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

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| LEILA MENDEZ; SHEILA SASSO; ALONSO ZARAGOZA; and MICHAEL LUCCI, | ) | Case No. 16 CH 15489 |
| Plaintiffs, | ) | Hon. Sanjay T. Tailor |
| v. | ) | |
| CITY OF CHICAGO, a municipal corporation; MARIA GUERRA LAPACEK, in her official Capacity as Commissioner of the City of Chicago Department of Business Affairs and Consumer Protection, | ) | |
| Defendants. | ) | |



**CITY OF CHICAGO ANSWER TO AMENDED COMPLAINT**

The City of Chicago ("City") answers Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief as follows:

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. 02016-5111, hereinafter the "Ordinance").

**Answer**: City admits that Plaintiffs have brought a lawsuit alleging purported violations of Plaintiffs' constitutional rights. All remaining allegations of paragraph 1 are denied.

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.

**Answer**: City admits that home-sharing describes the practice whereby a property owner, for consideration, allows others to stay in that property. City admits that the "sharing economy" enables better connection between homeowners and travelers. City admits that

Airbnb and Homeaway are online home-sharing platforms that enable property owners to rent their property for consideration, which they may use to pay their mortgages and other expenses. City admits that home-sharing provides certain benefits to certain people, including, in some cases, more choice and lower prices. City lacks knowledge sufficient to form a belief as to the truth of the remaining allegations of paragraph 2.

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.

**Answer**: City denies all allegations of paragraph 3.

4. Plaintiffs Leila Mendez, Sheila Sasso, Alonso Zaragoza, and Michael Lucci 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.

**Answer**: City admits that Plaintiffs have filed a complaint seeking declaratory and injunctive relief for purported violations of Plaintiffs' constitutional rights. All remaining allegations of paragraph 4 are denied.

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

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

6. Plaintiff Sheila Sasso is a resident of Arizona, who also owns a condominium in Chicago, where she previously lived for 12 years and still occasionally stays.

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

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

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

8. Plaintiff Michael Lucci is a resident of Cook County, Illinois, who owns a home in Chicago.

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

9. Defendant City of Chicago (the "City") is an Illinois municipal corporation.

**Answer**: City admits the allegations of paragraph 9.

10. Defendant Maria Guerra Lapacek, 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.

**Answer**: City admits that this lawsuit has named Maria Guerra Lapacek as a defendant in her official capacity, who at the time of this lawsuit being filed, was the Commissioner of the City of Chicago Department of Business Affairs and Consumer Protection. Answering further, City states that the current Commissioner of the City of Chicago Department of Business Affairs and Consumer Protection is Rosa Escareno. City admits that the Commissioner is responsible for enforcing the regulatory portions of the Ordinance. All remaining allegations of paragraph 10 are denied.

**Jurisdiction**

11. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2701 because Plaintiffs seek a declaratory judgment that the Ordinance violates various provisions of the Illinois Constitution.

**Answer**: City admits the allegations of paragraph 11.

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

**Answer**: City admits that this Court has personal jurisdiction over Defendants. City denies that Defendants' actions gave rise to any valid cause of action. All remaining allegations of paragraph 12 are denied.

13. Venue is proper in Cook County because Plaintiffs reside in Cook County, Illinois, and Defendants are located in Cook County.

**Answer**: City admits that venue is proper and admits that Defendants are located in Cook County. City lacks knowledge sufficient to form a belief as to whether Plaintiffs reside in Cook County, Illinois.

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

**Answer**: City admits the allegations of paragraph 14.

15. 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).

**Answer**: City admits that Section 2 of the Chicago Shared Housing Ordinance ("Ordinance") amends the Chicago Municipal Code's ("Code") definition of "hotel accommodations" to include a "shared housing unit" as defined by Section 4-14-010. City admits that Section 2 of the Ordinance imposes a surcharge upon the rental or leasing of any vacation rental or shared housing unit in the City of Chicago at a rate of 4% of the gross rental or leasing charge. City admits that Section 8 of the Ordinance adds a new Chapter, Chapter 4-13, to Title IV of the Code. City admits that Code Section 4-13-260(a)(9) provides that "A short term residential rental shall be ineligible for listing by a provider on a licensee's platform under the following conditions: . . . (9) If the building contains five or more dwelling units, when the owner 31 of the building notifies the commissioner, in a manner prescribed by rule, that no licensed vacation rentals or shared housing units are permitted to operate anywhere in such building. Provided, however, that if the building is a cooperative building, condominium building or building governed by a

homeowners association, the requirement that such building must contain five or more dwelling units shall not apply for purpose of this subsection (a)(9)." City admits that Code Section 4-13-270(c) provides that: "The commissioner shall maintain a list, which shall be known as the prohibited buildings list, identifying the address(es) of all buildings whose owner(s), including any applicable homeowners association or board of directors, have notified the commissioner, pursuant to Section 4-13-260(a)(9), that no vacation rentals or shared housing units, in any combination, are permitted to operate anywhere in such building. The commissioner shall: (1) post the prohibited building list on the City of Chicago website; (2) establish a process by rule for verifying any notification received from a building owner(s) requesting the commissioner to include such building on the prohibited buildings list; and (3) establish a process, by rule, to enable building owners to remove buildings from the prohibited buildings list." City admits that Sections 4-13-260(a)(9) and 4-13-270(c) took effect on July 15, 2016. All remaining allegations of paragraph 15 are denied.

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

**Answer**: City admits that all provisions of the Ordinance other than Section 2, Section 4-13-260(a)(9) and Section 4-13-270(c) were originally scheduled to become effective on December 17, 2016. Answering further, City states that because of the stay imposed on enforcement of the Ordinance in Keep Chicago Livable v. City of Chicago, 16-cv-10371, the other provisions of the Ordinance did not become effective until March 14, 2017 when the stay was lifted.

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).

**Answer**: City admits that the term "shared housing unit" is defined in Section 4-14-010 of the Code. City admits that the term "vacation rental" is defined in Section 4-6-300(a) of the Code. All remaining allegations of paragraph 17 are denied.

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

**Answer**: City states that the Ordinance definitions of "shared housing unit" and "vacation rental" speak for themselves and denies all allegations that are contrary to such definitions as set forth in the Ordinance.

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.

**Answer**: City denies that Plaintiffs have cited the entirety of the definition of "vacation rental" as set forth in Code Section 4-6-300. City admits that those portions quoted by Plaintiffs are quoted accurately.

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).

**Answer**: City denies that Plaintiffs have cited the entirety of the definition of "shared housing unit" as set forth in Code Section 4-14-010. City admits that those portions quoted by Plaintiffs are quoted accurately.

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.

**Answer**: City denies all allegations of paragraph 21.

**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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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.

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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."

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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.

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

**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."

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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.*

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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. Mimi. Code §§ 4-6-300(h)(1); 4-14-060(f).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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 §§ 4-6300(h)(8), (9); 4-14-060(d), (e).

**Answer:** The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

35. Under Chi. Muni. Code §§ 4-6-300(1) 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."

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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(1), 414-100(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.*

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

**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."

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

**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), 4-14080(c)(2).]

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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), 414-080(c)(2).

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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."

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

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.

**Answer**: The allegations of this paragraph exclusively relate to a Count previously dismissed and are therefore not answered.

**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."

**Answer**: City admits that the Ordinance imposes a surcharge upon the rental or leasing of any vacation rental or shared housing unit in the City of Chicago at a rate of 4% of the gross rental or leasing charge. City admits that this surcharge does not apply to other hotel accommodations. All remaining allegations of paragraph 45 are denied.

46. 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).

**Answer**: City admits that the Ordinance, via amendment to the Chicago Municipal Code, defines the term "hotel accommodations." City denies that Plaintiffs have fully cited this definition. City denies all remaining allegations of paragraph 46.

47. 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 an additional tax of 4 percent of gross rental or leasing charges for any "vacation rental" or "shared housing unit." Chi. Muni. Code § 3-24-030. This additional 4 percent tax applies *only* to vacation rentals and shared housing units. It does not apply to any other "hotel accommodations," such as inns, hotels, motels, lodging houses, or "bed-and-breakfast establishments."

**Answer**: City admits that the Code imposes a hotel tax upon the rental or leasing of any hotel accommodations in the City of Chicago, at the rate of 4.5% percent of the gross rental or leasing charge. City admits that the Code imposes a surcharge upon the rental or leasing of any vacation rental or shared housing unit in the City of Chicago at a rate of 4% of the gross rental or leasing charge. City admits that this surcharge does not apply to the rental of other hotel accommodations, such as inns, hotels, motels, lodging houses, or bed-and-breakfast establishments. All remaining allegations of paragraph 47 are denied.

**Discriminatory Fees**

48. 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."

**Answer**: City admits that in order 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 and that this license costs $250 and must be renewed every 2 years. City admits that in order to be a shared housing unit host for more than one shared housing unit, one must obtain a regulated business license from the City which costs $250 and must be renewed every 2 years. City denies all remaining allegations of paragraph 48.

49. 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.

**Answer**: City admits that to operate a hotel in Chicago, one must obtain a regulated business license from the City but denies that this requirement is set forth in

Chicago Municipal Code Section 4-6-180(b). The remaining allegations of paragraph 49 are admitted.

50. 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 he paid every two years. Chi. Muni. Code § 4-5-010.

**Answer**: City admits that in order to operate a "bed-and-breakfast establishment" in Chicago, one must obtain a regulated business license but denies that this requirement is set forth in Municipal Code Section 4-6-290(b). The remaining allegations of paragraph 50 are admitted.

51. 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).

**Answer**: City admits that in order 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, but denies that this requirement is set forth in Municipal Code Section 4-6-300(b). City admits that a separate license is required for each dwelling unit used as a vacation rental, but denies that this requirement is set forth in Municipal Code Section 4-6-300(d)(1). The remaining allegations of paragraph 51 are admitted.

52. 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).

**Answer**: City admits that an owner or tenant of a single shared housing unit is not required to obtain a license or pay a licensing fee to the City in order to rent out that unit. City admits the remaining allegations of paragraph 52.

53. 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.

**Answer**: City admits the allegations of paragraph 53.

**Injuries to Plaintiffs**

54. Plaintiffs Sheila Sasso, Alonso Zaragoza, and Michael Lucci use the Airbnb platform to rent out rooms in their respective homes in Chicago. Accordingly, they are subject to Ordinance's rules that apply to homeowners who rent out their homes as "shared housing units."

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

55. Because they rent out rooms in their homes as "shared housing units," Mr. Lucci and Mr. Zaragoza will be subject to warrantless searches of their 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.

**Answer**: City denies the allegations of paragraph 55.

56. 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.

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

57. Further, Plaintiff Leila Mendez has previously used the Airbnb platform to rent out her home in Chicago; she no longer does so for periods of 31 or fewer days, however, to avoid being subject to warrantless searches and other restrictions the Ordinance places on shared housing units.

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

58. As Chicago residents and homeowners, Plaintiffs Lucci, Mendez, and Zaragoza pay sales taxes and property taxes to the City of Chicago. As the owner of a condominium in Chicago, Plaintiff Sasso pays property taxes to the City of Chicago.

**Answer**: City lacks knowledge sufficient to form a belief as to the truth of these allegations.

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

**Answer**: City admits that one use of funds from the general revenue fund is the implementation and enforcement of the Ordinance. All other allegations of paragraph 59 are denied.

60. Accordingly, Plainiffs 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.

**Answer**: City denies the allegations of paragraph 60.

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

Paragraphs 61 through 68.

**Answer**: Count I has been dismissed and does not necessitate an answer.

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

Paragraphs 69 through 88.

**Answer**: Count II has been dismissed and does not necessitate an answer.

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

Paragraphs 89 through 97.

**Answer**: Count III has been dismissed and does not necessitate an answer.

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

Paragraphs 98 through 108.

**Answer**: Count IV has been dismissed and does not necessitate an answer.

**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)**

Paragraphs 109 through 119.

**Answer**: Count V has been dismissed and does not necessitate an answer.

**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)**

Paragraphs 120 through 127.

**Answer**: Count VI has been dismissed and does not necessitate an answer.

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

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

**Answer**: City repeats its answers to each of the paragraphs re-alleged for paragraph 128.

129. 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.

**Answer**: City admits the allegations of paragraph 129.

130. 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).

**Answer**: The allegations of paragraph 130 state a legal conclusion and are therefore denied.

**Discriminatory Tax**

131. 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.

**Answer**: City admits that the Code imposes a surcharge upon the rental or leasing of any vacation rental or shared housing unit in the City of Chicago at a rate of 4% of the gross rental or leasing charge. City admits that the Code imposes a hotel tax upon the rental or leasing of any hotel accommodations in the City of Chicago, at the rate of 4.5% percent of the gross rental or leasing charge. All remaining allegations of paragraph 131 are denied.

132. 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.

**Answer**: City denies that there is a "class of taxpayers" who stay at Chicago establishments other than vacation rentals and shared housing units. City admits that the Code imposes a surcharge upon the rental or leasing of any vacation rental or shared housing unit in the City of Chicago at a rate of 4% of the gross rental or leasing charge. City admits that the Code also imposes a hotel tax upon the rental or leasing of any hotel accommodations in the City of Chicago, at the rate of 4.5% percent of the gross rental or leasing charge. All remaining allegations of paragraph 132 are denied.

133. 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.

**Answer**: City denies the allegations of paragraph 133.

134. For purposes of taxation, there is no real and substantial difference between vacation rentals and shared housing units — whose guests are subject to an additional 4% tax — and other establishments included in the definition of "hotel accommodations," whose guests are not subject to that tax.

**Answer**: City denies the allegations of paragraph 134.

135. 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.

**Answer**: City responds that the cited code provisions speak for themselves as to their content and denies any allegations of paragraph 135 inconsistent therewith. Answering further, City denies that Plaintiffs have fully quoted any of the listed

definitions. City admits that the portion of Chicago Municipal Code Section 4-6-300 is quoted accurately. All remaining allegations of paragraph 135 are denied.

136. Accordingly, the City cannot justify imposing a 4% tax on vacation rentals and shared housing units that it does not apply to bed-and-breakfast establishments.

**Answer**: City denies all allegations of paragraph 136.

137. 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 — does not bear any reasonable relationship to the object of the legislation.

**Answer**: City denies all allegations of paragraph 137.

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

**Answer**: City denies all allegations of paragraph 138.

139. For these reasons, the Code's discriminatory tax that applies to only to guests of vacation rentals and shared housing units, but not to guests of other "hotel accommodations," violates the Uniformity Clause of the Illinois Constitution.

**Answer**: City denies all allegations of paragraph 139.

140. The Code's additional tax on guests of vacation rentals and shared housing units injures Plaintiffs Sheila Sasso, Alonso Zaragoza, and Michael Lucci because guests to whom they rent out their respective shared housing units are required to pay it.

**Answer**: City denies all allegations of paragraph 140.

141. 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.

**Answer**: City denies all allegations of paragraph 141.

**Discriminatory Licensing Fees**

142. 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.

**Answer**: City denies all allegations of paragraph 142.

143. 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.

**Answer**: City admits the allegations of paragraph 143.

144. 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.

**Answer**: City admits the allegations of paragraph 144.

145. 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.

**Answer**: City admits the allegations of paragraph 145.

146. 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).

**Answer**: City admits that an owner or tenant of a single shared housing unit is not required to obtain a license or pay a licensing fee to the City in order to rent out that unit. City admits the remaining allegations of paragraph 146.

147. 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.

**Answer**: City admits the allegations of paragraph 147.

148. 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.

**Answer**: City denies all allegations of paragraph 148.

149. 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.

**Answer**: City denies all allegations of paragraph 149.

150. 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.

**Answer**: City denies all allegations of paragraph 150.

151. 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.

**Answer**: City denies all allegations in paragraph 151.

**FIRST AFFIRMATIVE DEFENSE**
**(Lack of Standing)**

The tax challenged in this Complaint applies to guests of vacation rentals and shared housing units. Plaintiffs, however, are not alleged to be guests of either vacation rentals or shared housing units. As such, Plaintiffs have suffered no damage and therefore lack standing to challenge the tax.

WHEREFORE, the City of Chicago asks the Court to enter judgment in its favor and against Plaintiffs on Count VII of their Amended Complaint, along with such further relief as may be appropriate.

Respectfully submitted,

**CITY OF CHICAGO**

By: _____

Jason Rubin
Weston Hanscom
Attorneys for
Defendants

Weston Hanscom
Deputy Corporation Counsel
City of Chicago Law Department
Revenue Litigation Division
30 N. LaSalle, Suite 1020
Chicago, IL 60602
(312) 744-9077

Jason Rubin
Senior Counsel
City of Chicago Law Department
Revenue Litigation Division
30 N. LaSalle, Suite 1020
Chicago, IL 60602
(312) 744-4174

**AFFIDAVIT**

Pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I hereby certify under penalties as provided by law, in my official capacity as a Deputy Corporation Counsel for the City of Chicago Department of Law, that I am one of the attorneys representing the parties on behalf of whom this answer was prepared. Where this answer contains statements of insufficient knowledge on which to base a belief as to the truth or falsity of the allegations contained in the complaint, I attest to the truth of the lack of knowledge.

Date: 4/30/18

## CERTIFICATE OF SERVICE

I, Jason Rubin, an attorney, hereby certify that on April 30, 2018, I served the foregoing City of Chicago Answer to Amended Complaint on Plaintiffs' counsel by U.S. mail and electronic mail sent to:

Jacob Huebert
Jeffrey Schwab
Liberty Justice Center
Cook County No. 49098
190 S. LaSalle Street, Suite 1500
Chicago, Illinois 60603
(312) 26307668
jhuebert@libertyjusticecenter.org
jschwab@libertyjusticecenter.org