LIBERTY JUSTICE CENTER

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Kathleen O'Hara, President
Village of Lake Bluff Board of Trustees
40 E. Center Avenue
Lake Bluff, Illinois 60044

July 6, 2017

Re: Proposed restriction of short-term rentals in Lake Bluff

Dear Ms. O'Hara:

I'm an attorney at the Liberty Justice Center, a non-profit public-interest law firm that brings lawsuits to protect constitutional rights and enforce limits on government power in Illinois. I am writing to express concerns about the ordinance to restrict short-term rentals (also known as home-sharing) that the Board considered at its meeting of June 21, 2017.

Many of the proposed ordinance's restrictions would unnecessarily intrude on the fundamental property rights of Lake Bluff homeowners. If the Village or some of its residents have legitimate concerns about noise, traffic, or trash that home-sharing guests might produce (just as anyone else might), those concerns can be – and already are – addressed by existing ordinances designed to prevent such nuisances.

We currently represent several Chicago homeowners in a lawsuit challenging Chicago's ordinance restricting short-term rentals for violating the Illinois Constitution, *Mendez v. City of Chicago*, Cook County Circuit Court No. 2016 CH 15489. It appears that provisions of the proposed Lake Bluff ordinance would likewise be unconstitutional.

The Illinois Constitution requires that all laws be reasonably designed to serve the public's health, safety, or welfare. Several provisions of the proposed ordinance do not satisfy this requirement:

- **The 1,000-foot rule.** The ordinance's rule that no short-term rental may occur on any lot within 1,000 feet of any other lot on which a short-term rental operates is not reasonably designed to serve the public's health, safety, or welfare. The Illinois Supreme Court struck down a village ordinance that prohibited any gas station from locating within 250 feet of an existing gas station because the rule did not serve to protect the public's safety. *See Chi. Title & Trust Co. v. Vill. Of Lombard*, 19 Ill. 3d 98, 103-07 (1960). If the government's interest in public safety cannot justify keeping gas stations 250 feet from each other, it certainly cannot justify keeping houses used

as short-term rentals 1,000 feet from each other. The proposed rule is especially unreasonable because it applies regardless of how often a home is actually rented out: it treats a home that is rented out one day a year (or that receives a special use permit for short-term rentals but is never actually rented out at all) the same as a home that is rented out every day of the year.

- **The "primary residence" rule.** The ordinance's rule that a "short-term rental must be the property owner's primary residence" is not reasonably designed to serve the public's health, safety, or welfare. The Village could have no reasonable basis for believing that guests staying at homes that are not the owner's primary residence pose a greater threat to the public's health, safety, or welfare than guests who stay at homes that are the owner's primary residence. And, regardless of whether a building is the owner's primary residence, the Village can enforce its laws against nuisances to address (and prevent) disruptions.

- **The owner-presence rule.** The ordinance's rule that a "property owner must occupy and be present on the property during any period in which any part of the property is rented as a short-term rental"is unreasonably vague. It is not clear whether an owner must actually be present every second a guest is there, or, if not, how much time an owner must spend in the home to be "present." (A similarly vague provision of Honolulu's home-sharing ordinance is the subject of an ongoing legal challenge, *Kokua Coalition v. Honolulu Dep't of Planning &* Permitting, No. 16-00387-DKW-RLP (D. Haw. Jul. 11, 2016).) In any event, the rule would unreasonably interfere with liberty and property rights. A property owner cannot be made a prisoner in his or her own home just to be allowed to have overnight guests, whether the guests pay the owner or not.

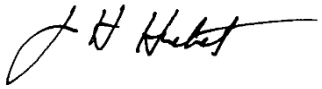
- **The parking rule.** The ordinance's requirement that any home used for short-term rentals have "at least one on-site parking space per sleeping room available for rent, plus two additional on-site parking spaces for use by the property owner" is likewise unreasonable. The Village already has rules to limit where and when anyone may park a vehicle, whether a short-term rental guest or not, which are sufficient to ensure that renters' vehicles do not clog the streets.

The Village should note that home-sharing is a *residential use* of property and is part of a longstanding tradition in Illinois and nationwide. For centuries, people have allowed guests to stay in their homes in exchange for money, or for doing chores, or for other types of compensation.

So long as people obey the generally applicable rules on parking, noise, and other nuisances, there is no reason why it should matter to the Village whether they're staying in a home as a guest for free or in exchange for money, or if they're staying for one night or six months.

We therefore respectfully urge the Village not to adopt the proposed ordinance or any ordinance that would needlessly interfere with residents' ability to share their homes. Unless and until the existing generally applicable rules prove inadequate to address genuine nuisances – and so far, it does not appear that they have – there is no reason for the Village to take any action on home-sharing at all.

Very truly yours,



Jacob H. Huebert
Senior Attorney

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