

CODE ENFORCEMENT

Noise, Light, and Unreasonable Interference: When a Neighbor's Holiday Merriment Gets out of Hand

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For many, decorating the house and yard during the holiday season is an automatic annual event – and one that many of us immediately dread when we try to make the Christmas lights work! Indeed, it's said the use of holiday light decorations goes as far back as Thomas Edison—who, after inventing the light bulb, was asked to create a smaller bulb to be used for Christmas tree decorations. Over the decades since then, the Yuletide illumination on businesses and homes lining our streets has become more of a cultural tradition than a religious statement. And few would argue that the bright lights in December and early January aren't lovely.

Even so, we know that the best of traditions can get out of hand! Clark Griswold's home in the 1989 movie "Christmas Vacation" may be an extreme example – he had so many lights adorning his residence that the local electric company had to add an auxiliary power source – but extremes do arise. We may joke at the distraction as we drive by houses and yards with so many decorations and bright lights, but the neighbors next door – as in "Christmas Vacation," may not find it so amusing.

We know that as a general matter, excessive noise and light can affect the "quiet enjoyment" of adjacent and nearby property owners; these are at times the grist of code enforcement work. It may be easy to consider a complaining neighbor as the epitome of Scrooge. But what if that neighbor is not able to sleep because holiday lighting nearby is so bright it seems like daylight, or if there is accompanying music or other sounds? Many county and municipal codes include noise ordinances, the violation of which can result in a civil citation. While excessive light prohibitions are less common, most state and local codes do offer some protection for the common-law right of quiet enjoyment.

So the question is, even if they are considered Scrooge-like, what are the options for a person complaining about holiday decorations? What can code enforcement officers do when they receive such a complaint? And what laws might apply to address such a Clark Griswold-like situation which is truly excessive?

One might expect that most neighbors would be hesitant to file a formal complaint – to avoid becoming known as the local "Scrooge" of the community. And certainly the hope, as in any code enforcement matter, is that upon being notified of a complaint, a resident or business would try to take steps to correct the problem. There is little record of any complaints being formalized, which may reflect the fact that holiday displays are not intended to harass or interfere with someone's quiet enjoyment, and any complaints are informally addressed, person to person. Indeed, the goal of any code enforcement effort is, at core, to solve the problem. The other reality is that enforcement efforts, especially those requiring a Board or court hearing, can take time – even as much as many months, offering little relief for a person facing excessive light or noise every night.

Most holiday decorations consist of nighttime lighting. While many local development codes specify the types of permitted lighting, including a focus on reducing glare through the use of shielded or full cut-off fixtures to avoid light on neighboring properties, relatively few local governments have prohibitions on excessive lighting or glare as part of their property maintenance codes. But outdoor lighting standards may contain prohibitions on glare, such as the City of Bonita Springs, Florida's Ordinance No. 11-01. That ordinance specifies, at §12(d)(2)(a), that light "shall not be permitted" which shines on roadways and causes "glare, annoyance, discomfort or loss of visual ability;" it also limits the frequency of flashing or moving lights. In the event of a neighbor complaint, this provision could be potentially used to address glare. However, the section limiting flashing or moving lights creates an exception for "low wattage decorative lighting fixtures . . . used for decoration." That seems clearly intended to exempt holiday lights from the flashing/moving lights prohibition, but it should be noted that no such exception appears for the prohibition on glare on roadways causing annoyance. Even so, the requirement that the glaring affect a roadway as a condition, rather than simply annoying a neighbor, would limit its enforceability.

A similar exemption appears in the San Antonio, Texas ordinance which attempts to support night training at nearby military bases and is cited in support of the City's "dark sky" initiative to limit light pollution generally. That provision at City Code §35-339.04(b)(5) limits residential light at the property line to no more than 1.5 foot candles, considered a similar limitation to that of Bonita Springs. Yet subsection 15's exemptions



Chrstmas lighting on a home in Seattle.

include "[d]ecorative holiday lighting from November 15 through the next January 15."

Other limit restrictions, such as Portland, Oregon's Title 33, §33.262.080, simply prohibits glare from "all types of lighting" from directly or indirectly causing illumination of more than 0.5 foot candles of light, which can be measured by a light meter (and would be generally compared to a night light in a hallway for comparison purposes). Certainly a very bright holiday light display would run the risk of violating this provision, but the regulations are limited to nonresidential uses, creating off-site impacts in specified residential zones.

Especially with the built-in exemptions for holiday lighting, a glare prohibition may not provide relief against the most extreme light displays. It is also likely that even in a neighborhood, only one neighbor will be most directly impacted. But where displays include noise, some relief may be available, as more than one person may be willing to complain. Also, prohibitions on "unreasonably loud, unnecessary and unusual noise" such as Kernan, California's Chapter 9.26(a), are more commonly covered in municipal and county ordinances, and do not specify exceptions for holiday decorations—which might also include Halloween and other holidays as well as Christmas. Options vary as to what must be shown to demonstrate a violation; Kernan requires considerations of housing density, time of day, duration, noise level and proximity of the noise to sleeping facilities, among other factors. But ultimately, the question of "unreasonable noise" calls for a more subjective answer than an objective one.

That raises the main distinction between various noise ordinances – between tests which are objective or based on verifiable events, such as time of day, or are more subjective – based on whether a reasonable person would find the noise disturbing. In most cases, a holiday display using loud or amplified noise in a residential area would fall within even the most limited prohibitions, but the practical enforcement process for noise complaints can be challenging.

Enforcement can be elusive because while many code enforcement citations depend only on the municipal code officer's testimony, noise ordinance violations almost always require evidence from a witness rather than the code enforcement officer. As a result, objective tests with timelines and specific prohibitions, rather than subjective tests in which citations are issued based on unreasonable disturbances can be easier to prove and enforce. Overall, there are essentially four noise ordinance options:

1. Behavioral standards. These usually include time limits, and may for example include a prohibition on picking up trash within 500 feet of a residence before 6AM. It's not dependent on anyone saying they were bothered, but simply proving what happened, where, and at what time. Another example is the prohibition on using lawn equipment before 7AM or after 9PM, as Gaithersburg, Maryland's City Code §15-8(a) provides.

2. Time prohibitions for certain disturbances. This also depends on a time limit, but without clearly prohibiting specific behavior. Instead, the prohibition is on creating certain disturbing noise or, more often, creating noise on one property that is heard across the property line after a certain hour. As anr example, Miami, Florida's Chapter 36, §36-4(a) prohibits amplified noise that is "plainly audible" 100 feet from the building where it is produced. An-

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other example is prohibiting amplifying music after 11:00 pm. While the time standard is clear, whether music or other noise is "heard across the property line" can be interpreted in a subjective manner, because the question will come down to whether what someone heard was reasonable – even when the prohibition is on hearing anything.

3. Purely subjective tests. Many ordinances simply prohibit "any unreasonable noise," such as Lakewood, Colorado's City Code, §9.52.040, or the sending of such noise across the property line. While residents may often favor such laws – as they "sound" good in theory – in fact, this option can be the most difficult to prove in court. They are is also highly subject to disputes among neighbors, because they allow each to assert a personal definition of what is reasonable. The Lakewood ordinance includes specific auditory specifications, including, at §9.52.060, bells and chimes from 10:00 pm. until 7:00 am. Generally, enforcement of such subjective provisions requires multiple violations, often more egregious behavior than, for example, merely violating a timeframe such as 11:00 pm, and courts (or in some cases the ordinance itself) may require two or more separate complaints from two different addresses in the neighborhood.

4. Purely objective tests. Some local governments, such as Montgomery County, Maryland, at County Code §31B-5(a)(1), prohibit noise levels over 55 decibels in a residential area at night. Others, such as the City of Malden, Massachusetts, consider excessive noise, per City Code §7.9.1, as over 50 decibels between 9 pm and 7 am, when measured at the property line. Such tests will then require use of a noise calibration machine to show a violation. Thus, there is not the same need for multiple witnesses to show that the noise is unreasonable; as with time and behavior standards, the only question is whether the decibel limit was violated. While seemingly easiest to prove in court, that's not always the case, as showing a violation depends on a demonstrably accurate, well-maintained machine that correctly records noise levels.

Within those four options, the first can be most effectively enforced, as it simply requires a showing of the behavior – not whether it was unreasonable or even produced noise – and adding a time limit is equally objective. The others may vary, with the "unreasonable noise" subjective requirement as probably the most difficult to enforce; many, at some level, will depend on citizen testimony. Thus, even though a holiday display producing excessive noise may be easy enough to prove with multiple willing witnesses, resolution may ultimately depend on the offending neighbor to moderate the annoying behavior.

While noise and light can be the two main impacts from holiday displays, traffic caused by sightseers can also be a concern. ABC news reported on November 29, 2017 about a neighborhood complaint involving a residential holiday light display in the Town of Fairfield, Connecticut. The report referred to it as a "massive" display with more than 350,000 lights. The Fairfield noise ordinance, Town Code §§78-4 and 78-5, does specify decibel limits of only 45 for residential areas – much lower than Montgomery County, Maryland's 55 decibel limit – but there is no light ordinance prohibiting glare. The petition signed by 45 persons in the neighborhood did not focus on excessive light or noise. Instead, neighbors raised concerns about the traffic caused by observers coming to appreciate the massive display, known as "Wonderland in Roseville." The news broadcast indicated that the neighborhood dispute about excessive traffic was resolved when the host residents agreed to cut off their lights earlier in the evening and police agreed to provide some assistance in routing traffic through the neighborhood.

Regardless of the basis for the complaint - -whether noise, light, traffic or unreasonable conduct – it's also a reality that a local government pursuing such a complaint may face some backlash. A business owner in San Juan Capistrano, California, according to a local television station, was fined for a Christmas decoration which consisted of a large, inflatable Santa apparently marked with the business name. Such inflatable signs are prohibited by the City Code, §9-3.543(e)(8). The 2010 news report indicated that the owner said the oversized Santa helped business, and in the face of complaints, the City fined him for violating the municipal sign ordinance. Some residents characterized the enforcement effort as "pooh-poohing on Santa Claus," and the report referred to the sign ordinance as "The Scrooge Law"- - even though the ordinance did not target holiday displays, and no residential display was involved.

Note that the complaining parties in San Juan Capistrano were not compared to Scrooge, but the City ordinance definitely was – and one might expect that City officials enforcing "Scrooge's Law" would also themselves become known as "Scrooges" if the matter wasn't speedily resolved. That may be the risk even in addressing an extreme situation, which will depend on facts showing how extreme a display may be, and how it is impacting the neighbors, recalling Clark Griswold's example. The problem is that code enforcement staff aren't the ones likely to file these complaints – but, as in San Juan Capistrano in 2010, are simply responding to resident complaints. Thus, where informal, friendly, neighbor-to-neighbor resolution in the holiday season doesn't work, county and city staff will try again – and insist on the facts, which in many cases will require direct observation and some level of community support, to demonstrate behavior so extreme it violates local lighting, noise, sign, or "quiet enjoyment" laws.

I certainly hope everyone's end-of-year revelry has been enjoyable, and taking a cue from the community in Fairfield, Connecticut's Wonderland in Roseville, any disputes about holiday decorations were amicably resolved without requiring the intervention of any Scrooge. ML