



REGULATING NOISE GENERATED BY OUTDOOR ENTERTAINMENT

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QUESTION

Does the law authorize municipalities to regulate noise generated by outdoor entertainment (e.g., concerts)?

The Office of Legislative Research is not authorized to give legal opinions, and this report should not be construed as such.

SUMMARY

State law does not explicitly authorize municipalities to regulate noise generated by outdoor entertainment, but the power to do so is implied in the statutes granting municipalities (1) their general municipal and zoning powers and (2) the authority to adopt noise ordinances (CGS §§ [7-148](#), [8-2](#), and [22a-73](#)). Regulations and ordinances typically include (1) restrictions on when and where such entertainment may occur and (2) general limits on noise levels.

By law, municipalities' (1) legislative bodies may adopt ordinances to, among other things, regulate public amusements and performances and prevent disturbing noises and (2) zoning commissions may adopt regulations specifying land uses that are suitable for an area's character. In several cases, Connecticut's courts have upheld, as a legitimate exercise of these general municipal and zoning powers, regulations and ordinances restricting outdoor entertainment that generates loud noises.

Additionally, the law authorizes municipalities to regulate noise by adopting a noise ordinance approved by the Department of Energy and Environmental Protection (DEEP) ([CGS § 22a-73](#)). According to DEEP, at least 75 municipalities have noise ordinances. Unless specifically exempted (e.g., by a permit or by the ordinance itself), outdoor entertainment noise is subject to the limits in these ordinances.

GENERAL MUNICIPAL POWERS

Exhibitions, Public Amusements, and Performances

It appears that municipalities' legislative bodies can adopt ordinances regulating outdoor entertainment pursuant to the statute specifying their general powers. Under [CGS § 7-148](#), municipalities have the authority to prohibit, restrain, license, and regulate exhibitions, public amusements, and performances. Although we did not find a case interpreting exhibition, public amusement, or performance in the context of [CGS § 7-148](#), a Connecticut Supreme Court case interpreting a law concerning police presence at certain events ([CGS § 7-284](#)) held that "concerts are 'exhibitions'...[and the term] places of amusement includes all classes of public exhibitions, such as are usually conducted upon a stage for the observation and amusement of the public" (*Morascini v. Commissioner of Public Safety*, 236 Conn. 781(1996), quoting *New York v. Eden Musee American Co.*, 102 N.Y. 593 (1886)). This suggests that the terms exhibition, public amusement, and performance, as used in [CGS § 7-148](#), may encompass many forms of outdoor entertainment, thus subjecting such entertainment to municipal regulation.

Nuisances

It appears that municipalities could also regulate outdoor entertainment by virtue of their authority to prohibit nuisances. [CGS § 7-148](#) authorizes municipalities to:

1. prohibit and abate nuisances, including activities harmful to inhabitants' health, morals, safety, convenience, and welfare;
2. preserve the public peace and good order, prevent and quell disorderly assemblages, and prevent disturbing noises; and
3. keep streets, sidewalks, and public places free from undue noise and nuisances.

Outdoor entertainment may constitute a private nuisance, thus subjecting it to municipal regulation, when it unreasonably interferes with neighbors' use and enjoyment of their homes. In determining whether a nuisance exists, courts weigh parties' conflicting interests and consider a case's particular circumstances (see *Pestey v. Cushman*, 259 Conn. 345 (2002)). For example, in *Esposito v. New Britain Baseball Club*, the Superior Court held that nearly biweekly fireworks

displays at the conclusion of minor league baseball games constituted a private nuisance (49 Conn. Supp. 509 (2005)). Residents living close to the baseball stadium complained that the displays generated excessive noise, smoke, odors, and the possibility of property damage, while the baseball team countered that the displays were essential to its financial survival. The court rejected the team's argument and issued an injunction limiting the frequency of the displays, stating:

the severity of the interference...outweighs the benefits of the interfering use which is, fundamentally, a profit making enterprise that provides entertainment. While the court recognizes and applauds the social utility of that business to the city, it is not sufficient to justify the extent to which these individual plaintiffs have suffered and will suffer... (*Id.* at 526).

ZONING REGULATIONS

Statutes

Although the zoning statutes do not explicitly authorize zoning commissions to adopt regulations concerning outdoor entertainment, the commissions may have implied authority to do so from the statute specifying the purposes for which municipalities may adopt zoning regulations ([CGS § 8-2](#)). These purposes include promoting health and general welfare, and below we describe a court case that upheld a municipal outdoor entertainment regulation as meeting these purposes.

The statutory criteria zoning regulations must meet also suggest an implied authority to regulate outdoor entertainment. 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, specifying when and where outdoor entertainment is permitted.

Case Law

Connecticut courts have upheld zoning regulations that restrict to certain areas activities that affect residents' health, welfare, or safety. For example, the Connecticut Supreme Court upheld a Shelton zoning regulation banning outdoor concerts and theatrical performances 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 stated 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). It held that the regulation withstood constitutional challenges even though “[a]rguably the city could have chosen to address ...[threats to safety and tranquility] by limiting the decibel levels of concerts [or] limiting audience size...” (*Id.* at 584). The United States Supreme Court dismissed the appeal for want of a substantial federal question (479 U.S. 802 (1986)). (There is no written opinion explaining the court’s decision, but the dismissal constitutes a decision on the merits.)

In an unpublished opinion, the Superior Court cited *Husti* when it upheld a Woodbury zoning regulation that (1) required a recreational facility owner in a residential neighborhood to obtain a special permit before holding outdoor concerts on his property and (2) limited the number of such events to four per year, spaced at least 28 days apart (*Town of Woodbury v. Taylor*, 1993 WL 544630 (1993)). The court held that:

the presentation of concert performances...in a residential neighborhood would threaten the quality of life and safety of the inhabitants of the neighborhood by causing noise, attracting large crowds and creating large amounts of traffic on residential rural roads unless controlled by the appropriate municipal agency which in this case is the Woodbury Zoning Commission (*Id.* at 6).

NOISE ORDINANCES

In addition to time and place restrictions, municipalities regulate outdoor entertainment noise through their general authority to regulate noise levels. By law, municipalities may adopt a noise ordinance with maximum allowable noise levels if 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](#)). Noise ordinances set limits based on (1) the source of the noise (emitter class) and (2) where the noise is heard (receptor zone). Generally, ordinances identify three categories of classes and zones: industrial, commercial, and residential. In some municipalities, maximum noise limits in residential receptor zones are higher during the day than they are at night.

Municipalities adopting noise ordinances setting maximum noise levels 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)).

For more information on noise ordinances, please see OLR Report [2014-R-0126](#).

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