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

LEILA MENDEZ, et al.,	)	
	)	
Plaintiffs,	)	Case No. 2016-CH-15489
	)	
v.	)	Judge Sanjay T. Tailor
	)	
CITY OF CHICAGO, et al.,	)	
	)	
Defendants.	)	
	)	

PLAINTIFFS' RESPONSE TO DEFENDANTS' SECTION 2-619.1 MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

This Court should deny Defendants' motion to dismiss Plaintiffs' amended complaint, which repeats an argument against Plaintiffs' standing that the Court has already rejected and attacks sufficiently pled constitutional claims that the Court has already said may proceed.

BACKGROUND

Plaintiffs are Chicago taxpayers and homeowners who wish to rent out their homes through the Airbnb home-sharing platform. (Am. Compl. ¶¶ 54-58.) In November 2016, they filed a complaint challenging various provisions of Chicago's anti-home-sharing ordinance (the "Ordinance") for violating the Illinois Constitution. The City moved to dismiss that complaint and, in October 2017, the Court issued an order partially granting that motion ("Order"). But the Court rejected the City's argument that Plaintiffs lack standing as taxpayers to enjoin the use of public funds to administer the Ordinance provisions they challenge. (Order 4-5.) And the Court denied the City's motion with respect to Plaintiffs' allegation that the Ordinance's "Primary Residence Rule" violates substantive due process because it allows a city official to make exceptions to the Rule based on vague, arbitrary criteria. (*Id.* 8-13.) The Court also granted Plaintiffs leave to amend their complaint to correct certain defects in their claim alleging that the Ordinance's 4% surcharge on home-sharing rentals and licensing fees violate the Illinois Constitution's Uniformity Clause. (*Id.* 19-23.)

Plaintiffs then filed their amended complaint, which corrects the defects in the Uniformity Clause claim; updates certain factual allegations; omits the original Count II, which Plaintiffs voluntarily dismissed in February 2017; and notes which claims the Court has already dismissed. The City has now moved to dismiss the three claims alive at this stage of the proceedings: (1) Count II's claim that the Primary Residence Rule violates substantive due process based on the Commissioner's power to grant exceptions based on vague, arbitrary

criteria; (2) Count VII's claim that the Ordinance's 4% surcharge on home-sharing rentals violates the Illinois Constitution's Uniformity Clause; and (3) Count VII's claim that the Ordinance's licensing fees violate the Uniformity Clause.

Plaintiffs' Primary Residence Rule Claim

Count II of Plaintiffs' amended complaint presents a substantive due process challenge to the Ordinance's "Primary Residence Rule," under which the owner or tenant of a single-family home or a unit in a building with two to four residential units may not engage in home-sharing unless the residence is his or her "primary residence." (Am. Compl. ¶¶ 26-37, 69-88.)

The Ordinance authorizes the Commissioner of the City's Department of Business Affairs and Consumer Protection to make exceptions ("adjustments") to the Rule on a case-by-case basis "if, based on a review of 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." Chi. Muni. Code §§ 4-6-300(l)(l), 4-14-100(a). The Ordinance lists factors the Commissioner may consider in deciding whether to make an exception to the Rule, but only "by way of example and not limitation." *Id.* Plaintiffs allege that the Rule violates substantive due process because it fails to give the Commissioner sufficient objective criteria to guide his or her exercise of discretion in deciding whether to grant an adjustment. (Am. Compl. ¶¶ 81-83.)

Plaintiffs' Uniformity Clause Challenge to the 4% Surcharge

Count VII challenges the Ordinance's 4% surcharge on rentals of "vacation rentals" and "shared housing units" under the Uniformity Clause (Article IX, § 2) of the Illinois Constitution. (Am. Compl. ¶¶ 128-41.) Plaintiffs allege that the surcharge violates the Uniformity Clause

because, "[f]or purposes of taxation, there is no real and substantial difference between vacation rentals and shared housing units— whose guests are subject to [the] additional 4% tax— and other establishments included in the [City Code's] definition of 'hotel accommodations,' whose guests are not subject to that tax." (*Id.* ¶¶ 134-36.) Plaintiffs also allege that the surcharge violates the Uniformity Clause because its stated purpose— "to fund supportive services attached to permanent housing for homeless families and to fund supportive services and housing for the chronically homeless," Chi. Muni. Code § 3-24-030— bears no reasonable relationship to the object of the legislation. (Am. Compl. ¶¶ 137-38.)

In its previous motion to dismiss, the City argued that Plaintiffs' challenge to the surcharge failed because (1) Plaintiffs did not allege the existence of two classes of taxpayers, one subject to the tax and one not, and (2) the surcharge is based on a real and substantial difference between home-sharing guests and guests of other types of "hotel" accommodations. (Memo. in Support of 1st MTD 23-25.) The Court accepted the first argument but granted Plaintiffs leave to amend their complaint to correct the deficiency. (Order 21-23.) The Court rejected the City's "real and substantial differences" argument, however, because it was "based on facts outside the complaint." (*Id.* 22-23.)

Plaintiffs have amended their Uniformity Clause claim to remedy the "deficiency" the Court referenced by specifically alleging two classes of taxpayers: those who "stay (and pay taxes) only at vacation rentals or shared housing units in Chicago," and those who "stay (and pay taxes) only at hotels, bed-and-breakfasts, or other 'hotel accommodations' that are not vacation rentals or shared housing units." (Am. Compl. ¶ 133.)

Plaintiffs' Uniformity Clause Challenge to the Ordinance's Fees

Count VII further alleges that the Ordinance's discriminatory fees violate the Uniformity Clause. The Court dismissed Plaintiffs' original uniformity challenge to the fees because Plaintiffs did not "clearly identify which fees [they] complain of" and granted Plaintiffs leave to replead. (Order 23.) Plaintiffs have now amended their claim to make clear that the Ordinance imposes "different fee schemes for vacation rentals and shared housing units." (Am. Compl. ¶ 148.) Specifically, the Ordinance imposes a $250 license fee for a vacation rental license but does not impose any licensing fee on owners and tenants of shared housing units, instead requiring "short term residential rental intermediar[ies]" to pay a $10,000 license fee plus $60 for each "short term residential" rental listed on its "platform." (*Id.* ¶¶ 145-46.) Plaintiffs allege that the different fees for vacation rentals and shared housing units violate the Uniformity Clause because "the two types of rentals are virtually identical" and "the fees' purpose does not bear any reasonable relationship to the object of the Ordinance." (*Id*. ¶¶ 148-50.)

LEGAL STANDARD

In reviewing the sufficiency of a complaint under Section 2-615, the Court must accept as true all well-pleaded facts and reasonable inferences, and construe the allegations in the light most favorable to the Plaintiffs. The motion can only be granted if no set of facts can be proved that would entitle Plaintiff to recovery. *Doe v. Lawrence Hall Youth Servs.*, 2012 IL App (1st) 103758, ¶ 15. "A section 2-619 motion to dismiss admits the legal sufficiency of the plaintiff's complaint but asserts affirmative defenses or other matter" that would avoid or defeat the claim, *id.* at ¶ 16, but there, too, all properly pleaded facts must be accepted as true and the Court address only the questions of law presented by the pleadings. *Id.*

ARGUMENT

I. Plaintiffs have standing to bring their claims.

A. Plaintiffs have standing as Chicago taxpayers.

Plaintiffs have standing to bring their claims because, as the Court has already recognized, they are injured as Chicago taxpayers when the City uses their tax dollars to administer or enforce an unconstitutional ordinance. (Order 4-5.)

As the Court has stated, the "[i]llegal use of public funds is a special injury to taxpayers that may bestow standing" on them. (Order 4.) Indeed, "[i]t has long been the rule in Illinois that . . . taxpayers have a right to enjoin the misuse of public funds"— *i.e.*, that "[t]he misuse of [public] funds for illegal or unconstitutional purposes is a damage which entitles [taxpayers] to sue." *Barco Mfg. Co. v. Wright*, 10 Ill. 2d 157, 160 (1956). And the Illinois Supreme Court has long held that the use of public funds to administer an unconstitutional provision of law is a "misuse of public funds" that taxpayers have standing to challenge. *See Snow v. Dixon*, 66 Ill. 2d 443, 449-52 (1977) (taxpayer had standing to enjoin use of public resources to collect illegal tax); *Krebs v. Thompson*, 387 Ill. 471, 473 (1944) (taxpayer had standing to challenge licensing law for professional engineers because state used public funds to administer it); *see also Crusius v. Ill. Gaming Bd.*, 348 Ill. App. 3d 44, 51 (1st Dist. 2004) (taxpayer had standing to challenge statute regarding gambling licenses because state used public funds to administer it). The misuse of public funds injures taxpayers because they are the funds' "equitable owners" and will, by definition, be "liab[le] to replenish" treasury funds after they are spent. *Barco* 10 Ill. 2d at 160.

Here, each Plaintiff pays property taxes, and three Plaintiffs pay sales taxes, to the City of Chicago. (Am. Compl. ¶ 58.) Defendants have not rebutted Plaintiffs' allegations that the City is using general revenue funds— *i.e.*, Plaintiffs' tax dollars, which they are liable to replenish— to

implement the Ordinance. (*Id.* ¶¶ 59-60.) Therefore, under longstanding Illinois Supreme Court precedent, Plaintiffs have alleged an injury that establishes their standing.

As before, there is no merit in the City's arguments that taxpayer plaintiffs must allege that the provisions they challenge will cause a net financial loss to the City or cause them to face "imminent" liability to replenish the City's treasury. (*See* 2d MTD 3-4.) The use of public funds to administer an unconstitutional provision of law always injures taxpayers, whether the amount involved is "great or small." *Krebs*, 387 Ill. at 474-76. And the Illinois Supreme Court has repeatedly held that taxpayers have standing to challenge the use of public funds to administer an unconstitutional statute even if it generates a "profit" for the government. For example, in *Snow*, the Court held that 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 but generated millions in revenue. 66 Ill. 2d at 450-51; *see also Krebs*, 387 Ill. at 474-76 (taxpayer had standing regardless of whether fees statute generated would "result in a net profit to the State").

This Court applied these precedents in its order on the City's previous motion to dismiss and concluded that Plaintiffs have standing to bring their claims. (Order 4-5.) The City has presented no grounds for the Court to reconsider that conclusion, and it should not do so.

B. Plaintiffs have standing to challenge the Ordinance's home-sharing surcharge because it injures them.

In addition, Plaintiffs have standing to bring their Uniformity Clause challenge to the Ordinance's 4% surcharge on home-sharing rentals because it harms them. Although guests pay the surcharge, Plaintiffs must collect and remit it. Chi. Muni. Ord. § 3-24-050. The surcharge also increases the effective price of Plaintiffs' rentals, making it harder for them to compete with other types of accommodations. Therefore, Plaintiffs would benefit from the relief they seek, and

their claim presents an "actual controversy" the Court can hear. *See Waterfront Estates Dev., Inc. v. City of Palos Hills*, 232 Ill. App. 3d 367, 371-72 (1st Dist. 1992).

II. Plaintiffs have stated a claim that the Primary Residence Rule violates substantive due process because the Ordinance authorizes a city official to make exceptions based on vague, arbitrary criteria.

Plaintiffs have stated a claim that the Primary Residence Rule violates substantive due process because it allows the Commissioner to make or deny exceptions based on vague, arbitrary criteria.

A. An ordinance that allows officials to grant or deny a citizen's property rights based on vague, arbitrary criteria violates substantive due process.

A licensing ordinance that gives government officials unlimited or overly broad discretion to grant or deny a license violates due process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 366-67 (1886) (striking licensing ordinance where decisions were left to city officials' "mere will"); *see also Ward v. Vill. of Skokie*, 26 Ill. 2d 415, 422 (1962) (Klingbiel, J., concurring) ("Ordinances providing for an unrestricted power to approve or reject are in violation of basic constitutional protections and cannot be sustained."). A law grants overly broad discretion where the factors officials are to apply in deciding to grant someone a license or permit are vague and lack "sufficient standards" to guide the official's discretion. *Polyvend, Inc. v. Puckorius*, 77 Ill. 2d 287, 299 (1979). Due process requires that a law's application rest on "objective criteria or facts," not the "opinions and whims" of an individual or group. *Gen. Motors Corp. v. State Motor Vehicle Rev. Bd.*, 224 Ill. 2d 1, 24 (2007).

Therefore, Illinois courts strike down ordinance provisions that do not sufficiently constrain local officials' discretion to grant or deny a permit or license. For example, the Appellate Court has struck down ordinances that conditioned the issuance of a building permit on vague criteria, such as whether a building's features or materials would be "inappropriate."

See Waterfront Estates, 232 Ill. App. 3d at 377-78 (terms "inappropriate" and "inadequate" did not "adequately limit [the government's] discretion); *R.S.T. Builders, Inc. v. Vill. of Bolingbrook*, 141 Ill. App. 3d 41, 44 (3d Dist. 1986) (terms "harmonious conformance," "inappropriate materials," "durable quality," "good proportions," exposed accessories," and "monotony of design … fail[ed] to prescribe adequate standards"); *Pacesetter Homes, Inc. v. Vill. of Olympia Fields*, 104 Ill. App. 2d 218, 221, 225-26 (1st Dist. 1968) (ordinance that allowed denial of permit for "excessive similarity or dissimilarity of design" gave officials "too broad a discretion"); *see also Hanna v. City of Chicago*, 388 Ill. App. 3d 909, 916 (1st Dist. 2009) (terms "value," "important," "significant," and "unique," among others, in landmark-designation ordinance were "vague, ambiguous, and overly broad").

The City disregards all of this and essentially argues that the City Council is entitled to enact vague ordinances and leave it to City officials to determine what the law actually means as they enforce it, especially if the law does not impose criminal penalties. (*See* 2d MTD 5.) But, as the cases discussed above show, that is simply false. There is no merit in the City's argument that the Ordinance only has to "identify the 'persons and activities potentially subject to regulation,' 'harm sought to be prevented,' and 'general means intended to be available to the administrator to prevent the identified harm.'" (2d MTD 7, quoting *Stofer v. Motor Vehicle Cas. Co.*, 68 Ill. 2d 361, 372 (1977).) That might be all the legislature must do to guide an administrative agency with respect to the rules and regulations it may adopt. *See Stofer*, 68 Ill. 2d at 369-75 (considering whether statute provided "sufficient statutory directions against which to compare administrative regulations"). But nothing in the case law suggests that the legislature can provide such minimal guidance for an executive-branch official's *case-by-case* decisions regarding whether *particular citizens* may exercise their property rights.

B. Plaintiffs have sufficiently alleged that the Primary Residence Rule violates substantive due process because it allows the Commissioner to grant or deny exceptions based on vague, arbitrary criteria.

Plaintiffs have sufficiently alleged that the Primary Residence Rule violates substantive due process because it gives the Commissioner virtually unlimited discretion to grant or deny an adjustment based on "relevant" factors the Ordinance does not even identify and "example" factors that are vague and arbitrary.

1. The Ordinance's "overarching directive" does not sufficiently constrain the Commissioner's discretion.

The City argues that the Ordinance is not unduly vague because it gives the Commissioner a "clear, overarching directive" to "determine whether 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.'" (2d MTD 7, quoting Ordinance § 4-6-300(1).) But the Ordinance does not define "extraordinary burden" or "unique or unusual circumstances," so its "directive" is vague and depends on the Commissioner's personal, subjective opinions of what is "extraordinary" or "unusual" enough to warrant an adjustment. The Ordinance's reference to the "public's health, safety, or welfare" is likewise vague because opinions vary greatly on what will benefit the public's health, safety, or welfare. Indeed, in our system of government, questions about what will benefit the public's health, safety, or welfare are placed in the hands of legislators, who cannot delegate that authority to executive-branch officials by authorizing them to simply do whatever he or she thinks best.

The City relies on *Hill v. Relyea*, 34 Ill. 2d 552, 555 (1966) (*see* 2d MTD 7), but that case does not support the City's argument. *Hill* upheld a statute under which hospital superintendents could discharge patients whom a court had ordered to be hospitalized for mental treatment "as

the welfare of such person and of the community may require, under such rules and regulations as may be adopted by the Department [of Mental Health]."*Id.* Two features of *Hill* distinguish it from this case. First, the hospital superintendent's discretion was to be constrained by "rules and regulations" promulgated by the Department of Mental Health based on its expertise. *Id.* Second, hospital superintendents and their staffs have expertise and first-hand knowledge about assessment of mental patients that legislators lack. *Id.* at 556. Here, in contrast, the Commissioner's discretion is not constrained by regulations, and the Commissioner cannot be presumed to have specialized professional expertise about what will benefit the public or whether applicants' personal circumstances warrant granting them an adjustment.

2. The "example" factors the Ordinance identifies are vague and give the Commissioner virtually unlimited discretion.

Further, the Ordinance's examples of factors the Commissioner may consider are vague and unintelligible and therefore do not sufficiently constrain the Commissioner's discretion.

The "relevant geography" factor is vague and unintelligible because the Ordinance does not define that term. (Am. Compl. ¶ 83(a).) The City argues that "[p]ersons of common intelligence do not have to guess at the meaning" of the word "geography" (among other terms used in the factors) (2d MTD 8), but that misses the point. Even if most people understand the dictionary definition of "geography," that definition does not explain how "geography" is relevant to determining whether someone is entitled to an adjustment. Without such an explanation, the Commissioner can only decide for himself or herself in what ways "geography" is relevant, which can only lead to arbitrary results.

The term "relevant population density" likewise is vague and unintelligible because the Ordinance does not specify which geographical unit's population density is relevant. (Am. Compl. ¶ 83(b).) Nor does it specify how population density is relevant to whether an adjustment

would affect the public's health safety, or welfare. (*Id.*) This factor therefore allows the Commissioner to grant and deny adjustments based on his or her subjective, personal assessment of how population density relates to whether an adjustment is appropriate. (*Id.*)

The "legal nature and history of the applicant" factor is also vague and unintelligible because the Ordinance does not define it and because it authorizes the Commissioner to grant or deny an adjustment based on his or her subjective, personal view regarding an applicant's "legal nature" or "legal history." (Am. Compl. ¶ 83(c).) The Ordinance does not specify which aspects of an individual's "nature" or "history" are relevant, leaving it entirely up to the Commissioner to determine what facets of an applicant's legal past matter. (*Id.*) This creates obvious opportunities for abuse and unfairness, as citizens may be denied rights based on subjective judgments based on long-ago "legal" events, potentially including judgments about whether citizens have been sufficiently punished for past wrongdoing.

The "extraordinary economic hardship" factor is likewise vague, unintelligible, and undefined. (Am. Compl. ¶ 83(d).) The Ordinance does not specify how "economic hardship" is relevant to whether an adjustment would serve the public's health, safety, or welfare. This factor therefore authorizes the Commissioner to grant and deny adjustments based on nothing more than his or her subjective, personal assessment of applicants' need.

The City defends this factor by citing a case involving administrative review of a historic-preservation commission decision, *Zaruba v. Vill. of Oak Park*, 296 Ill. App. 3d 614 (1st Dist. 1998). That case applied a village ordinance that prohibited certain changes to buildings designated as "historic landmarks" but authorized exceptions where the village issued a "Certificate of Economic Hardship." *Id.* at 616. The ordinance specified that a "Certificate of Economic Hardship" was appropriate when a property designated as a landmark could not "be

put to a reasonable beneficial use or the owner [could not] obtain a reasonable economic return thereon without the proposed [change to the property]." *Id.* at 621-22. Therefore, the ordinance in *Zaruba* made relatively clear where its economic-hardship exception applied—in contrast with the Ordinance at issue here, which gives the Commissioner no similar guidance.

The "any police reports or other records of illegal activity or municipal code violations at the location" factor is also vague and arbitrary because it authorizes the Commissioner to grant or deny citizens' property rights based on unspecified "illegal activit[ies]" and "municipal code violations" that were not committed by the applicant, including even illegal actions of which the applicant was the victim. (Am. Compl. ¶ 83(e).) Further, many illegal activities and code violations have no bearing on whether granting an exception to the Rule would affect the public's health, safety, or welfare. (*Id.*)

Finally the "whether the affected neighbors support or object" factor is also vague, arbitrary, and not rationally related to the promotion of a legitimate interest. (Am. Comp. ¶ 83(f).) The Ordinance does not define "affected neighbors," and, worse, it authorizes the Commissioner to grant or deny property rights based on the subjective, personal, or privately-interested desires of particular private parties rather than the public's health, safety, or welfare. (*Id.*)

3. The requirement that the Commissioner state reasons for his or her decisions and the availability of judicial review do not cure the Ordinance's vagueness.

The City argues that the Ordinance constrains the Commissioner's discretion by requiring the Commissioner to make adjustment decisions within 60 days, stating his or her reasons, and by subjecting the Commissioner's decisions to judicial review. (2d MTD 8.) Neither of these things helps. A statement of reasons makes the Ordinance and the Commissioner's decisions no less inherently arbitrary. And the courts are no more capable of giving objective meaning to the

Ordinance's many vague, undefined terms than anyone else. "Without sufficient statutory directions . . . the mere existence of judicial review is not a meaningful safeguard against administrative abuses. . . . [U]nless found in the [ordinance], the restraints which the judiciary [would] apply to safeguard against the abuse of discretion . . . simply do not exist." *Stofer*, 68 Ill. 2d at 371.

4. Plaintiffs do not "benefit" from the Ordinance's vagueness.

Finally, there is no merit in the City's suggestion that Plaintiffs "could only benefit" from the Ordinance's vagueness because "[g]reater specificity" would make the Commissioner less able to grant adjustments. (2d MTD 9.) This amounts to an argument that no one is harmed when the government enacts laws taking away everyone's property rights and then arbitrarily gives them back to select individuals at will— an absurd position that is incompatible with the rule of law. Besides, as the cases striking down vague criteria for licensing and building-permit decisions recognize, vague criteria can harm applicants as easily as it can hurt them. And, in any event, Plaintiffs have an interest in preventing their tax dollars from being used to fund arbitrary, unconstitutional decision-making.

III. Plaintiffs have stated a claim that the Ordinance's surcharge on home-sharing violates the Uniformity Clause.

Plaintiffs have also stated a claim that the Ordinance's 4% surcharge on rentals of vacation rentals and shared housing units violates the Uniformity Clause (Article IX, § 2) of the Illinois Constitution, which provides:

> 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.

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. Metro. Pier & Exposition Auth.*, 172 Ill. 2d 243, 249 (1996). It requires any tax classification to be "based on a real and substantial difference between the people taxed and not taxed" and to "bear some reasonable relationship to the object of the legislation or to public policy." *Geja's Café v. Metro. Pier & Exposition Auth.*, 154 Ill. 2d 239, 247 (1992).

Once Plaintiffs establish a good-faith Uniformity Clause challenge, "[the] taxing body must produce a justification for its classifications." *Id.* at 248. *Only then* must Plaintiffs show that the justification is insufficient as a matter of law or unsupported by the facts. *Id.* at 248-49. Therefore, as this Court recognized in ruling on the City's previous motion to dismiss, even if the City states a "reasonably conceivable" justification for the different treatment of home-sharing units, it is not appropriate to dismiss Plaintiffs' claim as long as Plaintiffs could prove some set of facts that would persuade the Court the Defendants' justification is insufficient. (Order 22-23.)

The City argues that there are "real and substantial" differences between home-sharing units and other types of hotel accommodations by pointing to the zoning districts in which the different types of accommodations may exist: vacation rentals and shared housing units are allowed in all residential zoning districts, but bed-and-breakfasts are only allowed in high-density residential districts, and hotels are not allowed in residential districts at all. (2d MTD 12.) But the City has not explained how these zoning differences are "real and substantial" for Uniformity Clause purposes, and it is not obvious that whatever justifies treating properties differently for zoning purposes necessarily justifies treating them differently under the Uniformity Clause. Such an explanation would require facts outside the complaint, which the City has not presented— and cannot present— at this stage of the proceedings.

The City also argues that imposing the surcharge on home-sharing rentals, but not on hotel and B&B rentals, "bears a reasonable relationship to the object of the legislation or to public policy" because it "helps ensure that residential districts maintain their desired characteristics" and promotes "the availability of affordable housing" in a way that taxing other hotel accommodations would not. (2d MTD 12-13.) But this is an assertion of "factual matters outside the complaint," which, again, cannot support dismissal at this stage. (*See* Order 22-23.)

IV. Plaintiffs have stated a claim that the Ordinance's discriminatory fees violate the Uniformity Clause.

In attacking Plaintiffs' Uniformity Clause challenge to the Ordinance's fees, the City argues that Plaintiffs cannot complain of any discriminatory treatment because the fees for "B&Bs, vacation rentals and shared housing unit operators" are "identical"— all must pay $250 every two years. (2d MTD 14.) But that argument fails because it ignores owners or tenants of shared-housing units who are not "shared housing unit operators" (*i.e.*, people who rent out only one shared housing unit, *cf.* Chi. Muni. Ord. § 4-16-100), who are not subject to the $250 fee. Therefore, the City has not presented a basis for dismissing Plaintiffs' Uniformity Clause challenge to the Ordinance's fees.

CONCLUSION

Plaintiffs respectfully ask this Court to deny Defendants' motion to dismiss.

Respectfully Submitted,

LEILA MENDEZ, SHEILA SASSO,
ALONSO ZARAGOZA, AND MICHAEL LUCCIf

By: /s/ Jacob H. Huebert
One of their Attorneys

Liberty Justice Center
Cook County No. 49098
Jacob Huebert (#6305339)
Jeffrey Schwab (#6290710)
190 S. LaSalle Street, Suite 1500
Chicago, Illinois 60603
(312) 263-7668
(312) 263-7702 (fax)
jhuebert@libertyjusticecenter.org
jschwab@libertyjusticecenter.org

Goldwater Institute
Timothy Sandefur (#6325089 / pro hac vice #61192)
Christina Sandefur (#6325088 / pro hac vice # 61186)
500 E. Coronado Road
Phoenix, Arizona 85004
(602) 462-5000
(602) 256-7045 (fax)
tsandefur@goldwaterinstitute.org
csandefur@goldwaterinstitute.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I, Jacob Huebert, an attorney, hereby certify that on January 19, 2018, I served the foregoing Response to Defendants' Section 2-619.1 Motion to Dismiss Plaintiffs' Amended Complaint on Defendants' counsel by electronic mail to Andrew W. Worseck (Andrew.Worseck@cityofchicago.org) and Ellen W. McLaughlin (Ellen.McLaughlin@cityofchicago.org).

/s/ Jacob H. Huebert
Jacob H. Huebert