



## E-Notice

**2012-CH-30062**

CALENDAR: 16

To: Jacob Horst Huebert  
jhuebert@libertyjusticecenter.org

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

**NUCCIO JAMES vs. CITY EVANSTON**  
**2012-CH-30062**

The transmission was received on 09/16/2016 at 3:08 PM and was ACCEPTED with the Clerk of the Circuit Court of Cook County on 09/16/2016 at 3:17 PM.

**DISMISS(SET FOR MOTION HEARING) (Agreed Motion to Voluntarily Dismiss)**

**EXHIBITS (Exhibit 1 - Settlement Agreement)**

Filer's Email: jhuebert@libertyjusticecenter.org  
Filer's Fax: (312) 263-7702  
Notice Date: 9/16/2016 3:17:05 PM  
Total Pages: 8

**DOROTHY BROWN**  
**CLERK OF THE CIRCUIT COURT**  
COOK COUNTY  
RICHARD J. DALEY CENTER, ROOM 1001  
CHICAGO, IL 60602

(312) 603-5031  
courtclerk@cookcountycourt.com

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9/16/2016 3:08 PM  
2012-CH-30062  
CALENDAR: 16  
PAGE 1 of 3  
CIRCUIT COURT OF  
COOK COUNTY, ILLINOIS  
CHANCERY DIVISION  
CLERK DOROTHY BROWN

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

JAMES NUCCIO, et al., )  
)  
Plaintiffs, ) Case No. 12 CH 30062  
)  
) Judge David B. Atkins  
)  
)  
CITY OF EVANSTON, a municipal )  
corporation, )  
)  
Defendant. )

**AGREED MOTION TO VOLUNTARILY DISMISS**

NOW COME Plaintiffs – James Nuccio, Gabriel Wiesen, and After Hours Pizza LLC – by and through their attorneys, Jacob Huebert and Jeffrey Schwab of the Liberty Justice Center, and move to voluntarily dismiss this lawsuit pursuant to the Settlement Agreement of the parties. In support, Plaintiffs state as follows:

1. On June 15, 2016, the parties entered into a Settlement Agreement, attached as Exhibit 1, to resolve the dispute between them in this case.
2. The parties agree that all conditions of the Settlement Agreement have been satisfied and that there is therefore no further dispute to resolve between them.
3. The parties agree that they each will bear their own fees, costs, and expenses.

WHEREFORE, Plaintiffs respectfully ask this Court to dismiss this case with prejudice and retain jurisdiction to enforce the Settlement Agreement.

Dated: September 16, 2016.

Respectfully Submitted,



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Jacob H. Huebert (#6305339)  
Jeffrey M. Schwab (#6290710)  
Attorneys for Plaintiffs

Liberty Justice Center  
Cook County No. 49098  
190 S. LaSalle Street, Ste. 1500  
Chicago, Illinois 60603  
Telephone (312) 263-7668  
Facsimile (312) 263-7702  
jhuebert@libertyjusticecenter.org  
jschwab@libertyjusticecenter.org

**CERTIFICATE OF SERVICE**

I, Jacob H. Huebert, an attorney, hereby certify that on September 16, 2016, I served the foregoing Agreed Motion to Voluntarily Dismiss on Defendant's counsel of record by electronic mail sent to hford@cityofevanston.org and mmasoncup@cityofevanston.org.

  
\_\_\_\_\_  
Jacob H. Huebert

# Exhibit 1

## Settlement Agreement

This Settlement Agreement is hereby made and entered into as of this 15<sup>th</sup> day of JUNE, 2016, by and between James Nuccio, Gabriel Wiesen, and After Hours Pizza LLC (d/b/a Beavers Coffee & Donuts) (collectively "Plaintiffs") and the City of Evanston (the "City").

WHEREAS, Plaintiffs operate food trucks under the name Beavers Coffee & Donuts in the City of Chicago and also wish to do so in the City of Evanston;

WHEREAS, Plaintiffs maintain a licensed food establishment for Beavers Coffee & Donuts in the City of Chicago;

WHEREAS, Plaintiffs are not the owners or agents of a licensed food establishment in the City of Evanston;

WHEREAS, Plaintiffs have been denied a license to operate a food truck in the City of Evanston because Evanston City Code § 8-23-1 has required that a "mobile food vehicle must be owned and operated by the owner or agent of a licensed food establishment in the City, and must be affiliated with that establishment";

WHEREAS, Plaintiffs and the City dispute whether the above-quoted provision of Evanston City Code § 8-23-1 is a valid exercise of the City's police power or constitutes a violation of the Equal Protection and/or Due Process Clauses of the Illinois Constitution, and this dispute is the subject of a lawsuit between the parties in the Circuit Court of Cook County, Illinois, Case No. 12 CH 30062 (the "Lawsuit");

WHEREAS, the parties to this Agreement wish to avoid the additional expense and disruption of litigation;

WHEREAS, the City of Evanston has indicated that it is prepared to amend its Mobile Food Vehicle Ordinance, including the challenged provision of Evanston City Code § 8-23-1, in response to changed circumstances in the City of Evanston;

WHEREAS, the Plaintiffs and the City intend to achieve a settlement without compromise or prejudice to the parties' respective positions and defenses except set forth herein.

NOW THEREFORE, in consideration of the mutual covenants and promises of the parties set forth herein, the parties to this Agreement agree as follows:

1. **INCORPORATION OF RECITALS.** The foregoing recitals are incorporated into this Agreement as material terms hereto.

2. **AMENDMENT OF ORDINANCE.** The City shall amend its Mobile Food Vehicle requirements contained within Title 8, Chapter 23 of the City Code by Ordinance 17-O-16. The proposed Ordinance removes the requirement for a mobile food vehicle to be operated and owned by the owner or agent of a licensed food establishment in the City be affiliated with that licensed food establishment. The draft ordinance is attached to this Agreement as Appendix 1, which is incorporated herein by reference.

When the City considers the draft ordinance, it may also consider other amendments to the ordinance that are not related to this settlement and do not bear upon the relative ability of mobile food vehicles based outside of Evanston to operate in Evanston. This Agreement is not contingent upon the passage or non-passage of such additional amendments. By entering this Agreement, Plaintiffs do not give their approval or consent to any changes to the ordinance that are not contained in the draft ordinance attached as Appendix 1. Accordingly, notwithstanding any other provision of this Agreement, Plaintiffs retain their rights to criticize or challenge the validity of any amendments to Evanston's mobile food vehicle ordinance other than those set forth in Appendix 1.

3. **GRANTING OF LICENSE.** After the City amends its Mobile Food Vehicle ordinance as set forth in Paragraph 2, Plaintiffs shall file a new application to operate a food truck in the City of Evanston. The City shall grant Plaintiffs' new application, provided that: (1) Plaintiffs' application satisfies the requirements of the amended ordinance; and (2) Plaintiffs' vehicle passes a City inspection. If the City determines that Plaintiffs' application does not satisfy the amended ordinance's requirements, or Plaintiffs' vehicle does not pass an inspection, Plaintiffs and the City shall work together in good faith so that Plaintiffs can amend their application to satisfy the ordinance's requirements and/or take actions necessary to pass an inspection.

4. **FEES AND COSTS.** The Plaintiffs and the City shall be liable for their own respective attorneys' fees and costs incurred in connection with the Lawsuit.

5. **DISMISSAL WITH PREJUDICE & RELEASE.** If Plaintiffs receive a mobile food vehicle license from the City as set forth in Paragraph 3 above, then Plaintiffs shall, within 14 days of receiving the license, file a motion to dismiss the Lawsuit with prejudice. The motion shall reference this Settlement Agreement and

shall make clear that the parties will bear their own respective attorneys' fees and costs incurred in connection with the lawsuit.

After Plaintiffs receive a mobile food vehicle license from the City as set forth in Paragraph 3 above, the Parties shall agree to fully and finally release, acquit and forever discharge any and all claims, demands, liabilities, responsibilities, damages, actions, or causes of action, which either of the Parties now have, have ever had, or may have, whether known or unknown on the date hereof, against any of the Parties, and all claims resulting from, arising out of, to arise out of, or connected with, directly or indirectly: the City's denial of Plaintiffs' mobile food vehicle vendor license application as alleged in the Lawsuit.

If the City does not award Plaintiffs a mobile food vehicle license after the Parties have made the good-faith efforts described in Paragraph 3, Plaintiffs shall not be required to dismiss the Lawsuit, and the Parties shall not release any of their respective claims, demands, liabilities, responsibilities, damages, actions, or causes of action resulting from, arising out of, to arise out of, or connected in any way, directly or indirectly, with the Lawsuit.

6. NO ADMISSION. Plaintiffs and the City are entering into this Agreement as a means of compromising, settling, and resolving all questions, issues, duties, obligations, and responsibilities between them relating to the claims asserted in the Lawsuit. Nothing in this Agreement shall be interpreted or construed as a concession or admission by any of the parties with respect to any issue or dispute between them, or with respect to any other person, firm, or entity.

7. FREEDOM OF INFORMATION ACT – CONFIDENTIALITY. To the extent provided by law, and the Illinois Freedom of Information Act (“FOIA”), 5 ILCS 120 *et. seq.*, Plaintiffs and the City agree to maintain the terms and understandings of this Settlement Agreement as confidential. The Parties agree that no party shall publically comment upon this Settlement Agreement after the Agreement is executed. In the event an inquiry is made to any Party concerning the disposition of this action, that Party will limit any comment to the fact that the action was settled and dismissed, and that the City denied liability or wrong-doing.

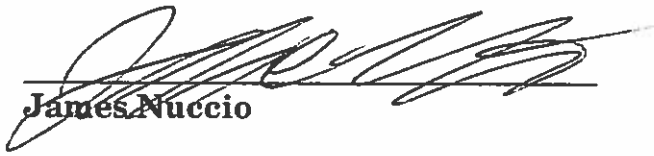
If a FOIA requestor requests from the City a copy of this Agreement, any City compliance in producing a copy of this Agreement responsive to said request in accordance with its duties and obligations under FOIA shall not be a violation of this paragraph. Any City compliance with the Open Meetings Act, 5 ILCS 120/2.06, as may be related to this Agreement, shall not be a violation of this paragraph.



8. ENTIRE AGREEMENT. This instrument constitutes the entire and final agreement among the parties to the Lawsuit. There are no agreements, understandings, warranties, or representations among the parties except as set forth in this Agreement.


9. RETENTION OF JURISDICTION. The Court shall retain jurisdiction to enforce the terms and conditions of this Agreement.

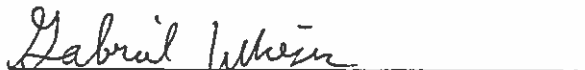
**IN WITNESS WHEREOF**, the Plaintiffs and the City have executed this Agreement and the day and year set forth above.

  
James Nuccio

  
Gabriel Wiesen


**After Hours Pizza LLC d/b/a Beavers Coffee & Donuts**

By:   
James Nuccio, managing member

  
Gabriel Wiesen, managing member

**City of Evanston**

By:   
Wally Bobkiewicz, City Manager

Approved as to form:  
W. Grant Farrar  
Corporation Counsel  
By: 

# Chancery DIVISION

## Litigant List

Printed on 09/16/2016

Case Number: 2012-CH-30062

Page 1 of 1

### Plaintiffs

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Plaintiffs Name	Plaintiffs Address	State	Zip	Unit #
NUCCIO JAMES			0000	
AFTER HOURS PIZZA			0000	
BEAVERS DONUTS			0000	

Total Plaintiffs: 3

### Defendants

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Defendant Name	Defendant Address	State	Unit #	Service By
CITY EVANSTON			0000	

Total Defendants: 1