



Virginia Local Government Law

Noise Ordinances Being Struck Down Post-Tanner: What's A Locality To Do?

By: Andrew McRoberts. *This was posted Monday, February 14th, 2011*

This blog predicted that the decision by the Virginia Supreme Court in [Tanner v. City of Virginia Beach](#) would likely have significant impacts on local governments and their citizens.

Forecast has become fact, as ordinances across the state have been struck down or charges dismissed.

In the City of Richmond, a noise ordinance adopted after the *Tanner* decision was [struck down by the Richmond General District Court as being too vague and ambiguous](#). The City chose not to appeal, and is now [in the midst of amending the ordinance](#) rather than keep fighting.

The City's [proposed new ordinance](#) has already [received a lot of criticism](#), and so there appears no end in sight to the challenges to find an enforceable Richmond noise ordinance post-*Tanner*!

And just recently, in [Souter v. County of Warren](#), a panel of the Virginia Court of Appeals issued a majority opinion that a noise ordinance adopted by the Warren County Board of Supervisors pre-*Tanner* was similarly vague and ambiguous. Based on *Tanner*, the Court's opinion ruled the Warren County noise ordinance unconstitutional on essentially the same grounds of vagueness and due process. A third judge wrote in his concurring opinion that he personally believed that the ordinance "withstands constitutional muster" but felt he had to concur with the majority because of *Tanner* and the principles of *stare decisis*.

Now, Warren County has, like the City of Richmond, amended its ordinance.

As I [suggested on this blog previously](#), the reasonable person standard is a maleable standard that has been upheld time and time again throughout legal history as an objective standard. In *Tanner*, the Virginia Supreme Court held it to be a subjective and vague standard in a criminal noise ordinance and therefore violating the constitutional due process standard.

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As [noted by the U.S. Supreme Court in upholding the “reasonable person” standard in a noise ordinance](#) against a vagueness due process challenge, localities are “condemned to the use of words” and therefore “we can never expect mathematical certainty from our language.” Virginia courts now are required to apply the law from *Tanner*, but should be cautious not to hold the standard of certainty so high that no local noise ordinance can pass constitutional muster. But the standard is plainly higher than it once was.

By rejecting the reasonable person standard as being too vague, *Tanner* has left local governments struggling to adopt ordinances that are not only objective but also can be readily applied. This struggle was played out most recently in Warren County and the Court of Appeals, as shown in the separate opinion written by one justice. We expect to continue to see this struggle played out in the Virginia courts.

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