



## The story behind Chicago's 'impossible to comply with' home-sharing ordinance

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Shorge Sato is a Chicago attorney who specializes in real estate law and is recognized as a top rated business litigator by Super Lawyers magazine.

And even he can't make sense of the Windy City's new 58-page ordinance governing home-sharing firms like Airbnb, VRBO and others that the City Council adopted on a 43-7 vote on June 22.

In an interview with Watchdog, Sato called the ordinance an "impossible to comply with law."

Sato, who is also an Airbnb host, says the City Council is "recklessly" and "immoral[ly]" using confusion and the threat of hefty penalties to force hosts into submission.

The ordinance is 25,000 words, 25 times longer than Chicago's hotel ordinance and three times longer than the U.S. Constitution and its 27 amendments.

A home-sharing advocacy group, Keep Chicago Livable, claims that the document is "literally incomprehensible."

That's unfortunate for those who need to comprehend it, because the ordinance requires all Airbnb, VRBO, HomeAway, and Flipkey hosts to sign an attestation that they have fully read and comprehend the ordinance, legal jargon and all. Should they somehow be caught having not read the terms and conditions, hosts will be subject to a \$1,000 penalty under the Chicago False Statements Ordinance.

But, as they say in the ads, that's not all.

If a host manages to decode the ordinance and legally sign the attestation, they're still on the hook for complying with it, and with the 55-page Board of Health regulations.

Should the rental space contain food, under the health regs the host may be required under the ordinance to comply with "all applicable food handling and licensing requirements" for

commercial kitchens. This includes a separate hand-washing station – from the sink for dishes and food prep – as well as a ban on dogs.

### **Harrowed Hosts**

Complexity aside, opponents of the ordinance argue that it will force out renters trying to earn extra cash.

Former Airbnb “superhost” Valerie Landis, who used to earn \$35,000 and house 90 guests a year in her spare room, told Watchdog, “I’m out.”

“They don’t understand how home-sharing works,” said Landis, in reference to the authors of the ordinance.

One facet of the new law is an assumption of personal liability for Airbnb hosts. If a host’s guest causes a disturbance or damage to adjacent property, the host, and not the platform, is on the hook and can also personally face a \$5,000 per day fine from the city.

Landis also told Watchdog that she is wary of the city publishing her personal information on its website if she were to apply for a license.

At this point, it is unclear how many of the approximately 4,500 Airbnb hosts in Chicago will decide that the benefits no longer outweigh the costs, but Landis suggests many casual hosts could call it quits.

Charles Hughes, policy associate with the free-market Cato Institute, told Watchdog that’s a real possibility.

“I do think the complexity of the rules and the burden of compliance might be high enough that it also dissuades many ‘small time hosts’ from continuing to use the platform, especially among the older age cohorts, which some analyses have found are the most likely to use platforms like Airbnb [as hosts],” Hughes said.

On the bright side, the final version of the ordinance dispensed with the threat of jail time as a penalty for non-compliance.

### **Regulator Rationale**

The hotel and lodging industry, which is regulated by its own 1,001-word ordinance, has been threatened by the encroachment of home-sharing platforms into their sphere since 2008 and has a strong interest in imposing draconian restrictions on the competition.

But hotels were not the only proponents of the ordinance. Organized neighborhood groups decrying what they call the “touristization” of their enclaves at the hands of landlords also lent a hand.

Proponents of strict regulations such as Alderman Brendan Reilly of the 42<sup>nd</sup> Ward, which includes some of the city's biggest tourist attractions like Navy Pier, argue that regulation isn't about protecting "older economies" such as hotels, but saving neighborhoods from loud "frat parties" and other disturbances – although such activities are typically already punishable under public nuisance statutes.

"For me, it's the impact on the people who have to live with it," Reilly said on WGN radio. Reilly also cited unregistered home-sharing under the previous (and much more lenient) regulatory regime. "They need to also play by some rules. They can't have an unlevel playing field."

Michele Smith, the 43<sup>rd</sup> Ward (Lincoln Park) alderman, says the regulations have not gone far enough. "Berlin, Paris, London – even Austin, Texas, has more restrictions on the number of 'hotels' in residential neighborhoods. This ordinance has none," she said.

If the goal is to cut back on professional hosts, Hughes says the aldermen might be successful, citing the ordinance's "additional restrictions for hosts who list multiple properties, and additional restrictions on the listings of non-primary residences."

Local alderman are also given the power to freeze the listing of shared housing units and – in true Chicago style – exempt hosts from the ordinance's requirements at their discretion, a handy tool for rewarding political friends and punishing enemies.

### **Big Business, Closed Doors**

That might be why the people who wrote the ordinance took such care to do it in secret.

Landis told Watchdog that the council did not solicit the input of hosts, but instead urged them to contact their local alderman. She did, and after a month-and-a-half of trying, Reilly granted her an audience – on the condition she stop complaining about the proposed ordinance on social media.

The meeting on May 11, as described by Landis, was "nine minutes long ... all for press." Reilly has not responded to Watchdog's request for comment.

The council informed hosts they would have the opportunity to speak at a hearing in May, but by when the scheduled time for them to make their case arrived, "most of the Alderman had already left," Landis said.

Other interested parties did have the ear of the city council.

Hotels and lodging groups have been giving thousands of dollars to the campaigns of Chicago aldermen for years. Reilly, who voted for the ordinance, has received about \$135,000 in campaign contributions from the hotel industry since the beginning of 2013.

Debra Silverstein of the 50<sup>th</sup> Ward, Emma Mitts of the 37<sup>th</sup> and other aldermen received \$30,000 from the Illinois Hotel-Motel PAC in the past year alone. Forty-ninth Ward Alderman Joe Moore, a vocal proponent of the ordinance, received campaign donations from Chicago Hilton Hotel Resort supervisor Shah Mojammel and the Sheridan Chase Motel.

Mayor Rahm Emanuel supports the ordinance. A 4 percent surcharge customers will face to book a short-term rental (in addition to the 17.4 percent hotel tax they already pay) is expected to generate \$2 million a year. Emanuel says the money will be spent to house the homeless, but it's not earmarked.

Of course, politicians did not want to entirely dispense with the golden goose. Between July 2014 and June 2015, Airbnb units in Chicago accommodated over 320,000 guests, generating an estimated \$200 million in economic activity.

So while individuals and smaller home-sharing companies are likely to suffer or disappear entirely in the Chicago market, as is often the case the bigger players might gain some benefit from regulation.

One big win for home-sharing platforms is the risk-monkey they got off their back with the transfer of liability to hosts.

Another is that platforms will pay \$10,000 for a license to operate in the city – less than a drop in the bucket for Airbnb, but possibly enough to deter startups.

Moreover, the platforms are free of any obligation to police the regulations, with that duty charged entirely to the Chicago Department of Business Affairs and Consumer Protection. Enforcement will be paid for by hosts, through a \$60 fee per listing.