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Justices strike down Va Beach noise law

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RICHMOND, Va.

Localities throughout the state may have to rewrite their noise ordinances now that the Virginia Supreme Court has declared Virginia Beach's law unconstitutionally vague, lawyers involved in the case said Friday.

The justices unanimously ruled Friday that the city's statute prohibiting "unreasonably loud, disturbing and unnecessary noise" cannot stand because it lacks measurable standards and leaves enforcement to the whim of police officers.

"Noise that one person may consider `loud, disturbing and unnecessary' may not disturb the sensibilities of another listener," Justice Barbara Milano Keenan wrote in the unanimous ruling. "As employed in this context, such adjectives are in inherently vague because they require persons of average intelligence to guess at the meaning of these words."

Deputy City Attorney Chris Boynton said representatives from his office and the police department will meet "and come up with an ordinance that passes constitutional muster." He said his counterparts throughout Virginia likely will do the same, because most local noise ordinances are similar to the one in Virginia Beach.

"We are not in this boat by ourselves," he said.

Kevin Martingayle, attorney for the Virginia Beach nightclub owners who challenged the ordinance, agreed.

"We looked at noise ordinances from all around Virginia. It appears most do not have measurable standards, such as decibel levels. Even those that do seem to have some catchall language that makes

them too vague," he said.

Martingayle represented Bradley S. Tanner and Eric A. Williams, owners of The Peppermint Beach Club on the oceanfront. The club on the ground floor of a hotel regularly features disc jockeys or live music, including hip-hop and punk rock.

"If they had been playing Lawrence Welk real loud, they never would have been given the first summons," Martingayle said.

He said the club has been cited at least 10 times for violating the ordinance, although only one conviction was affirmed on appeal to circuit court. Violations are a misdemeanor punishable by a \$250 fine.

Martingayle said his clients fought every citation to avoid the fate of another nightclub that just paid the fines as a cost of doing business. That club lost its liquor license and was forced to shut down after the convictions piled up, Martingayle said.

"The chief gripe my clients had was they never had a complaint from anybody. They weren't too loud for the customers, for neighboring businesses--just the police officers," he said.

The Virginia Beach statute allows a charge to be filed if a "reasonable person" would consider the noise excessive. Martingayle said that standard has been upheld in other cases so "it was a bit of a surprise and disappointment" that the Supreme Court ruled it was too vague.

The American Civil Liberties Union, which filed a friend-of-the-court brief in the case, praised the ruling and also predicted broad ramifications.

"What's likely to happen is localities' attorneys as a result of this will take a look at their own ordinances and begin to make changes if they feel they aren't in compliance," said Kent Willis, executive director of the Virginia ACLU.

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