APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

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

LEILA MENDEZ *and* ALONSO ZARAGOZA, Plaintiffs-Appellants, v. CITY OF CHICAGO, *a municipal corporation; and* KENNETH J. MEYER, *in his official capacity as Commissioner of the City of Chicago Department of Business Affairs and Consumer Protection*, Defendants-Appellees.	Case No. 16 CH 15489 Hon. Cecilia A. Horan

NOTICE OF APPEAL

Plaintiffs-Appellants Leila Mendez and Alonso Zaragoza appeal to the Illinois Appellate Court, First Judicial District, from the following orders of the circuit court:

(1) The circuit court's order dated October 13, 2017 dismissing Count I of the original Complaint[1], alleging a violation of Article I, Section 6 of the Illinois Constitution for lack of

[1] There are four versions of the complaint in this case: the original complaint, the amended complaint, the second amended complaint, and the third amended complaint. Each amended complaint repleaded, for purposes of preserving for appeal, the claims the were dismissed or disposed of by the circuit court in the previous complaint. The only exception to this is that Count II of the original complaint, alleging a violation of unreasonable search and the right to privacy because the ordinance empowered city officials to obtain information of guests at shared housing units without a warrant or any process for pre-compliance review. The City amended the ordinance and removed this provision, so the amended complaints did not replead Count II of the original complaint. Thus, Counts III through VIII of the original complaint each moved up one as Count III of the original complaint became Count II, Count IV became Count III, Count V became Count IV, Count VI became Count V, Count VII became Count VI, and Count VIII became Count VII. The Third Amended Complaint added an additional count, Count VIII, which is not the same as Count VIII of the original complaint. Count VIII of the Third Amended Complaint alleges that 2020 amendments to the ordinance delegating authority to allow or prohibit single-night rentals violates Art. IV, § 1 of the Illinois constitution.

ripeness; dismissing Count III of the Complaint, alleging that the City of Chicago's "primary residence" rule for short-term rentals in certain properties violates substantive due process; dismissing Count IV of the Complaint, alleging that the primary residence rule violates equal protection; dismissing Count V of the complaint alleging that the City of Chicago's limits on the number of residential units in a given building that may be used for short-term rentals violate substantive due process; dismissing Count VI of the Complaint alleging that the City of Chicago's noise restrictions for short-term rentals violate substantive due process for being vague and unintelligible; dismissing Count VII of the Complaint alleging that the noise restrictions violate equal protection.

(2) The circuit court's order dated April 2, 2018 dismissing Count II of the Amended Complaint alleging that Commissioner of the City's Department of Business Affairs and Consumer Protection's authority to grant "adjustments" from the requirement that a home sharing property be the owner's primary place of residence violates due process.

(3) The circuit court's order dated October 15, 2020 granting summary judgment in favor of defendants and against plaintiffs on Count VII of the Second Amended Complaint alleging that surcharges applying to vacation rentals and share housing units violate the Uniformity Clause of the Illinois Constitution, Art. IX, §2.

(4) The circuit court's final and appealable order dated October 20, 2021 dismissing Plaintiffs' only remaining claim: Count VIII of the Third Amended Complaint, alleging a violation of Art. IV, §1 of the Illinois Constitution.

A true and correct copy of each order is attached hereto.

By this appeal, Plaintiffs-Appellants ask that the appellate court reverse the circuit court's orders dismissing Plaintiffs' claims and remand those claims to the circuit court, reverse the circuit court's October 15, 2020 order and grant summary judgment to Plaintiffs on Count VII of the Second Amended Complaint alleging that surcharges applying to vacation rentals and share housing units violate the Uniformity Clause of the Illinois Constitution, Art. IX, §2, and grant any other appropriate relief.

Dated: November 18, 2021

Respectfully submitted,

LEILA MENDEZ and ALONSO ZARAGOZA

By: /s/ Jeffrey M. Schwab
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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

I, Jeffrey Schwab, an attorney, certify that on November 18, 2021, I served copies of the Notice of Appeal on Defendants' counsel of record by the Court's Electronic Filing System.

/s/ Jeffrey M. Schwab
Jeffrey M. Schwab

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

[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

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

MENDEZ, et al.
v.
City of Chicago, et al.

No. 2016 CH 15489

ORDER

This MATTER coming to be heard on Defendants' motion to dismiss the Amended Complaint, all Parties being present and the court having heard argument, it is hereby ordered:

(1) Defendants' motion to dismiss is granted as to Count II, which is dismissed with prejudice for the reasons stated on the record;

(2) Defendants' motion to dismiss is denied as to Count VII. Defendants shall file their answer to Count VII by April 30, 2018;

(3) Plaintiff Michael Lucci's motion to voluntarily dismiss his claims is granted;

(4) Plaintiffs' Motion for judicial notice is denied as Moot;

(5) Status set for May 2, 2018 at 9:30 AM in courtroom 2008.

Attorney No.: 90909
Name: Ellen W. McLaughlin
Atty. for: City of Chicago
Address: 30 N. LaSalle #1230
City/State/Zip: Chicago IL 60602
Telephone: 312 742-5147

ENTERED:

ENTERED
JUDGE SANJAY TAILOR-1870
APR 0 2 2018
DOROTHY BROWN
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

Dated: _____

_____ _____
Judge Judge's No.

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

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

DECISION

This matter comes before the Court on cross-motions for summary judgment on the Plaintiffs' claim that certain provisions of the City of Chicago's Shared Housing Ordinance ("Ordinance") violate the Uniformity Clause of the Illinois Constitution. Illinois Const. 1970, Art. IX, § 2. For the reasons stated below, the Defendants' motion is granted.

I. Undisputed Salient Facts

The Plaintiffs, Leila Mendez and Alonzo Zaragoza, own homes in Chicago (collectively, the "Homeowners") and rent, or wish to rent, their homes on a short-term basis. On June 22, 2016, the Defendant, City of Chicago ("City"), adopted the Ordinance to regulate the effects of the home-sharing industry on residential neighborhoods and housing availability in Chicago. The Ordinance regulates both home-sharing platforms, such as Airbnb, and homeowners who rent their homes, or portions thereof, on a short-term basis.

The Ordinance classifies short-term rental properties in two categories: (1) "vacation rentals"; and (2) "shared housing units." These terms are defined almost identically, except that they are mutually exclusive. A "vacation rental" is defined as:

> a dwelling unit that consists of 6 or fewer sleeping rooms that are available for rent or for hire for transient occupancy 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.

Chi. Muni. Code § 4-6-300. 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.

Id. at § 4-14-010. "Transient occupancy," as used in these definitions, means "occupancy on a daily or nightly basis, or any part thereof, for a period of 31 or fewer consecutive days." *Id.* at §§ 4-6-290, 4-6-300, 4-14-10.

The Ordinance expands the definition of "hotel accommodations" to include vacation rentals and shared housing units, thereby subjecting guests who stay in such accommodations to the City's 4.5% hotel tax. *Id.* at § 3-24-030(A). In addition, the Ordinance imposes an additional 4% tax on vacation rentals and shared housing units, *id.* at § 3-24-030(B), the proceeds of which are to be used "to fund supportive services attached to permanent housing for homeless families and to fund supportive services and housing for the chronically homeless." *Id.* The Ordinance also imposes an additional 2% tax on vacation rentals and shared housing units, *id.* at § 3-24-030(C), the proceeds of which are to be used "to fund housing and related supportive services for victims of domestic violence." *Id.* The additional 4% and 2% taxes ("Surcharges") are imposed on lessees or tenants of vacation rentals and shared housing units and are collected by the operators. § 3-24-040.

The parties cross-move for summary judgment on the Homeowners' allegation that the Surcharges violate the Uniformity Clause because they apply to guests of vacation rentals and shared housing units (together, "Shared Housing"), but not guests of hotels and bed-and-breakfasts (together, "Hotels"). The Homeowners also challenged a $250 biennial license fee that applied to owners of vacation rentals but not owners of shared housing units. However, on September 9, 2020, the City amended the Ordinance ("2020 Amendments") to, among other things, impose a $125 annual license fee on owners of shared housing units, effectively equalizing the licensing fee for owners of vacation rentals and shared housing units. As a consequence, the Homeowners no longer pursue their claim relating to the license fee, making that aspect of the parties' cross-motions moot. The Homeowners' third amended complaint, which they have been granted leave to file, challenges two other aspects of the 2020 Amendments – the ban on single-night rentals and a change to the excessive noise rule – but those claims are not the subject of this decision.

II. Discussion

The City seeks summary judgment on two bases: (a) the Homeowners lack standing; and (b) three independent justifications support the classification for the Surcharges, each of which also further the purpose of the Ordinance and public policy. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c); *Bluestar Energy Svcs. v. Illinois Commerce Comm'n*, 374 Ill. App. 3d 990, 993 (1st Dist. 2007). In deciding whether a genuine issue of material fact exists, "the pleadings, depositions, admissions, exhibits, and affidavits are to be construed strictly against the movant and liberally in favor of the opponent." *Delaney Electric Co. v. Schiessle*, 235 Ill. App. 3d 258, 263 (1st Dist. 1992). When, as here, the parties file cross-motions for summary judgment, it's usually the case that there's no genuine issue of material fact and the issues presented are

questions of law. *See Hagen v. Distributed Solutions, Inc.*, 328 Ill. App. 3d 132, 137 (1st Dist. 2002).

A. The Plaintiffs Lack Standing to Bring Their Uniformity Claim

The City's standing defense presents a threshold issue and a reprise of its motion to dismiss. In order to have standing to challenge the constitutionality of a statute, a party must have sustained, or be in immediate danger of sustaining, a direct injury as a result of the enforcement of the challenged statute. *Carr v. Koch*, 2012 IL 113414, at ¶ 28. The claimed injury must be (1) distinct and palpable; (2) fairly traceable to defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of requested relief. *Id.* The Homeowners did not pay the Surcharges they challenge and, therefore, cannot thereby claim injury.

Rather, the Homeowners contend that they have standing to sue in their capacity as taxpayers. Taxpayer standing to challenge government expenditures was first addressed by the United States Supreme Court in *Frothingham v Mellon*, 262 U.S. 447, 487 (1923). Holding that the plaintiff taxpayer did not present a justiciable controversy, the Supreme Court stated that his "interest in the moneys of the Treasury – partly realized from taxation and partly from other sources – is shared with millions of others; is comparatively minute and indeterminable; and the effect upon future taxation of any payment out of the funds, so remote, fluctuating and uncertain, that no basis is afforded for an appeal to the preventive powers of a court of equity." *Id.* at 488; *see also Doremus v. Bd. of Educ. of Borough of Hawthorne*, 342 U.S. 429, 436 (1952) ("[t]he party who invokes the power must be able to show, not only that the statute is invalid, but that he sustained or is immediately in danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers in some indefinite way in common with people generally."). In Illinois, "[i]t has long been the rule . . . that citizens and taxpayers have a right to enjoin the misuse of public funds, and that this right is based upon the taxpayers' ownership of such funds and their liability to replenish the public treasury for the deficiency caused by such misappropriation." *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 160 (1956); *see also Scachitti v. UBS Fin. Servs.*, 215 Ill. 2d 484, 494 (2005) (quoting *Barco Mfg.*). Thus, as the Homeowners acknowledge (Tr. of Hrg., Aug. 20, 2020, at p. 19), in order to establish that they have standing, they must show that they will be liable to replace funds used to administer the allegedly unconstitutional Surcharges.

In denying the City's motion to dismiss on the basis of standing, the Court relied heavily on *Jenner v. Ill. Dep't of Comm. & Econ. Opp.,* 2016 IL App (4th) 150522, which held that a taxpayer had standing to challenge a state agency's regulation allowing a tax credit that was allegedly not authorized by law. *Jenner* took an expansive view of taxpayer standing, noting that although the Supreme Court of the United States denies standing to taxpayers because of "'[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. However, after the Illinois Supreme Court granted review in *Jenner*, the appeal was dismissed as moot and the appellate court's decision was vacated. *Jenner v. Ill. DOC & Econ. Opportunity*, 2017 Ill. LEXIS 1306.

Upon further consideration of the issue, it is apparent that the showing required for taxpayer standing is not a settled matter. In contrast to the appellate court's decision in *Jenner*, a number of courts have stated that a taxpayer's standing to challenge the misappropriation of public funds in Illinois is a "narrow doctrine." *See Illinois Ass'n of Realtors v. Stermer*, 2014 IL App (4th) 130079, ¶ 29; *Schacht v. Brown,* 2015 IL App (1st) 133035, ¶ 19 (quoting *Stermer); Veazey v. Bd. of Educ. of Rich Twp. High Sch. Dist. 227*, 2016 IL App (1st) 151795, ¶ 25 (describing taxpayer standing principle as "narrow"). Thus, in *Schacht*, the plaintiffs challenged the manner in which a court clerk held and remitted certain court fees, but the court held that they lacked standing because they failed to offer "any evidence showing that they, as taxpayers, have been or will be liable for increased taxes as a result of the Clerk's collection and alleged misappropriation of any fees that were allocated or intended for specific juvenile intervention programs." 2015 IL App (1st) 133035, at ¶¶ 20, 28. The court rejected the notion that the plaintiffs, as taxpayers, have an "inherent right to complain of a misapplication of public funds," stating that the case law on taxpayer standing requires a "specific showing" that the plaintiffs will be liable to replenish public revenues depleted by the Clerk's alleged retention or misuse of said funds. *Id. Cf. Dudick v. Baumann*, 349 Ill. 46, 51 (1932) (taxpayer lacks standing because he is "not one of those whose property has been assesed [sic] and is therefore not interested in the disposition of the assessments collected, unless a situation arises which would lead to a misappropriation of public funds and necessity for levying taxes to meet obligations of the village because of such misappropriation. He makes no such showing."). Similarly, in *Veazey*, the plaintiff taxpayer sought a declaration that the school district's decision to reinstate an assistant principal with back pay and to pay her attorney fees was illegal because the school district allowed the defendant board member, the assistant principal's husband, to cast the tie-breaking vote in violation of the school district's anti-nepotism policy. Although the plaintiff alleged that he was a taxpayer of the school district and the vote to reinstate the assistant principal was illegal, the court held that the plaintiff "failed to specifically plead that, as a taxpayer, he has been or will be liable to replenish the District's misappropriation of funds, i.e., the payments made to [the assistant principal] in conjunction with her reinstatement. Because such allegations are absent, [plaintiff's] complaint is 'fatally defective.'" 2016 IL App (1st) 151795, at ¶ 34 (citations omitted).

Here, the only evidence offered by the Homeowners to establish they have standing as taxpayers is the City's admission that it uses general revenue funds to implement the Ordinance. There is no evidence that the City disbursed any taxpayer funds in connection with its imposition of the challenged Surcharges, let alone that the Homeowners will be liable to replenish such funds. The Homeowners contend, however, that they need only show the government's expenditure of general revenue funds, an expansive view of taxpayer standing that cannot be squared with *Veazey* and *Schacht*. The two principal cases cited by the Homeowners, *Snow v. Dixon*, 66 Ill. 2d 443 (1977), and *Krebs v. Thompson*, 387 Ill. 471 (1944), are not to the contrary. The plaintiffs in those cases invoked their statutory right to sue as taxpayers under the Public Monies Act (presently codified at 735 ILCS 5/11-301 *et seq.*), which, parenthetically, does not even require a taxpayer to establish that he will be liable to replenish public funds. More to the point, however, in each case there was evidence of the amount of public funds used to administer the illegal statute. In *Krebs*, the State admitted that it would cost $11,000 to administer the new statute, and the only dispute was whether the taxpayer had standing where the revenue generated

under the statute would exceed the cost of administering it. The court held that any profit that may be generated for the State under the statute was immaterial; rather, the taxpayer's standing was established because general revenue funds were used to administer the statute. *Krebs*, 387 Ill. at 475. Likewise, in *Snow*, the State acknowledged that it expended $41,400 annually in an auditor's salary to collect the tax, and the court held that the taxpayers had standing to challenge the use of public funds to collect an illegal tax even though the tax allegedly only cost a "*de minimis*" amount to collect. *Snow,* 66 Ill. 2d at 450-51.

Unlike the State in *Krebs* and *Snow*, the City does not argue that the Homeowners lack standing because the revenue generated by the Surcharges exceeds the cost to collect it. Rather, the City argues, correctly, that the Homeowners fail to offer any evidence that they will be liable to replenish any taxpayer funds. There is no evidence that any more in public funds are being expended to enforce and collect the Surcharges than the City is already expending to enforce the other provisions of the Ordinance. In other words, there is no evidence that the City's expenditure of public funds would have been less had the Surcharges not been enacted into law. To illustrate the point, even if the Homeowners were to prevail on their claim that the Surcharges are unconstitutional, public funds would still be used to enforce the extension of the City's 4.5% hotel tax on Shared Housing, a provision of the Ordinance that the Homeowners do not challenge. In short, the record does not establish that the Homeowners will be liable to replenish any public funds. Thus, insofar as *Snow* and *Krebs* are predicated on a taxpayer's statutory right to sue to enjoin the use of public funds to administer an illegal law, the Homeowners offer no evidence of what public funds the Court would even enjoin the use of in connection with the City's administration of the allegedly unconstitutional Surcharges.

It goes without saying that just about anything that government does requires the expenditure of public funds, which, of course, lays bare why the Homeowners' view of taxpayer standing proves too much. The Homeowners' construction, if accepted, would expand taxpayer standing to the point where it would be essentially limitless, hamstringing government by tying up the administration of public funds. *Cf. Hill v. La Salle County,* 326 Ill. 508, 515 (1927) ("When the right of a public officer charged with the duty and responsibility of the proper application of public funds to disburse such funds is challenged by a lawsuit, it is obvious that for his own protection he will refuse to pay out the money in his custody until the suit is finally adjudicated."). Accordingly, in the absence of any evidence that the Homeowners will be liable to replenish any public funds, they lack standing to challenge the Surcharges under the Uniformity Clause of the Illinois Constitution.

B. The Homeowners' Uniformity Challenge Fails

Even if the Homeowners have standing as taxpayers, the Surcharges do not violate the Uniformity Clause. The Uniformity Clause states:

> In 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. Exemptions, deductions, credits, refunds, and other allowances shall be reasonable.

Illinois Const. 1970, Art. IX, § 2. To survive scrutiny under the Uniformity Clause, "a nonproperty tax classification must be (1) based on real and substantial differences 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 Corp. v. Zehnder*, 204 Ill. 2d 142, 153 (2003). The initial burden of proof is not with the party attacking the classification as unreasonable. *Milwaukee Safeguard Ins. Co. v. Selcke*, 179 Ill. 2d 94, 98 (1997). Rather, when a good-faith challenge to the reasonableness of a tax classification has been presented, it is the taxing body that must first justify the tax classification. *Geja's Cafe v. Metro. Pier & Exp. Auth.*, 153 Ill. 2d 239, 248 (1992). However, the government "does not have an evidentiary burden and does not have to produce facts in support of its justification." *Friedman v. White*, 2015 IL App (2d) 140942, ¶ 31. Once the taxing body comes forward with a justification, the challenging party must persuade the court that the taxing body's justification is unsupported by the facts or insufficient as a matter of law. *Geja's Café*, 153 Ill. 2d at 248-49; *Arangold*, 204 Ill. 2d at 156 ("The taxing body need only assert a justification for the classification. It is the plaintiff who then has the evidentiary burden of proving that the asserted justification is unsupported by the facts.").

"Broad latitude is afforded to legislative classifications for taxing purposes. A plaintiff challenging such a classification has the burden of showing that it is arbitrary or unreasonable; if a state of facts can be reasonably conceived that would sustain it, the classification must be upheld." *Geja's Cafe*, 153 Ill.2d at 248. Yet, this test does not merely "duplicate the limitation on the taxing power contained in the equal protection clause;" rather, it is "meant to insure that taxpayers receive added protection in the state constitution based on standards of reasonableness which are more rigorous than those developed under the federal constitution." *U.S.G. Italian Marketcaffe, L.L.C. v. City of Chicago*, 332 Ill. App. 3d 1008, 1014 (1st Dist. 2002).

The City is entitled to summary judgment on either of at least two justifications: (a) differences in zoning rules that apply to Hotels and Shared Housing; and (b) the effect that Shared Housing has on long-term housing. The City offers a third independent justification based on the differences in property and income tax rates that apply to Shared Housing and Hotels, but the Court expresses no opinion in that regard.

1. Zoning Justification

First, Hotels are zoned differently than Shared Housing. Hotels typically are permitted only in business or commercial districts, while Shared Housing is also permitted in residential districts. The purpose behind residential zoning districts is "to create, maintain and promote a variety of housing opportunities for individual *households* and to maintain the desired physical character of the city's existing neighborhoods." (Chicago Code § 17-2-0101) (emphasis in original). By contrast, commercial and business districts are intended to "accommodate retail, service and commercial uses and to ensure that business and commercial-zoned areas are compatible with the character of existing neighborhoods." (Chicago Code § 17-3-0101). The peace and character of residential neighborhoods can be affected by the presence of Shared Housing. When Shared Housing guests create a disturbance, as sometimes occurs, an owner or employee may not be present to quell the disturbance and the police are required to respond to resident complaints. The Surcharges imposed under the Ordinance are a reasonable method for financing the cost of this extra demand on limited government resources.

The Homeowners, relying on *Satellink of Chicago, Inc. v. Chicago*, 168 Ill. App. 3d 689 (1st Dist. 1988), first argue that there is not a real and substantial difference between Shared Housing and Hotels because guests at each type of accommodation consume the same service – lodging on a transient basis for a nightly rate. In *Satellink of Chicago*, the court held that the City's amusement tax violated the Equal Protection Clause because the City did not have a compelling governmental interest in imposing a 4% tax on satellite television providers but not on franchised cable television providers. The court rejected the City's argument that because franchised cable television providers pay 5% of their gross receipts as a franchise fee, they reasonably may be exempted from the 4% amusement tax that satellite television providers are required to pay. *Id.* at 693. It stated that "[n]either raising revenue nor equalizing the financial burden on cable television can support the targeting of subscription television." *Id.* at 696. However, *Satellink of Chicago*, which arose in the context of the First Amendment, *id.* at 695-96, did not establish a *per se* rule that providers of the same service may not be taxed differently; rather, that was simply the factual context of the case. To be sure, there are numerous instances where classifications involving the same service have withstood challenge under the Uniformity Clause. *See e.g. Labell v. City of Chicago*, 2019 IL App (1st) 181379 ¶ 47 (on-demand music); *Empress Casino Joliet Corp. v. Giannoulias*, 231 Ill. 2d 62, 78-80 (2008) (casino gaming); *Allegro Serv.,* 172 Ill. 2d at 256-57 (taxi cabs); *Peoples Gas Light and Coke Co. v. City of Chicago*, 9 Ill. 2d 348, 355-56 (1956) (energy); *Best Buy Stores, L.P. v. Dep't of Revenue*, 2020 IL App (1st) 191680, ¶ 31 (appliance installation).

Here, even though they provide the same core lodging service, there are real and substantial differences between Shared Housing and Hotels. The most obvious, of course, is that Hotels have personnel on site to immediately address problems, including quelling disturbances created by guests, and often provide ancillary services, such as room service, valet parking, concierge service, restaurant dining, and to-go food items. Nevertheless, citing *Nat'l Pride of Chicago, Inc. v. Chicago*, 206 Ill. App. 3d 1090 (1st Dist. 1990), the Homeowners argue that the presence of employees is not sufficient to treat Hotels differently for tax purposes. At issue in *Nat'l Pride of Chicago* was an administrative ruling by the City's Department of Revenue that applied the City's transaction tax to self-service car washes but not to automatic and tunnel car washes. The trial court found the tax classification was reasonable because self-service car washes provided their customers "exclusive use of the washing equipment for a fixed period of time and for a fixed amount of money." *Id.* at 1104. The appellate court rejected that reasoning because the same is true for automatic and tunnel car washes, which only permit one car to be washed in the stall or tunnel at a given time, each wash takes a prescribed period of time, and payment is a fixed amount. *Id.* The court concluded that the Department of Revenue's administrative ruling represented an expansion of the identified categories of personal property transactions intended to be taxed, in violation of its role to interpret but not to expand or amend the ordinance. *Id.* In addition, the court held the administrative ruling created an arbitrary distinction between self-serve and automatic and tunnel car washes based solely on the customer's hands-on participation in the car wash process. *Id.* Thus, aside from being *dicta*, the court's uniformity analysis was informed by the customer's own participation in the cleaning process, not by the presence of car wash employees and personnel. In any case, the court did not hold that the presence of on-site personnel may never justify a tax classification. In sum, the Homeowners' argument that Shared

Housing and Hotels each provide lodging is no doubt correct, but it is a rather oblique view that overlooks just how different they are.

The Homeowners next argue that zoning laws that permit Shared Housing, but not Hotels, in residential districts is not a real and substantial difference that justifies the different tax treatment. However, when the Illinois Supreme Court rejected an equal protection challenge to Chicago's parking tax that exempted residential parking, it recognized that distinctions based on zoning may be a proper basis for differential taxation. *See Jacobs v. Chicago*, 53 Ill. 2d 421, 425 (1973) ("Zoning ordinances have long distinguished between residential, business, commercial and industrial uses and such common classifications are not invalid. A reasonable basis exists for the distinction between these classes."). *Jacobs*' reasoning applies with equal force to the Homeowners' Uniformity Clause claim. In a related argument, the Homeowners contend that the City's zoning justification fails because there are zoning districts where both Shared Housing and Hotels are legally permitted. However, this is merely an appeal to perfection, which the Uniformity Clause does not demand of legislative enactments. *See Geja's Café*, 153 Ill. 2d at 252 ("[I]n a uniformity clause challenge the court is not required to have proof of perfect rationality as to each and every taxpayer. The uniformity clause was not designed as a straitjacket for the General Assembly. Rather, the uniformity clause was designed to enforce minimum standards of reasonableness and fairness as between groups of taxpayers.")

The Homeowners also dispute the City's evidence that Shared Housing can disrupt the quiet character of residential neighborhoods and place stress on the City's limited resources. However, they merely nit-pick the City's evidence and fail to offer any counter-evidence. The City's affiant, Charles Lee, Supervisor of Business Compliance Investigations for the City's Department of Business Affairs and Consumer Protection, avers that Shared Housing has placed an increased burden on the City by requiring it to respond to complaints of nuisance, excessive noise, neighborhood disturbances, rules violations, and sub-standard property conditions. In addition, the City offers a spreadsheet of 311 (the City's non-emergency number) calls that document nuisance and other complaints that stem exclusively from Shared Housing that the City received between December 2016 and April 2018. The spreadsheet shows that of the 356 calls the City received during that period, 128 resulted in a complaint being filed with the City. In addition, during that same period, 40 enforcement actions were brought by the City, 14 of which involved Shared Housing. The Homeowners, however, contend that, ultimately, only six *nuisance-based* enforcement actions were brought by the City against *licensed and registered* Shared Housing operators. Even so, the record establishes that the Surcharge classification bears a reasonable relationship to the Ordinance's objective to maintain the character of, and prevent disruption in, residential neighborhoods. That the City did not bring more enforcement actions based on nuisance does not diminish the disruption that Shared Housing brings to residential neighborhoods. And, the fact remains that there were hundreds of complaints to the City regarding Shared Housing—many more than the number of complaints regarding Hotels. Indeed, the number of complaints relating to Hotels received in residential areas was zero because Hotels are not permitted in residential districts. Additionally, whether the properties complained of were licensed or not, they are still complaints related to Shared Housing. In the absence of any contrary evidence, the Homeowners have not shown that the zoning justification for the Surcharge classification is insufficient as a matter of law or unsupported by the facts.

2. Long-Term Affordable Housing Stock Justification

Second, Shared Housing removes long-term housing stock from the market in a way that Hotels do not, contributing to homelessness in the City and a lack of housing for victims of domestic violence. The revenue from the Surcharges helps addresses these problems by funding homelessness and related services.

As a threshold matter, the Homeowners move to exclude the opinion of Bryan Esenberg, Deputy Commissioner of the City's Department of Housing, who opined that "there is substantial support for the proposition that house sharing has a tendency to reduce the availability of affordable housing[.]" Esenberg cites a number of publications in support of his opinion, and states that "these reports are of the type that would be reasonably relied upon by policy makers and advisers . . . in forming opinions and inferences upon the subjects that the reports address." The Homeowners argue that Esenberg's opinion should be excluded because he is not qualified to opine on the studies due to his lack of "knowledge of econometric and statistical methods" and because he did not apply any methodology to underpin his conclusion. In addition, the Homeowners contend that Esenberg's first-hand observation regarding the conversion of a single-room occupancy building to a short-term rental building cannot form a basis of his opinion because it is anecdotal and he lacks basic knowledge of the factors that influence the availability of affordable housing.

The Homeowners misconstrue, at least in part, Esenberg's report. He does not purport to offer opinions on the "econometric or statistical" soundness of studies and reports he reviewed. Rather, the crux of his opinion is what a government policy-maker relies on in forming policies. Specifically, in citing the various publications that address how home sharing affects affordable housing, Esenberg opines that policy makers, like him, typically rely on these types of publications. The Homeowners do not dispute that aspect of Esenberg's opinion. Esenberg further opines that these publications form a reasonable basis for the City's conclusion that "house sharing has a tendency to reduce the availability of affordable housing . . .." Thus, Esenberg was merely opining on the reasonableness of the City's justification for the Surcharge classification. While Esenberg does not purport to offer a scientific opinion, he is clearly qualified in terms of education, knowledge and experience to offer an opinion going to the reasonableness of the City's decision to impose Surcharges on Shared Housing but not Hotels. Esenberg has worked for the City's Department of Housing since 2013, first as Assistant Commissioner and, starting in 2017, as Deputy Commissioner. In his current role, Esenberg oversees the City's investment in multifamily affordable housing and develops programs to increase affordable housing opportunities. His portfolio also involves devising strategies to deal with troubled and abandoned buildings. Esenberg's opinions, based on his knowledge, skill and experience, go to the types of information and data that inform decisions about housing issues in the City and clearly meet the standard under Illinois Evidence Rule 702 ("If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert, by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise."). In any case, even if Esenberg is not qualified to opine that Shared Housing reduces the availability of affordable housing, that is beside the point because, as explained below, the Homeowners' expert acknowledges that there is a relationship

between house sharing and home prices and rents, and that restrictions on housing supply can affect homelessness.

The Homeowners' argument relating to Esenberg's first-hand observation about the conversion of a single room occupancy hotel to a short-term rental building fares no better. He states that when the building was converted, the City had to provide resources and help those affected find replacement housing. The Homeowners offer no sound legal basis to exclude Esenberg's observation based on his personal experience as a high-ranking official whose leads the City's efforts to devise and execute housing policy.

Turning to the merits of their Uniformity Clause claim, the Homeowners argue that the City's justification that Shared Housing decreases long-term housing stock fails because many Shared Housing properties continue to serve as the host's primary residence. Once again, the Uniformity Clause does not require perfection. *See Arangold Corp.*, 204 Ill. 2d at 153; *Empress Casino Joliet Corp*., 231 Ill. 2d at 80. Rather, the City must simply "ensure 'minimum standards' of reasonableness." *Best Buy Stores, L.P.*, 2020 IL App (1st) 191680, ¶ 32. Thus, even if many Shared Housing units would not remove long-term housing stock from the housing marketplace because they will continue to be owner-occupied, it is undisputed that some properties would be removed from the long-term housing supply. Likewise, the Homeowners' argument that Hotels also remove long-term housing because they occupy real estate that could otherwise be dedicated to long-term housing misses the point. The City concedes, of course, that any business, including a hotel, which occupies real estate, keeps property out of the long-term housing market. But, Shared Housing *converts* property that was intended, and was actually used, for long-term housing into short-term housing. Therefore, Shared Housing removes long-term housing from the market in a way that Hotels do not.

The Homeowners also fail to meet their burden to show that the City's justification that Shared Housing reduces the supply of affordable housing in the City is unsupported by the facts or insufficient as a matter of law. To reiterate, Esenberg opines that "there is substantial support for the proposition that house sharing has a tendency to reduce the availability of affordable housing[.]" Esenberg cites a number of publications in support of his opinion. Esenberg also notes that "the pressure that short-term rentals place on rent prices 'pushes units out of the margins of affordability for low- and middle- income residents, an effect that cascades through the city.'" He explained:

> In other words, if rent prices increase in the neighborhoods where house sharing is most common, some people who cannot afford those rents move into less expensive neighborhoods, which raises the rents there. This is turn spills over to less well-off neighborhoods, where at some point people who could barely afford the rent before have to move out or get evicted. These people become homeless or at least require governmental assistance to secure housing.

The Homeowners offer the report and deposition testimony of Dr. Adrian Moore, who opines that home prices are affected more by other factors, such as land use restrictions and housing regulations. However, the Homeowners acknowledge (at p. 16 of their opening brief) that "the only nationwide study found that home-sharing had a minimal effect on rents." They further

admit (at p. 19 of their opening brief) that "[r]estrictions on housing supply do affect homelessness; one study of 40 large U.S. cities found that about 42 percent of the variation in homelessness explained by difference in median home prices." The Homeowners further concede (at pp. 12-13 of their combined reply and response) that Moore acknowledged that "restrictions on housing supplies can affect home prices, which in turn can affect homelessness, but he also concluded that home-sharing's effect on housing supplies and prices was minimal," and questioned whether this would increase homelessness. Thus, even if the Court entirely discounted Esenberg's opinion that there is substantial support for the view that house sharing decreases the availability of affordable housing, the Homeowners themselves concede that there exists at least a "minimal" basis for the classification based on the loss of affordable housing. That there are other factors contributing to the decrease in housing supply and increase in homelessness does not make the City's justification arbitrary or unreasonable. As the Illinois Supreme Court has said, "if a state of facts can be reasonably conceived that would sustain it, the classification must be upheld." *Geja's Cafe*, 153 Ill. 2d at 248.

Affordable housing and homelessness, no doubt, present highly complex issues that lend themselves to a variety of policy approaches, some more effective than others. The Uniformity Clause is not intended to constrain government to legislate in ways that more, or most, effectively address a public policy concern. That is an argument for the Chicago City Council, not the courts.

3. Income and Property Tax Justification

Finally, for its third independent justification for the Surcharges, the City argues that Hotels are subject to higher income and property tax rates than Shared Housing, and that Hotels are potentially subject to a variety of business-related taxes that Shared Housing is not. Thus, Shared Housing has a competitive financial advantage and the Surcharges are an attempt to put Hotels on a more level playing field with Shared Housing. The Homeowners respond, in part, that because only Shared Housing guests are subject to the Surcharges and the Uniformity Clause looks to whether there exists a real and substantial difference between persons who are taxed and persons who are not taxed, the higher taxes paid by Hotels is irrelevant. Although the City offers no argument in reply, one might safely assume that, as a general matter, Hotels, like other businesses, pass along their cost of doing business in the rates they charge their customers. Nevertheless, having determined that the Surcharges withstand scrutiny on two, independent bases, the Court need not belabor this opinion by reaching the merits of the City's justification based on the income and property tax advantage of Shared Housing over Hotels.

III. Conclusion

The Homeowners' motion to exclude Esenberg's opinion is denied. Summary judgment is entered in favor of the Defendants and against the Plaintiffs on count VII of the second amended complaint relating to the Surcharges. The Clerk shall notify all counsel of record of the entry of this decision.

ENTER:

/s/ *Sanjay T. Tailor*

In the Circuit Court of Cook County, Illinois
County Department, Chancery Division

LEILA MENDEZ and ALONSO ZARAGOZA, Plaintiffs, v. CITY OF CHICAGO, et al. Defendants.	Case No. 2016 CH 15489 Hon. Cecilia A. Horan General Chancery Calendar 9

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ORDER

This matter coming before the Court for a ruling on Defendants' Section 2-619.1 Motion to Dismiss Plaintiffs' Third Amended Complaint, due notice having been given and the Court being fully advised in the premises, IT IS HEREBY ORDERED:

1. For the reasons stated on the record during the Court's September 17, 2021 and October 19, 2021 hearings, Defendants' Section 2-619.1 Motion to Dismiss Plaintiffs' Third Amended Complaint is granted; and

2. This is a final and appealable order, resolving all issues outstanding in the case.

ENTER:

/s/ Cecilia A. Horan No. 2186

Meeting ID: 956 5899 1093
Password: 129359
Dial-in: 312-626-6799

Judge Cecilia A. Horan
OCT 20 2021
Circuit Court - 2186

DATE: October 19, 2021
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