

VILLAGE OF DOWNERS GROVE
Report for the Village
6/1/2021

SUBJECT:	SUBMITTED BY:
Liquor Provisions	Enza Petrarca Village Attorney

SYNOPSIS

An ordinance has been prepared which would allow certain liquor license holders to provide pick-up service for beer, wine or mixed cocktails in accordance with the type of license they hold and set forth restrictions on the delivery of alcoholic liquor.

STRATEGIC PLAN ALIGNMENT

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

FISCAL IMPACT

N/A

RECOMMENDATION

Approval on the June 8, 2021 active agenda.

BACKGROUND

In 2020, as part of COVID relief efforts, the Illinois legislature passed amendments to the Illinois Liquor Control Act which allowed the sale of mixed drinks or cocktails by all Illinois retail liquor license holders. Prior to that, only sales of alcohol for off-premise consumption were allowed if they were sold in their original containers. The State law allowing the sale of mixed drinks or cocktails sunsets on June 2, 2021, but there is currently a Senate Bill pending to allow this activity through January 1, 2024. The Senate Bill is expected to pass and become law in the coming weeks.

The Village restricts certain license holders to on-premise consumption only. However, in March 2020, as part of COVID relief efforts, the Village also issued an executive order to allow restaurants the option to sell pre-packaged beer and wine with a food purchase for off-premise consumption. The proposed amendment to Chapter 3 would allow Class B (brew pub/restaurant), BF (brew facility), all restaurant classifications (R-1, R-2 and R-3), and WB (wine boutique) the ability to sell beer and wine (and mixed drinks if their license classification allows) for pick-up service with a food purchase on a permanent basis. The amendment is more restrictive than the State law as it limits the type of license classification that can provide this service and requires the sale of food, as opposed to the State law which allows any retail license holder to offer mixed drinks “to-go”.

The proposed ordinance would allow the sale for off-premises consumption of pre-packaged beer and wine, and Mixed Drinks (any beverage obtained by combining ingredients alcoholic in nature, whether brewed,

fermented, or distilled, with ingredients non-alcoholic in nature, such as fruit juice, lemonade, cream, or a carbonated beverage) placed in a sealed container at the licensee's location, only if the following requirements are met:

- (a) Only in conjunction with a food purchase;
- (b) Only for pick-up at the licensee's location;
- (c) Sold by an employee of the licensee who is twenty-one (21) years of age or older;
- (d) Placed in the trunk of the vehicle, or if there is no trunk, in the vehicles' rear compartment that is not readily accessible to the passenger area;
- (e) For a Mixed Drink, the sealed container shall be affixed with a label or tag that contains the following information:
 - (1) the mixed drink ingredients, type, and name of the alcohol;
 - (2) the name, license number, and address of the retail licensee that filled the original container and sold the product;
 - (3) the volume of the mixed drink in the sealed container; and
 - (4) the sealed container was filled less than seven (7) days before the date of sale.

Section 3.33.4 which sets forth restrictions on the delivery of alcohol is also being amended to clarify which types of license holders can provide delivery service. These include Class B, BF, P-1, P-2, R-3 and WB.

ATTACHMENTS

Ordinance

ORDINANCE NO. _____

**AN ORDINANCE AMENDING PROVISIONS OF CHAPTER 3
REGARDING DELIVERY SERVICE AND ESTABLISHING
“PICK-UP” LIQUOR SALES PROVISIONS
FOR CERTAIN LICENSE CLASSIFICATIONS**

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 existed in the Village. On April 7, 2020, the Village Council of the Village of Downers Grove (“the Village”) extended the State of Emergency to run concurrently with the Gubernatorial Disaster Proclamation; and

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 which was re-issued on May 29, 2020, June 26, 2020, July 24, 2020, August 21, 2020, September 18, 2020, October 16, 2020, November 13, 2020, December 11, 2020, January 8, 2021, February 5, 2021, March 5, 2021, and April 2 and 30, 2021; and

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); and

WHEREAS, on June 2, 2020, the State enacted Section 6-28.8 of the Illinois Liquor Control Act (“the Act”), allowing for the retail sale of cocktails or mixed drinks by curbside pick-up or delivery, subject to certain restrictions and regulations, which had a repeal date of June 2, 2021 (235 ILCS 5/6-28.8); and

WHEREAS, the state of Illinois currently has a bill pending (SB 104) which extends the repeal date of Section 6-28.8 of the Act to January 1, 2024, and the Village wishes to implement its own restrictions and regulations relating to pick-up and delivery of alcoholic liquor; and

WHEREAS, the Village is a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois and as such may legislate as to matters which pertain to its local government affairs; and

WHEREAS, the Village Council has the authority to adopt ordinances and to promulgate rules and regulations that pertain to its government and affairs and protect the public health, safety and welfare of its citizens; and

WHEREAS, the Village Council believes it is in the best interests of this Village to adopt reasonable regulations to continue to allow the retail sale of certain alcoholic liquor with certain restrictions only by Class B, R-1, R-2, R-3, and WB liquor license holders. .

NOW, THEREFORE, 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 "B" Brew Pub/Restaurant Licenses

"B-1" Brew pub/restaurant licenses shall authorize the retail sale of alcoholic liquor and beer produced on the premises for on-site consumption and the retail sale of beer in original packages, unopened only, produced on the licensed premises for off-premise consumption. Such licenses may provide delivery service pursuant to Section 3.33.4 and "pick-up" services pursuant to Section 3.33.6 herein.

Class "BF" Brewing Facility Licenses

"BF" licenses shall authorize the on-premise consumption and retail sale of craft beer for consumption off the licensed premises where the premises is that of a brewing facility as defined herein. Such licenses may provide delivery service pursuant to Section 3.33.4 and "pick-up" service pursuant to Section 3.33.6 herein. The following provisions shall apply:

Product sampling shall be permitted in accordance with State law at no charge,

On-premise consumption shall be limited to the retail portion of the licensed premises except during supervised tours and private events. The retail portion shall not exceed three thousand (3,000) square feet.

Patrons under the age of twenty-one (21) shall be allowed on the premises when accompanied by an individual twenty-one (21) years of age or older, however, classes and seminars shall be limited to patrons twenty-one (21) years of age or older.

* * *

Class "P" Off-Premise Consumption Licenses

"P-1" Packaged liquor licenses shall authorize the retail sale on the premises specified of alcoholic liquor in packages with the seals unbroken, only, and not for consumption on the premises, except that tastings shall be permitted on such premises in accordance with State law. Such licenses may provide delivery service pursuant to Section 3.33.4 herein. Such licenses shall be only authorized in locations where the sale of packaged liquor is the primary business and/or in locations where the primary business is that of a grocery store or convenience store as defined herein.

"P-2" Packaged liquor licenses shall authorize the retail sale on the premises specified of beer and wine in original packages, unopened only, and not for consumption on the premises, except that tastings shall be permitted on such premises in accordance with State law. Such licenses may provide delivery service pursuant to Section 3.33.4 herein. Such licenses shall be only authorized in locations where the primary business is that of a grocery store, wine shop or convenience store as defined herein.

* * *

Class "R" Restaurant, On Premise Consumption, Indoor Licenses

"R-1" Restaurant licenses shall authorize the sale of alcoholic liquor for consumption on the licensed premises and the retail sale of beer, wine and mixed drinks for consumption off the licensed premises pursuant to 3.33.6 herein, where the primary business is that of a restaurant, as defined herein.

"R-2" Restaurant licenses shall authorize the retail sale of beer and wine for consumption on the licensed premises and the retail sale of beer and wine for consumption off the licensed premises pursuant to Section 3.33.6 herein, where the primary business is that of a restaurant, as defined herein.

"R-3" Restaurant licenses shall authorize the sale of alcoholic liquor for consumption on the licensed premises and the retail sale of alcoholic liquor for consumption on or off the licensed premises, where the primary business is that of a restaurant, as defined herein, provided that bar/lounge seating shall be no more than twenty percent (20%) of the total seating provided for patrons of the establishment. Such licenses may provide delivery service pursuant to Section 3.33.4 and pick-up service pursuant to Section 3.33.6 herein.

* * *

Class "WB" Wine/Beer Boutique Licenses

"WB" Wine/Beer Boutique licenses shall authorize the retail sale of wine and/or beer in original packages with the option for delivery service pursuant to Section 3.33.4 herein and for consumption 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:

1. The premises shall not exceed three thousand six hundred (3,600) square feet.
2. Such facilities shall provide food service on the premises, including hot or cold sandwiches, appetizers or other similar foods.

* * *

Section 2. That Section 3.33.4 is hereby amended to read as follows:

Sec 3.33.4 Delivery Service

Beer, wine or Alcoholic liquor delivered to any address located within the Village of Downers Grove which does not hold a valid liquor license is subject to the following restrictions:

1. ~~Alcoholic liquor must be delivered~~ Delivery must be made by an individual at least twenty-one (21) years of age or older.
2. Deliveries must be during prescribed hours as set forth in DGMC Section 3.31(a).
3. The express company, common carrier or contract carrier or agent of a liquor license holder that carries or transports alcoholic liquor into or within the Village shall not deliver or leave such deliveries without requiring a signature of an individual twenty-one (21) years of age or older.
4. Adequate evidence for proof of age should be produced to the delivery agent in all instances of delivery.
5. A record shall be kept by the express company, common carrier or contract carrier or agent of a liquor license holder who delivers alcoholic liquor into or within the Village indicating the purchaser's name, address, driver's license/state identification number, time, date and place of delivery and the individual deliver's identity.

Only Class B, BF, R-3, P-1, P-2 and WB liquor license holders may deliver beer, wine or alcoholic liquor in accordance with the type of license they hold.

(Ord. 5413, Amended, 11/11/2014; 4204, Enacted, 07/18/2000)

Section 3. That Section 3.33.6 is hereby added to read as follows:

Sec 3.33.6 "Pick-Up" Sales

Only Class B, R-1, R-2, R-3, and WB liquor license holders may provide "Pick-Up" Sales in accordance with the type of license they hold, and subject to the following restrictions:

1. For purposes of this Section, the following definitions apply:
 - (a) "Mixed Drink" means any beverage obtained by combining ingredients alcoholic in nature, whether brewed, fermented, or distilled, with ingredients non-alcoholic in nature, such as fruit juice, lemonade, cream, or a carbonated beverage.

- (b) "Original container" means a container that is filled, sealed, and secured by a retail licensee's employee at the retail licensee's location with a tamper-evident lid or cap.
- (a)(c) "Sealed container" means a rigid container that contains a mixed drink, is new, has never been used, has a secured lid or cap designed to prevent consumption without removal of the lid or cap, and is tamper-evident.
- (b)(d) "Sealed container" does not include a container with a lid with sipping holes or openings for straws or a container made of plastic, paper, or polystyrene foam. (d) "Tamper-evident" means a lid or cap that has been sealed with tamper-evident covers, including, but not limited to, wax dip or heat shrink wrap.
- (e) "To Go" means the sale of alcoholic liquor for off-premises consumption via pick-up only by the purchaser at the licensee's location.

2. Pre-packaged beer and wine, and Mixed Drinks placed in a sealed container at the licensee's location, may be transferred and sold for off-premises consumption only if the following requirements are met:

- (a) Only in conjunction with a food purchase;
- (b) Only for pick-up at the licensee's location;
- (c) Sold by an employee of the licensee who is twenty-one (21) years of age or older;
- (d) Placed in the trunk of the vehicle, or if there is no trunk, in the vehicles' rear compartment that is not readily accessible to the passenger area;
- (e) For a Mixed Drink, the sealed container shall be affixed with a label or tag that contains the following information: (1) the mixed drink ingredients, type, and name of the alcohol; (2) the name, license number, and address of the retail licensee that filled the original container and sold the product; (3) the volume of the mixed drink in the sealed container; and (4) the sealed container was filled less than seven (7) days before the date of sale.

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

Section 5. That this ordinance shall go into effect on the same date when Illinois Senate Bill 104 becomes effective as law.

Mayor

Passed:

Published:

Attest: _____

Village Clerk