

**DOWNERS Grove LIQUOR COMMISSION
VILLAGE HALL COUNCIL CHAMBERS
801 BURLINGTON AVENUE**

November 2, 2000

I. CALL TO ORDER

Mr. Mochel called the meeting to order at 7:32 p.m.

II. ROLL CALL

PRESENT: Ms. Gerloff, Mr. Julian, Mr. Mochel, Chairman Brown (arrived 7:45 p.m.)

ABSENT: Mr. Keenley

STAFF: Village Attorney Daniel Blondin, Liaison to the Liquor Commission Carol Conforti, Secretary Karen Mudra

III. APPOINTMENT OF CHAIRMAN PRO TEM

In the absence of Chairman Brown, Mr. Mochel asked for a motion to appoint a Chairman Pro Tem for this evening's meeting

MR. JULIAN MOVED TO APPOINT MR. MOCHEL TO ACT AS CHAIRMAN PRO TEM FOR THE NOVEMBER 2, 2000 MEETING OF THE LIQUOR COMMISSION. MS. GERLOFF SECONDED.

VOTE: **Aye:** Mr. Julian, Ms. Gerloff, Mr. Mochel

Nay: None

Abstain: None

MOTION CARRIED: 3:0:0

IV. APPROVAL OF MINUTES

MR. JULIAN MOVED TO APPROVE THE MINUTES OF THE OCTOBER 5, 2000 LIQUOR COMMISSION MEETING AS PRESENTED. MS. GERLOFF SECONDED.

VOTE: **Aye:** Mr. Julian, Ms. Gerloff

Nay: None

Abstain: Chairman Pro Tem Mochel

MOTION CARRIED: 2:0:1

Mr. Mochel said he abstained from voting on the minutes because he was not present at the October 5th meeting. Village Attorney Blondin clarified that it is permissible for a member to vote on approval of the minutes even if they were not present at the meeting. He added that it has been a matter of practice for members to abstain in those cases; however, there is no requirement to do so.

Ms. Conforti said that Chairman Brown had noted one correction to the minutes. He asked that the second sentence, in the 9th paragraph on page 4, be corrected to read, "Chairman Brown said the license is contingent upon receipt of satisfactory background checks, Certificate of Occupancy and certificate of dram shop insurance." The Commission agreed and the correction was made.

V. OLD BUSINESS

Chairman Pro Tem Mochel said the Commission would continue its review of the Liquor Ordinance and its discussion of package alcohol licenses. He asked if the Commission members had any comments.

Mr. Julian asked if the only difference between the draft packaged alcohol ordinance before the Commission tonight and the one presented at the October meeting was a change in language. Ms. Conforti replied yes. She noted that at last month's meeting the Commission expressed concern over the use of the words "drugs and sundries". After discussing the matter with Assistant Village Attorney Petrarca, the language stating the requirements for a packaged alcohol license was changed to read, "...where the retail sale of food, health/beauty aids and cleaning products is the main or principal business." Ms. Conforti said the language was changed to make the requirements more specific. The revised language is also similar to language contained in a previous ordinance. Mr. Julian clarified that the requirements were made more specific to prevent video stores and similar establishments from obtaining a liquor license.

Ms. Gerloff noted that in Section 3-13(a)(2) the last phrase of the last sentence should be shaded to indicate that it is part of the new language being added to the ordinance. Ms. Conforti agreed.

Mr. Mochel asked Village Attorney Blondin if he felt this ordinance would be upheld in court if it was challenged. Mr. Blondin said he feels that the ordinance is clear and there should be no problem sustaining it in any challenge, provided there is a reasonable interpretation. Mr. Mochel said he is concerned that the first establishment that is denied a packaged liquor license would

challenge it. Village Attorney Blondin said he did not believe that a cigarette store would have any basis to challenge the decision and if they did, he did not feel they would be successful.

Ms. Conforti said she visited Maple Cigarettes located at Maple and Belmont and found that they do sell a limited supply of health and beauty aids, soft drinks, and cleaning products. She said they might qualify for this license; however, they would be required to supply sales figures, which would document their main or principal business. Mr. Mochel said if the intent of this ordinance change is to keep video stores, cigarette stores, etc. from obtaining a packaged alcohol license and, if the cigarette store might still qualify under the new ordinance, perhaps the requirements should be made even more stringent. Mr. Blondin said if the cigarette store applied for a license they would be required to demonstrate that their main or principal business is the sale of food, health and beauty aids and cleaning products. He said he did not feel that they would be able to do so. Mr. Blondin pointed out that the Liquor Commission can determine the type and amount of information required of each applicant. However, he cautioned them that they must be consistent and require the same information from each applicant.

Ms. Conforti said currently there are no Class "B-2" licenses available. She asked if the Commission wished to discuss creating more Class "B-2" licenses at this time. Mr. Julian noted that the cigarette store is currently on a waiting list for the next available Class "B-2" license.

Ms. Conforti said yes. However, she pointed out that if this amendment to the Liquor Ordinance is approved, future applicants of the Class "B-2" licenses will have to meet the requirements of the revised ordinance. Mr. Mochel agreed. Ms. Conforti said the cigarette store will remain on the waiting list for a Class "B-2" license until December 31, 2000 and shall be notified of the new Class "B-2" requirements. After December 31st they must submit another written request to remain on the waiting list.

Village Attorney Blondin noted that establishments have no right to continuation of current regulations. The Village has the right to change the Liquor Control Ordinance and require licensees to comply with new regulations.

Mr. Julian said it is not the Commission's intention to prohibit appropriate establishments from selling alcohol. He noted that this ordinance revision is to safeguard the Commission's ability to determine which establishments are appropriate. Village Attorney Blondin said he feels that this ordinance will discourage establishments that are not true grocery or liquor stores from applying for a packaged liquor license.

Ms. Gerloff said she feels the revision to this ordinance was badly needed to establish guidelines to determine who is authorized to have a Class "B-2" license. She said she feels that video stores, trading card shops and cigarette stores should not be selling alcohol in Downers Grove. Ms. Gerloff added that she is pleased with the change and hopes that the Village Council will be also.

Chairman Pro Tem Mochel asked for a recommendation from the Commission concerning submittal of the October 6, 2000 revised draft of the ordinance amending packaged alcohol licenses to the Village Council.

MR. JULIAN MOVED TO FORWARD A POSITIVE RECOMMENDATION TO THE VILLAGE COUNCIL CONCERNING THE AMENDED PACKAGED ALCOHOL LICENSE ORDINANCE AS PRESENTED AT THIS MEETING. MS. GERLOFF SECONDED.

VOTE: **Aye:** Mr. Julian, Ms. Gerloff, Chairman Pro Tem Mochel

Nay: None

Abstain: None

MOTION CARRIED: 3:0:0

VI. NEW BUSINESS

Chairman Pro Tem Mochel asked Ms. Conforti to present the new business for discussion. Ms. Conforti said the Mayor had asked for the Commission's opinion concerning a request from the Illinois Retail Merchants Association. The Association requested permission to begin liquor sales prior to noon on Sunday, December 24th (Christmas Eve) and Sunday, December 31st (New Year's Eve) for the convenience of customers.

Ms. Conforti said that under the Ordinance the Liquor Commissioner has the discretion to allow licensees to operate up to three hours before or after applicable opening and/or closing times. Because this is the first request that Mayor Krajewski has received as Mayor and Liquor Commissioner, he has asked for the Commission's opinion on this request.

Ms. Conforti said that in the past, Mayor Cheever had authorized extended hours on Christmas Eve and/or New Year's Eve on a case-by-case basis. Many restaurants would request to stay open an hour later on New Year's Eve. Ms. Conforti added that the permission for an extra hour of alcohol service was contingent upon the establishment also serving food during that time. She explained that licensees are required to submit a letter to the Mayor requesting extended hours and decisions are made on a case-by-case basis. Ms. Conforti said there might be a few more requests for extended hours this year because Christmas Eve and New Year's Eve fall on Sundays.

Ms. Gerloff noted that the Merchants Association is requesting permission to sell alcohol before noon on Sundays, not for an extension of hours. Ms. Conforti agreed. Ms. Gerloff also noted that the letter seems to refer to package alcohol sales, rather restaurants. She said she feels that individuals should

take the ban on liquor sales before noon on Sundays into consideration when planning their shopping. Ms. Gerloff said she is against such a general waiving of restrictions on Sunday liquor sale hours. She added that if a waiver or extension is desired, each individual licensee should submit a request in writing and each request should be considered on a case-by-case basis.

Mr. Julian disagreed with Ms. Gerloff. He said he does not see the harm in waiving the Sunday sales restrictions for Christmas Eve and New Year's Eve. Mr. Julian said those days can be hectic, and he does not see a problem in waiving the restrictions.

Ms. Gerloff pointed out that the Retail Merchants Association is not requesting an extension of hours after normal closing times. Their request is to allow liquor sales before noon on Sunday on Christmas Eve and New Year's Eve. Mr. Julian said the Commission could recommend the days they wish to have extended hours.

Ms. Conforti said that the Ordinance allows licensees up to two extensions of hours per year. Licensees are required to submit their request in writing and each request is approved or denied on a case-by-case basis. Ms. Conforti said she forwards all written requests for extended hours to the Mayor for consideration. She then notifies the Police Department which licensees are allowed extended hours. Ms. Conforti said the Ordinance permits extensions of up to three hours before or after applicable sale hours. In this case, the Retail Association seems to be requesting an across the board waiver of hours which is prior to the normal opening hours on Sunday.

Chairman Brown pointed out that this letter is from an association, not a licensee. He said we do not know if any of our licensees are interested in participating. Ms. Conforti agreed; however, she added that the Mayor wanted the Commission to discuss the extension of hours in general in addition to this request. Mr. Mochel added that in September, Mayor Krajewski learned that other mayors in the area had received requests for extensions of the alcohol sales hours during the holidays.

Ms. Conforti said she in the past she received a request from a licensee that wanted to serve alcohol prior to noon for a Sunday brunch. She advised the licensee that they needed to submit the request in writing to the Mayor for his consideration, but these were typically granted for holidays.

Ms. Gerloff said she did not feel an overall waiver of Sunday sales restrictions was necessary. She said she feels that each interested licensee should submit a written request for extended hours to the Mayor in accordance with the ordinance and that each request should be decided on a case-by-case basis.

Ms. Conforti explained that this discussion is to obtain the Commission's general opinion on the idea of waiving the Sunday sales restrictions for Christmas Eve and New Year's Eve if additional requests are received and did not feel it was appropriate to consider granting a blanket waiver of Sunday sales restrictions to all licensees. She added that pursuant to the Ordinance, each licensee is required to submit a request and such request would be considered on a case-by-case basis.

Ms. Gerloff said the Ordinance states exactly what a licensee must do to request an extension of hours and she feels that if they wish to extend their hours they should follow the requirements in the Ordinance. She said that Mr. Vite of the Illinois Retail Merchants Association must not be familiar with our

Ordinance. Ms. Conforti and Chairman Brown said that the Association's letter was probably sent to all villages and towns in the County.

Ms. Conforti said the Mayor also wanted the Commission's opinion on the current permitted maximum three-hour extension. Under the current ordinance the earliest a licensee could serve alcohol is 9:00 a.m. Mr. Mochel asked what would happen if a licensee requested a three hour extension after closing hours and wanted to remain open until 5:00 a.m. on New Year's Eve. Ms. Conforti said the situation could be evaluated when the Mayor reviews each request on a case-by-case basis.

Mr. Julian said he feels this request concerns liquor stores and grocery stores that sell packaged alcohol, rather than restaurants. He said the spirit of the request from Retail Association seems to stem from their wish to accommodate customers who want to do all their shopping early in the day on New Year's Eve and/or Christmas Eve. Chairman Brown agreed. He added that he did not feel the current ordinance needed to be changed. He said he felt that any licensee who wanted to extend their hours could submit a written request to the Mayor.

Mr. Mochel said he would recommend that the Mayor deny any requests from packaged liquor stores to sell alcohol before noon on Sunday on Christmas Eve and/or New Year's Eve. However, he would not object to the Mayor approving requests from restaurants to serve alcohol with brunch, etc. prior to noon on those days. He added that he does not feel there is any reason for a packaged alcohol store to sell liquor before noon on Sunday. Mr. Mochel said he feels individuals could plan ahead and purchase liquor on the Saturday or at another time prior to Christmas Eve or New Year's Eve morning. Ms. Gerloff said that was her point also. Mr. Mochel said he was in agreement with her.

Mr. Julian said he did not agree with Ms. Gerloff and Mr. Mochel.

Ms. Conforti said that in the past Mayor Cheever had denied certain requests to waive the Sunday restrictions. She recalled that Mayor Cheever denied a request from a packaged alcohol licensee that wished to sell alcohol before noon on Superbowl Sunday.

Ms. Gerloff said she feels there is ample time to plan ahead and purchase alcohol before Sunday morning on Christmas Eve and New Year's Eve. Chairman Brown agreed and said he felt the ordinance should remain as it is and any requests received should be dealt with on a case-by-case basis.

Ms. Conforti asked if the Commission would be against granting requests for alcohol sales before noon on a Sunday. Chairman Brown said he would not be in favor of granting that request. Mr. Julian said he would not object.

Chairman Pro Tem Mochel asked if the Commission wanted to make a recommendation to the Mayor concerning requests for alcohol sales before noon on Sundays.

Ms. Gerloff said she would recommend that a generalized waiver of Sunday alcohol sales restrictions be denied and any waivers or extension be considered on a case-by-case basis. Mr. Julian asked if Ms. Gerloff would be opposed to any request for alcohol sales before noon on Sunday. She said she is against a generalized extension of Sunday liquor sale hours; however, if there is a hardship or a brunch scheduled, she felt a written request for extended hours should be submitted to the Mayor and the requests should be evaluated on a case-by-case basis.

Chairman Brown said he feels the focus of the Retail Association's request was packaged alcohol sales rather than restaurant sales. Mr. Julian agreed. Chairman Brown said he is against the sale of packaged liquor before noon on Sundays. Ms. Gerloff said she is also against it.

MS. GERLOFF MOVED TO RECOMMEND THAT THE VILLAGE MAINTAIN THE CURRENT SUNDAY SALES RESTRICTIONS FOR THE SALE OF PACKAGED ALCOHOL AND NOT OFFER THE OPTION FOR EARLIER SALES OF PACKAGED ALCOHOL ON SUNDAYS. CHAIRMAN BROWN SECONDED.

Mr. Mochel added that he would recommend that any request to sell packaged alcohol before noon on Sundays be denied. Chairman Brown agreed and asked for clarification of the motion on the floor. He asked if the motion applied to all alcohol sales before noon on Sundays or if it applied only to the sale of packaged alcohol before noon on Sundays. Ms. Gerloff said that her motion is to maintain the current Sunday liquor sale hours as provided in the ordinance for alcohol sales including packaged alcohol.

Chairman Brown said he did not recall ever having a request to extend the hours for packaged alcohol sales hours. Ms. Conforti said there was a request to do so for Superbowl Sunday and Mayor Cheever denied it. Chairman Brown said that because the letter from the Retail Association concerns the sale of packaged alcohol he would like to see a motion targeted to respond to their request. Chairman Brown said he feels that there are some appropriate opportunities for earlier alcohol sales i.e. restaurant brunches, etc. Ms. Conforti pointed out that the Ordinance allows the Mayor the discretion to decide which requests for early sales will be granted and which will be denied. She added that at this time the Mayor wanted to know the Commission's general feeling on the request from the Retail Association. Mr. Julian agreed and pointed out that currently there is no request to amend the Ordinance.

Chairman Pro Tem Mochel asked Village Attorney Blondin if a specific recommendation concerning packaged alcohol sales would be considered discriminatory. Mr. Blondin suggested that the Commission deal with the current issue, which is a response to the Illinois Retail Merchants Association's letter requesting earlier hours on Christmas Eve and New Year's Eve. He suggested that the Commission make a recommendation that the request of the Illinois Retail Merchants Association not be honored and that any other request be processed as provided under the Ordinance on a case-by-case basis. Chairman Pro Tem Mochel asked Ms. Gerloff if she would be willing to amend her motion to simply recommend that this request from the Illinois Retail Merchants Association be denied. She and Chairman Brown agreed to amend their motion.

Chairman Pro Tem Mochel called for a vote on the amended motion.

VOTE:

Aye:	Ms. Gerloff, Chairman Brown, Chairman Pro Tem Mochel
Nay:	Mr. Julian
Abstain:	None

MOTION CARRIED: 3:1:0

Mr. Mochel added that he would not like to see the Mayor grant any request for the sale of packaged alcohol prior to noon on Sunday, even if a written request was received and it was considered on a case-by-case basis. However, he added that he would not object to requests from restaurants to serve alcohol with brunch prior to noon on Sunday on Christmas Eve or New Year's Eve if considered on a case-by-case basis. Ms. Conforti noted that licensees are only allowed to extend their alcohol sales hours two calendar days per year.

Chairman Pro Tem Mochel asked if there was any further business.

Ms. Conforti said that the Tivoli Bowl received a DUI notification. Mr. Johnson, owner the Tivoli Bowl, responded to the notification by discussing the incident with his employees and requesting more information from the Village. Ms. Conforti distributed a draft letter in response to Mr. Johnson's letter.

Ms. Gerloff said she did not feel Ms. Conforti's letter would satisfy Mr. Johnson. Ms. Gerloff said she feels Mr. Johnson was looking for assistance in addressing this matter because he did not seem to feel that the individual was over-served at his establishment. Mr. Mochel said he feels Ms. Conforti's response explains that the DUI notification is not an indictment against Mr. Johnson. Ms. Gerloff agreed that Ms. Conforti's letter states the policy on DUI's; however, she did not feel it answered Mr. Johnson's questions.

Ms. Conforti explained that the DUI Notification Program was enacted as a courtesy to licensees. She said it would be difficult to revoke a liquor license because of DUI's because police officers have a difficult time obtaining information from individuals arrested for driving under the influence.

Mr. Julian commended Mr. Johnson for paying attention to the DUI notification, for discussing it with his employees and for responding to the Village. He said, as far as he knows, Mr. Johnson is the first licensee to respond in this manner to a DUI notification. He said he feels Ms. Conforti's response is appropriate in that it explains the DUI Notification Program.

Mr. Mochel commended Ms. Conforti for expressing appreciation that Mr. Johnson discussed this matter with his employees. He said that such discussion is the basic intent of the notification letter. It presents an excellent for opportunity for owners and managers to remind their employees to watch for

over-service.

Ms. Conforti said that Mr. Johnson also talked to Sergeant Gunn and learned more about the incident.

Mr. Julian asked Ms. Conforti to add a line to her letter stating that the Liquor Commission also appreciated Mr. Johnson's response to the incident. Ms. Gerloff said she was impressed with Mr. Johnson's concern and his intention to follow-up on the incident.

Village Attorney Blondin said that when the DUI Notification Program was adopted, it was acknowledged that the Village may not be able to prove where an individual was over-served prior to a DUI arrest. He explained that the notification program was intended to be persuasive rather than coercive in requiring compliance.

Ms. Gerloff noted that Mr. Johnson's letter shows his pride and concern in his establishment. Mr. Mochel said, after reading Mr. Johnson's letter, he thought that perhaps Mr. Johnson was concerned that proceedings might be brought against him and he wanted to be prepared. Mr. Blondin said the only proceedings the Village has ever initiated because of DUI notifications is to occasionally call a licensee with a number of DUI's attributed to them before the Liquor Commission at the time of their license renewal. However, Mr. Blondin admitted that even in those cases the Village did not have sufficient basis to revoke their license.

Ms. Conforti added that Oliver's had a DUI notification hearing after they had received a number of DUI notifications within one year. She added that the DUI Notification Program is intended as a courtesy. Mr. Julian said he sees the notification program as more than a courtesy, he feels it implies that the establishment should look into a potential problem. Ms. Conforti said the program also alerts the Village to establishments that may be having a problem training their employees in proper alcohol service and in recognizing signs of intoxication. When she sees an establishment with a number of DUI's it may indicate that employees are missing signs of intoxication and that they need more training. Sergeant Gunn and Ms. Conforti have gone to different establishments and given DUI presentations to employees. Ms. Conforti said the DUI Notification Program is intended to identify establishments with potential problems and to help prevent them if possible.

Mr. Julian thanked Ms. Gerloff for supplying the Commission with articles of interest. Ms. Gerloff suggested that the Commissioners take the time to read the article from The Wall Street Journal concerning alcohol consumption in colleges.

Ms. Conforti said the next meeting is tentatively scheduled for December 7, 2000.

VII. COMMENTS FROM PUBLIC

None.

VIII. ADJOURNMENT

The meeting was adjourned acclimation at 8:13 p.m.