

VILLAGE OF DOWNERS GROVE
Report for the Village
5/15/2018

SUBJECT:	SUBMITTED BY:
An Ordinance Amending the Wine Boutique License Classification	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared amending the Class "W-1" Wine Boutique liquor license classification.

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

N/A

UPDATE & RECOMMENDATION

This item was discussed at the May 8, 2018 Village Council meeting. Staff recommends approval on the May 15, 2018 active agenda.

BACKGROUND

The W-1 Wine Boutique license classification currently allows the on-premise consumption of beer and wine and the off-premise sale of beer and wine where the primary business is the sale of wine. The classification currently also requires that food must be prepared and served on the premises. A draft ordinance has been prepared amending the Class W-1 Wine Boutique to allow the on and off-premise consumption of beer and wine where the primary business is the sale of wine *and/or* beer. The draft ordinance further amends the ordinance by removing the requirement that food be prepared on the premises, and instead only requires that the facility provide food service. This would eliminate the requirement for an establishment to have a kitchen where food is prepared on site, and would allow for the sale of pre-packaged or catered food items to be served for on-site consumption.

The Liquor Commission discussed this matter on April 5, 2018. The Commission members voted 5:1 in favor of the amendment to allow wine and/or beer sales as the primary business, and also recommended the removal of the food service requirement.

ATTACHMENTS

Ordinance
Minutes

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: May 15, 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 THE WINE BOUTIQUE LIQUOR LICENSE CLASSIFICATION", as presented.



SUMMARY OF ITEM:

Adoption of the attached ordinance shall amend the wine boutique liquor license classification.

RECORD OF ACTION TAKEN:

Boutique - B/W

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE WINE BOUTIQUE
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 3.3 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:

* * *

Wine/Beer Boutique. A place kept, used, maintained, advertised or held out to the public as a place where the retail sale of wine and/or beer, tastings and education seminars/classes are conducted on a regular basis and on-site consumption of wine and/or beer is allowed.

* * *

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 "O" On-Premise Consumption, Outdoor Licenses

"O" Outdoor licenses shall authorize the sale and consumption of alcoholic liquor in an enclosed outdoor seating area. This license may only be issued to establishments holding a valid Class B, C, E, P-O, REC, RF, R or ~~WB~~ license and shall be limited to the conditions of the respective license classification issued to the establishment. The main and principal operation of the outdoor area shall be for dining purposes and food must be available in the outdoor dining area at all times and shall be subject to the provisions set forth in Section 3.30. Operation of the outdoor area for a Class C license is limited to private party rentals and shall be subject to the provisions set forth in Section 3.32.

* * *

Class "WB" Wine/Beer Boutique Licenses

~~"WB-1"~~ Wine/Beer Boutique licenses shall authorize the retail sale of ~~beer and wine~~ and/or beer in original packages and for consumption of wine or beer on the premises. Tastings, classes or seminars shall be permitted on such premises in accordance with State law and Village ordinances. Such licenses shall be only authorized in locations where the sale of wine and/or beer is the primary business. The sale of wine and/or beer shall be permitted for consumption on the premises subject to the following conditions:

- a. The premises shall not exceed three thousand six hundred (3,600) square feet.
- b. ~~The seating/serving area for customers ordering wine or beer within the premises shall be limited~~

Boutique - B/W

to forty percent (40%) of the gross retail square footage, but shall not exceed seven hundred fifty (750) square feet.

~~_____ e. Such facilities shall include an area in which preparation of food is provided and food is served~~ provide food service on the premises, including hot or cold sandwiches, appetizers, tapas or other similar foods.

~~_____ d. It is intended that the service of wine or beer is merely an adjunct to the sale of beer and wine in original packages.~~ (Ord. No. 244, § 6; Ord. No. 279, § 1; Ord. No. 356, § 1; Ord. No. 634, § 1; Ord. No. 635, § 1; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1465, § 1; Ord. No. 1741, §§ 15 to 17; Ord. No. 2246, § 1; Ord. No. 2388, § 7; Ord. No. 2541, § 6; Ord. No. 2735, § 1; Ord. No. 2945, § 1; Ord. No. 2996, § 1; Ord. No. 3050, § 1; Ord. No. 3164, § 2.)

Section 3. That Section 3.15. is hereby amended to read as follows:

3.15. Limitation on number of licenses.

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
"AS" (Arts & Crafts Studio)	2
"B-1" (Brew Pub)	1
"BF" (Brewing Facility)	2
"BYO" (Bring Your Own - beer/wine)	4
"C-1" (Club, private)	6
"E" (Entertainment/Restaurant - full)	2
"G" (Golf Course)	1
"H-1" (Hotel)	Unlimited
"K-1" (Catering - full)	4
"K-2" (Catering - Park District - beer/wine)	1
"O" (Outdoor)	Unlimited
"P-1" (Packaged-full)	20
"P-2" (Packaged -beer/wine)	15
"P-O" (Packaged - full off premise and on premise consumption - Grocery Store)	3
"REC-1" (Recreational Facility - full)	3
"REC-2" (Recreational Facility - beer/wine)	3
"R-1" (Restaurant - full)	Unlimited
"R-2" (Restaurant - beer/wine)	Unlimited
"RF" (Retirement Facility - full)	Unlimited
"S-1" (Special Event)	Unlimited
"S-2" (Special Event)	Unlimited
"T" (Theater)	1
" WB-1 " (Wine/ Beer Boutique)	24

(Ord. No. 244, § 4a; Ord. No. 284, § 1; Ord. No. 356, § 2; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1395, § 1; Ord. No. 1465, § 2; Ord. No. 1741, § 21; Ord. No. 2246, § 2; Ord. No. 2541, § 8; Ord. No. 2735, § 1; Ord. No. 2861, § 3; Ord. No. 3050, § 3.)

Section 4. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Boutique - B/W

Section 5. 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

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www.downers.us

April 10, 2018

**COMMUNITY RESPONSE
CENTER**
630.434.CALL (2255)

The Honorable Martin T. Tully
Mayor and Liquor Commissioner

Re: Proposed Ordinance - Arts & Craft Studio Liquor License Creation

CIVIC CENTER
801 Burlington Avenue
Downers Grove
Illinois 60515-4782
630.434.5500
TDD 630.434.5511
FAX 630.434.5571

Dear Mayor Tully:

On Thursday, April 5, 2018 the Liquor Commission considered a draft ordinance concerning an amendment to the Wine Boutique liquor license classification. The following finding was made:

MR. JACOBSON MOVED TO REMOVE ANY FOOD SERVICE REFERENCES IN THE REVISED WINE/BEER BOUTIQUE LICENSE CLASSIFICATION REVISIONS. MR. CLARY SECONDED.

**FIRE DEPARTMENT
ADMINISTRATION**
5420 Main Street
Downers Grove
Illinois 60515-4834
630.434.5980
FAX 630.434.5998

VOTE:

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

MOTION CARRIED: 5:1:0

Motion carried.

POLICE DEPARTMENT
825 Burlington Avenue
Downers Grove
Illinois 60515-4783
630.434.5600
FAX 630.434.5690

MR. JACOBSON MOVED TO FORWARD THE AMENDED WINE/BEER BOUTIQUE AMENDMENT TO THE VILLAGE COUNCIL FOR CONSIDERATION. MR. KRUSENOSKI SECONDED.

VOTE:

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

MOTION CARRIED: 5:1:0

Motion carried.

**PUBLIC WORKS
DEPARTMENT**
5101 Walnut Avenue
Downers Grove
Illinois 60515-4046
630.434.5460
FAX 630.434.5495



www.downers.us

Further discussion of this subject can be found in the April 5, 2018 minutes of the Liquor Commission (attached).

**COMMUNITY RESPONSE
CENTER**

630.434.CALL (2255)

CIVIC CENTER

801 Burlington Avenue
Downers Grove
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630.434.5500
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I:\wp\liquor\code\Wine&Beer Boutique\Liq-Com-Rec

**FIRE DEPARTMENT
ADMINISTRATION**

5420 Main Street
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Illinois 60515-4834
630.434.5980
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POLICE DEPARTMENT

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**PUBLIC WORKS
DEPARTMENT**

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Very truly yours,

Alice Strelau, Chairman
Liquor Commission

VILLAGE OF DOWNERS GROVE

VII. 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 staff prepared a draft ordinance change requested by Erick Schmidt, Orange & Brew, for an amendment to the Class W-I Wine Boutique liquor license classification. She stated the draft ordinance amends the license classification to eliminate a kitchen requirement and the provision that the primary business is the on-site consumption of wine.

Ms. Kuchynka noted that discussion will be limited to the ordinance change and testimony concerning details of his operation should be held for application hearing discussion if the amendment is adopted.

Ms. Kuchynka advised that the Village has a Wine Boutique liquor license which authorizes the sale of beer and wine in original packages and on-site consumption of beer and wine where the sale of wine is the primary business. She stated that the "primary business is the sale of wine" clause will need to be reworded in order to accommodate Mr. Schmidt's request for a craft beer boutique.

Ms. Kuchynka advised that Erick Schmidt was present to discuss his request.

Mr. Erick Schmidt was sworn in by the court reporter. Mr. Schmidt introduced himself as the owner/operator of Orange & Brew.

Mr. Schmidt stated that he is proposing a craft beer concept which will have on-site consumption and packaged craft beer to go. He stated that there are a few of these independent facilities popping up in the area.

Mr. Krusenoski asked if it will serve as a craft beer tasting room. Mr. Schmidt stated that customers will be able to try some of the craft brews before they make a purchase. He would also like to have 10-12 craft beers on tap for on-site consumption.

Mr. Krusenoski asked if the Cellar Door holds this license. Ms. Kuchynka replied yes. She stated that their business is the primary sale of wine. She noted that Cellar 406 holds the same license. She stated that it is limited in that the primary business is the sale of wine. She added that the amendment would be so the primary business is the sale of beer and/or wine.

Chairman Strelau asked how this differs from the license held by Alter. Mr. Schmidt replied that he will not brew any of his own beer. She asked how the license differs from brewing on-site. Ms. Kuchynka replied that on-site brewing is a large component of that operation. She stated that food service is not required, however the brewing facility license limits the number of ounces that can be served to a patron on any given day.

Mr. Krusenoski asked what the difference is from how Cellar Door operates. Ms. Kuchynka stated that the "primary" business is the sale of wine, although beer sales are allowed.

Mr. Schmidt stated that he would offer some wine on the premises, but the primary business would not be the sale of wine.

Mr. Clary asked if the change was primarily semantics. Chairman Strelau stated that there were other strikeouts and did not see where the primary business was the sale of wine. Ms. Didier stated that in the definition and class sections, the license is limited to locations in which the primary sales are wine.

Chairman Strelau stated that the license classification does not need to be reinvented. She also noticed the strikeout and that there will not be food prepared on the premises.

Mr. Schmidt stated that half of the space will be devoted to retail sales. He stated that he plans to have tables for on-site consumption. He stated that they are located across from the commuter lot on Burlington. He stated that they do not want to prepare food or have a kitchen on-site. He stated that he would support selling pre-packaged food and encourage food to be brought in.

Chairman Strelau noted that with the food service component gone, the Village limited the amount someone could consume. Ms. Didier stated that the only classification where the amount of alcohol is limited is in the brewing facility license which has no food service component. Ms. Didier stated that the boutique will require them to have food available, but the food will not have to be *prepared* on the premises.

Mr. Krusenoski stated that Alter has snacks on the premises. Ms. Kuchynka stated that any licensee can have food on the premises, it is just not a requirement in order to sell alcohol.

Chairman Strelau believed that the Village could accommodate his request by amending the class. She wondered if the preparation of food was more important than the availability of it. She asked *what* are they required to have by way of food.

Mr. Clary asked if this was going to resemble a tavern. Mr. Schmidt stated that the typical customer will have 1-2 beers and take craft beer home. He stated that craft beer is a higher gravity and higher alcohol beer. He stated it is a different consumer.

Ms. Pietrucha asked about the number of licenses proposed. Ms. Kuchynka replied that the increase by two would accommodate Mr. Schmidt's request and give the opportunity for another applicant to apply.

Mr. Clary asked if it mattered whether food was prepared on site or brought in and wondered what the difference is. Ms. Kuchynka stated that if food is prepared on the premises, additional Health Department requirements kick in.

Mr. Clary asked why the Liquor Commission would be concerned as to whether food was prepared on site or not. He noted that just because food is prepared there, does not guarantee food is bought there. Ms. Kuchynka added that there is no requirement for any license holder to make a customer order food if they want a drink.

Mr. Clary asked if there were any down sides to putting "beer" in the boutique license classification. Ms. Kuchynka stated that there are strict parameters in place. She noted that the license class is limited in number and that food shall be provided.

Mr. Clary asked if this license class was created for the Cellar Door. Ms. Kuchynka replied yes. She recalled at the time of their application, they had a very small offering of food on the premises. She noted that their menu has grown substantially since. She stated that the small preparation area that they have offers a fair amount of options.

Chairman Strelau asked if this amendment would cause a disadvantage to Alter if their requirements are more onerous than what is being allowed under the revised boutique provisions. She wanted to be fair. Mr. Clary noted that manufacturing on the premises is a majority of Alter's business. Mr. Krusenoski stated that Alter patrons are limited to consuming 48 ounces.

Mr. Jacobson asked if the Commission should move to review the brewing facility license requirements and see if they have any issues with the ounce limitation. Mr. Clary asked staff if they have complained about the limits. Ms. Kuchynka replied mostly on the limits when they have special events, but she noted those special event licenses to not have a limit on the number of drinks allowed.

Chairman Strelau stated that she has heard that they have a more difficult burden. Mr. Clary stated that the licensee should request a change and not necessarily tell them to come and complain. Mr. Krusenoski stated that Mr. Schmidt will be competing with Alter and he will not have a limit on the number of ounces he serves and could be at an advantage.

Mr. Jacobson asked if the change is good and if the Commission should revisit the Alter license. He stated that they should come and address their needs to be fair. Mr. Clary did not believe that the boutique license would give any advantage over Alter or any other license holder.

Chairman Strelau stated that those establishments that have to meet Health Department requirements have a different burden. She stated that has changed how the Commission has considered license amendments. Mr. Clary stated that the Commission should be concerned about the liquor part of the operation. He stated that the Cellar Door, too, then will have an advantage over Alter.

Ms. Kuchynka stated that the requirements of the brewing facility license were taken from other communities which have similar ounce service limitations. She noted that craft beer is distinctly higher alcohol per volume than a regular beer. Mr. Schmidt stated that the alcohol per volume can range from 4.5%-10%. He stated theoretically 16 oz. of 5% alcohol per volume equates to a 10-12 ounce craft beer.

Mr. Clary asked how the serving size is regulated State wide. Ms. Kuchynka stated size limitations are regulated locally.

Chairman Strelau suggested that the Commission review the brewing facility license. Ms. Kuchynka pulled up the Code from the website and addressed the Village's regulations. The group noted the 48 ounce limit. Mr. Krusenoski recalled staff surveying surrounding communities with similar regulations when the ordinance was being drafted. Ms. Kuchynka noted that although the limits are in place, staff is required to be trained to recognize signs of intoxication and expected to cut off service if they believe a customer has been over served. She stated that 48 ounces is a large amount and a component of training would be to know when to cut off a patron if they exhibit signs of intoxication, regardless if they consume that much.

Ms. Kuchynka stated that when the direction moves away from food service, there is a desire to at least have some food available on the premises. She stated that the mere availability of food does not mean that a patron has to order it, which goes for any establishment, including restaurants.

Chairman Strelau thought that Alter had to have some food. Ms. Kuchynka replied no, which was why the ounce limitations were put in place. Mr. Krusenoski recalled Alter being ok with the limitations so long as they did not have to have food on the premises. Mr. Clary noted that food service was no part of their business and that they mentioned partnering with area restaurants and having food trucks supply food.

Mr. Jacobson stated that he made amendments to the draft ordinance that staff provided. He stated that they remove the food requirement and had other changes to clarify the code. He stated that if the

establishment is not going to force food, it becomes a business decision not to offer it. Chairman Strelau felt that this operation is different from the proverbial "watering hole".

Mr. Krusenoski stated that Alter painted themselves as a true tap room and people would not come in and drink all day. He stated that the purpose was to come in and taste the beer, but noted that it has become a quasi-bar by the activities that go on there.

Chairman Strelau stated that the Commission seems to be in agreement with Mr. Jacobson to remove the food requirement and change the boutique definition to include beer.

Mr. Jacobson stated that he made changes to add wine and beer. He stated that he preferred the wording of "wine, beer or the combination thereof" when referring to types of service. He added a provision to include that it is a violation of State and "municipal law" concerning tastings. Chairman Strelau asked if the Village had laws on tastings. Ms. Didier noted that the Village adopts the State law with regard to tastings but has some provisions for classes and seminars. Mr. Jacobson stated that it would not hurt anything to add a provision about the violation of local laws. He felt that a defendant could argue against a violation if adherence to local laws are not mentioned. Chairman Strelau noted that a home rule can adopt stricter codes than the State, but cannot be less restrictive under home rule authority.

Ms. Kuchynka asked the Commission if they were in agreement with the elimination of the food service requirement. She stated that a licensee can choose to provide food, but does not have to in accordance with serving beer or wine in this license category. She noted that this license will be limited in number and noted that there are no limits in the number of restaurant licenses. Ms. Kuchynka stated that beer or wine service would be the primary business of this license class. The Commission concurred.

Ms. Didier asked the Commission if they wanted to eliminate all food service or replace the wording of "shall provide" to "may provide" food service. Chairman Strelau and Mr. Clary agreed that "may provide" would be appropriate. Mr. Jacobson asked what type of food service would they provide. Ms. Kuchynka replied perhaps keeping consistent with existing provisions of tapas, hot/cold sandwiches, etc. Mr. Jacobson stated that tapas is an ethnic food. Ms. Kuchynka noted that they are appetizers. Mr. Jacobson stated why not just leave it out as they can sell t-shirts too and the Village would not regulate that. Ms. Didier asked if they wanted to take out any reference to food completely. Chairman Strelau replied yes, no reference to any specific food.

MR. JACOBSON MOVED TO REMOVE ANY FOOD SERVICE REFERENCES IN THE REVISED WINE/BEER BOUTIQUE LICENSE CLASSIFICATION REVISIONS. MR. CLARY SECONDED.

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

MOTION CARRIED: 5:1:0

Motion carried.

Ms. Kuchynka stated that staff will revise the ordinance based on the Commission's discussion. Ms. Didier stated that another motion is needed to forward the amended draft to the Village Council for consideration.

MR. JACOBSON MOVED TO FORWARD THE AMENDED WINE/BEER BOUTIQUE AMENDMENT TO THE VILLAGE COUNCIL FOR CONSIDERATION. MR. KRUSENOSKI SECONDED.

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

Nay: None

Abstain: None

MOTION CARRIED: 5:1:0

Motion carried.

Ms. Kuchynka hoped to get this on an upcoming Village Council agenda and encouraged Mr. Schmidt to attend the meeting. She stated that the Liquor Commission is a recommending body and could not guarantee that the exact changes proposed would be adopted by the Village Council. Mr. Schmidt thanked the Liquor Commission and appreciated their consideration.

VI. OLD BUSINESS

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

Ms. Kuchynka discussed the month end report. She included a copy of the Findings & Order from Bed Bath and Beyond. She noted that the license for Outback was issued on March 7th. She stated that she provided the Commission with an updated license classification chart.

Ms. Kuchynka advised the Commission that she will begin preparing the annual renewal applications. She advised that they are mailed to licensees in May with a June 8th return deadline.

Ms. Kuchynka stated that she expected to hold a May Liquor Commission meeting.

Mr. Jacobson asked about the status of Cadence Kitchen and Pierce's Tavern. Ms. Kuchynka replied that Cadence is scheduled to open April 19th and she stated that Pierce's Tavern ran into a build-out issue and did not expect them to open until June. She stated that she will be placing their outdoor liquor license application on an upcoming agenda. Ms. Kuchynka advised that Capri has opened for lunch.

VIII. COMMENTS FROM THE PUBLIC

There were none.