

VILLAGE OF DOWNERS GROVE
Report for the Village
6/2/2020

SUBJECT:	SUBMITTED BY:
An emergency order regarding outdoor dining and other liquor provisions	Enza Petrarca Village Attorney

SYNOPSIS

A motion is requested affirming and authorizing an emergency order regarding outdoor dining and other liquor provisions.

STRATEGIC PLAN ALIGNMENT

The goals for 2019-2021 include *Exceptional Municipal Services*.

FISCAL IMPACT

The COVID-19 pandemic is significantly negatively impacting the national, regional and local economy. Accordingly, many Village revenue sources will be negatively impacted. At the same time, expenses related to the pandemic are projected to increase.

RECOMMENDATION

Approval at the discretion of the Village Council

BACKGROUND

Governor Pritzker's current iteration of the Stay at Home Order and Phase 3 of the Restore Illinois Plan allows restaurants and bars to operate outdoor dining areas. The May 29 Executive Order issued by the Mayor:

- Is effective from May 29, 2020 through the end of Phase 3 in the Restore Illinois Plan
- Allows restaurants and certain other establishments to operate outdoor dining areas adjacent to their establishment, including patios, public and private sidewalks, private parking lots and in portions of public streets.
- Temporarily waives the requirement to obtain a Temporary Use permit to operate an outdoor cafe
- Allows establishments which currently hold a liquor license to sell and serve alcohol in the outdoor dining area without the issuance of a separate outdoor dining liquor license (Class O)
- Allows establishments which currently hold a liquor license for the sale of full alcohol for on-site consumption to sell beer, wine, cocktails or mixed drinks by curbside pick-up or delivery (must be sold in connection with the purchase of food)

Upon Governor Pritzker's announcement on May 21st that restaurants and bars would be allowed to operate outdoor dining areas in Phase 3 of the Restore Illinois Plan, staff established a quick, easy and free process that allows restaurants to operate outdoor dining. Through this process, restaurants can:

- Use portions of their property, including parking spaces and patios for outdoor dining.
- Serve alcohol in designated outdoor dining areas (*Applies to current liquor license holders, only*)
- Begin to operate subject to the established [Rules for Outdoor Dining Areas](#) with only a simple notification to the Village.

As of Friday, May 29, 34 restaurants informed the Village that they will be operating outdoor dining areas. (16 in the downtown area, 18 located outside of the downtown area).

Staff and Downtown Management worked together with downtown restaurants and businesses to create and implement a plan for outdoor dining areas. The plan calls for Downtown restaurants to operate outdoor dining areas in existing outdoor cafes, on public and private sidewalks, in private parking lots and in selected on-street parking spaces. All downtown streets will remain open to allow customers to access all downtown businesses and to allow for safe, efficient vehicle traffic flow. The Village installed barricades to separate on-street parking spaces used for outdoor dining from adjacent parking spaces and drive aisles. A total of 27 on-street parking spaces on Main Street, Mochel Drive and Burlington Avenue are being used for outdoor dining areas. Sixteen downtown restaurants are operating outdoor dining areas.

ATTACHMENTS

Emergency Order regarding Outdoor Dining and Other Liquor Provisions

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney DATE: June 2, 2020
(Name)

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

NATURE OF ACTION:

STEPS NEEDED TO IMPLEMENT ACTION:

- Ordinance
- Resolution
- Motion
- Other

Motion to affirm and approve an emergency order regarding outdoor dining and other liquor provisions.

SUMMARY OF ITEM:

Adoption of this motion will affirm and approve an emergency order regarding outdoor dining and other liquor provisions.

RECORD OF ACTION TAKEN:

**AN EMERGENCY ORDER REGARDING
OUTDOOR DINING AND OTHER LIQUOR PROVISIONS**

WHEREAS, on March 14, 2020, upon the authority of Section 9-16 of the Downers Grove Municipal Code, Robert T. Barnett, Mayor, upon the recommendation of the Village of Downers Grove Office of Emergency Management, proclaimed that a State of Emergency exists in the Village of Downers Grove (the “Village”). On April 7, 2020, the Village Council of the Village of Downers Grove extended the State of Emergency to run concurrently with the Gubernatorial Disaster Proclamation;

WHEREAS, JB Pritzker, Governor of Illinois, declared all counties in the State of Illinois as a disaster area on March 9, 2020 (Gubernatorial Disaster Proclamation) in response to the outbreak of COVID-19;

WHEREAS, the number of suspected COVID-19 cases in Illinois was increasing exponentially and across more locations in Illinois, indicating that drastic social distancing measures are needed, even in communities where confirmed cases have not yet been identified, to reduce the number of people who become sick at any given time and the possibility of exhausting our health care resources;

WHEREAS, on March 20, 2020 Governor Pritzker issued a Stay at Home Order (EO 2020-10 or “Order”) directing all individuals living within the State of Illinois to stay at home or at their place of residence except as allowed by the Order; and ordering all non-essential businesses and operations to cease and the suspension of on-premises consumption of food and beverages in restaurants all in accordance with the Order through April 7, 2020. On March 31, 2020, the Governor extended the Order through April 30, 2020 and again extended on April 30, 2020 and May 29, 2020;

WHEREAS, on May 5, 2020 Governor Pritzker issued the Restore Illinois Plan;

WHEREAS, the Village is an Illinois municipal corporation possessing home rule powers under Section 6 of Article VII of the Illinois Constitution, and the approval of this Emergency Order by the Village Council constitutes an exercise of its home rule powers and functions as granted in the Constitution of the State of Illinois;

WHEREAS, COVID-19 has resulted in significant economic impact, including loss of income and wages, that threaten to undermine housing security and financial stability. More specifically, the stay at home order has had a significant financial impact upon the businesses in Downers Grove that have unable to fully operate during the Stay at Home Order;

WHEREAS, although the suspension of on-premises consumption of food and beverages is temporary, it is unprecedented and has presented a hardship for local establishments in Downers Grove;

WHEREAS, Governor’s Executive Order allows for food and beverages to be sold by delivery, third-party delivery, drive-through, and curbside pick-up to be consumed off-premises;

WHEREAS, on March 17, 2020, Mayor Barnett issued an Executive Order allowing the R1 and R2 liquor licensees the option to sell pre-packaged beer and wine in connection with a food order for off premise consumption (Liquor Sales Executive Order);

WHEREAS, Phase 3 of the Governor's Restore Illinois Plan goes into effect on May 29, 2020, which in part allows food establishments to open outdoor dining facilities with appropriate social distancing and safeguards;

WHEREAS, on May 23, 2020, the State legislature passed HB 2682, enacting Section 6-28.8 of the Illinois Local Control Ordinance, allowing for the retail sale of cocktails or mixed drinks by curbside pick-up or delivery, subject to certain restrictions and regulations.

WHEREAS, as the Local Liquor Commissioner, the Mayor has the authority to adopt rules or regulations related to the retail sale of alcoholic liquor within the corporate boundaries of Downers Grove;

WHEREAS, I find that in the best interest of the Village that restaurants and certain other establishments be allowed to temporarily establish outdoor dining areas adjacent to or near the establishment and to allow those establishments currently hold a valid liquor license to serve alcohol within the outdoor dining area; to allow the current holders of valid liquor licenses the option to sell pre-packaged beer, wine, cocktails or mixed drinks in connection with a food order by curbside pick-up or delivery, all subject to certain restrictions and regulations contained herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Restaurants and certain other establishments shall be allowed to temporarily establish outdoor dining areas adjacent to or near the establishment, including parking areas and existing outdoor cafes. Accordingly, Sections 28.7.030, 28.7.050A, and 28.7.080A of the Downers Grove Municipal Code relating to parking requirements are hereby temporarily suspended for any establishment that expands its outdoor dining area.
2. Establishments that currently hold one of the following valid liquor license classifications, B, BF, BYO, C, G, H, O, REC, RF, R or WB, may also sell alcohol, in accordance with the type of license it holds, in the outdoor dining area, without the issuance of a separate Class O liquor license, provided that, no alcohol served in an open container shall be removed from the outdoor dining area. Accordingly, Section 3.8 "License Required" of the Downers Grove Municipal Code is hereby temporarily suspended.
3. Establishments shall not be required to obtain a temporary use permit for an outdoor café in order to operate an outdoor dining area and Section 4.104 "Outdoor Café" of the Downers Grove Municipal Code is hereby temporarily

suspended. Establishments that desire to establish an outdoor dining area shall notify the Village of its intent to do so.

4. All establishments operating outdoor dining areas must comply with the Village [Rules for Outdoor Dining Areas](#), as well as the [Restore Illinois Plan](#) and all applicable State and County regulations.
5. The Village Manager may, in his sole discretion, order changes to the outdoor dining operation, including but not limited to the immediate cessation of the use, and removal of any or all equipment and facilities in order to protect the public health, safety and welfare of the community.
6. Pursuant to and upon the effective date of HB 2682 enacting Section 6-28.8 of the Illinois Local Control Ordinance, establishments currently holding a valid liquor license authorizing the sale of full alcohol for on-site consumption shall be authorized to sell cocktails or mixed drinks by curbside pick-up or delivery in accordance with all regulations established in Section 6-28.8 of the Illinois Local Control Ordinance and Chapter 3 of the Downers Grove Municipal Code. (235 ILCS 5/6-28.8). All sales of cocktails or mixed drinks for off-premise consumption must be made in connection with a food order.
7. The Liquor Sales Executive Order issued by Mayor Barnett on March 17, 2020, allowing the sale pre-packaged beer and wine in connection with a food order for off premise consumption is hereby extended.
8. Any violation of this Emergency Order, the Liquor Sales Executive Order, dated March 17, 2020, or any other provisions of the Village's Liquor Code or Illinois Liquor Control Act except as provided in this Emergency Order shall be subject to fine and/or suspension or revocation of the liquor license.
9. This Emergency Order, the Liquor Sales Executive Order, dated March 17, 2020, and all rules, regulations, authorizations and approvals regarding outdoor dining, sales of pre-packaged beer and wine, and sales of cocktails and pre-mixed drinks shall terminate upon the expiration of Phase 3 of the Restore Illinois Plan, unless further extended. Notwithstanding the foregoing, the Mayor or Village Council of the Village of Downers Grove, in his/their sole discretion, shall have the authority to amend or terminate this Emergency Order at any time.

Effective Date: May 29, 2020



Robert T. Barnett, Mayor