No. 128575

IN THE SUPREME COURT OF ILLINOIS

ALEC PINKSTON,

Plaintiff-Appellee,

v.

CITY OF CHICAGO,

Defendant-Appellant.

Appeal from the Appellate Court of Illinois, First District
Case No. 1-20-0957

There Heard on Appeal from the Circuit Court of Cook County,
Case No. 2019 CH 12364
The Honorable Caroline K. Moreland, Judge Presiding

BRIEF OF PLAINTIFF-APPELLEE

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POINTS & AUTHORITIES

NATURE OF THE CASE

This action arises from Defendant-Appellant CITY OF CHICAGO's ("Defendant" or "City") routine and systematic practice of improperly issuing parking tickets for violations of the Municipal Code of Chicago ("Code") that did not occur. In his Class Action Complaint ("Complaint"), Plaintiff-Appellee ALEC PINKSTON ("Plaintiff"), individually, and on behalf of a putative class of all others similarly situated (the "Class"), seeks a declaration—pursuant to the Illinois Declaratory Judgment Act (735 ILCS 5/2-701)—that the parking tickets at issue are facially invalid, injunctive relief barring the City from issuing improper tickets in the future, and restitution in connection with the monies Plaintiff and Class members paid in connection with improperly issued tickets. (C7-16, A5-14).

On September 4, 2020, the Circuit Court granted Defendant's *Section 2-619 Motion to Dismiss the Complaint*, and dismissed this case with prejudice. (C144-147, A1-4). On appeal, the Appellate Court reversed that decision, holding that Plaintiff was *not* required to exhaust administrative remedies prior to filing the instant lawsuit. *See generally*, *Pinkston v. City of Chicago*, 2022 IL App (1st) 200957. For the reasons set forth below, the Appellate Court's decision should be affirmed in its entirety.

STATEMENT OF FACTS

The City is an Illinois municipal corporation located in Cook County, Illinois. (Complaint, ¶ 2, C7, A5). Title 9, Chapter 64 of the City's Code establishes various restrictions as to where, when, and how long vehicles may be parked in the City. (Complaint, ¶ 5, C8, A6). One such provision of the Code permits the City Council to

create and designate "parking meter zones" throughout the City. Chi. Mun. Code. § 9-64-200.

As defined by the Code, a "parking meter zone" is "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." Chi. Mun. Code. § 9-4-010. Under the Code, a "parking meter" is "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," provides a vehicle owner with a printed or electronic receipt or which contains a display that "show[s] 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." Chi. Mun. Code. § 9-4-010.

Relevant to the issues in this case, Section 9-64-190(a) of the Code makes it "unlawful to park any vehicle in a designated parking meter zone or space" for any period of time exceeding the amount of time purchased from the corresponding parking meter. A violation of Section 9-64-190 is "a civil offense punishable by fine." Chi. Mun. Code. § 9-100-020(a) ("The violation of any provision of the traffic code prohibiting or restricting vehicular standing or parking…shall be a civil offense punishable by fine.").

"Whenever any vehicle exhibits a parking, standing, or compliance violation" in contravention of *inter alia*, Section 9-64-190 of the Code, "any police officer, traffic control aide, other designated member of the police department, parking enforcement aide

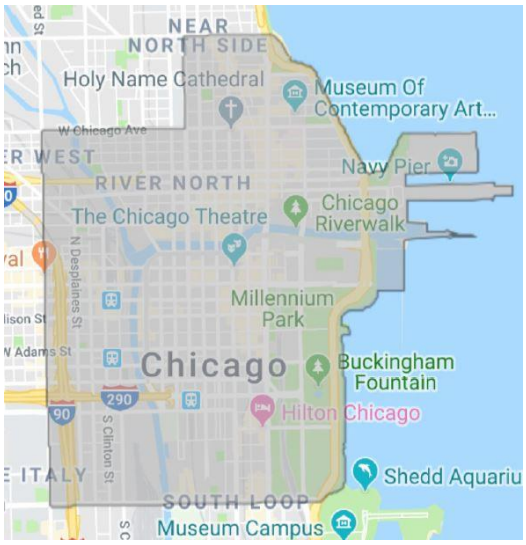
or other person designated by the [City's] traffic compliance administrator observing such violation may issue a violation notice"—*i.e.*, a ticket.[1] Chi. Mun. Code. § 9-100-030(b). Each such ticket *must* contain certain information, including "the state registration number of the ticketed vehicle" (Chi. Mun. Code. § 9-100-030(a)), "the particular ordinance allegedly violated, the make…of the cited vehicle, []the place, date, time and nature of the alleged violation" (Chi. Mun. Code. § 9-100-030(b)), "the applicable fine as provided in Section 9-100-020" of the Code, the late fees and other consequences (such as vehicle immobilization and driver's license suspension) that may be imposed if the vehicle owner does not timely pay the ticket, "information as to the availability of an administrative hearing in which the violation may be contested on its merits and the time and manner in which such hearing may be had," as well as "that payment of the indicated fine, and of any applicable penalty for late payment, shall operate as a final disposition of the violation" (Chi. Mun. Code. § 9-100-040(a)). The ticketing agent—*i.e.*, the issuer of the ticket—must also "certify the correctness of [this] information by signing his or her name" on the ticket.

After receiving a ticket, a person is required to either "pay the indicated fine" or challenge the ticket through the City's administrative adjudicative process. Chi. Mun. Code. § 9-100-050(a). All of the Code's provisions regarding the information required to appear on parking tickets, the availability of an administrative procedure through which a recipient may challenge a ticket, and the administrative adjudicative process itself are derived from the authority granted to the City by 625 ILCS 5/11-208.3, which authorizes the City to "provide by ordinance for a system of administrative adjudication of vehicular standing and parking violations." As such, in issuing and enforcing parking tickets, the

[1] For brevity, the enumerated types of individuals authorized to issue parking tickets on behalf of the City shall hereinafter be referred to collectively as "ticketing agents."

City acts in an administrative capacity, and, for all intents and purposes applicable to this case, is an administrative agency. 625 ILCS 5/11-208.3(a).

Most violations of the metered parking restrictions set forth in Section 9-64-190 of the Code are subject to a $50 fine. Chi. Mun. Code. § 9-100-020(b) (citing Chi. Mun. Code. § 9-64-190(a)). However, pursuant to Section 9-64-190(b) of the Code, a violation of the metered parking restrictions set forth in Section 9-64-190 of the Code which occurs *within* the City's "Central Business District" is subject to a $65 fine. Chi. Mun. Code. § 9-100-020(b) (citing Chi. Mun. Code. § 9-64-190(b)). Section 9-4-010 of the Code defines the City's "Central Business District" as "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." A map outlining the City's Central Business District is included below:

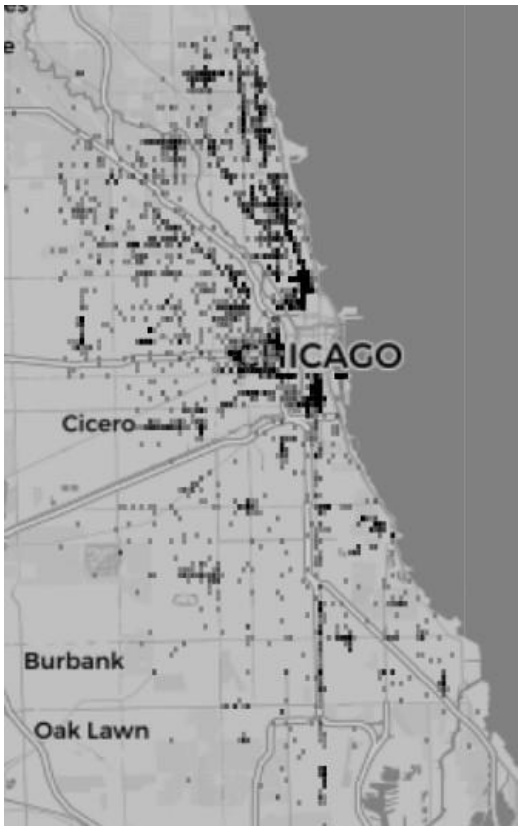


When a vehicle is ticketed for being parked in violation of Section 9-64-190 of the Code in a parking meter zone located *outside* of the Central Business District, the violation stated on the ticket is supposed to read "Expired Meter Non-Central Business District" (with a citation to Chi. Mun. Code. § 9-64-190(a)), and the fine amount is supposed to be $50.[2] (Complaint, ¶ 12, C10, A8). In contrast, when a vehicle is ticketed for being parked in violation of Section 9-64-190 of the Code in a parking meter zone located *within* the Central Business District, the violation stated on the ticket is supposed to read "Expired Meter Central Business District" (with a citation to Chi. Mun. Code. § 9-64-190(b)), and the fine amount is supposed to be $65.[3] (Complaint, ¶ 12, C10, A8).

Despite the clear distinction between Central Business District Tickets and Non-Central Business District Tickets, the City has a routine practice of issuing Central Business District Tickets to vehicles parked outside of the City's Central Business District. (Complaint, ¶ 16, C11, A9). According to a May 14, 2019 news article posted by CBS Chicago, Matt Chapman ("Chapman"), a "self-described data geek" analyzed a dataset published by ProPublica which contains information regarding parking tickets issued by the City of Chicago ("Dataset"). (Complaint, ¶ 13, C10, A8). After analyzing the Dataset, Chapman discovered that "from 2013 to 2018 the City issued 30,001 [Central Business District Tickets] outside the Central Business District," and he created a map of each Central Business District Ticket that was issued outside the Central Business District, which is reproduced below. (Complaint, ¶ 15, C10-11, A8-9).

[2] These types of parking tickets will be hereinafter referred to as "Non-Central Business District Tickets."

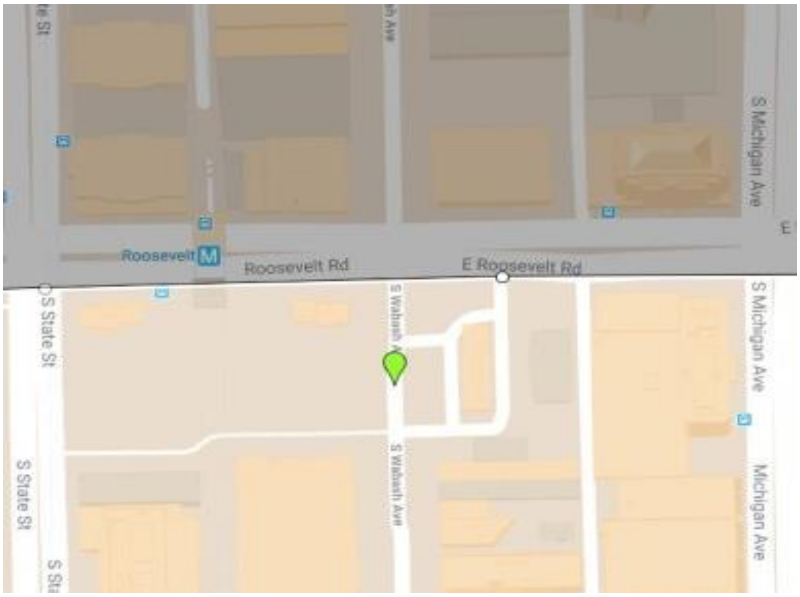
[3] These types of parking tickets will be hereinafter referred to as "Central Business District Tickets."



The parking tickets that Plaintiff and Class members received (the "Tickets") fall within this category. (Complaint, ¶¶ 17, 25, C11, C13, A9, A11; Plaintiff's Ticket, C95, A41). As a result, Plaintiff and members of the Class were (and are) subject to fines in connection with violations of Chi. Mun. Code. § 9-64-190(b)—which governs vehicles parked *within* the City's Central Business District—that they did not commit because their vehicles were parked *outside* of the City's Central Business District. Chi. Mun. Code. § 9-100-020(b); Chi. Mun. Code. § 9-64-190(a); Chi. Mun. Code. § 9-64-190(b).

For example, on May 21, 2019, Plaintiff parked his vehicle in a parking meter zone located at or near 1216 South Wabash Avenue—*i.e.*, on Wabash Avenue, south of Roosevelt Road. (Complaint, ¶ 23, C13, A11). 1216 South Wabash Avenue is located *outside* the City's Central Business District, as the southern limit of the Central Business District ends at Roosevelt Road. Chi. Mun. Code. § 9-4-010. A map of the southern limit

of the Central Business District (shaded) in relation to where Plaintiff's vehicle was parked (marker) is included below:



Despite the fact that Plaintiff's vehicle was parked *outside* of the Central Business District on May 21, 2019, Plaintiff received a Central Business District Ticket ("Plaintiff's Ticket"). (Complaint, ¶ 25, C13, A11; Plaintiff's Ticket, C95, A41). As a result of Plaintiff's Ticket, Plaintiff was subjected to a $65 fine for a violation of Chi. Mun. Code. § 9-64-190(b) that he did not commit. Chi. Mun. Code. § 9-100-020(b).

These facts are confirmed by the information on the face of Plaintiff's Ticket, which states that, on May 21, 2019, Plaintiff's vehicle was parked *beyond* the Central Business District's southern boundary.[4] (Plaintiff's Ticket, C95, A41). Nevertheless, Plaintiff's Ticket cites Chi. Mun. Code. § 9-64-190(b)—which governs vehicles parked *within* the City's Central Business District—as the Code provision violated,[5] contains the text

[4] Although Plaintiff's Ticket provides a location of 1202 South Wabash Avenue, instead of 1216 South Wabash Avenue (as alleged in the Complaint), this difference is immaterial, as both addresses are *outside* of the City's Central Business District.

[5] Plaintiff's Ticket refers to Chi. Mun. Code. § 9-64-190(b) by displaying "0964190B" in the "code" field. (Plaintiff's Ticket, C95, A41).

"CENTRAL BUSINESS DISTRICT EXPIRED METER," and reflects a fine of $65. (Plaintiff's Ticket, C95, A41).

In addition to the fines imposed in connection with the Tickets that they received, Plaintiff and members of the Class could have been, or were, subjected to late payment fees, interest, the immobilization of their vehicles, the suspension of their driver's licenses, liens imposed on their personal property, and other costs associated with the City's debt collection attempts (*e.g.*, attorneys' fees and court costs). Chi. Mun. Code. §§ 2-14-103, 2-14-104, 9-100-050(e), 9-100-100(b), 9-100-120. Due to these potential consequences, Plaintiff and some Class members—*i.e.*, members of the Subclass defined in the Complaint—paid the fines associated with their Tickets under duress. (Complaint, ¶¶18, 27, C12-13, A10-11).

Finally, because Plaintiff and Class members are vehicle owners who will continue to drive and park their vehicles within the City, Plaintiff and members of the Class are at risk of receiving Central Business District Tickets—even though their vehicles will be located *outside* of the City's Central Business District—in the future. (Complaint, ¶ 21, C12, A10). Indeed, despite the fact that the City's practice of erroneously issuing Central Business District Tickets to vehicles that were parked outside of the City's Central Business District came to light in early 2018, the City continued (and continues) to improperly issue these improper Central Business District Tickets. (Complaint, ¶ 20, C12, A10).

ARGUMENT

In the proceedings below, the Appellate Court correctly concluded that Plaintiff's claims are not barred by the doctrine of exhaustion of administrative remedies or the

voluntary payment doctrine. For the reasons set forth below, the Court should affirm that decision.

I. The Court Should Not Expand the Scope of the Exhaustion Doctrine or Curtail the Exceptions Thereto.

Before turning to the arguments set forth in the City's Opening Brief ("Opening Brief"), it is important, as a preliminary matter, to briefly discuss the broader context in which this case stands, as well as the significant policy implications this Court's decision will have. In recent years, local governments nationwide—including the City, and other municipalities throughout the state of Illinois—have increasingly relied upon the collection of fines levied in connection with violations of local ordinances as a means of generating revenue. As a result, there has been a significant uptick in the vigorous enforcement of zoning restrictions, building codes, and other similar regulations designed to raise revenue through fines against property owners,[6] as well as to the excessive use of traffic tickets—such as parking tickets, and those generated through the use of so-called "speed cameras" and "red light cameras"—to extract fines from motorists,[7] oftentimes without any legitimate justification other than raising revenue.[8]

The City has been at the forefront of this trend, as it "has long used ticketing to bridge unbalanced budgets, generating over $550 million in revenue from [speed and red

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[6] https://www.nashvillescene.com/news/coverstory/code-snitching-nashvillians-are-weaponizing-metro-codes-against-undesirable-neighbors/article_5e94bd56-0c67-11ed-af4e-e3d04ad7e500.html; Jennifer Aronsohn, *Weaponizing Code Enforcement*, 108 Cornell L. Rev. 16 (2022).

[7] https://www.illinoispolicy.org/reports/illinois-red-light-cameras-have-collected-more-than-1b-from-drivers-since-2008/; https://www.illinoispolicy.org/chicagos-speed-camera-start-churning-out-35-tickets-march-1/; https://www.illinoispolicy.org/chicago-issues-over-1m-parking-tickets-in-6-months/.

[8] https://www.chicagotribune.com/investigations/ct-idot-red-light-cameras-met-20170921-story.html.

light] cameras between 2008 and 2018."[9] Since then, the City has gotten even more overzealous. For example, in 2021, the City lowered the threshold for the issuance of speed camera tickets from 10 miles per hour to 6 miles per hour over the speed limit, which led to the issuance of "more tickets to drivers in one year than there are residents in the nation's third-largest city"—2,817,554—which equates to "one [ticket] every 11 seconds, filling city coffers at the rate of $250,000 a day," and which, in total, generated $89 million in revenue for the City.[10] Similarly, in the first six months of 2022, the City issued "over 1 million parking tickets to drivers," leading to "a quarter more fines than the City issued during the same period in 2021."[11]

While the revenue generated through the aggressive enforcement of municipal ordinances has been a boon to local governments, its allure has also led to, and will continue to lead to, serious abuses of governmental power. In Illinois, for instance, several state and local officials have been indicted on federal corruption charges in connection with taking bribes in exchange for permitting the installation of red light cameras in various municipalities.[12] Overly restrictive zoning restrictions and building codes, as well as overzealous vehicle ticketing practices, have also been found to reinforce segregation and disproportionately harm minorities, concerns that are often ignored in the face of the huge financial windfalls that municipalities can reap.[13]

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[9] https://www.illinoispolicy.org/chicagos-speed-camera-start-churning-out-35-tickets-march-1/.

[10] https://www.illinoispolicy.org/speed-cameras-issue-more-tickets-in-2021-than-chicago-has-residents/.

[11] https://www.illinoispolicy.org/chicago-issues-over-1m-parking-tickets-in-6-months/; https://chicago.suntimes.com/city-hall/2022/10/6/23391591/parking-tickets-up-booting-down-ward-by-ward-chicago.

[12] https://www.illinoispolicy.org/state-senator-faces-federal-bribery-charges-in-red-light-camera-scheme/.

[13] Jennifer Aronsohn, *Weaponizing Code Enforcement*, 108 Cornell L. Rev. 16 (2022); https://features.propublica.org/driven-into-debt/chicago-ticket-debt-bankruptcy/.

These types of abuses are fostered, if not encouraged, by the confluence of several different factors, and will almost certainly become more common as the use of municipal code enforcement for the purpose of raising revenue continues to expand. The first such factor is legal in nature. Illinois law grants municipalities nearly unbridled power and discretion, and permits them to operate with virtually no independent oversight, when it comes to the promulgation and enforcement of local ordinances. Indeed, in contrast to the separation of powers seen at the federal and state government levels, municipalities are, somewhat extraordinarily, vested with the powers of all three branches of government (*i.e.*, legislative, executive, and judicial) to make, enforce, *and* adjudicate their own local ordinance violations. *See, e.g.*, ILL. CONST., art. VII, § 6 (granting home rule municipalities broad authority to "exercise any power and perform any function pertaining to its government and affairs"); 65 ILCS 5/1-2.1-2 (permitting local governments to operate "a system of administrative adjudication of municipal code violations"); 625 ILCS 5/11-208.3 (permitting local governments to operate "a system of administrative adjudication of vehicular standing and parking violations and vehicle compliance violations").

In addition to permitting municipalities to adjudicate the propriety of the citations they issue in forums that they themselves establish and control, Illinois law provides that any citation issued by a municipality "shall be prima facie correct and shall be prima facie evidence of the correctness of the facts" alleged in the citation, which effectively makes ticket recipients guilty until proven innocent. *See, e.g.*, 625 ILCS 5/11-208.3(b)(3). For these reasons, local governments' enforcement actions are rarely subject to scrutiny, and, even when they are, it is in a forum where they, by law, have the upper hand.

The second factor is the incongruous balance of financial incentives between municipalities and citizens. Since most citizens lack the time, resources, and/or motivation to contest relatively small fines imposed against them, local governments know that a significant portion of the citations they issue will be paid without protest. Local governments are also virtually assured to prevail against a substantial number of citizens who actually do contest their citations, given the applicable burden of proof. In other words, the amount of revenue than municipalities can generate through code enforcement is simply a function of the number of citations they issue—*i.e.*, more citations, more revenue.

As a result of this incentive structure, local governments have little motivation to refrain from issuing dubious (or even outright illegal) citations because they know that a large percentage of them will generate revenue. Indeed, even if, in some cases, citizens do successfully escape liability for the citations they are issued, the lost revenue from a few adverse administrative rulings pales in comparison to the revenue gained from the large number of citizens who do not challenge their citations in the first place.

These types of abusive practices are not merely speculative; they are real. For example, the Village of Crestwood, Illinois, has been routinely issuing red light camera tickets to motorists who fail to stop when using a divided lane to make right turns on red, even though there is no stoplight that controls the dedicated right turn lane at the intersection at issue. *See*, *Jones v. Village of Crestwood*, Case No. 17 CH 13401 (Cook County, Illinois). In other words, Crestwood has been issuing red light camera tickets to motorists for running a red light that simply does not exist. But, because most of these

tickets go uncontested, and, even where they are contested, motorists are found liable regardless, Crestwood continues to issue them.

The same is true in the Village of Stone Park, Illinois. Under Illinois law, a "municipality…may not use [a red light camera] to issue violations in instances where the motor vehicle comes to a complete stop and does not enter the intersection…even if the motor vehicle stops at a point past a stop line or crosswalk where a driver is required to stop." 625 ILCS 5/11-208.6(c-5). For this reason, a red light camera must "produce recorded images of motor vehicles entering an intersection"—which is defined, by law, as the "area within which vehicles traveling upon different roadways joining at any other angle may come in conflict" (625 ILCS 5/1-132)—"against a red signal indication." 625 ILCS 5/11-208.6(a). Yet, despite these clear statutory mandates, Stone Park has been routinely issuing red light camera tickets to motorists who pass the stop line preceding a particular intersection, even where they do not actually enter the intersection. *See, Tock v. Village of Stone Park,* Case No. 2021 CH 05781 (Cook County, Illinois). In fact, Stone Park's red light camera does not even depict vehicles entering the actual intersection, as its field of view is limited to the stop line preceding the intersection. Nevertheless, Stone Park continues to issue these tickets, and find motorists liable for them.

The final factor—and the one most relevant here—is the doctrine of exhaustion of administrative remedies, which frequently shields local governments from any meaningful judicial scrutiny into their code enforcement misconduct. Any further expansion of the exhaustion doctrine—or the curtailment of the exceptions thereto—would make it even more difficult, if not impossible,[14] for citizens to challenge these types of abuses, as it

[14] Indeed, a cunning municipality particularly devoted to misconduct could simply dismiss every single citation that was challenged, making administrative review impossible, while continuing to

would preclude legal challenges from all but the smallest sliver of citation recipients—*i.e.*, those who contest their citations, lose, and are willing to bear the substantial additional expense of seeking administrative review[15]—if any such individuals even exist.

For these reasons, it is necessary to strike a careful balance between the many important functions that the exhaustion doctrine serves and citizens' ability to challenge clear, systematic misconduct by local governments. *E.g.*, *Goral v. Dart*, 2020 IL 125085, ¶¶ 38-39 ("*Goral II*") (affirming *Goral v. Dart*, 2019 IL App (1st) 181646 ("*Goral I*")). The Appellate Court's ruling in this case strikes that balance perfectly, as it preserves the exhaustion requirement in most cases, while also recognizing that, where, and *only* where, widespread, systematic misconduct is afoot, the administrative process cannot provide a remedy. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 54-63 (noting that if, and only if, "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 [Plaintiff] or the class with the relief sought on remand," but noting that, if "the evidence fails to support a finding that the City is engaged in the 'routine practice'[] alleged, then the exhaustion doctrine will indeed apply.").

In sum, although, in the Opening Brief, the City repeatedly attempts to trivialize this lawsuit as concerning a single "run-of-the-mill" parking ticket, this case is about much more than parking tickets. Instead, the core issue in this matter is whether the Court should

collect revenue from the large number of citations that were not challenged. In such a scenario, there would be absolutely no recourse to address the misconduct.

[15] For example, in Cook County, Illinois, the filing fee for an administrative review case is $368.00, which is more than five times as much as it would cost to pay one of the Tickets at issue in this case. *See*, https://services.cookcountyclerkofcourt.org/Forms/Forms/pdf_files/CCCH0607.pdf. This does not even account for the expense associated with hiring an attorney and other related costs.

do away with one of the last remaining meaningful checks on the misuse of municipal power. For the reasons discussed herein, the Court should decline the City's invitation to do so, and hold that the exhaustion doctrine does not bar Plaintiff's claims.

II. This Case Primarily Concerns the City's Exercise of Its Police Power and Seeks to Remedy the City's Abuse Thereof.

It is also is necessary, as a preliminary matter, to discuss the common, underlying premise upon which the City's arguments are based. Specifically, in the Opening Brief, the City repeatedly mischaracterizes this case and the relief sought herein as relating to an administrative decision. However, this characterization grossly misapprehends the issues in this case, the nature of Plaintiff's claims, and the relief that he seeks.

First, as the City successfully argued in the proceedings below, it, unlike the DOAH, is 'neither an administrative agency nor a creature of statute,' but is rather a home rule municipality with broad police powers" granted by Article VII, Section 6 of the Illinois Constitution. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 27-29. In addition, although the DOAH is ultimately responsible for *adjudicating* parking tickets, it does not *issue* them; instead, parking "tickets are issued by *the City itself*, in the exercise of its police power." *Pinkston*, 2022 IL App (1st) 200957 at ¶ 28 (emphasis added). Therefore, the City's issuance of the Tickets, and then the DOAH's subsequent adjudication thereof, are separate governmental actions, undertaken by two different governmental bodies, acting pursuant to distinct sources of authority, with only the latter—*i.e.*, the DOAH's adjudication of the Tickets—involving administrative action taken by an administrative agency.[16] *See, Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 27-29.

[16] This stands in contrast to most cases implicating the exhaustion doctrine—such as those involving professional licenses, public employment, or industry regulation—wherein a single

Here, Plaintiff's primary grievance is that his Ticket was one of the over "30,000 Central Business District Tickets for vehicles[] that were parked outside of the Central Business District" that were issued as a result of "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." *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 8, 53-54 (emphasis added); Complaint, ¶¶ 15, 16, 20, C10-12. Since, as just mentioned, the City's issuance of these Tickets is a distinct act from the DOAH's adjudication thereof, the routine practice of which Plaintiff complains has nothing to do the DOAH or any administrative decision, but instead concerns the City's exercise of its police power. *See*, *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 27-29. In other words, Plaintiff's "complaint is not about how DOAH adjudicates these Tickets—it is *about the way that the City issues them*" pursuant to its police power. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 53, 61 ("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*.") (emphasis added). Therefore, insofar as Plaintiff challenges the way the Tickets were *issued* by *the City*, no administrative decision is even implicated. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 62-63 ("The factual and legal issues that must be resolved [in this case] do not 'arise from' an agency decision.").

Second, for similar reasons, the relief that Plaintiff seeks in this case is designed to remedy *the City's* systematic misuse of its police power—which was (and will continue to be) a common cause of the erroneous issuance of Central Business District Tickets—as opposed to simply invalidating any DOAH determination of liability with respect to "a

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administrative agency, acting in accordance with powers granted exclusively by statute, is responsible for both initiating, and then adjudicating the propriety of, a governmental action.

single erroneous parking ticket or even an unconnected group of such tickets." *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 54, 56. In fact, the relief sought herein is specifically intended to make the administrative process unnecessary, as the very essence of this lawsuit is to "stop the City from routinely issuing these erroneous Tickets" in the first place, "so that [Plaintiff] and the class [he] seek[s] to represent will not have to" appear before the DOAH to "defend themselves on Tickets that impose fines in excess of what is authorized by the Municipal Code." *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 54, 56, 61.

Put another way, although Plaintiff *may* have been able to escape liability for his *individual* Ticket though the administrative procedures available to him, Plaintiff "is not seeking any such individualized determination" or relief in this case. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 54, 56. Instead, Plaintiff "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[] caused." *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 54, 56. This remedy was (and is) entirely unavailable through the administrative process, as the DOAH is "tasked merely with making a finding of liability or no liability with respect to each individual ticket that comes before it," and thus, does not have the power or authority to grant a "declaration that [all] Tickets issued in accordance with [the City's routine] practice are invalid," issue "an injunction to halt the practice," or provide "restitution for those harmed by the practice," as Plaintiff seeks here. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 54 (citing Chicago Municipal Code §§ 9-100-070(d), 9-100-090(a)). Accordingly, the relief sought in this case is not, as the City claims, duplicative of the administrative remedies available to Plaintiff, but instead is targeted at

the City and its process of issuing and enforcing erroneous Central Business District Tickets *as a whole*.

III. The Exhaustion Doctrine Does Not Even Apply in This Case.

Under the doctrine of exhaustion of administrative remedies, "a party *aggrieved* by an *administrative decision* cannot seek judicial review without first pursuing all available administrative remedies." *E.g.*, *Canel v. Topinka*, 212 Ill.2d 311, 320 (2004) (emphasis added); *Poindexter v. State, ex rel. Dept. of Human Services*, 229 Ill.2d 194, 206-07 (2008); *Goral II*, 2020 IL 125085 at ¶ 37; *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill.2d 304, 308 (1989). For purposes of the exhaustion doctrine, "an administrative 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*.'" *Goral II*, 2020 IL 125085 at ¶ 37 (quoting 735 ILCS 5/3-101) (emphasis added); *Bd. of Educ. of City of Chicago v. Bd. of Trustees of Pub. Sch. Teachers' Pension & Ret. Fund of Chicago*, 395 Ill.App.3d 735, 744 (1st Dist. 2009) ("*Board of Education*").

As explained below, Plaintiff was not "aggrieved by" an "administrative decision" rendered by an "administrative agency." *E.g.*, *Goral II*, 2020 IL 125085 at ¶ 37; *Canel*, 212 Ill.2d at 320; 735 ILCS 5/3-101. Accordingly, the exhaustion doctrine does not even apply, in the first instance, to Plaintiff's claims.

First, as discussed in Section II, *supra*, Plaintiff's "complaint is not about how DOAH adjudicates the[] Tickets—it is *about the way that the City issues them*" pursuant to its police power. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 53, 61. This is an important distinction because, although the DOAH—an administrative agency—is ultimately responsible for *adjudicating* parking tickets, the City—which is *not* an administrative

agency—is responsible for issuing them. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 27-29. Therefore, Plaintiff's claims, by definition, do not implicate an "administrative decision" rendered by an "administrative agency," and the exhaustion doctrine is wholly inapplicable. *See, e.g.*, 735 ILCS 5/3-101 (defining "administrative decision" and "administrative agency"); *Goral II*, 2020 IL 125085 at ¶ 37 (noting that the exhaustion doctrine applies where "a party [is] aggrieved by an *administrative decision*") (emphasis added); *Canel*, 212 Ill.2d at 320 (same).

Second, Plaintiff was not "*aggrieved* by…'any decision, order or determination of any administrative agency rendered *in a particular case*.'" *See, e.g., Goral II*, 2020 IL 125085 at ¶ 37 (quoting 735 ILCS 5/3-101) (emphasis added); *see also*, *Canel*, 212 Ill.2d at 320. Rather, Plaintiff was aggrieved by the "*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." *Pinkston*, 2022 IL App (1st) 200957 at ¶ 53 (emphasis added).

Finally, while it is true that Plaintiff could have contested (and, in fact, did contest) his *individual* Ticket before the DOAH, it would not have provided him with the remedy he seeks in this case—namely, putting an end to the City's routine and systematic issuance of erroneous Central Business District Tickets, which continues to this day. *See*, Section II, *supra*. Accordingly, the doctrine of exhaustion of administrative remedies does not apply. *See*, *Goral II*, 2020 IL 125085 at ¶ 40 (the exhaustion doctrine applies where "the Administrative Review Law is applicable *and provides a remedy*") (emphasis added).

IV. Even If the Exhaustion Doctrine Applies in This Case, It Does Not Bar Plaintiff's Claims.

Even assuming, *arguendo*, that the exhaustion doctrine is implicated in this case, there are nevertheless several well-established exceptions thereto. For example, "it is well

settled that administrative remedies need not be exhausted where the reviewing agency is incapable of providing an adequate remedy." *E.g.*, *Pinkston*, 2022 IL App (1st) 200957 at ¶ 53 (citing *Castaneda*, 132 Ill.2d at 309); *Canel*, 212 Ill.2d at 321 (2004); *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill.2d 474, 499 (2008); *Goral I*, 2019 IL App (1st) 181646 at ¶ 30; *Sanders v. City of Springfield*, 130 Ill.App.3d 490, 493 (4th Dist. 1985). As explained below, the Appellate Court correctly held that this exception to the exhaustion doctrine applies here.

A. Administrative Proceedings Would Not Have Provided Plaintiff With the Relief He Seeks in This Case.

In the Opening Brief, the City claims that Plaintiff had an adequate administrative remedy because he could have contested his Ticket before the DOAH. Opening Brief, pp. 10-13. However, as discussed in Section II, *supra*, this argument is based on the flawed premise that Plaintiff's challenge relates to the DOAH's determination of liability, instead of the City's routine and systematic abuse of its police power.

To reiterate, although the DOAH's administrative hearing process *may* have provided Plaintiff with an opportunity to contest the validity of his *individual* Ticket, Plaintiff "is not seeking any such individualized determination" in this case. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 56. Instead, Plaintiff is asking "for the court to condemn the [City's routine] practice" of erroneously issuing Central Business District Tickets, "forbid it going forward, and redress the harm the practice has already[] caused." *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 54, 56. Therefore, 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"—was (and is) completely incapable of granting the relief that Plaintiff

seeks here. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 54 (citing Chicago Municipal Code §§ 9-100-070(d), 9-100-090(a)).

B. The Appellate Court's Decision With Respect to the Inadequacy of Remedies Was Not Premised on This Case's Status as a Putative Class Action.

The City next argues that the Appellate Court's decision runs afoul of this Court's precedent, which holds that a party may not circumvent the exhaustion doctrine simply by asserting class claims for equitable relief. Opening Brief, pp. 14-20 (citing, *inter alia*, *People ex rel. Naughton v. Swank*, 58 Ill.2d 95, 102 (1974)). While it is true that a case's status as a class action seeking equitable relief, *standing alone*, is insufficient to avoid the exhaustion doctrine, the Appellate Court's decision was not premised on this aspect of the instant lawsuit. Instead, the Appellate Court's decision was based on the fact that the DOAH was entirely incapable of providing the relief that Plaintiff seeks in this case—*i.e.*, redressing and putting an end to the City's routine and systematic abuse of its police power. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 54.

Put another way, the cases relied upon by the City stand for the entirely unremarkable proposition that there is no *independent* class action exception to the exhaustion doctrine. Instead, just like any other case, a class action must independently satisfy one the established exceptions to the exhaustion doctrine in order to avoid its application, and if not, the exhaustion doctrine applies. *Murphy v. Policemen's Annuity & Ben. Fund of City of Chicago*, 71 Ill.App.3d 556, 559 (1st Dist. 1979) (noting that the plaintiff's only argument against the application of the exhaustion doctrine was "that the administrative remedies would be time consuming and the outcome predictable," which is not an established exception); *Heidenhain Corp. v. Doherty*, 288 Ill.App.3d 852, 854 (1st Dist. 1997) (acknowledging that "if the [agency] never had subject matter jurisdiction to

consider [the plaintiff's] claim," the exhaustion doctrine would not apply, but concluding that this exception did not apply); *Midland Hotel Corp. v. Dir. of Employment Sec.*, 282 Ill.App.3d 312, 319 (1st Dist. 1996) ("None of the[] exceptions [to the exhaustion doctrine] apply in this case."); *Naughton*, 58 Ill.2d at 102 ("Nothing in the facts of [the] case that would justify" disregarding the exhaustion requirement).

Here, however, the circumstances are entirely different from those present in the cases upon which the City relies. For example, in *Naughton*, the plaintiffs' class claim for declaratory relief related to the Illinois Department of Public Aid's administrative decisions as to the date that they (and members of the putative class) qualified for public assistance. *Naughton*, 58 Ill.2d at 98-99. In other words, the *Naughton* plaintiffs' claims were little more than challenges to specific *administrative decisions* rendered by an *administrative agency* that just so happened to be brought on behalf of a putative class. *Id*.

In contrast, Plaintiff's grievance does not relate to any administrative decision or any administrative agency. *See*, Section II, *supra*. Instead, Plaintiff's claim is that *the City*, in an exercise of its *police power*, engaged (and continues to engage) in a routine practice of erroneously issuing Central Business District Tickets to vehicles parked outside the Central Business District, and that he was harmed (and will likely be harmed in the future) as a result. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 8; Complaint, ¶¶ 15, 16, 20, C10-12. Since the DOAH could not remedy this harm, or stop it from occurring in the future, the Appellate Court held that the exhaustion doctrine did not apply. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 53. It was *these* aspects of this lawsuit, as opposed to the fact that Plaintiff asserts his claims on a classwide basis, that led to the Appellate Court's decision. *Pinkston*,

2022 IL App (1st) 200957 at ¶¶ 56-63. Therefore, the Appellate Court's holding is entirely consistent with existing precedent on this point.

C. The Appellate Court's Decision With Respect to the Inadequacy of Remedies Is Consistent With Controlling Precedent.

The City's argument that the Appellate Court's decision runs afoul of existing precedent continues with a discussion of the decisions in *Midland Hotel* and *Board of Education*. Opening Brief, pp. 21-27 (citing, *inter alia*, *Midland Hotel*, 282 Ill.App.3d at 313-318; *Board of Education*, 395 Ill.App.3d at 744). Once again, however, the City's argument fails.

First, although the *Midland Hotel* plaintiff claimed that it was contesting "an ongoing, continuing, persistent course of unlawful conduct in excess of [an agency's] jurisdiction and authority," a simple review of that decision makes clear that the true relief sought was to invalidate a decision rendered in *prior* administrative proceedings against it. *Midland Hotel*, 282 Ill.App.3d at 318-19. In other words, the *Midland Hotel* plaintiff's request for injunctive relief was little more than an improper collateral attack on a prior administrative review decision, and was rejected accordingly. *Midland Hotel*, 282 Ill.App.3d at 318 ("In order for Midland to prevail in this appeal, we would necessarily have to find error in the circuit court's judgment in the administrative review case…That we will not do."); *see also*, *Pinkston*, 2022 IL App (1st) 200957 at ¶ 59 (reiterating that, in *Midland Hotel*, the court primarily "affirmed the dismissal of the chancery complaint on grounds of res judicata and collateral estoppel," despite noting in passing that an "administrative review judgment cannot be avoided by bringing a subsequent class action").

Nevertheless, the City claims that the holding is *Midland Hotel* is instructive here because "in this context, collateral attack and failure to exhaust are two sides of the same coin." Opening Brief, p. 23. Once again, however, this argument is based on the flawed premise that the only relief Plaintiff seeks is the invalidation of his *individual* Ticket, when, in reality, Plaintiff seeks to redress to the City's widespread practice of improperly issuing Tickets more generally, which is relief that could not have been granted by the DOAH. *See*, Section II, *supra*. This stands in contrast to *Midland Hotel*, wherein the plaintiff was, in a collateral proceeding, asking for the exact same relief that it had previously requested (and could have been granted) in proceedings before the administrative agency. *Midland Hotel*, 282 Ill.App.3d at 320-21. Therefore, the Appellate Court correctly distinguished *Midland Hotel*.

Second, according to the City, the Appellate Court should have ignored the decision in *Board of Education* because that case involved pensions, whereas this case does not. Opening Brief, pp. 25-26. However, the portion of the *Board of Education* decision upon which the Appellate Court relied related to statutory interpretation and what types of administrative actions fall within the scope of the Administrative Review Law, which is an issue that is not unique to pensions. *Pinkston*, 2022 IL App (1st) 200957 at ¶¶ 55-56 (discussing *Board of Education*, 395 Ill.App.3d at 744). In other words, the Appellate Court treated *Board of Education* like any precedent should be treated—as an analogue—and properly drew its conclusions from the legal rationale employed therein. This was entirely proper.

D. The Appellate Court's Decision Is Entirely Consistent with the Purposes of the Exhaustion Doctrine.

The City also argues that the Appellate Court's decision contravenes the underlying purposes of the exhaustion doctrine. Opening Brief, pp. 27-31. This argument is without merit.

First, one purpose of the exhaustion doctrine is to give "an agency an opportunity to correct its own mistakes." *Goral II*, 2020 IL 125085 at ¶ 38. However, requiring Plaintiff to exhaust his administrative remedies would not satisfy this goal, as the "mistake"—if something that occurs more than 30,000 times over the course a decade can be called one—was not the DOAH's mistake, but was instead the City's mistake. Indeed, as noted above, it is *the City* that was responsible for issuing the Tickets; the DOAH was merely responsible for adjudicating them. *See*, Section II, *supra*.

Moreover, the sheer number of Tickets issued by the City—over 30,000 between 2013 and May 14, 2018 alone[17]—the fact that those Tickets were issued citywide—from the City's northernmost boundary to its southernmost boundary, and from Lake Michigan to the City's westernmost boundary—and the City's continued issuance of improper Tickets *after* this practice came to light in the media, all demonstrate the City's indifference towards attempting to correctly issue the Tickets. (Complaint, ¶¶ 15, 20, 23, C10-13). Given this background, and the imbalance of incentives discussed in Section I, *supra*, it is utterly absurd to think that a single administrative challenge would have caused the City to change the widespread practice Plaintiff seeks to redress in this case.

[17] To be clear, Plaintiff is not suggesting that the City stopped issuing erroneous Central Business District Tickets on May 14, 2018. May 14, 2018 is simply the ending date of the Dataset referenced in the Complaint.

Second, the City also claims that requiring exhaustion would allow the DOAH to "develop a factual record [and] utilize its expertise." Opening Brief, pp. 27. This contention is ironic, given that Plaintiff did, in fact, challenge his Ticket before the DOAH, and *still* was found liable, even though his Ticket made unequivocally clear that Plaintiff was *not* parked within the City's Central Business District. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 41. Clearly, the DOAH is not interested in scrutinizing a factual record or utilizing any expertise, and the City should not be permitted to rely on that as a rationale as to why the exhaustion doctrine should apply.

Third, the City's claims that the Appellate Court's decision will lead to a cavalcade of litigation is simply unfounded. Opening Brief, pp. 29-30. There is nothing new or particularly novel about the Appellate Court's decision that would prompt such a concern; it simply applied a long-standing exception to the exhaustion doctrine that has existed for over 30 years. *See*, *Castaneda*, 132 Ill.2d at 309 (recognizing the inadequate remedies exception to the exhaustion doctrine). Moreover, even to the extent that the Appellate Court's application of this exception expands its scope, any such expansion would be extremely limited. Indeed, the only circumstances where the type of routine, systemic practice at issue here would occur would be where a local government engages in either deliberate malfeasance or, at the very least, reckless indifference. Both of these circumstances demonstrate precisely why this narrow exception to the exhaustion doctrine should be recognized.

Finally, as discussed in Section I, *supra*, the use of aggressive municipal code enforcement for the purpose of raising revenue, and the negative consequences associated therewith, are well-documented. The narrow exception recognized by the Appellate Court

ensures that municipalities will responsibly wield the tremendous power they have to promulgate and enforce local ordinances by providing citizens with a check against abuses thereof. Accordingly, the Court should refuse to grant the City unlimited power it seeks.

V. The Appellate Court Correctly Concluded That Issues Related to the Voluntary Payment Doctrine Could Not Be Resolved on a Motion to Dismiss.

With respect to the voluntary payment doctrine, both the Appellate Court and the Circuit Court concluded that questions of fact preclude dismissal of this case at this time. *Pinkston*, 2022 IL App (1st) 200957, ¶ 66. This conclusion was also correct.

First, it is unclear whether Plaintiff actually had knowledge of all relevant facts—such as where he parked his car and what provision of the Code he was charged with violating—when he paid his Ticket. For example, although Plaintiff's Ticket (presumably) alleges a violation of Chi. Mun. Code. § 9-64-190(b) by displaying "CODE: 0964190B" on its face, whether Plaintiff actually understood this notation to refer to the provision of the Code allegedly violated is a question of fact that must be resolved. (Plaintiff's Ticket, C95). Indeed, Plaintiff may have believed that the word "CODE" followed by various numbers and letters could have referred to an internal processing code to be used by the City, or that it was a reference number to use when contesting and/or paying the Ticket.

Similarly, while Plaintiff may have known where is vehicle was parked *at the time he parked it*, Plaintiff did not pay his Ticket until several months later, after the DOAH entered a finding of liability. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 41. As lampooned in the episode of the television show *Seinfeld* entitled "The Parking Garage," individuals frequently forget precisely where they parked their vehicles, even shortly after parking. The Parking Garage, *Seinfeld*, Season 3, Episode 6 (October 30, 1991). As such, it is not

unreasonable to believe that Plaintiff could no longer remember precisely where his vehicle was parked at the time he paid his Ticket several months later.

The fact that Plaintiff's Ticket reflected a disjunction between where Plaintiff's car was alleged to have been located and the Code provision allegedly violated was also a source for confusion. Plaintiff may have known that *something* on his Ticket was incorrect, but it could have been *either* the alleged location of his vehicle *or* the Code provision allegedly violated. If Plaintiff assumed that he was, in fact, parked within the City's Central Business District, despite his Ticket stating that he was not, he would not have had a basis to honestly and truthfully challenge his Ticket on the grounds that he was not parked within the City's Central Business District. In other words, Plaintiff may have mistakenly believed that he *was* liable for a violation of Chi. Mun. Code. § 9-64-190(b), and paid the associated fine based on that incorrect factual understanding.

Moreover, Defendant's contention that Plaintiff should be charged with the knowledge of precisely where he parked, and the precise boundaries of the City's Central Business District, is particularly ironic, given that not even the City's own parking enforcement officer could correctly ascertain this information *at the time Plaintiff's Ticket was issued.* Under these circumstances, it simply cannot be presumed that Plaintiff had full and correct knowledge of all the relevant facts pertaining to his Ticket at the time he paid it.

Second, even if Plaintiff did have knowledge of the facts relevant to the payment of his Ticket, the voluntary payment doctrine does not apply if payment was made under duress or compulsion. *Getto v. City of Chicago*, 86 Ill.2d 39, 48-55 (1981). The issue of

duress is generally a question of fact. *Midwest Med. Records Ass'n, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶ 39.

In determining whether payment is made under duress, the main consideration is whether the party had a choice or option, *i.e.*, whether there was "some actual or threatened power wielded over the payor from which he has no immediate relief and from which no adequate opportunity is afforded the payor to effectively resist the demand for payment." *Brown*, 2018 IL App (1st) 163230 at ¶ 28 (citations omitted).

Notably, a plaintiff does not have to plead an actual threat; implied duress is sufficient. *King v. First Capital Fin. Servs. Corp.*, 215 Ill.2d 1, 31 (2005); *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 24 (2004). Indeed, Illinois courts have routinely rejected application of the voluntary payment doctrine—even in the absence of any formal "protest"—when detrimental consequences would result from the refusal to pay. *Brown*, 2018 IL App (1st) 163230 at ¶ 39 (finding duress where plaintiffs alleged that they paid the filing fees because nonpayment would have resulted in loss of access to a necessary good or service, *i.e.*, access to the courts to challenge adverse judgments entered against them); *Getto*, 86 Ill.2d at 51 ("[T]he implicit and real threat that phone service would be shut off for nonpayment of charges amounted to compulsion that would forbid application of the voluntary-payment doctrine."); *Raintree Homes, Inc. v. Vill. of Long Grove*, 389 Ill.App.3d 836, 864 (2nd Dist. 2009) (finding that payment to secure building permits was paid under duress); *Terra-Nova Investments v. Rosewell*, 235 Ill.App.3d 330, 336 (1st Dist. 1992) (finding compulsion or duress where plaintiff was confronted with the choice of payment of the sheriff's fees or the sheriff's refusal to issue to plaintiff the certificate of purchase of a parcel of property at a scavenger tax sale); *W. Suburban Hosp. Med. Ctr. v. Hynes*, 173 Ill.App.3d 847, 856 (1st

Dist. 1988) (holding that voluntary payment did not bar the refund claim of a taxpayer, who had paid the redemption price following an erroneous tax sale of its property, where it "was threatened with an imminent and substantial increase in interest, or worse, the loss of its property").

Here, Plaintiff alleges that he paid the fine imposed in connection with his Ticket under duress. (Complaint, ¶¶ 18, 27, C11-13). In support of that allegation, Plaintiff notes that, under the Code, he could have been subjected to late payment fees, interest, the immobilization of his vehicle, the suspension of his driver's license, liens imposed on his personal property, and other costs associated with the City's debt collection attempts (*e.g.*, attorneys' fees and court costs). (Complaint, ¶ 18, C11-12) (citing Chi. Mun. Code. §§ 2-14-103 (providing for a judgment lien against the respondent for an unpaid fine, and providing that the City can obtain attorney's fees and court costs to collect a fine), 2-14-104 (provides for interest on any debt due and owing), 9-100-050(e) (late payment fees), 9-100-100(b) (failure to pay fines or penalties may result in immobilization of the person's vehicle or suspension of the person's driver's license), 9-100-120 (vehicle immobilization program)).

While it is true that Plaintiff could have challenged his Ticket on administrative review without being subjected to these consequences (Chi. Mun. Code. § 9-100-100(a)), Plaintiff's decision regarding whether to pursue administrative review is *not* at issue; the issue is Plaintiff's decision to pay the Ticket. Simply put, had Plaintiff not paid his Ticket, these consequences would have attached. Accordingly, these allegations, at the very least, establish a triable issue of fact as to whether Plaintiff paid his Ticket under duress. *Pinkston*, 2022 IL App (1st) 200957 at ¶ 66.

CONCLUSION

For the foregoing reasons, this Court should affirm the Appellate Court's decision in its entirety, and remand the matter to the Circuit Court for further proceedings in accordance with this Court's ruling.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 31 pages.

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

PROOF OF SERVICE

I, Thomas A. Zimmerman, Jr., an attorney, certify under penalties provided by law pursuant to 735 ILCS 5/1-109 that on June 21, 2023, I served a true and correct copy of the foregoing *Brief of Plaintiff-Appellee*, via Odyssey eFileIL, to the following recipients:

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[X] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth in this instrument are true and correct.

No. 128575

IN THE SUPREME COURT OF ILLINOIS

ALEC PINKSTON,

Plaintiff-Appellee,

v.

CITY OF CHICAGO,

Defendant-Appellant.

Appeal from the Appellate Court of Illinois, First District
Case No. 1-20-0957

There Heard on Appeal from the Circuit Court of Cook County,
Case No. 2019 CH 12364
The Honorable Caroline K. Moreland, Judge Presiding

APPENDIX
to
BRIEF OF PLAINTIFF-APPELLEE

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APPENDIX

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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: 2233
Judge Caroline Kate Moreland

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

ALEC PINKSTON, individually, and on behalf of all others similarly situated, Plaintiff,	)	
v.	)	No. 2019CH12364
CITY OF CHICAGO, Defendant.	)	Jury Trial Demanded

CLASS ACTION COMPLAINT

Plaintiff ALEC PINKSTON ("Plaintiff"), individually, and on behalf of all others similarly situated, by and through counsel at ZIMMERMAN LAW OFFICES, P.C., brings this action against Defendant CITY OF CHICAGO ("Defendant" or "City"), as follows:

Parties

1. At all relevant times, Plaintiff was a resident and citizen of Illinois.

2. At all relevant times, Defendant was an Illinois municipal corporation located in Cook County, Illinois.

Jurisdiction and Venue

3. Jurisdiction over Defendant is proper under 735 ILCS 5/2-209(a)(1) (transaction of any business within the state), 735 ILCS 5/2-209(a)(12) (corporation organized under the laws of this state or having its principal place of business in the state), and 735 ILCS 5/2-209(c) (any other basis now or hereafter permitted by the Illinois Constitution or the Constitution of the United States).

4. Venue is proper in this County, pursuant to 735 ILCS 5/2-101 and 735 ILCS 5/2-103, because Defendant is a resident of Cook County and because the transactions at issue in this case occurred in this County.

Factual Allegations

5. Title 9, Chapter 64 of the Municipal Code of Chicago ("Code") establishes various restrictions as to where, when, and how long vehicles may be parked in the City. One such provision of the Code permits the City Council to create and designate "parking meter zones" throughout the City. Chi. Mun. Code. § 9-64-200.

6. As defined by the Code, a "parking meter zone" is "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." Chi. Mun. Code. § 9-4-010.

7. As defined by the Code, a "parking meter" is "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," provides a vehicle owner with a printed or electronic receipt or which contains a display that "show[s] 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." Chi. Mun. Code. § 9-4-010.

8. Relevant to this issues in this case, Section 9-64-190(a) of the Code makes it "unlawful to park any vehicle in a designated parking meter zone or space" for any period of time exceeding the amount of time purchased from the corresponding parking meter.

9. Pursuant to Section 9-100-020(a) of the Code, "the violation of any provision of the traffic code prohibiting or restricting vehicular standing or parking…shall be a civil offense punishable by fine."

10. Most violations of the metered parking restrictions set forth in Section 9-64-190 of the Code are subject to a $50 fine. Chi. Mun. Code. § 9-100-020(b) (citing Chi. Mun. Code. § 9-64-190(a)). However, pursuant to Section 9-64-190(b) of the Code, a violation of the metered parking restrictions set forth in Section 9-64-190 of the Code which occurs *within* the City's "Central Business District" is subject to a $65 fine. Chi. Mun. Code. § 9-100-020(b) (citing Chi. Mun. Code. § 9-64-190(b)).

11. Section 9-4-010 of the Code defines the City's "Central Business District" as "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." A map outlining the City's Central Business District is included below:

12. Based on the foregoing, when a vehicle is ticketed for being parked in violation of Section 9-64-190 of the Code in a parking meter zone located *outside* of the Central Business District, the violation stated on the ticket is supposed to read "Expired Meter Non-Central Business District," and the fine amount is supposed to be $50. In contrast, when a vehicle is ticketed for being parked in violation of Section 9-64-190 of the Code in a parking meter zone located *within* the Central Business District, the violation stated on the ticket is supposed to read "Expired Meter Central Business District," and the fine amount is supposed to be $65 ("Central Business District Tickets").

13. According to a May 14, 2019 news article posted by CBS Chicago, Matt Chapman ("Chapman"), a "self-described data geek" analyzed a dataset published by ProPublica which contains information regarding parking tickets issued by the City of Chicago ("Dataset").[1]

14. That "Dataset provides details on all parking and vehicle compliance tickets issued in Chicago from January 1, 1996 to May 14, 2018."[2] The data within the Dataset "includes information on when, where, and by whom tickets were issued; de-identified license plates; vehicle make; registration zip code; the violation for which the vehicle was cited; the payment status and more."[3] ProPublica also "added block-level address information to the location where a ticket was issued."[4]

15. After analyzing the Dataset, Chapman discovered that "from 2013 to 2018 the City issued 30,001 [Central Business District Tickets] outside the Central Business District."[5]

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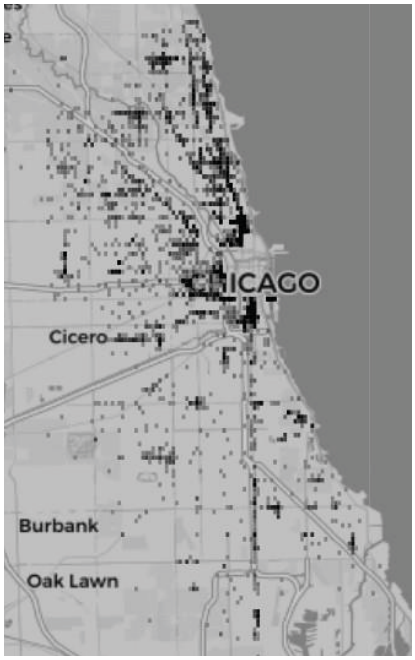
[1] CBS Chicago, *City Overcharging for Thousands of Expired Meter Parking Tickets*, available at: https://chicago.cbslocal.com/2019/05/14/expired-parking-meter-tickets-overbilled-overcharged/.
[2] ProPublica, *City of Chicago Parking and Camera Ticket Data*, available at: https://www.propublica.org/datastore/dataset/chicago-parking-ticket-data.
[3] *Id.*
[4] *Id.*
[5] CBS Chicago, *City Overcharging for Thousands of Expired Meter Parking Tickets*, available at: https://chicago.cbslocal.com/2019/05/14/expired-parking-meter-tickets-overbilled-overcharged/.

Chapman also used the Dataset to create a map of each Central Business District Ticket that was issued outside the Central Business District.[6] That map is included below:



16. Based on the foregoing, the City has a routine practice of issuing Central Business District Tickets to vehicles parked outside of the City's Central Business District. These erroneously issued Central Business District Tickets were facially invalid because they alleged violations of Section 9-64-190(b) of the Code which did not actually occur.

17. Many vehicle owners such as Plaintiff and members of the Class (defined below) were issued Central Business District Tickets despite the fact that their vehicles were not located within the City's Central Business District. As a result, Plaintiff and members of the Class were (and are) subject to fines in connection with violations of the Code which they did not commit. Chi. Mun. Code. § 9-100-020(b) (citing Chi. Mun. Code. § 9-64-190(b)).

18. In addition to the fines imposed in connection with the Central Business District Tickets they received, Plaintiff and members of the Class could have been, or were, subjected to

[6] Matt Chapman, *Chicago Parking Ticket Visualization*, available at: https://mchap.io/.

late payment fees, interest, the immobilization of their vehicles, the suspension of their driver's licenses, liens imposed on their personal property, and other costs associated with the City's debt collection attempts (*e.g.*, attorneys' fees and court costs). Chi. Mun. Code. §§ 2-14-103, 2-14-104, 9-100-050(e), 9-100-100(b), 9-100-120. Due to these potential consequences, Plaintiff and members of the Subclass (defined below) paid the fines associated with their Central Business District Tickets under duress. *Midwest Med. Records Ass'n, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶ 29, n. 3 (citing, *inter alia*, *Keating v. City of Chicago*, 2013 IL App (1st) 112559-U, ¶¶ 69, 71, 75).[7]

19. Accordingly, Plaintiff, individually, and on behalf of the Class, seeks a declaration that all such improperly issued Central Business District Tickets are invalid, and recovery of the amounts that they paid to the City in connection with these invalid Central Business District Tickets.

20. Despite the fact that the City's practice of erroneously issuing Central Business District Tickets to vehicles that were parked outside of the City's Central Business District came to light in early 2018, the City continues to improperly issue these invalid Central Business District Tickets.

21. As vehicle owners who will continue to drive and park their vehicles within the City but outside of the City's Central Business District, Plaintiff and members of the Class are at risk of receiving improper Central Business District Tickets in the future.

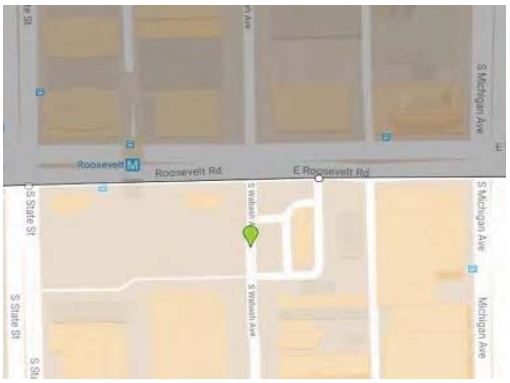
[7] In *Keating*, the Illinois Appellate Court determined that the same provisions of the Code cited above were sufficient to establish that the plaintiffs paid traffic tickets issued to them by the City under duress. *Keating*, 2013 IL App (1st) 112559-U at ¶ 69-73, 78. Although *Keating* is an unpublished opinion, it was referenced, described, and relied upon in *Brown*, which is a published opinion upon which this Court may rely. In addition, pursuant to Illinois Supreme Court Rule 23(e)(1), unpublished opinions may be cited for purposes of collateral estoppel. Since the City was a party in *Keating*, and the *Keating* court rendered a decision on the merits on an identical issue—*i.e.*, whether the same provisions of the Code were sufficient to establish payment under duress— this Court may rely upon *Keating* directly.

22. Accordingly, Plaintiff, individually, and on behalf of the Class, seeks 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.

Facts Related to Plaintiff

23. On May 21, 2019, Plaintiff parked his vehicle in a parking meter zone located at or near 1216 South Wabash Avenue *i.e.*, on Wabash Avenue, south of Roosevelt Road.

24. 1216 South Wabash Avenue is located outside the City's Central Business District, as the southern limit of the Central Business District ends at Roosevelt Road. Chi. Mun. Code. § 9-4-010. A map of the southern limit of the Central Business District (shaded) in relation to where Plaintiff's vehicle was parked (marker) is included below:



25. Despite the fact that Plaintiff's vehicle was parked outside of the Central Business District on May 21, 2019, Plaintiff received a Central Business District Ticket ("Plaintiff's Ticket").

26. As a result of Plaintiff's Ticket, Plaintiff was subjected to a $65 fine for a violation of Chi. Mun. Code. § 9-64-190(b) which he did not commit. Chi. Mun. Code. § 9-100-020(b).

27. On July 11, 2019, Plaintiff paid the $65 fine in connection with Plaintiff's Ticket. For the reasons stated above, Plaintiff did so under duress.

Class Allegations

28. **Class Definition**: Plaintiff brings this action pursuant to 735 ILCS 5/2-801, on behalf of a class of similarly situated individuals and entities (the "Class"), defined as follows:

> All persons and entities who were issued a Central Business District Ticket when their vehicles were parked outside of the City's Central Business District.

Excluded from the Class are: (1) Defendant, Defendant's agents; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Class; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

29. **Subclass Definition:** Plaintiff also brings this action pursuant to 735 ILCS 5/2-801, on behalf of a subclass of similarly situated individuals and entities (the "Subclass"), defined as follows:

> All persons and entities who were issued a Central Business District Ticket when their vehicles were parked outside of the City's Central Business District, and who paid a fine, penalty, and/or interest thereon.

Excluded from the Subclass are: (1) Defendant, Defendant's agents; (2) the Judge to whom this case is assigned and the Judge's immediate family; (3) any person who executes and files a timely request for exclusion from the Subclass; (4) any persons who have had their claims in this matter finally adjudicated and/or otherwise released; and (5) the legal representatives, successors and assigns of any such excluded person.

30. **Numerosity**: Upon information and belief, the Class is comprised of tens of thousands of individuals, and is so numerous that joinder of all members of the Class is impracticable. While the exact number of Class members is presently unknown and can only be ascertained through discovery, Plaintiff believes there are tens of thousands of Class members based upon the fact that the City issued approximately 6,000 erroneous and invalid Central Business District Tickets per year between 2013 and 2018.[8] Class members can be easily identified through Defendant's records or other means because each Central Business District

[8] CBS Chicago, *City Overcharging for Thousands of Expired Meter Parking Tickets*, available at: https://chicago.cbslocal.com/2019/05/14/expired-parking-meter-tickets-overbilled-overcharged/.

Ticket contains specific information regarding the vehicle to which it was issued. Chi. Mun. Code. § 9-64-220(b).

31. **Commonality and Predominance**: There are several questions of law and fact common to Plaintiff's and Class members' claims which predominate over any individual issues, including:

a. Whether Central Business District Tickets issued to vehicles parked outside of the City's Central Business District are facially invalid;

b. Whether Defendant was unjustly enriched as a result of its conduct; and

c. Whether, and to what extent, Plaintiff and members of the Class were damaged as a result of Defendant's conduct alleged herein.

32. **Adequacy of Representation**: Plaintiff will fairly and adequately represent and protect the interests of the Class, and has retained counsel competent and experienced in complex class actions. Plaintiff has no interest antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff. The questions of law and fact common to the proposed Class members predominate over any questions affecting only individual Class members.

33. **Appropriateness**: A class action is an appropriate method for the fair and efficient adjudication of the controversy. Plaintiff's claims are typical of the claims of the proposed Class, as Defendant engaged in uniform conduct of erroneously issuing Central Business District Tickets to vehicles which were not parked within the City's Central Business District. As such, all claims are based on the same legal and factual issues.

34. A class action is also superior to other available methods for the fair and efficient adjudication of this controversy, as the expense and burden of individual litigation would make it impracticable or impossible for proposed Class members to prosecute their claims individually. The trial and the litigation of Plaintiff's and Class members' claims are manageable.

35. Unless a class is certified, Defendant will retain monies received as a result of its conduct that was wrongfully taken from Plaintiff and Class members.

36. Moreover, Defendant has acted and refused to act on grounds generally applicable to the proposed Class, making appropriate final injunctive relief with respect to the proposed Class as a whole.

COUNT I
Declaratory Judgment
(On behalf of Plaintiff, the Class, and the Subclass)

37. Plaintiff repeats and realleges Paragraphs 1-36 with the same force and effect as though fully set forth herein.

38. At all relevant times there was in full force and effect the Illinois Declaratory Judgment Act, 735 ILCS 5/2-701. Section 5/2-701(a) provides, in relevant part, "The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments . . . including a . . . determination of the rights of interested parties." 735 ILCS 5/2-701(a).

39. Plaintiff, individually, and on behalf of the Class, is seeking a judgment declaring that all Central Business District Tickets issued to vehicles parked outside of the City's Central Business District are facially invalid, and therefore, all such citations are void and unenforceable.

40. Plaintiff and Class members have a legally tangible interest in being free from receiving invalid Central Business District Tickets which allege violations of the Code that they did not commit, as well as the corresponding consequences and obligations associated with those invalid Central Business District Tickets. Plaintiff and Subclass members also have a legally tangible interest in the money they paid to Defendant in connection with the invalid Central Business District Tickets they received, including the fines, penalties, and interest thereon.

41. Defendant is opposed to Plaintiff's and Class members' interests because it issued invalid Central Business District Tickets to Plaintiff and Class members, collected money from Plaintiff and Subclass members through fines, penalties, and interest thereon, and continues to issue invalid Central Business District Tickets to vehicle owners parked outside the City's Central Business District.

42. Accordingly, an actual controversy exists between the parties because Defendant issued invalid Central Business District Tickets to Plaintiff and Class members.

WHEREFORE, Plaintiff ALEC PINKSTON, individually, and on behalf of the Class and Subclass, prays for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or Subclass defined herein;

B. Designating Plaintiff as representative of the Class and/or Subclass and his undersigned counsel as Class Counsel;

C. Entering judgment in favor of Plaintiff and the Class and/or Subclass and against Defendant;

D. Declaring that all Central Business District Tickets issued to vehicles parked outside of the City's Central Business District are facially invalid, and therefore, all such citations are void and unenforceable;

E. Awarding Plaintiff and the Class and/or Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT II
Injunctive Relief
(On behalf of Plaintiff, the Class, and the Subclass)

43. Plaintiff repeats and realleges Paragraphs 1-36 with the same force and effect as though fully set forth herein.

44. At all relevant times complained of herein, there existed in full force and effect certain statutes that provide for injunctions. *See*, 735 ILCS 5/11-101; 735 ILCS 5/11-102.

45. Plaintiff seeks an injunction to preserve the status quo and prevent further harm to Plaintiff and Class members by enjoining Defendant from issuing Central Business District Tickets issued to vehicles parked outside of the City's Central Business District.

46. Due to the fact that Defendant continues to erroneously issue Central Business District Tickets to vehicles parked outside of the City's Central Business District, and because Plaintiff and members of the Class will continue to drive and park their vehicles within the City but outside of the City's Central Business District, Plaintiff and Class members are at risk of receiving improper Central Business District Tickets in the future.

47. Plaintiff and Class members will suffer irreparable harm if an injunction is not granted. The substantial, immediate, and continuing harm includes, but is not limited to, administrative adjudication, the collection of fines, penalties, and interest thereon, the threat of vehicle seizure and/or immobilization, revocation of their driver's licenses, debt collection, notification to credit bureaus, liens, or garnishments. As such, Plaintiff and Class members would suffer irreparable harm in the loss of property, damage to their credit scores, threats of collection actions, loss of their vehicles and/or driver's licenses, and other harms.

48. Plaintiff and Class members do not have an adequate remedy at law to prevent the irreparable harms. The wrongs complained of herein are continuous in nature, as the City continues to issue Central Business District Tickets to vehicles parked outside of the City's Central Business District.

49. Plaintiff and Class members have a clearly ascertainable right to their property, and to be free from the imposition of invalid fines.

50. Enforcement of the requested injunction is feasible. The Court can easily determine whether Defendant has issued any Central Business District Tickets to vehicles parked outside of the City's Central Business District, as all parking tickets issued by the City are required to specify "the particular parking regulation allegedly violated…and the place, date, time and nature of the alleged violation." Chi. Mun. Code. § 9-64-220(b).

51. The hardship on Defendant is slight compared to the potential harm that Plaintiff and Class members may suffer. Defendant may still issue tickets for parking violations, but simply must refrain from issuing Central Business District Tickets to vehicles parked outside of the City's Central Business District.

WHEREFORE, Plaintiff ALEC PINKSTON, individually, and on behalf of the Class and Subclass, prays for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Class and/or Subclass defined herein;

B. Designating Plaintiff as representative of the Class and/or Subclass and his undersigned counsel as Class Counsel;

C. Entering judgment in favor of Plaintiff and the Class and/or Subclass and against Defendant;

D. Mandatorily enjoining Defendant from issuing Central Business District Tickets to vehicles parked outside of the City's Central Business District;

E. Awarding Plaintiff and the Class and/or Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further and other relief as the Court deems just and appropriate.

COUNT III
Unjust Enrichment
(On behalf of Plaintiff and the Subclass)

52. Plaintiff repeats and realleges Paragraphs 1-36 with the same force and effect as though fully set forth herein.

53. Plaintiff and Subclass members received Central Business District Tickets despite the fact that their vehicles were parked outside of the City's Central Business District.

54. Defendant has unjustly received and retained a benefit at the expense of Plaintiff and the Subclass because Defendant unlawfully collected money, in the form of fines, penalties, and interest thereon, from Plaintiff and Subclass members in connection with its void and invalid Central Business District Tickets.

55. Defendant acquired and retained money belonging to Plaintiff and Subclass members as a result of wrongful conduct: *i.e.*, imposing fines, penalties, and interest thereon on Plaintiffs and Subclass members through the issuance of invalid Central Business District Tickets. As such, Plaintiff and Subclass members suffered damages as a direct result of Defendant's conduct.

56. Defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience because the Central Business District Tickets it issued to Plaintiff and Subclass members were invalid and falsely alleged that Plaintiff and Subclass members violated Section 9-100-020(b) of the Code when, in fact, they had not.

57. Under the principles of equity, Defendant should not be allowed to keep the money belonging to Plaintiff and Subclass members because Defendant has unjustly received it as a result of Defendant's unlawful actions described herein.

58. Plaintiff, individually and on behalf of the Subclass, seeks disgorgement and restitution for Defendant's unlawful conduct, as well as interest and attorneys' fees and costs.

WHEREFORE, Plaintiff ALEC PINKSTON, individually, and on behalf of the Subclass, prays for an Order as follows:

A. Finding that this action satisfies the prerequisites for maintenance as a class action set forth in 735 ILCS 5/2-801, *et seq.*, and certifying the Subclass defined herein;

B. Designating Plaintiff as representative of the Subclass and his undersigned counsel as Class Counsel;

C. Entering judgment in favor of Plaintiff and the Subclass and against Defendant;

D. Disgorging and refunding all of the money for fines, penalties, and interest paid by Plaintiff and the Subclass in connection with invalid Central Business District Tickets that were issued outside of the Central Business District;

E. Awarding Plaintiff and the Subclass attorneys' fees and costs, including interest thereon, as allowed or required by law; and

F. Granting all such further and other relief as the Court deems just and appropriate.

JURY DEMAND

Plaintiff demands a trial by jury on all counts so triable.

Plaintiff ALEC PINKSTON, individually, and on behalf of all others similarly situated,

By: Thomas A. Zimmerman, Jr.

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Hearing Date: 1/15/2020 10:00 AM - 10:00 AM
Courtroom Number:
Location:

FILED
1/3/2020 11:05 AM
DOROTHY BROWN
CIRCUIT CLERK
COOK COUNTY, IL
2019CH12364

7928756

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

Alec PINKSTON, Plaintiff, v. CITY OF CHICAGO, Defendant.	Case No. 2019-ch-12364 Honorable Caroline Kate Moreland Calendar 10

DEFENDANT CITY OF CHICAGO'S SECTION 2-619 MOTION TO DISMISS THE COMPLAINT

Defendant City of Chicago (the "City"), by its attorney, Mark A. Flessner, Corporation Counsel for the City of Chicago, respectfully moves the Court under Section 2-619 of the Illinois Code of Civil Procedure for an order dismissing Plaintiff's Complaint in its entirety. The City incorporates its memorandum of law filed herewith, and respectfully states as follows:

1. A section 2-619 motion seeks dismissal of a claim when "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.

2. The City provides for heightened parking meter violation fines in the City's Central Business District. See Municipal Code of Chicago ("MCC") § 9-64-190(b).

3. Plaintiff alleges in the Complaint that the City has a practice of issuing these higher-fine violations to vehicles parked outside of the Central Business District, and that Plaintiff received such a ticket in May of 2019.

4. Plaintiff admits in the Complaint that he paid the ticket rather than administratively contest it. Compl. ¶ 27.

5. The Complaint should be dismissed because Plaintiff admits that he paid his ticket, rather than challenging his ticket administratively. The only jurisdiction this Court may exercise to review administrative determinations like a parking meter ticket is through the process set forth in the Administrative Review Law. Because Plaintiff has not sought review via that procedure and could not, since he elected to pay and not challenge his ticket the Court has no jurisdiction to entertain this collateral action.

6. Plaintiff's claim should also be dismissed under the voluntary payment doctrine. Because Plaintiff paid his fine without challenging it, he is barred under that doctrine from seeking review now in this Court.

CONCLUSION

WHEREFORE, the City respectfully requests that the Court dismiss Plaintiff's Complaint with prejudice and grant such further relief as it deems just and proper.

Date: January 3, 2020

Respectfully submitted,

MARK A. FLESSNER,
Corporation Counsel for the City of Chicago

By: /s/ *Bradley G. Wilson*

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Attorneys for Defendant

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

ALEC PINKSTON, individually, and on behalf of all others similarly situated,	)	
Plaintiff,	)	
v.	)	No. 19 CH 12364
CITY OF CHICAGO,	)	
Defendant.	)	

PLAINTIFF'S RESPONSE TO DEFENDANT CITY OF CHICAGO'S
SECTION 2-619 MOTION TO DISMISS THE COMPLAINT

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Counsel for the Plaintiff and the putative Class

I. INTRODUCTION.

Plaintiff ALEC PINKSTON ("Plaintiff"), individually, and on behalf of all others similarly situated, filed a Class Action Complaint ("Complaint") in the Circuit Court of Cook County, Illinois against the CITY OF CHICAGO ("Defendant" or "City") alleging that the City improperly issued expired parking meter tickets pursuant to Section 9-64-190(b) of the Municipal Code of Chicago ("Code") for violations that occur *within* the City's "Central Business District" ("Central Business District Tickets") to vehicles parked *outside* of the City's Central Business District. *See* Complaint ¶¶ 5-22. Importantly, a violation of the metered parking restrictions set forth in Section 9-64-190 of the Code that occurs *within* the City's Central Business District is a violation of Section 9-64-190(b), whereas a violation of a metered parking restriction that occurs *outside* the Central Business District is a violation of Section 9-64-190(a). *Id.* ¶ 10 (citing Chi. Mun. Code. § 9-64-190(a)-(b)). Therefore, these erroneously issued Central Business District Tickets are facially invalid because they alleged violations of Section 9-64-190(b) of the Code which did not actually occur. *See id.* ¶ 16.

In the Complaint, Plaintiff, individually, and on behalf of the Class[1] and Subclass[2], brings claims pursuant to the Illinois Declaratory Judgment Act, 735 ILCS 5/2-701, for injunctive relief, and unjust enrichment. *See* Complaint, Counts I through III. Plaintiff seeks, *inter alia*, a declaration that all such improperly issued Central Business District Tickets with respect to vehicles at expired parking meters located outside the Central Business District are invalid, recovery of the amounts that Plaintiff and Class members paid to the City in connection with

[1] Plaintiff seeks to maintain this action on behalf of himself, and a class ("Class") of similarly situated individuals, defined as follows: "All persons and entities who were issued a Central Business District Ticket when their vehicles were parked outside of the City's Central Business District." *See* Complaint, ¶ 28.

[2] Plaintiff also seeks to maintain this action on behalf of himself, and a Subclass ("Subclass") of similarly situated individuals, defined as follows: "All persons and entities who were issued a Central Business District Ticket when their vehicles were parked outside of the City's Central Business District, and who paid a fine, penalty, and/or interest thereon." *See* Complaint, ¶ 29.

these invalid Central Business District Tickets, and 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.

II. LEGAL STANDARD FOR A 2-619 MOTION.

A section 2-619 motion admits the legal sufficiency of the complaint, and, as such, the court must accept the factual allegations in the complaint as true, and make all reasonable inferences in the plaintiff's favor. *See U.S. Bank Nat. Ass'n v. Manzo*, 2011 IL App (1st) 103115, ¶¶ 14-15.

III. ARGUMENT.

Defendant makes four arguments in support of its *Motion to Dismiss* ("Motion"): (1) whether Plaintiff was required to exhaust administrative remedies before pursuing this action, (2) whether Plaintiff's claims are untimely, (3) whether Plaintiff's claims are precluded by *res judicata*, and (4) whether the voluntary payment doctrine bars Plaintiff's claims. Because the foregoing questions can all be answered in the negative, the Court should deny Defendant's Motion.

A. The Central Business District Tickets Are Void.

As a preliminary matter, it is important to explain why the Central Business District Tickets at issue in this case are void, such that the City's enforcement thereof (and its imposition/collection of fines incident thereto) was, and is, improper.

Pursuant to Section 9-100-030(b) of the Code, "whenever any vehicle exhibits a parking, standing, or compliance violation, any police officer, traffic control aide, other designated member of the police department, parking enforcement aide or other person designated by the [City's] traffic compliance administrator observing such violation may issue a violation

notice" *i.e.*, a parking ticket. Section 9-100-030(b) of the Code incorporates the provisions of 625 ILCS 5/11-208.3(b)(2), and requires parking tickets issued by the City to specify, *inter alia*, "the particular ordinance allegedly violated," as well as "the place, date, time and nature of the alleged violation."

Although Section 9-100-070(c) of the Code requires parking violations to be proven "by a preponderance of the evidence," parking tickets that comply with the requirements of Section 9-100-030(b) and, by extension, 625 ILCS 5/11-208.3(b)(2) constitute "prima facie evidence of the correctness of the facts specified therein." Chi. Mun. Code § 9-100-070(c) (establishing burden of proof relative to "hearings" conducted by mail); Chi. Mun. Code § 9-100-080(e) (establishing burden of proof relative to "in-person" hearings); *see also*, 625 ILCS 5/11-208.3(b)(3) ("A parking…violation notice issued, signed and served in accordance with this section…shall be prima facie correct and shall be prima facie evidence of the correctness of the facts shown on the notice.").

Therefore, when a parking ticket, on its face, sets forth facts which, taken as true, establish a violation of "the particular ordinance" specified, the parking ticket sets forth a prima facie case against the recipient, and the burden of negating that presumption shifts to the recipient. *E.g.*, Chi. Mun. Code § 9-100-030(b); Chi. Mun. Code § 9-100-070(c); Chi. Mun. Code § 9-100-080(e); 625 ILCS 5/11-208.3(b)(3); *see also*, *Vill. of Evergreen Park v. Russell*, 102 Ill.App.3d 723, 727 (1st Dist. 1981); *City of Chicago v. Hertz Commercial Leasing Corp.*, 71 Ill.2d 333, 342 (1978). In other words, "under this system, [a] parking ticket is considered prima facie evidence of a violation," and therefore, by operation of law, establishes the "City's prima facie case," subject to refutation by the recipient. *E.g.*, *Van Harken v. City of Chicago*, 305 Ill.App.3d 972, 974 (1st Dist. 1999); *City of Chicago v. Hertz Commercial Leasing Corp.*, 71

Ill.2d 333, 342 (1978) ("Proof of a violation and of registered ownership establishes the City's prima facie case against a defendant and that the defendant may rebut either element of the prima facie case.").

The Central Business District Tickets at issue in this case, however, do not meet the requirements of Section 9-100-030(b) of the Code and 625 ILCS 5/11-208.3(b)(2). As noted above, those Central Business District Tickets allege violations of Section 9-64-190(b) of the Code which governs vehicles parked *within* the Central Business District even though, according to the facts asserted on the face of those Central Business District Tickets, the vehicles ticketed were parked *outside* of the Central Business District. *See, e.g.*, Complaint, ¶¶ 16-17, 23-26; Plaintiff's Central Business District Ticket ("Plaintiff's Ticket"), attached hereto as **Exhibit 1**.[3] Therefore, the Central Business District Tickets at issue in this case, on their face, do not establish a violation of Section 9-64-190(b) of the Code *i.e.*, the "ordinance allegedly violated."

These deficiencies render the Central Business District Tickets, and the City's enforcement thereof, invalid. First, it is well-settled that where a traffic ticket fails to specify the particular act and violation allegedly committed, the ticket is void. *See, e.g.*, *People v. Roberts*, 113 Ill.App.3d 1046, 1049-50 (5th Dist. 1983); *People v. Walker*, 20 Ill.App.3d 1029, 1031 (3rd Dist. 1974); *People v. Griffin*, 36 Ill.2d 430, 434-35 (1967); *People v. Tellez-Valencia*, 188 Ill.2d 523, 527 (1999). As such, the Central Business District Tickets were "a complete nullity from their inception[,] ha[d] no legal effect," and could not be enforced by the City. *See, e.g.*, *Nat'l Bank of Monmouth v. Multi Nat. Indus., Inc.*, 286 Ill.App.3d 638, 640 (3rd Dist. 1997); *Cushing*

[3] Specifically, Plaintiff's Ticket correctly states that his vehicle was parked on the 1200 block of South Wabash Avenue. *Compare*, Plaintiff's Ticket (listing an address of "1202 S Wabash Ave") *with* Complaint, ¶ 23 (alleging that Plaintiff was parked at or near 1216 South Wabash Avenue). Plaintiff's Ticket also alleges a violation of Chi. Mun. Code. § 9-64-190(b)—which governs vehicles parked *within* the Central Business District. *See* Plaintiff's Ticket (listing "CODE: 0964190B"). However, the 1200 block of South Wabash Avenue is located *outside* the Central Business District. *See* Complaint, ¶¶ 11, 24-25.

v. Greyhound Lines, Inc., 2012 IL App (1st) 100768, ¶ 103; *Pedigo v. Johnson*, 130 Ill.App.3d 392, 395 (4th Dist. 1985).

Second, 625 ILCS 5/11-208.3(a) grants municipalities, such as the City, the power to enact, enforce, and administratively adjudicate ordinances concerning "vehicular standing and parking violations," but that power is subject to the limitations established by 625 ILCS 5/11-208.3(b). As discussed above, 625 ILCS 5/11-208.3(b)(2) which is incorporated within the provisions of Chi. Mun. Code § 9-100-030(b) requires parking tickets issued by the City to specify the information concerning the "date, time, and place of violation of a parking…regulation" and "the particular regulation violated." However, the Central Business District Tickets at issue in this case failed to do so, as they cited Plaintiff and members of the Class for violating a provision of the Code Section 9-64-190(b) which they had not violated. *See, e.g.*, Plaintiff's Ticket; Complaint, ¶¶ 11, 16-17, 23-26. As such, the City lacked subject matter jurisdiction under 625 ILCS 5/11-208.3 to enforce the Central Business District Tickets. *E.g.*, *Gilchrist v. Human Rights Comm'n*, 312 Ill.App.3d 597, 601 (1st Dist. 2000) ("An administrative agency…obtains its power to act from the legislation creating it and its power is strictly confined to that granted in its enabling statute… A decision by an **agency** which lacks the statutory power to enter the decision is treated the same as a decision by an **agency** which lacks personal or subject matter jurisdiction the decisions are **void**.") (collecting cases); *Taylor v. Dart*, 2017 IL App (1st) 143684-B, ¶ 18 ("Where an administrative body acts outside of its specific statutory authority, it acts without jurisdiction, and its actions are void and a nullity from their inception.") (citing *Daniels v. Indus. Comm'n*, 201 Ill.2d 160, 165 (2002)).

Finally, for the reasons set forth above, the Central Business District Tickets at issue in this case do *not* establish a prima facie case against the recipients *i.e.*, Plaintiff and members of the Class. *See, e.g.*, Plaintiff's Ticket; Complaint, ¶¶ 11, 16-17, 23-26. Importantly, Section 9-100-030(c) of the Code states that the City "shall withdraw a violation notice when said notice fails to establish a prima facie case." Section 9-100-030(c) further provides that "a final determination of liability that has been issued for a violation required to be withdrawn under this subsection (c) shall be vacated by the City. The City shall extinguish any lien which has been recorded for any debt due and owing as a result of the vacated determination and refund any fines and/or penalties paid pursuant to the vacated determination." Therefore, according to its own ordinances, the City was *required* to dismiss the Central Business District Tickets, even in the absence of an administrative hearing, and has no entitlement to the fines paid or imposed against Plaintiff and Class members. Chi. Mun. Code § 9-100-030(c).

Where, as here, "a statute expressly prescribes a consequence for failure to obey a statutory provision," the statutory directive is considered "to be mandatory."[4] *E.g.*, *Bd. of Educ. of Waukegan Cmty. Unit Sch. Dist. 60 v. Illinois State Charter Sch. Comm'n*, 2018 IL App (1st) 162084, ¶¶ 68-69 (quoting *People v. Robinson*, 217 Ill.2d 43, 54 (2005)) (internal quotations omitted). "If the procedural command is deemed mandatory and the government entity fails to comply with the required act," the government action is invalid. *E.g.*, *Waukegan*, 2018 IL App (1st) 162084 at ¶ 69 (citing *In re M.I.*, 2013 IL 113776, ¶ 16). As such, the Central Business District Tickets are invalid, and the fines imposed and/or collected as a result of the City's enforcement thereof were improper.

[4] Although this case involves a municipal ordinance, it is well-settled that "municipal ordinances are interpreted using the same rules of statutory interpretation as statutes." *Crittenden v. Cook County Comm'n on Human Rights*, 2012 IL App (1st) 112437, ¶ 81 (*aff'd sub nom.*, *Crittenden v. Cook County Comm'n of Human Rights*, 2013 IL 114876) (citing *Express Valet, Inc. v. City of Chicago,* 373 Ill.App.3d 838, 850 (1st Dist. 2007)).

B. Plaintiff Does Not Need to Exhaust Administrative Remedies.

In the Motion, Defendant correctly cites to the general rule that a party must exhaust administrative remedies before seeking judicial review. *See Phillips v. Graham*, 86 Ill.2d 574, 289 (1981). However, Defendant ignores the many exceptions to that general rule. *See Maschek v. City of Chicago*, 2015 IL App (1st) 150520, at ¶ 47 ("While our supreme court generally requires strict compliance with the rule requiring exhaustion of administrative remedies, it has recognized several exceptions."). Here, the relevant exceptions are that a plaintiff does not need to exhaust administrative remedies when: (1) the plaintiff challenges the administrative decision as being void, (2) the agency cannot provide adequate relief, (3) it would be futile for the plaintiff to seek administrative relief, or (4) agency expertise is not required. *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill.2d 304, 308-09 (1989); *Nw. Univ. v. City of Evanston*, 74 Ill.2d 80, 86 (1978).

First, Plaintiff does not need to exhaust administrative relief because he challenges the Central Business District Tickets issued for vehicles that were parked outside of the City's Central Business District as being void. *See Nw. Univ.*, 74 Ill.2d at 86 (1978) ("When he complains . . . that the ordinance is void . . . he need not exhaust these remedies."); *see also Simpson v. City of Chicago*, Cook County Case No. 15 CH 4802, at p. 19 ("a party need not exhaust administrative remedies in order to challenge an administrative decision that is void."), attached hereto as **Exhibit 2**.

In *Simpson*, the plaintiffs challenged red light tickets issued by the City of Chicago. *See* **Exhibit 2** at p. 1. The court held that the plaintiffs were not required to exhaust their administrative remedies because they challenged the red light camera tickets as being void. *See id.* at p. 19 (citing *People v. Jardon*, 393 Ill.App.3d 725, 740 (1st Dist. 2009) ("It is well

established that a void judgment may be attacked at any time, either directly or collaterally, and courts have an independent duty to vacate void orders.")); *Maschek*, 2015 IL App (1st) 150520 at ¶ 47 (plaintiff need not exhaust administrative remedies where no issues of fact are presented, the agency's expertise is not involved, and the plaintiff claims the ticket is void because the ticket was not authorized by statute and the City lacked the jurisdiction or authority to issue the ticket).

Similarly, in *Jones v. Village of Crestwood*, Cook County Case No. 17 CH 13401, the plaintiffs challenged traffic tickets issued by the defendant, the Village of Crestwood, as void. *See* June 28, 2018 transcript of proceedings in *Jones* ("Jones Transcript"), 1:12-24, attached hereto as **Exhibit 3**. The Village of Crestwood filed a Section 2-619 motion to dismiss arguing, *inter alia*, that the plaintiffs failed to exhaust their administrative remedies with respect to the traffic tickets being challenged. *See* Jones Transcript, 9:17-19. Like Plaintiff and Class members in this case, "one of the named plaintiffs [in *Jones*] paid a ticket without challenging it" and two of the *Jones* plaintiffs "challenged the ticket administratively but didn't file an administrative review appeal with the Circuit Court." *See* Jones Transcript, 9:20-10:1. The *Jones* court denied the motion to dismiss, holding that "all of the[] exceptions" articulated in *Maschek* applied because the plaintiffs were "challenging [the tickets] as void." *See* Jones Transcript, 10:6-22; June 28, 2018 order entered in *Jones* ("Jones Order"), attached hereto as **Exhibit 4** (denying the motion to dismiss "for the reasons stated on the record").

Like the plaintiffs in *Jones* and *Simpson*, Plaintiff contends that his Ticket is facially invalid and void because it fails to establish a prima facie case, and should have been withdrawn pursuant to Section 9-100-030(c) of the Code. *See* Section III-A, *supra*. Therefore, contrary to the City's contention, this case *is* "different than myriad claims of *factual* error brought before [the City] every day, such as claims that a parking meter was not expired, that a car was parked

far enough from a fire hydrant, or that a car was not parked in a no-parking zone." *See*, Motion, p. 6 (emphasis added). In those scenarios, the tickets, on their face, establish the facts supporting the violations alleged, and the recipient is attempting to rebut the City's prima facie case by challenging the *factual* allegations as incorrect.

Here, by contrast, Plaintiff does not challenge the *factual accuracy* of his Ticket, as it correctly states that his vehicle was parked on the 1200 block of South Wabash Avenue. *See* Plaintiff's Ticket; Complaint, ¶¶ 23-24. Instead, Plaintiff challenges the *legal validity* of his Ticket because it alleges that he violated Chi. Mun. Code § 9-64-190(b) a provision of the Code that governs vehicles parked *within* the Central Business District even though the 1200 block of South Wabash Avenue is located *outside* the Central Business District.[5] *See* Plaintiff's Ticket; Complaint, ¶¶ 11, 24-26. Therefore, Plaintiff is not required to challenge his Ticket administratively.

Second, a party is not required to exhaust administrative remedies when the administrative proceeding cannot provide adequate relief. *Sanders v. City of Springfield*, 130 Ill.App.3d 490, 493 (4th Dist. 1985) ("the doctrine of exhaustion of administrative remedies does not apply where it would be futile to proceed initially via administrative channels, especially where a challenge is made to the facial validity of a statute or where the administrative agency cannot provide adequate relief."). In this case, Plaintiff seeks to enjoin Defendant from issuing

[5] This distinction is analogous to the difference between a Section 2-615 motion for judgment on the pleadings and a Section 2-619 motion to dismiss. Like a defendant argues in a Section 2-615 motion for judgment on the pleadings, Plaintiff argues that the Ticket he received is *legally* insufficient because the facts apparent from the face of Plaintiff's Ticket entitle him to judgment as a *matter of law* that he did not violate Chi. Mun. Code § 9-64-190(b). *E.g.*, *In re Appointment of Special Prosecutor*, 2019 IL 122949, ¶ 52 (noting that relative to a Section 2-615 motion for judgment on the pleadings, "a court will consider only those facts apparent from the face of the pleadings," accept those facts as true, and grant judgment in favor of the defendant "when the pleadings disclose no genuine issue of material fact and the movant is entitled to judgment as a matter of law"). The examples provided by the City, however, are more akin to a Section 2-619 motion to dismiss because the recipients are admitting that their tickets establish a prima facie case, but are asserting a *factual* defense using evidence "outside the [ticket] that defeats it" as a *factual* matter. *E.g.*, *Fayezi v. Illinois Cas. Co.*, 2016 IL App (1st) 150873, ¶ 32.

any further Central Business District Tickets for vehicles parked outside the Central Business District. *See* Complaint, ¶¶ 43-51 (Count II seeking Injunctive Relief). Because of the risk of future harm, and because injunctive relief is not available through the City's Department of Administrative Hearings ("DOAH"), Plaintiff cannot obtain full relief through an administrative proceeding.

Moreover, while Section 9-100-030(c) of the Code provides that a "a final determination of liability that has been issued for a violation required to be withdrawn" shall be vacated and that any fines imposed/collected as a result of a vacated determination shall be extinguished and refunded the Code does not provide a mechanism through which this can be accomplished under the circumstances present in this case. Plaintiff cannot be required to exhaust administrative remedies which do not exist, and therefore can seek relief in this action.

Third, it would be futile for Plaintiff to seek administrative relief. The administrative remedy would be to challenge the Central Business District Tickets at a hearing with the DOAH, which would certainly be denied by the hearing officer. As noted above, Section 9-100-030(c) *required* the City to withdraw Plaintiff's Ticket because it failed to state a prima facie case, yet the City refused to do so. *See* Section III-A, *supra*. Moreover, as discussed in the Complaint, "the City *continues* to improperly issue[] invalid Central Business District Tickets," even though its illegal practice of doing so "came to light in early 2018." *See* Complaint, ¶ 20 (emphasis added).[6]

Since any administrative challenge to Plaintiff's Ticket would have been denied, Plaintiff would have still been required to appeal that decision to the Cook County Circuit Court, placing

[6] The City knowingly and intentionally continued to issue these invalid Central Business District Tickets from early 2018 (when its unlawful practice was publicized) through at least May 2019 (when Plaintiff received his invalid Central Business District Ticket). *See, e.g.*, Complaint, ¶¶ 20, 25.

the parties in the exact same position they are currently in. *See Oak Park Trust and Sav. Bank v. Village of Palos Park*, 106 Ill.App.3d 394, 407 (1st Dist. 1982) (holding that the plaintiff was not required to exhaust remedies when "the fundamental dispute between the parties would be unchanged" and "the Village would not approve [of the claim] in any event.") (citations omitted). Thus, exhausting administrative remedies would be futile.

Finally, when the agency's expertise is not required and the dispute involves statutory interpretation, courts do not require plaintiffs to exhaust administrative remedies before seeking relief in court. *See Maschek*, 2015 IL App (1st) 150520 at ¶ 48; *Simpson*, **Exhibit 2**, at pp. 19-20. Here, there is no need for the expertise of the City's DOAH in this matter, as the geographic boundaries of the Central Business District are established by law, and no fact-finding as to the location of Plaintiff's vehicle which is not in dispute is necessary. As such, the DOAH's expertise is not required to determine whether the Central Business District Tickets were improperly issued, because it is merely an issue of applying undisputed facts to an unambiguous provision of the Code, which falls within the Court's expertise. *See Maschek*, 2015 IL App (1st) 150520 at ¶ 48.

Because of the foregoing applicable exceptions, Plaintiffs are not required to exhaust their administrative remedies, and the Court has jurisdiction to hear this matter.

C. Plaintiff's Claims are Timely.

Defendant also argues that Plaintiff's claims are barred because he did not bring them within 35 days of a final administrative decision. *See* Motion, pp. 6-7. An "administrative decision" is defined, in relevant part, as "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."

735 ILCS 5/3-101. However, there was no final administrative decision in this matter because Plaintiff paid the Ticket. Thus, the 35-day rule is inapplicable. Instead, Plaintiff's unjust enrichment claim is subject to the five year statute of limitations. *Frederickson v. Blumenthal*, 271 Ill.App.3d 738, 742 (1st Dist. 1995).

Assuming, *arguendo*, that there was an "administrative decision," the Central Business District Ticket was facially invalid because it alleged a violation of Section 9-64-190(b) of the Code that did not actually occur. *See* Section III-A, *supra*. Thus, any purported administrative decision would also have been invalid and without authority, which allows it to be attacked at any time, either directly or collaterally. *E.g.*, *Weingart v. Dep't of Labor*, 122 Ill. d 1, 17-18 (1988) ("[A]n order entered by an administrative agency which lacks the inherent power to make or enter it is void and may be attacked at any time, either directly or collaterally, notwithstanding the 35-day filing limit for judicial review of administrative decisions."); *Daniels*, 201 Ill.2d at 166.

D. Plaintiff's Claims are Not Barred by *Res Judicata*.

In the Motion, Defendant correctly states that "[a]dministrative decisions have *res judicata* and collateral estoppel effect where the administrative determination is made in proceedings that are adjudicatory, judicial, or quasijudicial in nature." *See* Motion, p. 7, n. 1 (citing *Vill. of Bartonville v. Lopez*, 2017 IL 120643, ¶ 71). Here, however, there were no adjudicatory, judicial, or quasijudicial proceedings because Plaintiff paid the $65 fine, as it would have been futile for Plaintiff to seek administrative relief through such proceedings before the DOAH. *See* Section III-B, *supra*. As there was no adjudicatory, judicial, or quasijudicial proceedings that resulted in an administrative decision, there is no *res judicata* that bars Plaintiff's claims. Regardless, because Plaintiff's Ticket was void *ab initio*, any administrative

determination arising therefrom is a legally nullity, and is not entitled to preclusive effect. *See, e.g.*, *Bank of Monmouth*, 286 Ill.App.3d at 640; *Cushing*, 2012 IL App (1st) 100768 at ¶ 103.

E. The Voluntary Payment Doctrine Does Not Bar Plaintiff's Claims.

The voluntary payment doctrine does not bar Plaintiff's claims because his payment of the Central Business District Ticket at issue was compulsory and involuntary. In Illinois, the voluntary payment doctrine does not apply if payment was made under duress or compulsion. *Getto v. City of Chicago*, 86 Ill.2d 39, 48-55 (1981). Plaintiff does not have to plead an actual threat; implied duress is sufficient. *King v. First Capital Fin. Servs. Corp.*, 215 Ill.2d 1, 31 (2005); *Wexler v. Wirtz Corp.*, 211 Ill.2d 18, 24 (2004). In determining whether payment is made under duress, the main consideration is whether the party had a choice or option, *i.e.*, whether there was "some actual or threatened power wielded over the payor from which he has no immediate relief and from which no adequate opportunity is afforded the payor to effectively resist the demand for payment." *Midwest Med. Records Ass'n, Inc. v. Brown*, 2018 IL App (1st) 163230, ¶ 28 (citations omitted). The issue of duress is generally a question of fact. *Id.*, ¶ 39.

Following these guidelines, Illinois courts have routinely rejected application of the voluntary payment doctrine even in the absence of any formal "protest" when detrimental consequences would result from the refusal to pay. *See id.* (finding duress where plaintiffs alleged that they paid the filing fees because nonpayment would have resulted in loss of access to a necessary good or service, *i.e.*, access to the courts to challenge adverse judgments entered against them); *Getto*, 86 Ill.2d at 51 ("[T]he implicit and real threat that phone service would be shut off for nonpayment of charges amounted to compulsion that would forbid application of the voluntary-payment doctrine."); *Raintree Homes, Inc. v. Vill. of Long Grove*, 389 Ill.App.3d 836, 864 (2nd Dist. 2009) (finding that payment to secure building permits was paid under duress);

Terra-Nova Investments v. Rosewell, 235 Ill.App.3d 330, 336 (1st Dist. 1992) (finding compulsion or duress where plaintiff was confronted with the choice of payment of the sheriff's fees or the sheriff's refusal to issue to plaintiff the certificate of purchase of a parcel of property at a scavenger tax sale); *W. Suburban Hosp. Med. Ctr. v. Hynes*, 173 Ill.App.3d 847, 856 (1st Dist. 1988) (holding that voluntary payment did not bar the refund claim of a taxpayer, who had paid the redemption price following an erroneous tax sale of its property, where it "was threatened with an imminent and substantial increase in interest, or worse, the loss of its property").

For example, in *Norton*, the payment of a $3 delinquent penalty fee on parking violations was rendered involuntary, in light of the negative consequences that were threatened in the notices sent to the violators by a third-party collector that could result if the plaintiff failed to pay the delinquent penalty fee, including threatened further legal action, a default judgment of $35 plus court costs, or a demand of the maximum fine allowed by law. *Norton v. City of Chicago*, 293 Ill.App.3d 620, 627 (1st Dist. 1997). Since the threat of these negative consequences amounted to compulsion and duress, rendering the payments involuntary, the *Norton* court concluded that the voluntary payment doctrine did not preclude an action challenging the delinquent penalty fees. *Norton*, 293 Ill.App.3d at 628.

In addition to the fines imposed in connection with the Central Business District Tickets they received, Plaintiff and members of the Class could have been, or were, subjected to late payment fees, interest, the immobilization of their vehicles, the suspension of their driver's licenses, liens imposed on their personal property, and other costs associated with the City's debt collection attempts (*e.g.*, attorneys' fees and court costs). *See* Complaint, ¶ 18 (citing Chi. Mun. Code. §§ 2-14-103 (providing for a judgment lien against the respondent for an unpaid fine, and

providing that the City can obtain attorney's fees and court costs to collect a fine), 2-14-104 (provides for interest on any debt due and owing), 9-100-050(e) (late payment fees), 9-100-100(b) (failure to pay fines or penalties may result in immobilization of the person's vehicle or suspension of the person's driver's license), 9-100-120 (vehicle immobilization program)). Due to these potential consequences, Plaintiff and members of the Subclass paid the fines associated with their Central Business District Tickets under duress. *Brown*, 2018 IL App (1st) 163230 at ¶ 29, n. 3 (citing, *inter alia*, *Keating v. City of Chicago*, 2013 IL App (1st) 112559-U, ¶¶ 69, 71, 75).

In fact, the Illinois appellate court has already determined that the same provisions of the Code cited above are sufficient to establish that payments in connection with traffic tickets issued by the City are made under duress.[7] *Keating*, 2013 IL App (1st) 112559-U at ¶¶ 69-73, 78. The *Keating* court held that the ordinances created "both a threat to the plaintiffs' property (in the form of a judgment lien) and a threat of penalties." *Id.* ¶ 75. The *Keating* court likened the ordinances to the notices at issue in *Norton*, 293 Ill.App.3d 620 (discussed *supra*) in finding they had a coercive effect.

III. CONCLUSION.

For the reasons set forth herein, the Court should deny the City's Motion.

[7] Although *Keating* is an unpublished opinion, it was referenced, described, and relied upon in *Brown*, which is a published opinion upon which this Court may rely. In addition, pursuant to Illinois Supreme Court Rule 23(e)(1), unpublished opinions may be cited for purposes of collateral estoppel. "Collateral estoppel, also referred to as issue preclusion, will prevent a party from relitigating an issue if the following elements are present: (1) the issue decided in the prior litigation is identical to the one presented in the current case, (2) there was a final adjudication on the merits in the prior case, and (3) the party against whom estoppel is asserted was a party to, or in privity with a party to, the prior litigation." *Pine Top Receivables of Illinois, LLC v. Transfercom, Ltd.*, 2017 IL App (1st) 161781, ¶ 8. All four elements are met in this case, as the City was a party in *Keating*, and the *Keating* court rendered a decision on the merits on an identical issue—*i.e.*, whether the same provisions of the Code were sufficient to establish payment under duress. As such, this Court may rely upon *Keating* directly.

Plaintiff ALEC PINKSTON, individually, and on behalf of all others similarly situated,

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

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CERTIFICATE OF SERVICE

I, Jacalyn E. Zaleski, a non-attorney, certify that a copy of the foregoing *Plaintiff's Response to Defendant City of Chicago's Section 2-619 Motion to Dismiss the Complaint* was served on counsel of record via the Court's efiling system to the email addresses listed below on February 21, 2020.

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/s/ Jacalyn E. Zaleski

[X] Under penalties as provided by law pursuant to 735 ILCS 5/1 109, I certify that the statements set forth in this instrument are true and correct.

*** VIOLATION 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	Meter: 331702
1202 S WABASH AVE	

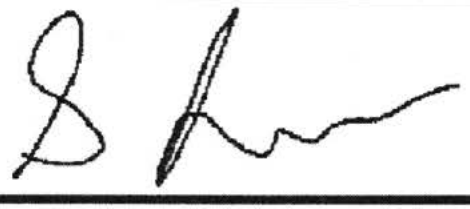
CODE: 0964190B
CENTRAL BUSINESS DISTRICT
EXPIRED METER

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.

9302802738 006500 8

Exhibit 1

City of Chicago Department of Finance
www.chicago.gov/finance
P.O. Box 6289, Chicago, Illinois 60680-6289
312-744-7275 312-744-7277 (TTY - For Hearing Impaired)

Monday, October 21, 2019

ALEC P PINKETON
4740 N HAMLIN AVE
CHICAGO, IL 60625-5705

Dear Motorist:

Re:
Vehicle Information: P411433
Ticket Number(s): 9302802738

Thank you for your inquiry regarding the parking ticket(s) referenced above. The copy of the parking ticket you requested is attached.

You can pay your tickets on-line at <www.cityofchicago.org/finance>. Alternatively, you may remit payment and a copy of this letter to:

City of Chicago Department of Finance
P.O. Box 6289
Chicago, IL 60680-6289

Please include the ten (10) digit ticket number(s) on your check(s) or money order(s). Payments identifying only license plate number(s) or notice number(s) will be processed in accordance with the Department's payment hierarchy criteria, should you have multiple tickets. Please do not send cash. Any applicable penalties may be assessed, so please remit your payment immediately. You must remit payment in person if your vehicle has been seized or your driver's license has been suspended.

Again, thank you for your inquiry. Should you require additional information, including the locations of our conveniently located payment processing centers, please visit us on-line at <www.cityofchicago.org/finance> or call the City of Chicago's ticket help line at 312.744.PARK (7275).

City of Chicago - Department of Finance
File: Copy of Parking Ticket/70

Search & Pay For Your Tickets On-Line
www.cityofchicago.org/finance

9266-D
4271-D
5221-D

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

Judge Kathleen G. Kennedy

FEB 19 2016

Circuit Court – 1718

4234-D
4315-D

THEMASHA SIMPSON, DELYN MCKENZIE-LOPEZ and ERICA LIESCHKE, individually and on behalf of all others similarly situated,
Plaintiffs,

v.

CITY OF CHICAGO, a Municipal Corporation,
Defendant.

15 CH 4802

OPINION AND ORDER

INTRODUCTION

This is a putative class action against Defendant City of Chicago related to the notice the City provides and the late penalties the City assesses for automated speed enforcement (ASE) violations (speed camera tickets) and automated traffic law enforcement (ATL) violations (red light camera tickets). Plaintiffs seek declaratory and injunctive relief as well as damages and the recoupment of fees and penalties assessed against them. The City filed a motion to dismiss pursuant to 735 ILCS 5/2-619.1, which the parties briefed and argued orally. While the motion was under advisement Plaintiffs filed supplemental authority to which the City responded and Plaintiffs replied. For the reasons that follow, the City's motion is denied in part and granted in part.

STATUTORY FRAMEWORK

In the Illinois Vehicle Code (IVC), the legislature provides for local administrative adjudication of traffic regulation violations, including ATL and ASE system violations. 625 ILCS 5/11-208.3. The IVC requires the local administrative

system to "have as its purpose the fair and efficient enforcement of municipal or county regulations through the administrative adjudication of [ASE] system or [ATL] violations." *Id.* The IVC sets forth the statutory requirements for "[a]ny ordinance establishing a system of administrative adjudication." 625 ILCS 5/11-208.3(b).

The administrative adjudication begins with a determination of the ASE or ATL violation and the review of that determination in accordance with Section 11-208.3(b)(3) of the IVC. 625 ILCS 5/11-208.3(b)(3). The administrative adjudication then proceeds with a violation notice. The statutory requirements for an ASE and ATL violation notice include

- the date, time, and place of violation
- 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 and state registration number
- the identification number of the person issuing the notice
- the statement 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
- information as to the availability of a hearing in which the violation may be contested on its merits
- the time and manner in which a hearing may be had.

625 ILCS 5/11-208.3(b)(2). Additionally, for ASE or ATL violations, the IVC requires that the "vehicle make shall be specified on the [ASE] system or [ATL] violation notice if the make is available and readily discernible." *Id.*

The City of Chicago established an ASE program (Chicago Municipal Code (MCC) §§ 9-101-010 *et seq.*), an ATL enforcement system (MCC §§ 9-102-010 *et seq.*), and a system of administrative adjudication for ASE and ATL violations pursuant to the IVC (MCC §§ 9-100 *et seq.*). Chapter 9-100 of the MCC addresses the administrative adjudication of four types of violations: parking, compliance, ATL, and ASE. Additionally, the MCC includes general provisions on the interpretation of its language, one of which states: "Except as otherwise explicitly provided in this Code, the word 'shall' as used in this Code is mandatory." MCC § 1-4-100. No explicit alternative provision for the interpretation of "shall" exists in the ASE, ATL, and administrative adjudication sections of the MCC.

Under the City's administrative adjudication system that took effect July 1, 2012, the Department of Finance mails a violation notice "to the address of the registered owner of the vehicle as recorded with the Secretary of State." § 9-100-045(a).[1] Certain time frames apply to the notice provision. *Id.* Also, "[t]he notice shall include all applicable information required in Sections 11-208.3, 11-208.6 and 11-208.8 of the [IVC]." *Id.*

The City's administrative adjudication system gives the following options to a person on whom an ASE or ATL violation notice has been served pursuant to the MCC:

> within seven days from the date of the notice: (1) pay the indicated fine; or, in the manner indicated on the notice, either (2) submit the materials set forth in Section 9-100-070 to obtain an adjudication by mail; or (3) request an administrative hearing as set forth in Section 9-100-080 to

[1] The statutory framework here is phrased in the present tense and reflects the MCC effective July 1, 2012. In 2015, the Chicago City Council amended some of the provisions at issue in this case.

> contest the charged violation. A response by mail shall be deemed timely if postmarked within seven days of the issuance of the notice of violation.

MCC § 9-100-050 (a). The MCC specifies the duties of the city traffic compliance administrator when a respondent opts for (2) or (3). MCC § 9-100-050(b) and (c).

The MCC limits and lists the applicable grounds for contesting an ASE or ATL violation. MCC § 9-100-060 (b). For an ASE, the grounds are (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, and (ii) the facts alleged in the violation notice are inconsistent or do not support a finding that a specified traffic law was violated. MCC § 9-100-060(b)(1)(i) and (ii) (eff. July 1, 2012). For an ATL, the grounds are (i) the operator of the vehicle was issued a Uniform Traffic Citation for a specified violation, (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 a specified traffic law was violated. MCC § 9-100-060(b)(2)(i), (ii), (iii) (eff. July 1, 2012).

The MCC also provides for contests on the grounds that 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; 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); the vehicle was an authorized emergency vehicle; or the

respondent was not the registered owner or lessee of the cited vehicle at the time of the violation. MCC § 9-100-060(b)(3)-(6) (eff. July 1, 2012).

The MCC provides for a determination of liability in the amount of the fine indicated on the notice for a respondent who requested an administrative hearing but failed to pay the indicated fine before or appear at the hearing. MCC § 9-100-050(c). Failure to pay the fine within "25 days of issuance of a determination of liability for a violation of an [ASE] system or an [ATL] enforcement system will result in the imposition of a late payment penalty." *Id.* Additionally, if no response is made under subsection (a), then "the city traffic compliance administrator shall cause a second notice of violation to be sent to the respondent." MCC § 9-100-050(d). The MCC specifies the information to be included in the second notice of violation. *Id.* In subsections (d) and (e) the MCC reiterates the late payment penalty provisions for ASE and ATL violations. MCC § 9-100-050(d) and (e).

FACTUAL ALLEGATIONS

The City issued violation notices to the three named Plaintiffs. Plaintiffs attached to their complaint copies of parts of two notices. One includes a "PAY BY DATE" alleged to be 21 days from the date of the determination of liability notice. The City provided copies of some notices that include photos of the vehicle at issue.

Simpson

The City issued ATL violation notices to Themasha Simpson on April 5 and July 30, 2013. The subject of each of the violations was a Chevy registered in Simpson's name with the Secretary of State. The violation notices listed "OTHR" in the "VEHICLE

MAKE" column. The City issued Simpson a determination of liability for each of the violations without sending a second notice. The City assessed a $100 late penalty against Simpson on each of the violations. Simpson has not paid the fines or penalties. The notices indicate that the consequences of unpaid fines include driver's license suspension, vehicle seizure, and referral to a collection agency.

McKenzie-Lopez

The City issued ASE and ATL violation notices to Delyn McKenzie-Lopez on April 29, May 14, May 22, and May 29, 2014. The vehicle that was the subject of each of the violations was a Nissan registered in McKenzie-Lopez's name with the Secretary of State. The violation notices listed "OTHR" in the "VEHICLE MAKE" column. The City issued a determination of liability for each of the violations without sending a second notice. The City assessed a $100 late penalty against McKenzie-Lopez for each of the violations. McKenzie-Lopez paid the fines and penalties for the ASE violation issued May 29, 2014. She has not paid for the other violations. The notices indicate that the consequences of unpaid fines include driver's license suspension, vehicle seizure, and referral to a collection agency.

Lieschke

The City issued an ATL violation notice to Erica Lieschke on June 26, 2010. The vehicle that was the subject of the violation was a GMC registered in Lieschke's name with the Secretary of State. The violation notice listed "OTHR" in the "VEHICLE MAKE" column. The City issued Lieschke a determination of liability without sending

a second notice. The City assessed a late penalty of $100 and other amounts against Lieschke, which she paid.

PLAINTIFFS' CLAIMS

Plaintiffs bring eight counts against the City. They propose one class and two sub-classes that correspond to their individual allegations: a "Vehicle Make" class, a "Notice" sub-class, and a "Penalty" sub-class. Class certification is not yet at issue.

Count I – Declaratory and Injunctive Relief on Behalf of the Vehicle Make Class (Based on Violations of Illinois Constitution, Article VII, Section 6)

In their first count, Plaintiffs seek declaratory and injunctive relief on behalf of the Vehicle Make Class based on alleged violations of the Illinois Constitution. Plaintiffs request a judgment declaring that the City's practice of issuing ASE and ATL violation notices with "OTHR" in the "VEHICLE MAKE" field does not comply with the IVC, making the practice unconstitutional, void, and unenforceable as transgressing the City's home rule authority. Plaintiffs ask the court to enjoin the City from collecting on or enforcing the liability determinations resulting from these violation notices and to award them damages, including pre- and post-judgment interest, costs, and attorney fees.

Count II – Unjust Enrichment on Behalf of the Vehicle Make Class (Based on Violations of Illinois Constitution, Article VII, Section 6)

In their second count, Plaintiffs seek damages for unjust enrichment on behalf of the Vehicle Make Class. Plaintiffs allege that the City received fines and penalties from Plaintiffs to which it was not entitled because the City's practice transgresses the City's home rule authority by conflicting with the IVC.

Count III - Declaratory and Injunctive Relief on Behalf of the Vehicle Make Class (Based on Violation of Section 208.3(b)(2) of the IVC and Section 9-100-045 MCC)

In their third count, Plaintiffs seek declaratory and injunctive relief on behalf of the Vehicle Make Class based on the City's practice of not specifying the vehicle make on the ASE and ATL notices in violation of both the IVC Section 208.3(b)(2) and the MCC Section 9-100-045. Plaintiffs ask the court to declare the violation notices void and unenforceable and to grant preliminary and injunctive relief prohibiting the City from either collecting on or enforcing the violations. Plaintiffs also ask for damages, including pre- and post-judgment interest, attorney fees, and costs.

Count IV – Unjust Enrichment on Behalf of the Vehicle Make Class (Based on Violation of Section 208.3(b)(2) of the IVC and Section 9-100-045 MCC)

In their fourth count, Plaintiffs seek damages for unjust enrichment on behalf of the Vehicle Make Class. Plaintiffs allege that the City received fines and penalties from Plaintiffs to which the City was not entitled because the underlying violations did not specify the make of the subject vehicle as required by the IVC and MCC.

Count V - Declaratory and Injunctive Relief on Behalf of the Notice Sub-Class (Based on Failure to Issue Second Notice in Violation of the MCC)

In their fifth count, Plaintiffs seek declaratory and injunctive relief on behalf of the Notice Sub-Class because the City's practice of not sending a second notice before issuing determinations of liability violates MCC Section 9-100-050(d). Plaintiffs ask the court to declare the determinations of liability void and unenforceable and to grant preliminary and injunctive relief prohibiting the City from either collecting on or enforcing the violations. Plaintiffs also ask for damages, including pre- and post-judgment interest, attorney fees, and costs.

Count VI— Unjust Enrichment on Behalf of the Notice Sub-Class (Based on Failure to Issue Second Notice in Violation of the MCC)

In their sixth count, Plaintiffs seek damages for unjust enrichment on behalf of the Notice Sub-Class. Plaintiffs allege that the City received fines and penalties from Plaintiffs to which the City was not entitled because the City issued determinations of liability without issuing a second notice as required by the MCC.

Count VII— Declaratory and Injunctive Relief on Behalf of the Penalty Sub-Class (Based on Assessment of Penalties in Violation of the MCC)

In their seventh count, Plaintiffs seek declaratory and injunctive relief on behalf of the Penalty Sub-Class because the City assesses penalties and fines on alleged ASE and ATL violations prior to the expiration of the 25-day grace period specified in the MCC. The City's determination of liability notices set a "pay-by" date, which is 21 days from the date of the determination of liability notice, and provide for a late penalty if payment is not received by the pay-by date. Plaintiffs ask the court to declare the City's penalty assessment practice unlawful and the penalties resulting from this practice void and unenforceable. They also ask the court to grant preliminary and injunctive relief prohibiting the City from collecting on or enforcing penalties on alleged ASE and ATL violations assessed prior to the expiration of the 25-day grace period. Plaintiffs also ask for damages, including pre- and post-judgment interest, attorney fees, and costs.

Count VIII— Unjust Enrichment on Behalf of the Penalty Sub-Class (Based on Assessment of Penalties in Violation of the MCC)

In their eighth count, Plaintiffs seek damages for unjust enrichment on behalf of the Penalty Sub-Class. Plaintiffs allege that the City received fines and penalties from

Plaintiffs to which the City was not entitled because the fines and penalties were assessed prior to the expiration of the 25-day grace period set forth in the MCC.

To summarize, Plaintiffs claim that (a) the City exceeded its home rule authority by issuing ASE and ATL violation notices that do not specify the vehicle make as required by the IVC, (b) ASE and ATL violation notices that do not specify the vehicle make are unlawful under the IVC and the MCC, (c) the City's practice of issuing determinations of liability on ASE and ATL violations without sending a second notice is unlawful under the MCC, and (d) the City's practice of assessing penalties on alleged ASE and ATL violations prior to the expiration of the 25-day grace period is unlawful under the MCC. Plaintiff Simpson is not included in the unjust enrichment counts (Counts II, IV, VI, and VIII). Plaintiff Lieschke has withdrawn from Counts VII and VIII.

ANALYSIS

Legal Standard

Section 2-619.1 of the Code of Civil Procedure, 735 ILCS 5/2-619.1, allows a litigant to combine a Section 2-615 motion to dismiss based upon substantially insufficient pleadings with a Section 2-619 motion to dismiss based upon certain defects or defenses. *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 24. When ruling on a motion to dismiss under either Section 2-615 or Section 2-619 the court must accept all well-pled facts in the complaint as true and draw all reasonable inferences from those facts in favor of the nonmoving party. *Id.*

The question presented by a Section 2-615 motion to dismiss is whether the allegations of the complaint, when taken as true and viewed in a light most favorable to

the plaintiff, are sufficient to state a cause of action upon which relief can be granted. *Turner v. Memorial Medical Center*, 233 Ill. 2d 494, 499 (2009). The question presented by a Section 2-619 motion to dismiss is whether, after admitting the legal sufficiency of the complaint, an "affirmative matter" outside the complaint defeats the cause of action. *Czarobski v. Lata*, 227 Ill. 2d 364, 369 (2008).

Grounds for Dismissal

The City argues the six grounds for dismissal that follow, four pursuant to Section 2-615, and two, unclean hands and standing, pursuant to Section 2-619. First, Plaintiffs' claims amount to an impermissible collateral attack on determinations of liability for which Plaintiffs have administrative remedies, not subject to exhaustion exceptions, that they failed to exhaust. Second, Plaintiffs cannot state a claim for unjust enrichment. Third, Plaintiffs' unjust enrichment claims are barred by the doctrine of unclean hands. Fourth, Plaintiffs' "Vehicle Make" claims fail as a matter of law because (a) the ordinance does not exceed the City's home rule authority and (b) the ATL and ASE notices comply with the vehicle make requirement. Fifth, the "Vehicle Make" and "Second Notice" requirements are directory, not mandatory. Sixth, Plaintiffs lack standing to bring their penalty claims.

The City essentially asserts that its exhaustion argument is dispositive. Plaintiffs assert that the mandatory-directory question is dispositive of all the City's arguments. Because the resolution of the mandatory-directory question informs the exhaustion analysis, discussion of the parties' positions properly begins with the mandatory-directory question. Answering that question involves the mandatory-directory analysis

generally, both the legislative intent and the mandatory-directory analysis as applied to the second notice and the vehicle make requirements, which are distinguishable, and the consequences of noncompliance with a mandatory requirement.

The Illinois Supreme Court clarified the analysis of what "shall" means.

Construction of the word "shall" involves two dichotomies, the mandatory-permissive and the mandatory-directory. *People v. Robinson*, 217 Ill. 2d 43, 51 (2005). In *Robinson*, the court acknowledged that it had helped create the confusion between the two dichotomies by speaking about them as if they were the same. *Id.* at 53. Thus, the court clarified that the word "shall" is presumed to be mandatory in the mandatory/permissive dichotomy, which relates to whether the government actor must act or is permitted to act. *Id.* at 52. Further, the court explained that the word "shall" is not determinative in the mandatory-directory dichotomy. *Id.* at 54. Rather, the construction of "shall" is a matter of legislative intent." *Id.* However, as the court explained in *In re M.I.*, language issuing a procedural command to a government official is presumed to indicate an intent that the statutory provision is directory. *In re M.I.*, 2013 IL 113776, ¶ 17. (citing *People v. Delvillar*, 235 Ill. 2d 507, 517 (2009)) (emphasis added). Nevertheless, "[t]his presumption is overcome, and the provision will be read as mandatory, under either of two conditions: (1) when there is negative language prohibiting further action in the case of noncompliance or (2) when the right the provision is designed to protect would generally be injured under a directory reading." *Id.* It follows that no presumption is necessary when the legislature expressly states that the word "shall" means mandatory.

The Chicago City Council intended the provisions at issue to be mandatory.

Plaintiffs' case rests on the premise that a governmental actor's failure to follow mandatory statutory provisions renders the governmental actions void. The City disputes this premise and argues that noncompliance with mandatory provisions renders the governmental actions voidable, not void. However, the threshold question is whether the provisions at issue here, the MCC requirements for the specification of vehicle make and the issuance of a second notice, are mandatory.

Plaintiffs argue that the question must be answered in the affirmative based on the City Council's intent, plainly set forth in the MCC, that "[e]xcept as otherwise explicitly provided in this Code, the word 'shall' as used in this Code is mandatory." MCC § 1-4-100. Plaintiffs add that the court is bound by the appellate court's ruling in *Puss N Boots, Inc. v. Mayor's License Commission of the City of Chicago*, 232 Ill. App. 3d 984, (1992), *as supplemented on denial of rehearing* (Aug. 14, 1992), which approved this interpretation of the MCC based on the City Council's intent.

In response, the City argues that *Puss N Boots* is not in accord with current law, as articulated in *Robinson*, which establishes "different senses of mandatory." According to the City, applying *Robinson's* mandatory/permissive – mandatory/directory analysis leads to the conclusion that the MCC provisions at issue here, which the City characterizes as "technical procedural requirements," are directory. (City Mem. in Support, p. 4). However, if there are different senses of "mandatory" and the City Council was confused between mandatory/permissive and mandatory/directory, *Robinson* makes clear that the mandatory/directory question is one of legislative intent.

Robinson, 217 Ill. 2d at 54. The plain language of the MCC shows that City Council intended the provisions at issue to be mandatory.

The court may not depart from the plain language of a statute by reading into it exceptions, limitations, or conditions that conflict with the express legislative intent. *Petersen v. Wallach*, 198 Ill. 2d 439, 446 (2002). "[T]here is no rule of construction that authorizes a court to say that the legislature did not mean what the plain language of the statute provides." *In re D.L.*, 191 Ill. 2d 1, 9 (2000). The City Council unambiguously expressed its intent that "shall" is mandatory in the MCC unless explicitly stated otherwise.

Research shows that such a definitive expression of legislative intent on the mandatory/directory question may be rare. See, *e.g.*, Kane County Code ("*Shall.* The word 'shall' is mandatory.' Kane County Code, § 1-2 (amended Dec. 12, 2006); the Code of Civil Procedure ("(a) 'May.' The word 'may' as used in this Article means permissive and not mandatory. (b) 'Shall.' The word 'shall' as used in this Article means mandatory and not permissive." 735 ILCS 5/15-1105); the Election Code ("Whenever the word 'shall' is used it shall be considered mandatory. The use of 'may' is deemed permissive. " 26 Ill. Adm. Code 125.830 (2015)). However, the City offers no authority for the court to act contrary to established principles of statutory construction and construe "shall" as directory regardless of the plain language of the MCC.

Various penalty cases effectuate the MCC's construction of "shall." For example, in *City of Chicago v. Elevated Properties, L.L.C.*, 361 Ill. App. 3d 824, 835 (2005), the court explained that the use of the word "shall" in the MCC is mandatory, not directory,

meaning that the trial court was not authorized to find compliance with the Code based on the filing of an appearance when the Code specifically required the filing of a registration statement with the department of buildings on forms provided by the department for that purpose. In *City of Chicago v. Cotton*, 356 Ill. App. 3d 1 (1992), the court emphasized principles of statutory construction and agreed with the City of Chicago that the circuit court acted without authority and entered a void judgment when it imposed a fine below the statutorily established range.

Both the intent of the MCC and the application of the mandatory/directory analysis make the second notice provision mandatory.

The MCC's second notice requirement does not refer to underlying IVC provisions. The plain language of the MCC shows that the City Council intended the second notice provision to be mandatory, not directory. Even if the legislative intent were unclear, the mandatory/directory analysis shows that the second notice provision is mandatory.

The use of "shall" in the procedural command to provide a second notice is presumed to be directory rather than mandatory. Further, the MCC has no negative language prohibiting further action or indicating a specific consequence for failing to provide the second notice. However, the second notice provision is designed to protect a non-responding violator's right to contest a violation before a determination of liability issues. This right is generally injured by a directory reading. Therefore, the term "shall" means mandatory in the second notice provisions of the MCC. As a result,

Plaintiffs' second notice claims survive the City's Section 2-615 motion to dismiss based on legislative intent as well as the application of the mandatory/directory analysis.

As to vehicle make, the underlying IVC provisions are directory so Plaintiffs' vehicle make-related claims fail.

The MCC provides that the notice issued by the department of finance shall include all applicable information required in specified sections of the IVC. MCC 9-100-045 (eff. July 1, 2012). Thus, the inquiry on the motion to dismiss the vehicle-make related claims does not end with the determination that "shall" is mandatory, but rather, requires the mandatory/directory analysis of the underlying IVC provisions.

The IVC states, "[w]ith regard to [ASE] system or [ATL] violations, vehicle make shall be specified on the [ASE] system or [ATL] violation notice if the make is available and readily discernible." 625 ILCS 5/11-208.3(b)(2). The mandatory/directory analysis of this provision follows. The IVC does not define "shall" as mandatory. As procedural commands, the use of "shall" in this section of the IVC is presumed to be directory. The IVC has no negative language prohibiting further action or indicating a specific consequence for failing to include the vehicle make in the notice. The right that this IVC provision was designed to protect, ensuring the issuance of a violation notice to the owner of the violating vehicle, is not injured by a directory reading. Therefore, the term "shall" means directory in this section of the IVC. Because the underlying IVC provisions with which the MCC mandates compliance are directory, Plaintiffs cannot state a claim against the City for violation of the vehicle make provisions. If a procedural command to a government official is directory rather than mandatory, then

failure to comply with a particular procedural step will not have the effect of invalidating the governmental action to which the procedural requirement relates. *In re James W.*, 2014 IL 114483, ¶ 35.

Noncompliance with mandatory procedural requirements makes the determinations of liability void.

The City relies on *Newkirk v. Bigard*, 109 Ill. 2d 28 (1985), for the proposition that where administrative jurisdiction is proper, the failure to comply with a mandatory procedural requirement may make the administrative action voidable not void *ab initio*. Specifically, the City asserts that the administrative decisions here are not void because the City satisfied the three requisite criteria: personal jurisdiction, subject matter jurisdiction, and the inherent power to issue the determinations of liability.

In *Newkirk*, the plaintiffs sought to have a mining board order declared void *ab initio* for omitting specifics that the statute provided "shall" be included. The court determined that "shall" meant mandatory in the statute, and agreed that the order was defective. Yet the court reasoned that because the mining board had personal and subject matter jurisdiction, as well as the inherent authority to issue the order, the omissions made the order voidable, not void.

The *Newkirk* result is inconsistent with decisions in which courts have held that the failure to comply with mandatory statutory provisions makes the resulting administrative action void, or, phrased differently, invalidates the action. See, *e.g.*, *Hester v. Kamykowski*, 13 Ill. 2d 481, 484–85 (1958) (election statute); *In re Disconnection of Certain Territory from Machesney Park*, 122 Ill. App. 3d 960, 966 (1984) (Illinois Municipal

Code) ("A mandatory provision in a statute is one which renders the proceeding to which the provision relates void and illegal if the provision is omitted or disregarded.")

Plaintiffs rely on *Andrews v. Foxworthy*, 71 Ill. 2d 13 (1978), for the proposition that the City's failure to follow mandatory statutory requirements renders the violations at issue void, not voidable. In *Andrews*, the trial court held that the failure to publish the assessment changes in a nonquadrennial year rendered the assessment increases void. The appellate court affirmed. The supreme court framed the issue as whether the statutory publication date for increased assessments in a nonquadrennial year is merely directory or is mandatory such that tardy publication invalidates the increase. The court found the publication date at issue to be mandatory and explained: "We do not consider the failure to comply with a mandatory requirement of publication to be 'some informality or clerical error.'" *Id.* at 24. The supreme court affirmed the judgment of the appellate court.

Newkirk and *Andrews* remain good law. Harmonizing their rulings may depend on a party's access to administrative review to seek a voidability determination. Assuming that this is the applicable distinction, Plaintiffs here lack that access due to the MCC's limitations on the grounds for contesting an ASE or ATL violation. See MCC § 9-100-060(b) (eff. July 1, 2012). In any case, under *Andrews*, noncompliance with the mandatory second notice provision voids the resulting determinations of liability.

Plaintiffs were not required to exhaust administrative remedies.

The City argues that Plaintiffs' claims should be dismissed as impermissible collateral attacks on final administrative decisions. Generally, a party must exhaust

administrative remedies before seeking judicial review. *Poindexter v. State of Illinois*, 229 Ill. 2d 194, 206–07 (2008). However, a party need not exhaust administrative remedies in order to challenge an administrative decision that is void. "It is well established that 'a void judgment may be attacked at any time, either directly or collaterally, and courts have an independent duty to vacate void orders.'" *People v. Jardon*, 393 Ill. App. 3d 725, 740 (2009) (quoting *People v. Mathis*, 357 Ill. App. 3d 45, 51 (2005)). "[T]he 'directory' or 'mandatory' designation . . . denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates." *People v. Robinson*, 217 Ill. 2d 43, 51-52 (2005) (quoting *Morris v. County of Marin*, 18 Cal. 3d 901, 907 (1977)). Because the second notice requirement at issue is mandatory under the MCC the determinations of liability are void and subject to collateral attack. In contrast, the vehicle make requirement is directory and not subject to collateral attack as void.

Plaintiffs cite as supplemental authority *Maschek v. City of Chicago*, 2015 IL App (1st) 150520, a challenge to a ticket resulting from an ASE camera operating near a school. As a threshold issue the court in *Maschek* ruled that the plaintiff's claim was not barred because he voluntarily paid and failed to exhaust his administrative remedies to contest the ticket. The court reasoned that the plaintiff's dispute with the City's means of enforcement involved neither issues of fact nor issues requiring the agency's particular expertise. Rather, because the plaintiff attacked the issuance of the ticket as not authorized by statute his claim was subject to judicial review without first exhausting administrative remedies. Applying the *Maschek* analysis here provides an

alternative basis for rejecting the City's collateral attack argument as to the second notice requirement.

Plaintiffs failed to state a claim for a home rule-related constitutional violation.

The Illinois Constitution provides that "[h]ome rule units may exercise and perform concurrently with the State any power or function of a home rule unit to the extent that the General Assembly by law does not specifically limit the concurrent exercise or specifically declare the State's exercise to be exclusive." Ill. Const. Art. VII, § 6(i). The IVC specifically provides that its provisions "shall be applicable and uniformly applied and enforced throughout this State, in all other political subdivisions and in all units of local government." 625 ILCS 5/11-208.1. Plaintiffs claim that the City's application and enforcement of the MCC fail to comply with the IVC and therefore transgress the City's home rule authority. The City argues that home rule authority can only be exercised through legislative action, not through practice, that is, through application or enforcement. The City also argues that the notices comply with the IVC's vehicle make requirement because they include photos of the vehicles.

As stated above, the IVC's vehicle make provisions are directory, making the MCC's provision directory. Plaintiffs' constitutional claims relate only to the vehicle make allegations, and the notices substantially comply with the IVC. Therefore, Plaintiffs' vehicle make-related claims fail, and the court need not reach the question of whether the City's practices constitute the exercise of the City's home rule authority.

Plaintiffs have standing to pursue their penalty claims.

The City argues that Plaintiffs lack standing for their penalty claims in Counts VII and VIII. Simpson is not included in Count VIII, and Lieschke has withdrawn from Counts VII and VIII. Thus, to proceed Simpson and/or McKenzie-Lopez must have standing to bring Count VII, and McKenzie-Lopez must have standing to bring Count VIII.

"The doctrine of standing insures that issues are raised only by those parties with a real interest in the outcome of the controversy." *Carr v. Koch*, 2012 IL 113414,¶ 28. To have standing a party must have sustained, or be in immediate danger of sustaining, a direct injury as a result of the enforcement of the challenged statute. *Id.* "The claimed injury, whether actual or threatened, must be distinct and palpable, fairly traceable to the defendant's actions, and substantially likely to be prevented or redressed by the grant of the relief requested." *Village of Chatham v. County of Sangamon*, 216 Ill. 2d 402, 419-20 (2005).

The City bases its standing argument on Plaintiffs' failure to allege that they were injured or are in immediate danger of sustaining an injury based on the late penalties allegedly assessed in violation of the 25-day grace period. Additionally, the City contends that Simpson lacks standing on these counts because she has not made any payment. The City also argues that Simpson cannot meet the traceability requirement for standing because Simpson refused to pay the City, so her actions, not the City's, caused the threats of additional payments and vehicle seizure. Further, the

City argues that Plaintiffs do not have standing because they did not allege that they paid the fine after the 21st and before the 25th days.

The MCC provides that "[f]ailure to pay the fine within . . . 25 days of issuance of a determination of liability for a violation of an [ASE] system or an [ATL] enforcement system, will result in the imposition of a late payment penalty pursuant to subsection (e) herein." MCC 9-100-050(c) (eff. July 1, 2012). However, the alleged failure to comply with the mandatory second notice requirement voids the determination of liability as well as any late penalty assessed on that liability. Therefore, Simpson's failure to pay a penalty is irrelevant to the standing analysis. Plaintiffs Simpson and McKenzie-Lopez have standing because they sufficiently alleged an injury, which the City has the power to redress, that is fairly traceable to the actions of the City in failing to comply with a mandatory procedure.

Plaintiffs stated a claim for unjust enrichment based on fees collected pursuant to void determinations of liability made without a second notice.

To state a claim for unjust enrichment, the plaintiff must allege facts that show that the defendant "has unjustly retained a benefit to the plaintiff's detriment, and that defendant's retention of the benefit violates the fundamental principles of justice, equity, and good conscience." *HPI Healthcare Services, Inc. v. Mt. Vernon Hospital, Inc.*, 131 Ill. 2d 145, 160 (1989). The City argues that it is not unjust for it to retain fines paid for violations of law because retaining the fines does not violate the fundamental principles of justice, equity, and good conscience. Further, the City argues that Plaintiffs ignored the notices they received and assert an entitlement to ignore the notices for

what the City characterizes as purely technical reasons: the notices did not spell out in text the makes of their vehicles, the first notices were not followed by second reminder notices before final determinations were made, and the notices provided 21-day rather than 25-day late-fee grace periods. The City argues that any technical violation that may have occurred did not impact Plaintiffs' conduct or rights in any way because Plaintiffs received notices that informed them of their rights to pay or to contest the violations.

Plaintiffs argue that the City's collection of fines and penalties paid by Plaintiffs and class members was unjust because the City was not entitled to collect those payments. Further, the City's failure to follow the law deprived thousands of citizens of proper notice and due process, and illegally accelerated the City's ability to increase and collect fines and penalties. Plaintiffs argue that the City's retaining Plaintiffs' payments violates the fundamental principles of justice, equity, and good conscience.

The ordinance makes it clear that the City was required to send a second notice before determining liability. The City argues that notices received by Plaintiffs satisfied due process because "due process only requires notice and an opportunity to be heard." *First Lien Co. v. Markle*, 31 Ill. 2d 431, 438 (1964). However, "what due process entails is a flexible concept in that not all situations calling for procedural safeguards call for the same kind of procedure." *Lyon v. Department of Children & Family Services*, 209 Ill. 2d 264, 272 (2004). Here, Plaintiffs' receipt of a single violation notice does not mean that due process was satisfied when the ordinance mandates that two notices be sent to a non-responder before a determination of liability. MCC 9-100-090(b) (eff. July 1, 2012). Thus, McKenzie-Lopez and Lieschke have stated a claim for unjust enrichment because they

have sufficiently alleged facts showing that the City's retention of payments from determinations made without a second notice violates the fundamental principles of justice, equity, and good conscience.

Plaintiffs stated a claim for unjust enrichment based on premature late fees.

Plaintiffs also argue that the City was unjustly enriched by assessing premature late fees against McKenzie-Lopez. The City argues that Plaintiffs did not state a claim for unjust enrichment because McKenzie-Lopez did not allege that she paid the penalty within the 25-day period prescribed by statute. However, McKenzie-Lopez alleges that the City failed to follow the law, which resulted in the City's impermissibly accelerating the determination of liability and, ultimately, the assessment of late fees. The alleged practice of accelerating late fees, without statutory compliance, is sufficient to show a violation of the fundamental principles of justice, equity, and good conscience. Therefore, McKenzie-Lopez stated a claim for unjust enrichment resulting from the premature penalty assessment.

Plaintiffs' claims are not barred by the doctrine of unclean hands.

The City argues that Plaintiffs have unclean hands because they violated traffic safety laws and then they ignored the notice they received. The doctrine of unclean hands bars equitable relief when the party seeking that relief is guilty of misconduct in connection with the subject matter of the litigation. *Thomson Learning, Inc. v. Olympia Properties, LLC*, 365 Ill. App. 3d 621, 634 (2006). Misconduct by a plaintiff that will defeat the plaintiff's recovery under the unclean hands doctrine "must have been conduct in connection with the very transaction being considered or complained of, and must have

been misconduct, fraud or bad faith toward the defendant making the contention." *Baal v. McDonald's Corporation*, 97 Ill. App. 3d 495, 500–01 (1981). The doctrine of unclean hands is not intended to prevent equity from doing complete justice. *Id.*

The City argues that Plaintiffs' violations of traffic safety laws should not be disregarded or minimized; the violations amount to misconduct that prevents Plaintiffs from recovering in equity. Plaintiffs argue that a traffic ticket is not the type of misconduct toward the City that the doctrine of unclean hands is designed to prevent. Plaintiffs also point out that the doctrine of unclean hands is neither favored by the courts nor applied in the absence of bad faith or fraud.

Plaintiffs persuasively argue that the traffic safety law violations here are the result of their mistakes, but their mistakes were not fraudulent or in bad faith. Therefore, Plaintiffs' conduct does not rise to the level required for the doctrine of unclean hands to bar their claims.

IT IS HEREBY ORDERED:

1. Defendant's motion to dismiss Plaintiffs' complaint is granted in part and denied in part.
2. Counts I, II, III, and IV are dismissed with prejudice pursuant to 735 ILCS 5/2-615.
3. Defendant's motion to dismiss Counts V, VI, VII, and VIII is denied.
4. Defendant is granted 28 days to answer Counts V, VI, VII, and VIII.
5. This case is continued to March 25, 2016 at 10:15 a.m. for status.

Judge Kathleen G. Kennedy

ENTER: 1718

FEB 19 2016

2-19-16

Circuit Court – 1718 25

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

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

ROSIE JONES, DEBRA DEMBRY, and JANET WITTENMYER, Individually, And on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.) No. 2017 CH 13401

VILLAGE OF CRESTWOOD,

Defendant.

REPORT OF PROCEEDINGS had at the hearing in the above entitled cause before the Honorable Pamela McLean Meyerson, Judge of said Court, in Room 2305, Richard J. Daley Center, Chicago, Illinois, on 28th day of June, 2018, at 2:03 p.m.

APPEARANCES:

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Appeared on behalf of the Plaintiffs;

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Appeared on behalf of the Defendant.

MR. HAGMAN: Good afternoon, your Honor. Nick Hagman for the plaintiff class.

MR. STANNER: Good morning, your Honor. Daniel Stanner on behalf of the Village of Crestwood.

THE COURT: So we are here this afternoon for status on ruling on defendant's motion to dismiss the complaint. And, as you know, I heard all argument on May 23rd after reviewing the briefs and the complaint. And I'm prepared to give you an oral ruling.

There are three counts in the complaint. Count I was for declaratory judgment on behalf of the proposed class. Once a declaration that there was no traffic control device controlling the intersection of Chicago Avenue and Cal Sag Road and that the red light camera tickets that were issued at that intersection violate the Manual of Uniform Traffic Control Devices, which I'm going to be referring to a lot during this opinion, so I'm going to call it MUTCD. And also the Illinois Vehicle Code, and that those tickets are void and unenforceable.

Count II is for injunctive relief. It asks for an injunction enjoining plaintiff from issuing I'm sorry, defendant from issuing automated red light camera tickets for right turns at that intersection. And Count III is for unjust enrichment and asks the Court to require defendant to refund all fines, penalties, and interests for those violations.

Defendant makes four arguments which all go to each of the counts, and I'm going to do these in a little bit different order than the order that the arguments were presented to me in the briefs and the oral arguments.

So the first argument that I will address is a 2 615, argument, and that is that the MUTCD doesn't contain binding legal requirements, but the complaint doesn't just say that defendant violated MUTCD. It also says defendant violated the Illinois Vehicle Code.

So my holding is that the MUTCD requirements are relevant to the extent that

they have been adopted by Illinois law. And they have been. Section 301 of the Illinois Vehicle Code, which is 625 ILCS 5/11 301 provides, quote:

"The department shall adopt a State manual and specifications for a uniform system of traffic control devices. Such uniform system shall correlate with and, where not inconsistent with Illinois highway conditions, conform to the system set forth in most recent edition of the national manual on uniform traffic control devices for streets and highways.

In addition, Section 305 of the Illinois Vehicle Code provides in A that:

The driver of any vehicle shall obey the instructions of any official traffic control device applicable thereto.

And in C it provides that:

No provision of this act for

which official traffic control devices are required shall be enforced against an alleged violator if at the time and place of the alleged violation an official device is not in proper position and sufficiently legible to be seen by an ordinarily observant person.

So the MUTCD standards have been adopted in Illinois, and I'm not going to dismiss the complaint based on this first argument.

The second argument I will address is the 2 615 argument that there is no private right of action to enforce the MUTCD. And that argument says that because Section 301 of the Illinois Vehicle Code did not explicitly state that drivers can bring private rights of action to enforce the terms of the MUTCD, that there is not such a right.

At oral argument defendant suggested that MUTCD could be used defensively to defend against a traffic ticket but not offensively to bring a suit such as this one.

Plaintiff conceded that the MUTCD doesn't contain an explicit private right of action provision but argued that it can be implied from the statute. The standard on filing a private right of action was set forth in *Pilotto versus Urban Outfitters*. Pilotto is P I L O T T O. And that is 2017 Ill. App. 1st 160 844. And at Paragraph 22 it provides that:

In order to find an implied private right of action, the Court must find that, 1, the plaintiff is a member of the class for whose benefit the statute was enacted; 2, the plaintiff's injury is one the statute was designed to prevent; 3, a private right of action is consistent with the underlying purpose of the statute; and, 4, implying a private right of action is necessary to provide an adequate remedy for violations of the statute.

My holding is plaintiff does meet these requirements. The key statute that

we're talking about here is Section 305 of the vehicle code which I described before, and that requires before a driver can be punished for violating a traffic control device that device has to be in proper position and sufficiently legible to be seen by an ordinarily observant person.

So considering those four requirements in Pilotto, first of all, is the statute meant to benefit the plaintiffs? Sure. By definition the plaintiffs are people affected by the alleged improper enforcement of the statute. Secondly, was there injury when the statute was designed to prevent? Yes, we can assume the statute was meant to avoid enforcement of tickets that were issued for signs that were in the wrong place or that couldn't easily be seen. Third is a private right of action consistent with the purpose of the statute? Yes. A lawsuit could prevent improper placement of signs. And, finally, is it necessary to provide an adequate remedy? Defendants have argued that it's not because the violators could bring

their arguments as a defense at an administrative hearing.

There's some question as to whether or not those arguments would be heard in an administrative hearing or not, but even if they would, plaintiffs are seeking an injunction in this case to stop the issuance of tickets at this intersection as it's now configurated, and that is not relief that could be awarded in the administrative hearing on the ticket.

So a private right of action in the circuit court is necessary to provide an adequate remedy. My holding is that private right of action is available here, and so I will not dismiss based on that argument.

The third argument is a 2 619 argument, and it is that plaintiffs have not exhausted their administrative remedies. There's no question that they didn't. One of the named plaintiffs paid a ticket without challenging it. Two of them challenged the ticket administratively but didn't file an administrative review appeal with the circuit

court.

The question is do they have to exhaust their administrative remedy in this case? Plaintiff argued that there are exceptions to the exhaustion requirement. You don't have to exhaust where one plaintiff challenges administrative decisions as being void; two, the agency can't provide adequate relief; three, it would be futile to seek administrative relief; or, four, agency expertise is not required. And those are set forth in *Maschek versus City of Chicago* case, M A S C H E K, 2015 Ill. App. 1st 150520.

My holding is that all of these exceptions are fine in this case. I'm not making a holding that the decisions are void, only that plaintiff is challenging them as void.

You can see in the prayer for relief in Count I, plaintiff wants a declaration that such citations are void and unenforceable. And as I've discussed the complaint is asking the Court to grant relief that could not be granted in the

administrative proceeding enjoining the defendant from issuing tickets at that intersection, and so the agency couldn't provide adequate relief. And it would be futile to seek administrative relief. And this is a matter that doesn't particularly require the specific expertise in the nature of that intersection and the familiarity with that particular intersection that the Court can grant from hearing the evidence.

So the final argument is a 2 615 argument, and defendant argues that even if MUTCD requirements are binding, the complaint doesn't state a claim because the complaint shows the defendant has met those requirements.

Defendant argues that from the photo attached as an exhibit to the complaint you can see the stoplight. On a 2 615 motion, the Court must accept all well pleaded allegations as true. But it's also the case that exhibits attached to the complaint will control over the allegations of the complaint itself. Here, taking the allegations as true

for purposes of its motion, I find that the complaint does state a cause of action that defendants violated the MUTCD requirements and the Illinois Vehicle Code. It attaches an expert opinion that says, quote:

"There are no traffic signal faces clearly visible during the motorists' normal view," unquote.

The defendant says it's clear from the picture that you can see the stoplight, but it's not clear from me by looking at the picture that it's, quote, "sufficiently legible to be seen by an ordinarily observant person," unquote. And that is the standard taken directly from Section 305. So it's a question of fact.

In summary, I'm going to deny the motion to dismiss in its entirety, and I'll give you 28 days to answer.

MR. STANNER: Can I ask for a point of clarification?

THE COURT: Yes.

MR. STANNER: Several points you talked about there being a private right of

action under the statute.
THE COURT: Yes.
MR. STANNER: I'm not clear what statute the Court is implying right of action under. If it's under 305, which the court referenced a few times, 305 is not mentioned in the complaint. So are we it was something that came up in the briefing on the motion to dismiss, so are we to move forward with the assumption that that is the basis for the plaintiff's complaint or is plaintiff going to amend to clarify that?
THE COURT: Would you like to address that issue?
MR. HAGMAN: Okay. Give me a second to think because I wasn't prepared to argue today.
THE COURT: Well, the so there was a lot of argument at the oral argument about Section 301, Section 304, Section 305. I am looking at Section 304 does deal with the placement of the traffic control devices by the Village. Section 305 deals with not enforcing the traffic control devices. I

don't I do have the complaint in front of me now, but I'll take your word for it that the complaint doesn't actually reference Section 305.
Is that what you're saying?
MR. STANNER: Yeah.
THE COURT: Okay. So it does reference Section 301.
Is it your position that for it to move forward it needs to reference Section 305? I mean, that is, in fact, what I am basing my opinion in large part upon. So I think what I will do is ask you to amend the complaint to reference Section 305 explicitly, perhaps heading off any further arguments in the future about that, okay?
So how long do you want to do that?
MR. HAGMAN: I guess
THE COURT: It shouldn't be
MR. HAGMAN: No, I'm just
THE COURT: that difficult because I'm not asking you to make an extensive
MR. HAGMAN: Yeah, a week. I mean, if we're just going to add a paragraph and make

sure everything is renumbered.
THE COURT: All right. So today's the 28th. Next week is the 4th of July.
Do you want to do it by the end of next week or do you want to do it by the following Monday?
MR. HAGMAN: We'll do the following Monday.
THE COURT: Okay, by July 9th. And then you can answer within 28 days after. So that would be August 6th.
And then why don't we have a status after that?
MR. STANNER: Is the Court's order that the defendant may only file an answer, it can't file a responsive pleading?
THE COURT: Well, you've made your argument, right, so the presumably the only changes going If you want to make any change other than explicitly referring to Section 305, then I'll let you make that one change. And then if you want to do something other than answer, you have to ask for leave

MR. STANNER: Sure.
THE COURT: okay?
So we will presume you will answer by August 6th, and if you want to do something else then you need to bring a motion before that, okay?
MR. STANNER: Okay.
THE COURT: And we'll have a status, how about the 16th or so? It will be 10:15.
Does that work?
MR. HAGMAN: Yes.
MR. STANNER: That's fine.
MR. HAGMAN: One point of clarification. I believe at the beginning you mentioned the roads were think you said Chicago and Cal Sag. It's Cicero and Cal Sag.
THE COURT: Did I say that?
MR. HAGMAN: I believe I heard Chicago.
THE COURT: I thought I said the intersection of Cicero and Cal Sag Road. That's what I wrote, but if I said it differently, that's what I meant, Cicero.

MR. HAGMAN: Perfect.
THE COURT: Got it. It's a particular intersection that was specifically identified in the complaint.
MR. STANNER: Thank you, judge.
MR. HAGMAN: Thank you.
THE COURT: Thank you.
Court is in recess.
(Which were all the proceedings had in the above entitled cause on this date.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I, MARY ANN CASALE, Certified Shorthand Reporter of the State of Illinois and Notary Public of the County of Cook, do hereby certify that I caused the proceedings in the above captioned cause to be reported in shorthand and that the foregoing is a true, complete, and correct transcript of said proceedings as appears from my stenographic notes so taken and transcribed under my personal direction.

IN WITNESS WHEREOF I do hereunto set my hand and affix my notarial seal at Chicago, Illinois, this 27th day of July, 2018.

MARY ANN CASALE, CSR, RPR, CLVS, CMRS
Notary Public, Cook County, Illinois
Illinois CSR License No. 084 002668

Order (Rev. 02/24/05) CCG N002

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Rosie Jones et al
v.
Village of Crestwood

No. 2017 CH 13401

ORDER

This matter coming to be heard on Defendant's Rule 2-619.1 Motion to Dismiss, due notice given and the Court being fully advised

IT IS HEREBY ORDERED THAT:

1. The Motion to dismiss is denied for the reasons stated on the record
2. Plaintiffs are directed to amend the complaint on or before July 9, 2018 to reference section 305 of the Motor Vehicle Code
3. Defendant shall answer or seek leave to otherwise plead on or before August 6, 2018
4. This matter is set for status on August 16, 2018 at 10:15 a.m.

Attorney No.: 38234
Name: R Stanner
Atty. for: Defendant
Address: 209 S. LaSalle
City/State/Zip: Chicago IL
Telephone: 312-762-9450

ENTERED:
Judge Pamela McLean Meyerson
Dated: JUN 28 2018
Circuit Court – 2097
Judge Judge's No.

DOROTHY BROWN, CLERK OF THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

Exhibit 4

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:
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Appellee's Name: City of Chicago

Appellee's Attorneys:
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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.

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Matthew C. De Re
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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
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/s/ Thomas A. Zimmerman, Jr.
Thomas A. Zimmerman, Jr.

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

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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
County Department, 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

CODE PROVISIONS INVOLVED

Chic. Mun. Code § 9-4-010

Chic. Mun. Code § 9-64-190

Chic. Mun. Code § 9-100-020

Chic. Mun. Code § 9-100-030

625 ILCS 5/11-208.3

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 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 two or more individuals competing or racing on any street or highway 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 one or more individuals competing in a race against time on any street or highway.

“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 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; and (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.

"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, 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.

"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.

"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 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 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)

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)

9-100-020 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*
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)	$65.00
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*
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	$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 (1)	$35.00 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)

9-100-030 Prima facie responsibility for violation and penalty – Parking, standing or compliance violation issuance and removal.

(a) Whenever any vehicle exhibits a parking, standing or compliance violation, any person in whose name the vehicle is registered with the Secretary of State of Illinois or such other state's registry of motor vehicles shall be prima facie responsible for the violation and subject to the penalty therefor. The city and the ticketing agent shall accurately record the state registration number of the ticketed vehicle. 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.

(b) Whenever any vehicle exhibits a parking, standing or compliance violation, any police officer, traffic control aide, other designated member of the police department, parking enforcement aide or other person designated by the traffic compliance administrator observing such violation may issue a violation notice, as provided for in Section 9-100-040 and serve the notice on the owner of the vehicle by: (i) handing the notice to the operator of the vehicle, if the operator is present, or (ii) affixing the notice to the vehicle in a conspicuous place, or (iii) if the operator drives away in the vehicle before notice can be served in the manner prescribed in items (i) or (ii) of this subsection, 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 City 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 shall occur no later than 210 days after the date of the violation. The issuer of the notice shall specify on the notice his or her identification number, the particular ordinance allegedly violated, the make and state registration number of the cited vehicle, and the place, date, time and nature of the alleged violation, and shall certify the correctness of the specified information by signing his or her name as provided in Section 11-208.3 of the Illinois Vehicle Code, as amended.

(c) The traffic compliance administrator shall withdraw a violation notice when said notice fails to establish a prima facie case as described in this section; provided, however, that a violation notice shall not be withdrawn if the administrator reasonably determines that (1) a state registration number was properly recorded by the city and its ticketing agent, and (2) any discrepancy between the vehicle make or model and the vehicle registration number as set forth in the violation notice is the result of the illegal exchange of registration plates. A final determination of liability that has been issued for a violation required to be withdrawn under this subsection (c) shall be vacated by the city. The city shall extinguish any lien which has been recorded for any debt due and owing as a result of the vacated determination and refund any fines and/or penalties paid pursuant to the vacated determination.

(d) It shall be unlawful for any person, other than the owner of the vehicle or his designee, to remove from a vehicle a violation notice affixed pursuant to this chapter.

(Prior code § 27.1-3; 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. 7-30-97, p. 49902; Amend Coun. J. 4-29-98, p. 66564; Amend Coun. J. 2-10-10, p. 84658, § 2; Amend Coun. J. 10-28-15, p. 11951, Art. I, § 4; Amend Coun. J. 4-24-20, p. 15058, § 1)

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: July 1, 2020 to June 30, 2021

<Text of section effective until July 1, 2021. See, also, text of section 625 ILCS 5/11-208.3, effective July 1, 2021.>

§ 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. The traffic compliance administrator also may make

a certified report to the Secretary of State under Section 6-306.5.

(2) A parking, standing, compliance, automated speed enforcement system, or automated traffic law violation notice that shall specify or include the date, time, and place of violation of a parking, standing, compliance, automated speed enforcement system, or automated traffic law regulation; the particular regulation violated; any requirement to complete a traffic education program; the fine and any penalty that may be assessed for late payment or failure to complete a required traffic education program, or both, when so provided by ordinance; the vehicle make or a photograph of the vehicle; the state registration number of the vehicle; and the identification number of the person issuing the notice. With regard to automated speed enforcement system or automated traffic law violations, vehicle make shall be specified on the automated speed enforcement system or automated traffic law violation notice if the notice does not include a photograph of the vehicle and the make is available and readily discernible. With regard to municipalities or counties with a population of 1 million or more, it shall be grounds for dismissal of a parking violation if the state registration number or vehicle make specified is incorrect. The violation notice shall state that the completion of any required traffic education program, the payment of any indicated fine, and the payment of any applicable penalty for late payment or failure to complete a required traffic education program, or both, shall operate as a final disposition of the violation. The notice also shall contain information as to the availability of a hearing in which the violation may be contested on its merits. The violation notice shall specify the time and manner in which a hearing may be had.

(3) Service of a parking, standing, or compliance violation notice by: (i) affixing the original or a facsimile of the notice to an unlawfully parked or standing vehicle; (ii) handing the notice to the operator of a vehicle if he or she is present; or (iii) mailing the notice to the address of the registered owner or lessee of the cited vehicle as recorded with the Secretary of State or the lessor of the motor vehicle within 30 days after the Secretary of State or the lessor of the motor vehicle notifies the municipality or county of the identity of the owner or lessee of the vehicle, but not later than 90 days after 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 drivers license for failure to complete a traffic education program or to pay fines or penalties, or both, for 5 or more automated traffic law violations under Section 11-208.6 or 11-208.9 or automated speed enforcement system violations under Section 11-208.8.

(6) A notice of impending drivers license suspension. This notice shall be sent to the person liable for failure to complete a required traffic education program or to pay any fine or penalty that remains due and owing, or both, on 5 or more unpaid automated speed enforcement system or automated traffic law violations. The notice shall state that failure to complete a required traffic education program or to pay the fine or penalty owing, or both, within 45 days of the notice's date will result in the municipality or county notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under Section 6-306.5 of this Code. The notice shall also state that the person may obtain a photostatic copy of an original ticket imposing a fine or penalty by sending a self addressed, stamped envelope to the municipality or county along with a request for the photostatic copy. The notice of impending drivers 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.

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. 101-659. Some statute sections may be more current, see credits for details.