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

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

SECOND AMENDED COMPLAINT

Introduction

1. This is a civil-rights lawsuit to vindicate the constitutional rights of homeowners who wish to offer their private homes to overnight guests but have been arbitrarily and irrationally deprived of the right to do so by the City of Chicago's draconian and unintelligible 58-page Shared Housing Ordinance (Ordinance No. O2016-5111, hereinafter the "Ordinance") and the subsequent amendment to the Ordinance (Ordinance No. O2018-4988, hereinafter the "Amendment").

2. Home-sharing is a long-standing American tradition, whereby property owners allow people to stay in their homes, sometimes for money, rather than staying in a hotel. The so-called "sharing economy" has empowered homeowners and travelers to connect better than ever before. Online home-sharing platforms like Airbnb and Homeaway enable homeowners to rent their homes to make money and help pay their mortgages. Consumers benefit from more choice and lower prices; communities attract visitors who support local businesses; and people are incentivized to buy dilapidated homes and fix them up.

3. Through the Ordinance, however, the City has imposed draconian and

unintelligible restrictions on home-sharing that hurt communities, violate constitutional rights, and punish responsible homeowners.

4. Plaintiffs Leila Mendez and Alonso Zaragoza bring this complaint for declaratory and injunctive relief challenging the Ordinance as vague, unintelligible, and an unconstitutional intrusion on their rights to privacy, due process of law, equal protection, and other rights. Plaintiffs seek a declaratory judgment that the Ordinance is invalid and a permanent injunction against its further enforcement.

Parties

5. Plaintiff Leila Mendez is a resident of Cook County and Chicago, Illinois, who owns a home in Chicago.

6. Plaintiff Alonso Zaragoza is a resident of Cook County and Chicago, Illinois, who owns a three-unit residential building in Chicago.

7. Defendant City of Chicago (the "City") is an Illinois Municipal Corporation.

8. Defendant Rosa Escareno, sued in her official capacity, is the Commissioner of the City of Chicago Department of Business Affairs and Consumer Protection ("Commissioner") and is responsible for enforcing the Ordinance.

Jurisdiction

9. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2-701 because Plaintiffs seek a declaratory judgment that the Ordinance violates various provisions of the Illinois Constitution.

10. This Court has personal jurisdiction over the Defendants because this lawsuit arises from Defendants' actions in the State of Illinois.

11. Venue is proper in Cook County because Plaintiffs reside in Cook County,

Illinois, and Defendants are located in Cook County.

Factual Allegations

12. The Chicago City Council passed the Ordinance on June 22, 2016, and Mayor Rahm Emanuel signed it on June 24, 2016.

13. Several provisions of the Ordinance took effect on July 15, 2016, including Section 2, which amends the Chicago Municipal Code's definition of "hotel accommodations" to include home-sharing arrangements, imposes an additional 4% tax on home-sharing rentals, and provides for rescission of shared-housing registrations; and the provisions of Section 8 which create Chi. Muni. Code §§ 4-13-260(a)(9) (prohibiting owners of units from renting them out through home sharing arrangements where a building's owner has prohibited it) and 4-13-270(c) (establishing a list of buildings whose owners have prohibited them from being rented out through home sharing arrangements).

14. All other provisions of the original Ordinance became effective on December 17, 2016.

15. The Chicago City Council passed the Amendment to the Ordinance on July 25, 2018, and it became law on or before the City Council's next meeting on September 20, 2018 pursuant to 65 ILCS 5/3.1-40-45.

16. The Amendment will take effect on the first day of the first month that begins at least 60 days after its passage and publication. It creates Chi. Muni. Code § 3-24-030(C), which imposes a 2% tax on home-sharing rentals, in addition to the 4% tax on home-sharing rentals that was imposed by the original Ordinance.

Definitions

17. The Ordinance establishes two categories of shared-housing arrangements, which it calls "vacation rentals" and "shared housing units." *Compare* Chi. Muni. Code § 4-14-010 *with*

Chi. Muni. Code § 4-6-300(a).

18. The Ordinance's definitions of these two terms are nearly identical, except that they are mutually exclusive.

19. The Ordinance defines a "vacation rental" as "a dwelling unit that contains 6 or fewer sleeping rooms that are available for rent or for hire for transient occupancy by guests," ***not*** including "(1) single-room occupancy buildings or bed-and-breakfast establishments, as those terms are defined in Chi. Muni. Code § 13-4-010; (2) hotels, as that term is defined in Chi. Muni. Code § 4-6-180; (3) a dwelling unit for which a tenant has a month-to-month rental agreement and the rental payments are paid on a monthly basis; or (4) corporate housing; (5) guest suites; or (6) shared housing units registered pursuant to Chapter 4-14 of this Code." Chi. Muni. Code § 4-6-300.

20. The Ordinance defines a "shared housing unit" as "a dwelling unit containing 6 or fewer sleeping rooms that is rented, or any portion therein is rented, for transient occupancy by guests," not including "(1) single-room occupancy buildings; (2) hotels; (3) corporate housing; (4) bed-and-breakfast establishments, (5) guest suites; *or (6) vacation rentals*." Chi. Muni. Code § 4-14-010 (emphasis added).

21. Consequently, a property is classified as a shared housing unit if it (a) meets the criteria specified, which are the same criteria that define a vacation rental, but (b) is not a vacation rental.

Warrantless Searches

22. The Ordinance requires any property owner who rents out a room or home through a shared-housing arrangement classified as a "vacation rental" to submit to warrantless inspections by city officials or third parties. Chi. Muni. Code § 4-6-300(d)(2)(e)(1). The

Ordinance also subjects all vacation rentals to an unlimited number of inspections by the building commissioner or any third party he or she may designate "*at any time and in any manner*." Chi. Muni. Code § 4-6-300(e)(1) (emphasis added).

23. The Ordinance subjects a "shared housing unit operated by a shared housing unit operator" to inspections by the building commissioner (or a third party) "at least once every two years." Chi. Muni. Code § 4-16-230.

24. The Ordinance does not require the building commissioner to find probable cause or to obtain a warrant before ordering an inspection of a "vacation rental" or a "shared housing unit."

25. Through these provisions, the Ordinance delegates unlimited and unbounded discretion to the building commissioner to conduct, or to commission a third party to conduct, unrestricted searches of homes for any reason, at any time, and in any manner.

The Primary Residence Rule

26. The Ordinance also includes rules prohibiting the use of certain homes as vacation rentals or shared housing units if they are not the owner's "primary residence."

27. The Ordinance defines a "platform" as "an internet-enabled application, mobile application, or any other digital platform used by a short term residential rental intermediary to connect guests with a short term residential rental provider." Chi. Muni. Code § 4-13-100. Short-term residential rental intermediary is defined as "any person who, for compensation or a fee: (1) uses a platform to connect guests with a short term residential rental provider for the purpose of renting a short term residential rental, and (2) primarily lists shared housing units on its platform." *Id*. "Advertising platform" is defined as "any person who, for compensation or a fee: (1) uses a platform to connect guests with a short term residential rental provider for the purpose

of renting a short term residential rental, and (2) primarily lists licensed bed-and-breakfast establishments, vacation rentals, or hotels on its platform or dwelling units that require a license under this Code to engage in the business of a short term residential rental." *Id.*

28. The Ordinance prohibits the owner of a single family home from listing that property on a "platform"—regardless of whether that home is defined as a "vacation rental" or a "shared housing unit"—and/or from renting the property as either a "vacation rental" or a "shared housing unit," unless that single family home is the owner's "primary residence." Chi. Muni. Code §§ 4-6-300(h)(8), 4-14-060(d).

29. The Ordinance also prohibits the owner of a unit within a building that has two, three, or four dwelling units (inclusive) from listing that property on a "platform" and from renting out the property as a vacation rental or a shared housing unit, unless that unit is: (1) the "primary residence" of the vacation-rental licensee or shared-housing host; and (2) the only unit in the building that is or will be used as a vacation rental or shared housing unit. Chi. Muni. Code §§ 4-6-300(h)(9), 4-14-060(e).

30. These two prohibitions – hereinafter referred to individually and collectively as the "Primary Residence Rule" – do not apply to owners of homes located in buildings with five or more dwelling units. Those owners may offer their homes as "vacation rentals" or "shared housing units" regardless of whether or not the homes are the owner's primary residence. Chi. Muni. Code §§ 4-6-300(h)(1); 4-14-060(f).

31. Because of the Primary Residence Rule for single-family homes, the Ordinance requires an applicant seeking a license to use a single-family home as a vacation rental to submit with his or her application "an attestation that such home is the applicant's or licensee's primary residence" or, alternatively, that one of the specified exceptions to the Primary Residence Rule

applies. Chi. Muni. Code § 4-6-300(b)(8). The Ordinance also requires an applicant seeking to use a unit in a building with two, three, or four units as a vacation rental to submit with his or her application an attestation that the unit "(i) is the applicant's or licensee's primary residence; and (ii) is the only dwelling unit in the building that is or will be used as a vacation rental or shared housing unit, in any combination," or, alternatively, that one of the specified exceptions to the rule applies. Chi. Muni. Code. § 4-6-300(b)(9).

32. The Ordinance makes several exceptions to the Primary Residence Rule:

33. The ***first*** exception to the Primary Residence Rule is that the prohibitions do *not* apply if the owner of the home or unit in question "is on active military duty and . . . has appointed a designated agent or employee to manage, control and reside in the [home or unit] during the [owner's] absence." Chi. Muni. Code §§ 4-6-300(h)(8), (9); 4-14-060(d), (e).

34. The ***second*** exception to the Primary Residence Rule is that the prohibitions do not apply if the owner has received a "commissioner's adjustment." Chi. Muni Code §§ 4-6-300(h)(8), (9); 4-14-060(d), (e).

35. Under Chi. Muni. Code §§ 4-6-300(l) and 4-14-100(a), the Commissioner may approve such an "adjustment" – *i.e.*, an exception to the Primary Residence Rule – "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."

36. The Ordinance lists factors that the Commissioner may consider in deciding whether to make an exception to the Primary Residence Rule. The Ordinance explicitly declares that the factors are "by way of example and not limitation." Chi. Muni. Code §§ 4-6-300(l), 4-

14-100(a). Those factors include: "(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 the 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." *Id.*

37. The ***third*** exception to the Primary Residence Rule exempts vacation-rental applicants or licensees who "held a valid vacation rental license, as of June 22, 2016, for the [home or unit in question]," Chi. Muni. Code §§ 4-6-300(h)(8), (9), and shared housing applicants whose home or unit "was properly licensed, as of June 22, 2016, as a non-owner occupied vacation rental," Chi. Muni. Code §§ 4-14-060(d), (e).

Rental Caps

38. The Ordinance limits the number of units within a building that may be used as either a "vacation rental" or a "shared housing unit."

39. Specifically, the Ordinance prohibits a home from being used as a "vacation rental" or "shared housing unit" if it is a dwelling unit in a building with five or more units and "more than six dwelling units in the building, or one-quarter of the total dwelling units in the building, whichever is less, are or will be used" as either a "vacation rental" or a "shared housing unit." Chi. Muni. Code §§ 4-6-300(h)(10), 4-14-060(f).

40. Similarly, the Ordinance prohibits a home in a building with four or fewer units from being used as a vacation rental or a shared housing unit if another short term rental is already registered in the same building. Chi. Muni. Code §§ 4-6-300(h)(9), 4-14-060(e).

Noise Rules

41. The Ordinance provides that a vacation rental license or shared housing unit registration may be suspended if a unit has been the situs of certain "objectionable conditions" on three or more occasions, while rented to guests. Chi. Muni. Code §§ 4-6-300(j)(2)(ii), 4-14-080(c)(2).

42. The "objectionable conditions" that can lead to a license or registration suspension include, among others, "excessive loud noise," defined as "any noise, generated from within or having a nexus to the rental of the shared housing unit [*sic*], 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 vacation rental." Chi. Muni. Code §§ 4-6-300(j)(2)(ii), 4-14-080(c)(2).

43. The Ordinance does not define "average conversational level." This term is vague, unintelligible, and provides no limits to, or guidelines for, the exercise of official discretion when determining what "level" is "average."

44. The Ordinance imposes no such noise rule, or any equivalent rule, on other rental entities regulated by this or any other Ordinance. The Chicago Municipal Code sections restricting noise in general (which apply to entities the Ordinance defines as "bed-and-breakfast establishments" or "hotel accommodations") specifically exempt "noise created by unamplified human voices." Chi. Muni. Code §§ 8-32-150, 8-32-170. The Ordinance, however, contains no similar exemption for unamplified human voices in vacation rentals or shared housing units. Further, the restrictions on noise in bed-and-breakfasts or hotels apply to noise "on the public way" or "on any private open space," not noise "within or having a nexus to" a particular property.

Discriminatory Taxation

45. The Ordinance imposes an extra 4 percent tax on "vacation rentals" and "shared housing units" that it does not impose on other rentals the Ordinance defines as "hotel accommodations."

46. The subsequent Amendment imposes an additional 2 percent tax on "vacation rentals" and "shared housing units" that it does not impose on other rentals the Ordinance defines as "hotel accommodations."

47. The Ordinance defines "hotel accommodations" to include "a room or rooms in any building or structure kept, used, or maintained as, or advertised or held out to the public to be an inn, motel, hotel, apartment hotel, lodging house, bed-and-breakfast establishment, vacation rental, . . . shared housing unit, dormitory, or similar place, where sleeping, rooming, office, conference or exhibition accommodations are furnished for lease or rent, whether with or without meals." Chi. Muni. Code § 3-14-020(A)(4).

48. The Code imposes a 4.5 percent tax on the gross rental or leasing charge for any hotel accommodation in the City, and also imposes additional taxes of 4 percent plus 2 percent (for a total of 6 percent) of gross rental or leasing charges for any "vacation rental" or "shared housing unit." Chi. Muni. Code § 3-24-030. These additional taxes of 4 percent and 2 percent apply *only* to vacation rentals and shared housing units. They do not apply to any other "hotel accommodations," such as inns, hotels, motels, lodging houses, or "bed-and-breakfast establishments."

Discriminatory Fees

49. The Ordinance imposes different fees on "vacation rentals" and "shared housing units" than it imposes on other entities that the Ordinance defines as "hotel accommodations."

50. To operate a hotel in Chicago, one must obtain a regulated business license from the City. Chi. Muni. Code § 4-6-180(b). That license costs $250, plus $2.20 per room, Chi. Muni. Code § 4-5-010(3), and must be paid every 2 years. Chi. Muni. Code § 4-5-010.

51. To operate a "bed-and-breakfast establishment" in Chicago, one must obtain a regulated business license to engage in the business of bed-and-breakfast establishment from the City. Chi. Muni. Code § 4-6-290(b). Such a license costs $250, Chi. Muni. Code 4-5-010(2), and must be paid every two years. Chi. Muni. Code § 4-5-010.

52. To operate a "vacation rental" in Chicago, one must obtain a regulated business license from the City authorizing the owner of a dwelling unit to rent or lease such dwelling unit as a vacation rental. Chi. Muni. Code § 4-6-300(b). Such a license costs $250, Chi. Muni. Code 4-5-010(2), and must be paid every 2 years. Chi. Muni. Code § 4-5-010. A separate license is required for each dwelling unit used as a "vacation rental." Chi. Muni. Code § 4-6-300(d)(1).

53. Unlike the owner of a "vacation rental," the owner or tenant of a single "shared housing unit" is *not* required to obtain a license or paying a licensing fee to the City. Instead, a "short term residential rental intermediary" must register annually with the City on behalf of the tenant or owner. Chi. Muni. Code § 4-13-230(a). In addition, the "short term residential rental intermediary" must pay a $10,000 license fee plus $60 for each "short term residential" rental listed on its "platform." Chi. Muni. Code § 4-5-010(36).

54. Further, any person who is a "shared housing unit" host for more than one dwelling unit ("Shared Housing Unit Operator") must obtain a license. Chi. Muni. Code § 4-16-200. A shared housing unit operator license costs $250, Chi. Muni. Code § 4-5-010(38), and must be renewed every two years. Chi. Muni. Code § 4-5-010.

Injuries to Plaintiffs

55. Plaintiffs Leila Mendez and Alonso Zaragoza use the Airbnb platform to rent out rooms in their homes in Chicago. Accordingly, they are subject to the Ordinance's rules that apply to homeowners who rent out their homes as "shared housing units."

56. Because they rent out rooms in their respective homes as "shared housing units," Ms. Mendez and Mr. Zaragoza will be subject to warrantless searches of their respective homes as set forth above; they also must comply with – and will be subject to having their shared housing unit registrations revoked for violations of – the "excessive noise" rules described above.

57. In addition, Mr. Zaragoza would like to use the Airbnb platform to rent out a dwelling unit in a three-unit residential building he owns in Chicago; because the unit is not his primary residence, however, the Ordinance prohibits him from doing so.

58. As Chicago residents and homeowners, Plaintiffs Mendez and Zaragoza pay sales taxes and property taxes to the City of Chicago.

59. The City uses public funds, including general revenue funds, to implement and enforce all of the foregoing provisions of the Ordinance.

60. Accordingly, Plaintiffs are injured when the City of Chicago uses public funds, which they will be liable to replenish as Chicago taxpayers, for an unconstitutional or otherwise illegal activity.

COUNT I
The Ordinance authorizes unreasonable searches and invasions of privacy.
(Illinois Constitution Article I, Section 6)

61. Plaintiffs reallege the preceding paragraphs of this Complaint as though fully set forth herein.

62. Article I, section 6 of the Illinois Constitution provides:

> The people 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. No warrant shall issue without probable cause, supported by affidavit particularly describing the place to be searched and the persons or things to be seized.

63. Because the Ordinance empowers the building commissioner to conduct unrestricted warrantless administrative searches of residential property, it violates Plaintiffs' and their guests' constitutional rights to privacy and protection against unreasonable searches and seizures under Article I Section 6 of the Illinois Constitution.

64. The Ordinance injures Plaintiffs because it subjects them to unconstitutional searches of their respective homes in Chicago, which they rent out as shared housing units.

65. The Ordinance also injures Plaintiffs because they will be liable, as Chicago taxpayers, to replenish the public funds the City uses to conduct unconstitutional searches pursuant to the Ordinance.

66. Although the Court dismissed this claim in its order of October 13, 1017, Plaintiffs allege this claim to preserve it for appeal. *See Bonhomme v. St. James,* 2012 IL 112393, at ¶ 17 (2012) (explaining that an amended complaint must refer to or adopt dismissed causes of action to preserve them for appeal).

67. Because the Court dismissed this claim for lack of ripeness because the City of Chicago had not yet enacted rules and regulations to govern its searches under the ordinance, Plaintiffs reserve the right to pursue this claim if and when the City enacts such rules or regulations or when the City conducts searches under the Ordinance in the absence of rules and regulations.

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment that the Ordinance's authorizations of unrestricted warrantless administrative searches of residential property in Chi. Muni. Code §§ 4-6-300(e)(1) and 4-16-230 violate Article I, Section 6, of the Illinois Constitution;

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from conducting warrantless searches pursuant to Chi. Muni. Code §§ 4-6-300(e)(1) and 4-16-230;

C. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from using public funds or public resources to conduct warrantless searches pursuant to Chi. Muni. Code §§ 4-6-300(e)(1) and 4-16-230;

D. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to 740 ILCS 23/5(c) and any other applicable law; and

E. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT II
The Ordinance's "primary residence" requirement violates substantive due process.
(Illinois Constitution Article I, Section 2)

68. Plaintiffs reallege the preceding paragraphs of this Complaint as though fully set forth herein.

69. The Due Process Clause of the Illinois Constitution (Article I, Section 2) provides that "[n]o person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws."

70. The Due Process Clause of the Illinois Constitution protects the right of Illinoisans to use their private property as they see fit, subject only to regulations that are rationally related to the public's health, safety, or welfare.

71. Plaintiffs allege that the City of Chicago's home-rule authority to regulate the use

of private property within the City does not entitle it to enact restrictions on the use of private property that bear no reasonable relationship to the public's health, safety, or welfare. *See Chicago Title & Trust Co. v. Lombard*, 19 Ill. 2d 98, 105 (1960).

72. Chi. Muni. Code §§ 4-6-300(h)(8) and 4-14-060(d) violate the right to due process, both on their face and as applied, to the extent that they prohibit an owner of private property in Chicago from using a single-family home as a vacation rental or shared housing unit simply because the home is not the owner's primary residence.

73. Chi. Muni. Code §§ 4-6-300(h)(9) and 4-14-060(e) likewise violate the right to due process, both on their face and as applied, to the extent that they prohibit an owner of a dwelling unit in a building with two, three, or four dwelling units from using his or her unit as a vacation rental or shared housing unit simply because the unit is not the owner's primary residence.

74. The Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(8), (9) and 4-14-060(d), (e), is not rationally related to any legitimate government interest and therefore is not a valid exercise of the City's police power to protect the public's health, safety, or welfare.

75. Specifically, restricting *who* may rent out a single-family home or dwelling unit in a building with two, three, or four units as a vacation rental or shared housing unit bears no relationship to the public's health, safety, or welfare.

76. The City has no reasonable basis for concluding that guests staying at homes which are the primary residences of the owners would pose a lesser threat to the public's health, safety, or welfare than would guests who stay at homes which are not the primary residences of their owners.

77. A regulation actually directed toward protecting the public's health, safety, or

welfare would address *how* such homes and units are used – *e.g.*, by prohibiting specific nuisance activities or specified noise levels, imposing mandates on property management companies, etc., so as to ensure that actions taken by guests in a vacation rental or shared housing unit do not harm others. Limiting allowable ownership accomplishes none of these purposes. The City can protect quiet, clean, and safe neighborhoods by, for example, implementing rules to limit noise, enforce parking restrictions, and restricting other specific nuisances.

78. Therefore, because the Primary Residence Rule bears no reasonable relationship to how vacation rentals and shared housing units are used, it bears no rational relationship to the public's health, safety, or welfare.

79. For these reasons, the Primary Residence Rule violates the right to due process of law guaranteed by Article I, Section 2 of the Illinois Constitution on its face and as applied to Plaintiffs.

80. In addition, Chi. Muni. Code §§ 4-6-300(l) and 4-14-100(a) give the Commissioner unbounded and unbridled discretion to make exceptions to the Primary Residence Rule under vague, unintelligible, and undefined criteria. This allows the Commissioner to exercise arbitrary and unlimited discretion to permit or deny a citizen the right to use a single-family home as a vacation rental or shared housing unit.

81. Specifically, the Ordinance gives the Commissioner excessively broad discretion by failing to provide sufficient objective criteria to guide the Commissioner's exercise of discretion in deciding whether to make an exception to the Primary Residence Rule. The Ordinance gives the Commissioner arbitrary power by allowing him or her to consider factors not listed in the Ordinance in deciding whether to grant an exception to the Primary Residence

Rule.

82. Further, the factors the Ordinance does authorize the Commissioner to consider when deciding whether to grant an exception to the Primary Residence Rule are vague, arbitrary, undefined, unintelligible, and not reasonably related to the public's health, safety, or welfare. Specifically:

a. "[T]he relevant geography" is vague and unintelligible because the Ordinance does not define that term, and it could therefore mean virtually anything the Commissioner wants it to mean that relates in any way to "geography." The Ordinance thus allows the Commissioner to grant or deny an exception to the Primary Residence Rule based on his or her subjective, personal assessment of how unspecified geographical factors may relate to the granting or denial of exceptions.

b. "[T]he relevant population density" is vague and unintelligible because the Ordinance does not specify which geographical unit's population density is relevant, nor does it specify in what way population density is relevant to whether an exception to the Primary Residence Rule would affect the public's health, safety, or welfare, and because the Ordinance allows the Commissioner to grant or deny an exception to the Primary Residence Rule based on his or her subjective, personal assessment of how population density in an unspecified location relates to the granting or denial of exceptions.

c. "[T]he legal nature and history of the applicant" is vague and unintelligible because the Ordinance does not define "legal nature and history of the applicant" and because it authorizes the Commissioner to grant or deny an exception to the Primary Residence Rule based on his subjective, personal view regarding an applicant's "legal nature" or "legal history," even if those matters are entirely unrelated to public health, safety, or welfare, or to the applicant's

operation of a vacation rental or shared housing unit. Nor does the Ordinance specify in what way the "legal nature" or the "legal history" of the applicant is relevant to whether an exception to the Primary Residence Rule should be granted.

d. "[A]ny extraordinary economic hardship to the applicant" is vague and unintelligible because the Ordinance does not define "extraordinary economic hardship" or explain how the Commissioner is to determine what qualifies as "hardship," and because the Ordinance allows the Commissioner to grant or deny an exception to the Primary Residence Rule based on his or her subjective, personal assessment of an applicant's economic need, which bears no relationship to protecting the public's health, safety, or welfare. Nor does the Ordinance specify in what way "economic hardship" is relevant to whether an exception to the Primary Residence Rule would serve the public's health, safety, or welfare.

e. "[A]ny police reports or other records of illegal activity or municipal code violations at the location" is vague and arbitrary because it authorizes the Commissioner to grant or deny property rights based on "illegal activity" and "municipal code violations" that were not committed by the applicant, including even illegal actions of which the applicant was the victim. Also, this criterion is vague and arbitrary because illegal activities and municipal code violations occurring at a location have no necessary relationship to whether granting an exception to the Primary Residence Rule would affect the public's health, safety, or welfare.

f. "[W]hether the affected neighbors support or object to the proposed use" is also vague, arbitrary, and not rationally related to the promotion of a legitimate government interest. The Ordinance does not define "affected neighbors" and 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.

83. On its face, this grant of arbitrary power to the Commissioner violates the right to due process of law guaranteed by Article I, Section 2 of the Illinois Constitution.

84. The Primary Residence Rule injures Plaintiff Alonso Zaragoza because it prevents him from renting out a unit in the three-unit residential building in Chicago that he owns because the unit is not his primary residence.

85. The Primary Residence Rule injures Plaintiffs because they will be liable, as taxpayers, to replenish the public funds the City uses to implement and enforce it.

86. The Commissioner's exercise of arbitrary power in considering whether to grant an exception to the Primary Residence Rule likewise injures Plaintiffs because they will be liable, as Chicago taxpayers, to replenish the public funds used to fund the Commissioner's activity.

87. The Court dismissed this claim (Count III of Plaintiffs' original complaint) in its Order of October 13, 2017, except to the extent that it is based on the Commissioner adjustment exception to the Primary Residence Rule. It dismissed the rest of this claim in its Order of April 2, 2018. Plaintiff alleges the dismissed bases for this claim to preserve them for appeal. *See Bonhomme v. St. James*, 2012 IL 112393, at ¶17 (2012) (explaining that an amended complaint must refer to or adopt dismissed causes of action to preserve them for appeal).

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment that the Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(8) and 4-14-060(d) is unconstitutional, both on its face and as applied, because it violates the due process guarantee of Article I, Section 2 of the Illinois Constitution;

B. Enter a declaratory judgment that the Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(9) and 4-14-060(e) is unconstitutional, both on its face and as applied, because it

violates the due process guarantee of Article I, Section 2 of the Illinois Constitution;

C. Enter a declaratory judgment that, by granting the Commissioner arbitrary power to make exceptions to the foregoing rules, Chi. Muni. Code §§ 4-6-300(l) and 4-14-100(a) are unconstitutional, both on their face and as applied, because they violate the due process guarantee of Article I, Section 2 of the Illinois Constitution;

D. Enter a permanent injunction prohibiting Defendants from enforcing the Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(8), (9) and 4-14-060(d), (e);

E. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from using public funds or public resources to implement or enforce the Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(8), (9) and 4-14-060(d), (e);

E. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to 740 ILCS 23/5(c) and any other applicable law;

F. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT III
The Ordinance's Primary Residence Rule violates the right to equal protection under the law.
(Illinois Constitution Article I, Section 2)

88. Plaintiffs reallege the preceding paragraphs of this Complaint as though fully set forth herein.

89. The Ordinance does not impose the Primary Residence Rule set forth above on owners of homes located in buildings with five or more dwelling units. Instead, those owners may offer their homes as "vacation rentals" or "shared housing units" regardless of whether or not the homes are the owner's primary residence. Chi. Muni. Code § 4-6-300(h)(1) (vacation rentals); § 4-14-060(f) (shared housing units).

90. This discrimination is irrational and arbitrary, and it violates the right to equal

protection of the law of people who wish to offer homes that they own, but that are not their primary residences, as vacation rentals or shared housing units. This discrimination is not rationally related to any legitimate government interest and therefore is not a valid exercise of the City's police power to protect the public's health, safety, or welfare.

91. Specifically, forbidding the owner of a unit in a building with two, three, or four units from renting the unit out as a vacation rental or shared housing unit because the unit is not the owner's primary residence – while allowing owner of a unit in a building with more than four units to rent the unit out as a vacation rental or shared housing unit, even if it is *not* the owner's primary residence – bears no relationship to the public's health, safety, or welfare.

92. The City has no reasonable basis for believing that guests staying at homes of *more than four units* that are not owned by their primary residents would pose a lesser threat to the public's health, safety, or welfare than guests who stay at homes of *two, three, or four units*, that are not owned by people who are not the homes' primary residents.

93. A regulation actually directed toward protecting the public's health, safety, or welfare would address *how* those homes or units are used – *i.e.*, it would be directed at ensuring that actions taken by guests in a vacation rental or shared housing unit do not harm others or create nuisances. For example, the City can protect quiet, clean, and safe neighborhoods by implementing rules to limit noise, enforce parking restrictions, and deal with other nuisances.

94. By imposing restrictions on property based not on the use of that property but on the irrelevant and arbitrary criterion of whether the property contains four units or fewer, the Ordinance imposes a form of unconstitutional discrimination. This discrimination injures Plaintiff Alonso Zaragoza because it prevents him from renting out a unit in the three-unit residential building in Chicago that he owns because the unit is not his primary residence.

95. This discrimination also injures Plaintiffs because, as Chicago taxpayers, they will be liable to replenish the public funds Defendants use to implement and enforce the Primary Residence Rule.

96. Although the Court dismissed this claim (Count IV of Plaintiffs' original complaint) in its order of October 13, 1017, Plaintiffs allege this claim to preserve it for appeal. *See Bonhomme v. St. James*, 2012 IL 112393, at ¶17 (2012) (explaining that an amended complaint must refer to or adopt dismissed causes of action to preserve them for appeal).

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment that the Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(8) and 4-14-060(d) is unconstitutional, both on its face and as applied, because it violates the equal protection guarantee of Article I, Section 2 of the Illinois Constitution;

B. Enter a declaratory judgment that the Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(9) and 4-14-060(e) is unconstitutional, both on its face and as applied, because they violate the equal protection guarantee of Article I, Section 2 of the Illinois Constitution;

C. Enter a declaratory judgment that, by granting the Commissioner arbitrary power to make exceptions to the foregoing rules, Chi. Muni. Code §§ 4-6-300(l) and 4-14-100(a) are unconstitutional, both on their face and as applied, because they violate the equal protection guarantee of Article I, Section 2 of the Illinois Constitution;

D. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from enforcing the Primary Residence Rule of Chi. Muni. Code §§ 4-6-300(h)(8), (9) and 4-14-060(d), (e);

E. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from using public funds or public resources to implement or enforce the Primary Residence Rule

of Chi. Muni. Code §§ 4-6-300(h)(8), (9) and 4-14-060(d), (e);

F. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to 740 ILCS 23/5(c) and any other applicable law;

G. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT IV
The Ordinance's rental cap violates substantive due process.
(Illinois Constitution Article I, Section 2)

97. Plaintiffs reallege the preceding paragraphs of this Complaint as though fully set forth herein.

98. The rental-cap provisions of Chi. Muni. Code §§ 4-6-300(h)(9), (10) and 4-14-060(e), (f), which limit the number of units in a building that may be used as "vacation rentals" or "shared housing units," are not related to any legitimate government interest and therefore are not a valid exercise of the City's police power to protect the public's health, safety, or welfare.

99. The rental-cap provisions are not tied to how often – or even *whether* – a property is actually rented out to guests. Rather, the caps are triggered by a property owner merely obtaining a license to rent out a property as a vacation rental, or by registering a home as a shared housing unit, even if he or she never actually rents out the property at all.

100. The City has no rational foundation for concluding that restricting the number of vacation rentals or shared housing units within a building, as the rental cap provisions do, protects the public's health, safety, or welfare.

101. A regulation actually directed toward protecting the public's health, safety, or welfare would address *whether* and *how* such units are used – *i.e.*, it would be directed at ensuring that actions taken by guests in a vacation rental or shared housing unit do not harm others.

102. For example, the City can protect quiet, clean, and safe neighborhoods by

implementing rules to limit noise, enforce parking restrictions, and prohibit other nuisance activities.

103. The only purpose of the rental-cap provisions is to protect the traditional hotel industry against legitimate economic competition from property owners classified as "vacation rentals" or "shared housing units."

104. Protecting the hotel industry against competition at the expense of people who would like to operate "vacation rentals" or "shared housing units" is not a valid exercise of the City's police power to protect the public's health, safety, and welfare.

105. The rental cap provisions therefore violate the right to due process of law guaranteed by Article I, Section 2 of the Illinois Constitution on their face and as applied to Plaintiffs.

106. The rental cap provisions injure Plaintiffs because they will be liable, as Chicago taxpayers, to replenish the public funds the City uses to implement and enforce the provisions.

107. Although the Court dismissed this claim (Count V of Plaintiffs' original complaint) in its order of October 13, 1017, Plaintiffs allege this claim to preserve it for appeal. *See Bonhomme v. St. James*, 2012 IL 112393, at ¶17 (2012) (explaining that an amended complaint must refer to or adopt dismissed causes of action to preserve them for appeal).

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment that Chi. Muni. Code §§ 4-6-300(h)(10) and 4-14-060(f), which restrict the number of dwelling units in a building with five or more units that may be used as vacation rentals or shared housing units, are unconstitutional, both on their face and as applied, because they violate the due process guarantee of Article I, Section 2 of the Illinois Constitution;

B. Enter a declaratory judgment that Chi. Muni. Code §§ 4-6-300(h)(9) and 4-14-060(e), which restrict the number of dwelling units that may be used as vacation rentals or shared housing units in a building with four or fewer units, are unconstitutional, both on their face and as applied, because they violate the due process guarantee of Article I, Section 2 of the Illinois Constitution;

C. Enter a permanent injunction prohibiting Defendants from enforcing the restrictions on the number of units in a building that may be used as vacation units or shared housing units in Chi. Muni. Code §§ 4-6-300(h)(9), (10) and 4-14-060(e), (f).

D. Enter a permanent injunction prohibiting Defendants from using public funds or public resources to implement or enforce the restrictions on the number of units in a building that may be used as vacation units or shared housing units in Chi. Muni. Code §§ 4-6-300(h)(9), (10) and 4-14-060(e), (f);

D. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees pursuant to 740 ILCS 23/5(c) and any other applicable law;

E. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT V
The Ordinance's authorization of license revocation for "excessive loud noise" violates substantive due process because it is vague.
(Illinois Constitution Article I, Section 2)

108. Plaintiffs reallege the preceding paragraphs of this complaint as though fully set forth herein.

109. The sections of the Ordinance providing for suspension of a vacation rental license or shared housing unit registration based on "excessive loud noise" do not provide the kind of notice that would enable an ordinary person to understand what constitutes "excessive loud noise."

110. The Ordinance's definition of "excessive loud noise" ("any noise, generated from within or having a nexus to the rental of the shared housing unit [or vacation rental], 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 shared housing unit [or vacation rental]") does not define what it means to "hav[e] a nexus to the rental" nor does it define "average conversational level."

111. In addition, the Ordinance encourages arbitrary and discriminatory enforcement both because of its vague, undefined, and unintelligible terms and because it does not specify a mechanism for how the City will decide when an instance of "excessive loud noise" has occurred.

112. The Ordinance does not provide a procedure or standards for measuring, recording, or logging instances of "excessive loud noise."

113. Other municipalities impose objective noise limitations by specifying the decibel level that is permissible or impermissible at particular times. Because the Ordinance lacks such objective measurement or any procedure for objective measurement or recording, the Ordinance is vague and subjective and subjects the Plaintiffs to arbitrary, unpredictable, and subjective enforcement and/or punishment based on allegations of "excessive noise" that cannot be proven or disproven.

114. Further, the Ordinance's definition of "excessive loud noise" specifies no durational requirement, so that a quick and solitary burst of noise – for example, a child crying out or a person cheering while watching a sporting event – apparently would be "excessive loud noise" even if those sounds are sustained for mere seconds, which makes it virtually impossible to avoid noise violations.

115. For these reasons, the Ordinance's definition of "excessive loud noise" is vague and unintelligible, and allows for arbitrary and discriminatory enforcement, and thus violates the Due Process Clause of the Illinois Constitution.

116. The Ordinance's "excessive loud noise" provision for shared housing units injures Plaintiff Alonzo Zaragoza because, as a person who rents out his Chicago homes as shared housing units, he cannot know in advance what noise level is "excessive," or take steps to prevent "excessive loud noise," or know in advance how to avoid suspension of his shared housing units' registrations based on noise violations or how to avoid other penalties.

117. The Ordinance's "excessive loud noise" provisions also injure Plaintiffs because they will be liable, as Chicago taxpayers, to replenish the public funds Defendants use to implement and enforce the unconstitutional rule.

118. Although the Court dismissed this claim (Count VI of Plaintiffs' original complaint) in its order of October 13, 1017, Plaintiffs allege this claim to preserve it for appeal. *See Bonhomme v. St. James*, 2012 IL 112393, at ¶17 (2012) (explaining that an amended complaint must refer to or adopt dismissed causes of action to preserve them for appeal).

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment that the "excessive loud noise" provisions of Chi. Muni. Code §§ 4-6-300(j)(2)(ii) and 4-14-080(c)(2) are unconstitutionally vague, both on their face and as applied, in violation of the due process guarantee of Article I, Section 2 of the Illinois Constitution;

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from revoking any vacation rental license or shared housing unit registration based on "excessive loud noise" under Chi. Muni. Code §§ 4-6-300(j)(2)(ii) and 4-14-080(c)(2);

C. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from using public funds or public resources to revoke any vacation rental license or shared housing unit based on "excessive loud noise" under Chi. Muni. Code §§ 4-6-300(j)(2)(ii) and 4-14-080(c)(2);

D. Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 740 ILCS 23/5(c) and any other applicable law;

E. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT VI
The Ordinance's authorization of license revocation for "excessive loud noise" violates the right to equal protection under the law.
(Illinois Constitution Article I, Section 2)

119. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

120. Although the Ordinance authorizes the City to revoke the vacation rental license or shared housing unit registration of a unit that has been the situs of "excessive loud noise" on three or more occasions, as set forth above, the City does not subject hotels and bed-and-breakfast establishments to the same restrictions.

121. This difference in treatment bears no reasonable relationship to protecting the public's health, safety, or welfare because noise has the same effect on the public regardless of whether it comes from a hotel, a bed-and-breakfast establishment, a vacation rental, or a shared housing unit.

122. The Ordinance's rule on "excessive loud noise" therefore singles out "vacation rentals" and "shared housing units" for unfavorable treatment for reasons and in a manner that is not reasonably calculated to protect any legitimate government interest in public health, safety, or welfare.

123. In this way, the Ordinance irrationally and arbitrarily discriminates against owners of vacation rentals and shared housing units in violation of their right to equal protection of the law.

124. This discrimination injures Plaintiff Alonso Zaragoza as a person who rents out his Chicago homes as shared housing units, who is subject to the more stringent rule applicable to shared housing units.

125. This discrimination also injures Plaintiffs because they will be liable, as Chicago taxpayers, to replenish the public funds Defendants use to implement and enforce the unconstitutional rule.

126. Although the Court dismissed this claim (Count VII of Plaintiffs' original complaint) in its order of October 13, 1017, Plaintiffs allege this claim to preserve it for appeal. *See Bonhomme v. St. James*, 2012 IL 112393, at ¶17 (2012) (explaining that an amended complaint must refer to or adopt dismissed causes of action to preserve them for appeal).

Wherefore, Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment that the "excessive loud noise" provisions of Chi. Muni. Code §§ 4-6-300(j)(2)(ii) and 4-14-080(c)(2) violate the equal protection clause of Article I, Section 2 of the Illinois Constitution;

B. Enter a preliminary injunction and a permanent injunction prohibiting Defendant City of Chicago from enforcing license revocation provisions for "excessive loud noise" of Chi. Muni. Code §§ 4-6-300(j)(2)(ii) and 4-14-080(c)(2);

C. Enter a preliminary injunction and a permanent injunction prohibiting Defendants from using public funds or public resources to revoke any vacation rental license or shared housing unit based on "excessive loud noise" under Chi. Muni. Code §§ 4-6-300(j)(2)(ii) and 4-

14-080(c)(2);

D. Award Plaintiffs their reasonable costs and attorneys' fees pursuant to 740 ILCS 23/5(c);

E. Award Plaintiffs any additional relief the Court deems just and proper.

COUNT VII
The Ordinance's taxes and fees violate the Uniformity Clause of the Illinois Constitution. (Illinois Constitution Article IX, Section 2)

127. Plaintiffs reallege the foregoing paragraphs of this Complaint as though fully set forth herein.

128. The Uniformity Clause, Article IX, Section 2, of the Illinois Constitution 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.

129. To comply with the Uniformity Clause, a tax must: (1) be based on a "real and substantial" difference between those subject to the tax and those that are not; and (2) "bear some reasonable relationship to the object of the legislation or to public policy." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 150 (2003).

Discriminatory Tax

130. The City of Chicago imposes a 4% tax – in addition the City's hotel tax – on the class of taxpayers who stay in vacation rentals or shared housing units in Chicago.

131. The City of Chicago does not impose that extra 4% tax on the class of taxpayers: who stay at Chicago establishments other than vacation rentals and shared housing units that are included in the City's definition of "hotel accommodations," such as hotels and bed-and-breakfasts.

132. The City of Chicago also imposes an additional 2% tax – in addition the City's hotel tax – on the class of taxpayers who stay in vacation rentals or shared housing units in Chicago.

133. The City of Chicago does not impose that extra 2% tax on the class of taxpayers: who stay at Chicago establishments other than vacation rentals and shared housing units that are included in the City's definition of "hotel accommodations," such as hotels and bed-and-breakfasts.

134. There are individuals who are members of the first class of taxpayers who are not members of the second class of taxpayers: *i.e.*, some individuals stay (and pay taxes) only at vacation rentals or shared housing units in Chicago, and some individuals stay (and pay taxes) only at hotels, bed-and-breakfasts, or other "hotel accommodations" that are not vacation rentals or shared housing units.

135. For purposes of taxation, there is no real and substantial difference between vacation rentals and shared housing units – whose guests are subject to additional taxes of 4% and 2% (for a total of 6%) – and other establishments included in the definition of "hotel accommodations," whose guests are not subject to those taxes.

136. The Code's definition of a bed-and-breakfast establishment – "an owner-occupied single-family residential building, or an owner-occupied, multiple-family dwelling unit building, or an owner-occupied condominium, townhouse, or cooperative, in which 11 or fewer sleeping rooms are available for rent or for hire for transient occupancy by registered guests," Chi. Muni. Code § 4-6-290(a) – is substantially similar to, and overlaps with, the Ordinance's definitions of vacation rentals and shared housing units, which include dwelling units with "6 or fewer sleeping rooms that are available for rent or for hire for transient occupancy by guests," Chi. Muni. Code

§§ 4-6-300, 4-14-010.

137. Accordingly, the City cannot justify imposing taxes of 4% and 2% on vacation rentals and shared housing units that it does not apply to bed-and-breakfast establishments.

138. In addition, the Ordinance's stated purpose of the extra 4% tax that applies only to guests of vacation rentals and shared housing units – 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(B) – does not bear any reasonable relationship to the object of the legislation.

139. Further, the Ordinance's stated purpose of the additional 2% tax that applies only to guests of vacation rentals and shared housing units – to "fund housing and related supportive services for victims of domestic violence," Chi. Muni. Code § 3-24-030(C) – does not bear any reasonable relationship to the object of the legislation.

140. There is no reason to believe that guests of vacation rentals and shared housing units have anything to do with homelessness, let alone any reason to think that vacation rentals and shared housings units have any *greater* connection to homelessness than other traveler housing accommodations, such as hotels, bed-and-breakfast establishments, or even non-commercial activities such as staying in a friend's guest room.

141. There is also no reason to believe that guests of vacation rentals and shared housing units have anything to do with domestic violence, or a connection to the availability of housing or supportive services for victims of domestic violence. Additionally, there is no reason to think that vacation rentals and shared housings units have any *greater* connection to the availability of housing or supportive services for victims of domestic violence than other traveler housing accommodations, such as hotels, bed-and-breakfast establishments, or even non-

commercial activities such as staying in a friend's guest room.

142. For these reasons, the Code's discriminatory taxes that apply to only to guests of vacation rentals and shared housing units, but not to guests of other "hotel accommodations," violate the Uniformity Clause of the Illinois Constitution.

143. The Code's additional taxes on guests of vacation rentals and shared housing units injure Plaintiff Alonso Zaragoza because guests to whom he rents out his shared housing units are required to pay it.

144. The Code's discriminatory taxation of guests of vacation rentals and shared housing units also injures Plaintiffs because they will be liable, as Chicago taxpayers, to replenish the treasury for the public funds used to implement and collect the unconstitutional tax.

Discriminatory Licensing Fees

145. For the purpose of licensing fees, there is no real and substantial difference between hotels, bed-and-breakfast establishments, vacation rentals, and shared housing units. Yet the Code applies separate licensing fees for each of these hotel accommodations. *See* ¶¶ 54-59.

146. The license for a hotel costs $250, plus $2.20 per room, Chi. Muni. Code § 4-5-010(3), and must be paid every 2 years. Chi. Muni. Code § 4-5-010.

147. A license for a "bed-and-breakfast establishment" costs $250, Chi. Muni. Code 4-5-010(2), and must be paid every two years. Chi. Muni. Code § 4-5-010.

148. A license for a "vacation rental" costs $250, Chi. Muni. Code 4-5-010(2), and must be paid every 2 years. Chi. Muni. Code § 4-5-010.

149. The owner or tenant of a single "shared housing unit" is *not* required to obtain a license or pay a licensing fee to the City. Instead, a "short term residential rental intermediary" must register annually with the City on behalf of the tenant or owner. Chi. Muni. Code § 4-13-230(a). In addition, the "short term residential rental intermediary" must pay a $10,000 license

fee plus $60 for each "short term residential" rental listed on its "platform." Chi. Muni. Code § 4-5-010(36).

150. Any person who is a "shared housing unit" host for more than one dwelling unit ("Shared Housing Unit Operator") must obtain a license. Chi. Muni. Code § 4-16-200. A shared housing unit operator license costs $250, Chi. Muni. Code § 4-5-010(38), and must be renewed every two years. Chi. Muni. Code § 4-5-010.

151. The Ordinance's different fee schemes for vacation rentals and shared housing units are especially unjustifiable because the Code's definitions of the two types of rentals are virtually identical.

152. In addition, the fees' purpose does not bear any reasonable relationship to the object of the Ordinance because there can be no legitimate purpose in charging different registration fees for such similar uses.

153. For these reasons, the Code's imposition of different registration fees on similar types of hotel accommodations violates the Uniformity Clause of the Illinois Constitution.

154. The Code's discriminatory fees for vacation rentals and shared housing units injure Plaintiffs because they will be liable, as Chicago taxpayers, to replenish the treasury for the public funds used to implement and collect the unconstitutional fees.

Wherefore, the Plaintiffs respectfully pray that the Court grant the following relief:

A. Enter a declaratory judgment that the Ordinance's additional taxes of 4% and 2% that apply only to vacation rentals and shared housing units, but not to similar units defined as "hotel accommodations," in Chi. Muni. Code § 3-24-030 violate the Uniformity Clause of Article IX, Section 2, of the Illinois Constitution;

B. Enter a declaratory judgment that the Ordinance's imposition of different

licensing and registration fees on similar units defined as "hotel accommodations" in Chi. Muni. Code § 4-5-010 violates the Uniformity Clause of Article IX, Section 2, of the Illinois Constitution;

C. Enter a preliminary injunction and a permanent injunction against the Defendant City of Chicago's enforcement of the Ordinance's 4% and 2% taxes on vacation rentals and shared housing units in Chi. Muni. Code § 3-24-030 and the licensing and registration fees for hotel accommodations in Chi. Muni. Code § 4-5-010;

D. Enter a preliminary injunction and a permanent injunction against the Defendant City of Chicago's use of public funds or public resources to enforce the Ordinance's 4% and 2% taxes on vacation rentals and shared housing units in Chi. Muni. Code § 3-24-030 and the licensing and registration fees for hotel accommodations in Chi. Muni. Code § 4-5-010;

E. Award Plaintiffs their reasonable costs, expenses, and attorneys' fees, pursuant to 740 ILCS 23/5(c) or other applicable law;

F. Award Plaintiffs any additional relief the Court deems just and proper.

Dated: September 21, 2018

Respectfully submitted,

LEILA MENDEZ and ALONSO ZARAGOZA

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

I, Jeffrey Schwab, an attorney, hereby certify that on September 21, 2018, I served the foregoing Second Amended Complaint on Defendants' counsel by U.S. mail and electronic mail sent to:

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