

II. Standard of Review

A 2-615 motion to dismiss requires the court to determine “whether the complaint sufficiently states a cause of action.” *Jespersen v. 3M*, 288 Ill. App. 3d 889, 892 (1st Dist. 1997) (citations omitted). The court should “not consider the merits of the claim. [Rather a]ll well-pleaded facts and reasonable inferences that could be drawn from those facts are accepted as true, but not conclusions of law or conclusions of fact unsupported by allegations of specific facts.” *Id.* (citations omitted). The court should “construe the allegations in the complaint in the light most favorable to the plaintiff,” and unless it appears to a certainty the plaintiff is entitled to no relief on the provable stated facts, the complaint must be sustained. *Marshall v. Burger King Corp.*, 222 Ill. 2d 422, 429 (2006).

III. Analysis

The Petition alleges that Section 9-112-510 is “outmoded . . . and insignificant in meeting the increased costs of gasoline and the cost of living faced by CABDRIVERS and those similarly situated.” Am. Pet. ¶ 6. Moreover, the amended ordinance allegedly:

12. . . . provides for trebling of fines for the most petty of infractions of Rules and Regulations of DCS in Section 9-104-140 thereof at “Administrative Hearings” at which rank hearsay evidence is routinely admitted and due process is flouted.
13. . . . in Section 9-104-040(c)(iii) permits the DCS Commissioner to suspend or even *revoke* the Public Passenger Vehicle Chauffeur license of CABDRIVERS who might be charged with a felony before even a finding of guilt has been made thereby ignoring the presumption of innocence fundamental to the system of justice in every jurisdiction of these United States of America and, thereby, abridging the rights of CABDRIVERS without any procedural due process.

Am. Pet. ¶¶ 12-13 (emphasis in original). The City has moved to dismiss the Petition, contending that plaintiffs have failed to state a claim for injunctive relief because their Petition does not allege that the amended ordinance violates any statutes or constitutional provisions. City’s Mot. 1.

The City is correct that plaintiffs' belief that the amended ordinance is outmoded and insignificant is not a proper basis upon which to challenge an ordinance. Ordinances are "presumed valid, and the burden of establishing invalidity rests upon those asserting it." *Mulligan v. Dunne*, 61 Ill. 2d 544, 558 (1975). "This court may not act to invalidate legislation simply upon considerations of what litigants, attorneys or this court may regard as the public welfare." *Chirikos v. Yellow Cab Co.*, 87 Ill. App. 3d 569, 574 (1st Dist. 1980). A court may invalidate a disputed ordinance "only upon grounds that the enactment violates a provision of the Federal or State constitutions or violates the mandate of a State or Federal statute." *Id.*

The Petition does allege that Section 9-104-040(c) of the amended ordinance deprives city cabdrivers of procedural due process by permitting DCS to suspend or revoke a cabdriver's license based on a felony charge "before even a finding of guilt has been made [,] thereby ignoring the presumption of innocence fundamental to the system of justice in every jurisdiction of these United States of America" Am. Pet. ¶ 12. (emphasis in original). Procedural due process claims are raised to challenge the constitutionality of "specific procedures employed to deny a person's life, liberty, or property interest. The requirement of due process is met by having an orderly proceeding wherein a person is served with notice, actual or constructive, and has an opportunity to be heard and to enforce and protect his rights." *Tri-G, Inc. v. Burke, Bosselman & Weaver*, 222 Ill. 2d 218, 245 (2006) (citation omitted). The Petition does not allege that a cabdriver charged with a felony is denied notice and/or an opportunity to be heard by DCS prior to the loss of his or her license. Without any allegations relating to those due process requirements, plaintiffs' claim for a procedural due process violation cannot lie.

Plaintiffs do raise other constitutional violations in their brief in response to the motion to dismiss, including, *inter alia*, an alleged violation of the Eighth Amendment. However, because

all those allegations appear only in plaintiffs' response to the motion to dismiss and not in the Petition, the court cannot consider them. *See Tembrina v. Simos*, 208 Ill. App. 3d 652, 656 (1st Dist. 1991) (where the defendant failed to raise by his answer or by a counterclaim his right to a claim, the trial court could not properly consider that claim). It is of no consequence that the plaintiffs' Petition contains the broad request "for such other and further relief as fairness and equity require." Am. Pet. ¶ 16. Since all the constitutional claims aside from the procedural process claim appear only in the plaintiffs' response, the court cannot consider them and injunctive relief based on those claims would be inappropriate. *See Burke v. Burke*, 12 Ill. 2d 483, 487 (1957) ("A party to a suit, either at law or in equity, cannot have relief under proofs without allegations, nor allegations without proof in support.").

In response, plaintiffs contend that they need not "slavishly make reference to each of the constitutional infirmities of the ordinance under consideration" because the "Court already understands the problems with the ordinance, and it serves no good purpose to have to file yet more paper to say what all involved already understand." Pls.' Resp. 7-8. Plaintiffs are wrong. "The court's authority to exercise its jurisdiction and resolve a justiciable question is invoked through the filing of a complaint or petition." *Ligon ex rel. Williams v. Williams*, 264 Ill. App. 3d 701, 707 (1st Dist. 1994) (citations omitted). "[P]leadings function to frame the issues for the trial court and to circumscribe the relief the court is empowered to order; a party cannot be granted relief in the absence of corresponding pleadings." *Id.* (citations omitted). Therefore, in order for this court to determine the amended ordinance's constitutionality, the purported constitutional violations must be alleged in the pleadings. Those allegations cannot be stated solely in a brief nor can they be presumed to be understood by the parties involved.

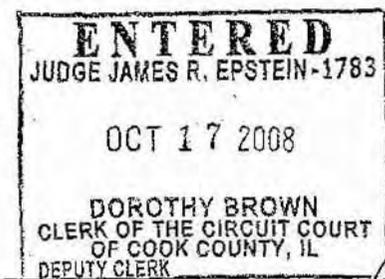
"A party seeking preliminary injunctive relief must establish: (1) a certain and clearly ascertainable right needing protection; (2) irreparable injury will occur without injunctive relief; (3) no adequate remedy at law exists; and (4) a probability of success on the merits." *Office Electronics, Inc. v. Adell*, 228 Ill. App. 3d 814, 819 (1st Dist. 1992). Here, the court need not determine whether all the requirements for injunctive relief are properly pled because plaintiffs have failed to allege the last element: probability of success on the merits. Plaintiffs have not pled any claim upon which relief could be granted. Again, an ordinance may only be invalidated on "grounds that the enactment violates a provision of the Federal or State constitutions or violates the mandate of a State or Federal statute." *Chirikos*, 87 Ill. App. 3d at 574. No statutory violation is alleged in the Petition, and plaintiffs' single conclusory allegation in paragraph 13 that Section 9-104-040(c) deprives cabdrivers of procedural due process falls well short of alleging a procedural due process violation. The City's motion to dismiss plaintiffs' Petition is therefore granted, and plaintiffs may file an amended pleading on or before November 14, 2008.

IV. Order

The City of Chicago's motion to dismiss is granted, and plaintiffs' Amended Petition for Injunctive Relief is dismissed. Plaintiffs may file an amended pleading on or before November 14, 2008. This matter is set for status on November 17, 2008, at 9:30 a.m. in Courtroom 2405.

Dated: _____

Entered: _____



James R. Epstein, Judge 1783