

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION

BOTTLED BLONDE CHICAGO, LLC, )  
)  
Plaintiff, )

v. )

RAHM EMANUEL, as Mayor of the City of )  
Chicago and Local Liquor Control )  
Commissioner, LOCAL LIQUOR CONTROL )  
COMMISSION OF THE CITY OF CHICAGO, )  
MARIA GUERRA LAPACEK, as Commissioner )  
of Business Affairs and Consumer )  
Protection, SHANNON TROTTER, as )  
Commissioner of the Local Liquor )  
Control Commission of the City of )  
Chicago, and the CITY OF CHICAGO, a )  
Municipal Corporation, )

Defendants. )

2017CH16660  
CALENDAR/ROOM 05  
TIME 00:00  
Declaratory Judgment

DOROTHY BROWN  
CLERK OF THE CIRCUIT COURT  
CHANCERY DEPARTMENT

2017 DEC 14 A 11:35

FILED-3

**COMPLAINT FOR DECLARATORY JUDGMENT AND OTHER RELIEF**

Plaintiff Bottled Blonde Chicago, LLC, by and through its attorneys, Tanzillo Gallucci, LLC, complain of Defendants Rahm Emanuel, as Mayor of the City of Chicago; The Local Liquor Control Commission of the City of Chicago; Maria Guerra Lapacek, as Commissioner of Business Affairs and Consumer Protection; Shannon Trotter, as Commissioner of the Local Liquor Control Commission of the City of Chicago; and the City of Chicago, Illinois and allege as follows:

Parties

1. Plaintiff BOTTLED BLONDE CHICAGO, LLC [Licensee] is an Illinois limited liability company with its principal place of business in Chicago, Illinois.
2. Defendant RAHM EMANUEL, sued in his official capacity, is the Mayor of the City of Chicago.
3. Defendant LOCAL LIQUOR CONTROL COMMISSION OF THE CITY OF CHICAGO [LLCC] is a municipal agency organized and authorized under the laws of the State of Illinois.
4. Defendant MARIA GUERRA LAPACEK, sued in her official capacity, was Commissioner of the City of Chicago Department of Business Affairs and Consumer Protection at all times relevant to the pending litigation.
5. Defendant SHANNON TROTTER, sued in her official capacity, is the City of Chicago Local Liquor Control Commissioner.
6. Defendant CITY OF CHICAGO [City] is a municipal corporation organized and authorized under the laws of the State of Illinois.

## Jurisdiction

7. This Court has subject matter jurisdiction over this matter under 735 ILCS 5/2-701 because Plaintiffs seek a declaratory judgment as to the authority of the agency under the ordinance and the constitutionality of the ordinance itself.
8. This Court has personal jurisdiction over the Defendants because this lawsuit arises from Defendants' actions in the State of Illinois.
9. Venue is proper in Cook County because Plaintiffs and Defendants are located in Cook County.

## COUNT I

Declaratory Judgment as to the  
Authority and Jurisdiction of the Administrative Agency

10. Pursuant to the Liquor Control Act of 1934, 235 ILCS 5/4-2, the Mayor shall be the local liquor control commissioner and may appoint a person to assist him in the exercise of the powers and the performance of the duties required of such local liquor control commissioner.
11. Pursuant to the Chicago Municipal Code 2-25-50 (b)(v), in the event the mayor designates a local

liquor control commissioner, said local liquor control commissioner shall exercise the license-related powers, duties and responsibilities as are vested in the local liquor control commissioner pursuant to the Local Liquor Control Act of 1934, as amended, and this Code.

12. On June 10, 2011, Mayor Rahm Emanuel designated Gregory Steadman as the local liquor control commissioner.

13. At all times relevant to the instant matter and with the sole exception of Mayor Emanuel, Commissioner Steadman was the only person in Chicago authorized under the Liquor Control Act and the Chicago Municipal Code to exercise the license-related powers, duties and responsibilities with respect to liquor.

14. On October 25, 2015, Plaintiff and Defendant LLCC entered into an agreement commonly known as the Liquor License Plan of Operation, whereby Defendant LLCC agreed to issue Plaintiff a City of Chicago liquor license under such terms and conditions as set forth therein [Plan of Operation].

15. A copy of the agreement, dated October 25, 2015, is attached hereto as Exhibit A, is referred to as the

- Plan of Operation and is incorporated herein by reference.
16. Commissioner Steadman and Mayor Emanuel are the only persons with the requisite authority to execute such an agreement.
  17. The Plan of Operation was executed by Commissioner Steadman in his official capacity as the Local Liquor Control Commissioner.
  18. On October 30, 2015, the City of Chicago issued a City of Chicago Liquor License to Plaintiff.
  19. A copy of the license, dated October 30, 2015, is attached hereto as Exhibit B, is referred to as the Liquor License and is incorporated herein by reference.
  20. On September 29, 2016, Defendant City attempted to revise the Plan of Operation by executing a second agreement, commonly known as the Revised Liquor License Plan of Operation.
  21. A copy of the agreement, dated September 29, 2016, is attached hereto as Exhibit C, is referred to as the Revised Plan of Operation and is incorporated herein by reference.
  22. Neither Commissioner Steadman nor Mayor Emanuel executed the Revised Plan of Operation.

23. The Revised Plan of Operation was instead executed by Maria Guerra Lapacek in her capacity as the Commissioner of Business Affairs and Consumer Protection.
24. Maria Guerra Lapacek has not been designated local liquor control commissioner by Mayor Emanuel.
25. It is outside the jurisdiction of the Commissioner of the Department of Business Affairs and Consumer Protection to execute such an agreement.
26. The Commissioner of Business Affairs and Consumer Protection is not the Local Liquor Control Commissioner as authorized by the Liquor Control Act of 1934.
27. The Commissioner of Business Affairs and Consumer Protection is not the Local Liquor Control Commissioner as authorized by the Municipal Code of Chicago.
28. The Commissioner of Business Affairs and Consumer Protection lacks the requisite authority under the Liquor Control Act of 1934 to act as the Local Liquor Control Commissioner.
29. The Commissioner of Business Affairs and Consumer Protection lacks the requisite authority under the

Municipal Code of Chicago to act as the Local Liquor Control Commissioner.

30. Under the Liquor Control Act of 1934 and the Chicago Municipal Code the mayor and the local liquor control commissioner are the only persons with authority to exercise the license-related powers, duties and responsibilities with respect to liquor.
31. Executing a liquor license plan of operation constitutes the exercise of the license-related powers, duties and responsibilities with respect to liquor.
32. The Revised Plan of Operation is not legally enforceable because it was not executed by the local liquor control commissioner, as is required by law.
33. Further, the Revised Plan of Operation states Defendant City has agreed to issue a liquor license to Plaintiff based on the terms and conditions set forth in the Revised Plan of Operation.
34. At the time the Revised Plan of Operation was executed Plaintiff already had a liquor license.
35. As such, there was no consideration for Plaintiff to execute the Revised Plan of Operation.
36. The Revised Plan of Operation cannot be legally enforced because it is not a legally enforceable

bargained for exchange with consideration, as required by law.

37. Defendant City of Chicago is attempting to enforce the Revised Plan of Operation to the detriment of Plaintiff despite the fact that it is legally unenforceable for the reasons herein stated.

38. An actual controversy exists between Plaintiff and Defendant with respect to the obligations of Plaintiff and Defendant pursuant to the Revised Plan of Operation.

39. As a direct and proximate consequence of Defendant City's attempt to enforce the legally void Revised Plan of Operation, there is a threat to Plaintiff's business and constitutionally protected property interests.

40. Plaintiff can maintain declaratory judgment action because it is challenging the agency's conduct in violation of the law by allowing a member without the requisite authority under the Liquor Control Act of 1934, the Chicago Municipal Code and other Illinois laws to execute an agreement which affects the rights of the Plaintiff, rather than substance of its administrative decision.



41. However, administrative decisions based upon the Revised Plan of Operation are also unauthorized by law and legally void because the agreement was executed without the requisite statutory authority.
42. Defendants are attempting to unconstitutionally deprive Licensee of its property without due process of law.
43. Defendants have exceeded their authority under the enabling statute by substituting the jurisdiction of one agency for another.
44. Plaintiff maintains the imposition of the Revised Plan of Operation is made without statutory authority and thus is unauthorized by law.

WHEREFORE, Plaintiff Bottled Blonde requests entry of a declaration of rights and a declaratory judgment that:

1. Defendants have no right or remedy arising out of the Revised Plan of Operation against Plaintiff;
2. Defendants only remedy against Plaintiff is pursuant to the initial Plan of Operation executed in consideration of obtaining a City of Chicago Liquor License;

3. Plaintiff is under no further obligation to Defendants pursuant to the Revised Plan of Operation; and
4. such other and further relief as may be appropriate.

Count II

Declaratory Judgment as to the  
Constitutionality of the Statute

45. City of Chicago Municipal Ordinance 40-60-40(H) provides, in relevant part:

The local liquor control commissioner shall deny an application if the applicant fails to satisfy the requirements of this chapter, and may deny an application for a city liquor dealer's license if the issuance of such license would tend to create a law enforcement problem, result in or add to an undue concentration of licenses, or have a deleterious impact on the health, safety or welfare of the community in which the licensed premises is to be located.

A deleterious impact is presumed to exist whenever there have been a substantial number of arrests within 500 feet of the applicant's premises (measured from the nearest exterior wall of the premises) within the previous two years, unless the applicant has adopted a plan of operation that will provide reasonable assurance that the issuance of the license will not have a deleterious impact.

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The plan may include conditions upon the applicant's operation of the premises that are useful or necessary to mitigate a deleterious impact, including but not limited to providing security personnel, restricted hours of operation, providing outdoor lighting, the display of signs, providing trash pickup services, or any other reasonable restrictions on business practices.

An applicant's failure to adhere to a written plan of operation approved by the commissioner pursuant to this section shall constitute a basis to impose a fine and to suspend or revoke any liquor license subsequently issued, as appropriate.

46. The ordinance is unconstitutional on its face, in its entirety and as applied because it calls for Licensee's staff to perform an impossible undertaking, i.e. to prevent crimes by exercising police powers. This is most often applied as requiring licensees to use crowd control, i.e., a police service, with respect to patrons that were leaving or had left the establishment and were on the public way. Neither Licensee nor its employees have such power or authority to police the public streets of the City of Chicago.

47. The ordinance is also unconstitutionally vague and violates due process because it does not provide standards reciting with clarity what conduct is

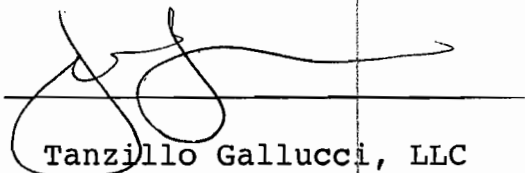
required on the part of the licensee and what conduct is prohibited on the part of a licensed establishment.

48. Finally, the ordinance is unconstitutional because it imposes a penalty without any requirement that the conduct of the licensee be the proximate cause of the "deleterious impact" or that the Licensee have had an intent to cause such a situation. That creates liability without fault and without causation.
49. Indeed, pursuant to the ordinance, a deleterious impact is presumed to exist whenever there have been a substantial number of arrests within 500 feet of the applicant's premises.
50. This standard is arbitrary and capricious.
51. Furthermore, the ordinance also provides that a failure to adhere to the ordinance may constitute a basis for revocation without providing standards reciting with clarity what specific conduct will give rise to such a harsh penalty.
52. Failure to specify to licensees which conduct could result in the loss of their constitutionally protected property interests is depriving licensees of their rights under the Constitutions of the United States and the State of Illinois.

53. Declaratory Judgment is an appropriate remedy because irreparable harm will result from the further pursuit of administrative remedies.
54. Plaintiff is seeking to enjoin action taken pursuant to unauthorized legislative action.
55. There is no adequate alternative remedy as Plaintiff is in immediate danger of sustaining a direct injury in the loss of its business from the enforcement of the ordinance.

WHEREFORE, Plaintiff Bottled Blonde respectfully prays that the Court grant the following relief:

- a. Enter a declaration of rights and declaratory judgment finding that Chicago Municipal Code Ordinance 40-60-40(H) to be unconstitutional, arbitrary, illegal, and void;
- b. Enter a permanent injunction against Defendant City of Chicago's enforcement of any obligations imposed on Plaintiff as a result of Chicago Municipal Code Ordinances 40-60-40(H), including but not limited to the Revised Plan of Operation;
- c. Award Plaintiff such other and further relief as seems just and proper.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned above a horizontal line.

Tanzillo Gallucci, LLC  
1016 West Jackson Blvd.  
Chicago, Illinois 60607  
312.878.2718