

Limiting Hours of Operation/Liquor Sales [IMAN-ACTIVE.FID2821443]

 2 attachments (355 KB)

Parillo Food Grp_ Inc. v. Bd. of Zoning Appeals of New Haven_169 _n. App. 598.pdf; _n. Gen. Stat. _30-91_.pdf;

From: "Andres, Charles R." <candres@barclaydamon.com>

Date: October 1, 2024 at 6:02:20 PM EDT

To: MICHAEL MICHAEL <fenbois@aol.com>, Abby Conroy <aconroy@salisburyct.us>

Subject: RE: Limiting Hours of Operation/Liquor Sales [IMAN-ACTIVE.FID2821443]

Abby and Michael,

You have asked whether the authority of the Planning & Zoning to impose limits on the hours of operation of a hotel bar as a condition of approval of a special permit has been preempted by state statute, specifically CGS §30-91 (copy attached). That statute establishes hours of operation for hotel (and other) liquor permits, and provides that municipalities may alter those hours by ordinance or town meeting – but does *not* address whether the hours of operation may be limited by a zoning commission when evaluating a special permit for this use. Based on an Appellate Court case addressing this issue, I believe that a Zoning Commission *does* have authority to impose restrictions on the hours of operations of a hotel bar allowed by special permit provided the authority to do so is provided in the zoning regulations.

This issue was addressed by the Appellate Court in Parillo Food Group, Inc. v. Board of Zoning Appeals, 169 Conn. App. 598 (2016) (copy attached). In that case, a restaurant that had previously operated with just a beer and wine permit sought a special exception to operate with a full liquor permit. (The restaurant had been damaged by a fire, and the applicant was reconstructing the restaurant.) The New Haven Board of Zoning Appeals approved the special exception application, but imposed a condition limiting the hours of operation. The plaintiff/applicant appealed, claiming that the local zoning board lacked authority to limit the hours of operation, and that the hours of operation could be restricted from what is provided in CGS §30-91(a) only if the municipality imposed the restriction by ordinance or town meeting pursuant to CGS §30-91(b). The trial court agreed with the plaintiff, but the Appellate disagreed and reversed the trial court's decision.

The Appellate Court held that CGS §30-91(b) did not preempt a local zoning board's authority to impose conditions of approval restricting hours of operation as a condition of approval for a special exception. Employing a preemption analysis established by our Supreme Court, it first held that the Liquor Control Act (including CGS Sec. 31-90) did not demonstrate an intent to occupy the field of liquor regulation, since various statutes in that Act acknowledge that municipalities can regulate liquor establishments. It further held that the local regulation did not conflict with state law because Section 31-90(b), authorizing restrictions on a town-wide basis, does not necessarily conflict with the authority to adopt more severe restrictions on an individual case-by-case basis in the context of a Zoning Commission's evaluation of special permit. Accordingly, it found that the local regulation and state law could coexist without conflict.

Of course, in order to impose such a condition on a particular special permit application, there would need to be authority to do so in the regulations, and there should be evidence in the record to support such a condition. Here, Section 807.5 of the regulations provides "In deciding on a Special Permit Application, the Commission may attach such conditions to its approval necessary to assure compliance with the requirements of these Regulations." Accordingly, any condition restricting the hours of operation should be premised on the site plan and special permit standards in the regulations. See regulations, Section 801 and 803. Also, I note that CGS §8-1cc and Section 217.19 of the Regulations allow outdoor food and beverage services to extend until at least 9 p.m.

I hope this is helpful. Let me know if you need additional information.

Chuck Andres

Charles R. Andres

Partner

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From: MICHAEL MICHAEL <fenbois@aol.com>
Sent: Tuesday, October 1, 2024 10:11 AM
To: Abby Conroy <aconroy@salisburyct.us>
Cc: Andres, Charles R. <CAndres@barclaydamon.com>
Subject: Re: Limiting Hours of Operation/Liquor Sales

Thanks for following up on this. As this is a controversial situation I would appreciate a written opinion from you for the record please ...Michael
Sent from my iPhone

On Oct 1, 2024, at 10:07 AM, Abby Conroy <aconroy@salisburyct.us> wrote:

Good Morning Chuck,

One of the PZC Commission members asked about whether or not the Commission can limit the hours of operation associated with a hotel bar under a special permit.

I found the statute below:

30-91(b) Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which sales under subsection (a) of this section, except sales under a cafe permit issued under subsection (d) of section 30-22a, shall be permissible. In all cases when a town, either by vote of a town meeting or by ordinance, has acted on the sale of alcoholic liquor or the reduction of the number of hours when such sale is permissible, such action shall become effective on the first day of the month succeeding such action and no further action shall be taken until at least one year has elapsed since the previous action was taken.

Based on that, it seems like the the only authority to limit stems from Town Meeting or Ordinance and must be applicable to all establishments. I have also included his original inquiry below.

Any insights?

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Walk-ins 8am-9am Monday/Tuesday/Thursday and Wednesdays 8am-12pm.
Outside of these hours, staff are available by appointment ONLY.

User Name: charles.andres9

Date and Time: Tuesday, October 1, 2024 4:00:00 PM EDT

Job Number: 234927021

Document (1)

1. [Conn. Gen. Stat. § 30-91](#)

Client/Matter: 474505-4700046

Search Terms: Name (new haven) and liquor and "hours of operation"

Search Type: Terms and Connectors

Narrowed by:

Content Type


Narrowed by
-None-

Conn. Gen. Stat. § 30-91

Current through 2024 Regular Session approved on or before July 1, 2024.

LexisNexis® Connecticut Annotated Statutes > Title 30 Intoxicating Liquors (Ch. 545) > Chapter 545 Liquor Control Act (Pts. I — VII) > Part VII Prohibited Acts, Penalties and Procedure (§§ 30-74 — 30-118)

Notice

 This section has more than one version with varying effective dates.

Sec. 30-91. Hours and days of closing. Exemption.

(a) The sale, dispensing, consumption or presence in glasses or other receptacles suitable to allow for the consumption of alcoholic liquor by an individual in places operating under hotel permits issued under section 30-21, restaurant permits issued under section 30-22, cafe permits issued under section 30-22a, Connecticut craft cafe permits issued under section 30-22d, club permits issued under section 30-22aa, restaurant permits for catering establishments issued under section 30-22b, coliseum permits issued under section 30-33a, temporary liquor permits for noncommercial entities issued under section 30-35, nonprofit public museum permits issued under section 30-37a, manufacturer permits for beer, a farm winery or wine, cider and mead issued under subsection (b), (c) or (d), respectively, of section 30-16, casino permits issued under section 30-37k and caterer liquor permits issued under section 30-37j shall be unlawful on: (1) Monday, Tuesday, Wednesday, Thursday and Friday between the hours of one o'clock a.m. and nine o'clock a.m.; (2) Saturday between the hours of two o'clock a.m. and nine o'clock a.m.; (3) Sunday between the hours of two o'clock a.m. and ten o'clock a.m.; (4) Christmas, except (A) for alcoholic liquor that is served where food is also available during the hours otherwise permitted by this section for the day on which Christmas falls, and (B) by casino permittees at casinos, as defined in section 30-37k; and (5) January first between the hours of three o'clock a.m. and nine o'clock a.m., except that on any Sunday that is January first the prohibitions of this section shall be between the hours of three o'clock a.m. and ten o'clock a.m.

(b) Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which sales under subsection (a) of this section, except sales under a cafe permit issued under subsection (d) of section 30-22a, shall be permissible. In all cases when a town, either by vote of a town meeting or by ordinance, has acted on the sale of alcoholic liquor or the reduction of the number of hours when such sale is permissible, such action shall become effective on the first day of the month succeeding such action and no further action shall be taken until at least one year has elapsed since the previous action was taken.

(c) Notwithstanding any provisions of subsections (a) and (b) of this section, such sale, dispensing, consumption or presence in glasses in places operating under a cafe permit issued under subsection (f) of section 30-22a shall be unlawful before eleven o'clock a.m. on any day, except in that portion of the permit premises which is located in a separate room or rooms entry to which, from the bowling lane area of the establishment, is by means of a door or doors which shall remain closed at all times except to permit entrance and egress to and from the lane area. Any alcoholic liquor sold or dispensed in a place operating under a cafe permit issued under subsection (f) of section 30-22a shall be served in containers such as, but not limited to, plastic or glass. Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which sales under this subsection shall be permissible.

(d) The sale or dispensing of alcoholic liquor for off-premises consumption in places operating under package store permits issued under subsection (b) of section 30-20, druggist permits issued under section 30-36, manufacturer permits issued under section 30-16, grocery store beer permits issued under subsection (c) of section 30-20, religious wine retailer permits issued under section 30-37sor temporary auction permits issued under section 30-37u shall be unlawful on Thanksgiving Day, New Year's Day and Christmas; and such sale or dispensing of alcoholic liquor for off-premises consumption in places operating under package store permits, druggist permits, manufacturer permits for beer, grocery store beer permits, religious wine retailer permits and temporary auction permits shall be unlawful on Sunday before ten o'clock a.m. and after six o'clock p.m. and on any other day before eight o'clock a.m. and after ten o'clock p.m. Any town may, by a vote of a town meeting or by ordinance, reduce the number of hours during which such sale shall be permissible.

(e)

(1) In the case of any premises operating under a cafe permit issued under subsection (c) of section 30-22a, or a Connecticut craft cafe permit issued under section 30-22d, and wherein, under the provisions of this section, the sale of alcoholic liquor is forbidden on certain days or hours of the day, or during the period when such permit is suspended, it shall likewise be unlawful to keep such premises open to, or permit such premises to be occupied by, the public on such days or hours.

(2) In the case of any premises operating under a cafe permit, it shall be unlawful to keep such premises open to, or permit such premises to be occupied by, the public between the hours of one o'clock a.m. and six o'clock a.m. on Monday, Tuesday, Wednesday, Thursday and Friday and between the hours of two o'clock a.m. and six o'clock a.m. on Saturday and Sunday or during any period of time when such permit is suspended, provided the sale, dispensing or consumption of alcohol on such premises operating under such cafe permit shall be prohibited beyond the hours authorized for the sale, dispensing or consumption of alcohol for such premises under this section.

(3) Notwithstanding any provision of this chapter, in the case of any premises operating under a cafe permit, it shall be lawful for such premises to be open to, or be occupied by, the public when such premises is being used as a site for film, television, video or digital production eligible for a film production tax credit pursuant to section 12-217jj, provided the sale, dispensing or consumption of alcohol on such premises operating under such cafe permit shall be prohibited beyond the hours authorized for the sale, dispensing or consumption of alcohol for such premises under this section.

(f) The retail sale and the tasting of free samples of wine, cider not exceeding six per cent alcohol by volume, apple wine not exceeding fifteen per cent alcohol by volume, apple brandy, eau-de-vie and mead by visitors and prospective retail customers of a permittee holding a manufacturer permit for a farm winery issued under subsection (c) of section 30-16 or a manufacturer permit for wine, cider and mead issued under subsection (d) of section 30-16 on the premises of such permittee shall be unlawful on Sunday before ten o'clock a.m. and after ten o'clock p.m. and on any other day before eight o'clock a.m. and after ten o'clock p.m. Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which sales and the tasting of free samples of products under this subsection shall be permissible.

(g) Notwithstanding any provision of subsection (a) and subdivisions (1) and (2) of subsection (e) of this section, food or nonalcoholic beverages may be sold, dispensed or consumed in places operating under a cafe permit issued pursuant to subsection (d) of section 30-22a, at any time, as allowed by agreement between the Connecticut Airport Authority and its lessees or concessionaires. In the case of premises operating at Bradley International Airport under a cafe permit, the sale, dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual shall be unlawful on any day between the hours of twelve o'clock a.m. and four o'clock a.m. and after eleven o'clock p.m.

(h) The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual in places operating under a nonprofit golf tournament permit issued under section 30-37g shall be unlawful on any day prior to nine o'clock a.m. and after ten o'clock p.m.

(i) Nothing in this section shall be construed to require any permittee to continue the sale or dispensing of alcoholic liquor until the closing hour established under this section.

(j) The retail sale of alcoholic liquor, and the provision of samples or tastings of alcoholic liquor, to festival visitors at a festival organized and sponsored under a festival permit issued under section 30-37t shall be unlawful on Sunday before ten o'clock a.m. and after six o'clock p.m., and on any other day before eight o'clock a.m. and after ten o'clock p.m. Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which the retail sale, tasting or sampling of alcoholic liquor under this subsection shall be permissible.

(k) The sale of products at a farmers' market by a permittee holding a farmers' market sales permit pursuant to section 30-37o shall be unlawful on any day before eight o'clock a.m. and after ten o'clock p.m., provided such permittee shall not sell such products at a farmers' market at any time during such hours that the farmers' market is not open to the public. Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which sales of products under this subsection shall be permissible.

(l) Notwithstanding any provision of subsection (a) of this section, it shall be lawful for casino permittees at casinos, as defined in section 30-37k, to allow the presence of alcoholic liquor in glasses or other receptacles suitable to permit the consumption thereof by an individual at any time on its gaming facility, as defined in subsection (a) of section 30-37k, provided such alcoholic liquor shall not be served to a patron of such casino during the hours specified in subsection (a) of this section. For purposes of this section, "receptacles suitable to permit the consumption of alcoholic liquor" does not include bottles of distilled spirits or bottles of wine.

History

1949 Rev., S. 4296; 1949, March, 1950, 1951, S. 2170d; 1957, P.A. 617, S. 2; 1961, P.A. 301; February, 1965, P.A. 553, S. 12; 1967, P.A. 365, S. 4; 489; 1971, P.A. 89, S. 1; 254, S. 5; 309, S. 1; 541; 1972, P.A. 1, S. 1; 68, S. 5; 294, S. 32; P.A. 73-11; 73-533, S. 7; P.A. 74-181, S. 1, 2; 74-307, S. 12; P.A. 75-598, S. 5; P.A. 76-347, S. 6; P.A. 79-272; P.A. 80-181; 80-198, S. 1; P.A. 81-169, S. 1, 3; 81-367, S. 8, 9; P.A. 82-33, S. 1, 2; 82-299, S. 5, 6; P.A. 83-283, S. 4, 5; P.A. 84-494, S. 10, 11; 84-546, S. 80, 173; P.A. 85-380, S. 4, 10, 12; P.A. 86-403, S. 98, 132; P.A. 87-321, S. 5, 6; P.A. 89-181, S. 5, 6; P.A. 90-44; P.A. 93-139, S. 68; P.A. 95-161, S. 2; P.A. 99-159, S. 3; P.A. 00-192, S. 77, 102; P.A. 01-17, S. 1; June 30 Sp. Sess. P.A. 03-1, S. 103; P.A. 05-7, S. 2; 05-226, S. 2, 3; 05-288, S. 134; P.A. 09-47, S. 6, 8; P.A. 11-164, S. 5; P.A. 12-17, § 11, § 15, § 9, § 10, effective May 14, 2012; P.A. 15-24, § 2, effective July 1, 2015; P.A. 15-244, § 82, effective July 1, 2015; P.A. 16-103, § 2, § 3, effective June 2, 2016; P.A. 16-117, § 6, effective June 3, 2016; P.A. 17-90, § 4, effective June 9, 2017; P.A. 17-160, § 6, effective July 7, 2017; P.A. 17-232, § 2, effective October 1, 2017; P.A. 18-66, § 1, effective June 1, 2018; P.A. 19-24, § 17, effective July 1, 2020; P.A. 21-37, § 76, effective July 1, 2021; P.A. 22-56, § 5, effective May 23, 2022; P.A. 22-104, § 23, effective May 24, 2022; P.A. 23-50, § 22, effective July 1, 2023; P.A. 23-110, § 3, effective July 1, 2023; P.A. 23-50, § 23, effective October 1, 2023; P.A. 24-40, § 41, effective October 1, 2024.

Annotations

Notes

Amendment Notes

2015 amendment, by P.A. 15-244, effective July 1, 2015, in the first sentence of (d), substituted "six o'clock p.m." for "five o'clock p.m." and "ten o'clock p.m." for "nine o'clock p.m."; substituted "ten o'clock p. m." for "nine o'clock p. m." twice in the first sentence of (f); substituted "ten o'clock p.m." for "nine o'clock p.m." in (h); substituted "ten o'clock p.m." for "nine o'clock p.m." in the first sentence of (l); and made a stylistic change.

Conn. Gen. Stat. § 30-91

2016 amendment, by P.A. 16-103, effective June 2, 2016, substituted “ten o'clock a. m.” for “eleven o'clock a. m.” in (a)(3) and (a)(5); and substituted “before eight o'clock a. m.” for “before ten o'clock a. m.” in the first sentence of (f).

2016 amendment, by P.A. 16-117, effective June 3, 2016, substituted “before ten o'clock a. m.” for “before eleven o'clock a. m.” in the first sentence of (f).

2017 amendment, by P.A. 17-90, effective June 9, 2017, substituted “prior to nine o'clock” for “eleven o'clock” in (h).

2017 amendment, by P.A. 17-160, effective July 7, 2017, inserted “manufacturer permits for a farm brewery” twice in (d).

2017 amendment, by P.A. 17-232, effective Oct. 1, 2018, inserted “manufacturer permits for farm distilleries” twice in (d).

2018 amendment, by P.A. 18-66, effective June 1, 2018, in (g), substituted “the Connecticut Airport Authority” for “the state of Connecticut” in the first sentence and added the second sentence.

2019 amendment, by P.A. 19-24, effective July 1, 2020, in (a), added “Connecticut craft cafe permits,” and substituted “manufacturer permits for beer, casino permits” for “a manufacturer permit permits for a brew pub, manufacturer permits for beer and brew pubs, casino permits”; rewrote (d); in (f), substituted “sale and” for “sale of wine and”, added “cider not exceeding six per cent alcohol by volume, apple wine not exceeding fifteen per cent alcohol by volume, apple brandy, eau-de-vie and mead” and “or a manufacturer permit for wine, cider and mead” and substituted “samples of products” for “samples of wine”; deleted former (i); redesignated former (j) through (m) as (i) through (l); and in (k), substituted “products” for “wine” three times and “market sales” for “market wine sales.”

2021 amendment, by P.A. 21-37, effective July 1, 2021, rewrote the section.

2022 amendment, by P.A. 22-56, effective May 23, 2022, in (j), in the first sentence, substituted “alcoholic liquor” for “wine”, “the provision of samples or tastings of alcoholic liquor, to festival” for “the tasting of free samples of wine by”, “at a festival organized and sponsored under a festival permit issued under section 1 of this act” for “and prospective retail customers of a permittee holding a wine festival permit or an out-of-state entity wine festival permit issued pursuant to section 30-37l or 30-37m”, “ten o'clock a.m.” for “eleven o'clock a.m.”, “six o'clock p.m.” for “eight o'clock p.m.”, “eight o'clock a.m.” for “ten o'clock a.m.” and “ten o'clock p.m.” for “eight o'clock p.m.” and “tasting or sampling of alcoholic liquor under” for “of wine and the tasting of free samples of wine pursuant to” in the second sentence; and made a stylistic change.

2022 amendment, by P.A. 22-104, effective May 24, 2022, rewrote (a); substituted “under a cafe permit issued under subsection (d) of section 30-22a” for “pursuant to a cafe permit issued pursuant to subsection (d) of section 30-22a” in (b); in (c), substituted “under subsection (f) of section 30-22a” for “pursuant to subsection (f) of section 30-22a” in the first sentence and substituted “under subsection (f) of section 30-22a” for “pursuant to subsection (f) of section 30-22a” in the second sentence; rewrote (d); in (e)(1), added “issued under subsection (c) of section 30-22a, as amended by this act, or a Connecticut craft cafe permit issued under section 30-22d, as amended by this act,” and substituted “such permit” for “a cafe permit” and “permit such premises” for “permit it”; and made related and stylistic changes.

2023 amendment, by P.A. 23-50, effective July 1, 2023, in (a), added “temporary liquor permits for noncommercial entities issued under section 30-35” and deleted “charitable organization permits issued under section 30-37b” preceding “shall be unlawful.”

2023 amendment, by P.A. 23-50, effective October 1, 2023, in (d), added “emporary auction permits issued under section 5 of this act” and “temporary auction permits”; in (f), added “issued under subsection (c) of section 30-16” and “issued under subsection (d) of section 30-16”; added “issued under section 30-37g” in (h); and deleted “subsection (a) of” following “pursuant to” in the first sentence of (k).

2023 amendment, by P.A. 23-110, effective July 1, 2023, added “o'clock” in the first sentence of (c).

Notes to Decisions

Constitutional Law: Prohibition

Criminal Law & Procedure: Criminal Offenses: Controlled Substances: General Overview

Criminal Law & Procedure: Criminal Offenses: Controlled Substances: Delivery, Distribution & Sale: General Overview

Criminal Law & Procedure: Search & Seizure: Warrantless Searches: Plain View

Evidence: Hearsay: Exceptions: Public Records: General Overview

Governments: Legislation: Sunday Closing Laws

Governments: State & Territorial Governments: Licenses

Real Property Law: Zoning & Land Use: Ordinances

Constitutional Law: Prohibition

Conn. Gen. Stat. § 30-91, insofar as it declared unlawful, and Conn. Gen. Stat. § 30-74 and Conn. Gen. Stat. § 30-77, insofar as they prohibited the sale of alcoholic liquor on Good Friday, were laws made in violation of Conn. Const. art. VII because Conn. Gen. Stat. § 30-91, Conn. Gen. Stat. § 30-74, and Conn. Gen. Stat. § 30-77 compelled complainants to join or support, or be classed or associated with, a congregation, church, or religious association. No clear secular purpose justified prohibition of liquor sales on Good Friday, the primary effect of the Good Friday prohibition was to advance religion, and the Good Friday prohibition required excessive and, thus, impermissible entanglement of government with religion. *Griswold Inn, Inc. v. State*, 183 Conn. 552, 441 A.2d 16, 1981 Conn. LEXIS 497 (Conn. 1981).

Criminal Law & Procedure: Criminal Offenses: Controlled Substances: General Overview

Where a police officer observed through a window over a bar acts which gave him probable cause to believe that the crime of dispensing alcoholic liquor after hours was being committed, the nature of the premises, the carrying of glasses from the bar to the table, the presence of glasses on tables with people sitting around the tables, on the day and time in question, gave the officers reasonable cause to demand entry for the purpose of arrest and the seizure of the glasses and liquids (which upon testing were found to contain alcohol) connected with the crime for which the arrest was being made; these facts established a plain violation of Conn. Gen. Stat. § 30-91. *State v. De Lorme*, 2 Conn. Cir. Ct. 231, 197 A.2d 543, 1963 Conn. Cir. LEXIS 251 (Conn. Cir. Ct. 1963).

Criminal Law & Procedure: Criminal Offenses: Controlled Substances: Delivery, Distribution & Sale: General Overview

Where a police officer observed through a window over a bar acts which gave him probable cause to believe that the crime of dispensing alcoholic liquor after hours was being committed, the nature of the premises, the carrying of glasses from the bar to the table, the presence of glasses on tables with people sitting around the tables, on the day and time in question, gave the officers reasonable cause to demand entry for the purpose of arrest and the seizure of the glasses and liquids (which upon testing were found to contain alcohol) connected with the crime for which the arrest was being made; these facts established a plain violation of Conn. Gen. Stat. § 30-91. *State v. De Lorme*, 2 Conn. Cir. Ct. 231, 197 A.2d 543, 1963 Conn. Cir. LEXIS 251 (Conn. Cir. Ct. 1963).

Criminal Law & Procedure: Search & Seizure: Warrantless Searches: Plain View

Liquor Control Commission validly revoked a restaurant's liquor license for violating Conn. Gen. Stat. § 30-91 by selling liquor during prohibited hours; a seizure of a glass that was found to contain liquor was valid under Conn. Gen. Stat. § 30-8 because the glass was in plain view and because the police report that contained the analysis of the glass' contents was admissible under the public records exception to the hearsay rule. *Hing Wan Wong v. Liquor Control Com.*, 160 Conn. 1, 273 A.2d 709, 1970 Conn. LEXIS 589 (Conn. 1970), cert. denied, 401 U.S. 938, 91 S. Ct. 931, 28 L. Ed. 2d 218, 1971 U.S. LEXIS 2953 (U.S. 1971).

Evidence: Hearsay: Exceptions: Public Records: General Overview

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Governments: Legislation: Sunday Closing Laws

Where there was no evidence of what was in the six-pack of beer cans obtained from a patron outside of defendant's store and the cans were not introduced into evidence, defendant was improperly convicted of selling alcoholic liquor on Sunday in violation of Conn. Gen. Stat. § 30-91. *State v. Mallozzi*, 23 Conn. Supp. 279, 1 Conn. Cir. Ct. 196, 181 A.2d 453, 1962 Conn. Cir. LEXIS 189 (Conn. Cir. Ct. 1962).

Governments: State & Territorial Governments: Licenses

Trial court improperly determined that a city was precluded from imposing a condition restricting a restaurant's hours of operation with a liquor permit and improperly determined that the condition was illegal, as that condition limiting the restaurant's hours of operation was authorized by the local zoning regulations and was not in conflict with the provisions of Conn. Gen. Stat. § 30-91(b). *Parillo Food Grp., Inc. v. Bd. of Zoning Appeals of New Haven*, 169 Conn. App. 598, 151 A.3d 864, 2016 Conn. App. LEXIS 442 (Conn. App. Ct. 2016).

Conn. Gen. Stat. § 30-91 makes it clear that a liquor permit is nothing more than an "extra hours" permit which allows the sale of alcoholic liquor for an extra hour after closing time on premises already validly operating. *Greenwich v. Liquor Control Com.*, 191 Conn. 528, 469 A.2d 382, 1983 Conn. LEXIS 616 (Conn. 1983).

Conn. Gen. Stat. § 30-91(a) gives municipalities the authority to enact by referendum a prohibition against the extra hour sale or consumption of alcoholic liquor permitted under various types of permits. *Greenwich v. Liquor Control Com.*, 191 Conn. 528, 469 A.2d 382, 1983 Conn. LEXIS 616 (Conn. 1983).

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Conn. Gen. Stat. § 30-91

Where there was no evidence of what was in the six-pack of beer cans obtained from a patron outside of defendant's store and the cans were not introduced into evidence, defendant was improperly convicted of selling alcoholic liquor on Sunday in violation of Conn. Gen. Stat. § 30-91. *State v. Mallozzi*, 23 Conn. Supp. 279, 1 Conn. Cir. Ct. 196, 181 A.2d 453, 1962 Conn. Cir. LEXIS 189 (Conn. Cir. Ct. 1962).

Real Property Law: Zoning & Land Use: Ordinances

Trial court improperly determined that a city was precluded from imposing a condition restricting a restaurant's hours of operation with a liquor permit and improperly determined that the condition was illegal, as that condition limiting the restaurant's hours of operation was authorized by the local zoning regulations and was not in conflict with the provisions of Conn. Gen. Stat. § 30-91(b). *Parillo Food Grp., Inc. v. Bd. of Zoning Appeals of New Haven*, 169 Conn. App. 598, 151 A.3d 864, 2016 Conn. App. LEXIS 442 (Conn. App. Ct. 2016).

Notes to Unpublished Decisions

Governments: Local Governments: Police Power

Governments: State & Territorial Governments: Licenses

Real Property Law: Zoning & Land Use: Administrative Procedure

Governments: Local Governments: Police Power

Unpublished decision: A city had the authority to regulate the use of a restaurant in a park that was located within the city but was owned by another city; limitations on hours of operation were reasonably related to the city's police power pursuant to Conn. Gen. Stat. § 8-2, and the city had the authority to regulate the serving of alcohol pursuant to its police powers and Conn. Gen. Stat. § 30-91. *City of Hartford v. Town Council of the Town of West Hartford*, 2003 Conn. Super. LEXIS 2314 (Conn. Super. Ct. Aug. 5, 2003).

Governments: State & Territorial Governments: Licenses

Unpublished decision: Substantial evidence supported the suspension of the liquor permit of plaintiffs, a permittee and the backer of a grocery beer permit, for their selling of beer during prohibited hours, in violation of Conn. Gen. Stat. § 30-91, as the trial court was free to credit the testimony of officers. *Ashour v. Connecticut Liquor Control*, 1999 Conn. Super. LEXIS 478 (Conn. Super. Ct. Feb. 26, 1999).

Real Property Law: Zoning & Land Use: Administrative Procedure

Unpublished decision: Town planning and zoning commission's approval of a special use permit and liquor permit in order for defendant to serve liquor on-premises at its restaurant was not legal pursuant to Conn. Gen. Stat. § 30-91 where the commission limited the time for dispensing liquor only up until midnight; as the proper procedure for imposing such a time limitaiton was not followed, the commission exceeded its power. *D'Amato v. Windsor Locks Planning & Zoning Comm'n*, 2012 Conn. Super. LEXIS 3133 (Conn. Super. Ct. Dec. 21, 2012).

Opinion Notes

OPINIONS OF ATTORNEY GENERAL

[NO NUMBER IN ORIGINAL], 1980 Conn. AG LEXIS 27.

Research References & Practice Aids

Hierarchy Notes:

Conn. Gen. Stat. Title 30

Conn. Gen. Stat. Title 30, Ch. 545

State Notes

Notes

History Notes:

1961 act permitted sale of liquor after voting hours on election days in hotel, restaurant, club and tavern permit premises; 1965 act added references to golf country club permits; 1967 acts added references to cafe permits and changed closing time for sales under package store, package store beer, drug store, drug store beer and grocery store permits from nine to eight o'clock p.m.; 1971 acts changed closing time for Sunday liquor sales under Subdiv. (a) from nine to eleven o'clock p.m., added references to charitable organization permits, prohibited sales on Saturday between two o'clock a.m. and nine o'clock a.m. and changed closing time for Sunday sales, when allowed, from one to two a.m. and prohibited sales on Independence Day (or the following Monday, if on Sunday) and Labor Day under package store, drug store and grocery store permits; 1972 acts added exception re elections at which not all electors may vote to prohibition of sales on election days, added reference to university permits and deleted provision prohibiting sales on Decoration Day; P.A. 73-11 specified that liquor may be sold on Christmas for on-premises consumption with hot meals; P.A. 73-533 added references to coliseum and coliseum concession permits; P.A. 74-181 authorized towns to allow sale of liquor on Sunday and tavern permit between noon and eleven o'clock p.m.; P.A. 74-307 added references to the various special sporting facility permits; P.A. 75-598 added provision governing times and days when sales allowed under night club permits; P.A. 76-347 added references to bowling establishment permits and specific provision regulating sales under such permits; P.A. 79-272 divided section into Subsecs. and changed location and wording of provision granting towns power to reduce hours of operation for clarity; P.A. 80-181 changed time of closing for sales period which began on Sunday from eleven o'clock that day to one a.m. on Monday; P.A. 80-198 deleted provision in Subsec. (c) which had prohibited sales of liquor on election days under tavern permit unless election is one at which not all electors may vote; P.A. 81-169 added Subsec. (e) to state the hours during which the retail sale and tasting of free samples of wine are permissible at farm wineries and to allow towns to shorten such hours; P.A. 81-367 eliminated references to package store beer permits and drug store beer permits and eliminated prohibition against sales on Good Friday; P.A. 82-33 eliminated the prohibition against liquor sales on election day, provided that liquor may be sold on the Fourth of July if it occurs on a Saturday and deleted references to "package store beer permits" and "drug store beer permits"; P.A. 82-299 amended Subsec. (a) by adding references to catering establishments; P.A. 83-283 amended Subsec. (a) by adding reference to racquetball facility permits; P.A. 84-494 added a new Subsec. (f) concerning the hours of operation of premises operating under airport restaurant permits and airport bar permits; P.A. 84-546 made technical change in Subsec. (a); P.A. 85-380 deleted provisions in Subsecs. (a) and (f) re nightclub permits and added Subsec. (g) re hours during which liquor may be served under a nonprofit golf tournament permit; P.A. 86-403 made technical changes; P.A. 87-321 amended Subsec. (f) by establishing hours and days of closing for airport airline clubs and by providing that food or nonalcoholic beverages may be sold, dispensed or consumed in places operating under any class of airport permit at any time, as allowed by agreement between the state and its lessees or concessionaires; P.A. 89-181 amended Subsec. (c) to include brew pubs; P.A. 90-44 amended Subsec. (a) to allow lane side service of alcohol in bowling alleys at two p.m. rather than five p.m.; P.A. 93-139 made technical changes, added a provision to allow towns to reduce the hours of sale in all permit

premises except sales pursuant to an airport restaurant permit, airport bar permit or airport airline club permit and allowed Sunday sales in all towns; P.A. 95-161 amended Subsec. (d) to prescribe the days and hours brew pubs could sell beer for off-premise consumption and inserted new Subsec. (i) re on-premise consumption, relettering former Subsec. as (j); P.A. 99-159 amended Subsec. (e) to add Subdiv. indicators and a provision in new Subdiv. (2) to allow for one year premises operating under a manufacturer permit for a brew pub in which class III gaming takes place to remain open when the brew pub itself must be closed; P.A. 00-192 amended Subsec. (a) to add references to casino permits and caterer liquor permits, designate existing exception in Subdiv. (4) as Subpara. (A), substitute "where food is also available" for "with hot meals" in said Subpara. and add Subdiv. (4)(B) re casino permittees, effective May 26, 2000 (Revisor's note: In Subdiv. (4)(B), a reference to "section 24 of this act" was deemed by the Revisors to be a reference to definition section 76, and codified accordingly as section "30-37k", for accuracy); P.A. 01-17 amended Subsec. (c) by deleting references to the color or transparency of drink containers for alcoholic liquor dispensed under a bowling establishment permit; June 30 Sp. Sess. P.A. 03-1 amended Subsec. (d) to change the closing hour for sales by package stores, drug stores and grocery stores from eight o'clock p.m. to nine o'clock p.m., effective August 16, 2003; P.A. 05-7 amended Subsec. (d) by adding references to manufacturer permits for a brew pub and manufacturer permits for beer and deleting provision re unlawful sale of beer for consumption off premises of brew pub, and amended Subsec. (e)(1) by adding references to manufacturer permits for beer; P.A. 05-226 repealed section 2 of P.A. 05-7 which amended Subsecs. (d) and (e), effective July 8, 2005, amended Subsec. (d) to include references to manufacturer permits for beer and amended Subsec. (e) to delete references to premises operating under a manufacturer permit for a brew pub, delete Subdiv. (1) designator and delete former Subdiv. (2) re exception for premises operating under a manufacturer permit for a brew pub in which class III gaming may be legally conducted; P.A. 05-288 made a technical change in Subsec. (g), effective July 13, 2005; P.A. 09-47 made a technical change in Subsecs. (c) and (g) and added Subsec. (k) re wine festival permit and out-of-state entity wine festival permit, effective May 20, 2009, and amended Subsec. (f) by changing closing hour from 8 o'clock p.m. to 9 o'clock p.m., effective July 1, 2009; P.A. 11-164 added Subsec. (l) re hours of sale of wine at farmers' market and municipal reduction of such hours, effective July 1, 2011; P.A. 12-17 amended Subsec. (a) to add reference to manufacturer permits for beer and brew pubs, amended Subsec. (d) to add references to manufacturer permits for beer and brew pubs, delete provisions re sales prohibition on Decoration Day, Independence Day, Labor Day and Sunday, add provision re Sunday sales hours and make a technical change, amended Subsec. (e) to designate existing provisions as Subdiv. (1) and delete provisions re cafe permit therein, add Subdiv. (2) re cafe permit hours of operation and add Subdiv. (3) re opening of tavern and cafe permit premises during certain film, television, video or digital productions, amended Subsec. (l) to delete provision re unlawful Sunday wine sales at farmers' market, and added Subsec. (m) re casino permittees, effective May 14, 2012.

Case Notes:

Cited. 118 Conn. 252. Proof of alcoholic content discussed. 119 Conn. 439. Cited. 121 Conn. 445. Beer consumed at a forbidden hour given as a favor instead of being sold was held a violation. 127 Conn. 710. Cited. *Id.*, 722. Town may permit Sunday sales in hotels only. 138 Conn. 172. Evidence concerning glass and its contents was legally obtained and therefore admissible to prove violation of section. 160 Conn. 1. Board of zoning appeals may not limit the hours of a liquor outlet; that power is reserved to the town. 161 Conn. 297. Held unconstitutional insofar as statute pertains to prohibition on sale of alcoholic liquor on Good Friday. 183 Conn. 552. Cited. 191 Conn. 528; 226 Conn. 418.

Legislative intent discussed. 3 Conn. Supp. 388. Cited. 5 Conn. Supp. 51. Legislature intended that permittee assume the responsibility to see to it that no liquor is sold on the days and during the hours prescribed by statute. *Id.*, 118. History of statute; sale of liquor by a holder of a package store beer permit prior to 8 a.m. held not to be a violation of statute. 15 Conn. Supp. 290. The fact that plaintiff was acquitted on a criminal charge did not affect propriety of commission's decision to suspend his permit. 17 Conn. Supp. 156. Cited. 23 Conn. Supp. 281.

Research References & Practice Aids

Cross References:

See Sec. 30-10 re vote on liquor permit question by towns.

See Sec. 30-36 re druggists' permits.

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1. [Parillo Food Grp., Inc. v. Bd. of Zoning Appeals of New Haven](#)

Client/Matter: 474505-4700046

Search Terms: Name (new haven) and liquor and "hours of operation"

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Parillo Food Grp., Inc. v. Bd. of Zoning Appeals of New Haven

Appellate Court of Connecticut

October 5, 2016, Argued; December 6, 2016, Officially Released

AC 38023

Reporter

169 Conn. App. 598 *; 151 A.3d 864 **; 2016 Conn. App. LEXIS 442 ***

PARILLO FOOD GROUP, INC. v. BOARD OF ZONING APPEALS OF THE CITY OF NEW HAVEN

Prior History: [***1] Appeal from the decision by the defendant granting the plaintiff's application for a special exception in connection with the operation of a restaurant with a liquor permit, with conditions, brought to the Superior Court in the judicial district of New Haven and tried to the court, Blue, J.; judgment sustaining the appeal in part, from which the defendant, on the granting of certification, appealed to this court.

Parillo Food Group, Inc. v. New Haven Bd. of Zoning Appeals, 2014 Conn. Super. LEXIS 3074 (Conn. Super. Ct., Dec. 12, 2014)

Disposition: Reversed; judgment directed.

Core Terms

special exception, restaurant, ordinance, zoning, regulations, hours of operation, conditions, special permit, trial court, municipality, neighborhood, quotation, liquor, marks, provisions, zoning board, authorize, alcohol, seats, local zoning, impose a condition, zoning regulation, convenience, restricting, alcoholic liquor, state statute, town meeting, circumstances, neighboring, advisory

Case Summary

Overview

HOLDINGS: [1]-The trial court improperly determined that a city was precluded from imposing a condition restricting a restaurant's hours of operation with a liquor permit and improperly determined that the condition was illegal, as that condition limiting the restaurant's hours of operation was authorized by the local zoning regulations and was not in conflict with the provisions of Conn. Gen. Stat. § 30-91(b); [2]-The court held that the Connecticut

Legislature did not intend to occupy the entire field of regulation under the Liquor Control Act, Conn. Gen. Stat. § 30-1 et seq., but rather intended that municipalities and local zoning boards have some input regarding the location of establishments that sell alcohol and conditions relating to the operation of those businesses.

Outcome

Judgment reversed; case remanded to the trial court with direction to dismiss plaintiff's appeal.

LexisNexis® Headnotes

Constitutional Law > The Judiciary > Case or Controversy > Advisory Opinions

HN1 Case or Controversy, Advisory Opinions

The Appellate Court of Connecticut does not render advisory opinions. As the Connecticut Supreme Court has explained more than a century ago, such action on our part would be clearly extrajudicial. It would be a case purely of advice and not of judgment.

Governments > State & Territorial Governments > Licenses

HN2 State & Territorial Governments, Licenses

Conn. Gen. Stat. § 30-91(a) provides in part: The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual in places operating under restaurant permits shall be unlawful on: (1) Monday, Tuesday, Wednesday,

Thursday and Friday between the hours of one o'clock a.m. and nine o'clock a.m.; (2) Saturday between the hours of two o'clock a.m. and nine o'clock a.m.; (3) Sunday between the hours of two o'clock a.m. and eleven o'clock a.m.

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Governments > State & Territorial Governments > Licenses

Governments > Local Governments > Ordinances & Regulations

HN3 **Zoning, Ordinances**

Conn. Gen. Stat. § 30-91(b) provides in relevant part: Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which sales under subsection (a) of the section, except sales pursuant to an airport restaurant permit, airport bar permit or airport airline club permit, shall be permissible.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Real Property Law > Zoning > Judicial Review

HN4 **Standards of Review, Substantial Evidence**

In reviewing a decision of a zoning board, a reviewing court is bound by the substantial evidence rule, according to which, conclusions reached by a zoning commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the commission. The question is not whether the trial court would have reached the same conclusion, but whether the record before the commission supports the decision reached. If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court cannot substitute its judgment as to the weight of the evidence for that of the commission. The agency's decision must be sustained if an examination of the record discloses evidence that

supports any one of the reasons given.

Administrative Law > Judicial Review > Standards of Review > Substantial Evidence

Real Property Law > Zoning > Judicial Review

HN5 **Standards of Review, Substantial Evidence**

The substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. The substantial evidence rule is a compromise between opposing theories of broad or de novo review and restricted review or complete abstention. It is broad enough and capable of sufficient flexibility in its application to enable the reviewing court to correct whatever ascertainable abuses may arise in administrative adjudication. On the other hand, it is review of such breadth as is entirely consistent with effective administration. The corollary to that rule is that absent substantial evidence in the record, a court may not affirm the decision of the zoning board.

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Real Property Law > Zoning > Variances
Business & Corporate Compliance > Real Property > Zoning > Variances

HN6 **Zoning, Ordinances**

With respect to special exceptions, Conn. Gen. Stat. § 8-2(a) provides, in part, that local zoning regulations may provide that certain uses of land are permitted only after obtaining a special permit or special exception subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. The terms special permit and special exception are interchangeable. A special permit allows a property owner to use his property in a manner expressly permitted by the local zoning regulations. The proposed use, however, must

satisfy standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience and property values. An application for a special permit seeks permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district.

Business & Corporate Compliance > Real Property > Zoning > Local Planning
Real Property Law > Zoning > Local Planning

Real Property Law > Zoning > Variances
Business & Corporate Compliance > Real Property > Zoning > Variances

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

HN7 **Zoning, Local Planning**

When ruling upon an application for a special permit, a planning and zoning board acts in an administrative capacity. Its function is to decide within prescribed limits and consistent with the exercise of its legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. The nature of special permits is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site. Review of a special permit application is inherently fact-specific, requiring an examination of the particular circumstances of the precise site for which the special permit is sought and the characteristics of the specific neighborhood in which the proposed facility would be built. When considering an application for a special permit, a zoning board is called upon to make a decision as to whether a particular proposal would be compatible with the particular zoning district under the circumstances then existing.

Business & Corporate Compliance > Real Property > Zoning > Local Planning
Real Property Law > Zoning > Local Planning

Business & Corporate Compliance > Real Property > Zoning > Ordinances

Real Property Law > Zoning > Ordinances

Real Property Law > Zoning > Variances
Business & Corporate Compliance > Real Property > Zoning > Variances

HN8 **Zoning, Local Planning**

The general conditions such as public health, safety and welfare, which are enumerated in zoning regulations, may be the basis for the denial of a special permit. Before the zoning commission can determine whether the specially permitted use is compatible with the uses permitted as of right in the particular zoning district, it is required to judge whether any concerns, such as parking or traffic congestion, would adversely impact the surrounding neighborhood. Connecticut courts have never held that a zoning commission lacks the ability to exercise discretion to determine whether the general standards in the regulations have been met in the special permit process. If the special permit process were purely ministerial there would be no need to mandate a public hearing. Where a special exception is involved, the board may impose conditions only to the extent allowed by the zoning regulations themselves. Without such a grant of power, the board would be unable to impose a condition even where one was obviously desirable.

Business & Corporate Compliance > Real Property > Zoning > Local Planning
Real Property Law > Zoning > Local Planning

Governments > Legislation > Interpretation

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

HN9 **Zoning, Local Planning**

The authority to engage in zoning is drawn from the police power, which is the source of all zoning authority. There is overlap in the Connecticut General Statutes between the authority of a zoning commission and the exercise of the municipal police power through the adoption of ordinances by a town's legislative body. Many of the subjects over which the municipality is given the power to regulate by Conn. Gen. Stat. § 7-148 are traditionally the subject of zoning and planning regulations as well. When the language and purpose of two statutes overlap, they are to be read in concert.

Business & Corporate Compliance > Real
Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Governments > Legislation > Interpretation

Governments > Local Governments > Police Power

HN10 **Zoning, Ordinances**

The State may regulate any business or the use of any property in the interest of the public welfare or the public convenience, provided it is done reasonably. The limit of the exercise of the police power is necessarily flexible, because it has to be considered in the light of the times and the prevailing conditions. In determining whether a local ordinance is preempted by a state statute, the appellate court must consider whether the legislature has demonstrated an intent to occupy the entire field of regulation on the matter or whether the local ordinance irreconcilably conflicts with the statute.

Business & Corporate Compliance > Real
Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Governments > Local Governments > Licenses

Governments > Local Governments > Ordinances &
Regulations

HN11 **Zoning, Ordinances**

When reviewing various provisions of the Liquor Control Act, Conn. Gen. Stat. § 30-1 et seq., it becomes apparent that the legislature intended municipalities and local zoning boards to have some input regarding, inter alia, the location of establishments that sell alcohol and conditions relating to the operation of those businesses. Conn. Gen. Stat. § 30-91(b) authorizes a town, by vote of a town meeting or by ordinance, to reduce the number of hours during which sales of alcoholic liquor are permissible. Further, a town may vote to prohibit the sale of alcoholic liquor within its boundaries. Conn. Gen. Stat. § 30-9. Additionally, the Department of Consumer Protection must refuse to grant permits for the sale of alcoholic liquor in no-permit towns and where prohibited by the zoning ordinance of any city or town. Conn. Gen. Stat. § 30-44.

Business & Corporate Compliance > Real
Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Governments > Legislation > Interpretation

Governments > Local Governments > Ordinances &
Regulations

HN12 **Zoning, Ordinances**

Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives. Therefore, that a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through the enactment of an ordinance, so long as there is no conflict with the state legislation. Where the state legislature has delegated to local government the right to deal with a particular field of regulation, the fact that a statute also regulates the same subject in less than full fashion does not, ipso facto, deprive the local government of the power to act in a more comprehensive, but not inconsistent, manner.

Business & Corporate Compliance > Real
Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Governments > Legislation > Interpretation

Governments > Local Governments > Police Power

HN13 **Zoning, Ordinances**

Merely because a local ordinance, enacted pursuant to the municipality's police power, provides higher standards than a statute on the same subject does not render it necessarily inconsistent with the state law. Whether a conflict exists depends on whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes. If, however, both the statute and the ordinance are prohibitory and the only difference is that the ordinance goes further in its prohibition than the statute, but not counter to the prohibition in the statute, and the ordinance does not attempt to authorize that which the legislature has forbidden, or forbid that which the

legislature has expressly authorized, there is no conflict. Where a municipal ordinance merely enlarges on the provisions of a statute by requiring more than a statute, there is no conflict unless the legislature has limited the requirements for all cases.

Governments > State & Territorial
Governments > Licenses

Governments > Local Governments > Licenses

HN14 **State & Territorial Governments, Licenses**

The Liquor Control Act, Conn. Gen. Stat. § 30-91(a), which provides that sales of alcoholic liquor shall be unlawful during certain hours, is a prohibitory statute.

Administrative Law > Judicial Review > Standards
of Review > De Novo Standard of Review

Governments > Legislation > Interpretation

Business & Corporate Compliance > Real
Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

HN15 **Standards of Review, De Novo Standard of Review**

When the resolution of an appeal requires the appellate court to construe provisions of state statutes and local zoning regulations, the court's analysis entails the construction of the relevant zoning regulations and state statutes, and is therefore a matter of law over which it exercises plenary review of the trial court's decision.

Business & Corporate Compliance > Real
Property > Zoning > Local Planning
Real Property Law > Zoning > Local Planning

Real Property Law > Zoning > Variances
Business & Corporate Compliance > Real
Property > Zoning > Variances

HN16 **Zoning, Local Planning**

A zoning board may impose conditions relating to a business' hours of operation in granting a special exception. Decisions regarding applications for special

exceptions are particularly fact bound. A zoning board must consider the particular circumstances of the precise site, including whether the mode of operation must be regulated because of the topography, traffic problems and neighboring uses of the site.

Business & Corporate Compliance > Real
Property > Zoning > Local Planning
Real Property Law > Zoning > Local Planning

Governments > Local Governments > Licenses

Business & Corporate Compliance > Real
Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

HN17 **Zoning, Local Planning**

The Connecticut Supreme Court case of *P. X. Restaurant, Inc. v. Windsor* states: It is also reasonable to imply that liquor premises are subject to local zoning ordinances which involve matters other than location. Once a liquor location is approved there may be additional health, safety and welfare factors unrelated to the fact that liquor will be sold at that location. Those are zoning matters of local concern and thus are within the expertise of local authorities.

Syllabus

The plaintiff restaurant appealed from the decision of the defendant board of zoning appeals granting the plaintiff's application for a special exception to operate the restaurant with a full liquor permit and imposing a condition limiting the plaintiff's hours of operation. The plaintiff previously had a special exception that permitted the service of wine and beer but, following a fire, the plaintiff rebuilt the restaurant and filed an application for a special exception to operate with a full restaurant liquor permit. The defendant granted the application subject to, inter alia, the condition that limited the plaintiff's hours of operation. The plaintiff appealed to the trial court, claiming that the defendant lacked the authority to impose the [***2] condition because the Liquor Control Act (§ 30-1 et seq.) governed the hours of operation for restaurants authorized to provide full liquor service. The plaintiff claimed that its hours of operation could only be limited pursuant to statute (§ 30-91 [b]) by vote of a town meeting or by ordinance to reduce the number of hours

during which sales of alcoholic liquor are permissible in the municipality. The trial court concluded that the defendant could not limit the hours of sale of alcohol under the guise of zoning and that this condition of the special exemption was illegal. The defendant, on the granting of certification, appealed to this court, claiming that the trial court improperly concluded that the Liquor Control Act divested the defendant of the power to attach conditions limiting the hours of operation of restaurants that serve alcohol. *Held* that the trial court improperly determined that the defendant was precluded from imposing the condition restricting the plaintiff's hours of operation and improperly determined that the condition was illegal, as that condition limiting the plaintiff's hours of operation was authorized by the local zoning regulations and was not in conflict with the provisions of [***3] § 30-91 (b): the legislature did not intend to occupy the entire field of regulation under the Liquor Control Act, but rather intended that municipalities and local zoning boards have some input regarding the location of establishments that sell alcohol and conditions relating to the operation of those businesses; furthermore, there was no conflict between the defendant's authority under the local zoning regulations to impose the condition that limited the plaintiff's hours, which was based on the adverse effect on the public convenience and the welfare of neighboring residential uses resulting from this particular change in the plaintiff's business to full alcohol service together with the addition of a bar, and the purpose and intent of § 30-91 (b), which permits a town to limit the hours of service in all types of businesses selling alcohol in all of the zoning districts in town because of a general determination that such a limitation is in the best interests of the town.

Counsel: Proloy K. Das, with whom were Roderick R. Williams, assistant corporation counsel, and, on the brief, Sarah Gruber, for the appellant (defendant).

Brian F. Valko, with whom was Amy P. Blume, for the appellee (plaintiff).

Judges: Alvord, Sheldon [***4] and Mullins, Js.
ALVORD, J. In this opinion the other judges concurred.

Opinion by: ALVORD

Opinion

[**868] [*599] ALVORD, J. The defendant, the Board of Zoning Appeals of the City of New Haven, appeals

from the judgment of the trial court sustaining the appeal of the plaintiff, Parillo Food Group, Inc., from the defendant's decision granting the plaintiff's application for a special exception to operate a restaurant serving liquor that imposed a condition limiting its hours of operation. On appeal, the defendant claims that the court improperly concluded that it had no authority to limit the hours of operation of the plaintiff's restaurant.¹ Specifically, the [*600] defendant claims that the court (1) should have determined that municipal zoning boards have the authority to place temporal restrictions on special exception uses, (2) erroneously concluded that Connecticut's Liquor Control Act, General Statutes § 30-1 et seq., divests the defendant of its power to attach conditions limiting the hours of operation of restaurants that serve alcohol, and (3) erroneously concluded that the challenged condition was not integral to the defendant's approval of the special exception. We agree with the defendant's second claim and, accordingly, reverse the judgment of [***5] the trial court.²

[**869] The record reveals the following facts and procedural history. The plaintiff leases property on State

¹ The defendant granted the special exception subject to five conditions, two of which were not challenged by the plaintiff and two of which the defendant conceded were advisory and not integral to the decision. The only condition at issue is the first condition: "Hours of operation not to extend past 11:30 p.m. daily. (Consistent with conditions attached to similar requests in this neighborhood.)"

² With respect to the defendant's first claim, the plaintiff does not challenge the authority of municipal zoning boards to impose temporal conditions, in certain situations, on special exception uses. Nevertheless, the defendant urges this court to "clarify that municipal zoning authorities may place reasonable hours of operation restrictions on local businesses when considering applications for special exceptions." Because this issue is not in controversy between the parties, we decline to address it. *HNI* [↑] "This court does not render advisory opinions. . . . As our Supreme Court explained more than a century ago, [s]uch action on our part would be clearly extrajudicial. It would be a case purely of advice and not of judgment." (Citations omitted; internal quotation marks omitted.) *National Amusements, Inc. v. Town of East Windsor*, 84 Conn. App. 473, 485, 854 A.2d 58 (2004).

We [***6] also do not address the defendant's third claim. Because we conclude that the defendant had the authority to impose the condition limiting the hours of operation, it is not necessary to determine whether that condition was integral to the defendant's approval of the special exception.

Street in New Haven, on which it operates a restaurant. The property is situated in a BA zone, and the area surrounding the restaurant is used for both residential and commercial purposes. Three dwelling units are located above the restaurant, and there also is a separate two-family dwelling located on the subject property. The use of the property as a restaurant began in the 1990s.

In August, 2000, the defendant granted a special exception to Amato Bernardo that permitted the service [*601] of wine and beer in the then existing forty-two seat restaurant. In September, 2011, the plaintiff leased the restaurant portion of the property. In January, 2012, the restaurant was severely damaged by fire. The plaintiff expended approximately \$15,000 to rebuild the restaurant, and, on January 25, 2013, it filed an application [***7] for a special exception to operate a forty-seven seat restaurant with a full restaurant liquor permit. Additionally, the plaintiff requested permission to allow three on-site parking places instead of the twelve spaces ordinarily required for a forty-seven seat restaurant.

The defendant held a public hearing on the plaintiff's application on March 12, 2013. Several individuals attended the hearing, some speaking in favor of the proposal and others speaking against it. Exhibits were submitted to the defendant, including an advisory report prepared by the New Haven City Plan Department (department) and an advisory report prepared by the New Haven City Plan Commission (commission). At a voting session held on April 9, 2013, the defendant's board members discussed the plaintiff's application and the commission's suggestions in its report. The members voted unanimously to approve the special exception subject to the five conditions stated in that report. By letter dated April 12, 2013, the defendant notified the plaintiff of its decision. The plaintiff appealed to the Superior Court, challenging the authority of the defendant to impose the conditions.

The trial court held a hearing on November [***8] 13, 2014. The court heard testimony from Daniel Parillo, the president of the plaintiff corporation, and found that the plaintiff was aggrieved.³ Following that determination, the parties' counsel presented their arguments to the court. They agreed that the pivotal issue before the court was whether the defendant had the authority to [*602] impose a limitation on the hours of the

³The court's finding of aggravement has not been challenged on appeal. [***9]

restaurant's operation as set forth in the first condition attached to the special exception. That condition provided: "Hours of operation not to extend past 11:30 p.m. daily. (Consistent with conditions attached to similar requests in this neighborhood.)" Although not expressly alleged in its administrative appeal or argued in its pretrial brief, plaintiff's counsel claimed at the hearing that the provisions of the Liquor Control Act governed the hours of operation for restaurants authorized [**870] to provide full liquor service.⁴ According to the plaintiff, only a town, by vote of a town meeting or by ordinance; see General Statutes § 30-91 (b);⁵ could limit those hours of operation. The trial court allowed both parties to submit supplemental briefs addressed to that particular issue.

The court issued its memorandum of decision on December 12, 2014. The court made the following determination: "Local authorities unquestionably have a general power to regulate health, safety, and welfare factors affecting establishments where liquor is sold. . . . Such regulation must, however, be done in a comprehensive, but not inconsistent, manner. . . . When local authorities [***10] seek to regulate the hours of operation of establishments selling alcoholic beverages . . . § 30-91 (b) tells them exactly how to do this. They must do so by vote of a town meeting or by ordinance." (Citations [*603] omitted; internal quotation marks omitted.) Citing *Bora v. Zoning Board of Appeals*, 161 Conn. 297, 302, 288 A.2d 89 (1971), and *Greenwich v. Liquor Control Commission*, 191 Conn. 528, 540, 469 A.2d 382 (1983), the court concluded that the defendant could not limit the hours of sale of alcohol under the guise of zoning. Accordingly, the court found the condition limiting the plaintiff's hours of operation to be

⁴General Statutes § 30-91 (a) [HN2](#) provides in relevant part: "The sale or the dispensing or consumption or the presence in glasses or other receptacles suitable to permit the consumption of alcoholic liquor by an individual in places operating under . . . restaurant permits . . . shall be unlawful on: (1) Monday, Tuesday, Wednesday, Thursday and Friday between the hours of one o'clock a.m. and nine o'clock a.m.; (2) Saturday between the hours of two o'clock a.m. and nine o'clock a.m.; (3) Sunday between the hours of two o'clock a.m. and eleven o'clock a.m. . . ."

⁵General Statutes § 30-91 (b) [HN3](#) provides in relevant part: "Any town may, by vote of a town meeting or by ordinance, reduce the number of hours during which sales under subsection (a) of this section, except sales pursuant to an airport restaurant permit, airport bar permit or airport airline club permit, shall be permissible. . . ."

illegal. After finding that the condition was not an integral component of the defendant's decision, the court modified that decision by removing that condition from the approval of the special exception. The defendant filed the present appeal after this court granted its petition for certification to appeal.

We first set forth the applicable legal principles and standard of review that guide our analysis. **HN4** [↑] "In reviewing a decision of a zoning board, a reviewing court is bound by the substantial evidence rule,⁶ according to which, [c]onclusions reached by [a zoning] commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely [***11] [**871] within the province of the [commission]. . . . [*604] The question is not whether the trial court would have reached the same conclusion, but whether the record before the [commission] supports the decision reached. . . . If a trial court finds that there is substantial evidence to support a zoning board's findings, it cannot substitute its judgment for that of the board. . . . If there is conflicting evidence in support of the zoning commission's stated rationale, the reviewing court . . . cannot substitute its judgment as to the weight of the evidence for that of the commission. . . . The agency's decision must be sustained if an examination of the record discloses evidence that supports any one of the reasons given." (Citations omitted; footnote added; internal quotation marks omitted.) *Municipal Funding, LLC v. Zoning Board of Appeals*, 270 Conn. 447, 453, 853 A.2d 511 (2004).

⁶ **HN5** [↑] "This so-called substantial evidence rule is similar to the sufficiency of the evidence standard applied in judicial review of jury verdicts, and evidence is sufficient to sustain an agency finding if it affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . [I]t must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion [***12] sought to be drawn from it is one of fact for the jury. . . . The substantial evidence rule is a compromise between opposing theories of broad or de novo review and restricted review or complete abstention. It is broad enough and capable of sufficient flexibility in its application to enable the reviewing court to correct whatever ascertainable abuses may arise in administrative adjudication. On the other hand, it is review of such breadth as is entirely consistent with effective administration. . . . The corollary to this rule is that absent substantial evidence in the record, a court may not affirm the decision of the board." (Internal quotation marks omitted.) *Meriden v. Planning & Zoning Commission*, 146 Conn. App. 240, 247, 77 A.3d 859 (2013).

HN6 [↑] With respect to special exceptions, "General Statutes § 8-2 (a) provides in relevant part that local zoning regulations may provide that certain . . . uses of land are permitted only after obtaining a special permit or special exception . . . subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. . . . The terms special permit and special exception are interchangeable. . . . A special permit allows a property owner to use his property in a manner expressly [***13] permitted by the local zoning regulations. . . . The proposed use, however, must satisfy standards set forth in the zoning regulations themselves as well as the conditions necessary to protect the public health, safety, convenience and property values. . . . An application for a special permit seeks permission to vary the use of a particular piece of property from that for which it is zoned, without offending the uses permitted as of right in the particular zoning district. . . . **HN7** [↑] When ruling upon an application for a special permit, a planning and zoning board acts in an administrative capacity. . . . [Its] function . . . [is] to decide [*605] within prescribed limits and consistent with the exercise of [its] legal discretion, whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply. . . . We have observed that the nature of special [permits] is such that their precise location and mode of operation must be regulated because of the topography, traffic problems, neighboring uses, etc., of the site. . . . Review of a special permit application is inherently fact-specific, requiring an examination of the particular circumstances [***14] of the precise site for which the special permit is sought and the characteristics of the specific neighborhood in which the proposed facility would be built." (Citations omitted; internal quotation marks omitted.) *Meriden v. Planning & Zoning Commission*, 146 Conn. App. 240, 244-45, 77 A.3d 859 (2013). When considering an application for a special permit, a zoning board is called upon to make a decision as to whether a particular proposal would be compatible with the particular zoning district "under the circumstances then existing." *Barberino Realty & Development Corp. v. Planning & Zoning Commission*, 222 Conn. 607, 614, 610 A.2d 1205 (1992).

HN8 [↑] "The general conditions such as public health, safety and welfare, which are enumerated in zoning regulations, may be the basis for the denial of a special permit. . . . [B]efore the zoning commission can determine whether the specially permitted use is compatible with the uses permitted as of right in the particular zoning district, it is required to judge whether

any concerns, such as parking or traffic congestion, would adversely impact the surrounding neighborhood. . . . Connecticut **[**872]** courts have never held that a zoning commission lacks the ability to exercise discretion to determine whether the general standards in the regulations have been met in the special permit process. . . . If the special permit process were purely ministerial there **[***15]** would **[*606]** be no need to mandate a public hearing." (Internal quotation marks omitted.) *Children's School, Inc. v. Zoning Board of Appeals*, 66 Conn. App. 615, 619-20, 785 A.2d 607, cert. denied, 259 Conn. 903, 789 A.2d 990 (2001). Where a special exception is involved, "the board may impose conditions only to the extent allowed by the zoning regulations themselves. . . . Without such a grant of power, the board . . . would be unable to impose a condition even where one was obviously desirable." (Citations omitted.) *Shulman v. Zoning Board of Appeals*, 154 Conn. 426, 429, 226 A.2d 380 (1967).

It is undisputed that the plaintiff is entitled to operate a restaurant as a permitted use in the BA zone. In order to serve alcoholic liquor, however, the plaintiff was required to obtain a special exception pursuant to article V, § 42, of the New Haven Zoning Ordinance (regulations). Section 63 (d) of the regulations, pertaining to special exceptions, provides the following statement of purpose: "It is recognized . . . that there are certain uses and features which, because of their unique characteristics, cannot be distinctly classified or regulated in a particular district or districts, without consideration, in each case, of the impact of such uses and features upon neighboring uses and the surrounding area, compared with the public need for them at particular locations. Such uses and features are therefore treated **[***16]** as special exceptions." (Emphasis omitted.)

Section 63 (d) (3) of the regulations provides the defendant with the following guidelines in evaluating an application for a special exception: "Special exceptions shall be granted only where the [defendant] finds that the proposed use or feature or the proposed extension or substantial alteration of an existing use or feature is in accord with the public convenience and welfare after taking into account, where appropriate . . . (b) [t]he resulting traffic patterns and adequacy of proposed off-street parking and loading . . . (c) [t]he **[*607]** nature of the surrounding area and the extent to which the proposed use or feature might impair its present and future development . . . (d) [t]he proximity of dwellings, churches, schools, public buildings and other places of public gathering . . . (e) [a]ll standards contained in this

ordinance . . . (f) [t]he comprehensive plan of the City of New Haven, and other expressions of the purpose and intent of this ordinance." (Emphasis omitted.) In addition to these general conditions, § 63 (d) (5) authorizes the defendant to impose specific conditions on a special exception when appropriate: "In granting a special exception, the [defendant] may attach such additional **[***17]** conditions and safeguards as are deemed necessary to protect the neighborhood, such as, but not limited to, those listed in paragraph 63 (c) (3) of this ordinance. Failure to comply with any such condition or safeguard shall constitute a violation of this ordinance." The conditions listed in § 63 (c) (3) include, inter alia, "[i]mitation of size, number of occupants, *method or time of operation*, or extent of facilities" (Emphasis added.)

The applicable zoning regulations clearly authorize the defendant to attach a condition limiting the hours of operation when granting a special exception. In reaching its decision that such a condition was warranted in the present case, the defendant had to rely on the record of the proceedings before it, which included the evidence presented at the public hearing and the advisory reports of the department and **[**873]** the commission.⁷ At the public hearing, the defendant was apprised of the fact that the plaintiff had added a separate bar area to the restaurant with seven seats. The dining area accommodated forty seats, for a total of **[*608]** forty-seven seats. An opposition to the plaintiff's application, titled "[a]pproval of this special exception would intensify the present use and cause **[***18]** undue hardship to neighboring residents and businesses due to the lack of parking," that was signed by approximately forty-five people, was presented to the defendant. Additionally, concerns were expressed that the addition of the bar would change the nature of the restaurant's former use. Although only seven seats were in the bar area, one speaker at the hearing noted that many people would congregate in that area, standing behind the seats and ordering drinks. Further, individuals who identified themselves as living in the neighborhood for several years stated that the parking situation was "awful" and a "nightmare," that there were many families with small children living in the area, that there would be "more bar action," and that the traffic would increase if the restaurant had a full liquor permit.

⁷ The department's advisory report was submitted pursuant to § 63 (e) (2) of the regulations, and the commission's advisory report was submitted pursuant to § 63 (d) (6) of the regulations.

The advisory reports both recommended granting the special exception with conditions. The department's report contained the following statement: "The proposed change from beer and wine to full alcohol service (including a [***19] bar) does change the nature of the restaurant. Practically speaking, the question is whether or not it is apparent (or even just likely) that . . . this change . . . will result in an establishment that can operate `in accordance with the public convenience and welfare' as was determined to be the case for the previous restaurant in 2000. In the view of staff, much of what could be viewed as additional impact is mitigable. For example, while it is unlikely that extending full liquor service to diners would in any way affect existing neighborhood conditions, the addition of a bar might. In many cases, bar service continues far past dining hours into early morning hours, occasionally disturbing nearby residents. Staff suggests that the imposition of hours of operation reflecting dining hours is not only [*609] appropriate but is reflective of recent policy in respect to restaurants located not only on State Street but also in other neighborhood business districts within the City." The department suggested adding a condition to the approval of the special exception that the "[h]ours of operation [are] not to extend past 11:30 p.m. daily."

The commission's report expressed similar concerns. In reviewing [***20] the criteria in the regulations pertaining to the granting of special exceptions, the commission noted: "The Plan's Housing and Neighborhood Planning section advises that neighborhoods be protected against potentially deleterious and/or nuisance influences. Any approval of this application should provide some assurances of that protection." The commission recommended that the application be approved with five conditions, including the following: "Hours of operation not to extend past 11:30 p.m. daily. (Consistent with conditions attached to similar requests in this neighborhood.)"⁸ At the

⁸ The plaintiff challenges the defendant's statement that similar conditions relating to hours of operation have been imposed on similar establishments in the area, noting that the restaurant across the street has a full liquor permit and has no restriction on its hours of operation. The competitor restaurant, however, secured its liquor permit twenty-eight years prior to the public hearing on the [***21] plaintiff's application. As previously noted, a zoning board must consider the circumstances "then existing" when it acts upon an application for a special exception. *Barberino Realty & Development Corp. v. Planning & Zoning Commission*, supra, 222 Conn. 614. Neighborhood conditions may have changed substantially within those twenty-eight years.

defendant's voting session [**874] on April 9, 2013, it followed the recommendation of the commission and approved the plaintiff's special exception with the five conditions listed in the commission's advisory report.

The plaintiff claims, however, that even if temporal conditions relating to a business' operation may be appropriate under certain circumstances, the defendant could not limit the plaintiff's hours of operation because [*610] the provisions of the Liquor Control Act grant only the city of New Haven, and not its zoning board, the authority to restrict the hours during which its restaurant can sell liquor. The plaintiff argues, and the trial court agreed, that § 30-91 (a) sets forth the permissible hours of operation for a restaurant with a full liquor permit and that § 30-91 (b) allows a municipality to restrict those hours by vote of a town meeting or by ordinance. In other words, as argued, although a municipality has the authority to restrict the hours of sale, a zoning board has no such authority. We disagree.

The plaintiff maintains that the defendant erroneously construes the trial court's decision as holding that the preemption doctrine precludes the defendant [***22] from restricting the plaintiff's hours of operation. We conclude that the preemption doctrine does factor into our analysis because the trial court essentially has determined that a local zoning board is precluded, by virtue of § 30-91 (b), from restricting the hours of operation of a restaurant that possesses a full liquor permit. Even though the regulations expressly authorize the defendant to impose such a condition in granting a special exception, the court, in adopting the reasoning of the plaintiff, determined that zoning boards are preempted by the provisions of the Liquor Control Act from restricting the hours of service because only a municipality is expressly authorized to do so by § 30-91 (b). Accordingly, we look to the legal principles involved in the determination of when a local ordinance is preempted by a state statute.

HN9 [↑] "The authority to engage in zoning is drawn from the police power, which is the source of all zoning authority." (Internal quotation marks omitted.) *VIP of Berlin, LLC v. Berlin*, 50 Conn. Supp. 542, 549, 951 A.2d 714 (2007), aff'd, 287 Conn. 142, 946 A.2d 1246 (2008). "There is overlap in the General Statutes between the authority of a zoning commission and the exercise of [*611] the municipal police power through the adoption of ordinances by a town's legislative body. Many of the subjects [***23] over which the municipality is given the power to regulate by [General Statutes] § 7-

148 are traditionally the subject of zoning and planning regulations as well. . . . Where the language and purpose of two statutes overlap, they are to be read in concert." (Citation omitted; internal quotation marks omitted.) *Id.*, 551.

HN10 [↑] "The State may regulate any business or the use of any property in the interest of the public welfare or the public convenience, provided it is done reasonably. . . . The limit of the exercise of the police power is necessarily flexible, because it has to be considered in the light of the times and the prevailing conditions." (Internal quotation marks omitted.) *Modern Cigarette, Inc. v. Orange*, 256 Conn. 105, 118, 774 A.2d 969 (2001). "[I]n determining whether a local ordinance is [****875**] preempted by a state statute, we must consider whether the legislature has demonstrated an intent to occupy the entire field of regulation on the matter or whether the local ordinance irreconcilably conflicts with the statute." *Id.*, 119.

In the present case, **HN11** [↑] when reviewing various provisions of the Liquor Control Act, it becomes apparent that the legislature intended municipalities and local zoning boards to have some input regarding, inter alia, the location of establishments that sell alcohol and conditions [*****24**] relating to the operation of those businesses. As already noted, § 30-91 (b) authorizes a town, by vote of a town meeting or by ordinance, to reduce the number of hours during which sales of alcoholic liquor are permissible. Further, a town may vote to prohibit the sale of alcoholic liquor within its boundaries. General Statutes § 30-9. Additionally, the Department of Consumer Protection must refuse to grant permits for the sale of alcoholic liquor in no-permit towns and where [***612**] prohibited by the zoning ordinance of any city or town. General Statutes § 30-44.

We next examine the relevant statutes and the New Haven Zoning Ordinance to determine whether there is a conflict that precludes the defendant from imposing the hours of operation condition authorized by the local zoning regulation. **HN12** [↑] "Whether an ordinance conflicts with a statute or statutes can only be determined by reviewing the policy and purposes behind the statute and measuring the degree to which the ordinance frustrates the achievement of the state's objectives. . . . Therefore, [t]hat a matter is of concurrent state and local concern is no impediment to the exercise of authority by a municipality through the enactment of an ordinance, so long as there is no conflict with the state legislation. [*****25**] . . . Where the state legislature has delegated to local government the right to deal with

a particular field of regulation, the fact that a statute also regulates the same subject in less than full fashion does not, ipso facto, deprive the local government of the power to act in a more comprehensive, but not inconsistent, manner." (Citations omitted; internal quotation marks omitted.) *Modern Cigarette, Inc. v. Orange*, supra, 256 Conn. 119.

"Therefore, **HN13** [↑] merely because a local ordinance, enacted pursuant to the municipality's police power, provides higher standards than a statute on the same subject does not render it necessarily inconsistent with the state law. Whether a conflict exists depends on whether the ordinance permits or licenses that which the statute forbids, or prohibits that which the statute authorizes. If, however, both the statute and the ordinance are prohibitory⁹ and the only difference is that [***613**] the ordinance goes further in its prohibition than the statute, but not counter to the prohibition in the statute, and the ordinance does not attempt to authorize that which the legislature has forbidden, or forbid that which the legislature has expressly authorized, there is no conflict. . . . Where a municipal ordinance merely [*****26**] enlarges on the provisions of a statute by requiring more than a statute, there is no conflict unless the legislature has limited the requirements for all cases." (Footnote added; internal quotation marks omitted.) *Id.*, 120.

HN15 [↑] Our resolution of this appeal requires us to construe provisions of state [****876**] statutes, i.e., provisions in the Liquor Control Act, and the local zoning regulations. "This analysis entails the construction of the relevant [zoning] regulations and [state] statutes, and is therefore a matter of law over which we exercise plenary review of the trial court's decision." *Zimnoch v. Planning & Zoning Commission*, 302 Conn. 535, 547, 29 A.3d 898 (2011).

The parties do not dispute that, under certain circumstances, **HN16** [↑] a zoning board may impose conditions relating to a business' hours of operation in granting a special exception. Decisions regarding applications for special exceptions are particularly fact bound. A zoning board must consider "the particular circumstances [*****27**] of the precise site," including

⁹ Section 30-91 (a), **HN14** [↑] which provides that sales of alcoholic liquor shall be unlawful during certain hours, is a prohibitory statute. The condition imposed by the defendant on the plaintiff's special exception also is prohibitory in that it extends the hours during which the plaintiff's sale of alcoholic liquor would be prohibited.

whether the "mode of operation must be regulated because of the topography, traffic problems [and] neighboring uses . . . of the site." (Internal quotation marks omitted.) *Meriden v. Planning & Zoning Commission*, supra, 146 Conn. App. 245. The defendant in this case concluded that a change from the plaintiff's service of beer and wine to full alcohol service, including a bar, would adversely affect the public convenience and welfare of the neighboring residential uses unless a condition limiting the hours of operation was imposed. This decision involves a particular use of a particular business in a particular zone.

[*614] As such, we conclude that the exercise of such authority pursuant to the regulations does not conflict with the purpose and intent of § 30-91 (b). The provisions of § 30-91 (b) permit a town to limit the hours of service in all types of businesses selling alcohol in all of the zoning districts in that town. It is a legislative decision, expressing a policy that service of alcohol should be restricted. Unlike a zoning board's administrative decision relating to an application for a special exception, a town, when it acts by vote of a town meeting or by ordinance pursuant to § 30-91 (b), has determined that everyone within its boundaries **[***28]** must limit the hours of sale because of a general determination that such a limitation is in the best interests of the town. The purposes for limiting the hours of operation in connection with a special exception and the purposes for restricting the hours of sale of liquor on a town-wide basis are separate and distinct, and both the local zoning regulation and the state statute can coexist without conflict.

We conclude that the condition imposed by the defendant on the plaintiff's special exception, which limited the hours of operation with respect to the sale of alcoholic liquor, was authorized by a regulation that was not in conflict with the provisions of § 30-91 (b). The defendant's restriction of hours merely went further in its prohibition on sales as set forth in § 30-91 (a). For the reasons stated in this opinion, the trial court improperly determined that the defendant was precluded from imposing the condition restricting the plaintiff's hours of operation and improperly determined that the condition at issue was illegal.¹⁰

¹⁰The trial court also relied on the cases of *Bora v. Zoning Board of Appeals*, supra, 161 Conn. 297, and *Greenwich v. Liquor Control Commission*, supra, 191 Conn. 528, in reaching its conclusion that the condition was illegal.

In *Bora*, a 1971 decision by our Supreme Court, the defendant


[*615] The judgment is reversed and the case is remanded to the trial court with direction to dismiss the plaintiff's appeal. **[***31]**

[877]** In this opinion the other judges concurred.

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zoning **[***29]** board of appeals granted the application for a variance from the off street parking regulations so that the applicant could operate a cafe without providing the requisite eight parking spaces. *Bora v. Zoning Board of Appeals*, supra, 161 Conn. 299. The board attached a condition to the variance that limited the hours of the applicant's operation of the cafe. Our Supreme Court determined that the zoning board exceeded its powers, as granted to it by the zoning ordinance, and concluded that the board had acted illegally. *Id.*, 302. This was not a case involving a special exception, with the authority to impose a condition limiting the hours of operation as set forth in the zoning ordinance. The condition in *Bora* was attached to a *variance of parking space regulations*. The special exception in the present case was required in order for the plaintiff to sell alcoholic liquor.

In *Greenwich*, our Supreme Court determined that the plaintiff town had improperly refused to certify that an applicant's request for an issuance of a night club liquor permit from the Liquor Control Commission did not violate the town's zoning ordinance. *Greenwich v. Liquor Control Commission*, supra, 191 Conn. 539-40. The applicant's restaurant already had a valid restaurant liquor permit, and the applicant wanted to remain open one hour **[***30]** longer as permitted by a night club liquor permit. *Id.*, 535-36. Our Supreme Court stated that the town had failed to point to any zoning laws that prohibited the applicant's certification for a night club liquor permit. *Id.*, 539. Further, "[w]hat they did attempt, *without any basis in their zoning laws* and without having employed the legitimate legislative option of limiting the hours of sale afforded by § 30-91 (a), was to prohibit the issuance of this permit under the guise of zoning." (Emphasis added.) *Id.*, 540. We do not find the holding of this case to be applicable to the present situation.

We also note that **HN17**  the Supreme Court case of *P. X. Restaurant, Inc. v. Windsor*, 189 Conn. 153, 454 A.2d 1258 (1983), contains language that is supportive of our decision. Our Supreme Court stated: "It is also reasonable . . . to imply that liquor premises are subject to local zoning ordinances which involve matters other than location. Once a liquor location is approved there may be additional health, safety and welfare factors unrelated to the fact that liquor will be sold at that location. These are zoning matters of local concern and thus are within the expertise of local authorities." *Id.*, 160.