ORDINANCE 2015-008    PASSED: FEBRUARY 23, 2015

ADDING SECTION 5.16 TO THE CITY OF DEKALB CODE
OF ORDINANCES RELATING TO FIRE SAFETY
INSPECTIONS OF COMMERCIAL BUILDINGS.

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 5 of the City Code, which
relates to the Fire Department of the City of DeKalb and the operation and obligations of
said Department; and,

WHEREAS, the City Council finds that the City of DeKalb has experienced a decline in
the quality of commercial properties and has experienced the high-profile collapse or
closure of a number of commercial businesses; and,

WHEREAS, the City of DeKalb formerly utilized an inspection process utilizing the
City Fire Department to conduct both ISO-compliant pre-plan walkthroughs of buildings
and basic building safety inspections, which programs were successful tools in
identifying and addressing potential safety concerns, and which programs were
successful in expediting emergency responses to commercial properties in the City, and
the City only terminated such programs based upon reductions in staffing and funding
that rendered the programs impossible to operate; and,

WHEREAS, the City Council has determined that it is necessary to again implement a
program of Fire Safety Inspections and ISO-Complaint Preplan Walkthroughs for
commercial properties in the City (as defined below), and further to specify that such
inspections should be completed within the confines outlined here, and required by
ordinance; and,

WHEREAS, the City Council finds that the measures contemplated herein are the least
invasive measure possible to reasonably address the decline in property quality and the
threats to public safety which exist, and further finds that previous measures including
limited licensure and a reactive approach to property maintenance issues have been
unsuccessful in meaningfully addressing such issues; and,

WHEREAS, the City Council finds that there is a rational relationship between the
conduct of the Fire-Safety Inspection and Preplan Walkthrough contemplated herein and
the public safety goal of ensuring that commercial properties in the City are properly
maintained and utilized in a safe fashion, and further finds that the implementation of the
program contemplated herein is necessary to protect the public health, welfare, safety and
morals;
THEREFORE BE IT ORDAINED by the Mayor and City Council of the City of DeKalb, DeKalb County, Illinois, as follows:

Section 1. Ordinances Added.

Section 5.16 of the City Code of Ordinances is herein added to the City Code as follows:

5.16 Fire Safety Registration and Commercial Building Inspection Program

a) Definitions:

Basic Fire Inspection: An inspection of Commercial Buildings and surrounding property conducted by the City of DeKalb Fire Department pursuant to an inspection form approved by the City Council, which inspection is aimed at identifying conditions which create or have the potential to create an unreasonable risk of harm to building occupants, first responders or the general public, including but not limited to: structural deficits that jeopardize or have the potential to jeopardize the integrity of the structure; non-compliance with any applicable emergency ingress/egress, fire-prevention, fire-suppression or fire-alarm related standard; non-compliance with standards relating to the storage of hazardous, flammable or combustible substances; non-compliance with any applicable building code relating to electrical or utility service that creates a potential safety hazard, or other similar conditions, whether within a Commercial Building or on the property surrounding a Commercial Building. A Basic Fire Inspection shall cover all portions of the Building and property inspected, with specific attention to any hazards within Public Areas.

Building: Any structure, temporary or permanent, constructed upon real property within the City of DeKalb.

Commercial Building: Any Building, whether vacant or occupied, which is zoned or utilized for any commercial or industrial use or purpose, along with the parcel(s) of property on which it is located. A Commercial Building shall include any Mixed-Use Property as defined herein. A Commercial Building shall not include any Excluded Building. Any Commercial Building that is vacant shall be nonetheless considered to be a Commercial Building. For purposes of this Ordinance, buildings owned by the City of DeKalb shall be deemed to be Commercial Buildings.

Commercial or Industrial Use: Any zoning designation or use which is identified as or is consistent with a use enumerated as a commercial use or as an industrial use in the City’s Unified Development Ordinance.

Excluded Building: Any Commercial Building which is: 1) owner-occupied and exclusively residential in nature; 2) a Governmental Building; 3) a home-based business (business operated out of a portion of a private, owner-occupied, single-family residential structure) or, 4) residential rental property, multi-unit or otherwise, that is required to be
registered with the City pursuant to the requirements of Chapter 10 of the City Code of Ordinances, unless such property is a Mixed-Use Property as defined herein.

Governmental Building: Any parcel of real property, improved with a temporary or permanent structure, where either the real property or the structure is owned or leased by the State or Federal Government or a unit thereof, or by a unit of local government other than the City of DeKalb. Where a property includes multiple uses, such portion of the property or Building which qualifies as a Governmental Building shall be deemed Excluded, and the balance shall not be Excluded.

Mixed-Use Property: Any Building which is zoned for or utilized in a fashion as to include a combination of uses which include residential uses (whether for rental or owner-occupied) in connection with either a Commercial or Industrial Use, regardless of whether such property is registered as a residential rental property.

Owner: The person or entity listed of record as being the Owner of a parcel of property, and also as identified on the property registration form filed with the City. The Owner shall be the person or entity upon whom legal process shall be served, and shall be the person or entity who has the authority to exercise the legal rights of the Owner (such as approving compliance agreements).

Pre-Plan Walkthrough: A Walkthrough inspection completed at a Commercial Building and the property on which it is located, in compliance with Insurance Services Offices standards and requirements applicable to building emergency pre-planning, identifying ingress/egress points, utility connections, fire alarm or sprinkler panel/connection locations, bulk flammables storage areas and other similar information. A Pre-Plan Walkthrough shall cover all portions of the Building and property inspected.

Public Area: Any portion of a Building which members of the public, customers, or persons other than Owner’s (or a given tenant’s) employees and agents are permitted to enter.

Third Party Inspection: A current, annual, comprehensive fire/structural/safety inspection of a Commercial Building and the property on which it is located, completed by a qualified third party (i.e. a trained, credentialed third party and not the Building Owner or any occupant thereof and not the City or its agents or employees) and documented in writing, which is at least as comprehensive as the Basic Fire Inspection and which satisfies all applicable ISO guidelines or recommendations as determined by the City.

b) Registration of Commercial Buildings Required: The Owner of each Commercial Building is required to maintain a current registration with the City of DeKalb for said building. There shall be no fee for registration of a Commercial Building, and no process for suspension or revocation of registration. Initial registration shall be completed by May 1, 2015.
1) Registration shall provide the name and contact information for the Commercial Building's Owner, and other related information.

   a) The Owner shall be required to designate a 24 hour emergency contact and keyholder who shall have authority to grant the City expedited, immediate access to the property during the course of an emergency response to the property.

   b) The Owner shall also be required to designate and provide contact information for a local representative who shall have the authority to grant the City access to any portion of the building or property which is solely under the control of the Owner, for purposes of completing an inspection or walkthrough under this ordinance.

   c) Owners are encouraged, but not required, to provide floorplans or other information showing the layout of all Buildings required to be registered under this ordinance. Owners are required to provide a floorplan identifying any Public Areas, and identifying any portion of a Building which is vacant.

   d) At the time of initial application for registration, each Building shall be assigned a twelve-month annual registration period (with the City undertaking to include all Buildings under common ownership within the same registration period). Subsequently, each Owner shall renew the registration of each Building by filing an application for renewal at least ninety (90) days prior to the end of the then-current term of the assigned registration period. In the event of any change in ownership of a Building or in the identity of the emergency contact, the registration shall be updated within ten days of the date of the change (but shall not change the timeline for applicable Building Inspections or Walkthroughs). In the event that there is no change in building ownership or emergency contact, the annual renewal shall be a simplified verification of existing information.

2) Multi-Unit Buildings:

   a) Buildings which are not multi-unit, or which are multi-unit but which are either vacant or occupied by a single entity shall be subject to common inspection / walkthrough, and shall be treated as a single unit for purposes of this ordinance. Multi-unit buildings where the occupancies are not separated by permanent, physical improvements (e.g. offices separated by cubicles) shall be treated as single units.

   b) Buildings which are multi-unit, with the units being fully separated by permanent, physical improvements shall be subject to inspection / walkthrough on a unit-by-unit basis, with the City attempting to complete
all inspections/walkthroughs at the same time. The exterior portion of the
inspection/walkthrough, and the inspection/walkthrough of any shared
interior common areas shall be conducted at the same time as the unit-by-
unit inspection/walkthrough. Any violations discovered within an
individual unit that do not extend beyond the individual unit shall be
handled on a unit-by-unit basis. Any violations discovered that present a
threat to a portion of the occupancy extending beyond an individual unit
(e.g. an inoperable, building-wide fire suppression system) shall be
addressed to the affected portion of the building.

c) Inspection of Commercial Buildings: Subject to the provisions of this Ordinance,
each Commercial Building within the City shall be subject to the Basic Fire Inspection
every 1-3 years. There shall be no fee assessed for such Basic Fire Inspections.

1) Timing of Basic Fire Inspections: The City shall complete the Basic Fire
Inspections contemplated herein within three years of the effective date of this
Ordinance. Thereafter, buildings which do not have any violations noted during
the inspection and buildings which correct violations prior to the first reinspection
shall be reinspected on a recurring three-year rotation. Buildings which have
violations noted that are not corrected prior to the first reinspection and any
vacant Buildings shall be reinspected on a one-year rotation (and shall also be
reinspected until any violations are corrected). The timing for reinspection (one-
year or three-year) shall be based upon the results of the most-recent Basic Fire
Inspection (and not based upon subsequent reinspections of violations).

a) Documentation: The Fire Department shall prepare and keep
accurate records of the Basic Fire Inspections conducted, and a copy of the
most recent inspection record shall be provided to the Owner at no cost
within a reasonable period after the inspection is conducted.

i) The initial inspection report to be utilized is in the form
attached hereto as Exhibit A or a computerized version of the same
(which exhibit need not be codified). Updates or modifications to
the inspection report shall require the approval of the City Council.

b) Reinspection of Violations: Any violations noted shall be subject
to reinspection within a reasonable time after the initial inspection, to
confirm that compliance has been achieved.

c) Waiver of Basic Fire Inspection: A Basic Fire Inspection shall not
be required for:

i) Any portion of a Commercial Building which is subject to a
City license-based inspection (e.g. Fire Life-Safety, Hotel-Motel,
Gas Station, Rooming House). In the case of a Commercial
Building where only a portion is subject to a City license-based
inspection, the balance of the Building shall be subject to a Basic Fire Inspection.

ii) If the Owner or occupant of a Commercial Building provides the City with a complete copy of acceptable annual Third Party Inspection reports for said Building, such portion of the Building which was inspected/document in the Third Party Inspection report shall not be required to have a Basic Fire Inspection.

iii) In the case of a Mixed-Use Building, the portions utilized or available for Commercial or Industrial uses shall be subject to inspection. In addition, common areas of buildings with any residential use (e.g. common stairwells, balconies and hallways) shall be subject to inspection. Individual residential units shall not be subject to inspection, in the absence of either a properly issued search warrant or occupant request for/consent to inspection.

d) Coordination of Inspections: The City shall use its best efforts to coordinate inspections of any Building with multiple uses/occupancies so as to complete all inspections at a single time.

2) Refusal to Permit Inspection: The Fire Department shall attempt to complete all inspections contemplated by this Ordinance, and as contemplated by the Fire Prevention Code of the City of DeKalb. In the event that any Owner or Tenant refuses to permit inspection of a Building or a portion thereof, the Fire Department shall inspect such portion as the Owner or Tenant permits access to, and shall document any conditions noted. The City shall also document any building or property maintenance code violations or other ordinance violations that are visible from any public property or right of way, Public Area or private property to which the City is granted access. The City shall have the ability to issue citations for any violations noted, and shall have the authority to apply for and seek issuance of a search warrant, administrative or otherwise, on a case by case basis.

d) Pre-Plan Walkthrough: The Fire Department shall conduct a Pre-Plan Walkthrough of all Commercial Buildings in the City within three years of the effective date of this Ordinance, and shall endeavor to conduct Pre-Plan Walkthroughs updates of all Commercial Buildings on an annual basis thereafter.

1) Documentation: The Fire Department shall endeavor to prepare Pre-Plan documentation based upon the completion of the Pre-Plan Walkthrough, in a fashion compliant with applicable Insurance Services Office standards, and shall maintain such documentation in a format accessible to emergency responders. Building Owners are encouraged, but not required, to provide building plans,
schematics and related documents, in electronic format if possible, to enable the efficient preparation of accurate Pre-Plans.

a) The initial inspection report to be utilized is in the form attached hereto as Exhibit A or a computerized version of the same (which exhibit need not be codified). Updates or modifications to the inspection report shall require the approval of the City Council.

2) Portion of Building Subject to Pre-Plan Walkthrough: The Commercial Building and the property on which it is located shall be subject to the conduct of a Pre-Plan Walkthrough, excluding any individual residential units in a Mixed-Use Building.

3) Coordination with Other Inspections: The City shall endeavor to conduct the Pre-Plan Walkthrough at the same time as any other required inspections are conducted. The Pre-Plan Walkthrough shall be required even for Buildings that do not require a Basic Fire Inspection under Section (c)(1)(c)(i) and (ii) of this Ordinance (i.e. Buildings which are subject to a City license-based inspection and Buildings which have an acceptable Third-Party Inspection).

4) Refusal to Permit Pre-Plan Walkthrough: The Fire Department shall attempt to conduct the Pre-Plan Walkthrough contemplated by this Ordinance. In the event that any Owner or Tenant refuses to permit the Pre-Plan Walkthrough of a Building or a portion thereof, the Fire Department shall conduct a Walkthrough in such portion as the Owner or Tenant permits access to. The City shall document the Owner’s or Tenant’s refusal in writing and shall provide a copy of such notice to the Owner within a reasonable time thereafter.

e) Compliance Agreements and Incentives:

1) Buildings that Permit Inspections and Walkthroughs: In the case of any Building and Property that voluntarily complies with the conduct of applicable City Inspections and Walkthroughs:

a) Informal Resolution: Following the conduct of an Inspection hereunder, the City shall work informally with the Owner and/or Tenant to resolve any violations discovered in the Inspection. The Owner and/or Tenant shall have until the first reinspection to successfully complete such remediation. The violations noted, if any, shall be indicated in the inspection report prepared by the City, and the City shall provide a copy of such report to the Owner within a reasonable time thereafter.

b) Compliance Agreements: In the event any City Inspection reveals the presence of one or more violations of any applicable City Code which are not resolved prior to the first reinspection, the City shall thereafter negotiate in good faith with the Owner of the Building to enter into a
Compliance Agreement which acknowledges and documents the presence of the violation and provides a timeline for remediation. Provided that the Owner enters into such an agreement and undertakes reasonable measures to remediate the violation, the City shall not issue citations for ordinance violations that the Owner is working to remediate, during the time allowed under the Compliance Agreement or any mutually acceptable extension thereof. No Owner shall be required to enter into a Compliance Agreement; any Owner may elect to dispute the presence of any violation, in which case the City shall evaluate the matter for the issuance of appropriate notices or citations to the Owner and/or tenant.

i) Determination of Timeline: The City shall work in good faith with the Owner of a Building to determine a reasonable timeline for remediation of violations, based upon the nature and scope of the violation, the complexity of the required repair, the necessity for building permits or plans, the impact that weather conditions have upon the repair, the availability of repair materials, and similar factors.

ii) Extension of Compliance Agreements: In the event that the Owner has in good faith and within a reasonable time period commenced efforts to remediate any noted violations and is unable to remediate a violation within the time period allowed under the Compliance Agreements because of factors not under the Owner’s control, the City shall agree to extend a Compliance Agreement by a reasonable amount of time.

iii) Contents of Compliance Agreements: A Compliance Agreement shall be required to include the following provisions:

1) A reasonably precise description of the violation(s) noted (with photographs where possible) with the Owner’s acknowledgment of the presence of the violation.
2) The timeline for the remediation to be completed and the anticipated reinspection date.
3) An acknowledgement that the Owner and City are agreeing to utilize a Compliance Agreement to attempt to amicably remedy the violation(s) in lieu of litigating the matter, and an acknowledgment that if the violation(s) are not remediated or if the Compliance Agreement is violated, the City may proceed to issue appropriate notices or citations to the Owner and/or tenant.
4) A basic description of the contemplated repair (where possible), and an indication as to whether a building permit is required to complete the repair based upon the information known at the time.
5) Contact information for the Owner and City representatives who will be most directly involved in carrying out the Compliance Agreement.
6) In the event of a condition that presents an imminent safety hazard, a description of any agreed-upon temporary measures being undertaken to mitigate or protect against said hazard.

iv) Further Action: In the event that an Owner refuses to enter into a Compliance Agreement or refuses to comply with the terms thereof, violations or conditions noted shall be evaluated for issuance of appropriate violation notices or citations to the Owner and/or tenant.

v) Use of Compliance Agreements: City staff is authorized to utilize the Compliance Agreement procedures outlined herein to address other property-related ordinance violations as may be appropriate from time to time. The City shall in good faith attempt to utilize Compliance Agreements where any violation is identified in the completion of any Inspection which is required by City Code.

c) City Incentives: The Building shall be eligible for City Incentives as follows:

i) Building Permit Fee Reduction: The cost of any applicable building permit or building-permit related inspection fee related to remediation or correction of a violation identified during the conduct of an inspection required by City Code shall be reduced in an amount to be established by City Council resolution from time to time, initially established at twenty-five percent (25%). This incentive shall only be available for the first round of inspections completed pursuant to this Ordinance, and only within three years of the effective date of this Ordinance.

ii) Commercial Property Remediation Incentive: The Building shall be eligible for participation in the then-current Commercial Property Remediation incentive program (if any), with the City making a contribution towards the repair or remediation costs or otherwise incentivizing, subsidizing or reducing the cost of the remediation.

iii) AIP Incentives: Where possible, the Building shall be eligible for any available Architectural Improvement Program incentives that may be available.
iv) Agreed Suspension of Licenses: If a violation requires temporary closure of a Building with a City-issued license (e.g. liquor license), at the Owner’s request, the City shall temporarily suspend such license for the period of repair, and shall pro-rate the next applicable license renewal fee based upon the period of time that the license was voluntarily suspended.

v) Other Incentives: Depending upon the nature, scope, cost and complexity of the remediation required, the City Council may approve additional incentives on a case by case basis.

vi) Recognition of Safe Buildings: The Fire Department shall issue each Building which voluntarily completes all required Inspections and Walkthroughs and remediates any noted violations with a City-issued certificate or decal recognizing appropriately recognizing and commending the Building or Owner.

2) Buildings that Refuse or Partially Refuse Inspection or Walkthrough: In the case of any Building and Property that does not voluntarily comply with the full conduct of any portion of an applicable City Inspection or Walkthrough:

   a) The Building shall not be eligible for use of a Compliance Agreement and shall not be eligible for any of the incentives contemplated in Section (e)(1) above.

f) Applicable Standards: No provision of this Ordinance shall have an impact upon the determination of the applicable building code or standards to which a Building or property is held. It is the intention of the City to recognize any applicable ‘grandfathering’ provisions of the City’s Building and Fire Codes relating to Buildings. It is expressly recognized that not all buildings will comply with the most updated provisions of the City’s building codes, and that under applicable laws, existing Buildings benefit from provisions in the codes that permit grandfathering of existing conditions.

1) The City acknowledges that with regard to Buildings which were constructed a significant time ago, or which were constructed and amended over a period of time, it may be challenging to identify the applicable building codes and standards for all or for portions of a Building. The City shall act in good faith and shall extend a reasonable opportunity to conference with the Owner regarding the identification of the appropriate standard, and shall work in good faith to identify standards that are: a) appropriate for the Building given its age; b) attainable given the nature of the structure; and, c) appropriate to preserve public safety and the safety of building occupants.

2) In the event that there is a dispute regarding which code or standard is applicable that is not resolved through the conference identified in (f)(1), such
dispute may be referred to the Building Code Board of Appeals consistent with the provisions of Chapter 24 of the City Code of Ordinances.

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: February 24, 2015. Effective date: March 5, 2015.


ATTEST:

MARCIA E. SWEIGERT, City Clerk

JOHN A. REY, Mayor