IN THE CIRCUIT COURT FOR THE
17TH JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY, FLORIDA

THE CITY OF PLANTATION, a Florida municipal corporation,
Plaintiff,

CASE NO: 14-004059 CACE (18)

JUDGE: MARINA GARCIA-WOOD

vs.

MARK HYATT and KATHERINE HYATT,
Defendants.
_______________________________________/

FINAL JUDGMENT

THIS CAUSE came before the court for a non-jury trial on September 27, 28, 29, and 30, 2016. The court, having heard testimony[1] and having carefully observed those who have testified, evaluated their candor and scrutinized their demeanor, resolved conflict in the testimony, if any, considered all exhibits placed into evidence, having heard the argument of counsels, having reviewed the applicable law, and being otherwise duly advised in the premises, makes the following findings of fact, conclusions of law, and renders the following final judgment:

This action arises out of plaintiff, City of Plantation's ("Plaintiff" or "City"), complaint for abatement of nuisance and injunctive relief. Specifically, Plaintiff alleges a significant interest in protecting the welfare and safety of the people who travel along Old Hiatus Road and NW 14th Street in Plantation, Florida. At issue is a holiday display known as the Hyatt Extreme Christmas ("Event") organized and executed by defendants, Mark and Katherine Hyatt ("Defendants" or "Hyatts"), and a team of volunteers. The Event is held at the Hyatts' residence.

[1] The court heard live testimony from: (1) Detective Michael Capo (retired); (2) Detective Sarah Boucher; (3) Detective Bryan Radziwon; (4) Eugene Petrino; (5) Gayle Easterling; (6) Chief W. Howard Harrison; (7) Kathy Hyatt; (8) Eugene Marchese; (9) Mark Hyatt; and (10) Nina Fornalski.

On February 28, 2014, Plaintiff filed its one-count complaint for abatement of nuisance and injunctive relief, seeking to limit the nature, size, and promotion of the Event. Specifically, the City claims that the Event is incompatible with a limited access residential neighborhood. Plaintiff seeks a judgment from this Court ordering the Hyatts to refrain from promoting, erecting, and operating a holiday display at their residence of a nature, extravagance, or size which is calculated to, likely to, or does attract large numbers of the public, including pedestrians, motor vehicles, or buses.

The following facts are undisputed, and are set forth in the parties' Joint Pre-Trial Stipulation filed on September 26, 2016. Since 2006, the Defendants have maintained and owned a residence within the municipal boundaries of the City, located at 11201 NW 14th Street, Plantation, FL 33323 ("Residence"). The Residence itself sits on NW 14th Street along with seven (7) other private residences. NW 14th Street has a cul-de-sac and is situated off of Old Hiatus Road between Sunrise Boulevard and Broward Boulevard. The only means of ingress and egress to and from the Hyatts' Residence, and the seven (7) other properties, is via Old Hiatus Road. From Sunrise Boulevard to Broward Boulevard, Old Hiatus Road is a two lane thoroughfare which has a drainage canal on the east side of the road and a shoulder on the west side that adjoins parcels of real property except where interrupted by roads connecting to Old Hiatus Road. There are "No Parking" signs along the east side of the length of Old Hiatus Road from Broward Boulevard to Sunrise Boulevard which have been in place prior to Thanksgiving 2013. Since they have lived in Plantation, the Hyatts have erected and operated a holiday display at their residential home for the holiday season. The Event customarily operates from the day after Thanksgiving Day to December 28 or so, and generally from 6:00 PM – 10:00 PM, Sunday through Thursday, and 6:00 PM – 11:00 PM Friday and Saturday. The gates to the display are

closed on or about December 23. The Hyatts have an internet website[2] and Facebook page relating to the Event. The Hyatts are responsible for the content posted on the internet website and Facebook page, other than comments specifically made by third parties. On Saturday, December 14, 2013, and Sunday, December 15, 2013, the City's police department, at its own expense, assigned two overtime police officers in an effort to monitor and control the vehicular and pedestrian traffic along Old Hiatus Road and NW 14th Street. The Police Chief and Police Captain created a safe zone for pedestrian traffic by closing Old Hiatus Road between NW 12th Street and NW 15th Street to all non-resident vehicular traffic from approximately 6:00 PM – 11:00 PM from December 19, 2013 through December 23, 2013. The City additionally implemented a safe zone with different boundaries in 2014 and 2015.

At issue for this Court to decide is: (1) whether the Event poses a public safety threat to the people who travel along Old Hiatus Road and NW 14th Street while the display is operational—thus making it a nuisance; (2) whether the nature, size, or extravagance of the Event is incompatible with the Hyatts' limited access, residential neighborhood; (3) whether this Court should give deference to the decision of the Chief of the Plantation Police Department that the Event causes a threat to public safety; and (4) whether the Hyatts may be restricted, by an injunction, from promoting, erecting, and operating a holiday display at their Residence of a nature, size, or extravagance that is calculated to, likely to, or does attract large numbers of the public, motor vehicles, or buses.

The Florida Constitution grants home rule powers to municipal governments pursuant to Article VIII, Section 2(b) of the Florida Constitution, which states:

> **Powers.** Municipalities shall have governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal

[2] www.hyattextremechristmas.com

> services, and may exercise any power for municipal purposes except as otherwise provided by law. Each municipal legislative body shall be elective.

Art. VIII, § 2, Fla. Const. Further, section 166.021, Florida Statutes, provides, in pertinent part:

> [a]s provided in s. 2(b), Art. VIII of the State Constitution, municipalities shall have the governmental, corporate, and proprietary powers to enable them to conduct municipal government, perform municipal functions, and render municipal services, and may exercise any power for municipal purposes, except when expressly prohibited by law.

§ 166.021 (1), Fla. Stat. Prior to 1973, Florida law explicitly allowed a city or town council to "prevent and abate nuisances." § 167.05, Fla. Stat (1972) (repealed). In 1973, the Florida Legislature repealed chapter 167, and enacted chapter 166. Specifically, section 166.042 (1), Florida Statutes states:

> [i]t is the legislative intent that the repeal by chapter 73-129, Laws of Florida, of chapter[] 167 ... of Florida Statutes shall not be interpreted to limit or restrict the powers of municipal officials, but shall be interpreted as a recognition of constitutional powers. It is, further, the legislative intent to recognize residual constitutional home rule powers in municipal government, and the Legislature finds that this can best be accomplished by the removal of legislative direction from the statutes. It is, further, the legislative intent that municipalities shall continue to exercise all powers heretofore conferred on municipalities by the chapters enumerated above, but shall hereafter exercise those powers at their own discretion, subject only to the terms and conditions which they choose to prescribe.

§ 166.042, Fla. Stat. The Florida Legislature recognized that a municipality's home rule power is rooted in the Florida Constitution, and not provided for by the Florida Statutes. Thus,

> Article VIII, section 2, Florida Constitution, expressly grants to every municipality the authority to conduct municipal government, perform municipal functions, and render municipal services. The only constitutional limitation placed on the municipalities' authority is that such powers be exercised for valid "municipal purposes." *State v. City of Sunrise,* 354 So. 2d 1206 (Fla. 1978). The "Municipal Home Rule Powers Act," enacted by the legislature in 1973, states that as provided by the Florida

> Constitution municipalities "may exercise any power for municipal purposes, except when expressly prohibited by law." § 166.021(1), Fla. Stat. (1989). Thus, municipalities are not dependent upon the legislature for further authorization, and legislative statutes are relevant only to determine limitations of authority. *City of Sunrise*, 354 So. 2d at 1209.

City of Ocala v. Nye, 608 So. 2d 15, 17 (Fla. 1992) (footnote omitted). Therefore, the court determines that the City possesses the authority to prevent or abate a nuisance, if one exists.

Under Florida law,

> [t]he sole question in an action seeking injunctive relief to abat[e] a nuisance is whether or not the use made of property by the one complained against is reasonable under the circumstances. This question includes also a determination of whether the annoyance and disturbance complained of have resulted in injury to a legal right of the person complaining. Mere disturbance and annoyance as such do not in themselves necessarily give rise to an invasion of a legal right.

Davis v. Levin, 138 So. 2d 351, 352 (Fla. 3d DCA 1962). Thus, a

> residential property owner has a duty not to unreasonably interfere with other persons' use and enjoyment of their property." *Reaver v. Martin Theatres of Florida, Inc.*, 52 So. 2d 682 (Fla. 1951); *Rogers v. City of Miami Springs*, 231 So. 2d 257 (Fla. 3d DCA), *cert. denied*, (Fla. 1970). As recognized by the Supreme Court of Florida:
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> > An owner or occupant of property must use it in a way that will not be a nuisance to other owners and occupants in the same community. Anything which annoys or disturbs one in the free use, possession, or enjoyment of his property or which renders its ordinary use or occupation physically uncomfortable may become a nuisance and may be restrained.
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> *Knowles v. Central Allapattae Properties, Inc.*, 145 Fla. 123, 130, 198 So. 819, 822 (1940) (*quoting Mercer v. Keynton*, 121 Fla. 87, 163 So. 411, 413 (1935)). The idea behind the law of nuisance, as expressed in the maxim "*Sic utere tuo ut alienum non laedas*," is that every person has the right to the free use of property so long as the rights of another are not injured. *See Pierce v. Riggs*, 149 Vt. 136, 540 A.2d 655 (1987); *Baum v. Coronado Condominium*

> *Association, Inc.*, 376 So. 2d 914 (Fla. 3d DCA 1979) (*citing Reaver v. Martin Theatres of Florida, Inc.*, 52 So. 2d at 683).

Rae v. Flynn, 690 So. 2d 1341, 1342 (Fla. 3d DCA 1997). "Although there is no exact rule or formula for ascertaining when [something] rise[s] to the level of a nuisance, relief will be granted where plaintiffs show they are substantially and unreasonably disturbed notwithstanding proof that others living in the vicinity are not annoyed." *Id.* at 1343. The City bears the burden of proof by the "preponderance of the evidence standard." *South Florida Water Management District v. RLI Live Oak, LLC*, 139 So. 3d 869, 872 (Fla. 2014).

The testimony and evidence reveals that the Event consists of over 200,000 lights, a 20-foot Ferris wheel, a thirty (30) foot lighted tree, a live "reindeer" horse, parades, snow, and additional decor. The approximate two mile stretch of Old Hiatus Road from West Broward Boulevard to West Sunrise Boulevard is dimly lit and has no traffic control devices, including no stop lights, no stop signs, or pedestrian crosswalks. Prior to 2013, some of the Hyatts' neighbors permitted parking on their property, which eliminated the need for vehicles to park along the swale. In May 2012, the Hyatts received a letter from the Mayor of the City specifically allowing the use of vacant property, as long as permission was received from the landowner.[3] On November 8, 2013, the City's position changed and the Hyatts were no longer able to use vacant property to park vehicles because the vacant lots were not zoned in a category designated for a parking lot. Notwithstanding the City's change in position, those landowners have not revoked their offer to the Hyatts to allow parking on the vacant lots. Further, in an effort to combat parking along the grassy swale abutting the canal the City installed numerous "No Parking" signs. Despite the installation of these signs, vehicles have continued to park along Old Hiatus Road.

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[3] Nina Fornalsky testified that she had recently used her land to park several vehicles for a fundraising race without any recourse from the City.

The court observes that the instant action does not involve an allegation that the Hyatts are in violation of a City ordinance or zoning code, does not involve an allegation that the Hyatts are in violation of state or federal law, nor is an action brought by neighbors seeking to recover damages. Rather, as asserted in the complaint:

> [b]esides the severe traffic safety issues, other issues directly caused by the oversized pedestrian and vehicular congestion are: the serious impairment of the ability of neighboring homeowners to gain access to and from their property, excessive noise which is audible from inside neighboring residences, the accumulation of litter and trash on streets and private property, and the delayed response time for emergency services.

(Compl. at ¶ 25). The court finds that the City has failed to prove its case by a preponderance of the evidence. First, the court finds that there was no testimony or evidence presented that there were any neighbor complaints as to excessive noise. There was testimony that a few neighbors did not like the display, but that the majority of neighbors enjoy the lights. Notably, there was no evidence presented that any citations or warnings of excessive noise have been issued in conjunction with the Event. Second, despite generalized statements contained in letters sent to the Hyatts regarding accumulation of trash, there was no evidence that there was an actual accumulation. Further, there was testimony that the Hyatts and volunteers for the Event regularly monitor for litter, and disposed of it accordingly. Importantly, there was no evidence of citations or warnings of littering having been issued. Third, there was no admitted evidence that the response times of emergency services were, or would be, delayed as a result of the Event. The testimony elicited regarding this issue was speculative and not grounded in fact. Fourth, the court determines that the severe traffic issues are being exacerbated by the City and the City's police department safety zones, not the Hyatts. A review of the videotaped evidence

depicting the City's safety concerns clearly show an increase in disorderly pedestrian and vehicular traffic as a result of the creation of the safety zone in 2014.[4]

As stated in Plaintiff's complaint, the City has sought the Hyatts' cooperation in conforming the nature and size of the Event to a compatible and appropriately sized display for a residential neighborhood. However, absent an applicable provision in the City's zoning code, municipal ordinance, or Florida Statute enumerating what an appropriate sized display would be, such a judicial determination would be arbitrary. Simply, there was no testimony or evidence that the Hyatts utilize their property in such a way that results in injury to a legal right of the City or to its residents.

Further, the use made of the property is one that is reasonable under the circumstances. This Final Judgment should not be construed such that the City is not allowed to maintain the roadways or enforce its zoning and ordinances in a manner it deems appropriate. Indeed, the City is free to do so under its municipal powers.[5] Nor should this Final Judgment be construed such that the Hyatts are permitted to do whatever they desire with respect to their holiday display. The City must ensure that its residents and visitors comply with its zoning code, its municipal ordinances, and the laws of the State of Florida. However, this Court declines to exercise its power where such conduct is not regulated and there is no testimony or evidence to support the City's claims for abatement of a nuisance.

Accordingly, it is hereby:

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[4] The court notes that the City's July 4, 2016 event appeared to have substantially more traffic and pedestrian issues than that occurring as a result of the Event, including a motorcycle being operated on the sidewalk.

[5] For example, the City can issue citations and tow those vehicles who park in violation of the no parking restrictions along Old Hiatus Road. Similarly, in the interest of public safety, the City can also choose to make an exception/variance to its zoning codes and allow parking to occur on nearby vacant lots, where the landowner's permission is given, to reduce the amount of pedestrian traffic traveling down Old Hiatus Road, which does not have a paved sidewalk.

ORDERED AND ADJUDGED that Final Judgment is entered in favor of Defendants, Mark Hyatt and Katherine Hyatt, and against Plaintiff, The City of Plantation, who shall take nothing from this action and go hence without day.

IT IS FURTHER ORDERED that the court retains jurisdiction to award attorney's fees and costs, both as to entitlement and amount.

DONE AND ORDERED in Chambers, Fort Lauderdale, Florida, this 27th day of October, 2016.

MARINA GARCIA-WOOD
CIRCUIT COURT JUDGE

TRUE COPY

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