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Va. justices strike down Beach noise ordinance

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The Virginia Supreme Court has struck down Virginia Beach's noise ordinance as unconstitutionally vague, in a decision that could have wide repercussions.

Yesterday's 13-page ruling stemmed from a challenge by the owners of The Peppermint Beach Club on Atlantic Avenue, which was repeatedly warned and cited by police for music sound levels in violation of the ordinance.

But the justices wrote, noise that one person may consider, "loud, disturbing and unnecessary," as stated in the ordinance, might not disturb the sensibilities of another listener.

"Such adjectives are inherently vague because they require persons of average intelligence to guess at the meaning of those words" and require police officers to make subjective determinations that would invite arbitrary enforcement, said the court.

The ruling says that references in the ordinance to "reasonable persons," or "reasonable sensitivity," do not provide a degree of objectivity or "definiteness" to save the law from being too vague.

"Because these determinations . . . can only be made by police officers on a subjective basis, we hold that the language of the ordinance is impermissibly vague," the justices ruled.

Kevin E. Martingayle, a Virginia Beach lawyer representing the club, said yesterday, "I think this is going to have a big impact on every locality in Virginia. . . . The Supreme Court got it exactly right."

Martingayle said most localities with noise ordinances that he reviewed did not have objective standards -- such as appropriately measured decibel levels -- and some of those that do have the sort of vague, "catch-all" language faulted by the Supreme Court.

He said there had never been any complaints about the Virginia Beach clubs cited for violating the ordinance. All the citations were initiated by the police, he said.

He said Virginia Beach can be far more objective in regulating noise as it has been with an amphitheater since 1996 in which specific decibel levels are set.

Rebecca K. Glenberg, legal director of the ACLU of Virginia, said, "A great deal of constitutionally protected speech consists of sound -- speech itself or music -- so regulating sound inevitably leads to regulating speech."

"It is essential that noise regulations be both neutral and specific so that everyone knows what the limits are so that the police are not able to use their subjective feeling about what is too loud to decide what is unlawful," she said.

Glenberg said she believes Richmond's noise ordinance and those of other localities in the state may be similarly flawed.

Richmond's ordinance defines 11 different acts as creating an illegal loud noise, including playing a car radio so that it can be heard 50 feet away and honking a horn when a vehicle isn't moving.

"We'll certainly take a careful look and advise the city accordingly," said Richmond City Attorney Norman Sales.

Andrew R. McRoberts, the Goochland County attorney, wrote a friend-of-the-court brief for the Local Government Attorneys of Virginia and the Virginia Municipal League defending the "reasonable person standard" in the Virginia Beach ordinance.

"There are a good number of ordinances in Virginia that are based upon the reasonable person standard. It could have significant repercussions," he said of the ruling.

Steve Micas, county attorney in Chesterfield, said, "Our noise ordinance is very similar to Virginia Beach's ordinance, so we will be necessarily looking at some alternative approach to unreasonable noise complaints."

Historically in Chesterfield there have been few prosecutions under the ordinance and when asked by a police officer to turn down the noise, most people voluntarily comply, he said.

Joseph P. Rapisarda Jr. county attorney in Henrico, said he had not had a chance to look at the ruling. He said he will look to see how closely Henrico County's ordinance matches that of Virginia Beach and consider whether to recommend changes in response.

Hanover hasn't yet had time to review the decision, said Lisa Seward, an assistant county attorney

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Staff writers David Ress and Wesley P. Hester contributed to this report.