STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	IN THE COURT OF COMMON PLEAS
CITY OF COLUMBIA, Plaintiff, vs. JOHNNY GARDNER, Defendant.	CASE NO. 92-CP-40-0950 ORDER

This is an appeal from the ruling of the Columbia Municipal Court Judge Jean P. Popowski, finding Section 2-2082, City of Columbia Code of Ordinances, to be unconstitutionally vague in failing to give notice of proscribed conduct. The ordinance provides as follows:

> "It shall be unlawful for any person to create, assist in creating, permit, continue or permit the continuance of any unreasonably loud, disturbing or unnecessary noise in the City".

The matter was heard on April 22, 1992. Present were James S. Meggs, City Attorney, and Pernell Starks, Esquire, Attorney for the Defendant. Counsel for the Defendant requested ten (10) days in which to prepare and submit a memorandum of authorities. Defendant's memorandum has been submitted and considered. I find and conclude that the ordinance is constitutional in part, but unconstitutional in another part.

The South Carolina Supreme Court has ruled that in construing a statute or ordinance, the language used should be

given it ordinary meaning. State v. Hardee, 179 S.C. 409, 308 S.E. 2d 521 (1982). In Hardee, the terms asserted to be vague were found by the Court to be "commonplace terms which are easily found in dictionaries and other source books", 308 S.E. 2d at 524. This analysis was reaffirmed in City of Columbia v. Moser, 280 S.C. 134, 311 S.E. 2d 920 (1983).

The United States Fourth Circuit Court of Appeals in Jim Crockett Promotions, Inc. v. City of Charlotte, 706 F. 2d 486 (1983), has held virtually identical language in a Charlotte ordinance to be constitutional. While affirming the District Court's holding that the term "unnecessary" was unconstitutionally vague, the Court held that one unconstitutionally vague term did not provide a basis for invalidating the entire ordinance. By excising the term "unnecessary", the remainder of the ordinance is left fully operative as law. This is consistent with the result in United States v. Jackson, 390 U.S. 570, 88 S.Ct. 1209, 20 L.Ed. 138 (1968), which holds:

> "[T]he unconstitutionality of a part of an Act does not necessarily defeat ... the validity of its remaining provisions. Unless it is evident that the Legislature would not have enacted those provisions which are within its power, independently of that which is not, the invalid part may be dropped if what is left is fully operative as a law." In accord, State, ex rel, McLeod v. West, 249 S.C. 243, 153 S.E. 2d 892 (1967).

In Jim Crockett, the Court of Appeals held that "unreasonably loud" and "disturbing" were not unconstitutionally vague terms. Rather, the Court observed that such terms are

"invulnerable" from constitutional attack. Kovaks v. Cooper, 336 U.S. 77, 69 S.Ct. 448, 93 L.Ed. 513 (1949) (unreasonably loud is not unconstitutionally vague); Grayned v. City of Rockford, 408 U.S. 104, 92 S.Ct. 2294, 33 L.Ed. 2d 222 (1972) (disturbing is not unconstitutionally vague). By applying the holding in Jim Crockett to this case I find that the term "unnecessary" used in the Columbia City ordinance is void because it is unconstitutionally vague. Additionally, I find that the term "unnecessary" is severable from the remainder of the ordinance. The remainder of the ordinance is not unconstitutionally vague and is left fully operative as law.

IT IT THEREFORE ORDERED that the City of Columbia Municipal Court be, and it is hereby, reversed, and this case is hereby remanded.

AND IT IS SO ORDERED.

P3#3

L. Henry McKellar
Judge, Court of Common Pleas
Fifth Judicial Circuit

Columbia, South Carolina
May 15, 1992.