

**ORDINANCE 2017-041**

**PASSED: OCTOBER 23, 2017**

**AMENDING CHAPTER 17 “ADMINISTRATIVE HEARING PROCEDURE” OF THE MUNICIPAL CODE OF THE CITY OF DEKALB, ILLINOIS, BY ADDING SECTION 17.08 “APPEAL OF LICENSE DENIAL”, AND SECTION 17.09 “STANDARDS FOR CONSIDERATION OF LICENSURE”.**

**WHEREAS**, the City of DeKalb is a home rule municipality with the power and authority conferred thereupon by virtue of the Illinois Municipal Code, the Illinois Constitution, the Illinois Liquor Control Act and the City Code of the City of DeKalb; and

**WHEREAS**, the City has previously created a number of licenses and approvals that are granted through the actions of City staff, including the approval of event licenses, the approval of management representatives of licensed liquor establishments, and other similar licenses and permits; and

**WHEREAS**, the City seeks to ensure that any party or parties seeking such licensure or approval are provided with a full and fair process by which their application is considered, as well as a means of being afforded adequate due process in the event that their application is rejected or declined; and

**WHEREAS**, the City Council has thus determined that it is necessary and advantageous to adopt a process providing for the appeal of a license denial through the provisions of the City Code.

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

**Section 1.** Chapter 17, Section 17.08 shall be amended as follows:

**17.08 APPEAL OF LICENSE DENIAL.**

a) **Applicability:** This ordinance shall provide a process that shall be applicable to the denial of any license, permit, permission or approval (collectively, “License”) which is created or granted pursuant to the provisions of any City Code, Ordinance or Resolution, provided that such License is granted through the actions of any staff or employees of the City of DeKalb, up to and including the City Manager. This Ordinance shall also apply to any License that is granted through actions of the City’s staff and Liquor Commissioner. This ordinance shall not apply to: 1) any License which is approved or rejected through the action or inaction of the City Council of the City of DeKalb; or, 2) any License which has a preexisting process for appeal under City Code.

b) **Notice of Appeal:** In the event that any person is aggrieved by the denial or conditional approval of any License as defined herein, such person may initiate the appeal of such denial or conditional approval (“Decision”) by filing a written notice of

appeal within five (5) days of the date of issuance of the denial or conditional approval ("Date of Decision"). Such appeal shall be filed with the City Manager and shall state, in writing, all grounds upon which the Decision is being appealed or is sought to be overturned. No basis of appeal may later be raised which is not included in the written notice of appeal.

c) Process: Upon the receipt of a written notice of appeal, the City Manager or designee shall review the same, and shall determine the applicable process:

- 1) Type of Hearing to be Conducted:
  - i) Decision by other than City Manager: In the case of a Decision being appealed which was made by a party other than the City Manager, the City Manager or a designee thereof may conduct a due process hearing to consider the appeal, or the City Manager may refer the same for hearing before the City's Administrative Hearing Officer.
  - ii) Decision by City Manager: In the case of a Decision being appealed that was made by the City Manager, such appeal shall be referred for hearing before the City's Administrative Hearing Officer.
- 2) Hearing Before City Manager or Designee:
  - i) In the event that the City Manager elects to conduct a due process hearing before the City Manager or designee thereof, such hearing shall be conducted within thirty (30) days of the date of the City's receipt of the appeal. The appellant shall be afforded not less than five (5) days written notice of the date, time and location of the hearing. Relevant evidence and testimony shall be received at such hearing and considered in the determination of whether the Decision should be affirmed or overturned. The City Manager or designee shall issue a written decision within thirty (30) days of the date of hearing.
  - ii) In the event that the party bringing the appeal disagrees with the decision of the City Manager or designee following the above-described hearing, such party shall have the ability to file a written notice of appeal of the decision. Such written notice shall follow the provisions of subsection (b) of this Ordinance (shall be filed within 5 days of the date of decision, shall be filed with the City Manager, and shall contain all bases upon which appeal is sought). Such appeal shall be forwarded for hearing before the Administrative Hearing Officer of the City of DeKalb.
- 3) Hearing before Administrative Hearing Officer:

- i) For any hearing before the Administrative Hearing Officer, such hearing shall be conducted within sixty (60) days of the date of filing of the appeal, either at a standard Administrative Hearing date of the City of DeKalb, or at a special setting (at the City's preference). The appellant shall be provided not less than five (5) days written notice of the date of hearing.
- ii) Hearings shall be conducted pursuant to the provisions of this Chapter 17 of the City Code, and the City Attorney shall represent the interests of the City with respect to the issuance of the Decision.
- iii) Within thirty (30) days of the date of the hearing, the Administrative Hearing Officer shall issue a written decision affirming or overturning the Decision. Such decision may include conditional issuance, with inclusion of conditions such as those described in subsection (d) below. In the event that such decision affirms the underlying Decision, the Administrative Hearing Officer may impose costs on the appellant, in an amount equal to the costs incurred by the City in conducting the hearing, presenting testimony or witnesses (such as the costs incurred from the appearance of witnesses), the costs of the hearing officer or attorneys fees, or costs otherwise relating to the appeal or conduct of the hearing.

d) **Settlement or Conditional Issuance:** In the alternative to the conduct of a due process hearing, the City Manager or designee may conduct a conference to discuss the resolution of any dispute relating to a Decision, or to discuss the issuance of a conditional License. If agreement is reached regarding the same, the City shall memorialize the conditions of approval in an appropriate agreement, and the City may impose additional relevant conditions as may be necessary to ensure the public safety and welfare (e.g. a license may be issued with a requirement that the applicant bear the costs of additional public services including but not limited to supplemental police or fire department patrols, or with other requirements as determined by the City Manager or designee).

#### **17.09 STANDARDS FOR CONSIDERATION OF LICENSURE.**

a) **Applicability:** This Section shall apply to all Licenses (as defined in Section 17.08) which are subject to recommendation or approval by any City staff or employee, whether as final approval or as recommendation for forwarding to another party for decision making. This Section shall also provide guidance to the City Manager or designee, or to the Administrative Hearing Officer in the consideration of an appeal pursuant to 17.08.

b) **Submission of Supplemental Information:** Wherever any City representative is

reviewing an application for a License as defined in Section 17.08 and believes that further information or submittals are required for a full and considered evaluation of the application, the representative shall be authorized to require the submission of additional information deemed by him or her to be relevant to the License application, shall be authorized to delay consideration of the License application pending submission of such additional information, and shall be authorized to deny the License application if such additional information is not provided.

c) Standards: With regard to both the underlying Decision (and staff determinations to grant, condition or deny a License), the City acknowledges that many City ordinances do not expressly include a full list of factors or elements that should be evaluated in the decision, nor do all such ordinances include a list of all information that is required to be submitted by the applicant. This Section shall apply to provide further clarification of other provisions of City Code. The standards outlined below apply to the applicant, and to all persons involved in the conduct or operation of the proposed licensed activity. Standards to be considered with regard to the issuance of any License include:

- 1) Public Safety: Any factor, information or matter that bears upon the safety of the public, including but not limited to those who are directly affected by the granting or denial of the License. This may include the organization of an event or the configuration of a premises. It may also include the presence or absence of security plans or the nature, extent or sophistication thereof, along with the relevant experience of the party or parties providing event organization or security. A License application may be denied based upon the proposed provision of inadequate measures to protect public safety (inadequate facilities or inadequate police, medical or fire services), or approval may be conditioned upon the provision of independent public safety services (e.g. appropriately trained and licensed private security and/or private ambulance or emergency services) or upon the execution of a standby or patrol agreement wherein the applicant agrees to bear the costs of the City providing standby or supplemental police, fire or public works services necessitated by the virtue of the event.
- 2) Compliance with Codes: Non-compliance with any applicable code, standard or ordinance, or the failure to affirmatively demonstrate compliance with all applicable regulations, shall constitute an absolute basis for denial of a License.
- 3) Relevant History: The relevant history of the same or similar events or businesses, events or businesses conducted or operated by the same parties or organizers, or the City (or other community's) past experience with the same or similar circumstances or events to what is proposed by the License application shall be considered. For example, if a given applicant proposes to operate a social club, and that same applicant previously operated a substantially similar social club that generated

significant public safety concerns, the history of similar operations shall be considered relevant and shall be considered.

- 4) **Criminal History:** Where any License application requires the completion of a criminal background check, the applicant's criminal history shall be considered. Criminal history information that is relevant to the License application shall be evaluated. For example, multiple minor traffic infractions may not be relevant to an application for tattoo licensure, but are relevant to an application for food and beverage vending vehicle licensure or taxi licensure (as such licenses relate to the operation of motor vehicles). For licenses involving a specific regulated item (e.g. alcohol, tobacco or other regulated or controlled substances), previous legal violations (regardless of the severity) involving such substances may be relevant. For example, previous criminal offenses relating to the unlawful sale of tobacco or alcohol may be relevant to a liquor or tobacco license regulation. Previous charges for disruptive intoxication, driving under the influence or other alcohol-related charges (or other charges arising out of incidents involving the consumption of alcohol) may also be relevant to the evaluation of liquor license applications. Previous charges for solicitation without a license may be relevant to application for solicitor or peddlers licenses. Criminal history involving felonies or crimes of fraud, theft or moral turpitude shall be considered relevant to any License application. The nature and severity of the criminal offense, any remedial measures taken since the date of the offense, and the duration of time between the offense and the License application shall all be considered. In addition, in completing a criminal background check, the party completing such investigation shall be entitled to review matters wherein a crime was alleged but no conviction resulted, and shall be entitled to question the applicant regarding such circumstances and the results thereof, provided that: a) no applicant shall be required to divulge information legally protected from disclosure; and, b) the fact that a person was accused of or charged with a crime shall not be considered a disqualifying event without further information. In consideration of relevant criminal history, the party reviewing applications shall consider all relevant information and evidence available, and such considerations shall be based upon a "preponderance of the evidence" standard.
- 5) **Evidence of Judgment, Decision-making or Character:** Where a License involves the exercise of judgment or character or the completion of decision-making (e.g. a Liquor license involving decisions regarding whether or not to continue serving a patron), evidence of the judgment or character of the applicant shall be relevant for consideration to the extent provided in the underlying License application or disclosed in the City's investigation. Information evaluated may include civil litigation or civil claim history where relevant to the license sought (e.g. information showing civil fraud claims may be relevant to the consideration of

issuance of a license requiring the exercise of judgment or the maintenance of accurate records). No information which is not either initially disclosed by the applicant or revealed by the City's investigation shall be considered. Any information disclosed by the applicant or revealed by the City's investigation that bears upon the applicant's ability to make rational, informed decisions relating to the License shall be considered.

- 6) **Outside Factors:** Where a License proposes an activity that has a likelihood to be influenced by outside factors, such factors may be considered as relevant to the application. For example, if the City has previously permitted a large Mass Gathering event and receives a license for a second large Mass Gathering event on the same date and time, the City shall evaluate whether the first event will utilize resources to a point that the City lacks the ability to properly provide public services, including but not limited to police and fire protection, to both events.
- 7) **Date, Time, Location and Demand:** The date, time and location of any proposed activity subject to a license, and the demands that such activity places upon the City and its personnel, shall always be considered relevant to a License application.
- 8) **Insurance and Security:** The applicant's ability to provide relevant insurance, bonding or security relating to the proposed licensed activity. Where City Code does not specify a specific insurance requirement, the City personnel responsible for considering such License application shall be authorized to establish appropriate insurance requirements.
- 9) **Clarity of Application:** The extent to which the applicant clearly and fully discloses relevant information relating to the licensed activity (including the provision of relevant historical information, accurate and scaled drawings of proposed event locations or other information) shall always be considered relevant to the consideration of the License.
- 10) **Inspection of Premises:** Where any application contemplates the conduct of licensed activity at a specific premises with permanent structures or improvements, the City shall be authorized to fully inspect the premises and all portions of the building within which such premises reside, prior to consideration of approval. The condition of such premises shall be relevant to the consideration of the License application, and approval may be rejected based upon the condition of the premises or based upon the applicant's failure or refusal to improve the same to comply with relevant codes or public safety concerns. Where an application contemplates the conduct of licensed activity at a specific premises to be improved with temporary structures, temporary utility services, tents or similar temporary improvements, licensure may be conditioned upon such temporary

improvements complying with standards specified in the license approval, and final licensure may be conditioned upon the completion of a full inspection of all temporary improvements, once actually installed and available for inspection.

- 11) Degree of Planning / Compliance with Timelines: The timing and degree of planning evidenced in a License application, including but not limited to the applicant's compliance with any filing periods contemplated by City Code shall be relevant to the consideration of the license.
- 12) Public Facility Considerations: Where a License application contemplates the use or obstruction of any public facility (e.g. encroachment permit or mass gathering permit in a public area), the degree of impact on the public facility shall be considered. Consideration shall be given to the potential for damage to public facilities, liability and insurance concerns, the extent to which the proposed licensed activity will have adequate emergency access (or will impair other City standard or emergency operations), the impact on the general public, the setup and cleanup of the affected area and the costs (if any) that the City will incur. Additionally, where proposed licensed activity has the potential to impact public parking or disabled accessible parking, or has the potential to impact disability access improvements such as ramps or sidewalks, such matters shall be given consideration.
- 13) Other Relevant Information: Because of the nature and breadth of Licenses issued by the City, the party responsible for reviewing license applications may consider other relevant information that relates to the License application, as determined by him or her.

d) Interaction Between Licenses: Where City staff has the authority to issue multiple Licenses, and where a given event requires the issuance of multiple Licenses in order to technically comply with multiple codes, the City Manager is authorized, upon a positive recommendation from all relevant Department Heads, to waive, condition or limit some or all of the requirements for multiple licensure (or specific requirements under various potentially applicable licenses) to permit carefully planned, narrowly constructed licensed activity to occur in a fashion that protects the public safety, health and welfare.

e) Conditional Approval: Where any code grants the City staff the ability to approve of a given License, such authority shall be deemed to include the ability to grant conditional approvals (e.g. an approval conditioned based upon the applicant's agreement to modify the nature of the licensed activity or to complete some action), including but not limited to the execution of an agreement to reimburse the City for expenses incurred in the conduct of the licensed activity (e.g. supplemental police, fire or public works services).

**Section 2.** All ordinances or portions thereof in conflict with this ordinance, including the prior versions of the ordinances included above, 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: October 24, 2017. Effective date: November 2, 2017.

**PASSED BY THE CITY COUNCIL** of the City of DeKalb, Illinois at a Regular meeting thereof held on the 23<sup>rd</sup> day of October, 2017 and approved by me as Mayor on the same day. First Reading October 9, 2017. Passed by an 8-0 roll call vote. Aye: Jacobson, Finucane, Marquardt, Fagan, Noreiko, Verbic, Faivre, Smith. Nay: None.

**ATTEST:**

  
  
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**RUTH A. SCOTT**, Deputy City Clerk      **JERRY SMITH**, Mayor

