122 A.D.3d 1376
Supreme Court, Appellate Division, Fourth Department, New York.

In the Matter of Thomas C. TURNER and Kingsley Stanard, Petitioners–Plaintiffs–Appellants,
v.
MUNICIPAL CODE VIOLATIONS BUREAU OF CITY OF ROCHESTER and City of Rochester, Respondents–Defendants–Respondents.

Nov. 21, 2014.

Synopsis

Background: Plaintiffs brought hybrid article 78 proceeding and declaratory judgment action challenging the constitutionality of city's outdoor storage ordinance. The Supreme Court, Monroe County, Ann Marie Taddeo, J., entered judgment in favor of city. Plaintiffs appealed.

[Holding:] The Supreme Court, Appellate Division, held that ordinance was unconstitutionally void for vagueness.

Reversed.

West Headnotes (5)

[1] Constitutional Law
Particular Issues and Applications

Municipal Corporations
Form and sufficiency in general

City ordinance, prohibiting outdoor storage in all districts except enumerated commercial districts, and defining outdoor storage as storage of any materials, merchandise, stock, supplies, machines and the like that were not kept in structure with at least four walls and a roof, was unconstitutionally void for vagueness; ordinance gave ordinary people virtually no guidance on how to conduct themselves in order to comply with it, it was difficult for a citizen to comprehend precise conduct that was prohibited, and it did not provide clear standards for enforcement by code enforcement officers.

Cases that cite this headnote

[2] Municipal Corporations
Presumptions and burden of proof

Municipal ordinances, like other legislative enactments, enjoy an exceedingly strong presumption of constitutionality.

1 Cases that cite this headnote

[3] Municipal Corporations

Form and sufficiency in general

The void-for-vagueness doctrine embodies a rough idea of fairness and an impermissibly vague ordinance is a violation of the due process of law. U.S.C.A. Const.Amend. 14.

Cases that cite this headnote

[4] Statutes

Certainty and definiteness; vagueness

In addressing vagueness challenges, courts must determine whether the statute in question is sufficiently definite to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute.

Cases that cite this headnote

[5] Statutes

Certainty and definiteness; vagueness

In addressing vagueness challenges, the court must determine whether the enactment provides officials with clear standards for enforcement.

Cases that cite this headnote

Attorneys and Law Firms

***876** Santiago Burger Annechino LLP, Rochester (Michael A. Burger of Counsel), for Petitioners–Plaintiffs–Appellants.

T. Andrew Brown, Corporation Counsel, Rochester (Sara L. Valencia of Counsel), for Respondents–Defendants–Respondents.

PRESENT: SMITH, J.P., PERADOTTO, CARNI, VALENTINO, and WHALEN, JJ.

Opinion

MEMORANDUM:

Petitioners-plaintiffs (plaintiffs) commenced this hybrid CPLR article 78 proceeding and declaratory judgment action seeking, inter alia, to declare section 120–175 of the Municipal Code of the City of Rochester (Code) unconstitutional. Supreme ***877** Court denied the relief sought in the petition-complaint.

The ordinance at issue was enacted by the Rochester City Council to advance the health, safety, and welfare of the residents of the City of Rochester (*see* Code § 120–162). To that end, the ordinance seeks to prohibit "outdoor storage" in all districts except specifically enumerated commercial districts (*id.* § 120–175). The Code defines "outdoor storage" as

"[s]torage of any materials, merchandise, stock, supplies, machines and the like that are not kept in a structure having at least four walls and a roof, regardless of how long such materials are kept on the premises" (*id.* § 120–208).

[1] [2] [3] Plaintiffs contend that Code § 120–175 is unconstitutionally void for vagueness, and we agree. We therefore reverse the judgment and declare section 120–175 of the Code to be unconstitutional. Municipal ordinances, like other legislative enactments, "enjoy an 'exceedingly strong presumption of constitutionality' " (*Cimato Bros. v. Town of Pendleton*, 270 A.D.2d 879, 879, 705 N.Y.S.2d 468, *lv. denied* 95 N.Y.2d 757, 713 N.Y.S.2d 1, 734 N.E.2d 1212, quoting *Lighthouse Shores v. Town of Islip*, 41 N.Y.2d 7, 11, 390 N.Y.S.2d 827, 359 N.E.2d 337). The void-for-vagueness doctrine "embodies a 'rough idea of fairness' " (*Quintard Assoc. v. New York State Liq. Auth.*, 57 A.D.2d 462, 465, 394 N.Y.S.2d 960, *lv. denied* 42 N.Y.2d 805, 398 N.Y.S.2d 1026, 367 N.E.2d 659, *appeal dismissed* 42 N.Y.2d 973, 398 N.Y.S.2d 1035, 367 N.E.2d 878, quoting *Colten v. Kentucky*, 407 U.S. 104, 110, 92 S.Ct. 1953, 32 L.Ed.2d 584), and an impermissibly vague ordinance is a violation of the due process of law (*see People v. Stuart*, 100 N.Y.2d 412, 419, 765 N.Y.S.2d 1, 797 N.E.2d 28).

[4] [5] "In addressing vagueness challenges, courts have developed a two-part test ... [F]irst[,] ... the court must determine whether the statute in question is sufficiently definite to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by the statute" (*id.* at 420, 765 N.Y.S.2d 1, 797 N.E.2d 28 [internal quotation marks omitted]; *see People v. Nelson*, 69 N.Y.2d 302, 307, 514 N.Y.S.2d 197, 506 N.E.2d 907; *see also Matter of Kaur v. New York State Urban Dev. Corp.*, 15 N.Y.3d 235, 256, 907 N.Y.S.2d 122, 933 N.E.2d 721, *cert. denied sub nom. Tuck–It–Away, Inc. v. New York State Urban Dev. Corp.*, 562 U.S. ——, 131 S.Ct. 822, 178 L.Ed.2d 556). "Second, the court must determine whether the enactment provides officials with clear standards for enforcement" (*Stuart*, 100 N.Y.2d at 420, 765 N.Y.S.2d 1, 797 N.E.2d 28; *see People v. New York Trap Rock Corp.*, 57 N.Y.2d 371, 378, 456 N.Y.S.2d 711, 442 N.E.2d 1222).

We conclude that the ordinance fails to pass either part of the test. With respect to the first part of the test, we conclude that the ordinance gives ordinary people virtually no guidance on how to conduct themselves in order to comply with it, and the language used in the ordinance makes it "difficult [ ] for a citizen to comprehend" the precise conduct that is prohibited (*Nelson*, 69 N.Y.2d at 307, 514 N.Y.S.2d 197, 506 N.E.2d 907). Moreover, with respect to the second part of the test, we conclude that the vague language of the ordinance does not provide clear standards for enforcement and, thus, a determination "whether the ordinance has been violated 'leaves virtually unfettered discretion in

the hands of' the [code enforcement officer]" (*Bakery Salvage Corp. v. City of Buffalo*, 175 A.D.2d 608, 610, 573 N.Y.S.2d 788, quoting *People v. Illardo*, 48 N.Y.2d 408, 414, 423 N.Y.S.2d 470, 399 N.E.2d 59).

In view of our determination, we do not address plaintiffs' remaining contentions.

***878** It is hereby ORDERED that the judgment so appealed from is unanimously reversed on the law without costs and judgment is granted in favor of petitioners-plaintiffs as follows:

It is ADJUDGED and DECLARED that section 120–175 of the Municipal Code of the City of Rochester is unconstitutional under the United States and New York Constitutions.

Parallel Citations

122 A.D.3d 1376, 997 N.Y.S.2d 876, 2014 N.Y. Slip Op. 08156

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