

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
AUGUST 16, 2011 AGENDA

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

SYNOPSIS

An ordinance has been prepared amending the Liquor Code which would delete the sunset clause for Friday hours for the sale of liquor.

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

UPDATE & RECOMMENDATION

This item was discussed at the August 9, 2011 Village Council meeting. Staff recommends approval on the August 16, 2011 Consent Agenda.

BACKGROUND

Based upon a request from the Downers Grove Chamber on behalf of several license holders, the Liquor Commission discussed amending liquor sales hours on Friday until 2 a.m. with a 1 year sunset clause. The Village Council adopted an ordinance amending Friday hours from 1:00 a.m. to 2:00 a.m. with a 6-month (September 1, 2011) sunset clause and remanded it back to the Liquor Commission for discussion and review.

Village Staff and the Police Department personnel have monitored licensed establishments and reported to the Commission that there has been no significant increase in liquor related issues or police calls resulting from this extra hour of liquor service.

The Liquor Commission discussed this matter at their meetings of May 5, 2011 and July 28, 2011. On July 28th, the Commission recommended that the sunset clause be removed and Friday hours amended to 2:00 a.m.

In an effort to make Section 3.31 easily understood, hours of delivery/sale have been clarified and are now written as follows:

Day	Hours
Monday through Thursday	8:00 a.m. to 1:00 a.m., the following day
Friday and Saturday	8:00 a.m. to 2:00 a.m., the following day
Sunday	9:00 a.m. to 1:00 a.m., the following day

ATTACHMENTS

An Ordinance Amending Liquor Sales Hours

Liquor Commission Minutes – May 5, 2011
Liquor Commission Minutes & Recommendation July 28, 2011

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VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** August 16, 2011
(Name)

RECOMMENDATION FROM: Liquor Commission **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- ☒ Ordinance
☐ Resolution
☐ Motion
☐ Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "AN ORDINANCE AMENDING LIQUOR SERVING HOURS", as presented.

SUMMARY OF ITEM:

Adoption of the attached ordinance shall amend liquor serving hours.

RECORD OF ACTION TAKEN:

Liquor Serving Hours

ORDINANCE NO. _____

AN ORDINANCE AMENDING LIQUOR SERVING HOURS

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 3.31. is hereby amended to read as follows:

3.31. Hours of business.

~~_____ (a) It shall be unlawful for any on-premise liquor license holder to deliver, sell or offer for sale, any alcoholic liquor in the Village between the hours of 1:00 A.M. and 8:00 A.M. Monday through Friday, between the hours of 2:00 A.M. and 8:00 A.M. on Saturday. After September 1, 2011, it shall be unlawful for any on-premise liquor license holder to deliver, sell or offer for sale, any alcoholic liquor between 1:00 A.M. and 8:00 A.M. on Saturday, or between the hours of 2:00 A.M. and 9:00 A.M. on any Sunday.~~

~~_____ (b) It shall be unlawful for any off-premise liquor license holder to sell or offer for sale, at retail, any alcoholic liquor in the Village between the hours of 1:00 A.M. and 8:00 A.M. or between the hours of 2:00 A.M. and 9:00 A.M. on any Sunday.~~

(a) Licensees may deliver, sell or offer for sale, alcoholic liquor between the following hours, unless otherwise provided:

<u>Day</u>	<u>Hours</u>
<u>Monday through Thursday</u>	<u>8:00 a.m. to 1:00 a.m., the following day</u>
<u>Friday and Saturday</u>	<u>8:00 a.m. to 2:00 a.m., the following day</u>
<u>Sunday</u>	<u>9:00 a.m. to 1:00 a.m., the following day</u>

(b) Hours during which sale is lawful may be extended by written order of the Local Liquor Commissioner for periods not to exceed three hours upon written application by the licensee stating the reasons for the requested extension and the date or dates for which the extension is sought. The request shall be forwarded to the Village in writing no later than two (2) weeks prior to the date the extension is requested or the request shall automatically be denied. No licensee shall be granted such extension for more than eight dates in any one calendar year, provided a fee as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" shall be submitted for each day of requested extension.

(c) It shall be unlawful to keep open for business or to admit prospective customers to any premises having a Class "P" packaged liquor license during the hours within which the sale of alcoholic liquor is prohibited; provided, that in the case of:

(1) A Class "P" packaged liquor license for premises from which less than half of the gross revenues are derived from the sale of alcoholic liquor not for consumption on the premises, such premises may be kept open during such hours, but no alcoholic liquor may be sold to any person in such premises during such hours.

(d) It shall be unlawful for any licensee to suffer or permit any person to consume alcoholic liquor on premises licensed under this Chapter later than one hour after the applicable closing time determined under paragraph (a) of this Section 3-31.

(e) It shall be unlawful for any licensee holding a license for on-premise consumption, to sell or offer for sale any alcoholic liquor at any time when the regular food service in such licensed premises is not in actual operation, except that such sales may be made during a one-hour period immediately following the close of regular food service operations in such premises, subject to the provisions of paragraph (a) of this Section 3-31. (Ord. No. 2450, § 2; Ord. No. 2735, § 1; Ord. No. 3050, § 6; Ord. No. 3075, § 1.)

Liquor Serving Hours

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

V. OLD BUSINESS

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

Ms. Petrarca stated a part of tonight's new business was to discuss the concept of creating a late night liquor license. She stated that staff has discussed the matter and realized the many components of such licensing. She stated that one option would be to charge and license those who wish to serve late.

Ms. Petrarca stated that licensees were surveyed in order to determine their closing hours and what might constitute late night service. She advised that regular serving hours could end at midnight daily and a late night license could allow service until 2AM. She stated that rather charging extra for just one hour of service, two hours of service could be granted for the weekend evenings or every day of the week.

Mr. Krusenoski asked if staff was suggesting the issuance of late night license. Ms. Petrarca replied that the Village Council requested that the issue be discussed by the Commission. She advised that this was just the starting point of discussion on serving hours and asked for the Commission's feedback. Mr. Krusenoski stated that with the exception of Chicago and Schaumburg, the Village currently is in line with serving hours of many surrounding communities. She stated that many liquor license holders were not interested in serving late and that their hours could roll back to 12 midnight. Ms. Strelau was uncomfortable with rolling back the hours.

Ms. Petrarca reminded the Commission that in the past they were not willing to charge for one additional hour. Ms. Strelau replied that she will still not in favor of creating a license or charging for just one hour extra.

Mr. Krusenoski asked if the annual liquor fees were comparable to other communities. Ms. Petrarca replied that staff can research that information. Ms. Petrarca stated that Oak Brook was the only community that charged an extra \$500 for the 1 hour late night license.

Ms. Petrarca reminded the group that Friday night hours were extended by 1 hour, which sunsets in September. She stated that staff has been closely monitoring police activity to determine if whether the additional 1 hour of service has contributed to the increase in service calls. Staff will report back to the Commission.

Chairman McInerney stated that they would be segmenting liquor licenses. He stated that the bulk of licensees do not serve late. He stated that the Village could make those who are interested in serving later pay for it, as there could potentially be more enforcement activity and monitoring associated with it.

Mr. Krusenoski felt Oak Brook was onto something by charging for the extra hour. Ms. Petrarca noted that they only charge for the extra hour on Friday and not Saturday.

Ms. Kuchynka stated that in speaking to Oak Brook, they had no explanation as to how they came up with the extra \$500 fee for the late night license.

Ms. Petrarca stated that Ms. Fregeau had comments in her absence. Ms. Petrarca stated that Ms. Fregeau was concerned and was not in favor of having 2AM serving hours all week long.

The Commission discussed the potential of licensees operating at different times, as this may cause confusion for the Police Department. The staff agreed.

Ms. Petrarca stated that Ms. Fregeau was concerned about hours being taken away from existing licensees.

Ms. Petrarca stated that if the Commission moved in favor of creating a 2AM license that Ms. Fregeau would like the extension request provision eliminated. Ms. Strelau agreed.

Ms. Kuchynka advised that she included hours for certain holidays on the chart of hours for surrounding communities. She stated that the ordinance includes provisions for an extra hour of service automatically for New Years Eve. Ms. Strelau mentioned that licensees also ask for extensions on the evening before Thanksgiving. Chairman McNerney noted that the extra police activity on that evening. Ms. Strelau liked the fact that some communities establish hours for popular holidays.

Ms. Strelau recalled that Ballydoyle has requested early AM serving hours. Ms. Petrarca noted that most early hour requests have fallen by the wayside with the inception of 9AM liquor serving hours which accommodated brunches and certain holidays that fell on Sundays.

Ms. Petrarca stated that Ms. Fregeau would like more direction from the Council and the new Mayor. Ms. Petrarca advised that she has not had an opportunity to meet with Mayor Tully as of yet. She would like to take the Commission's feedback to him.

Chairman McNerney noted agreement with Ms. Fregeau's sentiments. He did not believe that all were in favor of extending hours to 2AM all week long. The Commission was not in favor of rolling hours back.

Ms. Strelau stated that those licensees who close early are not the source of police problems and did not feel that they should be punished by rolling back hours. She stated that if they have a party and it went past midnight, it would not be fair. She was in agreement that the 1 hour be given, but would like to see what other communities are charging for their licenses and determine if the fees are fair.

Ms. Kuchynka stated that the Cost Center Analysis takes into account the cost to administer the license. She stated that some communities charge licensee fees and use them as a revenue source.

Ms. Kuchynka felt that it would be reasonable to charge for compliance checks for those that serve in the late hours. She asked licensees if they would be willing to pay extra for the 1 hour of service and most were in agreement if the cost was fair. Ms. Petrarca stated that the late night license would be separate and other administrative charges may need to be calculated in, along with hearing fees.

Ms. Strelau stated that the Police Department may have trouble deciphering which licensees serve until 1AM or 2AM.

Ms. Petrarca asked Ms. Kuchynka how many establishments were currently taking advantage of the 2AM license. Ms. Kuchynka was aware of nine licensees including 63rd Street Billiards, Another Round, Ballydoyle, Brickhouse, Doubletree (24 hrs) , Marriott (24 hr. operation), Rockwood Tap House, Rita's, and Shanahan's.

Mr. Krusenowski asked if Rita's was still open as he noticed the area did not regularly seem busy. Ms. Kuchynka noted they are closed a few days during the week and open in the late afternoon. Chairman McInerney mentioned that he heard advertisements on B96 and KISS FM promoting DJs. He stated did not believe those advertisements target the corporate audience Rita's portrayed at their application hearing. Ms. Strelau agreed and noted that licensees should not portray themselves one way and operate as something else. Ms. Petrarca mentioned there has been some increase in police activity and will have staff determine if they are offering specials or targeting certain audiences.

Ms. Petrarca stated that she would like to focus on evaluating Friday 2AM police calls at the three month mark at next month's meeting. The group asked if they will have a report. Ms. Petrarca will speak with Lt. Budds and review police activity and report back to the Commission. Chairman McInerney would also like a year's comparison. Ms. Strelau would like the Police Department's opinion as to what may be the reasoning behind the increase in police activity.

Ms. Kuchynka asked if they would like to include a provision for one hour of service on New Years Eve. The Commission agreed to include it in the ordinance. Ms. Strelau was also in favor of removing the extension provision.

Chairman McInerney hoped that the Village does not underestimate costs of enforcement. He wanted staff to look ahead at those activities the Village wants to accomplish and include it in the fees. Ms. Petrarca stated that staff has discussed increasing the entertainment license classification fees. Ms. Strelau agreed that some classifications tend to be high maintenance. Chairman McInerney noted that not only certain categories of licenses tend to be high maintenance, but those establishments with larger square footage seem to be high maintenance as well. Ms. Petrarca felt the entertainment and pub establishments tend to require additional staff time. Ms. Kuchynka noted that some restaurants have evolved into a drinking facilities.

Ms. Strelau noted that DUI Notifications seemed to have dropped over the past few months. Ms. Kuchynka replied that there were two in March. She stated that Tivoli received a DUI notification and sent a letter back to the Village with drink receipts for the evening. She stated that the bartender did not believe that the individual was drinking at their facility that evening based on their records. Ms. Kuchynka was pleased that the licensee took the time to investigate the matter and provide supporting documentation. Chairman McInerney was pleased they were being responsible.

Ms. King asked if the Village is actively monitoring licensee advertising. Ms. Kuchynka replied yes. She stated that the Chamber recently contacted her about after hours events and was told that they were finding it difficult to book events because licensees were worried about violating serving laws. Ms. Kuchynka explained that once their after hours invitation is put on their website, the event may become public. Ms. Strelau asked why they could not have a cash bar. Ms. Kuchynka replied that they could have a cash bar or limit drinks, provided that guests are bona fide business owners interested in joining the group. She stated that establishments are not allowed to entice people into a business or participate in an activity by promoting alcohol. Ms. Petrarca stated that the Village is not precluding them from holding events, as there are a lot of options available to them.

Chairman McInerney noticed a trend at out of state hotels. He advised that they provide a manager's special open to the hotel guests from 5-7PM, which includes drinks. He stated that some of these establishments do not have a license. He stated that spot checks of non-licensed local hotels may be beneficial.

Ms. Kuchynka advised that the Village recently caught the Sybaris selling champagne without a license. She advised that they have been charged with a Village ordinance violation, as there is no liquor license to suspend, revoke or fine. Ms. Petrarca stated that they will appear in Circuit Court for the violation. Ms. Kuchynka noted their court date of May 16th. She stated that both the manager and establishment were charged. Ms. Kuchynka stated that she received an anonymous complaint and officers when in undercover.

Ms. Petrarca stated that staff will speak with the Liquor Commissioner. She asked the Commission what they would like to see from staff next month. She stated that it sounded as though the Commission was not in favor of creating a stand alone license for late night hours. Chairman McInerney agreed that it would be confusing for licensees, the police and staff to enforce and monitor. He did not feel that there was much to gain from creating a separate license. He felt if the 2AM hours service remains, the Commission should consider eliminating extensions. He suggested that they put the New Years Eve hour extensions or other holiday hours into the ordinance. Ms. Petrarca will research other community holiday hours and fees.

Ms. Petrarca felt that Schaumburg would be a good community to research as far as entertainment classifications comparable to Downers Grove.

Ms. Strelau stated that it is not the intention to make money by way of liquor licenses, however, local licensees were quoted in the newspaper as to how much money they make selling in that extra hour.

Ms. Petrarca stated that staff will also review police activity on Fridays between 1-2AM over the past 3 months and compare it to previous months.

Ms. Petrarca stated she will meet with Mayor Tully and review the Suspension Guidelines for discussion at a future meeting.

Ms. Strelau felt that any violation of the liquor ordinance should be treated cumulatively. She felt that any previous violation of the code should not be disregarded and the entire record of licensee should be taken into consideration when determining penalties.

Chairman McInerney stated that the type of violations should be reflected on. He noted the difference between advertising violations and control buy failures. He stated that they predominately hear control buy violations. He stated that the group should evaluate what warrants suspension and fines. He believed that a licensee's performance for things like police activity and number of DUI Notifications should be measured. Ms. Petrarca noted the problem with DUI Notification program as the police rely on the statements from the arrestee. Chairman McInerney understood, but asked if they could frame their performance as indicators of responsible service. Ms. Kuchynka stated that there are some licensees who have received no DUI Notifications and some who regularly do, which is a clear indicator of over service. Ms. Petrarca stated that staff and the police department have personally met with licensees about their excessive number of DUIs. Ms. Petrarca stated that over service, specials and the promotion of liquor all contribute to DUIs.

Ms. King noticed the Naperville violation. Ms. Petrarca felt that the Village received some attention with their drink special violation hearings. Ms. Strelau noted that in Naperville, the licensee was fined and a suspension served on a Friday night.



www.downers.us

August 3, 2011

**COMMUNITY RESPONSE
CENTER**

630.434.CALL (2255)

CIVIC CENTER

801 Burlington Avenue

Downers Grove

Illinois 60515-4782

630.434.5500

TDD 630.434.5511

FAX 630.434.5571

FIRE DEPARTMENT

ADMINISTRATION

5420 Main Street

Downers Grove

Illinois 60515-4834

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 60515-4046

630.434.5460

FAX 630.434.5495

The Honorable Martin T. Tully
Mayor and Liquor Commissioner

Re: Friday Sales Hours

Dear Mayor Tully:

On Thursday, July 28, 2011, at a regular meeting of the Downers Grove Liquor Commission, the members made a recommendation concerning an amendment to sales hours. The following finding was made:

MS. KING MOVED TO AMEND SECTION 3.31(A) REGARDING HOURS OF BUSINESS TO ELIMINATE THE SUNSET CLAUSE. MR. CLARY SECONDED.

VOTE: **Aye:** Ms. King, Mr. Clary, Mr. Adank, Chairman Pro Tem Strelau

Nay: None

Abstain: None

MOTION CARRIED: 4:0:0

The motion carried.

This motion can be found in the July 28, 2011 minutes of the Liquor Commission (attached).

Very truly yours,

Alice Strelau, Chairman Pro Tem
Liquor Commission

VILLAGE OF DOWNERS GROVE

cc: April Holden, Village Clerk

a\recommend.l-cl\Friday-hours-sunset

V. OLD BUSINESS

Chairman Pro Tem Strelau asked if there was any discussion, update from staff or comments from the Commission regarding any old business.

Ms. Kuchynka reminded the group that Friday night hours were extended by one hour. She stated the code change sunsets on September 1st. She recalled the last group discussion that they were not in favor of creating a late night license but were comfortable with an across the board change to 2AM on Friday.

Ms. Kuchynka stated that Lt. Budds provided her with police reports for the past six months. Lt. Budds stated that the police department broke down all liquor related calls and Friday night calls from 1-2AM. He stated that they have not noticed a spike in calls that would cause concern.

Chairman Pro Tem Strelau stated the Commission was not in favor of the extension if the police department did not feel comfortable. She asked Lt. Budds if the extra hour of service was an undue burden. Lt. Budds did not believe that there has been a significant increase in police calls during that time frame.

Mr. Adank asked staff to reiterate allowable sales hours. Ms. Kuchynka replied 8AM-1AM; Monday through Thursday; 8AM to 2AM Friday/Saturday; and 9AM to 1AM on Sunday.

Ms. Kuchynka stated that she could draft an ordinance and remove the September 1st sunset clause and reminded the group that they can always re-visit hours of sales if liquor related calls become an undue burden on the police department.

Mr. Clary was glad to hear that there was not an increase in problems.

Ms. Kuchynka recalled that the Commission was concerned that licensees could request an additional hour of liquor service and discussed the possibility of licensees being able to serve until 3AM. She advised that extensions are granted on a case-by-case basis and is allowed only at the discretion of the Liquor Commissioner. She stated that staff can advise the Mayor if there have been issues with the licensee. She stated that extensions were granted typically for special occasions and holidays such as New Years Eve, Mother's Day, St. Patrick's Day, etc.

Mr. Adank asked how often extensions were turned down. Ms. Kuchynka did not recall ever turning down any requests.

Chairman Pro Tem Strelau recalled the conversation differently. She recalled asking the Village Attorney if the Village was going to grant one hour extensions and that Enza did not believe so. Chairman Pro Tem Strelau stated that Mayor Sandack would not allow liquor establishments to be open and serve until 3 AM while he was Mayor. She was unsure if Liquor Commissioner Tully felt the same. She stated that the group talked about allowing early openings. She recalled discussion that liquor service would never be later than 2AM. She stated that the group never had a thorough conversation as a Commission as to whether further extensions past 2AM were the appropriate thing.

Ms. Kuchynka did not recall receiving any requests for liquor service until 3AM. Chairman Pro Tem Strelau stated that Stardust wanted to serve until 3AM.

Chairman Pro Tem Strelau did not believe that there was a good reason for Friday night hours to be different from Saturday night hours.

Chairman Pro Tem Strelau wanted to be clear if there would be any more extensions beyond 2AM. Ms. Didier stated that the Code, as written, allows for it. She asked if the Commission would want to remove the extension provision.

Chairman Pro Tem Strelau stated that she would support a motion to remove the request for extensions. She did not know how Mayor Tully felt about it.

Chairman Pro Tem Strelau asked what section of the Code needed to be amended for Friday serving hours. Ms. Kuchynka replied Section 3.31. Hours of Business, subsection (a).

Chairman Pro Tem Strelau asked what section of the Code allows for the extension request. Ms. Kuchynka replied Section 3.31. Hours of Business, subsection (b). Chairman Pro Tem Strelau stated that amending subsection (b) could eliminate extension requests beyond 2AM.

Ms. Kuchynka asked if they would do two separate motions. Chairman Pro Tem Strelau agreed as the Council may like one provision and not the other. Ms. Kuchynka requested a motion for the removal of the sunset clause and a second motion amending provision for licensees to request liquor serving extensions beyond 2AM. Ms. Kuchynka stated that she would draft ordinances accordingly.

Chairman Pro Tem Strelau asked if there were comments from the public. Mr. Larry Spatz, Rita's, asked for clarification. He asked if extensions could be granted for New Year's Eve if they fall on a Monday-Thursday, thereby extending liquor service to 2AM. Ms. Kuchynka stated that the extension provision could be amended to not allow extensions beyond 2AM. Chairman Pro Tem Strelau recalled that the Commission discussed having special hours for holidays. She stated that some communities have holiday hours spelled out, i.e. for New Years Eve.

Chairman Pro Tem Strelau did not want the extension provision past three hours, which is allowed now. Ms. Kuchynka stated that the "up to three hour extension" provision was added to accommodate those requesting early service for brunch (9AM) when on-premise consumption hours began at 12 noon on Sunday. She stated that now Sunday hours have changed and the three hour provision is no longer necessary. Mr. Clary asked if it was possible to allow for extensions, but not past 2AM. Ms. Kuchynka replied yes. The group was in agreement that extensions to 2AM could be granted for holidays that fall on a Monday-Thursday.

Chairman Pro Tem Strelau requested that staff provide the Commission with the materials prior to sending the item to Council. Ms. Kuchynka replied that the sunset clause item will need to be placed on the August 9th agenda for first reading with adoption on the 16th, so as not to miss the September 1st deadline.

Ms. Didier stated that the only ordinance and recommendation that needs to go before Council is the sunset clause. She stated that the group should not vote on the extension provision and it can be put on the next Liquor Commission agenda.

Chairman Pro Tem Strelau stated that there was no confusion with the sunset clause. She stated that the extension section wording is where the confusion lies.

Chairman Pro Tem Strelau requested a motion for the sunset clause removal.

MS. KING MOVED TO AMEND SECTION 3.31(A) REGARDING HOURS OF BUSINESS TO ELIMINATE THE SUNSET CLAUSE. MR. CLARY SECONDED.

VOTE: **Aye:** Ms. King, Mr. Clary, Mr. Adank, Chairman Pro Tem Strelau

Nay: None

Abstain: None

MOTION CARRIED: 4:0:0

The motion carried.