

VILLAGE OF DOWNERS GROVE
Report for the Village Council Meeting
1/16/2018

SUBJECT:	SUBMITTED BY:
An Ordinance Amending Theater License Provisions	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared amending the Class "T" Theater liquor license provisions.

STRATEGIC PLAN ALIGNMENT

The goals for 2017-2019 include *Exceptional Municipal Services*.

FISCAL IMPACT

N/A

BACKGROUND

The Tivoli has held a theater liquor license from the Village since 2001. The license classification was created to allow full liquor service on a contractual basis with individual rentals of the facility. In 2009 the classification was amended further to expand the venues at which the theater could offer liquor service to include box office events and expanded further on contracted theater rentals.

The Tivoli has requested another amendment which would allow liquor service during regularly scheduled movies. They have increased the concessions and now offer food items. Drinks will be limited to one per person in order to deter adults sharing drinks with minors.

Attached is a draft ordinance making certain amendments to the theater license classification. The Liquor Commission discussed this matter at the December 7, 2017 meeting and recommended that the ordinance be forwarded to the Village Council for consideration.

UPDATE & RECOMMENDATION

This item was discussed at the January 9, 2018 Village Council meeting. At the meeting the Village Council asked if a minor was in possession of liquor in the Tivoli Theatre, would that be a violation of the Village's alcoholic liquor ordinance. Yes, that would be a violation in accordance with Section 3.25:

Section 3.25. Sale to certain persons prohibited.

(a) No licensee or other person shall sell, give or deliver alcoholic liquor to any person under the Downers Grove Municipal Code Page 26 of 35 age of twenty-one (21) years, or to any intoxicated person. The fine for such a violation shall be set forth in Section 1.16 (i)(1)(i) .

(b) If a person under the age of twenty-one (21) years is in possession of alcoholic liquor on premises licensed to sell alcoholic liquor for consumption on such premises, it shall be presumed that the licensee sold, gave or delivered such alcoholic liquor to the minor in possession thereof.

(c) For the purpose of preventing the violation of this section, any licensee, or its agent or employee, may refuse to sell or serve alcoholic beverages to any person who is unable to produce adequate written evidence of identity and of the fact that he or she is twenty-one (21) years of age or older.

Additionally, Section 3.33(c) was further amended to clarify that the showing of a R-rated movie or film by a Class "T" Theater liquor license holder does not constitute a violation under this section.

Village Council members also discussed limiting alcohol consumption to the lobby area only.

Staff recommends approval on the January 16, 2018 active agenda.

ATTACHMENTS

Draft Ordinance
Liquor Commission Recommendation & Minutes

VILLAGE OF DOWNERS GROVE COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** January 16, 2018
(Name)

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

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to Adopt "AN ORDINANCE AMENDING THEATER LICENSE PROVISIONS", as presented.

SUMMARY OF ITEM:

Adoption of the attached ordinance shall amend theater liquor license provisions.

RECORD OF ACTION TAKEN:

Theater

ORDINANCE NO. _____

**AN ORDINANCE AMENDING
THEATER LICENSE PROVISIONS**

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 "T" Theater Licenses

"T" Theater licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises where the primary business is that of a Theater as defined herein, subject to the following conditions:

1. Sales of alcoholic liquor shall be limited to contracted theater rentals, and theater production/box office events and regularly scheduled motion pictures or films. Under no circumstances may alcoholic liquor be served more than one (1) hour prior to a scheduled event, rental or the advertised time of the first motion picture or film showing on any day.
2. ~~Alcoholic liquor sales shall not be allowed during regularly scheduled motion pictures or films or during events that are primarily oriented for children.~~
3. ~~Sales shall be made from portable service bars containing alcoholic liquor, mixes and related preparation materials. Such portable service bars shall not have seats or stools for patrons at which to sit.~~
4. ~~Portable bars shall be removed and/or stored out of view during all regularly scheduled motion pictures.~~
5. ~~No alcoholic liquor shall be served at a single contracted theater rental for more than six (6) consecutive hours.~~
6. ~~Alcoholic liquor may be served during theater production/box office events during one (1) hour prior to the event, during intermission not exceeding two (2) consecutive hours and for no more than one (1) hour after an event. However, an extension of liquor serving hours may be granted in accordance with the provisions of Section 3.31(a).~~
7. Food service must be available during all times alcoholic liquor is available on the premises. during contracted theater rentals and theater production/box office events in which alcoholic liquor service exceeds two (2) consecutive hours. However, should there be a suspension of liquor service for a main event or attraction (at a minimum duration of one (1) hour), such food service shall not be required.
8. ~~The licensee shall submit a report to the Village within thirty (30) days following each July 1 and January 1 setting forth each contracted theater rental/theater production/box office event and the number of hours for which liquor was served during the six (6) months prior. In addition, such report shall describe any planned events currently scheduled by the licensee.~~
4. The licensee shall not serve or deliver more than one alcoholic beverage to a person at a time and no person shall have in his/her possession at any given time more than one alcoholic beverage.
5. Containers in which alcoholic liquor is served must be of a different color, size and design of those in which non-alcoholic beverages are served.
6. Alcoholic liquor shall be served only in single-servings, no bottles, pitchers, buckets, etc.

Theater

* * *

Section 2. That Section 3.33. is hereby amended to read as follows:**3.33. Prohibited activities on licensed premises.**

(a) Gambling. It shall be unlawful to permit any gambling or video gaming on any premises licensed to sell alcoholic liquor except in accordance with the provisions of Section 15.13.

(b) Solicitation. It shall be unlawful for any licensee, its manager or other person in charge of any licensed premises where alcoholic liquor is sold or offered for sale for consumption thereon to engage, employ or permit the engagement or employment of any person, nor shall any person be permitted to remain on said premises, who shall solicit any patron or customer thereof to purchase alcoholic or nonalcoholic liquor for said person, or any other person therein; nor shall any person, whether or not such person impersonates or presents the appearance of one of the opposite sex, and whether or not such person is an employee or entertainer, solicit any patron or customer therein to purchase alcoholic or nonalcoholic liquor for himself or herself or any other person therein; provided, however, that nothing herein contained shall prohibit any manager, bartender or waitress who shall be regularly employed therein from accepting and serving the order of a patron or customer in the regular course of employment as such manager or waitress.

(c) It shall be unlawful for any licensee, its manager, or other person in charge of premises licensed to sell alcoholic liquor to permit books, magazines, coin-operated motion picture devices, films, or movies depicting, describing or relating to the following kinds of conduct on such premises:

(1) The performance of acts, or simulated acts, of sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation or any sexual acts which are prohibited by law.

(2) The actual or simulated touching, caressing or fondling of the breast, buttocks, anus or genitals.

(3) The actual or simulated displaying of the breasts, pubic hair, anus, vulva or genitals.

Provided, however, that Class "T" Theater liquor license holders shall be allowed to show motion pictures or films classified by the Motion Picture Industry as rated R or less.

(d) It shall be unlawful for any licensee, its manager, or other person in charge of premises licensed to sell alcoholic liquor to permit any entertainment, fashion show, presentation or performance which may include any person in a nude or semi-nude state, including, but not limited to, servers, hosts, hostesses, dancers, singers, models or other performance artists, or to permit role playing interactions. (Ord. No. 2489, § 1; Ord. No. 2735, § 1.)

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

I:\ord. 18\Theater-REV-short



www.downers.us

December 21, 2017

**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

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The Honorable Martin Tully
Mayor and Liquor Commissioner

Re: Theater Liquor License

Dear Mayor Tully:

On Thursday, December 7, 2017, at a regular meeting of the Downers Grove Liquor Commission, the members made a recommendation to modify the current Class "T" theater liquor license classification. The following recommendation was made:

MS. TOERPE RECOMMENDED THAT THE THEATER LICENSE AMENDMENT BE FORWARDED TO THE VILLAGE COUNCIL FOR CONSIDERATION. MR. JACOBSON SECONDED.

VOTE: **Aye:** Ms. Toerpe, Mr. Jacobson, Ms. Flanagan, Mr. Krusenoski, Ms. Pietrucha, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 6:0:0

Motion carried.

Further discussion of this subject can be found in the December 7, 2017 minutes of the Liquor Commission (attached).

Very truly yours,

Alice Strelau, Chairman
Liquor Commission

VILLAGE OF DOWNERS GROVE

Attachment

cc: April Holden, Village Clerk

a:Theater#2-amd

checks, receipt of the annual fee, Certificate of Occupancy, liquor liability insurance and receipt of employee certifications.

Chairman Strelau asked for comments from the public. There were none.

Hearing the testimony given in this case, Chairman Strelau asked for a recommendation from the Commission concerning its finding of "qualified" or "not qualified" with respect to the applicant with regard to their Class "REC-2" liquor license application.

MR. KRUSENOSKI MOVED TO FIND SAACHI VENTURES, INC. D/B/A FUN ZONE LOCATED AT 2011 W. 63RD STREET, QUALIFIED FOR A CLASS "REC-2", BEER AND WINE, ON-PREMISE CONSUMPTION LIQUOR LICENSE. MS. TOERPE SECONDED.

VOTE: **Aye:** Mr. Krusenoski, Ms. Toerpe, Ms. Flanagan, Mr. Jacobson, Ms. Pietrucha, Chairman Strelau

Nay: None

Abstain: None

MOTION CARRIED: 6:0:0

Motion carried.

DRAFT

V. NEW BUSINESS

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

Ms. Kuchynka advised that Tivoli Theater has submitted a request for an amendment to their existing Class "T" theater classification to permit liquor service during regularly scheduled movies. She stated that the current license limits liquor service to contracted theater rentals and productions/box office events. She stated that Mr. Johnson has agreed to offer additional food items in addition to concessions in order to have full time liquor service at the theater.

Ms. Kuchynka stated that a draft ordinance has been prepared by staff. She stated that staff researched other communities and what is allowed at similar facilities. She stated that liquor service will be allowed during the time the theater is in operation on the condition that food/concessions are available. She stated that only one drink will be allowed per person as there is not "table service" inside the theater. She stated that the bartenders need to see who they are selling to/serving and to be sure that someone of age does not share a drink with a minor. She asked for discussion by the licensee and commission.

Mr. Willis Johnson introduced himself and Ms. Linda Smith as manager of the Tivoli Theater. Mr. Willis stated that the Tivoli has held a license for 16 years. He stated that there have been no violations at the facility. He stated that the industry is changing and that theaters are offering liquor during movies. He stated that they are currently licensed to serve alcohol at events and would like to be allowed the flexibility to offer liquor during regularly scheduled movies.

Mr. Johnson stated that during the original request submittal, he was advised that additional food service would be required. He stated that they have added nachos and pretzel bites with cheese and hot dogs in addition to their concessions.

Ms. Kuchynka noted that the original classification allows for portable bars. She stated that the amendment allows a more permanent bar, however, shall be a service bar only with no seats.

Chairman Strelau asked for comments from the Commission.

Ms. Toerpe stated that she understood why they were seeking the license in order to be competitive with other theaters. She stated that they have both challenges and advantages. She stated that a challenge is their staff is very young and they will have to hire bartenders that are over 21. Mr. Johnson stated that they have staff over 21, all of which will be BASSET certified. Ms. Smith stated that she is aware that they will need to add more staff over 21. Mr. Johnson noted that there is staff at other theaters and the bowling alley. Ms. Smith stated that they have over 21 employees at the main office that are certified and can also step up to help.

Mr. Jacobson stated he was surprised this was not done sooner. He stated that the Tivoli has added a lot of value to the Village and he was looking forward to the change.

Mr. Krusenoski stated that they will need a lot of staff once alcohol is available. He asked Mr. Johnson if they serve alcohol in any of their other Classic Cinemas. Mr. Johnson replied no.

Mr. Krusenoski stated that there is a concession area and asked where customers would get a drink. Mr. Johnson stated that they currently use two portable bars that were moved out of sight during regularly scheduled movies. Mr. Krusenoski asked if they will still use the portable bars but make them more permanent in nature. Mr. Johnson replied yes. Mr. Johnson noted that there is some development being done at the facility. He stated that it will be their ultimate goal to have a "permanent" bar and supplement that with the portable bars when they know they will be having a larger event.

Mr. Krusenoski asked if they ever considered supplementing their food service with slices of pizza from Auriello's. Mr. Johnson replied that one challenge of food service in a theater is odors. He stated that not everyone wants to smell pizza and stated that the other items have relatively little or no odor. Ms. Smith also noted cleanup issues.

Ms. Pietrucha stated that she liked the use of a service bar versus a portable bar. She stated that she felt this was a step in the right direction.

Ms. Flanagan had no questions.

Chairman Strelau asked if there is a limit to the number of service bars that can be in the location. Ms. Kuchynka replied no. She stated that they currently have two portable bars. Chairman Strelau stated that there should be a limit to the number of portable bars in the facility. Ms. Kuchynka agreed in that some licensees have run afoul with the number of beer tubs and bars popping up throughout facilities.

Chairman Strelau stated that this is reasonable and was happy that the Tivoli approached the Commissioner. She recalled that this was a highly debated notion when they first came before the Commission to serve liquor at contracted events and theater rentals. She stated that it is not as radical of a notion these days. She stated that they have been a good steward concerning their license.

Chairman Strelau asked for a recommendation from the Commission concerning the Tivoli request for an amendment to the liquor control ordinance concerning theater activities.

Mr. Johnson stated that staff shared a copy of the draft ordinance and he stated that he had a few comments concerning the draft. He asked whether "movie" could be changed to "event" in the first paragraph and noted that they do offer things in addition to movies. He also asked for changes to Section

3.33, where obscenity is concerned. He stated that they have no control over what Hollywood produces and asked if the draft could be amended to address some R-rated movies. Ms. Kuchynka asked Mr. Johnson if he would be agreeable to let staff amend the provision further to allow for certain activities, while keeping the events appropriate less X-rated movies.

Mr. Jacobson referred to Section 3.33(c)(1). and stated that community standards differ when considering "obscene" things. Chairman Strelau felt that staff could adequately address the issue.

MS. TOERPE RECOMMENDED THAT THE THEATER LICENSE AMENDMENT BE FORWARDED TO THE VILLAGE COUNCIL FOR CONSIDERATION. MR. JACOBSON SECONDED.

VOTE:	Aye:	Ms. Toerpe, Mr. Jacobson, Ms. Flanagan, Mr. Krusenoski, Ms. Pietrucha, Chairman Strelau
	Nay:	None
	Abstain:	None

MOTION CARRIED: 6:0:0

Motion carried.

Ms. Kuchynka excused herself and turned the meeting over to Ms. Didier.

VI. OLD BUSINESS

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

Ms. Didier stated that the Commission received the month end report. She advised that Karma appealed the Mayor's Findings & Order for revocation of the liquor license with the Illinois Liquor Control Commission. Ms. Pietrucha noted that they did not even show up to the hearing to defend themselves.

Chairman Strelau asked what the appeal process is. Ms. Didier stated that the licensee will file a Memorandum of Law as to why they think the Mayor's decision should be overturned. She stated that the appeal is only on the record, so there will be no testimony from either side. Ms. Didier stated that the ILCC will look at the transcript. Ms. Pietrucha asked if they will be allowed to present additional evidence. Ms. Didier replied no. Mr. Jacobson asked if their argument was that they were not allowed due process. Ms. Didier replied no, she stated that they chose not to show up. Mr. Jacobson asked who was the representing attorneys. Ms. Didier replied Siegel, Moses.

VII. COMMENTS FROM THE PUBLIC

There were none.

VIII. ADJOURNMENT

Concluding business for the evening, Chairman Strelau called for a motion to adjourn.

Ms. Toerpe moved to adjourn the December 7, 2017 meeting. The meeting was adjourned by acclimation at 7:37 p.m.