



Regular Council

AGENDA ITEM REPORT

To: City Council
Subject: Consideration of Spin Revocation Hearing - Hearing Officer's Recommendation
Meeting: Regular Council - 05 Mar 2024
Department: City Attorney
Staff Contact: Anthony Chubb, Attorney

BACKGROUND INFORMATION:

On September 28, 2023, the City Manager issued a License revocation to the license to operate scooters held by Skinny Labs Inc., d/b/a Spin scooters ("Spin") pursuant to City Ordinance 8-67. Spin appealed that revocation, and the City allowed it to continue operations pending the findings of the appeal. Pursuant to that Ordinance, Hearing Officer Thomas Lapka was appointed and oversaw the appeals hearing.

On February 16, 2024, he issued a Hearing Officer Report stating, in part, that the City attorneys provided comprehensive proof that the City has grounds to revoke or suspend Spins license..." This was based upon findings as follows:

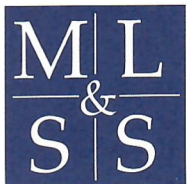
- "The acts and omissions of Spin violated Section 8-610(12) which requires the deployment of electric skateboards only in areas so designated by the City";
- "The acts and omissions of Spin violated Section 8-610(13) by failure to remove electric skateboards from locations around the city between the hours of 3 am and 6 am each day and place them in designated deployment locations"; and
- "The acts or omissions of Spin violated Section 8-615(1)(a) by impeding or interfering with access of sidewalks or crosswalks.

Pursuant to City Ordinance 8-67, "Upon receipt of the hearing officer's report and proposed decision, the city council may reject, modify, or stay the action within 28 days of receipt of the report, otherwise the hearing officer's decision shall become final. Any decision made by the council shall be final." That report was provided to Council when it was released and is also attached hereto.

Therefore, if the Council wishes to make the foregoing determinations final, the proper Motion should be a "Motion to adopt the findings of the Hearing Officer Report that Spin violated Ordinance Sections 8-610(12), 8-610(13), and 8-615(1)(a), and that permanent license revocation is therefore proper; and to further move that it becomes effective midnight on the seventh day following the adoption of this Motion."

ATTACHMENTS:

[City of East Lansing v. Skinny Labs Inc. dba Spin recommendation](#)



Mallory,
Lapka, Scott
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February 16, 2024

VIA EMAIL AND FIRST-CLASS MAIL

East Lansing City Council
c/o Mr. Robert Belleman, City Manager
City of East Lansing
410 Abbot Road
East Lansing MI 48823

RE: City of East Lansing v. Skinny Labs, Inc., d/b/a Spin

Dear Mr. Belleman,

Enclosed please find my proposed decision from the hearing held on January 11, 2024 on the revocation of Skinny Labs, Inc., d/b/a Spin electronic scooter license.

If you have any questions or concerns, please contact me at your earliest convenience.

Very truly yours,

MALLORY LAPKA, SCOTT & SELIN, PLLC

A handwritten signature in black ink, appearing to read 'T. Lapka', written over the printed name.

Thomas L. Lapka

Cc: Anne Gabbert
Anthony Chubb
Jason A. Orr

STATE OF MICHIGAN
CITY OF EAST LANSING LICENSE REVOCATION HEARING

CITY OF EAST LANSING,

v

SKINNY LABS, INC., D/B/A SPIN

Hearing Officer Thomas L Lapka
605 S Capitol Avenue
Lansing MI 48933

On Behalf of the City:
Giarmarco, Mullins & Horton, P.C.
Anne R. Gabbertt (P70852)
Anthony Chubb (P72602)
10th Floor Columbia Center
101 Big Beaver Road
Troy, MI 48084-5280

On Behalf of Skinny Labs, Inc., d/b/a Spin:
Jason A. Orr (via Zoom)

INTRODUCTION

A hearing was held on January 11, 2024 in the matter of the revocation of the electric skateboard license issued to Skinny Labs Inc., d/b/a Spin (“Spin”) for 2023¹.

The revocation of the license was effective as of September 28, 2023, which is the date of a letter from Robert Belleman, City Manager to Spin revoking its license to operate electronic skateboards within the City of East Lansing (“City”). City Ordinance No 1453, under Article X, Provisions 1-4, includes provisions regulating electric skateboard companies and the licensing

¹ The term of the licensing period runs from July 1 – June 30. The licensing period was July 1, 2021 – June 30, 2022; Second renewal was July 1, 2022 – June 30, 2023; the renewal license in question for July 1, 2023 – June 30, 2024.

thereof; and more specifically in sections 8-601, 8-605, 8-606, 8-610, 8-611, 8-612, and 8-615 to Chapter 8 - Businesses.

The license revoked by the City Manager was the existing Spin License for 2023. Spin had previously operated in the City under annual licenses in 2021 and 2022.

The City presented evidence of numerous violations that occurred in 2023. The City also presented clear and convincing evidence of violations of the ordinances in 2021 and 2022, including numerous correspondences, e-mails and meetings (“Communications”) between representatives of the City and Spin were presented as evidence. Essentially these Communications cited violations such as:

- Scooters placed throughout the downtown area outside of designated scooter parking locations;
- Scooters parked outside of local business emergency exits and other areas that impair foot traffic and other access;
- Scooters not being removed daily and situated within designated deployment areas between 3 am and 6 am as required; and
- Scooters being left in right of ways, sidewalks and yards;

Even though there were many written violations in 2021 and 2022 regarding violations of the ordinance, the City renewed the electric skateboard license for both 2022 and 2023. The 2021 and 2022 violations are tangentially relevant only. The City renewed the license despite the violations. So little evidentiary weight is warranted.

The City also presented significant evidence of environmental concerns due to the number of Spin scooters found within the Red Cedar River and in particular near the Bogue Street Bridge area. Testimony that it negatively impacted the navigability of the Red Cedar was also presented. The evidence presented that the number of scooters removed over the last three years was

approximately 280 Spin scooters.

The testimony also established concerns regarding environmental issues involving potential leakage from the lithium batteries and components of a scooter, in addition to posing issues with safe navigability of the river for canoers and kayakers.

To counter these issues, Spin representatives presented evidence of the encapsulation of the scooters batteries and components. Specifically, Spins' position was that the scooters meet all federal standards which virtually ensure that the batteries and its components are leak proof even while being in a waterway. The scooters are Ninebot Max 2.2 and Max 2.3 which meet the federal standard of 60529 IPX7 waterproofing standards. Additionally Spin representative claimed there was no evidence the scooters removed from the river showed leaking batteries or that components were otherwise compromised.

During the 2023 calendar year Communications by the City representatives and Spin representatives were sporadic and not at the same level of frequency that occurred in 2021 and 2022.

Spin provided the City with a lost scooter report that referenced lost GPS monitoring locations within 300 feet of the river. That report revealed losses as follows:

2021 – 66 lost scooters;

2022 – 81 lost scooters; and

2023 – 4 lost scooters.

The testimony of Spin's representatives was that these lost scooters within 300 feet of the river were all recovered in 2023. Spin also presented vandalism mitigation strategies that were recently put in place. One such strategy is a geofencing program which prevents a scooter rider from ending their ride at a location near a waterway or bridge. The rider will continue to be charged financially until the scooters are located in a designated deployment zone. Further, when

Spin receives notice via GPS that a scooter is near a waterway it immediately sends a team to retrieve the scooter. The timeliness of that retrieval process was not documented. As per the evidence, Spins mitigation efforts have been somewhat successful. Riders may often park scooters improperly however, the Ordinance doesn't obligate Spin to ensure that riders do not mispark their scooters, it only requires that Spin correct misparked scooters.

Sec 8-612 was cited by the City as being violated, which requires Spin to provide certain reports. No evidence was presented that Spin failed to do so. The evidence shows that data was provided although the timeliness of providing reports was an issue. Further, various reports were also available on-line and accessible by City representatives at any time.

RESPONSIBILITIES

Under Section 8-6 of the East Lansing Code of Ordinances as hearing officer I have the following responsibilities:

1. Hear and receive testimony and all relevant and material evidence offered by the City in support of such action;
2. Allow the licensee to be present with or without counsel and rebut evidence offered against him/her;
3. Allow the licensee to cross examine witnesses and also produce witnesses and evidence in his/her own behalf;
4. Give full and fair consideration of all the evidence presented;
5. Within 28 days following completion of the hearing, prepare and file with the council a proposed decision containing the reasons thereof for each issue of fact and law which supports such a decision.

CONCLUSION

Based upon the evidence presented my findings are as follows:

A. That the acts and omissions of Spin violated Section 8-610(12) which requires the deployment of electric skateboards only in areas so designated by the City;

B. That the acts and omissions of Spin violated section 8-610(13) by its failure to remove electric skateboards from locations around the city between the hours of 3 am and 6 am each day and place them in designated deployment locations;

C. The acts or omissions of Spin violated Section 8-615(1)(a) by impeding or interfering with access of sidewalks or crosswalks.

D. There is no substantive violation by Spin under Section 8-612 regarding reporting requirements;

E. The letter dated September 28, 2023 from the City Manager which revoked the license issued to Spin was the only official notice of the license revocation (I am cognizant that the Ordinance does not require prior notice). Despite the Communications in 2021 and 2022 very few occurred in 2023. None of these Communications ever touched on the potential issue of a license suspension or revocation. The testimony and evidence provided by Spin left them with no idea that revocation was under consideration at any point. They were under the impression that Spin had a collaborative relationship with the City. It seems that Spin was not afforded a certain level of due process during the investigatory stage of this process. The fact that the license renewal for 2023 was granted in my opinion supports this.

The City attorneys provided comprehensive proof that the City has grounds to revoke or suspend Spins license based on A, B & C above and the revocation may stand on those violations.

FURTHER RECOMMENDATIONS

Notwithstanding the violations substantiated by the City Attorneys in presenting the City's case during the hearing, the lack of due process provided to Spin by the City cannot be ignored. The City has an option to conditionally reinstate Spins license and during the remaining term of

the conditional reinstatement that City representatives and Spin representatives meet and resolve the issues regarding deployment locations within the City; removal of scooters between 3 am and 6 am; improve response times to pick up scooters left on sidewalks, crosswalks and other downtown areas that impair access to merchants and their customers. Should Spins' adherence to the Ordinances still fall short of objective criteria then a renewal for 2024-2025 should be denied.

As per the City's ordinances these are my findings.



Thomas L. Lapka, Hearing Officer

Dated: February 12, 2024