ORDINANCE 2014-05       Passed: March 10, 2014

AMENDING ESTABLISHING A TEMPORARY LICENSING PROCESS FOR CERTAIN BUSINESSES WITHIN THE CITY OF DEKALB.

BE IT ORDAINED BY THE CITY COUNCIL of the City of DeKalb, Illinois as follows:

WHEREAS, the City of DeKalb is an Illinois Home Rule Municipality located in DeKalb County, Illinois and pursuant to its Home Rule authority and the applicable provisions of the Illinois Municipal Code has established regulations addressing the permitted locations and permitted conditions of operation for certain types of businesses and establishments, as well as establishing licensing procedures for said businesses; and,

WHEREAS, said regulations are intended to protect the public health, safety, welfare and morals through ensuring that businesses are properly sited at locations that provide proper access and public services, along with ensuring that businesses are located in areas that are harmonious to surrounding uses; and,

WHEREAS, the City has determined that certain uses or types of businesses which are either new to the City of DeKalb, have new applications or implications and which have the potential to significantly impact public health, welfare, safety or morals; and,

WHEREAS, the City has witnessed a rapid growth in the popularity of e-cigarettes and other forms of ingesting liquid forms of nicotine, with or without additives, and has not had an opportunity to adequately study the impact upon the public or upon minors and youths. The City Council has observed that many additives are available for such devices and that such additives often include fruit flavors or other flavorings intended to create a more pleasant taste, which is likely to create an incentive for minors to attempt to purchase, possess or utilize such devices. The City has determined, based upon initial investigation, that establishments that offer a significant focus on the sale of such e-cigarettes or refills or supplies for e-cigarettes may present a threat to public health and safety that merits initial regulation, followed by careful study, followed by the imposition of permanent regulations; and,

WHEREAS, the City has witnessed changes in crime patterns within the City and has noted, from past experience with such organizations, that certain types of social clubs or similar gathering establishments generate a disproportionate amount of crime and demand for public services, and create an undue impact upon surrounding businesses and property owners. The City maintains existing regulations with regard to “Teen Clubs”, but has determined, based upon a preliminary review of other area communities’ regulations, that the City’s current ordinance provisions require updating and revision. In the absence of such revision, such establishments could be operated in a fashion as to generate a public safety concern and an increase in crime, as was experienced in the past. The City has determined that such establishments accordingly may present a threat to public health and safety that merits initial regulation, followed by careful study, followed by the imposition of permanent regulations; and,

WHEREAS, in order to permit the free flow of commerce while nonetheless imposing temporary restrictions intended to protect the public health, safety, welfare and morals, the City Council has
determined that it is appropriate to implement temporary business licensure restrictions pending the creation and passage of permanent regulations intended to address the foregoing concerns; and,

WHEREAS, the City of DeKalb determines and finds that the provisions as reflected below are necessary and proper, are in the public interest, and protect the public health, welfare, safety and morals;

NOW THEREFORE, be it ordained by the Mayor and City Council of the City of DeKalb as follows below:

Section 1. Temporary Business License Provisions:

A. Term of Ordinance: The provisions of this Ordinance shall remain in effect for a period of One Hundred and Eighty (180) days from the date of effectiveness. This Ordinance may thereafter be renewed by a Motion of the City Council for a prescribed period; in the absence of such an extension, this Ordinance shall terminate and the provisions herein shall cease to be in effect. This Ordinance shall not be codified, but shall be a temporary restriction.

B. Definitions:

i. E-Cigarette Retailer: Any business or organization which specializes in the retail sale of e-cigarettes, other mechanical/electrical devices intended or able to be used for the ingestion of nicotine, with or without additives, in a vapor or airborne format or in any format other than within a legally regulated tobacco product, or in the sale of any supplies, refills, liquid (or other non-tobacco format) nicotine, or related products. For purposes of this Ordinance, a business shall be deemed to “specialize” in such sales if at least 20% of its total sales, either in terms of revenues or volume of items sold, are derived from such products when viewed over any period of time, or if such business identifies, advertises or markets itself as a retailer of such products. A business that engages in incidental sales of such products (e.g. a gas station that sells e-cigarettes) shall not be deemed an E-Cigarette Retailer under this Ordinance.

ii. Social Club: Any business or organization which is open to the public, the primary function of which is to offer, provide, procure, make available, allow, suffer or permit entertainment to patrons between the ages of 14 and 35 years, consisting of dancing, the enjoyment of live or pre-recorded music, the enjoyment of entertainment provided by dancers, comedians or other performers, with or without food, in an indoor venue. A Social Club shall not include: a) an establishment with a valid liquor license issued by the City of DeKalb; b) theaters which seat patrons in parallel rows of fixed seats, with seating capacity of 1,000 patrons or more; c) outdoor performances; d) any business, organization or event conducted by a component part of a unit of government; or, e) full service restaurants that feature background music incidental to the primary function of serving food.

C. License Required: It shall be unlawful to operate an E-Cigarette Retailer or a Social Club without first obtaining a license issued by the City of DeKalb. Violation of this Ordinance shall be punishable by a fine of not less than Seven Hundred and Fifty Dollars ($750.00) per occurrence, and each day that a violation exists shall be deemed to be a separate occurrence. In addition, in the event
that the City proves a violation of this Ordinance, the City shall be entitled to recover any costs incurred by the City in responding to the violation or the entity generating the violation, including but not limited to personnel and equipment costs for police or fire department responses to the establishment, or to patrons entering or exiting the establishment.

D. License Application and Process:

i. Application shall be made to the City of DeKalb for a license under this Ordinance on a form generated by the City Attorney 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).

ii. 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.

iii. Applicants shall pay an initial application deposit of $5,000. This application deposit shall be held by the City and used to pay for the cost of review of the application and proposed site by any City personnel or consultants. 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. Any deposit made by an applicant which is unused shall be returned to the applicant within 30 days of issuance of the license.

iv. 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. E-Cigarette Retailers must also obtain a Sale of Tobacco License from the City of DeKalb and in the sale of E-Cigarettes, refills or products related thereto must comply with all regulations applicable to the Sale of Tobacco (other than the collection of tobacco-related taxes).

v. 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.

vi. 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 and posting the application deposit, 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.

vii. 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 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.

viii. 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.

E. Issuance 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 as reasonably determined by the City Council. A license, if granted, shall be effective for an initial term of six months. Renewal of a license shall require completion of this application process and approval by City Council, provided that this Ordinance remains in effect.

F. Suspension or Revocation of License: The City may utilize any process outlined in City Code for the suspension or revocation of any City-issued license as the process for suspension or revocation of the license contemplated herein. Licenses may be suspended or revoked for any violation of any applicable code or ordinance.

G. Establishment of New Regulations: Applicants are advised that the City has established this regulation as a temporary regulation, pending establishment of permanent regulations. Upon the establishment of permanent regulations (and the expiration of the term of any license issued hereunder), applicants shall be required to comply with all applicable provisions of the then-current regulations established by the City.
Section 2. That each section, paragraph, sentence, clause and provision of this ordinance is separable and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this ordinance, nor any part thereof, other than that part affected by such decision.

Section 3. That except as may be in direct conflict with any provision of this ordinance, all Sections of the Municipal Code of the City of DeKalb, Illinois shall remain in full force and effect.

Section 4. The City Council, based upon the findings in the recitals, determines that there exists a public safety emergency that requires this Ordinance to take effect immediately upon passage, and incorporates this recital to that effect.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 10th day of March, 2014 and approved by me as Mayor on the same day. Approved by roll call vote 7-0-1. Aye: Jacobson, Finucane, Lash, Snow, Baker, O'Leary, Rey. Absent: Naylor.

ATTEST:

Elizabeth E. Peerboom, City Clerk

John A. Rey, Mayor