

VILLAGE OF DOWNERS GROVE
Report for the Village
3/15/2022

SUBJECT:	SUBMITTED BY:
Outdoor Dining Program Update - Outside of the Downtown	Stan Popovich, AICP Director of Community Development

SYNOPSIS

An Ordinance has been prepared amending the outdoor dining regulations.

STRATEGIC PLAN ALIGNMENT

The 2021-23 Long Range Plan identifies *Downtown Outdoor Dining for 2022 & Beyond* as a Priority Action Item.

FISCAL IMPACT

N/A

RECOMMENDATION**UPDATE & RECOMMENDATION**

This item was discussed at the March 1, 2022 Village Council meeting. Based on the Council discussion, staff modified the draft Ordinance to reflect the following:

- Tents are permitted to be installed and operated in outdoor cafes located on private property.
- Tents are not permitted in outdoor cafes located on public property.

In addition, staff has drafted an Ordinance amending the building code to allow tents associated with outdoor cafes to be operated for a period of 246 days to align with the outdoor cafe operating period of March 15 through November 15. Staff has also received questions about fees, bonds & insurance for outdoor area.

Staff recommends action at the discretion of the Village Council on the April 5, 2022 Active Agenda.

FEES, BONDS & INSURANCE

Fees, Bonds and Insurance for Outdoor Cafes

Fees

Historically fees have been charged for outdoor cafes. Currently, the Village charges the fees noted below which were considered by the Council on February 1, 2022.

2022 Outdoor Cafe Fees

Type	Amount	Notes
Application	\$103.00	Charged for all outdoor cafe permit applications
On-Street	\$1.60 per square foot of space used	Charged only for outdoor cafes located on public streets
Sidewalk	\$1.35 per square foot of space used	Charged only for outdoor cafes located on public sidewalks

Prior to 2020, the Village charged an application fee and charged a fee for the use of public property on a square footage basis. The sidewalk outdoor dining fees are consistent with past fees (adjusted for inflation). Prior to 2020, the Village did not allow outdoor cafes to be located within on-street parking spaces. As there are additional expenses related to staff time, the removal of public parking spaces and recouping the costs for barricades with on-street outdoor dining, the fee is higher for on-street outdoor dining. Fees for outdoor cafes were not charged in 2020 and 2021 during the pandemic.

Fee Comparison, 2019 to 2022

	2022	2021	2020	2019
Application	\$103	No Charge	No Charge	\$95
On-Street	\$1.60 psf	No Charge	No Charge	N/A
Sidewalk	\$1.35 psf	No Charge	No Charge	\$1.22

Bonds

Historically, the Village has required operators of outdoor cafes located on public property to submit a refundable cash bond. The cash bond is required to ensure that the outdoor cafe:

- Is operated in compliance with the cleanliness standards in the Code
- Is maintained in a safe condition and in compliance with the standards of the Code
- Does not result in damage to public property

If the outdoor cafe operator fails to comply with the maintenance or cleanliness standards, the Village has the right to draw funds from the cash bond to clean and maintain the area. Further, funds can be used by the Village to cover the cost of repairing any damage to public property.

Currently the Village requires a cash bond of \$2,500. Prior to 2020, the required cash bond amount ranged from \$1,000 to \$5,000 based on the type and amount of equipment located on public property as well as the type of operation. For example, Angelo's and Pierce Tavern submitted \$1,000 bonds in 2019 while Emmett's submitted a \$5,000 bond.

Examples of Fees and Bonds, 2019 to 2022

	2022	2021	2020	2019
Another Round				
Application Fee	\$103	–	–	\$95
Sidewalk Fee	\$298 (221 sf)	–	–	–
Street Fee	\$506 (316 sf)	–	–	–
Bond	\$2,500	–	–	–
Angelo's				
Application Fee	\$103	–	–	\$95
Sidewalk Fee	\$919 (681 sf)	–	–	\$831 (681 sf)
Street Fee	N/A	–	–	
Bond	\$,2500	–	–	\$1,000
Pierce Tavern				
Application Fee	\$103	–	–	\$95
Sidewalk Fee	\$763 (565 sf)	–	–	\$385 (315 sf)
Street Fee	\$669	–	–	N/A
Bond	\$2,500			\$1,000

Insurance

The Village requires operators of outdoor cafes located on public property to provide insurance in specific amounts, naming the Village as an additional insured. The insurance is required to shift liability to the operators of the outdoor cafes. The table below summarizes the insurance requirements from 2019 to present. The amounts are based on recommendations from the Village's risk management consultant, The Owens Group. The insurance amounts related to liquor liability were changed in 2021 during the pandemic.

Insurance Requirements, 2019 to 2022

Type	2022	2021	2020	2019
Commercial General Liability	\$1 million per occurrence \$2 million aggregate	\$1 million per occurrence \$2 million aggregate	\$1 million per occurrence \$2 million aggregate	\$1 million per occurrence \$2 million aggregate
Liquor Liability	\$1 million	\$2 million	\$1 million	\$1 million
Umbrella Liability with Liquor	\$4 million	\$2 million	\$4 million	\$4 million
Umbrella Liability without Liquor	\$2 million	\$2 million	\$2 million	\$2 million

BACKGROUND

At the February 8, 2022 meeting, the Village Council [approved amendments to the outdoor dining regulations](#) primarily focused on restaurants located in the downtown area. The Council directed staff to explore further amendments to the regulations which would allow outdoor dining for restaurants located in areas outside of the downtown. The proposed amendments would:

- Allow the operation of outdoor cafes at all restaurants between March 15 and November 15 pursuant to the issuance of a Temporary Use permit
- Allow outdoor cafes to be located within or adjacent to privately owned parking lots
- Require that the outdoor cafes be separated from parking areas and drive aisles with a physical barrier to deter vehicles from entering the cafe
- Require that the outdoor cafe shall not displace any parking spaces required to be provided and maintained per the Zoning Ordinance
- Prohibit the use of tents in outdoor cafes throughout the Village.
- Limit the number of seats in the outdoor cafe to the number of seats inside the establishment.
- Exempt the following outdoor cafes located entirely on private property from obtaining a Temporary Use permit.
 - Cafes consisting of two or fewer tables; and
 - Cafes located entirely within a permanent outdoor enclosure that have been previously approved as part of a building permit.

Staff analyzed five restaurants that operated outdoor cafes in 2020 and 2021 to determine the likely feasibility of operating an outdoor cafe pursuant to the proposed regulations. It appears that all five restaurants would be able to operate an outdoor cafe. The table below summarizes the results of the analysis.

Establishment	Location	Total Parking Spaces Provided	Parking Required	Parking Available for Cafe	Estimated Max. Cafe Size
Goldfinger	513 Rogers	61 Spaces	48 Spaces	13 Spaces	2100 s.f.
Honey Jam	3000 Oak Grove	77 Spaces	55 Spaces	22 Spaces	3500 s.f.
Carnivore and the Queen	2241 Maple	153 Spaces	125 Spaces	28 Spaces	4500 s.f.
Baked Apple	1224 Ogden	76 Spaces	57 Spaces	19 Spaces	3000 s.f.
Grand Duke	980 75th	76 Spaces	51 Spaces	25 Spaces	4000 s.f.

ATTACHMENTS

Ordinance

ORDINANCE NO. _____

**AN ORDINANCE AMENDING CERTAIN
INTERNATIONAL BUILDING AND FIRE CODES**

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 7.1102 is hereby amended to read as follows:

Sec 7.1102 International Building Code - Amendments

The deletions from and modifications and amendments to the 2015 International Building Code as referred to in this Article are the following:

* * *

Section 108.1 Temporary Structures and Uses is amended as follows:

108.1 General.

The building official is authorized to issue a permit for temporary structures and temporary uses. Such permits shall be limited as to time of service, but shall not be permitted for more than one hundred eighty (180) days, except in conjunction with the operation of an Outdoor Café provided for in Chapter 4 of the DGMC, in which case it may be permitted for up to two hundred forty-six (246) days. The building official is authorized to grant extensions for demonstrated cause.

* * *

Section 3103.1 Temporary Structures is amended as follows:

3103.1 General.

The provisions of Sections 3103.1 through 3103.4 shall apply to structures erected for a period of less than 180 days. Tents and other membrane structures erected for a period of less than one hundred eighty (180) days, and those erected in accordance with Chapter 4 of the DGMC, up to two hundred forty-six (246) days shall comply with the *International Fire Code*. Those erected for a longer period of time shall comply with applicable sections of this code.

Section 2. That Section 17.45 is hereby amended to read as follows:

Sec 17.45 International Fire Code - Amendments

The deletions from and modifications and amendments to the Fire Prevention Code are as follows: Section 103.2 is amended by deleting the same in its entirety and by substituting in lieu thereof the following:

* * *

Section 3103.5 is amended as follows:

3103.5 Use period.

Temporary tents, air-supported, air-inflated or tensioned membrane structures shall not be erected for a period of more than one hundred eighty (180) days, except in conjunction with the operation of an Outdoor Café provided for in Chapter 4 of the DGMC, in which case it may be permitted for up to two hundred forty-six (246) days within a 12-month period on a single premises.

* * *

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