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Regulatory Field: Home of Chicago Laws

Burdensome Laws Strike Out Chicago Entrepreneurs

Special Updated Edition • November 2010



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Cover Photos

Top—In Chicago not only is making food for commercial purposes in a home-based kitchen illegal, but there are layers of regulations, inspections and ongoing reporting requirements at both the city and state levels.

Bottom—The city has proposed legislation to prospectively rein in rickshaws, leaving the nascent industry to fight against the often-overwhelming bureaucracy.

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Chicagoans must battle the presumption that lawmakers have *carte blanche* when it comes to determining what work people can do and how they should do it.

Executive Summary

Want to create a job in Chicago? It is not that easy.

Especially in such tough economic times, people may be shocked to discover the lengths to which the city of Chicago and the state of Illinois go to discourage entrepreneurs who seek to create jobs for themselves and others. This updated report by the Institute for Justice Clinic on Entrepreneurship documents how government regulations:

- Force new moving companies to present witnesses who swear that they could not move property without the new company. In addition to having to cut through massive amounts of red tape and pay a fee of \$1350, moving companies have to prove that they already have all the equipment and cash they need to run a full-fledged moving company, before they have permission to move for one customer.
- Hinder home-based businesses in the city by imposing a laundry list of restrictions. The city bars more than one person who doesn't live in the home from working there; prohibits the assembly of products (like jewelry or greeting cards) in homes to be sold elsewhere; caps the number of customers a home-based business can serve to two at any time and 10 in a day; prohibits the display of products on shelves or racks in a home; and bans the sale of so much as a cupcake from even the cleanest of home kitchens. Many thriving Chicago entrepreneurs—such as Shawanimals plush toy creator Shawn Smith and Katrina Markoff, owner/chocolatier of Vosges Haut-Chocolat—had to flout the law to start their businesses.
- Hamstring would-be street vendors—a traditional occupation for the poor trying to raise themselves up—by barring vendors from wide swaths of the city. Chicago tightly restricts even constitutionally protected vending of books and art, and bans outright the sale of flowers on the street.



The sheer volume, cost and complexity of regulations on small businesses in Chicago are head-spinning. Among the most corrupting and stifling of the restrictions is the veto power aldermen can exercise over the entrepreneurial aspirations of anyone in their ward—the power to kill a small-business person’s American Dream before it can even get started. Getting into business in Chicago shouldn’t require someone to kiss the alderman’s ring. The marketplace—and not the government—is best able to decide if a business will succeed.

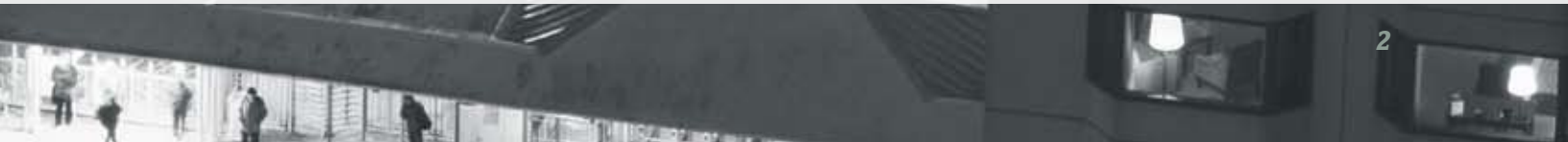
This report examines government-created barriers in industries that have traditionally provided a better way of life for the economically disenfranchised. Economic liberty—the right to pursue an honest living without arbitrary government interference—must be respected by governments at every level. Government policies should aim to foster honest enterprise, not layer regulation over stifling regulation, especially now. According to the Bureau of Labor Statistics, the Chicago area lost more jobs in the past year than any other metropolitan area, losing 70,800 non-farm jobs between July 2009 and July 2010.¹

Among the Chicago regulatory burdens examined in the report are those dealing with: home-based businesses, food service

providers, street vendors, child play centers, retail computing centers and commercial vehicles. The study also looks at state laws that license: barbers, African hairbraiders, nail technicians, landscape designers/contractors, engineers and moving companies. The report is filled with the real-life stories of Chicago entrepreneurs who want to do nothing more than earn an honest living, but find government regulations standing in their way.

The authors recommend that the city of Chicago:

- Review every fee and paperwork requirement in the Municipal Code to reduce the burden on entrepreneurs to the amount that is absolutely necessary to protect public safety.



- Remove aldermanic discretion from the license and permit-application processes, so that favoritism and corruption cannot squeeze out promising entrepreneurs.
 - Require inspectors to honor previous decisions by officials and other inspectors unless conditions present immediate danger.
 - Rewrite the laws on home-based businesses, so that Chicago allows all industrious people to work from home as long as they are doing no harm to their neighbors.
 - Streamline requirements for food businesses and reduce fees. Permit food preparation in home kitchens as long as they pass a reasonable and objective inspection.
 - Throw out the incomprehensible prohibitions on peddling in certain districts.
 - Allow people to sell art, flowers and fruits freely. Permit traditional eloteros and other vendors to prepare food on the street.
 - Reform the definition of “children’s activities facilities,” so neighborhood-friendly businesses are encouraged to offer programming for children alongside adults without being ensnared in a new set of unnecessary regulatory requirements.
 - Do away with the license for retail computing centers altogether. Welcome entrepreneurs who encourage computer literacy and bridge the digital divide. Let them charge their customers in the way that makes sense for their businesses.
 - Remove restrictions on parking for tradespeople who drive ordinary-sized vehicles and need to park near customers and near home.
 - Defer restrictions on bicycle rickshaws until the new industry has had time to mature, and then implement only those regulations that are absolutely necessary for public safety.
- The authors recommend the following reforms to Illinois law to open opportunities to talented people throughout the state without giving competitors a veto over new businesses:
- Eliminate all but health- and safety-specific education requirements for barbers, braiders and nail technicians. Cancel continuing education requirements. Allow customers to decide who is qualified. Do not let a panel of insiders decide.
 - Let people truthfully tell others what they do for a living. Reform all professional regulations that include “titling acts” like those covering landscape architects, interior designers, and engineers. The General Assembly should not enact anti-competitive laws at the behest of industry lobbyists.
 - Overhaul the law authorizing household goods movers within Illinois, so no more is required than registration and proof of insurance. Cut the competitors out of the process and repeal requirements that a company prove that its services are “necessary” before it can open.

The overlapping rules of the city of Chicago and the state of Illinois create a matrix that is so confusing and nonsensical that it often seems designed to stop entrepreneurs in their tracks.

In reaffirming the greatness of our nation, we understand that greatness is never a given. It must be earned. Our journey has never been one of shortcuts or settling for less. It has not been the path for the faint-hearted—for those who prefer leisure over work, or seek only the pleasures of riches and fame. Rather, it has been the risk-takers, the doers, the makers of things—some celebrated but more often men and women obscure in their labor—who have carried us up the long, rugged path towards prosperity and freedom.

— Inaugural Address of President Barack Obama, January 20, 2009

Introduction

In Chicago, and all across the United States, we rely on the risk-takers, the doers, the makers of things. We rely on inventive entrepreneurs who have a bright vision for the future. We rely on them to turn the wheels of the economy by creating new jobs for themselves and others, and sometimes even by creating entire new industries. And, in a humbler fashion, we rely on people who have trouble finding work to figure out a way to make a living and to be self-sufficient. We rely on them to use their talents to the best of their abilities to contribute to the life of our city.

In fact, we rely on entrepreneurs to make Chicago what it is. Chicago is a proud city of neighborhoods, and those neighborhoods take their character from the small, independent businesses that populate them: the sari shop on Devon, the German apothecary in Lincoln Square, the hipster bar in Wicker Park, the galleries in River North, the taquerias in Pilsen, the blues club in Woodlawn, the barber shop in Lawndale. Without those distinctive landmarks, without the reminders of a neighborhood's ethnic roots, without those favorite gathering places, we could not tell one neighborhood from another.

Yet, in spite of the importance of small businesses to Chicago, there are myriad laws on the books that make it difficult—sometimes even impossible—for people to start new enterprises. The laws have been urged on legislators over the years, maybe to address a fleeting problem, maybe to help existing businesses tamp down the competition, maybe to make the urban environment conform to the fashion of the moment. And they have piled up in layers. The legal requirements are often completely unnecessary to protect the public, but they are never revisited by legislators who focus on passing additional regulations and generating more revenue from fines

and fees. Instead of a navigable system designed to make sure businesses meet reasonable health and safety standards, the overlapping rules of the city of Chicago and the state of Illinois create a matrix that is so confusing and nonsensical that it often seems designed to stop entrepreneurs in their tracks.

When legal rules and requirements multiply, so do fees, forms and delays. The payments and paperwork required to start a business have gotten wildly out of hand. As a result, courageous, creative entrepreneurs—especially lower-income people who cannot afford to pay fees, much less lawyers—are discouraged from taking the risks that we rely on them to take. Or people decide to operate in the shadow economy, off the books, where they can evade detection but they cannot grow their businesses to their full potential and they do not contribute to their communities as public role models or taxpayers. Nevertheless, local officials keep interfering with Chicagoans' freedom to start businesses. They treat entrepreneurs like a hazard that must be guarded against or like a cash cow for easy revenue. The gatekeepers keep designing new gates and they grow dependent on the tolls they collect.

Laws impeding entrepreneurship are harmful to Chicago's local economy, but deeper than that, they are anathema to our deep-seated conviction that Americans can be whatever they want to be without having to seek the government's permission first. The Illinois Supreme Court has stated in no uncertain terms that each citizen of Illinois has the "constitutional right to pursue his calling and exercise his own judgment as to the manner of conducting it," and the lawmakers can restrict that right only when necessary "to protect the public health and secure the public safety and welfare."² Chicagoans may be sadly accustomed to paying fees to the local government to accomplish anything, but Chicagoans must battle the presumption that lawmakers have *carte blanche* when it comes to determining what work people can do and how they should do it. Neither the state legislature, nor state agencies, nor the Mayor's office, nor the aldermen should have the power to choose who can set up a new business or how it should be run. Americans have the right to economic liberty—earning a living in the occupation of their choice free from arbitrary or excessive government regulations.

We released "Regulatory Field" in May 2009 as the first in-depth examination of some of the most egregious regulatory barriers facing entrepreneurs in the city of Chicago and the state of Illinois. The reaction to the report was overwhelming: we have heard from city Aldermen and

State Representatives, advocacy organizations and administrative agencies, as well as many more entrepreneurs that have shared their stories of how Chicago and Illinois could do better to foster, or at least stay out of the way of, entrepreneurship. They have offered striking stories of how regulations can operate in unexpected ways to keep out valuable new businesses, they have suggested blueprints for more sensible rules, and they have pledged their support for law reform that would benefit entrepreneurs.

In this newly revised report, we seek to convey that the ability to easily start a business is crucial to the well-being and prosperity of every single citizen, even one who would never dream of starting a business. The benefits of entrepreneurship extend past the entrepreneurs, their families and their immediate communities to affect customers, the broader marketplace for innovation, and taxpayers alike. The barriers to entrepreneurship in our region that have grown up over time may be the result of expensive lobbying efforts by incumbent businesses, self-interested legislators or merely poorly-tailored concern for the public interest. But what is certain is that the issue is deeper than the particular rules governing a specific occupation: entrepreneurship is about opportunity, plain and simple. And by explaining the actual rules that get in the way of entrepreneurship alongside true stories of entrepreneurs in communities across our city and state, we seek to rally the public at large to demand reform in the most egregiously broken areas, as well as to require a new level of accountability from our government. If one person's dream is squelched by onerous regulation, we all suffer. Read on to find out what you can do to make Chicago the city that really works.

Doing Business

Every entrepreneur who wants to sell goods or services in Chicago must register with the city and pay a fee. If there are no special rules or qualifications for the particular kind of business proposed, the entrepreneur must get a limited business license, which costs \$250 every two years.³ Operating without the license



Julie Welborn and Denise Nicholes, who founded Perfect Peace Cafe & Bakery, were shocked that they had to pay a fee and wait for permission from the city even to hang a sign.

can result in penalties from \$200 to \$500 per day. The licensing fees are high enough to discourage some lower-income entrepreneurs, but they are just the beginning. Every entrepreneur faces additional zoning and building regulations, as well as requirements for aldermanic approval that make Chicago look like a medieval fiefdom. Chicago requires business owners to jump through so many hoops that many promising businesses cannot get started or else get shut down for no good reason.

Building Permits and Inspections

To renovate a storefront, restaurant, or office space, entrepreneurs must go through the notoriously corrupt and slow building permit application process. The line to receive approval of a permit application from the zoning department forms around 6 am each day. A business owner who arrives at City Hall midday is too late. It is common practice to pay people to help with this bureaucratic labyrinth. When exposés revealed the fact that these so-called expeditors often sped permit applications along by paying city officials, the city required the expeditors to pay for licenses instead of cleaning up the corruption internally.⁴ The Buildings Department has to give the entrepreneur's alderman notice of every permit application, presumably so that the alderman can object to the building permit if he or she does not support the business plan.⁵ The business can be stopped in its tracks, or at least horribly delayed, if any one of many bureaucrats is unavailable or uninterested or antagonistic.

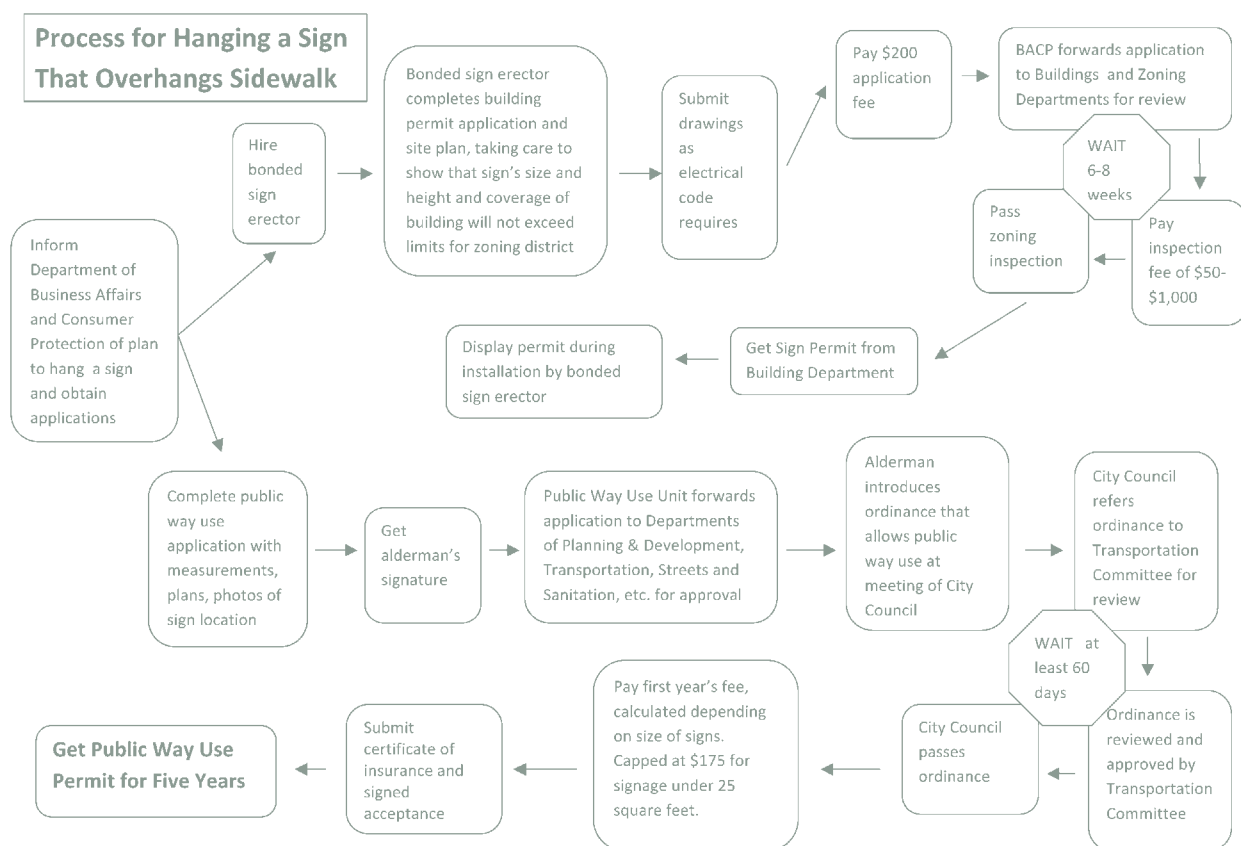
Even if the Buildings Department finally approves the permit, inspectors might arrive after the work is underway—or even years later—and tell the entrepreneur it is not up to code. The fact that

the plans were clearly documented and approved at the permitting stage is no defense. Every time an inspector arrives at a business, the business owner is at that inspector's mercy. Inspectors do not consider themselves to be bound by decisions made earlier by city officials. And they have the power to cause major problems for a business. The inspector can threaten to shut a business down if work done in reliance on a building permit is not torn out and redone, causing budgets and timelines for a new business to balloon. It is expensive and time-consuming to challenge the inspector's judgment call before an administrative hearing officer downtown. Plus, a trip to the department of administrative hearings requires the entrepreneur to re-prove that all previous problems were fixed, because previous citations are not removed from the system even after they are resolved. When a single inspector wields the power to cause a business so much unfair expense, by penalizing the business owner for relying on previous decisions by city officials or perhaps ticketing a business owner because a customer moved something out of place, the system is ripe for corruption. It is easy for an inspector to

ask for a bribe—implicitly or explicitly—in exchange for turning a blind eye on a meaningless technicality and it is easy for an entrepreneur to be tempted to save precious time and money by convincing the inspector to forego a small or fallacious citation.

Steve Soble is an example of a wonderful Chicago entrepreneur, who has many more stories of run-ins with inspectors than he would like. He has helped start half a dozen restaurants where Chicagoans gather to celebrate and enjoy themselves. Each business has created jobs in the community and contributed to the vibrancy of its neighborhood. And each business contributes to the city’s tax base, as well. (As Soble points out, owners of commercial real estate pay property taxes to the county at more than twice the

rate of homeowners, in addition to sales taxes and even a “head tax” per employee if the business employs over fifty people.) Yet, like many other business owners, he reports that at times he feels “persecuted” by inspectors. Years after inspectors signed off on the porch of a mixed-use building that Soble owns in South Shore, a new inspector showed up and said it had to be torn down and rebuilt because the initial permit was flawed. Even though the architect’s drawings for Seven Ten Lanes in Hyde Park had been approved in multiple departments of City Hall, an inspector told Soble after construction was complete that an exit would have to be added behind the pins in the bowling lane. And these two stories are just a small sample. Soble estimates that he spends 20 hours a week fighting the city on tax and regulatory matters, instead of on building his businesses and creating new jobs. He has never offered a bribe to an inspector, believing it is too much like feeding a bear. “If you pay one, they’ll all come after you,” he says. But he is worn down by the fight and ready to pull his businesses out of Chicago altogether. He laments the fact that the city makes doing business so hellish, and he wonders about the future of this city that he loves.⁶





Chicago entrepreneurs Dennis J. Stanton (left) and Steve Soble have both had their struggles to abide by the numerous burdensome and inscrutable restrictions and regulations set forth by their city.

Signage

To hang a simple sign announcing the name of a new business, an intrepid entrepreneur must venture into yet another bureaucratic maze. A shop owner cannot hang a sign—any sign—without hiring a bonded sign erector; paying fees; and undergoing inspection to get a permit from the Buildings Department.⁷ To understand the requirements and limitations on signage, a business owner must interpret confusing rules scattered through the Zoning Code,⁸ Building Code,⁹ Public Way Code¹⁰ and Electrical Code.¹¹ Together, the provisions of the Municipal Code governing signage cover at least 70 pages.

And that is the best case scenario. If a sign is large (over 100 square feet), or high (over 24 feet), the business owner must also get approval from the entire city council,¹² which must be shepherded by the business owner’s alderman and can take months even when the alderman is supportive of the business’s plans (which is not a foregone conclusion).¹³ Likewise, anyone whose sign will hang over any part of the public way must also obtain a second permit, accompanied by a second set of fees and inspections. Several departments of the city must approve the application, the alderman must approve the application, and the entire city council must vote on the sign. If the alderman is against issuing a public way use permit for any reason, it is almost impossible to obtain.¹⁴

If the business owner does not figure all this out, or inherits a sign put up by a previous tenant who did not obtain the correct permits, the owner can incur fines that are often set at thousands of dollars per day. Dennis J. Stanton of the Chicago Andersonville landmark, The Swedish Bakery, had such an experience. When he acquired the business in 1992, he inherited the signage and city permits from the previous owners. But, in 2009, he received, with no warning or any indication he was under investigation, a letter

from the city’s Department of Buildings, stating that he was out of compliance with the signage rules and would have to shut down or pay thousands of dollars in fees. After spending \$2,000 to get help from a licensed, bonded sign erector, he has tackled the alleged problems with his front sign but is still working on the sign that is visible from the side of the building, which hangs flat against the brickwork and is not a danger to anyone. Says Stanton: “I may just have to take that down.”¹⁵ This is no way for a city to treat a business that has been a Chicago institution since the 1920s, let alone a new business pinching pennies trying to open its doors and tell customers about its products.

In the summer of 2009, the city started enforcing sign permit requirements with a vengeance. Entrepreneurs and chambers of commerce were stunned by the rash of citations for violating incomprehensible requirements, which no city representative or inspector had ever explained to them. At a hearing before city council members in July, entrepreneurs told shocking stories about needing separate permits for an awning and the words on an awning and inspectors who said it was the duty of the entrepreneur—not the inspector who approved the signs initially—to know the law.



Chicago should be happy to have such a business developing in its midst. But, according to government decree, Shawnimals should have never happened.

The city has responded to the outcry from entrepreneurs. In January 2010, the Department of Business Affairs and Consumer Protection, under Commissioner Norma Reyes, proposed a sign amnesty program, which provides business owners with a few months in 2010 to get proper permits for signs without risking penalties for previous mistakes.¹⁶ The city is also charging a single fee for a bundle of permits that business owners often need. Yet, a business owner still has to hire a bonded sign erector to apply for the building permit, even if a sign was erected decades ago. Moreover, the Byzantine process for obtaining a public way use permit (for signs and awnings overhanging the sidewalk), requiring approval from multiple agencies, including the city council as a whole, was codified at the same time.¹⁷

Entrepreneurs' ability to communicate to customers about their businesses on signs is vital to their survival, and it is a communication protected by the First Amendment of the United States Constitution. Chicago's current process, which is indefinite and allows a single alderman to veto many applications for sign permits, may well be unconstitutional as well as ridiculous.

Aldermanic Discretion

Approval of the local alderman is required at so many stages of developing a business, including those applications described above. It is conventional wisdom in Chicago that an entrepreneur needs to be friendly with the local alderman—if not a campaign contributor—in order to succeed. The system is designed to allow even scrupulously honest aldermen to wield undue influence on businesses in their wards; the price of political disfavor can be unimaginably high. And it goes without saying that a corrupt alderman can exact ransom for business licenses and building permits in the form of bribes. Chicago has to overhaul this system if it wants to provide equal opportunities to all creative, courageous entrepreneurs.

Home-Based Businesses

It almost goes without saying that many entrepreneurs start their businesses in their homes. Indeed, nearly half of all American businesses are home-based.¹⁸ During a business's initial trial-and-error period, before it starts generating money, it might in fact be foolish to rent commercial space. In a tough economy, people who are out of work often try to work for themselves from home. Other

people's ultimate goal is to work from home to make ends meet or to have more flexibility. In fact, home-based businesses are vital sources of income for people who want or need to be home tending to children or elderly family members.

A rising star among Chicago entrepreneurs provides a classic example of a business that started at home. Shawn Smith started making quirky plush toys for friends as a hobby when he was in school. The word started to spread and demand grew. With help from his wife Jen Brody, he began developing more characters and hand-sewing more and more toys. Eventually, they rented a bigger apartment to make room for a couple of sewing machines and the friends they occasionally hired to help out. Sales to customers and toy stores began to multiply. Now, the growing line of toys has expanded from a hobby to a full-fledged business, Shawanimals LLC, headquartered in a studio in the Kinzie industrial corridor. The characters that spring from Shawn's imagination thrill fans on the web and shoppers around the country. They have been licensed out for comic books and a Nintendo video game. The company has several employees and has contributed to the growth of other businesses that develop new products based on Shawanimals characters or fit into the supply chain of toys made by Shawanimals. By any measure, Shawanimals is a success story that started as a home-based business. Chicago should be happy to have such a business developing in its midst.

But, according to government decree, Shawanimals should never have happened. Chicago has a laundry list of strict restrictions on home-based businesses. For instance, no more than one person who



Business owners Brandi Cousins and Charvon Nicholson met layers of regulations, inspections and reporting requirements in their efforts to get their cupcake business off the ground.

does not live in the home is allowed to work there.¹⁹ And the manufacturing or assembly of products (like plush toys or dresses or greeting cards or jewelry) is not allowed unless they are sold at retail to customers right from the home.²⁰ So, Shawanimals' early sales to specialty stores were prohibited. But, the company could not have sold directly to customers very easily either: a home-based business cannot serve more than two customers at one time and no more than ten in a day, and, inexplicably, the law prohibits displaying products on shelves or racks.²¹ The business could never have gotten off the ground.

In addition, many other businesses would be ineligible for a home occupation license, such as catering, hairbraiding or teaching dance lessons.²² *The Cosby Show's* Dr. Huxtable could not have even had his doctor's office in a brownstone in Chicago, at least not with a separate entrance²³ or a sign by the door.²⁴

Recently, there has been controversy in Chicago about the phenomenon of "apartment galleries," where artists or art-lovers exhibit and sell art in their homes. At least one gallery shut down after citations were issued by the city.²⁵ Confusing conversations with the city aside, such a

venture that was "incidental or secondary" to the use of the space for residential use, as most apartment galleries appear to be, would need a home occupation license. But limiting gallery attendees to no more than two at one time and no more than ten in one day would destroy the whole business model.

The city council should revise the Municipal Code so that Chicago is a friendly forum for creative, home-based entrepreneurs, whether they are building computers in the garage and dreaming of becoming the next Bill Gates, or braiding hair for customers while keeping an eye on an elderly parent. Making products should be legal unless it creates a nuisance for neighbors in the form of excessive noise, smells or health hazards. Entrepreneurs should be allowed to sell those products to any customers, including resellers. And entrepreneurs should be allowed to display their products to customers and put signs up to allow customers to find them.

Food Service

Brandi Cousins and Charvon Nicholson are bound together by more than a friendship dating back to their childhood as neighbors on Chicago's South Side. The two young women are also passionate about handmade cupcakes, homemade ice cream, and the power of small businesses to change lives and neighborhoods. They graduated from high school at Dunbar Vocational Career Academy, went on to get associate's degrees in culinary science and hospitality, and gained experience working in different food service jobs to prepare them for starting up their own dessert café in Chicago. By the time they came to the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School to get legal advice, they had already formulated and taste-tested a menu for their café, to be called Ice Cream Please,

Recipe for Opening A Cupcake Business In Chicago

Ingredients:

- A commercial kitchen that meets all applicable state and city health standards
- 33 hours and \$260 for an approved food sanitation manager certification course¹
- \$35, payable to the city, for Food Sanitation Manager certificate²
- \$660 (or higher³) for two-year retail food establishment license⁴
- Affidavit for Department of Business Affairs and Consumer Protection
- Limitless patience and perseverance to work through Chicago's bureaucratic maze

Instructions:

1. Don't even think about starting your business in your own kitchen, no matter how clean and tidy it may be.
2. Rent or build a commercial kitchen in a properly-zoned space for a retail food establishment business.
3. Prepare retail food establishment license application to submit to the Department of Business Affairs and Consumer Protection.
4. Provide the city Department of Health with extensive information about the business's activities, conditions of its equipment and the facilities used for conducting the business.⁵
5. Verify that business had a valid building permit for any structural, plumbing, electrical or ventilation changes made to the space.⁶ File Affidavit listed in "ingredients" above.
6. Pass inspections of kitchen, vehicles, and all equipment and facilities for compliance with the Municipal Code of Chicago and the rules and regulations of the Board of Health.⁷
7. Ensure that someone who has a valid Food Sanitation Manager certificate is present at the establishment at all times when food is being prepared or served.⁸
8. Comply with all sanitary condition regulations of the Chicago Municipal Code and the associated Department of Health Regulations—such rules cover topics that range from "control of vermin and insects"⁹ to stipulations that, before an entrepreneur remodels or makes "any major alteration or replacement of existing equipment," he must submit "plans or complete drawings" of the relevant changes to the Department of Health for advance approval.¹⁰
9. Comply with food service sanitation requirements included in the Illinois Administrative Code,¹¹ as well as the Sanitary Food Preparation Act.¹²

The Fine Print

¹ The city must approve food sanitation certification courses. See Chicago Municipal Code 7-38-012(a). For information on one such approved course, see, e.g., <http://hwwashington.ccc.edu/fscertify.asp?section=pgms&navpage=fsscrt>

² *Id.*

³ See Chicago Municipal Code 4-5-010. The fees for a two-year retail food establishment license range from \$660 for locations under 4,500 square feet to \$1,100 for locations more than 10,000 square feet.

⁴ The definition of a "retail food establishment" is very broad: it includes "catering kitchens" as well as a laun-

dry list of other food service businesses: "restaurants, coffee shops . . . industrial feeding establishments . . . dressed poultry markets . . ." etc. See Chicago Municipal Code 4-8-010.

⁵ See Chicago Municipal Code 4-8-030(a).

⁶ See Chicago Municipal Code 4-8-030(c).

⁷ See Chicago Municipal Code 4-8-030(b).

⁸ See Chicago Municipal Code 7-38-012(a).

⁹ See Chicago Municipal Code 7-38-020.

¹⁰ See Chicago Municipal Code 7-38-035.

¹¹ See Ill. Admin. Code Title 77, Sections 750.5 to 750.3300.

¹² See 410 ILCS 650/2 et seq.



Chicago entrepreneur Katrina Markoff, the owner/chocolatier of Vosges Chocolat, had to flout the law to start her home-based business, which has since grown into a worldwide brand and earned numerous awards.

that included unusual flavors of cupcakes and special theme packages for parties.

Cousins' and Nicholson's plan for moving forward was a classic example of starting small and bootstrapping: they intended to build their customer base and brand recognition by launching Ice Cream Please first as a catering business with a focus on cupcake packages for children's birthday parties. In their initial meeting with the students and attorneys at the IJ Clinic on Entrepreneurship, they explained that they would keep costs low by working out of their homes, and then would use their savings and their track record of revenues to get a small-business loan to open their café storefront in the South Side neighborhood of Bronzeville.

Little did they know that, despite their limitless enthusiasm and otherwise-solid plan for growth, the IJ Clinic would have to deliver some bad news; not only is making food for commercial purposes in a home-based kitchen illegal,²⁶ but there are layers upon layers of regulations, inspections and ongoing reporting requirements at both the city and state levels for prospective food service entrepreneurs to navigate. The applicable rules and regulations governing

a food service business are spread out over a large body of law. To get to the bottom of the question "what must I do to be legal," even for a simple business such as a cupcake catering outfit, the entrepreneur must consult a panoply of sources: the Chicago Municipal Code's licensing title,²⁷ the Chicago Municipal Code's health and safety title,²⁸ the Illinois Sanitary Food Preparation Act,²⁹ and the Illinois Administrative Code,³⁰ as well as other laws that are not specific to food services.

All told, it is reasonable to expect an exhaustive review of these sources alone to take dozens of attorney-hours, not to mention the time necessary to research questions presented by vague or ambiguous language in forms and applications. Translating these hours into the cost of reasonably priced private legal services means that conscientious entrepreneurs like Cousins and Nicholson would need to set aside a minimum of \$25,000 in addition to their other start-up expenses. It is not surprising that the dizzying array of requirements makes for a far more expensive and complicated recipe for launching a business than most entrepreneurs can stomach, particularly those whose most valuable (or only) asset may be their recipes or unique know-how.

After learning about the possible penalties and fines for baking their cupcakes in their home kitchens, Cousins and Nicholson considered renting space in a communal commercial kitchen. Communal commercial kitchens are designed to meet all the city and state standards for health and sanitation and can be rented by the hour or day by aspiring entrepreneurs. Although the city still requires each entrepreneur to get a separate business license and food sanitation manager certificate, and to undergo health inspections for his or her

operation in the commercial kitchen, the arrangement can be more affordable for someone who is starting a food venture part-time.³¹ Unfortunately, there are very few such facilities in Chicago and prices are relatively high. When the young women did the math, they could not find a way to make leasing even a small space in a commercial kitchen work.

This story is familiar to other food service entrepreneurs. Katrina Markoff, the Le Cordon Bleu-trained founder of Vosges Haut-Chocolat® who has built a worldwide brand and garnered numerous awards, started out in the kitchen of her North Side apartment. Markoff had researched using a commercial kitchen or a co-packer to make her chocolates legally but came to the same conclusion as Cousins and Nicholson: it was too expensive. Instead, she took the risk of incurring citations and fines by operating from home. According to Markoff, she “did everything herself”—piling boxes for chocolates in her apartment, assembling packages on her dining room table, making her trendy labels at Kinko’s, and driving her chocolate delicacies to retail outlets in her car.³² This strategy worked: slowly she built up brand recognition and an extensive clientele, and was able to rent production space in the city. Now, Vosges employs more than 50 people in Chicago and has six retail locations. Says Markoff: “I started illegally because that’s what I needed to do to see whether the business was viable. That’s why people start out at home.”

Something must be broken in Chicago’s system if the only way a fantastic corporate citizen like Vosges can start is by breaking the law. It is impossible to know how many possible success stories like Vosges are squelched before they can start because their owners could not or would not risk flaunting Chicago’s rules. And, when businesses like Vosges and Ice Cream Please go underground, everyone loses out: consumers cannot count on the protection of health laws, the city does not collect tax revenues, and entrepreneurs may be hesitant to expand and effectively market themselves because they will be fined if they are discovered.

Rather than continue this counterproductive cycle, the city must reduce its licensing fees for retail food establishments and reevaluate its requirement that food service businesses operate exclusively out of commercial kitchens. As long as an entrepreneur is willing to submit to health inspections for his or her home-based kitchen, the benefits of legitimizing the widespread phenomenon of home-based food production are clear. Moreover, in recognition of the extent to which such bans drive food production underground, other states and municipalities have considered authorizing certain kinds of home-

based food production without extensive inspections.³³ The city and state must also work together to streamline and coordinate the layers of regulations of food service businesses: the current maze of regulation is a grave deterrent for conscientious businesses that we want to succeed in our communities.

Street Vendors

People who want to make a living in a straightforward way take products right to customers. Selling food and merchandise to commuters and tourists on the streets and sidewalks of the city is one of the most fundamental forms of entrepreneurship. It is sometimes the only choice for poor, uneducated people who want to support their families in hard times.³⁴ Street vending is also a good option for entrepreneurs who are only able to work during limited hours or days of the week and may not want to rent a permanent space. But getting permission from Chicago to sell anything in this way is far from straightforward.

To go from place to place selling merchandise or fruits and vegetables, an entrepreneur must obtain a peddler’s license.³⁵ The license fee is \$165 every two years (or \$88 for a senior citizen, veteran or disabled person).³⁶ However, even with a license, peddlers are not allowed to sell their wares in prohibited districts. The Municipal Code contains a list of prohibited districts that goes on for pages.³⁷ A peddler would have to be an expert in cartography to translate all the boundaries and restrictions into a map that could provide actual guidance. After all that work, she would find that there is not much of the city left after all the prohibited districts are eliminated.

Especially significant, the “Central District,” including the entire Loop and the Magnificent Mile, are off limits. A street vendor is not allowed on the streets where the most people are. And the other prohibited districts are a random assortment of locations closed to peddlers by an alderman’s fiat.

Charles Ashton has been selling general merchandise on the street since the time he was a schoolboy in the 1950s, and his experiences highlight the extent to which the city’s draconian licensing regime is used to punish law-abiding citizens seeking only to earn an honest living. Because the police have an excuse (and may in fact be required by their supervisors) to check each peddler for his or her valid peddler’s license, even in a zone where peddling is allowed, the activity of selling goods on the street attracts disproportionate scrutiny from law enforcement, explains Ashton.³⁸ Low-income peddlers can ill afford harassment by police, which also conveys to other less law-abiding people on the street that peddlers are an easy target for intimidation or robbery, and might result in an expensive citation for unlicensed peddling or peddling in a prohibited zone (\$200 and \$500, respectively.)³⁹ Moreover, a citation may be accompanied by other harassment: “If you’re lucky, all you’ll get is a ticket [and fine], but sometimes the police will jump you, lock you up, and take all your stuff,” says Ashton.⁴⁰ This confiscatory “forfeiture” practice by police penalizes peddlers with a double-whammy of both an expensive citation and the loss of the very inventory that the peddler is counting on to earn a living. “I’m out here working hard every day—not stealing from anyone, not selling drugs, doing my best to earn an honest living. What right does the city have to treat me like a criminal?”

In addition to trampling on individuals’ right to earn an honest living, the peddling rules also dampen Chicago’s vibrancy as a cultural urban center where customers can purchase unique items throughout the city. Artists cannot sell paintings in front of the Art Institute,⁴¹ even though the U.S. Court of Appeals held in 2002 that the city cannot constitutionally prohibit the sale of expressive goods like paintings, books or slogan t-shirts, which are forms of speech protected by the First Amendment, just because it speculates that peddlers disrupt traffic.⁴² But the city made only minor changes to the law, and so-called speech peddlers are only allowed in a few spots when they have made arrangements well in advance. Moreover, neighborhoods are less safe when people are discouraged from conducting honest activities and serving as “eyes on the street.” For a poignant example, think of the street vendor who alerted police in New York to the car bomb in Times Square.⁴³

Chicago’s law on peddling also means that traditional *eloteros* selling ready-to-eat corn-on-the-cob or fruit cups are breaking the law, even if they are in permissible districts. Food cannot be “prepared” on the street, and peddlers are only allowed to sell whole, uncut fruit or vegetables. It is illegal to dress a Chicago hot dog from a cart on the street, even though a Chicago institution, Vienna Beef, draws entrepreneurs from all over the world to learn how to do so at Hot Dog U.⁴⁴ To sell prepared food, entrepreneurs need a different, more expensive license, and they would have to prepare and seal the food in a licensed kitchen, sell from a vehicle with a running sink, sell only after 10am, and stay 200 feet from any restaurant.⁴⁵ Roasted chestnuts (a staple of chilly New York city days) or *elotes* are not allowed under any license. Yet, the Park District, unlike the rest of the city, does license people to prepare food from carts with some success. Nonetheless, when we contacted the Park District to learn what their safety requirements are, representatives told us they were not available to the public.

In 2008, the city told the *Chicago Tribune* that it had received only 35 complaints regarding food vendors but it issued 560 tickets.⁴⁶ Enforcement is unpredictable and often seems arbitrary. Flavored ice and tamale vendors sell their wares openly in some neighborhoods, especially neighborhoods with many Mexican-American residents, and customers flock to them. Yet any business owner who does not like the competition can send the police after them. Vendors who have booming businesses near a flea market in Back of the Yards are regularly bullied by the business’s security guards. When one security guard told them to stop selling to their customers—four

blocks away from the market—and some vendors stood up to him, he called the police, and two street vendors were arrested (supposedly for “assaulting” the security guard). They were kept in jail for 22 hours.

At the time of writing, a street vendors association formed in Back of the Yards has started meeting with aldermen asking for reform. In a parallel movement, well-trained chefs made proposals to the city council to allow entrepreneurs to prepare fresh food for customers from trucks with kitchen equipment on board. A new license for food trucks was introduced to the city council for consideration on July 28, 2010. But the current draft does not provide for inexpensive carts and prohibits trucks from selling anywhere close to other food establishments.⁴⁷

Finally, in the most bizarre and mystifying twist, Chicago flatly prohibits vendors from selling flowers.⁴⁸ It is impossible to imagine an acute health or safety risk that justifies outlawing flower sellers. The city council has no place prohibiting people from making a living in this time-honored way.

The city should open up to vendors and peddlers. These small businesspeople typically occupy the lowest rung on the economic ladder. Peddling represents a first step for immigrants and the impoverished towards becoming self-sufficient and is often the most obvious means of fighting homelessness. But by severely restricting the most basic form of entrepreneurship, the city tacitly encourages these individuals to remain on public assistance or to turn to illicit activities to support themselves.

The city should likewise nurture speech protected by the First Amendment and exempt artists and authors from these tight restrictions. It should allow a vendor to cut or peel fruit for a customer, and, for heaven’s sake, it should allow people to sell flowers wherever other goods can be sold.

Child Play Centers

In a diverse and family-oriented city like Chicago, affordable services for children are essential to make the city livable. Yet, under a new law, the city exposes businesses and individuals that provide any “recreational, cognitive or educational activities to children 17 years or younger” to severe consequences if they do not obtain a “children’s activity facility” license.⁴⁹

The new law, passed in May 2010, was designed to remedy a grave problem that faced businesses providing a space where parents or caregivers could bring children to play with other children. Under

the previous law, such businesses were treated like an enormous threat to the community that must be suppressed by the most stringent measures, and were required to get a Public Place of Amusement (“PPA”) license—the same license that applies to strip clubs, cabarets, billiard halls and sports stadiums.⁵⁰ Because PPA licenses are designed for business activities that may have negative impacts on neighborhoods, such as noise, congestion or rowdiness, there is a lengthy public notice and comment period built into the law itself and a provision requiring mayoral approval,⁵¹ which means that the license requires a minimum of two months to obtain, but almost always takes much longer.

The PPA hurdle tripped up entrepreneurs like Esmeralda Rodriguez, who is just the kind of doer that makes Chicago tick. After working with the Chicago Park District for 13 years designing successful programs for young children, Rodriguez decided that she could serve more children with more flexibility by striking out on her own. She and her husband saved a small nest egg of start-up money, and Rodriguez worked hard to write a business plan that laid out her vision of dividing a children’s play space into a stimulating theater and puppet play area, a library for storytime, and a recreation area with lots of toys and games for children ages six months to six years. She found a small (760 square feet) but suitable storefront for

By severely restricting the most basic form of entrepreneurship, the city tacitly encourages these individuals to remain on public assistance or to turn to illicit activities to support themselves.

The shortcomings of the new children’s activity facilities ordinance are serious and, unless clarifications are offered, are likely to deter a wide range of Chicago businesses from offering any sort of activity geared toward children under age 17. Even so, it is much better than the requirements Esmeralda Rodriguez faced.



the business, and began the process of applying for the appropriate business license.

That's when Rodriguez discovered that charging an "admission fee" to offer "amusement" to her customers⁵² required her to get a PPA license. In addition to assembling a long list of other documentation,⁵³ Rodriguez struggled to pay an architect nearly \$1,000 to prepare plans of her location that would pass muster. And, because the city will not review a PPA license application that does not include a valid lease for the premises, Rodriguez had no choice but to rent space in a high-stakes gamble that the city would eventually grant her the PPA license, knowing as each day passed that she was squandering more of her nest egg on rent while remaining closed. Once she got these materials together, she was told by the Department of Zoning that the parking provided pursuant to her already-signed lease was inadequate—a PPA must demonstrate that it provides "10 percent parking"—that is, that the business has access to off-street parking spaces equaling 10 percent of the maximum occupancy of the premises. For Rodriguez's small children's play center, this was a death knell—not only did her entire customer base live in walking distance (thus obviating the need for parking spaces), but there was no nearby parking that she could afford to rent to meet the requirement. And, indeed, the arduous process for contesting the parking requirements took far too long for Rodriguez's limited funds. Rodriguez had no choice but to abandon her dream, and any hope of recouping her savings, after more than a year of futile efforts to obtain a PPA license.

In response to the outcry over the nonsensical categorization of child play centers as PPAs (including the first release of this report, which told Rodriguez's complete story), the Department of Business Affairs and Consumer Protection ("BACP") and the Mayor's office made it a priority to enact changes to the Municipal Code that would better fit the special characteristics of child play centers. During the spring of 2010, the BACP released a draft ordinance for an entirely new licensing category for "children's activity facilities" ("CAFs"), which the city council passed in May 2010.

The CAF ordinance is an improvement over the PPA regime in a number of ways, and the city deserves credit for these steps in the right direction. For example, it appears that there is no requirement to have a valid lease for the business's premises in order to apply for a license, so entrepreneurs like Rodriguez will hopefully avoid the untenable position of paying rent while waiting for their license. Another significant improvement is that the ordinance seeks to modify the zoning code and relax the difficult parking requirements that ensnared

entrepreneurs under the PPA regime: In most zoning districts, CAFs less than 4,000 square feet would be exempted from having off-street parking.⁵⁴

Nonetheless, the shortcomings of the new CAF ordinance are serious and, unless clarifications are offered, are likely to deter a wide range of Chicago businesses from offering any sort of activity geared toward children under age 17. The ordinance defines a CAF as any person (or any entity) that provides recreational, cognitive or educational activities to children 17 years or younger, regardless of whether the children are alone or being accompanied by a parent or caregiver.⁵⁵ Without limiting the definition to businesses that offer activities to children without a caregiver present, or even who primarily focus on children's programming, the ordinance covers an indeterminable number of businesses. Organizations as diverse as museums, bookstores with weekly story hours, magicians that perform at birthday parties, yoga studios that serve some teenagers or host mommy-and-me classes or an after-school tutor for high school students would be required to get the CAF license, which costs a steep \$500.⁵⁶

Not surprisingly, the CAF license requires more than payment of a fee. The ordinance states that "each employee or other staff member that has contact with the children" must submit to a background check, but "contact" is not defined—does every docent in a museum who makes eye contact with children trigger the background check and reporting requirements? Or is "contact" limited to physical contact or direct conversation? Moreover, the names of all such personnel must be filed with the BACP, with any changes to the list of names to be reported "immediately." And if a business submits a false statement to the BACP, which would presumably include an inaccurate or out of date list of personnel who have contact with children, its CAF license will be denied or revoked.⁵⁷

When the IJ Clinic presented these problems to members of the Committee on License and Consumer Protection during a hearing on the ordinance, only two members of the committee were present (one of whom was the sponsor of the bill), and our concerns about lack of quorum went unaddressed.⁵⁸ Representatives from the BACP offered assurances that the interpretive questions highlighted above would never arise, because the BACP would be reasonable in applying the rule only to businesses whose primary purpose was providing activities to children, and the Commissioner of the BACP would offer rules and regulations to clarify any remaining issues.⁵⁹ When we asked the city for a copy of the recording of the hearing so we could keep a record of those assurances, we were told (after numerous requests) that “the tape got ate.”

The city’s lawyers may be correct that the new CAF license will not be enforced broadly, but such a response is problematic for at least three reasons. First, entrepreneurs that read the plain language of the statute are likely to be deterred by its overbreadth and will shy away from offering any programming that would call into question their need to comply with the CAF. Rules and regulations later issued by the commissioner may soften this deterrent effect, but are unlikely to be as easily accessible to the public as the statute itself: the chilling effect of laws on the books is well-documented. Second, rules and regulations are not subject to the democratic process of being scrutinized by elected officials and having public hearings on their merits. The commissioner, a mayoral appointee, has wide discretion in issuing rules pursuant to city ordinances, as do her successors if she is replaced. While we appreciate that

the current commissioner, Norma Reyes, is sensitive to our concerns about runaway enforcement, there are no assurances that the policy of limited application to certain types of CAF businesses couldn’t change on a dime under a new commissioner. Third, inspectors will have latitude to cite businesses for violating the letter of the law. They will not be bound in the future by the intent of the lawyers who wrote the law to cover only certain kinds of businesses that serve children as their primary function.

Family-friendly facilities, like bookstores, yoga or fitness studios with mommy-and-me classes, gardening stores with kids’ activities, outdoor playgrounds or recreation halls in schools or churches, carry with them virtually none of the risks that arise in regard to places that allow caregivers to leave their children unattended. While we applaud the city’s instinct to exempt child play centers from the public place of amusement regulations, regulators should avoid throwing the baby out with the bathwater, so to speak. For businesses that admit children under adult supervision, the safety and health inspections mandated under other sections of the Municipal Code would suffice to protect children from potential play hazards and the entire community would be better off. A revised CAF ordinance should require this special license only for facilities that provide recreational, cognitive or educational activities to *unaccompanied* children under age 17. Children would have safe and stimulating places outside their home to play, socialize and exercise while being supervised by their caregivers, families would have access to affordable recreation for their children, and the city would have more thriving businesses that in turn make the city habitable for growing families.

Retail Computing Centers

The “digital divide” is a fundamental issue facing inner-city communities that seek to compete in today’s knowledge economy.⁶⁰ Access to the Internet lowers information costs, allowing for greater civic engagement and political participation in these communities. Households in low-income urban neighborhoods are less likely to have personal computers and access to the Internet at home, and entrepreneurs who provide the opportunity to learn about and use computers and software are a great community asset. Chicago should be encouraging businesses that allow people to develop computer skills, type resumes, search for jobs online, and actively engage in their communities. Instead, the city stymies businesses that provide such services, either as a stand-alone computer center



David Lane has a gift for technology, but when he tried to open a business teaching others, he was stopped in his tracks by provisions in the Chicago Municipal Code that are out-of-step with computer and software technology.

or as part of a neighborhood café or bodega.

David Lane is an example of an entrepreneur who was prevented from pursuing his dreams of opening a computing hub in underserved communities by the city's regulations.⁶¹ From a young age, Lane was fascinated by computers, and he eventually pursued training in technology education. Growing up in a minority community in Chicago, he was amazed by "how many of my family and friends didn't know anything about computers, and were always calling me for help. I would help them, of course, but it struck my mind—wait a moment, this is probably going on elsewhere in the city! That's when I looked into the issue more, and I understood that there was a real need for people to learn about computers."

Lane managed to find a location for the business he envisioned, where people, young and old, could come to take classes about computers and then use them at reasonable rates. On the edge of the hardscrabble Englewood neighborhood, he went into business with another entrepreneur who specialized in selling ink and printing services, and they decided to set up a few computers in the store. Says Lane: "People would come in, buy their ink, but they would really want to learn to use the computers. We ended up partnering with a community-based organization down the street, which would send groups of people to take classes from me. We saw that it was both lucrative and it was filling a need in the community, so we were thrilled."

But when Lane and his partner looked into what they would need to do to get the appropriate license for their business, they began to think twice. Under the Chicago Municipal Code, any business that qualifies as a "retail computing center" must obtain a special license that is difficult if not impossible to legally maintain. The definition of a retail computing center is broad, and covers any

business that has three or more computing workstations that are "held out to the public for a fee" for either (a) the rental of computer access or (b) computer training.⁶² If an entrepreneur is planning to have workstations that meet this definition, he or she must take two baffling steps to obtain the appropriate license. First, after complying with the general requirements of the Code for obtaining a business license (filling out a business license application form, registering for an Illinois Business Taxation number, etc.), the entrepreneur must provide a sworn statement as to the number of computer workstations that are located or will be located on the premises of the retail computing center.⁶³ Second, the entrepreneur must include in the statement a list of all of the computer applications available on the workstations.⁶⁴

These requirements raise myriad questions that are not answered by the code and are completely out-of-step with the reality of computer and software technology. What if the applicant is not sure how many computer workstations he or she will eventually have on-site? Many small businesses grow organically, starting small and becoming larger as time and

revenues allow. Should the applicant list the number of workstations she initially plans to operate, or attempt to estimate the number that she might operate in the future? Will the license need to be amended to reflect the actual number if a forward-looking guess turns out to be wrong? The Code is silent on these questions.

The required list of available applications presents similar, but potentially more difficult, problems. As technology is constantly changing, a successful entrepreneur will need to alter the mix of software available to customers. Each time new software programs are added (or old ones removed) does he or she need to notify the BACP and seek to amend the documents supporting his or her retail computing license? What about updating software versions, a nearly daily process? Again, the Code has no answer, and such vagueness in the code is likely to cause an entrepreneur to hesitate before plunging into the regulatory morass.

Worse, however, are the ongoing pricing rules and reporting requirements that limit the entrepreneur's choices about what software programs to offer and how to charge for the service of using the computers and software. For example, the Code requires that:

- (1) a majority of the menu selection categories available to customers are dedicated to applications for business, personal computing, education, communications services and Internet access; and (2) the licensee does not advertise that games are available on the computing stations; and (3) the actual use of the computing stations within the

licensed location for the playing of games is not more than 25% of the use of the stations per month.⁶⁵

Additionally, retail computing center licensees must maintain an electronic record of the use of each workstation that details “which applications are employed by the user and the length of time that each application is used.”⁶⁶ The provision makes it illegal to “manipulate, delete, or tamper with the electronic record.”⁶⁷ Beyond the fact that the government has no business monitoring the content of computers in private use, keeping such copious records on the computing activity of each customer with respect to each application used is extremely difficult, and the lack of prescribed timeframe for keeping such records makes compliance even more costly for entrepreneurs like Lane and his partner. As a result, the business partners tried to think creatively about how they might price their offerings to cover their bureaucratic costs while still turning a profit.

Sadly, no amount of creative thinking—the hallmark of savvy entrepreneurs—could solve Lane's problem. Without explanation, the code declares that the fee for use of a computer workstation be “based on the duration of customer use, without consideration of the type or number of applications used by the customer.”⁶⁸ Such restrictions on freedom of contract are unusual (and in some cases, unconstitutional), especially for businesses that lack a history of consumer exploitation or where the restriction is too broad in addressing exploitation. Instead, the market should determine what type of pricing is most appropriate. While a flat-rate charge based on usage time may be preferable to some customers, others, especially in niche markets, may prefer to pay based on the applications they actually use. Regardless, the effect of Chicago's mandatory pricing scheme is to force those who use run-of-the mill, less costly applications to subsidize the use of specialized software programs, such as photo or video editing suites, by a select few. Realizing this, and being unable to create a menu of discrete prices that corresponds with the varying needs of different users, many retail computing center entrepreneurs may forgo the purchase of specialized programs altogether. This not only limits consumer choice at the retail computing center level, but may block users from *ever* being able to access the applications they need when rental of the software is their only economically viable option.

When Lane and his partner realized that they had almost no leeway to craft their pricing menu as they saw fit but would have to shoulder the heavy reporting costs, they decided against



Chicago parking regulations prohibit any commercial vehicle, like this truck owned by Matt Tindle, a Chicago entrepreneur, from parking on any city street.

applying for the retail computing license altogether. Unfortunately (but predictably), one day an inspector from the city walked in, looked around, and cited them for operating illegally. Lane and his partner got a few citations and had to pay a minimum fine of \$250 per citation,⁶⁹ but they knew that if they complied with the retail computing center ordinance, they would go out of business. After some soul-searching, they decided to shut down their business rather than comply with the licensing rules and reporting requirements. Currently, Lane is looking to use his computer-education skills by teaching classes at already-licensed retail computing centers, public libraries and community centers that have computing resources available, but he has had trouble locating outlets that can accommodate him because of their own government-imposed expenses.

For the benefit of lower-income Chicagoans who do not have the resources to purchase a home computer or expensive software, the city should revisit its retail computing center regulations. Keeping onerous and out-of-date recordkeeping requirements on the books simply encourages noncompliance and drives entrepreneurs like Lane underground and, eventually, out of business. And the requirement that a flat time-based fee be charged rather than a variable fee based on the applications used by the consumer is indefensible—not only does it abridge the individual entrepreneur’s economic freedom, but it has the effect of hurting precisely those consumers who need basic computer training or access to word processing and the Internet and cannot afford computers at home. The end result is that, where there could have been a thriving business teaching inner-city adults and children skills that are crucial to their futures, there is nothing. And that is something that Chicago should seek to change.

Commercial Parking Restrictions

Many self-employed people and small businesses serve customers directly in their homes and businesses all over Chicago. From landscapers to florists to plumbers to janitorial service providers to handymen, they deliver their services right to their customers’ doors. They need to drive their equipment and deliveries to their customers, but the city has rules that burden them all. Chicago prohibits parking business vehicles on the street. As a result, these productive, small businesses must pay a king’s ransom in parking tickets when they park near customers or near their own homes.

Chicago’s parking regulations flatly prohibit any commercial vehicle (including any car marked with a business name or carrying merchandise or supplies) from “parking on any business street or residential street in the city for a longer period than is necessary for the reasonably expeditious loading or unloading of such vehicle.”⁷⁰ So, the Geek Squad cannot park on the street while fixing your computer, a landscaper cannot park on the street while manicuring a lawn, and a florist cannot



The onerous restrictions Chicago proposes for TriAcycle and other pedicab operators may eviscerate their usefulness as a mode of transportation.

park his van in front of his apartment building at night. It is a mystery how self-employed tradespeople are supposed to function at all.⁷¹

In practice, they do function, but they pay a high price. Not only is a violator of the commercial parking restrictions subject to daily fines of \$125 (one of the highest parking fines in the Municipal Code),⁷² but the vehicle is subject to immobilization and impoundment “without prior notice or placement on an immobilization list.”⁷³ One too many boots, and a talented tradesperson might decide being in business is simply not worthwhile.

Take Tim Tindle, who has been self-employed as a junk hauler in Chicago for more than two decades.⁷⁴ Tim contracts with homeowners or businesses that need their junk hauled away, and he sells useful scraps to junkyards. His business helps keep the city clean and promotes the reuse of resources. Unfortunately, Tim’s livelihood was threatened by Chicago’s hostile parking restrictions. When he was starting out in the 1980s, he parked overnight on streets where there were plenty of spaces for residents, but over a few months he received a ticket almost every night and soon had accumulated about \$7,500 in fines. Before he could get together the money to pay them, Tim’s driver’s license was suspended, so he could not work. In the end, he resorted to filing for personal bankruptcy so he could get a valid driver’s license and get back to work. Now, Tim parks his truck in a commercial parking lot overnight, at the price of \$2,400 a year. Still, he risks a ticket every time he parks his truck somewhere while he works or eats during the day.

Some businesspeople in certain parts of the city are allowed to park in front of their homes if their aldermen give them a special permit.⁷⁵ But this technicality hardly solves the problem for laborers, as Matt Tindle, another self-employed junk hauler, learned to his dismay.⁷⁶ After getting a number of \$125 tickets, he made the rounds of different city offices to try to find out exactly what the Chicago Municipal Code required him to do to park legally. But, he said, “Everyone will tell you a different version of the law. If you want clear information, you’ll have problems getting it. I went to the Department of Streets and Sanitation, police stations, the Department of Revenue, my alderman’s office, city clerks in other departments, and they all told me different things.” When Matt learned about the limited exception that might allow him to park his vehicle outside his residence in the Portage Park neighborhood with a permit granted by his alderman, he was temporarily thrilled. However, his ward is not covered by the exception, and his alderman was unsympathetic to his plight. “The law,” says Matt, “is targeted towards working people [like me].” As a result, Matt spends a significant amount of money each month to rent a private garage space but still worries about what to do with his truck when he is working on-location at jobs during the day.

Presumably, the purpose of these commercial parking restrictions is to prevent commercial vehicles from monopolizing all the street parking. But, as usual, the city has overreacted by prohibiting all commercial parking, with very few exceptions. Although a large business is likely to have off-street parking alternatives when the vehicle is off-duty, a small business or sole proprietor often will not.



“When traffic is at its worst, pedicabs are most useful. They give passengers another option . . . rather than be willing to try us out, they’re just saying, ‘no way, we’re not going to give you a shot.’”

-Julia Samuels

Instead, the city could allow small-time entrepreneurs to park near the driver’s home or near customers without causing any disruption.

Chicago’s draconian parking regulations act as a tax on tradespeople, and they make it difficult for entrepreneurs to enter the most basic occupations. They privilege the aesthetic sensibilities and convenience of white-collar residents—whose trendy SUVs may well outsize prohibited commercial vehicles—over the ability of ordinary people to work for a living. People who use cars, vans and pick-ups in their work must be allowed to park near customers and near home without incurring costly parking tickets or begging permission from aldermen. Chicago needs to welcome the workers into their customers’ and their own neighborhoods to encourage entrepreneurship and self-sufficiency.

Bicycle Taxis

In the quest for green solutions to urban congestion, high gas prices and busy professionals on the go, what could be better than a flexible, on-demand, carbon-free, low-cost ride in the fresh air? Rather than hop on a horse and buggy or the back of a death-trap motorcycle or scooter, Chicagoans and visitors alike have been hailing a new breed of rickshaws being pedaled around Chicago’s trendy neighborhoods. Regardless of whether they succeed in consigning the automobile to the dustbin of history, these new vehicles epitomize innovation and entrepreneurship in action.

But the incumbent taxi companies and some of the aldermen on the License and Consumer Protection Committee and the Committee on Transportation and Public Way believe that bicycle taxis are a risk

to public safety and will even worsen congestion if they are allowed to offer their services. Without verifiable evidence of these purported ills, the city has proposed legislation to prospectively rein in the rickshaws, leaving the nascent industry to fight against bureaucracy without yet having tangible benefits to show from its penetration into Chicago’s transit market. Stated Julia Samuels of Chicago Rickshaws: “When traffic is at its worst, pedicabs are most useful. They give passengers another option. I remember vividly during the committee hearing [on pedicabs] when one of the aldermen said, ‘well, when we let horse and carriages in the loop during rush hour, they created huge traffic problems.’ We’re not similar to horse and carriages in any way...The city doesn’t understand [this]—rather than be willing to try us out and see what kind of benefits we can bring to the city, they’re just saying, ‘no way, we’re not going to give you a shot.’”⁷⁷

It is easy to see why pedicab operators would feel that the licensing ordinance proposed by the city in June 2009 could have been designed to put them out of business. In response to an outcry from the pedicab community, the Department of Business Affairs and Consumer Protection revisited some of the provisions, and issued a draft substitute ordinance in April 2010. While there are many points of relative improvement in the substitute ordinance, the laundry list of limitations on a pedicab’s ability to operate in Chicago runs the gamut from moderately onerous to downright unworkable:

- Pedicabs are banned from downtown until after 7:00 pm on weekdays, which bans exactly the area and the time of day in which they are thriving and have the potential to reduce congestion most dramatically.⁷⁸

- Pedicabs are banned from operating on any route “on which the operation of a pedicab is prohibited by rules and regulations promulgated by the commissioner.”⁷⁹
- Unless a pedicab license applicant is the “sole operator of his pedicab,” each applicant must provide proof of workers’ compensation insurance to cover each individual that operates a pedicab in his fleet.⁸⁰

At a meeting of city officials and members of the pedicab community,⁸¹ it was this last requirement that generated the greatest outcry. Because the industry is new, insurance carriers are uncomfortable with estimating the risk to workers. Rob Tipton of Chicago Rickshaws reported that, for his roster of pedicab operators, each of whom may only ride a pedicab for one day a week during the high season but who must all be covered by a year-round workers’ compensation policy, he received a bill for over \$27,000 for his workers’ compensation insurance. The fleet owners in the room agreed

The laws are shaped by people who have a clear interest in keeping business for themselves, rather than opening the occupation to competition, especially competition that would charge lower prices.

that the city’s requirement that proof of insurance be shown to get a pedicab business license would force them to shut down. Although workers’ compensation insurance is required by state law for many types of businesses, pedicab operators seek to approach the state to clarify the scope of workers’ comp in light of the special features of the typical pedicab business: pedicab fleet owners merely lease the pedicab to an operator at a set rate, regardless of how much in fares the operator collects in a given day, thus qualifying each operator as an independent entrepreneur for all substantive purposes. Given the enormous implications of this particular requirement for the survival of the industry, the city should eliminate the workers’ comp requirement in the ordinance.

The provisions of the ordinance that would prevent pedicabs from operating downtown and in areas deemed off-limits by the commissioner are also unworkable. The restrictions eviscerate the usefulness of pedicabs as a mode of transportation. One can imagine how popular this green alternative would be if a passenger needed a ride to the train station after work but was told, “sorry, I can’t take you there until 7:00 pm!” Chicago can do better than to squelch an innovative new service before it has a chance to develop. Rather than caving into pressure from incumbent transit providers, Chicago lawmakers should allow the market to deliver a verdict. Where a new business idea that has potential to address many of the most pressing (and expensive) urban problems is untested, the most prudent approach is “wait and see” rather than overreact and overregulate.

State Laws

Entrepreneurs in Chicago have to fight City Hall, but that is not all. The state of Illinois has its own set of rules governing who can enter what occupation. Most of the time, trade associations composed of incumbent businesses have lobbied the state to treat their work as a “profession,” which requires testing and oversight by a board of experienced practitioners. As a result,

they can keep insiders in and potential competitors out. People who envision a new, more efficient, or less expensive way of getting the work done are not allowed to compete unless they learn the old way of doing things first and get the approval of the established businesses. The delay and expense of the certification process makes it hard for them to charge their customers less. Or they operate in secret, without certification. This “professional regulation” has grown dramatically. In the 1950s, only one in 20 occupations required a government-issued license; today that number is closer to one in five.⁸² And licensing is often not designed to protect the public: it merely protects existing service providers. People with talent are denied their right to pursue their calling.

Barbers

The beauty industry in Illinois (and across America) is notoriously over-regulated. Trade associations lobby state legislatures to make it difficult for new talent to set up shop. They convince lawmakers that health and safety are at stake, and that no one could possibly give a safe hair cut or paint nails without hours upon hours of schooling, certification and continuing education. The laws are shaped by people who have a clear interest in keeping business for themselves, rather than opening the occupation to competition, especially competition that would charge lower prices.⁸³ Oftentimes it seems as if the laws are driven not by real concerns about public safety, but by the schools that make more money if they are the gatekeepers for the occupations. It turns out that the beauty industry is tough on some immigrant groups too. English or Spanish skills and an approved education are required to get a license to ply trades that might otherwise provide wonderful opportunities for immigrant entrepreneurs.

To become a barber in Illinois, that is, to shampoo without supervision, shave, style or cut hair legally, one must graduate from a barber school with at least 1,500 hours of study or, alternatively, graduate from a cosmetology school while also completing an additional 1,000

hours at a barber school.⁸⁴ The schools must be approved by the Illinois Department of Financial and Professional Regulation (“DFPR”). Finally, one must pass a written examination, which is offered only in English or Spanish in Illinois. Sample questions on the DFPR’s web site include identifying the type of spore formed by anthrax and tetanus bacilli (answer: “Spherical”) and the distinguishing feature of French-style shears (answer: “have a finger brace”). The Department can—and frequently does—refuse, suspend or revoke a license if someone has a felony conviction, so training to become a barber is often foreclosed for someone coming out of prison and trying to make his way in the world. Working as a barber without a license can result in fines up to \$5,000.⁸⁵

One poignant story is revealed by a 1980 court case. Michele Citrano, an Italian by birth, had already been a barber for 17 years when he immigrated to Chicago. He went to look for work in a barber shop, and he was told he would need a license. A friendly barber filled out the paperwork for him, listing people Citrano did not know as character witnesses. Somehow, Citrano took the written examination. And he proceeded to live the American Dream, working in a barber shop downtown in Chicago and buying a home in the suburbs where he lived with his wife and children. But five years after he got his license, the Department of Registration and Education revoked it, because the Barber’s Committee claimed that the

character witnesses were not genuine and that Citrano did not have the English skills to have passed the exam without improper assistance. In an extraordinary sequence of events, Citrano took his case to court, and the court determined that it was arbitrary and capricious to revoke the man's license when the complaints against him had nothing to do with his good character or barbering skills. The appellate court affirmed.⁸⁶ It is impossible to know how many skilled immigrants like Citrano never meet a friendly soul to help them figure out the system, how many give up when they find out about an exam in English, or how many surrender to the government's efforts to strip them of their rights because they cannot afford a lawyer. It is impossible to know how many talented, hard workers are locked out of trades because they do not meet requirements that a thoughtful judge would declare arbitrary and capricious.

The state of Illinois should not require 1,500 hours of schooling and a character review for barbers because it is not necessary to protect public health. Customers should be able to decide whether they want to seek out barbers who are trained in all the latest styles and techniques. The government does not need to require it.



Chicago braiders need licenses to legally braid. Regardless of their experience, they must complete 300 hours of formal education to practice a craft that has been handed down from one generation to the next without government oversight.

Braiders

There are many African hairbraiders in Chicago in Citrano's position: they have developed their skills outside the beauty school system and often outside the country. All-natural techniques to braid and lock hair are passed down through the generations. And for many years, braiders in Chicago served satisfied customers without needing special degrees or licenses displayed on the walls of their shops.

Oumou Wague is one such hairbraider. Wague started braiding after she arrived in the United States from Senegal more than 18 years ago. Says Wague: "Cornbraiding is a craft that all women learn and which we all do at home. After I immigrated to the U.S., it was hard to find a job as an immigrant who had limited English skills; hairbraiding was the only opportunity I had. It was a way to support myself and to send money to help my family back in Senegal."⁸⁷ Wague moved from New York to Chicago in 1999 because she had Senegalese friends who had built up their own businesses in Chicago and found that it was a good environment in which to run a hairbraiding salon. After she arrived, she established her business, grew it and hired employees, and got a business license from the city of Chicago. In 1999, this was the only license that a braider like Wague needed.

Meanwhile, the Illinois Cosmetology Association didn't like the competition, and beauty schools wondered why they were not getting a cut. In 2001, the Illinois Cosmetology Association pushed through a change in Illinois law that made braiding the practice of cosmetology.⁸⁸ All of a sudden, braiding without a degree and a license was illegal. In 2005, Wague received a letter from the

Illinois Department of Professional and Financial Regulation, notifying her that she was in violation of the law and ordering her to cease and desist operating her business. Many other members of Chicago's growing hairbraiding community received similar notices. Recounts Wague ruefully: "We were shocked and didn't have any information. So we tried to see what solution we could pursue and we contacted a lawyer."⁸⁹ Unfortunately, the lawyer was (not surprisingly) unable to do anything to assist the hairbraiders, but they had paid him \$400 each, or about \$15,000, in fees. Discouraged but determined not to break the law, Wague decided to go to cosmetology school, which costs at least \$7,000 or \$8,000 for 1,500 hours of classes, and prepares the students for a written exam in either English or Spanish that they must pass.⁹⁰ She attended a full 600 hours, but dropped out after nothing in the classes covered skills relating to hairbraiding: "I wasn't interested in [using] chemicals, because braiding is my passion. I was trying to get the teacher to talk about braiding, but it simply wasn't part of the curriculum."

Even beauty school directors admitted that they do not teach much if anything about all-natural braiding⁹¹ so it was difficult for them or the state to argue that the schooling would make people better braiders. It was questionable whether it would even make them safer braiders, because they do not use chemicals or machines that pose risks to health or safety. Rather, it just made them poorer braiders (or, alternatively, pricier braiders, as costs must be passed along to consumers), because they would have to spend thousands of dollars on school and lose a year of work to get the irrelevant degree. Adding insult to injury, the law also required cosmetologists, including braiders, to complete at least 14 hours of continuing education classes every two years.⁹² They can lose their licenses if they repeatedly fail to meet the continuing education requirements, but are more frequently put on probation and fined hundreds of dollars for failing to complete the courses.⁹³ And the continuing education classes do not even have to cover issues related to health and safety.⁹⁴

Laws requiring braiders to acquire so much useless training do nothing to protect the public and constitute an unconstitutional attack on braiders' freedom to work.⁹⁵ The cosmetology statute was fashioned solely to protect established beauty parlors from competition, and has no public protection purpose. However, the Illinois Supreme Court has held before that a safe occupation should not be prohibited to protect license-holders from competition: "No

citizen should be legislated out of his trade and have it awarded to another craft under the garb of a health measure where it is not definitely related to such measure."⁹⁶

In response to pressure from the African immigrant community and other advocates for hairbraiders,⁹⁷ Illinois legislators recently approved changes to the regime that classifies hairbraiders as cosmetologists.⁹⁸ Unfortunately, rather than allowing hairbraiders to be free to practice their craft, the law creates a new licensing category for hairbraiders that stands alongside the categories for barbers, nail technicians and cosmetologists. The rules require each new braider to have 300 hours of training through an approved hairbraiding school and, similar to the existing cosmetology rubric, applicants will need to pass an exam.⁹⁹ And the continuing education requirement is still present: 10 hours of classes every two years are required.¹⁰⁰ While 300 hours of classes are certainly less onerous a burden than 1,500 hours, the influence of the powerful beauty school lobby is manifestly evident, as they have refused to support a bill that would not have created a market for them to offer, and charge for, hairbraiding curriculum. In voting for the new law, Illinois lawmakers failed to take the principled position, consistent with the state Constitution, that licensure is unnecessary for hairbraiders.

Customers—not bureaucrats—should decide whether braiders are doing a good job. As everyone who has ever received an unfortunate hairstyle knows, licensing is no guarantee that you will like your hair. As one cosmetologist anonymously said, the only truly credible explanation for the continuing education requirements is the fact that it is a racket for the schools that offer the classes.

“From my viewpoint, all [requiring a landscape architecture license] would do is raise the cost to consumers of obtaining landscaping services. There’s really no upside to the consumer.”

-Dee Busch

Illinois does not need to police who braids hair or whether hair stylists take regular classes. Requirements should be limited to include only those necessary to ensure public safety. Customers should decide who is a talented, knowledgeable hair stylist.

Nail Technicians

Nail technicians are also subject to arbitrary and unconstitutional requirements. They must complete 350 hours of training, costing anywhere from \$2,000 to \$3,000, must pass a written examination and must complete 10 hours of continuing education every two years.¹⁰¹ The written examination is offered only in English or Spanish, which is particularly troublesome because nail care has historically been a vital occupation for immigrant women, especially those from Vietnam. Vietnamese speakers constitute 43 percent of nail technicians nationwide.¹⁰² Exam questions that cover basic knowledge about hygiene, vocabulary and nail care techniques are arguably related, in part, to health and safety. Someone who passes that test should be allowed to work as a nail technician. But the requirement of 350 hours of schooling and continuing education requirements seem to serve no purpose related to protecting the public. They only protect the nail schools' bank accounts.

Landscape Designers/Contractors

What if the government prohibited you from truthfully telling potential customers what you do for a living, even though your work is perfectly legal? If you could afford to pay a constitutional lawyer, you might bring a lawsuit on First Amendment grounds. However, if you were an ordinary entrepreneur who dreams of building a healthy business but cannot afford a legal battle, you would be in the same situation as many landscapers in Illinois.

In Illinois, no one may “represent himself to be a landscape architect or use the title ‘landscape architect,’ ‘registered landscape architect,’ or any other title which includes the words ‘landscape

architect,’” unless he or she has registered with the state under the Illinois Landscape Architecture Act of 1989 (the “Act”).¹⁰³

In order to register as a landscape architect, one must meet a number of requirements found in the statute and the regulations drawn up by the DPFR: an “approved professional degree in landscape architecture from an approved and accredited program,” “practical experience in landscape architectural work” and a passing score on the state’s written examination covering “technical and professional subjects” related to landscape architecture, among other requirements.¹⁰⁴

As a result, landscape professionals in Illinois who are not registered “landscape architects” are very careful not to call themselves landscape architects, as they could incur a fine of up to \$5,000 and other penalties.¹⁰⁵ As one landscape designer explained, “I do many of the same tasks that a landscape architect would do, but I am extremely careful about making sure that none of my professional materials use the word ‘architect.’”¹⁰⁶

Restrictions on what a businessperson can call herself, called “titling acts,” are not only unconstitutional censorship of truthful commercial speech,¹⁰⁷ but they have generated no positive evidence of consumer benefit by reducing confusion or fraud. Moreover, according to anecdotal data from landscape professionals and trade associations such as the Illinois Landscape Contractors’

Association and the Illinois Nurserymen's Association, as well as a systematic review of DFPR enforcement reports from the past three years, there has been no recorded enforcement of the Act in Illinois.¹⁰⁸ But enforcement is only half the story.

Titling acts chill truthful, constitutionally protected speech, and often they are used as stepping-stones toward more insidious legislation. Once people are used to a titling act, states often pass a law making it illegal to work in an occupation without receiving a license from the state. (These are called "practice acts" in contrast to "titling acts.") For example, interior design titling acts in a number of states have paved the way for tougher practice acts that prohibit anyone without a government-issued license from doing any sort of work that could be characterized as interior design.¹⁰⁹

Led by the landscape architecture trade association, called the Illinois Chapter of the American Society for Landscape Architecture (ASLA), there has been a concerted effort to pass a practice act that would cover "landscape architecture." If such a law were passed using the definition of landscape architecture in the Act, virtually every gardener, landscape designer, contractor and even an entry-level yard maintenance worker would be covered. The definition of "Landscape Architectural Practice" under the Act includes: "developing

design concepts; planning for the relationships of physical improvements and intended uses of the site; establishing form and aesthetic elements," among other tasks routinely performed by non-landscape architects.¹¹⁰

ASLA tries to justify a practice act by claiming it will provide "both the public and professionals protection from unqualified individuals providing landscape architecture services under a different title."¹¹¹ However, the current titling Act is supposed to provide this same benefit, and it is difficult to see what a practice act would add other than to dramatically increase demand for licensed landscape architects while driving up the cost of routine landscape work for consumers and businesses alike.

This is the point that Dee Busch, a landscape entrepreneur and co-owner of Greenlawn Landscaping in Chicago, raises when asked about the impact a practice act would have in Illinois.¹¹² After a first career as a graphic designer, Dee took a series of courses and obtained her voluntary certification in landscape design. She slowly began building her client base, and now her sole livelihood comes from her landscape design work. If a practice act were to go into effect, "we would be required to pay an outside source to sign off on our designs, and it would have an adverse impact on our ability to do business." Dee points out that, in addition to increasing expenses, having such a "professional" on a team does not always raise quality. "From my viewpoint, all [requiring a landscape architecture license] would do is raise the cost to consumers of obtaining landscaping services. Moreover, lots of landscape architects don't know the nuts and bolts of plant materials and how to design/build. There's really no upside to the consumer."

Illinois legislators should hold fast and reject any efforts by special interest landscape architecture groups to pass a landscape architecture practice act in Illinois. At stake are the ability of able, honest landscape professionals to truthfully advertise their services and the continued availability, at reasonable prices, of such services to consumers.



Successful and well-respected product engineer Burton Siegal has been cited by the Illinois Department of Financial and Professional Regulation for calling himself an engineer and calling his company Budd Engineering.

Engineers

The state of Illinois has a lot of nerve questioning Burton Siegal’s right to call himself an engineer. The University of Illinois’ College of Engineering gave him a degree, for one thing, and a Distinguished Alumnus Award, for another. For 55 years, he has designed products, including part of a camera that traveled to the moon, and his clients have acquired patents on 125 or more of his designs. He is a successful and well-respected product engineer. He has been hired again and again by corporations as large as IBM and Ford because he has great problem-solving skills and the creativity and mechanical ingenuity to design things that work.

Nonetheless, Siegal has been cited by the Illinois Department of Financial and Professional Regulations for calling himself an engineer and calling his company Budd Engineering. He faces \$5,000 fines on each count. The current version of the Professional Engineering Practice Act of 1989 says that someone who does not have a professional engineering license cannot use the term “engineer.”¹¹³ But the professional engineering license is not remotely related to the product design and cost-reduction consulting that Siegal does. Rather, it is required for work commonly referred to as “civil engineering.” According to the

statute, examples of the kinds of work that require a professional engineering license include designing a power plant or a sewer system.¹¹⁴

Engineers like Siegal, who work for manufacturers, are not required to have the license. Indeed, less than a third of people with engineering degrees get licenses as professional engineers.¹¹⁵ The examination required for a professional engineer’s license relates exclusively to the knowledge important to civil engineering. “That exam has as much relevance to what I do as the color of my eyes,” says Siegal. And it would be absurd to require Siegal to acquire four years of work experience under the supervision of a licensed professional engineer so he could get the license.

What changed? Well, the story is like the story of hair braiders or landscape architects. Just as the Cosmetology Association lobbied to add braiding

to the list of activities reserved for licensed cosmetologists, and ASLA has an agenda to stop unlicensed landscapers from working, the National Society of Professional Engineers and its state chapters are actively engaged in lobbying state legislatures and the DFPR to make sure they are the only ones who can use the term “engineer.” The general counsel for the National Society says, “If you hold yourself out as offering engineering services and you’re not a P.E., then you will run afoul of the law.”¹¹⁶ Siegal is offering engineering services and is doing so truthfully and legally. He should not be denied his First Amendment right to tell manufacturers truthfully what he does.

Entrepreneurs like Siegal are vital to Illinois. In fact, Illinois and the United States give tax incentives to customers who hire Budd Engineering for research and development because the firm is an important source of jobs for U.S. citizens. Siegal’s clients would hire him without the tax incentives, though, because they recognize he has the know-how and the talent to do the work better than anyone else. In a half-century as an engineer, Siegal was never sued by an unsatisfied client or anyone injured by any of the hundreds of products he has designed. “The first and only legal actions against me in 50 years claim I committed fraud by calling myself an engineer,” he said. “I am so sorry to hear that this can happen in America.”¹¹⁷

This system does not serve or protect the public. It serves and protects the existing moving companies.

The state of Illinois can make sure that engineers overseeing public projects and infrastructure know how to keep the public safe, but it should not defer to a self-interested trade association that wants to expand its monopoly to extend over software, electronic and automotive engineers. Manufacturers should have the freedom to decide who can engineer a solution to their problems, and people like Siegal should be able to state proudly that they are engineers without having to get the government’s permission.

Moving Companies

Josh Leith wanted to start his own moving business. He learned the ins and outs of the business the old-fashioned way, by working for an established company. As customers got to know him, they started to request him personally. He began to moonlight a bit, renting a truck and moving furniture for people he knew. In classic entrepreneurial fashion, he began to see that there was an opportunity for him to make it on his own, taking different kinds of jobs than those accepted by his employer. He has what it takes to make a moving company succeed: muscle and hustle.

Unfortunately, the Illinois Commerce Commission (the “ICC”) requires more than muscle and hustle for those who want to build a moving business. The application process belongs in Lewis Carroll’s Wonderland, where people can believe six impossible things before breakfast.

To move furniture or personal property from one house to another in Illinois, a new company must prove to the ICC that “a public need for the service exists; the applicant is fit, willing and able to provide the service in compliance with [the law and ICC rules]; and the public convenience and necessity requires” the ICC to grant permission.¹¹⁸ In other words, an aspiring mover has to prove, *before* he starts working with customers in Illinois to discover what they need and whether he can distinguish himself, that the public *needs* his new moving company. The applicant has to prove, *before* it can start building a business and making money, that he has the equipment and capital needed to serve the area in Illinois identified in his application. And, when all is said and done, the applicant has to pay \$1,350 to file the paperwork.

This law is gallingly anti-competitive. It runs directly contrary to the commonplace notion that competition is good for customers, and that entrepreneurs can prove themselves helpful to customers

over time by charging lower rates or offering better service. In fact, the ICC is explicitly charged with protecting existing moving companies from the threat of competition. When deciding whether to permit a new company to operate in Illinois, the law requires the ICC to consider the effect that the applicant would have on existing companies' services.¹¹⁹ Moreover, applicants have to publicize their applications, so that competitors can intervene in the process and convince the ICC's judge that they are already serving the needs of customers in the territory identified in the application.¹²⁰ Major moving companies regularly send an attorney to intervene in the application process.

In addition, the applicant has to present several witnesses who will testify under oath that they need the new company's services for specific moves.¹²¹ The ICC is not allowed to consider whether the witnesses simply prefer to hire the new company, but only whether they need to.¹²² It is hard to imagine how people could swear to such testimony without perjuring themselves, particularly when the applicant has not yet been allowed to prove its unique ability to meet their needs.

On top of this evidence that the new mover is "necessary," an applicant must prove that he is "fit" by attending a seminar; passing a test; submitting extensive financials; proving that he already has the money or equipment to run the business; writing safety, training and maintenance policies; buying insurance, and demonstrating an acceptable traffic safety record.

Leith, discouraged by the extensive paperwork and the high filing fees, decided not to start his own business. Many others operate unauthorized until or unless they are caught. One ICC judge commended an applicant in a hearing for actually going through the process as prescribed by the law. Almost all applicants, she said, apply for a license only after they have been cited for unauthorized moving by the ICC. If the licensing process were straightforward and accessible, more movers would register with the state, and consumers might be better protected by enforced safety standards and other reasonable requirements. The current system, however, discourages companies from operating above ground and, perversely, puts the public at risk.

This system does not serve or protect the public. It serves and protects the existing moving companies. Under the Illinois Constitution, the legislature cannot give special privileges, as it has done here. Illinois needs to overhaul this law.

Home-Based Day Cares

Saengjun Luse was a teacher in her native Thailand before coming to the United States. Once she arrived in Chicago and observed the demand for experienced child care providers in the Hyde Park neighborhood, she became affiliated with a network of daycare providers and sought to launch her own home-based day care to generate income for her family while her husband attended school full-time. However, her goal of having eight to 12 children in her care, with the help of a full-time assistant, has been more elusive than she imagined—not because there is insufficient demand for her services, but because the licensing process moves at a seemingly glacial speed and limits the horizons of ambitious, talented daycare providers like Luse.

The state licenses home-based daycare providers in cooperation with the Department of Children's and Family Services (DCFS). Not surprisingly, there are many requirements that the proprietor of a business falling under the state's definition of a "day care home"¹²³ must meet as part of the license application, including submitting fingerprints to the state police and agreeing to a criminal background check,¹²⁴ undergoing a physical exam and tuberculosis test¹²⁵ and completing a basic training course, as prescribed by the state, on the care of disabled children.¹²⁶

Luse was prepared to hurdle these daunting requirements to get her home-based daycare license and expand to serve more than three children in her program. However, she soon discovered that the process for obtaining an initial



Saengjun Luse's goal of having eight to 12 children in her care, with the help of a full-time assistant, has been more elusive than she imagined—not because there is insufficient demand for her services, but because the licensing process moves at a seemingly glacial speed and limits the horizons of ambitious, talented daycare providers like herself.

permit (a special category of license that is valid for the first six months of a home-based daycare's operations and can be "renewed" for a regular three-year license)¹²⁷ works much more slowly than it should, thus preventing new entrants from capitalizing on their launch momentum to expand to serve more children. Luse was told that the fire safety inspection must occur before the DCFS inspection, but that her permit could not be issued until the DCFS representative recommended her application for approval and such approval was affirmed by a DCFS supervisor.¹²⁸ Says Luse, "I was told it would be a minimum of six months from the time that the DCFS inspection occurred until the time that I could finally receive my permit. And I am still waiting for the fire safety inspection, which has to happen first. The delay is unworkable."¹²⁹

Ironically, the silver lining of the

state's home-based daycare regulatory regime for many daycare providers is that it does not involve the city. Although it seems clear that a home-based daycare business should be required to obtain at least a limited business license from the city of Chicago¹³⁰ there is no separate license category for day cares operated out of private homes and the city maintains that it does not require home-based day cares to obtain any sort of city license as long as the business acquires the appropriate state license. For home-based daycare entrepreneurs such as Janie Parker, not having to tangle with the city is one of the major reasons she has stuck with her arrangement despite evidence that expanding her business to a bigger daycare center would benefit many more at-risk children in her West Side neighborhood.

Non-home-based daycare centers, however, are regulated under the Chicago Municipal Code¹³¹ and are subject to a litany of requirements in addition to those at the state level. Examples include not being within "250 feet of the property line of any lot containing a motor vehicle repair shop requiring a Class III license under Chapter 4-288 of this Code,"¹³² requiring an observation room for potentially ill children,¹³³ and other requirements. States Parker about her dream of parlaying her daycare experience into a badly-needed boys and girls center

for latch-key middle school students: “Just thinking about the process of getting licensed by the city and the money that you have to spend, I couldn’t imagine getting everything together and dealing with the red tape of a child care center license from the city.”¹³⁴

Fees for Creating Business Organizations

One of the first legal steps an entrepreneur typically takes is the creation of a separate entity for the business, especially where complex contractual arrangements or vicarious liability for agents or employees make the so-called “limited liability” shield for business owners attractive. Generally, the two most popular forms of business organizations among for-profit start-ups are the S-Corporation and the LLC because of their advantageous tax treatment. Nonetheless, the restrictions that accompany an S-Corporation should give any forward-looking entrepreneur pause, and many attorneys routinely counsel clients to choose the LLC unless there are extenuating circumstances. But, in Illinois, another factor comes into play for the cash-strapped entrepreneur: There is a substantial difference in the up-front and periodic fees for forming and maintaining an S-Corporation versus an LLC. The cost of creating a LLC is \$500 as compared to \$150 for a corporation¹³⁵ and the annual report filing fees are \$250 and \$75, respectively.¹³⁶ It is not surprising that many entrepreneurs opt for the S-Corporation to save valuable resources upfront.

Pursuant to the Internal Revenue Code, a business can elect S-Corporation status only under specific circumstances. Two requirements are particularly important: first, each shareholder must be a person (other than an estate, certain trusts, or certain tax-exempt organizations) rather than an entity; and, second, the corporation may have only “one class of stock,” meaning that each share of stock of the corporation must have identical rights (although it is permissible to have one class of common stock and to issue some shareholders shares with voting rights and others shares without voting rights).¹³⁷

In practice, the prohibition against having shareholders in an S-Corporation that are entities operates to exclude more sophisticated investors, who generally make investments through limited liability

pass-through entities, such as a limited partnership or an LLC. This structure characterizes almost all venture capital firms and private equity funds and implies that an entrepreneur who chooses to organize her business as an S-Corporation may find that her sources of capital are substantially limited.

Equally significant is the requirement that the S-Corporation have only one class of stock. This restriction limits the flexibility of the enterprise to bring in new owners on terms that can achieve the various parties’ objectives. It prevents creative structuring among owners that is available to LLCs, because “one class of stock” means that an owner must have the same income rights, loss rights, cash flow rights and liquidation rights as every other owner. Thus, choosing an LLC gives entrepreneurs the additional flexibility to structure their ownership incentives in a customized manner.

The choice-of-entity decision of an entrepreneur is too important to be influenced by unjustified differences in filing costs. Illinois is already an outlier among states. In fact, the difference between the filing fees for an Illinois LLC versus a corporation is \$325, greater than any other state in the union. In most states the difference in filing fees is negligible or nonexistent. It’s time for the Illinois state legislature to bring us in line with the rest of the country. If not, entrepreneurs seeking to minimize the fees paid to the state will be tempted to form the wrong entity and our local economy will suffer the future consequences.

Conclusion

In troubled economic times, the jobs entrepreneurs create for themselves and others are absolutely essential. Yet, Chicago and Illinois continually put up senseless roadblocks for people who are trying to start businesses. Chicago must eliminate pointless regulatory requirements, reduce fees and streamline bureaucratic operations. The city council must scrub the Municipal Code and remove all business regulations that are not necessary to protect the public. The rules need to be fair and equal for all Chicagoans in every neighborhood, and an entrepreneur's alderman should never be allowed arbitrary power over the entrepreneur's fate. The state of Illinois also needs to reform its system of regulating "professions." Competitors should never have influence over who is licensed to work. And, fundamentally, no one's professional calling should be constrained by laws that have nothing to do with public safety.

We recommend the following reforms to free entrepreneurs to take risks and make Chicago work:

- Review every fee and paperwork requirement in the Municipal Code to reduce the burden on entrepreneurs to the amount that is absolutely necessary to protect public safety.
- Remove aldermanic discretion from the license- and permit-application processes, so that favoritism and corruption cannot squeeze out promising entrepreneurs.
- Rewrite the laws on home-based businesses, so that Chicago allows all industrious people to work from home as long as they are doing no harm to their neighbors.
- Streamline requirements for food businesses and reduce fees. Permit food preparation in home kitchens as long as they pass a reasonable and objective inspection.
- Throw out the incomprehensible prohibitions on peddling in certain districts.
- Allow people to sell art and flowers and fruits freely. Permit traditional eloteros and other vendors to prepare food on the street.
- Reform the definition of "children's activity facilities," so neighborhood-friendly businesses are encouraged to offer programming for children alongside adults without being ensnared in a new set of unnecessary regulatory requirements.
- Do away with the license for retail computing centers altogether. Welcome entrepreneurs who encourage computer literacy and bridge the digital divide. Let them charge their customers in the way that makes sense for their businesses.
- Remove restrictions on parking for tradespeople who drive ordinary-sized vehicles and need to park near customers and near home.
- Defer regulation of bicycle rickshaws until the new industry has had time to mature, and then implement only those regulations that are absolutely necessary for public safety.



Interestingly, one provision in the occupational licensing section of the Chicago Municipal Code anticipates the perpetual need to revisit licensing regulations, and empowers “the commissioner of the department of business affairs and consumer protection to convene a license review advisory group for the purpose of recommending amendments to, repeal of, or adoption of new provisions relating to licensing of any business in the city. Such a group shall be comprised of representatives of city departments and agencies, and the chairman of the city council committee on license and consumer protection, and business constituencies that would be affected by the proposed change in law.”¹³⁸ We urge the commissioner to avail herself of this provision and gather together a group of lawmakers and advocates to hammer out meaningful improvements in the municipal regulatory framework for Chicago entrepreneurs.

We recommend the following reforms to Illinois law to open opportunities to talented people throughout the state without giving competitors a veto over new businesses:

- Eliminate all but health-and safety-specific education requirements for barbers, braiders and nail techs. Cancel continuing education requirements. Allow customers to decide who is qualified. Do not let a panel of insiders decide.
- Let people truthfully tell others what they do for a living. Reform all professional regulations that include a “titling act” like those covering landscape architects, interior designers and engineers. The General Assembly should not enact anti-competitive laws at the behest of industry lobbyists.
- Overhaul the law authorizing household goods movers within Illinois, so no more is required than registration and proof of insurance. Cut the competitors out of the process and repeal requirements that a company prove it is “necessary” before it can open.

- Streamline the process for obtaining a home-based daycare license: an inspection and approval process that takes over half a year for even the best-prepared applicant is unacceptable.
- Reduce the fees in Illinois for organizing a limited liability company to achieve parity with the fees for establishing a corporation. The disparity causes entrepreneurs to sacrifice the future flexibility of the LLC and the state has no cost-based justification for the higher fees.

Chicago is the city of Broad Shoulders. People here are willing to work hard. They have big dreams. The city and state should never bully the dreamers into submission. Especially now, Chicago must free entrepreneurs to start businesses quickly and smoothly, to turn their imaginations and their dreams into wealth. Every entrepreneur, from every neighborhood, should say proudly that Chicago is my kind of town.

Endnotes

1. U.S. Department of Labor, Bureau of Labor Statistics, "Metropolitan Area Employment and Unemployment (Monthly) News Release, September 1, 2010 (available at <http://www.bls.gov/news.release/metro.htm>).
2. *Banghart v. Walsh*, 339 Ill. 132, 137-38 (1930).
3. Chicago Municipal Code 4-4-020, 4-5-010.
4. Chicago Municipal Code 4-165.
5. Chicago Municipal Code 13-32-30.
6. Authors' interview with Steve Soble, June 10, 2010
7. Chicago Municipal Code 13-20-550.
8. Chicago Municipal Code 17-12-0100 through 17-12-1100.
9. Chicago Municipal Code 13-20-500 through 13-20-750.
10. Chicago Municipal Code 10-24-010 through 10-24-060; 10-28-010 through 10-28-075.
11. Chicago Municipal Code 18-27-600.1 through 18-27-600.110.
12. Chicago Municipal Code 13-20-680.
13. Julie Jargon, "Slaw And Order: Hotdog Stand in Chicago Triggers Frank Debate," *The Wall Street Journal*, October 13, 2009, page A1.
14. *Ibid.*
15. Authors' telephone interview with Dennis J. Stanton, November 17, 2009.
16. http://www.cityofchicago.org/city/en/depts/bacp/supp_info/chicago_sign_permitamnestyprogram.html.
17. Chicago Municipal Code 10-28-010 through 10-28-799.
18. Henry B.R. Beale, "Home-Based Business and Government Regulation," p.1 (Feb. 2004).
19. Chicago Municipal Code 4-380-010(b).
20. Chicago Municipal Code 4-380-070(a).
21. Chicago Municipal Code 4-380-060(h).
22. Chicago Municipal Code 4-380-070(a).
23. Chicago Municipal Code 4-380-060(c).
24. Chicago Municipal Code 4-380-060.
25. Kathryn Born, "Are Apartment Galleries Illegal?," *Chicago Art News*, May 13, 2010, at <http://chicagoartmagazine.com/2010/05/all-apartment-galleries-are-illegal/>.
26. The Chicago home-based business license is not available to food-based businesses, including catering. See Chicago Municipal Code 4-380-070.
27. Chicago Municipal Code 4-8-010 et seq.
28. Chicago Municipal Code 7-38-001 et seq. (Food Establishments—Sanitary Operating Requirements), 7-40-005 et seq. (Food Establishments—Care of Foods), and 7-42-010 et seq. (Food Establishments—Inspections, Violations and Hearing Procedures).
29. 410 ILCS 650/2 et seq.
30. 77 Ill. Admin. Code Sections 750.5 (Food Service Sanitation Code) and 760.5 et seq. (Retail Food Sanitation Code).
31. The city has a shaky track record implementing licensing requirements in commercial kitchens available for rent. For months, representatives of the Department of Business Affairs and Consumer Protection told small businesses renting space in kitchens that they were not allowed to get food establishment licenses, because the city would not issue multiple licenses to prepare food at one address. Renters thought it must be sufficient for the kitchen itself to have a license. Then the Health Department raided a communal commercial kitchen, destroyed healthy organic food stored there and ticketed all the renters. <http://leisureblogs.chicagotribune.com/thestew/2010/02/health-department-destroys-thousands-of-dollars-of-local-fruit.html>. Now BACP does grant licenses to small businesses renting kitchen space by the hour, but it is still far from clear how the responsibility for keeping the shared kitchen up to code is allocated among the temporary and overlapping tenants of a communal commercial kitchen. BACP says it is in the process of developing yet more legislation to cover these circumstances.
32. Authors' interview with Katrina Markoff of Vosges on September 11, 2008.

33. Maher, Kris, "Pennsylvania Pie Fight: State Cracks Down on Baked Goods; Inspector Nabs Homemade Desserts At St. Cecilia Church's Lenten Fish Fry," *The Wall Street Journal*, April 10, 2009, at page A1.
34. Wendell Hutson, "Street vendors part of down-low economy," *Chicago Defender*, Oct. 8, 2008.
35. Chicago Municipal Code 4-244-030.
36. Chicago Municipal Code 4-5-010(66).
37. Chicago Municipal Code 4-244-140.
38. Authors' interview with Charles Ashton, June 2009.
39. Chicago Municipal Code 4-244-170 and 4-244-140.
40. Authors' interview with Charles Ashton, June 2009.
41. Deanna Isaacs, "Got a Permit for That?," *Chicago Reader* July 24, 2008.
42. *Weinberg v. City of Chicago*, 310 F.3d 1029 (7th Cir. 2002).
43. Corey Kilgannon and Michael Schmidt, "Vendors Who Alerted Police Called Heroes," *N.Y. Times*, May 2, 2010.
44. Chicago Municipal Code 7-38-08 through 7-38-125; *see also* Monica Eng, "Say yes to fresh fruit, no to ticketing vendors," *Chicago Tribune*, Aug. 21, 2008.
45. David Sterrett "It's no B.S., Hot Dog University: Vienna Beef teaches aspiring entrepreneurs the science of steaming a bun," *Crain's Chicago Business*, Feb. 22, 2010, at page 3.
46. Leonor Vivanco, "The other fast food: Legal or not, treats vendors peddle are hot (or cold) stuff," *Chicago Tribune*, Aug. 12, 2008.
47. Lisa Lenoir, "Chicago Street Vendors Push to Reform City Laws," *Chicago Tribune*, April 30, 2010, at <http://www.chicagotribune.com/news/local/chicago/ct-x-c-street-vendors-0430-20100430,0,5807308.story>; Phil Vettel, "Chicago's Food-Truck Ordinance Introduced," *Chicago Tribune*, July 29, 2010, at <http://leisureblogs.chicagotribune.com/thestew/2010/07/chicagos-foodtruck-ordinance-introduced-.html>.
48. Chicago Municipal Code 4-244-150.
49. Chicago Municipal Code 4-76-010, Adopted May 2010.
50. Chicago Municipal Code 4-156-290 through 4-156-520.
51. Chicago Municipal Code 4-156-311.
52. Chicago Municipal Code 4-156-305(c). Rodriguez would have qualified for an exception to the PPA code because of the small size of the establishment (occupancy fewer than 100 persons) but for the fact that it offers "music, dancing, or other amusement" and has an "admission fee, minimum purchase requirement, membership fee or other fee or charge [that is] imposed for the privilege of entering the premises."
53. Chicago Municipal Code 4-156-310.
54. Revised Chicago Municipal Code 17-3-0207.
55. Revised Chicago Municipal Code 4-76-010.
56. Revised Municipal Code 4-5-010.
57. Revised Chicago Municipal Code 4-76-040(a)(3).
58. According to Rule 39, Chicago City Council Rules of Order 2007-2011, Adopted May 23, 2007, "one-half (½) of the total number of members of each standing committee (excepting from such total the President Pro Tempore) shall constitute a quorum." The Committee currently has 14 members and thus lacked authority under its own rules to approve the CAF ordinance and refer it to the full city council.
59. Authors' notes from proceedings of the Committee on License and Consumer Protection, Thursday, May 6, 2010, Council Chamber, City Hall.
60. For a review of recent literature on the digital divide, *see, e.g.*, Janet Thompson Jackson, "Capitalizing on Digital Entrepreneurship for Low-Income Residents and Communities," 112 *W. Va. L. Rev.* 1, 187, 189-195 (2009).
61. Authors' telephone interview with David Lane, December 30, 2008.
62. Chicago Municipal Code 4-253-010.
63. Chicago Municipal Code 4-253-030.
64. *Id.*
65. Chicago Municipal Code 4-253-040(d). It is probable that these rules were created to save retail computer centers from the burdens of the PPA application process, and the city coun-

cil was trying to make sure that arcades would still be PPA's. Yet, the new requirements they created are hardly a favor for people trying to set up a business providing computer access to Chicagoans.

66. Chicago Municipal Code 4-253-040(e).

67. *Id.*

68. Chicago Municipal Code 4-253-040(b).

69. Chicago Municipal Code 4-253-050.

70. Chicago Municipal Code 9-64-170(a).

71. Chicago Municipal Code 4-216-010.

72. Chicago Municipal Code 9-100-020(b).

73. Chicago Municipal Code 9-64-170(d).

74. Authors' telephone interview with Tim Tindle in December 18, 2008.

75. Chicago Municipal Code 9-64-170(a).

76. Authors' telephone interview with Matt Tindle, August 5, 2008.

77. Authors' interview with Julia Samuels and Rob Tipton of Chicago Rickshaws LLC, October 28, 2009.

78. Pedicab Substitute Proposed Ordinance 4-248-120(b)(4).

79. Pedicab Substitute Proposed Ordinance 4-248-120(b)(5).

80. Pedicab Substitute Proposed Ordinance 4-248-050(b).

81. Public Pedicab Meeting, City Hall Room 300B, Tuesday, April 27, 2010.

82. Morris Kleiner, *Licensing Occupations: Ensuring quality or restricting competition*, at 1 (Kalamazoo, MI: Upjohn Institute, 2006).

83. Demonstrating this point, it is the law of Illinois that the Barber, Cosmetology, Esthetics, and Nail Technology Board, which advises the Department of Financial and Professional Regulation (DFPR) on all matters related to the practice of these trades, consist of six licensed cosmetologists (including at least two representing schools, two representing salons with multiple locations, and one who owns an independent salon), 2 licensed barbers, one licensed esthetician or esthetics teacher, one licensed nail techni-

cian or nail technology teacher, and one public member who holds no licenses issued by the DFPR. 225 ILCS 410/4-2.

84. 225 ILCS 410/2-1 to 2-2. Cain's Barber College on the South Side of Chicago publicizes on the Internet that its tuition is \$6,550, and fees and expenses are an additional \$900.

85. 225 ILCS 410/1-7.5.

86. *Citrano v. Dept. of Regis. & Educ. Of Ill.*, 414 N.E.2d 74 (App. Ct. Ill. 1st 1980).

87. Authors' phone interview with Oumou Wague, March 1, 2010.

88. Cosmetology is defined as including most of the hair treatment of barbering (plus braiding), as well as nail decoration or treatment, scalp massage, cosmetics application, applying false eyelashes and tweezing unwanted hair. 225 ILCS 410/3-1.

89. Authors' phone interview with Oumou Wague, March 1, 2010.

90. 225 ILCS 410/3-2(1). It is strikingly odd that barber licenses require the same number of hours of schooling for a subset of the skills of a cosmetologist. The inequity may descend from an era when beauticians required fewer skills than barbers because women did not get their hair cut.

91. Tasneem Paghdiwala, "The Politics of Braids," *Chicago Reader*, Sept. 1, 2006.

92. 225 ILCS 410/3-7.

93. 225 ILCS 410/4-23.

94. 68 Ill. Admin Code 1175.1200(c)(4).

95. *Banghart v. Walsh*, 339 Ill. 132, (Ill. 1930) (holding that prohibiting beauticians from cutting women's hair unless they went to barber school and apprenticed to a barber, where they would have to spend pointless hours learning to shave men and to trim beards, was an unconstitutional deprivation of liberty).

96. *Scully v. Hallihan*, 365 Ill. 185, 192 (Ill. 1936).

97. Karen Hawkins, "Hair-Braiding Bill Offers Regulatory Compromise," *The State Journal-Register*, May 2, 2010, at <http://www.sj-r.com/news/x1540367876/Hair-braiding-bill-offers-regulatory-compromise>. 98. 225 ILCS 410 et. seq, new.

99. 225 ILCS 410/3E-2 new, per HB 5783.
100. 225 ILCS 410/3E-5 new, per HB 5783.
101. 225 ILCS 410/3C-2; 225 ILCS 410/3C-8.
102. *Nails 2007-2008 The Big Book*, p. 34.
103. 225 ILCS 315/4.
104. 225 ILCS 315/11(a).
105. 225 ILCS 315/4.5
106. Authors' telephone interview with Annette Held on December 16, 2008.
107. *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993) ("a governmental body seeking to sustain a restriction on commercial speech must demonstrate that the harms it recites are real and that its restriction will in fact alleviate them to a material degree"); David Harrington and Jaret Treber, "Designed to Exclude: How Interior Design Insiders Use Government Power to Exclude Minorities & Burden Consumers," (Institute for Justice, February 2009), at 6 (demonstrating increased consumer costs in regulated states).
108. <http://www.idfpr.com/dpr/news/page2008.asp> and linked pages for access to disciplinary reports for the years 1999 to the present. The authors reviewed all disciplinary reports for 2006, 2007 and 2008, and found no citations for violations of the Act.
109. Harrington and Treber, *supra* note 90, at 3.
110. 225 ILCS 315/3(f).
111. "Landscape Architecture in Illinois: The Case for Licensure," White Paper of the Illinois Chapter of the American Society of Landscape Architects, p. 3.
112. Authors' telephone interview with Dee Busch on January 7, 2009.
113. 225 ILCS 325/4(o).
114. 225 ILCS 325/4(o).
115. Charles J. Murray, "Are You An Engineer If You Don't Pass the P.E.?" in *Design News*, Sept. 8, 2008.
116. *Id.*
117. Authors' telephone interview with Burton Siegal, February 27, 2009.
118. 625 ILCS 5/18c-4202(2).
119. 625 ILCS 5/18c-4204(b).
120. 625 ILCS 5/18c-2106(1), (2)(a)(i). Specifying the territory of Illinois that an applicant intends to serve is strategically fraught. The applicant has to show that the new service is needed in that area and has to show that it already has the finances, equipment and capability to serve that area. 92 Ill. Admin. Code 1457.80(a). Again, this is impractical (to say the least) when an entrepreneur has not yet been allowed to build up a customer base and bank account.
121. 625 ILCS 5/18c-4204(1)(a).
122. 625 ILCS 5/18c-4204(3)(a).
123. Any family home that "receives more than three and less than 12 children for less than 24 hours a day" is considered a "day care home" by the state of Illinois. 225 ILCS 10/1.8.
124. 225 ILCS 10/4.1.
125. Illinois Administrative Code Part 406.24(h)(1).
126. 225 ILCS 10/4.5.
127. 225 ILCS 10/5(d) and (e).
128. Illinois Administrative Code Part 406.4(c).
129. Authors' interview with Saengjun Luse, October 16, 2009.
130. Chicago Municipal Code 4-4-020. 131. Chicago Municipal Code 4-72.
132. Chicago Municipal Code 4-72-065(a).
133. Chicago Municipal Code 4-72-120.
134. Authors' interview with Janie Parker, October 20, 2009.
135. See 805 ILCS 180/50-10(b)(1) and 805 ILCS 5/15.10(a), respectively.
136. See 805 ILCS 180/50-10(b)(11) and 805 ILCS 5/15.10(o), respectively.
137. See Section 1361(b)(1)(a) through (d) of the Internal Revenue Code of 1986, as amended (hereinafter, the "Code").
138. Chicago Municipal Code 4-4-023.

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Elizabeth Milnikel is the Director of the Institute for Justice Clinic on Entrepreneurship at the University of Chicago Law School. Under Beth's guidance, Chicago law students take their first steps into the practice of law by providing legal advice to lower income entrepreneurs. Beth and her students have helped the owner of a local shoe store re-negotiate her lease, advised an experienced moving man on the convoluted process required to start his own authorized moving company, drafted agreements to protect the characters created by a toy company and helped countless other entrepreneurs achieve their dreams of self-sufficiency. Beth also teaches a seminar on entrepreneurship at the University of Chicago Law School, to introduce law students to the vital role played by entrepreneurs and the legal obstacles they must overcome. Under her leadership, the Clinic has extended its reach to many entrepreneurs and community leaders, so that many more people may learn why the law must be made a help, rather than a hindrance, for inner city entrepreneurs.

Beth came to the IJ Clinic from the law firm Sidley Austin Brown & Wood, where she practiced for several years with a specialty in intellectual property litigation. Prior to joining Sidley, she clerked for the Honorable Bruce M. Selya on the Court of Appeals for the First Circuit. Beth received her J.D. *magna cum laude* from the University of Michigan Law School in 1999. During her time at Michigan, she served as Managing Editor of the Michigan Law Review and interned in the General Counsel's office of the Guggenheim Museum. As an undergraduate, Beth studied Comparative Literature at Yale University, graduating *magna cum laude* in 1996.



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Emily received her B.A. in Economics with Distinction from Yale College in 1997, where she served as Editor-in-Chief of the Yale Political Monthly (now the Yale Political Quarterly). After studying for one year in the Ph.D. program in Economics at the University of California at Berkeley, Emily attended Stanford Law School and was a founder of the Social Entrepreneurship Club. Following her graduation, Emily was awarded a Dorot Fellowship and lived in Jerusalem. Emily came to the IJ Clinic from Skadden, Arps, Slate, Meagher & Flom LLP in New York City and Chicago, where her practice focused on the federal income taxation of certain business entities, and is now a Research Associate at the Faculty of Law at the University of Toronto.





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