

ORDINANCE 2014-029 Passed: August 25, 2014

AMENDING THE MUNICIPAL CODE OF THE CITY OF DEKALB, ILLINOIS, CHAPTER 64 "SMOKING REGULATIONS" AND DELETING SECTIONS 11.06 "CIGARETTE VENDING MACHINES" AND 11.07 "TOBACCO, SALES, USE AND LICENSING" OF CHAPTER 11, "HEALTH."

WHEREAS, the City of DeKalb, DeKalb County, Illinois is a home rule community with those powers granted under the provisions of the Illinois Constitution and the Illinois Municipal Code, 65 ILCS 5/1-1-1, *et. seq.*; and,

WHEREAS, the City of DeKalb currently maintains Chapter 64 of the City Code, which relates to the Smoking Regulations within the City of DeKalb; and,

WHEREAS, the City Council finds that certain updates to Chapter 64 are required to properly promote the public health, safety, welfare and morals; and,

WHEREAS, in the time since the establishment of that Chapter, there has been a great deal of scientific study which has reinforced the fact that second-hand smoke and exposure thereto presents a public safety threat and a hazard to public welfare, and this fact has been memorialized into a statewide Illinois law which prohibits smoking in many public areas, in a fashion that mirrors the local regulations established by the City of DeKalb in 2006; and,

WHEREAS, in the time since establishment of that Chapter, there have been released a number of alternative devices intended for the consumption of tobacco products and/or for the ingestion of nicotine, including so-called 'e-cigarette' devices that utilize an electronically powered atomizer to permit the user to ingest a liquid solution including nicotine, or other devices that char, atomize, or otherwise permit a user to ingest tobacco, tobacco derivatives or nicotine; and,

WHEREAS, such alternative devices are not presently approved by the United States Food and Drug Administration (and the Administration has presently proposed rules contemplating extension of significant regulations limiting and/or prohibiting the sale or use of e-cigarettes), and whereas a number of groups including the American Lung Association have called for a ban on such devices based upon the public safety concern that they present, noting that there are no clinical studies showing the long-term consequences of either the devices themselves, the ingestion of the substances they produce, or the effects of secondhand exposure to such devices, other than the studies showing that the underlying tobacco products present a significant threat to public safety, the myriad of studies showing the harmful and addictive effects of nicotine, and preliminary studies suggesting that the byproducts and emissions from such alternative devices include nicotine much in the same fashion as does secondhand smoke; and,

WHEREAS, preliminary research suggests that emissions from such devices include nicotine, carcinogens, heavy-metals, tin, nickel, nickel and chromium nanoparticles, and other devices known to cause human pulmonary fibroblasts and respiratory toxicity, and whereas there are no established 'safe levels' for exposure to such substances emitted from such devices, either as a firsthand user or as a secondhand recipient of such emissions; and,

WHEREAS, nearly 300 cities and counties across the Country have enacted full or partial bans on the utilization of such alternate devices, based upon the public safety and health threat that they pose, and whereas many communities, including the City of Chicago, City of Los Angeles and other communities are currently contemplating such regulations; and,

WHEREAS, the City of DeKalb has previously banned smoking in certain enclosed areas where persons work, and has herein determined that the well-established hazards of secondhand smoke extend to defined outdoor areas where persons work, contemplated herein as Outdoor Patios, and whereas the City adopts the findings of the Smoke Free Illinois Act, 410 ILCS 82/5, *et. seq.*; and,

WHEREAS, Illinois has recently adopted the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1, which establishes a framework for the lawful use of medical marijuana within certain restrictions, and which contemplates the potential smoking or airborne ingestion of marijuana and its derivatives, a process which generates secondhand smoke which (like e-cigarettes) has not been approved by the Food and Drug Administration and which has not been adequately studied for safety; and,

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

Section 1. Ordinances Amended.

Chapter 64 shall be amended in the form attached hereto as Exhibit A.

Chapter 11, Sections 11.06 and 11.07 shall be deleted in their entirety.

Section 2. All ordinances or portions thereof in conflict with this ordinance are hereby repealed.

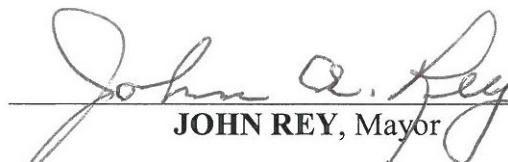
Section 3. Should any provision of this Ordinance be declared invalid by a court of competent jurisdiction, the remaining provisions will remain in full force and affect the same as if the invalid provision had not been a part of this Ordinance.

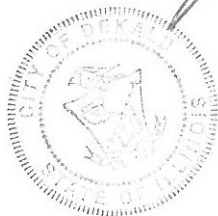
Section 4. This Ordinance shall be in full force and effect after passage and publication pursuant to law. Publication date: August 12, 2014. Effective date: September 4, 2014.

PASSED BY THE CITY COUNCIL of the City of DeKalb, Illinois at a regular meeting thereof held on the 25th day of August, 2014 and approved by me as Mayor on the same day. First reading August 11, 2014. Motion carried 5-3 on Roll Call Vote. Aye: Finucane, Lash, Snow, Baker, Rey. Nay: Jacobson, Naylor, O'Leary.

ATTEST:


ELIZABETH A. PEERBOOM, City Clerk


JOHN REY, Mayor



Chapter 64

SMOKING REGULATIONS

Sections: (06-09)

- 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 NONSMOKING.**
- 64.07 POSTING OF SIGNS.**
- 64.08 NONRETALIATION.**
- 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 LICENSINGEFFECTIVE DATE.**
- 64.17 VENDING MACHINES.**

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. "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.

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5. "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.

6. "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.

7. "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.

8. "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.

9. "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.

10. "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.

11. "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.

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12. "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.

13. "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.

~~13. utilized primarily for the sale of tobacco products and accessories and in which the sale of other products is merely incidental.~~

14. "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.

15. "Shopping Mall" means an enclosed public walkway or hall area that serves to connect retail or professional establishments.

16. "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, nicotine or medical cannabis ingestion such as use of chewing tobacco or use of nicotine patches.

17. "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.

17:18. "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.

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.
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.

22. b) Smoking shall be prohibited in any location where prohibited under applicable state, federal or local laws or ordinances.

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 ~~10-15~~ 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.

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.

2. Retail Tobacco Stores, as follows:

i) 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;

ii) 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.

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.

5. The otherwise lawful use of medical marijuana in areas where expressly permitted by the Compassionate Use of Medical Cannabis Pilot Program Act, 410 ILCS 130/1, et. seq.

~~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:~~

~~Private residences, except during the hours of operation as a licensed child day care home, adult day care home, or health care facility.~~

~~Hotel and motel rooms that are rented to guests and are designated as smoking rooms.~~

~~Retail tobacco stores; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.~~

~~Private and semiprivate rooms in nursing homes and long-term care facilities that are occupied by one (1) or more persons, all of whom are smokers and have requested in writing to be placed in a room where smoking is permitted; provided that smoke from these places does not infiltrate into areas where smoking is prohibited under the provisions of this Chapter.~~

~~Existing not for profit private membership clubs.~~

~~Outdoor patios.~~

~~Public sidewalks, roadways, parks and golf courses.~~

~~Vehicles.~~

~~9. The lounge area in existing bowling facilities, until September 1, 2007, at which time the smoking prohibition will go into effect.~~

~~10. Existing restaurants with or without liquor licenses, until September 1, 2006, at which time the smoking prohibition will go into effect.~~

~~11. Existing bars, until September 1, 2007, at which time the smoking prohibition will go into effect.~~

64.06 DECLARATION OF ESTABLISHMENT AS NONSMOKING.

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 NONRETALIATION

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.

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.

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) nor more than one hundred dollars (\$100).

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) nor more than one hundred dollars (\$100) for a first violation.

2. A fine not less than one hundred dollars (\$100) nor more than two hundred dollars (\$200) for a second violation within a twelve month period.

3. A fine not less than two hundred dollars (\$200) nor more than five hundred dollars (\$500) 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 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 ~~EFFECTIVE DATE.~~ TOBACCO / SMOKING SALES, USE AND LICENSING:

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~~a) Unless otherwise reflected herein, the provisions of this Chapter shall be effective ninety (90) days from and after the date of its adoption. (May 29, 2006)~~

~~(Ord. 06-09, 2-27-06) a) Definitions. As used in this Section 11.10, the following words and phrases shall have the following meanings, unless the context clearly indicates that a different meaning is intended:~~

~~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 eighteen (18) 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 ingestion 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).~~

~~"Retail Tobacco Store" means a retail store which derives more than fifty percent (50%) 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. 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 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 eighteen years of age is prohibited by law;

Penalties. Any person violating any of the provisions of Section 11.07 (e), 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.

1) Any Retail Tobacco Store in existence in the City of DeKalb as of the effective date of this Ordinance shall be permitted to continue its operations in its current location and with its current ownership by maintaining a Tobacco License. Upon the revocation or expiration of a Tobacco License or upon the change in location or ownership of such establishment, this temporary grandfathering provision shall no longer be effective, and such store shall be required to obtain a Retail Tobacco Store License.

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

- i) No Retail Tobacco Store shall be permitted within 1,000 feet of any property used for any public or private pre-school, elementary school, secondary school, or undergraduate or graduate college purpose.
- ii) 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.

iii) 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 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.

i. Conditional Approval of License: The City Council may, but shall not be obligated to, approve social club 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:

- (i) Description of the grounds for the hearing;
- (ii) Date, time and place of hearing;
- (iii) Right of licensee to participate or be represented by an attorney;
- (iv) 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:

- (i) Revoke the license.
- (ii) Suspend the license for a period not to exceed ninety days.
- (iii) Fine the licensee in an amount not to exceed One Thousand Dollars (\$1,000.00) per violation.
- (iv) 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 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 anytime within the past twelve months of the date of such application.

g) Unlawful use, possession or purchase by minors. It shall be unlawful for any person under the age of eighteen (18) years to use, possess, purchase or attempt to purchase cigarettes or tobacco products of any kind. The possession or use of tobacco products by a person under the age of eighteen (18) 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 eighteen (18) 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.

h) Misrepresenting Age. No person under the age of eighteen (18) 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).

i) 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.

j) 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 eighteen (18) years, except that a retailer may transfer cigarette or tobacco products to an employee under the

age of eighteen (18) years, strictly for the resale on the licensed premises to a person over the age of eighteen (18) years making a purchase.

Penalties. Any person violating Section (j), 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:

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.

b) Penalties. Any person, firm or corporation violating this Section shall be fined not less than One Hundred Dollars (\$100) nor more than Five Hundred Dollars (\$500) 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.