

VILLAGE OF DOWNERS GROVE
Report for the Village
2/8/2022

SUBJECT:	SUBMITTED BY:
Updated Outdoor Dining Program	Stan Popovich, AICP Director of Community Development

SYNOPSIS

An Ordinance has been prepared amending the outdoor dining regulations. For the downtown, these modifications include fees for use of public parking spaces, additional cleanliness requirements and additional Downtown Management Corporation involvement.

STRATEGIC PLAN ALIGNMENT

The Village's 2021-2023 Long Range Plan identified *Downtown Outdoor Dining for 2022 and Beyond* as a Priority Action Item.

FISCAL IMPACT

Funding for this project is available in the Capital Projects Fund. Based on similar participation in the program in 2022, expected revenues for the program are \$30,000 if every restaurant participates from the last two years.

RECOMMENDATION

UPDATE & RECOMMENDATION

This item was discussed at the February 1, 2022 Village Council meeting. Staff recommends approval on the February 8, 2022 Active Agenda. Staff has begun work on potential changes to outdoor dining regulations for areas outside of downtown.

BACKGROUND

At the direction of the Village Council, staff worked with the Downtown Management Corporation (DMC) to develop a downtown outdoor dining program for 2022 and beyond. Key components of the 2020 and 2021 temporary emergency outdoor dining programs are proposed to continue while some changes and additional enhancements are proposed as the outdoor dining program evolves from a temporary emergency program into a permanent program. At the December 2, 2021 DMC Board Meeting, the Board discussed key terms of the program and provided input regarding the proposed ordinance.

Proposed Outdoor Dining Program Changes

- Village Code Amendments - Amendments to Sections 3.13, 3.30, 4.104 and 4.106 of the Municipal Code, are proposed, which removes the enclosure requirement around patios on sidewalks, with the requirement that a four foot pedestrian access aisle be maintained on the public sidewalk. For safety reasons, enclosures will still be required around seating within parking spaces.
- Barricade Placement and Fee Program - It is proposed that a fee structure is implemented with a three tier system based on the outdoor dining location, as follows:

Location	Fee
On-Street Outdoor Dining	\$1.60 per square foot of space used + Application Review Fee (\$103 in 2022)
Sidewalk Outdoor Dining	\$1.35 per square foot of space used + Application Review Fee (\$103 in 2022)
Outdoor Dining on Private Property not within the Downtown	Application Review Fee (\$103 in 2022)

Prior to 2020, the Village charged an application fee and a fee for the use of public property on a square footage basis. The proposed sidewalk outdoor dining fee is consistent with past fees. As there are additional expenses related to staff time, the removal of public parking spaces and the costs for barricades with on-street outdoor dining; it is recommended that on-street outdoor dining fee be set higher than the sidewalk outdoor dining fee.

- Downtown Cleanliness - The current ordinance requires daily cleaning of the outdoor cafe. Additional cleanliness requirements will be placed within an updated License Agreement. These cleanliness requirements will include as-needed cleanings of sidewalk and on-street parking spaces by the permit holder or as directed by the Village. Should cleanliness standards not be met, the License Agreement will detail enforcement actions, including permit revocation. The DMC has indicated that it will provide additional support and enforcement is helpful in communicating clear expectations on both public and private property.
- Liquor License - During the emergency outdoor dining program, a Class O (outdoor) liquor license was not required if liquor was going to be provided in the café so long as the establishment had an on-premise liquor license. A Class O liquor license will now be required for any establishment serving alcohol outdoors.

ATTACHMENTS

Ordinance

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: February 8, 2022
(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 OUTDOOR DINING PROVISIONS", as presented.



SUMMARY OF ITEM:

Adoption of the attached ordinance shall amend outdoor dining provisions.

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____

**AN ORDINANCE
AMENDING OUTDOOR DINING PROVISIONS**

BE IT ORDAINED by the Village Council of the Village of Downers Grove in DuPage County, Illinois, as follows: (Additions are indicated by redline/underline; deletions by ~~strikeout~~):

Section 1. That Section 3.13 is hereby amended to read as follows:

Sec 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, BF, BYO, C, H, P-O, REC, RF, R or WB license and shall be limited to the conditions of the respective license classification issued to the establishment. Except for Class BF and Class C, food must be available in the outdoor dining area at all times and shall be subject to the provisions set forth in DGMC 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 DGMC Section 3.32.

* * *

Section 2. That Section 3.30 is hereby amended to read as follows:

Sec 3.30 Outdoor Sales

- (a) Subject to receipt of a Class "O" outdoor license, the sale, service and consumption of alcoholic liquor in an outdoor seating area may be permitted adjacent to premises licensed to sell alcoholic liquor for consumption on the premises; subject to the following conditions:

~~(1) The outdoor area is enclosed; and~~

~~(2)~~(1) The outdoor area is owned or leased by the licensee, or the licensee has entered into a sidewalk cafe license agreement, as provided in Chapter 4 of the Downers Grove Municipal Code, which shall be required for any outdoor seating area conducted wholly or partially upon Village-controlled property; and

~~(3)~~(2) The outdoor area is included as part of the regular food service business located on the licensed premises with the exception of Class "BF" Brew Facility and Class "C" Club licensees that do not provide regular food service; and

~~(4) Access to the outdoor area shall be limited through the licensed premises or, if not practicable, through monitored entrances that are controlled by employees and/or reasonable fencing of the licensed premises during all operating hours and/or while alcoholic liquor is being served; and~~

~~(5)~~(3) Seating in the outdoor area shall not be included in the overall seating calculation or in any way utilized to expand the number of seats that are allowed in the interior bar/lounge area.

- (b) Applications for the establishment of an outdoor seating area, or the amendment of an existing outdoor seating area, shall be filed on such forms and with such information as may be directed by the Local Liquor Commissioner. The Local Liquor Commissioner may refer an outdoor seating area application to the Local Liquor Commission for review and comment.

(Ord. No. 2735, § 1; Ord. No. 2945, § 2.) (Ord. 5808, Amended, 01/14/2020; Ord. 5413, Amended, 11/11/2014; Ord. 5014, Amended, 11/18/2008; Ord. 4768, Amended, 05/02/2006; Ord. 4510, Amended, 05/20/2003; 4438, Amended, 08/06/2002; 4118, Amended, 05/21/2002; 4034, Amended, 05/18/1998; 3881, Amended, 09/09/1996)

Section 3. That Section 4.104 is hereby amended to read as follows:

Sec 4.104 Outdoor Cafe

An outdoor café is permitted as a Temporary Use consecutively between March 15 and November 15 in all businesszoning districts when associated with a restaurant and shall meet all applicable Downers Grove Municipal Code (DGMC) regulations and the following standards:

- (a) ~~The outdoor café area shall be immediately adjacent to the principal restaurant building and shall have direct access via the principal restaurant. The outdoor café area shall maintain at all times a pedestrian access aisle of a minimum of four (4) feet.~~
- (b) The café shall be safely located at least five (5) feet away from any drive aisle, parking space, or point of vehicular access ~~except for outdoor cafés in the DB (Downtown Business) Zoning District, DC (Downtown Core) Zoning District and Fairview Concentrated Business District located on public property, as approved by the Village.~~
- (c) Lighting which is directly related to the operation of the outdoor café shall be directed away from adjacent properties in such a manner and shall not create a public nuisance.
- (d) The outdoor café shall be placed on a hard dustless material, generally asphalt, concrete, or concrete paver.
- (e) The outdoor café shall be cleaned as needed or on a daily basis whichever is more frequent to maintain an orderly fashion and kept free of refuse.
- (f) If the outdoor café is self-service, a trash receptacle shall be provided.
- (g) The applicant shall not be permitted to sell or serve alcoholic liquor at the outdoor café except in conformance with an appropriate liquor license issued pursuant to Chapter 3 of the Downers Grove Municipal Code.
- (h) Outdoor entertainment is allowed subject to the following conditions:
 - (1) Entertainment is not allowed past 10 p.m.
 - (2) Amplification is not allowed.
 - (3) Outdoor entertainment may be shut down earlier if the Police Department receives any complaints.
- (i) Outdoor cafés shall be located entirely on private property, except that outdoor cafés in the DB (Downtown Business) or DC (Downtown Core) Districts and Fairview Concentrated Business District may be located on public property provided that they comply with ~~the above~~all regulations and that they shall be required to enter into an encroachment license agreement with the Village in a form acceptable to the Village Attorney and may be required to pay a fee for the use of public property.

(j) In the DB (Downtown Business) or DC (Downtown Core) Districts outdoor cafés consisting of two (2) or fewer tables and located entirely on private property are exempt from obtaining a Temporary Use permit.

(k) All applications for outdoor cafés in the DB (Downtown Business) Zoning District, DC (Downtown Core) Zoning District and Fairview Concentrated Business District located on public property shall be submitted no later than March 1st annually. The size and location of those cafés located on public property shall be determined by the Village, in consultation and approval by the Downtown Management Corporation, based upon a number of factors, including but not limited to the following:

(1) The restaurant street frontage;

(2) The interior size of the restaurant. In no case shall the number of seats in the outdoor café exceed the number of seats inside the establishment.

(3) The restaurant location relative to other businesses and general pedestrian activity. The applications will be reviewed as a holistic approach to the entire downtown area.

(Ord. 5717, Amended, 10/16/2018; Ord. 5068, Add, 08/04/2009)

Section 4. That Section 4.106 is hereby amended to read as follows:

Sec 4.106 Denial, Revocation Or Suspension Of Permit

No Temporary Use Permit shall be issued or renewed as follows:

- (a) To an applicant providing false or misleading information on the application.
- (b) To an applicant who has been convicted of the following offenses (applicable to any event dealing primarily with children):
 - (1) Any offense involving sexual misconduct with children or other sex offenses as defined in Article 11 of the Criminal Code of 1961, as amended; or
 - (2) A felony based upon conduct or involvement in such business or activity or related or similar business or activity, within the past ten (10) years; or
 - (3) A felony unrelated to conduct or involvement in such business or activity or related or similar business or activity, but which felony involved the use of a deadly weapon, traffic in narcotic drugs, or violence against another person, including rape, within the past five (5) years; or
 - (4) A misdemeanor or licensing ordinance violation, based upon conduct or involvement in such business or activity or related or similar business or activity, within the past two (2) years.
- (c) To an applicant whose license issued under this ordinance has been revoked for cause.
- (d) To an applicant who, at the time of application for renewal of any license issued hereunder, would not be eligible for such license upon a first application.
- (e) To an applicant under the age of eighteen (18) years of age.

- (f) To a partnership, if any general partner thereof, or any limited partner owning more ~~that~~than twenty percent (20%) of the aggregate limited partner interest in such partnership, would not be eligible to receive a license hereunder.
- (g) To a corporation, if any officer or director, or any stockholder or stockholders owning in the aggregate more than twenty percent (20%) of the stock of such corporation, would not be eligible to receive a license hereunder.
- (h) To a corporation unless it is incorporated in Illinois, or unless it is a foreign corporation which is qualified under the "Business Corporation Act of 1983" to transact business in Illinois.
- (i) To an applicant whose place of business is conducted by a manager unless the manager possesses the same qualifications required by the licensee.
- (j) To an applicant who is not a beneficial owner of the business to be operated by the licensee.

Revocation or Suspension of Permit:

- (a) Any permit granted pursuant to the provisions of this Chapter may be subject to revocation or suspension by the Community Development Director (or his/her designee), for failure to comply with this Chapter or any other applicable provisions of the DGMC or any required agreement with the Village. Upon revocation or suspension of the permit, the outdoor café must cease operations and may be required to be removed. If the outdoor café is located on public property, the Village shall have the right to enter the property and remove the outdoor café. The Village shall have the right to file a lien against the property for any costs incurred as a result of the removal.

(Ord. 5068, Add, 08/04/2009)

Section 5. That all ordinances or resolutions or parts of ordinances or resolutions in conflict with the provisions of this ordinance are hereby repealed.

Section 6. 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