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

VUGO, INC., DONALD DEANS, DENISE JONES, GLOUSTER BROOKS, and PATRICIA PAGE, Plaintiffs, and MURRAY MEENTS, Plaintiff-Intervener, v. CITY OF CHICAGO, an Illinois municipal corporation, Defendant.	)	Case No. 17-cv-864 The Hon. Judge Elaine E. Bucklo

PLAINTIFFS' AND PLAINTIFF-INTERVENER'S COMBINED MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

In May, 2014, the City of Chicago adopted an ordinance regulating transportation network providers (or "ridesharing service providers"), such as Uber and Lyft, the people who drive for those services ("transportation network drivers"), and the vehicles they use to transport passengers ("transportation network vehicles"). Chi. Ordinance No. SO2014-1367 (the "Ordinance") (SOF 10). The Ordinance prohibits the display of all "[c]ommercial advertisements . . . on the exterior or in the interior of a transportation network vehicle." Chi. Mun. Code 9-115-130 (the "commercial ad ban") (SOF 10.) But the Chicago Municipal Code ("Code") elsewhere allows taxicabs to display commercial advertisements on or inside those vehicles with a permit. (SOF 14.) And the City does not prohibit commercial advertising on and inside ordinary passenger vehicles that are not used as taxicabs or for ridesharing. (SOF 17.)

The commercial ad ban violates the right to free speech under the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution and the right to equal protection under the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Illinois Constitution because, applying intermediate scrutiny, it is underinclusive by permitting commercial advertising on and in taxis and personal vehicles and therefore does not materially advance the City's purported interests, and because it burdens more speech than is necessary to achieve those interests. In the alternative, the commercial ad ban is a content-based restriction on speech, and therefore subject to strict scrutiny under the First Amendment, which it cannot survive because the Ordinance is not narrowly tailored to achieve any compelling government interest. For the reasons explained in detail below, this Court should grant Plaintiffs' and Plaintiff-Intervener's Combined Motion for Summary Judgment.[1]

[1] For ease, hereinafter Plaintiffs and Plaintiff-Intervener will collectively be referred to as Plaintiffs, unless otherwise stated.

LEGAL STANDARD

Summary judgment is appropriate where there are no disputed issues of material fact and the moving party is entitled to summary judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); Fed. R. Civ. P. 56(c). The Court must view the evidence and draw inferences in the light most favorable to the nonmoving party, but, to defeat a motion for summary judgment, the nonmoving party must set forth specific facts showing that there is a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

ARGUMENT

I. The commercial ad ban violates the First Amendment to the United States Constitution and Article I, Section 4 of the Illinois Constitution.

Under either the scrutiny provided for restrictions on commercial speech or strict scrutiny applied to content-based restrictions on speech, the commercial ad ban violates Plaintiffs' free speech rights because it is not narrowly tailored to serve a City interest.

A. The commercial ad ban cannot survive the scrutiny provided for restrictions on commercial speech.

In *Central Hudson Gas & Electric Corp. v. Public Services Commission of New York*, 447 U.S. 557 (1980), the Supreme Court established a framework for "intermediate scrutiny" to determine whether a restriction on commercial speech violates the First Amendment. Under the *Central Hudson* test, courts consider whether: (1) the commercial speech concerns a lawful activity and is not false or misleading; (2) the asserted governmental interest is substantial; (3) the regulation directly advances the governmental interest asserted; and (4) the restriction is no more extensive than necessary to serve that interest. *Id*. at 566. The fourth prong requires "a means narrowly tailored to achieve the desired objective." *Bd. of Trs. of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 480 (1989). The City bears the burden of affirmatively establishing that the

commercial ad ban is justified by the final three prongs. *Id*.; see also *Sorrell v. IMS Health, Inc*., 564 U.S. 552, 571-72 (2011) (citing *Thompson v. W. States Med. Ctr*., 535 U.S. 357, 373 (2002). The City cannot satisfy this burden with "mere speculation or conjecture" but rather "must demonstrate," with evidence, "that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield v. Fane*, 507 U.S. 761, 770 (1993). The Ordinance cannot survive the *Central Hudson* test.

1. There is no dispute that Plaintiffs' proposed commercial speech is not false or misleading, nor does it advertise unlawful activity.

The first factor cannot reasonably be disputed: there is no reason to believe that Plaintiffs' proposed commercial speech is unlawful, false, or misleading. Further, there is no reason to believe that commercial advertisements in or on rideshare vehicles generally would be false, misleading, or concern unlawful activities, or would be more likely to be false or misleading than commercial advertisements in or on taxis or personal vehicles.

2. Defendant's purported substantial interests are limited.

In its Motion to Dismiss, the City cited three interests that the commercial advertising ban on TNP vehicles purportedly serves: aesthetics, traffic safety, and passenger comfort. (Memo. Mot. Dismiss 6.) The Supreme Court has recognized that traffic safety and city appearance are substantial governmental interests. *Metromedia, Inc. v. City of San Diego*, 453 U.S. 490, 507-8 (1981). Plaintiffs do not dispute this.

However, Plaintiffs dispute that the City's purported interest in passenger comfort is a substantial interest. The City asserted that there is a substantial interest in passenger comfort where speech is directed to a "captive audience." (Memo. Mot. Dismiss 7-8.) But the cases on which the City relies all involved speech on government property, not in private vehicles. *See Lehman v. Shaker Heights*, 418 U.S. 298, 304 (1974) (finding that buses were not a First

Amendment forum, and thus upholding a restriction on political advertising on city buses); *Anderson v. Milwaukee Cnty*., 433 F.3d 975, 980 (7th Cir. 2006) (also involving public buses); *Frisby v. Schultz*, 487 U.S. 474, 484-85 (1988) (involving speech on government property); *Hill v. Colorado*, 530 U.S. 703, 718 (2000) (same). It does not follow that the government interest recognized in these cases – maintaining *public* property for the enjoyment of everyone – applies to vehicles owned by private persons seeking to engage in free speech activity using their private vehicles simply because they offer their vehicles for hire.

Lehman and *Anderson* specifically involved non-public forums. See *Walker v. Tex. Div., Sons of Confederate Veterans, Inc.*, 135 S. Ct. 2239, 2252 (2015) (explaining that *Lehman* held that advertising space on city buses was a nonpublic forum); *Anderson*, 433 F.3d at 979 ("the interior of a city-operated transit vehicle is a nonpublic forum"). In a non-public forum, "restrictions need only pass the test of reasonableness so long as they are not an attempt to stifle a viewpoint based on its content." *Anderson*, 433 F.3d at 979-80 (citing *Int'l Soc'y for Krishna Consciousness v. Lee*, 505 U.S. 672, 683 (1992)). The non-public forum analysis is much more lenient than intermediate scrutiny and the government's interest in restricting speech in a non-public forum does not need to be substantial. And the non-public forum analysis does not apply to government restrictions on speech on private property. *Horina v. City of Granite City*, 538 F.3d 624, 632 (7th Cir. 2008) (finding a restriction on placing handbills on privately owned automobiles unconstitutional). *Lehman* and *Anderson*, therefore, cannot stand for the proposition that passenger comfort in private vehicles is a substantial government interest.

3. The commercial ad ban does not directly or materially advance a substantial government interest.

Regardless of whether the City's interests in traffic safety, aesthetics, and passenger comfort are substantial, the Ordinance cannot survive the third and fourth factors of *Central Hudson*. The

last two steps in the *Central Hudson* analysis have been considered, somewhat in tandem, to determine if there is a sufficient fit between the Ordinance's ends and the means chosen to accomplish those ends. *Bad Frog Brewery v. N.Y. State Liquor Auth.*, 134 F.3d 87, 98 (2d Cir. 1998) (citing *Posadas de P.R. Assocs. v. Tourism Co.*, 478 U.S. 328, 341 (1986)).

In a case involving a similar ban on commercial advertisements in TNP vehicles in New York City, the District Court for Southern District of New York, struck down the New York ordinance finding that the "fit between the ends sought by the City and the chosen means is, simply put, an unreasonable one." *Vugo, Inc. v. City of N.Y.*, 309 F. Supp. 3d 139, 150 (S.D.N.Y. 2018). The court found that the commercial ad ban in that case was both underinclusive because taxis were permitted to display advertisements, and unnecessarily restrictive because passengers in TNP vehicles could be protected from the dangers identified by the City by means less severe than a complete prohibition on advertising. *Id*.

Similarly, in this case, the commercial ad ban is both underinclusive because it permits commercial advertising on and in taxis and other vehicles, and it permits non-commercial speech on and in TNP vehicles – failing the third prong of *Central Hudson* – and because it is unnecessarily restrictive because it bans substantially more speech than is necessary – failing the fourth *Central Hudson* prong.

The commercial ad ban fails the third prong of the Central Hudson analysis because it is woefully underinclusive. It permits commercial advertising on and in taxis and other vehicles, and it permits non-commercial speech on and in TNP vehicles. *See City of Ladue v. Gilleo*, 512 U.S. 43, 52 (1994) (exemptions from restrictions on speech can "diminish the credibility of the government's rationale for restricting speech in the first place"); *see also Vanguard Outdoor, LLC v. City of Los Angeles*, 648 F.3d 737, 742 (9th Cir. 2011) (restriction on speech can be

underinclusive, and therefore invalid, when exceptions undermine and counteract the interest the government claims the restriction furthers); *Greater New Orleans Broad. Ass'n v. United States*, 527 U.S. 173, 193-94 (1999) ("Even under the degree of scrutiny that we have applied in commercial speech cases, decisions that select among speakers conveying virtually identical messages are in serious tension with the principles undergirding the First Amendment.").

It is the City's burden to prove that the ban on commercial ads on or in TNP vehicles directly or materially advances its interests in traffic safety, aesthetics, and passenger comfort. *See Fox*, 492 U.S. at 480. The City cannot satisfy this burden with "mere speculation or conjecture" but rather "must demonstrate," with evidence, "that the harms it recites are real and that its restriction will in fact alleviate them to a material degree." *Edenfield v. Fane*, 507 U.S. 761, 770 (1993). In order to do so, the City must demonstrate that the ban on commercial ads in or on TNP vehicles, but not taxis or passenger vehicles, materially advances its interests. Further, the City must demonstrate why commercial ads, but not other kinds of speech, are a threat to its purported interests. This the City cannot do. Any threats to traffic safety, aesthetics, or passenger comfort, to the extent they actually exist, apply to taxis and passenger vehicles just as much as TNP vehicles. And any threats to traffic safety, aesthetics, and passenger comfort, to the extent they actually exist, apply equally to both commercial advertisements and other kinds of speech.

To find that a regulation directly advances a governmental interest, there must be an immediate connection between the prohibited advertising and that interest. *Central Hudson*, 474 U.S. at 569. Where the link between the prohibition and the interest is tenuous, the prohibition does not directly advance that interest. *Id*. Likewise, where the impact of the advertising on the interest is speculative, the prohibition does not materially advance that interest. *Id*. Conditional and remote eventualities simply cannot justify banned advertisements, *id*; and the regulation may

not be sustained if it provides only ineffective or remote support for the government's purpose. *Id*. at 564.

In *Rubin v. Coors Brewing Co.*, the Supreme Court found that a statute banning the disclosure of alcohol content on beer labels did not directly and materially advance its asserted interest in preventing "strength wars" among beer brewers because of the overall irrationality of the regulatory scheme applying a contrary policy to other alcohol labels. 514 U.S. 476, 488 (1995). While the scheme prohibited the disclosure of alcohol content on beer labels, it allowed the disclosure of alcohol content on wine and spirit labels. *Id*. "Because the government had established inconsistent policies, the Supreme Court found that the challenged statute did not directly advance the government's asserted interest." *Green v. Anthony Clark International Insurance Brokers, Ltd.*, No. 09 C 1541, 2010 WL 431673, at *3 n.2 (N.D. Ill. Feb. 1, 2010) (describing the holding in *Rubin*).

Like in *Rubin*, the Ordinance applies an irrational and contradictory scheme by prohibiting commercial advertisements in and on TNP vehicles, while allowing commercial advertisements on or in taxis and personal vehicles. Like the regulation in *Rubin* banning alcohol content on beer labels, but allowing it on wine and spirits labels, the City cannot claim that the commercial ad ban directly advances its asserted interests in traffic safety, aesthetics, and passenger comfort, when it permits commercial advertisements in and on taxis and personal vehicles. *See Rubin*, 514 U.S. at 488.

In *Cincinnati v. Discovery Network*, 507 U.S. 410 (1993), Cincinnati prohibited publications that were principally commercial from using newsracks on public property but permitted newspapers to be sold at such newsracks. The Court struck the law down, finding that the ordinance's distinction between commercial and noncommercial speech bore no relationship to

the particular interests that the city asserted. Newsracks with commercial publications would be "no greater an eyesore than the newsracks [with non-commercial publications] permitted to remain on Cincinnati's sidewalks." *Id.* at 424. The same is true here. The distinction between commercial ads (prohibited) and noncommercial speech (not prohibited) in TNP vehicles bears no relationship to the interests asserted by the City. How, for example, is a sign on a TNP vehicle that says "Eat at Joe's" more of a threat to traffic safety, city aesthetics, or passenger comfort, than a similarly-placed sign that says "Vote for Joe"?

The testimony of the City's own officials undermine any claim that the commercial ad ban directly or materially advances an interest in traffic safety. For example, Kevin McDonald, Special Assistant for the Public Vehicle Inspection division of the Department of Business Affairs and Consumer Protection, which is responsible for inspecting taxicabs and wheelchair accessible TNP vehicles, (SOF 27), testified that the City does not inspect commercial advertisements on taxicabs to determine whether such an advertisement would create traffic or safety hazards, (SOF 41). Nor has he ever encountered an exterior taxicab advertisement that he determined to be distracting to drivers or pedestrians, or an advertisement that would cause a safety hazard. (SOF 40). In addition, Deputy Commissions of the City of Chicago's Department of Business Affairs and Consumer Protection, Rupal Bapat, (SOF 25), stated taxicab advertisement volume is not an imminent threat to public safety. (SOF 45). She stated that advertisements painted on the side of the vehicle are not a safety issue and that the Department only inspects the equipment, not the advertising, in the interior of the taxi. (SOF 35, 38.) The fact that the City makes no effort to ensure that exterior taxicab advertisements do not cause traffic hazards undermines the City's claim about the effects that exterior advertisements would have on traffic safety.

The commercial ad ban does not directly or materially advance the City's interests in traffic safety, aesthetics, or passenger comfort. The Ordinance is underinclusive because it allows commercial ads in taxis and passenger vehicles, and allows non-commercial speech in and on TNP vehicles. For these reasons, it fails the third prong of the *Central Hudson* test and violates Plaintiffs' free speech rights.

4. The commercial ad ban is not narrowly drawn because it burdens substantially more speech than is necessary to achieve the City's goal.

The Ordinance cannot survive the *Central Hudson* analysis for another reason: the commercial ad ban is not narrowly tailored to serve those interests because the City could achieve its purported interests in ways that are less burdensome of Plaintiffs' speech rights.

A regulation is narrowly drawn if it is a "fit" between the legislature's ends and the means chosen to accomplish those ends. *Fox*, 492 U.S. at 480. Such fit need not be perfect, only reasonable, and need not be the "single best disposition, but one whose scope is 'in proportion to the interests served.'" *Id*. (quoting *In re R.M.J.*, 455 U.S. 191, 203 (1982)). The means must be narrowly tailored to achieve the desired objective. *Fox*, 492 U.S. at 480. Means are narrowly tailored when the regulation does not burden substantially more speech than is necessary to further the government's legitimate interest. *Id*. at 478.

To the extent that the City seeks to enhance traffic safety, aesthetics, and passenger comfort, there is no reason why the City cannot do so in the same manner if purportedly protects those interests in its regulation of commercial advertisements on taxicabs. The Code allows taxicabs to display advertisements so long as the content is not offensive or morally questionable. (SOF 31.) Generally, in order to display advertisements, the licensee must obtain a permit from the City for paid content, but taxicabs do not need a permit if they are advertising themselves. (SOF 15.) The City does not assess advertising content on or in taxicabs unless the advertisement is alleged to

be for illegal activity, depicts nudity, or is fraudulent or deceptive. (SOF 42.) In doing so, the City takes a reactive, not a proactive approach. It reviews taxicab advertising content only when receiving a citizen complaint, not before the advertisement is displayed to the public. (SOF 42-45.) In this way, the City is able to advance its interests in traffic safety, aesthetics, and passenger comfort without having to completely ban commercial advertisements in or on taxicabs. See *Ashcroft v. American Civil Liberties Union*, 542 U.S. 656, 669 (2004) (the City bears the burden of demonstrating that there are not less-burdensome alternatives to the challenged restriction on speech).

The City permits taxicabs to have interior displays, called Personal Information Monitors (PIMs) that contain video and audio features. (SOF 35.) While the volume on these displays can be muted, the display may not be turned off. (SOF 36.) The City could address any concern in passenger comfort is related to issues related to a captive audience by treating interior video and audio displays, such as Vugo's software, just as it treats PIMs. The City could require that TNP passengers be able to silence advertisements and nearly completely dim the display screen. And in fact Vugo's software allows passengers to turn down the volume so that the sound is essentially muted and allows passengers to dim the screen to almost entirely turn off the picture. (SOF 22-23.) As the City could achieve its interest in passenger comfort in a less burdensome way, like it does with taxicabs, the commercial ad ban is not narrowly drawn to serve the City's purported interest in passenger comfort. "[I]f the Government could achieve its interests in a manner that does not restrict speech, or that restricts less speech, the Government must do so." *Thompson v. Western States Medical Center*, 535 U.S. 357, 371 (2002); see also *Ashcroft*, 542 U.S. at 669 (City has the burden to prove there are not less-restrictive alternatives).

Because the City categorically bans advertisements in or on TNP vehicles, when it has a mechanism to review such advertisements on a case-by-case basis to ensure its interests in traffic safety, aesthetics, and passenger comfort that is less restrictive of free speech, the Ordinance burdens substantially more speech than is necessary to further the City's asserted interests. Thus, the Ordinance is fails the fourth prong of *Central Hudson*.

B. In the alternative, the Ordinance's ban on commercial advertisements, but not non-commercial speech, on or in TNP vehicles is a content-based restriction subject to strict scrutiny, which it cannot survive.

In the alternative, the Ordinance is a content-based restriction on speech. A restriction on speech is content based if it applies to particular speech because of the topic discussed or the idea or message expressed. *Reed v. Town of Gilbert*, 135 S. Ct. 2218, 2227 (2015); *see also Norton v. City of Springfield*, 806 F.3d 411, 412 (7th Cir. 2015) (explaining that, after *Reed*, "[a]ny law distinguishing one kind of speech from another by reference to its meaning now requires a compelling justification"). A law "defining regulated speech by its function or purpose" is content based. *Reed*, 135 S. Ct. at 2227.

1. The Ordinance is content-based because it bans commercial speech, but not noncommercial speech, in rideshare vehicles.

The Ordinance's ban on commercial advertisements, but not noncommercial speech, is content based: speech is either allowed or prohibited based entirely on its topic, idea, or message – or, in other words, by the "function or purpose" of the speech. *See Reed*, 135 S. Ct. at 2227; *Vugo, Inc. v. City of N.Y.*, 309 F. Supp. 3d 139, 147 (S.D.N.Y. 2018) (finding that a similar prohibition on advertising in TNP vehicles was content-based). If the function of an advertisement's speech is to propose a commercial transaction, it is banned; but its purpose or function of speech is anything else, it is allowed. By the test that the Supreme Court put forth in *Reed*, distinctions between commercial and noncommercial speech are content-based. *Cf. Sorrell*

v. IMS Health Inc., 564 U.S. 552, 564 (2011) ("[M]arketing [is] speech with a particular content."); see also *Patriotic Veterans, Inc. v. Zoeller*, 845 F.3d 303, 305 (7th Cir. 2017) (rejecting a plaintiff's argument that an exception for political speech should be carved from Indiana's anti-robocall statute because, as the Court stated, such an "exception if created, would be real content discrimination, and Reed then would prohibit the state from forbidding robocall advertising and other non-political speech.")

Although the Court has not overturned *Central Hudson*, the Court's opinions in *Reed* and *Sorrell* support the proposition that where a law restricts commercial speech more strictly than other speech based solely on the content of that speech, the proper analysis is not the *Central Hudson* test, but strict scrutiny. *See, e.g., Matal v. Tam*, 137 S. Ct. 1744, 1769 (2017) (Kennedy, J., concurring in part and concurring in judgment joined by Ginsburg, J., Sotomayor, J., and Kagan, J.) ("'I continue to believe that when the government seeks to restrict truthful speech in order to suppress the ideas it conveys, strict scrutiny is appropriate, whether or not the speech in question may be characterized as 'commercial.'") (*quoting Lorillard Tobacco Co. v. Reilly*, 533 U.S. 525, 572, 121 S. Ct. 2404, 150 L. Ed. 2d 532 (2001) (Thomas, J., concurring in part and concurring in judgment). Indeed, the reason the Supreme Court has never explicitly overturned *Central Hudson* and subjected restrictions on commercial speech based on the content of that speech to strict scrutiny is that it has never had to reach that decision. For the commercial speech restrictions the Court struck down in recent years, the "outcome [was] the same whether a special commercial speech inquiry or a stricter form of judicial scrutiny is applied." *Sorrell*, 131 S. Ct. at 2663-2664.

To be clear, it is not Plaintiffs' view that "*any* governmental restraint on commercial speech, unless directed to misleading speech or to speech concerning an unlawful activity, is *per se*

content based and thus subject to strict scrutiny." *Vugo, Inc. v. City of Chi.*, 273 F. Supp. 3d 910, 916 (N.D. Ill. 2017) (emphasis in original). Rather, it is Plaintiffs' contention that where a law makes a distinction between commercial and non-commercial speech that was not related to preventing misleading speech or speech concerning an unlawful activity, that that law is content-based and thus subject to strict scrutiny. See *44 Liquormart v. Rhode Island*, 517 U.S. 484, 501 (1996) ("when a State entirely prohibits the dissemination of truthful, nonmisleading commercial messages for reasons unrelated to the preservation of a fair bargaining process, there is far less reason to depart from the rigorous review that the First Amendment generally demands.") But if the law applied restrictions to both commercial and non-commercial speech equally, that the law would not be content-based, and while it may be constitutionally-suspect for other reasons, it would not be subject to strict scrutiny.

2. The Ordinance is content-based because it applies to rideshare vehicles but not taxis or personal vehicles.

The commercial ad ban is also a content-based restriction on speech for the additional reason that it prohibits commercial advertising by some speakers – rideshare drivers – but not others – taxi drivers and drivers of personal vehicles.

"Laws designed or intended to suppress or restrict the expression of specific speakers contradict basic First Amendment principles." *United States v. Playboy Entm't Grp.*, 529 U.S. 803, 812 (2000). "Restrictions that favor or disfavor certain speech based on the speaker rather than the content of the message are still content based." *Surita v. Hyde*, 665 F.3d 860, 870 (7th Cir. 2011). As the Court recognized in *Reed*, restrictions on speech based on the identity of the speaker are all too often simply a means to control content. 135 S. Ct. at 2230. Laws favoring some speakers over others are therefore subject to strict scrutiny when the legislature's speaker preference reflects a content preference. *Id*. "Thus," for example, "a law limiting the content of

newspapers, but only newspapers, could not evade strict scrutiny simply because it could be characterized as speaker based." *Id*.

Here, the Ordinance displays a preference by the City to favor the speech of taxis over the speech of rideshare drivers, giving taxis an advantage over their rideshare competitors. The Ordinance is therefore subject to strict scrutiny.

3. The Ordinance is subject to strict scrutiny, which it cannot survive.

When a law places content-based restrictions on speech, the Court applies strict scrutiny, "'which requires the Government to prove that the restriction furthers a compelling interest and is narrowly tailored to achieve that interest.'" *Reed*, 135 S.Ct. at 2231 (citation omitted). Content-based restrictions of speech are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve a compelling state interest. *R.A.V. v. St. Paul*, 505 U.S. 377, 395 (1992); *Simon & Schuster, Inc. v. Members of N.Y. State Crime Victims Bd.*, 502 U.S. 105, 115 (1991). Strict scrutiny applies where speech restrictions are directed at certain content and aimed at particular speakers. *Sorrell v. IMS Health Inc.*, 564 U.S. 552, 567 (2011). Commercial speech is no exception. *Id.* at 566; *see also Discovery Network*, 507 U.S. at 429-30.

The City's purported interests in aesthetics, traffic safety, and passenger comfort are not compelling government interests. *See Cent. Radio Co. v. City of Norfolk*, 811 F.3d 625, 633 (4th Cir. 2016); *Whitton v. City of Gladstone*, 54 F.3d 1400, 1408 (8th Cir. 1995); *Neighborhood Enters. v. City of St. Louis*, 644 F.3d 728, 737-38 (8th Cir. 2011); *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1267 (11th Cir. 2005); *Foti v. City of Menlo Park*, 146 F.3d 629, 637 (9th Cir. 1998).

And even if any of these interests were compelling – which they are not – as discussed above, the commercial ad ban does not advance any of these interests in a narrowly tailored manner. *See Gilleo*, 512 U.S. at 52. Because the commercial ad ban cannot survive strict scrutiny, it is unconstitutional.

For these reasons, the Court should enter summary judgment for Plaintiffs on their free speech claims against Defendant.

II. The Ordinance violates the Equal Protection Clause.

Because the Ordinance restricts some speech more than other speech, the Court may analyze it not only under the First Amendment but also under the Equal Protection Clause of the Fourteenth Amendment. *See Police Dep't of Chi. v. Mosley*, 408 U.S. 92, 94-95 (1972). The Ordinance does this in two ways: (1) it only bans commercial advertising, not others kinds of speech; and (2) it only bans commercial advertising on or in rideshare vehicles, not on any other vehicles. Under the Equal Protection Clause, when differential treatment involves expressive conduct that is protected by the First Amendment, the differential treatment of speech must be narrowly tailored to serve a substantial government interest. *Id*. at 101. Since this analysis is substantially the same as the *Central Hudson* analysis, the Ordinance violates the Equal Protection Clause for the same reasons, discussed above, that it violates the First Amendment. See *Chambers v. Stengel*, 256 F.3d 397, 401 (6th Cir. 2001) (citing *R.A.V. v. City of St. Paul*, 505 U.S. 377, 385 (1992))

Therefore, the Court should enter summary judgment in favor of Plaintiffs finding that the commercial ad ban violates the right to equal protection of the laws.

CONCLUSION

For the foregoing reasons, the Court should grant Plaintiffs' and Plaintiff-Intervener's Combined Motion for Summary Judgment against the Defendant City of Chicago, declaring the Ordinance unconstitutional and enjoining its enforcement.