

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
MARCH 11, 2008 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Proposed Ethical Standards – Liquor Code Amendments	Resolution ✓ Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared amending the liquor ordinance to prohibit liquor licensees from contributing to the campaigns of local elected officials, members of the Downers Grove Liquor Commission or any other person seeking election to a municipal office in the Village.

STRATEGIC PLAN ALIGNMENT

The Five Year Plan and Goals for 2006-2011 identified *Exceptional Municipal Organization*. Supporting these goals are the objectives *Village Government Trusted and Respected by Residents*.

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the March 18, 2008, active agenda.

BACKGROUND

The Liquor Commission discussed the need for changes to existing provisions of the Liquor Code. An amendment has been drafted in order to further clarify and enhance the regulations that govern conduct of licensees and ensure they meet generally accepted Ethical Standards by prohibiting contributions to elected officials and Liquor Commission members. This ordinance also sets forth the disciplinary action that the Village may take against licensees as well as applicants.

This ordinance was previously discussed at the December 11, 2007, Workshop. At that time the Village Council directed staff to make further revisions to the ordinance. Accordingly, the ordinance was revised to the exempt Class S special event license holders and Class E-3-A license holders from these provisions. A Class E-3-A license is specific to the Park District, and since the Park District Board members are actually listed as the applicant of the license it is recommended that they be exempted from these provisions. The ordinance was also revised to clarify that if a campaign contribution was made to the Local Liquor Commissioner the penalty to be imposed against the licensee shall be as determined by the Deputy Local Liquor Commissioner.

ATTACHMENTS

Ordinance

Liquor Commission Recommendation and minutes of the August 2, October 4 and November 1, 2007

ORDINANCE NO. _____

AN ORDINANCE PROHIBITING LIQUOR LICENSEES FROM CONTRIBUTING TO CERTAIN LOCAL POLITICAL CAMPAIGNS

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by shading/underline; deletions by ~~strikeout~~):

Section 1. That Section 3.22SEC. is hereby amended to read as follows:

3.22SEC. Conduct of Licensees/Prohibited Campaign Contributions.

(a) Every licensee shall conduct his/her place of business in a decent and respectable manner and shall eject therefrom or refuse admittance thereto to all persons rendering themselves objectionable or undesirable by reason of undue noise or other acts disturbing the peace.

(b) Any person, any applicant, liquor manager or entity listed on a Downers Grove liquor license application is prohibited from directly or indirectly making campaign contributions as defined in Section 9-1.4 of the Election Code (10 ILCS 5/9-1.4) to elected officials of the Village of Downers Grove, members of the Downers Grove Liquor Commission or any other persons seeking election to a municipal office in the Village of Downers Grove. Class "S" Special Event Licenses and Class "E-3-A" Entertainment/Recreational Facility Licenses (Park District) are excluded from this provision.

(i) Any person, liquor manager or entity found guilty of a violation of this section may cause the licensee to be subject to fines, suspension and/or revocation pursuant to Section 3-39 of this Code or may result in the non-issuance of a license to a pending applicant. Such penalties shall be as determined by the Local Liquor Commissioner or, in the case of a campaign contribution made to the Local Liquor Commissioner in violation of subsection (b), such penalties shall be as determined by the Deputy Local Liquor Commissioner.

(ii) Any violation of this Section shall be reported to the Local Liquor Commissioner and/or Downers Grove Liquor Commission. Said license shall not be revoked, suspended, imposed a fine or refused issuance, except after a public hearing. The hearing concerning the violation shall be conducted by the Downers Grove Liquor Commission and shall be in accordance with proper public hearing procedures. If the subject of the hearing concerns campaign contributions made to a member of the Downers Grove Liquor Commission, such member shall not participate in the hearing, nor shall such member determine or recommend imposition of any penalties for a violation of this Section.

(iii) In addition to any other fine or penalty, the licensee found guilty of a violation shall be responsible for hearing costs in accordance with Section 3-40(e) as determined by the Local Liquor Commissioner or his/her designee.

Section 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 3. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk



www.downers.us

November 21, 2007

**COMMUNITY RESPONSE
CENTER**

630.434.CALL (2255)

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801 Burlington Avenue
Downers Grove
Illinois 60515-4776
630.434.5500
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ADMINISTRATION
6701 Main Street
Downers Grove
Illinois 60516-3426
630.434.5980
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POLICE DEPARTMENT

825 Burlington Avenue
Downers Grove
Illinois 60515-4783
630.434.5600
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PUBLIC WORKS

DEPARTMENT
5101 Walnut Avenue
Downers Grove
Illinois 60515-4074
630.434.5460
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DEPARTMENT OF COUNSELING

AND SOCIAL SERVICES
842 Curtiss Street
Downers Grove
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630.434.5595
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The Honorable Ronald Sandack
Mayor and Liquor Commissioner

Re: Proposed Ordinance Change - Licensee Ethics

Dear Mayor Sandak:

On November 1, 2007 the Liquor Commission considered an amendment regarding licensee ethical standards. The following finding was made:

MR. KUBES MOVED TO RECOMMEND AN ORDINANCE PROHIBITING LICENSEES FROM CONTRIBUTING TO CERTAIN LOCAL POLITICAL CAMPAIGNS BE FURTHER AMENDED BY STAFF AND FORWARDED TO THE VILLAGE COUNCIL FOR CONSIDERATION. MS. KING SECONDED.

VOTE:

Aye: Mr. Kubes, Ms. King, Ms. Strelau, Mr. Cawthorne, Mr. Barnett, Mr. Adank, Chairman McInerney

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

The Motion carried.

Further discussion of this subject can be found in the November 1, 2007, October 4, 2007 and August 2, 2007 minutes of the Liquor Commission (attached).

Very truly yours,

Daniel McInerney, Chairman
Liquor Commission

VILLAGE OF DOWNERS GROVE

a\Ethics



VOTE:

Aye: Mr. Kubes, Mr. Adank, Ms. King, Mr. Cawthorne, Mr. Barnett, Ms. Strelau, Chairman
McInerney

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

The Motion carried.

Mr. Kubes requested that the ordinance be forwarded to the Commission once it is amended.

Ms. Kuchynka advised that the minutes of this meeting and previous discussion will be forwarded to the Council along with the ordinance for their consideration. She stated that in the meantime, Juxtapose House of Art can opt to prepare a menu, liquor manual, operating policies, floor plan. She advised that the ordinance requires Council approval and adoption of the new classification prior to the submission of application.

Licensee Ethics

Ms. Kuchynka stated that staff had amended the Ethics ordinance prohibiting campaign contributions of licensees that was previously presented to the Commission. She stated that provisions were added to address hearing procedures. She noted that if the Mayor were to receive a contribution from a licensee, either the Liquor Commission or Deputy Liquor Commissioner would conduct a disciplinary hearing. She stated that in the event a Commission member were to receive a contribution from a licensee, the Liquor Commission would hold a hearing, however that individual will be required to recuse themselves from any vote.

Ms. Kuchynka wanted the Commission's thoughts on how particular they wish to restrict contributions. She was unsure if they were comfortable with the language that reads "*liquor license holders are prohibited from directly or indirectly making contributions*" and asked whether they wished to add specific language such as "*any applicant, liquor manager, person or entity listed on the license application shall be prohibited from directly or indirectly making contributions*". She thought the liquor license holder reference may be too obscure and wanted to know if they would prefer something more than just prohibiting a license holder from contributing. Ms. Kuchynka stated that typically corporations hold the license and thereby would be prohibited from contributing. She felt that "license holders" was too vague and gave the example of a 100% owner of the corporation, who personally would may be able to give a contribution. She thought it might be more appropriate and more encompassing to include all individuals listed on the application. Chairman McInerney stated that since the provision is new, he would rather be more specific than general so as to avoid confusion.

Ms. Perez noted that the Village does not have control over people involved on the application in general. Mr. McInerney asked what staff recommended. Ms. Kuchynka suggested adding language such as "any person, any applicant, liquor manager, person or entity listed on the license application". Mr. McInerney suggested that language be incorporated on the application in the form of a yes/no question requesting the disclosure of contributions. Mr. Barnett noted that formal applicants have something to gain. Ms. Kuchynka noted that at application there is no license that exists that the Village can fine or suspend. She did note that the Village can deny issuance of a license if a contribution was made during application. Mr. Kubes asked if they can be denied if they contributed in the past. Ms. Kuchynka replied no.

Mr. Barnett stated that if language is put on the application stating that contributions are unlawful, it will serve as another means to cover the possibility of the rules and sets a clear tone about the expected behavior of licensees. He noted that there may be some ways for a licensee to circumvent the law.

Ms. Kuchynka noted that the larger corporations are 100% publicly traded. She stated that the Village does not know every person that owns each share of stock. Mr. McInerney wondered what stock percentage would constitute a material interest. Ms. Kuchynka noted that disclosure is required from anyone owning more than 5% of stock.

Mr. Barnett asked staff if the Village Attorney provided them with a copy of information regarding states that require structured bidding and disclosure of certain information. Staff replied no.

Ms. Strelau asked if the Commission wanted the ordinance revised and brought back before them. Mr. Barnett stated that staff can make reasonable changes and forward it to the Council for consideration. Mr. Kubes noted that the Village Council may have more insight and proper wording as they have been discussing ethics matters for awhile or be better able to tie the regulations in with other ethics policies previously adopted.

Chairman McInerney called for a motion.

MR. KUBES MOVED TO RECOMMEND AN ORDINANCE PROHIBITING LICENSEES FROM CONTRIBUTING TO CERTAIN LOCAL POLITICAL CAMPAIGNS BE FURTHER AMENDED BY STAFF AND FORWARDED TO THE VILLAGE COUNCIL FOR CONSIDERATION. MS. KING SECONDED.

VOTE:

Aye: Mr. Kubes, Ms. King, Ms. Strelau, Mr. Cawthorne, Mr. Barnett, Mr. Adank, Chairman McInerney

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

The Motion carried.

V. NEW BUSINESS

Chairman McInerney asked if there was any discussion, update from staff or comments from the Commission regarding any new business.

Ms. Kuchynka stated that she left items for the Commission. She noted that the licenses for Stillwater and 7-Eleven were issued on October 25th. Ms. King asked when Stillwater was opening. Ms. Kuchynka was unsure of the exact date. Ms. Kuchynka noted that due to the change in ownership of the 7-Eleven, the former White Hen Pantry license was forfeited.

Ms. Kuchynka advised that Downers Delight completed a remodel a few years ago, however, had just finalized renovation of the back room of the restaurant. She provided the Commission with the updated floor plan. She noted that the area contains a banquet room with a service bar, dance floor and seating. She stated that the addition does not alter the nature of his facility as the owner previously advised that

Mr. Mullins stated that they are hoping to open in January. He stated that they also hope to partner with area businesses such as the Dance Academy, Beautiful Music, local high schools as well as North Central College radio. He added that they plan on contacting local colleges to host art shows.

Mr. Barnett noted that there was a community benefit study concerning an Arts Center for Downers Grove. He noted that they may wish to obtain the report. Ms. Kuchynka also noted that the Total Community Development Project (TCD II) also had a committee which discussed the need for a cultural/performing arts facility. She stated that she would try to locate the reports for their review.

Mr. Barnett stated that the group mentioned they hoped to be open in January. He advised that the creating a new classification can take a number of months and can be a long process and advised them not to sign a final lease until all goes through. Ms. Kuchynka stated that she advised them to make the lease contingent upon receipt of a liquor license, as they will have a way out of the lease in the event they are not issued a license.

Chairman McInerney echoed the sentiments of the Commission and thought the facility to be a great idea. He noted his concern about the square footage of the establishment and felt their estimate for security needs was low. He informed them that they should be concerned with potential over service and DUI issues.

Ms. Kuchynka noted that the most comparable classification would be that of the E-3 Entertainment Facility License that is currently held by the Tivoli. She stated that she did a bit of research, but could not find another community with a performing arts center liquor license. She noted that she could modify the E-3 license and attempt to meet the needs of the Juxtapose House of Arts. She stated the classification can be very specific and the number available can be limited to one as sources of control. She added that she would draft an ordinance for possible consideration at the November meeting.

Ms. Strelau stated that the College of DuPage hosts an art and wine expo. Ms. Kuchynka replied that they might obtain a special event license for that type of activity. The group mentioned Drury Lane, Rivinia and the Tweeter Center as possible locations to investigate and determine how they are licensed. Chairman McInerney stated that the Class E Entertainment Facility license classification is a good category to start with.

Chairman McInerney asked for a motion concerning the creation of a cultural/performing arts facility.

MR. BARNETT MOVED TO RECOMMEND THAT STAFF PREPARE A DRAFT ORDINANCE CREATING AN ENTERTAINMENT FACILITY LICENSE FOR A CULTURAL/PERFORMING ARTS FACILITY. MS. KING SECONDED.

VOTE:

Aye: Mr. Barnett, Ms. King, Ms. Strelau, Mr. Cawthorne, Mr. Kubes, Mr. Adank, Chairman McInerney

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

~~The motion carried.~~

Ms. Kuchynka provided a draft ordinance to the Commission which addresses Licensee Ethics. She

stated that the Village Council adopted a Village's Ethics Ordinance and Council Policies on Tuesday, October 2nd. She stated that Mr. Barnett discussed adopting an ordinance which would prohibit licensees from contributing to certain local political campaigns. She stated that the Legal Department drafted an ordinance which would prohibit licensees from contributing to political campaigns of certain public officials. She stated that penalties are tied to the Ordinance recently adopted by the Village Council. She advised that political candidates have to disclose who contribute to their campaign and noted this ordinance would prohibit licensees from contributing to certain campaigns. She asked the Commission discuss the matter and provide their comments.

Mr. Barnett was in support of the ordinance affecting the Liquor Code. He noted that this addresses another end of the spectrum with regard to ethics and could potentially put the license in jeopardy should they try to contribute to licensing officials. He noticed that the penalty for violation is a Class A Misdemeanor that the State's Attorney prosecutes. He wondered if the violation can be handled by the provisions of Chapter 3.

Ms. Strelau stated that the recently adopted Village's ethics act brings a great deal of merit to Downers Grove. She was pleased that the ethics issue extends to the Liquor Ordinance. She noted that keeping it in with the liquor provisions will be in a format as to what is expected of licensees. She supported the amendment.

Mr. Cawthorne wondered who would be limited from personally contributing. Ms. Kuchynka stated that technically, the corporation, or applicant would be barred from contributing. She noted that the ordinance can include language such as "*any applicant, liquor manager, or any person or entity agent, or entity listed on any and all Village of Downers Grove liquor license applications*" thereby preventing any person listed on the application from being able to contribute to political campaigns.

Mr. Kubes felt that the Council did a great job in adopting Village-wide Ethics ordinances. He wondered why it was also necessary to adopt further ethics policies in the Liquor Code. Ms. Kuchynka replied that licensees would be held accountable. Chairman McNerney stated that the Village wide ordinance requires disclosure of campaign contributions by the candidate, whereas, the liquor ordinance would prohibit licensees from donating.

Mr. Kubes wondered if this only applied to liquor license holders and wondered whether the Village would consider preventing all businesses from contributing to local political campaigns. Ms. Kuchynka noted there is a potential for that to happen, however, at this time, the Village does not have a business license. She noted that there are other licensees the Village issues that this could apply to such as taxi drivers, electricians, etc. Mr. Kubes wondered if it should apply to all Village vendors as well.

Ms. Strelau asked about Section 1.32 of the Village's Ethics Ordinance and wondered what constitutes "a person who *intentionally* violates..." She wondered how a person could be found guilty of an "intentional" violation when they could simply argue that they were not aware of the policy. She felt it an odd choice of words. She felt that the provisions restricting licensees from donating should be in the Liquor Code so that licensee's are well aware of prohibited campaign contributions. She fully supported the effort of preventing licensee contributions.

Chairman McNerney stated that the ordinance brings further transparency to local politics and added that it hinders a lack of checks and balances. He noted that the ordinance adds balance as only one individual (i.e. Mayor) has ultimate say in the application or disciplinary process.

Ms. Kuchynka was concerned about prosecuting licensees with violating the campaign contribution provisions under the Liquor Code. She noted that if the Liquor Commission recommended issuance of a penalty and was concerned if a particular Commission member was provided a contribution, they would need to recuse themselves from a vote. In addition, the Mayor/Liquor Commissioner would be directly

involved in the issuance of a penalty and it would not be appropriate for the Commissioner to issue a fine if he himself received a contribution. She stated that she would check the legality of who is responsible and/or who would be most appropriate in handling penalties in these regards.

Ms. Strelau noted that members can be recused and the Village's Ethic's Officer could handle the disciplinary action if the contribution involves the Mayor/Liquor Commissioner's campaign.

Mr. Barnett would prefer that the violation for campaign contributions be prosecuted under Section 3-39 where the licensee would be subject to fines, revocation or non renewal rather than Section 1-34 of the Village-wide policy that they be subject to a Class A misdemeanor and thereby putting the license at stake and in jeopardy. Chairman McInerney agreed. He felt that it would put some teeth into the ordinance.

Chairman McInerney recommended a motion concerning the licensee's ethics ordinance.

MR. BARNETT MOVED TO RECOMMEND AN ORDINANCE PROHIBITING LICENSEES FROM CONTRIBUTING TO CERTAIN LOCAL POLITICAL CAMPAIGNS WITH PENALTIES ASSESSED BY SECTION 3-39 OF THE LIQUOR CODE. MS. STRELAU SECONDED.

VOTE:

Aye: Mr. Barnett, Ms. King, Ms. Strelau, Mr. Cawthorne, Mr. Kubes, Mr. Adank, Chairman McInerney

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

The Motion carried.

~~Ms. Kuchynka advised the group that there may be some issues concerning the Smoking Ban which is to become effective on January 1st of 2008. She noted that she has received numerous requests for liquor licenses for smoking lounges and/or cigar bars. She added that she is unsure what to expect as the law has not gone into effect, but is certain it may affect some licensees and/or an influx of business owners wanting to establish some type of club license. Ms. Perez advised that tobacconists cannot hold liquor licenses, nor is smoking allowed in restaurants. They noted there may be some requests for the creation of a new classification that would accommodate a smoking facility. Staff will be in the process of investigating if a license is feasible for this type of facility, taking into consideration the provisions of State law.~~

~~Mr. Kubes asked how the smoking ban will affect businesses. Ms. Kuchynka replied that there will be no smoking allowed within any building. She noted that smokers will have to be a minimum of 15 feet from any entrance. She stated that she would try to obtain a copy of the Act for their review. Ms. Kuchynka noted that it is a State-wide ban and added, that although a home-rule community, the Village can only be more restrictive than the State. Chairman McInerney questioned police enforcement. Ms. Perez replied that although a State law, local agencies will be responsible for enforcing the regulations.~~

~~Mr. McInerney noted his concerned if a patron walks out of an establishment with an alcoholic beverage to have a cigarette. Ms. Kuchynka noted that it may not affect establishments with outdoor seating areas, however, licensees can only allow on-premise consumption, and, without a patio, this law may affect them. Chairman McInerney noted that the police should be given notice of this potential activity and have~~

VI. NEW BUSINESS

Chairman Kubes asked for discussion, update from staff or comments from the Commission regarding any new business.

Mr. Barnett advised that he forwarded Legal staff a proposed change to the Liquor Ordinance concerning campaign contributions. He asked that the item be placed on the September agenda, but understood that the Council is in the process of amending other sections in the Code pertaining to such issue. Ms. Perez noted that the Village Council is considering other ethics issues at their meeting of August 14th. Ms. Conforti stated that the Village is considering an Ethics Policy as a whole and what elected officials can or cannot accept from certain individuals. She stated that the Legal Department has drafted a policy that will cover the entire Code. She noted that in lieu of placing the policy in Chapter 3, or including it in every chapter, it is standard to keep the policy in one area and apply it Village-wide. Mr. Barnett stated that the Council is dealing with gifts they can and cannot receive. He advised that he would like to prohibit licensees from providing campaign contributions to the Liquor Commissioner. Mr. McInerney noted that liquor licensing is unique in that the Liquor Commissioner/Mayor is the end-all decision maker.

Ms. Strelau stated that she would like to licensees prohibited from contributing to the campaign of the Liquor Commissioner/Mayor. She wanted to be sure licensees were aware of the ethics ordinance. Mr. Barnett noted that even permit holders could have incentive to contribute to elected officials. He asked that the Commission think about the issue and discuss the matter in the future.

Ms. Perez noted that the Liquor Control Act may have had provisions about campaign contribution restrictions and needed to do further research as to why and how the legislation has since changed.

Mr. McInerney noted that staff should be mindful of local businesses and residents and their ability to retain the right to participate in political campaigns.

Ms. Strelau asked if surrounding towns had similar ordinances. Mr. Barnett replied he had not gone that far with research. Chairman Kubes agreed with the idea and indicated the group should discuss the matter on a future agenda.

Chairman Kubes asked about the Carbondale article. Mr. Barnett noted that the Carbondale Mayor wished to amend the ordinance to revert authority to issue licenses from the Village's Liquor Commission back to the sole authority of the Mayor.

VII. COMMENTS FROM THE PUBLIC

~~There were none.~~

VIII. ADJOURNMENT

Concluding business for the evening, Chairman Kubes called for a motion to adjourn.

Mr. McInerney moved to adjourn the August 2, 2007 meeting. The meeting was adjourned by acclamation at 8:00 p.m.