

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RICE

THIRD JUDICIAL DISTRICT

State of Minnesota,
Plaintiff,

Court File No.: 66-VB-16-103

v.

ORDER OF DISMISSAL

Helen Lucille Edell,
Defendant.

The above-entitled matter came before the undersigned Judge of District Court for a pretrial hearing on March 7, 2016. The Defendant appeared personally and was represented by Attorney David Ludescher. The State was represented by Attorney Rebecca Christensen, Northfield City Attorney.

The Defendant is charged with violating Northfield Municipal Code Section 10-39. The Defendant argues that Code Section 10-39 is unconstitutional for various reasons including:

1. That the ordinance is unconstitutionally broad.
2. That the Northfield Council acted arbitrarily in denying the Defendant her application for a permit to keep more than three animals.
3. That Code Section 10-39 is unconstitutionally vague and denies Defendant due process of law.
4. That Code Section 10-39 is unconstitutionally vague as applied to the Defendant.

NOW, THEREFORE, the Court issues the following order:

ORDER

1. The Defendant's motion to declare Northfield Municipal Code Section 10-39 unconstitutionally vague, as applied to her, is GRANTED.
2. The charges against the Defendant are dismissed.
3. The Defendant's other arguments to declare the ordinance unconstitutional need not be addressed since the Court has granted the Defendant's motion based upon vagueness of the ordinance, as applied to the Defendant.
4. The attached memorandum is incorporated herein.

04/05/2016 07:57:34 AM

Thomas M. Neville

Honorable Thomas M. Neville
District Court Judge

MEMORANDUM

Facts:

The Court takes judicial notice of the fact that the Defendant was previously charged with cruelty to animals in court file 66-CR-15-1730. In that file, the Defendant executed a continuance for dismissal agreement, without entering a guilty plea, that the case would be continued for dismissal for one year on the condition that she allow inspections of her home by Northfield Police Officer Jesse Cordova. When Defendant was charged with cruelty to animals, she had four dogs living with her at home. Ultimately, all four dogs were returned to the Defendant.

At the pretrial hearing on March 7, 2016, the Defendant testified that she applied for a permit to keep the four dogs at her residence in November, 2015. Defendant testified that the Northfield City Council denied the permit summarily and made no findings of fact to support the denial of the permit to maintain four dogs at her home. In this file (66-VB-16-103), the Defendant was charged by citation on January 8, 2016, for violation of Northfield Code Section 10-39.

There is no record establishing why the Northfield City Council denied the Defendant a permit to keep four dogs at her home instead of three.

The Court also takes notice that the Northfield Municipal Code contains no procedure for requesting a permit to maintain four dogs at one's home, nor does the code include any specific criteria which must be established by a person who seeks to have more than three dogs in their place of residence.

Legal Analysis

Section 10-39 of the Northfield Municipal Code states:

“No person shall keep in a residential unit or a residential site more than three animals over six months of age without securing a permit from the city council.”

Violation of this Code Section carries with it a maximum potential penalty of a \$1,000 fine and/or 90 days in jail. Northfield Code Section 1-8(c) (1).

On its face, Northfield Code Section 10-39 permits any number of animals as long as they are under six months of age. The code also permits more than three animals over six months of age if the homeowner secures a *permit from the city council*.

The Defendant testified that she first became aware of the three animal limit contained in Code Section 10-39 when the city first took four of her dogs in July, 2015 and charged her with animal cruelty in Rice county district court file 66-CR-15-1730. Defendant attempted to comply with the Ordinance by directing her attorney, Mr. Ludescher, to apply for a permit from the city council under Code section 10-39. However, the Defendant had no way of knowing what criteria would be considered by the city council in determining whether to grant a permit. Although the State argues in its memorandum that the permit was denied based upon the recommendation of the City Police Chief, Monte Nelson, there is nothing in this record to support that claim. The Defendant testified that the city council denied her permit to keep four dogs at home without making any specific findings as to the reason why. No facts in the record rebut this claim by Defendant. Less than two months after having her permit application denied, the Defendant was charged with the offense here, under Code Section 10-39.

Vague laws can violate due process in at least two ways: They “trap the innocent by not providing adequate warning of what constitutes unlawful conduct” and they “unleash the potential for unfair and uneven law enforcement by not establishing minimal guidelines.” *State v. Becker*, 351 NW 2d 923, 925 (Minn. 1984); *In Re Welfare of B.A.H.*, 845 NW 2d 158, 163 (Minn. 2014).

Accordingly, a penal statute must define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983); *State v Newstrom*, 371 N.W.2d 525,528 (Minn 1985); *State v Phipps*, 820 N.W.2d 282,285 (Minn.App.2012). . The United States Supreme Court has called the second basis demanding “minimal guidelines to govern law enforcement,” the more important aspect of the vagueness doctrine. *Kolender*, supra. at 358. To prevail on her unconstitutional-as-applied claim, Ms. Edell needs to show that the Ordinance was impermissibly vague as applied to her own behavior. *City of Minneapolis v Reha*, 483 N.W.2d 688,691 (Minn. 1992).

The court concludes that Ms. Edell did not receive a “fair warning of the criminality” of her conduct because the city ordinance failed to tell her what criteria she had to satisfy to obtain a permit from the city council. Ordinance 10-39 allows the City to bring charges against the defendant in an arbitrary manner. The Ordinance here is vague because ordinary people cannot

understand what they must do to obtain a permit from the city council. The City's Code has no objective criteria for issuing the permit which is needed to avoid criminal prosecution.

Vagueness means that a statute leaves its enforcers free to decide without any legally fixed standards, what is prohibited and what is not in each particular case. *State v. Bussmann*, 741 NW 2d 79, 83 (Minn.2007). For example, a statute that requires people to provide "credible and reliable" identification on request by a police officer and contained no standard for determining what a suspect had to do in order to satisfy the requirement was unconstitutionally vague because it "vested virtually complete discretion in the hands of the police to determine whether the suspect had satisfied the statute." *Kolender* at 358.

In *United States v. Williams*, 553 U.S. 285, 306 (2008) the U.S. Supreme Court explained that statutes are unconstitutionally vague when criminal culpability depends on wholly subjective judgments without statutory definitions, narrowing context or settled legal meanings. In other words, a statute is unconstitutionally vague if it affords no guidance to enforcement officials which limits their discretion in determining whether certain conduct is allowed or prohibited. See *State v. Newstrom*, 371 NW 2d 525, 528 (Minn. 1985). The Court emphasized that the essential constitutional problem with vague statutes is that it lets enforcers determine who is a violator in the first place. *In Re Welfare of B.A.H.*, at 163-164. At the vagueness doctrine's core is a rough idea of fairness. It is not a principle designed to convert into a constitutional dilemma the practical difficulties in drawing criminal statutes both general enough to take into account a variety of human conduct and sufficiently specific to provide fair warning that certain kinds of conduct are prohibited. If a vagueness challenge does not involve a First Amendment freedom, then it must be examined in a light of the facts at hand. *State v. Becker*, 351 NW 2d 923, 925 (Minn. 1984). Unless the statute prescribes no comprehensible course of conduct at all, it should be upheld. *Id*; see also *State v. Kortkamp*, 633 NW 2d 863, 866 (Minn. App. 2001).

In this case, Helen Edell first became aware that she could not have more than three dogs without a city council permit in July 2015. Thereafter, she sought to obtain a permit but had literally no idea what conditions she had to meet in order to obtain a permit from the city council. Since the city ordinance defined no specific procedure or criteria of the granting of a permit to allow more than three animals at a person's house, the city council was free to arbitrarily grant

permits to some and deny permits to others based on any criteria they determined applicable, or in Ms. Edell's situation, based on no documented criteria at all.

Under Northfield City Code Section 10-39, one neighbor might be permitted to have 10 dogs while another neighbor is limited to three. One neighbor could have 15 puppies, who would affect the health, welfare, and safety of the neighborhood much more than another neighbor who sought to have four older dogs at her home such as the Defendant in this case. Put another way, if a city put up a sign at its city limits that said, 'you cannot drive more than 30 mph on certain streets within the city, but we will not tell you which streets are subject to the speed limit', that would be a problem. Northfield's ordinance catches non-lawbreakers within its nets and thus depends on the whim of the city council as to whom they choose to charge by granting or not granting a permit.

The Court concludes that, as applied to Ms. Edell, Northfield Ordinance 10-39 is unconstitutionally vague. Having so concluded, the charges against the Defendant are hereby dismissed. The vagueness of the ordinance denied the Defendant her property (her dogs) without due process of law.

While it is not this Court's function to advise the City of Northfield whether it should correct its ordinances, the Court does note that reasonable regulations on the maintenance of animals in residential settings likely would be valid under the police powers to protect the health, welfare, and safety of individuals and neighborhoods. However, if the city chooses to regulate an area, and particularly if the city chooses to make violation of its ordinances criminal, it must sufficiently define when and how an individual can successfully obtain a permit to have more than three animals at their home, adopt a more definite ordinance without a special permit process.

The Court finds no First Amendment interest involved in this matter. While dogs clearly constitute "property" of an individual, there is no evidence on the record before this Court that the City of Northfield has attempted to take or remove any of Helen Edell's dogs from her simply because she is charged with a criminal violation of City Code Section 10-39. The penalty for the violation of this ordinance does not include forfeiture or removal of the animals.

Conclusion

The Court finds that Northfield City Code 10-39 is unconstitutionally vague, as it was applied to Defendant, because it gives the Northfield City Council the arbitrary power to determine who obtains an animal permit under Ordinance 10-39, and who does not. Codes absent of any criteria for obtaining a permit make the ordinance vague as to its enforcement and application. Charging the Defendant with violation of Code Section 10-39 is unfair because the Code did not provide the Defendant the sufficient notice of what she was required to prove in order to obtain a permit to keep her four dogs at home.

TMN