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Beach noise ordinance thrown out; cases tossed

VIRGINIA BEACH

The city's noise ordinance, used for decades against teens playing loud music in their cars, Oceanfront clubs, and street peddlers, is unconstitutional.

The statute is too vague and depends on the standards of the police officer, the state Supreme Court said Friday.

"Determinations of this nature invite arbitrary enforcement," Justice Barbara Milano Keenan wrote in the 13-page opinion. "Police officers likely will have differing perceptions regarding what levels of sound exceed the described tolerance levels and sensitivities of reasonable persons."

The owners of the Peppermint Beach Club at the Oceanfront challenged the law after receiving citations. The fine for a noise violation, a misdemeanor, is \$25.

"We're very excited about the court's ruling," said Kevin

Martingayle, the attorney for the Peppermint Beach Club. "Citizens should not be faced with the threat of criminal prosecution, based on laws that are so vague."

The wording of the ordinance set as its standard a noise level that "responsible persons" would find too loud, but it didn't tie the noise level to any specific decibel level.

About 50 Virginia localities, including Suffolk and Newport News, use the same standard, said Chris Boynton, a deputy city attorney for the Beach. Those ordinances could also be unconstitutional, he said.

Beach officials will rewrite the ordinance, and a decibel measurement will be considered, but the court acknowledged that regulating noise is a challenge, Boynton said. The city will drop pending court cases based on the existing noise statute.

But that doesn't mean it's OK to throw a rowdy party.

"Police have other tools in their toolbox if noise is a problem," Boynton said. "'Disturbing the peace' is an option."

Pilot writer Aaron Applegate contributed to this report.

Deirdre Fernandes, (757) 222-5121, deirdre.fernandes@pilotonline.com

Source URL (retrieved on 04/23/2009 - 14:06): <http://hamptonroads.com/2009/04/beach-noise-ordinance-thrown-out-cases-tossed-0>