

AMENDING CHAPTER 35 "TOWING", CHAPTER 52 "OFFENSES AGAINST PUBLIC PEACE – SAFETY AND MORALS", AND CHAPTER 64 "SMOKING REGULATIONS" TO CONFORM TO NEW CANNABIS AND TOBACCO LAWS.

WHEREAS, the City of DeKalb (the "City") is a home rule municipality with the power and authority conferred upon it by the Illinois Constitution; and

WHEREAS, the Cannabis Regulation and Tax Act (the "Act") preempts the City's authority to prohibit the use and possession of cannabis in conflict with the Act; and

WHEREAS, the Illinois Drug Paraphernalia Act was recently amended to eliminate the possession of cannabis drug paraphernalia as a criminal misdemeanor; and

WHEREAS, State and Federal laws now prohibit the purchase of tobacco by persons who are under the age of 21; and

WHEREAS, the City's Code as amended prohibits the use and possession of cannabis and tobacco by persons who are under the age of 21, the use of cannabis by any person in any public place, and other cannabis-related regulations not in conflict with the Act; and

WHEREAS, the City's Corporate Authorities find that amending the City Code to regulate the use and possession of cannabis and tobacco as provided by this ordinance is in the public interest and promotes the public health, safety, and welfare; and

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

SECTION 1: The City's Corporate Authorities amend Chapters 35, 52, and 64 of the City Code as set forth in Exhibit A, attached hereto and incorporated herein by reference.

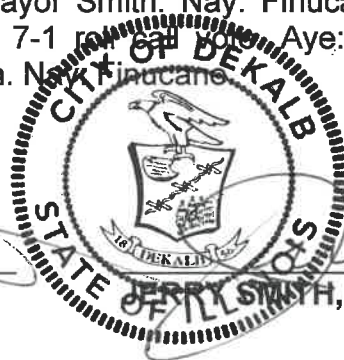
SECTION 2: All ordinances or portions thereof in conflict with this ordinance are repealed.

SECTION 3: Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and effect as if the invalid provision had not been a part of this Ordinance.

ADOPTED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a Regular meeting held on the 10th day of February 2020 and approved by the Mayor on the same day. Passed on First Reading on January 27, 2020 by a 7-1 roll call vote. Aye: Morris, Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: Finucane. Passed on Second Reading on February 10, 2020 by a 7-1 roll call vote. Aye: Morris, Smith, Perkins, McAdams, Verbic, Faivre, Mayor Smith. Nay: Finucane.

ATTEST:


RUTH A. SCOTT, Executive Assistant




JERRY SMITH, Mayor

EXHIBIT A

Chapter 35

TOWING

Current as of 12-31-14

Sections:

- 35.01 DEFINITIONS.**
- 35.02 COMPLIANCE WITH APPLICABLE LAWS.**
- 35.03 INTERFERENCE WITH LAWFUL TOWING ACTIVITIES.**
- 35.04 CITY OF DEKALB TOWING ROTATION.**
- 35.05 ORDERS FOR TOWING AND IMPOUNDING OF VEHICLES BY CITY.**
- 35.06 VEHICLE IMPOUNDMENT OR IMMOBILATION: MULTIPLE PARKING TICKETS.**
- 35.07 VEHICLE IMPOUNDMENT OR IMMOBILATION: TOW FOR SPECIFIED VIOLATIONS.**
- 35.08 ADDITIONAL BASIS FOR CITATION/TOWING: TEMPORARY PARKING RESTRICTIONS.**
- 35.09 UNLAWFUL PRACTICES - RELOCATOR.**
- 35.10 UNLAWFUL PRACTICE – PROPERTY OWNER.**
- 35.11 SECURITY REQUIREMENTS.**
- 35.12 PROPERTY OWNER’S RIGHT TO EMPLOY RELOCATION SERVICE TOW RISK SIGNS.**
- 35.13 CIVIL AND CRIMINAL LIABILITY.**
- 35.14 RELOCATION RATES.**
- 35.15 LICENSES.**
- 35.16 PENALTIES.**

35.01 DEFINITIONS.

For the purpose of this Chapter 35, the following words shall have the meanings hereinafter assigned to them.

"GoJak" means a combination jack/dolly which enables the lifting and moving of a locked, blocked or disabled vehicle into hook-up alignment with a tow truck or car carrier.

"Relocator" means any person, firm, corporation or entity engaged in the business of removing trespassing vehicles from private property to impound area by towing or other means.

"Impound Lot" means any real property owned by or in the lawful possession or control of the relocator for which will be properly used in accordance with the zoning laws of the City of DeKalb for the relocation to and storage of trespassing vehicles removed from private property.

"Police Chief" shall mean the Chief of Police of the City of DeKalb Police Department, or his authorized designee.

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"Property owner" means any person owning or in lawful control or possession of a property or his authorized agent.

"Tow Vehicle" means any truck permanently equipped with booms, towbars, winches, dollies or similar equipment maintained and designed for the recovery and transportation of vehicles, which adhere to the specifications for tow trucks enumerated in Illinois Revised Statutes, Chapter 95-1/2, Section 12-606.

35.02 COMPLIANCE WITH APPLICABLE LAWS.

It shall be unlawful to operate any Tow Vehicle in violation of any applicable law, rule or regulation, including but not limited to the Illinois Commercial Safety Towing Law, 625 ILCS 5/18d-101, etc. seq. The Commercial Safety Towing Law is hereby adopted by reference, as if set forth fully herein, and a violation thereof shall also be a violation of City ordinance, punishable by fine.

35.03 INTERFERENCE WITH LAWFUL TOWING ACTIVITIES.

It shall be unlawful to interfere with any towing company engaged in lawful towing activities, within the City of DeKalb, or to engage in disorderly conduct or other unlawful behavior in an attempt to prevent the towing of a vehicle that is eligible for towing.

It shall further be unlawful to improperly stop payment or attempt to reverse charges on any form of payment provided to a towing company which has lawfully towed a vehicle. A violation of this Section 35.03 is punishable by a fine of not less than Two Hundred and Fifty Dollars (\$250), unless the violation is interfering with lawful towing activities initiated by the City of DeKalb (i.e. City ordered towing or towing from public property), in which case the minimum fine shall be Five Hundred Dollars (\$500).

35.04 CITY OF DEKALB TOW ROTATION.

a) Tow Rotation Authorized: Pursuant to the provisions of this Section 35.04, the Chief of Police is and shall be authorized to maintain a tow rotation list for towing services to be utilized by the Police Department and other City departments, when it is necessary to tow any vehicle within the City of DeKalb or within the jurisdictional area covered by the Police Department or any other City department.

b) Qualifications for Inclusion on Tow Rotation List: Any towing company which operates towing services within the City of DeKalb may submit an application for inclusion on the City of DeKalb Tow Rotation List on a form prescribed by the Chief of Police, for review and consideration by the Police Chief. Should the Police Chief deny an applicant for inclusion on the Tow Rotation, such applicant may submit the Police Chief's decision for review by the City Council, by requesting the same within thirty days of the issuance of the Police Chief's written notice of denial. Any such applicant shall be required to comply with the following requirements:

1. Insurance: All parties listed on the tow rotation shall be required to maintain the following insurance:

(a) Comprehensive Automobile Liability Insurance with minimum coverage limits of \$1,000,000 per occurrence, naming the City of DeKalb as additional primary insured.

(b) Comprehensive General Liability Insurance with minimum coverage limits of \$1,000,000 per occurrence, naming the City of DeKalb as additional primary insured.

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(c) Worker's Compensation and other statutorily required forms of insurance, with no less than minimum coverage limits as required by law.

(d) Premises liability or other acceptable form of insurance coverage to cover any vehicles, or the contents thereof, that are towed by the party in question for the period of time between when the tow vehicle takes custody until the vehicle is released to the owner or otherwise disposed of (i.e. while vehicle is being towed or stored), with minimum coverage limits of \$500,000 per occurrence, naming the City of DeKalb as additional primary insured.

(e) The coverages contemplated by sections (a), (b) and (d) may be obtained either through primary coverage, or through a combination of primary coverage and umbrella insurance policies, provided that the minimum coverage limits are satisfied.

(f) A certificate of insurance evidencing compliance with these requirements shall be provided to the City prior to the time at which the party is approved for the tow rotation list.

2. **Equipment:** Any applicant must provide a list of the equipment proposed to be utilized for services rendered to the City, including the make, model and year of chassis/truck, the towing capacity (in both weight capacity and type of vehicle which may be towed), a description of the type of tow vehicle (bumper lift, rollback, etc.), a description of the lighting and safety equipment utilized, a copy of the most recent safety-test passing result, and the location at which such vehicle is stored. Applicants must be able to tow a wide variety of vehicles to be considered for inclusion on the tow rotation list. Equipment must be modern, reliable, and equipped to safely handle towing services for the City.

3. **Secure Lot:** Any applicant must provide a description and picture of the location of their secure parking lot, to be used for short-term vehicle storage after a vehicle is towed. Such lot must be equipped with adequate security features (fences, cameras, and other similar equipment), and must be in a location within the City of DeKalb.

4. **Indoor Storage:** From time to time, the Police Department may request locked, indoor storage for towed vehicles. The applicant must provide a description and picture of the indoor storage area that it proposes to use, with capacity for at least 3 vehicles, in a location within the corporate limits of the City.

5. **Response Times:** Any applicant must certify that, based upon the location of their equipment as stored, the applicant will be able to respond to any location within the City of DeKalb within thirty (30) minutes of being dispatched.

6. **Communications Equipment:** Any applicant must provide a description of at least two methods of communication (e.g. 2-way radio and cellular telephone) that may be utilized for communicating between the towing company and its tow vehicles. Applicant must also provide at least one phone number which is monitored 24 hours per day, 365 days per year by a live person, dispatching tow vehicles for applicant.

7. **Compliance with Laws / Safe Operational Practices:** Any applicant shall certify that their vehicles shall be operated in compliance with all applicable laws, and in a safe and reasonable fashion designed to minimize the potential risk of harm to the public or to public or private property, by persons having adequate skill and training to operate the equipment provided. Any company selected for inclusion on the tow rotation list shall operate solely as an independent contractor, fully responsible for the safe operation of and liability for their tow vehicle and conduct. Applicants shall also be required to operate their companies in compliance with all applicable laws, including but not limited to laws prohibiting discrimination and the Illinois Drug Free Workplace Act. Applicants shall be required to complete a certification provided by the Chief of Police, certifying compliance with applicable regulations.

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8. Commercial Driver's Licenses: Applicants must certify that all of the persons who may respond to a City request for towing possess valid, current, Illinois commercial driver's licenses with all certifications required for operation of the tow vehicle utilized.

9. Experience: Applicants must demonstrate their years of experience towing or engaging in commercial vehicle towing, and must list any commendations or complaints/citations/moving or equipment violations received within the past five years.

10. Additional Qualifications: Applicants must also demonstrate compliance with any additional qualifications required by the Chief of Police.

11. Certification of Required Services: Applicants must certify that they shall be responsible for cleaning up fluids, broken glass or plastic, vehicle parts, or other debris or substances left on the roadway from a vehicle that they are requested to tow.

12. Registered Sex Offenders: Applicants must certify that they shall not permit registered sex offenders, as defined under Illinois law, to operate tow vehicles for any tow initiated through the City's tow rotation.

c) Dispatch of Tow Services: Any time that any City personnel require the assistance of a towing service, said personnel shall contact the City's emergency dispatch services. The City's emergency dispatch services shall maintain a current list of all approved towing services for the tow rotation, and shall contact the towing services in the order listed on the rotation (e.g. if towing services A, B and C are listed on the rotation, the first tow shall go to A, the second tow shall go to B, the third tow shall go to C, and the fourth tow shall go to A). In the event an approved towing service is not available or does not have adequate equipment for the nature of the vehicle to be towed, dispatch shall contact the next listed towing company on the tow rotation. The Police Department may elect to use an order other than the tow rotation list from time to time, based upon operational needs; inclusion on the tow rotation list is not a guarantee that a towing service shall be utilized in the order contemplated therein.

d) Update of Documentation: Companies listed on the tow rotation shall, on a schedule established by the Police Chief, provide updated documentation to demonstrate compliance with the qualifications contemplated by subsection (b) above (i.e. updated equipment lists, safety test results, insurance certificates, etc.).

e) Review of Tow Rotation: The Police Chief shall review the tow rotation on a periodic basis. The Police Chief may suspend or remove any company from the tow rotation in his sole and absolute discretion, based upon the performance of the company, compliance with the Qualifications contemplated in subsection (b) hereof, or other factors he deems appropriate. Any such removal may be appealed to the City Council by submitting a written request for the same within thirty (30) days of the issuance of the Police Chief's notice of suspension or removal. Inclusion on the tow rotation list is not a property right and there is no expectation of continuing service generated by inclusion on the list; the City reserves the right to suspend or remove a towing service from the tow rotation at any time, for any reason.

f) Fee for Towing Services: The Police Chief shall be authorized to review and approve a standard fee list for all towing services to be provided by any company listed on the City of DeKalb Tow Rotation; all companies listed shall adhere to the standard fee list. In addition, the Police Chief may update such list from time to time, and shall provide not less than thirty (30) days written notice to participants on the tow list of any such modification.

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g) Supplemental Tow Rotation Lists: The Police Chief may, in his discretion, establish separate tow rotation lists for tow companies that provide specialized services (e.g. the ability to tow heavy vehicles, rollback services, etc.).

h) Additional Terms for Tow Rotation Participants: Applying for inclusion on the City's tow rotation list constitutes acceptance of the following terms:

1. The tow company shall be responsible to the City for the payment of all City fines and charges collected on behalf of the City and shall be responsible to the City for any costs or expenses incurred, or fines and penalties lost, as a result of the improper release of a vehicle from impoundment.

2. The tow company shall keep a record of all charges associated with the towing of any vehicle ordered to be towed by the City, along with a written log of signatures for any vehicle reclaimed by the owner, and shall provide the City with access to said record upon request by the City.

3. The tow company acknowledges that, in the event the City advises the tow company that a vehicle was erroneously ordered to be towed, said vehicle shall be released immediately, without charge to the owner or the City.

4. Prior to the release of any vehicle, the tow company shall contact the City for confirmation of fines, penalties or fees due. The tow company shall be responsible for calculation of its own towing and storage fees, in accordance with the then-current schedule.

35.05 Orders for Towing and Impounding of Vehicles by City:

a) The provisions of this Section 35.05 shall authorize the towing and impounding of vehicles, within the City of DeKalb. This Section shall not impair the authority provided under any other applicable City Ordinance or Regulation, but rather shall be read to provide additional authority to authorized City employees, to have vehicles towed and impounded.

b) Towing and Impounding Authorized: City of DeKalb Police Officers, Code Enforcement Officers and their authorized designees shall be authorized to have a vehicle towed and impounded as authorized under any other applicable City Ordinance or Regulation, and also under the following conditions:

1. A vehicle is involved in a traffic stop or is otherwise stopped during or as a component of the investigation of a potential traffic or criminal violation, which investigation results in the arrest of the driver of the vehicle.

2. A vehicle is illegally parked upon or is illegally trespassing upon property owned by the City of DeKalb, other than a roadway or public right of way.

3. A vehicle is reasonably believed to have been the scene of a crime or is reasonably believed to have or contain evidence of a crime or other unlawful activity.

4. A vehicle is subject to being seized or towed under any applicable federal, state or local ordinance, statute, code or regulation, including but not limited to vehicles eligible for towing under:

65 ILCS 5/11-1302;
625 ILCS 5/11-208.7;
725 ILCS 150/1;
720 ILCS 5/36-1;

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625 ILCS 5/4-203.

5. A vehicle is subject to being towed and impounded based upon the accrual of a sufficient number of parking tickets, and issuance of appropriate notices, under applicable City Ordinance.

6. A vehicle is parked in a location that presents an immediate and unwarranted threat to public health, welfare or safety, including but not limited to:

(a) Vehicles parked in front of fire hydrants, fire doors, fire lanes, or other similar locations.

(b) Vehicles parked in a location so as to block ingress or egress from any City Fire Department, Police Department or Public Works Department building or parking lot.

(c) Vehicles parked in a location so as to block ingress or egress from any runway access drive or emergency access drive at DeKalb Taylor Municipal Airport.

(d) Vehicles parked in a location so as to block ingress or egress from any hospital, urgent care center or other emergency medical facility.

(e) Vehicles parked within a roadway (other than within a designated parking zone).

(f) Vehicles on or in dangerously close proximity to railroad tracks.

(g) Vehicles that are on or in close proximity to a public right of way, that have become immobilized due to mechanical difficulty, weather conditions, or for any other cause.

(h) Vehicles in such other location that is determined, by the City agent or employee ordering the towing, to be unsafe or unlawful, in their absolute and sole discretion.

7. A vehicle is illegally parked on private property for which the City has a valid traffic enforcement agreement that permits towing without property owner notification or consent, or is illegally parked on private property and the property owner consents to the tow.

c) Towing Not Required: In the event that a vehicle is eligible to be towed under 35.05 1., above, and the City officer or agent involved determines that the vehicle does not require towing (e.g. a vehicle involved in a traffic stop resulting in the driver being arrested, where the vehicle is either lawfully parked or capable of being lawfully driven by another, properly licensed occupant in the vehicle), the City officer or agent may elect to not have the vehicle towed or impounded, or may elect to have the vehicle towed and impounded, in his or her absolute and sole discretion.

d) Warrant or Other Authority: In the event a City of DeKalb Police Officer believes that a vehicle contains evidence of a crime or other unlawful activity but the officer lacks legal authority to seize the vehicle and have it towed, the Officer shall be authorized to promptly seek and secure a search warrant or other similar authority to authorize the seizure, towing and/or search of the vehicle.

e) Towing and Impoundment: Any City agent or employee authorized to order the towing of a vehicle under this Section shall utilize the tow rotation procedures contemplated by this Chapter 35. Any vehicle towed or impounded under this Section shall be retained by the party towing the vehicle until: a) all outstanding fines, penalties, fees, interest, or other charges whatsoever have been paid to the City and the party towing the vehicle, in full; b) the vehicle is ordered to be released from impound by the City of DeKalb Administrative Hearing Officer; c) the vehicle is ordered to be released from impound by a Court having

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jurisdiction over the matter; or, d) the vehicle is ordered to be released from impound by the City Manager, Assistant City Manager, Police Chief, or their designee. Any time a vehicle is towed, the City may require that such vehicle be towed to the City of DeKalb Police Station, City Impound lot, or another location within the corporate limits of the City. Any company towing a vehicle, where the tow is initiated by the City and/or where a vehicle is seized by the City, shall comply with the City's requirements and shall deposit the vehicle where instructed, at no additional charge. The owner of the vehicle shall still remain liable for any costs incurred in towing. Companies on the Tow Rotation shall comply with the Immediate Release and 24 hour release provisions applicable to Commercial Relocators under City Code Section 35.09(m) (or any successor or similar provision). The Chief of Police shall be authorized to set storage fees for any vehicle retained at the City impound lot, provided that such fees shall only be assessed after a vehicle is available for pickup by the owner of said vehicle (i.e. no longer needed for evidentiary purposes). The owner of said vehicle shall be responsible for payment of all towing and storage charges prior to release of the vehicle. In the event that the City no longer requires a vehicle at the impound lot, the Chief of Police may authorize removal of the vehicle from the City's impound lot and transferal to a towing company's storage lot.

f) Towing Policy: The Chief of Police is and shall be authorized to approve changes, amendments or modifications to the City's official Towing Policy from time to time, without requiring approval of the City Council or amendment of this Ordinance, and shall maintain a current copy of the Towing Policy at the Police Department office, for public inspection. Use of a "Denver Boot" or other vehicle immobilization device, and use of towing and impoundment of vehicles is and shall be authorized in accordance with the requirements of the then-current Towing Policy. The City presently maintains a system for Administrative adjudication of violations of traffic regulations regarding the stopping, standing or parking of vehicles, and pursuant to the City's authority, the City approves the Towing Policy's provisions on booting/immobilizing/towing/impounding of vehicles, and delegates to the Police Chief the authority to modify or amend that Towing Policy, including but not limited to the number of citations required to trigger booting/immobilization/towing/impound of vehicles.

g) Presumption of Ownership: In the case of any parking citation or handicapped parking violation issued by or on behalf of the City, regardless of whether such citation is issued in the form of a mail-in citation, or whether such citation is prosecuted through the City's Administrative Hearings or through the Circuit Court, the provisions of this subsection (g) shall apply. As the City's parking citations are civil in nature, the City exercises its home rule authority to determine the liability of owners for the parking of vehicles registered in their name, within the Corporate Limits of the City of DeKalb.

1. Citation issued to occupied vehicle: In the case of any citation issued to a vehicle which is occupied or claimed by a driver at the time of issuance of the citation, the citation shall be issued and prosecuted in the name of the driver or person claiming responsibility.

2. Citation issued to unoccupied vehicle: In the case of any citation issued to a vehicle which is unoccupied and unclaimed by a driver at the time of issuance, the citation shall be issued to the registered owner of the vehicle.

(a) In all such cases, there shall be a rebuttable presumption that the registered owner of the vehicle is the party responsible and liable for the vehicle's parking, violation of City or State code or ordinance, and resulting fines, penalties and other liabilities.

(b) For any parking citation issued to the owner of an unoccupied vehicle, the City may accept payment for such citation from any party or person.

(c) For any parking citation issued to an unoccupied vehicle, the only party that shall be authorized or entitled to contest the parking citation and/or to request an Administrative Hearing on such

citation is the registered owner to whom such vehicle is registered.

i. In the event that the registered owner contests such a citation on the basis that a driver or person other than the registered owner was operating the vehicle and/or parked the vehicle unlawfully, the registered owner shall nonetheless be liable for the parking, violation of City or State code or ordinance, and resulting fines, penalties and other liabilities unless:

(A) The registered owner produces a police report and other documentation acceptable to the party reviewing the citation, demonstrating that at the time the citation was issued, the vehicle had been reported stolen; or,

(B) The registered owner produces documentary or testimonial evidence demonstrating that at the time the citation was issued, an individual, discrete, expressly named person identified by the registered owner had actual custody of the vehicle and had personally parked the vehicle and incurred the parking citation.

ii. It shall not be a defense to a citation issued to the registered owner of an unoccupied vehicle that such vehicle was leased, rented, loaned or otherwise utilized by a third party, in the absence of proof that the vehicle was under such person's actual direct operation at the time that the citation was issued, as required under subsection (g)(2)(c)(i)(B), above.

35.06 VEHICLE IMPOUNDMENT OR IMMOBILATION: MULTIPLE PARKING TICKETS:

a) Authorization to Impound, Immobilize or Tow Motor Vehicle. Any motor vehicle, the registered owner of which has been determined to be liable for ten (10) or more vehicular standing or parking regulation violations, for which the fines, penalties and costs assessed remain unpaid, may be immobilized or towed and impounded if:

1. The Ordinance Enforcement Administrator has determined that a person is liable for ten (10) or more violations, for which the fines, penalties and costs remain unpaid.

2. The person determined to be liable for ten (10) or more violations is the registered owner of a motor vehicle located within the City's geographical boundaries.

3. A Seizure Notice has been sent, via first class mail, to the registered owner of the motor vehicle located within the geographic boundaries of the City at the address registered with the Secretary of State, which contains, but shall not be limited to the following:

(a) That a final determination has been made on ten (10) or more violations, for which the fines, penalties and costs remain unpaid;

(b) A listing of the violations for which the person has been determined to be liable, which shall include for each violation:

- i. the ticket number;
- ii. date of issuance of the ticket; and
- iii. total amount of fines, penalties and costs assessed;

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(c) That the motor vehicle owned by the person and located within the geographic boundaries of the City is subject to immobilization and/or towing and impoundment if the fines, penalties and costs are not paid within fifteen (15) days of the date of the Seizure Notice;

(d) Date of impending immobilization;

(e) Date of impending towing and impoundment; and

(f) That the registered owner may contest the validity of the Seizure Notice by filing a written request for a hearing with the Ordinance Enforcement Administrator, or his/her designee, within fifteen (15) days of the date of the Seizure Notice and submitting such evidence which would conclusively disprove liability, such as, but not limited to, the following:

i. That the registered owner was not the driver, owner or lessee of the vehicle, or otherwise responsible for the vehicle on the date or dates the notices of violation were issued; or

ii. That the fines, penalties and costs for the violations cited in the notice have been paid in full; or

iii. That the registered owner has not accumulated ten (10) or more violations which are unpaid or not adjudicated.

4. The registered owner to whom a Seizure Notice has been sent has failed to make payment of the fines, penalties and costs as specified in the Seizure Notice and has failed to request a hearing to contest the validity of the Seizure Notice.

b) Request for Hearing in Cases of Immobilization, Impoundment and Towing of Motor Vehicle. Upon the receipt of a request for hearing to contest the validity of immobilization or towing and impoundment, the Ordinance Enforcement Administrator, or his/her designee, shall schedule an administrative hearing to contest the validity of the immobilization or towing and impoundment on the next scheduled hearing date, but in no case, shall the hearing be scheduled later than thirty (30) days after the request for hearing is filed. Notice of the hearing date shall be served upon the registered owner by first class mail, postage prepaid, to the address set forth on the request for hearing. Service of the notice of hearing shall be complete on the date it is placed in the United States mail.

c) Notice Affixed to Vehicle in Cases of Immobilization. Upon immobilization of an eligible vehicle, a notice shall be affixed to the vehicle in a conspicuous place. Such notice shall warn that the vehicle is immobilized and that any attempt to move the vehicle may result in damage. The notice shall also state that the unauthorized removal of or damage to the immobilizing restraint is a violation of Sections 16-1 and 21-1 of the Illinois Criminal Code. The notice shall also provide the following information, specifying that a release of the immobilizing restraint may be had by:

1. Paying all the fines, penalties and costs, if any, due on the outstanding violations for which notice has been sent prior to the date of immobilization; or

2. Submitting a written request for hearing, as set forth in Sections a) and b) above, on all outstanding violations for which notice has been sent prior to the date of the immobilization and making a deposit with the City in the amount of Fifty Per Cent (50%) of the total fines, penalties and costs, if any, for these outstanding violations, or \$500.00, whichever is less.

d) Towing of Immobilized Vehicle. Except where the vehicle is otherwise subject to towing, if the

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immobilization restraint has not been released as hereinabove provided, within seventy-two (72) hours of its placement, the vehicle may be towed and impounded.

e) **Post-Impoundment Notice.** Within ten (10) days after a vehicle has been impounded, notice of impoundment shall be sent by certified mail, return receipt requested, to the registered owner of the vehicle, at the last address reflected in the records of the Secretary of State. The notice shall state that the owner has the right to a post-immobilization and post-towing hearing as provided in Section 35.06 f) and that if the vehicle is not claimed within thirty (30) days from the date of the notice, the vehicle may be sold or otherwise disposed of in accordance with the Illinois Vehicle Code.

f) **Hearing in Cases of Vehicle Impoundment.** The owner of an impounded vehicle shall have the right to a hearing to determine whether the immobilization or any subsequent towing and impoundment were erroneous or whether the vehicle was properly included on an immobilization list, if the owner files a written demand for a hearing with the Ordinance Enforcement Administrator or his/her designee within fourteen (14) days after issuance of the notice specified in 35.06 e), or within fourteen (14) days of immobilization, whichever is later. A hearing shall be conducted on any business day within forty-eight (48) hours of receipt of a written demand for hearing, unless otherwise mutually agreed by the parties. Failure to request or attend a scheduled hearing shall be deemed a waiver of the right to a hearing. In the event of such failure, any amount deposited pursuant to this Section 35.06 shall be forfeited to the City, and shall not apply towards accrued fines or penalties. A hearing provided by this Section shall not determine the validity of or otherwise adjudicate any citation or notice of violation issued relative to the immobilized vehicle or the violator, but shall only relate to whether the vehicle was properly immobilized or towed, by determining whether the owner previously submitted evidence required by this Section 35.06.

g) **Fines and Fees for Immobilization and Impoundment.** The fine for immobilization of a vehicle shall be One Hundred Fifty Dollars (\$150.00) and the fine for impoundment and towing shall be an additional Two Hundred Dollars (\$200.00). The owner of the vehicle shall also be charged reasonable storage and towing costs, provided that no costs shall be assessed for any immobilization or tow which has been determined to be erroneous. All fines, penalties and costs must be paid in full before the vehicle will be released to the owner.

h) For vehicles with fewer than ten parking tickets, the Chief of Police may create a policy allowing for their towing or immobilization, consistent with any applicable state law, provided that there exists a hearing process similar to the one contemplated in this Section 35.06 for the purpose of permitting a person whose car has been immobilized or towed to have the opportunity to contest the validity or appropriateness of the immobilization, towing or impoundment.

35.07 VEHICLE IMPOUNDMENT OR IMMOBILIZATION: TOW FOR SPECIFIED VIOLATIONS:

a) **Tow for Specified Violations.** Pursuant to the City's Home Rule Authority and in addition to the foregoing authority, the City may order the towing of any vehicle where a police officer has probable cause to believe that a vehicle has allegedly been involved in or been present for any offense enumerated in the then-current version of 625 ILCS 5/11-208.7 (or any successor statute). At the time of approval of this Ordinance, the list of eligible offenses includes: (2014-40)

1. Operation or use of a motor vehicle in the commission of, or the attempt to commit, an offense for which a motor vehicle may be seized and forfeited pursuant to 720 ILCS 36-1;

2. Driving under the influence of alcohol, another drug or drugs, an intoxicating compound or compounds, or any combination thereof, in violation of 625 ILCS 5/11-501;

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3. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Cannabis Control Act or Cannabis Regulation and Tax Act;

4. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of the Illinois Controlled Substances Act;

5. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Section 24-1 (Unlawful Use of Weapons), 24-1.5 (Reckless Discharge of a Firearm), or 24-3.1 (Unlawful Possession of Firearms/Ammunition) of the Criminal Code of 1961;

6. Driving while a driver's license, permit or privilege is suspended or revoked pursuant to 625 ILCS 5/6-303 (unless suspended for an unpaid parking or moving violation or failure to emissions test);

7. Operation or use of a motor vehicle while soliciting, possessing, or attempting to solicit or possess cannabis or a controlled substance in violation of ~~as defined by~~ the Cannabis Control Act, Cannabis Regulation and Tax Act, or the Illinois Controlled Substances Act;

8. Operation or use of a motor vehicle with an expired driver's license, in violation of 625 ILCS 5/6-101, provided that said license is one year or more past expiration;

9. Operation or use of a motor vehicle without ever having been issued a driver's license or permit, in violation of 625 ILCS 5/6-101, or operating a motor vehicle without ever having been issued a driver's license or permit due to a person's age;

10. Operation or use of a motor vehicle by a person against whom a warrant has been issued by a circuit clerk in Illinois for failing to answer charges that the driver violated 625 ILCS 5/6-101 (license or permit), 5/6-303 (driving while license suspended or revoked) or 5/11-501 (driving under the influence);

11. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, an offense in violation of Article 16 or 16A of the Illinois Criminal Code of 1961; or,

12. Operation or use of a motor vehicle in the commission of, or in the attempt to commit, any other misdemeanor or felony offense in violation of the Illinois Criminal Code of 1961.

b) Procedures for Impoundment: (13-06)

1. Notice at time of Impoundment: When an officer has cause to believe that a vehicle is subject to impoundment under this Section 35.07, the officer shall utilize the process for dispatching a tow vehicle under the City's tow rotation list, as provided in this Chapter 35. At such time, the officer shall notify or make a reasonable attempt to notify the owner, lessee or person identifying himself or herself as the owner or lessee, or any person found to be in control of the vehicle at the time of the alleged offense, of the fact of the seizure, and of the vehicle owner's or lessee's right to an administrative hearing as provided below. The officer shall also notify the person in control that the vehicle shall remain impounded pending completion of an administrative hearing, unless the owner or lessee of the vehicle or a lienholder posts with the City a bond of \$500.00, and pays for all towing and storage charges.

2. Written Notice: After impounding a vehicle under this Section 35.07, the City shall issue a written notice to the owner, lessee and any lienholders of record by personal service or by first class mail to such parties at the address registered with the Illinois Secretary of State. Said notice shall be mailed to such parties within forty-five (45) days after the date of impound, and shall contain the date, time and location of an administrative hearing, which hearing shall be convened within ninety (90) days of the date of mailing the

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notice.

At the time of posting the above-required bond, the party posting the bond shall have the option of either proceeding with a hearing (and potentially being subject to the imposition of costs for such hearing, if the City prevails at such hearing), or of waiving the right to a hearing and avoiding the potential for such costs. The City shall provide a form for the party posting the bond to execute, to indicate accordingly. In the event that the party posting the bond waives hearing, the bond shall be forfeit to the City automatically, without hearing.

3. Administrative Hearing: An administrative hearing shall be conducted by a hearing officer qualified under 625 ILCS 5/11-208.7(g), and the decision of the hearing officer shall be subject to review under the Administrative Review Law. If the impoundment is upheld by the hearing officer, the administrative fee shall be due and payable (or if previously posted to secure the release of the vehicle, shall be forfeited). If the impoundment is overturned by the hearing officer, the administrative fee shall not be payable. The hearing officer shall issue a written decision at the conclusion of the administrative hearing. Any fine, penalty or administrative fee approved by the hearing officer which remains unpaid in whole or in part after the expiration of the deadline for seeking judicial review of the decision may be enforced in the same manner as a judgment entered in a court of competent jurisdiction. Said hearing shall not be subject to formal or technical rules of evidence, but shall be recorded and the hearing officer shall be empowered to administer oaths and to secure by subpoena both testimony of witnesses and production of books and papers. The burden of proof at such hearing shall be a preponderance of the evidence. If the City submits a signed complaint for a violation that renders a vehicle eligible for impoundment under this Section 35.07 or order for impoundment of a vehicle under this section, the City shall be deemed to have satisfied its prima facie case for impoundment, and said prima facie case may only be overcome by clear and convincing evidence.

c) Fee: Any vehicle towed under this Section 35.07 shall be subject to payment of all applicable towing charges, fees and fines otherwise imposed under applicable Illinois law or City Ordinance, and shall also be subject to the payment of an administrative fee of \$500.00. Upon payment of the administrative fee and all other applicable charges to the tow company in possession of a vehicle, the vehicle shall be released to the owner of record, lessee or a lienholder of record upon payment of all administrative fees and towing and storage fees. Said administrative fee shall be paid directly to the City, prior to the time at which the party responsible for said vehicle claims said vehicle from the towing company.

d) Unclaimed Vehicles: Any vehicle which is not retrieved, with full payment of fines, costs and the administrative fee, within 35 days after an administrative hearing officer issues a written decision shall be deemed abandoned (unless an action for administrative review has been filed in the Circuit Court). Said vehicles may then be disposed of pursuant to the provisions of the City's Towing Policy for abandoned motor vehicles.

e) The eligible offenses as enumerated above are herein defined by the City of DeKalb to be public nuisances, meriting immediate abatement. The City Council hereby finds such nuisances to require immediate abatement to protect the public health, safety and welfare. Accordingly, the City may tow any vehicle allegedly involved in or present for the commission of one of the enumerated offenses, as a form of nuisance abatement. Any vehicle so towed shall be impounded and shall be subject to the payment of an administrative fee as contemplated above. Any vehicle impounded pursuant to this Ordinance shall be considered a "properly impounded vehicle" pursuant to 625 ILCS 5/11-208.7. (2014-40)

f) Presumption of Consent: In any instance where the operator of a motor vehicle is not the owner of the motor vehicle, the owner of the motor vehicle shall be presumed to consent to the operator's use of the motor vehicle unless: a) the owner has previously reported the vehicle having been stolen or reports the vehicle stolen at the time of being notified of the vehicle having been impounded; or, b) the owner demonstrates, by a preponderance of the evidence that the vehicle was utilized without permission. Consent

may be inferred based upon permitted past use of a motor vehicle, granting access to a vehicle or keys to a vehicle, the relationship between the owner or operator, the purpose for which the vehicle was being operated, the presence of the owner in the vehicle at the time it was being operated, or other similar facts or circumstances giving rise to a reasonable inference of consent. (2014-40)

35.08 ADDITIONAL BASIS FOR CITATION/TOWING: TEMPORARY PARKING RESTRICTIONS.

The Chief of Police, Fire Chief, and their designees shall be authorized to impose temporary parking restrictions (limited hours, limited types of vehicles, etc.) or parking prohibitions (no parking permitted) within the City, under the provisions of this Section 35.08.

a) **Duration of Restrictions:** Said temporary restrictions may be imposed for a period of no more than sixty days at a time.

b) **Method of Posting / Notice:** No such temporary parking restrictions shall be enforced until at least 48 hours have passed since the posting of temporary signs in the affected area, indicating the applicable restrictions. Said temporary signs shall be enforceable for the time that they remain posted. In the event of an emergency that requires less notice, the temporary restrictions may be imposed and enforced upon the provision of personal notice to any vehicles parked in the area of the temporary signs at the time of their posting, and the temporary signs shall indicate the time at which the temporary restrictions shall take effect.

c) **Enforcement:** Once 48 hours have passed after the posting of temporary signs, the temporary parking restrictions may be enforced in the same fashion as any other City parking restriction, and shall have the effect of City Ordinance. Because such temporary restrictions are intended to be utilized in circumstances where the City determines that parking presents a public safety threat, any vehicle parked in violation of the temporary parking restrictions shall be subject to a minimum fine of \$100, and shall be subject to immediate towing.

d) **Removal or Tampering with Temporary Parking Restriction Signs:** It shall unlawful to move, remove, alter or tamper with any temporary parking restriction signs posted by the City. Any such violation shall be subject to a fine of not less than Five Hundred Dollars (\$500).

35.09 UNLAWFUL PRACTICES – RELOCATOR.

It shall be unlawful for any commercial vehicle relocater:

- a) To operate in the City of DeKalb without first obtaining a license therein.
- b) To remove any vehicle from private property if the relocater knows, or should know, that the vehicle is parked in a space in which it is authorized to park.
- c) To deny the owner or operator of any relocated vehicle the opportunity to inspect the interior and exterior of such vehicle prior to the payment of fees for the release of such vehicle.
- d) To operate on the streets contained within the city limits of DeKalb any vehicle used in connection with any vehicle relocation service unless:

1. There is painted or firmly affixed to such vehicle on both sides thereof in a color or colors vividly contrasting to the color of the vehicle the name, address and telephone number of the operator thereof. Said

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insignia to be painted or firmly affixed to such vehicles shall be easily legible.

2. There is carried in the power unit of such vehicle a certified copy of the currently effective City Relocator license. Copies may be photographed, photocopied or reproduced or printed by any other legible and durable process.

3. The tow vehicle is listed on the relocater's license application or as amended thereto and is properly equipped as specified in 35.09 1).

e) To remove any vehicle from private property without having first obtained the written authorization of the property owner or other person in lawful control or possession of the property, his authorized agent, or any authorized law enforcement officer. Such authorization may be on a contractual basis covering a period of time or limited to a specific removal.

f) To charge the private property owner, who requested that an unauthorized vehicle be removed from his property, with the costs of removing such vehicle contrary to any terms which may be a part of the contract between the property owner and the commercial relocater.

g) To remove a vehicle when the owner or operator of such vehicle is present or arrives at the vehicle location at any time prior to the completion of removal, is willing and able to remove the vehicle immediately and is willing and able to pay a fee of Seventy-Five Dollars (\$75.00).

For purposes of this Section, the relocater shall only be entitled to a fee of Seventy-Five Dollars (\$75.00) after the tow vehicle has made physical contact with the vehicle and before the tow vehicle has removed the vehicle to the public street. The relocater may not charge any other fee in addition to the Seventy-Five Dollar (\$75.00) fee unless and until such vehicle is removed by the relocater to a public street. Before a tow vehicle has made physical contact with the vehicle, the relocater shall not be entitled to any fee from the vehicle owner or operator. After the vehicle is removed to a public street, the relocater shall be entitled to the full normal relocation rate.

For purposes of this Section, the relocater shall not be required to accept personal checks, but shall keep sufficient United States currency to make change for denominations up to Twenty (\$20.00) Dollars. It is within the discretion of the relocater to wait for the owner or operator of a vehicle to present proper payment of relocation fees if the owner or operator does not have sufficient payment on his person.

h) To fail to notify the City of DeKalb Police Department within one hour of the removal of a trespassing vehicle except that for vehicle relocations occurring between 9:00 p.m. and 2:00 a.m. on Friday and Saturday, the relocater may notify the Police Department by 3:00 a.m. rather than the normal one hour notification time period. Notification shall include a complete description of the vehicle, registration numbers if possible, the location from which and to which the vehicle was removed, and the time of removal.

i) To impose any charge for service or storage in excess of the maximum rates as set forth herein.

j) To remove any vehicle located within the corporate limits of the City of DeKalb, otherwise in accordance with this Chapter, to a location outside the corporate limits of the City of DeKalb.

k) To fail to make a telephone number available to the City of DeKalb Police Department, at which the relocater or an employee of the relocater may be contacted at any time, during the hours in which the relocater is engaged in the relocation of vehicles, the storage of relocated vehicles or is advertised as engaged in the relocation of vehicles, for the purpose of effectuating the release of a towed vehicle; or to fail to include such telephone number in any advertisement of the relocater's services published or otherwise appearing on or

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after the effective date of this Chapter.

l) To fail to notify the City of any change of the location or locations of the impound lot owned or in the lawful possession or control of the relocater at which the relocater will relocate and store any and all trespassing vehicles which he has removed from private property; or to relocate a trespassing vehicle to any place or property other than the place or property listed on the relocater's license application or amendment thereto as being the properly zoned impound lot at which the relocater will relocate and store any and all trespassing vehicles which he has removed from private property; or to relocate a trespassing vehicle to any place where such vehicle will be in violation of any statute or ordinance or other regulation; or to relocate a trespassing vehicle to any public street or public parking facility.

m) To deny the immediate release of a relocated vehicle to its owner or operator when said owner or operator is demanding the release and has proper payment of all charges for such relocated vehicle. Immediate release under this Section shall mean within three (3) hours of the time demand is made, provided that a lesser period of time may reasonably be expected if the relocater is open for business and/or on the premises at the time the demand is made. Immediate release shall be required 24 hours a day, 365 days a year.

n) To remove any vehicle from private property unless clearly visible written notice is provided in the form of a posted tow risk sign in accordance with the provisions of this Chapter.

o) To fail to provide and maintain a current listing with the Community Development Department of the addresses of all properties on which it has a contract with the owner(s) of such properties to perform commercial relocation services or to notify the Community Development Department of the addresses of any properties added to or removed from such listing.

p) To fail to accept a credit card for the payment of fees and charges under this Chapter if, the relocater accepts credit cards for payment of other services and if the payment is made at the business office of the relocater. The relocater shall be under no obligation to accept credit cards for payment of services under subsection g) of this Section.

q) To deny the owner or operator of any relocated vehicle the immediate release, upon demand of such owner or operator, of any personal property within such vehicle prior to the payment of all fees and charges for such relocation unless otherwise directed by the Police Department. For purposes of this Section, "personal property" shall not include any vehicle part, equipment, or installed audio system.

35.10 UNLAWFUL PRACTICE - PROPERTY OWNER.

It shall be unlawful for any property owner or his agent to relocate or authorize the relocation of any vehicle if it is legally parked in a space in which it is authorized to park. Property Owners are authorized to use any reasonable means to restrict the usage of parking on their property, including but not limited to designating specific parking spots for specific units or tenants, use of parking passes or stickers, prohibiting the parking of unlicensed or inoperable vehicles, establishing protocols for revoking parking permits, or other reasonable measures.

35.11 SECURITY REQUIREMENTS.

Every commercial vehicle relocater shall file with the City upon license application or renewal documentation that the relocater has an effective Garage Keeper's Legal Liability insurance policy and shall file with the City and have in effect an indemnity bond or insurance policy or certificates of bonds or insurance in lieu thereof which shall indemnify or insure the relocater for its liability:

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- a) for injury to person, in an amount not less than \$1,000,000 per person/per occurrence; and,
- b) in case of damage to property other than a vehicle being removed, damage to vehicles being moved, or damage to vehicles relocated or stored by the relocater, in an amount not less than \$500,000 for any one occurrence.

Any such bond or policy shall be issued by a bonding or insurance firm qualified to do business as such in the State of Illinois. All certificates or indemnity bonds or insurance filed with the City must show the coverage effective continuously until canceled, and the City may require such evidence of continued validity annually or as it deems necessary.

35.12 PROPERTY OWNER'S RIGHT TO EMPLOY RELOCATION SERVICE TOW RISK SIGNS.

a) It shall be unlawful for an owner or other person in lawful possession or control of private property to remove or employ a commercial relocater to remove an unauthorized vehicle from such property unless clearly visible written notice is provided, in the form of a posted tow risk sign in accordance with the provisions of this Chapter.

b) A tow risk sign shall be lawful for purposes of permitting the commercial relocation of unauthorized vehicles provided that said sign meets the following requirements:

1. Is inspected and approved in writing by the Director of Community Development or his designee, prior to the commencement of relocation activity;

2. Is clearly visible at all times, free from interference from any natural or manmade objects and is clearly visible at night;

3. Includes a general statement indicating who is allowed to park in the area and a warning that unauthorized vehicles will be towed;

4. Is located in such area or areas as to reasonably insure visibility by vehicle operators;

5. All signs shall be erected and maintained in accordance with the approved locations designated in the site plan application as permitted by the Director of Community Development or his designee.

6. Is in compliance with the following specifications, provided that the Director of Community Development or his designee, may allow variances to these specifications as necessary or appropriate to further the intent of this Section 35.05;

(a) Approximately twenty-four (24) inches in height and thirty-six (36) inches in width;

(b) Securely affixed to an upright support or an exterior wall surface at the entrances to a parking area and any additional conspicuous locations deemed appropriate by the Community Development Director, or his designee;

(c) Installed so that the bottom of the sign is no lower than four (4) feet from the ground and no higher than eight (8) feet from the ground;

(d) Contains letters not less than three (3) inches in height for all warnings and parking

authorizations or prohibitions;

- (e) Provides vivid contrast of letters and sign background color;
- (f) Contains the name and 24-hour telephone number of the relocater;
- (g) Contains the maximum fee allowed to be charged for vehicle relocation and release.
- (h) Is located in conformance with the yard setback requirements and other applicable requirements of the property's specific zoning district.

c) Signs shall not be required to authorize or permit relocation of unauthorized vehicles parked on private property in the following instances:

1. Parking in fire lanes designated in Schedule 0, Chapter 51 of DeKalb Municipal Code.
2. Parking in approved handicap spaces;
3. Double-parking;
4. Parking in other unapproved areas such as yards;
5. Parking in private drives of property located in "SFR," Single Family Residential or "TFR," Two Family Residential zoning districts; and,
6. Parking so as to block entrance or exit drives of property in the City.

35.13 CIVIL AND CRIMINAL LIABILITY.

Nothing in this Chapter shall be construed to limit or alter the vehicle owner's or operator's civil or criminal liability for trespass.

35.14 RELOCATION RATES.

Effective with commercial relocation licenses issued effective on or after the effective date of this Ordinance:

- a) It shall be unlawful for a commercial vehicle relocater to impose a charge for the relocation or storage of a vehicle in excess of the maximum rate established by the Illinois Commerce Commission under 625 ILCS 5/18a-200(5) for relocater towing within Kane County or in excess of the storage fees permitted under ICC regulations for relocater towing within Kane County;
- b) It shall be unlawful for a commercial vehicle relocater to impose an additional charge for the immediate release of a vehicle between 7:00 a.m. and 9:00 p.m. on Mondays through Fridays and between 7:00 a.m. and 6:00 p.m. on Saturdays;
- c) It shall be unlawful for a commercial vehicle relocater to impose an additional charge in excess of Thirty Dollars (\$30.00) for the immediate release of a vehicle between 10:01 p.m. and 6:59 a.m. on Mondays through Fridays, Saturdays between 12:01 a.m. and 6:59 a.m. and after 6:00 p.m. on Sundays and on legal holidays recognized by the State of Illinois;

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d) It shall be unlawful for a commercial vehicle relocater to impose a charge for storage of a relocated vehicle in excess of the maximum rate established by the Illinois Commerce Commission under 625 ILCS 5/18a-200(5) for relocater towing within Kane County;

e) It shall be unlawful for a commercial vehicle Relocater to impose any fee or charge except as authorized in this Chapter 35. Fees and charges authorized in this Chapter 35 shall be periodically reviewed by the City Council.

f) It shall be unlawful for a commercial vehicle relocater to impose any fee or charge under this Chapter 35 unless the relocater gives a written receipt acknowledging and listing the payment of each fee or charge imposed by the relocater. The receipt shall also include the date and time of the vehicle's release, the location of the tow, reason for the tow, the name of the tow truck operator and the date and time of the tow. Such receipts shall also be given for all quick release tows.

g) It shall be unlawful for a commercial vehicle relocater to fail to notify the Police Department if any vehicle relocated under the provisions of this Chapter remains unclaimed seven (7) days after such vehicle was relocated.

h) It shall be unlawful for a commercial relocater to fail to disclose to a person inquiring about a vehicle the relocater has towed the amount of all fees and charges that may be assessed for such relocation, including information as to when the vehicle can be claimed to avoid additional charges under this Chapter.

i) Unauthorized vehicles removed and stored by a commercial vehicle relocater in compliance with this Chapter 35, shall be subject to a possessory lien for services pursuant to 770 ILCS 50/1 et seq. In no event shall such lien be greater than the rate or rates established in accordance with this Chapter 35. In no event shall such lien be increased or altered to reflect any charge for services or materials rendered in addition to those authorized by this Chapter. Every such lien, unless otherwise specifically accepted, shall be payable by the use of any major credit card, in addition to being payable in cash.

j) In the event that the Illinois Commerce Commission discontinues imposing towing fees for Kane County, the last-set fees shall be the maximum fee possible to impose under this Ordinance. In no event shall a towing company impose a fee in excess of the amount listed on the relocation notice sign posted at the premises from which a vehicle is removed.

35.15 LICENSES.

Relocator's license.

a) Each application for a license to operate as a commercial vehicle relocater shall be made in writing to the Chief of Police, shall be verified under oath; shall be in such form and contain such information as may be required by the Chief of Police, including but not limited to a listing of all vehicles which will be used in the relocation of trespassing vehicles and the addresses of any and all impound lots owned by or in the lawful possession or control of the relocater at which trespassing vehicles will be relocated or stored. Said application shall be accompanied by the required application fee and proof of security. In order to be eligible for a relocater's license, the relocater further must equip all tow vehicles with an apparatus designed to protect automobile bodies from damage, and with a set of dollies to transport front wheel drive vehicles and vehicles with locked wheels.

Such tow vehicles may be subject to inspection by the Chief of Police, or his designee, at the time of license application and renewal and as the Chief of Police deems it necessary. The Chief of Police may issue a relocater's license to any qualified applicant pursuant to an application filed, and to the inspection of tow

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vehicles, if it appears that the applicant is fit, willing and able to properly perform the service proposed and to conform to provisions of this Chapter 35. In the event that the Chief of Police refuses such a license, said refusal may be appealed to the City Manager, in writing, within ten business days of the date of the Chief of Police's decision, and the City Manager shall then hold an administrative hearing to consider denial of the license. Applicants shall also submit a completed copy of their most current Illinois Commerce Commission Relocator's License application or renewal, and a copy of their issued Illinois Commerce Commission Relocator's License.

- b) The required annual fee for a relocator's license shall be One Hundred Twenty-five Dollars (\$125.00).
- c) All relocator's licenses shall expire on April 30 of each year. The license fee for any relocator's license which is issued, shall be pro-rated by month and made to expire on the next April 30.
- d) A relocator may renew his license by submitting to the Chief of Police a written application for renewal, verified under oath, in such form and containing such information that may be required by the Chief of Police and accompanied by the required application fee and proof of security. The City may renew said license to any qualified applicant pursuant to an application for renewal filed, if it appears that the applicant is fit, willing and able properly to perform the service proposed and to conform to provisions of this Chapter. In the event that the Chief of Police refuses such a license, said refusal may be appealed to the City Manager, in writing, within ten business days of the date of the Chief of Police's decision, and the City Manager shall then hold an administrative hearing to consider denial of the license.
- e) If a licensed commercial vehicle relocator engages in more than one violation of this Ordinance within the term of any license, or for other good cause shown, the City Manager may, following an administrative hearing, suspend the license of a commercial vehicle relocator for thirty (30) days. If violations of the provisions of this Chapter thereafter continue, the City Manager may, following an administrative hearing, revoke the license of a commercial vehicle relocator for a period not to exceed one (1) year. The commercial vehicle relocator may apply for a new license pursuant to the procedures set forth in this section. The Chief of Police may temporarily suspend the license of a commercial vehicle relocator, without a hearing, for a period not to exceed ten days, in the event that he determines that such temporary suspension is required.
- f) Relocator companies shall not have any property rights or expectation of continuation of their licenses. The City reserves the right to revoke, suspend or terminate any relocator license issued hereunder at any time, with or without cause, through action of the City Council.

35.16 PENALTIES.

- a) Penalties. The penalty imposed under this Chapter shall not exceed One Thousand Dollars (\$1,000.00) for each violation. Each day during which the violation continues is a separate violation. The City Attorney shall bring such action in the name of the people of the City of DeKalb. Penalties recovered under the provisions of this Section shall be paid into the City treasury. By judgment, the City Manager shall have the authority to suspend or revoke the licenses of relocators who are found to have committed substantial or repeated violations of this Chapter.
- b) Restitution. The court may, at the sentence hearing, determine whether restitution is an appropriate sentence, in addition to any penalties which may be imposed under Subsection a) of this Section 35.16, on a defendant who is convicted of violating any provision of this Chapter 35. If the court determines that an order directing the defendant to make restitution is appropriate, the defendant may be sentenced to make restitution in the amount of all towing fees and costs paid to the defendant by the person whose motor vehicle was towed.

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If restitution is so ordered to be made hereunder, the court shall determine whether said restitution shall be paid in a single payment or in installments and shall fix a period of time in which payment of restitution shall be paid in full.

c) Nothing contained in this Section 35.16 shall preclude the right of any party to proceed in a civil action to recover for any damages incurred due to the violation of any provision of this Chapter 35 by the defendant.

d) If a vehicle owner or operator believes his/her vehicle was improperly towed under the provisions of this Chapter, he/she may file a report with the Police Department setting forth the basis for such belief. The Police Department shall forward the report to the City Attorney for review. If the City Attorney believes a violation of this Chapter occurred, he/she may contact the relocater to resolve the matter without filing a complaint. If the matter is not resolved in that manner, the City Attorney may elect to file a complaint against the relocater. Nothing in this Section shall prohibit the City Attorney from filing a complaint whether the relocater is contacted or not.

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Chapter 52, "Offenses Against Public Peace - Safety and Morals"

CHAPTER 52
OFFENSES AGAINST PUBLIC PEACE - SAFETY AND MORALS

Latest Revision: April 24, 2017 (Ordinance 2017-022)

Sections:

- 52.01 FIGHTING.**
- 52.02 DISORDERLY CONDUCT.**
- 52.03 ALCOHOL WITHOUT LIQUID (AWOL) MACHINES PROHIBITED.**
- 52.04 DELETED. (2016-16)**
- 52.05 DELETED. (2016-16)**
- 52.06 DISORDERLY HOUSE. (2012-089)**
- 52.07 SOUND APPARATUS. (2015-049)**
- 52.08 NOISE IN PUBLIC PLACES.**
- 52.09 DELETED. (2016-16)**
- 52.10 FIRE ARMS AND AIR GUNS. (2013-019)**
- 52.11 BURGLARS TOOLS.**
- 52.12 BOWS AND ARROWS, CROSSBOWS. (2012-089)**
- 52.15 INTERFERENCE WITH PUBLIC PROPERTY.**
- 52.16 DELETED. (2016-016)**
- 52.18 DELETED. (2016-016)**
- 52.20 DELETED. (2016-016)**
- 52.20-5 SYNTHETIC ALTERNATIVE DRUGS.**
- 52.21 DELETED. (2016-016)**
- 52.22 DELETED. (2016-016)**
- 52.23 DELETED. (2016-016)**
- 52.24 DELETED. (2016-016)**
- 52.25 DELETED. (2016-016)**
- 52.26 DELETED. (2016-016)**
- 52.28 DELETED. (2016-016)**
- 52.29 DELETED. (2016-016)**
- 52.31 DELETED. (2016-016)**
- 52.32 EMERGENCIES.**
- 52.33 BARBED WIRE FENCES.**
- 52.35 DELETED. (2016-016)**
- 52.36 DELETED. (2016-016)**
- 52.37 THEFT OF CITY PROPERTY.**
- 52.37-5 PROTECTION OF DEKALB PUBLIC LIBRARY MATERIALS.**
- 52.38 DELETED. (2016-016)**
- 52.39 CURFEW.**
- 52.40 ASSAULT.**
- 52.50 BATTERY.**

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- 52.60 CRIMINAL DAMAGE TO PROPERTY.** (2012-089)
- 52.70 CRIMINAL TRESPASS TO REAL PROPERTY.**
- 52.75 GRAFFITI DEFACEMENT.**
- 52.80 RETAIL THEFT.**
- 52.85 DEFACING PUBLIC PROPERTY.** (2015-050)
- 52.90 THEFT.** (2012-089)
- 52.91 FIREWORKS.**
- 52.130 PARENTAL RESPONSIBILITY.**
- 52.200 ADULT USE - VIEWING BOOTHS.**
- 52.201 DEFINITIONS.**
- 52.202 PHYSICAL LAYOUT OF BOOTHS AND PREMISES.**
- 52.203 RESPONSIBILITIES OF THE OPERATOR.**
- 52.204 ENFORCEMENT.**
- 52.205 PENALTIES.**
- 52.300 TOBACCO USE, CONSUMPTION, POSSESSION BY MINORS.** (2012-086)
- 52.400 POSSESSION OF CANNABIS.** (2008-071, 2017-022)
- 52.410 POSSESSION OF DRUG PARAPHERNALIA.** (2008-071, 2017-022)
- 52.411 NUISANCE GATHERING.** (2012-089)

52.01 FIGHTING.

No person shall physically fight with another person without legal justification. Any person violating this Section shall be punished by a fine of not less than Three Hundred Dollars (\$300.00) nor more than Seven Hundred Fifty Dollars (\$750) for each offense. (1993-035, 2001-046, 2001-094, 2008-070)

52.02 DISORDERLY CONDUCT.

Prohibited Conduct.

a) A person commits disorderly conduct when that person knowingly:

1. Does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace; or
2. Transmits in any manner to the Fire Department of the City a false alarm of fire, knowing at the time of such transmission that there is no reasonable ground for believing that such fire exists; or
3. Interferes with any fire apparatus, signal or mechanism used as a fire defense, or injures any wire connected with any fire box, of which is a part of an electric circuit connected with any fire box in the City, without prior permission of the Chief of the Fire Department; or

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4. Transmits in any manner to another, a false alarm to the effect that a bomb or other explosive of any nature is concealed in such place that its explosion would endanger human life, knowing at the time of such transmission that there is no reasonable grounds for believing that such bomb or explosive is concealed in such place; or
 5. Transmits in any manner to any peace officer, public officer or other employee of the City, a report to the effect that an offense, statutory or otherwise, has been committed, knowing at the time of such transmission that there is no reasonable grounds for believing that such an offense has been committed; or
 6. Enters upon the property of another and for a lewd or unlawful purpose deliberately looks into a dwelling on the property through any window or other opening in it; or
 7. Transmits in any manner to the police department or fire department of any municipality or fire protection district, or any privately owned and operated ambulance service, a false request for an ambulance, emergency medical technician-ambulance or emergency medical technician-paramedic knowing at the time there is no reasonable grounds for believing that such assistance is required; or, (2016-016)
 8. Carries, displays, brandishes or implies the possession or use, in a threatening or menacing manner, without authority of law, any: i) firearm, rifle, shotgun, machine gun, pistol, revolver, dagger, razor, dangerous knife, stiletto, knuckles, slingshot, billy, stun gun or taser, crossbow, common or compound bows, underwater speargun, black-jack, sand-club, sand-bag, throwing star, nunchakus, or any broken bottle or other piece of glass; ii) any air gun, air pistol, spring gun, spring pistol, BB gun, paint ball gun, pellet gun or any implement that is not a firearm which impels a breakable paint ball containing washable marking colors, or a pellet constructed of hard plastic, steel, lead or other hard materials with a force that reasonably is expected to cause bodily harm; or iii) any look-alike weapon which by its appearance, including shape, color, size, markings or lack thereof, or any other identifying physical characteristics, would lead a reasonable person to believe that the object is a weapon which could cause bodily harm, an object containing noxious or deleterious liquid, gas or substance or other dangerous weapon. A person also commits disorderly conduct when he is in possession of any item described in (ii) or (iii) of the preceding sentence while committing any other violation of City Code or federal or state law. (2013-019, 2016-016)
- b) Penalties. Any person, eighteen (18) years of age or older and any firm or corporation violating this Section shall be guilty of a misdemeanor and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) and may be incarcerated in the DeKalb County Jail for a term not to exceed six (6) months under the provisions of Section 1-2-1.1 of the Illinois Municipal Code (65 ILCS 5/1-2-1.1) and under the provisions of the Illinois Code of Criminal Procedure (725 ILCS 5/100-1 et. seq.). Any person less than eighteen (18) years of age violating this Section shall be punished by fine only, community restitution services, or a combination thereof. Such person shall be fined not less than Three Hundred Dollars (\$300.00) nor

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more than One Thousand Dollars (\$1,000.00) for each offense. (1990-064, 1991-035, 1992-101, 1999-012, 2000-019, 2001-046, 2003-050, 2016-016)

52.03 ALCOHOL WITHOUT LIQUID (AWOL) MACHINES PROHIBITED. (06-43)

- a) Definition: Alcohol Without Liquid Machine (AWOL): A device designed, manufactured, marketed or used for the purpose of mixing alcoholic liquor with oxygen, air or another gas to produce a mist or vapor for inhalation or snorting for non-medicinal purposes. It shall not include such medical devices as inhalers, nebulizers, atomizers or other devices properly prescribed by a physician and being used to dispense a prescribed medication to the holder of such prescription.
- b) It shall be unlawful to possess, sell, transfer or use an Alcohol Without Liquid (AWOL) machine or device within the City of DeKalb.
- c) It shall be unlawful to use a medical device such as an inhaler, nebulizer, atomizer or other device properly prescribed by a physician for the purpose of mixing alcoholic liquor with oxygen, air or another gas to produce a mist or vapor for inhalation or snorting for non-medicinal purposes within the City of DeKalb.
- d) Penalties. Any person violating these Sections 52.0, b) or c) shall be guilty of an offense and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) nor more than One Thousand Dollars (\$1,000.00) for each offense. The AWOL machine or device is subject to immediate seizure by the Police Department and destruction, upon order of the Circuit Court of DeKalb County.

52.04 DELETED (2016-16)

52.05 DELETED (2016-16)

52.06 DISORDERLY HOUSE.

- a) **DISORDERLY HOUSE—BUSINESS.** No person shall keep or maintain any place of business where any person is allowed or permitted to make any loud or raucous noise clearly audible from fifty (50) feet or more from the place of business; or to alarm or disturb another so as to create a breach of the peace; where any minor is permitted to consume intoxicating drinks of any kind; or where any person is permitted to consume or possess marijuana in violation of this Municipal Code. (2008-004, 2012-089)
- b) **DISORDERLY HOUSE—RESIDENTIAL.** No person, whether such person is an owner, renter, or otherwise responsible for, in custody of, or entrusted with a given dwelling unit or residential property, is allowed or shall be permitted to make any loud or raucous noise clearly audible from fifty (50) feet or more from the residence; or to alarm or disturb another so as to create a breach of the peace; or where any minor is permitted to consume intoxicating drinks of any kind; or where any person is permitted to consume or possess marijuana in violation of this Municipal Code. For purposes of this ordinance, the following persons may be cited for a violation: 1) the owner of an owner-occupied residence; 2) the renter or tenant of a rental property; 3) in the absence of the

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owner or renter, any person within a residential dwelling unit where such unit is in violation of this ordinance; 4) any person permitted by the owner or renter of a residential dwelling unit to utilize such space at a time when such unit is in violation of this ordinance. (2012-089)

c) CHRONIC DISORDERLY HOUSE—RESIDENTIAL (2012-089)

1. **PURPOSE AND DECLARATION OF POLICY.** It is the purpose of this section and the policy of the City of DeKalb to protect, preserve and promote the health, safety, and welfare of its citizens through the reduction, control, and prevention of criminal and nuisance activities described herein as unlawful activities. In that regard, the City Council finds that the repeated commission of unlawful activities within the City by dwelling unit occupants (whether owner occupant or tenants), members of an occupant's household, occupant's guest(s), and any person under the occupant's control substantially annoys and injures the health, safety and welfare of DeKalb citizens.

The City Council further finds that individual offenders should be held responsible for their commission of unlawful activities that may lead to the finding of a disorderly house at any dwelling unit within the City. Therefore, owners, landlords, tenants, occupants and guests, who commit unlawful activities should be cited (and/or arrested) by the DeKalb Police Department for such offense.

This section shall be liberally construed and applied to promote the City Council's purposes and policies.

2. **DECLARATION OF CHRONIC DISORDERLY HOUSE.** It shall be unlawful for any person to intentionally, knowingly, recklessly, or negligently permit any dwelling unit—including rental and owner-occupied units—within the City of DeKalb to become, exist, or be used as a Chronic Disorderly House. Any unlawful activity, as defined in this section, that is found to exist in, at, on or about such dwelling unit shall be subject to fine and abatement in accordance with this section.

3. DEFINITIONS

- (a) *Chronic Disorderly House*. A dwelling unit that experiences three (3) or more unlawful activities in, at, on or about the unit during a 12 month period, subject to the notice requirements of this Section.
- (b) *Chief of Police*. The duly appointed City of DeKalb Police Chief or designee. For purposes of meetings with landlords as described below, it is contemplated that the Police Department shall be represented by a designee of the Chief of Police.
- (c) *Crime-Free Lease*. A written lease or rental agreement, including therein a crime-free lease provision as defined in Chapter 10 of this Municipal Code.
- (d) *Residential Incident*. Any unlawful activity in, at, on or about a dwelling unit, which is documented by arrest or the issuance of a citation. For purposes of this

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section, a written warning shall not be considered an arrest or citation.

- (e) Landlord. The owner or lessor of one (1) or more dwelling units and his/her agents, property managers or representatives. For purposes of this ordinance, relative to an owner-occupied structure, the owner shall be deemed to be both the "Landlord" and an Occupant, and shall be charged with the rights and responsibilities attendant to both positions.
- (f) Occupant. Any person who has the right to use of, or possess, a dwelling unit, including, but not limited to, the tenant.
- (g) Owner. The title holder or mortgage holder of a dwelling unit.
- (h) Offender. A person who commits one (1) or more unlawful activities.
- (i) Dwelling Unit. A dwelling unit is a room or group of rooms meeting minimum habitable room sizes as required by the city's building code which are arranged, designed, used or intended for use exclusively as living quarters for one (1) family or one (1) household, including sleeping, cooking, eating and sanitation facilities. For purposes of this section, dwelling unit shall mean a single-family structure, attached or detached, an apartment, condominium, and townhouse, and the individual dwelling units in a multiple-family structure or rooming house, as such terms are defined in Section 3.01 of Chapter 23 of the DeKalb Municipal Code. A dwelling unit may be leased or owner-occupied, and includes the land which is affixed, incidental to or appurtenant to it.
- (j) Rooming House. A building as defined in Section 3.01 of Chapter 23 of this Municipal Code.
- (k) Tenant. Any person entitled to occupy a rental unit under a written rental agreement.
- (l) Unlawful Activity. Any of the following activities, behavior or conduct:
 - i. Alcohol Offenses. Any offense defined and prohibited by Section 6-16 (Prohibited Sales and Possession) or Section 6-20 (Purchase or Acceptance of Gift of Liquor by Persons Under Age 21) of the Liquor Control Act of 1934, 235 ILCS 5/6-16 and 5/6-20, or similar City of DeKalb ordinance.
 - ii. Felony Offenses. Any of the activities, behaviors or conduct that constitutes a felony as defined in the Illinois Criminal Code, 720 ILCS 5/1-1 et seq.
 - iii. Misdemeanor Offenses. Any of the activities, behaviors or conduct that constitute a misdemeanor as defined in the Illinois Criminal Code of 1961, 720 ILCS 5/1-1 et seq., or any similar offense under this Municipal Code.
 - iv. Any violation of Chapter 52, "Offenses against Public Peace, Safety and

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Morals" of this Municipal Code, or violation of a similar State statute or County ordinance.

- v. Any inchoate offense defined and prohibited by Article 8 (Inchoate Offenses) of the Criminal Code of 1961, 720 ILCS 5/8-1, et seq., which is relative to the commission of any of the aforesaid principal offenses.
- (m) Rental Premises: Any combination of contiguous units, buildings or parcels of land, utilized predominantly as residential rental property, under common ownership or common management. For purposes of this definition, common ownership or common management shall be deemed to exist where a unit or parcel or group of units or parcels: a) have the same person, company, organization or group serving as manager, lessor, owner or otherwise responsible party; b) owned by the same person or by land trusts or companies that are under common ownership or management (including corporations or other companies that are subsidiaries of the same company or otherwise related to each other or under common ownership or management); or, c) otherwise under common control, management or ownership.
- (n) Management Decisions: The fashion in which rental properties are maintained, lit, utilized or permitted to be utilized; compliance or non-compliance with the requirements of City Code (including the provisions of Chapter 10 of the City Code); the decision to file and diligently pursue eviction of tenants who engage in Unlawful Activities; compliance with any agreements, plans, recommendations or suggestions of the Chief of Police; compliance with best management practices or policies discussed or explained at Landlord Educational Programs contemplated by City Code; the process of selecting tenants for new leases or lease renewals; the use of personnel, technology or equipment for the purpose of ensuring the security of dwelling units and Rental Premises; or other decisions or actions which affect the use and operation of a rental dwelling unit or Rental Premises or which impact upon surrounding public or private properties.

4. RESIDENTIAL INCIDENT: FIRST UNLAWFUL ACTIVITY

- (a) Notice of First Unlawful Activity. Whenever the Chief of Police receives notice that a citation has been issued or an arrest has been made for an unlawful activity in, at, on or about a particular dwelling unit, the Chief may notify the Landlord of the dwelling unit of the incident. The notice shall contain the following information:
 - i. The street or legal address of the dwelling unit.
 - ii. A copy of the citation or arrest report describing the incident and enumerating the offenses that occurred.
 - iii. The names of the occupants or others involved in the incident.

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iv. The date and time (within forty-eight (48) hours of issuance of a citation or arrest) and manner in which notice of the unlawful activity was given to the landlord in person, or by telephone, email or facsimile.

v. A statement substantially as follows:

The DeKalb Police Department has information that the property is in danger of becoming a Chronic Disorderly House. In the event of occurrences of two (2) additional unlawful activities in, at, on or about that unit, the Chief may declare the unit a Chronic Disorderly House and refer the matter to the City Attorney to be brought before an administrative hearing officer for a hearing. Corrective action must be taken to ensure that subsequent unlawful activity does not occur.

vi. A response form should be included along with a statement requesting the Landlord to complete and return the form to the Chief within seven (7) business days of the postmark on the Chief's written notice or the date it was personally served. The response may be by personal service, registered or certified mail, return receipt requested, electronic mail, or facsimile indicating whether the offenders were occupants and any actions the owner took in response to the activity, such as:

- (1) A letter of Warning to the occupants or correspondence.
- (2) Any phone calls, electronic mail, or communications to the occupants.
- (3) Any corrective action taken, such as, a No Trespass notice issued to non-tenants.
- (4) A meeting with the occupants and their responses.
- (5) Copies of any agreements, resolutions, or pledges by occupants.
- (6) Landlord's comments or questions on the incident.
- (7) A noise curfew was instituted.

Any documentation provided to the City may be utilized in any later proceeding involving the property or the affected units, tenants or persons.

(b) Chief's Follow Up to Landlord's Response. If the landlord responds to the notice referenced in 4(a) above:

- i. The Chief should deliver a follow-up response letter to the landlord regarding the Chief's assessment of the Landlord's response, including whether the response was adequate, inadequate, acceptable, and/or unacceptable. If inadequate or unacceptable, the Chief shall invite the Landlord to a follow up meeting within ten (10) days of the Chief's receipt of that response letter.

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- ii. At the follow up meeting, the Chief should recommend that the Landlord take reasonable corrective action so that a second or subsequent unlawful activity does not occur in, at, on, or about the same dwelling unit within a one (1) year period.
- iii. The Chief and Landlord should discuss other possible means to correct the problem.
- iv. The Chief should explain that, in the event of the occurrence of a third unlawful activity in, at, on or about the dwelling unit within a one (1) year period, the Chief may declare the property a Chronic Disorderly House and refer the matter to the City Attorney to be brought before an administrative hearing officer for a hearing at which the landlord may be subjected to penalties under this Section.
- v. The Chief should document, in writing, the results of the meeting, including any agreement reached with the Landlord regarding corrective action to be taken. The Landlord should acknowledge his/her agreement in writing, and a copy of the agreement should be provided to the landlord.

5. RESIDENTIAL INCIDENT: SECOND UNLAWFUL ACTIVITY

- (a) Notice of Second Unlawful Activity. Whenever the Chief of Police receives notice that a citation has been issued or arrest made for a second unlawful activity in, at, on or about the same dwelling unit within a one (1) year period, the Chief may notify the landlord that the property is in danger of becoming a Chronic Disorderly House. Said notice shall further state the following:
 - i. The street or legal address of the dwelling unit.
 - ii. A copy of the citation or arrest report describing the second incident and enumerating the offenses that occurred.
 - iii. The names of the occupants or others involved in the incident.
 - iv. The date and time (within forty-eight (48) hours of issuance of a citation or arrest) and manner in which notice of the second unlawful activity was given to the Landlord in person, or by telephone, email or facsimile.

A statement substantially as follows:

The DeKalb Police Department has information that the property is in danger of becoming a Chronic Disorderly House (along with a concise description of the unlawful activities that exist or have occurred). In the event of a subsequent occurrence of an unlawful activity in, at, on or about that unit, the Chief may declare the unit a Chronic Disorderly House and refer the matter to the City

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Attorney to be brought before an administrative hearing officer for a hearing. Corrective action must be taken to ensure that a subsequent unlawful activity does not occur.

- (b) In determining whether to send the second notice, the Chief may consider the prior cooperation (or lack of cooperation) of the Landlord in responding to the Chief's notification letter, agreeing upon corrective action, and whether or not the agreed corrective action was taken. In the event that the Chief finds that further discussions with the Landlord may achieve corrective action, the Chief may convene a mandatory meeting to establish such a corrective action plan.
- (c) Mandatory Meeting with the Chief. At the mandatory meeting, the Chief may suggest various courses of action for the landlord to prevent further unlawful activities from occurring. A corrective action plan should be established, which may include the lawful eviction of a tenant or the Landlord's ability to bar persons from the property. In the event that the Landlord fails to attend the mandatory meeting, the second notice should be sent, and expiration of the time limits for sending such notice shall not bar such notice.

6. RESIDENTIAL INCIDENT: THIRD UNLAWFUL ACTIVITY.

- (a) Notice of Declaration of Disorderly House. If the Chief of Police receives notice that a citation was issued, or arrest made for a third or subsequent unlawful activity in, at, on or about the same dwelling unit within a one (1) year period, and determines that the unit has become a Chronic Disorderly House, the Chief shall notify the Landlord of the property that it has been declared a Chronic Disorderly House. The notice shall contain the following information:
 - i. The street or legal address of the dwelling unit.
 - ii. A copy of the citation or arrest report describing the third incident and enumerating the offenses that occurred.
 - iii. The names of the occupants or others involved in the incident.
 - iv. The date and time (within forty-eight (48) hours of issuance of a citation or arrest) and manner in which notice of the third unlawful activity was given to the Landlord in person, or by telephone, email or facsimile.

A statement substantially as follows:

The Chief has determined the dwelling unit to be a Chronic Disorderly House (with a concise description of the unlawful activities occurring during the one (1) year period that led to that finding). The Chief will refer the matter to the City Attorney to be brought before an administrative hearing officer for a hearing, but, if the Landlord notifies the Chief immediately upon receipt of the notice and agrees to remedy the disorderly conditions within ten (10) days, or to take other

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agreed and timely measures, the Chief may, at his/her sole discretion, postpone referring the matter to the City Attorney.

- (b) Settlement Agreement. The Chief and the Landlord may agree to resolve the matter short of a hearing by entering into a settlement agreement to include the imposition of a fine and a remediation plan for the dwelling unit, along with a compliance date, and agreed upon penalties in the event of non-compliance by that date.

7. NOTICES BY CHIEF; EFFECT OF FAILURE TO GIVE NOTICE.

- (a) Notices that are required to be given by the Chief to the landlord shall be given as follows:

- i. The Chief shall use reasonable efforts to notify the Landlord of the issuance of a citation or arrest for unlawful activity in person, or by telephone, email or facsimile within forty-eight (48) hours of issuance or arrest.
- ii. The Chief shall also give written notice, pursuant to subsections 4(a), 5(a) and 6(a) of this section, by regular mail or by personal service within ten (10) business days of the issuance of a citation or arrest for unlawful activity.
- iii. Written notice declaring a Chronic Disorderly House under subsection 6 of this section shall require, in addition to the notices set forth in subsections 7(a)(i) and 7(a)(ii) of this section, notice by certified or registered mail, receipt requested.

- (b) Notice shall be effective five (5) days after mailing or on the date delivered, if by personal service.

- (c) Notice shall be given to Landlord as follows:

- i. To the Landlord or local agent designated in the rental unit registration pursuant to Chapter 10 of the Municipal Code; or
- ii. To the person to whom the last tax bill on the property was sent in the event that subsection (1) does not apply.

- (d) If reasonable efforts are not made as provided in subsection a(i) above or notice is not given as provided in subsection a(ii) above, or a(iii), as applicable, that citation or arrest will not be considered an unlawful activity for purpose of declaring the dwelling unit a Disorderly House.

8. BURDEN OF PROOF; NOTICE

- (a) In an action seeking the abatement of a Chronic Disorderly House, the City shall have the initial burden of proof in showing by a preponderance of the evidence that the dwelling unit is a Chronic Disorderly House.

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- (b) For purposes of showing that the dwelling unit is a Chronic Disorderly House and that unlawful activities have occurred in, at, on or about the unit, the testimony of police officers to recount witness statements shall be admissible. Police reports, court records, and prosecution records are admissible and relevant, and may be used to prove that the unit is a Chronic Disorderly House. The City shall not be obligated to prove each underlying violation as a component of its case in chief in the Chronic Disorderly House case.
 - (c) The City may, but shall not be obligated to, demonstrate how the measures taken by the landlord at the first two steps failed to keep the peace, as well and as what measures the landlord could take in the future to correct such actions.
 - (d) The administrative hearing shall be conducted by a hearing officer pursuant to Chapter 17, Administrative Hearing Procedure, of this Municipal Code. In the alternative, the City, in its discretion, may elect to pursue such action directly in the Circuit Court, with the existence of the Chronic Disorderly House constituting a violation of City Ordinance.
 - (e) The following constitute a defense to an action before the administrative hearing officer or judge:
 - i. The nuisance activities were not related to the same dwelling unit or committed during the tenancy of the same tenant.
 - ii. The landlord has worked cooperatively with the City and taken every reasonable step to prevent unlawful activities from occurring, including initiating and diligently pursuing action to evict the tenant(s) in question.
 - iii. Compliance with a corrective action plan agreed upon by the Landlord and Chief failed to prevent the unlawful activity.
 - (f) Failure To Receive Notice. The failure of any person to receive the legal notice required in this section shall not invalidate or otherwise affect the proceedings under this section.
 - (g) Voluntary Agreement – At any time after a notice for hearing has been sent, the owner and city may enter into an agreement to assure compliance, which may include fines, and the matter before the hearing officer or judge may then be entered and continued until an agreed upon date for compliance. In the event that compliance is not achieved by the established date of compliance, the hearing process shall proceed, unless otherwise agreed by the parties.
9. LANDLORD USE OF FORCIBLE ENTRY AND DETAINER ACTIONS
- (a) If a landlord has initiated a Forcible Entry and Detainer action in the Circuit Court of DeKalb County to evict the tenant(s) of a dwelling unit that is subject to notices under this section, the City shall initially agree to enter and continue the

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administrative hearing in regard to its declaration as a Chronic Disorderly House, pending the result of such court action. In deciding whether or not to further continue the matter based upon the eviction proceeding, the City shall consider, among other things, whether eviction is the only remedy for preventing future unlawful activities, and whether the action is being timely prosecuted and diligently pursued by Landlord.

- (b) Landlords must submit to the City, prior to the administrative hearing, a copy of the Forcible Entry and Detainer lawsuit that was filed, and provide regularly updated copies of pleadings after each hearing or court status date.
- (c) The Landlord shall notify the Chief of Police regarding the progress of the court proceeding within seven (7) business days of its resolution including, but not limited to, orders to stay judgments, evict, grant possession or abandonment, and dismiss the case.

10. PENALTIES FOR MAINTAINING A CHRONIC DISORDERLY HOUSE

- (a) If the Administrative Hearing Officer finds that the Landlord (or the Owner of an owner-occupied structure) has permitted a Chronic Disorderly House, the Landlord (or Owner) is subject to the following penalties:
- (b) The Landlord or Owner shall be fined not less than Three Hundred Dollars (\$300.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for each unit declared to be a Chronic Disorderly House. Further, such landlord shall be fined not less than Seven Hundred and Fifty Dollars (\$750.00) nor more than Fifteen Hundred Dollars (\$1,500.00) for each subsequent unlawful activity that occurs in, at, on or about that unit within the one (1) year period.
- (c) In addition to the fines set forth in subsection 10(i) of this subsection, a Landlord or Owner shall be liable for administrative costs associated with the hearing pursuant to Chapter 17 of this Municipal Code, or court costs that may be assessed in an action for ordinance violation in the Circuit Court.
- (d) In the event that a Landlord or Owner fails to remit the fines associated with the ruling of an Administrative Hearing Officer or Judge, or fails to comply with the terms of an agreed settlement, the City may seek such relief as may be provided in Chapter 17 of this Municipal Code or as otherwise provided by law or another other provision of this Municipal Code.

11. DISORDERLY RENTAL PREMISES:

- (a) It shall be unlawful to keep, maintain, manage or offer for lease any Rental Premises within the City of DeKalb which is a Disorderly Rental Premises by virtue of:
 - i. Failing to implement the recommendations of the Chief of Police in a timely

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fashion after having been declared a Chronic Disorderly House by the Chief of Police;

- ii. Having or permitting an unlawful activity occurring relative to an individual dwelling unit after having been declared a Chronic Disorderly House by the Chief of Police;
- iii. Having or permitting a combination of any two or more units within the Rental Premises which, in the aggregate, have four or more unlawful activities within a one year period; or,
- iv. Having or permitting units being used in such a fashion as to generate a threat to public safety or welfare that extends beyond the boundaries of an individual dwelling unit to the interior or exterior common areas, parking lots, sidewalks or other similar areas of a Rental Premises, or to surrounding private property not included within the Rental Premises, or to surrounding public or private rights of way, sidewalks or streets.

For purposes of this subsection 11(a)(iv), conduct that generates a public safety threat shall include, but shall not be limited to, use of rental dwelling units to facilitate, encourage or promote gatherings, disturbances or parties on Rental Premises common areas, on private property not included within the Rental Premises or on public rights of way where the regular flow of traffic is impeded or where unlawful activities occur. Facilitating, encouraging or promoting gatherings shall be deemed to include, but shall not be limited to: a) playing loud music in violation of City Ordinances, with such music being clearly audible more than fifty feet from the dwelling unit and clearly audible from the location of the gathering; b) providing food, beverage, restrooms or other accommodations to the gathering; or, c) permitting open transfer of persons from the outdoor gathering to within an individual dwelling unit and back.

- (b) For purposes of this subsection 11, the City may initiate a proceeding either before the Administrative Hearing Officer, or in the Circuit Court. In the event that the City is able to prove, by a preponderance of the evidence, that the Management Decisions of the owner, manager or other person responsible for a rental dwelling unit or Rental Premises reasonably cause, contribute to or relate to the circumstances or events giving rise to the existence of a Disorderly Rental Premises as defined above, an Administrative Hearing Officer or Circuit Court Judge shall declare such Rental Premises to be a Disorderly Rental Premises.
- (c) The following constitute a defense to an action before the administrative hearing officer or judge:
 - i. The landlord has taken every reasonable step to prevent unlawful activities from occurring at the Rental Premises, including but not limited to initiating and diligently pursuing action to evict the tenant(s) in question, undertaking

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- property improvements (such as lighting and landscaping modifications or other similar measures) to discourage such unlawful activities, soliciting and following suggestions from the City of DeKalb Police Department, Building Department and other similar authorities, and has complied with all requirements of Chapter 10 of the City Code.
- ii. Compliance with a corrective action plan agreed upon by the Landlord and Chief failed to prevent the unlawful activity.
- (d) Remedies: Upon the declaration that a given Rental Premises is a Disorderly Rental Premises under subsection 11(b), above, the City may seek an order from the Administrative Hearing Officer or Judge imposing any or all of the following remedies:
- i. A fine of not less than Five Hundred Dollars (\$500) for each day or portion thereof that the Rental Premises remains a Disorderly Rental Premises. Notwithstanding the foregoing, after the initial day's fine, subsequent daily fines may be tolled for the period of time during which the Landlord is able to demonstrate that it is undertaking immediate, continued, substantial and diligent efforts to remediate the conditions giving rise to the Disorderly Rental Premises condition;
 - ii. An Order authorizing the inspection of all portions of the Rental Premises, including but not limited to the exterior, interior, interior common areas, and individual dwelling units. The City shall not be required to demonstrate individual probable cause for such inspections, but such inspections shall be ordered on a Rental Premises-wide basis. In lieu of requiring interior inspections generally on a regular basis, the City is, at this time, limiting interior inspections to premises subject to a declaration of being a Disorderly Rental Premises;
 - (1) Once ordered, such interior inspection protocol shall remain in place for a duration not less than two years after the date upon which the last of any defects or code violations discovered during any inspection process has been corrected and remediated and has successfully passed reinspection.
 - (2) The owner or manager of a Disorderly Rental Premises shall be responsible for the costs of any reinspection of the Rental Premises necessary to confirm that any defects discovered in the initial inspection have been corrected. Such reinspection shall be charged at the rates customarily used for reinspection of residential construction or remodeling projects for similar violation corrections.
 - (3) The City may initiate additional code enforcement actions based upon any matters discovered during such inspections.

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iii. A prohibition on new or renewed leases or other forms of rental use of the Rental Premises. In lieu of rental property licensure (which could include license termination and denial of the ability to rent property within the City), the City is, at this time, limiting prohibitions on rental to premises subject to a declaration of being a Disorderly Rental Premises. In order to effectuate such prohibition:

(1) The City shall mail a notice to the mailing address for each dwelling unit within the Rental Premises, advising them that the property has been declared a Disorderly Rental Premises and that it is thus unlawful to enter into a new lease or to renew or extend an existing lease after the effective date of the notice. The City shall also post one or more notices prominently upon entrances to the Rental Premises and/or buildings located thereupon, advising tenants of the prohibition, and may take such other action as the City deems reasonable to notify the public and interested parties of the prohibition on rental or leasing.

(2) It shall be unlawful, during any period that a Court or Administrative Hearing Officer has ordered a prohibition on new or renewed leases or other forms of rental, to enter into a new or renewed lease or other form of rental agreement for a Disorderly Rental Premises. Such action shall be punishable by a fine of not less than One Thousand Dollars (\$1,000.00) per lease, with each day or portion thereof that an offense remains in place constituting a separate offense.

(3) The City may terminate utility services to any vacant dwelling units within a Rental Premises for the duration of time that a prohibition remains in effect.

(4) The Owner of a property subject to a prohibition on rental or leasing may apply to the Court or Administrative Hearing Officer for an Order lifting such prohibition, and shall be eligible for such an Order, provided that:

A. The Owner has initiated and diligently pursued eviction of any tenants in individual dwelling units who are eligible for eviction under the terms of the Crime Free Lease Addendum under Chapter 10 of the City Code, or has otherwise provided for modification of their behavior;

B. The Owner has complied with the mandatory interior/exterior inspection protocol, has corrected and repaired any code or property maintenance violations discovered during the same, and has successfully passed reinspection by the City;

C. The Owner has paid all fines, costs, fees, utility bills, or other amounts of any kind due and owing from the Owner to the City, by

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virtue of the pending legal action or by virtue of any other relationship or action between the parties, or has entered into and is in compliance with a mutually acceptable payment plan for the payment of the same;

- D. The Owner provides a sworn certification that the Rental Premises is in compliance with all requirements of City Code, including but not limited to Chapter 10 of the City Code;
 - E. The Owner has submitted to a joint property inspection and management review conducted by the City and a Citywide or regional rental property owner's association, and has either implemented or taken reasonable steps towards implementing all suggestions arising out of such joint inspection and review; and,
 - F. The Owner has otherwise rectified all conditions and violations giving rise to the Disorderly Rental Premises declaration.
- iv. An Order for restitution to be paid to the City for any extraordinary City expenses incurred in responding to unlawful activities occurring at or arising out of the use of the Disorderly Rental Premises.
- (1) Expenses eligible for restitution shall be any extraordinary City staff time, including police department, fire department or public works employee time or materials that were specifically allocated to addressing, redressing, preventing, responding to, or cleaning up unlawful activities either at or arising out of the use of the Disorderly Rental Premises, or expenses incurred repairing any damage to public property which occurred as a result of the unlawful activities.
 - (2) Extraordinary expenses shall be eligible for restitution if they were incurred either responding to unlawful activities that gave rise to the Disorderly Rental Premises declaration, or if they were incurred thereafter. Such expenses shall be reimbursed at the hourly rate utilized for overtime response for personnel, or for the estimated hourly equipment cost for any equipment utilized. For purposes of this ordinance, an expense shall be deemed to be "extraordinary" if it is in excess of the regular resources allocated for said purpose (e.g. police officers removed from other areas or patrols to respond to a particular incident, or patrols in excess of normal patrol services).
- v. An Order for restitution to any surrounding private property owners for any costs or expenses incurred by them in cleaning up after unlawful activities either at or arising out of the use of the Disorderly Rental Premises.

12. APPEAL/PROCESS: The landlord may appeal the decision of an Administrative Hearing Officer in accordance with Chapter 17 of this Municipal Code. The

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administrative hearing procedures set forth in Chapter 17 of the Municipal Code shall apply to enforcement of this Section to the extent not inconsistent therewith. The landlord may appeal a decision of a Circuit Court Judge in accordance with Illinois law.

13. **ENFORCEMENT:** The procedures set forth herein for enforcement of this section are not exclusive. The City may enforce this section in any manner authorized by law, such as by filing an action in the Circuit Court of DeKalb County, and the penalties set forth in this section shall apply, in addition to any other legal remedies that may be available.

14. **EVICTON OR RETALIATION PROHIBITED.**

(a) **Prohibition.** It shall be unlawful for an owner to terminate the lease or rental agreement of a tenant or otherwise retaliate against any tenant or occupant because that tenant or occupant complained to the Chief of Police about unlawful activity on the owner's property.

(b) **Penalties.** Any person violating this Subsection 14 shall be fined not less than Three Hundred Dollars (\$300.00) nor more than Seven Hundred and Fifty Dollars (\$750.00) for each offense.

52.07 SOUND APPARATUS. (2015-049)

a) **Distance-Based Regulations:** No person shall play, use, operate or permit to be played, used or operated, any radio or other device for receiving broadcast sound, reproducing recorded sound or amplifying sound if the device is located. (2016-016)

1. On the public way (when not within a motor vehicle); or (2016-016)
2. In any motor vehicle on the public way; and if the sound generated by the device is clearly audible to a person with normal hearing at a distance greater than 50 feet from the device.
3. On any private property, where the sound generated by the device or motor vehicle is clearly audible to a person with normal hearing at a distance greater than 50 feet from the device.

This section shall not apply to any person participating in a parade or public assembly for which a permit has been obtained from the City during the duration of such event, nor to a person with any other City-issued permit for outdoor entertainment or which authorizes the sound amplifying device, during the duration of the permitted event.

b) **Decibel Based Regulations:** (2016-016)

1. **Definitions.** All terminology used in this Section shall be in conformance with applicable publications of the American National Standard Institute (ANSI) or its successor body. (2008-070)

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2. **Weighted Sound Level.** This means the sound pressure level decibels as measured on a sound level meter using the "A" weighing network. The level so read is designated dB(A) or dBA.
3. **Day Hours.** No person shall cause or allow the emission of sound during daytime hours (7:00 a.m. to 10:00 p.m.) from any noise source to any receiving residential land which exceeds 60 dBA when measured at any point within such receiving residential land, provided; however, that point of measurement shall be on the property line of the complainant. (1997-105B)
4. **Night Hours.** No person shall cause or allow the emission of sound during night time hours (10:00 p.m. to 7:00 a.m.) from any noise source to any receiving residential land which exceeds 55 dBA when measured at any point within such receiving residential land provided; however, that point of measurement shall be on the property line of the complainant. (1997-105B)
5. **Variance Permits.** Variance permits may be issued by the City Manager to exceed the noise standards set forth in this ordinance as follows:
 - (a) A temporary variance permit may be issued upon request provided that the work producing such noise is necessary to promote the public health and/or welfare and reasonable steps are taken to keep such noise at the lowest possible practical level.
 - (b) A permanent variance permit may be issued upon request, following an investigation into the source of the noise, including what, if any, measures can be taken to reduce or eliminate the noise; the cost of any such measure; and an overall evaluation of the request including the severity of the problem weighted against the cost of remedial measures; the benefit of the public, and the impact on the noise source.

Any permanent variance may be revoked by the City Manager if there is a significant change in the facts from the time the original variance was granted and if, following the same procedures involved in issuing the original permit, the City Manager should conclude it is in the best interest of the public to revoke the permit. (1992-145)
6. **Exemptions.**
 - (a) **Emergency Operations.** Emergency short term operations which are necessary to protect the health and welfare of the citizens, such as, emergency utility and street repair, fallen tree removal or emergency fuel oil delivery shall be exempt, provided that reasonable steps shall be taken by those in charge of such operations to minimize noise emanating from the same.

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- (b) Noises Required By Law. The provisions of section shall not apply to any noise required specifically by law for the protection or safety of people or property.
- (c) Powered Equipment. Powered equipment such as lawn mowers, small lawn and garden tools, riding tractors and snow removal equipment which is necessary for the maintenance of property, is kept in good repair and maintenance, and which equipment, when new, would not comply with the standards set forth in this ordinance, shall be exempted.
- (d) Community Events. The term "community events" shall include such things as parades, festivals, drum corps shows, sports events, 4th of July celebrations, sanctioned or sponsored in whole or in part by local governments, schools or charitable or service organizations.

c) Temporal Regulations: (2016-016)

The use within a dwelling unit of a stationary or portable electronic sound reinforcement and/or sound reproduction system, utilizing loudspeakers, such that loud or raucous sounds radiate from outside the dwelling unit and are clearly audible from a distance of fifty feet from such dwelling unit shall be prohibited during the following hours: (1997-105A)

Sunday 10:00 p.m. – Monday 7:00 a.m.
Monday 10:00 p.m. – Tuesday 7:00 a.m.
Tuesday 10:00 p.m. – Wednesday 7:00 a.m.
Wednesday 10:00 p.m. – Thursday 7:00 a.m.
Thursday 10:00 p.m. – Friday 7:00 a.m.
Friday 12:00 Midnight – Saturday 7:00 a.m.
Saturday 12:00 Midnight – Sunday 7:00 a.m.

- d) Penalty: The minimum penalty for a violation of this ordinance shall be a fine of Two Hundred Dollars (\$200.00) if paid as a mail-in violation or Three Hundred Dollars (\$300.00) if a finding of liability is imposed in Court. (2016-016)

52.08 NOISE IN PUBLIC PLACES.

It shall be unlawful for any reason within the City to ring any bell, sound any gong or blow any whistle or horn other than a musical instrument used in connection with a band, or use any sound signal upon a vehicle except as a danger signal, or to make any other or unusual noise upon any street or other place in close proximity thereto. This shall not apply to fire apparatus, ambulances, police motorcycles, or whistles used by police or by factories for time signals.

52.09 DELETED (2016-016)

52.10 FIRE ARMS AND AIR GUNS. (2013-019)

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- a) Discharge. No person shall discharge any rifle, shot gun, pistol, revolver or similar firearm, instrument or weapon, or any prohibited projectile weapon, within the City. No person shall carry any prohibited projectile weapon, except unloaded and within a case, when on any public street, sidewalk or other public property, or when upon any private property not owned by such person.
- b) Selling to Minors. No person shall sell, give, loan, or furnish to any minor within the City, any pistol, revolver, air gun, derringer, bowie knife, switch blade knife, dirk or other weapon of like character (shotguns and rifles excepted.)
- c) Unlawful Carrying. No person shall carry concealed upon or about his person within the City, any pistol, revolver, derringer, bowie knife, switch blade knife, razor, slingshot, metallic knuckles or any other weapon.
- d) Exception. This section shall not apply to any peace officer in the City in the discharge of his duties.
- e) Confiscation of Weapons. Any weapon adjudged by any court to have been worn or carried by any person in violation of the provisions of this Section shall be forfeited or confiscated to the City of DeKalb and shall be thereafter destroyed by Order of the Court.
- f) Penalty. Any person, firm or corporation violating this Section shall be fined as follows: 1) for discharge of a Prohibited Projectile Weapon with no accompanying injury to person or property, not less than One Hundred Fifty Dollars (\$150) and not more than One Thousand Dollars (\$1,000); and 2) for the discharge of any other weapon or for the discharge of a Prohibited Projectile Weapon with personal injury or property damage, not less than Three Hundred Dollars (\$300) nor more than One Thousand Dollars (\$1,000) for each offense. In addition, any person causing property damage with any such device shall be responsible for restitution for any damage caused.
- g) Definition: For purposes of this Section 52.10, a Prohibited Projectile Weapon shall include any air gun, bb gun, pellet gun, or other air, compressed air or spring-powered weapon that discharges hard projectiles made of plastic, metal, or other similar hard materials, regardless of caliber or muzzle velocity. It shall expressly include any bb gun, slingshot, pellet gun (whether powered by a spring, pump-air system, compressed air or another mechanical device), any Airsoft gun, and any gun defined as an Air Rifle under 720 ILCS 535/0.01. Additionally, a Prohibited Projectile Weapon shall include: a) any paintball gun, slingshot or other device that uses a spring, battery, compressed air or other mechanism to lob or discharge a paint, soap, or other liquid or powder filled capsule/bullet/projectile; and, b) any device that uses an explosive charge to launch, fire or discharge a projectile of any kind. It shall not include any toy that does not use any explosive charge and that only discharges a projectile made of soft foam or another soft substance at a low velocity.
- h) Notices: The Chief of Police shall be authorized to approve signs or notices to be proposed for placement at local retail establishments that may stock or carry Prohibited

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Projectile Weapons, for public educational purposes, to advise the public of the requirements of this Ordinance.

- i) **State-Licensed Concealed Carry:** (2014-001)
- 1) Notwithstanding any of the foregoing prohibitions or any other applicable City regulation, the lawful possession, display or use of a concealed firearm in strict conformity with all applicable then-current State statutes and regulations applicable thereto, by a person who has been issued and is actually in possession of a valid, current, State-issued concealed carry permit after completion of all required training and after compliance with all statutory prerequisites, shall not be unlawful under City Code. Any violation of applicable State regulations shall render the immunities of this section i)1. inapplicable.
 - 2) It shall be unlawful to display a false, fraudulent, forged, expired, misleading or otherwise invalid concealed carry permit or to give false information to a police officer regarding the existence, validity or other facts relating to the issuance of such a concealed carry permit. It shall be unlawful to use or attempt to use a concealed carry permit belonging to any other person. It shall be unlawful to possess a fraudulent, forged or false concealed carry permit. A violation of this subsection i)2. shall be punishable by a fine of not less than Seven Hundred and Fifty Dollars (\$750.00), plus Court Costs.
 - 3) It shall be a violation of this City Code and unlawful to engage in any violation of the then-current version of the applicable Illinois statute or statutes which permit the concealed carry of firearms. The then-current, applicable provisions of State law are adopted as a component of this ordinance, by reference, as if fully restated herein. A violation of this subsection i)3. shall be punishable by a fine of not less than Seven Hundred and Fifty Dollars (\$750.00), plus Court Costs.

52.11 BURGLARS TOOLS.

No person shall have in his possession in the City any burglars' instruments or tools for any unlawful purpose. Burglars' instruments or tools include lock picks, any device designed or intended to defeat a lock or alarm system (including slim jims and other automobile lock defeat devices) or any tools or implements which have been modified for the purpose of enabling them to be utilized as a lock or alarm defeat device, provided that a licensed locksmith, sworn peace officer, authorized municipal community service officer or tow truck driver may possess the foregoing items while in the performance of their official duties. Evidence of the presence of an unlawful purpose may be inferred from relevant circumstances, such as the presence of the offender on private property without lawful permission, the utilization or attempted utilization of such tools to gain access to private property without permission, the possession of such tools in conjunction with the possession of stolen merchandise, and other relevant circumstances. (2016-016)

52.12 BOWS AND ARROWS, CROSSBOWS. (1998-045)

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- a) It shall be unlawful for any person to shoot any bow designed to shoot arrows in any place within the City at a target or other object at a distance greater than twenty (20) yards or where any person or property is likely to be struck, or in any way injured thereby. Only field tip or target tip arrows may be discharged. An arrow which lands on property other than the property from which it was discharged, shall be prima facie evidence of a violation of the provisions of this Section. Further, cross bows may only be discharged by handicapped persons who have been issued a hunting license by the State of Illinois for cross bow use.
- b) In addition to the above restrictions, no person under sixteen (16) years of age may shoot any bow designed to shoot arrows unless under the direct supervision of an adult twenty-one (21) years of age or older.
- c) Any person violating any of the provisions of this Section 52.12 shall be fined not less than Three Hundred Dollars (\$300.00) nor more than One Thousand Dollars (\$1,000.00) for each offense. (2012-89)

52.15 INTERFERENCE WITH PUBLIC PROPERTY.

- a) Definitions. For the purpose of this Section, "public property" shall mean any real or personal property of any kind or description in which the State of Illinois, the City of DeKalb or any other municipality, local government or other public body has an ownership interest or right to possession or use.
- b) Prohibited Conduct.
 - 1. Public Property. No person shall injure, deface or destroy any public property without prior permission of the City Manager or his designee.
 - 2. Drainage Systems. No person shall stop or obstruct the passage of water or other effluent upon any public way or public sewer, culvert, water pipe, hydrant or other drainage system laid, placed or maintained by any public authority.
 - 3. Street Lights and Utility Wires. No person shall intentionally or recklessly break, deface, disturb or interfere with, or in any way injure or destroy any electric light, lamp, globe or any part of or appurtenance thereto, used in, upon or about any public way. No person shall intentionally or recklessly break, injure destroy or interfere with any electric, telephone or telegraph wire, or any other utility medium, including television cable and gas transmission media used in, upon or about the public way.
 - 4. Kishwaukee River. No person shall operate or control an motor vehicle in, over, along or upon land lying adjacent to the Kishwaukee River and over which the City has easements for constructing, operating or maintaining levees, except vehicles authorized by the Director of Public Works, nor shall any person hinder access to the land lying adjacent to the River when access is authorized by the Director of Public Works. No person shall construct any obstacle or impediment limiting or

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preventing access to such land, except with the approval of the Department of Public Works. (2016-016)

52.16 DELETED (2016-016)

52.18 DELETED (2016-016)

52.20 DELETED (2016-016)

52.20-5 SYNTHETIC ALTERNATIVE DRUGS. (2012-033)

a) Definitions. For purposes of this article, the following definitions shall apply unless the context clearly indicates or requires different meaning:

1. *A product containing a synthetic alternative drug* means any product containing a synthetic cannabinoid, stimulant or psychedelic/hallucinogen, as those terms are defined herein such as, but not limited to, the examples of brand names or identifiers listed on Exhibit "A" attached hereto and incorporated herein.
2. *Synthetic cannabinoid* means any laboratory-created compound that functions similar to the active ingredient in marijuana, tetrahydrocannabinol (THC), including, but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including isomers, esters, ethers, salts, and salts of isomers) containing a cannabinoid receptor agonist, such as:
 - JWH-007 (1-pentyl-2-methyl-3-(1-naphthoyl)indole)
 - JWH-015 ((2-Methyl-1-propyl-1H-indol-3-yl)-1-naphthalenylmethanone)
 - JWH-018 (1-pentyl-3-(1-naphthoyl)indole)
 - JWH-019 (1-hexyl-3-(naphthalen-1-oyl)indole)
 - JWH-073 (naphthalen-1-yl-(1-butylindol-3-yl)methanone)
 - JWH-081 (4-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone)
 - JWH-098 (4-methoxynaphthalen-1-yl-(1-pentyl-2-methylindol-3-yl)methanone)
 - JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl)indole)
 - JWH-164 (7-methoxynaphthalen-1-yl-(1-pentylindol-3-yl)methanone)
 - JWH-200 (1-(2-morpholin-4-ylethyl)indol-3-yl)-naphthalen-1-ylmethanone)
 - JWH-203 (2-(2-chlorophenyl)-1-(1-pentylindol-3-yl)ethanone)
 - JWH-210 (4-ethylnaphthalen-1-yl-(1-pentylindol-3-yl)methanone)
 - JWH-250 (1-pentyl-3-(2-methoxyphenylacetyl)indole)
 - JWH-251 (1-pentyl-3-(2-methylphenylacetyl)indole)
 - JWH-398 (1-pentyl-3-(4-chloro-1-naphthoyl)indole)
 - HU-210 ((6aR,10aR)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol)
 - HU-211 ((6aS,10aS)-9-(Hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo [c]chromen-1-ol)
 - HU-308 (((1R,2R,5R)-2-[2,6-dimethoxy-4-(2-methyloctan-2-yl)phenyl]-7,7-dimethyl-4-bicyclo[3.1.1]hept-3-enyl] methanol)

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- HU-331 ((3-hydroxy-2-[(1R,6R)-3-methyl-6-(1-methylethenyl)-2-cyclohexen-1-yl]-5-pentyl-2,5-cyclohexadiene-1,4-dione)
 - CP 55,940 (2-[(1R,2R,5R)-5-hydroxy-2-(3-hydroxypropyl) cyclohexyl]- 5-(2-methyloctan-2-yl)phenol)
 - CP 47,497 (2-[(1R,3S)-3-hydroxycyclohexyl]- 5- (2-methyloctan-2-yl)phenol) and its homologues
 - WIN 55,212-2 ((R)-(+)-[2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo [1,2,3-de)-1,4-benzoxazin-6-yl]-1-nepthalenylmethanone)
 - RCS-4 ((4-methoxyphenyl)(1-pentyl-1H-indol-3-yl)methanone)
 - RCS-8 (1-(1-(2-cyclohexylethyl)-1H-indol-3-yl)-2-(2-methoxyphenyl)ethanone)
3. *Synthetic stimulant* means any compound that mimics the effects of any federally controlled Schedule I substance such as cathinone, methcathinone, MDMA and MDEA, including, but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including salts, isomers, and salts of isomers) containing substances which have a stimulant effect on the central nervous system, such as:
- 3-Fluoromethcathinone
 - 4-Fluoromethcathinone (other name: flephedrone)
 - 3,4-Methylenedioxy-methcathinone (other name: methylone, MDMC)
 - 3,4-Methylenedioxy-pyrovalerone (other name: MDPV)
 - 4-Methylmethcathinon (other names: mephedrone, 4-MMC)
 - 4-Methoxymethcathinone (other names: methedrone, bk-PMMA, PMMC)
 - 4-Ethylmethcathinone (other name: 4-EMC)
 - Ethcathinone
 - Beta-keto-N-methylbenzodioxolylpropylamine (other names: butylone, bk-MBDB)
 - Napthylpyrovalerone (other names: naphyrone, NRG-1)
 - N,N-dimethylcathinone (other name: metamfepramone)
 - Alpha-pyrrolidinopropiophenone (other name: alpha-PPP)
 - 4-methoxy-alpha-pyrrolidinopropiophenone (other name: MOPPP)
 - 3,4-methylenedioxy-alpha-pyrrolidinopropiophenone (other name: MDPPP)
 - Alpha-pyrrolidinovalerophenone (other name: alpha-PVP)
 - 6,7-dihydro-5H-indeno(5,6-d)-1,3-dioxal-6-amine (other name: MDAI)
 - Any compound that is structurally derived from 2-amino-1-phenyl-1-propanone by modification or substitution in any of the following ways:
 - in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents;
 - at the 3-position with an alkyl substituent;
 - at the nitrogen atom with alkyl, dialkyl, benzyl, or methoxybenzyl groups;
 - or by inclusion of the nitrogen atom in a cyclic structure.
4. *Synthetic psychedelic/hallucinogen* means any compound that mimics the effects of

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any federally controlled Schedule I substance, including but not limited to, any quantity of a natural or synthetic material, compound, mixture, preparation, substance and their analog (including salts, isomers, esters, ethers and salts of isomers) containing substances which have a psychedelic/hallucinogenic effect on the central nervous system and/or brain, such as:

- 2-(2,5-Dimethoxy-4-ethylphenyl)ethanamine (2C-E);
- 2-(2,5-dimethoxy-4-methylphenyl)ethanamine (2C-D);
- 2-(4-Chloro-2,5-dimethoxyphenyl)ethanamine (2C-C);
- 2-(4-Iodo-2,5-dimethoxyphenyl)ethanamine (2C-I);
- 2-(4-(Ethylthio)-2,5-dimethoxyphenyl)ethanamine (2C-T-2);
- 2-(4-(Isopropylthio)-2,5-dimethoxyphenyl)ethanamine (2C-T-4);
- 2-(2,5-Dimethoxyphenyl)ethanamine (2C-H);
- 2-(2,5-Dimethoxy-4-nitro-phenyl)ethanamine (2C-N);
- 2-(2,5-Dimethoxy-4-(n)-propylphenyl)ethanamine (2C-P).

5. *Misbranded drug* shall have the same meaning as found in the Illinois Food, Drug and Cosmetics Act, 410 ILCS 620/1 et seq.

- b) **Sale or Delivery.** It shall be unlawful for any person to sell, offer for sale or deliver any product containing a synthetic cannabinoid, stimulant, misbranded drug or psychedelic/hallucinogen.
- c) **Possession.** It shall be unlawful for any person to knowingly possess a product containing a synthetic cannabinoid, stimulant, misbranded drug or psychedelic/hallucinogen.
- d) **Use.** It shall be unlawful for any person to be under the influence of a synthetic cannabinoid, stimulant, misbranded drug or psychedelic/hallucinogen.
- e) **Penalties.** Any person found to be in violation of Section 52.420 (b), (c), or (d) shall be guilty of a City Ordinance Violation for each violation thereof. Each violation of this ordinance, or everyday a violation continues to exist, shall constitute a new and separate violation. Each violation of this Ordinance is punishable by a fine of not less than Seven Hundred Fifty Dollars (\$750) nor more than One Thousand Dollars (\$1,000) per violation.
- f) **Effect Upon Other Licensure.** As noted above, violation of this Section constitutes an ordinance violation punishable by fine. In addition, violation of Section 52.20-5, b) by any organization, person, business, place, or establishment which has a license to sell intoxicating liquors pursuant to Chapter 38 of the City of DeKalb Municipal Code and/or which has a license to sell tobacco pursuant to Section 11.07 of the Municipal Code of the City of DeKalb shall constitute grounds for the City to take action relating to the liquor and/or tobacco license separate and apart from the ordinance violation, and the City may initiate proceedings to suspend or revoke the liquor and/or tobacco license of the party charged with a violation of this Section 52.20-5, b), and/or seek to impose a

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penalty under Chapter 38 or Section 11.07 of the Municipal Code of the City of DeKalb. For purposes of such a proceeding relating to the liquor and/or tobacco license, a violation of Section 52.20-5, b) shall be construed as a violation of the licensure requirements and sale restrictions under Section 11.07 and/or Chapter 38, which may be prosecuted according to the applicable requirements of those sections/chapters.

52.21 DELETED (2016-016)

52.22 DELETED (2016-016)

52.23 DELETED (2016-016)

52.24 DELETED (2016-016)

52.25 DELETED (2016-016)

52.26 DELETED (2016-016)

52.28 DELETED (2016-016)

52.29 DELETED (2016-016)

52.31 DELETED (2016-016)

52.32 EMERGENCIES.

- a) When both of the following conditions exist, there exists in the City of DeKalb a "state of emergency":
1. A group of persons in excess of twenty-five (25), either standing together as a group or fragmented into such a number that the total of the fragments acting in concert equal in excess of twenty-five (25); and
 2. Wild and violent disorders, or violent breaches of the peace by the group of persons named in Paragraph 1, or a climate where there exists a clear, present and imminent danger of violence by the group of persons named in Paragraph 1, coupled with the ability to carry out such violence.
- b) Whenever the Mayor shall determine that a "state of emergency" exists, he shall sign, under oath, a statement finding that such standards have been met, setting forth facts to substantiate such findings, describing the nature of the emergency, and declaring that a "state of emergency" exists. Such statement shall be filed with the Clerk of the City of DeKalb as soon as practicable.
- c) After declaring a "state of emergency" the Mayor may declare the "state of emergency" at an end by giving written notice to that effect to the City Clerk, but in no event shall a

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"state of emergency" extend beyond the adjournment of the first regular meeting of the City Council of the City of DeKalb after the "state of emergency" is declared.

- d) Within thirty (30) minutes after the signing of the declaration of "state of emergency," there shall exist a curfew in the corporate limits of the City of DeKalb, which shall be in effect until the "state of emergency" is ended as provided in Subsection c).
- e) When a curfew exists under this Section, it shall be unlawful for any person to be upon the streets, sidewalks, public ways or public places of the City of DeKalb and it shall be unlawful for any person to sell or offer for sale any intoxicating beverages, gasoline or any other combustible or flammable liquid or gas. The Mayor may permit the sale of gasoline for motor vehicle purposes only, but such permission shall be in writing and filed with the Clerk. For the purpose of this Section no one shall be guilty of violating the curfew unless they:
 - 1. Intended to be upon the streets, sidewalks, public ways, or public places. If one is found upon the streets, sidewalks, public ways or public places, the presumption shall be that he intended to be there unless rebutted; or,
 - 2. Intended to sell intoxicating beverages or gasoline or any other combustible or flammable liquid and did offer to sell or did sell those items. If one is found offering to sell or selling the items heretofore mentioned, the presumption shall be that he intended to do so unless rebutted.
- f) Notice. The Mayor shall cause notice to be given of the calling of a "state of emergency" and the time at which he signed the declaration by all available means reasonably known to him at the time of calling such a "state of emergency".
- g) Penalties. Any person, firm or corporation violating this Subsection e) shall be guilty of an ordinance violation and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00). (2013-039)
- h) The following persons shall be excepted from the application of that part of Subsection (e) making it unlawful to be on the streets, sidewalks, public ways or public places: the Mayor, the Aldermen, the City Manager, the City Attorney, the Municipal Youth Officer, members of the news media possessing proper credentials as issued by the City of DeKalb in conjunction with recommendations of the various news medias for the purpose of identification only, medical personnel acting in their professional capacity, peace officers and fire fighters, and any other persons who the Mayor may designate.

52.33 BARBED WIRE FENCES.

It shall be unlawful to erect or maintain anywhere in the City a fence equipped with or having barbed wire, spikes or any similar device unless specifically authorized by the Unified Development Ordinance of the City of DeKalb. (2016-016)

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52.35 DELETED (2016-016)

52.36 DELETED (2016-016)

52.37 THEFT OF CITY PROPERTY.

- a) **Property.** Property as used in this Section shall mean property owned by the City of DeKalb.
- b) **Permanent Deprivation.** As used in this Section, to "permanently deprive" means to:
 - 1. Defeat all recovery of the property by the City of DeKalb; or,
 - 2. Deprive the City of DeKalb criminally of the beneficial use of the property; or,
 - 3. Retain the property with intent to restore it to the City of DeKalb only if the City purchases or leases it back, or pays a reward or other compensation for its return, or,
 - 4. Sell, give, pledge or otherwise transfer any interest in the property or subject it to the claim of a person other than the City of DeKalb.
- c) **Stolen City property.** As used in this Section, "stolen City property" means property owned by the City of DeKalb over which control has been obtained by theft.
- d) **Obtain.** As used in this Section, "obtain" means:
 - 1. In relation to property owned by the City of DeKalb, to bring about a transfer of interest or possession, whether to the offender or to another.
- e) **Obtain control.** As used in this Section, the phrase "obtains or exerts control" over property owned by the City of DeKalb includes but is not limited to the taking, carrying away, or the sale, conveyance, or transfer of title to, or interest in, or possession of property owned by the City of DeKalb.
- f) **Theft of City property.** A person commits theft of City owned property when he knowingly:
 - 1. Obtains or exerts unauthorized control over property owned by the City of DeKalb; or,
 - 2. Obtains by deception control over property of the City of DeKalb; or,
 - 3. Obtains by threat control over property of the City of DeKalb.

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4. Obtains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen, and
 - (a) Intends to criminally deprive the City of DeKalb permanently of the use or benefit of the property; or,
 - (b) Knowingly uses, conceals or abandons the property in such manner as to deprive the City of DeKalb permanently of such use or benefit; or,
 - (c) Uses, conceals, or abandons the property knowing such use, concealment or abandonment probably will deprive the City of DeKalb permanently of such use or benefit.
- g) It shall be prima facie evidence that a person "knowingly obtains or exerts unauthorized control over property owned by the City of DeKalb" when a lessee of the personal property of the City of DeKalb fails to return to the City of DeKalb within thirty (30) days after written demand from the City of DeKalb for its return. A notice in writing, given after the expiration of the Leasing Agreement, addressed and mailed, by certified mail, to the lessee at the address given by him and shown on the Leasing Agreement shall constitute proper demand.
- h) Theft of Lost or Mislaid City Property. A person who obtains a control over lost or mislaid property owned by the City of DeKalb commits theft when he:
 1. Knows or learns that the City of DeKalb is the owner of the property or is aware of a reasonable method of learning that the City of DeKalb is the owner of the property. and
 2. Fails to take reasonable measures to restore the property to the City of DeKalb, and
 3. Intends to permanently deprive the City of DeKalb of the use or benefit of the property.
- i) Penalties. Any person, firm or corporation violating this Ordinance shall be guilty of an ordinance violation and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00), and shall be responsible for restitution for any damage caused. (2013-039)
- j) Reward. Any person providing information leading to the conviction of any individual charged with the offense of theft of City property or mislaid City property may, at the discretion of the City Council of the City of DeKalb, be paid a reward of Two Hundred Fifty Dollars (\$250.00).

52.37-5 PROTECTION OF DEKALB PUBLIC LIBRARY MATERIALS.

- a) Definitions. As used in this Ordinance:

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1. "Library facility" includes any public library or museum, or any educational, historical or eleemosynary institution, organization or society.
2. "Library material" includes any book, plate, picture, photograph, engraving, painting, sculpture, statue, artifact, drawing, map, newspaper, pamphlet, broadside, magazine, manuscript, document, letter, microfilm, sound recording, audio-visual material, magnetic or other tape, electronic data processing record or other documentary, written or printed material regardless of physical form or characteristics, or any part thereof, belonging to, or on loan to, or otherwise in the custody of a library facility.
3. "Premises of a library facility" means the interior of a building, structure or other enclosure in which a library facility is located and in which the library facility keeps, displays and makes available for inspection or borrowing library material, but for purposes of this Section, such premises do not include the exterior appurtenances to such building, structure or enclosure nor the land on which such building, structure or other enclosure is located.
4. "Library card" means a card or plate issued by a library facility for purposes of identifying the person to whom the library card was issued as authorized to borrow library material, subject to all limitations and conditions imposed on such borrowing by the library facility issuing such card.

b) Library Theft. A person commits the offense of library theft when he or she:

1. Knowingly and intentionally removes any library material from the premises of a library facility without authority to do so; or
2. Knowingly and intentionally conceals any library material upon his or her person or among his or her belongings, while still in the premises of a library facility and in such a manner that the library material is not visible through ordinary observation although there may be some notice of its presence, and removes such library material beyond the last point in the premises of that library facility at which library material may be borrowed in accordance with procedures established by that library facility for the borrowing of library materials; or
3. With the intent to deceive borrows or attempts to borrow any library material from a library facility by (i) use of a library card issued to another without the others consent, or (ii) use of a library card knowing that it is revoked, canceled or expired, or (iii) use of a library card knowing that it is falsely made, counterfeit or materially altered; or
4. Borrows from a library facility any library material pursuant to an agreement with or procedure established by the library facility for the return of such library material, and willfully without good cause fails to return the library material so borrowed in accordance with such agreement or procedure, and further willfully without good cause fails to return such library materials within 30 days after receiving written notice by certified mail from the library facility demanding the return of such library material. (1998-139)

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- c) Criminal mutilation or vandalism of library materials. A person commits mutilation or vandalism of library materials when he knowingly tears, marks on, maliciously renders imperfect or otherwise damages or destroys library materials.
- d) Posting of warning. Each library facility shall post a copy of this Ordinance at a location adjacent to each entrance to the premises of the library facility and at each point in the premises of the library facility at which the borrowing of library materials occurs.
- e) Sentence.
 - 1. Library theft, as defined in paragraph 4 of section (b) is a petty offense for which the offender shall be fined not less than \$75.00 nor more than \$500.00 and be ordered to reimburse the library for actual replacement cost of the materials not returned, pay all late fees and the postage required under 52.37-75 b) 4.
 - 2. Library theft, other than as defined in paragraph 4 of section (b) when the aggregate value of the library material which is the subject of such theft does not exceed \$300.00 is an ordinance violation with the offender punishable by a fine of not less than Three Hundred Dollars (\$300.00) and ordered to reimburse the library for actual replacement costs of materials taken and not returned. (2013-039)
 - 3. For the purpose of sentencing under sections (1) and (2), separate transactions totaling more than \$300 within a 90 day period shall be presumed to constitute a single offense.
 - 4. Criminal mutilation or vandalism of library materials, when the aggregate damage or loss of the library materials which are subject of such mutilation or vandalism does not exceed \$300.00 shall be punished by a fine of not less than \$100.00 nor more than \$500.00 and the offender shall be ordered to reimburse the library for the actual replacement costs of the damaged materials. For the purpose of sentencing under this section (4), separate acts totaling more than \$300.00 within a 90 day period shall be presumed to constitute a single offense. (1993-061)

52.38 DELETED (2016-016)

52.39 CURFEW.

- a) Age Restriction; Curfew Hours: It is unlawful for a person less than seventeen (17) years of age to be present at or upon any public assembly, building, place, street or highway at the following times: (2004-019)
 - 1. Between 12:01 a.m. and 6:00 a.m. Saturday;
 - 2. Between 12:01 a.m. and 6:00 a.m. Sunday; and
 - 3. Between 11:00 p.m. on Sunday to Thursday, inclusive and 6:00 a.m. on the following day.

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- b) **Enforcement:** Before taking any enforcement action under this Section 52.39, a police officer shall ask the apparent offender's age and reason for being in the public place. The officer shall not issue a citation or make an arrest under this Section unless the officer reasonably believes that a violation has occurred and that, based upon any response and other circumstances, none of the following exceptions apply:
1. The minor is accompanied by the minor's parent, legal guardian, custodian, sibling at least eighteen (18) years of age or a responsible companion at least eighteen (18) years of age approved by the minor's parent or legal guardian;
 2. The minor is engaged in employment that the laws of this state authorize a person less than seventeen (17) years of age to perform;
 3. The minor is engaged in an emergency involving the protection of a person or property from an imminent threat of serious bodily injury or substantial damage;
 4. The minor is participating in, going to, or returning from an activity involving the exercise of the minor's right of religious freedom, freedom of speech or the right to assemble and petition protected under the First Amendment of the United States Constitution or Article 1, Sections 3, 4 and 5 of the Constitution of the State of Illinois, or both;
 5. The minor is participating in, going to, or returning from an activity conducted by a non-profit or governmental entity that provides recreation, education, or training under the supervision of at least one (1) adult; or
 6. The minor is participating in, going to, or returning from a school recreational activity, which is organized and/or sponsored by the school in which the minor is enrolled.
- c) **Permitting Minor to Violate Curfew:** It is unlawful for a parent, legal guardian or other person to knowingly permit a person in his custody or control to violate Subsection a) of this Section. (2004-019)
- d) **Penalty:** Any person violating any provision of this Section shall pay a fine of not less than Ten Dollars (\$10.00) and not more than One Hundred Dollars (\$100.00). (1991-066)

52.40 ASSAULT.

- a) A person commits an assault when, without lawful authority, he engages in conduct, which places another in reasonable apprehension of receiving a battery.
- b) **Penalties.** Any person, firm or corporation violating this Ordinance shall be guilty of an ordinance violation and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00), and shall be responsible for restitution for any damage caused. (2013-039)

52.50 BATTERY.

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- a) A person commits battery if he intentionally or knowingly without legal justification and by any means: 1) causes bodily harm to an individual; or 2) makes physical contact of an insulting or provoking nature with an individual.
- b) Penalties. Any person, firm or corporation violating this Ordinance shall be guilty of an ordinance violation and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00), and shall be responsible for restitution for any damage caused. (2013-039)

52.60 CRIMINAL DAMAGE TO PROPERTY.

- a) A person commits an illegal act when he:
 - 1. Knowingly damages any property of another without his consent; or
 - 2. Recklessly by means of fire or explosive damages property of another; or
 - 3. Knowingly starts a fire on the land of another without his consent; or
 - 4. Knowingly injures a domestic animal of another without his consent; or
 - 5. Knowingly damages the property of another without his consent by defacing, deforming or otherwise damaging such property by the use of paint or any other similar substance.
- b) Penalties. Any person, firm or corporation violating this Ordinance shall be guilty of an ordinance violation and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00), and shall be responsible for restitution for any damage caused. (2013-039)

52.70 CRIMINAL TRESPASS TO REAL PROPERTY.

- a) A person commits criminal trespass to real property when he enters upon the land or a building, other than a residence, or any part thereof of another, after receiving, prior to such entry, notice from the owner or occupant that such entry is forbidden, or remains upon the land or in a building, other than a residence, of another after receiving notice from the owner or occupant to depart.
- b) A person has received notice from the owner or occupant within the meaning of Subsection a) if he has been notified personally, either orally or in writing, or if a printed or written notice forbidding such entry has been conspicuously posted or exhibited at the main entrance to such land or the forbidden part thereof.
- c) Any owner or lessee of real property within the City of DeKalb may execute a Trespass Enforcement Agreement with the City of DeKalb that names the sworn peace officers of the City as the agent of the owner/lessee for purposes of issuing no-trespass notices, for the purpose of issuing citations based upon violations of the same, and for purposes of serving as complaining witness in the event of any violation of a no-trespass notice. The Chief of Police or designee shall be authorized to approve of an agreement for

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such use in form and content acceptable to the Chief, and to thereafter comply with and enforce the same. Where a citation is issued for trespass by virtue of such an enforcement agreement, any sworn peace officer of the City of DeKalb may serve as complaining witness in the prosecution of such offense. (2016-016)

- d) Penalties. Any person, firm or corporation violating this Ordinance shall be guilty of an ordinance violation and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00), and shall be responsible for restitution for any damage caused. (2013-039, 2016-016)

52.75 GRAFFITI DEFACEMENT. (1998-019)

- a) Definitions. For the purposes of this section, the following words shall have the meanings respectively ascribed to them in this subsection, except where the context clearly indicates a different meaning:
1. *Aerosol paint container* means any aerosol container that is adapted or made for the purpose of applying spray paint or other substances capable of defacing property.
 2. *Broad-tipped marker* means any felt tip indelible marker or similar implement with a flat or angled writing surface that, at its broadest, is greater than one-fourth (1/4th) of an inch, containing ink or other pigmented liquid that is not water soluble.
 3. *Etching equipment* means any tool, device, or substance that can be used to make permanent marks on any natural or man-made surface.
 4. *Graffiti* means any unauthorized inscription, word, figure, painting or other defacement that is written, marked, etched, scratched, sprayed, drawn, painted or engraved on or otherwise affixed to any surface of public or private property by any graffiti implement, to the extent that the graffiti was not authorized in advance by the owner or occupant of the property, or, despite advance authorization, is otherwise deemed a public nuisance by the City Council.
 5. *Graffiti implement* means an aerosol paint container, a broad-tipped marker, gum label, paint stick or graffiti stick, etching equipment, brush or any other device capable scarring or leaving a visible mark on any natural or man-made surface. (2016-16)
 6. *Paint stick or graffiti stick* means any device containing a solid form of paint, chalk, wax, epoxy or other similar substance capable of being applied to a surface by pressure and leaving a mark of at least one-eighth (1/8th) of an inch in width.
 7. *Person* means an individual, partnership, cooperative association, private corporation, personal representative, receiver, trustee, assignee, or any other legal entity.
- b) Defacement. It shall be unlawful for any person to apply graffiti to any natural or man-made surface on any city-owned property or, without the permission of the owner or occupant, on any non-city-owned property.

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c) Penalties.

1. Fines and Imprisonment. Any person violating this Section shall be punished by a fine of not less than Two Hundred Fifty Dollars (\$250.00) nor more than One Thousand Dollars (\$1,000.00) for each offense.
 - (a) In the case of a minor, the parents or legal guardian shall be jointly and severely liable with the minor for payment of all fines.
 - (b) Failure of the parents or legal guardian to make payment will result in the filing of a lien on the parents or legal guardian's property that includes the fine and administrative costs.
2. Restitution. In addition to any punishment specified in this Section, the court shall order any violator to make restitution to the victim for damages or loss caused directly or indirectly by the violator's offense in the amount or manner determined by the court. In the case of minor, the parents or legal guardian shall be ordered jointly and severely liable with the minor to make the restitution.
3. Community Service. In lieu-of, or as part of, the penalties specified in this Section, a minor or adult may be required to perform community service as described by the court based on the following minimum requirements:
 - (a) The minor or adult shall perform at least fifty (50) hours of community service.
 - (b) Reasonable effort shall be made to assign the minor or adult to a type of community service that is reasonably expected to have the most rehabilitative effect on the minor or adult, including community service that involves graffiti removal.
- d) Rewards and Reimbursements for Information. Any person providing information which results in the arrest and conviction of a person for defacement under the provisions of this Section, may, at the discretion of the City Council, be paid a reward of up to Two Hundred Fifty Dollars (\$250.00). No claim for a reward shall be allowed unless the City investigates and verifies the accuracy of the claim and determines that the requirements of this Section have been satisfied.
- e) Graffiti as Nuisance. The existence of graffiti on public or private property in violation of this Section is expressly declared to be a public nuisance and, therefore, is subject to the removal and abatement provisions specified in this Section. It is the duty of both the owner of the property to which the graffiti has been applied and any person who may be in possession or who has the right to possess such property to at all times keep the property clear of graffiti.
- f) Removal of Graffiti by Perpetrator. Any person applying graffiti on public or private property shall have the duty to remove the graffiti within twenty-four (24) hours after notice by the City or private owner of the property involved. Such removal shall be done in a manner prescribed by the Chief of Police, the Community Development

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Director, or any additional City department, as authorized by the City Manager. Any person applying graffiti shall be responsible for the removal or for the payment of the removal. Failure of any person to remove graffiti or pay for the removal shall constitute an additional violation of this Section. Where graffiti is applied by an unemancipated minor, the parents or legal guardian shall also be responsible for such removal or for the payment for the removal.

g) Removal of Graffiti by Property Owner or City. If graffiti is not removed by the perpetrator according to Subsection f), graffiti shall be removed pursuant to the following provisions:

1. Property Owner Responsibility. It is unlawful for any person who is the owner or who has primary responsibility for control of property or for repair or maintenance of property in the City, to permit property that is defaced with graffiti to remain defaced for a period of more than seven (7) days after service by first class mail of notice of the defacement. The notice shall contain the following information:
 - (a) The street address and legal description of the property sufficient for identification of the property;
 - (b) A statement that the property is a potential graffiti nuisance property with a concise description of the conditions leading to the finding;
 - (c) A statement that the graffiti must be removed within seven (7) days after receipt of the notice and that if the graffiti is not abated with that time the City will declare the property to be a public nuisance, subject to the abatement procedures in Subsection g); and
 - (d) An information sheet identifying any graffiti removal assistance programs available through the City and private graffiti removal contractors.
2. Exceptions to Property Owner Responsibility. The removal requirements of Subsection g), 1. above shall not apply if the property owner or responsible party can demonstrate that:
 - (a) The property owner or responsible party lacks the financial ability to remove the defacing graffiti; or,
 - (b) The property owner or responsible party has an active program for the removal of graffiti and has scheduled the removal of the graffiti as part of that program, in which case it shall be unlawful to permit such property to remain defaced with graffiti for a period of more than fifteen (15) days after service by first class mail of notice of the defacement.
3. Right of City to Remove.
 - (a) Use of Public Funds. Whenever the City becomes aware or is notified and determines that graffiti is located on publicly or privately owned property viewable from a public or quasi-public place, the City shall be authorized to use public funds for the removal of the graffiti, or for the painting or repairing of the

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graffiti, but shall not authorize or undertake to provide for the painting or repair of any more extensive an area than that where the graffiti is located, unless the City Manager, or the designee of the City Manager, determines in writing that a more extensive area is required to be repainted or repaired in order to avoid an aesthetic disfigurement to the neighborhood or community, or unless the property owner or responsible party agrees to pay for the costs of repainting or repairing the more extensive area.

- (b) **Right of Entry on Private Property.** Prior to entering upon private property or property owned by a public entity other than the City for the purpose of graffiti removal the City shall attempt to secure the consent of the property owner or responsible party and a release of the City from liability for property damage or personal injury. If the property owner or responsible party fails to remove the offending graffiti within the time specified by this Section, or if the City has requested consent to remove or paint over the offending graffiti and the property owner or responsible party has refused consent for entry on terms acceptable to the City and consistent with the terms of this Section, the City shall commence abatement and cost recovery proceedings for the graffiti removal according to the provisions specified below.

4. Abatement and Cost Recovery proceedings.

- (a) **Notice of Due Process Hearing.** The City Manager, or the designee of the City Manager, serving as the Hearing Officer, shall serve the property owner of record and the party responsible for the maintenance of the property, if a person different than the owner, with written notice of the City's intent to hold a due process hearing at which the property owner or responsible party shall be entitled to present evidence and argue that the property does not constitute a public nuisance. If the owner of record cannot be found after a diligent search, the notice may be served by posting a copy thereof in a conspicuous place upon the property for a period of ten (10) days.
- (b) **Determination of Hearing Officer.** The determination of the Hearing Officer after the due process hearing shall be final and not appealable. If, after the due process hearing, regardless of the attendance of the owner or the responsible party of their respective agents, the Hearing Officer determines that the property contains graffiti viewable from a public or quasi-public place, the Hearing Officer shall give written notice in an eradication order that, unless the graffiti is removed within seven (7) days, the City shall enter upon the property, cause the removal, painting over (in such color as shall meet with the approval of the Hearing Officer), or such other eradication thereof as the Hearing Officer determines appropriate, and shall provide the owner and the responsible party thereafter with an accounting of the costs of the eradication effort on a full cost recovery basis.
- (c) **Eradication Effort.** Not sooner than the time specified in the order of the Hearing Officer, the City Manager, or the designee of the City Manager, shall implement the eradication order and shall provide an accounting to the owner and the responsible party of the costs thereof.

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(d) Lien. As to such property where the responsible party is the property owner, if all or any portion of the assessed eradication charges remain unpaid after thirty (30) days, the portion thereof that remains unpaid shall constitute a lien on the property that was the subject of the eradication effort and shall be recorded with the County Clerk's Office.

52.80 RETAIL THEFT.

a) For purposes of this Section 52.80, the words and phrases defined below have the meanings ascribed to them unless a contrary meaning is clear from the context.

1. To "conceal" merchandise means that, although there may be some notice of its presence, that merchandise is not visible through ordinary observation.
2. "Full Retail Value" means the merchant's stated or advertised price of the merchandise.
3. "Merchandise" means any item of tangible personal property.
4. "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator.
5. "Minor" means a person who is less than 19 years of age, is unemancipated and resides with his parents or legal guardian.
6. "Person" means any natural person or individual.
7. "Peace Officer" has the meaning ascribed to that term in Section 2-13 of the Illinois Code of Criminal Procedure (725 ILCS 5/ 2-13).
8. "Premises of a Retail Mercantile Establishment" include, but is not limited to, the retail mercantile establishment; any common use area in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment.
9. "Retail Mercantile Establishment" means any place where merchandise is displayed, held, stored or offered for sale to the public.
10. "Shopping Cart" means those push carts of the type of types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and incidentally, from the stores to a place outside the store.
11. "Under-ring" means to cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

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12. "Theft Detection Shielding Device" means any laminated or coated bag or device designed and intended to shield merchandise from the detection by an electronic or magnetic theft alarm sensor.
 13. "Theft Detection Device Remover" means any tool or device specifically designed and intended to be used to remove any theft detection device from any merchandise.
- b) A person commits the offense of retail theft when he or she knowingly:
1. Takes possession of, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored or offered for sale in a retail mercantile establishment with the intention of retaining such merchandise or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise; or
 2. Alters, transfers, or removes any label, price tag, marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment and attempts to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of the full retail value of such merchandise; or
 3. Transfers any merchandise displayed, held, stored or offered for sale, in a retail mercantile establishment from the container in, or on which such merchandise is displayed to any other container with the intention of depriving the merchant of the full retail value of such merchandise; or
 4. Under-rings with the intention of depriving the merchant of the full retail value of the merchandise; or
 5. Removes a shopping cart from the premises of a retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of depriving the merchant permanently of the possession, use or benefit of such cart; or
 6. Represents to a merchant that he or another is the lawful owner of property, knowing that such representation is false and convey or attempts to convey that property to a merchant who is the owner of the property in exchange for money, merchandise credit or other property of the merchant; or
 7. Uses or possess any theft detection shielding device or theft detection device remover with the intention of using such device to deprive the merchant permanently of the possession, use or benefit of any merchandise displayed, held, stored or offered for sale in retail mercantile establishment without paying the full retail value of such merchandise; or
 8. Obtains or exerts unauthorized control over property of the owner and thereby intends to deprive the owner permanently of the use or benefit of the property when

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a lessees of the personal property of another fails to return it to the owner, or if the lessee fails to pay the full retail value of such property to the lessor in satisfaction of any contractual provision requiring such, within 30 days after written demand from the owner of its return. A notice in writing, given after the expiration of the leasing agreement, by certified mail, to the lessee at the address given by the lessee and shown on the leasing agreement shall constitute proper demand; or, (2016-016)

9. Removes, loosens, alters, deactivates or attempts to remove/loosen/alter/deactivate any theft detection or theft deterrence device employed by a retail mercantile establishment, except with the express permission and authorization of such establishment; or, (2016-016)
10. Possesses any specialized device, implement or tool which is created or manufactured specifically for the purpose of disabling or removing a theft detection or theft deterrence device and which has no other common purpose, on the premises of a retail mercantile establishment, except when acting in the employment of such establishment. (2016-016)

c) Presumptions. If any person:

1. Conceals upon his or her person or among his or her belonging, unpurchased merchandise displayed, held stored or offered for sale in a retail mercantile establishment; and
2. Removes that merchandise beyond the last known station for receiving payment for that merchandise in that retail mercantile establishment, such person shall be presumed to have possessed, carried away or transferred such merchandise with the intention of retaining it or with the intention of depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the full retail value of such merchandise.

d) Detention. Any merchant who has reasonable grounds to believe that a person has committed retail theft may detain such person, on or off the premises of a retail mercantile establishment, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

1. To request identification;
2. To verify such identification;
3. To make reasonable inquiry as to whether such person has in his possession unpurchased merchandise and to make reasonable investigation of the ownership of such merchandise;
4. To inform a peace officer of the detention of the person and surrender the person to the custody of a peace officer;

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5. In the case of a minor, to inform a peace officer, the parents, guardian or other private person interested in the welfare of that minor of this detention and to surrender custody of the minor to such person;

A merchant may make a detention as permitted herein off the premises of a retail mercantile establishment only if such detention is pursuant to an immediate pursuit of such person.

A merchant shall be deemed to have reasonable grounds to make a retention for the purposes of this Section if the merchant detains a person because such person has in his possession either a theft detection shielding device or a theft detection device remover.

- e) Affirmative Defense. A detention as permitted in this Ordinance does not constitute an arrest or an unlawful restraint, as defined in Section 10-3 of the Illinois Code of Criminal Procedure (725 ILCS 5/10-3), nor shall it render the merchant liable to the person so detained.
- f) Penalties. Any person, firm or corporation violating this Ordinance shall be guilty of an ordinance violation and shall be punished by a fine of not less than Three Hundred Dollars (\$300.00), and shall be responsible for restitution for any damage caused or merchandise removed. (2013-039)

52.85 DEFACING PUBLIC PROPERTY. (2015-050)

It shall be unlawful to urinate or defecate on, in or upon any public street, sidewalk, park or other public place, or on any outdoor private property. Persons found violating this provision shall be fined not less than Seventy-Five Dollars (\$75.00) nor more than Three Hundred Dollars (\$300.00) for each offense.

52.90 THEFT.

- a) A person commits theft when he knowingly:
1. Obtains or exerts unauthorized control over property of the owner; or
 2. Obtains by deception control over property of the owner; or
 3. Obtains by threat control over property of the owner; or
 4. Obtains control over stolen property knowing the property to have been stolen or under such circumstances as would reasonably induce him to believe that the property was stolen; and
- (a) Intends to deprive the owner permanently of the use or benefit of the property; or
- (b) Knowingly uses, conceals or abandons the property in such a manner as to deprive the owner permanently of such use or benefit; or

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- (c) Uses, conceals or abandons the property knowing such use, concealment or abandonment probably will deprive the owner permanently of such uses or benefit.
- b) Penalties. Any person, firm or corporation violating this Ordinance shall be guilty of an ordinance violation and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00), and shall be responsible for restitution for any damage caused. (2013-039)

52.91 FIREWORKS.

- a) A person shall not possess, sell, offer for sale, or discharge on private property any fireworks described below except where approved for the supervised display of fireworks. (2016-016)

Fireworks shall mean and include any explosive composition or any substance or combination of substances, or article prepared for the purpose of producing a visible or an audible effect of a temporary exhibitional nature by combustion, explosion, deflagration or detonation, and shall include: blank cartridges, toy cannons in which explosives are used, the type of balloons which require fire underneath to propel the balloon, firecrackers, torpedoes, sky rockets, Roman candles, bombs or other fireworks of like construction and any fireworks containing any explosive compounds; or any tablets or other devices containing any explosive substance, or containing combustible substances producing visual effects.

The term "fireworks" shall not include snake or glow worm pellets; smoke devices; sparklers; trick noisemakers known as "party poppers", "booby traps", "snappers", "trick matches", "cigarette loads" and "auto burglar alarms"; automobile flares; toy pistols, toy canes, toy guns or other devices in which paper or plastic caps containing twenty-five hundredths (.25) grains or less of explosive compound are used, provided they are so constructed that the hand cannot come in contact with the cap when in place for the explosion; and toy pistol paper or plastic caps which contain less than twenty-five hundredths (.25) grains of explosive mixture; the sale and use of which shall be permitted at all times.

- b) A person shall not manufacture, store, offer or expose for sale, sell at retail or discharge on public property any fireworks described below except where approved for the supervised display of fireworks.

Fireworks shall mean and include any combustible or explosive composition, and any substance and combination of substances and articles prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration or detonation.

Fireworks shall include: blank cartridges, toy pistols, toy cannons, toy canes and toy guns in which explosives are utilized, balloons requiring fire underneath to propel the balloon, firecrackers, torpedoes, skyrockets, Roman candles, sparklers and other devices of similar construction, any device containing any explosive or flammable compound, and any tablets and other devices containing any explosive substance.

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The term "fireworks" shall not include automobile flares, paper caps containing not more than an average of .25 grain (16mg) of explosive content per cap, and toy pistols, toy canes, toy guns and other devices utilizing such caps. The sale and utilization of the types of explosives devices listed herein which are not considered fireworks shall be permitted at all times.

Any person violating this Section shall be punished by a fine of not less than Fifty Dollars (\$50.00) nor more than Five Hundred Dollars (\$500.00) for each offense.

- c) For purposes of this Ordinance, "except where approved" shall be interpreted to mean where a fireworks display is expressly authorized by the issuance of all required federal, state or local permits, and where the display has been authorized in writing by the Fire Chief of the City of DeKalb. (2016-016)

52.130 PARENTAL RESPONSIBILITY. (2018-017)

- a) COMPASS Program: The City of DeKalb hereby formally initiates the COMPASS Program (Changing Outcomes by Making Parents Accountable, Successful and Supported).

1) Definitions:

Delinquent Acts means those acts which violate the laws of the United States, or the statutes of the state or the ordinances of the city, but does not include traffic violations.

Illegal Drugs means controlled substances or other illegal drugs obtained without a legal prescription.

Minor means any person under the age of eighteen (18) years residing with a parent as defined herein.

Parent means mother, father, legal guardian and any other person having the care or custody of a Minor or any person acting in the parent's stead who has custody or control of the child.

2) Parental Responsibility:

- (a) It is the continuous duty of the parent of any Minor to exercise reasonable control to prevent the Minor from committing any Delinquent Act.
- (b) Included (without limitation) in this continuous duty of reasonable parental control are the following parental duties (with a violation of any such duty being unlawful):
- (1) To keep illegal drugs or illegal substances or items out of the home, and to reasonably control and restrict access to alcohol or legal drugs within the home;

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- (2) To know the city's curfew law and to require the Minor to observe the curfew law;
 - (3) To require the Minor to attend regular school sessions and to forbid the Minor to be absent from class without parental or school permission;
 - (4) To arrange proper supervision for the Minor when the parent must be absent;
 - (5) To personally supervise and constrain the behavior of the Minor when the parent is present;
 - (6) To forbid the Minor from keeping stolen property, illegally possessing firearms or illegal drugs, or associating with known juvenile delinquents or gang members, and to seek help from appropriate governmental authorities or private agencies in handling or controlling the Minor, when necessary; if it becomes known to the parent that the Minor possesses stolen property, legal or illegal firearms, illegal drugs, or is associating with known juvenile delinquents;
 - (7) To know the location and activities of the Minor at all times;
 - (8) To prevent the Minor from engaging in any unlawful activity.
- (c) It shall be unlawful to fail to complete any training or counseling required pursuant to the provisions of this ordinance (and such failure may be charged as an ordinance violation without regard to the stage that the parent or Minor is at in the juvenile offender process).
- 3) Process:
- (a) If a Minor commits a Delinquent Act, the parent shall be guilty of a violation of this Ordinance if it is proven that any act, word, performance or nonperformance of parental duty by the parent encouraged, contributed toward, caused, tended to cause or in any way aided or enabled the commission of the Delinquent Act by the Minor, or the creation of a circumstance where the Minor was unattended or unsupervised at a time when the Minor committed the Delinquent Act. Where a parent fails to exercise reasonable control over a Minor, where the Minor commits the act while unsupervised by a parent or guardian, or where the Minor commits the act while also violating curfew or being absent from school (or home-schooling) without lawful authority, it shall be presumed that such failure to exercise reasonable control has a causal relationship to the Delinquent Act.
 - (b) For purposes of this Ordinance, the City shall be required to prove the occurrence of the Minor's Delinquent Act by a preponderance of the evidence, and also to prove the parent's action or inaction (unless a presumption applies). Notwithstanding the foregoing, the prosecution of the offense shall not be a prosecution of the Minor and no penalty shall be imposed against the Minor by

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virtue of such prosecution. If the Minor has plead guilty or been found guilty of the Delinquent Act in any Circuit Court or administrative proceeding, whether by default or otherwise, the City shall not be required to prove the occurrence of the Minor's Delinquent Act.

- (c) Upon the first violation of this ordinance, the Parent shall be provided with informational letter in form and content acceptable to the Chief of Police or designee, explaining the penalties for further violations.
- (d) Upon the second violation of this ordinance (whether a second offense by same Minor, or an offense by another Minor in the custody of parent or guardian) within a 12-month rolling period, the Parent shall be required to attend an in-person meeting with a trained juvenile officer from the DeKalb Police Department. The meeting shall include a detailed review of the offenses that the Minor was charged with. If appropriate, the parent and the City may enter into a Compliance Agreement with strategies that the parent will employ to avoid further offenses. The parent shall also be required to attend a Juvenile Intervention training conducted by the City and third parties in form and content acceptable to the Chief of Police or designee thereof.
- (e) Upon the third violation of this ordinance (whether a second offense by same Minor, or an offense by another Minor in the custody of parent or guardian) within a 12-month rolling period, or upon the failure of a parent to complete any meeting or training required herein, the parent shall be subject to a fine of not more than seven hundred fifty dollars (\$750.00).
- (f) In lieu of ordering payment of a fine, the parent may be sentenced to completing community service hours at a social service agency or non-profit, with a preference towards organizations providing services to minors.
- (g) In addition to the other penalties provided for herein, the defendant may be sentenced to payment of restitution to the City of DeKalb for officer time and actual costs incurred in the investigation, processing or prosecution of Delinquent Acts of the Minor or of violations of this ordinance. The Court shall make an initial determination as to whether or not it shall consider imposition of such costs, and if the Court determines to consider imposition, a hearing shall be set for the presentation of relevant evidence as to the costs incurred.
- (h) Enforcement of any penalty imposed pursuant to this Ordinance may be suspended for a period of time acceptable to the Court, provided that the parent enters into a Court Supervision Order providing for the completion of additional training or counseling, or otherwise providing for the performance of actions designed to minimize the potential for recidivism by the Minor(s) in question.
- (i) It shall be an affirmative defense to any charge based upon the action of a Minor, where the parent is able to prove that: 1) he or she was present with the Minor and utilizing all available reasonable measures to control the behavior of the Minor; 2) the Minor left the parent's residence without the consent and against the parent's express direction; 3) the parent immediately reported the

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Minor's leaving the premises without consent to the Police Department; and, 4) the Minor completed the Delinquent Act while so absent without consent.

b) **Mandatory Attendance at Court:**

1) **Definitions as used in this section:**

Knowingly means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inquiry or inspection. Knowingly includes knowledge that a parent should reasonably be expected to have concerning the whereabouts of a juvenile in that parent's legal custody. This requirement is intended to hold a neglectful or careless parent up to a reasonable community standard of parental responsibility through an objective test. It shall therefore be no defense that a parent was completely indifferent to the activities or conduct or whereabouts of such juvenile.

Legal Guardian means a person appointed guardian, or given custody, of a Minor by a circuit court of this state but does not include a person appointed guardian or given custody of a Minor under the Juvenile Court Act.

Minor means a person under the age of eighteen (18).

Parent means a biological or adoptive parent.

Unemancipated Minor means a Minor still under the care and custody of at least one (1) of her parents or a legal guardian.

- 2) **Prohibited Conduct:** It shall be unlawful for any parent or legal guardian of any Minor in her custody to knowingly allow or to knowingly permit such Minor to fail to appear in court, when said Minor is required by law to appear in court, after the Minor has been charged with a violation of any ordinance of the City of DeKalb or with failing to comply with any order of the Court. It shall be an affirmative defense for the parent or legal guardian to prove that she exercised reasonable efforts to ensure the Minor would appear in court when required, but that such action on the part of the parent or guardian, although exercised with due care, was unsuccessful. Any parent or legal guardian shall only be charged with a violation of this provision if she has received written notice, either by certified or registered mail or by personal service of summons or notice to appear, setting forth the charges against said Minor in the original cause.
- 3) **Penalties:** Every person violating the provisions of Section 52.130(b) shall be fined not less than Fifty Dollars (\$50) nor more than Two Hundred Fifty Dollars (\$250) for each offense.

52.200 ADULT USE - VIEWING BOOTHS.

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PURPOSE. It is a lawful purpose of the City of DeKalb to enact an ordinance setting forth regulations for the preservation of health and to prevent the spread of AIDS and other communicable or sexually transmitted diseases in the City of DeKalb. It has been found by DeKalb as well as other communities around the country, particularly Milwaukee, Racine, Waukesha, Delafield and Kenosha, Wisconsin, and Marion County, Indiana, that many adult-oriented establishments install movie viewing booths with doors and locks in which patrons view adult-oriented video tapes, movies, films and other forms of adult entertainment, and that such booths have been and are being used by patrons to engage in sexual acts resulting in unsanitary, unhealthy and unsafe conditions in said booths and establishments. This ordinance establishes standards for booth construction and maintenance in order to preserve health and to prevent the spread of AIDS and other communicable diseases. (1996-134)

52.201 DEFINITIONS.

- a) Adult-Oriented Establishment shall mean any premises including, but not limited to: adult bookstores, adult motion picture theaters, or adult cabarets, to which public patrons or members are invited or admitted and which are physically arranged so as to provide booths, cubicles, rooms, compartments or stalls separate from the common areas of the premises for the purposes of viewing adult entertainment, including adult-oriented motion pictures, films, or videotapes, or wherein an entertainer provides adult entertainment to a member of the public, a patron, or a customer, whether or not such adult entertainment is held, conducted, operated or maintained for a profit, direct or indirect.
- b) Adult Bookstore means an establishment having as its stock in trade, for sale, rent, lease, inspection or viewing, books, films, video cassettes, magazines or other periodicals which are distinguished or characterized by their emphasis on matters depicting, describing or relating to "specific sexual activities" or "specified anatomical areas" as defined below, and in conjunction therewith have facilities for the presentation of adult entertainment, as defined below, including adult-oriented films, movies or live performances, for observation by patrons therein.
- c) Adult Motion Picture Theater means an enclosed building used for presenting material having as its dominant theme, or distinguished or characterized by an emphasis on, matters depicting, describing or relating to "specified sexual activities" or "specified anatomical areas" as defined below, for observation by patrons therein.
- d) Adult Cabaret means a cabaret which features topless dancers, strippers, male or female impersonators, or similar entertainers.
- e) Adult Entertainment means any exhibition of any motion picture, film, videotape, live performance, display or dance of any type, which has as its dominant theme, or is distinguished or characterized by an emphasis on, any actual or simulated "specified sexual activities" or "specified anatomical areas" as defined below.
- f) Police Department means the City of DeKalb Police Department.
- g) Operator means any person, partnership, or corporation operating, conducting, maintaining or owning any adult-oriented establishment.

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h) Specified sexual activities means simulated or actual.

1. Showing of human genitals in a state of sexual stimulation or arousal.
2. Acts of masturbation, sexual intercourse, sodomy, bestiality, necrophilia, sadomasochistic abuse, fellatio or cunnilingus.
3. Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts.

i) Specified anatomical areas means:

1. Less than completely and opaquely covered human genitals, public region, buttocks, and female breasts below the point immediately above the top of the areola.
2. Human male genitals in a discernible turgid state, even if opaquely covered. (1996-134)

52.202 PHYSICAL LAYOUT OF BOOTHS AND PREMISES.

Any adult-oriented establishment having available for customers, patrons or members, any booth, room or cubicle for the private viewing of any adult entertainment must comply with the following requirements:

- a) **Access.** Each booth, room or cubicle shall be totally accessible to and from aisles and public areas of the adult-oriented establishment and shall be unobstructed by any door, lock, curtain, blind, or other control-type devices.
- b) **Construction.** Each booth, room or cubicle shall meet the following construction requirements:
 1. Each booth, room or cubicle shall be separated from adjacent booths, rooms or cubicles and any non-public areas by a wall.
 2. Each booth, room or cubicle shall have at least one side totally open to a public lighted aisle so that there is an unobstructed view at all times of anyone occupying the same.
 3. All walls in each booth, room or cubicle shall be solid without any openings. All such walls shall be extended from the floor to a height of not less than six (6) feet and be light colored, non-absorbent, smooth-textured and easily cleanable.
 4. The floor in each booth, room or cubicle must be light colored, non-absorbent, smooth textured and easily cleanable.
 5. The lighting level of each booth, room or cubicle when not in use shall be a minimum of ten (10) foot candles at all times, as measured from the floor. The

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lighting level of each booth, room or cubicle when in use shall be a minimum of one (1) foot candle at all times, as measured from the floor.

- c) Occupants. Only one individual shall occupy a booth, room or cubicle at any time. No occupant of same shall engage in any type of sexual activity, cause any bodily discharge or litter while in the booth. No individual shall damage or deface any portion of the booth. (1996-134)

52.203 RESPONSIBILITIES OF THE OPERATOR.

- a) Every act of omission by an employee constituting a violation of the provision of this Section shall be deemed the act or omission of the operator if such act or omission occurs either with the authorization, knowledge, or approval of the operator, or as a result of the operator's negligent failure to supervise the employee's conduct, and the operator shall be punishable for such act or omission in the same manner as if the operator committed the act or caused the omission.
- b) The operator shall maintain the premises in a clean and sanitary manner at all times.
- c) The operator shall maintain at least ten (10) foot candles of light in the public portions of the establishment, including aisles, at all times.
- d) The operator shall ensure compliance of the establishment and its patrons with the provisions of this section.
- e) The operator shall post the regulations concerning booth occupancy on signs, with lettering at least one inch high, in conspicuous areas of the establishment and in each booth, room or cubicle. (1996-134)

52.204 ENFORCEMENT.

It shall be unlawful for any person, corporation, partnership or other entity to operate any adult-oriented establishment in violation of or to otherwise violate any of the provisions of this ordinance. The Police Department shall have the authority to inspect the premises during operating hours and to enforce the provisions of this ordinance. (1996-134)

52.205 PENALTIES.

Any person violating any provisions of this section shall be fined not less than Five Hundred Dollars (\$500) nor more than Five Thousand Dollars (\$5,000) for each offense. With the exception of 52.202(c), a separate offense is established for every day that a violation exists. (1996-134)

52.300 TOBACCO USE, CONSUMPTION, POSSESSION BY MINORS.

It shall be unlawful for any person under the age of ~~twenty-one~~ ~~eighteen~~ (21~~8~~) years, to use, possess or consume any cigar, cigarette, smokeless tobacco or tobacco in any of its forms within One Thousand (1,000) feet of the property line of any public school within the

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corporate limits of the City of DeKalb. For purposes of this section, "smokeless" tobacco shall mean any tobacco product that is suitable for dipping or chewing. (2012-086)

Penalty: Any person violating this Section shall be fined not less than Seventy-Five Dollars (\$75.00) for each offense. (1997-007, 2012-086)

52.400 POSSESSION OF CANNABIS. (2008-071, 2017-022)

a) Except as may otherwise be allowed under State law and this Code, the possession of cannabis is prohibited as follows: (1) ~~no person who is under 21 years of age shall use or possess any substance containing cannabis;~~ (2) ~~no person who is 21 years of age or older shall possess (a) more than 30 grams of cannabis flower, (b) 5 grams of cannabis concentrate, (c) cannabis-infused product(s) containing a total of more than 500 milligrams of tetrahydrocannabinol (THC), and (d) cannabis plants;~~ (3) no person shall possess any amount of cannabis in any form (a) in a school bus, (b) on the grounds of any preschool or primary or secondary school, (c) in a vehicle not open to the public unless the cannabis is in a reasonably secured, sealed container and reasonably inaccessible while the vehicle is moving, or (d) in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises; and (4) no person shall use cannabis (a) in a school bus, (b) on the grounds of any preschool or primary or secondary school, (c) in any motor vehicle, (d) in any motor vehicle, (e) in a private residence that is used at any time to provide licensed child care or other similar social service care on the premises, (f) in any public place where a person could reasonably be expected to be observed by others, (g) knowingly in close physical proximity to anyone under 21 years of age who is not a registered medical cannabis patient, or (h) while operating a motor vehicle, aircraft, or motorboat. ~~in an amount of 10 —grams or less.~~ (2017-022)

b) For purposes of this Section, "cannabis" ~~means~~ ~~includes~~ marijuana, hashish, and other substances that are identified as including any parts of the plant Cannabis sativa and including derivatives or subspecies, such as indica, of all strains of cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and any compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other naturally produced cannabinol derivatives, whether produced directly or indirectly by extraction; however, "cannabis" does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted from it), fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination. "Cannabis" does not include industrial hemp as defined and authorized under the Industrial Hemp Act. "Cannabis" also ~~means concentrate and cannabis-infused products, marijuana, hashish or other substances —which are identified as including any part of the plant Cannabis sativa, whether growing —or not; the seeds thereof; the resin extracted from any part of such plant; and any —compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, —or resin, including tetrahydrocannabinol (THC) and all other synthetically produced —ingredients, whether produced directly or indirectly by extraction, or independently by —means of chemical synthesis or by combination of extraction and chemical synthesis; —but shall not include the mature stalks of such plant, fiber produced from such stalks, oil —or cake made from the seeds of such plant, any other compound, manufacture, salt, —derivative, mixture, or preparation of such mature stalks (except the resin extracted~~

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~~therefrom), fiber, oil or cake, or the sterilized seed of such plant. Cannabis shall also include any substance defined as cannabis in section 3 of the Illinois cannabis control act 720 Illinois Compiled Statutes 550/3 et seq., and as hereafter amended.~~

c) Penalty: Any person violating this Section shall be fined not less than Three Hundred Dollars (\$300) for a first-time violation and not less than (Seven Hundred and Fifty Dollars (\$750) nor more than One Thousand Dollars (\$1,000) for second or subsequent violations charged. Notwithstanding the foregoing, in the event that a violation of this section is processed and paid as a "mail-in" citation within the timeline for said mail-in process (and before the initiation of an ordinance violation case in the Circuit Court), the fine for said violation shall be Two Hundred Dollars (\$200). (2013-003, 2017-022)

d) State-Licensed Medicinal Cannabis Marijuana: (2014-001)

1) Notwithstanding any of the foregoing prohibitions or any other applicable City regulation, the lawful possession or use of ~~marijuana, for medicinal cannabis and therapeutic reasons,~~ in strict conformity with all applicable then-current State statutes and regulations applicable thereto, by a person who has been issued and is actually in possession of a valid, current, State-issued medicinal cannabis marijuana permit, shall not be unlawful under City Code. Any violation of applicable State regulations shall render the immunities of this section (d)(1) inapplicable.

2) It shall be unlawful to display a false, fraudulent, forged, expired, misleading or otherwise invalid medicinal cannabis marijuana permit or to give false information to a police officer regarding the existence, validity or other facts relating to the issuance of such a medicinal cannabis marijuana permit. It shall be unlawful to use or attempt to use a medicinal cannabis marijuana permit belonging to any other person. It shall be unlawful to possess a fraudulent, forged or false medicinal cannabis marijuana permit. A violation of this subsection (d)(2) shall be punishable by a fine of not less than Seven Hundred and Fifty Dollars (\$750.00), plus Court Costs.

3) It shall be a violation of this City Code and unlawful to engage in any violation of the then-current version of the applicable Illinois statute or statutes which permit the medicinal ~~or therapeutic~~ use or possession of cannabis. The then-current, applicable provisions of State law are adopted as a component of this ordinance, by reference, as if fully restated herein. A violation of this subsection (d)(3) shall be punishable by a fine of not less than Seven Hundred and Fifty Dollars (\$750.00), plus Court Costs.

52.410 POSSESSION OF DRUG PARAPHERNALIA. (2008-071, 2017-022)

a) Violation. No person shall possess any item of drug paraphernalia with the intent to use it for the purpose of unlawfully ingesting, inhaling, or otherwise introducing ~~cannabis or~~ a controlled substance into the human body, or in preparing ~~cannabis or~~ a controlled substance for that use. In determining intent for purposes of this Section, the trier of fact may take into the consideration of the proximity of the ~~cannabis or~~ controlled substances to the drug paraphernalia or the presence ~~of cannabis or~~ a controlled substance on the drug paraphernalia.

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- b) Definitions. As used in this Section, the following shall include and have the following meanings:

~~CANNABIS: Marijuana, hashish or other substances which are identified as including any part of the plant Cannabis sativa, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and any compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin, including tetrahydrocannabinol (THC) and all other synthetically produced ingredients, whether produced directly or indirectly by extraction, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis; but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil or cake, or the sterilized seed of such plant. Cannabis shall also include any substance defined as cannabis in section 3 of the Illinois Cannabis Control Act, 720 Illinois Compiled Statutes 550/3 et seq., and as hereafter amended.~~

CONTROLLED SUBSTANCE: Any substance as defined in article II of the Illinois Controlled Substances Act, 720 ILCS 570/201 et seq.

DRUG PARAPHERNALIA: All equipment, products, and materials of any kind which are used or intended to be used in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body ~~cannabis or~~ a controlled substance in violation of Section 52.400 of this Code, ~~the Cannabis Control Act, 720 ILCS 550/1 et seq.,~~ or the Illinois Controlled Substances Act, 720 ILCS 570/100 et seq. It includes, but is not limited to:

1. Kits intended to be used unlawfully in manufacturing, compounding, converting, producing, processing, or preparing ~~cannabis or~~ a controlled substance;
2. Isomerization devices intended to be used unlawfully in increasing the potency of any species of plant which is ~~cannabis or~~ a controlled substance;
3. Testing equipment intended to be used unlawfully in a private home for identifying or in analyzing the strength, effectiveness, or purity of ~~cannabis or~~ controlled substances;
4. Diluents and adulterants intended to be used unlawfully for cutting ~~cannabis or~~ a controlled substance by private persons;
5. Objects intended to be used unlawfully in ingesting, inhaling, or otherwise introducing ~~cannabis, cocaine, hashish, hashish oil~~ or other controlled substances into the human body including, where applicable, the following items: (2016-016)
 - (a) Water pipes;
 - (b) Carburetion tubes and devices;

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- (c) Smoking and carburetion masks;
 - (d) Miniature cocaine spoons and cocaine vials;
 - (e) Carburetor pipes;
 - (f) Electric pipes;
 - (g) Air driven pipes;
 - (h) Chillums;
 - (i) Bongs;
 - (j) Ice pipes or chillers;
 - (k) Foodstuffs that have been modified for the purpose of rendering them capable of being utilized in the burning and inhalation or other administration of drugs;
(2016-016)
 - (l) Any other item that includes drug residue or indicia of use as an implement for the ingestion, cooking, preparation or distribution of controlled substances.
(2016-016)
6. Any item whose purpose, as announced or described by the seller, is for use in violation of this Section or Section 52.400 of this Code.

KNOWLEDGE: Knows, acts knowingly or with knowledge:

1. The nature or attendant circumstances of his/her conduct, described by the section defining the offense, when he/she is consciously aware that his/her conduct is of such nature or that such circumstances exist. Knowledge of a material fact includes awareness of the substantial probability that such fact exists.
2. The result of his/her conduct, described by the section defining the offense, when he/she is consciously aware that such result is likely to be caused by his/her conduct.
3. Knowledge may be inferred from the surrounding circumstances.

MANUFACTURE: The production, preparation, propagation, compounding, conversion or processing of controlled substances~~cannabis~~, either directly or indirectly, by extraction from substances of natural origin, or independently by means of chemical synthesis, and includes any packaging or repackaging of ~~cannabis~~-controlled substances or labeling of its container, except that this term does not include the preparation, compounding, packaging or labeling of ~~cannabis~~-controlled substances as an incident to lawful research, teaching or chemical analysis and not for sale.

PERSON: Any individual, corporation, business trust, estate, trust, partnership or association, or any other entity.

POSSESSION: Possession may be either actual or constructive.

1. Actual possession means exercising physical dominion.
2. Constructive possession may be inferred if the defendant has intent and capacity to

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maintain control and dominion over the cannabis or drug paraphernalia.

PRODUCE OR PRODUCTION: Planting, cultivating, tending or harvesting.

- c) Penalty. Any person violating this Section shall be fined not less than Three Hundred Dollars (\$300) for a first-time violation and not less than Seven Hundred and Fifty Dollars (\$750.00) nor more than One Thousand Dollars (\$1,000.00) for second or subsequent violations charged. Notwithstanding the foregoing, in the event that a violation of this Section is processed and paid as a "mail-in" citation within the timeline for said mail-in process (and before the initiation of an ordinance violation case in the Circuit Court), the fine for said violation shall be Two Hundred Dollars (\$200). (2017-022)
- d) Forfeiture. Drug paraphernalia as defined herein, seized by police officers pursuant to an arrest or issuance of a notice to appear for a violation of this Section, shall be forfeited to the City of DeKalb upon a plea or finding of guilty for a violation of this Section, or upon payment of the fine in settlement of said violation pursuant to Section 1.12 of this Code, without further order of the court.
- e) Exempt Items. This Section does not apply to the following:
 - 1. Items marketed for the use in the preparation, compounding, packaging, labeling or other use of cannabis or a controlled substance as an incident to lawful research, teaching, or chemical analysis and not for sale.
 - 2. Items marketed for, or historically and customarily used in connection with the planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, or inhaling of tobacco or any other lawful substance, such as garden hoes, rakes, sickles, baggies, tobacco pipes, and cigarette rolling papers.
 - 3. Items listed in the definition of "drug paraphernalia" in Section 52.400(b), which are marketed for decorative purposes, when such items have been rendered completely inoperable or incapable of being used for any illicit purposes prohibited by this Section.
- f) Determination. In determining whether a particular item is exempt under this Section, in addition to all other logically relevant facts, the following should be considered:
 - 1. The general, usual, customary, and historical use of the item involved;
 - 2. Expert evidence concerning the ordinary or customary use of the item involved and the effect of any peculiarity in the design or engineering of the item upon its functioning;
 - 3. Any written or oral instructions accompanying the delivery of the item concerning its use;

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4. National and local advertising concerning its use;
5. The manner in which the item is displayed for sale.

~~g) State-Licensed Medicinal Marijuana: (2014-004)~~

- ~~1. Notwithstanding any of the foregoing prohibitions or any other applicable City regulation, the lawful possession or use of drug paraphernalia, for medicinal and therapeutic reasons, in strict conformity with all applicable then-current State statutes and regulations applicable thereto, by a person who has been issued and is actually in possession of a valid, current, State-issued medicinal marijuana permit, shall not be unlawful under City Code. Any violation of applicable State regulations shall render the immunities of this section g)1. inapplicable.~~
- ~~2. It shall be unlawful to display a false, fraudulent, forged, expired, misleading or otherwise invalid medicinal marijuana permit or to give false information to a police officer regarding the existence, validity or other facts relating to the issuance of such a medicinal marijuana permit. It shall be unlawful to use or attempt to use a medicinal marijuana permit belonging to any other person. It shall be unlawful to possess a fraudulent, forged or false medicinal marijuana permit. A violation of this subsection g)2. shall be punishable by a fine of not less than Seven Hundred and Fifty Dollars (\$750.00), plus Court Costs.~~
- ~~3. It shall be a violation of this City Code and unlawful to engage in any violation of the then-current version of the applicable Illinois statute or statutes which permit the medicinal or therapeutic use or possession of drug paraphernalia. The then-current, applicable provisions of State law are adopted as a component of this ordinance, by reference, as if fully restated herein. A violation of this subsection g)3. shall be punishable by a fine of not less than Seven Hundred and Fifty Dollars (\$750.00), plus Court Costs.~~

52.411 NUISANCE GATHERINGS. (2012-089)

- a) Definition. A Nuisance Party is a social gathering or party which is conducted within the City and, by reason of the conduct of persons in attendance, results in the occurrence of any one (1) or more of the enumerated offenses.
- b) Enumerated Offenses; References to the DeKalb Municipal Code.
 1. Unlawful carrying or possessing of an open container of alcohol or fermented malt beverage in public – Section 38.13-2;
 2. Public urination or defecation – Section 52.85;
 3. Unlawful sale, furnishing, possession or consumption of alcohol or fermented malt beverage – Section 38-21;
 4. Unlawful deposit of trash or litter – Sections 43.02, -.03, -.06, -.08, -.09, -.16;

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5. Parking on an unapproved surface;
 6. Destruction of property – Sections 52.15, 52.60;
 7. Generation of pedestrian or vehicular traffic, standing or parking which obstructs the flow of traffic or interferes with the ability to render emergency service – Chapter 51;
 8. Excessive, unnecessary or unreasonable noise which disturbs the comfort, quiet or repose of the neighborhood – Sections 52.05, -52.08, -52.35;
 9. Public disturbances, brawls, fights or threatening verbal quarrels; or
 10. Indecent or obscene conduct, and indecent exposure – Section 52.04.
- c) Declaration of nuisance. A nuisance party shall be deemed to constitute a public nuisance. No person, who is an owner, occupant, tenant, or who otherwise has lawful possession or possessory control, individually or jointly with others, of any premises shall knowingly, negligently or recklessly allow a social gathering or party on said premises to become a nuisance party as defined in this section.
- d) Order to cease and disperse. A nuisance party shall cease upon the order of a police officer; and all persons not residing at the site of such nuisance party shall disperse immediately. No person shall knowingly or willfully fail or refuse to obey such an order.
- e) Penalty. Any person who fails to perform an act required by this section or who commits an act prohibited by this section shall be subject to a fine not less than Three Hundred Dollars (\$300.00) for a first offense, and an increased fine for successive offenses.

Chapter 64
SMOKING REGULATIONS

Latest Revision: March 12, 2018 (2018-009)

Sections:

- 64.01 DEFINITIONS.**
- 64.02 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.**
- 64.03 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.**
- 64.04 SMOKING-FREE PERIMETER.**
- 64.05 WHERE SMOKING IS NOT REGULATED.**
- 64.06 DECLARATION OF ESTABLISHMENT AS NON-SMOKING.**
- 64.07 POSTING OF SIGNS.**
- 64.08 NON-RETALIATION.**
- 64.09 ENFORCEMENT.**
- 64.10 VIOLATIONS AND PENALTIES.**
- 64.11 PUBLIC EDUCATION.**
- 64.12 GOVERNMENTAL AGENCY COOPERATION.**
- 64.13 OTHER APPLICABLE LAWS.**
- 64.14 LIBERAL CONSTRUCTION.**
- 64.15 SEVERABILITY.**
- 64.16 TOBACCO / SMOKING SALES, USE AND LICENSING. (2014-029)**
- 64.17 VENDING MACHINES. (2014-029)**

64.01 DEFINITIONS.

- a) The following words and phrases, whenever used in this Chapter, shall be construed as defined in this Section:
1. *"Adult Day Care Home"* means family homes which receive for care one or more aging or disabled adults, not related to the family.
 2. *"Bars"* means the holder of a Class A liquor license that authorizes the retail sale of alcoholic liquor for consumption on the premises.
 3. *"Business"* means a sole proprietorship, partnership, joint venture corporation, or other business entity, either for-profit or not-for-profit, including retail establishments where goods or services are sold; professional corporations and other entities where legal, medical, dental, engineering, architectural, or other professional services are delivered.
 4. "Cannabis" and "Cannabis business establishment" have the same meaning as those terms are defined by section 7.18 of the Unified Development Ordinance.

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45. *"Child Day Care Home"* means family homes which receive for care more than 3 up to a maximum of 12 children including the family's natural, foster, or adopted children and all other persons under the age of 12.
56. *"Employee"* means a person who is employed by an employer in consideration for direct or indirect monetary wages or profit, and a person who volunteers his or her services for a non-profit entity.
67. *"Employer"* means a person, business, partnership, association, corporation, including a municipal corporation, trust, or non-profit entity that employs the services of one or more individual persons.
78. *"Enclosed Area"* means all space in any structure or building that is enclosed on all sides by any combination of walls, windows, or doorways, extending from floor to the ceiling, regardless of whether they are open or closed.
89. *"Health Care Facility"* means an office or institution providing care or treatment of diseases, whether physical, mental, or emotional, or other medical, physiological, or psychological conditions, including but not limited to, hospitals, rehabilitation hospitals or other clinics, including weight control clinics, nursing homes, homes for the aging or chronically ill, laboratories, and offices of surgeons, chiropractors, physical therapists, physicians, dentists, and all specialists within these professions. This definition shall include all waiting rooms, hallways, private rooms, semiprivate rooms, and wards within health care facilities.
910. *"Place of Employment"* means an area under the control of a public or private employer that employees normally frequent during the course of employment, including, but not limited to, work areas, employee lounges, restrooms, conference rooms, meeting rooms, classrooms, employee cafeterias, and hallways. A private residence is not a "place of employment" unless it is being used as a licensed child care, adult day care, or health care facility.
4011. *"Private Club"* means an organization, whether incorporated or not, which is the owner, lessee, or occupant of a building or portion thereof used exclusively for club purposes at all times, which is operated solely for a recreational, fraternal, social, patriotic, political, benevolent, or athletic purpose, but not for pecuniary gain, and which only sells alcoholic beverages incidental to its operation. The affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at an annual meeting. The organization has established bylaws and/or a constitution to govern its activities. The organization has been granted an exemption from the payment of federal income tax as a club under 26 U.S.C. Section 501.

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- 4412.** *"Public Place"* means an enclosed area to which the public is invited or in which the public is permitted, including but not limited to, banks, bars, educational facilities, health care facilities, hotel and motel lobbies, laundromats, public transportation facilities, reception areas, restaurants, retail food production and marketing establishments, retail service establishments, retail stores, shopping malls, recreational facilities, theaters, and waiting rooms. A private club is a "public place" when being used for a function to which the general public is invited. A private residence is not a "public place" unless it is being used as a licensed child day care home, adult day care home, or health care facility.
- 4413.** *"Restaurant"* means an eating establishment, including but not limited to, coffee shops, cafeterias, sandwich stands, and private and public school cafeterias, which gives or offers for sale food to the public, guests, or employees, as well as kitchens and catering facilities in which food is prepared on the premises for serving elsewhere. The term "restaurant" shall include a bar area within the restaurant.
- 4414.** *"Retail Tobacco Store"* means a retail store which derives more than thirty percent (30%) of its gross revenue from the sale of tobacco or nicotine products and accessories, inclusive of any device contemplated within the definition of "Smoking" below, or which dedicates more than twenty-five percent (25%) of its total floor area or public display area to the storage or sale of such items. (2014-029)
- 4415.** *"Service Line"* means an indoor line in which one (1) or more persons are waiting for or receiving service of any kind, whether or not the service involves the exchange of money.
- 4416.** *"Shopping Mall"* means an enclosed public walkway or hall area that serves to connect retail or professional establishments.
- 4417.** *"Smoking"* means: a) inhaling, exhaling, burning, or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form; b) inhaling or exhaling from, turning on, powering, ingesting or utilizing in any form any device intended for the atomization, charring, burning, piezoelectronic ignition of or ingestion of tobacco products or nicotine in any gaseous, smoke, aerosol, vaporous or other similar form, including but not limited to the use of any e-cigarette, personal vaporizer used with nicotine or tobacco derivatives, electronic nicotine delivery system, e-puffer, cartomizer or other similar device; c) use of any other device intended for the gaseous, smoke, aerosol, vaporous or other similar airborne ingestion of tobacco, tobacco derivatives, nicotine, or nicotine derivatives; or, d) completing any of the foregoing actions utilizing any form of smoked, aerosolized, ionized, vaporous or similar airborne ingestion of ~~marijuana, cannabis or any derivative thereof~~. Smoking shall not include non-airborne forms of tobacco,

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nicotine, or cannabis ingestion (e.g., chewing tobacco, nicotine patch, edible).
(2014-029)

~~17~~18. "*Recreational Facility*" means enclosed sports pavilions, stadiums, gymnasiums, health spas, boxing arenas, swimming pools, roller and ice rinks, bowling alleys, and other similar places where members of the general public assemble to engage in physical exercise, participate in athletic competition, or witness sports or other events.

~~48~~19. "*Outdoor Patio*" means any outdoor area at any Place of Employment which is set aside for the regular or recurring use of patrons or customers of the Place of Employment for the purpose of utilizing or enjoying the products, services or items sold at such Place of Employment, including but not limited to patios or outdoor seating areas at Restaurants or bars. (2014-029)

64.02 PROHIBITION OF SMOKING IN ENCLOSED PUBLIC PLACES.

- a) Smoking shall be prohibited in all enclosed public places within the City of DeKalb, including but not limited to, the following places:
1. Aquariums, galleries, libraries, and museums.
 2. Areas available to and customarily used by the general public in businesses and non-profit entities patronized by the public.
 3. Bars (existing), effective September 1, 2007; smoking will be prohibited in any bar which may obtain a liquor license from the City of DeKalb created after the effective date of this Ordinance.
 4. Bingo facilities.
 5. Bowling facilities (existing); the lounge area within the bowling facility, effective September 1, 2007.
 6. Convention facilities.
 7. Educational facilities, both public and private.
 8. Elevators.
 9. Facilities primarily used for exhibiting a motion picture, stage, drama, lecture, musical recital, or other similar performance.
 10. Health care facilities.
 11. Licensed child day care and adult day care homes.

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12. Lobbies, hallways, and other common areas in apartment buildings, condominiums, trailer parks, retirement facilities, nursing homes, rooming houses, other multiple-unit residential facilities, hotels and motels.
13. Polling places.
14. Private residences during the hours of operation of a licensed child care, adult day care, or health care facility.
15. Public transportation facilities, including buses and taxicabs, under the authority of the City of DeKalb and ticket, boarding, and enclosed waiting areas of public transit depots, not including bus shelters.
16. Restaurants (existing) with or without a liquor license, effective September 1, 2006; smoking will be prohibited in any restaurant which may obtain a Fire Life-Safety license from the City of DeKalb after the effective date of this Ordinance.
17. Restrooms, lobbies, reception areas, hallways, and other common-use areas.
18. Retail stores.
19. Rooms, chambers, places of meeting or public assembly, including school buildings, under the control of an agency, board, commission, committee of City of DeKalb or a political subdivision of the State, to the extent the place is subject to the jurisdiction of the City of DeKalb.
20. Service lines.
21. Shopping malls.
22. Recreational Facilities.
23. Outdoor Patios. (2014-029)
24. Cannabis business establishments.

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- b) Smoking shall be prohibited in any location where prohibited under applicable state, federal, ~~or~~ and local laws or ordinances. (2014-029)

64.03 PROHIBITION OF SMOKING IN PLACES OF EMPLOYMENT.

- a) Smoking shall be prohibited in all enclosed areas within places of employment. This includes common work areas, auditoriums, classrooms, conference and meeting rooms, private offices, elevators, hallways, medical facilities, cafeterias, employee lounges, stairs, restrooms, and all other enclosed areas.

64.04 SMOKING-FREE PERIMETER.

- a) Smoking is prohibited within 15 feet from any entrance, passageway, operable window or ventilation system of any area where smoking is prohibited and is prohibited within 15 feet of any Outdoor Patio, so as to insure that tobacco smoke does not enter the area through entrances, windows, ventilation systems, or other means. (2014-029)

64.05 WHERE SMOKING IS NOT REGULATED.

- a) Notwithstanding any other provision of this Chapter to the contrary, the following places shall be exempt from the provisions of Sections 64.03 and 64.04:
 - 1. Private residences, except those utilized as a licensed day care home, adult day care home, other health care facility, or other home-based business open to the public. A private residence or home-based business which is not open to the public shall not be regulated by this Ordinance. (2014-029)
 - 2. Retail Tobacco Stores, as follows: (2014-029)
 - (a) For Retail Tobacco Stores in existence as of the effective date of this Ordinance, Smoking within such stores shall be permitted if: a) operated in compliance with 410 ILCS 82/35(2) and any other applicable regulations; and, b) emissions from Smoking does not infiltrate into areas where Smoking is prohibited under the provisions of this Chapter.
 - (b) For Retail Tobacco Stores established on or after the effective date of this Ordinance, Smoking shall be permitted only if the business is located in a freestanding structure occupied solely by the business and emissions from Smoking do not migrate into any area where Smoking is prohibited under the provisions of this Chapter.
 - 3. Hotel and motel sleeping rooms that are rented to guests and designated as Smoking rooms, provided that all smoking rooms on the same floor must be contiguous, and emissions from Smoking from these rooms must not infiltrate into nonsmoking rooms or other prohibited areas. Not more than 25% of the rooms rented to guests in a hotel or motel may be designated as smoking rooms. The status of rooms as smoking or nonsmoking may not be changed, except to permanently add additional nonsmoking rooms. (2014-029)
 - 4. Common smoking rooms in long-term care facilities operated under the authority of the Illinois Department of Veterans' Affairs or licensed under the Nursing Home Care Act that are accessible only to residents who are smokers and have requested in writing to have access to the common smoking room where smoking is permitted and the emissions from Smoking shall not infiltrate other areas of the long-term care facility. (2014-029)

5. The ~~otherwise lawful Smoking use~~ of medical ~~cannabis~~marijuana in areas where expressly permitted by the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1, *et. seq.* (2014-029)

64.06 DECLARATION OF ESTABLISHMENT AS NON-SMOKING.

- a) Notwithstanding any other provision of this Chapter, an owner, operator, manager, or other person in control of an establishment, facility, or outdoor area may declare that entire establishment, facility, or outdoor area as a nonsmoking place. Smoking shall be prohibited in any place in which a sign conforming to the requirements of Section 64.07, a), is posted.

64.07 POSTING OF SIGNS.

- a) "No Smoking" signs or the international "No Smoking" symbol (consisting of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar diagonally across it) shall be clearly and conspicuously posted in every public place and place of employment where smoking is prohibited by this Chapter, by the owner, operator, manager, or other person in control of that place.
- b) Every public place and place of employment where smoking is prohibited by this Chapter shall have posted at every entrance a conspicuous sign clearly stating that smoking is prohibited.
- c) All ashtrays shall be removed from any area where smoking is prohibited by this Chapter by the owner, operator, manager, or other person having control of the area.

64.08 NON-RETALIATION.

- a) No person or employer shall discharge, refuse to hire, or in any manner retaliate against an employee, applicant for employment, or customer because that employee, applicant, or customer exercises any rights afforded by this Chapter or reports or attempts to prosecute a violation of this Chapter.

64.09 ENFORCEMENT.

- a) This Chapter shall be enforced by the City of DeKalb Police Department.
- b) Notice of the provisions of this Chapter shall be given to all applicants for a license issued by the City of DeKalb that will be affected by the provisions of this Chapter.
- c) Any citizen who desires to register a complaint under this Chapter may initiate enforcement with the Police Department.

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- d) The Building and Code Enforcement Division and Fire Department or their designees shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Chapter.
- e) ~~An owner, manager, operator, or employee of an establishment regulated by this Chapter shall inform persons violating this Chapter of the appropriate provisions thereof.~~
- f) Notwithstanding any other provision of this Chapter, an employee or private citizen may bring a private cause of action against any individual or business that commits a violation of this Chapter.
- g) In addition to the remedies provided by the provisions of this Section, the City may apply for injunctive relief to enforce any provision of this Chapter in the DeKalb County Circuit Court. If the City files any such action, it may recover any costs it incurs to do so, including reasonable attorneys' fees.
- h) Any violation of this Chapter by a City licensee, or any violation which any licensee knowingly permits to occur, shall also constitute a violation of any City-issued licenses, including but not limited to liquor licenses, hotel licenses, or fire-life safety licenses, which violation may be separately sanctioned under the applicable licensure program. (2014-029)

64.10 VIOLATIONS AND PENALTIES.

- a) A person who smokes in an area where smoking is prohibited by the provisions of this Chapter shall be guilty of an infraction, punishable by a fine not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00).
- b) A person who owns, manages, operates, or otherwise controls a public place or place of employment and who fails to comply with the provisions of this Chapter shall be guilty of an infraction, punishable by:
 - 1. A fine not less than Fifty Dollars (\$50.00) nor more than One Hundred Dollars (\$100.00) for a first violation.
 - 2. A fine not less than One Hundred Dollars (\$100.00) nor more than Two Hundred Dollars (\$200.00) for a second violation within a twelve month period.
 - 3. A fine not less than Two Hundred Dollars (\$200.00) nor more than Five Hundred Dollars (\$500.00) for each additional violation within a twelve month period.
- c) In addition to the fines established by this Section, violation of this Chapter by a person who owns, manages, operates, or otherwise controls a public place or

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place of employment may result in the suspension or revocation of any permit or license issued by the City of DeKalb to the person for the premises on which the violation occurred following an administrative hearing by the City Manager.

- d) Each day on which a violation of this Chapter occurs shall be considered a separate and distinct violation.

64.11 PUBLIC EDUCATION.

- a) The Citizen's Environmental Commission may engage in a continuing program to explain and clarify the purposes and requirements of this Chapter to citizens affected by it, and to guide owners, operators, and managers in their compliance with it. The program may include publication of a brochure for affected businesses and individuals explaining the provisions of this ordinance.

64.12 GOVERNMENTAL AGENCY COOPERATION.

- a) The Citizen's Environmental Commission may annually request other governmental and educational agencies having facilities within the City of DeKalb to establish local operating procedures in cooperation and compliance with this Chapter. This includes urging all Federal, State, County and School District agencies to update their existing smoking control regulations to be consistent with the current health findings regarding secondhand smoke.

64.13 OTHER APPLICABLE LAWS.

- a) This Chapter shall not be interpreted or construed to permit smoking where it is otherwise restricted by other applicable laws.

64.14 LIBERAL CONSTRUCTION.

- a) This Chapter shall be liberally construed so as to further its purposes.

64.15 SEVERABILITY.

- a) If any provision, clause, sentence, or paragraph of this Chapter or the application thereof to any person or circumstances shall be held invalid, that invalidity shall not affect the other provisions of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable.

64.16 TOBACCO/SMOKING SALES, USE AND LICENSING. (2014-029)

- a) Definitions. As used in this Section 64.16, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended:

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Distribution: to give, sell deliver, dispense, issue or offer to give, sell, deliver, dispense or issue.

Establishment: any physical facility operated by a commercial enterprise, nonprofit entity, government agency or other person.

Employee: any person who may be required or directed by any employer in consideration of direct or indirect gain or profit, to engage in any employment, or to go, or work, or be at any time in any place of employment.

Employer: any person, firm, corporation, agent, manager, representative, or other person having control or custody of any employment, place of employment, or employee.

Minor: a person under the age of ~~twenty-one~~**eighteen** (21**8**) years.

Organization: a corporation for profit, or not-for-profit, partnership, limited partnership, joint venture, unincorporated association, estate, trust, or other commercial legal entity.

Tobacco: any substance containing tobacco leaf, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco. For purposes of this Ordinance, Tobacco shall also be defined to include any device (or supplies therefor) which may be utilized for Smoking, as defined herein (including but not limited to e-cigarettes and similar devices, and refills or supplies for such devices).

Smoking: a) inhaling, exhaling, burning, ingesting or carrying any lighted cigar, cigarette, pipe, or other lighted tobacco product in any manner or in any form; b) inhaling or exhaling from, turning on, powering, ingesting or utilizing in any form any device intended for the atomization, charring, burning, piezoelectronic ignition of or ingestion of tobacco products or nicotine in any gaseous, smoke, aerosol, vaporous or other similar form, including but not limited to the use of any e-cigarette, personal vaporizer used with nicotine or tobacco derivatives, electronic nicotine delivery system, e-puffer, cartomizer or other similar device; c) use of any other device intended for the gaseous, smoke, aerosol, vaporous or other similar airborne ingestion of tobacco, tobacco derivatives, nicotine, or nicotine derivatives; or, d) completing any of the foregoing actions utilizing ~~marijuana, cannabis or any derivative thereof~~. Smoking shall not include non-airborne forms of tobacco, ~~or~~ nicotine, ~~or cannabis~~ ingestion (e.g., ~~such as use of~~ chewing tobacco or ~~use of~~ nicotine patches). For purposes of this ordinance, any reference to the sale or distribution of tobacco products or cigarettes shall be read to include any device which is intended to be used for Smoking as defined herein (including Hookahs, e-cigarettes or other similar devices).

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"Retail Tobacco Store" means a retail store which derives more than thirty percent (30%) of its gross revenue from the sale of tobacco or nicotine products and accessories, inclusive of any device contemplated within the definition of "Smoking", or which dedicates more than twenty-five percent (25%) of its total floor area or public display area to the storage or sale of such items.

- b) Tobacco License Required. It shall be unlawful to sell or give away tobacco (inclusive of devices or products related to Smoking as defined herein, such as e-cigarettes) in any form in the City of DeKalb without first obtaining a license issued by the City of DeKalb for such purpose, provided that no license shall be required for sales at wholesale. No Tobacco License or Retail Tobacco Store license shall be issued to any company or person who is more than thirty days delinquent in the payment of any obligation to the City of DeKalb.
- c) Applications. Application for a tobacco vendor license shall be made in writing on a form provided by the City ~~Clerk~~ Manager. Such application shall include the name of the applicant and the location at which tobacco sales are to be made and shall be filed with the City ~~Clerk~~ Manager together with the annual license fee of Three Hundred and Fifty Dollars (\$350.00), for the period of July 1 through June 30.
- d) Term. All tobacco vendor licenses shall expire on June 30 of each year. The license fee for any tobacco vendors license which is issued shall be reduced to Twenty Five Dollars if less than six (6) months remains in the current license year.
- e) Illegal Distribution of Cigarettes or other Tobacco Products. No manufacturer, producer, distributor, wholesaler or retailer of cigarettes or other tobacco products, or any agent, employee or representative of a manufacturer, producer, distributor, wholesaler or retailer of cigarettes or other tobacco products shall do any of the following:
 - 1. Give, sell or otherwise distribute cigarettes or other tobacco products to any minor.
 - 2. Give, sell or distribute cigarettes or other tobacco products in any place that does not have posted in a conspicuous place a sign stating that giving, selling or otherwise distributing cigarettes or other tobacco products to a person under twenty-one (21) ~~eighteen~~ years of age is prohibited by law.

Penalties. Any person violating any of the provisions of Section 64.16, shall be fined not less than Three Hundred Fifty Dollars (\$350.00) nor more than Seven Hundred Fifty Dollars (\$750.00) for each violation. This penalty provision shall not apply to a licensee.

- f) Retail Tobacco Store License. (2015-003)
 - 1. Any Retail Tobacco Store in existence in the City of DeKalb as of December

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31, 2017, shall be permitted to continue its operations in its current location by maintaining (and continuing to renew) a Tobacco License in good standing, or by continuing licensure of a successor owner of the operation in the same location and in substantially the same format. Upon the revocation, termination or expiration (by the Owner's non-renewal) of a Tobacco License or upon the change in location of such establishment, this grandfathering provision shall no longer be effective, and such store shall be required to obtain a Retail Tobacco Store License. A change in ownership alone shall not terminate the grandfathering provisions of this ordinance. Ownership shall be established, for purposes of this section 64.16, based upon the same principles as applicable to ownership of a licensed liquor establishment under Chapter 38 of the City Code. (2018-009)

2. Application shall be made to the City of DeKalb for a license under this Ordinance on a form generated by the City ~~Manager~~^{Clerk} and acceptable to the City Manager, substantially in the form of a liquor license application and containing the same information as required on a liquor license application, with such additional information as shall be required by the City Manager (including details of operation, parking arrangements and any other required information). All City expenses incurred in the review of the permit (including costs, staff time, consultant fees, or other expenses whatsoever) shall be borne exclusively by the applicant, and shall be paid prior to issuance of any license. Applicants shall be required to obtain a Fire Life Safety License for their proposed establishment prior to applying for a license under this Ordinance. Applicants shall also be required to complete any other City applications and obtain any other City permits, permissions or inspections prior to application for a license under this Ordinance. Prior to issuance of a license under this Ordinance, the proposed establishment shall be fully built-out and shall have been issued a certificate of occupancy. The establishment must be in full conformance with all applicable local, state and federal regulations. After satisfying all conditions precedent as outlined above, successfully completing a background check (utilizing the procedure utilized for liquor license applications) and then submitting a completed application, the City shall thereafter have a period of forty-five (45) days for staff review and evaluation of the application. Staff review shall include any recommendations regarding public safety concerns, appropriateness of siting and zoning, available parking, proximity to schools or other age-sensitive installations, noise generation, adequacy of site lighting, and any other relevant considerations. If any conditions are discovered during such review that constitute a violation of any applicable law, code, regulation or ordinance, the forty-five (45) day review period shall be tolled until such point as the premises is brought into compliance with applicable codes. Following staff review, the matter shall be forwarded to the City Council of the City of DeKalb at a meeting occurring within forty-five (45) days of the date on which staff review is completed. The City Council shall be provided with all staff recommendations and shall make the ultimate decision as to whether a

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license should be granted or denied. A license application may be continued from time to time, and the City Council may require the conduct of a public hearing on the application; any publication or notice costs for the public hearing shall be borne by the applicant.

- (a) No Retail Tobacco Store shall be permitted within 200 feet of any property used for any public or private pre-school, elementary school, secondary school, or undergraduate or graduate college purpose measured from the nearest part of the building(s) used for either purpose. (2015-012)
 - (b) No Retail Tobacco Store shall be permitted to apply for or maintain a Liquor License or to sell or dispense alcoholic beverages of any kind, nor shall a Retail Tobacco Store be permitted to apply for any required licensure or otherwise dispense medical marijuana or cannabis.
 - (c) A Retail Tobacco Store must be in a freestanding building that does not have any other occupancies, and that does not share any air-handling, HVAC, or other utilities with any other occupancy.
3. Submission of a signed application for a license and/or acceptance of a license under this ordinance constitutes the applicant's consent to an inspection of any and all portions of the licensed premises by the City: 1) at any time during the normal business hours of the licensed premises, with or without advance notice; or, 2) at such other time as the City shall designate to the applicant/licensee in writing, with not less than 48 hours advance notice. Inspections pursuant to this consent may be conducted by any City personnel, including Police Department, Building, Public Works, or Fire Department staff, the City Attorney, the City Manager or other staff authorized by the City Manager, for purposes of determining compliance with the provisions of this ordinance, or for purposes of determining compliance with any other applicable code or regulation. The consent for inspection shall extend to any portion of the premises. An applicant or licensee's refusal to grant access to the premises for an inspection shall constitute grounds for denial of a pending application (without refund of any posted application fees), and shall constitute a violation of this ordinance for license holders, which may subject a licensee to suspension or revocation of their license, imposition of fines and penalties under this ordinance, or both. All holders of a license must also hold a valid Fire Life Safety License issued by the City.
4. Issuance and Renewal of License: Upon conclusion of any consideration of a license application, the City Council may grant or deny the license application. If the license application is granted, the Applicant shall pay a license fee equivalent to that charged by the City of DeKalb for a Full-Service Restaurant and Bar combination liquor license. Retail Tobacco Store Licenses shall have the same term as a Tobacco License, and may be renewed without

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requirement of action by the City Council, upon submission of a renewal application and the renewal fee (equivalent to the then-current renewal fee for a Full-Service Restaurant and Bar combination liquor license). Retail Tobacco Store Licenses shall be treated in the same fashion as Liquor Licenses issued by the City with regard to termination upon change in ownership, transferability, and related issues.

5. Applicants shall be required to comply with the provisions of City Code Section 38.06 for provision of insurance (other than dram shop insurance). Proof of insurance shall be required at time of application.

- (a) Conditional Approval of License: The City Council may, but shall not be obligated to, approve retail tobacco store licenses for licensees who are otherwise eligible for issuance of a license, but whose place of business has not been built-out, has not received a Fire-Life Safety License, is not yet eligible for issuance of a final certificate of occupancy or is otherwise ineligible for operation because of non-compliance with any other City Code or requirement. Such conditional licenses shall not permit occupancy of the premises until such point in time as all required City permits and approvals have been received by the Licensee. At such time as all other required City permits and approvals, including but not limited to a certificate of occupancy and final inspection, have been provided, a conditionally issued license shall convert to an unconditional license, subject to the terms of this Chapter 64. Should a Licensee fail, within a time specified by the City Council, to obtain all required City permits and approvals including but not limited to a certificate of occupancy, the City Manager shall be authorized to revoke the conditional license without any requirement of holding a public hearing or providing any due process. Any applicant/Licensee who requests a conditional license under this subsection shall execute a waiver agreeing and acknowledging the terms of this subsection, including the provisions relating to revocation.

g) Suspension or Revocation.

1. The licenses issued under this Section may be suspended or revoked and/or the licensee fined by the City Manager or the City's Administrative Hearing Officer, after due process notice and hearing as provided for herein.
2. The licensee shall be given written notice that a due process hearing shall be held to determine if the licensee has violated any of the provisions as listed in this Section or any other City Code or Ordinance and whether the license is to be suspended or revoked and/or the licensee fined. Such notice shall be mailed to the licensee's last known address, or delivered in person, and shall state the following:

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- (a) Description of the grounds for the hearing;
 - (b) Date, time and place of hearing;
 - (c) Right of licensee to participate or be represented by an attorney;
 - (d) Possible penalties.
3. Such hearings shall be open to the public.
4. If the City Manager or Hearing Officer shall determine that the licensee has violated any of the applicable ordinances, such person may:
- (a) Revoke the license.
 - (b) Suspend the license for a period not to exceed ninety days.
 - (c) Fine the licensee in an amount not to exceed One Thousand Dollars (\$1,000.00) per violation.
 - (d) Impose a combination of the penalties prescribed in the preceding subsections.
5. The City Manager or Hearing Officer may, at said person's discretion, continue the hearing from time to time.
6. A written decision shall be issued by the City within five (5) business days of the conclusion of the hearing.
7. The licensee may appeal from a decision of the City Manager or Hearing Officer wherein a license is suspended or revoked and/or fines are imposed. Such appeal shall be made to the City Council and filed with the City Clerk within ten (10) days of the issuance of a written decision. The appeal shall set forth the grounds for the appeal. The City Council shall consider the appeal at a regular or special meeting within thirty (30) days after the notice of appeal has been filed with the City ~~Manager~~Clerk. The City Council shall by a majority vote either uphold or overturn the decision of the City Manager.
8. No application for a license to sell tobacco at retail shall be approved for a licensee to sell tobacco products at a location where a tobacco license at such location has been revoked at any time within the past twelve months of the date of such application.
- h) Unlawful use, possession or purchase by minors. It shall be unlawful for any person under the age of ~~twenty-one~~ ~~eighteen~~ (21~~8~~) years to use, possess, purchase or attempt to purchase cigarettes or tobacco products of any kind. The

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possession or use of tobacco products by a person under the age of ~~twenty-one~~eighteen (21~~8~~) years under the direct supervision of the parent or legal guardian of such minor in the privacy of a residence is not prohibited by this Section g). A person under the age of ~~twenty-one~~eighteen (21~~8~~) years may possess cigarettes or tobacco products for the sole purpose of resale in the course of employment during his working hours if employed by a retailer licensed by the City of DeKalb to sell tobacco products.

- i) **Misrepresenting Age.** No person under the age of ~~twenty-one~~eighteen (21~~8~~) years shall present or offer to any licensee, his agent or employee, any written, printed or photostatic evidence of age and identity which is false, fraudulent, or not actually his own for the purpose of violating any prohibited conduct specified in Section g).
- j) **Penalties.** Any minor violating the provisions of this Section g) or Section h), shall be fined not less than Fifty Dollars (\$50.00) nor more than Two Hundred Dollars (\$200.00) for each offense in addition to any court costs imposed. In addition, as part of any disposition for a violation of this Section, a minor may be ordered to attend and complete a smoking cessation class or course of treatment or attend smoking awareness classes.
- k) **Delivery of tobacco products to a minor.** No person shall give, sell or deliver cigarettes or other tobacco products to a person under the age of ~~twenty-one~~eighteen (21~~8~~) years, except that a retailer may transfer cigarette or tobacco products to an employee under the age of ~~twenty-one~~eighteen (21~~8~~) years, strictly for the resale on the licensed premises to a person over the age of ~~twenty-one~~eighteen (21~~8~~) years making a purchase.

Penalties. Any person violating Section k) shall be fined not less than One Hundred Fifty Dollars (\$150.00) nor more than Five Hundred Dollars (\$500.00) for each violation. This penalty provision shall not apply to a licensee.

64.17 VENDING MACHINES. (2014-029)

- a) The sale of any device relating to Smoking from vending machines is prohibited except in the following locations:
 - 1. In establishments with a Bar liquor license as defined in Chapter 38, "Intoxicating Liquors", of the DeKalb Municipal Code.
 - 2. Within the approved bar area, as defined by the Liquor Commissioner in other establishments as defined in Chapter 38, "Intoxicating Liquors", of the DeKalb Municipal Code.
 - 3. In non-profit entities licensed with a PENP license, as defined in Chapter 38, "Intoxicating Liquors," of the DeKalb Municipal Code in a location designated and approved by the Director of Community Development.

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- b) Penalties. Any person, firm or corporation violating this Section shall be fined not less than One Hundred Dollars (\$100.00) nor more than Five Hundred Dollars (\$500.00) for each offense.
- c) The location shall be in the immediate vicinity to the area where alcoholic beverages are dispensed, in plain view and under the control of a responsible employee so that all tobacco purchases will be readily observable by that employee.