No. 127547

In the Supreme Court of Illinois

RITA LINTZERIS, WILLIAM MORAITIS,
ZARON JOSSELL and CLARENCE DANIELS,
individually and on behalf of all others similarly situated,

Plaintiffs – Appellants,

v.

CITY OF CHICAGO, a Municipal Corporation,

Defendant – Appellee.

On Appeal from the Appellate Court of Illinois, First Judicial District, No. 1-19-2423
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 17 CH 11375
The Honorable Anna M. Loftus and The Honorable Kathleen M. Pantle, Judges Presiding

BRIEF OF PLAINTIFFS-APPELLANTS

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ORAL ARGUMENT REQUESTED

POINTS AND AUTHORITIES

NATURE OF THE CASE

This case concerns the scope of home rule authority under the Illinois Constitution of 1970 and whether a municipal ordinance is preempted by state law. Plaintiffs challenge the City of Chicago's ("Chicago") practice of imposing administrative penalties under its vehicle impoundment ordinance. Chicago Municipal Code ("MCC") § 2-14-132 ("Impoundment Ordinance"). Plaintiffs' vehicles were impounded under the Impoundment Ordinance. (C24-26). They allege that the State's interest in the uniform regulation of the movement of vehicles is paramount and that the Impoundment Ordinance violates the General Assembly's express limitation on local laws that are inconsistent with Chapter 11 if the Illinois Vehicle Code ("Vehicle Code"). 625 ILCS 5/11-208.2 (2002) As a consequence of the General Assembly's express limitation codified in Section 11-208.2 in 1971, the Impoundment Ordinance is preempted by 625 ILCS 5/11-208.7 (2016)

The circuit court dismissed Plaintiffs' Complaint pursuant to 735 ILCS 5/2-615, finding that Plaintiffs could not allege any set of facts that would entitle them to relief and that Chicago was entitled to judgment as a matter of law (C377-402). Plaintiffs appealed and the appellate court affirmed finding that Chicago's Impoundment Ordinance was not preempted by § 11-208.7. This appeal brings the preemption issue to this Court. There is no issue raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the use and operation of motor vehicles is a subject "pertaining to" Chicago's local government and affairs or is a matter of local or statewide concern.

2. Whether the express limitation on home rule authority codified in Section 11-208.2 prohibits home rule units from adopting local laws that are "inconsistent" with Chapter 11 of the Vehicle Code, specifically Section 11-208.7.

3. Whether Chicago's Impoundment Ordinance that imposes an "administrative penalty" is a punitive measure inconsistent with, and therefore preempted by, the Administrative Fee and Impoundment Procedure Statute (Section 11-208.7).

JURISDICTION

On November 8, 2019, the circuit court entered a final judgment after granting Defendant's Motion to Dismiss with prejudice. (C377-402). Plaintiffs timely filed their Notice of Appeal on November 26, 2019. Ill. S. Ct. R. 303 (eff. July 1, 2017) (C405-06). On July 9, 2021, the First District Appellate Court issued an Order pursuant to Illinois Supreme Court Rule 23 affirming the circuit court's decision. (A1-23). Plaintiffs timely filed their Petition for Leave to Appeal pursuant to Illinois Supreme Court Rule 315(a) on August 13, 2021, which this Court granted on November 24, 2021. The Court, therefore, has jurisdiction under Illinois Supreme Court Rule 315. Ill. S. Ct. R. 315 (eff. Oct. 1, 2020).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Illinois Constitution of 1970, Article VII Section 6 – Powers of Home Rule Units.

625 ILCS 5/11-207 (2002), Provisions of this Chapter uniform throughout the State.

625 ILCS 5/11-208.1 (1971), Uniformity.

625 ILCS 5/11-208.2 (2002), Limitation on Home Rule Units.

625 ILCS 5/11/208.7 (2012), Administrative Fee and Impoundment Procedure Statute.

STATEMENT OF FACTS

I. History of Illinois Uniform Statewide Vehicle Laws

When endeavoring to glean the legislative intent and purpose of a statute, this Court considers the legislative and statutory foundations underlying it. *Oswald v. Homer*, 2018 IL122203, ¶ 10. In 1899, Chicago passed one of the first local laws in the nation regulating

the use and operation of motor vehicles.[1] In 1903, Illinois enacted a law titled "An act to regulate the speed of automobiles and other horseless conveyances upon the public streets, roads and highways of the State of Illinois." (eff. July 1, 1903). The 1903 law was later repealed by the Motor Vehicle law of 1907 entitled: "An act defining motor vehicles and providing for the registration of the same and *uniform rules* regulating the use and speed thereof and repealing [1903 law]." (eff. July 1, 1907) (emphasis added). As its title suggests, the General Assembly's intent was to pass a "general, uniform regulation, applicable alike to all municipalities of the State." *Ayres v. City of Chicago*, 239 Ill 237, 245 (1907). As aptly stated by this Court:

> Automobiles have but recently come into general use. It is a fact within the common knowledge of most persons that automobiles, other than those used for hire, are extensively used in this State in making tours of considerable distance, in the course of which many cities, villages and towns would be visited. The legislature has by the Motor Vehicle act taken the subject of regulation of the speed and operation of automobiles out of the hands of local authorities and passed the Motor Vehicle law as a general, uniform regulation, applicable alike to all municipalities of the State. The effect of this law manifestly is to abrogate all municipal ordinances designed to regulate the use of motor vehicles passed prior to the time such law went into force and to deprive such municipalities of the power to pass such regulating ordinances in the future. The necessity for such uniform law was a matter for legislative determination, with which the courts have nothing to do. Clearly, the purpose of the legislature was to pass a new and complete law designed to take the place of all municipal ordinances or rules regulating the equipment and operation of motor vehicles.

Id.

The text of the Illinois Motor Vehicle Act of 1911 demonstrates the same legislative intent as the 1907 Motor Vehicle Act. *People v. Sargent*, 254 Ill 514, 517 (1912). In *Sargent*, this Court noted: "A careful reading of the act of 1911 will show that the

[1] Dr. Neil Gale, HOW THE AUTOMOBILE BECAME KING IN CHICAGO, The Digital Research Library of Illinois, Jun. 12, 2020 (https://drloihjournal.blogspot.com/2020/06/how-the-automobile-became-king-in-chicago.html) (last visited Mar. 3, 2022).

legislative intent is the same as expressed above in respect to the act of 1907. The manifest purpose of the legislature was to bring the whole subject of regulating the use of motor vehicles under the control of the State." *Id.* Although historically the decisions of this Court make clear that the State has a vital interest in uniform regulation of the use and operation of vehicles on public roads, this Court also noted that the State, through its motor vehicle laws, never intended to deprive municipalities of the ability to make local laws so long as they were not inconsistent with the uniform state regulation. *Chicago v. Walden W. Shaw Livery Co.*, 258 Ill. 409, 416-17 (1913). In *Walden W. Shaw.,* the Court reviewed the legislative intent and purpose behind the prohibition on local laws:

> Section 12 of the act of 1911 deals with the same subject matter as section 14 of the act of 1907 and is practically the same in its scope and intent, except that by the act of 1911 the following language is added to the last proviso of said section 12: 'or from making and enforcing reasonable traffic and other regulations except as to rates of speed not *inconsistent* with the provisions hereof.' That provision was nowhere contained in the act of 1907, and the intent and purpose of the legislature in incorporating it into the act of 1911 was undoubtedly to meet the statement in the *Ayres* case that it was clearly the purpose of the legislature to pass a new and complete law designed to take the place of all municipal ordinances or rules regulating the equipment and operation of motor vehicles. By the addition of the language last quoted to the act of 1911 the legislature has invested municipalities with the power and authority to make any regulation of the use of motor vehicles *not inconsistent* with the provisions of the act, except as to rates of speed.

Id. at 415-16 (emphasis added).

In 1935, the legislature enacted, the Uniform Act Regulating Traffic on Highways ("Uniform Act"). *See Rockford v. Floyd*, 104 Ill. App. 2d 161, 168 (2d Dist. 1968). Section 123 of the Uniform Act provided, "no local authority shall enact or enforce any ordinance, rule or regulation in conflict with its provisions unless expressly authorized in the Act." *Id.* The General Assembly enacted a fresh set of vehicle regulations in 1965 that expressly

adopted the Uniform Act and the above pre-1970 express limitation on inconsistent local units of government. *See Floyd*, 104 Ill. App. 2d at 165; Uniform Act Regulating Traffic on Highways (Ill. Rev. Stat. 1967, ch. 95 1/2, par. 98 et seq.).

The Illinois Constitution of 1970 granted home rule units broad powers to govern locally with respect to problems that are purely local in nature. The text of the Constitution of 1970 and this Court's decisions reveal that the constitutional framers placed significant limitations on home rule powers. The Constitution permits a home rule unit to "exercise any power and perform any function relating to its government affairs" but not matters of statewide concern. ILL. CONST. 1970, art. VII, sec. 6(a). The framers granted the General Assembly the power to limit the exercise of home rule power through legislative action. *Id.* at art. VII, secs. 6(g), (h), and (i).

The Illinois Vehicle Code, as it exists today, went into effect on July 1, 1970. 625 ILCS 5/20-401 (1970) ("Vehicle Code"). The Constitution of 1970 was effective on July 1, 1971. Less than six weeks later, consistent with the intent and purpose of the first uniform act, as discerned by this Court in 1909, the General Assembly enacted Section 11-208.2 to ensure the constitution grant of home rule power did not interfere with the State's vital interest in the uniform enforcement of motor vehicle laws. law that, by its text, specifically prohibits local home rule units from enacting local police regulations that are inconsistent with the provisions of Chapter 11 of the Vehicle Code titled "THE RULES OF THE ROAD" except where authorized by specifically enumerated sections. P.A. 77-706 (1971) codifying 625 ILCS 5/11-208.2. The same Public Act enacted Section 11-208.1 that requires all provisions included in Chapter 11 of the Vehicle Code be applied and enforced

uniformly throughout the State, "in all other political subdivisions and *in all units of local government*." *Id.* codifying 625 ILCS 5/11-208.1 (1971).

Section 11-207, another uniformity provision in Chapter 11, was enacted prior to the enactment of the Statute on Statutes, requires Chapter 11 to be applied and enforced uniformly throughout the State "and in all political subdivisions and municipalities therein." P.A. 85-532 (eff. Sept. 18, 1987) amending 625 ILCS 5/11-207; Ill.Rev.Stat. (1967), Ch. 95 1/2, ¶ 11-207. Section 11-207 also expressly states that "no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein." *Id.*

In 1989, the Vehicle Code was amended to include Section 11-208.3 that creates the authority for all units of local government to administratively adjudicate violations involving "traffic regulations concerning the standing, parking, or condition of vehicles, automated traffic law violations, and automated speed enforcement system violations." 625 ILCS 5/11-208.3 (eff. Jan 1, 1990). Neither Section 11-208.3, nor the Administrative Adjudication Statute, 65 ILCS 5/1-2.1-2, permit administrative adjudication of moving violation or matters that concern the "movement of vehicles." Until enactment of Section 11-208.7, there was no authority to administratively adjudicate impoundments arising out of the use and operation of vehicles during the commission of criminal offenses. See 625 ILCS 5/11-208.7(d) (2012) (incorporating administrative adjudication procedures codified in Section 11-208.3).

In 1996, Chicago amended the Municipal Code of Chicago ("MCC") consistent with the legislature's grant of authority to local home rule units to establish a system of administrative adjudication. See Chicago, Ill. Mun. Code Ch. 2-14-010 (July 10, 1996).

(A127). Cf. 65 ILCS 5/1-2.1-2 (1998) (A130). In 2002, the legislature passed P.A. 92-868, eff. June 1, 2003, amending Section 11-208.2 to add three sections of Chapter 11 to the Sections of 208.2 that are excepted from the limitation on home rule units from adopting local regulations that are inconsistent with Chapter 11. (A145). That same year, the legislature passed P.A. 92-651, eff. July 11, 2002, amending Section 11-207 for the purpose of modifying the uniformity provision in Section 11-207 by substituting the word "Chapter" for the word "Act" ("Provisions of *this Chapter* uniform throughout State."). (A140).

In 1997 the General Assembly enacted the Administrative Adjudication Statute permitting local units of government to establish an administrative hearing system to adjudicate certain municipal code violations. P.A. 90-516 (eff. Jan. 1, 1998) codifying 65 ILCS 5/1-2.1-2.

In 1998, Chicago enacted its Impoundment Ordinance. Chicago, Ill., Mun. Code Ch. 2-14-32 (July 10, 1996). (C199-201). The Impoundment Ordinance imposed a $500 "administrative penalty" that, unlike here, Chicago argued actually represented the functional equivalent of "administrative and processing costs" and was compensatory as opposed to punitive. See *People v. Jaudon*, 307 Ill.App.3d 427, 442-43 (1st Dist. 1999). In 2011, Chicago substantially increased the mandatory administrative penalties that it imposes for vehicle impoundment to the current levels that range from $500 to $3,000. See, e.g., MCC § 7-28-440 ($500 administrative penalty) (A133); MCC § 7-24-225 (imposing administrative penalty of $2,000-$3,000) (A132).

Also in 2011, the Illinois Legislature codified Section 11-208.7 of the Illinois Vehicle Code as 625 ILCS 5/11-208.7 (2012) that became effective on January 1, 2012. (C14). Section 11-208.7 provides and applies on its face to:

> (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 may be waived by the county or municipality upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded.

625 ILCS 5/11-208.7(a) (eff. Jan. 1, 2012) (emphasis added) (C14; A154-57).

Section 11-208.7(b) enumerates and incorporates the criminal statutes that, if violated during the use and operation of a motor vehicle, provide a basis for impoundment of a vehicle and imposition an administrative fee against the owner. 625 ILCS 5/11-208.7(b). The enumerated offenses include, without limitation, any offense identified in the State's Criminal Forfeiture Act 720 ILCS 5/36-1 (2012); driving under the influence of alcohol 625 ILCS 5/11-501 (2020); any violation of the Cannabis Control Act 720 ILCS 550/1 et seq. (1971); and the Criminal Code of 1963 or the Criminal Code of 2012 720 ILCS 5/1-1 (eff. Jan. 1, 2013), or the Illinois Controlled Substances Act 720 ILCS 570/100 et seq (1971). *Id.*

Prior to the enactment of Section 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 (*e.g.*, the Impoundment Ordinance). (C14). The Vehicle Code authorizes local units of government to tow and impound vehicles in the event of use or operation of a vehicle

during the commission of a criminal offense. 625 ILCS 5/11-1302 (2012); 625 ILCS 5/4-203 (2012) (requiring local government units to impound vehicles used in the commission of a DUI offense under Section 11-501).

MCC § 2-14-132, Impoundment, states, in pertinent part:

> (a)(1) Whenever the owner of a vehicle seized and impounded pursuant to *** of this Code *** 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, ***, 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 Chicago the amount of the administrative penalty prescribed for the code violation plus fees for towing and storing the vehicle.
>
> * * *
>
> (c)(1) An administrative penalty, plus towing and storage fees, imposed pursuant to this section shall constitute a debt due and owing to Chicago 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.

MCC §2-14-132(a)(1); (b)(1); (c)(1)(A)-(B). (C18-19; A128-31).[2]

[2] See MCC §2-14-132 defining the "use-related offense sections" of the MCC that provide the basis for impoundment and imposition of an administrative penalty under MCC §§7-24-225, 7-24-226, 7-28-390, 7- 28-440, 7-38-115(c-5), 8-4-130, 8-8-060, 8-20-070, 9-12-090, 9-32-040, 9-76-145, 9-80-225, 9-80-240, 9-92-035, 10-8-480(c), 11-4-1410, 11-4-1500 or 15-20-270. (A128-31).

Section 11-208.7 was enacted by the 97th General Assembly in 2011. 625 ILCS 5/11-208.7 (2012). During the same session of the General Assembly, the legislature was simultaneously engaged in a comprehensive rewrite of the entire Criminal Code of 1961. *See People v. Richards*, 2021 IL App (1st) 192154, ¶ 19 ("The Criminal Codes of 1961 and 2012 represent our legislature's last two comprehensive revisions of the codified criminal laws of Illinois."). The 97th General Assembly was also engaged in a complete overhaul of the State's civil and criminal *in rem* forfeiture laws. See Pub. Act 97-544, § 5 (eff. Jan. 1, 2012) (adding 720 ILCS 5/36-1.5 to 720 ILCS 5/36-1, *et seq.*). This Court has already taken notice of the fact that the overhaul of the State's *in rem* forfeiture laws by the 97th General Assembly was responsive to a federal case, *Alvarez v. Smith*, 558 U.S. 87 (2009). *See People v. One 1998 GMC*, 2011 IL 110236, ¶ 111.[3]

In response to *Alvarez* and the due process concerns raised in that case, along with the 7th Circuit's opinion regarding due process in *Smith*, the legislature, in 2011, enacted 720 ILCS 5/36-1.5, which allowed for preliminary review within 14 days of a seizure pursuant to the criminal code. See 720 ILCS 5/36-1.5 (2012) ("§ 36-1.5"), see also, P.A. 97-544 (eff. Jan. 1, 2012). In addition to § 36-1.5, P.A. 97-544 enacted 725 ILCS 150/3.5 of the Drug Asset Forfeiture Procedure Act, which provides a preliminary review using language verbatim to § 36-1.5. 725 ILCS 150/3.5 (2012). In addition to providing due

[3] *Alvarez* was on appeal from the Seventh Circuit addressing whether Illinois state law provided a sufficiently speedy opportunity to contest an *in rem* seizure. *Alvarez*, 558 U.S. at 89. Prior to reaching the U.S. Supreme Court, the 7th Circuit found in favor of respondents, finding that "'the procedures set out in' the Illinois statute 'show insufficient concern for the due process rights of the plaintiffs.'" *Id*. at 91 (quoting *Smith v. City of Chi.*, 524 F. 3d 834 at 836-39 (7th Cir. 2008)). The Supreme Court declined to consider the case finding the controversy moot. *Id.* This necessitated legislative action to remedy the holding of the 7th Circuit.

process safeguards, P.A. 97-554 amended the Drug Asset Forfeiture Procedure Act to increase the value of non-real property subject to non-judicial forfeiture from $20,000 to $150,000. P.A. 97-544; 725 ILCS 150/6 (West 2012). The revision applied to the Illinois Controlled Substances Act (720 ILCS 570/505) the Cannabis Control Act (720 ILCS 550/12) and the Methamphetamine Control and Community Protection Act (720 ILCS 646/85). 725 ILCS 150/6. In sum, the legislative acts by the same 97th General Assembly overhauling the Criminal Code and Civil and Criminal Forfeiture laws are pertinent in this Court's interpretation of Section 11-208.7. This background demonstrates the legislature never intended a punitive sanction arising out of vehicle impoundment. For if it did, it would have included the same procedural due process protections codified in the amended civil and criminal forfeiture law.

In 2013, the legislature enacted Pub. Act 98-518 (eff. Aug. 22, 2013) thereby amending Section 11-208.7. The amendment added a new offense justifying impoundment and reimbursement by amending § 11-208.7(b). See 625 ILCS 5/11-208.7(b)(13) (West 2013) (A155). ("(13) operating or use of a motor vehicle in violation of Section 11-502 of this Code: (A) while the vehicle is part of a funeral procession; or (B) in a manner that interferes with a funeral procession."). In 2016, the legislature passed P.A. 99-848 to § 11-208.7, eff. Aug. 19, 2016, amending Section 11-208.7. 625 ILCS 5/11-208.7 (West 2016). In the introductory language of (b), P.A. 99-848 substituted "An ordinance" for "Any ordinance" and inserted "only"; added (g)(6) and (j); and related changes. *Id.* (A154-57).

In 2016, the legislature amended Section 11-208.7 to add Section 11-208.7(j) and Section 11-208.7(g)(6), which states that the fee limits provided in subsection (b) do not apply to home rule units provided that a vehicle is towed due to a violation of a statute or

local ordinance and the home rule unit owns and operates a towing facility and owns or operates tow trucks. The inclusion of the home rule "carve out" in the 2016 Amendment confirms the legislative intent that Section 11-208.7 limits home rule authority and no local unit of government may enact a local law inconsistent with it.

II. Procedural History

a. Circuit Court Proceedings

On August 18, 2017, Appellants filed their Class Action Complaint seeking a declaratory judgment, injunctive relief, unjust enrichment, and conversion based on Chicago's wrongful retention of vehicles and imposition of penalties. (C11-44). Two of the Plaintiffs were driving their own vehicle when they were arrested, and the children of the remaining two Plaintiffs were driving Plaintiffs' vehicles when they were arrested. (C24-28). All four Plaintiffs owned vehicles that were impounded pursuant to Chicago's Impoundment Ordinance. *Id.* The penalties imposed on each of the Plaintiffs in this case include the amounts of $4,000.00, $1,000.00, $2,000.00, and $2,000.00. *Id.* On January 26, 2018, Chicago filed its Motion to Dismiss pursuant to 735 ILCS 5/2-615, 2-619 and 2-619.1 (C62, 77, 157). On January 17, 2019, following a hearing on Chicago's Motion to Dismiss, the circuit court took Chicago's Motion under advisement. (C337). The Court also granted Plaintiffs leave to file the legislative history for 625 ILCS 5/11-208.7, which was filed on or about January 18, 2019. (C337-74). On November 8, 2019, the circuit court issued its opinion and order, granting Chicago's Motion to Dismiss and dismissing Plaintiffs' Class Action Complaint with prejudice. (C377-402).

b. Appellate Court Proceedings

On November 26, 2019, Plaintiffs filed a timely Notice of Appeal to the First District of the Illinois Appellate Court. (C405-06). On July 9, 2021, the Appellate Court issued an unpublished order under Illinois Supreme Court Rule 23, that affirmed the judgment of the circuit court. *Lintzeris v. City of Chicago*, 2021 IL App (1st) 192423-U. Plaintiffs argued there, as they do here, that the circuit court failed to properly consider and apply the express limitation that prohibits home rule units from enacting local regulations that are inconsistent with Chapter 11, the RULES OF THE ROAD. 625 ILCS 5/11-208.2; *Id.* at ¶ 53. Plaintiffs further argued that the Impoundment Ordinance violated both uniformity mandates in Chapter 11. 625 ILCS 5/11-208.1 (1971); 625 ILCS 5/11-207 (1987). These uniformity mandates further limit Chicago's authority as a home rule unit to enact ordinances that are inconsistent with or conflict with the Vehicle Code. *Lintzeris*, 2021 IL App (1st) 192423-U, ¶ 53. The First District rejected Plaintiffs' arguments with respect to the limitation these sections impose on Chicago, holding "Plaintiffs' conclusion that Chicago's ordinance is inconsistent with any provision of Chapter 11 is misplaced." *Lintzeris*, 2021 IL App (1st) 192423-U, ¶ 54. The First District further held that Plaintiffs have failed to show "how the impoundment ordinance conflicts with any portion of Chapter 11, including 11-208.2." *Id*.

On July 9, 2021, the First District affirmed, on the basis that Section 11-208.7 does not contain express language that prohibits the imposition of penalties and, therefore, does not in any way limit a home rule unit's authority to enact a local ordinance that ignores the remedial scheme codified in Section 11-208.7 but instead imposes a penalty for the sole purpose of punishment. *Lintzeris*, 2021 IL App (1st) 192423-U, ¶ 49. The First District failed to address Plaintiff's argument that fines and fees are "legally inconsistent" remedies

causing Chicago's Impoundment Ordinance to be inconsistent with, and, preempted by, Section 11-208.7. The First District held that Chicago's Impoundment Ordinance is not inconsistent with any section contained within Chapter 11. *Id.* at ¶ 50. The First District further held that the Impoundment Ordinance "operates concurrently with the Vehicle Code," therefore, Chicago's enactment and enforcement of the Impoundment Ordinance is within its authority as a home rule unit. *Id*.

STANDARD OF REVIEW

The constitutional question of whether a municipal ordinance is preempted by state law is reviewed *de novo*. *Burns v. Municipal Officers Bd. of Elk Grove Village*, 2020 IL 125714, ¶ 10; *Accettura v. Vactionaland, Inc*., 2019 IL 124285, ¶ 11; *Murphy-Hylton v. Liberman Mgmt. Servs.*, 2016 IL 120394, ¶ 17. An order dismissing a complaint under 735 ILCS 5/2-615 on the ground that no set of facts could entitle a plaintiff to relief is subject to *de novo* review. *Cowper v. Nyberg*, 2015 IL 117811, ¶ 12.

SUMMARY OF THE ARGUMENT

The courts below erred by ruling that enforcement of Chicago's punitive Impoundment Ordinance is a valid exercise of constitutional home rule power. Few things are expressed more clearly in Illinois law than that traffic regulations governing the movement of vehicles must be applied and enforced uniformly throughout the state. Chapter 11 of the Vehicle Code, 625 ILCS 5/100 *et seq*., codifies the State's uniform "RULES OF THE ROAD." Chapter 11 contains not one but two uniformity provisions. See 625 ILCS 5/11-207 (2002); 625 ILCS 5/11-208.1 (2006); see also 625 ILCS 5/11-208.2 (2002) (express home rule limitation prohibiting home rule units from enacting "inconsistent" local laws). The text of the Chapter 11 uniformity provisions are evidence

of the General Assembly's express intent to proscribe all inconsistent local laws in favor of the uniform system of vehicle regulations codified in Chapter 11.

The Impoundment Ordinance imposes an "administrative penalty" in addition to reimbursement of towing and storage costs. Section 11-208.7, however, only permits imposition of an administrative fee in addition to reimbursement of towing and storage costs. A "penalty" and a "fee" are "legally inconsistent" remedies. *People v. Nedrow*, 122 Ill 363, 366-67 (1887); *People v. Jones*, 223 Ill. 2d 560, 598-99 (2006). It offends the pronouncements of this Court to even suggest that, in the context of the statewide uniform enforcement of Chapter 11 of the Vehicle Code, a home rule unit may impose an "*administrative* penalty," like the Impoundment Ordinance imposes. It is indisputable that a non-home rule unit cannot charge or collect an "administrative penalty." As such, any local ordinance purporting to authorize the collection of an "administrative penalty" is in direct conflict with Section 11-208.7 and violates the uniformity provisions and home rule limitation against inconsistent local laws on the subjects codified in Chapter 11.

Chicago contends Section 11-208.7 does not apply to it because of its broad home rule power. Chicago's home rule powers are derived from section 6(a) of the Constitution of 1970. ILL. CONST. 1970, art. VII, § 6(a). Moreover, the General Assembly codified an express limitation against local police regulations that are inconsistent with the laws codified in Chapter 11. As such, Chicago's arguments on the subject of home rule authority are incorrect.

The question of whether a claimed power is within the scope of home rule is for the Court. *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 540 (1975); *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 19 (modified on denial of reh'g). Chicago lacks home rule power

to enforce the Impoundment Ordinance for two independent reasons. First, the text of the Constitution of 1970 does not grant home rule power to legislate in the regulatory area that uniform vehicle enforcement occupies. Uniform motor vehicle laws are a matter of statewide concern and, therefore, fall outside of the constitutional grant of home rule power in section 6(a) because they do not "pertain[] to" local "government and affairs" ILL. CONST. 1970, art. VII, sec. 6(a); *People ex rel. Bernardi v. City of Highland Park,* 121 Ill. 2d 1, 12-13 (1988) (Municipal ordinance "pertains to" government and affairs of a home rule unit if it relates to localized problems as opposed to those that are state or national.)

Second, the Constitution of 1970 grants authority to the General Assembly to limit the concurrent exercise of home rule power. ILL. CONST. 1970, art. VII, sec. 6(i); *City of Chicago v. Roman*, 184 Ill. 2d 504, 512-13 (1998) (Identifying Section 208.2 as an example of an express statutory limitation on the exercise of home rule power.) The General Assembly exercised this power in 1971 through the enactment of an express home rule limitation prohibiting local laws that are inconsistent with the statewide uniform enforcement of the RULES THE ROAD. See 625 ILCS 5/11-208.2 (2002) ("The provisions of this Chapter of this Act limit the authority of home rule units to adopt local police regulations inconsistent herewith …").

As a general matter this Court defers a decision on constitutional issues if it is possible to decide the case on other grounds. As this Court's decisions in the area of home rule demonstrate, however, analysis under section 6(a) of our Constitution logically comes before the statutory analysis applying the General Assembly's express limitation in Section 208.2. *See, e.g.*, *Palm v. 2800 N. Lakeshore Drive Condominium Assoc*., 2013 IL 110505, ¶ 36 (holding that in reviewing the constitutionality of the home rule power at issue,

determining whether the local law pertains to the home rule unit's government and affairs under 6(a) is the first step in the analysis).

The section 6(a) analysis is unnecessary given the express limitation of Section 208.2 and the Court may choose not to reach the issue. *Int'l Ass'n of Fire Fighters, Local 50 v. City of Peoria*, 2022 IL 127040, ¶ 37 (Applying express statutory limitation on home rule authority without reaching section 6(a) analysis). Even if the Court chooses to bypass the section 6(a) issue, because the case at bar similarly involves the express statutory limitation codified in Section 208.2, the analysis of the State's interest in uniform vehicle regulation required under section 6(a) remains germane to the Court's task of construing the General Assembly's intent and purpose in its legislative determinations on the subjects codified in Chapter 11.

Prior to reaching the home rule analysis, however, we construe Chapter 11 and Section 11-208.7 specifically to determine the intent and purpose underlying these enactments. The section 6(a) vital purpose analysis is germane to the issue of the General Assembly's intent and purpose for enacting the law. In 2011, the General Assembly enacted Pub. Act 97-109 (eff. Jan. 1, 2012). 625 ILCS 5/11-208.7 (2012). Apparent from the text of the Section 11-208.7, and the General Assembly's decision to codify it in Chapter 11, is the legislative purpose of standardizing vehicle impoundment, arising out of the use and operation of vehicles during commission of criminal offenses, across all units of local government. Section 11-208.7 gives local governments the discretion to enact ordinances, "consistent with this section," adopting the procedures in Section 11-208.7 for the release of the vehicle and 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.* Prior to the enactment of Section 11-208.7 non-home rule units of government did not have the authority to enact ordinances requiring remuneration to obtain the release of an impounded vehicle.

Section 11-208.7 must be applied consistently in every locale in the state to comply with the General Assembly's express uniformity mandates and prohibition against home rule units from enforcing local laws that are inconsistent with Chapter 11. It is indisputable that non-home rule entities cannot enact local laws permitting them to extract penalties from the owner of an impounded vehicle in exchange for its release. Uniform application of Section 11-208.7 in all units of government results in the inescapable conclusion that home rule units lack the power to enact or enforce a local law permitting imposition of an administrative penalty. If allowed, this practice results in inconsistent enforcement of Chapter 11. From the plain language of Chapter 11, it is apparent the General Assembly did not intend to permit home rule units to imposes penalties as doing so would result in inconsistent application of the RULES OF THE ROAD. Penalties are, therefore, proscribed by Section 11-208.7.

ARGUMENT

I. THE TEXT OF SECTION 11-208.7 DEMONSTRATES THE GENERAL ASSEMBLY'S PURPOSE OF UNIFORM MUNICIPAL COST RECOVERY AND PROCEDURES FOR VEHICLE IMPOUNDMENT INCIDENT TO CRIMINAL ARREST.

The Court's primary goal in construing a statute is to ascertain and give effect to the intent of the legislature. *Monson v. City of Danville*, 2018 IL 122486, ¶ 14; *People v. Richardson*, 196 Ill.2d 225, 228 (2001). The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning. *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶ 22. When using the plain meaning approach

to statutory construction, the Court is mindful of the subject [the law] addresses and the legislature's apparent purpose in enacting the statute." *Monson*, 2018 IL 122486, ¶ 14. The Court views the statute as a whole, construing words and phrases in context to other relevant statutory provisions and not in isolation. *Murphy-Hylton v. Lieberman Management Services, Inc*., 2016 IL 120394, ¶ 25. The Court also considers the reason for the law, the problem sought to be remedied, and the consequences of construing the statute one way or another. *Id.*

A. Legislative Intent and Purpose

The General Assembly's apparent purpose for enacting Section 11-208.7 was to standardize municipal impoundment practices and cost recovery through uniform enforcement. The decisions below are contrary to the General Assembly's express intent codified in every version of the State's vehicle act since the first uniform vehicle act was enacted in 1907. *Ayres v. Chicago*, 239 Ill. 237, 240 (1909) ("Clearly, *the purpose of the legislature* was to pass a new and complete law designed to take the place of all municipal ordinances or rules regulating the equipment and operation of motor vehicles.") (emphasis added); *People v. Sargent*, 254 Ill. 514, 517 (1912) ("*The manifest purpose of the legislature* was to bring the whole subject of regulating the use of motor vehicles under the control of the State.") (emphasis added); *Chicago v. Walden W. Shaw Livery Co.*, 258 Ill. 409, 413 (1913) (Explaining that the General Assembly codified this Court's *Ayres* inconsistency standard in a 1911 amendment to the uniform vehicle act.); *Chicago v. Francis*, 262 Ill. 331 (1914) (Inconsistent local traffic laws lead to "confusion and in some cases injustice."); *Lincoln v. Dehner*, 268 Ill. 175 (1915) (same); *Heartt v. Downers Grove*, 278 Ill. 92, 95 (1917) (Explaining that inconsistent local laws would frustrate the legislative purpose of statewide enforcement that is necessary because automobiles make tours of

considerable distance passing through or visiting many "cities, villages and towns."); *Roe v. Jacksonville*, 319 Ill. 215, 217-18 (1925) (same); *Hoigard v. Yellow Cab Co.*, 320 Ill. 317, 320 (1926) (same); *Ferguson Coal v. Thompson*, 343 Ill. 20, 26 (1931) (same); *Chicago v. Hastings Express Co.*, 369 Ill. 610, 615-16 (1938) (same); *Chicago v. Hertz Commercial Leasing Corp.*, 71 Ill. 2d 333, 351 (1978) ("[T]he Code expresses the general preference for uniform traffic regulations throughout the State" except for specific areas carved out by the General Assembly in Section 11-208 that Chapter 11 does not cover such as the regulation of parking.).

And, prior to the decision below, the intermediate appellate courts in Illinois properly applied the *Ayres* standard. See, e.g., *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 527 (1st Dist. 1999) *appeal denied*, 189 Ill. 2d 582 (2000) (Lack of uniformity makes home rule ordinances inconsistent with the policy of uniformity expressed in Chapter 11 of the Code and unenforceable as a consequence); *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 519 (2d Dist. 2000) (Recognizing that municipal power does not extend to alternative enforcement of the RULES OF THE ROAD codified in Chapter 11); *Village of Park Forest v. Thomason*, 145 Ill. App. 3d. 327, 330-32 (1st Dist. 1986) (Home rule municipality lacks power to enact a drunk-driving ordinance that provided more severe penalties from those prescribed in the Vehicle Code pointing to the legislative purpose behind Chapter 11's uniformity provisions); *Mundelein v. Hartnett*, 117 Ill. App. 3d 1011, 1016-1017 (2d Dist. 1983) (General Assembly's intent and purpose underlying codification of the drunk-driving laws in Chapter 11 was to give the State exclusive control over regulation of the subject matter).

Like the first uniform vehicle law, the legislative purpose of standardizing vehicle impoundment and municipal cost recovery through uniform enforcement is apparent from the decision by the General Assembly to codify Section 11-208.7 in the RULES OF THE ROAD. 625 ILCS 5/11-100, *et. seq.* (2021). Chapter 11 contains not just one, but two, uniformity clauses. The First District erred by failing to consider the context of the General Assembly's decision to codify Section 11-208.7 in Chapter 11 of the Vehicle Code and the larger comprehensive regulatory scheme where Section 11-208.7 fits. The uniformity and consistency provisions of Chapter 11 are designed to protect the State's "paramount" interest in uniform enforcement of the RULES OF THE ROAD. *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 2164 (2016) (citations omitted) (The State's interest in uniform enforcement of the "Rules of the Road" is "paramount"). See also *infra* at § II (B) (collecting cases on subject of State's vital interest in safe roads).

B. The General Assembly Intended a Remedial Remedy.

The enactment of Section 11-208.7 was an exercise of the legislature's broad power to fix remedies. Its actions reflecting its intent. It prescribes a remedial remedy and proscribes any punitive one, as a consequence. "[T]he public has a compelling interest in safe roads." *People v. Jung*, 192 Ill. 2d 1, 5 (2000). By enacting Section 11-208.7, the legislature created a statutory remedy, as part of a comprehensive uniform regulatory scheme, designed to relieve the financial burdens that arrests place on local governments and statutorily authorized vehicle impoundment incident to criminal arrest. Section 11-208.7 permits cost recoupment for all local units of government via swift administrative adjudication. 625 ILCS 5/11-208.7(g) (Incorporating administrative procedures codified in Section 11-208.3 relating to parking). Statutes are expressions of Illinois public policy. *Clark v. Children's Mem'l Hosp.*, 2011 IL 108656, ¶ 79. The Court discerns the public

policy of Illinois as expressed in the State's Constitution, statutes and judicial precedent. *Id.* "[R]emedial statutes [ ] are designed to grant remedies for the protection of rights, introduce regulation conducive to the public good, or cure public evils." *Standard Mut. Ins. Co. v. Lay*, 2013 IL 114617, ¶ 31.

"Statutory provisions regarding costs must be strictly construed." *People v. McAfee*, 366 Ill.App.3d 726, 728 (3d Dist. 2006). On its face Section 11-208.7 does not expressly authorize penalties. As such, there is no express authorization for the "administrative penalty" that the Impoundment Ordinance imposes on the owners of impounded vehicles. The Court should give the General Assembly's legislative determination to enact a fee remedy deference.

As a general matter, this Court defers to the General Assembly in the sentencing arena because it is institutionally better equipped than the judicial branch to gauge the seriousness of various offenses and to fashion sentences. *People v. Sharpe*, 216 Ill.2d 481, 497-98 (2005) (citing *People v. Hill*, 199 Ill. 2d 440, 454 (2002)). The General Assembly enjoys broad discretion with respect to setting criminal penalties. *Id.* (citing *People v. Morgan*, 203 Ill. 2d 470, 488 (2003)); *People v. Sharpe*, 216 Ill. 2d 481, 488 (2005) ("The legislature's discretion in setting criminal penalties is broad, and courts generally decline to overrule legislative determinations in this area.)

The intent behind Section 11-208.7 is clear, however; the punitive intent in enacting Chicago's Impoundment Ordinance not only extends beyond the intent of the legislature but imposing penalties for impoundment subsequent to an arrest has serious financial consequences for individuals.

This exact financial impact was explained in *City of Chicago v. Fulton*, 141 S. Ct. 585 (2021). In her concurrence, Justice Sotomayer described this immense financial impact perfectly, stating: "Drivers in low-income communities across the country face similar vicious cycles: A driver is assessed a fine she cannot immediately pay; the balance balloons as late fees accrue; the local government seizes the driver's vehicle, adding impounding and storage fees to the growing debt; and the driver, now without reliable transportation to and from work, finds it all but impossible to repay her debt and recover her vehicle. *Fulton*, 141 S. Ct. at 593. *Fulton* concerned the interplay between the Impoundment Ordinance and Chapter 13 of the United States Bankruptcy Code, an issue that is not germane here. The General Assembly did not "expressly authorize" penalties as a matter of legislative determination that this Court should not disturb. The vicious cycle that Justice Sotomayer describes provides ample basis for the General Assembly's legislative decision to proscribe penalties. Chicago and all local units of government, home rule or not, are prohibited from enacting or enforcing any ordinance, rule or regulation in conflict with the provisions of this Chapter unless expressly authorized by the text of the Chapter. Plainly, administrative penalties are not authorized by Chapter 11.

II. HOME RULE AUTHORITY HAS SIGNIFICANT LIMITATIONS.

A. Under Section 6(a) Uniform Vehicle Regulation Does Not "Pertain[ ] To" Local Government and Affairs.

Chicago is a home rule unit of government under the Illinois Constitution of 1970 and is therefore granted broad powers to govern. These powers, however, are not without limitation. Article VII of the Illinois Constitution grants "home rule" powers to local units of government that have a population of at least 25,000 people. ILL. CONST. 1970, Art. VII, § 6(a). Article VII, Section 6(a) provides:

> Except as limited by this Section, 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. 1970, art. VII, § 6(a) (emphasis added).

The grant of home rule power in section 6(a) of the Illinois Constitution does not permit home rule units to pass laws inconsistent with statewide uniform vehicle regulations. Section 6(a) of the Constitution od 1970 provides the authority for a home rule unit to "exercise any power and perform any function pertaining to its government and affairs…" *Id.* "[A]n ordinance pertains to local government and affairs where it addresses local, rather than state or national problems." *Palm*, 2013 IL 110505, ¶ 110 (citing *Schillerstrom Homes v. City of Naperville*, 198 Ill. 2d 281, 290 (2001)); *Kalodimos v. Morton Grove*, 103 Ill. 2d 483, 501 (1984); *Park Forest*, 145 Ill. App. 3d at 330. Accord *City of Chicago v. StubHub, Inc.*, 2011 IL 111127, ¶ 19 (modified on denial of reh'g) ("The framers' intent was clear: 'the powers of home-rule units relate to their own problems,' not problems more competently solved by the state.")

The "pertaining to" requirement in Section 6(a) permits judicial intervention where, like here, a home rule unit "interfere[s] with vital state policies." David A. Baum, *A Tentative Survey of Illinois Home Rule (Part I): Powers and Limitations*, 1972 U. ILL. L. F. 137, 156-57. Certain problems do not "pertain[] to" local government affairs and, therefore, fall outside of the grant of power in section 6(a). *Ampersand, Inc. v. Finley*, 61 Ill. 2d 537, 542-43 (1975) (citing 7 Record of Proceedings, 6th Ill. Constitutional Convention at 1652).

The violation of criminal laws during the use and operation of motor vehicles is not a local problem. Indeed, while vehicles will be impounded in Chicago subsequent to criminal arrest under state law, *see* 625 ILCS 5/11-1302 (2012), this does not make the problem a local one. Instead, alleged violations of criminal laws involving the use and operation of motor vehicles in Chicago are merely manifestations of a statewide problem as opposed to one of local concern in the context of section 6(a).

It is the proper role of the judiciary to enforce the "pertaining to" language found in section 6(a). *StubHub.*, 2011 IL 111127, ¶¶ 18-22. This Court applies section 6(a) to determine what matters are of statewide concern such that home rule legislation is not constitutionally permissible. *Id.* at ¶¶ 23-24. In *StubHub*, Chicago asserted it had the power to require electronic intermediaries to collect and remit amusement taxes on resold tickets to entertainment and sporting events. *Id.* at 1. Chicago asserted it could collect the amusement tax from ticket resellers and their agents. *Id.* at 4. StubHub, an electronic intermediary, that was an agent for ticket resellers, lodged a challenge to Chicago's home rule power requiring it to remit the local tax. *Id.* at 6-8.

In *People ex rel. Lignoul v. Chicago*, this Court determined that a Chicago ordinance was invalid because the regulation of banking was a concern of the state as a whole and that "unitary control of it should rest with the General Assembly." *People ex. Rel Lignoul v. Chicago*, 67 Ill. 2d 480, 488 (1977). In *Ampersand Inc. v. Finley*, this Court struck down a Cook County ordinance that imposed an extra filing fee on the first pleading or appearance filed to raise revenue for the county law library noting: "The administration of justice under our constitution is a matter of statewide concern and does not pertain to local government or affairs. Since … the powers of a home rule unit relate only to its own

affairs and not to those of the State, we conclude that the ordinance imposing a filing fee is invalid." *Ampersand, Inc.*, 61 Ill. 2d at 542-43.

"[T]he control of the public streets is vested in the legislature, and that such power of control may be delegated by the legislature to the municipalities of the State." *Harder's Fireproof Storage & Van Co. v. Chicago*, 235 Ill. 58, 77 (1908). "The legislature of the State represents the public at large, and has … full and paramount authority over all public ways and public places." *Id.* (quoting JOHN FORREST DILLON, THE LAW OF MUNICIPAL CORPORATIONS (4th ed. 1890)).

This Court conducts a three-part analysis when analyzing whether an issue is within the scope of a home rule unit's authority under section 6(a). *Id.* at ¶ 24. This Court considers: (1) the nature and extent of the problem; (2) the units of government with the most vital interest in its solution; and (3) the role traditionally played by the State to address the problem. *Id.* All three parts of the analysis weigh heavily in favor of determining uniform regulation of vehicles is not a matter of local government or affairs.

1. Nature And Extent of the Problem

In *StubHub*, Chicago argued that it had home rule authority to legislate in the area at issue because Chicago is home to all five professional sports franchises in the State and because it hosts a significant share of the State's live theater events. *Id.* at 26. This Court held that Chicago's substantial financial interest in the subject matter was not determinative of the issue. *Id.* Conversely, this Court held the State's historic legislation on ticket sales and resales demonstrated that the problem was of statewide concern. *Id. StubHub* involved a matter of statewide concern for the same reasons as the subject matter reviewed in *Bernardi* and *Lignoul*. *Lignoul*, 67 Ill. 2d at 487-88 (Subject matter of regulating banks

could present unique problems for Chicago but the problem was nevertheless of statewide concern); *Bernardi*, 121 Ill. 2d at 16 (Permitting the exercise of home rule power to repeal the mandates of the General Assembly impermissible as such actions would lead to the destruction of statewide labor policies codified by the General Assembly).

The uniform regulation of motor vehicles has been a problem of statewide concern for over a century. *See Ayres*, 239 Ill. at 245. This Court and the General Assembly have made clear that uniform statewide vehicle laws must be enforced uniformly and consistently across all units of government. *Id*.; 625 ILCS 5/11-208.2 (2003). The General Assembly's actions demonstrate the problem is one of statewide concern by codifying the uniformity clauses in the Vehicle Code. See 625 ILCS 5/11-208.1 (1971); 625 ILCS 5/11-207 (1987). The General Assembly's enactment of a uniform law alone demonstrates that the use and operation of vehicles on roads in the State is a matter of statewide concern.

Additionally, criminal offenses committed during the use or operation of a motor vehicle occur in local units throughout the state. Just because the problem manifests itself in local units of government does not result in the problem being one of local concern within the meaning of section 6(a). All statewide problems will manifest in local units of government. *Lignoul*, 67 Ill. 2d at 486-87; (The fact that activity occurs locally does not make it a matter of local "government and affairs" under section 6(a)); *StubHub*, 2011 IL 111127, ¶ 27; *Ampersand*, 61 Ill. 2d at 543. If local manifestation of a problem were sufficient there would be no problem of statewide concern rendering the scope of section 6(a) nugatory.

2. The State Has A Vital Interest In Enforcement of Uniform Vehicle Laws.

Under the *StubHub* framework, the next step is to analyze whether the State or local units of government have a more vital interest in the subject matter of the local law. *StubHub*, 2011 IL 111127 at ¶¶ 27-34. In *StubHub*, the State statute at issue regulated the entire field of ticket resales and set forth a complete regulatory scheme. *Id*. In that case, the State's interest in statewide regulation outweighed the home rule unit's interest of generating revenue through local taxes. *Id*. at ¶ 34. This Court, again, made clear that where the General Assembly passes a comprehensive and uniform law on a subject matter the State's interest in unform regulation of the subject matter is greater than that of local units of government. *Id*. ("StubHub also notes that if other municipalities followed the City's lead and required internet auctioneers to collect and remit amusement taxes, there could potentially be a patchwork of local regulations. The [General Assembly] considered such burdens, and decided not to impose them, preferring instead a more comprehensive and uniform approach.").

In this case, the State's interest in uniform regulation of the movement of vehicles is far greater than that of a local unit of government *Francis*, 262 Ill. at 336. In sum, the State's vital interest in the subject matter is not just the regulation of moving vehicles but the regulation of vehicles under a uniform statewide law that results in consistent enforcement in all units of local government. "[T]he public has a compelling interest in safe roads." *People v. Jung*, 192 Ill. 2d 1, 5 (2000). The State's interest in uniform enforcement of the Rules of the Road is paramount. *Birchfield v. North Dakota*, ___ U.S. ___, 136 S. Ct. 2160, 2164 (2016) (citations omitted). Accord *Delaware v. Prouse*, 440 U.S. 648, 670 (1979) ("We agree that the States have a vital interest in ensuring that only those qualified to do so are permitted to operate motor vehicles, that these vehicles are fit

for safe operation, and hence that licensing, registration, and vehicle inspection requirements are being observed. Automobile licenses are issued periodically to evidence that the drivers holding them are sufficiently familiar with the *rules of the road* and are physically qualified to operate a motor vehicle.").

The General Assembly has legislatively limited the power of local units to enact and enforce local police regulations that are inconsistent with Chapter 11 for the express purpose of uniform enforcement. See *infra* at § I(B). The patchwork of laws that would result from enforcement of local laws that are inconsistent with Chapter 11 offends not only the concept of uniform enforcement but the express intention of the General Assembly with respect to uniform, consistent enforcement of the Rules of the Road. The Impoundment Ordinance is a prime example of a local law that is inconsistent with Chapter 11. No other jurisdiction in the State imposes such a draconian and substantial penalty in order to secure the release of a vehicle impounded because of its use or operation during the commission of an alleged crime.

The Court should consider the impact beyond Chicago if enforcement of the Impoundment Ordinance were to somehow be upheld. Indeed, there will be a rush by home rule municipalities to enact ordinances imposing similar, substantial penalties that bear no relation to recouping administrative and processing costs arising out of impoundment of a vehicle subsequent to criminal arrest. The Impoundment Ordinance not only affects residents of Chicago it also has a substantial impact on individuals that travel into or through Chicago from other municipalities throughout the State. This reality demonstrates the public policy behind uniform enforcement and why regulation of the movement of vehicles is a matter of statewide concern. This Court has enforced this concept in its

decisions limiting home rule authority for matters of statewide concern. See, e.g., *People ex rel. Bernardi v. Highland Park*, 121 Ill. 2d 1 (1988).

In *Bernardi*, the City of Highland Park issued contracts for a project involving a water treatment plant. *Id.* at 5. A complaint was filed alleging that Highland Park did not comply with the Prevailing Wage Act, which requires "that wages on public works projects correspond to those paid generally on public works projects in the county." *Id.* Although Highland Park admitted to violating the Prevailing Wage Act, Highland Park asserted that it was not required to comply with the Prevailing Wage Act because it was a home rule unit. *Id.* This Court ultimately held that uniform regulation of labor conditions was beyond the scope of Highland Park's authority as a home rule unit. *Id.* at 16. The Court held that Highland Park's actions would affect individuals and entities outside of Highland Park and this was an area considered to be one of the "State's vital interests." *Id*. This Court further noted that in order "to avoid a chaotic and ultimately ineffective labor policy … the State has a far more vital interest in regulating labor conditions than do local communities." *Id.*

Similarly, the effects of Chicago's Impoundment Ordinance are not solely local in nature. In addition to Chicago's residents, its Impoundment Ordinance is imposed on anyone passing through Chicago as well as individuals who commute to Chicago daily for work. Permitting the continued enforcement of Chicago's Impoundment Ordinance will allow for the same "chaos" that is the foundation of this Court's holding in *Bernardi*. Chicago's enforcement of its Impoundment Ordinance offends the General Assembly's uniformity mandate prohibiting inconsistent local laws. Thus, like Highland Park's actions in *Bernardi* - that disrupted the uniform enforcement of the Prevailing Wage Act – Chicago's Impoundment Ordinance, in addition to being preempted by the express

limitation with respect to local laws that are inconsistent with Chapter 11, is preempted because the matter is one of statewide concern that requires uniform regulation. Similar to the State's vital interest in regulating labor conditions and fair wages, the State's interest in regulating motor vehicles is paramount. The State's interest in the uniform regulation of motor vehicles is even more vital than the State's interest in regulating labor conditions and wages that this Court found preempted home rule authority.

3. Traditional Regulatory Role

There is no question that regulating the use or operation of vehicles on State roads and uniform enforcement of the RULES OF THE ROAD has always been a traditional regulatory role of the State. This fact dates back to 1907 with this Court's decision in *Ayres*. Since this Court's decision in *Ayres*, it has consistently held that the State is better suited to regulate the use and operation of vehicles because of the need for uniformity in creating laws that regulate the use and operation of vehicles. *See* HISTORY OF ILLINOIS UNIFORM STATEWIDE VEHICLE LAWS, *supra* at 2.

A home rule authority's powers are granted to it under section 6(a) of the Constitution of 1970, which specifically grants broad powers to home rule units that pertain to the home rule unit's local affairs. Regulating the use or operation of vehicles is and has always been a matter of statewide concern, and, therefore, does not pertain to Chicago's affairs. As such, Chicago's Impoundment Ordinance regulates matters beyond the scope of its home rule powers under the Illinois Constitution.

III. THE GENERAL ASSEMBLY EXPRESSLY LIMITED HOME RULE UNITS FROM ENACTING AND ENFORCING LOCAL LAWS THAT ARE INCONSISTENT WITH CHAPTER 11.

Subsections 6(g), 6(h), and 6(i) of Article VII "are referred to as the preemption provisions of the constitution." HOME RULE IN ILLINOIS 50-51 (Stephanie Cole & Samuel

K. Gove eds., 1973). Chicago's Impoundment Ordinance violates the Preemption Clause of the Illinois Constitution of 1970. The Preemption Clause, or Section 6(i) of Article VII, of the Illinois Constitution allows a home rule unit to exercise any power concurrently with the State unless the General Assembly "specifically limit[s] the concurrent exercise or specifically declare[s] the State's exercise to be exclusive." ILL. CONST. 1970, art. VII, § 6(i) ("§ 6(i)").[4]

§ 6(g) sets forth the only other circumstance where legislation must pass a law by a super-majority in order to limit or deny home rule authority. A three-fifths majority is required to limit "any other power or function of a home rule unit *not exercised* or performed by the State other than a power or function specified in subsection (l) of this section." ILL. CONST. 1970, art. VII, §6(g) (emphasis added). The second requirement in § 6(g), prevents the legislature from enacting statutes containing a "laundry list" of powers that it intends to limit, not already exercised by the State, rendering the purpose of local autonomy useless. *Id.*

§ 6(h) "allows for preemption by only a simple majority … 'when a state statute actually exercises a governmental power or authorizes a state agency to do so." HOME RULE IN ILLINOIS 50-51 (Stephanie Cole & Samuel K. Gove eds., 1973) (quoting Ill., Sixth Const. Conv., *Record of Proceedings*, Local Government Committee Proposal 1, VII: 1640-41))

[4] Contrary to Chicago's urging below (C112-14), because this case concerns an express limitation placed on home rule authority by the General Assembly in 1971, the Statute on Statutes, does not apply. Pub. Act 80-1458 (eff. Sept. 19, 1978) codifying 65 ILCS 70/7 (1978). Similarly, the Home Rule Note Act does not apply to the General Assembly's passage of the express limitation on home rule authority in Chapter 11 of the Vehicle Code. See Pub. Act 77-706 (eff. Aug. 12, 1971) codifying 625 ILCS 5/11-208.2 (1971). The Home Rule Note Act's effective date was nearly 20 years after the effective date of Section 11-208.2. See Pub. Act 87-229 (eff. Sept. 3, 1991) codifying 25 ILCS 75/5 (1991).

("The Local Government Committee felt that 'the state interest is much more significant than where the statute merely denies the power to local governments.'"). "Different considerations become important when a [] statute … exercises a governmental power …." See, e.g., *United Private Detective & Sec. Ass'n v. Chicago*, 62 Ill. 2d 506, 513-14 (1976) (quoting 7 Record of Proceedings, Sixth Illinois Constitutional Convention, 1569, 1641-1645).

Chicago's position that it can pass local laws that are inconsistent with Chapter 11 of the Vehicle Code offends the public policy pronouncements of the General Assembly and this Court with respect to statewide uniform vehicle regulation. For over a century, this Court and the General Assembly have applied or codified the *Ayres* standard, preempting any local laws that are inconsistent with the uniform statewide regulation of vehicles. 625 ILCS 5/11-208.2 (2002).

Although the Illinois Constitution cloaked home rule units with broad powers, it simultaneously cloaked the legislature with the express authority to deny or limit any home rule power. ILL. CONST. 1970, art. VII, sec. 6(i) (A home rule unit may only exercise home rule power "to the extent that the General Assembly by law does not specifically limit the concurrent exercise [of legislative power] or specifically declare the State's exercise to be exclusive."); *Nevitt v. Langfelder*, 157 Ill. 2d 116, 131 (1993). Where, like here, the legislature codified an express limitation prohibiting home rule units from enacting "inconsistent" local laws, the Court should enforce that statutory mandate. 625 ILCS 5/11-208.2 (eff. Jun. 1, 2003). The legislature placed further limits on home rule authority by mandating uniform enforcement of Chapter 11 of the Vehicle Code. See, e.g., 625 ILCS

5/11-208.1 (1971) (Chapter 11 shall be applied uniformly throughout the state and in all units of local government); *See also* 625 ILCS 5/11-207 (2002).

In 2016, the legislature amended Section 11-208.7 to add Section 11-208.7(j) and Section 11-208.7(g)(6), which states that the fee limits provided in subsection (b) do not apply to home rule units provided the vehicle is towed due to a violation of a statute or local ordinance and the home rule unit owns and operates a towing facility and owns or operates tow trucks. The inclusion of the home rule "carve out" in the 2016 Amendment confirms the General Assembly's intent to preempt home rule authority.

A subsequent amendment of a statute may "be an appropriate source in determining legislative intent." *People v. Parker*, 123 Ill. 2d 204, 211-12 (1988) (citations omitted). "An amendatory change in the language of a statute creates a presumption that it was intended to change the law as it theretofore existed, the presumption is not controlling and may be overcome by other considerations." *Id.* (internal marks and citations omitted).

Although the 2016 amendment does change the law in some respects, the presumption that the amendment was intended to change the law is rebutted to the extent the courts below found Section 11-208.2 inapplicable. This is based on the analysis of the impact of Section 11-208.2 on laws codified in Chapter 11. The Court should, therefore, interpret the addition of section (j), exempting certain portions of Section 11-208.7 from the limitation on home rule units as confirmation of the legislature's original intent of an express limitation on home rule power via Section 11-208.2. Indeed, Section 11-208.2 is consistent with over a century of well rooted Illinois law that local units of government cannot pass inconsistent traffic laws.

The State controls the regulation of motor vehicles. In 1914, this Court analyzed the concept of uniformity in *Chicago v. Francis*, 262 Ill. 331 (1914). In *Francis*, Chicago enacted an ordinance making it unlawful for any driver to use a vehicle within the city unless there is a plate affixed to the vehicle that is issued by the city clerk. *Id.* at 336. This ordinance was in direct conflict with a state statute that only required drivers to display a registration number that was issued by the Secretary of State. *Id.* This Court held that the inconsistent ordinance was invalid noting "it is apparent from this law that the General Assembly by the revision of the law in 1911 and having in mind the court decisions of recent years which we have cited, intended to take certain matters in regard to the control of motor vehicles *entirely out of the hands of municipal authorities.*" *Id.* (emphasis added). This Court noted that the increased use of automobiles as well as the distance people travel in an automobile created an increased need for generally applicable laws throughout the state acknowledging that allowing municipalities to control laws governing the movement of vehicles would lead to "confusion and in some cases injustice." *Id.* Here, the patchwork that results when some local units impose penalties while others can only impose fees results in injustice.

IV. CHICAGO'S IMPOUNDMENT ORDINANCE IS EXPRESSLY PREEMPTED.

The General Assembly has the power to preempt a municipality's home rule powers through an express statutory limitation on home rule authority." *Palm*, 2013 IL 110505, ¶ 31. With the broad power granted to home rule units came the express limitation that the General Assembly always gets the last word and can specifically limit home rule power or specifically declare the State's power exclusive. While the powers granted to home rule units by the Illinois Constitution are extremely broad, these powers are not unlimited as

Chicago argued below. The legislature undoubtedly has the constitutional power to limit the authority of a home rule unit to govern in a specified regulatory area. *City of Chicago v. Roman*, 184 Ill. 2d 504, 512-13 (1998). In 1971, the General Assembly placed an express limitation on home rule powers with respect to the uniform regulation of motor vehicles effective on July 1, 1971. 625 ILCS 5/11-208.2 (1971). There is simply no basis to not enforce this statutory command.

A. The Express Limitation On Home Rule Authority In Section 11-208.2 Applies to Section 11-208.7.

The First District erred by failing to acknowledge the crucial limiting effect of Section 11-208.2 on Section 11-208.7. The first step in determining whether the legislature has "specifically limited the concurrent exercise [of power]" or "specifically declared the State's exercise [of power] to be exclusive" is to examine the plain language of the pertinent section of the statute, as passed by the legislature, alone and within the specific statutory scheme where the legislature chose to codify the law (*e.g.*, Chapter 11); in an effort to identify any express direction or expression from the legislature, that specifically limits concurrent exercise of power, or a declaration that it has exclusive power over Section 11-208.7. *Hanover Park*, *supra*. When the legislature intends to preempt local regulations and limit concurrent exercise of local power, it knows how to do so. *Roman,* 184 Ill. 2d at 517-18. Accord, *Iwan Ries & Co. v. City of Chi.*, 2019 IL 124469 (municipal tax on "other tobacco products" preempted by state law).

When construing a statute, other statutes on related subjects are properly considered. *Stewart v. Industrial Comm'n*, 115 Ill. 2d 337, 341 (1987). The Court presumes that the legislature intended its enactments to be consistent and harmonious. *United Citizens v. Coalition to Let the People Decide*, 125 Ill. 2d 332, 338-39 (1988). Although

this Court has not had occasion to review the limiting effect of Section 11-208.2 on Section 11-208.7, this Court included Section 11-208.2 as an example of when the legislature intends to limit home rule powers, it knows exactly how to do so. *Roman*, 184 Ill. 2d at 517-18. In *Roman*, this Court noted in citing to Section 11-208.2, among others: "In many statutes that touch on countless areas of our lives, the legislature has expressly stated that, pursuant to section 6(h), 6(i), or both, of article VII of the Illinois Constitution, a statute is declared to be an exclusive exercise of power by the state and that such power shall not be exercised by home rule units." *Id.*

Nevertheless, the decisions of the Illinois appellate courts hold that local ordinances that purport to regulate moving, or similar regulations governing the movement of vehicles, especially those codified in Chapter 11, are subject to the express limitation on home rule powers codified in Section 11-208.2 that was passed in 1971 and amended in 1992. *Village of Park Forest v. Thomason*, 145 Ill. App. 3d 327, 330-32 (1st Dist. 1986) (home rule municipality lacked power to enact a DUI ordinance that purported to impose stiffer penalties than those prescribed in Chapter 11 of the Vehicle Code); *Hanover Park*, *supra* (the Vehicle Code is "devoid of any authorization for programs that administratively adjudicate violations of Chapter 11" and found that "to be valid, the alternative traffic programs must comport with the provisions mandating uniformity and consistency…"). Cf. *Village of Mundelein v. Franco*, 317 Ill. App. 3d 512, 519 (2d Dist. 2000) (adopting the First District's analysis in *Park Forest* and *Hanover Park* that municipal power does not extend to alternative enforcement of the RULES OF THE ROAD in Chapter 11 but distinguishing Plaintiff's case because the provision at issue was in Chapter 12).

Section 11-208.2 states:

> 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, 11-142.1, and 11-2412.2 of this Chapter of this Act.

625 ILCS 5/11-208.2 (2003).

This Court recently held that the Public Safety Benefits Act effectively limited exercise of concurrent authority by a home rule unit, based on an express limitation on home rule authority barring local units from providing "benefits to persons covered under th[e] Act in a manner inconsistent with the requirements of th[e] Act." *Int'l Ass'n of Fire Fighters, Local 50 v. City of Peoria*, 2022 IL 127040, ¶ 24; 820 ILCS 320/20 (1997).

Similarly, here, Section 11-208.2 effectively limits home rule units from adopting ordinances that are inconsistent with the Vehicle Code. Although Section 11-208.2 does not contain the limitation under Section 6(i) of the Constitution like the Public Safety Benefits Act, that language was unnecessary to limit home rule power because unlike the Public Safety Benefits Act, Section 11-208.2 was enacted before the Statute on Statutes, which set forth the specific language required for the legislature to limit home rule power. 5 ILCS 70/7. Thus, even "home rule" units of government cannot enact or enforce local ordinances that are inconsistent with Chapter 11. 625 ILCS 5/11-208.2.

The General Assembly intended for Section 11-208.2 to limit home rule power. Section 11-208.2 sets forth the legislature's express limitation on home rule units prohibiting local laws that are "inconsistent" with those set forth in Chapter 11. 625 ILCS 5/11-208.2 (2003). Home rule units lobbied to have Section 11-208.7 added to the specifically excluded sections in Section 11-208.2 and, while a bill was introduced the General Assembly chose not to act on it. (C16). When read together, it becomes apparent

that the General Assembly intended to create a remedy unavailable at common law[5] so not to upset the criminal laws and as necessary to preempt inconsistent home rule action in this area of the law.

B. The First District's Decision Is Contrary To This Court's Precedent Holding That Fines And Fees Are Legally Inconsistent.

The First District's holding, that the Impoundment Ordinance is not inconsistent with the any section of Chapter 11 of the Vehicle Code, offends the precedent of this Court, establishing the clear legal delineation between a fine and a fee over a century ago. See *People v. Nedrow*, 122 Ill. 363, 366-67 (1887). Rules of statutory construction teach us that we should look to Illinois precedent, in addition to other legal sources, when endeavoring to ascertain the legislative intent behind a statute, that uses well defined legal terms when prescribing a legally defined remedy. When a "statute employs words that have known legal significance, courts will, in the absence of any expression to the contrary, assume that the legislature intended the words to have that meaning." *Harris v. Manor Healthcare Corp*., 111 Ill. 2d 350, 364-65 (1986). "Where statutes are enacted after judicial opinions are published, it must be presumed that the legislature acted with knowledge of the prevailing case law." *Burrell v. S. Truss*, 176 Ill.2d 171, 176 (1997) (quoting *People v. Hickman*, 163 Ill. 2d 250, 262 (1994)).

This Court has examined in detail the legal demarcation between a penalty and a fee. If a charge is not assessed to compensate the State for a cost relating to the defendant's

[5] In general, where a statute applies to an area formerly covered by the common law, we interpret the statute as adopting the common law unless the general assembly clearly and specifically expressed an intention to change the common law. *In re Visitation with C.B.L.*, 309 Ill. App. 3d 888, 890-91 (1999). Here, however, there is no cause of action at common law for recovery of these costs outside of Section 11-208.7. *People v. Danenberger*, 364 Ill. App. 3d 936, 937 (2d Dist. 2006) (finding department was not entitled to restitution for money that would have been expended anyway).

prosecution, then it is either a tax (if assessed regardless of whether the defendant is convicted) or a fine (if assessed only upon conviction). *Crocker v. Finley*, 99 Ill. 2d 444, 452 (1984) ("[C]ourt charges imposed on a litigant are fees if assessed to defray the expenses of his litigation," but "a charge having no relation to the services rendered, assessed to provide general revenue rather than compensation, is a tax"); *People v. Jones*, 223 Ill. 2d 560, 582 (2006) (explaining that "a 'fine' is a part of the punishment for a conviction, whereas a 'fee' or 'cost' seeks to recoup expenses incurred by the [S]tate").

In *Jones*, this Court determined that the terms "fine" and "fee" are legally inconsistent. *Id.* at 598-99. The distinction between "fines" and "fees" were in dispute due to recurrent "labeling issues" in the context of criminal sentencing in the circuit courts. *Id.* At issue generally, were alleged misclassifications of "fines" as "fees" imposed by the circuit clerk based on the circuit court's sentencing order. *Id.* Criminal defendants are entitled to daily "custody credits" that offset "fines" but not "fees." *Id.* The Defendant changed course when he reached this Court, arguing that a "fine" was improperly classified as a "fee," in attempt to support a due process argument. *Id.*

This Court defined the terms "fine" and "fee" and provided that these terms have distinct, opposite meanings, stating:

> A 'fine' is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense. A 'cost' is a charge or fee taxed by a court such as a filing fee, jury fee, courthouse fee, or reporter fee. Unlike a fine, which is punitive in nature, a cost does not punish a defendant in addition to the sentence he received, but instead is a collateral consequence of the defendant's conviction that is compensatory in nature. A 'fee' is a charge for labor or services especially professional services.

Id. at 581 (quoting *People v. White*, 33 Ill. App. 3d 777, 781 (2002)).

The bright-line legal demarcation between "fines" and "fees" is well drawn by this Court's precedent. A "fine" is a pecuniary punishment imposed as part of a sentence on a person convicted of a criminal offense. It is also defined as a "pecuniary penalty," with this caveat: "[t]he word 'penalty' is broader than [the] word 'fine,' which is always a penalty; whereas, a penalty may be a fine or it may designate some other form of punishment." *People v. Johnson*, 2011 IL 11817, ¶16 (internal quotation marks and citations omitted). Conversely, a "fee" is generally compensatory, such as recoupment of capital, including for the cost of professionals, as opposed to punishment. *Jones,* 223 Ill. 2d at 582. "[W]hen a charge does not include a punitive aspect, it is a fee, not a fine." *People v. Murphy*, 2017 IL App (1st) 142092, ¶¶ 19-20 (collecting cases).

Section 11-208.7 provides that a municipality may impose 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 vehicle." 625 ILCS 5/11-208.7(a) (2016). Section 11-208.7 further requires that the municipality's procedures for impoundment and release of the impounded vehicles be consistent with Section 11-208.7. *Id.* Further, Section 11-208.2 places an explicit limitation on the broad powers of home rule units requiring that local regulations cannot be inconsistent with any provision of Chapter 11 of the Vehicle Code except for the five excluded sections, none of which are applicable here. 625 ILCS 5/11-208.2 (2003).

The remedy Section 11-208.7 prescribes is remedial not punitive and nothing in the text of Section 208.7 authorizes the "administrative penalty" the Impoundment Ordinance prescribes. As such, Chicago's Impoundment Ordinance is indisputably inconsistent with Section 11-208.7, and the First District's holding that the impoundment Ordinance is not

inconsistent with Section 11-208.7 fails to account for the legal inconsistency between a "penalty" and a "fee." The Impoundment Ordinance prescribes an "administrative penalty" and there is nothing in the text of Section 11-208.7 expressly authorizing a penalty. Cf. 625 ILCS 5/11-207 (2002).

In *Int'l Ass'n of Fire Fighters*, this reviewed an ordinance that attempted to re-define a term, undefined by the state statute, but defined by this Court through statutory construction. The ordinance was inconsistent as a result of the conflicting definitions. As such, Peoria exceeded its home rule authority that was expressly limited by the General Assembly. *Int'l Ass'n of Fire Fighters,* 2022 IL 127040, at ¶ 37. Although Chicago has not defined a term, Chicago has codified a remedy that is legally inconsistent with Section 11-208.7. *Jones*, *supra*, 40-41. As such, the punitive remedy in the Impoundment Ordinance is preempted by Section 11-208.7.

C. The Impoundment Ordinance Is Inconsistent with Section 11-208.7.

Chicago's Impoundment Ordinance violates the consistency limitation found in Section 11-208.7. Section 11-208.7 of the Illinois Vehicle Code, states, in part:

> 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 removal, impoundment, storage, and release of the vehicle.

625 ILCS 5/11-208.7(a) (2016) (emphasis added).

Chicago's Impoundment Ordinance states, in part:

> 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.

MCC § 2-14-132 (emphasis added).

When presented with an issue of statutory construction, the Court's primary objective is to ascertain and give effect to the intent of the legislature. *Oswald v. Hammer*, 2018 IL 122203, ¶ 10. The most reliable indicator of legislative intent is the plain and ordinary language of the statute. *Id.* The Court will not read language in isolation and must view the statute as a whole, construing words and phrases in light of other relevant statutory provisions. *Id.* Each word, clause, and sentence of a statute must be given a reasonable meaning and, if possible, the Court should not interpret a statute that would render any portion of it superfluous. *Id.* The Court presumes "that the legislature did not intend to create absurd, inconvenient or unjust results." *People v. Palmer*, 2021 IL 125621, ¶ 53 (citing *People v. Williams*, 2016 IL 118375, ¶ 15). The Court also considers "the purpose of the statute, the problems sought to be remedied, the purpose to be achieved, and the consequences of construing the statute one way or another. *Id.* (citing *People v. Bradford*, 2016 IL 118674, ¶ 15).

In applying express preemption principles, courts analyze whether "the ordinance infringes upon the spirit of the state law or is repugnant to the policy of the state." *People ex rel. Ryan v. Village of Hanover Park*, 311 Ill. App. 3d 515, 526 (1st Dist. 1999) *appeal denied*, 189 Ill. 2d 582 (2000). "The State statute is the strongest indicator of public policy, and where the [General Assembly] speaks on a subject upon which it has constitutional power to legislate, the public policy is what the statute passed indicates." *Mundelein v.*

Hartnett, 117 Ill. App. 3d 1011, 1015 (2d Dist. 1983). "Where there is a conflict between a statute and an ordinance, the ordinance must give way." *Id.*

The plain language of the statute is clear. Section 11-208.7(a) prescribes a "*reasonable* administrative fee" to reimburse law enforcement and other local departments for the overhead, salaries, benefits and other structural costs ("administrative and processing costs") associated with the arrest and processing of the offender and impoundment of a vehicle incident to arrest for a criminal offense. Section 11-208.7 grants local units of government a remedy that permits recovery. 625 ILCS 5/11-208.7(a) (2016). This is a remedial remedy as a matter of law. This section, by its plain language, also expressly limits this ability by requiring that the remedy and procedures implemented by the municipality be consistent with the language set forth in Section 11-208.7.

Chicago's Impoundment Ordinance, however, mandates that a vehicle impounded pursuant to specific sections of the Municipal Code of Chicago can only be released upon the payment of fees for towing and storage of the vehicle in addition to a penalty that varies based on the criminal act that allegedly took place. (C199-201). Chicago's Impoundment Ordinance is indisputably punitive in nature. Further, Chicago's admission below, that the "administrative penalties" at issue here are punitive, belies any remedial classification of the Impoundment Ordinance. (C111). There is no rational interpretation that renders Chicago's "administrative penalty" consistent with the "administrative fee" Section 11-208.7 prescribes.

Here, the plain language of Section 11-208.7 demonstrates that Chicago's enforcement of its punitive Impoundment Ordinance is inconsistent with, and therefore, preempted by, Section 11-208.7.

D. Imposing Penalties For Impoundment Offenses Interferes With Penal Laws.

It is well established that prescription of punishment for violation of the Illinois penal laws or any punitive remedy, is the province of the legislature. *People v. Hare,* 119 Ill. 2d 441 (1998). While the judicial branch is the final arbiter of appropriate punishment for a criminal offense, the legislature provides the circuit courts with the criminal sentencing framework by setting forth the nature and extent of mandatory and discretionary penalties to be imposed upon conviction. *Id.* Thus, the legislature determines what penalties are appropriate under the circumstances, and the court imposes them, without exception. *Id*.

Section 11-208.7(b) enumerates the criminal offenses that may provide the basis for impoundment and, consequently, imposition of administrative fees. All criminal offenses are part of the State's statutory sentencing scheme, which a court may not ignore. *Ward v. Salter*, 28 Ill. 3d 612, 615 (1963). The legislature's mandate, that administrative fees collected under Section 11-208.7(c)(1) shall be in addition to "any other penalties that may be assessed by a court of law for the underlying violations," is consistent with the meaning the Illinois courts ascribe to "any other penalty" in the context of enumerated offenses in Section 11-208.7(b) falls within the legislature's sentencing schemes that set forth uniform guidelines for sentencing including requirements with respect to sentencing and "any other penalties," but for the forfeiture statute, which is cited for the sole purpose of incorporating the criminal code.[6] It is also notable that at the time the legislature enacted

[6] *See e.g.*, 730 ILCS 5/5-4.5-50 (All felonies under the Illinois Criminal Code of 2012 carry a minimum fine of $75, which was may be reduced or waived by a court of law); 730 ILCS 5/5-4.5-55 (Class A misdemeanors carry a fine of $75, but not to exceed $2,500, and may be reduced or waived by a court of law); 730 ILCS 5/5-4.5-60 (Class B misdemeanors carry a fine of $75, but not to exceed $1,500, and may be reduced or waived by a court of law); 730 ILCS 5/5-4.5-65 (Class C misdemeanors carry a fine of $75, but not to exceed $2,500, and may be reduced or waived by a court of law). Chicago's reading of § 11-208.7

Section 11-208.7, it was simultaneously making significant revisions to the Criminal Code and the Forfeiture Act. *See supra*, 10-11 (discussing the General Assembly's response to *Smith v. Alvarez*, 558 U.S. 87 (2009).

The parameters of double jeopardy under the Illinois and United States Constitutions, and this Court's jurisprudence, further demonstrate the intent to proscribe penalties. For purposes of double jeopardy, forfeiture proceedings are considered remedial *in rem* proceedings that impose a civil sanction. *In re P.S.*, 175 Ill. 2d 79, 86 (1997) (the Court concluded that the forfeiture proceedings under the Forfeiture Act to be a mere civil sanction and, therefore, "the subsequent criminal prosecution for the same underlying conduct does not implicate double jeopardy concerns.").

Pursuant to the remedial framework set forth by the General Assembly, there is no possibility that an underlying criminal prosecution and subsequent forfeiture proceedings (including an incidental impoundment) could implicate the double jeopardy provision of the Illinois or Federal Constitutions because the underlying criminal prosecution is a criminal penal proceeding while the forfeiture proceeding is a civil *in rem* proceeding against a piece of property, not a person. Yet, when the City collects "administrative penalties" via its own administrative adjudication for the impoundment in addition to the underlying criminal prosecution and the *in rem* forfeiture proceeding, the "administrative penalties," which are without a doubt penal, violate the double jeopardy provisions of the Illinois and Federal Constitutions.

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would upset the statutory scheme and 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.

This Court has not yet had the opportunity to determine whether a penalty in this specific instance violates the Illinois Constitutional protection against double jeopardy, which provides: "No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense." ILL. CONST. 1970, art. I, § 10. The United States Supreme Court has established a test to determine whether a civil sanction can be deemed a penalty for double jeopardy purposes. *United States v. Ward*, 448 U.S. 242 (1980).[7]

As determined by the Supreme Court in *Hudson v. United States*, the proper analysis for determining if a civil sanction violates the Double Jeopardy clause is a two-part analysis, which was established in *Ward*. *Hudson v. United States*, 118 S. Ct. 488, 493 (1997) (citing *United States v. Ward*, 448 U.S. 242, 248 (1980)). First, in analyzing the statute at issue, courts must determine "whether the legislature, 'in establishing the penalizing mechanism indicated either expressly or impliedly a preference for one label or the other.'" *Id.* Here, the Impoundment Ordinance explicitly shows that Chicago intended for the sanction to be a penalty for the offense committed as it states "… 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 Chicago the amount of the administrative *penalty* prescribed for the code violation…" (C18-19) (emphasis added). The sanction is based on the underlying offense committed, supporting the conclusion that Chicago is intending to punish the individual for committing the offense. Also notable, Chicago admitted below that the purpose behind its Impoundment Ordinance is purely punitive. (C111).

[7] In *United States v. Halper*, 490 U.S. 345 (1989), the Supreme Court abrogated *Ward* in favor of a less stringent test but later abrogated the "unworkable" *Halper* test in favor of the *Ward* test. *Hudson v. United States*, 118 S. Ct. 488, 493 (1997).

The second part of the analysis is only necessary when the statute at issue shows an intent for a fee, which as established above is not the case here. *Hudson*, 118 S. Ct. at 493. Although the analysis can stop here under *Hudson*, the Impoundment Ordinance also satisfies the second prong articulated in *Hudson.* The administrative penalty is imposed for a punitive purpose, which if enforced violates the Double Jeopardy Clause. *Id.* If the statute at issue shows an intention for a fee, courts "'have inquired further whether the statutory scheme was so punitive either in purpose or effect,' as to 'transform what was clearly intended as a civil remedy into a criminal penalty.'" *Id.* (citing *Rex Trailor Co. v. United States*, 350 U.S. 148, 154 (1965)). In performing this inquiry, courts look to the factors listed in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-69 (1963). These factors include: "(1) 'whether 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.'" *Id.* At least five of the seven factors are clearly satisfied in the present case, showing that the penalties the Impoundment Ordinance imposes are punitive in purpose or effect.

First, the Impoundment Ordinance involves an affirmative restraint because Chicago will not release an impounded vehicle until the owner of the vehicle pays the penalty imposed, which varies as it is based on the underlying offense committed. Although the sanction does not restrain an individual in the traditional sense such as imprisonment,

"the use of one's automobile is certainly an important interest, and deprivation of it for more than a brief period could interfere severely with 'a person's ability to make a living and his access to both necessities and amenities of life.'" *Miller v. Chicago*, 774 F.2d 188, 192 (7th Cir. 1985) (quoting *Stypmann v. San Francisco*, 557 F.2d 1338, 1342-1343 (9th Cir. 1977)). Therefore, deprivation of one's vehicle is a restraint or a physical disability satisfying the first factor.

Second, the penalties at issue in the Impoundment Ordinance have "historically been regarded as a punishment." The amount of the penalties varies based on one of the several offenses enumerated in the Impoundment Ordinance, and all the offenses in the Impoundment Ordinance are criminal violations under Illinois law. Therefore, a penalty imposed based on the crime committed is a punishment for that crime satisfying factor two.

Third, the Impoundment Ordinance punishes individuals for various offenses, at least one of which, possession of a controlled substance, for example, prohibits a person from *knowingly* possessing a controlled substance, therefore, the penalty only comes into play on a finding of *scienter* satisfying factor three. *See* 720 ILCS 570/420.

Fourth, the Impoundment Ordinance indisputably serves a punitive purpose and promotes deterrence. The fines imposed can be up to $4,000 for one offense, therefore, the purpose of this fine cannot be said to be imposed to recover costs incurred. Again, Chicago previously admitted that the penalties serve a purely punitive purpose below satisfying factor four. (C111).

Fifth, all the offenses in the Impoundment Ordinance for which the penalty is imposed, are already considered crimes satisfying factor five. In analyzing these factors, it is clear that Chicago's Impoundment Ordinance does not impose a civil sanction as seen

in a typical forfeiture proceeding. The constitutional prohibition on punishing an individual twice for the same offense coupled with the legislature permitting only an administrative fee when crimes are committed during the use or operation of a vehicle, shows further support for the legislature's purpose in only permitting an administrative fee in this area. As such, Chicago's imposition of a fine in this area is impermissible. Clearly, the General Assembly did the above result. This demonstrates that Chicago's arguments that it can render Section 11-208.7 nugatory by ignoring it and imposing a draconian penalty, are incorrect.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully requests that this Court reverse the judgment of the circuit court and remand this case for further proceeding and trial.

Dated: March 23, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341 (d) cover, the Rule 341(h)(1) 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/ Charles F. Morrissey
Charles F. Morrissey

CERTIFICATE OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that on March 23, 2022, a copy of the foregoing Brief was filed electronically with the Clerk of the Illinois Supreme Court and was served on counsel of record, identified below, via email pursuant to Illinois Supreme Court Rule 11.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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AMENDED CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages 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/ Charles F. Morrissey
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2021 IL App (1st) 192423-U

No. 1-19-2423

Order filed July 9, 2021

Sixth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

RITA LINTZERIS, STEVEN MORAITIS, WILLIAMS MORAITIS, ZARON JOSSELL, and CLARENCE DANIELS, individually and on behalf of all others similarly situated,	)	Appeal from the Circuit Court of Cook County.
Plaintiffs-Appellants,	)	No. 17 CH 11365
v.	)	Honorable Anna M. Loftus, Judge, Presiding.
CITY OF CHICAGO, a Municipal Corporation,	)	
Defendant-Appellee.	)	

JUSTICE ODEN JOHNSON delivered the judgment of the court.
Presiding Justice Mikva and Justice Connors concurred in the judgment.

ORDER

¶ 1 *Held*: We affirmed where: (a) Chicago's section 2-615 (735 ILCS 5/2-615 (West 2016)) motion was properly granted because plaintiffs' complaint failed to state a claim upon which relief could be granted because Chicago's impoundment ordinance was not preempted by section 11-208.7 of the Illinois Vehicle Code (625 ILCS 5/11-208.7 (West 2016)); (b) the circuit court could have properly denied discovery where plaintiffs sought information that was irrelevant to the legal issues raised in the motion to dismiss; and (c) the circuit court properly denied plaintiffs' leave to

file an amended complaint where they had no statutory right to amend after the circuit court granted the motion to dismiss.

¶ 2 Plaintiffs Rita Lintzeris (Lintzeris), Steven Moraitis (Steven)[1], William Moraitis (William), Zaron Jossell (Jossell), and Clarence Daniels (Daniels) (collectively plaintiffs), individually and as class representatives filed suit against the City of Chicago (Chicago) challenging Chicago's authority to enact an ordinance which authorized the assessment of administrative penalties on owners of impounded vehicles and established administrative hearing procedures. The circuit court granted Chicago's section 2-615 (735 ILCS 5/2-615 (West 2016)) motion to dismiss with prejudice, and plaintiffs appealed.

¶ 3 On appeal, plaintiffs contend that: (1) the impoundment order is preempted by section 11-208.7 of the Illinois Vehicle Code (Vehicle Code) (625 ILCS 5/11-208.7 (West 2016)); (2) Daniels was deprived of his right to a hearing; (3) the circuit court's stay of plaintiffs' limited discovery requests was an abuse of discretion; and (4) the circuit court erred in granting Chicago's motion to dismiss and in denying plaintiffs' motion for leave to amend. For the following reasons, we affirm.

¶ 4 BACKGROUND

¶ 5 The underlying facts are not in dispute. Chicago enacted the impoundment ordinance in 1998, which allows it to impound vehicles under certain circumstances and impose administrative penalties based on the circumstances of the impoundment. The amount of the penalty varies based on the underlying violation; for example, $2000 when the vehicle contains or is used in the purchase of drugs; $2000 for driving under the influence of alcohol or other drugs; and $1000 for

[1] Steven was dismissed on plaintiffs' counsel's request on November 13, 2017.

driving with a suspended license. After a vehicle is impounded, the owner may within 15 days request a preliminary hearing to be held within 48 hours. At the hearing, an administrative law officer (ALO) determines whether there was probable cause to support the underlying violation. If so, the impoundment continues until the penalty, fees, and any other traffic violation debts owed to Chicago are paid. If the ALO finds no probable cause, the vehicle is released.

¶ 6 Additionally, the impoundment ordinance requires Chicago to notify the owner within 10 days of impoundment by certified mail of the owner's right to request a full hearing to challenge the violation. The owner must submit a written request for hearing within 15 days after the notice was mailed or otherwise provided, and the hearing must be scheduled no more than 30 days after a request has been filed. At the hearing, Chicago must show, by a preponderance of the evidence, that the vehicle was used in the violation. If, however, Chicago does not meet its burden, the vehicle is returned, and any previously paid penalties and fees are refunded.

¶ 7 In cases where the violation is sustained, the ALO enters an order finding the owner liable for the penalties and fees. If the owner does not pay or request judicial review within 10 days, Chicago is authorized to dispose of the impounded vehicle and collect unpaid judgments. When the owner seeks judicial review, Chicago cannot dispose of the vehicle until 10 days after a final judgment is rendered in favor of it.

¶ 8 If an owner fails to request or attend a full hearing, the owner is deemed to have waived his or her right to a hearing and the ALO enters a default order against the owner. Chicago may then dispose of a vehicle 10 days after the ALO's default decision becomes final. Nevertheless, the impoundment ordinance also provides a procedure for setting aside a default.

¶ 9 The Vehicle Code covers a variety of subjects related to vehicles and allows for concurrent and additional regulation by home rule units in section 11-207 (625 ILCS 5/11-207 (West 2016)). In July 2011, the General Assembly enacted section 11-208.7, administrative fees and procedures, for impounding vehicles for specified violations, which became effective January 1, 2012.

¶ 10 On August 18, 2017, plaintiffs filed the instant case in the circuit court of Cook County, chancery division, on behalf of themselves and a class of vehicle owners who either paid administrative penalties or had judgments entered against them for such penalties under Chicago's impoundment ordinance.[2] Plaintiffs are owners of vehicles that were impounded between August 2016 and April 2017.

¶ 11 Lintzeris owns a vehicle that Chicago impounded after her son was involved in an accident and subsequently arrested for possessing illegal drugs and driving while intoxicated on April 24, 2016. Two days later, Lintzeris paid the applicable administrative penalties and fees totaling $4210 and retrieved her vehicle. A full hearing was held on August 17, 2016, and the impoundment was sustained.

¶ 12 William's vehicle was impounded after his son, Steven, was arrested for driving on a suspended license on March 5, 2017. A full hearing was held on August 14, 2017, where Steven appeared in William's stead pursuant to a power of attorney, and the impoundment was sustained. William did not allege that he paid an administrative penalty as a result of the impoundment.

[2] Plaintiffs Lintzeris, Jossell and Daniels initially filed a nine-count complaint in federal court, raising fourth and fourteenth amendment challenges to the impoundment ordinance, as well as the state law claims raised in the circuit court. The federal claims were dismissed with prejudice on August 3, 2017; and the state claims were dismissed without prejudice. *Lintzeris v. City of Chicago*, 276 F. Supp. 3d 845, 852 (N.D. Ill. 2017).

¶ 13 Jossell owned a vehicle that was impounded when he was arrested for possession of a controlled substance on August 12, 2016. On August 17, 2016, he paid $2250 for the applicable penalty and fees and retrieved his vehicle. After a full hearing on October 17, 2016, the impoundment was sustained.

¶ 14 Daniels owned a vehicle that was impounded when he was arrested for driving while intoxicated on December 10, 2016. Daniels alleged that the notice he received from Chicago did not include the date, time and location of the hearing as required under the Illinois Vehicle Code (625 ILCS 5/11-208.7 (West 2016)). He further alleged that, because of the missing information, he did not appear for a hearing and a default judgment was entered against him. Daniels has not paid the penalty and fees required to retrieve his vehicle.

¶ 15 Count I of the complaint sought an order declaring that the impoundment ordinance was unenforceable and that all administrative findings of liability and defaults entered pursuant to the impoundment ordinance were null and void. Count II sought to enjoin Chicago from collecting any further administrative penalties. Counts IV and V claimed unjust enrichment and conversion and sought a refund of all administrative penalties Chicago had collected since 2012, as well as proceeds from the sale of impounded vehicles.

¶ 16 Chicago filed a motion to dismiss plaintiffs' complaint pursuant to section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)) on January 8, 2018. In its motion, Chicago argued that under section 2-615 (735 ILCS 5/2-615 (West 2016)) that plaintiffs' claims failed as a matter of law because the impoundment ordinance was not inconsistent with state law and was therefore not preempted by state law. Chicago additionally argued under section 2-619 (735 ILCS 5/2-619 (West 2016)) that plaintiffs failed to seek administrative review of the ALO's decisions, and further that Daniels

failed to exhaust his administrative remedies; accordingly, the circuit court lacked jurisdiction to hear plaintiffs' claims.

¶ 17 Plaintiffs sought leave to file a first amended complaint on February 20, 2018. Chicago filed a motion to stay discovery pending resolution of its motion to dismiss pursuant to Rule 201(c)(1) (Ill. S. Ct. R. 201(c)(1) (eff. May 29, 2014)), because the motion to dismiss was based on law not fact, therefore there was no purpose for discovery as it could not lead to any admissible facts. That rule allows the court on its own initiative or on motion of any party or witness to make a protective order denying, limiting, conditioning or regulating discovery to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or oppression. Ill. S. Ct. R. 201(c)(1) (eff. May 29, 2014). On February 26, 2018, the circuit court denied plaintiffs' motion to amend their complaint without prejudice, and continued Chicago's motion to stay discovery. [3]

¶ 18 A hearing on Chicago's motion to dismiss was held on January 17, 2019, after which the circuit court took the matter under advisement. The circuit court also granted plaintiffs leave to file the legislative history for section 11-208.7, which was filed on January 18, 2019.

¶ 19 On November 8, 2019, in a written memorandum opinion and order, the circuit court granted Chicago's motion to dismiss plaintiffs' complaint in its entirety and with prejudice. The court found that section 11-208.7 of the Vehicle Code did not restrict Chicago's imposition of administrative penalties because that section governed fees, not penalties, and therefore did not interact with the impoundment ordinance's penalty provisions. The court additionally found that section 11-208.7 did not restrict Chicago, as a home rule entity, from implementing its own hearing

[3] The record does not indicate any disposition of Chicago's motion to stay discovery.

and notice scheme. The court further stated that, even if section 11-208.7 applied, its notice provisions were directory, and no violation was actionable. The circuit court concluded that, because the remaining claims were derivative, once the core declaratory judgment claim is dismissed with prejudice, so too must the rest. The court added that its decision did not preclude plaintiffs from challenging their specific impoundments through the administrative process if they desired to do so.

¶ 20 Plaintiffs filed their timely notice of appeal on November 26, 2019.

¶ 21 DISCUSSION

¶ 22 On appeal, plaintiffs contend that: (1) the impoundment order is preempted by 625 ILCS 5/11-208.7 (West 2016); (2) Daniels was deprived of his right to a hearing; (3) the circuit court's stay of plaintiffs' limited discovery requests was an abuse of discretion; and (4) the circuit court erred in granting Chicago's motion to dismiss and in denying plaintiffs' motion for leave to amend.

¶ 23 A. Overall Standard of Review

¶ 24 This is an appeal from the trial court's grant of Chicago's section 2-615 (735 ILCS 5/2-615 (West 2016)) motion to dismiss plaintiffs' complaint in its entirety with prejudice. A section 2-615 motion to dismiss challenges the legal sufficiency of a complaint based on defects apparent on its face. *Pooh-Bah Enterprises, Inc. v. County of Cook*, 232 Ill. 2d 463, 473 (2009). A cause of action should not be dismissed pursuant to a section 2-615 motion unless it is clearly apparent that no set of facts can be proved that would entitle the plaintiff to relief. *Id.* In ruling on such a motion, only those facts apparent from the face of the pleadings, matters of which the court can take judicial notice, and judicial admissions in the record may be considered. *Id.* We accept as true all well-pleaded facts and all reasonable inferences that may be drawn from those facts. *Id.* However, a

plaintiff may not rely on mere conclusions of law or facts unsupported by specific factual allegations. *Id.* We review *de novo* an order granting a section 2-615 motion to dismiss. *Id.*

¶ 25 B. Preemption of Chicago's Impoundment Ordinance by the Illinois Vehicle Code

¶ 26 Plaintiffs first contend that the impoundment ordinance as a whole is preempted by section 11-208.7 of the Vehicle Code (625 ILCS 5/2-11.208.7 (West 2016)), and further that its notice provisions conflict with, and are preempted by it. They make several arguments in support of these contentions, namely that: (1) any inconsistent exercise of home rule power is preempted; and (2) the impoundment ordinance is inconsistent with section 11.208.7.

¶ 27 In order to address plaintiffs' issue on appeal, we must construe the statutory and ordinance provisions at issue. We construe statutes and municipal ordinances under the same principles. *Sullivan v. Village of Glenview*, 2020 IL App (1st) 200142, ¶ 23. We must ascertain and give effect to the intent of the legislative body. *Id.* at ¶ 24. We start with the plain language of the ordinance, given its ordinary meaning. *Id.* If the statute or ordinance is unambiguous, the judicial inquiry ends; we apply the language as written. *Id.* If, however, we find ambiguity in the language, we may resort to extrinsic aids to determine legislative intent. *Id.*

¶ 28 One of the fundamental principles of statutory construction is to view all provisions of an enactment as a whole. *Brucker v. Mercola*, 227 Ill 2d 502, 514 (2007). Accordingly, words and phrases must be interpreted in light of other relevant provisions of the statute and not construed in isolation. *Id.* Additionally, we interpret statutes as a whole, rejecting an interpretation that exalts one provision of a statutory scheme over another. *Van Milligan v. Department of Employment Security*, 373 Ill. App. 3d 523, 538-39 (2007).

¶ 29 In the case at bar, our determination involves a purely legal question. Pure questions of law, including questions of statutory construction, are reviewed *de novo*. *Solomon v. Scholefield*, 2015 IL App (1st) 150685, ¶ 15.

¶ 30 1. Home Rule Jurisprudence

¶ 31 Plaintiffs contend that the impoundment ordinance is an invalid exercise of Chicago's home rule, while Chicago contends that it is not. Home rule is based on the assumption that municipalities should be allowed to address problems with solutions tailored to their local needs. *Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 29. The home rule provisions of the 1970 Illinois Constitution were designed to drastically alter the relationship between our local and state governments. *Id.* Article VII, section 6(a) of the Illinois Constitution provides:

> "Except as limited by this Section, 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. 1970, art. VII, §6(a).

¶ 32 Section 6(a) was intended to give home rule units the broadest powers possible. *Palm*, 2013 IL 110505, ¶ 30. The Illinois Constitution also provides that the powers and functions of home rule units shall be construed liberally. Ill. Const. 1970, art. VII, §6(m).

¶ 33 However, the General Assembly may preempt the exercise of a municipality's home rule powers by expressly limiting that authority. *Palm*, 2013 IL 110505, ¶ 31. Under article VII, section 6(h), the General Assembly "may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit." Ill. Const. 1970, art. VII, §6(h). If the

legislature intends to limit or deny the exercise of home rule powers, the statute must contain an express statement to that effect. *Palm*, 2013 IL 110505, ¶ 31. If a statute does not expressly limit or deny home rule authority, a municipal ordinance and a state statute may operate concurrently as provided in article VII, §6(i):

> "Home 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 concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. 1970, art. VII, §6(i).

¶ 34 Under that section, home rule units may continue to regulate activities even if the state has also regulated those activities. *Palm*, 2013 IL 110505, ¶ 32. To restrict the concurrent exercise of home rule power, the General Assembly must enact a law specifically stating home rule authority is limited. *Id.* The General Assembly has codified that principle in section 7 of the Statute on Statutes, providing:

> "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 (West 2016).

¶ 35 Our supreme court has formally adopted section 7 as part of its home rule jurisprudence in *Schillerstrom Homes, Inc. v. City of Naperville*, 198 Ill. 2d 281, 287 (2001). Moreover, the legislature has enacted the Home Rule Note Act, which provides that "[e]very 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 (West 2016). Our supreme court has interpreted that provision as the legislature's recognition of its principal role in determining whether to preempt or limit home rule power and its responsibility to use specific language when doing so. *Palm*, 2013 IL 110505, ¶ 33.

¶ 36 Further, our supreme court has consistently recognized that the home rule provisions of the Illinois Constitution are intended 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.' " *Palm*, 2013 IL 110505, ¶ 34 (quoting *Scadron v. City of Des Plaines*, 153 Ill. 2d 164, 186 (1992), [Citation.]); *Schillerstrom Homes*, 198 Ill. 2d at 288. As such, our supreme court has concluded that if the constitutional design is to be respected, the courts should step in only in the clearest cases of oppression, injustice, or interference by local ordinances with vital state policies. *Scadron*, 153 Ill. 2d at 190.

¶ 37 2. Relevant Statutory Framework

¶ 38 We now turn our attention to the relevant ordinance and statutory framework at issue in the case at bar.

¶ 39 Section 1-2.1-2 of the Illinois Municipal Code (Municipal Code) provides as follows:

> "Administrative adjudications of municipal code violations. Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution. A "system of administrative adjudication" means the adjudication of any violation of a municipal ordinance, except for

(i) proceedings not within the statutory or the home rule authority of municipalities; and (ii) any offense under the Illinois Vehicle Code or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense under section 6-205 of the Illinois Vehicle Code. 65 ILCS 5/1-2.1-2 (West 2016).

¶ 40 Chicago's impoundment ordinance is codified in Chicago Municipal Code section 2-14-132. The portions of the impoundment ordinance relevant to this appeal provide as follows:

"(a)(1) Whenever the owner of a vehicle seized and impounded pursuant to * * * (for purposes of this section, the 'status-related offense sections'), or * * * (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.

* * *

(b)(1) 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.

(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.

* * *

(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. * * *" Municipal Code of Chicago, Ill. §§ 2-14-132 (a)(1), (b)(1)-(5), (c)(1) (Amend Coun. J. November 11, 2016).

¶ 41 Several sections of the Vehicle Code are also applicable to our discussion.

¶ 42 Section 11-207 provides as follows:

"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." 625 ILCS 5/11-207 (West 2016).

¶ 43 Section 11-208.2 provides as follows:

"Limitations 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." 625 ILCS 5/11-208.2 (West 2016).

¶ 44 Section 11.208.7 provides as follows:

"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:

* * *

(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

* * *

(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;

* * *

(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. * * *" 625 ILCS 5/11-208.7(a)-(b)(2), (6), (f) (West 2016).

¶ 45 3. Analysis

¶ 46 We begin by noting, as pointed out by Chicago, 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. We disagree.

¶ 47 The impoundment ordinance at issue was adopted by Chicago, which is a home rule unit of local government. Ill. Const. 1970, art. VII, §6(a). Home rule is based on the assumption that municipalities should be allowed to address problems with solutions tailored to their local needs. *Palm*, 2013 IL 110505, ¶ 29. As such, a home rule unit may exercise any power and perform any function pertaining to its government and affairs, including activities regulated by the State. *Id.* at ¶ 32. The Illinois Constitution gives home rule units the broadest powers possible, to the extent that the General Assembly does not specifically limit the concurrent exercise of those powers or specifically declare the State's exercise to be exclusive. *City of Chicago v. Roman*, 184 Ill. 2d 504, 513 (1998). Additionally, those powers are to be construed liberally. Ill. Const. 1970, art. VII, § 6(m); *Shachter v. City of Chicago*, 2016 IL App (1st) 150442, ¶ 40.

¶ 48 Also as noted above, if the legislature did not specifically limit or deny home rule authority, a municipal ordinance and a state statute may operate concurrently as provided by the Illinois Constitution. Ill. Const. 1970, art. VII, § 6(i). Additionally, such limitation or denial of home rule authority must be expressly stated. *Shachter*, 2016 IL App (1st) 150442, ¶ 41.

¶ 49 Section 11-208.7 expressly provides that any county or municipality may, consistent with its provisions, enact ordinances with procedures for the release of properly impounded vehicles

and for the imposition of a reasonable administrative fee, in addition to any towing or storage fees for impounded vehicles. 625 ILCS 5/11-208.7 (West 2016). By its plain language, Section 11-208.7 allows a county or municipality to impose administrative fees. However, contrary to plaintiffs' assertion, nowhere in that section 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. As noted above, when construing a statute, we give words their plain and ordinary meaning and if the statute is unambiguous, we apply the language as written. *Sullivan*, 2020 IL App (1st) 200142, ¶ 24. The plain language of section 11-208.7 provides for the collection of an administrative fee and does not preclude a home rule unit from imposing a fine.

¶ 50 This conclusion is further supported by the Municipal Code, which grants municipalities the ability to create a system of administrative adjudication of municipal code violations by ordinance in sections 1-2.1-2. 65 ILCS 5/1-2.1-2 (West 2016). Moreover, our supreme court has previously found that home rule units have the power to impose fines under the Illinois Constitution. See *Roman*, 184 Ill. 2d at 513-14 (home rule units do not have the power to define and punish felonies but are free to impose fines and jail sentences for less serious offenses). The impoundment ordinance is not inconsistent with the Vehicle Code and operates concurrently with the Vehicle Code. Accordingly, we hold that Chicago, as a home rule unit, was not preempted by the Vehicle Code from imposing an administrative penalty or fine in its impoundment ordinance, and further that enactment of such ordinance was a valid exercise of is home rule powers.

¶ 51 The same conclusion is warranted for plaintiffs' contention that the impoundment ordinance's notice provisions are inconsistent with section 11-208.7. The impoundment ordinance provides that the owner will be notified within 10 days by certified mail that the vehicle has been

impounded as well as their right to have a hearing. Section 11-208.7 similarly provides that there should be a reasonable attempt to notify the owner or lessee of the facts of the seizer and of their right to an administrative hearing; no time period is specified. The impoundment ordinance further allows the owner or lessee to request a hearing, within 15 days after the notice of impoundment was given, with such hearing to be no more than 30 days later. Section 11-208.7 provides that notice of a hearing shall be served by first class mail within 10 days after the impoundment and that the hearing shall be held no later than 45 days after the date of mailing of such notice. A reading of the plain language of the two provisions yields the conclusion that they are not inconsistent with one another.

¶ 52 Moreover, we find, as did the circuit court, that the notice provisions of section 11.208.7 are directory rather than mandatory where there is an absence of language specifying a particular consequence of noncompliance with the provision. *Lakewood Nursing and Rehabilitation Center, LLC v. Department of Public Health*, 2019 IL 124019, ¶ 33. A mandatory construction is supported only where the statute precludes further action and imposes a specific consequence in the event of noncompliance. *Id.* at ¶ 36. We also look to whether the right that the statute is designed to protect will be injured by a directory construction. *Id.* at ¶ 44. Here, the only rights referenced in section 11-208.7 are those of owners or lessees to receive notice of the right to a hearing and notice of the hearing upon impoundment of their vehicles, and we do not find those rights to be generally injured by a directory construction.

¶ 53 We further disagree with plaintiffs' argument that the circuit court failed to consider the application of the limitation on home rule units in section 11-208.2 to section 11-208.7. Plaintiffs contend that Chapter 11 applies uniformly throughout the State pursuant to two uniformity

provisions, and further that there is an express limiting provision on home rule units set forth in section 11-208.2 which excludes five specific sections that does not include section 11-208.7. Plaintiffs concede that none of the five exceptions are applicable to the present case.

¶ 54 Plaintiffs' conclusion that Chicago's ordinance is inconsistent with any provision of Chapter 11 is misplaced. Plaintiffs have not shown how the impoundment ordinance conflicts with any portion of Chapter 11, including section 11-208.2. Further, we have already concluded that section 11-208.7 did not preclude Chicago from enacting an ordinance to collect administrative penalties. We therefore find that the impoundment ordinance did not preclude Chicago from enacting the impoundment ordinance.

¶ 55 In light of our conclusion that the impoundment ordinance is not preempted by or inconsistent with section 11-208.7, it follows that Chicago's motion to dismiss was properly granted pursuant to section 2-615 (735 ILCS 5/2-615 (West 2016)) where plaintiffs have not asserted claims for which relief could be granted as a matter of law.

¶ 56 C. Stay of Discovery

¶ 57 Plaintiffs also contend that the circuit court abused its discretion in staying discovery on Chicago's motion. As noted above, the record contains no record of an order of the circuit court granting Chicago's motion to stay discovery.

¶ 58 Even assuming that the circuit court had granted Chicago's motion to stay discovery, a circuit court may properly stay or quash a discovery request when it has sufficient information upon which to rule on a motion to dismiss. *Evitts v. DaimlerChrysler Motors Corp.*, 359 Ill. App. 3d 504, 513 (2005). A court should not refuse a discovery request and grant a motion to dismiss where it reasonably appears discovery might assist the nonmoving party. *Id.* at 513-14. Discovery

is not necessary where a cause of action has not been stated. *Id*. at 514. Decisions concerning discovery motions are reviewed for an abuse of discretion. *Id*. at 513.

¶ 59 Here, Chicago filed a section 2-619.1 (735 ILCS 5/2-619.1 (West 2016)) motion to dismiss based on the pleadings, which alleged grounds for dismissal under 2-615 (735 ILCS 5/2-615 (West 2016)), failure to state a claim, and section 2-619 (735 ILCS 5/2-619 (West 2016)), the existence of an affirmative defense. The decision in this case turned on whether plaintiff's complaint was sufficient to state a cause of action, and whether an affirmative defense existed, regardless of any extrinsic evidence produced by discovery. Plaintiffs' discovery request sought Chicago's report to the legislature regarding the actual costs incurred by Chicago for administrative functions associated with the impoundment of vehicles, which would not supply evidence to support its cause of action as to whether section 11-208.7 preempted the impounded ordinance or contradict Chicago's affirmative defense. Such evidence would not have assisted plaintiffs in surviving the motion to dismiss, and the grant of such stay would not have been an abuse of the circuit court's discretion.

¶ 60 D. Leave to File First Amended Complaint

¶ 61 Finally, plaintiffs contend that the circuit court erred by denying their motion for leave to amend their complaint and for finding that no set of facts can be proven as a predicate to relief. Plaintiffs' proposed first amended complaint sought to add an additional plaintiff, and raised count I (declaratory judgment that the impoundment ordinance was preempted by section 11-208.7); count II (declaratory judgment that the City lacked jurisdiction to hold administrative hearings based on the impoundment ordinance if section 11-208.7 did not apply to home rule jurisdictions); count III (injunctive relief); count IV (unjust enrichment); count V (unjust enrichment based on

lack of jurisdiction if section 11-208.7 did not apply to home rule jurisdictions); and count VI (conversion). The record indicates that the circuit court initially denied plaintiffs' motion to amend without prejudice before ultimately granting Chicago's motion to dismiss with prejudice. The record does not indicate that plaintiffs refiled their motion for leave to amend the complaint; nor did they file a motion to reconsider prior to filing their notice of appeal.

¶ 62 When a complaint is dismissed with prejudice and does not include a statement allowing the plaintiff leave to amend, an involuntary dismissal order is final. *Compton v. Country Mutual Insurance Co.*, 382 Ill. App. 3d 323, 332 (2008). Where the circuit court's dismissal of plaintiffs' complaint constituted a final judgment, they had no statutory right to amend. *Id.* Additionally, as previously noted, the record does not indicate that plaintiffs ever renewed their motion for leave to amend, despite verbal discussion before the circuit court. Further, the grant of Chicago's motion to dismiss on the basis that the complaint failed to state a cause of action was a determination that there was no claim on which relief could be granted as a matter of law. Plaintiffs' adding of an additional plaintiff and additional counts based on the City's lack of jurisdiction to hold administrative hearings under the impoundment ordinance would, therefore, not cure a defective pleading, but would create an entirely different pleading. *Id.* at 333. We conclude that it was not error for the circuit court to deny plaintiff leave to file a first amended complaint.

¶ 63 CONCLUSION

¶ 64 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 65 Affirmed.

Notice of Appeal **(10/23/19) CCA 0256 A**

☐ **THIS APPEAL INVOLVES A MATTER SUBJECT TO EXPEDITED DISPOSITION UNDER RULE 311(a).**

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY **DEPARTMENT,** CHANCERY **DIVISION/DISTRICT**

Rita Lintzeris, William Moraitis, Zaron Jossell and Clarence Daniels, individually and on behalf of all others similarly situated

Plaintiff/ ◉ Appellant ○ Appellee

v.

City of Chicago, a Municipal Corporation

Defendant/ ○ Appellant ◉ Appellee

Reviewing Court No.: _____

Circuit Court No.: 17 CH 11365

Plaintiffs' **NOTICE OF APPEAL**

(Check if applicable. See IL Sup. Ct. Rule 303(a))(3).

☐ Joining Prior Appeal ☐ Separate Appeal ☐ Cross Appeal

Appellant's Name: Rita Lintzeris, et al.

◉ Atty. No.: 61390
○ Pro Se 99500

Name: Morrissey & Donahue, LLC

Address: 200 E. Randolph St., Suite 5100

City: Chicago

State: IL Zip: 60601

Telephone: 312-967-1200

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Appellee's Name: City of Chicago

○ Atty. No.: 90909
○ Pro Se 99500

Name: City of Chicago, Department of Law

Address: 30 N. LaSalle St., Suite 1230

City: Chicago

State: IL Zip: 60602

Telephone: (312) 744-0740

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Notice of Appeal **(10/23/19) CCA 0256 B**

An appeal is taken from the order or judgment described below:

Date of the judgment/order being appealed: 2/26/2018; 11/8/2019

Name of judge who entered the judgment/order being appealed: Kathleen Pantle and Anna Loftus

Relief sought from Reviewing Court:

Reversal of the 2/26/18 Order denying Plaintiffs' Motion for Leave to Amend their Complaint and entering and continuing Defendant's Motion to Stay Discovery, generally; Reversal of the 11/8/19 Order granting Defendant's Motion to Dismiss Plaintiffs' Complaint, with prejudice.

I understand that a *"Request for Preparation of Record on Appeal"* form (CCA 0025) must be completed and the initial payment of $70 made prior to the preparation of the Record on Appeal. The Clerk's Office will not begin preparation of the ROA until the Request form and payment are received. Failure to request preparation of the ROA in a timely manner, i.e., at least 30 days before the ROA is due to the Appellate Court, may require the Appellant to file a request for extension of time with the Appellate Court. A *"Request for Preparation of Supplemental Record on Appeal"* form (CCA 0023) must be completed prior to the preparation of the Supplemental ROA.

/s/ Charles F. Morrissey

To be signed by Appellant or
Appellant's Attorney

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT – CHANCERY DIVISION

Rita Lintzeris, William Moraitis, Zaron Jossell, and Clarence Daniels, Plaintiffs, v. City of Chicago, Defendant.	No. 17 CH 11365 Calendar 15 Hon. Anna M. Loftus Judge Presiding

MEMORANDUM OPINION & ORDER

This matter involves a dispute between Plaintiffs and the City of Chicago concerning the propriety of certain administrative penalties imposed by the City on impounded vehicles. Broadly speaking, Plaintiffs argue that a 2012 amendment to the Illinois Vehicle Code had the effect of preempting those portions of the Chicago Municipal Code providing for certain administrative penalties, and that the City's continued collection of those penalties is wrongful.

The plain language of the Illinois Vehicle Code regulates fees, not penalties. The City's imposition of penalties simply does not interact with the Code, and the core cause of action cannot stand.

To the extent Plaintiffs seek to raise issues concerning notice, the claims are not well-founded. The relevant portions of the Vehicle Code do not regulate the City, which has authority as a Home Rule entity to implement the notice scheme it has. Furthermore, even if the Vehicle Code applied, any violation would be technical, and not an actionable basis to invalidate the relevant provisions of the Municipal Code.

Plaintiffs' Complaint is dismissed, in its entirety and with prejudice, for the reasons stated below.

I. Background

The claims at issue concern the interplay between the City's Impoundment Ordinance and certain newer provisions of the Illinois Vehicle Code. Plaintiffs have each had a vehicle impounded, and have brought this case to address the claimed statutory conflicts.

A. The Impoundment Ordinance

The City of Chicago has occasion to impound vehicles for any number of reasons. For certain types of impoundment, the Municipal Code of Chicago permits the City to assess administrative penalties against the vehicle's owner. Regardless

of the reason for the impoundment, the Municipal Code sets forth mechanisms for the assessment of any monetary penalty or fee, and the administrative procedure to challenge the process. Section 2-14-132 provides, in relevant part:

> (a) (1) Whenever the owner of a vehicle seized and impounded pursuant to [referencing status-related offenses], or [referencing use-related offenses] 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 [the] request . . . . 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.
>
> [. . .]
>
> (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 [other outstanding fees]; or
> >
> > (B) the vehicle is sold or otherwise disposed of to satisfy a judgment or enforce a lien as provided by law.

Municipal Code of Chicago §2-14-132(a), (c) (hereinafter "MCC").

The Municipal Code also contains a number of other provisions, scattered throughout its various titles and chapters, outlining administrative penalties for each specific offense. For example, if a vehicle contains a controlled substance, or is

used in the purchase or sale of such, the record owner may be assessed an administrative penalty of $2,000, plus towing and storage fees. MCC §7-24-225(a). Collectively, these individual penalty provisions, enumerated in Section 2-14-132(a)(1), and the procedural provisions of Section 2-14-132 itself, are the Impoundment Ordinance.

Essentially, when the City impounds a vehicle, it may charge the owner with both the costs incurred through towing and storage, and an administrative penalty based on the reason for the impound. MCC §2-14-132(a). The City must then notify the owner within ten days. *Id.* §2-14-132(b)(1). The owner then has fifteen days to request a full hearing before the Department of Administrative Hearings ("DOAH"). *Id.* §2-14-132(b)(2). The DOAH hearing must occur within thirty days after the owner requests it. *Id.* If the owner fails to appear, they are defaulted. *Id.* §2-14-132(b)(4). Defaults can be vacated within twenty-one days, for good cause; or at any time, if notice was improper. *Id.* §2-14-108(a).

Though specific offenses and dollar amounts have varied over time, the Impoundment Ordinance, the imposition of administrative penalties, and the basic scheme as described above have been in effect since 1998.

B. The Illinois Vehicle Code

The Illinois Vehicle Code covers vehicular operation and regulation in the State, including traffic laws in the chapter entitled Rules of the Road. 625 ILL. COMP. STAT. 5/11-100 *et seq.* Unsurprisingly, that chapter provides that its provisions are to be uniform throughout the State, and that while other authorities can augment its requirements, "no local authority shall enact or enforce any ordinance rule or regulation in conflict with the provisions of this Chapter unless expressly authorized herein." *Id.* 11-207. The Code further provides that Home Rule units, such as the City of Chicago, cannot adopt inconsistent regulations, subject to exceptions not relevant here. *Id.* 11-208.2.

Until 2012, the Illinois Vehicle Code was silent as to impoundments. That changed on January 1, 2012, when Section 11-208.7 came into effect. Governing administrative fees and procedures for impoundment, that Section provides in relevant part as follows:

> (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: [enumerating violations].
>
> [. . .]
>
> (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.

625 ILL. COMP. STAT. 5/11-208.7(a), (b), (f). The remainder of the Section sets forth various minimum procedural requirements, along the same lines as the provisions of Section 2-14-132 of the City's Impoundment Ordinance.

C. Plaintiffs' Impoundments

The Complaint is pled as a putative class action, on behalf of all persons who paid administrative penalties under the Impoundment Ordinance after the January 1, 2012 implementation of Section 11-208.7 of the Illinois Vehicle Code. Because the Complaint is framed as such, each individual Plaintiff's factual circumstance is less relevant—in a proper class, the named plaintiff(s) would largely be fungible, because the underlying legal issues would predominate.

Nevertheless, because no class has been certified, the Court takes a moment to describe the factual allegations the Plaintiffs to make concerning their own impoundment events. The Court takes the allegations as true for the purposes of the present Motion to Dismiss. *In re Chicago Flood Litigation*, 176 Ill. 2d 179, 184 (Ill. 1997).

Rita Lintzeris owned a vehicle which her adult son used. Using the vehicle, her son was involved in an accident; he was arrested for DUI and possession of a controlled substance. The vehicle was impounded, and as the owner of record she paid $4,210, representing a $4,000 administrative penalty and $210 in towing and storage costs. She appeared at a DOAH hearing in August 2016 concerning the impoundment and unsuccessfully raised arguments substantially similar to those now being raised in this case.

Steven Moraitis was identified as a Plaintiff in the Complaint. He was voluntarily dismissed, with prejudice, on November 13, 2017.

William Moraitis owned a vehicle which his son, Steven, used. Steven was arrested for driving on a suspended license, and William's vehicle was impounded. William was assessed $6,780, representing a $1,000 administrative penalty and $5,780 in towing and storage costs.[1] At a DOAH hearing in August 2017, William objected through counsel, unsuccessfully raising similar arguments as those raised here.

Zaron Jossell was arrested in his vehicle for possession of a controlled substance. His vehicle was impounded, and he paid $2,250, representing a $2,000 administrative penalty and $250 in towing and storage costs. He also appeared at a DOAH hearing in October 2016 and unsuccessfully raised arguments similar to those raised here.

Clarence Daniels was arrested for DUI and his vehicle impounded in December 2016. He alleges that he did not receive notice of any DOAH hearing, was defaulted, and the City imposed an administrative penalty of $2,000.[2] The Complaint further alleges that his vehicle remains impounded, though at hearing Plaintiffs' counsel suggested that the vehicle had been sold in the time since the Complaint was filed. Hrg. Tr. 31:16–22.[3]

D. Procedural History

Plaintiffs Lintzeris, Jossell, and Daniels first raised their claims in federal court, filing a nine-count complaint which raised Fourth and Fourteenth Amendment challenges to the Impoundment Ordinance, as well as state law claims before the Court today. The federal claims were dismissed with prejudice on August 3, 2017; absent a federal anchor, the state claims were dismissed without prejudice. *Lintzeris v. City of Chicago*, 276 F. Supp. 3d 845, 852 (N.D. Ill. 2017).

Plaintiffs filed the present Complaint thereafter, on August 18, 2017. It presents four counts addressing the same underlying statute. Count I seeks a

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[1] Whereas the Complaint alleges that the other Plaintiffs paid their fines, it is unclear from the Complaint whether these penalties were paid. Complaint, ¶77. *See* Part III.E.2 *infra* (standing to claim unjust enrichment and conversion).

[2] The City asserts, in a footnote, that Daniels was indeed sent proper notice. Reply, p.15 n.2. The Court points out, in this footnote, that even if the City is correct, the analysis here assumes that the well-pled allegations—here, that the City "failed to provide notice to Plaintiff Daniels"—are true. Complaint, p. 18. Whether discovery would uncover a fatal factual defect in a claim does not affect whether the claim is properly legally pled in the first place.

[3] All citations to the hearing transcript refer to proceedings before this Court on January 17, 2019.

declaration that the Impoundment Ordinance is contrary to the Illinois Vehicle Code, and therefore that judgments entered on it are null and void. Count II requests an injunction against the collection of further administrative penalties. Count III is for unjust enrichment, seeking a refund of all administrative penalties imposed upon and revenue from vehicles sold after January 1, 2012, estimated at approximately $43 million and $18 million, respectively. Finally, Count IV for conversion essentially parallels Count III on a different theory.

The City has moved to dismiss. The Motion was fully briefed and argued, and the Court took it under advisement for the issuance of the present written opinion. The Court now rules.

II. Legal Standard

The City's Motion combines challenges to the Complaint under both Sections 2-615 and 2-619. The Motion is properly brought under Section 2-619.1. 735 ILL. COMP. STAT. 5/2-619.1.

The Section 2-615 portions of the motion challenge the legal sufficiency of the Affirmative Defense and of the Counterclaim based on defects apparent on the face of the pleadings. 735 ILL. COMP. STAT. 5/2-615(a). In such an analysis, the Court accepts as true all well-pleaded facts and inferences stemming therefrom. The essential question is whether the allegations, "when construed in the light most favorable to the [non-moving party], are sufficient to establish a cause of action upon which relief may be granted." *Blumenthal v. Brewer*, 2016 IL 118781, ¶19.

The Section 2-619 portions of the motion also require that the Court accept as true all well-pleaded facts and their attendant inferences. The Section 2-619(a)(9) arguments raised by Defendant seek a dismissal upon a showing of other affirmative matters, outside the four corners of the complaint, which defeat the claim in whole or in part. *Alford v. Shelton (In re Estate of Shelton)*, 2017 IL 121199, ¶21.

Under either standard, should the allegations be insufficient, the Court may consider permitting or requiring amendment as appropriate. 735 ILL. COMP. STAT. 5/2-615(d), 2-616(a); *see also Loyola Academy v. S & S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273–76 (Ill. 1992). Nevertheless, if the underlying legal theory is flawed such that no cause of action could be stated, amendment would be futile. *Regas v. Associated Radiologists*, 230 Ill. App. 3d 959, 968 (1st Dist. 1992) (discussing *Loyola Academy* factors).

III. Motion to Dismiss

The core question presented is whether Section 208.7 of the Illinois Vehicle Code restricts the City's imposition of administrative penalties. The Court holds that it does not: Section 208.7 governs fees, not penalties, and therefore does not interact with the Impoundment Ordinance's penalty provisions. To the extent that Plaintiffs seek to challenge the interaction between Section 208.7's *notice* provisions

and the Impoundment Ordinance, Section 208.7 does not restrict the City, as a Home Rule entity, from implementing its own hearing and notice scheme. Even if Section 208.7 applied, its notice provisions are directory, and no violation is actionable. Finally, because the remaining claims are derivative, because the core declaratory judgment claim must be dismissed with prejudice, so too must the rest.

A. Standing

As a threshold matter, the City argues Plaintiffs lack standing to raise their substantive claims of statutory conflict because they failed to exhaust their administrative remedies. Indeed, Plaintiffs did not even seek administrative review of the DOAH decisions that actually imposed the challenged administrative penalties. The City rightly points out that DOAH is an administrative proceeding, and as such the Administrative Review Law provides the proper mechanism for appeal therefrom. MCC §2-14-102 (adopting Administrative Review Law). In administrative review, failure to seek judicial review of an administrative decision bars further review of that decision. 735 ILL. COMP. STAT. 5/3-102.

Here, the City styles Plaintiffs' arguments as being challenges to the administrative penalties DOAH imposed. Furthermore, three of the named Plaintiffs here did raise their substantive claims before DOAH, which rejected them. Complaint, ¶¶65 (Lintzeris), 75 (Moraitis), 83 (Jossell); *see also* Hrg. Tr. 22:4–7.[4] Therefore, argues the City, if Plaintiffs wished to further challenge the administrative penalties, they should have sought direct administrative review of the final DOAH decisions.

Plaintiffs acknowledge the general principle that exhaustion of remedies is necessary, but invoke six exceptions to the doctrine, some more creative than others. Response, pp. 2–8. But, and perhaps most compellingly, Plaintiffs point to discussion in a recent First District case, *Maschek v. City of Chicago*. The plaintiff in *Maschek*, representing a putative class, challenged the City's practice of using speed traps near schools, arguing that the City was only authorized to use them on school days, and he was caught on a different day. 2015 IL App (1st) 150520, ¶13. Just as it does here, the City there raised standing by way of failure to pursue an administrative appeal. *Id.* ¶46. But the *Maschek* court soundly rejected the City's argument:

> An aggrieved party may seek judicial review of an administrative decision without first exhausting administrative remedies for several reasons, including: 'when [1] no issues of fact are presented or [2] agency expertise is not involved,' or '[3]

[4] The missing Plaintiff, Daniels, did not make such an argument: his claim, and that of putative Subclass 2, is premised on a lack of notice of the DOAH hearing in the first place. The Court generally agrees with the City that this puts Daniels, and his Subclass, in a substantially different position with respect to standing. The Court need not determine whether Daniels has standing, because the remaining Plaintiffs do, permitting the Court to reach the underlying substantive claims in any event.

> where the agency's jurisdiction is attacked because it is not authorized by statute.' In the case at bar, all three quoted exceptions apply. First, no issues of fact are presented, since plaintiff does not contest that he was speeding. Second, the agency's expertise is not involved, since this case does not require a resolution of whether plaintiff did or did not violate the law. Third, plaintiff attacks the City's jurisdiction or authority to issue the ticket, claiming that it was not authorized by statute.

Maschek, 2015 IL App (1st) 150520, ¶47 (internal citations omitted, and numbering added for clarity). All three of the exceptions identified in *Maschek* are present here.

First, Plaintiffs present no issues of fact. Despite the liberal sprinkling of the word "allegedly" in their factual recitations, it is clear that Plaintiffs do not actually raise any factual disputes. *See* Complaint ¶¶59–60 (Lintzeris), 71 (Moraitis), 78 (Josell), 84 (Daniels). They do not challenge the imposition of administrative penalties based on whether the underlying conduct actually occurred; rather, they challenge whether *any* administrative penalties could ever be properly imposed through the DOAH hearing process pursuant to the Impoundment Ordinance.

Second, DOAH's agency expertise is not involved. As in *Maschek*, "this case does not require a resolution of whether plaintiff[s] did or did not violate the law." *Maschek*, 2015 IL App (1st) 150520, ¶47. Plaintiffs asked DOAH to consider whether its own procedure was proper. As Plaintiffs allege, DOAH—properly—refused to entertain such arguments, because they are of a fundamentally different character than the issues to be resolved in administrative proceedings. *See* Complaint ¶¶ 65–66; Hrg. Tr. 23:2–6.

Third, and perhaps most squarely in line with the issues in *Maschek*, Plaintiffs here directly attack the City's "jurisdiction or authority" to impose administrative penalties, claiming that such penalties are not authorized by statute. The mechanism of the challenge differs—the issue in *Maschek* hinged on the definition of "school day," while the issue here concerns the effect on a later-implemented state statute on a municipal ordinance—but the nature of the challenge is legally the same.

Finally, *Maschek* provides a clean distinction between what Plaintiffs may challenge here. In that case, the plaintiff did "not contest either that he was speeding or the amount of the fine for this type of violation. His dispute is not with the underlying violation or the fine, but with the City's means of enforcement." *Maschek*, 2015 IL App (1st) 150520, ¶46. That language, applicable almost verbatim here, offers a neat bright line: if Plaintiffs wish to challenge the facts of the underlying violations, they must do so by means of an administrative review action, which would incidentally require the sort of fact-based analysis generally disfavored in the class context. But if they wish to challenge DOAH's broader

jurisdictional authority generally, the proper mechanism to do so is with a separate action—by this action.

Thus, Plaintiffs Lintzeris, Moiatis, and Jossell[5] have standing to bring their substantive claims concerning conflicts between the Impoundment Ordinance and the Illinois Vehicle Code.

B. Section 208.7, Fees, and Penalties

The lead issue in this case is whether Section 208.7's authority to collect fees interferes with the City's collection of administrative penalties. The Court holds that it does not, because the plain language of Section 208.7 concerns fees, not penalties. Plaintiffs' reading would add a statutory limitation where none exists.

The plain language of the statute is dispositive of the issue. Even if arguments concerning statutory construction were relevant, however, Plaintiffs' proposed reading would contradict the clearly expressed legislative intent underlying Section 208.7. That Section only grants authority to impose fees, and neither restricts authority generally, nor regulates penalties at all. Enforcement of the Impoundment Ordinance therefore does not conflict with the statute.

1. Penalties and Fees

As an initial matter, the Court observes the clear distinction between penalties and fees. The caselaw concerning monetary charges assessed by municipalities distinguishes between the language of fines and fees; it is axiomatic that "Fees and fines serve different purposes." *Carter v. City of Alton*, 2015 IL App (5th) 130544, ¶37. Specifically, a fee is intended to recover costs incurred, while a fine is intended as a punitive or deterrent measure. *Id.* (citing *People v. Jones*, 223 Ill. 2d 569, 581–82 (Ill. 2006)). When characterizing a monetary charge as a fee or fine, it is the purpose of the charge that controls its categorization. *See, e.g., People v. Ratliff*, 282 Ill. App. 3d 707 (2d. Dist. 1996) (characterizing "penalty" as a remedial fee, rather than fine); *Jones*, 223 Ill. 2d at 600 (fee is "clearly a fine, the label notwithstanding"); *Carter*, 2015 IL App (5th) 130544, ¶¶23–26 (insufficient evidence to characterize charge as fee or fine at pleadings stage). And, generally speaking, municipalities have broader authority to impose fines than fees. *Id.* at ¶37 (citing *People v. Gildart*, 377 Ill. App. 3d 39, 41 (1st Dist. 2007)).

Here, it is undisputed that the City's administrative penalties are fines, as opposed to fees. *See Sloper v. City of Chicago*, 2014 IL App (1st) 140712, ¶¶25–28 (administrative penalties under Impoundment Ordinance are fines, but do not run afoul of Constitutional prohibition against excessive fines). The Court uses the language of the Impoundment Ordinance and refers to "administrative penalties," on the understanding that the penalties are fines, and not fees, within the scope of the interpretive caselaw.

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[5] These three Plaintiffs are sufficient to present the case for review on the merits. Because the underlying claim fails as a matter of law, the Court need not determine whether Plaintiff Daniels has standing at this time: whether he does or not, he does not have a claim to bring. *See* note 4 *supra* (sidestepping discussion of Daniels).

2. Prior Penalty Authority

It is likewise undisputed that, prior to enactment of Section 208.7, the City had authority to impose administrative penalties. The general scheme of Home Rule units assessing administrative penalties under impoundment ordinances was given constitutional sanction directly in the *McGrath* case, which concerned a similar Kankakee ordinance. *McGrath v. City of Kankakee*, 2016 IL App (3d) 140523, ¶¶18–25. And the City of Chicago's Impoundment Ordinance has itself withstood prior legal challenges on a variety of grounds. *See People v. Jaudon*, 307 Ill. App. 3d 427 (1st Dist. 1999) (broad challenge to Ordinance's predecessor); *Sloper*, 2014 IL App (1st) 140712 (administrative penalties not unconstitutionally excessive fines). *Accord Tabor v. City of Chicago*, 2014 IL App (1st) 133742-U, ¶15 (lack of spousal testimonial privilege exception in Ordinance not problematic).

The narrow issue before the Court is therefore whether Section 208.7 changed any of this analysis, or impacted the City's established authority to impose administrative penalties.

3. Statutory Interpretation

The primary principle of statutory interpretation is to give effect to the intent of the legislature. The best evidence of legislative intent is the plain language of the statute. Consequently, where the statutory language is clear, that language is conclusive, and is to be applied directly, without resort to other principles of statutory construction. *Hadley v. Ill. Dep't of Corr.*, 224 Ill. 2d 365, 371 (Ill. 2007) (citations omitted).

i. Plain Language

Here, the plain language of Section 208.7 provides that "Any county or municipality may, consistent with this Section, provide . . . for the imposition of a reasonable administrative fee." 625 ILL. COMP. STAT. 5/11-208.7(a). As discussed above, fees and penalties are distinct sanctions. *See* Part III.B.1 *supra*. The plain language of Subsection (a) is thus unambiguous in referring solely to fees, and not to penalties. Because the statute does not assert to regulate penalties, the Impoundment Ordinance's provisions authorizing imposition of administrative penalties do not, and in fact cannot, conflict with Section 208.7.

Plaintiffs assert that the statute "specifically limit[s] relief to the collection of 'reasonable administrative *fees*'," and that therefore penalties are excluded. Response, p.12 (emphasis in original). But the statute contains no such language of exclusion. It does not state that municipalities may provide for the imposition of fees *only*, thus limiting municipal authority. Rather, it grants authority to collect *fees*, and is silent to other actions which a municipality may take.

The plain language is a grant of authority, and Plaintiffs would read it to include a parallel limitation of authority. As a matter of statutory interpretation, the Court cannot read words of limitation, exception, or condition into a statute that are simply not there. *People v. Glisson*, 202 Ill. 2d 499, 505 (Ill. 2002).

ii. Other Portions of Section 208.7

The plain language of a statute should be evaluated when taking the statute as a whole, as opposed to reading phrases in isolation. *Glisson*, 202 Ill. 2d at 505. With this in mind, the Court notes that two portions of Section 208.7 *do* discuss penalties: Subsections (c) and (i). Just as with the plain language of Subsection (a), however, neither reference to penalties contains any sort of limitation. Section 208.7 is a grant of authority for fees, not a limitation on penalties, and in this respect it is internally consistent.

First, Subsection (c) provides five requirements on the fees which may be assessed under Section 208.7. One of the requirements is that "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[.]" 625 ILL. COMP. STAT. 5/11-208.7(c)(2). Plaintiff points to this subsection as an indication that the General Assembly meant to bar administrative agencies, such as DOAH, from imposing penalties, because they are not a "court of law" as the statute states. Plaintiff reads this language as "delegat[ing] the imposition of penalties/fines to neutral judicial tribunals, as opposed to administrative tribunals controlled by municipalities." Response, p.13; *see also* Hrg. Tr. 24:20–25:10 (Jan. 17, 2019).

This reading is misplaced. Subsection (c) does not delegate anything; indeed, the whole point of Section 208.7 is to permit *municipalities* to impose fees. Subsection (c) simply acknowledges that any fees imposed under Section 208.7 are to stack with (i) penalties imposed by a court and (ii) towing and storage fees. It does not provide that those are the only other monetary sanctions which may be imposed. To read it as such would impose a limitation and transform the Subsection from its plain language, which addresses the fees only.

Second, Subsection (i) is a simple enforcement provision, stating in relevant part that "any fine, penalty, or administrative fee imposed under this Section . . . may be enforced in the same manner as a judgment entered by a court of competent jurisdiction." 625 ILL. COMP. STAT. 5/11-208.7(i). Neither party discusses the Subsection, but the Court notes that the presence of the word "penalty" does not affect the above calculus.

Subsection (i) contemplates imposition of penalties, but no other provision of Section 208.7 authorizes penalties. This alone makes it self-evident that Section 208.7 is not intended to prohibit penalties—for if it did, why acknowledge that penalties might still exist? On Plaintiffs' reading of Subsection (a), penalties could never be imposed. This would make the reference to penalties in Subsection (i) meaningless, which is contrary to well-established principle of statutory interpretation. *Glisson*, 202 Ill. 2d at 505.

Furthermore, Section 208.7 both authorizes the imposition of fees and establishes notice procedures for fee proceedings. Recall that municipalities generally have broader authority to impose fines than fees. *Carter*, 2015 IL App (5th) 130544, ¶37 (citing *Gildart*, 377 Ill. App. 3d at 41). While it would be theoretically possible for a municipality to establish a hearing procedure for fees under Section 208.7 and have a *separate* procedure for penalties, that would be

roundabout and inefficient. Subsection (i) recognizes that, if a municipality complies with Section 208.7 and imposes fees, it may very well impose penalties at the same time. And, if the municipality's Section 208.7 procedure results in concurrent imposition of fees and penalties, Subsection (i) simply provides for uniformity in enforcement of *any* monetary sanction, however reached.

4. Statutory Construction

As noted above, when the plain language of the statute admits of only one interpretation, it is dispositive of the inquiry. *Hadley*, 224 Ill. 2d at 371. Because Section 208.7 is unambiguous, the Court is bound to apply it as written, without further reliance on principles of statutory construction. *Id.*; *Taylor v. Pekin Ins. Co.*, 231 Ill. 2d 390, 395 (Ill. 2008). But, even if Section 208.7 contained some degree of ambiguity as to whether it prohibited the imposition of penalties, further analysis with tools of statutory construction would lead to the same conclusion: it does not, and was never intended to.

The background and legislative history of a statute are instructive in determining the intent of the General Assembly. *Chicago Tribune Co. v. Johnson*, 106 Ill. 2d 63, 69–70 (Ill. 1985). It is particularly appropriate to examine where, as here, the Court is presented with transcripts of legislative debate, and the original bill's sponsor's remarks. *Krohe v. City of Bloomington*, 329 Ill. App. 3d 1133, 1137 (4th Dist. 2002).

Section 208.7 was adopted July 14, 2011, by Public Act 97-109. It originated in the House of Representatives as House Bill 1220, and in that respect was brought before the House for its third reading on March 31, 2011. In that debate, the bill's sponsor, Representative Zalewski, had occasion to explain what, exactly, H.B. 1220 was designed to accomplish.[6]

If a municipality had occasion to make an arrest for, say, DUI, Representative Zalewski explained, that would often entail additional work at the time of the arrest: waiting for the tow truck to arrive, recovering the arrested driver and vehicle, running paperwork, and so forth. These efforts took time and incurred costs; municipalities wanted to recover those costs by imposing fees. H. Tr. 142–43 (97th G.A., May 31, 2011) (statement of Rep. Zalewski). Home Rule entities had clear authority to impose fees, but non–Home Rule municipalities did not necessarily have the same authority. But, many non–Home Rule municipalities were imposing fees anyway. *Id.* at 143, 145.

And so, H.B. 1220 was designed to give non–Home Rule municipalities statutory authority to do what Home Rule entities already were. In Representative Zalewski's words, "This is not anything new that we're doing. We're simply codifying what's going on already." *Id.* at 145 (statement of Rep. Zalewski).

These comments have relevance to the City's Home Rule status, discussed below. But they also evidence a clear intent that Section 208.7 was not intended to

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[6] The transcript from H.B. 1220's consideration in the Senate was provided, but is not particularly informative; no one had much to say about it. S. Tr. 8–9 (97th G.A., May 26, 2011) (Senate discussion of H.B. 1220).

do anything new, but simply ratify fee authority—and certainly not affect fees. The Court has scrutinized the transcript closely, and can find no comments concerning *penalties*. *See generally id.* at 138–47 (House discussion of H.B. 1220). And the comments concerning fees make it clear that, in the eyes of the General Assembly, H.B. 1220 would not change anything, and certainly not make the substantial change that a penalty prohibition would entail:

> We are giving non–Home Rule entities the authority under state statute, which a lot of them are already doing this under less than ideal circumstances, but we're giving it to them in state statute the authority to impose fees.

H. Tr. 143 (97th G.A., May 31, 2011) (statement of Rep. Zalewski).

> Zalewski: Representative, just to be crystal clear, currently [Non–Home Rule entitles] . . . are already doing these impoundments and these tows and administering these fees. [The] question before the Body is, are we going to regulate it appropriately through state statute or allow it up to village attorneys to make, frankly, sometimes inconsistent decisions? This is not anything new that we're doing. We're simply codifying what's going on already.
>
> Flowers: And so, what exactly are you codifying?
>
> Zalewski: We're allowing non–Home Rule entities that don't have this power under Home Rule to impose fees for the purposes of tows after arrest.

Id. at 145 (statements of Reps. Zalewski and Flowers)

> This Bill is . . . a very limited Bill that simply clarifies that non–Home Rules are allowed to impose administrative towing fees. There's nothing else. . . there's no more tows or less tows or more arrests or less arrests that are going to be added because of this Bill. We're just simply giving some guidance and some clarification to non–Home Rule entities.

Id. at 146 (statement of Rep. Zalewski).

Prior to Section 208.7, it is undisputed that the City had authority to impose administrative penalties. *See* III.B.2 *supra*. If Section 208.7 was intended to abridge that well-established authority, surely someone would have said so. The legislative history evidences quite the contrary: it was intended solely to ratify what was already happening by *granting*, rather than revoking, authority. This much is

evident from the first sentence of the statute: "Any county or municipality *may* . . . ." 625 ILL. COMP. STAT. 5/11-208.7(a) (emphasis added).

Reading Section 208.7 as Plaintiffs request, to bar the City from imposing administrative penalties, runs counter to both the plain language of and the exceedingly clear legislative intent behind the statute. The Court will not do so.

C. Home Rule Status

Separate and apart from whether Section 208.7 covers the administrative penalties at issue, the parties engage in a secondary dispute over whether the Section applies to Home Rule units, such as the City, at all. Plaintiffs urge that it does, citing the broad language of the statute, the uniformity provisions of the Illinois Vehicle Code generally, and the fact that it is a procedural statute. The City disagrees, discussing preemption and other Constitutional concerns.

The Court begins its analysis with the plain language of Section 208.7. Here, and unlike with the discussion of fees and penalties, the language is ambiguous. The legislative history of the statute is unfortunately ambiguous as well; the General Assembly itself has not been consistent on this point. Nevertheless, the most reasonable reconciliation of the conflicted expressions of intent is that Section 208.7 does not apply to Home Rule units. This conclusion is consistent with the broadly stated purpose of the statute, the limited caselaw on point, and the principles of Home Rule authority.

Because the Court concludes that Section 208.7 does not apply to Home Rule units, it need not reach the other arguments advanced.

1. Statutory Interpretation

Section 208.7 was implemented in 2011, effective January 1, 2012. P.A. 97-109; *see also* Part III.B.4 *supra* (legislative history). Since then, it has been amended a number of times. Relevant here, the 2016 Statewide Relocation Towing Licensure Commission Act added Subsection (j) to Section 208.7. P.A. 99-848 (eff. Aug. 19, 2016). Subjection (j) specifically exempts Home Rule units from certain fee limitations in Subsections (b) and (g)(6). The fee limitations are not relevant here, but the amendment is: the text of the 2016 amendment renders the statute ambiguous.

i. The Original Statute

Briefly setting aside the changes wrought by the 2016 amendment, the remainder of Section 208.7 gives no indication that it applies to Home Rule units. It consistently refers to the subjects of its regulation as a "county or municipality." *E.g.*, 625 ILL. COMP. STAT. 5/11-208.7(a), (c)(4), (e)(1)–(3), (g)(3)–(4), (g)(6). This directly contrasts with the remainder of the Illinois Vehicle Code, which includes Home Rule units by name when it chooses to. *See, e.g., id.* 11-208.6(c) (referring explicitly to "county or municipality, including a home rule county or municipality").

For this reason, it is almost a given that Section 208.7 does *not* apply to Home Rule units. There are two reported cases that contain discussion of Section

208.7: *Carter* and *Hayenga*.[7] *Carter* simply notes as an aside that the statute only applies to non–Home Rule municipalities. *Carter v. City of Alton*, 2015 IL App (5th) 130544, ¶44. *Hayenga* asserts, quite bluntly, that "The plain and ordinary language of subsection (a) grants non-home-rule units the power to enact ordinances to establish procedures for the release of 'properly impounded vehicles' and for the imposition of reasonable fees." *Hayenga v. City of Rockford*, 2014 IL App (2d) 131261, ¶25. Notably, *Hayenga* does not concern further discussion of this point, because the parties did not even contest it: the statute applied to non–Home Rule entities only.

ii. The 2016 Amendment

But in the time since *Carter* and *Hayenga*, however, Section 208.7 has been amended to add Subsection (j). That Subsection specifically exempts Home Rule units from certain fee provisions. 625 ILL. COMP. STAT. 5/11-208.7(j). If Section 208.7 did not cover Home Rule units, then Subsection (j) would not make logical sense, for why exempt Home Rule units from a statute that never applied to them?

The plain language of the statute does not unambiguously resolve this seeming contradiction. Section 208.7 is therefore ambiguous, and must be examined with the tools of statutory construction.

2. Statutory Construction

As before, the Court turns to the legislative history of Section 208.7 to determine the General Assembly's intent. *Johnson*, 106 Ill. 2d at 69–70. It is also particularly appropriate to examine the transcripts of legislative debate concerning the statute and its various amendments. *Krohe*, 329 Ill. App. 3d at 1137.

This examination reveals two clear facts. First, Section 208.7 was never intended to apply to Home Rule units. Second, despite this, subsequent amendments and debate make it clear that some persons think it did.

i. Original Intent

It was never the intent of the General Assembly to have Section 208.7 govern Home Rule units. This much is evident from the repeated comments in the legislative history that the intent was to grant authority to non–Home Rule units to do something that Home Rule units could already do. *See* Part III.B.4 *supra* (quoting history at length); *see, e.g.*, H. Tr. 146 (97th G.A., May 31, 2011) (statement of Rep. Zalewski) ("We're allowing non–Home Rule entities that don't

[7] The Court can find four cases in total: *Carter* and *Hayenga*, discussed below; *Christian v. Springfield*, a Rule 23 decision which string-cites the statute solely to note that it was not raised on appeal; and *Lintzeris v. Chicago*, the federal district court decision that preceded this case, solely for the proposition that the argument was not properly before the federal court at all. *Christian v. City of Springfield*, 2015 IL App (4th) 140587-U, ¶76; *Lintzeris v. City of Chicago*, 276 F. Supp. 3d 845, 849, 852 (N.D. Ill. 2017).

have this power under Home Rule to impose fees."); *accord, e.g., Hayenga*, 2014 IL App (2d) 131261, ¶25.[8]

But original intent is not always dispositive, and subsequent statutory changes must be taken into account. *See generally, e.g., DeGrand v. Motors Ins. Corp.*, 146 Ill. 2d 521 (Ill. 1992) (reviewing numerous subsequent amendments in determination of statutory intent); *People v. Harper*, 392 Ill. App. 3d 809, 818 (1st Dist. 2009) (history and amendments useful to determine intent).

ii. 2013 Funeral Amendment

Two years after Section 208.7 became law, the General Assembly amended it to add Subsection (b)(13), which expands the list of code violations that could justify imposition of fees by enumerating the offenses of driving in a reckless manner while in a funeral procession, and driving in a reckless manner so as to interfere with a procession. P.A. 98-518; 625 ILL. COMP. STAT. 5/11-208.7(b)(13). By itself, this amendment is irrelevant to the present issue. But the legislative history sheds crucial light on why it came to be.

The 2013 amendment originated with a legislative push from Chicago: the Cook County Sheriff's Office, Chicago Police Department, local aldermen, and local funeral directors. H. Tr. 51–52 (98th G.A., May 28, 2013) (exchange between Reps. Dunkin and Hurley). These and other stakeholders were looking for another tool to combat reckless activity that occurred during funeral processions, and it was hoped that adding those offenses to the list of fee-assessable activity would help. *Id.* 52 (statement of Rep. Hurley).

The conflict here is clear: if the City of Chicago, as a Home Rule entity, was exempt from Section 208.7, then it would have the authority to impose the impoundment by ordinance directly, without amending Section 208.7 to authorize such fees. Records of debate in the House of Representatives can only cover so much, but they do indicate that the Chicago alderman first attempted to implement a local ordinance, but was told that enabling legislation was required. *Id.* 53 (statements of Rep. Hurley). Subsequent comments are somewhat convoluted, but evidence that Representatives were unsure about this claimed requirement as well. *See id.* 53–55 (floor debate); *see also e.g., id.* at 53 ("Did [the alderman] present statutory information validating that statement? I've never heard of that. . . . Or was he just saying that he [thought] that's what the case was?") (statement of Rep. Dunkin).

Ultimately, the specific point was sidestepped; Representative Cabello cosponsored the bill, noting how Rockford—part of his district, and a non–Home

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[8] Plaintiffs raise the argument that, because the City has separately lobbied to add Section 208.7 to the list of provisions from which Home Rule units are explicitly exempted, the *City* believes that it is bound by Section 208.7. Complaint, ¶¶28–31. The City's belief does not affect the General Assembly's intent. Furthermore, the City could hardly be faulted for wanting to make its position—that Section 208.7 does not and never has applied to Home Rule units—an explicit provision of the Code, regardless of whether such statutory clarity was strictly necessary or not.

Rule municipality[9]—suffered from criminality that the bill was intended to address. H. Tr. 58–59 (98th G.A., May 28, 2013) (statement of Rep. Cabello). He was joined by other Representatives who foresaw potential benefit. *Id.* at 60 (statement of Rep. K. Burke) ("This sort of behavior has not happened [in my district] yet, but I can anticipate that someday it might and I think we . . . I would be very glad to have this law in effect.").

The bill passed both chambers unanimously, and no debate was had on the Senate floor. *See id.* at 61 (House vote); S. Tr. 85–86 (98th G.A., April 17, 2013) (Senate proceedings). Six years later, it is difficult to untangle the specific intent underlying Subsection (b)(13). Was it passed to regulate Home Rule units? Was it passed because non–Home Rule municipalities also wanted it passed? Was it a prophylactic measure? Ultimately, the only conclusion that can be drawn from the 2013 amendment is that, by 2013, at least some elements of government believed that Home Rule units were bound by Section 208.7.

iii. 2016 Statewide Relocation Towing Licensure Commission Act

In response to a series of towing scandals affecting illegal activity in Chicagoland and elsewhere, the General Assembly passed the Statewide Relocation Towing Licensure Commission Act. As Senate floor comments indicate, it has a number of moving parts. S. Tr. 22–23 (99th G.A., April 22, 2016) (statement of Sen. Haine). The Act creates its titular commission, makes solicitation of towing services at an accident scene a Class 4 felony, and provides that the owner of an improperly impounded vehicle is entitled to reimbursement for storage costs and fees. P.A. 99-848 (eff. Aug. 19, 2016).

And, relevant here, the Act amends Section 208.7 in three ways. First, it provides that the list of violations for which fees can be imposed, itemized in Subsection (b), is exclusive. 625 ILL. COMP. STAT. 5/11-208.7(b) (ordinance "may impose fees *only* for the following violations" (emphasis added)). Second, it provides that a vehicle's owner can recoup storage costs and attorney's fees, if the impoundment was well beyond the municipality's authority. *Id.* 208.7(g)(6); *see also* H. Tr. 111–12 (99th G.A., May 31, 2016) (statements of Rep. Sandack explaining intent behind recoupment provision). And third, it adds Subsection (j), which exempts Home Rule units from the recoupment provision, as well as the fee limitations, if the unit operates its own towing service and storage. 625 ILL. COMP. STAT. 5/11-208.7(j).

The problem here is self-evident. If Section 208.7 does not apply to Home Rule units—as the General Assembly originally intended, and as courts consistently found previously—then there is no need for Subsection (j) to exempt Home Rule units from certain fee limitations, as they would not apply in the first place.

The Court has reviewed those portions of the relevant legislative history brought to its attention, and cannot find any discussion or acknowledgement of this contradiction. *See* H. Tr. 110–12 (99th G.A., May 31, 2016) (House discussion and

[9] The Court can take judicial notice of the Home Rule status of municipalities. *See* "Home Rule Municipalities," Illinois Municipal League, www.iml.org/homerule-municipalities.

unanimous vote); S. Tr. 22–24 (99th G.A., April 22, 2016) (Senate discussion and voice vote). From the language of the Act as amended, it is clear that the General Assembly believed that Section 208.7 applied to limit Home Rule units—despite the fact that, just four years prior, it was equally clear that the General Assembly never intended it to apply to Home Rule units at all.

3. Statutory Reconciliation

This issue presents an irreconcilable tension between two core principles of statutory interpretation. On the one hand, the fundamental goal of statutory interpretation is to give effect to the intent of the legislature. *Hadley*, 224 Ill. 2d at 371. And on the other, "if at all possible, a statute should be construed so that no part is rendered a nullity." *Aurora Manor, Inc. v. Dep't of Pub. Health*, 2012 IL App (1st) 112775, ¶11 (citing *Eads v. Heritage Enters.*, 204 Ill. 2d 92, 105 (Ill. 2003)). Reading Subsection (j) to apply Section 208.7 to Home Rule entities would be a radical and wholly unintentional shift in the purpose of the statute. This runs contrary to the principle that a statutory amendment should not change settled law unless the amendment's clear and specific language requires such a change. *People v. Jones*, 214 Ill. 2d 187, 199–200 (Ill. 2005) (discussing *In re Will County Grand Jury*, 152 Ill. 2d 381, 388 (Ill. 1992)). Yet holding Home Rule entities exempt would make the language of Subsection (j) appear irrelevant.

The intent of the General Assembly is best achieved by holding that Section 208.7 does not apply to Home Rule entities. If a Home Rule unit chooses to bind itself to the provisions of Section 208.7, however, Subsection (j) sets forth the scope of what portions of the Section would apply. This reconciliation is admittedly complex, but no other consistent statutory construction is possible.[10]

i. General Inapplicability to Home Rule Units

To start with, the Court notes that this issue concerns the effect of a later amendment on an existing statute. As part of a statutory intent analysis, therefore, the Court is not confined to the literal language of the amendment, but can—and must—consider the history of the statute and the intent underlying its amendment, whether or not the amendment explicitly achieved its purpose. *Harper*, 392 Ill. App. 3d at 818 (reconciling concurrent, contradictory amendments).

Here, Section 208.7 was not originally intended to apply to Home Rule entities. This much is clear, both from the language of the statute and the plain language of its proponents before the General Assembly. *See* Part III.C.2.i *supra*; *Hayenga*, 2014 IL App (2d) 131261, ¶25. It was a grant of authority to non–Home Rule units, and nothing more.

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[10] The Court's electronic database provider is LexisNexis. The editors of the Lexis version of Section 208.7 have added a footnote to their version of the section, noting coyly that "This section was affected by multiple amendments of the Illinois General Assembly. Although these amendments failed to take each other into account, they do not conflict and have been combined in a single version by the editor."

Nothing in the 2016 Statewide Relocation Towing Licensure Commission Act, which added Subsection (j), evidences any intention to change that. The Act establishes a Commission to examine the state of towing. This includes a review of towing laws and fees, but does not affirmatively change them; the Commission was to evaluate and report only. P.A. 99-848, §15 ("Reporting"). It strengthens the prohibition on solicitation at the scene of an accident, turning such activity from a business offense into a Class 4 felony—but this affects individuals, not municipalities of any stripe. 625 ILL. COMP. STAT. 5/11-1431(b).

It is presumed that, when the General Assembly enacts legislation, it acts rationally and with full knowledge of all prior legislation and judicial decisions concerning same. *People v. Jones*, 214 Ill. 2d 187, 199 (Ill. 2005). The discussion *supra* may call into question whether that was the case here, but a reconciliation is possible.

Crucially, Subsection (j)'s only purpose is to *exempt* Home Rule units from Section 208.7's requirements. Going into the 2016 Act, Section 208.7 did not apply to home Rule units—and it would defeat the broader purpose of Subsection (j) to hold that the creation of an exception *ipso facto* meant the rest of the rule now applied. To hold otherwise would mean that a minor amendment, designed to lift restrictions on Home Rule units, in an Act that did not otherwise purport to regulate Home Rule units, would have the massive and wholly unintended effect of applying a statute where it was never meant to apply. This contradicts the principle that "a statute will not be interpreted to effect a change in settled law unless its terms clearly require such a construction." *Jones*, 214 Ill. 2d at 200 (citing *Will County Grand Jury*, 152 Ill. 2d at 388).

It is far more reasonable to conclude that the drafters of the 2016 Act were either misinformed concerning, or unclear on, whether Section 208.7 applied to Home Rule units, and the addition of Subsection (j)—an exception only—was in the interests of ensuring that, no matter what else the 2016 Act did, it did not affect Home Rule authority. This would not be the first time that amendments to the Illinois Vehicle Code were undertaken in a state of less than total clarity concerning the scope of Section 208.7—*viz.* the funeral procession amendment of 2013. *See* Part III.C.2.ii *supra*; P.A. 98-518 (codified as 625 ILL. COMP. STAT. 5/11-208.7(b)(13)).

The purpose of Subsection (j) was to exempt Home Rule entities from Section 208.7, which did not regulate such entities in the first place. The specific intentions of the General Assembly have changed over time, but in all respects there is a broader goal: that Section 208.7 not affect the way Home Rule entities go about towing. Holding Section 208.7, including its component Subsection (j), to not apply to Home Rule units is a significant and counterintuitive measure, but it is the only way to coherently reconcile the statute.

ii. Home Rule Choice and Voluntary Application

The above conclusion does not mean that Subsection (j) is necessarily a nullity. The purpose of Section 208.7 was to implement statutory guidelines and

procedures for assessing fees on impounded vehicles. For non–Home Rule units, it is the only source of authority; such entities impose fees pursuant to Section 208.7 or not at all. Home Rule units can impose fees pursuant to their Home Rule powers. *See* Part III.B.2 *supra*. But, Home Rule units are not prohibited from relying on Section 208.7. The statute may not include them, but there is certainly no prohibition against a Home Rule unit imposing fees based on Section 208.7's grant of authority, rather than its own Home Rule powers.

It is not difficult to envision a circumstance under which a Home Rule unit might wish to draw on the clear-cut provisions of Section 208.7 for its fee assessments, rather than its Home Rule powers. Perhaps the unit saw the provisions and limitations of Section 208.7 as sufficient, and saw no need to expand beyond them. Perhaps the unit wished to rely on the statutory option, rather than risk litigation with an exercise of often nebulous Home Rule power. Perhaps the unit *was* a municipality, implemented procedures under Section 208.7, and when it achieved Home Rule status, saw no reason to change procedures that it knew worked.

Whatever its reason for doing so, *if* a Home Rule unit chose to comply with Section 208.7, then Subsection (j) is meaningful. If the unit contracts for its own towing and storage, it is automatically exempt from certain fee limitations. 625 ILL. COMP. STAT. 5/11-208.7(j). If a Home Rule unit implemented an ordinance pursuant to Section 208.7, and then carved out its own exceptions using Home Rule powers, the resulting ordinance would be a piecemeal creation that nevertheless relied on Home Rule power—thus defeating some of the benefit of adopting Section 208.7 in the first place. Subsection (j) ensures that, where a Home Rule unit relies exclusively on statutory authority to implement its fee ordinance, the ordinance comes with ready-made exceptions to ensure Home Rule units can implement it consistent with their existing towing regimes.

This discussion does not, however, apply to the City of Chicago. As noted above, the City's Impoundment Ordinance predates Section 208.7 by decades. *See* Part I.A *supra*. The City imposes, and always has imposed, fees pursuant to its Home Rule authority, rather than any statutory grant. Therefore, with respect to the City, Subsection (j)—and, indeed, the entirety of Section 208.7—is simply not applicable. They may have application elsewhere, but it is not to the case at bar.

The Court therefore concludes that Section 208.7 does not regulate the City of Chicago, as a Home Rule entity that imposes fees pursuant to its Home Rule authority through the Impoundment Ordinance, rather than through Section 208.7 directly. Therefore, to the extent that Plaintiffs' claims are premised on a putative violation of Section 208.7, there can be no violation, because there is no regulation.

D. Notice

Separate and apart from the imposition of administrative penalties, Plaintiffs argue that the Impoundment Ordinance's notice provisions conflict with the requirements of Section 208.7. Because Section 208.7 does not regulate Home Rule units, no conflict is possible, and the notice claim fails. Nevertheless, even if

Section 208.7's requirements applied, they are directory, not mandatory, and a claim for their violation cannot stand.

1. Pleading Sufficiency

As a preliminary note, the Court observes that Plaintiffs do not actually plead a notice claim. The Complaint contains a number of allegations relevant to notice. *See* Complaint, ¶¶ 56–58 (notice argument), 88–89 (notice allegations of Plaintiff Daniels); ¶92 (Subclass 2 defined based on notice). But the Complaint's Counts, as pled, do not specifically raise a notice argument. Count I seeks a declaration concerning the collection of administrative penalties only;[11] Count II seeks an injunction on same; and Counts III and IV seek compensation for those penalties. Complaint, pp. 28–34. If the case were to continue, it would be preferable if the notice allegations were made explicit in the Counts, either as an amendment to Count I or, preferably, as a freestanding separate Count. *See* 735 ILL. COMP. STAT. 5/2-603(b).

Despite this, both parties have briefed the issue of notice as if it were properly presented. Granting Plaintiffs leave to amend the Complaint to explicitly state the claim would serve no purpose, because the parties have thoroughly ventilated their arguments as to its sufficiency.[12] The Court therefore addresses the notice issue in full.

2. Notice Argument

Plaintiffs articulate what their notice argument would be in their briefing. Response, pp. 23–24. Essentially, Plaintiffs argue that the Impoundment Ordinance's notice provisions do not strictly conform to the requirements imposed by Section 208.7.

Section 208.7 contains extensive procedural requirements, setting forth the administrative procedure for the imposition of fees on impoundments in whole cloth. Among those requirements are notice provisions. In relevant part, it provides that the vehicle's owner is entitled to a notice of hearing within ten days of the impoundment, after which "An initial hearing shall be scheduled and convened no later than 45 days after the date of the mailing of the notice of hearing." 625 ILL. COMP. STAT. 5/11-208.7(f)(3).

The Impoundment Ordinance contains similar provisions. An impounded vehicle's owner is entitled to notice within ten days of the impoundment. MCC §2-14-132(b)(1). The City's notice, however, states that an owner must file a written request for a hearing with DOAH within 15 days; if requested, a hearing must be held no more than 30 days thereafter. MCC §2-14-132(b)(2).

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[11] A notice argument could lead to the same *relief* as requested in Count I—a voiding of the Ordinance—but such is not pled. The specific allegations of Count I itself only refer to administrative penalties, and not notice. Complaint, ¶¶ 143–46.

[12] Thus, the Court also largely sidesteps the Section 2-615-like issues pertaining to the specific notice allegations raised by Plaintiff Daniels. The ultimate question is whether a claim concerning whether the Ordinance's provisions conflict with Section 208.7 could *ever* be successful, not whether it is pled.

Under both the Ordinance and Section 208.7, the owner of an impounded vehicle is entitled to a hearing within 45 days of the notice of impoundment.[13] The difference is that Section 208.7 provides that a hearing is to be automatically scheduled, while the Ordinance requires that an owner request a hearing.

3. Ordinance Conflict

The City proposes that there is no conflict between the Ordinance and Section 208.7. It acknowledges the variances between the provisions as articulated above, but argues that the difference in the statutory language is not a *conflict*:

> But this difference – which improves the efficiency of DOAH proceedings for the benefit of respondents and the City alike by ensuring that hearing are not scheduled for respondents who have no interest in taking their case to a hearing – does not conflict in any way with [Section 208.7's] requirement that respondents receive a hearing within 45 days of the mailing of the notice of impoundment.

Memorandum in Support, p.22.

The City's point is perfectly reasonable. Chicago is the largest city in the State by more than an order of magnitude. On the reasonable inference that it undertakes a correspondingly high number of impoundments, the City faces difficulties of scale that no other jurisdiction would. As a practical matter, scheduling hearings that would go unattended would be a substantial waste of time and resources.[14]

But the *reasonability* of the City's Ordinance is not at issue. In requiring the respondent to affirmatively seek a hearing, rather than setting one forth and inviting the respondent's attendance, the Ordinance shifts the procedural burden to the respondent in a way that is simply at odds with the plain language of Section 208.7. This may be a trivial conflict, but it is still a conflict, because it is not possible to square the Ordinance's procedures with those set forth in the statute.

3. Section 208.7's Directory Reading

Assuming for the purposes of this discussion that Section 208.7 and its notice provisions govern Home Rule entities, it is in conflict with the Impoundment Ordinance, however minor that conflict may be. Section 208.7 and the Impoundment Ordinance both prescribe the performance of an act by a public

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[13] The Municipal Code contains exceptions not relevant here—for instance, accounting for a situation where the owner of record is a non-titled lessee. MCC §2-14-132(b)(1). Section 208.7 does not contain explicit exceptions, but accounts for similar situations with broad language. 625 ILL. COMP. STAT. 5/11-208.7(e)(2). None of the exceptions are relevant here; the question concerns the broader statutory scheme.

[14] "Home rule is based on the assumption that municipalities should be allowed to address problems with solutions tailored to their local needs." *Palm v. 2800 Lake Shore Drive Condo. Ass'n*, 2013 IL 110505, ¶ 29. This is one such example of a uniquely local need motivating a unique solution.

entity. Therefore, an element of Section 208.7's statutory construction is whether it is mandatory or directory. *See Sloper*, 2014 IL App (1st) 140712, ¶18. The mandatory-directory dichotomy determines whether a failure to comply with a certain procedural step will invalidate the governmental action at issue. *People v. Delvillar*, 235 Ill. 2d 507, 516–17 (Ill. 2009) (quoting *People v. Robinson*, 217 Ill. 2d 43, 51–52 (Ill. 2005) (itself quoting *Morris v. County of Marin*, 18 Cal. 3d 901, 908 (Cal. 1977))).

Examining a statute under the mandatory-directory dichotomy is a two-part analysis. Presumptively, a statute's procedural command is directory, rather than mandatory. This is the case even when the statute's language uses the word "shall." *People v. Rita P. (In re Rita P.)*, 2014 IL 115798, ¶¶44–45. The statute is mandatory under two conditions: "(1) when there is negative language prohibiting further action in the case of noncompliance or (2) when the right the provision is designed to protect would generally be injured under a directory reading." *People v. M.I. (In re M.I.)*, 2013 IL 113776 at ¶17 (citing *Delvillar*, 235 Ill. 2d at 517).

Neither condition is met here, and Section 208.7's impositions are directory. Therefore, to the extent Section 208.7 applies, and to the extent it conflicts with the Ordinance, the conflict does not invalidate actions taken pursuant to the Ordinance's provisions.

i. No Negative Language

Section 208.7 contains no negative language that would render it mandatory. *See* 625 ILL. COMP. STAT. 5/11-208.7(f). It does not impose any consequences for failure to schedule a hearing, as opposed to offering a hearing. Nor does it contain language limiting further administrative action if its requirements are not met. *Sloper*, 2014 IL App (1st) 140712, ¶20 (similar analysis of Impoundment Ordinance).

Furthermore, this contrasts sharply with other provisions of the Illinois Vehicle Code, which *do* provide specific consequences for failure to comply with their requirements. Section 208.3, for instance, regulates red light cameras, and like Section 208.7 sets forth requirements governing the administrative of violations. 625 ILL. COMP. STAT. 5/11-208.3(b). Section 208.3 requires that violation notices shall include, among other things, a vehicle's make and registration number. *Id.* § 11-208.3(b)(2). But it explicitly specifies that, with respect to the City, "it shall be grounds for dismissal of a parking violation if the state registration number or vehicle make specified is incorrect." *Id.*

Section 208.7 contains no such language of consequence. It is therefore not mandatory under the first prong of the test.

ii. No General Injury

For the second prong to apply, the right that the statute protects must be harmed by the municipality's failure to strictly follow it. Here, the parties dispute the nature of the right protected by Section 208.7: the City characterizes it as the right to a *timely* hearing, but Plaintiffs identify it as protecting the right to a

hearing in the first place. The parties' focus on the nature of the right is perhaps misplaced, because under either interpretation, the right protected is not *harmed*.

"Harm" in the context of a mandatory-directory analysis is fairly limited. In *People v. Delvillar*, the Illinois Supreme Court considered whether failure to admonish a criminal defendant as to deportation consequences of a guilty plea was error, based on whether the statute requiring such admonishment was mandatory or directory. 235 Ill. 2d at 513. The Court concluded that the requirement was directory: because a United States citizen would never face immigration consequences, failure to warn a citizen would have no harmful effect. *Id.* at 518–19. And, furthermore, a noncitizen might have reasons to plead guilty even in the face of deportation. *Id.* at 519. Therefore, because failure to admonish as to potential deportation would not *necessarily* cause harm, the requirement to do so could not be mandatory. *Id.*

A similar conclusion presents here. Even on the assumption that Plaintiff's interpretation is correct, and the right at issue is the right to have a hearing, the Ordinance's provision requiring a respondent to ask for a hearing first would not injure that right. If the respondent wants a hearing, all he or she need do is request it. A hearing is then scheduled, within the 45-day period as contemplated by statute; the end result is perfectly compliant with Section 208.7's requirements, and no harm is suffered. Because harm does not necessarily follow, per *Delvillar*, this alone would be sufficient to read Section 208.7 as directory.

But even continuing the analysis, it is clear the right would *never* be injured by a directory reading. If the respondent does not want a hearing, or does not otherwise want to contest the charge, then the effect is that no hearing is held—but only in a situation where the responded does not want a hearing. In other words, the right to a hearing is suspended as a result of its waiver; once again, there is no harm in not giving the respondent what they did not ask for.[15] And, to the extent there may be a failure of notice, the Ordinance provides for vacation within twenty-one days, for good cause; or at any time, if notice was improper. MCC §2-14-108(a).

Section 208.7 is presumptively directory. Because neither condition for a mandatory reading is met, the presumption is not overcome, and the Court concludes that Section 208.7 is directory. Thus, to the extent the City is bound by Section 208.7 at all, and to the extent the Impoundment Ordinance may conflict, the conflict is not actionable, and has no consequences as to the propriety of DOAH's hearings or adjudications.

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[15] Plaintiffs make much of the fact that, in that situation, no hearing would *ever* be held, and thus there would be no opportunity to effectively test the propriety the fees and penalties imposed. *See* Hrg. Tr. 33:5–34:23. As does the City, the Court does not see how this situation is substantially different from a default. *See* Hrg. Tr. 38:2–18. The Municipal Code provides for sworn evidence to be generated in the course of impoundment proceedings. *E.g.*, MCC §2-14-132(g). That would appear sufficient, though it is difficult to tell because the argument here is so far afield of what is actually pled.

E. The Remaining Counts

The above discussion resolves Count I, which seeks a declaratory judgment, as well as any potential notice amendments thereto. But the Complaint articulates three other causes of action: Count II seeks an injunction, and Counts III and IV seek recovery by way of unjust enrichment and conversion, respectively. Because all three counts are derivative, they necessarily fail. Furthermore, each has additional Count-specific issues.

1. Injunction

Count II seeks injunctive relief, in the form of an injunction against the City prohibiting further enforcement of the Impoundment Ordinance. The principal issue here is that an injunction is a remedy, not a cause of action. It is no more appropriate to plead a count for "injunction" than one for "money damages." *Town of Cicero v. Metro. Water Reclamation Dist.*, 2012 IL App (1st) 112164, ¶46.

This technical defect is, however, not fatal. It is abundantly clear that, if Plaintiffs should prevail on Count I, part of their requested relief is a permanent injunction. Likewise, they could seek a preliminary injunction on Count I directly at any time, without the need for a freestanding claim for an injunction alone. Therefore, looking to the pleading's character, rather than its title, the Court reads Count II together with Count I as constituting a single cause of action—declaratory judgment—with multiple requested remedies. *See, e.g., Ladien v. Presence RHC Corp.*, 2017 IL App (1st) 152778-U ("injunction" not cause of action, but in the context of a Section 2-615 analysis, properly interpreted as a specific cause of action with a limited remedy).

Axiomatically, a party seeking a permanent injunction must succeed on the merits of the underlying cause of action. *Town of Cicero v. Metro. Water Reclamation Dist.*, 2012 IL App (1st) 112164, ¶46. Because Count I is not, and never can be, a viable claim, no injunction in Plaintiffs' favor could ever stand.

2. Unjust Enrichment & Conversion

Both Counts III and IV are premised on an underlying ruling in Plaintiffs' favor: if the City's collection of administrative penalties is improper, then retention of the penalties would work an unjust enrichment, and failure to return them would constitute conversion. Plaintiffs seek, one way or another, a class-wide return of the penalties at issue.

First and foremost, the Counts III and IV are wholly derivative. They are dependent on success on Count I's declaratory judgment. Because Count I fails, so too must Counts III and IV. *See Young v. City of Pekin*, 2015 IL App (3d) 140484-U, ¶69 (citing *Towns v. Yellow Cab Co.*, 73 Ill. 2d 113, 123–24 (Ill. 1974)) (where challenge to impoundment ordinance failed, claims for unjust enrichment and conversion of impoundment fines and fees necessarily failed).

Second, the Court notes that, though Counts III and IV are brought by all Plaintiffs, not all Plaintiffs allege that they paid money. Plaintiff Moraitis pleads that he was assessed $6,780, but does not indicate whether that sum was paid.

Complaint, ¶77. And Plaintiff Daniels specifically pleads that he has not paid the $2,000 assessed against him. Complaint, ¶87. This defect also affects all three putative Subclasses, to the extent classmembers have not paid the penalties at issue. *See* Complaint, ¶91. Because the City has not received those Plaintiffs' money, there is no enrichment, unjust or otherwise, and no money to convert. *See Drury v. County of McLean*, 89 Ill. 2d 417, 426 (Ill. 1982) (no unjust enrichment where fine went unpaid).

Third and finally, Plaintiffs on Response shift their conversion argument slightly, seeking leave to amend the conversion claims on behalf of those Plaintiffs whose vehicles have been sold or scrapped to state a claim for monetary value of the vehicles, rather than the vehicles themselves. Response, p. 23; *see* Hrg. Tr. 31:16–22. This is somewhat perplexing, as the underlying claim is for conversion of the administrative penalties themselves, *not* the vehicles. Complaint, ¶170 (absolute and unconditional right to possession of administrative penalties only). To the extent Plaintiffs seek restitution of the penalties, the claim fails as derivative.

To the extent Plaintiffs would seek to challenge the propriety of the *impoundment itself*, that type of claim is fundamentally different in substance from the claims raised here today. *See* Part III.A *supra* (Plaintiffs would not have standing to challenge impoundments directly). *See also Maschek*, 2015 IL App (1st) 150520, ¶46 (in procedurally similar case, noting that plaintiff's "dispute is not with the underlying violation or the fine"). No such claim is before the Court today.

IV. Orders

The City's Motion to Dismiss is granted. Plaintiffs' Complaint is dismissed, with prejudice. Specifically:

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2004

Count I, Declaratory Judgment, is dismissed with prejudice.

Count II, Injunction, is dismissed with prejudice, because it is not a cause of action. To the extent that it is treated as a request for a specific remedy on Count I, it shares Count I's fate, and will be dismissed with prejudice.

Counts III and IV, Unjust Enrichment and Conversion, are dismissed, as they are derivative and wholly contingent on Count I. This dismissal does not preclude Plaintiffs from challenging their specific impoundments through the administrative process if they desire to do so, if such a challenge would otherwise be proper.

ENTERED:

Judge Anna M. Loftus
NOV 08 2019
Circuit Court - 2102

Judge Anna M. Loftus

IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CHANCERY DIVISION

RITA LINTZERIS, STEVEN MORAITIS, WILLIAM MORAITIS, ZARON JOSSELL, and CLARENCE DANIELS, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

CITY OF CHICAGO, a Municipal Corporation,

Defendant.

No.

CLASS ACTION COMPLAINT

Plaintiffs, RITA LINTZERIS, ("Lintzeris"), STEVEN MORAITIS, ("S. Moraitis"), WILLIAM MORAITIS, ("W. Moraitis"), ZARON JOSSELL ("Jossell"), and CLARENCE DANIELS ("Daniels") (collectively "Plaintiffs"), by and through their undersigned counsel, MORRISSEY & DONAHUE, LLC, hereby file this Class Action Complaint, individually, and on behalf of all others similarly situated, against Defendant CITY OF CHICAGO, a municipal corporation (the "City"), and for their Complaint allege:

INTRODUCTION

1. Plaintiffs bring this action on behalf of themselves and all other similarly situated persons who have paid "Administrative Penalties" pursuant to Chicago Municipal Code §2-14-132 in direct violation of a mandate by the Illinois Legislature based on a bill that was signed into law and became effective on January 1, 2012, amending the Illinois Motor Vehicle Code and prohibiting "Any County or Municipality" in the State of Illinois from enacting or enforcing a local ordinance and/or regulation related to the impoundment of vehicles that imposes any type of fine and specifically states that the City (and other counties and municipalities in the State of

Illinois) may only collect "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." 625 ILCS 5/11-208.7 (West 2012) ("Section 208.7").

2. On information and belief, the City had knowledge of the aforementioned amendment to the Illinois Motor Vehicle Code but failed to repeal or amend its impoundment ordinance, Chicago Municipal Code ("MCC") §2-14-132 ("MCC §2-14-132") and related sections including MCC §7-24-225, MCC §7-24-226(a), MCC §9-080-240, MCC § 9-80-220, MCC § 8-8-060(d) and other applicable sections identified in MCC §2-14-132 (the "Impoundment Ordinance"), and that the City continues to enforce the Impoundment Ordinance, despite the fact that the Impoundment Ordinance is invalid because it imposes an "Administrative Penalty" or multiple "Administrative Penalties" on the owners of vehicles impounded by the Chicago Police Department and impounded by the City pursuant to the Impoundment Ordinance, and despite the specific language of Section 208.7 that limits the amount the City may charge for release of a vehicle to its "reasonable administrative costs." 625 ILCS 5/11-208.7 (West 2012) (emphasis added).

3. The Impoundment Ordinance was the sole authority for the impoundment of Plaintiffs' vehicles and because the Impoundment Ordinance is contrary to and in violation of Illinois law and, thus, preempted by the Illinois Constitution, all impoundments by the Chicago Police Department based on the Impoundment Ordinance since January 1, 2012 were unlawful and without legal justification, entitling Plaintiffs to relief.

4. The City has been unlawfully collecting Impoundment Penalties pursuant to the Impoundment Ordinance from January 1, 2012 through the filing date of this Complaint.

5. Absent injunctive relief from this Court, the City will continue to enforce the invalid Impoundment Ordinance by collecting Administrative Penalties without lawful justification.

6. The City has been unlawfully violating the Illinois Motor Vehicle Code and the Illinois Constitution, from January 1, 2012 through the filing date of this Complaint, despite knowledge of its violations and will continue to violate the Illinois Motor Vehicle Code and the Illinois Constitution absent injunctive relief from this Court.

7. The Plaintiffs in this action seek monetary, declaratory, equitable and injunctive relief, individually and on behalf of those similarly situated, based on the City's illegal practice of collecting Administrative Penalties pursuant to the invalid Impoundment Ordinance, and refusing to acknowledge that Section 208.7 prohibits the practice.

8. Despite full knowledge that the Impoundment Ordinance is invalid and violates state law, the City continues to enforce the Impoundment Ordinance and, absent the intervention of this Court, the unlawful impoundments and collection of unlawful "Administrative Penalties" and/or destruction of vehicles will continue, harming Plaintiffs and other class members.

PARTIES

9. Plaintiff Lintzeris is a citizen of the State of Illinois and resides in Cook County.

10. Plaintiff S. Moraitis is a citizen of the State of Illinois and resides in Cook County.

11. Plaintiff W. Moraitis is a citizen of the State of Illinois and resides in Cook County.

12. Plaintiff Jossell is a citizen of the State of Illinois and resides in Cook County

13. Plaintiff Daniels is a citizen of the State of Illinois and resides in Cook County.

14. Defendant, City of Chicago, is a Municipal Corporation and home rule unit, incorporated pursuant to the laws of the State of Illinois and located in Cook County.

JURISDICTION AND VENUE

15. This Court has jurisdiction pursuant to 735 ILCS 5/2-209(a)(1) and (c) because Plaintiffs and Defendant are, or were at the relevant time, residents of Cook County, Illinois.

16. Venue is proper pursuant to 735 ILCS 5/2-101 because the events and transactions giving rise to the claims asserted herein occurred in Cook County, Illinois.

FACTUAL ALLEGATIONS

17. Effective January 1, 2012, a bill passed by the Illinois Legislature was signed by the Governor and became law enacting Section 208.7 of the Illinois Motor Vehicle Code that provides and applies on its face to:

> **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 charges for the towing and storage of an impounded vehicle. The administrative fee may be waived by the county or municipality upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded.

625 ILCS 5/11-208.7(a) (West 2012) ("Section 208.7") (emphasis added).

18. Prior to enactment of Section 208.7, effective January 1, 2012, the Illinois Motor Vehicle Code did not include a limitation prohibiting home rule units, such as the City, from adopting local regulations permitting police departments to impound vehicles for certain violations of Illinois law (*e.g.*, the Impoundment Ordinance).

19. Section 208.7 is not identified in Section 11-208.2 of the Illinois Motor Vehicle Code, that identifies the provisions in Section 11 of the Illinois Motor Vehicle Code that home rule units may modify by codifying local police regulations (via ordinance or otherwise). 625 ILCS 5/11-208.2 (West 2012) ("Section 208.2").

20. Section 208.2 states:

> 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.

625 ILCS 5/11-208.2 (West 2012), (emphasis added).

21. Consequently, home rule units, including the City, are prohibited from enforcing any local police regulations, including the Impoundment Ordinance, in any manner inconsistent with Section 208.7.

22. The language of Section 208.7 makes clear on its face that it applies to home rule units, such as the City, in that it applies to "**Any** county or **municipality**" within the State. 625 ILCS 5/11-208.7(a) (emphasis added).

23. Further, the extensive legislative history of Section 208.7 from the date of its enactment in 2012, supports its applicability to home rule units and, specifically, the City.

24. In 2013, the City actively participated with and advised the Illinois legislature in efforts to amend Section 208.7 to allow for the imposition of fees for reckless driving while part of a funeral procession, or in a matter that interferes with a funeral procession. 2013 Ill. SB 2154; A; 98th Gen Assem., transcript from May 28, 2013, p. 51.

25. While discussing S.B. 2154 and the proposed amendment to Section 208.7, Representative Hurley, representing House District 35 (the south-side of Chicago), stated that "this great idea came from the Cook County Sheriff's Department and also a discussion with the Chicago Police Department, Senator Cunningham, our local alderman and local funeral directors." *Id.*

26. Specifically, the Cook County Sheriff's Department and Chicago Police Department were hoping to use Section 11-208.7 as an additional tool to stop reckless behavior by gang members during funeral processions. *Id.* at p. 48.

27. According to Representative Hurley, this was an issue specific to the City of Chicago, as representatives from downstate and smaller municipalities were unclear why such an amendment was necessary. *Id.* at pp. 47-61.

28. On information and belief, the City of Chicago and other home rule units actively lobbied the Illinois State Legislature to amend Section 208.2. As a result, on February 19, 2015, a member of the 99th General Assembly of the Illinois House of Representatives, introduced Illinois House Bill 2656 ("ILHB 2656"), seeking to amend Section 208.2 to allow home rule units, such as the City, to adopt ordinances inconsistent with Section 208.7.

29. ILHB 2656 proposed that the bold and underscored reference to Section 208.7, as set forth below, be added to Section 11-208.2:

> § 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, **11-208.7**, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2 of this Chapter of this Act.

H.B. 2656, 99th Gen. Assem., (February 19, 2015) (emphasis in original).

30. In March of 2015, after the first reading of ILHB 2656, it was assigned to the Revenue and Finance and Towing Oversight Committees of the Illinois House of Representatives, where it expired without being returned to the House Floor for a second reading.

31. On information and belief, the City and other home rule units continued to lobby the Legislature for relief from the restrictions in Sections 208.2 and 208.7, as necessary to continue to collect large "Administrative Penalties." Those lobbying efforts were unsuccessful.

32. In 2016, the City once again participated in efforts by the Illinois legislature to amend Section 208.7 to the benefit of home rule units, including the City.

33. Specifically, during discussion of S.B. 2261, Senator Haine mentioned the City of Chicago with regards to the amendment, stating that the City was "on board" with the amendment, which, if enacted, would restrict the amount municipalities may charge as administrative fees. 2015 Ill. SB 2261; 99th Gen. Assem., transcript from April 22, 2016, p. 22-23.

34. On August 19, 2016, an amendment to Section 208.7 was signed into law with two limited carve outs for home rule units, neither of which is applicable to the facts of this case (the "August 2016 Amendment").

35. With the adoption of the August 2016 Amendment, for the first time in its extensive legislative history, the Impoundment Ordinance made reference to home rule units or non-home rule units within Section 11-208.7, and states:

> (j) The fee limits in subsection (b), the exceptions in paragraph (6) of subsection (b), and all of paragraph (b) 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: (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.

625 ILCS 5/11-208.7 (West 2016).

36. Senate Bill 2261 also created "the Statewide Relocation Towing Licensure Commission" (the "Commission") to study, among other things, what amounts counties and municipalities should be able to recover as "reasonable administrative costs" when a vehicle is impounded. 625 ILCS 65/5 (West 2016).

37. Pursuant to S.B. 2261, the Commission would report its findings to the Governor of the State of Illinois and the Illinois Legislature no later than July 31, 2017. *Id.*

38. The August 2016 Amendment appointed "the Mayor of the City of Chicago or his designee" to the Commission to participate in determining, among other things, what amount of United States Dollars will properly reimburse counties and municipalities for "reasonable administrative costs" relating to the impoundment of vehicles. *Id.*

39. Upon information and belief, the Commission, which includes "the Mayor of the City of Chicago or his designee," completed its duties in July of 2017, and reported its findings on what constitutes a "reasonable administrative cost" relating to the impoundment of vehicles to the Governor of Illinois on or about July 31, 2017. *Id.*

40. Since January 1, 2012, Chicago has collected an amount well in excess of forty-three million dollars ($43,000,000) in "Administrative Penalties" pursuant to the Impoundment Ordinance, contrary to and in violation of Sections 208.2 and 208.7.

41. Since January 1, 2012, Chicago has also recovered an amount well in excess of eighteen million dollars ($18,000,000) from the sale of impounded vehicles where respondents could not pay the City's unlawful "Administrative Penalty" as necessary to alleviate the City's deprivation of their liberty and property interests in their vehicles.

A. <u>The Chicago Municipal Code</u>

42. Chicago Municipal Code §2-14-132, Impoundment, states in part:

> (1) Whenever the owner of a vehicle seized and impounded pursuant to Section 3-46-076, 4-68-195, 7-24-225, 7-24-226, 7-28-390, 7-28-440, 8-4-130, 8-8-060, 8-20-015, 9-12-090, 9-80-220, 9-92-035, 9-112-555, 11-4-1115, 11-4-1410, 11-4-1500, or 15-20-270 of this code 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 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.** If the vehicle is also subject to immobilization for unpaid parking and/or compliance violations, the owner of the vehicle must also pay the amounts due for all such outstanding violations prior to the release of the vehicle. If the administrative law officer determines that 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.

(2) Within 10 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 lien holder 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 photocopy 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 (9).

(3) **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 (1) the administrative penalty, plus any applicable towing and storage fees, plus all amounts due for outstanding final determination of parking and/or compliance violations (if the vehicle is also subject to immobilization for unpaid final determinations of parking and/or compliance violations), is paid to the city,** in which case possession of the vehicle shall be given to the person who is legally entitled to possess the vehicle; or **(2) the vehicle is sold or otherwise disposed of to satisfy a judgment** or enforce a lien as provided by law.

MCC §2-14-132(1)-(3).

43. MCC §2-14-132 allows for impoundment pursuant to the following sections of the code:

a. MCC § 3-46-076, Impoundment of Ground Transportation Vehicles;

b. MCC § 4-68-195, Unlicensed Ambulance;

c. MCC § 7-24-225, Unlawful Drugs in Vehicle;

d. MCC § 7-24-226, Driving While Intoxicated;

e. MCC § 7-28-390, Dumping on Public Way;

f. MCC § 7-28-440, Dumping on Real Estate without Permit;

g. MCC § 8-4-130, Possession of Etching Materials;

h. MCC § 8-8-060, Solicitation for Prostitution;

i. MCC § 8-20-015, Unlawful Firearm in Vehicle;

j. MCC § 9-12-090, Drag Racing;

k. MCC § 9-80-220, False, Stolen or Altered Temporary Registration Permits;

l. MCC § 9-92-035, Impoundment of Fleeing Vehicle;

m. MCC § 9-112-555, Revoked, Surrendered License;

n. MCC § 11-4-1410, Disposal in Waters Prohibited;

o. MCC § 11-4-1500, Treatment and Disposal of Soling or Liquid Waste; and

p. MCC § 15-20-270, Unlawful Fireworks in Motor Vehicle.

B. Limitation on Home Rule Units

44. Chicago is a home rule unit. The powers of home rule units to govern local affairs originates from Article VII, Section 6(a) of the Illinois Constitution which states:

> Except as limited by this Section, 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. 1970, art. VII, § 6(a).

45. However, these powers are not without limitation. Section 6(i) of Article VII states that:

> home 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. 1970, art. VII, §6(i).

46. The Chapter of the Illinois Motor Vehicle Act that includes 625 ILCS 5/11-208.7 states:

> 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.

625 ILCS 5/11-208.2 (West 2012), (emphasis added).

47. The 2016 Amendment did not remove the limitation on home rule units that limits **any** county or municipality from imposing any fines, penalties or other monetary relief, with the exception 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**."

48. The 2016 Amendment contains the following, limited, home rule exemption:

> (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 the 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.

625 ILCS 5/11-208.7(j) (West 2016).

49. The reference to "fee limits" in subsection (b) permits home rule units to impound vehicles for offenses beyond those enumerated in Section 208.7(b), consistent, of course, with the remainder of Section 208.7. The other specific carve outs for home rule units do not permit home rule units to collect penalties, making the Impoundment Ordinance invalid because it is contrary to and in violation of the Illinois Motor Vehicle Code and the Illinois Constitution.

50. The legislative activity surrounding Section 208.7 confirms that Section 208.7 means what it says.

51. Thus, Section 208.7 is applicable to home rule units inasmuch as the Illinois House of Representatives refused to consider H.B. 2652, deliberately rejecting the efforts of home rule units to persuade the Illinois Legislature to amend Section 208.2, as necessary to exclude home rule units from the limitations of Section 208.7.

52. There is no ambiguity in Section 208.7, it applies to "Any County or Municipality" and prohibits the collection of anything beyond 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." 625 ILCS 5/11-208.7(a).

53. In sum, the City has actively participated in shaping the language of Section 208.7 through the years since its enactment, and the Illinois Legislature has flatly rejected the lobbying efforts and requests by home rule units to make them exempt from the purview of Section 208.7, as necessary to allow home rule entities to continue to fill their budget gaps by collecting penalties pursuant to impoundment ordinances.

C. §11-208.7 of The Illinois Motor Vehicle Code

54. 625 ILCS 5/11-208.7 of the Illinois Motor Vehicle Code states in pertinent part:

> **(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.
>
> **(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.**

625 ILCS 5/11-208.7 (West 2012), (emphasis added).

55. The 2016 Amendment removed the restriction on home rule units from imposing fees for offenses beyond those enumerated in Section 11-208.7(b).

56. The City's obstinate decision to continue the enforcement of the invalid Impoundment Ordinance against Plaintiffs, and those similarly situated, not only violates Section 208.7 but also ignores the nuances of its own ordinance by failing to provide notice of a right to hearing by the prescribed method therein (*i.e.*, certified mail).

57. What is more, the City fails to follow the strictures of Section 208.7 regarding notice, instead choosing to send notices that require the owner of an impounded vehicle to demand a hearing, contrary to Section 208.7, which clearly requires the City to mail notice containing a hearing date within 45 days of the date of mailing. 625 ILCS 5/11-208.7(e)(3); see also MCC §2-14-132; *cf.* 625 ILCS 5/11-208.7(e)(3).

58. Further, it is the custom and practice at the Department of Administrative Hearing that, in order to vacate a default judgment, it is insufficient for the respondent to allege that they did not receive proper notice by mail.

D. Plaintiff Lintzeris

59. On or about April 24, 2016, Frank Lintzeris, the adult son of Plaintiff Lintzeris, borrowed her 2015 Jeep Compass and was allegedly involved in a motor vehicle accident in the City of Chicago.

60. Frank Lintzeris was arrested by officers of the Chicago Police Department for allegedly driving while intoxicated and for possession of unlawful drugs.

61. Plaintiff Lintzeris's vehicle was seized and impounded by the Chicago Police Officers pursuant to the Impoundment Ordinance.

62. On or about April 26, 2016, Plaintiff Lintzeris paid $4,210.00 to the City of Chicago Department of Finance as necessary to regain possession of her automobile that was impounded pursuant to the unlawful Impoundment Ordinance.

63. Of the $4,210.00 paid by Plaintiff Lintzeris, $4,000.00 were "Administrative Penalties" in violation of her rights as enumerated herein.

64. The remaining balance paid by Plaintiff Lintzeris included a $150.00 fee for towing and $60.00 for two days of storage.

65. After paying the "Administrative Penalties" subject to her right to a "full hearing," on August 17, 2016, Plaintiff Lintzeris appeared at the DOAH facility at 400 W. Superior Street in Chicago, Illinois, with her counsel. Her counsel argued, among other things, to the assigned DOAH Administrative Law Judge that the Impoundment Ordinance is invalid because it violates Section 208.7 because it requires a vehicle owner to pay an "Administrative Penalty" or multiple

"Administrative Penalties" that are "fines" as a matter of law as the Illinois Supreme Court held in *People v. Jones*, 223 Ill.2d 659 (2006).

66. The DOAH Administrative Law Judge advised he could not consider the arguments stating that the arguments were for "another court" apparently referencing DOAH's policy to follow the rules set forth on the City's "Vehicle Impoundment Fact Sheet" that states:

> The vehicle owner may only present evidence of the following defenses to the impoundment:
>
> - The vehicle 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.
> - The vehicle was operating as a common carrier (taxi cab, livery, etc. ...) and the violation occurred without the knowledge of the person in control of the vehicle.
> - The vehicle had been donated, traded-in or sold to another person prior to the violation.[1]

E. Plaintiff S. Moraitis

67. On or about July 7, 2017, Plaintiff S. Moraitis was driving his 2004 GMC Yukon when he was arrested for allegedly driving on a suspended license.

68. Plaintiff S. Moraitis's vehicle was seized and impounded by Chicago Police Officers pursuant to the Impoundment Ordinance.

69. Despite submitting a request for hearing on July 13, 2017, as of the date of filing this Complaint, a hearing date has yet to be set.

70. Based on the City's custom and practice, to recover his vehicle, Plaintiff S. Moraitis will be required to pay "Administrative Penalties" in an amount no less than $1,000.00.

[1] See http://www.cityofchicago.org/city/en/depts/ah/supp_info/vip/vip_fact_sheet.html (last visited January 31, 2017).

F. Plaintiff W. Moraitis

71. On or about March 5, 2017, Plaintiff S. Moraitis was driving W. Moraitis a 1998 Toyota registered to his father, W. Moraitis, when he was arrested for allegedly driving on a suspended license.

72. Plaintiff W. Moraitis's vehicle was seized and impounded by Chicago Police Officers pursuant to the Impoundment Ordinance.

73. Hearing on Plaintiff W. Moraitis's ordinance violation took place on August 14, 2017.

74. S. Moraitis appeared in W. Moraitis's stead at the hearing with a fully executed power of attorney.

75. His counsel objected to the imposition of an administrative judgment against Plaintiff W. Moraitis because the Impoundment Ordinance is void because Section 208.7 does not allow for the imposition of penalties or fines.

76. The Administrative Law Judge disagreed, entered "Findings, Decisions & Order" in favor of the City and against Plaintiff W. Moraitis.

77. Plaintiff W. Moraitis was ordered to pay a $1,000.00 Administrative Penalty, along with $5,630.00 in storage costs, and a $150.00 towing fee.

G. Plaintiff Jossell

78. On or about August 12, 2016, Plaintiff Jossell was driving his 2002 Nissan Pathfinder when he was arrested for allegedly being in possession of a controlled substance.

79. Plaintiff Jossell's vehicle was seized and impounded by the Chicago Police Officers pursuant to the Impoundment Ordinance.

80. On or about August 17, 2016, Plaintiff Jossell paid $2,250.00 to the City of Chicago Department of Finance, as necessary to regain possession of his automobile that was impounded pursuant to the unlawful Impoundment Ordinance.

81. Of the $2,250.00 paid by Plaintiff Jossell, $2,000.00 was an "Administrative Penalty" in violation of Plaintiff Jossell's rights as enumerated herein.

82. The remaining balance paid by Plaintiff Jossell included a $150.00 fee for towing and a $100.00 fee for storage.

83. On or about October 17, 2016, Plaintiff Jossell appeared at DOAH for his Administrative Hearing, his counsel made the same objection that was imposed by Plaintiff Litzeris and the objection was overruled. See ¶ 65, *supra*.

H. Plaintiff Daniels

84. On or about December 10, 2016, Plaintiff Daniels was driving his 2002 Chevy Suburban when he was arrested for allegedly driving while intoxicated.

85. Plaintiff Daniels's vehicle was seized and impounded by the Chicago Police Officers pursuant to the Impoundment Ordinance.

86. On information and belief, Defendant City has imposed an "Administrative Penalty" on Plaintiff Daniels in the amount of $2,000, in violation of Plaintiff Daniel's rights as enumerated herein.

87. Plaintiff Daniels does not have the funds necessary to pay the "Administrative Penalty" imposed by the City and therefore, on information and belief, his vehicle remains in the Chicago auto pound and is incurring further storage costs and will eventually be sold by the City to satisfy an illegal fine.

88. Further, Defendant City through DOAH, failed to provide notice to Plaintiff Daniels of the date, time and location of an administration hearing, contrary to and in violation of Illinois Motor Vehicle Code 625 ILCS 5/11-208.7.

89. Due to the City's failure to provide the aforementioned notice, a default judgment was entered against Plaintiff Daniels before the DOAH, and was a direct violation of Plaintiff Daniels's rights.

I. Defendant City of Chicago

90. Defendant City of Chicago, through its agents and employees, including but not limited to its Chief Executive Officer, have and continue to enforce the Impoundment Ordinance despite knowing it is invalid, in violation of the Illinois Constitution and Illinois law. Defendant City continues to engage in unreasonable impoundments of vehicles and conducts proceedings with intentional and willful indifference to the rights of Plaintiffs, and those similarly situated.

CLASS ACTION ALLEGATIONS

91. Pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-801, Plaintiffs bring this class action and seek certification of the claims and certain issues in this action on behalf of a class defined as:

> **All persons who have paid "Administrative Penalties" pursuant to Chicago Municipal Code, §2-14-132 and the pertinent sections of the Chicago Municipal Code identified therein, contrary to and in violation of Illinois Motor Vehicle Code 625 ILCS 5/11-208.7, during the period extending from January 1, 2012, through and to the filing date of this Complaint.**

Plaintiffs also bring this action on behalf of a putative Subclass of similarly situated individuals, defined as follows:

> **All persons who had judgment entered against them by DOAH pursuant to Chicago Municipal Code, §2-14-132 and the pertinent sections of the Chicago Municipal Code identified therein, during the period extending from January 1, 2012 though and to the filing date of this Complaint. ("Subclass 1").**

Plaintiff Daniels also brings this action, on behalf of a putative Subclass of similarly situated individuals defined as follows:

> **All persons who were defaulted before the DOAH but were not given Notice by the City of Chicago, containing the date, time and location of the administrative hearing schedule to convene no later than 45 days after the date of the mailing of the notice of hearing, contrary to and in violation of Illinois Motor Vehicle Code 625 ILCS 5/11-208.7, during the period extending from January 1, 2012, through and to the filing date of this Complaint. ("Subclass 2").**

Plaintiff S. Moraitis also brings this action, on behalf of a putative Subclass of similarly situated individuals defined as follows:

> **All persons who had judgments entered against them or were defaulted by DOAH, pursuant to Chicago Municipal Code, §2-14-132 and the pertinent sections of the Chicago Municipal Code identified therein, and are now the subject of a collection against by the City, or its agent, for recovery of unpaid "Administrative Penalties" storage costs, or tossing costs as a result of those judgments and/or orders of default.**

92. Plaintiffs reserve the right to amend the Class definition if further investigation and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified. Excluded from the Class are governmental entities, Defendant, any entity in which Defendant has a controlling interest, and Defendant's elected officials, legal representatives, employees, co-conspirators and assigns. Also excluded from the Class is any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and judicial staff.

93. Defendant's practices and omissions were applied uniformly to all members of the Class, including any subclass arising out of the claims alleged herein, so that the questions of law and fact are common to all members of the Class and any subclass.

94. All members of the Class and any subclass were and are similarly affected by the "Administrative Penalties" and improper notice of DOAH hearings, and the relief sought herein is for the benefit of Plaintiffs and members of the Class and any subclass.

95. Total damages suffered by the proposed class are sizable; the City of Chicago's 2017 proposed budget indicates that Chicago has collected at least forty-three million dollars ($43

million) in revenue as a result of imposing "Administrative Penalties" as purportedly allowed by the Impoundment Ordinance since the enactment of Section 208.7 on January 1, 2012.

96. The City has also unlawfully impounded and sold vehicles and entered default judgments as a result of assessing "Administrative Penalties" as purportedly allowed by the Impoundment Ordinance since the enactment of Section 208.7 on January 1, 2012.

97. Based on the annual revenue from the "Administrative Penalties," it is apparent that the number of members in both the Class and any subclass is so large as to make joinder impractical, if not impossible.

98. Further, members of the class are easily identifiable because, on information and belief, Defendant maintains information regarding all persons who have been assessed "Administrative Penalties," have paid "Administrative Penalties," and/or whose cars were forfeited pursuant to the Impoundment Ordinance, and maintain information relating to all DOAH hearings held since January 1, 2012.

99. Class Members can be identified using the information maintained by Defendant in the usual course of business and/or in the control of Defendant. Class Members can be notified of the pendency of the class action through direct mailing to address lists maintained in the usual course of business by Defendant. The precise number of Class members is unknown to Plaintiffs, but Plaintiffs allege that Defendant has accessed "Administrative Penalties" in excess of forty-three million dollars ($43 million).

100. Questions of law and fact common to the Plaintiff Class and any subclass exist that predominate over questions affecting only individual members, including *inter alia*:

a. Whether the Impoundment of vehicles for the purpose of collecting "Administrative Penalties" pursuant to MCC §2-14-132 and the pertinent sections of the Chicago Municipal Code identified therein is in violation of Illinois Motor Vehicle Code 625 ILCS 5/ 11-208.2 and 11-208.7;

b. Whether the Impoundment of vehicles for the purpose of collecting "Administrative Penalties" pursuant to MCC §2-14-132 and the pertinent sections of the Chicago Municipal Code identified therein is in violation of the Illinois Constitution;

c. Whether the City of Chicago should be required to return all "Administrative Penalties" that it has collected, with interest, and/or pay vehicle owners the reasonable value of their vehicles that were confiscated in lieu of or in addition to an "Administrative Penalty" or for the failure to pay an "Administrative Penalty."

d. Whether the City of Chicago should be required to vacate all judgments for "Administrative Penalties."

101. Defendant engaged in a common course of conduct giving rise to the legal rights sought to be enforced by Class Members. The same or substantially similar sections of the Municipal Code and imposition of illegal "Administrative Penalties," pursuant to those sections, makes the pertinent portions of the Municipal Code that violate Section 208.7 facially invalid and, therefore, the Court should declare the same and require the City of Chicago to pay remuneration to the Class.

102. By way of example, the number of penalties assessed, and the corresponding amounts paid by Plaintiffs, is not an individual question that predominates because the question of whether Defendant systemically violates Illinois law by unlawfully impounding vehicles in violation of Section 208.7 can be answered regardless of the amount in penalties paid by each Class Member. Because the questions of law and fact common to the respective members of the Class and any subclass predominate over questions of law and fact affecting only individual members, class litigation is superior to any other method available for a fair and efficient decree of the claims.

103. The claims asserted by Plaintiffs in this action are typical of the claims of the members of the Plaintiff Class and any subclass, as the claims arise from the same course of

conduct by Defendant, and the relief sought within the Class and any subclass is common to the members of each. The injuries sustained by the Class Members flow in each instance from a common nucleus of operative facts. In each case, Defendant illegally violated Illinois law by enforcing an ordinance in violation of the Illinois Motor Vehicle Code. Further, all Plaintiffs have been found to be in violation of the Impoundment Ordinance and have either paid "Administrative Penalties" or have had to forfeit their vehicles due to an inability to pay. Defendant continues to retain Plaintiffs' funds, while at the same time continuing to deprive Plaintiffs of their money and any interest or other gains they may be entitled to.

104. Absent a class action, it would be highly unlikely that the representative Plaintiffs or any other members of the Class or any subclass would be able to protect their own interests because the cost of litigation through individual lawsuits might exceed expected recovery.

105. Certification is also appropriate because Defendant acted, or refused to act, on grounds generally applicable to both the Class and any subclass, thereby making appropriate the relief sought on behalf of the Class and any subclass as respective wholes. Further, given the large number of fines imposed pursuant to the Impoundment Ordinance since enactment of Section 208.7 on January 1, 2012, allowing individual actions to proceed in lieu of a class action would run the risk of yielding inconsistent and conflicting adjudications.

106. A class action is a fair and appropriate method for the adjudication of the controversy, in that it will permit a large number of claims to be resolved in a single forum simultaneously, efficiently, and without the unnecessary hardship that would result from the prosecution of numerous individual actions and the duplication of discovery, effort, expense and burden on the courts that individual actions would engender.

107. The class action device presents far fewer management difficulties and provides the benefits of a single, uniform adjudication, economies of scale, and comprehensive supervision by a single court.

108. The benefits of proceeding as a class action, including providing a method for obtaining redress for claims that would not be practical to pursue individually, outweigh any difficulties that might be argued with regard to the management of this class action.

109. Plaintiffs will fairly and adequately represent and protect the interest of the members of the Plaintiff Class and any subclass.

110. Plaintiffs are represented by counsel experienced and competent in all areas of law relating to this Complaint, who are prepared to fully and adequately prosecute this Action on behalf of their clients and on behalf of all members of the Plaintiff Class as Class Counsel.

VIOLATION OF ILLINOIS HOME RULE STATUTE

111. The Ordinance is unlawful because it violates the Illinois Home Rule Statute.

112. Chicago is a home rule unit. The powers of home rule units to govern local affairs originates from Article VII, Section 6(a) of the Illinois Constitution which states:

> Except as limited by this Section, 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. 1970, art. VII, § 6(a).

113. However, these powers are not without limitation. Section 6(i) of Article VII states that:

> home 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. 1970, art. VII, §6(i).

114. As a home-rule unit, Chicago does possess inherent powers to legislate on a particular subject, however, it must not pass ordinances or continue to enforce ordinances where the legislature limits its home rule powers.

115. Section 208.2 expressly limits Chicago's authority to adopt local police regulations inconsistent with the Code, except pursuant to Sections 11-208, 11-209, 11-1005.1, 11-1412.1, and 11-1412.2.

116. Despite heavy lobbying efforts in both legislative branches, the limited home rule exclusion in the amended version of Section 208.7 demonstrates that the City's position that the law, as passed in 2012, does not apply to it, is without merit and arguably frivolous.

117. The City does not have authority to adopt any ordinances inconsistent with Section 208.7, although it may impound cars for offenses beyond those set forth in subsection (b) of Section 208.7 and is not subject to an award of attorneys' fees in an administrative hearing where a respondent may prevail.

118. The only monetary amounts the City may seek are its towing, storage and other "reasonable administrative costs" related to the impoundment.

119. A municipal ordinance adopted, or that is not withdrawn, where the legislature limits home rule power is void *ab initio*.

120. The Impoundment Ordinance states in pertinent part:

> …**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.**

121. Section 208.7(a) provides that:

> **(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.

122. Section 208.7(c) provides that:

> **(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.**

123. The Impoundment Ordinance is inconsistent with Section 11-208.7(a) and (c) in its imposition of fines (*i.e.*, illegal "Administrative Penalties").

124. Despite the express limitation on Chicago's ability to continue to enforce its impoundment ordinances in direct contradiction to the law as set forth in Section 208.7 by continuing to impose hefty "Administrative Penalties," and has placed at least $61,000,000 in its coffers by doing so.

125. The Impoundment Ordinance has not been amended and is being unlawfully enforced.

126. Moreover, the allegedly "neutral" Administrative Hearing offices at DOAH refuse to acknowledge clear state law, instead choosing to follow the City's illegal Ordinance thereby condoning the Chicago Police Department's ongoing unlawful impoundments of vehicles.

VIOLATION OF PREEMPTION CLAUSE OF THE ILLINOIS CONSTITUTION

127. The Ordinance is unlawful because it violates the Preemption Clause of the Illinois Constitution.

128. Because the Ordinance is in violation of the Preemption Clause of the Illinois Constitution, Section 6(i) of Article VII, the Ordinance is *void ab initio.* Thus, the City lacks authority and justification for the impoundment of vehicles and collection of "Administrative Penalties."

129. Chicago is a home rule unit. The powers of home rule units to govern local affairs originates from Article VII, Section 6(a) of the Illinois Constitution which states:

> Except as limited by this Section, 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. 1970, art. VII, § 6(a).

130. However, these powers are not without limitation. Section 6(i) of Article VII states that:

> home 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. 1970, art. VII, §6(i).

131. Chicago may not adopt a municipal ordinance that is preempted by Illinois law.

132. Section 208.7(a) provides that:

> **(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.

133. Section 208.7(c) provides that:

> **(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.**

134. Pursuant to Section 208.2, home rule units may not adopt local regulations inconsistent with §11-208.7, above.

> 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.

135. Chicago Municipal Code 2-14-132 Impoundment states, in pertinent part:

> …**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.**

136. The Impoundment Ordinance directly conflicts with Section 208.7 and is thus preempted by Illinois law.

137. The Impoundment Ordinance attempts to legislate or regulate in a field extensively occupied by the Illinois government through the Illinois Motor Vehicle Code, and thus exceeds the authority granted to the City by Art. VII of the Illinois Constitution.

138. By permitting the City to collect "Administrative Penalties," the Impoundment Ordinance conflicts with and is preempted by Illinois law.

139. Illinois law, including but not limited to, Section 208.7, only allows for "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."

140. By permitting the DOAH Administrative Law Judges to order the continued impoundment of vehicles unless owners pay the City the "Administrative Penalty" (that is clearly a fine as a matter of law) prescribed for in the code, the Impoundment Ordinance at issue conflicts with and is, therefore, unconstitutional and preempted by Illinois Law.

COUNT I
DECLARATORY JUDGMENT

141. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 140 as if fully set forth herein.

142. Pursuant to 735 ILCS 5/2-701(a), this Court may "make binding declarations of rights, having the force of final judgments" including "the construction of any statute, municipal ordinance, or other governmental regulation" and "the rights of the parties interested." 735 ILCS 5/2-701(b) (West 2016).

143. Since January 1, 2012, Defendant has collected "Administrative Penalties" from Plaintiffs contrary to and in violation of Section 208.7.

144. These "Administrative Penalties" were contrary to and in violation of Section 208.7.

145. There is an actual controversy between the parties regarding the legality of the impoundments based on the Impoundment Ordinance that is facially invalid because it requires the vehicle owner to pay an "Administrative Penalty" in violation of Section 208.7.

146. Plaintiffs have a protectable interest and clearly ascertainable right to be free from unlawful impoundments and the deprivation of their property that can only be restored by payment of an unlawful "Administrative Penalty" based on the plain language of the Impoundment Ordinance.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

a. A declaration that the Impoundment Ordinance was repealed by implicated upon the enactment of Section 208.7 of the Illinois Motor Vehicle Code on January 1, 2012;

b. A declaration that all administrative findings of liability pursuant to the Impoundment Ordinance are null and void, and declaring that any "Administrative Penalties" or other amounts stemming from those administrative findings are similarly void;

c. A declaration that all default judgments pursuant to the Impoundment Ordinance are null and void where respondents did not receive notice of hearing pursuant to Section 208.7 of the Illinois Motor Vehicle Code, and declaring that any "Administrative Penalties" or other amounts stemming from those default judgments are similarly void;

d. A declaration that the "Administrative Penalties" since January 1, 2012 are contrary to and in violation of 625 ILCS 5/11-208.7;

e. A declaration that the Impoundment Ordinance is unenforceable as a matter of law;

f. Such other and further relief as this court may deem just and proper.

COUNT II
INJUNCTIVE RELIEF

147. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 140 as if fully set forth herein.

148. Since January 1, 2012, Defendant has collected "Administrative Penalties" from Plaintiffs contrary to and in violation of Section 208.7.

149. Plaintiffs have a substantial likelihood of success on the merits, as the Impoundment Ordinance is clearly in violation of Section 208.7 on its face because it allows for the imposition of "Administrative Penalties," and is therefore preempted by Illinois law.

150. Additionally, Defendant continues to knowingly and illegally enforce the Impoundment Ordinance, and the pertinent sections of the Chicago Municipal Code identified therein, in violation of Illinois law, causing substantial irreparable harm to Plaintiffs, and other similarly situated people for which there is no adequate remedy at law other than permanent injunctive relief to prohibit further violation of Plaintiffs' rights.

151. In balancing the interests of the parties against the public interest, the scales weights in favor of injunctive relief to prevent continued violation of Plaintiffs' rights, and stop the City from its deliberate violation of Illinois law.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

a. An injunction prohibiting Defendant from continuing to knowingly violate Illinois law by unlawfully impounding vehicles, initiating or conducting further impoundment proceedings at DOAH or in any other forum that seek "Administrative Penalties" in violation of 625 ILCS 5/11-208.7;

b. Such other and further relief as this court may deem just and proper.

COUNT III
UNJUST ENRICHMENT

152. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 140 as if fully set forth herein.

153. The City has demanded and received "Administrative Penalties" from Plaintiffs and other class members for alleged Ordinance violations pursuant to an illegal Impoundment Ordinance, contrary to and in violation of Illinois law.

154. Despite this fatal deficiency, the City has collected penalties from Plaintiffs and class members to which it is not entitled, and the City knowingly appreciated and accepted these benefits, which has resulted and continues to result in an inequity to Plaintiff and members of the Class.

155. Since January 1, 2012, the City has collected approximately forty-three million dollars ($43,000,000) in impoundment penalties from Plaintiffs.

156. Since January 1, 2012, the City has collected approximately eighteen million dollars ($18,000,000) in revenue from the sale of impounded vehicles, forfeited by Plaintiffs.

157. But for Defendant's unlawful impoundment of vehicles, requiring "Administrative Penalties" to be posted as bond for the release of vehicles and entering judgments, collecting funds, destroying or selling vehicles because of the failure to pay "Administrative Penalties," contrary to and in violation of Section 208.7, Chicago would not have received at least forty-three million dollars ($43,000,000) from Class Members and additional proceeds of eighteen million dollars ($18,000,000) obtained by selling unlawfully impounded vehicles.

158. The City has never been legally entitled to collect the "Administrative Penalties" from Plaintiffs, or any members of the Plaintiff Class.

159. The City has improperly obtained and kept money belonging to Plaintiffs and to all members of the Plaintiff Class.

160. Defendant has been unjustly enriched at the expense of, and detriment to, Plaintiffs. Allowing Defendant to retain the "Administrative Penalties" and revenues from sold impounded vehicles would violate fundamental principles of justice, equity and good conscience.

161. The City has wrongfully acquired and continues to wrongfully acquire "Administrative Penalties" for its own use and benefit and have deprived Plaintiffs, and those similarly situated, of the use and benefit thereof.

162. The City has also wrongfully acquired and continues to wrongfully acquire funds from the sale of vehicles (in lieu of collecting a portion of judgments for "Administrative Penalties") for its own use and benefit and have deprived Plaintiffs, and those similarly situated, of the use and benefit thereof.

163. It would be unjust for Defendant to retain Plaintiffs' monies.

164. This Court has the power to award restitution to Plaintiffs, in both law and in equity, to rectify the unjust gains and enrichment of Defendant.

165. This Court has the power to award prejudgment interest where warranted by equitable considerations.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

a. Imposition of a constructive trust on all "Administrative Penalties" received and retained by Defendant, in the past, present and future, and for an equitable accounting of all "Administrative Penalties" received or used as a result of said Ordinance;

b. Defendant shall refund to Plaintiffs all sums they have paid in "Administrative Penalties" assessed in connection with the Impoundment Ordinance;

c. Defendant shall refund to Plaintiffs all sums they have paid in towing and storage fees in connection with the Impoundment Ordinance;

d. Defendant shall refund to Plaintiffs all amounts obtained by selling vehicles due to the failure of Plaintiffs to pay "Administrative Penalties" in connection with the Impoundment Ordinance;

e. Legal and equitable restitution to Plaintiffs of all such sums;

f. Compensatory, incidental, and consequential damages in an amount to be determined at trial, equal to the "Administrative Penalties" unlawfully collected and/or obtained by selling vehicles because of the failure to pay "Administrative Penalties;"

g. Prejudgment interest, and costs of suit herein incurred;

h. Such other and further relief as this Court may deem just and proper.

COUNT IV
CONVERSION

166. Plaintiffs hereby incorporate by reference all of their allegations set forth above in paragraphs 1 through 140 as if fully set forth herein.

167. But for the illegal collection of "Administrative Penalties," Plaintiffs and other class members would not have paid Defendant fines at least in the sum of forty-three million dollars ($43,000,000) since January 1, 2012.

168. Defendant wrongfully assumed control, dominion, or ownership over Plaintiffs personal property.

169. The proceeds of Defendant's "Administrative Penalties" have already been spent as part of the Special Revenue Fund of the City of Chicago's Budget. Accordingly, a demand on Defendant for return of the "Administrative Penalties" would be futile.

170. Plaintiffs are entitled to immediate possession of the "Administrative Penalties," absolutely and unconditionally.

171. This Court has the power to award prejudgment interest where warranted by equitable considerations.

WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Defendant, including the following:

a. Compensatory, incidental, and consequential damages in an amount to be determined at trial, equal to the "Administrative Penalties" unlawfully collected

and/or obtained by selling vehicles because of the failure to pay "Administrative Penalties;"

b. Prejudgment interest, and costs of suit herein incurred;

c. Such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury as to all of their claims so triable.

Dated: August 18, 3017

Respectfully submitted,

By: /s/ Charles F. Morrissey

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Clerk Bolin: "House Bill 1220, a Bill for an Act concerning transportation. Third Reading of this House Bill."

Speaker Lyons: "The Gentleman from Cook, Representative Mike Zalewski."

Zalewski: "Thank you, Mr. Speaker. This Bill simply allows non-Home Rule entity the authority under the law to impose towing fees. A lot of non-Home Rule entities currently are operating under opinions issued by village attorneys. We thought it'd be better if they operated under state statute instead. I respectfully ask for an 'aye' vote."

Speaker Lyons: "Chair recognizes the Gentleman from Crawford, Representative Roger Eddy."

Eddy: "Thank you. Would the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Eddy: "Representative, this allows for the imposition of a fee?"

Zalewski: "Correct."

Eddy: "So, are there limits on what the fee amount can be?"

Zalewski: "I don't… I don't… one moment, Representative."

Eddy: "It… it's a fee on impounded vehicles, right?"

Zalewski: "Correct. I don't think we… I don't believe we capped the amount. I just think we allowed for the imposition of the fee."

Eddy: "So, this is for any municipality in the state?"

Zalewski: "Non… non-Home Rule. Currently, Home Rule entities are allowed to do this."

Eddy: "Okay."

Zalewski: "However, non-Home Rule entities are… frankly, there's some ambiguity."

Eddy: "So, you're… you're extending this authority to non-Home Rule areas and they will be the ones that impose the fee?"

Zalewski: "Correct."

Eddy: "You haven't set a cap on the fee in this though?"

Zalewski: "That… that's… I don't believe so, Representative."

Eddy: "Okay. Representative, I… I… I think it's just important that the Body understands that this… this does not impose the fee, but it certainly does allow for the imposition of a fee."

Zalewski: "Correct."

Eddy: "Thank you."

Zalewski: "Thank you, Representative."

Speaker Lyons: "Representative Eddy, excuse me, are you still searching for something or are you finished? Okay, Representative Jack Franks."

Franks: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lyons: "Sponsor yields."

Franks: "Representative, it's my understanding as I'm reading the analysis that you are seeking to give the municipalities the ability, if they so choose, to impose fees for certain vehicles that have been impounded, is that correct?"

Zalewski: "Correct, Representative."

Franks: "And there are two additional areas in which they would impose these fees. One when the vehicle has been used in the commission of a felony retail theft and also during the commission of an offense in violation of the Criminal Code, correct?"

Zalewski: "Correct."

Franks: "Now, why would you single out these two to put additional fees on? Is there some additional cost to the municipality or is this just a revenue generator?"

Zalewski: "Rep… Representative, the original Bill I believe had a significant amount of offenses. The Amendment allowed for the retail theft and that's simply because some of the municipalities… oftentimes, police are called to retail thefts to detain the suspect. And frankly, that's manpower, that's time, that's gas, that these non-Home Rules are frankly, in certain, they… they can't afford to…"

Franks: "That's what I'm… that's what I'm trying to find out what the rationale is because some of them you haven't. And I just don't want to have these as fee generators…"

Zalewski: "Right."

Franks: "…but if there's a logical reason that these two categories cost the municipality more, please explain."

Zalewski: "I know with respect to those two specific crimes, that's… that's what you're asking, Representative?"

Franks: "Yeah and that's all there is."

Zalewski: "Okay. So, my understanding with respect to retail theft, what was the other offense you were concerned with?"

Franks: "The… as I'm reading the analysis and perhaps this is incomplete, but they indicated one was felony theft or retail theft and the second one was use of a vehicle during the commission…"

Zalewski: "Okay."

Franks: "…of any offense in violation of the Criminal Code. That seems a little broad."

Zalewski: "So, in both… well, in both of those instances I would… I would argue…"

Speaker Lyons: "…Franks, your two minutes are up. We'll give you another minute to finish your question."

Franks: "Yeah, we're still waiting for the answer."

Zalewski: "I'll… I'll address the Gentleman's question, Mr. Speaker. In both of those instances I would refer you back to the fact that those are instances where the responding officer for… for whatever reason is… is being asked to commit time to the detention of the suspect. And therefore, there is no recourse for the… for the municipality to

recoup those fees other… recoup that time and the resources other than the imposition of the fees. As to the broadness of the language, I… I just believe that those two offenses have to be included in the… in the Bill in order to… to assist the municipality."

Franks: "But would you be willing, maybe in the Senate…"

Zalewski: "Sure."

Franks: "…should this get the requisite, to talk maybe tightening up the language because this…"

Zalewski: "Absolutely."

Franks: "Thank you, I appreciate that."

Speaker Lyons: "Chair recognizes the Lady from Cook, Representative Monique Davis."

Davis, M.: "Thank you so much, Mr. Speaker. Will the Representative yield?"

Speaker Lyons: "The Representative yields."

Davis, M.: "Representative, could you give us a brief scenario on what your Bill will do?"

Zalewski: "Certainly. I think the most common and the reason, frankly, for the Bill are DUIs, Representative and vehicle offenses. It… it takes a significant amount of… of work at the time of the DUI once… once the arrest has been made. You have to wait for the… for the tow truck because the driver's being arrested. You have to take them back to the police station. You have to then issue the breathalyzer test, you have to fill out the paperwork, the statutory summary suspension papers. I mean, there's a significant amount of… of effort involved. And frankly, non-Home Rules don't have the ability to… to recompensate themselves based

on that and they end up losing revenue because of these arrests that they're compelled to make."

Davis, M.: "So, we're increasing the fees for a person to be able to retrieve their vehicle, is that correct?"

Zalewski: "We're not… I'm sorry, what was your question, Representative?"

Davis, M.: "We're increasing the fees for an automobile operator to be able to retrieve his automobile?"

Zalewski: "Not accurate, Representative. We are giving non-Home Rule entities the authority under state statute, which a lot of them are already doing this under less than ideal circumstances, but we're giving it to them in state statute the authority to impose fees."

Davis, M.: "It says, operation or use of a motor vehicle in the commission of or in the attempt to commit an offense in violation of Sections 24-1, 24-1.5 and so on of the Criminal Code. Is a speeding ticket, are you violating the Criminal Code?"

Zalewski: "Yes, depending on the speeding tick…"

Speaker Lyons: "I'm sorry. We'll give you another minute, Representative, to finish your question."

Davis, M.: "Thanks. If a person violates the speeding laws and his vehicle is taken from him, you're telling me he's going to have to pay additional fees. Is that right?"

Zalewski: "I… I don't… let me rephrase. A typical speeding ticket instance is where the offender is cited and sent on their way. If it's aggravated speeding or the officer subsequently discovers some other issue for which the person has to be arrested then the… then an arrest takes

place and then the car may have to be impounded. So, we're not talking about your ordinary speeding ticket, we're talking about exceptional circumstances where the speeding ticket leads to an arrest."

Davis, M.: "Or… or perhaps where the person had additional tickets; therefore, we're going to arrest you 'cause you got a speeding ticket now and you're driving on a ticket. So, you're going to jail. This is another one of those Bills where we are going to say to the consumer or to the people who visit mostly our city, we're going to add another fee on you. It's going to be over $500 or more to get your car and go home. Now, I know you've made a little effort to tell us about a person who's committing a major crime. The guy who's committing a major crime, he's not going to have his own car. You're not going to apprehend him and you're not going to take his car in and tow it. You're talking about everyday citizens who make a mistake, who may have a DUI but at that point he's not drunk. And you're going to take his car and charge him an arm and a leg to get it out and it's wrong. Vote 'no'."

Speaker Lyons: "The Chair recognizes the Lady from Cook, Representative Mary Flowers."

Flowers: "Thank you, Mr. Speaker. Will the Gentleman yield?"

Speaker Lyons: "Gentleman yields."

Flowers: "Representative, you know these are very hard times for lots of people. You know people who used to have cars and homes and, you know, but stuff has happened. They lost their jobs, they lost their homes and they lost their livelihood. And now the family once had two cars, they only

have one. And maybe the… the husband or the wife who lost their job is drinking, which is wrong and you know, they should… shouldn't be out there drinking and driving, I agree. But what about the other family members, Sir? What about the other family member that needs the vehicle to go work, take their child to the hospital, take their kids to the school. Can't we take into consideration of the other family members for this?"

Zalewski: "Representative, just to be crystal clear, currently non-Home Rule entities and Home Rule entities, because they already have the power to do so, are already doing these impoundments and these tows and administering these fees. The… the… the question before the Body is, are we going to regulate it appropriately through state statute or allow it up to village attorneys to make, frankly, sometimes inconsistent decisions? This is not anything new that we're doing. We're simply codifying what's going on already."

Flowers: "And so, what exactly are you codifying?"

Zalewski: "We're allowing non-Home Rule entities that don't have this power under Home Rule to impose fees for the purposes of tows after arrest."

Flowers: "So, my question to you, again, as opposed to having the car towed…"

Speaker Lyons: "Representative, we'll give you one more minute to finish your question."

Flowers: "Can a telephone call be made to a family member? Or if there's another member in the vehicle, if there's someone else in the vehicle, does the car necessarily have to be towed? Can the car be driven away? The car did not

commit the crime, it was the person in the car. And so, if the car is only being towed to a towing place for the benefit of someone else to get the… the monies for it because the car has been impounded and a fine must be paid. I'm asking, can you please take into consideration the family who might need the vehicle, cannot afford the tow? Can we just change it to say that a call has been made? Can that be a part of what you're codifying?"

Zalewski: "I… I… Representative, I… I think what you're suggesting is a different issue. And I… I… I respectfully disagree with… with what you're saying because we're not… if you want to change the way police officers handle arrests and subsequent impoundment of vehicles, you're dealing with a whole other area of law. This is a municipal issue dealing with Home Rule and non-Home Rule powers."

Flowers: "We're… we're not talking about an arrest, we're talking about the impound vehicle and what happens to the vehicle, that is the point. The vehicle, not the arrest. Thank you, Sir."

Speaker Lyons: "Representative Zalewski to close."

Zalewski: "Let… just… again, in closing. This Bill is… is a very limited Bill that simply clarifies that non-Home Rules are allowed to impose administrative towing fees. There's nothing else… there's no more tows or less tows or more arrests or less arrests that are going to be added because of this Bill. We're just simply giving some guidance and some clarification to non-Home Rule entities. I'd respectfully ask for an 'aye' vote."

Speaker Lyons: "The Gentleman moves for the passage of House Bill 1220. All those in favor signify by voting 'yes'; those opposed vote 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Currie, Harris, Leitch, Saviano, Smith. Mr. Clerk, take the record. On this Bill, there are 66 Members voting 'yes', 41 Members voting 'no', 3 voting 'present'. This Bill, having received the Constitutional Majority, is hereby declared passed. Representative Hernandez, for what purpose do you seek recognition, Ma'am?"

Hernandez: "Yes, Mr. Speaker, I inadvertently hit my button wrong for House Bill 1628. I wish it to reflect on the record as 'no' for 1628."

Speaker Lyons: "The Journal will reflect your request. Representative Andre Thapedi, you have House Bill 171. Read the Bill, Mr. Clerk, Out of the record. Out of the record. Representative Al Riley, you have House Bill 1324. Read the Bill, Mr. Clerk."

Clerk Bolin: "House Bill 1324, a Bill for an Act concerning local government. Third Reading of this House Bill."

Speaker Lyons: "Representative Riley."

Riley: "Thank you, Mr. Speaker, Members of the House. House Bill 1324 essentially allows the Metropolitan Water Reclamation District to be able to float bonds for the purposes of financing administrative buildings. It… it seems pretty intuitive that they could do that, but it is not listed as one of the articulated purposes. And so, this Bill allows them to finance administrative buildings through bonds."

Bill 1151. Senator Haine. Senator Haine, on House Bill 1151. Out of the record. House Bill 1197. Senator Lightford. Leader Lightford, on 1197. Out of the record. House Bill 1220. Senator Sandack. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 1220.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Sandack.

SENATOR SANDACK:

Good afternoon, Mr. President, Ladies and Gentlemen of the Senate. House Bill 1220 allows a municipality to 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 properly impounded vehicles. This is an initiative of the Village of Brookfield, which is a non-home rule community. This ordinance -- I'm sorry, this bill would be permissive and, I'd argue, is a cost-shifting from the taxpayers to the users of the system. I'm happy to answer any questions.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Is there any discussion? Senator Bomke, for what purpose do you rise?

SENATOR BOMKE:

Thank you, Mr. President. To the bill: Just to let…

PRESIDING OFFICER: (SENATOR SULLIVAN)

To the bill.

SENATOR BOMKE:

…everyone know here, it's a -- there's a fee increase.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Is there any further discussion? Is there any further discussion? Seeing none, the question is, shall House Bill 1220 pass. All those in favor will vote Aye. Opposed, Nay. And the voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Madam Secretary, take the record. On that question, there are 42 voting Aye, 13 voting Nay, 1 voting Present. House Bill 1220, having received the required constitutional majority, is declared passed. House Bill 1226. Senator Wilhelmi. Senator Wilhelmi. Out of the record. House Bill 1253. Senator Martinez. Madam Secretary, please read the bill.

SECRETARY ROCK:

House Bill 1253.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Martinez.

SENATOR MARTINEZ:

Thank you, Mr. President, Members of the Senate. As amended, 1253 requires sex offenders who commit their crimes before January 1st, 1996 - the start date for the current registration law - to register as sex offenders when they are convicted of a felony after July 1st, 2011. Where the original crime is still classified as a sex offense, the registration period will be for ten years; if the crime is now classified to

PRESIDING OFFICER: (SENATOR SULLIVAN)

3rd Reading. Ladies and Gentlemen, with leave of the Body, I think we'll go down to -- 2153. Senate Bill 2153. Senator Althoff. Out of the record. Senate Bill 2154. Senator Cunningham, on 2154. Do you wish to proceed? Okay. Ladies and Gentlemen -- Mr. Secretary, pardon my error here, Senate Bill -- we need to go to Senate Bill 2153 first. Out of the record. Senate Bill 2154. You wish to proceed? Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 2154.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Cunningham.

SENATOR CUNNINGHAM:

Thank you, Mr. President, Members of the Senate. Senate Bill 2154 is enabling legislation that will allow municipalities that have administrative -- an administrative hearing process in place to adopt an ordinance that would allow their police to impound a vehicle that is used in a reckless driving incident if that vehicle is part of a funeral procession or interferes with a funeral procession. I'd be happy to answer any questions and I'd ask for the Chamber's support.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you very much. Is there any discussion? Is there any discussion? Seeing none, Ladies and Gentlemen, the question is, shall Senate Bill 2154 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who

wish? Have all voted who wish? Have all voted who wish? Mr. Secretary, take the record. On that question, there are 54 voting Aye, 0 voting Nay, 0 voting Present. Senate Bill 2154, having received the required constitutional majority, is declared passed. Next up on the Calendar, we have Senate Bill 2182. Leader Harmon. Out of the record. Senate Bill 2183. Leader Harmon. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 2183.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Senator Harmon.

SENATOR HARMON:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. Senate Bill 2183 creates the Transportation Sustainability Procurement Program Act. While it will still make certain that price and quality are the primary factors to consider in procuring transportation services, it would permit the procurement officers to consider the environmental impact on the sustainability programs offered by the shippers. I'm not aware of any concerns over the bill and I'd ask for your Aye votes.

PRESIDING OFFICER: (SENATOR SULLIVAN)

Thank you very much. Is there any discussion? Senator Duffy, for what purpose do you rise?

SENATOR DUFFY:

Thank you, Mr. -- thank you, Mr. President. Question for the sponsor.

moves for the passage of the Bill. The Chair recognizes Mr. Davis."

Davis, W.: "Thank you, Mr. Speaker. Should this Bill receive the requisite number of votes, I request a ver… I'm just joking. Just joking."

Speaker Lang: "Those in favor of the Gentleman's Bill will vote 'yes'; opposed 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Beiser, Davis, Harris, Rita. Please take the record. On this question, there are 118 voting 'yes', 0 voting 'no'. And this Bill, having received the Constitutional Majority, is hereby declared passed. Senate Bill 2154, Representative Hurley, who is standing and ready. Please read the Bill."

Clerk Hollman: "Senate Bill 2154, a Bill for an Act concerning transportation. Third Reading of this Senate Bill."

Speaker Lang: "Representative Hurley."

Hurley: "Thank you, Mr. Speaker and Members of the House. Today I am presenting Senate Bill 2154. Senate Bill 2154 adds the offense of reckless driving while in a funeral procession and driving in a reckless manner that interferes with a funeral procession to the list of Illinois Vehicle Code violations that could employ impoundment proceedings. This Bill was cosponsored in the Senate by Senator Cunningham, Senator Emil Jones, Senator Ira Silverstein and Senator Jacqui Collins. I am open for questions and would appreciate an 'aye' vote."

Speaker Lang: "The Lady moves for the passage of the Bill. The Chair recognizes Mr. Bost."

Bost: "Thank you, Mr. Speaker. Representative, you and I have talked about this Bill before. I'm just amazed. So, you say

that in your district people get into funeral processions and drive recklessly. Is that correct?"

Hurley: "In my district and in the southwest side of Chicago, yes."

Bost: "Is it… is it some kind of a statement they're trying to make? Do they have too much to drink before the funeral starts? What exactly is going on?"

Hurley: "I am not sure the reason behind their behavior."

Bost: "You just know that they're doing it. And is it… how common is it?"

Hurley: "Every Saturday and Sunday you will see this behavior."

Bost: "Every Saturday and Sunday you'll see this behavior."

Hurley: "Correct."

Bost: "Well, we see that down south too, but it's not… on Saturday and Sunday, but not usually in a funeral procession."

Hurley: "Saturdays, Sundays and funeral processions usually."

Bost: "So, it's Sunday… Saturday and Sunday nights. That's why we have those laws and everything to stop that."

Hurley: "Okay."

Bost: "But I never… you know, I'm amazed by the diversity of our state because I'm pretty sure in our area… you know, we have a thing that we do is we pull over and stop when a funeral procession comes by and I've been in a lot of parts of the state where they don't do that. The traffic's just too thick and you can’t do that, but I've never had one where they said, okay, now everybody weave."

Hurley: "I don't think everybody weaves, but there is participants in funerals who do weave, who drive into oncoming traffic,

who drive at accelerated speeds and who drive across crosswalks and pedestrian ways."

Bost: "And I'm not… I'm amazed by this Bill, but right now are the police trying to just charge them with reckless driving or is there anything that they can do in that respect?"

Hurley: "We have talked to the Cook County Sheriff's Department, the Chicago Police and they are using this as another tool to stop this behavior. They have issued tickets, but it doesn't seem to be working."

Bost: "Okay. Thank you."

Speaker Lang: "Mr. Brady."

Brady: "Thank you very much, Mr. Speaker. Will the Sponsor yield?"

Speaker Lang: "The Lady yields."

Brady: "Representative, in talking to Senator Cunningham who used to be at the Cook County Sheriff's Department and who I've worked with before and Sheriff Dart, also, and I think maybe to the Representative's concern which is very legitimate here at times the funeral procession depending on potentially who the deceased may be attracts some type of individuals who are less than respectful of the law and less than respectful of the established statutes as it pertains to how you yield by law to a funeral procession as long as that funeral procession is exhibiting the proper lighting and things that are spelled out in that statute. So, I stand in support of the Lady's legislation. It's hard to comprehend, in my particular area where I'm from and as a funeral director that these type of things have to be dealt with from a legislative standpoint. But the reality of it is, it's a big, different state and I support the Lady's Bill. Thank you."

Speaker Lang: "Representative Davis."

Davis, M.: "Will the Sponsor yield?"

Speaker Lang: "The Lady yields."

Davis, M.: "Yeah. Representative Hurley, are there other instances in which vehicles are taken away from people?"

Hurley: "The Illinois Vehicle Code has 12 other incidences. You can… I can list a few."

Davis, M.: "Would you?"

Hurley: "Certainly. Soliciting a prostitute, driving with…"

Davis, M.: "Hold on, hold on. Now, if you're soliciting a prostitute, we can take your car?"

Hurley: "Yes, you can, according to the Illinois Vehicle Code."

Davis, M.: "Okay. I'd like to know how many times that happens, but go on."

Hurley: "Okay. An attempt to… wait, hold on. A suspended driver's license, driving under the influence, operating a motor vehicle in attempting to commit a felony and 12 others. And recently, a few weeks ago, we passed another Bill out of the House that if you are… if you participated in a fraud that you can… home repair fraud, that they can impound your car for that as well."

Davis, M.: "What do they do with these cars that they impound?"

Hurley: "You have an administrative hearing."

Davis, M.: "They have an administrative hearing and then does the person have to pay storage and towing and all of that?"

Hurley: "That's a possibility, yes."

Davis, M.: "Okay. To the Bill, Mr. Speaker. I will support this Bill truly against my better judgment because sometimes people who are driving a car in a funeral they're driving

someone else's car. Frequently there may be a son who's driving the mother and the rest of the family. There may be a nephew or a cousin and actually there are a lot of laws on the books for all the behavior for which we want to take these cars. There's a law on the book against drinking and driving. There are laws on the books against endangering other people and driving. I mean, there are really… there are laws already there for all of this behavior that we want to capture. So, I'm really concerned that we're just changing something perhaps that we should just enforce the laws that are on the books. Those laws on the books should be enforced and they shouldn't wait 'til they get to the funeral… to the cemetery to enforce them. They should enforce them if this behavior is happening on the street on the way to the cemetery. So, because the people that send me here want this Bill, I will vote for it, but I really think it's bad legislation."

Speaker Lang: "Mr. Dunkin."

Dunkin: "Thank you, Representative, Mr. Speaker. Will the Sponsor yield?"

Speaker Lang: "The Lady yields."

Dunkin: "So, I'm curious. Representative, where did this Bill come from? Was this from a particular municipality or is this another one of our great ideas down here?"

Hurley: "This great idea came from the Cook County Sheriff's Department and also a discussion with the Chicago Police Department, Senator Cunningham, our local aldermen and local funeral directors."

Dunkin: "Okay. So, the… what about the Illinois Municipal League? Did they chime in on this?"

Hurley: "I have not heard that, no."

Dunkin: "I think you and I talked briefly about this particular issue. You probably get one or two individuals who would do something like that. I think that's pretty dangerous, but how would we enforce this? So, this'll be State Law or would this be city law, local law?"

Hurley: "It's for municipalities, but it would be throughout the state."

Dunkin: "I'm sorry."

Hurley: "It's for municipalities, but it will be throughout the state."

Dunkin: "What about the County Sheriff's Association or the various police leagues? Where are they with this here?"

Hurley: "Currently, it's just municipalities."

Dunkin: "Is there a cost associated with this?"

Hurley: "If your car is impounded for reckless driving in a funeral procession, of course, you'd have an administrative hearing."

Dunkin: "So, the tow truck companies would make a nice, little windfall."

Hurley: "Possibly."

Dunkin: "So, my colleague, Representative Monique Davis, Monique D. Davis stated that law's already on the books for this here. Is this… do we expect a drastic change as a result of this here in activity of arrests with various police?"

Hurley: "We're looking for another tool to combat this behavior and they're hoping that this will have a dramatic effect on the behavior of the participants in the funeral processions."

Dunkin: "So, if this doesn't pass, can a municipality impose this type of ordinance on the books to deal with those erratic drivers who are driving reckless and dangerous in these funeral processions?"

Hurley: "The alderman would look for a local ordinance originally, but was told that the General Assembly would have to pass enabling legislation first."

Dunkin: "Wait, the alderman did what now?"

Hurley: "He wanted to write an ordinance regarding reckless driving in a funeral procession and he said it had to be… was told that the General Assembly would have to pass enabling legislation first."

Dunkin: "Now, who told him that? 'Cause I didn't realize that aldermen had to come to us to write particular ordinances on a traffic or a moving violation."

Hurley: "Alderman O'Shea from the 19th Ward was down here and testifying in the Senate Committee."

Dunkin: "Did he present statutory information validating that statement? I've never heard of that. I know a couple of aldermen myself actually and they really come to me and say, hey, I need some statutory green light to make this happen. Or was he just saying that he think… he thought that's what the case was? That's a question."

Hurley: "Can you repeat the question?"

Dunkin: "Repeat the question?"

Hurley: "Yes, Sir."

Dunkin: "Your staffer said that?"

Hurley: "No."

Dunkin: "Did you hear her staffer?"

Hurley: "That was she said something else and I didn't hear you because you said something else."

Dunkin: "She's a sharp knife too, right?"

Hurley: "Too?"

Dunkin: "So, did the alderman reference or cite an Illinois Administrative Code statute that said he or she had to come down here in order for this to pass?"

Hurley: "I wasn't in the Senate Committee hearing."

Dunkin: "Do you know, Representative, the mayor right there? Let me see. What's his name? He's out of Des Plaines. Representative Mahoney. Am I saying that right? Moylan, Moylan. Representative Moylan, maybe he can answer that. He was a mayor of a city in this great state. I wonder if he can enlighten us. In order to pass a traffic violation they need to come down here and engage us."

Hurley: "It's the Illinois…"

Dunkin: "And where in the statute does that exist?"

Hurley: "It's the Illinois Vehicle Code. Okay. That's…"

Dunkin: "Okay. What Section? Let me pull up the Illinois…"

Hurley: "11-503."

Dunkin: "…Vehicle Code on my computer. What? Say that Section again."

Hurley: "11-503."

Dunkin: "Can you read that to us on…"

Hurley: "I could."

Dunkin: "…for the record. Before you read that, are you a lawyer?"

Hurley: "I am not."

Dunkin: "Neither am I. Do you play one on TV?"

Hurley: "I do not."

Dunkin: "Why not?"

Hurley: "I don't like TV."

Dunkin: "You don't like TV?"

Hurley: "No."

Dunkin: "We don't have cable either at home, just so you know. We have regular television. Okay. You were saying counselor, lawyer, lawmaker. Can you… I thought you were going to read the… the statute… statutory that says they have to come down here to pass a driver's license… a moving violation in the big city."

Hurley: "It's the Illinois Vehicle Code. And it says in, a) any municipality may consistent with this Section provide an ordinance procedure for the release of property, impounded vehicles and for the imposition of a reasonable administrative fee. And then it continues with the list of 12 Vehicle Code issues that we can impound a car. Not we, but the municipalities."

Dunkin: "It's says that in the… you're sure."

Hurley: "Yes, Sir."

Dunkin: "All right. So, when was that last amended statutorily?"

Speaker Lang: "Mr. Dunkin, can you bring your remarks to a close, Sir."

Dunkin: "Sure. This is good stuff here, Mr. Speaker."

Speaker Lang: "It certainly is, Sir."

Dunkin: "You're a lawyer as well, right? I'm just trying to get our moving violations in order here statutorily."

Hurley: "97th General Assembly."

Dunkin: "What'd it say?"

Hurley: "97th General Assembly."

Dunkin: "What year was that?"

Speaker Lang: "Mr. Dunkin, can you bring your remarks to a close, Sir."

Dunkin: "Thank you for your wonderful answers, Representative."

Hurley: "Thank you."

Dunkin: "Appreciate it. Thank you."

Speaker Lang: "That's it? You're done? Okay. Representative Reboletti."

Reboletti: "I'm looking forward to asking the next budget Sponsor of a Bill to read that entire Bill before we… I ask questions, so I'm looking forward to that. So, will the Sponsor yield?"

Speaker Lang: "The Sponsor yields gladly."

Reboletti: "Thank you, Speaker. Representative, there's been issues in the neighborhood with respect to people who are reckless driving near cemeteries when rival gangs are meeting because one gang member is being buried and the other ones from the rival gang are initiating shots fired, loud music, gang signs being flashed. It's not a normal funeral procession honoring the deceased. This obviously becomes much more than that. Is that fair to say?"

Hurley: "Yes, Sir."

Reboletti: "And the Illinois Vehicle Code does not allow for the impoundment of the vehicle for the local municipalities and so you're trying to fix that, right?"

Hurley: "Yes, Sir."

Reboletti: "And that it's also fair to say that in order to charge reckless driving you have to have a willful and wanton behavior. It's the only part of our Vehicle Code that requires the mental state, right?"

Hurley: "Correct."

Reboletti: "See, these questions were a lot easier than the previous questioner, but Ladies and Gentlemen to the Bill. It's obviously a very serious situation and when these are more frequent, there's a lot of problems in people's neighborhoods near the cemetery and it's very easy for more violence to erupt. All we're going to do is allow a local municipality the opportunity to impound a vehicle which we already let them do for 12 other offenses including DUI or possession of alcohol by a minor and a few others. So, this makes good sense. If you want to reward gang members for intervening in a rival gang member's procession and not seize the car, then vote 'no'. It's not a bad piece of legislation. Actually, you should seize the vehicle and not give it back to them because it's an instrument of the crime. So, I would urge an 'aye' vote. Thank you."

Speaker Lang: "Mr. Ford."

Ford: "Thank you, Mr. Speaker. Hello, almost seatmate. I should tell your constituents that you do a wonderful job in Springfield and are you wearing black because of the Bill?"

Hurley: "In honor of funerals and death with dignity and the respect, yes."

Ford: "All right. Have you ever heard of the term from the cradle to the grave?"

Hurley: "Yes."

Ford: "Do you know the definition?"

Hurley: "No."

Ford: "So, the definition is from birth to death the government's promise to take care of us from the cradle to the grave. You

can feel secure and well-protected from the cradle to the grave. And that's what your Bill does. Congratulations. Vote 'aye'."

Speaker Lang: "Representative Davis."

Davis, M.: "My name was used in debate, Mr. Speaker."

Speaker Lang: "Please proceed."

Davis, M.: "And I want to ask a question of the Sponsor. When you take the vehicle will you also take their driver's license? And the second part of that is suppose the vehicle doesn't belong to them, but they're driving for a family member."

Hurley: "I don't believe we take the driver's license, but I'll get back to you on that and if the car is borrowed, you still have the responsibility of the car ownership, yes."

Davis, M.: "So, this is unique legislation for a unique part of our city. There's nothing like it and I'm sure, as Ken Dunkin has stated earlier… where's Representative Dunkin? As Representative Dunkin stated earlier, this is the kind of legislation that is specific and we're micromanaging the 19th Ward. So, we can micromanage the 19th Ward which I'm a part of, proudly so, but I just am concerned when we have all of these laws on the books for drinking and driving, a nuisance, reckless driving, gang behavior, shooting. Is it illegal to shoot at somebody? It's already against the law. But anyway, because I'm also from the 19th Ward I will have to vote for this Bill, but I do not urge anyone else to vote for this Bill."

Speaker Lang: "The Chair is confused. Mr. Cabello."

Cabello: "Thank you, Mr. Speaker. To the Bill. Representative Hurley, I would like to be added as a cosponsor and I have

unfortunately given many of funeral escorts. This does not just pertain to the 19th Ward; this pertains to Rockford and every other community in this state. Even though you give these escorts you have your lights on, you have a car… a police car in the front, you have a police car in the back depending on how long the funeral service is. You have lots of different major intersections and unfortunately, that still does not deter some of the criminal element. We have a group called the Hood Ryders in Rockford who will overtake the streets, overtake squad cars by doing circles around them and this is going to help the police. And please remember that the funeral procession is part of the honoring that we do to the dead and is part of the closure process. So, again, I would like to be added as a cosponsor, please."

Speaker Lang: "Mr. Sullivan. Mr. Sullivan would like to give his time to Mr. Reboletti. All you needed to do is say his name in debate. He'd speak forever."

Reboletti: "Well, he's over there, Mr. Speaker."

Speaker Lang: "Mr. Reboletti."

Reboletti: "I'm very confused as to why people would say it's a bad Bill, but they live there; then they're going to be for the Bill, but it's bad. I'm a little bit confused right now, but I think it's very simple that people come down here all the time with issues in their district and they try to seek a solution. Why is this so different than the other 3 thousand Bills that have been filed in this particular Session that… and the 1500 across the street? Why is this any different? Every other General Assembly deals with new issues all the time. I don't understand why we spent an hour on this

legislation, but if it's necessary then sobeit. So, with that, I think the Lady has a good Bill and it's very simple. You know, I'm a former state prosecutor, but I don't know much about these things. But I will tell you this is that it's a good Bill and I urge an 'aye' vote."

Speaker Lang: "Mr. Hays."

Hays: "Mr. Speaker, I move the previous question."

Speaker Lang: "Mr. Hays, if you'd indulge me, there's only one more light on. Representative Burke."

Burke, K.: "Thank you, Mr. Speaker. Will the Sponsor yield?"

Speaker Lang: "The Lady yields."

Burke, K.: "Representative, you and Senator Cunningham and Alderman O'Shea have gone to extensive lengths to try and curb this problem before resorting to seeking legislation. Is that correct?"

Hurley: "Yes."

Burke, K.: "You've talked to the funeral directors in the area, you've talked to the cemetery that is the particular problem and to no avail these processions continue endangering the lives and property of people along the procession route into the funeral home or to the cemetery. Is that correct?"

Hurley: "Yes."

Burke, K.: "While your particular cemetery is not in my district, I do have numerous other cemeteries in my district. This sort of behavior has not happened there yet, but I can anticipate that someday it might and I think we… I would be very glad to have this law in effect. I think it's a good Bill. I support it and I thank you for bringing it to the floor."

Hurley: "Thank you."

Speaker Lang: "Representative Hurley to close."

Hurley: "Thank you everyone for your comments, questions and concerns. This law already allows for impoundment in more than a dozen incidences as I mentioned before. This is a commonsense solution to a very dangerous situation that is not only a threat to public safety, but an insult to the family members of the deceased who just want to bury their family members in peace. I ask for an 'aye' vote."

Speaker Lang: "Those in favor of the Lady's Bill will vote 'yes'; opposed 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Mr. Davis. Please take the record. On this question, all 118 Members of the House, including Representative… (unintelligible), voted 'yea', 0 voted 'no'. And this Bill, having received the Constitutional Majority, is hereby declared passed. The Chair recognizes Mr. Bost."

Bost: "Thank you, Mr. Speaker. Please let the record reflect that Representative Roth will be excused for the rest of the day."

Speaker Lang: "Thank you, Sir. Senate Bill 2234, Mr. Zalewski. Please read the Bill."

Clerk Bolin: "Senate Bill 2234, a Bill for an Act concerning gaming. Third Reading of this Senate Bill."

Speaker Lang: "Mr. Zalewski."

Zalewski: "Thank you, Mr. Speaker. We dealt with this matter earlier in the spring, but it's back with a change. It simply allows for the portability of value upon a voucher under the state's video gaming law. Additionally, we are adding some language that would allow for some cost savings potentially by creating a larger pool of companies that can test,

licenses and this would -- this bill would mean they could not lose their license if they get behind and default on their student loans. An important point is - to remember - you cannot bankrupt yourself out of student loans and ISAC remains -- retains the ability to garnish wages and put negative ratings on credit reports as ways to get their repayments. I'd ask for an Aye vote.

PRESIDING OFFICER: (SENATOR HARMON)

Thank you, Senator. Is there any discussion? Seeing none, the question is, shall Senate Bill 2236 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 51 voting Aye, none voting No, none voting Present. Senate Bill 2236, having received the required constitutional majority, is declared passed. With leave of the Body, we'll return later to Senate Bill 2237. Senate Bill 2261. Senator Haine, do you wish to proceed? Senator Haine requests leave of the Body to recall Senate Bill 2261 to the Order of 2nd Reading. Seeing no objection, leave is granted. Now on the Order of 2nd Reading, Senate Bill 2261. Mr. Secretary, have there been any amendments approved for consideration?

SECRETARY ANDERSON:

Floor Amendment No. 2, offered by Senator Haine.

PRESIDING OFFICER: (SENATOR HARMON)

Senator Haine, on your amendment.

SENATOR HAINE:

Thank you, Mr. President, Ladies and Gentlemen of the Senate. The Floor Amendment No. 2 becomes the bill. It incorporates some of the original language of the committee amendment. And this started out as a minor -- as a major issue just affecting my Metro

East area, with mayors arguably - some mayors - arguably charging and abusing people with administrative fees. It is {sic} now, fortunately -- or unfortunately, mushroomed into the illegal towing and storage scandals in the northern part of the State, which is being addressed in the rest of the bill. It has many moving parts. It establishes a Statewide Relocation Towing Licensure Commission. This -- this -- these problems have been amplified by the Chicago press and the downstate press. And there are no -- no opponents to the bill. The Municipal League, the City of Chicago, the towing industry - the legitimate towing industry, the insurance industry are all on board. This is still a work in progress. This bill's going to have to be extensively reviewed in the House. We ran out of time and so there will be - it'll be amended in -- in the House consistent with the desires of all those stakeholders, excluding the road towers. And I would -- want to thank the staffer for the Transportation Committee and its distinguished Chairman, Senator Sandoval, for their -- their patience on this bill.

PRESIDING OFFICER: (SENATOR HARMON)

Thank you, Senator Haine, for a full description of your amendment. Is there any discussion of the amendment? Seeing none, all in favor, say Aye. Opposed, Nay. The Ayes have it, and the amendment is adopted. Have there been any further Floor amendments approved for consideration?

SECRETARY ANDERSON:

No further amendments reported.

PRESIDING OFFICER: (SENATOR HARMON)

3rd Reading. Now on the Order of 3rd Reading, Senate Bill 2261. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 2261.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR HARMON)

Senator Haine, on your bill.

SENATOR HAINE:

I repeat and reallege my previous comments, Mr. President, and I would ask for an Aye vote to keep this process going in the House.

PRESIDING OFFICER: (SENATOR HARMON)

Thank you, Senator. Is there any discussion? Any discussion? Seeing none, the question is, shall Senate Bill 2261 pass. All those in favor will vote Aye. Opposed, Nay. The voting is open. Have all voted who wish? Have all voted who wish? Have all voted who wish? Take the record. On that question, there are 53 voting Aye, none voting No, none voting Present. Senate Bill 2261, having received the required constitutional majority, is declared passed. Senate Bill 2263. Senator Bennett. Senate Bill 2270. Senator Stadelman. Mr. Secretary, please read the bill.

SECRETARY ANDERSON:

Senate Bill 2270.

(Secretary reads title of bill)

3rd Reading of the bill.

PRESIDING OFFICER: (SENATOR HARMON)

Senator Stadelman.

SENATOR STADELMAN:

Thank you, Mr. President, Members of the Senate. Senate Bill 2270 limits the five years' length of a local government's contract

a legisl… at the end of a Legislative Session. That is when there is a willingness on behalf of the Leadership in both chambers to do so. We could actually work 'til 12:03 because there's precedent from the Chicago White Sox Bill years ago that, my gosh, it was 12:03 on the board, but it was 11:59 in the record. So, folks, there's a precedent for us working through the day and through the night to accomplish things that are extremely important. These Bills are both in a position to be moved, sent to a committee and sent to the other chamber for Concurrence. My message is, let's leave with accomplishment not with unfulfilled promises. Thank you."

Speaker Lang: "Mr. Sullivan is recognized. For what reason do you rise, Sir? Gentleman doesn't wish to speak. Senate Bill 2261, Mr. Zalewski. Please read the Bill."

Clerk Hollman: "Senate Bill 2261, a Bill for an Act concerning transportation. This Bill was read a second time a previous day. Committee Amendment #3 was adopted in committee. No Floor Amendments. No Motions are filed."

Speaker Lang: "Third Reading. Please read the Bill."

Clerk Hollman: "Senate Bill 2261, a Bill for an Act concerning transportation. Third Reading of this Senate Bill."

Speaker Lang: "Mr. Zalewski."

Zalewski: "Thank you, Mr. Speaker. As… as the Clerk mentioned, House Amendment 3 becomes the Bill. It effectively creates a Towing Commission to deal with the issues facing towing in Illinois. And it amends the Vehicle Code by specifying when a Home Rule unit can seize a vehicle. It… it deals with

various interests of the types of offenses that involve the tow. I would ask for an 'aye' vote."

Speaker Lang: "Mr. Sandack."

Sandack: "Thank you. Will the Gentleman yield?"

Speaker Lang: "Gentleman yields."

Sandack: "Representative, for some legislative intent, I have a series of questions for you."

Zalewski: "Yes, Sir."

Sandack: "I note the Amendment requires a county or a municipality to pay storage fees and costs as well as reasonable attorney's fees, if an administrative hearing officer finds that the county or municipality exceeded their authority by impounding a vehicle?"

Zalewski: "Yes. That's correct."

Sandack: "In this same Section there's a reference to those fees being owed by a county, municipality, if they exceed their authority under the Code. Is it correct that the storage and the attorney's fees are intended to apply only in those instances where a violation occurred for impoundments associated with violations under Section 11-208.7 of the Vehicle Code?"

Zalewski: "Yes. A county or municipality would only be required pay storage costs and attorney's fees if they exceed their authority to impound a vehicle for the violations listed under that particular Section."

Sandack: "And if a county or municipality goes before an administrative hearing and loses the decision, would they automatically owe storage fees and attorney's fees?"

Zalewski: "No. The costs and fees would be automatic because a municipality and county lost the hearing. The costs would only apply if the administrative hearing decision clearly found that the county or municipality exceeded their authority when they impounded the vehicle."

Sandack: "So, for instance, the administrative hearing decision went against the county or municipality because of a procedural issue was mishandled or for some other reason not directly relevant to the question of whether they possess the authority to impound the vehicle, then the storage costs and attorney's fees wouldn't apply?"

Zalewski: "That never happens, does it, Ron?"

Sandack: "No."

Zalewski: "That's correct."

Sandack: "Thank you."

Speaker Lang: "Those in favor of the Gentleman's Bill will vote 'yes'; opposed 'no'. The voting is open. Have all voted who wish? Have all voted who wish? Please record yourselves. Ammons. Please take the record. There are 116 voting 'yes', 0 voting 'no'. And this Bill, having received the Constitutional Majority, is hereby declared passed. The Chair recognizes the Clerk."

Clerk Hollman: "The following committees will be meeting: Executive is meeting in Room 118; Judicial Criminal is meeting in 115; Revenue & Finance is meeting in 122; Counties & Townships in C-1; Human Services in D-1 and Labor in Room 114."

Il. Const. Art. I § 10.

Section 10. Self-Incrimination and Double Jeopardy

No person shall be compelled in a criminal case to give evidence against himself nor be twice put in jeopardy for the same offense.

Il. Const. Art. I § 11.

Section 11. Limitation of Penalties After Conviction.

All penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship. No conviction shall work corruption of blood or forfeiture of estate. No person shall be transported out of State for an offense committed within the State.

Il. Const. Art. VII § 6.

Section 6. Powers of Home Rule Units.

(a) A County which has a chief executive officer elected by the electors of the county and any municipality which has a population of more than 25,000 are home rule units. Other municipalities may elect by referendum to become home rule units. Except as limited by this Section, 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.

(g) The General Assembly by a law approved by the vote of three-fifths of the members elected to each house may deny or limit the power to tax and any other power or function of a home rule unit not exercised or performed by the State other than a power or function specified in subsection (l) of this section.

(h) The General Assembly may provide specifically by law for the exclusive exercise by the State of any power or function of a home rule unit other than a taxing power or a power or function specified in subsection (l) of this Section.

(i) Home 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. Sup. Ct. Rule 315(a)

(a)Petition for Leave to Appeal; Grounds.

Except as provided below for appeals from the Illinois Workers' Compensation Commission division of the Appellate Court, a petition for leave to appeal to the supreme Court from the Appellate Court may be filed by any party, including the State, in any case not appealable from the Appellate Court as a matter of right. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered: the general importance of the question presented; the existence of a conflict between the decision sough to be reviewed and a decision of the Supreme Court, or of another division of the Appellate Court; the need for the exercise of the Supreme Court's supervisory authority; and the final or interlocutory character of the judgment sought to be reviewed.

No petition for leave to appeal from a judgment of the five-judge panel of the Appellate Court designated to hear and decide cases involving review of the Illinois Workers' Compensation Commission orders shall be filed, unless two or more judges of that panel join in a statement that the case in question involves a substantial question which warrants consideration by the supreme Court. A motion asking that such a statement be filed may be filed as a prayer for alternative relief in a petition for rehearing, but must, in any event, be filed within the time allowed for filing a petition for rehearing.

MCC § 2-14-10

Department of Administration Hearings—Establishment And Composition

There is hereby established an office of the municipal government to be known as the department of administrative hearings which shall be authorized to conduct administrative adjudication proceedings for departments and agencies of the city.

The department shall be administered by a director, who shall be appointed by the major, subject to approval by the city council, and staffed by administrative law officers and other employees as may be provided for in the annual appropriation ordinance.

The provisions of Division 2.1 of Article 1 of the Illinois Municipal Code are hereby adopted and incorporated into this chapter as if fully set forth herein.

MCC § 2-14-132

Impoundment.

(1) Whenever the owner of a vehicle seized and impounded pursuant to Section 3-46-076, 4-68-195, 7-24-225, 7-24-226, 7-28-390, 7-28-440, 8-4-130, 8-8-060, 8-20-015, 9-12-090, 9-80-220, 9-92-035, 9-112-555, 11-4-1115, 11-4-1410, 11-4-1500, or 15-20-270 of this code 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 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. If the vehicle is also subject to immobilization for unpaid parking and/or compliance violations, the owner of the vehicle must also pay the amounts due for all such outstanding violations prior to the release of the vehicle. If the administrative law officer determines that 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.

(2) Within 10 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 lien holder 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 photocopy 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 (9).

However, no such notice need be sent to the owner of record if the owner is personally served with the notice within 10 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. 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. 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. 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. 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 of record pays such penalty and fees and the vehicle is returned to the owner, no default order need be entered if the owner is informed of his or her right to a hearing and signs a written waiver, in which case an order of liability shall be deemed to have been made when the City receives the written waiver. For the purposes of this section and those sections of this code referenced in paragraph (1) of this section, 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 of the code listed in subsection 1 of this section, regardless of whether the vehicle is actually towed to and held at a city facility.

(3) 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 (1) the administrative penalty, plus any applicable towing and storage fees, plus all amounts due for outstanding final determinations of parking and/or compliance violations (if the vehicle is also subject to immobilization for unpaid final determinations of parking and/or compliance violations), is paid to the city, in which case possession of the vehicle shall be given to the person who is legally entitled to possess the vehicle; or (2) the vehicle is sold or otherwise disposed of to satisfy a judgment or enforce a lien as provided by law. 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 or she 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 lienholders of record, up to the total amount of penalties imposed under this section. 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 shall be returned to the owner of record.

(4) Any motor vehicle that is not reclaimed within 10 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.

(5) 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 of Chicago enumerated in subsection (1) of this Section, "owner of record" also includes the lessee of the vehicle.

(6) 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.

(7) 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 (a) is prepared in the performance of a law enforcement officer's duties and (b) sufficiently describes the circumstances leading to the impoundment, shall be admissible evidence of the vehicle owner's liability under Section 7-24-226 of this code, and shall support a finding of the vehicle owner's liability under Section 7-24-226, unless rebutted by clear and convincing evidence.

(8) For purposes of this 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; or (3) the alleged owner provides adequate proof that the vehicle had been sold to another person prior to the violation.

(9) (A)Notwithstanding any provision of this section to the contrary, a lessor (except where the lessee holds title to the vehicle) asserting his or her right to possession of a vehicle impounded pursuant to Sections 3-46-076, 4-68-195, 7-24-225, 7-24-226, 7-28-390, 7-28-440, 7-38-115(c-5), 8-4-130, 8-8-060, 8-20-015, 9-12-090, 9-76-145, 9-80-220, 9-92-035, 9-112-555, 11-4-1410, 11-4-1500 or 15-20-270 of this Code may obtain immediate release of such vehicle by paying the applicable towing and storage fees provided in subsection (6) of this section and submitting a

photocopy 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 (3) of this section regarding the payment of parking and/or compliance violations shall apply to such a lessor only to the extent of such outstanding final determinations of parking and/or compliance violations for which the lessor is legally liable with respect to such impounded vehicle. 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.

(9) (B) 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 Sections 3-46-076, 4-68-195, 7-24-225, 7-24-226, 7-28-390, 7-28-440, 7-38-115(c-5),8-4-130, 8-8-060, 8-20-015, 9-12-090, 9-76-145, 9-80-220, 9-92-035, 9-112-555, 11-4-1410, 11-4-1500 or 15-20-270 of this Code 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 photocopy 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 photocopy or other evidence within the time frame provided herein.

(10) When an authorized employee or agent of the City of Chicago 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 (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 of Chicago 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 and no more than $2,000 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 and no more than $1,000.

MCC § 7-24-225

Unlawful drugs in motor vehicle—Impoundment.

(a) Any motor vehicle that contains any controlled substance, as defined in the Illinois Controlled Substances Act, or that is used in connection with the purchase or attempt to purchase, or sale or attempt to sell, ay such controlled substance shall be subject to the seizure and impoundment pursuant to this section.
(b) Any motor vehicle that is used in connection with the unlawful purchase or unlawful attempt to purchase, or unlawful sale l or unlawful attempt to sell, cannabis may be subject to seizure and impoundment pursuant to this section.
(c) Th owner of record of any motor vehicle that is seized and impounded pursuant to this section shall be liable to the City for an administrative penalty of $2,000.00, plus towing and storage fees. Provided, however, that if the violation takes place within 500 feet of the boundary line of a public park or elementary or secondary school, the administrative penalty shall be $3,000.00, plus towing and storage fees.
(d) Whenever a police officer has probable cause to believe that a vehicle is subject to seizure and impoundment pursuant to this section, the police officer shall provide for the towing of the vehicle to a facility controlled by the city or its agent. When the vehicle is towed, the police officer shall notify any person identifying himself as the owner of the vehicle or any person who is found to be in control of the vehicle at the time of the alleged violation, if there is such a person, of the fact of the seizure and of the vehicles owner's right to request a preliminary hearing to be conducted under Section 2-14-132 of this Code.
(e) Section 2-14-132 shall apply whenever a motor vehicle is seize and impounded pursuant to this section.

(Added Coun. J. 3-9-95, p. 66176; Amend Coun. J. 4-29-98, p. 66564; Amend Count. J. 12-4-02, p. 99026 § 5.2; Amend Coun. J. 12-15-04, p. 39840, § 1; Amend Coun. J. 11-16-11, p. 14596, Art. I, § 1; Amend Coun. J. 7-30-14, p. 86194, § 1; Amend Coun. J. 11-26-19, p. 11547, § 12)

MCC§ 7-28-440

Dumping on real estate without permit—Nuisance—Violation—Penalty—Recovery of costs.

(a) No personal shall dumb, deposit, or dispose, or cause, suffer, allow, or procure to be dumped, deposited, or disposed on any lot or parcel of real estate within the city any ashes, refuse, or waste, except at a sanitary landfill site, liquid waste handling facility or transfer station for which a permit has been properly issued pursuant to the provisions of Chapter 11-4 of this code. For purposes of this section "ashes", "dispose", "refuse" and "waste" shall have the meaning ascribed to those terms in Section 11-4-120. Such Dumping without a permit is hereby declared to be a nuisance.

(b) Penalties imposed for violations of this section shall be as provide in Section 11-4-1600.

(Prior code § 99-39; Added Coun. J. 10-15-87, p. 5194; Amend Coun. J. 7-31-90, p. 19384; Amend Count. J. 6-12-91, p. 1459; Amend Coun. J. 10-14-92, p. 21818; Amend Coun. J. 7-14-93, p. 35530; Amend Coun. J. 6-14-95, p. 2990; Amend Coun. J. 3-6-96, p. 17618; Amend Coun. J. 7-29-03, p. 5530 § 1; Amend Coun. J. 11-3-04, p. 34974, § 2)

5 ILCS 70/6.

Same subject matter; conflicting acts

Two or more Acts which relate to same subject matter and which are enacted by the same General Assembly shall be construed together in such manner as to give full effect to each Act except in case of an irreconcilable conflict. In case of an irreconcilable conflict the Act last acted upon by the General Assembly is controlling to the extent of such conflict. The Act last acted upon is determined by reference to the final legislative action taken by either house of the General Assembly, whether such final action is passage on third reading in the second house, concurring in or receding from an amendment, adoption of a conference committee report, acceptance of the Governor's specific recommendations for change, or passage over the Governor's veto. However, for the purpose of determining the effective date of laws under Section 10 of Article IV of the Constitution of 1970 [Ill. Const. (1970) Art. IV, § 10] and "An Act in relation to the effective date of laws", approved July 2, 1971 [5 ILCS 75/0.01 et seq.], a bill is "passed" at the time of its final legislative action before presentation to the Governor as provided in paragraph (a) of Section 9 of Article IV of the Constitution of 1970 [Ill. Const. (1970) Art. IV, § 9].

An irreconcilable conflict between 2 or more Acts which amend the same section of an Act exists only if the amendatory Acts make inconsistent changes in the section as it theretofore existed.

The rules of construction provided for in this section are applicable to Acts enacted by the same General Assembly throughout the 2 year period of its existence.

5 ILCS 70/7

Home rule unit; power or function

No law enacted after January 12, 1977, denies or limits any power of function of a home rule unit, pursuant to paragraphs (g), (h), (i), (j), or (k) of Section 6 of Article VII [Ill. Const. (1970) Art. VII, § 6] of the Illinois Constitution, unless there is specific language limiting or denying the power or function and the language specifically set forth in what manner to what extent it is a limitation on or denial of the power or function a home rule unit.

25 ILCS 75/5

Bills required to have home rule notes

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.

65 ILCS 5/1-2-1.1

Corporate authorities; penal ordinances

The corporate authorities of each municipality may pass ordinances, not inconsistent with the criminal laws of this State, to regulate any matter expressly within the authorized powers of the municipality, or incidental thereto, making violation thereof a misdemeanor punishable by incarceration in a penal institution other than the penitentiary not to exceed 6 months. The municipality is authorized to prosecute violations of penal ordinances enacted under this Section as criminal offenses by its corporate attorney in the circuit court by an information, or complaint sworn to, charging such offense. The prosecution shall be under and conform to the rules of criminal procedure. Conviction shall require the municipality to establish the guilt of the defendant beyond reasonable doubt.

A penalty imposed for violation of an ordinance may include, or consist of, a requirement that the defendant do one or both of the following:
(1) Complete an education program, except that a holder of a valid commercial driver's license who commits a vehicle weight or size restriction violation shall not be required to complete an education program under this Section.
(2) Perform some reasonable public service work such as but not limited to the picking up of litter in public parks or along public highways or the maintenance of public facilities.
A low-income individual required to complete an education program under this Section who provides proof of eligibility for the federal earned income tax credit under Section 32 of the Internal Revenue Code [26 U.S.C. § 32] or the Illinois earned income tax credit under Section 212 of the Illinois Income Tax Act [35 ILCS 5/212] shall not be required to pay any fee for participating in a required education program.

This Section shall not apply to or affect ordinances now or hereafter enacted pursuant to Sections 11-5-1, 11-5-2, 11-5-3, 11-5-4, 11-5-5, 11-5-6, 11-40-1, 11-40-2, 11-40-2a, 11-40-3, 11-80-9 and 11-80-16 of the Illinois Municipal Code [65 ILCS 5/11-5-1, 65 ILCS 5/11-5-2, 65 ILCS 5/11-5-3, 65 ILCS 5/11-5-4, 65 ILCS 5/11-5-5, 65 ILCS 5/11-5-6, 65 ILCS 5/11-40-1, 65 ILCS 5/11-40-2, 65 ILCS 5/11-40-2a, 65 ILCS 5/11-40-3, 65 ILCS 5/11-80-9 and 65 ILCS 5/11-80-16], as now or hereafter amended, nor to Sections enacted after this 1969 amendment which replace or add to the Sections herein enumerated, nor to ordinances now in force or hereafter enacted pursuant to authority granted to local authorities by Section 11-208 of "The Illinois Vehicle Code" [625 ILCS 5/11-208], approved September 29, 1969, as now or hereafter amended.

65 ILCS 5/1-2.1-2

Administrative adjudication of municipal code violations

Any municipality may provide by ordinance for a system of administrative adjudication of municipal code violations to the extent permitted by the Illinois Constitution [Illinois Const. Art. I, § 1 et seq.]. A "system of administrative adjudication' means the adjudication of any violation of a municipal ordinance, except for (i) proceedings not within the statutory or the home rule authority of municipalities; and (ii) any offense under the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.] or a similar offense that is a traffic regulation governing the movement of vehicles and except for any reportable offense under Section 6-204 of the Illinois Vehicle Code [625 ILCS 5/6-204].

65 ILCS 5/11-80-1

Applicability of other laws

All provisions of this code relating to the control of streets, alleys, sidewalks and all other public ways are subject to provisions of "The Illinois Vehicle Code", as no and hereafter amended [625 ILCS 5/1-100 et seq.], and the Illinois Highway Code, as now and hereafter amended [605 ILCS 5/1-101 et seq.].

625 ILCS 5/11-207

Provisions of this Chapter uniform throughout State

The provisions of this Chapter shall be applicable and uniform throughout this State and 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 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.

625 ILCS 5/11-208

Power of local authorities.

(a) The provisions of this Code shall not be deemed to prevent local authorities with respect to streets and highways under their jurisdiction and within the reasonable exercise of the police power from:

1. Regulating the standing or parking of vehicles, except as limited by Sections 11-1306 and 11-1307 of this Act [625 ILCS 5/11-1306 and 625 ILCS 5/11-1307];
2. Regulating traffic by means of police officers or traffic control signals;
3. Regulating or prohibiting processions or assemblages on the highways; and certifying persons to control traffic for processions or assemblages;
4. Designating particular highways as one-way highways and requiring that all vehicles thereon be moved in one specific direction;
5. Regulating the speed of vehicles in public parks subject to the limitations set forth in Section 11-604 [625 ILCS 5/11-604];
6. Designating any highway as a through highway, as authorized in Section 11-302 [625 ILCS 5/11-302], and requiring that all vehicles stop before entering or crossing the same or designating any intersection as a stop intersection or a yield right-of-way intersection and requiring all vehicles to stop or yield the right-of-way at one or more entrances to such intersections;
7. Restricting the use of highways as authorized in Chapter 15 [625 ILCS 5/5-100 et seq.];
8. Regulating the operation of mobile carrying devices, bicycles, low-speed electric bicycles, and low-speed gas bicycles, and requiring the registration and licensing of same, including the requirement of a registration fee;
9. Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections;
10. Altering the speed limits as authorized in Section 11-604;
11. Prohibiting U-turns;
12. Prohibiting pedestrian crossings at other than designated and marked crosswalks or at intersections;
13. Prohibiting parking during snow removal operation;
14. Imposing fines in accordance with Section 11-1301.3 [625 ILCS 5/11-1301.3] as penalties for use of any parking place reserved for persons with disabilities, as defined by Section 1-159.1 [625 ILCS 5/1-159.1], or veterans with disabilities by any person using a motor vehicle not bearing registration plates specified in Section 11-1301.1 [625 ILCS 5/11-1301.1] or a special decal or device as defined in Section 11-1301.2 [625 ILCS 5/11-1301.2] as evidence that the vehicle is operated by or for a person with disabilities or a veteran with a disability;
15. Adopting such other traffic regulations as are specifically authorized by this Code; or
16. Enforcing the provisions of subsection (f) of Section 3-413 of this Code [ILCS 5/3-413] or a similar local ordinance.

(b) No ordinance or regulation enacted under paragraph 1, 4, 5, 6, 7, 9, 10, 11 or 13 of subsection (a) shall be effective until signs giving reasonable notice of such local traffic regulations are posted.

(c) The provisions of this Code shall not prevent any municipality having a population of 500,000 or more inhabitants from prohibiting any person from driving or operating any motor vehicle upon the roadways of such municipality with headlamps on high beam or bright.

(d) The provisions of this Code shall not be deemed to prevent local authorities within the reasonable exercise of their police power from prohibiting, on private property, the unauthorized use of parking spaces reserved for persons with disabilities.

(e) No unit of local government, including a home rule unit, may enact or enforce an ordinance that applies only to motorcycles if the principal purpose for that ordinance is to restrict the access of motorcycles to any highway or portion of a highway for which federal or State funds have been used for the planning, design, construction, or maintenance of that highway. No unit of local government, including a home rule unit, may enact an ordinance requiring motorcycle users to wear protective headgear. Nothing in this subsection (e) shall affect the authority of a unit of local government to regulate motorcycles for traffic control purposes or in accordance with Section 12-602 of this Code [625 ILCS 5/12-602]. No unit of local government, including a home rule unit, may regulate motorcycles in a manner inconsistent with this Code. This subsection (e) is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(e-5) The City of Chicago may enact an ordinance providing for a noise monitoring system upon any portion of the roadway known as Lake Shore Drive. Twelve months after the installation of the noise monitoring system, and any time after the first report as the City deems necessary, the City of Chicago shall prepare a noise monitoring report with the data collected from the system and shall, upon request, make the report available to the public. For purposes of this subsection (e-5), "noise monitoring system" means an automated noise monitor capable of recording noise levels 24 hours per day and 365 days per year with computer equipment sufficient to process the data.

(e-10) A unit of local government, including a home rule unit, may not enact an ordinance prohibiting the use of Automated Driving System equipped vehicles on its roadways. Nothing in this subsection (e-10) shall affect the authority of a unit of local government to regulate Automated Driving System equipped vehicles for traffic control purposes. No unit of local government, including a home rule unit, may regulate Automated Driving System equipped vehicles in a manner inconsistent with this Code. For purposes of this subsection (e-10), "Automated Driving System equipped vehicle" means any vehicle equipped with an Automated Driving System of hardware and software that are collectively capable of performing the entire dynamic driving task on a sustained basis, regardless of whether it is limited to a specific operational domain. This subsection (e-10) is a limitation under subsection (i) of Section 6 of Article VII of the Illinois Constitution on the concurrent exercise by home rule units of powers and functions exercised by the State.

(f) A municipality or county designated in Section 11-208.6 [625 ILCS 5/11-208.6] may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of this Code or a similar provision of a local ordinance and imposing liability on a registered owner or lessee of a vehicle used in such a violation.

(g) A municipality or county, as provided in Section 11-1201.1 [625 ILCS 5/11-1201.1], may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of Section 11-1201 of this Code [625 ILCS 5/11-1201] or a similar provision of a local ordinance and imposing liability on a registered owner of a vehicle used in such a violation.

(h) A municipality designated in Section 11-208.8 [625 ILCS 5/11-208.8] may enact an ordinance providing for an automated speed enforcement system to enforce violations of Article VI of Chapter 11 of this Code or a similar provision of a local ordinance.

(i) A municipality or county designated in Section 11-208.9 [625 ILCS 5/11-208.9] may enact an ordinance providing for an automated traffic law enforcement system to enforce violations of Section 11-1414 of this Code [625 ILCS 5/11-1414] or a similar provision of a local ordinance and imposing liability on a registered owner or lessee of a vehicle used in such a violation.

625 ILCS 5/11-208.1

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.

625 ILCS 5/11-208.2

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 [625 ILCS 5/11-208, 625 ILCS 5/11-209, 625 ILCS 5/11-1005.1, 625 ILCS 5/11-1412.1, and 625 ILCS 5/11-1412.2].

625 ILCS 5/11-208.3

Administrative adjudication of violations of traffic regulations concerning the standing, parking, or condition of vehicles, automated traffic law violations, and automated speed enforcement system violations.

(a) Any municipality or county may provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations and vehicle compliance violations as described in this subsection, automated traffic law violations as defined in Section 11-208.6, 11-208.9, or 11-1201.1 [625 ILCS 5/11-208.6, 625 ILCS 5/11-208.9, or 625 ILCS 5/11-1201.1], and automated speed enforcement system violations as defined in Section 11-208.8 [625 ILCS 5/11-208.8]. The administrative system shall have as its purpose the fair and efficient enforcement of municipal or county regulations through the administrative adjudication of automated speed enforcement system or automated traffic law violations and violations of municipal or county ordinances regulating the standing and parking of vehicles, the condition and use of vehicle equipment, and the display of municipal or county wheel tax licenses within the municipality's or county's borders. The administrative system shall only have authority to adjudicate civil offenses carrying fines not in excess of $500 or requiring the completion of a traffic education program, or both, that occur after the effective date of the ordinance adopting such a system under this Section. For purposes of this Section, "compliance violation" means a violation of a municipal or county regulation governing the condition or use of equipment on a vehicle or governing the display of a municipal or county wheel tax license.

(b) Any ordinance establishing a system of administrative adjudication under this Section shall provide for:

(1) A traffic compliance administrator authorized to adopt, distribute, and process parking, compliance, and automated speed enforcement system or automated traffic law violation notices and other notices required by this Section, collect money paid as fines and penalties for violation of parking and compliance ordinances and automated speed enforcement system or automated traffic law violations, and operate an administrative adjudication system. The traffic compliance administrator also may make a certified report to the Secretary of State under Section 6-306.5.

(2) A parking, standing, compliance, automated speed enforcement system, or automated traffic law violation notice that shall specify or include the date, time, and place of violation of a parking, standing, compliance, automated speed enforcement system, or automated traffic law regulation; the particular regulation violated; any requirement to complete a traffic education program; the fine and any penalty that may be assessed for late payment or failure to complete a required traffic education program, or both, when so provided by ordinance; the vehicle make or a photograph of the vehicle; the state registration number of the vehicle; and the identification number of the person issuing the notice. With regard to automated speed enforcement system or automated traffic law violations, vehicle make shall be specified on the automated speed enforcement system or automated traffic law violation notice if the notice does not include a photograph of the vehicle and the make is available and readily discernible. With regard to municipalities or counties with a population of 1 million or more, it shall be grounds for dismissal of a parking violation if the state registration number or vehicle make specified is incorrect. The violation notice shall state that the completion of any required traffic education program, the payment of

any indicated fine, and the payment of any applicable penalty for late payment or failure to complete a required traffic education program, or both, shall operate as a final disposition of the violation. The notice also shall contain information as to the availability of a hearing in which the violation may be contested on its merits. The violation notice shall specify the time and manner in which a hearing may be had.

(3) Service of a parking, standing, or compliance violation notice by: (i) affixing the original or a facsimile of the notice to an unlawfully parked or standing vehicle; (ii) handing the notice to the operator of a vehicle if he or she is present; or (iii) mailing the notice to the address of the registered owner or lessee of the cited vehicle as recorded with the Secretary of State or the lessor of the motor vehicle within 30 days after the Secretary of State or the lessor of the motor vehicle notifies the municipality or county of the identity of the owner or lessee of the vehicle, but not later than 90 days after the date of the violation, except that in the case of a lessee of a motor vehicle, service of a parking, standing, or compliance violation notice may occur no later than 210 days after the violation; and service of an automated speed enforcement system or automated traffic law violation notice by mail to the address of the registered owner or lessee of the cited vehicle as recorded with the Secretary of State or the lessor of the motor vehicle within 30 days after the Secretary of State or the lessor of the motor vehicle notifies the municipality or county of the identity of the owner or lessee of the vehicle, but not later than 90 days after the violation, except that in the case of a lessee of a motor vehicle, service of an automated traffic law violation notice may occur no later than 210 days after the violation. A person authorized by ordinance to issue and serve parking, standing, and compliance violation notices shall certify as to the correctness of the facts entered on the violation notice by signing his or her name to the notice at the time of service or, in the case of a notice produced by a computerized device, by signing a single certificate to be kept by the traffic compliance administrator attesting to the correctness of all notices produced by the device while it was under his or her control. In the case of an automated traffic law violation, the ordinance shall require a determination by a technician employed or contracted by the municipality or county that, based on inspection of recorded images, the motor vehicle was being operated in violation of Section 11-208.6, 11-208.9, or 11-1201.1 or a local ordinance. If the technician determines that the vehicle entered the intersection as part of a funeral procession or in order to yield the right-of-way to an emergency vehicle, a citation shall not be issued. In municipalities with a population of less than 1,000,000 inhabitants and counties with a population of less than 3,000,000 inhabitants, the automated traffic law ordinance shall require that all determinations by a technician that a motor vehicle was being operated in violation of Section 11-208.6, 11-208.9, or 11-1201.1 or a local ordinance must be reviewed and approved by a law enforcement officer or retired law enforcement officer of the municipality or county issuing the violation. In municipalities with a population of 1,000,000 or more inhabitants and counties with a population of 3,000,000 or more inhabitants, the automated traffic law ordinance shall require that all determinations by a technician that a motor vehicle was being operated in violation of Section 11-208.6, 11-208.9, or 11-1201.1 or a local ordinance must be reviewed and approved by a law enforcement officer or retired law enforcement officer of the municipality or county issuing the violation or by an additional fully trained reviewing technician who is not employed by the contractor who employs the technician who made the initial determination. In the case of an automated speed enforcement system violation,

the ordinance shall require a determination by a technician employed by the municipality, based upon an inspection of recorded images, video or other documentation, including documentation of the speed limit and automated speed enforcement signage, and documentation of the inspection, calibration, and certification of the speed equipment, that the vehicle was being operated in violation of Article VI of Chapter 11 of this Code [625 ILCS 5/11-601 et seq.] or a similar local ordinance. If the technician determines that the vehicle speed was not determined by a calibrated, certified speed equipment device based upon the speed equipment documentation, or if the vehicle was an emergency vehicle, a citation may not be issued. The automated speed enforcement ordinance shall require that all determinations by a technician that a violation occurred be reviewed and approved by a law enforcement officer or retired law enforcement officer of the municipality issuing the violation or by an additional fully trained reviewing technician who is not employed by the contractor who employs the technician who made the initial determination. Routine and independent calibration of the speeds produced by automated speed enforcement systems and equipment shall be conducted annually by a qualified technician. Speeds produced by an automated speed enforcement system shall be compared with speeds produced by lidar or other independent equipment. Radar or lidar equipment shall undergo an internal validation test no less frequently than once each week. Qualified technicians shall test loop-based equipment no less frequently than once a year. Radar equipment shall be checked for accuracy by a qualified technician when the unit is serviced, when unusual or suspect readings persist, or when deemed necessary by a reviewing technician. Radar equipment shall be checked with the internal frequency generator and the internal circuit test whenever the radar is turned on. Technicians must be alert for any unusual or suspect readings, and if unusual or suspect readings of a radar unit persist, that unit shall immediately be removed from service and not returned to service until it has been checked by a qualified technician and determined to be functioning properly. Documentation of the annual calibration results, including the equipment tested, test date, technician performing the test, and test results, shall be maintained and available for use in the determination of an automated speed enforcement system violation and issuance of a citation. The technician performing the calibration and testing of the automated speed enforcement equipment shall be trained and certified in the use of equipment for speed enforcement purposes. Training on the speed enforcement equipment may be conducted by law enforcement, civilian, or manufacturer's personnel and if applicable may be equivalent to the equipment use and operations training included in the Speed Measuring Device Operator Program developed by the National Highway Traffic Safety Administration (NHTSA). The vendor or technician who performs the work shall keep accurate records on each piece of equipment the technician calibrates and tests. As used in this paragraph, "fully trained reviewing technician" means a person who has received at least 40 hours of supervised training in subjects which shall include image inspection and interpretation, the elements necessary to prove a violation, license plate identification, and traffic safety and management. In all municipalities and counties, the automated speed enforcement system or automated traffic law ordinance shall require that no additional fee shall be charged to the alleged violator for exercising his or her right to an administrative hearing, and persons shall be given at least 25 days following an administrative hearing to pay any civil penalty imposed by a finding that Section 11-208.6, 11-208.8, 11-208.9, or 11-1201.1 or a similar local ordinance has been violated. The original or a facsimile of the violation notice or, in the case of a notice produced by a

computerized device, a printed record generated by the device showing the facts entered on the notice, shall be retained by the traffic compliance administrator, and shall be a record kept in the ordinary course of business. A parking, standing, compliance, automated speed enforcement system, or automated traffic law violation notice issued, signed, and served in accordance with this Section, a copy of the notice, or the computer-generated record shall be prima facie correct and shall be prima facie evidence of the correctness of the facts shown on the notice. The notice, copy, or computer-generated record shall be admissible in any subsequent administrative or legal proceedings.

(4) An opportunity for a hearing for the registered owner of the vehicle cited in the parking, standing, compliance, automated speed enforcement system, or automated traffic law violation notice in which the owner may contest the merits of the alleged violation, and during which formal or technical rules of evidence shall not apply; provided, however, that under Section 11-1306 of this Code [625 ILCS 5/11-1306] the lessee of a vehicle cited in the violation notice likewise shall be provided an opportunity for a hearing of the same kind afforded the registered owner. The hearings shall be recorded, and the person conducting the hearing on behalf of the traffic compliance administrator shall be empowered to administer oaths and to secure by subpoena both the attendance and testimony of witnesses and the production of relevant books and papers. Persons appearing at a hearing under this Section may be represented by counsel at their expense. The ordinance may also provide for internal administrative review following the decision of the hearing officer.

(5) Service of additional notices, sent by first class United States mail, postage prepaid, to the address of the registered owner of the cited vehicle as recorded with the Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database, or, under Section 11-1306 or subsection (p) of Section 11-208.6 or 11-208.9, or subsection (p) of Section 11-208.8 of this Code, to the lessee of the cited vehicle at the last address known to the lessor of the cited vehicle at the time of lease or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database. The service shall be deemed complete as of the date of deposit in the United States mail. The notices shall be in the following sequence and shall include, but not be limited to, the information specified herein:

(i) A second notice of parking, standing, or compliance violation if the first notice of the violation was issued by affixing the original or a facsimile of the notice to the unlawfully parked vehicle or by handing the notice to the operator. This notice shall specify or include the date and location of the violation cited in the parking, standing, or compliance violation notice, the particular regulation violated, the vehicle make or a photograph of the vehicle, the state registration number of the vehicle, any requirement to complete a traffic education program, the fine and any penalty that may be assessed for late payment or failure to complete a traffic education program, or both, when so provided by ordinance, the availability of a hearing in which the violation may be contested on its merits, and the time and manner in which the hearing may be had. The notice of violation shall also state that failure to complete a required traffic education program, to pay the indicated fine and any applicable penalty, or to appear at a hearing on the merits in the time and manner specified, will result in a final determination of violation liability for

the cited violation in the amount of the fine or penalty indicated, and that, upon the occurrence of a final determination of violation liability for the failure, and the exhaustion of, or failure to exhaust, available administrative or judicial procedures for review, any incomplete traffic education program or any unpaid fine or penalty, or both, will constitute a debt due and owing the municipality or county.

(ii) A notice of final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability. This notice shall be sent following a final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability and the conclusion of judicial review procedures taken under this Section. The notice shall state that the incomplete traffic education program or the unpaid fine or penalty, or both, is a debt due and owing the municipality or county. The notice shall contain warnings that failure to complete any required traffic education program or to pay any fine or penalty due and owing the municipality or county, or both, within the time specified may result in the municipality's or county's filing of a petition in the Circuit Court to have the incomplete traffic education program or unpaid fine or penalty, or both, rendered a judgment as provided by this Section, or, where applicable, may result in suspension of the person's driver's license for failure to complete a traffic education program or to pay fines or penalties, or both, for 5 or more automated traffic law violations under Section 11-208.6 or 11-208.9 or automated speed enforcement system violations under Section 11-208.8.

(6) A notice of impending driver's license suspension. This notice shall be sent to the person liable for failure to complete a required traffic education program or to pay any fine or penalty that remains due and owing, or both, on 5 or more unpaid automated speed enforcement system or automated traffic law violations. The notice shall state that failure to complete a required traffic education program or to pay the fine or penalty owing, or both, within 45 days of the notice's date will result in the municipality or county notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under Section 6-306.5 of this Code. The notice shall also state that the person may obtain a photostatic copy of an original ticket imposing a fine or penalty by sending a self-addressed, stamped envelope to the municipality or county along with a request for the photostatic copy. The notice of impending driver's license suspension shall be sent by first class United States mail, postage prepaid, to the address recorded with the Secretary of State or, if any notice to that address is returned as undeliverable, to the last known address recorded in a United States Post Office approved database.

(7) Final determinations of violation liability. A final determination of violation liability shall occur following failure to complete the required traffic education program or to pay the fine or penalty, or both, after a hearing officer's determination of violation liability and the exhaustion of or failure to exhaust any administrative review procedures provided by ordinance. Where a person fails to appear at a hearing to contest the alleged violation in the time and manner specified in a prior mailed notice, the hearing officer's determination of violation liability shall become final: (A) upon denial of a timely petition to set aside that determination, or (B) upon expiration of the period for filing the petition without a filing having been made.

(8) A petition to set aside a determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability that may be filed by

a person owing an unpaid fine or penalty. A petition to set aside a determination of liability may also be filed by a person required to complete a traffic education program. The petition shall be filed with and ruled upon by the traffic compliance administrator in the manner and within the time specified by ordinance. The grounds for the petition may be limited to: (A) the person not having been the owner or lessee of the cited vehicle on the date the violation notice was issued, (B) the person having already completed the required traffic education program or paid the fine or penalty, or both, for the violation in question, and (C) excusable failure to appear at or request a new date for a hearing. With regard to municipalities or counties with a population of 1 million or more, it shall be grounds for dismissal of a parking violation if the state registration number or vehicle make, only if specified in the violation notice, is incorrect. After the determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability has been set aside upon a showing of just cause, the registered owner shall be provided with a hearing on the merits for that violation.

(9) Procedures for non-residents. Procedures by which persons who are not residents of the municipality or county may contest the merits of the alleged violation without attending a hearing.

(10) A schedule of civil fines for violations of vehicular standing, parking, compliance, automated speed enforcement system, or automated traffic law regulations enacted by ordinance pursuant to this Section, and a schedule of penalties for late payment of the fines or failure to complete required traffic education programs, provided, however, that the total amount of the fine and penalty for any one violation shall not exceed $250, except as provided in subsection (c) of Section 11-1301.3 of this Code.

(11) Other provisions as are necessary and proper to carry into effect the powers granted and purposes stated in this Section.

(c) Any municipality or county establishing vehicular standing, parking, compliance, automated speed enforcement system, or automated traffic law regulations under this Section may also provide by ordinance for a program of vehicle immobilization for the purpose of facilitating enforcement of those regulations. The program of vehicle immobilization shall provide for immobilizing any eligible vehicle upon the public way by presence of a restraint in a manner to prevent operation of the vehicle. Any ordinance establishing a program of vehicle immobilization under this Section shall provide:

(1) Criteria for the designation of vehicles eligible for immobilization. A vehicle shall be eligible for immobilization when the registered owner of the vehicle has accumulated the number of incomplete traffic education programs or unpaid final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability, or both, as determined by ordinance.

(2) A notice of impending vehicle immobilization and a right to a hearing to challenge the validity of the notice by disproving liability for the incomplete traffic education programs or unpaid final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation liability, or both, listed on the notice.

(3) The right to a prompt hearing after a vehicle has been immobilized or subsequently towed without the completion of the required traffic education program or payment of the outstanding fines and penalties on parking, standing, compliance, automated speed

enforcement system, or automated traffic law violations, or both, for which final determinations have been issued. An order issued after the hearing is a final administrative decision within the meaning of Section 3-101 of the Code of Civil Procedure [735 ILCS 5/3-101].

(4) A post immobilization and post-towing notice advising the registered owner of the vehicle of the right to a hearing to challenge the validity of the impoundment.

(d) Judicial review of final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violations and final administrative decisions issued after hearings regarding vehicle immobilization and impoundment made under this Section shall be subject to the provisions of the Administrative Review Law.

(e) Any fine, penalty, incomplete traffic education program, or part of any fine or any penalty remaining unpaid after the exhaustion of, or the failure to exhaust, administrative remedies created under this Section and the conclusion of any judicial review procedures shall be a debt due and owing the municipality or county and, as such, may be collected in accordance with applicable law. Completion of any required traffic education program and payment in full of any fine or penalty resulting from a standing, parking, compliance, automated speed enforcement system, or automated traffic law violation shall constitute a final disposition of that violation.

(f) After the expiration of the period within which judicial review may be sought for a final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation, the municipality or county may commence a proceeding in the Circuit Court for purposes of obtaining a judgment on the final determination of violation. Nothing in this Section shall prevent a municipality or county from consolidating multiple final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violations against a person in a proceeding. Upon commencement of the action, the municipality or county shall file a certified copy or record of the final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation, which shall be accompanied by a certification that recites facts sufficient to show that the final determination of violation was issued in accordance with this Section and the applicable municipal or county ordinance. Service of the summons and a copy of the petition may be by any method provided by Section 2-203 of the Code of Civil Procedure [735 ILCS 5/2-203] or by certified mail, return receipt requested, provided that the total amount of fines and penalties for final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violations does not exceed $2500. If the court is satisfied that the final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation was entered in accordance with the requirements of this Section and the applicable municipal or county ordinance, and that the registered owner or the lessee, as the case may be, had an opportunity for an administrative hearing and for judicial review as provided in this Section, the court shall render judgment in favor of the municipality or county and against the registered owner or the lessee for the amount indicated in the final determination of parking, standing, compliance, automated speed enforcement system, or automated traffic law violation, plus costs. The judgment shall have the same effect and may be enforced in the same manner as other judgments for the recovery of money.

(g) The fee for participating in a traffic education program under this Section shall not exceed $25.

A low-income individual required to complete a traffic education program under this Section who provides proof of eligibility for the federal earned income tax credit under Section 32 of the Internal Revenue Code or the Illinois earned income tax credit under Section 212 of the Illinois Income Tax Act [35 ILCS 5/212] shall not be required to pay any fee for participating in a required traffic education program.

625 ILCS 5/11-208.7

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 [720 ILCS 5/36-1]; 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 [625 ILCS 5/11-501]; 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 [720 ILCS 550/1 et seq.]; 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 [720 ILCS 570/100 et seq.]; 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 [720 ILCS 5/24-1, 720 ILCS 5/24-1.5 or 720 ILCS 5/24-3.1]; 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 [625 ILCS 5/6-303]; 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 [625 ILCS 5/6-101], 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 [625 ILCS 5/6-101, 625 ILCS 5/6-303 or 625 ILCS 5/11-501]; 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 [720 ILCS 5/16-0.1 et seq. or 720 ILCS 5/(now repealed)]; 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 [720 ILCS 5/1-1 et seq.], when so provided by local ordinance; or
(13) operation or use of a motor vehicle in violation of Section 11-503 of this Code [625 ILCS 5/11-503]:
(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 [625 ILCS 5/11-208.3], 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 [625 ILCS 5/4-201 et seq.].

(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.

625 ILCS 5/11-208.7 (2013)

Administrative fees and procedures for impounding vehicles for specified violations.

(a) Any 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 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 municipality upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded.

(b) Any ordinance establishing procedures for the release of properly impounded vehicles under this Section may impose fees 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 [720 ILCS 5/36-1]; 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 [625 ILCS 5/11-501]; 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 [720 ILCS 550/1 et seq.]; 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 [720 ILCS 570/100 et seq.]; 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 [720 ILCS 5/24-1, 720 ILCS 5/24-1.5, or 720 ILCS 5/24-3.1]; 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 [625 ILCS 5/6-303]; 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 [625 ILCS 5/6-101], 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 [625 ILCS 5/6-101, 625 ILCS 5/6-303, or 625 ILCS 5/11-501]; 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 [720 ILCS 5/16-1 et seq. or 720 ILCS 5/16A-1 et seq. (now repealed)]; 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 [625 ILCS 5/11-503]:

(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 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 [625 ILCS 5/11-208.3], 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 municipality.

(2) At the time the vehicle is towed, the 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 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 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 municipality;

(4) all final decisions of the administrative hearing officer shall be subject to review under the provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.]; and

(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.

(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 [625 ILCS 5/4-201 et seq.].

(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.

625 ILCS 5/11-208.7 (2012)

Administrative fees and procedures for impounding vehicles for specified violations.

(a) Any 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 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 municipality upon verifiable proof that the vehicle was stolen at the time the vehicle was impounded.

(b) Any ordinance establishing procedures for the release of properly impounded vehicles under this Section may impose fees 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 [720 ILCS 5/36-1]; 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 [625 ILCS 5/11-501]; 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 [720 ILCS 550/1 et seq.]; 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 [720 ILCS 570/100 et seq.]; 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 [720 ILCS 5/24-1, 720 ILCS 5/24-1.5, or 720 ILCS 5/24-3.1]; 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 [625 ILCS 5/6-303]; 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 [625 ILCS 5/6-101], 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 [625 ILCS 5/6-101, 625 ILCS 5/6-303, or 625 ILCS 5/11-501]; 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 [720 ILCS 5/16-1 et seq. or 720 ILCS 5/16A-1 et seq. (now repealed)]; 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.

(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 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 [625 ILCS 5/11-208.3], 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 municipality.

(2) At the time the vehicle is towed, the 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 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 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 municipality;

(4) all final decisions of the administrative hearing officer shall be subject to review under the provisions of the Administrative Review Law [735 ILCS 5/3-101 et seq.]; and

(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.

(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 [625 ILCS 5/4-201 et seq.].

(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.

625 ILCS 5/11-209

Powers of municipalities and counties—Contract with school boards, hospitals, churches, condominium complex unit owners' associations, and commercial and industrial facility, shopping center, and apartment complex owners for regulation of traffic.

(a) The corporate authorities of any municipality or the county board of any county, and a school board, hospital, church, condominium complex unit owners' association, or owner of any commercial and industrial facility, shopping center, or apartment complex which controls a parking area located within the limits of the municipality, or outside the limits of the municipality and within the boundaries of the county, may, by contract, empower the municipality or county to regulate the parking of automobiles and the traffic at such parking area. Such contract shall empower the municipality or county to accomplish all or any part of the following:

1. The erection of stop signs, flashing signals, person with disabilities parking area signs or yield signs at specified locations in a parking area and the adoption of appropriate regulations thereto pertaining, or the designation of any intersection in the parking area as a stop intersection or as a yield intersection and the ordering of like signs or signals at one or more entrances to such intersection, subject to the provisions of this Chapter.
2. The prohibition or regulation of the turning of vehicles or specified types of vehicles at intersections or other designated locations in the parking area.
3. The regulation of a crossing of any roadway in the parking area by pedestrians.
4. The designation of any separate roadway in the parking area for one-way traffic.
5. The establishment and regulation of loading zones.
6. The prohibition, regulation, restriction or limitation of the stopping, standing or parking of vehicles in specified areas of the parking area.
7. The designation of safety zones in the parking area and fire lanes.
8. Providing for the removal and storage of vehicles parked or abandoned in the parking area during snowstorms, floods, fires, or other public emergencies, or found unattended in the parking area, (a) where they constitute an obstruction to traffic, or (b) where stopping, standing or parking is prohibited, and for the payment of reasonable charges for such removal and storage by the owner or operator of any such vehicle.
9. Providing that the cost of planning, installation, maintenance and enforcement of parking and traffic regulations pursuant to any contract entered into under the authority of this paragraph (a) of this Section be borne by the municipality or county, or by the school board, hospital, church, property owner, apartment complex owner, or condominium complex unit owners' association, or that a percentage of the cost be shared by the parties to the contract.
10. Causing the installation of parking meters on the parking area and establishing whether the expense of installing said parking meters and maintenance thereof shall be that of the municipality or county, or that of the school board, hospital, church, condominium complex unit owners' association, shopping center or apartment complex owner. All moneys obtained from such parking meters as may be installed on any parking area shall belong to the municipality or county.
11. Causing the installation of parking signs in accordance with Section 11-301 [625 ILCS 5/11-301] in areas of the parking lots covered by this Section and where desired by the person contracting with the appropriate authority listed in paragraph (a) of this Section, indicating tha in areas of the parking lots covered by this Section and where desired by the

person contracting with the appropriate authority listed in paragraph (a) of this Section, indicating that such parking spaces are reserved for persons with disabilities.

12. Contracting for such additional reasonable rules and regulations with respect to traffic and parking in a parking area as local conditions may require for the safety and convenience of the public or of the users of the parking area.

(b) No contract entered into pursuant to this Section shall exceed a period of 20 years. No lessee of a shopping center or apartment complex shall enter into such a contract for a longer period of time than the length of his lease.

(c) Any contract entered into pursuant to this Section shall be recorded in the office of the recorder in the county in which the parking area is located, and no regulation made pursuant to the contract shall be effective or enforceable until 3 days after the contract is so recorded.

(d) At such time as parking and traffic regulations have been established at any parking area pursuant to the contract as provided for in this Section, then it shall be a petty offense for any person to do any act forbidden or to fail to perform any act required by such parking or traffic regulation. If the violation is the parking in a parking space reserved for persons with disabilities under paragraph (11) of this Section, by a person without special registration plates issued to a person with disabilities, as defined by Section 1-159.1 [625 ILCS 5/1-159.1], pursuant to Section 3-616 of this Code [625 ILCS 5/3-616], or to a veteran with a disability pursuant to Section 3-609 of this Code [625 ILCS 5/3-609], the local police of the contracting corporate municipal authorities shall issue a parking ticket to such parking violator and issue a fine in accordance with Section 11-1301.3 [625 ILCS 5/11-1301.3].

(e) The term “shopping center”, as used in this Section, means premises having one or more stores or business establishments in connection with which there is provided on privately-owned property near or contiguous thereto an area, or areas, of land used by the public as the means of access to and egress from the stores and business establishments on such premises and for the parking of motor vehicles of customers and patrons of such stores and business establishments on such premises.

(f) The term “parking area”, as used in this Section, means an area, or areas, of land near or contiguous to a school, church, or hospital building, shopping center, apartment complex, or condominium complex, but not the public highways or alleys, and used by the public as the means of access to and egress from such buildings and the stores and business establishments at a shopping center and for the parking of motor vehicles.

(g) The terms “owner”, “property owner”, “shopping center owner”, and “apartment complex owner”, as used in this Section, mean the actual legal owner of the shopping center parking area or apartment complex, the trust officer of a banking institution having the right to manage and control such property, or a person having the legal right, through lease or otherwise, to manage or control the property.

(g-5) The term “condominium complex unit owners’ association”, as used in this Section, means a “unit owners” association” as defined in Section 2 of the Condominium Property Act [765 ILCS 605/2].
(h) The term “fire lane”, as used in this Section, means travel lanes for the fire fighting equipment upon which there shall be no standing or parking of any motor vehicle at any time so that fire fighting equipment can move freely thereon.

(i) The term “apartment complex”, as used in this Section, means premises having one or more apartments in connection with which there is provided on privately-owned property near or contiguous thereto an area, or areas, of land used by occupants of such apartments or their guests as a means of access to and egress from such apartments or for the parking of motor vehicles of such occupants or their guests.

(j) The term “condominium complex”, as used in this Section, means the units, common elements, and limited common elements that are located on the parcels, as those terms are defined in Section 2 of the Condominium Property Act.

(k) The term “commercial and industrial facility”, as used in this Section, means a premises containing one or more commercial and industrial facility establishments in connection with which there is provided on privately-owned property near or contiguous to the premises an area or areas of land used by the public as the means of access to and egress from the commercial and industrial facility establishment on the premises and for the parking of motor vehicles of customers, patrons, and employees of the commercial and industrial facility establishment on the premises.

(l) The provisions of this Section shall not be deemed to prevent local authorities from enforcing, on private property, local ordinances imposing fines, in accordance with Section 11-1301.3, as penalties for use of any parking place reserved for persons with disabilities, as defined by Section 1-159.1, or veterans with disabilities by any person using a motor vehicle not bearing registration plates specified in Section 11-1301.1 [625 ILCS 5/11-1301.1] or a special decal or device as defined in Section 11-1301.2 [625 ILCS 5/11-1301.2] as evidence that the vehicle is operated by or for a person with disabilities or a veteran with a disability.

This amendatory Act of 1972 is not a prohibition upon the contractual and associational powers granted by Article VII, Section 10 of the Illinois Constitution.

625 ILCS 5/20-204

Adoption by municipality by reference of all or part of Code.

A county or the corporate authorities of a municipality may adopt all or any portion of the Illinois Vehicle Code [625 ILCS 5/1-100 et seq.] by reference.

720 ILCS 5/36-1.5

Preliminary review.

(a) Within 14 days of the seizure, the State's Attorney of the county in which the seizure occurred shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture.
(b) The rules of evidence shall not apply to any proceeding conducted under this Section.

(c) The court may conduct the review under subsection (a) of this Section simultaneously with a proceeding under Section 109-1 of the Code of Criminal Procedure of 1963 [725 ILCS 5/109-1] for a related criminal offense if a prosecution is commenced by information or complaint.

(d) The court may accept a finding of probable cause at a preliminary hearing following the filing of an information or complaint charging a related criminal offense or following the return of indictment by a grand jury charging the related offense as sufficient evidence of probable cause as required under subsection (a) of this Section.

(e) Upon making a finding of probable cause as required under this Section, the circuit court shall order the property subject to the provisions of the applicable forfeiture Act held until the conclusion of any forfeiture proceeding.
For seizures of conveyances, within 28 days of a finding of probable cause under subsection (a) of this Section, the registered owner or other claimant may file a motion in writing supported by sworn affidavits claiming that denial of the use of the conveyance during the pendency of the forfeiture proceedings creates a substantial hardship and alleges facts showing that the hardship was not due to his or her culpable negligence. The court shall consider the following factors in determining whether a substantial hardship has been proven:

(1) the nature of the claimed hardship;
(2) the availability of public transportation or other available means of transportation; and
(3) any available alternatives to alleviate the hardship other than the return of the seized conveyance.

If the court determines that a substantial hardship has been proven, the court shall then balance the nature of the hardship against the State's interest in safeguarding the conveyance. If the court determines that the hardship outweighs the State's interest in safeguarding the conveyance, the court may temporarily release the conveyance to the registered owner or the registered owner's authorized designee, or both, until the conclusion of the forfeiture proceedings or for such shorter period as ordered by the court provided that the person to whom the conveyance is released provides proof of insurance and a valid driver's license and all State and local registrations for operation of the conveyance are current. The court shall place conditions on the conveyance limiting its use to the stated hardship and providing transportation for employment, religious purposes, medical needs, child care, and restricting the conveyance's use to only those individuals authorized to use the conveyance by the registered owner. The use of the vehicle shall be further restricted to exclude all recreational and entertainment purposes. The court may order additional restrictions it deems reasonable and just on its own motion or on motion of the People. The court shall revoke the order releasing the conveyance and order that the

conveyance be reseized by law enforcement if the conditions of release are violated or if the conveyance is used in the commission of any offense identified in subsection (a) of Section 6-205 of the Illinois Vehicle Code [625 ILCS 5/6-205].

If the court orders the release of the conveyance during the pendency of the forfeiture proceedings, the court may order the registered owner or his or her authorized designee to post a cash security with the clerk of the court as ordered by the court. If cash security is ordered, the court shall consider the following factors in determining the amount of the cash security:

(A) the full market value of the conveyance;
(B) the nature of the hardship;
(C) the extent and length of the usage of the conveyance;
(D) the ability of the owner or designee to pay; and
(E) other conditions as the court deems necessary to safeguard the conveyance.

If the conveyance is released, the court shall order that the registered owner or his or her designee safeguard the conveyance, not remove the conveyance from the jurisdiction, not conceal, destroy, or otherwise dispose of the conveyance, not encumber the conveyance, and not diminish the value of the conveyance in any way. The court shall also make a determination of the full market value of the conveyance prior to it being released based on a source or sources defined in 50 Ill. Adm. Code 919.80(c) (2) (A) or 919.80(c) (2) (B).

If the conveyance subject to forfeiture is released under this Section and is subsequently forfeited, the person to whom the conveyance was released shall return the conveyance to the law enforcement agency that seized the conveyance within 7 days from the date of the declaration of forfeiture or order of forfeiture. If the conveyance is not returned within 7 days, the cash security shall be forfeited in the same manner as the conveyance subject to forfeiture. If the cash security was less than the full market value, a judgment shall be entered against the parties to whom the conveyance was released and the registered owner, jointly and severally, for the difference between the full market value and the amount of the cash security. If the conveyance is returned in a condition other than the condition in which it was released, the cash security shall be returned to the surety who posted the security minus the amount of the diminished value, and that amount shall be forfeited in the same manner as the conveyance subject to forfeiture. Additionally, the court may enter an order allowing any law enforcement agency in the State of Illinois to seize the conveyance wherever it may be found in the State to satisfy the judgment if the cash security was less than the full market value of the conveyance.

720 ILCS 550/12

Forfeiture.

(a) The following are subject to forfeiture:

(1) (blank);

(2) all raw materials, products, and equipment of any kind which are produced, delivered, or possessed in connection with any substance containing cannabis in a felony violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any substance containing cannabis or property described in paragraph (2) of this subsection (a) that constitutes a felony violation of the Act, but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the violation;

(ii) no conveyance is subject to forfeiture under this Section by reason of any act or omission which the owner proves to have been committed or omitted without his or her knowledge or consent;

(iii) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data which are used, or intended for use, in a felony violation of this Act;

(5) everything of value furnished or intended to be furnished by any person in exchange for a substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to commit or in any manner to facilitate any felony violation of this Act;

(6) all real property, including any right, title, and interest including, but not limited to, any leasehold interest or the beneficial interest in a land trust, in the whole of any lot or tract of land and any appurtenances or improvements, that is used or intended to be used to facilitate the manufacture, distribution, sale, receipt, or concealment of a substance containing cannabis or property described in paragraph (2) of this subsection (a) that constitutes a felony violation of this Act involving more than 2,000 grams of a substance containing cannabis or that is the proceeds of any felony violation of this Act.

(b) Property subject to forfeiture under this Act may be seized under the Drug Asset Forfeiture Procedure Act [725 ILCS 150/1 et seq.]. In the event of seizure, forfeiture proceedings shall be instituted under the Drug Asset Forfeiture Procedure Act.

(c) Forfeiture under this Act is subject to an 8th Amendment to the United States Constitution disproportionate penalties analysis as provided under Section 9.5 of the Drug Asset Forfeiture Procedure Act [725 ILCS 150/9.5].

(c-1) With regard to possession of cannabis offenses only, a sum of currency with a value of less than $500 shall not be subject to forfeiture under this Act. For all other offenses under this Act, a sum of currency with a value of less than $100 shall not be subject to forfeiture under this Act. In seizures of currency in excess of these amounts, this Section shall not create an exemption for these amounts.

(d) (Blank).

(e) (Blank).
(f) (Blank).

(g) (Blank).

(h) Contraband, including cannabis possessed without authorization under State or federal law, is not subject to forfeiture. No property right exists in contraband. Contraband is subject to seizure and shall be disposed of according to State law.

(i) The changes made to this Section by Public Act 100-512 and Public Act 100-699 only apply to property seized on and after July 1, 2018.

(j) The changes made to this Section by Public Act 100-699 are subject to Section 4 of the Statute on Statutes.

720 ILCS 646/85

Forfeiture.

(a) The following are subject to forfeiture:

(1) (blank);

(2) all methamphetamine manufacturing materials which have been produced, delivered, or possessed in connection with any substance containing methamphetamine in violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of any substance containing methamphetamine or property described in paragraph (2) of this subsection (a) that constitutes a felony violation of the Act, but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to the violation;

(ii) no conveyance is subject to forfeiture under this Section by reason of any act or omission which the owner proves to have been committed or omitted without his or her knowledge or consent;

(iii) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data which are used, or intended for use in a felony violation of this Act;

(5) everything of value furnished or intended to be furnished by any person in exchange for a substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to commit or in any manner to facilitate any felony violation of this Act;

(6) all real property, including any right, title, and interest (including, but not limited to, any leasehold interest or the beneficial interest in a land trust) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a violation of this Act or that is the proceeds of any violation or act that constitutes a violation of this Act.

(b) Property subject to forfeiture under this Act may be seized under the Drug Asset Forfeiture Procedure Act [725 ILCS 150/1 et seq.]. In the event of seizure, forfeiture proceedings shall be instituted under the Drug Asset Forfeiture Procedure Act.

(c) Forfeiture under this Act is subject to an 8th Amendment to the United States Constitution disproportionate penalties analysis as provided under Section 9.5 of the Drug Asset Forfeiture Procedure Act [725 ILCS 150/9.5].

(d) With regard to possession of methamphetamine offenses only, a sum of currency with a value of less than $500 shall not be subject to forfeiture under this Act. For all other offenses under this

Act, a sum of currency with a value of less than $100 shall not be subject to forfeiture under this Act. In seizures of currency in excess of these amounts, this Section shall not create an exemption for these amounts.

(e) For felony offenses involving possession of a substance containing methamphetamine only, no property shall be subject to forfeiture under this Act because of the possession of less than 2 single unit doses of a substance. This exemption shall not apply in instances when the possessor, or another person at the direction of the possessor, is engaged in the destruction of any amount of a substance containing methamphetamine. The amount of a single unit dose shall be the State's burden to prove in its case in chief.

(f) (Blank).

(g) (Blank).

(h) Contraband, including methamphetamine or any controlled substance possessed without authorization under State or federal law, is not subject to forfeiture. No property right exists in contraband. Contraband is subject to seizure and shall be disposed of according to State law.

(i) The changes made to this Section by Public Act 100-0512 and this amendatory Act of the 100th General Assembly only apply to property seized on and after July 1, 2018.

(j) The changes made to this Section by this amendatory Act of the 100th General Assembly are subject to Section 4 [5 ILCS 70/4] of the Statute on Statutes.

720 ILCS 570/505

Forfeiture.

(a) The following are subject to forfeiture:

(1) (blank);

(2) all raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, distributing, dispensing, administering or possessing any substance in violation of this Act;

(3) all conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, sale, receipt, possession, or concealment of substances manufactured, distributed, dispensed, or possessed in violation of this Act, or property described in paragraph (2) of this subsection (a), but:

(i) no conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this Section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this Act;

(ii) no conveyance is subject to forfeiture under this Section by reason of any act or omission which the owner proves to have been committed or omitted without his or her knowledge or consent;

(iii) a forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if he or she neither had knowledge of nor consented to the act or omission;

(4) all money, things of value, books, records, and research products and materials including formulas, microfilm, tapes, and data which are used, or intended to be used, in violation of this Act;

(5) everything of value furnished, or intended to be furnished, in exchange for a substance in violation of this Act, all proceeds traceable to such an exchange, and all moneys, negotiable instruments, and securities used, or intended to be used, to commit or in any manner to facilitate any violation of this Act;

(6) all real property, including any right, title, and interest (including, but not limited to, any leasehold interest or the beneficial interest in a land trust) in the whole of any lot or tract of land and any appurtenances or improvements, which is used or intended to be used, in any manner or part, to commit, or in any manner to facilitate the commission of, any violation or act that constitutes a violation of Section 401 or 405 of this Act [720 ILCS 570/401 or 720 ILCS 570/405] or that is the proceeds of any violation or act that constitutes a violation of Section 401 or 405 of this Act.

(b) Property subject to forfeiture under this Act may be seized under the Drug Asset Forfeiture Procedure Act [725 ILCS 150/1 et seq.]. In the event of seizure, forfeiture proceedings shall be instituted under the Drug Asset Forfeiture Procedure Act.

(c) Forfeiture under this Act is subject to an 8th Amendment to the United States Constitution disproportionate penalties analysis as provided under Section 9.5 of the Drug Asset Forfeiture Procedure Act [725 ILCS 150/9.5].

(d) With regard to possession of controlled substances offenses only, a sum of currency with a value of less than $500 shall not be subject to forfeiture under this Act. For all other offenses under this Act, a sum of currency with a value of less than $100 shall not be subject to forfeiture under this Act. In seizures of currency in excess of these amounts, this Section shall not create an exemption for these amounts.

(d-5) For felony offenses involving possession of controlled substances only, no property shall be subject to forfeiture under this Act because of the possession of less than 2 single unit doses of a controlled substance. This exemption shall not apply in instances when the possessor, or another person at the direction of the possessor, engaged in the destruction of any amount of a controlled substance. The amount of a single unit dose shall be the State's burden to prove in its case in chief.

(e) If the Department of Financial and Professional Regulation suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal by the Director. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a suspension or revocation order becoming final, all substances are subject to seizure and forfeiture under the Drug Asset Forfeiture Procedure Act.

(f) (Blank).

(g) (Blank).

(h) (Blank).

(i) Contraband, including controlled substances possessed without authorization under State or federal law, is not subject to forfeiture. No property right exists in contraband. Contraband is subject to seizure and shall be disposed of according to State law.

(j) The changes made to this Section by Public Act 100-512 and Public Act 100-699 only apply to property seized on and after July 1, 2018.

(k) The changes made to this Section by Public Act 100-699 are subject to Section 4 of the Statute on Statutes [5 ILCS 70/4].

725 ILCS 150/3.5

Preliminary review.

(a) Within 14 days of the seizure, the State shall seek a preliminary determination from the circuit court as to whether there is probable cause that the property may be subject to forfeiture.

(b) The rules of evidence shall not apply to any proceeding conducted under this Section.

(c) The court may conduct the review under subsection (a) of this Section simultaneously with a proceeding under Section 109-1 of the Code of Criminal Procedure of 1963 [725 ILCS 5/109-1] for a related criminal offense if a prosecution is commenced by information or complaint.

(d) The court may accept a finding of probable cause at a preliminary hearing following the filing of an information or complaint charging a related criminal offense or following the return of indictment by a grand jury charging the related offense as sufficient evidence of probable cause as required under subsection (a) of this Section.

(e) Upon making a finding of probable cause as required under this Section, the circuit court shall order the property subject to the provisions of the applicable forfeiture Act held until the conclusion of any forfeiture proceeding.

For seizures of conveyances, within 28 days after a finding of probable cause under subsection (a) of this Section, the registered owner or other claimant may file a motion in writing supported by sworn affidavits claiming that denial of the use of the conveyance during the pendency of the forfeiture proceedings creates a substantial hardship and alleges facts showing that the hardship was not due to his or her culpable negligence. The court shall consider the following factors in determining whether a substantial hardship has been proven:

(1) the nature of the claimed hardship;
(2) the availability of public transportation or other available means of transportation; and
(3) any available alternatives to alleviate the hardship other than the return of the seized conveyance.

If the court determines that a substantial hardship has been proven, the court shall then balance the nature of the hardship against the State's interest in safeguarding the conveyance. If the court determines that the hardship outweighs the State's interest in safeguarding the conveyance, the court may temporarily release the conveyance to the registered owner or the registered owner's authorized designee, or both, until the conclusion of the forfeiture proceedings or for such shorter period as ordered by the court provided that the person to whom the conveyance is released provides proof of insurance and a valid driver's license and all State and local registrations for operation of the conveyance are current. The court shall place conditions on the conveyance limiting its use to the stated hardship and providing transportation for employment, religious purposes, medical needs, child care, and obtaining food, and restricting the conveyance's use to only those individuals authorized to use the conveyance by the registered owner. The use of the vehicle shall be further restricted to exclude all recreational and entertainment purposes. The court may order any additional restrictions it deems reasonable and just on its own motion or on motion

of the People. The court shall revoke the order releasing the conveyance and order that the conveyance be reseized by law enforcement if the conditions of release are violated or if the conveyance is used in the commission of any offense identified in subsection (a) of Section 6-205 of the Illinois Vehicle Code [625 ILCS 5/6-205].

If the court orders the release of the conveyance during the pendency of the forfeiture proceedings, the court may order the registered owner or his or her authorized designee to post a cash security with the clerk of the court as ordered by the court. If cash security is ordered, the court shall consider the following factors in determining the amount of the cash security:

(A) the full market value of the conveyance;
(B) the nature of the hardship;
(C) the extent and length of the usage of the conveyance;
(D) the ability of the owner or designee to pay; and
(E) other conditions as the court deems necessary to safeguard the conveyance.

If the conveyance is released, the court shall order that the registered owner or his or her designee safeguard the conveyance, not remove the conveyance from the jurisdiction, not conceal, destroy, or otherwise dispose of the conveyance, not encumber the conveyance, and not diminish the value of the conveyance in any way. The court shall also make a determination of the full market value of the conveyance prior to it being released based on a source or sources defined in 50 Ill. Adm. Code 919.80(c)(2)(A) or 919.80(c)(2)(B).

If the conveyance subject to forfeiture is released under this Section and is subsequently forfeited, the person to whom the conveyance was released shall return the conveyance to the law enforcement agency that seized the conveyance within 7 days from the date of the declaration of forfeiture or order of forfeiture. If the conveyance is not returned within 7 days, the cash security shall be forfeited in the same manner as the conveyance subject to forfeiture. If the cash security was less than the full market value, a judgment shall be entered against the parties to whom the conveyance was released and the registered owner, jointly and severally, for the difference between the full market value and the amount of the cash security. If the conveyance is returned in a condition other than the condition in which it was released, the cash security shall be returned to the surety who posted the security minus the amount of the diminished value, and that amount shall be forfeited in the same manner as the conveyance subject to forfeiture. Additionally, the court may enter an order allowing any law enforcement agency in the State of Illinois to seize the conveyance wherever it may be found in the State to satisfy the judgment if the cash security was less than the full market value of the conveyance.

725 ILCS 150/6

Non-judicial forfeiture.

If non-real property that exceeds $150,000 in value excluding the value of any conveyance, or if real property is seized under the provisions of the Illinois Controlled Substances Act, the Cannabis Control Act, or the Methamphetamine Control and Community Protection Act, the State's Attorney shall institute judicial in rem forfeiture proceedings as described in Section 9 of this Act within 28 days from receipt of notice of seizure from the seizing agency under Section 5 of this Act. However, if non-real property that does not exceed $150,000 in value excluding the value of any conveyance is seized, the following procedure shall be used:

(A) If, after review of the facts surrounding the seizure, the State's Attorney is of the opinion that the seized property is subject to forfeiture, then, within 28 days of the receipt of notice of seizure from the seizing agency, the State's Attorney shall cause notice of pending forfeiture to be given to the owner of the property and all known interest holders of the property in accordance with Section 4 of this Act.
(B) The notice of pending forfeiture must include a description of the property, the estimated value of the property, the date and place of seizure, the conduct giving rise to forfeiture or the violation of law alleged, and a summary of procedures and procedural rights applicable to the forfeiture action.

(C)

(1) Any person claiming an interest in property which is the subject of notice under subsection (A) of this Section may, within 45 days after the effective date of notice as described in Section 4 of this Act, file a verified claim with the State's Attorney expressing his or her interest in the property. The claim must set forth:

(i) the caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;
(ii) the address at which the claimant will accept mail;
(iii) the nature and extent of the claimant's interest in the property;
(iv) the date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;
(v) the names and addresses of all other persons known to have an interest in the property;
(vi) the specific provision of law relied on in asserting the property is not subject to forfeiture;
(vii) all essential facts supporting each assertion; and
(viii) the relief sought.

(2) If a claimant files the claim then the State's Attorney shall institute judicial in rem forfeiture proceedings within 28 days after receipt of the claim.

(D) If no claim is filed within the 45-day period as described in subsection (C) of this Section, the State's Attorney shall declare the property forfeited and shall promptly notify the owner and all known interest holders of the property and the Director of the Illinois State Police of the declaration of forfeiture and the Director shall dispose of the property in accordance with law.

730 ILCS 5/5-4.5-50

Sentence Provision; All Felonies.

Except as otherwise provided, for all felonies:

(a) NO SUPERVISION. The court, upon a plea of guilty or a stipulation by the defendant of the facts supporting the charge or a finding of guilt, may not defer further proceedings and the imposition of a sentence and may not enter an order for supervision of the defendant.

(b) FELONY FINES. Unless otherwise specified by law, the minimum fine is $75. An offender may be sentenced to pay a fine not to exceed, for each offense, $25,000 or the amount specified in the offense, whichever is greater, or if the offender is a corporation, $50,000 or the amount specified in the offense, whichever is greater. A fine may be imposed in addition to a sentence of conditional discharge, probation, periodic imprisonment, or imprisonment. See Article 9 of Chapter V (730 ILCS 5/Ch. V, Art. 9) for imposition of additional amounts and determination of amounts and payment. If the court finds that the fine would impose an undue burden on the victim, the court may reduce or waive the fine.

(c) REASONS FOR SENTENCE STATED. The sentencing judge in each felony conviction shall set forth his or her reasons for imposing the particular sentence entered in the case, as provided in Section 5-4-1 (730 ILCS 5/5-4-1). Those reasons may include any mitigating or aggravating factors specified in this Code, or the lack of any such factors, as well as any other mitigating or aggravating factors that the judge sets forth on the record that are consistent with the purposes and principles of sentencing set out in this Code.

(d) MOTION TO REDUCE SENTENCE. A motion to reduce a sentence may be made, or the court may reduce a sentence without motion, within 30 days after the sentence is imposed. A defendant's challenge to the correctness of a sentence or to any aspect of the sentencing hearing shall be made by a written motion filed with the circuit court clerk within 30 days following the imposition of sentence. A motion not filed within that 30-day period is not timely. The court may not increase a sentence once it is imposed. A notice of motion must be filed with the motion. The notice of motion shall set the motion on the court's calendar on a date certain within a reasonable time after the date of filing.
If a motion filed pursuant to this subsection is timely filed, the proponent of the motion shall exercise due diligence in seeking a determination on the motion and the court shall thereafter decide the motion within a reasonable time.
If a motion filed pursuant to this subsection is timely filed, then for purposes of perfecting an appeal, a final judgment is not considered to have been entered until the motion to reduce the sentence has been decided by order entered by the trial court.

(e) CONCURRENT SENTENCE; PREVIOUS UNEXPIRED FEDERAL OR OTHER-STATE SENTENCE. A defendant who has a previous and unexpired sentence of imprisonment imposed by another state or by any district court of the United States and who, after sentence for a crime in Illinois, must return to serve the unexpired prior sentence may have his or her sentence by the Illinois court ordered to be concurrent with the prior other-state or federal sentence. The court may order that any time served on the unexpired portion of the other-state or federal sentence, prior to

his or her return to Illinois, shall be credited on his or her Illinois sentence. The appropriate official of the other state or the United States shall be furnished with a copy of the order imposing sentence, which shall provide that, when the offender is released from other-state or federal confinement, whether by parole or by termination of sentence, the offender shall be transferred by the Sheriff of the committing Illinois county to the Illinois Department of Corrections. The court shall cause the Department of Corrections to be notified of the sentence at the time of commitment and to be provided with copies of all records regarding the sentence.

(f) REDUCTION; PREVIOUS UNEXPIRED ILLINOIS SENTENCE. A defendant who has a previous and unexpired sentence of imprisonment imposed by an Illinois circuit court for a crime in this State and who is subsequently sentenced to a term of imprisonment by another state or by any district court of the United States and who has served a term of imprisonment imposed by the other state or district court of the United States, and must return to serve the unexpired prior sentence imposed by the Illinois circuit court, may apply to the Illinois circuit court that imposed sentence to have his or her sentence reduced.
The circuit court may order that any time served on the sentence imposed by the other state or district court of the United States be credited on his or her Illinois sentence. The application for reduction of a sentence under this subsection shall be made within 30 days after the defendant has completed the sentence imposed by the other state or district court of the United States.

(g) NO REQUIRED BIRTH CONTROL. A court may not impose a sentence or disposition that requires the defendant to be implanted or injected with or to use any form of birth control.

730 ILCS 5/5-4.5-60

Class B Misdemeanors; Sentence.

For a Class B misdemeanor:

(a) TERM. The sentence of imprisonment shall be a determinate sentence of not more than 6 months.

(b) PERIODIC IMPRISONMENT. A sentence of periodic imprisonment shall be for a definite term of up to 6 months or as otherwise provided in Section 5-7-1 (730 ILCS 5/5-7-1).

(c) IMPACT INCARCERATION. See Section 5-8-1.2 (730 ILCS 5/5-8-1.2) concerning eligibility for the county impact incarceration program.

(d) PROBATION; CONDITIONAL DISCHARGE. Except as provided in Section 5-6-2 (730 ILCS 5/5-6-2), the period of probation or conditional discharge shall not exceed 2 years. The court shall specify the conditions of probation or conditional discharge as set forth in Section 5-6-3 (730 ILCS 5/5-6-3).

(e) FINE. Unless otherwise specified by law, the minimum fine is $75. A fine not to exceed $1,500 for each offense or the amount specified in the offense, whichever is greater, may be imposed. A fine may be imposed in addition to a sentence of conditional discharge, probation, periodic imprisonment, or imprisonment. See Article 9 of Chapter V (730 ILCS 5/Ch. V, Art. 9) for imposition of additional amounts and determination of amounts and payment. If the court finds that the fine would impose an undue burden on the victim, the court may reduce or waive the fine.

(f) RESTITUTION. See Section 5-5-6 (730 ILCS 5/5-5-6) concerning restitution.

(g) CONCURRENT OR CONSECUTIVE SENTENCE. The sentence shall be concurrent or consecutive as provided in Section 5-8-4 (730 ILCS 5/5-8-4).

(h) DRUG COURT. See Section 20 of the Drug Court Treatment Act (730 ILCS 166/20) concerning eligibility for a drug court program.

(i) CREDIT FOR HOME DETENTION. See Section 5-4.5-100 (730 ILCS 5/5-4.5-100) concerning credit for time spent in home detention prior to judgment.
(j) GOOD BEHAVIOR ALLOWANCE. See the County Jail Good Behavior Allowance Act (730 ILCS 130/) for rules and regulations for good behavior allowance.

(k) ELECTRONIC MONITORING AND HOME DETENTION. See Section 5-8A-3 (730 ILCS 5/5-8A-3) concerning eligibility for electronic monitoring and home detention.

730 ILCS 5/5-4.5-65

Class C Misdemeanors; Sentence.

For a Class C misdemeanor:

(a) TERM. The sentence of imprisonment shall be a determinate sentence of not more than 30 days.

(b) PERIODIC IMPRISONMENT. A sentence of periodic imprisonment shall be for a definite term of up to 30 days or as otherwise provided in Section 5-7-1 (730 ILCS 5/5-7-1).

(c) IMPACT INCARCERATION. See Section 5-8-1.2 (730 ILCS 5/5-8-1.2) concerning eligibility for the county impact incarceration program.

(d) PROBATION; CONDITIONAL DISCHARGE. Except as provided in Section 5-6-2 (730 ILCS 5/5-6-2), the period of probation or conditional discharge shall not exceed 2 years. The court shall specify the conditions of probation or conditional discharge as set forth in Section 5-6-3 (730 ILCS 5/5-6-3).

(e) FINE. Unless otherwise specified by law, the minimum fine is $75. A fine not to exceed $1,500 for each offense or the amount specified in the offense, whichever is greater, may be imposed. A fine may be imposed in addition to a sentence of conditional discharge, probation, periodic imprisonment, or imprisonment. See Article 9 of Chapter V (730 ILCS 5/Ch. V, Art. 9) for imposition of additional amounts and determination of amounts and payment. If the court finds that the fine would impose an undue burden on the victim, the court may reduce or waive the fine.

(f) RESTITUTION. See Section 5-5-6 (730 ILCS 5/5-5-6) concerning restitution.

(g) CONCURRENT OR CONSECUTIVE SENTENCE. The sentence shall be concurrent or consecutive as provided in Section 5-8-4 (730 ILCS 5/5-8-4).

(h) DRUG COURT. See Section 20 of the Drug Court Treatment Act (730 ILCS 166/20) concerning eligibility for a drug court program.

(i) CREDIT FOR HOME DETENTION. See Section 5-4.5-100 (730 ILCS 5/5-4.5-100) concerning credit for time spent in home detention prior to judgment.

(j) GOOD BEHAVIOR ALLOWANCE. See the County Jail Good Behavior Allowance Act (730 ILCS 130/) for rules and regulations for good behavior allowance.

(k) ELECTRONIC MONITORING AND HOME DETENTION. See Section 5-8A-3 (730 ILCS 5/5-8A-3) concerning eligibility for electronic monitoring and home detention.

AMENDED CERTIFICATE OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that on March 24, 2022, a copy of the foregoing Brief was filed electronically with the Clerk of the Illinois Supreme Court and was served on counsel of record, identified below, via email pursuant to Illinois Supreme Court Rule 11.

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Kaitlyn M Frey
Kaitlyn M. Frey