

VILLAGE OF DOWNERS GROVE
REPORT FOR THE VILLAGE COUNCIL MEETING
OCTOBER 4, 2011 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 allow the consumption of full alcohol on-site for the Class P-O-2 liquor license classification (Lemon Tree Grocer).

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 a request from the Lemon Tree Grocer, the Liquor Commissioner considered amending the Class P-O-2 liquor license classification which would allow the on-site consumption of alcohol on the premises. Food service will be available at all times; however, the grocery store shall remain the primary business of the establishment. Currently, the licensee is allowed only on-site consumption of beer and wine.

A draft ordinance is attached amending the beer and wine only on-site consumption sales to the service of full alcohol on-site.

For clarification purposes, definitions for a grocery store and drug store were included in this draft ordinance.

ATTACHMENTS

An Ordinance Amending Class P-O-2 License Provisions

Lemon Tree Letter of Request

Liquor Commission Recommendation & DRAFT Minutes - September 8, 2011

ORDINANCE NO. _____

**AN ORDINANCE AMENDING
ON AND OFF PREMISE CONSUMPTION LICENSES**

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 3.3 is hereby amended to read as follows:

3.3 Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

* * *

Drug Store. A retail store where medication and miscellaneous articles (food, cosmetics and film) are sold.

* * *

Grocery Store. A building where the primary business consists of the direct retail sale of items such as meats, cereals, grains, produce, baked goods, dairy products, canned and frozen prepared food products, beverages, cleaning supplies, pet food and supplies, over the counter medicines, personal products, household goods and similar items are available to be purchased by the consumer.

* * *

Section 2. 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 "P-O" On Premise and Off Premise Consumption Licenses

"P-O-2" Packaged liquor licenses shall authorize the retail sale of alcoholic liquor. Such licenses shall be only authorized in locations where a grocery store is the primary business.

(1) The sale of alcohol, in original packages, unopened only, shall be permitted subject to the following conditions:

- a. No more than ten percent (10%) of the retail sale square footage area shall be devoted to the sale of tobacco products.
- b. Free tastings, classes or seminars shall be permitted on such premises in accordance with State law.
- c. Alcohol sold in original packages and intended for off-premise consumption shall not be opened or consumed on the premises or in any designated seating/serving area.
- d. Hours for the sale of alcohol, in original packages, unopened only, shall be in accordance with Section 3-31(b).

Full Packaged & On-Site

(2) The sale of ~~beer and wine only~~ alcohol shall also be permitted for consumption on the premises subject to the following conditions:

a. The premises shall exceed five thousand five hundred (5,500) square feet and be located within the Downtown Business District.

b. The seating/serving area for customers consuming ~~beer and wine~~ alcohol on the premises shall not exceed seven hundred fifty (750) square feet.

c. Consumption of ~~beer and wine~~ alcohol on the premises shall be limited to the designated seating/serving area and signage shall be posted that patrons may not leave the area with open alcohol.

d. Such facilities shall include an area where food is prepared and regularly served on the premises, including hot or cold sandwiches, appetizers, tapas, baked goods or other similar foods.

e. It is intended that the service of alcoholic liquor is merely an adjunct to the operation of a grocery store and that the facility shall not be advertised or otherwise held out to be a drinking establishment.

f. Hours for the sale of ~~beer and wine only~~ alcohol, for on-premise consumption, shall be in accordance with Section 3-31(a).

* * *

Section 3. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. 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

The Honorable Martin T. Tully
Mayor and Liquor Commissioner

Re: *Amendment of the On & Off Premise Consumption Liquor License (P-O-2)*

Dear Mayor Tully:

On 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 amend the full alcohol, off-premise sales and beer and wine only on-premise consumption liquor license. The following finding was made:

MS. KING MOVED TO AMENDED THE PO2 LICENSE CLASSIFICATION TO INCLUDE FULL ALCOHOL ON-PREMISE SERVICE. MR. KRUSENOSKI SECONDED.

VOTE:

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

Nay: None

Abstain: Mr. Austin

MOTION CARRIED: 4:0:1

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\recommend.1-c\P-O-2-fullon&off

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

DRAFT

Ms. Kuchynka advised the group of a request from Lemon Tree Grocer to allow full-on premise liquor consumption. She stated that they currently serve beer and wine for on-premises consumption and have full off-premise retail liquor sales. Staff has drafted an ordinance amending their existing P-O-2 license classification.

Ms. Kuchynka stated that a full on-premise and off-premise consumption license was previously considered by the Commission when Binny's requested such sales. She advised that Binny's never pursued that license, as they purchased the former Sam's Wine & Spirits facility.

Mr. Tim Canning and Mr. Shaun Black introduced themselves as the owners of The Lemon Tree and were present in support of their proposal for full on-site liquor service. Ms. Kuchynka asked them to discuss their request.

Mr. Black stated that The Lemon Tree Grocer had diverted a bit from its original concept and has changed based on consumer demands. He stated that they have a grocery store and full restaurant with limited space. He stated that their café operations will cease November 15th. He stated that they were looking for ways to increase revenue and compliment their facility.

Mr. Black advised that they are planning to add Saturday breakfast, in addition to the Sunday brunch they currently offer. He stated that they would like to have a Blood Mary Bar. He stated that garnishes to make one's own bloody mary will be provided on a community table and vodka would be poured by wait staff at the barista. He stated that they are not seeking to become a bar and advised that they close at 10PM on weekends.

Mr. Black stated that they would also to promote "Steakhouse Saturdays" and offer martini's, etc. before meals. He stated that they would like to start small and noted that there is not much room to store full alcohol in the bar. He stated that liquor service will be pretty basic.

Ms. Kuchynka clarified that their barista will serve as their bar area. Mr. Black replied that they two kegs there on tap.

Mr. Black advised that they have no violations and a strict manual and handbook. Mr. Canning stated that complimenting food will also be their goal.

Chairman Pro Tem Strelau asked staff if it would make sense to change the license from a grocery store to a restaurant. She stated that everything that has increased or changed has been liquor related, not grocery, related. Mr. Black stated that they have increased the grocery and advised that they began with 500 grocery items but are up to 3-4,000 items.

Mr. Canning stated reasoning for the change was from figuring out what the community wants. He stated that it did not make sense to keep \$21 bottles of olive oil on the shelves and stated that they have lower priced items and expanded on certain specialty items.

Mr. Austin asked if they considered the barista seating area their bar area. Mr. Black replied yes. Mr. Austin asked if that was less than 20% of their seating. Mr. Black replied yes.

Mr. Austin asked if they are asking for a restaurant license classification. Chairman Pro Tem Strelau stated that she felt they should be applying for the R-1 restaurant classification. Ms. Kuchynka noted that the R-1 license would not allow them to have full packaged sales. Ms. Fregeau stated that the Commission has seen applicants evolve. Mr. Austin added that they are a hybrid classification.

Ms. Petrarca asked if grocery is still the primary business. Mr. Black replied yes, at a 3:1 margin. Mr. Black added that the liquor portion is even less than half of the restaurant food sales. He stated that they are a full service grocery store.

Ms. Fregeau asked Mr. Black to break down their estimates provided in the packet and asked what they ballpark grocery vs. restaurant vs. liquor sales. Mr. Black stated that they had a little over \$2 million in sales. Ms. Petrarca replied that they provided café figures.

Ms. Fregeau stated, in the original application, the sale of alcohol was incidental or secondary to the main business as a downtown grocery. She stated that the Commission is open to expansion and new ideas, but they need to know if the alcohol sales are represented.

Mr. Black stated that they have a full butcher. He stated that they have a restaurant inside of a grocery store. He stated that the grocery area was 5 times the size of the dining area.

Mr. Black stated that the grocery business is three times more than the restaurant itself. He stated that they hoped to be a grocery store and did not intend for the café expansion, but they are trying to survive and that they need additional revenue streams.

Mr. Austin asked if there was a requirement as to where a license is held and if a wall could separate the two businesses. Ms. Petrarca replied that giving two licenses was more of an administrative burden. Mr. Austin was not certain if restaurants should have the same ability to sell packaged goods and wondered if it would be better to issue two separate licenses for the two separate organizations. Ms. Petrarca did not believe that issuing two licenses to the same location was allowed under the Code, which is why this unique license was created.

Ms. Petrarca stated that the ordinance change in this case would simply amend their existing class to allow on-site alcohol sales in lieu of being limited to on-site beer and wine sales.

Chairman Pro Tem Strelau stated that this feels like the wrong classification. Ms. King wondered how it is different than offering an outdoor license in addition to a restaurant. Ms. Petrarca stated that the outdoor license is the same as the interior license, only allowing one classification, per say. She stated that the difference here is the activity allowed, restaurant and grocery. Ms. Petrarca stated that it is staff's recommendation to simply make the change to their existing license, without requiring two licenses.

Ms. King stated there is only one P-O-2 license available. Staff confirmed. Ms. Petrarca added that they are the only location to qualify for this license classification as it is written.

Mr. Austin asked what the possibility is for other restaurants to request this class if this change is made. Ms. Kuchynka understood the Commission's concern if Jewel Osco wanted to open a restaurant in one of their locations. Ms. Petrarca noted that this is limited to the Downtown Business District and limited to 5,500 square feet. And noted this license was created for them. She did not believe that any other establishment would qualify.

Mr. Austin wondered if Ballydoyle could request to sell packaged liquor out of the bar. Ms. Kuchynka replied that they have asked to sell growlers. Ms. Kuchynka stated that there is a Brew Pub license which allows for off-site sales of beer brewed on the premises.

Chairman Pro Tem Strelau asked how the license would be charged for. Ms. Kuchynka replied that a cost center analysis was done in conjunction with the Binny's request. She added that the annual license fee would increase from \$1,840 to \$2,610. She stated that costs vary for monitoring and administrative staff time. She added that two controlled buys, one for on-site test and one test for off-site sales are required.

Ms. Kuchynka noted that the draft ordinance would not be affected by the fee, as fees are contained in an Administrative Regulation. She advised that the license is limited to one. Ms. Kuchynka stated that the Village created the license specifically for them and based on their needs. She stated that she believed the needs of the community have dictated their changes.

Ms. Kuchynka stated that she understood that the licensee was evolving more toward operating as a restaurant. She stated this would still require that the primary business be a grocery store. She stated should they no longer have grocery sales as the primary business, they would no longer qualify for this license.

Chairman Pro Tem Strelau asked what the standard was for them to qualify for this license. Ms. Kuchynka replied 50% of grocery sales or more. Ms. Kuchynka stated that at renewal, they are required to submit an annual declaration, which breaks down their sales percentages or dollar amounts.

Mr. Black advised that they have a meat department, deli and grocery store operations. He asked if that was a requirement of the tax rebate agreement. Ms. Petrarca agreed. Ms. Fregeau stated that the tax incentive agreement was more grocery driven than alcohol driven.

Mr. Austin stated that the Code might need a "grocery store" definition.

Chairman Pro Tem Strelau asked staff if they requested a motion. Ms. Petrarca replied yes and requested a motion for an amendment to the license class and to forward the item on to the Village Council for consideration.

Ms. Fregeau asked Mr. Black if they anticipate any change in hours because of this amendment. Mr. Black stated that remain the same for now but would like to change if it gets busy. He stated that the grocery store will be open at all times the restaurant is in operation. He felt that demand might take time as they are not known as a night time spot. He did not anticipate much of a change in hours.

Ms. Kuchynka asked Mr. Black if he was fully aware that food service has to be in operation during liquor sales. Mr. Black replied yes.

Chairman Pro Tem Strelau requested a motion.

MS. KING MOVED TO AMENDED THE PO2 LICENSE CLASSIFICATION TO INCLUDE FULL ALCOHOL ON-PREMISE SERVICE. MR. KRUSENOSKI SECONDED.

Mr. Austin stated that a few other changes to the draft ordinance may need to be made. He stated that the Mayor and Downtown Management should be contacted in case they foresee any problem with blurring the line between a restaurant and a packaged goods establishment.

Mr. Austin stated while it is a grocery store license, he suggested that a definition of a grocery store be added to Section 3.2. Staff agreed and would include a grocery store definition into a revised ordinance that could be presented to the Village Council.

Ms. Petrarca advised that she has spoken to the Mayor about the issue and he was in favor of the amendment.

Chairman Pro Tem Strelau stated that the concern was not about full alcohol service but how the classification is structured. She stated that she could not decide what would be better than this, but it did not feel they are being classified properly. Ms. Fregeau noted that a number of classifications are unique and they are created for the situation.

Chairman Pro Tem Strelau stated that the sales figures indicate The Lemon Tree is a grocery store, however, their marketing is not toward the grocery as much as she has seen it for drinks and restaurant activities.

Ms. Kuchynka stated that the Commission has discussed how convoluted the ordinance has become with the number of classifications that have become too specific for certain establishments. Ms. Fregeau stated that the group talked about streamlining the classes. Ms. Kuchynka stated that the State issues licenses for either on-site or off-site, beer/wine or full alcohol sales and do not get into specific details.

Chairman Pro Tem Strelau stated that may be the problem by outlining every aspect of business. Ms. Kuchynka stated that new licensees often evolve into what the market dictates. Chairman Pro Tem Strelau stated that she wanted them to be successful but want it to fit well in the Code. Ms. Petrarca stated that their activities are still consistent with what was put in the Code.

Mr. Austin stated that it was not that the Commission did not want the change, but there are constraints per the ordinance.

Ms. Kuchynka advised that a definition would be added to the draft ordinance. Mr. Austin stated that the definition is lacking and felt that it should be reviewed before it goes to Council. Ms. Petrarca stated that staff could bring back the ordinance next month.

Chairman Pro Tem Strelau called for a vote on the motion on the floor.

VOTE:

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

Nay: None

Abstain: Mr. Austin

MOTION CARRIED: 4:0:1

The Motion carried.

Mr. Canning and Mr. Black thanked the Commission for their consideration.



Lemon Tree Grocer
5101 Mochel Drive
Downers Grove, Illinois 60515

August 29, 2011

Carol Kuchynka
Liaison to the Liquor Commission
Legal Department
Village of Downers Grove
801 Burlington Avenue
Downers Grove, IL 60515

Dear Carol,

Attached is a quarterly sales report for Zest. They include wine and beer sold through the restaurant only.

Our plan with the expanded liquor license is to start slowly. The idea originated from our expanded menu, as we recently started a Sunday brunch. As the brunch has grown, we have seen a need for expansion in products offered. One of the most logical ideas was the Saturday and Sunday Bloody Mary bar. One of our bartenders would pour the (pre-determined and measured pour) vodka in a glass behind the barista. The customer would then use the ingredients to mix their drink the way they wanted it at our Bloody Mary bar. We would, of course, continue the very strict identification process that we have been adhering to over the last year of being open, with no violations. No pouring of alcohol would be done outside of the barista and all pourers would be BASSET certified.

Sales projections are tough because of the following factors: seasonal seating will be ending, the newness of our concept, as well as the decision to have the Bloody Mary bar available on Saturday and Sundays or just Saturdays. We intend on building slowly in an effort to help supplement the loss of our outdoor seating as we continue with our quest to reach a profitable level as a business.

Please let me know if you have any additional questions and I will be happy to answer them.

Sincerely,

Shaun

**Lemon Tree Grocer
Sales Report**

	Q1 Jan 1 - Mar 23, 2011	Q2 Apr 1 - Jun 30, 2011	Q3 Jul 1 - present
Total Zest Sales	\$97,635.92	\$171,994.12	\$113,870.30