

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
6/28/2016

SUBJECT:	SUBMITTED BY:
Mobile Food Vendors	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance setting forth the regulations for permitting and operations of mobile food vendors has been prepared.

STRATEGIC PLAN ALIGNMENT

Food Truck Ordinance is a High Priority Action Item for 2015-2017.

FISCAL IMPACT

N/A

RECOMMENDATION

Action at the discretion of the Village Council.

BACKGROUND

The proposed ordinance has been prepared based on ordinances in similar communities as well as discussions with the Village Council and other stakeholders. Based on Council direction, staff will make revisions to the ordinance for consideration at a future Council meeting.

The key provisions of the ordinance are as follows:

Permit Provisions

- Vendors shall be required to submit a permit application, which includes vehicle and owner information, a menu, a submission of fingerprints for purposes of conducting a background check and a hold harmless agreement.
- The applicant shall submit a copy of the DuPage County Health Department permit.
- The Village shall issue 10 permits per year on a first-come, first-serve basis. The fee will be listed in the “User-Fee, License and Fine Schedule.” Staff is proposing a \$250 annual fee.
- Vendors shall prominently display the Village permit by affixing the permit to the lower lefthand corner of the windshield of the mobile food vehicle.
- Mobile food vendors shall be permitted only in the following locations: Ellsworth Business Park as depicted on the map in Section 8.17.1, and Public Parks owned and operated by the Downers Grove Park District, subject to the Park District’s consent.

Operating Provisions

- Hours of operation shall be 7:00 a.m. to 10:00 p.m., and all sales shall occur on the side of the vehicle nearest the street curb.
- Mobile food vendors shall not operate within 500 feet of the property line of a licensed food establishment unless consent is granted by the proprietor of the licensed food establishment.
- Mobile food vendors shall not operate within 500 feet of the property line of schools when school is in session.
- Mobile food vendors shall not operate within 500 feet of any festival, special or civic event sponsored or permitted by the Village unless the mobile food vendor has obtained a temporary use permit from the Village.
- Mobile food vendors shall not operate on private property within the permitted locations unless written consent is obtained from the private property owner.
- Only one mobile food vendor shall operate in a private parking lot at a time, providing the vendor is in compliance with the zoning code, off-street parking requirements, and is parked on a dust-free surface lot not blocking any drive aisles.
- Mobile food vendors shall be required to submit sales tax and shall provide, on request, records of sales and sales taxes.
- The Village may suspend or revoke the permit for violations of the ordinance.

ATTACHMENTS

Ordinance

Map of Ellsworth Business Park (Sect. 8.17.1)

Mobile Food Vehicle Vendors

ORDINANCE NO. _____

AN ORDINANCE ESTABLISHING PROVISIONS FOR MOBILE FOOD VENDORS

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 8.15ART. is hereby amended to read as follows:**8.15ART. Article III. Mobile Food Vehicle Vendors****Section 2. That Section 8.16. is hereby amended to read as follows:****8.16. General Provisions.****Section 3. That Section 8.16.1. is hereby added to read as follows:****8.16.1. Definitions.**

Mobile food vehicle. A commercially manufactured, motorized mobile food unit from which ready-to-eat food is cooked, wrapped, packaged, processed, or portioned and sold for immediate consumption and open to the general public.

Mobile food vehicle vendor. The owner of a mobile food vehicle or the owner's agent or employee; hereinafter referred to as "Vendor." Mobile food vehicle vendors do not include street and sidewalk vendors or ice cream vendors.

Section 4. That Section 8.16.2. is hereby added to read as follows:**8.16.2. Permit Required; Application**

(A) It shall be unlawful for any person to operate within the Village a mobile food vehicle, as defined in this Chapter, without first having obtained a permit from the Village for that purpose. The Village shall issue only ten (10) permits per year and they shall be issued on a first-come first-serve basis.

(B) Application shall be made by the Vendor in writing to the Village on a form as required and approved by the Village. A permit and application fee as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule" shall be submitted with the application. A permit shall be valid until December 31st of the year in which it was issued and shall only be valid for one (1) mobile food vehicle.

(C) The Vendor shall be required to include in the application a true statement of certain facts including, but not limited to: whether the Vendor is a corporation, partnership or sole proprietorship; the state of incorporation of the Vendor if the Vendor is a corporation; whether the Vendor is organized and qualified to do business under the laws of the State of Illinois if the Vendor is a corporation; the names of the individuals who own the Vendor; the registered agent of the Vendor; the Vendor's principal place of business; and the principal office of the Vendor.

(D) The Vendor shall, with its application for a permit, register or cause to be registered the mobile food vehicle operated by, or operated for, such Vendor within the Village. The following information for the mobile food vehicle to be registered shall be provided:

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- (1) The year, make, color and vehicle identification number of the vehicle.
- (2) Name, address, and telephone number of the owner of the vehicle.
- (E) A description of the food product(s) offered for sale, including the intended menu.
- (F) The Vendor, applicant(s) and any employee(s) or agent(s) who will be operating the mobile food vehicle shall submit his/her fingerprints to be used in completing the review of the application. Vendor(s) are required to present themselves for fingerprints to be taken by the Downers Grove Police Department or by a State approved agency. A fingerprint fee, as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule", shall be paid.
- (G) The Vendor shall submit a signed statement that the Vendor shall hold harmless the Village and its officers and employees, and shall indemnify the Village, its officers and employees for any claims for damage to property or injury to persons which may be occasioned by any activity carried on under the terms of the permit. Vendor shall furnish a certificate of insurance showing that it maintains such public liability, food products liability, and property damage insurance as will protect Vendor, property owners, and the Village from all claims for damage to property or bodily injury, including death, which may arise from the operations under the permit or in connection therewith. Such insurance shall provide coverage of not less than one million dollars (\$1,000,000.00) per occurrence. The policy shall further provide that it may not be cancelled except upon a thirty (30) day written notice served upon the Village Attorney. A permit issued pursuant to the provisions of this Section shall be invalid at any time the insurance required herein is not maintained and evidence of continuing coverage is not filed with the Village Attorney.
- (H) The Vendor shall be required to submit a copy of the required DuPage County Health Department Permit to the Village with the application.
- (I) Failure to fully comply with the application and disclosure requirements of this Section shall constitute grounds for the Village to deny issuance of a permit. The Vendor shall notify the Village within thirty (30) days of any changes to application information.
- (J) Issuance or Denial of License. The Village shall, within sixty (60) days after submittal of a properly completed application, or within such other period of time as the Village and the applicant shall otherwise agree, either issue or deny issuance of a permit pursuant to this Article.

Section 5. That Section 8.16.3. is hereby added to read as follows:

8.16.3. Investigation.

The Village shall investigate the Vendor, including each officer, general partner, sole proprietor and all persons having an ownership interest of five percent (5%) or more of any such applicant. If this investigation of the application materials reveals information showing any of the following, the application shall not be approved and no permit shall be issued to the Vendor:

- (1) If the Vendor has been convicted of a felony within the past ten (10) years.
- (2) If the Vendor has been convicted of a misdemeanor, which misdemeanor involves any of the following offenses:
- (a) Unlawful possession with the intent to deliver: any controlled substance, as such term is defined in the Illinois Controlled Substances Act (720 ILCS 570/100 et seq.), as amended from time to time; or cannabis, as defined in the Cannabis Control Act (720 ILCS 550/1 et seq.), as amended from time to time; or an intoxicating compound, as listed or defined in the Intoxicating Compounds Act (720 ILCS 690/0.01 et seq.), as amended from time to time, within the past five (5) years.
- (b) Unlawful possession of any controlled substance, cannabis or intoxicating compound within the past five (5) years.
- (c) Any offense involving moral turpitude, including, but not limited to any offense involving the misapplication, misappropriation or misuse of funds of another person within the past five (5) years.
- (d) Driver's license suspended or revoked in any state within the past three (3) years as

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consequence of violations of law concerning the operation of a motor vehicle.

(3) If the Vendor that is required to register as a sex offender as required by the Sex Offender Registration Act, 730 ILCS 150 or has been convicted of criminal sexual assault and/or criminal sexual abuse, as such offenses are defined in the Illinois Criminal Code (720 ILCS 5/1-1 et seq.), or any like offense of another state or country.

(4) If the Vendor as misrepresented or omitted material facts in the application for a permit.

Section 6. That Section 8.16.4. is hereby added to read as follows:

8.16.4. Transfer of Permit.

The permit shall not be transferrable from person to person without the approval of the Village Manager or his/her designee and payment of the transfer fee as set forth in Administrative Regulation entitled "User-Fee, License and Fine Schedule".

Section 7. Section 8.16ART. is hereby repealed in its entirety

8.16ART. Article IV. Pawnbrokers

Section 8. That Section 8.17. is hereby added to read as follows:

8.17. Permitted Operating Locations.

(A) Mobile food vehicles are only authorized to operate in the Village of Downers Grove at the following locations:

(1) Ellsworth Business Park – as depicted on the map in Section 8.17.1.

(2) Public Parks owned and operated by the Downers Grove Park District, subject to the Park District's consent.

(B) In addition to the above restrictions, no mobile food vehicle shall operate in a location that:

(1) would substantially obstruct a public way;

(2) would impair the movement of pedestrians or vehicles;

(3) would pose a hazard to public safety;

(4) is adjacent to a bus stop, taxi stand, or handicap loading zone;

(5) is within thirty (30) feet of an intersection;

(6) is within three (3) feet of a curb cut; or

(7) is directly in front of a property entryway.

(C) Pedestrian walkways of no less than six (6) feet must be maintained around the mobile food vehicle location.

(D) It shall be unlawful for a Vendor to park, stand, or operate in a location which is adjacent to or within five hundred (500) feet of the property line of a food establishment business. This requirement may be waived if the application is submitted with the written consent of the proprietor of the adjacent food establishment business. No person or corporation shall either pay or accept payment for the written consent provided herein.

(E) No more than one (1) mobile food vehicle shall be allowed to operate per private parking lot, which must remain in compliance with the zoning code, including the off-street parking requirements for the host parking lot. The mobile food vehicle shall not block required drive aisles and must be parked on a dust-free surface lot at all times.

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(F) A Vendor shall not operate a mobile food vehicle within five hundred (500) feet of any festival, special event, or civic event that is permitted or sponsored by the Village except when the Vendor has obtained a temporary use permit from the Village.

(G) On days when school is in session at elementary, middle, and secondary schools (public or private), it shall be unlawful for any Vendor to operate a mobile food vehicle within five hundred (500) feet of the property lot line of said schools. Exception. During summer school sessions, this restriction shall apply only to those individual schools which are in operation.

(H) A Vendor shall not operate on private property within the permitted operating locations without first obtaining written consent to operate from the affected private property owner.

Section 9. That Section 8.17.1. is hereby added to read as follows:

8.17.1. Maps.

<http://www.downers.us/public/docs/code/EllsworthBusinessParkMap.pdf>

Section 10. That Section 8.18. is hereby added to read as follows:

8.18. Inspections.

(A) All mobile food vehicles shall be kept in a clean and sanitary condition. The Village Manager or his/her designee, bearing proper identification, shall be permitted to enter any mobile food vehicle at any reasonable time for the purpose of inspecting to determine whether the Vendor has complied with the terms of this Article. Additionally, the Vendor shall, on request, provide the Village Manager or his/her designee with the records of the mobile food vehicle to obtain information pertaining to sales and sales taxes. Denial of access to the mobile food vehicle or to said records shall be deemed a violation of this Article and grounds for suspension and/or revocation of the permit.

(B) All food storage, preparation and distribution of food, and vehicle equipment must meet applicable Illinois Department of Public Health and DuPage County Health Department standards and requirements.

(C) All waste liquids, garbage, litter and refuse shall be kept in leak-proof, nonabsorbent containers which shall be kept covered with tight-fitting lids and disposed of properly. No waste liquids, garbage, litter or refuse shall be dumped or drained into sidewalks, streets, gutters, drains, trash receptacles, or any other place. A garbage receptacle shall be easily accessible for customer use. Each mobile food vehicle shall be equipped with sufficient garbage receptacles, and each Vendor shall be responsible for collecting all litter, garbage and refuse left by customers and related to its products located within a fifty foot (50') radius of the mobile food vehicle.

Section 11. That Section 8.19. is hereby added to read as follows:

8.19. Operational Requirements.

(A) A Village permit for each mobile food vehicle to be operated in the Village must be prominently displayed and permanently affixed to the lower lefthand corner of the windshield of the mobile food vehicle.

(B) All sales from the mobile food vehicle shall occur on the side of the vehicle nearest the street curb.

(C) No mobile food vehicle shall impede visibility or the flow of vehicular, pedestrian or bicycle traffic in any location.

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(D) It shall be unlawful for any person operating a mobile food vehicle while on duty to drink any alcoholic beverage, to shout or call to prospective customers, or to disturb the peace in any manner.

(E) No mobile food vehicle shall operate unless it bears a State license duly issued, and no such vehicle shall be operated unless it is equipped with proper brakes, lights, tires, horn, muffler, rear vision mirror and windshield wipers in good condition.

(F) Each mobile food vehicle shall have on each side, in letters readable from a distance of fifty (50) feet, the name of the Vendor operating it.

(G) Each mobile food vehicle shall have available for inspection a copy of the required DuPage County Health Department Permit.

(H) The hours of operation shall be limited to the hours between 7:00 a.m. to 10:00 p.m. No approved mobile food vehicle shall be left unattended on a public way, nor remain on a public way, outside of these allowed hours of operation.

(I) No Vendor shall use or maintain any outside sound amplifying equipment, lights, or noisemakers, such as bells, horns or whistles.

(J) No mobile food vehicle shall use external signage, attention getting devices, bollards, seating, or any other equipment not contained within the vehicle.

(K) The mobile food vehicle shall not have a drive-through.

(L) The Vendor shall obey any lawful order of a police officer to move to a different permitted location to avoid congestion or obstruction of a public way or remove the mobile food vehicle entirely from the public way if necessary to avoid such congestion or obstruction.

(M) Any power required for the mobile food vehicle located on a public way shall be self-contained and shall not use utilities drawn from the public right-of-way.

(N) All identifying information, logos, advertising, decorations, or other displays on the exterior of a mobile food vehicle shall conform to the purposes set forth in the Downers Grove Zoning Ordinance regulating commercial signage, to the extent applicable. In particular, exterior displays shall be designed to minimize confusion or distraction that jeopardizes vehicular and pedestrian safety and shall be harmonious with the surroundings and consistent with the character of the community in which the mobile food vehicle operates.

(O) The Vendor must comply with all other applicable conditions and requirements imposed upon mobile food vendors under the law, must comply with Village ordinances and State law, and shall make all required sales tax returns and other reports as required by State law.

Section 12. That Section 8.20. is hereby added to read as follows:

8.20. Violations.

Section 13. That Section 8.20.1. is hereby added to read as follows:

8.20.1. Penalties.

Any person or entity who shall be guilty of a violation of any of the provisions of this Article, shall be subject to a fine of not less than seventy-five dollars (\$75.00) and not more than seven hundred fifty

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dollars (\$750.00). A separate offense shall be deemed committed for every day a violation continues.

Section 14. That Section 8.20.2. is hereby added to read as follows:

8.20.2. Denial, Suspension or Revocation of Permit.

(A) A permit issued under the provisions of this Article may be revoked or suspended by the Village for a violation of any provision of this Article. If the Village determines after investigation that cause exists for the suspension or revocation of a permit, the Village shall notify the Vendor in writing that its permit will be revoked or suspended, setting forth the reasons therefor, and advising the Vendor of the right to appeal pursuant to Section 8.20.3 of this Chapter. Unless a timely appeal is filed as provided in Section 8.20.3, such revocation or suspension shall be final and effective on the eleventh (11th) business day following receipt of the notice by the Vendor. If a timely appeal is filed as provided in Section 8.20.3, such revocation or suspension shall not be final and effective until the appeal has been processed.

(B) An application may be denied or an approved permit may be revoked, suspended, or not renewed for any of the following reasons:

- (1) The application contains material omissions or false, fraudulent, or deceptive statements.
- (2) The mobile food vehicle is operated in such a manner that constitutes a public nuisance per the Downers Grove Municipal Code or State statutes.
- (3) The proposed operation is in violation of any federal, State, or local laws.

The provisions of this Section are not exclusive. This Section shall not preclude the enforcement of any other provisions of this Municipal Code or State and federal laws and regulations.

(C) Any permit issued shall be automatically revoked if the Vendor is convicted of such offenses enumerated in Section 8.16.3.

(D) No revocation or suspension shall require return by the Village of any permit fee.

(E) Any revocation of a permit shall preclude the permittee (or any subsequent company that has 20% or more common identity/ownership interest with the permittee) from receiving another permit under this Article for two (2) years from the date of revocation; except that upon automatic revocation, as provided above, the permittee (or any subsequent company that has 20% or more common identity/ownership interest with the permittee) shall not be permitted to receive another permit for ten (10) years from the date of revocation for violations of Section 8.16.3.

(F) Revocation or suspension of a permit shall not preclude the imposition of a fine by a court of competent jurisdiction for violation of any part of this Article.

Section 15. That Section 8.20.3. is hereby added to read as follows:

8.20.3. Appeals

(A) Any permit holder who receives a notice of revocation or suspension or whose application has been denied may file an appeal with the Village Manager as provided herein. Such appeal shall be filed with the Village Manager, in writing, no later than ten (10) business days following receipt of the notice of revocation or suspension or denial of application, and shall include: (1) a petition for an informal public hearing, and (2) a response to the notice. Such response shall include a brief statement addressing the

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substantive deficiencies cited in the notice and shall set forth the basis for why the permit should not be revoked or suspended or why the application should not be denied. The applicant or permittee shall not operate within the Village during the pendency of the appeal.

(B) The Village Manager shall schedule an informal public hearing as soon as possible following receipt of such appeal. The purpose of the hearing will be to offer the applicant or permittee an opportunity to show cause as to why the application should not have been denied or why the permit should not be suspended or revoked. A record shall be made of the informal public hearing and documents may be submitted and/or testimony given, either in person or through sworn affidavit. This record may be made by electronic recording. The Village Manager shall have the power to administer oaths and to continue the hearing from time to time to permit the applicant or Vendor to provide additional information.

(C) Within thirty (30) days after such hearing, the Village Manager shall make written findings of fact and issue an appropriate order. If the Village Manager determines that the denial of the application should be upheld or that the permit should be revoked or suspended, the reasons supporting such determination shall be included in the written order. A copy of such order shall be served upon the applicant or permittee.

(D) The decision of the Village Manager as provided in subsection (c) above shall be the final administrative action of the Village with respect to the permit and shall be subject to the immediate appeal by the applicant or permittee to the circuit court. Such appeal to the circuit court shall be filed not later than thirty-five (35) days following receipt of the Village Manager's findings and order. Failure to timely file such appeal as provided herein shall render the Village Manager's decision final.

(E) The Village Manager may delegate any duty or power set forth in this Section, including but not limited to, the conduct of the informal hearing and issuance of any final order, to such Village officer or agent as the Village Manager may designate.

Section #15. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section #16. That this ordinance shall be in full force and effect from and after its passage and publication in the manner provided by law.

Mayor

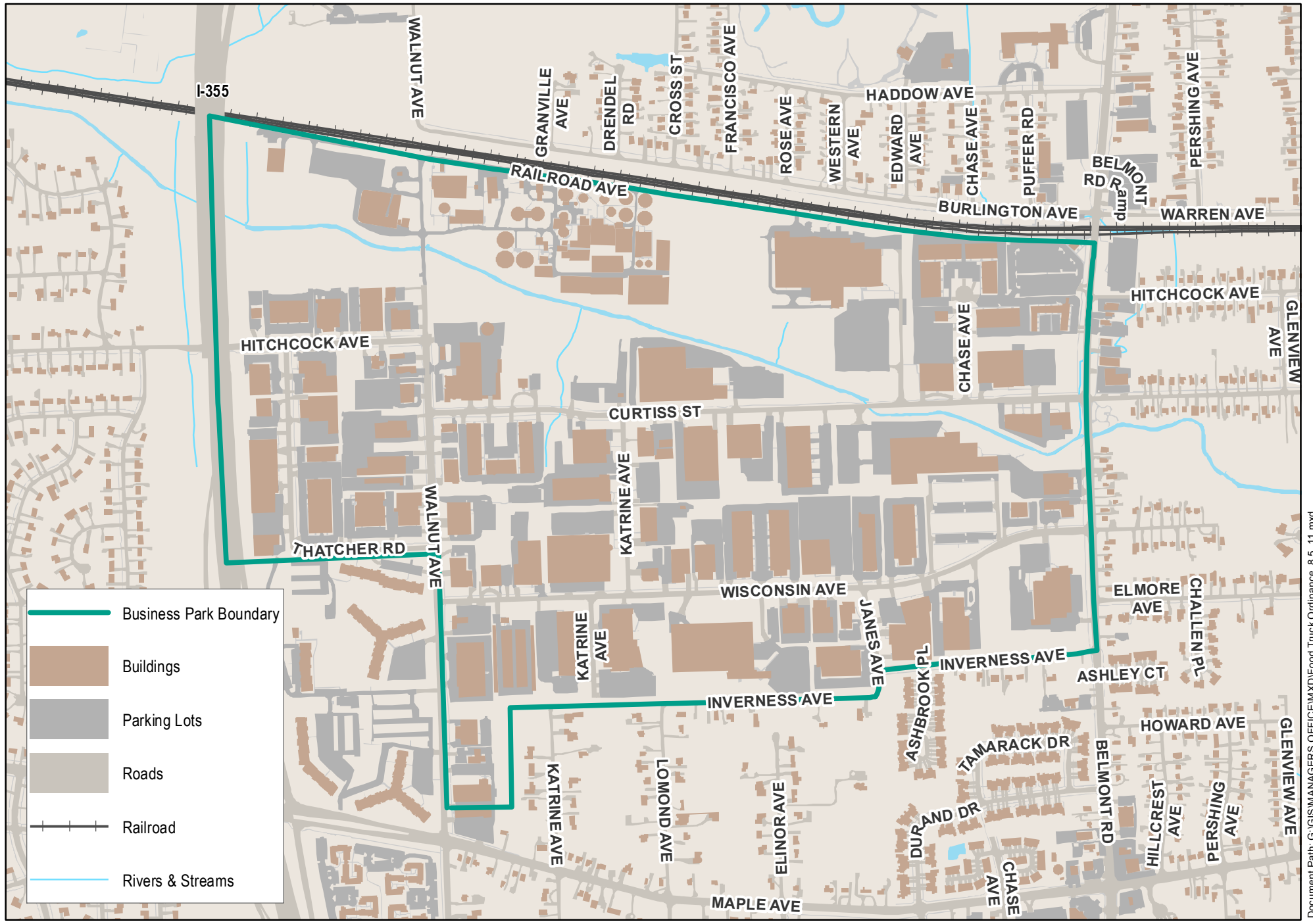
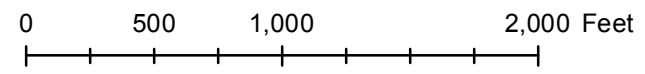
Passed:







Published:

Attest: _____

Village Clerk

Ellsworth Business Park



-  Business Park Boundary
-  Buildings
-  Parking Lots
-  Roads
-  Railroad
-  Rivers & Streams