

**VILLAGE OF DOWNERS GROVE  
REPORT FOR THE VILLAGE COUNCIL WORKSHOP  
MARCH 25, 2008 AGENDA**

SUBJECT:	TYPE:	SUBMITTED BY:
Ordinance Amendments: Liquor Provisions	Resolution ✓ Ordinance Motion Discussion Only	Enza Petrarca Village Attorney

**SYNOPSIS**

An ordinance has been prepared amending the Liquor Code which would prohibit patrons from ordering a bottle of distilled spirits for consumption on premises.

**STRATEGIC PLAN ALIGNMENT**

The Downers Grove Vision for 2021 provides for *Businesses to Thrive* and a principle for that vision is *Unique, Quality Restaurants Serving Residents and Corporations*.

**FISCAL IMPACT**

N/A

**RECOMMENDATION**

Approval on the April 1, 2008 active agenda.

**BACKGROUND**

State law was recently amended to allow two or more patrons to order a bottle of distilled spirits for consumption on a licensed premise. This is commonly known as "bottle service". Essentially, a bottle of distilled spirits could be ordered and placed on the table to allow patrons to mix their own drinks. This State law amendment currently applies to all Illinois municipalities, unless a home rule municipality adopts an ordinance specifically prohibiting it.

The Liquor Commission discussed this matter at their meeting of March 6, 2008 and recommended by a vote of 4:2 that the ordinance prohibiting the sale of distilled spirits by the bottle be forwarded to the Village Council for their consideration. Staff recommends adopting the proposed ordinance prohibiting bottle service, as there is concern that by allowing bottle service the alcohol would not be under the direct control of the licensee and would make it difficult to monitor over consumption.

**ATTACHMENTS**

Draft Ordinance  
State Law Provisions  
Liquor Commission Minutes - March 6, 2008

Bottle Service

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE AMENDING LIQUOR SALES PROVISIONS  
FOR ON-PREMISE CONSUMPTION**

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 3.33.1. is hereby amended to read as follows:**

**3.33.1. Limitations on the sale and promotion of alcoholic liquor on licensed premises.**

(a) It shall be unlawful for any licensee, or any employee or agent of any licensee, on licensed premises where alcoholic liquor is sold or offered for sale for consumption thereon, to engage in any of the following practices:

- (1) Deliver two or more drinks to any one person at one time, except sale or delivery of:
  - (i) wine by the bottle or carafe;
- (2) Sell, offer for sale, or deliver to any person an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;
- (3) Sell, offer for sale, or deliver drinks to any person or group of persons on any one day at prices less than those charged the general public on that entire day, except at private functions not open to the public;
- (4) Increase the volume of alcoholic liquor contained in a drink without a proportionate increase in the price charged for such drink as compared to prices during the same calendar week;
- (5) Encourage or permit on the licensed premises any game or contest which involves drinking or the awarding of drinks as prizes.

(6) Sell, offer for sale, or deliver to any person or group of persons a bottle of distilled spirits.

(b) No licensee shall advertise or promote in any way, whether within or outside of the licensed premises, any of the practices prohibited under this section. Specifically, no licensee shall advertise or promote in any way, whether on or off-licensed premises, any of the practices prohibited under subsections (2) and (3) of this Section. This includes but is not limited to, advertisements using the words "free", "complimentary", "open bar" or "unlimited drinks" in regard to alcoholic liquor.

(c) It is intended that the service of alcohol is merely an adjunct to the meals offered at any restaurant and that the restaurant must not be advertised or otherwise held out to be a drinking establishment.

(d) Nothing contained in this section shall prohibit a licensee from engaging in any of the following practices:

- (1) Offering free food or entertainment at any time;
- (2) Offering a drink as part of a meal or hotel services package;
- (3) Offering free wine tastings;
- (4) Offering room service to registered guests in hotels licensed for such service.
- (5) Selling or delivering any container (including, but not limited to buckets, pitchers, carafes or bottles) of alcoholic liquor provided:

a. Containers shall not exceed sixty-four (64) ounces of beer, or no more than two (2) types of spirits combined with non-alcoholic beverages or mixers (i.e. margaritas) in a sixty-four (64) ounce container, ~~and only two (2) types of spirits~~ shall be served in the single container for on-premise consumption and said container shall only be delivered to two or more persons over the age of twenty-one at one time.

b. A single container shall not exceed ninety-six (96) ounces of beer for on-premise consumption and shall be delivered to four or more persons over the age of twenty-one at one time.

## Bottle Service

c. Nothing herein shall prohibit a Class "B" license holder from offering the sale of beer produced on the licensed premises for off-premise consumption.  
(Ord. No. 3089, § 1; Ord. No. 3290, § 1.)

**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.

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Mayor

Passed:

Published:

Attest:

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Village Clerk

(235 ILCS 5/6-28) (from Ch. 43, par. 144d)

Sec. 6-28. Happy hours prohibited.

(a) All retail licensees shall maintain a schedule of the prices charged for all drinks of alcoholic liquor to be served and consumed on the licensed premises or in any room or part thereof. Whenever a hotel or multi-use establishment which holds a valid retailer's license operates on its premises more than one establishment at which drinks of alcoholic liquor are sold at retail, the hotel or multi-use establishment shall maintain at each such establishment a separate schedule of the prices charged for such drinks at that establishment.

(b) No retail licensee or employee or agent of such licensee shall:

(1) serve 2 or more drinks of alcoholic liquor at one time to one person for consumption by that one person, except conducting product sampling pursuant to Section 6-31 or selling or delivering wine by the bottle or carafe;

(2) sell, offer to sell or serve to any person an unlimited number of drinks of alcoholic liquor during any set period of time for a fixed price, except at private functions not open to the general public;

(3) sell, offer to sell or serve any drink of alcoholic liquor to any person on any one date at a reduced price other than that charged other purchasers of drinks on that day where such reduced price is a promotion to encourage consumption of alcoholic liquor, except as authorized in paragraph (7) of subsection (c);

(4) increase the volume of alcoholic liquor contained in a drink, or the size of a drink of alcoholic liquor, without increasing proportionately the price regularly charged for the drink on that day;

(5) encourage or permit, on the licensed premises, any game or contest which involves drinking alcoholic liquor or the awarding of drinks of alcoholic liquor as prizes for such game or contest on the licensed premises; or

(6) advertise or promote in any way, whether on or off the licensed premises, any of the practices prohibited under paragraphs (1) through (5).

(c) Nothing in subsection (b) shall be construed to prohibit a licensee from:

(1) offering free food or entertainment at any time;

(2) including drinks of alcoholic liquor as part of a meal package;

(3) including drinks of alcoholic liquor as part of a hotel package;

(4) negotiating drinks of alcoholic liquor as part of a contract between a hotel or multi-use establishment and another group for the holding of any function, meeting, convention or trade show;

(5) providing room service to persons renting rooms at a hotel;

(6) selling pitchers (or the equivalent, including

but not limited to buckets), carafes, or bottles of alcoholic liquor which are customarily sold in such manner, or selling bottles of spirits, and delivered to 2

or more persons at one time; or

(7) increasing prices of drinks of alcoholic liquor in lieu of, in whole or in part, a cover charge to offset the cost of special entertainment not regularly scheduled.

(d) A violation of this Act shall be grounds for suspension or revocation of the retailer's license as provided by this Act.

(Source: P.A. 94-1112, eff. 2-27-07.)



www.downers.us

**COMMUNITY RESPONSE  
CENTER**

630.434.CALL (2255)

**CIVIC CENTER**  
801 Burlington Avenue

Downers Grove  
Illinois 60515-4776  
630.434.5500  
TDD 630.434.5511  
FAX 630.434.5571

**FIRE DEPARTMENT  
ADMINISTRATION**

6701 Main Street  
Downers Grove  
Illinois 60516-3426  
630.434.5980  
FAX 630.434.5998

**POLICE DEPARTMENT**  
825 Burlington Avenue

Downers Grove  
Illinois 60515-4783  
630.434.5600  
FAX 630.434.5690

**PUBLIC WORKS  
DEPARTMENT**

5101 Walnut Avenue  
Downers Grove  
Illinois 60515-4074  
630.434.5460  
FAX 630.434.5495

**DEPARTMENT OF COUNSELING  
AND SOCIAL SERVICES**

842 Curtiss Street  
Downers Grove  
Illinois 60515-4761  
630.434.5595  
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March 14, 2008

The Honorable Ronald Sandack  
Mayor and Liquor Commissioner

Re: Proposed Ordinance Change - Bottle Service

Dear Mayor Sandack:

On March 6, 2008, the Liquor Commission recommended prohibiting the sale of distilled spirits by the bottle for on-premise consumption. The following recommendation was made:

**MR. BARNETT RECOMMENDED THAT STAFF PREPARE AN  
ORDINANCE PROHIBITING THE SALE OF DISTILLED SPIRITS BY THE  
BOTTLE FOR ON-PREMISE CONSUMPTION. MR. KUBES SECONDED.**

**VOTE:**           **Aye:** Mr. Barnett, Mr. Kubes, Ms. King, Chairman McInerney

**Nay:** Mr. Cawthorne, Mr. Adank

**Abstain:** None

**MOTION CARRIED:** 4:2:0

The Motion carried.

Further discussion of this subject can be found in the March 6, 2008 minutes of the Liquor Commission (attached).

Very truly yours,

Daniel McInerney, Chairman  
Liquor Commission

VILLAGE OF DOWNERS GROVE

aBottleSrv



## VII. NEW BUSINESS

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

Ms. Kuchynka stated that the Village was recently made aware that the State amended its rules that would allow "bottle service". She advised that a liquor licensee may sell an entire bottle of distilled spirits to a group of 2 or more persons. She stated that a bottle could be brought to the table along with mixers which would allow the patrons to mix their own drinks. She stated that staff was concerned about this activity as there is a potential for over service and there exists no regulation of this activity. Ms. Kuchynka advised that she spoke with an attorney of the Illinois Liquor Control Commission which also advised that their staff had the same concerns and preferred regulation of it.

Ms. Kuchynka advised that table/bottle service is typically done in a VIP section for a group of people where they pay a large fee for the bottle and are escorted to a private table/area. She noted, however, the law permits that an entire bottle could potentially be served to two people with no minimum charge for the entire bottle.

Ms. Kuchynka stated that the Mayor and the Village Attorney asked that the Commission provide their input and comments on the matter. Ms. Kuchynka stated that the Village may ban the activity or put in place guidelines regulating bottle service.

Ms. Clark asked what would happen if a customer did not finish a bottle. Ms. Kuchynka replied that the bottle cannot be removed from the premises, as with the ability to take home an unfinished bottle of wine; however, the licensee may be able to hold the bottle until the customer returns.

Mr. Cawthorne noted this activity has been happening in Chicago for years. He added that Star Dust mentioned doing this activity. Ms. Kuchynka noted that the State adopted the change in January, 2007. She did research and found that there are clubs in the Chicagoland area offering bottle service.

Mr. Kubes asked if the Village wants to mirror the State statute. Ms. Kuchynka replied that the Village can leave the ordinance as written, thereby adopting the State statute and allow bottle service, prohibit the sale of distilled spirits by the bottle or regulate bottle service. She asked the Commission to provide their comments.

Chairman McNerney asked the Commission to provide input on the matter and asked whether they would prefer to restrict bottle service or allow it.

Mr. Barnett asked if the State modified the wording about the number of beers a person can get at one time. Ms. Kuchynka replied no. He wondered why the State made it so easy to obtain a full bottle of liquor yet there are issues with getting more than one beer at a festival. Ms. Kuchynka noted that the only exception to the one beer per person rule is a bucket of beer, carafe/bottle of wine or that a pitcher of beer may be delivered to 2 or more people. She added this law would allow an entire bottle of distilled spirits to be delivered to 2 or more people. Mr. Barnett opted not to allow bottle service and suggested that the Village prohibit it.

Ms. Kuchynka noted that a bottle of champagne would be classified as wine and could still be deliverable to 2 or more people.

Mr. Cawthorne stated that he is willing to allow bottle service. He stated that he has seen it work in a VIP/club type atmosphere and that they charge upwards of \$250.00 for the bottle. Mr. Cawthorne informed the group that when a patron orders a bottle, they are also provided mixers and juices. He noted that this is exactly what Star Dust wants to do in their VIP area. He is aware that this is customary in Vegas and Chicago and that it is a new activity taking place in the industry. He noted if the Village was considering restricting it to make delivery of a bottle to 4 or 6 people. He felt the Commission should keep an open mind on the issue and to do more research done on the matter.

Ms. Janicki-Clark stated there are no restrictions on only club type licensees from providing bottle service that the way the law is currently written, nor does it dictate that a licensee has to charge \$250.00 per bottle. She noted that a licensee could charge 2 people \$10.00 for a bottle. Mr. Cawthorne replied that the Village could increase the number of people a bottle must be served to, limit the activity to a certain class of license holders or not allow the activity after 11 p.m. He felt it could be controlled.

Ms. King was against the idea that all license classifications could provide bottle service. She noted that she was not opposed to having a special license and/or restrictions placed on bottle service but felt that it should be restricted right now to protect the Village.

Mr. Adank stated that he was completely open to the issue and wondered who promoted it. Ms. Kuchynka replied that downtown Chicago clubs wanted bottle service. She noted that this activity has been taking place in Los Angeles and Vegas and has been increasingly popular in the club-type atmosphere. Ms. Kuchynka noted that the State relaxed the law much to the dismay of the Illinois Liquor Commission staff. She noted their concerns with over consumption and loss of control by the licensee.

Mr. Kubes was concerned that the IL Secretary of State would allow this activity especially with driving under the influence laws. He wondered how many 1 ½ ounce drinks can be made out of a bottle of distilled spirits. He stated that he was against the activity.

Mr. Kubes suggested that staff contact the Chamber of Commerce and see if there are any Downers Grove businesses have requested this type of activity. He wondered if any licensee would even want to do this activity. He noted that the Commission might not be opposed to the idea of allowing it, but have provisions for them pay for a separate/higher license fee to offer it. Mr. Kubes noted that the Village could have a special addendum to the license that would have some regulations on it. He felt that this activity may lead to over service. He agreed with Mr. Barnett that there is something fundamentally wrong with the new State law that he cannot get more than one bottle of beer, yet could get served a full bottle of distilled spirits.

Ms. Janicki-Clark noted that there would also be an issue with unfinished bottles of alcohol and what policies the licensee will have. She added that patrons may stay to finish a bottle. Mr. Kubes stated that there is no regulation on the number of shots a person can get and he wondered why someone would need an entire bottle delivered to the table. He added that the novelty in bottle service is being able to pour one's own drinks.



Chairman McInerney stated he was against bottle service. He felt hard pressed to justify allowing it. He wondered how this activity would help Downers Grove and what it brings to the quality of life in the community. He stated it does not mean it is right for Downers Grove just because Vegas or Chicago allows it.

Chairman McInerney recognized that the Village must react as the State has made the change. He felt that the gap should be closed from allowing it in Downers Grove. He stated that if a licensee would want to pursue the matter, it could be brought back to the attention of the Commission for reconsideration with limitations.

Ms. Perez noted that the Village already heard a request for bottle service from Reggie Benjamin of Star Dust. Mr. Kubes noted that he is not an existing licensee. Chairman McInerney agreed that he was still in the process of pursuing a license classification that has not been created yet. Ms. Kuchynka confirmed that the Council's decision to create the entertainment license is not final, nor has the Commission heard the application yet.

Chairman McInerney stated that he would rather have an existing licensee bring the issue forward rather than a new business without a proven track record. He noted that there are some existing licensees on the DUI Notification list and noted that history may be useful in determining the appropriateness of the activity. Mr. Kubes agreed that a proven track record may be useful in determining if the activity is appropriate at certain establishments.

Mr. Kubes noted that the Commission has been very receptive to new business and ventures. He wondered if the Chamber should be contacted to see if they have been asked about bottle service. Mr. Kubes asked if an establishment has the choice to offer it. Ms. Kuchynka replied that a licensee can opt to offer bottle service or not, but they do have the ability under the law to do so at this time.

Mr. Barnett was opposed to asking the Chamber for their input at this time as they seek to have the most flexible market and environment for their members to operate. He noted that they may not be supportive of restrictions.

Mr. Barnett stated that this law gives 2 people the ability to order an entire bottle of liquor. He stated that there is nothing in the law that would require a licensee to charge \$250.00 for bottle service. He stated that licensees can charge whatever they want, so long as it is consistent. He added that the Commission or Council may not want to get into market price setting. He noted that if a patron attempted to finish a bottle, there is no way that they can stay under the legal limit to operate a vehicle and he was certain that they would end up too intoxicated to drive. He was opposed to the idea.

Chairman McInerney stated it cannot be assumed that a bottle would be consumed equally amongst the group it is delivered to.

Ms. Kuchynka noted that the Village could create a special license to allow this activity and set restrictions. She stated that an additional fee/license could be required, restrictions set for the licensee to maintain control of the bottle and/or limit the activity to certification classifications.

Mr. Barnett wondered how licensees would maintain control of the bottle. Ms. Kuchynka stated that the

licensee could pour the alcohol for the first drink, then remove the bottle. Mr. Kubes wondered why the customer couldn't just order a number of shots and be sold an entire bottle. He wondered why give patrons the opportunity to order a full bottle if the bottle is taken away after each pour.

Ms. Kuchynka requested that the Commission consider allowing this activity or not. Chairman McInerney asked the Commission for a motion.

**MR. BARNETT RECOMMENDED THAT STAFF PREPARE AN ORDINANCE PROHIBITING THE SALE OF DISTILLED SPIRITS BY THE BOTTLE FOR ON-PREMISE CONSUMPTION. MR. KUBES SECONDED.**

**VOTE:**           **Aye:** Mr. Barnett, Mr. Kubes, Ms. King, Chairman McInerney

**Nay:** Mr. Cawthorne, Mr. Adank

**Abstain:** None

**MOTION CARRIED: 4:2:0**

The Motion carried.

Ms. Kuchynka stated that she would prepare a draft ordinance to prohibit bottle service. She stated that the Commission can re-visit the issue in the future. She noted that she would contact other communities that allow bottle service and see if there are any issues. Mr. Cawthorne suggested that she contact clubs and determine other means bottle service is controlled.

Ms. Kuchynka noted that under the State provisions and current Village ordinance, licensees can have bottle service if and until the Village Council passes the ordinance specifically prohibiting it.