

COUNCIL WORKSHOP ITEM

ITEM: An Ordinance Amending Outdoor Liquor Sales Provisions
DATE: June 18, 2002
PREPARED BY: Carol Conforti, Liaison to the Liquor Commission
PURPOSE: To adopt an ordinance amending provisions of the Liquor Control Ordinance concerning outdoor sales

DISCUSSION:

Section 3-30 of the Liquor Control Ordinance governs liquor sales for outdoor areas. In addition, Section 19-49 governs sidewalk cafés and their operation on public property. Alcohol sales are allowed in Sidewalk cafes if the establishment holds a valid liquor license and is found qualified by the Local Liquor Commissioner to serve liquor outdoors. Sidewalk Café licensees are also subject to additional conditions and regulations set forth in a Sidewalk Café License Agreement which is approved by the Village Council on a case-by-case basis. Recently, it has come staff's attention that certain provisions of Section 3-30 of the Liquor Control Ordinance can potentially create an unduly burdensome requirement. Specifically, Section 3-30(4) requires that access to the outdoor area is through the licensed premises, and no direct entrance to or exit from such area is available other than emergency exits.

As it may be difficult, if not impossible, for a licensee to construct an access door to a front café area, staff is recommending the proposed amendment. This amendment would ease restrictions for licensees that request the ability to have direct ingress/egress to an outdoor dining area that is adjacent to or located in the rear of an establishment. As a method of control, means of ingress/egress to the sidewalk café can be set forth in the license agreement on a case-by-case basis. In the case of general outdoor sales, the Downers Grove Liquor Commission shall review applications and plans and make a recommendation to the Local Liquor Commissioner setting forth guidelines for approval of outdoor liquor sales.

To date, one Sidewalk Café License has been issued which allows liquor sales for Founders Hill Brewing Company. Founders Hill does not meet the requirements of Section 3-30, as the entrance and/or exit to the café is not through the licensed establishment.

At their meeting of June 6, 2002, the Downers Grove Liquor Commission addressed this matter. After considerable discussion, the group voted 3:2 in favor of an amendment to Section 3-30 which would add some flexibility to the ordinance for direct access to outdoor seating areas.

For your information, I have attached a summary of outdoor sales regulations for surrounding communities.

ATTACHMENT:

JUNE 6, 2002 LIQUOR COMMISSION MINUTES (RE: OUTDOOR SALES DISCUSISON)

Surrounding Community Outdoor Sales Regulations

AN ORDINANCE AMENDING OUTDOOR LIQUOR SALES

RECOMMENDATION:

It is requested that the Village Council consider this matter at their Workshop meeting of June 25, 2002.

cc: Downers Grove Liquor Commission
Enza Petrarca, Acting Village Attorney

from the Commission.

MR. SANDACK MOVED TO FIND LAMEX CORPORATION D/B/A LAMEX FINE MEXICAN CUISINE, 500 W. 75TH STREET, QUALIFIED FOR A CLASS "R" LIQUOR LICENSE. MR. KUBES SECONDED.

VOTE: **Aye:** Mr. Sandack, Mr. Kubes, Ms. Gerloff, Ms. Summers, Chairman Mochel

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0


Chairman Mochel wished Mr. Carlos good luck.

VII. OLD BUSINESS

None

VIII. NEW BUSINESS

Ms. Conforti reviewed the contents of the informational packet sent to Commission members prior to this meeting. She included the most current copy of the Liquor Ordinance. Ms. Conforti said it is liquor license renewal time and all current licenses will expire on June 30, 2002. She said license renewal requests are due June 14, 2002 and licenses for 2002/2003 will be renewed on July 1st.

 Ms. Conforti called the Commission's attention to information in their packet concerning an outdoor seating area for Isabella/Bambaleo. She reminded the Commission that a few years ago management had come before the Liquor Commission to request an outdoor seating area for these same restaurants that were known as Pizza Capri and Vivaldi at that time. The Liquor Commissioner granted their request; however, they delayed opening the outdoor seating area because of street construction on Curtiss. The management of Isabella/Bambaleo would now like to open the outdoor seating area with a few proposed changes to their originally approved application.

However, Ms. Conforti said that the proposed changes do not comply with the terms of the current Liquor Ordinance, which states that access to an outdoor seating area must be through the licensed premises. She said the revised floor plan presented to the Liquor Commissioner, shows that there will be direct access to the outdoor seating area from Curtiss, instead of through the licensed premises on Main Street. The Liquor Commissioner asked Ms. Conforti to bring this matter to the Liquor Commission for their discussion and comments. Ms. Conforti said the

Liquor Commissioner would like to know if the Commission members would be in favor of amending the Ordinance to permit direct access to an outdoor seating area.

Ms. Gerloff said she felt strongly that the Ordinance should not be amended. She said although she was not a member of the Liquor Commission at the time, she was in the audience during the application hearing for the outdoor seating area for Pizza Capri/Vivaldi. She recalled that the original plans were very impressive and met the requirements of the Ordinance and that the Liquor Commission approved their application for outdoor seating. However, she added that they never opened the outdoor seating area.

Ms. Gerloff noted that Isabella/Bambaleo has changed the original plans. She said she does not like the new plans at all. Ms. Gerloff said the original plan called for wrought iron gates on Curtiss Street that could be opened in case of emergency and to accommodate emergency equipment if necessary. However, in compliance with the Ordinance, all non-emergency access to the outdoor seating area was through the licensed premises.

Ms. Gerloff said she does not like the idea of accessing the area via a hostess station on Curtiss Street, because she thought it likely that there would be times when the hostess would be away from her station escorting guests to their tables, etc. She said she does not like the new plan because when the hostess is away from her station, access to the area will be open and there will be no way to control who enters or leaves the location. In addition she does not like the new plan because it does not comply with the Ordinance. Ms. Gerloff said she believes that the existing Ordinance was written with great thought and she does not see any reason to amend it.

Ms. Summers said she agrees with Ms. Gerloff. She said she views an unfenced outdoor seating area as a security nightmare. She said a fence would protect the patrons from having their possessions snatched and would protect the restaurant from having customers leave the premises without paying their bill. Ms. Summers said she found the new floor plan inadequate because it did not provide the total number of seats in the area. Ms. Summers said she would not be in favor of amending the Ordinance.

Chairman Mochel said he felt that the Village would be setting an unwanted precedent if it changed the Ordinance. He pointed out that other establishments have complied with the Ordinance and provided a secure outdoor seating area with access through the licensed premises as required. Chairman Mochel said he would not be in favor of changing the Ordinance at this time. He added that even if it were possible he would not be in favor of permitting an exception to the Ordinance to accommodate this new outdoor seating plan.

Mr. Kubes asked about access to the outdoor seating area at Founders Hill. Ms. Conforti said there is no self-seating in the outdoor dining area, patrons enter the restaurant and are seated in the outdoor seating area by a hostess who is stationed inside the restaurant. Chairman Mochel pointed out there is nothing to prevent individuals from entering the outdoor seating area at Founders Hill directly from the street without going through the restaurant. Ms. Conforti said the Founders Hill outdoor seating policy states that patrons are to go to the hostess station inside the

restaurant and wait to be seated in the outdoor seating area by the hostess per operation plans submitted with their sidewalk café license agreement. Ms. Petrarca asked what would prevent an individual from walking in directly from Main Street and taking a seat in the Founders Hill outdoor seating area. Ms. Conforti said nothing would prevent such a scenario from occurring; however, it would be a violation of the Founders Hill policy. Mr. Kubes noted that if a member of the waitstaff noticed an individual who was not seating by the hostess, they would instruct them to check in with the hostess. Ms. Petrarca said she does not see any significant difference between the outdoor seating area at Founders Hill and the proposed outdoor seating area at Isabella/Bambaleo.

Ms. Gerloff noted that when Founders Hill originally submitted their application for outdoor seating, it included seating on Grove Street and on Main Street. Access to the outdoor seating area was through the restaurant and it was very controlled. Ms. Petrarca pointed out that with the current outdoor seating area there is direct access from the street. Ms. Gerloff agreed.

Ms. Gerloff noted that the revised plan for the current Founders Hill outdoor seating area was never submitted to the Liquor Commission for review. She said that although their original application for outdoor seating was approved two years ago, it was never put into effect. This year a revised plan was submitted to and approved by the Mayor.

Ms. Petrarca said she did not believe the current Founders Hill outdoor seating area was in compliance with the Ordinance. Ms. Gerloff agreed.

Mr. Sandack said he would not be in favor of amending the Ordinance unless there was a reason to do so. Mr. Sandack noted that the revised floor plan for the outdoor seating area at Isabella/Bambaleo does not appear to differ greatly from the floor plan submitted with their original outdoor seating application. The only difference is that instead of enclosing the area with wrought iron fencing, the area will be enclosed with planters. Chairman Mochel agreed. However, he said in the original plan the only access to the outdoor seating area was through the licensed premises. The wrought iron gates were only to be used as an emergency exit or as access for deliveries or emergency vehicles.

In defense of Founders Hill, Chairman Mochel noted that there are windows overlooking the outdoor seating area, which may provide some visual control of the area. However, there is no visual access from Isabella/Bambaleo to the outdoor seating area, which is located in the alley behind the restaurant. Mr. Sandack said he feels it would be easier for an individual to enter the Founders Hill outdoor seating area undetected, than for someone to enter the outdoor seating at Isabella/Bambaleo's. Chairman Mochel disagreed. He said that he thought it would be easier for individuals to walk into Isabella/Bambaleo's outdoor seating area, which is located in an alley surrounded by brick walls, than it would be to enter the Founders Hill outdoor seating area on Main Street, which is directly in front of their windows. Ms. Petrarca reminded the Commission that Isabella/Bambaleo plans to have a separate hostess on duty and stationed in the outdoor seating area.

Mr. Kubes asked why Isabella/Bambaleo was requesting access from Curtiss Street instead of having patrons enter through the restaurant on Main Street. Ms. Petrarca said she did not believe that management wanted to tell patrons who came to the Curtiss Street outdoor seating area that they would have to walk around the corner to the restaurant on Main Street in order to access the outdoor seating. Ms. Petrarca said management felt that by denying direct access from Curtiss to the outdoor seating area they would risk losing the traffic on Curtiss Street.

Mr. Kubes noted that the proposed outdoor seating area would seat 40 to 50 guests.

Mr. Kubes asked how many months the outdoor seating area would be open. Ms. Conforti said that would be governed by a temporary use permit for outdoor sales, for which Isabella/Bambaleo has applied. Ms. Petrarca said that the temporary use ordinance is in the process of being amended; however she said she thought permits would be issued on a seasonal basis and that Isabella/Bambaleo's temporary use permit would be for the summer months, May through October.

Mr. Kubes asked if direct access to the outdoor seating area from Curtiss Street would be permitted if there is a hostess on duty during the hours that it is open. Ms. Gerloff and Chairman Mochel said even with a hostess on duty, unless the area is enclosed and access is only permitted through the licensed premises, it would not be in compliance with the ordinance.

Chairman Mochel expressed concern that if the Village changes the Ordinance or permits an exception to the provisions for the outdoor seating area at Isabella/Bambaleo, other establishments with outdoor seating may request similar treatment.

Ms. Gerloff recalled that at the time Founders Hill presented their original application for outdoor seating there was a great deal of discussion about the height of the fence enclosing the proposed seating area on Grove Street and about how the fence would prevent alcohol from being passing out of the dining area. However, Ms. Gerloff said the low fence enclosing the Founders Hill outdoor seating area on Main Street does not even remotely resemble the fencing described at the original application hearing. Chairman Mochel agreed.

Concerning the request from Isabella/Bambaleo for outdoor seating, Mr. Sandack said he did not know if the ordinance should be changed, but he would like to find a way to accommodate this type of use. He said it appears that requiring entrance to the outdoor seating area through the licensed premises will not work at this location. Ms. Conforti suggested that the ordinance could be amended to state that no direct access to an outdoor seating area will be permitted unless there is a hostess on duty to control access to the area. Mr. Sandack said he thought permitting some type of variance to the current Ordinance could provide a possible solution.

Ms. Gerloff asked Mr. Sandack if he would be unwilling to walk around to Main Street and through the restaurant in order to access outdoor seating on Curtiss. Mr. Sandack said he was not sure. He added that reaching the outdoor café would be quite a bit of work, requiring patrons to walk around the corner to Main Street, go through the kitchen area of the restaurant and out a

side door.

Mr. Sandack said if direct access to an outdoor seating area can be properly controlled, he felt there would be instances when an exception to the Ordinance could be allowed. He said if access to the Isabella/Bambaleo outdoor seating area is properly staffed and has adequate security, he felt that conceptually it could work.

Mr. Kubes asked if the Isabella/Bambaleo outdoor seating area is limited to the alley. Ms. Petrarca replied the alley is the only area that belongs to the establishment; however, the owner is considering leasing part of the sidewalk area at some time in the future.

Ms. Summers asked if the Village could require that the proposed outdoor seating area be enclosed by a fence with a gate at the hostess station on Curtiss that could only be opened by the hostess from the inside. Ms. Conforti said a fixed gate would make it impossible for service or emergency vehicles to enter the alley. Chairman Mochel pointed out that when Isabella/Bambaleo first applied for an outdoor seating area, they planned to fence off the alley with movable wrought iron gates.

Mr. Sandack said Ms. Summers has presented some reasonable accommodations, however it still does not answer the question of whether or not the Commission feels the ordinance should be changed. Currently the Ordinance states that access to an outdoor seating area must be through the licensed establishment.

Ms. Summers said Founders Hill already has an outdoor seating area that can be entered without going through the licensed premises. Chairman Mochel agreed and said he believes that the Founders Hill situation should be brought to the attention of the Mayor and Council.

Ms. Petrarca said she would like a recommendation from the Commission regarding whether or not they are in favor of amending the ordinance. She said she was not necessarily recommending removing the entire requirement, but perhaps it could be modified to permit some type of reasonable accommodation for outdoor seating areas where access through the licensed premises would be difficult or impossible.

Chairman Mochel said perhaps the Commission should make a recommendation on the concept and let others work out the operational and enforcement details. Chairman Mochel asked the members of the Commission if they would be in favor of having the Village work with the liquor licensees to provide this facility.

Ms. Gerloff said she is not against Isabella/Bambaleo having an outdoor seating area; however, she said she was against amending the Ordinance.

Ms. Petrarca clarified that the issue before the Commission is not approval or denial of Isabella/Bambaleo's outdoor seating area, it is whether or not the Ordinance should be amended. Ms. Conforti and Mr. Sandack agreed. Mr. Sandack said the Commission must decide if they are

in favor of amending the Ordinance to allow an exception where an exception may be necessary. Chairman Mochel disagreed. He said he feels the issue is whether or not to change the ordinance. Mr. Sandack agreed. However, he added that the discretion to do so must be in the body of the law. He also agreed that how the law is applied must be determined on a case-by-case basis. Mr. Sandack said there are instances where access to an outdoor seating area through the licensed premises is not feasible and he feels the Ordinance should provide some discretion to the Village Council in those cases.

Ms. Petrarca read Section 3-30(a)(4), which states "access to the outdoor area is through the licensed premises, and no direct entrance to or exit from such area is available other than emergency exits." The question she said, is whether or not the Commission is in favor of amending this section to provide some type of discretion.

Chairman Mochel asked if the Commissioners are in favor of amending the Section 3-30 "Outdoor Sales". Mr. Sandack said he believes the Council should have some discretion in limited circumstances, such as those that have been discussed this evening.

Chairman Mochel asked the Commission members whether or not they were in favor of having the Council amend the Ordinance. Mr. Kubes, Mr. Sandack, and Ms. Summers indicated that they were in favor of amending the Ordinance. Chairman Mochel and Ms. Gerloff indicated that they were opposed to amending the Ordinance. Chairman Mochel noted that how the Ordinance is amended is up to the Village Council.

Mr. Kubes said he believes that when the Mayor and Council see that the Liquor Commission was divided 3-2 on this issue, they will give it serious consideration before amending the Ordinance.

Ms. Petrarca said she will present the issue as an Ordinance change not in conjunction with Isabella/Bambaleo's outdoor seating request. Ms. Petrarca said she intends to point out that the Village has a licensee that is not completely in compliance with Section 3-30 of the Ordinance, while governed by a sidewalk café license, and ask if they feel the ordinance should be amended so that in the future the Ordinance will be less restrictive.

Ms. Gerloff said she is not against Isabella/Bambaleo having an outdoor seating area; however, she believes they should comply with the Ordinance.

Chairman Mochel asked if Isabella/Bambaleo has actually requested to have an outdoor seating area with access from Curtiss Street. Ms. Petrarca replied yes. Based on the fact that the Village already has one non-compliant licensee, Chairman Mochel asked if there is anyway the Village could deny Isabella/Bambaleo's request. Ms. Petrarca said the Village could deny the request. Chairman Mochel said the precedent has been set. Ms. Petrarca agreed. She added that the reason the matter is before the Commission tonight is because there is already one non-compliant licensee and an applicant who has submitted a plan that does not comply. Perhaps the Ordinance is too restrictive and should be amended.

Ms. Conforti said due to the July 4th holiday, the next meeting will be scheduled for July 11, 2002.

IX. COMMENTS FROM THE PUBLIC

None

X. ADJOURNMENT

MR. SANDACK MOVED TO ADJOURN THE MEETING.

The meeting was adjourned by acclamation at 8:58 p.m.

Outdoor Sales Restrictions Surrounding Communities

Aurora:

Currently no café/sidewalk licenses issued

Allow beer gardens/patios, enclosure must be approved, access through licensed premises w/ emergency exit

LaGrange:

Business must be licensed to sell alcohol, No restrictions on private property outdoor liquor sales. Must apply for Outdoor Eating Café Permit (public property)

Naperville:

Access through licensed premises

Sidewalk Café Licenses Issued, however no alcohol allowed on public property

Oak Brook:

Outdoor enclosed

Access through licensed premises, no direct entrance/exit from area

Westmont:

Outdoor enclosed

Access through premises or entrances at which control by employees of the licensed premises is provided to assure that no unlawful sale to minors shall occur

Wheaton:

No outdoor sales allowed for licensed premises

DRAFT

Orig. 06/03/02

Rev. 06/07/02

06/10/02

ORDINANCE NO. _____

AN ORDINANCE AMENDING OUTDOOR LIQUOR SALES

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 3-30 of the Downers Grove Municipal Code is hereby amended as follows:

3-30. Outdoor sales.

(a) Subject to the approval of the Liquor Commissioner, the sale, service and consumption of alcoholic liquor in an outdoor seating area may be permitted adjacent to premises licensed to sell alcoholic liquor for consumption on the premises; subject to the following conditions:

- (1) The outdoor area is enclosed; and
- (2) The outdoor area is owned or leased by the licensee; and
- (3) The outdoor area is included as part of the regular food service business located on the licensed premises; and

(4) Access to the outdoor area ~~is shall be limited through the licensed premises, and no is no direct entrance to or exit from such area is available other than emergency exits or through entrances that are controlled and monitored by employees of the licensed premises.~~

(~~5~~4) Seating in the outdoor area shall not be included to meet the required guest seating capacity for any license classification as established in Section 3-13 of this Chapter.

(~~6~~5) A sidewalk cafe license as provided in Chapter 19 of the Downers Grove Municipal Code shall be required for any outdoor seating area conducted wholly or partially upon Village controlled property.

(b) Applications for the establishment an outdoor seating area, or the amendment of an existing outdoor seating area, shall be filed on such forms and with such information as may be directed by the Liquor Commissioner. The fee for such application shall be four hundred twenty-five dollars (\$425.00). Provided, in the event an outdoor seating area application is filed and processed in conjunction with an application for issuance of a liquor license under Section 3-9, the outdoor seating area application fee shall be two hundred fifteen dollars \$215.00. The Liquor Commissioner may refer an outdoor seating area application to the Liquor Commission for review and comment. (Ord. No. 2735, § 1; Ord. No. 2945, § 2.)

SECTION 2. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 3. 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

[liq-out]