

No. 123123

In the Supreme Court of Illinois

LMP SERVICES, INC.,**Plaintiff-Appellant,****v.****THE CITY OF CHICAGO,****Defendant-Appellee.**

**On Appeal from the Appellate Court of Illinois
First Judicial District, No. 16-3390
There Heard on Appeal from the
Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 12 CH 41235
The Honorable Anna H. Demacopolous, Judge Presiding**

**BRIEF OF PLAINTIFF-APPELLANT
LMP SERVICES, INC.**

Robert P. Frommer (ARDC #6325160)
Erica J. Smith (ARDC #6318419)
Robert W. Gall (ARDC #6325161)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
rfrommer@ij.org
esmith@ij.org
bgall@ij.org

James W. Joseph
EIMER STAHL LLP
224 S. Michigan Avenue
Suite 1100
Chicago, Illinois 60604
(312) 660-7600
jjoseph@eimerstahl.com

Attorneys for Plaintiff-Appellant

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NATURE OF THE CASE

This action challenges two provisions of Chicago’s regulation of mobile food vehicles (colloquially known as “food trucks”).¹ One is Chicago’s 200-foot rule, which prohibits food trucks from operating on public or private property within 200 feet of the main entrance of any business that prepares and serves food to the public. Municipal Code of Chicago (“MCC”) § 7-38-115(f). The other is Chicago’s GPS requirement, which forces food trucks to install and use Global Positioning System (GPS) devices that transmit their whereabouts to “any service that has a publicly-accessible application programming interface (API).” MCC § 7-38-115(l).

Plaintiff LMP Services, Inc. (“LMP”) and its owner, Laura Pekarik, have a food truck called “Cupcakes for Courage.” Together with Greg Burke and Kristin Casper, owners of the “Schnitzel King” food truck,² LMP sued, alleging that the 200-foot rule violates due process and equal protection under Article I, Section 2 of the Illinois Constitution, and that the GPS requirement violates their right to be free from unreasonable searches under Article I, Section 6. They sought a declaration that the two provisions violate the Illinois Constitution, an injunction preventing their further enforcement, and an award of nominal damages along with Plaintiffs’ costs and expenses.

¹ Throughout this brief, the term “food trucks” should be read as synonymous with “mobile food vehicles” as defined by Section 4-8-010 of the Municipal Code of Chicago.

² Greg Burke and Kristin Casper were forced to close Schnitzel King in 2014, in part because the 200-foot rule made it too difficult to operate in Chicago. The two were voluntarily dismissed from this action and subsequently left Illinois to seek other employment.

Plaintiffs amended their Complaint, and Chicago, in turn, moved to dismiss under Illinois Code of Civil Procedure Section 2-615. Although the circuit court dismissed Plaintiffs' equal protection claim, it allowed their due process and searches, seizures, privacy and interceptions claims to proceed. Following discovery, the parties cross-moved for summary judgment. On December 5, 2016, the circuit court granted Chicago's motion for summary judgment and denied LMP's motion.

LMP timely appealed to the First Judicial District, which on December 18, 2017, affirmed the circuit court's decision. On January 11, 2018, Justice Burke extended LMP's time to submit a petition for leave to appeal. Pursuant to that order, LMP petitioned for leave to appeal to this Court on February 16, 2018. This Court allowed an appeal on May 30, 2018.

No questions are raised on the pleadings.

ISSUES PRESENTED

1. Whether the appellate court erred in upholding Chicago's 200-foot rule on the basis that the police power may be used to blatantly discriminate against one business for the express purpose of financially benefitting that business's would-be competitors.
2. Whether, in light of the facts and circumstances in evidence, the 200-foot rule reasonably furthers Chicago's non-protectionist rationales of mitigating pedestrian congestion and spreading retail food options.
3. Whether the appellate court erred in holding that Chicago's GPS requirement is not a search under Article I, Section 6.
4. Whether Chicago's GPS requirement is a reasonable search although it has never been used for its ostensible purpose and requires that LMP's location history be available to anyone who requests access to it.

JURISDICTION

On May 30, 2018, this Court allowed LMP's petition for leave to appeal. Thus, jurisdiction in this Court lies under Illinois Supreme Court Rule 315.

STATUTES INVOLVED

Municipal Code of Chicago § 7-38-115(f)

No operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant

which is located on the street level; provided, however, the restriction in this subsection shall not apply between 12 a.m. and 2 a.m.

Restaurant, for purposes of this section, means any public place at a fixed location kept, used, maintained, advertised and held out to the public as a place where food and drink is prepared and served for the public for consumption on or off the premises pursuant to the required licenses. Such establishments include, but are not limited to, restaurants, coffee shops, cafeterias, dining rooms, eating houses, short order cafes, luncheonettes, grills, tearooms and sandwich shops.

Municipal Code of Chicago § 7-38-115(l)

Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API). For purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle's GPS device.

Illinois Constitution, Article I, Section 2

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of the laws.

Illinois Constitution, Article I, Section 6

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.

STATEMENT OF FACTS

Plaintiff LMP Services, Inc. is a closely held Illinois corporation based in Elmhurst. A.211.³ Its owner, Laura Pekarik, operates a food truck called “Cupcakes for Courage.” A.212. Cupcakes for Courage is a licensed “mobile food dispenser” that, since June 2011, has sold cupcakes on both public and private property throughout Chicago. *Id.* Laura named the food truck Cupcakes for Courage in honor of her sister Kathryn, who made cupcakes with Laura while recovering from cancer, and Laura donates a portion of the truck’s proceeds to cancer charities.⁴

Chicago has numerous rules that apply to food trucks. Most are straightforward: Food trucks cannot park and operate within 20 feet of a crosswalk, within 30 feet of a stop sign or traffic signal, or directly outside a

³ The record on appeal consists of 23 volumes. Volumes 1 through 21 are the common law record, cited as “C.__.” Volumes 22 through 23 contain transcripts of circuit court proceedings, cited as “__Tr.__,” where the initial blank contains its volume number. The Separate Appendix of Plaintiff-Appellant LMP Services, Inc. is cited as “A.__.”

⁴ *About*, Courageous Bakery & Café, <https://courageousbakery.com/about/>.

theater’s doors. MCC §§ 7-38-115(e)(i)-(ii), 9-64-100(h). But two rules are unusual and onerous. One is the “200-foot rule,” a rule which the Mayor says “protects traditional restaurants” by keeping food trucks from operating within 200 feet of the principal entrance of any business that prepares and sells food to the public. A.57. The second requires that food trucks permanently install and operate Global Positioning System (GPS) devices. A.61. Meant to help enforce the 200-foot rule, these devices send a truck’s location data to a private company every five minutes a truck is operating. And that company, in turn, must both give Chicago access to that data upon request and provide a publicly accessible application programming interface (API), a “door” that allows the public to obtain a truck’s current and historical location data via a computer program. A.167, 304.

A. The History of the 200-Foot Rule

The 200-foot rule is not Chicago’s first attempt to discriminate against food trucks in favor of their brick-and-mortar competitors. In the 1980s, Municipal Code Section 130-4.12(d) forbade food trucks from operating “within two hundred feet . . . o[f] a place of business which deals in like or similar commodities such as are sold by the mobile unit.” A.51. In a 1986 lawsuit brought by food trucks serving construction workers, the Cook County Circuit Court struck down 130-4.12(d) under Article I, Section 2, the same constitutional provision invoked here. A.51, C.1520.

Five years later, in 1991, Chicago re-enacted its 200-foot rule, this time forbidding food trucks from operating within 200 feet of *any* ground-floor restaurant. A.52–53. But unlike Section 130-4.12(d), that re-enactment exempted food trucks serving “food and drink to persons engaged in construction” from the rule. *Id.*

B. Chicago Enacts a New Vending Ordinance

On June 27, 2012, Mayor Rahm Emanuel and seven aldermen introduced Ordinance 2012-4489, A.56, which for the first time required food-truck operators to install GPS tracking devices. A.61. The Mayor’s Office stated that, under the GPS requirement, “[d]ata on food truck locations will be available online to the public. Food truck operators will be required to use mounted GPS devices in each truck so that the City and consumers can follow their locations.” A.117.

The ordinance also maintained the 200-foot rule, while greatly increasing the fines for violating it. Before, Chicago fined trucks \$250.00 to \$500.00 for violating the rule. A.60. The ordinance quadrupled those fines to \$1,000–\$2,000 per violation. A.60-61. Those heightened fines underscored the rule’s protectionist purpose. In a press release, for instance, the Mayor stated that the ordinance “protects traditional restaurants.” A.114.

Alderman Tom Tunney—owner of four Ann Sathers restaurants and former chairman of the Illinois Restaurant Association—echoed those comments, arguing in favor of the ordinance on the explicit grounds that it “regulates

competition” between restaurants and food trucks. *Id.* Alderman Brendan Reilly, who represents an area of Chicago with many restaurants, likewise stated that “we want to make sure that we are guarding those folks who’ve made substantial investments in the City of Chicago by buying restaurants.” A.66–67. And at the July 25, 2012 vote enacting the ordinance, Alderman Walter Burnett, Jr. said that “we don’t want to hurt the brick and mortar restaurants.” A.68.

Following the ordinance’s passage, the Chicago Board of Health enacted GPS tracking regulations, which it subsequently amended. Under those amended regulations, a GPS device must be an “active” device that sends real-time location data to a GPS service provider at least once every five minutes. A.166. The device must be sending that data whenever the truck is vending food, is otherwise open to the public, or is being serviced at a commissary. *Id.* Officials may request a truck’s location data for numerous reasons, including to “establish[] compliance with” the 200-foot rule. *Id.* That data must include both the truck’s current location and at least six months of historical information. A.166–67. And the regulations, like the ordinance, require GPS service providers to provide “[a]n application programming interface (API) that is available to the general public.” A.167.

C. LMP Challenges the 200-Foot Rule and GPS Tracking Scheme

On November 14, 2012, LMP joined with Greg Burke and Kristin Casper and sued in Cook County Circuit Court, contending that the 200-foot

rule violated the Due Process and Equal Protection Clauses of Article I, Section 2 and that the GPS tracking requirement violated Article I, Section 6.

C.3–24. Following amendment, C.194–230, Chicago moved to dismiss.

C.232–35. Although the circuit court dismissed Plaintiffs’ equal protection claim, it allowed their due process and searches and seizures claims to proceed. C.382.

Chicago answered and, following discovery, the parties each moved for summary judgment. On December 5, 2016, the circuit court granted Chicago’s motion for summary judgment, holding that the rule was a legitimate means of “balancing the interest” between food trucks and restaurants and mitigating pedestrian congestion, while the GPS requirement was a reasonable warrantless search. A.3–21. LMP appealed this ruling to the Appellate Court, First Judicial District, on December 28, 2016. A.22.

On December 18, 2017, the appellate court affirmed the circuit court’s decision. A.451. With respect to the 200-foot rule, the appellate court noted that brick-and-mortar restaurants pay property taxes and other associated fees that it felt exceeded similar payments made by food-truck owners. A.463, ¶ 32. Because of that, it held that Chicago could “protect those” restaurants from competition by mobile vendors; accordingly, it refrained from considering Chicago’s post-hoc, non-protectionist rationales for the rule. A.471. The appellate court also held that the GPS scheme did not constitute

a “search” both because LMP had to install the device itself, A.473, ¶ 52, and because GPS tracking was a condition of licensure. A.474–75, ¶ 56. LMP petitioned for leave to appeal to this Court, which this Court granted on May 30, 2018.

STANDARD OF REVIEW

An appeal arising from a summary judgment order is decided under the de novo standard of review. *Perry v. Dep’t of Fin. & Prof’l Regulation*, 2018 IL 122349, ¶ 30 (citing *Stern v. Wheaton–Warrenville Cmty. Unit Sch. Dist. 200*, 233 Ill. 2d 396, 404 (2009)).

ARGUMENT

Chicago enacted its 200-foot rule to “regulate[] competition,” A.60–61, and to ensure “the viability and economic activity of Chicago’s restaurants.” C.1626. It protects restaurants by prohibiting food trucks, whether on public or private property, from operating within 200 feet of a restaurant’s front doors. A.51–52. If a food truck dares to compete within that radius, it can be fined up to \$2,000, A.60–61, thirty times more than the fine for parking in an intersection.

Using the police power to burden one business in order to financially benefit its competitors violates the Illinois Constitution. For over a century, Illinois courts have repeatedly struck down anti-competitive zoning decisions, occupational licensing laws and, most relevant here, proximity restrictions like the 200-foot rule. The appellate court, however, held a government may ignore that constitutional history and “protect brick-and-mortar restaurants,”

A.463, if the government can claim that one competitor might pay more in taxes than another. That conclusion lacks any legal support. And to credit it, to say that governments may snuff out one person's trade in order to reap the "economic by-products" of his or her competitors, would swallow the rule against protectionism.

The appellate court's sole basis for upholding the 200-foot rule was its conclusion that protectionism is permissible as long as the protected class pays taxes, and rejecting that conclusion is sufficient to reverse. To the extent the Court examines alternative bases for affirming, however, none exist. Discovery confirmed that the rule's only plausible explanation is the one Chicago officials have consistently offered: protectionism. Because the 200-foot rule furthers no legitimate interest, this Court should reverse and declare that it violates Article I, Section 2.

To help enforce the 200-foot rule, Chicago requires food trucks to install and operate GPS tracking devices that enable it to monitor a food truck's movements for months on end. This is a warrantless search under the Fourth Amendment and Article I, Section 6. The appellate court said, though, that because food trucks install the devices themselves as a condition of licensure, no search has taken place. A.474–75. Chicago cannot force people to surrender their rights to be free from unreasonable searches in order to work. And it cannot evade constitutional scrutiny by ordering people to install surveillance equipment rather than doing the job itself.

Chicago's GPS scheme is therefore a search, and an unreasonable one at that. Both the Fourth Amendment and Article I, Section 6 require that warrantless inspections be necessary. Chicago has claimed GPS helps facilitate health inspections, but it admitted *never* using GPS data for that purpose. The requirement is also overbroad in that Chicago requires GPS information be shared with anyone who asks for it. Because the GPS tracking requirement is an unreasonable warrantless search, LMP asks this Court to declare that it violates the Illinois Constitution.

I. The Appellate Court Was Wrong to Hold That Protecting Restaurants from Food Truck Competition Is a Legitimate Government Interest.

The parties, as well as the court below, all agree on one thing: Chicago designed its 200-foot rule to protect restaurants from competition by mobile vendors. When Chicago re-enacted the rule in 1991, the Mayor's press secretary defended it on that basis.⁵ It was similarly justified in 2012: Mayor Emanuel said the rule "protects traditional restaurants." A.114. Alderman Tom Tunney, former chairman of the Illinois Restaurant Association, said the rule "regulates competition" between restaurants and food trucks. A.68. Aldermen Reilly and Burnett made similar statements. A.66–68. And throughout this case, Chicago's principal argument has been that the rule "preserv[es] the viability and economic activity of Chicago's

⁵ Janet Ginsburg, *City Cracks Down on Mobile Food Vendors*, CHI. TRIB. (July 27, 1991), http://articles.chicagotribune.com/1991-07-27/news/9103230333_1_mobile-food-vendors-parking-food-truck.

restaurants.” C.1626.

Using the police power to burden one business to increase the “economic activity” of its competitors violates decades of Illinois jurisprudence. Again and again, Illinois courts have held that “[c]ompetition should be managed by market forces, not by local government, which should not be placed in the position of deciding whether more (or less) competition is a good thing.” *Bossman v. Vill. of Riverton*, 291 Ill. App. 3d 769, 777 (4th Dist. 1997). This basic tenet of Illinois jurisprudence led this Court in *Chicago Title & Trust, Co. v. Village of Lombard*, 19 Ill. 2d 98 (1960) to invalidate a proximity restriction on all fours with the one in this case.

The appellate court broke with this decades-long string of precedent in upholding the 200-foot rule. It declared that “[w]e reject LMP’s assertion that the City may not protect brick-and-mortar restaurants.” A.463, ¶ 32. Leaning heavily on dicta from *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296 (2008)—a zoning case that has nothing to do with protectionism—the court held that local governments could “protect those in the food service industry who pay and support the City’s property tax base from those food businesses that do not,” A.463, ¶ 32, by blatantly discriminating against the latter in favor of the former.

This Court should recognize the appellate court’s holding as an unsupportable deviation from an unbroken line of cases. In Part A, LMP articulates how, in both *Chicago Title & Trust* and numerous other cases,

Illinois courts have rejected the notion that governments may discriminate against X in order to benefit Y. In Part B, LMP shows how courts in other states have reached the same conclusion. And in Part C, LMP explains why the appellate court erred in holding that *Napleton* silently overthrew decades of Illinois jurisprudence.

A. Illinois Courts Have Repeatedly Held That Protecting Businesses From Competition Is Not a Legitimate Use of the Police Power.

For over a century, Illinois courts have held that state and local governments may not use the police power to suppress competition and thereby financially benefit a preferred private party. *See, e.g., City of Peoria v. Gugenheim*, 61 Ill. App. 374, 380 (2d Dist. 1895) (invalidating vending ordinance as “unjust and oppressive” after concluding that “its aim and intent was to prevent competition with the city merchants by transient merchants, to the detriment of the public generally”). This principle has been reaffirmed at least a dozen times since, in cases involving zoning laws, occupational licensing, and proximity restrictions like Chicago’s 200-foot rule.

The protectionist impulse often arises in zoning cases, with local governments prohibiting new businesses out of fear they will compete with existing establishments. In *Lazarus v. Village of Northbrook*, for instance, plaintiffs bought land to build a new hospital. 31 Ill. 2d 146 (1964). Despite being a permissible use, the village board of trustees refused permission to build, in part because a new hospital might compete with nearby facilities

and hurt them financially. The plaintiffs sued, alleging in part that the board's actions were arbitrary and unreasonable.

This Court agreed, holding that the board's denial had no "real and substantial relation to the public health, safety, morals or general welfare." *Id.* at 151–52. The project was compatible with the area, and similar facilities existed nearby. This Court additionally rejected the village's protectionist impulse, holding that "the fear of potential economic disadvantage to other hospitals is not a permissible consideration." *Id.* at 152. Similar cases abound. *E.g.*, *Suburban Ready-Mix Corp. v. Vill. of Wheeling*, 25 Ill. 2d 548, 550 (1962) (invalidating ordinance prohibiting new concrete plants after finding that it "exclude[d] from the village all ready-mix concrete plants except that of the Meyer company"); *Cosmopolitan Nat'l Bank v. Vill. of Niles*, 118 Ill. App. 3d 87, 91 (1st Dist. 1983) (reversing denial of permit to build new restaurant near four existing restaurants on basis of potential competition); *Exch. Nat'l Bank of Chi. v. Vill. of Skokie*, 86 Ill. App. 2d 12, 20–21 (1st Dist. 1967) (rejecting denial of special-use permit for automated carwash and holding that a local government cannot "legislate economic protection for existing businesses against the normal competitive factors which are basic to our economic system").

Illinois courts have also frequently dealt with anti-competitive occupational licensing schemes that empower incumbents to shield their profession from new entrants. In *Church v. State*, for instance, the law

required would-be security alarm installers to work for an existing contractor for three of the previous five years. 164 Ill. 2d 153, 159 (1995). This Court examined if the restriction had a “definite and reasonable relationship” to protecting the public from incompetent contractors. *Id.* at 165. This Court concluded that it did not, holding the restriction unconstitutional “because it grants members of the private alarm contracting trade monopolistic control over individuals who wish to gain entrance into the field.” *Id.* at 168.

Church is no anomaly; for decades, Illinois courts have struck down similar anti-competitive and monopolistic trade restrictions. *E.g., People v. Johnson*, 68 Ill. 2d 441 (1977) (plumbing); *Ill. Hosp. Serv., Inc. v. Gerber*, 18 Ill. 2d 531 (1960) (insurance); *Schroeder v. Binks*, 415 Ill. 192 (1953) (plumbing); *People v. Brown*, 407 Ill. 565 (1950) (same); *Johnson v. Ill. Dep’t of Prof’l Regulation*, 308 Ill. App. 3d 508, 513–14 (4th Dist. 1999) (private detectives).

This principle against protectionism has also arisen in challenges to proximity restrictions like the 200-foot rule. In *Chicago Title & Trust v. Village of Lombard*, this Court scrutinized a proximity restriction that prevented new gas stations from opening within 650 feet of existing stations. 19 Ill. 2d 98, 100 (1960). After the plaintiffs negated Lombard’s post-hoc justifications of fire safety and congestion remediation, this Court turned to the restriction’s real purpose: protecting existing gas stations from competition. This Court rejected the legitimacy of that purpose, holding that the proximity restriction inhibited competition and “tend[ed] to promote

monopoly.” *Id.* at 107. Because protectionism is illegitimate, this Court held that it could not find “a rational basis for the restriction,” and declared Lombard’s 650-foot rule unreasonable and unconstitutional. *Id.*

Twenty-six years later, the Cook County Circuit Court invalidated a previous version of Chicago’s 200-foot rule in a challenge brought by a vending company that principally served construction workers. *Thunderbird Catering Co. v. City of Chicago*, No. 83 L 52921 (Cook Cty. Cir. Ct. Oct. 15, 1986). Though the order merely said the rule was “vague and unenforceable,” the *Chicago Tribune* contemporaneously reported that the court upheld the argument “that the provision was an illegal infringement on competition and was not needed for traffic safety because vendors are required to park legally.” *Vendor Restriction Rolls Away*, CHI. TRIB., Oct. 16, 1986, 1986 WLNR 1202339. Five years later, Chicago enacted its current version of the 200-foot rule and added a brand-new exemption for food trucks serving construction workers. A.51–53.

The appellate court cast these decisions to the side, either because they involved non-home-rule municipalities or did not involve use of the right-of-way. Below, LMP explains that these cases are not distinguishable, and that the Illinois Constitution *always* requires that the police power be used for a public purpose, no matter who exercises that power or how it is deployed.

1. *Chicago Title & Trust* and other cases remain good law following the establishment of home-rule authority in the 1970 Constitution.

Cases like *Chicago Title & Trust* and *Exchange National Bank of Chicago* demonstrate that local governments may not use the police power to shield businesses from competition. But the appellate court cast many of those cases to the side because they were decided before 1970 and involved non-home-rule units. Pointing to this Court's decision in *Triple A Services*, it said that the "home rule provision [in the 1970 Constitution] dramatically altered Chicago's authority, and it can now act with the 'same powers as the sovereign.'" A.468, ¶ 42 (quoting *Triple A Services, Inc. v. Rice*, 131 Ill. 2d 217, 230 (1989)).

But, the advent of home-rule authority makes no difference. None of the cases cited above turned on the fact that the defendant locality had not been delegated authority to regulate. Instead, they all turned on the same question presented here: whether the Illinois Constitution permits the police power to be used purely for protectionism.

In any event, Illinois courts use the same analysis to determine whether a law is constitutional, no matter whether the law was enacted by a home-rule authority or not. For a non-home-rule municipality, there are two steps. First, the court must determine if the General Assembly has delegated authority to exercise the police power to the municipality. If it has, the court proceeds to the second step of determining if the municipality's exercise of that power has a rational basis; that is, whether it is a reasonable means of

furthering some legitimate government interest.

Home-rule authority simply eliminates that first step, since home-rule municipalities like Chicago derive their police power directly from the Illinois Constitution. Il. Const. art. VII, § 6(a). But they must still proceed to the second step, since courts must always evaluate if the government's action has a rational basis. *See, e.g., Allen v. Woodfield Chevrolet, Inc.*, 208 Ill. 2d 12, 33 (2003) (declaring statute invalid under rational-basis test because it “had an artificially narrow focus, designed primarily to confer a benefit on a particular group, rather than to promote the general welfare”).

In other words, the reasonableness of municipal ordinances is judged by the same constitutional standard, no matter whether those municipalities are home-rule authorities or are exercising power delegated to them by the legislature. This Court said as much in *City of Carbondale v. Brewster*, 78 Ill. 2d 111, 115 (1979), where it explained that enactments by the state and home-rule authorities must “bear a reasonable relationship to one of the foregoing interests which is sought to be protected, and the means adopted must constitute a reasonable method to accomplish such objective.” The Court then immediately remarked that this same test “also applies to ordinances passed pursuant to legislative authority.” *Id.* (citing *Petterson v. City of Naperville*, 9 Ill. 2d 233, 244 (1956)). And in *Petterson*, this Court explained that while “the legislature may, if it sees fit, confer special extraterritorial powers on municipalities,” 9 Ill. 2d at 243 (citations omitted),

“[t]he exercise of such extraterritorial powers by a municipality is, of course, always subject to the requirement that the ordinance passed pursuant to legislative authority constitutes a valid exercise of the police power, and bears a reasonable and substantial relation to the public health, safety or general welfare.” *Id.* at 243–44.

Chicago Title & Trust followed this familiar two-step process. This Court began its opinion by performing the first step described above, acknowledging that the legislature had given Lombard authority “to regulate the storage of petroleum products, and to locate and regulate the use and construction of garages.” 19 Ill. 2d at 103. This Court then turned to the second, constitutional, step. It evaluated the evidence for Lombard’s 650-foot proximity restriction and held that it could not find “a rational basis for the restriction.” *Id.* at 107. This Court therefore affirmed the lower court’s decision holding the ordinance “unconstitutional and void.” *Id.* at 100. *Chicago Title & Trust* is on all fours with this case, as are the numerous other cases dismissing protectionism as a legitimate state interest.

2. The fact that vending sometimes takes place on the public way does not absolve the 200-foot rule of constitutional scrutiny.

The appellate court also said *Chicago Title & Trust, Exchange National Bank, Cosmopolitan National Bank* and other cases were distinguishable because they involved private property. A.469–70. It cited *Triple A Services v. Rice*, *City of Chicago v. Rhine*, and *Good Humor v. Village of Mundelein* as supporting the idea that “LMP and all food trucks have no

constitutional property right to conduct any private business from the streets or sidewalks of Chicago.” A.469, ¶ 43. To the appellate court, when a regulation involves a trade conducted on the right of way, the minimum constitutional standard of rationality either withers or falls away altogether.⁶

That is not what these cases say. Instead, they say that the right to practice one’s trade must yield to reasonable police power regulations. LMP fully appreciates that point, but the plaintiffs in *Triple A Services, Good Humor*, and *Rhine* did not. They felt that they had acquired a property right entitling them to keep vending as they always had, irrespective of any reasonable police-power regulations. They were wrong. *See, e.g., Triple A Servs., Inc. v. Rice*, 131 Ill. 2d 217, 237 (1989) (“Plaintiffs seem to suggest that through long and continued operation of their businesses within the District, they have become vested with some property interest in continuing to do so. We disagree.”); *Good Humor Corp. v. Vill. of Mundelein*, 33 Ill. 2d 252, 259 (1965) (rejecting idea that, because plaintiff had operated for 15 years, a ban on vending on public property could not be applied to him); *City of Chicago v. Rhine*, 363 Ill. 619, 625 (1936) (ruling that plaintiff had no “inherent right” to vend despite enactment of reasonable congestion ordinance).

Again, unlike the plaintiffs in *Triple A Services, Good Humor*, and *Rhine*, LMP does not claim that it may ignore reasonable health, safety, or

⁶ It is important to remember that the 200-foot rule applies on both public and private property throughout all of Chicago.

welfare regulations. But its argument is that the 200-foot rule is *not* a reasonable regulation. Its anti-competitive purpose violates this Court's repeated holdings that the government may only regulate the public way "within reason." *E.g., Vill. of Lake Bluff v. Dalitsch*, 415 Ill. 476, 486 (1953).

Lower Illinois courts have invalidated unreasonable municipal regulations regarding the public way under the rational-basis test. In *City of Evanston v. City of Chicago*, 279 Ill. App. 3d 255 (1st Dist. 1996), for instance, Evanston sued Chicago concerning a divider Chicago erected between the two cities. Although Chicago had home rule, the First District noted "that a municipality's regulatory and police powers over its public streets are subject to a reasonableness limitation." *Id.* at 266 (citing *City of Chicago Heights v. Pub. Serv. Co.*, 408 Ill. 604, 608 (1951)). Citing *Triple A Services*, it recognized that Evanston had the burden of demonstrating that Chicago's actions lacked a rational basis. *Id.* It held that Evanston had met that burden by proving that Chicago had conducted no traffic studies regarding the barrier and by presenting evidence that the barrier would not further Chicago's supposed justifications.

As *City of Evanston* demonstrates, the Illinois Constitution *always* constrains government action, whether on public or private property. And it always requires that the government use the police power to further the public interest, not to financially benefit private parties by running off their competition. This is true not only in Illinois but, as the next section shows,

other states throughout the nation.

B. Courts in Other States Have Rejected the Idea That the Police Power Authorizes Governments to Protect Restaurants and Other Brick-and-Mortar Retailers from Vending Competition.

Lazarus, Church, and Chicago Title & Trust all demonstrate a bedrock rule of Illinois jurisprudence—that the government may not use its police power to shield a business from its competitors. But that rule is not unique to Illinois courts, and in fact courts around the nation have rejected the idea that tax receipts can justify protectionism.

Good Humor Corp. v. City of New York is a perfect example. 290 N.Y. 312 (1943). There, the New York Court of Appeals held that the police “power is not broad enough to prohibit use of the street for a lawful business . . . for the sole purpose of protecting rent payers and taxpayers against competition from others who do not pay rent or taxes.” *Id.* at 317.⁷ Applying the holding in *Good Humor*, New York courts have held that New York City cannot require vendors to stay 100 feet away from brick-and-mortar businesses selling similar goods (or 250 feet away if the business complains). *Duchain v. Lindsay*, 345 N.Y.S.2d 53, 55–57 (N.Y. App. Div. 1973), *aff’d*, 34 N.Y.2d 636 (1974).

⁷ Of course, Chicago’s food trucks do pay taxes, including property taxes. All Chicago food trucks must associate with a commissary, MCC § 7-38-138, and therefore pay property tax either by virtue of owning that commissary or by renting space in one. They likewise underwrite the commissaries’ electricity use and water and sewer taxes. They pay sales taxes, with the rate for food trucks in Chicago exceeding 11%. And unlike restaurants, food trucks must pay Chicago taxes for the fuel they purchase. *Id.* § 3-52-020.

New Jersey has likewise rejected the idea that cities may discriminate against vendors to enrich brick-and-mortar businesses. In *Fanelli v. City of Trenton*, 135 N.J. 582, 589 (1994), the New Jersey Supreme Court stated that “a municipal prohibition on peddling that serves no purpose other than to protect local businesses from competition is an invalid exercise of a municipality’s police power.” (citations omitted); *see also Moyant v. Borough of Paramus*, 30 N.J. 528, 545 (1959) (holding in vending case that the police “power cannot . . . be exercised for a purpose to shield the local shopkeepers from lawful competition”) (internal quotations and citations omitted). In applying that longstanding norm, a New Jersey court struck down a law preventing vending within 200 feet of businesses with similar merchandise, declaring that “a regulation patently for the benefit of local shopkeepers to prevent competition . . . will not be permitted under the mask of a police regulation.” *Mister Softee v. Mayor of Hoboken*, 77 N.J. Super. 354, 367 (N.J. Super. Ct. Law Div. 1962), *overruled on other grounds by Brown v. City of Newark*, 113 N.J. 565, 578 (1989).

California, too, has rejected the appellate court’s holding. In *People v. Ala Carte Catering Co.*, for instance, a California court invalidated a Los Angeles rule that kept food trucks from selling within 100 feet of a restaurant. 159 Cal. Rptr. 479 (Cal. Ct. App. 1979). That court, after rejecting Los Angeles’ pretextual congestion and spreading retail food options

rationales, invalidated Los Angeles' rule as a "rather naked restraint of trade." *Id.* at 484 (citation omitted).

C. *Napleton* Does Not Justify Chicago's Blatantly Discriminatory Use of the Police Power.

The above-discussed cases from Illinois and other states show that governments may not use the police power to play favorites, to burden X because doing so will aid Y. That principle undergirds this Court's repeated rejection of protectionism and its holding in *Chicago Title & Trust* that Lombard could not constitutionally "promote monopoly" for existing gas stations by preventing new ones from opening within 650 feet.

The appellate court's decision sidestepped that basic principle, concluding that because it felt that a food truck on average pays less in taxes and fees than a restaurant, the government could engage in pure protectionism on behalf of the latter. A.463. The sole Illinois case it cited in support was *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296 (2008), but that decision cannot bear the weight the appellate court would put on it.

Napleton concerned a challenge to a zoning text amendment enacted by the Village of Hinsdale. The village's zoning code established three distinct business districts, each meant to serve a different shopping population (i.e., village residents versus the broader suburban community). Hinsdale commissioned a months-long study to evaluate whether the village should allow new banks and credit unions to open in first-floor retail spaces in those districts. Hinsdale concluded that when a bank or credit union

(which does not generate sales taxes) occupied a first-floor space, that necessarily prevented a sales-tax-generating use from occupying it. So Hinsdale prevented new first-floor banks and credit unions in two of the three districts.

Katherine Napleton, who owned several contiguous parcels of property in one of the affected districts, sued. She complained that Hinsdale's amendment reduced the pool of potential lessees she could attract, and argued that Hinsdale's actions lacked a rational basis. This Court affirmed the dismissal of her complaint, holding that it lacked sufficient factual detail. But it also said that, in any event, the amendment had a rational basis. In its view, Hinsdale's amendment ensured a mix of businesses in the affected districts, and limiting additional banks from locating in first-floor spaces was a reasonable way for Hinsdale to address this "opportunity cost in forgone tax revenue." *Id.* at 321.

Napleton therefore does not stand for the idea that protectionism is legitimate. Instead, it stands for the unremarkable proposition that cities may take into account how much tax revenue a use generates when deciding whether to permit that use in a given zoning district. This sort of math is common, indeed ubiquitous, in zoning determinations: In evaluating a potential zoning change for a specific parcel, for instance, one factor officials consider is "the relative gain to the public as compared to the hardship imposed upon the individual property owner." *La Salle Nat'l Bank of Chi. v.*

Cook Cty., 12 Ill. 2d 40, 47 (1957).

Rather than prohibit new banks from entering the village, Hinsdale used its zoning power to create different rules for different districts based on those districts' purposes. This is common: Zoning officials may recognize that increasing housing density could potentially increase property tax revenue, for instance, but they will weigh that increase against the chance increased density could mean greater service costs. That's why some residential areas have single-family homes, and others have apartment buildings. And it's why Hinsdale said there could be no new first-floor banks in its "Community Business" and "General Business" districts, but continued to allow them in its "Central Business District." The holding of *Napleton* is that communities may constitutionally conduct this type of routine calculus.

The appellate court, by contrast, read *Napleton* as letting municipalities play favorites so long as they point to peoples' relative tax contributions as justification. But that reading ignores the facts of the case. Katherine Napleton was a property owner, not someone whose plans of opening a new bank were stymied by Hinsdale's actions. Hinsdale did not change its zoning to protect existing banks and credit unions from competition by new entrants. Indeed, nothing in *Napleton* even intimates that Hinsdale could amend its zoning code to prevent new banks in order to protect the revenues of existing ones. Such a holding would conflict with numerous holdings that say "the control or restriction of competition is not a

proper or lawful zoning objective.” *Cosmopolitan Nat’l Bank v. Vill. of Niles*, 118 Ill. App. 3d 87 (1st Dist. 1983); *see also Lazarus v. Vill. of Northbrook*, 31 Ill. 2d 146, 152 (1964); *Swain v. Winnebago Cty.*, 111 Ill. App. 2d 458, 467 (1st Dist. 1969) (“It is not the function of the county zoning ordinances to provide economic protection for existing businesses.”).

Indeed, authorizing municipalities to blatantly discriminate whenever they felt that one competitor paid more in taxes than another would swallow the rule against protectionism. Small takeout restaurants, for instance, often have a small footprint, little to no seating, and a tax bill that is a fraction of that paid by full-size restaurants. Under the appellate court’s view of *Napleton*, cities could restrict or outlaw such small-scale entrepreneurs out of concern that consumers, if given a choice, may choose that less-expensive or more-convenient option. The same would be true of online retailers like Amazon that, just like food trucks, use the Internet and city streets to bring their wares to willing customers.

Of course, food trucks pay taxes, just like restaurants and all other businesses. But those amounts can be difficult to calculate and compare across industries. The appellate court’s reading of *Napleton* would therefore authorize cities to blatantly discriminate against disfavored businesses whenever they could plausibly *claim* those businesses *might* pay less in taxes. Indeed, under the appellate court’s view of *Napleton*, virtually every Illinois case identified above, *see supra* Section I.A., should have come out

differently, as the government could have speculated in each that one competitor might contribute more to the tax base than another.⁸

To allow the police power to authorize blatant protectionism would do violence to the Illinois Constitution. In *Southwestern Illinois Development Authority v. National City Environmental, LLC*, this Court held that the government could not use eminent domain to take from X and give to Y because the government felt the forced transfer would lead to greater economic activity. 199 Ill. 2d 225, 239 (2002). Declaring such actions to be outside the police power, this Court held that “[i]f property ownership is to remain . . . a part of the liberty we cherish, the economic by-products of a private capitalist’s ability to develop land cannot justify a surrender of ownership to eminent domain.” *Id.* at 240. It should likewise hold that such potential “economic by-products” do not justify depriving LMP of its trade so as to increase, in Chicago’s words, the “economic activity of Chicago’s restaurants.” C.1626.

Since 2008, Illinois courts have cited *Napleton* 136 times. Until this case, it had never been cited as blessing protectionism. But *Napleton* did not overrule *Lazarus*, *Cosmopolitan National Bank*, *Exchange National Bank of Chicago*, *Church, Brown*, *Chicago Title & Trust*, and numerous other cases, particularly without even mentioning it was doing so. Because the 200-foot

⁸ In addition, Chicago is the one who determines how much both food trucks and restaurants pay in taxes. It should not be allowed to bootstrap that fact into a justification for protecting the latter against competition by the former.

rule's actual, admitted purpose is to burden food trucks so as to financially benefit restaurants, and because the Illinois Constitution rejects such protectionist urges, this Court should reverse and hold that the 200-foot rule violates Article I, Section 2.

II. The 200-Foot Rule Does Not Reasonably Further Either of Chicago's Non-Protectionist Rationales.

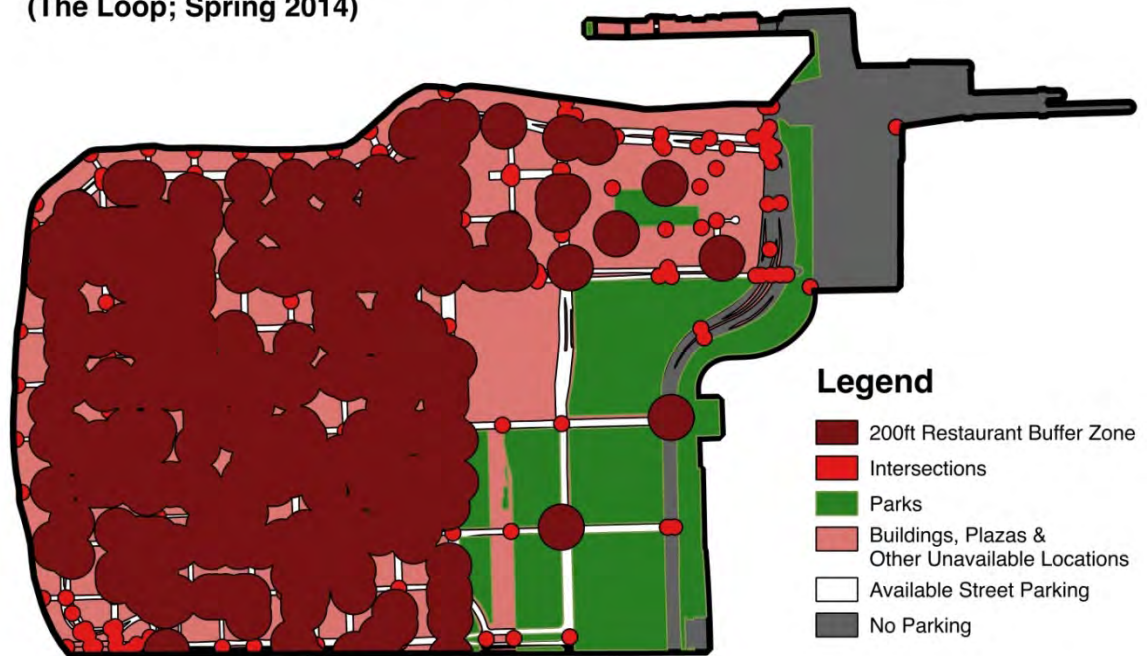
The appellate court premised its entire decision regarding the 200-foot rule on protectionism grounds, A.471, and this Court can therefore reverse entirely on that basis. But in discovery, Chicago also suggested two non-protectionist rationales for its rule: that it would mitigate pedestrian congestion and spread retail food options to underserved areas. To the extent this Court considers those rationales in the alternative, it can easily reject them based on the undisputed facts in evidence, which show that the 200-foot rule is an arbitrary, irrational means of either reducing pedestrian congestion or encouraging food trucks to visit underserved areas.

A. Because the 200-Foot Rule Impairs LMP's Constitutional Right to Pursue Its Trade, It Is Subject to Rational-Basis Review.

The 200-foot rule severely impinges on the right of LMP and Chicago's other food truckers to practice their trade. It paints a circle, 400 feet across, around the front door of each restaurant, coffee shop, and convenience store in the city. Within that circle, no vending may occur. Given that there are thousands of these establishments in Chicago, the rule's cumulative effect is prohibitory. Restaurant data Chicago provided in discovery shows, for

instance, that these hundreds of circles overlap to effectively prevent Laura and others from vending in the vast majority of the northern part of the Loop.

Chicago Food Truck Parking Map (The Loop; Spring 2014)



This is an injury of constitutional dimension. As this Court has repeatedly recognized, “[i]t is a well-established constitutional principle that every citizen has the right to pursue a trade, occupation, business or profession. This inalienable right constitutes both a property and liberty interest entitled to the protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions.” *Coldwell Banker Residential Real Estate Servs. of Ill., Inc. v. Clayton*, 105 Ill. 2d 389, 397 (1985). Although the police power may interfere with that right “where the public health, safety or welfare so requires,” *id.*, that power must be exercised reasonably. *Lyon v. Dep’t of Children and Family Servs.*, 209 Ill. 2d 264, 272

(2004).

Accordingly, whether the 200-foot rule is constitutional turns on the rational-basis test, which requires a “definite and reasonable relationship to the end of protecting the public health, safety and welfare.” *Church*, 164 Ill. 2d at 165; *see also Krol v. Cty. of Will*, 38 Ill. 2d 587, 590 (1968) (requiring “a definite and substantial relation to a recognized police-power purpose”). This test, which applies to a municipality’s police power over its public streets, *see supra* Section I.A.2, “is not ‘toothless’ and [courts] must strike down provisions which run afoul thereof.” *People v. Jones*, 223 Ill. 2d 569, 596 (2006) (citation omitted).

In applying that test, Illinois courts employ a two-step inquiry. The first step looks at whether the articulated legislative purpose is a legitimate one. If it is, the court then examines the relationship between that purpose and the means the ordinance employs to effectuate it. Even an ordinance meant to serve legitimate interests is invalid if facts and circumstances demonstrate that it does not reasonably further that interest. *Krol*, 38 Ill. 2d at 591.

This Court took that fact-based approach in *Chicago Title & Trust*. There, Lombard claimed its rule preventing new gas stations from opening within 650 feet of existing ones would reduce the risk of fire and explosions, and that having stations located too near each other increased congestion. 19 Ill. 2d at 101–02. But this Court examined the record amassed by the

plaintiffs and concluded that they had negated Lombard’s asserted rational bases. This Court credited expert testimony demonstrating that one station’s proximity to another did not enhance any danger from fire. *Id.* at 105; *see id.* at 102–03 (expert testimony). It also noted that the 650 feet Lombard mandated between gas stations was far larger than the 150 feet it required between a gas station and a hospital, church, or school, and concluded that, if the concern was danger to the public, the 650-foot rule was “clearly unreasonable.” *Id.* at 105. It noted that gas stations were no different than other businesses, and that existing stations could continue operating within 650 feet of one another, both of which undercut Lombard’s congestion rationale. *Id.* at 105–07. It therefore upheld the circuit court and struck the 650-foot rule down.

Chicago’s 200-foot rule fails rational-basis review under the standard this Court laid out in *Chicago Title & Trust* and other cases. In Part B, LMP demonstrates that the rule is not a reasonable means of mitigating pedestrian congestion. And in Part C, LMP explains why the rule is not a rational means of encouraging food trucks to operate in underserved areas.

B. The 200-Foot Rule Is Not a Reasonable Means of Mitigating Pedestrian Congestion.

The appellate court’s ruling on the 200-foot rule rested exclusively on protectionism. The idea that the rule mitigates pedestrian congestion has always been an afterthought. And for good reason. The evidence demonstrates the rule’s unreasonableness as a pedestrian congestion

measure. In Section 1, LMP shows the arbitrariness of the 200-foot rule as a pedestrian congestion measure, both because it applies only to one potential source of congestion (food trucks operating near restaurants) and because it sweeps far more broadly (and fines much more heavily) than laws actually designed to mitigate congestion. In Section 2, LMP demonstrates how the rule's exemptions for food trucks serving construction workers or operating at mobile-food-vehicle stands undercut any claim of rationality. In Section 3, LMP illustrates how the rule blocks food-truck operations even on private property and other places where congestion concerns do not arise. And in Section 4, LMP discusses an empirical expert study that showed that the distance between food trucks and restaurants has no effect on the degree of pedestrian congestion.

1. **The fact that the 200-foot rule requires trucks to stay much farther away from restaurants than actual congestion sources and imposes far greater fines for violations undercuts the rule's reasonableness.**

Chicago's proximity restriction is just as unreasonable a congestion tool as Lombard's proximity restriction was an unreasonable means of ensuring public safety. In *Chicago Title & Trust*, one rationale for Lombard's rule was that preventing new gas stations from opening within 650 feet of existing ones would protect the public from fire and explosions. *See* 19 Ill. 2d at 101.

But this Court saw through that charade. It pointed out that Lombard only required that new gas stations not be "within 150 feet of any hospital,

church or school.” Said the Court,

[I]t can hardly be supposed that proximity to such places, where numbers of people are accustomed to assemble, involves less danger than proximity to another filling station. To require filling stations to be separated by at least 650 feet, while requiring an intervening distance of only 150 feet between a filling station and a hospital, church or school, is clearly unreasonable if the test is danger to the public.

Chicago Title & Trust, 19 Ill. 2d at 104–05.

The same situation exists here. Just like Lombard’s 650-foot rule, Chicago’s 200-foot rule requires that food trucks stay much farther away from restaurants than actual congestion sources. Chicago testified that in “most everyday circumstances,” it would not “expect lines and crowds to form outside retail food establishments,” and that lines and crowds would not be “typical.” A.186. By contrast, Chicago admitted that “[b]efore a performance starts, there tends to be a crowd around a theater entrance.” A.183. Yet Chicago lets food trucks park outside a theater so long as they’re not immediately outside the theater’s doors. MCC § 9-64-100(h).

Or look at intersections. Chicago admitted they pose a distinct congestion concern, with Chicago’s expert testifying that “[p]latooned pedestrian flows,” side-by-side walking that can increase the severity of pedestrian congestion, “generally occur near traffic signals.” C.1917. But the rule requires that food trucks stay up to *ten times* farther away from restaurants than from these sensitive locations. MCC §§ 7-38-115(e)(i) (20 feet from crosswalk); 7-38-115(e)(ii) (30 feet from stop signs and lights).

Chicago also imposes far greater fines for violating the 200-foot rule as compared to these actual anti-congestion measures. Fines for violating the 200-foot rule start at \$1,000 and can reach up to \$2,000, A.60–61, up to *thirty times higher* than the fine for parking too near crosswalks (\$60), stop signs and lights (\$60), or theaters (\$100).⁹

Nor do restaurants pose any greater pedestrian congestion risk than department stores, office buildings, or other businesses. Expert research, discussed in more detail below, noted no pedestrian congestion impacts caused by restaurants. *See infra* Section II.B.4. And although Chicago’s congestion expert said that people can travel in groups to restaurants, he admitted that “[p]eople can walk in groups to a lot of different places. I mean anything, really.” C.1734. Despite that, Chicago mandates *no* minimum distance between food trucks and numerous other establishments with significant pedestrian traffic like department stores and office buildings.

The fact that Chicago permits many other activities that raise congestion concerns to locate within 200 feet of a restaurant further shows the rule’s unreasonableness as a congestion measure. Chicago’s 1,000-plus street performers—who greatly outnumber Chicago’s food-truck population—can play directly outside a restaurant even though they, in Chicago’s words, often “claim a large area of the sidewalk for their instruments and

⁹ *Parking, Compliance, and Automated Enforcement Violations*, City of Chicago, https://www.cityofchicago.org/city/en/depts/fin/supp_info/revenue/general_parking_ticketinformation/violations.html (last visited Aug. 16, 2018).

themselves and constrain the flow getting around them.” A.177. Handbillers may also operate outside restaurants even though Chicago said they too were “a potential source” of congestion. A.176. And vending carts, which both serve pedestrians and are *parked directly upon the sidewalk*, can sit immediately outside a restaurant’s front doors. MCC § 7-38-148(3).

If the goal was actually to mitigate congestion, then prohibiting food trucks, and only food trucks, from operating near restaurants while simultaneously allowing these other activities would be an arbitrary and ineffective way of achieving that goal. These discrepancies show that it is competition, not congestion, that the rule seeks to suppress.

2. The fact that the 200-foot rule exempts food trucks serving construction workers and/or operating at a mobile-vending-vehicle stand—situations where congestion concerns would be just as, if not more, pronounced—undercuts any claim of the rule’s reasonableness as a congestion measure.

Chicago Title & Trust instructs that courts should be extremely skeptical when a proximity restriction has exemptions that undercut its purported rationales. Lombard’s 650-foot rule, for instance, permitted existing stations within 650 feet to keep operating even though they raised the same fire and explosion concerns Lombard claimed motivated the rule. 19 Ill. 2d at 106. Because the plaintiff’s “proposed service station [wa]s no different from those already in operation,” the Court held that the exemption undercut the 650-foot rule’s reasonableness. *Id.* at 107; *see also Lou Owen, Inc. v. Vill. of Schaumburg*, 279 Ill. App. 3d 976, 987–88 (1st Dist. 1996)

(invalidating ban on for-profit dances where it found “a paucity of evidence to show a reason for distinguishing between commercial and noncommercial activities”).

Chicago’s 200-foot rule contains two glaring exceptions that raise the same deficiency identified in *Chicago Title & Trust* and *Lou Owen*. First, Chicago exempts food trucks serving construction workers from the rule. A.52–53. This exemption exists because in 1986, a company whose trucks primarily served construction workers succeeded in having a court invalidate the 200-foot rule’s predecessor under Article I, Section 2. A.51, C.1520. When Chicago re-enacted the rule, it exempted trucks serving construction workers to head off another lawsuit. It did this although, as anyone walking by a construction site knows, construction can pose significant congestion concerns. In fact, Chicago admitted that construction projects imposing on the right-of-way can “contribute to pedestrian congestion,” A.186, *see also* A.136–37.

The construction exemption’s broad and undefined scope only underscores its arbitrariness. Chicago admitted that food trucks qualifying for the exemption need not exclusively serve construction workers. When LMP asked what minimum “percentage of customer clientele” had to be construction workers, Chicago could not say. A.135. Chicago also testified that a truck need not be on a construction site to qualify; it is enough that it be “in the proximity of the construction site.” A.134. But when LMP asked

what distance “in the proximity” indicated, Chicago was again at a loss.

A.135. And it is important to remember that, at any given time, there are *thousands* of active construction permits in Chicago. A.137.

The 200-foot rule’s exemption for trucks operating at designated parking spots called “mobile-food-vehicle stands,” A.61, further undercuts the rule’s reasonableness as a congestion measure. City law requires five stands in each community area with more than 300 retail-food establishments, MCC § 7-38-117(c), areas that Chicago admitted are densely populated and contain “a lot of pedestrian congestion.” A.205. But these stands have little to no oversight: Chicago, for instance, has no regulations concerning the stands, *see* C.1969, and it was not aware of anyone tasked with monitoring them. A.152. Yet despite this, Chicago was unaware of having ever “received any [c]omplaints about sidewalk congestion at mobile food vehicle stands.” A.154.

Chicago claimed that its exemption for mobile-food-vehicle stands was reasonable because they were less likely to cause pedestrian congestion than non-stand locations. Not only did Chicago provide no basis for that assertion, but research showed it to be incorrect. As discussed in more detail below, *see infra* Section II.B.4, Professor Renia Ehrenfeucht is an expert on the use of sidewalks who conducted a large-scale study of seven different food-truck locations across the Loop. A.220–22. As part of that study, Professor Ehrenfeucht analyzed congestion outcomes at three mobile-food-vehicle stand locations and compared that to congestion outcomes arising at four, non-

stand locations. A.222. That analysis found that no pedestrian congestion differences existed between the two. A.221.

3. The fact that the rule prohibits food trucks from operating on private property and other locations where no congestion concerns could reasonably exist further undercuts its claim of reasonableness.

The 200-foot rule is also unreasonable as a congestion measure because it prohibits food trucks from operating where no congestion concerns exist. In *Krol v. County of Will*, this Court held that a “regulation attempted where the threat to public health is remote” should be declared invalid. 38 Ill. 2d at 591 (citing *City of W. Frankfort v. Fullop*, 6 Ill. 2d 609, 614 (1955)). In striking down the county’s requirement that Krol’s waste only be deposited in a continuously flowing stream—even though that waste had already been treated—the Court found it relevant that “any possible public benefit which might be gained from the enforcement of the ordinance is slight and the hardship it can inflict on individual property owners is great.” *Krol*, 38 Ill. 2d at 592.

The 200-foot rule likewise prohibits food-truck operations where the threat of pedestrian congestion is remote to non-existent. The rule, for instance, prevents food trucks from operating on private property. LMP had wanted to operate in the rear parking lot of Fischman Liquors & Tavern at 4780 North Milwaukee Avenue and had secured permission to do so. A.214. But it could not because two retail food establishments, Krakus Homemade Sausage (located at 4772 North Milwaukee Avenue) and Ideal Pastry (located

at 4765 North Milwaukee Avenue), were within 200 feet of where Cupcakes for Courage would be operating. *Id.* Thus, the rule blocked LMP from operating even though Krakus' entrance was on the other side of the building and Ideal Pastry's entrance was on the other side of Milwaukee Avenue. *Id.*



Figure 1 shows the effect of the 200-foot rule at Fischman Liquors and Tavern.

Neither logic nor evidence suggests that operating on private property could threaten public sidewalks. These are private lots, away from pedestrian traffic. Chicago admitted that it had not “ever heard of a situation where a mobile food vehicle operating on private property led to pedestrian congestion concerns on the public right-of-way.” A.202. And, in fact,

Chicago's expert observed three popular food trucks operating in a parking lot and testified that their patrons had no interaction with or effect on anyone on the sidewalk. C.1721.

The 200-foot rule is also unreasonably overinclusive as to public property. LMP wanted to operate, for instance, on West Madison Street to the west of South Wells Street in the Loop. A.213. But because on the intersection's northeastern side was a Red Robin (now a Pret a Manger), which kept Cupcakes for Courage from operating on the next block over. *Id.*

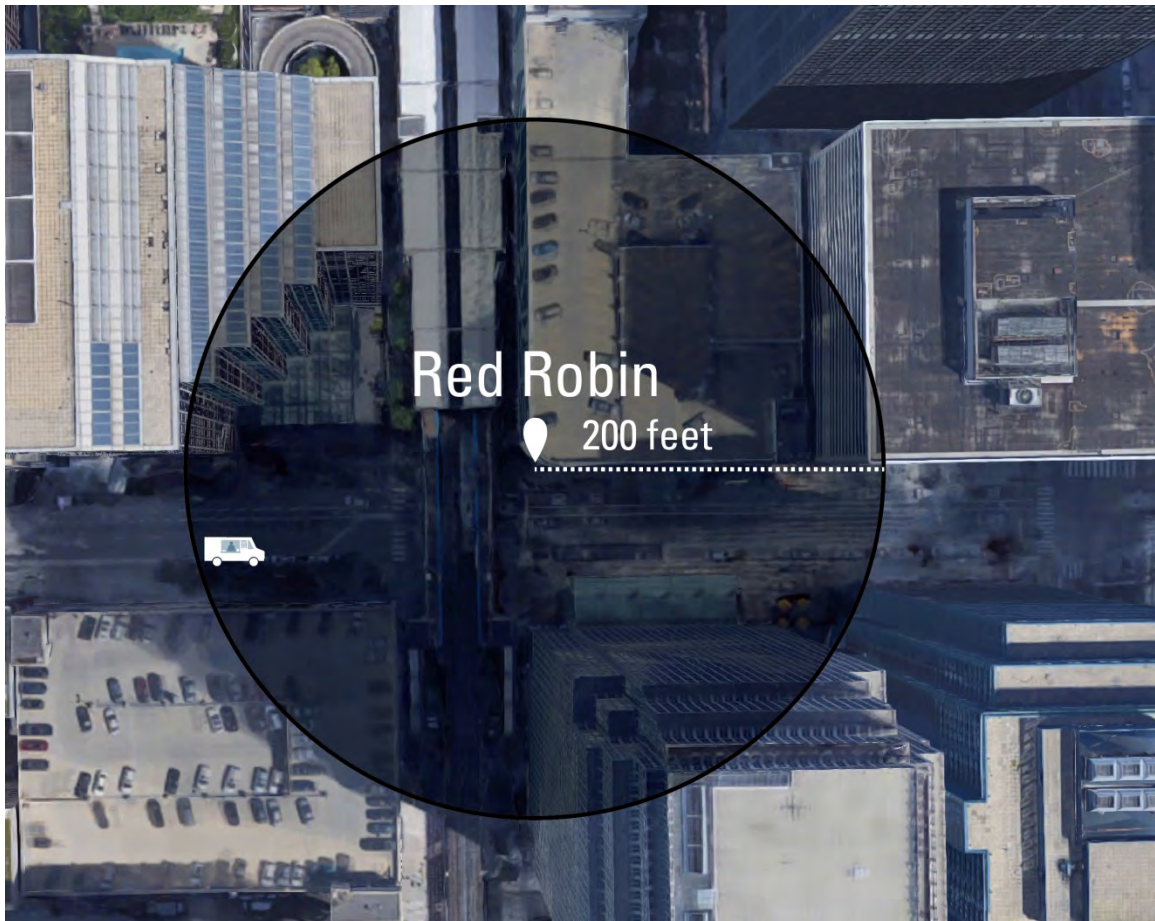


Figure 2 shows the effect of the 200-foot rule at the intersection of West Madison St. and Wells St.

This was because the 200-foot rule applies “as the crow flies,” radiating out 200 feet in all directions from a restaurant’s door. As a result, a food truck would violate the rule if it “was parked across the street from a restaurant, but was within 200 feet.” A.128. The same would be true “if it was a block over, next block over past an intersection [from a restaurant], but still within 200 feet of the [restaurant’s] principal customer entrance.” *Id.*

Chicago’s own words show, however, that prohibiting food trucks in those kinds of circumstances does nothing to help mitigate congestion. In deposition, Chicago’s designated representative testified that a source like a food truck or street performer causes what is known as “localized congestion.” A.178. When LMP asked how far localized congestion could be felt, Chicago responded by saying that “localized congestion can affect a block face,” which is a single side of a street between two intersections. *Id.*

The 200-foot rule therefore prevents food trucks from operating even where they couldn’t possibly implicate Chicago’s purported congestion interest. Indeed, as the next Section shows, empirical research shows that the distance between food trucks and restaurants has no effect on pedestrian congestion.

4. Expert research confirming that pedestrian congestion does not turn on a food truck’s proximity to a restaurant undercuts any claim of its reasonableness.

Lastly, Chicago’s congestion rationale rests on a faulty premise: that the closer food trucks operate to a restaurant, the more pedestrian congestion

will result. Empirical research shows this not to be the case. Renia Ehrenfeucht, Professor of Urban Planning and an expert on the use of sidewalks, A.219–20, conducted a large-scale study of seven different food-truck locations across the Loop during lunchtime to evaluate Chicago’s congestion rationale. A.220–22. Four locations were within 200 feet of a restaurant, while three were 200 feet or farther away. A.223. The study confirmed that the distance between a truck and a restaurant did not affect the amount of pedestrian congestion. A.221. It also confirmed that no pedestrian congestion differences existed as between the three food-truck stands and four non-stand locations studied. *Id.* And it noted no instances in which restaurants had lines outside or where people entering or exiting a restaurant caused pedestrian congestion. *Id.*

The 200-foot rule is just as arbitrary a pedestrian congestion measure as the 650-foot rule in *Chicago Title & Trust* was as a public safety measure. The undisputed evidence demonstrates that the rule’s reach far exceeds other, actual, congestion measures; that it arbitrarily singles out restaurants and food trucks for special treatment; that it irrationally exempts certain food trucks that raise equal, if not greater, congestion concerns; and that it prohibits food trucks from operating even in situations where they simply could not cause congestion problems. In reviewing this evidence, this Court should reach the same conclusion it did in *Chicago Title & Trust*: “that the actual purpose served by the restriction has little to do with public health or

safety.” 19 Ill. 2d at 104. This Court should therefore reject the idea that the rule is a reasonable congestion measure.

C. The 200-Foot Rule Is Not a Reasonable Means of Increasing Retail Food Options in “Underserved” Areas.

Chicago also claimed that its 200-foot rule helps increase retail food options in “underserved” areas “by providing an incentive to food trucks to locate in areas that lack many or any restaurants.” C.1627. This post-hoc argument, which the circuit court rejected, has no basis on the law’s face, in economic theory, or in practice.

First, the law on its face is an unreasonable means to increase food-truck operations in underserved areas. That is because the rule applies throughout all of Chicago, including in underserved areas. As a result, even one restaurant in an underserved area will prohibit a food truck from parking anywhere nearby—directly undermining Chicago’s purported objective. *E.g.*, A.422.

Indeed, if spreading retail food options were the goal, Chicago had many tools at its disposal. It could suspend the 200-foot rule in underserved areas. It could have installed mobile-vending-vehicle stands. Or it could have taken *any* other step to encourage trucks to operate there, such as by offering longer operating hours, lowering licensing fees, or just speaking to truck owners about it. But Chicago did *none* of those things. C.2096–97, C.2100.

Economic reasoning also refutes this rationale. Henry Butler is a Ph.D. economist who analyzed Chicago's spreading retail food options rationale from both a theoretical and empirical perspective. A.415–17. Regarding the former, Dr. Butler testified that “[e]conomic theory predicts that the 200-foot rule cannot and will not achieve the City’s stated goal of encouraging food trucks to operate in community areas lacking sufficient retail food options.” A.417. Food-truck operators wish to maximize their profits; since a truck’s costs are largely the same no matter where it operates, A.419, operators will go where demand is highest. *See id.* Accordingly, economic logic suggests that food trucks will focus on dense areas where consumers have relatively high levels of disposable income.¹⁰ A.421. Because “underserved” areas lack these features, economic theory predicts little vending there. A.422–23.

Evidence bears out this economic reasoning. Dr. Butler analyzed the Twitter messages of Chicago’s food trucks to determine if they operate in underserved areas. A.423. He collected over 48,000 tweets from more than 140 food trucks and used three separate tests to see if food trucks go to six community areas Chicago called “underserved” in discovery. A.423–26. Dr. Butler’s study found no empirical support for the government’s rationale,

¹⁰ Butler’s analysis accords with Chicago’s own testimony and research. The City admitted two questions potential retailers have about a neighborhood are its population and median income. C.2087. A “Citywide Retail Market Analysis” commissioned by Chicago likewise pointed out that “[h]ousehold income and density are key indicators of potential demand.” C.2187.

with all three tests showing a total of only 34 stops in underserved areas over more than a year. *See* A.426–28. In fact, Dr. Butler testified that such operations were “so rare” that “it’s almost like these [trucks wind up in these areas because they] get lost.” C.4099. Instead, food trucks congregated where economic theory predicted: high-density, high-income neighborhoods like the Loop, Near North, and Near West. By contrast, Chicago never analyzed whether the 200-foot rule actually spreads retail food options. C.2094–95.

Given all of this evidence, it is simply not reasonable to think the 200-foot rule could or does spread retail food options.

III. Chicago’s GPS Tracking Requirement Violates Article I, Section 6.

Chicago forced LMP to install a GPS tracking device on Cupcakes for Courage. Every five minutes, that device transmits Cupcakes for Courage’s location to a GPS service provider, which must turn over both current and historical location information to Chicago upon request. It must also maintain “a publicly-accessible application programming interface (API),” a software “door” that is open to anyone upon request. A.304. People who access that door can find out where Cupcakes for Courage is at any moment.

Laura Pekarik objects to this requirement. As Laura testified, LMP’s employees often work alone on the truck, and some have previously been harassed and threatened by members of the public or people they knew from outside of work. A.215. Laura can refrain from updating the truck’s location

on social media when her employees face that unwanted attention. *Id.* But she cannot turn off the GPS tracking device, since Chicago law mandates that it be on whenever Cupcakes for Courage is in operation. *Id.*

Despite this, the appellate court held that Chicago's GPS requirement was not a search. The court reached that conclusion in part because Chicago made Laura install the device rather than do the job itself. A.473, ¶ 52. And the court said that, because Chicago requires GPS tracking as a condition of licensure, "LMP cannot raise a fourth amendment challenge to 'bar enforcement of the very conditions upon which extension of the license is predicated.'" A.475, ¶ 56 (quoting *Grigoleit, Inc. v. Bd. of Trustees*, 233 Ill. App. 3d 606, 613 (4th Dist. 1992)).

These conclusions fundamentally misinterpret search-and-seizure jurisprudence, as the holdings of this Court and the U.S. Supreme Court demonstrate. Below, LMP explains that Chicago's GPS requirement is a search for two independent reasons. First, the requirement is a search under the property-rights framework laid out in *United States v. Jones*, 565 U.S. 400 (2012), because it mandates that LMP physically install a GPS tracking device on its vehicle in order to exercise its right to practice its trade under Article I, Section 2. Second, the requirement is also a search under *Katz v. United States*, 389 U.S. 347 (1967), because, by enabling Chicago to engage in long-term tracking of Cupcakes for Courage's whereabouts, the GPS scheme

impinges on LMP's reasonable expectation of privacy.¹¹

Because GPS monitoring is a warrantless search, it is per se unreasonable and Chicago had to prove that it fit into one of a few well-established exceptions to the warrant requirement. Chicago failed to meet that burden, or indeed present any evidence on the point below. That alone should be fatal. But as shown below, Chicago's warrantless search scheme violates Article I, Section 6, both because Chicago never used it for its intended purpose and because it requires LMP's data to be shared with anyone who asks for it.

A. A Law Requiring the Installation and Use of GPS Devices so the Government Can Obtain Information Accomplishes a Search.

Precedent demonstrates that requiring food-truck operators to install and use GPS tracking devices is a search. In *United States v. Jones*, 565 U.S. 400 (2012), officials installed a GPS device on Jones' vehicle without a proper warrant and tracked it for several weeks. Following his arrest, Jones moved to suppress the GPS evidence. The district court largely denied the motion, but the D.C. Circuit reversed, holding that long-term GPS monitoring is a search for Fourth Amendment purposes. *United States v. Maynard*, 615 F.3d 544 (D.C. Cir. 2010).

The U.S. Supreme Court unanimously affirmed, with five justices (Scalia, J., joined by Roberts, C.J., Kennedy, Thomas, and Sotomayor, JJ.)

¹¹ Illinois courts construe Article I, Section 6 as generally consistent with the Fourth Amendment. *People v. Caballes*, 221 Ill. 2d 282, 309 (2006).

holding that a search had occurred because the government had physically occupied private property, without first getting Jones' consent, for the purpose of obtaining information. *Jones*, 565 U.S. at 404. Illinois courts have recognized that, pursuant to *Jones*, installing a GPS device on a vehicle without consent constitutes a search. *See, e.g., People v. LeFlore*, 2015 IL 116799, ¶ 10; *People v. Bravo*, 2015 IL App (1st) 130145, ¶ 15.

1. Whether GPS monitoring is a search turns on whether installation was done with the property owner's consent, not on who does the installing.

The appellate court held that *Jones* did not apply, though, because Chicago required LMP to install the device, rather than doing the installation itself. A.473, ¶ 52. That conclusion is legally unsupportable, and holdings from across the nation state that laws mandating GPS tracking require constitutional scrutiny, no matter whether the government or the individual happens to be the one doing the installing.

First, the appellate court failed to appreciate that under *Jones*, the unconsented placement of a GPS tracking device is a warrantless search. *Jones*, 565 U.S. at 413 (Sotomayor, J., concurring) (noting that the problem was placing the GPS “without Jones' consent”). As the U.S. Supreme Court's decision in *Grady v. North Carolina* illustrates, it is this lack of consent—not who physically installs the device—that controls. 135 S. Ct. 1368 (2015) (per curiam). In *Grady*, a civil statute required certain offenders, upon release, to wear GPS tracking devices. Torrey Grady noted his eligibility for monitoring under the statute but did not consent to it, instead arguing that it was an

unreasonable warrantless search. *Id.* at 1369. Like the appellate court here, North Carolina courts held that requiring GPS tracking did not constitute a search. *Id.* at 1369–70.

But a unanimous U.S. Supreme Court disagreed, holding that North Carolina’s program “is plainly designed to obtain information. And since it does so by physically intruding on a subject’s body, it effects a Fourth Amendment search.” *Id.* at 1371. Thus, *Grady* turned on whether North Carolina’s program *required* Grady to wear a tracking device so it could acquire information. Whether officials attached the device or had Grady do it was not important.

LMP no more consents to attaching a GPS tracker to its truck than Grady consented to having a GPS tracker attached to his body. As this Court has recognized, the “standard for valid consent . . . is whether that consent is voluntarily given.” *People v. Bean*, 84 Ill. 2d 64, 69 (1981). And here, nothing is voluntary; Chicago’s ordinance forced LMP to put a tracking device on its vehicle in order to practice its trade. As the next section demonstrates, this “acquiescence to a claim of lawful authority,” *Bumper v. North Carolina*, 391 U.S. 543, 548–49 (1968), does not equal consent. Conditioning the receipt of a vending license on GPS monitoring cannot free Chicago’s scheme from constitutional scrutiny. *El-Nahal v. Yassky*, 835 F.3d 248, 259 (2d. Cir. 2016) (Pooler, J., concurring in part and dissenting in part) (stating that regulations requiring taxi owners to install GPS tracking devices as a

condition of licensure “worked an unlicensed physical intrusion on a constitutionally protected effect” and therefore constituted a search).

2. Mandating GPS tracking as a condition of licensure is a “search” that warrants constitutional scrutiny.

The appellate court also held that Chicago’s GPS requirement was not a search because it was a condition of licensure and LMP therefore implicitly consented to the monitoring. A.474–75. In support, it cited *Grigoleit, Inc. v. Board of Trustees*, a lower court case concerning the revocation of a company’s wastewater permit, and stated that “[i]n accepting a license to conduct business from the City street, LMP cannot raise a fourth amendment challenge to ‘bar . . . enforcement of the very conditions upon which extension of the license is predicated.’” A.475, ¶ 56 (quoting *Grigoleit*, 233 Ill. App. 3d 606, 613 (4th Dist. 1992)).

The appellate court’s statement, that businesses implicitly consent to whatever conditions the government may wish to impose, is wrong. As the leading commentator on the Fourth Amendment has stated, an ordinance imposing an inspection scheme “is not entitled to be conclusively presumed valid under the Fourth Amendment merely because it is directed toward businesses licensed by . . . the government.” 5 Wayne R. LaFave, *Search and Seizure* § 10.2(c) (5th ed. 2012). The government therefore may not avoid constitutional scrutiny by presuming that individuals consented to searches as a condition of licensure; instead, it must prove that those searches are reasonable. If the ordinance or statute authorizing the search is

unreasonable, no consent can be imputed. *See McElwain v. Office of the Ill. Sec’y of State*, 2015 IL 117170, ¶ 21 (noting that where statute requiring drivers to consent to searches was unconstitutional, state could not punish driver for refusing to consent) (citing *King v. Ryan*, 153 Ill. 2d 449, 462 (1992)); *Serpas v. Schmidt*, 827 F.2d 23, 30 (7th Cir. 1987) (rejecting contention that racetrack employees, by accepting occupational licenses, had implicitly consented to inspections of their quarters, holding that any such consent “was vitiated by the fact that it was premised on the existence of the otherwise unauthorized and unconstitutional regulations”), *overruled in part on other grounds by LeRoy v. Ill. Racing Bd.*, 39 F.3d 711, 714 (7th Cir. 1994).

This can be seen in *City of Los Angeles v. Patel*, 135 S. Ct. 2443 (2015), where the U.S. Supreme Court evaluated a Los Angeles ordinance that required hoteliers, as a condition of licensure, to maintain records about guests and their vehicles and make those records available to police for inspection. *Id.* at 2448. A group of hoteliers sued, contending that the ordinance violated the Fourth Amendment.

Patel demonstrates that an occupational license does not equal consent and does not preclude evaluating whether a search scheme is reasonable. After all, if licensees may not “raise a fourth amendment challenge to ‘bar . . . enforcement of the very conditions upon which extension of the license is predicated,’” A.475, ¶ 56, Patel’s lawsuit should have failed at the outset. Los Angeles would have been free to make Patel give up his constitutional right

to be free from unreasonable searches in order to exercise his right to practice his trade. But that is *not* what happened. Instead, the Supreme Court held not only that Patel and his fellow plaintiffs could challenge Los Angeles' ordinance, but that their challenge was successful. 135 S. Ct. at 2453.

This lesson from *Patel*—that warrantless searches, prescribed as a condition of licensure, are not immune from constitutional scrutiny—also can be found in holdings by lower Illinois courts. In *Hansen v. Illinois Racing Board*, 179 Ill. App. 3d 353 (1st Dist. 1989), for instance, the Racing Board's regulations stated that individuals, "in accepting a license, do[] thereby irrevocably consent to" inspections of any "stables, rooms, vehicles, or other places" by Board officials. *Id.* at 357 (citation omitted). The Board suspended Warren Hansen, a Racing Board licensee, after he refused to allow a search of his pick-up truck.

Hansen challenged his license suspension on Article I, Section 6 grounds. Again, if the appellate court were right, Illinois courts should have rejected Hansen's challenge because he had implicitly consented to the inspections in securing his license. But not only was Hansen able to *raise* a Fourth Amendment challenge, he *won*. The First District struck down the Racing Board's rule because it—just like Chicago's GPS scheme—failed to adequately cabin inspecting officers' discretion. *Id.* at 359; *see also 59th & State St. Corp. v. Emanuel*, 2016 IL App (1st) 153098, ¶ 21 (holding that a rule requiring licensees to submit to warrantless searches was unreasonable).

The cases cited above demonstrate why the appellate court's citation to *Grigoleit* missed the mark. Grigoleit, Inc. was a manufacturer of decorative trim for the appliance industry. Because Grigoleit discharged over 25,000 gallons of water a day into Decatur's water treatment system, it was deemed a "significant industrial user" that had to, among other things, give Decatur's Sanitary District access to its drains so the District could verify that it was not discharging any chemicals that would harm the sewers. *Grigoleit*, 233 Ill. App. 3d at 609. But Grigoleit refused to let District personnel do that verification. *Id.* at 610. In response, the Sanitary District rescinded Grigoleit's authority to discharge its manufacturing waste into Decatur's sewers. *Id.*

Grigoleit complained, arguing that the District's actions violated the Fourth Amendment. But the appellate court disagreed, holding that "no questions of constitutional magnitude are presented" and that "[t]he fourth amendment constitutional provisions respecting issues of administrative searches have no application to the facts of this case." *Id.* at 612, 614. In the appellate court's view, Grigoleit had no right to a sewer connection and could choose to avoid inspections by processing its own wastewater or disposing of it by other means.

The reasoning of *Grigoleit* and its view of implicit consent is incorrect. As this Court said in *People v. Anthony*, "[c]onsent must be received, not extracted 'by explicit or implicit means, by implied threat or covert force.'"

198 Ill. 2d 194, 202 (2001) (quoting *Schneckloth v. Bustamonte*, 412 U.S. 218, 228 (1973)). This is why courts have repeatedly held that they will not deem people to have implicitly consented to unreasonable searches in exchange for even discretionary benefits. *See, e.g., Lebron v. Sec’y of Fla. Dep’t of Children & Families*, 772 F.3d 1352, 1378 (11th Cir. 2014) (stating that Florida’s welfare program, which mandated drug testing of recipients, could not be deemed reasonable because recipients “consented” to the testing as a condition of receiving benefits); *Milewski v. Town of Dover*, 2017 WI 79, ¶ 68 (holding that government could not require property owner to consent to interior inspection of home in order to contest property-tax assessment).

And here, LMP is put to a stark choice. In order to practice its trade, LMP must secure a license from Chicago. And just like the governments tried to do in *Patel* and *Hansen*, Chicago tells LMP it must choose between two constitutional rights: its Article I, Section 2 right to practice its trade or its Article I, Section 6 right to be free of unconstitutional searches. Because Chicago’s GPS requirement mandates food truckers either install tracking devices on their vehicles or forsake their constitutional “right to pursue a trade, occupation, business or profession,” *Coldwell Banker*, 105 Ill. 2d at 397, its effects a warrantless search that Chicago must justify.

B. The GPS Rule, by Authorizing Long-Term Monitoring of LMP's Location, Also Impinges on LMP's Reasonable Expectation of Privacy.

Chicago's GPS requirement, by mandating the physical installation of GPS tracking devices, constitutes a search under the property-rights holding of *Jones*. But it also constitutes a search for a second, independent reason. As the majority in *Jones* recognized, "the *Katz* reasonable-expectation-of-privacy test has been *added to*, not *substituted for*, the common-law trespassory test." 565 U.S. at 409. And five justices in *Jones* applied *Katz* to conclude that "longer term GPS monitoring . . . impinges on expectations of privacy" and therefore constitutes a search. *Id.* at 430 (Alito, J., concurring in the judgment); *see also id.* at 415 (Sotomayor, J., concurring) (agreeing with Justice Alito's statement).

Thus, if Chicago's GPS requirement fails either the property-rights or reasonable-expectation-of-privacy tests laid out in *Jones*, it is a search. It fails both. As shown above, requiring LMP to physically install a tracking device violates its property rights. And the long-term monitoring Chicago's GPS requirement enables impinges on LMP's expectations of privacy and therefore constitutes a search under *Katz*. In *Jones*, Justice Alito concluded that monitoring Jones' vehicle for four weeks via GPS tracker was "surely" a search. 565 U.S. at 430. But Chicago's GPS requirement is far more invasive. Under Chicago's regulations, a GPS device must transmit its location every five minutes a food truck is operating, even when operators are

cleaning their truck at the commissary. A.166. GPS providers must record that location information so officials may request and review it. *Id.* And those providers must turn over not only a truck's current location but at least *six months* of historical records. *Id.* If that is not long-term monitoring, it is hard to envision what could be.

Nor does it matter that LMP tweets out its general location. It is true that "when an individual reveals private information to another, he assumes the risk that his confidant will reveal that information," *United States v. Jacobsen*, 466 U.S. 109, 117 (1984), and LMP does not claim its tweets are private. But in transmitting LMP's location every five minutes, its GPS device reveals far more than what LMP shares, including when Cupcakes for Courage is operating in the privacy of its commissary. In addition, Laura Pekarik, LMP's owner, noted that her employees in the past have been stalked by customers or other people. A.215. Although she can stop posting Cupcakes for Courage's location on social media in those situations, she cannot do the same regarding GPS tracking since Chicago law mandates that it be transmitting whenever Cupcakes for Courage is operating. *Id.* Both the precision and constancy of Chicago's surveillance scheme reveal it as a warrantless search the city must justify.

C. Chicago's Warrantless GPS Tracking Scheme Is Unreasonable.

As noted above, the appellate court found that Chicago's GPS tracking requirement did not amount to a search that warranted any constitutional

scrutiny. But it is a search, both because it requires LMP to install and use a GPS device on its vehicle and because that device empowers long-term monitoring of Cupcakes for Courage's location.

Because Chicago's GPS scheme is a warrantless search, it is *per se* unreasonable. *People v. Bridgewater*, 235 Ill. 2d 85, 95 (2009) (declaring that warrantless post-arrest search of vehicle "was *per se* unreasonable under the fourth amendment"). To be upheld, Chicago must prove that it fits within one of "a few specifically established and well-delineated exceptions" to the warrant requirement. *Patel*, 135 S. Ct. at 2452 (internal quotations and citations omitted).

Below, Chicago defended its GPS requirement as a warrantless inspection of a closely regulated business.¹² But warrantless inspections of these businesses are deemed reasonable and constitutional only if they meet all three criteria the U.S. Supreme Court laid out in *New York v. Burger*: First, the regulatory scheme must serve a substantial government interest. Second, warrantless inspections must be necessary to further that interest. And third, the law must be an adequate substitute for a warrant. 482 U.S. 691, 702–03 (1987).¹³

Chicago's GPS scheme fails the second and third prongs of *New York v. Burger*. GPS tracking is not necessary, as shown by the fact that Chicago

¹² LMP acknowledges that food service is a closely regulated industry. *City of Chicago v. Pudlo*, 123 Ill. App. 3d 337, 347 (1st Dist. 1983).

¹³ Illinois uses the *Burger* criteria in evaluating warrantless inspections. *See, e.g., Fink v. Ryan*, 174 Ill. 2d 302, 305 (1996).

never used location data for its ostensible purpose. And Chicago’s requirement that GPS service providers make LMP’s data available to *anyone* who requests it renders the scheme unconstitutionally overbroad.

1. GPS tracking cannot be deemed necessary when Chicago never used GPS tracking to facilitate a health inspection.

Chicago claimed that the purpose of its GPS requirement was to locate food trucks in order to conduct field inspections and investigate public-health complaints, which by all accounts are substantial interests. C.1630–31. To satisfy the second criterion in *New York v. Burger*, Chicago had the burden of demonstrating that GPS monitoring was necessary to meet these substantial interests by submitting evidence showing that, absent GPS monitoring, it could not enforce its health ordinances as effectively. *See Burger*, 482 U.S. at 702–03. But not only did Chicago not put forward any such evidence, it admitted that it had *never* “requested GPS data when it’s wanted to go out and conduct an inspection in response to a complaint about a public health issue.” A.246.

Instead, Chicago has employed other, less-intrusive means of locating a food truck, such as by reviewing social media or calling operators. It pointed out that “[i]f we want to conduct an inspection in the field, what we have done is tried to locate them using Twitter.” *Id.* And it admitted that every time Chicago had conducted field inspections, it had located trucks using “social media. Either by Facebook or by Twitter.” A.253. A warrantless scheme that has *never* been used for its proffered rationale is by

definition not “necessary.”

2. The GPS scheme is unconstitutionally excessive in scope.

The GPS scheme is unreasonable for a second, independent reason. Although Chicago doesn’t access GPS data for its ostensible purpose, it ensures that anyone who wants to can access that data and follow a food truck’s every move. This authorizes a far broader dissemination of LMP’s location data than any governmental interest supports.

In *New York v. Burger*, the U.S. Supreme Court held that a statute authorizing a warrantless inspection scheme must provide sufficient guidance so that it can serve as an adequate substitute for a warrant. This guidance is twofold: Not only must the scheme 1) advise the person being searched that the search has a properly defined scope, but it must also 2) limit inspecting officers’ discretion. *Burger*, 482 U.S. at 703.

Chicago’s GPS scheme fails this requirement. To be constitutional, all searches must be “reasonably related in scope to the circumstances which justified the interference.” *Terry v. Ohio*, 392 U.S. 1, 19-20 (1968); *see also Burger*, 482 U.S. at 711 (holding that the “time, place, and scope of the inspection [must be] limited”) (quotation marks and citation omitted). But the plain text of Chicago’s GPS requirement lacks any properly defined scope: It requires that GPS providers have “a publicly-accessible application programming interface (API).” MCC § 7-38-115(*l*).

Eugene Lorman, the founder of Truckspotting, LMP’s GPS service

provider, explained that an API is a “door through which one system can obtain information from another system.” A.304. Mr. Lorman explained that through such an API, a person can request access to a food truck’s location information. A.307. Of course, many APIs remain closed, thereby limiting who can get access. But because Chicago mandated that service providers’ APIs be “publicly accessible,” Lorman testified that “[he] could [not] deny access to that API to people requesting it.” A.403. That means that, even if a food-truck operator “didn’t want [their] data to be available through [his] API,” he could not restrict access to the truck’s data “per the ordinance.” A.406. And it turned out that, in at least one instance, Mr. Lorman acceded to a request for access. A.403.

The GPS requirement therefore requires LMP’s location data be made available to whomever wishes it. And once that data has been accessed and retrieved, it can be used for any purpose, including rebroadcasting it to the world. This is intentional; as the Mayor stated, “[d]ata on food truck locations will be *available online to the public*. Food truck operators will be required to use mounted GPS devices in each truck so that the City *and consumers can follow their locations*.” A.117 (emphases added).

But giving everyone this broad level of access does not further any government interest. If Chicago wants GPS data for field inspections, only its sanitarians would need access to that data. The same is true for using GPS to help enforce the 200-foot rule. But instead, Chicago mandates that

the public be able to both track Cupcakes for Courage in real time and look up everywhere it has operated over the past six months. As Laura noted, this causes her great concern due to the fact that her employees have previously been the victims of unwanted attention by customers and others. A.215. In giving the public carte blanche to peer into Cupcakes for Courage's movements, the GPS requirement violates Article I, Section 6.

CONCLUSION

For the foregoing reasons, LMP Services, Inc. respectfully requests that this Court reverse the appellate court's ruling and hold that Chicago's 200-foot rule and GPS tracking requirement violate Article I, Section 2 and Article I, Section 6 of the Illinois Constitution, respectively.

Dated: August 20, 2018

Respectfully submitted,

LMP SERVICES, INC.
Plaintiff-Appellant

By: /s/ Robert P. Frommer
One of its Attorneys

Robert P. Frommer (ARDC #6325160)
Erica J. Smith (ARDC #6318419)
Robert W. Gall (ARDC #6325161)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
rfrommer@ij.org
esmith@ij.org
bgall@ij.org

James W. Joseph
EIMER STAHL LLP
224 S. Michigan Avenue,
Suite 1100
Chicago, Illinois 60604
(312) 660-7600
jjoseph@eimerstahl.com

Attorneys for Plaintiff-Appellant

CERTIFICATE OF COMPLIANCE

I hereby certify that this brief conforms with the requirements of Rules 341(a) and (b). The length of this brief, excluding the words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and the Appendix, is 14,865 words.

/s/ Robert P. Frommer

CERTIFICATE OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that on August 20, 2018, a copy of the foregoing **Brief of Plaintiff-Appellant LMP Services, Inc.** and the attached **Appendix of Plaintiff-Appellant LMP Services, Inc. Volumes I and II** were filed and served upon the Clerk of the Illinois Supreme Court via the efileIL system through an approved electronic filing service provider and was served on counsel of record below in the manner indicated:

Via Email

Suzanne M. Loose
City of Chicago, Department of Law
Appeals Division
30 North LaSalle Street, Suite 800
Chicago, Illinois 60602
(312) 744-8519
suzanne.loose@cityofchicago.org
appeals@cityofchicago.org

Counsel for Defendant-Appellee

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Robert P. Frommer

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No. 123123

In The Supreme Court of Illinois

LMP SERVICES, INC.,**Plaintiff-Appellant,****v.****THE CITY OF CHICAGO,****Defendant-Appellee.**

**On Appeal from the Appellate Court of Illinois
First Judicial District, No. 16-3390
There Heard on Appeal from the
Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 12 CH 41235
The Honorable Anna H. Demacopolous, Judge Presiding**

**APPENDIX OF PLAINTIFF-APPELLANT
LMP SERVICES, INC.**

Volume I

Robert P. Frommer (ARDC #6325160)
Erica J. Smith (ARDC #6318419)
Robert W. Gall (ARDC #6325161)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
rfrommer@ij.org
esmith@ij.org
bgall@ij.org

James W. Joseph
EIMER STAHL LLP
224 S. Michigan Avenue
Suite 1100
Chicago, Illinois 60604
(312) 660-7600
jjoseph@eimerstahl.com

Attorneys for Plaintiff-Appellant

Dated: August 20, 2018

Oral Argument Requested

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Carolyn Taft Grosboll
SUPREME COURT CLERK

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August 30, 2013	Defendant City of Chicago's Answer to Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief	A43	C398 – C467
June 26, 2012	Mayor Rahm Emanuel Press Release, regarding legalization of food truck industry across Chicago	A114	C1521 – C1522
July 25, 2012	Mayor Rahm Emanuel Press Release, regarding City Council approval to expand food truck industry across Chicago	A116	C1523 – C1527
October 8, 2014	Deposition of Joy Adelizzi, Deputy Commissioner with the City of Chicago Department of Business Affairs and Consumer Protection	A121	C1528 – C1570
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October 9, 2014	Deposition of Luann Hamilton, Deputy Commissioner of the Division of Project Development at the Chicago Department of Transportation	A168	C1634 – C1676

Date	Document	Appendix Volume I Cite	Record Cite
March 18, 2016	Affidavit of Laura Pekarik in Support of Plaintiff's Motion for Summary Judgment	A211	C2507 – C2514
March 18, 2016	Affidavit of Renia Ehrenfeucht in Support of Plaintiff's Motion for Summary Judgment	A219	C2581 – C2590

Date	Document	Appendix Volume II Cite	Record Cite
October 9, 2014	Deposition of Gerrin Butler, Director of Food Protection for the City of Chicago	A228	C2260 – C2293
December 12, 2014	Deposition of Eugene Lorman, CEO of TruckSpotting, Inc.	A262	C2324 – C2476
March 18, 2016	Affidavit of Henry Butler in Support of Plaintiff's Motion for Summary Judgment	A415	C2515 – C2531
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December 18, 2017	Opinion of the Illinois Appellate Court, First Division	A451	N/A

This change resulted in an increase in the number and variety of food trucks wishing to do business in the City of Chicago.

Ordinance 2012-4489 maintained a proximity restriction first passed on September 11, 1991 that prohibits parking within 200 feet of the entrance of a restaurant (the “200-foot rule”). Municipal Code of Chicago (“MCC”), Sec. 7-38-115(f). The definition of a restaurant includes any “place where food and drink is prepared and served for the public for consumption on or off the premises pursuant to a required license.” *Id.* Plaintiff alleges that the definition includes businesses such as 7-Elevens (117 locations in Chicago), Starbucks (179 locations), and Dunkin’ Donuts (193 locations). The 200-foot rule applies to food trucks whether they are operating on public or private property (except as to restaurants located on the private property to which the food truck is invited). MCC, Sec. 7-38-115(k)(1)(iii). Food trucks are also required to have a GPS device permanently installed on their vehicle “which sends real-time data to any service that has a publicly-accessible application programming interface (API)” (“GPS requirement”). MCC, Sec. 7-38-115(l).

Ordinance 2012-4489 requires the City to establish “mobile food vehicle stands”—designated spaces on the public way where mobile-food vehicles may operate without being subjected to the 200-foot proximity restriction. Ordinance 2012-4489 requires the City to establish at least five mobile food vehicle stands “in each community areas . . . that has 300 or more retail foods establishments.” MCC, Sec. 7-38-117. Additionally, a minimum fine of \$1,000.00 was set for any violations of sections 7-38-115 and 7-38-117. MCC, Sec. 7-38-128(d). This amount is quadruple the amount for certain violations prior to the amended ordinance.

Laura Pekarik is the sole owner and shareholder of LMP. Ms. Pekarik owns and runs a brick and mortar bakery called “Courageous Bakery” located in Elmhurst, Illinois, as well as a food truck called “Cupcakes for Courage.” Plaintiff’s food truck travels through the Chicagoland

area serving desserts to customers. Plaintiff complains that due to the 200-foot rule, there are large portions of Chicago that her food truck cannot park and customers she may not serve, even if she is a guest on private property. In the Amended Complaint, Plaintiff alleges the 200-foot rule and the GPS requirement violate constitutional rights provided in Article I, Sections 2 and 6 of the Illinois Constitution—Due Process (Count I) and Searches, Seizures, and Privacy (Count III). Plaintiff's equal protection claim (Count II), also brought under Article I, Section 2, was previously dismissed by the Honorable LeRoy K. Martin Jr.

LEGAL STANDARD

Summary judgment is appropriate where the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the non-moving party, reveal that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adames v. Sheahan*, 233 Ill.2d 276, 296 (2009)(citing *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 43(2004)). When the parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the court to decide the questions presented as a matter of law. *Steadfast Ins. Co. v. Caremark Rx Inc.*, 359 Ill. App. 3d 749, 755 (1st Dist. 2005). Summary judgment is "a drastic means of disposing of litigation and, therefore, should be granted only when the right of the moving party is clear and free from doubt." *Adames*, 233 Ill.2d at 296.

ANALYSIS

This dispute pits the interests of the traditional brick-and-mortar restaurant against the young rising pop star—the food truck. The public interest that the City is charged with protecting

and furthering lies somewhere in the uncertain middle. The parties have taken numerous depositions in this matter and the Court has reviewed nearly two thousand pages in supporting exhibits. For the following reasons, the Court grants the City's motion for summary judgment and denies Plaintiff's cross-motion for summary judgment.

Count I – 200 Foot Rule (Due Process)

The 200-foot rule provides:

No operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level; provided, however, the restriction in this subsection shall not apply between 12:00 a.m. and 2:00 a.m.

MCC, Sec. 7-38-115(f).

The Court notes that the 200-foot rule is not a new regulation. As of the filing of this lawsuit in November 2012, the 200-foot rule had been in place with respect to food trucks for over eleven years.¹ Although, a prior rule containing a 200-foot proximity requirement was struck down by the Circuit Court in 1986, such provision was held unenforceable due to its vagueness—a challenge not raised against the 2012-4489 Ordinance.² See *Thunderbird v. Catering Co. v. City of Chicago*, No. 83 L 52921 (Cook Cty. Cir. Ct. Oct. 15, 1986)(O'Brien, T). Though the language of the 200-foot rule has not significantly changed since 1991, the marketplace for food trucks in Chicago has broadened both with a nationwide surge in interest in

¹ Both the 1991 and 2012 ordinances provide, "No operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level." Section 7-38-115(f), as amended in 2012, includes the following additional language, "provided, however, the restriction in this subsection shall not apply between 12:00 a.m. and 2:00 a.m."

² The predecessor ordinance to the one at issue provided in relevant part, "No operator of (a mobile food dispensing vehicle shall park or stand such vehicle within 200 feet of . . . a place of business which deals in like or similar commodities such as are sold by the mobile unit." MCC, Sec. 130-4.12(d). The Court struck Sec. 130-4.12(d) as "vague and unenforceable," and prohibited the City from enforcing the ordinance. *Thunderbird Catering Co. v. City of Chicago*, No. 83 L 52921 (Cook Cty. Cir. Ct. Oct. 15, 1986).

food trucks, as well as the expanded opportunities for entrepreneurship given the changes effected by Ordinance 2012-4489.

In its motion for summary judgment, Plaintiff asserts that the 200-foot rule violates its due process rights, specifically the right to pursue a trade or business free from arbitrary and irrational regulation. Plaintiff argues that proximity restrictions have been invalidated by numerous courts, including the Illinois Supreme Court. Moreover, Plaintiff further argues that the 200-foot rule does not “definitely and substantially” advance any legitimate government interest as each of the stated bases for the rule are either illusory or improper.

In response and by its cross-motion for summary judgment, the City argues that Plaintiff (not the City) bears the burden to show that the 200-foot rule is unreasonable and has failed to meet that burden. The City contends that balancing the interests of brick-and-mortar restaurants with that of the food trucks is a legitimate governmental interest. Further, the other bases for the restriction, including reducing pedestrian congestion and encouraging food trucks to locate in underserved areas are rationally related to the regulation, as well.

Rational Basis Test

When considering a substantive due process challenge, “a statute is unconstitutional if it impermissibly restricts a person's life, liberty or property interest.” *People v. Johnson*, 225 Ill.2d 573, 584 (2007). Well-settled is the constitutional principle that every citizen has the right to pursue a trade, occupation, business or profession. *Coldwell Banker Residential Real Estate Services, Inc. v. Clayton*, 105 Ill.2d 389, 397 (1985). “This inalienable right constitutes both a property and liberty interest entitled to the protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions.” *Id.* Ordinance 2012-4489, as with other ordinances regulating mobile food vendors or peddlers addressed by previous courts, “concerns regulation in the socio-economic sphere, and neither encroaches upon a fundamental right nor

draws lines which create an inherently suspect classification.” See *Triple A. Servs. v. Rice*, 131 Ill.2d 217, 226 (1989). Accordingly, the rational basis test will apply. *Napleton v. Vill. of Hinsdale*, 229 Ill.2d 296, 307 (2008).

Under the rational-basis test, the Court’s inquiry is twofold: (1) the Court “must determine whether there is a legitimate state interest behind the legislation” and, (2) “if so, whether there is a reasonable relationship between that interest and the means the legislature has chosen to pursue it.” *Johnson*, 225 Ill.2d at 584. “One who challenges an ordinance as failing this test of minimum rationality bears the burden of proving ‘by clear and affirmative evidence that the ordinance constitutes arbitrary, capricious and unreasonable municipal action; that there is no permissible interpretation which justifies its adoption, or that it will not promote the safety and general welfare of the public.’” *Triple A Servs.*, 131 Ill.2d at 225-226 (quoting *City of Decatur v. Chasteen*, 19 Ill.2d 204, 210 (1960)). “If there is any conceivable set of facts to show a rational basis for the statute, it will be upheld.” *Johnson*, 225 Ill.2d at 585. “[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.” *Harris v. Manor Healthcare Corp.*, 111 Ill.2d 350, 368-369 (1986) (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-88, 99 (1955)).

The City has offered three rational bases for the 200-foot rule: “(1) it fosters restaurants – which provide important economic, cultural, and neighborhood benefits to the City- while at the same time allowing food trucks to prosper; (2) it helps spread retail food options to blocks or entire communities of the City that lack enough restaurants, and (3) it manages sidewalk congestion caused by lines of food truck customers.” (Def.’s. Mem. in Supp. Summ. J. 1). As noted above, it is Plaintiff’s burden to show that the regulation is unreasonable, arbitrary or capricious rather than the City’s burden to prove that it is reasonable. *Triple A Servs.*, 131 Ill.2d

at 226. As discussed below, the Court finds that at least two rational bases exist for the 200-foot rule, namely the balancing of interests and reducing pedestrian congestion.

(1) Balancing of Interests

The City argues that Ordinance 2012-4489 serves the dual purpose of balancing the needs of both restaurants and food trucks. Plaintiff contends that the ordinance is intended to protect brick-and-mortar restaurants from competition, which is not a legitimate government purpose. Following review of Illinois law and the supporting exhibits to the cross-motions for summary judgment, the Court agrees that food trucks may be regulated in a manner that balances the needs of the community, which includes the interests of the brick-and-mortar restaurants.

Plaintiff relies upon *Chicago Title & Trust Co. v. Village of Lombard*, 19 Ill.2d 98 (1960) and cases from foreign jurisdictions in support of its contention that Illinois courts do not favor barriers to competition such as proximity limitations. In *Chicago Title*, the Illinois Supreme Court struck down an ordinance barring the construction of a gas station within 650 feet of another existing gas station. Noting that the ordinance permitted existing service stations situated within 650 feet of each other to continue, the court found the proximity restriction arbitrary and unreasonable. The Court further concluded that the ordinance “exempts from its requirements businesses already established, and, in operation and effect, tends to promote monopoly.” *Id.* at 107.

Chicago Title is readily distinguishable from the facts of the instant matter. In particular, the businesses to be separated by the Village of Lombard ordinance—gas stations—were the exact same type of business and in direct competition with one another. Here, the City has designed its regulation to separate two different types of business with different business needs. Plaintiff’s expert, Dr. Henry Butler, Dean of George Mason University School of Law with a Ph.D. in economics, testified that the risk taken in opening a new restaurant “is a lot higher for

the brick and mortar” than for a food truck. (City’s MSJ, Ex. 7, Butler Dep. at 74:1-22). As to costs, according to *Streets of Dreams*, a report published by the Institute for Justice (“IJ”), “[s]treet vending allows entrepreneurs to establish their own businesses at a fraction of the cost of other potential ventures.” (City’s MSJ, Ex. 8 at IJ0169). The IJ report illustrates this point with the example of Stephan Boillon, a chef in Washington, D.C., who lost his job in 2008. Mr. Bouillon wanted to start his own business, specifically a restaurant serving only cold sandwiches. *Id.* at IJ0170. This simple concept obviated the need to buy expensive cooking equipment. *Id.* However, setting up a brick and mortar restaurant would have cost \$750,000, “not including operating costs such as rent, utilities and insurance,” whereas the mobile food truck he “put on the road cost only \$50,000 to get up and running.” *Id.* Were the City to bar new brick and mortar restaurants from opening within a certain distance of existing brick and mortar restaurants or food trucks from other food trucks, *Chicago Title* would be on point.

Moreover, Ordinance 2012-4498 does not tend to promote the monopoly criticized in *Chicago Title* as the 200-foot rule does not come close to excluding entire areas of Chicago, including the Loop. Plaintiff’s principal, Ms. Pekarik, testified that although there are areas in the City from which she may not sell, she has been able to find appropriate places to vend in the Loop and her business is thriving such that she opened a brick-and-mortar bakery, purchased a second food truck, and now has 15 employees. (City’s MSJ, Ex. 9, Pekarik Dep. at 20:1-3; 59:2-17; 74-79). Additionally, the amended ordinance specifically allows for more food trucks in specially designated areas known as mobile food vehicle stands, which are exempt from the 200-foot rule. MCC, Sec. 7-38-117(f).

About 19 years after *Chicago Title*, the Illinois Supreme Court addressed a mobile food vending ordinance much more restrictive than the ordinance before this Court today. In *Triple A Services v. Rice*, 131 Ill.2d 217 (1989), the Court upheld a complete ban of mobile food vending

companies in the Medical District, challenged on both due process and equal protection grounds. The stated purpose of the ordinance was to “enhance[] the professional appearance and ambience of the District. . . . [and] serve[] to protect against a decline in property values and to attract professional medical personnel and medical clients to the District.” *Id.* at 228. Further, the ordinance prevented pedestrian and vehicular congestion, and acted to prevent sanitation problems arising from discarded food wrappers. *Id.* The Court found all of these purposes to be “legitimate governmental objectives.” *Id.* at 228. While the appellate court had concluded that total ban of mobile food vendors from the Medical District was overly broad as a portion of the area designated in the ordinance was used for nonmedical purposes, the Illinois Supreme Court disagreed. The Court held that it did not find “that the means adopted by the Chicago city council to further the aforementioned objectives is so grossly overly broad as to render the ordinance arbitrary, capricious and unreasonable.” *Id.* Noting that “[t]he fit between the means and the end to be achieved need not be perfect” and “rational distinctions may be made with substantially less than mathematical exactitude” the Court upheld the ordinance. *Id.* at 228-229.

In reaching its decision in *Triple A Services*, the Illinois Supreme Court relied upon *City of New Orleans v. Dukes*, 427 U.S. (1976), in which the Supreme Court upheld an ordinance which prohibited vendors from selling foodstuffs from pushcarts in the French Quarter of the City of New Orleans. While the ordinance grandfathered vendors who had continuously operated within the French Quarter for eight years prior to enactment of the ordinance, the Court rejected petitioner's equal protection argument, holding that the ordinance rationally furthered the purpose of preserving “the appearance and custom valued by the Quarter's residents and attractive to tourists.” The Supreme Court found that the legitimacy of that objective was “obvious.” 427 U.S. at 304.

While the cases from foreign jurisdictions of New York, New Jersey, and California cited by Plaintiff, do tend to show a strong disapproval of proximity limitations or any geographic restraints on mobile food vendors as unfair attempts to regulate competition, they stand in contrast with Illinois law.³ Other Illinois cases cited by Plaintiff in support of its theory that government regulation that affect competition in the marketplace is unconstitutional are unavailing as they concern specific zoning decisions or licensure. Finally, in considering the particular needs and characteristics of the City of Chicago—a city which is noted for its culture, uniquely diverse neighborhoods, and even popularity with culinary tourists, the Court finds that the balancing of interests between food trucks, brick-and-mortar restaurants, and other needs of the city is a rational basis for the 200-foot rule.

(2) Spreading Retail Food Options to Underserved Areas

The City contends that the 200-foot rule will encourage food trucks to locate to areas which are presently underserved by restaurants. Plaintiff argues that this reason is unfounded under basic principles of economics. The Court finds that Plaintiff has met its burden in showing that the 200-foot rule does not encourage food trucks to locate in areas lacking restaurants. Dr.

³ In *People v. Ala Carte Catering Co.*, a California appellate court struck down a Los Angeles ordinance that barred catering trucks from selling within 100 feet of a restaurant. 98 Cal. App. 3d Supp. 1, 9 (Cal. App. Dep't Super. Ct. 1979). The basis for the ordinance was the potential "hazard to traffic" and "nuisance to pedestrians" created by the "unregulated stopping of vehicles for the sale of foods and beverages." *Id.* In striking down the ordinance, the court held it was a "naked restraint of trade," that was "arbitrarily made for the mere purpose of classification." *Id.* at 13. See also *Duchain v. Lindsay*, 345 N.Y.S.2d 53, 55-57 (N.Y. App. Div. 1973)(invalidating law prohibiting vending within 100 feet of businesses selling the same goods); *Mister Softee v. Mayor of Hoboken*, 186 A.2d 513, 519-20 (N.J. Super. Ct. Law Div. 1962)(invalidating law preventing vending within 200 feet of business selling similar merchandise). Although the preceding cases tend to show the aversion of courts in certain jurisdictions to any proximity limitations, this Court is bound by Illinois precedent which has expressly permitted proximity restrictions and even the total ban of food trucks and the like. See e.g. *Triple A Servs. v. Rice*, 131 Ill. 2d 217 (1989); *Good Humor Corp. v. Mundelein*, 33 Ill. 2d 252 (1965)(upholding ordinance banning ice cream trucks from village streets); *Chicago v. Rhine*, 363 Ill. 619 (1936)(upholding ban of the sale of all goods on the street except newspapers).

Butler concluded that “[e]conomic theory predicts that the 200-foot rule cannot and will not achieve the City’s stated goal of encouraging food trucks to operate in community areas lacking sufficient retail food options.” (Plt. MSJ, Butler Aff. ¶15). This is because food truck operators are entrepreneurs who wish to maximize their profits and will go where the demand is the highest. *Id.* ¶14. Food trucks will focus on dense areas where consumers have relatively high levels of disposable income. *Id.* ¶17. Because “underserved” areas generally lack these features, economic theory predicts little food-truck activity in such areas. *Id.* ¶21. Expert analysis also showed no evidence that food trucks were visiting the underserved areas since the passage of the amended ordinance. Professor Butler analyzed over 48,000 tweets of Chicago food trucks from November 26, 2013 to November 26, 2014, and concluded that food trucks do not often operate in the areas identified as underserved by the City such as Auburn Gresham, Beverly, Engelwood, Humbolt Park Morgan Park, and South Shore. *Id.* ¶¶ 39. For these reason, the Court finds the 200-foot is not rationally related to the purpose of spreading retail food options to underserved areas of the City.

(3) Managing Sidewalk Congestion

Lastly, the City argues that the 200-foot rule is rationally related to the City’s interest “reducing congestion and delays on sidewalks because it creates a buffer between food truck customer lines and the congestion that can arise outside restaurants.” (City’s MSJ p. 11). Plaintiff responds that the 200-foot rule as between restaurants and food trucks is arbitrary because other businesses can be sources of pedestrian congestion such as theatres. Further, the exemption for food trucks serving construction workers or operating at food truck stands undermines the City’s position because food truck stands and construction also may create pedestrian congestion. Finally, Plaintiff’s expert, Renia Ehrenfeucht, Professor of Community and Regional Planning at the University of New Mexico, avers that in her observational study of seven food truck

locations, four of which were within 200 feet of a restaurant's principal entrance and the rest food truck stands, no difference in congestion was observed. (Plt.'s MSJ, Ehrenfeucht Aff., ¶¶27-28). Moreover, no one complained of the lines caused by food trucks.

Even if all of Plaintiff's arguments are true, this does not invalidate the 200-foot rule as a rational basis exists for reducing sidewalk congestion. Photos and notes collected through Professor Ehrenfeucht's study, as well by photos retrieved from Twitter, clearly show that food trucks result in significant sidewalk congestion. Moreover, restaurants often have sidewalk cafes during the warmer months, which further reduce available sidewalk space and cause congestion. (Plt.'s MSJ, Ex. 16, Hamilton Dep. at 36:8-11). It is well-settled that "[a] local ordinance aimed at remedying a problem need not entirely eliminate the problem." *Vaden v. Maywood*, 809 F.2d 361, 365 (7th Cir. 1987). Rather, "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Id.* (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955)).

The Illinois Supreme Court in *Triple A Services* relied upon *Vaden v. Village of Maywood*, 809 F.2d 361 (7th Cir. 1987), which upheld an ordinance banning the operation of mobile food vending businesses in Maywood from 8 a.m. to 4 p.m. on any day between August 25 and June 30 when a public elementary or secondary school was in operation. Plaintiff Vaden, who sold snacks primarily to school children, challenged the ordinance on due process, equal protection, and other grounds. Noting that "[i]n determining the constitutionality of the ordinance, [the Court] cannot consider whether the Village Board acted wisely in regulating the business of its street vendors or whether it could have accomplished its goals more effectively; [the Court] consider[s] only whether the ordinance is wholly arbitrary." *Id.* at 364-365. Finding that the restriction was rationally related to the legitimate goal of preventing children from being

delayed and distracted while traveling to and from school, the Seventh Circuit upheld the ordinance.

Though other businesses are sources of pedestrian congestion, lines at food trucks and traditional restaurants are more likely to occur at the same time than, perhaps, another business such as a theatre at lunch time. A “legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. *In re Adopt O.J.M.*, 293 Ill. App. 3d 49, 64 (1st Dist. 1997)(quoting *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809 (1969)(internal quotes, citations omitted). In this case, although the 200-foot rule does not solve all sources of pedestrian congestion, the evidence shows that food trucks are a significant source of congestion, as are restaurants. Accordingly, the Court finds that the 200-foot rule is rationally related to the City’s legitimate goal to reducing sidewalk congestion.

Count III – GPS Requirement (Unreasonable Search/Violation of Privacy)

The GPS requirement is a combination of MCC Section 7-38-115(l), created by Ordinance 2012-4489, and the regulations enacted by the City’s Department of Public Health (“DPH”) on December 21, 2012. The ordinance provides:

Each mobile food vehicle shall be equipped with a permanently installed functioning global-positioning-system (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API). For purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle's GPS device.

MCC, Sec. 7-38-115(l).

The DPH regulations state that the GPS need only transmit location data “while the vehicle is vending food or otherwise open for business to the public, and when the vehicle is being serviced at a commissary. . .” (Plt.’s MSJ, Ex. K, CITY000703). When required to function, the GPS device must transmit the vehicle’s location at least once every five minutes. *Id.*

City personnel may request location information from a GPS Service Provider if the information is sought to investigate a food-related threat to public health, “in connection with establishing compliance with Chapter 7-38 of the Municipal Code of Chicago or the regulations promulgated thereunder” or “for purposes of emergency preparation or response.” *Id.* The GPS Service Provider must maintain at least six months of historical location data for a mobile food vehicle. *Id.*

Plaintiff challenges the GPS requirement as an unreasonable search, and that the ordinance and regulations do not serve as an adequate substitute for a warrant. Plaintiff also complains that the data is not collected by the City, but rather by a third party which must hold six months of data open to the world. The City responds that GPS requirement is not a search by the government, and therefore, no warrant is required. Moreover, the City has never obtained Plaintiff’s location data from the GPS Service provider, other than during the pendency of this lawsuit pursuant to subpoena issued by the City’s counsel. Reviewing the data, however, would not be a search because LMP has no reasonable expectation of privacy when operating its food truck. Even if the requirement constitutes a search, it would be lawful as a reasonable search because the data is limited and serves important City interests. Finally, the City argues that there is no meaningful difference between what it transmitted by the GPS unit and what is routinely communicated by the food truck themselves via social.

The GPS Requirement Does Not Constitute a Search or Seizure

As a preliminary matter, LMP has not been subject to a search or seizure, illegal or not, as the City never requested LMP’s location data outside the pendency of this lawsuit. Thus, LMP lacks standing to raise a challenge to the GPS requirement because it was never searched. Even had the City accessed LMP’s data via the third-party GPS service provider, Plaintiff’s constitutional claims fail as the GPS requirement does not constitute a search.

Plaintiff cites *United States v. Jones*, 565 U.S. 400 (2012), in support of its contention that the GPS requirement constitutes a search. In *Jones*, the defendant came under suspicion of trafficking in narcotics. *Id.* at 402. The government obtained a search warrant in federal court which authorized the installation of a GPS unit on the vehicle registered to Jones' wife (but of which Jones was the exclusive driver), however the warrant expired before the GPS unit was installed. *Id.* at 403. Over the next 28 days, the government collected data using the device and indicted Jones and several alleged co-conspirators with conspiracy to distribute five kilograms or more of cocaine. *Id.* Jones filed a motion to suppress the evidence obtained by the GPS unit which the District Court granted only in part, suppressing the data obtained while the vehicle was parked at Jones' residence. *Id.* Jones was then convicted with the data from the GPS unit having led to the alleged co-conspirators' house that contained \$850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. *Id.* at 403-404. Upon review, the Supreme Court noted that the "Government physically occupied private property for the purpose of obtaining information", and found that the installation of a GPS unit was an unconstitutional search. *Id.* at 404. The Court further held that it need not reach the "reasonable expectation of privacy" analysis first articulated in Justice Harlan's concurrence in *Katz v. United States*, 389 U.S. 347 (1967) due to such "physical intrusion" by the Government. *Id.* at 407. Our appellate court relied upon *Jones* in a similar case where special agents working for the Drug Enforcement Agency installed a GPS tracking device on a suspect's car without judicial authorization, and then monitored the suspect for a month. *People v. Bravo*, 2015 IL App (1st) 130145.

Jones and *Bravo* are distinguishable most notably because the government did not surreptitiously place the GPS unit on Plaintiff's food truck. There was no physical trespass to LMP's food truck for the purpose of installing the GPS unit. Rather, the GPS unit is a requirement of operations in the City, that is made obvious to Plaintiff by both the Municipal

Code of Chicago and DPH regulations. As such, the GPS requirement does not constitute a search.

Even if the GPS Requirement Were Deemed a Search, It Would Be Reasonable.

Warrantless inspections of closely regulated businesses (such as food service) must meet three criteria as set forth by the United States Supreme Court in *New York v. Burger*, 482 U.S. 691 (1987). First, there must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made. *Burger*, 482 U.S. at 702. Second, the warrantless inspections must be necessary to further the regulatory scheme. *Id.* Finally, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. *Id.* at 703. The Court finds that the GPS requirement as codified by ordinance and DPH regulations satisfies the *Burger* test.

The parties do not dispute that the City has a substantial interest in ensuring food safety. Accordingly, as the DPH regulations more than adequately make clear that public health is a substantial basis for the regulation, the first requirement of the Burger test is satisfied. The regulations provide that City personnel will not require location information from a GPS service provider pertaining to a mobile food vehicle unless the information is sought (1) to investigate a complaint of unsanitary or unsafe conditions, (2) to investigate a food-related threat to public health, (3) in connection with establishing compliance with Chapter 7-38 of the MCC (which also includes numerous health and safety requirements), or (4) for purposes of emergency preparation or response. (Plt.'s MSJ, Ex. K, CITY0000703). Second, the warrantless inspections are necessary to further the regulatory scheme. The data required to be maintained enables the City to learn a food truck's current and prior locations for purposes of health inspection or notification of the public. That the City could obtain this information by consulting the food truck's Twitter feed or telephoning the truck is of no matter. Moreover, Ms. Pekarik testified that

there is no requirement as to when or how soon after arrival her employees will post the food truck's location on Twitter or Facebook and there have been times when the driver neglected to post on social media. (City's MSJ, Ex. 9, Pekarik Dep. at 24:23-26:24). As brick-and-mortar restaurants are subject to unannounced health inspections, there is no colorable reason that food trucks should not be subject to the same if the City deems it necessary. Lastly, the third requirement that the GPS requirement must satisfy the basic requirement of a warrant is satisfied as both the ordinance and the DPH regulations clearly inform a food truck licensee what data is collected and when it may be requested by the City. Accordingly, because all elements of the *Burger* test are satisfied, even if the GPS requirement constitutes a "search," it would pass constitutional muster.

LMP Has No Reasonable Expectation of Privacy

Plaintiff also contends that the GPS requirement violates its reasonable expectation of privacy. This contention borders on the absurd. That a business, serving food to the *public* should be permitted to conceal its location from governmental scrutiny, including the public health department, simply because it is on wheels is incomprehensible. The GPS requirement expressly states that the GPS unit only need transmit the food truck's location when the food truck is vending food, otherwise open for business, or being serviced at a commissary. (Plt.'s MSJ, Ex. K, CITY0000703). Plaintiff argues that occasionally keeping the location of the food truck secret may prevent competitor food trucks from coming to the same parking spot and siphoning off customers. Another reason offered is that the GPS requirement will compromise an employee's safety from unwanted attention from members of the public or acquaintances outside the workplace. Neither reason serves as a basis for a reasonable expectation of privacy when operating a food business. Finally, it is well-settled that there is no reasonable expectation of privacy in a vehicle's location when operating in public. *United States v. Knotts*, 460 U.S. 276,

281 (1983)(“A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.”).

Because LMP has no reasonable expectation of privacy in its location when its food truck is open for business and serving food to the public, there is no constitutional right ceded in exchange for a food truck license. Thus, the Court need not reach the issue of whether the GPS requirement is a permissible condition of licensure. *Planned Parenthood of Ind., Inc. v. Comm’r of the Ind. State Dep’t of Health*, 699 F.3d 962, 986 (7th Cir. 2012)(“The first step in any unconstitutional-conditions claim is to identify the nature and scope of the constitutional right arguably imperiled by the denial of a public benefit.”)

CONCLUSION

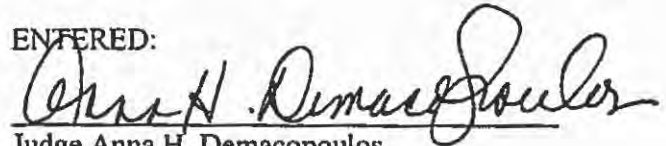
Because the Court finds the 200-foot rule is rationally related to at least two legitimate government purposes, namely balancing of interests between food trucks and brick-and-mortar restaurants and reducing pedestrian congestion, it finds the 200-foot rule does not violate Plaintiff’s due process rights. Summary judgment as to Count I is entered in favor of the City.

The Court further finds that the GPS requirement does not constitute a “search” by the government and no seizure has occurred. That the requirement only applies when the food truck is open for business or being serviced at a commissary is key. There is no reasonable expectation of privacy when the food truck is open for business and serving food to the public. Moreover, as a food truck is a vehicle, there is no reasonable expectation of privacy on the public ways at any time. Finally, even were Plaintiff to have a constitutional right to privacy when open for business and the GPS requirement to constitute a search, such a warrantless search is likely to pass constitutional muster because the ordinance and regulations adequately inform the licensee when and why its location data might be retrieved. For these reasons, summary judgment as to Count III is entered in favor of the City.

WHEREFORE, IT IS HEREBY ORDERED:

- 1) The City of Chicago's Motion for Summary Judgment is granted.
- 2) Plaintiff's Motion for Summary Judgment is denied.

ENTERED:


Judge Anna H. Demacopoulos

Judge Anna Helen Demacopoulos
DEC - 5 2016
Circuit Court - 2002

3323



16-3390

**APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

LMP SERVICES, INC.,
Plaintiff-Appellant,

v.

**THE CITY OF CHICAGO,
ILLINOIS,**
Defendant-Appellee.

**Appeal from the Circuit Court of Cook
County, Illinois, County Department,
Chancery Division**

No. 12 CH 41235

**The Honorable
Anna H. Demacopoulos,
Judge Presiding**

FILED
CIRCUIT COURT OF COOK
COUNTY, ILLINOIS
2016 DEC 28 PM 1:04
CLERK
CIVIL RIGHTS DIVISION

NOTICE OF APPEAL

Plaintiff-Appellant LMP Services, Inc., by its attorneys, hereby appeals to the Appellate Court of Illinois, First Judicial District, from the Order of the Circuit Court of Cook County, Illinois, entered on December 5, 2016, attached here as Exhibit A.

Through this appeal, Plaintiff-Appellant will ask the Appellate Court to reverse the judgment of the Circuit Court and enter judgment in favor of Plaintiff-Appellant as to Counts I and III of its Amended Complaint, filed March 7, 2013.

Dated: December 28, 2016

Respectfully submitted,

LMP SERVICES, INC.

James W. Joseph
EIMER STAHL LLP
224 South Michigan Avenue, Suite 1100
Chicago, Illinois 60604
(312) 660-7600
jjoseph@eimerstahl.com
Firm ID No. 49152
Counsel for Plaintiff-Appellant

By:


One of Plaintiff Appellant's Attorneys

Exhibit A

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

LMP SERVICES, INC.

PLAINTIFF

V.

CITY OF CHICAGO

DEFENDANT

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No. 12 CH 41235

Calendar 13

Judge Anna Helen Demacopoulos

MEMORANDUM OPINION AND ORDER

This case concerns the City of Chicago's regulation of food trucks. Plaintiff LMP Services, Inc. ("LMP"), owner of a food truck known as "Courageous Cupcakes", filed the lawsuit in response to an amended ordinance passed by the Chicago City Council on July 25, 2012. Plaintiff challenges the rule which prohibits food trucks from parking within 200 feet of an existing restaurant, as well as the requirement that each food truck maintain a global-positioning-system (GPS) unit which transmits their location to a third-party vendor. This matter having come before the Court on cross-motions for summary judgment, the Court having reviewed the motions, memoranda in support thereof, statements of undisputed facts and exhibits thereto, and the pleadings, heard arguments of counsel on October 19, 2016, and thereby being fully informed in the premises, finds as follows:

STATEMENT OF FACTS

On July 25, 2012, the Chicago City Council passed Ordinance 2012-4489, an amended ordinance regarding mobile food vehicles (food trucks) within the City of Chicago (the "City"). Ordinance 2012-4489 introduced numerous changes, such as the ability to obtain a license to sell food that is prepared and served from a mobile food truck, rather than only prepackaged food.

This change resulted in an increase in the number and variety of food trucks wishing to do business in the City of Chicago.

Ordinance 2012-4489 maintained a proximity restriction first passed on September 11, 1991 that prohibits parking within 200 feet of the entrance of a restaurant (the “200-foot rule”). Municipal Code of Chicago (“MCC”), Sec. 7-38-115(f). The definition of a restaurant includes any “place where food and drink is prepared and served for the public for consumption on or off the premises pursuant to a required license.” *Id.* Plaintiff alleges that the definition includes businesses such as 7-Elevens (117 locations in Chicago), Starbucks (179 locations), and Dunkin’ Donuts (193 locations). The 200-foot rule applies to food trucks whether they are operating on public or private property (except as to restaurants located on the private property to which the food truck is invited). MCC, Sec. 7-38-115(k)(1)(iii). Food trucks are also required to have a GPS device permanently installed on their vehicle “which sends real-time data to any service that has a publicly-accessible application programming interface (API)” (“GPS requirement”). MCC, Sec. 7-38-115(l).

Ordinance 2012-4489 requires the City to establish “mobile food vehicle stands”—designated spaces on the public way where mobile-food vehicles may operate without being subjected to the 200-foot proximity restriction. Ordinance 2012-4489 requires the City to establish at least five mobile food vehicle stands “in each community areas . . . that has 300 or more retail foods establishments.” MCC, Sec. 7-38-117. Additionally, a minimum fine of \$1,000.00 was set for any violations of sections 7-38-115 and 7-38-117. MCC, Sec. 7-38-128(d) This amount is quadruple the amount for certain violations prior to the amended ordinance.

Laura Pekarik is the sole owner and shareholder of LMP. Ms. Pekarik owns and runs a brick and mortar bakery called “Courageous Bakery” located in Elmhurst, Illinois, as well as a food truck called “Cupcakes for Courage.” Plaintiff’s food truck travels through the Chicagoland

area serving desserts to customers. Plaintiff complains that due to the 200-foot rule, there are large portions of Chicago that her food truck cannot park and customers she may not serve, even if she is a guest on private property. In the Amended Complaint, Plaintiff alleges the 200-foot rule and the GPS requirement violate constitutional rights provided in Article I, Sections 2 and 6 of the Illinois Constitution—Due Process (Count I) and Searches, Seizures, and Privacy (Count III). Plaintiff's equal protection claim (Count II), also brought under Article I, Section 2, was previously dismissed by the Honorable LeRoy K. Martin Jr.

LEGAL STANDARD

Summary judgment is appropriate where the pleadings, affidavits, depositions, admissions, and exhibits on file, when viewed in the light most favorable to the non-moving party, reveal that there is no genuine issue as to any material fact and that the movant is entitled to judgment as a matter of law. 735 ILCS 5/2-1005(c). "A genuine issue of material fact precluding summary judgment exists where the material facts are disputed, or, if the material facts are undisputed, reasonable persons might draw different inferences from the undisputed facts." *Adames v. Sheahan*, 233 Ill.2d 276, 296 (2009)(citing *Adams v. Northern Illinois Gas Co.*, 211 Ill.2d 32, 43(2004)). When the parties file cross-motions for summary judgment, they concede the absence of a genuine issue of material fact and invite the court to decide the questions presented as a matter of law. *Steadfast Ins. Co. v. Caremark Rx Inc.*, 359 Ill. App. 3d 749, 755 (1st Dist. 2005). Summary judgment is "a drastic means of disposing of litigation and, therefore, should be granted only when the right of the moving party is clear and free from doubt." *Adames*, 233 Ill.2d at 296.

ANALYSIS

This dispute pits the interests of the traditional brick-and-mortar restaurant against the young rising pop star—the food truck. The public interest that the City is charged with protecting

and furthering lies somewhere in the uncertain middle. The parties have taken numerous depositions in this matter and the Court has reviewed nearly two thousand pages in supporting exhibits. For the following reasons, the Court grants the City's motion for summary judgment and denies Plaintiff's cross-motion for summary judgment.

Count I – 200 Foot Rule (Due Process)

The 200-foot rule provides:

No operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level; provided, however, the restriction in this subsection shall not apply between 12:00 a.m. and 2:00 a.m.

MCC, Sec. 7-38-115(f).

The Court notes that the 200-foot rule is not a new regulation. As of the filing of this lawsuit in November 2012, the 200-foot rule had been in place with respect to food trucks for over eleven years.¹ Although, a prior rule containing a 200-foot proximity requirement was struck down by the Circuit Court in 1986, such provision was held unenforceable due to its vagueness—a challenge not raised against the 2012-4489 Ordinance.² See *Thunderbird v. Catering Co. v. City of Chicago*, No. 83 L 52921 (Cook Cty. Cir. Ct. Oct. 15, 1986)(O'Brien, T). Though the language of the 200-foot rule has not significantly changed since 1991, the marketplace for food trucks in Chicago has broadened both with a nationwide surge in interest in

¹ Both the 1991 and 2012 ordinances provide, “No operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level.” Section 7-38-115(f), as amended in 2012, includes the following additional language, “provided, however, the restriction in this subsection shall not apply between 12:00 a.m. and 2:00 a.m.”

² The predecessor ordinance to the one at issue provided in relevant part, “No operator of (a mobile food dispensing vehicle shall park or stand such vehicle within 200 feet of . . . a place of business which deals in like or similar commodities such as are sold by the mobile unit.” MCC, Sec. 130-4.12(d). The Court struck Sec. 130-4.12(d) as “vague and unenforceable,” and prohibited the City from enforcing the ordinance. *Thunderbird Catering Co. v. City of Chicago*, No. 83 L 52921 (Cook Cty. Cir. Ct. Oct. 15, 1986).

food trucks, as well as the expanded opportunities for entrepreneurship given the changes effected by Ordinance 2012-4489.

In its motion for summary judgment, Plaintiff asserts that the 200-foot rule violates its due process rights, specifically the right to pursue a trade or business free from arbitrary and irrational regulation. Plaintiff argues that proximity restrictions have been invalidated by numerous courts, including the Illinois Supreme Court. Moreover, Plaintiff further argues that the 200-foot rule does not “definitely and substantially” advance any legitimate government interest as each of the stated bases for the rule are either illusory or improper.

In response and by its cross-motion for summary judgment, the City argues that Plaintiff (not the City) bears the burden to show that the 200-foot rule is unreasonable and has failed to meet that burden. The City contends that balancing the interests of brick-and-mortar restaurants with that of the food trucks is a legitimate governmental interest. Further, the other bases for the restriction, including reducing pedestrian congestion and encouraging food trucks to locate in underserved areas are rationally related to the regulation, as well.

Rational Basis Test

When considering a substantive due process challenge, “a statute is unconstitutional if it impermissibly restricts a person's life, liberty or property interest.” *People v. Johnson*, 225 Ill.2d 573, 584 (2007). Well-settled is the constitutional principle that every citizen has the right to pursue a trade, occupation, business or profession. *Coldwell Banker Residential Real Estate Services, Inc. v. Clayton*, 105 Ill.2d 389, 397 (1985). “This inalienable right constitutes both a property and liberty interest entitled to the protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions.” *Id.* Ordinance 2012-4489, as with other ordinances regulating mobile food vendors or peddlers addressed by previous courts, “concerns regulation in the socio-economic sphere, and neither encroaches upon a fundamental right nor

draws lines which create an inherently suspect classification.” See *Triple A. Servs. v. Rice*, 131 Ill.2d 217, 226 (1989). Accordingly, the rational basis test will apply. *Napleton v. Vill. of Hinsdale*, 229 Ill.2d 296, 307 (2008).

Under the rational-basis test, the Court’s inquiry is twofold: (1) the Court “must determine whether there is a legitimate state interest behind the legislation” and, (2) “if so, whether there is a reasonable relationship between that interest and the means the legislature has chosen to pursue it.” *Johnson*, 225 Ill.2d at 584. “One who challenges an ordinance as failing this test of minimum rationality bears the burden of proving ‘by clear and affirmative evidence that the ordinance constitutes arbitrary, capricious and unreasonable municipal action; that there is no permissible interpretation which justifies its adoption, or that it will not promote the safety and general welfare of the public.’” *Triple A Servs.*, 131 Ill.2d at 225-226 (quoting *City of Decatur v. Chasteen*, 19 Ill.2d 204, 210 (1960)). “If there is any conceivable set of facts to show a rational basis for the statute, it will be upheld.” *Johnson*, 225 Ill.2d at 585. “[T]he law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it.” *Harris v. Manor Healthcare Corp.*, 111 Ill.2d 350, 368-369 (1986) (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 487-88, 99 (1955)).

The City has offered three rational bases for the 200-foot rule: “(1) it fosters restaurants – which provide important economic, cultural, and neighborhood benefits to the City- while at the same time allowing food trucks to prosper; (2) it helps spread retail food options to blocks or entire communities of the City that lack enough restaurants, and (3) it manages sidewalk congestion caused by lines of food truck customers.” (Def.’s. Mem. in Supp. Summ. J. 1). As noted above, it is Plaintiff’s burden to show that the regulation is unreasonable, arbitrary or capricious rather than the City’s burden to prove that it is reasonable. *Triple A Servs.*, 131 Ill.2d

at 226. As discussed below, the Court finds that at least two rational bases exist for the 200-foot rule, namely the balancing of interests and reducing pedestrian congestion.

(1) Balancing of Interests

The City argues that Ordinance 2012-4489 serves the dual purpose of balancing the needs of both restaurants and food trucks. Plaintiff contends that the ordinance is intended to protect brick-and-mortar restaurants from competition, which is not a legitimate government purpose. Following review of Illinois law and the supporting exhibits to the cross-motions for summary judgment, the Court agrees that food trucks may be regulated in a manner that balances the needs of the community, which includes the interests of the brick-and-mortar restaurants.

Plaintiff relies upon *Chicago Title & Trust Co. v. Village of Lombard*, 19 Ill.2d 98 (1960) and cases from foreign jurisdictions in support of its contention that Illinois courts do not favor barriers to competition such as proximity limitations. In *Chicago Title*, the Illinois Supreme Court struck down an ordinance barring the construction of a gas station within 650 feet of another existing gas station. Noting that the ordinance permitted existing service stations situated within 650 feet of each other to continue, the court found the proximity restriction arbitrary and unreasonable. The Court further concluded that the ordinance “exempts from its requirements businesses already established, and, in operation and effect, tends to promote monopoly.” *Id.* at 107.

Chicago Title is readily distinguishable from the facts of the instant matter. In particular, the businesses to be separated by the Village of Lombard ordinance—gas stations—were the exact same type of business and in direct competition with one another. Here, the City has designed its regulation to separate two different types of business with different business needs. Plaintiff’s expert, Dr. Henry Butler, Dean of George Mason University School of Law with a Ph.D. in economics, testified that the risk taken in opening a new restaurant “is a lot higher for

the brick and mortar” than for a food truck. (City’s MSJ, Ex. 7, Butler Dep. at 74:1-22). As to costs, according to *Streets of Dreams*, a report published by the Institute for Justice (“IFJ”), “[s]treet vending allows entrepreneurs to establish their own businesses at a fraction of the cost of other potential ventures.” (City’s MSJ, Ex. 8 at IJ0169). The IFJ report illustrates this point with the example of Stephan Boillon, a chef in Washington, D.C., who lost his job in 2008. Mr. Bouillon wanted to start his own business, specifically a restaurant serving only cold sandwiches. *Id.* at IJ0170. This simple concept obviated the need to buy expensive cooking equipment. *Id.* However, setting up a brick and mortar restaurant would have cost \$750,000, “not including operating costs such as rent, utilities and insurance,” whereas the mobile food truck he “put on the road cost only \$50,000 to get up and running.” *Id.* Were the City to bar new brick and mortar restaurants from opening within a certain distance of existing brick and mortar restaurants or food trucks from other food trucks, *Chicago Title* would be on point.

Moreover, Ordinance 2012-4498 does not tend to promote the monopoly criticized in *Chicago Title* as the 200-foot rule does not come close to excluding entire areas of Chicago, including the Loop. Plaintiff’s principal, Ms. Pekarik, testified that although there are areas in the City from which she may not sell, she has been able to find appropriate places to vend in the Loop and her business is thriving such that she opened a brick-and-mortar bakery, purchased a second food truck, and now has 15 employees. (City’s MSJ, Ex. 9, Pekarik Dep. at 20:1-3; 59:2-17; 74-79). Additionally, the amended ordinance specifically allows for more food trucks in specially designated areas known as mobile food vehicle stands, which are exempt from the 200-foot rule. MCC, Sec. 7-38-117(f).

About 19 years after *Chicago Title*, the Illinois Supreme Court addressed a mobile food vending ordinance much more restrictive than the ordinance before this Court today. In *Triple A Services v. Rice*, 131 Ill.2d 217 (1989), the Court upheld a complete ban of mobile food vending

companies in the Medical District, challenged on both due process and equal protection grounds. The stated purpose of the ordinance was to “enhance[] the professional appearance and ambience of the District. . . . [and] serve[] to protect against a decline in property values and to attract professional medical personnel and medical clients to the District.” *Id.* at 228. Further, the ordinance prevented pedestrian and vehicular congestion, and acted to prevent sanitation problems arising from discarded food wrappers. *Id.* The Court found all of these purposes to be “legitimate governmental objectives.” *Id.* at 228. While the appellate court had concluded that total ban of mobile food vendors from the Medical District was overly broad as a portion of the area designated in the ordinance was used for nonmedical purposes, the Illinois Supreme Court disagreed. The Court held that it did not find “that the means adopted by the Chicago city council to further the aforementioned objectives is so grossly overly broad as to render the ordinance arbitrary, capricious and unreasonable.” *Id.* Noting that “[t]he fit between the means and the end to be achieved need not be perfect” and “rational distinctions may be made with substantially less than mathematical exactitude” the Court upheld the ordinance. *Id.* at 228-229.

In reaching its decision in *Triple A Services*, the Illinois Supreme Court relied upon *City of New Orleans v. Dukes*, 427 U.S. (1976), in which the Supreme Court upheld an ordinance which prohibited vendors from selling foodstuffs from pushcarts in the French Quarter of the City of New Orleans. While the ordinance grandfathered vendors who had continuously operated within the French Quarter for eight years prior to enactment of the ordinance, the Court rejected petitioner’s equal protection argument, holding that the ordinance rationally furthered the purpose of preserving “the appearance and custom valued by the Quarter’s residents and attractive to tourists.” The Supreme Court found that the legitimacy of that objective was “obvious.” 427 U.S. at 304.

While the cases from foreign jurisdictions of New York, New Jersey, and California cited by Plaintiff, do tend to show a strong disapproval of proximity limitations or any geographic restraints on mobile food vendors as unfair attempts to regulate competition, they stand in contrast with Illinois law.³ Other Illinois cases cited by Plaintiff in support of its theory that government regulation that affect competition in the marketplace is unconstitutional are unavailing as they concern specific zoning decisions or licensure. Finally, in considering the particular needs and characteristics of the City of Chicago—a city which is noted for its culture, uniquely diverse neighborhoods, and even popularity with culinary tourists, the Court finds that the balancing of interests between food trucks, brick-and-mortar restaurants, and other needs of the city is a rational basis for the 200-foot rule.

(2) Spreading Retail Food Options to Underserved Areas

The City contends that the 200-foot rule will encourage food trucks to locate to areas which are presently underserved by restaurants. Plaintiff argues that this reason is unfounded under basic principles of economics. The Court finds that Plaintiff has met its burden in showing that the 200-foot rule does not encourage food trucks to locate in areas lacking restaurants. Dr.

³ In *People v. Ala Carte Catering Co.*, a California appellate court struck down a Los Angeles ordinance that barred catering trucks from selling within 100 feet of a restaurant. 98 Cal. App. 3d Supp. 1, 9 (Cal. App. Dep't Super. Ct. 1979). The basis for the ordinance was the potential "hazard to traffic" and "nuisance to pedestrians" created by the "unregulated stopping of vehicles for the sale of foods and beverages." *Id.* In striking down the ordinance, the court held it was a "naked restraint of trade," that was "arbitrarily made for the mere purpose of classification." *Id.* at 13. See also *Duchain v. Lindsay*, 345 N.Y.S.2d 53, 55-57 (N.Y. App. Div. 1973)(invalidating law prohibiting vending within 100 feet of businesses selling the same goods); *Mister Softee v. Mayor of Hoboken*, 186 A.2d 513, 519-20 (N.J. Super. Ct. Law Div. 1962)(invalidating law preventing vending within 200 feet of business selling similar merchandise). Although the preceding cases tend to show the aversion of courts in certain jurisdictions to any proximity limitations, this Court is bound by Illinois precedent which has expressly permitted proximity restrictions and even the total ban of food trucks and the like. See e.g. *Triple A Servs. v. Rice*, 131 Ill. 2d 217 (1989); *Good Humor Corp. v. Mundelein*, 33 Ill. 2d 252 (1965)(upholding ordinance banning ice cream trucks from village streets); *Chicago v. Rhine*, 363 Ill. 619 (1936)(upholding ban of the sale of all goods on the street except newspapers).

Butler concluded that “[e]conomic theory predicts that the 200-foot rule cannot and will not achieve the City’s stated goal of encouraging food trucks to operate in community areas lacking sufficient retail food options.” (Plt. MSJ, Butler Aff. ¶15). This is because food truck operators are entrepreneurs who wish to maximize their profits and will go where the demand is the highest. *Id.* ¶14. Food trucks will focus on dense areas where consumers have relatively high levels of disposable income. *Id.* ¶17. Because “underserved” areas generally lack these features, economic theory predicts little food-truck activity in such areas. *Id.* ¶21. Expert analysis also showed no evidence that food trucks were visiting the underserved areas since the passage of the amended ordinance. Professor Butler analyzed over 48,000 tweets of Chicago food trucks from November 26, 2013 to November 26, 2014, and concluded that food trucks do not often operate in the areas identified as underserved by the City such as Auburn Gresham, Beverly, Engelwood, Humbolt Park Morgan Park, and South Shore. *Id.* ¶¶ 39. For these reason, the Court finds the 200-foot is not rationally related to the purpose of spreading retail food options to underserved areas of the City.

(3) Managing Sidewalk Congestion

Lastly, the City argues that the 200-foot rule is rationally related to the City’s interest “reducing congestion and delays on sidewalks because it creates a buffer between food truck customer lines and the congestion that can arise outside restaurants.” (City’s MSJ p. 11). Plaintiff responds that the 200-foot rule as between restaurants and food trucks is arbitrary because other businesses can be sources of pedestrian congestion such as theatres. Further, the exemption for food trucks serving construction workers or operating at food truck stands undermines the City’s position because food truck stands and construction also may create pedestrian congestion. Finally, Plaintiff’s expert, Renia Ehrenfeucht, Professor of Community and Regional Planning at the University of New Mexico, avers that in her observational study of seven food truck

locations, four of which were within 200 feet of a restaurant's principal entrance and the rest food truck stands, no difference in congestion was observed. (Plt.'s MSJ, Ehrenfeucht Aff., ¶¶27-28). Moreover, no one complained of the lines caused by food trucks.

Even if all of Plaintiff's arguments are true, this does not invalidate the 200-foot rule as a rational basis exists for reducing sidewalk congestion. Photos and notes collected through Professor Ehrenfeucht's study, as well by photos retrieved from Twitter, clearly show that food trucks result in significant sidewalk congestion. Moreover, restaurants often have sidewalk cafes during the warmer months, which further reduce available sidewalk space and cause congestion. (Plt.'s MSJ, Ex. 16, Hamilton Dep. at 36:8-11). It is well-settled that "[a] local ordinance aimed at remedying a problem need not entirely eliminate the problem." *Vaden v. Maywood*, 809 F.2d 361, 365 (7th Cir. 1987). Rather, "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind." *Id.* (quoting *Williamson v. Lee Optical of Oklahoma, Inc.*, 348 U.S. 483, 489 (1955)).

The Illinois Supreme Court in *Triple A Services* relied upon *Vaden v. Village of Maywood*, 809 F.2d 361 (7th Cir. 1987), which upheld an ordinance banning the operation of mobile food vending businesses in Maywood from 8 a.m. to 4 p.m. on any day between August 25 and June 30 when a public elementary or secondary school was in operation. Plaintiff Vaden, who sold snacks primarily to school children, challenged the ordinance on due process, equal protection, and other grounds. Noting that "[i]n determining the constitutionality of the ordinance, [the Court] cannot consider whether the Village Board acted wisely in regulating the business of its street vendors or whether it could have accomplished its goals more effectively; [the Court] consider[s] only whether the ordinance is wholly arbitrary." *Id.* at 364-365. Finding that the restriction was rationally related to the legitimate goal of preventing children from being

delayed and distracted while traveling to and from school, the Seventh Circuit upheld the ordinance.

Though other businesses are sources of pedestrian congestion, lines at food trucks and traditional restaurants are more likely to occur at the same time than, perhaps, another business such as a theatre at lunch time. A “legislature need not run the risk of losing an entire remedial scheme simply because it failed, through inadvertence or otherwise, to cover every evil that might conceivably have been attacked. *In re Adopt O.J.M.*, 293 Ill. App. 3d 49, 64 (1st Dist. 1997)(quoting *McDonald v. Board of Election Commissioners*, 394 U.S. 802, 809 (1969)(internal quotes, citations omitted). In this case, although the 200-foot rule does not solve all sources of pedestrian congestion, the evidence shows that food trucks are a significant source of congestion, as are restaurants. Accordingly, the Court finds that the 200-foot rule is rationally related to the City’s legitimate goal to reducing sidewalk congestion.

Count III – GPS Requirement (Unreasonable Search/Violation of Privacy)

The GPS requirement is a combination of MCC Section 7-38-115(l), created by Ordinance 2012-4489, and the regulations enacted by the City’s Department of Public Health (“DPH”) on December 21, 2012. The ordinance provides:

Each mobile food vehicle shall be equipped with a permanently installed functioning global-positioning-system (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API). For purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle’s GPS device.

MCC, Sec. 7-38-115(l).

The DPH regulations state that the GPS need only transmit location data “while the vehicle is vending food or otherwise open for business to the public, and when the vehicle is being serviced at a commissary. . .” (Plt.’s MSJ, Ex. K, CITY000703). When required to function, the GPS device must transmit the vehicle’s location at least once every five minutes. *Id.*

City personnel may request location information from a GPS Service Provider if the information is sought to investigate a food-related threat to public health, “in connection with establishing compliance with Chapter 7-38 of the Municipal Code of Chicago or the regulations promulgated thereunder” or “for purposes of emergency preparation or response.” *Id.* The GPS Service Provider must maintain at least six months of historical location data for a mobile food vehicle. *Id.*

Plaintiff challenges the GPS requirement as an unreasonable search, and that the ordinance and regulations do not serve as an adequate substitute for a warrant. Plaintiff also complains that the data is not collected by the City, but rather by a third party which must hold six months of data open to the world. The City responds that GPS requirement is not a search by the government, and therefore, no warrant is required. Moreover, the City has never obtained Plaintiff’s location data from the GPS Service provider, other than during the pendency of this lawsuit pursuant to subpoena issued by the City’s counsel. Reviewing the data, however, would not be a search because LMP has no reasonable expectation of privacy when operating its food truck. Even if the requirement constitutes a search, it would be lawful as a reasonable search because the data is limited and serves important City interests. Finally, the City argues that there is no meaningful difference between what it transmitted by the GPS unit and what is routinely communicated by the food truck themselves via social.

The GPS Requirement Does Not Constitute a Search or Seizure

As a preliminary matter, LMP has not been subject to a search or seizure, illegal or not, as the City never requested LMP’s location data outside the pendency of this lawsuit. Thus, LMP lacks standing to raise a challenge to the GPS requirement because it was never searched. Even had the City accessed LMP’s data via the third-party GPS service provider, Plaintiff’s constitutional claims fail as the GPS requirement does not constitute a search.

Plaintiff cites *United States v. Jones*, 565 U.S. 400 (2012), in support of its contention that the GPS requirement constitutes a search. In *Jones*, the defendant came under suspicion of trafficking in narcotics. *Id.* at 402. The government obtained a search warrant in federal court which authorized the installation of a GPS unit on the vehicle registered to Jones' wife (but of which Jones was the exclusive driver), however the warrant expired before the GPS unit was installed. *Id.* at 403. Over the next 28 days, the government collected data using the device and indicted Jones and several alleged co-conspirators with conspiracy to distribute five kilograms or more of cocaine. *Id.* Jones filed a motion to suppress the evidence obtained by the GPS unit which the District Court granted only in part, suppressing the data obtained while the vehicle was parked at Jones' residence. *Id.* Jones was then convicted with the data from the GPS unit having led to the alleged co-conspirators' house that contained \$850,000 in cash, 97 kilograms of cocaine, and 1 kilogram of cocaine base. *Id.* at 403-404. Upon review, the Supreme Court noted that the "Government physically occupied private property for the purpose of obtaining information", and found that the installation of a GPS unit was an unconstitutional search. *Id.* at 404. The Court further held that it need not reach the "reasonable expectation of privacy" analysis first articulated in Justice Harlan's concurrence in *Katz v. United States*, 389 U.S. 347 (1967) due to such "physical intrusion" by the Government. *Id.* at 407. Our appellate court relied upon *Jones* in a similar case where special agents working for the Drug Enforcement Agency installed a GPS tracking device on a suspect's car without judicial authorization, and then monitored the suspect for a month. *People v. Bravo*, 2015 IL App (1st) 130145.

Jones and *Bravo* are distinguishable most notably because the government did not surreptitiously place the GPS unit on Plaintiff's food truck. There was no physical trespass to LMP's food truck for the purpose of installing the GPS unit. Rather, the GPS unit is a requirement of operations in the City, that is made obvious to Plaintiff by both the Municipal

Code of Chicago and DPH regulations. As such, the GPS requirement does not constitute a search.

Even if the GPS Requirement Were Deemed a Search, It Would Be Reasonable.

Warrantless inspections of closely regulated businesses (such as food service) must meet three criteria as set forth by the United States Supreme Court in *New York v. Burger*, 482 U.S. 691 (1987). First, there must be a substantial government interest that informs the regulatory scheme pursuant to which the inspection is made. *Burger*, 482 U.S. at 702. Second, the warrantless inspections must be necessary to further the regulatory scheme. *Id.* Finally, the statute's inspection program, in terms of the certainty and regularity of its application, must provide a constitutionally adequate substitute for a warrant. *Id.* at 703. The Court finds that the GPS requirement as codified by ordinance and DPH regulations satisfies the *Burger* test.

The parties do not dispute that the City has a substantial interest in ensuring food safety. Accordingly, as the DPH regulations more than adequately make clear that public health is a substantial basis for the regulation, the first requirement of the Burger test is satisfied. The regulations provide that City personnel will not require location information from a GPS service provider pertaining to a mobile food vehicle unless the information is sought (1) to investigate a complaint of unsanitary or unsafe conditions, (2) to investigate a food-related threat to public health, (3) in connection with establishing compliance with Chapter 7-38 of the MCC (which also includes numerous health and safety requirements), or (4) for purposes of emergency preparation or response. (Plt.'s MSJ, Ex. K, CITY0000703). Second, the warrantless inspections are necessary to further the regulatory scheme. The data required to be maintained enables the City to learn a food truck's current and prior locations for purposes of health inspection or notification of the public. That the City could obtain this information by consulting the food truck's Twitter feed or telephoning the truck is of no matter. Moreover, Ms. Pekarik testified that

there is no requirement as to when or how soon after arrival her employees will post the food truck's location on Twitter or Facebook and there have been times when the driver neglected to post on social media. (City's MSJ, Ex. 9, Pekarik Dep. at 24:23-26:24). As brick-and-mortar restaurants are subject to unannounced health inspections, there is no colorable reason that food trucks should not be subject to the same if the City deems it necessary. Lastly, the third requirement that the GPS requirement must satisfy the basic requirement of a warrant is satisfied as both the ordinance and the DPH regulations clearly inform a food truck licensee what data is collected and when it may be requested by the City. Accordingly, because all elements of the *Burger* test are satisfied, even if the GPS requirement constitutes a "search," it would pass constitutional muster.

LMP Has No Reasonable Expectation of Privacy

Plaintiff also contends that the GPS requirement violates its reasonable expectation of privacy. This contention borders on the absurd. That a business, serving food to the *public* should be permitted to conceal its location from governmental scrutiny, including the public health department, simply because it is on wheels is incomprehensible. The GPS requirement expressly states that the GPS unit only need transmit the food truck's location when the food truck is vending food, otherwise open for business, or being serviced at a commissary. (Plt.'s MSJ, Ex. K, CITY0000703). Plaintiff argues that occasionally keeping the location of the food truck secret may prevent competitor food trucks from coming to the same parking spot and siphoning off customers. Another reason offered is that the GPS requirement will compromise an employee's safety from unwanted attention from members of the public or acquaintances outside the workplace. Neither reason serves as a basis for a reasonable expectation of privacy when operating a food business. Finally, it is well-settled that there is no reasonable expectation of privacy in a vehicle's location when operating in public. *United States v. Knotts*, 460 U.S. 276,

281 (1983)(“A car has little capacity for escaping public scrutiny. It travels public thoroughfares where both its occupants and its contents are in plain view.”).

Because LMP has no reasonable expectation of privacy in its location when its food truck is open for business and serving food to the public, there is no constitutional right ceded in exchange for a food truck license. Thus, the Court need not reach the issue of whether the GPS requirement is a permissible condition of licensure. *Planned Parenthood of Ind., Inc. v. Comm'r of the Ind. State Dep't of Health*, 699 F.3d 962, 986 (7th Cir. 2012)(“The first step in any unconstitutional-conditions claim is to identify the nature and scope of the constitutional right arguably imperiled by the denial of a public benefit.”)

CONCLUSION

Because the Court finds the 200-foot rule is rationally related to at least two legitimate government purposes, namely balancing of interests between food trucks and brick-and-mortar restaurants and reducing pedestrian congestion, it finds the 200-foot rule does not violate Plaintiff's due process rights. Summary judgment as to Count I is entered in favor of the City.

The Court further finds that the GPS requirement does not constitute a “search” by the government and no seizure has occurred. That the requirement only applies when the food truck is open for business or being serviced at a commissary is key. There is no reasonable expectation of privacy when the food truck is open for business and serving food to the public. Moreover, as a food truck is a vehicle, there is no reasonable expectation of privacy on the public ways at any time. Finally, even were Plaintiff to have a constitutional right to privacy when open for business and the GPS requirement to constitute a search, such a warrantless search is likely to pass constitutional muster because the ordinance and regulations adequately inform the licensee when and why its location data might be retrieved. For these reasons, summary judgment as to Count III is entered in favor of the City.

WHEREFORE, IT IS HEREBY ORDERED:

- 1) The City of Chicago's Motion for Summary Judgment is granted.
- 2) Plaintiff's Motion for Summary Judgment is denied.

ENTERED: Judge Anna Helen Demacopoulos

DEC - 5 2016

Judge Anna H. Demacopoulos

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

GREG BURKE, KRISTIN CASPER,)
AND LMP SERVICES, INC.,)

Plaintiffs,)

v.)

THE CITY OF CHICAGO, ILLINOIS,)

Defendant.)

No. 12 CH 41235

FILED - CH
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**DEFENDANT CITY OF CHICAGO'S ANSWER TO PLAINTIFFS'
AMENDED COMPLAINT FOR DECLARATORY JUDGMENT
AND INJUNCTIVE RELIEF**

Defendant City of Chicago ("City"), by and through its counsel, Stephen R. Patton, Corporation Counsel of the City of Chicago, hereby submits its Answer to Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief.

ANSWER

Preliminary Statement

This civil-rights lawsuit seeks to vindicate the fundamental rights of Plaintiffs, who own and operate mobile-vending vehicles, to earn an honest living free from unreasonable and anticompetitive government restrictions. Mobile vending has long been an entry point to entrepreneurship in cities across America, whereby those with a strong work ethic but little capital can strike out on their own. Through that hard work, mobile vendors around the country create jobs, offer consumers tasty food at reasonable prices, and energize urban spaces.

Although food trucks have grown increasingly popular around the country, they remain rare in Chicago largely due to burdensome and anticompetitive laws that the City has put in place. On July 25, 2012, the Chicago City Council passed an ordinance that overhauled mobile vending within the city. That ordinance maintained a rule that bans Plaintiffs and other food trucks from operating within 200 feet of any fixed business where food and drink is prepared and served for the public. This restriction does not address any public health or safety concern; instead, it exists simply to protect brick-and-mortar businesses from competition. Accordingly, the 200-foot proximity rule unconstitutionally interferes with Plaintiffs' rights to pursue a lawful occupation as protected by the Due Process and Equal Protection Clauses of Article I, Section 2 of the Illinois Constitution.

To help enforce the 200-foot proximity rule, the City is also requiring that Plaintiffs and other food-truck entrepreneurs permanently install Global Positioning System (GPS) devices on their trucks so that City officials and the general public may track a truck's whereabouts whenever and wherever it is operating. Ensuring that food trucks do not operate within 200 feet of a brick-and-mortar competitor, however, is not a legitimate government interest and cannot be the basis for this highly unusual and highly intrusive measure. This requirement therefore violates Plaintiffs' rights to be free of unreasonable searches and seizures, as protected by the Searches, Seizures, Privacy and Interceptions Clause of Article I, Section 6 of the Illinois Constitution.

Answer: As to the first paragraph of the preliminary statement, the City admits that Plaintiffs purport to assert rights enumerated in the Bill of Rights of the Illinois Constitution. The City denies that the ordinance provisions challenged in this lawsuit are unreasonable and anticompetitive. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations of the first paragraph.

As to the second paragraph of the preliminary statement, the City admits that on July 25, 2012, the City Council passed an ordinance amending its mobile vending laws. The City denies that the ordinance provisions challenged in this lawsuit are unreasonable and anticompetitive, and that Section 7-38-115(f) of the Municipal Code of Chicago bans food trucks from operating within 200 feet of any fixed business where food and drink is prepared and served for the public. The City lacks knowledge or information as to the remaining allegations of the first sentence of the second paragraph. The City denies the remaining allegations of the second paragraph.

As to the third paragraph of the preliminary statement, the City admits that Section 7-38-115(l) of the Municipal Code of Chicago states, in part, that "[f]or purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle's GPS device." The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks

states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 - 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
 - 1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 - 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 - 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific

mobile food vehicle, the operator must immediately respond with the location information of the vehicle.

- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of the third paragraph.

JURISDICTION AND VENUE

1. At all times pertinent to this action, the acts complained of have occurred in or are occurring in the City of Chicago, Cook County, Illinois.

Answer: The City admits the allegations of this paragraph.

2. This action arises under Article I, Section 2, of the Illinois Constitution (Due Process and Equal Protection Clauses); Article I, Section 6, of the Illinois Constitution (Search, Seizure, Privacy and Interceptions Clause); and 735 ILCS 5/2-701 (Declaratory Judgment).

Answer: The City admits that this action purports to assert violations of the cited constitutional provisions, and to be brought under the Illinois Declaratory Judgment Statute, but the City denies that Plaintiffs are entitled to relief and it denies any remaining allegations in this paragraph.

3. This Court has jurisdiction over the subject matter pursuant to Article VI, § 9 of the Illinois Constitution. Venue is proper in this Court pursuant to 735 ILCS 5/2-103 because the City is a municipal corporation with its principal office in Cook County.

Answer: The City admits the allegations of this paragraph.

PARTIES

4. Plaintiff Greg Burke is a citizen of Illinois and a resident of the City of Chicago.

Answer: The City lacks knowledge or information sufficient to form a belief as to

the allegations in this paragraph.

5. Mr. Burke is the owner of Schnitzel King, a licensed mobile food vending vehicle that operates on both public and private property in the City of Chicago.

Answer: The City admits that Mr. Burke, doing business as Chicago Schnitzel King, has a mobile food license issued by the City. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

6. Plaintiff Kristin Casper is a citizen of Illinois and a resident of the City of Chicago.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

7. Ms. Casper is the Director of Media Relations for Schnitzel King.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

8. Plaintiff LMP Services, Inc. is an Illinois-based corporation with its principal place of business in Elmhurst, Illinois.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

9. LMP Services, Inc. operates a licensed mobile-food vending vehicle named Cupcakes for Courage, which operates on both public and private property within the City of Chicago and elsewhere.

Answer: The City denies that LMP Services, Inc., currently has a valid mobile food license issued by the City. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

10. LMP Services, Inc. is wholly owned by Laura Pekarik, a citizen of Illinois and a resident of Lombard, Illinois.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

11. Defendant City of Chicago is a municipal corporation organized under the laws of the State of Illinois.

Answer: The City admits the allegations in this paragraph.

FACTS

The Food-Truck Industry in the United States

12. Mobile-food vending vehicles (more commonly known as “food trucks”) are commercial vehicles that let entrepreneurs travel from place to place in order to sell and serve food to private groups or the public at large.

Answer: The City admits the allegations of this paragraph, except that it denies that only entrepreneurs operate food trucks.

13. Food trucks take many different forms. Some food trucks, including Plaintiff LMP Services, Inc.’s cupcake truck, only serve food that is prepared and prepackaged in a licensed commercial kitchen. Other food trucks are self-sufficient mobile kitchens that let those working onboard prepare and serve fresh food directly from the truck.

Answer: The City admits that some food trucks serve food that is prepared on the truck, and that some food trucks serve food that is prepared and prepackaged elsewhere. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

14. Historically, the typical clientele for food-truck fare were construction workers. Food trucks that served construction sites typically served coffee, tacos, and sandwiches.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

15. The late 2000's saw the rise of the modern “gourmet” food truck. These trucks differ in several ways from their predecessors. Rather than sandwiches and coffee, these newer

trucks serve a wide variety of ethnic and high-end fare, including Korean fusion, freshly baked pizzas, and traditional New England lobster rolls.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

16. Gourmet food trucks also differ in how they connect with their customers. Using both their websites and social media sites such as Twitter and Facebook, modern trucks can communicate directly with their customers to let them know where the trucks will be serving food.

Answer: The City admits that food trucks can communicate with customers via their websites and through social media sites such as Twitter and Facebook, and that these communications include information about where the trucks will be serving food. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

17. Lastly, modern gourmet food trucks serve a different clientele than traditional trucks. Rather than sit on a construction job site, most modern food trucks serve the general public. This can occur both on the public right of way (for example, by having the truck park in a legal parking space) and on private property (for example, by having the truck park on a private lot with the owner's permission).

Answer: The City admits that food trucks can serve the general public and that sales can occur on public rights of way and on private property. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

18. Food trucks provide a number of benefits for their customers, their employees, and their communities. Being mobile gives food trucks a broader customer base, which allows the trucks to offer more "niche" products than a brick-and-mortar store may offer. And the lower overhead involved with opening a food truck can lead to lower prices for the customer.

Answer: The City admits that food trucks can provide benefits to their customers, employees, and communities. The City lacks knowledge or information sufficient to form a

belief as to the remaining allegations in this paragraph.

19. Food trucks create jobs, not just for those people who work on the truck itself, but for those who build the trucks, equip them, and maintain them.

Answer: The City admits that people operate, build, equip, and maintain food trucks. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

20. Food trucks also help make streets safer and revitalize moribund areas. Food trucks increase foot traffic by drawing people out of their homes and offices, which in turn reduces the likelihood of criminal activity. Food-truck "rallies" are popular social events that can attract hundreds, if not thousands, of visitors. Locally, a food-truck rally held in April 2012 on the University of Chicago campus drew over 300 attendees.

Answer: The City admits that food trucks can help make streets safer and revitalize moribund areas, that they can increase foot traffic in an area, and that rallies can attract large numbers of visitors. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

21. Food trucks serve as complements to restaurants, with the two working together on joint ventures. Many food-truck entrepreneurs later open restaurants, and vice versa.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

Chicago's Small Food-Truck Industry

22. Chicago, when compared to other cities of similar size, has historically had few food trucks. Despite having a population of 2.7 million, Chicago had only 127 food trucks as of July 2012. By way of comparison, Travis County, Texas, which includes Austin, has a population of 1 million and 1,200 mobile food vendors.

Answer: The City admits that the City's population was approximately 2.7 million in 2012, and that as of July 1, 2012 there were approximately 138 mobile food dispenser licenses

issued by the City. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

23. One reason there historically have been few food trucks in Chicago is the city's laws. Until recently, Chicago was the only major city in the United States to prohibit cooking onboard food trucks. Under the old law, food trucks had to serve only prepackaged items and could not take any final step to "finish" an item, such as by putting ketchup on a hot dog.

Answer: The City admits the third sentence of this paragraph. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

24. The law in Chicago also limited food trucks' hours of operation. Under the old law, food trucks could only operate during twelve hours of each day, between 10:00 am and 10:00 pm.

Answer: The City admits the allegations of this paragraph.

25. Chicago has also historically attempted to "protect" restaurants from competition by vendors through legislation. In the 1980s, Section 130-4.12(d) of the Municipal Code of Chicago ("City Code") forbade food trucks from operating "within two hundred feet ... o[f] a place of business which deals in like or similar commodities such as are sold by the mobile unit."

Answer: The first sentence of this paragraph states a legal conclusion to which no answer is required. The City admits the second sentence of this paragraph.

26. On October 15, 1986, Judge Thomas O'Brien of the Circuit Court of Cook County, Chancery Division, struck down Section 130-4.12(d) as unconstitutional in a challenge brought by two food-truck providers whose clients used the trucks to serve construction crews.

Answer: The City admits that on October 15, 1986, Judge Thomas O'Brien of the Circuit Court of Cook County, Law Division, ruled that Section 130-4.12(d) was "vague and unenforceable." The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

27. In 1991, Chicago passed a slightly modified version of the proximity restriction

that this Court struck down five years earlier. That new restriction prohibited food trucks from operating within 200 feet of any fixed business that sold food for immediate or later consumption.

Answer: The City admits that in 1991, it passed an ordinance amending Section 4-344-360 of the Municipal Code of Chicago and stating in part that “[n]o operator of such vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level. Restaurant, for purposes of this section, means any public place at a fixed location kept, used, maintained, advertised and held out to the public as a place where food and drink is prepared and served for the public for consumption on or off the premises pursuant to the required licenses. Such establishments include, but are not limited to, restaurants, coffee shops, cafeterias, dining rooms, eating houses, short order cafes, luncheonettes, grills, tearooms and sandwich shops.” The City denies the remaining allegations of this paragraph.

28. Contemporaneous news reports from 1991 about the introduction of the 200-foot rule reported that its purpose was to protect restaurants from competition from mobile vendors.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

29. In a 1991 article entitled “City Cracks Down on Mobile Food Vendors,” Chicago Tribune reporter Janet Ginsburg recounted the words of then-mayoral press secretary Avis LaVelle, who according to the article asserted that permanent restaurants deserve protection from competition from mobile vendors.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

30. Unlike the proximity restriction that this Court struck down in 1986, the 1991 law expressly exempts food trucks that are serving construction crews from the 200-foot proximity restriction. Plaintiffs are aware of no other litigation on the constitutionality of the City’s

proximity restriction that has occurred before the filing of this lawsuit.

Answer: As to the first sentence of this paragraph, the City admits that in 1991, it passed an ordinance amending Section 4-344-360 of the Municipal Code of Chicago and stating in part that “[m]obile food dispenser vehicles that are being used to provide food and drink to persons engaged in construction in the city of Chicago and which are not equipped with noise-making devices are exempt” from the provision restricting mobile food dispenser vehicles from being within 200 feet of a principal customer entrance to a restaurant located on street level. The City denies the remaining allegations of the first sentence of this paragraph to the extent that they are inconsistent with this admission. The City lacks knowledge or information sufficient to form a belief as to the second sentence of this paragraph.

Plaintiffs’ Food-Truck Businesses

Schnitzel King

31. Greg Burke is the owner and operator of the Schnitzel King food truck.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

32. Greg earned a degree in mechanical engineering and worked in the construction trade. He found himself without a job, however, when his company was forced to lay off him and all of his fellow employees in response to the collapse of the commercial real-estate market. Greg searched for another job but was unable to find one.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

33. Greg, along with most people in Chicago, is a Bears fan. For years, he tailgated at Chicago Bears games, and there he would fry schnitzel (a hand-breaded and fried pork, chicken, or lamb cutlet), put it between two slices of bread, and top it with grilled onions and peppers.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

34. Greg served his schnitzel sandwiches to his fellow tailgaters, who told him both that they loved the sandwiches and that Greg should sell them for a living.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

35. With no job options, Greg went into business for himself. He pulled together his life savings, bought a vintage 1970s Jeep that he turned into the Schnitzel King food truck, and rented out space in a commercial kitchen.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

36. Kristin Casper is Greg Burke's fiancée and the Director of Media Relations for Schnitzel King. After helping get the food truck opened, Kristin planned on helping manage the social media and public relations for Schnitzel King while working her own full-time job. But then Kristin herself was laid off and she joined Greg to work on the food truck full time.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

37. Because Chicago prohibited cooking on board a food truck, Greg prepared and cooked Schnitzel King's sandwiches in a commercial kitchen. He then kept the sandwiches in a warmer on the food truck until selling them to consumers.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

38. The Schnitzel King food truck operates both on public property and on private property with the owners' permission.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

39. As described below, the 200-foot proximity restriction contained in Section 7-38-115(f) of the City Code has caused, and continues to cause, injuries to Plaintiffs Casper and Burke.

Answer: The City denies the allegations in this paragraph.

Cupcakes for Courage

40. Laura Pekarik is the sole shareholder of LMP Services, Inc., a corporation registered in Illinois. LMP Services, Inc., in turn, owns the Cupcakes for Courage food truck.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

41. Laura's pathway to being a food-truck entrepreneur had its start in tragedy. When Laura's sister Kathryn was diagnosed with Non-Hodgkin's lymphoma, Laura and her mother both quit their jobs to take care of her. In order to keep Kathryn's mind off of her cancer treatments, Laura and her sister baked, developing many cupcake recipes and perfecting each cupcake's base and icing.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

42. Kathryn's cancer thankfully went into remission. Laura originally thought about returning to her previous job, but instead decided that she wanted to go into business for herself.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

43. Like many new entrepreneurs, Laura didn't have the money to open a storefront location, so she instead chose to sell cupcakes out of a food truck.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

44. Laura, through LMP Services, Inc., opened the Cupcakes for Courage food truck in June 2011. Laura donates ten percent of Cupcakes for Courage's proceeds to the Leukemia & Lymphoma Society and a local non-profit organization called Ride Janie Ride that helps cancer patients with their financial needs.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

45. Cupcakes for Courage has been successful enough that Laura, through LMP Services, Inc., had the resources to open Courageous Bakery, a bakery and coffee shop located in Elmhurst, Illinois, in September 2012. The bakery serves as the home and commercial kitchen for the food truck, which continues to operate throughout all of Chicago.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

46. The Cupcakes for Courage food truck operates both on public property and on private property with the owners' permission.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

47. As described below, the 200-foot proximity restriction contained in Section 7-38-115(f) of the City Code has caused, and continue to cause, injuries to Plaintiff LMP Services, Inc. and Laura Pekarik.

Answer: The City denies the allegations in this paragraph.

Chicago's New Food-Truck Ordinance

48. On June 27, 2012, Mayor Rahm Emanuel, along with seven aldermen, introduced Ordinance 02012-4489 ("Ordinance"), entitled "Amendment of Titles 2, 4, 7, 9, 10 and 17 of Municipal Code regarding mobile food vehicles."

Answer: The City admits that on June 27, 2012, Mayor Rahm Emanuel, along with seven aldermen, introduced Ordinance 02012-4489, entitled "Amendment of various titles of Municipal Code regarding mobile food vehicles." The City denies the remaining allegations of this paragraph.

49. Section I of the Ordinance (which is codified at Section 4-8-010 of the City Code) created a new category of mobile food vehicle called a "mobile food preparer," defined as "any person who, by traveling from place to place upon the public ways, prepares and serves food

from a mobile food truck.”

Answer: The City admits the allegations of this paragraph.

50. Part C of Article II of the Ordinance (which is codified at Section 7-38-134(a) of the City Code) stated that “[a]ny food sold or served by a mobile food preparer shall be prepared or wrapped in the mobile food vehicle or a [sic] in a duly licensed food establishment.”

Answer: The City admits the allegations of this paragraph.

51. The Ordinance also gave “mobile food dispensers,” i.e., those food trucks that “serve[] previously prepared food or drink that is enclosed or wrapped for sale in individual portions,” more flexibility. Part B of Article II (which is codified at Section 7-38-130(a)(1) of the City Code) states that food served by mobile food dispensers “may undergo a final preparation step immediately prior to service to a consumer, provided such final preparation steps conform with the rules and regulations of the board of health.”

Answer: The City admits the allegations of this paragraph, except that the definition of mobile food dispensers does not include the phrase “or drink.”

52. The Ordinance’s original language repealed the limitation on food trucks’ hours of operation so that food trucks could serve their customers whenever they wished. A substitute version of the Ordinance that was introduced on July 19, 2012 amended Section 7-38-115(d) of the City Code to prohibit food trucks from operating between the hours of 2:00 a.m. to 5:00 a.m.

Answer: The City admits the allegations of this paragraph, except that the substitute version of the Ordinance introduced on July 19, 2012 permits food trucks to operate between the hours of 2:00 a.m. and 5:00 a.m. if specifically allowed in a mobile food vehicle stand.

53. The Ordinance also maintained the 1991 proximity restriction that restricts how close food trucks may operate to fixed businesses that sell food. Section 7-38-115(f) of the City Code states that “[n]o operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level.” The Ordinance modified Section 7-38-115(f) to clarify that the 200-foot proximity restriction was not in effect between the hours of midnight and 2:00 a.m.

Answer: The City admits the second and third sentences of this paragraph, except that the modification referenced in the third sentence was introduced in the substitute version of

the Ordinance. The City denies the first sentence of this paragraph.

54. Section 7-38-115(f) of the City Code describes a “[r]estaurant” as “any public place at a fixed location kept, used, maintained, advertised and held out to the public as a place where food and drink is prepared and served for the public for consumption on or off the premises pursuant to the required licenses. Such establishments include, but are not limited to, restaurants, coffee shops, cafeterias, dining rooms, eating houses, short order cafes, luncheonettes, grills, tearooms and sandwich shops.”

Answer: The City admits the allegations of this paragraph.

55. Accordingly, businesses such as 7-Eleven (of which there are approximately 117 locations in Chicago), Starbucks (179 locations in Chicago), and Dunkin’ Donuts (193 locations in Chicago) all trigger the 200-foot proximity restriction listed in Section 7-38-115(f).

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

56. The Ordinance maintained Section 7-38-115(h) of the City Code, which since 1991 has exempted food trucks that “are being used to provide food and drink to persons engaged in construction in the City of Chicago” from the 200-foot proximity restriction, although the Ordinance added that food trucks serving construction workers must be “standing or parked in a legal parking spot.”

Answer: The City admits that Section 7-38-115(h) of the Municipal Code of Chicago exempts food trucks that “are being used to provide food and drink to persons engaged in construction in the City of Chicago” from the 200-foot proximity restriction, and that this exemption has existed since 1991. The City further admits that the substitute version of the Ordinance added the provision stating that food trucks serving construction workers must be “standing or parked in a legal parking spot.” The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

57. Section 7-38-115(k) to the City Code permits food trucks to operate on private property with the owners’ written permission.

Answer: The City admits that Section 7-38-115(k) states that:

(1) No operation of a mobile food vehicle is allowed on any private property unless all of the following requirements are met:

- (i) The mobile food vendor has obtained the express written consent of the owner or lessee of such property and such written consent is kept in the mobile food vehicle at all times when the vehicle is on the property;
- (ii) The mobile food vendor is in compliance with all applicable requirements of the Chicago Zoning Ordinance; and
- (iii) The mobile food vendor is in compliance with subsection (b)(i) and, except for the private property that allows the operation of the mobile food vehicle, subsection (f) of this section.

(2) Notwithstanding any other provision in subsection (k)(1), no operation of a mobile food vehicle is allowed on a privately-owned (i) vacant lot, or (ii) lot in a vacant building. For purposes of this subsection, the term “vacant” has the meaning ascribed to the term in section 13-12-125(e) of this Code.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

58. The 200-foot proximity restriction in Section 7-38-115(f) applies to food trucks no matter whether they operate on public or private property. If an office building, for instance, invites a food truck onto its property to sell to the building’s occupants, the truck may not do so if it would be within 200 feet of the principal entrance of a nearby restaurant.

Answer: The City admits that Section 7-38-115(f) does not distinguish between food trucks operating on public or private property. The City denies the remaining allegations of this paragraph.

59. For trucks operating on private property, the only exception to the 200-foot proximity restriction is for restaurants that are located on the property the truck would be vending from. Section 7-38-115(k)(1)(iii). In other words, if Pizzeria Uno invites a food truck to vend from its parking lot, the truck may legally operate there, but only if there are no restaurants other than Pizzeria Uno within 200 feet.

Answer: The City denies the allegations of this paragraph.

60. The Ordinance also dramatically increased the fines imposed on a food truck for violating the 200-foot proximity restriction laid out in Section 7-38-115(f).

Answer: The City denies the allegations of this paragraph.

61. Previously, Section 7-38-575 of the City Code levied fines of \$250.00 to \$500.00 upon mobile-food vehicles that violated the 200-foot proximity restriction.

Answer: The City admits that Section 7-38-575 of the Municipal Code of Chicago states that “[t]he board of health shall promulgate rules and regulations classifying violations of this chapter as critical, serious or minor. Except as otherwise specified in this chapter, any person who violates or who resists the enforcement of any provision of this chapter shall be fined \$500.00 for each critical violation; \$250.00 for each serious violation; and \$250.00 for each minor violation that is not corrected upon reinspection by the health authority. A separate and distinct offense shall be deemed to have been committed for each and every day on which any person shall be guilty of such violation; provided that, the intervening days between when a license holder whose license has been suspended applies for restoration of the license and a reinspection has been conducted by the department of health shall not constitute separate offenses if the violation was found to be corrected upon reinspection.” The City further admits that this provision predates the 2012 Ordinance. The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

62. The Ordinance quadrupled the fines applicable to trucks that violate Section 7-38-

115(f) of the City Code. The Ordinance added Section 7-38-128(d) to the City Code, which now says that “[a]ny person who violates sections 7-38-115 and 7-38-117 of this chapter shall be fined not less than \$1,000.00 and not more than \$2,000.00 for each offense. Each day that the violation occurs shall be considered a separate and distinct offense.”

Answer: The City admits the allegations of this paragraph, except that it denies that Section 7-38-128(d) necessarily quadruples the fines applicable to trucks that violate Section 7-38-115.

63. The Ordinance also created Section 7-38-117 in the City Code, which requires the City to establish “mobile food vehicle stands” – designated spaces on the public way where mobile-food vehicles may operate without being subject to the 200-foot proximity restriction. No food trucks may operate on a block where a food-truck stand has been established unless they are located at the stand. The Ordinance requires the City to establish at least five (5) mobile food vehicle stands “in each community area ... that has 300 or more retail food establishments.”

Answer: The City admits the allegations of this paragraph, except that Section 7-38-117(c)’s requirement to establish mobile food vehicle stands in certain areas is subject to the conditions set forth in that section.

64. The same part of the Ordinance that retained the City’s 200-foot proximity restriction also added language requiring food trucks to purchase and permanently install a GPS tracking device to aid the City in enforcing that restriction. Section 7-38-115(1) of the City Code now states that “Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).”

Answer: The City admits that this paragraph quotes, in part, Section 7-38-115(l), and that the provision governing trucks parking within 200 feet of a principal customer entrance to a restaurant is also part of Section 7-38-115. The City denies the remaining allegations of the paragraph.

65. The GPS tracking device will permit both City officials and the general public to monitor the whereabouts of a food truck. The GPS tracking device will also let City officials access a record of a food truck’s movements that can be later used to prove that the truck violated the City’s 200-foot proximity restriction.

Answer: The City admits that Section 7-38-115(l) states, in part, that “For purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle’s GPS device.” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 - 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
 - 1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 - 2. At least six (6) months of historical information/reports, in a

downloadable format (i.e., PDF, CSV or Excel).

3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
 - D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

66. The Chicago Board of Health adopted regulations on December 21, 2012 that, in part, govern the GPS requirements for food trucks.

Answer: The City admits the allegations of this paragraph.

67. Under Rule 8 of those regulations, “[t]he [GPS] device must be an ‘active,’ not ‘passive’ device that sends real-time data to a GPS tracking service provider.”

Answer: The City admits that Rule 8(A) of the regulations states, in part, the technical requirements applicable to GPS alleged in this paragraph.

68. Rule 8 of the regulations require that the GPS tracking device be permanently installed in the food truck and broadcast the truck’s location at least once every five minutes.

Answer: The City admits that Rule 8(A) of the regulations states, in part, the technical requirements applicable to GPS alleged in this paragraph, except that the Rule permits the GPS device to also be installed on the food truck.

69. Rule 8 of the regulations state that the GPS tracking device must function at all times while the food truck is in “operation,” although the regulations do not specify what “operation” means or if it includes the time that a truck is travelling to and from vending locations or when the truck is parked and heating up its fryer and other cooking equipment.

Answer: The City admits that Rule 8(A) of the regulations states, in part, the technical requirements applicable to GPS alleged in this paragraph, and that it does not define “operation” or state whether the examples alleged in this paragraph constitute “operation.” The City denies the remaining allegations of this paragraph.

70. Under Rule 8 of the regulations, a GPS tracking service provider (i.e., the company that sells or rents the GPS tracking device to the food truck and monitors the truck’s location) must be able to provide City officials “[r]eports of each transmitted position including arrival dates, times, address, and duration and each stop” along with “[a]t least six (6) months of historical information/reports, in a downloadable format.”

Answer: The City admits that Rule 8(B) of the regulations states, in part, that:

B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:

1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

71. Rule 8 of the regulations require that “[t]he device must be accurate no less than 95% of the time.” The regulations do not specify, however, what the term “accurate” means precisely.

Answer: The City admits that Rule 8(A) of the regulations states, in part, the

technical requirements applicable to GPS alleged in this paragraph, and that the regulations do not define “accurate.” The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with this admission.

72. In any event, GPS tracking devices are not 100 percent accurate. The common commercial standard of GPS tracking gives the device’s exact location plus/minus 9.8 to 16.4 feet 95% of the time, while the other 5% of the time GPS tracking may mistake the exact location of the device by 32.8 feet or more. That means that even an “accurate” device will routinely be off by up to 15 feet. The accuracy of GPS tracking devices further degrades in downtown areas where tall buildings make it difficult for a device to “lock” onto GPS satellites.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

73. Despite this, Section 7-38-115(1) of the City Code states that “[f]or purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle’s GPS device.”

Answer: The City admits that Section 7-38-115(1) states, in part, the requirement alleged in this paragraph. The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with this admission.

Chicago Enacts Its New Food-Truck Ordinance

74. The 200-foot proximity restriction has the sole purpose and effect of protecting brick-and-mortar restaurants from competition. Statements by Chicago officials confirm that protectionism is the interest the proximity restriction was designed to advance.

Answer: The City denies the allegations of this paragraph.

75. In a June 26 press release, the Office of the Mayor confirmed that the restriction “protects traditional restaurants” from having to compete with food trucks.

Answer: The City admits that the Mayor’s Office issued a June 26, 2012, press release stating, in part, that the food truck ordinance “protects traditional restaurants, maintains

public health standards, and fosters this growing industry.” The release also states, in part, that “Chicago’s small businesses are the backbones of our communities and are a vital part of what make our city a thriving place to live, work and visit,” and that the administration “is committed to common-sense changes that will allow [the food truck] industry to thrive, creating jobs and supporting a vibrant food culture across the city.” The City denies the remaining allegations of this paragraph.

76. On that same day, Monica Eng at the Chicago Tribune reported that Alderman Joe Moreno, in “explaining the reasoning behind keeping the trucks away from restaurants,” said that “[y]ou want to not infringe on the brick-and-mortars but not interfere with entrepreneurship.”

Answer: The City admits that Monica Eng of the Chicago Tribune wrote an article dated June 26, 2012, and that it contains the quoted material alleged in this paragraph and attributed to Alderman Moreno. The City denies the remaining allegations of this paragraph.

77. In a July 3, 2012 debate on the ordinance, Alderman Moreno stated that the 200-foot rule is meant to “dispel the competitive concerns of established businesses.”

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

78. On July 19, 2012, the Chicago City Council Committee on License and Consumer Protection held a hearing to discuss the Ordinance.

Answer: The City admits the allegations of this paragraph.

79. Alderman Brendan Reilly, who represents an area of Chicago with many restaurants, stated at the July 19 hearing that “we want to make sure that we are guarding those folks who make substantial investments in the City of Chicago by buying restaurants.”

Answer: The City admits that Alderman Reilly represents an area of Chicago with many restaurants, and that at the July 19 hearing he stated that “we want to make sure that we are guarding those folks who’ve made substantial investments in the City of Chicago by buying

restaurants.” The City denies the remaining allegations of this paragraph.

80. Witnesses representing the interests of some restaurants testified at the July 19th hearing and voiced support for the 200-foot restriction as a means of reducing competition.

Answer: The City admits the allegations of this paragraph.

81. Glenn Keefer, the owner of Keefer’s Restaurant, stated that restaurants “deserve a little protection from other businesses and people parking in front of businesses and siphoning off our customers.”

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in this paragraph.

82. Sam Toia, the acting President of the Illinois Restaurant Association, testified in support of the ordinance, which protects the “interests of brick and mortar restaurants.”

Answer: The City admits that Sam Toia, acting President of the Illinois Restaurant Association, testified in support of the ordinance at the hearing and made the quoted statement alleged in this paragraph. The City denies the remaining allegations of this paragraph.

83. Jay Steiber, the Executive Vice President of Lettuce Entertain You Enterprises, a company that owns and operates multiple restaurants throughout Chicago, testified that “[w]e think that it is essential to maintain with the ordinance, the 200 foot rule that is being promulgated to protect brick and mortar restaurants.”

Answer: The City admits the allegations of this paragraph.

84. Food-truck operators, including Kristin Casper and Laura Pekarik, testified in opposition to provisions of the Ordinance, including its retention of the 200-foot proximity restriction in the City Code.

Answer: The City admits the allegations of this paragraph.

85. Members of the Illinois Food Truck Association and Plaintiffs asked that the existing 200-foot proximity restriction located at Section 7-38-115(f) of the City Code be eliminated, arguing that it both unconstitutionally restricted competition and made it virtually impossible for food trucks to succeed.

Answer: The City admits that Plaintiff Casper referenced the constitutionality of the

200-foot proximity restriction in Section 7-38-115(f) of the Municipal Code of Chicago, and that other food truck operators stated that the restriction made it impossible for food trucks to succeed. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations in this paragraph.

86. Alderman John Arena of the 45th Ward noted at the committee hearing that under the ordinance, a serious health violation results only in a fine of \$250, while a violation of the 200-foot proximity restriction results in a fine that is at least four times as large.

Answer: The City admits the allegations of this paragraph.

87. After testimony, the members of the Committee on License and Consumer Protection passed the Ordinance out of committee by voice vote, which Alderman John Arena opposed.

Answer: The City admits the allegations of this paragraph.

88. Six days later, on July 25, 2012, the full Chicago City Council approved the Ordinance by a vote of 45-1.

Answer: The City admits the allegations of this paragraph.

89. Statements made by aldermen at the July 25 hearing echoed the protectionist statements made six days earlier.

Answer: The City denies the allegations of this paragraph.

90. Alderman Tom Tunney, who co-sponsored the ordinance, owns four Ann Sathers restaurants, and is the former chairman of the Illinois Restaurant Association, stated that the ordinance "regulates competition" between restaurants and food trucks.

Answer: The City admits the allegations of this paragraph.

91. Alderman Walter Burnett, Jr. also said that "[n]ot only do we want food trucks to make money, but we don't want to hurt the brick and mortar restaurants."

Answer: The City admits the allegations of this paragraph.

92. The sole "Nay" vote came from Alderman John Arena, who said, "I think restraint of trade is what this ordinance serves up," and "A brick-and-mortar restaurant lobby got

ahold of [the ordinance], and it was stuffed with protectionism and baked in the oven of paranoia.”

Answer: The City admits the allegations of this paragraph.

Chicago Establishes Food-Truck Stands

93. On October 3, 2012, Mayor Rahm Emanuel introduced Ordinance 02012-6638, which was entitled “Designation of mobile food vehicle stands at various addresses.” With six community areas in Chicago that have 300 or more restaurants, Section 7-38-117 of the City Code requires that the City establish 30 food-truck stands. Despite that, Ordinance 02012-6638 designated only 23 locations throughout the six community areas.

Answer: The City admits the allegations of this paragraph, except that Section 7-38-117(c)’s requirement to establish mobile food vehicle stands in certain areas is subject to the conditions set forth in that same section.

94. On October 24, 2012, the Committee on License and Consumer Protection passed a substitute ordinance, S02012-6638, out of committee. This substitute ordinance removed two designated locations, including one at 2934 North Broadway in the Lakeview community area. A Chicago Tribune article that ran the day after S02012-6638 passed out of committee indicated that City officials removed the Broadway location in order to block mobile vendors from competing with area restaurants. The full City Council passed the substitute ordinance, which designated only 21 locations for food-truck stands, on October 31, 2012.

Answer: The City admits the allegations in the first, second, and fourth sentences of this paragraph. The City also admits that the Chicago Tribune ran an article on October 25, 2012 discussing the ordinance and the views of certain aldermen and private individuals regarding the ordinance. The City denies the remaining allegations of this paragraph.

95. The substitute ordinance designated only four locations in “the Loop” community area despite it being the busiest lunchtime area in Chicago. Furthermore, one of the locations is adjacent to Buckingham Fountain, which is a considerable distance from the office buildings where most food-truck customers work, and none of the locations is south of Jackson Boulevard.

Answer: The City admits that the substitute ordinance designated three locations

within the Loop community area, one of which is adjacent to Buckingham fountain, and that a June 2013 ordinance established a fourth location within the Loop community area. The City admits that three of these locations are north of Jackson Boulevard, but denies that the location adjacent to Buckingham Fountain (437 South Columbus Drive) is not south of Jackson Boulevard. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph.

96. The food-truck stands do nothing to alleviate the problems caused by the 200-foot proximity restriction.

Answer: The City denies the allegations on this paragraph.

INJURIES TO PLAINTIFFS

97. The proximity restriction in Section 7-38-115(f) of the City Code prohibits Plaintiffs and other mobile vendors from operating within 200 feet of a fixed location where food and drink is prepared and served for the public, including restaurants, coffee shops, and grocery and convenience stores.

Answer: The City denies the allegations of this paragraph.

98. Due to the ubiquity of brick-and-mortar businesses that serve food, the 200-foot proximity restriction prohibits Plaintiffs from vending in large swaths of Chicago, including virtually the entire downtown area known as "the Loop."

Answer: The City denies the allegations of this paragraph.

99. The average block in the Loop is approximately 450 feet long, although some blocks measure only 225 feet. Having only one or two restaurants, coffee shops, or grocery and convenience stores on a block means that no food trucks may operate on that block.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations in the first sentence of this paragraph, as, in particular, the allegations are vague. The City denies the allegations of the second sentence of this paragraph.

100. Some blocks in Chicago, particularly in the Loop, have several restaurants on each

block. The block of East Madison Street between State Street and Wabash Avenue, for instance, has five different restaurants and a 7-Eleven convenience store.

Answer: The City admits the allegations of this paragraph.

101. By preventing one potential class of competitors-food trucks-from operating within 200 feet of a restaurant, coffee shop, or grocery or convenience store, Chicago's proximity restriction reduces the competition that those fixed businesses face.

Answer: The City denies that this paragraph accurately reflects the requirements of Section 7-28-115(f). The City lacks knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph.

102. Laura Pekarik, owner of Plaintiff LMP Services, Inc., would like to operate the Cupcakes for Courage food truck on public property near the corner of North Franklin Street and West Randolph Street in the Loop. But she may not legally do so because the principal entrances of several ground-level brick-and-mortar restaurants, including Jimmy Figs (located at 160 North Franklin Street) and Potbelly Sandwich Works (located at 225 West Randolph Street), are located within 200 feet of where she would operate. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Ms. Pekarik would be able to legally operate at this location and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

103. Laura Pekarik would also like to have Cupcakes for Courage operate at the corner of West Madison Street and South Wells Street in the Loop. She cannot legally do so, however, because the principal customer entrances to several brick-and-mortar restaurants, including Jamba Juice (located at 190 West Madison Street) and Dunkin' Donuts (located at 201 West Madison Street) are within 200 feet of where Cupcakes for Courage would vend. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Ms. Pekarik would be able to legally operate at this location and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

104. Plaintiffs Casper and Burke would like to operate the Schnitzel King food truck on public property at various parking spaces at the corner of West Monroe Street and North Dearborn Street. But they may not legally operate at the majority of parking spaces there because

the principal customer entrances of several ground-level brick-and-mortar restaurants, including Caribou Coffee (located at 55 West Monroe Street) and The Grillroom Chophouse & Wine Bar (located at 33 West Monroe Street), are located within 200 feet of where they would operate the food truck. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Plaintiffs Casper and Burke would be able to legally operate at those now prohibited parking spaces and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

105. Plaintiffs Casper and Burke would also like to operate at locations that are outside the Loop but which they are barred from due to the proximity restriction found in Section 7-38-115(f) of the City Code. For instance, they would like to vend at the intersection of West Addison Street and North Sheffield Avenue near Wrigley Field, but may not legally do so because the principal customer entrances of several ground-level brick-and-mortar restaurants, including Sports Comer Bar & Grill (located at 956 West Addison Street) and Subway (located at 951 West Addison Street), are located within 200 feet of where they would operate the food truck. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Plaintiffs Casper and Burke would be able to legally operate at this location and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

106. Plaintiffs Casper and Burke would like to operate on public property at the corner of West Jackson Boulevard and South Jefferson Street on the Near West Side. They may not legally do so, however, because the principal customer entrance for Lou Mitchell's (located at 565 West Jackson Boulevard) is within 200 feet of where they would operate. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Plaintiffs Casper and Burke would be able to legally operate at this location and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

107. The vending stands that Section 7-38-117 of the City Code calls upon the City to establish do not fix or ameliorate the problems caused by the 200-foot restriction.

Answer: The City denies the allegations of this paragraph.

108. The proximity restriction contained in Section 7-38-115(f) also applies to mobile food vehicles that operate on private property with the property owner's permission.

Answer: The City admits the allegations of this paragraph.

109. Laura Pekarik, through Plaintiff LMP Services, Inc., would like to operate from the parking lot of Maria's Packaged Goods & Community Bar, located at 960 West 31st Street, and has gotten permission from Maria's to vend there in the past, but cannot legally do so because the principal entrances of two restaurants, the Bridgeport Coffeehouse (located at 3101 South Morgan Street) and Carlito's Way Pizzeria (located at 964 West 31 st Street), are both within 200 feet of where Cupcakes for Courage would be operating. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Ms. Pekarik would be able to legally operate at this location and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

110. Plaintiffs Casper and Burke have reached agreements with private property owners to operate on their property and would do so but for the 200-foot proximity restriction. Plaintiffs Casper and Burke have received consent from Heritage Bicycles, a retailer located at 2951 North Lincoln Avenue, to operate on its private lot. They cannot do so, however, because the principal entrances of two restaurants, Rice Bistro (located at 2964 North Lincoln Avenue) and the Golden Apple diner (located at 2971 North Lincoln Avenue), are both within 200 feet of where Schnitzel King would be operating. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Plaintiffs Casper and Burke would be able to legally operate at this location and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

111. Plaintiffs Casper and Burke also reached an agreement with Fischman's Liquors, located at 4780 North Milwaukee Avenue, to operate on its private lot. They may not legally do so, however, because the principal entrance of Krakus Homemade Sausage, a Polish deli located at 4772 North Milwaukee Avenue, is within 200 feet of where they would operate. But for the 200-foot proximity restriction located in Section 7-38-115(f) of the City Code, Plaintiffs Casper and Burke would be able to legally operate at this location and would do so.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

112. Plaintiffs earn their livings from vending. They seek to do nothing more than offer food for sale from their trucks without being hampered by the City's 200-foot proximity restriction around restaurants, coffee shops, and grocery and convenience stores.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

113. Because Plaintiffs cannot legally operate within 200 feet of brick- and-mortar businesses that serve food, they are limited to vending where that restriction does not apply. Given how many fixed businesses sell food for immediate or later consumption, permissible areas to vend from are difficult to identify. In addition, many of the areas where vending may legally occur are not profitable places to operate a mobile-vending business.

Answer: The City admits that Plaintiffs' operations are subject to the requirements of Section 7-28-115(f), but denies that this paragraph accurately reflects the requirements of Section 7-28-115(f). The City lacks knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph.

114. Plaintiffs' businesses have suffered due to the proximity restriction contained in Section 7-38-115(f) of the City Code.

Answer: The City denies the allegations of this paragraph.

115. But for the City's enforcement of Section 7-38-115(f), Plaintiffs could and would legally vend within 200 feet of existing restaurants.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

116. Plaintiffs Casper and Burke's business is the Schnitzel King food truck. The proximity restriction contained in Section 7-38-115(f) makes it difficult for Plaintiffs Casper and Burke to reach potential customers. Plaintiffs Casper and Burke would like to operate the Schnitzel King at the locations identified in Paragraphs 104-106 and 110-111 of this Complaint. But for the proximity restriction contained in Section 7-38-115(f), Plaintiffs Casper and Burke would operate the Schnitzel King food truck at those locations.

Answer: The City denies the second sentence of this paragraph. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph.

117. Laura Pekarik, through Plaintiff LMP Services, Inc., owns both the Cupcakes for Courage food truck and the Courageous Bakery in Elmhurst, Illinois. The proximity restriction contained in Section 7-38-115(f) makes it difficult for Plaintiff LMP Services, Inc., to reach potential customers. Laura Pekarik, through Plaintiff LMP Services, Inc., would like to operate Cupcakes for Courage at the locations identified in Paragraphs 102-103 and 109 of this Complaint. But for the proximity restriction contained in Section 7-38-115(f), Laura Pekarik, through LMP Services, Inc., would operate the Cupcakes for Courage food truck at those locations.

Answer: The City denies the second sentence of this paragraph. The City lacks knowledge or information sufficient to form a belief as to the remaining allegations of this paragraph.

118. The same section of the City Code ordinance that establishes the 200-foot proximity restriction also requires Plaintiffs to permanently install and operate a GPS tracking device as a means to enforce that restriction.

Answer: The City admits that Section 7-38-115 contains both the provision governing trucks parking within 200 feet of a principal customer entrance to a restaurant, and the provision requiring a GPS device. The City also admits that Section 7-38-115(l) states: "Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publically-accessible application programming interface (API). For purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle's GPS device." The City denies the remaining allegations of the paragraph to the extent that they are inconsistent with these admissions.

119. Section 7-38-115(1) of the City Code mandates that the GPS tracking devices send real-time data regarding the whereabouts of their food trucks to both City officials and the general public.

Answer: The City admits that Section 7-38-115(l) states, in part, that "Each mobile

food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 - 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
 - 1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 - 2. At least six (6) months of historical information/reports, in a

downloadable format (i.e., PDF, CSV or Excel).

3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
 - D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

120. The GPS tracking devices allow the City to collect and store indefinitely the movements of each of Plaintiffs' food trucks.

Answer: The City admits that Section 7-38-115(l) states in part that "Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API)." The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the

City of Chicago as well as the following:

1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 2. The device must be permanently installed in, or on, the vehicle.
 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 5. The device must be accurate no less than 95% of the time..
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access

information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

121. Nothing in the Ordinance or Rule 8 of the regulations the Chicago Board of Health adopted on December 21, 2012 places any restrictions on when City officials may access or analyze the location data that the GPS tracking devices transmit.

Answer: The City admits that Section 7-38-115(l) states in part that “Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.

5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

122. Nothing in the Ordinance or Rule 8 of the regulations the Chicago Board of Health adopted on December 21, 2012 places any restrictions on how City officials may use the location data that the GPS tracking devices transmit.

Answer: The City admits that Section 7-38-115(l) states in part that "Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a

publicly-accessible application programming interface (API).” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 - 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
 - 1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 - 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 - 3. An application programming interface (API) that is available to the

general public.

- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

123. Nothing in the Ordinance or Rule 8 of the regulations the Chicago Board of Health adopted on December 21, 2012 places any restrictions on who will have access to the location data that the GPS tracking devices transmit.

Answer: The City admits that Section 7-38-115(l) states in part that “Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends

real-time data to a GPS tracking service provider.

2. The device must be permanently installed in, or on, the vehicle.
 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are

inconsistent with these admissions.

124. The GPS tracking device required by the City will broadcast the whereabouts of Plaintiff LMP Services, Inc.'s Cupcakes for Courage food truck to the world even when the truck is outside Chicago's city limits.

Answer: The City admits that Section 7-38-115(l) states in part that "Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API)." The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an "active", not "passive" device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 - 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon

request of the city of Chicago, the following:

1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

125. The GPS tracking device required by the City will broadcast the whereabouts of Plaintiffs Casper and Burke's Schnitzel King food truck to the world when they operate the truck outside Chicago's city limits.

Answer: The City admits that Section 7-38-115(l) states in part that "Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API)." The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in

relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 - 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
 - 1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 - 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 - 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific

mobile food vehicle, the operator must immediately respond with the location information of the vehicle.

- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

126. Plaintiffs do not wish to pay hundreds of dollars to install a GPS tracking device along with an activation and monthly monitoring fee.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

127. Through the arbitrary acts of the City as alleged above, Plaintiffs are injured irreparably by the deprivation of their due process and equal protection rights to earn an honest living free from arbitrary and irrational government interference as protected by the Illinois Constitution.

Answer: The City denies the allegations of this paragraph.

128. Through the arbitrary acts of the City as alleged above, Plaintiffs are injured irreparably by the deprivation of their right to be free from unwarranted searches, seizures, inspections and invasions of privacy as protected by the Illinois Constitution.

Answer: The City denies the allegations of this paragraph.

COUNT I

(Violation of Article I, Section 2 of the Illinois Constitution Due Process)

129. Plaintiffs incorporate Paragraphs 1 through 128 by reference as though fully alleged in this Paragraph 129.

Answer: The City incorporates its answers to Paragraphs 1 through 128 as though

fully alleged herein.

130. Article I, Section 2 of the Illinois Constitution 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.”

Answer: The City admits the allegations of this paragraph.

131. The Due Process Clause of the Illinois Constitution protects the right of Illinoisans to pursue legitimate occupations, subject only to regulations that are rationally related to a legitimate government purpose.

Answer: This paragraph state a legal conclusion to which no answer is required.

132. The proximity restriction contained in Section 7-38-115(f) of the City Code violates Plaintiffs’ right to due process of law under the Illinois Constitution both on its face and as applied to the extent that it prohibits Plaintiffs from selling food within 200 feet of any restaurant, coffee shop, grocery or convenience store, or any other fixed business that sells food for immediate or later consumption.

Answer: The City denies the allegations of this paragraph.

133. The sole purpose of the proximity restriction contained in Section 7-38-115(f) of the City Code is to protect fixed businesses from competition by mobile vendors, including Plaintiffs.

Answer: The City denies the allegations of this paragraph.

134. The statements made by Chicago officials, including those reflected in paragraphs 29, 75-77, 79, and 90-92, demonstrate that the purpose of the 200-foot proximity restriction, in the words of Alderman Joe Moreno, is so that food trucks would “not infringe on the brick-and-mortars.”

Answer: The City denies the allegations of this paragraph.

135. Protecting non-mobile businesses at the expense of mobile vendors is not a valid exercise of the City’s police power to protect public health and safety.

Answer: The City denies the allegations of this paragraph.

136. Prohibiting food trucks from operating within 200 feet of a restaurant is not rationally related to any legitimate government interest.

Answer: The City denies the allegations of this paragraph.

137. In its memorandum in support of its motion to dismiss, the City contends that the 200-foot proximity restriction furthers three non-protectionist government interests: preventing sidewalk congestion near restaurants, guarding against litter being deposited on the public way, and eliminating “food deserts” and expanding retail food options in Chicago.

Answer: The City admits that this paragraph generally summarizes arguments made by the City in its motion to dismiss, but denies that the paragraph fully depicts and conveys those arguments.

138. Preventing food trucks from operating within 200 feet of any fixed business that sells food for immediate or later consumption is not rationally related to any of the City’s purported health and safety rationales.

Answer: The City denies the allegations of this paragraph.

139. For example, the 200-foot proximity restriction is not rationally related to the City’s pretextual interest in preventing sidewalk congestion.

Answer: The City denies the allegations of this paragraph.

140. No studies demonstrate that food trucks operating in an area create or exacerbate sidewalk congestion. The only research looking at the link between food trucks and sidewalk congestion is a 2011 empirical study undertaken by the Institute for Justice. Its findings failed to support the notion that food trucks create or increase sidewalk congestion.

Answer: The City lacks information or knowledge sufficient to form a belief as to the allegations of this paragraph.

141. The City of Chicago already has laws in place to alleviate both street and sidewalk congestion. Section 4-8-037 of the City Code gives the City Council the authority to “define areas, in the interest of preserving public health and safety or avoiding traffic congestion, which no mobile food vendor may prepare or dispense food from a wheeled vehicle.”

Answer: The City admits that Section 4-8-037 states, in part, that “[t]he city council may from time to time define areas, in the interest of preserving public health and safety or avoiding traffic congestion, in which no mobile food vendor may prepare or dispense food from a

wheeled vehicle.” The City also admits the allegations of the first sentence of this paragraph, except that the City denies that those laws obviate the need for Section 7-38-115(f).

142. Section 9-80-180 of the City Code makes it illegal for a person to willfully and “unnecessarily hinder, obstruct or delay ... any other person in lawfully driving or travelling along or upon any street or who shall offer to barter or sell any merchandise or service on the street so as to interfere with the effective movement of traffic or who shall repeatedly cause motor vehicles travelling on public thoroughfares to stop or impede the flow of traffic.”

Answer: The City admits the allegations of this paragraph.

143. Chicago’s disorderly-conduct statute gives police officers the authority to order persons and vehicles to move along should their presence disturb the peace by causing a sidewalk to become congested. City Code § 8-4-010.

Answer: The City admits the allegations of this paragraph.

144. Section 4-8-036(d) of the City Code gives Chicago officials the power to limit the number of mobile food vendor licenses “in the interest of preserving public safety or avoiding traffic congestion.”

Answer: The City admits the allegations of this paragraph.

145. The ordinance requires the City to place at least five food-truck stands, which are exempt from the 200-foot proximity restriction, in high-density areas that have more than 300 restaurants. This fact contradicts the notion that the 200-foot proximity restriction is meant to address sidewalk congestion.

Answer: The City admits that Section 7-38-117(c) requires the City to establish mobile food vehicle stands in certain areas, and that such requirement is subject to the conditions set forth in that same section. The City also admits that such stands are exempt from Section 7-38-115(f). The City denies the remaining allegations of this paragraph.

146. The 200-foot proximity restriction listed in Section 7-38-115(f) extends to food trucks operating on both public and private property, even though food trucks located on private property do not park alongside a sidewalk.

Answer: The City admits the allegations of this paragraph, except that the City

denies that food trucks located on private property necessarily do not park alongside a sidewalk.

147. Similarly, prohibiting food trucks from operating within 200 feet of a restaurant is not rationally related to the City's pretextual interest in preventing trash from being deposited on the public way.

Answer: The City denies the allegations of this paragraph.

148. The City of Chicago already has laws in place to prevent the placement of trash or litter on the public way, which the City Code defines as "any sidewalk, roadway, alley or other public thoroughfare open to the use of the public." City Code § 9-4-010.

Answer: The City admits that Section 9-4-010 defines, for purposes of certain chapters of Title 9 of the Municipal Code of Chicago, "public way" as meaning "any sidewalk, roadway, alley or other public thoroughfare open to the use of the public, as a matter of right, for purposes of travel, excepting bridle paths." The City also admits that it has laws in place to prevent the placement of trash or litter on the public way, except that the City denies that those laws obviate the basis for Section 7-38-115(f).

149. Section 9-80-030 of the City Code makes it illegal for individuals to "cast, throw or deposit any litter ... upon any public way."

Answer: The City admits that Section 9-80-030(d) states that "[n]o person shall cast, throw or deposit any litter, as defined in Section 10-8-480 of the Municipal Code, upon any public way." The City denies any remaining allegations that are inconsistent with this admission.

150. Section 4-4-310(b) of the City Code prohibits "any [business licensed by the City of Chicago] to litter or to permit the accumulation of any paper, rubbish or refuse upon that portion of the public way."

Answer: The City admits that Section 4-4-310(b) states that "[i]t shall be unlawful for any licensee to litter or to permit the accumulation of any paper, rubbish or refuse upon that portion of the public way abutting the licensed premises."

151. Section 7-38-124 of the City Code requires licensed food trucks to “maintain a suitable, tight, non-absorbent washable receptacle for refuse. The operator shall be responsible for sanitation of the environs of the place of operation, including the mobile food vehicle stand area used by the operator. Said refuse receptacle shall be adjacent to, but not an integral part of, the mobile food vehicle. The operator of a mobile food vehicle shall dispose refuse collected from the mobile food vehicle and the environs of the place of operation at a commissary approved by the department of health.”

Answer: The City admits the allegations of this paragraph.

152. The ordinance requires the City to place at least five food-truck stands, which are exempt from the 200-foot proximity restriction, in high-density areas that have more than 300 restaurants. This fact contradicts the notion that the 200-foot proximity restriction is meant to prevent trash from being deposited on the public way.

Answer: The City admits that Section 7-38-117(c) requires the City to establish mobile food vehicle stands in certain areas, and that such requirement is subject to the conditions set forth in that same section. The City also admits that such stands are exempt from Section 7-38-115(f). The City denies the remaining allegations of this paragraph.

153. Likewise, prohibiting food trucks from operating within 200 feet of a restaurant is not rationally related to the City’s pretextual interest in eliminating “food deserts” or increasing retail food options in Chicago.

Answer: The City denies the allegations of this paragraph.

154. The Healthy Foods Financing Initiative at the U.S. Department of Agriculture defines “food desert” as “a low-income census tract where a substantial number or share of residents has low access to a supermarket or large grocery store.”

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

155. The concern about “food deserts” is that citizens in those areas, in the words of the Centers for Disease Control and Prevention, will “lack access to affordable fruits, vegetables, whole grains, lowfat milk, and other foods that make up the full range of a healthy diet.”

Answer: The City lacks knowledge or information sufficient to form a belief as to

the allegations of this paragraph.

156. Food trucks are neither supermarkets nor grocery stores, and they sell fully prepared meals rather than grocery items like uncut fruits and vegetables, bags of whole grains, or gallons of low-fat milk. Thus, the presence or absence of food trucks in an area does nothing to ameliorate the problems that an area faces as a “food desert.”

Answer: The City admits that food trucks are neither supermarkets nor grocery stores, and that they may sell fully-prepared meals. The City denies the remaining allegations of this paragraph.

157. Like other businesses, food trucks will not operate where it is not economically viable. Barring Plaintiffs from operating near restaurants in economically viable areas has not caused them, will not cause them, and cannot rationally be expected to cause them to operate in areas that are not economically viable. Thus, the 200-foot proximity restriction serves only to decrease the total number of places where trucks will operate.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

158. The 200-foot proximity restriction listed in Section 7-38-115(f) of the City Code applies throughout all of Chicago, including those areas that may be defined as “food deserts” or that City officials believe have insufficient retail food options. The presence of only a few restaurants, coffee shops, or grocery and convenience stores in a food desert or an area deemed to be underserved prevents Plaintiffs and other food trucks from operating in the area.

Answer: The City admits that Section 7-38-115(f) generally applies throughout Chicago, including areas that may be defined as “food deserts” or that City officials believe have insufficient retail food options. The City denies the remaining allegations of this paragraph.

159. In sum, the rule requiring food trucks to stay 200 feet away from any fixed business selling food is not rationally related to any legitimate health and safety purpose; instead, the restriction only serves to protect fixed businesses that sell food from having to compete with food trucks.

Answer: The City denies the allegations of this paragraph.

160. Unless Defendant City of Chicago is enjoined from committing the above-

described violations of the Due Process Clause of Article I, Section 2, Plaintiffs will continue to suffer great and irreparable harm.

Answer: The City denies the allegations of this paragraph.

WHEREFORE, Plaintiffs request the following relief:

- A. Entry of a declaratory judgment in favor of Plaintiffs and against the City providing that Section 7-38-115(f) of the City Code is unconstitutional both on its face and as applied to Plaintiffs, and that, as a consequence, it is void and without effect;
- B. Entry of a permanent injunction in favor of Plaintiffs and against the City prohibiting the City or its officers or agents from enforcing Sections 7-38-115(f) of the City Code;
- C. An award of nominal damages in favor of Plaintiffs and against the City in the amount of one dollar;
- D. An award of Plaintiffs' costs and expenses of this action, together with reasonable attorneys' fees; and
- E. Such other and further relief as this Court deems just and proper.

Answer: The City denies that Plaintiffs are entitled to the relief requested in Count

I.

WHEREFORE, the City respectfully requests that the Court enter judgment in favor of the City and against Plaintiffs on Count I.

COUNT II

(Violation of Article I, Section 2 of the Illinois Constitution Equal Protection)

161. Plaintiffs incorporate Paragraphs 1 through 128 by reference as though fully alleged in this Paragraph 161.

Answer: As the Court has dismissed Count II, no answer to this paragraph is

required.

162. Article I, Section 2 of the Illinois Constitution 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.”

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

163. The Equal Protection Clause of the Illinois Constitution prohibits “the government from according different treatment to persons who have been placed by statute into different classes on the basis of criteria wholly unrelated to the purpose of the legislation.” *Jacobson v. Dep’t of Pub. Aid*, 171 Ill. 2d 314, 322 (1996).

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

164. The proximity restriction contained in Section 7-38-115(f) of the City Code violates Plaintiffs’ right to equal protection both on its face and as-applied because it prohibits Plaintiffs from selling food within 200 feet of any restaurant, coffee shop, grocery or convenience store, or any other fixed business that sells food for immediate or later consumption.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

165. The sole purpose of the proximity restriction contained in Section 7-38-115(f) of the City Code is to protect fixed businesses from competition by mobile vendors, including Plaintiffs.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

166. The statements made by Chicago officials, including those reflected in paragraphs 29, 75-77, 79, and 90-92, demonstrate that the purpose of the 200-foot proximity restriction, in the words of Alderman Joe Moreno, is so that food trucks would “not infringe on the brick-and-mortars.”

Answer: As the Court has dismissed Count II, no answer to this paragraph is

required.

167. In its memorandum in support of its motion to dismiss, the City contends that the 200-foot proximity restriction furthers three non-protectionist government interests: preventing sidewalk congestion near restaurants, guarding against litter being deposited on the public way, and eliminating food deserts and expanding retail food options in Chicago.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

168. The proximity restriction contained in Section 7-38-115(f) treats food-truck operators like Plaintiffs differently than food trucks that serve construction workers on the basis of criteria wholly unrelated to any of the City's claimed legislative purposes.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

169. As stated in paragraph 58, the 200-foot proximity restriction in the City Code applies to food trucks regardless of whether they operate on public or private property.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

170. Section 7-38-115(h) of the City Code exempts food trucks that serve construction workers from the otherwise applicable 200-foot proximity restriction.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

171. If a company invites a food truck to park and sell food to the company's employees, the food truck may legally operate only if it is not within 200 feet of a restaurant, coffee shop, grocery or convenience store, or any other fixed business where food and drink is prepared and served for the public.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

172. If a company invites a food truck to park and sell food to construction workers

that are renovating the company's building, however, the food truck is exempt from the 200-foot proximity restriction.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

173. The construction and renovation of buildings often creates or exacerbates sidewalk congestion, yet Section 7-38-115(h) exempts food trucks serving those working on such construction and renovation from the 200-foot proximity restriction.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

174. Exempting food trucks from the 200-foot proximity restriction solely based on the identity of the clientele they serve demonstrates that the restriction does not rationally further any legitimate health and safety interest.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

175. The proximity restriction contained in Section 7-38-115(f) of the City Code causes the City of Chicago to treat food trucks differently than other entities for reasons that are wholly unrelated to the pretextual health and safety rationales the City identifies in its motion to dismiss.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

176. For example, the 200-foot proximity restriction treats food trucks differently than other types of businesses that serve customers who might line up on the public way.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

177. Although restaurants can often have long lines extending out onto the public way, no provision in the City Code prevents restaurants from opening and operating within 200 feet of other restaurants.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

178. The Chicago restaurant Big Star is a popular Mexican restaurant located at 1531 North Damen Avenue. The line to get into Big Star often spills out onto the street and could potentially block access to Cippolina, an Italian sandwich shop located approximately 117 feet away at 1543 North Damen Avenue. Although no provision in the City Code imposes any proximity restriction on Big Star's restaurant, Big Star's food truck cannot park directly outside of Big Star without violating Chicago's 200-foot proximity restriction.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

179. Similarly, theaters can often have long lines extending onto the public way, yet no provision in the City Code prevents theaters from operating within 200 feet of a restaurant.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

180. The Chicago Theatre is a live performance hall located at 175 North State Street. Events at the Chicago Theatre can frequently cause long lines to form on State Street, which could potentially block access to the Halsted Street Deli, which is located next door at 177 North State Street. Yet no provision in the City Code prohibits the Chicago Theatre or other theaters from locating within 200 feet of a restaurant.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

181. Street peddlers, as defined by Section 4-244-010 of the City Code, can have lines of customers in the public way, yet no provision in the City Code prevents them from operating within 200 feet of a restaurant.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

182. Sidewalk cafes physically occupy the public way and reduce the space available for pedestrians to traverse the sidewalk, yet no provision in the City Code prevents sidewalk cafes from opening within 200 feet of another restaurant.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

183. Similarly, prohibiting food trucks from operating within 200 feet of a restaurant treats food trucks differently than other types of businesses whose customers might choose to deposit refuse on the public way.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

184. For example, although restaurants that serve items “to go” can create a large amount of refuse, and there is a risk that their customers might discard that refuse on the public way, no provision in the City Code prevents “to go” restaurants from operating within 200 feet of another restaurant.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

185. Likewise, the City treats Plaintiffs’ food trucks differently than other types of businesses, such as restaurants, coffee shops, and grocery and convenience stores, which the City believes can help eliminate “food deserts” throughout Chicago and/or can provide Chicago residents with more retail food options.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

186. Although restaurants, coffee shops, grocery and convenience stores, and other fixed businesses that sell food for immediate or later consumption can help eliminate “food deserts” and/or can serve as additional retail food options, no provision in the City Code prohibits any of these fixed businesses from opening or operating within 200 feet of a restaurant.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

187. In sum, the 200-foot proximity restriction treats food-truck operators like Plaintiffs differently than restaurants, coffee shops, grocery and convenience stores, and food trucks that serve construction crews for reasons wholly unrelated to any legitimate legislative purpose; instead, the restriction only serves to protect fixed businesses that sell food from having

to compete with food trucks.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

188. Unless Defendant City of Chicago is enjoined from committing the above-described violations of the Equal Protection Clause of Article I, Section 2, Plaintiffs will continue to suffer great and irreparable harm.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

WHEREFORE, Plaintiffs request the following relief:

- A. Entry of a declaratory judgment in favor of Plaintiffs and against the City providing that Section 7-38-115(f) of the City Code is unconstitutional both on its face and as applied to Plaintiffs, and that, as a consequence, it is void and without effect;
- B. Entry of a permanent injunction in favor of Plaintiffs and against the City prohibiting the City or its officers or agents from enforcing Sections 7-38-115(f) of the City Code;
- C. An award of nominal damages in favor of Plaintiffs and against the City in the amount of one dollar;
- D. An award of Plaintiffs' costs and expenses of this action, together with reasonable attorneys' fees; and
- E. Such other and further relief as this Court deems just and proper.

Answer: As the Court has dismissed Count II, no answer to this paragraph is required.

COUNT III

(Violation of Article I, Section 6 of the Illinois Constitution Searches, Seizures, Privacy and Interceptions)

189. Plaintiffs incorporate Paragraphs I through 128 by reference as though fully

alleged in this Paragraph 189.

Answer: The City incorporates its answers to Paragraphs 1 through 128 as though fully alleged herein.

190. Article I, Section 6 of the Illinois Constitution provides that “[t]he 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.”

Answer: The City admits the allegations of this paragraph.

191. Article I, Section 6 of the Illinois Constitution protects Illinoisans from unreasonable searches, seizures, and other technological invasions of their right to privacy.

Answer: This paragraph states a legal conclusion to which no answer is required.

192. The United States Supreme Court in *United States v. Jones*, 132 S. Ct. 945, 949 (2012), held that monitoring one’s movements through the placement of a GPS tracking device is a “search” for purposes of the Fourth Amendment to the U.S. Constitution.

Answer: This paragraph states a legal conclusion to which no answer is required.

193. Illinois courts construe the search and seizure provisions in Article I, Section 6 of the Illinois Constitution in a matter consistent with the Fourth Amendment to the U.S. Constitution.

Answer: This paragraph states a legal conclusion to which no answer is required.

194. Section 7-38-115(1) of the City Code requires Plaintiffs and all other food-truck operators to install and use a GPS tracking device at their own expense.

Answer: The City admits that Section 7-38-115(1) states, in part, that “[e]ach mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).” The City denies the remaining

allegations of this paragraph.

195. Forcing Plaintiffs to install a GPS tracking device in order to engage in a common occupation constitutes a search under Article I, Section 6 of the Illinois Constitution.

Answer: The City denies the allegations of this paragraph.

196. The GPS tracking device requirement in Section 7-38-115(1) of the City Code does not serve a legitimate, let alone substantial, government interest, is not necessary to further any legitimate government interest, and does not provide a constitutionally adequate substitute for a warrant.

Answer: The City denies the allegations of this paragraph.

197. The GPS tracking device requirement in Section 7-38-115(1) exists to enforce the 200-foot proximity restriction in that same section.

Answer: The City admits that Section 7-38-115(l) states, in part, that “[f]or purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle's GPS device.” The City denies the remaining allegations of this paragraph.

198. Nothing in the Ordinance or Rule 8 of the regulations the Chicago Board of Health adopted on December 21, 2012 places any restrictions on when City officials may access or analyze the location data that the GPS tracking devices transmit.

Answer: The City admits that Section 7-38-115(l) states, in part, that “Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

A. All mobile food vehicles must be equipped with an operational Global

Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:

1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 2. The device must be permanently installed in, or on, the vehicle.
 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.

- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

199. Nothing in the Ordinance or Rule 8 of the regulations the Chicago Board of Health adopted on December 21, 2012 limits City officials' ability to access the location data that the GPS tracking devices transmit to only certain purposes.

Answer: The City admits that Section 7-38-115(l) states, in part, that "Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API)." The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
1. The device must be an "active", not "passive" device that sends real-time data to a GPS tracking service provider.
 2. The device must be permanently installed in, or on, the vehicle.
 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.

4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

200. Nothing in the Ordinance or Rule 8 of the regulations the Chicago Board of Health adopted on December 21, 2012 places any restrictions on how City officials may use the location data that the GPS tracking devices transmit.

Answer: The City admits that Section 7-38-115(l) states, in part, that "Each mobile

food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago as well as the following:
 - 1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 - 2. The device must be permanently installed in, or on, the vehicle.
 - 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 - 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 - 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
 - 1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 - 2. At least six (6) months of historical information/reports, in a

downloadable format (i.e., PDF, CSV or Excel).

3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
 - D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

201. Nothing in the Ordinance or Rule 8 of the regulations the Chicago Board of Health adopted on December 21, 2012 places any restrictions on the people who will have access to the location data that the GPS tracking devices transmit.

Answer: The City admits that Section 7-38-115(l) states, in part, that “Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API).” The City also admits that Rule 8 of the regulations promulgated by the Chicago Board of Health governing food trucks states, in relevant part, that:

- A. All mobile food vehicles must be equipped with an operational Global Positioning System (GPS) tracking device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the

City of Chicago as well as the following:

1. The device must be an “active”, not “passive” device that sends real-time data to a GPS tracking service provider.
 2. The device must be permanently installed in, or on, the vehicle.
 3. The device must broadcast GPS coordinates no less frequent than once every five (5) minutes.
 4. The device must function at all times while the mobile food vehicle is in operation, regardless if the engine is on or off.
 5. The device must be accurate no less than 95% of the time.
- B. The GPS tracking device service provider must be able to provide, upon request of the city of Chicago, the following:
1. Reports of each transmitted position including arrival dates, times, addresses, and duration of each stop.
 2. At least six (6) months of historical information/reports, in a downloadable format (i.e., PDF, CSV or Excel).
 3. An application programming interface (API) that is available to the general public.
- C. At the request of the city of Chicago, provide the location of a specific mobile food vehicle, the operator must immediately respond with the location information of the vehicle.
- D. If the city of Chicago provides a website for displaying the location of a mobile food vehicle, the operator must provide the appropriate access

information to the API of its GPS to enable the posting on such website.

The City denies the remaining allegations of this paragraph to the extent that they are inconsistent with these admissions.

202. Rather than require food trucks to install GPS units, other jurisdictions, including Austin, Texas and Los Angeles County, California, have food trucks submit periodic itineraries detailing where the food trucks will be making sales. By so doing, these jurisdictions have satisfied their legitimate health and safety concerns in a minimally invasive manner.

Answer: The City lacks knowledge or information sufficient to form a belief as to the allegations of this paragraph.

WHEREFORE, Plaintiffs request the following relief:

- A. A declaratory judgment in favor of Plaintiffs and against the City providing that Section 7-38-115(l) of the City Code and Rule 8 of the regulations concerning mobile food vehicles that the Chicago Board of Health adopted on December 21, 2012 are unconstitutional both on their face and as applied to Plaintiffs, and that, as a consequence, they are void and without effect;
- B. A permanent injunction in favor of Plaintiffs and against the City prohibiting the City or its officers or agents from enforcing Section 7-38-115(l) of the City Code and Rule 8 of the regulations concerning mobile food vehicles that the Chicago Board of Health adopted on December 21, 2012;
- C. An award of nominal damages in favor of Plaintiffs and against the City in the amount of one dollar;
- D. An award of Plaintiffs' costs and expenses of this action, together with reasonable attorneys' fees; and
- E. Such other and further relief as this Court deems just and proper.

Answer: The City denies that plaintiffs are entitled to the relief requested in Count

III.

WHEREFORE, the City respectfully requests that the Court enter judgment in favor of the City and against Plaintiffs on Count III.

AFFIRMATIVE DEFENSES

For its affirmative defenses, Defendant City of Chicago ("City"), by its attorney, Stephen R. Patton, Corporation Counsel for the City of Chicago, hereby states as follows:

First Affirmative Defense - Lack of Standing (Count I)

1. In Count I of the Amended Complaint, Plaintiffs assert that the 200 foot restriction contained in Section 7-38-115(f) of the Chicago Municipal Code violates their right to due process under the Illinois Constitution. Plaintiffs allege in Paragraph 114 that their "businesses have suffered due to the proximity restriction contained in Section 7-38-115(f) of the City Code." Plaintiffs also allege in Paragraphs 116 & 117 that Section 7-38-115(f) makes it difficult for them "to reach potential customers."

2. Upon information and belief, Section 7-38-115(f) has not caused Plaintiffs' businesses to suffer. Even though Section 7-38-115(f) prevents Plaintiffs from vending at certain places at certain times, they remain free under that Section to ply their trade and generate revenue by selling at other locations and at other times in the City, and Plaintiffs have done so. They also remain free to vend outside the City.

3. Upon information and belief, Section 7-38-115(f) has not made it more difficult for Plaintiffs to reach potential customers. Even though Section 7-38-115(f) prevents Plaintiffs from vending at certain places at certain times, they remain free under that Section to reach potential customers by selling at other locations and at other times, and through other means (such as via advertising, their websites, and social media) in and outside the City, and Plaintiffs have done so.

4. Accordingly, Plaintiffs have not suffered a legally-cognizable injury as a result of

Section 7-38-115(f), and they therefore lack standing to challenge that Section.

5. In addition, Plaintiff LMP Services, Inc. ("LMP"), does not currently possess a valid mobile food license from the City. For this reason, Section 7-38-115(f) does not cause any injury to LMP, since LMP lacks the legal right to operate a food truck within the City and would not be able to legally operate a food truck in the City even if the Court were to invalidate Section 7-38-115(f). Accordingly, LMP lacks standing to challenge Section 7-38-115(f).

Second Affirmative Defense - Lack of Standing (Count III)

6. In Count III of the Amended Complaint, Plaintiffs allege that the GPS requirement in Section 7-38-115(l) violates their right against unreasonable searches and seizures under the Illinois Constitution. Plaintiffs allege in Paragraph 120 that this requirement allows the City to "collect and store indefinitely the movements of each of Plaintiffs' food trucks." Plaintiffs allege in Paragraphs 124 & 125 that the GPS device will broadcast their whereabouts "to the world." And Plaintiffs allege in Paragraph 126 that they do not wish to pay "hundreds of dollars" to install and use a GPS device.

7. Upon information and belief, no Plaintiff has installed a GPS device on or in their food trucks or transmits location data as required by Section 7-38-115(l) and Rule 8 of the regulations promulgated by the Chicago Board of Health. In addition to Paragraph 126 of the Amended Complaint, which indicates that Plaintiffs have not yet installed and operated a GPS device on their food trucks, no Plaintiff has tendered proof of compliance with the GPS requirement to the City, as required by the City's Department of Business Affairs and Consumer Protection. Alternatively, if Plaintiffs are transmitting data to a GPS service provider pursuant to Section 7-38-115(1) and Rule 8, the City has not been provided with any Plaintiffs' location data

pursuant to those provisions.

8. Accordingly, Plaintiffs have not suffered a legally-cognizable injury as a result of Section 7-38-115(l), and they therefore lack standing to challenge that Section.

Third Affirmative Defense - Lack of Ripeness (Count III)

9. The City hereby realleges and incorporates paragraphs 6 & 7 above as if fully set forth herein.

10. Because no Plaintiffs has installed a GPS device on or in their food trucks or transmits location data as required by Section 7-38-115(l) and Rule 8 of the regulations promulgated by the Chicago Board of Health, and also because the City has not been provided with any Plaintiffs' location data pursuant to those provisions, Plaintiffs' challenge to Section 7-38-115(l) is premature, and the claim is not ripe.

Respectfully submitted,

STEPHEN R. PATTON
Corporation Counsel
City of Chicago

By:


One of Its Agents

Mardell Nereim
Andrew W. Worsec
City of Chicago, Department of Law
Commercial & Policy Litigation Division
30 North LaSalle Street, Suite 1230
Chicago, Illinois 60602
(312) 744-6975/ 744-7129

Dated: August 30, 2013.



OFFICE OF THE MAYOR
CITY OF CHICAGO

EMBARGOED UNTIL 12:01AM

June 26, 2012

CONTACT:

Mayor's Press Office

312.744.3334

press@cityofchicago.org

MAYOR EMANUEL TO LEGALIZE COOK-ON-SITE FOOD TRUCK INDUSTRY ACROSS CHICAGO
Mayor Will Introduce Ordinance Designed to Support and Expand Food Truck Operations Throughout City

CHICAGO – On Wednesday, Mayor Emanuel, Alderman Tom Tunney and Alderman Joe Moreno will introduce an ordinance to expand food truck operations in neighborhoods across Chicago by allowing food truck operators to prepare "food to order" on board their trucks. Currently, food truck operators are only allowed to sell food packaged in a commercial kitchen. The new law will further encourage this creative industry that spurs small business development and a diverse and vibrant cultural scene across the city.

"Chicago's small businesses are the backbones of our communities and are a vital part of what make our city a thriving place to live, work and visit," said Mayor Emanuel. "The food truck industry in Chicago has been held back by unnecessary restrictions, and my administration is committed to common-sense changes that will allow this industry to thrive, creating jobs and supporting a vibrant food culture across the city."

The ordinance to be introduced was developed after months of conversations with restaurateurs, the food truck industry, and local aldermen. It is influenced by best practices from other major cities where smart and practical requirements for food trucks have allowed them to operate more freely than they have in Chicago. The ordinance protects traditional restaurants, maintains public health standards, and fosters this growing industry.

"I'm proud that we were able to bring so many stakeholders to the table to reach this compromise, to support this innovative industry right alongside our world-renown restaurants," said Alderman Tom Tunney. "We'll continue to work with our communities and all those involved to ensure a smooth implementation."

The ordinance legalizes freer food truck operations while maintaining public health standards and includes:

121 NORTH LASALLE STREET, ROOM 507, CHICAGO, ILLINOIS 60602

LMP0301

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- **"Food to Order":** Food truck operators will be allowed to provide "food to order" for their customers, or fresh meals prepared directly on board a truck.
- **"Food Truck Stands" Across the City:** In addition to the legal parking spaces food trucks currently use, food trucks will now be allowed to park at designated Food Truck Stands across the city. These locations will be selected through an open and collaborative process in each ward by aldermen, the business community, and residents. Similar to a traditional loading zone, these dedicated locations will help food truck operators park safely, especially in high-congestion areas where parking is scarce.
- **Around-the-Clock Operations:** Food trucks may operate 24 hours-a-day, 7-days a week. Each food truck will be able to park at one food stand or other designated location for up to 2 hours.
- **Regular Health Inspections and Trainings:** Food trucks will be required to adhere to the highest health standards, as are traditional restaurants, and will undergo regular inspections through the Chicago Department of Public Health. And at least one employee with a food sanitation certificate, obtained after food sanitation training, must be present at the truck at all times to further ensure the health safety of their food.

"Our neighborhoods are full of a diverse assortment of food and restaurant options, from family-owned to fusion. Creating these sensible avenues for the food truck industry to develop right alongside of these excellent options will be a boon for our food culture and neighborhood business development," said Alderman Moreno.

"Data on food truck locations will be available online to the public, as well. Food truck operators will be required to use mounted GPS devices in each truck so that the City and consumers may track their locations."

###

121 NORTH LASALLE STREET, ROOM 507, CHICAGO, ILLINOIS 60602

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FOR IMMEDIATE RELEASE

July 25, 2012

CONTACT:

Mayor's Press Office

312.744.3334

press@cityofchicago.org

**CITY COUNCIL APPROVES MOBILE FOOD ORDINANCE TO EXPAND FOOD TRUCK INDUSTRY
ACROSS CHICAGO**

*Ordinance Allows Food Truck Operators to prep and cook onboard and park for free throughout the
City*

CHICAGO – Today, the Chicago City Council passed an ordinance to expand food truck operations in neighborhoods across Chicago. Food truck operators will now be permitted to prepare "food to order" on board their trucks and have the opportunity to park for free in newly created "food truck stands" in highly congested areas as well as legal metered spaces that are 200 feet from a retail food establishment. Currently, food truck operators are only allowed to sell food packaged in a commercial kitchen and park in metered spaces that are 200 feet from a retail food establishment. The new law will further encourage this creative industry that spurs small business development and a diverse and vibrant cultural scene across the city.

"This ordinance is a fair and workable compromise that will allow the food truck industry to grow across Chicago, after years of unnecessary restrictions, as a full part of our city's vibrant food culture" said Mayor Emanuel. "The years of debate are over: commonsense changes like these allow job growth and small business development for Chicagoans."

The ordinance is a practical compromise developed after months of conversations with restaurateurs, the food truck industry, and local aldermen. Input from all of the stakeholders and a study of best practices from other major cities helped to create smart and workable requirements

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for food trucks that provide additional parking opportunities and expanded operations to foster this growing industry. The ordinance also protects maintains public health standards and safeguards communities from congestion and public safety issues.

"Chicago deserves a thriving food truck industry. This ordinance opens doors for food entrepreneurs by expanding options for cooking, parking and business hours." said Department of Business Affairs and Consumer Protection Commissioner Rosemary Krimbel.

The ordinance legalizes expanded food truck operations while maintaining public health standards and includes:

- **"Food to Order":** Food truck operators will be allowed to provide "food to order" for their customers, or fresh meals prepared directly on board a truck.
- **"Food Truck Stands" Across the City:** In addition to the legal parking spaces food trucks currently use, food trucks will now be allowed to park at designated Food Truck Stands across the city. These locations will be selected through an open and collaborative process in each ward by aldermen, the business community, and residents. Similar to a traditional loading zone, these dedicated locations will help food truck operators to park safely, especially in high-congestion areas where parking is scarce.
- **Increased Hours of Operation:** Food trucks may operate from 5am-2am, 7-days a week. Each food truck will be able to park at one food stand or other legal parking spot for up to 2 hours.
- **Regular Health Inspections and Trainings:** Food trucks must adhere to the highest health standards, the same standards as traditional restaurants, and will undergo regular inspections through the Chicago Department of Public Health. At least one employee trained and certified in food sanitation, must be present on the truck at all times to further ensure the health safety of their food.
- **GPS Data:** Data on food truck locations will be available online to the public. Food truck operators will be required to use mounted GPS devices in each truck so that the City and consumers can follow their locations.

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The ordinance was co-sponsored by Aldermen Tom Tunney, Joe Moreno, Scott Waguespack, Brendan Reilly, Emma Mitts, Michele Smith, and Walter Burnett.

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COMMENTS FROM ALDERMANIC CO-SPONSORS

"Local restaurants are the cornerstone of our neighborhoods and food trucks are a promising trend nationwide. I am proud that we were able to bring so many stakeholders to the table to reach this compromise that addressed food safety and to support this innovative industry alongside our city's world-renown restaurants. Once the program is put into place, we can continue to modify and adapt the law working with our community residents and businesses."

Alderman Emma Mitts, 37th Ward and Chairman of the Council Committee on License and Consumer Protection

"Chicago entrepreneurs and small businesses alike will benefit from the flexibility, safety and innovation in this new mobile food licensing ordinance, and I am energized by the support this compromise measure has received today from the Chicago City Council."

Alderman Walter Burnett Jr., 27th Ward

"This ordinance provides a great opportunity for new businesses to get started and for existing businesses to expand and get greater exposure."

Alderman Proco Joe Moreno, 1st Ward

"This is not a perfect ordinance, but ultimately, it's fair and realistic. Legitimizing food trucks in our city has been talked about for years. I was elected to get things done, not to beat my chest and talk in circles. Compromise isn't a dirty concept and I'm proud to be a co-sponsor of this ordinance."

Alderman Michelle Smith, 43rd Ward:

"I am excited that we have taken the first step forward in ensuring that we are active participants in innovate and modern dining experiences without sacrificing the brick and mortar restaurants responsible for making Chicago one of the nation's premier food hubs."

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Alderman Tom Tunney, 44th Ward

"Local restaurants are the cornerstone of our neighborhoods and food trucks are a promising trend nationwide. I am proud that we were able to bring so many stakeholders to the table to reach this compromise that addressed food safety and to support this innovative industry alongside our city's world-renown restaurants. Once the program is put into place, we can continue to modify and adapt the law working with our community residents and businesses."

Alderman Scott Waguespack, 32nd Ward

"This ordinance is a great step forward for the City, opening new doors of creativity and excitement for Chicagoans. This will help move the culinary industry forward while creating hundreds of jobs, building new aspects of the food industry, expand commissaries and kitchens and put Chicago back at the top of the food truck movement. I am glad to have the opportunity to work collaboratively with the Mayor's staff, restaurant owners, and business organizations throughout the City to move this ordinance forward."

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JOY ADELIZZI
BURKE vs. CITY OF CHICAGO

October 08, 2014
1-4

<p style="text-align: right;">Page 1</p> <p>1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS</p> <p>2 COUNTY DEPARTMENT - CHANCERY DIVISION</p> <p>3</p> <p>4 GREG BURKE; KRISTIN)</p> <p>5 CASPER and LMP)</p> <p>6 SERVICES, INC.,) No. 12 CH 41235</p> <p>7 Plaintiffs,)</p> <p>8 vs.)</p> <p>9 THE CITY OF CHICAGO,)</p> <p>10 ILLINOIS,)</p> <p>11 Defendant.)</p> <p>12</p> <p>13 The deposition of JOY ADELIZZI, called</p> <p>14 as a witness for examination, taken pursuant to the</p> <p>15 provisions of the Code of Civil Procedure and the</p> <p>16 Rules of the Supreme Court of the State of Illinois</p> <p>17 pertaining to the taking of depositions for the</p> <p>18 purpose of discovery, taken before LISA C. HAMALA,</p> <p>19 a Notary Public within and for the County of Cook,</p> <p>20 State of Illinois, and a Certified Shorthand</p> <p>21 Reporter of said state, CSR No. 84-3335, at Suite</p> <p>22 1200, 224 South Michigan Avenue, Chicago, Illinois,</p> <p>23 on the 8th day of October, A.D. 2014, at 9:08 a.m.</p> <p>24</p>	<p style="text-align: right;">Page 3</p> <p>1 (WHEREUPON, the witness was duly</p> <p>2 sworn.)</p> <p>3 JOY ADELIZZI,</p> <p>4 called as a witness herein, having been first duly</p> <p>5 sworn, was examined and testified as follows:</p> <p>6 EXAMINATION</p> <p>7 BY MR. FROMMER:</p> <p>8 Q. Thank you for being here. I'm Robert</p> <p>9 Frommer, an attorney with the Institute For</p> <p>10 Justice. We are a nonprofit public interest law</p> <p>11 firm out of Arlington, Virginia.</p> <p>12 Could you state your name, title and</p> <p>13 work address, please.</p> <p>14 A. Sure. Joy Adelizzi. I'm a Deputy</p> <p>15 Commissioner with the City of Chicago Department of</p> <p>16 Business Affairs and Consumer Protection.</p> <p>17 My office is located at City Hall, which</p> <p>18 is 121 North LaSalle Street, Room 800.</p> <p>19 MR. WORSECK: To jump in, it's 9:08 in the</p> <p>20 morning that this deposition is starting.</p> <p>21 I want to state for the record we are</p> <p>22 producing Ms. Adelizzi as a 206(a)(1) witness on</p> <p>23 behalf of the City pursuant to the designations we</p> <p>24 made in our September 30th letter, and subject to</p>
<p style="text-align: right;">Page 2</p> <p>1 PRESENT:</p> <p>2 INSTITUTE FOR JUSTICE,</p> <p>3 (901 North Glebe Road, Suite 901,</p> <p>4 Arlington, Virginia 22203,</p> <p>5 703-682-9320), by:</p> <p>6 MR. ROBERT FROMMER,</p> <p>7 rfrommer@ij.org,</p> <p>8 MR. BERT GALL,</p> <p>9 bgall@ij.org,</p> <p>10 MS. ERICA SMITH,</p> <p>11 esmith@ij.org</p> <p>12 appeared on behalf of the Plaintiffs;</p> <p>13 ASSISTANT CORPORATION COUNSEL,</p> <p>14 Litigation Division</p> <p>15 (30 North LaSalle Street, Suite 1230,</p> <p>16 Chicago, Illinois 60602,</p> <p>17 312-744-9018), by:</p> <p>18 MR. ANDREW WORSECK,</p> <p>19 andrew.worseck@cityofchicago.org,</p> <p>20 MR. DAVID M. BARON,</p> <p>21 david.baron@cityofchicago.org,</p> <p>22 appeared on behalf of the Defendants.</p> <p>23 REPORTED BY: LISA C. HAMALA, CSR,</p> <p>24 Illinois CSR No. 84-3335.</p>	<p style="text-align: right;">Page 4</p> <p>1 the objections that we have stated in prior</p> <p>2 correspondence regarding the 206(a)(1) notice,</p> <p>3 including our August 27th letter and September 18th</p> <p>4 letter.</p> <p>5 MR. FROMMER: Thank you.</p> <p>6 BY MR. FROMMER:</p> <p>7 Q. We are representing the plaintiffs in a</p> <p>8 constitutional challenge to the City's rules that</p> <p>9 prohibit mobile food vehicles from operating within</p> <p>10 200 feet of a restaurant and that require those</p> <p>11 same vehicles to have equipped GPS tracking</p> <p>12 devices.</p> <p>13 We are seeking only injunctive and</p> <p>14 declaratory relief.</p> <p>15 As Drew just mentioned, you have been</p> <p>16 designated by the City to answer some questions on</p> <p>17 some of our topics.</p> <p>18 Do you have any questions?</p> <p>19 A. No.</p> <p>20 Q. Okay. So for the remainder of the</p> <p>21 deposition, I will be talking about the requirement</p> <p>22 that food trucks or mobile food vehicles not be</p> <p>23 within 200 feet of a restaurant.</p> <p>24 That's in Chicago City Code 7-38-115(f),</p>



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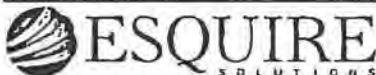
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<p style="text-align: right;">Page 5</p> <p>1 but I will call it the 200-foot rule.</p> <p>2 Similarly, there is another provision</p> <p>3 called 7-38-115(l) that says that mobile food</p> <p>4 vehicles must be equipped with GPS tracking</p> <p>5 devices.</p> <p>6 For shorthand, we will call it the GPS</p> <p>7 tracking requirement.</p> <p>8 Is that okay?</p> <p>9 A. Sure.</p> <p>10 Q. Before we begin, I will go over some</p> <p>11 rules for the deposition so everybody understands.</p> <p>12 I will ask questions. The court</p> <p>13 reporter is going to record my questions and then</p> <p>14 your answers.</p> <p>15 To assist the court reporter, I'm going</p> <p>16 to try to be clear and slow in how I ask questions.</p> <p>17 When you respond, please do the same. It makes it</p> <p>18 easier for her. Make sure to answer each question</p> <p>19 verbally.</p> <p>20 Sometimes people nod or go uh-huh, but</p> <p>21 the reporter can't take that down. Please make</p> <p>22 sure to say yes, no. Words like that.</p> <p>23 Often, when you do depositions, part of</p> <p>24 the normal flow of conversation is people will talk</p>	<p style="text-align: right;">Page 7</p> <p>1 truthfully and completely.</p> <p>2 You understand this is the same oath you</p> <p>3 would take as if you were in a court of law giving</p> <p>4 testimony to a judge?</p> <p>5 A. Yes.</p> <p>6 Q. If you don't understand the question,</p> <p>7 let me know. I will ask her to read it back, or I</p> <p>8 will rephrase the question.</p> <p>9 Will you tell me if you don't understand</p> <p>10 the question?</p> <p>11 A. Definitely.</p> <p>12 Q. If you don't know an answer, say so.</p> <p>13 That's fine. If you do know the answer, give it</p> <p>14 truthfully and completely.</p> <p>15 Unless you say otherwise, I will assume</p> <p>16 you understood my question.</p> <p>17 If you want to talk to Drew or Dave,</p> <p>18 that's fine, but I ask that you answer the question</p> <p>19 pending, or if you were in the middle of an answer,</p> <p>20 get that done, and then you can speak with your</p> <p>21 attorney.</p> <p>22 Sometimes Drew or Dave might raise an</p> <p>23 objection to a question that I ask. That doesn't</p> <p>24 mean I asked a bad question, and it doesn't mean</p>
<p style="text-align: right;">Page 6</p> <p>1 at one another, talk over each other as part of the</p> <p>2 normal flow.</p> <p>3 The problem with that in a deposition is</p> <p>4 it makes it really hard for the reporter to take it</p> <p>5 down.</p> <p>6 So I will ask that you wait until I</p> <p>7 finish the question before you begin to answer,</p> <p>8 even if you think you know where I'm going.</p> <p>9 I will hold off and let you finish the</p> <p>10 answer before I ask the next question.</p> <p>11 Is that okay?</p> <p>12 A. Yes.</p> <p>13 Q. One more thing.</p> <p>14 Sometimes when you answer a question,</p> <p>15 later on you may realize there was something else</p> <p>16 you want to add or clarify. If that happens, let</p> <p>17 me know.</p> <p>18 We will go ahead and get that</p> <p>19 clarification on the record when you are still</p> <p>20 thinking about it.</p> <p>21 Is that okay?</p> <p>22 A. Yes.</p> <p>23 Q. You were sworn in, and that means you</p> <p>24 gave an oath like in a courtroom to answer</p>	<p style="text-align: right;">Page 8</p> <p>1 you don't have to answer.</p> <p>2 The whole point is to note on the record</p> <p>3 that they have raised it so that if they want to</p> <p>4 later on argue to the judge why that question</p> <p>5 should not be allowed, they would be preserving</p> <p>6 that right. But you still have to answer the</p> <p>7 question.</p> <p>8 A. Yes.</p> <p>9 Q. One other thing.</p> <p>10 If you would like a break at any time,</p> <p>11 that's fine. If we are in a line of questioning,</p> <p>12 and you have to break, let me know. We will</p> <p>13 finish, and then you can break.</p> <p>14 Sometimes during a deposition you might</p> <p>15 think there's a document or some other materials</p> <p>16 that might help you answer a question. If you</p> <p>17 could think of them, we may have them here.</p> <p>18 If there is anything like that, any kind</p> <p>19 of document you might like, let me know. We can</p> <p>20 see if we can get it for you to help answer the</p> <p>21 question.</p> <p>22 A. Thank you.</p> <p>23 Q. Now you understand you are here to</p> <p>24 testify as a representative of the City and that</p>

JOY ADELIZZI
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<p style="text-align: right;">Page 9</p> <p>1 your answers are going to be the City's answers 2 about the topics that are designated? 3 A. Yes. 4 Q. Because we need to make sure we get full 5 and complete answers, are you taking any 6 medication, are you ill, or is there anything that 7 would keep you from understanding my questions and 8 being able to provide complete answers? 9 A. No. 10 Q. Okay. Do you have any questions before 11 we start? 12 A. I don't think so. 13 Q. Okay. Let's start. 14 Have you ever been deposed before? 15 A. I have not. 16 Q. Okay. That's the reason we talked about 17 all those things before. It will be a low stress 18 process and go fine. 19 Let's move on to the things you are here 20 to talk about today. 21 MR. FROMMER: Can I have Exhibit No. 1, Notice 22 of Deposition, please. 23 24</p>	<p style="text-align: right;">Page 11</p> <p>1 legal objections with respect to pieces of the 2 topics. 3 BY MR. FROMMER: 4 Q. Do you need another moment? 5 A. Yes. 6 Q. That's fine, but maybe I can help. 7 The City designated you for Topic 7, 8 "Implementation, operation and enforcement of the 9 200-foot rule." 10 Topic 8, "Exemption of mobile food 11 vehicles that are being used to provide food and 12 drink to serve persons engaged in construction in 13 the City of Chicago." 14 Topic 9, Topic 12, which is about the 15 regulations and guidance concerning GPS. 16 Topics 13 through 16, which go into 17 about the evidence. Topic 17, as well. 18 Does that sound correct to you? 19 A. Yes. 20 Q. Great. 21 MR. WORSECK: For the record, with respect to 22 Topics 13 through 16, we are designating 23 Ms. Adelizzi only as to a portion of those topics 24 to the extent they relate to enforcing the</p>
<p style="text-align: right;">Page 10</p> <p>1 (WHEREUPON, a certain document was 2 marked Adelizzi Deposition Exhibit 3 No. 1, for identification, as of 4 10-8-14.) 5 BY MR. FROMMER: 6 Q. Take a second to look it over. 7 Have you seen it before? 8 A. Yes. 9 Q. You are here to answer questions about 10 some of the topics listed in this, right? 11 A. That's correct. 12 Q. Which of these topics are you here to 13 testify about? 14 MR. WORSECK: Objection to the extent 15 designations have already been made in writing by 16 the City. 17 BY MR. FROMMER: 18 Q. If you would please answer the question. 19 A. I'm here to talk about - 20 MR. WORSECK: Don't speculate if you don't 21 recall the exact number. 22 I will note we have objected to parts of 23 some of the topics we have designated her for, and 24 she should not be held to be cognizant of all the</p>	<p style="text-align: right;">Page 12</p> <p>1 provisions of MCC7-38. 2 MR. FROMMER: Okay. 3 BY MR. FROMMER: 4 Q. Can you describe your qualifications to 5 speak about the topics we just talked about. 6 MR. WORSECK: Objection. Vague. 7 BY THE WITNESS: 8 A. I'm a Deputy Commissioner, as I 9 mentioned before, with the Department of Business 10 Affairs and Consumer Protection. 11 I'm responsible for license issuance 12 along with public way. 13 My role is to at times work on 14 ordinances, as well as develop the license 15 application and implementation of the license 16 application to full license issuance. 17 BY MR. FROMMER: 18 Q. What are your qualifications with regard 19 to topics dealing with GPS? 20 MR. WORSECK: Same objection. 21 BY THE WITNESS: 22 A. Staff in the Department has done 23 significant research regarding GPS, as well as 24 performance standards, industry standards, as well</p>



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<p style="text-align: right;">Page 13</p> <p>1 as consulted with other experts at the City and 2 outside field regarding these industry standards. 3 BY MR. FROMMER: 4 Q. Okay. Thank you. 5 How much time did you spend preparing 6 for this deposition? 7 MR. WORSECK: Objection. Vague. 8 BY MR. FROMMER: 9 Q. Please go ahead. 10 A. Roughly less than a week or so. 11 Q. Did you discuss this deposition with 12 anyone before coming? 13 MR. WORSECK: Objection. Vague. 14 BY THE WITNESS: 15 A. Yes. 16 BY MR. FROMMER: 17 Q. Who would that be? 18 A. Counsel. 19 Q. Okay. Anyone besides counsel? 20 A. Internal staff that report to me. 21 Q. Okay. How long did you talk to them 22 about it? 23 A. In the course of a day, maybe a total of 24 less than an hour, hour.</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Did you happen to look at the 2 Plaintiffs' Amended Complaint? 3 A. I did look at a large document, but I 4 didn't go through every page. 5 It was a quick one page "this is what it 6 looks like." 7 Q. What was the nature of that document? 8 A. This is my first deposition, so I think 9 to prepare me for what it looks like with question, 10 answer and response. 11 Q. Who provided that to you? 12 A. Counsel. 13 MR. WORSECK: Let's take a break. 14 (WHEREUPON, there was a 15 conference between the witness 16 and counsel.) 17 BY THE WITNESS: 18 A. My apologies. 19 I was responding to the Amended Response 20 to the Complaint. 21 BY MR. FROMMER: 22 Q. The City's Answer to the Complaint? 23 A. Yes. 24 Q. That's fine. The two documents look</p>
<p style="text-align: right;">Page 14</p> <p>1 Q. I don't want to get into any substance 2 of conversations with counsel, but approximately 3 how long did you meet and talk with them in 4 preparing for this deposition? 5 MR. WORSECK: Same objection. Vague. 6 BY THE WITNESS: 7 A. A number of hours. 8 BY MR. FROMMER: 9 Q. Do you have a better estimate? 10 A. I would say maybe a total of four to 11 five hours. 12 Q. Okay. Did you review any documents to 13 prepare for this deposition? 14 A. This document in front of me. 15 Q. The Notice of Deposition? 16 A. Yes, as well as a Federal Department of 17 Defense Performance Standard for GPS. 18 Current rules and regs issued by the 19 Health Department. 20 Q. Concerning the GPS requirements? 21 A. Yes, as well as sections of the actual 22 Mobile Food Ordinance. 23 Q. Anything else? 24 A. I don't recall anything else.</p>	<p style="text-align: right;">Page 16</p> <p>1 very similar. If you aren't a litigator, it is 2 easy to confuse the two. 3 Did you look at any of the City's 4 Discovery Responses to the plaintiffs' Discovery 5 Request in this case? 6 A. Such as? 7 Q. We issued a number of Interrogatories 8 and Document Requests about a number of different 9 areas, including the 200-foot rule and GPS tracking 10 requirement. 11 Did you happen to look at either of 12 those requests or how the City responded to them? 13 A. I don't recall in detail. 14 Q. Did you look at any citations, any 15 issued for the violations of the 200-foot rule? 16 A. I flipped through a packet of some of 17 the citations. 18 Q. Do you know approximately how many 19 citations there were? 20 A. I didn't count the number of them. It 21 was a stack. 22 Q. Are there any other documents that you 23 remember? 24 A. Not that I recall. If I remember</p>



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<p style="text-align: right;">Page 17</p> <p>1 something, I will add.</p> <p>2 Q. That's fine.</p> <p>3 Who else at the City is knowledgeable</p> <p>4 about the topics you have been designated to talk</p> <p>5 about today?</p> <p>6 MR. WORSECK: Objection. Calls for</p> <p>7 speculation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. In my Department, I'm the Deputy of the</p> <p>10 center, of the licensing.</p> <p>11 There are supervisors that are very</p> <p>12 familiar with the ordinance, as well as business</p> <p>13 consultants that process the license applications</p> <p>14 for the operators, as well as senior staff such as</p> <p>15 our Commissioner, as well as other Deputies in the</p> <p>16 Department that have a piece to this ordinance such</p> <p>17 as investigations.</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. Do you think there is anyone more</p> <p>20 knowledgeable than you at the City about the topics</p> <p>21 you have been designated to talk about today?</p> <p>22 MR. WORSECK: Objection. Calls for</p> <p>23 speculation.</p> <p>24 Rule 206 does not require the most</p>	<p style="text-align: right;">Page 19</p> <p>1 (WHEREUPON, a certain document was</p> <p>2 marked Adelizzi Deposition Exhibit</p> <p>3 No. 2, for identification, as of</p> <p>4 10-8-14.)</p> <p>5 MR. WORSECK: For clarification, there doesn't</p> <p>6 appear to be a header or footer or other indicator</p> <p>7 of where you got this from.</p> <p>8 MR. FROMMER: It's from the American Legal</p> <p>9 Publishing. I believe it's the official place for</p> <p>10 the code.</p> <p>11 Instead of printing off directly from</p> <p>12 the website, which would be the entire chapter, we</p> <p>13 pulled this relevant portion.</p> <p>14 MR. WORSECK: Okay.</p> <p>15 BY MR. FROMMER:</p> <p>16 Q. Do you recognize this document?</p> <p>17 A. I recognize the ordinance, yes.</p> <p>18 Q. You sort of answered the next question.</p> <p>19 Can you describe what this is?</p> <p>20 A. This is an ordinance that regulates</p> <p>21 mobile food vendors in the City of Chicago.</p> <p>22 Q. Can you turn to Page 4, but,</p> <p>23 unfortunately, they are not numbered.</p> <p>24 When there, can you read about a third</p>
<p style="text-align: right;">Page 18</p> <p>1 knowledgeable person to be produced.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I'm comfortable in answering these</p> <p>4 questions today.</p> <p>5 BY MR. FROMMER:</p> <p>6 Q. Is there anyone that is more</p> <p>7 knowledgeable, in your opinion, at the City about</p> <p>8 these topics?</p> <p>9 A. No.</p> <p>10 Q. Let me ask a basic question.</p> <p>11 Does the City allow mobile food vehicles</p> <p>12 to operate?</p> <p>13 A. Yes.</p> <p>14 Q. Can they operate on public property?</p> <p>15 A. They can operate on the public way, yes.</p> <p>16 Q. Can they operate on private property?</p> <p>17 A. They can with written consent of the</p> <p>18 property or leaseholder.</p> <p>19 MR. FROMMER: Can you get Exhibit No. 2.</p> <p>20 This is City code, which I think you</p> <p>21 said you didn't look at.</p> <p>22</p> <p>23</p> <p>24</p>	<p style="text-align: right;">Page 20</p> <p>1 of the way up on the page subsection</p> <p>2 (f) for us.</p> <p>3 A. For clarity, 7-38-117(f).</p> <p>4 Q. 115(f) -- sorry. I was including the</p> <p>5 cover page.</p> <p>6 A. To be clear, 7-38-115(f).</p> <p>7 Q. Yes.</p> <p>8 A. "No operator of a mobile food vehicle</p> <p>9 shall park or stand such vehicle within 200 feet of</p> <p>10 any principal customer entrance to a restaurant</p> <p>11 which is located on the street level; provided,</p> <p>12 however, the restriction in this subsection shall</p> <p>13 not apply between 12:00 a.m. and 2:00."</p> <p>14 Q. Next paragraph, please.</p> <p>15 A. "Restaurant, for purposes of this</p> <p>16 section, means any public place at a fixed location</p> <p>17 kept, used maintained, advertised and held out to</p> <p>18 the public as a place where food and drink is</p> <p>19 prepared and served for the public consumption on</p> <p>20 or off the premises pursuant to the required</p> <p>21 licenses. Such establishments include, but are not</p> <p>22 limited to, restaurants, coffee shops, cafeterias,</p> <p>23 dining rooms, eating houses, short order cafes,</p> <p>24 luncheonettes, grills, tea rooms and sandwich</p>



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<p style="text-align: right;">Page 21</p> <p>1 shops."</p> <p>2 Q. Thank you. I appreciate that.</p> <p>3 Having just read this subsection, would</p> <p>4 a Starbucks qualify as a restaurant for the</p> <p>5 purposes of the 200-foot rule?</p> <p>6 MR. WORSECK: Objection. Vague.</p> <p>7 BY THE WITNESS:</p> <p>8 A. It may or may not.</p> <p>9 BY MR. FROMMER:</p> <p>10 Q. What would it depend on?</p> <p>11 A. If food and drink is served and</p> <p>12 prepared.</p> <p>13 Q. On the first line of the paragraph that</p> <p>14 begins "Restaurants," the last phrase, what does it</p> <p>15 say?</p> <p>16 A. Repeat that.</p> <p>17 Q. Fourth line, what's the last phrase</p> <p>18 there?</p> <p>19 A. "Such establishments include, but are</p> <p>20 not limited to, restaurants, coffee shops,</p> <p>21 cafeterias" --</p> <p>22 Q. Yes. That's enough.</p> <p>23 Is Starbucks a coffee shop?</p> <p>24 A. It is.</p>	<p style="text-align: right;">Page 23</p> <p>1 Q. Same question about 7-Eleven's,</p> <p>2 convenience stores.</p> <p>3 A. Again, if they are serving food and</p> <p>4 drink.</p> <p>5 Q. How many retail establishments in the</p> <p>6 City of Chicago qualify as restaurants for the</p> <p>7 purposes of the 200-foot rule?</p> <p>8 A. That's a difficult question.</p> <p>9 Our database today, we have one retail</p> <p>10 food license that encompasses all types of food</p> <p>11 services.</p> <p>12 The type of food services is not broken</p> <p>13 down completely between food and drink, or what is</p> <p>14 prepared or what is packaged.</p> <p>15 Our data is, for lack of a better term,</p> <p>16 old. We had data back from the 80's and 90's that</p> <p>17 were moved into a new database in the year 2000 all</p> <p>18 falling under one license type or retail food</p> <p>19 license type.</p> <p>20 The business activity in many cases is</p> <p>21 extremely vague. It says "Food."</p> <p>22 What does that mean?</p> <p>23 Q. If a mobile food truck wanted to come up</p> <p>24 to a restaurant, and he knew it was a retail food</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. So would it be qualified as a restaurant</p> <p>2 for the purposes of the 200-foot rule?</p> <p>3 MR. WORSECK: Objection to the extent you are</p> <p>4 calling for a legal conclusion.</p> <p>5 BY THE WITNESS:</p> <p>6 A. It may include a coffee shop.</p> <p>7 BY MR. FROMMER:</p> <p>8 Q. What about Dunkin Donuts, would that</p> <p>9 qualify as a restaurant for the purposes of the</p> <p>10 200-foot rule?</p> <p>11 A. The restaurant, to qualify, would need</p> <p>12 to serve food and drink and prepare it.</p> <p>13 Q. Does Dunkin Donuts sell food and drink?</p> <p>14 A. Some just serve food. Some serve just</p> <p>15 drink. Some serve both.</p> <p>16 Q. Is it the City's position that in order</p> <p>17 to decide if somebody comes up to a Dunkin Donuts,</p> <p>18 they have to go in and check the menu in order to</p> <p>19 determine whether the 200-foot applies?</p> <p>20 A. They may.</p> <p>21 Q. What about McDonald's, would that</p> <p>22 qualify as a restaurant for the purposes of the</p> <p>23 200-foot rule?</p> <p>24 A. If they are serving food and drink.</p>	<p style="text-align: right;">Page 24</p> <p>1 establishment, would that be enough for them to</p> <p>2 determine whether the 200-foot rule applied?</p> <p>3 A. I think the operator would have to be</p> <p>4 familiar with the restaurant and see if food and</p> <p>5 drink is prepared and served at that location.</p> <p>6 Q. You mentioned food and drink.</p> <p>7 Does the City take the position that in</p> <p>8 order to be qualified for the 200-foot rule, a</p> <p>9 retail food establishment has to serve both food</p> <p>10 and drink, so that simply food would not be enough?</p> <p>11 A. Food and drink is prepared and served at</p> <p>12 the location.</p> <p>13 Q. So I want to make sure I understand.</p> <p>14 Both must be prepared and served at the</p> <p>15 location?</p> <p>16 A. Yes.</p> <p>17 Q. Mobile food vehicles that are serving</p> <p>18 people who are engaged in construction, are they</p> <p>19 subject to the 200-foot rule?</p> <p>20 A. They are not.</p> <p>21 Q. Are there any other exceptions like</p> <p>22 that?</p> <p>23 A. It would be the hours of operation.</p> <p>24 Between 12:00 a.m. and 2:00 a.m., as</p>

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1 well as the mobile food stands alleviates that
2 200-foot rule.
3 Q. What City agencies administer and
4 enforce the 200-foot rule?
5 A. The Department of Police. My
6 Department, Department of Business Affairs and
7 Consumer Protection. Possibly Health.
8 Q. What are the roles that each of those
9 organizations play in administering and enforcing
10 the 200-foot rule?
11 A. Well, they have the ability to write
12 citations if they are within 200 feet.
13 Q. All three agencies, Police, Business
14 Affairs and Health could all write citations?
15 A. Yes.
16 Q. Is there one organization that has
17 primary responsibility for enforcing the 200-foot
18 rule?
19 A. It's a shared responsibility.
20 BACP and Police probably have the most
21 responsibility, if you will. With more beat cops
22 on the street probably issue more.
23 Q. Does BACP have officials out on the
24 street looking for violations of the 200-foot rule?

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1 A. No.
2 Q. Do the police have officers on the
3 street looking for violations of the 200-foot rule?
4 MR. WORSECK: Objection. Vague.
5 BY THE WITNESS:
6 A. The primary role of a police officer is
7 for all safety.
8 They are not there specifically to
9 police vehicles or mobile operators within 200
10 feet.
11 BY MR. FROMMER:
12 Q. But it is one of their responsibilities?
13 A. As with many others, yes.
14 Q. Do you know if the Health Department has
15 any officials that go out and look for violations
16 of the 200-foot rule?
17 A. Health primary focuses on sanitation
18 issues. Unsafe handling or food-related issues.
19 Q. But they are empowered to write
20 citations for violations of the 200-foot rule?
21 A. They could.
22 Q. How do those agencies determine if a
23 mobile food vehicle is violating the 200-foot rule?
24 A. I can speak for BACP.

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1 If a citation were to be issued, it
2 could either be by just being at the location and
3 seeing the proximity, if it is directly in front of
4 the restaurant.
5 Or, if needed, which we have not done
6 yet, they could measure it by either a wheel
7 measuring tool or laser guide.
8 Q. So I want to make sure I understand.
9 This is with regards to BACP officials
10 enforcing the 200-foot rule?
11 A. That's correct.
12 Q. Does the City know how police officers
13 determine whether there was a violation of the
14 200-foot rule?
15 A. I do not know.
16 Q. Does the City know how Health officials
17 determine whether a violation of the 200-foot rule
18 has occurred?
19 A. I don't know.
20 Q. You said a second ago that BACP
21 officials go out and sort of take a visual gauge of
22 how far the mobile food vehicle is from the
23 restaurant.
24 What part of the restaurant is the part

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1 for enforcement of the 200-foot rule?
2 MR. WORSECK: Objection. Your question
3 mischaracterizes her prior testimony.
4 THE WITNESS: Could you ask that again.
5 BY MR. FROMMER:
6 Q. When BACP officials are deciding whether
7 to issue a citation for violation of the 200-foot
8 rule, how do they determine whether a violation has
9 occurred?
10 A. Typically, the vehicle is directly in
11 front of the restaurant.
12 Q. I believe a second ago you said that in
13 some instances, they have not done so, but they
14 will pull out a measuring stick or laser guide.
15 They could do that to determine
16 distance?
17 A. There are tools available. They could
18 do it. They have not.
19 Q. What is the operative distance that is
20 being measured for purposes of the 200-foot rule?
21 Is it the distance between the principal
22 customer entrance of the restaurant and the mobile
23 food vehicle?
24 A. That's correct.

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<p style="text-align: right;">Page 29</p> <p>1 Q. So is it your understanding the 200-foot 2 rule creates, in effect, a circle with a 200-foot 3 radius between the principal customer entrance of 4 the restaurant, and if a mobile food vehicle was 5 operating within that radius, it would be in 6 violation of the rule? 7 A. It would be directly -- yes. 8 It would be that the vehicle is within 9 200 feet of the primary entrance. 10 I did want to add one thing that I 11 didn't answer before. 12 That would be the primary entrance on 13 the first floor. I left that out. 14 Q. That's fine. I took it as part of that. 15 But let me make sure we understand. 16 <u>In essence, the way that the BACP and</u> 17 <u>the City enforces the 200-foot rule is you have a</u> 18 <u>spot -- you take the principal customer entrance,</u> 19 <u>and then anywhere within 200 feet of that radius,</u> 20 <u>that would be -- if a mobile food vehicle is in</u> 21 <u>there, it would be a violation?</u> 22 A. That's correct. 23 Q. A food truck that parked directly in 24 front of a restaurant, that would violate the</p>	<p style="text-align: right;">Page 31</p> <p>1 BY MR. FROMMER: 2 Q. Okay. Thank you. That's helpful. 3 For the next set of questions, I will 4 use the phrase "parking spaces." I want to make 5 sure we are talking about the same thing. 6 For the purposes of these questions, 7 understand when I say "parking spaces," I'm 8 referring to like legal parking spots on public 9 property where a mobile food vehicle could legally 10 operate. 11 Let's put aside the 200-foot rule for 12 the time being. 13 Does the City know how many parking 14 spaces there are in the Loop where food trucks 15 could legally operate under the 200-foot rule? 16 A. I don't have that information. 17 I will defer to CDOT for that 18 information. 19 Q. You were designated for the 20 implementation of the enforcement of the 200-foot 21 rule, is that correct? 22 A. Yes. 23 Q. Do you happen to know if the City keeps 24 track of those legal parking spaces?</p>
<p style="text-align: right;">Page 30</p> <p>1 200-foot rule, is that correct? 2 A. Yes. 3 Q. <u>If a food truck was parked across the</u> 4 <u>street from a restaurant, but was within 200 feet,</u> 5 <u>would that be a violation?</u> 6 A. <u>If they were not within 200 feet?</u> 7 Q. <u>No. Within 200 feet.</u> 8 A. <u>But across the street? Yes.</u> 9 Q. <u>Would a food truck violate the 200-foot</u> 10 <u>rule if it was a block over, next block over past</u> 11 <u>an intersection, but still within 200 feet of the</u> 12 <u>principal customer entrance?</u> 13 A. <u>Yes. It's 200 feet.</u> 14 Q. If a food truck was parked around the 15 block from the restaurant, but was still within 200 16 feet of the principal customer entrance, would that 17 be a violation of the 200-foot rule? 18 MR. WORSECK: Objection to the extent that 19 there are any blocks in the City that would allow 20 that to happen, but if there are, you could answer. 21 BY THE WITNESS: 22 A. Again, it's 200 feet from the primary 23 entrance. 24</p>	<p style="text-align: right;">Page 32</p> <p>1 A. I'm aware there is information. I don't 2 know how it's housed or how you could pull it. 3 There is information regarding legal 4 parking spaces. 5 Q. Do you know if the City has a map or 6 list that displays where these legal parking spaces 7 are? 8 A. I can't answer that. 9 Q. Who would be able to answer that? 10 A. It would be the Department of 11 Transportation. 12 Q. Any particular official that you think 13 would be knowledgeable about this? 14 MR. WORSECK: Don't speculate. 15 BY THE WITNESS: 16 A. I can't honestly answer that. I would 17 have to do some research and reach out to see who 18 would be the best person to answer that. 19 BY MR. FROMMER: 20 Q. Do you think Luanne Hamilton might be 21 able to answer that question? 22 A. I can't speak for her. 23 Q. So I'm assuming you don't know whether 24 the City updates any map, is that correct?</p>



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1 A. I can't answer that question.
2 Q. Do you know how many parking spaces are
3 in the Loop where food trucks cannot operate
4 because of the 200-foot rule?
5 By that, legal parking spaces where they
6 cannot operate because of the 200-foot rule?
7 A. I don't know, no.
8 Q. Do you know how many locations on
9 private property in the Loop food trucks could
10 legally operate under the 200-foot rule?
11 MR. WORSECK: Would you define what you are
12 referring to as the "Loop"?
13 BY MR. FROMMER:
14 Q. Do you understand what the Loop is, the
15 boundaries of the Loop?
16 MR. WORSECK: If you have an understanding
17 you're working with, please state that.
18 BY MR. FROMMER:
19 Q. I will back up.
20 What's your understanding when I refer
21 to the "Loop," your understanding of that?
22 A. The Loop to me is the downtown area. I
23 don't have the specific boundary streets handy here
24 to speak to that.

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1 The concentrated downtown area.
2 Q. Do you know how many locations on
3 private property within the Loop where food trucks
4 could legally operate?
5 A. I do not.
6 Q. Do you know how many locations on
7 private property in the Loop food trucks cannot
8 operate because of the 200-foot rule?
9 A. I do not.
10 Q. Do you know if the City studied how the
11 the 200-foot rule impacts where food trucks can
12 park in the Loop?
13 MR. WORSECK: Objection. Vague.
14 BY THE WITNESS:
15 A. At the time of creating the ordinance,
16 the 200-foot rule has been an existing section of
17 this amendment for many many years.
18 In amending this ordinance, it's looking
19 at dense areas where there would be restrictions
20 that birth the mobile food stand program which
21 would allow and open up those dense areas to allow
22 trucks to operate in those areas within that
23 restriction.
24

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1 BY MR. FROMMER:
2 Q. We will talk about the mobile food
3 stands later.
4 Let me make sure I understand.
5 You're not aware whether the City has
6 studied how the 200-foot rule impacts where food
7 trucks can park in the Loop?
8 MR. WORSECK: Same objection. Vague.
9 BY THE WITNESS:
10 A. At the time of the ordinance, we ran
11 reports of the number of retail food
12 establishments, which, again, going back to the
13 prior answer is a little vague not knowing exactly
14 if it falls within this definition.
15 Also looking at protected bike lanes.
16 So there was some research done knowing that that,
17 again, was the creation of the mobile food stand.
18 BY MR. FROMMER:
19 Q. Were there any documents created as part
20 of that analysis?
21 A. Internal data was reviewed and harvested
22 from our licensing database.
23 Q. But did the BACP or other Departments
24 actually put something together to show what the

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1 effect of the rule would be?
2 A. Not necessarily for internal purposes as
3 to what counts look like.
4 Kind of in the regular course of the day
5 we harvest data and pull data.
6 MR. WORSECK: I note, for the record, the City
7 has produced to the plaintiffs, as part of an
8 ongoing project to establish an agreed-upon map of
9 where trucks can and can't operate in the Loop,
10 various data relating to retail food
11 establishments.
12 BY MR. FROMMER:
13 Q. When you're doing this analysis, there
14 were internal documents created, true?
15 A. Reports created, yes.
16 Q. Who would house those reports?
17 Whose reports are they, BACP's?
18 A. They were working reports.
19 As Drew mentioned, maps were created or
20 data was pulled to get some sort of idea of what
21 that density looked like in the Loop.
22 Q. Let me ask this.
23 Let's say there is an area in the City
24 where there are no restaurants. Let's say there's

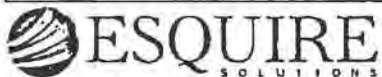


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<p style="text-align: right;">Page 37</p> <p>1 a block with no restaurants at all or within 200 2 feet of a block. 3 Would there be a limit as to how many 4 trucks could park in legal parking spaces on that 5 block? 6 A. The only provision would be if there was 7 a food stand, it would only allow up to two. 8 Q. Let's say there's no restaurants and no 9 food stands. It's just a block in the City that 10 has no restaurants, no food stands and has a number 11 of parking spaces along it. 12 Is there any limitation in the law as to 13 how many food trucks could park there? 14 A. To the best of my knowledge, no. 15 Q. So if there were six open spots in a 16 row, six food trucks could park there? 17 A. If they legally paid the meter. 18 Q. Yes. What would happen if a new 19 restaurant opened up on that block? 20 A. And it met the criteria for the 21 restriction? 22 Then those vehicles could no longer park 23 there. They would be in violation. 24 Unless, again, it was a designated food</p>	<p style="text-align: right;">Page 39</p> <p>1 Q. Based on your history with food trucks, 2 and I know you have done a good amount of work with 3 them, do they tend to go places where there is 4 customer demand? 5 A. Yes. 6 Q. So if there are areas of the City that 7 they cannot go because of the 200-foot rule, but 8 there is customer demand there, would you expect 9 them to go to those locations if the 200-foot rule 10 no longer existed? 11 MR. WORSECK: Objection to the extent it calls 12 for speculation. 13 It's a hypothetical question. 14 BY THE WITNESS: 15 A. I would assume so. 16 BY MR. FROMMER: 17 Q. Would it be fair to say that the 18 200-foot rule reduces the number of locations in 19 the Loop, to your understanding of the Loop, where 20 mobile food vehicles could legally operate? 21 A. Yes. Along with other restrictions such 22 as protected bike lanes and the lack of legal 23 parking spaces. 24 Q. Putting those aside, the bike lanes and</p>
<p style="text-align: right;">Page 38</p> <p>1 stand. 2 Q. We are not talking about food stands 3 now, but thank you. 4 A. As well as that midnight to 2:00 a.m. 5 exclusion. 6 Q. So from 5:00 a.m. to midnight they would 7 not be allowed to park in those spaces? 8 A. That's correct. 9 MR. WORSECK: Objection. I think you 10 misstated the time parameters. 11 BY MR. FROMMER: 12 Q. If the City got rid of or stopped 13 enforcing the 200-foot rule, would you expect 14 mobile food vehicles to spread out beyond the 15 parking spaces and locations where they are 16 currently allowed to operate? 17 MR. WORSECK: Objection. Don't speculate. 18 BY THE WITNESS: 19 A. It would be difficult to answer. I 20 don't know what they would do. 21 BY MR. FROMMER: 22 Q. Why would it be difficult? 23 A. I can't speak to where they would or 24 wouldn't go.</p>	<p style="text-align: right;">Page 40</p> <p>1 the legal parking spaces. 2 <u>Given all those other things that you</u> 3 <u>identified, the protected bike lanes, parking</u> 4 <u>spaces, does the 200-foot rule further reduce the</u> 5 <u>number of available parking spaces available</u> 6 <u>places in the Loop where food trucks could operate?</u> 7 A. Yes. 8 Q. Are mobile food vehicles operating on 9 private property subject to the 200-foot rule? 10 A. Yes, unless it's a construction site. 11 Q. Is there anything different about how 12 the 200-foot rule applies to mobile food vehicles 13 operating on private property as opposed to public 14 property? 15 A. Same rules apply with the exception on 16 private property. 17 As I mentioned earlier, they need 18 written consent of the property owner or 19 leaseholder. 20 I did want to add that all of the 21 operational requirements would remain such as the 22 two-hour service limit, as well as the restriction. 23 Q. Food trucks even operating on private 24 property are limited to two hours?</p>



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<p style="text-align: right;">Page 41</p> <p>1 A. Yes.</p> <p>2 Q. What's the rationale or basis for that?</p> <p>3 MR. WORSECK: Objection. Beyond the scope.</p> <p>4 BY MR. FROMMER:</p> <p>5 Q. In your view, what's the purpose for</p> <p>6 that?</p> <p>7 MR. WORSECK: Don't speculate.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I don't know.</p> <p>10 BY MR. FROMMER:</p> <p>11 Q. Could a mobile food vehicle operate,</p> <p>12 given that it gets written consent and everything,</p> <p>13 on private property if there is a restaurant on</p> <p>14 that property?</p> <p>15 A. If it is not within 200 feet.</p> <p>16 Q. Let me rephrase. That's unfair.</p> <p>17 So you have a private lot. It's private</p> <p>18 personal property. On that lot there's a</p> <p>19 restaurant.</p> <p>20 The restaurant says to the food truck</p> <p>21 "You can park on my lot," and they sign the written</p> <p>22 agreement.</p> <p>23 Is that legal?</p> <p>24 A. It is still a restriction of the</p>	<p style="text-align: right;">Page 43</p> <p>1 "No operator of a mobile food vehicle shall park or</p> <p>2 stand such vehicle within 200 feet of any principal</p> <p>3 customer entrance to a restaurant which is located</p> <p>4 on the street level."</p> <p>5 BY MR. FROMMER:</p> <p>6 Q. Could a food truck operate there,</p> <p>7 assuming there are no other restaurants within 200</p> <p>8 feet?</p> <p>9 A. Yes.</p> <p>10 Q. So there is a restaurant on the lot. No</p> <p>11 other restaurants nearby. A food truck wants to</p> <p>12 come and park on the lot. The restaurant owner</p> <p>13 says sure.</p> <p>14 Can they legally do that?</p> <p>15 A. It refers back to subsection (f) saying</p> <p>16 it cannot.</p> <p>17 Q. What's your understanding of the words</p> <p>18 in (k)(iii) "except for the private property that</p> <p>19 allows the operation of the mobile food vehicle."</p> <p>20 What do you think that's referring to?</p> <p>21 A. I have taken this to read that it's not</p> <p>22 allowed unless – in answering this, it has been</p> <p>23 the only retail restaurant-owned food vehicle</p> <p>24 that's been allowed there.</p>
<p style="text-align: right;">Page 42</p> <p>1 200-foot rule.</p> <p>2 Q. Look at Exhibit No. 2, the page after</p> <p>3 the one we were talking about before.</p> <p>4 Subsection (k) right near to the top of</p> <p>5 the page.</p> <p>6 Look at (k)(iii) and read that.</p> <p>7 A. "The mobile food vendor is in compliance</p> <p>8 with subsection (b)(i) and, except for the private</p> <p>9 property that allows the operation of the mobile</p> <p>10 food vehicle, subsection (f) of this section,"</p> <p>11 which is the 200-foot rule of the section.</p> <p>12 Q. I will restate the question then.</p> <p>13 If a food truck got permission from a</p> <p>14 restaurant owner who had a private lot to come and</p> <p>15 park on his lot, could he do that?</p> <p>16 A. There is still a 200-foot restriction.</p> <p>17 Q. What's your understanding of subsection</p> <p>18 (k)(iii), particularly, the language "except for</p> <p>19 the private property that allows the operation of</p> <p>20 the mobile food vehicle" to mean?</p> <p>21 MR. WORSECK: Objection to the extent it calls</p> <p>22 for a legal conclusion.</p> <p>23 BY THE WITNESS:</p> <p>24 A. It refers back to subsection (f), that</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. What do you mean?</p> <p>2 A. I have a mobile food truck and I have a</p> <p>3 restaurant. I can use my vehicle there.</p> <p>4 Q. So the position of the City is if the</p> <p>5 food truck is owned by the restaurant, then they</p> <p>6 could be both on the – it could be on the</p> <p>7 restaurant's private property?</p> <p>8 A. As long as it is not within 200 feet of</p> <p>9 another restaurant.</p> <p>10 Q. But if it was a food truck owned by</p> <p>11 another person, by a company other than the</p> <p>12 restaurant, would it be allowed there?</p> <p>13 A. No.</p> <p>14 MR. WORSECK: Can we take a quick break.</p> <p>15 MR. FROMMER: Yes. Actually, let's take five</p> <p>16 minutes.</p> <p>17 (WHEREUPON, a short recess was had.)</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. If a restaurant wants to let a food</p> <p>20 truck park on its location, and the food truck is</p> <p>21 not owned by the restaurant, is it allowed to do</p> <p>22 that?</p> <p>23 A. By the section of the code it is. We</p> <p>24 have not encountered that.</p>

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<p style="text-align: right;">Page 45</p> <p>1 We have had a number of questions about</p> <p>2 a retail operation owning a food truck, if the food</p> <p>3 truck would be there.</p> <p>4 This question has not come up in our</p> <p>5 shop or been asked of us.</p> <p>6 So I misunderstood you before. I</p> <p>7 apologize.</p> <p>8 Under this section, it is allowed with</p> <p>9 permission.</p> <p>10 Q. Okay. And since it is owned -- okay. I</p> <p>11 understand.</p> <p>12 Could a restaurant that owns a food</p> <p>13 truck bring that food truck on its lot if there</p> <p>14 were other restaurants within 200 feet?</p> <p>15 A. This provision would -- it would depend</p> <p>16 on who owns the lot and to make sure there was</p> <p>17 permission from the other restaurants that there</p> <p>18 wasn't a conflict with that truck being there.</p> <p>19 Same scenario as we talked about before.</p> <p>20 Q. Okay. So let's say Tamale Spaceship has</p> <p>21 a new restaurant. They want to bring the Tamale</p> <p>22 Spaceship food truck there and have it parked</p> <p>23 there.</p> <p>24 There are restaurants within 200 feet of</p>	<p style="text-align: right;">Page 47</p> <p>1 BY MR. FROMMER:</p> <p>2 Q. If a restaurant within 200 feet of the</p> <p>3 Tamale Spaceship -- if there was a restaurant</p> <p>4 within 200 feet, could they do that?</p> <p>5 A. Repeat that.</p> <p>6 Q. So if Tamale Spaceship parked its food</p> <p>7 truck on its lot and wanted to operate the food</p> <p>8 truck, and there were restaurants within 200 feet</p> <p>9 of that food truck, could they operate the food</p> <p>10 truck?</p> <p>11 MR. WORSECK: Same objection.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Yes.</p> <p>14 BY MR. FROMMER:</p> <p>15 Q. What if Tamale Spaceship opens up its</p> <p>16 restaurant, wants to invite Cupcakes for Courage to</p> <p>17 come in and sell cupcakes on the lot, and there are</p> <p>18 restaurants within 200 feet of where the trucks</p> <p>19 operate, is that permissible?</p> <p>20 A. If it's allowed on the private property.</p> <p>21 Q. Okay. Let's switch gears a little.</p> <p>22 It is still the 200-foot rule, but with</p> <p>23 the construction exception.</p> <p>24 Let's go back to the code, Section</p>
<p style="text-align: right;">Page 46</p> <p>1 Tamale Spaceship's lot.</p> <p>2 Could Tamale Spaceship bring its food</p> <p>3 truck there?</p> <p>4 A. They would most likely be having it</p> <p>5 there anyway to use as a commissary, but they</p> <p>6 couldn't leave it there.</p> <p>7 Q. Could they operate the food truck from</p> <p>8 that location?</p> <p>9 A. Are they the property owner?</p> <p>10 Q. Yes. Tamale Spaceship, I forget the</p> <p>11 name of the restaurant, but the people that own it</p> <p>12 have a restaurant. They want to bring the truck</p> <p>13 there. They want to do sales. Operate the food</p> <p>14 truck on that lot.</p> <p>15 Can they do that?</p> <p>16 MR. WORSECK: Objection to the extent it's an</p> <p>17 incomplete hypothetical.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Based on the ordinance, they could do</p> <p>20 that.</p> <p>21 We have not encountered that situation.</p> <p>22 Not knowing if there would be complaints from other</p> <p>23 restaurants there at the property.</p> <p>24</p>	<p style="text-align: right;">Page 48</p> <p>1 115(h).</p> <p>2 Take a look at that on Exhibit No. 2.</p> <p>3 It appears on Page 4. About halfway down on the</p> <p>4 page.</p> <p>5 Read that for us.</p> <p>6 A. "Mobile food vehicles that are being</p> <p>7 used to provide food and drink to persons engaged</p> <p>8 in construction in the City of Chicago and which</p> <p>9 are not equipped with noise-making devices are</p> <p>10 exempt from the provisions of (f) above, provided</p> <p>11 such vehicles are standing or parked in a legal</p> <p>12 spot."</p> <p>13 Q. Okay. Would you agree that the code</p> <p>14 exempts mobile food vehicles serving people who are</p> <p>15 engaged in construction from the 200-foot rule?</p> <p>16 A. Per the ordinance, yes.</p> <p>17 Q. Why does the code exempt mobile food</p> <p>18 vehicles serving people engaged in construction</p> <p>19 from the 200-foot rule?</p> <p>20 MR. WORSECK: Objection to the extent it calls</p> <p>21 for testimony about legislative intent or</p> <p>22 rationale.</p> <p>23 She has been designated to speak to</p> <p>24 governmental purposes, but that's a distinct issue.</p>



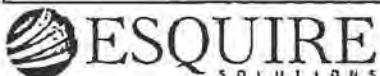
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<p style="text-align: right;">Page 49</p> <p>1 BY THE WITNESS:</p> <p>2 A. This section of the code has been</p> <p>3 existing for many many years with a slight</p> <p>4 exception adding illegal parking spots.</p> <p>5 Construction sites can be in areas that</p> <p>6 have retail food or restaurant options that are</p> <p>7 possibly not open or available to serve a</p> <p>8 construction worker.</p> <p>9 There could be time constraints. It</p> <p>10 could be the type of restaurant. Perhaps it's a</p> <p>11 while tablecloth fine dining place where there</p> <p>12 wouldn't be a quick fast food choice for the</p> <p>13 construction worker.</p> <p>14 BY MR. FROMMER:</p> <p>15 Q. You mentioned a second ago that as part</p> <p>16 of the 2012 ordinance, they changed part of</p> <p>17 subsection (h).</p> <p>18 What did they change precisely?</p> <p>19 A. The section was added about parking in a</p> <p>20 legal parking spot.</p> <p>21 Q. What does that phrase mean, "legal</p> <p>22 parking spot"?</p> <p>23 A. Well, it would mean they are on the</p> <p>24 property that would allow them at the construction</p>	<p style="text-align: right;">Page 51</p> <p>1 BY MR. FROMMER:</p> <p>2 Q. This actually goes right into my next</p> <p>3 question.</p> <p>4 Is a person who is building a new</p> <p>5 building engaged in construction?</p> <p>6 MR. WORSECK: Objection to the extent it calls</p> <p>7 for a legal conclusion or speculation. Incomplete</p> <p>8 hypothetical.</p> <p>9 BY THE WITNESS:</p> <p>10 A. If he's constructing at that time, it is</p> <p>11 an active construction site.</p> <p>12 BY MR. FROMMER:</p> <p>13 Q. Is there anything in the code that makes</p> <p>14 that clear?</p> <p>15 A. I can't answer that.</p> <p>16 Q. Do you know if there are any regulations</p> <p>17 that make that clear?</p> <p>18 A. I can't answer that.</p> <p>19 Q. When you say you can't answer that, you</p> <p>20 mean you don't know?</p> <p>21 A. I don't know.</p> <p>22 Q. A person renovating an office building,</p> <p>23 and you probably noticed they are doing a lot of</p> <p>24 renovations here.</p>
<p style="text-align: right;">Page 50</p> <p>1 site.</p> <p>2 Clearly, they are not in any sort of No</p> <p>3 Parking zone, tow zone, handicap zone.</p> <p>4 So a spot that would allow them to park</p> <p>5 legally.</p> <p>6 Q. Similar to the parking spaces we were</p> <p>7 talking about earlier, a place where the truck</p> <p>8 could legally operate.</p> <p>9 It can park there legally?</p> <p>10 A. Yes.</p> <p>11 Q. Does the code define what it means to be</p> <p>12 engaged in construction?</p> <p>13 A. There are definitions in the building</p> <p>14 code that highlight construction.</p> <p>15 Q. Are those provisions in the building</p> <p>16 code controlling as to what "engaged in</p> <p>17 construction" means here?</p> <p>18 MR. WORSECK: Objection to the extent it calls</p> <p>19 for a legal conclusion.</p> <p>20 BY THE WITNESS:</p> <p>21 A. The term of construction is something</p> <p>22 that's actively being constructed, rehabbed,</p> <p>23 something in the process of being transformed.</p> <p>24</p>	<p style="text-align: right;">Page 52</p> <p>1 The people that are doing those</p> <p>2 renovations, are they engaged in construction?</p> <p>3 MR. WORSECK: Same objection as before.</p> <p>4 BY THE WITNESS:</p> <p>5 A. They could be.</p> <p>6 BY MR. FROMMER:</p> <p>7 Q. What would be needed to determine if</p> <p>8 they are or are not engaged in construction?</p> <p>9 A. If they are rehab, remodeling, there is</p> <p>10 some sort of construction going on. Some sort of</p> <p>11 permit was pulled for them to rehab something.</p> <p>12 They would most likely have</p> <p>13 construction-type workers, trade workers that are</p> <p>14 here actively building something, remodeling</p> <p>15 something, fixing something.</p> <p>16 Q. Does the code require that a permit be</p> <p>17 pulled before someone can be deemed to be engaged</p> <p>18 in construction?</p> <p>19 A. A permit is required from the City of</p> <p>20 Chicago if there is active construction.</p> <p>21 Levels of permits vary. I'm not an</p> <p>22 expert relating to building permits, but a permit</p> <p>23 is required for replacement, repair, construction,</p> <p>24 plumbing, electrical, what have you.</p>

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<p style="text-align: right;">Page 53</p> <p>1 Q. Okay. So would someone have to pull a 2 permit in order for the people who are working 3 under that permit to qualify for the exception? 4 MR. WORSECK: Objection to the extent it's 5 beyond the designation and calls for speculation. 6 BY THE WITNESS: 7 A. Typically, construction work in the City 8 of Chicago does require a permit. 9 I can't give examples of when it would 10 not require a permit. At what level of 11 construction that would be. 12 I can't answer that. 13 BY MR. FROMMER: 14 Q. Is pulling a permit a legal prerequisite 15 before a truck could qualify for the exemption if 16 it's serving the people who are engaged in the 17 conduct that the permit was pulled for? 18 Does that make sense? 19 A. Yes. It goes back to permit 20 requirements. 21 Is a permit required to conduct whatever 22 rehab, remodeling, construction they are doing. 23 Q. Would a handyman be a person engaged in 24 construction?</p>	<p style="text-align: right;">Page 55</p> <p>1 But construction to me is based on 2 building something, changing something, altering 3 something. 4 BY MR. FROMMER: 5 Q. Subsection (h), does it require a mobile 6 food vehicle operate at a specific location to 7 qualify for the exemption? 8 A. It would be the construction site. 9 Q. So would they have to be on the 10 construction site itself? 11 A. It would need to be in the proximity of 12 the construction site. 13 Q. Could it be in a legal parking spot on 14 public property outside the construction site? 15 A. As stated in the ordinance, yes. 16 Q. Is there anything in the code or 17 regulations that states that? 18 A. Not that I am aware of. 19 We have not received any complaints 20 and/or questions for interpretation regarding this 21 piece. 22 As I mentioned before, it is a long 23 existing section of this code. 24 Q. To make sure I understand, if a food</p>
<p style="text-align: right;">Page 54</p> <p>1 MR. WORSECK: Objection to the extent it calls 2 for speculation or legal conclusion. 3 BY THE WITNESS: 4 A. Depends on the type of rehab or 5 construction. 6 BY MR. FROMMER: 7 Q. It doesn't matter about the type of 8 project he is doing? 9 A. That's a difficult question to answer. 10 It would really depend on what's happening at the 11 construction site. 12 Q. What would you be looking for precisely 13 in order to determine this? 14 A. Well, construction to me is rehabbing 15 something, building something, changing something. 16 I don't know if installing a new chair 17 is considered a construction site. 18 Q. Is there anything in the code that 19 defines what qualifies as construction or not? 20 MR. WORSECK: Objection. Asked and answered. 21 BY THE WITNESS: 22 A. I think I answered before there are some 23 definitions regarding some brief areas of 24 construction.</p>	<p style="text-align: right;">Page 56</p> <p>1 truck is operating on the construction site, they 2 would be exempt, is that correct? 3 A. Yes. 4 Q. If they were on public property in a 5 certain proximity of the construction site and 6 serving people engaged in construction, that food 7 truck would be exempt, is that correct? 8 A. Yes. 9 Q. What if the food truck was half a block 10 away from the construction site, would it qualify 11 for the exemption then? 12 MR. WORSECK: Objection. Calls for 13 speculation. 14 BY THE WITNESS: 15 A. That's difficult to answer. 16 Without having an actual scenario in 17 front of us, I can't speak why it would be half a 18 block away. 19 BY MR. FROMMER: 20 Q. Is there anything in the code or 21 regulations that says that a food truck has to be 22 within a certain distance of the construction site 23 to qualify for the exemption? 24 A. It is not called out.</p>



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<p>Page 57</p> <p>1 Q. <u>Is there any guidance that the City</u> 2 <u>provides food trucks about how close they have to</u> 3 <u>be parked to a construction site in order to</u> 4 <u>qualify for the exemption?</u> 5 A. <u>We have not had any requests for</u> 6 <u>information or questions relative to this.</u> 7 <u>It has been a section of the code that's</u> 8 <u>been in existence, but we have not had to address</u> 9 <u>it.</u> 10 Q. <u>So the answer is no?</u> 11 A. <u>No.</u> 12 Q. <u>Does the code require that the mobile</u> 13 <u>food vehicle exclusively serve persons who are</u> 14 <u>engaged in construction in order to qualify for the</u> 15 <u>exemption?</u> 16 MR. WORSECK: <u>Objection. Vague.</u> 17 BY THE WITNESS: 18 A. <u>The ordinance is being used to provide</u> 19 <u>food and drink to persons engaged in construction.</u> 20 BY MR. FROMMER: 21 Q. <u>Does the food truck have to provide food</u> 22 <u>and drink exclusively to persons engaged in</u> 23 <u>construction in order to qualify for the exemption?</u> 24 MR. WORSECK: <u>Same objection. Vague.</u></p>	<p>Page 59</p> <p>1 incomplete hypothetical and calls for speculation. 2 BY THE WITNESS: 3 A. I would say no, if it is just here and 4 there. A quick sale. That it's not the intent to 5 serve the public at the location. 6 Its primary focus is to serve 7 construction workers specific to this section. 8 BY MR. FROMMER: 9 Q. Is there a certain percentage of 10 customer clientele, people who are engaged in 11 construction versus people who are not engaged in 12 construction, a percentage at which point a food 13 truck no longer qualifies for the exemption? 14 MR. WORSECK: Same objection. 15 BY THE WITNESS: 16 A. No. 17 BY MR. FROMMER: 18 Q. How many locations in the City at any 19 given time are there people who are engaged in 20 construction? 21 A. I don't have an exact number. At any 22 given time there has to be a number of construction 23 sites throughout the City. 24 Q. Is there a list kept of active -- not</p>
<p>Page 58</p> <p>1 BY THE WITNESS: 2 A. The section does not specifically say 3 only. 4 It says it is used to provide persons 5 engaged at the construction site. 6 BY MR. FROMMER: 7 Q. Is the answer yes or no to that 8 question? 9 A. <u>The ordinance says it is being used to</u> 10 <u>provide food to persons engaged in construction.</u> 11 <u>My thought would be if it is just a</u> 12 <u>passerby, and they see a food truck there and want</u> 13 <u>to make a purchase, that they would be allowed to</u> 14 <u>do that.</u> 15 <u>But this piece, and for them to park</u> 16 <u>there would -- is meant to be for those</u> 17 <u>construction workers.</u> 18 Q. So if there's a food truck operating 19 near a construction site, and somebody happens to 20 walk by and picks up a cup of coffee from them, you 21 know, he is not engaged in construction, but just a 22 passerby, would the food truck then lose its 23 exemption under the code? 24 MR. WORSECK: <u>Objection to the extent it's an</u></p>	<p>Page 60</p> <p>1 construction sites. 2 Does the City keep a list of the number 3 of locations where people are engaged in 4 construction? 5 A. The City has a database that has access 6 to active permits. An active permit may result in 7 an active construction site. 8 But the permit -- the City would not 9 know every single day at every single moment if 10 that site is operational -- if it's under 11 construction. It would be a live permit. 12 Q. So the City is unaware at any given 13 point whether construction is occurring at a given 14 location? 15 MR. WORSECK: <u>Objection. Vague. Misstates</u> 16 <u>prior testimony.</u> 17 BY THE WITNESS: 18 A. An open permit would allow for 19 construction. 20 BY MR. FROMMER: 21 Q. Does the City have any way of 22 determining whether there is actually any 23 construction occurring at that location for which 24 the permit was pulled?</p>

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1 A. They can if that site is being inspected
2 for purposes of the permit.
3 Q. If there is an inspector there,
4 obviously, they can determine whether activity is
5 occurring.
6 But as a more general sense, does the
7 City have the ability to know at any given moment
8 whether there are persons engaged in construction
9 at a particular location?
10 MR. WORSECK: Objection. Vague.
11 BY THE WITNESS:
12 A. It goes back to if it's an open permit.
13 They are allowed to construct during an
14 open permit.
15 BY MR. FROMMER:
16 Q. The City has a list of permits, they
17 keep track of the permits issued?
18 A. Yes.
19 Q. They don't necessarily have a list of
20 where active construction is occurring at any given
21 moment, true?
22 A. They would have a list of the active
23 permits.
24 I can't speak if they have a list that

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1 there is actual construction happening every single
2 day while that permit is open.
3 Q. Do construction projects frequently
4 start and stop?
5 A. They could.
6 Q. Do you know approximately how many
7 permits have been pulled currently for the City of
8 Chicago?
9 A. I don't have an exact number.
10 Q. Is there someone at the City who would
11 know that number?
12 A. That data is from the Department of
13 Buildings.
14 Q. Does the Department of Buildings publish
15 any sort of list specifying -- publish any sort of
16 list that details where active permits have been
17 pulled?
18 A. Informing is available on the City's
19 data portal of permits.
20 Q. Do you know if BACP officials ever
21 looked at that list when trying to enforce the
22 200-foot rule?
23 A. To the best of my knowledge, we have
24 not.

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1 Q. If you wanted to find out the list of
2 active permit sites, how would you go about finding
3 that?
4 A. If we needed to find a specific
5 location, if there was an active construction site,
6 we would reach out to the Department of Buildings
7 to find out what information they had.
8 What type of permits were pulled for
9 that location within the scope of the permit.
10 Q. Is that something that police officers
11 would have access to?
12 A. I can't speak to the actual police
13 officer on the street.
14 But the police could have the same
15 access I would have in reaching out to the
16 Department of Buildings to find out if there was an
17 active site.
18 Q. So you're not sure whether they had
19 access to that information?
20 A. It would be available through the
21 Department of Buildings.
22 I can't say if they reached out to find
23 that out.
24 Q. You don't know if the Department of

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1 Buildings shares that information with the Police
2 Department or BACP?
3 MR. WORSECK: Objection to the extent it
4 mischaracterizes prior testimony.
5 BY THE WITNESS:
6 A. They can and will share data.
7 And if we are asked to in other
8 scenarios, yes.
9 BY MR. FROMMER:
10 Q. Has it occurred in the past?
11 A. We have never received any questions or
12 concerns regarding this piece of the ordinance.
13 Q. You have been around construction
14 projects, I'm sure, because there is lots of
15 construction here in Chicago.
16 Is it fair to say that construction
17 projects can create congestion issues?
18 MR. WORSECK: Objection. Vague.
19 BY THE WITNESS:
20 A. They could.
21 BY MR. FROMMER:
22 Q. What kind of congestion issues could
23 they create?
24 A. Depends on the type of construction.



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1 If the whole perimeter of the location
 2 is fenced off, or if traffic is rerouted, it could
 3 cause congestion.
 4 BY MR. FROMMER:
 5 Q. You're saying if they pulled a permit to
 6 build a new building, that could affect sidewalk
 7 congestion, is that correct?
 8 A. It could if the sidewalk needed to be
 9 temporarily closed or rerouted.
 10 Q. Is it your understanding that typically
 11 happens in construction projects?
 12 MR. WORSECK: Objection. Vague. Calls for
 13 speculation.
 14 BY THE WITNESS:
 15 A. My thought of what I know of
 16 construction is it would be for larger construction
 17 sites.
 18 BY MR. FROMMER:
 19 Q. Does the City have knowledge about how
 20 many of these larger construction sites exist in
 21 the City of Chicago?
 22 A. I can't answer that.
 23 Q. So the City doesn't know?
 24 MR. WORSECK: Objection. Vague.

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1 BY THE WITNESS:
 2 A. I don't know.
 3 BY MR. FROMMER:
 4 Q. You're here in a representative capacity
 5 for the City. So your answers are the City's
 6 answers in this regard.
 7 The City doesn't have any knowledge
 8 about how many large construction projects are
 9 occurring at any given time in the City?
 10 MR. WORSECK: Objection. Misstates prior
 11 testimony.
 12 BY THE WITNESS:
 13 A. The Department of Buildings issues
 14 permits to conduct construction.
 15 For the Department of Buildings to
 16 review that data and look at the permits out there,
 17 they would have an idea of construction sites in
 18 the City of Chicago, as well as the size of the
 19 construction site.
 20 BY MR. FROMMER:
 21 Q. Did you talk to the Department of
 22 Buildings and ask them about the number of
 23 construction projects that are taking place in the
 24 City of Chicago?

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1 A. Briefly.
 2 Q. What did they say?
 3 MR. WORSECK: Objection to the extent it would
 4 intrude into attorney-client communications or any
 5 privileged information.
 6 With that caveat, you could answer.
 7 BY THE WITNESS:
 8 A. Again, as I answered before,
 9 construction projects are based on open permits.
 10 There would have to be a review of open
 11 building permits to identify what type of
 12 construction projects are in the City.
 13 Even though a permit is active, it
 14 doesn't necessarily mean that the construction is
 15 happening right at that given time.
 16 Construction starts and stops.
 17 BY MR. FROMMER:
 18 Q. How would an enforcement official on the
 19 street determine whether a particular project
 20 qualified for the exemption?
 21 MR. WORSECK: Objection. Calls for
 22 speculation.
 23 BY THE WITNESS:
 24 A. I'd think there is construction activity

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1 and construction workers there.
 2 BY MR. FROMMER:
 3 Q. Is it fair to say construction projects
 4 could sometimes create trash or refuse?
 5 A. They may.
 6 Q. What do you think that depends on?
 7 A. Again, I think it would depend on the
 8 type of construction at the location.
 9 Q. When you spoke to the Department of
 10 Buildings about the number -- you said you spoke to
 11 the Department of Buildings, and they responded
 12 briefly.
 13 What did they say to you?
 14 A. About permit status. Active permits
 15 would warrant possible construction at any given
 16 time until that permit is closed and that
 17 construction is completed.
 18 Q. But they didn't provide you with any
 19 sort of list or number?
 20 A. I don't recall an actual number.
 21 There are thousands, but I don't recall
 22 an actual number.
 23 Q. Thousands of --
 24 A. Active permits.

<p style="text-align: right;">Page 69</p> <p>1 Q. Throughout the City?</p> <p>2 A. Yes.</p> <p>3 Q. Do you know how many new permits are</p> <p>4 pulled each year?</p> <p>5 A. No.</p> <p>6 Q. Do you know how many construction</p> <p>7 projects are completed, and therefore, the permit</p> <p>8 has ended each year?</p> <p>9 A. I don't know, but that data is</p> <p>10 accessible on the data portal.</p> <p>11 Q. <u>Do you know if officials who are</u></p> <p>12 <u>responsible for enforcing the 200-foot rule looked</u></p> <p>13 <u>at that data?</u></p> <p>14 A. <u>I don't think they would need to - I</u></p> <p>15 <u>will say no.</u></p> <p>16 I'd retract that and say no.</p> <p>17 Q. Who did you talk to at the Department of</p> <p>18 Buildings about construction projects?</p> <p>19 A. In the Department of Buildings, the</p> <p>20 chief of staff at the Department, as well as their</p> <p>21 IT person.</p> <p>22 Q. Who are those people?</p> <p>23 A. Ken Meyer, chief of staff in the</p> <p>24 Department of Buildings.</p>	<p style="text-align: right;">Page 71</p> <p>1 BY MR. FROMMER:</p> <p>2 Q. I just had a couple questions about what</p> <p>3 we talked about before. Then we will dive into our</p> <p>4 next topic.</p> <p>5 Has the City ever enforced the 200-foot</p> <p>6 rule when the mobile food vehicle was parked</p> <p>7 somewhere other than directly in front of a</p> <p>8 restaurant?</p> <p>9 MR. WORSECK: Objection. Vague.</p> <p>10 BY THE WITNESS:</p> <p>11 A. I don't know. I have to look through</p> <p>12 all the citations.</p> <p>13 BY MR. FROMMER:</p> <p>14 Q. Back to the hypothetical about the</p> <p>15 Tamale Spaceship.</p> <p>16 So you have the Tamale Spaceship</p> <p>17 restaurant, and they invite Cupcakes for Courage to</p> <p>18 operate on their lot. And there are restaurants</p> <p>19 within 200 feet of that location.</p> <p>20 Would they need to get those</p> <p>21 restaurants' consent to operate?</p> <p>22 MR. WORSECK: Objection. Incomplete</p> <p>23 hypothetical.</p> <p>24</p>
<p style="text-align: right;">Page 70</p> <p>1 And I apologize. I don't know the IT</p> <p>2 person's name.</p> <p>3 Q. That's fine.</p> <p>4 A. To add one more piece to that, their</p> <p>5 First Deputy of Buildings was there for just a</p> <p>6 moment.</p> <p>7 Matt Beaudett.</p> <p>8 Q. Do you know what Matt's responsibilities</p> <p>9 are?</p> <p>10 A. He is the First Deputy of the</p> <p>11 Department. I can't speak to his overall</p> <p>12 responsibilities.</p> <p>13 He is senior staff for the Department of</p> <p>14 Buildings.</p> <p>15 Q. You did this in preparation for this</p> <p>16 deposition, you spoke with them?</p> <p>17 A. Yes.</p> <p>18 MR. FROMMER: If it's okay, I would like to</p> <p>19 take a five-minute break.</p> <p>20 THE WITNESS: Sure.</p> <p>21 (WHEREUPON, a short recess was had.)</p> <p>22 MR. WORSECK: We are just coming back from a</p> <p>23 13-minute break.</p> <p>24 MR. FROMMER: Okay.</p>	<p style="text-align: right;">Page 72</p> <p>1 BY THE WITNESS:</p> <p>2 A. It's in the ordinance they would need</p> <p>3 permission of the property owner.</p> <p>4 BY MR. FROMMER:</p> <p>5 Q. Which property owner?</p> <p>6 A. Of the lot.</p> <p>7 Q. So Tamale Spaceship owns the lot, and</p> <p>8 they have the restaurant there.</p> <p>9 Cupcakes for Courage would need to get</p> <p>10 Tamale Spaceship's permission?</p> <p>11 A. Per the ordinance.</p> <p>12 Q. But they wouldn't need to get permission</p> <p>13 if say there is a McDonald's 150 away?</p> <p>14 A. No.</p> <p>15 Q. Can you describe how the City learns</p> <p>16 about potential violations of the 200-foot rule?</p> <p>17 A. The City learns about violations either</p> <p>18 via complaint to 311, and/or an officer that is at</p> <p>19 the location writing a citation.</p> <p>20 Q. Okay. Let me break that out a little.</p> <p>21 So do City officials proactively look</p> <p>22 for violations of the 200-foot rule?</p> <p>23 MR. WORSECK: Objection. Vague.</p> <p>24</p>

<p style="text-align: right;">Page 73</p> <p>1 BY THE WITNESS:</p> <p>2 A. I would say in the course of the</p> <p>3 business of a police officer, when they are on the</p> <p>4 street, if there is a violation, they may or may</p> <p>5 not issue a violation.</p> <p>6 It would depend on the circumstance at</p> <p>7 that given time.</p> <p>8 BY MR. FROMMER:</p> <p>9 Q. What would be the circumstances that</p> <p>10 would weigh on whether they issue a citation or</p> <p>11 not?</p> <p>12 A. I can't speak for the Police Department,</p> <p>13 if they would immediately write that citation.</p> <p>14 But they are authorized to write</p> <p>15 citations for the 200-foot restriction.</p> <p>16 Q. You don't know whether the Police</p> <p>17 Department has any rules or guidelines about when</p> <p>18 they should issue citations for violations of the</p> <p>19 200-foot rule?</p> <p>20 MR. WORSECK: Objection. Vague.</p> <p>21 BY THE WITNESS:</p> <p>22 A. Again, it's a violation. They have the</p> <p>23 authority to issue a citation.</p> <p>24 The citation should be issued if they</p>	<p style="text-align: right;">Page 75</p> <p>1 enforcing the City's rules and regulations.</p> <p>2 BY MR. FROMMER:</p> <p>3 Q. Does the Police Department tell officers</p> <p>4 to be on the lookout for violations of the 200-foot</p> <p>5 rule?</p> <p>6 A. Along with any other illegal activity</p> <p>7 that's going on where they could write a ticket.</p> <p>8 Q. Do you know if the Police Commissioner,</p> <p>9 Police Chief, precinct captains, do they instruct</p> <p>10 officers to go look for violations and write</p> <p>11 citations if they find them?</p> <p>12 A. My answer remains if anyone is breaking</p> <p>13 the law and is in conflict of any City code or</p> <p>14 requirement, the officer is authorized to write a</p> <p>15 citation.</p> <p>16 Q. I still don't think that's answering</p> <p>17 whether there's anyone that instructs the officers</p> <p>18 to be on the lookout for this.</p> <p>19 I understand the officers are authorized</p> <p>20 to write citations.</p> <p>21 Does the Police Department tell its</p> <p>22 officers that they should be looking for violations</p> <p>23 of the 200-foot rule?</p> <p>24 MR. WORSECK: Objection. Vague.</p>
<p style="text-align: right;">Page 74</p> <p>1 are breaking a law.</p> <p>2 BY MR. FROMMER:</p> <p>3 Q. You said in some circumstances the</p> <p>4 police may not issue a citation?</p> <p>5 A. If there are extenuating circumstances</p> <p>6 outside of that.</p> <p>7 Q. What would those be?</p> <p>8 A. I think it's case-by-case. I can't</p> <p>9 honestly answer that.</p> <p>10 Is it questionable if it's 200 feet?</p> <p>11 Clearly, if it's in violation of the</p> <p>12 200-foot rule, they have the ability to write a</p> <p>13 citation.</p> <p>14 Q. But you don't know if there are any</p> <p>15 internal policies or guidelines directing officers</p> <p>16 about when they should or should not issue</p> <p>17 citations?</p> <p>18 A. I do not know that information from CPD.</p> <p>19 Q. Do you know if police officers are</p> <p>20 instructed to proactively look for violations of</p> <p>21 the 200-foot rule?</p> <p>22 MR. WORSECK: Objection. Vague.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I think police officers are charged with</p>	<p style="text-align: right;">Page 76</p> <p>1 BY THE WITNESS:</p> <p>2 A. I can't answer that.</p> <p>3 BY MR. FROMMER:</p> <p>4 Q. Before you said the potential -- that</p> <p>5 the City learns about potential violations of the</p> <p>6 200-foot rule through Complaints, and then also</p> <p>7 officers or other officials noticing them when they</p> <p>8 are out on the street, is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Are there any other ways that the City</p> <p>11 learns about potential violations?</p> <p>12 A. If you could rephrase that.</p> <p>13 I guess the question is violation by an</p> <p>14 issued ticket, or a violation that someone is</p> <p>15 parking there.</p> <p>16 I'm not clear of the question.</p> <p>17 Q. How does the City learn that there might</p> <p>18 be a potential violation of the 200-foot rule?</p> <p>19 A. It's Complaint-driven.</p> <p>20 It could be a mobile food operator</p> <p>21 complaining about another mobile food operator</p> <p>22 within the 200-foot rule. It could be a passerby.</p> <p>23 It could be the restaurant itself.</p> <p>24 The Complaint can come from anywhere.</p>

JOY ADELIZZI
BURKE vs. CITY OF CHICAGO

October 08, 2014
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<p style="text-align: right;">Page 77</p> <p>1 Q. Does the City have any sense for those 2 Complaints, what percentage of them come from 3 restaurants? 4 A. I don't have that data. I don't know. 5 Q. Similarly, the City wouldn't know which 6 come from mobile food operators? 7 A. I don't have an exact number, no. 8 Q. How are these Complaints about potential 9 violations of the 200-foot rule communicated to the 10 City? 11 A. Typically, someone will call 311. 12 311 will dispatch through their internal 13 routing process a Complaint for the 200-foot rule, 14 or for any other concern or Complaint within the 15 City. 16 311 is the major hub of City Complaint 17 type of requests. 18 Q. When those Complaints come in to 311, is 19 there a record created of the Complaints? 20 A. There should be, yes. 21 Q. Is that the service requests, so there's 22 a written -- an electronic document that's created? 23 A. There should be, yes. 24 Q. Do you know of any instances where 311</p>	<p style="text-align: right;">Page 79</p> <p>1 out on the streets enforcing the 200-foot rule? 2 A. We have limited resources for licensing 3 and public way use investigators, but they are not 4 out there combing the streets looking for trouble. 5 They are assigned to multiple licensing 6 regulations and enforcement, as well as public way 7 use. 8 Q. How many inspectors does the BACP have? 9 A. Roughly 20. 10 Q. Do you know approximately how many 11 police officers are out on the streets of Chicago 12 at any given point? 13 A. I can't answer that question. 14 I would like to go back to my prior 15 answer about the 20 investigators. 16 Of the 20, roughly five investigators 17 are assigned to licensing and public way use. 18 Q. Okay. But you don't know how many 19 police officers are out on the street? 20 A. I do not. 21 Q. When you are speaking with food trucks, 22 you said a minute -- why are you doing that? 23 A. We are very business-friendly to food 24 truck operators. We work with them in many</p>
<p style="text-align: right;">Page 78</p> <p>1 has received a Complaint about a potential 2 violation of the 200-foot rule, but did not create 3 a record? 4 A. I personally am not aware of that, no. 5 Q. Do City officials sometimes receive 6 Complaints in person about potential violations of 7 the 200-foot rule? 8 A. I can't speak for other departments. 9 I can say that in meeting with food 10 truck operators, they have mentioned that other 11 operators are within 200 feet of a location. 12 The Complaint being not a formal 13 Complaint, but verbal after the fact. 14 Q. Okay. They are addressing these 15 Complaints to you? 16 A. Me, or to another representative of the 17 Department. Perhaps to another Department. 18 Q. Do you know if police officers receive 19 Complaints orally from people about potential 20 violations of the 200-foot rule? 21 A. I don't want to assume. I can't answer 22 that question. 23 Q. Does the BACP, and I think we have may 24 have talked about this, but do they have officials</p>	<p style="text-align: right;">Page 80</p> <p>1 different scenarios. 2 It could be at time of renewal that they 3 may be coming into the office for renewal to grow. 4 Many of our food truck operators are growing into 5 fixed locations and getting retail food locations, 6 which is fantastic. 7 We also have food truck operators that 8 come to our many business education workshops 9 promoting and explaining the mobile food license 10 and ordinance. 11 We also have -- although not recently 12 within the last couple months, but we have held 13 informal forums with the food trucks to talk about 14 kind of what's working and what's not working. How 15 can we help promote them. 16 This kind of goes into all of the 17 efforts that the City, along with Special Events, 18 sponsored our food truck fairs and rallies, what 19 have you. 20 So those conversations primarily are 21 held around that sort of a circle. 22 In addition, operators may just call 23 randomly. 24 Q. Do you also speak to restaurants in your</p>



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<p style="text-align: right;">Page 81</p> <p>1 position?</p> <p>2 A. In my position, typically, when I speak</p> <p>3 with a restaurant, it's part of an application</p> <p>4 process for reinspection and/or working with them</p> <p>5 to get their license.</p> <p>6 Q. Do any of them call up and complain to</p> <p>7 you "Hey, there's a food truck right outside"?</p> <p>8 A. I personally have not received a</p> <p>9 Complaint from a fixed restaurant concerning a food</p> <p>10 truck.</p> <p>11 Q. Do you know if members of your staff</p> <p>12 have received those Complaints?</p> <p>13 A. I can't answer that.</p> <p>14 Q. We talked about this before a little,</p> <p>15 but to understand better, when there is an</p> <p>16 enforcement -- strike that.</p> <p>17 You don't know whether people in the</p> <p>18 BACP have received Complaints about violations of</p> <p>19 the 200-foot rule?</p> <p>20 MR. WORSECK: Objection. Mischaracterizes the</p> <p>21 testimony.</p> <p>22 BY MR. FROMMER:</p> <p>23 Q. Is it fair to say you don't know whether</p> <p>24 the BACP staff have received Complaints directly</p>	<p style="text-align: right;">Page 83</p> <p>1 that Complaint, depending on whether the</p> <p>2 Complainants also called 311?</p> <p>3 A. Yes.</p> <p>4 Q. We talked about this earlier.</p> <p>5 A. I apologize. Let me go back to that</p> <p>6 answer.</p> <p>7 I did want to say if we do receive a</p> <p>8 Complaint via e-mail, what have you, we will</p> <p>9 forward it to 311 or an investigation team.</p> <p>10 Q. Are there instances when the BACP would</p> <p>11 receive a Complaint, but it wouldn't end up having</p> <p>12 a written record, either because it was also given</p> <p>13 to 311, or you forwarded it to 311?</p> <p>14 A. If we forwarded it to 311, that would be</p> <p>15 the written record.</p> <p>16 There are a couple of instances where we</p> <p>17 received an e-mail from an operator saying that</p> <p>18 people are violating -- other operators are</p> <p>19 violating the 200-foot rule.</p> <p>20 Q. How does an enforcement officer</p> <p>21 determine if a mobile food vehicle is operating</p> <p>22 within 200 feet of a restaurant?</p> <p>23 A. As I mentioned before, on the street</p> <p>24 they can see if it is within that 200-foot radius</p>
<p style="text-align: right;">Page 82</p> <p>1 about potential violations of the 200-foot rule?</p> <p>2 MR. WORSECK: Same objection.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Yes. We have received Complaints about</p> <p>5 the 200-foot rule.</p> <p>6 BY MR. FROMMER:</p> <p>7 Q. Who are those from?</p> <p>8 A. It varies. Again, from mobile food</p> <p>9 operators themselves.</p> <p>10 It could be from a restaurant or</p> <p>11 passerby.</p> <p>12 Q. To be clear, we are talking about</p> <p>13 Complaints that are outside the 311 system?</p> <p>14 A. They may be, yes.</p> <p>15 Q. Are there records kept of Complaints</p> <p>16 that are not -- that the City doesn't receive</p> <p>17 through the 311 system?</p> <p>18 A. Typically, no. It's a conversation.</p> <p>19 It's not a formal Complaint, but a</p> <p>20 complaint that someone has said "I have called 311</p> <p>21 because of" this.</p> <p>22 It is more of a conversation as opposed</p> <p>23 to them filing a Complaint with us.</p> <p>24 Q. So there may or may not be a record of</p>	<p style="text-align: right;">Page 84</p> <p>1 of the restaurant.</p> <p>2 We can, but we have not yet, the BACP,</p> <p>3 we do have measurement tools available to us if we</p> <p>4 needed to take measurements.</p> <p>5 Q. Do enforcement officials who are</p> <p>6 actually investigating potential violations carry</p> <p>7 those tools with them?</p> <p>8 A. Are you talking about the police or</p> <p>9 BACP?</p> <p>10 Q. When BACP officials are investigating</p> <p>11 potential violation of the 200-foot rule, are they</p> <p>12 carrying the measurement tools?</p> <p>13 A. It would vary based on where they were</p> <p>14 before.</p> <p>15 A number of our investigators also do</p> <p>16 location restrictions for other license-type</p> <p>17 applications and requirements.</p> <p>18 It may or may not be with them. I can't</p> <p>19 speak to what they have on their body when they're</p> <p>20 out there.</p> <p>21 Q. If they do not have those tools with</p> <p>22 them, how do they determine if a violation has</p> <p>23 occurred?</p> <p>24 A. Again, it's in looking at the proximity</p>

<p style="text-align: right;">Page 85</p> <p>1 of the truck to the restaurant.</p> <p>2 Q. They're eyeballing it?</p> <p>3 A. Yes.</p> <p>4 Q. How about police officers, do you know</p> <p>5 when police officers are investigating possible</p> <p>6 violations of the 200-foot rule, do they carry</p> <p>7 measurement tools?</p> <p>8 A. I don't know.</p> <p>9 Q. If a BACP official determines that a</p> <p>10 potential violation has occurred of the 200-foot</p> <p>11 rule, or is incurring, what do they do?</p> <p>12 MR. WORSECK: Objection. Vague.</p> <p>13 BY THE WITNESS:</p> <p>14 A. They can write a citation.</p> <p>15 BY MR. FROMMER:</p> <p>16 Q. Do they always write a citation?</p> <p>17 A. They may write a notice to correct if</p> <p>18 it's a first violation, or it could be a citation.</p> <p>19 Q. How do enforcement officials for the</p> <p>20 BACP make the determination about whether to issue</p> <p>21 a citation versus just giving a warning?</p> <p>22 A. Sometimes a notice to correct is given</p> <p>23 in the early onset of when the ordinance was first</p> <p>24 implemented as kind of a business-friendly</p>	<p style="text-align: right;">Page 87</p> <p>1 write citations for violations of the 200-foot</p> <p>2 rule?</p> <p>3 A. I don't know.</p> <p>4 Q. Do you know the percentage of the time</p> <p>5 that they write citations for violations of the</p> <p>6 200-foot rule?</p> <p>7 MR. WORSECK: Objection. Vague.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I don't know.</p> <p>10 BY MR. FROMMER:</p> <p>11 Q. Do you know whether the number of</p> <p>12 citations that police officers have issued for</p> <p>13 violations of the 200-foot rule has changed over</p> <p>14 time?</p> <p>15 MR. WORSECK: Objection. Vague.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I don't know.</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. Why don't you know?</p> <p>20 A. They're citations issued from the</p> <p>21 Department of Police, so I don't have access to all</p> <p>22 of the citations that have been issued over the</p> <p>23 course of time.</p> <p>24 Without knowing the full universe, I</p>
<p style="text-align: right;">Page 86</p> <p>1 courtesy.</p> <p>2 After time, as the ordinance is in</p> <p>3 existence and the restrictions are very clear, the</p> <p>4 citation would come into place.</p> <p>5 Q. In the past, has the percentage of</p> <p>6 warnings given for violations of the 200-foot rule</p> <p>7 changed over time?</p> <p>8 MR. WORSECK: Objection. Vague.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I don't know.</p> <p>11 BY MR. FROMMER:</p> <p>12 Q. For police officers, when police</p> <p>13 officers determine that a potential violation of</p> <p>14 the 200-foot rule has occurred, what do they do in</p> <p>15 response?</p> <p>16 A. They issue a citation.</p> <p>17 Q. Do they issue a citation in every</p> <p>18 instance?</p> <p>19 A. I don't know.</p> <p>20 Q. Do you know if police officers sometimes</p> <p>21 issue citations for violations of the 200-foot</p> <p>22 rule?</p> <p>23 A. I do know citations are written.</p> <p>24 Q. But you don't know whether they always</p>	<p style="text-align: right;">Page 88</p> <p>1 would not be able to accurately answer that</p> <p>2 question.</p> <p>3 Q. Did you talk with the Police Department</p> <p>4 in preparation for this deposition?</p> <p>5 A. I did not, no.</p> <p>6 Q. Did you request any documents from the</p> <p>7 Police Department in preparation for this</p> <p>8 deposition?</p> <p>9 A. I did not, no.</p> <p>10 Q. Is it fair to say you did no</p> <p>11 investigation with the Police Department prior to</p> <p>12 coming to this deposition?</p> <p>13 MR. WORSECK: Objection. Vague.</p> <p>14 Mischaracterizes the testimony.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Not specifically for today's deposition,</p> <p>17 no.</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. What investigation, if any, did you do</p> <p>20 with the Police Department in preparation for</p> <p>21 today's deposition?</p> <p>22 MR. WORSECK: Objection. Vague.</p> <p>23 BY THE WITNESS:</p> <p>24 A. I did not request any data for today's</p>

<p style="text-align: right;">Page 89</p> <p>1 deposition.</p> <p>2 BY MR. FROMMER:</p> <p>3 Q. Did you speak with anyone at the Police</p> <p>4 Department in preparation for today's deposition?</p> <p>5 MR. WORSECK: Objection. Same objection.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I did not, no.</p> <p>8 BY MR. FROMMER:</p> <p>9 Q. How many citations for violations of the</p> <p>10 200-foot rule did the City issue in 2013?</p> <p>11 A. I don't know.</p> <p>12 Q. How many citations did the City issue</p> <p>13 for violations of the 200-foot rule in 2014?</p> <p>14 A. I don't know.</p> <p>15 Q. BACP enforcement officials, does issuing</p> <p>16 a citation for violation of the 200-foot rule turn</p> <p>17 or depend on whether they were made aware of that</p> <p>18 violation or potential violation through a</p> <p>19 Complaint?</p> <p>20 A. Repeat that question.</p> <p>21 Q. Is a BACP enforcement officer more or</p> <p>22 less likely to issue a citation for violation of</p> <p>23 the 200-foot rule if the way he or she learned</p> <p>24 about it was through a Complaint?</p>	<p style="text-align: right;">Page 91</p> <p>1 officers issued tickets at a higher rate when it's</p> <p>2 a restaurant that complains?</p> <p>3 A. I don't know.</p> <p>4 Q. Does the City give out formal or</p> <p>5 informal advice to food truck owners about how not</p> <p>6 to run afoul or violate the 200-foot rule?</p> <p>7 MR. WORSECK: Objection. Vague.</p> <p>8 BY THE WITNESS:</p> <p>9 A. We are very proactive and</p> <p>10 business-friendly in providing not only mobile food</p> <p>11 operators, but other license-holders with the do's</p> <p>12 and don'ts, if you will, of that activity.</p> <p>13 We spent a lot of time and effort in</p> <p>14 putting fact sheets together that outline the</p> <p>15 ordinance. That provide restrictions. Hours of</p> <p>16 operation.</p> <p>17 In addition, when the operators do come</p> <p>18 in for license consultation, the business</p> <p>19 consultant is extremely thorough in the operating</p> <p>20 requirements.</p> <p>21 Not only specific to the 200-foot rule,</p> <p>22 but as far as the two-hour limit. In addition to</p> <p>23 other pieces of the overall business activity.</p> <p>24 So we are very thorough in providing</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Enforcement is Complaint-driven. Yes.</p> <p>2 Q. So do BACP officials independently</p> <p>3 investigate on their own for violations of the</p> <p>4 200-foot rule, or is it just a Complaint-based</p> <p>5 system?</p> <p>6 A. It is typically Complaint-based</p> <p>7 enforcement.</p> <p>8 Q. Does the percentage chance that an</p> <p>9 enforcement officer will issue a citation vary</p> <p>10 based on the identity of the Complainant?</p> <p>11 MR. WORSECK: Objection. Vague</p> <p>12 BY MR. FROMMER:</p> <p>13 Q. I will put it plainer.</p> <p>14 If a restaurant complains that a food</p> <p>15 truck is violating the 200-foot rule, is it more or</p> <p>16 less likely to issue a citation as opposed to if a</p> <p>17 member of the public notified them about the</p> <p>18 potential violation?</p> <p>19 A. To the best of my knowledge, the</p> <p>20 citations are issued based on a Complaint.</p> <p>21 Q. Did you review the citations and look at</p> <p>22 who the complaining parties were?</p> <p>23 A. Not in detail, no.</p> <p>24 Q. So you don't know if enforcement</p>	<p style="text-align: right;">Page 92</p> <p>1 that information. The information that's available</p> <p>2 to the public online is pretty detailed.</p> <p>3 I want to add we hold a number of</p> <p>4 regular workshops for mobile food operators.</p> <p>5 BY MR. FROMMER:</p> <p>6 Q. Are there written documents created for</p> <p>7 those workshops?</p> <p>8 A. There's a PowerPoint presentation.</p> <p>9 The material distributed is the</p> <p>10 information that's available online.</p> <p>11 Q. Are there any publications or manuals</p> <p>12 that BACP provides officers and other individuals</p> <p>13 who are enforcing the 200-foot rule?</p> <p>14 A. The information online, our public</p> <p>15 documents, our fact sheets, the ordinance, as well,</p> <p>16 is available for the police to pull, as well as we</p> <p>17 have provided them with it.</p> <p>18 Q. Are there any other documents that are</p> <p>19 not on the website or not the code?</p> <p>20 A. Not that I am familiar with other than</p> <p>21 our PowerPoint presentation for our workshop.</p> <p>22 Q. What kind of feedback have you gotten</p> <p>23 from enforcement officials about the 200-foot rule?</p> <p>24 MR. WORSECK: Objection. Vague.</p>

<p style="text-align: right;">Page 93</p> <p>1 BY THE WITNESS:</p> <p>2 A. I don't recall a lot of conversation</p> <p>3 about the 200-foot rule.</p> <p>4 It's a rule in the ordinance.</p> <p>5 BY MR. FROMMER:</p> <p>6 Q. Okay.</p> <p>7 A. Maybe I don't understand the question.</p> <p>8 Q. Have you ever heard from any enforcement</p> <p>9 officials about the 200-foot rule, you, the City</p> <p>10 heard from enforcement officials about how to</p> <p>11 enforce the rule, how to implement it?</p> <p>12 MR. WORSECK: Same objection.</p> <p>13 BY THE WITNESS:</p> <p>14 A. Not that I recall other than it would be</p> <p>15 enforced.</p> <p>16 It's a regulation that requires</p> <p>17 enforcement if it's broken.</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. Have enforcement officials ever said the</p> <p>20 200-foot rule is difficult to enforce?</p> <p>21 A. I don't recall that, no.</p> <p>22 Q. Has the City ever heard from restaurant</p> <p>23 owners or employees about the 200-foot rule?</p> <p>24 A. I don't understand the question.</p>	<p style="text-align: right;">Page 95</p> <p>1 is probably on the record, which you probably</p> <p>2 already have, anyone that came to testify about the</p> <p>3 ordinance.</p> <p>4 Q. But you don't know if the City has</p> <p>5 received communications from restaurant officials</p> <p>6 or employees about how the 200-foot rule is being</p> <p>7 enforced?</p> <p>8 A. I have not received anything.</p> <p>9 Q. Do you know --</p> <p>10 A. Not that I am aware of.</p> <p>11 So I will rephrase that and say I don't</p> <p>12 know.</p> <p>13 Q. Have food truck owners communicated to</p> <p>14 the City and talked to the City about how the</p> <p>15 200-foot rule is enforced?</p> <p>16 A. We have received Complaints from</p> <p>17 operators that another truck is in violation.</p> <p>18 Q. Can you give any details about that.</p> <p>19 A. Again, it's just an informal</p> <p>20 conversation at informal forums that perhaps they</p> <p>21 received a notice to correct or a Complaint, but</p> <p>22 yet, the next day, a week later, other trucks are</p> <p>23 blatantly in front of restaurants and have</p> <p>24 complained about it "Have they been cited or not?"</p>
<p style="text-align: right;">Page 94</p> <p>1 Q. Has the City ever heard from restaurant</p> <p>2 officials or restaurant owners, employees about the</p> <p>3 City's enforcement of the 200-foot rule?</p> <p>4 MR. WORSECK: Objection. Vague. Calls for</p> <p>5 speculation.</p> <p>6 BY THE WITNESS:</p> <p>7 A. I don't know if I completely understand</p> <p>8 the question.</p> <p>9 BY MR. FROMMER:</p> <p>10 Q. Have restaurant officials or employees</p> <p>11 ever reached out to the City to comment about how</p> <p>12 the City is enforcing the 200-foot rule?</p> <p>13 MR. WORSECK: Same objection.</p> <p>14 BY THE WITNESS:</p> <p>15 A. They could file a Complaint that there's</p> <p>16 a violation.</p> <p>17 BY MR. FROMMER:</p> <p>18 Q. Are there any communications from</p> <p>19 restaurant officials and employees about the</p> <p>20 enforcement of the 200-foot rule notwithstanding</p> <p>21 these Complaints?</p> <p>22 A. To the best of my knowledge, it is all</p> <p>23 Complaint-driven.</p> <p>24 At time of ordinance and hearing, there</p>	<p style="text-align: right;">Page 96</p> <p>1 Q. Do you remember the identity of any of</p> <p>2 the people that either made these Complaints or</p> <p>3 received them?</p> <p>4 A. Off the top of my head, we have dealt</p> <p>5 with so many mobile food operators, so I have to go</p> <p>6 back to my notes of who was there at the forum.</p> <p>7 I don't recall.</p> <p>8 Q. Has the City done any kind of internal</p> <p>9 analysis or study about the 200-foot rule?</p> <p>10 MR. WORSECK: Objection. Vague.</p> <p>11 BY THE WITNESS:</p> <p>12 A. In what way?</p> <p>13 BY MR. FROMMER:</p> <p>14 Q. Has the City done any internal analysis</p> <p>15 study about the effect of the 200-foot rule, about</p> <p>16 how -- strike that.</p> <p>17 Has the City done any kind of internal</p> <p>18 analysis about how it is enforcing the 200-foot</p> <p>19 rule, whether it is meeting its enforcement goals?</p> <p>20 MR. WORSECK: Objection. Vague.</p> <p>21 Mischaracterizes prior testimony.</p> <p>22 BY THE WITNESS:</p> <p>23 A. I don't think there's a goal to write a</p> <p>24 number of citations.</p>

<p style="text-align: right;">Page 97</p> <p>1 To the best of my knowledge, no.</p> <p>2 BY MR. FROMMER:</p> <p>3 Q. Has the City done any kind of internal</p> <p>4 analysis regarding the 200-foot rule?</p> <p>5 A. I guess I don't understand the question.</p> <p>6 Q. Has the City analyzed the 200-foot rule,</p> <p>7 done any studies about how it is enforced, the</p> <p>8 effects of it.</p> <p>9 What the 200-foot rule means in terms of</p> <p>10 the number of available spaces where trucks could</p> <p>11 park.</p> <p>12 Has it done any sort of internal</p> <p>13 investigation or analysis or report about the</p> <p>14 effects of the 200-foot rule?</p> <p>15 MR. WORSECK: Objection.</p> <p>16 BY THE WITNESS:</p> <p>17 A. The rule is not new to this ordinance.</p> <p>18 It has been in existence for many years.</p> <p>19 In amending this ordinance, some data</p> <p>20 was pulled to look at community districts,</p> <p>21 congested areas.</p> <p>22 I'm not aware of any other studies or</p> <p>23 reports.</p> <p>24</p>	<p style="text-align: right;">Page 99</p> <p>1 investigations of violating the two-hour rule?</p> <p>2 A. No.</p> <p>3 Q. Does the City have any policies or</p> <p>4 guidelines about when officials should request GPS</p> <p>5 data to investigate potential violations?</p> <p>6 A. Today, if we needed to pull GPS data, it</p> <p>7 would be on an emergency basis.</p> <p>8 Q. Why is that?</p> <p>9 A. It's a protocol we are still developing.</p> <p>10 The intent of pulling GPS data is really</p> <p>11 specific to life safety issues, emergency issues.</p> <p>12 Unsanitary conditions. Food-related hiccups, what</p> <p>13 have you.</p> <p>14 Q. Do you know if the City has ever pulled</p> <p>15 GPS data?</p> <p>16 A. To the best of my knowledge, no.</p> <p>17 Q. Do you know if the City has ever issued</p> <p>18 a citation to a mobile food vehicle for violation</p> <p>19 of the 200-foot rule after the vehicle has left the</p> <p>20 location?</p> <p>21 A. I don't know, no.</p> <p>22 Q. Do you know if City officials track</p> <p>23 mobile food vehicles by social media, Facebook,</p> <p>24 Twitter, in order to determine where they are</p>
<p style="text-align: right;">Page 98</p> <p>1 BY MR. FROMMER:</p> <p>2 Q. Who pulled those community statistics</p> <p>3 and metrics you were just discussing?</p> <p>4 A. As I mentioned before, as outlined in</p> <p>5 the ordinance, it's community areas that have 300</p> <p>6 or more retail food establishment locations.</p> <p>7 That data was generated from my group.</p> <p>8 Q. This is for the purposes of determining</p> <p>9 where the stands would be?</p> <p>10 A. For designating community areas.</p> <p>11 Q. Let's go back to Exhibit No. 2, the</p> <p>12 code.</p> <p>13 What kinds of violations of 7-38 does</p> <p>14 the City of Chicago use GPS units to investigate</p> <p>15 and enforce?</p> <p>16 MR. WORSECK: Objection. Vague.</p> <p>17 BY THE WITNESS:</p> <p>18 A. As of this date, we have not pulled any</p> <p>19 GPS data to enforce any section of the code.</p> <p>20 BY MR. FROMMER:</p> <p>21 Q. Has the City pulled GPS data in order to</p> <p>22 enforce the 200-foot rule?</p> <p>23 A. We have not, no.</p> <p>24 Q. Has it pulled GPS data for</p>	<p style="text-align: right;">Page 100</p> <p>1 located?</p> <p>2 MR. WORSECK: Objection. Vague.</p> <p>3 BY THE WITNESS:</p> <p>4 A. Ask that again, please.</p> <p>5 BY MR. FROMMER:</p> <p>6 Q. How do officials locate mobile food</p> <p>7 vehicles?</p> <p>8 A. Again, from my Department, it is</p> <p>9 Complaint-driven. We are not actively looking for</p> <p>10 trouble or the vehicles.</p> <p>11 I can't speak for the Police Department.</p> <p>12 I don't know.</p> <p>13 BY MR. FROMMER:</p> <p>14 Q. Okay. The BACP does not use social</p> <p>15 media to locate the trucks, is that correct?</p> <p>16 A. We are Complaint-driven enforcement,</p> <p>17 yes -- I don't think I answered.</p> <p>18 Ask one more time.</p> <p>19 Q. Do BACP officials who are investigating</p> <p>20 and enforcing the 200-foot rule, do they access</p> <p>21 social media to determine where mobile food</p> <p>22 vehicles are?</p> <p>23 A. To the best of my knowledge, no.</p> <p>24 Q. Do police officials, when investigating</p>

<p style="text-align: right;">Page 101</p> <p>1 and enforcing the 200-foot rule violations, use 2 social media to determine where those trucks are? 3 A. I don't know. 4 Q. You said a second ago that the GPS is 5 relatively new and that protocols were still in 6 development, is that correct? 7 A. GPS is a new requirement to this 8 ordinance. 9 Our business rule is that we have never 10 pulled GPS data in my Department, or, to the best 11 of my knowledge, any other Department. 12 If we did need to pull it, it would be 13 pulled for an emergency situation. 14 Q. Has your Department put together any 15 formal rules about when that data would be pulled? 16 A. Again, there is not a written protocol. 17 We have a working business process. 18 If GPS data needed to be pulled for an 19 emergency situation, it would be at a senior level. 20 Q. What would that entail? 21 A. I don't understand. 22 What would be an emergency? 23 Q. If officials believe there is an 24 emergency situation, how would they go about</p>	<p style="text-align: right;">Page 103</p> <p>1 BY THE WITNESS: 2 A. I don't know. We have yet to do it. 3 BY MR. FROMMER: 4 Q. Would an official that's investigating 5 and wants to access GPS data, would they need to 6 get written permission from a senior official at 7 your Department or another Department before 8 requesting that data? 9 A. Again, we have yet to pull that data. I 10 would assume yes. 11 But there would have to be approval or a 12 direction to pull that data based on the emergency 13 situation. 14 Q. Are there any internal documents that 15 specify what an emergency situation is? 16 MR. WORSECK: Objection. Vague. 17 BY THE WITNESS: 18 A. As stated before, it could be a 19 foodborne illness, tainted food. It could be, God 20 forbid, the truck is on fire. 21 Anything of an urgent, urgent situation. 22 BY MR. FROMMER: 23 Q. Are there any documents about how 24 officials should proceed in requesting that data?</p>
<p style="text-align: right;">Page 102</p> <p>1 requesting that GPS data, or -- strike that. 2 How would they first make the 3 determination that they needed to pull GPS data? 4 MR. WORSECK: Objection. Vague. Calls for 5 speculation. 6 BY THE WITNESS: 7 A. Again, I think there are all sorts of 8 criteria that would be considered an emergency. 9 It could be a foodborne illness, tainted 10 food. 11 It could be an emergency situation with 12 the vehicle. If that was the case, and we were 13 aware of this urgent need to pull the data, then 14 senior staff, probably myself or an investigator, 15 or someone that's my counterpart, would do 16 everything to contact the operator, and then the 17 provider to obtain that information, seek 18 permission to obtain that information. 19 BY MR. FROMMER: 20 Q. If you reached out to the GPS service 21 provider, would you have to prepare any written 22 request to that service provider? 23 MR. WORSECK: Same objection. Speculation. 24 Vague.</p>	<p style="text-align: right;">Page 104</p> <p>1 Any protocols that they should follow? 2 MR. WORSECK: Objection. Vague. 3 BY THE WITNESS: 4 A. As I said before, we do not have written 5 protocols. 6 BY MR. FROMMER: 7 Q. If one of your investigators decided he 8 wanted to pull GPS data to investigate a 200-foot 9 rule, are there any rules or regulations that would 10 stop him from just calling the GPS service provider 11 and requesting data? 12 MR. WORSECK: Objection. Vague. 13 BY THE WITNESS: 14 A. The working business rule would be that 15 it would have to go to senior level to determine 16 why the GPS would need to be required. 17 BY MR. FROMMER: 18 Q. Is there anything written that states 19 that? 20 A. It's a working business rule. I think 21 it is an understanding. 22 It's just our working business rule 23 right now as we need a formal protocol with other 24 Departments.</p>

<p style="text-align: right;">Page 105</p> <p>1 Q. Is there a formal protocol being 2 developed with other Departments currently? 3 A. It's in process. 4 Q. How far along in the process is it? 5 A. I can't speak for the other Departments. 6 We have something in the works. 7 It's very difficult to say at what stage 8 it's completed. 9 Q. When was the GPS service tracking 10 requirement added to the ordinance? 11 A. 2012. 12 Q. It's now 2014. 13 So it has been more than two years, is 14 that correct? 15 A. Yes. 16 Q. What would happen if an official 17 requested GPS data from a service provider? 18 If an official wants to call up a 19 service provider saying they want GPS data for 20 whatever truck, and you found out about that, what 21 would happen? 22 MR. WORSECK: Objection. Speculation. 23 BY MR. FROMMER: 24 Q. One of your investigators says "I think</p>	<p style="text-align: right;">Page 107</p> <p>1 senior official? 2 A. In the City's personnel rules. 3 Q. What -- 4 A. I can't cite the City's personnel rules. 5 There are hundreds of them. 6 If they did not seek proper approval to 7 pull information for whatever the investigation or 8 the circumstances are presented, there would be 9 repercussion to that. 10 Q. But you don't know what in those rules 11 would cause them to be disciplined? 12 A. Without looking at the hundreds of HR 13 rules and personnel records, there are definitely 14 rules for not following the direction of a 15 supervisor. 16 It would most likely fall within that 17 broad category. Acting outside of their scope. 18 Q. How would this not follow the orders of 19 a supervisor? 20 A. Again, there's a working business rule. 21 We have not pulled any GPS data. 22 GPS data, if it's needed on an emergency 23 level, is bumped up to senior staff level. 24 Q. This working business rule, is it</p>
<p style="text-align: right;">Page 106</p> <p>1 that truck violated the 200-foot rule." 2 He calls up a GPS service provider 3 saying "Give me the historical data for this 4 truck." 5 You find out about it. He didn't come 6 to you. He just went directly to the provider. 7 What happens to him? 8 MR. WORSECK: Objection. Speculation. 9 BY THE WITNESS: 10 A. Our working business rule -- again, we 11 have not pulled any GPS data. 12 The working rule to pull GPS data is 13 really emergency-specific. Life safety issues. 14 It would be difficult for me to say what 15 would happen to that person. I don't know the 16 circumstances. 17 The business rule is that they would 18 seek proper approval, and it would be an emergency 19 situation to pull that data. 20 BY MR. FROMMER: 21 Q. Is there any policy or something written 22 down that says whether that person would be 23 punished, or otherwise disciplined, for seeking 24 data without first getting authorization from a</p>	<p style="text-align: right;">Page 108</p> <p>1 written down somewhere? 2 A. Not that I recall. There were a lot of 3 conversations with a lot of our licenses and 4 enforcement and regulatory of kind of what an 5 escalation process rule is. 6 Our investigators do have processes in 7 place step-by-step and at what stage they need 8 supervisor approval. 9 Q. Why hasn't something been written down? 10 Why hasn't this business rule been 11 written down? 12 MR. WORSECK: Objection. Speculation. 13 BY THE WITNESS: 14 A. We have not had a need, thank God. No 15 dire emergency. 16 It's a protocol that we are working on. 17 BY MR. FROMMER: 18 Q. You said a second ago that you will 19 request GPS data if it comes up with senior staff 20 in an emergency situation. 21 When was that emergency situation 22 requirement implemented? 23 When did that become part of the rules 24 that the City follows?</p>

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<p style="text-align: right;">Page 109</p> <p>1 MR. WORSECK: Objection. Vague. 2 BY THE WITNESS: 3 A. It has been a working business process 4 all along that GPS would be pulled in the event of 5 an emergency. 6 Foodborne illness. Unsanitary 7 conditions. 8 BY MR. FROMMER: 9 Q. But is that written down anywhere, that 10 protocol? 11 A. To the best of my knowledge, it is not a 12 documented public document. 13 Q. Is it an internal document? 14 A. It's a working business rule. 15 Q. Is that business rule written down? 16 A. I'm not aware that it is in my shop. 17 I can't speak for somebody else. I 18 don't know. 19 Q. You don't know whether the Police 20 Department, the Health Department have internal 21 written working rules about when GPS data should be 22 pulled? 23 A. I don't know. 24 Q. Do you know if the Police Department has</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. Could you give me some idea of when a 2 business rule would be written down and when it 3 would not? 4 A. For training purposes specific to 5 license application processing, there are business 6 rules in place for training. 7 Pulling of GPS data is completely out of 8 the scope of a business consultant. It goes to 9 another level, which would be my level. 10 Q. We have been talking a lot about GPS, so 11 let's backtrack a little to have some basic 12 understanding. 13 What's a global positioning system? 14 A. It allows the system to identify a 15 location of the vehicle. 16 Q. What's a GPS tracking device? 17 Is it a device that allows someone to 18 identify the location of a vehicle? 19 A. It allows it to identify the location of 20 a vehicle, and it also provides historical data. 21 Q. With GPS's, I understand there are 22 active and passive devices. 23 Can you explain the difference between 24 the two.</p>
<p style="text-align: right;">Page 110</p> <p>1 communicated to its enforcement officials the 2 conditions under which they should request GPS data 3 or ask for permission for GPS data? 4 MR. WORSECK: Objection. Vague. Incomplete 5 hypothetical. 6 BY THE WITNESS: 7 A. I can't make an assumption. 8 My answer is I don't know. 9 BY MR. FROMMER: 10 Q. For health officials for the Health 11 Department, do you know if the Health Department 12 has written protocols instructing their enforcement 13 officials about when they should either pull GPS 14 data or request authorization to pull that data? 15 MR. WORSECK: Same objection. 16 BY THE WITNESS: 17 A. I'm not aware of a published document. 18 BY MR. FROMMER: 19 Q. When you have these working business 20 rules, is it common to write them down? 21 A. It really varies based on the license 22 type and regulations. 23 We oversee hundreds of business 24 activities.</p>	<p style="text-align: right;">Page 112</p> <p>1 A. Yes. An active device sends real-time 2 data, where a passive device pulls the data that 3 needs to be pulled at a later date. 4 Q. An active device is constantly pushing 5 out location information? 6 A. Transmits it. That's correct. 7 Q. An active device transmits location 8 information? 9 A. Yes. 10 Q. What kind of equipment is needed to 11 receive those transmissions from the active GPS 12 device? 13 MR. WORSECK: Objection. Vague. 14 BY THE WITNESS: 15 A. I don't understand the question. 16 BY MR. FROMMER: 17 Q. You're saying it's transmitting location 18 information. 19 How do you receive that information? 20 What kind of device receives that information? 21 A. We would have to contact the provider to 22 pull that information. 23 Q. So the provider receives that 24 information, is that correct?</p>



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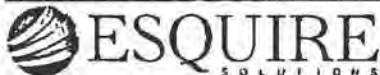
<p style="text-align: right;">Page 113</p> <p>1 A. The provider has that information.</p> <p>2 Q. The provider has equipment that can</p> <p>3 receive those transmissions?</p> <p>4 A. Correct.</p> <p>5 Q. Do you know how the information is sent?</p> <p>6 Let me be more specific.</p> <p>7 Do you know if that information, when it</p> <p>8 is being transmitted, is encrypted or scrambled?</p> <p>9 A. I don't know.</p> <p>10 Q. Could that location information be</p> <p>11 intercepted by a third-party?</p> <p>12 A. I don't know.</p> <p>13 Q. How accurate are GPS devices?</p> <p>14 MR. WORSECK: Objection. Vague.</p> <p>15 BY MR. FROMMER:</p> <p>16 Q. How accurate are the active GPS tracking</p> <p>17 devices that the City requires mobile food vehicle</p> <p>18 operators to install?</p> <p>19 A. We require that the accuracy is at 95</p> <p>20 percent.</p> <p>21 Q. What does that mean?</p> <p>22 A. Industry standard. The 95 percent comes</p> <p>23 from the Federal Department of Defense on</p> <p>24 performance standards for GPS.</p>	<p style="text-align: right;">Page 115</p> <p>1 BY MR. FROMMER:</p> <p>2 Q. What is this document?</p> <p>3 A. This document is available online at the</p> <p>4 BACP website.</p> <p>5 It appears to be the page from "Mobile</p> <p>6 Food Vendor Licenses."</p> <p>7 Q. Turn to Pages 4 and 5 of the exhibit.</p> <p>8 MR. WORSECK: Would you refer to the Bates</p> <p>9 numbers.</p> <p>10 BY MR. FROMMER:</p> <p>11 Q. Look at City 000698 and 699 starting</p> <p>12 with 698 entitled "GPS."</p> <p>13 What information is this?</p> <p>14 A. GPS requirements.</p> <p>15 Q. Are these the GPS regulations that have</p> <p>16 been promulgated by the City?</p> <p>17 MR. WORSECK: Objection. Vague.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I'm assuming yes.</p> <p>20 But to honestly answer, I would have to</p> <p>21 look at the rules and regulations to ensure it's</p> <p>22 the same.</p> <p>23 BY MR. FROMMER:</p> <p>24 Q. To the best of your knowledge, these are</p>
<p style="text-align: right;">Page 114</p> <p>1 It means that the GPS needs to be 95</p> <p>2 percent accurate.</p> <p>3 Q. That term "accurate," what does it mean?</p> <p>4 A. Again, by the Federal Department of</p> <p>5 Defense, their performance standards, accurate is</p> <p>6 around 10 feet of the proximity of the vehicle.</p> <p>7 Q. For a GPS unit to be an acceptable one</p> <p>8 under the regulations, it has to provide the</p> <p>9 location of the vehicle within 10 feet 95 percent</p> <p>10 of the time it's operating?</p> <p>11 A. Yes. Correct.</p> <p>12 MR. FROMMER: Let me show you Exhibit No. 3.</p> <p>13 (WHEREUPON, a certain document was</p> <p>14 marked Adelizzi Deposition Exhibit</p> <p>15 No. 3, for identification, as of</p> <p>16 10-8-14.)</p> <p>17 BY MR. FROMMER:</p> <p>18 Q. These are GPS regulations which were</p> <p>19 produced by the City.</p> <p>20 Do you recognize this document?</p> <p>21 MR. WORSECK: Obviously, the witness could</p> <p>22 answer questions about the document, but I object</p> <p>23 to the extent you're mischaracterizing the</p> <p>24 document.</p>	<p style="text-align: right;">Page 116</p> <p>1 put together by City?</p> <p>2 A. Appears to be.</p> <p>3 Q. It requires mobile food vehicles to be</p> <p>4 equipped with a GPS tracking device?</p> <p>5 A. Correct.</p> <p>6 Q. And that device needs to be an active</p> <p>7 device under the regulations, is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. Under the regulations, when does a</p> <p>10 mobile food vehicle have to have its GPS unit on</p> <p>11 and transmitting?</p> <p>12 A. It must function while the vehicle is</p> <p>13 vending food, open for business to the public, as</p> <p>14 well as being served at the commissary.</p> <p>15 Q. Page 699, about a quarter of the way up</p> <p>16 on the page, there's Section B.</p> <p>17 We talked about this before, but how</p> <p>18 does a City employee go about requesting location</p> <p>19 information from a GPS service provider?</p> <p>20 A. Again, we have never requested, to the</p> <p>21 best of my knowledge, any GPS data.</p> <p>22 Q. Would you have any way of knowing</p> <p>23 whether an enforcement official requested GPS data?</p> <p>24 A. To the best of my knowledge, no GPS data</p>

<p style="text-align: right;">Page 117</p> <p>1 has ever been requested.</p> <p>2 Q. But the question is would the City have</p> <p>3 any way to be made aware if an official, any</p> <p>4 enforcement official, anyone at the City of Chicago</p> <p>5 calls up a GPS service provider and requests GPS</p> <p>6 location information?</p> <p>7 MR. WORSECK: Objection. Vague. Speculation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. Ask that again.</p> <p>10 BY MR. FROMMER:</p> <p>11 Q. If a City official, someone working for</p> <p>12 the City called up a GPS service provider saying "I</p> <p>13 want the location information for Truck X," how</p> <p>14 would you learn about that?</p> <p>15 MR. WORSECK: Same objection.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I can't answer that. It would have to</p> <p>18 be the employee going to the supervisor. The</p> <p>19 supervisor coordinating efforts.</p> <p>20 If the supervisor wasn't aware of it -</p> <p>21 again, we have yet to pull this sort of</p> <p>22 information.</p> <p>23 BY MR. FROMMER:</p> <p>24 Q. That you know of?</p>	<p style="text-align: right;">Page 119</p> <p>1 A. I don't know.</p> <p>2 Q. How do you know if someone has requested</p> <p>3 GPS data?</p> <p>4 MR. WORSECK: Objection. Mischaracterizes</p> <p>5 prior testimony.</p> <p>6 BY THE WITNESS:</p> <p>7 A. How would I know?</p> <p>8 BY MR. FROMMER:</p> <p>9 Q. How would the City know whether anyone</p> <p>10 has ever requested GPS data?</p> <p>11 A. This ordinance, and the staff that work</p> <p>12 on it, work together.</p> <p>13 If data were to be pulled, we would</p> <p>14 communicate to each other.</p> <p>15 Q. If a random official, random employee</p> <p>16 wants to pull data, doesn't want to tell you or</p> <p>17 anybody else, just calls up the provider saying</p> <p>18 "Give me the data," how would you ever know about</p> <p>19 that?</p> <p>20 MR. WORSECK: Objection. Speculation.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I wouldn't know - let me go back to</p> <p>23 that.</p> <p>24 I said I wouldn't know, but I can't</p>
<p style="text-align: right;">Page 118</p> <p>1 A. Yes. I can't answer that question. I</p> <p>2 don't know.</p> <p>3 Q. But if a City employee wanted to call up</p> <p>4 the service provider and request the information,</p> <p>5 would he be able to do so without you being made aware</p> <p>6 of it?</p> <p>7 MR. WORSECK: Objection. Speculation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I don't know.</p> <p>10 BY MR. FROMMER:</p> <p>11 Q. Are there any regulations that limit</p> <p>12 which City personnel could request GPS location</p> <p>13 information?</p> <p>14 MR. WORSECK: Objection. Vague.</p> <p>15 BY THE WITNESS:</p> <p>16 A. As stated before, within my Department,</p> <p>17 they would escalate up.</p> <p>18 I can't answer or comment for another</p> <p>19 Department.</p> <p>20 BY MR. FROMMER:</p> <p>21 Q. At the Police Department, for instance,</p> <p>22 are there any rules or regulations in place that</p> <p>23 would limit which police employees can request GPS</p> <p>24 location information?</p>	<p style="text-align: right;">Page 120</p> <p>1 speak for another Department.</p> <p>2 If an employee did it and then going to</p> <p>3 a supervisor, that the supervisor would know.</p> <p>4 BY MR. FROMMER:</p> <p>5 Q. You're only aware of how BACP deals with</p> <p>6 requesting GPS data?</p> <p>7 MR. WORSECK: Objection. Mischaracterizes</p> <p>8 prior testimony.</p> <p>9 BY THE WITNESS:</p> <p>10 A. Again, to the best of my knowledge, no</p> <p>11 GPS data has been pulled.</p> <p>12 The working business rule among the</p> <p>13 enforcing Department is it's emergency-related if</p> <p>14 data were to be pulled.</p> <p>15 If data were to be pulled at that level,</p> <p>16 we all would be working together.</p> <p>17 BY MR. FROMMER:</p> <p>18 Q. Can you look at Exhibit No. 1, the</p> <p>19 Notice of Deposition. Look at Designation 17.</p> <p>20 Is this one of the topics you were</p> <p>21 designated for?</p> <p>22 A. Yes.</p> <p>23 Q. I just wanted to verify. Okay.</p> <p>24 Does a City employee, when requesting --</p>

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<p style="text-align: right;">Page 121</p> <p>1 is there any regulation that requires them to 2 provide written documentation stating why they are 3 requesting the data? 4 MR. WORSECK: Objection. Vague. 5 BY THE WITNESS: 6 A. I don't know. 7 BY MR. FROMMER: 8 Q. Does a City employee, if they are 9 requesting location information from a GPS service 10 provider, have to provide a written confirmation 11 that they received permission from a senior 12 official to pull that data? 13 A. Rephrase that. 14 Q. Is there anything in the code, anything 15 in the regulations, any written regulations or 16 binding internal policy which states that a City 17 employee that's requesting location information 18 from a provider provide that provider with written 19 documentation showing that they have received 20 permission from a senior City official to request 21 that data? 22 A. I'm not familiar with a formal document. 23 Again, we have not pulled GPS data. We 24 have not had to act.</p>	<p style="text-align: right;">Page 123</p> <p>1 written down that states that that information can 2 only be used for certain enumerated purposes? 3 MR. WORSECK: Same objection. 4 BY THE WITNESS: 5 A. It would be in the scope of the 6 information if they were to pull the GPS data. 7 BY MR. FROMMER: 8 Q. If a City employee wants to use the 9 location data that they pulled and share it with a 10 member of the public, is there any rule or 11 regulation that would prevent them from doing so? 12 MR. WORSECK: Same objection. 13 BY THE WITNESS: 14 A. I don't know. 15 BY MR. FROMMER: 16 Q. Is there any rule, regulation that 17 states that once GPS location data has been pulled, 18 that limits who has access to that data, who can 19 view that data? 20 MR. WORSECK: Same objection. Also calls for 21 a legal conclusion. 22 BY THE WITNESS: 23 A. I don't know. 24</p>
<p style="text-align: right;">Page 122</p> <p>1 Q. Could a GPS service provider refuse the 2 request of a City employee who is requesting GPS 3 location data? 4 MR. WORSECK: Objection. Speculation. Calls 5 for a legal conclusion. 6 BY THE WITNESS: 7 A. I don't know. 8 BY MR. FROMMER: 9 Q. Is there any regulation that empowers 10 service providers to deny a request from a City 11 employee? 12 A. I don't know. 13 Q. Are there rules, regulations, anything 14 written down that specifies how once GPS location 15 data has been received from a provider that limits 16 how that information can be used? 17 MR. WORSECK: Objection. Vague. 18 BY THE WITNESS: 19 A. Can you explain that question? 20 I'm not clear. 21 BY MR. FROMMER: 22 Q. A City employee requests GPS location 23 data. He receives it. 24 Is there any regulation or rule that's</p>	<p style="text-align: right;">Page 124</p> <p>1 BY MR. FROMMER: 2 Q. I'm going to move over to something a 3 little different and talk about some of the food 4 truck stands. 5 This is back to code, which I believe is 6 Exhibit No. 2. 7 Where does the code require that the 8 City establish mobile food stands? 9 A. In the ordinance under 7-38-117. 10 That outlines the program. 11 Q. What are the criteria? 12 What community areas does the code 13 require mobile food vehicle stands? 14 A. Again, same section under (C)(2). 15 Q. That's where there is an area of more 16 than 300 food establishments. Okay. 17 Are those community areas where there 18 are more than 300 retail food establishments areas 19 there's a lot of pedestrian traffic? 20 A. I don't know. 21 Q. What's the purpose behind the City's 22 food truck stand program? 23 MR. WORSECK: Objection to the extent it calls 24 for things like legislative intent.</p>



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<p style="text-align: right;">Page 125</p> <p>1 The witness has been designated to speak</p> <p>2 to governmental purposes supported by the</p> <p>3 provision.</p> <p>4 BY THE WITNESS:</p> <p>5 A. It is predictability, as well as it</p> <p>6 allows the mobile food operators to operate in</p> <p>7 dense areas where they otherwise might be able to.</p> <p>8 BY MR. FROMMER:</p> <p>9 Q. What do you mean?</p> <p>10 A. Due to limited legal parking spots,</p> <p>11 location restrictions, protected bike lanes.</p> <p>12 Q. Due to the 200-foot rule?</p> <p>13 A. Yes.</p> <p>14 Q. Are there any regulations or formal or</p> <p>15 informal guidelines governing how the City</p> <p>16 administers the food truck stands?</p> <p>17 A. The food stand program is implemented</p> <p>18 from the Department of Transportation.</p> <p>19 I will defer to my colleague that you</p> <p>20 will be meeting with later.</p> <p>21 Q. Again, I would like to point to Exhibit</p> <p>22 No. 1, which is the Notice of Deposition.</p> <p>23 Can you look at Topic 9.</p> <p>24 MR. WORSECK: I want to object that the prior</p>	<p style="text-align: right;">Page 127</p> <p>1 Is that one of the topics you were</p> <p>2 designated for?</p> <p>3 MR. WORSECK: Objection to the extent of our</p> <p>4 objections to that topic noted the entire</p> <p>5 correspondence.</p> <p>6 BY THE WITNESS:</p> <p>7 A. Yes.</p> <p>8 BY MR. FROMMER:</p> <p>9 Q. Does the City actively monitor food</p> <p>10 truck stand locations for issues like sidewalk</p> <p>11 congestion, trash?</p> <p>12 A. Randomly, Complaint-driven. We have not</p> <p>13 received a lot of Complaints regarding trash,</p> <p>14 pedestrian congestion.</p> <p>15 Q. <u>So the City has no one actually tasked</u></p> <p>16 <u>with actively monitoring those sites?</u></p> <p>17 A. <u>I don't know.</u></p> <p>18 Q. <u>Does the City have any objective</u></p> <p>19 <u>criteria to measure the amount of trash and</u></p> <p>20 <u>congestion at a food truck stand location?</u></p> <p>21 A. <u>I don't know.</u></p> <p>22 Q. Has the City established any objective</p> <p>23 measurement of sidewalk congestion that it uses to</p> <p>24 evaluate the stands?</p>
<p style="text-align: right;">Page 126</p> <p>1 question was vague.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Perhaps I didn't understand. Ask it</p> <p>4 again.</p> <p>5 BY MR. FROMMER:</p> <p>6 Q. Does the City have any formal</p> <p>7 regulations or informal guidelines governing how</p> <p>8 the City administers the food truck stand program</p> <p>9 and food truck stand locations?</p> <p>10 A. The locations are identified and</p> <p>11 processed through an ordinance.</p> <p>12 The ordinance, as it is outlined in the</p> <p>13 mobile food ordinance, there's a process of</p> <p>14 approval under 7-38-117 where approval is conducted</p> <p>15 by City Council to establish the signs.</p> <p>16 Also taking into account the alderman,</p> <p>17 the police and where the stand should be erected.</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. But does the City actually have any</p> <p>20 regulations or guidelines on how the food truck</p> <p>21 stand location should be administered?</p> <p>22 A. I don't know.</p> <p>23 Q. Again, look at the Notice of Deposition</p> <p>24 No. 1, Topic 9.</p>	<p style="text-align: right;">Page 128</p> <p>1 MR. WORSECK: Objection. Vague.</p> <p>2 BY THE WITNESS:</p> <p>3 A. I don't know.</p> <p>4 BY MR. FROMMER:</p> <p>5 Q. Does the City have an acceptable amount</p> <p>6 of sidewalk congestion -- let me rephrase that.</p> <p>7 Has the City established any guidelines</p> <p>8 or regulations about what is an acceptable amount</p> <p>9 of sidewalk congestion at the mobile food vehicle</p> <p>10 stands?</p> <p>11 MR. WORSECK: Vague.</p> <p>12 BY THE WITNESS:</p> <p>13 A. The Department of Transportation does</p> <p>14 have information regarding pedestrian traffic and</p> <p>15 congestion.</p> <p>16 I don't know if that comes into play in</p> <p>17 identifying a stand. I don't know if it's specific</p> <p>18 to the stand.</p> <p>19 But there is information from the</p> <p>20 Department of Transportation regarding these</p> <p>21 studies, pedestrian flows and congestion.</p> <p>22 BY MR. FROMMER:</p> <p>23 Q. Do you know if there is any actual</p> <p>24 measurement of sidewalk congestion that's actually</p>



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<p style="text-align: right;">Page 129</p> <p>1 employed when evaluating the level of sidewalk 2 congestion at the mobile food vehicle stands? 3 MR. WORSECK: Objection. Vague. Speculation. 4 Incomplete hypothetical. 5 BY THE WITNESS: 6 A. I don't know. 7 BY MR. FROMMER: 8 Q. For the City, do they have an acceptable 9 amount of sidewalk congestion at the mobile food 10 vehicle stands, a certain amount of sidewalk 11 congestion that it's willing to tolerate at mobile 12 food vehicle stand locations? 13 MR. WORSECK: Same objections. 14 BY THE WITNESS: 15 A. I can't answer that. I don't know. 16 BY MR. FROMMER: 17 Q. Does the City have an objective upper 18 limit of how much sidewalk congestion can occur at 19 a mobile food vehicle stand location before it 20 takes some action to try to remediate that sidewalk 21 congestion issue? 22 MR. WORSECK: Same objections. 23 BY THE WITNESS: 24 A. I don't know.</p>	<p style="text-align: right;">Page 131</p> <p>1 A. They may. 2 Q. Has that occurred? 3 A. A couple of stands have been moved. 4 I don't know the full requirement or 5 criteria as to why or what the hiccup was behind 6 it. 7 Q. Does the City have any objective 8 measurement of trash that it employs when 9 evaluating the amount of trash at a mobile food 10 vehicle stand? 11 MR. WORSECK: Objection. Speculation. Vague. 12 BY THE WITNESS: 13 A. I don't understand. 14 BY MR. FROMMER: 15 Q. Does the City have any objective metric 16 created about the amount of trash that -- when the 17 City looks at a mobile food vehicle stand and wants 18 to evaluate if there is too much trash there, does 19 it have any objective metrics by which it makes 20 that determination? 21 MR. WORSECK: Same objection. 22 BY THE WITNESS: 23 A. It would be difficult to do it before 24 the stand is even implemented.</p>
<p style="text-align: right;">Page 130</p> <p>1 BY MR. FROMMER: 2 Q. If there is too much congestion, a level 3 of sidewalk congestion that exceeds what the City 4 deems permissible, what actions will the City take 5 to attempt to remediate that congestion? 6 MR. WORSECK: Objection. Same objections. 7 BY THE WITNESS: 8 A. The stand could be moved. 9 BY MR. FROMMER: 10 Q. Does the City take any steps to try to 11 reduce the amount of sidewalk congestion at a 12 mobile food vehicle stand? 13 A. In what way? 14 Q. For instance, does the City have 15 officials go out to make sure that food truck lines 16 are positioned such that they don't create sidewalk 17 congestion? 18 A. To the best of my knowledge, I'm not 19 aware of that. 20 Q. Do City officials go out and look at 21 other fixed structures near the mobile food vehicle 22 stands which might be causing congestion and then 23 suggest that those either be removed or moved to a 24 different location?</p>	<p style="text-align: right;">Page 132</p> <p>1 BY MR. FROMMER: 2 Q. But during the operation when the stand 3 is up and running, and now we are in the 4 administration of the stand. 5 A. I'm not aware of there being a hiccup 6 with excess trash or debris. If there were, it be 7 would be addressed. 8 Again, there is an option to move a 9 stand if it's a problem. 10 Q. You are not aware of mobile food 11 vehicles creating a trash problem? 12 MR. WORSECK: Objection. Mischaracterizes the 13 testimony. 14 BY THE WITNESS: 15 A. I don't know. 16 BY MR. FROMMER: 17 <u>Q. Do you know if there is a problem with</u> 18 <u>mobile food vehicles creating a problem with trash</u> 19 <u>at mobile food vehicle stands?</u> 20 <u>A. I'm not aware of such a problem.</u> 21 Q. Does the City have an upper limit of how 22 much trash could be at mobile food vehicle stand 23 locations before it takes some steps to 24 remediation?</p>



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<p style="text-align: right;">Page 133</p> <p>1 MR. WORSECK: Vague. Asked and answered. 2 BY THE WITNESS: 3 A. I'm not familiar with an outlined 4 criteria. 5 If the area is constantly cluttered with 6 trash and overflowing debris, it would be 7 addressed. 8 BY MR. FROMMER: 9 Q. Has the City looked at whether the 10 degree of sidewalk congestion at the mobile food 11 vehicle stands, have they compared that to the 12 amount of sidewalk congestion at other places where 13 mobile food vehicles are operating? 14 A. I don't think I understand. 15 Q. Has the City looked and compared between 16 the amount of sidewalk congestion at a mobile food 17 vehicle stand and compared that to the amount of 18 sidewalk congestion at other locations on public 19 property where mobile food vehicles operate? 20 A. I don't know that answer. 21 Q. Has the City looked at the amount of 22 trash at the mobile food vehicle stands and 23 compared that to the amount of trash at other 24 places where mobile food vehicles operate?</p>	<p style="text-align: right;">Page 135</p> <p>1 fit at a stand? 2 MR. WORSECK: Objection. Mischaracterizes the 3 testimony. 4 BY THE WITNESS: 5 A. I'm not aware of that. 6 BY MR. FROMMER: 7 Q. Let me jump back quickly to GPS. 8 Can you look at Exhibit 3, Page 699. 9 The requirement under (C)(3) halfway 10 down the page, what's an application programming 11 interface? 12 A. A tool that interfaces with data. 13 Q. What do you mean by that? 14 A. A tool where you can have access to 15 data. 16 Q. Okay. When the regulations talk about 17 an application programming interface that's 18 available to the general public, what does that 19 mean? 20 A. That the data has to be public in order 21 to access it. 22 You can't access the data unless you 23 have permission or a unique identifier to pull the 24 data.</p>
<p style="text-align: right;">Page 134</p> <p>1 MR. WORSECK: Objection. Vague. 2 BY THE WITNESS: 3 A. That information may be out there. 4 I'm not aware of it. 5 BY MR. FROMMER: 6 Q. If there is a congestion or trash issue 7 at the stands, how does the City become aware of 8 that? 9 A. It would be either by Complaint or 10 actual visualization of trash overflowing. 11 Q. <u>Has the City received any Complaints</u> 12 <u>about sidewalk congestion at mobile food vehicle</u> 13 <u>stands?</u> 14 A. <u>I'm not aware of any Complaints.</u> 15 Q. How many trucks are supposed to be able 16 to fit in a mobile vehicle stand? 17 A. Roughly two. 18 Q. Are you aware of reports of some stands 19 where only a single truck could fit? 20 A. I don't recall getting a Complaint on 21 that. 22 I don't recall that conversation. 23 Q. You're saying the City doesn't know if 24 it received any Complaints that two trucks can't</p>	<p style="text-align: right;">Page 136</p> <p>1 Q. From the provider? 2 I'm a little confused by the answer. 3 You have an application programming 4 interface that says it's available to the general 5 public. 6 What does that mean? 7 MR. WORSECK: Objection to the extent you are 8 mischaracterizing the regulations. 9 BY THE WITNESS: 10 A. So data has to be available to the 11 public, but in order to take that data, you need 12 access to get the data. 13 BY MR. FROMMER: 14 Q. That's what the API is for? 15 A. It's the interface to get to the data. 16 Q. Is it fair to say that someone could 17 create a program that hooks into the API and 18 through that accesses GPS data? 19 MR. WORSECK: Objection. Vague. 20 BY THE WITNESS: 21 A. With permission. 22 It would be the permission of the 23 provider and GPS holder. 24</p>



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1 BY MR. FROMMER:
2 Q. Where does it state that in the
3 regulations?
4 A. It's industry standard. Technical
5 requirements.
6 Q. Have you communicated that understanding
7 to any GPS service providers?
8 A. We have not received any questions
9 regarding this, of the API component and/or what
10 this represents.
11 Q. Under what conditions could a GPS
12 service provider refuse to give permission to a
13 programmer who wants to use that API?
14 MR. WORSECK: Objection. Speculation.
15 BY THE WITNESS:
16 A. I'm not clear on the question.
17 BY MR. FROMMER:
18 Q. Somebody calls up saying "I have a
19 program. I want to hook into your GPS service and
20 access the information that you have there."
21 Is there any situation where the GPS
22 service provider says "No. I won't give that to
23 you."
24 A. I can't answer that. I don't know.

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1 MR. FROMMER: Let's take five minutes.
2 (WHEREUPON, a short recess was had.)
3 MR. WORSECK: For the record, there is 20
4 minutes left to the deposition.
5 MR. FROMMER: Yes.
6 BY MR. FROMMER:
7 Q. Is there a uniform City policy on the
8 GPS tracking requirement?
9 MR. WORSECK: Objection. Vague.
10 BY THE WITNESS:
11 A. There are requirements set out in the
12 rules and regs.
13 BY MR. FROMMER:
14 Q. Is there a uniform policy across all
15 Departments about when GPS data can be accessed,
16 what permission needs to be attained before
17 requesting that data, or about how that data can be
18 subsequently used or shared?
19 MR. WORSECK: Same objection. Vague.
20 It also calls for a legal conclusion.
21 BY THE WITNESS:
22 A. Again, under the rules and regs, there
23 is criteria of why GPS data would need to be
24 pulled.

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1 BY MR. FROMMER:
2 Q. You said the BACP has its working
3 business rule about when it will pull data and
4 whose permission needs to be gotten before a
5 request is made, is that correct?
6 A. I said that we have a working business
7 rule as to the escalation for how we would pull the
8 data.
9 But the data to pull it would fall under
10 the regulations outlined in the rules and
11 regulations.
12 Q. Do other Departments have their own
13 working business rules about the process by which
14 people seek permission to request GPS data?
15 A. I don't know. I would assume yes.
16 Q. Do you know if there's a uniform City
17 working rule about how City employees request GPS
18 data and what permissions they need to get and from
19 whom?
20 MR. WORSECK: Objection. Vague.
21 BY THE WITNESS:
22 A. I don't have a working approval list for
23 the Departments.
24 It would be an escalation to management

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1 that if the GPS data needed to be pulled based on
2 the criteria, it would be pulled.
3 BY MR. FROMMER:
4 Q. Do you know if the Police Department
5 uses the same working rule that BACP uses?
6 A. I don't know.
7 Q. Do you know if the Health Department
8 uses the same working rule that BACP uses?
9 A. It's not documented, but in business
10 rules and working together, yes.
11 Q. When did BACP communicate this working
12 rule to its employees?
13 A. In training business consultants and
14 investigators with the new application, the
15 application process and the escalation.
16 Q. When was that precisely?
17 A. The ordinance passed back in 2012.
18 We have had a handful of trainings to
19 our business consultants pretty much about intake,
20 consultation, the documents available, application
21 processing and escalation.
22 Q. So these are communicated at trainings?
23 A. They are trainings.
24 Q. Are there any written materials produced



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<p style="text-align: right;">Page 141</p> <p>1 for those trainings?</p> <p>2 A. I can't speak -- our training documents</p> <p>3 are an internal document of processing, obtaining</p> <p>4 information, the requirements.</p> <p>5 Q. So there are internal documents that lay</p> <p>6 out this working rule?</p> <p>7 A. For GPS specifically? No. It is not</p> <p>8 written in the training materials.</p> <p>9 It's a verbal conversation to a staff.</p> <p>10 Q. Why is there no written documentation of</p> <p>11 the business rule as it applies to GPS?</p> <p>12 A. Because it falls out of the realm of a</p> <p>13 business consultant.</p> <p>14 For training purposes, it is not in</p> <p>15 their purview to address this issue.</p> <p>16 Q. Is there any written document whatsoever</p> <p>17 that actually lays out this working rule?</p> <p>18 A. For my team, no.</p> <p>19 Q. How about for the Police Department?</p> <p>20 A. I don't know.</p> <p>21 Q. How about for the Health Department?</p> <p>22 A. I don't know.</p> <p>23 Q. You said it was about training, that</p> <p>24 these were communicated in trainings.</p>	<p style="text-align: right;">Page 143</p> <p>1 that GPS data would be pulled, it would be</p> <p>2 communicated and shared across this team that works</p> <p>3 on this application at a senior level.</p> <p>4 Q. Has the working rule been communicated</p> <p>5 to investigators?</p> <p>6 A. It would be out of the purview of an</p> <p>7 investigator to pull any GPS data without the</p> <p>8 direction of a supervisor or for any other legal</p> <p>9 sense of pulling information, as with any other</p> <p>10 investigation with a business.</p> <p>11 Q. That's the precise question. How do</p> <p>12 they know that?</p> <p>13 How do they know they are supposed to</p> <p>14 escalate it to someone like yourself before pulling</p> <p>15 GPS data?</p> <p>16 How was that information communicated to</p> <p>17 those investigators?</p> <p>18 A. I don't know.</p> <p>19 Q. Do you even know if the investigators</p> <p>20 have knowledge of this working rule?</p> <p>21 A. I know they have knowledge, yes.</p> <p>22 I'm not -- it's in their own trainings</p> <p>23 that our supervisors, my counterpart, have with</p> <p>24 their line staff.</p>
<p style="text-align: right;">Page 142</p> <p>1 Were there trainings in 2012?</p> <p>2 A. With our business consultants, yes.</p> <p>3 Q. 2013?</p> <p>4 A. Yes.</p> <p>5 Q. Were there trainings that occurred</p> <p>6 before this lawsuit commenced, which was November</p> <p>7 2012?</p> <p>8 A. Yes.</p> <p>9 Q. Were there any written documents created</p> <p>10 for that training about the business rule?</p> <p>11 A. For GPS?</p> <p>12 Q. Yes.</p> <p>13 A. No.</p> <p>14 Q. How is the working rule communicated to</p> <p>15 investigators?</p> <p>16 Before you were talking about people who</p> <p>17 are involved in like business consultation.</p> <p>18 How has the BACP communicated the</p> <p>19 working rule to its investigators?</p> <p>20 A. I work with my counterpart of</p> <p>21 investigations, the person that handles</p> <p>22 investigations.</p> <p>23 Again, we have not pulled any GPS data.</p> <p>24 Our agreement and working rule is that in the event</p>	<p style="text-align: right;">Page 144</p> <p>1 Q. Are there written documents created for</p> <p>2 those trainings?</p> <p>3 A. There are written documents provided for</p> <p>4 investigators for training.</p> <p>5 I can't speak if this GPS piece of when</p> <p>6 or when not to call or how to escalate is on that</p> <p>7 training document.</p> <p>8 Q. Would a violation of the 200-foot rule</p> <p>9 ever constitute an emergency under the working</p> <p>10 business rule?</p> <p>11 MR. WORSECK: Objection. Vague. Speculation.</p> <p>12 BY THE WITNESS:</p> <p>13 A. If it falls into an unsafe, unsanitary</p> <p>14 or other sort -- if it falls into the criteria of</p> <p>15 an emergency.</p> <p>16 BY MR. FROMMER:</p> <p>17 Q. Can you think of any examples where that</p> <p>18 might occur, a violation of the 200-foot rule might</p> <p>19 constitute an emergency?</p> <p>20 A. It could be unsafe conditions. It could</p> <p>21 be an issue with the vehicle itself and the fire</p> <p>22 equipment.</p> <p>23 Q. Is there any written guidelines for</p> <p>24 delineating what constitutes an emergency for</p>



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<p style="text-align: right;">Page 145</p> <p>1 purposes of the 200-foot rule?</p> <p>2 MR. WORSECK: Objection. Vague.</p> <p>3 BY MR. FROMMER:</p> <p>4 Q. You say you could pull GPS data in an</p> <p>5 emergency situation.</p> <p>6 You say there may be some instances</p> <p>7 where the violation of the 200-foot rule</p> <p>8 constitutes an emergency.</p> <p>9 Is there anything written down that</p> <p>10 actually reflects that?</p> <p>11 I think it's the emergency as we know</p> <p>12 them based on unsafe conditions, life-threatening</p> <p>13 emergencies.</p> <p>14 Q. Is the answer no?</p> <p>15 A. Specific to the 200-foot rule? I don't</p> <p>16 know.</p> <p>17 Q. Before you said that you distribute</p> <p>18 information to trucks at various events about how</p> <p>19 to operate a mobile food vehicle.</p> <p>20 Are those the fact sheets that are</p> <p>21 available on the website?</p> <p>22 A. Yes.</p> <p>23 Q. Is there anything that you distribute to</p> <p>24 trucks in in-person meetings that is not those fact</p>	<p style="text-align: right;">Page 147</p> <p>1 API and researched GPS, in talking to providers,</p> <p>2 know that there is a permission that's required to</p> <p>3 obtain information.</p> <p>4 Q. What's the criteria by which the service</p> <p>5 provider could decide whether to grant or deny that</p> <p>6 request?</p> <p>7 A. I don't know.</p> <p>8 Q. Does the City have anything written down</p> <p>9 saying when GPS service providers should allow</p> <p>10 access to the API's?</p> <p>11 MR. WORSECK: Objection. Vague.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I don't know.</p> <p>14 BY MR. FROMMER:</p> <p>15 Q. Did you know you were designated to</p> <p>16 speak about Departments -- not only about BACP, but</p> <p>17 about other City Departments like Police and Health</p> <p>18 regarding implementation and enforcement of the</p> <p>19 200-foot rule and the GPS tracking requirement?</p> <p>20 A. Yes.</p> <p>21 Q. Why do you think you were designated to</p> <p>22 speak on behalf of the Police Department about the</p> <p>23 200-foot rule and the GPS tracking requirement?</p> <p>24 MR. WORSECK: Objection. Vague. Calls for</p>
<p style="text-align: right;">Page 146</p> <p>1 sheets?</p> <p>2 A. There may be as far as application</p> <p>3 requirement. We might give -- we have a working</p> <p>4 application they are required to complete.</p> <p>5 That application is provided to them.</p> <p>6 It is not available online.</p> <p>7 It's customized as with any license type</p> <p>8 to any business activity.</p> <p>9 Q. Would that license application include</p> <p>10 some information about the necessity of getting a</p> <p>11 GPS, or how the GPS should be used?</p> <p>12 A. There's a GPS affidavit that's required</p> <p>13 at time of application that the operator must swear</p> <p>14 to and submit.</p> <p>15 Q. Who has those GPS affidavits?</p> <p>16 A. We hold them at BACP.</p> <p>17 Q. Before, when talking about GPS, you said</p> <p>18 it was industry standard that a programmer who</p> <p>19 wanted to access an API would have to seek</p> <p>20 permission from the GPS service provider.</p> <p>21 What makes you say that, that that's the</p> <p>22 industry standard?</p> <p>23 A. It is industry knowledge.</p> <p>24 Staff in the office that have researched</p>	<p style="text-align: right;">Page 148</p> <p>1 speculation and calls for potential intrusion into</p> <p>2 attorney-client privilege matters.</p> <p>3 BY MR. FROMMER:</p> <p>4 Q. Why do you think you are the best person</p> <p>5 or person who has knowledge about the actions of</p> <p>6 the Police Department?</p> <p>7 MR. WORSECK: Don't speculate. Objection.</p> <p>8 Speculation.</p> <p>9 BY THE WITNESS:</p> <p>10 A. I can't answer that.</p> <p>11 BY MR. FROMMER:</p> <p>12 Q. So you don't know?</p> <p>13 A. I don't know.</p> <p>14 Q. What about the food truck stands, you</p> <p>15 have been designated to speak about how they were</p> <p>16 administered and implemented.</p> <p>17 But from what I recall before, you said</p> <p>18 the Department of Transportation is the one that</p> <p>19 works on that primarily, is that correct?</p> <p>20 MR. WORSECK: Objection. Argumentative.</p> <p>21 Mischaracterizes the testimony.</p> <p>22 BY THE WITNESS:</p> <p>23 A. What I said was that I can speak to the</p> <p>24 ordinance and creation of the stand.</p>

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<p style="text-align: right;">Page 149</p> <p>1 The Department of Transportation is 2 responsible for the actual stand program. 3 BY MR. FROMMER: 4 Q. Why do you think you are qualified to 5 speak on behalf of the Police Department and Health 6 Department about the issues in the Notice of 7 Deposition for which you have been designated? 8 MR. WORSECK: Same objection as to the prior 9 question. Calls for speculation. Calls for 10 intrusion into privileged matters. 11 Argumentative. Misstates the 12 requirements for a Rule 206 witness. 13 BY THE WITNESS: 14 A. I don't know. 15 BY MR. FROMMER: 16 Q. You don't know why you're qualified to 17 speak on behalf of the Police Department and Health 18 Department? 19 MR. WORSECK: Same objections. 20 BY THE WITNESS: 21 A. I don't know. 22 BY MR. FROMMER: 23 Q. Who do you think at the Department of 24 Transportation would have knowledge about the</p>	<p style="text-align: right;">Page 151</p> <p>1 available. 2 Q. But does the BACP has any involvement in 3 the day-to-day administration of those stands? 4 A. No. 5 MR. GALL: We have about five minutes left in 6 the deposition, but let's take a quick five-minute 7 break. 8 (WHEREUPON, a short recess was had.) 9 MR. WORSECK: For the record, there's five 10 minutes left. 11 BY MR. FROMMER: 12 Q. We were talking before about the 13 business rule regarding the GPS tracking 14 requirement. 15 Was the business rule communicated at 16 trainings for business consultants in 2012? 17 A. 2012, with the training, the business 18 rule was regarding application, how to confirm if 19 an operator had GPS, the requirements for them to 20 come into compliance. 21 This was a verbal conversation that this 22 is not in their area of expertise or in their role 23 to pull any sort of GPS data. This would not be 24 under their jurisdiction or role.</p>
<p style="text-align: right;">Page 150</p> <p>1 mobile food vehicle stand program? 2 MR. WORSECK: Objection. Vague. 3 BY MR. FROMMER: 4 Q. Do you think Luanne Hamilton would have 5 knowledge about how the mobile food vehicle stands 6 are administered? 7 A. Yes. 8 Q. Do you think she would have more 9 information about how the mobile food vehicle 10 stands are administered compared to you? 11 MR. WORSECK: Objection. Vague. 12 BY THE WITNESS: 13 A. She may. Yes. It's her Department. 14 BY MR. FROMMER: 15 Q. To what extent are you involved in the 16 administration of the mobile food vehicle stands? 17 A. Again, in creating the ordinance and 18 creating the program, I was part of that creation. 19 We are a keeper, if you will -- BACP has 20 the most information online for the operators 21 regarding food truck operations and mobile food 22 stands. 23 We have mapped it. Put locations. We 24 do have that information to make it readily</p>	<p style="text-align: right;">Page 152</p> <p>1 Q. Was the business rule communicated at 2 trainings for investigators in 2012? 3 A. I don't know. 4 Q. Was it communicated at trainings for 5 investigators in 2013? 6 A. In the training for the investigators, 7 that's ongoing. There is an escalation process for 8 investigations. 9 They use all sorts of tools to gather 10 information as needed and required under law. 11 Q. Do you know for certain that the 12 business rule has been communicated to 13 investigators? 14 A. Through verbal conversations with my 15 counterparts on this GPS, knowing that my 16 Department has not pulled any GPS data, that in the 17 event of an emergency or need to pull the GPS data, 18 that there would be coordination. 19 Q. So you're saying your conversations with 20 other officials at the BACP make you believe that 21 the business rule has been communicated to 22 investigators? 23 A. Yes. 24 Q. When did those communications take</p>

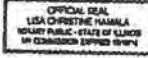


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<p style="text-align: right;">Page 153</p> <p>1 place?</p> <p>2 A. All along from the creation of the</p> <p>3 ordinance.</p> <p>4 Adding the GPS requirement, getting</p> <p>5 their input, up until today.</p> <p>6 Q. The business rule specifically regarding</p> <p>7 the process by which employees access GPS data,</p> <p>8 when was that first communicated to investigators?</p> <p>9 A. I don't have the exact date.</p> <p>10 I assume during the training for this</p> <p>11 new amendment to the ordinance and all the</p> <p>12 requirements, that that was part of that training.</p> <p>13 We didn't have people come into</p> <p>14 compliance with the GPS component until later in</p> <p>15 2012.</p> <p>16 Q. You don't know for certain?</p> <p>17 A. No.</p> <p>18 Q. One other thing about GPS, and then I</p> <p>19 think we will be finished here.</p> <p>20 You said there was protocol being</p> <p>21 developed about how the GPS information, under what</p> <p>22 circumstances it would be accessed, and how</p> <p>23 employees access that data, get permission to</p> <p>24 access it.</p>	<p style="text-align: right;">Page 155</p> <p>1 for attorney-client, work product privilege</p> <p>2 information.</p> <p>3 I instruct the witness not to divulge</p> <p>4 any answer that could compromise those privileges.</p> <p>5 (WHEREUPON, the record was read by</p> <p>6 the reporter as requested.)</p> <p>7 MR. WORSECK: Same objections.</p> <p>8 BY THE WITNESS:</p> <p>9 A. No.</p> <p>10 BY MR. FROMMER:</p> <p>11 Q. Why do you say that?</p> <p>12 A. Because it is a requirement in the</p> <p>13 ordinance.</p> <p>14 If there's a need to pull GPS data based</p> <p>15 on this criteria, we would want to do it</p> <p>16 consistently.</p> <p>17 Q. Is there a requirement in the code that</p> <p>18 you develop these protocols?</p> <p>19 A. No. In the municipal code and for</p> <p>20 licensing and enforcement and regulation, there are</p> <p>21 needs to develop protocols.</p> <p>22 MR. FROMMER: That's all I have.</p> <p>23 I knew Drew said he had a few questions.</p> <p>24 MR. WORSECK: A couple.</p>
<p style="text-align: right;">Page 154</p> <p>1 Is that fair to say?</p> <p>2 A. Correct.</p> <p>3 Q. When is that going to be complete?</p> <p>4 A. I would expect by the end of the year.</p> <p>5 I say that because we are in mid-October.</p> <p>6 Q. When did the work to establish that</p> <p>7 protocol first start?</p> <p>8 A. I would say it has been ongoing. We</p> <p>9 have not had a need to pull any GPS data.</p> <p>10 It's been a work in progress.</p> <p>11 Q. Then what makes you think by the end of</p> <p>12 the year?</p> <p>13 A. Now that we have a number of trucks out</p> <p>14 in the community, licensed trucks, people with the</p> <p>15 GPS components, that we will have a protocol in</p> <p>16 place.</p> <p>17 Q. What was the reason why the City started</p> <p>18 developing this protocol?</p> <p>19 A. Well, as with any regulation, any</p> <p>20 license, we do have business rules, protocols on</p> <p>21 how to administer things.</p> <p>22 Q. Was this lawsuit one of the reasons the</p> <p>23 City started developing these protocols?</p> <p>24 MR. WORSECK: Objection to the extent it calls</p>	<p style="text-align: right;">Page 156</p> <p>1 EXAMINATION</p> <p>2 BY MR. WORSECK:</p> <p>3 Q. Is it fair to say in the two-plus years</p> <p>4 that the 2012 food truck ordinance has been in</p> <p>5 effect, that BACP has had regular contact and</p> <p>6 communication with the Police Department, the</p> <p>7 Health Department and CDOT about the ordinance in</p> <p>8 general and about the 200-foot rule in particular?</p> <p>9 MR. FROMMER: Objection. Leading.</p> <p>10 This is your witness.</p> <p>11 MR. WORSECK: It's cross-examination in a</p> <p>12 deposition.</p> <p>13 The objection is noted.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Yes. We have had conversations over the</p> <p>16 two-and-a-half years or year-and-a-half.</p> <p>17 BY MR. WORSECK:</p> <p>18 Q. Counsel didn't give you these documents</p> <p>19 today. He was not required to.</p> <p>20 Are you aware of a packet of citations</p> <p>21 for violations of the 200-foot rule that were</p> <p>22 generated in connection with DOH proceedings that</p> <p>23 were produced to the plaintiffs as part of this</p> <p>24 lawsuit?</p>

<p style="text-align: right;">Page 157</p> <p>1 A. Yes.</p> <p>2 Q. Were at least some, if not many, of</p> <p>3 those tickets generated by CPD?</p> <p>4 A. Yes.</p> <p>5 Q. If I can direct you to Exhibit No. 3,</p> <p>6 Page 699.</p> <p>7 That purports to contain at least some</p> <p>8 of the City's GPS regulations.</p> <p>9 Section C, do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. That talks about the GPS service</p> <p>12 provider must be able to "provide the following,"</p> <p>13 and then it lists various things that the provider</p> <p>14 must be able to provide?</p> <p>15 A. Yes.</p> <p>16 Q. Item 3 is something you and counsel</p> <p>17 talked about earlier regarding the application</p> <p>18 programming interface?</p> <p>19 A. Yes.</p> <p>20 Q. Your understanding of that is that it</p> <p>21 refers to a technological feature that would have</p> <p>22 the capability to allow a third-party to access</p> <p>23 data that's being held by the service provider?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 159</p> <p>1 to private property and restaurants on private</p> <p>2 property.</p> <p>3 I will refer you to Exhibit No. 2, which</p> <p>4 are excerpts of the City's Municipal Code Section</p> <p>5 7-38-115 subsection (k), which talks about the</p> <p>6 scenario.</p> <p>7 You and counsel had a long colloquy</p> <p>8 about different hypotheticals, and so forth, about</p> <p>9 where that might apply and might not apply.</p> <p>10 To clarify, if there was a restaurant on</p> <p>11 private property that granted permission to a food</p> <p>12 truck to locate on its private property, but there</p> <p>13 were still other restaurants within 200 feet of</p> <p>14 that location where the truck would be operating,</p> <p>15 this provision says that would not be permissible,</p> <p>16 is that correct?</p> <p>17 MR. FROMMER: Objection. Leading.</p> <p>18 BY THE WITNESS:</p> <p>19 A. That's correct.</p> <p>20 MR. WORSECK: Nothing else.</p> <p>21 MR. FROMMER: Nothing else.</p> <p>22 MR. WORSECK: Reserved.</p> <p>23 MR. FROMMER: I would like to note for the</p> <p>24 record that the witness was designated for a number</p>
<p style="text-align: right;">Page 158</p> <p>1 Q. But it doesn't require that data to be</p> <p>2 given to the third-party by the service provider,</p> <p>3 to your understanding, is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. The service provider would have the</p> <p>6 freedom to deny access to the person requesting the</p> <p>7 data?</p> <p>8 A. That's correct.</p> <p>9 Q. Nothing in the rule requires the</p> <p>10 provider to grant access to the person requesting</p> <p>11 the data?</p> <p>12 A. That's correct.</p> <p>13 Q. Nothing in the rule requires the food</p> <p>14 truck itself who is transmitting the data to the</p> <p>15 provider to consent to or to grant access to a</p> <p>16 third-party that might want to access that data?</p> <p>17 A. That's correct.</p> <p>18 Q. Under the rule, both the service</p> <p>19 provider and the truck have the authority to deny</p> <p>20 access to a party seeking through the application</p> <p>21 programming interface to access data?</p> <p>22 A. That's correct.</p> <p>23 Q. I want to go back to a line of</p> <p>24 questioning about the 200-foot rule as it applies</p>	<p style="text-align: right;">Page 160</p> <p>1 of topics in the Notice of Deposition.</p> <p>2 It is plaintiffs' belief that this</p> <p>3 witness was not an adequate representative for the</p> <p>4 City about several of those topics.</p> <p>5 Regarding Topic 7, which is the</p> <p>6 "implementation, operation and enforcement of the</p> <p>7 200-foot rule," the deponent had no information</p> <p>8 about either the Police Department or Health</p> <p>9 Department.</p> <p>10 Topic No. 9, the "Mobile Food Vehicle</p> <p>11 Stands Program," the deponent had no answers to a</p> <p>12 number of questions.</p> <p>13 Topic No. 12, "Regulations and</p> <p>14 guidance," the deponent only was able to speak</p> <p>15 about regulations, guidance given to enforcement</p> <p>16 officials at the BACP, not at the Police Department</p> <p>17 or Health Department, or any other City agency.</p> <p>18 Topic No. 17, the "Implementation,</p> <p>19 operation and enforcement of the GPS tracking</p> <p>20 requirement," the deponent only had information and</p> <p>21 knowledge about Business Affairs and Consumer</p> <p>22 Protection.</p> <p>23 Therefore, the plaintiffs deemed that</p> <p>24 this is not an adequate representative for purposes</p>

JOY ADELIZZI
BURKE vs. CITY OF CHICAGOOctober 08, 2014
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<p style="text-align: right;">Page 161</p> <p>1 of 206(a)(1), and we reserve any rights they need, 2 including calling additional witnesses or moving to 3 compel. 4 MR. WORSECK: For the record, we state that we 5 have complied with the obligations set forth by 6 Rule 206, which are not as plaintiffs seem to 7 believe them to be. 8 We have lodged objections and 9 correspondence regarding the scope of certain 10 topics and permissible parameters within certain 11 topics. 12 Even on the face of the topics 13 themselves, counsel has engaged in numerous lines 14 of questioning going beyond the scope of those 15 topics. 16 We permitted it as it was counsel's 17 freedom to choose his time as he wanted to in this 18 deposition, but we fully complied with obligations 19 of the rule. 20 MR. FROMMER: Thank you. 21 We're done now. 22 FURTHER DEPONENT SAITH NOT. 23 24</p> <p style="text-align: right;">Page 162</p> <p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF C O O K) 4 I, LISA C. HAMALA, a Notary Public 5 within and for the County of Cook, State of 6 Illinois, and a Certified Shorthand Reporter of 7 said state, do hereby certify: 8 That previous to the commencement of the 9 examination of the witness, the witness was duly 10 sworn to testify the whole truth concerning the 11 matters herein; 12 That the foregoing deposition transcript 13 was reported stenographically by me, was thereafter 14 reduced to typewriting under my personal direction 15 and constitutes a true record of the testimony 16 given and the proceedings had; 17 That the said deposition was taken 18 before me at the time and place specified; 19 That I am not a relative or employee or 20 attorney or counsel, nor a relative or employee of 21 such attorney or counsel for any of the parties 22 hereto, nor interested directly or indirectly in 23 the outcome of this action. 24 IN WITNESS WHEREOF, I do hereunto set my</p>	<p style="text-align: right;">Page 163</p> <p>1 hand of Chicago, Illinois, this 13th day of 2 October, 2014. 3 4 <i>Lisa Christine Hamala</i> 5 Notary Public, Cook County, Illinois. 6 My commission expires October 19, 2016. 7 8 C.S.R. Certificate No. 84-3335. 9 10  11 12 13 14 15 16 17 18 19 20 21 22 23 24</p> <p style="text-align: right;">Page 164</p> <p>1 INDEX 2 WITNESS EXAMINATION 3 JOY ADELIZZI 4 By Mr. Frommer 3 5 By Mr. Worseck 156 6 7 8 9 EXHIBITS 10 NUMBER MARKED FOR ID 11 Adelizzi Deposition Exhibit 12 Exhibit No. 1 10 13 Exhibit No. 2 19 14 Exhibit No. 3 114 15 16 17 18 19 20 21 22 23 24</p>
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A161

C 1568

1 DEPOSITION ERRATA SHEET

2 Our Assignment No. 218112

3 BURKE, et al vs. THE CITY OF CHICAGO

4 Case No. 12 CH 41235

5
6 DECLARATION UNDER PENALTY OF PERJURY

7
8 I declare under penalty of perjury that I have read
9 the entire transcript of my Deposition taken in the
10 captioned matter or the same has been read to me,
11 and the same is true and accurate, save and except
12 for changes and/or corrections, if any, as
13 indicated by me on the DEPOSITION ERRATA SHEET
14 hereof, with the understanding that I offer these
15 changes as if still under oath.

16 Signed on the 8th day of
17 April, 2015.

18
19 

20 JOY ADELIZZI
21
22
23
24

JOY ADELIZZI
BURKE vs. CITY OF CHICAGO

October 08, 2014
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1 DEPOSITION ERRATA SHEET

2 Page No. 34 Line No. 20 Change to: _____

3 Change "birth" to "birthed"

4 Reason for change: incorrect transcription

5 Page No. 62 Line No. 18 Change to: _____

6 Change "Informing" to "Information"

7 Reason for change: incorrect transcription

8 Page No. 80 Line No. 3 Change to: _____

9 Change "for renewal to grow" to "for renewal or to grow"

10 Reason for change: incorrect transcription

11 Page No. 116 Line No. 14 Change to: _____

12 Change "served" to "serviced"

13 Reason for change: incorrect transcription

14 Page No. 125 Line No. 7 Change to: _____

15 Change "able" to "unable"

16 Reason for change: incorrect transcription

17 Page No. 145 Line No. 11 Change to: _____

18 Change "I think it's" to "A. I think it's"

19 Reason for change: Question/Answer signifier omitted

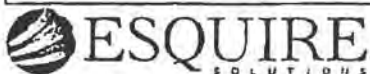
20 Page No. _____ Line No. _____ Change to: _____

21 _____

22 Reason for change: _____

23 SIGNATURE: Joy Adelizzi DATE: 4-8-15

24 JOY ADELIZZI



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C 1570



Guidelines to obtaining a MOBILE FOOD DISPENSER license

Please refer to 4-8-036 of the Municipal Code of Chicago for the complete ordinance.

What is a Mobile Food Dispenser?

A Mobile Food Dispenser (MFD) is any person who, by traveling from place to place upon the public ways from a mobile food vehicle, serves individual portions of food that are totally enclosed in a wrapper or container and which have been manufactured, prepared or wrapped in a licensed food establishment. Such food may undergo a final preparation step immediately prior to service to a consumer in conformity with the rules and regulations of the Board of Health.

Mobile Food Vehicle (MFV) Defined

A motorized vehicle registered as a commercial vehicle and may not be used for any purposes other than a mobile food dispenser or mobile food preparer business.

Application and License Fee

\$700 application fee, 2-year term

License Application Requirements

- Complete a Business Information Sheet to include applicant's full name, residence address, business address, e-mail, telephone number(s), date of birth and Social Security Number.
- Government-issued photo ID from ALL applicants, owners, and business entity controlling persons and registered agents.
- Federal Employer Identification Number (EIN), State of Illinois File Number; Illinois Department of Revenue Account ID.
- Name and address of the licensed commissary where the MFV will be cleaned and serviced, and, if the MFV will not be stored at the commissary, the name and address of the place where the MFV will be stored when not in use.
- A retail food establishment or shared kitchen user license if the Mobile Food Dispenser is producing food for sale.
- A certificate of commercial general liability insurance with limits of not less than \$350,000.00 per occurrence, required for applicants who will use a propane tank or natural gas in the MFV.

Health Consultation Requirements

At the time of application in the Small Business Center (SBC), the applicant must also complete a Health Consultation with a Department of Public Health Sanitarian to review the following:

- Proposed menu including a list of all food items the applicant intends to serve.
- Blueprints (plans) of the MFV.
- Specification sheets on equipment installed and used within the MFV.
- If the applicant is from outside of Chicago, then provide an inspection report from within the last 90 days from the state or local health authority where the food source or commissary is located.
- If the MFV has a gasoline, diesel or electric generator, propane or compressed natural gas, type II exhaust hood or fire suppression system, then applicants must also submit a MFV Fire Safety Permit application to the Chicago Fire Department (CFD) for approval.

Fire Safety Permit

All MFVs with a gasoline, diesel or electric generator, propane or compressed natural gas, type II exhaust hood or fire suppression system will need a Fire Safety Permit.

FIRE SAFETY PERMIT APPLICATION

Applicants must submit a completed "MFV Fire Safety Permit Application" along with:

- A \$100.00 check or money order made payable to the "City of Chicago" for the MFV Fire Safety Permit Application Fee, and
- Any required documents. Please refer to the "MFV Fire Safety Permit Consultation Packet".

APPLICATIONS WITH GASOLINE, DIESEL, PROPANE OR NATURAL GAS SYSTEMS

Applicants with a gasoline, diesel, propane or natural gas system installed in their MFV, must register the MFV operator(s) for the required Fire Safety Class (FSC).



For more information visit www.cityofchicago.org/sbc, or call (312) 74-GOBI2 / 744-6249
CITY OF CHICAGO - DEPARTMENT OF BUSINESS AFFAIRS & CONSUMER PROTECTION - SMALL BUSINESS CENTER

CITY000701



- o Classes are conducted at the 2nd floor of the Bureau of Fire Prevention, 444 N. Dearborn, on Thursdays, at 9 a.m.
- o Registration for, and rescheduling of, the FSC is done through your Small Business Center (SBC) Business Consultant.
- o Attendees must bring a valid Driver's License, State ID, or another Government-issued photo ID.
- o Attendees should also bring a Combustible Gas Detector to learn how to properly check LP/CNG leaks in the MFV.
- o Any owner or operator not receiving a Fire Safety Permit within a six (6) month period from their original FSC will need to repeat the class.
- **APPLICATIONS WITH FIRE SUPPRESSION SYSTEM**
Applicants with a Fire Suppression System (FSS) installed on their MFV must:
 - o Have the COMPANY that designed/installed their MFV's fire suppression system submit MFV plans, on company letterhead, to the CFD at the Bureau of Fire Prevention Headquarters, 444 N. Dearborn, 2nd Floor.
 - o Forward a \$150.00 check, or money order, made payable to the "City of Chicago" for the FSS Plan Review.
- **ONSITE INSPECTION**
 - o An onsite inspection of the applicant's MFV will be conducted with CDPH at 2133 W. Lexington, Chicago, Illinois.
 - o The onsite inspection will be scheduled by your Business Consultant.
- **PERMIT ISSUANCE**
A Fire Safety Permit will be issued once the following has been verified:
 - o The MFV has passed the onsite inspection.
 - o The owner and employees (MFV operators) have attended the Fire Safety Class, if applicable.
 - o All applicable CFD fees have been paid.

Inspections

- Onsite Inspection: After payment of the license application fee, the MFV must be made available for inspection by the Department of Public Health, and if applicable, the Fire Department.
- Operational Inspections: Like any other restaurant or food establishment, after issuance of the license, MFVs will be subject to routine sanitation inspections at the discretion of the Department of Public Health. Such inspections will also include a fire safety compliance evaluation if using a gasoline, diesel or electric generator, propane or compressed natural gas, type II exhaust hood or fire suppression system.
- At the time of license renewal, all MFVs are required to be inspected.

MFV Requirements

- The MFV must be enclosed with a top and sides; the floor, walls and ceilings must be of smooth, not readily corrodible, impervious materials capable of withstanding repeated washing and scrubbing and must be finished in a light color.
- The MFV may not be used for any purpose other than as a Mobile Food Dispenser.
- The MFV must contain/have:
 - o a hand washing sink with an adequate supply of hot and cold water;
 - o a water storage tank that is self-draining and cleaned and flushed not less than twice in each six-month period;
 - o liquid waste piped in fixed piping to a liquid retention tank 50 percent larger than the water storage tank, located in a separate area from the food storage or food-contact surfaces and emptied twice daily or more often if necessary and only into a sanitary drainage facility, not onto the public way;
 - o adequate mechanical refrigeration equipment that must be capable of maintaining food or drink at temperature of 40 degrees Fahrenheit or less, if any food or drink is required to be kept cold; must have adequate mechanical heating equipment that must be capable of maintaining food or drink at a temperature of 140 degrees Fahrenheit or more, if any food or drink is required to be kept hot, or capable of heating food or drink to a temperature of 165 degrees Fahrenheit or more, if any food or drink is required to be heated.
- The MFV must have the business name and license number legibly painted in letters and figures at least two inches in height in a conspicuous place on each lateral side of the MFV.
- The MFV must maintain a suitable, tight, non-absorbent washable receptacle for refuse. The refuse receptacle may be adjacent to, but not an integral part of, the MFV.



- The MFV must be registered as a commercial vehicle and any person who operates such MFV must have a valid driver's license issued by the State of Illinois or another state, district or territory of the United States;
- The MFV must be inspected and maintained by a licensed professional, including mechanics and, if applicable, by professionals who install and maintain fire prevention equipment, and propane tanks, as often as necessary but not less than every 90 days, and copies of the last four maintenance reports must be kept in the MFV at all times while the MFV is in use;
- **If propane is to be used in the MFV, there must be no more than 40 pounds of propane in the MFV at any time.** The design and maintenance of the MFV must conform to CFD regulations as outlined in the applicant's Fire Safety Permit.

Operational Requirements

- No food that is sold or served from a mobile food vehicle may be stored or prepared in a residential home. All operators must work in conjunction with a commissary or shared kitchen to store and prepare food. All MFVs must also be stored at a commissary, or a Department of Public Health approved location.
- MFVs must move from place to place upon the public ways and may not be operated at a fixed location. Stops may be made to service customers and may not exceed a total of two hours or the maximum permitted period for parking, whichever is lesser, in anyone block.
- Hours of operation are 5AM – 2AM, unless otherwise allowed from a mobile food vehicle stand.
- MFVs may operate from a designated food stand not to exceed a 2-hour service limit. No other MFV may park or operate on such block of the designated stand.
- No MFV may park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level with the exception of 12AM – 2AM.
- MFVs may operate on private property, not to exceed service limits of two hours, as long as; the property meets the applicable requirements of the Chicago Zoning Ordinance, and the property owner provides written permission to utilize the property.
- MFVs are not allowed on privately-owned vacant lots, or a lot of a vacant building.
- MFVs must be in continual compliance with CFD regulations governing the use of a gasoline, diesel or electric generator, propane or compressed natural gas, type II exhaust hood or fire suppression system, and uphold the terms of the MFV's fire safety permit.
- Global Positioning System (GPS) requirements:
 - A. All MFVs must be equipped with an operational Global Positioning System (GPS) device. The device must meet the requirements set forth in Section 7-38-115 of the Municipal Code of the City of Chicago, as well as the following:
 1. The device must be permanently installed in, or on, the MFV.
 2. The device must be an "active", not "passive" device that sends real-time location data to a GPS service provider; the device is not required to send location data directly to the City.
 3. The device must be accurate no less than 95% of the time.
 4. The device must function while the MFV is vending food or otherwise open for business to the public, and when the MFV is being serviced at a commissary as required by Section 7-38-138 of the Municipal Code of the City of Chicago or these regulations. The device must function during these times regardless of whether the engine is on or off.
 5. When the GPS device is required to function, the device will transmit GPS coordinates to the GPS service provider no less frequently than once every five (5) minutes.
 - B. City personnel will not request location information from a GPS service provider pertaining to a mobile food vehicle unless:
 1. The information is sought to investigate a complaint of unsanitary or unsafe conditions, practices, or food or other products at the MFV;
 2. The information is sought to investigate a food-related threat to public health;
 3. The information is sought in connection with establishing compliance with Chapter 7-38 of the Municipal Code of Chicago or the regulations promulgated thereunder;
 4. The information is sought for purposes of emergency preparation or response;
 5. The City has obtained a warrant or other court authorization to obtain the information; or
 6. The City has received permission from the licensee to obtain the information.
 - C. The GPS service provider must maintain at least six (6) months of historical location information and be able to provide the following:



1. When requested, as per the regulations stated in section B of these GPS requirements, reports of each transmitted position including arrival dates, times, addresses, and duration of each stop, in a downloadable format (i.e. PDF, CVS or Excel). If the request is to provide the current location of a vehicle, the GPS service provider must respond immediately with the most recent location information for the MFV.
 2. Reports that provide anonymous, aggregate information regarding MFV operations within the City, and do not identify specific MFVs.
 3. An application programming interface (API) that is available to the general public.
- D. If the City establishes a website for displaying the real-time location of MFVs, for purposes of marketing and promotional efforts, the licensee may choose to provide the appropriate access information to the API of its GPS to enable the posting of the MFV's location on such website. The licensee is not required to provide such information or otherwise allow the City to display the MFV's location.
- E. The following will serve as evidence that the GPS requirements have been met:
1. Proof of GPS installation.
 2. Proof from a GPS tracking device service provider the operator is in compliance with the requirements as stated in Rule 8 of the MFV Rules and Regulations.

How do I apply?

You may apply in-person at BACP's Small Business Center, 121 North LaSalle Street, Room 800.

- Application intake hours are from 8:30 AM through 3:30 PM, Monday through Friday.
- An appointment is recommended, and can be made:
 - o Online at www.cityofchicago.org/sbc > Starting Your Business > Schedule An Appointment, or
 - o Call (312) 74-GOBIZ / 744-6249.

Free Vehicle Assessment

To help MFV license applicants prepare for the Department of Public Health (CDPH) and, if applicable, Chicago Fire Department (CFD) inspections, we are providing a FREE Mobile Food Vehicle (MFV) Assessment prior to, or during, the license application process.

The MFV Assessment consists of a mobile food vehicle review by CDPH and CFD inspectors, who will provide applicants with an inspection report explaining the results of their compliance assessment. Please be sure that your MFV is fully functional so that the inspectors may review every part of the MFV appropriately. Specifically:

- There must be a permanent divide between the front driving area and the back cook/prep area;
- All equipment must be up and running at the proper temperatures including the water which must be of sufficient quantity for assessment purposes;
- All Mobile Food Preparer trucks must have a grease trap under the three compartment sink.

MFV Assessments are conducted by appointment only. Appointments can be made through your SBC Business Consultant, or by calling 312.74.GOBIZ / 744.6249.



For more information visit www.cityofchicago.org/sbc, or call (312) 74-GOBIZ / 744-6249
CITY OF CHICAGO - DEPARTMENT OF BUSINESS AFFAIRS & CONSUMER PROTECTION - SMALL BUSINESS CENTER

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LUANN HAMILTON
BURKE, ET AL. -vs- CITY OF CHICAGO

October 09, 2014
1-4

Page 1

1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF COOK)
4
5 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
6 COUNTY DEPARTMENT - CHANCERY DIVISION
7 GREG BURKE, KRISTIN CASPER, AND)
8 LMP SERVICES, INC.,)
9 Plaintiffs,) Case No.
10 -vs-) 12 CH 41235
11 THE CITY OF CHICAGO, ILLINOIS,)
12 Defendant.)
13
14 The deposition of LUANN HAMILTON, called
15 for examination, taken pursuant to the provisions of
16 the Code of Civil Procedure and the Rules of the
17 Supreme Court of the State of Illinois pertaining to
18 the taking of depositions for the purpose of
19 discovery, taken before V. LINDA BOESCH, a Notary
20 Public within and for the County of DuPage, State of
21 Illinois, and a Certified Shorthand Reporter, CSR No.
22 84-3108, of said state, at Suite 1200, 224 South
23 Michigan Avenue, Chicago, Illinois, on
24 October 9, 2014, at 9:25 a.m.

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1 PRESENT:
2 INSTITUTE FOR JUSTICE,
3 (901 North Glebe Road, Suite 900,
4 Arlington, Virginia 22203,
5 703-682-9320), by:
6 MR. ROBERT FROMMER,
7 rfrommer@ij.org,
8 MR. ROBERT GALL,
9 bgall@ij.org, and
10 MS. ERICA SMITH,
11 esmith@ij.org,
12 appeared pro hac vice on behalf
13 of the Plaintiffs;
14 OFFICE OF CORPORATION COUNSEL,
15 CITY OF CHICAGO,
16 (30 North LaSalle Street, Suite 1230,
17 Chicago, Illinois 60602,
18 312-744-7150), by:
19 MR. ANDREW WORSECK,
20 aworseck@cityofchicago.org, and
21 MR. DAVID BARON,
22 appeared on behalf of the Defendant
23 and the Deponent.
24 REPORTED BY: V. LINDA BOESCH, CSR No. 84-3108

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1 MR. FROMMER: Ready? Could you please swear
2 the witness in?
3 (WHEREUPON, the witness was duly
4 sworn.)
5 LUANN HAMILTON,
6 called as a witness herein, having been first duly
7 sworn, was examined and testified as follows:
8 EXAMINATION
9 BY MR. FROMMER:
10 Q. Thank you for being here today. Can you
11 please state your full name, title, and a work
12 address for the record, please?
13 A. My name is Luann Hamilton, and my title
14 is Deputy Commissioner of the Division of Project
15 Development at the Chicago Department of
16 Transportation, and my address is 30 North LaSalle,
17 Suite 500, 60602, in Chicago.
18 MR. WORSECK: Rob, just before you jump in, I
19 just want to make a statement for the record. First
20 of all, this deposition is beginning at 9:25 a.m.
21 and we are producing Ms. Hamilton pursuant to the
22 designation set out in our September 30th letter and
23 subject to the objections previously raised in our
24 August 27th letter and September 18th letter.

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1 MR. FROMMER: Okay.
2 BY MR. FROMMER:
3 Q. Hi, Ms. Hamilton. My name is Robert
4 Frommer. I'm an attorney at the Institute For
5 Justice. We are a nonprofit, public interest law
6 firm. We are based in Arlington, Virginia, and we
7 are representing the Plaintiffs in this
8 constitutional challenge to two aspects of the City's
9 rules.
10 One is a rule that says mobile food
11 vehicles cannot operate within 200 feet of a
12 restaurant and another rule which says those same
13 mobile food vehicles have to be equipped with GPS
14 tracking devices.
15 And we're only seeking injunctive and
16 declaratory relief. We are not seeking damages or
17 anything like that.
18 And as you understand, you've been
19 designated by the City of Chicago as its
20 representative to discuss some of the topics in this
21 lawsuit, and that's why we are here today.
22 Do you have any questions right now?
23 A. No.
24 Q. Okay. So for the remainder of the



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1 deposition, I'll probably switch back and forth, so
2 just for sake of clarity, I'll refer to the
3 requirement that mobile food vehicles not operate
4 within 200 feet of a restaurant that's defined by
5 Chicago City Code 7-38-115(f), I'll be calling that
6 pretty often the 200-foot rule.
7 And, similarly, I'll probably also refer
8 to the requirement that mobile food vehicles be
9 equipped and use GPS tracking devices that's in City
10 Code Section 7-38-115(l), I'll be calling that the
11 GPS tracking requirement.
12 Is that clear?
13 A. Uh-huh.
14 Q. Okay. Before we begin, let's go over
15 some of the ground rules of a deposition just so we
16 understand each other.
17 Does that sound fair?
18 A. Sure.
19 Q. As this is a deposition, I'll ask you
20 questions and the court reporter will record those
21 questions, and as well as your answers. So to assist
22 the court reporter, I'm going to try to speak clearly
23 and slowly and best if you do the same.
24 Now, also, please answer each question

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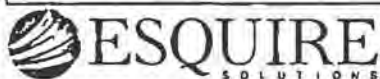
1 verbally. A lot of times people go "uh-huh" and nod
2 their head. The problem is the court reporter can't
3 take that down. So please be sure when you're
4 answering to say "yes," "no," and just be clear
5 about -- say it verbally instead of nodding.
6 Another thing that people often do and
7 this is just per conversation is they will -- as part
8 of normal conversation, will talk over each other.
9 You know, it's the back and forth of conversation.
10 The problem is that makes it very hard
11 for the court reporter to take down what two people
12 are saying at once. So on my behalf -- so I would
13 ask that you wait until I finish a question before
14 you begin your answer, even if you think you know
15 where I'm going to go. And, similarly, I'll wait
16 until you have finished your answer before I ask the
17 next question.
18 So do you understand all that?
19 A. Uh-huh.
20 THE COURT REPORTER: I'm sorry. I need a --
21 BY THE WITNESS:
22 A. Yes.
23 BY MR. FROMMER:
24 Q. A little practice early on.

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1 So you were sworn in a moment ago by the
2 court reporter, and you understand that oath means
3 that you have to give truthful and complete answers
4 just as you would if you were testifying in a court
5 before a judge. Is that --
6 A. Yes.
7 Q. Okay. Now, if you don't understand a
8 question, please let me know. You know, I'll either
9 ask the court reporter to read the question back to
10 you or I'll rephrase it.
11 So, please, will you tell me if you don't
12 understand a question?
13 A. Yes.
14 Q. All right. Thank you.
15 And if you don't know an answer, that's
16 fine. Just say, I don't know. Just say so. But if
17 you do know the answer, then please answer it
18 truthfully and completely. And unless you state
19 otherwise, I'll assume that you understood the
20 question that I was asking.
21 Does that make sense?
22 A. Yes.
23 Q. Now, if you want to talk to Drew or Dave
24 during the deposition, that's fine. But the only

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1 thing is that if there's a question pending, if I've
2 asked you a question or if you're in the middle of an
3 answer, you have to finish your answer before talking
4 to them.
5 Is that all right?
6 A. Yes.
7 Q. All right. Now, as part of all this,
8 periodically, the opposing counsel, counsel for the
9 City, may object after I ask a question. Doesn't
10 mean I asked a bad question and doesn't mean that you
11 don't have to answer it.
12 The whole point of objections is just for
13 them to note on the record what -- that they thought
14 there was some problem with the question so that if
15 we try to want to use your answer later on, they can
16 say -- they can argue to the court why that was
17 inappropriate.
18 Understand?
19 A. Yes.
20 Q. Now, sometimes, and this happens all the
21 time, you answer the question, then you might
22 remember something else or you want to add additional
23 information or clarify. That's fine.
24 If it happens, just let me know and



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<p style="text-align: right;">Page 9</p> <p>1 we'll -- as soon as possible, we'll let you add that 2 additional information so that way, you have a full 3 and complete answer. 4 Now, if you'd like to take a break at any 5 time, that's okay. That's perfectly fine. I want to 6 make sure you're comfortable. All I ask is if I'm in 7 a middle of a line of questioning, that we complete 8 that line of questioning and then we'll take the 9 break. 10 Does that sound fair? 11 A. Yes. 12 MR. WORSECK: Objection to the extent it talks 13 about a line of questioning, to the extent you 14 misstate any obligation that's otherwise imposed upon 15 the witness. 16 BY MR. FROMMER: 17 Q. During our conversation now, you might 18 think of some documents or other materials that might 19 help you remember issues -- 20 A. Hold on. 21 (WHEREUPON, there was a short 22 interruption for a cell phone.) 23 BY THE WITNESS: 24 A. Okay. Sorry.</p>	<p style="text-align: right;">Page 11</p> <p>1 A. I'm not taking any medications that would 2 affect my ability to answer your questions or 3 understand your questions. 4 Q. Okay. Great. And so is there any other 5 reason why you wouldn't be able to give full and 6 complete answers to my questions? 7 A. No. 8 Q. All right. Do you have any questions? 9 A. No. 10 Q. All right. Ms. Hamilton, have you ever 11 been deposed before? 12 A. Yes. 13 Q. Oh, really? How many times? 14 A. Once. 15 Q. Oh, okay. And what was the -- when was 16 that? 17 A. Within the last six months. 18 Q. Oh, really? What were the circumstances 19 behind that? 20 A. It's a lawsuit involving bike lanes. 21 Q. Involving bike lanes? 22 What was the nature of your testimony in 23 that? 24 A. I was asked to testify about our</p>
<p style="text-align: right;">Page 10</p> <p>1 BY MR. FROMMER: 2 Q. That's fine. 3 So there might be some documents and 4 materials you think, oh, this might help me better 5 answer the question. You might ask us whether we 6 have that here. It's possible that we do. And if we 7 do, we'll try and get that for you so you can have a 8 full and complete answer. 9 Will you make sure and do that? 10 A. Sure. 11 Q. All right. Now, you understand you're 12 here to testify as a representative of the City of 13 Chicago and that means that your answers, unless I 14 specifically say I'm asking you something personally, 15 are the City's answers. 16 Do you understand that? 17 A. Yes. 18 Q. Okay. Great. Now, because it's 19 important that we get full and complete answers, one 20 thing I always need to ask is whether you're taking 21 any medication or if there's anything that would 22 cause you not to be able to either understand my 23 questions or be able to give me complete answers to 24 those questions?</p>	<p style="text-align: right;">Page 12</p> <p>1 standards for bike lane installation as they related 2 to a specific location. 3 Q. Oh, so it's about bike lanes not 4 generally but as to a specific location? 5 A. Correct. Well, it was a specific 6 location and how the general rules applied to the 7 specific location. 8 Q. And what location was that? 9 A. Milwaukee Avenue over the Kennedy 10 Expressway. 11 Q. Oh, okay. Is that case still ongoing? 12 A. I really don't know. 13 Q. All right. That's fine. Have you ever 14 testified outside of a deposition before? 15 MR. WORSECK: Objection, vague. 16 BY MR. FROMMER: 17 Q. You can answer. 18 A. No, not that I can think of. 19 MR. FROMMER: Erica, could we have the Notice 20 of Deposition, please? 21 We'll mark this as Hamilton 1. This is a 22 Notice of Deposition that we had sent to the City. 23 (WHEREUPON, a certain document 24 was marked Hamilton Deposition</p>



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1 Exhibit No. 1, for
2 identification, as of
3 10/09/2014.)
4 (WHEREUPON, the document was
5 tendered to the witness.)
6 BY MR. FROMMER:
7 Q. Take a minute and look it over.
8 MR. WORSECK: For the record, Mr. Baron is
9 temporarily leaving the deposition to attend to a
10 court hearing.
11 MR. FROMMER: See you later, Dave.
12 MR. BARON: See you.
13 (WHEREUPON, Mr. David M. Baron
14 left the deposition proceedings.)
15 BY MR. FROMMER:
16 Q. All right. Have you had a chance to look
17 it over?
18 A. Uh-huh.
19 Q. All right. Do you recognize this
20 document?
21 A. Yes.
22 Q. You've seen it before?
23 A. Yes.
24 Q. Okay. And is it the Notice of

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1 Deposition?
2 A. Yes, it is.
3 Q. Okay. Could you tell me - this Notice
4 of Deposition lists several topics that the City's
5 representatives are supposed to testify on.
6 Can you tell me which of these topics
7 you're here to testify about today?
8 A. Items 4, 5, and 6.
9 Q. So that is Topic 4,
10 "The governmental purposes
11 and rationales that Defendant
12 claims the 200-foot rule is meant
13 to serve"?
14 A. Yes.
15 MR. WORSECK: Objection to the extent that our
16 designation specifies that Ms. Hamilton is being
17 designated with respect to a subset of responsive
18 information as to Topics 4, 5, and 6.
19 BY MR. FROMMER:
20 Q. Are you here to talk specifically about
21 pedestrian congestion in the context of these topics?
22 A. I'm here to talk about pedestrian
23 environments in the City, congestion included.
24 Q. Okay. And are you also here you said for

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1 Topics 5 and 6 as you mentioned?
2 A. Right.
3 Q. Okay. Can you describe to me what your
4 qualifications are to speak about these topics?
5 A. Well, I've been at the Chicago Department
6 of Transportation or its predecessor, the Department
7 of Public Works, since 1985, starting as a City
8 Planner I and working my way up through the ranks,
9 and I've been Deputy Commissioner of Project
10 Development since the end of 2004 when we reorganized
11 and created my division that I had.
12 And my division covers all of the
13 planning, programming, policy functions of the
14 department, including things like our complete
15 streets policy and our bicycle-pedestrian planning,
16 all of our general multimodal planning. So I think
17 that I have experience to discuss this issue.
18 Q. Okay. Thank you.
19 How much time did you spend preparing for
20 this deposition?
21 MR. WORSECK: Objection, vague.
22 BY MR. FROMMER:
23 Q. You can go ahead and answer.
24 A. A couple of hours, a few hours.

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1 Q. Okay. Did you discuss this deposition
2 with anyone before coming?
3 A. I don't know how I should answer that.
4 No one outside of the Law Department.
5 Q. Okay. It's fine for you, by the way, to
6 tell me that you spoke with them. I'm not going to
7 inquire about what the substance of those discussions
8 were.
9 So you said you spoke to Law Department.
10 I'm assuming to Mr. Worseck and Mr. Baron?
11 A. Yes.
12 Q. How long did you talk to them
13 approximately?
14 A. I would say a total of maybe six hours,
15 total, over many months.
16 Q. Did you speak with counsel for the City
17 yesterday?
18 A. Yes.
19 Q. When was that?
20 A. Yesterday afternoon.
21 Q. Could you give me a time, approximately?
22 A. I think our appointment was at 2:00
23 o'clock.
24 Q. Okay. Did you speak to anyone about any



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1 other depositions that have been taken in this case?
2 MR. WORSECK: Objection to the extent you're
3 getting into attorney-client privileged material, and
4 I would instruct the witness not to answer to the
5 extent that you would talk about matters discussed
6 with your attorneys.
7 BY MR. FROMMER:
8 Q. Please answer.
9 A. What was your question again?
10 MR. WORSECK: I'm instructing the witness not
11 to answer with respect to the qualifications I just
12 stated.
13 MR. FROMMER: That's fine, Drew.
14 BY MR. FROMMER:
15 Q. I'm asking did you speak with anyone
16 other than legal counsel for the City about
17 depositions taken in this case?
18 A. Yes.
19 Q. Who? Who did you speak with?
20 A. I saw Joy, so I spoke briefly with her.
21 Q. What did you speak about with Joy
22 regarding the deposition?
23 A. She just said that she'd never done a
24 deposition before and that it was grueling.

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1 Q. Oh, I'm sorry to hear that. Did you talk
2 about the substance of her testimony at all?
3 A. No.
4 Q. Okay. Did you do any additional
5 preparations after speaking with Ms. Adelizzi?
6 A. No.
7 Q. Did you do any additional preparation
8 after speaking with the City – the City attorneys?
9 MR. WORSECK: Objection –
10 BY THE WITNESS:
11 A. No.
12 MR. WORSECK: – vague.
13 If you could wait for a pause after he
14 asks a question, so I have a chance to jump in with
15 an objection.
16 THE WITNESS: Okay. Sorry.
17 BY MR. FROMMER:
18 Q. So did you review any documents to
19 prepare for this deposition?
20 A. I did review our documents that we have,
21 our design standards that we use for the public way,
22 and I briefly looked over our plans; particularly our
23 pedestrian plan and complete streets guidelines.
24 Q. Did you –

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1 A. But I didn't spend a lot of time on that.
2 Q. Okay. Sorry for speaking over you.
3 Did you review the Plaintiffs' complaint
4 in this case, the document that –
5 A. I would say no, I did not review the
6 complaint.
7 MR. GALL: You guys were speaking over each
8 other.
9 MR. FROMMER: Oh.
10 BY MR. FROMMER:
11 Q. Did you look at the City's answer to that
12 complaint?
13 A. No.
14 Q. Did you look at the City code?
15 A. Not for this specific deposition, no.
16 Q. Did you look at any regulations, City of
17 Chicago regulations?
18 A. As I mentioned, I looked at our design
19 standards.
20 Q. Did you look at any citations that the
21 City has issued?
22 A. No.
23 Q. A second ago, you said the design
24 standards. What design standards were those again?

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1 A. Our public way, street and – I think
2 they're called our street urban design guidelines.
3 Q. Okay. And that's a City of Chicago
4 publication?
5 A. Correct.
6 Q. Okay. Any other documents other than the
7 ones we've talked about just now?
8 A. No.
9 Q. All right. Did you review any other
10 materials other than those documents?
11 A. No.
12 Q. All right. Who else at the City would
13 you say is knowledgeable about the topics we are
14 going to discuss today?
15 MR. WORSECK: Objection, vague.
16 BY MR. FROMMER:
17 Q. Please go ahead.
18 A. I would say that I'm the most
19 knowledgeable because I am over the people that deal
20 with specific issues within the general category of
21 public way.
22 So there are people under me who are
23 knowledgeable about certain aspects, but I'm the
24 person who has the broadest knowledge.



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<p>1 Q. Okay. So you don't think there's anyone 2 more knowledgeable than you at the City to testify 3 about the subjects you've been designated for? 4 MR. WORSECK: Objection, vague, calls for 5 speculation, calls for a legal conclusion. 6 BY THE WITNESS: 7 A. I'm only speaking for my department and 8 my division, so I would say I'm the most qualified 9 under those constraints. 10 BY MR. FROMMER: 11 Q. Okay. And that actually leads me to 12 another set of questions. So you work for the 13 Chicago Department of Transportation, right? 14 A. Yes. 15 Q. Okay. And what are your duties at the 16 Chicago Department of Transportation? 17 A. I'm the Deputy Commissioner over the 18 Division of Project Development. That's the division 19 that does all the planning, programming, policy for 20 the department. 21 That includes things like our complete 22 streets policy, it includes all multimodal planning, 23 it includes the street scrapes, the sustainable 24 design program, make way for people program, the</p>	<p>1 stands? 2 A. Correct. 3 Q. Okay. So does your department have other 4 responsibilities regarding mobile food vehicles 5 except for those stands? 6 A. No. 7 Q. Do other departments -- do you believe 8 that there are other departments that have 9 responsibilities in the City with regard to mobile 10 food vehicles? 11 A. Yes. 12 Q. What departments are those? 13 A. Business Affairs and Consumer Protection, 14 Public Health, Fire Department. I would say those 15 are three that come to mind. 16 Q. What about the Police Department? 17 A. The Police Department collaborates with 18 us when we have candidates for stands. So per code, 19 we consult with the Police Department to make sure 20 they don't have any public safety concerns. 21 Q. Okay. So any other departments? 22 A. I think I already mentioned the BACP and 23 Public Health. 24 Q. Okay. Any besides them?</p>
Page 22	Page 24
<p>1 traffic studies and the traffic design programs, the 2 Divvy program, the plan review process for plan 3 developments, and other things. 4 Q. A second ago, you said you could only 5 speak for your department about being the most 6 knowledgeable person. 7 Do you have any reason to believe that 8 there's anyone in any other department who might be 9 more knowledgeable than you to speak about these 10 topics? 11 MR. WORSECK: Objection, calls for speculation. 12 BY THE WITNESS: 13 A. I would hazard that there isn't anyone in 14 another department that could speak to this better 15 than I could. 16 BY MR. FROMMER: 17 Q. Okay. So with regard to your duties at 18 CDOT, what of those duties, if any, involve mobile 19 food vehicles? 20 A. We are the agency that's responsible for 21 establishing, in coordination with aldermen and the 22 Chicago Police Department, the food truck stands. So 23 we have that responsibility per code. 24 Q. Okay. In the establishment of the</p>	<p>1 MR. WORSECK: Objection, vague, calls for 2 speculation. 3 BY THE WITNESS: 4 A. I'm sure there are other departments but 5 I'm not thinking about them right now. I mean, the 6 Law Department, of course, and -- 7 MR. WORSECK: Only because we were forced to. 8 By this lawsuit. 9 BY MR. FROMMER: 10 Q. What is your department's 11 responsibilities regarding pedestrian congestion? 12 A. Our department is responsible for 13 ensuring the safe passage of pedestrians in the City, 14 and we also have goals in terms of improving the 15 pedestrian environment and so that would include 16 making the pedestrian experience a comfortable 17 experience and enjoyable. 18 Q. What are some things that make the 19 customer -- the pedestrian experience enjoyable? 20 A. Activity on the public way makes it 21 enjoyable. 22 Q. What types of activity are you talking 23 about? 24 A. Window shopping is an example.</p>



<p style="text-align: right;">Page 25</p> <p>1 Q. Are street performers? Would that be 2 something that would be an enjoyable activity? 3 A. I wouldn't say it's necessarily enjoyable 4 for people that are exposed to it. It could be 5 irritating instead of enjoyable, but.... 6 Q. What about mobile food vehicles; are 7 those enjoyable? 8 MR. WORSECK: Objection, vague. 9 BY THE WITNESS: 10 A. They can be. 11 BY MR. FROMMER: 12 Q. Okay. They can be. 13 What is your department's 14 responsibilities concerning pedestrian congestion as 15 it relates to mobile food vehicles? 16 A. Well, when we are going to site a 17 stand -- determine if a particular location is a good 18 stand location, one of the things we would look at is 19 the pedestrian environment at that site. 20 Q. Okay. What specifically are you looking 21 at there? 22 A. We would be looking at the safe passage 23 issue, the comfort issue, the traffic issue. Is this 24 a good place to have that kind of a stand located in</p>	<p style="text-align: right;">Page 27</p> <p>1 in case of hazardous conditions, it's the Police 2 Department. 3 BY MR. FROMMER: 4 Q. Okay. Do other legislative and executive 5 bodies consult with CDOT about legislative proposals 6 regarding the right-of-way? 7 A. Yes. 8 MR. WORSECK: Objection -- 9 THE WITNESS: Sorry. 10 MR. WORSECK: Objection, vague. 11 BY MR. FROMMER: 12 Q. What are those discussions or what are 13 the nature of those consultations? 14 MR. WORSECK: And I want to -- sorry. Can you 15 repeat the question again, the preceding question? 16 MR. FROMMER: Can you read back the preceding 17 question, please? 18 (WHEREUPON, the record was read 19 by the reporter as requested.) 20 MR. WORSECK: Vague is my objection, but you 21 can answer. 22 BY THE WITNESS: 23 A. Yes. 24 BY MR. FROMMER:</p>
<p style="text-align: right;">Page 26</p> <p>1 terms of potential conflicts. 2 Q. Do other departments in the City also 3 share responsibility for pedestrian congestion? 4 A. I would -- this is -- I would assume the 5 Police Department has responsibility as well, because 6 they have responsibility to ensure public safety. 7 Q. Would you say that CDOT is the primary 8 agency responsible for pedestrian congestion issues? 9 MR. WORSECK: Objection, vague. 10 BY THE WITNESS: 11 A. I would say we are one of the agencies 12 responsible, but I would say the police, also, 13 because of their role in ensuring public safety are 14 also responsible. 15 BY MR. FROMMER: 16 Q. Which agency would you say has a greater 17 role in pedestrian congestion, CDOT or the police? 18 MR. WORSECK: Objection, vague. 19 BY THE WITNESS: 20 A. I would say we have a responsibility, in 21 particular, at the front end. So in the design of 22 facilities and in regulations such as what we are 23 discussing here. 24 In terms of enforcement and intervention</p>	<p style="text-align: right;">Page 28</p> <p>1 Q. What's the substance of those 2 consultations? What is discussed? 3 MR. WORSECK: Here, I want to object to the 4 extent that the answer would call for either 5 attorney-client privileged material but, also, 6 legislative privileged material, executive privileged 7 material, predecisional privileged material. 8 Subject to those instructions, you can 9 answer if you can. 10 BY THE WITNESS: 11 A. We would be there to talk about the 12 issues I mentioned already which is safety, safe 13 passage, and comfort and convenience for pedestrians. 14 BY MR. FROMMER: 15 Q. Okay. Does CDOT regularly review 16 proposals about how to regulate the right-of-way? 17 MR. WORSECK: Objection, vague. 18 BY THE WITNESS: 19 A. When we are asked to review by the 20 executive branch, then we review. 21 BY MR. FROMMER: 22 Q. And does the executive branch ask CDOT to 23 review? 24 A. We do reviews. I don't know if we are</p>



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<p style="text-align: right;">Page 29</p> <p>1 reviewing everything, but we review whatever they ask 2 us to review. 3 Q. How often would you say that you're asked 4 to – CDOT is asked to provide its opinion about 5 proposals? 6 A. By "proposals," do you mean ordinances? 7 Q. Or any regulations regarding the use of 8 the public way. 9 A. I would say it could be a number of times 10 a year. If it's something like an ordinance that's 11 introduced by an alderman that affects these kinds of 12 issues, it gets circulated among departments that are 13 affected by it and we're asked to make comment on it. 14 Q. Does CDOT consult with the police, Health 15 Department, or other agencies concerning the 200-foot 16 rule? 17 MR. WORSECK: Objection, vague. 18 BY THE WITNESS: 19 A. No. 20 BY MR. FROMMER: 21 Q. No. 22 CDOT officials have never consulted with 23 any other agencies about the 200-foot rule? 24 MR. WORSECK: Same objection.</p>	<p style="text-align: right;">Page 31</p> <p>1 Q. So how does pedestrian traffic – does 2 pedestrian traffic differ from pedestrian congestion? 3 A. Yes. 4 Q. Okay. And is that because pedestrian 5 congestion relates to people having to change either 6 their pathway or their speed because of some 7 perceived obstacle on a right-of-way? 8 A. Yes. 9 Q. Okay. How does one measure pedestrian 10 congestion? 11 A. The way we measure in the City is to 12 observe and evaluate using professional judgment. 13 Q. Could you explain that to me a little bit 14 more? What's the precise methodology that the City 15 employs? 16 A. We would normally – 17 MR. WORSECK: Objection, vague. 18 BY THE WITNESS: 19 A. We would normally send a traffic engineer 20 to go to a site and evaluate it whenever there's any 21 issues of congestion. 22 BY MR. FROMMER: 23 Q. And what is that traffic engineer looking 24 for?</p>
<p style="text-align: right;">Page 30</p> <p>1 BY THE WITNESS: 2 A. No, not since the passage of the 3 ordinance. 4 MR. WORSECK: And just for clarification, 5 you're referring to the 2012 ordinance? 6 THE WITNESS: The 200-foot rule, right, that's 7 in the 2012 ordinance. 8 BY MR. FROMMER: 9 Q. Let me ask a basic question. Sorry if 10 this is too simplistic, but what is "foot traffic"? 11 A. Foot traffic is another way of saying 12 pedestrian traffic. 13 Q. And what's "pedestrian congestion"? 14 A. <u>Pedestrian congestion is when it's hard</u> 15 <u>for a pedestrian to go down the street because there</u> 16 <u>are knots of people, groups of people that obstruct</u> 17 <u>their passage, or other kinds of objects that</u> 18 <u>obstruct passage besides people.</u> 19 Q. And when you say hard to get down the 20 street, could you give me a sense of what you mean by 21 that? 22 A. You would have to alter your gait or your 23 pace to avoid obstacles, whether they're human or 24 nonhuman.</p>	<p style="text-align: right;">Page 32</p> <p>1 A. They're looking for constraints, 2 obstructions in the public way. They're looking for, 3 as I mentioned, conglomerations of people that are 4 all milling in an area. For example, an intersection 5 corner. 6 And they're observing if there's any kind 7 of a safety concern or efficient passage concern that 8 could be addressed potentially through design 9 changes, for example. 10 Q. Are intersections typically seen as 11 obstructions that can cause pedestrian congestion? 12 A. Intersections can have elements that lead 13 to congestion that can be addressed through design 14 changes. 15 Q. What are some of those elements? 16 A. As I mentioned, there are obstructions 17 such as street furniture that can cause a problem, 18 especially for people with disabilities, for example. 19 There can be a problem in the sense that 20 there are large volumes that use a particular corner 21 on a routine basis and there may not be enough 22 sidewalk capacity. 23 So one of the things you look at is 24 potentially bumping out that corner to create a safe</p>

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1 place for pedestrians to wait.
 2 Q. Okay. Now, I understood a second ago
 3 that you said that the City would send out -- if the
 4 City believes that there is a potential congestion
 5 problem at a location, they'll send out a traffic
 6 engineer to evaluate.
 7 Does the City have any objective metrics
 8 by which to evaluate or measure pedestrian
 9 congestion?
 10 MR. WORSECK: Objection, vague.
 11 BY THE WITNESS:
 12 A. As I mentioned, that's the professional
 13 judgment of our traffic engineers. They don't use
 14 any specific methodology or technique in terms of
 15 measuring traffic congestion. They use their
 16 professional judgment.
 17 BY MR. FROMMER:
 18 Q. So it's a judgment call?
 19 A. It's an educated engineer's
 20 determination.
 21 Q. Okay. Are there any guidelines or any
 22 documents that explain to traffic engineers how they
 23 should go about evaluating potential congestion
 24 situations?

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1 A. I don't -- I would assume that's in their
 2 training that they receive before they get their
 3 engineering degrees. We hire them because they have
 4 those credentials and they have had that education
 5 and they bring that to their positions.
 6 Q. So it's the traffic engineer's education
 7 that provides the information they need for the
 8 judgment?
 9 A. Yes.
 10 Q. Not anything that the City itself
 11 provides to them?
 12 A. Correct.
 13 Q. Does the City have any way of making sure
 14 that traffic engineers are being consistent in their
 15 evaluation of pedestrian congestion?
 16 A. We have a chain of command with a senior
 17 position over traffic design who reviews all product
 18 and provides consistency, and I also review all
 19 product and provide consistency.
 20 Q. How many traffic engineers are there,
 21 approximately?
 22 A. The group that does this type of work,
 23 it's probably five or six.
 24 Q. Okay. And that's for all of the City of

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1 Chicago?
 2 A. Correct.
 3 Q. Has the City ever conducted any objective
 4 measurements of pedestrian congestion in the past?
 5 MR. WORSECK: Objection, vague.
 6 BY MR. FROMMER:
 7 Q. Did you understand the question?
 8 A. Has the City ever provided -- say it
 9 again.
 10 Q. Has the City ever conducted any objective
 11 measurements of pedestrian congestion in different
 12 parts of the City?
 13 MR. WORSECK: Objection, vague, and calls for
 14 speculation.
 15 BY MR. FROMMER:
 16 Q. Was that a question -- did you understand
 17 that question?
 18 A. Yes.
 19 Q. Okay.
 20 A. No.
 21 Q. No. Okay.
 22 We talked about this a little bit before
 23 but I just want to make sure I understand. So what
 24 are some of the -- what are the causes of pedestrian

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1 congestion?
 2 A. It can be caused by obstructions in the
 3 public way. So that can be things like trash
 4 receptacles, light posts, newsstands, other street
 5 furniture, benches, that are in the path of travel.
 6 It can be caused by constrained
 7 conditions where there's a large volume of
 8 pedestrians. So, for example, sidewalk cafes take up
 9 part of the sidewalk space seasonally, and if there's
 10 a large volume of pedestrians using that corridor,
 11 that can cause congestion.
 12 Q. So you mentioned a number of different
 13 types of structures or activities that affect -- that
 14 might create pedestrian congestion.
 15 You said newsstands. Would that be a
 16 potential source of -- a potential obstruction?
 17 A. Yes.
 18 Q. How about people like handbillers, people
 19 handing out fliers: would that be a potential source?
 20 A. Yes.
 21 Q. How about like newspaper boys; would that
 22 be a potential source of congestion?
 23 A. It's a potential source but those are
 24 ephemeral and they don't stay in a specific location.



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1 So those wouldn't be something we would be as focused
2 on as the fixed objects in terms of what an engineer
3 can recommend.
4 Q. So is it that fixed objects are -- does
5 the City perceive like fixed objects as being the
6 most -- the biggest driver of the congestion?
7 MR. WORSECK: Objection, vague.
8 BY THE WITNESS:
9 A. No, because we have standards that govern
10 where you place those things. So any that are
11 officially sanctioned by the City should be following
12 our requirements and not leading to undue congestion.
13 There are objects that are placed without
14 our permission that may not follow the regulations.
15 BY MR. FROMMER:
16 Q. What about like ATMs, automatic teller
17 machines and the lines that come from them; is that a
18 potential source of pedestrian congestion?
19 A. I would have to say that most of our ATMs
20 are inside buildings, so that's really not an issue
21 because people wait inside the lobby of the building.
22 Q. How about delivery vehicles, you know,
23 vehicles pulling up to make deliveries to businesses
24 or homes; are those a potential source of congestion?

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1 A. Those are a potential source of
2 congestion in the street.
3 Q. Okay. And I mentioned before street
4 performers. Can street performers be a potential
5 source of pedestrian congestion?
6 A. Yes.
7 Q. Why is that?
8 A. Because they may claim a large area of
9 the sidewalk for their instruments and themselves and
10 constrain the flow getting around them.
11 Q. Do they -- do street performers sometimes
12 attract, like, crowds of people?
13 A. Yes.
14 Q. And how does that affect pedestrian
15 congestion?
16 A. It can cause localized congestion.
17 Q. What's "localized congestion"? What does
18 that mean?
19 A. At that specific address.
20 Q. Where the --
21 A. Where the performers are stationed.
22 Q. Where the particular activity is
23 occurring?
24 A. Yes.

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1 Q. What did you call that again,
2 localized....
3 THE COURT REPORTER: Localized.
4 BY MR. FROMMER:
5 Q. Okay. "Localized." We'll call it
6 localized obstruction. Is that --
7 THE COURT REPORTER: "Congestion."
8 MR. FROMMER: "Localized congestion."
9 BY MR. FROMMER:
10 Q. What is "localized congestion"? Does
11 that differ from general pedestrian congestion?
12 A. Yes. So general congestion can be, for
13 example, a commuter corridor where there's heavy
14 flows because there's a rail station and commuters
15 getting from the rail station to their work sites.
16 And so certain corridors have large
17 volumes of people that they carry and there are
18 certain requirements in the public way to accommodate
19 that. Localized congestion is much more specific to
20 an address.
21 Q. Okay. I think I understand that. So is
22 a sidewalk cafe, would that be something that would
23 cause localized congestion?
24 A. It could cause localized congestion.

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1 However, there are regulations in place that require
2 certain passages be maintained for pedestrians. So
3 those requirements would minimize congestion at those
4 locations.
5 Q. What are those requirements for sidewalk
6 cafes?
7 A. I believe they have to maintain a
8 six-foot clear passage around the cafe.
9 Q. So as long as there's six feet of clear
10 sidewalk passageway, then the City is not -- the
11 City's congestion concerns are alleviated (sic)?
12 MR. WORSECK: Objection, vague.
13 BY THE WITNESS:
14 A. And CDOT does not oversee sidewalk cafes.
15 That's BACP. So I'm not -- it's not my area of
16 expertise to know all the rules about sidewalk cafes,
17 so I can only speak broadly about them.
18 BY MR. FROMMER:
19 Q. Does BACP consult with CDOT about the
20 placement of sidewalk cafes?
21 A. I would say not on a case-by-case basis
22 because there's such a large volume. They have to be
23 renewed every year, and so I think that's probably
24 thousands of applicants. And so, no, they don't



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1 consult with CDOT about every single one.
2 Q. There are thousands of sidewalk cafes?
3 A. I'm guessing.
4 Q. Okay.
5 A. I mean, when you look at every fast food
6 restaurant has one, when they're, you know, a
7 storefront location instead of a drive-in location,
8 so...
9 Q. Now, you mentioned -- a second ago, you
10 mentioned localized congestion and I'd like to get
11 sort of an idea of how localized congestion works.
12 When you say "localized congestion," how
13 far do the effects of localized congestion spread?
14 A. Well, I would say localized congestion
15 can affect a block face.
16 Q. "A block face"?
17 A. Yes.
18 Q. So if you have a localized objection
19 (sic) on one part of the block --
20 THE COURT REPORTER: I'm sorry. You said
21 "localized objection."
22 MR. FROMMER: Oh, sorry. "Localized
23 congestion." Let me restate.
24 BY MR. FROMMER:

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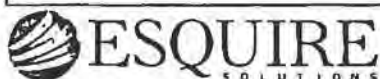
1 Q. If you have localized congestion on one
2 part of the block, on one part of the street --
3 actually, let me go back a step.
4 What is a "block face"?
5 A. A block face is -- so let me step back a
6 minute. There's a block (indicating). Sorry.
7 There's a block, and you can either talk
8 about the block as a whole, the four sides of the
9 block, or you can talk about one side which is the
10 face of the block (indicating). So it's one side of
11 a square block.
12 Q. Okay. So just so I understand, so a
13 street -- if you have a -- let's say an east-west
14 street, it abuts two separate block faces, is that
15 correct?
16 A. An east-west street has a block face on
17 either side of it.
18 Q. Yeah. So we have a street going this way
19 (indicating). There's this block face down here and
20 another block face up here (indicating). Is that
21 right?
22 A. I think so.
23 Q. Okay. I just want to make sure I
24 understand the terms. I'm sort of new to this area.

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1 MR. WORSECK: But you draw pictures in the air
2 very well.
3 MR. FROMMER: Thank you.
4 BY MR. FROMMER:
5 Q. So you say it can affect up to a block
6 face, generally?
7 A. I'm making a generalization, but...
8 Q. Okay. Has the City done any studies or
9 done any analysis about the effect of localized
10 congestion and how far it can be felt?
11 MR. WORSECK: Objection, vague, calls for
12 speculation.
13 BY MR. FROMMER:
14 Q. Did you understand the question?
15 A. No.
16 Q. You didn't?
17 A. I'm answering the question. No.
18 MR. FROMMER: I think there was a little
19 confusion there. So could you repeat my last
20 question?
21 (WHEREUPON, the record was read
22 by the reporter as requested.)
23 BY MR. FROMMER:
24 Q. I just wanted to make sure that you're

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1 answering my question and not --
2 THE WITNESS: Can I continue?
3 MR. WORSECK: Yeah.
4 BY THE WITNESS:
5 A. I just wanted to add on that we haven't
6 done any studies of this phenomenon.
7 BY MR. FROMMER:
8 Q. Upon what are you basing your belief that
9 a localized obstruction can affect -- or a localized
10 congestion can affect pedestrian flow on a block
11 face?
12 A. As I said, we use professional judgment
13 to make that determination.
14 Q. Okay. So a block face is just -- would a
15 block face include the other side of a street?
16 A. No. A block face is just one side, not
17 both sides.
18 Q. Okay. Would a block face include --
19 we're back to our east-west street.
20 Would a block face include around the
21 corner?
22 A. It could if -- a block face does not
23 include around the corner but I could elaborate that
24 going beyond a block face -- if it was an obstruction



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1 near the corner, it could affect another block face.
2 So it could affect two sides of a block
3 if it was something near the corner.
4 Q. If the obstruction that was causing the
5 localized congestion was near the corner?
6 A. Correct.
7 Q. Okay. Thank you, thank you.
8 Does localized congestion of the kind we
9 were just talking about, does that extend across
10 intersections?
11 A. As I said, it could if it was near the
12 corner.
13 Q. Could you give me an example of what that
14 would look like?
15 A. Well, I'm thinking of, say, an
16 intersection that has a lot of people at it waiting
17 to cross and the light changes and they all start
18 across in a big platoon of pedestrians and then they
19 enter the next block face.
20 And so there could be like a surge, in
21 other words, of pedestrians that could be moving
22 together.
23 Q. Okay. What if the obstruction was, let's
24 say, further away from the corner. Let's say 75 feet

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1 away from the corner.
2 Would that localized -- that obstruction
3 that might create localized congestion, would that
4 extend across the intersection?
5 MR. WORSECK: Objection, speculation, and
6 hypothetical question -- incomplete hypothetical.
7 BY MR. FROMMER:
8 Q. Did you understand?
9 A. I think you should repeat it.
10 MR. FROMMER: Okay. Could you read back the
11 question, please?
12 (WHEREUPON, the record was read
13 by the reporter as requested.)
14 BY THE WITNESS:
15 A. So I would have to say it would depend
16 upon the context and the nature of the obstruction.
17 So I can't answer the question because it's broad.
18 BY MR. FROMMER:
19 Q. Okay. What more information would you
20 need to be able to answer that question?
21 A. Specifics about the nature of the
22 obstruction.
23 Q. Let's say there's a street performer
24 operating 75 feet from an intersection. There's a

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1 crowd around him. You know, he attracts a crowd.
2 Would that affect pedestrian congestion
3 across the intersection?
4 MR. WORSECK: Objection, calls for speculation,
5 incomplete hypothetical.
6 BY THE WITNESS:
7 A. Again, it would depend on the context as
8 well. So how wide the sidewalk is where the
9 performer is standing or the performers are standing,
10 and -- so I don't -- it's kind of a broad question
11 again to be able to give you a specific answer.
12 BY MR. FROMMER:
13 Q. Okay. Let's see if we can get a few more
14 details in here.
15 A. Okay.
16 Q. So let's say the street performer is
17 operating -- not "operating." He's performing next
18 to the curb, he's near the curb, and there's, let's
19 say, 20 people around him watching him perform.
20 Would the pedestrian -- because of that
21 obstruction, would pedestrian congestion be felt
22 across an intersection?
23 MR. WORSECK: Same objections, incomplete
24 hypothetical, speculation.

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1 BY THE WITNESS:
2 A. So there's another issue which is the
3 pedestrian volume. So it depends on the pedestrian
4 volume in that situation. If it's a low volume, then
5 it probably wouldn't cause congestion across the
6 intersection. If it was a higher volume --
7 pedestrian volume location, then it could.
8 BY MR. FROMMER:
9 Q. So the degree of pedestrian congestion
10 that an obstruction can create depends partially on
11 the overall level of pedestrian traffic on the block
12 face?
13 A. Yes.
14 Q. Does it depend on the level of pedestrian
15 traffic on a block face on the other side of the
16 street?
17 A. It could.
18 Q. How could it?
19 A. It could be that this group is moving,
20 platooning once they pass this obstruction, and then
21 they could be going across the intersection and
22 affecting that next corner as well.
23 Q. I think we are talking about separate
24 things. I was talking about -- I wasn't talking



<p style="text-align: right;">Page 49</p> <p>1 about intersections there.</p> <p>2 A. Okay.</p> <p>3 Q. I mean if you have a performer -- going</p> <p>4 back to our east-west with the north-south block</p> <p>5 faces. We have a street performer on the south block</p> <p>6 face performing and he has a small crowd around him.</p> <p>7 Would that affect pedestrian traffic on</p> <p>8 the north block face?</p> <p>9 MR. WORSECK: Objection, speculation,</p> <p>10 incomplete hypothetical.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I can't really picture what you're</p> <p>13 describing. Sorry.</p> <p>14 MR. FROMMER: Let's take just a five-minute</p> <p>15 break and we'll come on back, okay?</p> <p>16 THE WITNESS: Okay. Thank you.</p> <p>17 (WHEREUPON, a recess was had.)</p> <p>18 MR. FROMMER: Back on the record? Okay.</p> <p>19 MR. WORSECK: For the record, we are coming</p> <p>20 back from a 15-minute break.</p> <p>21 BY MR. FROMMER:</p> <p>22 Q. Okay. Let me ask you a couple of</p> <p>23 questions. How wide are the streets in the Loop?</p> <p>24 A. It varies. We have different widths.</p>	<p style="text-align: right;">Page 51</p> <p>1 east-west streets are somewhere between 40 and 50</p> <p>2 feet in width?</p> <p>3 A. In curb-to-curb width, I would say</p> <p>4 generally speaking. But, you know, I wouldn't swear</p> <p>5 to it, given I don't have the actual diagrams in</p> <p>6 front of me.</p> <p>7 Q. Okay. And what about the north-south</p> <p>8 streets; what's the curb-to-curb width for those in</p> <p>9 the Loop?</p> <p>10 A. I would have to say I'd have to look it</p> <p>11 up. I'm more familiar with the east-west because we</p> <p>12 are doing projects right now that are east-west and</p> <p>13 we spend a lot time talking about the east-west curb-</p> <p>14 to-curb width, so....</p> <p>15 Q. All right. How wide are the sidewalks in</p> <p>16 the Loop?</p> <p>17 A. The sidewalks also vary in width, so....</p> <p>18 Q. Could you give me a range?</p> <p>19 A. I would say that they're probably in the</p> <p>20 10 to 20 foot range, typically.</p> <p>21 Q. Do you think there's any sidewalks wider</p> <p>22 than 20 feet?</p> <p>23 A. There may be. On State Street, for</p> <p>24 example.</p>
<p style="text-align: right;">Page 50</p> <p>1 Q. Are there any streets wider than a</p> <p>2 hundred feet?</p> <p>3 A. Well, there's a difference between the</p> <p>4 public way width and the drivable area. So which do</p> <p>5 you mean?</p> <p>6 Q. Can you explain to me what the difference</p> <p>7 is?</p> <p>8 A. Public way is typically building face to</p> <p>9 building face, property line to property line. And</p> <p>10 the street is curb to curb.</p> <p>11 Q. Okay. I mean, the curb to curb, the</p> <p>12 street. How wide -- is there --</p> <p>13 A. No, there aren't any --</p> <p>14 MR. WORSECK: Sorry. Can both of you be sure</p> <p>15 not to talk over the other.</p> <p>16 BY MR. FROMMER:</p> <p>17 Q. Are there any streets that are wider than</p> <p>18 a hundred feet in the Loop?</p> <p>19 A. I would have to look at the data, but I</p> <p>20 would say if there are, it would be Congress is one</p> <p>21 that could be, Wacker could be.</p> <p>22 Most of the east-west streets are more in</p> <p>23 the 43 feet, 48 feet, even in the 30's curb to curb.</p> <p>24 Q. So just so I understand, most of the</p>	<p style="text-align: right;">Page 52</p> <p>1 Q. But do you think, generally, sidewalks in</p> <p>2 the Loop are less than 20 feet wide?</p> <p>3 A. I would say, generally, they're 10 to 20</p> <p>4 feet.</p> <p>5 Q. All right. To help talk about some of</p> <p>6 the questions we were talking about before, we've</p> <p>7 prepared an Exhibit, just a demonstrative Exhibit.</p> <p>8 Hopefully, it will help clarify some of the things we</p> <p>9 were talking about before.</p> <p>10 MR. FROMMER: We'll mark this as Hamilton</p> <p>11 Exhibit 2.</p> <p>12 (WHEREUPON, a certain document</p> <p>13 was marked Hamilton Deposition</p> <p>14 Exhibit No. 2, for</p> <p>15 identification, as of</p> <p>16 10/09/2014.)</p> <p>17 (WHEREUPON, the document was</p> <p>18 tendered to the witness.)</p> <p>19 BY MR. FROMMER:</p> <p>20 Q. So this was a mockup that we did of</p> <p>21 several different blocks with a east-west and a</p> <p>22 north-south street and so that way we can discuss</p> <p>23 this and I think we'll have a clearer picture of what</p> <p>24 we are talking about.</p>



<p style="text-align: right;">Page 53</p> <p>1 MR. WORSECK: Rob, I just want to object. I 2 think "east" and "west" are on the wrong sides. 3 MR. FROMMER: Yes, they are. 4 MR. WORSECK: Why don't we correct that on the 5 official Exhibit? 6 MR. FROMMER: Yes, I agree. 7 (WHEREUPON, there was a short 8 interruption.) 9 BY MR. FROMMER: 10 Q. Okay. So before, we were talking about 11 obstructions and localized congestion and how it can 12 propagate. So using Exhibit 2, and let's say that 13 there is a street performer on the southern block 14 face of Block 2 about halfway down, in the middle of 15 the block face. 16 A. Okay. So (indicating). 17 MR. WORSECK: Wait. I just want to -- the 18 witness is using an Exhibit where north and south was 19 scratched out instead of east and west. 20 THE WITNESS: Correct. 21 MR. WORSECK: So east and west, we needed to 22 change that. So I'm just going to make -- 23 MR. FROMMER: Can we go off the record for a 24 second while we fix this?</p>	<p style="text-align: right;">Page 55</p> <p>1 performer, for instance, in the middle of the 2 southern block face for Block 1, okay? 3 A. Okay. Block 1. In the southern face of 4 Block 1. 5 Q. Uh-huh. 6 A. Okay. Yes. 7 Q. If there's a street performer there and 8 let's say he draws a crowd of a dozen people, how far 9 could we expect any localized congestion caused by 10 obstruction to radiate? 11 MR. WORSECK: Objection, calls for speculation, 12 and incomplete hypothetical. 13 BY THE WITNESS: 14 A. So it would depend on the context. It 15 could potentially affect the whole block face. 16 BY MR. FROMMER: 17 Q. It could potentially affect the whole 18 block face? 19 A. Depending on things like obstructions, 20 volumes, and all those other things we talked about 21 before. 22 Q. So if there's a particularly heavy volume 23 and maybe there's some other -- well, let's assume 24 there are no other obstructions on the street but</p>
<p style="text-align: right;">Page 54</p> <p>1 MR. WORSECK: Sure. 2 (WHEREUPON, there was a short 3 interruption to make copies.) 4 (WHEREUPON, Mr. David M. Baron 5 entered the deposition 6 proceedings.) 7 MR. FROMMER: Can we remark this as Exhibit 2? 8 (WHEREUPON, a corrected document 9 was marked Hamilton Deposition 10 Exhibit No. 2, for 11 identification, as of 12 10/09/2014.) 13 (WHEREUPON, the document was 14 tendered to the witness.) 15 BY MR. FROMMER: 16 Q. All right. Now that we have all of our 17 exhibits straight. So we were talking a little bit 18 before about obstructions and localized congestion 19 and how that affects traffic on the right-of-way -- 20 or pedestrians on the right-of-way. 21 So, this is Exhibit 2. It's something we 22 came up with. It shows four blocks along with an 23 intersection. Each block has a sidewalk. So for the 24 purpose of this, let's assume that there is a street</p>	<p style="text-align: right;">Page 56</p> <p>1 there's particularly heavy pedestrian volume. 2 You're saying that this obstruction could 3 create localized congestion across the entire 4 southern block face of Block 1? 5 A. Potentially. 6 MR. WORSECK: Objection, speculation, 7 incomplete hypothetical. 8 BY MR. FROMMER: 9 Q. "Potentially." 10 We still have our street performer. We 11 still have his dozen people. Could that street 12 performer's operations cause localized congestion on 13 the eastern block face of Block 1? 14 MR. WORSECK: Rob, will you give me a standing 15 objection here to this line of questioning? 16 MR. FROMMER: Yes. 17 MR. WORSECK: I just don't want to keep making 18 the objection, but I do want it to be preserved on 19 the record that to the extent questions are asking 20 about certain scenarios of congestion and number of 21 pedestrians and the number of people watching a 22 performer or what have you, that those are 23 hypothetical questions. 24 They're incomplete hypotheticals. They</p>

<p style="text-align: right;">Page 57</p> <p>1 call for speculation but, otherwise, the witness can 2 answer. 3 BY THE WITNESS: 4 A. And, again, it would depend on the 5 context. 6 BY MR. FROMMER: 7 Q. What additional information would you 8 need? 9 A. So as I said, the pedestrian volume on 10 that sidewalk would be important. Perhaps the signal 11 timing at the intersection could play a role. So I 12 know you said there weren't any other obstructions, 13 so obstructions wouldn't be an issue. 14 The land uses, what kinds of businesses 15 are fronting on this street and any kinds of trips 16 they're generating, movements of pedestrians in and 17 out, all those things can affect the extent. 18 Q. Generally, would you expect the street 19 performer performing on the southern block face of 20 Block 1 to create pedestrian congestion on the 21 eastern block face of Block 1? 22 A. I would hazard that -- you said there 23 were a dozen people watching him perform, is that 24 correct?</p>	<p style="text-align: right;">Page 59</p> <p>1 pedestrian congestion on another entirely different 2 block face? 3 A. I believe we've had these kinds of 4 discussions regarding locations in the downtown. 5 Q. What were the nature of those 6 discussions? What were they about? 7 A. Potential congestion of pedestrians at an 8 intersection that's affecting pedestrians on either 9 side of the block face. 10 Q. Now, you said that part of the congestion 11 that might result is by the type of uses that are 12 occurring on that block face. 13 What kinds of uses would potentially 14 increase the risk of pedestrian congestion? 15 A. Businesses that have more in and out 16 traffic. 17 Q. Like what? What kinds of businesses are 18 those? 19 A. Retail establishments. 20 Q. Stores? 21 A. Could be stores, convenience stores, fast 22 food establishments. Those types of businesses would 23 have more in/out traffic than, say, a clothing store 24 would.</p>
<p style="text-align: right;">Page 58</p> <p>1 Q. Yes. 2 A. That it probably would not extend to the 3 eastern block face of Block -- 2, right? 4 Q. The Block 1. 5 A. Oh, so this block face (indicating)? 6 Q. Yes. 7 A. Oh, okay. Sorry. 8 It could potentially impact the 9 intersection -- the intersection of the two 10 sidewalks. 11 Q. What about -- 12 A. I don't think it would extend to Block 2, 13 the south face. 14 Q. Do you believe it would extend up the 15 eastern block face of Block 1, past the intersection? 16 A. I feel that's a speculative question. I 17 can't really answer. 18 Q. What additional information would you 19 need? 20 A. What the conditions are on that block 21 face. 22 Q. Have you, as your experience at CDOT and 23 working on these issues, ever come across a situation 24 where an obstruction on one block face causes</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. Okay. So back to our Exhibit. If we 2 have our person on the southern block face of Block 3 1, our street performer, would his -- would that 4 obstruction lead to sidewalk congestion on either of 5 the block faces on Block 2? 6 A. This is speculative but if it's just 7 attracting 12 people watching the performer, I would 8 say that it would be unlikely that it would affect 9 either block face of Block 2. But, again, that's 10 context sensitive, so.... 11 Q. Why do you say that as a general matter, 12 it would not affect pedestrian congestion on those 13 block faces? 14 MR. WORSECK: Objection, mischaracterizes the 15 testimony. 16 BY THE WITNESS: 17 A. Because we have already established that 18 there aren't obstructions on this block face other 19 than the 12 people watching the performer. So under 20 that constraint, I would say it wouldn't affect these 21 two block faces. 22 But, again, it's going to depend on 23 in/out movements and other things like that. 24 BY MR. FROMMER:</p>

<p style="text-align: right;">Page 61</p> <p>1 Q. Okay. So the same scenario. What about 2 the block faces on Block 4; would it create 3 pedestrian congestion on those block faces? 4 A. And, again, with the constraints I 5 already mentioned, I would say it would not affect 6 those block faces. 7 Q. Okay. And one more question I think in 8 this. So we have our street performer on the 9 southern block face of Block 1. 10 How would that -- would that affect 11 pedestrian congestion -- would that obstruction 12 affect pedestrian congestion on the north face of 13 Block 3 -- the north block face of Block 3? 14 A. I would say under the constraints we 15 described, no. 16 Q. Does the City receive complaints about 17 sidewalk congestion? 18 A. Yes. 19 Q. How does it receive those complaints? 20 A. We get complaints that are passed through 21 aldermen to us about general public way use concerns, 22 and also 3-1-1 calls about general concerns, direct 23 e-mails from the public about these kinds of 24 concerns, or from businesses whose business involve</p>	<p style="text-align: right;">Page 63</p> <p>1 pedestrian congestion. I just wanted to run through 2 this and make sure I understand. 3 I believe you said that newsstands could 4 create pedestrian congestion? 5 A. Yes. 6 Q. Street performers as we were just 7 discussing, they could potentially create pedestrian 8 congestion? 9 A. Correct. 10 Q. And then for fixed objects, bus stops; 11 could they create pedestrian congestion? 12 A. I would say that would be atypical but 13 possible. 14 Q. How about tree planters; could those 15 cause pedestrian congestion? 16 A. As I said before, we have rules and 17 regulations regarding placement of things like tree 18 pits or planters that protects the pedestrian 19 corridor. So as long as they're following code, then 20 they shouldn't create an obstruction. 21 Q. Okay. Are there types of -- do theaters 22 create -- attract lines and draw crowds of people? 23 A. Before a performance starts, there tends 24 to be a crowd around a theater entrance. I would say,</p>
<p style="text-align: right;">Page 62</p> <p>1 use of the public way. So multiple sources. 2 Q. Are those complaints recorded in any way? 3 A. Well, if it's a 3-1-1 call, yes, it's 4 part of the 3-1-1 system. If it's an aldermanic, 5 normally we have what we call the Request Management 6 System, so the issue is logged in and then we prepare 7 a formal response. 8 Q. You said it was called the Request 9 Management System? 10 A. Right. 11 Q. Are there any situations where a 12 complaint wouldn't be reported? 13 A. Well, as I said, if it was something that 14 came in as an e-mail, for example. Those tend to be 15 kept as a separate list or if it's a direct letter to 16 the Commissioner from a member of the public, those 17 are on another list, so.... 18 Q. So there still would be a record of them? 19 A. There's a list because we always respond 20 to everyone. 21 Q. That's very attentive of you. 22 A. Yeah. 23 Q. So before we were talking about a number 24 of different things that can potentially create</p>	<p style="text-align: right;">Page 64</p> <p>1 <u>Usually, following, no, because everybody disperses</u> 2 <u>quickly. But when people are waiting to get in,</u> 3 <u>there can be a queue for a while.</u> 4 Q. <u>And can that lead to pedestrian</u> 5 <u>congestion?</u> 6 A. <u>It can affect the flow of the pedestrian.</u> 7 Q. That reminds me. Is there an acceptable 8 level of pedestrian congestion for the City? 9 MR. WORSECK: Objection, vague. 10 BY THE WITNESS: 11 A. As I said before, that's professional 12 judgment. In terms of how we evaluate things in our 13 shop, it's professional judgment by trained 14 engineers. They determine if there's congestion or 15 not. 16 BY MR. FROMMER: 17 Q. And what is it precisely that they're 18 looking for to determine whether there's congestion 19 or not? 20 A. They could be looking at the personal 21 safety of pedestrians. So, for example, are 22 pedestrians flowing into the street because there's 23 an obstruction that's creating congestion and 24 pedestrians are going around the obstruction and that</p>



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<p style="text-align: right;">Page 65</p> <p>1 could endanger them. That would be an example. 2 Q. How about concert halls, do those attract 3 lines and draw crowds? 4 A. It would be the same as a theater. 5 Q. Okay. How about taverns, bars; would 6 they tend to attract lines, draw crowds? 7 A. I would say not to the same degree 8 because — unless it's a bar that has a club, you 9 know, it has performers. You don't tend to have 10 queues waiting outside the bar. 11 Q. How about retail stores when they're 12 having big sales? You know, Apple always comes out 13 with their new phone. I'm sure you've seen like the 14 news reports. 15 Do those tend to draw lines and attract 16 crowds? 17 A. I would say that they could and that 18 would be something that's ephemeral. I mean, a new 19 product introduction is atypical. It's not like 20 there's a line there every day or a crowd there every 21 day or on a regular basis, as you could have with, 22 say, a theater or some other use. 23 Q. So I said theater before. I was thinking 24 of like live performance theater, like the Chicago</p>	<p style="text-align: right;">Page 67</p> <p>1 brought to my attention. 2 Q. Has the City measured the degree of 3 pedestrian congestion around these types of 4 establishments? 5 A. As I said, if there was — if we received 6 a request that there was a problem, then we would go 7 do an evaluation. That would be a traffic engineer 8 using their professional judgment. 9 Q. How frequently do, like, long lines and 10 crowds form around restaurants? 11 MR. WORSECK: Objection, vague. 12 BY THE WITNESS: 13 A. Could you repeat the question? 14 BY MR. FROMMER: 15 Q. Sure. 16 Generally, do most restaurants have large 17 lines and crowds around their entrances? 18 MR. WORSECK: Same objection. 19 BY THE WITNESS: 20 A. It depends on the time of day and the 21 business. 22 BY MR. FROMMER: 23 Q. What factors would you — do you think 24 weigh on that decision or weigh on whether's</p>
<p style="text-align: right;">Page 66</p> <p>1 Theater. 2 What about movie theaters, would they 3 attract lines, draw crowds? 4 A. Movie theaters attract lines, but it's 5 more spread out for a movie theater because, 6 typically, today they're multiplexes so they have a 7 number of films running and different theaters (sic) 8 are on different schedules so you don't get the same 9 volume that you would get a live performance where 10 the show starts at 8:00 and everybody's there at 7:45 11 to get in. So it's a different kind of flow. 12 Q. That makes sense. 13 Has the City compared the degree to which 14 these different kinds of businesses attract lines, 15 create crowds? 16 A. We would only do so in response to 17 concerns that were raised from the public or elected 18 officials about it. We don't routinely go out 19 looking for that. 20 Q. Has the City received any complaints or 21 questions about crowds, for instance, around live 22 theaters? 23 A. I couldn't answer for the whole City. I 24 can say that I haven't directly had that concern</p>	<p style="text-align: right;">Page 68</p> <p>1 pedestrian congestion or not? 2 A. One factor would be whether a restaurant 3 takes reservations or not. So if a restaurant takes 4 reservations, there's less likely to be a line. If a 5 restaurant doesn't, then, you know, when it's 5:00 6 o'clock, the line will potentially be there depending 7 on how popular the restaurant is. 8 Q. <u>Has the City done any measurements to see</u> 9 <u>if there are lines or crowds outside of restaurants?</u> 10 A. <u>The Chicago Department of Transportation</u> 11 <u>has not been asked to look at that issue by either</u> 12 <u>elected officials or general public. I can't speak</u> 13 <u>for other departments that may have been asked.</u> 14 Q. So what's the basis for your 15 understanding that this is occurring, that there are 16 lines and crowds around restaurants, if the City has 17 never looked at the issue? 18 A. This is based on my own -- 19 MR. WORSECK: Objection. Mischaracterizes the 20 testimony, but you can answer. 21 BY THE WITNESS: 22 A. That's based on my own observations of 23 restaurants. 24 BY MR. FROMMER:</p>



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1 Q. What observations of restaurants would
2 those be?
3 A. As a citizen.
4 Q. Are there any particular restaurants that
5 you're thinking about?
6 A. Restaurants that don't take reservations,
7 so Frontera Grill comes to mind.
8 Q. I'm sorry?
9 A. Frontera Grill is a restaurant that
10 doesn't take reservations. So if you want to go
11 there, you get in line and the line starts probably a
12 half hour before the restaurant opens.
13 Q. Now, does the City, with regards to some
14 of these businesses we have been talking about,
15 theaters, restaurants, other retail establishments
16 like those that potentially draw lines or attract
17 crowds.
18 Does the City require those businesses to
19 take any steps to minimize the effect of those lines
20 and crowds on pedestrian congestion?
21 A. Chicago Department of Transportation
22 don't get involved in that unless that issue was
23 brought to us, which it hasn't been brought to us.
24 There may be other departments that could be dealing

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1 with this, for example, BACP, and I can't speak for
2 BACP.
3 Q. Would you expect that CDOT would be
4 brought into the loop about creating rules or
5 regulations to instruct businesses how to minimize
6 pedestrian congestion caused by lines and crowds
7 outside their locations?
8 A. CDOT could be brought in to a planning
9 discussion at the front end. That would be the most
10 likely scenario. If it's something to do with
11 enforcement, it's not our department. It would most
12 likely be BACP or some other department, or the
13 Police Department. Not us.
14 Q. You mentioned a second ago that Frontera
15 Grill was one of the places that you might expect a
16 line or a crowd.
17 Are there other examples of restaurants
18 that you think would attract lines and crowds?
19 MR. WORSECK: Objection, calls for speculation.
20 You can answer to the extent of your knowledge.
21 BY THE WITNESS:
22 A. So I'm too old to actually go there, but
23 there's a doughnut place over on Kinzie and Franklin,
24 or just west of Franklin by the Gilt Bar. I can't

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1 think of the doughnut place.
2 MR. WORSECK: Doughnut Vault.
3 THE WITNESS: Thank you. You're younger than
4 me.
5 MR. WORSECK: There's a food truck that I go to
6 there.
7 BY THE WITNESS:
8 A. So places like that can attract lines as
9 well. Hotdogs can attract lines when it's closing.
10 BY MR. FROMMER:
11 Q. What about fast food restaurants like
12 McDonald's or, you know, Burger King; are those the
13 types of establishments that would draw lines and
14 have crowds outside their door?
15 A. I would say that it depends on the
16 context of the particular fast food restaurant.
17 Q. What kind of information would you need?
18 A. I mean, if it's a really populated area
19 with lots of activity and there are lots of
20 passersby, I could see that there could be crowds
21 that would be forming for a McDonald's, for example.
22 Q. Have you seen crowds form for a
23 McDonald's?
24 A. I have.

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1 Q. When was that?
2 A. Traveling.
3 Q. So not when you're in Chicago?
4 A. I haven't really seen it in Chicago
5 because I don't tend to go to tourist locations in
6 Chicago. But as a tourist, I've seen it in other
7 cities where the McDonald's has crowds because it's
8 one of the more affordable dining options.
9 Q. What about a place like Starbucks; would
10 that have crowds and lines out the door?
11 A. It could.
12 Q. What would -- in what circumstances?
13 A. Peak hour for caffeine consumption.
14 Q. What about 7-Eleven; would that have
15 lines and crowds outside the door?
16 A. I would think generally not, unless they
17 have some kind of special offer. You know, if
18 they're giving away something, two for one or
19 whatever. But, otherwise, I wouldn't expect that.
20 Q. Is it typical for a retail food
21 establishment to have lines and crowds outside their
22 door?
23 MR. WORSECK: Objection, vague.
24 BY THE WITNESS:



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1 A. I think there could be crowds outside
2 doors of restaurants, whether it's generated by the
3 restaurant in whole or in part. It could be general
4 pedestrian activity in the area as well.
5 BY MR. FROMMER:
6 Q. I think my question is, is it typical for
7 lines and crowds to form outside retail food
8 establishments?
9 MR. WORSECK: Same objection.
10 BY THE WITNESS:
11 A. And I would say it's the -- you'd have to
12 be context sensitive in making a determination.
13 BY MR. FROMMER:
14 Q. By "typical," I mean in the -- as a usual
15 matter of course. In most everyday circumstances,
16 would you expect lines and crowds to form outside
17 retail food establishments?
18 A. In that definition of typical, I'd say
19 no.
20 Q. Okay. Would a closed restaurant attract
21 lines or have crowds around their front door?
22 A. No.
23 Q. What's the effect of having like multiple
24 retail businesses like theaters, concert halls, next

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1 to each other?
2 MR. WORSECK: Objection.
3 BY MR. FROMMER:
4 Q. Is there a cumulative effect on the lines
5 and crowds that they draw that affects pedestrian
6 congestion in a different way than they would
7 individually?
8 A. I would say yes. That when you have
9 mixed land uses, that cumulatively they can have more
10 of an impact on the pedestrian environment than if
11 you had a single use.
12 Q. So having multiple retail businesses like
13 we were talking about, like theaters, concert halls,
14 next to each other, could make -- could increase the
15 chances of pedestrian congestion?
16 A. Yes.
17 Q. Okay. What about having multiple
18 restaurants next to each other: could that increase
19 the risk of pedestrian congestion?
20 A. Yes.
21 Q. Is construction a concern -- a potential
22 cause of pedestrian congestion?
23 A. There are rules and regulations regarding
24 maintaining passage during construction. So the City

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1 regulates the flow of traffic, whether it's
2 pedestrian or auto, around construction sites to
3 address that issue.
4 Q. I don't think that actually quite answers
5 my question, which is I think a little bit more
6 basic, which is are construction projects a potential
7 cause of pedestrian congestion?
8 A. Insofar as a construction project can
9 impose on the public way, it could contribute to
10 pedestrian congestion.
11 Q. How would that -- how would a
12 construction project that encroached upon the public
13 way, how would that affect pedestrian congestion?
14 A. For example, if it's a construction
15 project that requires the closure of a sidewalk on
16 one block face, say Block 2, the east side
17 (indicating), pedestrians could be rerouted to the
18 opposite block face or Block 1, the west side of the
19 street there.
20 Q. Let me make sure I understand for the
21 court reporter that you're looking at Exhibit 2, the
22 schematic we put together?
23 A. Uh-huh.
24 Q. And you were saying that construction

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1 projects that, for instance, closed the -- I guess
2 that would be the western block face of Block 2?
3 A. Right.
4 Q. Might cause increased pedestrian
5 congestion on the eastern block face of Block 1?
6 A. Yes.
7 Q. Okay. How does construction -- is
8 construction a relatively large concern for
9 pedestrian -- let me rephrase that.
10 To what extent do construction projects
11 create or exacerbate pedestrian congestion concerns?
12 A. Well, as I mentioned, the City has
13 regulations regarding how you accommodate pedestrians
14 during construction, so we have different
15 requirements in terms of canopies and barricades and
16 making sure that there's ADA accommodation.
17 So we take all these different measures
18 to try and provide safe passage for pedestrians even
19 though there's construction activity that's imposing
20 on the public way.
21 Q. Construction projects, do they generally
22 degrade the pedestrian experience in terms of being
23 able to traverse the block?
24 A. It depends on the specific construction



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1 site. Some construction sites that you're still able
2 to maintain the passage on that same sidewalk next to
3 the construction activity.
4 Other times, you have to detour people
5 off of that block face and then it causes more of an
6 impact on a pedestrian.
7 Q. Generally, though, would you say that
8 construction projects make it more -- degrade the
9 pedestrian experience as a general matter?
10 MR. WORSECK: Objection, vague.
11 BY THE WITNESS:
12 A. I would say they impact the pedestrian
13 experience in that it's case by case how much they
14 degrade the pedestrian experience.
15 BY MR. FROMMER:
16 Q. Is there a situation where a construction
17 project could improve pedestrian congestion during
18 the time of construction?
19 A. Only insofar as it might discourage
20 people from even using that block face or being in
21 that area, so there could be a decrease in volumes.
22 So there would be less pedestrians trying to pass
23 through that space.
24 Q. Is Chicago a pedestrian first City?

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1 MR. WORSECK: (Indicating.)
2 BY THE WITNESS:
3 A. Yes.
4 THE WITNESS: Sorry.
5 BY MR. FROMMER:
6 Q. So would deterring people from using the
7 sidewalk be consistent with Chicago's policy of being
8 a pedestrian first City?
9 MR. WORSECK: Objection, vague.
10 BY THE WITNESS:
11 A. We have a pedestrian hierarchy -- or a
12 modal hierarchy for Chicago and pedestrians are the
13 default primary concern in what we do. So we do work
14 on our regulations regarding things like construction
15 to try and always accommodate the pedestrian and
16 minimize the impact.
17 But there are some places where you will
18 require detours just because of the geography of the
19 location.
20 BY MR. FROMMER:
21 Q. Has the City ever gone out to different
22 construction sites to measure the effect that that
23 construction project is having on pedestrian
24 congestion and the ability of pedestrians to sidewalk

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1 past -- to traverse the block where the construction
2 is occurring?
3 MR. WORSECK: Objection, vague.
4 BY THE WITNESS:
5 A. Again, that would be a function that a
6 traffic engineer would respond -- or handle, and so
7 they would use their professional engineering
8 judgment in making determinations.
9 So, yes, that they could go out there
10 because of a request to examine some situation and
11 make recommendations for changes.
12 BY MR. FROMMER:
13 Q. Has that occurred?
14 A. Yes.
15 Q. Can you name some specific instances?
16 A. I can't name any specific instance, but
17 we do have those kinds of calls and respond to them.
18 Q. Is this a frequent activity, sending a
19 traffic engineer out to measure or analyze pedestrian
20 congestion near a construction site?
21 A. I would say it's less frequent than
22 requests to look at general traffic congestion. So
23 not specific to pedestrians, but general traffic
24 congestion because of construction, that's a more

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1 common concern that we get calls on and respond to
2 that.
3 Q. I'm sorry. Could you repeat that?
4 MR. FROMMER: Could you read back her answer?
5 (WHEREUPON, the record was read
6 by the reporter as requested.)
7 BY MR. FROMMER:
8 Q. Who are the calls concerning general
9 pedestrian congestion, who are they coming from?
10 A. Well, as I said before, most calls would
11 not be specific to pedestrians. They would be
12 general traffic concerns which could involve
13 pedestrians and motor vehicles.
14 They can come from citizens, they can
15 come from elected officials, they could come from
16 community organizations, SSAs, special service areas,
17 and others.
18 Q. What City agencies are involved in
19 mitigating pedestrian congestion?
20 MR. WORSECK: Objection, vague.
21 BY MR. FROMMER:
22 Q. Did you understand the question?
23 A. Well, if it's an enforcement issue, then
24 it would be the Police Department or other



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<p style="text-align: right;">Page 81</p> <p>1 departments like the police that do enforcement, not 2 us. 3 Q. So CDOT is not involved in pedestrian 4 congestion remediation? 5 A. Not pedestrian congestion per se. 6 Q. What steps do those agencies take to 7 mitigate pedestrian congestion? 8 MR. WORSECK: Objection, vague, and calls for 9 speculation. 10 BY THE WITNESS: 11 A. Right. I would say that's an enforcement 12 issue. So I -- that they would be involved from the 13 enforcement side. 14 BY MR. FROMMER: 15 Q. And by "enforcement," what do you mean? 16 A. For example, if there was a call that 17 there was an unsafe condition and pedestrian 18 congestion, and the police go check out that 19 situation and take action based on public safety. 20 And that could include making sure 21 they're enforcing whatever the requirements are for 22 that particular business. 23 Q. What steps does the -- do different City 24 agencies take to mitigate or remediate pedestrian</p>	<p style="text-align: right;">Page 83</p> <p>1 Gas, AT&T, CDOT, Department of Water Management, 2 et cetera. Private developers. 3 Q. Do you know if there's a list that's 4 created of all the ongoing open construction projects 5 in the City? 6 MR. WORSECK: Objection, vague. 7 BY MR. FROMMER: 8 Q. Did you understand the question? 9 A. Is there a list created? I don't know if 10 there's one list or multiple lists. That's not my 11 side of the business, so. That's the back end. I'm 12 at the front end. 13 Q. So that information about open 14 construction projects, is it shared with other City 15 agencies? 16 MR. WORSECK: Objection, speculation and 17 mischaracterizes prior testimony. But you can go 18 ahead. 19 BY THE WITNESS: 20 A. For example, Department of Water 21 Management has access to that same information that 22 Chicago Department of Transportation does. 23 BY MR. FROMMER: 24 Q. Are there any other agencies?</p>
<p style="text-align: right;">Page 82</p> <p>1 concerns caused by construction specifically? 2 A. We do have public way inspectors at CDOT. 3 So public way inspectors can go and make sure that 4 all of the plans that were set forth for maintenance 5 of traffic during construction are being followed, 6 and they can issue citations if they're not being 7 followed. 8 Q. So CDOT employees can issue citations for 9 congestion issues? 10 A. For noncompliance with maintenance of 11 traffic plans for construction. 12 Q. Okay. Does the City know where different 13 construction projects are occurring at any given 14 time? 15 A. Yes. 16 Q. How does it know that? 17 A. Building permits, for example. There are 18 also -- we have an office at CDOT called the Office 19 of Underground Coordination. So projects by any 20 different agency that could affect the public way 21 have to go through that OEC process and be evaluated. 22 So the OEC system contains the records of 23 all the current construction activities that are 24 happening, whether it's Commonwealth Edison, Peoples</p>	<p style="text-align: right;">Page 84</p> <p>1 A. I, again, wouldn't know all of the 2 agencies involved because I don't participate 3 directly in things like OEC. 4 Q. Does information about -- that's 5 collected by your department about open construction 6 projects, is that shared with agencies that are 7 tasked with mitigating or remediating pedestrian 8 congestion? 9 A. Well, there is a traffic management task 10 force that's run by OEMC, Office of Emergency 11 Management and Communications, and they, for things 12 like the Marathon, for example, will convene a lot of 13 different departments to talk about how we're going 14 to deal with a particular event like that. 15 I don't participate in that. But that's 16 a forum where different departments come together. 17 Q. So to make sure I understand, when the 18 departments come together to talk about open 19 construction projects, it's done in the context of 20 specific events like the Marathon? 21 A. No. That same group could look at 22 impacts of construction projects. So let's say 23 there's some major construction activity that's going 24 to take place in the next week on a specific block,</p>



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<p style="text-align: right;">Page 85</p> <p>1 and it's going to impact congestion. That group will 2 discuss that at their regular meetings. 3 Q. Does that group discuss all ongoing 4 construction projects that are taking place in the 5 City? 6 A. No. 7 Q. Does it talk about most of the ongoing 8 construction projects in the City? 9 A. It's all a matter of scale. So they're 10 going to be talking about projects of a large enough 11 scale to have a significant impact on traffic 12 congestion or pedestrian congestion. 13 Q. So the officials that are in those 14 meetings that are made aware of some of these ongoing 15 construction projects, are those the officials who 16 are actually involved in mitigating and remediating 17 pedestrian congestion? 18 MR. WORSECK: Objection, vague, speculation. 19 BY THE WITNESS: 20 A. It's a collection of different 21 departments, so departments like the Police 22 Department are there and so they are hearing about 23 the specific activity and then they're prepared to 24 address any kinds of problems.</p>	<p style="text-align: right;">Page 87</p> <p>1 it's a smaller scale project. 2 Then that's not going to be something 3 that rises to that level unless there were concerns 4 that were sent to the City through 3-1-1 system or 5 through elected officials. 6 BY MR. FROMMER: 7 Q. So are there City staff that monitor 8 pedestrian congestion near construction projects? 9 MR. WORSECK: Objection, speculation, vague. 10 BY THE WITNESS: 11 A. Not specifically pedestrian congestion. 12 BY MR. FROMMER: 13 Q. What then? 14 A. There are staff that would monitor for 15 large scale projects that are going to have or have 16 the potential for major impacts in sensitive areas 17 like downtown. 18 MR. FROMMER: Okay. Okay. Let's take a short 19 break. 20 MR. GALL: And, Drew, let's synchronize our 21 stopwatches. We're off the record. 22 (WHEREUPON, discussion was had 23 off the record.) 24 (WHEREUPON, a recess was had.)</p>
<p style="text-align: right;">Page 86</p> <p>1 BY MR. FROMMER: 2 Q. Does the Police Department then 3 communicate information about these ongoing 4 construction projects to the officers who are 5 actually on the ground remediating and mitigating 6 pedestrian congestion? 7 MR. WORSECK: Objection, speculation, vague. 8 BY THE WITNESS: 9 A. That's another department. I don't know 10 what they do, you know, how they communicate these 11 issues. 12 BY MR. FROMMER: 13 Q. Are City staff instructed to monitor 14 pedestrian congestion near construction projects? 15 MR. WORSECK: Objection, vague, overbroad, 16 speculation. 17 BY THE WITNESS: 18 A. I would say that given the volume of 19 construction activity, again it's a matter of scale. 20 So if it's a large scale project that's going to have 21 impact in a critical area, for example, downtown, 22 then there's going to be more monitoring occurring 23 than if it was some outlying neighborhood with less 24 pedestrian activity, with less traffic activity, and</p>	<p style="text-align: right;">Page 88</p> <p>1 MR. GALL: I just note that the exhibits that 2 were introduced right at the beginning of the 3 deposition, the printout on them indicates that they 4 were all printed out in June of this year which is 5 quite some time ago. 6 And so they were not promptly presented 7 to us to prepare for this deposition. Instead, they 8 were presented right before the deposition began. 9 That's all. 10 MR. WORSECK: And I'll note that the time that 11 they were printed out is not determinative of when 12 there was an obligation to produce them if, in fact, 13 they were obtained by attorneys in the course of 14 litigating a case. 15 Upon determining that they were relevant 16 to the case and used with the witness, they were 17 promptly and immediately produced to the Plaintiffs. 18 MR. GALL: Sure. Let's go ahead. 19 BY MR. FROMMER: 20 Q. I want to go back to something before 21 when we were talking about how to evaluate pedestrian 22 congestion, how City employees evaluate pedestrian 23 congestion. 24 And I think I remember you saying that</p>



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1 It's a context sensitive inquiry, is that right?

2 A. Yes.

3 Q. Okay. And that means -- can you explain

4 to me again what that means? What are they looking

5 at?

6 A. The context includes the land uses, the

7 fixed objects, the auto traffic levels and flow, the

8 pedestrian volumes and flow.

9 Q. And so these are all sort of context

10 sensitive -- or these are all -- so you said about

11 flow, you said about the usages, I believe you said

12 about other obstructions.

13 What other factors?

14 A. I said volumes.

15 Q. Volumes. Are there any other factors?

16 A. I'm sure there could be. But those are

17 the ones that are primary.

18 Q. Okay. Any others come to mind?

19 A. Not off the top of my head.

20 Q. And these are all -- these are all

21 evaluated, these subjective -- these factors are all

22 evaluated by a traffic engineer, is that right?

23 A. Right.

24 Q. Okay. And so what might create

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1 congestion on one block, might not create congestion

2 on another block, depending on these factors?

3 A. Correct.

4 Q. Okay. And then when the traffic engineer

5 is evaluating these factors, he does it based on his

6 professional judgment from his -- that he gained

7 from, I think, education?

8 A. Engineering training.

9 Q. Engineering training. And I would assume

10 experience in the field like that?

11 A. Right.

12 Q. So it sounds like, really, no block is

13 really -- all blocks are different. No blocks are

14 really the same, is that right?

15 MR. WORSECK: Objection, vague.

16 BY THE WITNESS:

17 A. Well, every place is unique. There are

18 general categories, downtown, nondowntown, that type

19 of thing but....

20 BY MR. FROMMER:

21 Q. And when you said that the engineers are

22 going out and looking at these things, these

23 potential congestion -- potential areas of pedestrian

24 congestion, we are not -- are we talking about any

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1 level of congestion whatsoever or are they looking

2 for whether there's more than an acceptable amount of

3 pedestrian congestion?

4 MR. WORSECK: Objection, vague.

5 BY THE WITNESS:

6 A. It's going to depend on what the request

7 is that they're investigating, so....

8 BY MR. FROMMER:

9 Q. Can you explain that to me? I'm not sure

10 I understand.

11 A. You gave two different types of

12 congestion.

13 THE WITNESS: Could you repeat them?

14 (WHEREUPON, the record was read

15 by the reporter as requested.)

16 BY THE WITNESS:

17 A. So depending on what the inquiry is, they

18 would be looking for pedestrian congestion that could

19 cause public safety concerns, concerns about safe

20 passage, and comfort of pedestrians.

21 BY MR. FROMMER:

22 Q. Okay. So the City is -- so the concern,

23 ultimately, is about pedestrian congestion that

24 creates safety issues or detracts from the pedestrian

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1 experience, is that right?

2 A. Also, if it was a case where it's

3 obstructing the pedestrian flow, that would be a

4 concern.

5 Q. And what --

6 A. Because of the fact that you need to keep

7 the pedestrian mobile. So let's say the pedestrian

8 is coming from a train station and going to their

9 worksite.

10 We have a responsibility to make sure

11 that they can flow efficiently through a corridor so

12 that they can get to their worksite, for example.

13 That means your City is functioning appropriately

14 and....

15 Q. So is any obstruction of pedestrian flow

16 something that the City -- let me ask the question

17 again.

18 Is the City concerned about any level of

19 interruption of pedestrian flow or is it instead that

20 once pedestrian flow is impeded above a certain

21 amount, that's when the City is concerned?

22 MR. WORSECK: Objection, vague, speculation.

23 BY MR. FROMMER:

24 Q. Did you understand my question?



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1 A. Are we concerned with any level of
2 pedestrian congestion or a level above a certain
3 threshold?
4 Q. Yeah. Basically, let's say there's some
5 pedestrian congestion, a very small amount, a
6 de minimis amount, such that it maybe causes very
7 minor changes in the pedestrian flow. Is that
8 something the City is concerned about?
9 A. Again, it would be context sensitive, but
10 I would say that it wouldn't be something that would
11 rise to the level where we would want to come up with
12 some changes to the design of the street or anything
13 like that.
14 Q. Okay. So all of these issues about
15 pedestrian congestion are really sort of context
16 sensitive?
17 A. Yes.
18 Q. Okay. I got that. Let's go back to
19 Exhibit 2. That's the schematic that we put together
20 earlier. I want to sort of go through some other
21 hypotheticals.
22 So let's get -- our street performer has
23 left the scene, okay?
24 A. Okay.

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1 Q. And in his place a food truck has come
2 and he's going to park at the same spot. So he was
3 in the middle of the --
4 A. (Indicating.)
5 Q. Exactly.
6 The middle of the southern block face of
7 Block 1. And he attracts a crowd. Not a large
8 crowd, several people.
9 And would his operation at that place
10 create a level of pedestrian congestion that would
11 cause the City -- that would cause any concerns for
12 the City?
13 MR. WORSECK: Objection, vague, speculation,
14 incomplete hypothetical.
15 BY THE WITNESS:
16 A. It would depend.
17 BY MR. FROMMER:
18 Q. On the factors we were talking about
19 before?
20 A. Right, right.
21 Q. Okay. About obstructions, usage, overall
22 number of people on the sidewalk?
23 A. Right.
24 Q. So it's sort of like a case-by-case

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1 analysis?
2 A. Right.
3 Q. Okay. And then would his operation on
4 that southern block face, the same spot, create --
5 potentially create congestion issues on the northern
6 block face of Block 3?
7 MR. WORSECK: Same objection.
8 BY THE WITNESS:
9 A. And are we specifically referring to
10 pedestrian congestion or any congestion?
11 BY MR. FROMMER:
12 Q. Yes, pedestrian congestion. I'm sorry.
13 A. Unlikely to create pedestrian congestion
14 on the north block face of Block 3. Could impact
15 roadway congestion, depending on how people are
16 approaching the truck and so on.
17 Q. Oh. Is it your understanding that people
18 have to order from food trucks from the curbside?
19 A. I think some trucks have rear windows,
20 too. I think they have curbside and they have rear.
21 I think what we had in mind was that they would order
22 from the curbside.
23 But I think some of them may also use the
24 back side. That's my general impression.

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1 Q. Okay. I think the code speaks about this
2 but we can look that up later.
3 Our same food truck is there doing the
4 same thing. Now, would -- could that potentially
5 create an unacceptable level of pedestrian congestion
6 on, let's say, the eastern block face of Block 1?
7 MR. WORSECK: Same objections.
8 BY THE WITNESS:
9 A. So (indicating) --
10 BY MR. FROMMER:
11 Q. Of Block 1.
12 A. The eastern block face....
13 Q. Of Block 1.
14 A. So this block face (indicating)?
15 Q. Yes, yes.
16 A. It would depend on how the line formed,
17 I'd say, and how it obstructed the flow as you
18 approach the intersection.
19 Q. Okay. So, again, it's a context
20 sensitive thing that rests on like a number of
21 different factors, right?
22 A. Yes.
23 Q. It's not like a hard and fast yes or no?
24 A. Correct.



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<p style="text-align: right;">Page 97</p> <p>1 Q. Okay. Let's move our food truck over 2 just a little bit. Just a little. So let's say he's 3 about a third of the way from the intersection of the 4 same block face of Block 1. 5 A. There (indicating)? 6 Q. Yes. 7 Could his operations there create a 8 pedestrian congestion concern, for instance, on the 9 north -- on the northern edge of the western block 10 face on Block 4? 11 MR. WORSECK: Same objections. 12 BY THE WITNESS: 13 A. And this is pedestrian congestion? 14 BY MR. FROMMER: 15 Q. Yes, it is pedestrian congestion. 16 A. Unlikely. 17 Q. "Unlikely"? Okay. All right. Thank 18 you. 19 Can you describe to me -- 20 MR. FROMMER: Actually, could I have the code, 21 Erica? Yes. 22 This is a copy of the -- the portion of 23 the Chicago City Code dealing with mobile food 24 vehicles. Let's mark this as an Exhibit, please,</p>	<p style="text-align: right;">Page 99</p> <p>1 Do I have to keep going? 2 Q. We don't need you to read the second 3 paragraph there. 4 What is your understanding of what this 5 rule prohibits? 6 A. It prohibits a mobile food vehicle to 7 locate within 200 feet of a restaurant entrance for 8 most of the hours of the day. 9 Q. Okay. And how does one measure 200 feet? 10 Well, let me -- rather than make you jump through 11 these hoops. 12 The City testified yesterday that the 13 200-foot rule operates by taking the principal 14 customer entrance to the restaurant and creating a 15 200-foot radius, and then that creates a circle with 16 a 200-foot radius around that restaurant. 17 Is that consistent with your 18 understanding of Subsection F? 19 A. That it's based on a radius instead of 20 linear? 21 Q. Yeah. Yes. 22 A. I think it's open to -- vague because 23 it's not specified here how it's being measured, 24 whether it's being measured linearly or as a radius.</p>
<p style="text-align: right;">Page 98</p> <p>1 Exhibit 3. 2 (WHEREUPON, a certain document 3 was marked Hamilton Deposition 4 Exhibit No. 3, for 5 identification, as of 6 10/09/2014.) 7 (WHEREUPON, the document was 8 tendered to the witness.) 9 BY MR. FROMMER: 10 Q. All right. So including the cover page, 11 one, two, three, four. Could you turn to the fourth 12 page of the Exhibit, please? Can you read Subsection 13 F that's about a quarter of the way down the page? 14 A. Do you want me to read it out loud? 15 Q. Yes, please. 16 A. "No operator of a mobile food 17 vehicle shall park or stand such 18 vehicle within 200 feet of any 19 principal customer entrance to a 20 restaurant which is located on the 21 street level; provided, however, 22 the restriction in this subsection 23 shall not apply between 12:00 a.m. 24 and 2:00 a.m."</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. So is there any reason for you to not -- 2 why do you -- the person who is charge -- the City 3 official yesterday who was asked about this said that 4 it was a radius. 5 A. So we are not involved in enforcement, so 6 I never really have been involved. I'm just telling 7 you from reading this, that I would have that 8 question: How are you measuring 200 feet? 9 Q. That's fine. The City official who was 10 designated for discussing enforcement, how the City 11 applies the 200-foot rule, testified that the City 12 views it as a 200-foot radius. 13 Which way do you think makes the most 14 sense to view the language in Subsection F; as a 15 radius or as strictly a linear measurement? 16 MR. WORSECK: Objection, vague, argumentative, 17 and to the extent it mischaracterizes prior 18 testimony. 19 BY THE WITNESS: 20 A. And I could see either one. I mean, if 21 you do a radius, you're capturing the other block 22 face of a block potentially that you wouldn't capture 23 when you did a linear measurement. 24 So I could see why they would do a radius</p>



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1 but, like I said, it's not specified in the Code.
2 BY MR. FROMMER:
3 Q. Is there anything in the Code that
4 delimits the 200 feet to linear? In other words –
5 I'm sorry.
6 If the measurement was supposed to be 200
7 linear feet, wouldn't it be easy to just say 200
8 linear feet?
9 MR. WORSECK: Objection to the extent it calls
10 for speculation, calls for legal conclusion about
11 what the Code means, argumentative. But you can
12 answer.
13 BY THE WITNESS:
14 A. Repeat the question.
15 BY MR. FROMMER:
16 Q. So you say you're not sure whether this
17 means 200 feet with a radius or 200 linear feet.
18 If it meant 200 linear feet, wouldn't the
19 easiest thing be to actually say 200 linear feet?
20 MR. WORSECK: Same objections.
21 BY THE WITNESS:
22 A. Yes.
23 BY MR. FROMMER:
24 Q. So how did you think it applied before

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1 coming here today?
2 A. I really am not involved in that. As I
3 said, our function is to establish the stands, and
4 the stands can be within 200 feet of a restaurant,
5 so....
6 Q. Okay. So –
7 A. I don't really deal with this side of it.
8 Q. That makes sense.
9 So would you say that interpreting it as
10 200 linear feet would require an extra step of logic
11 beyond what's simply written down in the code?
12 MR. WORSECK: Objection, vague, speculative –
13 calls for speculation.
14 BY THE WITNESS:
15 A. And repeat the question.
16 THE WITNESS: Do you want to repeat it?
17 BY MR. FROMMER:
18 Q. No, no. I'll ask it.
19 You say you hadn't really thought about
20 the 200-foot rule before coming, but –
21 A. About how it's enforced.
22 Q. About how it's enforced.
23 A. Right.
24 Q. But what did you think the 200-foot rule

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1 meant?
2 A. I thought it meant within 200 feet of a
3 business establishment that could conflict with the
4 food truck's presence or have other negative
5 interactions.
6 Q. Okay. So did you have any preconceived
7 view about whether it meant a radius or a linear or
8 you just haven't thought about it?
9 A. I didn't have any preconceived view about
10 it.
11 Q. Okay. So before you said that all these
12 issues of congestion, all these pedestrian congestion
13 issues, they're all very context sensitive. They're
14 always based on the different factors, the
15 obstructions, I think you said the amount of
16 pedestrians, the usages, all sorts of things. So
17 it's – no block face is ever quite the same.
18 Is that like the – in light of that, is
19 a flat 200-foot rule a rational way to deal with
20 pedestrian congestion concerns?
21 MR. WORSECK: Objection, calls for a legal
22 conclusion, vague.
23 BY THE WITNESS:
24 A. Well, I think that we have regulation of

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1 the public way that establishes some standard that is
2 going to be broad enough to apply to different
3 situations. Because if we didn't make – if we
4 didn't establish those kinds of standards, then we
5 couldn't really enforce anything.
6 We have to have a standard that we
7 establish, whatever that is. And we have regulation
8 to ensure public safety and the flow of commerce and
9 et cetera.
10 BY MR. FROMMER:
11 Q. When the City is evaluating other
12 potential sources of pedestrian congestion, it
13 employs – does it employ that sort of context
14 sensitive analysis that rests on different factors
15 and the professional judgment of the traffic
16 engineer?
17 A. Within the context –
18 MR. WORSECK: Objection to the extent it
19 mischaracterizes prior testimony, calls for
20 speculation.
21 BY THE WITNESS:
22 A. Within the context of regulation. So
23 there are regulations that we've already discussed
24 that apply to the public way, including things like



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<p style="text-align: right;">Page 105</p> <p>1 planter dimensions, tree grate locations, placement 2 of other street furniture. 3 So that's part of the context that the 4 traffic engineer would be reviewing these locations 5 within. 6 BY MR. FROMMER: 7 Q. Okay. So for most things, it's a context 8 sensitive review? 9 A. It's context sensitive but some of the 10 elements that make up the context are regulated. 11 Q. What do you think the purpose of the 12 200-foot rule is? 13 MR. WORSECK: Objection, calls for an answer 14 getting into the legislative purpose or intent of the 15 rule which the judge has ruled is not within the 16 bounds of the lawful discovery -- permissible 17 discovery in this suit. 18 Calls for speculation, also. 19 BY MR. FROMMER: 20 Q. Again, what do you think the purpose of 21 the 200-foot rule is? 22 A. I think it has multiple purposes. From a 23 transportation perspective, I think it's to avoid 24 conflicts among pedestrians that are entering and</p>	<p style="text-align: right;">Page 107</p> <p>1 This is the schematic that -- our schematic that we 2 keep talking about. 3 Now, you said before that -- how wide did 4 you say east-west streets were in the loop? 5 A. I said that they range, so. And if we 6 are talking about just curb to curb, it can range 7 from in the 30's up. 8 And you can go up probably to -- and I 9 don't know exactly, but 80 or even more if it's a 10 Congress or a Wacker or some street like that. 11 Q. But I think your prior -- what you 12 said -- you testified earlier that with the 13 exceptions of a few streets like Madison and Wacker, 14 most east-west streets are -- from curb to curb are 15 less than 50 feet, is that correct? 16 A. But it wasn't Madison. It was Congress. 17 Q. Oh, Congress. I'm sorry. 18 A. Madison is an example of one that's 19 actually less than 40. 20 Q. Oh, okay. I apologize for misspeaking. 21 A. I believe it's less than 40 or it's like 22 low 40's. It's like 43 or something. 23 Q. So taking those, Wacker and Congress, 24 putting them to the side, most east-west streets are</p>
<p style="text-align: right;">Page 106</p> <p>1 leaving the business or congregating at the business 2 and those who are congregating at the food truck. 3 Q. What other purposes? 4 A. Well, those other purposes would be ones 5 that other departments would be the leads on. 6 Q. Which departments? 7 A. Well, for example, BACP, the Department 8 of Planning. 9 Q. Well, can we go back to Exhibit 1 which 10 is the Notice of Deposition? I think it's Topic 11 No. 4, 12 "The governmental purposes 13 and rationales that Defendant 14 claims the 200-foot rule is meant 15 to serve." 16 Were you designated to talk about that? 17 A. Yes, about the transportation-related 18 aspects of it. 19 MR. WORSECK: For the record, our designation 20 of Ms. Hamilton explicitly says that she's being 21 designated to address the topics as they relate to 22 addressing pedestrian congestion. 23 BY MR. FROMMER: 24 Q. Let's go back to Exhibit 2 for a second?</p>	<p style="text-align: right;">Page 108</p> <p>1 less than 50 feet width from curb to curb? 2 A. I would say yes. At least in the heart 3 of downtown. It can change as you go outside the 4 downtown. 5 Q. Sure. 6 So back to this Exhibit 2. We have our 7 food truck here. Let's have him back to his original 8 location, which is in the middle of the southern 9 block face on Block 1. 10 A. Okay. 11 Q. And he's operating there. And let's say 12 on the middle of the northern block face for Block 3 13 there is a 7-Eleven. 14 A. Okay. 15 Q. Now, before, I believe you testified that 16 it was -- that the operation of the food truck on the 17 southern block face of Block 1 would not create 18 pedestrian congestion concerns on the northern block 19 face of Block 3, is that right? 20 MR. WORSECK: Objection, mischaracterizes prior 21 testimony. 22 BY THE WITNESS: 23 A. And repeat the question? 24 BY MR. FROMMER:</p>



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<p style="text-align: right;">Page 109</p> <p>1 Q. So before when we were talking about the 2 food trucks and where they could operate, I asked you 3 so imagine the food truck is operating on the 4 southern block face of Block 1 in the middle of the 5 block like we were talking. 6 And then I asked you, would that create 7 pedestrian congestion on Block 3, and you said no. 8 Is that your understanding? 9 MR. WORSECK: Objection, mischaracterizes the 10 testimony. That's not what she said. 11 BY THE WITNESS: 12 A. I thought I mentioned that there could be 13 movements of pedestrians over to the truck that could 14 affect general congestion. 15 BY MR. FROMMER: 16 Q. And with regard to being able to order 17 from the street side of the truck? 18 A. Not that, but that someone could be 19 walking along here (indicating) and see the truck and 20 then start -- there could be midblock crossings that 21 occur to get to the truck. 22 Q. Does the City of Chicago forbid 23 jaywalking? 24 A. Yes, but it doesn't happen all the time.</p>	<p style="text-align: right;">Page 111</p> <p>1 MR. WORSECK: Objection -- 2 BY THE WITNESS: 3 A. And safety concerns. 4 MR. WORSECK: Objection, mischaracterizes the 5 testimony. 6 BY MR. FROMMER: 7 Q. Would that truck be in violation of the 8 200-foot rule? 9 MR. WORSECK: Objection, calls for speculation, 10 and beyond the witness' designation. 11 BY THE WITNESS: 12 A. Well, according to what you said about 13 the 200 feet being measured as a radius from the 14 entranceway of the food establishment, I would say 15 yes. 16 BY MR. FROMMER: 17 Q. So let's move our truck over a little 18 bit. Back to the -- I think we had moved him a 19 little east before. So he's still on the southern 20 block face of Block 1, but he's a little bit closer 21 to the curb. 22 A. To the corner? 23 Q. Yeah, to the corner. Sorry. And he's 24 operating there again. And now, I believe we were --</p>
<p style="text-align: right;">Page 110</p> <p>1 Q. So the congestion, is this a likely 2 occurrence -- in your view, is this a likely 3 occurrence, that multiple people would cross in the 4 middle of a block? 5 A. Potentially. 6 Q. Across traffic? 7 A. Yes. 8 Q. Would that be a pedestrian congestion 9 concern or a traffic congestion concern? 10 A. It's a general congestion. 11 Q. Which one specifically? Is it a traffic 12 congestion concern or is it a pedestrian congestion 13 concern? 14 MR. WORSECK: Objection, argumentative, 15 mischaracterizing the testimony. 16 BY MR. FROMMER: 17 Q. Please go ahead. 18 A. I'd say it's a general traffic concern, 19 but it primarily impacts the motor vehicle traffic. 20 Q. So it's primarily -- just so I 21 understand, it's primarily an issue of motor -- in 22 this scenario, if people were crossing, mass illegal 23 jaywalking across the street, that would be primarily 24 an issue of traffic congestion concerns?</p>	<p style="text-align: right;">Page 112</p> <p>1 in one of our hypotheticals, we had -- I asked you 2 about the degree of pedestrian congestion, whether 3 that would create pedestrian congestion on the 4 northern end of the western block face of Block 4. 5 A. Okay. 6 Q. And your testimony was that that would be 7 unlikely to create any pedestrian congestion? 8 MR. WORSECK: Objection to the extent it 9 mischaracterizes testimony. 10 BY THE WITNESS: 11 A. Yeah, that's what I said, yes. 12 BY MR. FROMMER: 13 Q. Okay. Now, if that location was where, 14 let's say, a Starbucks was -- 15 A. Which location? 16 Q. The northern end of the western block 17 face of Block 4. 18 A. Okay. There's a Starbucks there? 19 Q. And let's say -- because this isn't to 20 scale, let's say that is within 200 feet of where our 21 food truck is. 22 Would that violate the 200-foot rule? 23 MR. WORSECK: Objection, beyond -- 24 BY THE WITNESS:</p>



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1 A. Like I said --

2 MR. WORSECK: Just let me interject.

3 Objection, hypothetical, beyond the

4 witness' designation.

5 BY MR. FROMMER:

6 A. And I don't really get involved with that

7 so I don't know for sure. That would be a different

8 department.

9 BY MR. FROMMER:

10 Q. What is it about mobile food vehicles

11 that raise potential congestion -- pedestrian

12 congestion concerns?

13 A. What is it about them?

14 Q. Yeah. Is that question not clear?

15 A. Well, I think it potentially has to do

16 with their popularity. So the whole phenomenon is

17 kind of based on letting people know that your truck

18 draws crowds of people and that that's why others

19 should want to go there.

20 So it's based on communicating this

21 quickly to people via their electronic devices so

22 they can go there to be part of that phenomenon or

23 that scene. So I think that's -- that's a concern.

24 Q. So the concern about the food trucks'

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1 operations is the customers who come to the food

2 trucks?

3 A. The concern from a transportation

4 pedestrian congestion perspective would be that.

5 Q. Thank you. That's specifically what I

6 was referring to.

7 So the pedestrian congestion concern

8 regarding food trucks would be the customers who come

9 to the food truck to order food and who are waiting

10 for their food?

11 A. Yeah. There could be a concern because

12 of the volume of the customers that come at one time

13 and how they occupy the public way and how it impacts

14 flows of pedestrians using the public way.

15 Q. Do you know on average how many people

16 congregate outside of a food truck?

17 A. Based on the evidence that was provided

18 earlier today that I saw yesterday, it varies. So it

19 could be five people, it could be 25 people. It

20 depends on the location and probably the time of the

21 day, the day of the week, the weather.

22 Q. And is this evidence that you collected

23 yourself?

24 A. No.

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1 Q. Where did this evidence come from?

2 A. It's in the documentation that you

3 received.

4 Q. And who gave that documentation to you?

5 MR. WORSECK: That's fine.

6 BY THE WITNESS:

7 A. Counsel (indicating).

8 BY MR. FROMMER:

9 Q. Okay. So counsel for the City provided

10 you with a number of pictures of people outside of

11 food trucks.

12 Is that your sole basis for your

13 estimation about how many people are outside of a

14 food truck?

15 A. My personal estimation. Obviously, other

16 technical staff, the traffic engineering staff, have

17 direct experience with food truck issues.

18 Q. Did you speak to them before coming to

19 this deposition?

20 A. No.

21 Q. Have you personally ever been to a food

22 truck?

23 A. There was one in front of my building

24 that I tried once, but it was overpriced.

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1 Q. Oh, sorry to hear that.

2 How many people --

3 A. It was illegally, yeah, parked there.

4 Q. How many people were there at that line?

5 A. Quite a few.

6 Q. Do you have an estimate?

7 A. No. It was a long time ago. It was

8 before they were regulated. That's how long ago it

9 was.

10 Q. Was it more than ten people?

11 A. Could have been.

12 Q. More than 20?

13 A. Probably I wouldn't have waited in a line

14 for more than that many. So probably in the ten

15 range. And it could have been more before I got

16 there and after I left. That was when I went down

17 there.

18 Q. So is there anything about the customers

19 who are standing outside the food trucks, anything

20 about how they're oriented or they're standing on the

21 sidewalk that raises pedestrian congestion concerns?

22 MR. WORSECK: Objection, vague, overbroad,

23 calls for speculation, incomplete hypothetical.

24 BY THE WITNESS:



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1 A. I think it's just the sheer mass of them
2 that would be the concern, however they array
3 themselves.
4 BY MR. FROMMER:
5 Q. If you had a line of customers who were
6 arrayed -- aligned parallel to the curb -- so let's
7 go back to our Exhibit 2. It's the easiest way to
8 talk about this.
9 A. Right.
10 Q. So you have our food truck here on the
11 southern block face of Block 1. And then all of his
12 customers, all the food truck's customers are
13 arranged in a single line parallel to the curb, right
14 next to the curb. And they stand in line, they order
15 their food, then they stand in another single file
16 line on the other side, and they pick up their food.
17 Would that alignment of customers raise
18 potential congestion concerns for you?
19 MR. WORSECK: Same objections, incomplete
20 hypothetical, speculation.
21 BY THE WITNESS:
22 A. Well, I don't know if it would be
23 physically possible for them to do that because
24 that's the street furniture zone, so. You know, two

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1 feet from the curb back is where you get all of your
2 sign posts and other street furniture elements.
3 So they may not be able to stand in a
4 straight line against the curb.
5 BY MR. FROMMER:
6 Q. Let's flush this out a bit. Let's say
7 there's some planters there. While I was just
8 walking down the street, I saw the planters. They're
9 pretty big.
10 They're about -- do you know how wide the
11 street planters are in the loop?
12 A. I don't know the specific dimension. It
13 probably depends on if it's on public way or private
14 property that's a plaza, for example. Some of them
15 straddle, and there are easements involved, so it
16 varies.
17 Q. Okay. Let's say that the customers are
18 all standing so that none of them -- none of the
19 customers go past the tree planters. So they are all
20 positioned between the tree planters and the curb.
21 Would that arrangement of customers raise
22 potential pedestrian congestion concerns to you?
23 MR. WORSECK: Same objections.
24 BY THE WITNESS:

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1 A. It could affect ability for people to
2 load and unload against the curb, so in that sense.
3 Let's say there's somebody that, for example, is in a
4 wheelchair and they are returning to a vehicle.
5 Maybe they're getting picked up.
6 And they would have to get through this
7 line to get to the curbside to get into the vehicle.
8 So it could cause those kinds of concerns.
9 BY MR. FROMMER:
10 Q. Are you aware of any of those -- any of
11 that hypothetical actually occurring?
12 A. I have no evidence of that. I'm just
13 giving you a hypothetical.
14 Q. Okay. So do you think that arrangement
15 of customers so that they were between, let's say,
16 the street furniture and the curb, would that
17 minimize any potential pedestrian congestion
18 concerns?
19 MR. WORSECK: Same objections.
20 BY THE WITNESS:
21 A. It could potentially minimize pedestrian
22 congestion concerns if there was such a protocol.
23 BY MR. FROMMER:
24 Q. So do you think that would be an

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1 effective way of mitigating any -- let me restart.
2 So do you think instructing food trucks
3 that their customers have to align themselves between
4 the street furniture and the curb would be an
5 effective way of mitigating pedestrian congestion
6 concerns?
7 MR. WORSECK: Objection, incomplete
8 hypothetical, calls for speculation.
9 BY THE WITNESS:
10 A. I think it would be difficult to enforce.
11 BY MR. FROMMER:
12 Q. Why?
13 A. Because you could have situations where
14 people are waiting in line directly across the path
15 of pedestrian travel and someone comes along to
16 enforce it and everyone is quickly moved over to be
17 along the curbside.
18 And so it would be hard to enforce
19 because it's kind of an ephemeral phenomenon.
20 Q. What's your experience with enforcement?
21 A. I don't directly enforce. Our division
22 doesn't directly enforce. But as logic would
23 dictate, that it's hard to enforce something like
24 that.



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1 Q. Do you have any reason to believe that
2 the hypothetical of mass people jumping in between
3 the street furniture and curb would be likely to
4 occur?
5 A. Say that again.
6 Q. You just said that you don't have any
7 enforcement experience?
8 A. Correct.
9 Q. Do you have any reason to believe that
10 the hypothetical you just put forward actually occurs
11 or is likely to occur?
12 A. Well, right now, there isn't any kind of
13 regulation that requires that people queue in a
14 certain way. So I'm sure that there are all kinds of
15 queues that develop depending on the context for a
16 specific truck at a specific time.
17 Q. The 200-foot rule, it applies in --
18 within 200 feet of a restaurant regardless of what
19 area of the City, right?
20 MR. WORSECK: Objection to the extent it
21 misstates the legal requirements of the 200-foot rule
22 and the exceptions thereto.
23 BY MR. FROMMER:
24 Q. Can you answer the question, please?

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1 A. Repeat the question.
2 Q. Sure.
3 Does the 200-foot rule apply in all areas
4 of the City, throughout the City?
5 MR. WORSECK: Same objections.
6 BY THE WITNESS:
7 A. It applies in all areas of the City
8 except in cases where there's a designated food truck
9 stand; that food truck stands can be within 200 feet.
10 BY MR. FROMMER:
11 Q. So absent the food truck stand -- a block
12 face where a food truck stand is, the 200-foot rule
13 applies on all other block faces, correct?
14 A. Yes.
15 Q. Okay. And it applies regardless -- does
16 that rule -- does the applicability of the rule
17 depend on the level of pedestrian congestion in an
18 area?
19 A. No.
20 Q. So imagine you had a food truck -- I
21 don't know the City as well as I should. Imagine you
22 had a food truck that was parked in a very low
23 congestion area. I'm sure you can imagine that there
24 are community areas that are pretty low congestion.

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1 So it's parked there and serving
2 customers. But then it's parked within 200 feet of a
3 restaurant. Would that be permissible?
4 MR. WORSECK: Objection to the extent it calls
5 for a legal conclusion, and it -- that's it.
6 BY THE WITNESS:
7 A. If it's not a stand, then it's not
8 permissible.
9 BY MR. FROMMER:
10 Q. Okay. So let's imagine that our food
11 truck says okay. A police officer comes on and says,
12 you have to move. You can't be here. Now, this is a
13 low congestion area with barely any pedestrian
14 traffic.
15 So the food truck starts up its engine,
16 goes to a different area. Comes to -- comes to the
17 Loop. And there are a few places in the Loop outside
18 the food truck stands where a mobile food vehicle can
19 operate without being within 200 feet of a
20 restaurant, so it parks there.
21 And would you consider the Loop to be a
22 high congestion area?
23 A. So you're saying it parks within 200 feet
24 of a restaurant?

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1 Q. No.
2 So let's say this food truck leaves the
3 low congestion area and it says, I'm going to go to
4 the Loop.
5 Would you consider the Loop to be a high
6 congestion area or a low congestion area of the City?
7 A. High.
8 Q. Okay. So it comes here. And it parks.
9 And it doesn't park at a food truck stand and it
10 doesn't park within 200 feet of a restaurant. It
11 finds a spot where it can park and it's operating.
12 Does that help or hurt pedestrian
13 congestion?
14 MR. WORSECK: Objection, vague, calls for
15 speculation, incomplete hypothetical.
16 BY MR. FROMMER:
17 Q. How does that make sense from a
18 pedestrian congestion standpoint that a food truck
19 has now been forced to go from a low congestion area
20 where there's no pedestrian traffic because it was
21 nearby a restaurant and as a result, it came to a
22 high congestion area and is now operating there?
23 How does that further -- how does that
24 make any sense from a pedestrian congestion



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1 standpoint?

2 MR. WORSECK: Objection, incomplete

3 hypothetical, it calls for speculation. It assumes

4 that the truck has nowhere else to go.

5 BY THE WITNESS:

6 A. Right. The truck doesn't have to go

7 downtown if it can't be parked within 200 feet of a

8 restaurant in an outlying neighborhood. So that's

9 the truck operator's decision.

10 BY MR. FROMMER:

11 Q. That's not my question.

12 My question is, the truck comes from a

13 low congestion area because it's within 200 feet. It

14 comes to the Loop which you have just said is a high

15 congestion area. It parks at a legal parking spot

16 and begins operating.

17 How does that help pedestrian congestion?

18 Does that make the overall level of pedestrian

19 congestion in the City better or worse?

20 MR. WORSECK: Objection, argumentative, vague,

21 calls for speculation, incomplete hypothetical.

22 BY THE WITNESS:

23 A. I really don't have an answer. I mean, I

24 don't quite understand your point.

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1 BY MR. FROMMER:

2 Q. What is it about the question that you

3 don't understand?

4 A. That the food truck is leaving a low

5 congestion area where it was parked within 200 feet

6 of a restaurant and is coming downtown when it could

7 just pull further away from the restaurant and stay

8 in the low congestion area.

9 So it's not being forced to come downtown

10 as an alternative. So I don't understand why I have

11 to make that comparison. It seems like it's the most

12 extreme comparison you could make.

13 BY MR. FROMMER:

14 Q. Does the law allow everything I just

15 said?

16 A. The law allows it, yes.

17 Q. Okay. So based on that, I have a

18 hypothetical situation where you have a truck in a

19 low congestion area within 200 feet of a restaurant.

20 It's told to move. It moves. It comes to the Loop,

21 a high congestion area. It parks in a spot that is

22 more than 200 feet away from a restaurant. As you

23 said, the Loop is a high congestion area.

24 Does that make any sense from a

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1 pedestrian congestion standpoint?

2 MR. WORSECK: Objection, same series of

3 objections. Argumentative, vague, speculation,

4 incomplete hypothetical.

5 BY THE WITNESS:

6 A. And I think it's context sensitive again.

7 Because we have a higher level of pedestrian activity

8 in the downtown, so we have wider sidewalks in the

9 downtown than we do in outlying neighborhoods. So

10 it's a different situation.

11 BY MR. FROMMER:

12 Q. Didn't you just say a second ago that the

13 Loop is a high congestion area?

14 A. It has more volume than other areas and,

15 therefore, likely more opportunity for congestion.

16 Q. So is having a truck move from an area

17 where there are very few opportunities of congestion

18 because it's within -- let me rephrase.

19 So you have a truck in an area with very

20 few opportunities for congestion that's within 200

21 feet of a restaurant, and it can't operate there

22 because it's within 200 feet. And then it comes to a

23 legal parking spot in the Loop where it can operate.

24 It's not within 200 feet of a restaurant, but it's a

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1 high congestion area.

2 Is it likely to increase the amount of

3 congestion?

4 MR. WORSECK: Same objections.

5 BY THE WITNESS:

6 A. It's likely to have more pedestrian

7 conflicts.

8 BY MR. FROMMER:

9 Q. By "conflicts" you mean -- is that

10 pedestrian conflicts, pedestrian congestion?

11 A. Yes.

12 Q. Okay. All right. Thank you.

13 Has the City ever studied whether the

14 operation of a mobile food vehicle, in fact,

15 creates -- let me rephrase.

16 Has the City studied whether -- actually

17 studied whether the customers outside a mobile food

18 vehicle, in fact, create obstructions or lead to

19 pedestrian congestion on the sidewalk?

20 A. My department hasn't looked at that.

21 Q. Has any department looked at that?

22 A. I wouldn't know.

23 Q. Are you designated by the City as the

24 person who would know that?



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1 MR. WORSECK: Objection to --
2 BY THE WITNESS:
3 A. No --
4 MR. WORSECK: Objection to the extent you
5 mischaracterize the designation or the Rule 206
6 obligation.
7 BY MR. FROMMER:
8 Q. Let's look at the Exhibit 1, the Notice
9 of Deposition. Are you designated for No. 5,
10 "Any evidence of which
11 Defendant is aware that the
12 operation of a mobile food vehicle
13 implicates any of the governmental
14 purposes and rationales"?
15 I believe that you are designated for
16 pedestrian congestion. Is there any evidence in the
17 City's possession that mobile food vehicles or, more
18 specifically, their customers, create obstructions or
19 pedestrian congestion?
20 A. And I would say that that would be an
21 enforcement agency that would know that rather than
22 CDOT.
23 Q. So the answer of the City is "I don't
24 know"?

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1 A. The answer of CDOT --
2 MR. WORSECK: Objection, mischaracterizes the
3 testimony.
4 BY MR. FROMMER:
5 Q. Are you the designated witness for the
6 City on the topic of whether there's any evidence
7 that mobile food vehicles implicate pedestrian
8 congestion?
9 A. Implicate pedestrian congestion?
10 Q. Yes.
11 Aware that the operation of a mobile food
12 vehicle implicates any of the governmental purposes
13 in your context of pedestrian congestion?
14 Are you the City's designated witness on
15 that?
16 A. Yes.
17 Q. And it's your understanding that your
18 answers -- you're speaking for the City in this
19 regard.
20 Are you aware of any evidence or any
21 studies about whether the operation of a mobile food
22 vehicle, or more specifically, the customers at the
23 mobile food vehicle, can create obstructions or
24 pedestrian congestion?

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1 MR. WORSECK: Rob. I normally don't want to
2 take a quick break in between --
3 MR. GALL: No, there's a question pending.
4 MR. WORSECK: Then I'll take a break after the
5 answer.
6 MR. GALL: So you can wait until that happens.
7 BY THE WITNESS:
8 A. So I would say there aren't studies of
9 that but there is analysis when we have an issue with
10 a stand.
11 So when there's an issue with a stand and
12 there are concerns about pedestrian congestion, we do
13 an analysis of that.
14 BY MR. FROMMER:
15 Q. Are there any --
16 MR. FROMMER: Do you want to take a break?
17 MR. WORSECK: Yeah, we'll just step right here.
18 MR. FROMMER: That's fine. We can take a
19 break.
20 MR. WORSECK: This will be really short so
21 don't go away.
22 MR. FROMMER: Okay.
23 (WHEREUPON, a recess was had.)
24 MR. FROMMER: Let's go on the record and you

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1 can make your statement.
2 MR. WORSECK: I just want to clarify on behalf
3 of the witness, and the witness can certainly answer
4 questions about my statement but she is being
5 designated to speak for the City on the designated
6 issues and there might have been some internal
7 confusion about what exactly that meant.
8 She can say that on behalf of the City,
9 the City was not aware of evidence -- and I can't
10 remember exactly how you phrased your question, but
11 there was something along the lines of analyses or
12 studies relating to the 200-foot rule and its impact
13 on pedestrian congestion, I think. But you can --
14 MR. FROMMER: The question was, has the City
15 studied whether the operation of a mobile food
16 vehicle -- and we can just ask it.
17 BY MR. FROMMER:
18 Q. Has the City studied whether the
19 operation of a mobile food vehicle or, more
20 specifically, the customers of the mobile food
21 vehicle, in fact, create obstructions or pedestrian
22 congestion on the sidewalk?
23 MR. WORSECK: And you can answer on behalf of
24 the City.



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<p>Page 133</p> <p>1 BY THE WITNESS: 2 A. And there aren't any studies that have 3 been done. But we have observations and evidence 4 from -- such as the photos. 5 MR. WORSECK: And I'll also just note for the 6 record that we have produced documents in response to 7 document requests basically going to the same issue. 8 So that record stands for itself, and 9 counsel is free to ask the witness about those 10 documents. 11 BY MR. FROMMER: 12 Q. Is there any other evidence besides those 13 photos? 14 A. Observation. Observation of City 15 personnel. 16 Q. And how do you know about those 17 observations? 18 A. Because we might be asked to go look at 19 some particular location. Now, these are stands, not 20 the ones that have the 200-foot rule applying to 21 them. 22 But, you know, we've been called to look 23 at some of those locations so we can observe that 24 activity there.</p>	<p>Page 135</p> <p>1 next to each other? 2 BY MR. FROMMER: 3 Q. Yes. Let's go back to our Exhibit 2. I 4 think it works the best. 5 So let's say on our southern block face 6 of Block 1, instead of our one food truck, we have 7 six food trucks parked right next to each other, 8 okay? 9 A. Uh-huh. 10 Q. What would be the cumulative effect in 11 your opinion, of having multiple mobile food vehicles 12 operating next to each other like that? 13 A. It could be detrimental to pedestrian 14 flow and result in pedestrian congestion. 15 Q. Okay. All right. Thank you. 16 Is that because there would be a 17 cumulative effect from the close operations of the 18 mobile food vehicles? 19 MR. WORSECK: Objection, speculation, 20 incomplete hypothetical. 21 BY THE WITNESS: 22 A. There could be interactions among the 23 queues for the different trucks. 24 BY MR. FROMMER:</p>
<p>Page 134</p> <p>1 Q. Have you personally been out to observe? 2 A. I don't observe. I'm over the people who 3 do that. 4 Q. But the people who did observe, they 5 reported to you those findings? 6 A. Yes. 7 Q. Okay. Before we were talking about 8 having multiple establishments like theaters and 9 concert halls next to each, and I believe your 10 testimony -- and if I'm mischaracterizing, please 11 tell me -- was that having multiple establishments of 12 those types next to each other could have a 13 cumulative effect on pedestrian congestion, is that 14 correct? 15 A. Yes. 16 Q. Okay. Thank you. 17 So if you have multiple mobile food 18 vehicles that are operating next to one another, what 19 effect would that have on pedestrian congestion? 20 MR. WORSECK: Objection, speculation, 21 incomplete hypothetical. 22 BY THE WITNESS: 23 A. Multiple mobile food trucks operating 24 within the -- abiding by the 200-foot rule that are</p>	<p>Page 136</p> <p>1 Q. Let's stick with our Exhibit here. It's 2 very useful. And let's say on the eastern block face 3 of Block 3, let's say there's a private -- there's a 4 business there with a lot. 5 A. With a? 6 Q. With a lot. It's an improved lot, and 7 there's a business that's there. 8 A. Okay. 9 Q. And a food truck pulls in. It has the 10 permission of the owner to be there, and it is 11 sitting there and it has customers come and order 12 from them. 13 A. Okay. 14 Q. How does the operation of a mobile food 15 vehicle that's operating wholly on private property 16 create a pedestrian congestion concern on the public 17 right-of-way? 18 MR. WORSECK: Objection, incomplete 19 hypothetical, speculation. 20 BY THE WITNESS: 21 A. Well, it could overspill on to the public 22 way or draw people from the public way that would be 23 moving into this lot. 24 BY MR. FROMMER:</p>

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1 Q. Have you ever heard of a situation where
2 a mobile food vehicle operating on private property
3 led to pedestrian congestion concerns on the public
4 right-of-way?
5 A. I have not heard of it. But it's logical
6 that that could happen.
7 Q. Do you think it is likely that that could
8 occur?
9 A. I think if it's a popular truck, that it
10 could occur.
11 Q. How many customers would have to visit
12 that food truck before that could potentially occur?
13 MR. WORSECK: Objection, speculation,
14 incomplete hypothetical.
15 BY THE WITNESS:
16 A. It would, obviously, depend on where the
17 truck parked in relation to the public way, and it
18 would seem logical that the truck would try and get
19 as close to the public way as possible because it
20 would be more visible there.
21 BY MR. FROMMER:
22 Q. So we have our lot on the eastern block
23 face of Block 3. So the same situation we had
24 before. We have the mobile food vehicle there. He's

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1 operating with the permission of the owner. He has
2 some customers coming there.
3 And what effect would that have on
4 congestion -- on potential pedestrian congestion on
5 the western block face of Block 4?
6 MR. WORSECK: Same objections.
7 BY THE WITNESS:
8 A. I would say that it would be unlikely to
9 have a direct effect on it.
10 BY MR. FROMMER:
11 Q. Do you know if the City -- strike that.
12 I want a foundational question so I make sure I
13 understand.
14 Does CDOT manage the parking spaces on
15 the public right-of-way?
16 A. Manage the parking spaces?
17 Q. Does it -- is that part of the -- are the
18 public parking spaces under the purview of CDOT?
19 Does it oversee those spaces?
20 A. Are you familiar with our parking meter
21 deal? So we have a 75-year deal with LAZ Parking, or
22 Goldman, Sachs, or whoever it is. So they manage the
23 pay and display parking for the City through that
24 concession.

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1 Q. Maybe I'm -- I think I might be
2 misstating.
3 Who decides where parking spaces exist in
4 the City?
5 A. It's kind of a combination of CDOT with
6 legislative action. So we work with aldermen on
7 parking -- on street parking issues.
8 Q. So CDOT is -- would you say CDOT is the
9 primary agency on this?
10 A. I would say we're the primary agency that
11 determines whether locating parking spaces on a
12 specific block face is acceptable or not in terms of
13 traffic issues and so on.
14 Q. Does the City put out any maps showing
15 where food trucks can legally operate under the
16 200-foot rule?
17 A. I'm not aware of any.
18 Q. Does it put out any map showing where
19 food trucks cannot operate because of the 200-foot
20 rule?
21 A. Again, I'm not aware of any.
22 Q. Okay. That's fine.
23 Has your department ever accessed GPS
24 data to measure or remediate pedestrian congestion?

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1 MR. WORSECK: Objection, beyond the scope of
2 the designation, vague.
3 BY MR. FROMMER:
4 Q. Has CDOT ever accessed GPS data to
5 measure or remediate pedestrian congestion?
6 MR. WORSECK: Same objections.
7 BY THE WITNESS:
8 A. Not that I'm aware of. We don't -- we
9 collect some data on pedestrian volumes, but we don't
10 use GPS for that.
11 BY MR. FROMMER:
12 Q. Were CDOT employees ever consulted
13 regarding the 200-foot rule?
14 MR. WORSECK: Objection, vague, and to the
15 extent it calls for an answer that would get into the
16 legislative process or regulatory process associated
17 with the 200-foot rule, I would instruct the witness
18 not to answer that portion of the question.
19 BY MR. FROMMER:
20 Q. I'm not asking about the substance of any
21 communications, but were CDOT employees ever
22 consulted regarding the 200-foot rule?
23 MR. WORSECK: Same objections.
24 BY THE WITNESS:



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1 A. CDOT employees were present when it was
2 discussed, but that was the extent of it.
3 BY MR. FROMMER:
4 Q. Did other City agencies solicit the views
5 of CDOT about the 200-foot rule?
6 MR. WORSECK: Same objections.
7 BY THE WITNESS:
8 A. I'm not sure how to answer this. But
9 there were conversations, but it was all involving
10 the legislative process. So the conversations we had
11 with the other departments were within that
12 legislative development process.
13 BY MR. FROMMER:
14 Q. How long have you viewed sidewalk
15 congestion remediation as a purpose for the 200-foot
16 rule?
17 MR. WORSECK: Objection, vague. Objection to
18 the extent it calls for attorney-client or work
19 product privileged information, and beyond the scope
20 of the designation.
21 BY MR. FROMMER:
22 Q. In the 23 years that the 200-foot rule
23 has been in existence, has CDOT ever analyzed how the
24 200-foot rule affects pedestrian congestion?

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1 MR. WORSECK: Objection, vague, speculation to
2 the extent you know 23 years' worth of history, but
3 you can answer if you can.
4 BY THE WITNESS:
5 A. I would say I don't know all 23 years
6 worth of history because the traffic function didn't
7 come under me until 2005, so I can't really comment
8 on anything that happened before that.
9 BY MR. FROMMER:
10 Q. Well, since 2005, has CDOT ever analyzed
11 how the 200-foot rule affects pedestrian congestion?
12 A. No.
13 Q. Has anyone in CDOT criticized or
14 disagreed with the 200-foot rule?
15 MR. WORSECK: Objection, beyond the scope,
16 vague.
17 BY MR. FROMMER:
18 Q. Did you understand my question?
19 A. Yes, I did.
20 Q. Okay.
21 A. Are you talking about on the record? Off
22 the record? What context?
23 Q. Either.
24 A. Well, my former Commissioner, Gabe Klein,

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1 I think probably publicly said that he didn't agree
2 with it. He operated food trucks when he was living
3 in Washington, D.C., so....
4 Q. When was he CDOT Commissioner?
5 A. May, 2011, until probably November, 2013.
6 Q. So the Commissioner of CDOT during the
7 time that the mobile food vehicle ordinance that
8 we're discussing today was passed, publicly
9 criticized the 200-foot rule?
10 MR. WORSECK: Objection --
11 BY THE WITNESS:
12 A. I didn't say he publicly criticized.
13 MR. WORSECK: Objection --
14 MR. FROMMER: Oh, I'm sorry.
15 MR. WORSECK: Objection, argumentative,
16 mischaracterizes the testimony.
17 BY THE WITNESS:
18 A. I said that he questioned it. I don't
19 know how publicly he did that. But he was a food
20 truck operator in his previous career and he didn't
21 agree with that, even though it's been in place for
22 23 years, as you said, in Chicago.
23 BY MR. FROMMER:
24 Q. What was the nature of his criticisms?

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1 MR. WORSECK: Objection, beyond the
2 designation, speculation.
3 BY THE WITNESS:
4 A. I think he felt that food trucks should
5 be able to stand wherever there is a legal parking
6 space.
7 BY MR. FROMMER:
8 Q. And what were his questions about the
9 200-foot rule?
10 A. I don't recall him having any specific
11 questions about it. I think he came from a
12 businessman's perspective to it.
13 Q. With regards to the 200-foot rule, did
14 Gabe Klein ever have questions about how the 200-foot
15 rule affected pedestrian congestion?
16 MR. WORSECK: Objection, vague, beyond the
17 designation.
18 Also, to the extent it calls for an
19 answer touching upon legislative process and
20 predecisional conversations, things of that nature, I
21 would instruct the witness not to answer.
22 BY MR. FROMMER:
23 Q. I'm asking about your personal
24 interactions with Mr. Klein.



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<p style="text-align: right;">Page 145</p> <p>1 A. I was never present for a discussion of 2 that issue with him. 3 Q. Oh, okay. What did you hear about his 4 views about - Mr. Klein's views about the 200-foot 5 rule and pedestrian congestion? 6 MR. WORSECK: Same objections, especially with 7 respect to the extent the answer would call for 8 testimony about legislative history or predecisional 9 matters, I would instruct the witness not to answer. 10 BY MR. FROMMER: 11 Q. Were these in the context of the passage 12 of the ordinance, his comments? 13 A. It was comments that he could have made 14 in regards to legislative process or it could have 15 been comments that he made informally. 16 Q. So his informal comments, did they go - 17 what were his informal comments regarding pedestrian 18 congestion and the 200-foot rule? 19 MR. WORSECK: Same objections. 20 BY THE WITNESS: 21 A. And I would say that his comment - 22 MR. WORSECK: And I would - 23 MR. GALL: She's in the middle of an answer. 24 MR. WORSECK: No, she jumped in. I'm going to</p>	<p style="text-align: right;">Page 147</p> <p>1 remediate pedestrian congestion? 2 MR. WORSECK: Objection, speculation, vague. 3 BY MR. FROMMER: 4 Q. Please answer the question. 5 A. I don't think that Mr. Klein was 6 concerned about that issue, particularly. Like I 7 said before, he came at it from a businessman's 8 perspective versus being concerned about pedestrian 9 congestion, or any other traffic or transportation- 10 related matter. 11 Q. But Mr. Klein was the head of the 12 department which is the primary agency tasked with 13 dealing with pedestrian congestion, is that right? 14 A. Correct. 15 Q. And he, the Commissioner of the primary 16 agency dealing with pedestrian congestion, didn't 17 seem to be concerned about - or the Commissioner of 18 the Department tasked with pedestrian congestion 19 didn't seem to be concerned about how the 200-foot 20 rule affected pedestrian congestion? 21 MR. WORSECK: Objection, argumentative, 22 mischaracterizes the testimony. 23 BY THE WITNESS: 24 A. As I said, Gabe was a businessman, so he</p>
<p style="text-align: right;">Page 146</p> <p>1 make my objection. She jumped in. 2 I'm going to make my objection and that 3 is, even if something might be thought to be 4 informal, if it was not - I just want to make sure 5 the witness is cognizant of a distinction that she 6 might be having between formally testifying before 7 City Council or formally being involved in the 8 legislative process and being involved in the 9 legislative process in some other informal capacity. 10 Anything touching upon the legislative 11 process, whether formal or informal, I would instruct 12 her not to answer with respect to. But if she can 13 answer, she can answer. 14 BY THE WITNESS: 15 A. So I meant just in asides that he might 16 make just standing around in his office or something. 17 That's what I'm talking about. 18 BY MR. FROMMER: 19 Q. Okay. 20 A. And it was a general statement about food 21 trucks should be able to stand in a legal parking 22 space. He didn't really go into why. 23 Q. Okay. Did Mr. Klein think that the 200- 24 foot rule was an effective way to try to mitigate or</p>	<p style="text-align: right;">Page 148</p> <p>1 came at it from an entrepreneurial perspective. 2 That's how he approached transportation in general. 3 And he's returned to being an 4 entrepreneur now, so.... 5 BY MR. FROMMER: 6 Q. Is there anyone else at CDOT who 7 disagreed with the 200-foot rule? 8 MR. WORSECK: Objection, vague. 9 BY THE WITNESS: 10 A. Not separately from the legislative 11 process. 12 BY MR. FROMMER: 13 Q. Okay. When CDOT officials discuss 14 pedestrian congestion, have they ever brought up 15 mobile food vehicles or the 200-foot rule? 16 MR. WORSECK: Objection, vague, calls for 17 speculation. 18 BY THE WITNESS: 19 A. I would say yes, that if we talk about 20 pedestrian congestion, food trucks are a part of any 21 conversation, but there's no specific studies or 22 anything like that. 23 BY MR. FROMMER: 24 Q. Can you recall any specific conversations</p>

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1 where CDOT officials discussed pedestrian congestion
2 and brought up the 200-foot rule?
3 A. No.
4 Q. Do you remember any conversations where
5 CDOT officials discussed pedestrian congestion and
6 brought up the 200-foot rule as a way to remediate
7 pedestrian congestion?
8 A. No.
9 Q. What areas of the City have, would you
10 say, the most pedestrian traffic?
11 MR. WORSECK: Objection, vague.
12 BY THE WITNESS:
13 A. Downtown is the primary area. Around
14 transit facilities is another. Around attractions is
15 a third.
16 BY MR. FROMMER:
17 Q. Okay. I meant specifically what
18 community areas of the City?
19 A. Oh, community areas.
20 Q. Yeah. I should have been more specific.
21 I apologize.
22 A. So what community areas have more
23 pedestrian congestion concerns? Are you talking
24 about the formal community areas of the City, the 77

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1 community areas?
2 Q. Yes, I think that works. Yes.
3 A. So the Loop, Near North. And that
4 general belt around the Loop in the central area of
5 Chicago.
6 Q. Like Near West?
7 A. Right.
8 Q. Okay. What about like Lincoln Park?
9 A. And that's part of the area around. So
10 you get into Lincoln Park going north. You get into
11 West Town going west. It extends south -- although
12 south has been changing rapidly because it has so
13 much more density than it used to, so it's changing
14 rapidly.
15 It has more concerns today than it did
16 five years ago with pedestrian congestion.
17 Q. Got it. Thank you.
18 Where does the Code -- where does the
19 City Code require that the City establish food truck
20 stands? In what community areas?
21 A. Oh, it's the six community areas that
22 have -- I think it's 300 or more licensed retail food
23 establishments.
24 So do you want me to name the six?

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1 Q. Or if it would be faster, I can name and
2 you can tell me if it's correct?
3 A. Okay.
4 Q. The Loop?
5 A. Yes.
6 Q. Near West?
7 A. Yes.
8 Q. Near North?
9 A. Yes.
10 Q. Lincoln Park?
11 A. Yes.
12 Q. Lakeview?
13 A. Yes.
14 Q. And West Town?
15 A. Yes.
16 Q. Okay. So the community areas where the
17 City is required to establish food truck stands are
18 areas with a lot of pedestrian congestion?
19 A. Yes.
20 Q. What's the purpose behind the City's food
21 truck stand program?
22 A. What's the purpose of the food truck
23 stand program?
24 MR. WORSECK: Objection, calls for speculation,

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1 legal conclusion, outside the scope of the
2 designation. But she can answer.
3 BY THE WITNESS:
4 A. I would say that it's an overlay on top
5 of the 200-foot rule that allows food trucks to have
6 a presence in communities that have a lot of
7 establishments.
8 BY MR. FROMMER:
9 Q. Are there any regulations or informal or
10 formal guidelines governing how the City administers
11 the food truck stands?
12 A. Yes.
13 Q. Okay. What criteria does the City
14 evaluate when administering a food truck stand
15 location?
16 A. Repeat it. What?
17 Q. So like what criteria does the City
18 evaluate when administering a food truck stand?
19 A. Okay. Well, we would be looking at, in
20 terms of establishing it --
21 MR. WORSECK: I just want to jump in.
22 Establishment --
23 MR. FROMMER: I'm sorry. The witness was
24 beginning to answer. You cannot interrupt. She can

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1 finish her answer and then you can make whatever
2 objection you have.
3 BY MR. FROMMER:
4 Q. Please continue.
5 MR. WORSECK: I'm just going to make an
6 objection for the record.
7 MR. FROMMER: You can make your objection
8 following the witness' answer.
9 MR. WORSECK: Rob, you asked a question about
10 administration. She started talking about selection
11 or -- I forget the word.
12 THE WITNESS: "Establishment."
13 MR. WORSECK: Establishment. And that is
14 outside the scope of the designation, and it's been
15 ruled irrelevant by the judge to the case, so I'm
16 putting that on the record.
17 BY MR. FROMMER:
18 Q. Let me ask the question again. Sorry
19 about that.
20 So what criteria does the City evaluate
21 when administering a food truck stand location?
22 A. And clarification, "administering" means
23 managing when it's already established then?
24 Q. Yes.

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1 A. So if there are concerns that are brought
2 to our attention, say through e-mails or other kinds
3 of contact, 3-1-1 calls, elected officials notifying
4 us, the traffic engineers would go out and evaluate
5 based on their professional engineering judgment
6 whether there's a problem with that location in terms
7 of congestion.
8 Q. And this is the context sensitive inquiry
9 we were talking about before?
10 A. Correct.
11 Q. Does the City actively monitor the food
12 truck stand location?
13 A. We at CDOT don't actively monitor
14 locations. We are more reactive than that.
15 Q. And what are you reacting to?
16 A. Phone calls, e-mails, other kinds of
17 correspondence from the public, from elected
18 officials, if there's a concern about congestion.
19 Q. Okay. So it's in response to complaints,
20 basically?
21 A. Correct. Or it could be reported
22 complaints. Someone, like an elected official, could
23 have gotten reports of problems and then they relay
24 that to us. They may not have actually witnessed it

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1 themselves.
2 Q. Has that occurred in the past? Have
3 officials relayed complaints that they have received
4 regarding food --
5 A. Yes.
6 Q. Can you describe some of those
7 situations?
8 A. Concerns that there's too much traffic
9 congestion in an area with a stand that's causing
10 public safety concerns, for example, and that we
11 should go investigate to see what's going on.
12 Q. What specific stands were these
13 complaints raised about?
14 A. Well, the one in particular is Larrabee
15 which is the block just north of Chicago Avenue, so
16 the 700 block of Larrabee. In that one in
17 particular, we had gotten concerns about that the
18 stand was generating more congestion than was
19 acceptable.
20 And so we did have the traffic engineers
21 go out and review the location, and they concurred
22 that there were concerns. In particular, just
23 because there's so much curbside activity happening
24 there, charter buses, taxis, there's a taxi stand,

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1 there was a food truck stand.
2 There were more trucks using the stand
3 than there was space and so they were extending out
4 into the travel lanes. And it was a two-way roadway
5 so there was a concern about potential conflicts in
6 safety, if traffic going southbound had to veer into
7 the northbound lanes to avoid this congestion from
8 trucks sticking out into the travel lane, et cetera.
9 So based on their -- the observations and
10 their professional judgment, traffic engineers
11 recommended that we relocate that stand.
12 Q. Okay. So you said that traffic engineers
13 go out -- went out to the food truck stand and they
14 evaluated based on this context sensitive approach.
15 Do traffic engineers ever go out and
16 evaluate areas like parking spaces where food trucks
17 could operate, not mobile food vehicle stands, that
18 are outside the 200-foot rule?
19 A. We haven't gotten any inquiries about
20 that.
21 Q. So the answer is no?
22 A. The answer is no.
23 Q. Has CDOT looked at whether the degree of
24 sidewalk congestion at the mobile food vehicle stands



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1 differs from sidewalk congestion at other places
2 where food trucks can legally operate on the public
3 right-of-way?
4 A. We haven't been asked to look at that.
5 Q. So the answer is no?
6 A. The answer is no.
7 Q. How many trucks are supposed to be able
8 to fit in a food truck stand?
9 A. Two.
10 Q. Is the City aware of any reports that
11 some stands can only fit a single truck?
12 A. I think it would depend on the length of
13 the truck. So I don't know their standard lengths.
14 If there was a long one, it would potentially only
15 allow a shorter one to be with it in that space. So
16 there's that kind of restriction.
17 Q. Has the City received any reports about
18 nonmobile food vehicles parking in stand locations?
19 A. Not that I can recall. At least not that
20 I know of.
21 Q. Okay. So you wouldn't know if those
22 reports came in, if the City did anything in
23 response?
24 A. Correct.

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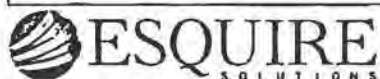
1 MR. FROMMER: Let's just take a very, very
2 short break and then we'll finish up.
3 THE WITNESS: Okay.
4 (WHEREUPON, a recess was had.)
5 MR. FROMMER: All right. So ready to go back
6 on the record?
7 All right. We are all done with our
8 questions at this point. So from our perspective,
9 we're finished with this deposition.
10 THE WITNESS: Okay.
11 MR. WORSECK: I just have a couple really quick
12 questions.
13 EXAMINATION
14 BY MR. WORSECK:
15 Q. Ms. Hamilton, in your opinion, is it
16 easier to plan in terms of addressing sidewalk
17 pedestrian congestion issues for sources of
18 congestion that are fixed versus sources of
19 congestion that are mobile?
20 A. It's easier to plan for sources of
21 congestion that are fixed.
22 Q. And have your staff ever reported to you
23 about lines outside of food trucks that they've
24 observed in the City?

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1 A. Yes. Uhm...
2 MR. WORSECK: That's fine.
3 THE WITNESS: Okay.
4 MR. WORSECK: Nothing further.
5 We'll reserve signature.
6 MR. FROMMER: Oh, yeah. Of course.
7 FURTHER DEPONENT SAITH NOT.
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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)
4 I, V. LINDA BOESCH, a Notary Public within
5 and for the County of DuPage, State of Illinois, and
6 a Certified Shorthand Reporter of said state, do
7 hereby certify:
8 That previous to the commencement of the
9 examination of the witness, the witness was duly
10 sworn to testify the whole truth concerning the
11 matters herein;
12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction
15 and constitutes a true record of the testimony given
16 and the proceedings had;
17 That the said deposition was taken before
18 me at the time and place specified;
19 That I am not a relative or employee or
20 attorney or counsel, nor a relative or employee of
21 such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in the
23 outcome of this action.
24 IN WITNESS WHEREOF, I do hereunto set my



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1 hand of office at Chicago, Illinois, this 14th day of
2 October, 2014.
3
4
5 *V. Linda Boesch*
6
7 Notary Public, DuPage County, Illinois
8 My commission expires 8-14-2017.
9
10
11 CSR Certificate No. 84-3108.
12
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"OFFICIAL SEAL"
V. LINDA BOESCH
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 8/14/2017

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1 DEPOSITION ERRATA SHEET
2
3 Job No. Chicago 218113
4 Burke vs. City of Chicago
5
6 DECLARATION UNDER PENALTY OF PERJURY
7
8 I declare under penalty of perjury that I
9 have read the entire transcript of my Deposition
10 taken in the captioned matter or the same has been
11 read to me, and the same is true and accurate, save
12 and except for changes and/or corrections, if any, as
13 indicated by me on the DEPOSITION ERRATA SHEET
14 hereof, with the understanding that I offer these
15 changes as if still under oath.
16
17 Signed on the _____ day of
18 _____, 20____.
19
20 LUANN HAMILTON
21
22
23
24

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1 DEPOSITION ERRATA SHEET
2 Page No. _____ Line No. _____ Change to: _____
3
4 Reason for change: _____
5 Page No. _____ Line No. _____ Change to: _____
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7 Reason for change: _____
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19 Reason for change: _____
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22 Reason for change: _____
23 SIGNATURE: _____ DATE: _____
24 LUANN HAMILTON



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BURKE, ET AL. -vs- CITY OF CHICAGO

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DEPOSITION ERRATA SHEET

Job No. Chicago 218113

Burke vs. City of Chicago

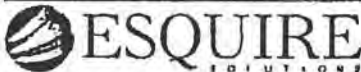
DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have read the entire transcript of my Deposition taken in the captioned matter or the same has been read to me, and the same is true and accurate, save and except for changes and/or corrections, if any, as indicated by me on the DEPOSITION ERRATA SHEET hereof, with the understanding that I offer these changes as if still under oath.

Signed on the 3rd day of
November, 2014.

Luann Hamilton

LUANN HAMILTON



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October 09, 2014
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1 DEPOSITION ERRATA SHEET

2 Page No. 71 Line No. 9 Change to: _____

3 Change "Hotdogs" to "Hot Doug's"

4 Reason for change: incorrect transcription

5 Page No. 82 Line No. 21 Change to: _____

6 Change "OEC" to "OUC"

7 Reason for change: incorrect transcription

8 Page No. 82 Line No. 22 Change to: _____

9 Change "OEC" to "OUC"

10 Reason for change: incorrect transcription

11 Page No. 84 Line No. 3 Change to: _____

12 Change "OEC" to "OUC"

13 Reason for change: incorrect transcription

14 Page No. 109 Line No. 24 Change to: _____

15 Change "but it" to "but that doesn't mean it"

16 Reason for change: incorrect transcription

17 Page No. 155 Line No. 16 Change to: _____

18 Change "700" to "800"

19 Reason for change: incorrect transcription

20 Page No. _____ Line No. _____ Change to: _____

21 _____

22 Reason for change: _____

23 SIGNATURE: Luann Hamilton DATE: 11-3-14

24 LUANN HAMILTON



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A210

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

LMP SERVICES, INC.,

Plaintiff,

v.

THE CITY OF CHICAGO,
ILLINOIS,

Defendant.

No. 12 CH 41235

Hon. Anna H. Demacopoulos

AFFIDAVIT OF LAURA PEKARIK

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

I, Laura Pekarik, do hereby state under oath that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. My name is Laura Pekarik. I am over the age of 18 years, a citizen of the United States, and a resident of the State of Illinois.
2. I am the President and Chief Executive Officer of LMP Services, Inc., a closely held Illinois Corporation of which I am the sole shareholder. The principal place of business for LMP Services, Inc. is Elmhurst, Illinois. Attached to this Affidavit as Exhibit A is a true and correct copy of LMP Services' Certificate of Good Standing from the Illinois Secretary of State.
3. LMP Services has a brick and mortar restaurant, named "Courageous Bakery," which is located in Elmhurst, Illinois.

4. LMP Services also operates a mobile food vehicle by the name "Cupcakes for Courage."

5. Cupcakes for Courage is licensed for use in the City of Chicago as a "mobile food dispenser," which allows me to sell my cupcakes, which are "previously prepared food that is enclosed or wrapped for sale," to the public. Attached to this Affidavit as Exhibit B is a true and correct copy of LMP Services' Mobile Food Dispenser license from the City of Chicago.

6. LMP Services operates Cupcakes for Courage in the City of Chicago on both public property and on private property with the written consent of the property owner.

7. I first conceived of the idea for Cupcakes for Courage while my sister Kathryn was recovering from non-Hodgkin's lymphoma. She and I baked and developed cupcake recipes in order to keep her mind off of her cancer.

8. Following the remission of Kathryn's cancer, I decided not to return to my previous job and instead to go into business for myself.

9. I opened Cupcakes for Courage in June 2011. The success of the food truck allowed me, through my company, to open Courageous Bakery in September 2012. Courageous Bakery serves as the base and commercial kitchen for Cupcakes for Courage.

10. One obstacle to operating Cupcakes for Courage in the City of Chicago is the restriction listed at Section 7-38-115(f) of the Municipal Code of Chicago, which generally prohibits an operator of a mobile food vehicle from parking or standing the vehicle within 200 feet of the principal entrance of a ground floor restaurant.

11. The Section's broad definition of "restaurant," which includes any public place at a fixed location kept, used, maintained, advertised and held out to the public as a place where food and drink is prepared and served for the public for consumption on or off the premises," means that

I cannot park or operate Cupcakes for Courage in large swaths of Chicago, including most of the downtown community area known as the Loop.

12. There are many places on public property in the City of Chicago that I would like to operate Cupcakes for Courage but cannot due to the "200-foot rule" contained in Section 7-38-115(f).

13. One public-property location where I would like to operate Cupcakes for Courage is at the corner of West Madison Street and South Wells Street in the Loop. Due to the 200-foot rule, I cannot operate Cupcakes for Courage at that corner because the principal customer entrances to several ground-level brick-and-mortar restaurants, including Red Robin's Burger Works (located at 190 West Madison Street) and Sixty Five Chinese Restaurant (located at 201 West Madison Street), are within 200 feet of where I would have Cupcakes for Courage operate.

14. If this Court rules that the 200-foot rule located in Section 7-38-115(f) is invalid under the Illinois Constitution, I would be able to legally operate at this location and would do so.

15. There are also locations on private property at which I would like to operate Cupcakes for Courage but cannot do so because of the 200-foot rule. One such location is the parking lot of Maria's Packaged Goods & Community Bar, located at 960 West 31st Street. In the past, I have received permission from Maria's to vend there, but I cannot legally operate there because the principal entrances of two restaurants, the Bridgeport Coffeehouse (located at 3101 South Morgan Street) and Pleasant House Bakery (located at 964 West 31st Street), would be within 200 feet of where Cupcakes for Courage would be operating.

16. If this Court rules that the 200-foot rule located in Section 7-38-115(f) is invalid under the Illinois Constitution, I would be able to legally operate Cupcakes for Courage at this location and would do so.

17. Another private property location where I would like to operate Cupcakes for Courage is in the rear parking lot of Fischman Liquors & Tavern, located at 4780 North Milwaukee Avenue. I cannot legally operate at that location, however, because the principal entrances of two retail food establishments, Krakus Homemade Sausage (located at 4772 North Milwaukee Avenue) and Ideal Pastry (located at 4765 North Milwaukee Avenue), are within 200 feet of where Cupcakes for Courage would be operating. This is the case even though the entrance to Krakus is on the opposite side of the building and the entrance to Ideal Pastry is on the other side of Milwaukee Avenue. If this Court rules that the 200-foot rule located in Section 7-38-115(f) is invalid under the Illinois Constitution, I would be able to legally operate Cupcakes for Courage at this location and would do so.

18. I also object to the requirement under Section 7-38-115(l) that LMP Services must install and operate a GPS tracking device on Cupcakes for Courage.

19. I do not wish to have to install a tracking device on my vehicle without my consent so that the City may gather information about my movements.

20. I object to having to associate with and pay money to a GPS service provider so that the City may monitor my vehicle's location.

21. I feel that the pervasive monitoring that the GPS device enables is an invasion of privacy. The fact that the law requires my GPS Service Provider to make available to the public an application programming interface (API) contributes to that feeling. This API allows members of the public to request and receive access to my vehicle's location information. I do not have any ability to block or otherwise restrict access to that information.

22. There are many times when I or my employees operate Cupcakes for Courage but do not wish for the truck's location information to be shared with the public. One instance is when I or my employees take Cupcakes for Courage to a potential new vending location to see if it is a

viable place to operate more regularly. The GPS tracking requirement means that Cupcakes for Courage's location information can be accessed and disseminated to the entire world, including potential competitors, even though I would prefer to keep that business research confidential.

23. Another instance when I would prefer not to share Cupcakes for Courage's location information is when I or my employees operate the food truck for a particular customer at a private event. In that situation, the GPS data can be retrieved and rebroadcast so as to allow members of the public to see where the truck is operating. Because my employees and I are selling only to that particular customer, we would have to refuse to sell cupcakes to members of the public who find us using the GPS data. This harms Cupcakes for Courage's reputation, which in turn harms my business' viability.

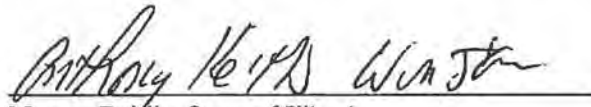
24. A third instance when I would prefer not to share Cupcakes for Courage's location information is when I or my employees are the subject of unwanted attention by particular customers or other individuals. In a few instances, employees have been threatened or harassed by either members of the public or persons they know outside the work environment. Because Cupcakes for Courage sells pre-made cupcakes, the truck typically operates with only a single employee on board. In those situations, I may wish to ensure that employee's safety by refraining from updating the truck's location via social media. I cannot do the same regarding the GPS tracking device, however, because Chicago law mandates that the device be transmitting whenever the vehicle is in operation.

FURTHER AFFIANT SAYETH NOT.

Dated: 3/11/16


Laura Pekarik

Subscribed and sworn to before me this 11 day of March, 2016.


Notary Public, State of Illinois

My commission expires on 08-21-2018



File Number

6673-239-8



To all to whom these Presents Shall Come, Greeting:

I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that I am the keeper of the records of the Department of Business Services. I certify that

LMP SERVICES, INC., A DOMESTIC CORPORATION, INCORPORATED UNDER THE LAWS OF THIS STATE ON OCTOBER 27, 2009, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE BUSINESS CORPORATION ACT OF THIS STATE RELATING TO THE PAYMENT OF FRANCHISE TAXES, AND AS OF THIS DATE, IS IN GOOD STANDING AS A DOMESTIC CORPORATION IN THE STATE OF ILLINOIS.

In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 10TH day of MARCH A.D. 2016 .



Authentication #: 1607001618 verifiable until 03/10/2017
 Authenticate at: <http://www.cyberdriveillinois.com>

Jesse White

SECRETARY OF STATE

LMP0311

A217

C 2511

CITY OF CHICAGO		
<h2 style="margin: 0;">LICENSE CERTIFICATE</h2> <p style="margin: 0;">NON-TRANSFERABLE</p>		
<p>BY THE AUTHORITY OF THE CITY OF CHICAGO, THE FOLLOWING SPECIFIED LICENSE IS HEREBY GRANTED TO</p>		
NAME:	LMP SERVICES, INC.	PRINTED ON: 01/27/2016
DBA:	CUPCAKES FOR COURAGE	
AT:	108 W. PARK	
	ELMHURST, IL 60126	
	1996 CHEVROLET STEPVA, PLATE: CFORC, VIN: 1GBGP32W4T3301827	
LICENSE NO.:	2263359	CODE: 4405
LICENSE:	Mobile Food License	
Includes:	Mobile Food Dispenser;	
	FEE: \$****700.00	
<p>PRESIDENT: LAURA MARIE PEKARIK SECRETARY: LAURA MARIE PEKARIK</p>		
<p>This license is a privilege granted and not a property right. This license is the property of the City of Chicago.</p>		
<p>THIS LICENSE IS ISSUED AND ACCEPTED SUBJECT TO THE REPRESENTATIONS MADE ON THE APPLICATION THEREFOR, AND MAY BE SUSPENDED OR REVOKED FOR CAUSE AS PROVIDED BY LAW, LICENSEE SHALL OBSERVE AND COMPLY WITH ALL LAWS, ORDINANCES, RULES AND REGULATIONS OF THE UNITED STATES GOVERNMENT, STATE OF ILLINOIS, COUNTY OF COOK, CITY OF CHICAGO AND ALL AGENCIES THEREOF.</p>		
<p>WITNESS THE HAND OF THE MAYOR OF SAID CITY AND THE CORPORATE SEAL THEREOF THIS 16 DAY OF JUNE, 2015</p>		
<p>ATTEST:</p>		<p>EXPIRATION DATE: June 15, 2017</p>
<p><i>Rahm Emanuel</i> ACCOUNT NO 360498 SITE: MAYOR</p>		<p><i>Susana J. Mendez</i> CITY CLERK</p>
<p>TRANS NO</p>		
<p>THIS LICENSE MUST BE POSTED IN A CONSPICUOUS PLACE UPON THE LICENSED PREMISES.</p>		

LMP0312

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A218

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

LMP SERVICES, INC.,

Plaintiff,

v.

THE CITY OF CHICAGO,
ILLINOIS,

Defendant.

No. 12 CH 41235

Hon. Anna H. Demacopoulos

AFFIDAVIT OF RENIA EHRENFUCHT IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

STATE OF NEW MEXICO)
) SS:
COUNTY OF BERNALILLO

I, Renia Ehrenfeucht, do hereby state under oath that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. My name is Renia Ehrenfeucht. I am over the age of 18 years and reside in Albuquerque, New Mexico. I am an academic with a focus on urban planning. I am currently employed as Professor of Community and Regional Planning at the University of New Mexico and the Director of the Community and Regional Planning program. Prior to my appointment at the University of New Mexico, I was an Associate Professor of Urban Planning and Chair of the Planning and Urban Studies Department at the University of New Orleans. I have a Ph.D. in Urban Planning from the University of California, Los Angeles, a Masters of Urban Planning from the University of Washington, and a B.A. in Environmental Studies and Sociology from the University of California, Santa Barbara.

2. My research program as an academic in urban planning has focused on the use of public space, including streets and sidewalks. I am the co-author of a book on the topic entitled *Sidewalks: Conflict and Negotiation over Public Space* (MIT Press 2009). I am also the co-author of a book chapter on the topic entitled "Sidewalk Democracy: Municipalities and the Regulation of Public Space," which was published in an edited volume entitled *Regulating Place: Standards and the Shaping of Urban America*. I have also published numerous articles about the use of sidewalk and public space for peer-reviewed journals including the *Journal of Urban Design, Environment and Planning*, and the *Journal of Historical Geography*.

RESEARCH PROJECT

3. I was retained by the Institute for Justice on behalf of Plaintiff LMP Services, Inc., to conduct an observational study meant to evaluate two of the City of Chicago's justifications for its rule prohibiting food trucks from operating within 200 feet of a retail food establishment. I will for the purposes of this affidavit refer to that prohibition, located at Section 7-38-115(f) of Chicago's Municipal Code, as the "200-foot rule."

4. In its response to an interrogatory submitted by Plaintiff, the City of Chicago stated that one of the justifications for the 200-foot rule is that it "prevent[s] congestion by keeping the lines and crowds that can form around food trucks from locating too close to, and consequently impeding, access to restaurants, which attract their own customer traffic." Def.'s Objections and Resps. to Pl.'s First Set Interrogs. No. 3.

5. In that same response, the City of Chicago also stated that the rule "prevent[s] litter and preserve[s] aesthetic appearances by preventing food truck customers from generating litter around the entrance of restaurants." Def.'s Objections and Resps. to Pl.'s First Set Interrogs. No. 3.

6. The observational study I conducted is meant to evaluate what pedestrian congestion and litter impacts are caused by food-truck operations in Chicago and whether those impacts varied based on a food truck's proximity to a retail food establishment.

EXECUTIVE SUMMARY

7. The following paragraphs summarize my findings and conclusions based both on the results of the observational study and my professional training and experience regarding use of the public right of way.

8. The food trucks generated no trash impacts on the streets where they vended. There were no observed incidences of littering from food-truck patrons. There were no observed incidences of overflowing trash receptacles. There were no observed locations that had notable litter or remaining food wrappers from the food trucks.

9. There were no observable differences in pedestrian-congestion impacts between observation sites that are within 200 feet from the front entrance of a food establishment and those that are more than 200 feet from the front entrance of a food establishment. Similarly, there were no observable differences in pedestrian-congestion impacts between observation sites that are City-designated food-truck stands and non-stand locations.

10. Because food-truck operations generated no litter impacts, and because there were no observable differences in pedestrian-congestion impacts based on a food truck's proximity to a retail food establishment, there is no factual support justifying the 200-foot rule under the City's congestion and litter rationales.

STUDY DESIGN

11. To examine the impact of food trucks on the pedestrian environment, from October 2 to November 1, 2013, seven food-truck sites in and near the Loop and Near North community areas were observed during a total of 37 periods that each averaged 2.5 hours. Eighty-two food

trucks operated at the sites during the observation periods and 77 of those trucks were observed. Thirty-five observation periods took place from 11:00 am to 1:30 pm during peak lunch time foot traffic. Two comparison observation periods occurred from 7:00 am to 9:30 am. Food trucks were present during 34 of the 37 observation periods. During six observation periods, one or more observers were assigned to observe nearby takeout pedestrian activity or a food-truck vending site without a food truck present.

12. The study I performed is known as a direct naturalistic observation study, which means that observers noted and recorded the impacts of the food trucks' operation without intervening or otherwise manipulating the research environment. Direct naturalistic observation studies allow researchers to evaluate behavior as it occurs in the real world.

13. The study I constructed followed best practices for conducting direct naturalistic observation studies.

14. I chose the study's seven observation sites to maximize variation, which is a technique used in direct naturalistic observation studies. Three of the locations were City-designated-food-vehicle stand locations (828 N. Larrabec St., 450 N. Cityfront Plaza, and 125 S. Clark St.), while the other four locations (the intersections of Clark & Washington, Madison & Wacker, Columbus & Randolph, and Van Buren & Wabash) were not. I chose sites located in the Loop and Near North community areas because these areas had the highest level of pedestrian activity and the most intensive use by food trucks.

15. The varied locations allowed me to compare the dynamics of food-truck operations under different conditions. 125 S. Clark, for instance, is a designated mobile-food-vehicle vending location in close proximity to a variety of food establishments. Three blocks to the north, the intersection at Clark & Washington was a regular food-truck vending location near office and governmental uses without many nearby restaurants. 828 N. Larrabee Street was a food-vehicle

stand location that had many food trucks daily and allowed for regular observation of a site with more intense food-truck use. 450 N. Cityfront Plaza Drive is a food vehicle stand that fronts a plaza. The intersections at Madison & Wacker and Columbus & Randolph were comparison sites with foot traffic and nearby outdoor seating areas. The intersection at Van Buren & Wabash had an uncomfortable pedestrian environment due to elevated rail tracks, which allowed me to analyze whether that appeared to impact pedestrian dynamics.

16. No food establishments were identified within 200 feet of the Columbus & Randolph vending site. There were no food locations along the 450 N. Cityfront Plaza street frontage but there were eateries in the buildings which the plaza abutted. The southwest intersection of Washington & Clark was 200 feet from the nearest food establishment. The four other vending sites had food establishments within 200 feet of food-truck parking locations.

17. I designed the study to have more than double the minimum number of observations that would be required in a study of this type. I designed the study with such a large number of observation periods so that it would lead to robust results.

18. I paired observers from different disciplines together to ensure that all relevant data were captured and recorded. Thirteen graduate students trained in either urban planning or ethnographic research methods, including direct naturalistic observation (observing and recording events without affecting how they unfold), reported on the effects of food-truck operations at seven different locations in the Loop and Near North communities. The observers usually worked in groups of two. The observer pair usually had one urban planning and one social science graduate student. The different knowledge base and skill sets of the observers allowed for close observation of the food trucks and surroundings from differing perspectives.

19. I developed a written protocol to guide observer fieldwork. The protocol instructed observers to record the site description and activity along the street. It also instructed observers to

quantitatively and qualitatively describe littering and garbage impacts arising from food-truck operations as well as disruptions to sidewalk flow by food-truck customers.

20. I met with observers at a food-truck site to explain the observation and data collection process. The observers had an introductory meeting at one of the sites and received the written protocol to guide their observations. They were given a notebook and pen to record observations and count customers and other relevant occurrences. The observers submitted typed reports via email based on their field notes with photographs or diagrams to explain the site and occurrences.

21. I reviewed the observers' reports as they were turned in, and reached out to observers to clarify information and offer further guidance. Then, I systematically reviewed and analyzed the 55-plus observer reports I received through a process called "coding." Because one feature of all direct naturalistic observation studies is that there will be some natural variation between different observers, the coding process allows researchers to identify common behavior and trends contained in the observers' reports, as well as to determine reports that contain outlying events. I compared reports from different observers on the same day in order to avoid duplicating incidences. The qualitative descriptions explained everyday occurrences and the scope and intensity of occurrences relating to sidewalk impacts. The duration and types of pedestrian crowding were drawn from synthesizing the qualitative descriptions.

22. Last, I drew conclusions from those findings.

23. Other urban planning researchers versed in direct naturalistic observation research methods reviewed the methodology used by this observational study. None identified any deficiencies in the research methods that the study employed.

CONCLUSIONS

Litter

24. Coding and analyzing the 55-plus field reports from observers revealed no trash impacts resulting from food-truck activities. These same reports consistently revealed that there were no observed incidences of littering related to food-truck operations.

25. Chicago law requires food-truck operators to put out a trash receptacle in which customers can deposit their litter. Observers recorded no incidences of food trucks having overflowing garbage cans.

26. Observation reports noted that almost all food-truck customers took their food to go. Some of the observation sites had nearby locations (plazas with seating, planters with wide ledges or benches) where food-truck customers could sit and eat. Observations of the seating areas near the food trucks indicated some food-truck customers ate in nearby plazas that were open to the public alongside customers of McDonalds, Native Foods, Jimmy John's, and Pret a Manger, among others. No observed outdoor seating areas contained litter arising from food-truck operations. The sites had nearby trash receptacles and were well maintained.

No Differences in Pedestrian-Congestion Impacts Based on Distance of Food-Truck Operations to Retail Food Establishments

27. As discussed previously, my study observed seven different locations where food-truck activity occurred. Four locations were within 200 feet of a restaurant (two of which were food-truck stands), and three were farther than 200 feet from a restaurant, (one of which was a food-truck stand). The sites are represented in the following chart:

<u>Location</u>	<u>Within 200 feet of a restaurant?</u>	<u>Food-truck stand?</u>
125 S. Clark	x	x
Clark & Washington	Depends on where food truck parks	
Madison & Wacker	x	
Columbus & Randolph		
828 N. Larrabee	x	x
450 N. Cityfront Plaza		x
Van Buren & Wabash	x	

28. Review and analysis of the 55-plus field reports revealed that there were no observed differences in pedestrian-congestion impacts based on the distance between a food truck's operations and the principal entrance of a retail food establishment. Moreover, there was no observed difference in pedestrian congestion between food-truck stands and non-food-truck stands. This was shown in several ways.

29. First, direct comparisons between non-food-truck stand locations located within and farther than 200 feet from a food establishment were made to determine if different pedestrian-congestion impacts were observable. For instance, Madison & Wacker is within 200 feet of restaurants, while Columbus & Randolph is not. Yet there were no observable differences in pedestrian congestion between them.

30. Second, I compared observations at the Clark & Washington location. Approximately 200 feet away from the intersection is a Jimmy John's, a fast casual sandwich restaurant. Depending on where they parked, food trucks in some instances would operate within 200 feet of the Jimmy John's principal entrance while other times they would be outside that radius. There were no observable differences in pedestrian-congestion impacts based on whether a truck was within 200 feet of the Jimmy John's or whether the truck operated 200 feet or farther from the Jimmy John's.

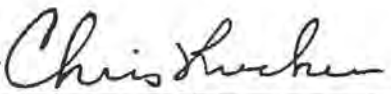
31. Third, there were no observed differences in pedestrian-congestion impacts between the three City-designated food-truck stand locations (125 S. Clark, 828 N. Larrabee, 450 N. Cityfront Plaza) and the four non-stand locations (Clark & Washington, Madison & Wacker, Columbus & Randolph, Van Buren & Wabash).

FURTHER AFFIANT SAYETH NOT.

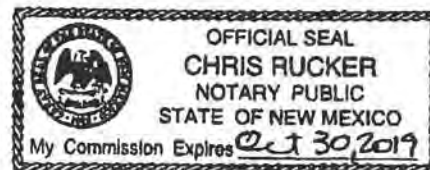
Dated: 3.10.2016


Renia Ehrenfeucht

Subscribed and sworn to before me this 10th day of March, 2016.


Notary Public, State of New Mexico
COUNTY OF BERNALILLO

My commission expires on Oct 30, 2019



No. 123123

In The Supreme Court of Illinois

LMP SERVICES, INC.,**Plaintiff-Appellant,****v.****THE CITY OF CHICAGO,****Defendant-Appellee.**

**On Appeal from the Appellate Court of Illinois
First Judicial District, No. 16-3390
There Heard on Appeal from the
Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 12 CH 41235
The Honorable Anna H. Demacopolous, Judge Presiding**

**APPENDIX OF PLAINTIFF-APPELLANT
LMP SERVICES, INC.**

Volume II

Robert P. Frommer (ARDC #6325160)
Erica J. Smith (ARDC #6318419)
Robert W. Gall (ARDC #6325161)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
rfrommer@ij.org
esmith@ij.org
bgall@ij.org

James W. Joseph
EIMER STAHL LLP
224 S. Michigan Avenue
Suite 1100
Chicago, Illinois 60604
(312) 660-7600
jjoseph@eimerstahl.com

Attorneys for Plaintiff-Appellant

Dated: August 20, 2018

Oral Argument Requested

E-FILED
8/20/2018 4:00 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

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Date	Document	Appendix Volume I Cite	Record Cite
December 5, 2016	Memorandum Opinion and Order of the Circuit Court of Cook County, Illinois, County Department, Chancery Division	A3	C5152 – C5170
December 28, 2016	Notice of Appeal	A22	C5171 – C5191
August 30, 2013	Defendant City of Chicago's Answer to Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief	A43	C398 – C467
June 26, 2012	Mayor Rahm Emanuel Press Release, regarding legalization of food truck industry across Chicago	A114	C1521 – C1522
July 25, 2012	Mayor Rahm Emanuel Press Release, regarding City Council approval to expand food truck industry across Chicago	A116	C1523 – C1527
October 8, 2014	Deposition of Joy Adelizzi, Deputy Commissioner with the City of Chicago Department of Business Affairs and Consumer Protection	A121	C1528 – C1570
N/A	Amended GPS Regulations	A164	C1620 – C1623
October 9, 2014	Deposition of Luann Hamilton, Deputy Commissioner of the Division of Project Development at the Chicago Department of Transportation	A168	C1634 – C1676

Date	Document	Appendix Volume I Cite	Record Cite
March 18, 2016	Affidavit of Laura Pekarik in Support of Plaintiff's Motion for Summary Judgment	A211	C2507 – C2514
March 18, 2016	Affidavit of Renia Ehrenfeucht in Support of Plaintiff's Motion for Summary Judgment	A219	C2581 – C2590

Date	Document	Appendix Volume II Cite	Record Cite
October 9, 2014	Deposition of Gerrin Butler, Director of Food Protection for the City of Chicago	A228	C2260 – C2293
December 12, 2014	Deposition of Eugene Lorman, CEO of TruckSpotting, Inc.	A262	C2324 – C2476
March 18, 2016	Affidavit of Henry Butler in Support of Plaintiff's Motion for Summary Judgment	A415	C2515 – C2531
April 4, 2017	Table of Contents of the Record on Appeal	A432	N/A
December 18, 2017	Opinion of the Illinois Appellate Court, First Division	A451	N/A

GERRIN CHEEK BUTLER
BURKE, ET AL. -vs- CITY OF CHICAGO

October 09, 2014
1-4

<p style="text-align: right;">Page 1</p> <p>1 STATE OF ILLINOIS) 2) SS: 3 COUNTY OF C O O K) 4 5 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS 6 COUNTY DEPARTMENT - CHANCERY DIVISION 7 GREG BURKE, KRISTIN CASPER, AND) 8 LMP SERVICES, INC.,) 9 Plaintiffs,) Case No. 10 -vs-) 12 CH 41235 11 THE CITY OF CHICAGO, ILLINOIS,) 12 Defendant.) 13 14 The deposition of GERRIN CHEEK BUTLER, 15 called for examination, taken pursuant to the 16 provisions of the Code of Civil Procedure and the 17 Rules of the Supreme Court of the State of Illinois 18 pertaining to the taking of depositions for the 19 purpose of discovery, taken before V. LINDA BOESCH, a 20 Notary Public within and for the County of DuPage, 21 State of Illinois, and a Certified Shorthand 22 Reporter, CSR No. 84-3108, of said state, at Suite 23 1200, 224 South Michigan Avenue, Chicago, Illinois, 24 on October 9, 2014, at 2:20 p.m.</p>	<p style="text-align: right;">Page 3</p> <p>1 MR. FROMMER: Could you swear the witness, 2 please? 3 (WHEREUPON, the witness was duly 4 sworn.) 5 GERRIN CHEEK BUTLER, 6 called as a witness herein, having been first duly 7 sworn, was examined and testified as follows: 8 EXAMINATION 9 BY MR. FROMMER: 10 Q. Could you please state your full name, 11 title, and work address for the record, please? 12 A. Sure. Gerrin Cheek Butler. I'm the 13 Director of Food Protection for the City of Chicago, 14 and my work address is 2133 West Lexington and that's 15 in Chicago, of course, 60612. 16 MR. WORSECK: And, Rob, again, I just want to 17 make my standard statement for the record, that we 18 are producing Ms. Butler pursuant to the topics 19 designated in our September 30th letter and pursuant 20 to the objections raised in our August 27th and 21 September 18th letters. 22 MR. FROMMER: All right. 23 BY MR. FROMMER: 24 Q. Hi. My name is Robert Frommer. I'm an</p>
<p style="text-align: right;">Page 2</p> <p>1 PRESENT: 2 INSTITUTE FOR JUSTICE, 3 (901 North Glebe Road, Suite 900, 4 Arlington, Virginia 22203, 5 703-682-9320), by: 6 MR. ROBERT FROMMER, 7 rfrommer@ij.org, 8 MR. ROBERT GALL, 9 rgall@ij.org, and 10 MS. ERICA SMITH, 11 esmith@ij.org, 12 appeared pro hac vice on behalf 13 of the Plaintiffs; 14 OFFICE OF CORPORATION COUNSEL, 15 CITY OF CHICAGO, 16 (30 North LaSalle Street, Suite 1230, 17 Chicago, Illinois 60602, 18 312-744-7150), by: 19 MR. ANDREW WORSECK, 20 aworseck@cityofchicago.org, and 21 MR. DAVID BARON, 22 appeared on behalf of the Defendant 23 and the Deponent. 24 REPORTED BY: V. LINDA BOESCH, CSR No. 84-3108.</p>	<p style="text-align: right;">Page 4</p> <p>1 attorney at the Institute For Justice. We're a 2 nonprofit public interest law firm. 3 We are based in Arlington, Virginia, and 4 we are representing the Plaintiffs in this 5 constitutional challenge to two aspects of the City's 6 mobile food vehicle law. 7 One is a requirement that food vehicles 8 not park or operate within 200 feet of a restaurant. 9 The other one is that mobile food vehicles be 10 equipped with and use GPS tracking devices when 11 they're in operation. 12 Now, I understand that you've been 13 designated by the City as its representative to 14 discuss certain topics that are at issue in this 15 lawsuit. Is that your understanding? 16 A. Yes. 17 Q. Okay. Now, we have asked the court to 18 rule on the constitutionality of the 200-foot rule 19 and the GPS tracker requirement. We are just seeking 20 declaratory relief and injunctive relief. We are not 21 seeking damages or anything like that. 22 Do you have any questions? 23 A. No. 24 Q. Okay. As you notice, just a second ago,</p>



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GERRIN CHEEK BUTLER
BURKE, ET AL. -vs- CITY OF CHICAGO

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<p style="text-align: right;">Page 5</p> <p>1 I said 200-foot and GPS tracking requirements. For 2 the remainder of the deposition, I'll probably refer 3 to the requirement that mobile food vehicles not 4 operate within 200 feet of a restaurant that's in the 5 Chicago City Code 7-38-115(f) as the 200-foot rule, 6 and I'll also be referring to the requirement that 7 mobile food vehicles be equipped with and use GPS 8 tracking devices. That requirement is in 7-38-115(l) 9 of the City Code. I'll be referring to that as the 10 GPS tracking requirement. 11 Does that make sense? 12 A. Yes. 13 Q. Okay. Great. 14 So before we begin, I'm going to go over 15 some of the ground rules for a deposition, just so 16 that we understand each other and everything goes 17 pretty smoothly. 18 So the way this works is we have a court 19 reporter here and I'll be asking the questions. 20 She'll be taking them down, and she'll also be taking 21 down your answers. And to assist the court reporter, 22 it's important that we speak clearly and slowly so 23 that she can write things down, okay? 24 A. Okay.</p>	<p style="text-align: right;">Page 7</p> <p>1 answering. Is that okay? 2 A. Yes. 3 Q. All right. Now, you were sworn in a 4 moment ago by the court reporter. Do you understand 5 that that oath is the same one you would give if you 6 were testifying in court before a judge? 7 A. Yes. 8 Q. Okay. And that means you need to answer 9 your questions truthfully and completely. Now, if 10 you don't understand a question, please let me know. 11 I'll either have the court reporter read it back to 12 you or I'll rephrase it. 13 Will you tell me if you don't understand 14 a question? 15 A. Yes. 16 Q. Okay. Good. And if you don't know an 17 answer, that's fine. You can just say, I don't know. 18 No problem with that. But if you do know the answer, 19 then you have a duty to answer it truthfully and 20 completely. 21 Unless you say otherwise, I'll assume 22 that you understood my question, okay? 23 A. Okay. 24 Q. Now, if you want to talk to the counsel</p>
<p style="text-align: right;">Page 6</p> <p>1 Q. Now, also, please make sure to answer 2 each question verbally. People sometimes have a 3 tendency to, you know, nod their head or go uh-huh. 4 The problem with that is it makes it hard 5 for the court reporter to take down what was being 6 said. So when you answer a question, try to say, 7 "yes" or "no." You know, articulate what your answer 8 is. 9 Is that okay? 10 A. Yes. 11 Q. Okay. Now, normally when people talk, 12 just part of conversation, people end up talking over 13 each other. It's just part of the natural flow. The 14 problem is, for the court reporter, it's very hard to 15 take down what two people are saying at the same 16 time. 17 So during the deposition, I'm going to 18 ask a question. I would ask when I'm asking the 19 question that you refrain from answering until I'm 20 done, even if you think you know where I'm going to 21 go. 22 And, similarly, I'm going to do my very 23 best that when you're answering the question, to hold 24 off from asking anything else until you're done</p>	<p style="text-align: right;">Page 8</p> <p>1 of the City, Drew or Dave, that's fine. The only 2 caveat is that if there's a question pending or if 3 you're in the middle of your answer, you have to 4 finish that answer — you have to give that answer 5 and finish it before you can speak to them, okay? 6 A. Okay. 7 Q. Now, periodically, Drew or Dave might 8 make objections. That doesn't mean I asked a bad 9 question. It doesn't mean you don't have to answer 10 the question. 11 What it means is that they're preserving 12 for the record that they had an objection, so that if 13 we use your answer later on in this case, they can 14 argue to the court that it was improper. 15 Do you understand? 16 A. Yes. 17 Q. All right. Now, sometimes you might 18 remember additional information — after you've 19 answered a question, you might remember additional 20 information or want to clarify or expand on what your 21 previous answer was. That's absolutely fine as well. 22 Just let me know that and as soon as 23 practicable, we'll have you explain the answer and we 24 can go from there, okay?</p>



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<p style="text-align: right;">Page 9</p> <p>1 A. Okay.</p> <p>2 Q. All right. If you want to take a break</p> <p>3 at any time, just let me know. If I'm in the middle</p> <p>4 of a question, we'll finish up that question and any</p> <p>5 follow up questions that need to occur and then we</p> <p>6 will take a break and, you know, go to the bathroom,</p> <p>7 whatever you need. Is that okay?</p> <p>8 A. Okay.</p> <p>9 Q. Now, when we are talking today, you might</p> <p>10 think maybe there's some document, like, that might</p> <p>11 help me remember an answer. And if you think that's</p> <p>12 the case, let me know because we have a lot of</p> <p>13 documents here and we can take a look through them to</p> <p>14 see if we have the one that might refresh your</p> <p>15 recollection or help you remember.</p> <p>16 And that way we can make sure that the</p> <p>17 answers you give will be as complete and accurate as</p> <p>18 possible, okay?</p> <p>19 A. Okay.</p> <p>20 Q. Now, you understand that you're here as a</p> <p>21 representative of the City of Chicago and that means</p> <p>22 that your answers are going to be the City's answers,</p> <p>23 unless during the question I specifically state that</p> <p>24 I'm speaking to you as an individual.</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Okay. And which department do you work</p> <p>2 in?</p> <p>3 A. The Health Department, Public Health.</p> <p>4 Q. What does Public Health do?</p> <p>5 A. We have many things related to public</p> <p>6 health, whether that be STI, STD, HIV surveillance</p> <p>7 which is one aspect of our jobs. We also do healthy</p> <p>8 communities which is one aspect, and then</p> <p>9 environmental, and then where I am which is Food</p> <p>10 Protection.</p> <p>11 Q. Okay. I'll get into what Food Protection</p> <p>12 does in a little bit.</p> <p>13 How long have you been in your current</p> <p>14 position as Director of Food Protection?</p> <p>15 A. Two years.</p> <p>16 Q. Did you work for the City before getting</p> <p>17 into this position?</p> <p>18 A. No.</p> <p>19 Q. Oh, really? Where did you work before</p> <p>20 you worked for the City?</p> <p>21 A. St. Louis County Health Department in a</p> <p>22 very similar position.</p> <p>23 Q. Oh, okay. And what's your educational</p> <p>24 background?</p>
<p style="text-align: right;">Page 10</p> <p>1 Is that okay?</p> <p>2 A. Yes.</p> <p>3 Q. All right. Because it's important to get</p> <p>4 full and complete answers, I have to ask whether</p> <p>5 you're taking any medication that might make it</p> <p>6 difficult for you to understand or answer my</p> <p>7 questions.</p> <p>8 Are you taking any medication that would</p> <p>9 make it difficult to understand or answer the</p> <p>10 questions today?</p> <p>11 A. No.</p> <p>12 Q. Okay. Is there any other reason why you</p> <p>13 wouldn't be able to give full, complete, and accurate</p> <p>14 answers to my questions?</p> <p>15 A. No.</p> <p>16 Q. Okay. Do you have any questions?</p> <p>17 A. No.</p> <p>18 Q. All right. So before we're going to talk</p> <p>19 about the topics you've been designated for, I want</p> <p>20 to get a little bit of background about you, so these</p> <p>21 are questions that are aimed at you personally.</p> <p>22 So you already said your full name, your</p> <p>23 address. What's your official position name again?</p> <p>24 A. Director of Food Protection.</p>	<p style="text-align: right;">Page 12</p> <p>1 A. I have a Bachelor's in environmental</p> <p>2 health and a Master's in public administration.</p> <p>3 Q. Now, could you tell me a little bit about</p> <p>4 what your current duties are at the Department of</p> <p>5 Health?</p> <p>6 A. I am responsible for ensuring that all of</p> <p>7 the food establishments get inspected in the City of</p> <p>8 Chicago.</p> <p>9 Q. And what of those duties -- well, we'll</p> <p>10 get back to that a little bit later.</p> <p>11 Have your duties at the position changed</p> <p>12 over time?</p> <p>13 A. No.</p> <p>14 MR. FROMMER: Okay. All right. Erica, could</p> <p>15 we have the Notice of Deposition? This should be a</p> <p>16 document you've seen before. It's a document we sent</p> <p>17 listing specific topics that we wanted to ask the</p> <p>18 City questions about.</p> <p>19 If you can mark this as Butler 1.</p> <p>20 (WHEREUPON, a certain document</p> <p>21 was marked Butler Deposition</p> <p>22 Exhibit No. 1, for</p> <p>23 identification, as of</p> <p>24 10/09/2014.)</p>



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<p style="text-align: right;">Page 13</p> <p>1 (WHEREUPON, the document was 2 tendered to the witness.) 3 BY THE WITNESS: 4 A. I'm sorry. I have to reach for my 5 glasses. 6 BY MR. FROMMER: 7 Q. That's absolutely fine. 8 Do you recognize this document? 9 A. Yes. 10 Q. Okay. And you're appearing today on 11 behalf of the City to answer questions about some of 12 the topics listed in this document? 13 A. Yes. 14 Q. All right. Have you ever personally been 15 deposed before? 16 A. Yes. 17 Q. Oh, how many times? 18 A. Twice. 19 Q. Really? When was that? 20 A. St. Louis County, having to do with other 21 inspections that had been conducted. 22 Q. Both of them were in St. Louis County? 23 A. Both in St. Louis County. 24 Q. Okay. What specifically were the</p>	<p style="text-align: right;">Page 15</p> <p>1 Q. Could you – 2 A. As related to personal? 3 Q. Oh, yes. It was in a personal action? 4 A. Correct. 5 Q. Okay. Okay. Was the testimony recorded 6 or transcribed, do you know? 7 A. Yes. 8 Q. Okay. Okay. I'd like to refer you back 9 to the Exhibit. In the Notice, it lists several 10 topics which the City's designees are supposed to be 11 prepared to testify upon. 12 Can you tell me which of these topics 13 you're here to testify about today? 14 MR. WORSECK: Objection to the extent it 15 presumes the knowledge that the witness can recite 16 from memory topics that she's been designated for. 17 The topics are enumerated in our 18 September 30th correspondence. 19 BY MR. FROMMER: 20 Q. Could you review the Notice and tell me 21 if – which, if any, of these topics you've been 22 designated to testify about? 23 THE WITNESS: I answer? 24 MR. WORSECK: Yes. I make the same objection,</p>
<p style="text-align: right;">Page 14</p> <p>1 circumstances in those cases? 2 A. It had to do with swimming pools and 3 compliance with the suction entrapment. 4 Q. With? 5 A. Suction entrapment. 6 Q. Okay. I'm going to spend 30 seconds. 7 What is "suction entrapment"? 8 A. So at the bottom of a swimming pool, 9 there is a drain. We've all seen the drain in the 10 bottom of a swimming pool? 11 If it is improperly constructed, people 12 could be suctioned to the drain and drown. 13 Q. Oh. 14 A. So there is a Virginia Graeme Baker Law 15 which requires that they have anti-entrapment covers 16 on all of these main drains and other suction in 17 swimming pools. 18 Q. Okay. Have you personally ever given any 19 other testimony other than being in a deposition? 20 MR. WORSECK: Objection, vague, but you can 21 answer. 22 BY MR. FROMMER: 23 Q. Yeah, you can answer. 24 A. Personally, yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 but to the best of your ability, please answer. 2 BY MR. FROMMER: 3 Q. Yes. But let me just explain. When he 4 makes an objection, that doesn't mean – like I was 5 saying before, it doesn't mean like my question was 6 improper or that you don't have to answer. He's just 7 noting it for the record. 8 If there's a particular time that he is 9 going to instruct you not to answer, he'll do that 10 specifically. But simply by making an objection, you 11 still have to answer the question. 12 A. Okay. 13 Q. So do you know which of the topics you 14 are here to testify about today? 15 A. I know some of the topics I'm supposed to 16 testify about. I am not familiar with legal jargon, 17 so when I'm reading them, I am not a hundred percent 18 sure. 19 Q. How about I walk through and tell me if 20 you agree. Are you here to talk about Topic 13, 21 "The governmental purposes 22 and rationales that the Defendant 23 claims that GPS tracking 24 requirement is meant to serve"?</p>



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<p style="text-align: right;">Page 17</p> <p>1 MR. WORSECK: Objection to the extent that it 2 mischaracterizes our designation which specifies that 3 Ms. Butler is being designated with respect to a 4 subset of issues pertinent to that topic. 5 BY THE WITNESS: 6 A. Yes. 7 BY MR. FROMMER: 8 Q. Are you here specifically to talk about 9 Topic 13 with regards to Food Protection? 10 A. Yes. 11 Q. Okay. How about Topic 14; are you here 12 to talk about Topic 14 as regards Food Protection? 13 A. Yes. 14 Q. And Topic 15, also for Food Protection? 15 A. Yes. 16 Q. And Topic 16, also for Food Protection? 17 A. Yes. 18 Q. Okay. Thank you. 19 And are you also here to talk about 20 Topics 1 and 2 to the extent that those questions 21 relate to the other topics, Topics 13 through 16, 22 that you're designated here for? 23 A. I don't understand the question. 24 Q. Okay. There are some questions that may</p>	<p style="text-align: right;">Page 19</p> <p>1 responsible for enforcement of portions of the 2 ordinance as well as the rules and regulations. As 3 such, I am the person who is responsible for the 4 people who conduct the inspections, so I guess that 5 is my authority. 6 Q. How much time did you spend preparing for 7 this deposition? 8 MR. WORSECK: Objection, vague. 9 BY MR. FROMMER: 10 Q. You can go ahead and answer. 11 A. I don't know how to answer it. I'm 12 sorry. I don't understand the question. 13 Q. How much time did you take in preparing 14 for this deposition? 15 MR. WORSECK: Same objection. 16 BY THE WITNESS: 17 A. Three hours. 18 BY MR. FROMMER: 19 Q. Three hours? And that's altogether three 20 hours? 21 A. Yes. 22 Q. Okay. Did you discuss this deposition 23 with anyone before coming here today? 24 A. Yes.</p>
<p style="text-align: right;">Page 18</p> <p>1 come up because they were raised in written 2 discovery. They are questions arising from the 3 discovery in this case, or the questions arising from 4 the City's answers to our allegations in the 5 complaint. 6 And to the extent they're about Food 7 Protection, the City has designated you as the 8 witness to answer those questions. 9 Is that your understanding? 10 A. Yes. 11 Q. Okay. Great. Can you describe what your 12 qualifications are to speak about the matters we just 13 discussed? 14 MR. WORSECK: Objection, vague, argumentative, 15 and also to the extent it misstates the requirements 16 of Rule 206, but you can answer. 17 BY THE WITNESS: 18 A. What was the question? I'm sorry. 19 BY MR. FROMMER: 20 Q. That's fine. 21 Can you describe what your qualifications 22 are to speak about the topics for which you have been 23 designated by the City? 24 A. The Food Protection Program is</p>	<p style="text-align: right;">Page 20</p> <p>1 Q. Okay. Who did you talk to? 2 A. I talked to my supervisor, the 3 Commissioner of Health, and both Drew and Dave. 4 MR. WORSECK: I'll just instruct the witness, 5 going forward, not to divulge any communications or 6 the content of any interactions we had regarding 7 this. 8 BY MR. FROMMER: 9 Q. And I won't be asking about the contents 10 of any of those discussions with the City's 11 attorneys. 12 How long did you talk with the 13 Commissioner about this deposition? 14 A. Very briefly. Minutes. Not very long. 15 Q. And how long did you take with speaking 16 with Drew and Dave about this deposition? 17 A. Two hours. 18 Q. Did you speak to counsel yesterday about 19 this deposition? 20 A. No. 21 Q. When was the last time you spoke with 22 them -- with counsel about this deposition? 23 MR. WORSECK: Objection, vague. 24 BY MR. FROMMER:</p>

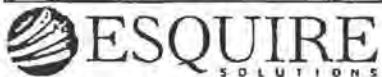


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<p style="text-align: right;">Page 21</p> <p>1 Q. Please answer the question.</p> <p>2 A. The meetings that I spoke about that was</p> <p>3 two hours was two days ago, and I've spoken with him</p> <p>4 briefly today.</p> <p>5 Q. Okay. Thank you.</p> <p>6 Did you speak to anyone else about their</p> <p>7 depositions in this case?</p> <p>8 A. No.</p> <p>9 Q. Okay. You didn't speak to Joy Adelizzi?</p> <p>10 A. No.</p> <p>11 Q. Luann Hamilton?</p> <p>12 A. No.</p> <p>13 Q. Okay. When you were speaking with the</p> <p>14 Commissioner, what did the Commissioner say about</p> <p>15 this deposition?</p> <p>16 A. He said nothing. He said -- it was an</p> <p>17 informative meeting on my part.</p> <p>18 Q. Just to let him know that --</p> <p>19 A. It was occurring and that I was being</p> <p>20 deposed.</p> <p>21 Q. And what was his response, if anything?</p> <p>22 A. He didn't say anything of significance.</p> <p>23 He said okay. And I'm not sure that he said okay,</p> <p>24 but he didn't say anything of significance.</p>	<p style="text-align: right;">Page 23</p> <p>1 City has issued?</p> <p>2 A. No.</p> <p>3 MR. WORSECK: Objection, vague.</p> <p>4 BY MR. FROMMER:</p> <p>5 Q. Did you review any inspection reports</p> <p>6 that the City -- that the City has produced?</p> <p>7 A. Yes.</p> <p>8 Q. What were those reports?</p> <p>9 A. The complaints that we had with regard to</p> <p>10 mobile food trucks.</p> <p>11 Q. Okay. And approximately how many of</p> <p>12 those are there?</p> <p>13 A. About 20.</p> <p>14 Q. So there are approximately 20 complaints</p> <p>15 regarding mobile food trucks.</p> <p>16 What's the nature of these complaints?</p> <p>17 A. They vary. I can't speak to what each</p> <p>18 one is without them in front of me.</p> <p>19 Q. Could you provide me sort of were they</p> <p>20 all concerning public health issues?</p> <p>21 A. No.</p> <p>22 Q. What were some of the other issues they</p> <p>23 were discussing?</p> <p>24 A. Some of the other issues were the</p>
<p style="text-align: right;">Page 22</p> <p>1 Q. Okay. Did you review any documents when</p> <p>2 you were preparing for this deposition?</p> <p>3 A. Yes.</p> <p>4 Q. What documents are those?</p> <p>5 A. I reviewed our policies and procedures</p> <p>6 for our standard operating procedures, I reviewed the</p> <p>7 ordinance, as well as the rules and regulations.</p> <p>8 Q. When you say "the ordinance," could you</p> <p>9 specify what sections in the ordinance?</p> <p>10 A. I reviewed the sections that are</p> <p>11 applicable to mobile food trucks.</p> <p>12 Q. Okay. So City Code 7-38?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Thank you.</p> <p>15 What other documents did you say that you</p> <p>16 reviewed in addition to the ordinance?</p> <p>17 A. Our policies and procedures.</p> <p>18 Q. Anything else?</p> <p>19 A. No.</p> <p>20 Q. Did you review either the Plaintiff's</p> <p>21 Amended Complaint or the City's answer to that</p> <p>22 complaint?</p> <p>23 A. No.</p> <p>24 Q. Did you review any citations that the</p>	<p style="text-align: right;">Page 24</p> <p>1 200-foot rule, the time that a truck was parked in a</p> <p>2 parking spot, or an illegal parking.</p> <p>3 Q. Okay. So how many of those 20</p> <p>4 complaints, how many of those had to do with public</p> <p>5 health?</p> <p>6 MR. WORSECK: Objection to the extent it calls</p> <p>7 for speculation.</p> <p>8 BY THE WITNESS:</p> <p>9 A. I believe that there are three. There</p> <p>10 are three that I recall.</p> <p>11 BY MR. FROMMER:</p> <p>12 Q. And these complaints, they're complaints</p> <p>13 that the City has received over what time period?</p> <p>14 A. Two years.</p> <p>15 Q. Since 2012?</p> <p>16 A. Correct.</p> <p>17 Q. Okay. Did you review any other</p> <p>18 documents?</p> <p>19 A. Not that I recall.</p> <p>20 Q. Did you review any materials other than</p> <p>21 documents or recordings in preparation for this</p> <p>22 deposition?</p> <p>23 MR. WORSECK: Objection, vague.</p> <p>24 BY THE WITNESS:</p>



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<p style="text-align: right;">Page 25</p> <p>1 A. No.</p> <p>2 BY MR. FROMMER:</p> <p>3 Q. I'm sorry?</p> <p>4 A. No.</p> <p>5 Q. "No," Okay.</p> <p>6 Who else at the City is knowledgeable</p> <p>7 about the topics you've been designated for in this</p> <p>8 Notice of Deposition?</p> <p>9 MR. WORSECK: Objection to the extent it calls</p> <p>10 for speculation.</p> <p>11 BY THE WITNESS:</p> <p>12 A. I would say that my direct supervisor</p> <p>13 would be and the other people that are on my team</p> <p>14 would have a very similar knowledge base to mine.</p> <p>15 BY MR. FROMMER:</p> <p>16 Q. Okay. And who are those other people on</p> <p>17 your team?</p> <p>18 A. The chief sanitarian who is responsible</p> <p>19 for all of the field operations, as well as the</p> <p>20 complaints manager who is responsible for maintaining</p> <p>21 all of the complaints, and the sanitarians who</p> <p>22 conduct the inspections.</p> <p>23 Q. Could I ask the names of these people,</p> <p>24 please?</p>	<p style="text-align: right;">Page 27</p> <p>1 through 3-1-1 and the ones that are appropriate for</p> <p>2 Health, as 3-1-1 has determined it, is sent to a</p> <p>3 queue where we can see it.</p> <p>4 And our complaints manager is the person</p> <p>5 who reviews all of the complaints and assigns them</p> <p>6 accordingly.</p> <p>7 Q. Okay. So the complaints manager is the</p> <p>8 one who's the principal person who takes in the</p> <p>9 complaints and then processes them, is that correct?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Do you think there's anyone more</p> <p>12 knowledgeable at the City than you to testify about</p> <p>13 the topics you've been designated for to talk about</p> <p>14 today?</p> <p>15 MR. WORSECK: Objection to the extent it calls</p> <p>16 for speculation, misstates the requirements of Rule</p> <p>17 206, and calls for a legal conclusion.</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. Go ahead.</p> <p>20 A. I can't speak to everybody else's</p> <p>21 knowledge base or who knows exactly what I know or</p> <p>22 knows more than what I know. So I don't know how to</p> <p>23 answer that.</p> <p>24 Q. Well, do you believe that there's anyone</p>
<p style="text-align: right;">Page 26</p> <p>1 A. I can't give you the names of all 33 of</p> <p>2 our sanitarians --</p> <p>3 Q. That's fine.</p> <p>4 A. -- off the top of my head. The</p> <p>5 supervisor, the chief sanitarian is Virginia</p> <p>6 Castaneda and the complaints manager is Patrick</p> <p>7 O'Connor.</p> <p>8 Q. So you said chief sanitarian and</p> <p>9 complaints manager?</p> <p>10 A. Correct.</p> <p>11 Q. What is a "chief sanitarian"?</p> <p>12 A. The chief sanitarian is the supervisor</p> <p>13 who supervises the supervisors and the sanitarians</p> <p>14 over field operations. So our hierarchy is the chief</p> <p>15 sanitarian, four field supervising sanitarians, and</p> <p>16 the 33 sanitarians.</p> <p>17 Q. Okay. We'll probably get into a little</p> <p>18 bit more into what these different people's roles are</p> <p>19 in a little bit.</p> <p>20 Could you describe to me what the</p> <p>21 complaints manager does?</p> <p>22 A. We have a complaints process. People can</p> <p>23 either call 3-1-1 or submit online 3-1-1 or tweet</p> <p>24 about a complaint. Those complaints get filtered</p>	<p style="text-align: right;">Page 28</p> <p>1 who -- can you identify somebody who you would say</p> <p>2 that person is more knowledgeable than I am to speak</p> <p>3 about the topics that the City's designated me to</p> <p>4 speak upon today?</p> <p>5 A. No.</p> <p>6 Q. Okay. So you said that you're the</p> <p>7 Director of Food Protection at the Department of</p> <p>8 Health, right?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. What is Food Protection -- is it</p> <p>11 the Department of Food Protection?</p> <p>12 A. We are a program within the Department of</p> <p>13 Health.</p> <p>14 Q. I just want to make -- when I'm speaking</p> <p>15 about Food Protection, I want to name you correctly.</p> <p>16 So the Food Protection Program, what is</p> <p>17 it tasked with protecting the public against?</p> <p>18 A. Primarily, foodborne illness, but the</p> <p>19 other part is we ensure compliance of the food</p> <p>20 establishments, compliance with the ordinance.</p> <p>21 Q. "Compliance with the ordinance."</p> <p>22 A. And subsequent rules and regulations.</p> <p>23 Q. In terms of -- is that general compliance</p> <p>24 with all of the requirements of the ordinance or,</p>



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<p style="text-align: right;">Page 29</p> <p>1 more specifically, compliance with the ordinance as 2 it regards to public health? 3 A. Compliance with the ordinance as it is 4 applicable to items assigned for enforcement to the 5 Health Department. 6 Q. Which leads naturally to my next 7 question, what are -- or what -- what are those 8 things that are assigned to the Health Department? 9 A. So the things that will be assigned to 10 the Health Department would be public health in 11 nature but, also, there are some building and 12 construction requirements that are also assigned to 13 Public Health. 14 Q. Why are building and construction 15 requirements assigned to the Department of Public 16 Health? 17 A. For some of those buildings, floors, 18 walls, ceilings violations or construction materials 19 could lead to issues with food protection as well as 20 public health. 21 Q. So you said that one of the things that 22 the department is tasked with protecting or 23 preventing is foodborne illness. 24 Can you explain to me what "foodborne</p>	<p style="text-align: right;">Page 31</p> <p>1 outbreak, then there is two or more unrelated people 2 that have eaten something in common. 3 And the other things -- so we have a 4 person that says they have become sick and that we 5 haven't been able to trace back and prove, we say 6 that that is a suspect food poisoning. 7 Q. What are some ways that food can become 8 potentially hazardous? 9 A. A food is in itself potentially 10 hazardous. So, for example, meat is potentially 11 hazardous. It didn't become potentially hazardous. 12 It just is. And it is potentially hazardous because 13 it supports the growth of pathogens. 14 So potentially hazardous means a food 15 that can support the growth of pathogens which means 16 that there is appropriate water activity. The water 17 activity is high, the acidity level is pretty 18 neutral, and there is nothing that is binding. 19 So it has to be somewhat liquid. So we 20 have the water activity and the acidity. 21 Q. Okay. So items -- so a cracker, for 22 instance, is that a potentially dangerous food? 23 A. "Potentially dangerous"? I don't 24 understand that.</p>
<p style="text-align: right;">Page 30</p> <p>1 illness" is? 2 A. Yes. Foodborne illness is -- and I hate 3 to use the definition -- the word in the definition, 4 but illnesses to humans that have been caused by food 5 or water or liquids. 6 So in our definition, anything that is 7 consumable is considered a food, so we don't 8 designate liquids or ice. We just say it's all a 9 food. 10 So any food that has caused someone to 11 become ill, we consider foodborne illness. 12 Q. Okay. Under the idea of foodborne 13 illness, does that include food poisoning? 14 A. We use those words somewhat 15 interchangeably, although they do have specific 16 separate definitions. But we use them 17 interchangeably. 18 Q. Okay. And I'm very interested in knowing 19 like what is the difference. You say that they have 20 slightly different meanings. What are those 21 different meanings? 22 A. When you talk to a person that is in Food 23 Protection or the food industry or communicable 24 disease, if you say that there has been a foodborne</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. I'm sorry. I'm just trying to 2 understand. 3 So there are certain items that are -- 4 certain food items that are by their very nature 5 potentially hazardous, and then there are others that 6 are not potentially hazardous, correct? 7 A. Correct. 8 Q. And are there additional ways that 9 food -- are there ways in which food that is not 10 inherently potentially hazardous, ways that it can 11 become hazardous? 12 MR. WORSECK: Objection, vague. 13 BY THE WITNESS: 14 A. I don't know how to answer that question. 15 BY MR. FROMMER: 16 Q. Okay. Let me see if I can -- so you say 17 that some foods are just potentially hazardous in and 18 of themselves? 19 A. Yes. 20 Q. Okay. How does the preparation of 21 food -- can improper preparation of food lead it to 22 being potentially hazardous? 23 A. No. For example, if you have leafy 24 greens, a produce product that is just in the grocery</p>



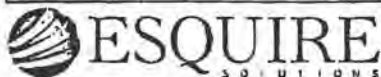
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<p style="text-align: right;">Page 33</p> <p>1 store, sitting out, it is not potentially hazardous.</p> <p>2 When you cook it, it becomes potentially hazardous</p> <p>3 because it can then support the growth of</p> <p>4 microorganism.</p> <p>5 A cracker is not potentially hazardous</p> <p>6 because it cannot support the growth of</p> <p>7 microorganisms. So if you leave a cracker out at</p> <p>8 room temperature, it is not going to make someone</p> <p>9 sick if they consume it.</p> <p>10 Q. That was exactly what I was going to ask,</p> <p>11 if a nonpotentially hazardous food -- could a</p> <p>12 nonpotentially hazardous food, given that nothing is</p> <p>13 done to it to make it potentially hazardous, could it</p> <p>14 make someone sick?</p> <p>15 A. No, it cannot.</p> <p>16 Q. Okay. Thank you.</p> <p>17 So are these concerns about potentially</p> <p>18 hazardous foods, are they present with any business</p> <p>19 that prepares and sells food to the public?</p> <p>20 A. Yes.</p> <p>21 Q. What are the different types of illnesses</p> <p>22 that one can get from food?</p> <p>23 A. There are several. We are all familiar</p> <p>24 with E. coli. Everybody talks about E. coli in meat</p>	<p style="text-align: right;">Page 35</p> <p>1 is a foodborne illness?</p> <p>2 A. Hepatitis A is a foodborne illness.</p> <p>3 Hepatitis B and C are not.</p> <p>4 Q. For E. coli, how long after that pathogen</p> <p>5 is introduced do symptoms develop?</p> <p>6 A. The textbook cases are between three and</p> <p>7 five days.</p> <p>8 Q. And for Salmonella, how long between</p> <p>9 pathogen and the symptoms?</p> <p>10 A. About three to seven days.</p> <p>11 Q. And for the Norwalk virus?</p> <p>12 A. Norwalk is much faster. It could be 12</p> <p>13 hours to two days. It's very fast.</p> <p>14 Q. And you said that the symptoms for</p> <p>15 E. coli, Salmonella, and Norwalk include -- and if I</p> <p>16 miss any -- vomiting, nausea, diarrhea?</p> <p>17 A. Correct.</p> <p>18 Q. Are there any other symptoms?</p> <p>19 A. They differ between -- each one could</p> <p>20 have something that is a little bit different.</p> <p>21 Norwalk is more known for explosive vomiting, and</p> <p>22 E. coli is known for shutting down people's immune</p> <p>23 systems.</p> <p>24 If you know, kids usually die from it</p>
<p style="text-align: right;">Page 34</p> <p>1 and food preparation. We always talk about</p> <p>2 Salmonella. That's the big one with chicken and</p> <p>3 everybody is kind of familiar with that.</p> <p>4 The one that nobody ever talks about is</p> <p>5 Norwalk and that is one that is the most common virus</p> <p>6 and there's no cure. It just runs its course. But</p> <p>7 there are all kinds of pathogens that are associated</p> <p>8 with foodborne illnesses.</p> <p>9 Q. And these different pathogens, do they</p> <p>10 exhibit different symptoms?</p> <p>11 A. Yes. But most of them -- the most common</p> <p>12 are nausea, vomiting, diarrhea which we are all</p> <p>13 familiar with in terms of foodborne illness. So</p> <p>14 those are the most common. Some of the other ones</p> <p>15 come along with fever and other symptoms, but those</p> <p>16 are the most common.</p> <p>17 Q. Okay. For the most common ones that you</p> <p>18 were describing, those symptoms, how quickly after</p> <p>19 consuming the pathogen does one develop symptoms?</p> <p>20 A. Depends on the pathogen. So it could be</p> <p>21 very quick and some of them have up to like --</p> <p>22 Hepatitis have up to a 90-day incubation period. So</p> <p>23 it could be hours, but it could also be days.</p> <p>24 Q. Now, is that one of the -- so Hepatitis</p>	<p style="text-align: right;">Page 36</p> <p>1 because they -- their systems shut down. So they</p> <p>2 have some -- each one has a little bit different</p> <p>3 symptoms.</p> <p>4 Q. Okay. And so some of these, it sounds</p> <p>5 like, some of these foodborne illnesses can be pretty</p> <p>6 serious in terms of consequences?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So for -- is Norwalk virus -- you</p> <p>9 said that the onset of symptoms for Norwalk virus is</p> <p>10 relatively faster than for other foodborne pathogens,</p> <p>11 is that right?</p> <p>12 A. Yes.</p> <p>13 Q. And how long did that take for someone to</p> <p>14 get symptomatic?</p> <p>15 A. The closest -- the soonest would be 12</p> <p>16 hours, but it could take up to two days.</p> <p>17 Q. Is there any foodborne pathogen that has</p> <p>18 a faster -- that will become symptomatic in a shorter</p> <p>19 period?</p> <p>20 A. Yes.</p> <p>21 Q. What is that?</p> <p>22 A. Staph.</p> <p>23 Q. "Staph"?</p> <p>24 A. Uh-huh. And that one has a very, very</p>

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<p style="text-align: right;">Page 37</p> <p>1 fast onset. Sometimes it's eight hours. It's very 2 fast. 3 Q. "Eight hours." And are the symptoms for 4 Staph similar for the Norwalk virus and E. coli? 5 A. Yes. 6 Q. So when people commonly talk about food 7 poisoning, they're really talking about getting one 8 of these -- symptoms from one of these foodborne 9 illnesses, is that right? 10 A. Yes. 11 Q. Okay. How does Food Protection -- what 12 steps does Food Protection take to try to prevent 13 people from eating potentially -- or hazardous foods 14 that could give them foodborne illnesses? 15 A. We conduct inspections at all food 16 establishments. So that is our first responsibility. 17 And while we're doing those inspections, we are 18 hoping that we are educating. 19 The second part is that each food 20 establishment is supposed to have someone on site at 21 all times that food is being prepared that has been 22 trained in food handling. 23 Second, we respond -- or maybe that's 24 third -- we respond to all complaints that we</p>	<p style="text-align: right;">Page 39</p> <p>1 A. In the last two years, they have been 2 pretty consistent. We've had about the same number 3 of foodborne illness inspections, investigations, and 4 the same -- primarily the same number of outbreaks 5 for the last two years. 6 Q. Okay. So you said as part of that, the 7 number of complaints about foodborne illnesses have 8 remained relatively constant over the past couple of 9 years? 10 A. Yes. 11 Q. Okay. And so for the potential sources 12 of foodborne illness, is food a potential source of a 13 foodborne illness every time someone cooks it or 14 prepares it? 15 A. Yes. If it is improperly prepared, then 16 yes, it has the potential to cause foodborne illness. 17 If it was contaminated at the source, meaning that 18 there was something wrong prior to them receiving it 19 and preparing it, then yes. 20 Q. Okay. So home cooking, someone 21 improperly cooks a chicken at their home, it could 22 cause them to get Salmonella, for instance? 23 A. Yes. 24 Q. Okay. A family polluck, the same thing?</p>
<p style="text-align: right;">Page 38</p> <p>1 receive. So with no regard to what the complaint is 2 or its validity, we do respond to all complaints. 3 We don't inspect them all, but we do 4 respond to all complaints that we receive. 5 Q. Okay. Are foodborne illnesses a big 6 problem in Chicago? 7 MR. WORSECK: Objection, vague. 8 BY THE WITNESS: 9 A. Foodborne illnesses are a big problem 10 everywhere. 11 BY MR. FROMMER: 12 Q. Let me be a little more specific. 13 How many people a year does the City of 14 Chicago -- in the City of Chicago get a foodborne 15 illness? 16 A. I can't answer that. 17 Q. Does the City have any estimate for the 18 number of people to receive -- 19 A. No. 20 Q. Okay. Have you noticed any trends in 21 foodborne illnesses over the past five years? 22 A. Well, I can't talk about five. I can 23 talk about two. 24 Q. Okay. Let's go with two.</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Yes. 2 Q. And at a restaurant, if they improperly 3 prepare the chicken, I can get just as sick from them 4 as at home? 5 A. Yes. 6 Q. Okay. So I think you described before 7 that the Department of Health does inspections of 8 businesses that serve food in order to prevent or 9 investigate potential foodborne illness issues, is 10 that right? 11 A. Yes. 12 Q. When the City inspects retail food 13 establishments, does the City -- let's start with 14 this earlier question. 15 Does the City inspect retail food 16 establishments? 17 A. Yes. 18 Q. What do those inspections entail? 19 A. We get a list from -- basically, of all 20 of our licensed food establishments. We prioritize 21 them according to a risk assessment that is approved 22 by the state, which is required for us to use. 23 We then inspect the establishment. So 24 the sanitarian goes there. Upon arrival, the first</p>



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<p style="text-align: right;">Page 41</p> <p>1 thing they should do is wash their hands, of course. 2 And then they're going to look at everything, from 3 the walls in, that have to do with food preparation, 4 including where they're preparing the food, where the 5 food is stored, the refrigeration, the hot holding, 6 the cold holding, the bathrooms, and every other 7 place inside that food establishment to see if what 8 is going on in that food establishment is in 9 compliance with the ordinance and the rules and 10 regulations. 11 Q. Okay. Now, you said a second ago that 12 the Food Protection does a risk assessment and that's 13 required by the state. 14 Can you tell me a little bit about what 15 that risk assessment is looking at? 16 A. Sure. The risk assessment looks at how 17 foods are -- to what extent foods are being handled. 18 For example, if you go to a gas station, they have 19 all prepackaged food. They are doing no handling of 20 food. So we risk assess that as low. 21 If you think about your fast food places 22 which get the things in frozen, they fry them and 23 they serve them to you, they do very little handling 24 of the food, that would be a medium risk. And if</p>	<p style="text-align: right;">Page 43</p> <p>1 does Food Protection conduct inspections of 2 facilities when they're getting their retail food 3 establishment license initially? 4 A. Yes. 5 Q. And when they're getting their retail 6 food establishment license renewed? 7 A. Yes. 8 Q. And are those in addition to the periodic 9 inspections we were talking about a minute ago? 10 A. I have to go back and clarify. 11 Q. Okay. 12 A. So we inspect new food establishments 13 when they're coming online at the license inspection. 14 We do routine inspections once they're operating. We 15 don't do a renewal inspection of brick and mortar, 16 but we do a renewal inspection of all mobile, no 17 matter how they are classified, whether that is a 18 push cart or a mobile food dispenser or a mobile food 19 preparer. 20 Q. Why is that? 21 A. We do that because we don't have the 22 ability to inspect them in the location in which they 23 are operating. 24 Q. So does the City conduct field</p>
<p style="text-align: right;">Page 42</p> <p>1 they extensively handle the food products, which 2 means they cook things from raw, they have special 3 processes, then we categorize them as high. 4 We in the City of Chicago designate them 5 as 1, 2, and 3 but, really, the designation is low, 6 medium, high. 7 Q. What does that risk assessment, how does 8 that relate to the inspections, either in terms of 9 their frequency or the thoroughness of the 10 inspection? 11 A. The thoroughness should all be equal, 12 which is why we have standard operating procedures. 13 But what it does designate is how often those food 14 establishments should be inspected. 15 Q. What is the different -- how often are 16 low risk food establishments investigated -- or 17 inspected? Sorry. 18 A. They should be inspected once every two 19 years. 20 Q. And for medium risk establishments? 21 A. Once per year. 22 Q. And for high risk? 23 A. Twice per year. 24 Q. Now, does the City conduct inspections --</p>	<p style="text-align: right;">Page 44</p> <p>1 inspections of mobile food vehicles? 2 A. When we receive complaints. 3 Q. But not on a periodic basis? 4 A. No. And the reason for that is we don't 5 have the capacity to do so. There are approximately 6 16,000 food establishments, that includes hospitals, 7 nursing homes, and all those other institutional 8 places that we inspect, along with those that are 9 retail food as far as mobile food, and we have 33 10 sanitarians. 11 In order for us to meet our inspection 12 frequency, we would need 72 sanitarians. So we are 13 prioritizing based on the fact that we have very 14 limited resources. 15 Q. Okay. How many mobile food operators are 16 subject to Food Protection inspections? 17 A. I don't have the number directly in front 18 of me. I know that there are hundreds of paleterias, 19 which are the mobile food carts that have ice cream. 20 There are hundreds of those. 21 There are mobile food dispensers. 22 There's a good number of those, and then there are 23 mobile food preparers. 24 Q. Okay. So for retail food establishments,</p>

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<p style="text-align: right;">Page 45</p> <p>1 the City conducts periodic inspections. 2 Are those announced inspections? 3 A. No. 4 Q. Okay. Do they occur -- for instance, for 5 a high-risk establishment, does the inspection occur 6 every six months at the six-month mark? 7 A. No. 8 Q. Okay. So there's a degree of randomness 9 so that -- so there's a degree of randomness in the 10 inspections? 11 A. There is a degree of randomness, but most 12 of the randomness is due to lack of resources. So we 13 prioritize even -- you know, we have to prioritize 14 where we are going. 15 Q. Does how a retail food establishment has 16 done on previous inspections inform how frequently 17 they are inspected in the future? 18 A. No. 19 Q. Oh. So does Food Protection conduct 20 random inspections outside of the periodic 21 inspections we were talking about? 22 MR. WORSECK: Objection, vague. 23 BY MR. FROMMER: 24 Q. Did you understand my question?</p>	<p style="text-align: right;">Page 47</p> <p>1 So does the City receive complaints from 2 the public about retail food establishments? 3 A. Yes. 4 Q. Okay. How many complaints about retail 5 food establishments does the City receive each year? 6 A. About 2,000, give or take a little bit. 7 Q. Okay. And how does the City take those 8 complaints in? 9 A. Through the 3-1-1 process, so even if 10 they call directly to us, we still refer them to 11 3-1-1 because they get a service request number and 12 they can -- citizens and everyone can see what has 13 happened and follow the complaint to conclusion. 14 Q. Okay. I actually saw that Food 15 Protection is using social media, going on Twitter to 16 ferret out like foodborne illnesses? 17 A. Yes. 18 Q. Can you tell me a little bit about that? 19 It sounds really interesting. 20 A. Sure. If a person tweets in the City of 21 Chicago, within the City of Chicago boundaries within 22 reason, or they have Chicago designated as their City 23 where they are from, and they tweet that they have 24 food poisoning, we have an algorithm that can pick</p>
<p style="text-align: right;">Page 46</p> <p>1 A. No. 2 Q. Okay. So you stated that the Food 3 Protection unit inspects on a periodic basis, either 4 every six months, once a year, or once every other 5 year depending on the risk assessment. 6 In addition to those inspections, does 7 Food Protection ever do random, unannounced 8 inspections of retail food establishments? 9 MR. WORSECK: Same objections. 10 BY THE WITNESS: 11 A. Yes, when we get a complaint. 12 BY MR. FROMMER: 13 Q. When you get a complaint. Okay. 14 And when there is an inspection, does the 15 sanitarian create a report? 16 A. Yes. 17 Q. What's that report called? 18 A. An inspection report. 19 Q. Okay. And does that happen every time an 20 inspection is done? 21 A. Yes. It's required by ordinance. 22 Q. Okay. And I believe you said a second 23 ago that the City -- Food Protection conducts 24 inspections in response to complaints.</p>	<p style="text-align: right;">Page 48</p> <p>1 that out, put it into a queue for us to review. 2 We look at it. We validate it to ensure 3 that it is a real person talking about really having 4 food poisoning. If they do that -- if we agree that 5 it is valid, then we send them the same report that 6 they would fill out if they had gone to 3-1-1 -- 7 online 3-1-1. 8 We send them the link to that. If they 9 fill it out and submit it, it starts that same 3-1-1 10 process that I was just talking about. 11 Q. So does every inspection that occurs in 12 response to a complaint, in all those instances is a 13 service request generated? 14 A. Yes. 15 Q. Okay. 16 A. No. I'm sorry. There is one exception. 17 I'm sorry. 18 The exception would be if the complaint 19 comes from an alderman, an IG, or some other 20 governmental way, and we get it via interoffice 21 either e-mail or mail. Then our complaints manager 22 puts them directly into our inspection system and it 23 doesn't get a service request. 24 Q. Why not create service requests for those</p>



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<p style="text-align: right;">Page 49</p> <p>1 as well?</p> <p>2 A. Because then we would have to send the</p> <p>3 piece of paper that just got sent to us to 3-1-1 and</p> <p>4 they would be entering it. So in order to facilitate</p> <p>5 getting it completed, we just enter it directly into</p> <p>6 our system.</p> <p>7 Q. Okay. So for those intergovernmental</p> <p>8 requests, is there still a written record?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So in every instance where an</p> <p>11 inspection is done in response to a complaint, there</p> <p>12 is a written document stating -- that basically</p> <p>13 summarizes that complaint?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And so when the City receives</p> <p>16 complaints about retail food establishments and</p> <p>17 foodborne illnesses, it does inspections, correct?</p> <p>18 A. Can you repeat the question?</p> <p>19 Q. Sure.</p> <p>20 Does the City investigate complaints it</p> <p>21 receives about retail food establishments and</p> <p>22 foodborne illnesses?</p> <p>23 A. Yes.</p> <p>24 Q. Does it do so every time there's a</p>	<p style="text-align: right;">Page 51</p> <p>1 inspection of the retail food establishment?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. In 2013, about how many</p> <p>4 inspections of retail food establishments did the</p> <p>5 City conduct in response to complaints?</p> <p>6 A. About 1800.</p> <p>7 Q. And from the time of the complaint, how</p> <p>8 long is it until -- if it's a serious or critical --</p> <p>9 that the complaint alleges a serious or critical</p> <p>10 violation, how long between when the time the</p> <p>11 complaint is submitted and when the inspection</p> <p>12 occurs?</p> <p>13 A. It's supposed to be within seven days.</p> <p>14 We have about a 90 percent compliance rate with that</p> <p>15 seven days. So, occasionally, it falls outside of</p> <p>16 the seven days.</p> <p>17 Q. Okay. And when the inspectors go to</p> <p>18 investigate in response to a complaint, what is it</p> <p>19 that they're looking for?</p> <p>20 A. Depends on what the complaint is and how</p> <p>21 detailed the complaint is. So if a person just says,</p> <p>22 I got sick at a place, then we do a full inspection</p> <p>23 same as we would.</p> <p>24 If they are detailed about what they ate,</p>
<p style="text-align: right;">Page 50</p> <p>1 complaint?</p> <p>2 A. No.</p> <p>3 Q. How does the City decide whether to</p> <p>4 investigate a complaint or not?</p> <p>5 A. We -- violations are categorized by the</p> <p>6 severity. So we categorize our violations minor,</p> <p>7 serious, and critical. If the complaint is about</p> <p>8 something that would be minor, if we were there doing</p> <p>9 an inspection, the floors are dirty, the tables are</p> <p>10 dirty would be a minor.</p> <p>11 Then what we do is we send the operator a</p> <p>12 letter that says we received a complaint about dirty</p> <p>13 floors. Please address the complaint. So if the</p> <p>14 comment is about something that is minor, we do not</p> <p>15 conduct an inspection, and we send a letter.</p> <p>16 Q. Okay. So what were the other two</p> <p>17 categories of complaints?</p> <p>18 A. Critical and serious. Not categories of</p> <p>19 complaints, but categories of violations.</p> <p>20 Q. Oh. So if the complaint alleges a</p> <p>21 serious or a critical violation, then the City</p> <p>22 investigates?</p> <p>23 A. Correct.</p> <p>24 Q. Okay. And that investigation entails an</p>	<p style="text-align: right;">Page 52</p> <p>1 what time they ate, then we focus our investigation</p> <p>2 on the food products and the process of preparing the</p> <p>3 food products which they implicate in their</p> <p>4 complaint.</p> <p>5 Q. And every time there's an inspection done</p> <p>6 in response to a complaint, a report is generated,</p> <p>7 correct?</p> <p>8 A. Correct.</p> <p>9 Q. Okay. And that is the Food Establishment</p> <p>10 Inspection Report?</p> <p>11 A. Correct.</p> <p>12 Q. Okay. And that happens in every</p> <p>13 instance?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. Can you tell me about Food</p> <p>16 Protection's approach to foodborne illnesses with</p> <p>17 regards to mobile food vehicles?</p> <p>18 MR. WORSECK: Objection, vague.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I don't understand the question.</p> <p>21 BY MR. FROMMER:</p> <p>22 Q. Okay. That's fine.</p> <p>23 So you said that Food Protection is</p> <p>24 responsible for making sure that mobile food vehicles</p>

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<p style="text-align: right;">Page 53</p> <p>1 are not – do not spread foodborne illnesses, 2 correct? 3 A. Yes. 4 Q. How does it go about ensuring that the 5 mobile food vehicles don't spread foodborne 6 illnesses? 7 A. So when a mobile food vehicle is in its 8 preparation to be licensed, we conduct an inspection. 9 Mobile food vehicles have a specific challenge with 10 regard to public health and food safety. One, 11 because of – it is really a restaurant on wheels. 12 So that means that things that we take 13 for granted at brick and mortar buildings must be 14 provided each and every day at those mobile food 15 vehicles. So, for example, they must fill the mobile 16 food unit up with water every day. They must empty 17 out the grey tank of dirty water every day. 18 They must ensure that they have enough 19 propane to heat their appliances that have fire. 20 They must also make sure that their power source, 21 whether that be an inverter or a generator, is 22 working, powered, however – whatever that process 23 is. 24 And, additionally, they have to ensure</p>	<p style="text-align: right;">Page 55</p> <p>1 food trucks, when we come to do an inspection of any 2 of them, we will only be able to do an inspection of 3 one because they can only be there for two hours. 4 So by the time we finish completing one 5 inspection, all the other trucks would be gone. And 6 I would not like to think they left because we were 7 there, but I think they do leave because we are 8 there. So in terms of like resource allocation, we 9 just don't have the resources to do it. 10 Q. And how many sanitarians did you say you 11 have on staff? 12 A. We have 33 that are eligible for working 13 today. 14 Q. And how many sanitarians does Food 15 Protection estimate that it would need to be able to 16 conduct all the inspections – random inspections it 17 would like to? 18 A. 72. 19 Q. That's a big difference. 20 A. Yes. 21 Q. Are there any plans to increase the 22 number of sanitarians? 23 A. We have been working on it the entire 24 time I've been here. It's obviously a funding issue.</p>
<p style="text-align: right;">Page 54</p> <p>1 that whatever their power sources are work and are 2 sufficient enough to power their hot-holding and 3 cold-holding units in order to keep the hot foods hot 4 and the cold foods cold, whatever their process is. 5 Q. So you said that when mobile food 6 vehicles are getting licensed, Food Protection 7 inspects them? 8 A. Correct. 9 Q. And I think you said earlier but let me 10 confirm, the Food Protection inspects mobile food 11 vehicles when their licenses are up for renewal? 12 A. Yes. 13 Q. Okay. Does the City conduct any random 14 inspections of mobile food vehicles? 15 MR. WORSECK: Objection, asked and answered. 16 BY MR. FROMMER: 17 Q. Please go ahead. 18 A. No, we don't. We haven't thus far, but 19 it has to do with the resource constraints. We don't 20 have the people to do that. 21 When we go out – so, for example, we 22 have gone out once or twice to find mobile food 23 trucks. And if we are able to find them in the 24 location and they are usually there with other mobile</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. Does Food Protection have reason to 2 believe that the number of sanitarians will 3 increase -- will be increased in the next year? 4 MR. WORSECK: Objection to the extent it calls 5 for speculation. 6 BY THE WITNESS: 7 A. I have posted or we have posted two 8 positions, and I expect to fill the two that have 9 been posted. Beyond that, I can't say. 10 BY MR. FROMMER: 11 Q. So if you are able to fill those two 12 positions, that will take you up to 35 inspectors? 13 A. Yes. 14 Q. Okay. So when the City inspects mobile 15 food vehicles outside of its – when it's not being 16 licensed or its license being renewed, what are the 17 circumstances when those inspections occur? 18 A. To date, it has been in response to 19 complaints. 20 Q. Okay. "In response to complaints." 21 And so how often is the average mobile 22 food vehicle inspected by Food Protection each year? 23 A. Once every two years. It's usually when 24 they are inspected at the renewal.</p>



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<p style="text-align: right;">Page 57</p> <p>1 If they participate in a mobile food 2 truck rally, festival, that we inspect, then we will 3 inspect them as well. So, for example, mobile food 4 trucks that participate in the Taste of Chicago, 5 we're inspecting while they were operating. 6 Q. Okay. So -- okay. Thank you. 7 And when Food Protection sanitarians are 8 inspecting these mobile food vehicles, what are some 9 of the things that they're looking for in those 10 inspections? 11 A. We look for very similar things as we 12 look for at brick and mortars. We look to make sure 13 that they have proper refrigeration, that the food 14 temperatures are below 40 degrees. We want to make 15 sure that they have running water, and the water is 16 under pressure which is a difficult thing for mobile 17 food trucks. 18 And we definitely want to make sure that, 19 if they are cooking on board, that they have met all 20 of the requirements for doing so, meaning that they 21 have a propane tank and it is properly located and it 22 is properly connected and they -- everything else in 23 terms of safety is in compliance as well. 24 Q. So Food Protection is responsible for</p>	<p style="text-align: right;">Page 59</p> <p>1 talking about the first inspection or the followup 2 inspection? 3 BY MR. FROMMER: 4 Q. The initial inspection. 5 A. 40 percent-ish. Estimated 40 percent. 6 Q. So when an inspection is done for mobile 7 food vehicles, is there a record created? 8 A. Yes. 9 Q. Okay. And that -- is that again the Food 10 Establishment Inspection Report? 11 A. With the mobile food vehicles, in order 12 to give them an opportunity to enter into the 13 business, we have collaborated with BACP to also do 14 assessments. So if we are doing an assessment of a 15 truck, we do not use the mobile food inspection 16 report because they don't have a license. 17 So from the point that they have a 18 license or are in the process of getting a license, 19 then we will put it on a Food Establishment 20 Inspection Report. 21 Q. Okay. So once the truck is licensed, any 22 inspection of that truck will result in a Food 23 Establishment Inspection Report? 24 A. Correct.</p>
<p style="text-align: right;">Page 58</p> <p>1 inspecting the propane units? 2 A. We are not responsible for inspecting the 3 propane units. However, if we see a tank and we know 4 that it is improperly mounted, we contact the fire -- 5 or we see something that we know is not correct, we 6 contact the Fire Department. 7 Q. Okay. Just, in general, how do mobile 8 food vehicles do on these inspections? 9 MR. WORSECK: Objection, vague. 10 BY MR. FROMMER: 11 Q. Let me ask, do most mobile food vehicles 12 that are inspected, do they pass inspection? 13 A. At the first inspection, no. 14 Q. Okay. So often, mobile food vehicles 15 will have to be reinspected? 16 A. Correct. 17 Q. And for retail food establishments, how 18 do they usually do on their initial inspection? 19 A. There's a 70 percent pass rate for brick 20 and mortars. 21 Q. And what's the pass rate for mobile food 22 vehicles, if you know? 23 A. 40 percent. 24 MR. WORSECK: Objection, vague. Are you</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. And that will happen in every instance 2 that a licensed truck is inspected? 3 A. Yes. 4 Q. Okay. So you said -- does the City 5 receive complaints from the public about mobile food 6 vehicles? 7 A. Yes. 8 Q. And how many complaints about public 9 health issues has the City received regarding mobile 10 food vehicles in the past two years? 11 A. I don't know how many. It hasn't been 12 very many. I think -- and some of the ones that were 13 assigned to Health, were not actually public health 14 issues. So I don't know what that number is right 15 off the top of my head. 16 Q. When you say that some of these 17 complaints were given to Health improperly, what were 18 the nature of the complaints? 19 A. It had to do with food stand 20 complaints -- food truck stand complaints, parking, 21 overcrowding, congestion, and the 200-foot rule. 22 Q. Why were they sent to you? 23 A. My guess is that as soon as the operators 24 at 3-1-1 hear a food truck, they think Food</p>

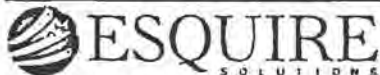


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<p style="text-align: right;">Page 61</p> <p>1 Protection.</p> <p>2 Q. So do you know how many complaints</p> <p>3 about -- public health complaints about mobile food</p> <p>4 vehicles the City received in 2013?</p> <p>5 A. I don't.</p> <p>6 Q. In 2014?</p> <p>7 A. I don't. It hasn't been very many.</p> <p>8 Q. Okay. And when the City receives these</p> <p>9 complaints, how does it take those in?</p> <p>10 A. Via 3-1-1. And our complaints manager</p> <p>11 processes it and then assigns it for inspection.</p> <p>12 Q. Okay. And so when the City's made aware</p> <p>13 of a complaint, it would reduce that complaint to</p> <p>14 writing, is that correct?</p> <p>15 I will rephrase.</p> <p>16 A. I'm sorry.</p> <p>17 Q. Yeah, I'll rephrase.</p> <p>18 When the Food Protection receives a</p> <p>19 complaint about a public health concern regarding a</p> <p>20 mobile food vehicle, does that complaint come to it</p> <p>21 in the written form?</p> <p>22 A. No, it's electronic.</p> <p>23 Q. Okay. But there's a record?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 63</p> <p>1 commissary rather than the vehicle itself?</p> <p>2 A. First, yes, and it depends on what we</p> <p>3 find out at the commissary.</p> <p>4 Q. Okay. And when the City -- or when Food</p> <p>5 Protection receives a complaint about a mobile food</p> <p>6 vehicle that deals with potential foodborne illness,</p> <p>7 does it investigate in that situation?</p> <p>8 A. Yes. There are some additional caveats</p> <p>9 to that. If it is more than one person that where we</p> <p>10 think it could be a potential foodborne illness</p> <p>11 outbreak which I described as being two or more</p> <p>12 unrelated people having one food item in common, we</p> <p>13 also have to reach out to Communicable Disease.</p> <p>14 They will do a three-day food history</p> <p>15 with those people, and we wait a little bit for them</p> <p>16 to determine and kind of give us the lead as to if</p> <p>17 they think it is what the complainant has told us.</p> <p>18 So the inspection may not occur immediately, and we</p> <p>19 will try to inspect it within the seven days that we</p> <p>20 have allotted in our protocol.</p> <p>21 Q. So when Food Protection receives a</p> <p>22 complaint about potential foodborne illness caused by</p> <p>23 a mobile food vehicle, does it always investigate</p> <p>24 that complaint?</p>
<p style="text-align: right;">Page 62</p> <p>1 Q. Okay. And is that the Service Request</p> <p>2 Summary Report?</p> <p>3 A. Yes.</p> <p>4 Q. And is a Service Request Summary Report</p> <p>5 produced each time Food Protection receives a public</p> <p>6 health complaint about mobile food vehicles?</p> <p>7 A. Yes.</p> <p>8 Q. And then what does Food Protection do</p> <p>9 with the public health complaints they receive about</p> <p>10 mobile food vehicles?</p> <p>11 A. Depends on the nature of the complaint.</p> <p>12 So, for example, if it has to do with they don't</p> <p>13 report to the commissary, we may not do an inspection</p> <p>14 of the truck necessarily because it didn't have</p> <p>15 anything to do with the truck itself.</p> <p>16 It really had to do with the commissary,</p> <p>17 and the commissary is supposed to keep a log of how</p> <p>18 often that mobile food truck comes there for</p> <p>19 servicing, which should be every day. So we will</p> <p>20 inspect the commissary as well as the logbook to</p> <p>21 determine if that truck was in compliance or not.</p> <p>22 Q. So if a public health complaint regarding</p> <p>23 a mobile food vehicle concerns the vehicle not going</p> <p>24 to its commissary, Food Protection inspects the</p>	<p style="text-align: right;">Page 64</p> <p>1 A. We always investigate the complaint. It</p> <p>2 does not always equal an inspection conducted</p> <p>3 immediately.</p> <p>4 Q. And that is because if there are multiple</p> <p>5 people involved, it might first go to Communicable</p> <p>6 Diseases?</p> <p>7 A. It doesn't go to them, but we collaborate</p> <p>8 with the Communicable Disease Program because they</p> <p>9 have investigators who investigate foodborne illness</p> <p>10 or illness, period. And they do a food history so</p> <p>11 they will ask the people what they ate, when the</p> <p>12 symptoms started. They get detailed information,</p> <p>13 So with the more detailed information,</p> <p>14 that helps guide our field investigations. So if</p> <p>15 they do a history, they may say, we need to</p> <p>16 investigate Place A before we investigate Place B,</p> <p>17 because they also all ate here or there's something</p> <p>18 else they all have in common.</p> <p>19 Q. I see. So when there is a complaint</p> <p>20 about a mobile food vehicle that deals with a</p> <p>21 potential foodborne illness, eventually an inspection</p> <p>22 is done?</p> <p>23 A. Yes.</p> <p>24 Q. And that occurs in every instance?</p>



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<p style="text-align: right;">Page 65</p> <p>1 A. Yes.</p> <p>2 Q. Okay. And when does the City -- when</p> <p>3 does Food Protection conduct that investigation? Let</p> <p>4 me rephrase.</p> <p>5 How many days after receiving the</p> <p>6 complaint concerning a mobile food vehicle and</p> <p>7 potential foodborne illness does Food Protection</p> <p>8 conduct an inspection of the mobile food vehicle?</p> <p>9 A. Our protocols require that it be done</p> <p>10 within seven days. We have about a 90 percent</p> <p>11 compliance rate overall.</p> <p>12 Q. Okay. And when Food Protection conducts</p> <p>13 an inspection of the mobile food vehicle because of a</p> <p>14 public health concern, where does that inspection</p> <p>15 occur?</p> <p>16 A. They have occurred in the field once or</p> <p>17 twice. But most often, we ask the mobile food truck</p> <p>18 to come to our location.</p> <p>19 Q. To Food Protection?</p> <p>20 A. To Food Protection at 2133 South</p> <p>21 Lexington.</p> <p>22 Q. Okay. So it is more common for an</p> <p>23 inspection to be done at Food Protection rather than</p> <p>24 in the field?</p>	<p style="text-align: right;">Page 67</p> <p>1 A. I don't know the exact number. There</p> <p>2 hasn't been very many.</p> <p>3 Q. There hasn't been very many?</p> <p>4 A. No.</p> <p>5 Q. Do you have an estimate?</p> <p>6 A. I would think over the two years --</p> <p>7 MR. WORSECK: I just want to counsel the</p> <p>8 witness not to speculate, but she can answer as best</p> <p>9 she can.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Approximately 20 over the two years.</p> <p>12 BY MR. FROMMER:</p> <p>13 Q. 20 inspections over the two years?</p> <p>14 A. 20 complaints over the two years.</p> <p>15 Q. "20 complaints over the two years."</p> <p>16 And how many inspections have there been</p> <p>17 as a result of those complaints?</p> <p>18 A. Three, I believe.</p> <p>19 Q. Okay. Besides complaints, are there</p> <p>20 other ways for Food Protection to learn about</p> <p>21 potential health problems on mobile food vehicles?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. That's fine.</p> <p>24 MR. FROMMER: Okay. I have an Exhibit here.</p>
<p style="text-align: right;">Page 66</p> <p>1 A. Correct.</p> <p>2 Q. And when the inspectors are inspecting</p> <p>3 the mobile food vehicle in response to the complaint</p> <p>4 about potential foodborne illnesses, what is it that</p> <p>5 they are looking for?</p> <p>6 A. We are looking to make sure that they</p> <p>7 have all of the equipment necessary, that their</p> <p>8 equipment is working, that they have the water and</p> <p>9 they can wash their hands, and that they don't have</p> <p>10 any sick employees.</p> <p>11 Those are the top things that we look for</p> <p>12 initially. And, also, where they're making their</p> <p>13 food and where they receive their food from.</p> <p>14 Q. And every time one of those inspections</p> <p>15 occurs, is there a record created?</p> <p>16 A. Yes.</p> <p>17 Q. And that is the Food Establishment</p> <p>18 Inspection Report?</p> <p>19 A. Yes.</p> <p>20 Q. And in 2013, how many inspections of</p> <p>21 mobile food vehicles did Food Protection undertake in</p> <p>22 response to public health complaints?</p> <p>23 A. I don't know.</p> <p>24 Q. In 2014?</p>	<p style="text-align: right;">Page 68</p> <p>1 This will be Exhibit 2, I believe. It's a set of</p> <p>2 Service Request Summary Reports and Food</p> <p>3 Establishment Inspection Reports.</p> <p>4 (WHEREUPON, the document was</p> <p>5 marked Butler Deposition Exhibit</p> <p>6 No. 2, for identification, as of</p> <p>7 10/09/2014.)</p> <p>8 (WHEREUPON, the document was</p> <p>9 tendered to the witness.)</p> <p>10 MR. WORSECK: Can we go off the record for a</p> <p>11 second?</p> <p>12 (WHEREUPON, a recess was had.)</p> <p>13 MR. FROMMER: Let's start again.</p> <p>14 BY MR. FROMMER:</p> <p>15 Q. All right. So when we left off, we were</p> <p>16 about to look at some exhibits. I believe these have</p> <p>17 been marked as Exhibit 2. It is a set of Service</p> <p>18 Request Summary Reports and Food Establishment</p> <p>19 Inspection Reports.</p> <p>20 MR. WORSECK: Rob, just for the record, we are</p> <p>21 coming back from a seven-minute break.</p> <p>22 MR. FROMMER: Oh, thank you.</p> <p>23 BY MR. FROMMER:</p> <p>24 Q. Are you familiar with these documents?</p>

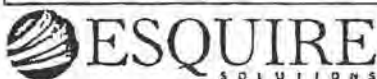


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<p>Page 69</p> <p>1 And take your time to look through them.</p> <p>2 Okay. So these are Service Request</p> <p>3 Summary Reports and Food Establishment Inspection</p> <p>4 Reports for mobile food vehicles, yes?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. We asked the City to provide all</p> <p>7 inspection reports for mobile food vehicles for the</p> <p>8 last two years and the City gave us three reports.</p> <p>9 Does that sound right to you?</p> <p>10 MR. WORSECK: Objection to the extent you</p> <p>11 mischaracterize the discovery requests, but the</p> <p>12 witness can answer.</p> <p>13 BY THE WITNESS:</p> <p>14 A. What I provided here or what our program</p> <p>15 provided was the complaint investigations. There are</p> <p>16 license inspection reports that are not -- that I've</p> <p>17 not provided to anyone.</p> <p>18 BY MR. FROMMER:</p> <p>19 Q. And do those license inspection reports,</p> <p>20 those were done either when the vehicle -- when the</p> <p>21 mobile food vehicle was getting its license renewed?</p> <p>22 A. Either initial license or license</p> <p>23 renewal.</p> <p>24 Q. And where do those inspections take</p>	<p>Page 71</p> <p>1 guess. There hasn't been many.</p> <p>2 Q. There hasn't been many. Okay. Less than</p> <p>3 20?</p> <p>4 A. Approximately 20, I would say.</p> <p>5 Q. Approximately 20. Okay. And if the City</p> <p>6 or Food Protection has received somewhere around 20</p> <p>7 complaints about mobile food vehicles that concern</p> <p>8 public health issues, why have there only been three</p> <p>9 Food Establishment Inspection Reports?</p> <p>10 MR. WORSECK: Objection, argumentative,</p> <p>11 mischaracterizes prior testimony, but you can answer.</p> <p>12 BY THE WITNESS:</p> <p>13 A. I would say that we had about 20 that</p> <p>14 were assigned to us, not -- assigned to us, "us"</p> <p>15 being Food Protection. Not all 20 were violations</p> <p>16 that Food Protection is responsible for enforcing.</p> <p>17 BY MR. FROMMER:</p> <p>18 Q. Okay. Of the complaints that were about</p> <p>19 mobile food vehicles that were sent to Food</p> <p>20 Protection, how many of them dealt with public health</p> <p>21 issues that are within Food Protection's</p> <p>22 jurisdiction?</p> <p>23 A. I believe there were three.</p> <p>24 Q. Were you involved with the inspections of</p>
<p>Page 70</p> <p>1 place?</p> <p>2 A. At our location on Lexington.</p> <p>3 Q. Okay. So there are three field or food</p> <p>4 establishment inspection reports that the City has</p> <p>5 created after investigating mobile food vehicles</p> <p>6 after complaints?</p> <p>7 A. Yes.</p> <p>8 Q. When the City -- when the Food Protection</p> <p>9 receives a complaint about a potential public health</p> <p>10 problem with a mobile food vehicle, does it record</p> <p>11 that complaint on a Service Request Summary Report?</p> <p>12 A. Ask the question again. I'm sorry.</p> <p>13 Q. Before we were saying that when the</p> <p>14 department or when Food Protection receives a</p> <p>15 complaint, it gets -- puts that complaint down on a</p> <p>16 Service Request Summary Report, right?</p> <p>17 A. 3-1-1 operators enter the data into the</p> <p>18 system which then creates the summary -- the service</p> <p>19 request report.</p> <p>20 Q. Okay. So how many Service Request</p> <p>21 Summary Reports has Food Protection received</p> <p>22 regarding mobile food vehicles where the complaint</p> <p>23 was that they might have a public health problem?</p> <p>24 A. I don't know. I don't want to venture to</p>	<p>Page 72</p> <p>1 these three mobile food vehicles?</p> <p>2 A. No.</p> <p>3 Q. Can you tell me why the City investigated</p> <p>4 the three mobile food vehicles that these Food</p> <p>5 Establishment Inspection Reports were generated for?</p> <p>6 A. Sure. There's a different reason for</p> <p>7 each one. The first one which has to do with Patty</p> <p>8 Wagon, which is my first one. I don't know if that's</p> <p>9 everybody else's first one.</p> <p>10 Q. Yes.</p> <p>11 A. Patty Wagon, the complaint was that the</p> <p>12 mobile food vehicle was not going back to the</p> <p>13 commissary. I know that we inspected the commissary</p> <p>14 as well, and the commissary is required to keep a</p> <p>15 log.</p> <p>16 And the logbook was in disarray, so it</p> <p>17 was difficult for us to confirm or deny whether they</p> <p>18 had actually been back to the commissary. So it then</p> <p>19 required us to also do an inspection of the truck.</p> <p>20 Q. Okay.</p> <p>21 A. Empanadas, we conducted an inspection</p> <p>22 there because, of course, any time someone says that</p> <p>23 they have -- a food place made them sick, we will</p> <p>24 investigate even if it is not immediately. We still</p>



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<p style="text-align: right;">Page 73</p> <p>1 conduct an investigation.</p> <p>2 Q. Go ahead, please.</p> <p>3 A. And then Chicago Lunchbox, the same</p> <p>4 thing; there were people that were complaining of</p> <p>5 illness.</p> <p>6 Q. Okay. And you said in your last answer,</p> <p>7 you mentioned even if we did not inspect immediately?</p> <p>8 A. Correct.</p> <p>9 Q. What do you mean by that?</p> <p>10 A. I think I talked about this a little bit</p> <p>11 before. When we have groups of people that are</p> <p>12 complaining about a place, we also refer this</p> <p>13 information to Communicable Disease.</p> <p>14 Sometimes when they do that three-day</p> <p>15 history, they give us additional information which</p> <p>16 means that we will reallocate our resources and</p> <p>17 prioritize the facilities that they are asking us to</p> <p>18 inspect.</p> <p>19 So if they ask us to go to Restaurant A</p> <p>20 before we go to Restaurant B, then we go to A first</p> <p>21 if they feel that this is the more likely suspect.</p> <p>22 Q. Do you know if that's what occurred with</p> <p>23 Chicago Lunchbox?</p> <p>24 A. I do know that with Chicago Lunchbox,</p>	<p style="text-align: right;">Page 75</p> <p>1 <u>the field, what we have done is tried to locate them</u></p> <p>2 <u>using Twitter. Most mobile food vehicles do tweet.</u></p> <p>3 I have found that they do not always tweet</p> <p>4 accurately.</p> <p>5 Q. What do you mean by "they don't tweet</p> <p>6 accurately"?</p> <p>7 A. So often they will say, "Hey, we are at</p> <p>8 this location and next we are going to Randolph."</p> <p>9 And then we get to Randolph and they are not there.</p> <p>10 Q. <u>Has Food Protection ever requested GPS</u></p> <p>11 <u>data when it's wanted to go out and conduct an</u></p> <p>12 <u>inspection in response to a complaint about a public</u></p> <p>13 <u>health issue?</u></p> <p>14 A. No.</p> <p>15 Q. Does the Health Department – or not</p> <p>16 Health Department. Does Food Production – I guess</p> <p>17 it would be the Health Department.</p> <p>18 Does the Health Department have any</p> <p>19 policies about when it will pull GPS data?</p> <p>20 MR. WORSECK: Objection, vague.</p> <p>21 BY MR. FROMMER:</p> <p>22 Q. Did you understand the question?</p> <p>23 A. As part of our protocols, we do have –</p> <p>24 we say that we can pull GPS data when we are trying</p>
<p style="text-align: right;">Page 74</p> <p>1 there was other things that were going on and the</p> <p>2 investigation took many twists and turns, some of</p> <p>3 that information coming from Communicable Disease.</p> <p>4 But all foodborne illness investigations,</p> <p>5 people complain and not necessarily complain directly</p> <p>6 about the place that made them sick. Often, they</p> <p>7 complain about the last meal that they ate. It's</p> <p>8 called the last meal bias, and it's not always the</p> <p>9 last meal because as we talked about, onset times.</p> <p>10 Some of them are very short. Very few of them are</p> <p>11 very short, that 12 hours. Only one or two that are</p> <p>12 very short.</p> <p>13 Most of them are very long, three days,</p> <p>14 which is why we do the three-day history.</p> <p>15 Communicable Disease does the three-day history. So</p> <p>16 we take the complaint in but if we find these, we</p> <p>17 also bring in our Communicable Disease investigators</p> <p>18 because that is their field, and they assist us by</p> <p>19 telling us where to go.</p> <p>20 Q. Okay. Thank you.</p> <p>21 <u>Can you tell me, how does Food Protection</u></p> <p>22 <u>find mobile food vehicles when it wants to conduct an</u></p> <p>23 <u>inspection?</u></p> <p>24 A. <u>If we want to conduct an inspection in</u></p>	<p style="text-align: right;">Page 76</p> <p>1 to follow up on a complaint. So we have included it,</p> <p>2 but we have not specifically determined how we would</p> <p>3 pull the GPS data because that's not information that</p> <p>4 we readily have available.</p> <p>5 Q. Does the Health Department have any</p> <p>6 policies about how an inspector who wished to inspect</p> <p>7 a truck would seek access to GPS data?</p> <p>8 A. No, we don't.</p> <p>9 Q. So there's no policies about how that</p> <p>10 inspector would request that GPS data?</p> <p>11 A. No. That is something that I am working</p> <p>12 on right now. Part of my purview is that I write</p> <p>13 most of the policies and procedures. This is one</p> <p>14 that will require coordination with other departments</p> <p>15 because that's not information that we have.</p> <p>16 So we would have to reach out to BACP in</p> <p>17 order to obtain that information.</p> <p>18 Q. And when did you start working on these</p> <p>19 policies?</p> <p>20 A. So whenever we implement new ordinances,</p> <p>21 we start with the thing that is likely to happen</p> <p>22 first. So the first thing that we have to do is</p> <p>23 figure out how we are going to inspect them.</p> <p>24 So that was why it was necessary to kind</p>



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<p style="text-align: right;">Page 77</p> <p>1 of create a checklist for the sanitarians in the 2 field. And then we had to look at, well, now we are 3 getting complaints, so we have to figure out how to 4 incorporate this new entity that we regulate into our 5 complaints protocols. 6 So now we are at the GPS. If you can 7 imagine, that implementing this, and this is the 8 first time we have brought something under regulation 9 that had never been regulated before, so we are 10 really starting from scratch. So we just prioritized 11 by what came first. 12 Q. So when did you first start working on 13 the GPS policies? 14 A. About the same time that we revised the 15 rules and regulations. 16 Q. When was that? 17 A. That October I would guess. Please don't 18 hold me to that. But when we revised the rules and 19 regulations. 20 Q. October of which year? 21 A. This is October. August. 22 Q. August? 23 A. Sorry. 24 Q. So you began working on the rules and</p>	<p style="text-align: right;">Page 79</p> <p>1 by the reporter as requested.) 2 MR. WORSECK: I'm going to object to that to 3 the extent it calls either for attorney-client 4 privileged information or information going to 5 legislative or regulatory promulgation processes 6 which the judge has ruled are irrelevant in this 7 case. 8 And to the extent the question calls for 9 an answer on those topics, I would instruct the 10 witness not to answer. 11 BY MR. FROMMER: 12 Q. How did the regulations that were 13 promulgated in August differ from the regulations 14 that were in place before? 15 A. It specifically outlined the uses that 16 the City of Chicago could use GPS for. 17 Q. And how does -- could you give me a 18 little more detail about those changes? 19 A. Yes. So it says that we can obtain GPS 20 data for use in a foodborne illness investigation for 21 compliance with the ordinance if we can obtain a 22 subpoena, and there is one other thing that I can't 23 remember right now. 24 MR. WORSECK: I'll just state for the record</p>
<p style="text-align: right;">Page 78</p> <p>1 regulations -- let me start over. I got confused. 2 So you started working on the policies 3 about when and how Food Protection individuals would 4 access and use GPS data beginning in August of this 5 year? 6 A. Beginning whenever the rules and 7 regulations were passed, and I don't remember that 8 date, which then brought up the idea that we need to 9 figure out how we are going to pull it. 10 If we are going to pull GPS data, we need 11 to have protocols in place in order to do so. 12 Q. Now, didn't the Health Department already 13 have regulations in place regarding the GPS units? 14 A. Yes. 15 Q. And those regulations changed in August? 16 A. Yes. Or at the last -- whenever the 17 rules and regulations changed. Please -- I don't 18 know the date. 19 Q. That's fine. I won't hold you to it. 20 Why did the Health Department change its 21 rules and regulations regarding the GPS units? 22 MR. WORSECK: I'm sorry. Can you read that 23 back, please? 24 (WHEREUPON, the record was read</p>	<p style="text-align: right;">Page 80</p> <p>1 that the regulations speak for themselves and the 2 witness can obviously talk about what they say to the 3 best of her knowledge and recollection, but they are 4 what they are. 5 MR. GALL: And we appreciate that, but she's 6 more than capable of testifying for herself without 7 you providing additional testimony. 8 MR. WORSECK: She is, of course, free to 9 testify. I am simply stating for the record -- 10 MR. GALL: You added your own testimony, and I 11 ask that you refrain from doing so or continuing your 12 practice of repeated speaking objections. 13 MR. WORSECK: I will not engage with you on 14 that, but my objections are proper and I will 15 continue to make objections as I see fit. 16 MR. GALL: And I'll continue to point out every 17 time they're improper. 18 BY MR. FROMMER: 19 Q. So under the GPS regulations or under the 20 Health Department policies, does an official who's 21 seeking GPS data -- a Health Department employee 22 seeking GPS data, does he need to provide an 23 explanation to the GPS service provider about why he 24 or she is seeking that data?</p>



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<p style="text-align: right;">Page 81</p> <p>1 A. We don't have policies in place to obtain 2 GPS data. 3 Q. Do you know if a GPS service provider, if 4 he's approached with a request for GPS data, can he 5 turn down that request? 6 A. I don't know. 7 Q. Does the Health Department have any 8 policies in place regarding who at the department may 9 request GPS data? 10 A. No. 11 Q. Does the Health Department have any 12 written disciplinary procedures governing a situation 13 where an employee -- a Health Department employee 14 sought GPS data without first getting authorization? 15 MR. WORSECK: Objection, vague. 16 BY MR. FROMMER: 17 Q. Did you understand the question? 18 A. Yes, I understood the question. 19 No, we do not have any policies or 20 procedures in place. 21 Q. Does the Health Department have any 22 written policies regarding who GPS data that it has 23 acquired from a GPS service provider may be shared 24 with?</p>	<p style="text-align: right;">Page 83</p> <p>1 A. We don't. However, if a sanitarian or 2 someone were to come to me and say, "I have not been 3 able to locate this vehicle. I need to do an 4 inspection. How do I do that?" 5 Then what I would say, this would be an 6 opportunity for us to get the GPS data, and I would 7 have to contact BACP to get that information from 8 them. 9 Q. Why would you need to contact BACP? 10 A. Because I don't know who the providers 11 are. That is not something that is in our records. 12 Q. So the Health Department doesn't have any 13 knowledge about which GPS service providers provide 14 GPS services for which food trucks? 15 A. No. 16 Q. Can you explain to me what a "working 17 business rule" is? 18 A. To me, that means what we actually do but 19 there -- it's not written down. So our 20 sanitarians -- for example, our sanitarians do 21 inspections but there is no written rule that says 22 you walk in the door, you say hello, you show your 23 ID, and then you wash your hands, and then you take a 24 temperature.</p>
<p style="text-align: right;">Page 82</p> <p>1 A. No. 2 Q. Does the Health Department have any 3 unwritten rules about the GPS requirement? 4 MR. WORSECK: Objection, vague. 5 BY THE WITNESS: 6 A. No. However, we don't have the GPS data 7 or GPS provider data information, so we don't know 8 who the provider is. So it is not information that 9 we readily have access to. 10 So it hasn't been a need to make any of 11 those policies or procedures with regard to how and 12 who because that's not something that we readily have 13 access to. 14 BY MR. FROMMER: 15 Q. But what I meant specifically is has the 16 Department developed any unwritten rules regarding 17 access or usage of GPS data? 18 MR. WORSECK: Objection, asked and answered. 19 BY THE WITNESS: 20 A. No. 21 BY MR. FROMMER: 22 Q. Okay. Does the Health Department have 23 any working business rules about requesting or 24 accessing GPS data?</p>	<p style="text-align: right;">Page 84</p> <p>1 We don't have that. So I think that 2 is -- what I determine it to be is the practice that 3 we use even if it is not written. 4 Q. Well, thank you. 5 So you said that the Health Department is 6 planning to draft written guidelines concerning the 7 access and usage of GPS data? 8 A. Yes. 9 Q. And are you planning on drafting these 10 written guidelines within the next year? 11 A. Yes. 12 Q. Does the Health Department have a target 13 date for when it will complete these written 14 guidelines? 15 A. No. 16 Q. Is the Department planning on changing 17 its GPS policies in the next year? 18 MR. WORSECK: Objection, vague. 19 BY THE WITNESS: 20 A. We don't have any policies by which we 21 would be changing, so this would all be new 22 processes. 23 BY MR. FROMMER: 24 Q. Do you know what impact, if any, this</p>



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<p style="text-align: right;">Page 86</p> <p>1 lawsuit has had on the Health Department's plans to 2 draft written guidelines concerning access and use of 3 GPS data? 4 MR. WORSECK: Objection to the extent the 5 question calls for the witness to divulge attorney- 6 client or other privileged information, and I would 7 instruct her not to answer to the extent that it 8 does, so.... 9 BY MR. FROMMER: 10 Q. Do you have an answer? 11 A. What was the question? I'm sorry. 12 Q. Do you know what impact, if any, this 13 lawsuit has had on the Health Department's plan to 14 draft written guidelines regarding the access and use 15 of GPS data? 16 MR. WORSECK: Same objection. 17 BY THE WITNESS: 18 A. I don't think that it has had any impact 19 on our desire to draft the process. So at the point 20 where we passed the rules and regulations, I'm kind 21 of -- I don't want to say -- the gatekeeper, but I 22 said, you know, we need to figure out if we need to 23 use GPA data, how we're going to do that. 24 And I began the process of putting</p>	<p style="text-align: right;">Page 87</p> <p>1 information that we have. 2 Q. Okay. So the -- to make sure I 3 understand then, so the Health Department is drafting 4 written guidelines about when and how to pull GPS 5 data and it is drafting those written guidelines by 6 itself? 7 A. We are drafting guidelines about when and 8 how we will get the information from BACP. Because 9 our portion of this process would stop at someone 10 from our department needs to contact someone at BACP 11 to obtain that information. 12 Q. Okay. So if other departments other than 13 Health want to access and use GPS data for other 14 purposes, that would not be -- they would not follow 15 the Health Department's draft written guidelines -- 16 or the written guidelines that you are drafting, is 17 that correct? 18 MR. WORSECK: Objection, calls for speculation. 19 BY THE WITNESS: 20 A. It would be applicable to Health 21 Department. 22 BY MR. FROMMER: 23 Q. So other departments would not use the 24 Health Department's written guidelines, is that</p>
<p style="text-align: right;">Page 86</p> <p>1 together those processes and procedures. 2 BY MR. FROMMER: 3 Q. Has this lawsuit had any impact on the 4 timing of when the Health Department intends to 5 complete its written guidelines regarding the access 6 and use of GPS data? 7 MR. WORSECK: Same objection. 8 BY THE WITNESS: 9 A. I don't think so. 10 BY MR. FROMMER: 11 Q. Has anyone at the Health Department said 12 that this lawsuit should affect the timetable by 13 which the Health Department completes written 14 guidelines about the access and use of GPS data? 15 MR. WORSECK: Same objection. 16 BY THE WITNESS: 17 A. No. 18 BY MR. FROMMER: 19 Q. And I believe you said before that the 20 Health Department is coordinating with other 21 departments about written guidelines concerning the 22 access and use of GPS data, is that right? 23 A. I said that we would have to coordinate 24 with BACP to obtain the data because that is not</p>	<p style="text-align: right;">Page 88</p> <p>1 correct? 2 MR. WORSECK: Same objection. 3 BY THE WITNESS: 4 A. Yes. 5 BY MR. FROMMER: 6 Q. What guidelines would those other 7 departments use? 8 A. They would have to draft their own. 9 Q. Were you aware that BACP is developing a 10 new protocol concerning the access and use of GPS 11 data for its own use? 12 A. No. 13 Q. Do you know how the idea of requiring 14 mobile food vehicles to be equipped with GPS tracking 15 devices first came up? 16 MR. WORSECK: Objection to the extent it calls 17 for testimony about the legislative process leading 18 to the 2012 ordinance, internal deliberations and the 19 like. 20 The judge has ruled that those are out of 21 bounds for the lawsuit, and I would instruct the 22 witness not to answer to the extent that her answer 23 would intrude into those matters. 24 MR. FROMMER: Drew, I'm able to ask questions</p>



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1 not only about topics that might be directly relevant
2 to the lawsuit, but might lead to the discovery of
3 other relevant evidence.
4 The fact that it might be irrelevant
5 itself does not mean it will not lead to the
6 discovery of admissible evidence. And relevance is
7 not a proper objection to prevent the answering of
8 the question.
9 So I ask again to the witness --
10 MR. WORSECK: Rob, I'm going to step in here.
11 You made those exact same arguments to the judge when
12 we argued this issue in front of him the last time,
13 and he rejected those.
14 And I'm going to instruct the witness not
15 to answer in accord with my instruction.
16 BY MR. FROMMER:
17 Q. And I'm going to ask again, how did the
18 idea to use the GPS to locate trucks to conduct
19 health inspections first arise?
20 MR. WORSECK: Same objection. Do not answer to
21 the extent your answer would get into matters
22 pertaining to the legislative process or internal
23 deliberative process relating to the ordinance.
24 But if you can otherwise answer, you can

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1 answer.
2 BY THE WITNESS:
3 A. My lawyer has instructed me not to
4 answer.
5 BY MR. FROMMER:
6 Q. Was the Department of Health involved in
7 any discussions regarding the use of GPS -- the GPS
8 tracker requirement?
9 MR. WORSECK: Same objection.
10 BY THE WITNESS:
11 A. Yes, the Health Department was involved.
12 BY MR. FROMMER:
13 Q. Was the Health Department consulted
14 regarding the GPS tracking requirement?
15 MR. WORSECK: Same objection.
16 BY THE WITNESS:
17 A. I don't know the difference between
18 involved and consulted.
19 BY MR. FROMMER:
20 Q. Were Health Department officials merely
21 present at meetings or were they asked for their
22 input about the GPS tracking requirement?
23 MR. WORSECK: Same objection.
24 BY THE WITNESS:

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1 A. I don't know the answer to that question.
2 BY MR. FROMMER:
3 Q. Were you involved in any discussions
4 about the GPS tracking requirement?
5 MR. WORSECK: Same objection.
6 BY THE WITNESS:
7 A. As it involves the ordinance or the rules
8 and regulations?
9 BY MR. FROMMER:
10 Q. Why don't we do both. So first, the
11 ordinance?
12 A. As it is involved in the ordinance, I was
13 not involved. That was passed prior to me coming
14 here. And with regards to the revision of the rules
15 and regulations, I was --
16 MR. WORSECK: (Indicating.)
17 The witness can continue to the extent
18 she does --
19 MR. FROMMER: No, no, no. Come on.
20 MR. WORSECK: I've instructed her not to answer
21 with respect to a certain boundary line.
22 MR. FROMMER: And I'm asking if she was
23 involved in discussions. I was not asking about the
24 substance of those discussions and so, therefore,

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1 your objection has no merit.
2 BY MR. FROMMER:
3 Q. Please answer the question.
4 Were you involved in any discussions
5 regarding the GPS tracking regulations?
6 A. I answered with regard to the ordinance.
7 I was involved in the rules and regulations.
8 Q. Okay. Thank you.
9 Do you know if the City considered other
10 methods besides GPS to locate mobile food vehicles?
11 MR. WORSECK: Same objections.
12 BY THE WITNESS:
13 A. No.
14 BY MR. FROMMER:
15 Q. Have you ever heard anyone in the Health
16 Department question whether the GPS tracking
17 requirement was necessary?
18 MR. WORSECK: Objection, vague.
19 BY MR. FROMMER:
20 Q. Please answer.
21 A. I haven't heard anybody discussing
22 whether it was necessary.
23 Q. Have you heard anyone in the Health
24 Department discuss the GPS tracking requirement at



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<p style="text-align: right;">Page 93</p> <p>1 all?</p> <p>2 A. Ever? Yes.</p> <p>3 Q. What were -- in what instances did those</p> <p>4 conversations arise?</p> <p>5 MR. WORSECK: Same objections with respect to</p> <p>6 internal deliberative processes or attorney-client</p> <p>7 privilege.</p> <p>8 And I would instruct the witness not to</p> <p>9 answer to that extent.</p> <p>10 MR. GALL: Within that privilege -- I mean,</p> <p>11 this is actually a clarifying question.</p> <p>12 Do you include within the scope of that</p> <p>13 privilege any discussions that occurred after the</p> <p>14 enactment of regulations? Because that's clearly not</p> <p>15 a deliberative process.</p> <p>16 MR. WORSECK: If they relate to sort of going</p> <p>17 forward, enforcement, implementation, administration,</p> <p>18 no, I don't object.</p> <p>19 If they were subsequent in time</p> <p>20 conversations about what was previously taking place</p> <p>21 during internal deliberations, then yes, that would</p> <p>22 still be part of that protected matter.</p> <p>23 MR. GALL: The discussions that occurred</p> <p>24 afterwards about going forward, you would say that</p>	<p style="text-align: right;">Page 95</p> <p>1 criticized the GPS tracking requirement?</p> <p>2 MR. WORSECK: Objection, vague.</p> <p>3 BY THE WITNESS:</p> <p>4 A. No.</p> <p>5 BY MR. FROMMER:</p> <p>6 Q. Are there other methods the Health</p> <p>7 Department could use other than GPS tracking to find</p> <p>8 mobile food vehicles?</p> <p>9 A. We do use other methods now. They have</p> <p>10 proven not to be very effective. We have used</p> <p>11 Twitter. We found that people don't always tweet</p> <p>12 accurately. We've used like logs at the commissary.</p> <p>13 We've gone to commissaries and inspected and found</p> <p>14 that the logs were sometimes undiscernible.</p> <p>15 I mean, there was a logbook and there was</p> <p>16 stuff there, but we couldn't figure out who had been</p> <p>17 there or who hadn't. Or at minimum, they weren't</p> <p>18 always accurate.</p> <p>19 Q. Has the Health Department ever considered</p> <p>20 requiring trucks to report their itinerary?</p> <p>21 A. That was a consideration, and nothing has</p> <p>22 come of it.</p> <p>23 Q. Why not?</p> <p>24 A. I don't know. I think, though, having --</p>
<p style="text-align: right;">Page 94</p> <p>1 those are not protected by privilege?</p> <p>2 MR. WORSECK: No, not to the extent they were</p> <p>3 about administration, enforcement, how do we apply</p> <p>4 this going forward. Subject, of course, to</p> <p>5 attorney-client privilege. That could still apply</p> <p>6 there.</p> <p>7 But the internal policy formulation</p> <p>8 privilege, that's not our position.</p> <p>9 MR. GALL: Okay. I just wanted a</p> <p>10 clarification.</p> <p>11 BY MR. FROMMER:</p> <p>12 Q. So have you ever heard anyone in the</p> <p>13 Health Department talk about the GPS tracking</p> <p>14 requirement, generally?</p> <p>15 A. Since we have made the changes in the</p> <p>16 rules and regulations -- whenever there are changes</p> <p>17 in the ordinance or rules and regulations, I'm</p> <p>18 responsible for training our entire staff, as well as</p> <p>19 informing my superiors appropriately as to how we are</p> <p>20 going to proceed.</p> <p>21 So in that method, yes, afterwards, we</p> <p>22 figure out how we are going to inspect, what does</p> <p>23 that mean for us, what is the impact.</p> <p>24 Q. Has anyone at the Health Department</p>	<p style="text-align: right;">Page 96</p> <p>1 relying on a human to make a log or tell someone</p> <p>2 where they are going to go is very difficult because</p> <p>3 they may change their mind midway.</p> <p>4 So, for example, University of Chicago</p> <p>5 has a food truck row, but if they get there and all</p> <p>6 the food truck stands are taken, then they can't be</p> <p>7 there. So they have to make another decision.</p> <p>8 "Where am I going to go next?"</p> <p>9 Q. Does the Health Department have the phone</p> <p>10 numbers of food trucks?</p> <p>11 A. We do have the phone numbers of food</p> <p>12 trucks. We often call them, and they don't always</p> <p>13 answer. The phone numbers are not always accurate.</p> <p>14 Q. How does the Health Department</p> <p>15 investigate caterers?</p> <p>16 A. We inspect caterers at their catering</p> <p>17 sites, so at their brick and mortar location. We do</p> <p>18 not inspect caterers at the site of the wedding or</p> <p>19 whatever the event is.</p> <p>20 So we make sure that they are properly</p> <p>21 preparing their food on site and that they have the</p> <p>22 proper equipment for transporting the food at the</p> <p>23 proper temperature. The only time we will inspect a</p> <p>24 caterer at the location is if there has been some</p>

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<p style="text-align: right;">Page 97</p> <p>1 reason for us to do so.</p> <p>2 Q. And in those instances -- what do you</p> <p>3 mean by "if there's some reason for us to do so"?</p> <p>4 A. We have gotten a complaint about how food</p> <p>5 has been delivered, et cetera, and then we would also</p> <p>6 have to know where the caterer was going and that's a</p> <p>7 difficulty as well.</p> <p>8 So with the caterers, we focus our</p> <p>9 efforts at their brick and mortar location.</p> <p>10 Q. So is the Health Department considering</p> <p>11 requiring caterers to be equipped with GPS tracking</p> <p>12 devices?</p> <p>13 A. No.</p> <p>14 Q. Why not?</p> <p>15 A. When caterers are delivering food, the</p> <p>16 food should be contained and it is not being cooked</p> <p>17 and it is not being hot held. It is usually a drive</p> <p>18 from Point A to Point B, very similar to pizza</p> <p>19 delivery. We don't inspect the cars that people get</p> <p>20 their food delivered in. So we liken catering to</p> <p>21 food delivery.</p> <p>22 Whereas a food truck is not that. They</p> <p>23 are out all day, hours at a time, whereas a cater is</p> <p>24 we went from Point A to Point B. Maybe Point C if</p>	<p style="text-align: right;">Page 99</p> <p>1 inspections of the mobile food vehicle at its</p> <p>2 commissary?</p> <p>3 A. So at the commissary, I don't know if you</p> <p>4 can visualize, that there are multiple trucks</p> <p>5 licensed to a single commissary. They are going</p> <p>6 there usually in the morning, and it is chaotic. We</p> <p>7 are in the way. We are ineffective if we inspect</p> <p>8 them at the commissary.</p> <p>9 The one time that we do inspect at the</p> <p>10 commissary is when we inspect the paletorias, and</p> <p>11 that is because they're push carts so we can do it in</p> <p>12 a little bit more organized manner. But if we have</p> <p>13 20 trucks trying to get serviced, water in, water</p> <p>14 out, food on, prepare, it's not effective.</p> <p>15 Q. It's --</p> <p>16 A. Our inspection is not effective because</p> <p>17 they are busy trying to do their business, and we are</p> <p>18 in the way.</p> <p>19 Q. When you inspect a truck in the field,</p> <p>20 isn't it busy trying to do its business?</p> <p>21 A. Yes. But when we are at the commissary,</p> <p>22 we have affected 20 trucks' businesses and not just</p> <p>23 the one that we are inspecting. So at the</p> <p>24 commissary, they are lined up. I don't know if you</p>
<p style="text-align: right;">Page 98</p> <p>1 there's two stops, but it's a very short amount of</p> <p>2 time.</p> <p>3 Q. Do the caterers have to -- when they take</p> <p>4 food to the catering site, do they have to maintain</p> <p>5 that at a certain temperature?</p> <p>6 A. Yes.</p> <p>7 Q. And how do you ensure that they actually</p> <p>8 do maintain it at that temperature?</p> <p>9 A. Absolutely. So when we are inspecting,</p> <p>10 we make sure that they have the equipment necessary</p> <p>11 to maintain the temperatures. So they might have</p> <p>12 Cambro's which hold things hot. They might have</p> <p>13 coolers that hold things cold.</p> <p>14 So if they have all of the things</p> <p>15 necessary and they're going usually short distances,</p> <p>16 usually caterers are not going extreme three-,</p> <p>17 four-hour distances, short distances, then those</p> <p>18 things usually keep the temperature appropriate.</p> <p>19 Q. So has the Health Department used GPS</p> <p>20 data to locate trucks to inspect them for potential</p> <p>21 health food violations?</p> <p>22 A. No.</p> <p>23 Q. If a mobile food vehicle is required to</p> <p>24 go to its commissary every day, why not conduct</p>	<p style="text-align: right;">Page 100</p> <p>1 can imagine 20 trucks being lined up.</p> <p>2 And they're all waiting to get under the</p> <p>3 cover so that they can get water in and water out and</p> <p>4 it is a very short restricted amount of time.</p> <p>5 So we are in the way and ineffective, and</p> <p>6 it makes it very difficult for us to do our jobs</p> <p>7 because the operators are not very cooperative</p> <p>8 because we are in their way.</p> <p>9 When they are in the field, it is one</p> <p>10 person -- usually, one person in the truck and they</p> <p>11 are just cooking. We are able to take a temperature</p> <p>12 here (indicating) while they are cooking over here</p> <p>13 (indicating).</p> <p>14 And then we can change places with them.</p> <p>15 They are doing one thing and we can do another thing</p> <p>16 and be in the same place.</p> <p>17 Q. Couldn't you simply allow the mobile food</p> <p>18 vehicle at the commissary to exit the queue and then</p> <p>19 inspect it on the right-of-way immediately outside</p> <p>20 the commissary?</p> <p>21 A. In some places, that's possible. In</p> <p>22 other places, it's not. Every commissary is not the</p> <p>23 same.</p> <p>24 Q. If you had a truck, a mobile food vehicle</p>



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<p style="text-align: right;">Page 101</p> <p>1 that you wanted to inspect and it was at the 2 commissary, couldn't the Health Department, the 3 sanitarian, simply order the truck to stay at the 4 commissary until — and allow the other vehicles to 5 leave and then do the inspection? 6 A. We could order anything. I mean, we 7 could say, "You must stay here and get inspected." 8 And because they have a license, they have agreed to 9 comply because they have a license. 10 However, it does not create — it creates 11 kind of the feeling of the gestapo and that's not 12 what we are trying to do. We are trying to inspect 13 them, we are trying to get them to comply, we're 14 trying to educate. We want to see how they operate 15 but we don't want to be in the way. 16 So I think there is a balance when you 17 are a sanitarian because if you create an adversarial 18 relationship, then you don't get the answers when we 19 ask our open-ended questions. How do you make your 20 chicken? We don't get the answers. How do you do 21 this? Because with a mobile food, you have to ask 22 those questions and they have to tell you. 23 Otherwise, you don't know. 24 "How do you get the clean water in?"</p>	<p style="text-align: right;">Page 103</p> <p>1 sanitarian to inspect the truck in the field? 2 A. We do, on occasion, inspect the truck in 3 the field, and it's not adversarial. We conduct the 4 inspection. We try to be as much out of the way as 5 we can. We are not trying to hinder their ability to 6 do their job and their business. 7 We want them to be there, we want them to 8 be open, and we want them to be operating. At the 9 same time, we want them to provide a safe food 10 product to the public. 11 Q. Okay. Let's turn back to Exhibit 2 which 12 is the series of summary reports and inspection 13 reports. 14 <u>How did the City locate the three mobile</u> 15 <u>food vehicles named in these reports?</u> 16 <u>A. Either by -- social media. Either by</u> 17 <u>Facebook or by Twitter.</u> 18 Q. Were there any problems in finding the 19 trucks? 20 A. Yes. Patty Wagon, I know that it took us 21 two attempts before we found them, where they were. 22 The other two, I'm not sure. But I do know Patty 23 Wagon was a difficult one to find. 24 Q. And why was that?</p>
<p style="text-align: right;">Page 102</p> <p>1 "Oh, they have a hose. We connect it here." "How do 2 you get the dirty water out?" "Here is where we... 3 and this is how we do it." 4 If we create a situation where they feel 5 that we are being adversarial, they don't answer 6 those questions. 7 Q. Does requiring a mobile food vehicle to 8 have a GPS tracking device that reports its location 9 information to the City, wouldn't that create an 10 adversarial relationship? 11 MR. WORSECK: Objection, calls for speculation. 12 BY THE WITNESS: 13 A. If they have a GPS and it's on and it's 14 doing what it's supposed to be doing, then it's just 15 part of their daily routine. I wouldn't say that 16 that was adversarial because there's nobody there 17 asking them to do anything except turn it on. 18 If we need the information, then that 19 would be us asking BACP how to get the information 20 and then getting that information from the provider. 21 So I don't know necessarily that it would be 22 adversarial. 23 BY MR. FROMMER: 24 Q. Wouldn't it create tension for the</p>	<p style="text-align: right;">Page 104</p> <p>1 A. Because where he had tweeted he was going 2 to be, he wasn't there twice when we went to find 3 him. 4 Q. Did the sanitarian attempt to call the 5 Patty Wagon? 6 A. Yes. I don't remember how many times the 7 sanitarian called, but I do know the first time, 8 there was no response and a voicemail message was 9 left. 10 Q. So when did the Health Department decide 11 to inspect these trucks? 12 A. I'm sorry. I don't understand the 13 question. 14 Q. For the three trucks that we are talking 15 about here, when did the City decide to inspect those 16 trucks? 17 A. I can answer what I think you're asking 18 me. So when we get a complaint, we look at it. 19 Patrick is our complaints manager. He'll look at it, 20 determine that it is a truck that needs to be 21 inspected. 22 This particular one about not reporting 23 back to the commissary was one that we had to discuss 24 because that was the first time we had gotten that</p>



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1 complaint, and we needed to know whether it was
2 valid.
3 So we decided to inspect the commissary,
4 specifically to look at the log first, to determine
5 if, indeed, there was something. When we got there
6 to look at the log, we noticed that the log wasn't
7 something that we could determine whether that truck
8 had been there or not.
9 It wasn't very good at that point. Much
10 better now, but it wasn't good at that point. So
11 then we had to go and find them to determine what
12 their process was and ask them, what's their process?
13 What have you been doing? Have you been going back
14 to the commissary?
15 Q. I understand.
16 So once the Food Protection looked at the
17 summary reports and looked at the complaints in the
18 summary reports, that was when it made a
19 determination that it needed to inspect the mobile
20 food vehicles, is that correct?
21 A. When we get a complaint and we look at
22 the service requests and we look at what the
23 complaint is -- the nature of the complaint, then we
24 make a determination on whether we want to inspect

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1 the truck in the field, at the commissary, or where
2 we're going to inspect the truck based on the nature
3 of the complaint.
4 Q. Now, I'd like to direct you to the dates
5 listed on the three summary reports, Service Request
6 Summary Reports, the "Created Dates." So let's take
7 these one at a time. Let's talk about 5411 -- it
8 says "Entanadas," but I'm assuming that's Empanadas.
9 So what date was this Service Request
10 Summary Report created?
11 A. October 18th.
12 Q. And when was the truck inspected?
13 A. October 25th.
14 Q. That's a one-week interval, correct?
15 A. That meets our service requirements. We
16 say we will inspect within seven days.
17 Q. Okay. And then for Chicago Lunchbox, the
18 service request "Created Date"?
19 A. Is August 5th.
20 Q. And then the "Inspection Date"?
21 A. August 21st.
22 Q. Why was there over a two-week interval
23 between the request and the inspection?
24 A. This one was -- when we found out that

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1 there were five individuals that were ill, that
2 concerned us, so we referred it to our Communicable
3 Disease Department.
4 They did a three-day history, and they
5 sent us to another location because that other
6 location was more likely the cause of the foodborne
7 illness.
8 Q. Did the City inspect mobile food vehicles
9 in response to complaints before the GPS requirement?
10 A. The GPS requirement came when we had the
11 mobile food preparers. We had mobile food dispensers
12 before that, and we inspected them at the license
13 renewal.
14 Q. If there is a complaint about a mobile
15 food dispenser about a public health -- a potential
16 public health violation by a mobile food dispenser,
17 would the City inspect those mobile food dispensers?
18 A. The mobile food -- I'm not aware of any
19 mobile food dispenser complaints that occurred prior
20 to 2012.
21 Q. Why aren't you aware of those?
22 A. Because I wasn't here. I wasn't employed
23 at the City of Chicago before 2012.
24 Q. And does --

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1 MR. FROMMER: All right. Let's take a
2 five-minute break.
3 (WHEREUPON, a recess was had.)
4 MR. WORSECK: For the record, we are coming
5 back from a 23-minute break, and Defendant's parties
6 have been here for at least the last 10 to 15
7 minutes.
8 BY MR. FROMMER:
9 Q. Okay. So when -- with regards to the
10 Patty Wagon, when the sanitation official -- what was
11 the title for the inspectors again?
12 A. Sanitarian.
13 Q. Say it again?
14 A. Sanitarian.
15 Q. Okay. So when the sanitarian missed the
16 Patty Wagon, did it -- did the sanitarian check
17 social media again to see if the Patty Wagon had
18 tweeted out a new location?
19 A. The sanitarian actually wasn't the one
20 that checked social media in the first place. It was
21 our chief sanitarian. And when the sanitarian
22 arrived and the truck was not there, the chief
23 sanitarian checked social media again and there
24 wasn't an updated location.



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<p style="text-align: right;">Page 109</p> <p>1 Q. Why not have the sanitarian, the person 2 who's actually out in the field looking for the 3 truck, be the one who checks social media to 4 determine where that truck is? 5 A. Our sanitarians are in a union. They 6 have very specific job descriptions, and they gave us 7 resistance to using social media on their own 8 personal cell phones to conduct work-related 9 business. 10 Q. So after the sanitarian got to the 11 location and saw that the Patty Wagon wasn't there, 12 what was the time lag? How long did it take the 13 sanitarian to call the chief sanitarian and tell him 14 about the situation? 15 A. Minutes. 16 Q. And did the chief sanitarian then 17 immediately go on to social media to determine if -- 18 to try to find the Patty Wagon? 19 A. To the best of my knowledge, yes. And 20 then we had an immediate conversation after that. So 21 it was a very short time frame. 22 Q. And explain to me again what the chief 23 sanitarian's review of social media uncovered? 24 A. I don't remember the exact location of</p>	<p style="text-align: right;">Page 111</p> <p>1 A. Yes. 2 Q. You said before that the Health 3 Department, basically, has power to order the mobile 4 food vehicles to do whatever the Health Department 5 deems necessary to fulfill its public health 6 functions. Is that accurate? 7 A. Yes. 8 Q. Okay. So could Health Department order 9 the operator of the mobile food vehicle, by that I 10 mean the person who's actually on the truck, to have 11 a cell phone with them and to respond to any calls 12 upon that cell phone? 13 A. Yes. However, the difficulty with that 14 is during busy times, restaurants as a rule don't 15 answer their phone. I don't know if you ever tried 16 to call a restaurant at lunch time? They don't have 17 anyone there that can answer the phone. 18 So I don't think that having a phone 19 there and requiring them to answer it, still puts in 20 that human aspect that I don't think that would be 21 effective. 22 Q. Could you require trucks to update their 23 location on social media once they have actually 24 parked at a location? So that, for instance -- let's</p>
<p style="text-align: right;">Page 110</p> <p>1 where the tweet said that the truck was going to be, 2 but they tweet things like, "hey, we got fresh 3 whatever and we are going to be here." And we sent 4 the sanitarian to whatever that location was. 5 Q. Once the chief sanitarian went on social 6 media, read the tweet, and then -- from the time the 7 chief sanitarian read the tweet, how long did it take 8 for the sanitarian who's actually supposed to be 9 doing the inspection to reach that location? 10 A. Minutes. Because the sanitarians don't 11 come into the office. They are assigned 12 territorially and so we sent the person who was 13 assigned to that territory. 14 Q. And by "minutes," do you have a more 15 precise -- 16 A. I don't. I would say their territory, 17 notwithstanding traffic, is five miles. So they're 18 always within five miles of any place. So we are 19 going to send the sanitarian closest to that truck's 20 location. 21 Q. So you have no idea of -- 22 A. Exact times, no. 23 Q. You're just estimating that it was some 24 amount of minutes?</p>	<p style="text-align: right;">Page 112</p> <p>1 say the Patty Wagon. The Patty Wagon pulls up to 2 let's just go 125 South Clark. And it pulls up, it 3 parks at the location. It's now at a specific spot. 4 Could you then order it, at that point 5 you need to tweet out precisely where you are? 6 A. We could ask that or order that. When 7 we -- so, for example, we talked earlier about a log, 8 that the commissary operators are supposed to keep a 9 log. And the log is supposed to keep track of when 10 the food trucks come back there. 11 The logs that we have seen, at best, 12 barely discernible. Barely could we see the date, 13 which trucks had been there, and what happened when 14 they got there. So if we asked them to tweet, we are 15 adding in another human aspect, and I'm not sure that 16 that would be effective. 17 Q. If you ordered them to put in their 18 location information after being -- once they arrive 19 at a specific location and they failed to do that, 20 could you fine them? 21 A. If it was a -- if it was in the ordinance 22 or in the rules and regulations, then -- and it was 23 a -- noted as a fineable offense, then we would have 24 the ability to fine.</p>

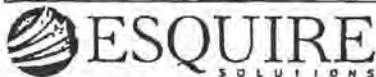


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<p style="text-align: right;">Page 113</p> <p>1 Q. Wouldn't the fact that you could fine 2 them or suspend their license give mobile food 3 vehicles an incentive to follow those orders? 4 MR. WORSECK: Objection to the extent it calls 5 for speculation. 6 BY THE WITNESS: 7 A. We, on average, write \$2.7 million worth 8 of citations. So I would say that I couldn't say 9 that — for sure that anybody would do anything just 10 because it is in the ordinance or in the rules and 11 regulations. People don't follow, you know, things 12 all the time. 13 BY MR. FROMMER: 14 Q. Couldn't you then just increase the fines 15 or the penalties for noncompliance until you get the 16 requisite level of compliance? 17 MR. WORSECK: Objection, calls for speculation. 18 BY THE WITNESS: 19 A. Our current procedure is if a violation 20 exists, for however long it exists and we conduct an 21 inspection, we write citations. So if we go one time 22 and the violation is there, we write a citation if it 23 is a citable violation. 24 If we go back, that violation still</p>	<p style="text-align: right;">Page 115</p> <p>1 immediate problem. They get reopened. 2 Does that mean that every time now that 3 they go to the commissary that they are going to make 4 sure that they put in the clean water and that their 5 water is running? I don't know. 6 And I don't know if giving that fine, no 7 matter if that fine is \$500 or \$10,000, if that is 8 going to make them operate correctly the next time. 9 Q. You said earlier that the Health 10 Department has to go through BACP for access to GPS 11 data currently, is that right? 12 A. It would have to go through BACP to get 13 access to the provider information. 14 Q. And, again, why doesn't the Health 15 Department have that itself? 16 A. So we get — BACP is the place that 17 issues the licenses. So we get notification upon a 18 person applying for a license, they have paid their 19 fee. They have seemingly done everything that is 20 appropriate for them to do to comply. And then the 21 Health Department gets notification to conduct an 22 inspection. 23 When we get that notification, we put the 24 inspection information into our software system,</p>
<p style="text-align: right;">Page 114</p> <p>1 exists? It increases from \$250 to \$500 depending on 2 the type of violation. And in some cases, violations 3 continue on until their license is suspended. 4 Q. So would raising those penalties help 5 insure better compliance with the Health Department 6 rules? 7 MR. WORSECK: Objection, speculation. 8 BY THE WITNESS: 9 A. I can't say. 10 BY MR. FROMMER: 11 Q. What would be required for you to be able 12 to say? 13 A. I don't know if there is an amount that 14 would prevent people from committing violations. I 15 mean, people — just in general, people violate the 16 law. We know that. 17 So I don't know if a fine would deter 18 someone from violating the law. 19 Q. What about suspending their license? 20 A. When we suspend a license, generally what 21 happens is they comply with whatever the violation is 22 in order to get reopen. So, for example, we 23 suspended a license of a food truck for not having 24 water. They put the water in. They fixed the</p>	<p style="text-align: right;">Page 116</p> <p>1 which is an inspection software system. Our 2 inspection software system is not connected with 3 BACP's licensing system. 4 Q. Well, is there any plans to have the 5 Health Department be able to have direct access to 6 the GPS service providers? 7 A. No. 8 Q. So every time, even in the future, that 9 the Health Department wants to access GPS data to 10 conduct a health inspection, it's going to have to 11 call over to BACP, talk to a BACP official, get that 12 BACP official to contact the provider, have the 13 provider send the GPS location information to that 14 BACP official, then the BACP official gives it to the 15 Health Department. 16 Then the Health Department chief 17 sanitarian gives it to the sanitarian, and then they 18 can go inspect the truck? 19 MR. WORSECK: Objection, speculation, and 20 mischaracterizes testimony. 21 BY THE WITNESS: 22 A. I can't say what that protocol will look 23 like or if in the future, there is a way for us to 24 determine how Health could get access to the</p>



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<p style="text-align: right;">Page 117</p> <p>1 information or get it faster. I can't say. 2 BY MR. FROMMER: 3 Q. How long would that entire process that I 4 just described take? 5 A. Hour. 6 Q. How long can a truck operate in one 7 location? 8 A. Two hours. 9 Q. And so you said with the Patty Wagon, 10 that it had tweeted a location but by the time the 11 sanitarian got there, the truck was gone. 12 Could it be possible that Patty Wagon 13 wasn't there because it reached the end of its 14 two-hour window and it left before your sanitarian 15 arrived? 16 MR. WORSECK: Objection, calls for speculation 17 and mischaracterizes testimony. 18 BY THE WITNESS: 19 A. I can't say how long the truck had been 20 there prior to or if they had reached their two-hour 21 limit. 22 BY MR. FROMMER: 23 Q. Isn't it possible that they were there 24 but your guys just missed them?</p>	<p style="text-align: right;">Page 119</p> <p>1 historical data which may be useful in a trace back 2 when we are investigating foodborne illness. 3 Q. Would the delay between the time you 4 first realize that you need this data and the time 5 you actually receive it undermine your ability to 6 conduct inspections of trucks in the field? 7 MR. WORSECK: Objection, speculation. 8 BY THE WITNESS: 9 A. Can you ask the question again? 10 BY MR. FROMMER: 11 Q. You said it could take an hour for the 12 entire process by which the request begins until the 13 time the sanitarian actually has the GPS data. 14 Doesn't that delay undermine the ability 15 of Health Department officials to actually inspect 16 trucks in the field? 17 MR. WORSECK: Objection, speculation and 18 incomplete hypothetical. 19 BY THE WITNESS: 20 A. I think that any method is going to take 21 time, no matter if we're looking at social media or 22 if we're looking at GPS and going through a process 23 of getting GPS data. Any method is going to take 24 time.</p>
<p style="text-align: right;">Page 118</p> <p>1 MR. WORSECK: Same objection. 2 BY THE WITNESS: 3 A. Sure. 4 BY MR. FROMMER: 5 Q. You just said a second ago that you felt 6 that the entire process I mentioned where the Health 7 Department official would call BACP, BACP would call 8 the GPS service provider, and the information comes 9 back to BACP and Health, it could take an hour. 10 So wouldn't you have the exact same 11 problem with GPS where you call -- you call BACP, 12 BACP calls the provider, the provider provides the 13 information back to BACP, it goes to the chief 14 sanitarian, it goes to the sanitarian, and then by 15 the time the sanitarian actually gets to that 16 location, the truck is gone? 17 A. Yes. 18 MR. WORSECK: Objection, calls for speculation. 19 THE WITNESS: I'm sorry. 20 BY MR. FROMMER: 21 Q. You said "yes"? 22 A. Yes. However, if we are trying to 23 investigate foodborne illness and we want to know 24 where the truck has been, then it would give us</p>	<p style="text-align: right;">Page 120</p> <p>1 It is a -- it's not a brick and mortar. 2 We know where brick and mortars are. We can find 3 them. If it is a McDonald's, the McDonald's is 4 always there. There's going to be a delay in finding 5 any mobile moving vehicle at any point. 6 And I said an hour, not knowing exactly 7 how long it takes to get that information. But 8 there's going to be a delay. 9 BY MR. FROMMER: 10 Q. <u>Doesn't the GPS requirement also require</u> 11 <u>that the truck turn on the GPS unit?</u> 12 A. I believe so. 13 Q. <u>So aren't you relying on a human there to</u> 14 <u>turn on that GPS unit?</u> 15 A. Yes. 16 Q. <u>So just as somebody could fail to tweet</u> 17 <u>their location or update their location once they</u> 18 <u>reached it, couldn't they similarly fail to turn on</u> 19 <u>their GPS unit?</u> 20 A. Yes. 21 Q. <u>And in that circumstance, doesn't that</u> 22 <u>undermine your entire ability to use the GPS data to</u> 23 <u>actually find that truck?</u> 24 MR. WORSECK: Objection, speculation.</p>

<p style="text-align: right;">Page 121</p> <p>1 argumentative.</p> <p>2 BY THE WITNESS:</p> <p>3 A. If the person doesn't turn on the GPS</p> <p>4 data -- I mean, turn on the GPS unit, then it is</p> <p>5 going to make it impossible for us to find them</p> <p>6 unless we use social media.</p> <p>7 So we will use all of our resources</p> <p>8 available in order to find a truck when there is an</p> <p>9 emergency and it requires us to do an investigation</p> <p>10 in the field.</p> <p>11 BY MR. FROMMER:</p> <p>12 Q. So would you consider the outbreak of a</p> <p>13 foodborne illness to constitute an emergency?</p> <p>14 A. Yes.</p> <p>15 Q. And in any of the service requests in</p> <p>16 Exhibit 2 that we discussed, would you consider any</p> <p>17 of those to constitute an emergency?</p> <p>18 A. When we -- none of these I would consider</p> <p>19 an emergency. We consider a foodborne illness</p> <p>20 outbreak when there are two unrelated people that</p> <p>21 have one food item in common.</p> <p>22 With all of these, I would not say that</p> <p>23 these are foodborne illness outbreaks. They are</p> <p>24 suspect food poisonings, and we would not have</p>	<p style="text-align: right;">Page 123</p> <p>1 reaching out to the provider to get information about</p> <p>2 where the truck is?</p> <p>3 A. Yes.</p> <p>4 Q. And you talked about how that process</p> <p>5 would operate. Do you recall that?</p> <p>6 A. Yes.</p> <p>7 Q. Isn't it fair to say that once that link</p> <p>8 was established so that the GPS provider had been</p> <p>9 identified and they were supplying data relating to</p> <p>10 where the food truck was, that that line of</p> <p>11 communication could be kept open until the sanitarian</p> <p>12 was able to be find where the truck was?</p> <p>13 MR. FROMMER: Objection. You're leading your</p> <p>14 witness again.</p> <p>15 BY MR. WORSECK:</p> <p>16 Q. You can answer.</p> <p>17 A. Yes.</p> <p>18 Q. So even if the truck was moving around</p> <p>19 during this period of time, if everything is</p> <p>20 operating the way the regulations require, real time</p> <p>21 data should be supplied by the truck to the provider</p> <p>22 which then could be immediately passed along to the</p> <p>23 City to locate that truck?</p> <p>24 MR. FROMMER: Objection, leading.</p>
<p style="text-align: right;">Page 122</p> <p>1 considered any of these emergencies -- either of</p> <p>2 these emergencies because the other one was about not</p> <p>3 reporting back to a commissary.</p> <p>4 MR. GALL: Why don't we take what will actually</p> <p>5 be out a five-minute break this time. We have to be</p> <p>6 out of here by 5:45 anyway, we've just been told, so</p> <p>7 it will actually be a five-minute break.</p> <p>8 MR. WORSECK: I think we have a 44-minute break</p> <p>9 we need to go take right now.</p> <p>10 MR. GALL: Sure. We'll just continue the</p> <p>11 deposition down at The Gage.</p> <p>12 (WHEREUPON, a recess was had.)</p> <p>13 MR. FROMMER: Ready to go back on the record?</p> <p>14 Okay. Actually, that was all the questions I had, so</p> <p>15 we thank you very much for coming here and talking</p> <p>16 with us today.</p> <p>17 MR. WORSECK: Just a couple quickies.</p> <p>18 EXAMINATION</p> <p>19 BY MR. WORSECK:</p> <p>20 Q. Ms. Butler, do you remember the line of</p> <p>21 questioning that you were just recently asked about</p> <p>22 establishing a line of communication between --</p> <p>23 starting from Health, reaching out to BACP, then</p> <p>24 getting information about the GPS provider, then</p>	<p style="text-align: right;">Page 124</p> <p>1 BY THE WITNESS:</p> <p>2 A. Yes.</p> <p>3 MR. WORSECK: Nothing further.</p> <p>4 MR. FROMMER: Okay.</p> <p>5 MR. WORSECK: We'll reserve signature.</p> <p>6 MR. FROMMER: We are done. Thank you so much,</p> <p>7 Ms. Butler. We greatly appreciate it.</p> <p>8 THE COURT REPORTER: Can I ask, are you</p> <p>9 ordering the transcript?</p> <p>10 MR. FROMMER: Yes.</p> <p>11 THE COURT REPORTER: Five days? I was told one</p> <p>12 week.</p> <p>13 MR. FROMMER: Five days will be good. That way</p> <p>14 we'll have them all together.</p> <p>15 THE COURT REPORTER: And you wanted the full</p> <p>16 printed transcript?</p> <p>17 MR. FROMMER: I always forget the one.</p> <p>18 Electronic is best.</p> <p>19 THE COURT REPORTER: E-Transcript?</p> <p>20 MR. FROMMER: I think so, yes. Then you can do</p> <p>21 like Minuscript with it and all that.</p> <p>22 THE COURT REPORTER: Yes.</p> <p>23 Sorry, gentlemen. Did you need a copy?</p> <p>24 MR. WORSECK: Yes.</p>

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1 THE COURT REPORTER: And regular delivery or do
2 you want it in five days, also?
3 MR. WORSECK: Whenever they get it, we'll take
4 it.
5 THE COURT REPORTER: And you wanted your
6 version to be electronic?
7 MR. WORSECK: Yeah, E-Tran is fine.
8 THE COURT REPORTER: Okay. Thank you.
9 FURTHER DEPONENT SAITH NOT.
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1 hand of office at Chicago, Illinois, this 14th day of
2 October, 2014.
3
4
5 *V. Linda Boesch*
6
7 Notary Public, DuPage County, Illinois
8 My commission expires 8-14-2017.
9
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11 CSR Certificate No. 84-3108.
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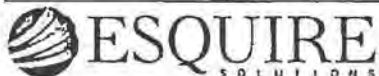
OFFICIAL SEAL
V. LINDA BOESCH
NOTARY PUBLIC, STATE OF ILLINOIS
My Commission Expires 8/14/2017

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1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF DU PAGE)
4 I, V. LINDA BOESCH, a Notary Public within
5 and for the County of DuPage, State of Illinois, and
6 a Certified Shorthand Reporter of said state, do
7 hereby certify:
8 That previous to the commencement of the
9 examination of the witness, the witness was duly
10 sworn to testify the whole truth concerning the
11 matters herein;
12 That the foregoing deposition transcript
13 was reported stenographically by me, was thereafter
14 reduced to typewriting under my personal direction
15 and constitutes a true record of the testimony given
16 and the proceedings had;
17 That the said deposition was taken before
18 me at the time and place specified;
19 That I am not a relative or employee or
20 attorney or counsel, nor a relative or employee of
21 such attorney or counsel for any of the parties
22 hereto, nor interested directly or indirectly in the
23 outcome of this action.
24 IN WITNESS WHEREOF, I do hereunto set my

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DEPOSITION ERRATA SHEET

Job No. Chicago 218113
Burke vs. City of Chicago

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I
have read the entire transcript of my Deposition
taken in the captioned matter or the same has been
read to me, and the same is true and accurate, save
and except for changes and/or corrections, if any, as
indicated by me on the DEPOSITION ERRATA SHEET
hereof, with the understanding that I offer these
changes as if still under oath.

Signed on the 12 day of

NOVEMBER, 2014.

Gerrin Cheek Butler

GERRIN CHEEK BUTLER



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1 DEPOSITION ERRATA SHEET

2 Page No. 97 Line No. 17 Change to: _____

3 Change "not" to "only"

4 Reason for change: incorrect transcription

5 Page No. 97 Line No. 24 Change to: _____

6 Change "we went" to "going"

7 Reason for change: incorrect transcription

8 Page No. _____ Line No. _____ Change to: _____

9 _____

10 Reason for change: _____

11 Page No. _____ Line No. _____ Change to: _____

12 _____

13 Reason for change: _____

14 Page No. _____ Line No. _____ Change to: _____

15 _____

16 Reason for change: _____

17 Page No. _____ Line No. _____ Change to: _____

18 _____

19 Reason for change: _____

20 Page No. _____ Line No. _____ Change to: _____

21 _____

22 Reason for change: _____

23 SIGNATURE: Gerrin Cheek Butler DATE: 11/12/14

24 GERRIN CHEEK BUTLER



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STATE OF ILLINOIS)
) SS:
 COUNTY OF C O O K)

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

LMP SERVICES, INC.,)
 Plaintiff,)
 -vs-) No. 2012 CH 41235
 THE CITY OF CHICAGO, a municipal)
 corporation,)
 Defendant.)

The deposition of EUGENE LORMAN, called for examination, taken pursuant to the provisions of the Code of Civil Procedure and the Rules of the Supreme Court of the State of Illinois pertaining to the taking of depositions for the purpose of discovery, taken before MARY T. MURPHY McGUIRK, a Notary Public within and for the County of Cook, State of Illinois, and a Certified Shorthand Reporter of said state, at 30 North LaSalle Street, 9th Floor, Chicago, Illinois, on December 12, 2014, at 9:00 a.m.

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1 APPEARANCES:

2 INSTITUTE FOR JUSTICE
3 901 North Gleve Road, Suite 901
4 Arlington, Virginia 22203
5 703-682-9320
6 Rfrommer@ij.org
7 BY: MR. ROBERT FROMMER
8 Appeared on behalf of the Plaintiff

9 CITY OF CHICAGO, DEPARTMENT OF LAW
10 Constitutional & Commercial Litigation Division
11 30 North LaSalle Street, Suite 1230
12 Chicago, Illinois 60602
13 312-744-9018
14 david.baron@cityofchicago.org
15 BY: MR. DAVID M. BARON
16 andrew.worseck@cityofchicago.org
17 BY: MR. ANDREW WORSECK
18 Appeared on behalf of the Defendant

19 NOVAK and MACEY, LLP
20 100 North Riverside Plaza
21 Chicago, Illinois 60606-1501
22 312-419-6900
23 aberg@novackmacey.com
24 BY: MR. ALEXANDER L. BERG
Appeared on behalf of the Witness

REPORTED BY: MARY T. MURPHY MCGUIRK, CSR
Certificate No. 84-4160

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1 (The witness was duly sworn.)

2 EUGENE LORMAN,

3 called as a witness herein, having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MR. BARON:

7 Q. Good morning. And your name is?

8 A. Eugene Lorman.

9 Q. Thank you. And what is your address?

10 A. 550 North St. Clair, Unit 1408, Chicago,
11 Illinois.

12 Q. And what's your ZIP code?

13 A. 60611.

14 Q. My name is Dave Baron. I represent the City
15 of Chicago in the pending -- in the lawsuit that is
16 currently happening here.

17 Have you ever been deposed before?

18 A. No.

19 Q. Never have?

20 A. No.

21 Q. Okay. Well, are you aware this lawsuit is
22 about a challenge to the City's ordinance governing food
23 trucks?

24 A. Yes.

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1 Q. In particular, a provision that relates to
2 food trucks that must have -- excuse me -- the ordinance
3 says that food trucks must have a GPS unit on board.
4 Are you aware of that?

5 A. Yes.

6 Q. Because you haven't taken a deposition before,
7 just a little bit of how this is going to go. I'll ask
8 you questions.

9 A. Uh-huh.

10 Q. You provide answers. One thing that we do
11 want to make sure is that your answers are "yes" or
12 "no."

13 A. Okay.

14 Q. That you use words in responding to me.

15 A. Okay.

16 Q. It's difficult to get the uh-huhs and uh-uhs.

17 A. Nodding.

18 Q. Sure. It's difficult to get that on the
19 transcript.

20 A. Okay.

21 Q. The other thing that I would ask is wait until
22 I'm done with a question before providing an answer.

23 A. Like that.

24 Q. Like that, exactly.

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1 And I'm going to do the same for your
2 answers. I'll wait until you finish your answer before
3 I move on with my next question.

4 A. Okay.

5 Q. Same idea, so that it gets down on the
6 transcript accurately.

7 From time to time, your counsel or
8 plaintiff's counsel may make an objection to one of my
9 questions. That doesn't mean that you don't have to
10 answer my question. That doesn't mean that there's
11 anything wrong with my question, but counsel is
12 preserving an objection for whether or not we fight
13 about whether what you say next could be used in court.
14 Okay?

15 A. Okay.

16 Q. And you understand that the oath that you just
17 took is the same as an oath that you would take in a
18 courtroom?

19 A. Yes.

20 Q. And I have to ask you. Are you on any drugs
21 or medication --

22 A. No.

23 Q. -- that would prevent you from accurately or
24 truthfully testifying today?

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1 A. No.

2 Q. Is there any other reason that you would be
3 unable to testify accurately and truthfully today?

4 A. No.

5 Q. And you are aware of the lawsuit, you said
6 previously?

7 A. Yes.

8 Q. Were you aware of the lawsuit before you
9 received the subpoena from the City?

10 A. Yes.

11 Q. And you are appearing today because you've
12 been subpoenaed by the City; is that correct?

13 A. Yes.

14 Q. How did you become familiar with the lawsuit?

15 A. I was told by the Schnitzel King guy, the guy
16 who backed out of the lawsuit.

17 Q. And when was this, that he told you about the
18 lawsuit?

19 A. Oh, jeez. Maybe a year and a half ago.

20 Q. What did he say about the lawsuit?

21 A. He said that him and Laura are filing one with
22 the Institute of Justice and that he needed a GPS to be
23 legit.

24 Q. So this was his effort to reach out to you to

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1 get a GPS --

2 A. Yes.

3 Q. -- unit for his truck?

4 A. Yes.

5 Q. Did you have any other conversations about the
6 lawsuit after that?

7 A. No.

8 Q. Did you ever speak to Ms. Pekarik, the other
9 plaintiff -- the only plaintiff in this lawsuit now?

10 A. No.

11 Q. Are you familiar with the plaintiff,
12 LMP Services, Inc.?

13 A. Yes. I provide their GPS.

14 Q. What do you mean by you provide them GPS?

15 A. I provide them a GPS unit that they use on
16 their food truck.

17 Q. Okay. And do you know the owner of
18 LMP Services?

19 A. No.

20 Q. Do you know Laura Pekarik?

21 A. No.

22 Q. Have you ever communicated with Laura Pekarik?

23 A. Yes.

24 Q. And how have you communicated with Laura

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1 Pekarik?

2 A. Via e-mail and a few phone calls.

3 Q. So you're aware that she is the owner of
4 LMP Services?

5 A. Yes.

6 Q. Is she the only person with LMP Services with
7 whom you've communicated?

8 A. No.

9 Q. Who else with LMP Services have you --

10 A. I believe it's her mother.

11 Q. Her mother?

12 A. Yes.

13 Q. Do you know her mother's name?

14 A. No. I don't remember.

15 Q. What was the context of those communications?

16 A. When I was delivering the GPS, she was on the
17 truck.

18 Q. Okay. And Laura Pekarik was not there?

19 A. No.

20 Q. If I use the term "LMP," that will refer to
21 LMP Services, Inc. Okay?

22 A. Okay.

23 Q. And are you aware that LMP operates two food
24 trucks under the business name of Cupcakes for Courage?

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1 A. Yes.

2 MR. WORSECK: We should establish a time.

3 MR. BARON: Oh, yeah.

4 MR. WORSECK: We had the initial time at
5 9:00 a.m.

6 MR. BARON: That's fine. It's 9:05.

7 MR. BERG: We'll just accept that.

8 MR. BARON: So we'll state for the record that
9 the deposition began at 9 o'clock. But thank you.

10 BY MR. BARON:

11 Q. Mr. Lorman, what did you do to prepare for
12 today?

13 A. I met with Alex yesterday. We went over sort
14 of how depositions work and then his firm ran through
15 all of my communication, sort of e-mails and everything
16 else, and was providing them to the City.

17 Q. What do you mean how depositions work?

18 A. Just the fact that you're going to ask me
19 questions. I have to answer the questions. I have to
20 answer all the questions. He might -- what is the term?
21 Whatever -- object to the question, that type of stuff.

22 Q. Did you talk with anyone else besides your
23 counsel or other counsel from his firm?

24 A. No.

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1 Q. Did you at any point speak with Mr. Frommer?

2 A. Yes.

3 Q. When was that?

4 A. That was a month and a half ago maybe, last
5 time.

6 Q. Was that after -- sorry.

7 A. No. No. A month or month and a half,
8 something.

9 Q. Was that after receiving the subpoena from the
10 City?

11 A. Yes.

12 Q. What was the nature of that communication?

13 A. So last time we met was at the Food Truck
14 Association meeting, and I think the discussion was that
15 he didn't know how it was proceeding with me, if you --
16 like where the whole process was. And he said that "You
17 should probably find a lawyer."

18 Q. And when was this Food Truck Association
19 meeting?

20 A. A month and a half ago, I want to say,
21 something like that.

22 Q. Was this the Illinois Food Truck Owners
23 Association meeting?

24 A. Yes. Yes.

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1 Q. And that's different from the Illinois Food
2 Truck Association meeting, correct? Does that
3 distinction --

4 A. No. That distinction means nothing me.

5 Q. Who is the president of the association with
6 whom -- at the meeting you attended?

7 A. I have no clue.

8 Q. Was it Daniel Herrera?

9 A. He owns the garage, so that might be him. I
10 honestly don't know. I got it through Twitter, through,
11 like, Beaver's Donuts or something, and I just showed
12 up. And I try go to them as a marketing thing as to
13 promote my company, promote my service.

14 Q. Do you do that regularly?

15 A. Whenever they have meetings, which isn't
16 regular.

17 Q. Do you know the owner of Beaver's Donuts?

18 A. Yes.

19 Q. Is he an officer of the association?

20 A. I don't know.

21 Q. Is he a member of the association?

22 A. He was at the meeting. That's all I know.

23 Q. Did you have any other communications with
24 Mr. Frommer?

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1 A. Yes. He called me twice before we met at the
2 meeting, just sort of asking, you know, like, "You were
3 subpoenaed. What's going on?" Like it seemed like he
4 didn't know when anything was happening and just wanted
5 to see if I knew any more than he did.

6 Q. Did you discuss the litigation itself?

7 A. No.

8 Q. Did he provide any recommendations as to who
9 counsel might be?

10 Let me clarify. Did he give you any
11 recommendations as to whom you might retain as counsel?

12 A. Yes.

13 Q. He did?

14 A. I mean, not recommendations. He found -- he
15 found the firm. He's the sort of -- he found the
16 pro bono firm for me.

17 Q. So Mr. Frommer went out and found an attorney
18 for you?

19 A. I guess.

20 Q. And they're representing you on a pro bono
21 basis?

22 A. Yes.

23 Q. Did you have any other communications with
24 anyone else at the Institute for Justice?

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1 A. No.

2 Q. Did you have -- other than --

3 A. Maybe a long time ago.

4 Q. What was the nature of that communication?

5 A. I think that was when they were first passing
6 the -- like, not even passing. Talking about the
7 legalizing food trucks in the city.

8 Q. What do you mean, legalizing food trucks?

9 A. Like, they had -- before they passed this
10 ordinance, the Institute For Justice had, like, a
11 meeting at the U. of C. and they gathered a bunch of --
12 all of the five food trucks that were sort of operating
13 in Chicago, and they did this whole thing on what the
14 Institute for Justice is, blah, blah, blah, blah, blah.

15 And there was some lady there who I think
16 I had some communication with.

17 Q. Was it Beth Kregor?

18 A. Yes. That name rings a bell.

19 Q. Aside from meeting Mr. Frommer at the Food
20 Truck Association meeting and aside from the telephone
21 calls, did you have any other contact with Mr. Frommer?

22 A. No.

23 Q. Was Mr. Frommer present while you prepared for
24 this deposition yesterday?

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1 A. No.

2 Q. How long was that preparation session?

3 A. A half an hour, I would say. No more than
4 that.

5 Q. And did you have any conversations with Laura
6 Pekarik to prepare for this deposition?

7 A. No.

8 Q. Did you have any conversations with anyone
9 else to prepare for this deposition?

10 A. No.

11 Q. Have at any point you been represented by the
12 Institute for Justice as counsel?

13 A. No.

14 Q. Did you review any documents to prepare for
15 today?

16 A. Just the e-mails that were sent to the City,
17 just so I'm familiar with what they are.

18 Q. The materials that were produced?

19 A. Yes, the materials that were produced.

20 Q. What did that consist of?

21 A. I believe all the documentation about CalAmp,
22 so the GPS sort of devices themselves and the few
23 e-mails, like promotional things I sent to the food
24 trucks, and few e-mails with Laura, or with LMP, I

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1 guess.

2 Q. The CalAmp device, is that the type of device
3 that is used by LMP?

4 A. Yes.

5 Q. How many devices does LMP have of yours?

6 A. Two.

7 Q. Are they both the same devices?

8 A. Yes.

9 Q. What's the complete model name of that device?

10 A. It's CalAmp LMU-710.

11 Q. Any other documents that you looked at?

12 A. No.

13 Q. And who were those documents provided by?

14 A. Alex.

15 Q. Your counsel?

16 A. My counsel, yeah.

17 Q. What's your date of birth?

18 A. January 11, 1980.

19 Q. And what's your educational background?

20 A. College at U. of I. in Champaign.

21 Q. What was your degree in?

22 A. Computer science.

23 Q. Do you have any other training in the area of
24 computer science?

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1 A. No.

2 Q. Did you receive any degree after -- is it a
3 bachelor's degree that you got at the U. of I.?

4 A. Yes.

5 Q. Did you get any other --

6 A. No.

7 Q. -- education after that point?

8 A. No.

9 Q. What's your current employment?

10 A. I'm self-employed currently.

11 Q. And what is your title?

12 A. The CEO, I guess.

13 Q. And you are the CEO of?

14 A. Lorman IT Services, Inc., I guess.

15 Q. What is Lorman IT Services?

16 A. Just a company that I can bill people under.

17 Just a way for me to be able to get money in.

18 Q. What do you do?

19 A. I consult mostly for eCommerce companies.

20 Q. Anything else?

21 A. No.

22 Q. What's your relation to TruckSpotting?

23 A. Me and my friend, we started TruckSpotting.

24 Q. And who is your friend?

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1 A. Mike Roytman.

2 Q. Mike Kroytman?

3 A. Roytman, R-o-y-t-m-a-n.

4 Q. Is Mr. Roytman still involved with

5 TruckSpotting?

6 A. No.

7 Q. At what point -- sorry. When did you start

8 TruckSpotting?

9 A. 2011, I want to say, 2012.

10 Q. Do you know about what month?

11 A. April-ish.

12 Q. April of 2011?

13 A. I would say probably, yes.

14 Q. At what point did Mr. Roytman leave his

15 association with TruckSpotting?

16 A. About a year after.

17 Q. Is TruckSpotting a subsidiary of Lorman IT

18 Services, Inc.?

19 A. No. It was set up as a separate entity.

20 Q. It's a separate corporation?

21 A. A separate corporation.

22 Q. Are you the sole owner of TruckSpotting?

23 A. No. I've sold it in the last two months, I

24 want to say.

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1 Q. To whom did you sell it?

2 A. To -- do you want a name or --

3 Q. Yes.

4 A. Mike Lynch, L-y-n-c-h.

5 Q. Is Mr. Lynch now the sole owner of
6 TruckSpotting?

7 A. I honestly don't know if he has any other
8 investors he's divested it into, but -- I guess that's
9 the answer.

10 Q. What role do you now have with respect to
11 TruckSpotting?

12 A. I support. For the next few months, I support
13 the systems just to make sure that he can get it
14 switched over to whatever he's doing.

15 Q. Do you know what he'll be doing with it?

16 A. No clue.

17 Q. Does he -- do you know if he plans to continue
18 providing GPS services for food trucks?

19 A. I think so, yeah.

20 Q. How did you come to know Mr. Lynch?

21 A. We were neighbors.

22 Q. At your home address?

23 A. Yes.

24 Q. And at what point did he become involved with

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1 **TruckSpotting activities?**

2 A. He was always involved. He was the initial
3 investor.

4 Q. So he's always had some ownership stake in the
5 company?

6 A. Yes. He's always had a small stake, and then
7 recently bought the rest.

8 Q. Once your consulting is finished, your
9 consulting with TruckSpotting is finished, will you have
10 any other ties to the company?

11 A. Not to the company, no.

12 Q. Will you retain any sort of ownership
13 interest?

14 A. No.

15 Q. And at this point, you don't have any
16 ownership interest?

17 A. No.

18 Q. But you do provide consulting services to help
19 the transition?

20 A. Yes.

21 Q. Is that what you do?

22 A. Yes.

23 Q. Previous to selling the company to Mr. Lynch,
24 what was your role with respect to TruckSpotting?

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1 A. Everything.

2 Q. What do you mean by that?

3 A. I was the sole sort of proprietor, employee.
4 I do everything, you know, billing, accounting,
5 marketing, the whole nine yards.

6 Q. Were you responsible for the system's design?

7 A. Yes.

8 Q. Were you responsible for the IT of
9 TruckSpotting?

10 A. Yes.

11 Q. Were you involved with the creation of the
12 system itself?

13 A. Yes.

14 Q. And you said that you sold it about a month
15 and a half ago?

16 A. Yeah.

17 Q. Do you have a specific date?

18 A. I don't even know if we -- I don't remember.
19 I don't know if we actually signed, like, a -- I know
20 we, like, reregistered it with the State under his name
21 when it was time to reregister, but that's about it.

22 Q. Okay. Other than your arrangement with
23 TruckSpotting, do you have any other businesses that
24 you're associated with?

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1 A. Yes. Well, under Lorman IT, I consult for an
2 eCommerce company.

3 Q. What's the name of that company?

4 A. The Hub Companies.

5 Q. And what is your position with respect to
6 them?

7 A. I'm the IT director.

8 Q. And what do your responsibilities entail?

9 A. Management of their website, management of
10 their internal infrastructure, sort of design of future
11 enhancements.

12 Q. At what point did you begin that arrangement?

13 A. About the same time that we started
14 TruckSpotting.

15 Q. Was Mr. Roytman also involved with that?

16 A. No.

17 Q. Do you have any other businesses aside from
18 your relationship with The Hub Companies, your
19 relationship with Lorman IT Services, and your
20 relationship with TruckSpotting?

21 A. No.

22 Q. Did you have any employment prior to founding
23 TruckSpotting?

24 A. Yes.

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1 Q. What was that?

2 A. From the beginning or --

3 Q. Immediately before TruckSpotting?

4 A. Immediately before? I worked for a company
5 call Just Kids Store.

6 Q. I'm sorry. What was that?

7 A. Just Kids Store.

8 Q. What was your role there?

9 A. IT director.

10 Q. And how long were you there?

11 A. Four years.

12 Q. Did you have a position -- were you employed
13 before that?

14 A. Yes.

15 Q. And where was that?

16 A. At Baby Super Mall.

17 Q. And what position did you hold there?

18 A. Just a software engineer. I don't know. It
19 was a company of ten people. There's no real positions.

20 Q. And how long were you there?

21 A. For two years.

22 Q. Any position before that?

23 A. Yes.

24 Q. What's that?

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1 A. Northrop Grumman Corporation.

2 Q. And what was your position there?

3 A. Software engineer, whatever number level it
4 was. I don't remember.

5 Q. And how long were you there?

6 A. For a year.

7 Q. One year?

8 A. Yes.

9 Q. Did you have any employment before that?

10 A. Yes.

11 Q. What was that?

12 A. Fermilab.

13 Q. And what was your position there?

14 A. Also software engineer.

15 Q. And how long were you there?

16 A. Five years, I want to say, four or five.

17 Q. Did you have a position before that?

18 A. No.

19 Q. Before that, you were at the University of
20 Illinois?

21 A. Before that, I was at U. of I., yes.

22 Q. Could you describe what TruckSpotting is?

23 A. TruckSpotting is a service for food trucks
24 where they can put a GPS unit in their truck and we

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1 announce their location via app or website to their
2 customers.

3 Q. Do you announce their location in any other
4 way other than the app or the website?

5 A. We recently started tweeting it. But that
6 didn't -- the truck has to sort of sign into Twitter and
7 all of that other stuff.

8 Q. Is there any other way that you let the
9 location be known of the trucks to your customers?

10 A. No.

11 Q. The tweeting aspect, could you describe that?

12 A. So if the truck owner allows our service to
13 tweet for them, any time we see that they start
14 operating, we will send a message out on Twitter with
15 their location.

16 Q. It has the location itself. Does it contain
17 any other information?

18 A. It contains the words "You've been spotted" or
19 "We've been spotted."

20 Q. Okay. Understood. Does TruckSpotting provide
21 any other services?

22 A. We also provide an app that does the same
23 thing. So instead of a GPS unit, you could have an app
24 on your phone and just push a button that says, "I'm

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1 here. I'm serving food." The rest of it handles the
2 same way.

3 Q. So does that take the place of a GPS device
4 that would be installed on the truck?

5 A. Yes. Where GPS devices are not necessary,
6 yes, that takes the place.

7 Q. Oh, in other cities, that's often where you
8 will use it?

9 A. Yes.

10 Q. Is that something that you use in Chicago?

11 A. No.

12 Q. Is the tweeting something that you use in
13 Chicago?

14 A. I don't believe anyone in Chicago has signed
15 up for the tweeting.

16 Q. Is the website something that you've used in
17 Chicago?

18 A. Yes.

19 Q. What is the address of TruckSpotting?

20 A. 550 North St. Clair.

21 Q. The same as your residence?

22 A. Yeah, the same as my residence right now.

23 Q. And you said you began the operations in about
24 April of 2011?

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1 A. Yes. I want to say somewhere around then.

2 Q. Why did you begin the company?

3 A. So Mike Roytman was living in Atlanta, and he
4 saw that there's a bunch of food trucks and he could
5 never figure out where they were. So the idea came to
6 outfit them with a device that tracks them and then
7 provide an app to people to find them. I thought it was
8 a good idea.

9 Q. And you signed on?

10 A. And I signed on, yeah.

11 Q. Did you both have responsibilities in creating
12 the system?

13 A. I was -- he did most of, like, the graphical
14 layout stuff. I did most of the engineering stuff.

15 Q. Did you agree that food trucks were difficult
16 to find?

17 A. Yes.

18 Q. And that the service would be helpful in that
19 regard?

20 A. Yes.

21 Q. Other than yourself and Mr. Roytman, has
22 TruckSpotting had any employees?

23 A. No.

24 Q. It's only been the two of you?

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1 A. Yes.

2 Q. Did Mr. Lynch ever have any role with the
3 operations of the company?

4 A. No.

5 Q. Did anyone else have any role with the
6 operations of the company?

7 A. No.

8 Q. Would you consider yourself the person who's
9 in charge of the IT aspects of TruckSpotting?

10 A. Yes.

11 Q. You provide GPS services to Laura Pekarik's
12 food trucks; is that right?

13 A. Yes.

14 Q. And other food trucks in Chicago?

15 A. Yes.

16 Q. I just want to walk through the basics now of
17 how GPS work. So a GPS device is placed into a truck,
18 correct?

19 A. Yes.

20 Q. How big is that -- are those devices?

21 A. About a -- maybe a cell phone, like an iPhone.

22 Q. And how is that device connected to the truck?

23 A. Through a 12-volt power source. So there's
24 two options. One is through the cigarette lighter

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1 adapter or provide a 1-ton volt plug.

2 Q. And what will the 1-ton volt plug be connected
3 to?

4 A. Their generator usually.

5 Q. So that's what powers the GPS device itself?

6 A. Yes. Yes.

7 Q. Is it wired in any other way to the
8 automobile?

9 A. No.

10 Q. Are there any other ways that you can connect
11 a device to a truck?

12 A. What do you mean?

13 Q. How does it physically attach to the truck?

14 A. Velcro, tape.

15 Not screwing through it. That's the only
16 way you can't do it.

17 Q. Through the device itself?

18 A. Yeah, don't put anything through the device;
19 otherwise, I've seen it -- you know, straps. I've seen
20 people build a little box and put it in there. All
21 kinds of stuff.

22 Q. And where in the food truck have you seen your
23 customers put the GPS device?

24 A. We recommend that they put it on their dash.

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1 Q. Anywhere else?

2 A. No. It needs to be by a window. It likes to
3 be by a window.

4 Q. How it the device turned on and off?

5 A. By supplying it or not supplying it power.

6 Q. So you either pull in, take out the plug or
7 put in the plug?

8 A. Yes.

9 Q. Is there any other way to turn the GPS device
10 on or off?

11 A. No.

12 Q. Can it be plugged into the car system itself
13 so that any time the car turns on -- excuse me -- the
14 truck turns on --

15 A. Yes.

16 Q. -- that --

17 A. Theoretically, yes.

18 Q. What do you mean, "theoretically"?

19 A. I've never done it. I mean, it needs
20 12 volts. It doesn't really care where it gets the
21 12 volts.

22 Q. As soon as the 12 volts are --

23 A. As soon as 12 volts is applied, we're happy.

24 Q. And it's on?

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1 A. Yes.

2 Q. At that point, is it transmitting data?

3 A. Usually, within a minute or so, it starts
4 transmitting data.

5 Q. What's during that minute?

6 A. It tries to find a satellite signal. It's
7 trying to find the GPS signal that connects to the Wi-Fi
8 to a sort of cell phone network and then that whole
9 thing takes over.

10 Q. So it connects to the cell phone network which
11 is often -- it was always a Wi-Fi network?

12 A. It's through T-Mobile and it's not -- it's
13 like the Edge T-Mobile, T-Mobile Edge, like the
14 predecessor to all the 3Gs, 4Gs, and all of that stuff.

15 Q. So it's an earlier system.

16 A. Very much earlier.

17 Q. Is that specific to your system of GPS?

18 A. I don't know what other ones use.

19 Q. Does Verizon use --

20 A. I don't know.

21 Q. What indicators are on the device itself?

22 A. There's two flashing lights; one for power,
23 one for -- no. Sorry. Both are for power, obviously;
24 one for, like, the cell phone network and one for the

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1 satellites.

2 Q. So you said both are for power. If the device
3 is turned on, it means that some lights --

4 A. Are going to be flashing, yes.

5 Q. Then one of the lights indicates that it's
6 connected to the cellular network?

7 A. Uh-huh.

8 Q. Then another light indicates whether it's
9 connected to the satellite network?

10 A. Yes.

11 Q. Could you explain how the signal will go from
12 the device itself to the cellular network; where does it
13 go next?

14 A. It goes to the cellular network. Then it goes
15 to the -- to our cellular provider, which is Wylless.

16 Q. Wylless?

17 A. Wylless.

18 Q. W-i-l-e-s-s?

19 A. W-y-l-e-s-s. They're British.

20 And then from there, it gets transmitted
21 on to our servers through a virtual private network,
22 through VPN. And then once it's on our servers, we put
23 it into the database.

24 Q. Was the satellite network involved in that

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1 path?

2 A. The GPS satellite network?

3 Q. Yes.

4 A. In that path, nowhere.

5 Q. Where is that satellite path involved with the
6 GPS transmissions?

7 A. So that's how the GPS device triangulates its
8 coordinates, is using the satellite.

9 Q. So that's how it creates the data point?

10 A. Yes.

11 Q. Which is then sent on to the cellular network?

12 A. Yes. Yes.

13 Q. Okay. So you mentioned that once it is on the
14 cellular network, it then goes to a VPN?

15 A. Yes.

16 Q. And that VPN then puts the data in your
17 servers?

18 A. Yes.

19 Q. And once it's in the servers, you then put it
20 into a database?

21 A. Yes.

22 Q. The GPS data, it's transmitted using its radio
23 waves, correct?

24 A. I believe so, yeah.

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1 Q. Is that what the cellular network uses to
2 transfer the data?

3 A. Yes. Yes.

4 Q. Is that data sent from the GPS device in real
5 time?

6 A. Yes.

7 Q. What does "real time" mean?

8 A. So right now, it's set up to transmit every
9 four minutes. So every four minutes it takes a
10 measurement of its location and sends that to our
11 servers.

12 Q. So is that an effort to keep the data
13 up-to-date?

14 A. Yes.

15 Q. Can that be changed?

16 A. Yes.

17 Q. It can be every two minutes?

18 A. Yes.

19 Q. Or ten minutes?

20 A. Yes.

21 Q. But you've decided four minutes is good to
22 show a real-time location?

23 A. The City ordinance states, I believe, five, so
24 I decided on four.

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1 Q. Aside from TruckSpotting servers, is the data
2 sent anywhere else?

3 A. No.

4 Q. So TruckSpotting is the only entity that
5 receives the GPS data that pertains to its trucks'
6 customers?

7 A. Yes.

8 Q. It's not sent to the City?

9 A. No.

10 Q. Now, once the data is on the server, you say
11 you put it into a database?

12 A. Yes.

13 Q. How do you do that?

14 A. With a database query call.

15 Q. Could you explain that?

16 A. There's a listener on the server that sits and
17 listens for any transmissions from GPS devices, and once
18 it hears it, it writes it to the database.

19 Q. So you set up a program that --

20 A. Yes.

21 Q. -- automatically takes it from the server --

22 A. Yes.

23 Q. If I can finish my questions, that would work
24 best.

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1 A. Sorry.

2 Q. No problem.

3 You've written a program that takes it
4 from the server -- you've written a query that looks for
5 specific GPS data as it comes in and that will then
6 transfer it to the database?

7 A. Yes.

8 Q. Does the data stay within your server, as
9 well?

10 A. No. Once it's in the database, it's in the
11 database.

12 Q. How quickly does that occur?

13 A. Milliseconds.

14 Q. Now, once it's in the database, what happens
15 to the data then?

16 A. Then it can get queried out to be displayed on
17 the website, to be displayed on the app, to be basically
18 stored for later use.

19 Q. How long is the data kept in that database?

20 A. Indefinitely.

21 Q. You don't have any sort of retention schedule
22 on that data?

23 A. No.

24 Q. So we talked about the query, about setup,

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1 that will take the data from the server to the database.

2 Does anyone see the data as it comes in?

3 A. No.

4 Q. It's done automatically?

5 A. Done automatically.

6 Q. By a program that you've set up?

7 A. Yes.

8 Q. So no human is interacting with that data as
9 it comes into the server?

10 A. No.

11 Q. Is any human interacting as the data is
12 transferred from the server to the database?

13 A. No.

14 Q. And then you said that the data can be queried
15 from the database to be used in the website or the app?

16 A. Yes.

17 Q. Is there any other use of that data?

18 A. Currently, no.

19 Q. What do you mean, "currently"?

20 A. There's people -- I mean potentially there
21 could be, right. Like, I can do other stuff with it.
22 Right now, I don't.

23 Q. But currently, you don't make any other use of
24 the data?

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1 A. No.

2 Q. Than putting it on the website or putting it
3 in the app, correct?

4 A. Yes.

5 Q. What is the website designed to do?

6 A. Display food trucks that are currently
7 operating within a metro area.

8 Q. What do you mean by "currently operating"?

9 A. The ones that are transmitting their signals.

10 Q. So if the food truck is not transmitting its
11 signal, you're not going to be displaying any
12 information about it on the website?

13 A. I display it as offline, as non-currently
14 operational.

15 Q. And you can tell that how?

16 A. Whether it's been -- so it's set up to --
17 whether it's transmitted in the last 15 minutes or not.
18 That's what determines your sort of openness.

19 Q. So if you receive data every four minutes, as
20 you're supposed to, it showed as active?

21 A. Yes.

22 Q. And if you don't receive any data after
23 15 minutes, it's showed as inactive?

24 A. Yes.

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1 Q. But the food truck itself is still provided on
2 your website?

3 A. Yes.

4 Q. What information do you convey on the website
5 itself about food truck?

6 A. So when it's active, I convey its location.

7 Q. How is that location depicted?

8 A. On a -- as a tick on a map.

9 Q. It's a just a point on a map?

10 A. A point on the map, yes.

11 Q. Does it provide any other information about
12 the food truck?

13 A. We provide the menu if people have entered in
14 their menu.

15 Q. Does it provide the last known time that that
16 data point came from?

17 A. No.

18 Q. Does it provide the accuracy of the GPS
19 reading at that point?

20 A. No.

21 Q. Is that data provided to the public in any
22 way?

23 A. Not currently.

24 Q. With respect to the app, is it similar in

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1 regards to a map?

2 A. Exactly the same.

3 Q. So it's the same system, where you take the
4 last GPS data location that's been transmitted and you
5 calculate that onto a map, correct?

6 A. Yes.

7 Q. How does the data, the location data, get put
8 onto a map?

9 A. So it gets queried out of the database based
10 on its time stamp in the database, and then through
11 Google API, it gets displayed on a map.

12 Q. So you use a Google API to display it onto the
13 map that exists on your website?

14 A. I use Google Maps on the website, and that's
15 what sort of gets put up there.

16 Q. So that's a system that you've designed?

17 A. That's a system that Google designed.

18 Q. You designed the system that was going to use
19 the Google information though, correct?

20 A. Yes.

21 Q. And then you designed the system that put the
22 map up on the website?

23 A. Yes.

24 Q. And you designed the system that put the

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1 location point on the map?

2 A. Yes.

3 Q. But it uses data from Google?

4 A. It uses the map itself from Google, yes.

5 Q. And you plot the location data that you have
6 onto that map?

7 A. Yes.

8 Q. Is the process by which you take the
9 information from the database and put it onto the map,
10 is that an API?

11 A. It uses Google's API, but I would not consider
12 it my API.

13 Q. Okay. That's a query?

14 A. Yeah.

15 Q. How else would you describe it?

16 A. A query or an API?

17 Q. How would you describe that process where it
18 goes from the database to the map?

19 A. I would describe it as a query.

20 Q. So the information that is on the map, it
21 presents the last known transmission point of the food
22 truck, correct?

23 A. Yes.

24 Q. It doesn't provide historical information

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1 about where the truck has been, correct?

2 A. Yes.

3 Q. And you -- but you keep that information
4 indefinitely?

5 A. Yes.

6 Q. But that information isn't made public?

7 A. No.

8 Or yes, it isn't made public. Sorry.

9 Q. Understood. Thank you.

10 And the way you've designed it is over
11 time, the point on the map moves to correspond with the
12 location?

13 A. Yes.

14 Q. So no one can go to the TruckSpotting website
15 and get a historical record of the GPS data for a
16 particular truck?

17 A. Yes.

18 Q. No one --

19 A. No, they cannot.

20 Q. They cannot do that?

21 A. They cannot.

22 Q. What is an API?

23 A. Something "programming interface."

24 Q. Is it "application programming interface"?

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1 A. Probably application.

2 Q. What's your understanding of what an API is?

3 A. My understanding is it's an access point. So
4 if somebody wants data or wants to do X on some system
5 and I'm the designer of that system, I don't want to
6 give them full access to my system. I want them
7 controlled within my system. So I provide them with an
8 API that does specific things within my system that
9 they're allowed to do and nothing else. So I lock out
10 the database access. I don't want them querying my data
11 live. I don't want them modifying information live. I
12 only let them do what I allow them to do.

13 Q. So you make a decision about what data you
14 want to make public and what data you want to keep
15 private?

16 A. Yes.

17 Q. And is it a door?

18 A. Yes.

19 Q. The API is the door through which one system
20 can obtain information from another system, correct?

21 A. Yes.

22 Q. Can you give an example of an API?

23 A. Within my system or any system?

24 Q. Any system.

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1 A. So Amazon. Everyone knows Amazon.

2 So Amazon has an API for retailers to be
3 able to put products on to Amazon, and then they also
4 have an API for you to get information. Once that
5 product has been sold, you can pull information out of
6 Amazon of, like, customer information, order
7 information, that type of stuff.

8 Q. And Amazon determines which data is going to
9 be able to be taken from the API?

10 A. Yes. Yes. Which data and how it's going to
11 be represented.

12 Q. And you mentioned that you have -- you
13 utilized Google's API?

14 A. Yes.

15 Q. So you're able to obtain certain data from
16 Google, but Google decides which data you're going to be
17 able to obtain?

18 A. Yes. So like on the map API, I can tell
19 Google "I want the map. I want to put these coordinates
20 on the map," and Google returns the image of the map.

21 Q. Okay. So talking about the door that we
22 mentioned before, is -- Google provides a door through
23 which you can go to get the data; is that --

24 A. Yes.

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1 Q. -- an adequate word?

2 A. Yes.

3 Q. How do the systems communicate through an API?

4 A. Usually, the same way you request a website.

5 Q. How is that?

6 A. Through the HTTP protocol.

7 Q. So is it usually a link, is the HTTP protocol?

8 A. Similar to a link. It's not -- you don't go
9 on a browser. You go programmatically, but yes.

10 Q. And the HTTP protocol is a program or it's a
11 language of itself, right?

12 A. Yes. It's a language of itself that allows
13 two servers or a server and a client to connect and
14 transmit information between each other.

15 Q. How is that connection established? Is it a
16 particular address after the HTTP?

17 A. Yes. Yes.

18 Q. Give me an example of what an API would look
19 like in terms of the HTTP. Is it a series of numbers?

20 A. Like for us, it's, you know,
21 www.TruckSpotting.com, slash, whatever API, and then
22 whatever information you're sending after that.

23 Q. What are some of the -- what's some of the
24 information that you'd be sending after that?

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1 A. So like the app gets its data using our
2 TruckSpotting API, so the information is -- I want, you
3 know -- so sometimes it will send "the client is at
4 location X. Give me food trucks," and the return is a
5 string with all the food trucks within that metro area
6 that the customer is in.

7 Q. Along with the map or along with the location
8 data?

9 A. Well, along with the location data. And then,
10 say, the app goes to Google's API and then pulls the map
11 down.

12 Q. So what -- is the data that is available
13 through your API, is that the longitude and latitude
14 coordinates?

15 A. Yes, longitude/latitude.

16 Q. Are any other data points available through
17 your API?

18 A. Truck name, graphic, whatever, a presentation
19 of their logo, that type of stuff.

20 Q. How about the time that the data was sent?

21 A. No.

22 Q. How about the accuracy of the GPS reading at
23 the time that it was sent?

24 A. No.

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1 Q. So you've made that decision about what's
2 going to be available on that API?

3 A. Yes.

4 Q. An API is not the same as the data, correct?

5 A. No.

6 Q. They're two separate concepts?

7 A. Yes.

8 Q. Is that a commonly accepted distinction in the
9 industry?

10 A. I believe so.

11 Q. So with an API, is the requesting party able
12 to automatically get access to the data, or does the
13 hosting party need to do something to allow the
14 requesting party to tap into the data?

15 A. It's usually password-protected.

16 Q. What do you mean, "usually
17 password-protected"?

18 A. Ours is password-protected. There's APIs that
19 are not.

20 Q. So you've set up a system where the
21 individual who wants to go into your API has to
22 insert a password?

23 A. Yes.

24 Q. Who do you give that password to?

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1 A. Myself right now. So nobody.

2 Q. Nobody else has that password?

3 A. Nobody else has that password.

4 Q. So nobody is currently using your API?

5 A. Nobody is using it.

6 Q. Now, you said, "usually." Is there
7 another way that someone might be able to tap into
8 an API?

9 A. There's other APIs that just don't
10 password-protect. So if people want to make it
11 completely open, you can. I'm sure the City has, you
12 know, whatever, their bus tracker API, that's just open.
13 You know, you want it? Here, take it.

14 Q. And that's not what your system is?

15 A. No.

16 Q. What does it mean for an API to be publicly
17 accessible?

18 A. I don't know.

19 Q. Why not?

20 A. Why don't I know?

21 MR. BERG: Objection to the form of that
22 question.

23 BY THE WITNESS:

24 A. Because I don't know what "publicly

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1 accessible" means. I can tell you my opinion of what I
2 think it is.

3 BY MR. BARON:

4 Q. Please.

5 A. So for us, I wanted to password-protect
6 because I don't want, A, just anybody getting it -- not
7 that anybody shouldn't get it, but I want to know who is
8 trying to use it and I want to sort of limit the load on
9 my servers. So the more requests I get, the more server
10 load there is.

11 Q. So it's better for your operations?

12 A. So it's better for me to -- yes. It's the
13 only way I can run it, is that "If you want it, I'll
14 give it to you, but you have to request it."

15 Q. Okay.

16 A. So you come to me. You ask for a password.
17 I'll give you the password. I might ask you why you
18 want it. I might not. And then once you have it, you
19 know, I usually limit it to a certain number of requests
20 per whatever time slot.

21 Q. To third parties?

22 A. Yes.

23 Q. You limit their access to --

24 A. Their access, yes.

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1 Q. -- use your API?

2 A. Yes. Because I don't want someone just
3 sitting there, like every millisecond hitting the
4 server.

5 Q. And up to this point, nobody has asked you for
6 access to the API?

7 A. No, no one has.

8 Q. Would you give them access?

9 A. Yes.

10 Q. Are you free to deny giving them access?

11 A. I believe I am.

12 Q. And why is that?

13 A. See. That's where "publicly" comes in. I
14 don't know if it's my data or the food trucks' data or,
15 you know, public data.

16 Q. Have you asked --

17 A. But if it's public data, why am I paying for
18 storing it? You know, that type of thing. So it's kind
19 of like is the forest public or is it owned by somebody,
20 if it's -- if someone has paid for it and pays taxes on
21 it, but then can I publicly go and camp on the thing?
22 That type of thing.

23 Q. So are there several ways to look at the
24 meaning of "publicly accessible" in your mind?

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1 MR. BERG: Objection to form.

2 BY THE WITNESS:

3 A. Sure.

4 BY MR. BARON:

5 Q. Well, you said you're confused by what that
6 means, correct?

7 A. Well, yeah.

8 Q. So could you explain that? Are there more
9 than one ways to look at it?

10 A. Truly publicly accessible, to me, is, you
11 know, sitting open on the street and the government pays
12 for all the expenses involved with it.

13 Q. So the definition of publicly accessible in
14 that view would depend on who is storing the data?

15 A. Who's storing and who's controlling sort of
16 the access. Because everything is controlled access.
17 There's no -- you know, even if I didn't have a password
18 on it, people would need to know exactly where to
19 request it, how to request it, all of this other stuff,
20 so I can make it nonpassword-protected, but it will be
21 gibberish to you unless I tell them "This is what it is"
22 and how to use it.

23 Q. Okay. Can you have a publicly accessible API
24 even if some the data is password-protected?

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1 A. Sure.

2 MR. BERG: Objection, form.

3 You can answer.

4 BY MR. BARON:

5 Q. I'm sorry. What was your answer?

6 A. Yeah. I think so. You can do partially open,
7 partially locked down.

8 Q. And it would still be a publicly accessible
9 API?

10 MR. FROMMER: Objection to the extent it calls
11 for a legal conclusion.

12 BY MR. BARON:

13 Q. You can still answer.

14 A. I think so.

15 Q. Would an API that uses proprietary programming
16 language that not everybody has, would that be a
17 publicly accessible API?

18 MR. BERG: Objection, form.

19 MR. FROMMER: Objection, vague.

20 BY THE WITNESS:

21 A. I don't think they exist.

22 BY MR. BARON:

23 Q. You don't think they exist?

24 A. I think the whole premise of an API is it

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1 opens -- it's like language nonspecific. There is
2 specific ways that the API is returned. They return
3 either a plain string or they return XML, which is
4 similar to HTML, or they return AJAX or something that's
5 readable, legible to anyone.

6 Obviously, they can return binary that you
7 need to know how to decode, but to me, that would be
8 defeating the purpose of the API.

9 Q. Can an API be hidden so that only a few people
10 know about it?

11 A. Yes.

12 Q. Would that be a publicly accessible API?

13 MR. BERG: Objection, form.

14 BY THE WITNESS:

15 A. I would think so.

16 BY MR. BARON:

17 Q. You would?

18 A. Yeah.

19 Q. Why is that?

20 A. I don't need to take an ad out in the paper to
21 tell people "here's where it is," do I? That's why I
22 think -- like, everything is hidden until people know
23 about it.

24 Q. So what you're talking about is whether or not

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1 the API is available to the public, correct?

2 A. I think there's a difference in the question
3 of whether it's available to the public or the public is
4 aware of it.

5 Q. Okay. What is the difference?

6 A. I think it's available, but no one is aware of
7 it. That's why no one has requested access or no one
8 wants to use it, which is another reason no one has
9 requested access, one of the two.

10 Q. Okay. Now the API system that you have, you
11 provide the location data and you provide the name of
12 the truck and you provide potentially the logo of the
13 truck?

14 A. Yes.

15 Q. Is there anything else?

16 A. Menu of the truck, that type of stuff.

17 Q. Do you have more data that comes from the GPS
18 system that you get from each food truck?

19 A. That I don't provide?

20 Q. Yes. Through the API?

21 A. Sure. There's the IP address. There's the
22 accuracy. I think that's about it. It only sends like
23 four data points.

24 Q. Is it your understanding that the City's

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1 ordinances require you to provide that information, as
2 well?

3 MR. BERG: Objection, form.

4 BY THE WITNESS:

5 A. I believe it states the location. I don't
6 know if it states like the accuracy of the reading.

7 BY MR. BARON:

8 Q. So your understanding of what the City's --
9 your interpretation of what the City's ordinances
10 require --

11 MR. WORSECK: Could we take a break?

12 MR. FROMMER: Yeah, sure.

13 (Recess from 9:52 a.m. to 9:58 a.m.)

14 BY MR. BARON:

15 Q. Mr. Lorman, what's your understanding of what
16 the City ordinances require you to do with respect to
17 the GPS data?

18 MR. BERG: Objection, form.

19 BY THE WITNESS:

20 A. So from what I understand, I'm required to
21 keep it for six months on whatever system and then
22 provide it to the City upon request.

23 BY MR. BARON:

24 Q. Anything else?

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1 A. Not that I -- I mean, it has to be publicly
2 available, which I think I cover through the website and
3 the app.

4 Q. And through the website and the app you are
5 making available the identity of the truck and the
6 location of the truck --

7 A. Yes.

8 Q. -- correct?

9 A. Yes.

10 Q. That's what you believe allows you to comply
11 with the City's ordinances?

12 A. I believe so, yes.

13 Q. Does your API, as you've described it, do you
14 believe that complies with the City's ordinances?

15 A. I believe so.

16 Q. And just so my understanding is correct, the
17 API you have set up is password-protected --

18 A. Yes.

19 Q. -- so that you would need to provide somebody
20 the password in order for them to get the underlying
21 data; is that correct?

22 A. I would need to provide them the password and
23 sort of the request string.

24 Q. And if they did go -- if they did have that

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1 password and the string, then what would be available to
2 them is the name of the truck, the identity of the
3 truck, and the geo coordinates?

4 A. Yes.

5 Q. The latitude and longitude?

6 A. Yes.

7 Q. You've made a decision about those data
8 points, but you do have other data points that you've
9 collected with regards to the GPS data from a truck?

10 MR. BERG: Objection, form.

11 BY THE WITNESS:

12 A. Yes.

13 BY MR. BARON:

14 Q. You do have that?

15 A. Yes.

16 Q. What leads you to your belief that that
17 complies with the City's ordinances?

18 MR. BERG: I'm going to object here. To the
19 extent your answer is based on anything that you've
20 ever discussed with an attorney, I'll direct you
21 not to answer. But to the extent it's not, feel
22 free to answer.

23 BY THE WITNESS:

24 A. Do you have a copy of the ordinance?

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1 BY MR. BARON:

2 Q. Well, before we look at the ordinance, what
3 leads you to that belief?

4 A. Because I think it states that -- I think it
5 states that I have to publicly provide the location and
6 store the location for six months. I don't believe it
7 states that I have to provide the historical location to
8 anyone who wants it. But if they requested it, I could,
9 but I've just never had the request, so I never did.

10 Q. So your understanding is that the ordinance
11 the requires you to provide the location data --

12 A. Yes.

13 Q. -- to the public?

14 A. Yes.

15 Q. And that you do that through your map and the
16 app?

17 A. Yes.

18 (Lorman Deposition Exhibit
19 No. 1 marked for identification.)

20 BY MR. BARON:

21 Q. And what I'm handing you is a copy of the
22 portion of the Municipal Code of Chicago. It's section
23 7-38-115, under "Operational Requirements." I direct
24 your attention to provision (1).

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1 MR. BERG: Eugene, feel free to read as much
2 or as little of the entire ordinance as you want.

3 BY MR. BARON:

4 Q. Could you read the first sentence of (1)?

5 A. "Each mobile food vehicle shall be
6 equipped with a permanently installed functioning
7 Global-Positioning-System (GPS) device which sends
8 real-time data to any service that has a publicly
9 accessible application programming interface (API)."

10 Q. Now, where in here do you read the ordinance
11 to say that you need to provide location data to the
12 public?

13 MR. BERG: Objection, form.

14 BY THE WITNESS:

15 A. I actually -- I do not. It has to provide an
16 API.

17 BY MR. BARON:

18 Q. Okay. What's the difference?

19 A. One is a way to programmatically get the data
20 and one is a way to see the data. So what I'm providing
21 is data to the public on the website or on the app. An
22 API would be "The data is available. You go and get
23 it."

24 Q. So where on here does it say that you need to

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1 make that data public?

2 A. Nowhere.

3 Q. Does the ordinance require you to have a
4 website with real-time plotting of data?

5 A. No. That was a business decision.

6 Q. What do you mean, a business decision?

7 A. Before Chicago passed the ordinance, the whole
8 business idea of TruckSpotting is to provide the data to
9 the public to allow food trucks that move around to
10 advertise their current locations.

11 Q. Is it better for food trucks in your opinion
12 to have that data be public?

13 MR. BERG: Objection, form.

14 MR. FROMMER: Objection, calls for
15 speculation.

16 MR. BERG: Go ahead and answer.

17 BY THE WITNESS:

18 A. Yes.

19 BY MR. BARON:

20 Q. Was that the basis of creating the system as
21 you did?

22 A. Yes.

23 Q. Are there other cities in which you operate
24 where there is no GPS requirement?

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1 A. Yes.

2 Q. And do you operate according to the same
3 model, where you have a map that makes location data
4 available?

5 A. Yes.

6 Q. And you're not required by law to do that?

7 MR. BERG: Objection, form.

8 BY THE WITNESS:

9 A. Yes, I'm not required by law to do that.

10 BY MR. BARON:

11 Q. Now, are you aware of any other GPS providers
12 that do not provide a map with real-time location data?

13 A. I believe some trucks use Verizon, but I'm not
14 certain.

15 Q. So are you saying that you believe Verizon
16 does not have a map with real-time locations?

17 A. I honestly don't know.

18 Q. You don't know?

19 A. I honestly never looked at their system, never
20 tried their system.

21 Q. Why did you bring up Verizon?

22 A. Because I know other trucks use it, but I
23 don't know what they get out of it.

24 Q. Do you know if they have an API that makes

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1 available GPS location data?

2 A. No clue.

3 Q. Do you know if they make any data available
4 about the trucks?

5 A. No idea.

6 Q. Are you familiar with EasiTrack?

7 A. No.

8 Q. Are you familiar with BrickHouse Security?

9 A. No.

10 Q. Are you familiar with Navman Wireless?

11 A. No.

12 Q. LandAirSea?

13 A. No.

14 Q. Track Your Truck?

15 A. No.

16 Q. Verizon?

17 A. Verizon, well, yeah, but...

18 Q. And you said previously you don't know if they
19 have a map that provides real-time location data?

20 A. So from what I know, just to sort of ease this
21 questioning along, when I looked, when we originally
22 started, why we went with CalAmp is because CalAmp
23 allows us to do whatever the hell we want to do. Pardon
24 the "hell."

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1 The other systems, from what I understand,
2 they're more like, you know, fleet tracking, which is
3 fine and dandy, but fleet tracking does not want to be
4 public. And like, usually, there's a password and you
5 can get on a map with that password, or whatever they
6 provide. They might provide some API to you that you
7 can then publicize that data. But back three years ago,
8 it was very inconvenient for me to go with anything but
9 CalAmp.

10 Q. So the fleet tracking model, in your opinion,
11 is not as conducive to what you want to do in terms of
12 putting information on a map with real-time data as to
13 location?

14 A. Yes, it could be with, you know, work involved
15 or whatever, but I think out of the box, I don't think
16 so.

17 Q. And Verizon --

18 A. And again, I've never actually used it, so I
19 don't know.

20 Q. Is Verizon one of those fleet-tracking
21 companies?

22 A. Verizon is a cell phone provider. I believe
23 they provide GPS for, like, throw it in the backpack of
24 your child so you know where your child is. I don't

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1 think they want to make that truly public data.

2 Q. And do you know if they do make that data
3 public?

4 A. I know the child data they do not. Otherwise,
5 you know, anyone can know which playground you're on and
6 all of this other stuff.

7 Q. What is an example of a GPS fleet provider?

8 A. I don't remember. The company we originally
9 bought CalAmps for -- from was a fleet provider. They
10 would put them on expensive leased vehicles.

11 Q. Are you aware of Agilis Systems?

12 A. No.

13 Q. How about Linxup?

14 A. No.

15 MR. BARON: I'd like to have Exhibit 2
16 stamped, Lorman Exhibit 2.

17 (Lorman Deposition Exhibit
18 No. 2 marked for identification.)

19 BY MR. BARON:

20 Q. Do you recognize this?

21 A. Yes.

22 Q. What is that?

23 A. It's our terms of service.

24 Q. Are these your standard terms of service?

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1 A. Yes.

2 Q. And all food trucks consent to these terms of
3 service before you provide them with GPS services?

4 A. Yes.

5 Q. How do they consent to them?

6 A. They go on the website, and before they can
7 sign up, there's a little "I have read these" button or,
8 whatever, check mark, whatever it is.

9 Q. And before they become your customer, they
10 have to consent to this?

11 A. Yes. Yes.

12 Q. Did LMP consent to these terms of service?

13 A. I believe so.

14 Q. They would have had to if they --

15 A. They would have had to. I mean, I don't know
16 if she's actually read them or not, but she hit the
17 check mark.

18 Q. But she did consent to these?

19 A. Yes.

20 Q. When did LMP Services do that?

21 A. When they signed up, so it must have been a
22 year and a half ago now.

23 Q. Do you know when that was approximately?

24 MR. FROMMER: Objection to the extent it calls

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1 for speculation.

2 BY THE WITNESS:

3 A. About a year and a half. I know it was in the
4 summer.

5 BY MR. BARON:

6 Q. You know it was in the summer?

7 A. And not last summer, so probably the summer
8 before.

9 MR. BARON: I'd like this to be Lorman
10 Exhibit 3.

11 (Lorman Deposition Exhibit
12 No. 3 marked for identification.)

13 BY MR. BARON:

14 Q. Do you recognize this?

15 A. Yes.

16 Q. And what is this?

17 A. It's a receipt for payment for a year.

18 Q. From who?

19 A. From Laura.

20 Q. Laura Pekarik?

21 A. Yes, Laura Pekarik.

22 Q. What's the date on it?

23 A. September 13th.

24 Q. What year?

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1 A. 2013.

2 Q. Would this have been the time at which
3 Ms. Pekarik signed up for the service?

4 A. Yes. She probably signed up about a month
5 before because we usually give a month free.

6 Q. So it would have been approximately
7 September 13th?

8 A. It would have been like approximately
9 August 13th when she signed up.

10 Q. Is that necessarily the case? Might she have
11 signed up and then made the payment immediately?

12 A. Yes.

13 Q. So you're not exactly sure of the deadline?

14 A. We usually give a 30-day free month, whether
15 people pay for it right away and then we make it for
16 13 months or -- I don't remember how I did it with her.
17 I honestly do not.

18 Q. Do you remember if you gave her a free month?

19 A. I give it to everyone, so probably.

20 Q. Would you be providing GPS services for
21 Ms. Pekarik prior to September 13th?

22 A. Again, possibly.

23 Q. So you could have been collecting her data
24 prior to that point?

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1 A. I don't remember when I dropped the GPS off.
2 I don't -- this is she obviously submitted the payment,
3 but I don't remember when she received her unit.

4 Q. So in approximately August of 2013 or
5 September of 2013, Ms. Pekarik became a customer of
6 yours?

7 A. Yes.

8 Q. And at that time, she had to consent to the
9 terms of service?

10 A. Yes.

11 Q. Returning to the terms of service themselves,
12 how long have you been using these terms of service?

13 A. Since the beginning, so since 2012, '11.

14 Q. You said you began operating in April of 2011?

15 A. Yes, so probably since then.

16 Q. Have you changed the terms of service since
17 then?

18 A. So the only thing that might change from truck
19 to truck sometimes is people ask to remove section 4,
20 "financial disclosures," out of the terms of service.

21 Q. So that is on page EL 333?

22 A. Yes.

23 Q. And sometimes customers ask you to remove that
24 provision?

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1 A. Yes.

2 Q. Did Ms. Pekarik ask you to remove that
3 provision?

4 A. I don't think she did.

5 Q. Are you aware that in January of 2013 the City
6 issued regulations that govern the GPS requirement?

7 A. No.

8 Q. Are you aware that the City revised those
9 regulations in January of 2014?

10 A. No.

11 Q. July of 2014? Excuse me.

12 A. No. Definitely not.

13 Q. Did you -- so you wouldn't have revised the
14 terms of service --

15 A. No.

16 Q. -- as a result of those changes?

17 A. No. I never knew the changes happened.

18 Q. I'd like to turn your attention to
19 provision 1(a)ii. That says, that "TruckSpotting, Inc
20 ("TruckSpotting) agrees to: upload the location data to
21 the TruckSpotting.com website, phone application and
22 Android application in real-time"; is that right?

23 A. Yes.

24 Q. Did Ms. Pekarik consent to this provision?

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1 A. Yes.

2 Q. Has Ms. Pekarik or anyone at LMP ever asked to
3 you keep their GPS information from being public?

4 A. No.

5 Q. Did they ever object to you putting data on
6 the map?

7 A. No.

8 Q. Did they ever object to making any sort of
9 available data -- data available through the API as
10 you've described it?

11 A. No.

12 Q. How about other clients; have they objected to
13 you putting their data up on the map?

14 A. No.

15 Q. If someone asked to you keep data off the map,
16 could you do that?

17 A. Yes.

18 Q. You have the technology that would be capable
19 of doing that?

20 A. Yes.

21 Q. Why did you design your service to provide the
22 location of the trucks on the map?

23 A. Because there's no point in the service
24 without it. Like, the way we built it wasn't to comply

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1 to the Chicago city ordinance. Chicago city ordinance
2 kind of fell into our lap. We designed it to provide a
3 marketing tool for food trucks.

4 Q. And you mentioned it's part of your business
5 model?

6 A. Yes.

7 Q. Why do you think it's a good business model?

8 MR. BERG: Objection, form.

9 BY THE WITNESS:

10 A. I think it's useful for someone who moves
11 around to -- if they want to be found, to alert people
12 where they are.

13 BY MR. BARON:

14 Q. Have you ever talked to anyone in the City
15 about the API provision in the ordinance?

16 A. I believe -- I can't remember how it started,
17 but we did talk to somebody when they were -- before
18 they ever wrote the ordinance, I believed.

19 Q. And you don't recall who that was?

20 A. I think there's an e-mail somewhere in the
21 stack, but we got contacted by the City and then I sent
22 it to the food trucks to say, sort of, "Do you guys have
23 any opinions on this?" And I don't think it went any
24 further than that.

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1 Q. Did you have any conversation -- other
2 conversations about the API provision in the ordinance?

3 A. About the API provision, no. I did have one
4 phone call from the City. What was it? It was from
5 someone in IT, I believe. And we kind of discussed what
6 we were doing, and they said it should be fine as far as
7 per the ordinance. And then that was basically it. So
8 it was like a 15-minute conversation I remember
9 having-as-driving type of thing.

10 Q. Have you had any conversations about the API
11 provision in the City's food truck regulations that were
12 promulgated in December 2012?

13 A. With?

14 Q. Any agent of the City?

15 A. No.

16 Q. And how about the City's regulations as
17 revised in July of 2014?

18 A. Again, I have no clue they were revised, so
19 no.

20 MR. BARON: Can we take a quick break?

21 (Recess from 10:19 a.m. to 10:29 a.m.)

22 BY MR. BARON:

23 Q. I'd like to turn back to the terms of service.
24 That's Exhibit 2.

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1 A. Uh-huh.

2 Q. And I direct your attention to provision
3 1(b)i.

4 A. Okay.

5 Q. And could you read that?

6 A. So (b) is "Truck agrees to: Turn on the GPS
7 unit when the truck is in operation and serving
8 customers."

9 Q. Was this provision in place since you first
10 started using --

11 A. Yes.

12 Q. -- these terms of service?

13 Sorry. It was?

14 A. Yes.

15 Q. And did you add this provision based on the
16 requirement in the food truck ordinance?

17 A. No.

18 Q. What did you add this requirements based on?

19 A. My business requirements for the food trucks.

20 Q. Do you believe that this requirement complies
21 with the City's food truck ordinance?

22 MR. BERG: Objection, form.

23 BY THE WITNESS:

24 A. Yeah, I believe so.

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1 BY MR. BARON:

2 Q. And what is your understanding of when the
3 City ordinance requires that food trucks must transmit
4 GPS data?

5 MR. BERG: Objection, form.

6 MR. FROMMER: Objection, calls for a legal
7 conclusion.

8 BY THE WITNESS:

9 A. I honestly don't know. My belief is that --
10 you know, and this comes from sort of technical
11 requirements, as well, because GPS obviously needs
12 power. So you don't always have power when a truck is
13 off. A lot of times, because of battery drain and all
14 of that other stuff, there's just no reasonable way to
15 have on 24/7, nor -- like my business requirement is not
16 to transmit their kitchen location, garbage dump
17 location, water/sewer location, all of that other stuff.
18 So I believe for the City, as well, it's when you're
19 operational.

20 BY MR. BARON:

21 Q. And what does that mean to you?

22 A. Either setting up or serving or cooling down
23 and packing up. So when they're parked on the street,
24 getting ready or serving customers or done serving

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1 customers, that's when they should be transmitting is my
2 opinion.

3 Q. With this provision -- by this provision, does
4 the truck agree to send GPS data when it's traveling
5 from location to location?

6 A. No.

7 Q. Does this provision indicate that a truck
8 agrees to provide GPS information when it's using their
9 food truck for personal reasons?

10 A. No.

11 Q. And how about when the truck is in the garage
12 for the night?

13 A. No.

14 Q. And bring you down to 3(a)ii.

15 A. Uh-huh.

16 Q. And I'll read it just because I know what I'm
17 looking at and you can tell me if this is what it says.
18 3(a)ii starts out in (a), "Truck agrees to provide
19 advertising to TruckSpotting, Inc., in the following
20 mediums:" And ii, "Truck will place a link on their
21 personal website to the TruckSpotting, Inc., website to
22 allow users to track their location in real time."

23 Is that what it says?

24 A. Yes.

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1 Q. Has this provision been in place since you
2 started the using the terms of service?

3 A. Yes.

4 Q. Is this a provision that LMP would have agreed
5 to in becoming a customer?

6 A. Yes.

7 Q. So above, in 1(a)ii?

8 A. Uh-huh.

9 Q. TruckSpotting stated that it would put a
10 truck's location data on your website in real time?

11 A. Yes.

12 Q. Thereby making that data public, correct?

13 A. Yes.

14 Q. And then in 3(a)ii, the truck agrees that on
15 its own website it will put a link to TruckSpotting,
16 which is displaying the information publicly?

17 A. Yes.

18 Q. Does anything in the City's ordinance require
19 you to put in this provision?

20 MR. BERG: Objection, form.

21 BY THE WITNESS:

22 A. No.

23 BY MR. BARON:

24 Q. Does anything in the City's ordinance require

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1 the trucks to agree to this provision?

2 MR. BERG: Objection, form.

3 MR. FROMMER: Objection, calls for a legal
4 conclusion.

5 MR. BERG: You --

6 BY THE WITNESS:

7 A. No.

8 MR. BERG: -- can answer.

9 BY MR. BARON:

10 Q. Why do you include this provision?

11 A. For personal gain and richness.

12 Because I want trucks to advertise my
13 service to their customers because it's a lot easier
14 than standing next to them on the street when they're
15 serving food.

16 Q. And this is a way that makes that information
17 more public?

18 A. It's a way for the food truck to help promote
19 my business.

20 Q. And that's something that each of your truck
21 customers has agreed to do?

22 A. Yes.

23 Q. Then the next page, provision 4(a)ii.

24 A. Oh, okay.

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1 Q. Reads "Truck agrees that any agreement it
2 reaches to share data or information to TruckSpotting
3 will automatically transfer to new ownership of
4 TruckSpotting in the case of an acquisition or other
5 ownership transfer of TruckSpotting"; is that what it
6 says?

7 A. Yes.

8 Q. And has this provision been in place since you
9 started using these terms?

10 A. Yes.

11 Q. And you said that some parties will opt out of
12 this aspect of it or at least they'll raise an
13 objection?

14 A. The thing they raise an objection to is not
15 (a)ii, but (a)i. So they don't want to provide us with
16 their sort of revenues.

17 Q. So no party has objected to (a)ii?

18 A. No.

19 Q. Specifically 4(a)ii?

20 A. No.

21 Q. Is this something -- this provision something
22 that all of your customers then agree to when they sign
23 up for the service?

24 A. Yes.

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1 Q. And that includes LMP?

2 A. Yes.

3 Q. It says, "Any agreement it reaches to share
4 data or information"; does that include location data?

5 A. In my opinion, this whole thing is about the
6 financial disclosure, so about their financial data.

7 Q. Now, on the previous page though, you have
8 1(a)ii, right?

9 A. Yes.

10 Q. In which the truck agrees that you're going to
11 upload location data onto the website, right?

12 A. Yes.

13 Q. Wouldn't that be an agreement about sharing
14 data?

15 A. Well, now it's legalese. In the way I read
16 it, the data that they are uploading, the location data,
17 they're not uploading it. It's the GPS unit is
18 supplying it. So the data that we agree to share would
19 be anything else, so their financial statements, how
20 much money they make at each stop. So our idea
21 initially was that if we can collect -- if we collect
22 enough of that information from food trucks, we can kind
23 of guide them as to where to go. Be like, you know,
24 "You do really well on Tuesday mornings here and

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1 Wednesday afternoons there."

2 Q. Is that data that would come under this
3 provision?

4 A. Yes. I believe the -- sort of the income data
5 would come under 4(a)ii.

6 Q. Wouldn't you need to have the location data in
7 order for that data to be useful?

8 A. Yes.

9 Q. So this would include locational data,
10 wouldn't it?

11 A. Locational data, I believe, is separate.

12 Q. You mentioned a minute ago that you would want
13 to provide the income data?

14 A. Yes.

15 Q. In order to let trucks know where's the best
16 place to go?

17 A. Yes.

18 Q. Correct?

19 A. Yes.

20 Q. In order to figure out where that is, don't
21 you need to know the location data of where they made
22 the sales?

23 A. Yes, but I get the location data whether they
24 agree or not agree to give me their financial data.

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1 Q. Is this provision in order to enable whoever
2 might be the new owner of TruckSpotting to do the same
3 thing?

4 A. To get the financial information, yes.

5 Q. What was the intent of what the new owner
6 would be able to do?

7 A. The new owner would be able to get their
8 financial information. So it wasn't an agreement
9 between me and somebody personally. It made sure that
10 it's me and somebody corporately.

11 Q. Would you agree that in 1(a)ii you are
12 agreeing to share data?

13 A. So my thinking is this. 1(a)ii is something
14 that I agree to do. 4(a)ii is something that they agree
15 to do.

16 Q. Does it say that in 4(a)ii?

17 A. No. I guess yes. "Truck agrees to provide
18 financial data to TruckSpotting, Inc." is 4(a), so it's
19 something the truck agrees to do. It's not anything I
20 agree to do.

21 In 1(a), it says, "TruckSpotting, Inc.,
22 agrees to," and then, "upload the location." So that's
23 something that TruckSpotting agrees to do. Not the
24 truck agrees to do. The truck isn't uploading any data.

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1 The truck owner doesn't go in and manually enter in
2 their GPS coordinates.

3 Q. The truck does the share data with you though,
4 doesn't it? The transmission of the data is sharing
5 data?

6 A. I believe because it's my device and my cell
7 phone and my everything else, I believe I'm the one
8 sharing the data with the truck, to be honest with you.

9 Q. So this provision -- finance provision, your
10 clients have agreed that any information that comes
11 under this clause will be given to a third-party if a
12 third-party buys the business?

13 A. Yes.

14 MR. BERG: You're talking about 4(a)ii, just
15 to clarify?

16 MR. BARON: Yes, 4(a)ii.

17 BY MR. BARON:

18 Q. And your clients don't necessarily know who
19 that's going to be, right?

20 A. No, they do not.

21 Q. It could be anyone?

22 A. Anyone.

23 Q. It could be any corporation?

24 A. Yes.

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1 Q. Does anything in the City's ordinance require
2 you to include this provision?

3 A. No.

4 MR. BERG: Objection, form.

5 That's fine.

6 BY THE WITNESS:

7 A. No.

8 BY MR. BARON:

9 Q. Does anything in the City's ordinance require
10 your customers to accept this provision?

11 MR. BERG: Objection, form.

12 BY THE WITNESS:

13 A. No.

14 BY MR. BARON:

15 Q. And your users, including LMP, have agreed to
16 it?

17 A. Yes.

18 Q. I think we discussed earlier when LMP began
19 using your services, correct?

20 A. Yes.

21 Q. When was that?

22 A. I believe August of '13. August, September of
23 '13.

24 Q. That's when they made the first payment to

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1 you?

2 A. Yes.

3 Q. And you believe that around that time --

4 A. Yes.

5 Q. -- is when you would have started to provide
6 GPS services?

7 A. Yes.

8 Q. Is that around that time when you would have
9 provided a GPS system?

10 A. Yes.

11 Q. For how many food trucks of LMP do you provide
12 services?

13 A. Two.

14 Q. Since when for each truck?

15 A. So the first truck was on August the 13th, and
16 the second unit, we gave them maybe four months, five
17 months back now, six months, something like that. So
18 maybe half a year ago.

19 MR. BARON: Sorry. What was the response with
20 respect to the first truck?

21 (The record was read as requested.)

22 BY MR. BARON:

23 Q. Is August -- previously, we showed you a
24 document that said she made the first payment on

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1 September 13th; is that right?

2 A. Yes.

3 Q. And you think approximately a month before
4 that might have been?

5 A. Yes. Yes.

6 Q. So you're not sure that it's actually
7 August 13th?

8 A. No.

9 Q. And with respect to the second truck, you
10 believe it's about four months back?

11 A. Yes, four or five. I don't remember how long
12 this whole thing has been going on, so it's -- I know
13 she contacted me before the subpoena to get the second
14 unit, but -- and I remember it was warm outside when I
15 delivered it. I don't really remember when.

16 Q. Was it approximately July of 2014?

17 A. That could be, yes.

18 Q. Did you provide the same sort of arrangement,
19 where you provided one month of free service?

20 A. I know we provided the unit for -- I believe
21 for free. I don't remember about the 30 days or not. I
22 believe so. I think when they sign up for the payment,
23 it's automatically set to give them 30 days free and
24 then start billing, so yes.

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1 Q. So at what point did you start providing GPS
2 services with respect to the second truck?

3 A. I believe somewhere in July.

4 Q. July of 2014?

5 A. Yes.

6 MR. BARON: This is Lorman Exhibit 4.

7 (Lorman Deposition Exhibit

8 No. 4 marked for identification.)

9 MR. BARON: You can take a minute to look at
10 it.

11 THE WITNESS: Okay.

12 BY MR. BARON:

13 Q. What is this?

14 A. This is an e-mail to Laura from me.

15 Q. What does it pertain to?

16 A. I guess the data for her trucks and, from the
17 second line, is the GPS for the second truck, I guess.

18 Q. Okay. So what is the date on the e-mail?

19 A. The date is October 14th, 2014.

20 Q. Is this -- this e-mail then contains an
21 attachment, correct?

22 A. Yes, it does.

23 Q. What is that attachment?

24 A. That's the IP, sort of GPS coordinates of her

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1 truck.

2 Q. This --

3 A. Historically. Historical.

4 Q. Is this contained -- does this contain all of
5 the information that you've received from the GPS
6 devices of LMP?

7 A. Yes.

8 Q. As of October 14th, 2014?

9 A. Yes.

10 Q. Does it amount to all of the data that you've
11 ever received from LMP Services?

12 A. Yes.

13 Q. Including up to today?

14 A. I haven't checked today.

15 Q. When was the last time you checked?

16 A. Maybe a month ago.

17 Q. And at that time, was there any updated
18 data --

19 A. I don't think so.

20 Q. Let me just finish my question.

21 A. Yes. Yes.

22 Q. Up to that point, had there been any new data
23 in addition to what's available as of October 14th?

24 MR. FROMMER: Objection; vague, that date.

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1 BY THE WITNESS:

2 A. No.

3 BY MR. BARON:

4 Q. On November 21st your counsel said that you
5 didn't have any additional data. Was that around the
6 time that you looked for additional data?

7 A. Yes.

8 Q. So around November 21st?

9 A. Yes.

10 Q. And at that time there was no additional data?

11 A. There was not.

12 Q. Did you check at any point after that?

13 A. No.

14 Q. And have you provided this data to Ms. Pekarik
15 and to the City's lawyers?

16 A. Yes.

17 Q. Have you provided it to anyone else?

18 A. To my counsel, as well, as part of the
19 discovery, I guess.

20 Q. Anyone else?

21 A. I don't think so, no.

22 Q. Turning to the second page, with the data
23 itself?

24 A. Uh-huh.

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1 Q. What does "ipAddr" refer to?

2 A. IP address.

3 Q. And what is that?

4 A. So each GPS device has an IP address that it
5 communicates at.

6 Q. So each individual device has its own
7 individual IP address?

8 A. Yes. Yes. Yes.

9 Q. Are the IP addresses here what would pertain
10 to the devices that you've given to Ms. Pekarik?

11 A. Yes.

12 Q. What is "feed time"?

13 A. The time that the location was recorded on the
14 GPS device.

15 Q. And it has both a date, an hour, and a minute
16 indicator?

17 A. Yes. Yes.

18 Q. What is -- and "latitude" and "longitude,"
19 what are those?

20 A. Googleable coordinates.

21 Q. The what?

22 A. The coordinates.

23 Q. Of the exact location?

24 A. Of the exact location, yes.

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1 Q. And what is "accuracy"?

2 A. It's the number of satellites being used to
3 calculate said location.

4 Q. So the higher the number, the more accurate --

5 A. Yes.

6 Q. -- it is?

7 And this is all information that you
8 received from the GPS unit of Ms. Pekarik?

9 A. Yes.

10 Q. We established earlier LMP began using your
11 services in August or September of 2013, correct?

12 A. I believe so.

13 Yes. I know it says, whatever, June.

14 Q. So if --

15 A. So I guess it was earlier.

16 Q. You're contemplating my question before I get
17 there. There's data on here before that time frame.

18 A. Yes, there is.

19 Q. There's data from June of 2013. Do you know
20 why that is?

21 A. There's two answers. One, the unit was on
22 some other truck or I gave her the GPS earlier, before
23 she paid. And I honestly don't remember which one it
24 was.

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1 Q. Okay. So this may be --

2 A. I honestly don't remember.

3 Q. This may pertain to somebody else's data?

4 A. It may pertain to somebody else's data.

5 Or it may be actually me testing the unit,
6 as well. That's the other thing that it could be.
7 Because it looks like it's really short periods of time.
8 So it might be me plugging it in. I would have to,
9 like, map the latitude/longitude to tell you exactly. I
10 could probably get more details if I could map it. I
11 could see if it's up at my house or my work or whatever.
12 I could say, "Okay. This is me testing it versus being
13 on a truck."

14 Q. Do you know that the data from July of 2013
15 represents data from the device when it was in the
16 possession of Ms. Pekarik?

17 MR. BERG: Objection, form. I don't see any
18 data from -- I think you said July.

19 BY MR. BARON:

20 Q. Oh, I'm sorry. June. June of 2014?

21 A. Again, I don't know. I think it could be me
22 testing otherwise.

23 Q. And the data from the month of August of 2013,
24 do you know if this data would have come from the GPS

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1 device after you had given it to Ms. Pekarik?

2 A. It looks like it did, yes.

3 Q. Do you know though?

4 A. I believe it is.

5 Q. Before, we established that you weren't sure
6 exactly when you provided the system --

7 A. Yes.

8 Q. -- correct?

9 So can you be sure that this data belongs
10 to her? Can you be sure that this data belongs to the
11 device when she was in possession of the device?

12 A. To answer another way, I can never be sure
13 that the data belongs to the device when she's in
14 possession of the device.

15 Q. And why is that?

16 A. Because I don't have eyes on her 24/7.

17 Q. Can you be sure that this data comes from the
18 device after you provided her with the device?

19 A. No. But I'm 90 percent certain that that is
20 the case.

21 Q. But you're not completely sure?

22 A. No.

23 Q. What is the time zone of the hour on the feed
24 time?

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1 A. Central Standard.

2 Q. Could it potentially be Central Daylight?

3 A. Probably Daylight. I don't know if it's
4 Daylight or not.

5 Q. But it's set to the Central Time Zone?

6 A. Central Time Zone, yes.

7 Q. And it could be Daylight or Standard?

8 A. Yes. I'd have to look at what the server is
9 set to.

10 Q. Now, we saw the payment on September 13th,
11 2013. At that point, had you given Ms. Pekarik the
12 GPS device?

13 A. Yes.

14 Q. So the data after that point, is that data
15 coming from the GPS device after you had given it to
16 Ms. Pekarik?

17 A. Yes. Well, yes.

18 Q. Now, after and including that date of
19 September 13th, 2013, it appears there's only data from
20 three dates; is that correct?

21 A. Yes.

22 Q. And to the best of your knowledge, after
23 September 13th, you never received any information from
24 Ms. Pekarik other than on those three dates; is that

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1 correct?

2 A. Yes.

3 MR. BERG: Objection, form. Sorry. A little
4 late on that one.

5 BY MR. BARON:

6 Q. And if you look at the IP address for that
7 information from September 13th, 2013, forward, there's
8 only one IP address; is that right?

9 A. Yes.

10 Q. Does that mean that you would have only
11 received GPS data from one device?

12 A. Yes.

13 Q. So one of the devices that you provided
14 Ms. Pekarik you've received no data?

15 A. Yes.

16 Q. Would this be the only information that you
17 could have used to put in the location on your website?

18 A. Yes.

19 Q. Not for any of the other days that you don't
20 have information for?

21 A. No.

22 Q. Do you know why you only have data on these
23 three dates?

24 A. No.

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1 Q. What could be the causes?

2 A. Device malfunction. Them not using it. Her
3 not operating on those dates. Anything.

4 Q. Any other reasons?

5 A. Not that I can come up with.

6 Q. And you mentioned that one of the reasons
7 might be that LMP just wasn't turning the devices on?

8 A. It's a possibility.

9 Q. On the cover of this document, the e-mail that
10 you sent, could you read the first paragraph of your
11 e-mail to Laura?

12 A. Okay. It says, "Here's the data I have for
13 your C4C truck. It's not much. I don't know why. It
14 might be that you're not plugging in, something else."

15 Q. So this "might be that you're not plugging
16 in," that indicates that you thought it might be that
17 she just wasn't turning on the system?

18 A. Yes.

19 Q. What did "something else" refer to?

20 A. Any other technical problems with the device.
21 It could be the plug went bad. The device went bad.
22 Food trucks are not a very nice environment for GPS
23 devices.

24 Q. Did you ever reach out to LMP to inquire why

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1 you were not receiving information except on these three
2 dates?

3 A. No, I don't usually monitor when trucks
4 transmit.

5 Q. Why is that?

6 A. It's such a small part of my life that, you
7 know, I kind of leave it up to them to make sure that
8 they're on the map and doing everything they need to be
9 doing.

10 Q. Why do you do that?

11 A. Because I don't have time to monitor them all.

12 Q. Have other customers contacted you about data
13 not being on the website?

14 A. Yes. I've had customers contact me.
15 Actually, just yesterday someone e-mailed that their
16 unit is broken.

17 Q. So you rely on them to report when the data is
18 not coming?

19 A. Uh-huh.

20 Q. Is that a "yes"?

21 A. Yes. Sorry.

22 Q. Why would you receive data from only one
23 device?

24 A. Because she only had one device for the

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1 majority of the time.

2 Q. At what point did you give her the second
3 device?

4 A. I thought I did it in the summer, but I guess,
5 based on this e-mail, she never picked it up in the
6 summer.

7 Q. To what are you referring in this e-mail?

8 A. The second paragraph of this e-mail.

9 Q. Could you read that?

10 A. "The 2nd truck, I guess you never picked up
11 the GPS, at least I don't see one recorded in our system
12 for you."

13 Q. So it was your belief as of October 14th that
14 LMP did not have a second device?

15 A. Yes.

16 Q. Did you provide LMP with a second device?

17 A. Yes. After that date, I believe they did pick
18 one up.

19 Q. Do you know what date, around what date that
20 was?

21 A. I honestly do not.

22 Q. Have you received any data from that device?

23 A. Not that I saw.

24 Q. When you checked on November 21st, or around

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1 November 21st, did you see any data from the second
2 device?

3 A. No.

4 Q. Do you know that -- if any data that you
5 received from LMP was actually put onto your website?

6 A. Uh-huh. Do I know if it was? I can pretty
7 much guarantee that when it was transmitted it was on
8 the website.

9 Q. How can you guarantee it?

10 A. All of it goes on the website. There's no way
11 for it not to be on the website.

12 Q. A minute ago, you had talked about customers
13 who had called you about data not going on the website
14 when you believed it was, correct?

15 A. Well, that's because the GPS unit was broken.
16 So if I have data from the GPS on those three dates,
17 then that information was displayed on the website for
18 those three, for those time periods.

19 Q. In all cases?

20 A. In all cases.

21 Q. Do you verify that?

22 A. Not physically, but it's software. It's
23 binary. It doesn't change.

24 Q. But you don't have any systems in check to

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1 make sure that the data that you're receiving does go
2 onto the website?

3 A. No.

4 MR. BARON: This will be Exhibit 5.

5 (Lorman Deposition Exhibit

6 No. 5 marked for identification.)

7 BY MR. BARON:

8 Q. I'll represent that we took a series of screen
9 shots from your website. Do these look familiar?

10 A. Yes.

11 Q. What is this?

12 A. It's screen shots from the website. It's maps
13 with food trucks on them.

14 Q. Is this the map that we've been discussing
15 where you put the locations of the food trucks that are
16 your customers?

17 A. Yes, it is.

18 Q. And you can see there are a few pinpoints on
19 the map itself?

20 A. Yes.

21 Q. Is that what is revealing the location of the
22 trucks?

23 A. Yes.

24 Q. Is the truck location made public in any other

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1 way on the website?

2 A. No.

3 Q. But it's made public in a -- through the API
4 that uses this map on your app, correct?

5 A. Yes.

6 Q. And on the right, you see there's a column?

7 A. Uh-huh.

8 Q. What is that column?

9 A. That's a list of all the food trucks in
10 Chicago that we have in our system.

11 Q. The first few food trucks look like they're in
12 a different color?

13 A. Yes.

14 Q. What do the different colors indicate?

15 A. So green is operating. Yellow is scheduled,
16 and whatever, gray -- well, it's printed black -- is not
17 operating.

18 Q. So when you say that any truck is not
19 operating, it means that you -- do you still have that
20 in your system?

21 MR. BERG: Objection, form.

22 BY THE WITNESS:

23 A. I don't understand.

24 BY MR. BARON:

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1 Q. Is that truck still a customer of yours?

2 A. Yes.

3 Q. But you don't have any data for it at the
4 time?

5 A. Yes. No real-time data.

6 Q. What does that mean?

7 A. No data in the past 15 minutes of their
8 location.

9 Q. Does the list on your website indicate all of
10 your customers?

11 A. Yes. Even the ones that are probably no
12 longer operating.

13 Q. Is Cupcakes for Courage listed in this list?

14 A. It should be. But -- Cupcakes, no, it's not.
15 Not in Chicago. No, I don't see it.

16 Q. Why would that be?

17 A. I do not know.

18 I'm guessing it's a recent screen shot.
19 Oh, you know what it may be?

20 Q. What might it be?

21 A. So this is how it is set up, is that this is
22 for a metro area. If the GPS was in a different --
23 outside the metro area, it wouldn't be in this list.
24 And I don't remember what the -- sort of the boundaries

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1 I set up were.

2 Q. Are you aware that Cupcakes for Courage, the
3 fixed location bakery is in Elmhurst?

4 A. I recently became aware. I honestly never
5 knew where they operated from.

6 Q. So if the GPS was designated as outside the
7 metro area of Chicago, it would not be posited on this
8 map?

9 A. Yes.

10 Q. Is there any chance that it could be posited
11 on this map?

12 A. If she shows up in Chicago, it would be on
13 this map.

14 Q. How would you know whether or not she shows up
15 in Chicago?

16 A. Via her GPS coordinates.

17 Q. So it --

18 A. So the truck drives into Chicago and plugs in
19 the GPS, she'd show up on the map.

20 Q. Does it indicate the -- so what are the
21 inactive --

22 A. The inactive ones are the ones that -- I
23 really don't know why she's not on here. She should be.
24 It's whatever trucks, where their last location was in

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1 the city, they should show up.

2 So if her location wasn't in the city, I
3 guess maybe she wouldn't show up if her last location
4 wasn't in the city. That's the only explanation I can
5 come up with.

6 Q. Have you ever looked into this?

7 A. No. It's never been pointed out, so I've
8 never looked into it. That is strange.

9 Q. If the data that was indicated on the list
10 that you provided us for September 13th, January 20th,
11 and January 21st, if her Cupcakes for Courage is not
12 listed in this column, could that data have been put
13 onto this map?

14 A. Yes.

15 Q. How's that?

16 A. At the time of transmission, it would have
17 been on the map. But then once it stops transmitting,
18 it goes off the map. Now, why it's not listed in the
19 trucks that are not operational, that's something I do
20 not know. That's the -- I'm thinking back to how all of
21 that works.

22 Q. So it's your best understanding that this list
23 would represent all of the trucks that are allocated to
24 Chicago?

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1 A. Yes.

2 Q. Is there some point at which you designate
3 whether a truck is in Chicago metro area?

4 A. Yes. There's a -- sort of a border around
5 whatever, the center of Chicago.

6 Q. Is there any opportunity when a customer signs
7 up for this service to indicate that they're in the
8 Chicago metro area?

9 A. No. It works off of the location.

10 Q. So if a food truck from Atlanta took a 15-hour
11 drive and started operating in Chicago, the data would
12 show up on this map?

13 A. Yes.

14 Q. According to your system?

15 A. Yes.

16 Q. Would it also show the name in this column?

17 A. While they were in Chicago. Once they go back
18 to Atlanta and plug in in Atlanta, they would start
19 showing up in Atlanta and not in Chicago.

20 Q. And what are the borders of the Chicago metro
21 area that you have?

22 A. I don't remember what I set them up.

23 Q. Do you have a general idea?

24 MR. FROMMER: Objection to the extent it calls

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1 for the witness to speculate.

2 BY THE WITNESS:

3 A. Probably 15 miles-ish.

4 BY MR. BARON:

5 Q. Fifteen outside of the city limits or outside
6 of --

7 A. Outside of, like, Madison and State or
8 whatever the zero point is.

9 Q. So if LMP turned on their GPS services today
10 outside of that 15 -- outside of whatever the radius is,
11 the data would show up on this map, according to you?

12 A. The data gets put into the map, so we've had
13 trucks from, like, St. Louis would plug in, and then the
14 map gets blown up to include St. Louis. Because that's
15 the closest metro area it can find for a live truck.
16 But if she shuts off afterwards, I only look at the
17 zone.

18 Q. As to where you plot the location?

19 A. As to the inactive ones.

20 Q. As to whether you include them in the column
21 on the right.

22 A. Yeah. Yeah, in the column on the right.

23 Q. Now, you mentioned that green represented
24 active?

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1 A. Yes.

2 Q. What does that mean?

3 A. Like currently serving food that we --
4 like, if a customer goes there, the truck will be there,
5 GPS plugged in, hopefully serving food. Again, I don't
6 know if they're serving food or not, but at least they
7 have the GPS plugged in.

8 Q. And I think you've mentioned before, the map
9 represents every truck that's given you data in the past
10 15 minutes?

11 A. Yes.

12 Q. Is that -- that's what represents active?

13 A. Yes. That's what represents active.

14 Q. And what does the yellow represent in terms
15 of, I think you said, scheduled?

16 A. Scheduled. So there's a way for them to go on
17 the website and say, "On Monday, I'll be here from this
18 time to this time. On Tuesday, I'll be here."
19 Wednesday, whatever. And then I display them in yellow,
20 because again, we are not certain if they're there, but
21 they told us that they will be there.

22 There's also a feature to scroll through
23 times so you can look -- not on the website. On the
24 app, there is. So you can look, like, eight hours from

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1 now, where the food truck is going to be. So that's the
2 premise of scheduled.

3 Q. Has LMP ever provided you with a schedule?

4 A. No.

5 Q. Do you believe GPS technology offers benefits
6 to food trucks?

7 MR. BERG: Objection, form.

8 BY THE WITNESS:

9 A. Yes.

10 BY MR. BARON:

11 Q. What are they?

12 A. I believe it's a way to advertise your
13 location when you don't have a location.

14 Q. Any others?

15 A. Some people have used it to track their
16 employees, to make sure that the employees were where
17 you want the employee to go and doing what the employee
18 should be doing.

19 Q. Any others?

20 A. Not that I can imagine or come up with.

21 MR. BARON: That is Lorman Exhibit 6.

22 (Lorman Deposition Exhibit
23 No. 6 marked for identification.)

24 BY MR. BARON:

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1 Q. Could you take a minute just to look over the
2 e-mail?

3 (Short pause.)

4 BY MR. BARON:

5 Q. Do you remember this e-mail?

6 A. Yes.

7 Q. Did you write this e-mail?

8 A. Yes.

9 Q. To whom did you send it?

10 A. To all the food trucks in Chicago that we had
11 an e-mail for.

12 Q. How did you get those e-mails?

13 A. Off of their websites.

14 Q. You see in the third paragraph?

15 A. Uh-huh.

16 Q. There's a portion that says, "Here are three
17 huge advantages of having GPS on board"; isn't that
18 right?

19 A. One, two, three. Sorry. I'm trying to look
20 for it. You have it highlighted. I do not.

21 Oh, yes. Okay. Yes.

22 Q. What were those three huge advantages of
23 having GPS on board?

24 A. So one is the -- there's the website app to

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1 display a real-time location.

2 Q. And you believe that's an advantage to food
3 trucks?

4 A. I believe it's an advantage to food trucks,
5 yes.

6 Two is that it's per city, whatever
7 meetings that they had on the ordinances, that it could
8 be used in a court of law if you do get a ticket for
9 violating whatever location limitations, if the GPS
10 system proves that you were in the specific spot, it's
11 dismissible and you could get out of a ticket.

12 Q. Why did you think that was a benefit for food
13 trucks?

14 A. Because sometimes you never know. The police
15 don't come out there with a measuring stick and go from
16 your door to the restaurant door to make sure it's 200
17 feet.

18 Q. Have you ever been asked for GPS data -- have
19 you ever been asked by a food truck for their GPS data
20 to use for that purpose?

21 A. Yes.

22 Q. When was that?

23 A. I don't remember when. I remember it was
24 Beaver's Donuts.

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1 Q. What were the circumstances?

2 A. Some lady called on him to the police because
3 she couldn't get out of her parking spot. And he
4 couldn't move the truck because he had hot oil and
5 didn't want to spill it all over the place.

6 Q. So called you?

7 A. He got a ticket. He called me. I gave him
8 his location for that day. He went -- and I believe
9 talked to all the restaurants around there -- as well,
10 got written letters that they were okay with him being
11 where he was. And he got the ticket dismissed.

12 Q. He got the ticket dismissed?

13 A. Yes.

14 Q. Was that a result of you having given him the
15 GPS data?

16 A. I don't know if it was because of the data or
17 because of the letters, but he got it dismissed.

18 Q. And what is the third benefit that you
19 identified in this e-mail?

20 A. So the third benefit is the one we never
21 actually used, but in theory, if we did collect
22 financial information and all of that stuff, we could
23 tell customers where their best spots are for serving
24 food.

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1 Q. And that's what this monthly data analytics
2 report was?

3 A. Yeah. It's the monthly data analytics report,
4 which we never did, nor did anyone ever pay for it, nor
5 did anyone ever provide enough data for us to do it.

6 Q. What was the intended benefit of this report?

7 A. So the intended benefit is that you might not
8 necessarily -- or as a food truck owner, you might not
9 necessarily be in the best location for you. So the
10 intended benefit is to see. Because we would have data
11 from all different food trucks. We could kind of put it
12 altogether and run an analysis on it, and then based on
13 that analysis, tell people, "Hey, you might want to go
14 here. There's a ton of customers and no food trucks,
15 you know, there. And too many food trucks, you don't
16 make money here." That type of stuff.

17 Q. Did you ever prepare any drafts of this sort
18 of report?

19 A. No. There's -- I believe my counsel submitted
20 a paper that is coauthored by Mike Roytman.

21 THE WITNESS: Did we submit that?

22 BY MR. BARON:

23 Q. Do you know what that paper is about?

24 A. It's about, like, how cooperating in the food

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1 truck environment can double the food truck environment
2 by, like, two times or something along those lines.

3 Q. Was that the Pareto efficiency paper?

4 A. Yes. Massive math.

5 Q. And the thinking was that the logic in that
6 paper would have supported this idea of using data to
7 figure out the optimal locations?

8 A. Yes.

9 Q. Pareto efficient locations?

10 A. Yes.

11 Q. And that was coauthored by Mike Roytman?

12 A. I believe he's on the author list. I know he
13 did it when he was in his graduate school, so that's --
14 you know, a circle through.

15 Q. In addition to these three advantages of
16 having GPS on board, are there any others?

17 A. Again, there's a way to track your employees.
18 That's what a lot of customers used. There's an ice
19 cream guy; he has four trucks. He wants to make sure
20 they're running around as they're supposed to. So he
21 has GPS on them and he's got them on his iPhone and
22 whips them into shape if they don't abide.

23 Q. Any others?

24 A. I don't know any others. Honestly don't.

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1 Q. I've got to ask that last question.

2 A. I know. I know.

3 (Lorman Deposition Exhibit
4 No. 7 marked for identification.)

5 BY MR. BARON:

6 Q. Now, I just want to authenticate. Does that
7 look familiar to you?

8 A. Yes. Yes. Yes.

9 Q. What is this?

10 A. This is the -- I believe "about us" or
11 something of that section on our website.

12 Q. Is this an accurate portrayal of what's on
13 the -- on your website?

14 A. Yes.

15 MR. BARON: This would be 8, Exhibit 8.

16 (Lorman Deposition Exhibit
17 No. 8 marked for identification.)

18 BY MR. BARON:

19 Q. Does this look familiar to you?

20 A. Yes.

21 Q. What is this?

22 A. This is the printed version of that one page
23 of the TruckSpotting website.

24 Q. So this is a depiction of what is on the

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1 website?

2 A. Yes.

3 Q. If you turn to page 3 --

4 A. Yes.

5 Q. -- what does page 3 depict?

6 A. It's a promotional video.

7 Q. Are you familiar with the video?

8 A. Yes.

9 Q. Did you help in creating the video?

10 A. I'm in the video.

11 Q. I was wondering who that was.

12 A. Did the cat make the video? I don't remember.
13 For part of it, had the cat in my lap.

14 MR. BARON: This will be Exhibit 9.

15 (Lorman Deposition Exhibit

16 No. 9 marked for identification.)

17 BY MR. BARON:

18 Q. Do you recognize this document?

19 A. Yes.

20 Q. Do you recognize what the words are on the
21 document?

22 A. Yes.

23 Q. Is this the -- is this an accurate transcript
24 of the video that we just discussed in exhibit -- as

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1 depicted in Exhibit 8?

2 A. Yes.

3 Q. Now, the second line, there is a sentence that
4 says, "Unlike brick and mortar restaurants, food trucks
5 are able to move around so they can serve more
6 customers."

7 A. Yes.

8 Q. What did you mean by that?

9 A. We meant that food trucks don't stay
10 stationary for very long times in most locales.

11 Q. Is that an advantage of being a food truck?

12 A. I believe so.

13 Q. And you said they can serve more customers.
14 More customers than what?

15 A. More customers than if they were sitting in
16 the same spot.

17 Q. Why is that?

18 A. Because they can do lunch in the business
19 center and dinner a residential area.

20 Q. Does it mean that they're able to find new
21 locations and serve new locations more easily than fixed
22 restaurants?

23 A. Yes.

24 Q. Then a couple sentences down it says, "Trucks

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1 are busy serving people so they don't always have time
2 to tweet about where they are."

3 A. Uh-huh.

4 Q. What did you mean by that?

5 A. A lot of food trucks at that time -- or
6 still -- were using Twitter as a means of announcing
7 their locations. And I know that a lot of them, you
8 know, you forget to tweet it. You don't have time to
9 tweet it, whatever it is. Like, it's -- I considered it
10 a burden to have to do it and keep remembering to do it
11 and all of that other stuff.

12 Q. Is GPS a way of remedying that burden?

13 A. I believe so.

14 Q. Is Twitter information reliable, as to finding
15 where a food truck is?

16 A. My belief is that partially.

17 Q. How so?

18 A. Because people tweet out -- or I shouldn't
19 say, "people." Some people tweet out that "We're here."
20 But some people never tweet out that "We have left," so
21 they might have left, and you walked for 20 minutes in
22 the cold to get your sandwich and they're gone.

23 Q. So it might not be accurate?

24 A. It might not be accurate, yes.

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1 Q. How does GPS remedy that issue?

2 A. Because it's a timed real-time system so the
3 most you'll have is a 15-minute sort of lapse. And if I
4 were to get complaints about the 15 minutes, we could
5 make the 15 minutes 2 minutes, whatever it is. Like I
6 can tighten up some gaps.

7 Q. And then below you say, "It's a simple,
8 efficient way to find a food truck. Just what this
9 market needs." What did you mean by that?

10 A. That using the apps or the website is a simple
11 way of finding food trucks.

12 Q. Using a GPS system?

13 A. Yes, using a GPS system, getting a location on
14 a map, all of that tied together.

15 Q. What do you mean by "what this market needs"?

16 A. What the food truck market needs.

17 Q. How so?

18 A. Because you get to see -- or at least the
19 vision of TruckSpotting is or was that you get to see
20 all the food trucks on a map, decide which one you want
21 to go to, see which one is closest to you without having
22 to go through Twitter, find the locations, map them
23 yourself, and then see what you wanted to do.

24 MR. BARON: Can we take a quick break?

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1 MR. FROMMER: Yes, sure.

2 (Recess from 11:19 a.m. to 11:26 a.m.)

3 BY MR. BARON:

4 Q. Do you have any company protocols that
5 indicate how you handle the GPS data that you have?

6 A. I mean, they're all in software. They're all
7 just written into software, so not, like, documented
8 protocols.

9 Q. Protocols in terms of how you or any agent of
10 TruckSpotting would use the data?

11 A. No.

12 Q. Do you have any sort of protocols about who
13 has access to that data?

14 A. No.

15 Q. Nothing written down about that?

16 A. Nothing written down, no. It's always been
17 one or two people at most that have worked for --

18 Q. And you --

19 A. -- TruckSpotting.

20 Q. I'm sorry. You can finish.

21 A. So there never was a need to sort of control
22 access and all of that stuff.

23 Q. And why is that?

24 A. Because it was me and one other guy or me on

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1 my own.

2 Q. Do you have any protocols about how
3 long GPS -- the GPS data is kept?

4 A. No.

5 Q. Why not?

6 A. Because data is cheap. Storage is cheap.

7 Q. What do you mean?

8 A. Like, for me to pay for the data to be stored
9 costs nothing. So I might as well just store it and
10 have it from, you know, infinity.

11 Q. Do you have any protocols about making sure
12 that data doesn't get out to people that you don't want
13 it to?

14 A. Regular security protocols that sort of
15 everyone implements.

16 Q. And what are those?

17 A. Passwords on the database, passwords on the
18 server, updating the server and sort of software
19 infrastructure to make sure it's not vulnerable to
20 attack, that type of stuff.

21 Q. Has any customer ever asked you to have
22 protocols that would govern what you can use the data
23 for?

24 A. No.

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1 Q. Has any customer asked you for protocols that
2 would pertain to who can see the data?

3 A. No.

4 Q. How about for how long you keep the data?

5 A. No.

6 Q. TruckSpotting operates in how many cities?

7 A. Actively, currently, two.

8 Q. Currently, two?

9 A. Yes.

10 Q. What are those cities?

11 A. Chicago and Tampa.

12 Q. Where else has TruckSpotting operated?

13 A. Well, we've operated in a plant, but that's
14 pretty much dead and gone.

15 Q. Anywhere else?

16 A. There's food trucks from a bunch of other
17 places, but I wouldn't call that us operating.

18 Q. Why is that?

19 A. Because someone calls and signs up and gets
20 the app and uses it. We don't actively market to them.
21 We don't actively pursue them. We don't have agents
22 there. We've never traveled there.

23 Q. In how many different cities does
24 TruckSpotting have trucks that are customers of yours?

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1 A. I honestly don't know. Whatever show up on
2 that list, which you have in Exhibit 8. It says,
3 "Cities." That's probably the cities. Some of them are
4 hopeful. Some of them are for real, but that's the
5 cities.

6 Q. Do you have at least one truck in each of
7 these cities?

8 A. Not in Boston. And one guy traveled to New
9 York and Asheville, but he no longer uses it. But
10 otherwise, yes.

11 Q. How many trucks are customers of yours?

12 A. Maybe 70-ish.

13 Q. How many of those trucks are in Chicago?

14 A. I honestly don't know.

15 Q. Do you have an estimate?

16 A. I'd say 40-ish.

17 Q. And the other trucks are spread throughout the
18 other cities?

19 A. Yes. Mostly Tampa there's a big
20 concentration. Tampa is a nice town for them.

21 Q. How many people would you estimate use
22 TruckSpotting?

23 MR. FROMMER: Objection, vague.

24 What do you mean by the term "use"?

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1 BY MR. BARON:

2 Q. Do you understand what I mean by that?

3 A. Customers or food trucks?

4 Q. Individuals that use TruckSpotting to find
5 food trucks.

6 A. To find food trucks? Okay.

7 About 150 to 200 daily.

8 Q. How do you get that number?

9 A. Google Analytics.

10 Q. What does that calculate?

11 A. People who look on the website or in
12 the app every day. So unique individuals that
13 look -- it might double count if you look from your
14 phone and your computer. But roughly, the numbers
15 are there.

16 Q. So it's 150 to 200 people that look at the
17 page every day?

18 A. Yes.

19 Q. Does it calculate not necessarily on a daily
20 basis, but people that do look at the page on a less
21 frequent basis than every day?

22 A. When you mean calculates for however many
23 people go there each day. Like, I don't know if a
24 person was there daily or if he goes there once and

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1 never comes back.

2 On average, every day, it's 100 to 200
3 people.

4 Q. Does it calculate it per month, how many
5 people visit your page per month?

6 A. Yeah, you can sum it up. I haven't looked in
7 a while, so I don't know.

8 Q. How does IMP Services pay you?

9 A. Through PayPal initially, and I believe now
10 she signed up through a credit card, provided a credit
11 card, I believe. But not certain.

12 Q. How does the PayPal system work?

13 A. I would send an invoice and hope and pray that
14 people will pay.

15 Q. And how does the credit card system work?

16 A. It's a little nicer. People go on the website
17 and they enter their credit card. Then I hope and pray
18 that the credit card doesn't expire. So there's an auto
19 bill that happens every month for the 25.

20 Q. Is the PayPal method an auto bill?

21 A. No. PayPal is not. PayPal is me chasing them
22 around.

23 Q. But the credit card method is an automatic
24 payment?

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1 A. Automatic payment, yes.

2 Q. And is LMP signed up with the automatic
3 payment now?

4 A. I believe so. Again, I haven't -- like, we've
5 implemented it in the last couple of months, and I've
6 kind of stepped away, at least from actively looking at
7 everything, so I don't know.

8 Q. We looked at a document before that said a
9 \$250 payment was made on --

10 A. Yes.

11 Q. -- September 13 --

12 A. Yes. Yes.

13 Q. -- 2013.

14 A. Yes.

15 Q. Have any other payments been made by LMP?

16 A. Not that I could find. And I looked.

17 Q. What was the terms of that initial
18 \$250 payment?

19 A. That was for the year. So we usually do
20 sort of if you pay for the year, we give you two months
21 free.

22 Q. So it'd be for approximately 14 months?

23 A. No. So that would be for 12 months. So she
24 paid for 10. We gave her 2 free.

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1 Q. I understand. That was in September of 2013?

2 A. Yes.

3 Q. Hasn't that timed elapsed?

4 A. Yes.

5 Q. So she hasn't paid you for current services?

6 A. I don't know if she's on the card or not, but
7 no. And that's just how I run all of this business. I
8 mean, that's how it used to be. I used to let people
9 lapse six months and go chasing them around. So it's
10 not uncommon. There's plenty of people who haven't paid
11 me for a long time.

12 Q. Would you still deem them to be your customer?

13 A. Yes.

14 Q. But they haven't actually paid you for the
15 services?

16 A. Yes. That's maybe not the best way of running
17 a business, but that's how it's been going.

18 Q. The device that you've provided to
19 Ms. Pekarik, what's the model of the device again?

20 A. That's a CalAmp LMU-710.

21 Q. And we talked a little bit about GPS devices
22 in general previously. The CalAmp LMP-700 (sic), do you
23 turn it on and off by plugging it in?

24 A. Yes.

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1 Q. It's the same method that we talked about
2 earlier?

3 A. Yes. Yes.

4 Q. Are there two lights on that device in
5 particular?

6 A. Yes.

7 Q. And they'll indicate if it is transmitting
8 data or not?

9 A. Yes.

10 Q. The satellite and the cellular network
11 lights --

12 A. Yes.

13 Q. -- that are indicated there?

14 A. Yes.

15 Q. Is the map on your website that shows the
16 real-time locations of trucks in the city, is that
17 something that distinguishes your company from other
18 GPS companies in the city?

19 A. I believe so.

20 Q. Why is that?

21 A. I don't know of anyone else who does that.

22 Q. Is that something you sell to customers?

23 A. Yeah. I mean, that is our marketing
24 strategies, that "Hey, we'll advertise you."

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1 Q. And they have the option to go to somebody
2 else if that's not what they want, right?

3 A. Yeah, of course.

4 But can I actually answer a question you
5 asked before the break?

6 Q. Sure.

7 A. I just figured it out. And this is, you
8 know, the engineering brain working. So this is going
9 back to Exhibit 5, why her trucks don't show up is
10 because --

11 Q. One second.

12 A. Sorry. I'll let you get back to it. I know
13 it's jumping back, but I might as well.

14 Because we changed the GPS unit on her
15 trucks.

16 Q. What about changing the GPS unit on her
17 trucks?

18 A. That changed the IP address, and that GPS unit
19 has never transmitted. That's why she's not on the --
20 she's not listed as an inactive truck.

21 Q. So the account information that you have --

22 A. So the truck is assigned a GPS unit, and the
23 GPS unit lives in some area. So because -- like when I
24 e-mailed her I haven't been getting any transmissions,

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1 to make sure that it's not the unit, I gave her a
2 brand-new GPS unit for both of her trucks. Since then,
3 I haven't heard anything from those units. That's why
4 she's not on that list. That's why the truck doesn't
5 show up.

6 Q. Would you have the data -- the list of data
7 that we reviewed before, that's a complete list of the
8 data --

9 A. Yes.

10 Q. -- you've received from --

11 A. Yes. Yes.

12 Q. -- either the old model or the new model?

13 A. Yes.

14 Q. Okay. And so these accounts on the right-hand
15 column of Exhibit 5 pertains to the IP address that you
16 added to the system?

17 A. Yes.

18 Q. So if the new system, the new devices that she
19 has sent you GPS information, would it show up on this
20 map?

21 A. Yes. It would show up on the map and then it
22 would show up on the inactive list because it would be
23 able to put where its last location was. So right now,
24 it can't determine where the truck's last location was

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1 because that GPS unit has never transmitted.

2 Q. Is this the case for the first device that you
3 initially provided to Ms. Pekarik in the fall of 2013?

4 A. I'm sorry?

5 Q. Let me restate.

6 A. Yes.

7 Q. Ms. Pekarik now has two devices in her
8 possession?

9 A. Yes.

10 Q. The first, there was one device that you
11 provided in the fall of 2013 --

12 A. Yes.

13 Q. -- correct?

14 A. Yes.

15 Q. Did you replace that device?

16 A. Yes.

17 Q. And you provided a second new device?

18 A. Yes.

19 Q. And each of those had two separate IP
20 addresses?

21 A. Each of them had one IP address for a sum of
22 two.

23 Q. And those two IP addresses were different than
24 the IP address of first device that you --

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1 A. Yes.

2 Q. When did you switch those devices?

3 A. After that e-mail in October, I believe
4 literally that week. Because I know she was going
5 through the lawsuit and I know she was like "I need this
6 ASAP," blah, blah, blah.

7 Q. Why did you switch out the previous GPS?

8 A. Because I saw that there was no transmissions.
9 When I did look at the data, I saw that there was no
10 transmissions for a long time. So just to sort of make
11 sure that the device is working, I did give her a
12 working unit.

13 Q. Did you ever check this column on the
14 right-hand side to see if Cupcakes for Courage was
15 listed at any point when she had services with you?

16 A. No. I don't usually monitor that stuff.

17 Q. So before the time you swapped out --

18 A. I wouldn't know. I honestly wouldn't know.

19 Q. Speaking about the old unit that was in the
20 first truck, if that unit was in Chicago and
21 transmitting data, that would have showed up on the
22 right-hand side?

23 A. Yes.

24 MR. BERG: Objection to form. I think --

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1 clarify the time period. Are you talking about
2 when he printed this out? Contemporaneously?

3 BY MR. BARON:

4 Q. Speaking about the map generally, the program
5 itself that is on the website --

6 A. Yes.

7 Q. -- it would have then appeared on the map
8 website?

9 A. Yes.

10 Q. If the truck then went outside the radius and
11 continued to transmit, would it continue to appear on
12 the right-hand side?

13 A. If it continued to transmit, yes.

14 Q. Even if it was outside of the Chicago
15 radius?

16 A. Yes. So what happens is there's -- so there's
17 metro areas on the map. Sorry. I can't draw. But it
18 basically picks the -- as it's transmitting, it assumes
19 you're in the closest metro area to that truck, whatever
20 that is. You could be in Pennsylvania, and it'll put
21 you in New York or Boston. I don't know which one is
22 closer.

23 So as far as, like, she's in Chicago. She
24 goes to Naperville. It shows up as Chicago. Once she

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1 shuts off, if she shuts off in Naperville and that was
2 the last location, depending on the distance radius, she
3 may not show up in Chicago anymore.

4 MR. BARON: Could you read that back.

5 (The record was read as requested.)

6 BY MR. BARON:

7 Q. If the last transmission that she gave was in
8 Naperville, outside the radius, it would no longer show
9 up.

10 A. As inactive in Chicago.

11 Q. Even after you gave the new device in October
12 of 2014, she hasn't transmitted any data to you?

13 A. Not that I can see.

14 Q. And you checked on --

15 A. And I checked, yes.

16 Q. -- November 21st?

17 A. Yes.

18 Q. And that device was in good working condition
19 at the time?

20 A. Yes.

21 Q. Both of them?

22 A. Yes.

23 Q. Have you ever asked Ms. Pekarik if she wasn't
24 turning on the prior device or plugging it in?

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1 A. No.

2 Q. Did you ask her if she was -- backtrack that.

3 Did you ask her about why she thought the
4 devices might not be sending any data?

5 A. No.

6 Q. Did she indicate that to you in any way?

7 A. No.

8 Q. What's your best guess as to why there was no
9 data being transmitted --

10 MR. FROMMER: Objection.

11 MR. BARON: I'm not done with the question.

12 MR. FROMMER: Oh, sorry.

13 BY MR. BARON:

14 Q. What's your best guess as to why there is only
15 data being transmitted from a handful of days and not as
16 to plenty of other days?

17 MR. FROMMER: Objection to the extent it calls
18 for speculation.

19 MR. BERG: Objection, form.

20 You can go ahead and answer if you know.

21 BY THE WITNESS:

22 A. I don't know. I honestly don't know.

23 BY MR. BARON:

24 Q. Based on --

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1 A. It could be the device was faulty. It could
2 be something was -- she was putting it in some spot
3 where it wasn't getting transmission. You know,
4 locking it in a metal box, it's not going to do
5 anything.

6 Q. So that would be on the user who's not using
7 it correctly?

8 A. Yes. Or faulty, meaning, you know,
9 check it. Call me. I'll replace it. Or she wasn't
10 plugging it in. I don't -- you know, anything could
11 happen.

12 Q. Have you had those type -- that gap of data
13 with respect to other customers?

14 A. Yes.

15 Q. You have?

16 A. Yes.

17 Q. And what have you done in response to that?

18 A. If they complain that it's the device, I'll
19 replace the device. Otherwise, you know, I can't tell
20 them how to run their business.

21 Q. Have those instances been as a result of
22 whatever the customer is doing with the GPS device?

23 MR. BERG: Objection, form.

24 BY THE WITNESS:

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1 A. Sometimes it's been that the device was
2 damaged. Other times, it's been on the customer.

3 BY MR. BARON:

4 Q. And what did they do in those circumstances?
5 What about what the customer did kept the data from
6 transmitting?

7 A. They wouldn't be plugging in. They wouldn't
8 be supplying it power. So sometimes, you know, they're
9 serving. They don't need the generator, so they
10 wouldn't be running the generator. There was no power
11 to the unit. It wasn't transmitting.

12 Q. And you believe that's what was happening with
13 Ms. Pekarik's devices?

14 A. I honestly --

15 MR. BERG: Objection, form.

16 BY THE WITNESS:

17 A. -- don't know.

18 There's three things that could be
19 happening.

20 BY MR. BARON:

21 Q. Sorry. What? The three are?

22 A. She's not plugging in, it's damaged, or it
23 can't get the signal.

24 Q. Okay. If any of those three were actually

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1 happening, would the lights on the device itself be lit
2 up? Would they be working to indicate that it is
3 transmitting?

4 A. If it's not plugged in, obviously there's no
5 lights. If it's plugged in and there's no lights,
6 there's something wrong with the device. And if it's
7 plugged in and the lights are flashing, it should be
8 fine.

9 Q. What about if it is the third option that you
10 had, it being in a position somewhere that it's not able
11 to get --

12 A. The lights would blink in a specific pattern,
13 and most customers know what that is, to let them know
14 that like...

15 Q. So there would be some indication that the
16 data --

17 A. Yeah. The lights blink in a pattern. So
18 there's like three on. It's like Morse code-ish.

19 Q. So you could tell from the device itself that
20 the data was not being transmitted to you?

21 A. Yes. Yes. Most people know the standard
22 blink of them, when it's all good, and they'll call me
23 if it's not that.

24 Q. So by looking at a device, a customer can tell

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1 pretty easily whether or not it's working?

2 A. Usually, yes.

3 Q. What do you mean, usually?

4 A. Sometimes they don't look, but yes,
5 by looking at it, you can tell if it's working or
6 not, yes.

7 MR. BARON: That's all we have.

8 MR. FROMMER: Can we take like a two-minute,
9 and then I have a couple questions?

10 MR. BARON: Yes.

11 (Recess from 11:48 a.m. to 11:50 a.m.)

12 EXAMINATION

13 BY MR. FROMMER:

14 Q. Mr. Lorman, how accurate are GPS units,
15 typically?

16 MR. BARON: Objection, vague.

17 BY THE WITNESS:

18 A. It depends on the number of satellites that
19 the GPS unit receives. It's as good as 3, 4 feet and as
20 bad as bad gets.

21 BY MR. FROMMER:

22 Q. And what factors depend -- weigh in on how
23 accurate a GPS unit is?

24 MR. BARON: Same objection.

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1 BY THE WITNESS:

2 A. How many satellites it can see.

3 BY MR. FROMMER:

4 Q. If a GPS unit is in an area that has a
5 number of very tall buildings, how does that affect the
6 GPS unit's accuracy, if at all?

7 MR. BARON: Objection, calls for speculation.

8 BY THE WITNESS:

9 A. So usually the buildings will block out a
10 number of satellites, so you'd -- it definitely drives
11 accuracy way down.

12 BY MR. FROMMER:

13 Q. Have you reviewed the GPS records for food
14 trucks operating in the Loop?

15 A. I have not, not recently.

16 Q. So --

17 A. I know that when we first started, there was a
18 dead spot right by Aon building. Because I think they
19 would park right between Aon and the Blue Cross-Blue
20 Shield building, and I think the way it's set up is it
21 blocks everything out.

22 Q. So is it fair to say that in areas with a
23 number of tall buildings the accuracy of the GPS unit
24 can be degraded?

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1 A. Yes.

2 MR. BARON: Objection, vague.

3 BY THE WITNESS:

4 A. Yes.

5 BY MR. FROMMER:

6 Q. Has the City of Chicago ever told you or
7 communicated to you under what conditions city employees
8 may request GPS data from TruckSpotting?

9 A. No.

10 Q. Has the City ever indicated that TruckSpotting
11 could refuse to provide GPS data to a city official who
12 was asking for it?

13 A. No.

14 Q. Suppose someone calls claiming to be a City of
15 Chicago employee and is ordering you to provide them a
16 truck's current location based off its GPS information.
17 has the City of Chicago provided you with any way to
18 either -- to verify the identity of that person?

19 A. No.

20 MR. BARON: Objection, calls for speculation.

21 THE WITNESS: Sorry.

22 BY THE WITNESS:

23 A. No.

24 BY MR. FROMMER:

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1 Q. Has the City of Chicago provided you
2 with any way to determine whether that request for the
3 GPS location is for a purpose that is laid out in either
4 the code, City of Chicago Code or the regulations?

5 A. No.

6 Q. Do you feel that there are any
7 circumstances where a City of Chicago employee,
8 or more accurately, a person calling claiming to be a
9 City of Chicago employee, if they contact you and
10 request the GPS location for a truck, are there any
11 circumstances under which you feel that you could refuse
12 that request?

13 MR. BARON: Objection, calls for speculation.

14 BY THE WITNESS:

15 A. Given the data is public, I don't think there
16 need be.

17 BY MR. FROMMER:

18 Q. What is your understanding about an
19 application -- scratch that.

20 In your opinion, what does it mean for an
21 application programming interface to be publicly
22 accessible?

23 MR. BERG: Objection, form.

24 MR. BARON: Objection, asked and answered.

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1 BY THE WITNESS:

2 A. I think that it's -- if requested, access is
3 granted.

4 BY MR. FROMMER:

5 Q. And in your opinion, what does it mean for an
6 API or application programming interface to be available
7 to the general public?

8 MR. BARON: Objection, asked and answered.

9 BY THE WITNESS:

10 A. I think the same thing, anyone can ask and get
11 access.

12 BY MR. FROMMER:

13 Q. Has anyone requested access to TruckSpotting's
14 application programming interface in the past?

15 MR. BARON: Objection, asked and answered.

16 BY THE WITNESS:

17 A. No, but there was one guy who was trying, and
18 he never went forward.

19 BY MR. FROMMER:

20 Q. Who was that?

21 A. Chicago Food Truck Finder. He wanted to get
22 away from using Twitter, but he never did. I don't
23 remember. I do think I provided him the information,
24 but he never implemented it, at least not that I know of.

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1 Q. So is it fair to say that you granted him
2 access to TruckSpotting's application programming
3 interface?

4 A. Yes. Yes.

5 Q. And that he just did not then use that --

6 A. Yes.

7 Q. -- API?

8 Okay. Did you feel that you had to
9 provide Chicago Food Truck Finder access to your
10 application programming interface?

11 A. No. It was a business mutually beneficial to
12 both parties, I feel.

13 Q. Do you feel that an application programming
14 interface would be publicly accessible or available to
15 the general public if you could deny access to that API
16 to people requesting it?

17 A. No.

18 Q. If some -- now, let me understand.
19 TruckSpotting has a website that displays member trucks'
20 current location, correct?

21 A. Yes.

22 Q. If someone, another person or
23 another entity, wanted to build a website similar
24 to yours that would display the real-time location

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1 information of trucks that are a part of your
2 service, and they asked for access to
3 your application programming interface to be
4 able to get the data for such a website, would
5 you have to make that API available to them?

6 MR. BARON: Objection, speculation.

7 BY THE WITNESS:

8 A. I believe so, yes.

9 BY MR. FROMMER:

10 Q. And what is the basis for that belief?

11 A. Because it needs to be publicly available.

12 Q. Have any city employees ordered TruckSpotting
13 to turn over GPS data?

14 A. No.

15 THE WITNESS: Do you guys count?

16 MR. BERG: They're city employees, yes.

17 BY MR. FROMMER:

18 Q. Let me re-ask the question. Have any city
19 employees, including any officials in the City of
20 Chicago Department of Law ordered TruckSpotting to turn
21 over GPS data?

22 MR. BARON: Objection, vague.

23 BY THE WITNESS:

24 A. Yes.

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1 BY MR. FROMMER:

2 Q. Can you tell me the circumstances when
3 they requested or ordered TruckSpotting to turn over
4 GPS data?

5 A. For the -- as part of the -- this lawsuit, it
6 was a request for data from LM -- LMP Services, whatever
7 the --

8 Q. The Cupcake --

9 A. Cupcakes for Courage truck, basically, yes.

10 Q. Outside of the City of Chicago Law Department
11 employees asking for Cupcake for Courage's location
12 information for the purposes of this lawsuit, has any
13 City of Chicago employee ever ordered TruckSpotting to
14 turn over GPS data?

15 A. No.

16 MR. BARON: Objection, vague.

17 THE WITNESS: Oh, sorry.

18 BY THE WITNESS:

19 A. No.

20 BY MR. FROMMER:

21 Q. One more thing. Did you send Laura Pekarik
22 a letter indicating that she was paid up and current
23 on all of her TruckSpotting dues through the end of
24 2014?

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1 A. I believe that my partner did or maybe I did,
2 but he wrote it. I don't remember exactly how the chain
3 went.

4 Q. But a letter saying that --

5 A. Yes.

6 Q. -- she was paid up --

7 A. A letter was sent, yes.

8 Q. -- was sent from TruckSpotting --

9 A. Yes.

10 Q. -- to LMP Services?

11 A. Yes.

12 MR. FROMMER: Okay. That's all I have.

13 FURTHER EXAMINATION

14 BY MR. BARON:

15 Q. Just a couple redirect. If a customer of
16 yours told you that they didn't want your data to be
17 available through your API, could you honor their
18 request?

19 A. In Chicago?

20 Q. Anywhere?

21 A. Anywhere, yes.

22 Q. How about in Chicago?

23 A. I believe per the ordinance, no.

24 Q. Why is that?

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1 A. Because I think the ordinance says that the
2 data has to be publicly available.

3 Q. So it's based on your belief that the data
4 must be publicly accessible?

5 A. Well, the location, yeah. The GPS location
6 data must be publicly accessible, yes.

7 MR. BARON: I think this is Exhibit 1.

8 (Short pause.)

9 MR. BARON: Could you read back just the
10 immediate testimony from Mr. Lorman?

11 (The record was read as requested.)

12 BY MR. BARON:

13 Q. What that testimony just said was that the
14 location data must be publicly accessible?

15 A. Uh-huh.

16 Q. Where in provision (1) does it say that the
17 location data must be publicly accessible?

18 A. It does not. But it says the API has to be
19 publicly accessible. And the API, in my assumption,
20 provides the location data.

21 Q. And that's based on your assumption?

22 A. Well, yeah. It doesn't say what the API does.

23 Q. It doesn't say that the data must be made
24 publicly accessible?

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1 A. That is -- yes. The data does not need to be
2 made...

3 Q. That's what the ordinance says?

4 A. That is true, yes. That is what the ordinance
5 says. The ordinance does not dictate what the API does.
6 The API could just say hello.

7 Q. So you could honor the request of a customer
8 not to provide particular location data?

9 A. I guess looking in depth, yes, but I would
10 probably have to contact some legal entity to find out
11 if that would be violating this or not.

12 Q. Or you could contact the City about that
13 question?

14 A. Yeah.

15 Q. Which you have not done?

16 A. I never had to.

17 Q. But you have not done up to this point?

18 A. No. No one requested it, therefore
19 no one...

20 Q. The location info that you produced to the
21 City, that was in response to the subpoena that we had
22 issued?

23 A. Yes.

24 Q. But outside of the subpoena that we've issued,

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1 you have not provided any GPS data to the City?

2 A. No.

3 MR. BARON: That's all we have.

4 MR. BERG: I don't have anything.

5 MR. FROMMER: Give me just 10 seconds.

6 MR. BERG: Sure.

7 (Short pause.)

8 FURTHER EXAMINATION

9 BY MR. FROMMER:

10 Q. Mr. Lorman.

11 A. Yes, sir.

12 Q. Do you think it is a reasonable interpretation
13 of 7-38-115 (1) that a service -- a publicly accessible
14 application programming interface would not provide
15 actual location information --

16 MR. BARON: Objection --

17 BY MR. FROMMER:

18 Q. -- of the truck?

19 MR. BARON: -- calls for a legal conclusion.

20 BY THE WITNESS:

21 A. I believe that if it's a GPS-based API that it
22 should provide the GPS data.

23 BY MR. FROMMER:

24 Q. So in the context of this being a provision of

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1 the code concerning GPS data, is it your belief that
2 application programming interface, the most reasonable
3 interpretation of that is that it would also provide
4 location information for the trucks that are required to
5 have GPS data?

6 MR. BARON: Same objection.

7 BY THE WITNESS:

8 A. Yes.

9 MR. FROMMER: All done.

10 THE REPORTER: Signature?

11 MR. BERG: Yes. We'll reserve, read and sign.

12 (The deposition concluded at 12:04 p.m.)
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1 IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

2 COUNTY DEPARTMENT - CHANCERY DIVISION

3 LMP SERVICES, INC.,)

4 Plaintiff,)

5 -vs-)

No. 2012 CH 41235

6 THE CITY OF CHICAGO, a municipal)

7 corporation,)

8 Defendant.)

9 I, EUGENE LORMAN, state that I have read the
10 foregoing transcript of my testimony taken December 12,
11 2014, consisting of Pages 1 to 149, inclusive, taken at
12 the aforesaid time and place, and that the foregoing is
13 a true and correct record of the testimony given by me
14 at said deposition and any changes I have indicated on
15 the errata sheet(s), if any, produced herewith.

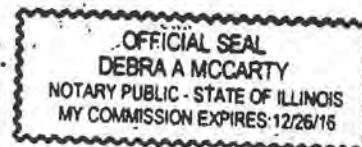
16
17 
18 EUGENE LORMAN, Deponent

19 _____ No corrections (Initial and sign above)

20 SUBSCRIBED AND SWORN TO
21 before me this 23rd day
22 of JAN. , 2015.

23 Notary Public

24 
NOTARY PUBLIC



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CASE: LMP SERVICES, INC. vs. THE CITY OF CHICAGO, a
municipal corporation

DATE: December 12, 2014

WITNESS: EUGENE LORMAN

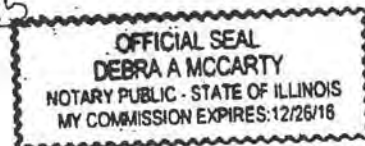
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EUGENE LORMAN

Subscribed and sworn to before me

This 23 day of JAN., 2015

Notary Public



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1 STATE OF ILLINOIS)

2) SS:

3 COUNTY OF C O O K)

4 I, MARY T. MURPHY McGUIRK, a Notary Public
5 within and for the County of Cook, State of Illinois,
6 and a Certified Shorthand Reporter of said state, do
7 hereby certify:

8 That previous to the commencement of the
9 examination of the witness, the witness was duly sworn
10 to testify to the whole truth concerning the matters
11 herein;

12 That the foregoing deposition transcript was
13 reported stenographically by me, was thereafter reduced
14 to typewriting under my personal direction and
15 constitutes a true record of the testimony given and the
16 proceedings had;

17 That the said deposition was reported
18 stenographically by me at the time and place specified;

19 That I am not a relative or employee or
20 attorney or counsel, nor a relative or employee of such
21 attorney or counsel for any of the parties hereto, nor
22 interested directly or indirectly in the outcome of this
23 action.

24 IN WITNESS WHEREOF, I do hereunto set my hand

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1 and affix my seal of office at Chicago, Illinois, this
2 30th day of December, 2014.

3
4 *Mary T. Murphy McGuirk*



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8 Mary T. Murphy McGuirk
9 Notary Public, Cook County, Illinois
10 My commission expires 5/20/2016
11

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14 C.S.R. Certificate No. 84-4160.
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

LMP SERVICES, INC.,

Plaintiff,

v.

THE CITY OF CHICAGO,
ILLINOIS,

Defendant.

No. 12 CH 41235

Hon. Anna H. Demacopoulos

AFFIDAVIT OF HENRY N. BUTLER IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

COMMONWEALTH OF VIRGINIA

COUNTY OF Arlington

)
) SS:
)

I, Henry N. Butler, do hereby state under oath that if called as a witness, I would testify that the following facts are true and correct to the best of my knowledge and belief and are based on my personal knowledge:

1. My name is Henry Nolde Butler. I am over the age of 18 years and reside in Huntly, Virginia. I am an economist and a lawyer. I am currently employed as Dean of George Mason University School of Law in Arlington, Virginia. Prior to my appointment as Dean, I was a George Mason University Foundation Professor of Law and Executive Director of the Law & Economics Center. I have a B.A. in Economics from the University of Richmond, an M.A. and a Ph.D. in Economics from Virginia Tech, and a J.D. from the University of Miami.

2. Prior to joining the law faculty at George Mason University in 2010, I held academic positions at several universities. From 1982 to 1986, I was an Assistant Professor of Management in the School of Business at Texas A&M University; during the 1985-86 academic year, I was on leave

as a John M. Olin Fellow in Law & Economics at the University of Chicago Law School. From 1986 to 1993, I was an Assistant Professor, Associate Professor, and Professor at George Mason University School of Law; I served as Associate Dean for Research and Faculty Development and Director of the Law & Economics Center from 1989 to 1991. From 1993 to 2001, I held a joint appointment in the School of Business and the School of Law at the University of Kansas, where I was the Koch Distinguished Teaching Professor of Law & Economics and subsequently the Koch Distinguished Professor of Law & Economics. From 2001 to 2007, I was the James Farley Professor of Economics at Chapman University in Orange, California, where I briefly served as Dean of the George Argyros School of Business and Economics and as a Professor (by Courtesy) of Law. From 2007 to 2010, I was the first Executive Director of the Searle Center on Law, Regulation and Economic Growth at Northwestern University School of Law; I also taught courses in the School of Law and the Kellogg Graduate School of Management. I have published several books, articles in the leading law & economics journals and law reviews, and numerous book chapters. My research has touched many areas of law and regulation, with an emphasis on the use of economics to analyze public policy issues.

3. Over the years, I devoted a substantial amount of my time and energy to trying to improve our nation's civil justice system through the training of thousands of judges in the basics of economics, finance, accounting, statistics, and the scientific method. I first became involved with judicial education when I was Director of the Law & Economics Center at George Mason from 1989 to 1991. The LEC has been offering programs in economics for judges since 1976. I started a similar program when I was at the University of Kansas and continued to operate that program under the auspices of various institutions (Chapman University, AEI-Brookings Joint Center for Regulatory Studies, The Brookings Institution, and Northwestern University) until I returned to George Mason in 2010 and merged the two programs into one.

RESEARCH PROJECT

4. I was retained by the Institute for Justice on behalf of Plaintiff LMP Services, Inc., to offer an economic analysis of one of the City of Chicago's justifications for its rule prohibiting mobile food vehicles from operating within 200 feet of a retail food establishment that prepares and serves food and drink to the general public. I will hereafter refer to that prohibition, located at section 7-38-115(f) of Chicago's Municipal Code, as the "200-foot rule."

5. In its response to an interrogatory submitted by Plaintiff, the City of Chicago stated that one of the justifications for the 200-foot rule is that it "encourag[es] the availability of retail food options in areas of the City underserved by retail food services by providing an incentive to food trucks to locate in areas that lack many or any restaurants." Def.'s Objections and Resps. to Pl.'s First Set Interrogs. No. 3.

6. The purpose of my research in this case is twofold: 1) to evaluate whether this rationale is supported by economic theory, and 2) to evaluate whether the 200-foot rule has indeed encouraged food trucks to operate in underserved areas.

EXECUTIVE SUMMARY

7. The following three paragraphs summarize my findings and conclusions regarding both my economic analysis and factual inquiry.

8. Economic Analysis: Economic theory predicts that the 200-foot rule cannot and will not achieve the City's stated goal of encouraging food trucks to operate in community areas lacking sufficient retail food options. There are two principal criteria that determine if a location is a viable one for a retail food business such as a food truck: 1) the disposable income of consumers who work or reside at that location, and 2) the geographic proximity between those consumers and the retail food business's place of operation. Economic theory predicts that customer demand will be weak at locations with lower incomes and greater geographic dispersion. This in turn will lead retail

food businesses, including food trucks, to avoid operating at those locations. The 200-foot rule does nothing to change that economic reality. Furthermore, because the 200-foot rule applies throughout all of Chicago, including in underserved areas, it will prevent food trucks from operating in what few profitable locations may exist in those areas.

9. Factual Inquiry of Food-Truck Activity: Factual evidence demonstrates that the 200-foot rule in fact does not achieve the City's articulated goal of spreading retail food options. Using three different methodologies, I directed researchers under my supervision to compile and map thousands of food-truck stops across Chicago. What that work shows is that food trucks tend to congregate at locations in a few community areas such as the Loop, Near North, and Near West, while rarely visiting locations in the community areas the City identified in its discovery responses as being underserved. Thus, the only evidence that exists shows that the law is not achieving its putative goal.

10. Conclusion: I conclude that there is neither any theoretical nor any factual support for the City's "spreading retail food options" rationale for the 200-foot rule, and that no alderman could rationally believe that the rule would further that rationale.

ECONOMIC ANALYSIS

11. Mobile food vehicles, or "food trucks," are vehicles that can drive to locations in order to sell food and drinks to willing customers. Although food trucks have been around for decades, their popularity has increased in recent years, as have their menu options. Food trucks increase consumer choice and consumer welfare by offering customers a way to purchase fast, gourmet food options at convenient locations.¹

¹ See generally Aileen Gallagher et al., *Trucks on a Roll*, N.Y. Magazine (July 11, 2010), <http://nymag.com/restaurants/cheapeats/2010/67139/>.

12. Every day, food trucks serve consumers in major cities throughout the United States.² The success of the food-truck industry in some cities has been well documented, with many owners of food trucks capitalizing on their success by establishing brick and mortar restaurants.³

13. As some incumbent food-truck owners have succeeded, the economic profits they have earned have enticed new entrants into the food-truck marketplace, as economic theory would predict.⁴ As new food-truck businesses enter the marketplace, they compete with both existing food trucks and brick and mortar establishments. This, in turn, benefits consumers by increasing the variety of available food options, improving the average quality of food items, and exerting downward pressure on prices.⁵

14. Food-truck operators, like most other entrepreneurs, seek to maximize their profits, which is the difference between their total costs and total revenues. The costs of a food truck include both fixed costs (such as the cost of the truck) and variable costs (including the fuel used to run the truck, the food and drink, and the salaries of those who drive the vehicle and/or prepare the food). These costs are largely invariant with respect to where a food truck decides to operate.

15. The revenue that a food truck can generate, and thus the truck's profitability, turns on customer demand. Cities are heterogeneous places, and where a food-truck owner decides to operate depends on the demand for the truck's product that exists in various areas. The level of customer demand for food trucks at any given location turns on two key factors: 1) the

² See, e.g., *DC Food Trucks*, Food Truck Fiesta, <http://foodtruckfiesta.com/dc-food-trucks/> (last visited Jan. 22, 2015).

³ See generally David Weber, *A Day in the Life of a Mobile Food Mogul*, Entrepreneur (Oct. 12, 2012), available at <http://www.entrepreneur.com/article/224610>; Deborah L. Cohen, *Food Truck Vendors Dig in for a Piece of Street Turf Against Brick-and-Mortar Restaurants*, A.B.A.J. (Nov. 1, 2013), http://www.abajournal.com/magazine/article/food_truck_vendors_dig_in_for_a_piece_of_street_turf_against_brick-and-mort/.

⁴ See R. Glenn Hubbard & Anthony Patrick O'Brien, *Microeconomics* 431 (5th ed. 2014) (discussing entrepreneurial entry into markets where incumbents are earning economic profits).

⁵ See, e.g., *Mergers and Competition*, Fed. Trade Comm'n, <http://www.ftc.gov/news-events/media-resources/mergers-and-competition> (last visited Mar. 1, 2016) (noting how competition "benefits consumers by keeping prices low and the quality and choice of goods and services high").

demographic characteristics of the potential consumers at that location, and 2) the geographic features of the location itself.

16. The first factor affecting customer demand for a food truck's product is the demographics of the truck's potential customer base. There is a concept in economics called the income elasticity of demand, which measures the relationship between a person's demand for a good and changes to his or her income. Fully prepared meals from restaurants and food trucks are what are known as "normal" goods, which means that demand for those items increases as consumer income rises.

17. Accordingly, food trucks have an incentive to operate in those areas where residents and office workers have sufficiently high levels of disposable income. This is particularly true for food trucks that sell gourmet items that often command a price premium, which make up many of the trucks that have most recently begun to operate.

18. The second factor affecting customer demand for a food truck's product is the relative distance between the customer and the food truck's place of operation. A consumer's decision to purchase a product rests not only on the price they will have to pay for the good itself, but also upon the cost the consumer must bear in order to acquire the good. One component of these acquisition costs is the cost of physically travelling to the seller in order to make a purchase.⁶ As a general matter, the farther a customer must travel to buy his or her meal from a food truck, the greater the cost that he or she must bear, and thus the less he or she would demand that meal, everything else being equal.

19. The relationship between travel distance and cost varies based on the transportation modality used by would-be consumers. The cost that consumers perceive of travelling by foot, for

⁶ This is an example of an implicit cost, which is a non-monetary opportunity cost. *See* Hubbard & O'Brien, *supra* note 4, at 354. By travelling to purchase an item, the consumer must both exert effort and sacrifice time that he or she could have used pursuing other opportunities.

instance, does not rise in a linear fashion with the distance travelled, but instead rises at an increasing rate.⁷ This means that the average person evaluates a walk of two blocks as being more than twice as costly as a one-block walk.⁸

20. The increasing nature of this cost function means that walking distances above a certain number of blocks become prohibitively expensive. Because the predominant way by which consumers reach food trucks is by foot, this increasing cost function effectively restricts a food truck's potential customers to a limited geographic area. Empirical research supports this point: A survey of food-truck customers conducted by the Institute for Justice in 2011 revealed that the average distance travelled to patronize a truck was only 2.6 blocks.⁹

21. The combination of these two factors (income elasticity and transportation costs) demonstrates that food trucks will tend to operate at geographically dense locations where nearby consumers have relatively high levels of disposable income. Locations that meet these two criteria exist in community areas such as the Loop, Near North, and Near West. By contrast, locations where residents have lower levels of disposable income, as well as those that are less geographically concentrated, lack sufficient customer demand to justify mobile-food-vehicle operations.

Application of Economic Principles to 200-Foot Rule

22. The City of Chicago prohibits mobile food vehicles from operating within 200 feet of the principal customer entrance of a ground floor restaurant.¹⁰ The City of Chicago has stated in discovery that one purpose of the 200-foot rule is to incentivize food trucks to operate in areas that the City feels lack sufficient retail food options. There are major flaws in the City's analysis.

⁷ See Jan Owen Jansson, *The Economics of Services* 58-59 (2d ed. 2013).

⁸ *Id.*

⁹ Erin Norman et al., Inst. for Justice, *Streets of Dreams: How Cities Can Create Economic Opportunity By Knocking Down Protectionist Barriers to Street Vending* 38 (2011), available at

http://www.ij.org/images/pdf_folder/economic_liberty/atl_vending/streetsofdreams_webfinal.pdf

¹⁰ Chicago Mun. Code § 7-38-115(f).

23. Areas that lack sufficient retail food options, like food deserts and other areas with few food choices, lack those options because many locations in those areas are unprofitable places to operate a retail food business. One reason these locations are unprofitable is socioeconomic and demographic characteristics. A 2012 study by the Department of Agriculture confirmed that poverty plays a primary role in the evolution of food deserts—areas without grocery stores or other food retailers where residents can purchase healthy food items.¹¹ The study found, “The predictive strength of poverty rate is most strongly observed among the set of densely populated urban tracts.”¹² This same criterion can be expected to undercut the profitability of operating retail food establishments in those same tracts, and thus lead to these locations being underserved by retail food options.

24. As discussed above, food-truck customers typically walk to a truck and generally travel no more than two to three blocks. But areas with insufficient retail food options often have few locations with sufficient geographical density of potential customers to support food trucks.

25. Finally, because the 200-foot rule applies throughout all of the city of Chicago—including those areas in the city that lack sufficient retail food options—it blocks food trucks from operating in the few locations in underserved areas that would be profitable. An underserved community area may possess a few locations where there is sufficient customer demand to profitably operate a retail food business. Economic theory would predict that retail food businesses would already be operating at those locations, which means that the 200-foot rule would prevent a mobile food vehicle from operating at those locations.

26. The 200-foot rule changes neither the geography nor the demographics that exist in underserved areas, nor does it transform those areas into profitable places to operate a mobile food

¹¹ Paula Dutko et al., *Characteristics and Influential Factors of Food Deserts*, U.S. Dep’t of Agric. (2012), available at <http://www.ers.usda.gov/media/883903/err140.pdf>.

¹² *Id.* at 27.

vehicle. A rational mobile food vehicle operator will not choose to operate at an unprofitable location. Thus, economic theory predicts that the end result of the 200-foot rule is not to entice food trucks to operate in underserved areas.

27. Because economic theory predicts that the 200-foot will do nothing to incentivize food-truck operators to serve low-income areas by increasing demand for food trucks in those areas, the City of Chicago's stated rationale for the 200-foot rule is irrational. In fact, as demonstrated in the next section, in practice the rule does not increase the number of mobile food vehicles operating in underserved areas.

INQUIRY REGARDING FOOD-TRUCK ACTIVITY

28. In addition to analyzing the theoretical soundness of the City's "spreading retail food options" rationale for the 200-foot rule, I endeavored to determine where mobile food vehicles actually operate in the city of Chicago. By determining the locations and community areas where mobile food vehicles typically operate, this inquiry can verify whether mobile food vehicles operate in underserved areas as the City has asserted. I concluded that they do not.

29. Given the dearth of existing work on this question, I organized and guided an inquiry of the location information put out by mobile food vehicles using the social media website Twitter. Many food trucks operating in Chicago periodically broadcast—or "tweet"—where they are or will soon be operating. By collecting, reviewing, and plotting these locations, this original research gives us a broad view of whether, with the City's 200-foot rule, trucks operate in community areas with relatively few retail food options. Although it is impossible to gather and analyze data from before the enactment of the 200-foot rule in 1991, recent data shows almost zero food-truck activity in those community areas deemed underserved by City officials.

30. Methodology. The first step of the inquiry was to identify mobile food vehicles operating in the city of Chicago. One website, ChicagoFoodTruckFinder.com, provides the public

with information about where various mobile food vehicles will be operating. It does so by following the social media “tweets” of Chicago-based mobile food vehicles.

ChicagoFoodTruckFinder.com also provides members of the public with the Twitter identity (or “handles”) for those mobile food vehicles. The Chicago Food Truck Finder website identified 154 Chicago-area food trucks with a Twitter handle. Researchers under my direction built a computer application using PHP (programming language used for writing software code) and MySQL (a relational database system). That application accessed the Twitter application programming interface (“API”)—a software “hook” that allows applications to request and access information from other computer systems—and gathered tweets sent out by each of the aforementioned 154 food trucks. The application collected at least one year’s worth of tweets for each mobile food vehicle that posted information via Twitter. The requested range was from November 26, 2013, to November 26, 2014. If a mobile food vehicle had not been in operation for an entire year as of November 26, 2014, the application collected all of the tweets they had posted until that date. For mobile food vehicles that posted messages on Twitter infrequently, the application collected more than a year’s worth of messages. In all, the application collected and stored 48,241 tweets from 143 mobile food vehicles (the eleven remaining mobile food vehicles either had not posted messages to Twitter in the previous year, had terminated their Twitter accounts, or their tweets were otherwise unavailable from Twitter’s API).

31. Location Information. Location information in tweets followed one of three typical patterns. The first and most common pattern included a mobile food vehicle identifying a set of intersecting streets that they would be operating nearby, such as “Clark and Monroe.” In some instances, mobile food vehicles would use different ways to denote those intersections, such as by writing “Clark/Monroe” or “Clark & Monroe.” The second pattern included mobile food vehicles providing a complete street address where they would be operating. The third pattern involved

mobile food vehicles that enabled their Twitter application or browser to include their geographic coordinates with each tweet.

32. Researchers under my supervision used the application to extract location information from the population of tweets that had been collected. The method of extraction differed for each of the three ways, identified above, that mobile food vehicles communicated their locations.

33. Intersection Query. The first query focused on the most common way for vehicles to post their location: by providing an intersection. On its website, the City of Chicago provides a dataset of street center lines, which are lines digitized along the center of a linear geographic feature such as a street. This dataset allowed researchers to create a database containing every intersection in the city of Chicago, along with the longitude and latitude for each intersection.

34. Some street name combinations occur at multiple locations due to loops, ordinal directions (North, South, East, West), and street types (i.e., Avenue, Road, Street, Place). Because mobile food vendors generally identify only street names, and do not include either ordinal directions or street types in their tweets, all street name combinations with multiple locations were excluded from the query.

35. The custom application that my researchers created then ran through the entire set of 48,281 tweets to search for expressions that corresponded to an entry in the intersection database. For each intersection, the application looked for tweets with the street names in either position (in other words, the application searched both for tweets mentioning "Clark & Monroe" or "Monroe & Clark"). The application also looked for intersection names with common delimiters such as "and," "/", or "n."

36. Address Query. The second query focused on mobile-food-vehicle tweets that provided a complete street address. The City of Chicago website provides a dataset of all Chicago

streets with suffixes, as well as minimum and maximum address number ranges for each street. The custom application ran through the entire set of tweets to identify those tweets that contained a one to four digit number followed by a single letter indicating a cardinal directional (such as "N" for "North," "S" for "South," "E" for "East," or "W" for "West") and the name of a Chicago street. For those tweets that also contained a suffix, that information was included in the database; if the tweet did not contain a suffix, its location was determined by matching the street number against the ranges provided in the City dataset. The longitude and latitude for the resulting street address was determined by appending "Chicago, IL" to the address and submitting the address to the geocoding application located at <http://geocod.io>.

37. GPS Query. The third query focused on explicit geo-coordinates obtained from the GPS software on the Twitter users' smartphone or tablet. The Twitter API contains metadata for applications or browsers that include geo-coordinates with each tweet. The custom application extracted the metadata from each tweet and saved it to a database table.

38. Data Review and Geolocation. To determine in which community area each food-truck stop occurred, researchers used GIS software to import a file containing the boundaries of each of Chicago's 77 community areas. They then imported and plotted the location of each of the tweets with identified longitude and latitude information. After joining the two layers, the GIS software provided a count of tweet locations for each community area.

39. The City of Chicago identified six community areas in discovery that it claims are underserved by retail food options: Auburn Gresham, Beverly, Englewood, Humboldt Park, Morgan Park, and South Shore. My factual inquiry looked at to what extent mobile food vehicles operated in those areas.

40. Results of Intersection Query. The custom application identified 5,454 tweets from food trucks with identifiable intersections within Chicago. This sample found that mobile food

vehicles tend to operate in a few community areas located in and near downtown Chicago. The most common destination for mobile food vehicles was the Loop community area, with 3,364 reported food truck stops. The second most-frequented community area was Near West, which had 710 stops. Other popular community areas included Near North (547 stops), Hyde Park (327 stops), Lake View (157 stops), and Lincoln Park (99 stops). For the community areas identified by the City as underserved, the query found the following: Auburn Gresham (1 stop), Beverly (3 stops), Englewood (0 stops), Humboldt Park (0 stops), Morgan Park (0 Stops), and South Shore (0 stops). A table listing results of the intersection query for all of Chicago's 77 community areas is listed as Exhibit A to this affidavit.

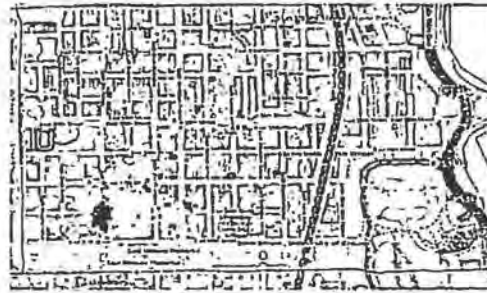
41. Results of Street Address Query. The custom application identified 1,528 tweets from a food truck containing a street address. This sample also found that mobile food vehicles tend to operate in or around downtown. The most common community area identified in this inquiry was Near North (639 stops), followed by the Loop (311 stops), and Near West (175 stops). For the community areas identified by the City as underserved, the query found the following: Auburn Gresham (0 stops), Beverly (1 stop), Englewood (0 stops), Humboldt Park (1 stop), Morgan Park (0 stops), and South Shore (1 stop). A table listing results of the street-address query for all of Chicago's 77 community areas is listed as Exhibit B to this affidavit.

42. Results of GPS Query. The application identified 4,178 tweets containing geographic coordinates within Chicago. Tweets from outside Chicago were not considered. Similar to the two prior analyses, mobile food vehicles operate in or near the downtown area. The Loop was the most popular community area under this inquiry (696 stops), followed by Near West (666 stops), and Near North (638 stops). For the community areas identified by the City as underserved, the query found the following: Auburn Gresham (4 stops), Beverly (3 stops), Englewood (4 stops),

Humboldt Park (3 stops), Morgan Park (5 stops), and South Shore (8 stops). A table listing results of the GPS query for all of Chicago's 77 community areas is listed as Exhibit C to this affidavit.

43. The results from the three queries each independently demonstrate that the community areas identified by the City as underserved are rarely frequented by mobile food vehicles.

44. The food-truck stops that occurred in the Hyde Park community area were located almost exclusively on the University of Chicago campus. Across all three methodologies, the application identified 723 food-truck stops in the Hyde Park community area. This is attributable almost entirely to the presence of the



Examination of GPS results showed that mobile food vehicles in Hyde Park cluster almost exclusively near the University of Chicago.

University of Chicago. Examining the GPS results demonstrated that the vast majority of vehicles operate on a block of Ellis Ave. between 57th St. and 59th St. This is in the middle of the University of Chicago campus, where food trucks serve food and drinks predominantly to University students, faculty, and staff.

45. To further investigate the Hyde Park community area, I had researchers collect population statistics for each of Chicago's 77 community areas based on the 2010 Census from the City of Chicago website. I likewise directed researchers to download the full database of current and active business licenses from the City of Chicago data portal, which includes the longitude and latitude of each licensed business. After filtering the database for only those licenses coded as "Retail Food Establishments," I had researchers calculate the number of such establishments in each community area. We then divided the number of retail food establishment licenses for each area by that area's population and then multiplied by 10,000.

46. The results of this analysis revealed that the Hyde Park community area has 45.17 retail food establishment licenses per 10,000 people. This ranks the area 15th out of the 77 community areas in terms of retail food establishment licenses per capita. Therefore, the City's data demonstrated that the Hyde Park area is not underserved in terms of brick-and-mortar retail food options. A table listing results of this analysis for all of Chicago's 77 community areas is listed as Exhibit D to this affidavit.

47. Furthermore, because most food truck activity in the Hyde Park area occurred at or near the University of Chicago campus, I inquired as to whether the census tract containing the University was under- or over-served. A report commissioned by the City entitled the "Citywide Retail Market Analysis" contained a submarket gap analysis that compared the amount of supply and demand for a variety of goods and services within various geographic areas in Chicago. The market data for that analysis came from the Environmental Systems Research Institute's (ESRI) Retail MarketPlace Profile dataset. This dataset provides highly granular data on retail supply and demand down to Census block groups and tracts.

48. Data obtained from ESRI's Retail MarketPlace Profile dataset indicate that the Census tract containing the University of Chicago, which is where virtually all food-truck activity in Hyde Park occurs, is overserved in terms of retail food options. That data show that the Census tract contains \$913,367 in "excess supply" with respect to full-service restaurants. For limited service eating places (like fast food restaurants and other places where you pay before eating), the Census tract has \$3.079 million in "excess supply." In all, the Census tract comprising the University of Chicago campus is overserved by Food Services & Drinking Places by more than \$4.2 million. A copy of this data is attached as Exhibit E to this affidavit.

49. Attached as Exhibit F to this affidavit is a true and correct copy of my expert report.

50. Attached as Exhibit G to this affidavit is a true and correct copy of my reply report to the rebuttal report submitted by the City's Rebuttal Expert Joseph Krock.

51. I hereby incorporate the reports in Exhibits F and G as part of this affidavit.

CONCLUSION

52. I conclude that there is no rational economic basis for the regulation because there is no logical way that a ban on food trucks operating within 200 feet of established restaurants is going to incentivize food trucks to operate in an area in which they were unwilling to operate prior to the imposition of the 200-foot rule. If the underserved areas were not attractive prior to the 200-foot rule, then there is no reason to believe that those areas would become economically viable upon passage of the ordinance. The 200-foot rule has no impact on food choices in underserved areas.

FURTHER AFFIANT SAYETH NOT.

Dated:

March 14, 2016

Henry N. Buder

Subscribed and sworn to before me this 14 day of March, 2016.

Patricia J. Hupalo

Notary Public, Commonwealth of Virginia

My commission expires on

8/31/2017



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N/A	Placita	C2751 <i>[Note: The C stamped page numbers in Volume 13 are not sequential to Volume 12 – see Volume 11.]</i>
March 18, 2016	Exhibits to The City of Chicago’s Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment Volume 1	C2752 <i>[Note: The page after C2766 has no stamp, and then the next page is C2767. Also, the page after C2875 is C2877, there is no stamped page C2876.]</i> <i>Continued from Volume 11</i> <i>Continued in Volume 12</i>
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<u>Volume Fourteen</u>		
Date	Document	Record on Appeal Cite
N/A	Placita	C3251
March 18, 2016	Exhibits to The City of Chicago's Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment Volume 2	C3252 <i>Continued from Volume 12</i>
March 18, 2016	Exhibits to The City of Chicago's Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment Volume 3	C3318 <i>Continued in Volume 15</i>
February 24, 2017	Certification of the Record	C3500

<u>Volume Fifteen</u>		
Date	Document	Record on Appeal Cite
N/A	Placita	C3501
March 18, 2016	Exhibits to The City of Chicago's Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment Volume 3	C3502 <i>Continued from Volume 14</i>
March 18, 2016	The City of Chicago's Statement of Undisputed Material Facts in Support of Its Motion for Summary Judgment	C3676
March 18, 2016	The City of Chicago's Motion for Summary Judgment	C3701 <i>[Note: This is a duplicate of Volume 6, C1252.]</i>
April 14, 2016	Agreed Order, granting City's Routine Motion to Modify the Briefing Schedule for Parties' Cross-Motions and setting new briefing schedule	C3706
April 29, 2016	The City of Chicago's Response to Plaintiff's Motion for Summary Judgment with attached Exhibit	C3707

Date	Document	Record on Appeal Cite
April 29, 2016	The City of Chicago's Cases Cited in Its Response Brief and Relied on Other Than For General Propositions	C3734 <i>Continued in Volume 16</i>
February 24, 2017	Certification of the Record	C3750

<u>Volume Sixteen</u>		
Date	Document	Record on Appeal Cite
N/A	Placita	C3751
April 29, 2016	The City of Chicago's Cases Cited in Its Response Brief and Relied on Other Than For General Propositions	C3752 <i>Continued from Volume 15</i>
April 29, 2016	Plaintiff's Counterstatement of Undisputed Material Facts and Supplemental Separate Statement of Uncontroverted Material Facts	C3774
April 29, 2016	Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment and Notice of Filing	C3811
April 29, 2016	Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts	C3832
April 29, 2016	Index of Exhibits to Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts	C3882 <i>Continued in Volume 17</i>
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<u>Volume Seventeen</u>		
Date	Document	Record on Appeal Cite
N/A	Placita	C4001
April 29, 2016	Index of Exhibits to Defendant's Response to Plaintiff's Statement of Uncontroverted Material Facts	C4002 <i>Continued from Volume 16</i>

Date	Document	Record on Appeal Cite
April 29, 2016	Supplemental Appendix of Affidavits and Exhibits in Support of Plaintiff's Submissions on Motions for Summary Judgment Volume IV	C4012 <i>[Note: The page after C4185 is C4187, there is no page stamped C4186.]</i>
April 29, 2016	The City of Chicago's Response to Plaintiff's Motion for Summary Judgment with attached Exhibit	C4210 <i>[Note: This is a duplicate copy of Vol. 15, C3707.]</i>
April 29, 2016	The City of Chicago's Cases Cited in Its Response Brief and Relied on Other Than For General Propositions	C4237 <i>[Note: This is a duplicate copy of Vol. 15, C3734 and Vol. 16, C3752.]</i> <i>Continued in Volume 18</i>
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<u>Volume Eighteen</u>		
Date	Document	Record on Appeal Cite
N/A	Placita	C4251
April 29, 2016	The City of Chicago's Cases Cited in Its Response Brief and Relied on Other Than For General Propositions	C4252 <i>Continued from Volume 17</i>
May 11, 2016	Agreed Order, granting City's Routine Motion to Modify the Briefing Schedule for the Parties' Cross-Motions for Summary Judgment, setting reply brief filing dates, and new status date	C4277
May 20, 2016	The City of Chicago's Reply in Support of Its Motion for Summary Judgment with attached Exhibit	C4278
May 20, 2016	Notice of Filing and Plaintiff's Reply Memorandum in Support of Summary Judgment	C4318

Date	Document	Record on Appeal Cite
May 20, 2016	Second Supplemental Appendix of Affidavits and Exhibits in Support of Plaintiff's Submissions on Motions for Summary Judgment Volume V	C4334 <i>Continued in Volume 19</i>
February 24, 2017	Certification of the Record	C4500

<u>Volume Nineteen</u>		
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N/A	Placita	C4501
May 20, 2016	Second Supplemental Appendix of Affidavits and Exhibits in Support of Plaintiff's Submissions on Motions for Summary Judgment Volume V	C4502 <i>[Note: The page after C4676 has no stamp, and then the next page is C4677.]</i> <i>Continued from Volume 18</i> <i>Continued in Volume 19</i>
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<u>Volume Twenty</u>		
Date	Document	Record on Appeal Cite
N/A	Placita	C4751
May 20, 2016	Second Supplemental Appendix of Affidavits and Exhibits in Support of Plaintiff's Submissions on Motions for Summary Judgment Volume V	C4752 <i>[Note: The page after C4887 is C4889, there is no page stamped C4888.]</i> <i>Continued from Volume 19</i> <i>Continued in Volume 21</i>
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<u>Volume Twenty-One</u>		
Date	Document	Record on Appeal Cite
N/A	Placita	C5001
May 20, 2016	Second Supplemental Appendix of Affidavits and Exhibits in Support of Plaintiff's Submissions on Motions for Summary Judgment Volume V	C5002
May 20, 2016	The City of Chicago's Reply to LMP's Counterstatement of Undisputed Material Facts	C5093
May 20, 2016	Index of Exhibits to The City of Chicago's Reply to LMP's Counterstatement of Undisputed Material Facts	C5108
June 2, 2016	Clerk's Status Order, movant has delivered a complete set of the Cross-Motions for Summary Judgment briefing	C5147
July 20, 2016	Order, setting new status date after case was administratively transferred to Judge Michael T. Mullen	C5148
August 17, 2016	Order, setting new oral argument date after case transferred back to Judge Anna H. Demacopoulos	C5149
August 17, 2016	Reassignment Order transferring case back to Judge Demacopoulos from Judge Mullen	C5150
October 19, 2016	Order, setting status conference post Cross-Motions for Summary Judgment Argument	C5151
December 5, 2016	Memorandum Opinion and Order	C5152
December 28, 2016	Notice of Appeal with attached Exhibits	C5171
December 28, 2016	Notice of Filing Notice of Appeal in the Appellate Court of Illinois	C5192

Date	Document	Record on Appeal Cite
December 28, 2016	Request for Preparation of Record on Appeal Form and Notice of Filing	C5194
February 24, 2017	Certification of Record	C5197

<u>Volume Twenty-Two</u>		
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February 15, 2017	Notice of Filing and Stipulation regarding Report of Proceedings	2
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Date	Document	Record on Appeal Cite
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NOTICE

The text of this opinion may be changed or corrected prior to the time for filing of a Motion for Rehearing or the disposition of the same.

2017 IL App (1st) 163390

FIRST DIVISION
December 18, 2017

No. 1-16-3390

LMP SERVICES, INC.,

Plaintiff-Appellant,

v.

THE CITY OF CHICAGO,

Defendant-Appellee.

) Appeal from the
) Circuit Court of
) Cook County.
)
) No. 12 CH 41235
)
) Honorable
) Helen A. Demacopoulos,
) Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court, with opinion.
Presiding Justice Pierce and Justice Mikva concurred in the judgment and opinion.

OPINION

¶ 1 Plaintiff-appellant, LMP Services, Inc. (LMP), filed this lawsuit seeking both declaratory and injunctive relief against two sections of an ordinance passed by defendant-appellee, City of Chicago (City). The two challenged ordinances pertained to the operation of mobile food vehicles (hereinafter food trucks) within Chicago. Under the first challenged ordinance, food trucks may not, with limited exceptions, locate themselves within 200 feet of the principal customer entrance of a restaurant located at street level. LMP challenged this ordinance under the due process and equal protection clauses of the Illinois Constitution. Under the second challenged provision, food trucks must be equipped with a Global Positioning System (GPS) that sends real-time data to any service that has a publicly accessible application programming interface. LMP challenged this provision as a violation of its right under the Illinois Constitution to be free from unreasonable searches.

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¶ 2 After LMP filed an amended complaint, the City moved to dismiss all of LMP's claims. The circuit court granted the motion with respect to the equal protection claim but denied the motion as to the due process and search claims. The City answered the remaining claims and the parties proceeded to discovery. At the close of discovery, the parties moved for cross-summary judgment. As to the 200-foot rule, the circuit court found it rationally related to (1) the City's need to balance the interests of both the food trucks and brick-and-mortar restaurants and (2) the City's need to balance sidewalk congestion. As to the GPS requirement, the circuit court found LMP lacked standing because the City had never requested its GPS information and, therefore, a search had not occurred. The court further concluded that, even if a search had occurred, the search was reasonable and therefore constitutional.

¶ 3 LMP now appeals the circuit court's grant of summary judgment in favor of the City. Upon this court's review, we agree with the circuit court's findings that LMP's constitutional challenge to both sections of the ordinance fails. The City has a critical interest in maintaining a thriving food service industry of which brick-and-mortar establishments are an essential part. The 200-foot exclusion represents a rational means of ensuring the general welfare of the City and is neither arbitrary nor unreasonable. The GPS is not a search pursuant to *United States v. Jones*, 565 U.S. 400 (2012). The GPS rule represents a method of requiring a licensee to maintain records as to its operational location in an electronic form as a condition of conducting business from the city street. Accordingly, the circuit court's grant of summary judgment in favor of the City is affirmed.

¶ 4 JURISDICTION

¶ 5 On June 13, 2013, the circuit court granted the City's motion to dismiss LMP's equal protection claim. On December 5, 2016, the circuit court granted the City's motion for summary

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judgment on LMP's due process and illegal search claims. LMP's cross-motion for summary judgment was denied the same day. On December 28, 2016, LMP timely filed its notice of appeal as to the December 5, 2016 order.¹ Accordingly, this court has jurisdiction over this matter pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 301 and 303. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. R. 301 (eff. Feb. 1, 1994); R. 303 (eff. May 30, 2008).

¶ 6

BACKGROUND

¶ 7 The plaintiff-appellant, LMP is a closely held Illinois corporation in Elmhurst, Illinois. Its owner, Laura Pekarik, operates the food truck called Cupcakes for Courage. Cupcakes for Courage is licensed in Chicago as a "mobile food dispenser," and since June 2011, Pekarik has sold cupcakes from the food truck.

¶ 8 On July 25, 2012, the Chicago city council passed an ordinance to expand food truck operations within the city limits of Chicago. The ordinance allows for food preparation on food trucks and established a number of regulations governing location, operation, and inspection of food trucks. The ordinance authorizes the commissioner of transportation for the City to establish fixed stands where parking space for food trucks is reserved. Chicago Municipal Code § 7-38-117(c) (added July 25, 2012). The ordinance requires a "minimum of 5 such stands" in each "community area *** designated in section 1-14-010 of this Code [(Chicago Municipal Code § 1-14-010 (added Dec. 15, 1993))], that has 300 or more retail food establishments." *Id.*

¹LMP does not challenge the order of June 13, 2013, and has therefore forfeited review of its equal protection claim. *Lewanski v. Lewanski*, 59 Ill. App. 3d 805, 815-16 (1978).

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Those community areas are the Loop,² Near West, Near North, Lincoln Park, Lakeview, and West Town.

¶ 9 Beyond food stands, food trucks may park in legal parking spots on the street for up to two hours. Chicago Municipal Code § 7-38-115(b) (amended July 25, 2012). Food trucks may not park within 20 feet of a crosswalk, 30 feet of a stop light or stop sign, or adjacent to a bike lane. Chicago Municipal Code § 7-38-115(e) (amended July 25, 2012). In addition, the ordinance provides:

“No operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance to a restaurant which is located on the street level; provided, however, the restriction in this subsection shall not apply between 12 a.m. and 2 a.m.” Chicago Municipal Code § 7-38-115(f) (amended July 25, 2012).

“Restaurant” is defined as:

“[A]ny public place at a fixed location kept, used, maintained, advertised and held out to the public as a place where food and drink is prepared and served for the public for consumption on or off the premises pursuant to the required licenses. Such establishments include, but are not limited to, restaurants, coffee shops, cafeterias, dining rooms, eating houses, short order cafes, luncheonettes, grills, tearooms, and sandwich shops.” *Id.*

There are two exceptions to the 200-foot requirement. The first exception allows food trucks to park at one of the five established food stands even if that stand is within 200-feet of the primary

²The Loop is geographically defined as the downtown area of Chicago boarded by Lake Michigan to the east, the Chicago River to the north and west, and Congress Parkway to the south.

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entrance of a restaurant. The second exception allows food trucks to park near construction sites and serve those sites.

¶ 10 Mobile food vendors are also subject to regulations designed to ensure safe food preparation and sanitary operations, including requirements for storage and plumbing equipment, food preparation, cleaning products, temperature control, and the presence of certified food service manager when food is prepared. Chicago Municipal Code §§ 7-38-132; 7-38-134 (added July 25, 2012). Each food truck must be linked to a commissary used daily for supplying, cleaning, and servicing. Chicago Municipal Code § 7-38-138 (added July 25, 2012). The Chicago board of health (board) is authorized to enact rules and regulations to implement those requirements (Chicago Municipal Code § 7-38-128 (added July 25, 2012)) and the department of public health conducts inspections. Chicago Municipal Code § 7-38-126 (added July 25, 2012).

¶ 11 The ordinance also has a requirement concerning the use of GPS equipment on the food trucks. The ordinance provides:

“Each mobile food vehicle shall be equipped with a permanently installed functioning Global-Positioning-System (GPS) device which sends real-time data to any service that has a publicly-accessible application programming interface (API). For purposes of enforcing this chapter, a rebuttable presumption shall be created that a mobile food vehicle is parked at places and times as shown in the data tracked from the vehicle’s GPS device.” Chicago Municipal Code § 7-38-115(l) (amended July 25, 2012)

The Board subsequently enacted “Rules and Regulations for Mobile Food Vehicles.” Rule 8 provides that the GPS device be permanently installed; be an “‘active,’” not “‘passive,’” device that sends real-time location data to a GPS provider; and be accurate no less than 95% of

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the time. Chicago Board of Health, Rules and Regulations for Mobile Food Vehicles, R. 8(A)(1)-(3) (eff. Aug. 7, 2014), https://www.cityofchicago.org/content/dam/city/depts/bacp/general/MFV_Rules_and_Regulations-8-7-2014.pdf. The City claimed that the GPS requirement's purpose was so that it could locate food trucks in order to conduct field inspections and investigate public health complaints.

¶ 12 The rule further provides that the device must function during business operations and while at a commissary and transmit GPS coordinates to the GPS service provider at least once every five minutes. Chicago Board of Health, Rules and Regulations for Mobile Food Vehicles, R. 8(A)(4)-(5) (eff. Aug. 7, 2014). The rule further provides that the City will not request GPS information without consent, a warrant, or court authorization unless the information is needed “to investigate a complaint of unsanitary or unsafe conditions, practices, or food or other products at the vehicle”; “to investigate a food-related threat to public health”; to “establish[h] compliance with” the ordinance and regulations; or for “emergency preparation or response.” Chicago Board of Health, Rules and Regulations for Mobile Food Vehicles, R. 8(B) (eff. Aug. 7, 2014). Rule 8 also clarified that, while GPS providers must “be able to provide” an API “that is available to the general public,” licensees need not “provide the appropriate access information to the API” unless the City establishes a website to display food truck locations and the licensee chooses to participate. Chicago Board of Health, Rules and Regulations for Mobile Food Vehicles, R. 8(C)-(D) (eff. Aug. 7, 2014). The food truck “is not required to provide such information or otherwise allow the City to display the vehicle’s location.” Chicago Board of Health, Rules and Regulations for Mobile Food Vehicles, R. 8(D) (eff. Aug. 7, 2014).

¶ 13 LMP filed this lawsuit on November 14, 2012, and later amended it on March 8, 2013, challenging both the 200-foot exclusion rule and GPS requirement. Its suit alleged that the

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200-foot rule violated the due process and equal protection clauses of article I, section 2 of the Illinois Constitution and the GPS tracking scheme violated the search, seizures, privacy and interceptions clause of article I, section 6 of the Illinois Constitution. The City moved to dismiss the complaint in its entirety, and after briefing, the circuit court granted the City's motion with respect to LMP's equal protection claim but denied it as to the due process and search claims. The City then answered the amended complaint and the parties proceeded to discovery. The City set forth three reasons for imposing the 200-foot restriction: (1) balance the interests of brick-and-mortar restaurants with the food trucks, (2) encourage food trucks to locate in underserved areas, and (3) manage sidewalk congestion.

¶ 14 The parties engaged in an extensive discovery phase regarding the City's justification for the 200-foot rule and the GPS requirement. The City testified that the 200-foot rule applied "as the crow flies," radiating out 200 feet in all directions from a restaurant's front door. This means a food truck cannot park on the other side of the street or a block over if that position is within 200 feet of a restaurant's principal entrance. The rule also applies to a food truck parked on private property. Pekarik's testified that the 200-foot rule excluded her from many areas she would like to conduct business from in the Loop. As to the construction site exception, the City testified that trucks need only operate within proximity of the construction site, though it could not give a precise definition of "proximity."

¶ 15 Plaintiff hired expert witness, Renia Ehrenfeucht, a professor of urban planning and sidewalk usage, to conduct an observational study of seven different food truck locations across the northern portion of the Loop. Based on what her team observed, she reached two conclusions: (1) there was no observed difference in pedestrian congestion impacts based on the distance between a food truck's operations and a restaurant's front door and (2) there was no

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difference in the degree of pedestrian congestion at mobile food truck stand locations versus other public-private locations.

¶ 16 The City explained the need for the GPS requirement because it may be necessary to track a food truck's location to conduct a health or administrative investigation. The City admitted that it had never requested GPS data from any licensed food truck. In the few instances the City needed to find a truck, the field inspectors utilized social media to determine a food truck's location. Since the GPS requirement only applies while the food truck is in operation, the City admitted the GPS unit may need to be physically turned on by the truck operator.

¶ 17 At the close of discovery, the parties filed cross-motions for summary judgment. The circuit court ruled that rational-basis review applied to LMP's due process challenge to the 200-foot rule. Under this review, the circuit court upheld the 200-foot rule based on the City's argument that the rule balances the interests of brick-and-mortar restaurants and food trucks. The circuit court found the rule rationally related to the City's interest in managing sidewalk congestion. It rejected the argument that the rule helped spread food truck business to underserved sections of the city. As to the GPS requirement, the court determined LMP lacked standing to even challenge the provision because LMP failed to show its data had ever been requested by the City. The circuit court further explained that even if a search had taken place, the search was reasonable because the City's interest in food safety, the GPS data is necessary to find food trucks for purposes of inspection or notifications, and the rules limit the type of information and the circumstances under which the City will obtain it.

¶ 18 LMP timely appealed the circuit court's grant of summary judgment and this appeal now follows.

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¶ 19

ANALYSIS

¶ 20 On appeal, LMP raises two issues: (1) the circuit court erred in concluding that the 200-foot rule does not violate its substantive due process rights, and (2) the circuit court erred in concluding the GPS requirement is not a search.

¶ 21 LMP's appeal arises from an order granting summary judgment in favor of the City upholding the validity of the 200-foot rule and the GPS requirement, our review is therefore *de novo*. *Progressive Universal Insurance Co. of Illinois v. Liberty Mutual Fire Insurance Co.*, 215 Ill. 2d 121, 128 (2005). *De novo* review is also the appropriate standard when the appellate court reviews the constitutionality of a statute. *Kanerva v. Weems*, 2014 IL 115811, ¶ 33.

¶ 22 LMP alleges the 200-foot restriction violates its due process right under article I, section 2 of the Illinois Constitution, which protects the right of Illinoisans to pursue a legitimate occupation. In claiming a violation of its due process rights, LMP states in its amended complaint, "[t]his lawsuit seeks to vindicate the fundamental rights of the Plaintiffs, who own and operate mobile-vending vehicles, to earn an honest living free from unreasonable and anticompetitive government restrictions."

¶ 23 The fourteenth amendment to the United States Constitution and article I, section 2, of the Illinois Constitution protect individuals from the deprivation of life, liberty, or property without due process of law. U.S. Const., amend. XIV; Ill. Const. 1970, art. I, § 2. Case law pertaining to due process recognizes two distinct due process analyses: substantive due process and procedural due process. *Doe v. City of Lafayette*, 377 F.3d 757, 767-68 (7th Cir. 2004); *In re J.R.*, 341 Ill. App. 3d 784, 791 (2003). "Whereas procedural due process governs the procedures employed to deny a person's life, liberty or property interest, substantive due process limits the state's ability to act, irrespective of the procedural protections provided." *In re Marriage of*

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Miller, 227 Ill. 2d 185, 197 (2007) (citing *Collins v. City of Harker Heights*, 503 U.S. 115, 125 (1992)). In the case before us, LMP raises no argument concerning the denial of notice or procedure; accordingly, we review LMP's claim only as it relates to substantive due process.

¶ 24 When a party claims a due process violation, a court “must first ascertain that a protected interest has been interfered with by the state. Then and only then does one consider what process is due.” *Big Sky Excavating, Inc. v. Illinois Bell Telephone Co.*, 217 Ill. 2d 221, 241 (2005); *In re J.W.*, 204 Ill. 2d 50, 66 (2003). This is a critical step because the “nature of the right dictates the level of scrutiny a court must employ in determining whether the statute in question comports with the constitution.” *Napleton v. Village of Hinsdale*, 229 Ill. 2d 296, 307 (2008).

¶ 25 LMP frames the 200-foot rule as a means to suppress its economic rights in violation of article I, section 2, of the Illinois Constitution. The ordinance states in relevant part, “[n]o operator of a mobile food vehicle shall park or stand such vehicle within 200 feet of any principal customer entrance *** which is located on the street level.” Chicago Municipal Code § 7-38-115(f) (amended July 25, 2012). In arguing that its due process right has been violated, LMP cites the accepted general principle that “every citizen has the right to pursue a trade, occupation, business or profession” and this right “constitutes both a property and liberty interest entitled to the protection of the law as guaranteed by the due process clauses of the Illinois and Federal constitutions.” *Coldwell Banker Residential Real Estate Services of Illinois, Inc. v. Clayton*, 105 Ill. 2d 389, 397 (1985).

¶ 26 The right to pursue a profession is not a fundamental right for substantive due process purposes, and the legislature's, or in this case the Chicago City council's, infringement on this right need only be examined using the rational basis test. *Potts v. Illinois Department of Registration & Education*, 128 Ill. 2d 322, 329 (1989). The state, in the proper exercise of its

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general police powers, may regulate this “economic right,” where the public health, safety, or general welfare so requires. *Id.* at 330 (citing *Pozner v. Mauck*, 73 Ill. 2d 250 (1978)).

¶ 27 The fact that the challenged provisions are part of an ordinance enacted by the City and not statutes enacted by the Illinois General Assembly is immaterial. Under the Illinois Constitution of 1970, the City is a home rule unit of local government. Ill. Const. 1970, art. VII, § 6. This provision of our constitution directly allows the City to “regulate for the protection of the public health, safety, morals and welfare.” Ill. Const. 1970, art. VII, § 6(a). Local governments granted home rule act with the same powers as the state unless specifically limited by the General Assembly. *City of Urbana v. Houser*, 67 Ill. 2d 268, 273 (1977).

¶ 28 While acknowledging the rational basis standard, LMP argues that under Illinois law, the rational basis test requires a “definite and reasonable relationship to the end of protecting the public health, safety and welfare.” *Church v. State*, 164 Ill. 2d 153, 165 (1995); *Krol v. County of Will*, 38 Ill. 2d 587, 590 (1968) (requiring a definite and substantial relation to a recognized police-power purpose). LMP fails to recognize that this argument concerning a “heightened” rational basis test was rejected by the Illinois Supreme Court in *Napleton*, 229 Ill. 2d 296. In that case, the plaintiff “used the term ‘substantial relationship’ or ‘real and substantial’ to describe the applicable level of judicial scrutiny” our supreme court should apply in reviewing her facial challenge to Hinsdale’s zoning law. *Id.* at 309. In rejecting plaintiff’s argument, the court stated,

“We clarify that the ‘substantial relation’ language used in cases addressing the validity of zoning regulations has been simply an alternate statement of the rational basis test which was tailored to address the specific interests advanced by the enactment of zoning ordinances, namely, the promotion of the public health, safety, morals, or general welfare.” *Id.* at 315.

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In accordance with *Napleton*, we reject LMP's argument that in order to survive rational basis scrutiny, the challenged ordinance must have "a definite and substantial" relationship to a recognized police power. As stated by our supreme court in *Napleton*, a challenged zoning ordinance will survive rational basis scrutiny "if it bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable." *Id.* at 319 (citing *Village of Lake Villa v. Stokovich*, 211 Ill. 2d 106 (2004)).

¶ 29 When Illinois courts apply the rational basis test, "a court must identify the public interest that the statute is intended to protect, examine whether the statute bears a reasonable relationship to that interest, and determine whether the method used to protect or further that interest is reasonable." *Arangold Corp. v. Zehnder*, 204 Ill. 2d 142, 147 (2003). A court's review under this standard is "limited" and " 'highly deferential.' " *Id.* Furthermore, under this test "mathematical precision" is not required and "a legislative choice is not subject to courtroom fact-finding and may be based on rational speculation unsupported by the evidence or empirical data." (Internal quotation marks omitted.) *Cutinello v. Whitley*, 161 Ill. 2d 409, 421-22 (1994). Whether a statute is wise or the best way of achieving a stated end is left to the determination of the legislature. *Arangold Corp.*, 204 Ill. 2d at 147.

¶ 30 Like statutes, ordinances are presumed constitutional, and the opposing party bears the burden of rebutting this presumption. *American Federation of State, County, & Municipal Employees (AFSCME), Council 31 v. State*, 2015 IL App (1st) 133454, ¶ 19. This court must, whenever possible, construe a statute to uphold its constitutionality. *Id.* A party raising a challenge that an ordinance is facially unconstitutional bears the burden of establishing a clear constitutional violation. *Jackson v. City of Chicago*, 2012 IL App (1st) 111044, ¶ 20. Any doubts are resolved in favor of the challenged regulations. *Granite City Division of National Steel Co. v.*

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Illinois Pollution Control Board, 155 Ill. 2d 149, 164-65 (1993). Under these guidelines, a facial challenge represents “the most difficult challenge to mount successfully because an enactment is invalid on its face only if no set of circumstances exists under which it would be valid.” *People v. One 1998 GMC*, 2011 IL 110236, ¶ 20. “The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity.” *Napleton*, 229 Ill. 2d at 306.

¶ 31 When LMP challenged the 200-foot rule, the City responded with three government objectives the rule is meant to further (1) strike a balance between brick-and-mortar restaurants and food trucks, (2) spread retail food options to underserved areas of the City, and (3) control sidewalk congestion in the applicable areas. If any one of these justifications is found to be sufficient, the ordinance will be upheld as constitutional. In arguing for reversal before this court, LMP asserts the 200-foot rule is unconstitutional because it is blatant protectionism and protecting brick-and-mortar restaurants from food truck competition is not a legitimate government interest.

¶ 32 We reject LMP’s assertion that the City may not protect brick-and-mortar restaurants and uphold the 200-foot rule as a rational means of promoting the general welfare of the City of Chicago. Both the City and its expert testified that brick-and-mortar restaurants bring critical economic benefits to communities, including the payment of property taxes. Unlike brick-and-mortar restaurants, LMP and all food trucks do not pay property taxes or other assorted fees to the City that would be associated with the operation of a brick-and-mortar restaurant occupying real property in the City. Property taxes represent a key source of revenue for the City. The 200-foot rule seeks to protect those in the food service industry who pay and support the City’s property tax base from those food businesses that do not. Moreover,

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brick-and-mortar restaurants also pay utility taxes, lease taxes, and, yes, even restaurant taxes. Chicago Municipal Code §§ 3-30-030 (added Nov. 19, 2003) (restaurant tax); 3-32-030 (amended Oct. 28, 2015) (lease tax); 3-53-020 (added June 10, 1998) (electricity use tax); and 3-80-040 (added Sept. 14, 2016) (water and sewer tax).

¶ 33 Illinois courts have previously found that it is completely rational for an Illinois municipality to favor businesses generating tax dollars over businesses that do not. In *Napleton*, a challenged zoning change prohibited “new depository or nondepository credit institutions from being located on the first floor of any building in the B-1 or B-3 zoning district.” 229 Ill. 2d at 302. In upholding the validity of the ordinance, our supreme court stated:

“[i]t was reasonable and legitimate for Hinsdale to conclude that the continued vitality of its business districts required an appropriate balance between businesses that provide sales tax revenue and those that do not, and its passage of the challenged amendments precluding new banks and financial institutions from locating on the ground floors of buildings in the designated districts because they impose an opportunity cost in forgone tax revenue is rationally related to that purpose.” *Id.* at 321.

In the same line of reasoning, it is reasonable and legitimate for the City to conclude that continued receipt of property taxes and other city fees associated with running a brick-and-mortar restaurant “required an appropriate balance” with those food businesses that do not.

¶ 34 This proposition is not new and has been accepted as a legitimate and reasonable government action by previous courts. In *City of New Orleans v. Dukes*, the United States Supreme Court acknowledged that the City of New Orleans may ban pushcart food vendors from

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the city's historic French Quarter. 427 U.S. 297, 303 (1976). In upholding the ban under a rational basis review, the Court recognized the ban as a legitimate way for the city of New Orleans "to preserve the appearance and custom valued by the Quarter's residents and attractive to tourists." (Internal quotation marks omitted.) *Id.* at 304.

¶ 35 In *Vaden v. Village of Maywood*, the Seventh Circuit, applying Illinois law, upheld as a legitimate and rational exercise of municipal authority, a Village of Maywood ordinance, which restricted mobile food vending near schools. 809 F.2d 361 (7th Cir. 1987). As the Seventh Circuit pointed out, "distinctions between street vendors and merchants with a fixed place of business have been accepted by other courts in upholding similar ordinances against equal protection challenges."³ *Id.* at 366. Cases like *Dukes*, *Napleton*, and *Vaden* establish that courts have long upheld city ordinances favoring one business over another under rational basis review.

¶ 36 As LMP admits, it seeks to overturn the 200-foot rule because its main affect is to prevent it from parking in areas close to a restaurant's front door where large amounts of potential customers gather. Notwithstanding LMP's license, which granted them the privilege to conduct business on the City's streets and sidewalks, LMP fails to recognize that while one has a constitutional right to pursue a profession (*Rios v. Jones*, 63 Ill. 2d 488, 496-97 (1976)), Illinois courts have long recognized that no individual or business has the constitutional right to conduct business from the city street or sidewalk. *City of Chicago v. Rhine*, 363 Ill. 619 (1936). The *Rhine* court dealt with a City ordinance that completely prohibited a person from selling newspapers in the Loop or Wilson Avenue districts. *Id.* at 620. In upholding the complete prohibition against the sale of newspapers in those areas, the court stated, "[Rhine] had no

³While the court discusses this in terms of equal protection, the court had previously noted that whether framed as a due process or equal protection challenge, rational basis review applied. *Vaden*, 809 F.2d at 365.

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property right in the use of any of the streets of Chicago for the location and maintenance of his business.” *Id.* at 625. Tellingly, LMP does not address *Rhine* or its progeny in either its opening or reply brief to this court.

¶ 37 The proposition that no individual has the constitutional property right⁶ to conduct business from the streets or sidewalks located within the state of Illinois has been reaffirmed several times since *Rhine*. In *Good Humor Corp. v. Village of Mundelein*, 33 Ill. 2d 252, 253-54 (1965), the Illinois Supreme Court upheld an ordinance, which prohibited all vending from the streets or sidewalks in the Village of Mundelein. Relying on *Rhine*, the court upheld the ordinance and found no due process violation because, “[t]he assumed property right upon which the plaintiff’s case against the validity of the ordinance is based is nonexistent.” *Id.* at 259 (citing *Rhine*, 363 Ill. at 625).

¶ 38 In *Triple A Services, Inc. v. Rice*, 131 Ill. 2d 217, 221-22 (1989), our supreme court was confronted with a Chicago ordinance that banned mobile food trucks from selling within the Medical District. After upholding the ordinance under a rational basis review, our supreme court again reiterated that no individual has the right to use streets or sidewalks for private gain. *Id.* at 229. The *Triple A Services, Inc.*, court further recognized that Chicago’s ability to regulate its streets and sidewalks had become even more evident since the *Rhine* decision because of the adoption of the 1970 Constitution and the introduction of “home rule.” *Id.* at 230 (citing Ill. Const. 1970, art. VII, § 6). Under article VII, section 6, Chicago had the “same powers as the sovereign, except where such powers are limited by the General Assembly.” *Id.*

¶ 39 In accord with *Rhine*, *Good Humor Corp.*, and *Triple A Services, Inc.*, we reiterate that no individual or business has a constitutional property right to use Chicago’s streets and sidewalks for private gain. It is only through the issuance of a license that plaintiff may conduct

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business on the City streets. The issuance of said license did not create a vested property right but rather a “revocable privilege to do an act or a series of acts upon the land of another without possessing any estate or interest in such land.” *Grigoleit, Inc. v. Board of Trustees of the Sanitary District of Decatur*, 233 Ill. App. 3d 606, 612 (1992) (citing *City of Berwyn v. Berghund*, 255 Ill. 498, 500 (1912)). As plaintiff acknowledged at oral argument, the City could outright ban all food trucks from operating on the city streets. The issuance of a license to operate on the city street did not abrogate the City’s power to legislate for the general welfare, and “[i]t is presumed, absent unequivocal language, that a city, in granting a license, reserves the ability to exercise its police power and place additional regulatory burdens on license holders.” (Internal quotation marks omitted.) *Triple A Services, Inc.*, 131 Ill. 2d at 235.

¶ 40 While LMP points out the main thrust of the 200-foot rule is to prohibit street parking, it also points to at least two instances where the 200-foot rule prohibits it from operating on private property. Yet this fact does not render the 200-foot restriction unconstitutional. LMP has raised a facial challenge to the constitutionality of the 200-foot rule, and this court will only sustain a facial challenge “if no set of circumstances exists under which it would be valid.” *Napleton*, 229 Ill. 2d at 306. “The fact that the enactment could be found unconstitutional under some set of circumstances does not establish its facial invalidity.” *Id.* (citing *Village of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 504 (1982)). Significantly, courts are to give “wide latitude” to the states “in the regulation of their local economies under their police powers, and rational distinctions may be made with substantially less than mathematical exactitude.” *Dukes*, 427 U.S. at 303. For this reason, LMP’s argument concerning the incidental effect of the 200-foot rule does not support its facial invalidity.

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¶ 41 We also find all of the cases relied upon by LMP to be readily distinguishable from the facts of this case and do not support a finding of facial invalidity. In attacking the 200-foot rule, LMP relies primarily on *Chicago Title & Trust Co. v. Village of Lombard*, 19 Ill. 2d 98 (1960), a case involving a proximity restriction between existing and new gas stations. In *Chicago Title*, our supreme court invalidated a Village of Lombard ordinance that prevented the establishment of any new gas station within 650 feet of any existing gas station. *Id.* at 100. While proposed on the basis of safety, the reviewing court found the fact that new stations could be built within 150 feet of schools, hospitals, and churches completely undermined the claim of safety. *Id.* at 104. Additionally, the rule had no effect on those stations within 650 feet already in existence. *Id.* at 106-07. Therefore, the court found no rational basis for the safety concerns. *Id.* at 107. Unlike, *Chicago Title*, the restriction at issue in this case was not proffered solely based on safety and does not favor existing food trucks over new truck competitors.

¶ 42 *Chicago Title* is distinguishable for several other reasons. *Chicago Title* was decided before the 1970 Illinois Constitution and the implementation of home rule. As explained in *Triple A Services Inc.*, the home rule provision dramatically altered Chicago's authority, and it can now act with the "same powers as the sovereign." *Triple A Services, Inc.*, 131 Ill. 2d at 230. Notably, the court in *Triple A Services, Inc.*, also rejected plaintiff's attempt to rely on nonhome rule case law. *Id.* at 231 (citing *Rocking H. Stables, Inc. v. Village of Norridge*, 106 Ill. App. 2d 179 (1969)). Besides not addressing home rule, *Chicago Title* is also distinguishable because the plaintiff in that case sought to use a piece of real property. 19 Ill. 2d at 106-07 (denies to plaintiffs the right to use their property as a gas station). Unlike the private real property at issue in *Chicago Title*, LMP seeks to make use of Chicago's streets and sidewalks for its own private

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gain. As previously stated, LMP has no property right to use the streets and sidewalks for its own private gain. *Rhine*, 363 Ill. at 625.

¶ 43 LMP claims that *Chicago Title* stands for the proposition that proximity based restrictions that “promote monopoly” are inherently suspect. See *Chicago Title*, 19 Ill. 2d at 107 (“[i]t exempts from its requirements businesses already established, and, in operation and effect, tends to promote monopoly”). LMP argues that the 200-foot restriction promotes a monopoly because it prevents it from “vending in the vast majority of the Loop” and reduces competition. As previously stated, LMP and all food trucks have no constitutional property right to conduct any private business from the streets or sidewalks of Chicago. *Rhine*, 363 Ill. at 625. Moreover, LMP appears to take the position that the 200-foot restriction promotes a monopoly by the brick-and-mortar restaurants regardless of who actually owns them. Black’s Law Dictionary defines monopoly as “[c]ontrol or advantage obtained by *one supplier or producer* over the commercial market within a given region.” (Emphasis added.) Black’s Law Dictionary (10th ed. 2014). LMP presents no evidence, nor does this court expect it could, that brick-and-mortar restaurants are controlled by one supplier or producer. LMP’s claim that the rule supports a monopoly has neither a basis in law or fact and is rejected by this court.

¶ 44 LMP also argues that Illinois may not discriminate against two different business models and cites *Exchange National Bank of Chicago v. Village of Skokie*, 86 Ill. App. 2d 12 (1967). In *Exchange National*, plaintiff was denied a special use permit to open an automated car wash. *Id.* at 13-14. While the court reversed the denial of the permit as arbitrary and unreasonable, it stated in *dicta* that the village did not have the municipal authority to legislate “economic protection for existing businesses against the normal competitive factors which are basic to our economic system.” *Id.* at 21.

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¶ 45 *Exchange National*, like *Chicago Title*, is a pre-1970 case and does not deal with home rule authority. This alone undercuts the weight to be given to it. Equally as important, the case simply does not support LMP's position. In making its argument, LMP willfully fails to recognize that it is not the same business as a brick-and-mortar restaurant. Unlike *Exchange National*, this is not a case where there are two similar business, one automated and one not, both seeking to permanently operate from private real property. LMP does not seek to permanently conduct its bakery business from a brick-and-mortar establishment in Chicago using automated techniques, and the 200-foot rule it seeks to invalidate does not prevent it from so doing. Accordingly, *Exchange National* does not support LMP's position.

¶ 46 The other cases relied upon by LMP also involved the use of private real property and are therefore distinguishable from the case currently before the court. A case relied upon by LMP, *Cosmopolitan National Bank v. Village of Niles*, 118 Ill. App. 3d 87 (1983), involved a piece of real property. See *id.* at 88-89 (noting the issue before the court was the denial of a special use permit to operate a McDonald's restaurant). It is further distinguished by the fact that the plaintiff in *Cosmopolitan National Bank* did not seek to invalidate any Niles ordinance. LMP also relies on *Church*, but that case involved licensures and whether the legislature could require practical experience as a prerequisite for issuing a license to become a private alarm installer. 164 Ill. 2d at 167-68. LMP does not claim it has been denied a license because it lacks experience in the food truck business, so its reliance on this case is misplaced.

¶ 47 Based on the above, LMP has failed to establish that the 200-foot restriction is arbitrary and unreasonable as having no relation to the City's authority to promote its general welfare.

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Accordingly, the circuit court's order granting summary judgment in favor of the City as to the 200-foot restriction is affirmed.⁴

¶ 48 LMP next argues the requirement that it install a GPS unit in its truck and transmit its location to a service provider represents a warrantless search in violation of article I, section 6, of the Illinois Constitution. Under the challenged municipal provision, each food truck "shall be equipped with a permanently installed functioning [GPS] device which sends real-time data to any service that has a publicly-accessible application programming interface." Chicago Municipal Code § 7-38-115(l) (amended July 25, 2012). An applicable board of health rule explains that the GPS device need only transmit location data "while the vehicle is vending food or otherwise open for business to the public, and when the vehicle is being serviced at a commissary." Chicago Board of Health, Rules and Regulations for Mobile Food Vehicles, R. 8(A)(4) (eff. Aug. 7, 2014).

¶ 49 Section 6, of article I, of the Illinois Constitution states:

i. "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." Ill. Const. 1970, art. I, § 6.

⁴Because we uphold the 200-foot rule as a reasonable exercise of the City's power to protect businesses paying property tax over those that do not, we decline to address whether the other proffered reasons would also support the constitutionality of the 200-foot restriction.

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We note that “the protection against unreasonable searches and seizures under the Illinois Constitution is measured by the same standards as are used in defining the protections contained in the forth amendment to the United States Constitution.” *People v. Thomas*, 198 Ill. 2d 103, 109 (2001).

¶ 50 LMP contends that the GPS requirement constitutes a “search” pursuant to *Jones*, 565 U.S. 400. In the *Jones* case, the FBI suspected the defendant of drug trafficking and obtained a warrant authorizing the installation of a GPS on defendant’s car within 10 days. *Id.* at 402-03. The government installed the GPS device on the eleventh day. *Id.* at 403. The government eventually obtained an indictment and was permitted to use the data collected while defendant moved about the city streets. *Id.* The United States Court of Appeals for the District of Columbia reversed the conviction because the use of the GPS device violated the fourth amendment. *Id.* at 404. On appeal, the United States Supreme Court concluded that “the Government’s installation of a GPS device on a target’s vehicle, and its use of that device to monitor the vehicle’s movements, constitutes a ‘search.’” *Id.* In reaching this conclusion, the Court stated “[t]he Government physically occupied private property for the purpose of obtaining information. We have no doubt that such a physical intrusion would have been considered a ‘search’ within the meaning of the Fourth Amendment when it was adopted.” *Id.* at 404-05 (citing *Entick v. Carrington* (1765) 95 Eng. Rep. 807).

¶ 51 The Court reaffirmed this holding in *Florida v. Jardines*, 569 U.S. 1, 5-7 (2013). In *Jardines*, the Court held that having a drug-sniffing dog nose around a suspect’s front porch was a search because the police had “gathered information by physically entering and occupying the [curtilage of the house] to engage in conduct not explicitly or implicitly permitted by the homeowner.” *Id.* at 6. Then in *Grady v. North Carolina*, 575 U.S. ___, 135 S. Ct. 1368 (2015),

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the Court found that North Carolina's program of attaching GPS devices to recidivist sex offenders implicated the fourth amendment. Following on *Jones* and *Jardines*, the Court stated, "it follows that a State also conducts a search when it attaches a device to a person's body." *Id.* at ___, 135 S. Ct. at 1370.

¶ 52 Based upon *Jones*, *Jardines*, and *Grady*, we reject LMP's claim that the GPS requirement at issue constitutes a search. No search occurred because the City has not physically trespassed on LMP's property. The key issue in the Court's finding that a search had occurred in the above cases was the *state's physical occupation* of property (*Jones*, 565 U.S. at 404; *Jardines*, 569 U.S. at 6) or the *state's physical intrusion* on the subject's body (*Grady*, 575 U.S. at ___, 135 S. Ct. at 1371). LMP never alleged the City physically entered its mobile food truck to place the device, nor does it allege the device is City property. Because there is no trespass, no search occurred within the context of *Jones*.

¶ 53 Normally, our inquiry would not end with the above. Pursuant to *Katz v. United States*, a search may also occur when the government intrudes on an individual's "reasonable-expectation-of-privacy." *Jones*, 565 U.S. at 409 (citing *Katz v. United States*, 389 U.S. 347 (1967)). However, LMP makes no argument concerning its "reasonable expectation of privacy" and we decline to engage in any analysis absent a properly raised argument by appellant. Ill. S. Ct. R. 341(h)(7) (eff. Jan. 1, 2016) (points not argued are waived and shall not be raised in the reply brief, in oral argument, or on petition for rehearing).

¶ 54 This case resembles *Grigoleit*, 233 Ill. App. 3d 606 (1992). *Grigoleit* discharged its industrial wastewater into the sanitary district's publicly owned water pipes. *Id.* at 608. The ordinance under which this was allowed also required *Grigoleit* to allow the district access to all discharge locations. *Id.* at 609. *Grigoleit* refused all such requests for inspection, and the district

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revoked Grigoleit's license to discharge. *Id.* at 610. The circuit court reinstated the permit, and the district appealed to this court. We reversed the circuit court and reinstated the board's decision to revoke Grigoleit's license. *Id.* at 610-11. In so doing, this court stated, "Grigoleit is not in this instance subject to a regulatory scheme purporting to regulate the internal conduct of its business activities." *Id.* at 611. "Grigoleit instead is subject to regulation which controls the external disposal of wastewater it has generated onto property in which it possesses no interest." *Id.* at 612. We continued "[i]t has long been settled that a license in respect of real property, either oral or written, is a revocable privilege to do an act or a series of acts upon the land of another without possessing any estate or interest." *Id.*

¶ 55 We concluded that Grigoleit had no "constitutionally protected interest in the sewer connection and may not accept the privileges afforded by the license while simultaneously raising the fourth amendment as a bar to enforcement of the very conditions upon which extension of the license is predicated." *Id.* at 613. As the court succinctly concluded, "[i]f Grigoleit chooses to withhold consent to inspection (as it did here), the permit may be revoked and no inspection takes place—there is no entry of Grigoleit's facility and there is no search implicating the fourth amendment." *Id.* at 614.

¶ 56 The same logic applied by this court in *Grigoleit* applies equally well here. Grigoleit and all other dischargers had no constitutional right to discharge waste into the district's water network. *Id.* at 613. Similarly, LMP and all food trucks have no constitutionally protected property right in conducting business from Chicago's streets or sidewalks. *Rhine*, 363 Ill. at 625. Like the conditions surrounding the district's issuance of discharge licenses, the GPS requirement at issue is a condition precedent that LMP and all food trucks must comply with to obtain a license to sell on the City streets or sidewalks. Like the ordinance in *Grigoleit*, the

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ordinance at issue here does not regulate the internal conduct of LMP's business activities. *Id.* at 611-12 (citing *New York v. Burger*, 482 U.S. 691, 702 (1987)). LMP makes no argument that the GPS requirement affects or regulates the internal operations of its bakery business. In accepting a license to conduct business from the City street, LMP cannot raise a fourth amendment challenge to "bar *** enforcement of the very conditions upon which extension of the license is predicated." *Id.* at 613.

¶ 57 In view of the above, we affirm the circuit court's finding that the GPS requirement does not constitute a search within the meaning of the Illinois Constitution or the fourth amendment to the United States Constitution.

¶ 58

CONCLUSION

¶ 59 For the foregoing reasons, both the 200-foot restriction and the GPS requirement are constitutionally valid. The decision of the circuit court is affirmed.

¶ 60 Affirmed.

No. 123123

In the Supreme Court of Illinois

LMP SERVICES, INC.,**Plaintiff-Appellant,****v.****THE CITY OF CHICAGO,****Defendant-Appellee.**

**On Appeal from the Appellate Court of Illinois
First Judicial District, No. 16-3390
There Heard on Appeal from the
Circuit Court of Cook County, Illinois
County Department, Chancery Division, No. 12 CH 41235
The Honorable Anna H. Demacopolous, Judge Presiding**

NOTICE OF FILING

TO: Suzanne M. Loose
City of Chicago, Department of Law
Appeals Division
30 North LaSalle Street, Suite 800
Chicago, Illinois 60602
(312) 744-8519
suzanne.loose@cityofchicago.org

PLEASE TAKE NOTICE that on **August 20, 2018**, the undersigned attorney caused to be filed with the Clerk of the Supreme Court of Illinois, at 160 North LaSalle Street, Chicago, Illinois, via the efileIL system through an approved electronic filing service provider, the **Brief of Plaintiff-Appellant LMP Services, Inc. and Appendix of Plaintiff-Appellant LMP Services, Inc. Volumes I and II**, copies of which are attached and hereby served upon you.

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8/20/2018 4:00 PM
Carolyn Taft Grosboll
SUPREME COURT CLERK

Dated: August 20, 2018

Respectfully submitted,
LMP SERVICES, INC.
Plaintiff-Appellant

Robert P. Frommer (ARDC #6325160)
Erica J. Smith (ARDC #6318419)
Robert W. Gall (ARDC #6325161)
INSTITUTE FOR JUSTICE
901 N. Glebe Road, Suite 900
Arlington, Virginia 22203
(703) 682-9320
rfrommer@ij.org
esmith@ij.org
bgall@ij.org

By: /s/ Robert P. Frommer
One of its Attorneys

James W. Joseph
EIMER STAHL LLP
224 S. Michigan Avenue, Suite 1100
Chicago, Illinois 60604
(312) 660-7600
jjoseph@eimerstahl.com

Attorneys for Plaintiff-Appellant

CERTIFICATE OF SERVICE

The undersigned certifies under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, that on August 20, 2018, a copy of the **Brief of Plaintiff-Appellant LMP Services, Inc., Appendix of Plaintiff-Appellant LMP Services, Inc. Volumes I and II**, and the accompanying **Notice of Filing** were filed via the efileIL system through an approved electronic filing service provider and served on counsel of record below in the manner indicated:

Via Email

Suzanne M. Loose
 City of Chicago, Department of Law
 Appeals Division
 30 North LaSalle Street, Suite 800
 Chicago, Illinois 60602
 (312) 744-8519
 suzanne.loose@cityofchicago.org
 appeals@cityofchicago.org

Counsel for Defendant-Appellee

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ Robert P. Frommer

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 Carolyn Taft Grosboll
 SUPREME COURT CLERK