

COUNCIL WORKSHOP ITEM

ITEM: An Ordinance Creating Outdoor Liquor Licenses and Amending Packaged Beer and Wine License Classifications and Requirements
DATE: May 5, 2003
PREPARED BY: Carol Conforti, Liaison to the Liquor Commission
PURPOSE: Adopt Ordinances Establishing Outdoor Liquor Service Licensing Provisions and Amending Packaged Beer & Wine License Provisions

DISCUSSION:

Attached find two ordinances which effect the Downers Grove Liquor Code and provisions for licenses.

First, an ordinance has been drafted which will establish outdoor liquor licenses in an effort to better monitor and more easily recognize those license holders who have obtained approval for outdoor liquor service. A new Class "O" outdoor license classification is being proposed at a cost to the licensee of \$200.00 per year in addition to the cost of the indoor license. At renewal, staff will request that outdoor floor plans be submitted to ensure that cafes and patios are kept in the same manner as they were originally approved and that the patio is kept in compliance with all terms of the Code - just as the interior is regulated.

Second, an ordinance has been drafted to address concerns with beer and wine off-premise consumption liquor licenses. Over the past year, the Liquor Commission has expressed its concern that the packaged beer and wine classification would could potentially allow tobacco and/or video stores the ability to sell alcohol. On several occasions the group discussed tightening up the ordinance to include a "convenience store" definition and that primary sales be that of convenience items including, but not limited to, the sale of food, non-alcoholic beverages, household products, cosmetic items and reading materials. It is proposed that the packaged beer and wine classification be separated into three categories:

Class B-2-A: Beer and Wine Off-Premise Consumption licenses would be issued to establishments primarily engaged in the sale of beer and wine products.

Class B-2-B: Beer and Wine Off-Premise Consumption licenses would be issued to establishments primarily whose main or principal business is that of a drug or grocery store.

Class B-2-C: Beer and Wine Off-Premise Consumption licenses would be issued to establishments where the main or principal business is that of a convenience store wherein at least 75% of the retail sales square footage area is devoted to the sale of food, non-alcoholic beverages, household products, cosmetic items and reading materials.

It is hoped that the breakout of the Class B-2 license will provide better clarification as to what types of establishments would qualify for packaged beer and wine sales.

Staff has also created a Business Activity Declaration (DG LIQ-Form 5) which shall be a required application submittal. This form will provide a declaration as to the business activity intentions of the licensee.

ATTACHMENTS:

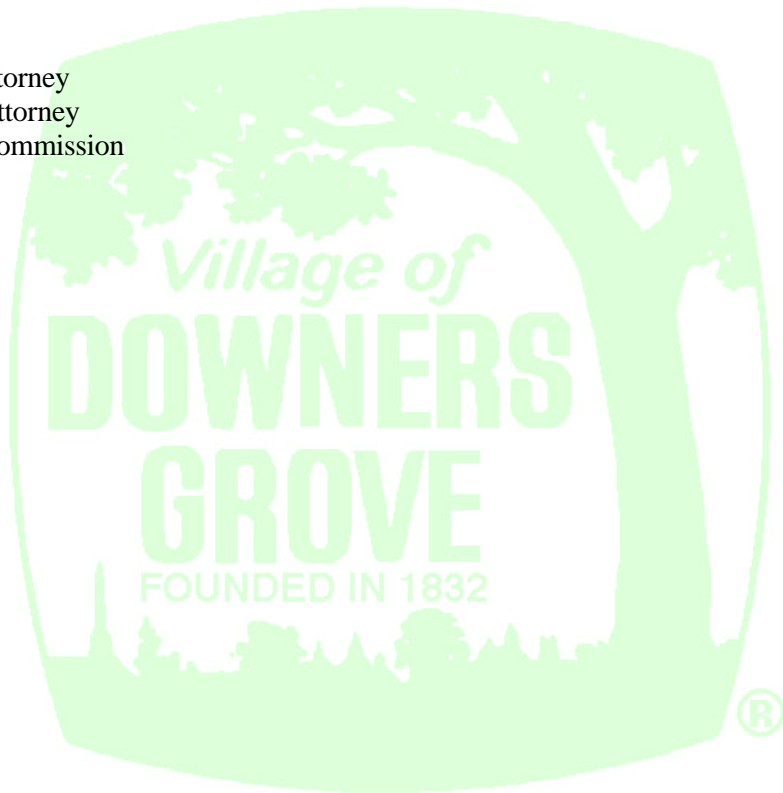
May 1, 2003 Liquor Commission Minutes
An Ordinance Amending Outdoor Liquor Sales

An Ordinance Amending Packaged Beer and Wine Licenses

RECOMMENDATION:

It is requested that the Village Council consider these matters at the Workshop meeting of May 13, 2003 and place on the Active Agenda for approval on May 20, 2003.

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



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VI. OLD BUSINESS

Ms. Conforti said she and Ms. Perez prepared a comprehensive ordinance for packaged beer and wine sales for convenience stores, packaged alcohol stores, grocery and drug stores. The proposed ordinance would add a "convenience store" definition to the Ordinance. Also "Retail sales square footage area" is defined and the applicant will be required to submit a floor plan for the establishment depicting the total square footage and the retail square footage area devoted to products sold from the premises. Ms. Conforti said applicants would be required to complete a "Business Activity Declaration" stating the principal business of the establishment.

Ms. Gerloff asked if the "Business Activity Declaration" would only be required for the Class "B-2" liquor license classification. Ms. Conforti replied no. She said it would be included will all liquor license applications.

Ms. Gerloff noted that the ordinance states that the declaration page would include "the corporate name, business name and address along with information concerning the type of business activity or retail sales primarily engaged in." She asked whether that referred to the applicant's current retail activity or his anticipated retail sales activity. Ms. Gerloff recalled that the owner of a cigarette store applied for and was granted a "Class B-2" based on his testimony that he intended to change his primary business to that of a convenience store. However, at the time of the application hearing his primary business was still that of a cigarette store. Ms. Perez clarified that applicants can list their current business activity and their anticipated business activity on the declaration page.

Mr. Sandack said regardless of what the applicant lists on the declaration page, the Ordinance requires that the Class "B-2-C" license "shall be authorized in locations where the main or principal business is that of a convenience store wherein at least seventy-five percent (75%) of the retail sale square footage is devoted to the sale of food, non-alcoholic beverages, household products, cosmetic items and reading materials."

Ms. Gerloff asked why staff included the declaration page. Ms. Perez said it would be helpful with other license classifications, i.e. the restaurant license. If an establishment declares that the primary business is that of a restaurant and receives a restaurant license, they could not advertise as a nightclub.

Mr. Sandack said he views the declaration page as an added safeguard because it requires the applicant to provide a signed and notarized statement of their business activity.

Ms. Petrarca said many applicants apply for a liquor license before their business is operational.

Ms. Gerloff expressed concern about the wording of the declaration page.

Chairman Mochel asked if the declaration page requires the applicant to state his current or intended primary business. He said he feels that if an applicant is applying as a convenient store, they should meet the definition of a convenience store before applying for the Class "B-2-C" liquor license. Ms. Petrarca and Ms. Conforti said that before receiving the Class "B-2-C" license the applicant would have to comply with the terms of the license including complying with the definition of "convenience store".

Ms. Conforti said some applicants apply for a liquor license before their business is open and they do not know the actual breakdown of their business activity. Chairman Mochel asked how the Village could monitor and police that type of situation. Ms. Perez said if an applicant does not comply with the sworn declaration that they made, the Village could cite them for an ordinance violation.

Chairman Mochel asked if there is a timeframe involved in the declaration. Ms. Perez said once they begin receiving the declarations, staff can request that the Police Department send an officer to check periodically to ensure that the establishment is operating the business as was declared.

Chairman Mochel said he is uneasy leaving too many "gray" areas in the ordinance, which would be open to legal interpretation.

Ms. Gerloff noted that the Class "B-2" license is now being divided into three categories. Ms. Gerloff said she did not feel that the proposed ordinance would correct the problem.

Ms. Conforti said the Village must keep the Class "B-2-A" classification for those establishments where the sale of packaged beer and wine is the principal business. Ms. Gerloff agreed. However, she said she does not know how the Village can prevent video and cigarette stores from applying for a Class "B-2" liquor license.

Ms. Summers asked Ms. Gerloff why she wanted to prevent those stores from obtaining a liquor license. Ms. Summers said she did not feel there was any rational basis for denying a liquor license to a cigarette or video store. Ms. Gerloff disagreed. Chairman Mochel said he did not feel there had to be a rational basis for the decision. He said if the Village Council did not want to allow cigarette and/or video stores to sell alcohol, they could structure the ordinance accordingly.

Ms. Petrarca explained the rational basis test and the constitutionality of ordinances.

Ms. Gerloff said Ms. Petrarca would not allow the Commission to enforce the ordinance in the case of the Maple Cigarettes. Ms. Petrarca said Mr. Patel did not apply as Maple Cigarettes; he applied as Maple Cigarettes and Food Mart.

Ms. Gerloff said Mr. Patel still does not have a sign for Maple Cigarettes and Food on his store and cigarette posters on the windows obstruct the view into the store. Ms.

Conforti said she met with Mr. Patel regarding the cigarette posters. Ms. Gerloff said she still does not believe that Mr. Patel's establishment is a food mart.

Mr. Kubes left the meeting to take his students back to the classroom. Chairman Mochel thanked the students for attending.

Mr. Sandack said he believes that having a specific provision prohibiting cigarette and video stores from having a liquor license would be a recipe for disaster. Ms. Petrarca agreed that she would never recommend such an ordinance.

Mr. Sandack agreed with Chairman Mochel that no matter how the ordinance is worded, there would always be someone crafty enough to circumvent it. However, Mr. Sandack said the proposed ordinance is a reasonable attempt to put a square footage requirement back into the ordinance. Thus, if a store is large enough and is a convenience store, the ordinance requires that they must sell something more than cigarettes in order to obtain a liquor license.

Ms. Gerloff said the Commission just went through this in December, with Mr. Patel and Maple Cigarettes. When asked if he considered his business a convenience store, Mr. Patel replied no. Mr. Sandack said Mr. Patel's opinion of his business is irrelevant, because at that time the ordinance did not define "convenience store". Ms. Gerloff said her interpretation of the ordinance was that the establishment had to actually be a "convenience store" not just intend to become one.

Mr. Sandack recalled that Mr. Patel testified that he was going to change the name of his establishment and become a convenience store. Mr. Sandack expressed disappointment that Mr. Patel has not yet changed the sign on his store. Ms. Petrarca and Ms. Conforti said they have contacted Mr. Patel regarding changing his sign. Mr. Sandack recalled that Mr. Patel testified under oath that he was going to add convenience store items to his store. Thus, the Commission and staff reasonably relied on his testimony.

Ms. Conforti said Mr. Patel has added shelf space and has spoken to his landlord about getting new signage on the building. Ms. Perez said Mr. Patel is attempting to get posters advertising products other than cigarettes; however, he said the cigarette distributors require him to put cigarette posters in the window. Ms. Conforti said Mr. Patel has been unable to get convenience store distributors to service his store because he does not sell many of those items. However, Mr. Patel has purchased products from other stores to re-sell in his store.

Mr. Sandack suggested that Mr. Patel contact the Downers Grove Food Mart to see who supplies their store and perhaps enter into a joint arrangement for purchasing.

As background, Ms. Conforti explained that the previous owner of Maple Cigarettes applied for a liquor license when the store was strictly a cigarette store. However, at the time there were no Class "B-2" licenses available and he was placed on a waiting list.

Ms. Conforti said when Mr. Patel took over the store, the number of Class "B-2" liquor licenses was increased and one became available.

Ms. Gerloff agreed. She said former Village Attorney Dan Blondin and Ms. Petrarca drafted a new ordinance increasing the number of Class "B-2" licenses. At that time, she recalled that the new ordinance was presented to the Village as being defensible in court and that it would prevent video and cigarette stores from applying for a Class "B-2" liquor license.

Ms. Petrarca agreed. She said if Mr. Patel had applied as Maple Cigarettes, the ordinance would have prevented him from obtaining a Class "B-2" liquor license. However, he applied as Maple Cigarettes and Food - a convenience store.

Ms. Gerloff said in her opinion the establishment was still a cigarette store. Ms. Petrarca disagreed and said in her opinion he applied as a convenience store.

Ms. Summers said too she viewed the establishment as a convenience store. Ms. Summers said she is still not sure why Ms. Gerloff is against allowing cigarette and videos stores to sell alcohol. Ms. Gerloff cited teen impact studies from the University of Illinois.

Ms. Summers said she was not going to attempt to set the morals for Downers Grove teens. If teens want to smoke, etc. she felt it was their parent's problem, not the responsibility of the Liquor Commission.

Ms. Conforti said if the problem is the sale of tobacco to minors, Downers Grove should consider licensing tobacco establishments. Ms. Perez said in that case the Village could pass an ordinance stating that if an establishment is licensed to sell tobacco products it is not eligible for a liquor license. Ms. Petrarca said she did not think that would work because many stores sell cigarettes and alcohol.

Ms. Summers said she has been unable to find any evidence that tobacco stores selling alcohol have an increase in the sale of alcohol to minors. Ms. Gerloff said the University of Illinois study indicated that the sale of tobacco to minors was higher in alcohol stores.

However, Ms. Perez countered that individuals that sell alcohol and tobacco may be more adept at reading licenses and may be more careful about who they sell alcohol and tobacco to because they always have to card their customers based upon the products that they sell.

Ms. Gerloff said recently the Mayor, Commissioner Schnell, Commissioner McConnell, and Commissioner Tully strongly implied to Ms. Conforti that they do not want cigarette stores to sell alcohol. Ms. Petrarca said this ordinance was written in response to the desires of the Mayor and the Commissioners. Ms. Petrarca added that she would not draft an ordinance that she could not enforce.

Ms. Gerloff said she wanted to be clear on the interpretation of the ordinance. Ms. Petrarca said all license applications would be considered on a case-by-case basis and at this time, it is her interpretation that a store that sells only cigarettes would not qualify for a liquor license under the proposed ordinance.

Ms. Gerloff said she did not feel that a tobacco store should be permitted to apply for a liquor license. Ms. Petrarca said an establishment always has the right to apply for a license. Ms. Conforti added that an applicant could also request an ordinance change if they are unable to qualify under the current ordinance, i.e. North Beach.

Chairman Mochel asked what would happen if an applicant says that they intend to make changes to their establishment to qualify for a liquor license and then do not follow through after the license has been granted. Ms. Petrarca said the Village could revoke their liquor license.

Ms. Conforti said currently the owner of Maple Cigarettes and Food sells more than just tobacco products and seems to be trying to stock more convenience store items. However, there is nothing to prohibit customers from purchasing only cigarettes and beer at any establishment. She added that Mr. Patel knows that he must change the sign on the store and he is currently trying to do so, but he has had problems getting the landlord's approval. Ms. Conforti said she could threaten him with non-renewal of his license unless the sign on the store is changed to match the business name on his liquor license.

Ms. Gerloff said she does not want to see Downers Grove handing out liquor licenses to video stores or cigarette stores. Ms. Conforti said currently Section 3-33 of the ordinance does not allow the sale of books, magazines, films or movies depicting adult subject matter at an establishment that sells alcohol. Thus, Ms. Conforti said any video store that carries "R" rates videos would be prohibited from obtaining a liquor license.

Ms. Gerloff observed that as long as she is on the Commission she has the option to vote "no" on any application presented.

Chairman Mochel asked what type of license does Maple Cigarettes and Foods have? Ms. Conforti said they have a Class "B-2" liquor license. Ms. Perez added that if they were applying for a license under the proposed ordinance they would have to apply for a Class "B-2-A" packaged alcohol store license or a Class "B-2-C" convenience store license and Mr. Patel would have had to have declared which type of store his establishment was.

Ms. Gerloff asked Ms. Perez if Maple Cigarettes and Foods would be considered a packaged alcohol store or a convenience. Ms. Perez said she believed that the establishment would fit under the convenience store definition. Ms. Gerloff asked if the establishment would have to meet the definition of convenience store before applying for a liquor license or if the applicant could state that he intends for his establishment to become a convenience store.

Mr. Sandack pointed out that many applicants apply for a liquor license before their establishment is open, i.e. Carlucci's applied for a license before the restaurant was built.

Chairman Mochel said an applicant could be granted a license based on what he intends to do. However, after a certain period of time if the applicant fails to follow through on his intentions, the Village can revoke his liquor license. Mr. Sandack agreed.

Chairman Mochel said it is his interpretation, that if Mr. Patel applied for a Class "B-2-C" liquor license he would have to have 75% of the retail space for food, non-alcoholic beverages, household products, cosmetic items and reading materials, not including cigarettes and/or liquor and that not more than 25% of the retail space should be for cigarettes and/or liquor.

Ms. Conforti said if the Village tries to dictate what establishments can and cannot sell, it would affect all of the other liquor licensees that hold this type of license.

Ms. Conforti and Ms. Petrarca said it is difficult to list and classify all the different types of products sold in convenience stores. Ms. Perez said the definition of convenience store was left as open as it was to allow the Commission the flexibility to judge each application on a case-by-case basis.

Ms. Gerloff noted that restricting the retail space for cigarettes would not necessarily mean that the principal business of the establishment is not the sale of tobacco. She asked how that could be monitored. Ms. Perez said the problem with monitoring sales is that there are many taxes involved in the sale of packaged cigarettes. Ms. Conforti asked if the Commission was more concerned with the type of store that the establishment appears to be or if they were more concerned about monitoring the amount of revenue generated by tobacco sales.

Mr. Kubes said he would not want a store like Tribeca to sell alcohol. Ms. Petrarca said Tribeca could not qualify for a liquor license under the proposed ordinance. Chairman Mochel asked what if they started selling potato chips and snacks. Ms. Petrarca said 75% of the establishment would have to be devoted to food, etc.

Chairman Mochel asked if cigarettes could be considered a household product. Ms. Perez said the Commission would have the discretion to make that interpretation at the time of the application hearing.

Chairman Mochel said it was his opinion this entire issue began several years ago because the Village Council wanted to find a way to prohibit liquor sales in cigarette and video stores.

Ms. Petrarca said Mr. Patel applied for a liquor license as Maple Cigarettes and Foods, not as a cigarette store. If he had applied as a cigarette store, he would not have qualified under the old ordinance or under the proposed ordinance.

Chairman Mochel asked if Mr. Patel's establishment is in fact a cigarette and food mart. He asked what constitutes a food mart. Ms. Petrarca explained that the old ordinance did not define food mart. Chairman Mochel asked if that loophole has been closed to prevent another cigarette store for obtaining a liquor license. Ms. Petrarca said that is the reason; convenience store has been defined in the proposed ordinance.

Mr. Sandack observed that there has not been a run on this type of license. He said although the establishment was a cigarette store at the time of the application hearing, Mr. Patel testified that he wanted to make it into a convenience store. Mr. Sandack said under the old ordinance, Mr. Patel was qualified for the license regardless of whether his store was a convenience store. Mr. Sandack said he believes that Mr. Patel is trying to turn his store into a convenience store.

Mr. Sandack explained that this proposed ordinance has divided the Class "B-2" license into three separate and defined classifications, "B-2-A" for packaged alcohol stores, "B-2-B" for grocery stores and/or drug stores, and "B-2-C" for convenience stores. He said he feels that this ordinance puts reasonable constraints on a business to be a convenience store, although he acknowledged that someone might find a loophole in the ordinance. Ms. Conforti agreed.

Mr. Kubes asked if a packaged alcohol store, i.e. Downers Grove Wine Shop, could start selling tobacco products. Ms. Petrarca replied yes. However, she added that the sale of beer and wine would have to remain their primary business to keep their liquor license.

Ms. Gerloff said she felt this all started because the Village did not want to project the wrong image, i.e. taverns on every corner etc. Ms. Summers said the Village does not want to project the image that they suppress small business either.

VII. NEW BUSINESS

Ms. Conforti presented an ordinance amending outdoor liquor sales to clarify recommendations for indoor and outdoor liquor sales. She said staff is proposing a Class "O" liquor license, which would allow outdoor liquor sales. It will be tacked on to the original license. There will be an initial fee to enable Ms. Conforti to keep track of outdoor liquor sales. She added that Carlucci's license would be a Class "R/O". Ms. Conforti said the license would not restrict outdoor sales to a certain season; however, the hours of business would have to conform to their regular liquor license. Ms. Conforti said the proposed ordinance will allow her to monitor to be sure the licensee does not alter the outdoor floor plan or change the outdoor area into a beer garden. She said food service must always be available in the outdoor service area.

Ms. Conforti said she would like to combine the ordinance amending packaged beer and wine licenses and the ordinance amending outdoor liquor sales into one comprehensive item to be presented to the Village Council on May 13, 2003. She said she wanted to

get the Commission recommendation on the Class "O" license prior to this year's liquor license renewals.

Ms. Gerloff asked if Ms. Conforti would discuss the aspects of each ordinance when presenting the combined ordinance to the Village Council. Ms. Conforti replied yes. Ms. Petrarca said if the Commission is not comfortable with the proposed changes to the Class "B-2" license, only the Class "O" amendment would be presented to the Village Council.

Ms. Gerloff asked what would happen if the Village Council is not comfortable with the proposed Class "B-2" amendments. Ms. Conforti and Ms. Petrarca said the ordinance could be broken into separate amendments, one for the Class "B-2" license changes and one for the Class "O" license.

Ms. Gerloff reminded Ms. Petrarca and Ms. Conforti that the Village Council has had problems with the Class "B-2" license classification in the past. She wondered if combining the two ordinances would delay adoption of the Class "O" ordinance. Ms. Petrarca replied that if they needed to they would separate the two ordinances.

MR. KUBES MOVED TO FORWARD THE ORDINANCE AMENDING PACKAGED BEER AND WINE LICENSES AND THE ORDINANCE AMENDING OUTDOOR LIQUOR SALES TO THE VILLAGE COUNCIL AS PRESENTED. MS. SUMMERS SECONDED.

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

Nay: None

Abstain: None

MOTION CARRIED: 5:0:0

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

3-9. Application.

(a) *Letter of request.* Any person who wishes to apply for a license required by Section 3-8 shall submit to the local Liquor Commissioner a letter of request containing information related to the identity, current and past business experience (including, but not limited to, handling of liquor) of the prospective applicant; the class of license(s) desired; the location and nature of the business proposed; and any additional information relevant to his qualifications for a retail liquor dealer's license. Upon such written request, the prospective applicant shall be provided with information concerning the availability of licenses of the requested classification and the application procedure.

(b) *Availability of license.* If no license of the requested classification is available at the time a written request is received, the name of the person shall be placed on a list of persons interested in a license of such classification. Any person placed on such list shall be obligated to inform the Village Manager in writing on or before December 31 of each year of a desire to remain on such list for the next year. Failure to do so will result in removal of such person's name from the list. Persons whose names appear on such list at the time a license of the requested classification becomes available shall be so informed, and may then, at their option, proceed to apply for a liquor license.

(c) *Application for license.* Following the initial letter of request, and the Village's response to it, a person wishing to file an application for a license may obtain from the Village an application form as prescribed by the Village Manager for the purpose of providing reasonable information respecting the applicant. Such application shall be filed with the local Liquor Commissioner and shall include:

(1) A manual outlining the applicant's program for training its employees to properly handle the sale of alcoholic liquor;

(2) A floor plan:

(a) for any premises to be licensed for sale of alcoholic liquor for off premise consumption drawn to scale, with sufficient detail to depict design features.

(b) for any premises to be licensed for sale of alcoholic liquor for on-premise consumption, drawn to scale, with sufficient detail to depict the number and location of dining tables and booths, the location of any bar(s), if applicable, the establishment design features, including but not limited to, entrances/exits and hostess areas. This plan should also include the maximum occupancy of the establishment and smoking and non-smoking designated areas.

(3) A valid lease in the name of the licensee which authorizes the sale, service and/or delivery of alcoholic beverages in effect for the entire license period. Such lease shall include terms of the lease as well as a contact person as agent of the property.

(4) Menu depicting all types of food and beverage items available to its patrons.

(5) Restaurant Operation Plan describing the planned operations for the restaurant which shall include, but is not limited to, a description of the customer facilities such as seating areas, displays, service areas, access and egress and similar facilities.

(6) Hours of operation. A list of the hours of operation for the establishment.

(7) Certificate of Occupancy verifying that the applicant has met all Building, Fire and Health Department requirements of the Village.

(8) The expected date of occupancy, which shall not exceed nine months from the date such application is filed;

(9) Certification that dram shop insurance is or will be in force covering the applicant and the premises which are to be operated under the license in an amount sufficient to satisfy statutory limits. The applicant shall attach to the application a copy of the policy for dram shop insurance coverage, which policy shall contain at a minimum the following information: insurer's name, agent's name, date of expiration of policy, type and amount of coverage, and a provision that the insurance company shall give the Village at least thirty (30) days notice prior to any cancellation or termination of the policy; and

(10) The name, home address, driver's license number, and past employment experience for the person to be designated as the Liquor Manager of the establishment. Also, certification that the Liquor Manager is employed on the premises of the establishment at least thirty-five (35) hours per week.

(d) *Application for classification change.* A licensee wishing to file an application for a change of liquor license classification shall submit an application to the Village on forms as prescribed by the Village Manager. Such application shall be filed with the local Liquor Commissioner and shall include those items listed in Section 3-9(c).

(e) *Application fee.* Except as otherwise provided herein, a non-refundable application fee of one thousand dollars (\$1,000.00) shall be required with the filing of any application. The application fee may be reduced or waived as follows:

(1) If the Commissioner determines, pursuant to this Chapter, to grant a liquor license without referring the application to the local Liquor Commission or the Plan Commission, the applicant may receive a partial refund of one-half of the application fee.

(2) If the Commissioner determines, pursuant this Chapter, to grant or deny a liquor license without requiring a full investigation, the applicant may receive a partial refund of one-half of the application fee.

(3) If the Commissioner determines, pursuant this Chapter, to grant a liquor license without referring the application to the local Liquor Commission or the Plan Commission, and without requiring a full investigation, the applicant may receive a partial or full refund of the application fee as provided herein. Where the Commissioner determines, based upon the nature and complexity of the application, that the administrative functions were de minimis, a full refund may be granted. Where the Commissioner determines that the administrative functions were not de minimis, a partial refund of one-half of the application fee may be granted.

(4) If the Commissioner determines, pursuant to this Chapter, to grant a liquor license while referring the application to the local Liquor Commission or Plan Commission for change of liquor license classification, at the discretion of the Liquor Commissioner the applicant may receive a partial or full refund of the application fee.

In the event that the applicant is seeking a license for outdoor liquor sales, a non-refundable application fee shall be required with the filing of any application. 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 this Section, the outdoor seating area application fee shall be two hundred fifteen dollars (\$215.00).(Ord. No. 244, § 3; Ord. No. 1741, § 10; Ord. No. 1749, § 2; Ord. No. 2388, § 5; Ord. No. 2450, § 3; Ord. No. 2541, § 4; Ord. No. 2735, § 1; Ord. No. 2847, § 2; Ord. No. 3064, § 1; Ord. No. 3182, § 2; Ord. No. 3343, § 1.)

3-13. Classification of licenses.

Such licenses shall be, and are hereby, divided into the following classes:

(a) Class "A" package liquor licenses, which shall authorize the retail sale on the premises specified, which shall not include premises of less than three thousand six hundred square feet, of alcoholic liquor in packages with the seals unbroken, only, and not for consumption on the premises, except that wine tasting shall be permitted on such premises. Such licenses shall be only authorized in locations where the sale of packaged liquor is the main or principal business and/or in locations where the principal business is that of a drug store or grocery store, including those grocery stores referred to as "convenience stores."

(b) Class "B" beer and wine licenses as follows:

(1) Class "B-1" beer and wine licenses shall authorize the retail sale of beer and wine with meals for consumption on the premises where the major business is that of a restaurant having a guest seating capacity, excluding outdoor areas, of not less than thirty-five.

(2) Class "B-2" beer and wine 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 wine tasting shall be permitted on such premises. Such licenses shall be only authorized in locations where the sale of beer and wine is the main or principal business and/or in locations where the principal business is that of a drug store or grocery store, including those grocery stores referred to as "convenience stores".

(3) Class "B-3" beer and wine licenses shall authorize the retail sale of beer and wine with meals for consumption on the premises where the major business is that of a restaurant, as defined herein, with full kitchen facilities for on-site preparation of meals, and which is open for business for a single daily period between the hours of 11:00 A.M. and 3:00 P.M., and for a single period on Sundays between the hours of 12:00 Noon and 4:00 P.M.

(c) Class "C" club licenses shall authorize the retail sale of alcoholic liquor for consumption on the premises where the business is that of a club as defined herein.

(d) Class "C-1" licenses shall authorize the retail sale of alcoholic liquor for consumption on the premises where the major and primary business is that of a Comedy Club. Provided, the sale of alcoholic beverages shall be authorized only during or one hour before the regularly scheduled performances. The performances shall consist of one or more comedians and shall be not less than 1.5 hours in length with patrons paying a separate admission charge for each performance. At the end of each performance, patrons shall be required to exit before the next group of patrons admitted. Provided, performances shall be done by professional comedians except that amateur performances (open mike) shall be permitted not more than one night per week.

(e) Class "D" restaurant licenses as follows:

(1) Class "D-1" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises where the major and primary business is that of a restaurant located in a retail or freestanding structure and having a guest seating capacity, excluding outdoor areas, of not less than one hundred twenty-five.

(2) Class "D-3" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises by service bar only, where the major and primary business is that of a restaurant located in a retail or freestanding structure and having a guest seating capacity, excluding outdoor areas, of not less than seventy-five.

(3) Class "D-4" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises; and the retail sale of beer and wine only in original packages, unopened only, and not for consumption on the premises, subject to the following:

a. The licensed premises shall have a guest seating capacity, excluding outdoor areas, of not less than one hundred twenty-five.

b. Retail liquor sales for off-site consumption shall be limited to beer and/or wine produced on the licensed premises, such as a micro-brewery.

c. For any new license issued after July 1, 2000, not more than forty percent (40%) of food and on-site beverage consumption sales shall be derived from alcoholic liquor.

(4) Class "D-5" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises, where the major and primary business is that of a restaurant located in the Concentrated Central Area as defined in the Downers Grove Zoning Ordinance, and having a guest seating capacity, excluding outdoor areas, of not less than sixty but not more than one hundred twenty four.

(f) Class "E" transition licenses as follows:

(1) Class "E-1" transition licenses shall be issued only for premises which were licensed by DuPage County for the retail sale of alcoholic liquor immediately prior to the annexation to the Village of the territory on which such premises are located; provided, however, that within three years of initial issuance of a Class "E-1" license,

a. The licensed premises must comply with the requirements for the issuance of a retail liquor license in the Village;

b. The licensee must apply for and receive such a license, or if no license of the necessary classification is available, the Liquor Commissioner may issue an "E-2" license as provided herein; and

c. The licensee must thereafter comply with the limitations of the license applied for and issued.

(2) Class "E-2" transition licenses shall be issued only for premises which were issued an "E-1" license and which comply with the requirements for issuance of a retail liquor license in the Village. Such license shall state limitations on liquor sales and required seating, if applicable.

(g) Class "F" hotel licenses shall authorize the retail sale of alcoholic liquor for consumption on the premises of a hotel, and the retail packaged sale of beer and wine in original packages to hotel patrons. This shall include sales occurring at facilities, or as part of activities, normally operated as an integral part of the hotel, such as, but not necessarily limited to, restaurants, cocktail lounges, room service and banquets. Provided, the licensed premises shall have at least one restaurant with a seating capacity of not less than one hundred twenty-five operated as an integral part of the hotel.

(h) Class "G" recreation facilities licenses as follows:

(1) Class "G-1" recreation facility license shall authorize the retail sale of beer and wine for consumption on the licensed premises in a recreational facility having a guest seating capacity, excluding outdoor areas, of not less than thirty-five.

(2) Class "G-2" recreation facility license shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises in a recreational facility of not less than 16,000 square feet and having a guest seating capacity, excluding outdoor areas, of not less than one hundred twenty-five.

(i) Class "H" publicly owned golf course license shall authorize the retail sale of beer and wine for consumption on the licensed premises in a facility located on a golf course owned and operated by the Downers Grove Park District.

(j) Class "I" catering license shall authorize the sale of alcoholic liquor in connection with the operation of an off-site catering business that serves alcoholic liquor in connection with the catering of foods for private functions and for consumption only on the premises where the food is catered. The sale of alcoholic liquor shall be incidental to the food service and if the catered event does not qualify as a private function, a special event license shall also be required for the location of the catered event. No cash bar shall be permitted. No alcoholic liquor shall be served at a single location for more than eight (8) consecutive hours. A licensee shall submit a report to the Village within thirty days following each July 1 and January 1 setting forth the location of each event the licensee has catered within the Village and the number of hours for which liquor and food were served at such events during the six months prior. In addition, such report shall describe any planned events currently scheduled by the Licensee.

(k) Class "O" outdoor license shall authorize the sale and consumption of alcoholic liquor in an enclosed seating area. This license shall be limited to the conditions of the license classification issued to the establishment. The main and principal operation of the outdoor area shall be for dining purposes and food must be available in the outdoor dining area at all times.

(kl) Class "R" restaurant license shall authorize the sale of alcoholic liquor for consumption on the licensed premises, where the major and primary business is that of a restaurant. Provided, not more than forty percent (40%) of food and beverage sales shall be derived from alcoholic liquor. In addition, bar seating shall be limited to twenty percent (20%) of the entire seating for the establishment.

(lm) Class "R-1" restaurant licenses shall authorize the retail sale of beer and wine for consumption on the licensed premises, where the major and primary business is that of a restaurant. Provided, not more than forty percent (40%) of food and beverage sales shall be derived from alcoholic liquor. In addition, bar seating shall be limited to twenty percent (20%) of the entire seating for the establishment.

(mn) Class "T" theater licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises where the major and primary business is that of a theater, subject to the following conditions:

- a. Sales of alcoholic beverages shall be limited to contracted theater rentals.
- b. Alcoholic beverage sales shall not be allowed during regularly scheduled motion pictures or films.
- c. Sales shall be made from portable bars containing alcoholic liquor, mixes and related preparation materials. Such portable bars shall not have seats or stools for patrons at which to sit.
- d. Portable bars shall be removed and/or stored out of view during all regularly scheduled motion pictures.
- e. No alcoholic liquor shall be served at a single contracted theater rental for more than six (6) consecutive hours.
- f. Food service must be available during contracted theater rentals in which alcoholic liquor service exceeds two (2) consecutive hours. However, should there be a suspension of liquor service for a main event or attraction (at a minimum duration of one (1) hour), such food service shall not be required.
- g. The licensee shall submit a report to the Village within thirty days following each July 1 and January 1 setting forth each contracted theater rental and the number of hours for which liquor was served during the six months prior. In addition, such report shall describe any planned events currently scheduled by the Licensee.

(Ord. No. 244, § 6; Ord. No. 279, § 1; Ord. No. 356, § 1; Ord. No. 634, § 1; Ord. No. 635, § 1; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1465, § 1; Ord. No. 1741, §§ 15 to 17; Ord. No. 2246, § 1; Ord. No. 2388, § 7; Ord. No. 2541, § 6; Ord. No. 2735, § 1; Ord. No. 2945, § 1; Ord. No. 2996, § 1; Ord. No. 3050, § 1; Ord. No. 3164, § 2.)

3-14. Term; fees.

- (a) The term of each license issued hereunder shall be from July 1 to June 30.
- (b) The fee for the various classes of licenses shall be as follows:

License	Annual Fee
"A"	\$1,600.00
"B-1"	\$1,075.00
"B-2"	\$950.00
"B-3"	\$450.00
"C"	\$470.00
"C-1"	\$850.00
"D-1"	\$2,630.00

"D-3"	\$1,750.00
"D-4"	\$2,770.00
"D-5"	\$2,630.00
"E-1"	\$2,630.00
"E-2"	\$2,630.00
"F"	\$2,730.00
"G-1"	\$1,075.00
"G-2"	\$2,630.00
"H"	\$1,075.00
"I"	\$765.00
"O"	\$200.00
"R"	\$2,700.00
"R-1"	\$1,150.00
"T"	\$765.00

(c) Except as provided herein, there shall be no refund or proration of the license fee for any portion of a year prior to issuance or during which licensee ceases to engage in the business of selling alcoholic liquor. For any license issued on or after the first day of January of any year, the license fee shall be prorated by dividing the fee set forth in subsection (b) by twelve and multiplying the resulting sum by the number of months, or parts thereof, remaining in the license year.

(d) For any change in classification issued on or before the first day of January of any year, the licensee shall be awarded a credit in the amount of the license fee previously paid by licensee in same license year for the same establishment.

(e) The annual fee shall be due and payable June 30 in each year. No licensee shall continue to engage in the business of selling alcoholic liquor unless such fee has been paid.

(f) All required fees shall be paid at the time of issuance of the license after approval by the local Liquor Commissioner pursuant to Section 3-12 of this Chapter. All such fees shall be forthwith deposited with the Village Treasurer.

(g) It is the intention of the Village to review and, if justified, adjust license fees annually based upon the costs and expenses incurred by the Village to administer this section. Provided, however, nothing herein shall require such review nor impair or prohibit any adjustment in fees as may from time to time, be approved by the Council. (Ord. No. 244 §§ 5, 6; Ord. No. 279, § 1; Ord. No. 356, § 1; Ord. No. 634, § 1; Ord. No. 635, § 1; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1465, § 1; Ord. No. 1741, §§ 15 to 17; Ord. No. 2167, § 4; Ord. No. 2246, § 1; Ord. No. 2388, § 7; Ord. No. 2541, § 6; Ord. No. 2735, § 1; Ord. No. 3050, § 2; Ord. No. 3377, § 1.)

3-15. Limitation on number of licenses.

The number of licenses in each classification as defined in Section 3-13 which it shall be lawful to issue shall be limited so that the licenses in force and effect at any time shall not exceed the following numbers:

Class "A" package liquor licenses not to exceed seventeen in number.

Class "B-1" beer and wine restaurant licenses not to exceed twenty-five in number. Effective July 1, 2000, no further Class "B-1" beer and wine restaurant licenses shall be issued unless issued as a renewal.

Class "B-2" beer and wine packaged liquor licenses not to exceed ten in number.

Class "B-3" beer and wine licenses not to exceed three in number.

Class "C" club licenses not to exceed six in number.

Class "C-1" comedy club licenses shall not exceed one in number.

Class "D-1" restaurant licenses not to exceed thirty-six in number. Effective July 1, 2000, no further Class "D-1" restaurant licenses shall be issued unless issued as a renewal.

Class "D-3" restaurant licenses not to exceed nine in number. Effective July 1, 2000, no further Class "D-3" restaurant licenses shall be issued unless issued as a renewal.

Class "D-4" restaurant licenses not to exceed two in number.

Class "D-5" restaurant licenses not to exceed four in number. Effective July 1, 2000, no further Class "D-5" restaurant licenses shall be issued unless issued as a renewal.

Class "E-1" transition licenses shall not be limited in number.

Class "E-2" transition licenses shall not be limited in number.

Class "F" hotel licenses shall not be limited in number.

Class "G-1" recreation facility licenses not to exceed one in number.

Class "G-2" recreation facility licenses, not to exceed one in number.

Class "H" publicly owned golf course license, not to exceed one in number.

Class "I" catering licenses, not to exceed four in number.

Class "O" outdoor licenses shall not be limited in number, but shall be issued only in connection with another license that encompasses indoor service.

Class "R" full alcohol restaurant licenses shall be unlimited in number.

Class "R-1" beer and wine only restaurant licenses shall be unlimited in number.

Class "T" theater licenses, not to exceed one in number.

(Ord. No. 244, § 4a; Ord. No. 284, § 1; Ord. No. 356, § 2; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1395, § 1; Ord. No. 1465, § 2; Ord. No. 1741, § 21; Ord. No. 2246, § 2; Ord. No. 2541, § 8; Ord. No. 2735, § 1; Ord. No. 2861, § 3; Ord. No. 3050, § 3.)

3-18.1. Change in floor plan or focus of local operation.

(a) During the term of any license(s) issued for the sale of alcoholic liquor for consumption on the premises **whether for indoor or outdoor service**, if a licensee proposes to make any of the changes hereinafter enumerated, which would alter its operation from the conditions pursuant to which the license was initially granted, the licensee shall apply in writing to the local Liquor Commissioner for approval of such changes, and provide information concerning the specific changes proposed, including a revised floor plan, if any. The following shall be considered a change in the operation for purposes of this section: (i) a change in the floor plan in any manner which would alter the number of seats provided primarily for restaurant use by more than ten percent, or which would expand any area in which entertainment or service of alcoholic liquor is provided; (ii) a change in the type and focus of the theme, decor, motif, advertising or menu for the licensed business in any manner which would promote the sale of alcohol or the entertainment available on the premises as opposed to the availability of food service, or which would change the ratio of alcohol sales to other activities on the licensed premises by more than ten percent.

(b) Upon receipt of a request for approval of any of the changes as provided in paragraph (a) of this section, the local Liquor Commissioner shall review the licensee's proposed changes to determine the nature and significance of the changes in consideration of the classification of license held and the requirements established for such classification, including the minimum number of seats required. The local liquor commissioner may approve the proposed changes if it is determined that the proposed changes in the floor plan, the nature and focus of the local operation, the menu, the type and focus of advertising for the licensed business, and the ratio of alcohol sales to other activities on the premises are not so substantial as to make questionable the continued conformance of the licensed premises with the requirements of the liquor control ordinance for the license classification, and if the minimum number of required seats is provided. If it is determined that such proposed changes are substantial, the local Liquor Commissioner may forward the information concerning such changes to the local Liquor Commission for its review and recommendation as to whether the changes are so substantial as to make questionable the continued conformance of the licensed

premises with the requirements of the liquor control ordinance for the license classification, including the minimum number of required seats.

(c) Fees for any application request for approval of changes on licensed premises as provided in paragraph (a) hereof shall be as provided in Section 3-9(c) of this Chapter. No additional license fee shall be payable and no new license shall be required by virtue of the changes described in paragraph (a) hereof.

(d) So long as an application for approval of any of the changes described in paragraph (a) hereof is pending, and not yet acted on by the local Liquor Commissioner, the applicant may continue to conduct its business and operations in the manner approved at the time the license was initially granted. If approval of the proposed changes is granted, the licensee may proceed to implement such changes in accordance with the approval granted, and subject to any conditions which may be established as part of such approval. If approval is denied, licensee shall continue to operate its business in the manner approved at the time the license was initially granted.

(e) Any licensed business which implements any of the changes on licensed premises as provided in paragraph (a) hereof, without requesting and receiving approval of the local Liquor Commissioner as provided therein, shall be subject to the penalties for violation of this Chapter, as established in Article V hereof, up to and including revocation of the license. (Ord. No. 3343, § 1.)

3-30. Outdoor sales.

(a) Subject to the approval of the Liquor Commissioner ~~receipt of a Class "O" outdoor license~~, 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 shall be limited through the licensed premises or, if not practicable, through monitored entrances that are controlled by employees and/or reasonable fencing of the licensed premises during all operating hours and/or while alcohol is being served.

(5) 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) 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

[out-liq]

ORDINANCE NO. _____

AN ORDINANCE AMENDING PACKAGED BEER AND WINE LICENSES

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 Chapter 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.
- Convenience Store.* A building in which the primary business is the sale of food, non-alcoholic beverages, household products, cosmetic items and reading materials.
- _____ ~~(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.

Retail sales square footage area. The area or space in a building devoted for the retail sale of goods or products offered for consumer purchase and shall not include storage freezers, storage coolers, warehouse, office areas or areas that are not open to the general public.

———~~(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.

3-9. Application.

(a) *Letter of request*. Any person who wishes to apply for a license required by Section 3-8 shall submit to the local Liquor Commissioner a letter of request containing information related to the identity, current and past business experience (including, but not limited to, handling of liquor) of the prospective applicant; the class of license desired; the location and nature of the business proposed; and any additional information relevant to his qualifications for a retail liquor dealer's license. Upon such written request, the prospective applicant shall be provided with information concerning the availability of licenses of the requested classification and the application procedure.

(b) *Availability of license*. If no license of the requested classification is available at the time a written request is received, the name of the person shall be placed on a list of persons interested in a license of such classification. Any person placed on such list shall be obligated to inform the Village Manager in writing on or before December 31 of each year of a desire to remain on such list for the next year. Failure to do so will result in removal of such person's name from the list. Persons whose names appear on such list at the time a license of the requested classification becomes available shall be so informed, and may then, at their option, proceed to apply for a liquor license.

(c) *Application for license*. Following the initial letter of request, and the Village's response to it, a person wishing to file an application for a license may obtain from the Village an application form as prescribed by the Village Manager for the purpose of providing reasonable information respecting the applicant. Such application shall be filed with the local Liquor Commissioner and shall include:

- (1) A manual outlining the applicant's program for training its employees to properly handle the sale of alcoholic liquor;
- (2) A floor plan:

(a) for any premises to be licensed for sale of alcoholic liquor for off premise consumption drawn to scale, with sufficient detail to depict design features **and depicting the total square footage of the establishment and the retail square footage area devoted to products sold from the premises.**

(b) for any premises to be licensed for sale of alcoholic liquor for on-premise consumption, drawn to scale, with sufficient detail to depict the number and location of dining tables and booths, the location of any bar(s), if applicable, the establishment design features, including but not limited to, entrances/exits and hostess areas. This plan should also include the maximum occupancy of the establishment and smoking and non-smoking designated areas.

(3) A valid lease in the name of the licensee which authorizes the sale, service and/or delivery of alcoholic beverages in effect for the entire license period. Such lease shall include terms of the lease as well as a contact person as agent of the property.

(4) Menu depicting all types of food and beverage items available to its patrons.

(5) Restaurant Operation Plan describing the planned operations for the restaurant which shall include, but is not limited to, a description of the customer facilities such as seating areas, displays, service areas, access and egress and similar facilities.

(6) Hours of operation. A list of the hours of operation for the establishment.

(7) Certificate of Occupancy verifying that the applicant has met all Building, Fire and Health Department requirements of the Village.

(8) The expected date of occupancy, which shall not exceed nine months from the date such application is filed;

(9) Certification that dram shop insurance is or will be in force covering the applicant and the premises which are to be operated under the license in an amount sufficient to satisfy statutory limits. The applicant shall attach to the application a copy of the policy for dram shop insurance coverage, which policy shall contain at a minimum the following information: insurer's name, agent's name, date of expiration of policy, type and amount of coverage, and a provision that the insurance company shall give the Village at least thirty (30) days notice prior to any cancellation or termination of the policy; and

(10) The name, home address, driver's license number, and past employment experience for the person to be designated as the Liquor Manager of the establishment. Also, certification that the Liquor Manager is employed on the premises of the establishment at least thirty-five (35) hours per week.

(11) Declaration page including the corporate name, business name and address along with information concerning the type of business activity or retail sales primarily engaged in.

(d) *Application for classification change.* A licensee wishing to file an application for a change of liquor license classification shall submit an application to the Village on forms as prescribed by the Village Manager. Such application shall be filed with the local Liquor Commissioner and shall include those items listed in Section 3-9(c).

(e) *Application fee.* Except as otherwise provided herein, a non-refundable application fee of one thousand dollars (\$1,000.00) shall be required with the filing of any application. The application fee may be reduced or waived as follows:

(1) If the Commissioner determines, pursuant to this Chapter, to grant a liquor license without referring the application to the local Liquor Commission or the Plan Commission, the applicant may receive a partial refund of one-half of the application fee.

(2) If the Commissioner determines, pursuant this Chapter, to grant or deny a liquor license without requiring a full investigation, the applicant may receive a partial refund of one-half of the application fee.

(3) If the Commissioner determines, pursuant this Chapter, to grant a liquor license without referring the application to the local Liquor Commission or the Plan Commission, and without requiring a full investigation, the applicant may receive a partial or full refund of the application fee as provided herein. Where the Commissioner determines, based upon the nature and complexity of the application, that the administrative functions were de minimis, a full refund may be granted. Where the Commissioner determines

that the administrative functions were not de minimis, a partial refund of one-half of the application fee may be granted.

(4) If the Commissioner determines, pursuant to this Chapter, to grant a liquor license while referring the application to the local Liquor Commission or Plan Commission for change of liquor license classification, at the discretion of the Liquor Commissioner the applicant may receive a partial or full refund of the application fee. (Ord. No. 244, § 3; Ord. No. 1741, § 10; Ord. No. 1749, § 2; Ord. No. 2388, § 5; Ord. No. 2450, § 3; Ord. No. 2541, § 4; Ord. No. 2735, § 1; Ord. No. 2847, § 2; Ord. No. 3064, § 1; Ord. No. 3182, § 2; Ord. No. 3343, § 1.)

3-13. Classification of licenses.

Such licenses shall be, and are hereby, divided into the following classes:

(a) Class "A" package liquor licenses, which shall authorize the retail sale on the premises specified, which shall not include premises of less than three thousand six hundred square feet, of alcoholic liquor in packages with the seals unbroken, only, and not for consumption on the premises, except that wine tasting shall be permitted on such premises. Such licenses shall be only authorized in locations where the sale of packaged liquor is the main or principal business and/or in locations where the principal business is that of a drug store or grocery store, including those grocery stores referred to as "convenience stores."

(b) Class "B" beer and wine **on-premise consumption** licenses as follows:

(1) Class "B-1" beer and wine licenses shall authorize the retail sale of beer and wine with meals for consumption on the premises where the major business is that of a restaurant having a guest seating capacity, excluding outdoor areas, of not less than thirty-five.

(2) Class "B-3" beer and wine licenses shall authorize the retail sale of beer and wine with meals for consumption on the premises where the major business is that of a restaurant, as defined herein, with full kitchen facilities for on-site preparation of meals, and which is open for business for a single daily period between the hours of 11:00 A.M. and 3:00 P.M., and for a single period on Sundays between the hours of 12:00 Noon and 4:00 P.M.

(c) Class "B" beer and wine **off-premise consumption** licenses as follows:

(1) Class "B-2-A" beer and wine 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 wine tasting shall be permitted on such premises. Such licenses shall be only authorized in locations where the sale of beer and wine is the main or principal business. ~~and/or in locations where the principal business is that of a drug store or grocery store, including those grocery stores referred to as "convenience stores".~~

(2) Class "B-2-B" beer and wine 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 wine tasting shall be permitted on such premises. Such licenses shall be only authorized in locations where the main or principal business is that of a drug store or grocery store.

(3) Class "B-2-C" beer and wine 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 wine tasting shall be permitted on such premises. Such licenses shall be only authorized in locations where the main or principal business is that of a convenience store wherein at least seventy-five percent (75%) of the retail sale square footage area is devoted to the sale of food, non-alcoholic beverages, household products, cosmetic items and reading materials.

(d) Class "C" club licenses shall authorize the retail sale of alcoholic liquor for consumption on the premises where the business is that of a club as defined herein.

(e) Class "C-1" licenses shall authorize the retail sale of alcoholic liquor for consumption on the premises where the major and primary business is that of a Comedy Club. Provided, the sale of alcoholic beverages shall be authorized only during or one hour before the regularly scheduled performances. The performances shall consist of one or more comedians and shall be not less than 1.5 hours in length with patrons paying a separate admission charge for each performance. At the end of each performance, patrons

shall be required to exit before the next group of patrons admitted. Provided, performances shall be done by professional comedians except that amateur performances (open mike) shall be permitted not more than one night per week.

(ef) Class "D" restaurant licenses as follows:

(1) Class "D-1" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises where the major and primary business is that of a restaurant located in a retail or freestanding structure and having a guest seating capacity, excluding outdoor areas, of not less than one hundred twenty-five.

(2) Class "D-3" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises by service bar only, where the major and primary business is that of a restaurant located in a retail or freestanding structure and having a guest seating capacity, excluding outdoor areas, of not less than seventy-five.

(3) Class "D-4" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises; and the retail sale of beer and wine only in original packages, unopened only, and not for consumption on the premises, subject to the following:

a. The licensed premises shall have a guest seating capacity, excluding outdoor areas, of not less than one hundred twenty-five.

b. Retail liquor sales for off-site consumption shall be limited to beer and/or wine produced on the licensed premises, such as a micro-brewery.

c. For any new license issued after July 1, 2000, not more than forty percent (40%) of food and on-site beverage consumption sales shall be derived from alcoholic liquor.

(4) Class "D-5" restaurant licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises, where the major and primary business is that of a restaurant located in the Concentrated Central Area as defined in the Downers Grove Zoning Ordinance, and having a guest seating capacity, excluding outdoor areas, of not less than sixty but not more than one hundred twenty four.

(fg) Class "E" transition licenses as follows:

(1) Class "E-1" transition licenses shall be issued only for premises which were licensed by DuPage County for the retail sale of alcoholic liquor immediately prior to the annexation to the Village of the territory on which such premises are located; provided, however, that within three years of initial issuance of a Class "E-1" license,

a. The licensed premises must comply with the requirements for the issuance of a retail liquor license in the Village;

b. The licensee must apply for and receive such a license, or if no license of the necessary classification is available, the Liquor Commissioner may issue an "E-2" license as provided herein; and

c. The licensee must thereafter comply with the limitations of the license applied for and issued.

(2) Class "E-2" transition licenses shall be issued only for premises which were issued an "E-1" license and which comply with the requirements for issuance of a retail liquor license in the Village. Such license shall state limitations on liquor sales and required seating, if applicable.

(gh) Class "F" hotel licenses shall authorize the retail sale of alcoholic liquor for consumption on the premises of a hotel, and the retail packaged sale of beer and wine in original packages to hotel patrons. This shall include sales occurring at facilities, or as part of activities, normally operated as an integral part of the hotel, such as, but not necessarily limited to, restaurants, cocktail lounges, room service and banquets. Provided, the licensed premises shall have at least one restaurant with a seating capacity of not less than one hundred twenty-five operated as an integral part of the hotel.

(hi) Class "G" recreation facilities licenses as follows:

(1) Class "G-1" recreation facility license shall authorize the retail sale of beer and wine for consumption on the licensed premises in a recreational facility having a guest seating capacity, excluding outdoor areas, of not less than thirty-five.

(2) Class "G-2" recreation facility license shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises in a recreational facility of not less than 16,000 square feet and having a guest seating capacity, excluding outdoor areas, of not less than one hundred twenty-five.

(ij) Class "H" publicly owned golf course license shall authorize the retail sale of beer and wine for consumption on the licensed premises in a facility located on a golf course owned and operated by the Downers Grove Park District.

(jk) Class "I" catering license shall authorize the sale of alcoholic liquor in connection with the operation of an off-site catering business that serves alcoholic liquor in connection with the catering of foods for private functions and for consumption only on the premises where the food is catered. The sale of alcoholic liquor shall be incidental to the food service and if the catered event does not qualify as a private function, a specialevent license shall also be required for the location of the catered event. No cash bar shall be permitted. No alcoholic liquor shall be served at a single location for more than eight (8) consecutive hours. A licensee shall submit a report to the Village within thirty days following each July 1 and January 1 setting forth the location of each event the licensee has catered within the Village and the number of hours for which liquor and food were served at such events during the six months prior. In addition, such report shall describe any planned events currently scheduled by the Licensee.

(kl) Class "R" restaurant license shall authorize the sale of alcoholic liquor for consumption on the licensed premises, where the major and primary business is that of a restaurant. Provided, not more than forty percent (40%) of food and beverage sales shall be derived from alcoholic liquor. In addition, bar seating shall be limited to twenty percent (20%) of the entire seating for the establishment.

(lm) Class "R-1" restaurant licenses shall authorize the retail sale of beer and wine for consumption on the licensed premises, where the major and primary business is that of a restaurant. Provided, not more than forty percent (40%) of food and beverage sales shall be derived from alcoholic liquor. In addition, bar seating shall be limited to twenty percent (20%) of the entire seating for the establishment.

(mn) Class "T" theater licenses shall authorize the retail sale of alcoholic liquor for consumption on the licensed premises where the major and primary business is that of a theater, subject to the following conditions:

- a. Sales of alcoholic beverages shall be limited to contracted theater rentals.
- b. Alcoholic beverage sales shall not be allowed during regularly scheduled motion pictures or films.
- c. Sales shall be made from portable bars containing alcoholic liquor, mixes and related preparation materials. Such portable bars shall not have seats or stools for patrons at which to sit.
- d. Portable bars shall be removed and/or stored out of view during all regularly scheduled motion pictures.
- e. No alcoholic liquor shall be served at a single contracted theater rental for more than six (6) consecutive hours.
- f. Food service must be available during contracted theater rentals in which alcoholic liquor service exceeds two (2) consecutive hours. However, should there be a suspension of liquor service for a main event or attraction (at a minimum duration of one (1) hour), such food service shall not be required.
- g. The licensee shall submit a report to the Village within thirty days following each July 1 and January 1 setting forth each contracted theater rental and the number of hours for which liquor was served during the six months prior. In addition, such report shall describe any planned events currently scheduled by the Licensee.

(Ord. No. 244, § 6; Ord. No. 279, § 1; Ord. No. 356, § 1; Ord. No. 634, § 1; Ord. No. 635, § 1; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1465, § 1; Ord. No. 1741, §§ 15 to 17; Ord. No. 2246, § 1; Ord. No. 2388, § 7; Ord. No. 2541, § 6; Ord. No. 2735, § 1; Ord. No. 2945, § 1; Ord. No. 2996, § 1; Ord. No. 3050, § 1; Ord. No. 3164, § 2.)

3-14. Term; fees.

- (a) The term of each license issued hereunder shall be from July 1 to June 30.

(b) The fee for the various classes of licenses shall be as follows:

License	Annual Fee
"A"	\$1,600.00
"B-1"	\$1,075.00
"B-2-A, B-2-B, B-2-C"	\$950.00
"B-3"	\$450.00
"C"	\$470.00
"C-1"	\$850.00
"D-1"	\$2,630.00
"D-3"	\$1,750.00
"D-4"	\$2,770.00
"D-5"	\$2,630.00
"E-1"	\$2,630.00
"E-2"	\$2,630.00
"F"	\$2,730.00
"G-1"	\$1,075.00
"G-2"	\$2,630.00
"H"	\$1,075.00
"I"	\$765.00
"R"	\$2,700.00
"R-1"	\$1,150.00
"T"	\$765.00

(c) Except as provided herein, there shall be no refund or proration of the license fee for any portion of a year prior to issuance or during which licensee ceases to engage in the business of selling alcoholic liquor. For any license issued on or after the first day of January of any year, the license fee shall be prorated by dividing the fee set forth in subsection (b) by twelve and multiplying the resulting sum by the number of months, or parts thereof, remaining in the license year.

(d) For any change in classification issued on or before the first day of January of any year, the licensee shall be awarded a credit in the amount of the license fee previously paid by licensee in same license year for the same establishment.

(e) The annual fee shall be due and payable June 30 in each year. No licensee shall continue to engage in the business of selling alcoholic liquor unless such fee has been paid.

(f) All required fees shall be paid at the time of issuance of the license after approval by the local Liquor Commissioner pursuant to Section 3-12 of this Chapter. All such fees shall be forthwith deposited with the Village Treasurer.

(g) It is the intention of the Village to review and, if justified, adjust license fees annually based upon the costs and expenses incurred by the Village to administer this section. Provided, however, nothing herein shall require such review nor impair or prohibit any adjustment in fees as may from time to time, be approved by the Council. (Ord. No. 244 §§ 5, 6; Ord. No. 279, § 1; Ord. No. 356, § 1; Ord. No. 634, § 1; Ord. No. 635, § 1; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1465, § 1; Ord. No. 1741, §§ 15 to 17; Ord. No. 2167, § 4; Ord. No. 2246, § 1; Ord. No. 2388, § 7; Ord. No. 2541, § 6; Ord. No. 2735, § 1; Ord. No. 3050, § 2; Ord. No. 3377, § 1.)

3-15. Limitation on number of licenses.

The number of licenses in each classification as defined in Section 3-13 which it shall be lawful to issue shall be limited so that the licenses in force and effect at any time shall not exceed the following numbers:

Class "A" package liquor licenses not to exceed seventeen in number.

Class "B-1" beer and wine restaurant licenses not to exceed twenty-five in number. Effective July 1, 2000, no further Class "B-1" beer and wine restaurant licenses shall be issued unless issued as a renewal.

Class "B-2-A, B-2-B and B-2-C" beer and wine packaged liquor licenses not to exceed ten in number.

Class "B-3" beer and wine licenses not to exceed three in number.

Class "C" club licenses not to exceed six in number.

Class "C-1" comedy club licenses shall not exceed one in number.

Class "D-1" restaurant licenses not to exceed thirty-six in number. Effective July 1, 2000, no further

Class "D-1" restaurant licenses shall be issued unless issued as a renewal.

Class "D-3" restaurant licenses not to exceed nine in number. Effective July 1, 2000, no further Class "D-3" restaurant licenses shall be issued unless issued as a renewal.

Class "D-4" restaurant licenses not to exceed two in number.

Class "D-5" restaurant licenses not to exceed four in number. Effective July 1, 2000, no further Class "D-5" restaurant licenses shall be issued unless issued as a renewal.

Class "E-1" transition licenses shall not be limited in number.

Class "E-2" transition licenses shall not be limited in number.

Class "F" hotel licenses shall not be limited in number.

Class "G-1" recreation facility licenses not to exceed one in number.

Class "G-2" recreation facility licenses, not to exceed one in number.

Class "H" publicly owned golf course license, not to exceed one in number.

Class "I" catering licenses, not to exceed four in number.

Class "R" full alcohol restaurant licenses shall be unlimited in number.

Class "R-1" beer and wine only restaurant licenses shall be unlimited in number.

Class "T" theater licenses, not to exceed one in number.

(Ord. No. 244, § 4a; Ord. No. 284, § 1; Ord. No. 356, § 2; Ord. No. 1059, § 1; Ord. No. 1200, § 1; Ord. No. 1395, § 1; Ord. No. 1465, § 2; Ord. No. 1741, § 21; Ord. No. 2246, § 2; Ord. No. 2541, § 8; Ord. No. 2735, § 1; Ord. No. 2861, § 3; Ord. No. 3050, § 3.)

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

[PkgLic]



**VILLAGE OF DOWNERS GROVE, ILLINOIS
BUSINESS ACTIVITY DECLARATION**

1. **Name of Liquor License Applicant/Holder:** _____
Doing Business As: _____
Address: _____
Phone: _____

2. **Main or Principal Business to be conducted by the Applicant on the premises stated above:**

wherein _____ (_____ %) of the business is devoted to the sale/service of:

THE UNDERSIGNED, BEING DULY SWORN, DOES STATE AS FOLLOWS:

- A. THAT THE UNDERSIGNED IS EMPOWERED TO PREPARE AND SIGN THIS APPLICATION ON BEHALF OF THE APPLICANT.**
- B. THAT THE UNDERSIGNED HAS REVIEWED THIS DECLARATION AND THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND ACCURATE.**

APPLICANT:

BY: _____

NAME: _____

TITLE: _____

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Public