STATE OF ILLINOIS
IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
COUNTY OF MCLEAN

JULIE CROWE,	)	
	)	
Plaintiff,	)	**Case No. 12 MR 45**
	)	
v.	)	**Judge Foley**
	)	
CITY OF BLOOMINGTON, a municipal corporation,	)	
	)	
Defendant.	)	
	)	

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Plaintiff Julie Crowe, pursuant to 735 ILCS 5/2-1005, and moves this Court for summary judgment against the Defendants on all of her claims. In support of her motion, Plaintiff states:

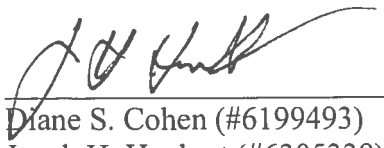
1. Plaintiff respectfully moves this Court for summary judgment on all three of her causes of action: (1) violation of her right to procedural due process; (2) violation of her right to substantive due process; and (3) a petition for a common-law writ of certiorari to review the City of Bloomington's denial of Plaintiff's application to operate a vehicle-for-hire service in Bloomington.

2. A memorandum of law in support of Plaintiff's Motion is attached hereto, together with six attached exhibits and Plaintiff's Verified Complaint.

3. For all the reasons stated in Plaintiff's Memorandum of Law, Plaintiff respectfully requests that this Court grant Plaintiff's motion.

DATED: APRIL 12, 2013

Respectfully submitted,



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PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT

Plaintiff Julie Crowe, pursuant to 735 ILCS 5/2-1005, submits this Memorandum of Law in support of her motion for summary judgment and states as follows:

I.
STATEMENT OF FACTS

Introduction

In 2007, the City of Bloomington enacted an ordinance (the "Ordinance") to regulate the entry into the marketplace and operation of vehicles for hire ("VFHs") in the City of Bloomington. Code of the City of Bloomington, Ch. 40, Art. X, § 1101 *et. seq.* (hereinafter "Code, __"). Under the Ordinance, VFHs are defined as any motor vehicle engaged in the business of carrying persons for hire, other than taxis, limousines, and mass-transit vehicles.[1] Unlike taxis and limousines, VFHs are restricted as to where and when they can operate. Specifically, VFHs are only permitted to transport people to or from downtown Bloomington, downtown Normal or any Bloomington or Normal establishment with a liquor license and are

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[1] Taxis and limousines are regulated under Ch, 40, Arts. I-IX, of the Code.
[2] The City Manager, David Hales, delegated all VFH responsibilities to Adkins. (*See* Exh. 1, Adkins Dep. 25:10-27:1.) Thus, Adkins alone has reviewed applications, presided at the public

only permitted to operate three nights a week, starting at 6:00 p.m. and ending at 4:00 a.m., on Thursdays through Saturdays, plus specifically designated holidays. Code, §§ 40-1001, 40-1002.

In 2010, the City amended the Ordinance to require a new VFH company, or any existing VFH company wishing to expand its fleet, to receive a certificate of convenience ("COC") from the City. Code §§ 1002A, 1002E. The COC provisions of the Ordinance are the subject of Plaintiff's complaint and this motion.

The City will only grant a COC if the City Manager "finds that further vehicle for hire service in the City of Bloomington is desirable and in the public interest, and that the applicant is fit, willing and able personally and financially to perform such public transportation and to conform to the provisions of this Ordinance and the rules promulgated by the City Manager." *Id.* § 40-1002E. This amendment was made at the urging of existing VFH licensees, who also obtained exemptions from these restrictions in the ordinance for themselves. (Exh. 2, Schmidt Dep. Exh. 2.) Specifically, while the ordinance requires new applicants, such as Plaintiff, to obtain a COC for any VFH they seek to operate, existing businesses with VFHs licensed before November 4, 2010, were grandfathered and owners automatically granted COC's for those vehicles. *Id.* § 1002A. Moreover, the Ordinance allows the grandfathered VFHs to be replaced with larger vehicles – with up to 50% more seats – without obtaining a COC. *Id.*

The VFH Application Process

An applicant for a VFH certificate must file an application with the City Clerk. *Id.* § 1002B. The application is then forwarded to Deputy City Manager Barbara Adkins,[2] who then holds a public hearing to consider the application and make a determination on whether to grant

[2] The City Manager, David Hales, delegated all VFH responsibilities to Adkins. (*See* Exh. 1, Adkins Dep. 25:10-27:1.) Thus, Adkins alone has reviewed applications, presided at the public hearings, and made the COC determinations. (*See id.*) All references to the "City Manager" herein refer to Deputy Adkins unless otherwise indicated.

or deny it. *Id.* § 40-1002D. Notice of these hearings must be published in the local newspaper, and notice must be given to all "interested persons," whom the ordinance defines as "all persons to whom certificates of public convenience have been theretofore issued." *Id.* The Ordinance also allows existing licensees to submit evidence supporting or opposing the application and to testify at the hearing. *Id.* § 1002D(b). The Ordinance contains no provisions governing what an applicant can submit or do at the public hearing, as it does for "interested persons," nor does it contain any procedures regarding the conduct of the hearing – *e.g.*, it does not require that evidence be taken under oath, does not provide for cross-examination of those who speak in opposition to an application, provides no rules or procedures regarding what evidence may be introduced or considered, does not provide for an applicant to receive notice of the evidence that will be used against him or her, and requires no opportunity for an applicant to present rebuttal evidence. *See id.*

After the public hearing concludes, the City either issues a COC or denies the application and is required to send a copy of the findings supporting the decision to the applicant as well as "all interested parties." *Id.* § 1002E. The findings in the decision letter are important because they provide an applicant with notice of the bases for a rejection, which is important for appeal purposes. (Exh. 1, Adkins Dep. 102:18-103:2.) If the VFH application is denied, the applicant may appeal to the City Council. *Id.* § 40-1033. There are no city rules, regulations, policies or procedures that govern the appeal process. (*See* Adkins Dep. 43:21-44:1-9; Schmidt Dep. 25:5-15; 86:19-24.)

Julie Crowe's VFH Application

On May 4, 2011, Julie Crowe filed a VFH COC application with the City so that she could start her own VFH service called "Main Street Shuttle." (Verified Compl. ¶ 10; Adkins

Dep. Exh. 1.) Crowe submitted all documents required by the City with her application (Adkins Dep. 64:12-17). She also submitted a letter setting forth how her VFH would serve the public and would be desirable by:

- providing a "needed service that the larger capacity business do not," as they better serve "individual[s] and small groups who do not which to wait for the larger capacity buses to fill up";
- providing a needed service to young women who "feel [vul]nerable as an inebriated passenger of a male drive shuttle, fear[] that they will be the last to be dropped off leaving them alone, often inebriated[,] with a stranger in the vehicle";
- providing a needed service to young women who otherwise are "let off at some distance from their destination," which forces them to walk several blocks alone in high heels;
- providing "added safety" because fights are less likely to occur in a 15-passenger van than on a large bus; and
- providing continuous service because 15-passenger vans "do not park for extended periods" and can keep moving to keep serving customers.

(Adkins Dep. Exh. 1; *see also* Adkins Dep. 170:17-171:17; 206:21-207:6.) Also included was a petition titled "Business support for establishing Main Street Shuttle," signed by nine downtown Bloomington bar owners in support of Crowe's application. (*Id.*)

Julie Crowe's Public Hearing – June 2011

The City held a hearing on Crowe's application on June 24, 2011. (Adkins Dep. Exh. 9 (hereinafter "Hrg. Tr.").) Before the hearing, the City did not advise Crowe as to the nature of the evidence she could present or the procedures that would be followed. (Verif. Compl. ¶¶ 12-14.) At the hearing, Crowe explained her VFH business plan, including why her business is needed, desirable, and in the public interest, based on her experience as a VFH driver and consistent with what she provided in her application. (Adkins Dep. 206:14-208:13.) For example, Crowe explained that her company would:

- provide a needed service to young women returning home late at night who would prefer a female driver (Hrg. Tr. 3:12-18, 6:24-7:6);
- relieve crowding on buses (Hrg. Tr. 3:24-4:8);
- reduce the risk of fights, which often break out on buses but do not break out as much in smaller vans (Hrg. Tr. 3:19-4:8);

- provide a needed, convenient service to smaller groups that need transportation early in the evening (Hrg. Tr. 6:2-6);
- help clear out downtown more quickly after bars close, getting inebriated young people off the streets sooner (Hrg. Tr. 5:3-8); and
- add to the diversity of vehicle-for-hire operators in the City with a female owner and driver (Hrg. Tr. 7:7-13).

Consideration of Evidence from "Interested Persons" – *AKA* Existing Licensees and Would-Be Competitors

Adkins also heard evidence from Crowe's would-be competitors including: a letter from Tami Quinn, owner of Bloomington-Normal Shuttle; testimony from Aaron Halliday, owner of Checker Cab of Bloomington; and testimony from Robert Rotramel, owner of Bob's Blue Nite. (Hrg. Tr. 9:19-13:12.) None of these opponents testified under oath (Adkins Dep. 203:9-14). All alleged that there was no need for additional VFH service. And none of them provided objective evidence to support their allegations nor any public health, safety or welfare reasons to deny Crowe's application. (Hrg. Tr. 9:24-10:22, 11:8-11, 12:14-13:8; Adkins Dep. 225:10-226:3.) For example, Quinn's letter claimed that her drivers are "verily (sic) making gas money for there (sic) vans" and that: "all the companies that are downtown now are handling the business. If there's need for more vehicles, [then] I feel that the companies that are down town (sic) should be able to expand and grow as business grows before allowing another company to come in." (Hrg. Tr. 9:19-10:22; Adkins Dep. Exh. 1.). Likewise, another competitor spoke in opposition claiming there was no need for Plaintiff's service based on his unsworn, undocumented, unsupported allegations that he receives few calls requesting female drivers. (Hrg. Tr. 8-9; 11:16-20.) Yet another competitor spoke in objection to Plaintiff's application by offering broad, unsupported claims such as that he "think[s] we have all the companies down there we need," and that he "can't even run all of [his] equipment when all the college kids are [in school]," and that "[t]here's going to be nowhere to park" downtown. (*Id.* 12:14-22.) This competitor provided

no explanation as to *why* he allegedly cannot run his equipment and Adkins admitted that this may have been due to any number of reasons, such as some vehicles being in disrepair or his inability to hire enough drivers. (Adkins Dep. 222:18-223:16.) Adkins asked him no follow up questions. (Hrg. Tr. 13:9-13) and Crowe was not given an opportunity to cross-examine or rebut their statements. (Verif. Compl. ¶¶ 28-29.) Instead, Adkins ordered the hearing closed immediately following the last competitor's statements. (Hrg. Tr. 13:13-16.)

The City's Denial of Crowe's Application

On August 25, 2011, the City issued a one-sentence letter to Crowe denying her application. This letter stated: "The City of Bloomington has determined that there is not a need to have an addition Vehicle for Hire Shuttle, there (sic) your request has been denied." (Adkins Dep. Exh. 4.) There were no findings incorporated in or attached to the letter. (*Id.*)

Crowe's Appeal to the City Council

In September 2011, Crowe filed an appeal to the Bloomington City Council. (Verif. Compl. ¶ 33.) When she gave notice of her appeal to the City Clerk's office, Crowe also submitted a letter in support of her appeal addressed to Bloomington Mayor Steve Stockton, which stated reasons why Crowe believed the evidence supported granting her application. (Exh. 3, Gooderham Dep. 201:14-203:7, Exh. 9.) The Clerk's office only delivered that letter to Adkins and no one gave it to Mayor Stockton or the members of the City Council. (Gooderham Dep. 203:1-204:9.) The City scheduled a hearing for September 26, 2011. (Verif. Compl ¶ 33.)

In preparation for the hearing, the City Clerk assembled a packet of information for the Council, which consisted entirely of documents selected by the City Manager's office. (Exh. 4, Covert Dep. 63:19-65:22, 67:3-68:13.) Those documents were: (1) a memorandum to the City Council recommending that it affirm Adkins's decision; (2) Crowe's application form; (3) the

letter from Quinn opposing Crowe's application; and (4) minutes of Crowe's June 24 public hearing. (Covert Dep. 61:14-20, 63:19-64:14, 67:3-24; Gooderham Dep. Exh. 16.) The packet did not include the letters Crowe submitted in support of her application and appeal, the petition from downtown bar owners supporting her application, any transcript or recording of her public hearing, or the financial statement she submitted in support of her application. (Gooderham Dep. Exh. 16; Defs.' Resp. Req. Admit 19.) The packet was sent to all council members before Crowe's appeal hearing and was the only information related to the appeal that council members received before the hearing. (Covert Dep. 62:21-63:7; Schmidt Dep. 28:19-23, 81:9-11.) No one informed council members that the packet was an incomplete record. For example, Alderwoman Karen Schmidt believed that the council reviewed all the evidence that the deputy city manager had considered and that she was "not aware that anything was withheld." (Schmidt Dep. at 22:23-23:6.)

The memorandum in the council packet stated that it was "[p]repared by" Mayor Stockton and "[r]ecommended by" City Manager Hales, and it bore their signatures (Gooderham Dep. Exh. 16), but was authored solely by Deputy Adkins (Adkins Dep. 248:3-18; Exh. 4, Stockton Dep. 9:20-10:4). The memorandum's purpose was to recommend that the council uphold the City Manager's decision to deny Crowe's application. (Gooderham Dep. Exh. 16.) The memorandum claimed that Crowe's application was denied "based primarily on two issues," neither of which was set forth in the rejection letter Adkins sent to Crowe denying her application: (1) "the applicant's cash flow limits the ability to perform" and (2) "establishing a new vehicle for hire company is not in the public interest [because c]urrently there were eleven (11) vehicle for hire companies, thirty-seven (37) registered vehicles totaling 910 seats [and a]nother vehicle for hire company would saturate the community." (Gooderham Dep. Exh. 16;

Adkins Dep. 264:10-265:21.) The memorandum also raised another issue not addressed below, which is contained in the "financial impact" section of the memorandum and states that granting a certificate would require "[a]dditional staff resources to process, inspect and issue licenses, and enforcement." (*Id.*)

The Appeal Hearing

At the appeal hearing, Adkins spoke several times in support of her decision and argued that Crowe's purported lack of "cash flow" or "financial wherewithal" – which were not included in the rejection letter she sent Crowe (Adkins Dep. Exh. 9) – were grounds to deny Crowe's appeal. (Adkins Dep. Exh. 5 at 605-06.) The Mayor also spoke in support of upholding Adkins' decision. (*Id.* at 610.)

Throughout the hearing, council members expressed their inability to understand how the hearing was supposed to be conducted or what standards should apply. For example, Alderwoman McDade stated that she "did not understand" how the City determines whether to issue a vehicle-for-hire license, that she "did not want to be the Council involved on a case by case basis," and – immediately before the City Council voted on the appeal – that she "needed better clarity regarding this issue." (Adkins Dep. Exh. 5 at 608-11; Ans. ¶ 41.) Alderwoman Stearns stated that the "process was arbitrary." (Adkins Dep. Exh. 5 at 610; Ans. ¶ 42.) Alderwoman Schmidt stated that she "had hoped that the staff's decision was based on a findings of fact," even though Adkins' decision below included no findings of fact. (Adkins Dep. Exh. 5 at 609; Ans. ¶ 43.) Schmidt also stated that she was "uncomfortable with the process" and that it was "hard to know what to do." (Adkins Dep. Exh. 5 at 609-10.)

Crowe was allowed to speak and reiterated her reasons for granting her application by reading from a written statement, a copy of which she provided to the city clerk. (*Id.* at 607-08;

Covert Dep. 69:17-70:7, Exh. 1A.) The City Council voted 8 to 1 to uphold Adkins' decision to deny Crowe's application. (Adkins Dep. Exh. 5 at 611.) On February 28, 2012, Plaintiff filed her Verified Complaint in this matter and now moves for Summary Judgment as a matter of law.

II. SUMMARY JUDGMENT STANDARD UNDER 735 ILCS 5/2-1005

Summary judgment is appropriate where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c). Summary judgment is appropriate where the "right of the moving party is clear and free from doubt." *Horwitz v. Holabird & Root*, 212 Ill.2d 1, 8 (2004). "While the nonmoving party is not required to prove his or her case, the nonmovant must present a factual basis arguably entitling that party to a judgment." *Id.*

III. SUMMARY OF ARGUMENT

The City's COC scheme is fundamentally arbitrary and unfair and violated Plaintiff's right to due process of law. The VFH Ordinance grants the city manager virtually unlimited to discretion to deny a COC based on her own subjective beliefs and gives city council unfettered discretion to uphold or reject the city manager's decision. When Plaintiff filed her application to start a new VFH company, she not only was expected to meet the City's impossibly arbitrary standards, but also was denied the most basic elements of due process: She was given no notice of the evidence that would be presented against her and no opportunity to cross-examine witnesses or present rebuttal evidence.

The City's COC scheme also violates due process of law because it is wholly unrelated to protecting the public's health, safety or welfare, and instead serves only to protect the established taxi and VFH companies – the same industries that lobbied for the scheme's enactment.

Moreover, the city's denial of Plaintiff's application was against the manifest weight of the evidence. In fact, the undisputed evidence supports granting Plaintiff's application. (Adkins Dep. 173:7-174:17, 183:1-10, 201:1-10, 205:8-16, 210:6-8, 212:3-23.)

Accordingly, Plaintiff respectfully asks this Court to grant summary judgment in her favor, strike down Section 1002(E) of the Bloomington City Code as unconstitutional, find that the City denied her due process of law, and reverse the City's denial of her VFH application.

IV. ARGUMENT

1. The Ordinance's COC provision is unconstitutionally vague and arbitrary and thus violates Plaintiff's right to due process of law.

A. The Ordinance grants City officials overly broad discretion.

Section 1002E of the Ordinance is unconstitutionally vague and grants city officials overly broad discretion to grant or deny COC applications. First, while the ordinance provides that a COC shall be granted "[i]f the City Manager finds that further vehicle for hire service in the City . . . is desirable and in the public interest," it fails to provide any definition of those terms whatsoever. *See* Code, § 1002E; Adkins Dep. 176:5-10. Nor are there any "objective criteria" in the Ordinance by which an applicant for a VFH COC can determine how to demonstrate that a new VFH service is "desirable and in the public interest," and there are no objective criteria by which the City Manager can determine whether new service is desirable. (Defs.' Resp. Req. Admit, 22-23.) As a result, the terms "desirable" and "in the public interest" mean whatever Adkins says they mean. (Adkins Tr. 170:23-171:5.)

Second, the Ordinance places no limits on the City Council's discretion to affirm or reverse the City Manager's denial of an application. As cited above, the vague language of the Ordinance, the confusion of council members at Crowe's hearing, and the testimony of Alderwoman Schmidt all illustrate how the lack of standards in the Ordinance to guide the

council's decision to grant or deny a license. As a result, the decisions of the City Council can only be arbitrary and violate applicants' rights to due process, as in Plaintiff's case.

The Ordinance's vagueness is also evinced by Adkins' disregard for "desirability" standard, which according to the Ordinance she is supposed to consider in deciding whether to grant a COC application. (Adkins Dep. 54:3-22.) She admits that whether something is "desirable" is "subjective" (*Id.* at 170:23-171:5), and that an applicant would not know by looking at the Ordinance what "desirable" means, what their burden of proof is, or how the standards will be applied in the determination of their application. (*Id.* at 175:50-10.) In disregarding the "desirability" factor altogether, Adkins focuses only on the "public interest" prong, which she defines as "whether an additional vehicle . . . is needed on the street." (*Id.* at 54:23-55:8.) Adkins does this even though the Ordinance does not mention the word "need," nor does it define "public interest" as "need." (*Id.* at 176:23-177:4.)

1. Flawed, Unreliable "Need" Criteria

To determine whether a "need" exists, Adkins considers criteria she invented: 1. "the existing number of seats;" 2. "how quickly downtown is cleared out," and 3. whether an additional vehicle for hire would "negatively impact[] existing companies." (Adkins Dep. Tr. at 177:5-178:16.) She does not consult with the students who utilize vehicles for hire in Bloomington. (*Id.* at 74:10-6.)

But not only are these criteria not found in the Ordinance, they are also flawed and unreliable. First, it is undisputed that the records on which Adkins relies in determining the number of seats do not reflect the number of licensed seats that are actually in operation on any given weekend. (*Id.* 142:6-23, 188:21-189:1; Gooderham Dep. 190:14-191:18; Defs.' Resp. Req. Admit 13.) Without knowing how many licensed seats actually operate, Adkins could have no

basis for determining whether the current number of seats sufficiently serves the public's need – if such a determination were even possible. In addition, it is also undisputed that the number of licensed seats that Adkins repeatedly cited in support of her decision that there was "no need" for additional seats in Crowe's case was inaccurate and not supported by the records on which she relies. Specifically, the 910 seats Adkins claimed were licensed at Crowe's June 2011 contradicted the number contained in the deputy city clerk's records. (Adkins Dep. 214:19-217:23; Gooderham Dep. 198:21-200:10.)

2. Clearing the Downtown

The next criterion that Adkins purportedly considers, the time at which downtown Bloomington is cleared of people, is also arbitrary. It is undisputed that it would be better to have the downtown cleared of people as early as possible and that an additional VFH, such as Crowe's 15-passenger van, would help clear the downtown earlier. (Adkins Dep. 158:9-159:8; 211:1-212:23.) Moreover, Crowe explained at her hearing that her van would benefit smaller groups seeking transportation early in the evening (Hrg. Tr. 6:2-6) – so the time by which the downtown clears at night is irrelevant to whether Crowe's service earlier in the evening would satisfy that consumer need.

3. "No Measurement Whatsoever" for "Negative Impact"

As for the final factor – the potential for "negative impact" on existing taxi and VFH companies – it is undisputed that Adkins has "no measurement whatsoever" and no "standards whatsoever" by which she makes this determination. (Adkins Dep. 153:19-154:14.) It is also undisputed that Adkins conducts no research to determine whether an additional VFH company would increase or decrease competitiveness in the market, or whether the market will support a new company. (*Id.* 157:1-11.) Accordingly, any determination that Adkins makes regarding

"negative impact" on existing VFH companies can only be speculative and arbitrary.

4. The Ordinance's arbitrary criteria have led to arbitrary, inconsistent outcomes.

The arbitrariness of the Ordinance has predictably led to inconsistent outcomes for VFH applicants. For example, in January 2011, Adkins approved a certificate of convenience for an existing VFH operator, Aaron Babb, to add a 45-passenger bus. (Adkins Dep. 276:15-23.) It is undisputed that Adkins granted Babb's application based solely on Babb's representations that there was a need for an additional bus; she did nothing to verify this information and simply took Babb's word for it. (*Id.* at 277:13-278:9.) She did not consider the number of seats licensed, nor did she consider how long it was taking to clear the downtown on weekend nights. (*Id.* at 289:11-290:14.) Babb provided no evidence of cash flow, and his financial statement stated that he had $80 cash on hand, with no real estate, salary, bonuses, or dividends. (*Id.* at 291:12-294:7.) Checker Cab owner Aaron Halliday submitted a letter arguing the market was saturated, citing an alleged decline in his VFH revenues, but Adkins did not find this "compelling." (*Id.* at 278:14-280:18.) Bob's Blue Nite owner Robert Rotramel spoke at Mr. Babb's hearing to argue, just as he did at Crowe's hearing, that no additional VFH service was needed because he did not operate all of his licensed VFHs. (Gooderham Dep. Exh. 10.) Nonetheless, Adkins granted Mr. Babb a license – but did not grant one to Crowe later that year. Adkins does not dispute that this disparate treatment – favoring Mr. Babb, an existing VFH owner, and disfavoring Crowe, a newcomer – was "not fair." (Adkins Dep. 302:5-14.)

When another VFH operator, Double Trouble Shuttle, sought to expand its fleet in September 2011 – just after Adkins denied Crowe a COC – Adkins disregarded the Ordinance's criteria and other requirements entirely. Double Trouble failed to renew its COC for a 12-passenger vehicle, which meant that, under the Ordinance, the COC lapsed pursuant to Section

1002I of the Code. (Adkins Dep. 282:10-285:6, 288:2-11.) Adkins, however, allowed Double Trouble to replace the lapsed vehicle with an 18-passenger vehicle without applying for a COC, holding a public hearing, or showing that an additional VFH was desirable and in the public interest. (*Id.*; Gooderham Dep. 229:21-233:4, Exh. 11.)

The vague language and lack of objective criteria in the Section 1002E of the Ordinance create an opportunity for the City Manager to make decisions based on her own arbitrary, non-objective criteria that bear no relationship to an applicant's ability to provide VFH service. As the undisputed facts including the above examples show, this is exactly what has occurred in Bloomington. Accordingly, the Ordinance violates due process on its face and as applied to Crowe, and this Court should strike it down.

B. The Ordinance deprived Plaintiff of due process of law.

A licensing ordinance that gives government officials unlimited or overly broad discretion to grant or deny a license violates due process of law. *Yick Wo v. Hopkins*, 118 U.S. 356, 366-67 (1886) (striking licensing ordinance where decisions were left to city officials' "mere will"); *see also Ward v. Village of Skokie*, 26 Ill.2d 415, 422 (1962) (Klingbiel, J., concurring) ("Ordinances providing for an unrestrained power to approve or reject are in violation of basic constitutional protections and cannot be sustained."). A law grants overly broad discretion where the factors officials are to apply in deciding whether to grant someone a license or permit are vague and lack "sufficient standards" to guide the officials' exercise of discretion. *Polyvend, Inc. v Puckorius*, 77 Ill.2d 287, 299 (1979). Due process requires that a law's application rest upon "objective criteria or facts," not the "opinions and whims" of an individual or group. *General Motors Corp. v. State Motor Vehicle Rev. Bd.*, 224 Ill.2d 1, 24 (2007). Thus, when a municipality decides whether to grant someone a license or permit, its exercise of

discretion "cannot be arbitrary, governed by fancy, caprice or prejudice. It must be sound discretion guided by law, legal and regular." *People ex rel. Pielet Bros. v. Village of McCook*, 3 Ill. App. 2d 543, 548 (1st Dist. 1954). To avoid unconstitutional vagueness, a law must "be sufficiently explicit to advise everyone what his rights are under it and how he will be affected by its operation." *McDougall v. Lueder*, 389 Ill. 141, 154 (1945). An ordinance is unconstitutionally vague if "its terms are so incomplete, vague, indefinite and uncertain that men and women of ordinary intelligence must necessarily guess at their meaning and differ as to their application." *City of Wheaton v. Sandberg*, 214 Ill. App. 3d 220, 227 (2d Dist. 1991). Here, the City does not dispute that the Ordinance fails to apprise applicants of their rights and how they will be affected by the operation of the Ordinance. (*See* Defs.' Resp. Req. Admit 22, 23.)

Illinois courts consistently strike down ordinance provisions that do not sufficiently constrain local officials' discretion to grant or deny a permit or license. For example, several decisions have struck down ordinances that conditioned the issuance of building permit on vague criteria, such as whether a building's features or materials would be "inappropriate." *See Waterfront Estates Dev. Inc. v. City of Palos Hills*, 232 Ill. App. 3d 367, 377-78 (1st Dist. 1992) (terms "inappropriate" and "inadequate" did not "adequately limit [the government's] discretion"); *R.S.T. Builders, Inc. v. Village of Bolingbrook*, 141 Ill.App.3d 41, 44 (3d Dist. 1986) (terms "harmonious conformance," "inappropriate materials," "durable quality," "good proportions," "exposed accessories," and "monotony of design . . . fail[ed] to prescribe adequate standards to control the actions of the [government]"); *Pacesetter Homes, Inc. v. Village of Olympia Fields*, 104 Ill. App. 2d 218, 225-26 (1st Dist. 1968) (ordinance that allowed denial of permit for "excessive similarity or dissimilarity of design" conferred "too broad a discretion" on government officials); *see also Hanna v. City of Chicago*, 388 Ill. App. 3d 909, 916 (1st Dist.

2009) (terms "value," "important," "significant" and "unique" were "vague, ambiguous, and overly broad" in landmark-designation ordinance). Similarly, the Illinois Supreme Court struck down a Chicago ordinance that authorized the mayor to grant a license for a place of amusement only if he received "satisfactory proof" that the applicant was a "fit and proper person" – criteria the Court found to be "purely subjective" and therefore unconstitutional. *City of Chicago v. Groffman*, 68 Ill. 2d 112, 123 (1977).

A lack of objective standards to constrain officials' discretion not only violates due process and the rule of law, it also creates opportunities for abuse. For example, officials with unconstrained discretion may grant licenses as "political favor[s] or as the result of a clandestine arrangement." *Hornsby v. Allen*, 326 F.2d 605, 609-10 (5th Cir. 1964). Where discretion to grant or deny a license or permit is placed in the hands of a local legislative body such as the City Council, there is an especially "obvious opportunity for the extension of special privileges to those well-connected politically." *People ex rel. Klaeren v. Village of Lisle*, 316 Ill. App. 3d 770, 787 (2d Dist. 2000), *aff'd on other grounds* 202 Ill. 2d 164 (2002). When officials abuse their discretion and "one applicant for a license is preferred over another equally qualified" for an improper purpose, this not only injures the applicant who has arbitrarily been denied a license, but also causes a "much greater" injury to the public, which "has the right to expect its officers to observe prescribed standards and to make adjudications on the basis of merit." *Hornsby*, 326 F.2d at 609-10.

Accordingly, due process forbids precisely what Bloomington's Ordinance establishes: decision-making based solely on a government official's desires – on personal "whims and opinions" rather than "objective criteria or facts." *See General Motors*, 224 Ill.2d at 24. By requiring the City Manager to find that further service is desirable and in the public interest

before issuing a vehicle-for-hire certificate, Bloomington's vehicle-for-hire ordinance ensures that *all* of the City's decisions to grant or deny a vehicle-for-hire application will be arbitrary and therefore unconstitutional. Likewise, by placing no constraints on the City Council's discretion, the Ordinance ensures that appeals will not be guided by law but instead will be guided only by the personal preferences of City Council members. The Ordinance therefore violates due process and should be struck down.

2. The City's vehicle-for-hire ordinance is not rationally related to the public's health, safety or welfare and instead serves only to protect established businesses from competition.

A. Laws regulating economic activities must be rationally related to a legitimate state interest.

More than a century of Illinois Supreme Court jurisprudence establishes that any law that infringes on a citizen's right to earn a living must serve the public's health, safety or welfare. Illinois has a "firmly entrenched constitutional principle that every citizen is guaranteed the right to engage in any lawful, useful and harmless business or trade, and that it is not within the constitutional authority . . . of the police power to interfere with that right of the individual where no interest of the public safety, welfare or morals is damaged or threatened." *Figura v. Cummins*, 4 Ill.2d 44, 48 (1954); *see also Church v. State*, 164 Ill.2d 153, 164 (1995) (regulation "must have a definite and reasonable relationship to the end of protecting the public health, safety and welfare").[3] Even where a restriction on the right to engage in a business or occupation is necessary to protect the public, it must be "a reasonable one, and be reasonabl[y] adapted to

[3] Illinois cases include several formulations of what constitutes a legitimate governmental purpose, but all involve some combination of the public health, safety, welfare, morals and comfort. *See, e.g., Church*, 164 Ill.2d at 164 ("health, safety, and welfare"); *People v. Johnson*, 68 Ill.2d 441, 447 (1977) ("health or safety"); *Figura*, 4 Ill.2d at 48 ("safety, welfare or morals"); *Metro. Trust Co. v. Jones*, 384 Ill. 248, 255 (1943) ("health, morals, safety or welfare"); *Koos v. Saunders*, 349 Ill. 442, 447 (1932) ("health, comfort, safety, or welfare").

obtain the objective intended." *Figura*, 4 Ill.2d at 49.

"Under substantive due process . . . a statute is unconstitutional if it impermissibly restricts a person's life, liberty or property interest." *People v. Johnson*, 225 Ill. 2d 573, 584-85 (2007). Law regulating economic activities must be rationally related to a legitimate state interest. Under the rational basis test, the court's inquiry is twofold: 1. it must determine whether there is a legitimate state interest behind the legislation; and if so, 2. whether there is a reasonable relationship between that interest and the means the legislature has chosen to pursue it. *Id.* at 584-85. "In determining whether an ordinance is reasonable, [a] court will take into consideration the object to be accomplished, the means provided to that end, and the conditions and circumstances to which the ordinance is made applicable." *Koos v. Saunders*, 349 Ill. 442, 448 (1932).

The City's stated purposes for the COC are to: 1. Prevent saturation of the market in order to "ensure the economic survival" of existing VFH operators (Schmidt Exh. 2); and 2. To establish a public hearing process in which the "main issue is whether the market will support a new company" (Schmidt Exh. 2 at 23). Accordingly, while the City enacted other provisions of the VFH Ordinance to govern the licensing of VFH drivers to ensure safety, *i.e.*, requiring criminal background checks for drivers and vehicle inspections to ensure the VFHs are safe (Schmidt Exh. 2 at 22-23), the COC requirement was specifically designed to regulate the number of VFH's that will be allowed to operate in the city. (*Id.* at 23.) At set forth below, the City's COC requirement bears no rational relation to public health, safety or welfare or any other legitimate state interest, but only serves to protecting existing businesses.

B. The COC is aimed at protectionism, not public safety.

Not only was the COC provision enacted to protect existing COC holders, it grants them

special privileges that applicants do not receive. These special privileges include:

- A grandfather provision that accords VFHs in service before November 4, 2010, to be automatically granted COCs for all of their existing vehicles. Code, § 1002A;

- A special privilege provision that entitles VFHs in service before November 4, 2010, to replace any VFH in service with a vehicle of up to 50% more capacity without obtaining a COC and thus without having to show that such additional seat capacity would be desirable and in the public interest. *Id.*; Adkins Dep. 166:17-23[4];

- Specific rights to receive notice from the City of any new COC application. Code § 1002(a);

- Specific rights to file evidence with the City Manager in support of or opposition to the issuance of a COC. § 1002(b);

- The specific right to file a motion to continue or postpone an applicant's public hearing. § 1002(c); and

- The City regularly has meetings that are closed to the public with existing licensees regarding the regulation of taxis and VFHs in Bloomington (Adkins Dep. 232:21-234:21, 236:4-237:20).

The special privileges the Ordinance bestows evince its failure serve the public health, safety or welfare in many ways, including the fact that no health, safety or welfare purpose is served by permitting competitors to present unsworn, unsupported, unreliable evidence in opposing (or supporting) an application. Not surprisingly, for every VFH COC application but one since the inception of the ordinance – when VFH operator Aaron Babb was granted a COC for one additional vehicle – the City has deferred to the established taxi and VFH owners' desire to stifle competition. Thus, in effect, established taxi and VFH owners hold a veto power over the entry of new participants into the VFH market. This deference is occurring despite the fact the existing COC and taxi licensees are "cut-throats" who will say whatever they need to say to keep someone else from encroaching on their business. (Adkins Dep. 221:17-21; 224:6-10.)

[4] The proposal was first discussed at one of the quarterly meetings the Deputy City Manager holds with taxi and VFH owners. (Adkins Dep. 167:8-19.)

Thus, the special privileges the law accords existing VFH operators at the expense of applicants like Crowe advances nothing other than protecting a discrete interest group – existing COC licensees – from competition.

Furthermore, the Ordinance's grant of unfettered discretion to the city manager shows that it is not rationally related to a legitimate government purpose because the city manager is not bound to grant or deny a COC on any criteria relating to the public's health, safety or welfare. As discussed above and specifically in the city council memorandum considering the COC provision, the VFH ordinance already provided for safety measures through vehicle inspections and driver background checks, predating the COC provision. Moreover, at the time the COC provision was passed, the City recognized that the operation of VFHs did not have an overall negative impact on their businesses and that the number of persons seeking to enter and leave the downtown area on weekends would "overwhelm the taxi companies if they were required to transport all of those persons." (Schmidt Dep. Exh. 2, at 22.) Thus, there is no evidence that the COC is rationally related to safety at all.Moreover, neither the term "desirable" nor in the "public interest" is defined, thus leaving the door wide open for the city to deny applications for reasons other than public health, safety or welfare.

The Illinois Supreme Court and federal courts alike have found that protecting a discrete interest group from competition is not a legitimate governmental purpose. *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002). The City may not invoke its police power "to serve a purely private purpose." *Koos*, 349 Ill. at 449. It can never use an ordinance to bestow "special and exclusive favors" on a particular group. *People v. Brown*, 407 Ill. 565, 584 (1950).

For more than a century, the Illinois Supreme Court has applied these principles to strike down statutes and ordinances that arbitrarily infringed the right to engage in a business or

occupation. *See, e.g., City of Chicago v. Netcher*, 183 Ill. 104, 108 (1899) (striking Chicago ordinances that barred sellers of dry goods, jewelry and drugs from selling groceries and barred sellers of dry goods, jewelry or hardware from selling liquor); *Figura*, 4 Ill.2d at 47-52 (striking statute that prohibited the processing of metal springs in one's home); *Gholson v. Engle*, 9 Ill.2d 454 (1956) (striking statute requiring a funeral director to also be a licensed embalmer). The Court has also struck licensing laws that arbitrarily protected people in particular occupations from competition and provided no corresponding benefit to the public. *See Church v. State*, 164 Ill.2d 153 (1995) (striking licensing requirement for alarm-system contractors); *People v. Masters*, 49 Ill.2d 224 (1971) (striking licensing requirement for plumbers); *Schroeder v. Binks*, 415 Ill. 192 (1953) (same); *People v. Brown*, 407 Ill. 565 (1950) (same).

As Crowe's expert witness Dr. Adrian Moore testifies, "more open and competitive vehicle for hire services tend to mean higher service levels . . . less waiting time for a vehicle, a greater variety of services, lower operating costs in the industry and higher quality service, than is found with vehicle for hire services in restricted markets." Adrian Moore, Ph.D.[5] "Competition and Entry into the Market for Taxis, Limousines, For Hire Vehicles and Related Services," (Exh. 6, Report of Adrian Moore 2, 7-8.) An open market also benefits the public by providing a larger and more vital VFH industry, with greater employment income opportunities, and often greater tax revenues. *Id.* at 7-8.

"Economic theory and knowledge are the most appropriate basis for government decisions regarding restricting entry into a market. *Id.* at 2. However, the Ordinance does not require independent research to assess if additional VFH services will affect competition in VFH market, nor are City decision-makers required to consult with experts in transportation markets

[5] Dr. Moore is being offered as an expert in the field of economics and also, specifically, transportation economics. His expert opinion and CV, are attached as Exhibit 6 hereto.

when deciding on applications. *Id.* at 2-3. Instead, the City determines need based on the number of licensed seats, which tells nothing about the actual number of seats in operation on any given weekend. In any event, as Plaintiff's expert testifies, "counting seats is a very static method of determining demand with no allowance for variance or change over time, and most importantly not allowing for the possibility that new services would influence demand." *Id.* at 3.

Likewise, while the City also considers how quickly the downtown clears on weekend nights when assessing "need," this analysis lacks any economic analysis, which would entail, "at minimum, detailed surveys of the origins and destinations of travel in the Bloomington metro area, a trip generation model, projected growth in travel and shift in travels patterns, and detailed data on demand and supply of vehicle for hire services over time to determine elasticities of supply and demand." *Id.* at 3. Indeed, as Plaintiff's expert testifies, "in an open market, consumers can directly let suppliers know their wants, and the more responsive the firms win more customers. Both sides gain. Bloomington's restricted vehicle for hire market constrains the very dynamic that causes progress in other markets." *Id.* at 4-5.

Finally, Adkins herself admits that allowing Crowe's VFH service would not be harmful and may even be desirable. (Adkins Dep. Tr. 170:17-171:1-17.) Likewise, Adkins testified that smaller vehicles, such as Crowe's fifteen-seat passenger van could cause less congestion than school bus-type VFH (Adkins Dep. Tr. 201:21-202:1-3) and that even more than fifteen seats was needed downtown. (Adkins Dep. Tr. 214:6-18.) As Plaintiff's expert opined:

> the only negative arguments [Adkins] discusses come from Crowe's competitors who have a direct financial interest in preventing new competitors from entering the market. Lacking offsetting information from the demand-side – customers – based on my review of Adkins' testimony, I did not see any application of generally accepted economic theory or knowledge that would indicate a new entrant would not be needed in the market.

Id. at 5.

The undisputed facts show that the only purpose the COC serves is to protect existing businesses from competition by barring the entrance of new businesses, like Plaintiff Crowe's. This is precisely the kind of purpose the Illinois Supreme Court has deemed impermissible under the Illinois Constitution.

3. The City's law, policies and procedures regarding the award of vehicle-for-hire certificates violated Crowe's right to procedural due process.

A. The City's hearings on Crowe's VFH application failed to provide her with even the most basic elements of procedural due process.

1. The City failed to provide Crowe with notice of the evidence that would be offered against her at her public hearing and appeal hearing.

At both her public hearing before the deputy city manager and her appeal hearing before the City Council, Crowe was confronted with evidence of which she had no notice, which violated her right to due process of law. Before her public hearing, Crowe had no notice of the evidence that would be offered against her: For example, she was not given Tami Quinn's letter, was not told who the opposing witnesses would be or what they would allege, was not given evidence regarding the alleged number of licensed VFH seats in Bloomington, and was not told that the number of seats would be a factor in Adkins' decision. (Adkins Dep. 193:6-23; Gooderham Dep. 136:14-137:18.) It is undisputed that Crowe had no way to know that the City even maintains a list of the number of licensed VFH seats – and would have had no opportunity to ask for that information – before her public hearing. (Adkins Dep. 193:6-23.)

Likewise, at her appeal, Julie Crowe learned of additional putative evidence against her that she had no opportunity to review and no meaningful opportunity to rebut. Before her appeal hearing, the City gave Crowe no notice that it would consider her business's projected "cash flow," let alone that it would use this as a reason to deny her a VFH certificate. (Defs.' Resps. Req. Admit 3, 4, 12.) The City's application form did not request any information about cash

flow; rather, it only asked for Crowe's "financial status, including the amount of all unpaid judgments." (Adkins Dep. 64:24-65:13, Exh. 1.) Crowe's financial statement showed that she had no unpaid judgments. (Adkins Dep. Exh. 1.) It is undisputed that, apart from the application form, the City does not inform applicants what kind of financial information it will consider in determining whether to grant a VFH certificate. (Adkins Dep. 65:17-21, 66:1-19.) At Crowe's June 2011 hearing, neither Adkins nor anyone else said anything about her finances or her business's projected cash flow. It is undisputed that the City never asked Crowe about her business's projected revenues, expenses or profits. (Adkins Dep. 75:8-76:4; Defs.' Resp. Req. Admit 4.)

Adkins's letter denying Crowe's application gave her no notice that an additional vehicle for hire would saturate the community. It merely said there was no "need" – a term that is undefined in the Ordinance. (Adkins Dep. 177:3-4.)

The City's failure to give Crowe notice of the evidence that would be presented against her is incompatible with fundamental fairness. Indeed, Bloomington Mayor Steve Stockton admitted in his deposition that an applicant cannot prepare for "surprise evidence" and that the City's presentation of new evidence without notice at Crowe's appeal hearing could have given the City an "unfair advantage." (Stockton Dep. 65:13-20, 70:17-20.)

2. The City did not allow Crowe to cross-examine witnesses or offer rebuttal evidence.

The City further denied Crowe due process of law when it gave her no opportunity to cross-examine witnesses or otherwise rebut opposing evidence at her public hearing.

As set forth in Section I above, the City gave Crowe no opportunity to cross-examine witnesses who opposed her application at her public hearing before Adkins. The City also denied Crowe the right of cross-examination at her appeal hearing because she had no opportunity to

cross-examine Adkins regarding the factual allegations Adkins made in opposition to her application. earing and in her memorandum to the City Council that there were 910 seats. (*Id.* at 606.)

3. The City provided the City Council with an incomplete record on appeal.

The City also violated Crowe's due process rights by failing to provide the City Council with a complete record on appeal. As set forth above, the only "record" the City Council received was the packet of documents selected by the City Manager's office – that is, documents selected exclusively by *one side* in the appeal – while excluding documents favorable to Crowe (Gooderham Dep. Exh. 16.)

B. The City's actions violated Crowe's right to procedural due process.

The City's failure to provide notice, allow cross-examination and rebuttal, or provide the City Council with a complete record resulted in fundamentally unfair proceedings and violated Crowe's right to procedural due process."[A]n administrative proceeding is governed by the fundamental principles and requirements of due process of law." *Abrahamson v. Ill. Dep't of Professional Regulation*, 153 Ill.2d 76, 92 (1992). Accordingly, the government must comport with the requirements of due process in determining whether to grant someone a license to engage in a particular occupation or business. *See, e.g., Balmoral Racing Club, Inc. v. Ill. Racing Bd.*, 151 Ill.2d 367, 408 (1992) (racetrack applying for licenses for racing dates entitled to due process); *Abrahamson*, 153 Ill.2d at 92 (medical license applicant entitled to due process before denial for lack of "good moral and ethical judgment"); *Willner v. Cmte. on Character & Fitness*, 373 U.S. 96, 105 (1963) (bar applicant entitled to due process before denial for lack of character and fitness); *Freitag v. Carter*, 489 F.2d 1377, 1382 (7th Cir. 1973) (chauffer's license applicant).

The government must provide an applicant with due process at all stages of licensing

proceedings, including appeals. *See Willner*, 373 U.S. at 105 ("[T]he requirements of fairness are not exhausted in the taking or consideration of evidence, but extend to the concluding parts of the procedure as well as to the beginning and intermediate steps."). The need for due process is especially great where, as here, a "local legislative body" acts to "grant permits, make special exceptions, or decide particular cases" because this "creates an obvious opportunity for the extension of special privileges to those well-connected politically." *Klaeren*, 316 Ill. App. 3d at 787.

Accordingly, when reviewing a licensing decision, a court "has a duty to examine the procedural methods employed at the administrative hearing, to insure that a fair and impartial procedure was used." *Abrahamson*, 153 Ill.2d at 92-93 (internal marks and citations omitted). Although the requirements of due process may vary depending on the circumstances, "certain minimal guarantees must always be provided." *Balmoral*, 151 Ill.2d at 408. In an administrative hearing, those guarantees include "the right to be heard, the right to cross-examine adverse witnesses, and impartiality in ruling upon the evidence." *Abrahamson*, 153 Ill.2d at 95. Other "minimal guarantees" that must "always be provided" include the rights to reasonable notice, to testify, to present witnesses, and to be represented by counsel. *Balmoral*, 151 Ill.2d at 408.

In this case, the City failed to provide Crowe with even minimal due process. When evidence is presented against a licensing applicant, it is essential that the applicant have an adequate opportunity examine and respond to it. Indeed, there is no meaningful "hearing" at all "when the party does does not know what evidence is offered or considered, and *is not given an opportunity to test, explain, or refute.*" *Id.* (quoting *Interstate Commerce Comm'n v. Louisville & Nashville R.R. Co.*, 227 U.S. 88, 93 (1913)). Thus, in *Balmoral*, where a license applicant's attorney was given only a "one-hour lunch break" to review the evidence offered against the

applicant before attempting to rebut it, the Illinois Supreme Court concluded that the applicant was denied due process. *Id.* Here, Crowe received even less opportunity to review and respond to the evidence against her – indeed, she had no notice or opportunity to respond at all.

The City's failure to provide the City Council with a complete record – and to instead provide it with a slanted record that favored Adkins's position – also created a proceeding that was fundamentally unfair and violated Crowe's due process rights. *See Abrahamson*, 153 Ill. 2d at 95-96 (people who make the final decision on a license application need not be present when evidence is taken so long as they review the record of proceedings).

Whether considered individually or all together, the City's failures deprived Crowe of a fair opportunity to make her case in support of her VFH application and violated her right due process of law.

4. The City's denial of Crowe's application was unreasonable and contrary to the manifest weight of the evidence.

In addition, this Court should reverse the deputy city manager's denial of Crowe's application because it was not supported by record evidence. This Court reviews an administrative decision to determine whether it is against the manifest weight of the evidence. *Dusthimer v. Bd. of Trs. of Univ. of Ill.*, 368 Ill. App. 3d 159, 163-64 (4th Dist. 2006). A decision is against the manifest weight of the evidence where "an opposite conclusion is apparent" from the record "or when findings appear to be arbitrary, unreasonable, or not based on evidence." *In re Estate of Parisi*, 328 Ill. App. 3d 75, 79 (1st Dist. 2002). Here, the manifest weight of the evidence did not support the City's denial of Crowe's application and instead supports granting the application.

A. The record contains no evidence to support Adkins' conclusion that the current number of seats was enough to satisfy consumers' "need."

The only basis Adkins stated in her letter denying Crowe's application for a vehicle-for-hire license was the lack of a "need" for another vehicle-for-hire shuttle in Bloomington. (Adkins Dep. Exh. 4.) The record, however, contains no competent evidence to support Adkins' finding.

According to Adkins, she determines need by looking to the number of currently licensed VFH seats. (Adkins Dep. 177:5-14.) The record, however, contains no competent evidence regarding the number of seats: No one with personal knowledge testified or provided other evidence in the record on the number of seats licensed in the City. Moreover, it is undisputed that the number of seats Ms. Adkins stated at Crowe's hearing, 910, was inaccurate. (*Id.* at 214:19-217:23.) And, as set forth above, the record also lacks evidence of how many licensed seats actually operate on any given night (*Id.* at 188:21-189:1); but it does contain undisputed evidence that not all vehicles are operated. (Hrg. Tr. 12:14-19). Accordingly, the record lacks any evidence to support Adkins's conclusion that the current number of seats sufficed to satisfy the public's need.

B. The record contains no evidence to support Adkins's conclusion that granting Crowe's application would "saturate the community."

The record also lacks evidence to support Adkins's claim – made only at Crowe's appeal – that "[a]nother vehicle for hire company would saturate the community." (Adkins Dep. Exh. 5 at 605-06.) Again, Adkins did not even know the correct number of licensed seats, and she had "no idea" how many seats actually operate on any given night. (Adkins Dep. 191:1-9.) Moreover, even if she did have those numbers, Adkins had no basis for determining whether they would show that they represent a "saturated" market.

C. Adkins had no evidence to support her conclusion that Crowe lacked the "cash flow" to operate her proposed business.

The record also lacks evidence to support Adkins's argument to the City Council that Julie Crowe's "cash flow limited [her] ability to perform." (Adkins Dep. Exh. 5 at 605.) The City solicited no information from Crowe on her business's projected cash flow on its application form, at Crowe's public hearing or anywhere else. (Defs.' Resp. Req. Admit 3, 4.) The transcript from Crowe's public hearing contains no reference to cash flow or any aspect of her finances. The record lacks any evidence regarding what "cash flow" would be necessary to operate a vehicle-for-hire service; it contains no evidence regarding the expenses involved in operating a vehicle-for-hire service or the revenues that a vehicle for hire could be expected to generate.

D. The manifest weight of the evidence supports granting Crowe's application.

As set forth above, the record lacks any evidence to support Adkins's decision to deny Julie Crowe's application or the City Council's vote to uphold that decision. The record does, however, contain ample undisputed evidence that supports granting Crowe's application.

In her letter supporting her application and at her public hearing, Julie Crowe presented numerous specific factual reasons why her business would provide a needed service to the public based on her experience as a VFH driver. Nothing in the record rebuts, discredits or otherwise casts any doubt on those reasons. It is undisputed that the service Crowe would provide to young women would be desirable. (Adkins Dep. 173:7-15.) It is undisputed that the diversity Crowe would bring as a female VFH operator and driver is desirable, in the public interest, and would serve the needs of the public and consumers. (*Id.* 173:11-174:17.) It is undisputed that Crowe is an experienced VFH driver. (*Id.* 205:8-16.) It is undisputed that nothing in the record shows that Crowe would harm the public or contribute to downtown traffic congestion. (*Id.* 201:1-10.) It is undisputed that Crowe's 15-passenger van would not harm the public interest. (*Id.* 210:6-8.) It is

undisputed that Crowe's service would allow 15 passengers at a time to have the choice of using her service, which they otherwise would not have. (*Id.* 212:3-23.) It is undisputed that the petition from downtown bar owners supporting Crowe is evidence that granting Crowe a VFH certificate would benefit the public convenience. (*Id.* 183:1-10.)

Therefore — because the undisputed record evidence supports granting =Crowe's application and shows that Adkins's decision was arbitrary, unreasonable and not based on evidence – the City's denial of Crowe's application was against the manifest weight of the evidence and should be reversed.

CONCLUSION

For all the foregoing reasons, Plaintiff respectfully requests that this Court grant her Motion for Summary Judgment on all causes of action in her Verified Complaint; declare that the Bloomington City Code § 40-1002E violates the due process guarantee of Article I, Section 2 of the Illinois Constitution, both on its face and as applied to Crowe; declare that the City's hearings on Crowe's application violated the due process guarantee of Article I, Section 2 of the Illinois Constitution; and reverse the City's denial of Crowe's application for a certificate of convenience to operate a VFH company.

DATED: APRIL 12, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

On April 12, 2013, I served the foregoing Motion for Leave to File *Intstanter*, Motion for Summary Judgment and Memorandum of Law by sending a copy by electronic mail to Plaintiff's counsel, J. Todd Greenburg, at tgreenburg@cityblm.org.

Attorney for Plaintiff