

CHAPTER 17
ADMINISTRATIVE HEARING PROCEDURE

DATE OF LAST AMENDMENT: July 9, 2018 (Ordinance 2018-039)

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17.01 PURPOSE AND CREATION.

- a) Purpose. The stated purpose of this Chapter 17 is to provide for the fair and efficient enforcement of City of DeKalb ordinances as may be allowed by law and directed by ordinance, through an administrative adjudication of violations of City ordinances and establishing a schedule of fines and penalties, and authority and procedures for the collection of unpaid fines and penalties. To that end, Division 2.1 of Article 1 of the Illinois Municipal Code (65 ILCS 5/1-2.1) is hereby adopted.
- b) Established. There is hereby established an administrative division of the municipal government to be known as the City of DeKalb Ordinance Enforcement Division, which is vested with the power to enforce compliance with all municipal ordinances as from time to time may be authorized by the City Council of the City, except for any offense that is ineligible for prosecution through an administrative hearing process. The establishment of the City of DeKalb Ordinance Enforcement Division does not preclude the City of DeKalb from using any other method to enforce the ordinances of the City.

17.02 ADMINISTRATIVE COMPOSITION.

- a) Organization. The City of DeKalb's Ordinance Enforcement Division shall be composed of a Hearing Officer, an Ordinance Enforcement Administrator, System Coordinator and Hearing Room Personnel, appointed by the City Manager, with the power and authority as hereinafter set forth.
- b) Hearing Officer.
 - 1. A Hearing Officer must be an attorney, who has been licensed to practice law in

the State of Illinois for at least three (3) years.

2. The Hearing Officer shall preside over all adjudicatory hearings and shall have the following powers and duties:
 - A. hearing testimony and accepting evidence that is relevant to the existence of a City Code violation;
 - B. issuing subpoenas directing witnesses to appear and give relevant testimony at the hearing or to produce relevant documents at the hearing, upon the request of the parties or their representatives;
 - C. preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing;
 - D. issuing and signing written findings, decisions and orders stating whether a City Code violation exists;
 - E. administer oaths and affirmations;
 - F. rule upon motions, objections, and the admissibility of evidence;
 - G. adopt rules of evidence and thereafter regulate the course of the hearing in accordance with this chapter and the rules of evidence so adopted, and in accordance with any other applicable law; and
 - H. imposing penalties or sanctions, ordering compliance with applicable City Code provisions, or imposing such other relief consistent with applicable City Code provisions and assessing costs upon finding a party liable for the charged violation, except however, that in no event shall the Hearing Officer have authority to (i) impose a penalty of incarceration, or (ii) impose a fine in excess of Fifty Thousand Dollars (\$50,000.00) per case. The maximum monetary fine under this section shall be exclusive of the costs of enforcement or costs imposed to secure compliance with the City's ordinances and shall not be applicable to cases to enforce the collection of any tax imposed and collected by the City.
3. Prior to conducting administrative adjudication proceedings under this Chapter 17, the Hearing Officer shall have successfully completed a formal training program, which shall include the following:
 - A. instruction on the rules of procedure of the administrative hearings over which the Hearing Officer shall preside;
 - B. orientation to each subject area of the Code violations that s/he will adjudicate;
 - C. observation of administrative hearings;

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- D. participation in hypothetical cases, including ruling on evidence and issuing final orders; and
 - E. otherwise comply with all applicable rules and regulations applicable to administrative hearing officers as may be imposed by the State of Illinois.
- c) Ordinance Enforcement Administrator. The Ordinance Enforcement Administrator shall be the City Manager or his/her designee. The Ordinance Enforcement Administrator is authorized and directed to:
- 1. Operate and manage the system of administrative adjudication of City ordinance violations as may be permitted by law and as directed by ordinance.
 - 2. Adopt, distribute and process all notices as may be required under this Chapter 17 or as may be reasonably required to carry out the purpose of this Chapter 17.
 - 3. Collect monies paid as fines, penalties and/or costs assessed after a final determination of liability.
 - 4. Certify copies of final determination of an ordinance violation adjudicated pursuant to this Chapter 17, and any factual reports verifying the final determination of any violation liability which was issued in accordance with this Chapter 17, the laws of the State of Illinois, including 625 ILCS 5/11-208.3, as may be amended from time to time.
 - 5. Certify reports to the Secretary of State concerning initiation of suspension of driving privileges in accordance with the provision of this Chapter 17 as hereinafter set forth, and those of 625 ILCS 5/6-306.5.
 - 6. Promulgate rules and regulations reasonably required to operate and maintain the administrative adjudication system hereby created.
 - 7. Collect unpaid fines, penalties and costs through private collection agencies, actions in the Circuit Court of DeKalb County and any and all post-judgment remedies available at law or in equity, as may be amended from time to time.
- d) System Coordinator. The System Coordinator shall be such person as may be designated by the Ordinance Enforcement Administrator. The System Coordinator is hereby authorized and directed to:
- 1. Input violation notice information.
 - 2. Establish hearing dates and notice dates.
 - 3. Record fine, penalty and costs assessment and payments.
 - 4. Issue payment receipts.

5. Issue succeeding notices of hearing dates and/or final determination of liability; issue notices of immobilization; issue notices of impending impoundment; issue Seizure Notices; issue notices of impending driver's license suspension, as directed by the Ordinance Enforcement Administrator in accordance with the provisions hereinafter set forth.
 6. Keep accurate records of appearances and non-appearances at administrative hearings, pleas entered, judgments entered, order for compliance entered, sanctions imposed, if any, and fines, penalties and costs assessed and paid.
- e) Hearing Room Personnel. Hearing Room Personnel shall be the personnel as may be determined by the City Manager to be necessary to perform such services as directed by the Hearing Officer and may be authorized and directed to:
1. Maintain hearing room decorum.
 2. Have and execute authority as is granted to courtroom deputies of the Circuit Court.
 3. Perform such other duties or act as may reasonably be required and as directed by the Hearing Officer or the Ordinance Enforcement Administrator.

17.03 VIOLATION NOTICES.

- a) Issuance of Violations.
1. Violation notices for any ordinance violation, including violations of Chapter 51 (Vehicle Code), shall be issued by the person authorized under this Code and shall contain information and shall be certified and constitute prima facie evidence of the violation cited as hereinafter set forth.
 2. All full-time and part-time police officers, full-time and part-time code enforcement officers and inspectors and community service officers, as well as other individuals specifically authorized by any City official, City department or City Code shall have the authority to issue violation notices.
 3. Any individual authorized hereby to issue violation notices, and who detects an ordinance violation authorized to be adjudicated under this Chapter 17 or a violation of any section of any City ordinance, is authorized to issue violation notices thereof.
- b) Violation Notice.
1. The violation notice shall contain, but shall not be limited to, the following information (unless otherwise required or limited by applicable law, such as restrictions regarding information on parking citations):

- A. The name of the party violating the ordinance, if known.
 - B. The date, time, and location of the violation.
 - C. The particular ordinance violated, including name and number.
 - D. The compliance required and the date for such compliance, if applicable.
 - E. Vehicle make and state registration number, if applicable.
 - F. The signature or initials and identification number (if applicable) of the person issuing the notice.
 - G. The date of issuance of the violation notice.
2. The correctness of the facts contained in any violation notice shall be verified by the person issuing said notice by:
 - A. Signing his/her name or initials to the notice at the time of issuance; or
 - B. In the case of a notice produced by a computer device, by signing a single certificate, to be kept by the System Administrator, attesting to the correctness of all notices produced by the device while under his/her control.
 3. The original or facsimile of the violation notice shall be retained by the System Coordinator where a docket number shall be stamped on all copies and a hearing date noted. The notice shall be kept as a record in the ordinary course of business by the System Coordinator. One (1) copy of the violation notice shall be returned to the person issuing the notice, so that s/he may prepare evidence for presentation at the hearing on the date indicated.
 4. Any violation notice issued, signed and served in accordance herewith, or a copy of the notice, shall be prima facie evidence of the correctness of the facts shown on such notice. Violation notices may be issued in hard copy or electronically, and electronic copies or electronic signatures shall be valid as originals.
- c) Notice of Hearing.
1. The Notice of Hearing shall contain, but shall not be limited to, the following information:
 - A. The date and location of the adjudication hearing of ordinance violation, which date shall not be less than fifteen (15) days nor more than sixty (60) days after the date of the Notice of Hearing is deposited in the mail; except however the fifteen (15) day notice period shall not apply in emergency situations, which means any situation that reasonably constitutes an immediate danger to the health, safety or general welfare of persons or property within the City. In an

emergency situation, the City shall be required to provide only two (2) days' notice of a hearing.

- B. The legal authority and jurisdiction under which the hearing is to be held and the penalties for failure to appear at the hearing.
- C. The fine and additional penalty sought.
- D. Where a violation is issued as an offense other than a must-appear violation, the notice may offer the offender the opportunity to settle or compromise the violation in advance of the scheduled hearing date, pursuant to procedures authorized by the City Manager or designee.

d) Service of Notices.

- 1. Non-Emergency Matters. One (1) copy of the Violation Notice and one (1) copy of the Notice of Hearing shall be served by personal service, posting or first-class mail on the alleged violator at the property address of the violation, the address of the violator as provided to the City, or the alleged violator's address registered with the Secretary of State. In the case of violations relating to a specific parcel of land or occurring at a specific parcel of land, notice shall also be effective if mailed to the taxpayer of record for the most recent ascertainable period. Notice may also be served upon the property manager as disclosed by the owner during the rental registration process.
- 2. Emergency Matters. For those matters which pose an immediate danger to the health, safety and general welfare of persons or property within the City, one (1) copy of the Violation Notice and one (1) copy of the Notice of Hearing shall be served by posting a copy at the property address of the violation and by mailing a copy, via first class mail, to the alleged violator at the property address of the violation, shall be served by personal service, or shall be served by such alternate means as shall be appropriate under the circumstances.

e) Contesting of Citation.

- 1. Any person who receives a citation or ticket may contest said citation or ticket and request a hearing before the Hearing officer as follows:
 - A. Failure to Comply Ticket – sign and date the ticket and return it to the City's Building and Code Enforcement Division within seven (7) days of the date the ticket was issued.
 - B. Parking Ticket/Citation – Complete a Request for Administrative Hearing and return it to the City's Legal Department within ten (10) days of the date of the ticket/citation was issued.
 - C. Ordinance Violation / Mail-In – the failure to submit a signed settlement

agreement and accompanying payment within twenty-one (21) days of the date of issuance of an ordinance violation citation shall result in such citation being set for initial status hearing on the date issued on the notice of violation. The City Attorney shall have the authority to extend the 21-day period for submittal of a mail-in plea and payment provided that a case has not yet gone to administrative hearing.

D. Ordinance Violation / Must-Appear – Ordinance Violation cases issued as mandatory appearances shall be set for initial status hearing at the date indicated on the complaint.

17.04 ADMINISTRATIVE HEARINGS.

- a) Subpoenas. At any time prior to the date set for the hearing, the Hearing Officer assigned to hear the violation, at the request of the authorized person issuing the violation notice, the City's prosecutor, or the alleged violator, shall issue a subpoena directing witnesses to appear and give testimony at the hearing or to produce relevant documents at the hearing. The party requesting a subpoena shall serve, via first class mail, a copy of the subpoena on all parties to the action. (2009-005)
- b) Continuances. No continuances shall be authorized by the Hearing Officer in proceedings under this Chapter 17, except in cases where a continuance is absolutely necessary to protect the rights of the parties. Lack of preparation shall not be grounds for a continuance. Any continuance authorized by a Hearing Officer under this Chapter 17 shall not exceed forty-five (45) days.
- c) First Appearance. Unless a case is set for hearing (by virtue of the filing of a request for hearing and resulting assignment of a hearing date) or proceeds to immediate hearing by agreement of the City, the first appearance date or initial status date for administrative hearings shall be used for the entry of a plea of liable or not-liable to the offense charged. With the agreement of the City and the respondent, cases with a plea of not-liable may proceed to immediate hearing; if such agreement is not made, the case shall be set for hearing at a later date.
- d) Hearing and Evidence.
 - 1. At the hearing, a Hearing Officer shall preside, shall hear testimony and shall accept any evidence relevant to the existence or non-existence of a City code violation. The strict rules of evidence applicable to judicial proceedings shall not apply to hearings authorized by this Chapter 17.
 - 2. The case for the City may be presented by the City Attorney, Assistant City Attorney, or such other person designated by the City Manager, and his/her designee, except that the case for the City shall not be presented by an employee of the Ordinance Enforcement Division. The case for the alleged violator may be presented by the alleged violator, his or her attorney, or another agent or representative of the alleged violator.

3. If, on the date set for hearing, the alleged violator or his or her attorney or representative fails to appear, the Hearing Officer may find the alleged violator in default and shall proceed with the hearing and accept evidence relevant to the existence of a violation.
4. Upon finding the alleged violator in default, the System Coordinator shall send or cause to be sent notices by first class mail, postage prepaid, to the violator who received the notice of violation, or in the case of a violation of Chapter 51, the registered owner or operator of the "cited vehicle" at the address as is last recorded with the Secretary of State, and, for leased vehicles, shall be sent to the lessee of the "cited vehicle" at the address last known to the lessor of the "cited vehicle" at the time of the lease. Service of notices sent in accordance herewith shall be complete as of the date of deposit in the United States mail.

e) Motions

1. The City or respondents may file motions, which shall generally be filed in accordance with the rules applicable to ordinance violation prosecution in the Circuit Court. The Hearing Officer shall have the discretion to grant or deny any motion as determined appropriate and shall have the authority to strike any motion which is not submitted in proper form, does not clearly assert the relief sought, or which is otherwise impermissible.
2. A \$20 motion fee shall be assessed to each respondent's motion and must be paid at the time of filing. A respondent who is unable to pay the motion fee may generate and file a motion for waiver of filing fees, which motion shall outline all bases upon which this relief is sought. Granting or denial of such a motion rests solely with the Hearing Officer.
3. Motions to reconsider or set aside a judgment must be filed within twenty-one (21) days of the judgement.

- f) Findings, Decision and Order. Following the conclusion of the hearing, the Hearing Officer shall make a determination on the basis of the evidence presented at the hearing as to whether or not a code violation exists or existed at the time identified in the Violation Notice. The determination shall be in writing, in the form of an order. The order shall include: (i) the Hearing Officer's findings of fact; (ii) a decision of whether or not a violation exists, based upon the findings of fact; and (iii) an order that states the sanction, compliance, fine, penalty and costs assessed, or either action with which the violator must comply or that dismisses the case if a violation has not been proved. A monetary sanction for a single violation under this Chapter 17 shall not exceed One Thousand Dollars (\$1,000.00) per offense, per day. A copy of the order shall be served upon the violator either in person at the end of the hearing or within ten (10) business days after the end of the hearing via US Mail, postage prepaid. If the order is issued after the end of the hearing, service shall be by first class mail.

Payment of any fine, penalty and costs and the disposition of such monies shall be in the same manner as set forth in the City Code. The hearing officer may also impose a requirement for payment of restitution for any costs incurred by the victim of an offense, any person affected by the offense, or the City (for any costs or damages incurred by the City as a result of the commission or investigation of the offense).

- g) Disruption of the Hearing Process. It shall be unlawful to appear at an administrative hearing manifestly under the influence of illegal drugs, alcohol or other intoxicants, or to engage in any act that offends, alarms or injures any staff of the administrative hearing, that disrupts the proceedings or that otherwise interferes with the orderly conduct of the hearings. It shall be unlawful to resist or fail to comply with any lawful order of any administrative hearing personnel, security personnel or administrative hearing bailiff. It shall be unlawful to enter or attempt to enter into the location of the administrative hearing with any unlawful or illegal substance, or any item which is either identified in City Code Section 52.02(a)(8) or which is substantially similar in form to any item identified therein. Violation of these provisions may be charged as a new offense or may be prosecuted with the addition of an amended charge in the underlying administrative hearing case being considered.
- h) Use of Automated Systems. The City may discharge any of the obligations for notice, conduct of hearing, or otherwise for the provision of due process through the use of technology or other automated systems, including service of notice through e-mail in lieu of postal mail (where a respondent has provided an e-mail address and has acknowledged that said e-mail address shall be utilized for service of process), and including the utilization of online hearings via video or audio conferencing. Hearing judgments and orders may be generated or maintained electronically and shall suffice as original records.
- i) Coordination with Other Processes. Administrative hearings may be coordinated with any other applicable process and the Hearing Officer shall have jurisdiction to order a respondent found liable of an offense to comply with other applicable City codes, ordinances and requirements. Without limitation, this shall include the authority to require a respondent to obtain building permits, or to participate in and comply with the COMPASS program as adopted by the City.

17.05 ENFORCEMENT OF JUDGMENTS.

- a) Debt Due the City.
 - 1. Any fine, penalty, other sanction, or costs imposed, or any part thereof, remaining unpaid after the exhaustion of, or the failure to exhaust, judicial procedures under the Administrative Review Law (735 ILCS 5/3-101 et seq.) shall be a debt due and owing the City and, as such, may be collected in accordance with applicable law.
 - 2. After expiration of the period within which judicial review under the Administrative Review Law (735 ILCS 5/3-101 et seq.) may be sought for a final determination of the code violation, unless stayed by a court of competent jurisdiction, the Findings,

Decision, and Order of the Hearing Officer may be enforced in the same manner as a judgment entered by a court of competent jurisdiction.

3. After expiration of the period within which judicial review under the Administrative Review Law (735 ILCS 5/3-101 et seq.) may be sought for a final determination of the code violation, the City Attorney may commence a proceeding in the Circuit Court of DeKalb County for the purpose of obtaining a judgment on the Findings, Decision and Order. Nothing in this section shall prevent the City from consolidating multiple Findings, Decisions and Orders against one person in such a proceeding. Service of the summons and a copy of the petition may be by any method provided for in Section 2-203 of the Code of Civil Procedure. If the Court is satisfied that the Findings, Decision and order was entered in accordance with the requirements of the applicable City ordinances and that the violator had an opportunity for a hearing and for judicial review, the Court shall issue any order or injunction that is requested by the City to enforce the Order of the Hearing Officer to correct a code violation.
4. A lien may be imposed on the real estate or personal estate, or both, of the violator in the amount of any debt due and owing the City under this Chapter. The lien may be recorded and enforced in the same manner as a judgment lien pursuant to a judgment of a court of competent jurisdiction. However, no lien may be enforced under this Section until it has been recorded in the manner required by Article XII of the Code of Civil Procedure (735 ILCS 5/12-101 et seq.) or by the Uniform Commercial Code (810 ILCS 5/1-101 et seq.)
5. An order to correct a code violation and any fine, penalty, fee, costs, or other sanction imposed on the violator as a result of a finding of liable shall attach to the property as well as to the owner of the property, that a finding of a code violation against one owner of the property cannot be avoided by conveying or transferring the property to another owner. Any subsequent transferee or owner of the property shall take the property subject to Findings, Decision and Order of the Hearing Officer.
6. A notice of impending suspension of a person's driver's license shall be sent to any violator determined to be liable for the payment of any fine, penalty and costs that remains due and owing on ten (10) or more vehicular standing or parking violations:
 - A. The notice shall state that the failure to pay the fine or penalty owing within forty-five (45) days of the date of the notice will result in the City notifying the Secretary of State that the person is eligible for initiation of suspension proceedings under 625 ILCS 5/6-306.5, incorporated herein by reference; and, that the violator may obtain a copy of the ticket(s) imposing a fine or penalty by sending a self-addressed, stamped envelope to the System Coordinator of the City, along with a written request for the copy.

- B. The notice of impending driver's license suspension shall be sent by first class mail, postage prepaid, to the address recorded with the Secretary of State.
 - C. The notice shall include a warning that failure to pay the fine and any penalty due and owing to the City within the time specified may result in proceeding with collection procedures in the same manner as a judgment entered by any court of competent jurisdiction.
 - D. The notice shall include, if applicable, a warning that the vehicle owned by the person and located within the City may be immobilized and impounded for failure to pay fines, penalties and costs for ten (10) or more vehicular standing or parking regulation violations.
7. Where any person, firm or entity has an outstanding administrative hearing judgment due to the City, the following restrictions shall apply:
- A. Any payment made by the person, firm or entity to the City for any purpose (other than payment of a water bill) shall be applied first to any administrative hearing judgment(s) due from such person other than parking citations, then to any parking citations, and then to any other obligations due, all without regard to any designation of payment made by the person, firm or entity. No provision of this Chapter 17 shall in any way interfere with the ability of a current water customer of the City to pay their water bill and maintain its status as operational.
 - B. No person, firm or entity who has an outstanding administrative hearing judgment due shall be eligible to obtain any license, permit or other form of approval from the City for any City-regulated right, privilege, entitlement or other permission while such judgment remains outstanding. No person shall be permitted to establish a new account with the City without first satisfying all debts due and owing to the City. Notwithstanding the foregoing, if such a person seeks any form of approval from the City and has an outstanding administrative hearing judgment which is the subject of a current payment agreement that is being complied with, a conditional license, permit, approval or permission may be granted, conditioned upon continuing compliance with the payment arrangement.
 - C. The failure to pay any administrative hearing judgment due the City shall constitute grounds for the suspension or revocation of any license, permit, approval or other permission granted by the City of DeKalb. Such suspension or revocation may be pursued either in the underlying administrative hearing case, or as a separately filed complaint. If filed as a separately filed complaint, no additional fines shall be assessed, but hearing costs shall be assessed.
- b) Judicial Review. The appeal of a Findings, Decision and Order of the Hearing Officer shall take place in the Circuit Court of DeKalb County. The provisions of the

Administrative Review Law (735 ILCS 5/3-101 et seq.), and the rules adopted pursuant thereto, shall apply to and govern every action for the judicial review of the Findings, Decision and Order of the Hearing Officer under this Chapter 17.

- c) **City's Right to Compliance.** In any case in which a violator has failed to comply with the Findings, Decision and Order which ordered the violator to correct a code violation or which imposed any fine or other sanction as a result of a code violation, any expense incurred by the City to enforce the judgment, including but not limited to, attorney's fees, court costs, and costs related to violation abatement or property demolition or foreclosure, after they are fixed by the Circuit Court of DeKalb County or other court of competent jurisdiction, or the Hearing Officer, shall be a debt due and owing the City and may be collected in accordance with applicable law. Prior to any expense being fixed by a hearing officer pursuant to this section, the City shall provide notice to the violator that states that the violator shall appear at a hearing before the Hearing Officer to determine whether the violator has failed to comply with the Findings, Decision and Order. The notice shall set the date for such a hearing, which shall not be less than seven (7) days from the date the notice is served. If the notice is served by first class mail, the 7-day period shall begin to run on the date the notice was deposited in the mail. Notice may be served in any fashion permitted for initiation of an underlying administrative hearing proceeding and may be either pursued in the underlying administrative hearing or be filed as a new proceeding.
- d) **Set Aside of Default Findings, Decision and Order.** The Hearing Officer may set aside any Findings, Decision and Order entered by default and set a new hearing date, upon a petition filed within twenty-one (21) days after the issuance of the order of default, if the Hearing Officer determines that the violator's failure to appear at the hearing was for good cause or if the violator establishes that the City did not provide violator with proper notice. If any Findings, Decision and Order is set aside pursuant to this subsection, the Hearing Officer shall have the authority to enter an order extinguishing any lien which has been recorded for any debt due and owing the City as a result of the vacated Findings, Decision and Order.

17.06 SCHEDULE OF FINES, PENALTIES AND COSTS.

- a) **General Fines for Any Violations Other Than Chapter 51 (Motor Vehicle Code).** For any violation of any City ordinance other than a violation under Chapter 51 (Motor Vehicle Code), fines and penalties shall be established from time to time by the City Council, but in no event shall exceed One Thousand Dollars (\$1,000.00) per violation per day, unless otherwise specifically set forth in the Municipal Code.
- b) **Fines for Violations of Chapter 51 (Motor Vehicle Code) Other Than Handicapped Parking.** For any violation of any provision of Chapter 51 (Motor Vehicle Code) of this Code, or any compliance violation, or violation of any other City ordinance regulating, restricting or prohibiting the standing or parking of a motor vehicle along the streets, by-ways, alleyways, regulated parking lots or other such locations as may be controlled by off-street parking agreements, located within the geographical

boundaries of the City, other than handicapped parking, the fine shall be not less than Fifty Dollars (\$50.00) nor more than Seven Hundred Fifty Dollars (\$750.00) per violation.

- c) Fines for Violations of Handicapped Parking Regulations. For any violation of any City ordinance regulating, restricting or prohibiting the standing or parking of a motor vehicle along the streets, by-ways, alleyways, regulated parking lots or other such locations as may be controlled by off-street parking agreements, located within the geographical boundaries of the City for areas specifically designated for handicapped parking, the fine shall be not less than Three Hundred Fifty Dollars (\$350.00) nor more than Seven Hundred Fifty Dollars (\$750.00) per violation.
- d) Collections. In the event that payment is not complete within thirty-five (35) days of judgment the City may assess up to a 35% surcharge in accordance with state law. The City may also use any collection method set out by current state law. In addition, the City may send the balance to a collection agency contracted by the City.
- e) Costs.
 - 1) For any complaint which is filed and is eligible for prosecution as an administrative hearing case, but which is settled by the respondent prior to hearing, the respondent shall be responsible for the payment of a \$10 processing fee (per case).
 - 2) For each notice of hearing presented to the Hearing Officer (other than cases contemplated in subsection (e)(3) below, unless the case is dismissed because a violation has not been proved, hearing costs in the amount of One-Hundred Dollars (\$100) shall be assessed.
 - 3) For notices of hearing presented to the Hearing Officer with regard to the suspension or revocation of a City-issued license, the respondent shall also be responsible for any other costs of prosecution or hearing, including but not limited to the costs of preparing a verbatim transcript, attorneys' fees, service costs, or other costs incurred by the City.
 - 4) Where this City Code contemplates the authority of the Hearing Officer to impose additional costs or sanctions or to require compliance following the entry of a set of Findings, Decision and Order, a request for such supplemental costs or sanctions may be presented either in the underlying administrative hearing prosecution or as a new request for administrative hearing. If presented in the underlying case, the Hearing Officer's entry of a supplemental order or imposition of additional fines shall only occur after the provision of a due process hearing with notice, and such supplemental order shall be considered to be a supplemental proceeding (and not a modification of the previously entered Findings, Decision and Order).

- 5) The respondent shall be liable for all credit or financing costs or charges incurred by the City, including but not limited to chargebacks, credit card usage fees or other costs.

17.07 VEHICLE IMPOUNDMENT OR IMMOBILIZATION.

- a) Authorization to Impound, Immobilize or Tow Motor Vehicle. Any motor vehicle, the registered owner of which has been determined to be liable for ten (10) or more vehicular standing or parking regulation violations, for which the fines, penalties and costs assessed remain unpaid, may be immobilized or towed and impounded if:
 1. The Ordinance Enforcement Administrator has determined that a person is liable for ten (10) or more violations, for which the fines, penalties and costs remain unpaid.
 2. The person determined to be liable for ten (10) or more violations is the registered owner of a motor vehicle located within the City's geographical boundaries.
 3. A Seizure Notice has been sent, via first class mail, to the registered owner of the motor vehicle located within the geographic boundaries of the City at the address registered with the Secretary of State, which contains, but shall not be limited to the following:
 - A. That a final determination has been made on ten (10) or more violations, for which the fines, penalties and costs remain unpaid;
 - B. A listing of the violations for which the person has been determined to be liable, which shall include for each violation:
 - (1) the ticket number;
 - (2) date of issuance of the ticket; and
 - (3) total amount of fines, penalties and costs assessed;
 - C. That the motor vehicle owned by the person and located within the geographic boundaries of the City is subject to immobilization and/or towing and impoundment if the fines, penalties and costs are not paid within fifteen (15) days of the date of the Seizure Notice;
 - D. Date of impending immobilization;
 - E. Date of impending towing and impoundment; and
 - F. That the registered owner may contest the validity of the Seizure Notice by filing a written request for a hearing with the Ordinance Enforcement Administrator, or his/her designee, within fifteen (15) days of the date of the Seizure Notice and submitting such evidence which would conclusively disprove liability, such as, but not limited to, the following:

- (1) that the registered owner was not the owner or lessee of the vehicle on the date or dates the notices of violation were issued; or
 - (2) that the fines, penalties and costs for the violations cited in the notice have been paid in full; or
 - (3) that the registered owner has not accumulated ten (10) or more violations which are unpaid or not adjudicated.
4. The registered owner to whom a Seizure Notice has been sent has failed to make payment of the fines, penalties and costs as specified in the Seizure Notice and has failed to request a hearing to contest the validity of the Seizure Notice.
- b) Request for Hearing in Cases of Immobilization, Impoundment and Towing of Motor Vehicle. Upon the receipt of a request for hearing to contest the validity of immobilization or towing and impoundment, the Ordinance Enforcement Administrator, or his/her designee, shall schedule an administrative hearing to contest the validity of the immobilization or towing and impoundment on the next scheduled hearing date, but in no case, shall the hearing be scheduled later than thirty (30) days after the request for hearing is filed. Notice of the hearing date shall be served upon the registered owner by first class mail, postage prepaid, to the address set forth on the request for hearing. Service of the notice of hearing shall be complete on the date it is placed in the United States mail.
- c) Notice Affixed to Vehicle in Cases of Immobilization. Upon immobilization of an eligible vehicle, a notice shall be affixed to the vehicle in a conspicuous place. Such notice shall warn that the vehicle is immobilized and that any attempt to move the vehicle may result in damage. The notice shall also state that the unauthorized removal of or damage to the immobilizing restraint is a violation of Sections 16-1 and 21-1 of the Illinois Criminal Code. The notice shall also provide the following information, specifying that a release of the immobilizing restraint may be had by:
1. Paying all the fines, penalties and costs, if any, due on the outstanding violations for which notice has been sent prior to the date of immobilization; or
 2. Submitting a written request for hearing, as set forth in Sections a) and b) above, on all outstanding violations for which notice has been sent prior to the date of the immobilization and making a deposit with the City in the amount of Fifty Per Cent (50%) of the total fines, penalties and costs, if any, for these outstanding violations, or \$500.00, whichever is less.
- d) Towing of Immobilized Vehicle. Except where the vehicle is otherwise subject to towing, if the immobilization restraint has not been released as hereinabove provided, within seventy-two (72) hours of its placement, the vehicle may be towed and impounded.
- e) Post-Impoundment Notice. Within ten (10) days after a vehicle has been impounded,

notice of impoundment shall be sent by certified mail, return receipt requested, to the registered owner of the vehicle, at the last address reflected in the records of the Secretary of State. The notice shall state that the owner has the right to a post-immobilization and post-towing hearing as provided in Section 17.07 f and that if the vehicle is not claimed within thirty (30) days from the date of the notice, the vehicle may be sold or otherwise disposed of in accordance with the Illinois Vehicle Code. (2009-005)

- f) **Hearing in Cases of Vehicle Impoundment.** The owner of an impounded vehicle shall have the right to a hearing to determine whether the immobilization or any subsequent towing and impoundment were erroneous or whether the vehicle was properly included on an immobilization list, if the owner files a written demand for a hearing with the Ordinance Enforcement Administrator or his/her designee within fourteen (14) days after issuance of the notice specified in 17.07 E, or within fourteen (14) days of immobilization, whichever is later. A hearing shall be conducted on any business day within forty-eight (48) hours of receipt of a written demand for hearing, unless otherwise mutually agreed by the parties. Failure to request or attend a scheduled hearing shall be deemed a waiver of the right to a hearing. In the event of such failure, any amount deposited pursuant to 17.07 c)2 shall be forfeited to the City. A hearing provided by this Section shall not determine the validity of or otherwise adjudicate any citation or notice of violation issued relative to the immobilized vehicle or the violator but shall only relate to whether the vehicle was properly immobilized or towed, by determining whether the owner previously submitted evidence required by this Section 17.07. (2009-005)

- g) **Fines and Fees for Immobilization and Impoundment.** The fine for immobilization of a vehicle shall be One Hundred Fifty Dollars (\$150.00) and the fine for impoundment and towing shall be Two Hundred Dollars (\$200.00). The owner of the vehicle shall also be charged reasonable storage and towing costs, provided that no costs shall be assessed for any immobilization or tow which has been determined to be erroneous. All fines, penalties and costs must be paid in full before the vehicle will be released to the owner.

- h) **Towing Services.** The Ordinance Enforcement Administrator shall appoint or retain the services of an individual, agency or company to tow and impound vehicles in accordance herewith, provided that said individual, agency or company is fully insured and licensed according to local and state law and has available a secured impound area within which to retain vehicles impounded hereunder. For the purpose of this Section, a secured area shall mean an area bounded by a fence, as required under the Unified Development Ordinance of this Code (Chapter 23), with a locking gate, so as to minimize or prevent unauthorized entry into the impounded area.

17.08 APPEAL OF LICENSE DENIAL. (2017-041)

- 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 5days 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 attorney's 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. (2017-041)

- 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 claim 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).