

VILLAGE OF DOWNERS GROVE
Report for the Village
4/5/2022

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

UPDATE & RECOMMENDATION

This item was discussed at the March 15th, 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.
- Tents with sides are prohibited.

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. Additional information about these topics is included in the report below.

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

FEES, BONDS & INSURANCE

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	\$2,500	–	–	\$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

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: April 5, 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 4.104 is hereby amended to read as follows:

Sec 4.104 Outdoor Café

(a) General

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

- (1) The outdoor café area shall maintain at all times a pedestrian access aisle of a minimum of four (4) feet.
- ~~(4)(2) In no case shall the number of seats in the outdoor café exceed the number of seats inside the establishment.~~
- ~~(2) The café shall be safely located away from any drive aisle, parking space, or point of vehicular access.~~
- (3) 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.
- (4) The outdoor café shall be placed on a hard dustless material, generally asphalt, concrete, or concrete paver.
- (5) 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.
- (6) If the outdoor café is self-service, a trash receptacle shall be provided.
- ~~(7) 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 DGMC.~~
- ~~(8) Temporary tents, air-supported, air-inflated or tensioned membrane structures shall only be constructed, erected, installed or used as part of an outdoor café operating solely on private property. Tent sidewalls, tent side panels or similar are not allowed to be used as part of an outdoor café.~~
- ~~(9) The outdoor café shall be safely separated from any drive aisle, parking space, or point of vehicular access. A physical barrier shall be placed and maintained between the café and drive aisle, parking space or point of vehicular access. The barrier shall prevent or deter vehicles from entering the café and shall be designed, located and maintained in a manner acceptable to the Community Development Director.~~

~~(10)~~ The outdoor café may be located within or adjacent to a parking lot, so long as the café does not displace or occupy parking spaces required to be provided and maintained per Section 28.7.030 of the DGMC.

~~(7)~~(11) Outdoor entertainment is allowed subject to the following conditions:

- a. Entertainment is not allowed past 10 p.m.
- b. Amplification is not allowed.
- c. Outdoor entertainment may be shut down earlier if the Police Department receives any complaints.

(b) Outdoor Café - DB (Downtown Business), DC (Downtown Core) zoning districts and Fairview Concentrated Business District

In addition to the regulations set forth in Section a above, the following additional regulations also apply to outdoor cafés located in DB (Downtown Business), DC (Downtown Core) zoning districts and Fairview Concentrated Business District.

~~(1)~~ The outdoor café shall be safely located away from any drive aisle, parking space, or point of vehicular access.

~~(1)~~(2) ~~Outdoor~~ The outdoor cafés shall may 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 it they complycomplies with all regulations and that they shallthe establishment 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. Temporary tents, air-supported, air-inflated or tensioned membrane structures shall not be constructed, erected, installed or used as part of an outdoor café operating on public property.

~~3.~~ 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.

~~(1)~~(3) ~~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:~~

- a. The restaurant street frontage;
- b. 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.
- c. 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.

(c) Outdoor Café – Exempt from Temporary Use Permit

The following types of outdoor cafés are exempt from requiring a Temporary Use permit. Although a Temporary Use permit may not be required, all other provisions of this ordinance listed above are applicable.

- (1) Outdoor cafés consisting of two (2) or fewer tables and located entirely on private property.
- (2) Outdoor cafés located entirely on private property and within a permanent outdoor enclosure that have been previously approved as part of a building permit.

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

HISTORY

Amended by Ord. [5913 Outdoor Dining/Cafe](#) on 2/8/2022

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