IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LEILA MENDEZ and ALONSO ZARAGOZA,	)	
	)	
Plaintiffs,	)	Case No. 16 CH 15489
	)	
v.	)	Judge Sanjay T. Tailor
	)	
CITY OF CHICAGO, a municipal corporation; and ROSA ESCARENO, in her official capacity as Commissioner of the City of Chicago Department of Business Affairs and Consumer Protection,	)	
	)	
Defendants.	)	

DEFENDANTS' AMENDED REPLY IN SUPPORT OF THEIR SECTION 2-619.1 MOTION TO DISMISS PLAINTIFFS' THIRD AMENDED COMPLAINT

I. Plaintiffs Lack Standing (Section 2-619).

The safe rental provisions do not prohibit Plaintiffs from engaging in single night rentals, but provide a way for that restriction to be lifted sooner than it might otherwise be, thus benefitting Plaintiffs. Accordingly, Plaintiffs lack standing to challenge the safe rental provisions because Plaintiffs suffer no injury from them, and striking them down would not redress an injury. See City Mem. at 4-5.

Plaintiffs assert that they have shown an injury sufficient to confer standing because the Ordinance's ban on single night rentals prevents them from engaging in single-night rentals. Resp. at 4. But this is a mismatch for their legal claim. That claim – an improper delegation claim – cannot challenge the Ordinance's restriction on single night rentals, because no delegation occurred when the City Council chose, itself, to restrict single night rentals. Instead, Plaintiffs' claim challenges an alleged improper delegation of legislative authority to the Commissioner and Superintendent to determine when single night rentals can be conducted safely. It is these separate "safe rental provisions" in the Ordinance, and not the Ordinance's ban on single night rentals, which vest the Commissioner and Superintendent with the authority that Plaintiffs challenge under separation of powers principles.

Plaintiffs allege no injury that results from the safe rental provisions themselves, nor could they, since those provisions *benefit* Plaintiffs by potentially allowing single night rentals to occur sooner than might otherwise happen if Plaintiffs had to wait for the City Council to repeal the ban. Plaintiffs protest that they are injured by the safe rental provisions because they permit the Commissioner and Superintendent to actively maintain the ban, see Resp. at 5, but, again, their argument conflates the safe rental provisions and the ban. It is the *Ordinance* that established the ban and that actively maintains it. The Commissioner and Superintendent are not alleged to have "actively" done anything here, and certainly not to have decided that the rental

ban is to remain in effect. And if and when these officials determine that single night rentals can be conducted safely, the effect will be to eliminate – not maintain – the single night rental ban.

Moreover, even if the Commissioner and Superintendent were to make a determination in the future to maintain the ban, that possibility does not give Plaintiffs standing now. Standing requires an injury to be actual or threatened and distinct and palpable; a mere hypothetical and speculative future occurrence is not enough. See Glisson, 188 Ill. 2d at 221 (1999). Plaintiffs cite no legal authority showing that such a possibility causes them injury *now*. See Resp. at 5.

Plaintiffs lack standing for the additional reason that their supposed injury in not being able to rent their units for a single night would not be redressed by a victory in this case. Instead, if Plaintiffs' claim were successful, the remedy would be to sever the safe rental provisions from the rest of the Ordinance. But that would leave the Ordinance's ban on single night rentals intact, thus maintaining (and not redressing) any injury from the inability to conduct single night rentals. See Mem. at 5-7. And under that scenario, Plaintiffs would be *worse* off by losing an administrative avenue through which the ban on single night rentals may be lifted.

Plaintiffs do not contest that if the safe rental provisions are severed out, their injury in not being able to conduct single night rentals will not be redressed. Instead, their redressability argument is that the safe rental provisions are not severable from the single night ban, and that both must therefore be struck down. See Resp. at 6-8. But here, too, Plaintiffs are incorrect.

"Severability is determined through a two-part inquiry" that first examines "'whether the valid and invalid portions of the statute are essentially and inseparably connected in substance,'" and then "whether the legislature would have enacted the valid portions without the invalid portions." Henderson, 2013 IL App (1st) 113294, ¶ 19. Here, the first step of the inquiry favors the City because it is possible to sever the safe rental provisions from the single night rental ban:

> It shall be unlawful for any shared housing host to rent any shared housing unit, or any portion thereof, for any period of less than two consecutive nights. ~~until such time that the commissioner and superintendent of police determine that such rentals can be conducted safely under conditions set forth in rules jointly and duly promulgated by the commissioner and superintendent.~~

See MCC 4-14-050(e). Plaintiffs, for their part, make no argument that the safe rental provisions cannot be removed from the Ordinance as a matter of textual construction.[1]

The second step also favors the City. City Council members expressed serious concern that single night rentals risked bringing about "super-spreader" events that could spur outbreaks of COVID-19, and the proliferation of "party houses" implicating a range of safety concerns. See Mem. at 2-4. The legislative record thus shows that striking down the single night rental ban, in addition to the safe rental provisions, would not only work violence to the City Council's intent, but also lift necessary checks on grave public safety threats.[2]

In response, Plaintiffs argue that the City Council would not have wanted the single night ban to survive as a stand-alone law if the safe rental provisions were severed out because both were intertwined as part of a "negotiated compromise." Resp. at 6-7. In support, Plaintiffs rely almost exclusively on snippets of statements made by one legislator – Alderman Smith. See Resp. at 6-8. But courts have repeatedly cautioned that statements of individual legislators do not speak for the full legislature's intent. See, e.g., Morel v. Coronet Ins. Co., 117 Ill. 2d 18, 24 (1987); United States v. O'Brien, 391 U.S. 367, 384 (1968). Moreover, Alderman Smith's alleged statements do not support Plaintiffs. The statement that she was concerned with whether

[1] The City's severability ordinance states that a decision invalidating a clause does "not affect the validity of the remaining portions of the" ordinance. MCC 1-4-200. The Court should thus presume that the City Council intended for Ordinance clauses to be severable. See People v. Mosley, 2015 IL 115872, ¶ 56.

[2] Importantly, the upshot of this analysis is not that the safe rental provisions should be severed; rather, the point here is that, if the provisions were invalidated, they would be subject to being severed, and the ban preventing Plaintiffs from engaging in single night rentals would remain. As a consequence, Plaintiffs' injury would not be redressed by striking out these provisions, and they therefore lack standing.

shared housing rentals should be allowed "only [in] people's primary residences" (and thus not in investment properties), is a different issue from whether they should be allowed for single nights. See Resp. at n. 5. As to the second quote Plaintiffs rely on, there Alderman Smith referred only vaguely to "people who favor this industry," and not to a contingent of aldermen who voted to approve the Ordinance only because it included the safe rental provisions. Id.

Nor are Plaintiffs helped by People ex rel. Chicago Bar Association v. State Board of Elections, 136 Ill. 2d 513 (1990), which involved a different statute with its own distinct purposes and history, and therefore is of no help to the context-specific severability analysis in this case. See Chairez, 2018 IL 121417, ¶¶ 61-62 (conducting severability analysis based on background and purposes of statute). Moreover, in concluding that the statute at issue was not subject to severing, the court pointed to several legislators who clearly and explicitly stated that the statute struck a delicate balance between competing concerns such that all of the statute's provisions were part of a unified whole. Chicago Bar, 136 Ill. 2d at 534-36. Here, in contrast, Plaintiffs cite nothing in the legislative record showing that the Ordinance would not have been enacted were the safe rental provisions not in it. Plaintiffs fail to identify even a single legislator who insisted on including the safe rental provisions as a condition for supporting the ban on single night rentals.

Last, Plaintiffs argue that the safe rental provisions are not severable because they are "exemptions." Resp. at 8. But this adds nothing to the severability analysis, because it says nothing about the City Council's intent. Moreover, the "exemption" label does not fit. The safe rental provisions are not exceptions to a rental ban, but a way for the ban to be lifted.

For these reasons, Plaintiffs lack standing to challenge the safe rental provisions.

II. Plaintiffs' Claim Is Unripe (Section 2-619).

Plaintiffs' challenge to the safe rental provisions is also unripe: The Commissioner and Superintendent have not yet promulgated rules to guide their decision on whether single night rentals are safe, much less made a determination under those rules. Plaintiffs challenge a delegation of authority that has not been and may never be exercised. Accordingly, (1) the issues here are not fit for judicial resolution given that no administrative action has been taken, and (2) Plaintiffs will suffer no hardship from withholding judicial consideration. See Mem. at 5-6.

Plaintiffs' only argument as to why the issues are fit for judicial resolution is that the Ordinance empowers the Commissioner and Superintendent to maintain the single night rental ban. Resp. at 8. But again, they cite no authority favoring their position. Moreover, Plaintiffs' argument is really a standing argument – that they are injured by the rental ban. It does not show that public officials have undertaken an exercise of authority that is ripe for judicial review.

On the second ripeness factor, Plaintiffs provide no account detailing how withholding judicial consideration would cause them hardship. Even if they did, such hardship would not relate to the safe rental provisions' grant of authority to the Commissioner and Superintendent, but to the ban on single night rentals enacted by the City Council itself. See Mem. at 6-7. Thus, this ripeness factor also favors the City, and Plaintiff's claim should be dismissed as unripe.

III. Count VIII Fails to State a Claim (2-615).

Even if Article IV, section 1 applied to the City,[3] the safe rental provisions do not amount to unlawful delegations of legislative authority. As the City explained, the Ordinance satisfies the three-part test for lawful delegations because it sufficiently identifies (1) the persons and

[3] As the City explained, Plaintiffs cannot sue under Article IV, section 1 because, by its text, it applies only to the State legislature. See Mem. at 8-9. Plaintiffs offer no response to this dispositive point. Further, the cases Plaintiffs cite to argue that the section applies to localities do not mention that section.

activities subject to regulation; (2) the harm to be prevented; and (3) the general means intended to be available to the administrator to prevent the identified harm. See Mem. 9-13.

Plaintiffs contest only the City's showing on the second factor, arguing that the Ordinance does not sufficiently identify the harm to be prevented because it does not speak to the scope or purpose of the rules to be promulgated by the Commissioner and Superintendent. But the Ordinance does sufficiently identify the harm to be prevented, for it authorizes these officials to determine when single night rentals can be conducted "safely." See Mem. at 9-13. Plaintiffs nowhere distinguish the cases cited by the City where courts held that analogous phrases, such as "protection of consumers in this State" and "conserve the health and safety of the pupils of the public schools," were sufficient to identify the harm to be prevented. See Mem at 11-12.

Rather than rebut this precedent, Plaintiffs pose questions about what "safely" means. Resp. at 14.[4] But those questions do not mean the Ordinance's delegation is unlawful. In South 51, the First District held that "the legislature may use broader and more generic language" when identifying the harm to be prevented, and directed courts to examine a statute's legislative history and other provisions to identify that harm. 335 Ill. App. 3d at 551-52. Here, any imprecision can be fleshed out by resort to the Ordinance's background, which shows that the City Council was concerned that single night rentals posed safety concerns relating to "party houses" and COVID-19. See Mem. at 2-4, 12.[5] No more specificity than this is required, as the point of delegation is to allow expert agencies to make the more particularized determinations.

[4] At base, Plaintiffs' effort to poke holes in the meaning of the term "safely" is a facial vagueness challenge to the safe rental provisions, a claim that would fail. As Judge Tailor recognized in upholding the Ordinance's prohibition on noise "louder than average conversational level," an ordinance is not vague on its face "unless it is incapable of any valid application[.]" See Oct. 13, 2017 Mem. and Op., attached as Exhibit A, at 17 (citation omitted). Here, the safe rental provisions' concern with safety is capable of valid application, such as in the context of super-spreader parties.

[5] The harm the City Council sought to prevent is also shown by other Shared Housing Ordinance sections regulating conduct that can occur in "party houses." See South 51, 335 Ill. App. 3d at 552 (discerning the

Plaintiffs also argue that pandemic response is a matter better suited to the City's Department of Public Health rather than the Commissioner and Superintendent. Resp. at 14-15. But the City Council's decision to task those individuals with making the safety determinations here is a policy matter for the legislature's discretion. The wisdom of that decision does not bear on whether there has been an unlawful delegation of authority, which is a question that turns on the statutory text and history. At any rate, the Commissioner and Superintendent are well-suited to monitor safety concerns associated with shared housing units. The Ordinance tasks the Commissioner with overseeing the entire shared housing industry, and the Commissioner and Superintendent participated in a task force to address "party houses." Mem. at 3.

Last, Plaintiffs try to elide the three-part delegation test and argue that the safe rental provisions are an lawful delegation of authority because they give the Commissioner and Superintendent unlimited discretion to *maintain* the ban on single night rentals. See Resp. at 12. At base, however, this is not a challenge to the authority given to the agencies, but to the City Council's own decision to ban single night rentals, because it is *that* decision that created the ban and is the cause for its existence today, as explained above. For these reasons, the safe rental provisions do not unlawfully delegate legislative authority.

CONCLUSION

WHEREFORE, the Court should dismiss Plaintiffs' Third Amended Complaint with prejudice.

Dated: July 8, 2021

Respectfully submitted,

CELIA MEZA,
Corporation Counsel for the City of Chicago

harm to be prevented based on other provisions in the statute). See also MCC 4-14-040(b) (criminal activity and egregious and unsanitary conditions), 4-14-010 (egregious conditions include "(1) drug trafficking; (2) prostitution; (3) gang-related activity; (4) violent acts involving the discharge of a firearm, or the death of, or serious bodily injury to, any person; (5) exceeding the design load; (6) overcrowding . . ."); 4-14-050(a) (nuisances), (b) (occupancy restrictions) (d) (service of alcohol).

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CERTIFICATE OF SERVICE

I, Jordan A. Rosen, an attorney, hereby certify that on July 8, 2021, I caused the foregoing **Defendants' Amended Reply in Support of Their Section 2-619.1 Motion to Dismiss Plaintiffs' Third Amended Complaint** to be served upon Plaintiffs' designated email addresses below:

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EXHIBIT A

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LEILA MENDEZ, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 16 CH 15489
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

Home-sharing, the business of renting a home or room on a short-term basis, has grown dramatically in the last decade due to the emergence of internet-based home-sharing platforms. Through these internet platforms, such as Airbnb and HomeAway, one can rent a home or room on a short-term basis in many parts of the world, often for less than the price of a hotel room. Home-sharing presents attractive options for an individual looking for an alternative to traditional hotels, and also provides a homeowner with an opportunity to supplement his income.

At the same time, rapid growth in home-sharing has affected those who live near homes that are frequently rented out to others on a short-term basis. To address these concerns, on June 22, 2016, the City of Chicago ("City") adopted the Shared Housing Ordinance ("Ordinance") to regulate the home-sharing industry in the City. On November 29, 2016, the plaintiffs filed this action challenging the constitutionality of the Ordinance. The defendants, the City and Maria Guerra Lapacek, in her official capacity as Commissioner of the City's Department of Business Affairs and Consumer Protection ("Commissioner"), move to dismiss the complaint under section 2-619.1 of the Code of Civil Procedure. 735 ILCS 5/2-619.1. With two exceptions, the plaintiffs fail to meet their heavy burden to allege sufficient facts to establish that the Ordinance is unconstitutional.

I. STATEMENT OF FACTS

The plaintiffs allege the following salient facts in their complaint, which the Court accepts as true for purposes of the present motion. The plaintiffs are Chicago homeowners: Leila Mendez and Michael Lucci each own single family homes in Chicago; Sheila Sasso is a resident of Arizona, but owns a condominium in Chicago at which she occasionally stays; and Alonso Zaragoza owns a single family home and a three-unit residential home, both in Chicago (collectively, the "Homeowners"). The Homeowners currently rent, or wish to rent in the future, their homes for short-term rentals.

The Ordinance regulates both home-sharing platforms and homeowners who rent their homes on a short-term basis, but this case primarily challenges provisions in the Ordinance that apply to the latter. Under the Ordinance, short-term rental properties are classified into two categories: (1) vacation rentals; and (2) shared housing units. To list a vacation rental for rent, the homeowner is required to obtain a license from the City. A vacation rental is defined as:

> a dwelling unit that contains 6 or fewer sleeping rooms that are available for rent or for hire for transient occupancy by guests. The term "vacation rental" shall not include: (i) single-room occupancy buildings or bed-and-breakfast establishments, as those terms are defined in Section 13-4-010; (ii) hotels, as that term is defined in Section 4-6-180; (iii) a dwelling unit for which a tenant has a month-to-month rental agreement and the rental payments are paid on a monthly basis; (iv) corporate housing; (v) guest suites; or (vi) shared housing units registered pursuant to Chapter 4-14 of this Code.

Id § 4-6-300. To list a shared housing unit for rent, an individual is required to register the unit with the City. A shared housing unit is defined as:

> a dwelling unit containing 6 or fewer sleeping rooms that is rented, or any portion therein is rented, for transient occupancy by guests. The term "shared housing unit" shall not include: (1) single-room occupancy buildings; (2) hotels; (3) corporate housing; (4) bed-and-breakfast establishments, (5) guest suites; or (6) vacation rentals.

Ordinance § 4-14-010.

The Ordinance imposes different licensing and registration requirements depending on the size of the building in which the rental unit is located. The Ordinance also regulates, among other things, the number of nights that some units can be rented per year, and the number of units that can be rented in a building. If a homeowner does not comply with the Ordinance, he is at risk of having his registration suspended or his license revoked.

The Homeowners challenge five provisions of the Ordinance, alleging that they violate various provisions of the Illinois Constitution. First, they claim that the home inspection provision violates their right against unreasonable search and invasion of privacy. Second, they claim that the primary residence provision applicable to certain homes violates their right to due process and equal protection. Third, they claim that the limit on the number of units that may be rented in a building violates their right to due process and equal protection. Fourth, they claim that the noise restrictions violate their right to due process because they are vague and unintelligible, and also violate their right to equal protection. Finally, they claim that the four percent surcharge on the rental fee imposed by the City violates the Uniformity Clause.[1]

The City moves to dismiss the complaint on the basis that the Homeowners lack standing to bring some of their claims, and otherwise fail to sufficiently allege facts to state a claim upon which relief may be granted. The common theme in the City's motion is that the Ordinance strengthens protection for consumers, protects quality of life for residents of Chicago, and discourages the rapid proliferation of vacation rental and shared housing units, thereby ensuring a steady supply of affordable housing for residents of the City. According to the Homeowners, the City has "one of the most extreme anti-home-sharing ordinances" in the United States. (Homeowners' Resp., p. 1.)

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[1] The Homeowners voluntarily dismissed Count II of their complaint, which alleged that the provision of the Ordinance authorizing the City to inspect guests' personal information without probable cause or a warrant violates Article 1, Section 6 of the Illinois Constitution.

II. DISCUSSION

A section 2-619 motion to dismiss accepts all well-pleaded facts as true, along with all reasonable inferences that can be gleaned from those facts. *Wackrow v. Niemi*, 231 Ill. 2d 418, 422 (2008). In ruling on a motion to dismiss, a court must interpret the pleadings and supporting documents in the light most favorable to the nonmoving party. *Id.*

A. The Homeowners Have Standing as Taxpayers to Challenge the Constitutionality of the Ordinance.

The City moves to dismiss the Homeowners' unreasonable search and invasion of privacy, due process, and equal protection claims in Counts I, III and V, respectively, for lack of standing.[2] To establish standing, a plaintiff must make allegations sufficient to show that he is suffering or likely to suffer an injury to a legally cognizable interest that is fairly traceable to the defendant, which the court can remedy. *Messenger v. Edgar*, 157 Ill. 2d 162, 170-71 (1993). Illegal use of public funds is a special injury to taxpayers that may bestow standing. *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 160-61 (1956). In *Jenner v. Ill. Dep't of Comm. & Econ. Opp.*, 2016 IL App. (4th) 150522, *appeal allowed*, 2017 IL LEXIS 271 (Mar. 29, 2017), the court held that the taxpayer had standing to challenge the defendant state agency's regulation allowing a tax credit that was allegedly not authorized by law. In so doing, the court observed that taxpayer standing in Illinois is broader than its federal counterpart in two respects:

> First, although the Supreme Court of the United States "has rejected the general proposition that an individual who has paid taxes has a continuing, legally cognizable interest in ensuring that those funds are not *used* by the Government in a way that violates the Constitution" (emphasis in original and internal quotation marks omitted), the rule in Illinois is precisely the opposite: "a taxpayer may bring suit to enjoin the misuse of public funds in administering an illegal legislative act even though the taxpayer is not subject to the provisions of that act". Second, although the Supreme Court of the United States denies standing to

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[2] The City also argues that the Homeowners lack standing to bring their Uniformity Clause claim because the incidence of the tax rests with the guest, not the homeowner. However, the Court does not reach this issue because the City raised it for the first time in its reply brief.

> taxpayers because "[t]he effect upon future taxation, of any payment out of funds, [is] too remote, fluctuating[,] and uncertain to give rise to a case or controversy" (internal quotation marks omitted), Illinois courts find an injury to taxpayers the moment public funds are used illegally, regardless of the ultimate effect of such illegal use on the treasury or on rates of taxation.

Id. at ¶49 (citations omitted). The misuse of public funds injures taxpayers because they are the funds' "equitable owners" and will, by definition, be "liab[le] to replenish" State treasury funds after they are spent. *Barco*, 10 Ill. 2d at 160. Thus, to establish taxpayer standing, there must be a specific showing that the plaintiff will be liable to replace funds used to administer the allegedly unconstitutional law. *See Schacht v. Brown*, 2015 IL App (1st) 133035, ¶20.

The Homeowners allege that, as property owners, the monies they pay in property and sales taxes will be used to fund the administration of the Ordinance insofar as the City draws from general revenue funds to do so, and that they will be liable to replenish such funds as Chicago taxpayers. The City does not contend otherwise. Accordingly, when viewing the allegations in a light most favorable to the Homeowners, it is reasonable to infer that the Homeowners will be liable to replace public funds that will be used to administer the Ordinance. *See Barco*, 10 Ill. 2d at 161 ("The illegal expenditure of general public funds may always be said to involve a special injury to the taxpayer not suffered by the public at large."); *Snow v. Dixon*, 66 Ill. 2d 443, 449-52 (1977) (taxpayer had standing to enjoin use of public resources to collect illegal tax). Therefore, the Homeowners have standing, as taxpayers, to challenge the Ordinance on the basis of its alleged constitutional infirmity.[3]

B. The Homeowners' Unreasonable Search and Invasion of Privacy Claim is Not Ripe for Adjudication.

In Count I, the Homeowners allege that sections 4-6-300(e)(1) and 4-16-230(a) of the Ordinance violate Article I, Section 6 of the Illinois Constitution, which states that "[t]he people

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[3] Because the Court finds that the Homeowners have standing as taxpayers, it does not reach their alternative argument that they have standing in fact.

shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means." Illinois Const., Art. I, § 6. Section 4-6-300(e)(1) of the Ordinance states that "[t]he building commissioner is authorized to mandate an inspection of any vacation rental, at any time and in any manner, including third-party reviews, as provided for in rules and regulations promulgated by the building commissioner." Ordinance § 4-6-300(e)(1). Section 4-16-230(a) of the Ordinance states that "[t]he building commissioner is authorized to mandate an inspection of any shared housing unit operated by a shared housing unit operator at least once every two years, at a time and in manner, including through third-party reviews, as provided for in rules and regulations promulgated by the building commissioner." Ordinance § 4-16-230(a). Because rules or regulations have not yet been promulgated by the building commissioner, the City moves to dismiss Count I under the ripeness doctrine.

The purpose of the ripeness doctrine is to prevent courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements over administrative policies, and also to protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties. *Morr-Fitz, Inc. v. Blagojevich*, 231 Ill. 2d 474, 490 (2008) (citing *Abbott Laboratories v. Gardner*, 387 U.S. 136, 148-49 (1967)). Courts evaluate the ripeness of a claim in two steps: first, courts look at whether the issues are fit for judicial decision; second, they look at any hardship to the parties that would result from withholding judicial consideration. *Id.* Events that may not happen in the future as expected, however, are not ripe. *See Thomas v. Union Carbide Agr. Prod. Co.*, 473 U.S. 568, 580-81 (1985).

The Ordinance allows for inspections to occur "as provided for in rules and regulations promulgated by the building commissioner." Ordinance §§ 4-6-300(e)(1), 4-16-100. However,

the City's building commissioner has not yet promulgated the rules and regulations that will govern inspections. Because the Ordinance's inspection provisions are tied to rules and regulations that have yet to be enacted, the Homeowners' unreasonable search and invasion of privacy claim is not ripe for adjudication. *See Thomas v. Union Carbide Agr. Prod. Co.*, 473 U.S. 568, 580-81 (1985) (a claim that involves "contingent future events that may not occur as anticipated, or indeed may not occur at all" is not ripe.); *cf. Bd. of Educ. of Chi. v. Chi. Teachers Union*, 2017 U.S. Dist. LEXIS 156132, at *12 (N.D. Ill. Sep. 25, 2017) (public school officials' claim for declaration that First Amendment does not prevent them from imposing reasonable restrictions on conduct of Chicago Teachers Union was not ripe where school district had not yet drafted or adopted such rules). Accordingly, Count I is dismissed because it is not ripe.

C. The Primary Residence Rule is Rationally Related to Neighborhood Preservation and Stability.

In Counts III and IV, the Homeowners allege that the Ordinance's primary residence requirement violates the due process and equal protection clauses of the Illinois Constitution, respectively. The primary residence provision states that a single-family home, or a dwelling unit in a building with four or fewer units, may not be rented as a vacation rental or shared housing unit unless the unit is the licensee's primary residence. Ordinance §§ 4-6-300(h)(8), 4-6-300(h)(9), 4-14-060(d), 4-14-060-(e). The Ordinance further requires an applicant seeking a license to use a single-family home as a vacation rental to submit proof that the home is his primary residence or that he qualifies for an exception. Ordinance § 4-6-300(b) (8). The Court addresses the Homeowners' due process and equal protection claims in turn.

1. Although the Primary Residence Rule Does Not Violate the Homeowners' Substantive Due Process Rights, the City Has Not Shown that the Exception to the Rule Is Not Arbitrary or Vague.

Count III alleges that the primary residence rule violates the Homeowners' rights to substantive due process. In addition, it alleges that the exception to the primary residence rule, the so-called Commissioner adjustment, violates the Homeowners' right to substantive due process.

a. The Primary Residence Rule Does Not Violate the Homeowners' Substantive Due Process Rights.

The Homeowners allege that sections 4-6-300(h)(8), 4-6-300(h)(9), 4-14-060(d), and 4-14-060-(e) of the Ordinance violate their rights under Article I, Section 2 of the Illinois Constitution, which provides that "[n]o person shall be deprived of life, liberty or property without due process of law . . . ." Illinois Const., Art. I, § 2. Where, as here, legislation does not affect a suspect class or fundamental right and does not differentiate based on illegitimacy or gender, it is subject to a rational basis test when it is alleged to violate substantive due process. *People ex rel. Lumpkin v. Cassidy*, 184 Ill. 2d 117, 124 (1998). Such legislation will survive a substantive due process challenge so long as it is reasonably designed to remedy the evils the legislature has determined to be a threat to the public health, safety, and general welfare. *Id.* Legislatures, not courts, decide whether an ordinance is wise or is the best way to achieve a goal; thus, the rationality of a statute is not influenced by fact finding of the court. *Id.* If there is any conceivable basis for finding a rational relationship, the law will be upheld. *Id.* In other words, the rationale basis test is met so long as facts supporting the rationality of the statute can be reasonably "conceived," *Cutinello v. Whitley*, 161 Ill. 2d 409, 418 (1994), "even if the reasoning advanced did not motivate the [legislature]." *Lumpkin*, 184 Ill. 2d at 124.

The City contends that home-sharing is a threat to a local neighborhood's preservation, continuity, and stability because transient guests are less likely than owners to be concerned with neighborhood upkeep and livability. Moreover, the City asserts that owners who are primary residents will do more than absentee owners to see that their transient guests do not disturb neighbors. The City also contends that an influx of transient guests could morph residential dwellings into commercial, hotel-like enterprises that would be incompatible with residential neighborhoods and might drive down property values. Finally, the City contends that the housing stock is threatened by the possibility that investors might purchase residential dwellings to be used primarily as short-term rental units.

The City has a legitimate interest in local neighborhood preservation and stability, *see Nordinger v. Hahn,* 505 U.S. 1, 12 (1992) (local neighborhood preservation, continuity, and stability is a legitimate government interest), and the primary residence requirement is rationally related to protecting that interest. The primary residence provision limits the number of nights per year that a single family home and dwelling with four or fewer units may be rented by transient guests. As such, the primary residence provision targets single family homes and small walk-up apartment or condominium buildings, which are much more likely to be found in residential neighborhoods. It is therefore a rationale means to curb the threats that home-sharing pose to the quality of life in residential neighborhoods, a legitimate government interest. *See Anderson v. Provo City Corp.*, 2005 UT 5, ¶ 21 (upholding requirement that rentals be owner-occupied because the city "could reasonably conclude" that "the presence on the property of the owner, who would maintain closer control over both the primary and accessory dwelling units, would . . . tend to preserve the neighborhood's single-family residential character."); *Kasper v. Town of Brookhaven*, 142 A.D.2d 213, 218-19 (N.Y. App. Div. 1988) (rejecting due process and

equal protection challenge to ordinance requiring owner occupancy of single family home in which rooms are rented out).

The Homeowners argue that they are entitled to present evidence that the primary residence rule is not rationally related to the City's interest in neighborhood preservation and stability. However, whatever evidence that the Homeowners may present to challenge the rationality of Ordinance is irrelevant here. *Arangold Corp. v. Zehnder*, 329 Ill. App. 3d 781, 793 (1st Dist. 2002) (a statute's rationality "is not a matter of what 'evidence' the parties to lawsuits succeed in mustering"); *Shachter v. City of Chicago*, 2011 IL App (1st) 103582, ¶99 (rationality is "not subject to courtroom fact finding"). In fact, judgments made by the legislature in enacting a statute may be based on rational speculation unsupported by evidence or empirical data. *Lumpkin*, 184 Ill. 2d at 214. The Homeowners' argument that the primary residence rule will not actually achieve the City's purported objective of neighborhood stability and preservation is futile because it is reasonably conceivable that it would achieve the City's goals. The Homeowners' argument that the statute is arbitrary because it will apply outside of residential areas and in neighborhoods with mixed-use buildings also fails, as courts must accept a legislature's generalizations "even when there is an imperfect fit between means and ends." *Id.* Finally, the Homeowners' argument that other statutory schemes would be more effective also fails because an ordinance is not unconstitutional simply because there are other methods for achieving a legislature's goal. *See McLean v. Department of Revenue of State of Ill.*, 184 Ill. 2d 341, 356 (1998). The Homeowners' substantive due process claim against the primary residence rule is factually and legally insufficient, and that aspect of Count III is dismissed with prejudice.

b. The City Has Not Established that the Commissioner Adjustment Provision Passes Constitutional Muster.

Sections 4-6-300(l) and 4-14-100(a) of the Ordinance authorize the Commissioner to grant an "adjustment" to allow the issuance of a license for either a vacation rental or shared housing unit located in a single family home that is not the applicant's primary residence, or for a building containing two to four dwelling units where the dwelling unit is not the applicant's primary residence. An adjustment may be approved only if, based on a review of the relevant factors, the Commissioner concludes that such an adjustment would eliminate an extraordinary burden on the applicant in light of unique or unusual circumstances and would not detrimentally impact the health, safety, or general welfare of surrounding property owners or the general public. The relevant factors include, "by way of example and not limitation:"

> (i) the relevant geography, (ii) the relevant population density, (iii) the degree to which the sought adjustment varies from the prevailing limitations, (iv) the size of the relevant building and the number of units contemplated for the proposed use, (v) the legal nature and history of the applicant, (vi) the measures the applicant proposes to implement to maintain quiet and security in conjunction with the use, (vii) any extraordinary economic hardship to the applicant, due to special circumstances, that would result from a denial, (viii) any police reports or other records of illegal activity or municipal code violations at the location, and (ix) whether the affected neighbors support or object to the proposed use.

Ordinance §§ 4-6-300(1) and 4-14-100(a).

Count III alleges that sections 4-6-300(1) and 4-14-100(a) give the Commissioner unbounded discretion to grant an adjustment from the primary residence rule under vague, unintelligible, and undefined criteria, in violation of the Homeowners' substantive due process rights. In addition, Count III alleges that the factors that the Commissioner is required to consider to grant an adjustment are arbitrary and not reasonably related to the public's health, safety or welfare. Finally, the Homeowners allege that by allowing the Commissioner to consider factors other than those specified in sections 4-6-300(l) and 4-14-100(a), such as the

views of the Alderman and community, *id.* at §§ 4-6-300(l)(1)(b) and 4-14-100(c), the Ordinance permits the Commissioner to exercise arbitrary and unlimited discretion in deciding whether to grant an adjustment.

The City argues that the Homeowners are not entitled to any process because they do not have a property interest in receiving an adjustment, and second, the grant of an adjustment is purely a matter of discretion. However, the City misapprehends the Homeowner's claim as one based on a violation of procedural due process. In fact, the Homeowners allege a substantive due process claim on the basis that the Commissioner is granted unlimited discretion to make exceptions to the primary residence rule based on factors unrelated to the public's health, safety, or welfare. In addition, the Homeowners argue that the factors that the Commissioner must consider are vague, undefined, and unintelligible. In their response brief, the Homeowners state that the relevant property right for their claim is their right to rent out their property, which exists independently of any statute or ordinance. Thus, the cases cited by the City in its opening brief, considering whether the plaintiff had a protected interest in some benefit that entitled him to procedural due process, such as a hearing before a benefit was denied, are inapposite.

In reply, the City argues for the first time that the Commissioner's ability to grant an adjustment should be viewed simply as the government's failure "to apply a law to 'all cases which it might possibly reach,'" which does not doom the Ordinance under rational basis review. City Reply Br., p. 7 (quoting *Greyhound Lines, Inc. v. City of Chicago*, 24 Ill. App. 3d 718, 729 (1st Dist. 1974)). The City contends that it does not "run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked." *Id.* (quoting *Matter of K.J.R.*, 293 Ill. App. 3d 49, 64 (1st Dist. 1997)). Thus, according to the City, granting adjustments from the primary residence

rule enhances the Ordinance's rationality because the City is able to waive the rule for properties where application would not be necessary to further the City's interest.

However, neither case cited by the City, *Greyhound Lines* nor *K.J.R.*, involve a statute authorizing an administrative exception; rather, the cases stand for the unremarkable proposition that a statute is not unconstitutional simply because it fails to cover all aspects of a problem that the government seeks to address. Moreover, a statute's grant of authority to allow exceptions based on factors that are allegedly arbitrary, vague and without limit should not be equated with a statute's failure to consider every evil.

It may be that the specific factors in the Ordinance that the Commissioner is required to consider in deciding whether to allow an adjustment to the primary residence rule are neither arbitrary nor vague as a matter of law. However, in the absence of any such argument, the City's motion to dismiss the Homeowners' substantive due process challenge to the provision authorizing the Commissioner to grant an exception to the primary residence rule must be denied.

2. The Primary Residence Rule Does Not Violate the Homeowners' Equal Protection Rights.

In Count IV, the Homeowners allege that the primary residence rule violates their rights under Article 1, Section 2 of the Illinois Constitution, which states that "[n]o person shall . . . be denied the equal protection of the laws." Illinois Const., Art. I, § 2. To state a claim under an equal protection theory, a plaintiff must allege that he was treated differently from others who were similarly situated and that there is no rational basis for the difference in treatment. *Kaczka v. Ret. Bd. of the Policeman's Ann. and Ben. Fund of the City of Chi.*, 398 Ill. App. 3d 702, 708 (1st Dist. 2010). Again, the Ordinance's primary residence provision applies to owners of buildings with two, three, or four dwelling units, but not to owners of buildings with five or more

dwelling units. The Homeowners allege that the two classes of homeowners are similarly situated, and that the rule irrationally discriminates against owners of buildings with two to four units. The City responds that the two homeowner classes are not similarly situated because buildings with five or more dwelling units are often located in dense areas with commercial and business activity, while buildings with less than five units are located primarily in residential neighborhoods. The City also argues that even if the two classes are similarly situated, it is justified in treating them differently because an influx of transient guests and a rise in commercial activity will not have the same detrimental impact on quality of life in denser areas than in residential neighborhoods.

The two classes of homeowners under the Ordinance are not similarly situated. First, buildings with five or more dwelling units are more likely to be located in dense areas where noise, traffic, street lighting, and pedestrian and commercial activity are prevalent. Thus, continued growth in home-sharing would not be as disruptive to the stability of these areas, and home and business owners in these areas are better equipped to address issues presented by such growth. While there may some commercial districts near or even within residential neighborhoods, these neighborhoods as a whole are still more quiet, experience less traffic, and embody a more family-centric setting that could be compromised by an increase in transient guests.

But even if the two classes of homeowners are similarly situated, the City's basis for treating them differently is rational. An increase in home-sharing poses a greater threat to the stability of a residential neighborhood than a denser commercial district. The rational relationship between the City's goal of preserving and protecting the continuity and stability of local neighborhoods and the primary residence rule is not undermined by the presence of buildings with more than four units or commercial businesses within residential neighborhoods,

or even the presence of buildings with two to four residential units in commercial districts. *See Arangold*, 329 Ill. App 3d at 789 (courts must accept a legislature's generalizations "even when there is an imperfect fit between means and ends.").

The Homeowners also assert that it would be inappropriate to decide these questions on a motion to dismiss before they have the opportunity to develop and present their evidence. Even if the Court accepted the Homeowners' position that the primary residence requirement treats similarly situated classes differently, the line drawn by the City still survives the rational basis test, under which rational speculation unsupported by evidence or empirical data is sufficient and the plaintiff's evidence is irrelevant. *Id.* at 793. The Homeowners' equal protection claim is ripe for disposition on a motion to dismiss because facts can be reasonably conceived to support the distinction between buildings of up to four dwelling units and buildings with more than four dwelling units in relation to the primary residence rule. The Homeowners' equal protection challenge to the primary residence rule is factually and legally insufficient, and Count IV is dismissed with prejudice.

D. The Rental Caps Are Rationally Related To Neighborhood Preservation and Stability.

In Count V, the Homeowners allege that sections 4-6-300(h) (9), (10), and 4-14-060(e), (f), collectively referred to as the rental caps, violate their substantive due process rights. Under the rental caps, only one dwelling unit in a building containing two to four dwelling units may be used as a shared housing unit or vacation rental, and the unit has to be the owner's primary residence. Ordinance §§ 4-6-300(h) (9), (10); 4-14-060(e), (f). In a building with five or more dwelling units, no more than six dwelling units in the building, or one-quarter of the total dwelling units, whichever is less, may be used as shared housing units or vacation rentals. *Id.*

The City asserts that the rental caps, like the primary residence rule, protect the livability of residential neighborhoods by preventing buildings from becoming *de facto* hotels. The City also contends that the rental caps will protect property values and the quality of life in all buildings, regardless of size. Finally, the City contends that the rental caps ensure the viability of the hotel industry, which the City claims is an important source of jobs and tax revenue for the City. The Court need not decide whether the City's interest in ensuring the viability of the hotel industry satisfies rational basis review because there can be no doubt that limiting the number of units in a building that may be rented is rationally related to the City's interest in preserving neighborhoods and maintaining quality of life.

The Homeowners, however, argue that the City's interests would be better served by an ordinance regulating the conduct of the guests staying at the units; that the rental caps are irrational because they are not tied to how often a unit is actually rented out; and that the rental caps restrict property rights in instances where doing so would not serve the City's alleged interest. These arguments must fail, as they are nothing more than policy quibbles that do not undermine the rational relationship that exists between the rental caps and the purposes they serve. The Homeowners' due process claim relating to the rental caps is factually and legally insufficient, and Count V is dismissed with prejudice.

E. The Noise Restrictions Are Neither Vague Nor Unintelligible, and Do Not Violate the Homeowners' Equal Protection Rights.

In Count VI, the Homeowners allege that the noise restrictions under the Ordinance are unconstitutionally vague and unintelligible and, therefore, violate their right to due process. In Count VII, the Homeowners allege that the noise restrictions violate their right to equal protection because they do not apply to, for instance, hotels and bed-and-breakfasts. The challenged noise provisions state that a vacation rental license or shared housing unit registration

may be suspended if the unit has been the site of "excessive loud noise" on three or more occasions while rented to guests. Ordinance §§ 4-6-300(j)(2)(ii), 4-14-080-(c)(2). The Ordinance defines excessive loud noise as "as noise, generated from within or having a nexus to the rental [of the unit], between 8:00 P.M. and 8:00 A.M., that is louder than average conversational level at a distance of 100 feet or more, measured from the property line of the [unit]." *Id.* The Court addresses the due process and equal protection claims in turn.

1. The Noise Restrictions Are Neither Vague nor Unintelligible.

In Count VI, the Homeowners allege that the noise restrictions violate their substantive due process rights because these provisions are vague and unintelligible, and allow for arbitrary and discriminatory enforcement. As an initial matter, the Homeowners allege that these provisions are facially invalid. Where, as here, a statute does not affect First Amendment rights, it will not be declared unconstitutionally vague on its face unless it is incapable of any valid application, that is, unless no set of circumstances exists under which the statute would be valid. *People v. Izzo*, 195 Ill. 2d 109, 112 (2001). A statute can be deemed impermissibly vague for either of two independent reasons: (1) if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits; or (2) if it authorizes or even encourages arbitrary and discriminatory enforcement. *City of Chi. v. Pooh Bah Enters.*, 224 Ill. 2d 390, 441 (2006). When reviewing a statute for vagueness, courts apply familiar rules of statutory construction to examine the plain statutory language in light of its common understanding and practice. *Bartlow v. Costigan*, 2014 IL 115152, ¶ 42. If the plain language of the statute sets forth clearly perceived boundaries, the vagueness challenge fails, and the court's inquiry ends. *Id.*

The plain language of the Ordinance gives a person of ordinary intelligence a clear boundary between the level of permissible noise and impermissible noise. A person of ordinary

intelligence understands the volume level of an average conversation. By way of analogy, one need look no further than the screaming toddler, whose parent may often be heard imploring the child to use his "inside" voice. In addition, a person of ordinary intelligence would understand that the phrase "generated from within or having a nexus to" means noise coming from the property. It could not be any clearer that the provisions, when read in their entirety, regulate noise made by people staying at a property.

Moreover, the Homeowners cannot in good faith claim that there are no circumstances under which the noise restriction could be valid. A person can easily determine whether noise violates the statute by standing 100 feet away from the property and gauging whether the noise coming from the property is louder than the level of an average conversation. With at least one set of circumstances under which the noise restrictions prove valid, the facial challenge to the noise restriction fails.

The Homeowners also complain that the noise restrictions are invalid because they do not exempt "noise created by unamplified human voices," which is the case for hotels, bed-and-breakfasts, and long-term residential units. In addition, they suggest that things such as a lawn mower or an alarm clock might violate the noise provisions. But a statute is not unconstitutionally vague simply because one can conjure up a hypothetical dispute over the meaning of some its terms. *See Gem Elecs. of Monmouth, Inc. v. Dep't of Revenue*, 183 Ill. 2d 470, 481 (1998). Finally, the Homeowners argue that the noise restrictions allow for arbitrary and discriminatory enforcement because they lack an objective and precise standard. However, it is well established that due process does not mandate absolute standards or mathematical precision. *People v. Izzo*, 195 Ill. 2d 109, 114 (2001). The noise restrictions do not violate the Homeowners' due process rights, and Count VI is dismissed with prejudice.

2. The Noise Restrictions Do Not Violate The Homeowners' Equal Protection Rights.

In Count VII, the Homeowners allege that the noise restrictions violate their equal protection rights. The Homeowners argue that there is no rational basis for home-sharing properties to be subjected to stricter noise restrictions than hotels and bed-and-breakfasts, which are often in close proximity to home-sharing properties and equally likely to be the source of excessive noise.

Although a home-sharing property could be located in the same neighborhood as a hotel or bed-and-breakfast, the two categories of short-term rental properties are distinguishable in that hotels and bed-and-breakfasts have owners and employees on site that can monitor and control loud noise, whereas the home-sharing properties subject to the noise provisions do not necessarily have any such persons at the property. Consequently, home-sharing properties and hotels or bed-and-breakfasts are not similarly situated, regardless of their location. But even if they were, given that vacation rentals and shared housing units are permitted in all residential zoning districts, unlike hotels which aren't permitted in residential districts, and bed-and breakfasts which are only permitted in high-density residential districts, it is reasonable to restrict noise made by transient guests occupying vacation rentals and shared housing units, who have no other investment in the neighborhood, in order to maintain the quality of life for those who live permanently in residential neighborhoods. The noise restrictions do not violate the Homeowners' equal protection rights, and Count VII is dismissed with prejudice.

F. Whether the Surcharge Violates the Uniformity Clause Cannot be Determined as a Matter of Law.

In Count VIII, the Homeowners allege that section 3-24-030 (B) of the Ordinance violates the Uniformity Clause of the Illinois Constitution, which provides in relevant part that "[i]n any law classifying the subjects or objects of non-property taxes or fees, the classes shall be

reasonable and the subjects and objects within each class shall be taxed uniformly." Illinois Const. 1970, Art. IX, § 2. Section 3-24-030 (B) of the Ordinance provides:

> there is hereby imposed and shall immediately accrue and be collected a surcharge, as herein provided, upon the rental or leasing of any hotel accommodations at any vacation rental or shared housing unit in the City of Chicago, at the rate of four percent of the gross rental or leasing charge. The purpose of this surcharge is to fund supportive services attached to permanent housing for homeless families and to fund supportive services and housing for the chronically homeless. Up to eight percent of the revenue from the surcharge shall be used for the City's administration and enforcement of Section 4-6-300 and Chapter 4-14 of the Code, as needed. The remaining revenue from the surcharge shall be used to fund supportive services attached to permanent housing for homeless families and supportive services and housing for the chronically homeless. The surcharge is a part of the tax imposed by this Chapter, and all references to the tax shall be deemed to include the surcharge.

Ordinance § 3-24-030 (B). The 4% surcharge is in addition to a 4.5% tax imposed on any hotel accommodation in the City. *Id.* at § 3-24-030 (A). The Homeowners allege that the Ordinance violates the Uniformity Clause in two ways: (1) by imposing a 4% surcharge on the gross rental amount for vacation rentals and shared housing units but not on other hotel accommodations; and (2) by imposing different licensing fees than it imposes on hotel accommodations.

The Uniformity Clause "imposes more stringent limitations than the equal protection clause on the legislature's authority to classify the subjects and objects of taxation." *Allegro Servs. v. Metropolitan Pier & Exposition Auth.*, 172 Ill. 2d 243, 249 (1996). To survive a uniformity clause challenge, a "nonproperty tax classification must (1) be based on a real and substantial difference between the people taxed and those not taxed, and (2) bear some reasonable relationship to the object of the legislation or to public policy." *Arangold*, 204 Ill. App. 3d at 795. When the opponent of the tax makes a "good-faith uniformity challenge, the taxing body bears the initial burden of producing a justification for the classifications." *Allegro Servs.*, 172 Ill. 2d at 255. Once the taxing body provides such a justification, the burden shifts to

the opponent of the tax to persuade the court that the proffered justification is not supported by the facts. *Id.*

First, the complaint fails to allege that there are two distinct classes of guests. The Homeowners' complaint that the Ordinance imposes a surcharge on vacation rental and shared housing unit rental fees but not on hotel rental fees is misplaced because the surcharge is levied against guests, not the Homeowners. To state a good faith claim under the Uniformity Clause, a plaintiff must establish allege that there exist a class of people who are subject to the tax and a class of people who are not. *See Terry v. Metro. Pier & Exposition Auth.*, 271 Ill. App. 3d 446, 454 (1st Dist. 1995). In *Terry*, the plaintiffs alleged that the Metropolitan Pier and Exposition Authority's Airport Departure Tax, which required all for-hire transportation operators to pay a tax when taking passengers from an airport, violated the Uniformity Clause. *Id.* at 449. The court held that without alleging that there was a class of operators whose only business was taking passengers from one of the airports, the plaintiffs failed to establish a distinction between classes of operators who were taxed and those who were not. *Id.* at 454. Thus, the plaintiffs failed to meet the initial burden of stating a good-faith uniformity claim. *Id.* Like the plaintiff taxpayers in *Terry*, nowhere in the complaint do the Homeowners allege that there exists one class of people who only stay at properties subject to the surcharge, and another class of people who only stay at properties not subject to the surcharge. As a result, the Homeowners fail to state a claim under the Uniformity Clause. *See id.* ("Nowhere do the plaintiffs allege that there is a class of vehicle operators whose only business consists of taking passengers from one of the metropolitan airports. Therefore, the plaintiffs have failed to establish a distinction between classes of operators who are taxed and those who are not. In other words, the plaintiffs fail to meet their initial burden of coming forward with a good-faith uniformity challenge to the

[Airport] Departure Tax [Ordinance] because they have not shown that vehicle operators may be divided into two separate classes.")

Because the Homeowners assure the Court that they can correct this pleading deficiency, the Court next addresses the City's argument that the Homeowners' claim should be dismissed because the surcharge is based on a real and substantial difference between guests staying at vacation rentals or shared housing units and guests staying at other accommodations, and that the tax classification bears a reasonable relationship to the object of the ordinance and public policy. The City contends that, unlike hotels and bed-and-breakfasts, shared housing units and vacation rentals usually will not have anybody on-site to monitor and control a guest's disruptive behavior. The City argues that because shared housing units and vacation rentals present an extra burden for the City, including in the provision of police and fire protection services, the surcharge is a rational and reasonable method for financing this extra burden that will be imposed upon the City. The City also asserts that the rapid proliferation of vacation rentals and shared housing units, which unlike hotels and bed-and-breakfasts are permitted in all residential neighborhoods, destabilize the housing market and reduce the supply of affordable housing, a significant problem in Chicago. According to the City, the 4% surcharge helps address this problem by providing a financial disincentive to growth of shared housing units and vacation rentals.

Unlike the Homeowners' equal protection and due process challenges, which the Court disposes of on the basis that the justifications offered by the City are reasonably conceivable, here it is not enough that the City's proffered justifications for the disparate taxation are reasonably conceivable. Here, the Homeowners meet their initial burden to state a good faith uniformity challenge, shifting the burden to the City to produce a justification for the tax classification. The City's attempt to justify the classification is based on facts outside the

complaint, and therefore it is not appropriate for the Court to dispose of this claim on a motion to dismiss. *See DeWoskin v. Lowe's Chi. Cinema*, 306 Ill. App. 3d 504, 523 (1st Dist. 1999) ("[I]f a taxing body is required to rely on factual matters outside of the complaint to establish a justification for a tax classification, a motion for summary judgment brought pursuant to section 2-1005 of the Code is more suited to the task.").

The City's motion to dismiss the Homeowners' Uniformity Clause challenge to the surcharge is granted, and the Homeowners are granted leave to replead. As for the Homeowners' allegation that the Ordinance's licensing fee violates the Uniformity Clause, the complaint does not clearly identify which fees the Homeowners complain of, and the Homeowners did not clarify this allegation either in their brief or at hearing. Accordingly, this claim is also stricken with leave to replead. *Coghlan v. Beck*, 2013 IL App (1st) 120891 ¶ 22, 35 ("to the extent plaintiffs' pleadings are ambiguous, they are insufficient under Illinois law").

III. CONCLUSION

Count I is dismissed on ripeness grounds. The motion to dismiss the Homeowners' substantive due process challenge to the Commissioner adjustment provision in Count III is denied; the remaining allegations in Count III are dismissed with prejudice. Counts IV through VII are dismissed with prejudice. The motion to dismiss the Homeowners' Uniformity Clause challenge to the surcharge and licensing fees in Count VIII is granted and the Homeowners are granted leave to replead within 28 days. The City shall have 28 days thereafter to file its response.

The Clerk shall notify all counsel of record of the entry of this Order.

Entered:

ENTERED
JUDGE SANJAY TAILOR-1870
OCT 13 2017
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK