

Circuit Court for Washington County
Case No. C-21-CV-20-000328

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0865

September Term, 2024

101103105 EAST WASHINGTON TRUST,
ET AL.

v.

CITY OF HAGERSTOWN

Shaw
Albright,
Kehoe, Christopher B.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: April 16, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Appellants, twenty-seven trusts and one limited liability company, filed a complaint for Declaratory, Injunctive, Mandamus, and Other Relief in the Circuit Court for Washington County against the City of Hagerstown. Appellants challenged the legislative and constitutional validity of Chapter 197 of the Hagerstown City Code, titled, *Rental Facilities*, and Chapter 95, titled, *Excessive Use of City Services*. Following a bench trial, the court granted, in part, and denied in part, Appellants’ requests for relief. The court held that the City had the legislative authority to enact both ordinances and that the Maryland General Assembly’s enactment of Md. Code Ann., Real Prop. § 14-126 was not preemptive or retrospective. The court found that the charges and expenses assessed under Chapters 197 and 95 did not constitute unauthorized taxes. The court further held that Chapter 197-6 (E) was violative of the Fourth Amendment of the U.S. Constitution and “unconstitutionally vague.” The court then severed Chapter 197-6 (E) and held that the balance of statute was valid.

Appellants noted this timely appeal and present six questions for our review:

1. Whether the Trial Court was correct in ruling that the City of Hagerstown had the legislative authority to enact a combination of *Chapters 197 and 95 of the City of Hagerstown Code of Ordinances*?
2. Whether the Trial Court was correct in ruling that the provisions of *MD Code, Real Prop § 14-126 (c)*, which became effective on October 1, 2023, did not invalidate the blended version of *Chapters 197 and 95 of the Code of Ordinances of the City of Hagerstown*?
3. Whether the Trial Court was correct in ruling that the Doctrine of Preemption does not invalidate *Chapters 197 and 95 of the Code of Ordinances of the City of Hagerstown*?
4. Whether the Trial Court, except for his ruling in favor of Appellants on 4th Amendment Constitutional grounds relating to search and seizure,

correctly ruled that the Ordinances in question are Constitutionally sound under the *U.S. Constitution and Maryland’s Declaration of Rights*?

5. Whether the Court was correct in ruling that his findings and opinion in favor of the Appellants did not invalidate the Ordinances at issue or their ongoing enforcement of same in the context of his rulings and the provisions of *Md. Code, RP 14-126* because the savings clause of *Chapter 197* allows the balance of the Ordinances to remain effective and enforceable?
6. Whether the Trial Court was correct in ruling that Section 197-6 E of Chapter 197 violated the Fourth Amendment of the U.S. Constitution and was unconstitutionally vague?

For reasons discussed below, we reverse in part and affirm in part the judgment of the circuit court. We hold that Md. Code Ann., Real Prop. § 14-126 (c)(1)(i) preempts by conflict and invalidates Chapter 95 in its entirety, and Real Prop. § 14-126 (c)(1)(ii) preempts by conflict and invalidates the following provisions of Chapter 197 of the Code of Ordinances of the City of Hagerstown: §§ 197-4(H); 197-7 (B); 197-7(C); 197-8(C)(1); 197-9; 197-10; 197-11; 197-12; 197-15(A). We hold that the circuit court did not err in holding that Section 197-6 (E) was violative of the Fourth Amendment of the U.S. Constitution and in determining that portions of Chapter 197 were severable.

BACKGROUND

On October 22, 2002, The City of Hagerstown enacted Chapter 197, a local ordinance, titled *Rental Facilities*. It became effective on November 22, 2002.¹ Following the initial adoption of the Rental Facilities Ordinance and continuing through December

¹ Appellants’ original complaint outlined in detail the legislative history of Chapter 197, as well as the efforts of past litigants, who are not parties to this appeal, in opposing the City’s enforcement of the ordinance from 2002 to 2020. We limit the facts of this appeal to those most relevant to analyzing the current versions of Chapters 197 and 95.

2022, a series of amendments and revisions were enacted. In 2014, the City amended Chapter 197 to include crime-free provisions aimed at reducing crime and nuisance activity in residential rental units. In 2018, the City repealed the prior Chapter 197 text and adopted a new version of Chapter 197. On November 1, 2022, the City repealed the 2018 version of Chapter 197 and adopted a newer Chapter 197 through Ordinance No. O-22-14. The 2022 version of Chapter 197 is the current codified text. The Ordinance requires a landlord to obtain a rental license and imposes various requirements for licensure, including annual inspections. Chapter 197 includes cross-references to Chapter 95 of the Hagerstown Code, titled *Excessive Use of City Services*.

Chapter 95 was enacted on March 18, 2014. It prohibits a landlord from knowingly permitting a tenant or any person under a tenant’s control to violate the crime-free provision of a lease after receiving notice that the property has been deemed a chronic nuisance property, without taking reasonable steps to enforce the provision. It also provides for the assessment of fees when excessive calls are made from a property deemed a chronic nuisance.

On July 23, 2020, Appellants filed a Complaint for Declaratory, Injunctive, Mandamus, and Other Relief in the Circuit Court for Washington County, challenging the validity of Chapters 197 and 95.² While Appellants’ case was pending in the Circuit Court,

² Appellants have “purposely” failed to comply with certain requirements of Chapters 197 and 95 based on the belief that the ordinances are invalid. The City has imposed monetary penalties upon Appellants because Appellants have failed to submit rental applications and to pay rental licensing fees. The City has also issued notices to Appellants that it will be forcing the sale of the rental properties for unpaid real estate taxes. Chapter 95 has yet to be enforced.

the City, in November 2022, “repealed and re-enacted Chapter 197 with amendments.” Appellants then filed an Amended Complaint on November 28, 2022.

On January 9, 2023, the Circuit Court conducted a bench trial, which concluded on January 12, 2023.³ The court held the matter *sub curia*. While the matter was pending, Maryland Senate Bill 450 was enacted on May 16, 2023, amending Md. Code Ann., Real Prop. § 14-126. The statute became effective on October 1, 2023.⁴ Md. Code Ann., Real Prop. § 14-126(c)(1)(i) states, in relevant part, that “a municipality may not enact a local law or ordinance that . . . [e]stablishes a threshold of requests to summon law enforcement or emergency services to a residential property as grounds for designating a property as a nuisance[.]” Md. Code Ann., Real Prop. § 14-126(c)(2), states that “[t]here is a presumption that a local law or ordinance relating to summoning of law enforcement or emergency services to a residential property is prohibited under paragraph (1)(ii) of this subsection if the local law or ordinance authorizes or requires (i) the assessment of a monetary penalty or fine on an operator, owner, owner-occupant, or tenant; (ii) the use of an action for repossession of a dwelling unit from a tenant or termination or nonrenewal of

³ The parties explain in the standard of review sections of their briefs that the trial court’s holdings are not disputed on the grounds of being clearly erroneous based on the testimony provided at trial. Rather, the parties dispute the legal conclusions pertaining to the legislative and constitutional validity of Chapters 197 and 95. We, therefore, do not outline the testimony from trial. We, instead, supplement the testimony where necessary.

⁴ The Maryland General Assembly further amended Md. Code Ann., Real Prop. § 14-126 in October 2025. This Court applies the version of the statute that became effective in October 2023 because that was the law in effect when the trial court entered its judgment.

a tenant’s lease; or (iii) the revocation, suspension, or nonrenewal of a rental license.”

Based on the new legislation, the parties submitted supplemental briefings.

The court issued its written opinion on May 24, 2024. As to the question of whether the City of Hagerstown possessed the legislative authority to enact Chapters 197 and Chapter 95, the court held that authority did exist in the Local Government Article for a municipality to adopt rental housing licensure ordinances. The court referenced Md. Code Local Gov’t §5-202, which states that:

The legislative body of municipality may adopt ordinances to:

(5) protect the health, comfort, and convenience of the residents of the municipality.

The Court held that §5-204 (e) expressly provides that municipalities “may exercise the licensing authority granted by law.” The court further held that:

[b]ecause Maryland’s Legislature appears to have authorized the individual provisions of Chapter 197 and 95, except as constrained by §14-126, the Chapters themselves are not void for being overbroad by some portion of either chapter exceeding the authority of Dillon’s Rule.⁵

As for Appellants’ argument that Md. Code Ann., Real Prop. § 14-126(c) preempted Chapters 197 and Chapter 95, the court held that the State legislation had not preempted the City of Hagerstown from enacting a municipal ordinance providing additional conditions upon landlords and tenants under Chapter 197. The court held that the state legislation did “constrain” the application of Chapter 95 as it is currently written. The court also held that the statute was prospective.

⁵ The Court will discuss Dillon’s Rule in further depth later in the opinion.

The court addressed Appellants’ argument that the charges and expenses under Chapters 197 and Chapter 95 were unauthorized taxes, stating:

[t]hat the State of Maryland has delegated and authorized municipalities to require landlords to obtain residential rental licenses, that the State of Maryland has not preempted that field of regulation, and that the license fee is not a tax. Thus, the City Defendant is operating within its delegated authority to enact and enforce Chapter 197.

The court then ruled that Chapter 197 was constitutional, pursuant to the U.S. Constitution and the Maryland Declaration of Rights. The court found that even though §197-6(E) was patently unconstitutional on one hand and invalid, on the other hand, “the savings clause §197-14 simply means that the subsection is stricken...”

The court found that Chapter 197 did not violate the Equal Protection Clause of the U.S. Constitution and Article 24 of the Maryland Declaration of Rights. The court turned to Appellants’ argument that Chapters 197 and 95 were unconstitutional due to vagueness and overbreadth and held that the argument failed because the assertions were premature. The court determined that Chapters 197 and 95 did not constitute an unconstitutional impairment under the Contracts Clause, nor did they violate the unconstitutional conditions doctrine. However, the court did conclude that §197-6(E) “is directly violative of the Fourth Amendment, and unconstitutionally vague.” The court noted that because “there is a savings clause in §197-14, the balance of Chapter 197 stands.”

On May 30, 2024, the City filed a Motion to Alter/Amend the Judgment, which the court denied on June 6, 2024. Appellants noted this timely appeal.

STANDARD OF REVIEW

Pursuant to Maryland Rule 8-131(c), “[w]hen an action has been tried without a jury, an appellate court will review the case on both the law and the evidence.” This Court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” When a trial court’s determination involves the interpretation and application of Maryland statutory or case law, “our Court must determine whether the trial court’s conclusions are legally correct under a *de novo* standard of review.” *Mayor and City Council of Balt. v. Thorton Mellon, LLC*, 478 Md. 396, 410 (2022).

DISCUSSION

I. The trial court did not err in finding that the City had the legislative authority to enact Chapters 197 and 95.

Appellants argue that the City lacked the legislative authority to enact Chapters 197 and 95 as the ordinances do not protect the health, comfort, and convenience of the residents of Hagerstown. They assert that the ordinances improperly shift the burden of police and code administration to landlords.

The City argues, preliminarily, that, because Appellants did not seek a declaratory judgment or a writ of mandamus prohibiting the enforcement of Chapter 95, their challenges to Chapter 95 are beyond the scope of this appeal. The City, also, argues that it had the legislative authority to enact Chapters 197 and Chapter 95 based upon Md. Code Ann., Local Gov’t § 5-202 and other provisions, such as Local Gov’t § § 5-204(d) and e.

We first address the City’s assertion that Appellants cannot argue the validity of Chapter 95 because it exceeds the scope of this appeal. We note that the circuit court’s opinion addresses Chapter 95’s validity and constitutionality. The language in Chapter 197 includes cross-references to Chapter 95, mandating that landlords create leases that require tenants to acknowledge Chapter 95 and that they, also, must submit an acknowledgement of Chapter 95 when applying for a rental license. As a result, a determination regarding Chapter 197’s validity requires a discussion of both ordinances.

Maryland Rule 8-131(a) states that, on appeal, we will not ordinarily “decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court.” *See DiCicco v. Balt. Cnty.*, 232 Md. App. 218, 225 (2017). Based upon our review, the validity of Chapter 95 was clearly raised and decided by the court. Thus, the validity of Chapter 195 is within our scope of review. Md. Rule 8-131(a).

In determining whether a municipality has legislative authority to enact a certain ordinance, the Maryland Supreme Court has often relied upon Dillon’s Rule, which is derived from 1 J. Dillon, *Municipal Corporations*, § 237, at 448–50 (5th ed.1911)), stating that:

A municipal corporation . . . can exercise the following powers, and no others: First, those granted in express words: second, those necessarily or fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation,—not simply convenient, but indispensable.

K. Hovnanian Homes of Maryland, LLC v. Mayor of Havre de Grace, 472 Md. 267, 288, (2021) (quoting 1 J. Dillon, *Municipal Corporations* § 237 (5th ed. 1911)).

The Maryland General Assembly has described the purposes for which a local government may enact ordinances in Md. Code Ann., Local Gov't § 5-202, which states:

[t]he legislative body of a municipality may adopt ordinances to:

- (1) assure the good government of the municipality;
- (2) protect and preserve the municipality's rights, property, and privileges;
- (3) preserve peace and good order;
- (4) secure persons and property from danger and destruction; and
- (5) protect the health, comfort, and convenience of the residents of the municipality.

Local Gov't § 5-204(e) provides that “[a] municipality may exercise the licensing authority granted by law.”

Chapter 197-1 of the Hagerstown City Code, titled Purpose, states:

A. The Mayor and Council recognize that clean, well-built, crime-free housing and neighborhoods are the foundation upon which healthy communities are built. This chapter promotes and advances the City’s vision and commitment to housing and neighborhoods throughout the City. The purpose of this chapter is to protect and promote the public health, safety and welfare of the citizens of Hagerstown, to establish rights and obligations of the landlord and the tenant in the rental of dwelling units, and to encourage the landlord and tenant to maintain and improve the quality of rental housing within the community.

B. An additional purpose of this chapter is to assure compliance with all laws, ordinances and regulations applicable to residential housing facilities in the City of Hagerstown and to promote and assure safety, health and habitability in the housing conditions in rental facilities in the City, to prevent deterioration of rental facilities in the City, to support property values, and to encourage responsible management and use of rental facilities through licensing and inspection.

C. It is also the purpose of this chapter to protect, preserve, and promote the health, safety and welfare of the citizens of Hagerstown by the reduction, control and prevention of criminal and nuisance activities in residential rental housing, through education and the implementation and enforcement of reasonable lease provisions.

D. The Mayor and Council further recognize that periodic inspections of rental facilities are essential to the accomplishment of these purposes.

The Ordinance requires that a landlord obtain a rental license to become a “Certified Residential Operator.” The landlord must submit a rental license application, and within 90 days, the landlord must also submit the required license fee. Failure to comply with the rental licensing process prohibits landlords from renting their properties. If landlords lease rental properties in the absence of a license, the statute authorizes the City to assess fines. The Ordinance, further, provides that, upon issuance of a rental license and annually thereafter, rental properties are required to undergo exterior inspections. Rental properties are also subject to interior inspections if they are newly licensed, and upon tenant turnover, but no more than every forty-eight months. In order to maintain a rental license, landlords must submit a written acknowledgement of their obligations and responsibilities. Additionally, Chapter 197 requires that all leases be in writing and include several mandatory provisions, including a crime-free clause and notice that the rental property may be subject to reasonable inspections by the landlord. The text or a fair summary of Chapters 197 and 95 of the Hagerstown City Code must be provided with each lease.

Chapter 95-1 of the Hagerstown City Code, titled Purpose, states:

It is the intended purpose of the Mayor and Council of the City of Hagerstown by the adoption of this chapter to impose on and collect from the owner of a property the costs incurred for police and law enforcement services and code administration services which are over and above the costs

of providing normal police protection, law enforcement and code administration services, if said excess costs are spent to abate a nuisance which has occurred or is maintained and permitted on the property.

The Ordinance provides that a landlord shall not knowingly permit a tenant or any person under a tenant’s control to violate the crime-free provision of a lease after receiving notice that a property has been deemed a chronic nuisance property. A landlord is required to take reasonable steps to enforce the provision. It also assesses fees when excessive calls are made after a property has been deemed a chronic nuisance.

Based on our view of the statutes, the City possessed the legislative authority to enact residential rental licensing ordinances, such as Chapters 197 and 95. We recognize that there is no reported opinion by the Court or the Supreme Court of Maryland that directly addresses this issue. However, references to the authority of municipalities to enact rental licensing ordinances are numerous. The licensing of residential rental housing has long been recognized through statutory interpretation. *McDaniel v. Baronowski*, 419 Md. 560 (2011) (holding that the landlord of an unlicensed rental property cannot utilize the summary ejectment process); *Assanah-Carroll v. Law Offices of Edward J. Maher*, 480 Md. 394 (2022) (holding that a landlord cannot recover unpaid rent from a tenant when the rental property was unlicensed in a municipality where licensing is required).

The articulated purpose of Chapter 197 is to promote the health, safety, and welfare of residential housing in the municipality by requiring rental licensing, inspections, and mandatory lease provisions. Chapter 197-1 seeks to “prevent deterioration of rental facilities in the City[,]” “to support property values[,]” and to enforce “control and prevention of criminal and nuisance activities in residential rental housing[.]” Chapter 95’s

purpose is to deter crime by imposing the costs of city services on landowners whose properties have become a “chronic nuisance”. Chapter 95 is cross-referenced in Chapter 197, and it serves as an enforcement mechanism.

Both local ordinances evidence purposes to achieve the same legislative goals described in Md. Code Ann., Local Gov’t § 5-202(3), (4) and (5). Under that section, local governments are permitted to develop legislation for the purpose of maintaining safety, crime prevention, and order. Chapters 197 and Chapter 95 are generally aligned with the purposes of the state statute. We hold that the court did not err in finding that the City had the legislative authority to enact Chapters 197 and 95. We shall analyze both statutes in greater detail in examining Appellants’ additional outlined issues.

II. The trial court erred in finding that Md. Code Ann., Real Prop. § 14-126 did not invalidate Chapter 95 and sections of Chapter 197.

Appellants contend that the trial court erred in holding that Md. Code Ann., Real Prop § 14-126 was prospective because of its conclusion regarding the language in Sections 14-126(b), 14-126(c)(1), 14-126(c)(2), and 14-126(d). Appellants argue that Real Prop. § 14-126, also, implicitly preempts Chapters 197 and Chapter 95 as the state statute prohibits local governments from enacting ordinances that create a nexus between rental licensing and crime prevention. Appellants contend that “the field of Landlord/Tenant matters has been completely occupied by the Legislature thereby invalidating any competing or potentially competing municipal ordinances.”

The City argues that Real Prop. § 14-126 has a prospective effect in that it creates defenses and remedies against enforcement, but the statute does not invalidate the

ordinances as a whole. The City argues that Real Prop. § 14-126 does not preempt Chapters 197 and 95, pursuant to Real Prop. § 8-208(f). The City contends that the language within Chapter 197-7 and Chapter 197-8 does not fall “within the ambit of Real Prop. § 14-126.”

Generally, in examining a statute, we “look first to the plain language, for its natural and ordinary meaning.” *Breslin v. Powell*, 421 Md. 266, 286 (2011). When the statutory language is clear, our inquiry ends and we need not look beyond the statutory language to determine the General Assembly’s intent. *Peterson v. State*, 467 Md. 713, 727 (2020). When the meaning of the plain language is ambiguous or unclear, we seek to discern the intent of the legislature from surrounding circumstances, such as legislative history, and the purposes upon which the statutory framework was based. *Twigg v. State*, 447 Md. 1, 24 (2016).

“[S]tatutes operate prospectively unless there is evidence of contrary intent.” *John Deere Const. and Forestry Co. v. Reliable Tractor, Inc.*, 406 Md. 139, 146 (2008). “[R]etroactivity, even where permissible, is not favored, except upon the plainest mandate in the act.” *Id.* (quoting *Bell v. State*, 236 Md. 356, 369 (1964)). The Supreme Court of the United States has defined retroactive application of a statute as one that “would impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed.” *Id.* at 147 (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994)). “A statute does not operate ‘retrospectively’ merely because it is applied in a case arising from conduct antedating the statute’s enactment[.]” *Id.* (quoting *Landgraf*, 511 U.S. at 269).

In *In re M.P.*, 487 Md. 53 (2024), the Maryland Supreme Court addressed the application of the Juvenile Justice Reform Act (JJRA), which changed the juvenile court’s jurisdiction by setting a new minimum age of thirteen years old for offenders charged with non-violent delinquent acts. *Id.* at 59. The Court examined whether the JJRA applied to delinquency cases that were pending when the statute took effect but involved acts that were committed before the effective date. *Id.* The State filed a juvenile petition alleging that on March 12, 2022, M.P. committed motor vehicle theft and related delinquent acts. *Id.* at 64. M.P. was twelve years old at the time of the alleged delinquent acts and was charged before the Juvenile Justice Reform Act (JJRA) took effect on June 1, 2022. *Id.* at 60. On June 30, 2022, prior to the juvenile court’s adjudication of the petition, counsel for M.P. filed a motion to dismiss the petition for lack of jurisdiction. *Id.* at 64. The juvenile court denied the motion, ruling that the “JJRA did not deprive the court of jurisdiction that had been established because the JJRA had taken effect on June 1, 2022.” *Id.*

The Supreme Court of Maryland granted M.P.’s writ for certiorari. *Id.* at 65. The Court held that the juvenile court lacked jurisdiction over M.P. because under the JJRA, children aged 10 to 12 charged with non-violent delinquent acts cannot be adjudicated in juvenile court if the petition was pending after June 1, 2022. *Id.* at 88-89. The Court emphasized that the JJRA’s jurisdictional changes apply prospectively to pending cases.

The Court explained that:

[w]here a statute is amended or repealed ‘after an alleged offense or after an event giving rise to some alleged liability, a court, including an appellate court, would generally apply the law as it existed when the court was considering the case and not the law in effect when the alleged offense or event occurred.’

Id. at 94 (quoting *Waker v. State*, 431 Md. 1, 9-10 (2013)).

In *Waker v. State*, 431 Md. 1 (2013), the Maryland Supreme Court considered whether the penalty provisions of the 2009 theft statute amendments were applicable to the petitioner’s sentencing. In this case, the petitioner, Calvin Waker, on March 30, 2009, committed a theft of property valued at \$615. *Id.* at 3. After one postponement, his trial was held on December 11, 2009. *Id.* at 3. Petitioner was found guilty of the theft of property having a value of \$615, and he was sentenced to ten years in prison. *Id.* “The General Assembly, at its 2009 session, amended the Maryland theft statute to provide, *inter alia*, that the theft of the property with a value of less than \$1,000 is a misdemeanor punishable by imprisonment not exceeding 18 months.” *Id.* at 2. The bill, which contained the amendments to the theft statute, was signed by the Governor on May 19, 2009, and had an effective date of October 1, 2009. *Id.* Prior to these 2009 amendments, the theft statute’s dividing line between a misdemeanor punishable by 18 months imprisonment and a felony punishable by a greater period of imprisonment was \$500. *Id.*

The Appellant argued that “when the General Assembly has reduced the penalty for an offense after the offense has been committed, but before the defendant’s trial and sentencing has occurred, the trial court should apply the statute as it existed at the time of the trial and sentencing rather than at the time of the offense.” *Id.* at 9. The Court agreed and held that “the sentence imposed upon the [petitioner] was illegal because it was not authorized by the statute in effect at the time of his trial and sentencing.” *Id.* at 13.

Real Prop. § 14-126, which became effective on October 1, 2023, provides, in relevant part, that:

(c)(1) The governing body of a county or a municipality may not enact a local law or ordinance that:

(i) Establishes a threshold of requests to summon law enforcement or emergency services to a residential property as grounds for designating a property as a nuisance; or

(ii) Penalizes or authorizes a penalty against an operator, an owner, an owner-occupant, or a tenant for:

1. The act of summoning law enforcement or emergency services to a residential property; or

2. The actions of another individual to summon the assistance of law enforcement or emergency services to a residential property.

(2) There is a presumption that a local law or ordinance relating to summoning law enforcement or emergency services to a residential property is prohibited under paragraph (1)(ii) of this subsection if the local law or ordinance authorizes or requires:

(i) The assessment of a monetary penalty or fine on an operator, an owner, an owner-occupant, or a tenant;

(ii) The use of an action for repossession of a dwelling unit from a tenant or termination or nonrenewal of a tenant's lease; or

(iii) The revocation, suspension, or nonrenewal of a rental license.

Subsection (b) provides a list of exceptions in which the statute will not apply, stating:

(1) The installation and use of residential security alarm systems;

(2) The physical condition, sanitation, maintenance, or repair of real property, including vacant buildings;

(3) Parking enforcement;

(4) Calls to law enforcement concerning social gatherings or excessive noise that do not involve an offense set forth in the Criminal Law Article and are:

(i) Made with the intent to harass another; or

(ii) Knowingly false, as a whole or in material part; or

(5) Short-term rental units.

Subsection (d) provides that:

(d) An operator, an owner, an owner-occupant, or a tenant may raise the issue that a local law or ordinance is prohibited under subsection (c) of this section:

(1) As a defense to an action to enforce the local law or ordinance; or

(2) As an affirmative claim for damages resulting from the enforcement of the law or ordinance.

Real Prop. § 14-126 was enacted after Chapters 95 and 197 became effective. Chapter 95 was enacted in 2014, and Chapter 197 was enacted in 2022. No language in Real Prop. § 14-126 expressly states that it is retrospective. Its language does, however, create defenses and remedies against types of enforcement. Subsection (d) allows an “operator, an owner, an owner-occupant, or a tenant” to raise the issue that any attempted enforcement of an ordinance containing the prohibited provisions prevents enforcement and it serves as a basis for an affirmative claim for damages.

We observe that the mere fact that a statute may be applied in a case arising from conduct antedating the statute's enactment does not make retrospective. Because of its language, we hold that the court did not err in finding that the General Assembly intended

Real Prop. § 14-126 to operate prospectively. Real Prop. § 14-126 applies prospectively to the current case, notwithstanding the fact that the original enactment and enforcement of the ordinances occurred before the statute became effective.

Next, we examine whether Chapters 197 and Chapter 95 are preempted by Real Prop. § 14-126. “In Maryland, ‘State law may preempt local law in one of three ways: (1) preemption by conflict, (2) express preemption, or (3) implied preemption.’” *Cnty. Council of Prince George’s Cnty. v. Chaney Enters. Ltd. P’ship*, 454 Md. 514, 540 (2017) (quoting *Reclamation Assocs., Inc. v. Harford Cty. (MRA IV)*, 414 Md. 1, 36 (2010)). “Express preemption occurs when the General Assembly prohibits local legislation in a field by specific language in a statute.” *Montgomery County v. Complete Lawn Care, Inc.*, 240 Md. App. 664, 685-86 (2019) (quoting *Worton Creek Marina, LLC v. Claggett*, 381 Md. 499, 512 n.6 (2004)). Preemption by conflict occurs when an ordinance “prohibits activity which is intended to be permitted by state law or permits an activity which is intended to be prohibited by state law.” *Id.* at 688 (quoting *Talbot Cty. v. Skipper*, 329 Md. 481, 487 n.4 (1933)). Implied preemption occurs when an ordinance “deals with an area in which the State Legislature has acted with such force that an intent by the State to occupy the entire field must be implied.” *Id.* at 692 (internal citations omitted). The Maryland Supreme Court has repeatedly stated that “the primary indicia of a legislative purpose to pre-empt an entire field of law is the comprehensiveness with which the General Assembly has legislated the field.” *Id.* (internal citation omitted). When determining whether an ordinance is preempted by a state law by implication, the following factors may also be considered:

1) whether local laws existed prior to the enactment of the state laws governing the same subject matter, 2) whether the state laws provide for pervasive administrative regulation, 3) whether the local ordinance regulates an area in which some local control has traditionally been allowed, 4) whether the state law expressly provides concurrent legislative authority to local jurisdictions or requires compliance with local ordinances, 5) whether a state agency responsible for administering and enforcing the state law has recognized local authority to act in the field, 6) whether the particular aspect of the field sought to be regulated by the local government has been addressed by the state legislation, and 7) whether a two-tiered regulatory process existing if local laws were not preempted would engender chaos and confusion.

Id. (citations modified).

As we see it, the overall legislative purpose of Real Prop. § 14-126, is to prohibit a local jurisdiction from enforcing a law or ordinance that creates a nexus between rental licensing, crime prevention and calls for police services. The statute, by its express language, does not preempt the field of “Landlord/Tenant matters.” It also does not invalidate Real Prop. § 8-208(f), which provides:

No provision of this section shall be deemed to be a bar to the applicability of supplementary rights afforded by any public local law enacted by the General Assembly or any ordinance or local law enacted by any municipality or political subdivision of this State; provided, however, that no such law can diminish or limit any right or remedy granted under the provisions of this section.

Chapter 95 imposes an obligation upon landlords and tenants that the State legislation prohibits. Chapter 95 imposes and collects from property owners, the costs incurred for law enforcement services if such costs were spent to abate a nuisance. Real Prop. § 14-126 (c)(1) expressly prohibits a local government from enacting a local law or ordinance that (i) establishes a threshold of requests to summon law enforcement or emergency services to a residential property and/or maintaining and enforcing an ordinance that

establishes a threshold of requests to summon law enforcement or emergency services to a residential property as grounds for designating a property as a nuisance; or (ii) penalizes or authorizes a penalty against an operator, an owner, an owner-occupant, or a tenant for the act of summoning law enforcement or emergency services to a residential property; or the action of another individual to summon the assistance of law enforcement or emergency services to a residential property.

The legislative history of Senate Bill 250 from the 2023 legislative session, which amended Real Prop. § 14-126 makes clear that the General Assembly amended the law to prevent counties and municipalities from penalizing or setting thresholds based on calls for law enforcement or emergency services. Md. S.B. 450, 2023 Leg., Reg. Sess., ch. 768 (Md. 2023). Because Chapter 95 penalizes residential property owners, including landlords, for the excessive use of city services when a property generates a number of qualifying calls, we conclude that it is preempted by conflict with Real Prop. § 14-126 and is, therefore, invalid. As to Chapter 197, we note that it contains a severability clause, and to the extent the ordinance is tied to Chapter 95, it is also invalid as preempted by conflict.

We next examine whether Chapter 197 is severable. In *Jackson v. Dackman Co*, 422 Md. 357 (2011), the Maryland Supreme Court addressed the issue of severability in analyzing immunity provisions in the Reduction of Lead Risk in Housing Act, granted to owners of certain rental properties, from personal injury lawsuits. *Id.* at 361. The Circuit Court granted, in part, the appellees’ motion for summary judgment, holding that the provisions were constitutional. *Id.* at 374. On appeal, our Court affirmed the constitutionality of the immunity provisions. *Id.* The Maryland Supreme Court granted

certiorari and reversed this court’s judgment, holding that the immunity provisions violated Article 19 of the Maryland Declaration of Rights. *Id.* at 376. The Court held, nevertheless, that the immunity provisions were severable and the remaining portions of the Act could be “given effect.” *Id.* at 383. The Court explained that “[e]ven in the absence of a severability clause, ‘there is a strong presumption that if a portion of an enactment is found to be invalid, the intent is that such portion be severed.’” *Id.* at 383, 384 (quoting *Board v. Smallwood*, 327 Md. 220 (1992)). The Court reiterated that the principal test is whether “the dominant purpose of an enactment may largely be carried out notwithstanding the [enactment’s] partial invalidity.” *Id.* at 384. The Court found that “the dominant purpose of the Act can be given effect without the invalid immunity provisions.” *Id.*

In the case at bar, the Chapter 197-14, titled Severability, states:

The provisions of this chapter are severable. If any provision of this chapter or its application to any person or circumstance is held to be invalid, such invalidity shall not affect the other provisions or applications of this chapter which can be given effect without the invalid provision or application.

In enacting this section, the City has expressed an intention to maintain the balance of Chapter 197 in the event of a severed provision. We, therefore, note and provide detail regarding the provisions of Chapter 197 that can be severed because they bear no relationship to the penalization for requests for law enforcement or emergency services. We also detail those provisions that are preempted by conflict with Real Prop. § 14-126 (c)(1)(ii) because of its prohibitions.

Chapter 197 Provisions	Severability Status
<p>§ 197-3 Licensing Requirement Makes it unlawful for the owner of any rental facility to enter into a residential lease with a tenant for a rental unit or permit occupancy of any rental unit by another unless said unit is currently licensed by the City and the license has not been denied, revoked, or suspended.</p>	<p>Severable This provision establishes an administrative licensing framework that does not penalize tenants for summoning law enforcement for emergency services. Its operation is independent of any crime-free or nuisance-call provisions and does not conflict with Real Prop. § 14-126 (c)(1)(ii).</p>
<p>§ 197-4 (A);(B);(C);(D);(E);(F);(G);(I);(J) Application; License Fee Establishes the application requirements for obtaining a rental facility license. Applicant must provide identifying information about the property, the number of rental units, ownership details, and contact information for responsible parties, including a certified residential operator. The provisions also govern the transfer of a license and require payment of a nonrefundable annual licensing fee.</p>	<p>Severable These provisions do not regulate or penalize calls for law enforcement or emergency services. Instead, they merely establish administrative requirements for obtaining a rental facility license and transferring a license. There is also an independent enforcement mechanism that governs failure to remit a payment for a license.</p>
<p>§ 197-4 (H) Annual Written Acknowledgement Requires landlords to annually acknowledge compliance with Chapter 197’s and Chapter 95’s crime-free housing provisions as a condition to obtaining “certified residential operator” status.</p>	<p>Preempted This subsection requires landlords to incorporate crime-free lease terms into every rental lease as a condition of licensure. It conflicts with Real Prop. § 14-126(c)(1)(ii) prohibiting municipalities from requiring lease terms that penalize tenants for lawful conduct, including contacting emergency services.</p>
<p>§ 197-5 Tenant Turnover Inspection Notice Requires that if a rental unit in a licensed rental facility became vacant and the owner intends to rent it again, the owner must notify Code Administration if the unit has been inspected within the last 48 months. Upon receiving notice, Code Administration will inform the owner if an interior inspection is required.</p>	<p>Severable The tenant-turnover inspection notice requirement is a conventional housing inspection mechanism that operates independently of any crime-free or nuisance-call provisions. It serves a distinct health and safety purpose with no connection to penalizing law enforcement or emergency service usage.</p>
<p>§ 197-6 Inspection Requirements Establishes a system for exterior and interior inspections of rental units to identify and address potential maintenance or safety issues. The provision outlines procedures for scheduling inspections, notice requirements, and circumstances under which the City may</p>	<p>Severable This provision functions independently of the crime-free and nuisance-call framework, does not penalize tenants for lawful conduct, and is not rendered inoperative by removal of the preempted provisions pursuant to Real Prop. § 14-26(c)(1)(ii).</p>

Chapter 197 Provisions	Severability Status
<p>obtain an administrative warrant if entry is refused.</p> <p>§ 197-7(A) Voluntary Crime Free Housing Training Requires that Hagerstown Police Department sponsor a voluntary crime-free housing seminar for landlords or their designated agents.</p>	<p>Severable Participation in crime-free housing training under this subsection is entirely voluntary.</p>
<p>§ 197-7(B) Mandatory Training Triggered by Qualifying Calls Mandates that a residential operator attend crime-free housing training when the owner, landlord, or designated agent of the property has received a threshold number of qualifying calls for service. The training obligation is triggered automatically upon meeting the qualifying call threshold and is enforced as a condition of continued licensure.</p>	<p>Preempted This provision uses an owner, landlord, or designated agent’s calls for law enforcement or emergency services as the basis for a punitive licensure consequence imposed on the operator. Because the mandatory training requirement is activated by qualifying calls for service under Chapter 95, it conflicts with Real Prop. § 14-26(c)(1)(ii). It is also rendered unenforceable as an enforcement mechanism due to the preemption of Chapter 95.</p>
<p>§ 197-7(C) Successor Designated Agent Requirement Requires that when the designated local agent is no longer employed by an owner who is subject to § 197-7B, a new designated agent shall comply with the requirements hereof within 90 days of that event.</p>	<p>Preempted This provision is operationally dependent on the crime-free licensing framework as applied through provisions tied to qualifying calls under §197-7B. Because the designated agent requirement functions as part of a chain linking qualifying-call thresholds to licensure obligations, severance of §197-7B renders this requirement unenforceable.</p>
<p>§ 197-8 (A);(B);(C)(2);(C)(3) Written Leases; Required Provisions Sets out the substantive requirements governing lease agreements for licensed rental units, including written lease mandates, required disclosure provisions, minimum lease terms, and other content requirements under state law, excluding the crime-free lease mandate addressed separately in § 197-8(C)(1).</p>	<p>Severable These subsections address general lease content and tenant-disclosure requirements that are not predicated on crime-free lease terms or triggered by tenant conduct. They impose independent obligations that promote transparency and contractual clarity in landlord-tenant relationships without penalizing tenants for lawful conduct or tying enforcement to calls for law enforcement or emergency services in violation of Real Prop. § 14-26(c)(1)(ii).</p>
<p>§ 197-8(C)(1) Written Lease Crime Free Provision Requires that all leases for licensed rental units include a specific written crime-free lease addendum that obligates tenants not to engage in, facilitate, or permit criminal activity on or</p>	<p>Preempted This provision requires a crime-free housing provision and penalizes a tenant, or member of the household, a guest or other person under the control of the tenant for summoning law enforcement or emergency services as defined in Chapter 95 of the</p>

Chapter 197 Provisions	Severability Status
<p>near the premises, and that authorizes the landlord to pursue eviction for violation of the provision.</p>	<p>code. Specifically, it provides that violation of this provision is a material breach of the lease and good cause for immediate termination of the tenancy.</p>
<p>§ 197-9 Enforcement of Crime Free Provision Provides that it shall be a violation of this chapter for a licensee, landlord, or designated agent to knowingly permit a tenant, occupant, a tenant’s guest, or any person under a tenant’s control to violate the crime-free housing provision of a lease after receiving notice that the property has been deemed a chronic nuisance property pursuant to Chapter 95 of the Code, without taking reasonable steps to enforce the provision.</p>	<p>Preempted This provision penalizes a licensee, landlord, or designated agent for the act of summoning law enforcement or emergency services to a residential property, and the actions of another individual to summon the assistance of law enforcement or emergency services to a residential property.</p>
<p>§ 197-10 Revocation of Residential Operator Certification Authorizes revocation of a residential operator’s certification upon a finding that the operator has failed to comply with the requirements of Chapter 197, including compliance with enforcement of crime-free provisions and satisfaction of training obligations.</p>	<p>Preempted Revocation of certification penalizes an operator for failing to take enforcement action against the actions of another individual that summons the assistance of law enforcement or emergency services to a residential property.</p>
<p>§ 197-11 Issuance of rental facility license; renewal Provides that once a landlord submits a completed application and fee, the Code Administration must issue a rental facility license within 30 days, and the license won’t be issued if it has been denied, revoked, or if the landlord is not a certified residential operator.</p>	<p>Preempted The enforcement provision does not operate independently. They are structurally dependent on the call-threshold framework under Chapter 95 and section 197-8(C)(1). Severing the preempted predicates leaves this provision without an operative enforcement trigger.</p>
<p>§ 197-12 Denial; Revocation of Rental Facility License Authorizes denial or revocation of a residential rental license in whole or in part by Code Administration for the rental unit in which points accumulate pursuant to table section 197-12(B). In addition, a rental facility license may be denied or revoked at any time if the landlord or designated agent is not a valid certified crime-free housing residential operator.</p>	<p>Preempted This provision is integrated into the same enforcement framework and procedural chain as Chapter 95 and section 197-8 (C)(1) of Chapter 197 respectively. Specifically, it gives the City the authority to deny or revoke a rental license if the landlord or designated agent is not a valid certified crime-free housing residential operator, or if there is an excessive use of services based on a points total.</p>

Chapter 197 Provisions	Severability Status
<p>§ 197-13 Crime-free designation Provides that HPD shall offer a more extensive voluntary program whereby residential rental operators may be afforded certain designations upon satisfaction of established criteria by owner, landlord, or designated agent, in recognition of crime prevention steps taken at the property.</p>	<p>Severable This provision is voluntary and does not require landlords to participate in order to rent their property. Because this provision seeks to encourage compliance, rather than penalize non-compliance, it is not in conflict with Real Prop. § 14-126(c)(1)(ii) and is severable.</p>
<p>§ 197-15 General Violations and Penalties Provides the general enforcement and penalty framework for violations of Chapter 197 that do not arise from the crime-free provisions, establishing baseline consequences for failure to obtain or maintain licensure, failure to cooperate with inspections, and other non-crime-free administrative violations.</p>	<p>Severable This provision operates independently of the crime-free and qualifying-call enforcement framework. General violations and penalties applicable to administrative non-compliance, such as unlicensed operation or inspection obstruction, do not implicate the preempted provisions.</p>
<p>§ 197-15A Crime Free Violations and Penalties Establishes a specific penalty regime for violations arising from the crime-free provisions of Chapter 197, including failure to include the required crime-free lease addendum, failure to comply with crime-free training mandates, and failure to enforce or report crime-free lease violations. Penalties under this subsection are distinct from and in addition to general penalties under § 197-15.</p>	<p>Preempted This subsection is the penalty enforcement mechanism for the crime-free provisions of the chapter. The crime-free violation penalties sole operative function is to impose consequences for non-compliance with the crime-free requirement, mandatory training, and crime-free enforcement obligations that are themselves preempted.</p>

In sum, and in accordance with the dominant purpose test as explained by the Supreme Court in *Dackman*, we hold that the severed provisions can be given effect. We acknowledge that the broader purposes of the ordinance are to protect and promote the public health, safety, and welfare of the citizens of Hagerstown; to prevent deterioration of rental facilities in the City; encourage responsible management and use of rental facilities through licensing and inspection. We also acknowledge that Chapter 197’s purpose is to

assure compliance with all laws, ordinances, and regulations. These purposes are aligned with the State statute. As a result, the ordinance’s purpose can be effectuated with the severances delineated above.

III. The trial court correctly concluded that the City did not impose unauthorized taxes.

Appellants argue the court erred in allowing the City to charge taxes for non-participation in the residential licensing program. They contend “the fact that the City may collect unpaid license fees in the same way that it collects taxes does not explain why the City is notifying Appellants that they have taxes—and not license fees—in arrears.”

The City argues the court did not err in finding that the fees and charges assessed against Appellants were not unauthorized taxes. The City contends that, pursuant to Md. Code Ann., Local Gov’t § 5-205(d)(1)(i), a municipality is permitted to collect reasonable fees and charges for licenses granted by the municipality. The City asserts that both Md. Code Ann., Local Gov’t § 5-205(d)(2) and the Charter of the City of Hagerstown, § 401(b)(32) provides that any assessment made against real property in a municipality is a lien on the property that can be collected in the same manner as municipal taxes.

Article 11-E, § 5 of the Maryland Constitution prohibits a municipality from imposing a “tax, license fee, franchise tax or fee” without the delegation of legislative authority by the Maryland General Assembly. Generally, a tax, as defined by this Court, is an “enforced contribution to provide for the support of [the] government.” *Shaarei Tfiloh Congregation v. Mayor of Balt.*, 237 Md. App. 102, 135 (2018) (quoting *E. Diversified Props., Inc. v. Montgomery Cnty.*, 319 Md. 45, 54 (1990)). In contrast, a fee is

“levied for the purpose of regulation, mandating compliance with delineated conditions, and requires payment of a specified sum.” *Id.* A defining feature of a fee is “some level of ‘choice as to the payment or non-payment of the charge.’” *Id.* (quoting *E. Diversified*, 319 Md. at 54). There is “no set rule” for determining whether a charge is a tax or a fee. *Id.* at 138 (internal quotations omitted). However, “the focus is on the underlying purpose of the enactment[.]” *Id.* at 136. This Court has explained that:

A regulatory measure may produce revenue, but in such a case the amount must be reasonable and have some definite relation to the purpose of the act. A revenue measure, on the other hand, may also provide for regulation, but if the raising of revenue is the primary purpose, the amount of the tax is not reviewable by the courts.

Id. (quoting *Maryland Theatrical Corp. v. Brennan*, 180 Md. 377, 381 (1942)).

Md. Code Ann., Local Gov’t § 5-205(d) states that:

(1) Except as otherwise provided under this article, the Tax– General Article, and the Tax–Property Article, **a municipality may establish and collect reasonable fees and charges:**

- (i) for franchises, **licenses**, or permits granted by the municipality; or
- (ii) associated with the exercise of a governmental or proprietary function exercised by a municipality.

(2) A municipality may provide that any valid charge, tax, or assessment made against real property in the municipality is a lien on the property to be collected in the same manner as municipal taxes.

(emphasis added). The Charter of the City of Hagerstown, § 401(b)(32) also provides that “any valid charges, taxes, or assessments made against any real property within the city **shall be liens upon the property, to be collected as municipal taxes are collected.**”

(emphasis added).

In *Golt v. Phillips*, 308 Md. 1 (1986), the Maryland Supreme Court addressed, among other issues, “whether the leasing of an unlicensed dwelling unit constitutes an unfair or deceptive act under Maryland’s Consumer Protection Act[.]” *Id.* at 4. Golt, a tenant, signed a lease for a property after receiving assurances that the property would be cleaned and repairs would be made. *Id.* at 5. After taking possession of the property, Golt discovered additional problems and requested more repairs; however, none of the repairs were completed. *Id.* Golt contacted the Baltimore City Department of Housing and Community Development, and it conducted an inspection and discovered that the rental property was unlicensed. *Id.* The Department issued several violations to the property owners and directed the owners to either obtain a rental license or discontinue renting the property. *Id.* at 6. Golt was evicted from the rental property, and the owner did not return Golt’s full security deposit, withheld one month’s rent, estimated water and sewage charges, and gas and electric charges. *Id.* Golt filed an action for recovery of his security deposit and damages. *Id.* at 1. The district court held that the Act was not violated. *Id.* Golt appealed and the circuit court dismissed the appeal. *Id.*

In explaining why the owners were not entitled to retain Golt’s security deposit, the Supreme Court found that:

an annual license fee for a multiple dwelling unit is only \$20.00 per dwelling unit, with a maximum fee of \$10,000.00. *Id.* § 1103(b) (1985 Cum.Supp.). **It is evident that the license fee is charged to support the cost of inspections, and not to raise revenue.** Therefore, Phillips Brothers may not retain any benefits from the unlicensed lease, and Golt may recover his full damages.

Id. at 13 (emphasis added).

In the present case, Paul Fulk, the Neighborhood Services Manager for the Rental Licensing Program of the City of Hagerstown, testified that the Rental Licensing Program is responsible for the registration of rental licenses, collection of fees, and inspections. Mr. Fulk explained that the fees collected through the rental licensing applications are used to fund the Rental Licensing Program’s activities, such as inspections and a document detailing the operating costs of the program for the years 2021 and 2022, was admitted into evidence. In its opinion, the trial court found “an almost dollar-for-dollar relation exists between the fees the City collects and the budget of the rental inspection program.” Appellants, on appeal, do not dispute these facts.

Based on our review, we hold that the trial court correctly concluded that Appellants were not subject to unauthorized taxes. The City of Hagerstown enacted Chapter 197 for the purpose of regulating residential housing and leasing agreements to promote the health, safety, and welfare of the community. The City has delineated the conditions for its fees in the form of residential licensing requirements and penalties for failure to comply with such requirements. We note that a fee, as opposed to a tax, is “levied for the purpose of regulation, mandating compliance with delineated conditions[.]” *Shaarei Tfiloh Congregation*, 237 Md. App. at 135. A fee “requires payment of a specified sum[.]” and the City has specified the amount of rental licensing within Chapter 197-4(G). The City has also specified the charges to be paid as penalties for failure to comply with the ordinance in Chapter 197-15. The act of renting one’s property is also a voluntary use of that property, and thus, payment of a rental licensing fee is not a mandated condition that

applies to all. In our view, the rental licensing charges and the penalties for non-payment of such are fees and not taxes.

IV. The trial court correctly concluded that Chapter 197-6(E) violated the Fourth Amendment, but that the remainder of Chapter 197 was constitutional.

Appellants argue the court properly found that Chapter 197-6(E) violated the Fourth Amendment; however, they assert that the court erred in finding that the remainder of Chapter 197 and the entirety of Chapter 95 were constitutional pursuant to the U.S. Constitution and the Maryland Declaration of Rights. Appellants contend that the ordinances violated Article 24 of the Maryland Declaration of Rights and the Equal Protection Clause of U.S. Constitution because the City has treated them differently from other similarly situated groups. They further argue that Chapters 197 and 95 are not reasonably understandable and are overreaching. Appellants assert that the ordinances violate the Contracts Clause and the unconditional conditions doctrine.

The City argues that Chapters 197 and 95 are constitutional in their entirety, including Chapter 197-6(E). The City contends that Section 197-6(E) “enumerates the probable cause standard for the issuance of an administrative search warrant that was established by the Supreme Court in *Camara*[,]” and thus, the court erred in finding that Chapter 197-6(E) is invalid based on the Fourth Amendment. The City asserts that the ordinances are not unconstitutionally vague or overbroad. The City further contends that the ordinances do not violate the contracts clause or the unconditional conditions doctrine.

Because we have determined that Chapter 95 is invalid, we decline further review of that ordinance.

A. The court did not err in finding that Chapter 197-6(E) is unconstitutional and violates the Fourth Amendment.

The Fourth Amendment provides for “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures” and that “no Warrants shall issue, but upon probable cause.” U.S. CONST. amend IV. An “administrative search of a private residence must comport with Fourth Amendment principles.” *Cahill v. Montgomery Cnty.*, 72 Md. App. 274, 281 (1987). “[P]robable cause in an administrative context is not the same as that required in a criminal context.” *Id.* Probable cause for the issuance of an administrative search warrant may be established “not only on specific evidence of an existing violation but also a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to a particular establishment.” *Id.* (quoting *Camara v. Mun. Ct. of City & Cnty. of San Francisco*, 387 U.S. 523, 538 (1967)). In the absence of consent or an administrative search warrant, a local government may offer “precompliance review before a neutral decisionmaker” to a tenant or landlord before an inspection is conducted in order to conduct a lawful administrative search. *City of Los Angeles, Calif. v. Patel*, 576 U.S. 409, 410 (2015).

Landlords and tenants have “a constitutional right to insist that . . . inspectors obtain a warrant to search” a rental property, and they “may not constitutionally be convicted for refusing to consent to the inspection.” *Camara*, 387 U.S. at 540. A “person’s refusal to consent to a warrantless search cannot form the basis of . . . probable cause.” *Longshore v. State*, 399 Md. 486, 537-538 (2007).

Chapter 197-6 provides that the interior⁶ of rental properties are required to be inspected under certain circumstances:

A. In connection with the application requirements contained in § 197-4 of this chapter, the rental facility to an initial inspection of annually thereafter.

(1) The interior of each rental unit, except for a single-unit rental facility to be occupied by an exempt tenant, shall be inspected at tenant turnover prior to being occupied by a new tenant, but never more frequently than 48 months from the most recent interior inspection conducted pursuant to this section.

* * *

B. All inspections conducted hereunder shall be conducted by Code Administration in accordance with Sections 104.2, 104.3 and 104.4 of the Property Maintenance Code, and shall be performed pursuant to the standards of the Property Maintenance Code. The applicant shall make the rental facility and/or each rental unit, as the case may be, available for inspection by Code Administration on the scheduled inspection date. Code Administration shall provide reasonable advance notice of inspection to the applicant, and the applicant shall have the right to be present at the inspection.

* * *

D. **The landlord or designated agent of the rental facility, and the tenant of any occupied rental unit, shall have the right to refuse consent to an inspection of the rental unit and to deny permission to enter the rental unit for said purpose.** All applications and inspection notices shall advise the landlord, designated agent or tenant, as the case may be, of his, her or its right to refuse consent and deny entry. **In the event of such refusal of**

⁶ We note that exterior inspections of a rental property are typically conducted from public property that is not within the curtilage of a rental property. Exterior inspections, therefore, do not necessarily require an infringement upon a landlord's or tenant's reasonable expectation of privacy. We, therefore, focus our analysis on the constitutionality of interior inspections under Chapter 197-6(E).

consent or denial of entry, Code Administration shall have the right to seek the issuance of an administrative search warrant under § 104.4 of the Property Maintenance Code in order to conduct the inspection.

- E. In addition to § 104.4. 3. a-c of the Property Maintenance Code, probable cause for the issuance of an administrative search warrant under this § 197- 6 shall exist if the Code Official demonstrates by specific evidence the violation of any provision of this Chapter 197 of the Code, **including but not limited to the refusal of consent to an inspection required by this Chapter** and one or more of the following: the passage of time since the last inspection, the nature of the Premises, or the condition of the neighborhood in which the Premises is located.

(emphasis added).

As noted, under Chapter 197, landlords and tenants are permitted to refuse consent to an interior inspection of a rental property in the absence of a warrant. Chapter 197-6(E) also states that probable cause “shall exist if the Code Official demonstrates by specific evidence the violation of any provision of this Chapter 197 of the Code, including but not limited to **the refusal of consent to an inspection required by this Chapter**[.]” (emphasis added). Because “a person’s refusal to consent to a warrantless search cannot form the basis of . . . probable cause[.]” we hold that Chapter 197-6(E) is violative of the Fourth Amendment. *Longshore*, 399 Md. at 538. We agree with the circuit court that Chapter 197-6(E) is unconstitutional and that it must be struck as null and void.

B. The court correctly concluded that the ordinances do not violate Article 24 of the Maryland Declaration of Rights or the Equal Protection Clause.

We now turn to Appellants’ contention that Chapters 197 and 95 violate the Equal Protection Clause and Article 24 of the Maryland Declaration of Rights because the ordinances treat landlords differently from similarly situated individuals. Appellants note that the ordinances do not apply to other forms of real estate, such as “(a) owner occupied units or a unit that is being rented to a family member; (b) commercial units; (c) units owned and/or operated by the Hagerstown Housing Authority; (d) units improved under permit to the Partners in Economic Progress (PEP) standards for a four-year period; and (e) privately owned and occupied residences without a rational basis.”

The Maryland Supreme Court has defined the relationship between the Equal Protection Clause of the U.S. Constitution and Article 24 of the Maryland Declaration of Rights as the following:

Although Article 24 does not contain an express equal protection clause, our courts long have recognized that “the concept of equal protection nevertheless is embodied in the Article.” *Renko v. McLean*, 346 Md. 464, 482, 697 A.2d 468 (1997); *see also Tyler v. City of Coll. Park*, 415 Md. 475, 499, 3 A.3d 421 (2010). Article 24 equal protection doctrine and federal equal protection doctrine are “complementary but independent.” *Verzi v. Balt. Cty.*, 333 Md. 411, 417, 635 A.2d 967 (1994). We consider U.S. Supreme Court decisions interpreting the federal equal protection clause persuasive but not controlling, and we may find a discriminatory classification unconstitutional for failing to provide equal protection under Article 24 alone. *Attorney Gen. of Md. v. Waldron*, 289 Md. 683, 715, 426 A.2d 929 (1981).

Pizza di Joey, LLC v. Mayor & City Council of Balt., 241 Md. App. 139, 164 (2019), *aff’d sub nom.*, *Pizza di Joey, LLC v. Mayor of Balt.*, 470 Md. 308 (2020).

Under Article 24 of the Maryland Declaration of Rights, if a legislative action “doesn’t discriminate based on a suspect classification, *i.e.*, when the statute does not differentiate based on race, religion, alienage, or national origin, and when no fundamental, enumerated constitutional right is implicated, it is subject to highly deferential, rational basis review.” *Pizza di Joey, LLC*, 241 Md. App. at 166. Similarly, “[u]nder the Fourteenth Amendment, this highly deferential standard applies unless the legislation designates a suspect (or quasi-suspect) class or implicates a fundamental right.” *Id.* at 171.

“Legislation that passed federal constitutional muster can fail Article 24 rational basis review[.]” *Id.* When applying the rational basis standard of review under Article 24, this Court must determine “whether the legislative enactment, as an exercise of the legislature’s police power, bears a real and substantial relation to the public health, morals, safety, and welfare of the citizens of the State or municipality.” *Baddock v. Baltimore Cnty.*, 239 Md. App. 467, 477 (2018) (quoting *Tyler v. City of College Park*, 415 Md. 475, 500 (2010)). In the context of the Equal Protection Clause, “[a] statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.” *Pizza di Joey, LLC*, 241 Md. App. 139 at 171 (quoting *McGowan v. Maryland*, 366 U.S. 420, 426 (1961)). “Generally, local housing and inspection codes are enacted pursuant to a local government’s police powers to enact general regulations for the protection and benefit of the health, safety, and welfare of the public.” *Aleti v. Metro. Balt., LLC*, 479 Md. 696, 726 (2022).

As we previously discussed, Chapter 197-1, titled *Purpose*, outlines the City’s legislative intent:

A. The Mayor and Council recognize that **clean, well-built, crime-free housing and neighborhoods are the foundation upon which healthy communities are built**. This chapter promotes and advances the City’s vision and commitment to housing and neighborhoods throughout the City. The purpose of this chapter is to **protect and promote the public health, safety and welfare of the citizens of Hagerstown**, to establish rights and obligations of the landlord and the tenant in the rental of dwelling units, and to encourage the landlord and tenant **to maintain and improve the quality of rental housing within the community**.

B. An additional purpose of this chapter is to assure compliance with all laws, ordinances and regulations applicable to residential housing facilities in the City of Hagerstown and **to promote and assure safety, health and habitability in the housing conditions in rental facilities in the City, to prevent deterioration of rental facilities in the City, to support property values, and to encourage responsible management and use of rental facilities through licensing and inspection**.

C. It is also the purpose of this chapter **to protect, preserve, and promote the health, safety and welfare of the citizens of Hagerstown by the reduction, control and prevention of criminal and nuisance activities in residential rental housing**, through education and the implementation and enforcement of reasonable lease provisions.

D. The Mayor and Council further recognize that periodic inspections of rental facilities are essential to the accomplishment of these purposes.

(emphasis added).

As we have previously explained, the City is utilizing its express authority to promote the health, safety, and welfare of the community by regulating residential housing within the City of Hagerstown. This Court has long recognized that such ordinances satisfy the rational basis test under both Article 24 and the Equal Protection Clause. We, therefore, hold that the ordinance does not violate Article 24 or the Equal Protection Clause by treating the owners of residential rental properties differently.

C. The court correctly concluded that Chapter 197 does not violate the Contracts Clause or the unconditional conditions doctrine.

“A finding that a statute is void for vagueness is a finding that the statute is unconstitutional.” *Pizza di Joey, LLC*, 241 Md. App. at 206- 207. “The void for vagueness doctrine is rooted in the fourteenth amendment’s guarantee of procedural due process.” *Pizza di Joey, LLC*, 470 Md. at 360. This Court has explained that:

Generally, courts apply two criteria to determine whether a statute is void for vagueness. *Williams v. State*, 329 Md. 1, 8, 616 A.2d 1275 (1992); *Eanes v. State*, 318 Md. 436, 459, 569 A.2d 604, cert. denied, 496 U.S. 938, 110 S.Ct. 3218, 110 L.Ed.2d 665 (1990); *Bowers v. State*, 283 Md. 115, 120–21, 389 A.2d 341 (1978). **First, a court must determine whether the statute complies with the “fair notice principle.”** *Id.* at 121, 389 A.2d 341. In discussing the fair notice principle, the Court of Appeals has held that “[d]ue process commands that persons of ordinary intelligence and experience be afforded a reasonably opportunity to know what is prohibited, so that they may govern their behavior accordingly.” *Id.* To determine whether a statute provides fair notice, a court considers “whether persons ‘of common intelligence must necessarily guess at [the statute’s] meaning.’ ” *Williams*, 329 Md. at 8, 616 A.2d 1275 (quoting *Broadrick v. Oklahoma*, 413 U.S. 601, 607, 93 S.Ct. 2908, 37 L.Ed.2d 830 (1973)). A statute is not vague under the fair notice principle if the meaning “of the words in controversy can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises or even the words themselves, if they possess a common and generally accepted meaning.” *Bowers*, 283 Md. at 125, 389 A.2d 341 (citations omitted); *see Eanes*, 318 Md. at 460, 569 A.2d 604.

Second, a statute may be stricken for vagueness if it does not “provide legally fixed standards and adequate guidelines for police, judicial officers, triers of fact and others whose obligation it is to enforce, apply and administer the penal laws.” *Bowers*, 283 Md. at 121, 389 A.2d 341. To survive the application of the second criterion, a statute must “eschew arbitrary enforcement in addition to being intelligible to the reasonable person.” *Williams*, 329 Md. at 9, 616 A.2d 1275. A statute is unconstitutionally vague when it “is so broad as to be susceptible to irrational and selective patterns of enforcement” *Bowers*, 283 Md. at 122, 389 A.2d 341. But, a statute is not void for vagueness “merely because it allows for the exercise of some discretion.” *Id.*

“As a general rule, the application of the void-for-vagueness doctrine is based on the application of the statute to the ‘facts at hand.’” *Galloway*, 365 Md. at 616, 781 A.2d 851 (quoting *Bowers*, 283 Md. at 122, 389 A.2d 341). Consequently, **“it will usually be immaterial that the statute is of questionable applicability in foreseeable marginal situations, if a contested provision clearly applies to the conduct of the defendant in a specific case.”** *Bowers*, 283 Md. at 122, 389 A.2d 341.

Neutron Prods., Inc. v. Dep’t Of The Env’t, 166 Md. App. 549, 608–09 (2006) (emphasis added).

Appellants assert that the definitions of “Reasonable Steps” and “Owners” in Chapter 197 are vague and cannot be understood by an ordinary person. Appellants further contend that the lack of a definition for the term “Tenant” is problematic. In their brief, Appellants indicated that they have not been subjected to inspections under Chapter 197. In other words, Appellants’ vagueness arguments are grounded in “foreseeable marginal situations” as opposed to the “facts at hand.” *Neutron Prods., Inc.*, 166 Md. App. at 609. We, therefore, decline to address Appellants’ arguments that Chapter 197 is void for vagueness.

D. The court did not err in holding that Chapter 197 does not violate the Contracts Clause or the unconditional conditions doctrine.

Appellants argue that the City violated the Contracts Clause of the U.S. Constitution by requiring mandatory rental licensing applications, mandating that landlords include additional provisions in leases, and dictating the relationship between private owners and occupants. “No State shall . . . pass any . . . [l]aw impairing the [o]bligation of [c]ontracts[.]” U.S. CONST. art I, § 10, cl. 1. According to the Maryland Supreme Court, “[a] very important prerequisite to the applicability of the Contract Clause at all to an

asserted impairment of a contract by state legislative action is that the challenged law operate with retrospective, not prospective effect.” *Cherry v. Mayor & City Council of Balt. City*, 475 Md. 565, 616 (2021) (quoting *Maryland State Teachers Ass’n, Inc. v. Hughes*, 594 F. Supp. 1353, 1360 (D. Md. 1984)) (internal quotation marks omitted). If a legislative action has a retroactive effect, this Court must then consider the following in determining whether it is constitutional:

(1) whether there has been an impairment of a contract; (2) whether the state law has operated as a substantial impairment of a contractual relationship; and (3) if there has been a substantial impairment, whether the impairment is permissible because it is reasonable and necessary to serve an important public purpose.

Id. (quoting *Cherry v. Mayor & City Council of Balt. City*, 762 F.3d 366, 371 (4th Cir. 2014) (quoting *Balt. Tchrs. Union v. Mayor & City Council of Balt.*, 6 F.3d 1012, 1015, 1018 (4th Cir. 1993))).

Here, the requirements of rental licensing and including additional provisions in leases may impair a landlord’s ability to contract with occupants *prospectively*. There is no indication that the City’s ordinances require retroactive action, such as canceling current leases and redrafting them or evicting tenants from unlicensed properties until a rental is obtained. We, therefore, find that the ordinances do not violate the contracts clause.

Appellants argue that Chapter 197 violates the unconstitutional conditions doctrine because the ordinances “by-pass[] the Fourth Amendment” by allowing intrusion into the rental properties without the right to refuse. Appellants further argue that signing an acknowledgement of Chapter 95 as required under Chapter 197 for a rental license application subjects them to conditions that are not constitutionally required.

“Generally, a government cannot condition a benefit on a basis that infringes constitutionally protected interests, ‘especially [one’s] interest in freedom of speech.’” *Thana v. Bd. of License Comm'rs for Charles Cnty.*, 226 Md. App. 555, 572 (2016) (quoting *Perry v. Sindermann*, 408 U.S. 593, 597 (1972)). The unconstitutional conditions doctrine has “routinely invalidated conditions that restricted individual rights generally and First Amendment rights in particular.” *Id.*

Chapter 197-6(D) provides that tenants and landlords may refuse an inspection of the rental property, stating:

The landlord or designated agent of the rental facility, and the tenant of any occupied rental unit, shall have the right to refuse consent to an inspection of the rental unit and to deny permission to enter the rental unit for said purpose. All applications and inspection notices shall advise the landlord, designated agent or tenant, as the case may be, of his, her or its right to refuse consent and deny entry.

As we see it, Chapter 197 does not bypass Fourth Amendment protections because tenants and landlords may refuse warrantless entry. Likewise, signing an acknowledgement of the ordinances’ requirements for inspection in a rental application does not violate the Fourth Amendment. We find that the unconstitutional conditions doctrine is inapplicable here.

V. The court did not err in finding that the balance of Chapter 197 was constitutionally valid.

Appellants argue that the court erred in finding the balance of Chapter 197 valid after it found that Chapter 197-6(E) violated the Fourth Amendment of the U.S. Constitution. They contend that Chapter 197-6(E) does not contain a valid Savings clause. Appellants further argue that, because Chapter 197-6(E) relates to the enforcement of inspections, it is the “heart and soul” of the ordinance, and the balance is invalid.

The City argues that the court did not err in preserving the remainder of Chapter 197 after it found that Chapter 197-6(E) violated the Fourth Amendment of the U.S. Constitution. The City notes that the presence of the Savings clause in Chapter 197 creates the presumption of severability. It argues that severing Chapter 197-6(E) was proper as the removal did not significantly impair the dominant purpose of the ordinance.

We agree with the City. As previously discussed, “[t]here is a strong presumption that if a portion of an enactment is found to be invalid, the intent is that such portion be severed.” *State v. Phillips*, 210 Md. App. 239, 268–69 (2013). “[W]hen the dominant purpose of an enactment may largely be carried out notwithstanding the enactment’s partial invalidity, courts will generally hold the valid portions severable and enforce them.” *Balt. City Bd. of Elections v. Mayor & City Council of Balt.*, 489 Md. 465, 511 (2025) (quoting *O.C. Taxpayers For Equal Rts., Inc. v. Ocean City*, 280 Md. 585, 601 (1977)). The removal of an unconstitutional provision allows the remainder of the ordinance to be applied properly.

Chapter 197-6(E) was found unconstitutional because it allows the City to obtain probable cause for an interior inspection of a rental property when a tenant or landlord refuses to consent to such. As we noted in our previous discussion of Chapter 197-6(E), had the City not included this subsection, the ordinance’s requirements for interior inspections would be valid under the Fourth Amendment. The removal of an unconstitutional subsection from an otherwise valid ordinance does not impede enforcement or diminish the statute’s purpose. Rather, the removal of an unconstitutional provision allows the remainder of the ordinance to be applied properly. We hold that the

court did not err in holding that the balance of Chapter 197 was valid after severing Chapter 197-6(E).

**JUDGMENT OF THE CIRCUIT
COURT FOR WASHINGTON
COUNTY AFFIRMED IN PART
AND REVERSED IN PART;
COSTS TO BE SPLIT BY
APPELLANTS AND THE CITY
OF HAGERSTOWN.**

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