THIRD DIVISION
March 13, 2019

No. 1-18-1036

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| JOSEPH L. DOMBROWSKI, on behalf of himself and all others similarly situated, | ) | Appeal from the Circuit Court of Cook County. |
| Plaintiff-Appellant, | ) | |
| v. | ) | No. 17 CH 1186 |
| THE CITY OF CHICAGO, a municipal corporation, | ) | |
| Defendant-Appellee. | ) | Honorable Raymond W. Mitchell, Judges Presiding. |

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JUSTICE HOWSE delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Ellis concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's February 20, 2018 order dismissing with prejudice Plaintiff's First Amended Class Action Complaint and holding that a mandatory presumption in a municipal ordinance is not *per se* unconstitutional. We do not address the efficacy of plaintiff's argument with respect to the trial court's August 8, 2017 order dismissing his Verified Class Action Complaint because (1) plaintiff abandoned and waived those claims by not expressly preserving the claims for appeal in Plaintiff's First Amended Class Action Complaint and (2) because he failed to exhaust all available administrative remedies.

¶ 2 BACKGROUND

¶ 3 Plaintiff, Joseph L. Dombrowski, is the owner of property located at 1433-39 West Balmoral Avenue, Chicago, Illinois ("Balmoral Property"). On November 3, 2016, an inspector

for the Department of Streets and Sanitation issued a citation alleging that plaintiff was liable for violating Municipal Code of Chicago ordinance 7-28-261 ("Refuse Ordinance"), specifically subsection (b). The Refuse Ordinance in its entirety provides as follows:

> "(a) No person shall deposit refuse in a standard or commercial refuse container, or compactor, in a manner that prevents complete closure of the container's cover, or deposit refuse on top of a container in a manner that interferes with opening of the container, or pile or stack refuse against a container.
>
> (b) The owner, his agent or occupant of a property shall not allow any person to violate subsection (a) of this section. The presence of refuse preventing complete closure of the container's cover, deposited on or piled or stacked against a standard refuse container, a commercial refuse container, or compactor shall be prima facie evidence of violation of this subsection (b).
>
> (c) Any person who violates any provision of this section shall be fined not less than $200.00 and not more than $500.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense." Chicago Municipal Code § 7-28-261 (amended July 7, 1999).

¶ 4 Administrative Proceedings

¶ 5 On December 12, 2016, plaintiff filed his appearance with the City of Chicago's Department of Administrative Hearings. That same day, plaintiff filed a motion to subpoena requesting the administrative law judge ("ALJ") issue a subpoena compelling the inspector who issued the citation to appear at the hearing on plaintiff's citation. In his motion, plaintiff raised a number of constitutional issues with the Refuse Ordinance to include violations of various sections of both the United States and Illinois constitutions.

¶ 6 On December 12, 2016, a hearing was held before the ALJ on plaintiff's motion to subpoena the inspector. The defendant, City of Chicago ("the City"), objected. Following argument, the ALJ denied plaintiff's motion concluding that the inspector would not provide testimony relevant to the contested issue.

¶ 7 On December 22, 2016, the ALJ conducted a hearing on plaintiff's alleged violation of the Refuse Ordinance. Plaintiff entered a not liable plea. Plaintiff stipulated to the ownership of the Balmoral Property. The City proceeded by documentation and introduced (1) the notice of ordinance violations and hearing containing the inspector's certified statement that on March 25, 2016 at 9:50 a.m. the inspector observed refuse improperly stacked against, piled on, or overflowing from the dumpster; and (2) three photographs taken by the inspector on March 25, 2016 showing the dumpster (i) was not closed because there was too much garbage, (ii) had garbage piled alongside it, and (iii) had "1433 West Balmoral" printed on it. The documents were admitted into evidence over plaintiff's objection and the ALJ found that the City had established a *prima facie* case. Plaintiff called one witness, Chris Stites, the janitor employed at the Balmoral Property on the date the citation was issued to plaintiff. Stites testified that he was at the Balmoral Property the morning of March 25, 2016 and observed the Balmoral Property dumpster located in the alley overflowing at 8:00 a.m. or 8:30 a.m. after which he called Lakeshore Management for immediate pick up. Stites testified that Lakeshore Management arrived at about 10:00 a.m. that same day during which time he observed them collecting the garbage from the Balmoral Property dumpster.

¶ 8 Following the hearing, the ALJ found plaintiff liable for violation of the Refuse Ordinance and entered a judgment against him in the amount of $260 for penalties and administrative costs. Plaintiff was also ordered to come into compliance with all outstanding code violations.

¶ 9 Plaintiff was advised by the ALJ that he had 35 days to file his appeal on the sixth floor of the Richard J. Daley Center. Plaintiff did not seek administrative review of the ALJ's decision.

¶ 10 Cook County Circuit Court Proceedings

¶ 11 On January 26, 2017, plaintiff filed a four count verified class action complaint in the circuit court of Cook County as follows: count I alleged plaintiff and the class were denied due process of law in violation of the United States Constitution and Article I, Section 2 of the Illinois Constitution (U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2) and further argued that the Refuse Ordinance is unconstitutional on its face and as applied; count II was a claim for declaratory judgment, count III was a claim for unjust enrichment; and count IV was a claim for injunctive relief.

¶ 12 On January 30, 2017, plaintiff filed a motion for class certification.

¶ 13 The City filed a motion to dismiss plaintiff's complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure (735 ILCS 5/2-615 (West 2016)) stating that plaintiff's due process claims were legally insufficient because plaintiff failed to seek administrative review of any alleged procedural errors. The City further argued that plaintiff's claims for declaratory judgment, unjust enrichment, and injunctive relief failed to state a cause of action.

¶ 14 After briefing and hearing, the trial court entered an order dismissing counts II through IV of plaintiff's complaint with prejudice and dismissing count I without prejudice. Plaintiff was given leave to file an amended complaint.

¶ 15 On September 5, 2017, plaintiff filed his amended class action complaint consisting of one count alleging that the Refuse Ordinance facially violates the fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution because the Refuse Ordinance contains an unconstitutional mandatory rebuttable presumption in section (b)

which provides that "[t]he presence of refuse preventing complete closure of the container's cover, deposited on or piled or stacked against a standard refuse container, a commercial refuse container, or compactor shall be *prima facie* evidence of the violation of this subsection (b)." Chicago Municipal Code § 7-28-261 (amended July 7, 1999). Aside from his due process argument relating to the Refuse Ordinance's mandatory rebuttable presumption, plaintiff's amended complaint did not incorporate any of the other claims from his January 26, 2017 complaint.

¶ 16 On November 16, 2017, the City filed a motion to dismiss plaintiff's amended complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure. The City argued that (1) plaintiff's due process claim failed as a matter of law because the provision in the Refuse Ordinance allowing the presence of accumulated refuse to establish *prima facie* evidence of an owner's violation of the ordinance in an administrative proceeding is consistent with due process, (2) due process is not offended by an ordinance citing various cases holding a property owner liable for an ordinance violation even where the violation was committed by a third party, (3) plaintiff's due process claim failed because he did not allege facts demonstrating prejudice, and (4) punitive damages sought by plaintiff should be stricken because they are not available against a municipality for claims asserting violations of civil rights laws.

¶ 17 On January 9, 2018, plaintiff filed his response to the City's motion to dismiss arguing that the Refuse Ordinance creates an unconstitutional mandatory presumption and that plaintiff was prejudiced by the alleged violation. Plaintiff further clarified his due process argument stating that enforcement of the facially unconstitutional Refuse Ordinance's mandatory presumption resulted in plaintiff and other similarly situated owners being held strictly liable for violations of the ordinance committed by other people. Plaintiff also acknowledged that punitive

damages were not available against local public entities and municipal corporations. On February 5, 2018, the City filed a reply in support of the motion to dismiss.

¶ 18 On February 20, 2018, following a hearing, the trial court entered an order dismissing plaintiff's amended complaint with prejudice finding that the Refuse Ordinance does not offend due process nor is it *per se* unconstitutional stating in relevant part as follows:

> "Plaintiff's claim is based solely on the premise that the ordinance is unconstitutional because it includes a mandatory rebuttable presumption. Plaintiff cites *People v. Woodrum* for the proposition that all mandatory rebuttable presumptions are *per se* unconstitutional. 223 Ill. 2d 286, 309 (2006). *Woodrum,* however, involved a criminal child abduction statute, and every subsequent case cited by Plaintiff on this issue addresses criminal statutes. *See Sandstrom v. Montana,* 442 U.S. 510 (1979) and *People v. Pomykala,* 203 Ill. 2d. 198 (2003). 'A mandatory rebuttable presumption violates due process when it relieves the State of its burden to prove the elements of a crime.' " *People v. Beltran,* 327 Ill. App. 3d 685, 691 (2002).

¶ 19 On March 21, 2018, plaintiff filed a motion to vacate the trial court's February 20, 2018 order pursuant to section 2-1301 of the Illinois Code of Civil Procedure (735 ILCS 5/2-1301 (West 2018)) which was denied by the trial court on April 27, 2018.

¶ 20 On May 17, 2018, plaintiff timely filed his notice of appeal from the trial court's August 8, 2017 and February 20, 2018 orders granting the City's motions to dismiss.

¶ 21 This appeal followed.

¶ 22 ANALYSIS

¶ 23 On appeal, plaintiff raises two issues. Plaintiff first argues that the trial court's August 8, 2017 order dismissing his original complaint for failure to exhaust administrative remedies was in error. In his second argument, plaintiff contends that the trial court's February 20, 2018 order dismissing his amended complaint was in error because the Refuse Ordinance has a mandatory rebuttable presumption which is facially *per se* unconstitutional and resulted in him and similarly situated property owners being held strictly liable for the ordinance violation.

¶ 24 We address plaintiff's two arguments in turn.

¶ 25 Dismissal of Plaintiff's Original Complaint

¶ 26 We first address plaintiff's argument that the trial court erred in its August 8, 2017 order dismissing plaintiff's original complaint filed on January 26, 2017, specifically, counts II, III and IV with prejudice and count I without prejudice on the basis that plaintiff failed to exhaust available administrative remedies. The City argues that plaintiff abandoned the arguments contained in his January 26, 2017 complaint when he did not resurrect them in his amended complaint filed on September 5, 2017 and additionally waived the arguments by failing to exhaust all administrative remedies. We agree that plaintiff abandoned all claims in his January 26, 2017 complaint which were not set forth or otherwise adopted in his amended complaint filed on September 5, 2017. We also agree that, even if not abandoned, plaintiff waived his claims by failing to exhaust the administrative remedies available to him.

¶ 27 Whether a dismissed claim has been preserved for review is a question of law that we review *de novo*. *Bonhomme v. St. James*, 2012 IL 112393, ¶ 17. We also apply *de novo* review to orders granting a motion to dismiss for failure to exhaust administrative remedies. *Wilson v. County of Cook*, 2012 IL 112026, ¶ 1; *Illinois Health Maintenance Organization Guaranty Ass'n v. Shapo*, 257 Ill. App. 3d 122, 130 (2005).

¶ 28 A party who files an amended pleading waives any objection to the trial court's ruling on prior complaints. *Boatmen's National Bank of Bellevielle v. Direct Lines, Inc.*, 167 Ill. 2d 88, 99 (1995); *Foxcroft Townhome Owners Ass'n v. Hoffman Rosner Corp.*, 96 Ill. 2d 150, 153 (1983). This is true even where certain counts contained in the earlier complaint were dismissed with prejudice. *Bonhomme*, 2012 IL 112393, ¶ 19. When a complaint, or certain counts therein, are dismissed plaintiff is left with two choices: (1) they can elect to stand on the dismissed counts and argue error at the appellate level prior to filing an amended complaint; or (2) they can reallege or preserve the dismissed count in their amended complaint. *Tabora v. Gottlieb Memorial Hospital*, 279 Ill. App. 3d 108, 113-14 (1996). Where neither is done, the claims are abandoned. *Id.* at 114. Even a simple paragraph or footnote in the amended pleading notifying defendant and the court that plaintiff is preserving the dismissed portions of his former complaint for appeal is sufficient to avoid abandonment. *Id.* However, where an amended complaint is complete in itself and does not refer to or adopt claims in a prior pleading, the prior claims cease to be part of the record for most purposes, being in effect abandoned and withdrawn. *Id.* at 113.

¶ 29 Plaintiff's amended complaint contains one count alleging only that the Refuse Ordinance contains an unconstitutional mandatory rebuttable presumption. In his amended complaint, plaintiff fails to incorporate or make reference to the following claims contained in his original January 26, 2017 complaint: (1) the claim in count I alleging procedural due process violations because plaintiff and the class were not afforded a hearing wherein they could call, subpoena, examine, and cross-examine the complainant and witness, under oath, in defense of themselves; (2) the claim in count II for declaratory judgment; (3) the claim in count III for unjust enrichment; and (4) the claim in count IV for injunctive relief. Plaintiff argues that he did not abandon these claims because: (a) the amended complaint included all of his objections before the ALJ and attached as an exhibit his motion to subpoena witness which contained his

procedural due process claim and the ALJ order denying the motion; (b) the amended complaint included his objections and arguments to plaintiff's introduction of the three photographs as evidence; (c) the amended complaint contained class action allegations and discussed common questions of fact and law including whether plaintiff's and the class' due process rights were violated; and (d) further stated that all of the above allegations and exhibits were specifically incorporated into count I of plaintiff's amended complaint.

¶ 30 We disagree with plaintiff that any of these actions were sufficient to notify the City and the court that plaintiff was preserving the dismissed portions of his former complaint for appeal. *Id*. at 114. Plaintiff's amended complaint does not reference the claims in his original complaint. The attachment of a motion to issue subpoena filed and denied by the ALJ during the administrative proceedings does not put the City or the trial court on notice of his intention to proceed on claims dismissed in his original complaint. The same is true with respect to plaintiff's pleading of general facts that may relate to the various waived claims but could also have application to arguments made in the amended complaint. Thus, plaintiff abandoned those claims when he filed an amended complaint without referring to or adopting the claims in his earlier complaint. See *Bonhomme*, 2012 IL 112393, ¶ 31. Because plaintiff's claims (1) alleging procedural due process violations based on the fact that plaintiff and the class were not afforded a hearing wherein they could call, subpoena, examine, and cross-examine the complainant and witness, under oath, in defense of themselves; (2) for declaratory judgment; (3) for unjust enrichment; and (4) for injunctive relief were abandoned, we need not consider his various arguments alleging error in the trial court's August 8, 2017 order dismissing plaintiff's complaint.

¶ 31 We also note, abandonment aside, plaintiff waived these claims by failing to exhaust his administrative remedies. The exhaustion of administrative remedies doctrine is a well settled basic principle of administrative law requiring a party aggrieved by administrative action to first

pursue all administrative remedies before seeking review in the courts. *Illinois Health Maintenance Organization Guaranty Ass'n*, 257 Ill. App. 3d at 130. Strict compliance with the doctrine is required except where (1) a statute, ordinance, or rule is attacked as unconstitutional on its face; (2) multiple administrative remedies exist and at least one is exhausted; (3) the agency cannot provide an adequate remedy or where it is patently futile to seek relief before the agency; (4) no issues of fact are presented or agency expertise is not involved; (5) irreparable harm will result from further pursuit of administrative remedies; or (6) the agency's jurisdiction is attacked because it is not authorized by statute. *Id.* at 30-31; *Castaneda v. Illinois Human Rights Comm'n*, 132 Ill. 2d 304, 308-09 (1989). We find none of the above exceptions applicable to plaintiff's abandoned arguments in his first complaint. Procedures were in place for review of alleged error including the ALJ's decision denying plaintiff's motion to subpoena the inspector and plaintiff was advised of these procedures. Plaintiff failed to pursue his available administrative remedies by not requesting review of the ALJ's orders and his other as-applied factually based due process challenges. In failing to do so, plaintiff deprived the reviewing body of the opportunity to review its decision and correct any errors that it may have possibly made. *Illinois Health Maintenance Organization Guaranty Ass'n*, 257 Ill. App. 3d at 133. Accordingly, in addition to abandonment, plaintiff also waived the claims in his original complaint by failing to exhaust all administrative remedies.

¶ 32 Having found that plaintiff has both abandoned and waived the claims contained in his first complaint, we turn our attention to plaintiff's second argument concerning the trial court's dismissal of his September 5, 2017 amended complaint.

¶ 33 Dismissal of Plaintiff's September 5, 2017 Amended Complaint

¶ 34 In his second argument, plaintiff contends that the trial court's February 20, 2018 order dismissing his amended complaint was in error because the Refuse Ordinance contains a

mandatory presumption which he argues is *per se* unconstitutional and facially violates the United States Constitution and Illinois Constitution. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. The City responds to plaintiff's second argument stating, among other things, that the trial court's February 20, 2018 order correctly dismissed plaintiff's amended complaint because the Refuse Ordinance satisfies due process and its mandatory presumption is not *per se* unconstitutional.

¶ 35 As noted above, this court reviews *de novo* orders granting a 2-615 motion to dismiss. *Wilson*, 2012 IL 112026, ¶ 1. A claim that an ordinance is unconstitutional is a question of law and is also reviewed *de novo*. *Id.*

¶ 36 "A facial challenge 'is the most difficult challenge to mount successfully because an enactment is invalid on its face only if no set of circumstances exists under which it would be valid.' [Citation.] 'If a statue can be validly applied in any situation, a facial challenge must fail.' [Citation.] In examining a facial challenge, the particular facts of a party's case are irrelevant. [Citation.]" *In re A.C.*, 2016 IL App (1st) 153047, ¶ 30. The plaintiff bears the burden of proving that no situation exists in which the ordinance would be valid. *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 30. The same rules of statutory construction are applied when construing the validity of a municipal ordinance. *Id.* ¶ 19. It is the challenging party's burden to establish a clear constitutional violation. *Id*. "A court will affirm the statue or ordinance if it is 'reasonably capable of such a determination' and 'will resolve any doubt as to the statute's construction in favor of validity.' " *Id.*

¶ 37 As a preliminary matter, we note that in his briefs outlining the facial constitutional challenge, plaintiff conflates the issues by weaving into his argument due process challenges from his January 27, 2016 complaint including whether the City could prove a violation of the Refuse Ordinance solely through photographs and whether plaintiff's due process rights were

violated where the ALJ denied his motion to subpoena preventing him from cross-examining the city inspector. As discussed *supra*, we find that plaintiff abandoned and waived these arguments.

¶ 38 However, the same is not true of plaintiff's facial constitutional challenge to the mandatory presumption language contained in the Refuse Ordinance which is set forth in plaintiff's amended complaint. We also do not find that plaintiff waived this challenge under the exhaustion of administrative remedies doctrine. While a plaintiff may not seek judicial relief from an administrative action unless all administrative remedies available are exhausted, such is not the case where the complaint attacks the constitutionality of an ordinance on its face. *Van Harken v. City of Chicago*, 305 Ill. App. 3d 972, 977 (1999). We therefore turn to plaintiff's argument that the Refuse Ordinance's mandatory presumption is *per se* unconstitutional.

¶ 39 The crux of plaintiff's due process argument is that the Refuse Ordinance facially violates the fourteenth amendment of the United States Constitution and Article I, Section 2 of the Illinois Constitution because it creates a mandatory presumption which he argues is *per se* unconstitutional. In support of this position, plaintiff relies on one line of an Illinois supreme court holding in a criminal case stating that "under Illinois law, all mandatory presumptions are *per se* unconstitutional." *People v. Woodrum*, 223 Ill. 2d 286, 309 (2006).

¶ 40 We disagree with plaintiff's interpretation of *Woodrum* that "under Illinois law, all mandatory presumptions are *per se* unconstitutional" is applicable to civil actions, and more precisely, municipal ordinance violations. *Woodrum*, 223 Ill. 2d at 309. In *Woodrum*, the court determined that the child abduction statute's incorporation of the phrase "shall be *prima facie* evidence" creates a constitutionally impermissible mandatory presumption. *Id*. *Woodrum* and the cases cited therein reasoned that mandatory presumptions conflict with the presumption of innocence, relieve the state of the burden of proving each element of an offense beyond a

reasonable doubt, and could have the effect of requiring a trial court to direct a verdict against a defendant on an element proven by the presumption. *Id*. at 308-09.

¶ 41 Nothing in *Woodrum* or the cases it relied on suggest application to civil proceedings under either federal or Illinois case law and we decline plaintiff's invitation to read into *Woodrum* such an inappropriately broad application of the court's ruling. *Id*. All of the cases cited in *Woodrum* including *People v. Pomykala*, 203 Ill. 2d 198 (2003), are criminal cases. Moreover, in its discussion of the constitutionality of mandatory presumptions the court focuses exclusively on presumptions and burdens within the context of a criminal case which require proof beyond a reasonable doubt. *Woodrum*, 223 Ill. 2d at 308-09.

¶ 42 However, prosecutions in which fines are sought for the violation of a municipal ordinance are civil proceedings. The burden of proof in municipal proceedings, like civil proceedings, is by a preponderance of the evidence. *Smoke N Stuff v. City of Chicago*, 2015 IL App (1st) 140936, ¶ 19; See also Ill. S. Ct. R. 571 (eff. Dec. 7, 2011) ("Except as specifically stated herein or in existing statutes, the Code of Civil Procedure shall apply in all ordinance prosecutions to which these rules apply"), Ill. S. Ct. R. 578 (eff. Dec. 7, 2011) ("The prosecuting entity must prove the ordinance violation by a preponderance of the evidence; meaning it is more likely true than not that the violation occurred.") "Attempts to require application of the criminal burden of proof to all municipal prosecutions have been consistently rejected by the courts. See *City of Crystal Lake v. Nelson*, 5 Ill. App. 3d 358, 361 (1972); *Village of Mundelein v. Aaron*, 112 Ill. App. 3d 134, 135 (1983); *City of Park Ridge v. Larsen*, 166 Ill. App. 3d 545, 548 (1988)." *Village of Beckmeyer v. Wheelan*, 212 Ill. App. 3d 287, 291 (1991). The United States Supreme Court has held that outside the criminal law area, the locus of the burden of proof is not usually an area of constitutional concern. *Lavine v. Milne*, 424 U.S. 577, 585 (1976).

¶ 43 Our supreme court has recognized that there are differences between civil and criminal litigation all of which "favor the criminal defendant" including the state's burden to "prove the defendant guilty beyond a reasonable doubt by a unanimous verdict, a greater burden than that faced by any civil litigant." *American Family Mutual Insurance Company v. Savickas*, 193 Ill. 2d 378, 385 (2000). Other actions and procedures prohibited in criminal cases but permissible in civil municipal cases include allowing the prosecuting municipality to appeal the acquittal of a defendant charged with violating a municipal ordinance without running afoul of double jeopardy; no application of speedy trial time limitations, instead requiring a prosecuting municipality to proceed on its own convenience; relaxed limitations on complaints alleging violations with no requirement that they be drawn with the precision necessary in the drafting of a criminal indictment or information; and use of summary judgment. *Village of Beckmeyer*, 212 Ill. App. 3d at 290-93.

¶ 44 The Refuse Ordinance contains a mandatory rebuttable presumption. However, we do not find that when contained in a municipal ordinance, such a presumption is *per se* unconstitutional given the lesser burden on plaintiffs and protections available to defendants in civil proceedings which are yet further relaxed in the context of municipal actions. Nor do we accept plaintiff's argument that due process is violated where the Refuse Ordinance employs a mandatory presumption shifting the burden to plaintiff, other similarly situated property owners, their agents, and occupants of a property to show they are not liable. As pointed out by the trial court and the City, there are a number of federal and state cases which have gone beyond the mere burden shift of which plaintiff complains. These cases have held that due process is not offended even where the statue creates no defense or exception for an innocent property owner subject to penalty due to the offending acts of a third party undertaken while using the innocent owner's property. See *Bennis v. Michigan*, 516 U.S. 442, 446 (1996) (holding that "an owner's

interest in property can be forfeited by reason of the use to which the property is put even though the owner did not know that it was to be put to such use"); *Tower v. City of Chicago*, 173 F.3d 619, 627 (1999) (holding that due process is not offended where an ordinance imposes on an innocent owner a fixed fine of $500 when he allows a third party use of his vehicle and that third party engages in illegal activity); *Jackson*, 2012 IL App (1st) 111044, ¶ 38 (holding that a municipal code did not violate due process where an innocent owner's vehicle is impounded due to an authorized third party's use of the vehicle to hold or purchase a controlled substance and citing numerous federal and state cases that have come to a similar conclusion); *City of Chicago v. Hertz Commercial Leasing Corp.*, 71 Ill. 2d 333, 345-46 (1978) (holding that due process does not prevent the imposition of liability on a vehicle owner for parking violations of a lessee of the vehicle); *People v. Jaudon*, 307 Ill. App. 3d 427, 435-38 (1999) (holding that an ordinance which allowed seizure and impoundment of an innocent owner's vehicle containing an unregistered firearm did not violate federal or state due process).

¶ 45 The City was required to and did present evidence of accumulated refuse preventing complete closure of the Balmoral Property's refuse container's cover as well as evidence of refuse alongside the container. There was also a stipulation that plaintiff owned the Balmoral Property. The constitutional requirement of procedural due process is satisfied because plaintiff is not precluded from rebutting the *prima facie* evidence of the elements of the substantive offense. *Hertz Commercial Leasing Corp.*, 71 Ill. 2d at 347. It is important to note that while the Refuse Ordinance presumption does shift the burden, it is only after evidence is admitted establishing that refuse was placed in or around a container causing it to accumulate in an improper manner along with evidence that the individual cited under the subsection was the owner, his agent, or an occupant of the property. Plaintiff had an opportunity to rebut the presumption; however, he failed to do so. In fact, plaintiff's only witness corroborated the

evidence provided by the City by testifying that on the morning of March 25, 2016, he observed the dumpster belonging to the Balmoral Property overflowing without resolution until after the time plaintiff was issued a citation by the inspector. Plaintiff stipulated that he was the owner of the relevant property, his witness corroborated that accumulated refuse was present in a manner that violated the ordinance, and plaintiff raised no defense with respect to whether or not he allowed any person to deposit the accumulated refuse. Further, procedures were in place for plaintiff to address his overruled objections to the photographs introduced by the City and to address the ALJ's denial of his motion to subpoena the inspector; however, by failing to exhaust his administrative remedies, plaintiff waived review of these issues.

¶ 46 The City of Chicago has the power to "define, prevent and abate nuisances" pursuant to section 11-60-2 of the Illinois Municipal Code (65 ILCS 5/11-60-2 (West 2016)) and those ordinances are presumed valid with the burden on the challenger of the ordinance to prove invalidity which plaintiff has failed to do. *Village of Beckmeyer*, 212 Ill. App. 3d at 295. Absent any clear constitutional violation raised by plaintiff this court is required to presume the municipal ordinance constitutional. *Jackson*, 2012 IL App (1st) 111044, ¶ 20.

¶ 47 Accordingly, we find that the trial court's February 20, 2018 order properly dismissed plaintiff's amended complaint with prejudice.

¶ 48 CONCLUSION

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

¶ 50 Affirmed.