



UPDATED REPORT: REGULATING DIRT BIKES ON PRIVATE PROPERTY

By: Julia Singer Bansal, Legislative Analyst II

QUESTION

This report updates OLR Report [2006-R-0345](#), which provides information on municipalities' authority to regulate dirt bike use on private property.

This office is not authorized to give legal opinions and this report should not be construed as such.

SUMMARY

Neither the statutes, nor the cases interpreting them, explicitly authorize municipalities to regulate dirt bike use on private property. However, it appears municipalities may exercise this authority pursuant to their (1) zoning powers through a regulation or (2) general municipal powers through an ordinance (CGS §§ [8-2](#) and [7-148](#)). By law, municipalities' zoning commissions may adopt regulations specifying land uses that are suitable for an area's character. Municipalities' legislative bodies may adopt ordinances to, among other things, abate nuisances and protect inhabitants' health. Connecticut's courts have generally upheld regulations and ordinances restricting activities which are loud, cause traffic problems, endanger the public health or welfare, or constitute a nuisance.

Additionally, the law authorizes municipalities to regulate noise, including noise that dirt bikes emit, by adopting a noise ordinance approved by the Department of Energy and Environmental Protection (DEEP) ([CGS § 22a-73](#)). Many municipalities have adopted a DEEP-approved ordinance incorporating noise limits for motorized recreational vehicles.

ZONING REGULATIONS

Statutes

The zoning statutes do not explicitly authorize zoning commissions to adopt regulations concerning the use of dirt bikes or other motorized recreational vehicles on private property. But, the authority to do so may be implied in the statute specifying the purposes for which municipalities may adopt zoning regulations ([CGS § 8-2](#)). These purposes include promoting health and general welfare. A regulation restricting individuals from using dirt bikes in certain areas could serve this purpose.

The statutory criteria zoning regulations must meet also suggest an implied authority to regulate dirt bike use. When crafting regulations, a zoning commission must consider an area's character and its "peculiar suitability for particular uses and with a view to...encouraging the most appropriate use of land throughout such municipality" ([CGS § 8-2](#)). Given this criterion, it appears that a zoning commission could adopt regulations, based on an area's character, restricting when and where individuals can ride dirt bikes.

Case Law

Connecticut's courts have not ruled on whether the zoning statutes authorize zoning commissions to limit dirt bike use on private property, though at least one case raised this question. In a recent case, Granby's zoning board of appeals (ZBA) considered the appeal of a resident who was ordered by the zoning enforcement officer to stop riding dirt bikes on his property because it negatively affected neighbors' quality of life. The ZBA determined that dirt bike riding was not a permitted use or permitted accessory use of a lot zoned for residential use, and thus was prohibited on such lots (*Cardwell v. Granby Zoning Board of Appeals*, 53 Conn. L. Rptr. 291 (2012)). (A "permitted use" is a use or activity specifically allowed by regulations in a particular zone (e.g., single-family dwellings in a residential zone). A "permitted accessory use" is a use or activity that is incidental to a permitted use and therefore allowed (e.g., a backyard swimming pool or tennis court).) The Granby resident appealed the ZBA's decision to Superior Court, but the court did not reach the question of whether that decision was correct, because it determined that the resident's appeal to the ZBA was untimely. Accordingly, it held it lacked jurisdiction over the appeal and remanded the matter to the ZBA.

In addition, Connecticut courts have upheld zoning regulations that restrict to certain areas activities that endanger residents' health, welfare, or safety or constitute a nuisance. For example, the Connecticut Supreme Court upheld a zoning regulation banning outdoor entertainment in residential zones in order to confine

this activity to “sections of the city that are well suited to accommodate the secondary effects of such activities” (*Husti v. Zuckerman Property Enterprises*, 199 Conn. 575, 581 (1986)). The court noted that it had “held on numerous occasions that zoning restrictions, so far as they reasonably promote public health, safety, and welfare without depriving landowners of all economically viable use of their property, are constitutional even though the effect of the restrictions may be to limit the exercise of private property rights” (*Id.* At 580). Based on this ruling, it appears that the municipalities can prohibit dirt bike use in residential areas if the effects of their use (e.g., noise and dust) threaten residents’ health, safety, or welfare.

Additionally, a Superior Court decision suggests that zoning commissions can prohibit individuals from using dirt bikes when riding constitutes a nuisance. In *Pahlsson v. Pond*, the court issued a temporary injunction prohibiting all-terrain vehicle (ATV) riding on an unpaved private road in a residential neighborhood because it constituted a nuisance in violation of Branford’s zoning regulations (1996 Conn. Supp. 5098 (1996)). Residents complained that ATV use in the neighborhood put them in physical danger, interfered with telecommuting, and caused loud noises, smoke, and fumes.

GENERAL MUNICIPAL POWERS

It appears that municipalities can adopt ordinances specifically restricting dirt bike use on private property pursuant to the statute specifying their general powers. Under [CGS § 7-148](#), municipalities have the authority to:

1. prohibit and abate nuisances, including activities harmful to the inhabitants' health, morals, safety, convenience, and welfare;
2. keep streets and other public places safe and free from undue noise and nuisances; and
3. prevent individuals from trespassing on public or private lands.

The Connecticut Supreme Court cited these powers when it upheld Berlin's decision to erect a gate preventing individuals from riding ATVs, motorcycles, and other vehicles on an abandoned road near a residential neighborhood. It determined that Berlin “was appropriately engaged in exercising the powers delegated to it to control and regulate traffic at the intersection...as well as to curtail excessive noise in the general area” (*Tighe v. Town of Berlin*, 259 Conn. 83, 91-91 (2002)).

NOISE ORDINANCES

Neighbors' complaints about excessive noise is one of the most common reasons municipalities seek to regulate dirt bike use on private property. The law authorizes municipalities to adopt a noise ordinance with maximum allowable noise levels provided the ordinance (1) is approved by the DEEP commissioner and (2) incorporates noise standards that are at least as stringent as those identified in DEEP's regulations ([CGS § 22a-73](#)).

DEEP regularly approves ordinances that include provisions limiting noise emitted by motorized recreational vehicles (frequently defined in ordinances as an internal combustion engine powered vehicle used for recreational purposes). Derby, East Lyme, Enfield, Hartford, Tolland, and Norwalk, for example, have ordinances prohibiting individuals from operating recreational vehicles in a manner that causes them to emit noise in excess of specified maximum noise levels.

Municipalities adopting noise ordinances must do so pursuant to the procedure in [CGS § 22a-73](#). In *Berlin Batting Cages v. Planning and Zoning Commission*, the Connecticut Appellate Court rejected a municipality's argument that the zoning statutes authorized it to set maximum noise levels in zoning regulations. The court instead found that municipalities establishing maximum noise levels must do so by adopting a DEEP-approved noise ordinance (76 Conn. App. 199, 215-219 (2003)).

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