

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
OCTOBER 4, 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 to create a BYO license classification.

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 October 11, 2011 Active Agenda.

BACKGROUND

Based upon requests from four area restaurants and the Downtown Management Corporation, the Liquor Commission discussed creating a Class BYO license which would allow patrons to bring their own beer and wine into a restaurant for on-site consumption.

BYO shall be permitted in conjunction with the purchase and consumption of a meal while seated at a table and served by wait staff where no more than one (1) 750ml bottle of wine or more than 36 ounces of beer may be carried in per person. Licensees may charge a corkage fee. Employees will be required to obtain certified training program and must be (19) years of age. Dram shop or equivalent liability insurance shall be required. Licensees are liable for any violation of the Liquor Code as is the holder of any other classification of liquor license, including but not limited to, violations for service to minors and the over-serving of patrons.

The Liquor Commission discussed this matter at its meeting of September 8, 2011 and recommended approval.

ATTACHMENTS

An Ordinance Creating a BYO License Classification

Liquor Commission Recommendation & DRAFT Minutes - September 8, 2011

Cost Center Analysis

BYO – Surrounding Communities

BYO

ORDINANCE NO. _____

**AN ORDINANCE CREATING A
BRING YOUR OWN LIQUOR LICENSE CLASSIFICATION**

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 3.13 is hereby amended to read as follows:

3.13 Classification of licenses.

Such licenses shall be, and are hereby, divided into the following classes:

Class "BYO" Bring Your Own Licenses

"BYO" licenses shall authorize the consumption of beer and wine which has been brought onto the premises by a patron or patrons over the age of twenty-one (21) for on-site consumption where the premises is that of a restaurant as defined herein. The following provisions shall apply:

BYO shall be permitted in conjunction with the purchase and consumption of a meal while seated at a table and served by wait staff;

No more than one (1) 750ml bottle of wine per patron or no more than 36 ounces of beer per patron (unopened) shall be permitted to be brought into the premises;

BYO shall be allowed only during the restaurant hours of operation and only along with and during regular food service. Downers Grove allowable sales hours per Section 3.31(a) shall apply;

BYO shall be limited to indoor seating only. Under no circumstances shall BYO be allowed outside unless as otherwise provided by a separate license classification validly held by the licensee;

BYO licensees may provide glass ware and ice to patrons; may uncork, pour and control its consumption and may charge a corkage fee;

Employees who have successfully completed a certified training program may perform corkage/serving duties. Such employees must be at least nineteen (19) years of age and shall serve in accordance with all State and local laws;

BYO licensees shall provide a certificate of insurance reflecting coverage for dram shop or equivalent liability for BYO service;

Patrons may not transport unsealed or opened containers of wine from the licensed establishment except when re-sealed in accordance with State law;

Licensees are prohibited from storing liquor on the premises, unless as otherwise provided by a separate license classification validly held by the licensee;

Packaged and on-site sales of liquor is prohibited, unless as otherwise provided by a separate license classification validly held by the licensee;

Licensees shall be liable for violations of this Chapter in the same manner as the holder of any other classification of liquor license, including but not limited to violations for service to minors and the over-serving of patrons.

* * *

Section 2. That Section 3.15. is hereby amended to read as follows:

3.15. Limitation on number of licenses.

BYO

The number of licenses in each classification as defined in Section 3-13 which it shall be lawful to issue shall be limited so that the licenses in force and effect at any time shall not exceed the following numbers:

License Classification	Amount of licenses not to Exceed
"B-1" (Brew Pub)	1
"BYO" (Bring Your Own - beer/wine)	4
"C-1" (Club, private)	6
"E-1" (Theater)	1
"E-2" (Comedy Club)	1
"E-3-A" (Golf Course)	1
"E-3-B" (Recreational Facility - beer/wine)	1
"E-3-C" (Recreational Facility - full)	2
"E-3-D" (Billiard Hall - full)	1
"E-4" (Cultural/Performing Arts Facility - beer/wine)	1
"E-5" (Entertainment - full)	1
"E-6" (Gaming Facility - full)	1
"H-1" (Hotel)	Unlimited
"K-1" (Catering - full)	4
"K-2" (Catering - Park District - beer/wine)	1
"O-1" (Outdoor)	Unlimited
"P-1" (Packaged-full)	17
"P-2" (Packaged -beer/wine)	12
"P-3" (Packaged - wine shop)	3
"P-O-2" (Packaged - full off premise and beer/wine on premise consumption - Grocery Store)	1
"R-1" (Restaurant - full)	Unlimited
"R-2" (Restaurant - beer/wine)	Unlimited
"S-1" (Special Event)	Unlimited
"S-2" (Special Event)	Unlimited
"W-1" (Wine Boutique)	2

* * *

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

September 23, 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: Creation of a BYO Liquor License

Dear Mayor Tully:

On Thursday, September 8, 2011, at a regular meeting of the Downers Grove Liquor Commission, the members made a recommendation to forward a draft ordinance to the Council which would create a BYO, beer and wine only, on-premise consumption liquor license. The following finding was made:

MR. AUSTIN MOVED TO FORWARD AN AMENDED BYO ORDINANCE TO THE VILLAGE COUNCIL FOR CONSIDERATION. MS. KING SECONDED.

VOTE:

Aye: Mr. Austin, Ms. King, Mr. Krusenoski, Ms. Fregeau, Chairman Pro Tem Strelau

Nay: None

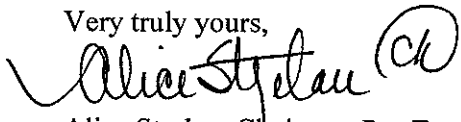
Abstain: None

MOTION CARRIED: 5:0:0

The motion carried.

This motion can be found in the September 8, 2011, minutes of the Liquor Commission (attached).

Very truly yours,


Alice Strelau, Chairman Pro Tem
Liquor Commission

VILLAGE OF DOWNERS GROVE

Attachments

cc: April Holden, Village Clerk

a\recomm.d.I-c\BYO

Ms. Kuchynka stated that the Mayor had received requests for "BYO" which would allow patrons to bring in their own beer/wine into a restaurant. Staff preferred a license be required. She provided the Commission with a draft ordinance creating a BYO license.

Ms. Kuchynka provided information to the Commission with the regulations of surrounding communities in the past. She reviewed regulations of those communities and included those provisions in the terms of the license. She asked that the Commission discuss particulars such as quantities allowed and serving hour regulations. She stated that she would do a Cost Center Analysis for an appropriate fee structure for this classification.

Ms. Kuchynka stated that hours of operation should be limited and when food service is in operation. She noted that some establishments could potentially be open 24 hours and should not exceed Downers Grove allowable sales hours.

Chairman Pro Tem Strelau asked why establishments would not obtain a regular liquor license in lieu of the BYO license. Ms. Kuchynka believed that space limitations, they would not have to maintain stock and offer this convenience to their customers.

Chairman Pro Tem Strelau stated that obtaining a regular liquor license is a lengthy application process with required submittals. She asked if these establishments would go through this same process. Ms. Petrarca replied yes. Chairman Pro Tem Strelau asked if the only thing they are allowed is beer and wine. Ms. Petrarca replied yes and stated that they will still have to train employees and require BASSETT certification. Ms. Kuchynka noted that they would also have to obtain insurance.

Ms. Fregeau asked if an existing licensee could add on this provision. Ms. Petrarca replied that existing licensees may let patrons bring in their own wine for special occasions. Ms. Kuchynka stated that the licensee has to maintain control of the alcohol under the current ordinance.

Ms. Fregeau asked if licensees were surveyed and asked if there is an unfair advantage for competitors to be able to allow this. Ms. Petrarca stated that Linda Kunze was asked to alert the Downtown businesses.

Ms. Fregeau stated that there may discrimination against businesses that are not restaurants. She stated that a billiard halls or nightclubs may ask why they could not allow BYO. Ms. Kuchynka noted that she has received requests from nail salons that wished to have wine or champagne with salon services. Ms. Kuchynka stated that Downers Grove has always required food service.

Ms. Kuchynka advised that five licensees did not renew for the 2011/12 license year. She noted that it was too costly to keep the license with such a small amount of liquor sales.

Ms. Fregeau asked if the Village will require BYO licensees to maintain insurance. Ms. Kuchynka replied yes. She stated that they may be at a lower rate as dram shop insurance is based on the amount of liquor sales. She stated that they will be allowed to charge a corkage fee versus individual drink sales.

Mr. Austin stated BYO may allow an aspiring restaurant to determine if they should pursue selling alcohol. He stated that he liked the BYO provisions and that it will allow restaurants to try something

new. He stated if those establishments realize they are missing out on revenue they may choose to apply for a regular license.

Ms. Fregeau stated that BYO may be the entre of liquor service into a dry community. She stated that she is pro-business and wants entrepreneurs to succeed, but wondered if the Village needs this.

Ms. Petrarca stated that the Mayor has had four requests. Ms. Kuchynka added that based on the number of requests, the Mayor wanted discussion on the issue.

Mr. Krusenoski asked where "restaurant" is defined. Ms. Kuchynka replied in Section 3.2 of the Liquor Code under definitions.

Ms. King asked if she could, for example, bring a bottle of wine into Every Day's a Sundae. Ms. Kuchynka replied no, they are not considered a restaurant. Ms. King asked what the ordinance says that prevents this. Ms. Kuchynka stated that the Code reads that alcohol cannot be consumed on premises without a liquor license.

Ms. Fregeau referred to the Classification Chart. She stated that there are 28 Class R-1 (full alcohol) and 9 Class R-2 (beer/wine) licensees. She asked if any of them have expressed interest in BYO. Ms. Kuchynka replied no. She stated four different locations which are not licensed have expressed interest.

Chairman Pro Tem Strelau asked if there was any comment from the public on the issue. Mr. Homer Ronstadt introduced himself as an employee at Katino's Italian Restaurant located on Main Street. Mr. Ronstadt stated that his employer wanted BYO. He stated that the owner of Katino's has a restaurant in Chicago, which allows BYO without a license and was unaware that BYO was not allowed in Downers Grove.

Mr. Ronstadt stated that his employer applied for a liquor license but hoped that they could allow patrons to bring in their own wine prior to obtaining the license. Ms. Kuchynka advised that she forwarded a packet, but had not received an application to date from Katino's.

Ms. Kuchynka referred to the chart of surrounding communities that allow BYO, Chicago being one of them, where no license or fee is required. Ms. Kuchynka advised that the owner of Katino's came in a long while ago, but she did not receive a letter of request until recently. He asked if BYO was allowed, but was advised that it was not allowed.

Ms. Kuchynka noted that the Mayor received requests for BYO and the consensus was not to simply allow it, but rather create a license for it.

Ms. King stated that Katino's is relatively small and she would be more comfortable with BYO as it may be easier to control in a small space.

Ms. Fregeau envisioned someone bringing in a magnum, rather than a regular bottle and arguments ensuing as to how much was being served. She was interested that so many surrounding communities do not allow it. She asked for the upside and downside in terms of compliance, monitoring and regulating it.

Mr. Krusenoski stated that he would be more likely to go to an establishment and be able to bring in his own wine. He stated it would also appeal to those customers who did not like an establishments' wine list.

Mr. Ronstadt stated that Katino's newly opened and they are trying to get people in the door. He stated that people like to have wine with their Italian meal and stated that many customers walk out when they find out they cannot have wine while dining. He stated that they would like to attract more people into the business to taste the food.

Chairman Pro Tem Strelau asked the reasoning for Katino's wanting BYO. Mr. Ronstadt replied to attract more customers to the business. Chairman Pro Tem Strelau asked why they do not want to have a liquor license. He replied that they do want a beer and wine license, but wanted to be able to allow people bring their own, until they receive a license. He stated that they made the unfortunate mistake of not applying for the license prior to opening.

Chairman Pro Tem Strelau advised that the process of creating the BYO license will not be any faster than applying for a restaurant license and this will not expedite their ability to serve beer and wine. She advised that the Commission takes time discussing the creation of a license, propose and review ordinances, make a recommendation which then needs to be approved by the Council. She stated that if the process goes well, it could take 3-4 months to allow BYO. She stated that they could apply for the Class R-2 beer and wine license and be on next month's agenda. She realized there are other restaurants are simply interested the BYO license.

Mr. Ronstadt stated that BYO would benefit his establishment by allowing BYO across the board without requiring a license like the City of Chicago.

Ms. Kuchynka noted that there was never a consensus to outright allow BYO. Ms. Kuchynka stated that the Commission has discussed this in the past, and more recently within the past four months. She stated that the Mayor preferred to issue a license.

Mr. Austin asked Mr. Ronstadt about their experience with the City of Chicago. Mr. Ronstadt replied that he did not work at the City of Chicago location.

Mr. Austin wondered what would happen if an establishment has a problem with patrons over serving themselves or if an unruly patron injures themselves or someone else. Ms. Kuchynka advised that the police were called to a Chinese restaurant, years ago, due to a patron becoming unruly, which is why the regulations were put in place. He agreed that regulations need to be established.

Ms. Fregeau asked about control issues and if self service of beer and wine goes against the spirit and intent of the Code. Chairman Pro Tem Strelau replied that maintaining control would be no different from when a pitcher of beer is delivered or diners serve themselves from a bottle is delivered to the table. She felt that when customers bring in their beer and wine you expect to have the ultimate control over it and was unsure if there would be a problem. She stated that the ordinance is designed for the licensee to maintain control of the alcohol.

Mr. Krusenowski stated that when a waiter brings a bottle to his table he controls the rate at which he consumes it. He stated that if the ordinance prohibits more than one bottle per patron, there is some control. Ms. Fregeau stated that regulations on the size of the bottle should be set.

Mr. Krusenowski asked Mr. Ronstadt what license they would choose if the cost and speed to acquire the BYO license was the same as a regular restaurant license. Mr. Ronstadt replied probably both.

Ms. Fregeau asked if a license is required to allow BYO in the City of Chicago. Ms. Kuchynka replied no.

Ms. Fregeau stated that she did not know what the challenges would be for the administration of this license and asked if staff would anticipate increased costs to monitor this activity.

Ms. Fregeau asked Mr. Ronstadt what the average entree costs at Katino's. Mr. Ronstadt replied dinner ranges from \$15-\$24. Mr. Ronstadt stated that the food and atmosphere lends to having wine with dinner.

Mr. Ronstadt stated that he was present tonight, not knowing that BYO would be a license deal, but be allowed in Downers Grove like the City of Chicago. Ms. Petrarca advised that it would not be allowed across the board but would be in the form of a license.

Mr. Austin asked if Downtown Management provided any comments on the BYO. Ms. Kuchynka replied that she spoke to Linda Kunze, who advised that a few establishments were in favor of the license if offered at a nominal fee.

Mr. Austin wanted Katino's to be aware that in light of BYO requiring a license, it will take the same amount of time for a regular license. Ms. Kuchynka stated that the Village was not prepared to offer BYO without some type of license.

Ms. Fregeau asked what reasoning other communities gave for not allowing BYO. Ms. Kuchynka replied monitoring issues.

Chairman Pro Tem Strelau asked if Downtown Management was advised that the Commission was to discuss BYO. Ms. Kuchynka replied she advised Ms. Kunze the item was on tonight's agenda.

Ms. King stated that the bottle size restrictions should be inserted in the draft ordinance.

Ms. Fregeau wondered if the size of an establishment will play a part in the issuance of the BYO license. Ms. Petrarca did not think size regulations would make a difference but stated that they should be limited to restaurants. She stated that the Lemon Tree and Rita's would not be considered restaurants, due to their unique classifications.

Ms. Fregeau asked if current restaurant license holders may allow patrons to bring in their own wine. Ms. Kuchynka replied yes. Mr. Krusenoski stated that few, if any, promote it. Ms. Kuchynka added that beer and wine have huge markups and they would lose money if people brought in their own, however, they will, on special occasions, accommodate patrons and allow them to bring in a special bottle.

Ms. King asked if hours were listed. Ms. Petrarca replied that provision was up for discussion and suggested they be in conformance to Village-wide hours while restaurant food service is in operation.

Chairman Pro Tem Strelau asked for additions, corrections or amendments to the draft ordinance. Ms. King asked to add hours in accordance with Downers Grove allowable sales hours.

Mr. Krusenoski asked how much beer or wine should be allowed. Mr. Austin suggested applying ounce limitations to both. Ms. Fregeau stated that most communities had 750ml standard bottle of wine size restrictions. Ms. Kuchynka suggested 36 ounces of beer (three 12oz bottles of beer). The group agreed limitations should be per person.

Mr. Austin suggested the license fee be minimal. Ms. Petrarca replied \$300-\$500 was the range for surrounding communities. Ms. Kuchynka stated that the fees should cover license renewal and

monitoring. She will complete a cost center analysis for the proper fee and noted the fee is set by Administrative Regulation which would not be reflected in this ordinance draft.

Mr. Austin stated that any violation of the Code should be added to the BYO provisions.

Ms. Fregeau asked if existing licensees feel that restaurants only offering BYO will have an unfair marketing advantage. Mr. Krusenoski stated that regular license holders get the alcohol sales revenue and the Village will get the tax revenue.

Ms. King suggested that the draft should read BYO "unopened" bottles. Ms. Kuchynka noted that unfinished bottles of wine may be taken from a restaurant if they are sealed in accordance with State law.

Mr. Ronstadt asked what stage of the application process was Katino's in. Ms. Kuchynka replied that she just sent out the application packet.

The group thanked Mr. Ronstadt for attending.

Chairman Pro Tem Strelau asked if there were any other changes to the draft ordinance.

Mr. Austin asked if a restaurant would be able to make the distinction between a malt beverage and beer and/or hard lemonade. Chairman Pro Tem Strelau replied that they should be able to.

Chairman Pro Tem Strelau stated that quantities have been established and staff will establish a fee. Ms. King asked if the penalties would remain the same. Ms. Kuchynka replied that all provisions of the ordinance shall apply equally to this license classification.

Ms. Fregeau asked if staff will have to be BASSETT trained. Ms. Kuchynka replied yes. Chairman Pro Tem Strelau stated that this license class should follow all the same hours allowed in the ordinance.

Mr. Austin asked about the number of BYO licenses which will be allowed. Ms. Kuchynka replied 4, based on the number of existing requests. Mr. Austin suggested allowing more. Chairman Pro Tem Strelau replied that they historically limit the number to those who request it. Mr. Austin asked if they could increase it if another establishment requests BYO. Chairman Pro Tem Strelau replied yes.

Chairman Pro Tem Strelau requested a motion.

MR. AUSTIN MOVED TO FORWARD AN AMENDED BYO ORDINANCE TO THE VILLAGE COUNCIL FOR CONSIDERATION. MS. KING SECONDED.

VOTE:

Aye: Mr. Austin, Ms. King, Mr. Krusenoski, Ms. Fregeau, Chairman Pro Tem Strelau

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

The Motion carried.

**Class BYO
Beer & Wine Only**

Resources	Staff Hours	Staff Rate	Total Cost
<i>Liquor Liaison</i>			
Prepare/send out renewals	0.5	\$38.37	\$19.19
Review renewals/floor plan/insurance/managers/principals	0.5	\$38.37	\$19.19
Prepare license/process checks	0.25	\$38.37	\$9.59
Miscellaneous Correspondence	0.25	\$38.37	\$9.59
Maintain file/database	0.25	\$38.37	\$9.59
Contact with licensees	0.25	\$38.37	\$9.59
Budgeting	0.25	\$38.37	\$9.59
Prepare reports	0.25	\$38.37	\$9.59
General overhead	0.25	\$38.37	\$9.59
<i>Legal Administration</i>	0.25	\$134.00	\$33.50
		Subtotal	\$139.02
Administrative Charge (1%)			\$1.39
		TOTAL	\$140.41

**General Administration
Class P-O-2**

\$140.41

General - Office	\$27.00
General - Equipment	\$38.00
Safe Celebration	\$50.00
Newsletters	\$18.00
Signage	\$3.00
Video	\$2.00
Staff Education	\$13.00
Staff Meetings	\$43.00
Fingerprints	\$0.00
Under 21	\$15.00
DUI Notification	\$0.00
Control Buy	\$175.00
Special Monitoring	N/A
Keg Tag	\$0.00
Packaged Seminar	\$0.00
Restaurant Seminar	\$0.00
DUI Seminar	\$0.00
Tactical Operation Fund	\$0.00
TOTAL	\$384.00

Program Fees

Class BYO

\$384.00

TOTAL FEES	
Class BYO	
1	1
2	2
3	3
4	4
5	5
6	6
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\$524.41

Surrounding Communities

BYOB

Schaumburg

No Response to date

Lisle

No BYOB

Naperville

No BYOB

Patrons may bring wine into restaurants
w/ license (+corkage fee)

DeKalb

Allow BYOB
\$220/yr -license reqd.
Training reqd.
Insurance reqd.
Meal service required
Corkage fee

Oak Brook

No BYOB

Glen Ellyn

No BYOB

Hinsdale

Allow BYOB (9/11)
\$300/yr. license reqd
Food Service
Corkage Fee

Downers Grove

No BYOB

Patrons may bring wine into restaurants
w/ license (+corkage fee)

Aurora

No BYOB

St. Charles

Allow BYOB
No BYOB on licensed premises

Countryside

Allow BYOB
\$500 app/\$200 ann
Food Service
Insurance
Hours Match Operation

Lombard

No BYOB

Patrons may bring wine into restaurants
w/ license (+corkage fee)

Woodridge

No BYOB

Kane County

Allow BYOB
\$250/yr -license reqd.
Training reqd.
Wine Only
Meal service required
Corkage fee

Chicago

Allow BYOB
\$0/yr -no license
No training
No insurance
Meal service required
Corkage fee

Westmont

Allow BYO Wine Only
\$300/yr -license reqd.
Training reqd.
Insurance reqd.
Meal service required
Corkage fee