

COUNCIL WORKSHOP ITEM

ITEM: Liquor Control Ordinance Amendment
DATE: November 19, 2002
PREPARED BY: Carol Conforti, Liaison to the Liquor Commission
PURPOSE: To adopt an ordinance amending provisions of the Liquor Control Ordinance concerning advertising and promotions

DISCUSSION:

Increasingly licensees inquire as to what types of liquor promotions are allowable under Village ordinance. Especially during the holidays, licensees wish to advertise specials and/or advertise parties or after work gatherings.

In an effort to clarify the Village's position on the matter, the Legal Department has come up with new language that will give staff the ability to *specifically* direct licensees as to what language may **not** be included in advertisements involving liquor specials and/or promotions. It mirrors State statute by prohibiting licensees to advertise "free" or "complimentary" liquor. It also goes above and beyond the statute by not allowing the advertisement of "open bar" or "unlimited" liquor when establishments host parties and/or events that may or may not qualify as "private parties".

The Downers Grove Liquor Commission has reviewed the attached ordinance and has provided staff with their comments. It is anticipated that the amendment will allow staff to better direct licensees as to what they specifically cannot advertise in relation to liquor promotions. Hopefully, it will alleviate confusion, as there is nothing contained in the Code that specifically guides licensees on improper advertising.

ATTACHMENT:

AN ORDINANCE AMENDING THE LIQUOR CONTROL ORDINANCE

RECOMMENDATION:

It is requested that the Village Council consider this matter at their Workshop meeting of November 26, 2002.

cc: Downers Grove Liquor Commission
Enza Petrarca, Village Attorney
Ann Marie Perez, Staff Attorney

DRAFT

Orig. 11/01/02

Rev. 11/05/02

11/07/02

11/19/02

ORDINANCE NO. _____

AN ORDINANCE AMENDING THE 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 3-3 of the Downers Grove Municipal Code is hereby amended as follows:

3-3. Definitions.

For the purposes of this Chapter, the following words and phrases shall have the meanings respectively ascribed to them by this section:

(a) *Act.* The Illinois Liquor Control Act of 1934, as now or hereafter amended.

(b) *Alcoholic liquor.* Any spirits, wine, beer, ale or other liquid containing more than one-half of one percent of alcohol by volume, which is fit for beverage purposes. Beverages sold as beer, ale or other designation commonly applied to malt beverages containing more than one-half of one percent of alcohol by volume shall be presumed to be alcoholic liquor for purposes of this Chapter.

(c) *Catering Business.* A business which provides and serves alcoholic liquor at locations not owned or leased by the catering business for consumption at such location.

(d) *Catered event.* A dinner, banquet, party or other similar event at which alcoholic liquor is provided for consumption on the premises by a Catering Business.

(e) *Club.* A corporation organized under the laws of this state, not for pecuniary profit, solely for the promotion of some common object other than the sale or consumption of alcoholic liquors, kept, used and maintained by its members through the payment of annual dues, and owning, hiring or leasing a building or space in a building, of such extent and character as may be suitable and adequate for the reasonable comfortable use and accommodation of its members and their bona fide guests and provided with suitable and adequate kitchen and dining room space and equipment and maintaining a sufficient number of employees for cooking, preparing and serving food and meals for its members and their bona fide guests. Provided, the sale or offer of alcoholic liquor for sale to the public by the club, except as provided in Section 3-32 of this Chapter is not permitted, and further provided, that the affairs and management of the club shall be conducted by a board of directors, executive committee or similar body chosen by the members at their annual meeting, and that no member or any officer, agent or employee of the club shall be paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenue of the club. The term club shall not include any "men's or women's club" as defined herein.

(f) *Comedy Club.* A non-restaurant business with live performances by comedians during one or more performances conducted at set times per day.

(g) *Contracted theater rental.* A prearranged function in which an entity enters into a rental agreement or contract for the use of a theater for events, private film viewing/critique and/or theatrical, musical or live performances.

(h) *Fashion show.* The modeling, showing or other presentation of lingerie or other garments for the purpose of entertaining or for sale of the garment, where the person so modeling the garment appears in a nude or semi-nude state.

(i) *Hotel*. A building or group of buildings used in conjunction with one another as a lodging facility providing sleeping accommodations for compensation to travelers and guests, whether transient, permanent or residential and in which one hundred or more rooms are provided for such purpose.

(j) *Liquor product identification sign*. Any sign, including any placard, banner, poster, streamer, balloon or other attention getting device, which is designed or used to advertise, promote or identify a particular brand of liquor. This includes, but is not limited to, those signs commonly referred to as "beer signs" and may involve electronic or neon displays.

(k) *Men's or women's club*. An establishment which offers entertainment where any person may appear in a nude or semi-nude state, or offers the customer a role playing interaction, including but not limited to servers, hosts, hostesses, dancers, singers, models or other performance artists, or an establishment which offers customers role playing interaction.

(l) *Nude or nudity or a state of nudity*. The appearance of a human bare buttock, anus, male genitals, female genitals, or female breast; or, a state of dress which fails to opaquely cover a human buttock, anus, male genitals, female genitals, or areola of the female breast.

(m) *Semi-nude*. A state of dress in which clothing covers no more than the genitals, pubic region, and areolae of the female breast, as well as portions of the body covered by supporting straps or devices.

(n) *Original package*. Any bottle, flask, jug, can, barrel, keg, or other receptacle or container whatsoever, used, corked or capped, sealed and labeled by the manufacturer of alcoholic liquor, to contain and to convey any alcoholic liquor.

(o) *Private function*. A prearranged private party, function, or event for a specific social or business occasion, either by invitation or reservation and not open to the general public, where the guests in attendance are served in an area designated and used exclusively for the private party, function or event **and where the licensee is not the host of said function**.

(p) *Regularly scheduled motion pictures or films*. Motion pictures or films scheduled to be shown at previously arranged and advertised times and open to the general public. Regularly scheduled motion pictures or films shall not include any motion pictures or films shown as a result of a contracted theater rental, as defined in this section.

(q) *Recreational facility*. A building or area in which the primary business is to provide, by membership or user fee or both, a place in which the public may participate in a sport or engage in physical fitness activities, including but not limited to volleyball, tennis, racquetball or handball clubs; bowling alleys; and health clubs. Provided, such facilities shall include an area in which service of food prepared on premises is provided, including hot or cold sandwiches or other similar foods.

(r) *Restaurant*. Any public place kept, used, maintained, advertised or held out to the public as a place where the primary business is the service of meals, and where meals are actually and regularly served, without sleeping accommodations, and where adequate provision is made for sanitary kitchen and dining room equipment and capacity and a sufficient number of employees to prepare, cook and serve a reasonable variety of meals for its customers. The mere availability and service at any premises of cold sandwiches, hors d'oeuvres or other similar foods will not, standing alone, be deemed sufficient to constitute such premises a restaurant within the meaning of this paragraph, it being the intent of this paragraph that the primary business conducted on premises to be licensed as restaurants hereunder shall be the service of meals.

(s) *Retail sale*. The sale for use or consumption, and not for resale.

(t) *Role playing interaction*. An arrangement, service or program where a server, host, hostess, dancer, singer, model or other performance artist, engages a customer in a meeting or conversation involving, depicting, participating in, or relating to any "specified sexual activities" as defined and set forth in Section 8-79(g).

(u) *Sale*. Any transfer, exchange or barter, in any manner or by any means whatsoever, for a consideration and not for resale, including all sales made by any person whether as principal, proprietor, agent, servant or employee, and including, but not limited to, all of the following acts when done for consideration:

- (1) The selling of liquor.
- (2) The delivery of liquor, without additional charge, with a meal or with entertainment or the providing of samples of liquor as part of a promotion or sales device of any kind.
- (3) The dispensing of liquor.
- (4) The providing of mix, ice, water or glasses for the purposes of mixing drinks containing alcoholic liquor for consumption on the same premises.
- (5) The pouring of liquor.
- (6) The providing of "set-ups" containing alcoholic liquor.

"Sale" shall not include:

- (1) a person acting in the privacy of his home
- (2) where liquor is provided as part of a religious ceremony; and
- (3) to private functions as defined herein that are held by the host and where the guests are not charged for the liquor consumed.

(v) *Service Bar.* The sale of liquor at a restaurant for consumption on the licensed premises in conjunction with the service of food, to customers seated at tables. A service bar shall not include, and shall specifically exclude, any counter, bar, lounge, waiting area or similar arrangement where liquor is sold to, or consumed by, customers who are not seated at a dining table.

(w) *Theater.* A facility within the Central Business District as that term is defined in the Downers Grove Zoning Ordinance, regularly used for showing motion pictures/films or conducting theatrical, musical or live performances or events with a seating capacity of 900 or more persons. (Ord. No. 244, § 1; Ord. No. 1741, § 1; Ord. No. 1749, § 1; Ord. No. 2388, § 1; Ord. No. 2450, § 1; Ord. No. 2541, § 1; Ord. No. 2735, § 1; Ord. No. 2847, § 1; Ord. No. 3164, § 1.)

NOTE: For state law as to definitions, see Ill. Comp. Stat., Ch. 235, § 5/1-3 et seq.

SECTION 2. That Section 3-7 of the Downers Grove Municipal Code is hereby amended as follows:

3-7. Applicability of other provisions.

Nothing in this Chapter shall excuse or relieve the licensee, owner, proprietor, or person in charge of any place in the Village where alcoholic liquor is sold from the restrictions and requirements of any other provision of this Code, other ordinances of the Village or of the statutes of the State of Illinois, **including but not limited to the Act, as amended from time to time, and the Illinois Liquor Control Commission Rules and Regulations.** (Ord. No. 2735, § 1.)

SECTION 3. That Section 3-33.1 of the Downers Grove Municipal Code is hereby amended as follows:

3-33.1. Limitations on the sale and promotion of alcoholic liquor on licensed premises.

(a) It shall be unlawful for any licensee, or any employee or agent of any licensee, on licensed premises where alcoholic liquor is sold or offered for sale for consumption thereon, to engage in any of the following practices:

(1) Delivery of two or more drinks to any one person at one time, except sale or delivery of:

- (i) wine by the bottle or carafe; and,
- (ii) beer or wine by the glass at a community special event as set forth in Section

3-38(d)(5);

(2) Sale, offer for sale, or delivery to any person of an unlimited number of drinks during any set period of time for a fixed price, except at private functions not open to the public;

(3) Sale, offer for sale, or delivery of drinks to any person or group of persons on any one day at prices less than those charged the general public on that entire day, except at private functions not open to the public;

(4) Increasing the volume of alcoholic liquor contained in a drink without a proportionate increase in the price charged for such drink as compared to prices during the same calendar week;

(5) Encouraging or permitting on the licensed premises any game or contest which involves drinking or the awarding of drinks as prizes.

(b) No licensee shall advertise or promote in any way, whether within or outside of the licensed premises, any of the practices prohibited under this section. **Specifically, no licensee shall advertise or promote in any way, whether on or off-licensed premises, any of the practices prohibited under subsections (2) and (3) of this Section. This includes but is not limited to, advertisements using the words "free", "complimentary", "open bar" or "unlimited drinks" in regard to alcoholic liquor.**

(c) It is intended that the service of alcohol is merely an adjunct to the meals offered at any restaurant and that the restaurant must not be advertised or otherwise held out to be a drinking establishment.

(d) Nothing contained in this section shall prohibit a licensee from engaging in any of the following practices:

(1) Offering free food or entertainment at any time;

(2) Offering a drink as part of a meal or hotel services package;

(3) Offering free wine tastings;

(4) Offering room service to registered guests in hotels licensed for such service.

(5) Selling pitchers (or the equivalent, including but not limited to buckets), carafes or bottles or alcoholic liquor which are customarily sold in such manner, and which are delivered to two or more persons at one time.

(Ord. No. 3089, § 1; Ord. No. 3290, § 1.)

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 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-adv]