IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

VUGO, INC., DONALD DEANS, DENISE JONES, GLOUSTER BROOKS, and PATRICIA PAGE,

Plaintiffs,

and

MURRAY MEENTS, individually, and on behalf of all others similarly situated,

Plaintiff-Intervenor,

v.

CITY OF CHICAGO, an Illinois municipal corporation,

Defendant.

Case No. 17-cv-864

Hon. Elaine E. Bucklo

DEFENDANT CITY OF CHICAGO'S MEMORANDUM IN SUPPORT OF ITS CROSS MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

Plaintiffs[1] allege that the City's ordinance prohibiting commercial advertising on the exterior and interior of transportation network provider vehicles, see Municipal Code of Chicago ("MCC") § 9-115-130 (the "Ordinance"), constitutes an unlawful restriction of commercial speech and a violation of equal protection under the federal and Illinois Constitutions. Plaintiffs cannot prevail on either claim because the law and undisputed facts demonstrate that the Ordinance is a lawful restriction of commercial speech under the intermediate scrutiny framework set forth in Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557, 561 (1980), and for the same reason does not violate equal protection.

Under Central Hudson, commercial speech receives less protection than other speech, and a government regulation is lawful so long as the regulation directly advances a substantial governmental interest and burdens no more speech than necessary to further that interest. Here, the City's restriction on advertising in and on transportation network provider ("TNP") vehicles directly advances the City's substantial interests in traffic safety, aesthetics, and passenger comfort by reducing visual and audio clutter that can be distracting to other drivers or pedestrians and intrusive to passengers. It also prevents TNP vehicles from having exterior adornment that could cause them to look like taxis, which serves the City's interest in maintaining taxis and TNPs as distinct classes of transportation service, and, in particular, prevents passengers on the street looking to hail a taxi from confusing a TNP vehicle for a taxi. In addition, the restriction burdens no more commercial speech than necessary because it applies

[1] The term "Plaintiffs" includes Plaintiffs Vugo, Inc., Donald Deans, Denise Jones, Glouster Brooks, and Patricia Page, as well as Plaintiff-Intervenor Murray Meents. The term "Complaints" includes the Amended Complaint of Plaintiffs Vugo, Inc., Donald Deans, Denise Jones, Glouster Brooks, and Patricia Page ("VC") and the Drivers' Complaint in Intervention of Plaintiff-Intervenor Murray Meents ("MC").

precisely to the areas where allowing commercial advertising would thwart these interests. Moreover, Plaintiffs' equal protection claim, which without Plaintiffs' First Amendment claim is governed by the more deferential rational basis standard, fails because the City has rational justifications for restricting advertisements in and on ridesharing vehicles, but not taxis or private vehicles.

For these reasons, which are explained fully below, the Court should grant summary judgment in the City's favor on Plaintiffs' claims.

BACKGROUND

Individual Plaintiffs are drivers in the TNP industry, in which TNP companies – such as Uber or Lyft – arrange for people to use their personal vehicles to transport passengers for a fee. These Plaintiffs wish to display commercial ads generated by third parties on the exterior and interior of their vehicles – through Plaintiff Vugo, Inc.'s ("Vugo") video software or otherwise. VC ¶¶ 11-14, 38; MC ¶¶ 14, 41. Vugo operates a mobile media network that enables TNP drivers to show video advertisements and other media on their tablet devices, which are mounted on their vehicles' headrests directly in front of a rear-seat passenger. VC ¶¶ 16-17, 20.

While taxis and TNP vehicles both transport passengers for hire, there are important differences between the two business models and in how they are regulated by the City. See generally Ill. Transp. Trade Ass'n v. City of Chicago, 839 F.3d 594 (7th Cir. 2016) (discussing the differences between taxis and TNPs and the City's regulation of each). Importantly, taxis are the only motor vehicle that can accept street hails in the City. See Def.'s Local Rule 56.1(a)(3) Statement of Undisputed Material Facts ("SOF") ¶ 24. Street hail trips are random and spontaneous, and the passenger usually has no prior relationship with the taxi driver, the vehicle, or the taxi company. SOF ¶¶ 24, 32. See also Ill. Transp. Trade Ass'n, 839 F.3d at 598. Yet the

passenger has certain expectations of safety and comfort – upon seeing a taxi, the passenger knows that both the driver and vehicle have been "approved" by the City's thorough regulations, and that the fare will be computed based on rates fixed by the City and tracked in real time on a taximeter visible from the back seat. SOF ¶¶ 26, 29, 56. See also Ill. Transp. Trade Ass'n, 839 F.3d at 598; MCC §§ 9-112-510, 9-112-600. Additionally, taxis require payment by the passenger in the vehicle, and so the City regulates the forms of payment that taxis must accept, in order to ensure uniformity and passenger convenience. SOF ¶ 56; MCC § 9-112-510. These regulations provide comfort to customers seeking a street hail on the corner; almost no one would get in an unmarked private car randomly answering street hails and quoting a fare off-the-cuff. Accordingly, the entire taxi street hail business model is premised on the public's expectation that the City will extensively regulate all aspects of the transaction and ride in order to ensure passenger comfort and safety. See Ill. Transp. Trade Ass'n, 839 F.3d at 598.

Unlike taxis, TNP vehicles are not – and cannot be – hailed on the street. SOF ¶ 25; MCC § 9-115-180(d)-(e). Instead, TNP rides are generally arranged as follows: a customer uses the TNP company's smartphone app to send a request to the TNP for transportation; the TNP sends the request to drivers affiliated with the TNP; a driver accepts the request and the TNP sends the driver's name and/or picture and passenger rating, as well as the vehicle type and license plate, to the passenger; the TNP charges a fare using rates set by the TNP and based on distance travelled, time elapsed, or both; the TNP collects the fare from the passenger using a credit card previously registered with the TNP and on file with the company; and the TNP pays the driver. SOF ¶¶ 25, 27; Ill. Transp. Trade Ass'n, 839 F.3d at 598. Distinct from taxis, TNP vehicles cannot accept payment of fare in the vehicle through any manner; instead payment must be made by using the TNP's app. SOF ¶ 65. And apart from and prior to any request for a ride,

a TNP customer establishes a pre-existing contractual relationship with the TNP company of their choice, through downloading the company's app and agreeing to particular contract terms provided by the TNP that govern significant aspects of rides arranged over the app, such as driver qualifications and insurance. See SOF ¶ 25; Ill. Transp. Trade Ass'n, 839 F.3d at 598. The TNP rider also opts for fare to be calculated based on his or her agreement with the TNP, rather than tracked on an approved taximeter with rates set by the City. SOF ¶ 27. Under this business model, the passenger does not expect the City to regulate the driver, vehicle, rate of fare, and other operational aspects in the same way that it does for taxis.

In accord with these differences in customer expectations and the underlying business models between taxis and TNPs, the City has enacted distinct regulatory frameworks for each. Through Chapter 9-112 of the MCC and the City's rules and regulations governing taxis, the City regulates nearly all aspects of the taxi industry, including such things as vehicle age and inspections, licensure and background checks of drivers, taximeter fares, and insurance requirements. SOF ¶¶ 26, 29, 56. The TNP industry, while still regulated by the City in significant ways through Chapter 9-115 of the MCC, has different requirements; for example TNP companies set their own fares, and the inspection and driver vetting process is their responsibility. SOF ¶¶ 27, 9. See also Ill. Transp. Trade Ass'n, 839 F.3d at 596.

ARGUMENT

I. The City Is Entitled to Judgment In Its Favor on Plaintiffs' First Amendment Claim Under Central Hudson.

The Court has already determined that Plaintiffs' First Amendment challenge to the Ordinance must be analyzed under Central Hudson Gas & Electric Corp. v. Public Service Commission of New York, 447 U.S. 557 (1980), because their claim involves commercial

speech, which receives less protection than other speech. Dkt. 47 at 13-14.[2] Under the Central Hudson framework, when (1) the restricted communications are not misleading or related to unlawful activity, a regulation is lawful so long as (2) it supports a substantial government interest, (3) it directly and materially advances that interest, and (4) it is narrowly drawn so that it is not more extensive than necessary to serve that interest. 447 U.S. at 564-65. Under this test, the government may justify its restriction by reference to the text of the enactment, history, logic, or common sense; it is not necessary for the government to point to studies or evidence. See Act Now to Stop War & End Racism Coal. v. Dist. of Columbia, 846 F.3d 391, 408-09 (D.C. Cir. 2017); Second Amendment Arms v. City of Chicago, 135 F. Supp. 3d 743, 759 (N.D. Ill. 2015).

The Ordinance meets the Central Hudson test because the City's interests in regulating commercial advertisements on and in ridesharing vehicles are substantial, the Ordinance directly advances those interests, and it is appropriately tailored.

A. The Ordinance supports various substantial government interests.

The City need only identify a single substantial interest supported by the Ordinance, see Florida Bar v. Went For It, Inc., 515 U.S. 618, 624 n.1 (1995), but here there are several.

First, as acknowledged by the Court, Plaintiffs have conceded that traffic safety and aesthetics are substantial government interests. See Dkt. 47 at 15. See also, e.g., Metromedia, Inc. v. City of San Diego, 453 U.S. 490, 507-08 (1981) ("traffic safety and the appearance of the city . . . are substantial governmental goals"). And it is "widely-recognized" that these interests "may be addressed through the regulation of signs," CBS Outdoor, Inc. v. Vill. of Plainfield, 959 F. Supp. 2d 1054, 1064 (N.D. Ill. 2013), which can distract drivers and pedestrians. See

[2] Plaintiffs' First Amendment claim under the Illinois Constitution is analyzed under the same standard as their federal claim. See Peterson v. Vill. of Downers Grove, 150 F. Supp. 3d 910, 913, 928-33 (N.D. Ill. 2015) (applying Central Hudson framework to First Amendment claim brought under both U.S. and Illinois Constitutions); Desnick v. Dep't of Prof. Reg., 171 Ill. 2d 510, 521, 665 N.E.2d 1346, 1353-54 (1996) (same).

Metromedia, 453 U.S. at 509 (acknowledging "the accumulated, common-sense judgments of local lawmakers and of the many reviewing courts that billboards are real and substantial hazards to traffic safety"); Candidates' Outdoor Graphic Serv. . . . COGS v. City & Cnty. of San Francisco, 574 F. Supp. 1240, 1248 (N.D. Cal. 1983) (recognizing a "substantial interest in traffic safety and the priority that road signs and traffic conditions must have in gaining motorists' attention").

The City's interest in the appearance of vehicles is also important in light of the core distinctions between taxis and TNPs. Perhaps "the most significant difference" between taxis and TNPs is that taxis, unlike TNPs, can be hailed by passengers standing on the street. Newark Cab Ass'n v. City of Newark, 901 F.3d 146, 156-57 (3d Cir. 2018). Indeed, as the Seventh Circuit has observed, "[t]axicabs are preferred to Uber and other TNPs by many riders, because you don't have to use an app to summon them – you just wave at one that drives toward you on the street—and also because the fares are fixed by the City." Ill. Transp. Trade Ass'n, 839 F.3d at 597. This means that customers standing on the street need to be able to easily tell whether an approaching car is a taxi or not; a customer may waste valuable minutes waiting for a vehicle spotted in the distance that he believes to be a taxi based on text or pictures on the door, only to discover as the car drives by that it is actually a TNP vehicle with exterior advertising.

And this interest in ensuring that taxis and TNPs differ in appearance is part of the City's broader interest in ensuring that taxis and TNPs remain as distinct forms of transportation service; while some people prefer taxis, others "prefer Uber to Yellow Cab," and "[t]he City wants to encourage this competition." Ill. Transp. Trade Ass'n, 839 F.3d at 598. See also TCF Nat'l Bank v. Bernanke, 643 F.3d 1158, 1165 (8th Cir. 2011) (government had legitimate interest in "provid[ing] valuable diversity" in the financial industry); Exec. Town & Country

Servs., Inc. v. City of Atlanta, 789 F.2d 1523, 1527 n.8 & 1528 (11th Cir. 1986) (explaining that it is legitimate for city to foster different "niches" in city's transportation network); Am. V.I.P. Limousines, Inc. v. Dade Cnty. Bd. of Cnty. Comm'rs, 757 F. Supp. 1382, 1396 (S.D. Fla. 1991) (upholding requirement that taxis and limousines use different airport access lanes because it promoted development of niches at airport). In recognition of these distinctions, the City has appropriately devised distinct regulatory frameworks for each industry that are largely shaped by the type of service each provides. Compare MCC Chapter 9-112 (regulating taxis), with Chapter 9-115 (regulating TNPs).

The Court also previously concluded that "the City's long-recognized interest in protecting the public, and particularly a captive audience, from unwanted intrusions extends to safeguarding the comfort of passengers riding in vehicles on the public way." Dkt. 47 at 16. See also Members of City Council of City of L.A. v. Taxpayers for Vincent, 466 U.S. 789, 806 (1984) (explaining "that the municipalities have a weighty, essentially esthetic interest in proscribing intrusive and unpleasant formats for expression"). Indeed, passengers in rideshare vehicles are a textbook example of a "captive audience," which courts have recognized as a group whose discomfort or annoyance may be addressed by restrictions on speech. See Lehman v. City of Shaker Heights, 418 U.S. 298, 302-04 (1974) (upholding prohibition of political advertising on city buses and concluding that city was entitled to protect unwilling viewers against intrusive advertising); Anderson v. Milwaukee Cnty., 433 F.3d 975, 980 (7th Cir. 2006) (validating ban on distributing literature on public buses).

B. The Ordinance directly advances the City's substantial interests.

Turning to the third Central Hudson prong, the Ordinance directly advances the City's substantial interests discussed above. The "directly advance" prong of Central Hudson requires the City to demonstrate that "the harms it recites are real and that its restriction will in fact

alleviate them to a material degree." Florida Bar, 515 U.S. at 626 (internal quotation marks and citation omitted).

i. The ban on exterior advertising advances the City's interests.

The City's ban on exterior advertising for TNP vehicles directly advances the City's substantial interests in traffic safety and aesthetics, as well as the City's interest in ensuring passengers are able to safely and easily distinguish between distinct public passenger vehicle services.

As to traffic safety, there is no question that banning commercial advertising on the exterior of ridesharing vehicles reduces the total number of distractions on the road, promoting traffic safety. The entire purpose of placing commercial advertisements on a vehicle is to draw the attention of other drivers and pedestrians, thus distracting them from driving or other vehicles nearby. SOF ¶¶ 11-14. Not only is that a matter of common sense, it is conceded by Plaintiffs. Indeed, Plaintiff Patricia Page testified that she advertised her business on the rear of her TNP vehicle so that "the person behind her," as well as "other drivers," would see it and take down her contact information. SOF ¶ 11. And as she further explained, drivers would do this by taking a picture of the ad with their cell phone, or writing the information down, both of which would require multiple steps – the driver would need to find her phone or a piece of paper and pencil, and then record the information in the ad – all while driving. SOF ¶¶ 15-18. These steps, which would take at least 5 to 20 seconds, and maybe longer, SOF ¶¶ 15,17-18, would be "unsafe" and lead to distracted driving. SOF ¶¶ 16-18. The City's ban on exterior advertising on TNPs directly and materially advances the City's interest in traffic safety by prohibiting these distractions from appearing on TNP vehicles. It is clearly justified by "a straightforward line of reasoning" that is self-evident and rooted in common sense. Act Now to Stop War & End

Racism Coal., 846 F.3d at 408. See also Metromedia, 453 U.S. at 508-11 (finding that "billboards are intended to, and undoubtedly do, divert a driver's attention from the roadway"); Supersign of Boca Raton, Inc. v. City of Ft. Lauderdale, 766 F.2d 1528, 1531 (11th Cir. 1985) (relying on Metromedia to hold that a vehicle advertising ban directly advanced the city's traffic safety and aesthetic interests).

The exterior ban also directly advances the City's interest in maintaining taxis and TNP vehicles as distinct forms of transportation service and allowing passengers to easily distinguish between the two types of vehicles. Easy identification of taxis by a person standing on the corner is promoted by taxis' distinctive appearance, which includes City-regulated paint jobs and required exterior signage regarding the taxi's affiliation and medallion license number. See SOF ¶¶ 28-29. Indeed, a "[n]otable" feature of taxis is their "vehicle attributes, such as a distinctive yellow color [and] overhead lights," which, among other things, "promote safety, convenience, easy identification, comfort, and uniformity of service" for customers hailing a taxi on the street. Progressive Credit Union v. City of New York, 889 F.3d 40, 50 (2nd Cir. 2018). Prohibiting exterior advertising on TNP vehicles directly advances this interest, because it prevents those vehicles from having visual adornment on the outside that may resemble that on taxis and cause a customer to believe – especially at a distance – that a TNP vehicle is actually a taxi. Further, an ad on a TNP vehicle could contain the driver's contact information, such as a cellphone number, which would allow a would-be passenger to call the driver directly and arrange a ride. SOF ¶ 33. This, too, would undermine the City's interest in preserving the distinctions between taxis and TNPs by allowing passengers to effectively street hail a TNP outside of the TNP's app and the City's regulations governing how TNPs must operate.

Closely related to this interest is the City's interest in reducing aesthetic blight. The

Supreme Court has held that advertising signs "by their very nature, wherever located and however constructed, can be perceived as an 'esthetic harm.'" Metromedia, 453 U.S. at 510. The same is true of exterior advertising on vehicles. Even though aesthetic harm is "necessarily subjective, defying objective evaluation," it is within the City's authority and discretion to identify and target what it deems to be visual blight. Id. Given the City's interests in maintaining taxis and TNPs as distinct forms of transportation service, the City may reasonably conclude that TNP vehicles as a class should be free from outside pictures and signage in order to maintain a uniform appearance – that of no adornment – to customers. And the ban on exterior commercial advertising directly advances this interest. Indeed, Plaintiff-Intervenor Meents testified that, without the ban, he would fill his TNP vehicle with ads so that it looked "just like a race car." SOF ¶ 12. Not only would this prove especially distracting to other drivers and pedestrians, it would lead to a free-for-all where TNP vehicles would vary widely in appearance and detract from the City's aesthetic interests in TNP vehicles having a common appearance.

ii. The ban on interior advertising advances the City's interests.

The City's ban on advertising inside TNP vehicles also directly advances the City's interests. First, as to passenger comfort, the ban materially advances that interest by shielding TNP passengers from being barraged with annoying or distracting advertisements. TNP passengers are a textbook example of a "captive" audience, and Vugo itself has stated that "[p]assengers in rideshare vehicles are not only captive but also one of the most sought-after audiences today." SOF ¶ 37. And Plaintiffs themselves testified that these captive passengers may find advertisements annoying and intrusive. SOF ¶¶ 39-40. Plaintiff Page in particular explained that she does not advertise her own business on the interior of her car when using it as

a TNP vehicle because that would be "too much in your face" for passengers who are "captive" and have "no other alternative" to being stuck in the car. SOF ¶ 40. And Vugo's own COO acknowledges that some passengers will not tolerate ads of any kind. SOF ¶¶ 42-43. Further, on numerous occasions, passengers have complained to the City that they find advertising in taxis annoying or disruptive. SOF ¶ 62. Likewise, when riders of New York City taxis were asked what they most dislike about taxis, 31.3% of respondents answered that Taxi TV – a form of video advertisements in taxis – is annoying. SOF ¶ 63. See also Peterson, 150 F. Supp. 3d at 930 (noting that evidence justifying speech restrictions "can be in the form of studies performed by [ ] other locales or even anecdotes from those towns") (citing Lorillard Tobacco v. Reilly, 533 U.S. 525, 555 (2001)). While any captive passenger might be annoyed by advertisements, the concern is particularly acute as to TNP passengers, since, by Vugo's own admission, they are one of the "most sought after" audiences for commercial ads, SOF ¶ 37, which means that they will be heavily targeted by advertisers.

The ban on interior advertising also advances the City's interest in passenger and driver safety, because it helps eliminate driver distractions. The audio from video ads like those shown by Vugo can be distracting to drivers but the sound level is within the passenger's control. SOF ¶ 51. Similarly, commercial advertising inside the vehicle can cause the driver to focus on helping consummate a commercial transaction instead of driving. For instance, a company called "Cargo" allows a TNP driver to keep a container in the car that is stocked with snacks and other items. SOF ¶ 53. A passenger may purchase these items by buying them in real time through Cargo's website, which then sends a text message to the driver confirming that a sale has been made, and instructing the driver to give the item to the passenger. SOF ¶ 54. The TNP driver must therefore watch for and read the text message to see what item was ordered, open the

Cargo box, and give the item to the passenger. Id. This entire transaction may occur while the vehicle is moving, which undoubtedly causes a distraction to the driver. Plaintiff Denise Jones, who has used the Cargo service while driving a TNP vehicle, testified that giving a passenger an item while driving is "too much of a struggle. . . . it's too dangerous." SOF ¶ 55. The City's Ordinance helps prevent precisely that sort of driver distraction and materially advances its interest in traffic safety.

iii. The City's allowance of advertising on and in taxis does not undermine the Ordinance.

To be sure, the City does not ban exterior or interior advertising on taxis. But this fact does not undermine the Ordinance's legality, for three reasons.

First, in order to satisfy Central Hudson, the City need not eradicate a problem in its entirety, so long as the regulation directly advances its substantial interest in some manner. Indeed, the Supreme Court has categorically rejected the argument that a municipality cannot prohibit certain unattractive advertising if the regulation does not apply to all such advertising. See Taxpayers for Vincent, 466 U.S. at 810. And in Supersign, for example, Fort Lauderdale generally prohibited ads on all vehicles, but allowed advertising on taxis, buses, and certain other vehicles. 766 F.2d at 1529. Even though those ads may have presented the same threat to aesthetics and traffic safety as the banned ads, the Eleventh Circuit upheld the law, reasoning that by prohibiting even some advertisements on vehicles, "the City solves some of its traffic problem and reduces the total number of unsightly advertisements." Id. at 1531. See also Metromedia, 453 U.S. at 510-11 (finding that a ban on off-site commercial advertising moved San Diego's aesthetic and safety interests forward, even though on-site commercial advertising was allowed).

So too here: Even if advertising on or in TNP vehicles and taxis equally detracted from the City's safety and aesthetic interests, the City may, consistent with the First Amendment, restrict advertising only as to ridesharing vehicles, because doing so eliminates at least some of the problem and therefore advances the City's interests. And here, the harm is not even equal; rather, the record indicates that the harms from advertising on or in TNP vehicles are likely to be materially more acute than those from taxis. City data shows that there are 17 times more TNP vehicles than taxis. SOF ¶¶ 21-22 (explaining that as of December 2017, there were 117,557 TNP vehicles registered with the City and only 6,907 licensed taxis). Similarly, City data suggests that TNPs are used at least 3 times more often than taxis.[3] These numbers alone show that TNP vehicles far outnumber taxis in absolute numbers, and in their frequency of usage, both of which support the conclusion that allowing TNP advertising would materially add to the amount of harmful visual clutter on City roadways or to which vehicle passengers are exposed during a ride. Further, as of September 2017, 1,487 taxis had permits for exterior rooftop advertising, and 29 had permits for exterior side panel advertising. SOF ¶ 31. Assuming that no taxi had both permits, these figures show that approximately 22% of licensed taxis (1,516 out of 6,907) engage in exterior advertising. Applying that same percentage to the 117,557 registered TNP vehicles means that, if TNPs were permitted to have advertising, the number of vehicles with distracting visual blight would increase by roughly 26,000 – nearly 17 times the number of taxis that advertise.[4]

[3] For instance, City data indicates that, in June 2017, TNP companies reported 7,138,318 trips. SOF ¶ 21. That same month, 1,092,557 taxi trips were reported. SOF ¶ 23. While the number of taxi trips is underinclusive, see SOF ¶ 23, even if that number were only one half of the total number of taxi trips (thus meaning that there were approximately 2.2 million taxi trips), the number of TNP trips would still be more than three times that amount.

[4] Just as TNP vehicles are more likely to contribute to unwanted advertisements than taxis, the

Second, as a qualitative matter, allowing advertising on and inside taxis does not detract from the City's interests in the same way that ads on or in TNP vehicles would. As to exterior advertising, taxis are already required to have extensive visual content: They must display specific paint jobs and trade dress on the vehicle exterior, including distinct approved color schemes and affiliation logos; they must show the vehicle's medallion number in four locations on the outside of the vehicle, with the numbering being at least four inches tall; and they must have a device affixed to the roof that indicates the taxi's medallion number and that can signal whether the taxi is available for hire. SOF ¶ 29. But advertising on the outside of taxis is allowed only in two specific locations: the side door panel, and the rooftop. SOF ¶ 30. These are the very locations where there is already preexisting trade dress and signage. It is therefore reasonable to conclude that advertising in these locations does not materially alter the appearance of, or add to, the visual content of taxi exteriors beyond what is already required for identification and safety purposes. In fact, allowing this advertising can contribute to the identification of taxis by passengers seeking a street hail by enhancing the distinctive appearance of taxis that separates them from other vehicles on the road, especially TNP vehicles. On the other hand, no such interest exists with respect to TNP vehicles since, as explained, they are not allowed to accept street hails; instead, their rides are arranged in advance over a smartphone app, which transmits a photograph and description of the vehicle at the time a ride is arranged, see

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record also supports the City's determination that they are more prone to be a platform for advertising than private vehicles. As many Plaintiffs themselves testified, vehicle owners have no interest in displaying advertising on their vehicles when used solely for personal purposes. For example, Plaintiff Donald Deans testified that even if he could advertise on the exterior of his vehicle "[i]t would have to be something removable" because he would not want advertising on his vehicle when using it to drive his family. SOF ¶ 19; see also SOF ¶ 34. Thus, the City need not ban advertising on private vehicles, because such advertising is unlikely to occur in the first place.

MCC § 9-115-180(g), so the customer knows exactly which vehicle to look for. SOF ¶ 25; Ill. Transp. Trade Ass'n, 839 F.3d at 598.

A similar analysis applies to advertising inside taxis. City regulations mandate an array of devices and signage inside the passenger compartment separate and apart from any advertising. For example, taxis must use an approved taximeter and prominently display meter rates, along with a host of other signage that provides consumer information to passengers. SOF ¶¶ 26, 29, 56. Taxis are also required to have rear seat equipment capable of processing non-cash payments. SOF ¶ 56. This equipment typically takes the form of a passenger information monitor ("PIM"), which is a small video screen in the back of a taxi that is integrated with the taximeter and allows for non-cash forms of payment by credit card and also provides prompts on how to make payment as well as audio accessibility for the visually impaired. SOF ¶¶ 56-57.[5] Notably, the PIM is the only place on the interior of a taxi where advertising is permitted. SOF ¶ 61. Since there is already a video screen and other signage inside the taxi for purposes of protecting and aiding the passenger, the City may conclude that allowing ads to be shown on the video screen does not materially detract from the passenger experience.

On the other hand, the City does not require any third party technology system (like a PIM) in TNP vehicles, and such a device would be pointless under the TNP method of operating, which requires passengers to pay for rides through the TNP's app using a credit card that the passenger already has on file. SOF ¶¶ 64-65. Further, the record indicates that TNP passengers expect a different level of comfort than taxi passengers. SOF ¶ 44. Notably, Uber and Lyft have

[5] PIMs serve an important regulatory purpose, as debit and credit card acceptance provide a convenience for passengers who prefer not to carry cash, have not had a chance to visit an ATM, or simply prefer to pay for day-to-day expenses with a debit or credit card. SOF ¶ 58. This technology also provides a safety benefit to drivers, who may carry less cash the more customers pay with cards, thereby discouraging robbery attempts. Id.

both expressed disapproval of interior advertising within vehicles operating on their platform. SOF ¶¶ 45-46. In particular, Uber stated that "[w]e don't believe that in-ride advertising enhances the ride experience, and we discourage driver partners from working with third party in-ride advertisers such as [Vugo]." SOF ¶ 46. Thus, advertisements in TNP vehicles are more likely to diminish the aesthetic experience for TNP passengers than for taxi passengers, and without advancing the City's regulatory agenda in any way.

Third, to the extent that advertising on or inside taxis does detract from the City's interests in traffic safety and passenger comfort, those harms are offset by the City's countervailing interests in allowing taxis to take advantage of a revenue stream that helps them recoup some of the costs of complying with regulatory requirements that apply to taxis but not to ridesharing vehicles. See Metromedia, 453 U.S. at 512 (refusing to override San Diego's judgment that "in a limited instance," its aesthetic and safety interests "should yield" in order to advance other interests). Indeed, Vugo itself explained that "Taxi TV" – a form of video advertising shown on PIM-type devices in taxis – originated as a way for taxis to offset the costs of adding credit card processing equipment to their vehicles. SOF ¶ 59. This allowance is reasonable in light of TNPs being regulated differently than taxis. For instance, among other things, TNP vehicles are not subject to the same requirements governing driver and vehicle qualifications, inspections, equipment, and insurance that apply to taxis. See e.g., SOF ¶¶ 28, 29, 56, 64. In addition, unlike taxis, whose rates are fixed by the City, ridesharing vehicles are free to set their own fares. Compare SOF ¶ 26, with SOF ¶ 27. Given the different regulatory impositions faced by taxis, but not TNPs, the City has an interest in allowing taxis to earn supplemental revenue through hosting advertisements, so that taxis can fully meet their regulatory obligations and remain a viable and safe transportation option for consumers. See

Newark Cab Ass'n, 901 F.3d at 158 ("It is not irrational for a city to create a system in which a more tightly regulated service (here, taxis) enjoys additional privileges—the ability to obtain customers by way of street hails—that are not available to the less regulated alternative (here, [TNPs])).

In short, the undisputed facts show that the City's ban on exterior and interior advertising for TNP vehicles directly and materially advances the City's substantial interests in traffic safety, aesthetics, customer choice, and passenger comfort, and is further bolstered by the City's consideration of other countervailing interests directly related to the Ordinance.

C. The City's interests would not be served as well by a more limited restriction on commercial speech.

Finally, the Ordinance satisfies the last prong of Central Hudson because it sweeps no more broadly than necessary to accomplish the City's goals. This element examines whether the regulation is "narrowly drawn." See Central Hudson, 447 U.S. at 565. In order to satisfy this element, the City is not required to adopt the least restrictive means of achieving its objective. Board of Trs. Of the State Univ. of N.Y. v. Fox, 492 U.S. 469, 477 (1989). What is required is:

> a "fit" between the legislature's ends and the means chosen to accomplish those ends . . . that is not necessarily perfect, but reasonable; that represents not necessarily the single best disposition but one whose scope is in proportion to the interest served, that employs not necessarily the least restrictive means but a means narrowly tailored to achieve the desired objective.

Fla. Bar, 515 U.S. at 632 (internal quotation marks and citations omitted).

The City's regulation does not burden more speech than necessary. The harms addressed by the Ordinance here are caused by the advertisements in or on TNP vehicles, and not some other factor that could be more narrowly limited. See Supersign, 766 F.2d at 1532 ("[E]ach advertising vehicle . . . contributes to the problem."). The City can therefore address this harm by banning the advertising. Indeed, in Metromedia and Taxpayers for Vincent, the Supreme

Court upheld bans on advertisements in certain locations, reasoning that if the sign were the problem, "then obviously the most direct and perhaps the only effective approach to solving the problems they create is to prohibit them." Taxpayers for Vincent, 466 U.S. at 817 (quoting Metromedia, 453 U.S. at 508).

That is the case here. As discussed above, exterior advertising of any kind would necessarily add to the visual clutter that can distract drivers and pedestrians, and would necessarily cause TNP vehicles to look more like taxis, thereby contributing to confusion by passengers as to whether the vehicle is a taxi. In light of this, the City may reasonably conclude that nothing short of a total ban on exterior advertising would sufficiently further the City's objectives. And even if it were possible to mitigate the impact by limiting the size or style of the advertising, the City is not required to adopt the least restrictive means. The same is true of the City's ban on interior advertising. Any advertising inside a TNP vehicle impacts aesthetics and passenger comfort, or distracts drivers, precisely because it is meant to be seen or heard by those in the vehicle. Accordingly, there is no manner in which the ban on commercial advertisements in or on TNP vehicles could be more finely tailored but be just as effective.

II. The City Is Entitled to Judgment In Its Favor on Plaintiffs' Equal Protection Claim.

Count II alleges that the Ordinance's application to ridesharing vehicles, but not taxis or other private vehicles, violates equal protection.[6] VC ¶¶ 52-62; MC ¶¶ 56-66. For the reasons stated above, the Court should grant judgment in the City's favor on Plaintiffs' First Amendment claim, which means that Plaintiffs' equal protection claim is subject to deferential rational basis review. See Foxxxy Ladyz Adult World, Inc. v. Vill. of Dix, Ill., 779 F.3d 706, 719 (7th Cir. 2015) (applying rational basis scrutiny to regulation of adult entertainment businesses because

[6] Claims under the equal protection clause of the Illinois Constitution are evaluated using the same analysis for equal protection claims under the U.S. Constitution. See Jarabe v. Indust. Comm'n, 666 N.E.2d 1, 3 (Ill. 1996).

the plaintiff did not show that the law burdened its right to free speech); see also St. John's United Church of Christ v. City of Chicago, 401 F. Supp. 2d 887, 901 (N.D. Ill 2005) (explaining that when a First Amendment claim "has failed, the Supreme Court has applied only rational basis scrutiny in its subsequent review of an equal protection . . . claim based on the same facts"). To prevail, Plaintiffs must show that (1) TNPs are similarly situated to taxis, and (2) there is no rational basis for the City's ban on commercial advertising on or in TNP vehicles. See Greer v. Amesqua, 212 F.3d 358, 370 (7th Cir. 2000). Plaintiffs cannot show either.

First, TNPs and taxis are not similarly situated. As discussed above, they are two distinct industries warranting different regulation see supra at 2-4, and the Seventh Circuit has held as much, see Ill. Transp. Trade Ass'n v. City of Chicago, 839 F.3d at 598 (explaining that "[t]here are enough differences between taxi service and TNP service to justify different regulatory schemes"). See also Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth., 825 F.2d 367, 370-72 (11th Cir. 1987). Second, even assuming TNPs and taxis are similarly situated, the Ordinance easily survives rational basis review. That standard is "a paradigm of judicial restraint," FCC v. Beach Commc'ns, Inc., 508 U.S. 307, 314 (1993), and recognizes that the City is "accorded wide latitude" in the regulation of its "local econom[y]." City of New Orleans v. Dukes, 427 U.S. 297, 303 (1976). In reviewing Plaintiffs' claim, the Court is not to judge the "wisdom, fairness, or logic" of the City's treatment of taxis vis-à-vis TNPs. Beach Commc'ns, 508 U.S. at 313. Rather, the City prevails so long as there is a "conceivable" rationale for the policy, even if that reason did not "actually motivate[]" the City or is not based on evidence or empirical data. Id. at 315. At base, equal protection invalidates only those economic regulations that result from "sheer senselessness." Pontarelli Limousine, Inc. v. City of Chicago, 929 F.2d 339, 343 (7th Cir. 1991). That is hardly the case here, where (as explained above), there are

numerous differences between taxi service and TNP service that justify allowing advertisements on or in taxis, but not TNP vehicles, "and the existence of such justification dissolves the plaintiffs' equal protection claim." Ill. Transp. Trade Ass'n, 839 F.3d at 598. To the extent that the Court concludes that Plaintiffs' Equal Protection claim should be assessed under intermediate scrutiny rather than rational basis review, the Ordinance passes muster for the same reasons that it survives Plaintiffs' First Amendment claim.

CONCLUSION

For the foregoing reasons, the City respectfully requests that the Court grant summary judgment in its favor on Plaintiffs' Amended Complaint and the Driver's Complaint in Intervention, deny Plaintiffs and Plaintiff-Intervenor's cross-motions for summary judgment, and grant the City such further relief as it deems just and appropriate.

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Respectfully submitted,

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