

Staff Responses to Council Questions
October 4, 2011

6. Consent H. Bid: Award \$36,717.00 to Vian Construction Company, Elk Grove Village, IL for Phase Two of the Finley Well House Repairs

The accident occurred some time ago. Repairs are in "Phase 2". What are the 3 phases and when will the restoration be completed?

The project was split into the three phases due to the unique nature and extent of the damage. Phase 1 included electrical work on the well motor control cabinet, repairs to the well motor and valve replacement. Phase 2 includes replacement of the pipes and valves that connect the well to the water main outside of the well house. The contractor estimates work to be completed in 2 weeks after award of the project. This work will result in the well being 100% functional.

Phase 3 involves permanent restoration of the building wall, floor, doors and roof that were damaged. This phase of work is expected to be brought to Council in mid-November and will require approximately four-weeks to complete.

Question 2 With repairs incomplete, how has service been affected?

Water service to residents and business has not been affected. The damage impacted one of the emergency back-up wells that the Village is required to maintain per the Village's agreement with the DuPage Water Commission.

8. First Reading A. Ordinance: Create a Bring Your Own Liquor License Classification

What techniques will be used for enforcement of the proposed BYO regulations?

The Police Department will conduct regular inspections to determine if licensees are complying with all terms and conditions of the BYO ordinance.

To my knowledge, the State has approved a way to "recork" unused portions of wine for transporting. Can you check into and describe this process? Would this have any affect on the proposed amendment?

Several years ago, State law was amended to allow patrons to transport unused bottles of wine so long as the bottle was resealed in State law approved packaging. In conjunction with the amendment to State law, in 2007 the Village amended its ordinance to also allow for it. The ordinance is attached. This does not have any impact on the BYO ordinance, as this new ordinance also allows for transporting of any unused portions of wine bottles in accordance with State law.

8. First Reading B. Ordinance: Amend On and Off Premise Consumption Licenses

Per the minutes, Mr. Black stated that the café operations will cease on November 15th. What does this mean?

This refers to the outdoor café. Per ordinance, an outdoor café can only operate from March 15 through November 15 annually.

How much of the gross sales are from the restaurant? How much of the gross sales are from groceries?

According to the Lemon Tree, of the \$2 million in sales, approximately \$650,000 were from the restaurant; the remaining balance was from the sale of groceries.

ATTACHMENT

Ordinance Amending Liquor Restrictions Regarding Resealing of Wine Bottles

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL WORKSHOP
MAY 22, 2007 AGENDA

SUBJECT:	TYPE:	SUBMITTED BY:
Ordinance Amending Liquor Restrictions Regarding Resealing of Wine Bottles	✓ Resolution Ordinance Motion Discussion Only	Enza I. Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared to amend the Liquor Code in order to allow restaurant patrons to leave the premises with a partially consumed bottle of wine, provided it is properly re-sealed.

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 June 5, 2007 active agenda.

BACKGROUND

On January 1, 2007, the State amended the law which would allow licensees to seal open wine bottles so that a customer may remove a partially consumed bottle of wine, provided that the patron purchases a meal and consumed a portion of the bottle of wine on the restaurant premises. This law was enacted in order to prevent over consumption.

State law provides that the bottle shall be securely sealed by the licensee prior to the removal from the premises and placed in a transparent one-time use tamper-proof bag. A dated receipt shall be provided to the patron. In order to be in compliance with the Illinois Vehicle Code and deemed a sealed container, the bottle must be resealed in accordance to the aforementioned provisions and not tampered with.

The Liquor Commission discussed this matter at their meetings of February 1, 2007 and March 1, 2007 and unanimously recommended that the ordinance be forwarded to the Council for their consideration and approval.

By default, this activity will be allowed in all non-home rule municipalities because it is State law and shall apply to home rule municipalities, provided they have no specific restriction against it. Section 3-29 of the Downers Grove Liquor Code specifically restricts the removal of alcohol from any licensed premises. The attached draft ordinance amends the Liquor Code to allow this activity and shall adopt State law and provide for the removal of wine from licensed premises.

ATTACHMENTS

Draft Ordinance
State Law Provisions
Sample container packaging

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE DOWNERS GROVE LIQUOR CODE
CONCERNING RE-SEALED BOTTLES OF WINE**

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 3.29. is hereby amended to read as follows:

3.29. Consumption on premises.

(a) Except as provided herein, it shall be unlawful for anyone holding a liquor license under this Chapter to allow customers to consume alcoholic liquor on the premises which was not purchased from the licensee unless the alcoholic liquor is provided and served by an off-site catering business holding a Class "K" catering license under the provisions of this Chapter. However, at the licensee's discretion, wine brought onto the licensed premises by a patron and not purchased from the licensee may be consumed on the premises so long as it is served and controlled by the licensee. In no event shall ~~any~~ open alcoholic liquor be removed from the licensed premises by a patron. However, bottles of wine purchased on the premises in conjunction with a meal may be removed from on-premise consumption licensed establishments, if properly re-sealed in accordance with State law.

(b) Except for wine tastings as authorized in Section 3-13(a) or (b)(2) and for Class "S" special event licenses as authorized by the Local Liquor Commissioner pursuant to Section 3-13, it shall be unlawful for anyone having a Class "P" packaged liquor license under this Chapter, which on its face limits sale of alcoholic liquor to original packages, unopened, not for consumption on the premises, to sell or offer for sale any alcoholic liquor for consumption on the licensed premises, or to permit alcoholic liquor to be consumed on such premises.

(c) Except for Class "S" special event licenses as authorized by the Local Liquor Commissioner pursuant to Section 3-13, it shall be unlawful for any person operating or employed by any club, retail store, hotel, men's or women's club, massage establishment, sexually oriented business, recreational facility or restaurant as defined in Section 3-3 which is not licensed to sell alcoholic liquor in the Village pursuant to the requirements of this Chapter, to permit alcoholic liquor to be consumed by any customers on the business premises. Provided, the provisions of this section shall not apply within hotel rooms as that term is defined in Article VI of Chapter 21 of the Downers Grove Municipal Code. (Ord. No. 244, § 8; Ord. No. 1200, § 1; Ord. No. 1741, § 2; Ord. No. 2541, § 2; Ord. No. 2735, § 1; Ord. No. 2847, § 4.)

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

(235 ILCS 5/6-33)

(Text of Section from P.A. 94-745)

Sec. 6-33. Alcohol without liquid machines.

(a) No person shall bring into this State for use or sale any alcohol without liquid machine.

(b) For the purposes of this Section, "alcohol without liquid machine" means a device designed or marketed for the purposes of mixing alcohol with oxygen or another gas to produce a mist for inhalation for recreational purposes.

(Source: P.A. 94-745, eff. 5-8-06.)

(Text of Section from P.A. 94-1047)

Sec. 6-33. Sealing and removal of open wine bottles from a restaurant. Notwithstanding any other provision of this Act, a restaurant licensed to sell alcoholic liquor in this State may permit a patron to remove one unsealed and partially consumed bottle of wine for off-premise consumption provided that the patron has purchased a meal and consumed a portion of the bottle of wine with the meal on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises pursuant to this Section shall be securely sealed by the licensee or an agent of the licensee prior to removal from the premises and placed in a transparent one-time use tamper-proof bag. The licensee or agent of the licensee shall provide a dated receipt for the bottle of wine to the patron. Wine that is resealed in accordance with the provisions of this Section and not tampered with shall not be deemed an unsealed container for the purposes of Section 11-502 of the Illinois Vehicle Code.

(Source: P.A. 94-1047, eff. 1-1-07.)



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Strelau asked if this applies to restaurants. Ms. Conforti replied yes.

Ms. Conforti noted that of the communities surveyed, most allowing it under the State Statute. She noted that four of the eight communities were not aware of the program and had no issue with it. She stated that there is an existing provision in the Downers Grove Liquor Code that specifically prohibits patrons from leaving an establishment with any alcohol. She stated that provision would need to be stricken from the Code if it considers allowing this activity. She stated that Lisle actually incorporated the State provisions into their own code. She felt that would not be necessary for the Village to incorporate the State provision into the Liquor Code, as they change from time to time and she would rather not have conflicting provisions if the State does not notify the Village of its amendments.

Chairman Kubes asked how the State law will affect packaged licensees. Ms. Conforti noted that this provision would only be allowed at on-premise consumption licensees. She noted that the State Statute has very strict guidelines. She stated that a copy of the receipt from the establishment along with one corked bottle has to be placed into a sealed bag. Chairman Kubes asked if hard alcohol is allowed to be removed from the premises. Ms. Conforti replied no, only wine. Chairman Kubes asked what would happen in another town where this activity is not allowed. Ms. Conforti replied that she did not find another community, other than Downers Grove, that does not allow it. Chairman Kubes asked what would happen if someone from Lisle drove through Downers Grove with a sealed container. Ms. Perez stated that as the item is sealed, it is allowed to be in the vehicle. She noted our ordinance prohibits alcohol from leaving one of our restaurants. Mr. McInerney asked if any licensees have requested to do this. Ms. Conforti replied that two questioned it. Ms. Conforti added that this program will cost licensees money because they would have to purchase packaging.

Chairman Kubes asked if a patron can bring in a bottle of wine to a restaurant and be charged a corkage fee. Ms. Conforti replied yes.

Ms. Conforti stated that she will provide a draft ordinance and provide the Commission with a copy of the State guidelines. She added that these items can be reviewed and discussed at an upcoming Liquor Commission meeting. Ms. Strelau did not recall particulars of the activity but recalled the issue being brought to the Commission and that it was going into effect as of the new year.

Mr. McInerney did not feel there was a pressing need to change the ordinance and did not see a huge benefit to licensees or the public in general. Ms. Conforti noted that the reason the law was put in place was to prevent over consumption by allowing patrons to take the un-consumed portion of wine home. Ms. Strelau stated that there is a responsible aspect in the law as it encourages people not to finish the bottle.

Mr. Barnett asked Ms. Conforti if she received any adverse comments about allowing this. She replied no. She stated that the State argued that they would rather a patron take a partially finished bottle home, than consume too much. Mr. Barnett asked if there would be any value to include a record keeping element, similar to keg tags, in the ordinance. Ms. Conforti stated the receipt in the sealed package would serve as the tracking element of the activity which would be traceable back to the restaurant.

Mr. Barnett asked Ms. Conforti to notify the Economic Development Commission and Chamber and get their input on the issue. Ms. Conforti noted that she will also solicit comments from the Police Department. Ms. Strelau asked if the licensees who questioned the program will be present at the meeting. Ms. Conforti noted that each licensee wanted information and did not express true interest in re-sealing wine. Ms. Perez felt that licensees might be calling the Village to answer patrons requests whether they can take the wine home. Chairman Kubes wondered how the Village was going to ensure that the wine is bagged correctly. Ms. Conforti replied that the person could be arrested for open alcohol

is the package is not re-sealed properly or re-opened. Chairman Kubes stated that we will need to trust that licensees will take a safe and proactive approach to the program.

Ms. Conforti stated that they Mayor would also like to hear discussion from the Commission about allowing consumption of wine at wine shops, thereby allowing consumption on the premises. She stated that four of the eight communities surveyed allowed wine tastings only, which is similar to Downers Grove policy which adopts State statute. She stated that the Statute limits the number and quantity of ounce samples given to an individual. She noted that Woodridge allows the consumption of 6 ounces, Hinsdale allows 10 ounces, Westmont has a wine boutique license which allows two glasses of wine per customer, Lisle approved an ordinance with no limits on the amount consumed, but has not issued any such license at this time.

Ms. Conforti stated that customers would be able to sit and have wine in a packaged goods establishment. Mr. Barnett recalled an previous applicant that was considering the option and recalled that they had a CO2 system that would allow them to have numerous bottles of wine open without them going bad. Ms. Conforti confirmed that establishment was The Cellar Door. She noted that on-site consumption is allowed at his Hinsdale wine shop location. Ms. Conforti noted that wine tastings can be done now in Downers Grove, however, this consumption amount is more than what our ordinance currently allows under tasting provisions. Chairman Kubes stated that it could end up more like a wine bar without having food service. Ms. Conforti agreed.

Ms. Strelau asked if Westmont had an ounce limit. Ms. Conforti replied no, just a two glass limit, where the glass can realistically be any number of ounces.

Chairman Kubes asked if wine boutiques could have outdoor seating. Ms. Conforti replied that they can restrict the issuance of a Class O - Outdoor license in connection with this establishment. She noted that the license can be structured to maintain control, add a food service requirement and regulate the amount consumed.

Ms. Conforti stated that the Economic Development Corporation was advised that The Cellar Door would serve tapas, however she was advised by the manager that they were going to serve cheese and crackers. She stated that the Cellar Door originally had a substantial tapas menu. Ms. Conforti stated that she could draft an ordinance with various regulations. Ms. King asked if a separate license would need to be created. Ms. Conforti stated it could be separate license or new guidelines incorporated into the wine shop license.

Mr. McInerney noted that the Village has had issues with administering non-standard licenses. He was unsure if placing controls will result in a compliant licensee. Ms. Conforti stated that if the licensee does not have a full menu, she suggested the number of drinks be limited. Chairman Kubes asked how other establishments will feel if there is a classification where a full menu is not available. He agreed that the amount consumed should be limited. Mr. Barnett requested that the item be placed on an agenda in order to discuss it in further detail. Ms. Conforti stated that she could draft up an ordinance based on those communities surveyed and could present them at a future meeting. Chairman Kubes would like to have more detailed discussion about this activity.

Ms. Strelau believed that Oak Park has a champagne and chocolate store. She was unsure how Oak Park administered the license and suggested that Ms. Conforti look into their license classifications. Ms. Perez stated Ethel's in Naperville operates in the same manner. Ms. Conforti stated that if the members were are interested in experiencing the concept of on-premise wine boutiques, she suggested they visit Wine Styles is located on 75th Street in Darien or Hinsdale Wine Shop in Hinsdale.

V. OLD BUSINESS

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

Ms. Conforti followed up on items from last month's meeting. She provided a draft ordinance which would allow patrons to leave establishments with partially consumed bottle of wine if it is properly sealed by the licensee. She stated that the current ordinance specifically does not allow patrons to leave the premises with alcohol. She noted that the State passed legislation in January which would allow this activity. She stated that it is in an attempt to reduce over service and the patron will not feel obligated to finish the wine.

The group discussed the provisions of the ordinance which would mirror State law. Ms. Conforti surveyed a number of communities that have adopted the practice. She indicated that licensees would be required to properly seal the container and place a receipt in the tamper-resistant packaging. She provided information from companies that manufactured acceptable packaging.

MR. McINERNEY MOVED TO FORWARD THE ORDINANCE CONCERNING RE-SEALED BOTTLES OF WINE TO THE VILLAGE COUNCIL FOR CONSIDERATION. MR. BARNETT SECONDED.

VOTE:

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

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

The Motion carried.

Ms. Conforti stated that she provided a draft ordinance concerning the creation of gourmet food shop license and amendments to the wine shop license. She informed the Commission that she received a request for a gourmet food shop asking to sell beer and wine. After reviewing the Code, Ms. Conforti determined that she was not able to accommodate their request and that they would not be able to qualify for a license under the existing code. She stated that the draft ordinance provided for a new gourmet food shop license classification and it being listed in the definition section.

Ms. Conforti reported that the ordinance also contained a section concerning an amendment to the wine shop license to allow for consumption on the premises. She explained that a few other communities allow it, but with certain restrictions, such as ounce, seating and consumption limits. She noted that samples are allowed to be given, but this is more than the 1 ounce sampling provisions what the Code currently allows. She noted that the Village adopted State law concerning the amount of samples.

The group discussed the provisions of the wine shop license and how service on-site would affect the current licensing structure. Ms. Conforti noted that this will be the only establishment to allow on-site sales without a food service requirement. She asked the group for their opinion on that issue. They discuss perhaps requiring some food service availability. The group also discussed control buy