



MICHIGAN MUNICIPAL LEAGUE
CONVENTION2026

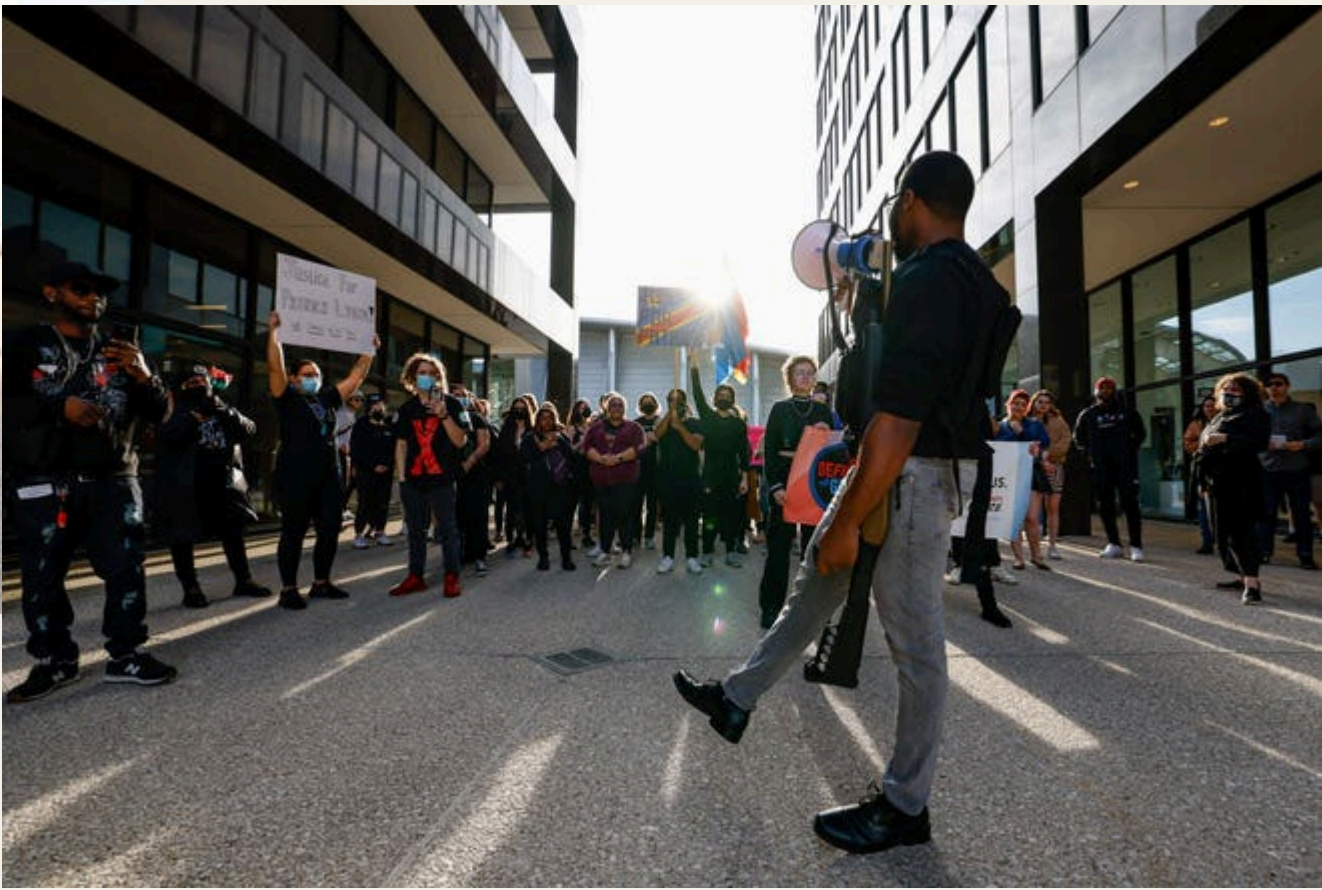


The First Amendment & the Right to Peaceably Assemble







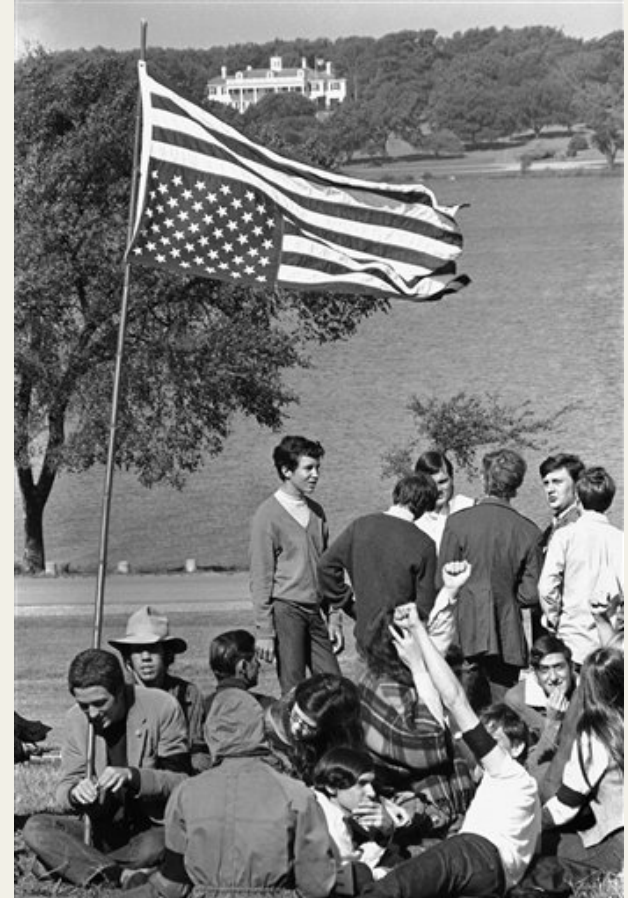


AMENDMENT I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

What Does the First Amendment Actually Protect:

- Peaceful Picketing
- Leafletting
- Symbolic Conduct
- Expressive Conduct
- Actual Speech



“Assembly” is an Encompassing Term:

- Marching
- Picketing
- Demonstrating
- Chanting
- Holding Signs
- Distributing Literature
- Symbolic Acts
- Speeches
- Protest

Michigan's Constitutional Protections:

“The people have the right peaceably to assemble, to consult for the common good, to instruct their representatives and to petition the government for redress of grievances.”

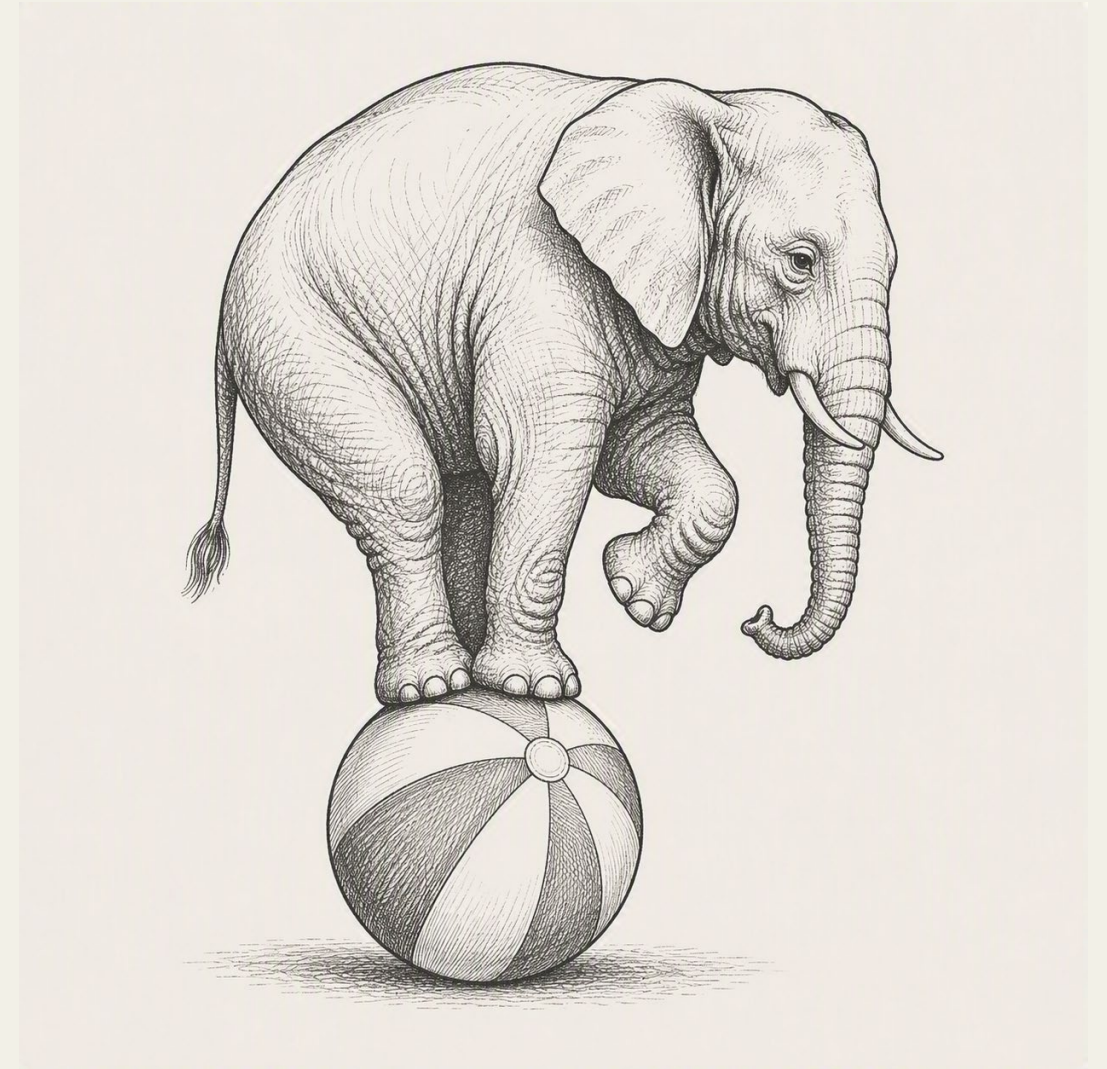
- Article I, § 3

Not an Absolute Right:

“The protections afforded by the First Amendment, however, are not absolute, and we have long recognized that the government may regulate certain categories of expression consistent with the Constitution.”

- United States Supreme Court, *Virginia v. Black*, 538 U.S. 343 (2003)

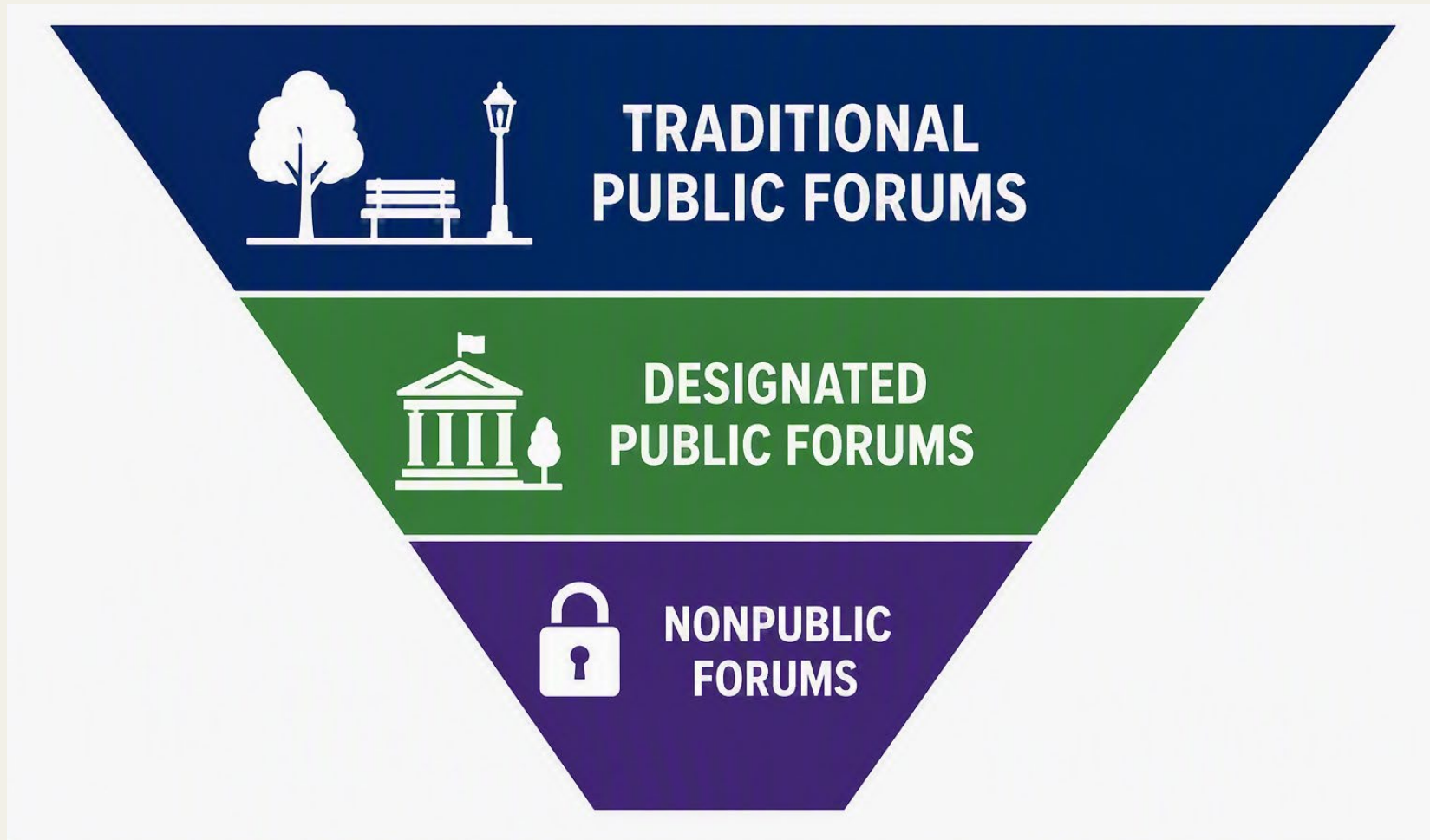
What Then Does Regulation Look Like?



“The rights of free speech and assembly, while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time.”

- United States Supreme Court, *Cox v. Louisiana*, 379 U.S. 536

Public Forum Doctrine:



Traditional Public Forums:

- Places that have traditionally been available for public expression
- To which people generally have a guaranteed right to access

Receive the greatest degree of First Amendment Protections

Traditional Public Forums:

- Parks
- Municipal
Plazas
- Sidewalks
- Public streets



Traditional Public Forums:

CANNOT: Cut off access or prohibit speech

CAN: Regulate access and speech through:

Time, Place, Manner

Traditional Public Forums: *Time, Place, Manner*

- Content Neutral
- Narrowly tailored to accomplish a ***significant*** government interest
- Provide alternative means of expression

Traditional Public Forum: *Time Restrictions*

Governments may regulate:

- Hours of park use (e.g., parks closed after dark)
- Restrictions on demonstrations during overnight hours in residential areas
- Limits on amplified sound during early morning or late-night periods
- Restrictions during particular events, emergencies, or Election Day operations

Traditional Public Forum: *Place Restrictions*

Governments may regulate:

- Keeping demonstrators a specified distance from building entrances
- Preventing assemblies from blocking sidewalks, streets, driveways, or emergency access routes
- Limiting demonstrations in sensitive locations such as courthouse interiors, police facilities, or secure government offices
- Election-day buffer zones around polling places (subject to constitutional limits)
- Requiring gatherings to occur in designated areas of parks or public facilities

Traditional Public Forum: *Manner Restrictions*

Governments may regulate:

- Maximum sound levels and amplification equipment
- Stage, tent, or structure placement
- Crowd-size limits tied to venue capacity
- Traffic-control requirements
- Security and emergency-access requirements
- Rules governing signs, banners, and displays
- Sanitation, cleanup, and restoration requirements
- Insurance requirements tied to objective risk factors
- Permit requirements for large assemblies, parades, or street closures

Traditional Public Forums: *Time, Place, Manner*

Significant Government interests: preventing excessive noise, maintaining public safety, protecting residential privacy, and allowing government facilities to operate normally.

Traditional Public Forums: *Time, Place, Manner*

The “Crucial Question” according to the Court:

“Whether the manner of expression is incompatible with the normal activity of a particular place at a particular time.”

Designated Public Forums

- Government property that has been intentionally opened for First Amendment activities
- Such availability may be temporary or for a specific limited purpose

**Receive Moderate First Amendment
Protections**

Designated Public Forums



- Public Libraries
- State University meeting spaces
- Community Centers
- Civic Auditoriums
- Town Hall Chambers
- Designated “First Amendment Spaces”

Designated Public Forums: Reasonable Restrictions

- Government may impose reasonable restrictions concerning the *purpose* of the public forum
- Still bound by the same viewpoint discrimination as a Traditional Public Forum

Nonpublic Forums:

- Government property that the government has not traditionally opened, or intentionally opened, for public expression.

Receive the Least First Amendment Protections

Nonpublic Forums:

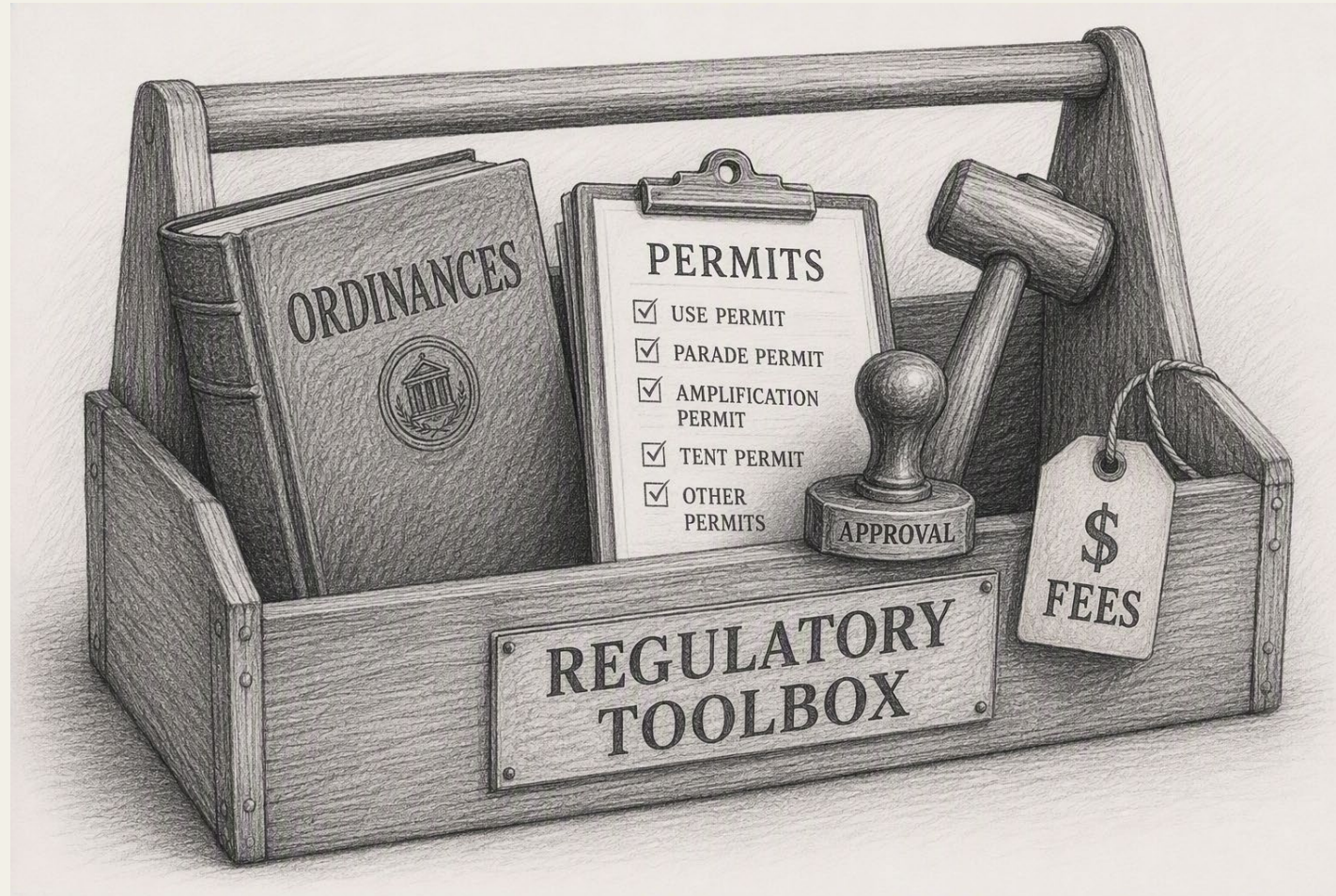
- Portions of government administrative offices
- Public school classrooms
- Police departments
- Polling locations



Nonpublic Forums: *Restrict but not Discriminate*

- Government may restrict speech content so long as the restrictions are reasonable and do not discriminate based on viewpoint

Regulatory Mechanisms: *The Toolbox*



Regulatory Mechanisms: *Ordinances*

Must consider:

- Nature of the place
- Pattern of normal activities at a given time

Must be:

- Narrowly tailored
- Further government's legitimate interests

Regulatory Mechanisms: *Ordinances*

The crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time.

- United States Supreme Court, *Grayned v. City of Rockford*, 408 US 104 (1972)

Regulatory Mechanisms: *Ordinances*

- Noise
- Traffic
- Obstruction
- Park hours
- Use of Streets
- Temporary structures
- Amplified sound
- Large gatherings
- Parade/marching routes
- Public safety
- Sanitation
- Property Damage

Regulatory Mechanisms: *Ordinances*

Drafting matters:

- 👍 Objectively identifiable conduct/standards
- 👎 Discretion or subjective standards

Ordinances: Noise / Amplified Sound



SCOTUS: Upheld
reasonable
restrictions on noise,
amplified sound, and
buffer zone.

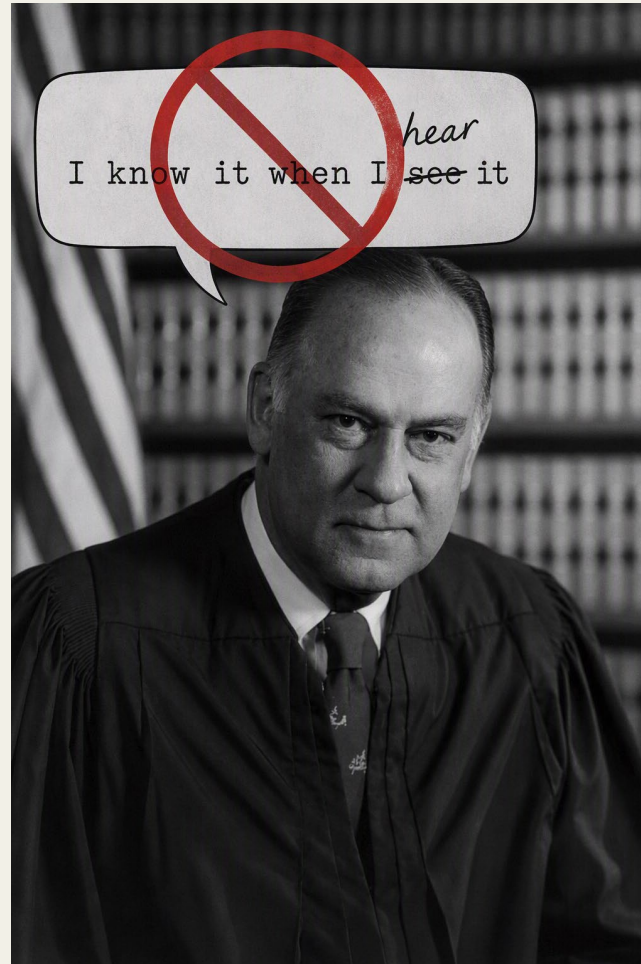
Ordinances: Unconstitutional Noise Ordinance

ORDINANCE: “No person shall use any premises or suffer any premises under his or her care or control to be used which shall destroy the peace and tranquility of the surrounding neighborhood.”

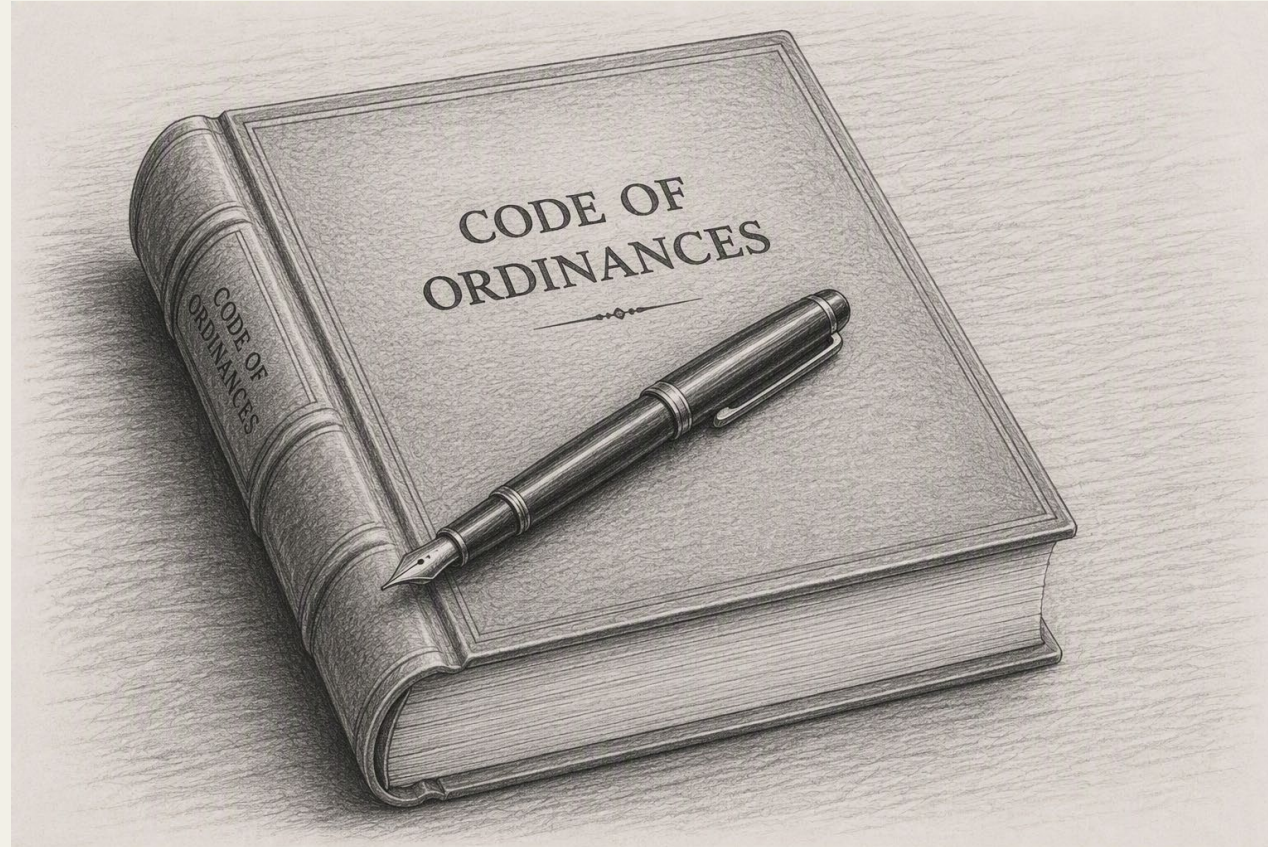
Unconstitutional Noise Ordinance: Defects

- Lack of Objective Standard
- Arbitrary/Discriminatory Enforcement (Discretion)
- Decibel Levels Elsewhere Did Not Cure Defects

Unconstitutional Noise Ordinance: Defects



Well Drafted Ordinances



Well Drafted Ordinance: Elements

- Clear Definitions
- Objective Thresholds
- Objective Standards
- Procedural Safeguards

Regulate objectively identifiable content

Regulatory Mechanisms: Permits

“[An] ordinance requiring a permit and a fee before authorizing public speaking, parades, or assemblies in ‘the archetype of a traditional public forum,’ [...] is a prior restraint on speech”

- *Forsyth Co v Nationalist Movement*, 505 US 123, (1992)

Regulatory Mechanisms: Permits

“Although there is a ‘heavy presumption’ against the validity of a prior restraint, [...] the Court has recognized that government, in order to regulate competing uses of public forums, may impose a permit requirement on those wishing to hold a march, parade, or rally...”

- *Forsyth Co v Nationalist Movement*, 505 US 123;
(1992)

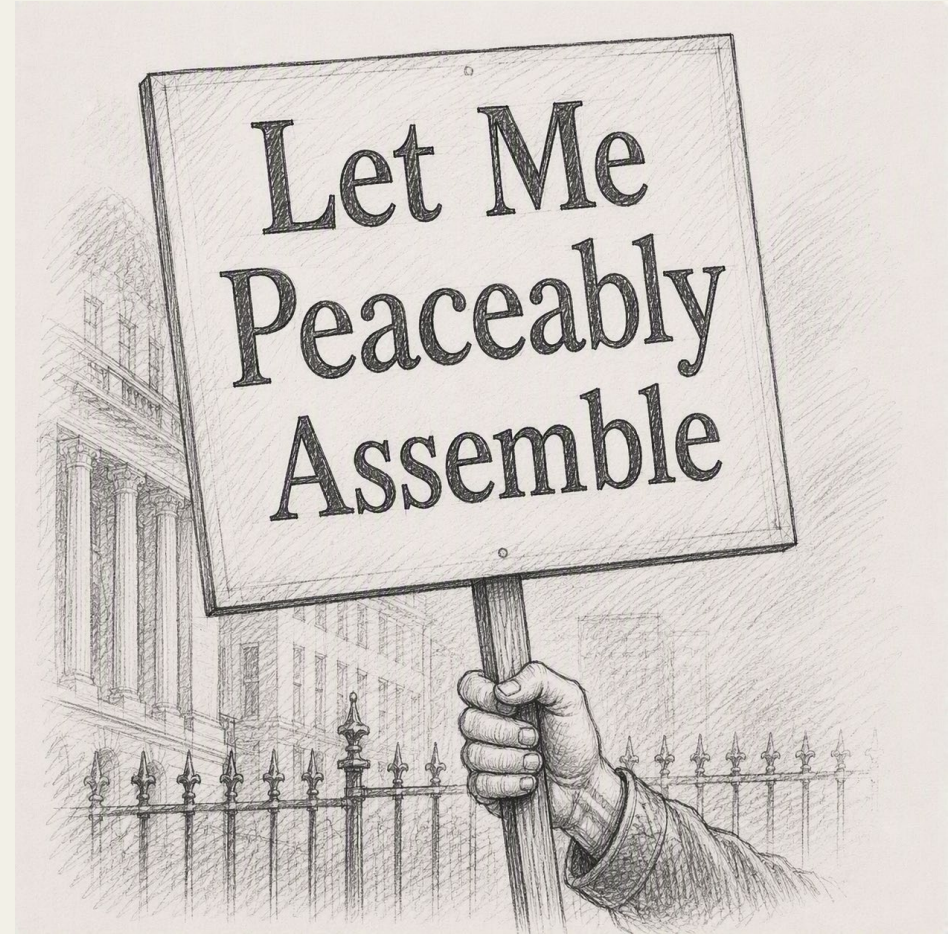
Regulatory Mechanisms: Permits

- Must avoid overly broad licensing discretion
- Must not be based on content of the message
- Must be narrowly tailored
- Must serve significant government interest
- Must leave open alternatives for communications
- Avoid denial based on vague standards

Regulatory Mechanism: Fees

- Permissible as an administrative mechanism
- Avoid charges for “Heckler’s Veto”
- Used objective and consistent fee structure
- Provide Explicit Standards
- Waiver Provisions (to avoid barrier to speech)
- Separate security v fee decisions

Putting
it all
Together





Regulating Assembly: Dogs are the Best Pets

- Location: City-owned Park
- Regulations:
 - Ordinances
 - Permits
 - Fees

Regulating Assembly: Dogs are the Best Pets

- Permit:
 - 👍 Narrowly drawn, reasonable, defined standards
 - 👎 Based on unbridled discretion of administrator

Regulating Assembly: Dogs are the Best Pets

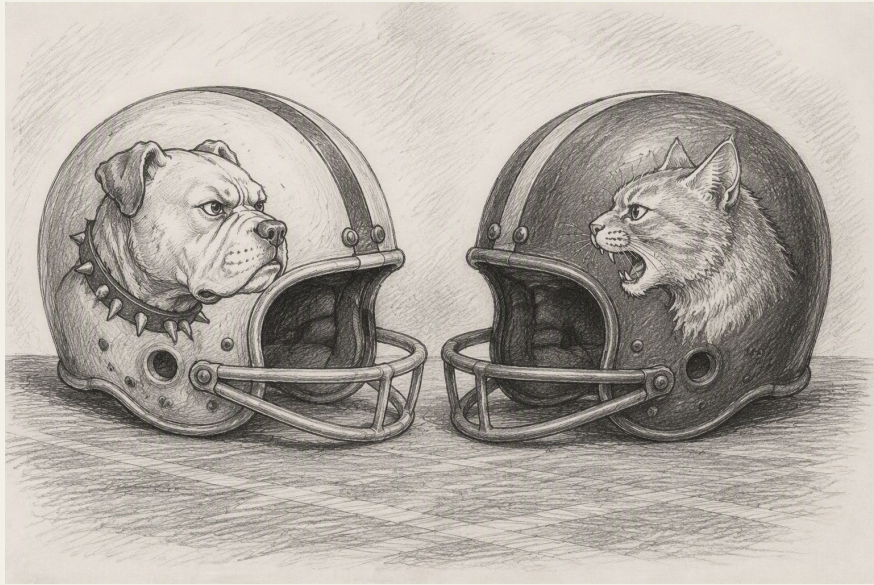
- Fees:
 - 👍 Established in advance, objective criteria, applied uniformly
 - 👍 Able to identify what gov't service/resource covered
 - 👎 Based on unbridled discretion of administrator



Regulating Assembly: Cats are the Best Pets

Regulatory Issue	Dog Advocates	Cat Advocates
Permit Required	Yes	Yes
Application Criteria	Same Objective Criteria	Same Objective Criteria
Park Rules	Same	Same
Noise Limits	Same	Same
Permit Fee	\$25	\$25
Damage Deposit	Same Objective Rule	Same Objective Rule
Application Deadline	Same Timeline	Same Timeline
Decision Deadline	Same Timeline	Same Timeline
Appeal Rights	Same	Same

Regulating Assembly: Avoiding “Heckler’s Veto”



- What if a hostile crowd is anticipated?
- Who bears responsibility for unlawful conduct?

Regulating Assembly: Additional Requests



- Request Municipal Equipment
- May Municipality Charge Cat Advocates More?

Regulating Assembly: Controversial Speaker



- Nationally Known Controversial Speaker to Address Crowd
- May Municipality Charge Cat Advocates More?

Regulating Assembly: Fee Comparison

Regulatory Issue	Dog Advocates	Cat Advocates
Permit Fee	\$25	\$25
Mobile Stage Fee	Not Requested	Published Fee
Stage Delivery/Set-up	Not Requested	Published Fee
Sound System	Not Requested	Published Fee
Sound Technician	Not Requested	Published Rate
Controversial Seaker Surcharge	Not Applicable	NO!
Anticipated Hostile Audience Surcharge	Not Applicable	NO!
Anticipated Police Based on Message	Not Applicable	NO!

Regulating Assembly: Barricade Park

- Cat Advocates Barricade the Park
 - Is This Protected Peaceful Assembly?



Regulating Assembly: Barricade Park

- Cat Advocates Barricade the Park
 - What Can the Municipality Do?



Regulating Assembly: Apply Rules Evenly

Conduct	Dog Advocates	Cat Advocates
Peacefull Signs/Speeches	Protected	Protected
Compliance with Park Hours	Required	Required
Compliance with Noise Limits	Required	Required
Keeping Entrances Open	Required	Required
Blocking All Park Access	Prohibited	Prohibited
Blocking Emergency Routes	Prohibited	Prohibited
Refusing Lawful Direction to Remove Barriers	Subject to Enforcement	Subject to Enforcement

Regulating Assembly: Decision Tree



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