ORDINANCE 2015-003 PASSED: JANUARY 15, 2015

AMENDING CHAPTER 64 “SMOKING REGULATIONS” OF THE MUNICIPAL CODE OF THE CITY OF DEKALB, ILLINOIS REGARDING STANDARDS FOR RETAIL TOBACCO STORES SETBACK.

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 has determined that it is necessary and advantageous to adopt certain updates to subsection (f) of Section 64.16, pertaining to Retail Tobacco Stores;

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

Section 1. Ordinances Amended.

Subsection (f) shall be amended consistent with the provisions of Option 2, in the form attached hereto.

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 All ordinances or portions thereof in conflict with this ordinance are hereby repealed.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. Upon its passage and approval according to law, this Ordinance shall, by authority of the City Council, be published in pamphlet form. On the tenth day after the date of publication, this Ordinance shall be in full force and effect. Publication date: January 13, 2015. Effective date: January 23, 2015.


ATTEST:

RUTH A. SCOTT, Deputy City Clerk

JOHN A. REY, Mayor
Option 2: Conditional Waiver

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 (and continuing to renew) a Tobacco License in good standing. Upon the revocation, termination or expiration (by the Owner's non-renewal) of a Tobacco License or upon the change in location or ownership of such establishment, this 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. The City Council may waive or reduce this requirement on a case by case basis, based upon the measures that any individual applicant proposes to properly restrict the sale of tobacco products to minors and based upon the imposition of any conditions or restrictions which the Council deems appropriate.

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 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.