No. 128575

IN THE
SUPREME COURT OF ILLINOIS

ALEC PINKSTON,

Plaintiff-Appellee,

v.

CITY OF CHICAGO,

Defendant-Appellant.

On Appeal from the Appellate Court of Illinois
First Judicial District, No. 1-20-0957
There Heard on Appeal from the Circuit Court of Cook County, Illinois
County Department, Chancery Division
No. 2019 CH 12364
The Honorable Caroline K. Moreland, Judge Presiding

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT CITY OF CHICAGO

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E-FILED
2/1/2023 11:30 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

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NATURE OF THE CASE

Plaintiff-appellee Alec Pinkston received a $65 ticket for parking at an expired meter in the City of Chicago's central business district ("CBD"). The address on his ticket was outside the boundaries of the CBD, where fines for the same ticket are $50. Pinkston unsuccessfully contested his ticket in the City's Department of Administrative Hearings ("DOAH") on a different basis. He did not seek administrative review and instead paid the fine. He then filed a complaint on behalf of himself and a putative class of individuals who received tickets for parking at expired meters within the CBD but were parked outside the CBD. He alleged that the City has a "routine practice" of issuing such tickets and sought declaratory relief that such tickets are invalid, injunctive relief preventing the City from issuing such tickets in the future, and restitution to recover fines.

The City moved to dismiss on the grounds that Pinkston failed to exhaust his administrative remedies and that his claims are barred by the voluntary payment doctrine. The circuit court granted the City's motion and dismissed the complaint with prejudice. The appellate court reversed. The City appeals. All questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether Pinkston had an adequate administrative remedy for the allegedly erroneous parking ticket.

2. Whether the voluntary payment doctrine bars Pinkston's claims.

JURISDICTION

On September 4, 2020, the circuit court entered an order dismissing Pinkston's complaint with prejudice. C. 147; A33.[1] On September 9, 2020, Pinkston filed a notice of appeal. C. 148-50; A34-A36. On March 31, 2022, the appellate court reversed the circuit court's judgment. Pinkston v. City of Chicago, 2022 IL App (1st) 200957. On April 20, 2021, the City filed a petition for rehearing. The appellate court issued a modified decision on May 6, 2022, A1-A28, and entered an order denying the petition on June 6, 2022, A29. On June 2, the City requested an extension of time to July 15, 2022 to file a petition for leave to appeal to this court, which this court granted. On July 15, 2022, the City filed a petition for leave to appeal. This court allowed the petition on September 28, 2022. This court has jurisdiction under Ill. Sup. Ct. R. 315.

STATUTES AND ORDINANCES INVOLVED

The Appendix to this brief includes the following statutes and ordinances:

> 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"
>
> 735 ILCS 5/3-101 – "Definitions"

[1] We cite the common law record as "C. ___" and the appendix to this brief as "A___."

735 ILCS 5/3-102 – "Scope of Article"

Municipal Code of Chicago, Ill. § 9-4-010 – "Definitions"

Municipal Code of Chicago, Ill. § 9-64-190 – "Parking meter zones – Regulations"

Municipal Code of Chicago, Ill. § 9-100-010 – "Purpose – Scope – Adoption of rules and regulations"

Municipal Code of Chicago, Ill. § 9-100-020 – "Violation – Penalty"

Municipal Code of Chicago, Ill. § 9-100-060 – "Grounds for contesting a violation"

Municipal Code of Chicago, Ill. § 9-100-070 – "Administrative correspondence hearing – Procedure"

Municipal Code of Chicago, Ill. § 9-100-080 – "Administrative in-person hearing – Procedure"

Municipal Code of Chicago, Ill. § 9-100-090 – "Hearing – Determination of liability or of no liability – Petition"

Municipal Code of Chicago, Ill. § 9-100-100 – "Notice of final determination"

STATEMENT OF FACTS

Pinkston alleges that, on May 21, 2019, he parked his vehicle at a parking meter at or near 1216 South Wabash Avenue. C. 13 ¶¶ 23-24. He received a ticket charging him with violating section 9-64-190(b) of the Municipal Code of Chicago, which imposes a $65 fine for parking at an expired meter within the CBD. C. 9 ¶ 10; C. 13 ¶¶ 25-26. He alleges that he was parked outside the CBD, where fines for parking at an expired meter are only $50, pursuant to section 9-64-190(a) of the Municipal Code. C. 9 ¶ 10; C. 13 ¶ 25. The address where he claims to have parked was less than half a

block south of Roosevelt Road, which is the southern border of the CBD. Municipal Code of Chicago, Ill. § 9-4-010. On July 11, 2019, he paid the $65 fine. C. 13 ¶ 27.

On October 24, 2019, Pinkston filed this lawsuit against the City on behalf of himself and a putative class of individuals who also received CBD tickets while parked outside the CBD. C. 7. He alleges that the City has a "routine practice" of issuing such tickets, C. 11 ¶ 16, and cites an online dataset purportedly showing that the City issued 30,001 such erroneous tickets between 2013 and 2018, C. 10-11 ¶¶ 13-15.[2] He further alleges that he and the putative class members were subject to fines for Code violations they did not commit, C. 11 ¶ 17, and could have incurred late payment fees, interest, immobilization of their vehicles, suspension of their driver's licenses, liens, and other costs associated with debt collection, C. 11-12 ¶ 18. For this reason, he alleges, he and the putative class members paid their tickets "under duress." C. 12 ¶ 18. Pinkston seeks a declaratory judgment that all such improperly issued CBD tickets are invalid, C. 16-17, an injunction preventing the City from issuing any such tickets in the future, C. 17-19, and restitution to recover the fines paid, C. 20-21.

[2] According to Pinkston's dataset, during the same timeframe, the City issued more than 1.4 million expired meter tickets outside the CBD. That would mean approximately 2% of the tickets issued to vehicles parked outside the CBD were erroneous in the way Pinkston alleges. ProPublica Data Store, City of Chicago Parking & Camera Ticket Data, https://www.propublica.org/datastore/dataset/chicago-parking-ticket-data.

On January 3, 2020, the City filed a motion to dismiss under 735 ILCS 5/2-619, on the grounds that Pinkston failed to exhaust his administrative remedies and had voluntarily paid the fine. C. 61-71. On September 4, 2020, the circuit court granted the City's motion and dismissed the complaint with prejudice. C. 147. The circuit court concluded that Pinkston failed to exhaust his administrative remedies and that none of the exceptions to the exhaustion doctrine applies. C. 145-46. The court did not base its decision on the voluntary payment doctrine, concluding that "there is a factual question remaining as to whether [Pinkston's] payment of the parking ticket was truly voluntary." C. 146. On September 9, 2020, Pinkston filed a notice of appeal. C. 148-50; A34-A36.

In the appellate court, Pinkston filed, concurrently with his reply brief, a motion for judicial notice stating for the first time that he did, in fact, challenge his ticket in DOAH and was found liable. A37-A41. He challenged his ticket, by mail, on the ground that the parking meter application he used to pay the meter did not record the correct license plate. A42-A45. He did not challenge his ticket on the basis that he was parked outside the CBD; nor did he file a complaint for administrative review of DOAH's finding of liability.

On March 31, 2022, the appellate court issued a decision reversing the circuit court's judgment for the City, over a dissent. Pinkston, 2022 IL App (1st) 200957. The majority began by explaining that four of the five

exhaustion exceptions Pinkston asserted do not apply. Id. ¶¶ 25-51. It first agreed that "the City undoubtedly has the authority to issue tickets for expired parking meter violations," id. ¶ 31, so Pinkston's "ticket was not void but merely voidable," id. ¶ 30, and "subject to attack only through the applicable administrative and judicial review proceedings," id. ¶ 31 (quotation omitted). The majority next rejected Pinkston's argument that exhausting his administrative remedies would have been futile, explaining that the fact that "Pinkston unsuccessfully challenged his ticket on wholly unrelated grounds is no indication that the process would have been futile as a means of challenging the location of his parking violation." Id. ¶ 41. The majority next explained that Pinkston contests the fact that he was parked in the CBD and that is precisely the sort of issue "DOAH routinely adjudicates," so the exception for lack of any question of fact or issue calling for agency expertise does not apply. Id. ¶ 45. Finally, the court rejected Pinkston's contention that he would suffer irreparable injury if required to exhaust, explaining that "[t]he process for administratively challenging a parking ticket issued by the City is in fact relatively simple." Id. ¶ 48.

The majority then concluded that the fifth exception – for when an agency cannot provide an adequate remedy – applies. Pinkston, 2022 IL App (1st) 200957, ¶¶ 52-63. It explained that because Pinkston is not seeking an "individualized determination," but instead alleges the City is engaging in a "routine or systemic practice," id. ¶ 56, DOAH "is simply not equipped to

provide [him] or the class with the relief sought in this case," id. ¶ 53. The majority further explained that, "if on remand the evidence fails to support a finding that the City is engaged in the 'routine practice' Mr. Pinkston has alleged, then the exhaustion doctrine will indeed apply." Id. ¶ 63. Finally, the majority addressed the voluntary payment doctrine and agreed with the circuit court "that questions of fact remain precluding dismissal on this basis." Id. ¶ 66.

The dissent disagreed with the majority's holding that Pinkston does not have an adequate administrative remedy. Pinkston, 2022 IL App (1st) 200957, ¶¶ 73-80 (Johnson, J., dissenting). The dissent explained that the relief Pinkston seeks "is premised on the factual finding of whether such ticket for illegally parking within the [CBD] was proper, which is squarely within the authority of the DOAH and not the circuit court." Id. ¶ 80. Until such factual determination is made, the dissent explained, the court cannot "reach the issue of whether the City's alleged practice is systemic." Id.

The City appeals.

ARGUMENT

Pinkston had an adequate administrative remedy. He did not avail himself of that remedy, so he now attempts to avoid the consequences of his failure to exhaust by reframing his run-of-the-mill parking ticket dispute as a class action for declaratory judgment, injunctive relief, and restitution, C. 16-21, based on the City's alleged "routine practice" of issuing erroneous parking

tickets, C. 11 ¶ 16. Well-settled precedent from this court and the appellate court holds that an aggrieved party cannot avoid exhaustion with a class action for equitable relief based on allegations of a widespread course of conduct. The majority's decision directly conflicts with this precedent and severely undermines the purposes of exhaustion. By erroneously allowing Pinkston's class action to proceed, the majority's decision threatens to nullify administrative adjudication; it provides a road map for aggrieved parties to avoid exhaustion, even where they could have easily avoided injury altogether by using the administrative process. The majority also erred in concluding that the voluntary payment doctrine does not bar Pinkston's action, despite that Pinkston paid his fine with full knowledge of the facts and could have avoided any adverse consequences by seeking administrative review. That ruling, too, conflicts with well-settled precedent.

This court reviews a decision on a motion to dismiss pursuant to section 2-619 de novo. Sheffler v. Commonwealth Edison Co., 2011 IL 110166, ¶ 23. Under this standard, the judgment of the appellate court should be reversed.

I. DISMISSAL WAS PROPER BECAUSE PINKSTON FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES.

It is well-settled in this court "that a party aggrieved by an administrative decision cannot seek judicial review without first pursuing all available administrative remedies." Canel v. Topinka, 212 Ill. 2d 311, 320 (2004); see, e.g., Poindexter v. State, ex rel. Department of Human Services,

229 Ill. 2d 194, 206-07 (2008) ("a party aggrieved by an administrative action must first pursue all available administrative remedies before resorting to the courts"); Phillips v. Graham, 86 Ill. 2d 274, 289 (1981) ("one may not seek judicial relief from an administrative action unless he has exhausted all administrative remedies available to him"); Illinois Bell Telephone Co. v. Allphin, 60 Ill. 2d 350, 358 (1975) ("a party aggrieved by administrative action ordinarily cannot seek review in the courts without first pursuing all administrative remedies available to him"). This exhaustion requirement "includes administrative review in the circuit court." Canel, 212 Ill. 2d at 321. Where the Administrative Review Law applies, "any other statutory, equitable or common law mode of review of decisions of administrative agencies" shall not "be employed," and a party who fails to seek review of an administrative decision under the statute "shall be barred from obtaining judicial review." 735 ILCS 5/3-102. In other words, the circuit court's "power to resolve factual and legal issues arising from an agency's decision must be exercised within its review of the agency's decision and not in a separate proceeding." Goral v. Dart, 2020 IL 125085, ¶ 40.

Pinkston did not exhaust his administrative remedies before filing this class action. He failed to contest his ticket in DOAH on the basis that he was parked outside the CBD, A45, so he cannot now pursue that defense in the circuit court. He also failed to file a complaint for administrative review of DOAH's finding of liability. Thus, the circuit court cannot now consider a

challenge to DOAH's finding of liability in a separate class action for equitable relief. And while courts have recognized limited exceptions to the exhaustion doctrine, Arvia v. Madigan, 209 Ill. 2d 520, 532 (2004), none excuses Pinkston's failure to exhaust in this case.

The appellate court correctly concluded that the exceptions for lack of agency authority, futility, lack of any question of fact or issue calling for agency expertise, and irreparable injury do not apply. Pinkston, 2022 IL App (1st) 200957, ¶¶ 25-51. The majority nonetheless excused Pinkston's failure to exhaust on the ground that DOAH "is incapable of providing an adequate remedy." Id. ¶ 53. The majority based its conclusion on Pinkston's allegation that the City has a "routine or systemic practice" of issuing CBD expired meter tickets to vehicles parked outside the CBD, id. ¶ 56, and his request for declaratory judgment, injunctive relief, and restitution for himself and the putative class members, id. ¶ 54. That was error. We will first explain that Pinkston had an adequate administrative remedy. We will then explain that he cannot avoid the exhaustion requirement by filing a class action for equitable relief based on allegations of a widespread course of conduct. Finally, we will explain that the majority's decision conflicts with well-settled exhaustion principles and severely undermines the purposes of exhaustion.

A. Pinkston Had An Adequate Administrative Remedy.

Pinkston alleges that the City issued him an erroneous parking ticket by fining him $65 for parking at an expired meter within the CBD, even

though the address on the ticket was outside the CBD, where the same tickets are $50. C. 10 ¶ 12; C. 13 ¶¶ 23-26. That is precisely the type of dispute DOAH was created to handle. The General Assembly authorized municipalities to "provide by ordinance for a system of administrative adjudication of vehicular . . . parking violations," 625 ILCS 5/11-208.3(a), and the City accordingly created DOAH "to provide for the administrative adjudication of violations of ordinances defining parking . . . violations, and to establish a fair and efficient system for the enforcement of such ordinances," Municipal Code of Chicago, Ill. § 9-100-010(a); see Van Harken v. City of Chicago, 305 Ill. App. 3d 972, 974 (1st Dist. 1999) ("City established a system for the adjudication of parking violations"). Through this process, a ticket recipient may request an administrative hearing to contest a violation on one or more grounds, Municipal Code of Chicago, Ill. §§ 9-100-070, 9-100-080, including "that the facts alleged in the violation notice are inconsistent or do not support a finding that the specified regulation was violated," id. § 9-100-060(a)(5), and "that the illegal condition described in the compliance violation notice did not exist at the time the notice was issued," id. § 9-100-060(a)(6). The purpose of the hearing "is to consider the evidence presented by the ticket recipient, make findings of fact, and determine whether the ticket recipient is liable for violating the [Code]." Van Harken, 305 Ill. App. 3d at 984-85. In addition, final decisions of DOAH are subject to review in the circuit court under the Administrative Review Law. Municipal Code of

Chicago, Ill. §§ 9-100-070(d), 9-100-090; 625 ILCS 5/11-208.3(d).

These provisions unquestionably provided Pinkston with an adequate administrative remedy for his allegedly erroneous parking ticket. He needed only to request a hearing and raise the precise defense he now asserts in his class action complaint – that the facts alleged on his ticket do not support a finding that he violated the CBD ordinance. And it would have been extremely easy for him to do so. The Municipal Code allows for challenges by correspondence, Municipal Code of Chicago, Ill. § 9-100-070; Van Harken, 305 Ill. App. 3d at 983, so Pinkston could have simply placed his ticket in the mail, along with a written statement setting forth his defense, see Municipal Code of Chicago, Ill. § 9-100-070(b). Indeed, in this case, Pinkston did just that in order to raise a different defense, A45; he needed only to add a sentence or two to also explain that he was not parked in the bounds of the CBD. The hearing officer could have then considered the defense before making its liability determination. Had Pinkston prevailed, he would have received a reduced fine and the City would have been alerted to its error. And, had he been found liable, he could have filed a complaint for administrative review in the circuit court.

Furthermore, had Pinkston pursued administrative remedies, the process would have served the essential purposes of the exhaustion doctrine. Requiring exhaustion allows the agency "to fully develop and consider the facts of the case before it" and "utilize its expertise," and it allows "the

aggrieved party to obtain relief from the agency, thus making judicial review unnecessary." Canel, 212 Ill. 2d at 320-21. Here, had Pinkston contested his ticket in DOAH on the basis he was parked outside the CBD, the hearing officer would have had to make a finding as to where Pinkston was actually parked. Such fact finding is "'uniquely within the province of the administrative agency.'" Gounaris v. City of Chicago, 321 Ill. App. 3d 487, 490 (1st Dist. 2001) (quoting Haynes v. Police Board, 293 Ill. App. 3d 508, 512 (1st Dist. 1997)). In addition, the hearing officer would have had to apply the Municipal Code – specifically, the definition of "Central Business District" in section 9-4-010 of the Code – to the facts at hand. When an agency interprets and applies a statute or ordinance it administers, it uses its "expertise." Slater v. Department of Children & Family Services, 2011 IL App (1st) 102914, ¶ 33; see also General Motors Corp. v. State Motor Vehicle Review Board, 224 Ill. 2d 1, 17 (2007) (agencies have "experience in construing and applying" statutes they administer).

Finally, had Pinkston, or anyone else whose ticket contained a similar error, raised the defense, that would have given the City an opportunity to correct its error and would have avoided this lawsuit altogether. Allowing the agency "to correct its own errors" is another core purpose of exhaustion, Castaneda v. Illinois Human Rights Commission, 132 Ill. 2d 304, 308 (1989), and avoiding unnecessary litigation furthers the important goal of "conserving valuable judicial resources," Beahringer v. Page, 204 Ill. 2d 363,

375 (2003). Pinkston thus had an adequate administrative remedy that he failed to pursue.

B. Pinkston Cannot Avoid Exhaustion By Bringing A Class Action For Equitable Relief Based On Allegations Of A Routine Course of Conduct.

Pinkston seeks to avoid the consequences of his failure to exhaust by reframing his run-of-the-mill parking ticket dispute as a class action for equitable relief based on the City's alleged "routine practice" of issuing erroneous CBD tickets. See C. 11 ¶ 16. This he cannot do.

This court has held that an aggrieved party cannot "circumvent" its administrative remedies "by a class action for declaratory judgment, injunction and other relief." People ex rel. Naughton v. Swank, 58 Ill. 2d 95, 102 (1974) (citing Chicago Welfare Rights Organization v. Weaver, 56 Ill. 2d 33, 38-39 (1973)). And it has enforced this rule even where the plaintiff has pled a routine course of conduct. In Naughton, the plaintiffs filed a class action challenging the Illinois Department of Public Aid's practice of awarding assistance from the date of approval, rather than from the date of application. 58 Ill. 2d at 96-97. They sought a declaration that existing regulations were invalid, id. at 98, and a writ of mandamus directing the department to promulgate new regulations, id. at 97-98. This court held that the plaintiffs were still required to exhaust their administrative remedies. Id. at 101-02. Otherwise, this court explained, an applicant could – merely by styling his complaint as a class action – "disregard the procedures" the

General Assembly established for internal appeal and instead seek review "by any form of action he chooses." Id. at 101. And nothing about class action allegations "justif[ies] a disregard" for administrative remedies, the court explained. Id. at 102. To hold otherwise would "largely nullif[y]" the administrative process, by eliminating "the requirement that administrative remedies be exhausted" and establishing "an additional method for the review of the decisions made by administrative agencies." Id. at 101-02.

Naughton unequivocally supports the conclusion that a plaintiff cannot circumvent administrative remedies merely by filing a class action to enjoin a supposed broad practice – which is precisely what Pinkston is attempting here. And until the majority's decision in this case, appellate court decisions faithfully adhered to Naughton, and echoed this court's concern that avoiding administrative remedies would nullify the administrative process. In Dvorkin v. Illinois Bell Telephone Co., 34 Ill. App. 3d 448 (1st Dist. 1975), the court affirmed dismissal of the plaintiff's class action to enjoin the telephone company from continuing its "policy and practice" of offering lower rates to its officers, directors, and employees. Id. at 449-50, 456-58. Relying on Naughton, the court explained that the plaintiff must pursue "the requested remedy" from the agency before seeking "relief by original proceedings in equity." Id. at 457. The court flatly rejected the argument that, because the agency "has no jurisdiction to entertain class actions[,] . . . the inherent powers of a court of equity are needed to provide redress." Id. Where a party

fails to exhaust his administrative remedies, and thus "has no individual cause of action, it necessarily follows that any attempted class action must also fail." Id. at 457-58.

The appellate court subsequently affirmed dismissal of class actions for failure to exhaust in Ballew v. Edelman, 34 Ill. App. 3d 490 (1st Dist. 1975); GTE Automatic Electric, Inc. v. Allphin, 38 Ill. App. 3d 910 (1st Dist. 1976); Foster v. Allphin, 42 Ill. App. 3d 871 (1st Dist. 1976); Murphy v. Policemen's Annuity & Benefit Fund, 71 Ill. App. 3d 556 (1st Dist. 1979); and Midland Hotel Corp. v. Director of Employment Security, 282 Ill. App. 3d 312 (1st Dist. 1996). In Ballew, the court held that public aid recipients could not bring a class action to enjoin the defendants' practice of using a certain standard to calculate public aid because they had "failed to afford" the agency "any opportunity to discharge [its] responsibility" to amend the standard. 34 Ill. App. 3d at 499. In GTE, the court held that taxpayers attempting to bring a class action to enjoin the defendants' practice of using a certain sales factor to calculate multistate business income failed to afford the agency an opportunity to develop a factual record and apply its expertise, and forced the court to consider the legal issues "in a factual vacuum." 38 Ill. App. 3d at 914-15. In Foster, the court held that lottery ticket holders could not bring a class action to enjoin the defendants' practice of selecting winners in a certain manner where they had "completely ignored the administrative remedy made available by the General Assembly." 42 Ill. App. 3d at 873-74. In Murphy,

the court held that police officers seeking to enjoin the defendants' practice of terminating pension benefits pursuant to a certain allegedly unconstitutional statute could not "abandon" administrative remedies "by the filing of a purported class action." 71 Ill. App. 3d at 559. And in Midland, where the plaintiff sought to enjoin the agency's practice of assessing liability for unemployment security contributions, the court held that the administrative process "cannot be avoided by bringing a subsequent class action." 282 Ill. App. 3d at 321.

The upshot of these cases is that there is nothing distinct about class action allegations that excuses a failure to exhaust. If each individual claimant has an adequate administrative remedy, amassing their claims together into one class action will not allow them to avoid that remedy. For each claim, the agency should have an opportunity to develop a factual record, apply its expertise, and issue a decision that may eliminate the need for equitable relief in the first place. After all, the entire point of the administrative process is to handle certain disputes quickly and efficiently through a simple process outside the court system. If an aggrieved party could bypass his administrative remedies by amassing a large number of claims to instead be heard in a class action in the circuit court, then it is difficult to imagine any role for administrative adjudication. Indeed, far from rendering administrative adjudication unsuitable, the very fact that there are so many disputes over the same issues justifies its existence.

Nor is there anything about a plaintiff's desire for an injunction that excuses exhaustion. Each of the cases we cite involved allegations of a widespread or routine practice; but none of the plaintiffs could escape exhaustion merely by seeking to enjoin that conduct. As this court has explained, "a party must exhaust its administrative review remedies . . . before seeking equitable relief," Newkirk v. Bigard, 109 Ill. 2d 28, 35 (1985) (emphasis added); accord Naughton, 58 Ill. 2d at 102, and cannot instead bring a claim for injunctive relief to avoid those remedies.

Nothing about Pinkston's case justifies a departure from these well-settled exhaustion principles. Pinkston tries to make his claim seem unique in that he alleges the City has a "routine practice" of issuing CBD tickets outside the CBD, C. 11 ¶ 16, for which he needs an injunction to prevent this practice in the future, C. 13 ¶ 22, and restitution for the City's alleged "unlawful conduct," C. 20 ¶ 58. But, if anything, there is an even stronger basis to enforce the exhaustion requirement in Pinkston's case than in the cases we cite. In those cases, the plaintiffs challenged the validity of specific standards, regulations, or statutory provisions as a matter of law, and the courts required exhaustion before the parties could raise their legal challenges in court. Here, there are not any common legal issues. Pinkston's claim instead hinges on the adjudication of purely factual issues about where an individual ticket recipient was parked – and not for just one ticket, but, according to the allegations in Pinkston's complaint, potentially 30,000. See

C. 10 ¶ 15. That requires exactly the type of factfinding and application of the Municipal Code that is squarely within the province of DOAH.

Not only is DOAH the forum required by ordinance and statute for a case like Pinkston's, but it is also a far more suitable one than the circuit court. Each recipient could have easily contested their ticket in DOAH by offering evidence – during a hearing or by mail – about where they had parked and explaining that it was outside the CBD. As even the appellate court majority recognized, "[t]he process for administratively challenging a parking ticket issued by the City is in fact relatively simple." Pinkston, 2022 IL App (1st) 200957, ¶ 48. Pinkston's attempt to shift those essential agency functions to the circuit court should be rejected as a usurpation of DOAH's authority and a colossal waste of judicial resources.

At bottom, Pinkston's case is nothing more than an attempt to relitigate his run-of-the-mill parking ticket dispute. He challenged the ticket in DOAH on a different basis and lost. A42, A45. He had an opportunity to raise the defense he now asserts but did not do so. He also had 35 days to seek administrative review of DOAH's final determination. See 735 ILCS 5/3-103. That he also did not do. Instead, he filed the present class action. An aggrieved party cannot "abandon the settled way of challenging an administrative action" by filing a lawsuit when the opportunity for an administrative remedy has "run out." Heidenhain Corp. v. Doherty, 288 Ill. App. 3d 852, 855 (1st Dist. 1997). Nor can a plaintiff use semantics – e.g.,

seeking to enjoin a "routine practice" – to avoid the consequences of the failure to exhaust. "Using creative terminology does not change the substance of the relief sought." Id.; see id. at 857 (plaintiff could not avoid exhaustion by framing administrative dispute as class action "for damages on a tort theory"). "Stripped of its excessive verbiage," Pinkston's lawsuit is just the kind of "attempt to avoid the impact of" a failure to exhaust that the courts have rejected, id. at 856-57, and thus was properly dismissed.

C. The Appellate Court Majority Erred In Concluding That Pinkston Lacked An Adequate Remedy.

After concluding that the exhaustion exceptions for lack of agency authority, futility, lack of any question of fact or issue calling for agency expertise, and irreparable injury do not apply, Pinkston, 2022 IL App (1st) 200957, ¶¶ 25-51, the appellate court majority held that Pinkston need not exhaust his administrative remedies because "DOAH is simply not equipped to provide Mr. Pinkston or the class with the relief sought in this case," id. ¶ 53. That conclusion turned on the majority's characterization of Pinkston's complaint as alleging a "systemic failure on the part of the City to confine [CBD] tickets to violations that occur within the established boundaries of that district." Id. That was error. The majority's decision conflicts with well-settled precedent and severely undermines the purposes of exhaustion.

1. The majority's decision conflicts with well-settled precedent.

The cases we cite above hold that an aggrieved party cannot

circumvent the exhaustion requirement by alleging a class action based on a widespread course of conduct. See, e.g., Naughton, 58 Ill. 2d at 101-02. The majority's decision to allow Pinkston's case to proceed – despite his failing to exhaust his administrative remedies – directly conflicts with the exhaustion principles established in Naughton and repeatedly reaffirmed by the appellate court. The majority did not identify anything that would justify such a departure here. The majority also did not cite any authority permitting a case like Pinkston's to proceed despite the failure to exhaust.

Midland is particularly instructive, but the majority did not follow it. Midland challenged a decision of the Illinois Department of Employment Security ("IDES") that it owed unemployment insurance contributions for certain quarters, id. at 313-14, and the director of employment security affirmed, id. at 314. Midland filed a complaint for administrative review, but also filed, on that same day, "a class action complaint for injunction, accounting and other relief." Id. A few months later, Midland filed an amended class action complaint, adding that the director was engaged in a "continuing violation of the Act." Id. The circuit court affirmed the director's decision on administrative review and dismissed the class action. Id. at 314-15. In affirming the liability findings that were the subject of the complaint for administrative review, the appellate court held that Midland's class action was an improper collateral attack on the circuit court's affirmance of the director's decision. Id. at 316. As for any liability during periods that were

not part of the administrative review action, the court held that Midland failed to exhaust its administrative remedies. Id. In so holding, the court rejected Midland's argument that the administrative proceedings would not afford an adequate remedy "for its challenge to IDES's ongoing illegal practices." Id. at 317. Midland had characterized its class action as a challenge to "an ongoing, continuing, persistent course of unlawful conduct in excess of its jurisdiction and authority," id. at 318, but the circuit court had already found the director's conduct lawful in the administrative review action, and that decision could not "be avoided by bringing a subsequent class action," id. at 321. A class action would be appropriate only after Midland successfully challenged an IDES order on administrative review; only then could the court hear "a petition for injunction against IDES." Id.

The same result follows in the present case. Pinkston seeks to circumvent administrative remedies by styling his action as a challenge to a widespread course of conduct rather than a ticket-by-ticket adjudication. C. 11 ¶ 16. That is not allowed, as Midland instructs; before a plaintiff can seek injunctive relief, it must obtain a final determination from the agency whether the challenged conduct is even unlawful. 282 Ill. App. 3d at 321. Just as Midland was required to pursue and successfully challenge an IDES order on administrative review before it could petition for an injunction, so was Pinkston required to successfully challenge his parking ticket in DOAH and on administrative review before he could petition for an injunction.

The majority attempted to distinguish Midland, but it did so on grounds that ignore the firm legal principles upon which that decision rests. First, according to the majority, the plaintiff in Midland was attempting to collaterally attack a final determination of liability, and Pinkston is not. Pinkston, 2022 IL App (1st) 200957, ¶ 59. But Midland makes clear that, in this context, collateral attack and failure to exhaust are two sides of the same coin: where administrative review is the sole method of challenging an agency's decision, the losing party must pursue that review and may not collaterally attack the agency's judgment in a separate lawsuit. And Pinkston's lawsuit is as much a collateral attack on an agency decision as was the separate action in Midland. Pinkston contested his ticket in DOAH and was found liable. A42. His lawsuit necessarily attacks the propriety of his ticket as determined by DOAH, and he cannot now challenge that ticket in an original action for equitable relief.[3] And it does not matter that, in DOAH, he challenged his ticket on a different basis. A party cannot collaterally attack a final judgment in a subsequent proceeding by raising an

[3] A plaintiff can collaterally attack a final judgment in only two circumstances: (1) where the court or agency lacked jurisdiction; or (2) where the judgment is based on a facially unconstitutional statute or ordinance. People v. Thompson, 2015 IL 118151, ¶¶ 31-34. Pinkston alleges neither. While Pinkston argued below that the City lacked authority to issue the ticket, Pinkston, 2022 IL App (1st) 200957, ¶ 26, the majority rightly rejected that contention, id. ¶¶ 34-35. The City, as a home rule municipality, plainly has authority to issue parking tickets, see Ill. Const. art. VII, § 6(a), and its "authority is not lost merely because its order may be erroneous," Newkirk, 109 Ill. 2d at 37.

issue that could have been raised in the initial proceeding. Malone v. Cosentino, 99 Ill. 2d 29, 33 (1983).

The majority also declined to follow Midland on the basis that here, unlike in Midland, there are supposedly no legal or factual issues "that must be addressed through administrative procedures" because "there is no question that [CBD] parking tickets must be issued only for parking meter violations within the [CBD]." Pinkston, 2022 IL App (1st) 200957, ¶ 61. That is flatly wrong. Indeed, it is inherently inconsistent with the majority's own holding that the exception for lack of any question of fact or issue calling for agency expertise does not apply. Id. ¶ 45. Plainly, there are fact questions for DOAH to decide. Most obviously, there are fact questions about where each individual ticket recipient was parked and whether that location is outside the CBD. Thus, Midland is squarely on point and precludes Pinkston's action.

The only case the majority cites to support its conclusion that Pinkston had no adequate remedy is an inapposite case involving systemic pension miscalculations, Board of Education v. Board of Trustees of Public School Teachers' Pension & Retirement Fund, 395 Ill. App. 3d 735 (1st Dist. 2009). There, the board of education challenged the method by which the trustees calculated average salaries for a certain category of teachers. Id. at 737. The court held that the trustees' decisions were not subject to administrative review for two reasons: (1) they involved a "systemic miscalculation," which

"falls outside the definition of an 'administrative decision' under the review law," id. at 744; and (2) the board of education was merely a third party to the decisions, so it did not have an interest in and standing to seek review of each decision before the pension board, id. at 744-45.

A decade later, in De Jesus v. Policemen's Annuity & Benefit Fund, 2019 IL App (1st) 190486, the court clarified the narrow scope of Board of Education and its progeny. The court first explained that the holdings in those cases apply only when a "systemic miscalculation" of pension or disability benefits is at issue, the rationale being that "'preventing significant violations of the Pension Code and ensuring the fiscal integrity of the pension fund are important goals.'" Id. ¶ 26 (alterations omitted) (quoting People ex rel. Madigan v. Burge, 2014 IL 115635, ¶ 38). The court then explained that a challenge to such a systemic miscalculation may proceed in an original action in "two limited circumstances": (1) where the action is brought by a third party, id. ¶ 26; and (2) where the action is brought by a party to the pension board decision and that party "can point to a specific rule, regulation, standard, or statement of policy from the pension board itself," id. ¶ 27. Thus, Board of Education does not, as the plaintiffs in De Jesus argued, "stand for the proposition that systemic miscalculations" are never subject to administrative review. Id.

Pinkston does not challenge the systemic miscalculation of disability or pension benefits, and for that reason alone the narrow holding in Board of

Education does not apply. In any event, Pinkston's case does not involve either of the limited circumstances articulated in Board of Education for when a party may challenge a systemic miscalculation in an original action in the circuit court: he does not raise a third-party challenge or complain about any specific rule, regulation, standard, or statement of policy issued by the agency – here, DOAH. Nor did the majority identify any DOAH rule, regulation, standard, or statement of policy. Instead, the majority identified a so-called "policy" of the City itself, namely, whether "the City has a widespread policy or is engaged in the routine or systemic practice of issuing" erroneous CBD tickets. Pinkston, 2022 IL App (1st) 200957, ¶ 56. But, as the majority recognized elsewhere in the opinion, the issuance of parking tickets is the role of the City "in the exercise of its police power," not of DOAH. Id. ¶ 28.

Nevertheless, the City has not issued any rule, regulation, standard, or statement of policy, either. Pinkston's allegations that the City has a "routine practice" of issuing erroneous tickets, C. 11 ¶ 16, are not enough. He offers no basis to attribute the errors to anything other than mistakes by individual ticketing agents, let alone to any law or policy to overcharge vehicles parked at expired meters outside the CBD.[4] In fact, the only policy

[4] As we explain above, the dataset that Pinkston cites reflects that only 2% of the tickets issued to vehicles parked outside the CBD were erroneous for the reason Pinkston alleges. See ProPublica Data Store, City of Chicago Parking & Camera Ticket Data, https://www.propublica.org/datastore/dataset/chicago-

the City has adopted with regard to expired meter violations is in section 9-64-190 of the Municipal Code, which establishes different fines for CBD and non-CBD tickets. See Municipal Code of Chicago, Ill. § 9-64-190. Far from endorsing the "routine practice" that Pinkston alleges, the City has declared through its enactment of section 9-64-190 that it shall not issue CBD-expired-meter tickets to vehicles parked outside the CBD.

Finally, it does not matter whether Pinkston frames his complaint as a challenge to an "administrative decision" within the meaning of the Administrative Review Law. He is still required to first pursue the administrative remedy prescribed by both statute, 625 ILCS 5/11-208, and ordinance, Municipal Code of Chicago, Ill. § 9-100-010(a), and cannot seek equitable relief until he does so. Thus, none of the authority the majority cites controls here, and its decision conflicts with well-settled precedent.

2. The majority's decision severely undermines the purposes of exhaustion.

As we explain above, the exhaustion doctrine has many salutary purposes, including to allow the agency to develop a factual record, utilize its expertise, and correct its own errors, and to allow the aggrieved party to

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parking-ticket-data. That certainly eliminates any question that the City has a rule, regulation, standard, or statement of policy authorizing CBD tickets as a matter of course. Moreover, "Illinois is a fact-pleading jurisdiction," meaning the "plaintiff must allege facts sufficient to bring his or her claim within the scope of the cause of action asserted." Beahringer, 204 Ill. 2d at 369. Pinkston cannot allege a routine practice based solely on a numerator, without any denominator to provide context.

obtain relief from the agency, making judicial review unnecessary and conserving valuable judicial resources. Canel, 212 Ill. 2d at 320-21; Castaneda, 132 Ill. 2d at 308. And requiring exhaustion in this case furthers those purposes by preserving DOAH's role in adjudicating the individual parking tickets and giving Pinkston and any putative class members an opportunity to obtain reduced fines and the City an opportunity to correct any errors. The majority's decision shifts essential agency functions to the circuit court, severely undermining the purposes of exhaustion and DOAH's role in the adjudication of parking ticket disputes.

The majority concluded that Pinkston may bring this class action to determine whether the City has "engaged in the 'routine practice' [he] has alleged," and that if the evidence fails to support a routine practice, "then the exhaustion doctrine will indeed apply." Pinkston, 2022 IL App (1st) 200957, ¶ 63 (emphasis added). This turns exhaustion upside down; this court has made clear that "a party must exhaust its administrative review remedies . . . before seeking equitable relief." Newkirk, 109 Ill. 2d at 35 (emphasis added). This rule makes sense. Indeed, the circuit court in Pinkston's putative class action cannot find that the City has engaged in a routine practice – nor order any relief – without first adjudicating the underlying tickets. Yet, that is the job of DOAH. Thus, the majority's decision leaves DOAH with no role, imposes a significant burden on the circuit court, and permits a class action that might have been avoided altogether. The majority's decision also guts

the Administrative Review Law by allowing Pinkston to avoid administrative review and instead collaterally attack DOAH's finding of liability in a separate proceeding.

Worse still, the majority's decision provides a road map for aggrieved parties and class action attorneys attempting to dodge administrative remedies before all kinds of administrative agencies across Illinois – even where an adequate administrative remedy, if used, could avoid harm altogether. For instance, DOAH alone adjudicates myriad Municipal Code violations touching on all areas of "the public health, safety, welfare, moral and economic well being." City of Chicago, Departments, Administrative Hearings, https://www.chicago.gov/city/en/depts/ah.html. And it serves the third largest city in the country, which has three million residents, draws commuters from a metropolitan area of ten million, and hosts more than 30 million tourists annually. On that scale, the officials issuing violations are bound to make errors – especially the ticketing agents who issue hundreds of thousands of expired meter tickets alone each year – and DOAH is bound to hear repeated disputes over the same error. That is when DOAH and other administrative tribunals are most effective. Through their experience and expertise, they can easily dispense with these disputes and alert the governing body to the error. That is the quintessential function of administrative adjudication.

Not so under the majority's approach. Even though the sheer number

of disputes is exactly what fueled the creation of administrative adjudication systems like DOAH, under the majority's approach, the mere fact that there are a large number of disputes becomes the basis for an end-run around that process. As this case illustrates, at the scale the City operates, even a small percentage of errors can be used to allege a "routine" or "systemic" practice under the majority's rationale. This means that an aggrieved party who fails to request a hearing at DOAH or pursue administrative review can get another chance to challenge their ticket, even years later, so long as enough other people have received tickets with the same error. The exhaustion doctrine would be rendered hollow.

Importantly, the majority's opinion also reflects fundamental misunderstandings about the nature of class action litigation. While the majority acknowledged that individuals challenging parking tickets will be subject to exhaustion, Pinkston, 2022 IL App (1st) 200957, ¶ 63, it excused the requirement here because Pinkston alleged a "routine practice" that caused others to receive similar tickets. But in a class action, the class representative must have an individual cause of action, or "any attempted class action fails." Saldana v. American Mutual Corp., 97 Ill. App. 3d 334, 338 (1st Dist. 1981). That rule applies equally in the context of exhaustion. See Dvorkin, 34 Ill. App. 3d at 457-58. Thus, since exhaustion is required in any individual case, as the majority recognized, Pinkston does not have an individual cause of action. Nor does any other plaintiff who failed to exhaust.

In addition, for a class action, the representative must show that there are common questions of law and fact that "predominate over individual issues." Smith v. Illinois Central Railroad Co., 223 Ill. 2d 441, 448-49 (2006). The majority seemed to believe there are common questions that are better resolved in a class action lawsuit, but that is not so. In fact, there are no common questions in Pinkston's suit. The only question is whether the City issued erroneous tickets, and that requires an individualized factual determination for each and every ticket. In other words, a determination that Pinkston received an erroneous ticket does not establish any "'right of recovery'" for the other class members. See id. at 449 (quoting Avery v. State Farm Mutual Auto Insurance Co., 216 Ill. 2d 100, 128 (2005)).[5] Because Pinkston failed to exhaust administrative remedies, the circuit court properly dismissed his complaint.

II. DISMISSAL WAS ALSO PROPER BECAUSE PINKSTON VOLUNTARILY PAID THE FINE.

Under the voluntary payment doctrine, "'money voluntarily paid under

[5] Moreover, styling the complaint as a class action does not change anything about what Pinkston has to show to obtain an injunction. He still must allege an injury that is not "contingent upon uncertainties." Bell Fuels, Inc. v. Butkovich, 201 Ill. App. 3d 570, 572 (1st Dist. 1990). This he has not done. He suggests only that the City may issue him another erroneous ticket in the future, but for such an error to occur, he would have to park illegally at an expired meter outside the CBD, a prospect that is wholly speculative. Indeed, courts assume that individuals "will conduct their activities within the law." O'Shea v. Littleton, 414 U.S. 488, 497 (1974). He also must show that there is no adequate remedy at law. Kopchar v. City of Chicago, 395 Ill. App. 3d 762, 772-73 (1st Dist. 2009). He has not done this either.

a claim of right to the payment and with full knowledge of the facts by the person making the payment cannot be recovered back on the ground that the claim was illegal.'" McIntosh v. Walgreens Boots Alliance, Inc., 2019 IL 123626, ¶ 22 (quoting Illinois Glass Co. v. Chicago Telephone Co., 234 Ill. 535, 541 (1908)). After DOAH issued its finding of liability on Pinkston's ticket, Pinkston voluntarily opted not to pursue administrative review and instead paid the fine. C. 13 ¶ 27. His claim is therefore barred.

To avoid the voluntary payment bar, the plaintiff must show that he: (1) "lacked knowledge of the facts upon which to protest the payment at the time of payment"; or (2) "paid under duress." Midwest Medical Records Association v. Brown, 2018 IL App (1st) 163230, ¶ 25. Pinkston has shown neither. First, Pinkston unquestionably had knowledge of the facts at the time he paid his ticket. He knew where he parked his car, and the ticket included the specific Municipal Code provision he was charged with violating. A43. Second, he did not pay under duress. A payment is made under duress when the party has no "choice or option," meaning the payee exerts "some actual or threatened power" over the payor "from which he has no immediate relief" and "no adequate opportunity" to "effectively resist the demand for payment." Walker v. Chasteen, 2021 IL 126086, ¶ 25 (quotation omitted). Pinkston had a clear choice. Section 9-100-100(a) of the Municipal Code states that a "determination of liability" will not "become final" until "the respondent has exhausted or failed to exhaust judicial procedures for review."

Municipal Code of Chicago, Ill. § 9-100-100(a). In other words, the Municipal Code provides a safe harbor for recipients who wish to contest their tickets in DOAH and pursue administrative review of DOAH's final determination. Had Pinkston pursued administrative review, he could have avoided all of the negative consequences he alleged in his complaint. See C. 12 ¶ 18.[6] Dismissal was therefore proper on this basis, as well.

The majority declined to affirm dismissal under the voluntary payment doctrine, concluding "that questions of fact remain precluding dismissal on this basis." Pinkston, 2022 IL App (1st) 200957, ¶ 66. The majority first explained that it was "unclear" whether Pinkston "in fact knew that his vehicle had not been parked within the boundaries of the central business district" when he elected to pay his ticket. Id. For this reason, the court concluded, "it could hardly be said that he paid the ticket 'with knowledge of the facts.'" Id. But that confuses knowledge of the law with knowledge of the facts. "An erroneous conclusion of the legal effect of known facts constitutes a mistake of law and not of fact," and because "all persons are presumed to know the law, a mistake or misrepresentation of law will not avoid the application of the voluntary payment doctrine." McIntosh, 2019 IL 123626, ¶ 39. In McIntosh, this court rejected the plaintiff's argument that he had no

[6] Pinkston admitted in his answer to the City's petition for leave to appeal that he "could have challenged his Ticket on administrative review without being subject to these consequences." Plaintiff-Respondent's Answer to Defendant-Petitioner's Petition for Leave to Appeal, at 15.

way of knowing, from his sales receipt, that he was improperly charged for the bottled water tax. Id. ¶¶ 35-40. As the court explained, "McIntosh had the ability to investigate the ordinance to determine if the bottled water tax applied to his purchase." Id. ¶ 40. Here, the CBD boundaries are clearly defined in the Municipal Code, see Municipal Code of Chicago, Ill. § 9-4-010, and Pinkston had the ability to investigate the ordinance and determine whether his vehicle was parked outside the CBD. The majority does not explain why Pinkston was excused from this obligation, and thus its decision conflicts with this court's settled precedent.

The majority next explained that there is a question of fact whether the negative consequences Pinkston alleged "were a true threat." Pinkston, 2022 IL App (1st) 200957, ¶ 56. That, too, was error. The issue of duress can be decided as a matter of law on a motion to dismiss "where the facts are not in dispute and only one valid inference concerning the existence of duress can be drawn from the facts." Smith v. Prime Cable of Chicago, 276 Ill. App. 3d 843, 850 (1st Dist. 1995). Here, the issue can easily be decided as a matter of law. The Municipal Code expressly states that a ticket recipient can avoid paying the fine, incurring late fees, and other adverse consequences while pursuing his administrative remedies. See Municipal Code of Chicago, Ill. § 9-100-100(a). Pinkston, therefore, ran no risk of incurring additional injury if he had continued to pursue his administrative remedies.

Finally, the court expressed concern that "neither party has addressed

how, if at all, the voluntary payment doctrine applies in this context of a potential class action." Pinkston, 2022 IL App (1st) 200957, ¶ 67. That is no reason to reject application of the voluntary payment doctrine. Nothing about the nature of a class action prevents the City from raising any viable defense against the named plaintiff. Indeed, as we explain above, a plaintiff must have an individual cause of action to sustain a class action. Saldana, 97 Ill. App. 3d at 338. Pinkston voluntarily paid the fine and thus has no cause of action. His complaint must be dismissed.

CONCLUSION

This court should reverse the appellate court's judgment.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rule 341(a) & (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) table of contents and points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 35 pages.

/s/ Elizabeth Mary Tisher
ELIZABETH MARY TISHER, Attorney

CERTIFICATE OF FILING/SERVICE

I certify under penalty of law as provided in 735 ILCS 5/1-109 that the statements in this instrument are true and correct and that the foregoing brief was electronically filed with the office of the Clerk of the Court using the File and Serve Illinois system and served via email, to the persons named below at the email addresses listed, on February 1, 2023.

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APPENDIX

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2022 IL App (1st) 200957

SIXTH DIVISION
Opinion filed March 31, 2022.
Modified upon denial of rehearing on May 6, 2022.

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

No. 1-20-0957

ALEC PINKSTON, Individually and on Behalf of Others Similarly Situated,	)	
	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 19 CH 12364
	)	
THE CITY OF CHICAGO,	)	Honorable
	)	Caroline K. Moreland,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court, with opinion.
Justice Harris concurred with the judgment and opinion.
Justice Oden Johnson dissented, with opinion.

OPINION

¶ 1 Plaintiff Alec Pinkston filed a class action complaint alleging that the City of Chicago (City) has an ongoing practice of improperly issuing central business district metered parking tickets. Mr. Pinkston alleged that the City routinely issues these tickets, for which there is a higher penalty than ordinary metered parking tickets, outside of the boundaries of the central business district established by the Chicago Municipal Code (Municipal Code). On behalf of himself and a class of similarly situated individuals, Mr. Pinkston sought a declaration that the tickets were void, an injunction to halt the practice, and the disgorgement of parking fees and the interest charged on

those fees as a remedy for the City's unjust enrichment. The City successfully moved to dismiss the complaint pursuant to section 2-619 of the Code of Civil Procedure (Civil Code) (735 ILCS 5/2-619 (West 2018)), on the grounds that Mr. Pinkston had failed to exhaust his administrative remedies with the City's Department of Administrative Hearings (DOAH) before initiating this action in the circuit court.

¶ 2 On appeal, Mr. Pinkston maintains that several exceptions to the exhaustion doctrine apply and should have prevented dismissal of his claims. He argues that (1) the ticket he received was void, both because the City lacked statutory authority to issue it and because it was invalid on its face; (2) it would have been futile to challenge his ticket with DOAH; (3) resolution of his claims required no fact finding or agency expertise; (4) availing himself of the administrative process would have resulted in irreparable injury; and (5) DOAH could not have provided him the "ultimate relief" he sought.

¶ 3 Although we agree with the City that the first four of these exceptions do not apply, we are persuaded that the last one does. We accept, for purposes of this motion to dismiss, Mr. Pinkston's argument that DOAH, which is tasked by the Municipal Code with establishing liability or nonliability for individual parking violations, cannot provide him with the core relief he seeks—injunctive and monetary relief to prospectively and retroactively redress the deleterious effects of the City's purportedly widespread practice of issuing erroneous central business district tickets. We reverse the circuit court's dismissal of Mr. Pinkston's complaint and remand for further proceedings on his claims.

¶ 4 I. BACKGROUND

¶ 5 The City of Chicago regulates metered parking spaces within its boundaries. A failure to comply with parking meter regulations outside the central business district results in a $50 fine.

Chicago Municipal Code § 9-64-190(a) (amended Nov. 16, 2016); Chicago Municipal Code 9-100-020(b) (amended Apr. 21, 2021). Within the central business district, the same violation resulted—at the time Mr. Pinkston's ticket was issued—in a $65 fine. Chicago Municipal Code § 9-64-190(b) (amended Nov. 16, 2016); Chicago Municipal Code § 9-100-020(b) (amended at Chi. City Clerk J. Proc. 38042 (Nov. 16, 2016)). That penalty has since been raised to $70, with no corresponding increase for violations outside of the district. Chicago Municipal Code § 9-100-020(b) (amended April 21, 2021)).

¶ 6 As defined in section 9-4-010 of the Municipal Code, the central business district is the area

> "beginning at the easternmost point of Division Street extended to Lake Michigan; then west on Division Street to LaSalle Street; then south on LaSalle Street to Chicago Avenue; then west on Chicago Avenue to Halsted Street; then south on Halsted Street to Roosevelt Road; then east on Roosevelt Road to its easternmost point extended to Lake Michigan"

and includes parking spaces on both sides of the above-mentioned streets. Chicago Municipal Code § 9-4-010 (amended July 21, 2021).

¶ 7 In his class action complaint, Mr. Pinkston alleged that on May 21, 2019, he parked his vehicle in a parking meter zone located at or near 1216 South Wabash Avenue in Chicago. Mr. Pinkston returned to his vehicle to find that he had received a ticket, purporting to be pursuant to section 9-64-190(b) of the Municipal Code, for having an expired parking meter within the central business district. The ticket stated that Mr. Pinkston's vehicle was parked at 1202 South Wabash Avenue. Both 1216 South Wabash Avenue and 1202 South Wabash Avenue are located south of Roosevelt Road and thus outside the southernmost boundary of the central business district. Mr. Pinkston alleged that he paid the $65 fine associated with his ticket "under duress."

¶ 8 Citing a May 14, 2019, news article analyzing data concerning parking tickets issued by the City, Mr. Pinkston alleged that over a five-year period the City had issued more than 30,000 central business district tickets for vehicles, like his, that were parked outside of the central business district. Mr. Pinkston alleged that the City was thus engaged in a "routine practice" of erroneously issuing such tickets.

¶ 9 On behalf of himself and a proposed class of similarly situated individuals, Mr. Pinkston asserted three counts against the City, seeking (1) a declaration that the improperly issued tickets were facially invalid, void, and unenforceable; (2) an injunction to prevent the City from continuing to issue central business district tickets to vehicles parked outside the district; and (3) as a remedy for unjust enrichment, the repayment of fines, penalties, and interest the City had unjustly received and retained at the expense of class members.

¶ 10 The City moved to dismiss Mr. Pinkston's complaint pursuant to section 2-619 of the Civil Code (735 ILCS 5/2-619 (West 2018)), arguing that the circuit court lacked subject matter jurisdiction because Mr. Pinkston had failed to exhaust his administrative remedies before filing suit. According to the City, the parking ticket issued to Mr. Pinkston was subject to administrative review by DOAH and, under the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2018)), he was required to seek a finding of no liability by first challenging the ticket with DOAH and then filing a complaint for administrative review in the circuit court if DOAH rejected his challenge. Because Mr. Pinkston filed his complaint outside of this administrative review process, the City maintained that his claims were barred by the administrative exhaustion of remedies doctrine. The City argued in the alternative that Mr. Pinkston's claims were barred by the voluntary payment doctrine, as he had also elected to pay his ticket before contesting it.

¶ 11 In response to the City's motion, Mr. Pinkston argued that "many exceptions" to the

exhaustion doctrine applied. He maintained that he had no obligation to pursue administrative remedies, for example, before challenging a facially invalid and therefore void ticket that the City was not statutorily authorized to issue. Mr. Pinkston further argued that administrative proceedings could not have provided him with adequate relief because only a court can issue an injunction against the City's continued issuance of erroneous central business district metered parking tickets. Mr. Pinkston also insisted that administrative proceedings would have been futile because the City's failure to withdraw his erroneous ticket of its own accord indicated that any challenge made to the ticket "would certainly be denied by [a DOAH] hearing officer." Finally, Mr. Pinkston argued that no fact-finding was required because the location of his vehicle relative to the boundaries of the central business district was not disputed and there was thus "no need for the expertise of the City's DOAH in this matter." Mr. Pinkston maintained, consistent with his allegations, that he had not voluntarily paid the $65 penalty associated with his ticket but had been compelled to do so to avoid late fees, immobilization of his vehicle, suspension of his driver's license, and other potential consequences.

¶ 12 The circuit court granted the City's motion in its entirety and dismissed Mr. Pinkston's claims with prejudice, concluding that Mr. Pinkston had failed to exhaust his administrative remedies and that none of the enumerated exceptions to the exhaustion doctrine applied. The court rejected Mr. Pinkston's argument that the City lacked authority or jurisdiction to issue the ticket he received and that the ticket was thus void *ab initio*. The court explained that although the ticket may have been "issued for a violation that could not factually be proven," it was not void because the City was authorized to issue tickets for parking violations. The court noted that Mr. Pinkston had failed to plead any facts showing it would have been futile to contest his ticket with DOAH. And the court rejected "the notion that all parties who receive parking tickets in the city of Chicago

can avoid administrative review because no agency expertise is involved." Accepting that proposition, in the court's view, "would eviscerate the concept of administrative hearings and administrative review for truly trivial matters and bombard the Court with litigation over parking and other related fines."

¶ 13 Finding that "a factual question remained as to whether [Mr. Pinkston's] payment of the parking ticket was truly voluntary," the court did not base its dismissal on application of the voluntary payment doctrine.

¶ 14 This appeal followed.

¶ 15 II. JURISDICTION

¶ 16 The circuit court granted the City's motion to dismiss Mr. Pinkston's complaint with prejudice on September 4, 2020, and Mr. Pinkston filed a timely notice of appeal from that order on September 9, 2020. We have jurisdiction pursuant to Illinois Supreme Court Rule 301 (eff. Feb. 1, 1994) and Rule 303 (eff. July 1, 2017), governing appeals from final judgments entered by the circuit court in civil cases.

¶ 17 III. ANALYSIS

¶ 18 The circuit court dismissed Mr. Pinkston's complaint under section 2–619(a) of the Civil Code (735 ILCS 5/2-619(a) (West 2018)). A motion brought pursuant to this section "admits the legal sufficiency of the plaintiff's claim but asserts certain defects or defenses outside the pleadings which defeat the claim." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55. The question on appeal is "whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law." *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993). Our review of the grant or denial of such a motion is *de novo*. *Id*. at 116.

¶ 19 The City urges us to affirm the dismissal of Mr. Pinkston's complaint on appeal because (1) Mr. Pinkston failed to exhaust his administrative remedies and (2) Mr. Pinkston's claims are barred by the voluntary payment doctrine. We address each basis in turn.

¶ 20 A. The Exhaustion Doctrine

¶ 21 The circuit court agreed with the City that Mr. Pinkston's claims were barred because he failed to exhaust his administrative remedies. The exhaustion doctrine provides that a party aggrieved by actions that are subject to review by an administrative agency generally cannot seek review in the courts outside of the administrative review process, which assigns courts the limited role of reviewing final agency decisions. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308 (1989). Reasons for this requirement include allowing the administrative agency to fully develop and consider the facts surrounding matters presented to it and to apply agency expertise to such matters, as well as the possibility that the complaining party might succeed before the agency, thus obviating the need for judicial review and conserving valuable judicial resources. *Id*.

¶ 22 Although strict compliance is generally required, our supreme court has recognized a number of exceptions to the exhaustion doctrine, including when (1) "a statute, ordinance, or rule is attacked as unconstitutional on its face"; (2) "multiple administrative remedies exist and at least one is exhausted"; (3) "the agency cannot provide an adequate remedy"; (4) "it is patently futile to seek relief before the agency"; (5) "no issues of fact are presented or agency expertise is not involved"; (6) "irreparable harm will result from further pursuit of administrative remedies"; or (7) "the agency's jurisdiction is attacked because it is not authorized by statute." *Id.* at 308-09.

¶ 23 Mr. Pinkston contends that several of these exceptions apply to his claims. He argues that (1) the ticket he received was void, both because the City lacked statutory authority to issue it and because it was invalid on its face, (2) it would have been futile to challenge his ticket with DOAH,

(3) resolution of his claims required no factfinding or agency expertise, (4) availing himself of the administrative process would have resulted in irreparable injury, and (5) DOAH could not provide Mr. Pinkston with an injunction, the "ultimate relief" he sought.

¶ 24 As noted above, we agree with Mr. Pinkston that the last of these exceptions applies. However, because our view that this exception applies is dependent on Mr. Pinkston's ability to prove his allegation of a "routine practice" of issuing central business district tickets for vehicles, like his, that were parked outside of the central business district, we also want to make clear that none of the other exceptions that he cites are applicable. We address each of these exceptions in turn.

¶ 25 1. Lack of Agency Authority/Jurisdiction

¶ 26 Mr. Pinkston first argues that he was not required to exhaust his administrative remedies because he was challenging the City's authority to issue that ticket and thus he was alleging that the ticket was void. It is true that "[a]n administrative agency's powers are limited to those granted by the legislature and any action taken by an agency must be authorized specifically by statute." *Ferris, Thompson & Zweig, Ltd. v. Esposito*, 2015 IL 117443, ¶ 16. "Because agency action for which there is no statutory authority is void, it is subject to attack at any time in any court, either directly or collaterally." *Daniels v. Industrial Comm'n*, 201 Ill. 2d 160, 166 (2002). Although "the term 'jurisdiction' is not strictly applicable" in this context, "the rules concerning the authority of an administrative agency and the validity of its orders have been held to be analogous to those governing courts of limited jurisdiction." *In re Abandonment of Wells Located in Illinois by Leavell*, 343 Ill. App. 3d 303, 306 (2003). Mr. Pinkston's position is that, because no statute specifically authorizes the City to issue central business district parking tickets outside of the central business district, each instance of the City erroneously doing so is a void act for which the

City lacked statutory authority.

¶ 27 The City maintains that this exception is inapplicable because Mr. Pinkston's argument goes to the authority of the City, not the authority of DOAH, and the City is "neither an administrative agency nor a creature of statute," but is rather a home rule municipality with broad police powers. See Ill. Const. 1970, art. VII, § 6(a) (providing that a home rule municipality may "exercise any power and perform any function pertaining to its government and affairs"). Mr. Pinkston's response to this is that "in issuing and enforcing parking tickets, the City acts in an administrative capacity, and, for all intents and purposes applicable to this case, is an administrative agency."

¶ 28 We agree with the City on this point. Although the validity of parking tickets must be raised with DOAH, an administrative agency that was created by the City to adjudicate administrative hearings, the tickets are issued by the City itself, in the exercise of its police power.

¶ 29 Even if we were persuaded by Mr. Pinkston's contention that the City functions as an administrative agency when it issues parking tickets, however, his argument that the City acted outside of its statutory authority would fail. Section 11-208 of the Illinois Vehicle Code, titled "Powers of local authorities," provides, with certain exceptions not applicable here, that local authorities may, as part of "the reasonable exercise of [their] police power[,] *** [r]egulat[e] the standing or parking of vehicles." 625 ILCS 5/11-208(a)(1) (West 2020). Section 9-64-220(b) of the Municipal Code further provides that a police officer or other designated representative of the City who observes a parking violation "may issue a parking violation notice and serve the notice on the owner of the vehicle by handing it to the operator of the vehicle, if he is present, or by affixing it to the vehicle in a conspicuous place." Chicago Municipal Code § 9-64-220(b) (amended Nov. 16, 2016).

¶ 30 As even the authorities Mr. Pinkston relies on make clear, "[a]n administrative agency *** has authority to act if it has the following: (1) personal jurisdiction over the parties ***, (2) subject matter jurisdiction over the general class of cases to which the particular case belongs, and (3) the inherent statutory authority to make or enter the particular order involved." *In re Abandonment of Wells Located in Illinois*, 343 Ill. App. 3d at 306. When it issued Mr. Pinkston's ticket, the City clearly had personal jurisdiction over him as an individual who parked his vehicle within city boundaries; the City had subject matter jurisdiction over parking violations; the general class of cases to which this particular case belongs; and the City also had the inherent statutory authority to issue tickets for expired parking meter violations, whether those violations occurred within the central business district or not. Thus, even if it was issued *in error*—and even, as Mr. Pinkston argues, if that error was obvious from the face of the ticket because it purported to be for a parking violation within the central business district while at the same time providing an address outside of the district—the City plainly had *authority* to issue the ticket. In other words, the ticket was not "void" but merely "voidable."

¶ 31 We discussed the difference between actions that are void and voidable in *Board of Education of the City of Chicago v. Board of Trustees of the Public Schools Teachers' Pension & Retirement Fund of Chicago*, 395 Ill. App. 3d 735 (2009). We acknowledged in that case that, "theoretically, anytime an agency makes an erroneous decision, it acts without statutory authority because the legislature and the statutes do not give an agency the power to make erroneous decisions." (Internal quotation marks omitted.) *Id.* at 740. But we went on to explain that a rule finding a lack of agency authority in such cases would "disregard the distinction between agency orders which are void and subject to collateral attack, and those which are merely voidable and subject to attack only through the applicable administrative and judicial review proceedings."

(Internal quotation marks omitted.) *Id.* at 741. The agency action at issue in *Board of Education*, the erroneous calculation of teacher pensions, was voidable, not void, because the agency did indeed have statutory authority to calculate pensions. *Id.* The same is true here, where the City undoubtedly has the authority to issue tickets for expired parking meter violations.

¶ 32 Other cases Mr. Pinkston relies on do not convince us otherwise. In *1550 MP Road LLC v. Teamsters Local Union No.* 700, 2019 IL 123046, ¶ 28, our supreme court held that a contract entered into by a labor union was unenforceable where the union had failed, as a condition of its authority, to obtain its members' approval prior to entering into the agreement. Mr. Pinkston points to no similar condition that must be satisfied before the City is authorized to issue parking tickets. The other cases Mr. Pinkston relies on, *Space Station 2001, Inc. v. Moses*, 118 Ill. App. 3d 658, 663 (1983), and *Ganley v. City of Chicago*, 18 Ill. App. 3d 248, 254 (1974), both involved the illegal issuance of building permits by a ministerial officer. The question in those cases was whether the agencies the employees worked for were equitably estopped from relying on the illegality of the permits to later revoke them. We held that they were not. *Space Station 2001*, 118 Ill. App. 3d at 663; *Ganley*, 18 Ill. App. 3d at 254. Although we remarked in those cases that a building permit granted in violation of the terms of a zoning ordinance is a "nullity" (*Space Station 2001*, 118 Ill. App. 3d at 663; *Ganley*, 18 Ill. App. 3d at 254), Mr. Pinkston reads too much into this use of the word. As our supreme court has noted, the terms "void" and "nullity" have sometimes been used too loosely, causing the court to repeatedly clarify the important distinction between void decisions and decisions that are merely voidable because they are incorrect. See, *e.g.*, *People v. Castleberry*, 2015 IL 116916, ¶¶ 1, 14, 19 (abolishing the "void sentence rule" and explaining that criminal sentences that do not conform to statutory requirements are not void but merely voidable); *In re Marriage of Mitchell*, 181 Ill. 2d 169, 174 (1998) (noting that the "question

whether a judgment is void or voidable depends on whether the court entering the challenged order possessed jurisdiction over the parties and the subject matter").

¶ 33 As an apparent corollary to his voidness argument, Mr. Pinkston argues that he was denied due process. The City contends that he has forfeited this argument by raising it for the first time on appeal. See *Mabry v. Boler*, 2012 IL App (1st) 111464, ¶ 15 (noting that "[g]enerally, arguments not raised before the circuit court are forfeited and cannot be raised for the first time on appeal"). Forfeiture aside, however, this argument also fails. "In the context of administrative hearings, due process of law specifically requires a definite charge, adequate notice, and a full and impartial hearing." *Stone Street Partners, LLC v. City of Chicago Department of Administrative Hearings*, 2017 IL 117720, ¶ 34. Mr. Pinkston insists that his ticket failed "to specify the particular act and violation allegedly committed." As discussed above, however, the ticket plainly stated that it was for an expired meter within the central business district. That the violation as stated may have been unsupported by the facts provided a reason to challenge the ticket. But Mr. Pinkston was certainly put on notice of the particular violation the City alleged he had committed.

¶ 34 Because the issuance of tickets by the City falls within its police powers and is not the action of an administrative agency and because Mr. Pinkston's allegations, if true, would establish that his parking ticket was voidable but not void, the exception to the exhaustion doctrine for challenges to void orders issued without agency authority does not apply.

¶ 35 Since we agree with the City that the tickets are not void, we reject any suggestion that the relief putative class members might be entitled to is a refund of all payments made on these tickets. Rather, the claim here is that the tickets were for incorrect amounts and the difference between the amount that the tickets should have been for and the increased penalties associated with the tickets because they were improperly labeled as violations of the central business district parking

regulations, is the injury that Mr. Pinkston and members of the putative class may be able to prove.

¶ 36 2. Futility of Engaging in Agency Proceedings

¶ 37 Mr. Pinkston also argues that it would have been futile for him to challenge his ticket administratively. In support of this argument, he cites section 9-100-030(c) of the Municipal Code, which states that the City "shall withdraw a violation notice when said notice fails to establish a *prima facie* case" of a parking, standing, or compliance violation. Chicago Municipal Code § 9-100-030(c) (amended Apr. 24, 2020). A *prima facie* case of a violation is established when the parking ticket specifies, as required by section 11-208.3(b)(2) of the Vehicle Code, "the date, time, and place" of the violation; "the particular regulation violated; any requirement to complete a traffic education program; the fine and any penalty that may be assessed ***; 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." 625 ILCS 5/11-208.3(b)(2) (West 2020). The accuracy of these facts must also be certified by the signature of the ticketing agent. *Id.* § 11-208.3(b)(3).

¶ 38 Mr. Pinkston argues the ticket he was issued did not establish a *prima facie* case of a parking violation because the facts stated on the ticket (an address outside the central business district) were in conflict with the violation asserted (an expired parking meter within the district). His position is that, under section 9-100-030(c) of the Municipal Code, the City is required to evaluate its tickets and—whether or not the vehicle owner has taken any action to formally challenge the ticket on this basis—to *sua sponte* withdraw a ticket if it contains such a discrepancy. The fact that the City did not independently withdraw his ticket in this manner, Mr. Pinkston insists, demonstrates that "the City maintains that [his ticket] was proper" and that there is thus "substantial reason to believe that any administrative challenge to [the ticket] would have been denied." While it is true that we do not require a party to exhaust his administrative remedies when

it would be patently useless to do so, *Beahringer v. Page*, 204 Ill. 2d 363, 378 (2003), this exception is wholly inapplicable here.

¶ 39 We agree with the City that neither the City nor the DOAH hearing officers had any obligation to *sua sponte* withdraw or dismiss a ticket because the address on the ticket was not within the central business district. Mr. Pinkston never raised this defense and there is no reason for assuming that, if he had, it would have been rejected.

¶ 40 The single case Mr. Pinkston cites in support of his futility argument, *Oak Park Trust & Savings Bank v. Village of Palos Park*, 106 Ill. App. 3d 394 (1982), is readily distinguishable. We held that the plaintiff in that case was not required to resubmit a building plan with a new sewage treatment system for approval before filing suit where the village's mayor had made clear that the problem the new system was designed to resolve was " 'peripheral' " and the chairman of the village's planning commission "would remain opposed to the plan even if engineering problems were solved." *Id.* at 407. Here, Mr. Pinkston points to no statement by the City or DOAH indicating that the results of challenges to erroneously issued central business district tickets brought before DOAH are similarly preordained.

¶ 41 Notably, Mr. Pinkston revealed in his reply brief, based on documents obtained after the complaint was filed, that he *did* in fact challenge his central business district parking ticket with DOAH. We granted his unopposed motion to take judicial notice of certain documents relating to those proceedings. These documents indicate that Mr. Pinkston contested his ticket solely on the basis that he paid the meter via the ParkChicago payment app and that somehow his payment became associated with a Minnesota license plate rather than with the Illinois license plate affixed to his vehicle. Noting that Mr. Pinkston had submitted no evidence explaining why a Minnesota license plate appeared on his receipt, DOAH ultimately determined that he was liable for the $65

fine associated with the ticket. Mr. Pinkston's position is apparently that when a ticket is brought to DOAH's attention for any reason, DOAH's finding of liability should be taken as evidence that the agency considered and rejected all possible challenges that were or could have been brought to the ticket's issuance. We disagree. The fact that Mr. Pinkston unsuccessfully challenged his ticket on wholly unrelated grounds is no indication that the process would have been futile as a means of challenging the *location* of his parking violation, had he deigned to make that specific argument. If anything, it demonstrates that the appropriate mechanism for such a challenge was known and accessible to Mr. Pinkston. He simply chose not to avail himself of it.

¶ 42 The exception to the exhaustion doctrine for challenges that would be patently useless to pursue before an administrative agency also has no application here.

¶ 43 3. Lack of Any Question of Fact or Issue Calling For Agency Expertise

¶ 44 Mr. Pinkston next argues that the policy considerations underlying the exhaustion doctrine do not apply here, where resolution of his claims turns on a purely legal question of statutory interpretation and not on questions of fact or matters calling for agency expertise. In support of this argument, he relies on this court's decision in *Maschek v. City of Chicago*, 2015 IL App (1st) 150520, ¶ 1. The plaintiff in that case received an automated speed enforcement (ASE) ticket for speeding in the vicinity of a school. Although by statute the City could utilize ASE cameras to issue tickets only on school days, the court concluded that a weekday during the summer qualified as such because special needs students attended the school year-round. *Id.* ¶¶ 4-5. Because this was a legal question of statutory and case law interpretation, the court concluded that no agency expertise was required, and the exhaustion doctrine therefore did not apply. *Id.* ¶ 48.

¶ 45 Mr. Pinkston argues that the same can be said here, where the boundaries of the central business district are established by the Municipal Code. The difference between this case and

Maschek, however, is that the plaintiff in *Maschek* did not challenge the traffic violation stated on his ticket. He contested neither that he was speeding in a school zone nor the amount of the fine for that violation. *Id.* ¶ 46. His dispute was solely with the means of enforcement the City employed and whether it had the authority to issue his ticket in the manner it did. *Id.* Here, by contrast, to the extent that Mr. Pinkston challenges the violation itself, asserting that, contrary to what was alleged on his ticket, he was not parked in the central business district on May 21, 2019, we agree with the City that DOAH routinely adjudicates questions like this and that the exception to the requirement of administrative exhaustion for situations where there are no factual questions or need for agency expertise is inapplicable.

¶ 46 4. Irreparable Injury

¶ 47 Mr. Pinkston also insists that being "subjected to the rigors of the City's administrative process" would constitute irreparable harm in this case because he should not have to "incur the costs and expenses associated with challenging a parking ticket that never should have been issued in the first place" or "face the inherent risk of being found liable for such a ticket, even in spite of the fact that the ticket is invalid." The cases he relies on, though they state the irreparable-harm exception without actually applying it, still make clear that the exception is only implicated where a plaintiff must pursue "lengthy administrative procedures that fail to provide interim relief" before filing suit. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 499 (2008); *Canel v. Topinka*, 212 Ill. 2d 311, 321 (2004).

¶ 48 The process for administratively challenging a parking ticket issued by the City is in fact relatively simple. The Municipal Code provides that a vehicle owner who believes a ticket was issued in error may contest the violation by requesting an in-person hearing before an administrative law officer appointed by the traffic compliance administrator. Chicago Municipal

Code § 9-100-050(a) (amended Oct. 27, 2021). The individual may alternatively initiate an "administrative correspondence hearing" and contest the violation by mail. Chicago Municipal Code § 9-100-070 (amended Oct. 28, 2015). In either case, the administrative law officer's finding of liability or no liability is a final determination subject to review under the Administrative Review Law. Chicago Municipal Code §§ 9-100-050(d) (amended Oct. 28, 2015), Chicago Municipal Code § 9-100-090(a) (amended Oct. 28, 2015).

¶ 49 As noted above, Mr. Pinkston availed himself of these procedures to challenge his ticket—on the basis that he paid the meter, but his payment became associated with a license plate for some other vehicle. The ticket was issued on May 21, 2019. Six days later, Mr. Pinkston challenged the ticket by mail, submitting a half-page explanation of his argument and attaching a receipt showing that a metered parking fee payment was made on the day in question for a vehicle with a Minnesota license plate. The records indicate that DOAH was in receipt of that correspondence by June 1, 2019, and issued Mr. Pinkston a finding of liability and a brief explanation of its determination one month later. Mr. Pinkston could have sought review of that determination in the circuit court within 35 days but elected instead to pay the ticket. Nothing about this process is suggestive of a lengthy and onerous administrative proceeding.

¶ 50 Neither *Gold v. Ziff Communications Co.*, 196 Ill. App. 3d 425, 435 (1989), which Mr. Pinkston cites for the proposition that "irreparable harm does not have to be devastating harm," nor *In re Marriage of Sheaffer*, 2013 IL App (2d) 121049, ¶¶ 14-15, in which we held that unnecessary costs associated with relitigating a matter may constitute irreparable harm, involved administrative agency proceedings or the exception to the exhaustion doctrine that Mr. Pinkston invokes. And the irreparable harm alleged in *Bio-Medical Laboratories, Inc. v. Trainor*, 68 Ill. 2d 540, 549 (1977), flowed not from the burdensomeness of engaging in an administrative review

process, but from the purportedly erroneous agency determination itself—the plaintiff's wrongful suspension from the Medicaid program. These cases do not support Mr. Pinkston's argument that administrative review before DOAH would cause him irreparable harm.

¶ 51 Mr. Pinkston has failed to convince us that the irreparable-injury exception to the exhaustion doctrine applies in this case.

¶ 52 5. Agency's Inability to Provide Adequate Relief

¶ 53 We are convinced, however, that if as Mr. Pinkston alleges, there is a systemic failure on the part of the City to confine central business district tickets to violations that occur within the established boundaries of that district, DOAH is simply not equipped to provide Mr. Pinkston or the class with the relief sought in this case and that the administrative exhaustion doctrine is thus inapplicable. It is well settled that administrative remedies need not be exhausted where the reviewing agency is incapable of providing an adequate remedy. *Castaneda*, 132 Ill. 2d at 309. Indeed, it is apparent from the complaint that the gist of the action complained of is not the action of DOAH in adjudicating these tickets but the action of the City in issuing them.

¶ 54 Mr. Pinkston has alleged not just a single erroneous parking ticket or even an unconnected group of such tickets. He instead maintains that the City is engaged in a "routine practice" of issuing central business district metered parking tickets for cars parked outside of the district. He seeks a declaration that the tickets issued in accordance with this practice are invalid, an injunction to halt the practice, and restitution for those harmed by the practice. We fail to see how the DOAH, which is tasked merely with making a finding of liability or no liability with respect to each individual ticket that comes before it (see Chicago Municipal Code §§ 9-100-070(d), 9-100-090(a) (amended Oct. 28, 2015)), could provide Mr. Pinkston with any of this relief.

¶ 55 Some cases have addressed this exception to the exhaustion doctrine in terms of whether

administrative review is even applicable. On this point, *Board of Education*, 395 Ill. App. 3d 735 (2009), discussed above, is instructive. The plaintiff in that case was denied leave to file an amended complaint alleging that an agency had miscalculated teacher pensions, on the basis that the claim was one within the purview of the Administrative Review Law (735 ILCS 5/3-101 *et seq.* (West 2006)) and, not having been challenged in the circuit court within 35 days of the agency's final decision, was untimely under section 3-103 of the Administrative Review Law (735 ILCS 5/3-103 (West 2006)). *Board of Education*, 395 Ill. App. 3d at 741-43. We disagreed with this ruling on appeal. We pointed out that the plaintiff had not alleged *individualized* pension miscalculations in the proposed amendment but rather a "systemic miscalculation." *Id.* at 744. The challenge was thus not to an " '[a]dministrative decision,' " which is defined in the Administrative Review Law as a "decision, order or determination of any administrative agency rendered in a particular case." *Id.* at 744 (quoting 735 ILCS 5/3-101 (West 2006)). Because only a challenge to *an administrative decision* must be brought within 35 days, the plaintiff's challenge to the agency's broader policy or practice of calculating pensions in the manner it did was not governed by the Administrative Review Law and was thus not untimely. *Id.* at 744.

¶ 56 Here, section 11-208.3(d) of the Vehicle Code states that "final determinations of parking, standing, compliance, automated speed enforcement system, or automated traffic law violations *** shall be subject to the provisions of the Administrative Review Law." 625 ILCS 5/11-208.3(d) (West 2020). As in *Board of Education*, however, Mr. Pinkston is not seeking any such individualized determination. He is asking for a court to determine if the City is engaged in the routine practice he alleges and, if so, for the court to condemn the practice, forbid it going forward, and redress the harm the practice has already purportedly caused—which we view as the additional $15 ($20 for tickets issued after April 21, 2021) that ticketed individuals have paid for metered

parking violations the City incorrectly claimed occurred within the central business district. As in *Board of Education*, the judicial determinations sought in this case fall outside of the scope of the Administrative Review Law. The exhaustion doctrine simply does not apply to claims that the City has a widespread policy or is engaged in the routine or systemic practice of issuing central business district metered parking tickets outside of the district's established boundaries. We conclude that dismissal on this basis was not proper.

¶ 57 The cases relied on by the City are quite different. The plaintiff in *Calderwood Corp. v. Mahin*, 57 Ill. 2d 216, 219 (1974), rather than seeking review of a tax imposed by the Director of Revenue through the Administrative Review Act, filed a suit for an injunction to stop the collection of the tax. Our supreme court explained: "The issues sought to be raised by [the plaintiff] could have been raised in administrative proceedings before the Department, and its determination could have been challenged under the Administrative Review Act." (Internal quotation marks omitted.) *Id.* at 221. There was no question that the administrative review process would have addressed the very issues and allowed for the very relief that the plaintiff in that case raised in its claim for an injunction.

¶ 58 In *Midland Hotel Corp. v. Director of Employment Security*, 282 Ill. App. 3d 312, 313, 317 (1996), an employer sought relief from IDES's practice of what it claimed was retroactively assessing unemployment taxes. While that case, like this one, involved a widespread practice, the problem there was that the agency had already ruled that the practice was authorized and appropriate, the circuit court had upheld that determination on administrative review, and the plaintiff had failed to appeal that decision. *Id.* at 314-15.

¶ 59 The plaintiff in *Midland Hotel* then attempted to collaterally attack that holding by filing a class action complaint in the chancery division of the circuit court. *Id.* at 316. It was in this context

that we affirmed the dismissal of the chancery complaint on grounds of *res judicata* and collateral estoppel and noted that "[a]n administrative review judgment cannot be avoided by bringing a subsequent class action." *Id.* at 316, 321. The bars of *res judicata* and collateral estoppel that dictated dismissal in *Midland Hotel* are simply not present here. There has been no finding by DOAH that it was proper for the City to engage in the practice that is alleged in this case.

¶ 60 At oral argument, counsel for the City relied on *Midland Hotel* to make a different argument—that a determination by DOAH that Mr. Pinkston's individual ticket was *improper* was a necessary "springboard" for him to then to seek injunctive relief in the circuit court. The *Midland Hotel* court did note that if the plaintiff in that case managed to "successfully challenge an [agency] order by using the administrative review procedure," it could then use that determination to seek an injunction in a separate action. *Id.* at 321. As the court recognized in *Midland Hotel*, there was a legal issue as to whether the IDES practice was correct and the proper way to raise that issue was through administrative review.

¶ 61 Here, however, there is no question that central business district parking tickets must be issued only for parking meter violations within the central business district. Thus, there is simply no legal or factual issue that must be addressed through administrative procedures. Here, Mr. Pinkston's complaint is not about how DOAH adjudicates these tickets—it is about the way that the City issues them. Mr. Pinkston seeks an injunction that will stop the City from routinely issuing these erroneous tickets so that they and the class they seek to represent will not have to defend themselves on tickets that impose fines in excess of what is authorized by the Municipal Code. No finding by DOAH, or on administrative review of a DOAH decision, is a necessary springboard for this action.

¶ 62 It bears noting how our supreme court has explained the exhaustion doctrine:

> "Where the Administrative Review Law is applicable *and provides a remedy*, a circuit court may not redress a party's grievance through any other type of action. The court's power to resolve factual and legal issues *arising from an agency's decision* must be exercised within its review of the agency's decision and not in a separate proceeding." (Emphases added.) *County of Knox ex rel. Masterson v. Highlands, L.L.C.*, 188 Ill. 2d 546, 551-52 (1999).

Here, the factual and legal issues that must be resolved do not "arise from" an agency decision. *Id.* And, as discussed above, the Administrative Review Law does *not* provide the remedy Mr. Pinkston seeks.

¶ 63 To be clear, if on remand the evidence fails to support a finding that the City is engaged in the "routine practice" Mr. Pinkston has alleged, then the exhaustion doctrine will indeed apply to any attempts through this litigation to adjudicate parking tickets on an individualized basis or to review administrative decisions outside the strictures of the Administrative Review Law. At this stage, however, the allegations must be taken as true and viewed in the light most favorable to Mr. Pinkston and the proposed class. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009). Mr. Pinkston has articulated claims that, depending on how one prefers to view them, either fall within an established exception to the exhaustion doctrine or are simply not subject to the provisions of the Administrative Review Law and thus not subject to the exhaustion doctrine.

¶ 64 B. The Voluntary Payment Doctrine

¶ 65 The City argues in the alternative that because Mr. Pinkston elected to pay his ticket before he initiated this lawsuit, dismissal was proper under the voluntary payment doctrine, which generally provides that "money voluntarily paid under a claim of right to the payment and with knowledge of the facts by the person making the payment cannot be recovered back on the ground

that the claim was illegal." *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 22. Although the circuit court declined to dismiss on this basis, the City reminds us that we may affirm a dismissal for any reason supported by the record. *Kumar v. Bornstein*, 354 Ill. App. 3d 159, 165 (2004).

¶ 66 We agree with the circuit court, however, that questions of fact remain precluding dismissal on this basis. It is unclear, for example, whether Mr. Pinkston in fact knew that his vehicle had not been parked within the boundaries of the central business district when, at the conclusion of his administrative challenge on unrelated grounds, he elected to pay the ticket rather than challenge it further. If he did not, it could hardly be said that he paid the ticket "with knowledge of the facts." See *Dreyfus v. Ameritech Mobile Communications, Inc.*, 298 Ill. App. 3d 933, 938 (1998) (noting that a payment is involuntary if "the payor lacked knowledge of the facts upon which to protest the payment at the time of payment"). Mr. Pinkston also alleged that he paid the ticket under duress, to avoid late fees, interest, the immobilization of his vehicle, the suspension of his driver's license, and other consequences. Whether these consequences were a true threat to Mr. Pinkston and whether their imposition was likely to deprive him of a necessary good or service are determinations that also involve questions of fact.

¶ 67 Finally, neither party has addressed how, if at all, the voluntary payment doctrine applies in this context of a potential class action challenge to an allegedly broad practice of issuing tickets contrary to the provisions of the Municipal Code.

¶ 68 Given these unresolved questions of fact and law, we cannot affirm the circuit court's dismissal of Mr. Pinkston's complaint on the basis that his claims were barred by the voluntary payment doctrine.

¶ 69 IV. CONCLUSION

¶ 70 For the above reasons, we reverse the circuit court's dismissal of the class action complaint in this matter and remand for further proceedings consistent with this opinion.

¶ 71 Reversed and remanded.

¶ 72 JUSTICE ODEN JOHNSON, dissenting:

¶ 73 I respectfully disagree with the majority's contention that plaintiff did not have to exhaust his administrative remedies prior to filing an action in equity.

¶ 74 A motion for involuntary dismissal under section 2-619(a)(9) of the Code admits the legal sufficiency of the complaint, accepts all well-pleaded facts, and asserts an affirmative matter outside of the complaint that bars or defeats the cause of action. 735 ILCS 5/2-619(a)(9) (West 2018); *Gajda v. Steel Solutions Firm, Inc.*, 2015 IL App (1st) 142219, ¶ 29. The defendant has the initial burden of establishing that there is an affirmative matter that defeats the claim. *Gajda*, 2015 IL App (1st) 142219, ¶ 29. If the defendant successfully asserts an affirmative matter, the burden shifts to the plaintiff to demonstrate that the defense is unfounded or requires the resolution of a material fact. *Id.* If the plaintiff fails to meet the shifted burden, the motion may be granted and the complaint dismissed. *Id*. An affirmative matter for a 2-619(a)(9) motion cannot merely refute well-pleaded facts- it must assert a completely new matter not present in the complaint. *Id*. ¶ 30. We review the dismissal of a complaint pursuant to section 2-619(a)(9) *de novo*. *Smith v. Waukegan Park District*, 231 Ill. 2d 111, 115 (2008).

¶ 75 In the circuit court, the City argued that plaintiff's complaint should be dismissed because it was an improper collateral attack on an administrative decision and that the court therefore did not have jurisdiction as plaintiff failed to exhaust his administrative remedies. In response, plaintiff

argued that no administrative proceeding was necessary, and the exhaustion of remedies doctrine did not apply because the ticket was void. The circuit court found, and the majority agrees, that the parking ticket issued to plaintiff was not void but voidable, that the City had jurisdiction to issue the ticket, that whether or not plaintiff's administrative challenge to the ticket was futile did not justify skipping the administrative process, and further that the administrative process could be avoided because no agency expertise was involved. The circuit court concluded that none of the exceptions to the exhaustion remedy applied and that plaintiff failed to exhaust his administrative remedies. My colleagues have concluded differently, on the basis that DOAH could not have provided plaintiff with the "ultimate relief" sought.

¶ 76 Parties aggrieved by the action of administrative agency ordinarily cannot seek review in the courts without first pursuing all administrative remedies available to them. *Castaneda v. Illinois Human Rights Commission*, 132 Ill. 2d 304, 308 (1989). Requiring the exhaustion of remedies allows the administrative agency to fully develop and consider the facts of the cause before it; it allows the agency to utilize its expertise; and it allows the aggrieved party to ultimately succeed before the agency, making judicial review unnecessary. *Id.* Our supreme court has recognized several exceptions to this rule: an aggrieved party may seek judicial review of an administrative decision without complying with the exhaustion of remedies doctrine where (1) a statute, ordinance or rule is attacked as unconstitutional on its face; (2) multiple administrative remedies exist and at least one is exhausted; (3) the agency cannot provide an adequate remedy or it is patently futile to seek relief before the agency; (4) no issues of fact are presented or agency expertise is not involved; (5) irreparable harm will result from further pursuit of administrative remedies; or (6) the agency's jurisdiction is attacked because it is not authorized by statute. *Id.* at 309.

¶ 77 Under the Chicago Municipal Code, if a ticket recipient challenges a parking ticket, an administrative hearing officer will consider the evidence, make factual findings, apply the law to those findings, and determine whether the ticket recipient is liable for violating the ordinance. See *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 974-75; 978 (1999). The ordinance specifically provides that all findings of liability made by the hearing officers are reviewable by the circuit court under the Administrative Review Law (735 ILCS 5/3-101 *et seq*. (West 2018)). Chicago Municipal Code § 9-100-070(d), 090(a) (amended Oct. 28, 2015).

¶ 78 A review of plaintiff's complaint reveals the following prayers for relief: (1) a declaration that "all such improperly issued Central Business District Tickets are invalid," void and unenforceable, and (2) "recovery of the amounts they paid to the City in connection with these invalid Central Business District Tickets;" and (3) "injunctive relief that would prevent the City from improperly issuing Central Business District Tickets to vehicles parked outside of the City's Central Business District."

¶ 79 The majority properly disposed of plaintiff's first requested relief – a declaration that all such improperly issued Central Business District Tickets are invalid, void, and unenforceable by finding that such tickets are voidable, and that the City has the authority to issue such tickets. Regarding plaintiff's second prayer for relief, recovery of the amounts paid to the City in connection with the parking ticket, I find that such relief is governed by an administrative challenge to the ticket, which plaintiff failed to do. Before determining whether plaintiff or other members of the proposed class are entitled to a refund, however, there must be a factual determination as to whether plaintiff's ticket was issued outside of the Central Business District, which is the province of the DOAH. See *O'Brien v. Musfeldt*, 345 Ill. App. 12, 22 (1951); *Wuebbles v. Shea*, 294 Ill. App. 157, 162 (1938). This same determination is applicable to plaintiff's prayer for injunctive

relief to keep the City from improperly issuing such tickets; there must first be a finding that the tickets are improper.

¶ 80 To the extent that plaintiff seeks review of the propriety of the ticketing and assessment of related fines and fees, the circuit court has no jurisdiction to review those matters as a result of plaintiff's failure to exhaust his administrative remedies and those claims were properly dismissed under section 2-619(a). It is well established that where administrative remedies are available to a litigant, the litigant must exhaust them before seeking review by the trial court. 735 ILCS 5/3-102 (West 2016); *Arvia v. Madigan*, 209 Ill. 2d 520, 531-32 (2004). As noted above, the City provides for administrative adjudication of disputed parking tickets. Here, there is no dispute that plaintiff did not seek administrative review of the propriety of his parking ticket or the resulting fine or fee on the bases raised in his complaint or on this appeal. The circuit court has no statutory authority to entertain independent causes of action regarding the agency's actions. *Arvia*, 209 Ill. 2d at 532. Plaintiff's failure to exhaust his administrative remedies leaves the circuit court without authority to address plaintiff's claims regarding the propriety of the ticketing or imposition of the fee. I disagree with the majority's holding that plaintiff meets an exception to the exhaustion of remedies doctrine, namely that the DOAH could not provide him with the ultimate relief he sought. Such relief is premised on the factual finding of whether such ticket for illegally parking within the Central Business District was proper, which is squarely within the authority of the DOAH and not the circuit court. Additionally, until such factual determination is made, I do not believe that we can reach the issue of whether the City's alleged practice is systemic or not. I would therefore conclude that plaintiff fails to meet any of the exceptions to the exhaustion of remedies doctrine and affirm the judgment of the circuit court.

No. 1-20-0957	
Cite as:	*Pinkston v. City of Chicago*, 2022 IL App (1st) 200957
Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 19 CH 12364, the Hon. Caroline K. Moreland, Judge Presiding.
Attorneys for Appellant:	Thomas A. Zimmerman, Jr. and Matthew C. De Re, of Zimmerman Law Offices, P.C., of Chicago, for appellant.
Attorneys for Appellee:	Celia Meza, Corporation Counsel of the City of Chicago (Myriam Zreczny Kasper, Chief Assistant Corporation Counsel, and Justin A. Houppert, Senior Counsel, of counsel), for appellee.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALEC PINKSTON, Individually and on Behalf of Others Similarly Situated Plaintiff-Appellant, v. THE CITY OF CHICAGO, Defendant-Appellee.	)	No. 1-20-0957

ORDER

Justices Harris and Mikva order as follows:

This cause coming to be heard on the City of Chicago's petition for rehearing, the court being fully advised in the premises,

IT IS HEREBY ORDERED that the petition for rehearing is DENIED.

Justice Oden Johnson would grant the PFR for the reasons stated in her dissent.

ORDER ENTERED

MAY 16 2022

APPELLATE COURT FIRST DISTRICT

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

Alec Pinkston,	)	
	)	
Plaintiff,	)	Case No. 19 CH 12364
v.	)	Hon. Caroline K Moreland
	)	Judge Presiding
City of Chicago,	)	Cal. 10
	)	
Defendant.	)	

MEMORANDUM OPINION AND ORDER

Defendant City of Chicago moves to dismiss plaintiff, Alec Pinkston's ("Pinkston") putative class action complaint (the "Complaint"), pursuant to Section 2-619.

I. Background

On May 21, 2019, Pinkston was given a parking ticket for parking in the central business district with an expired parking meter in violation of section 9-64-190 (b) of the Chicago Municipal Code. A ticket issued to a vehicle parked in the central business district is subject to an increased fine of $65 dollars. The southern boundary of the central business district zone is Roosevelt Road. *See* Chicago Municipal Code § 9-4-010.

According to the ticket issued to Plaintiff, his vehicle was parked at 1202 S. Wabash, Ave. This is outside of the central business district. After receiving his ticket, Pinkston paid the fine, without ever contesting the ticket. Plaintiff's Complaint alleges that the City has a policy of issuing central business district tickets for vehicles, like his, which were parked outside of the central business district.

II. Motion to Dismiss

The City has filed a motion pursuant to section 2-619 (a) (9) of the Illinois Code of Civil Procedure. A section 2-619 motion to dismiss "admits the legal sufficiency of the complaint and affirms all well-pled facts and their reasonable inferences, but raises defects or other matters either internal or external from the complaint that would defeat the cause of action." *Cohen v. Compact Powers Sys., LLC*, 382 Ill. App. 3d 104, 107 (1st Dist. 2008). A dismissal under section 2-619 permits "the disposal of issues of law or easily proved facts early in the litigation process." *Id*. Section 2-619(a) authorizes dismissal where the claim asserted against defendant is barred by other affirmative matter avoiding the legal effect of or defeating the claim." 735 ILCS 5/2-619(a)(9).

III. Analysis

The City argues that Pinkston's Complaint should be dismissed on two grounds. First the City argues that the Complaint is an improper collateral attack on an administrative decision. Second, the City argues that the Complaint is barred by the voluntary payment doctrine.

ADMINISTRATIVE REVIEW

Defendant argues that the court does not have jurisdiction because Plaintiff failed to exhaust its administrative remedies. Plaintiff argues that no administrative proceeding was necessary and the exhaustion of remedies doctrine does not apply because the ticket was void. Generally, under the Administrative Review Law a party must exhaust its administrative remedies before it can appeal to the circuit court. However, a party need not exhaust its administrative remedies before seeking relief in the circuit court when: 1) a statute, ordinance or rule is attacked as unconstitutional on its face; 2) where multiple administrative remedies exist and at least one is exhausted; 3) where the agency cannot provide an adequate remedy or where it is patently futile to seek relief before the agency; 4) where no issues of fact are presented or agency expertise is not involved; 5) where irreparable harm will result from further pursuit of administrative remedies; 6) or where the agency's jurisdiction is attacked because it is not authorized by statute. *Castaneda v. Illinois Human Rights Com.*, 132 Ill. 2d 304, 308-09 (1989).

Under the Administrative Review Law any challenge to a final agency decision must be made within 35 days of a final agency decision. *See* 735 ILCS 5/3-103. Failure to abide by this time limitation deprives the court of any authority to review administrative decisions. *See Ultsch v. Illinois Municipal Retirement Fund*, 226 Ill. 2d 169, 179 (2007). Under the Chicago Municipal Code, any person wishing to challenge a parking ticket must either pay the fine or request a hearing on the ticket. *See* Chicago Municipal Code § 9-100-050 (a). Here plaintiff chose to pay the fine and not challenge his parking ticket.

Plaintiff argues that they were not required to go through the administrative process because the ticket issued by the city was *void ab initio*. However, The Court disagrees with Plaintiff's characterization of the ticket as void. Unlike the cases cited in Plaintiff's brief, the necessary factual allegations are made to advise the Defendant of the charges made against him. I.e. that the Plaintiff was parked at 1202 S. Wabash, that there was no evidence that he paid the meter, and that this action violated section 9-64-190(b) of the Chicago Municipal Code. For example, in *People v. Roberts* the defendant was ticketed for reckless driving. *People v. Roberts*, 113 Ill. App. 3d 1046, 1050 (5th Dist. 1983). However, the ticket was completely devoid of any description of what conduct was reckless therefore the court held the ticket was void. *Id.* In *People v. Walker*, defendant was also given a ticket for reckless driving that failed to describe what was reckless about the defendant's actions. 20 Ill. App. 3d 1029, 1031 (3rd Dist. 1974). *People v. Tellez-Valencia*, involved a charge of criminal sexual assault of a child. 188 Ill.2d 523, 527 (1999). The court held that since the act which created that crime was found unconstitutional

by the Illinois Supreme Court, the charge was void. *Id.* The Court sees no similarities between the cases cited by the Plaintiff and the instant matter. An action is void only if "the agency lacked jurisdiction of the parties or of the subject matter, or lacked the inherent power to make or enter the particular order involved." *Newkirk v. Bigard*, 109 Ill. 2d 28, 36 (1985). Therefore, the Court finds that the ticket issued to plaintiff is not void, merely because the charge is allegedly not supported by the facts.

Plaintiffs argument that the Chicago Municipal Code § 9-100-030 (c) renders the ticket void is also unavailing. § 9-100-030 (c) states "The traffic compliance administrator shall withdraw a violation notice when said notice fails to establish a prima facie case as described in this section." The Chicago Municipal Code § 9-100-030(a) states that "[a] prima facie case shall not be established when: (1) the ticketing agent has failed to specify the proper state registration number of the cited vehicle on the notice; (2) the city has failed to accurately record the specified state registration number; or (3) for the purposes of Section 9-64-125, the registered owner was not a resident of the city on the day the violation was issued." Here none of those three conditions have been met.

Similarly, Plaintiff is also incorrect that the City lacked subject matter jurisdiction over Plaintiff's ticket. The mere fact that an invalid ticket was issued does not deprive the city of subject matter jurisdiction over it. Had Plaintiff's vehicle been parked one block south of the location where it was ticketed there is no dispute that the city would have had the authority to issue the ticket and the City's Department of Administrative Hearings would have had jurisdiction over any appeal of the ticket. *Farrar v. City of Rolling Meadows*, 2013 IL App (1st) 130734, ¶ 14; 625 ILCS 5/11-208.3. The fact that a ticket was issued for a violation that could not factually be proven does not change this. The Chicago Municipal Code provides the Plaintiff a method of challenging a ticket that is not factually supported. *See* Chicago Municipal Code § 9-100-050 (a). Plaintiff chose not to avail himself of that option and instead paid the ticket.

Here, the Court has rejected Plaintiff's premise that the ticket was void. Further, Plaintiff has plead no facts showing that had he challenged his parking ticket it would have somehow been a futile act. Lastly, the court rejects the notion that all parties who receive parking tickets in the city of Chicago can avoid administrative review because no agency expertise is involved. Doing so would eviscerate the concept of administrative hearings and administrative review for truly trivial matters and bombard the Court with litigation over parking and other related fines. Therefore, none of the enumerated exceptions to the exhaustion doctrine apply and Plaintiff failed to exhaust its administrative remedies.

VOLUNTARY PAYMENT

The Court does not base its decision on the voluntary payment doctrine. The Court agrees that there is a factual question remaining as to whether Plaintiff's payment of the parking ticket was truly voluntary. *See Getto v. City of Chicago*, 86 Ill.2d 39, 48-55 (1981).

IV. Conclusion

Defendant's motion is GRANTED. This matter is dismissed with prejudice.

Judge Caroline Kate Moreland
SEP 04 2020
Circuit Court - 2033

Entered: 2033

Judge Caroline Kate Moreland

APPEAL TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

ALEC PINKSTON, individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	No. 2019 CH 12364
v.	)	
CITY OF CHICAGO,	)	
Defendant.	)	

NOTICE OF APPEAL

Appellant's Name: Alec Pinkston

Appellant's Attorneys:
Thomas A. Zimmerman, Jr.
Sharon A. Harris
Matthew C. De Re
Jeffrey D. Blake
ZIMMERMAN LAW OFFICES, P.C.
77 W. Washington Street, Suite 1220
Chicago, Illinois 60602
(312) 440-0020 (telephone)
Firm No. 34418

Appellee's Name: City of Chicago

Appellee's Attorneys:
Andrew W. Worseck
Bradley G. Wilson
Mark A. Flessner
CITY OF CHICAGO DEPARTMENT OF LAW
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312) 744-7129/7686 (telephone)

An appeal is taken from the order described below:

Date of order being appealed: September 4, 2020. *See* attached order.

Name of judge who entered the order being appealed: Honorable Caroline K. Moreland

Relief sought from Reviewing Court: Plaintiff-Appellant requests that the aforementioned Order be reversed and that the above-captioned cause be remanded to the Circuit Court of Cook County, Illinois, County Department, Chancery Division, with instructions to vacate the Order and enter an Order denying Defendant-Appellee's Section 2-619 Motion to Dismiss the Complaint.

Respectfully submitted,

By: /s/ Thomas A. Zimmerman, Jr.
Thomas A. Zimmerman, Jr.
Sharon A. Harris
Matthew C. De Re
Jeffrey D. Blake
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Counsel for Plaintiff-Appellant

CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served the foregoing *Notice of Appeal* upon the following individuals via the Court's efiling system to the email addresses, as below addressed, on September 9, 2020.

Andrew W. Worseck
Bradley G. Wilson
CITY OF CHICAGO DEPARTMENT OF LAW
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
andrew.worseck@cityofchicago.org
bradley.wilson@cityofchicago.org

/s/ Thomas A. Zimmerman, Jr.
Thomas A. Zimmerman, Jr.

E-FILED
Transaction ID: 1-20-0957
File Date: 9/23/2021 7:38 PM
Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-20-0957

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALEC PINKSTON,

Plaintiff-Appellant,

vs.

CITY OF CHICAGO,

Defendant-Appellee.

On Appeal from the Circuit Court of Cook County, Illinois
Chancery Division
Court No. 2019 CH 12364
The Honorable Caroline K. Moreland, Judge Presiding

Date of Notice of Appeal: September 9, 2020
Date of Judgment: September 4, 2020

PLAINTIFF-APPELLANT'S MOTION FOR JUDICIAL NOTICE

NOW COMES Plaintiff-Appellant ALEC PINKSTON ("Plaintiff"), by and through counsel, and, pursuant to Supreme Court Rule 361, and Rule 4 of the Administrative and Procedural Rules of the Illinois Appellate Court First District, hereby moves this Court to take judicial notice of the outcome of Plaintiff's proceedings before the City of Chicago's Department of Administrative Hearings ("DOAH"), and in support thereof, states as follows:

This action arises from Defendant-Appellee CITY OF CHICAGO's ("Defendant" or "City") practice of improperly issuing parking tickets for violations of the Municipal Code of Chicago that did not occur. In short, Plaintiff was issued a parking ticket ("Plaintiff's Ticket") in

connection with an alleged violation of Chi. Mun. Code. § 9-64-190(b)—which governs vehicles parked within the City's "Central Business District"—even though Plaintiff's vehicle was parked *outside* of the Central Business District. (Plaintiff's Ticket, C95, A41). Plaintiff challenged his Ticket before the DOAH; however, he was still found liable by the DOAH (the "Liability Determination"). *See*, Declaration of Matthew C. De Re, ¶ 4, attached hereto as Exhibit A.

Plaintiff did not seek administrative review of the Liability Determination. Instead, Plaintiff filed a Class Action Complaint ("Complaint") against the City, seeking a declaration—pursuant to the Illinois Declaratory Judgment Act (735 ILCS 5/2-701)—that his Ticket (and those of putative Class members) are facially invalid, injunctive relief barring the City from issuing improper tickets in the future, and restitution in connection with the monies he and putative Class members paid in connection with these improperly issued tickets. (C7-16).

On September 4, 2020, the Circuit Court granted Defendant's *Section 2-619 Motion to Dismiss the Complaint*, and dismissed this case with prejudice on the grounds that Plaintiff failed to exhaust his administrative remedies. (C144-147). This appeal followed.

Since this matter does not arise on administrative review, the Liability Determination is not a part of the record in this case. However, "Illinois courts may take judicial notice of administrative orders, determinations, and judgments in related administrative proceedings involving the same parties." *E.g.*, *All Purpose Nursing Serv. v. Illinois Human Rights Comm'n*, 205 Ill.App.3d 816, 823 (1st Dist. 1990); *Am. Fed'n of State, County, & Mun. Employees, Council 31 v. Illinois Labor Relations Bd.*, 2017 IL App (5th) 160046, ¶ 18 (noting that "a court may take judicial notice of documents in the records of other courts or administrative tribunals" and granting motion for judicial notice). Accordingly, Plaintiff respectfully requests that this Court take judicial notice of the Liability Determination rendered by the DOAH with respect to Plaintiff's Ticket.

WHEREFORE, Plaintiff-Appellant ALEC PINKSTON, respectfully requests that this Court take judicial notice of the Liability Determination rendered by the DOAH with respect to Plaintiff's Ticket, and grant any further relief deemed just under the circumstances.

Plaintiff-Appellant ALEC PINKSTON,

By: s/Matthew C. De Re

Thomas A. Zimmerman, Jr.
Matthew C. De Re
ZIMMERMAN LAW OFFICES, P.C.
77 West Washington Street, Suite 1220
Chicago, Illinois 60602
(312) 440-0020

Counsel for Plaintiff-Appellant

No. 1-20-0957

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ALEC PINKSTON,

Plaintiff-Appellant,

vs.

CITY OF CHICAGO,

Defendant-Appellee.

On Appeal from the Circuit Court of Cook County, Illinois
Chancery Division
Court No. 2019 CH 12364
The Honorable Caroline K. Moreland, Judge Presiding

Date of Notice of Appeal: September 9, 2020
Date of Judgment: September 4, 2020

DECLARATION OF COUNSEL IN SUPPORT OF
PLAINTIFF-APPELLANT'S MOTION FOR JUDICIAL NOTICE

I, Matthew C. De Re, hereby certify and state under penalty of perjury as follows:

1. I am over the age of 21, and I have personal knowledge of all of the facts set forth in this Declaration and would be competent to testify thereto if called upon to do so as a witness.

2. I am an attorney licensed to practice law in the State of Illinois. I am an associate attorney the law firm Zimmerman Law Offices, P.C., the firm currently serving as counsel to Plaintiff-Appellant ALEC PINKSTON ("Plaintiff"), in the above-captioned matter.

EXHIBIT A

3. I submit this declaration in support of *Plaintiff-Appellant's Motion for Judicial Notice*, which is being filed simultaneously with this Declaration.

4. Documents produced by Defendant-Appellee CITY OF CHICAGO (the "City") in this matter show Plaintiff requested a hearing before the City's Department of Administrative Hearings ("DOAH") concerning the parking ticket at issue in this case ("Plaintiff's Ticket"), and Plaintiff's administrative proceeding before the DOAH resulted in a determination of liability (the "Liability Determination") against Plaintiff in connection with Plaintiff's Ticket.

Further the Affiant Sayeth Not.

s/Matthew C. De Re

Ticket - Transaction Detail

Identity

Ticket:	9302802738	Plate/State/Type:	P411433 / IL / PAS
Ticket Queue/Date:	Paid / 07-11-2019	Owner:	PINKETON , ALEC P
Due Today:	**$0.00**		

Court

Disposition Date/Time:	07-01-2019 08:42		
Contest Queue:	Mail	Ticket Amount:	$65.00
Hearing Start Date/Time:	06-01-2019 08:00	Hearing Location:	JEFFERY
Decision:	Liable	ALJ:	barberrw
Reason:	Violated the Parking or Compliance Ordinance		
Hearing Type:	Ticket		
Appearing:	PINKETON, ALEC P		
Additional Findings:			

Respondent:	PINKETON, ALEC P	City:	CHICAGO
Address:	4740 N HAMLIN AVE	State/Zip:	IL 606255705

Case Notes:

CITY HAS EST PFC. RESPONDENT ASSERTS PAID THROUGH PARKCHICAGO AND WRONG LIC PLATE SOMEHOW GOT ON THE SYSTEM. RESPONDENT DOES NOT SUBMIT ANY EVID SHOWING WHY A MN PLATE NUMBER IS ON THE RECEIPT. GREATER WEIGHT OF EVIDENCE FAVORS CITY. THEREFORE RESPONDENT IS LIABLE.

transaction list | ticket detail

City Of Chicago
VIOLATION NOTICE

*** VIOLATON SUPPORTED BY
*** PHOTOGRAPHS. VIEW PARKING OR
*** COMPLIANCE PHOTO ONLINE:
*** CITYOFCHICAGO.ORG/FINANCE

Issue No.	Date	Time
9302802738	Tue 5/21/2019	05:56 PM

Officer
Jones, S ID:1618

Agency	Unit
CPM	729
Sub Agency	Zone Assignment
METER ENFORCEMENT	P49

Location
1202 S WABASH AVE
Meter: 331702

Code:0964190B
CENTRAL BUSINESS DISTRICT
EXPIRED METER

Due Now: $65.00

License No	State	Exp	Type
P411433	IL	06/19	PAS

VIN:
Make:HOND

No receipt displayed, no mobile payment, no motorist walking to/from paybox

I certify that the facts and, if applicable images set forth are true and correct

Pay or contest online
www.cityofchicago.org/finance

9302802738 006500 8

128575

CITY 000006

A43

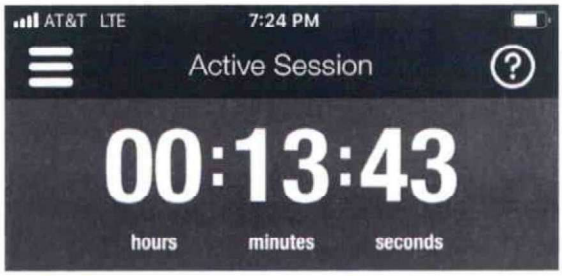
TICKET #: 9302802738

From: donotreply@gopassport.com
Date: May 24, 2019 at 3:53:26 PM CDT
To: Beccaemay@gmail.com
Subject: Parking Receipt - ParkChicago

ParkChicago

Session Number: 170406684
Zone Number: 331701
Zone Name: 1216 S Wabash Ave
License Plate: MN 624NAC
Start: Tue, May 21 2019, 04:36 PM
End: Tue, May 21 2019, 07:38 PM
Payment Info: ParkChicago Prefunded Account
Parking Fee: $6.00
Total Fee: $6.00

POWERED BY Passport



Parked in Chicago, IL
(1216 S Wabash Ave, Zone 331701)

Session Number:	170406684
License Plate:	MN 624NAC
Zone:	1216 S Wabash Ave (331…
Start:	Tue, May 21, 04:36 PM
End:	Tue, May 21, 07:38 PM
Parking Fee:	$6.00
Convenience Fee:	Free
Total Fee:	$6.00

Extend Time ›

5/27/19

To Whom It May Concern:

I wish to contest ticket #9302802738 that I received on Tuesday May 21st, 2019. I paid via the Park Chicago app as confirmed by location in the attached receipts. The license plate was incorrect, I am not sure why my license plate was not the default selection as this is the only car I possess and I've never had an issue with this application error before. I have since updated to the latest version of the application in hopes this will resolve the situation in the future as well as double checking that potential with every future use.

Despite the misidentification it is clear that purchased ample time in the correct zone and that I only have one car registered to long history of Chicago tickets and registrations. The illegal vehicle condition did not exist at the time of the compliance violation because the compliance effort still earned the city the correct amount for one parking space in that zone.

Thank You,

Alec Pinkston & Rebecca May-Pinkston
TICKET #9302802738

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

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

625 ILCS 5/11-208.3
Formerly cited as IL ST CH 95 1/2 ¶ 11-208.3

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

Effective: August 20, 2021 to December 31, 2022
Currentness

<Text of section effective until Jan. 1, 2023. See, also, text of section 625 ILCS 5/11-208.3, effective Jan. 1, 2023.>

§ 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, and automated speed enforcement system violations as defined in Section 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.

(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 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 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.

(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. The notice shall state that failure to complete a required traffic education program 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. [1]

(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. [2]

(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 [3] 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 shall not be required to pay any fee for participating in a required traffic education program.

Credits

P.A. 76-1586, § 11-208.3, added by P.A. 85-876, § 2, eff. Nov. 6, 1987. Amended by P.A. 86-947, § 2, eff. Nov. 13, 1989; P.A. 87-181, § 1, eff. Sept. 3, 1991; P.A. 88-415, § 10, eff. Aug. 20, 1993; P.A. 88-437, § 5, eff. Jan. 1, 1994; P.A. 88-670, Art. 2, § 2-59, eff. Dec. 2, 1994; P.A. 89-190, § 5, eff. Jan. 1, 1996; P.A. 92-695, § 10, eff. Jan. 1, 2003; P.A. 94-294, § 5, eff. Jan. 1, 2006; P.A. 94-795, § 5, eff. May 22, 2006; P.A. 94-930, § 5, eff. June 26, 2006; P.A. 95-331, § 1005, eff. Aug. 21, 2007; P.A. 96-288, § 10, eff. Aug. 11, 2009; P.A. 96-478, § 5, eff. Jan. 1, 2010; P.A. 96-1000, § 575, eff. July 2, 2010; P.A. 96-1016, § 5, eff. Jan. 1, 2011; P.A. 96-1386, § 10, eff. July 29, 2010; P.A. 97-29, § 5, eff. Jan. 1, 2012; P.A. 97-333, § 525, eff. Aug. 12, 2011; P.A. 97-672, § 5, eff. July 1, 2012; P.A. 98-556, § 5, eff. Jan. 1, 2014; P.A. 98-1028, § 5, eff. Aug. 22, 2014; P.A. 101-32, § 20-5, eff. June 28, 2019; P.A. 101-623, § 5, eff. July 1, 2020; P.A. 101-652, § 10-191, eff. July 1, 2021; P.A. 102-558, § 695, eff. Aug. 20, 2021.

Notes of Decisions (32)

Footnotes

1 735 ILCS 5/3-101.

2 735 ILCS 5/3-101 et seq.

3 735 ILCS 5/2-203.

625 I.L.C.S. 5/11-208.3, IL ST CH 625 § 5/11-208.3
Current through P.A. 102-1107 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 5. Code of Civil Procedure (Refs & Annos)
Article III. Administrative Review (Refs & Annos)

735 ILCS 5/3-101
Formerly cited as IL ST CH 110 ¶-3-101

5/3-101. Definitions

Effective: July 11, 2002
Currentness

§ 3-101. Definitions. For the purpose of this Act:

"Administrative agency" means a person, body of persons, group, officer, board, bureau, commission or department (other than a court or judge) of the State, or of any political subdivision of the State or municipal corporation in the State, having power under law to make administrative decisions.

"Administrative decision" or "decision" means any decision, order or determination of any administrative agency rendered in a particular case, which affects the legal rights, duties or privileges of parties and which terminates the proceedings before the administrative agency. In all cases in which a statute or a rule of the administrative agency requires or permits an application for a rehearing or other method of administrative review to be filed within a specified time (as distinguished from a statute which permits the application for rehearing or administrative review to be filed at any time before judgment by the administrative agency against the applicant or within a specified time after the entry of such judgment), and an application for such rehearing or review is made, no administrative decision of such agency shall be final as to the party applying therefor until such rehearing or review is had or denied. However, if the particular statute permits an application for rehearing or other method of administrative review to be filed with the administrative agency for an indefinite period of time after the administrative decision has been rendered (such as permitting such application to be filed at any time before judgment by the administrative agency against the applicant or within a specified time after the entry of such judgment), then the authorization for the filing of such application for rehearing or review shall not postpone the time when the administrative decision as to which such application shall be filed would otherwise become final, but the filing of the application for rehearing or review with the administrative agency in this type of case shall constitute the commencement of a new proceeding before such agency, and the decision rendered in order to dispose of such rehearing or other review proceeding shall constitute a new and independent administrative decision. If such new and independent decision consists merely of the denial of the application for rehearing or other method of administrative review, the record upon judicial review of such decision shall be limited to the application for rehearing or other review and the order or decision denying such application and shall not include the record of proceedings had before the rendering of the administrative decision as to which the application for rehearing or other administrative review shall have been filed unless the suit for judicial review is commenced within the time in which it would be authorized by this Act to have been commenced if no application for rehearing or other method of administrative review had been filed. On the other hand, if the rehearing or other administrative review is granted by the administrative agency, then the record on judicial review of the resulting administrative decision rendered pursuant to the rehearing or other administrative review may consist not only of the record of proceedings had before the administrative agency in such rehearing or other administrative review proceeding, but also of the record of proceedings had before such administrative agency prior to its rendering of the administrative decision as to which the rehearing or other administrative review shall have been granted. The term "administrative decision" or "decision" does not mean or include rules, regulations, standards, or statements of policy of general application issued by an administrative agency to implement, interpret, or make specific the legislation enforced or administered by it unless such a rule, regulation, standard or statement of policy is

involved in a proceeding before the agency and its applicability or validity is in issue in such proceeding, nor does it mean or include regulations concerning the internal management of the agency not affecting private rights or interests.

Credits

P.A. 82-280, § 3-101, eff. July 1, 1982. Amended by P.A. 83-707, § 1, eff. Sept. 23, 1983; P.A. 88-1, § 6, eff. Jan. 1, 1994; P.A. 92-651, § 84, eff. July 11, 2002.

Formerly Ill.Rev.Stat.1991, ch. 110, ¶ 3-101.

Notes of Decisions (433)

735 I.L.C.S. 5/3-101, IL ST CH 735 § 5/3-101
Current through P.A. 102-1107 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

End of Document

West s Smith-Hurd Illinois Compiled Statutes Annotated
Chapter 735. Civil Procedure
Act 5. Code of Civil Procedure (Refs & Annos)
Article III. Administrative Review (Refs & Annos)

735 ILCS 5/3-102
Formerly cited as IL ST CH 110 ¶ 3-102

5/3-102. Scope of Article

Effective: July 28, 2016
Currentness

§ 3-102. Scope of Article. This Article III shall apply to and govern every action to review judicially a final decision of any administrative agency where the Act creating or conferring power on such agency, by express reference, adopts the provisions of this Article III or its predecessor, the Administrative Review Act. [1] This Article shall be known as the "Administrative Review Law". In all such cases, any other statutory, equitable or common law mode of review of decisions of administrative agencies heretofore available shall not hereafter be employed.

Unless review is sought of an administrative decision within the time and in the manner herein provided, the parties to the proceeding before the administrative agency shall be barred from obtaining judicial review of such administrative decision. In an action to review any final decision of any administrative agency brought under this Article III, if a judgment is reversed or entered against the plaintiff, or the action is voluntarily dismissed by the plaintiff, or the action is dismissed for want of prosecution, or the action is dismissed by a United States District Court for lack of jurisdiction, neither the plaintiff nor his or her heirs, executors, or administrators may commence a new action within one year or within the remaining period of limitation, whichever is greater. All proceedings in the court for revision of such final decision shall terminate upon the date of the entry of any Order under either Section 2-1009 or Section 13-217. Such Order shall cause the final administrative decision of any administrative agency to become immediately enforceable. If under the terms of the Act governing the procedure before an administrative agency an administrative decision has become final because of the failure to file any document in the nature of objections, protests, petition for hearing or application for administrative review within the time allowed by such Act, such decision shall not be subject to judicial review hereunder excepting only for the purpose of questioning the jurisdiction of the administrative agency over the person or subject matter.

Credits
P.A. 82-280, § 3-102, eff. July 1, 1982. Amended by P.A. 84-221, Art. I, § 2, eff. Sept. 1, 1985; P.A. 88-1, § 6, eff. Jan. 1, 1994; P.A. 99-642, § 565, eff. July 28, 2016.

Formerly Ill.Rev.Stat.1991, ch. 110, ¶ 3-102.

Notes of Decisions (505)

Footnotes

1 Former Ill.Rev.Stat.1991, ch. 110, ¶ 264 et seq. (repealed; see, now, 735 ILCS 5/3-101 et seq.).

735 I.L.C.S. 5/3-102, IL ST CH 735 § 5/3-102
Current through P.A. 102-1107 of the 2022 Reg. Sess. Some statute sections may be more current, see credits for details.

9-4-010 Definitions.

Whenever the following words and phrases are used in Chapter 9-4 through 9-103, they shall have the meanings respectively ascribed to them in this section:

“Abandoned vehicle” means any vehicle that: (a) is in such a state of disrepair as to render the vehicle incapable of being driven in its present condition or (b) has not been moved or used for seven consecutive days and is apparently deserted.

"Administrative correspondence hearing" means a hearing by which a registered owner of a vehicle or his attorney, who does not wish to appear in-person before an administrative law officer, may contest liability for a parking, compliance, automated traffic law enforcement system or automated speed enforcement system violation based on the administrative law officer's review of documentary evidence submitted by the owner or his attorney.

"Administrative adjudication" means an administrative in-person hearing or an administrative correspondence hearing, whichever is applicable.

"Administrative in-person hearing" means a hearing before an administrative law officer at which a registered owner of a vehicle or his attorney appears in-person or via video or audio conference to contest liability for a parking, compliance, automated traffic law enforcement system or automated speed enforcement system violation.

“Alley” means a public way intended to give access to the rear or side of lots or buildings and not intended for the purpose of through vehicular traffic.

“Authorized emergency vehicle” means any vehicle of any fire department or police department or the city's office of emergency management and communications and any repair, service or other emergency vehicle of a governmental agency or public service corporation authorized by the superintendent of police.

“Automated speed enforcement system” has the meaning ascribed to that term in Section 11-208.8 of the Illinois Vehicle Code, 625 ILCS 5/11-208.8.

“Automated speed enforcement system violation” or “violation of an automated speed enforcement system” means a violation of Section 9-101-020.

“Automated traffic law enforcement system” has the meaning ascribed to that term in Section 11-208.6 of the Illinois Vehicle Code, 625 ILCS 5/11-208.6.

“Automated traffic law enforcement system violation” or “violation of an automated traffic law enforcement system” means a violation of Section 9-102-020.

“Bicycle” means a two or three-wheeled riding conveyance propelled solely by human power, and equipped with fully operable pedals, or their mechanical equivalent, which transfer the operator’s effort to the rotation of the wheels, creating the movement of the conveyance.

“Bicycle share station” means a self-service station where bicycles are made available for rent.

“Bicyclist” means a person operating a bicycle.

“Boulevard” means a through street, except that its use is limited exclusively to certain specified classes of traffic.

“Bridle path” means a path designated for travel by persons upon horses.

“Bus” means every motor vehicle designed for carrying more than ten passengers and used for the transportation of persons.

“Bus stand” means a fixed area in the roadway parallel and adjacent to the curb to be occupied exclusively by buses for layover in operating schedules or waiting for passengers.

“Bus stop” means a fixed area in the roadway parallel and adjacent to the curb set aside for the expeditious loading and unloading of passengers only.

“Business street” means the length of any street between street intersections on which more than 50 percent of the entire frontage at ground level of the street is in use by retail or wholesale businesses, hotels, banks, office buildings, railway stations, or public buildings other than schools.

“Carriage” means any device in, upon or by which any person is or may be transported or drawn upon a public way and designed to be or capable of being drawn by a horse.

“Carriage stand” means a fixed area in the roadway parallel and adjacent to the curb to be occupied exclusively by horse-drawn vehicles for loading and unloading passengers or waiting for passengers.

“Central Business District” means the district consisting of those streets or parts of streets within the area bounded by a line as follows: beginning at the easternmost point of Division Street extended to Lake Michigan; then west on Division Street to LaSalle Street; then south on LaSalle Street to Chicago Avenue; then west on Chicago Avenue to Halsted Street; then south on Halsted Street to Roosevelt Road; then east on Roosevelt Road to its easternmost point extended to Lake Michigan; including parking spaces on both sides of the above-mentioned streets.

“Commercial vehicle” means a motor vehicle meeting one or more of the following requirements and shall not include vehicles designed and operated to carry fewer than 10 passengers for hire:

(a) Any motor vehicle that is emblazoned with the name, logo or other identifier of a business affixed to the vehicle either permanently, such as stenciled or painted, or temporarily, such as a magnetic sticker or a sign attached to the antenna, in a manner identifiable from at least twenty-five feet away. Temporary, unaffixed identification, such as a sheet of paper or cardboard on the dashboard or rear window deck, is not sufficient to label a vehicle a commercial vehicle.

(b) Any motor vehicle driven for profit or to carry or transport property, merchandise, or supplies of a commercial or industrial nature bearing a permit issued under Section 9-64-160(d).

(c) Any junk vehicle as defined herein.

(d) Any vehicle with an unenclosed cargo bed, if such unenclosed cargo bed has been modified to increase the vehicle's capacity to transport or carry merchandise, junk, cargo or other property of any type, even if such cargo bed is empty.

(e) Any vehicle with a gross weight of 8,000 or more pounds.

"Commissioner", when used alone, means the commissioner of transportation of the city.

"Compliance violation" means a violation of an ordinance listed in subsection (c) of Section 9-100-020 of this Code. Provided, however, that a violation of Section 9-76-230 shall not be deemed to be a compliance violation within the meaning of this definition if such violation is subject to the reporting requirements of Section 6-204 of the Illinois Vehicle Code, as amended.

"Controlled or limited-access highway" means every public way in respect to which owners or occupants of abutting property or lands and other persons have no legal right of access to or from the same except at such points and in such manner as may be determined by the public authority having jurisdiction over such public way.

"Crossing guard" means an adult civilian officially authorized to supervise and expedite the crossing of school children or other pedestrians at hazardous or congested traffic points.

"Crosswalk" means that portion of a roadway ordinarily included within the prolongation or connection of sidewalk lines at intersections, or any other portion of a roadway clearly indicated for pedestrian crossing by markings.

"Drag racing" means the act of: (1) two or more individuals competing or racing on any street, highway or other public way in a situation in which one of the motor vehicles is beside or to the rear of a motor vehicle operated by a competing driver and the one driver attempts to prevent the competing driver from passing or overtaking, either by acceleration or maneuver; or (2) one or more individuals competing in a race against time on any street, highway or other public way.

"Drifting" means a driving technique in which the driver of a motor vehicle, in the absence of an emergency, either: (1) causes the vehicle to spin, skid, slide, turn abruptly or sway upon acceleration or braking; or (2) uses or controls the vehicle's throttle, brakes, clutch, gear shifting, steering input or other driving mechanisms, in any combination, to keep the vehicle in a state of oversteer while maneuvering the vehicle from turn to turn, or in circles, or in a figure eight, in a manner such that: (i) the rear slip angle of the wheels is greater than the front slip angle, and the front wheels are pointing in the opposite direction to the turn (e.g. the vehicle is turning left, wheels are pointed right); or (ii) the vehicle slides sideways through the turn(s); or (iii) the amount of countersteer (or opposite lock) coupled with the simultaneous modulation of the vehicle's throttle and brakes shifts the weight balance of the vehicle back and forth through the turn(s); or (iv) any or all of the vehicle's tires lose traction or grip on the road; or (v) an audible squeak or squeal sound coming from the vehicle's wheel area occurs when the vehicle is in motion or when the brakes are applied.

"Driver" means every person who operates or is in actual physical control of a vehicle.

"Driveway or private road" means every way or place in private ownership and used for vehicular travel by the owner and those having express or implied permission from the owner but not by other persons.

"Executive director" means the executive director of emergency management and communications.

"Firelane" means every way or place in private ownership used expressly for vehicular travel by emergency equipment and marked as such by signs or pavement markings.

"Funeral procession" means a procession consisting of motor vehicles which are designed and used for the carrying of not more than ten passengers, a funeral hearse and floral cars, or combinations thereof, with or without foot or equestrian units, proceeding to a funeral service or place of burial.

"Hazardous dilapidated motor vehicle" means any motor vehicle with a substantial number of essential parts, as defined by Section 1-118 of the Illinois Vehicle Code, either damaged, removed, altered or otherwise so treated that the vehicle is incapable of being driven under its own motor power or, which by its general state of deterioration, poses a threat to the public health, safety and welfare. "Hazardous dilapidated motor vehicle" shall not include a motor vehicle which has been rendered temporarily incapable of being driven under its own motor power in order to perform ordinary service or repairs.

"Highway" means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular traffic.

"Holidays." When used in the traffic code or on official signs erected by authority of the traffic code, the term "holidays" means New Year's Day (January 1st), Memorial Day (the last Monday in May), Independence Day (July 4th), Labor Day (the first Monday in September), Thanksgiving Day (the fourth Thursday in November) and Christmas Day (December 25th).

"Intersection" means the area embraced within the prolongation or connection of the property lines of two or more streets which join at an angle, whether or not one such street crosses the other. Where a highway includes two roadways 40 feet or more apart, every crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection.

“Junk vehicle” means any truck, automobile, or other motorized vehicle used to collect, dispose of, or transport junk, as defined in Section 4-6-150(a).

“Laned roadway” means a roadway which is divided into two or more marked lanes for vehicular traffic.

“Low-speed electric bicycle” means a bicycle, except equipped with an electric motor of less than 750 watts that meets the requirements of one of the following classes:

“Class 1 low-speed electric bicycle” means a low-speed electric bicycle that weighs less than 125 pounds and is equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of 20 miles per hour.

“Class 2 low-speed electric bicycle” means a low-speed electric bicycle that weighs less than 125 pounds and is equipped with a motor that can be used as the sole means to propel the bicycle and that is not capable of providing assistance when the bicycle reaches a speed of 20 miles per hour.

“Class 3 low-speed electric bicycle” means a low-speed electric bicycle equipped with a motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of 28 miles per hour, or is a Class 1 or a Class 2 low-speed electric bicycle that weighs 125 pounds or more.

A “low-speed electric bicycle” is not a moped or a motor-driven cycle.

"Low-speed electric delivery bicycle" means a bicycle, except equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle reaches a speed of 15 miles per hour, that is not more than 4 feet wide, whose electric motor disengages when the rider stops pedaling, and that meets such other requirements and specifications as the Commissioner provides by Rule.

"Low-speed electric mobility device" means a device which: (i) has no operable pedals; (ii) is no more than 26 inches wide; (iii) weighs less than 100 pounds; (iv) is powered by an electric motor that is capable of propelling the device with or without human propulsion at a maximum speed of 15 miles per hour on a paved level surface; and (v) is intended for transporting one individual.

“Mass transportation vehicle” means a public passenger vehicle having seating capacity for 35 or more passengers.

“Merging traffic” means a maneuver executed by the drivers of vehicles on converging roadways to permit simultaneous or alternate entry into the junction thereof, wherein the driver of each vehicle involved is required to adjust his vehicular speed and lateral position so as to avoid a collision with any other vehicle.

“Mobile pay” means the payment for a product or service through an electronic device, such as a smartphone, where the electronic device is involved in both the initiation and confirmation of the payment.

“Motor” means a device that uses electricity, a petroleum product, or another fuel source to propel a vehicle or other conveyance.

"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground but excluding farm tractors, low-speed electric bicycles, low-speed electric delivery bicycles and low-speed electric mobility devices.

"Motor-driven cycle" means every motorcycle and every motor scooter with less than 150 cubic centimeter piston displacement or their electric equivalent, but does not include a low-speed electric bicycle or a low-speed electric delivery bicycle.

“Motor scooter” means a two-wheeled motor vehicle with a step-through frame, but does not include a low-speed electric bicycle or a low-speed electric mobility device.

“Motor vehicle” means every vehicle which is propelled by a motor.

“Motor vehicle of the first division” means every motor vehicle designed and used for the carrying of not more than ten persons.

“Motor vehicle of the second division” means every motor vehicle designed for the carrying of more than ten persons, every motor vehicle designed or used for living quarters, every motor vehicle designed for pulling or carrying freight or cargo, and every motor vehicle of the first division remodeled for use and used as a motor vehicle of the second division.

“Neighborhood electric vehicle” means a self- propelled, electrically powered four-wheeled motor vehicle which is capable of attaining on level pavement a speed of more than 20 miles per hour, but not more than 25 miles per hour, and which conforms to federal regulations under Title 49 C.F.R. Part 571.500. “Neighborhood electric vehicle” does not include a vehicle modified after its original manufacture to meet the speed requirement or safety equipment requirements contained in Title 49 C.F.R. Part 571.500.

"Non-highway vehicle" means a motor vehicle not specifically designed to be used on a public highway, including: (1) an all-terrain vehicle, as defined by Section 1-101.8 of the Illinois Vehicle Code; (2) a golf cart, as defined by Section 1-123.9 of the Illinois Vehicle Code; (3) an off-highway motorcycle, as defined by Section 1-153.1 of the Illinois Vehicle Code; and (4) a recreational off-highway vehicle, as defined by Section 1-168.8 of the Illinois Vehicle Code.

“One-way street or alley” means a public way upon the roadway of which traffic is permitted to travel in one direction only.

“Operator” means every person who operates or is in actual physical control of any device or vehicle whether motorized or propelled by human power.

“Parking (to park)” means the standing of an unoccupied vehicle otherwise than temporarily for the purpose of and while actually engaged in loading or unloading property or passengers.

"Parking meter" means a traffic control device which, upon being activated by deposit of currency of the United States, or by electronic or other form of payment, in the amount indicated thereon or otherwise, either: (1) displays a signal showing that parking is allowed from the time of such activation until the expiration of the time fixed for parking in the parking meter zone in which it is located, and upon expiration of such time indicates by sign or signal that the lawful parking period has expired; or (2) issues a ticket or other token, or activates a display device, on which is printed or otherwise indicated the lawful parking period in the parking meter zone in which the parking meter is located, such ticket, other token, or display device, to be displayed in a publicly visible location on the dashboard or inner windshield of a vehicle parked in the parking meter zone, or such ticket to be affixed on a motorcycle or motor scooter parked in the parking meter zone; or (3) issues an electronic receipt through a virtual network which validates payment of the fee for a specific parking meter on a separate device.

"Parking meter zone" means a section of the public way designated by marked boundaries within which a vehicle may temporarily stop, stand, or park and be allowed to remain for such period of time as the parking meter attached thereto, or the ticket, other token, display device or electronic receipt issued by the parking meter, may indicate.

"Parking violation complaint" means a parking ticket summons and complaint, placed on a vehicle parked or standing in violation of the traffic code or given to the driver of the vehicle and returnable to the Circuit Court of Cook County.

"Parkway" means any portion of a street not considered as roadway, sidewalk, driveway or private road.

"Pedestrian" means any person afoot or any "pedestrian with a disability", as that term is defined in Section 5 of the Illinois Pedestrians with Disabilities Safety Act, codified at 625 ILCS 60/5.

"Play street" means a street or part of a street devoted to recreational purposes.

"Police officer" means every sworn officer of the municipal police department.

"Property line" means the line marking the boundary between any public way and the private property abutting thereon.

"Public building" means a building used by any government agency.

"Public passenger vehicle" means a motor vehicle which is used for the transportation of passengers for hire.

"Public way" means any sidewalk, roadway, alley or other public thoroughfare open to the use of the public, as a matter of right, for purposes of travel, excepting bridle paths.

"Push cart" means a conveyance designed to be propelled by a person afoot.

"Railroad" means a carrier of persons or property upon cars operated upon stationary rails.

"Railroad train" means a steam engine, electric or other motor with or without cars coupled thereto, operated upon rails.

"Recreational vehicle" means every camping trailer, motor home, mini-motor home, travel trailer, truck or van camper used primarily for recreational purposes and not used commercially nor owned and used by a commercial business.

"Registered owner" means the person in whose name the vehicle is registered with the Secretary of State of Illinois or such other state's registry of motor vehicles.

"Residential street" means the length of any street between street intersections when 50 percent or more of the occupied frontage of the street is in use for residence purposes.

"Right-of-way" means the right of a vehicle or pedestrian to proceed in a lawful manner in preference to another vehicle or pedestrian approaching under such circumstances of direction, speed and proximity as to give rise to danger or collision unless one grants precedence to the other.

"Roadway" means that portion of a public way between the regularly established curb lines, or that part improved, and intended to be used for vehicular travel.

"School bus" means every motor vehicle of the second division operated by or for a public or governmental agency or by or for a private or religious organization solely for the transportation of pupils in connection with any school activity.

"Semi-trailer" means every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

"Service drive" means a narrow portion of a public way open to vehicular traffic for the purpose of providing access to the front of abutting property between intersections and separated by physical means from through traffic, if the latter exists, on the same public way.

"Sidewalk" means that portion of a public way between the curb, or the lateral lines of the roadway, and the adjacent property lines, intended for the use of pedestrians.

"Standing (to stand)" means the halting of a vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers; provided, that, an operator is either in the vehicle or in the immediate vicinity, so as to be capable of immediately moving the vehicle at the direction of a police officer or traffic control aide.

"Stop" means the complete cessation of movement.

"Street" means the entire width between boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of general traffic circulation.

“Taxicab stand” means a fixed area in the roadway alongside and parallel to the curb set aside for taxicabs to stand or wait for passengers.

“Through street” means every public way or portion thereof on which vehicular traffic is given preferential right-of-way, and at the entrance to which vehicular traffic from intersecting public ways is required by law to yield right-of-way to vehicles on such through street in obedience to a traffic signal, stop sign or yield sign, when such traffic control devices are erected as provided in the traffic code.

“Traffic” means pedestrians, ridden or herded animals, bicycles, vehicles, and other conveyances either singly or together while using any public way for purposes of travel.

“Traffic control aide” means any person designated by the superintendent of police or the executive director of emergency management and communications to exercise the power of a police officer to direct or regulate traffic or to issue citations for violation of parking and compliance ordinances.

“Traffic control devices” means all signs, signals, markings, and devices placed or erected under authority of the City Council or located on property owned or controlled by a Sister Agency as that term is defined in Section 1-23-010, or the Metropolitan Pier and Exposition Authority, for the purpose of regulating, warning, or guiding traffic.

“Traffic violation” means a violation of the provisions of Chapter 9-4 through 9-100, other than a standing or parking violation, or a violation of Chapter 9-72. A compliance violation observed on a vehicle operated on the public way may be treated as a traffic violation, if the operator of the vehicle is also charged with a criminal offense. The superintendent of police shall issue standards for the treatment of a compliance violation as a traffic violation.

“Trailer” means every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

“Truck tractor” has the meaning ascribed to the term in the Illinois Vehicle Code, 625 ILCS 5/1-212.

"Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a street or highway, except motorized wheelchairs, low-speed electric bicycles, low-speed electric delivery bicycle, low-speed electric mobility devices, devices moved solely by human power, devices used exclusively upon stationary rails or tracks, and snowmobiles, as defined in the Snowmobile Registration and Safety Act of Illinois.

“Yield right-of-way” means the act of granting the privilege of the immediate use of the intersecting roadway to traffic within the intersection and to vehicles approaching from the right or left.

(Added Coun. J. 7-12-90, p. 18634; Amend Coun. J. 9-11-91, p. 5008; Amend Coun. J. 12-11-91, p. 10832; Amend Coun. J. 3-26-96, p. 19161, effective 1-1-97; Amend Coun. J. 10-28-97, p. 54839; Amend Coun. J. 4-29-98, p. 66564; Amend Coun. J. 12-4-02, p. 99026, § 8.7; Amend Coun. J. 7-9-03, p. 4349, § 2; Amend Coun. J. 7-29-03, p. 6166, § 3; Amend Coun. J. 9-4-03, p. 7167, § 1; Amend Coun. J. 11-19-03, p. 13426, § 3.1; Amend Coun. J. 12-7-05, p. 64870, § 1.9; Amend Coun. J. 4-11-07, p. 102914, § 1; Amend Coun. J. 11-5-08, p. 43707, § 1; Amend Coun. J. 12-4-08, p. 50506, § 8; Amend Coun. J. 2-11-09, p. 55024, § 3; Amend Coun. J. 7-6-11, p. 3026, § 1; Amend Coun. J. 4-18-12, p. 23762, § 3; Amend Coun. J. 6-5-13, p. 54082, § 6; Amend Coun. J. 6-5-13, p. 54983, § 1; Amend Coun. J. 10-28-15, p. 11951, Art. I, § 3; Amend Coun. J. 11-16-16, p. 38042, Art. IV, § 1; Amend Coun. J. 11-21-17, p. 61755, Art. VIII, § 1; Amend Coun. J. 4-10-19, p. 99061, § 1; Amend Coun. J. 7-24-19, p. 2674, § 1; Amend Coun. J. 11-26-19, p. 11514, Art. IV, § 2; Amend Coun. J. 10-7-20, p. 21525, § 2; Amend Coun. J. 4-21-21, p. 29728, § 2; Amend Coun. J. 7-21-21, p. 32789, § 2; Amend Coun. J. 9-21-22, p. 51997, § 1)

9-64-190 Parking meter zones – Regulations.

(a) It shall be unlawful to park any vehicle in a designated parking meter zone or space:

(1) without depositing United States currency of the denomination indicated on the meter or by otherwise making payment by electronic, mobile pay, or other forms of payment and putting the meter in operation or otherwise legally activating the meter;

(2) if the meter is of the type that issues a ticket or other token, or activates a display device, without displaying in a publicly visible location on the dashboard or inner windshield of the vehicle or affixing to a motorcycle or a motor scooter a ticket, token, or display device, issued or activated by the meter;

(3) for a period longer than is designated by the meter or on the ticket, token, display device or electronic receipt for the value of the currency deposited in the meter, or the value otherwise registered by the meter;

(4) displaying a stolen, altered, defaced or otherwise tampered with or counterfeited ticket, display device or electronic receipt; or

(5) displaying a ticket bearing a different plate number from the plate number of the vehicle parked in such zone or space.

It is not a violation of this section to park a vehicle at a zone or space served by a meter that does not function properly, provided that the meter is inoperable or malfunctioning through no fault of the vehicle's operator; and the vehicle's operator reports the meter, in compliance with the posted directions on the meter as inoperable or malfunctioning within 24 hours of parking the vehicle in the parking meter zone or space served by the inoperable or malfunctioning meter.

A ticket, token, display device or an electronic receipt issued or activated by a multiple-space parking meter may be used to park the purchaser's vehicle at a different multiple-space parking meter which has the same or a lesser hourly rate prior to the expiration of time on the ticket, token, display device, or electronic receipt and such ticket, token, display device , or electronic receipt shall be considered as putting the multiple-space parking meter where such person parks into operation; provided that this provision shall not apply to parking meters located in city parking lots. For purposes of this section, a “multiple-space parking meter” means a parking meter for a parking meter zone in which there is space for more than one vehicle to park.

Except as provided in Section 9-64-010(c)(1) and subject to Section 9-64-207, upon the expiration of the time thus designated by the meter, or on the ticket, token, display device or electronic receipt, the operator of the motor vehicle shall then immediately remove such vehicle from the parking meter zone. No operator of any motor vehicle shall permit such vehicle to remain in the parking meter zone for an additional consecutive time period.

These provisions shall not apply to service vehicles performing professional duties pursuant to a concession agreement approved by the city council for the operation, maintenance, improvement, installation and removal of, and the collection of fees from, certain designated parking meters.

Except as otherwise provided in subsection (b) and (c) of this section, any person violating any requirement of this subsection (a) shall be subject to the fine set forth in Section 9-100-020(b) for violations of Section 9-64-190(a).

(b) It shall be unlawful to park any vehicle in the Central Business District, as defined in Section 9-4-010, in violation of any requirement set forth in subsection (a) of this section. Any person violating any requirement of this subsection (b) shall be subject to the fine set forth in Section 9-100-020(b) for violations of Section 9-64-190(b).

(c) It shall be unlawful to stop, stand, or park any vehicle in a commercial loading zone, as defined in Section 9-64-165, in violation of any requirement set forth in subsection (a) of this section. A validly issued and displayed commercial loading permit shall satisfy the requirements of Section 9-64-190(a)(1) and (2). Any person violating any requirement of this subsection (c) shall be subject to the fine set forth in Section 9-100-020(b) for violations of Section 9-64-190(c).

(Added Coun. J. 7-12-90, p. 18634; Amend Coun. J. 10-28-97, p. 54839; Amend Coun. J. 6-4-03, p. 2489, § 1; Amend Coun. J. 4-11-07, p. 102914, § 1; Amend Coun. J. 11-13-07, p. 14999, Art. I, § 6; Amend Coun. J. 12-4-08, p. 50506, § 10; Amend Coun. J. 2-10-10, p. 84658, § 1; Amend Coun. J. 11-16-11, p. 14596, Art. IV, § 1; Amend Coun. J. 6-5-13, p. 54082, § 7; Amend Coun. J. 11-26-13, p. 67481, Art. II, § 2; Amend Coun. J. 11-9-16, p. 36266, § 7; Amend Coun. J. 11-16-16, p. 38042, Art. IV, § 2)

9-100-010 Purpose – Scope – Adoption of rules and regulations.

(a) The purpose of this chapter is to provide for the administrative adjudication of violations of ordinances defining parking, standing, compliance, automated speed enforcement system, and automated traffic law enforcement system violations, and to establish a fair and efficient system for the enforcement of such ordinances. The administrative adjudication system set forth in this chapter is established pursuant to Division 2.1 of the Illinois Municipal Code and Sections 11-208.3, 11-208.6 and 11-208.8 of the Illinois Vehicle Code.

(b) The comptroller shall serve *ex officio* as the city's traffic compliance administrator and in that capacity is authorized to:

(i) adopt, distribute, and process parking, standing, compliance, automated traffic law enforcement system and automated speed enforcement system violation notices and additional notices, collect money paid as fines and penalties for parking, compliance automated traffic law enforcement system, and automated speed enforcement system violations;

(ii) establish procedures necessary for the prompt, fair and efficient operation of the administrative adjudication system; and

(iii) adopt rules and regulations pertaining to: the administrative adjudication process, the selection and appointment of administrative law officers, the content of forms and procedures, and the daily operation of the administrative adjudication of parking, standing, compliance, automated traffic law enforcement system, and automated speed enforcement system violations.

(c) The traffic compliance administrator may delegate to the department of administrative hearings his authority to appoint administrative law officers, to adopt rules and regulations pertaining to administrative adjudication proceedings and to conduct administrative adjudication proceedings, including the functions of the traffic compliance administrator set forth in Sections 9-100-070(a); 9-100-080(a), (b) and (g); 9-100-090(c); 9-100-130(c); and subsection (b)(iii) of this section.

(d) Subject to the availability of duly appropriated funds, the traffic compliance administrator is authorized to enter into service contracts with vendors to be selected by the traffic compliance administrator for the purpose of receiving self-release immobilization devices lawfully removed pursuant to approval by the traffic compliance administrator. Such vendors may receive the lawfully removed self-release immobilization devices directly or through subcontractors to be selected by the contractors, subject to the approval of the traffic compliance administrator. The services contract may contain such terms as the traffic compliance administrator deems necessary to effectuate the purpose of this subsection.

The traffic compliance administrator is authorized to adopt rules for the proper administration and enforcement of this subsection.

(Prior code § 27.1-1; Added Coun. J. 3-21-90, p. 13561; Amend Coun. J. 7-12-90, p. 18634; Amend Coun. J. 3-26-96, p. 19161, effective 1-1-97; Amend Coun. J. 7-10-96, p. 24982; Amend Coun. J. 11-12-97, p. 56813; Amend Coun. J. 4-29-98, p. 66564; Amend Coun. J. 11-13-07, p. 14999, Art. I, §§ 4 and 7; Amend Coun, J. 11-16-11, p. 13798, Art. I, § 7; Amend Coun. J. 4-18-12, p. 23762, § 4; Amend Coun. J. 10-28-15, p. 11951, Art. III, § 5)

9-100-020 Violation – Penalty.

(a) The violation of any provision of the traffic code prohibiting or restricting vehicular standing or parking, or establishing a compliance, automated speed enforcement system, or automated traffic law enforcement system violation, shall be a civil offense punishable by fine, and no criminal penalty, or civil sanction other than that prescribed in the traffic code, shall be imposed.

(b) The fines listed below shall be imposed for a violation of the following sections of the traffic code:

Traffic Code Section	*Fine*
Traffic Code Section	*Fine*
9-12-060	$90.00
9-64-020(a)	$25.00
9-64-020(b)	$75.00
9-64-020(c)	$25.00
9-64-030	$50.00
9-64-040(b)	$60.00
9-64-041	$60.00
9-64-050	$250.00
9-64-060	$60.00
9-64-070	$60.00
9-64-080	$100.00
9-64-090(d) and (e)	$75.00
9-64-091	$50.00
9-64-100(a)	$150.00
9-64-100(b) and (c)	$150.00
9-64-100(d)	$75.00
9-64-100(e) and (h)	$100.00
9-64-100(f) and (g)	$60.00
9-64-110(a)(1)	$100.00
9-64-110(a)(2)	$300.00
9-64-110(c), (d) and (e)	$60.00
9-64-110(b), (f) and (g)	$75.00
9-64-110(h)	$100.00
9-64-120	$50.00
9-64-130	$150.00
9-64-140	$100.00
9-64-150(a)	$100.00
9-64-150(b)	$75.00
9-64-160	$60.00
9-64-170(a)	$75.00, if the vehicle has a gross vehicle weight rating of less than 8,000 pounds; $125.00, if the vehicle has a gross vehicle weight rating of 8,000 pounds or more
9-64-170(b)	$75.00, if the vehicle has a gross vehicle weight rating of less than 8,000 pounds; $125.00, if the vehicle has a gross vehicle weight rating of 8,000 pounds or more
9-64-170(c)	$60.00
9-64-180	$60.00
9-64-190(a)	$50.00
9-64-190(b)	$70.00
9-64-190(c)	$140.00
9-64-200(b)	$50.00
9-64-210	$50.00
9-68-025(d)	$75.00
9-80-095	$250.00
9-80-110(a)	$75.00
9-80-110(b)	$75.00
9-80-120(a)	$50.00

9-80-120(b)	$25.00
9-80-130	$50.00

(c) The fines listed below shall be imposed for violation of the following sections of the traffic code:

Traffic Code Section	*Fine*

| *Traffic Code Section* | *Fine* |

9-40-080	$75.00
9-40-170	$25.00
9-40-220	$25.00
9-64-125(b)	$200.00
9-64-125(c)	$500.00
9-64-125(d)	$30.00
9-68-020(a)(3)	$30.00
9-68-020(b)(3)	$30.00
9-76-010	$25.00
9-76-020	$25.00
9-76-030	$25.00
9-76-040	$25.00
9-76-050	$25.00
9-76-060	$25.00
9-76-070	$25.00
9-76-080	$25.00
9-76-090	$25.00
9-76-100	$25.00
9-76-110(a)	$25.00
9-76-120	$25.00
9-76-130	$25.00
9-76-140(a)	$500.00
9-76-140(b)	$100.00
9-76-160(a)(1)-(4)	$60.00
9-76-160(a)(5)-(7)	$500.00
9-76-160(b)	$60.00
9-76-190	$25.00
9-76-200	$25.00
9-76-210	$25.00
9-76-220(a) and (b)	$250.00

(d) The fines listed below shall be imposed for a violation of the following sections of the traffic code:

Traffic Code Section	*Fine*
9-101-020	$35.00
(1)	if the recorded speed is 6 or more miles over the applicable speed limit, but less than 11 miles over such speed limit;
(2)	$100.00 if the recorded speed is 11 or more miles per hour over the applicable speed limit.
9-102-020	$100.00

(Prior code § 27.1-2; Added Coun. J. 3-21-90, p. 13561; Amend Coun. J. 7-12-90, p. 18634; Amend Coun. J. 11-17-93, p. 42192; Amend Coun. J. 11-1-95, p. 9068; Amend Coun. J. 11-15-95, p. 11995; Amend Coun. J. 3-26-96, p. 19161, § 16, effective 1-1-97; Amend Coun.

J. 2-7-97, p. 38959; Amend Coun. J. 4-16-97, p. 42621; Amend Coun. J. 11-19-97, p. 57861; Amend Coun. J. 11-10-99, p. 14998, § 4.1; Amend Coun. J. 11-17-99, p. 17487, § 4.1; Amend Coun. J. 12-12-01, p. 75777, § 5.11; Amend Coun. J. 7-29-03, p. 6166, § 4; Amend Coun. J. 11-5-03, p. 10746, § 1; Amend Coun. J. 11-19-03, p. 14216, § 6.4; Amend Coun. J. 12-17-03, p. 14966, § 1; Amend Coun. J. 5-26-04, p. 24880, § 1; Amend Coun. J. 12-15-04, p. 39840, § 1; Amend Coun. J. 3-9-05, p. 44095, § 1; Amend Coun. J. 4-11-07, p. 102914, § 1; Amend Coun. J. 11-13-07, p. 15814, § 1; Amend Coun. J. 3-12-08, p. 22781, § 1; Amend Coun. J. 7-9-08, p. 32613, § 1; Amend Coun. J. 11-5-08, p. 43707, § 5; Amend Coun. J. 2-11-09, p. 55033, § 1; Amend Coun. J. 10-7-09, p. 73413, § 1; Amend Coun. J. 11-17-10, p. 106597, Art. II, § 1; Amend Coun. J. 11-16-11, p. 13793, § 2; Amend Coun. J. 11-16-11, p. 13798, Art. IX, § 4; Amend Coun. J. 11-16-11, p. 14596, Art. IV, § 1; Amend Coun. J. 2-15-12, p. 20533, § 1; Amend Coun. J. 4-18-12, p. 23762, § 4; Amend Coun. J. 11-8-12, p. 38812, § 2; Amend Coun. J. 11-26-13, p. 67528, § 4; Amend Coun. J. 4-30-14, p. 79799, § 2; Amend Coun. J. 5-28-14, p. 81917, § 3; Amend Coun. J. 11-19-14, p. 98037, § 12; Amend Coun. J. 11-16-16, p. 37901, Art. III, § 9; Amend Coun. J. 11-16-16, p. 38042, Art. IV, § 3; Amend Coun. J. 11-8-17, p. 59344, § 2; Amend Coun. J. 4-18-18, p. 76374, § 2; Amend Coun. J. 9-20-18, p. 84327, § 3; Amend Coun. J. 11-7-18, p. 88803, § 22; Amend Coun. J. 11-26-19, p. 11514, Art. IV, § 8; Amend Coun. J. 4-21-21, p. 29728, § 7)

9-100-060 Grounds for contesting a violation.

(a) A person charged with a parking, standing or compliance violation may contest the charge through an administrative adjudication limited to one or more of the following grounds with appropriate evidence to support:

(1) that the respondent was not the owner or lessee of the cited vehicle at the time of the violation;

(2) that the cited vehicle or its state registration plates were stolen at the time the violation occurred;

(3) that the relevant signs prohibiting or restricting parking or standing were missing or obscured;

(4) that the relevant parking meter was inoperable or malfunctioned through no fault of the respondent;

(5) that the facts alleged in the violation notice are inconsistent or do not support a finding that the specified regulation was violated;

(6) that the illegal condition described in the compliance violation notice did not exist at the time the notice was issued;

(7) that the compliance violation has been corrected prior to adjudication of the charge; provided, however, that this defense shall not be applicable to:

(i) except as otherwise provided in Section 9-64-125, compliance violations involving display of the city wheel tax license emblem under Section 9-64-125;

(ii) compliance violations involving motor vehicle exhaust systems under subsection (a)(2) of Section 9-76-140;

(iii) compliance violations involving registration plates under subsection (a) of Section 9-76-160;

(iv) compliance violations involving display of registration plates, temporary registration or temporary permits under subsection (b) of Section 9-76-160, except to the extent that 625 ILCS 5/3-821.2(b) or subsection (e) of Section 9-76-160 provides for an affirmative defense;

(v) compliance violations relating to glass coverings or coating under Section 9-76-220; or

(vi) compliance violations involving the use of a mobile, cellular, analog wireless or digital telephone while driving a motor vehicle under Section 9-76-230.

(b) A person charged with violating Section 9-101-020 or Section 9-102-020 may contest the charge through an administrative adjudication limited to one or more of the following applicable grounds with appropriate evidence to support:

(1) for violations of Section 9-101-020 that:

(i) the operator of the vehicle was issued a Uniform Traffic Citation for a speeding violation occurring within one-eighth of a mile and 15 minutes of the violation that was recorded by the system;

(ii) the facts alleged in the violation notice are inconsistent or do not support a finding that Section 9-12-070, 9-12-075, 9-12-077 or 9-101-020 was violated;

(2) for violations of Section 9-102-020 that:

(i) the operator of the vehicle was issued a Uniform Traffic Citation for a violation of Section 9-8-020(c);

(ii) the operator of the vehicle passed through the intersection when the light was red either to yield the right-of-way to an emergency vehicle or as part of a funeral procession; or

(iii) the facts alleged in the violation notice are inconsistent or do not support a finding that Section 9-8-020(c) was violated.

(3) the violation occurred at any time during which the vehicle or its state registration plates were reported to a law enforcement agency as having been stolen and the vehicle or its plates had not been recovered by the owner at the time of the alleged violation;

(4) the vehicle was leased to another and the lessor has provided the name and address of the lessee in compliance with Section 9-100-140(c);

(5) the vehicle was an authorized emergency vehicle; or

(6) the respondent was not the registered owner or lessee of the cited vehicle at the time of the violation.

(c) Where the lessor complies with subsection (b)(4), the lessee of the vehicle at the time of the violation shall be deemed to be the owner of the leased vehicle for purpose of this chapter. The department of finance, within 30 days of being notified by the lessor of the name and address of the lessee, shall mail the lessee a citation which contains the information required under Section 9-100-045; provided that service of the violation notice shall not occur more than 210 days after the violation.

(Prior code § 27.1-6; Added Coun. J. 3-21-90, p. 13561; Amend Coun. J. 7-12-90, p. 18634; Amend Coun. J. 3-26-96, p. 19161, effective 1-1-97; Amend Coun. J. 2-7-97, p. 38959; Amend Coun. J. 11-19-97, p. 57861; Amend Coun. J. 12-12-07, p. 16793, § 4; Amend Coun. J. 11-5-08, p. 43707, § 3; Amend Coun. J. 1-13-09, p. 52803, § 1; Amend Coun. J. 11-17-10, p. 107294, Art, I, § 1; Amend Coun. J. 4-18-12, p. 23762, § 4; Amend Coun. J. 5-6-15, p. 108500, § 3; Amend Coun. J. 10-28-15, p. 11951, Art. I, § 8; Amend Coun. J. 11-9-16, p. 36313, § 1; Amend Coun. J. 11-21-17, p. 61913, § 10; Amend Coun. J. 9-18-19, p. 4521, § 3; Amend Coun. J. 10-27-21, p. 40504, Art. I, § 4)

9-100-070 Administrative correspondence hearing – Procedure.

(a) An administrative correspondence hearing to review the materials submitted by the respondent and the city shall be held by an administrative law officer appointed by the traffic compliance administrator and conducted in accordance with this section.

(b) The respondent may contest a violation based on one or more of the applicable grounds by submitting a request for an administrative correspondence hearing in compliance with this chapter. The request shall include the following materials and information: the notice of violation, the full name, address and telephone number(s) of the respondent; the make, model and year of the vehicle; any documentary evidence that rebuts the charge; and a written statement signed by the respondent setting forth facts relevant to establishing a defense to the charge. A copy of any documentary evidence submitted by any party shall be accepted as the equivalent of the original document.

(c) No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a violation notice, or a copy thereof, issued in accordance with Section 9-100-030, or a notice of violation issued in accordance with Section 9-100-045 shall be prima facie evidence of the correctness of the facts specified therein.

(d) Upon review of the materials submitted, the administrative law officer shall enter a determination of no liability or of liability in the amount of the fine for the relevant violation as provided in Section 9-100-020. Upon issuance, such determination shall constitute a final determination for purposes of judicial review under the Administrative Review Law of Illinois.

(Prior code § 27.1-7; Added Coun. J. 3-21-90, p. 13561; Amend Coun. J. 7-12-90, p. 18634; Amend Coun. J. 3-26-96, p. 19161, effective 1-1-97; Amend Coun. J. 4-29-98, p. 66564, § 2; Amend Coun, J. 11-16-11, p. 13798, Art. I, § 7; Amend Coun. J. 4-18-12, p. 23762, § 4; Amend Coun. J. 10-28-15, p. 11951, Art. I, § 9)

9-100-080 Administrative in-person hearings – Procedure.

(a) The respondent may request an administrative in-person hearing to contest a violation. The administrative in-person hearing shall be held before an administrative law officer appointed by the traffic compliance administrator and conducted in accordance with this section.

(b) The respondent may or, at his own expense, be represented by an attorney. An attorney who appears on behalf of any respondent shall file with the administrative law officer a written appearance on a form provided by the traffic compliance administrator for such purpose.

(c) The formal and technical rules of evidence shall not apply in the conduct of the hearing.

(d) All testimony shall be given under oath or affirmation, which shall be administered by the administrative law officer. The administrative law officer may issue subpoenas to secure the attendance and testimony of witnesses and the production of relevant documents; provided, however, that a respondent who appears by an attorney shall not be compelled to attend the hearing and may submit his testimony, if any, by affidavit. In addition, witnesses who have not been subpoenaed to attend the hearing may submit their testimony, if any, by affidavit.

(e) No violation may be established except upon proof by a preponderance of the evidence; provided, however, that a violation notice, or a copy thereof, issued and signed in accordance with Section 9-100-030 or a notice of violation issued in accordance with Section 9-100-045 shall be prima facie evidence of the correctness of the facts specified therein.

(f) The administrative law officer may, on a showing of good cause, grant one continuance to a date certain.

(g) The traffic compliance administrator shall cause a record to be made of each hearing, and recording devices may be used for such purpose.

(Prior code § 27.1-8; Added Coun. J. 3-21-90, p. 13561; Amend Coun. J. 7-12-90, p. 18634; Amend Coun. J. 3-26-96, p. 19161, effective 1-1-97; Amend Coun. J. 4-29-98, p. 66564, § 2; Amend Coun. J. 4-18-12, p. 23762, § 4; Amend Coun. J. 10-28-15, p. 11951, Art. I, § 10)

9-100-090 Hearing – Determination of liability or of no liability – Petition.

(a) Upon conclusion of a hearing under Section 9-100-080, the administrative law officer shall issue a determination of no liability or of liability in the amount of the fine for the relevant violation as provided in Section 9-100-020. Upon issuance, such determination shall constitute a final determination for purposes of judicial review under the Administrative Review Law of Illinois.

(b) If a person fails to respond to the violation notice or any second notice of violation required by Section 9-100-050(d)(1), a determination of liability shall be entered against the respondent and shall be served upon the respondent in accordance with Section 9-100-050(f). Such determination shall become final for purposes of judicial review under the Administrative Review Law of Illinois upon the denial of, or the expiration of the time in which to file, a timely petition to set aside the determination as provided in subsection (c) of this section.

(c) Within 21 days from the issuance of a determination of liability pursuant to subsection (b) herein, the person against whom the determination was entered may petition the traffic compliance administrator by appearing in-person, at the location specified in the determination, to set aside the determination; provided, however, the grounds for the petition shall be limited to: (1) the petitioner not having been the owner or lessee of the cited vehicle on the date the violation occurred; (2) the petitioner having already paid the fine or penalty for the violation in question; or (3) if the traffic compliance administrator determines that the petitioner's failure to appear was for good cause; provided that a determination of liability shall be set aside at any time if the person establishes that the petitioner was not provided with proper service of process. The petitioner shall appear with appropriate evidence so that if the petition is granted, he is prepared to proceed immediately with a hearing on the merits.

(Prior code § 27.1-9; Added Coun. J. 3-21-90, p. 13561; Amend Coun. J. 7-12-90, p. 18634; Amend Coun. J. 3-26-96, p. 19161, effective 1-1-97; Amend Coun. J. 4-29-98, p. 66564, § 2; Amend Coun. J. 5-6-15, p. 108500, § 3; Amend Coun. J. 10-28-15, p. 11951, Art. I, § 11)

9-100-100 Notice of final determination.

(a) If any fine or penalty is owing and unpaid after a determination of liability under this chapter has become final and the respondent has exhausted or failed to exhaust judicial procedures for review, the Traffic Compliance Administrator shall cause a notice of final determination of liability to be sent to the respondent in accordance with Section 9-100-050(f); provided that the Traffic Compliance Administrator shall not send a notice of final determination to an eligible participant paying the indicated fine under an early installment payment plan pursuant to Section 9-100-160 and rules promulgated thereunder, unless the eligible participant defaults on the early installment payment plan. In the event of a default, the Traffic Compliance Administrator shall send a notice of final determination to the eligible participant in accordance with this section. Provided, however, for an early installment plan that an eligible participant may enter into pursuant to subsection (d) of Section 9-100-170, a notice of final determination of liability shall not be sent before the expiration of the program created under Section 9-100-170.

(b) Any fine and penalty, if applicable, remaining unpaid after the notice of final determination of liability is sent shall constitute a debt due and owing the City which may be enforced in the manner set forth in Section 2-14-103 of this Code. Failure of the respondent to pay such fine or penalty within 14 days of the date of the notice may result in, if applicable: (1) the immobilization of the person's vehicle for failure to pay fines or penalties pursuant to Section 9-100-120 or (2) the suspension of the person's driver's license for failure to pay fines or penalties pursuant to Section 9-100-130.

(Prior code § 27.1-10; Added Coun. J. 3-21-90, p. 13561; Amend Coun. J. 7-12-90, p. 18634; Amend Coun. J.. 3-26-96, p. 19161, effective 1-1-97; Amend Coun. J. 7-30-97, p. 49902; Amend Coun. J. 4-29-98, p. 66564, § 2; Amend Coun. J. 7-31-02, p. 90675, § 2; Amend Coun. J. 10-28-15, p. 11951, Art. III, § 7; Amend Coun. J. 9-18-19, p. 4521, § 3; Amend Coun. J. 10-27-21, p. 40504, Art. I, § 5)

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