IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
CEDAR RAPIDS DIVISION

LANDLORDS OF LINN COUNTY and REHMAN ENTERPRISES, LC, Plaintiffs, vs. CITY OF CEDAR RAPIDS, IOWA, Defendant.	No. 10-CV-109-LRR **ORDER**

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I. INTRODUCTION

The matter before the court is the "Motion to Remand" ("Motion") (docket no. 8), filed by Plaintiffs Landlords of Linn County and Rehman Enterprises, LC.

II. PROCEDURAL BACKGROUND

On July 29, 2010, Plaintiffs filed a four-count "Petition for Declaratory Judgment" ("Complaint") (docket no. 4) in the Iowa District Court for Linn County, case no. EQCV069920. On August 10, 2010, Defendant City of Cedar Rapids, Iowa ("City") removed the action to this court on the basis of federal question jurisdiction. That same date, the City filed an Answer (docket no. 3) denying the substance of the Complaint.

On September 9, 2010, Plaintiffs filed the Motion. On September 26, 2010, the City filed a Resistance (docket no. 9). On September 28, 2010, Plaintiffs filed a Reply (docket no. 10). Neither side requests oral argument on the Motion. The Motion is fully submitted and ready for decision.

III. FACTUAL BACKGROUND

A. Parties

Landlords of Linn County is an Iowa nonprofit corporation that seeks "to protect and promote the interests of owners and managers of residential rental property in Linn County, Iowa." Complaint at ¶ 1. Its members "own and manage thousands of residential rental units" within the City. *Id.* at ¶ 2. Rehman Enterprises, LC is an Iowa limited liability company that owns 14 residential rental units in the City.

B. New Chapter 29

On July 13, 2010, the City repealed Municipal Code Chapter 29 and enacted a

"rewritten" Chapter 29 ("New Chapter 29").[1] *Id.* at ¶ 7. Among other things, New Chapter 29 "requires residential rental agreements, whether written or oral, to include a written 'Crime Free Lease Addendum' in a form mandated by the City."[2] *Id.* at ¶ 8. "Under the terms of the 'Crime Free Lease Addendum' residents of rental units, members of the residents' households, guests of the residents and 'other persons affiliated with the resident' may not engage in any criminal activity including simple misdemeanors on the rental property and may not engage in certain enumerated crimes . . ., including specified simple misdemeanors, within 1000 feet of the residence." *Id.* at ¶ 10 (quoting Crime Free Lease Addendum). The Crime Free Lease Addendum provides, in part:

> 4. VIOLATION OF THE ABOVE PROVISIONS SHALL BE A MATERIAL AND IRREPARABLE VIOLATION OF THE LEASE AND GOOD CAUSE FOR THE IMMEDIATE TERMINATION OF TENANCY. A single violation of any of the provisions of this addendum shall be deemed a serious violation, and a material and irreparable non-compliance. It is understood that a single violation shall be good cause for immediate termination of the lease. Unless otherwise provided by law, proof of violation shall not require a criminal conviction, but shall be by a preponderance of the evidence.

Complaint Ex. B at ¶ 4.

New Chapter 29 requires landlords to be licensed to rent residential property within

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[1] Plaintiffs attached a copy of New Chapter 29 as Exhibit A to the Complaint. *See* Docket no. 4 at 12. Plaintiffs challenge only "those portions of Cedar Rapids City Code Chapter 29 which mandate the so-called 'Crime Free Lease Addendum' and which seek to enforce that mandate." Plaintiffs' Brief in Support of Motion to Remand ("Pl. Brief") (docket no. 8-1) at 6. For convenience, the court refers to the challenged provisions simply as "New Chapter 29." Thus, while New Chapter 29 contains many provisions unrelated to the Crime Free Lease Addendum, the court's reference to "New Chapter 29" in the instant Order is limited solely to those provisions that Plaintiffs challenge in this action.

[2] Plaintiffs attached a copy of the Crime Free Lease Addendum as Exhibit B to the Complaint. *See* Docket no. 4 at 26.

the City. To obtain a license, a landlord must register each residential rental unit. The City may "revoke, suspend, deny or decline to renew any Landlord License or Rental Unit Registration" as a result of certain enumerated violations. Complaint Ex. A at § 29.04(f). New Chapter 29 allows the City to revoke, suspend, deny or decline to renew a landlord license or rental unit registration based on a landlord's "[f]ailure to implement the Crime Free Agreement as outlined by this ordinance on all new and renewal lease agreements." *Id.* at § 29.04(f)(7). The City may also revoke, suspend, deny or decline to renew a landlord's license or rental unit registration if the landlord allows continued violations of the "'Crime Free Lease Agreement' without any notable or reasonable effort to abate the nuisance(s) . . . ." *Id.* at § 29.04(f)(6).

C. Plaintiffs' Claims

Plaintiffs challenge New Chapter 29 on four grounds. Their claims arise under both federal and state law.

1. State law claims

Plaintiffs allege that New Chapter 29 violates Iowa Code section 364.1 ("Section 364.1"), Iowa's home rule statute for cities, because it "purports to govern [a] private civil relationship by dictating terms that must be included in the private contract between the landlord and the tenant and also by dictating when one private party (the landlord) must take action against another private party (the tenant) for a breach of [a] lease contract." Complaint at ¶ 21. Plaintiffs contend that certain provisions of New Chapter 29 exceed the City's authority under Section 364.1 and are therefore unenforceable by reason of Article III, Section 38A of the Iowa Constitution.

Plaintiffs also allege that New Chapter 29 violates Iowa Code section 562A.27A ("Section 562A.27A"), which allows a landlord to initiate eviction proceedings if a tenant, or someone on the premises with the consent of the tenant, creates or maintains a "clear and present danger" by committing certain crimes. The statute also provides that, if the

criminal activity was committed by someone other than the tenant, the tenant may avoid eviction by taking specified remedial actions. Plaintiffs argue that the Crime Free Lease Addendum eliminates a tenant's right to take such remedial measures and therefore is an invalid exercise of home rule.

2. Federal constitutional claims

Plaintiffs allege that New Chapter 29 violates the "void for vagueness" doctrine of the 5th and 14th Amendments to the United States Constitution and Article I, section 9 of the Iowa Constitution. Complaint at ¶ 33. Specifically, Plaintiffs assert that New Chapter 29 "contains no articulable standard" with respect to what constitutes "reasonable" or "notable" efforts to enforce the Crime Free Lease Addendum. *See id.* at ¶¶ 31-32.

Plaintiffs also allege that New Chapter 29 violates the takings and due process provisions of the 5th and 14th Amendments of the United States Constitution and Article I, sections 9 and 18 of the Iowa Constitution. Specifically, they contend that New Chapter 29 "requires a private party to institute a civil action at the private party's own expense to vindicate a purely public grievance." Complaint at ¶ 40.

IV. ANALYSIS

Plaintiffs ask the court to remand this case to state court under the *Pullman* abstention doctrine. *See R.R. Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 500-02 (1941). Plaintiffs contend that *Pullman* abstention is appropriate because Iowa law is unclear with respect to Plaintiffs' state law claims and that such claims, if meritorious, would obviate the need to address their constitutional claims. The City contends *Pullman* abstention is inappropriate because Iowa law is clear and that, in any event, the court will "likely have to reach the Plaintiffs' Constitutional challenges." Resistance at 8.

A. **Pullman** *Abstention*

"As a general rule, federal courts have a 'virtually unflagging obligation' to exercise their jurisdiction in proper cases." *Beavers v. Ark. State Bd. of Dental Exmn'rs*, 151 F.3d

838, 840 (8th Cir. 1998) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). Nonetheless, "federal courts may abstain from deciding an issue in order to preserve 'traditional principles of equity, comity, and federalism.'" *Id.* (quoting *Alleghany Corp. v. McCartney*, 896 F.2d 1138, 1142 (8th Cir. 1990)). *Pullman* abstention "is one of several limited doctrines that permit district courts to preserve such principles." *Id.* at 840-41.

"'*Pullman* requires a federal court to refrain from exercising jurisdiction when the case involves a potentially controlling issue of state law that is unclear, and the decision of this issue by the state courts could avoid or materially alter the need for a decision on federal constitutional grounds.'" *Robinson v. City of Omaha, Neb.*, 866 F.2d 1042, 1043 (8th Cir. 1989) (quoting *Moe v. Brookings Cnty., S.D.*, 659 F.2d 880, 883 (8th Cir. 1981)). "Thus, for *Pullman* abstention to be appropriate, two requirements must be met." *Id.* "First, the controlling state law must be unclear. Second, a tenable interpretation of the state law must be dispositive of the case." *Id.* "In other words, if a reasonable interpretation would render unnecessary or substantially modify the federal constitutional question then abstention is appropriate." *Id.*

In *Beavers*, the Eighth Circuit Court of Appeals elaborated on the factors relevant to the *Pullman* inquiry:

> *Pullman* abstention requires consideration of (1) the effect abstention would have on the rights to be protected by considering the nature of both the right and necessary remedy; (2) available state remedies; (3) whether the challenged state law is unclear; (4) whether the challenged state law is fairly susceptible to an interpretation that would avoid any federal constitutional question; and (5) whether abstention will avoid unnecessary federal interference in state operations.

Beavers, 151 F.3d at 841 (citing *George v. Parratt*, 602 F.2d 818, 820-22 (8th Cir. 1979)).

B. Municipal Home Rule in Iowa

Plaintiffs' state law claims turn on the scope of Iowa municipalities' home rule power. Accordingly, the court briefly summarizes Iowa's general home rule principles before turning to the merits of the Motion.

The Iowa Constitution grants municipalities "home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government . . . ." Iowa Const. art. III, § 38A (the "home rule amendment"). Under the home rule amendment, the Iowa legislature "retains the unfettered power to prohibit a municipality from exercising police powers, even over matters traditionally thought to involve local affairs." *City of Davenport v. Seymour*, 755 N.W.2d 533, 538 (Iowa 2008). "Conversely, as long as an exercise of police power over local affairs is not 'inconsistent with the laws of the general assembly,' municipalities may act without express legislative approval or authorization." *Id.* (quoting Iowa Const. art. III, § 38A).

"This constitutional grant" of home rule power "is implemented through Iowa Code section 364.1," *State v. City of Iowa City*, 490 N.W.2d 825, 828 (Iowa 1992), which provides:

> A city may, except as expressly limited by the Constitution of the State of Iowa, and if not inconsistent with the laws of the general assembly, exercise any power and perform any function it deems appropriate to protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the peace, safety, health, welfare, comfort, and convenience of its residents. *This grant of home rule powers does not include the power to enact private or civil law governing civil relationships, except as incident to an exercise of an independent city power*.[3]

[3] The court shall at times refer to the first clause of the emphasized portion of Section 364.1 as the "private law exception" to the City's home rule power and the second clause of the emphasized portion as the "independent city power exemption."

Iowa Code § 364.1 (also referred to as the "home rule statute") (emphasis added).

C. Pullman *Analysis*

As noted above, Plaintiffs bring two state law challenges to New Chapter 29. The court must first consider whether Iowa law is unclear on these questions.

1. Clarity of state law

The Supreme Court "has not defined with precision what degree of unclarity in state law is needed to justify" *Pullman* abstention. 17A Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4242 at 336-37 (3d ed. 2007). The most common formulation, however, is that abstention is appropriate if the state law is fairly susceptible to an interpretation that avoids or substantially modifies the constitutional questions. *See Babbitt v. United Farm Workers Nat'l* Union, 442 U.S. 289, 306 (1979) (stating that abstention is appropriate where the state statute is "susceptible" or "fairly subject" to an interpretation that would moot or substantially modify the federal constitutional question). The Eighth Circuit Court of Appeals applies a similar standard. In *Robinson*, for example, the Eighth Circuit Court of Appeals concluded that state law was unclear because the statute at issue "conceivably support[ed]" the plaintiff's position. *Robinson*, 866 F.2d at 1043.

a. Section § 364.1

There are at least two state law questions in this case with respect to Section 364.1. First, whether the challenged portions of New Chapter 29 constitute a "private or civil law governing civil relationships . . . ." Iowa Code § 364.1. Second, if New Chapter 29 is a "private or civil law governing civil relationships," and therefore a generally impermissible use of home rule power, whether it is nonetheless valid as "incident to an exercise of an independent city power." *Id.* For the reasons explained below, the court finds that Iowa law is unclear on both questions.

The parties agree that no Iowa appellate court has construed the final sentence of

Iowa's home rule statute. That is, no Iowa appellate court has considered whether a particular ordinance falls within the private law exception and, if so, whether it was enacted pursuant to an "independent city power." Iowa Code § 364.1. The City argues that the absence of such case law does not mean that Iowa law is "in a state of flux" on this issue. Resistance at 2. Rather, the City argues that the Iowa courts, in addition to a backdrop of statutory law, have established a sufficient framework for analyzing the issues Plaintiffs raise in this case.

The mere absence of an Iowa appellate court decision construing this particular language of the home rule statute does not necessarily render state law unclear. *See Planned Parenthood of Dutchess-Ulster, Inc. v. Steinhaus*, 60 F.3d 122, 126 (2d Cir. 1995) ("The regulations at issue are neither ambiguous nor unintelligible, nor are they rendered 'unclear' merely because no state court has yet construed them."); *see also George v. Parratt*, 602 F.2d 818, 821 (8th Cir. 1979) (holding that state law was unclear because the issue "ha[d] not been passed on by the state courts *and* resolution of that question is unclear" (emphasis added)). However, the absence of such case law, coupled with other considerations explained below, leads the court to conclude that Section 364.1 is fairly susceptible to Plaintiffs' proffered interpretation.

i. Private law exception

With respect to whether New Chapter 29 is a "private or civil law governing civil relationships," Iowa Code § 364.1, Plaintiffs point the court to decisions from other states construing identical language. The Massachusetts Supreme Court and New Mexico Court of Appeals have interpreted this language in a manner consistent with what Plaintiffs urge here. *See Marshal House, Inc. v. Rent Review and Grievance Bd. of Brookline*, 260 N.E.2d 200, 205 (Mass. 1970) (sustaining challenge to city's rent control bylaw and noting that "[t]he term 'private or civil law governing civil relationships' is broad enough to include law controlling ordinary and usual relationships between landlords and tenants");

Bannerman v. City of Fall River, 461 N.E.2d 793, 795 (Mass. 1984) ("An ordinance which affects the landlord-tenant relationship is a 'private or civil law governing civil relationships.'"); *New Mexicans for Free Enter. v. City of Santa Fe*, 126 P.3d 1149, 1160 (N.M. Ct. App. 2005) (holding that city's minimum wage ordinance, "which sets a mandatory minimum wage term for labor contracts between private parties that the employee may enforce by bringing a civil action against the employer[,]" fell within the scope of the private law exception).

For largely the same reasons articulated in *Marshal House* and *New Mexicans for Free Enterprise*, the court finds that Plaintiffs' urged interpretation of the private law exception—i.e., that it prohibits the challenged portions New Chapter 29—is a reasonable interpretation of Section 364.1. New Chapter 29 mandates that certain terms, supplied in a City-mandated form, be included in every residential rental agreement. *See* Complaint Ex. A at § 29.16 ("All rental agreements commencing after the effective date of this ordinance . . . shall include the attached Crime Free Lease Agreement."). Further, New Chapter 29 allows the City to revoke, suspend, deny or decline to renew a landlord's license or rental unit registration if the landlord fails to make any "notable or reasonable effort" to abate a violation of the Crime Free Lease Agreement. *Id.* at § 29.04(f)(6). Plaintiffs reasonably argue that this provision could have the effect of mandating when and in what circumstances one private party, a landlord, must institute a legal action against another private party, a tenant, for a breach of their private contract. In short, Plaintiffs offer a reasonable interpretation of Section 364.1, under which the challenged portions of New Chapter 29 constitute a "private or civil law governing civil relationships." Accordingly, Iowa law is unclear on this question.[4]

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[4] The City offers several general arguments regarding the breadth of the City's home rule authority. For example, the City notes that limitations on a city's power are not implied; they must be imposed by the legislature. These arguments miss the point. (continued…)

ii. Independent city power

The remaining question underlying Plaintiffs' claim under Section 364.1 is whether New Chapter 29 falls within the independent city power exemption. If so, it would be a legitimate exercise of the City's home rule power even if it is a private or civil law governing civil relationships. The court finds that Iowa law also is unclear on this question.

No Iowa appellate court has construed the independent city power exemption. Plaintiffs argue that other courts have viewed this provision "as applying only to ordinances passed in response to independent enabling state legislation, as opposed to ordinances passed under general home rule authority."[5] Pl. Brief at 4. The City responds in two ways. First, it argues that "[i]nasmuch as the entire housing ordinance [New Chapter 29], including the Crime Free Amendment, was enacted pursuant to the City's police power, the text of [Section] 364.1 itself provides the 'independent authority' Plaintiffs allege is lacking." Resistance at 6. In other words, the City argues that the challenged portions of New Chapter 29 were enacted "to 'protect and preserve the rights, privileges, and property of the city or of its residents, and to preserve and improve the

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[4](…continued)
Plaintiffs allege that the private law exception itself constitutes an express limitation on the City's home rule power.

[5] Plaintiffs cite local civil rights laws and building codes as examples of such "independent enabling state legislation." Pl. Brief at 4. Plaintiffs argue that, while a local civil rights act may prohibit discrimination in "private civil rental relationships[,]" this does not violate state law because "the legislature has enacted specific enabling legislation permitting cities to do this." *Id.* (citing Iowa Code section 216.19, which states, "All cities shall, to the extent possible, protect the rights of the citizens of this state secured by the Iowa civil rights Act."). Similarly, Plaintiffs reason that, although a city building code might prohibit private contracts to build a non-compliant structure, "there is specific enabling legislation permitting cities to enact certain specified building codes." *Id.* (citing Iowa Code § 364.17).

peace, safety, health, welfare, comfort and convenience of its residents.'" *Id.* (quoting Iowa Code § 364.1). Second, the City argues that Iowa Code section 364.17, which requires cities to enact housing codes, provides the independent city power to enact the challenged portions of New Chapter 29.

With respect to the City's first argument, the court finds that Plaintiffs urge a reasonable interpretation of the independent city power exemption. The last clause of Section 364.1 is fairly susceptible to the interpretation that it applies only to ordinances enacted pursuant to city authority independent of a city's general home rule power. The language of the home rule statute itself appears to support Plaintiffs' position. The statute begins with the general grant of home rule, which includes the police power upon which the City relies. However, it concludes by stating, "*This grant* of home rule powers does not include the power to enact private or civil law governing civil relationships, *except as incident to an exercise of an independent city power*." Iowa Code § 364.1 (emphasis added). The statute's reference to "an independent city power" could reasonably be interpreted to mean a city power other than that bestowed in the previous sentence of the statute. At least one court has interpreted the phrase in this way. *See New Mexicans for Free Enterprise*, 126 P.3d at 1161 ("The exemption refers to an 'independent municipal power,' which we conclude means any power other than home rule."). If a court were to agree with Plaintiffs' reasonable interpretation of this clause, the City's reliance on its police power as set forth in Section 364.1 could not serve as the "exercise of an independent city power" to support New Chapter 29.

The City also points to Iowa Code section 364.17 as an "independent city power." This statute directs cities to adopt procedures to enforce their housing codes, and provides a non-exclusive list of enforcement procedures that cities may use.[6] Plaintiffs contend that

[6] These enforcement procedures include: civil penalties and criminal fines, orders (continued…)

Iowa Code section 364.17 relates to the "mechanical or structural safety of property" and that the "crime free lease addendum is not part of a uniform building code and has nothing to do with the structural integrity or structural safety of any building." Reply at 3. Plaintiffs also posit that, even if the challenged portion of New Chapter 29 were somehow related to building code enforcement, it would still be invalid because Iowa Code section 364.17 provides that building code enforcement procedures "shall be designed to improve housing conditions rather than to displace persons from their homes." Iowa Code § 364.17(3)(b). Plaintiffs argue that "[t]he 'crime free lease addendum' was designed and passed with only one thing in mind—to displace certain disfavored persons from their homes." Reply at 3.

The court finds that Iowa law is unclear with respect to this portion of the parties' dispute. As previously noted, no Iowa appellate court has construed the independent city power exemption. Furthermore, "[b]oth commentators and courts have noted the ambiguity of the independent power exemption." *New Mexicans for Free Enter.*, 126 P.3d at 1160; *see also City of Atlanta v. McKinney*, 454 S.E.2d 517, 520 (Ga. 1995) (noting that "the meaning of this provision is ambiguous"). Plaintiffs' argument that New Chapter 29 was designed to displace certain persons from their home in violation of Iowa Code section 364.17(3)(b) only amplifies the lack of clarity on this question. Given the ambiguity of the statute and the dearth of guidance from the Iowa courts, the court finds

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[6](…continued)
requiring code violations to be corrected within a reasonable time, the issuance of citations for failure to remedy a violation, authority for an officer to contract to have work done to remedy a violation, an "escrow system for the deposit of rent which will be applied to the costs of correcting violations," mediation of disputes regarding alleged violations and "[a]uthority by ordinance to provide that no rent shall be recoverable by the owner or lessee of any dwelling which does not comply with the housing code . . . until such time as the dwelling does comply with the housing code adopted by the city." Iowa Code § 364.17(3)(a)(1)-(8).

that Iowa law is unclear as to whether the City's authority to enforce its building code suffices as an exercise of an independent city power.

b. Section 562A.27A

Plaintiffs also argue that *Pullman* abstention is warranted based upon their claim that New Chapter 29 is inconsistent with Section 562A.27A.

Section 562A.27A provides a mechanism by which landlords may evict a tenant who has "created or maintained a threat constituting a clear and present danger to the health or safety of other tenants, the landlord, the landlord's employee or agent, or other persons on or within one thousand feet of the landlord's property . . . ." Under the statute, a "clear and present danger" includes, "but is not limited to, any of the following activities of the tenant or of any person on the premises with the consent of the tenant:"

> a. Physical assault or the threat of physical assault.
>
> b. Illegal use of a firearm or other weapon, the threat to use a firearm or other weapon illegally, or possession of an illegal firearm.
>
> c. Possession of a controlled substance unless the controlled substance was obtained directly from or pursuant to a valid prescription . . . . This paragraph applies to any other person on the premises with the consent of the tenant, but only if the tenant knew of the possession by the other person of a controlled substance.

Iowa Code § 562A.27A(2)(a)-(c). Generally, if a tenant has created or maintained a clear and present danger, the landlord may serve three days' written notice on the tenant and then begin eviction proceedings. Iowa Code § 562A.27A(1). However, this procedure is unavailable "if the activities causing the clear and present danger . . . are conducted by a person on the premises other than the tenant and the tenant takes at least one of" three

specified remedial measures.[7] Iowa Code § 562A.27A(3).

Plaintiffs contend that New Chapter 29 is inconsistent with Section 562A.27A in several ways. First, New Chapter 29 "provides that commission of *any* crime by any tenant, or guest or 'other persons affiliated with' the tenant is an 'IRREPARABLE' violation of the rental agreement and is grounds for immediate eviction." Pl. Brief at 5 (quoting Crime Free Lease Addendum). Second, the Crime Free Lease Addendum purports to take away the "cure rights" innocent co-tenants enjoy under Section 562A.27A(3). *Id.* at 6. Finally, Plaintiffs argue that New Chapter 29 "purports to cast a much broader net" than the statute, which "only applies to crimes involving illegal use or possession of firearms, assault in its various forms, or use or possession of controlled substances." *Id.* Plaintiffs also note that, under Section 562A.27A, a controlled substances violation constitutes a clear and present danger "only if the tenant knew of the possession by the other person . . . ." Iowa Code § 562A.27A(2)(c). In contrast, Plaintiffs argue that New Chapter 29 "purports to extend to all law violations and applies to violations by guests even if the tenant had no knowledge of the violation." Pl. Brief at 6.

The City argues that, even if New Chapter 29 is more strict than Section 562A.27A, Iowa law expressly allows the City to set more stringent standards. *See* Iowa Code § 364.3(3) (stating that a city "may set standards and requirements which are higher or more stringent than those imposed by state law, unless a state law provides otherwise").

Plaintiffs counter by arguing that New Chapter 29 is actually less strict than state

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[7] The tenant may: (1) seek a protective or restraining order or similar relief against the individual conducting the activities; (2) report the activities to a law enforcement agency or the county attorney; and/or (3) write a letter to the person conducting the activities "telling the person not to return to the premises and that a return to the premises may result in a trespass or other action against the person . . . ." Iowa Code § 562A.27A(3)(c).

law. According to Plaintiffs, Section 562A.27A allows a landlord to evict a tenant only if the landlord can show that the crime occurred *and* the innocent co-tenant "failed to avail himself or herself of the statutory cure provisions." Reply at 3. Plaintiffs contend that New Chapter 29 is less strict because it purports to eliminate the cure provisions and thereby make eviction easier for landlords. Alternatively, Plaintiffs argue that New Chapter 29 is neither more strict nor less strict than Section 562A.27A—they are simply inconsistent.

The court finds that Plaintiffs offer a reasonable interpretation of the potential interplay between Section 562A.27A and New Chapter 29. In *Baker v. City of Iowa City*, 750 N.W.2d 93, 100 (Iowa 2008), the Iowa Supreme Court considered the constitutionality of a city ordinance that purported to prohibit employment discrimination by all employers, regardless of size. State law, by contrast, provided that employers with fewer than four employees were exempt from Iowa's anti-discrimination statute. *Id.* The Iowa Supreme Court held that the city ordinance was inconsistent with state law and therefore exceeded the city's home rule authority. *Id.* at 101. In determining whether the ordinance was inconsistent with state law, the Iowa Supreme Court noted it was necessary to examine the legislative intent underlying state law's exemption for small employers. *Id.*

Like the ordinance in *Baker*, New Chapter 29 could be viewed as more strict than Section 562A.27A because it purports to expand the circumstances in which a landlord may evict a tenant. On the other hand, it could be viewed as inconsistent with state law if it runs contrary to the legislative intent underlying Section 562A.27A. In the instant action, it would presumably be necessary to consider the Iowa legislature's intent in identifying certain offenses that constitute a clear and present danger and specifying measures that an innocent tenant could take to prevent eviction. Therefore, Plaintiffs urge a reasonable interpretation of Section 562A.27A under which one or more provisions of New Chapter 29 could be inconsistent with Iowa law.

2. State law's impact on this case

The second requirement for *Pullman* abstention is that the resolution of Plaintiffs' state law claims in Plaintiffs' favor "be determinative of the case." *Robinson*, 866 F.2d at 1045. In other words, the court must consider whether Plaintiffs' urged interpretation of Iowa law "would render unnecessary or substantially modify the federal constitutional question . . . ." *Id.* at 1043. Plaintiffs argue that "[i]f, as contended, the mandate of a Crime Free Lease Addendum runs afoul of [Section] 364.1, then all of the challenged portions of the ordinance will be unenforceable and the constitutional questions raised in the lawsuit will be moot." Pl. Br. at 6. The court agrees. If the Iowa courts decide that Section 364.1 prohibits the City from enacting the challenged portions of New Chapter 29, those provisions of the ordinance would be nullified. *See* Iowa Const. art. III, § 38A (stating that Iowa cities have home rule power to the extent it is "not inconsistent with the laws of the general assembly"); Iowa Code § 364.1 (same). In the event of such a ruling by the state court, the need to consider Plaintiffs' constitutional claims would be obviated.

For the same reasons, this requirement also is met with respect to Plaintiffs' claim regarding Section 562A.27A. Plaintiffs contend that New Chapter 29 is inconsistent with Section 562A.27A, and the court previously found that Plaintiffs' urged interpretation of this statute is reasonable. If the Iowa courts rule in Plaintiffs' favor on this claim, the challenged portions would be unenforceable as written. *See* Iowa Const. art. III, § 38A. If the City attempted to redraft the ordinance to remedy any potential inconsistencies, Plaintiffs' federal constitutional claims may be substantially modified.

3. Other considerations

The court now considers the remaining factors set forth in *Beavers*: the effect abstention would have on the rights to be protected, available state remedies and whether abstention will avoid unnecessary federal interference in state operations. 151 F.3d at 841. As the party advocating for abstention, it is difficult to imagine what impact—delay or

otherwise—abstention could have on Plaintiffs' federal rights or remedies. *Cf. City of Houston, Texas v. Hill*, 482 U.S. 451, 467-68 (1987) (noting that the Supreme Court has been "particularly reluctant to abstain in cases involving facial challenges based on the First Amendment" because forcing the plaintiff "to suffer the delay of state-court proceedings might itself effect the impermissible chilling of the very constitutional right he seeks to protect"). As explained below, the City may reserve its right to return to this court for the adjudication of Plaintiffs' federal claims. Therefore, abstention will not affect the City's federal rights or its available remedies. Allowing the state court to interpret Iowa law as it relates to the ordinance also avoids federal interference in the State of Iowa's operations. Finally, the City has not presented any indication that the Iowa courts are not an available avenue for the parties to litigate Plaintiffs' state law challenges to New Chapter 29.

4. Summary

In sum, Iowa law is unclear with respect to Plaintiffs' claims regarding Sections 364.1 and 562A.27A. Plaintiffs also offer plausible interpretations of state law that would be determinative of the case. In these circumstances, "the *Pullman* doctrine counsels [the court] to stay [its] hand pending an authoritative determination of the state law and city ordinance[] involved here." *Robinson*, 866 F.2d at 1045.

D. Disposition

Plaintiffs ask the court to "remand this matter to the Iowa District Court for Linn County." Motion at 1. However, *Pullman* abstention does not involve "an abdication of federal jurisdiction, but only the postponement of its exercise." *Bob's Home Serv., Inc. v. Warren Cnty.*, 755 F.2d 625, 628 (8th Cir. 1985). Accordingly, the district court generally should "retain jurisdiction of th[e] case, pending submission of the state-law questions to the state courts." *Id.*; *see also C.R. v. Adams*, 649 F.2d 625, 630 (8th Cir. 1981) (directing the district court to "retain [the] case on its docket pending the disposition

of state-law issues in the state courts").

Therefore, the court shall deny the Motion to the extent it seeks an outright remand of the instant action. The court shall remand Plaintiffs' state law claims to the state court and stay further proceedings on Plaintiffs' federal constitutional claims pending the state courts' resolution of the state law issues. The City may either submit the federal constitutional claims to the state court or reserve its right to return to this court for their adjudication. *See England v. Louisiana State Bd. of Med. Exmn'rs*, 375 U.S. 411, 421-22 & n.13 (1964) (explaining that federal claims need not be actually litigated in the state courts and that the reservation of such claims for federal court adjudication "may be made by any party to the litigation," including defendants who have removed the case to federal court, only to have the district court abstain).

V. CONCLUSION

In light of the foregoing, it is **HEREBY ORDERED THAT**:

(1) The Motion (docket no. 8) is **GRANTED IN PART** and **DENIED IN PART**;

(2) Plaintiffs' claims arising under Iowa law are **REMANDED** to the Iowa District Court for Linn County;

(3) All proceedings in this case are **STAYED** pending final resolution of Plaintiffs' state law claims in the state courts;

(4) The parties are directed to file a joint status report on April 4, 2011; and

(5) The parties are directed to notify the court immediately upon the resolution of Plaintiffs' state law claims by the state courts.

IT IS SO ORDERED.

DATED this 9th day of December, 2010.

LINDA R. READE
CHIEF JUDGE, U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA