

Judge calls noise ordinance vague

But a hearing today still could force Clear Channel Entertainment to pull the plug on concerts at Ford Amphitheatre.

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TAMPA - A Hillsborough circuit judge declared portions of the county's noise ordinance unconstitutionally vague Friday, but allowed a hearing to continue today that could force Clear Channel Entertainment to pull the plug on concerts at the Ford Amphitheatre.

The ruling by Judge Gregory P. Holder comes as the Hillsborough County Environmental Protection Commission tries to persuade the judge to halt all concerts until Clear Channel and the Florida State Fair Authority can guarantee that future events will not violate the county's noise ordinance.

The EPC filed a lawsuit last year seeking to temporarily block the concerts after it received more than 160 complaints about noise from people who live near the amphitheater.

The Jimmy Buffett concert scheduled tonight at a sold-out Ford Amphitheatre will go on as planned. The amphitheater is on the State Fairgrounds.

On Friday, the judge considered two motions from Clear Channel and the Fair Authority as they tried to persuade him to throw out the EPC's suit.

Clear Channel argued that the ordinance is too vague when it prohibits noise that is "annoying" and "unreasonably interferes with the enjoyment of life, property or outdoor recreation of a reasonable person with normal sensitivities."

Holder agreed, saying those portions of the rule were "unconstitutionally vague." He did not throw out the county's decibel limits, but that could be an issue in today's hearing.

G. Donovan Conwell, an attorney for Clear Channel, also argued that what the EPC labels noise is actually constitutionally protected free speech.

Mark Bentley, an attorney with the EPC, argued that the noise rules do not regulate content and therefore don't violate free speech.

In a separate motion, Gordon J. Schiff, an attorney representing the State Fair Authority, argued that the EPC cannot sue the Fair Authority because county government cannot regulate an "instrument of the state," and the Fair Authority was created by the Legislature.

"The bottom line is that they're going about this the wrong way," he said. "It borders on the outrageous."

The judge was convinced that only a state agency can impose sanctions on the State Fair Authority. But he stopped short of suspending today's hearing, which convenes at 9 a.m. and is expected to draw hundreds of people to Courtroom One in the George Edgecomb Courthouse, adjacent to the main courthouse.

Bentley argued that Clear Channel was obligated to abide by local rules and regulations, including the noise ordinance, when it signed an agreement with the Fair Authority.

He said the county was seeking an injunction against the company leasing the concert venue, not the Fair Authority.

"We're simply here to regulate what Clear Channel can do," Bentley said. "The only remedy for us was to seek injunctive relief."

He called the motion by the State Fair Authority "another tactic to delay the proceedings."

Today, both sides will argue about what constitutes a noise violation, with the EPC attorney's offering evidence that Clear Channel has repeatedly violated the noise decibel limits.

Clear Channel plans to argue that the county's noise decibel restriction is flawed because it also measures noise from the crowd. He also will point out inconsistencies in the way the ordinance is imposed, which he said allows Ybor City venues to play music at higher decibels than the Ford Amphitheatre can.

The controversy over concert noise at the amphitheater surged after a Dec. 7 concert by Korn and other hard rock acts. That show generated noise levels more than 30 decibels above the county's acceptable limit in surrounding neighborhoods.

The EPC sued Clear Channel in December seeking the ban on the grounds that concert noise was too high. Then, last month, Clear Channel filed a countersuit saying the county's noise ordinance was unconstitutional.

On Friday, Judge Holder urged both sides to continue good-faith discussions to reach a settlement.

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