

Between 2013 and 2015, Plaintiffs received a plethora of citations including, but not limited to, expired vehicle registration, invalid vehicle inspection, speeding violations, dog related offenses, failure to maintain financial responsibility, driving with an invalid license, and driving without insurance. Plaintiffs allege that each citation was issued for a fine only offense. In other words, the harshest punishment for each citation was merely a monetary fine payable to the City.

The Complaint is unclear, but it appears that court administrators put at least some Plaintiffs on a payment schedule to discharge the fines in installments. The Complaint alleges the court administrators did “not take into consideration the person’s ability to pay such installments.” Further, when an individual missed an installment payment, “a warrant [was] issued . . . This [caused] the person to be arrested and held by Amarillo City Police officers before being brought before the court” The Complaint states “the Amarillo Police Department [made] no inquiry into whether the person was capable of paying the fine before taking them into custody.”

Plaintiffs eventually appeared before the Amarillo Municipal Court to address the unpaid fines. According to the Complaint, the municipal judge provided Plaintiffs with two options: pay the fines or go to jail. Plaintiffs, allegedly unable to pay, were incarcerated for failure to pay fines assessed for non-jailable offenses. Each Plaintiff maintains that he or she was legally indigent at all relevant times.

Plaintiffs argue that municipal officers (municipal judges, municipal court administrators, and police department) acted pursuant to a “pay or lay” statute, Amarillo Code of Ordinances § 2-8-111 (Section 2-8-111). Section 2-8-111 states as follows:

In the event of a conviction in a case pending before the Municipal Court, the judgment shall be in the name of the State and shall recover of the defendant the fine and other penalties for the use and benefit of the City. Except as otherwise provided the Court shall require the defendant to remain in the custody of the Chief of Police of the City until the fine, State-imposed fees and other penalties are paid, and order that execution issue to collect the fine and penalties.

AMARILLO, TEX., CODE OF ORDINANCES § 2-8-111. Plaintiffs allege that municipal officers, by enforcing Section 2-8-111, violated constitutional rights afforded to indigent individuals unable to pay fines.¹ Plaintiffs' Complaint argues that the City is liable for such constitutional violations under § 1983. The City seeks dismissal of Plaintiffs' § 1983 claims arguing, in relevant part, that Plaintiffs failed to state a plausible claim for municipal liability.

STANDARD FOR MOTIONS TO DISMISS

A motion to dismiss under Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted, is to be evaluated on the pleadings alone. *See Jackson v. Procnier*, 789 F.2d 307, 309 (5th Cir. 1986). To defeat the motion, a plaintiff must plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). The plaintiff's "factual allegations must be enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Id.* (internal citation and footnote omitted). Legal conclusions need not be accepted as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

A plaintiff's claim for relief must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Although the pleading standard of Rule 8 does not require detailed factual allegations, it does require more than mere labels and conclusions. *See Ashcroft*, 556 U.S. at 662. Dismissal for failure to state a claim does not require a determination that, beyond a doubt, the plaintiff can prove no set of facts in support of his claim that would entitle him to relief. *Twombly*, 550 U.S. at 544. Instead, "[t]o survive a motion to dismiss, a

¹ Plaintiffs allege municipal officers violated the Equal Protection Clause of the Fourteenth Amendment by converting a fine only offense to jail time solely because an individual was unable to pay a fine. *Tate v. Short*, 401 U.S. 395, 399 (1971). Plaintiffs also allege municipal officers violated the Due Process Clause of the Fourteenth Amendment by failing to make an affirmative determination of indigency status and consider adequate alternatives to incarceration. *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

complaint must contain sufficient factual matter, accepted as true, to ‘state a claim for relief that is plausible on its face.’” *Ashcroft*, 556 U.S. at 662.

DISCUSSION

I. Section 1983 Municipal Liability

Municipalities can be liable under § 1983 when an official policy serves as the moving force behind constitutional violations. *Piotrowski v. City of Hous.*, 237 F.3d 567, 578 (5th Cir. 2001). The Fifth Circuit held that a city ordinance constitutes an official policy. *Matthias v. Bingley*, 906 F.2d 1047, 1054 (5th Cir. 1990). The only official policy at issue in this case is Section 2-8-111. Portions of the Complaint, Motion, and Response address a persistent and widespread practice carried out by municipal officers. However, Plaintiffs affirmatively waived this theory of liability: “To make it clear, Plaintiffs claims are based on the existence of a written policy which has served as the moving force behind a constitutional violation, not on the policymaking authority of judges, administrators, or police.” *Plaintiffs’ Response*, p. 17.

Here, Plaintiffs argue that a city ordinance, Section 2-8-111, is the official policy that served as the moving force behind the alleged constitutional violations. The City does not dispute that Plaintiffs’ Complaint plausibly alleges Equal Protection and Due Process violations. Thus, at the motion to dismiss stage, the Court’s decision turns on whether the Complaint plausibly states Section 2-8-111 served as the moving force behind the alleged constitutional violations. The Court holds that Plaintiffs’ Complaint fails to meet this burden.

An official policy serves as the moving force when a municipal officer’s action is taken in accordance with an official policy. *See Meadowbriar Home for Children, Inc. v. Gunn*, 81 F.3d 521, 533 (5th Cir. 1996). In other words, no municipal liability exists when the municipal officer’s actions are taken in contravention of an official policy. *See id.* At the motion to dismiss stage the question is not whether Amarillo municipal officers violated Plaintiffs’ constitutional rights.

Rather, the question is whether the municipal officers acted in accordance with or contravention of an official policy when the alleged violations occurred.

The parties disagree on whether Section 2-8-111 served as the moving force behind the alleged constitutional violations. Plaintiffs interpret Section 2-8-111 as directing municipal officers to automatically jail indigent individuals for fine only offenses without determining indigency status and considering adequate alternatives to incarceration. Thus, under Plaintiffs' interpretation, the alleged violations resulted from actions taken in accordance with an official policy.

The City counters that Plaintiffs misinterpret Section 2-8-111 because Plaintiffs' interpretation renders the "except as otherwise provided" language meaningless. Under the City's interpretation, Section 2-8-111 and applicable municipal statutes require proper procedures prior to jailing an individual for failure to pay a fine. The City argues that municipal officers acted in contravention of the official policy when the alleged constitutional violations occurred. Thus, the Court must conduct a statutory interpretation analysis in order to determine what Section 2-8-111 dictates or allows.

If Plaintiffs' interpretation prevails, Plaintiffs' Complaint states a plausible claim for municipal liability and the Motion must be denied. On the other hand, if the City correctly interprets Section 2-8-111, the Motion must be granted.

II. Statutory Construction Analysis

When construing a statute, courts should give words their plain and common meaning and avoid rendering any language meaningless. *See White v. Black*, 190 F.3d 366, 368 (5th Cir. 1999); *Liberty Mut. Ins. Co. v. Garrison Contractors*, 966 S.W.2d 482, 484 (Tex. 1998). "If the meaning of the statutory language is unambiguous, we adopt, with few exceptions, the interpretation supported by the plain meaning of the provision's words and terms." *Fitzgerald v. Advanced Spine Fixation Sys., Inc.*, 996 S.W.2d 864, 865 (Tex. 1999). When a statute is unambiguous on its face,

courts should not apply rules of construction to create an ambiguity. *See id.* at 865–66. Most importantly to this analysis, federal courts “should not strain to interpret a statute in a manner that renders it unconstitutional and should, instead, attempt to read it as constitutional if its words permit.” *Hill v. City of Hous., Tex.*, 789 F.2d 1103, 1112 (5th Cir. 1986).

Section 2-8-111 does not direct municipal officers to violate indigent individuals’ constitutional rights. Section 2-8-111 explicitly provides that “*except as otherwise provided* the Court *shall* require the defendant to remain in the custody of the Chief of Police of the City until the fine, State-imposed fees and other penalties are paid” AMARILLO, TEX., CODE OF ORDINANCES § 2-8-111 (emphasis added). The plain and ordinary meaning of the words has one unambiguous meaning. Section 2-8-111, which combines “except as otherwise provided” and “shall,” mandates that the municipal court must incarcerate individuals for failure to pay a fine ***unless provided otherwise***. An interpretation that ignores possible exceptions to the incarceration requirement renders “except as otherwise provided” meaningless. This Court must therefore determine if a municipal statute provides an exception to the incarceration requirement. Simply put, does a municipal statute prevent municipal officers from incarcerating indigent individuals without first determining indigency status and considering adequate alternatives to incarceration?

Ordinances are interpreted in concert with applicable city charter provisions. *See Polsgrove v. Moss*, 157 S.W. 1133 (Ky. 1913); 62 C.J.S. Mun. Corps. § 381 (2016) (“An ordinance must be construed in connection with, and in subordination to, the charter or statute from which it derives its force”). Therefore, the Court will read Section 2-8-111 in concert with Amarillo City Charter provisions relating to municipal courts. *See City of Alexandria v. Cleco Corp.*, 735 F. Supp. 2d 465, 478–79 (W.D. La. 2010) (reading a city charter and ordinance in concert); *Cherry Creek Aviation, Inc. v. City of Steamboat Springs*, 958 P.2d 515, 519 (Colo. App. 1998) (“Additionally, city charters and ordinances pertaining to the same subject matter must be construed as a whole to . . . avoid

inconsistencies and absurdities.”). Reading Section 2-8-111 and applicable city charter provisions together, the Court holds that municipal statutes provide an exception to the automatic incarceration requirement.

The City Charter specifically requires municipal courts to follow constitutionally proper procedures before incarcerating indigent individuals for failure to pay a fine. The City of Amarillo Charter Section 22(ff) pertains to Amarillo Municipal Courts. *See* AMARILLO CHARTER Art. II § 22(ff). Section 22(ff) creates the municipal court system, sets the jurisdictional limits, and specifically adopts certain Texas state laws made applicable to municipal courts. *See id.* §§ 22(ff)–(ff-2). Section 22(ff-2) explicitly states: “State Law Controlling. All . . . prosecutions, . . . *commitment of those convicted of offenses* [and] *the collection and payment of fines* . . . shall be governed by the provisions of the Code of Criminal Procedure of the State of Texas and all other laws, as amended, *that are applicable to Municipal Courts.*” *Id.* § 22(ff-2) (emphasis added). Thus, the Court must consult the Texas Code of Criminal Procedure provisions that both apply to municipal courts and relate to commitment and collection of fines.

The Texas Code of Criminal Procedure requires municipal courts to follow procedures that prevent the alleged constitutional violations. Chapter 45 mandates procedural rules for municipal courts. TEX. CODE CRIM. PROC. ANN. § 45.001–.002 (West 2015) (“Criminal proceedings in the justice and municipal courts shall be conducted in accordance with this chapter.”). Article 45.046, entitled Commitment, provides that:

- (a) When a judgment and sentence have been entered against a defendant and the defendant defaults in the discharge of the judgment, the judge may order the defendant confined in jail until discharged by law *if the judge at a hearing makes a written determination that:*
 - (1) the defendant is not indigent and has failed to make a good faith effort to discharge the fine and costs; or
 - (2) the *defendant is indigent* and:

(A) has failed to make a good faith effort to discharge the fines and costs under Article 45.049²; and

(B) could have discharged the fines and costs under Article 45.049 without experiencing any undue hardship.

Id. § 45.046. City Charter § 22(ff-2) specifically adopts and incorporates this provision into the City Charter, and the Texas statute is unmistakably clear. *See id.*; AMARILLO CHARTER § 22(ff). Municipal courts, before jailing an indigent individual for failure to pay a fine, must first make a written determination of indigency status and consider reasonable alternatives to incarceration (here, community service). TEX. CRIM. PROC. §§ 45.046, .049.

Putting the rules of statutory interpretation together, Section 2-8-111 cannot plausibly serve as the moving force behind the alleged constitutional violations. One unambiguous interpretation exists based on the plain and ordinary meaning of the words; interpreting Section 2-8-111 in concert with applicable charter provisions; and ensuring the Court does not render any portion meaningless.

The City Charter, by adopting Article 45.046 of the Texas Code of Criminal Procedure, provides an exception to Section 2-8-111's automatic incarceration. This exception prevents municipal judges from confining indigent defendants to jail for failure to pay a fine without first determining indigency status and considering adequate alternatives to incarceration. Only after conducting the proper procedures and concluding the indigent defendant willfully or unjustifiably failed to discharge the fine through payment or community service is the municipal court required to jail individuals for the failure to pay.

CONCLUSION

Plaintiffs' Complaint fails to state a claim for relief that is plausible on its face. Section 2-8-111 cannot serve as the moving force behind Plaintiffs' alleged constitutional violations. The City's

² "A justice or judge may require a defendant who . . . is determined by the court to have insufficient resources or income to pay a fine or costs, to discharge all or part of the fine or costs by performing community service." TEX. CODE CRIM. PROC. ANN. § 45.049 (West 2015).

municipal officers (judges, court administrators, and police department) acted in contravention of, not in accordance with, an official city policy. Accordingly, Defendant's *Motion to Dismiss Plaintiffs' First Amended Complaint for Failure to State a Claim Upon Which Relief can be Granted Per Federal Rule of Civil Procedure 12(B)(6)* is GRANTED as to all of Plaintiffs' § 1983 claims.

It is SO ORDERED.

Signed this the 8th day of August, 2016.


MARY LOU ROBINSON
UNITED STATES DISTRICT JUDGE