No. 127547

IN THE
SUPREME COURT OF ILLINOIS

RITA LINTZERIS, WILLIAM MORAITIS,
ZARON JOSSELL, and CLARENCE DANIELS,

Plaintiffs-Appellants,

v.

CITY OF CHICAGO,

Defendant-Appellee.

Appeal from the Appellate Court of Illinois, First District
No. 1-19-2453
There heard on appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
No. 17 CH 11375
The Honorable Kathleen M. Pantle, Judge Presiding

BRIEF OF DEFENDANT-APPELLEE CITY OF CHICAGO

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TABLE OF CONTENTS AND POINTS AND AUTHORITIES

NATURE OF THE CASE

The City of Chicago Municipal Code authorizes a vehicle's impoundment and an administrative penalty against the vehicle's owner when a vehicle has been involved in any of certain enumerated offenses, such as driving while intoxicated or using a vehicle in connection with selling illegal narcotics. The City also has an ordinance that governs the administrative procedures that apply to impoundments. Municipal Code of Chicago, Ill. § 2-14-132 (the "impoundment ordinance"). Among other things, the impoundment ordinance provides that the owner of the impounded vehicle is liable for an administrative penalty if an administrative law officer finds that the vehicle was used in connection with the offense. Plaintiffs are vehicle owners who were assessed such penalties. They alleged that an Illinois Vehicle Code provision authorizing counties and municipalities to charge administrative fees associated with impoundment prohibits the City from charging administrative penalties. The circuit court rejected that theory and dismissed plaintiffs' complaint. The appellate court affirmed. All questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether the Vehicle Code's authorization of administrative fees associated with vehicle impoundments prohibits home rule units from charging administrative penalties.

2. Whether plaintiffs' argument that charging administrative penalties in connection with vehicle impoundments does not pertain to the City's government and affairs is forfeited, and meritless besides.

3. Whether plaintiffs' argument that administrative penalties in connection with vehicle impoundments violates double jeopardy is forfeited, and meritless besides.

JURISDICTION

The circuit court entered an order dismissing plaintiffs' complaint on November 8, 2019. C. 402.[1] Plaintiffs filed a notice of appeal on November 26, 2019. C. 405. On July 9, 2021, the appellate court issued an order pursuant to Ill. Sup. Ct. R. 23 affirming the circuit court's judgment. Lintzeris v. City of Chicago, 2021 IL App (1st) 192423-U. Plaintiffs filed a petition for leave to appeal on August 13, 2021, which this court allowed on November 24, 2021. This court has jurisdiction pursuant to Ill. Sup. Ct. R. 315.

STATUTES AND ORDINANCE INVOLVED

The following ordinance and statutes are in the appendix to this brief:

Municipal Code of Chicago, Ill. § 2-14-132

[1] We cite the common-law record as "C. __," and plaintiffs' brief as "Lintzeris Br. __."

Illinois Vehicle Code, 625 ILCS 5/11-207, 11-208.1, 11-208.2, 11-208.7

STATEMENT OF FACTS

We begin with an overview of the City's impoundment procedures and the pertinent provisions of the Illinois Vehicle Code. We then summarize the procedural history of this case.

The City's Impoundment Procedures

In 1998, the City enacted the impoundment ordinance, which sets forth procedures that apply when a vehicle is impounded for having been involved in any of certain enumerated offenses. Municipal Code of Chicago, Ill. § 2-14-132(a)(1). The impoundment ordinance applies to offenses such as driving while intoxicated, id. § 7-24-226, or using a vehicle in connection with selling illegal narcotics, id. § 7-24-225.[2] Under the impoundment ordinance, within fifteen days of the impoundment, an owner may request a preliminary hearing, at which an administrative law officer determines whether there is probable cause to believe the owner's vehicle was used in one of the enumerated offenses. Id. § 2-14-132(a)(1). If the administrative law officer finds probable cause, the owner may regain possession of the vehicle by paying the administrative penalty applicable to the offense, plus towing and storing fees, as well as any outstanding debt arising from other vehicle

[2] Other offenses to which the impoundment ordinance applies include dumping waste in Lake Michigan, Municipal Code of Chicago, Ill. § 11-4-1410, drag racing, id. § 9-12-090, and using a fraudulent decal to park in a space for people with disabilities, id. § 9-80-225.

offenses. Id. § 2-14-132(a)(1)-(2). If the owner does not pay those charges, the vehicle remains impounded. Id. § 2-14-132(a)(1). If probable cause is lacking, the vehicle is returned the owner, who does not have to pay any penalty or fees. Id. § 2-14-132(a)(3).

The impoundment ordinance also requires the City to notify the impounded vehicle's owner of the right to request a hearing challenging the impoundment. Municipal Code of Chicago, Ill. § 2-14-132(b)(1)(A). An owner may request a hearing within fifteen days of when notice was sent, and any hearing must take place within thirty days of the request's filing. Id. § 2-14-132(b)(2). If the administrative law officer finds by a preponderance of the evidence that the vehicle was used in the violation, the owner is liable for the administrative penalty applicable to that offense, plus towing and storage fees. Id. § 2-14-132(b)(3)(A). The vehicle remains impounded until the owner pays the penalty and fees, plus any outstanding debt for other vehicle offenses. Id. § 2-14-132(c)(1)(A). If the administrative law officer does not find by a preponderance of the evidence that the owner's vehicle was involved, the vehicle is ordered returned and the owner receives a refund of any penalty and fees paid. Id. § 2-14-132(b)(3)(B).

If an owner does not request a hearing, or fails to appear at the hearing, the administrative law officer enters a default order imposing the administrative penalty applicable to the violation, plus towing and storage fees. Municipal Code of Chicago, Ill. § 2-14-132(b)(4). A person who fails to

appear for a hearing may have the order set aside upon the filing of a petition within 21 days that establishes good cause for failing to appear. Id. § 2-14-108(a). Alternatively, a default order may be set aside at any time upon a showing that proper service of process did not occur. Id.

Additionally, the City may dispose of vehicles that go unclaimed. Municipal Code of Chicago, Ill. § 2-14-132(d). If the owner seeks judicial review of the administrative decision, the City may dispose of the vehicle after the entry of a final judgment in favor of the City. Id. If the owner does not pursue judicial review, the City may dispose of the vehicle ten days after the time for seeking review expires. Id.

Pertinent Illinois Vehicle Code Provisions

Chapter 11 of the Vehicle Code, entitled "Rules of the Road," has a section requiring that the chapter's provisions "be applicable and uniform throughout this State and in all political subdivisions and municipalities therein." 625 ILCS 5/11-207. That section generally prohibits local governments from enacting ordinances "in conflict with" Chapter 11's provisions, while also authorizing them to enact "additional traffic regulations which are not in conflict with the provisions of this Chapter." Id. A separate section of Chapter 11 states that "[t]he provisions of this Chapter of this Act . . . shall be applicable and uniformly applied and enforced throughout this State, in all other political subdivisions and in all units of local government." 625 ILCS 5/11-208.1. Another section provides that "[t]he

provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith," with exceptions for ordinances "pursuant to" Vehicle Code provisions that are not at issue in this case. 625 ILCS 5/11-208.2.

In 2011, the General Assembly added a provision to Chapter 11 of the Vehicle Code that grants counties and municipalities authority to "provide by ordinance procedures for the release of properly impounded vehicles." 625 ILCS 5/11-208.7(a). The statute further authorizes "a reasonable administrative fee related to [a county's or municipality's] administrative and processing costs associated with the investigation, arrest, and detention of an offender, or the removal, impoundment, storage, and release of the vehicle." Id. Such a fee "may be in addition to any fees charged for the towing and storage of an impounded vehicle" and must be waived upon proof that the vehicle was stolen when it was impounded. Id. Moreover, any such fee "shall be in addition to (i) any other penalties that may be assessed by a court of law for the underlying violations; and (ii) any towing or storage fees, or both, charged by the towing company." 625 ILCS 5/11-208.7(c)(2). In 2016, the General Assembly amended section 11-208.7 to add subsection (j), which states that some of the section's provisions "shall not apply to a home rule unit" if certain conditions are met, P.A. 99-848, § 105, eff. Aug. 19, 2016, none of which is at issue here.

Procedural History

Plaintiffs brought this suit as a putative class action on behalf of people who have paid administrative penalties pursuant to the impoundment ordinance. C. 11. Plaintiff Rita Lintzeris alleged that her son borrowed her vehicle and was arrested for driving while intoxicated and possessing unlawful drugs. C. 24. Her vehicle was impounded and she paid an administrative penalty, along with fees for towing and storage. C. 24.

Plaintiff William Moriartis alleged that his vehicle was impounded after his son was arrested for driving with a suspended license. C. 26. An administrative law officer ordered that he pay an administrative penalty, storage costs, and a towing fee. C. 26. Moriartis did not allege that he had paid the penalty or fees.

Plaintiff Zaron Jossell alleged that his vehicle was impounded after he was arrested for possessing a controlled substance. C. 26. He paid an administrative penalty, as well as towing and storage fees. C. 27.

Plaintiff Clarence Daniels alleged that vehicle was impounded after he was arrested for driving while intoxicated. C. 27. He alleged that he was assessed an administrative penalty, which he had not paid. C. 27.

Plaintiffs challenged the impoundment ordinance, alleging that the Vehicle Code prohibits local governments from imposing fines or penalties in connection with a vehicle's impoundment. C. 22. According to plaintiffs, because section 11-208.2 "expressly limits Chicago's authority to adopt local

police regulations inconsistent with the Code," and section 11-208.7 permits only "towing, storage and other reasonable administrative costs," C. 34 (internal quotation marks omitted), the impoundment ordinance is inconsistent with section 11-208.7 in that it provides for an administrative penalty, C. 35.

Plaintiffs sought a declaration that, among other things, all findings of liability and administrative penalties pursuant to the impoundment ordinance are void. C. 39. Plaintiffs also sought an injunction barring the City from "unlawfully impounding vehicles, initiating or conducting impoundment proceedings . . . that seek 'Administrative Penalties' in violation of 625 ILCS 5/11-208.7." C. 40. Plaintiffs further asserted claims for unjust enrichment and conversion, in which they sought refunds for administrative penalties and proceeds from the sale of impounded vehicles. C. 40-44.

The City moved to dismiss the complaint and argued, pursuant to section 2-615 of the Code of Civil Procedure, that plaintiffs' claims fail as a matter of law because the impoundment ordinance is not inconsistent with section 11-208.7, and because section 11-208.7 does not apply to home rule units. C. 92. The circuit court agreed and dismissed the complaint. C. 402. At the outset, the court observed that it was "undisputed that, prior to enactment of Section 208.7, the City had authority to impose administrative penalties." C. 386. The court then determined that section 11-208.7 does not

preempt the City's home rule authority to impose administrative penalties, because the statute's authorization of administrative fees does not include a prohibition of administrative penalties. Id. "Rather, it grants authority to collect *fees*, and is silent to other actions which a municipality may take." Id. The court also refused to "read words of limitation, exception, or condition into a statute that are simply not there." Id. And as an independent ground for dismissal, the court determined that section 11-208.7 does not apply to home rule units. C. 390.

Plaintiffs appealed, C. 405, and the appellate court affirmed, Lintzeris v. City of Chicago, 2021 IL App (1st) 192423-U. The court explained that "nowhere in [section 11-208.7] is there an explicit limitation on the power of a home rule unit to charge an administrative penalty or fine for the underlying violation that led to the impoundment of the vehicle." Id. ¶ 49. Accordingly, "[t]he impoundment ordinance is not inconsistent with the Vehicle Code and operates concurrently with the Vehicle Code." Id. ¶ 50.

Plaintiffs filed a petition for leave to appeal in which they argued that the City's imposition of penalties is preempted by the Vehicle Code, and added a new argument they had not raised in either court below: that the City's administrative penalties made "individuals throughout the state of Illinois susceptible to double jeopardy moving forward." PLA 3. This court allowed plaintiffs' petition for leave to appeal.

ARGUMENT

The City impounds vehicles that are used in the course of committing certain serious offenses, such as driving while intoxicated or selling illegal narcotics. In the event of an impoundment, the vehicle owner is liable for an administrative penalty in an amount that depends on the offense that gave rise to the impoundment. These penalties serve the important purpose of deterring unlawful and dangerous vehicle use, thereby protecting the health, safety, and welfare of City residents by making the City's streets safer.

In the courts below, plaintiffs asserted that the City was prohibited from imposing such penalties because of a provision of the Illinois Vehicle Code that authorizes counties and municipalities to charge administrative fees relating to impoundment; according to plaintiffs, that grant of authority means home rule units may assess only administrative fees, and no other amounts such as administrative penalties. But as the circuit court and appellate court rightly held, a statute authorizing fees cannot be understood to prohibit penalties. The circuit court further determined that the section of the Vehicle Code authorizing administrative penalties does not apply to home rule units at all. Both of these holdings are correct and should be affirmed.

In this court, plaintiffs continue to assert that the Vehicle Code preempts the City's authority to charge administrative penalties, but also debut new arguments that they did not raise below, did not include in their petition for leave to appeal, or both. These are: (1) their lead assertion that

vehicle regulation does not pertain to the City's government and affairs, and (2) their argument that the City's administrative penalties violate double jeopardy. These arguments are forfeited and should not be considered. These newfound arguments are also meritless in any event. Vehicle regulation unquestionably pertains to municipalities' government and affairs, and civil sanctions like the City's administrative penalties do not implicate double jeopardy.

This court reviews de novo a dismissal pursuant to section 2-615. Bogenberger v. Pi Kappa Alpha Corp., 2018 IL 120951, ¶ 23. "The critical inquiry is whether the allegations of the complaint, when construed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief may be granted." Id. Moreover, "local ordinances are presumed constitutional, and the burden of rebutting that presumption is on the party challenging the ordinance's validity to clearly demonstrate a constitutional violation. Blanchard v. Berrios, 2016 IL 120315, ¶ 14. Plaintiffs have not met their burden, and the appellate court's judgment should be affirmed.

As we explain below, the Vehicle Code does not preempt the City's home rule authority to impose administrative penalties associated with impoundment – both because the City's penalties are consistent with the Vehicle Code, and because the provision of the Code at issue does not even apply to, much less specifically preempt, home rule units. Plaintiffs have

forfeited their remaining arguments, which lack merit regardless.[3]

I. THE VEHICLE CODE DOES NOT PREEMPT THE CITY'S HOME RULE AUTHORITY TO IMPOSE ADMINISTRATIVE PENALTIES ASSOCIATED WITH VEHICLE IMPOUNDMENT.

Under the Illinois Constitution, "[h]ome rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. art. VII, § 6(i). Thus, "[i]f a subject pertains to local government and affairs, and the legislature has not expressly preempted home rule, municipalities may exercise their power." Palm v. 2800 Lake Shore Drive Condominium Association, 2013 IL 110505, ¶ 36 (internal quotation marks omitted).

The General Assembly has not preempted home rule units' power to charge administrative penalties when a vehicle is impounded. Pursuant to section 6(i), "unless a State law *specifically* states that a home rule unit's power is limited, then the authority of a home rule unit to act concurrently with the State cannot be considered restricted." Scadron v. City of Des

[3] Plaintiffs' statement of facts includes extensive argument. E.g., Lintzeris Br. 11 (arguing that "the legislature never intended a punitive sanction arising out of vehicle impoundment"); id. at 13 (arguing that the impoundment ordinance "ignores the remedial scheme codified in Section 11-208.7"). This court has disregarded a brief's "inappropriate argumentative statements," which violate Ill. Sup. Ct. R. 341(h)(6), Jane Doe-3 v. McLean County Unit District No. 5 Board of Directors, 2012 IL 112479, ¶ 10 n.4, and it should likewise ignore the arguments plaintiffs make in their statement of facts here.

Plaines, 153 Ill. 2d 164, 188 (1992). "The purpose of section 6(i) 'is to eliminate or at least reduce to a bare minimum the circumstances under which local home rule powers are preempted by judicial interpretation of unexpressed legislative intention.'" Id. at 186 (quoting Baum, A Tentative Survey of Illinois Home Rule (Part II): Legislative Control, Transition Problems, and Intergovernmental Conflict, ("Part II"), 1972 U. Ill. L.F. 559, 571). This "approach places almost exclusive reliance on the legislature rather than the courts to keep home rule units in line." Baum, Part II, 972 U. Ill. L.F. at 579.

Plaintiffs rely on several Vehicle Code provisions as collectively preempting home rule authority to impose the penalties at issue here, which they assert are inconsistent with or conflict with the Vehicle Code. Only one expressly addresses home rule units; located in chapter 11 of the Code, it provides that "[t]he provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to" provisions that are not at issue in this case. 625 ILCS 5/11-208.2. Another section of chapter 11 requires that its provisions "be applicable and uniform throughout this State," and prohibits local governments from "enact[ing] or enforce[ing] any ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein." Id. § 11-207. In addition, chapter 11 states that its provisions "shall be applicable and uniformly applied and enforced throughout this State." Id.

§ 11-208.1. Finally, section 11-208.7 authorizes "the imposition of a reasonable administrative fee" in impoundment cases. Id. § 11-208.7.

As we now explain, these provisions do not preempt the City's home rule authority to charge administrative penalties associated with vehicle impoundment, for two independent reasons. The penalties are not inconsistent with chapter 11; they complement it. And regardless, section 11-208.7 does not apply to home rule units such as the City.

A. The City's Imposition Of Penalties Is Not "Inconsistent" With Any Provision Of Chapter 11 Of The Vehicle Code.

The City's administrative penalties are not inconsistent with any provision of the Vehicle Code. Simply put, the General Assembly has enacted no legislation that prohibits home rule units from charging administrative penalties associated with impoundment. The section of chapter 11 on which plaintiffs principally rely, entitled "Administrative fees and procedures for impounding vehicles for specified violations," 625 ILCS 5/11-208.7, does not mention administrative penalties at all. Rather, it provides, in pertinent part, that "[a]ny county or municipality may, consistent with this Section, provide by ordinance procedures for the release of properly impounded vehicles and for the imposition of a reasonable administrative fee related to its administrative and processing costs associated with the investigation, arrest, and detention of an offender, or the removal, impoundment, storage, and release of the vehicle." Id. § 11-208.7(a).

By its terms, then, the statute does not prohibit anything. "A court may not read into a statute any limitations or conditions which are not expressed in the plain language of the statute." Evanston Insurance Co. v. Riseborough, 2014 IL 114271, ¶ 23. That bedrock principle of statutory interpretation is especially important in a case involving home rule preemption. "[A] state statute cannot preempt home rule power unless it contains specific language setting forth that legislative intent." Iwan Ries & Co. v. City of Chicago, 2019 IL 124469, ¶ 24 (internal quotation marks omitted). To prevail, plaintiffs need specific language prohibiting the imposition of administrative penalties. But section 11-208.7 contains none.

Rather, the statute grants authority. It provides that counties and municipalities "may" charge "a reasonable administrative fee" to cover various costs associated with an impoundment, among other things. 625 ILCS 5/11-208.7(a). Absent any language of prohibition, such as a statement that *only* fees may be charged, or that a certain kind of charge may not be imposed, the statute cannot be read as inconsistent with the City's imposition of administrative penalties.

For just this reason, plaintiffs' complaint that "nothing in the text of Section 208.7 authorizes the 'administrative penalty' the Impoundment Ordinance prescribes," Lintzeris Br. 41, is completely irrelevant. Units of local government with home rule powers do not need a statutory authorization. They are constitutionally entitled to exercise functions

pertaining to their government and affairs, unless the General Assembly specifically takes that power away. What plaintiffs need to show, then, is that the Vehicle Code specifically prohibits home rule units from imposing charges such as the administrative penalties the City imposes in connection with impoundment. Plaintiffs cannot do so here.

Nor does it make any sense to interpret the statute's reference to "administrative fees" as a category of charges that could include administrative penalties, since the two are completely different types of charges. A fee "seeks to recoup expenses incurred by the state." People v. Jones, 223 Ill. 2d 569, 582 (2006). A penalty, on the other hand, "connotes a fine," id. at 584, which is "a pecuniary punishment," id. at 581 (internal quotation marks omitted). In other words, "[a] fee is intended to recoup the costs incurred in providing a service, while a fine is intended to be punitive or act as a deterrent." Carter v. City of Alton, 2015 IL App (5th) 130544, ¶ 37. Given these settled definitions of "fee" and "fine," the use of one of those terms cannot include the other.

In short, section 11-208.7 is silent about administrative penalties. And, of course, there can be no inconsistency when a statute is silent on the subject. On the contrary, as plaintiffs acknowledge, Lintzeris Br. 36, "[w]hen the General Assembly intends to preempt or exclude home rule units from exercising power over a matter, that body knows how to do so," City of

Chicago v. Roman, 184 Ill. 2d 504, 517 (1998).[4] It does so with clear affirmative language, expressly stating that it is preempting home rule authority and defining the precise scope of preemption.

Indeed, it defies all common sense to suggest that, when the General Assembly enacts a statute that is utterly silent about how it limits any home rule authority, it could accomplish preemption. That approach would lead to absurd results. And when interpreting a statute, this court presumes that the legislature "did not intend to produce absurd, inconvenient or unjust results." Progressive Universal Insurance Co. v. Liberty Mutual Fire Insurance Co., 215 Ill. 2d 121, 134 (2005). Consider, for example, that the impoundment ordinance provides a procedure whereby a vehicle owner may request a hearing within 48 hours to challenge whether probable cause supports that the impounded vehicle was used in the alleged violation that gave rise to the impoundment. Municipal Code of Chicago, Ill. § 2-14-132(a)(1). If an administrative law officer finds probable cause lacking, the

[4] Plaintiffs also cite a portion of Roman that listed section 11-208.2 among statutes purportedly providing "an exclusive exercise of power by the state and that such power shall not be exercised by home rule units." 184 Ill. 2d at 517-18. See Lintzeris Br. 37. With respect, it was error for the court to characterize section 11-208.2 that way. The statute provides that home rule authority is "limit[ed]," not that the state's power is exclusive. 625 ILCS 5/11-208.2. That distinguishes section 11-208.2 from the other statutes the court listed in Roman, which do provide for exclusive exercise by the state, see 20 ILCS 3960/17; 215 ILCS 5/2.1; 220 ILCS 10/21; 225 ILCS 60/6; 235 ILCS 5/6-18; 325 ILCS 55/7; 410 ILCS 5/2(c); 520 ILCS 5/2.1, or so provided before their subsequent repeal, 410 ILCS 80/11 (1990); 625 ILCS 5/13A-114 (1984).

vehicle must be returned, and no penalty or fee will be imposed. Id. § 2-14-132(a)(3). Section 11-208.7, on the other hand, requires only a hearing on the merits of vehicle impoundment and makes no mention of any preliminary probable cause hearings. The mere fact that it mentions one kind of hearing and not the other, however, does not mean it would be inconsistent to provide the additional protection of a probable cause hearing. Likewise, the mere fact that section 11-208.7 mentions one kind of charge – an administrative fee – does not make it inconsistent with an ordinance that provides for an additional charge – an administrative penalty.

Along the same lines, plaintiffs are also wrong to say that administrative penalties are inconsistent with the uniform application of the provisions of chapter 11 of the Vehicle Code, as provided in 625 ILCS 5/11-207 and 625 ILCS 5/11-208.1. A local law is not inconsistent with a state statute when the statute can still be given full effect. The appellate court has, therefore, upheld ordinances that create rules different than the Vehicle Code, but which nevertheless do not interfere with its enforcement. See, e.g., City of Wheaton v. Loerop, 399 Ill. App. 3d 433, 436 (2d Dist. 2010) (Wheaton's ordinance establishing a minimum fine for DUI not inconsistent with Vehicle Code, which contained no such provision); City of DeKalb v. White, 227 Ill. App. 3d 328, 330-31 (2d Dist. 1992) (DeKalb's minimum fine of $34 for speeding was not in conflict with the Vehicle Code's maximum fine of $500). Here, the penalties do not interfere with the application of any

provision of chapter 11, including section 11-208.7. Again, that statute authorizes counties and municipalities to charge reasonable administrative fees, and nothing about the City's administrative penalties presents an obstacle to the ability of counties and municipalities to charge fees.

In attempting to establish an inconsistency between the imposition of penalties and section 11-208.7's authorization of fees, plaintiffs represent that "this Court determined [in Jones] that the terms 'fine' and 'fee' are legally inconsistent." Lintzeris Br. 40 (citing Jones, 223 Ill. 2d at 598-99).[5] That grossly misrepresents Jones, which did not say that fees and fines are inherently "inconsistent." Rather, that case addressed whether judicial estoppel barred the state from arguing that a statutory charge amounted to a fine, where the state argued in the appellate court that the charge was a fee. Jones, 223 Ill. 2d at 598. This court determined that judicial estoppel did not apply to the "legally inconsistent" arguments that the state made over the course of the litigation. Id. In other words, the "legal inconsistency" in Jones was between the state's different arguments about whether the *specific charge in that case* was a fee or a fine. The court did not hold that imposing a fine is inconsistent with statutory authorization of a fee. Jones, therefore,

[5] Elsewhere, plaintiffs cite People v. Nedrow, 122 Ill. 363 (1887), for the proposition that fees and penalties are "legally inconsistent." Lintzeris Br. 15. That case did not address the difference between fees and penalties. Rather, it considered "whether district attorneys in this state have a lien for their fees upon the penalties" provided by statute for working as an unregistered pharmacist. Nedrow, 122 Ill. at 363-64.

has nothing to do with this case.

The other cases plaintiffs cite do not support their position, either. In International Association of Fire Fighters, Local 50 v. City of Peoria, 2022 IL 127040, this court considered a statute requiring employers to provide certain benefits to any firefighter who "suffers a catastrophic injury." 820 ILCS 320/10(a). The statute further provides that "[a]n employer, including a home rule unit, . . . may not provide benefits to persons covered under this Act in a manner inconsistent with the requirements of this Act." Id. § 320/20. In a prior case, this court had construed the statutory term "catastrophic injury" to have a particular meaning, Krohe v. City of Bloomington, 204 Ill. 2d 392, 400 (2003), and "legislative acquiescence" supported that construction, International Association of Fire Fighters, 2022 IL 127040, ¶ 19. A Peoria ordinance, on the other hand, defined the *same term* – "catastrophic injury" – differently, in a way that disqualified individuals who would have been entitled to benefits under the statute. Id. ¶ 30. This court held that the ordinance was inconsistent with the statute, and thus preempted. Id. ¶ 37. The present case does not involve an ordinance that gives a different meaning to a statutory term, or which alters any statutory entitlement. Instead, the ordinance uses different terms and adds something, a penalty, to the impoundment process.

Similarly, in Village of Park Forest v. Thomason, 145 Ill. App. 3d 327 (1st Dist. 1986), the court held that an ordinance was inconsistent with the

uniform enforcement of the Vehicle Code because it reduced the offense of driving under the influence from a class A misdemeanor, as required under the Vehicle Code, to an offense not punishable by a jail sentence. Id. at 328-29. Here, the ordinance does not displace any requirement in the Vehicle Code in that manner. Moreover, the Thomason ordinance's sanction was not "stiffer" than what the Vehicle Code provided, as plaintiffs say, Lintzeris Br. 37; just the opposite – it was deemed inconsistent because it was not stiff enough.

People ex rel. Ryan v. Village of Hanover Park, 311 Ill. App. 3d 515 (1st Dist. 1999), involved a similar problem. The ordinance at issue there provided for "alternative traffic programs that allow the traffic offender to pay a settlement fee in lieu of court adjudication." Id. at 518-519. Such a program allowed offenders to avoid a conviction that would be reported to the Secretary of State, who monitors driving records. Id. The appellate court decided that the programs were inconsistent with the Vehicle Code because they "disrupt[ed] the uniform enforcement of the Code's rules of the road provided in chapter 11 by eliminating the judicial process and reports of convictions to the Secretary of State," id. at 524, and "derail[ed] one of the Secretary of State's most important duties," id. at 527. The impoundment ordinance does not similarly displace any procedure or disrupt any state official's function. Again, the ordinance does not take anything away or

replace anything. It adds something to the impoundment process.[6]

Plaintiffs' reliance on People v. McAfee, 366 Ill. App. 3d 726 (3d Dist. 2006) and People v. Sharpe, 216 Ill. 2d 481 (2005), Lintzeris Br. 22, is even further afield. Those cases did not involve home rule authority at all – instead, they addressed the bounds of judicial authority. McAfee addressed a state court's authority to impose a fine that no statute authorized. 366 Ill. App. 3d at 728. That case turned on the legal principles that a court has no common-law authority to impose costs and any statutory authority to do so "must be strictly construed." In re W.W., 97 Ill. 2d 53, 55 (1983). Similarly, in Sharpe, this court held that the General Assembly is better positioned than the *courts* to determine criminal sentences. 216 Ill. 2d at 487. These cases say nothing at all about the relationship between the state and home rule units.[7]

Finally, we note that there is no apparent reason why it would even

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[6] Plaintiffs also cite Village of Mundelein v. Franco, 317 Ill. App. 3d 512 (2d Dist. 2000) and represent that it also addressed "alternative enforcement of" chapter 11's provisions. Lintzeris Br. 37. Franco did not involve an alternative enforcement program. Rather, the appellate court determined that chapter 11's provisions do not preempt a home rule ordinance that is inconsistent with a statute in chapter 12 of the Vehicle Code. Franco, 317 Ill. App. 3d at 522.

[7] Plaintiffs cite City of Chicago v. Fulton, 141 S. Ct. 585 (2021) and say that it "concerned the interplay between the Impoundment Ordinance and" the Bankruptcy Code. Lintzeris Br. 23. Not so. Fulton concerned impoundments "for failure to pay fines for motor vehicle infractions," 141 S. Ct. at 589, which are governed by a separate ordinance that is not at issue in this case, see Municipal Code of Chicago, Ill. § 9-100-120. And like so many other authorities plaintiffs cite, Fulton has nothing to do with home rule.

make sense for the General Assembly to take away such an important tool for deterring vehicle offenses that pose serious threats to state residents. "The City . . . has a legitimate interest in securing compliance with the Code's provisions through penalties." Express Valet, Inc. v. City of Chicago, 373 Ill. App. 3d 838, 856 (1st Dist. 2007). And, as we have explained, the impoundment ordinance targets vehicles used in offenses that have the potential to greatly affect the health and safety of City residents – like driving while under the influence of alcohol or illegal drugs. Municipalities such as Chicago need effective tools to make their streets safer. Sensibly, the General Assembly has refrained from prohibiting such penalties, and this court should not read such a prohibition into the Vehicle Code.

B. Section 11-208.7 Does Not Preempt The City's Home Rule Authority.

In addition, section 11-208.7 does not apply to home rule units. The text and legislative history support that conclusion. This provides an independent ground on which to affirm the judgment in the City's favor.

1. The plain language of section 11-208.7 does not specifically limit home rule authority.

Home rule units may exercise their powers "to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. art. VII, § 6(i). "[T]he General Assembly knows how to accomplish" preemption. Roman, 184 Ill. 2d at 520. Thus, when the General Assembly has limited

home rule authority, it has "expressly stat[ed] that, pursuant to article VII, section 6(i), of the Illinois Constitution, a statute constitutes a limitation on the power of home rule units to enact ordinances that are contrary to or inconsistent with the statute." Id. When the General Assembly enacted section 11-208.7, however, it did not cite any home rule provision of the Constitution or state that the statute limits home rule authority.

Nor did the General Assembly invoke the requirements of section 7 of the Statute on Statutes for laws that limit home rule authority. That statute provides: "No law enacted after January 12, 1977, denies or limits any power or function of a home rule unit, pursuant to paragraphs (g), (h), (i), (j), or (k) of Section 6 of Article VII of the Illinois Constitution, unless there is specific language limiting or denying the power or function and the language specifically sets forth in what manner and to what extent it is a limitation on or denial of the power or function of a home rule unit." 5 ILCS 70/7. Section 11-208.7, enacted well after 1977, contains none of the language the statute requires for preempting home rule authority.

Likewise, the General Assembly included no home rule explanatory note in section 11-208.7 as provided by the Home Rule Note Act, which states: "Every bill that denies or limits any power or function of a home rule unit shall have prepared for it before second reading in the house of introduction a brief explanatory note that includes a reliable estimate of the probable impact of the bill on the powers and functions of home rule units."

25 ILCS 75/5. This statute reflects that "the legislature has recognized its principal role in determining whether to preempt or limit home rule power and its responsibility to use specific language when preempting or limiting that power." Palm, 2013 IL 110505, ¶ 33. And it further ensures that when the General Assembly ventures to preempt a particular power, it has fully considered its potential effects on home rule units. It is an important safeguard for home rule authority, and its absence in section 208.7 is telling.

Consistently, courts interpreting section 11-208.7 have understood it to apply only to non-home rule units. Thus, the appellate court has described section 11-208.7 as both "permit[ing]," Carter v. City of Alton, 2015 IL App (5th) 130544, ¶ 44, and "limit[ing]," Hayenga v. City of Rockford, 2014 IL App (2d) 131261, ¶ 25, only non-home rule units' ability to impose a reasonable administrative fee.

Plaintiffs assert that section 7 of the Statute on Statutes "does not apply" because it was enacted after section 11-208.2 of the Vehicle Code took effect in 1971. Lintzeris Br. 32 n.4. But section 11-208.2's general prohibition on "inconsistent" laws could not alone preempt home rule authority to impose penalties. To start, plaintiffs would still need a statute that is inconsistent with the City's ordinance, and the one they point to – section 11-208.7 – was enacted in 2011. By that time, section 7 of the Statute on Statutes had been in effect for decades, and the General Assembly was subject to its requirements. And plaintiffs' assertion that the Home Rule

Note Act does not apply because it was enacted after section 11-208.2, id., fails for the same reasons. When the General Assembly enacts legislation covering new ground, it must consciously determine whether it intends to preempt home rule authority – and if it does, then it must include express preemption language in the legislation itself. The constitutional command of specificity in a statute limiting home rule authority, see Ill. Const. art. VII, § 6(i), section 7 of the Statute on Statutes, and the Home Rule Note Act demand no less.

For all these reasons, plaintiffs cannot rely on section 11-208.2 to supply the specific language needed for section 11-208.7 to preempt home rule authority. This only makes sense. Otherwise, under plaintiffs' theory, the General Assembly could bypass the constitutional design by invalidating local ordinances on the ground of a mere inconsistency with statutes enacted at a much later time – even decades later – that regulate in new ways that could not have been foreseen by the earlier General Assembly that enacted section 11-208.2. Our constitution requires more; preemption must be based on a careful consideration and specific intent to limit home rule authority. That approach bears no resemblance to a proper home rule analysis under this court's longstanding precedent, and it should be rejected.

2. Section 11-208.7's legislative history further shows that it did not preempt the City's home rule authority.

This court need not address the statute's legislative history to

determine whether the General Assembly preempted home rule authority because the answer is clear from the plain language of the statute itself. Nevertheless, the circuit court correctly determined that any consideration of legislative history only adds further support to the conclusion that the General Assembly did not preempt the imposition of administrative penalties. C. 388. During the debate on House Bill 1220, the bill's sponsor, Representative Zalewski, explained that it was not clear that non-home rule municipalities had the authority to impose fees to cover the costs of impoundment, even though some had been imposing such fees anyway. C. 148-49. House Bill 1220 was designed to "allo[w] non-Home Rule entities that don't have this power under Home Rule to impose fees." C. 151. Nothing in the debate suggests that the General Assembly meant to usurp home rule authority in any way, much less limit the ability to impose administrative penalties in addition to fees. To the contrary, as the circuit court explained, "[t]he legislative history evidences . . . [that] it was intended solely to ratify what was already happening by *granting*, rather than revoking, authority." C. 389.

The circuit court also addressed some of the legislative history for later amendments to section 11-208.7, which demonstrated some legislators' confusion about whether the statute applies to home rule units. C. 391. For example, in 2013, Chicagoans pressed for an amendment that would add reckless driving that interferes with traffic during a funeral procession to the

offenses to which section 11-208.7 applies. C. 356. In response, legislators expressed uncertainty about whether the amendment was necessary for home rule units. C. 356. The amendment was passed after another representative explained that the legislation would benefit Rockford, a non-home rule municipality within his district. C. 361-62.

Then, in 2016, section 208.7 was amended to, among other things, except home rule units from some of the restrictions in that section, see 625 ILCS 5/11-208.7(j). According to plaintiffs, "[t]he inclusion of the home rule 'carve out' in the 2016 Amendment confirms the General Assembly's intent to preempt home rule authority." Lintzeris Br. 34. But the General Assembly's conduct in 2016 cannot inform the intent back in 2011, when it first enacted section 208.7. "[T]he legislative intent that controls the construction of a public act is the intent of the legislature which passed the subject act, and not the intent of the legislature which amends the act." People v. Siemens Building Technologies, Inc., 387 Ill. App. 3d 606, 618 (1st Dist. 2008). That is because it is generally inappropriate "to infer what one legislature intended from the subsequent action of a later legislature, composed of different members and perhaps working towards different purposes." O'Casek v. Children's Home & Aid Society, 229 Ill. 2d 421, 442 (2008) (internal quotation marks omitted). See also Roth v. Yackley, 77 Ill. 2d 423, 428 (1979) (finding it "logically difficult to perceive how the declaration and amendments by the 80th General Assembly can be simply a clarification of the intent of the 77th

General Assembly which originally enacted the statute seven years earlier since only a fraction of the individuals who comprised the General Assembly were the same at both times"). Nor, in any event, did the amendment supply the specificity necessary to preempt home rule authority that was lacking when 11-208.7 was enacted.

People v Parker, 123 Ill. 2d 204 (1988), on which plaintiffs rely, Lintzeris Br. 34, is inapposite. There, this court observed that a statutory amendment "may be an appropriate source in determining legislative intent" where the circumstances of the amendment "indicate that the legislature intended only to interpret the original act." Parker, 123 Ill. 2d at 211 (internal quotation marks omitted). Here, however, the General Assembly gave no indication that it was interpreting the original section 11-208.7 when it added subsection (j).

Thus, the legislative history for amendments to section 11-208.7 is not helpful in determining whether the General Assembly meant to preempt home rule authority when it originally enacted section 11-208.7 in 2011. And neither the legislative debates nor the proposed legislation contains any statement showing an intention to take away any aspect of home rule authority through section 11-208.7. As we explain above, the specificity requirement in the Constitution, as well as the Statute on Statutes and the Home Rule Note Act, demand attention to the question of preemption that is wholly unsupported by the legislative record here.

II. PLAINTIFFS' ARGUMENT THAT VEHICLE REGULATION DOES NOT PERTAIN TO THE CITY'S GOVERNMENT AND AFFAIRS IS FORFEITED AND MERITLESS.

For the first time in this case, plaintiffs argue that home rule units are powerless to enact their own vehicle regulations because such regulations do not pertain to a municipality's government and affairs. According to plaintiffs, that means the home rule authority enshrined in the Illinois Constitution does not extend to regulating vehicles. That argument is forfeited several times over and should not be considered. And it is meritless, besides.

A. Plaintiffs' Argument That Vehicle Regulation Does Not Pertain To The City's Government And Affairs Is Forfeited.

In their opening brief, plaintiffs argue for the first time that the entire field of vehicle regulation, encompassing the administrative penalties at issue here, is off-limits to home rule units. According to plaintiffs, "[r]egulating the use or operation of vehicles is and always has been a matter of statewide concern, and, therefore, does not pertain to Chicago's affairs." Lintzeris Br. 31. But by waiting until their opening brief in this court to raise this issue, plaintiffs have forfeited their argument many times over.

Until this case reached this court, plaintiffs did not question whether charging administrative penalties associated with impoundment pertains to the City's government and affairs. Instead, their complaint alleged that section 11-208.7 of the Illinois Vehicle Code preempted the City's home rule

powers. C. 37. They opposed the City's motion to dismiss on the same ground. C. 294. For that reason, the circuit court observed that it was "undisputed that, prior to enactment of Section 208.7, the City had authority to impose administrative penalties." C. 386. In other words, there was no issue whether administrative penalties pertained to the City's government and affairs.

In the appellate court, plaintiffs did not take issue with the circuit court's description of the parties' dispute. Rather, they asserted that "[p]rior to the enactment of § 11-208.7, the Vehicle Code did not include a limitation prohibiting home rule units, like Chicago, from adopting local regulations permitting police departments to impound vehicles for certain violations of Illinois law." Lintzeris App. Ct. Br. 7. They also asserted that comprehensive vehicle regulation is "a matter vital to state interest and more competently, and uniformly, regulated by the State," id. at 22, but did not develop any argument that the State's power was exclusive or include any discussion whether vehicle regulation pertained to the City's government and affairs. The City pointed this out in a footnote, stating that plaintiffs "do not explain [what] they mean by 'vital,'" and that if this was an attempt "to invoke the exception to concurrent legislative authority that applies" when there is interference with a vital state interest, the argument was grossly underdeveloped and thus forfeited. City App. Ct. Br. 16. The City further explained that "[p]laintiffs' sole argument for preemption of the penalty

provision rests on the enactment of section 208.7 in 2011." Id. at 16. Critically, plaintiffs did not dispute any of this in their reply brief. Thus, the appellate court proceeded to observe "that plaintiffs did not contest Chicago's ability to enact the impoundment ordinance in 1998, only that it was subsequently preempted by the enactment of section 11-208.7." Lintzeris, 2021 IL App (1st) 192423-U, ¶ 46. "Issues not raised in either the trial court or the appellate court are forfeited." 1010 Lake Shore Association v. Deutsche Bank National Trust Co., 2015 IL 118372, ¶ 14. Plaintiffs therefore forfeited their "government and affairs" argument twice by failing to raise it in either court below.

To make matters worse, plaintiffs omitted any such argument from their petition for leave to appeal to this court. They asserted that that "the state has a vital interest in regulating traffic," PLA 14, without arguing that the impoundment ordinance interfered with that alleged interest. Instead, plaintiffs argued that "Chapter 11 of the Illinois Vehicle Code only allows for a municipality to recover administrative costs like towing and storage costs, and also limits home rule units' authority to enact any ordinance that is inconsistent with Chapter 11 of the Illinois Vehicle Code." Id. at 10. Plaintiffs submitted that the impoundment ordinance is "inconsistent with § 11-208.7," id. at 11, and thus preempted. This court has repeatedly held that "[i]ssues that a party fails to raise in its petition for leave to appeal, even if raised in the party's appellant's brief, are not properly before this court and

are forfeited." People v. Fitzpatrick, 2013 IL 113449, ¶ 26. See also, e.g., BAC Home Loans Servicing, LP v. Mitchell, 2014 IL 116311, ¶ 22; Crossroads Ford Truck Sales, Inc. v. Sterling Truck Corp., 2011 IL 111611, ¶ 63; Buenz v. Frontline Transportation Co., 227 Ill. 2d 302, 320-21 (2008); People v. Whitfield, 228 Ill. 2d 502, 509 (2007). So plaintiffs forfeited the "government and affairs" argument for a third time, by omitting it from their petition for leave to appeal.

Indeed, the only argument that plaintiffs did raise below, that section 11-208.7 preempts the City's authority to impose administrative penalties, necessarily proceeds from the premise that vehicle regulation *does* pertain to the City's government and affairs. As this court recently explained, "Section 6(i) of article VII [of the Illinois Constitution], which provides for statutory preemption of home-rule powers, presupposes that both the legislature and home-rule unit have concurrent authority as to the power at issue." Illinois Road & Transportation Builders Association v. County of Cook, 2022 IL 127126, ¶ 48. Plaintiffs' petition for leave to appeal even highlighted their reliance on section 6(i) as the basis for preemption. PLA 1. Thus, by arguing that section 11-208.7 preempts the impoundment ordinance, plaintiffs tacitly acknowledged that unless statutorily preempted, the City had the authority as a home rule unit to charge administrative penalties in the first instance.

Plaintiffs are now attempting to take this case in an entirely different direction. It is too late for that. Their new argument contradicts their theory

of the case below, as well as the argument in their petition for leave to appeal for why this court should hear this case. This court should not countenance plaintiffs' bait and switch.

B. Plaintiffs' Forfeited "Government And Affairs" Argument Lacks Merit Regardless.

In addition to being forfeited, plaintiffs' "government and affairs" argument is wholly meritless. Under the Illinois Constitution, "a home rule unit may exercise any power and perform any function pertaining to its government and affairs including, but not limited to, the power to regulate for the protection of the public health, safety, morals and welfare; to license; to tax; and to incur debt." Ill. Const. art. VII, § 6(a). This section "was written with the intention to give home rule units the broadest powers possible." Palm, 2013 IL 110505, ¶ 30. Consistent with that broad grant of authority, the Constitution expressly provides that the "[p]owers and functions of home rule units shall be construed liberally." Ill. Const. art. VII, § 6(m). And although "[t]he framers . . . understood that further interpretation of section 6(a)'s intentionally imprecise language would fall to the judicial branch," City of Chicago v. StubHub, Inc., 2011 IL 111127, ¶ 19, that section "as a whole was intended to prevent implied preemption, or preemption by judicial interpretation," Blanchard, 2016 IL 120315, ¶ 28. Thus, "'[t]he Illinois approach places almost exclusive reliance on the legislature rather than the courts to keep home rule units in line.'" Scadron, 153 Ill. 2d at 188 (quoting Baum, Part II, 1972 U. Ill. L.F. at 579). "'[I]f the

constitutional design is to be respected, the courts should step in to compensate for legislative inaction or oversight *only in the clearest cases of oppression, injustice, or interference by local ordinances with vital state policies.*'" Id. at 190 (quoting Baum, A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations ("Part I"), 1972 U. Ill. L.F. 137, 157) (emphasis added in Scadron).

The City exercises its power to "regulate for the protection of the public health, safety, . . . and welfare," Ill. Const. art. VII, § 6(a), when it charges administrative penalties associated with vehicle impoundments. The impoundment ordinance provides for the removal of vehicles from City streets, often under circumstances where the vehicles cannot be operated safely. As an illustration, two plaintiffs in this case had their vehicles impounded because the operator was driving while intoxicated, C. 24, 27, and another impoundment took place after the operator was driving on a suspended license, C. 26. The City also provides for impoundment when vehicles are used in ways that are harmful to the public, such as for selling illegal narcotics, Municipal Code of Chicago, Ill. § 7-24-225, or dumping waste in City waters, id. § 11-4-1410. To deter the offenses that give rise to impoundment, the City charges administrative penalties against the owners of vehicles that were used to commit the violations. Assessing administrative penalties protects the health, safety, and welfare of City residents, and thus pertains to the City's government and affairs.

Plaintiffs invoke the three-part test that this court set forth in Kalodimos v. Village of Morton Grove, 103 Ill. 2d 483 (1984). According to Kalodimos, "[w]hether a particular problem is of statewide rather than local dimension must be decided . . . with regard for the nature and extent of the problem, the units of government which have the most vital interest in its solution, and the role traditionally played by local and statewide authorities in dealing with it." Id. at 501. This court should not apply that standard. As Justice Thomas persuasively observed, "the Kalodimos approach is contrary to the constitutional design." StubHub, 2011 IL 111127, ¶ 77 (Thomas, J., dissenting). It invites courts to decide whether to invalidate local ordinances "on the basis of comprehensive state regulation," or merely because "the state has a greater interest and a more traditional role in an area." Id. ¶ 73 (Thomas, J., dissenting). That "approach improperly requires the court to choose whether the home rule unit or the state has a greater interest, when the whole point of the home rule provisions of the constitution is that *both* may have an interest." Id. ¶ 77 (Thomas, J., dissenting). The Kalodimos test is therefore "indefensible on its face." Id. ¶ 83 (Thomas, J., dissenting). And besides, it is entirely unnecessary here. By its terms, section 6(a) provides that "the power to regulate for the protection of the public health, safety, . . . and welfare" is a function pertaining to a municipality's government and affairs. Ill. Const. art. VII, § 6(a). There is no need to look beyond that plain language because the impoundment ordinance protects the

health, safety, and welfare of Chicago residents.

But even on the terms of Kalodimos, vehicle regulation of the type at issue here pertains to the City's government and affairs. The first factor calls for the court to examine "examine the nature and extent of the problem sought to be remedied by the" ordinance in question. Blanchard, 2016 IL 120315, ¶ 30. Local vehicle regulations such as the impoundment ordinance address the problem of vehicles being used unlawfully for serious crimes on City streets. That is plainly a local problem that affects the health and welfare of City residents.

The second Kalodimos factor, which examines "the units of government which have the most vital interest in its solution," Kalodimos, 103 Ill. 2d at 501, favors the City's authority under section 6(a) as well. Professor Baum explained that "home rule units are supposed to be free to carry on activities that relate to their communities even if the state also is interested and is active in the area." Baum, Part I, 1972 U. Ill. L.F. at 155. Accordingly, Kalodimos does not set out "a free-wheeling preemption rule resting upon the mere existence of comprehensive state regulation." StubHub, Inc., 2011 IL 111127, ¶ 25 (internal quotation marks omitted). That means that in this case, the state's extensive regulation of vehicles does not remove that subject matter from the City's powers as a home rule unit. The "solution" at issue here is addressing the problem of unlawful vehicle use in the City. Because that problem adversely affects the health and welfare of City residents, the

City's interest in a solution is vital, and its vehicle regulations pertain to its government and affairs.

The third Kalodimos factor considers "the role traditionally played by local and statewide authorities in dealing with it." Kalodimos, 103 Ill. 2d at 501. There is a long history of local vehicle regulation in this state. In 1911, the General Assembly enacted a law acknowledging "the power of municipal corporations to make and enforce ordinances, rules and regulations affecting motor trucks and motor driven commercial vehicles and motor vehicles which are used within their limits for public hire, or for making and enforcing reasonable traffic and other regulations except as to rates of speed not inconsistent with the provisions" of the state's vehicle laws. City of Rockford v. Floyd, 104 Ill. App. 2d 161, 166 (2d Dist. 1968) (internal quotation marks omitted). Then, in 1935, the General Assembly enacted statutes providing that municipalities may "adopt additional traffic regulations which are not in conflict with the provisions of the" the vehicle code, and that nothing in the code shall "be deemed to prevent local authorities from regulating certain enumerated areas under their jurisdiction." Id. at 168. These 1935 statutes resemble the present-day 625 ILCS 5/11-207 and 625 ILCS 5/11-208, respectively. Accordingly, even before the institution of home rule, there was a longstanding tradition of concurrent local vehicle regulation in this state.

Moreover, the Vehicle Code's general statement that home-rule units may not enact inconsistent laws, 625 ILCS 5/11-208.2, itself reveals that

vehicle regulation pertains to a municipality's local government and affairs. A statutory provision that partially preempts home rule authority presupposes that local governments have authority in the area, Illinois Road & Transportation Builders Association, 2022 IL 127126, ¶ 48, and so section 11-208.2 shows that local governments have authority under section 6(a) to regulate vehicles. In other words, if vehicle regulation did not pertain to a home rule unit's government and affairs, then section 11-208.2 would be surplusage.

Plaintiffs, for their part, misapply the Kalodimos test at every turn. In attempting to address the first prong, plaintiffs assert that "[t]he uniform regulation of motor vehicles has been a problem of statewide concern for over a century." Lintzeris Br. 27. This is a non-sequitur. The problem to be assessed under Kalodimos is the one the local government is trying to address by its regulation. Here, that is the unlawful use of vehicles on City streets – not "the uniform regulation of motor vehicles." Unlawful use of vehicles on City streets is unquestionably a local problem.

Plaintiffs also represent that the Vehicle Code provides for "uniform statewide vehicle laws" that "must be enforced uniformly and consistently across all units of government." Lintzeris Br. 27 (citing 625 ILCS 5/11-208.2). But the Vehicle Code does not require that vehicle laws be the same throughout the state, nor does it contain the only vehicle laws that may be enacted in the state. Rather, only the provisions of Chapter 11 itself must be

"uniform throughout this State," 625 ILCS 5/11-207, and they must be "uniformly applied and enforced throughout this State," 625 ILCS 5/11-208.1. Far from requiring homogeneous vehicle laws statewide, however, the Code expressly acknowledges the authority of municipalities to "adopt *additional* traffic regulations which are not in conflict with" Chapter 11. 625 ILCS 5/11-207 (emphasis added). The Code even provides that certain aspects of local regulation, such as ordinances parking and standing, may be *inconsistent* with the Code. 625 ILCS 5/11-208(a)(1).[8]

Plaintiffs also attempt to minimize the local nature of the problem at issue here by asserting that "criminal offenses committed during the use or operation of a motor vehicle occur in local units throughout the state." Lintzeris Br. 27. If so, that only supports home rule authority. "Home rule is predicated upon the assumption that problems affecting municipalities and their residents should be met with solutions tailored to local needs." Schillerstrom Homes, Inc. v. City of Naperville, 198 Ill. 2d 281, 286 (2001). Home rule allows local governments to legislate "free from veto by voters and elected representatives of other parts of the State who might disagree with the particular approach advanced by the representatives of the locality

[8] Plaintiffs are wrong to say that Chapter 11 "does not cover . . . the regulation of parking." Lintzeris Br. 20. Article XIII of Chapter 11 is entitled "Stopping, Standing, and Parking," and it includes many laws governing parking. E.g. 625 ILCS 5/11-1301.1 (regulating parking for persons with disabilities); 625 ILCS 5/11-1303 (prohibiting parking at certain locations).

involved or fail to appreciate the local perception of the problem." Kalodimos, 103 Ill. 2d at 502. In other words, even where a problem arises in other parts of the state, home rule units have authority to address the problem as they see fit, to best serve their unique needs.

Plaintiffs also misunderstand how the second factor works when they argue that "the State's interest in uniform regulation of the movement of vehicles is far greater than that of a local unit of government." Lintzeris Br. 28. This again fails to focus on what the City is trying to accomplish. The "solution" at issue here is preventing unlawful vehicle use that harms the health and welfare of City residents. The City's interest in a solution to that local problem is vital.[9]

Plaintiffs also cite several cases that have nothing to do with home rule. Lintzeris Br. 28-29. People v. Jung addressed whether a provision of the Illinois Vehicle Code violated a person's right to privacy under the Illinois Constitution. 192 Ill. 2d 1, 3 (2000). Birchfield v. North Dakota examined whether laws criminalizing the refusal to take a blood alcohol concentration test violate the Fourth Amendment's prohibition of unreasonable searches.

[9] Plaintiffs do not attempt to explain how the impoundment ordinance constitutes a "regulation of the movement of vehicles." Arguments omitted from the appellant's brief are forfeited. Ill. Sup. Ct. R. 341(h)(7). Regardless, the impoundment ordinance does not regulate the movement of vehicles. It provides for liability against the vehicle owner, Municipal Code of Chicago, Ill. § 2-14-132(b)(3)(A), who is not necessarily the person who operated the vehicle. Thus, the owner's liability does not turn on whether they moved in traffic at all.

579 U.S. 438, 444 (2016). Delaware v. Prouse considered whether it is an unreasonable seizure to stop a vehicle for a license and registration check, in the absence of probable cause or reasonable suspicion. 440 U.S. 648, 650 (1979). None of these cases calls into question that the City has a vital interest in preventing the unlawful use of vehicles on its streets.

Elsewhere, plaintiffs argue that "the effects of Chicago's Impoundment Ordinance are not solely local" because nonresident owners are subject to its provisions if their vehicles pass through the City. Lintzeris Br. 30. This makes no sense. The Vehicle Code acknowledges that local governments have authority to regulate "with respect to streets and highways under their jurisdiction." 625 ILCS 5/11-208(a). It does not matter whether the vehicles traveling the streets within its borders are owned by residents or non-residents. The ordinance attempts to deter the illegal use of any vehicle *on City streets* by anyone using those streets.

As for the third Kalodimos factor, plaintiffs have nothing to say apart from citing the state's history of regulating vehicles. Lintzeris Br. 31. This ignores the longstanding tradition of concurrent vehicle regulation by units of local government. And as we have explained, for more than a century the Vehicle Code has acknowledged the authority of local governments to enact their own vehicle regulations. Plaintiffs' radical assertion that home rule units may play no role in "[r]egulating the use or operation of vehicles," Lintzeris Br. 31, is completely unfounded and should be rejected.

Last, plaintiffs cite cases in which this court held that a local regulation did not come within the municipality's government and affairs, Lintzeris Br. 23-31; but each is readily distinguishable. Some involved local enactments that conflicted with other constitutional provisions. For example, Ampersand, Inc. v. Finley, 61 Ill. 2d 537 (1975), involved an ordinance that directed the circuit court clerk to collect a library fee from litigants, thereby burdening the judicial system in violation of article VI of the Constitution. Id. at 542-43. In People ex rel. Lignoul v. City of Chicago, 67 Ill. 2d 480 (1977), the ordinance in question allowed branch banking in violation of article XIII, section 8 of the Constitution, which specifies that only the General Assembly can authorize branch banking. Id. at 485. Unlike the local laws in these cases, the City's impoundment ordinance does not regulate in any field specifically covered by the Illinois Constitution.

People ex rel. Bernardi v. City of Highland Park, 121 Ill. 2d 1 (1988) is distinguishable based on the extraterritorial effect of the municipality's conduct. That case involved a municipality's departure from the Prevailing Wage Act, which would "have a direct impact upon wages paid workers on public works projects" outside the municipality, and "at least throughout the county." Id. at 13. The impoundment ordinance has no such direct extraterritorial effect. "The question of whether a home rule enactment has extraterritorial effect is answered by focusing on the subject being controlled." City of Evanston v. Create, Inc., 85 Ill. 2d 101, 116 (1981). In

Create, a municipal landlord-tenant ordinance regulated the city's rental properties. Id. The fact that nonresident landlords or tenants would need to comply with its provisions did not render the ordinance extraterritorial in scope. Id. Likewise here, and as we explain above, the impoundment ordinance regulates the use of vehicles on City streets, and the possibility that it will reach nonresident vehicle owners does not make the ordinance extraterritorial.

And finally, in Stubhub, the ordinance in question "require[d] electronic intermediaries to collect and remit amusement taxes on resold tickets." 2011 IL 111127, ¶ 1 (internal quotation marks omitted). This court observed that the City's regulation of such ticket resales did not extend nearly as far back as the state's. Id. ¶¶ 4, 35. Under these circumstances, this court stated that the City did "not have a traditional role" in collecting amusement tax from internet auction sites. Id. ¶ 35. Here, by contrast, municipalities across the state have traditionally had a role in vehicle regulation. Indeed, as we explain above, local control over vehicle regulation has been deeply rooted in Illinois for well over a century. Although the state also has a traditional role in regulating vehicles, no authority suggests that the roles cannot be concurrent.[10]

[10] Plaintiffs also devote many pages to discussing vehicle cases from the early twentieth century. E.g., Lintzeris Br. 3-4, 19-20, 26-27. These cases are irrelevant because they long predate the institution of home rule. And regardless, as we have explained, state law provided for local vehicle regulation even before the enactment of the 1970 Constitution.

III. PLAINTIFFS' ARGUMENT THAT ADMINISTRATIVE PENALTIES FOR IMPOUNDMENT OFFENSES VIOLATE DOUBLE JEOPARDY IS FORFEITED AND WRONG.

Plaintiffs' last argument is also forfeited. They argue that administrative penalties for impoundment offenses "violate the double jeopardy provisions of the Illinois and Federal Constitutions." Lintzeris Br. 46.[11] Plaintiffs did not raise this argument in the circuit court or the appellate court. It should be rejected on this basis alone.

In addition, plaintiffs are wrong. The Double Jeopardy Clause of the United States Constitution provides that no "person [shall] be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The "Clause does not prohibit the imposition of all additional sanctions that could, in common parlance, be described as punishment." Hudson v. United States, 522 U.S. 93, 98-99 (1997) (internal quotation marks omitted). Rather, it "protects only against the imposition of multiple *criminal* punishments for the same offense, and then only when such occurs in successive proceedings." Id. at 99 (citations omitted).

To determine whether a punishment is criminal or civil in nature, "[a]

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[11] In a footnote, plaintiffs also assert that the City's "reading of § 11-208.7 would . . . allow for the collection of penalties for underlying felony offenses, in violation 65 ILCS 5/1-2-1.1 or 65 ILCS 5/1-2.1-2 [sic]." Lintzeris Br. 45-46 n.6. Plaintiffs do not say which of the two statutes is supposedly being violated, or how. Cursory arguments are forfeited, Bartlow v. Costigan, 2014 IL 115152, ¶ 52, and plaintiffs have forfeited any claim that the City violates either of these statutes.

court must first ask whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for one label or the other." Hudson, 522 U.S. at 99 (internal quotation marks omitted). And if the legislature applied a civil "label" to a penalty, a court nevertheless inquires "whether the statutory scheme was so punitive either in purpose or effect as to transfor[m] what was clearly intended as a civil remedy into a criminal penalty." Id. (internal quotation marks and citation omitted).

The City's administrative penalties are plainly civil in nature. To begin, City Council indicated a preference that the penalties be civil. The sanctions are *administrative* penalties, and City Council authorized an administrative agency, the City's Department of Administrative Hearings, to impose them. Agency authority to issue a sanction "is prima facie evidence that [the legislature] intended to provide for a civil sanction." Hudson, 522 U.S. at 103. Accordingly, the "label" that City Council intended is civil, not criminal.

Nor does the effect of the administrative penalties "transform" them into criminal punishments. Factors a court considers include:

> 1) [w]hether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of *scienter*; (4) whether its operation will promote the traditional aims of punishment – retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned.

Hudson, 522 U.S. at 99-100 (internal quotation marks omitted). The factors plaintiffs rely on, Lintzeris Br. 48-50, do not convert the administrative penalties at issue here into criminal punishments. They consist of monetary penalties and involve no bodily "restraint" akin to imprisonment, as required under Hudson. 522 U.S. at 104. And historically, monetary penalties have not been considered criminally punitive. Id. Moreover, the impoundment ordinance does not call for an administrative law officer to make any finding of scienter in a vehicle owner before imposing an administrative penalty against him or her. See Municipal Code of Chicago, Ill. § 2-14-132(b)(3)(A).

To be sure, the administrative penalties aim to deter violations. But deterrence "may serve civil as well as criminal goals." Hudson, 522 U.S. at 105 (internal quotation marks omitted). In Hudson, the Court emphasized that "[t]o hold that the mere presence of a deterrent purpose renders such sanctions 'criminal' for double jeopardy purposes would severely undermine the Government's ability to engage in effective regulation of institutions such as banks." Id. at 105. Likewise here, the City's ability to regulate for the safety of City streets should be enhanced, not undermined.

Last, while some of the violations that trigger impoundments are crimes under Illinois law, e.g., Municipal Code of Chicago, Ill. § 7-24-226 (providing for impoundment where operator is intoxicated, in violation of 625 ILCS 5/11-501), not all of them are. Other offenses that may result in impoundment include operating an ambulance or taxi without a City license.

Id. §§ 4-68-195, 9-112-640. Regardless, the fact that conduct triggering a sanction "may also be criminal" is not sufficient to render monetary penalties criminal in nature. Hudson, 522 U.S. at 105. Moreover, the impoundment ordinance imposes liability on the vehicle owner. The owner is not necessarily the driver or the one who committed the offense.

Plaintiffs thoroughly misapply Hudson. On the initial question of what "label" applies to the administrative penalties, plaintiffs say "that Chicago intended for the sanction to be a penalty." Lintzeris Br. 47. Plaintiffs miss the point. The question under Hudson is how that penalty is labelled – criminal or civil. 522 U.S. at 99. The word "penalty" is not synonymous with criminal punishment, as plaintiffs apparently believe. Indeed, Hudson itself involved "money penalties," id. at 103, which the Court nevertheless deemed civil in nature, id. at 105. And although plaintiffs are correct that "[t]he sanction is based on the underlying offense committed," Lintzeris Br. 47, that fact has no bearing on whether City Council intended one label or the other.[12]

At the second step of the Hudson test, plaintiffs assert that "five of the seven factors . . . sho[w] that the penalties the Impoundment Ordinance imposes are punitive in purpose or effect." Lintzeris Br. 48. Again, that

[12] Plaintiffs represent that the City "admitted below that the purpose behind its Impoundment Ordinance is purely punitive." Lintzeris Br. 47 (citing C. 111); see also id. at 49. The record contains no such admission. Rather, the City argued that the administrative penalties at issue here are fines rather than fees, C. 111, and plaintiffs do not dispute that point.

misstates the inquiry under Hudson. The question is whether a sanction is "*so* punitive in form and effect as to render them *criminal* despite" legislative intent to the contrary. Hudson, 522 U.S. at 104 (emphasis added; internal quotation marks omitted). And plaintiffs misconstrue most of the factors they rely on. They say that "deprivation of one's vehicle is a restraint or a physical disability." Lintzeris Br. 49. It is absurd to suggest that not having a car resembles a restraint "approaching the infamous punishment of imprisonment." Hudson, 522 U.S. at 104 (internal quotation marks omitted). This argument is also irrelevant because plaintiffs are challenging monetary penalties, not impoundments. Monetary penalties involve no physical restraint, as we have explained.

Plaintiffs also assert, without any support, that "the penalties at issue in the Impoundment Ordinance have 'historically been regarded as punishment.'" Lintzeris Br. 49 (citing nothing). That ignores the Supreme Court's clear pronouncement that monetary penalties have *not* "historically been viewed as punishment." Hudson, 522 U.S. at 104.

And contrary to plaintiffs' assertion, Lintzeris Br. 49, not "all the offenses" that may result in impoundment are crimes, as we have explained.[13] Accordingly, it is not the case that administrative penalties come into play

[13] Plaintiffs also represent that "Section 11-208.7(b) enumerates the criminal offenses that may provide the basis for impoundment and, consequently, imposition of administrative fees." Lintzeris Br. 45. The statute does not limit the offenses that may result in impoundment. Rather, it authorizes fees for certain enumerated offenses. 625 ILCS 5/11-208.7(b).

only on a showing of scienter, as Hudson requires. 522 U.S. at 104. In sum, plaintiffs' newfound argument that it violates double jeopardy to impose administrative penalties associated with vehicle impoundments lacks any merit.

CONCLUSION

For the foregoing reasons, the judgment of the appellate court should be affirmed.

Respectfully submitted,

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APPENDIX

TABLE OF CONTENTS OF APPENDIX

2-14-132 Impoundment.

(a) (1) Whenever the owner of a vehicle seized and impounded pursuant to Sections 3-46-076, 4-68-195, 4-227-140, 9-80-220, 9-112-640 or 9-114-420 of this Code (for purposes of this section, the "status-related offense sections"), or Sections 7-24-225, 7-24-226, 7-28-390, 7-28-440, 7-38-115(c-5), 8-8-060, 8-20-070, 9-12-090, 9-12-100, 9-12-110, 9-32-040, 9-76-160, 9-80-225, 9-80-240, 9-92-035, 11-4-1410, 11-4-1500 or 15-20-270 of this Code (for purposes of this section, the "use-related offense sections") requests a preliminary hearing in person and in writing at the department of administrative hearings, within 15 days after the vehicle is seized and impounded, an administrative law officer of the department of administrative hearings shall conduct such preliminary hearing within 48 hours of request, excluding Saturdays, Sundays and legal holidays, unless the vehicle was seized and impounded pursuant to Section 7-24-225 and the department of police determines that it must retain custody of the vehicle under the applicable state or federal forfeiture law. If, after the hearing, the administrative law officer determines that there is probable cause to believe that the vehicle was used in a violation of this Code for which seizure and impoundment applies, or, if the impoundment is pursuant to Section 9-92-035, that the subject vehicle is eligible for impoundment under that section, the administrative law officer shall order the continued impoundment of the vehicle as provided in this section unless the owner of the vehicle pays to the city the amount of the administrative penalty prescribed for the code violation plus fees for towing and storing the vehicle.

(2) In addition to any amount due under subsection (a)(1), prior to the release of a vehicle, the owner of the vehicle shall also pay all amounts due for all outstanding final determinations for parking, standing, compliance, automated traffic law enforcement system or automated speed enforcement system violations incurred by the owner, including all related collection costs and attorney's fees authorized under Section 1-19-020.

(3) If the administrative law officer determines there is no such probable cause, or, if the impoundment is pursuant to Section 9-92-035, that the subject vehicle has previously been determined not to be eligible for impoundment under that section, the vehicle will be returned without penalty or other fees.

(b) (1) (A) Within ten days after a vehicle is seized and impounded the Department of Streets and Sanitation or other appropriate department shall notify by certified mail the owner of record (other than a lessee who does not hold title to the vehicle), the person who was found to be in control of the vehicle at the time of the alleged violation, and any lienholder of record, of the owner's right to request a hearing before the Department of Administrative Hearings to challenge whether a violation of this Code for which seizure and impoundment applies has occurred or, if the impoundment is pursuant to Section 9-92-035, whether the subject vehicle is eligible for impoundment under that section. In the case where an owner of record is a lessee who does not hold title to the vehicle, the notice shall be mailed to such lessee within ten days after the Department of Streets and Sanitation receives a copy or

other satisfactory evidence of the vehicle lease or rental agreement, indicating the name, address, and driver's license number of the lessee pursuant to subsection (i). However, no such notice need be sent to the owner of record if the owner is personally served with the notice within ten days after the vehicle is seized and impounded, and the owner acknowledges receipt of the notice in writing. A copy of the notice shall be forwarded to the Department of Administrative Hearings. The notice shall state the penalties that may be imposed if no hearing is requested, including that a vehicle not released by payment of the penalty and fees and remaining in the City pound may be sold or disposed of by the City in accordance with applicable law.

(B) If, after the ten-day notice period provided in subparagraph (b)(1)(A) of this section, the City learns that the impounded vehicle was owned at the time of the impoundment by a person other than those persons who were identified during the ten-day notice period, then notice shall be sent to such owner or lienholder no later than 10 days after the date the City has learned the identity of such owner or lienholder. Except as provided in this subparagraph (b)(1)(B) of this section, such notice shall be consistent with, and shall be sent in the manner as provided in, subparagraph (b)(1)(A) of this section.

(2) The owner of record seeking a hearing must file a written request for a hearing with the Department of Administrative Hearings no later than 15 days after notice was mailed or otherwise given under this subsection. The hearing date must be no more than 30 days after a request for a hearing has been filed.

(3) (A) If, after the hearing, the administrative law officer determines by a preponderance of the evidence that the vehicle was used in the violation, or, if the impoundment is pursuant to Section 9-92-035, that the subject vehicle was properly impounded under that section, the administrative law officer shall enter an order finding the owner of record liable to the City for the amount of the administrative penalty prescribed for the violation, plus towing and storage fees.

(B) If, after a hearing, the administrative law officer does not determine by a preponderance of the evidence that the vehicle was used in such a violation, or, if the impoundment is pursuant to Section 9-92-035, that the subject vehicle was not eligible for impoundment under that section, the administrative law officer shall enter an order finding for the owner and for the return of the vehicle or previously paid penalty and fees; provided that if the vehicle was seized and impounded pursuant to Section 7-24-225, the vehicle shall not be returned unless and until the City receives notice from the appropriate state, or where applicable, federal officials that (i) forfeiture proceedings will not be instituted; or (ii) forfeiture proceedings have concluded and there is a settlement or a court order providing that the vehicle shall be returned to the owner of record.

(4) If the owner of record requests a hearing but fails to appear at the hearing or fails to request a hearing in a timely manner, the owner of record shall be deemed to have waived his or her right to a hearing and an administrative law officer of the Department of Administrative Hearings shall enter a default order in favor of the City in the amount of the

administrative penalty prescribed for the violation, plus towing and storage fees. However, if the owner: (i) redeemed the vehicle by payment of the appropriate penalty and fees, and (ii) was notified of the owner's right to request a hearing, and (iii) failed to timely request a hearing, then the payment shall be deemed an acknowledgment of liability and no adjudication shall be required.

(5) For the purposes of this section and those sections referenced in subsection (a), the terms "seizure and impoundment" and "seized and impounded" shall be deemed to also refer to a vehicle that a police officer or other authorized City agent or employee determines is subject to impoundment because there is probable cause to believe it was used in violation of one or more of those sections listed in subsection (a), regardless of whether the vehicle is actually towed to and held at a City facility.

(c) (1) An administrative penalty, plus towing and storage fees, imposed pursuant to this section shall constitute a debt due and owing to the city which may be enforced pursuant to Section 2-14-103 or in any other manner provided by law. Any amounts paid pursuant to this section shall be applied to the penalty. Except as provided otherwise in this section, a vehicle shall continue to be impounded until:

(A) the payment of the administrative penalty, plus any applicable towing and storage fees, plus all amounts due for outstanding final determinations of parking, standing compliance, automated traffic law enforcement system or automated speed enforcement system violations incurred by the owner, including all related collection costs and attorney's fees authorized under Section 1-19-020. Upon payment, possession of the vehicle shall be given to the person who is legally entitled to possess the vehicle; or

(B) the vehicle is sold or otherwise disposed of to satisfy a judgment or enforce a lien as provided by law.

(2) Notwithstanding any other provision of this section, whenever a person with a lien of record against a vehicle impounded under this section has commenced foreclosure proceedings, possession of the vehicle shall be given to that person if he pays the applicable towing and storage fees and agrees in writing to refund to the city the net proceeds of any foreclosure sale, less any amounts necessary to pay all lien holders of record, up to the total amount of penalties imposed under this section.

(3) Notwithstanding any other provision of this section, no vehicle that was seized and impounded pursuant to Section 7-24-225 shall be returned to the record owner unless and until the city has received notice from the appropriate state, or where applicable, federal officials that (i) forfeiture proceedings will not be instituted; or (ii) forfeiture proceedings have concluded and there is a settlement or a court order providing that the vehicle shall be returned to the owner of record.

(d) Any motor vehicle that is not reclaimed within ten days after the expiration of the time during which the owner of record may seek judicial review of the city's action under this

section, or, if judicial review is sought, the time at which a final judgment is rendered in favor of the city, or the time a final administrative decision is rendered against any owner of record who is in default may be disposed of as an unclaimed vehicle as provided by law; provided that, if the vehicle was seized and impounded pursuant to Section 7-24-225 and proceedings have been instituted under state or federal drug asset forfeiture laws, the vehicle may not be disposed of by the city except as consistent with those proceedings.

(e) As used in this section, the "owner of record" of a vehicle means the record title holder and includes, for purposes of enforcing Section 3-46-076, the "license holder of a ground transportation vehicle" as that term is defined in Chapter 3-46. For purposes of this section and the sections of the Municipal Code enumerated in subsection (a) of this section, "owner of record" also includes the lessee of the vehicle.

(f) Fees for towing and storage of a vehicle under this section shall be the same as those charged pursuant to Chapter 9-92 of this Code.

(g) In a hearing on the propriety of impoundment under Section 7-24-226, any sworn or affirmed report, including a report prepared in compliance with Section 11-501.1 of the Illinois Vehicle Code, that (1) is prepared in the performance of a law enforcement officer's duties and (2) sufficiently describes the circumstances leading to the impoundment, shall be admissible evidence of the vehicle owner's liability under Section 7-24-226, and shall support a finding of the vehicle owner's liability under Section 7-24-226, unless rebutted by clear and convincing evidence.

(h) For purposes of the section, a vehicle is not considered to have been used in a violation that would render the vehicle eligible for towing if:

(1) the vehicle used in the violation was stolen at the time and the theft was reported to the appropriate police authorities within 24 hours after the theft was discovered or reasonably should have been discovered;

(2) the vehicle was operating as a common carrier and the violation occurred without the knowledge of the person in control of the vehicle;

(3) the alleged owner provides adequate proof that the vehicle had been sold to another person prior to the violation;

(4) the owner of the vehicle provides adequate proof that a criminal court dismissed all of the alleged criminal violations for which the vehicle was impounded after a judicial finding of the facts of, or laws applicable to, such violations; or

(5) the owner of the vehicle was not present at the scene of the alleged crime for which the vehicle was impounded, and the owner of the vehicle provides adequate proof that:

(i) (A) the owner was not legally accountable for the conduct giving rise to the impoundment or acquiesced in the conduct; and (B) the owner did not solicit,

conspire, or attempt to commit the conduct giving rise to the impoundment; and (C) the owner did not know or did not have reason to know that the conduct giving rise to the impoundment was likely to occur; or

(ii) a motion of innocent owner has been granted to the owner pursuant to 725 ILCS 150/9.1, 720 ILCS 5/36-2.7 or 720 ILCS 5/29B-14 for the alleged violation for which the vehicle was impounded.

(i) (1) Notwithstanding any provision of this section to the contrary, a lessor (except where the lessee holds title to the vehicle) asserting his right to possession of a vehicle impounded pursuant to one or more of the use-related offense sections set forth in subsection (a) may obtain immediate release of such vehicle by paying the applicable towing and storage fees provided in subsection (f) of this section and agreeing in writing to refund to the city the net proceeds of any sale, less any amounts necessary to pay all lien holders of record, up to the total amount of any outstanding penalties imposed under subsection (c)(1); and submitting a copy or other satisfactory evidence of the vehicle lease or rental agreement, indicating the lessee's name, address and driver's license number. The requirements of subsection (c) of this section regarding the payment of final determinations of parking, standing, compliance, automated traffic law enforcement system or automated speed enforcement system violations shall apply to a lessor only if the lessor is liable for such outstanding final determinations. The city shall refund the towing and storage fees to such lessor if the city recovers such fees from the lessee, or if the towing is ultimately determined to be improper or erroneous, or if the lessee is otherwise determined not to be liable for such fees.

(2) No person who is the lessor of a vehicle pursuant to a written vehicle lease or rental agreement shall be liable for administrative penalties and fines set forth in one or more of the use-related offense sections set forth in subsection (a)(1) involving such vehicle during the period of the lease or rental agreement, if the lessor provides to the department of streets and sanitation or police, either prior to or within 30 days of the receipt of a notice of impoundment, a copy or other evidence of the vehicle lease or rental agreement, indicating the name, address, and driver's license number of the lessee. If such penalty, fine or fee has already been imposed on the lessor, it shall be abated by the city upon receipt of such copy or other evidence within the time frame provided herein.

(j) When an authorized employee or agent of the city has probable cause to believe that a vehicle is subject to seizure and impoundment pursuant to any one or more of the code sections set forth in subsection (a)(1) of this section, he shall affix a notice to the vehicle in a conspicuous place. Such notice shall warn that the vehicle is subject to seizure for purposes of impoundment. The notice shall also provide a warning that removal or relocation of the vehicle by any person other than the city or its authorized agents is unlawful.

It shall be unlawful for anyone other than an authorized agent of the city to remove or relocate any vehicle that has been determined to be subject to impoundment and which bears a warning notice that the vehicle is subject to seizure for purposes of impoundment. The owner of

record of such vehicle, and any person who removes or relocates such vehicle in violation of this subsection, shall be subject to a penalty of no less than $1,000.00 and no more than $2,000.00 for such violation. This offense shall be a strict liability offense as to the vehicle's owner of record. Anyone who removes a vehicle sticker affixed to a vehicle pursuant to this section before such vehicle is relocated to a city facility shall be subject to a fine of no less than $500.00 and no more than $1,000.00.

(k) Notwithstanding any other provision of this section, no impounded vehicle shall be released and operated on the public ways of the city without a current state registration plate registered to the impounded vehicle and unless the vehicle is covered by a liability insurance policy. In addition, if an impounded vehicle is required to be licensed under Chapter 3-56 of this Code, no such vehicle shall be released without a valid City of Chicago wheel tax license emblem. The owner of an impounded rental or commercial motor vehicle may meet the wheel tax license emblem requirement of this subsection by presenting proof of ownership of the impounded rental or commercial motor vehicle and a receipt issued by the office of the city clerk showing that the owner has purchased wheel tax license emblems for the owner's rental or commercial motor vehicles in accordance with Chapter 3-56 of this Code.

(l) Any vehicle impounded by the City or its designee shall be subject to a possessory lien in favor of the City in the amount required to obtain release of the vehicle.

(Added Coun. J. 4-29-98, p. 66564; Amend Coun. J. 7-21-99, p. 9095; Amend Coun. J. 12-15-99, p. 21529, § 1; Amend Coun. J. 3-15-00, p. 27700, § 2; Amend Coun. J. 6-6-01, p. 60138, § 1; Amend Coun. J. 12-12-01, p. 76443, § 2; Amend Coun. J. 7-31-02, p. 90675, § 1; Amend Coun. J. 12-4-02, p. 99026, § 5.1; Amend Coun. J. 5-7-03, p. 564, § 1; Amend Coun. J. 9-4-03, p. 7167, § 1; Amend Coun. J. 11-3-04, p. 34974, § 1; Amend Coun. J. 10-6-05, p. 56698, § 1; Amend Coun. J. 12-7-05, p. 64870, § 1.8; Amend Coun. J. 7-26-06, p. 81473, § 5; Amend Coun. J. 7-26-06, p. 81824, § 1; Amend Coun. J. 11-13-07, p. 14999, Art. I, § 7; Amend Coun. J. 12-12-07, p. 17518, § 2; Amend Coun. J. 11-18-09, p. 77163, § 1; Amend Coun. J. 7-2-10, p. 96234, § 1; Amend Coun. J. 11-17-10, p. 106597, Art. III, § 1; Amend Coun. J. 7-28-11, p. 5048, § 2; Amend Coun. J. 12-14-11, p. 17753, § 1; Amend Coun. J. 1-18-12, p. 19118, § 3; Amend Coun. J. 9-11-13, p. 58821, § 2; Amend Coun. J. 10-16-13, p. 61861, § 2; Amend Coun. J. 4-30-14, p. 80633, § 2; Amend Coun. J. 5-28-14, p. 82771, § 2; Amend Coun. J. 10-28-15, p. 11951, Art. III, § 1; Amend Coun. J. 11-16-16, p. 37901, Art. VIII, § 2; Amend Coun. J. 7-22-20, p. 18957, § 1; Amend Coun. J. 11-24-20, p. 24619, Art. V, § 1; Amend Coun. J. 4-21-21, p. 29728, § 1; Amend Coun. J. 5-26-21, p. 30457, § 1; Amend Coun. J. 7-21-21, p. 33189, § 1; Amend Coun. J. 10-27-21, p. 39525, § 1)

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 625. Vehicles
Act 5. Illinois Vehicle Code (Refs & Annos)
Chapter 11. Rules of the Road (Refs & Annos)
Article II. Obedience to and Effect of Traffic Laws (Refs & Annos)

625 ILCS 5/11-207
Formerly cited as IL ST CH 95 1/2 ¶ 11-207

5/11-207. Provisions of this Chapter uniform throughout State

Effective: July 11, 2002
Currentness

§ 11-207. Provisions of this Chapter uniform throughout State. The provisions of this Chapter shall be applicable and uniform throughout this State and in all political subdivisions and municipalities therein, and no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein. Local authorities may, however, adopt additional traffic regulations which are not in conflict with the provisions of this Chapter, but such regulations shall not be effective until signs giving reasonable notice thereof are posted.

Credits

P.A. 76-1586, § 11-207, eff. July 1, 1970. Amended by P.A. 85-532, § 1, eff. Jan. 1, 1988; P.A. 92-651, § 77, eff. July 11, 2002.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-207.

625 I.L.C.S. 5/11-207, IL ST CH 625 § 5/11-207
Current through P.A. 102-804 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

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Chapter 625. Vehicles
Act 5. Illinois Vehicle Code (Refs & Annos)
Chapter 11. Rules of the Road (Refs & Annos)
Article II. Obedience to and Effect of Traffic Laws (Refs & Annos)

625 ILCS 5/11-208.1
Formerly cited as IL ST CH 95 1/2 ¶ 11-208.1

5/11-208.1. Uniformity

Currentness

§ 11-208.1. Uniformity. The provisions of this Chapter of this Act, as amended, and the rules and regulations promulgated thereunder by any State Officer, Office, Agency, Department or Commission, shall be applicable and uniformly applied and enforced throughout this State, in all other political subdivisions and in all units of local government.

Credits
P.A. 76-1586, § 11-208.1, added by P.A. 77-706, § 1, eff. Aug. 12, 1971.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-208.1.

625 I.L.C.S. 5/11-208.1, IL ST CH 625 § 5/11-208.1
Current through P.A. 102-804 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

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Act 5. Illinois Vehicle Code (Refs & Annos)
Chapter 11. Rules of the Road (Refs & Annos)
Article II. Obedience to and Effect of Traffic Laws (Refs & Annos)

625 ILCS 5/11-208.2
Formerly cited as IL ST CH 95 1/2 ¶ 11-208.2

5/11-208.2. Limitation on home rule units

Effective: June 1, 2003
Currentness

§ 11-208.2. Limitation on home rule units.

The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act.

Credits
P.A. 76-1586, § 11-208.2, added by P.A. 77-706, § 1, eff. Aug. 12, 1971. Amended by P.A. 92-868, § 5, eff. June 1, 2003.

Formerly Ill.Rev.Stat.1991, ch. 95 ½, ¶ 11-208.2.

625 I.L.C.S. 5/11-208.2, IL ST CH 625 § 5/11-208.2
Current through P.A. 102-804 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West's Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 625. Vehicles
Act 5. Illinois Vehicle Code (Refs & Annos)
Chapter 11. Rules of the Road (Refs & Annos)
Article II. Obedience to and Effect of Traffic Laws (Refs & Annos)

625 ILCS 5/11-208.7

5/11-208.7. Administrative fees and procedures for impounding vehicles for specified violations

Effective: August 19, 2016 to December 31, 2022
Currentness

<Text of section effective until Jan. 1, 2023. See, also, text of section 625 ILCS 5/11-208.7, effective Jan. 1, 2023.>

§ 11-208.7. Administrative fees and procedures for impounding vehicles for specified violations.

(a) Any county or municipality may, consistent with this Section, provide by ordinance procedures for the release of properly impounded vehicles and for the imposition of a reasonable administrative fee related to its administrative and processing costs associated with the investigation, arrest, and detention of an offender, or the removal, impoundment, storage, and release of the vehicle. The administrative fee imposed by the county or municipality may be in addition to any fees charged for the towing and storage of an impounded vehicle. The administrative fee shall be waived by the county or municipality upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded.

(b) An ordinance establishing procedures for the release of properly impounded vehicles under this Section may impose fees only for the following violations:

(1) operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to Section 36-1 of the Criminal Code of 2012; or

(2) driving under the influence of alcohol, another drug or drugs, an intoxicating compound or compounds, or any combination thereof, in violation of Section 11-501 of this Code; or

(3) operation or use of a motor vehicle in the commission of, or in the attempt to commit, a felony or in violation of the Cannabis Control Act; or

(4) operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act; or

(5) operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Section 24-1, 24-1.5, or 24-3.1 of the Criminal Code of 1961 or the Criminal Code of 2012; or

(6) driving while a driver's license, permit, or privilege to operate a motor vehicle is suspended or revoked pursuant to Section 6-303 of this Code; except that vehicles shall not be subjected to seizure or impoundment if the suspension is for an unpaid citation (parking or moving) or due to failure to comply with emission testing; or

(7) operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance, as defined by the Cannabis Control Act or the Illinois Controlled Substances Act; or

(8) operation or use of a motor vehicle with an expired driver's license, in violation of Section 6-101 of this Code, if the period of expiration is greater than one year; or

(9) operation or use of a motor vehicle without ever having been issued a driver's license or permit, in violation of Section 6-101 of this Code, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age; or

(10) operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit clerk in Illinois for failing to answer charges that the driver violated Section 6-101, 6-303, or 11-501 of this Code; or

(11) operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Article 16 or 16A of the Criminal Code of 1961 or the Criminal Code of 2012; or

(12) operation or use of a motor vehicle in the commission of, or in the attempt to commit, any other misdemeanor or felony offense in violation of the Criminal Code of 1961 or the Criminal Code of 2012, when so provided by local ordinance; or

(13) operation or use of a motor vehicle in violation of Section 11-503 of this Code:

(A) while the vehicle is part of a funeral procession; or

(B) in a manner that interferes with a funeral procession.

(c) The following shall apply to any fees imposed for administrative and processing costs pursuant to subsection (b):

(1) All administrative fees and towing and storage charges shall be imposed on the registered owner of the motor vehicle or the agents of that owner.

(2) The fees shall be in addition to (i) any other penalties that may be assessed by a court of law for the underlying violations; and (ii) any towing or storage fees, or both, charged by the towing company.

(3) The fees shall be uniform for all similarly situated vehicles.

(4) The fees shall be collected by and paid to the county or municipality imposing the fees.

(5) The towing or storage fees, or both, shall be collected by and paid to the person, firm, or entity that tows and stores the impounded vehicle.

(d) Any ordinance establishing procedures for the release of properly impounded vehicles under this Section shall provide for an opportunity for a hearing, as provided in subdivision (b)(4) of Section 11-208.3 of this Code, and for the release of the vehicle to the owner of record, lessee, or a lienholder of record upon payment of all administrative fees and towing and storage fees.

(e) Any ordinance establishing procedures for the impoundment and release of vehicles under this Section shall include the following provisions concerning notice of impoundment:

(1) Whenever a police officer has cause to believe that a motor vehicle is subject to impoundment, the officer shall provide for the towing of the vehicle to a facility authorized by the county or municipality.

(2) At the time the vehicle is towed, the county or municipality shall notify or make a reasonable attempt to notify the owner, lessee, or person identifying himself or herself as the owner or lessee of the vehicle, or any person who is found to be in control of the vehicle at the time of the alleged offense, of the fact of the seizure, and of the vehicle owner's or lessee's right to an administrative hearing.

(3) The county or municipality shall also provide notice that the motor vehicle will remain impounded pending the completion of an administrative hearing, unless the owner or lessee of the vehicle or a lienholder posts with the county or municipality a bond equal to the administrative fee as provided by ordinance and pays for all towing and storage charges.

(f) Any ordinance establishing procedures for the impoundment and release of vehicles under this Section shall include a provision providing that the registered owner or lessee of the vehicle and any lienholder of record shall be provided with a notice of hearing. The notice shall:

(1) be served upon the owner, lessee, and any lienholder of record either by personal service or by first class mail to the interested party's address as registered with the Secretary of State;

(2) be served upon interested parties within 10 days after a vehicle is impounded by the municipality; and

(3) contain the date, time, and location of the administrative hearing. An initial hearing shall be scheduled and convened no later than 45 days after the date of the mailing of the notice of hearing.

(g) In addition to the requirements contained in subdivision (b)(4) of Section 11-208.3 of this Code relating to administrative hearings, any ordinance providing for the impoundment and release of vehicles under this Section shall include the following requirements concerning administrative hearings:

(1) administrative hearings shall be conducted by a hearing officer who is an attorney licensed to practice law in this State for a minimum of 3 years;

(2) at the conclusion of the administrative hearing, the hearing officer shall issue a written decision either sustaining or overruling the vehicle impoundment;

(3) if the basis for the vehicle impoundment is sustained by the administrative hearing officer, any administrative fee posted to secure the release of the vehicle shall be forfeited to the county or municipality;

(4) all final decisions of the administrative hearing officer shall be subject to review under the provisions of the Administrative Review Law, unless the county or municipality allows in the enabling ordinance for direct appeal to the circuit court having jurisdiction over the county or municipality;

(5) unless the administrative hearing officer overturns the basis for the vehicle impoundment, no vehicle shall be released to the owner, lessee, or lienholder of record until all administrative fees and towing and storage charges are paid; and

(6) if the administrative hearing officer finds that a county or municipality that impounds a vehicle exceeded its authority under this Code, the county or municipality shall be liable to the registered owner or lessee of the vehicle for the cost of storage fees and reasonable attorney's fees.

(h) Vehicles not retrieved from the towing facility or storage facility within 35 days after the administrative hearing officer issues a written decision shall be deemed abandoned and disposed of in accordance with the provisions of Article II of Chapter 4 of this Code.

(i) Unless stayed by a court of competent jurisdiction, any fine, penalty, or administrative fee imposed under this Section which remains unpaid in whole or in part after the expiration of the deadline for seeking judicial review under the Administrative Review Law may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

(j) The fee limits in subsection (b), the exceptions in paragraph (6) of subsection (b), and all of paragraph (6) of subsection (g) of this Section shall not apply to a home rule unit that tows a vehicle on a public way if a circumstance requires the towing of the vehicle or if the vehicle is towed due to a violation of a statute or local ordinance, and the home rule unit:

(1) owns and operates a towing facility within its boundaries for the storage of towed vehicles; and

(2) owns and operates tow trucks or enters into a contract with a third party vendor to operate tow trucks.

Credits

P.A. 76-1586, § 11-208.7, added by P.A. 97-109, § 5, eff. Jan. 1, 2012. Amended by P.A. 97-1150, § 575, eff. Jan. 25, 2013; P.A. 98-518, § 5, eff. Aug. 22, 2013; P.A. 98-734, § 5, eff. Jan. 1, 2015; P.A. 98-756, § 675, eff. July 14, 2014; P.A. 99-848, § 105, eff. Aug. 19, 2016.

625 I.L.C.S. 5/11-208.7, IL ST CH 625 § 5/11-208.7

Current through P.A. 102-804 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

CERTIFICATE OF COMPLIANCE

I certify that this response brief conforms to the requirements of Rule 341(a) & (b). The length of this brief, excluding the pages containing or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 50 pages.

/s/ Stephen G. Collins
STEPHEN G. COLLINS, Attorney

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing Brief was served on all counsel of record via File & Serve Illinois on August 24, 2022.

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