

COUNCIL WORKSHOP ITEM

ITEM: AN ORDINANCE AMENDING THE FINE PROVISIONS OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE
DATE: February 19, 2001
PREPARED BY: Carol Conforti, Liaison to the Liquor Commission
PURPOSE: Place Item on Active Agenda for Approval by Ordinance

DISCUSSION:

At their meeting of February 1, 2001, the Downers Grove Liquor Commission unanimously recommended adoption of an ordinance which amends fine provisions of the Municipal Code as they relate to violations of the Liquor Control Ordinance.

In July of 2000, the Village adopted fine provisions which mirrored State Statute to allow municipalities to fine a licensee up to \$1,000 per violation of the Liquor Control Ordinance in addition to, or in lieu of issuing a suspension. Effective January 1, 2001, the State has since raised such fine provisions by taking into consideration if and when a violation occurs numerous times within a 12-month period. It is proposed that the Municipal Code be amended to keep in line with the change in State Statute. This will allow the Liquor Commissioner to charge the following progressive fine amounts: \$1,000 for a first violation within a 12-month period; \$1,500 for a second violation within a 12-month period; and \$2,500 for a third violation within a 12-month period.

The proposed ordinance also allows the Liquor Commissioner to assess a charge of up to \$1,000 to cover administrative costs associated with a disciplinary hearing (which is in addition to any other fine or suspension) if a licensee is found guilty of violating *any* provision of the Liquor Control Ordinance. At one time, the ordinance specifically allowed the Village to charge licensees if they had failed liquor control buys wherein undercover minors attempt to purchase alcohol from licensed establishments. Once found guilty by the Liquor Commissioner, \$525.00 was charged to cover the costs associated with conducting the hearing, such as attorney's fees, court reporting fees, police officer attendance, re-testing the establishment, etc. Under the revised ordinance, the Liquor Commissioner will have the ability to charge guilty parties up to \$1,000 to cover the costs of any disciplinary hearing. This gives the Liquor Commissioner discretion in assessing costs on a case-by-case basis when a licensee violates any provision of the ordinance and does not limit charging those costs only to those who only fail control buys. The "not to exceed \$1,000" figure will allow staff to determine what costs, if any, should be assessed to a licensee. A breakdown of the costs will be determined depending upon the amount of staff time, attorney's fees, investigation fees, etc. devoted to prosecuting a violation. The Liquor Commissioner will receive a staff breakdown of the charges which shall be determined on a case-by-case basis. The licensee will then be issued the Liquor Commissioner's Findings and Order setting forth the violation as well as the date(s) and time(s) of suspension(s) and/or fine amount(s) plus administrative costs, if any.

With these proposed changes, the Liquor Commissioner will have greater flexibility in charging those who violate provisions of the Liquor Control Ordinance by way of suspension and/or fine while covering administrative costs.

ATTACHMENTS:

AN ORDINANCE AMENDING THE FINE PROVISIONS OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE

FEBRUARY 2, 2001 LIQUOR COMMISSION MINUTES & RECOMMENDATION

RECOMMENDATION:

Please place ordinance on a future Council workshop agenda.

Approved By Village Manager

cc: Dan Blondin, Village Attorney
Jerry Sprecher, Deputy Village Manager
Downers Grove Liquor Commission
Downers Grove Chamber of Commerce

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ORDINANCE NO. _____

AN ORDINANCE AMENDING THE FINE PROVISIONS OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE

BE IT ORDAINED by the Council of the Village of Downers Grove, in DuPage County, Illinois, as follows: (Additions are indicated by shading; deletions by ~~strikeout~~.)

SECTION 1. That Section 3-40 of the Downers Grove Municipal Code is hereby amended as follows:

3-40. Revocation or suspension of local license—Notice; hearing.

(a) The local Liquor Commissioner may revoke or suspend any license issued if the Commissioner determines that the licensee has violated any of the provisions of this Chapter or any state law pertaining to the sale of alcohol. In addition to or in lieu of suspension, the Commissioner may levy a fine on the licensee for such violations. The fine imposed shall not exceed **one thousand dollars (\$1,000.00) for each a first violation within a 12-month period, one thousand five hundred dollars (\$1,500.00) for a second violation within a 12-month period, and two thousand five hundred (\$2,500.00) for a third or subsequent violation within a 12-month period,** provided there shall be no maximum fine over the term of the license. Each day on which a violation continues shall constitute a separate violation. However, no such license shall be so revoked or suspended, and no fine shall be imposed, except after a public hearing by the Commissioner with at least three days' prior written notice, to the licensee, as provided in Section 3-41, affording the licensee an opportunity to appear and defend. If the licensee fails to appear for such public hearing after receiving notice as provided in Section 3-41, a default judgment may be entered and the Commissioner may revoke or suspend the license, and/or impose a fine.

(b) If the Commissioner has reason to believe that any continued operation of a particular licensed premises will immediately threaten the welfare of the community, the Commissioner may, upon the issuance of a written order stating the reason for such conclusion, and without notice or hearing, order the licensed premises closed for not more than seven days, giving the licensee an opportunity to be heard during that period. Provided, if such licensee shall also be engaged in the conduct of another business on the licensed premises, such order shall not be applicable to such other business.

(c) In determining the appropriate penalty for violating any of the provisions of this Chapter or any State law pertaining to the sale of alcohol, the Commissioner may consider such matters and information as the Commissioner deems are relevant including, but not limited to, the nature and circumstances surrounding the violation, the past record of the licensee and the penalties previously imposed by the Commissioner for similar violations. The past record shall include the record of the current licensee as well as the record of any other existing or prior licensee where there is, or was, not less than forty percent (40%) common identity between the owners of the current licensee and the owners of such other licensee. Such common identity shall be establish where persons holding an ownership interest of not less than 40% of the licensee under consideration also hold or held an ownership interest of not less than 40% of another existing or prior licensee. Where the licensee under consideration, or such other prior or existing licensee, is a business entity such as a corporation or partnership, the ownership interest includes the equity holdings of the stockholder or partner.

The consideration of the past record of such other or prior licensee shall only include that time period when such common identity is found.

(d) The Commissioner shall, as promptly as practicable and in any event within thirty days after such hearing, if the Commissioner determines after such hearing that the license should be revoked or suspended, and/or a fine should be imposed, state the reasons for such determination in a written order of revocation or suspension, and/or a fine should be imposed and shall serve a copy of such order upon the licensee.

(e) Any licensee found guilty by the Downers Grove Liquor Commissioner for violating any provision of this Chapter, in addition to any other penalty which may be imposed, shall be assessed and required to pay to the Village an amount to cover administrative costs associated with the hearing, including, but not limited to, attorney's fees, investigation fees and court reporting fees. The Liquor Commissioner shall designate the amount of costs in his Findings and Order. Provided, such costs shall not exceed one thousand dollars (\$1,000.00) (Ord. No. 1741, § 27; Ord. No. 2388, § 13; Ord. No. 2450, § 4; Ord. No. 2541, § 11; Ord. No. 2735, § 1.)

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

[lq-fine]



Village of
DOWNERS GROVE
ILLINOIS

Civic Center
801 Burlington Avenue
Downers Grove
Illinois 60515-4776
630.434.5500
TDD 630.434.5511
FAX 630.434.5571

CBD Redevelopment Office
1015 Curtiss Street
Downers Grove
Illinois 60515
630.434.5940
FAX 630.968.6346

*Fire Department
Administration*
3900 Highland Avenue
Downers Grove
Illinois 60515-1506
630.434.5980
FAX 630.434.5988

Police Department
825 Burlington Avenue
Downers Grove
Illinois 60515-4783
630.434.5600
FAX 630.434.5690

Public Works Department
5101 Walnut Avenue
Downers Grove
Illinois 60515-4074
630.434.5460
FAX 630.434.5495

*Department of
Social & Health Services*
842 Curtiss Street
Downers Grove
Illinois 60515-4761
630.434.5595
FAX 630.434.5599

*Village of
Downers Grove Web site*
<http://www.vil.downers-grove.il.us>

Info Line
630.434.6800

February 21, 2001

The Honorable Brian J. Krajewski
Mayor and Liquor Commissioner

&

Members of the Downers Grove Village Council

Re: Proposed Ordinance - Liquor Violation Fine Increase

On February 1, 2001 the Liquor Commission considered an ordinance which amends fines issued to licensees in violation of the Liquor Control Ordinance. The following finding was made:

MR. MOCHEL MOVED TO FORWARD A RECOMMENDATION TO THE VILLAGE COUNCIL IN SUPPORT OF A DRAFT ORDINANCE AMENDING THE FINE PROVISIONS OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE AS PRESENTED. MS. GERLOFF SECONDED.

VOTE:

Aye: Mr. Mochel, Ms. Gerloff, Mr. Keenley, Chairman Brown

Nay: None

MOTION CARRIED: 5:0

Further discussion of this subject can be found on Pages 7 through 9 of the February 1, 2001 minutes of the Liquor Commission (attached).

Very truly yours,

Wallace Brown, Chairman
Liquor Commission

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sporting events. Mr. Mochel said he felt that would encourage people to sit and drink while they watched sports on TV. He said that makes it seem more like a sports bar. Mr. Brown pointed out that Champs has television sets and serves restaurant food. He said there will be a television in the bar and added that they would be careful not overserve customers.

Chairman Brown advised Mr. Brown and Mr. Dominow that the Village has a DUI notification program. Every time a DUI is attributed to an establishment the Village sends a letter notifying the owners. If an establishment has a large number of notifications in a year, the owners are asked to appear before the Commission. Mr. Brown said they will instruct their servers to watch for signs of intoxication and suggest food or coffee to counteract the affects of alcohol. Mr. Dominow said they plan to offer free taxi cab service for anyone who appears intoxicated.

Mr. Brown and Mr. Dominow said they hope they can provide a new and different restaurant for Downers Grove.

Chairman Brown asked for a motion.

MR. KEENLEY MOVED TO FIND THE PINT HOUSE, 2009 OGDEN AVENUE, QUALIFIED FOR A CLASS "R" LIQUOR LICENSE. MS. GERLOFF SECONDED.

Aye: Mr. Keenley, Ms. Gerloff, Mr. Julian, Mr. Mochel, Chairman Brown

Nay: None

Abstain: None

Motion carried: 5:0:0

V. OLD BUSINESS

Ms. Conforti reviewed a draft ordinance amending the fine provisions of the Liquor Control Ordinance. She said the amendment to Section 3-40(a) of the Ordinance gives the Village the authority to issue a fine of up to \$1,000 for the first violation within a 12-month period, up to \$1,500 for the second violation within a 12-month period and up to \$2,500 for the third violation within a 12-month period. Ms. Conforti explained that these amounts would be strictly fines for violating the ordinance. She pointed out that the amendment to Section 3-40(e), regarding administrative fees, would permit the Village to charge a maximum fee of \$1,000 to cover administrative hearing costs. She added that the administrative fees would be assessed on a case-by-case basis.

Ms. Gerloff asked, once the amendments have been adopted, would it be appropriate to state a motion as follows: "I move to recommend a license suspension and a fine not to exceed \$1,000,

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plus payment of any administrative costs associated with the hearing.” Ms. Petrarca replied yes.

Mr. Mochel asked if the administrative costs had to be verifiable. Ms. Petrarca said the costs have to be within reason.

Mr. Mochel noted that the fine for an establishment’s first violation within a 12-month period is limited to \$1,000. Ms. Petrarca replied yes. Ms. Conforti pointed out that the Commission could also recommend a license suspension in addition to a fine.

Mr. Julian asked for a breakdown of the cost for the administrative fee. Ms. Petrarca said they do not plan an itemized breakdown of the fee because there are different costs associated with different types of hearings. Without a breakdown, the fee can be tailored to the type of hearing involved. Mr. Julian asked if any type of hearing fee schedule should be added before this draft ordinance goes to the Village Council. Ms. Petrarca replied no. She said the current language gives the Village the discretion to assess each fee on a case-by-case basis.

Ms. Gerloff noted that the proposed ordinance would give the Village the option to suspend an establishment’s liquor license and/or impose a fine and require them to pay a fee covering administrative hearing costs.

Mr. Julian said he would like the Council and the public to understand that the Village is first recovering the cost of the hearing, and any fine assessed would be in addition to that. He said he did not want it to appear that the Commission was being punitive or negative. Mr. Mochel said he felt it might be a good idea if they were perceived as punitive because it might make licensees more careful when selling alcohol. Mr. Julian said he agreed that the ordinance should have “some teeth in it” and he feels the proposed amendment will accomplish that. However, he wanted to define that the Village has a hearing fee and a fine beyond that. Mr. Mochel said he does not want the hearing fee to be so structured that it is restrictive.

Mr. Julian said he would like to take a gentle approach when presenting this ordinance to the Council and the public. He said he felt it should be explained that in addition to the hearing fees that are already being assessed, the ordinance would now goes one step further and allows for the possibility of a fine as well. He wanted the public to understand that the Commission is being firm, but also to explain that previously any money charged was to cover administrative costs and there was no actual fine.

Chairman Brown called for a motion in support of the draft ordinance.

MR. MOCHEL MOVED TO FORWARD A RECOMMENDATION TO THE VILLAGE COUNCIL IN SUPPORT OF A DRAFT ORDINANCE AMENDING THE FINE PROVISIONS OF THE DOWNERS GROVE LIQUOR CONTROL ORDINANCE. MS. GERLOFF SECONDED.

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Aye: Mr. Mochel, Ms. Gerloff, Mr. Julian, Mr. Keenley, Chairman Brown

Nay:- - None

Abstain: None

Motion carried: 5:0:0

Ms. Gerloff said she would like to discuss the packaged alcohol license amendment. Last September when the Commission reviewed the amendment she expressed concern that there were no Class "B-2" Liquor Licenses available. At that time Chairman Brown said it would not be a problem because licenses could be created and approved by the Village Council on a case-by-case basis. However, she noted that this ordinance was submitted in October 2000 and still has not been approved by the Village Council. Ms. Gerloff wondered how long it would take to create licenses requested on a case-by-case basis. She felt a lengthy approval process would discourage businesses from locating in Downers Grove. Ms. Gerloff said she feels the Commission should work on increasing the number of Class "B-2" licenses so that there will be one available if requested.

Ms. Petrarca said it is very unusual for any item to take six months to be brought before the Village Council. She explained that the packaged alcohol ordinance took longer than usual because after it was workshopped by Council, they requested that the Chamber of Commerce review it. The Chamber's review took several months. She added that the process was also delayed by the Christmas holidays and crowded meeting agendas in January. Ms. Petrarca said usually an item is workshopped one week and goes to the Village Council the next week.

Ms. Gerloff said she no longer feels that creating licenses is a matter of formality. It appears that circumstances can intervene to delay the process. She said businesses requiring a Class "B-2" license may not be willing to make a substantial investment to locate in Downers Grove without some guarantee that a license is available.

Chairman Brown said approval of this amendment is not quite the same as the Liquor Commissioner authorizing creation of another liquor license. He explained that if an establishment is reviewed and found qualified for a Class "B-2" license, the Village Council could pass an ordinance to add another liquor license. However, if an establishment is reviewed and found "not qualified" for an existing license, the applicant has a greater ability to appeal the decision. Mr. Mochel added that the Village has less latitude to deny a license application if a license is available. He said once the guidelines have been approved, it should take about two months, not six, to get Village Council approval to create a new license.

Mr. Julian asked what the current procedure is when an appropriate business inquires about the availability of a Class "B-2" license. Ms. Conforti said that at this time she tells prospective applicants that there are no licenses available and they will be put on a waiting list. Mr. Julian