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MUNICIPAL ORDINANCE - FLORIDA

City of West Palm Beach v. Chatman

District Court of Appeal of Florida, Fourth District - May 8, 2013 - So.3d - 2013 WL 1890698

Defendant was charged with violating city ordinance that criminalized loitering with intent to commit prostitution.

The district court of appeal held that:

- Ordinance was unconstitutionally overbroad, and
- Ordinance was unconstitutionally vague.

Ordinance was overbroad because its language did not require that the conduct proscribed be with specific intent, but rather restricted conduct that “demonstrates” a specific intent, and ordinance could therefore infringe on activities protected by the First Amendment, like waving at passersby or sauntering down a street, that were interpreted by a law enforcement officer as evincing a specific intent to entice or solicit another to commit an act of prostitution.

Ordinance was unconstitutionally vague, in violation of due process. Even though it required a violator’s conduct to be activity that “demonstrates” a specific intent to entice or solicit another to commit an act of prostitution, the ordinance still allowed for arbitrary enforcement by law enforcement, as it allowed an individual officer to determine subjectively if waving at passersby or strolling down the street “demonstrates” the requisite specific intent.