

COUNCIL WORKSHOP ITEM

ITEM: An Ordinance Amending Certain Alcoholic Liquor Provisions and License Requirements
DATE: February 17, 2004
PREPARED BY: Carol Conforti, Liaison to the Liquor Commission
PURPOSE: Adopt an Ordinance Amending Certain Liquor Provisions

DISCUSSION:

Attached find an ordinance amending provisions of the Liquor Code and certain license classification requirements. Over the course of the past few months, the Liquor Commission has addressed the 60-40% food v. alcohol requirement, fines to servers and “bring your own booze” (BYOB) issues.

The Commission discussed and reviewed the 60-40% food v. alcohol split requirements, and, after much discussion, came to the following consensus:

- *eliminate the 60-40% food v. alcohol split requirement

- *require licensees to provide a full menu until 10:00 p.m. Sunday-Thursday, and until 11:00 p.m. on Fridays & Saturdays. After such times, a reduced menu including appetizers, sandwiches, hors d’oeuvres must be available. Menus shall be on the table, presented to customers or posted in a manner so they are easily readable.

- *a full menu and/or a reduced menu will continue to be required up until 1 hour prior to close

- *continue to limit bar seating to 20% of the entire dining seating

It shall be noted that existing licensees holding other than a Class “R”, R-1” or “D-4” license will remain “grandfathered” as they did prior to the adoption of the 60-40% food v. alcohol split requirement. It is hoped that elimination of the 60-40% requirement will help retain current licensees and attract new businesses to the Village while maintaining the integrity of the Liquor Code without being overly-restrictive.

The Commission also discussed raising fines issued to servers involved in the Village’s control buy or “sting” operation (Section 1-16). It is proposed that the fine issued directly to those employees selling/delivering to the underage agent be raised from \$75.00 to \$200.00. The establishment will continue to be fined, suspended and required to pay administrative costs to cover the disciplinary hearing. This change is being proposed to place more responsibility on the server involved in the sale. Licensees have indicated their support for this increase.

In addition, the Commission discussed the removal of an existing restriction in which *licensed* establishments are not allowed to permit customers to bring in their own alcohol. So long as the licensee maintains control of the alcohol, the proposed ordinance would allow this change. (This was in response to a request from a license holder who frequently is asked by customers if they can bring in a “special” bottle of wine/champagne for a celebration.) It should be noted that each licensee could choose *whether or not* to allow this type of activity in their establishment. The ordinance is currently written to expressly prohibit patrons from bringing their own alcohol into **any** establishment - both licensed and unlicensed. Please note that amendments to the existing BYOB (bring your own booze) restrictions for *unlicensed* establishments were rejected by the Commission. It was determined that there are no means for holding an unlicensed establishment responsible for overservice or, on a more serious matter, serving minors. Other factors contributed to the rejection, such as, there being no requirement for liquor liability insurance coverage, no requirement for landlord approval/acknowledgement that liquor is being served on their premises and, especially, no requirement for food service - which is a main component of the Liquor Control Ordinance. The Liquor Commission may

revisit this item in the event a proposal is presented that would address the concerns that the Commission and staff have about this type of activity.

At their meeting of February 5, 2004, the Liquor Commission unanimously recommended approval of the amendments and that the ordinance be submitted to the Village Council for consideration.

ATTACHMENTS:

An Ordinance Amending Certain Alcoholic Liquor Provisions and License Requirements

Downers Grove Chamber of Commerce Support Letter

Liquor Commission Minutes of: August 7, 2004; September 4, 2004; October 2, 2003; December 4, 2003; January 8, 2004 & February 5, 2004

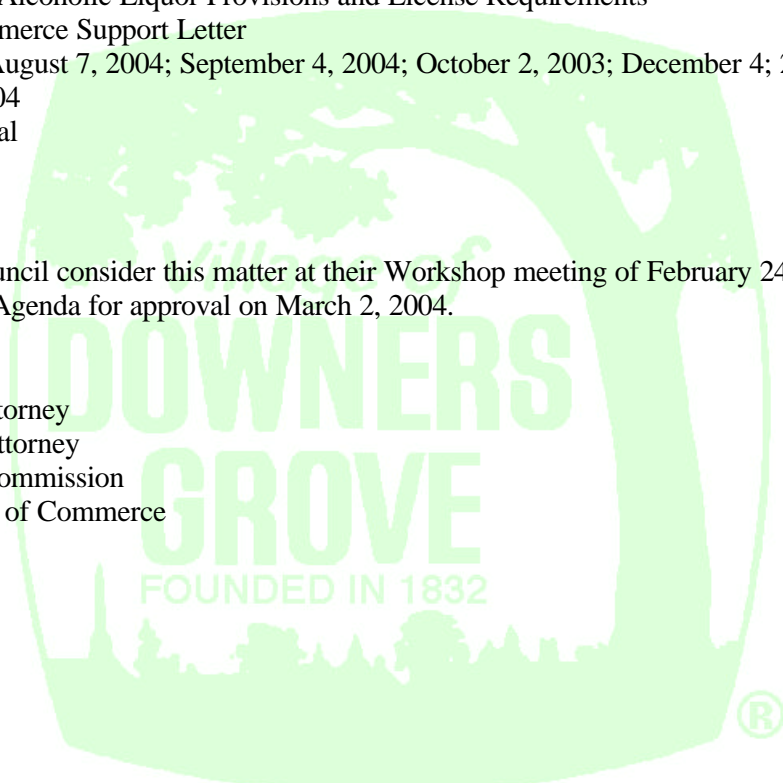
Miscellaneous background material

RECOMMENDATION:

It is requested that the Village Council consider this matter at their Workshop meeting of February 24, 2004 and place this item on the Active Agenda for approval on March 2, 2004.

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

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ORDINANCE NO. _____

AN ORDINANCE AMENDING CERTAIN ALCOHOLIC LIQUOR PROVISIONS AND LICENSE REQUIREMENTS

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

Section 1. That Section 1.16 is hereby amended to read as follows:

1.16 Citation and settlement in lieu of prosecution for certain offenses.

(a) Whenever a person is observed violating certain provisions of this code as specified in this section, or there is reasonable suspicion to believe that such a violation has occurred and that a particular person is responsible, the Village may, in lieu of filing a complaint in court, issue to the alleged violator a citation which shall:

- (1) Advise said person that the same has violated a specified ordinance;
- (2) Direct said person to make payment in an amount applicable to said alleged violation as set forth in this section as settlement of said claim;
- (3) Advise said person, where applicable, to cease and/or abate said violation forthwith and to refrain from like violations in the future;
- (4) Inform said person that, upon failure to so settle the claim and to cease and/or abate said violations, a complaint will be filed in the Circuit Court of DuPage County.

(b) Except as provided below, citations as provided herein shall be personally served upon the person responsible for the violation, his agent, representative, independent contractor or employee. In the event the owner, occupant, contractor or other person responsible for the violation cannot be located the citation may be served by posting a copy at the property, structure or vehicle where the violation has occurred and sending a copy by United States mail to the last known address of such person.

(c) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code and the Comprehensive Zoning Ordinance of the Village of Downers Grove may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of ten dollars (\$10.00) if paid within ten (10) days of service of the citation, or twenty-five (\$25.00) dollars if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

- (i) Section 5-12; Dog, Horse or Pony Running at Large.
- (ii) Section 5-12.1; Disposal of Dog Excrement.
- (iii) Section 13-43; Storage of Refuse.
- (iv) Section 13-49.1; Placing Garbage on the Parkway for Scavenger Removal.
- (v) Section 13-39; Smoking Prohibited in Certain Places.

2. COMPREHENSIVE ZONING ORDINANCE

- (i) Section 28-1404; Regulating Off-Street Parking.
- (ii) Section 28-1502; Regulating the Placement of Signs.

(d) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, and such other Codes adopted therein, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of twenty-five dollars (\$25.00) if paid within ten (10) days of service of the citation, or fifty dollars (\$50.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

Alcoholic Liquor

1. DOWNERS GROVE MUNICIPAL CODE

- (i) Section 25-11; Use of Public Hydrants.
- (ii) Section 15-8; Drinking in Public.
- (iii) Section 8-99(a)(7); Requirements for Display of Massage Establishment License and Massage Therapist Permit.
- (iv) Section 14-74; Pedestrian's Duties at Railroad Grade Crossings.
- (v) Section 15-5.1; Noise Regulations.
- (vi) Section 19-21.1; Depositing Snow on Paved Streets.
- (vii) Section 13-49.2; Discarding Refuse and Compostable Materials in Streets, etc., prohibited.

2. NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY CODE (As adopted in Section 7-29)

- (i) Section 1-3.13.1; Building Equipment Maintenance.
- (ii) Section 1-3.13.2; Building Fire Equipment and Systems Maintained in Proper Operating Condition.

3. BUILDING OFFICIALS & CODE ADMINISTRATOR NATIONAL FIRE PREVENTION CODE (As adopted in Section 17-43)

- (i) Section F-310.4; Multi-Plug Adaptors.
- (ii) Section F-310.5; Extension Cords.
- (iii) Section F-518; Portable Fire Extinguishers.

4. COMPREHENSIVE ZONING ORDINANCE

- (i) Section 28-1510; Temporary Signs.
- (ii) Section 28-1408; Parking of Recreational Vehicles and Recreation Equipment in Residence District.

(e) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of fifty dollars (\$50.00) if paid within ten (10) days of service of the citation, or one hundred dollars (\$100.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

- (i) Section 13-35; Open Burning Prohibited.
- (ii) Section 15-28.3; Possession of Telecommunications Devices on Public School Property Prohibited.
- (iii) Section 17-45; Parking in Fire Lane.
- (iv) Section 25-5; Regulations for Water Conservation.

2. DOWNERS GROVE PARK DISTRICT GENERAL USE ORDINANCE (pursuant to an intergovernmental agreement with the Downers Grove Park District)

(f) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of seventy-five dollars (\$75.00) if paid within ten (10) days of service of the citation, or one hundred and fifty dollars (\$150.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

- ~~(i) Section 3-25; Sale of Liquor to Certain Persons Prohibited.~~
- (ii) Section 15-23.1; Possession of Tobacco Products by Minors.
- (iii) Any provision of Chapter 6, Bicycles.
- ~~(iv)~~ Section 19-15.1; Skateboarding, Roller Skating or In-Line Skating in a Business District.

2. NATIONAL FIRE PROTECTION ASSOCIATION LIFE SAFETY CODE (As adopted in Section 7-29)

Alcoholic Liquor

(i) Section 2-4; Obstructing Building Exits.

(g) Any person served with a citation for violations of the following provisions of the Downers Grove Municipal Code, may settle and compromise the matter in respect of such ordinance violation by ceasing and/or abating said violation and paying the sum of two hundred dollars (\$200.00) if paid within ten (10) days of service of the citation, or four hundred dollars (\$400.00) if paid after such ten (10) day period but before filing of a complaint in the Circuit Court of DuPage County.

1. DOWNERS GROVE MUNICIPAL CODE

(i) Section 3-25; Sale of Liquor to Certain Persons Prohibited.

(gh) Payment of the citation shall be made at the window at Village Hall, or by depositing payment in the Village drop box or United States mail.

(hi) In the event that payment is not made within the time prescribed and a complaint has been filed in the Circuit Court of DuPage County, any person convicted of violating any of the provisions of this code shall be punished by a fine as determined under Section 1-15(a).

(ij) The issuance of a citation under this section shall not be deemed a waiver of the power of the Village of Downers Grove to suspend, revoke or refuse to renew any license or permit for cause.

(jk) The following Village personnel shall have the authority to issue citations under this section: police officers, fire department inspectors, code services officers, and such other persons as designated by the Village Manager; provided that fire department inspectors shall only write citations for violations of the Life Safety or BOCA Fire Prevention Code, and that the Village Manager, by administrative regulation, may limit the jurisdictional powers of other persons he designates as authorized to issue citations. (Ord. No. 2261, § 4)

Section 2. That Section 3.3 is hereby amended to read 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:

Act. The Illinois Liquor Control Act of 1934, as now or hereafter amended.

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.

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.

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.

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

Alcoholic Liquor

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.

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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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

Alcoholic Liquor

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. A full menu, including entrees and appropriate side dishes, shall be available at all times liquor sales are being conducted until ten o'clock (10:00) p.m. Sunday through Thursday, and eleven o'clock (11:00) p.m. Friday and Saturday. After such times, in the event a full menu is not provided, a reduced menu, which must include appetizers, sandwiches, hors d'oeuvres or other similar foods shall be available. Such menu shall be on the table, presented to each patron as they are seated or be posted in such a manner to be easily readable by the patrons of the restaurant. Provided, the kitchen may cease operating no sooner than one hour before closing.

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.

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).

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.

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.

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 3. That Section 3.9. is hereby amended to read as follows:

3.9. Application.

Alcoholic Liquor

(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. A reduced restaurant menu shall also be required should licensees remain open after 10:00 p.m. Sunday through Thursday or 11:00 p.m. on Friday or Saturday.

(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

Alcoholic Liquor

(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.

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 the 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.)

Section 4. That Section 3.13 is hereby amended to read as follows:

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

Alcoholic Liquor

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.

(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.

(f) 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.~~

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.

(g) 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.

(h) 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.

(i) 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.

(j) 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.

(k) 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.

(l) Class "O" outdoor license shall authorize the sale and consumption of alcoholic liquor in and 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

Alcoholic Liquor

and food must be available in the outdoor dining area at all times.

(m) 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.

(n) 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.

(o) 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.)

Section 5. That Section 3.27. is hereby amended to read as follows:

3.27. Required warning signs.

In every place in the Village where alcoholic liquor is sold there shall be displayed at all times in a prominent place a printed card which shall read substantially as follows:

Warning: If you are under twenty-one years of age, you are subject to a fine of up to \$750.00 under the Downers Grove Municipal Code if you attempt to purchase alcoholic liquor, purchase alcoholic liquor or misrepresent your age for the purpose of purchasing or obtaining alcoholic liquor. Official photo identification will be required to prove age before purchase.

Warning: If you sell, give or deliver alcoholic liquor to a person under twenty-one years of age, you are subject to a minimum fine of \$200.00 under Section 1-16 the Downers Grove Municipal Code. Official photo identification should be requested from patrons to prove age before a purchase.

Alcoholic Liquor

(Ord. No. 2735, § 1; Ord. No. 2910, § 2.)

Section 6. That Section 3.29. is hereby amended to read as follows:

3.29. Consumption on premises.

(a) Except as provided herein, it shall be unlawful for anyone holding a liquor license under this Chapter to allow customers to consume alcoholic liquor on the premises which was not purchased from the licensee unless the alcoholic liquor is ~~provided and served~~ and controlled by the licensee or an off-site catering business holding a Class "T" catering license under the provisions of this Chapter.

(b) Except for wine tastings as authorized in Section 3-13(a) or (b)(2) and for special events as authorized by the local Liquor Commissioner pursuant to Section 3-38, it shall be unlawful for anyone having a Class "A" or Class "B-2" license under this Chapter, or a Class "E-1" or Class "E-2" license which on its face limits sale of alcoholic liquor to original packages, unopened, not for consumption on the premises, to sell or offer for sale any alcoholic liquor for consumption on the licensed premises, or to permit alcoholic liquor to be consumed on such premises.

(c) Except for special events as authorized by the local Liquor Commissioner pursuant to Section 3-38, it shall be unlawful for any person operating or employed by any club, retail store, hotel, men's or women's club, massage establishment, sexually oriented business, recreational facility or restaurant as defined in Section 3-3 which is not licensed to sell alcoholic liquor in the Village pursuant to the requirements of this Chapter, to permit alcoholic liquor to be consumed by any customers on the business premises. Provided, the provisions of this section shall not apply within hotel rooms as that term is defined in Article VI of Chapter 21 of the Downers Grove Municipal Code. (Ord. No. 244, § 8; Ord. No. 1200, § 1; Ord. No. 1741, § 2; Ord. No. 2541, § 2; Ord. No. 2735, § 1; Ord. No. 2847, § 4.)

Section 7. That Section 3.31. is hereby amended to read as follows:

3.31. Hours of business.

(a) It shall be unlawful to sell or offer for sale at retail any alcoholic liquor in the Village between the hours of 1:00 A.M. and 8:00 A.M. on any day other than a Sunday, or between the hours of 2:00 A.M. and 12:00 Noon on any Sunday. Provided, the hours during which sale is lawful may be extended by written order of the local Liquor Commissioner for periods not to exceed three hours upon written application by the licensee stating the reasons for the requested extension and the date or dates for which the extension is sought. No licensee shall be granted such extension for more than two dates in any one calendar year.

(b) It shall be unlawful to keep open for business or to admit prospective customers to any premises having a Class "A", Class "B-2", Class "E-1" or Class "E-2" license during the hours within which the sale of alcoholic liquor is prohibited; provided, that in the case of:

(1) A Class "E-1" or Class "E-2" license for premises in which a restaurant, club, hotel, or recreational facility is operated, or

(2) A Class "A", "B-2", "E-1" or "E-2" license for premises from which less than half of the gross revenues are derived from the sale of alcoholic liquor not for consumption on the premises, such premises may be kept open during such hours, but no alcoholic liquor may be sold to any person in such premises during such hours.

(c) It shall be unlawful for any licensee to suffer or permit any person to consume alcoholic liquor on premises licensed under this Chapter later than one hour after the applicable closing time determined under paragraph (a) of this Section 3-31.

(d) It shall be unlawful for any licensee holding a Class "~~B-1", Class "D-1", Class "D-2", Class "D-3", Class "D-4", Class "D-5", Class "E-1", Class "E-2", Class "F", Class "G-1", or Class "G-2"~~ license for ~~on~~ premises ~~consumption in which a restaurant, club, hotel or recreational facility is operated,~~ to sell or offer for sale any alcoholic liquor at any time when the regular food service in such licensed premises is not in

Alcoholic Liquor

actual operation, except that such sales may be made during a one-hour period immediately following the close of regular food service operations in such premises, subject to the provisions of paragraph (a) of this Section 3-31. (Ord. No. 2450, § 2; Ord. No. 2735, § 1; Ord. No. 3050, § 6; Ord. No. 3075, § 1.)

Section 8. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 9. 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



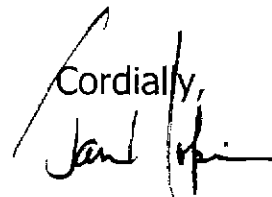
DOWNERS GROVE AREA
CHAMBER OF COMMERCE AND INDUSTRY

Date: February 5, 2004
To: Downers Grove Liquor Commission
Subject: Liquor Ordinance Amendments

The Legislative Committee for the Downers Grove Chamber of Commerce has reviewed the proposal for the amendment to the Liquor Control Ordinance. We would first like to thank Carol Conforti for all her assistance. She was always available for questions and attended our meetings to assist us in the review.

The elimination of the 60/40 food vs. alcohol ratio, maintaining the 20% maximum for bar seating and the revised food service required, addresses the major concerns of our members...and, we feel, the business community in general. As Carol so well stated in her memo, this was a way "to maintain the integrity of the ordinance without being over-restrictive."

We hope you will look upon this proposal favorably.

Cordially,


Jan Kopsis, co-chair

Legislative Committee

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Nay: Mr. Durkin

Abstain: None

MOTION CARRIED: 6:1:0


Mr. Durkin clarified that he voted nay on this motion because he felt Mr. Moore's license should have been suspended for a minimum of three days based on Mr. Moore's previous record in Woodridge and the fact that a red under 21 driver's license and a high school ID were presented in this case. Mr. Durkin said he felt the above circumstances justified a minimum suspension of three consecutive days served on a Thursday, Friday and Saturday as well as being required to pay a fine and the administrative costs associated with this hearing.

Chairman Kubes explained once the Commission makes a recommendation, the Liquor Commission has the final decision as to the length of the suspension and when and how it will be served as well as the amount of the fine and the administrative fee. Mr. Durkin agreed; however, as a representative of the citizens of the Village of Downers Grove, he felt it was his duty to recommend the penalty, which he felt was most appropriate in the case.

Chairman Kubes warned Mr. Moore that any future applications, which he might submit to the Liquor Commission, would be carefully scrutinized.

The Commissioners reviewed various procedures and methods for conducting discussions and making recommendations during the meeting.

Commissioner Durkin had another commitment and left the meeting at approximately 9:20 p.m.

V. OLD BUSINESS

Ms. Conforti presented a draft ordinance amending certain Alcoholic Liquor Provisions and License Requirements. Earlier today, Ms. Conforti said she received a statement delivered by Mr. Jan Kopis, from the Downers Grove Chamber of Commerce, Legislative Committee, which said that they have reviewed the proposed amendments to the Liquor Control Ordinance. They felt the elimination of the 60/40 food versus alcohol ratio, maintenance of a 20% maximum for bar seating, and revised food service requirements address the major concerns of their members and of the business community in general. They said this amendment is a way maintain the integrity of the ordinance without making it overly restrictive. The Legislative Committee hoped that the Liquor Commission would look favorably on this proposal and they thanked Ms. Conforti for her help.

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Ms. Conforti said she met with members of the Chamber of Commerce a few days ago, and they were in favor of the proposed amendment. Ms. Conforti said she believes the draft ordinance addresses the concerns expressed by the Liquor Commission at their January 8, 2004 meeting and maintains Downers Grove's commitment to restaurant service.

Ms. Dietrich said she agrees with the statement from the Chamber of Commerce and with the proposed language in the draft ordinance. She added that it is good to know that the Chamber also likes the proposed changes.

Mr. Barnett wondered if so many separate license classifications were necessary in light of the proposed changes and the elimination of the 60/40 food versus alcohol sales requirement. He asked if the size segregation in the Class D licenses and the seating percentages in the Class R licenses were in response to the 60/40 requirement and were included to avoid overburdening smaller establishments. Ms. Conforti said the different size classifications came about because smaller establishments were having difficulty meeting the minimum seating requirement for a full alcohol liquor license.

Mr. Barnett said with the proposed ordinance changes there are no performance differences in the different classifications. Ms. Conforti said some existing licensees may not be able to meet the 20% bar seating maximum. Thus, she suggested "grandfathering" existing licensees; although she said that there might be some that would not object to changing their classification.

Mr. Barnett said there seems to be some overlap of performance requirements within the four Class "D" license and two Class "R" classifications. Ms. Conforti explained that among the Class "D" licenses there are differentiations. She stated that the Class "D-1" is for restaurants with a minimum of 125 dining seats and there is not a limit on the number of seats at the bar, should the licensee exceed the 125 dining seats. She added that the Class "D-3" is for an establishment with a service bar in which bar seating limitations would not even apply as there is no actual bar, per se. She stated that the Class "D-4" was specifically created for brew pubs which allows the licensee to brew on premises and allow their brewed products produced on site to be sold. The "D-5" is limited to the CBD wherein the seating requirement is not less than 60 but not more than 124. She added that both Class "R" and Class "R-1" categories would still need to remain separate because the Class "R" is for a restaurant with full alcohol service and Class "R-1" is for a restaurant with beer and wine only.

Mr. Barnett said he thought that the Commission recommended limiting bar seating to 20% of the establishment's total seating for all licensees with a full alcohol license. Ms. Conforti said the Village could make that a requirement; however she pointed out some potential problems. If the Village changes the requirements for existing licensees, the Village may have to revoke licenses if they were not in compliance with the new requirements. However, the licensee would likely contest the revocation on the grounds that the Village was asking them to comply with requirements that differed from the

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Abstain: None

MOTION CARRIED: 6:0:0

Ms. Conforti said the ordinance would be presented to the Village Council on February 24, 2004 at their Workshop meeting. She invited the members of the Liquor Commission to attend if they wish.

Regarding mandatory training requirements, which the Commission suggested at last month's meeting. Rather than requiring mandatory training in the Ordinance, Ms. Conforti said staff would prefer to keep it as part of a Findings and Order from the Liquor Commissioner. She said, in that way, the Liquor Commissioner would have the option to require any licensee found guilty of a violation of Section 3-25(a) to send their employees to a mandatory certified training course as a part of his Findings and Order. In addition, licensees with outstanding records would not be penalized for the mistakes of others.

Ms. Conforti said there is often a large amount of turn over among restaurant employees and to require mandatory training for all of them would be burdensome to licensees. However, if a licensee violates a local ordinance, Ms. Conforti believed that the Liquor Commission could make a recommendation to send the employees to a certified training class. She recalled that a few years ago this was done when a licensee was found to have a number of DUP's attributed to his establishment.

Ms. Conforti explained that after the Liquor Commission submits their recommendations to the Liquor Commissioner, he issues a Findings and Order to the licensee, which includes the fines, penalties, dates of suspension, etc. Ms. Conforti said she believes the Findings and Order would be the appropriate way to require a licensee to send his employees for mandatory alcohol training. Ms. Conforti said in this way these decisions can be made on a case-by-case basis. As the Commission hears each case they can choose to recommend mandatory training, or not, depending on the circumstances of the case.

Ms. Perez said if the Ordinance requires mandatory training for all employees, it would result in an overwhelming and unmanageable amount of paperwork. For that reason Ms. Perez agreed that the requirement for mandatory training should be made on a case-by-case basis through a Findings and Order issued by the Liquor Commissioner.

Chairman Kubes said mandatory training would be helpful for the community. However, he agreed that it would not be something that the Village wants to force upon all licensees. He asked if liquor managers were required to have formal training. Ms. Conforti replied no. Chairman Kubes noted that even with proper training, violations still occur. He agreed that a mandatory training requirement would be another useful tool when making penalty recommendations for violations. He agreed that when necessary, it should be included as part of the Liquor Commissioner's Findings and Order.

VOTE: **Aye:** Mr. Barnett, Mr. Durkin, Ms. Dietrich, Ms. Haider, Ms. King, Mr. McInerney, Chairman Kubes

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

Chairman Kubes and the Commission welcomed Mr. and Mrs. Jain to Downers Grove and wished them good luck.

V. OLD BUSINESS

The Commission resumed their on-going discussion of the 60/40 food versus alcohol revenue split.

Ms. Conforti stated that the Commission has been asked to review the requirements for Class "R" and Class "R-1" licenses, particularly the 60/40 split requirement, to see if it should be revised or replaced to help Downers Grove attract new businesses and retain those that may be having difficulty meeting the current requirements. Ms. Conforti asked the Commission which of the current Class "R" license requirements they would like to retain.

Mr. Durkin said if the 60/40 requirement is eliminated, he believes it is critically important to require establishments to keep the kitchen open and to provide at least a partial late night menu. Chairman Kubes agreed.

Ms. Conforti asked if they wanted the kitchen to remain open until one hour before closing as the Ordinance currently requires. Chairman Kubes and several of the Commissioners said they felt the kitchen should remain open until closing. Chairman Kubes said he would not require a full menu, but some type of menu should be available.

Mr. Durkin said if the Commission recommends a mandatory partial late night menu, he believes that it should be available until 30 minutes to one hour before closing to give patrons an opportunity to finish their food and drinks before the establishment closes. Ms. Conforti said establishments are currently required to provide food up to one hour before closing. Mr. Durkin asked if any of the licensees have complained about the requirement. Ms. Conforti replied no. Chairman Kubes said he did not believe it has ever been an issue; however, he wants to have a definite timeframe included in the ordinance, so that licensees do not close the kitchen earlier.

Chairman Kubes asked the Commission how long before closing they felt the kitchen should be kept open.

Ms. Dietrich said she favors keeping the kitchen open until at least one hour before close of business and she would like a full menu available until the kitchen closes. She said requiring a full menu is important in maintaining the restaurant atmosphere in Downers Grove. She said the requirement would appease those who wished to eliminate the 60/40 split as well as those who feared that Downers Grove might have a bar on every corner if the 60/40 split is eliminated. Ms. Dietrich added that requiring a full menu and limiting bar seating to a maximum of 20% of the establishment's total seating would maintain the conservative aspects of the Ordinance and help restaurateurs who are having a problem meeting the current 60/40 split.

Ms. Dietrich remarked that the Village has never audited current licensees to verify their compliance with the 60/40 split requirement. She said she believes that change is needed.

Ms. Conforti said some licensees have indicated that it is difficult to keep most kitchen staff late to provide a full menu until closing. She noted that Naperville's ordinance requires that the full menu be available until 10:00 p.m. Sunday through Thursday and until 11:00 p.m. on Friday and Saturday. Ms. Dietrich said she would agree to those hours, if the Downers Grove ordinance specified what an acceptable late night menu must include.

Chairman Kubes agreed that it is difficult for some establishments to provide a full menu until closing and suggested that the Commission decide on the types of foods that they consider acceptable for a substantial late night menu.

Mr. McNerney said he believes the 60/40 requirement should be changed because it is impossible to legislate what an establishment's customers will order. He said he believes Downers Grove should pattern their ordinance after Naperville's, which specifies items to be included on the late night menu.

Mr. Durkin observed that one restaurant in Downers Grove serves only chips after the full menu is no longer available and he does not feel that constitutes an adequate late night menu. Chairman Kubes agreed. Chairman Kubes noted that the Naperville ordinance lists specific types of food to be included on a late night menu, i.e. appetizers, sandwiches, snacks, hors d'oeuvres or similar foods. Although Chairman Kubes admitted that it would be difficult to monitor the late night menus, he felt requiring a full menu until closing would present a hardship for licensees. He felt that closing the kitchen one hour before closing would be adequate.

Mr. Barnett recalled that Mr. Kopsis of the Downers Grove Chamber of Commerce said the Chamber would conduct a survey of business owners in Downers Grove regarding their feelings about the 60/40 split. He asked if Ms. Conforti had received the results of the survey. Ms. Conforti replied no. She explained that because of the recent changes in the structure of the Liquor Commission, the Chamber of Commerce decided to delay the survey until the new Commission had an opportunity to review and comment on the requirement.

Mr. Barnett said he would like the ordinance to require structured alcohol training.

Mr. Durkin asked how violations of the late night menu requirement would be handled. Ms. Conforti said they would be handled as a violation of the Liquor Ordinance and the licensee could be fined up to \$1,000. Mr. Durkin asked if the Liquor Commission would hold a disciplinary hearing for such violations. Ms. Conforti replied yes. Chairman Kubes added that because there is no control buy program for food, a formal complaint would have to be filed with the Village before the matter would be brought before the Commission.

Ms. Dietrich asked if anyone could file a formal complaint if they observe a violation of the Liquor Ordinance. Chairman Kubes replied yes. Ms. Conforti added that undercover officers would follow up by visiting the establishment to verify the validity of the complaint.

Mr. Durkin said if the ordinance is changed, it should specifically state the time to which the kitchen must remain open, the type of late night menu that is required and the time to which the late night menu must be available. Mr. Durkin said he believes that licensees and applicants would comply with the ordinance if it is specific and if they understand that these requirements must be met in order to obtain and maintain a liquor license in Downers Grove.

Mr. Barnett observed that although providing a late night menu may be somewhat burdensome, it provides licensees with an opportunity to increase food sales.

Ms. Dietrich agreed. She added that she felt it was important to establish some way to monitor and enforce the ordinance, as she believed that the failure to do so was one of the problems with the current requirement. Ms. Conforti acknowledged that the Village never professionally audited licensees to verify that the 60/40 sales revenue information provided by the licensee was true and accurate.

Ms. Conforti explained that if the ordinance were changed, new applicants would be required to provide a regular menu and a late night menu as part of their application packet if the establishment is scheduled to remain open after 10:00 p.m. on weeknights or 11:00 p.m. on Friday and Saturday nights. She added that many licensees close well within the Village's prescribed hours and the late night menu requirement may not apply to them. Ms. Conforti said the ordinance could be structured to "grandfather" current licensees or they could also be required to provide a late night menu, if applicable. This documentation could be required as part of their license renewal.

Ms. Conforti suggested keeping the following requirements for a Class "R" or Class "R-1" liquor license: that the majority/primary business of an establishment with a Class "R-1" or Class "R" license be that of a restaurant; that the bar seating should be limited to 20% of the establishment's total seating.

Mr. Barnett asked if the 60/40 percentage requirements could be removed from the current ordinance and if a component could be added stating that a late night menu must be provided if the establishment is open after 10:00 p.m. Mr. Barnett said he does not favor "grandfathering" existing licensees with regard to the new requirements. He said existing licensees should be subject to the new requirements upon renewal of their license. Mr. McInerney agreed.

Chairman Kubes pointed out that the Village currently has many different liquor license classifications; however, only a few, i.e. the Class "R" and Class "R-1", require the 60/40-revenue split. Ms. Conforti added that Class "D-5" brew pub licenses issued after January 1, 2000 are also subject to the 60/40 split requirement and even though none have been issued since January 1, 2000, that section of the ordinance would also have to be changed if the 60/40 split reference is eliminated.

Chairman Kubes asked the Commissioners if they wanted to eliminate the 60/40-split requirement for the Class "D-5", Class "R" and Class "R-1" liquor licenses. Mr. Barnett, Mr. Durkin, Ms. Dietrich, Ms. King, and Mr. McInerney said they were in favor of eliminating the 60/40 split. Ms. Haider was undecided.

Chairman Kubes asked if the Commissioners wished to change the percentage requirement or eliminate it completely.

Mr. Barnett clarified that if the ordinance is restructured and other components are added or changed to ensure responsible alcohol service in Downers Grove, he would be in favor of completely removing the percentage requirements from the ordinance.

Chairman Kubes said he favors completely removing the percentage requirements from the ordinance. He asked if anyone wishes to change the percent split to something other than 60/40. The Commissioners replied no.

Mr. Durkin said he is not in favor of having a percentage requirement in the ordinance unless the Village makes a commitment to audit licensees to verify the submitted revenue information. He clarified for the record that he supports abolishing the 60/40 food versus alcohol-split requirement because it is a law that the Village is not enforcing.

Ms. Haider said she is undecided at this time. She asked if licensees have complained about the 60/40 split requirement. Ms. Conforti replied yes. According to the Downtown Management Board and the Chamber of Commerce, businesses have decided not to relocate in Downers Grove because of the requirement. Mr. Barnett agreed that existing businesses have complained and struggled with the requirement. In light of that information, Ms. Haider agreed that the current ordinance should be changed; however, she did not know if the percentage requirement should be eliminated completely.

Chairman Kubes asked the if Commissioners were in agreement regarding maintaining the requirement for maximum bar seating at 20% of the establishment's total seating.

Mr. Durkin pointed out that any seat in an establishment could be used as bar seating. Ms. Conforti said seating limitations are based on the seating configuration. Only seating at the bar is limited to 20% of the establishment's total seating. Ms. Conforti added that Code Services also reviews the number of bar seats and restaurant seats when they calculate the total number parking spaces required for the establishment because more parking spaces are required for bar seating than for restaurant seating. She said it is some times difficult to tell whether a seat should be counted as bar seating or restaurant seating.

Mr. Barnett pointed out that limiting bar seating was one way of keeping establishments, i.e. bars, which have only bar seating, out of Downers Grove.

Ms. Conforti pointed out that licensees would still be required to serve food.

Chairman Kubes said he felt that patrons seated at tables would be more likely to order food than patrons seated at the bar.

Ms. Conforti said during application hearings, prospective licensees are frequently asked if the entire menu is also available at the bar. She said a provision could be added to the Ordinance requiring food service at the bar. Chairman Kubes and Mr. Durkin agreed. However, Chairman Kubes added that some establishments with smaller bars might require patrons to move to a table if they wish to order food. Chairman Kubes said he would like the ordinance to require that food be available at the bar.

Mr. Durkin said if the Commission makes the ordinance very restrictive, they would almost be micro-managing licensees. Chairman Kubes said they did not want to micro-manage licensees; however, he said the ordinance must be structured so that the licensees understand that Downers Grove is serious about responsible alcohol service.

Ms. Conforti suggested revising the ordinance to include that food service must be available in all areas of the restaurant, including the bar, at all times. She acknowledged that some restaurants, i.e. Sal Y Carvao, use the bar area for patrons who are waiting to be seated and it might not be feasible to require food service at that type of restaurant. Mr. Durkin said perhaps such exceptions could be "grandfathered." Ms. Conforti said each licensee could be handled on a case-by-case basis.

Mr. Sodaro commented that requiring food service at the bar might conflict with Health Department requirements.

Chairman Kubes agreed that the physical size of some bars may be too small for food service.

Mr. Barnett said the ordinance should be structured to encourage licensees, primarily restaurants, to behave responsibly and not act as taverns. However, he was not sure that requiring food service at the bar was the best way to accomplish this.

Mr. McInerney said the focus should be on requiring establishments that sell alcohol to also offer food service in whatever manner is convenient for them, whether or not it is at the bar. He believed the goal is to encourage establishments to behave responsibly and he did not want put a lot of constraints on businesses, which really do not touch on the issue.

Ms. Dietrich said she thought any responsible business would serve food to a patron seated at the bar if they were drinking too much to drink, whether or not it was required by the ordinance. Ms. Dietrich said she wanted the ordinance to contain general guidelines. The option of food service at the bar should be left to the licensee. She added that if there are problems or complaints concerning this issue, the Commission can address them at that time.

Ms. Conforti said as long a food is available, she did not think it was important whether or not the patron was served at the bar or directed to a table.

Chairman Kubes asked if the Commission agreed that the ordinance should require that food should be available, but not specifically require that it must be served at the bar. The Commissioners agreed.

Regarding hours of food service, Ms. Dietrich said the Naperville ordinance handled the issue well. Ms. Conforti said the hours of alcohol service in Naperville are the similar to those in Downers Grove. Ms. Conforti asked if the Commission agreed that the full menu should be provided until 10:00 p.m. on weekdays and 11:00 p.m. on Friday and Saturday and after those times a late night menu should be provided. The Commission agreed that a late night food menu, not just chips, should be available until one hour before closing.

Mr. Barnett suggested patterning the Downers Grove ordinance after the Naperville ordinance and requiring a reduced menu including appetizers, sandwiches, hor d'vors, or other similar foods. Mr. Durkin said he would like the reduced menu to include appetizers, sandwiches, hors d'oeuvres, and other similar foods. He did not want to allow the option to serve only appetizers.

Ms. Dietrich pointed out that the Commission would have the option to review the establishment's reduced menu at the time of the application hearing or at license renewal time.

Ms. Conforti pointed out that the licensees involved would all be restaurants and thus, the Village knows that they should have the ability to serve more than chips. She agreed that the Commission would review late night menus on a case-by-case basis and decide at application or renewal time whether or not they felt the menu was adequate.

Mr. Barnett added that the Liquor Commissioner has the ability to approve or deny license applications or renewals and if the Commissioner or the Commission is not

satisfied with the late night menu, the application could be denied, unless the menu is changed.

Mr. Durkin expressed concerned that failure to list what constitutes an acceptable late night menu, might create a loophole in the Ordinance that could be used to circumvent its intent.

Chairman Kubes wondered what would keep a licensee from submitting one menu at application/renewal time and then changing it a short time later. Chairman Kubes suggested that perhaps the ordinance should require a full menu until one hour before closing.

Ms. Conforti said the Naperville ordinance requires that a reduced menu be provided in the event the full menu is not available. She said by allowing a reduced menu, adequate food can be provided without keeping the entire kitchen staff on duty. Ms. Conforti said the ordinance could be changed to state that a reduced menu must include appetizers, sandwiches, hor d'vours. She suggested adding that the "mere availability of snacks does not constitute a late night menu".

Chairman Kubes asked audience member Mr. Sodaro how much clean up time would be involved if a full menu is required until closing. Mr. Sodaro said about one hour. However, he said he felt that it would be inconvenient to require a full menu until closing.

Ms. Conforti confirmed that the Commissioners wanted a reduced menu to be available until one hour before closing. Chairman Kubes noted that the late night menu requirement would apply only to those restaurants that closed the full restaurant several hours before the establishment closes. Ms. Conforti said at the time of renewal, she would require licensees who remain open after 10:00 p.m. to submit a late night menu. Ms. Conforti advised that all licensees must abide by the allowable hours for alcohol sales in Downers Grove; regardless of the time the establishment closes.

Chairman Kubes and the Commissioners asked staff provide a revised ordinance, patterned after Naperville's ordinance, for their review at the February meeting. Chairman Kubes reminded the Commission that when reviewing the draft ordinance, it is important to give the Council an ordinance that is workable and acceptable to them. It should be an ordinance than maintains the traditional values of Downers Grove, yet allows for future growth. Chairman Kubes said once the Ordinance has been revised he would like the Chamber of Commerce to survey business owners as was discussed at the October Liquor Commission meeting. Ms. Conforti said she would send the draft ordinance to Mr. Kopis and Ms. Kunze for their comments.

Mr. Barnett said some communities require mandatory professional alcohol training for all employees at licensed establishments. He asked for staff's opinion of the requirement. Ms. Conforti said some municipalities require licensees to turn in certifications for every employee; however, this is somewhat difficult to handle administratively. Other

communities required that proof of employee certification must be available upon request, which Ms. Conforti found to be less intrusive.

Ms. Conforti said that during a control buy the officers could also check employee certification. If an employee is not certified, it could be listed as an additional violation. She explained that if it is handled as a separate violation and not as an aggravating circumstance in a control buy failure, the Village could levy an additional fine of up to \$1,000.

Ms. Dietrich asked about the cost of TIPS training and certification. Ms. Conforti said the fee for TIPS training varies because trainers are usually independent business people. Chairman Kubes said the College of DuPage charges \$75 for an alcohol-training course and a firm in Downers Grove offers TIPS training for \$115 per person and also offers a discounted group rate. Chairman Kubes said he did not feel a training requirement would present a financial hardship for licensees. However, Ms. Dietrich wondered if the large turnover in restaurant employees might make the requirement burdensome for licensees and difficult for the Village to monitor.

Mr. Barnett said he has talked to five licensees about the concept of requiring professional alcohol training for employees and they indicated a willingness to consider license fee adjustments to cover training costs. Mr. Barnett said the Village could increase licensee fees to cover the cost of administering the program. Mr. Barnett said he was interested in exploring the idea of mandatory professional alcohol training as another means of reminding licensees that Downers Grove expects a certain level of behavior from them.

Mr. Barnett envisioned a program in which the licensee's liquor manual would state that within three months of being hired, servers will go through either TIPS or BASSETT training. The licensee could contract with a private firm or send employees to the College of DuPage for alcohol training. Mr. Barnett said there is evidence that formal alcohol training helps reduce alcohol violations.

Mr. Barnett said he believed that ordinance changes should be based on careful thought and logic and he wanted the public to understand that. He said he did not want the public to think that ordinance changes are based on complaints from licensees. Mr. Barnett said he is trying to craft a sensible ordinance that helps control the environment and is sensitive to the general public's impression of the interaction between government and business. Mr. Barnett asked Ms. Conforti to research the feasibility of revising the ordinance to include a requirement for mandatory formal alcohol training for employees at licensed establishments. Ms. Conforti agreed.

Mr. Durkin asked if mandatory alcohol training could be linked to alcohol violations. Although he is not in favor of micro-managing licensees, Mr. Durkin said that when a licensee violates the ordinance, perhaps professional training should be required as part of the penalty. Ms. Conforti agreed that the ordinance could be revised to state that

licensees found guilty of a violation of Section 3-25(a) would be required to send any and all employees to TIPS certified training. The Commission agreed.

Ms. Sodaro asked if the Village could offer a reduced license fee to establishments that voluntarily send their employees for training to offset the cost of the training. Ms. Conforti said if a licensee had already voluntarily sent their personnel for professional training, it would be taken into consideration if they were found guilty of a violation and they might be exempt from that portion of the penalty.

Ms. Dietrich pointed out that the licensee fee is based on the cost of administering the license and a reduced fee would result in administering the license at a loss. Ms. Conforti agreed.

Ms. Dietrich asked how the revenue from alcohol fines was used. Ms. Conforti said revenue from fines is deposited in the Village's Corporate Fund. She added that the administrative fee charged for a violation covers the cost of the secretary, the court reporter, the special employee, the officers, and the Village prosecutor involved in the case.

Chairman Kubes and Mr. Durkin suggested that perhaps the Chamber of Commerce and the independent TIPS trainer in Downers Grove could work together to offer TIPS training to local licensees at a reasonable rate.

Chairman Kubes concluded the discussion of the 60/40 split and related ordinance changes. Ms. Conforti agreed to have a draft ordinance prepared for the Commission's review at the next meeting.

Ms. Conforti said the next item under Old Business is the matter of fines for servers involved in sale of alcohol to minors. She said the current allowable fine is \$75. However, it could be increased by adding another section to the ordinance. She asked for comments from the Commission.

Mr. Durkin asked if the fine for servers is subject to adjustment by the court. Ms. Clark clarified that if such a case went to court, the judge would be bound by the minimum fine set by the ordinance.

Ms. Conforti explained that the fine is currently \$75, if it is not paid within 10 days, it doubles to \$150, if it is still not paid, the matter goes to court. Mr. Durkin asked if anyone has gone to court over this \$75 fine. Ms. Conforti replied no. Mr. Durkin suggested raising the fine to \$150.

Chairman Kubes commented that if establishments included the amount of the server's fine in their liquor manuals, it might motivate servers to be more careful when checking ID's and serving alcohol.

Ms. Conforti added that several licensees have said that they would be in favor of larger fines for servers who are involved in a violation.

Mr. Barnett observed that most failed control buys are the result of carelessness on the part of the server involved. He wondered if a \$150 fine was enough to motivate them to be more careful.

Ms. Dietrich said she felt a \$150 was not high enough. She suggested increasing it to \$250.

Mr. Barnett pointed out that the fine for a minor who attempts to purchase alcohol is \$500 to \$750. Ms. Haider responded that a minor attempting to purchase alcohol involves an intentional act; however, the sale of alcohol to a minor by a server is usually unintentional.

Mr. McInerney said he is in favor of increasing the fine to servers to \$200. He also suggested that licensees be required to post signs indicating the amount of the server's fine if they sell of alcohol to a minor. Mr. McInerney said the Commission should also consider the possibility that some establishments may pressure their servers to serve alcohol to anyone who requests it. He suggested providing a phone number on the sign that servers could call if they feel they are being pressured to serve alcohol to underage patrons.

The Commission members discussed various amounts for server's fine. Mr. Barnett suggested \$500. Ms. Haider suggested \$200, which would double in 10 days if not paid. Ms. Dietrich said she preferred \$250; however, she was willing to go along with \$200. Mr. Durkin, Ms. King, and Mr. McInerney agreed with a \$200 fine. Chairman Kubes said he felt \$200 was not high enough. He preferred \$250. Ms. Clark and Ms. Conforti said they felt \$200 was an appropriate amount for the fine.

Mr. McInerney asked how Downers Grove compares to other communities in regard to fines for servers. Ms. Conforti said she has not found another community that fines servers directly.

Ms. Conforti said once the ordinance is amended, licensees would be informed of the changes via the monthly Liquor Newsletter that is sent to all licensees.

Chairman Kubes said maintaining a daily liquor log is a good way to remind servers of their responsibility to serve alcohol with care. Mr. McInerney also suggested requiring signage as a constant reminder.

Finally, Ms. Conforti said that at a previous meeting, the Commission discussed a possible Ordinance change regarding the use of liquor product identification signs. Last fall the subject came up in relation to the use of patio umbrellas with alcohol logos.

Chairman Kubes tabled further discussion of this issue until next month's meeting and asked Ms. Conforti to provide Commission members with a copy of the Ordinance for their review.

VI. NEW BUSINESS

Ms. Conforti said Ms. Linda Kunze, of the Downtown Management Board, asked for the Commission's opinion on allowing "BYOB" (Bring your own booze) in Downers Grove. Ms. Kunze said some unlicensed establishments in Downers Grove have asked if patrons could bring in their own alcohol and consume it on their premises. Ms. Conforti said the current ordinance prohibits such activity. Ms. Conforti added the requests have come from non-restaurant establishments, i.e. The Mad Potter, the Bead shop, etc.

Chairman Kubes noted that some upscale restaurants and shops in other communities allow individuals to bring their own wine and charge a "corking fee."

Mr. Sodaro said he originally wanted to use the BYOB concept at his store; however, when told it was not allowed in Downers Grove, he decided to apply for a liquor license. Mr. Sodaro pointed out that even with a liquor license, his patrons are not allowed to bring in their own alcohol.

Chairman Kubes said if Ms. Kunze would provide specific information regarding this request, the Commission would look into it. Ms. Conforti agreed. She clarified that the regulation prohibiting BYOB was added as a means of controlling alcohol in Downers Grove. She added that there would also be liability issues in allowing individuals to bring alcohol into an establishment.

Ms. Dietrich agreed that Downers Grove issues liquor licenses as a means of control and if the Village is considering allowing BYOB, a license should be created for it.

Chairman Kubes pointed out that allowing BYOB at establishments that do not serve food would be in conflict with the existing ordinance.

Mr. Durkin said he thought that the question of BYOB would be solved by the fact that the majority of leases prohibit alcohol consumption on the premises.

Ms. Conforti advised that up to three Special Event licenses are available to establishments each year, which would allow them to serve alcohol at a parties, special events, etc. The Special Event license requires Dram Shop insurance, food service, etc. However, if an individual obtains the Special Event license, there would be no limit on the number of special events that could be held at an establishment as long as no one individual obtained more than three Special Event licenses in one year.

Chairman Kubes asked Ms. Conforti to find out how important this issue is to the Downtown Management Board and if increasing the number of permitted Special Event licenses from three to five per year per establishment would be beneficial. Ms. Conforti

agreed that there should be some limit on the number of Special Events licenses that an establishment could obtain in one year.

Mr. Durkin asked if a copy of the lease is required when applying for a Special Event license. Ms. Conforti explained that Dram Shop insurance covers the building owner, but added that landlord or owner approval may be required.

Mr. Sodaro said that the Special Event liquor license might be an alternative for small restaurants that do not want to maintain a liquor inventory; however, he did not feel that there would be a great demand for Special Event liquor licenses from non-restaurant establishments because of the cost of Dram Shop insurance.

Mr. Durkin said he would not have a problem permitting a BYOB restaurant liquor license.

Mr. McInerney said allowing BYOB at a restaurant is one thing; however, allowing it at an establishment that does not sell food is another matter.

Chairman Kubes asked Ms. Conforti to discuss the matter with Ms. Kunze and place the item on the agenda for discussion at next month's meeting.

Chairman Kubes recalled that an individual applied for a liquor license for a comedy club in Downers Grove and the Commission informed him that he would have to serve food in order to be found qualified for a liquor license.

Mr. Durkin said perhaps it would be beneficial to increase the number of Special Event liquor licenses and consider creating a BYOB restaurant liquor license for smaller establishments.

Ms. Conforti said the ordinance could be revised to allow individuals to bring their own alcohol into licensed premises. However, the current ordinance requires establishments without a liquor license to obtain a Special Event license before allowing alcohol on the premises.

Chairman Kubes said it is not feasible to eliminate the BYOB restriction before the Village makes a final decision concerning the 60/40 requirement.

Mr. Durkin asked how long it takes for the Council to act on a recommendation from the Liquor Commission. Ms. Conforti said the recommendations are usually placed on the Council Workshop Agenda within two weeks of the Liquor Commission meeting. If there are no further changes, the Council could vote to adopt the ordinance the following week. She explained that ordinance changes are effective immediately; however changes made to fines will not be in effect until ten days after the ordinance is passed. Mr. Durkin asked Ms. Conforti to notify members of the Liquor Commission when the Council is going to be considering their recommendations.

Chairman Kubes said further discussion of BYOB would be tabled until the February Liquor Commission meeting.

VII. COMMENTS FROM THE PUBLIC

None

VIII. ADJOURNMENT

MR. McINERNEY MOVED TO ADJOURN THE MEETING. MS. KING SECONDED.

The meeting was adjourned by acclamation at 9:20 p.m.

Mr. McInerney asked if food service would be maintained during normal business hours. Mr. Moore replied that food would be served until closing, although it might be a lighter menu later in the evening.

Chairman Kubes reminded Mr. Moore and Mr. Turek that the Village of Downers Grove and the Liquor Commission take control buys and other violations of the Ordinance very seriously. However, he added that the Commission is also there to help them if they should need it and he welcomed them to Downers Grove.

MR. DURKIN MOVED TO FIND D & R CATERING CO. D/B/A SHANAHAN'S PINT HOUSE, 2009 W. OGDEN AVENUE, QUALIFIED FOR A CLASS "R" LIQUOR LICENSE. MR. McINERNEY SECONDED THE MOTION.

VOTE: **Aye:** Mr. Durkin, Mr. McInerney, Mr. Barnett, Ms. Dietrich, Ms. Haider, Ms. King, Chairman Kubes

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

V. OLD BUSINESS

Ms. Conforti briefly discussed the contents of the informational packets sent to the Commissioners prior to the meeting. She called their attention to the list of licensees that passed the control buys conducted on November 12th. She noted that new licenses were issued in October to Cheeseburger in Paradise, Sal & Carvao and Ballydoyle Irish Restaurant and Pub.

Ms. Conforti asked the Commission to review the background information on the 60/40 split and Mr. Moore's letter concerning the split included in their packets in preparation for a discussion of alternatives, which would be more attractive to the business community, at next month's meeting.

Mr. Durkin asked about the large number of DUI's attributed to North Beach and Riprocks over the past few months. Ms. Conforti said she and Ms. Clark met with the owners of North Beach a few weeks ago to discuss the numerous DUI's, which have been attributed to them over the past months. The owners have submitted a list of activities, which they plan to initiate, to try to control this problem. They intend to promote their food service and prior to closing they plan to make announcements over the public address system offering cab rides home for any guest who is not up to driving. Ms. Conforti noted that there was an increase in DUI's attributed to North Beach on Thursday evenings and early Friday mornings, which she felt was attributed at least in part to the Thursday evening drink specials offered at the establishment. The owners voluntarily discontinued one of the drink specials and if that does not solve the problem, they said they would eliminate the other Thursday drink specials. In addition, Ms. Conforti will be

Chairman Mochel reminded everyone that tonight's meeting is being recorded on Village owned equipment and that Staff is present to keep minutes for the record.

IV. OLD BUSINESS

Chairman Mochel said tonight the Commission will discuss several provisions of the Liquor Ordinance focusing on the 60/40 food versus alcohol split, restrictions on liquor product advertising, and fines for servers involved in a control buy violation.

Ms. Conforti said that at the September 4, 2003 Liquor Commission meeting the Commission requested a review of the above provisions of the Ordinance. Ms. Conforti provided Commission members with history and background information on the 60/40 food versus alcohol split, restrictions on liquor product advertising and fines for servers involved in control buy violations. Ms. Conforti asked that the Commission provide staff with comments and discuss possible changes to the Ordinance regarding these three provisions.

Chairman Mochel asked for the Commission's comments on the 60/40 food versus alcohol-split requirement.

After reviewing the background discussion on this issue, Mr. Barnett observed that the comments made at last month's meeting were the same as those made when the ordinance was first discussed. He said he is not convinced that the current 60/40 provision adds anything to the Ordinance. In a memo to the Liquor Commission in March 2000, Ms. Conforti stated that a "goal of the Village, through economic development, is to further the interests of the liquor, tourism and hospitality industries while ensuring that the liquor industry develops in a way that is consistent with the needs and aspirations of the community and does not detract from the amenity of community life." In addition, the stated object of the Downers Grove Liquor Control Ordinance is "to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole and, specifically, encourage responsible attitudes towards the promotion, sale, supply, consumption and use of liquor." Mr. Barnett said he did not feel that the 60/40 requirement had any impact on the Village's goal as stated in Ms. Conforti's memo or on the stated object of the Liquor Control Ordinance.

Mr. Barnett distributed a comparison of various quality of life issues, which he compiled for twelve area communities. He compared such information as DUI arrests per resident, State Police crime data, community demographics, property values, occupations, length of residency, etc. Mr. Barnett said in spite of the 60/40 requirement Downers Grove did not stand out among the communities surveyed. He said he did not see how the 60/40 split added to or detracted from the quality of life in Downers Grove.

In addition, Mr. Barnett said it appears that there is evidence from Naperville and previous Liquor Commission discussions that the 60/40 split is difficult for some businesses to meet. Mr. Barnett said based on the previous discussion and the results of

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his comparison, he believes that the Commission should seriously consider repealing the 60/40-split requirement.

Ms. Dietrich said she too was not sure how the 60/40 requirement impacted the quality of life in Downers Grove. After reviewing the information from Naperville, Ms. Dietrich said it appears that the 60/40 split was one of the first control methods that they tried and as the needs of the community changed, they changed the ordinance and repealed the 60/40 split, allowing the ordinance to evolve into one that reflects the needs of the community. However, Ms. Dietrich pointed out that the restaurant association in Naperville actively requested that the City change the ordinance, whereas that has not been the case in Downers Grove.

Ms. Dietrich said she feels the Commission is speculating on what Downers Grove restaurant owners want. The Commission is assuming that the 60/40-split requirement is putting Downers Grove at a disadvantage when it comes to attracting new restaurants. She added that only one restaurant with a Class "R" license has had a problem meeting the 60/40 split. Ms. Dietrich said she is not opposed to relaxing the 60/40 requirement and trying to address the issue of control in another way, i.e. requiring a full menu and restricting bar seating to 20% of the establishment's total seating.

Ms. Conforti interjected that she believes Naperville had more of a problem with the 60/40 split because they did not "grandfather" existing licensees. When the Village adopted the 60/40 split, existing licensees kept their original license classification and were not required to meet the new restrictions. The new requirement applied only to new licensees.

Mr. Durkin said he would like to see the 60/40 split completely abolished. However, he approved of the portion of the current ordinance, which requires that the kitchen must be open and food must be served up until one hour before closing. He added that he felt a lighter late night menu was permissible.

Ms. Summers said she does not like the 60/40 split requirement because she believes it is an intrusion into business. However, it was put into effect because the Village wants to keep out those who would sell alcohol to minors and those who would over serve and cause DUI's. Although the Legal Department tracks the number of DUI's attributed to establishments, Ms. Summers wondered how the Village would prevent over service and sale of alcohol to minors without the 60/40 requirement. Thus, she said she is unsure at this time about repealing the requirement.

Mr. Kubes said he is in favor of eliminating the 60/40 split requirement. In addition, he would like the Commission to present a feasible means of control to the Village Council that would be acceptable to the Commission, the Council, residents and business owners. To avoid problems in the future, he favored maintaining the 20% maximum bar seating and requiring that food service be available until one hour before closing. He said he did not object to offering a lighter late night menu. However, he felt the food service should be more substantial than snack foods, i.e. pretzels, peanuts, etc.

Mr. Kubes also suggested that the Commission discuss increasing the license fees if the ordinance is changed. Mr. Kubes said he believes that the Village should make sure licensees do not serve minors and that they eliminate DUI's. He felt there should be some way the Village can address the situation of licensees with a number of DUI notifications. He suggested conducting yearly renewal hearings, giving licensees an opportunity to explain their actions over the past year, before their license was renewed. Mr. Kubes said when a license is issued the licensee should be informed that it is a one-year license and that they are expected to comply with the requirements of the license in order to maintain it.

Mr. Kubes suggested adding a provision requiring licensees to increase their employee training. He also suggested limiting the number of liquor licenses in the Village to the number that we currently have. Applicants who want to apply for an additional license would be required to come before the Commission to request that another license be created. Mr. Kubes said he believes that there are restaurants that would like to come into Downers Grove, but are discouraged from applying for a license because of the 60/40 split.

Ms. Gerloff said she was glad to see representatives from the Chamber of Commerce in the audience because it was her understanding that the some members of the Chamber had questioned the 60/40-split requirement. After the last Liquor Commission meeting, Ms. Gerloff asked Ms. Wysocki, Executive Director of the Chamber of Commerce about her concerns regarding the 60/40 split requirement. Ms. Wysocki responded that it was outdated. However, when asked, she said she did not know of any businesses that had decided not to come to Downers Grove because of the restriction.

Ms. Gerloff said she did not feel the license was outdated as it was created in July 2000. She recalled that the ordinance was changed at the Chamber's request. Prior to July 2000, a restaurant had to have a minimum of 125 seats to obtain a full liquor license. Through the Chamber's efforts, the Village Council created a Class "D-5" liquor license for restaurants in the Concentrated Business District allowing them to obtain a full liquor license even though they did not have 125 seats.

Ms. Gerloff said since July 2000, 4 Class "R-1" liquor licenses and 7 Class "R" full alcohol licenses have been issued. Only one establishment, Callaway's Pint House, has had a problem meeting the 60/40-split requirement. The Commission reviewed Callaway's situation and put them on probation. Currently, staff monitors their compliance on a monthly basis.

Ms. Gerloff said Downers Grove is interested in attracting quality establishments and does not want to have taverns or a tavern-image. The main goal of the Commission and the Council has been to promote food sales, not alcohol. Ms. Gerloff did not feel Downers Grove should emulate Naperville. She pointed out that Naperville did not have an advisory Liquor Commission until last year, before that time the Mayor made all

decisions concerning alcohol. Naperville also has different liquor license classifications, including a tavern license, which makes it difficult to compare our licenses with theirs.

Ms. Gerloff said she would like to know why the Chamber wants Downers Grove to change the ordinance. She added that she does not feel there is anything wrong with the ordinance and she does not feel it should be changed.

Chairman Mochel said although many Commission members are against the 60/40-split requirement; he said has not heard many recommendations for an adequate replacement for the requirement. Chairman Mochel reminded the Commission that the Village limited the number of licenses available in the past as a mean of control; however, the Chamber found it detrimental to attracting new businesses to the community and the limits were removed.

Chairman Mochel said it appears from the discussion that we are trying to advance the sale of alcohol in Downers Grove and he did not feel that was what the community wanted. He pointed out that several years ago, when the Heritage Festival Committee wanted to open the Beer Garden so that alcohol could be carried throughout the festival grounds, many residents expressed their opposition. In addition, the Village spends a good deal of money on the D.A.R.E. program, which is designed to teach students to avoid problem situations and limit their exposure to drugs, alcohol, etc. He said expanding the liquor sales in Downers Grove would be in direct opposition to this program.

Chairman Mochel asked if there were any comments from the public.

Mr. Jan Kopis, 1240 Chicago Avenue, Downers Grove, said he is a member of the Chamber of Commerce Legislative Committee. Mr. Kopis said he did not realize how instrumental the Chamber had been in the creation of the 60/40 ordinance. However, he said he believes that the 60/40-split requirement is impractical. A typical order of a \$6.00 meal and two beers would not meet the requirement and if that type of sale is multiplied many times over, it creates an unintentional imbalance and the establishment would not meet the 60/40 split requirement. Mr. Kopis said he would like to see the ordinance changed because he believes the requirement is inequitable and impractical. The intention of the ordinance appears to be to promote food sales rather than alcohol; however, ordering a meal and two drinks would not meet the requirement.

Although Mr. Kopis said he and the Chamber did not have a solution, he said they would be willing to do what they can to help. The Chamber would be willing to work with the Commission if they wish to "tweak" the ordinance. The Chamber would also be willing to act as a "sounding board" for the Commission and to talk to the business community to ascertain their feelings on the issue. The Chamber is in favor of an ordinance that is more equitable on the 60/40 split requirement.

Chairman Mochel assured Mr. Kopis that the Liquor Commission does not view the Chamber as an adversary in this matter.

Ms. Gerloff pointed out that the requirement is based on monthly sales of food and alcohol, not on each individual order. She said that many families do not order any alcohol when dining out, so she did not believe that one order of chicken wings and two beers would keep an establishment from meeting the monthly 60/40 requirement.

Mr. Kopis clarified that he felt the requirement might be impractical for more adult oriented establishments.

Ms. Gerloff said since the 60/40 requirement was created only one establishment has had a problem meeting it. She asked Mr. Kopis if other establishments have complained about the requirement or are having a problem meeting it.

Chairman Mochel said it seems that no matter what the ordinance states there is always someone who figures out a way to circumvent the intent. However, if the ordinance is structured to prevent that, it becomes so restrictive that no one can meet it. Once a license is issued, it is very difficult for the Village to revoke it unless they can prove blatant disregard for the law and human safety. Thus, he said the Village Council must draft an ordinance, which can be enforced, satisfies the majority of the residents, and still allows for the establishment of new businesses.

As background, Chairman Mochel explained that when Main Street was being redeveloped the Chamber told the Commission that it was virtually impossible for a restaurant on Main Street to meet the 125-seat requirement for a full alcohol license. Thus, the ordinance was changed to permit smaller specialty restaurants to have a full alcohol license.

After reviewing the informational packet, Mr. Barnett said it appears that initially the seating requirement was the main reason for reviewing the ordinance. The 60/40 split was an attempt to resolve the issue and the Chamber agreed it was better than the previous regulation. The Chamber and the Commission agreed to try the 60/40 split and review its effectiveness at a later date. Thus, Mr. Barnett said the Chamber may have been the "driving force" behind changing the ordinance, but they did not specifically suggest the 60/40 split. Chairman Mochel and Mr. Kopis agreed. Mr. Kopis said that the Liquor Commission and the Village Council adopted the 60/40 split ordinance as a way to allow smaller establishments to obtain a full alcohol license.

Ms. Summers asked if, with staff's approval, the Chamber could survey their constituents about the 60/40 split and obtain their suggestions for a replacement, if any, and their ideas on ways in which they can help the Liquor Commission prevent problems with alcohol sales to minors and over service in Downers Grove establishments. Mr. Kopis said he would be glad to conduct such a survey.

Ms. Linda Kunze, Downtown Manager, recalled that when the Village had the 125-seat requirement for a full alcohol license, small bistros that inquired about locating in downtown Downers Grove would go elsewhere. Ms. Kunze said Mr. Steve Rockwell,

Downers Grove Director of Economic Development, said the community has lost several restaurants because of the 60/40 split and she has noticed that some Downers Grove restaurant's, i.e. Callaway's and Omega, have raised their food prices to meet the requirement. Ms. Kunze suggested that the Village review this ordinance and try to find a more acceptable alternative. She agreed that no one wants to see taverns in Downers Grove and acknowledged that the Village does a good job monitoring underage drinking. However, the Village is in a competitive market when it comes to attracting new businesses and she suggested that everyone work together to attract some of the better businesses to Downers Grove.

Chairman Mochel commended Downers Grove restaurateurs for complying with the ordinances and doing their best to control alcohol sales and consumption.

Mr. Barnett asked Ms. Conforti if she knew of any other communities that are using the 60/40 split or another percentage requirement for their licensees. Ms. Conforti replied no. Ms. Conforti said Naperville has changed their ordinance, eliminating the 60/40 requirement, but they have maintained the food requirements. Other area communities have separate restaurant and tavern licenses. Mr. Barnett observed that his research has shown that many communities seem to control their environment without having a specific tavern license and without having a percentage requirement.

Mr. Barnett asked how the DUI notification program is being used. Ms. Conforti explained that if an establishment has a number of DUI's attributed to it, she conducts an on-site training seminar. However, the ordinance does not mandate any action or review process. Chairman Mochel added that from a legal standpoint it is very difficult to use information obtained at DUI stop as a basis for further disciplinary action.

Ms. Conforti clarified that the DUI notification program was originally established as a tool to identify establishments which are having a problem with over service. Mr. Barnett suggested that the DUI program could be enhanced to cause further discomfort to those establishments, which are exhibiting this pattern of behavior.

Mr. Barnett said it appears that the Village's goal is to enforce the legal drinking age and the Liquor Ordinance and to create a desirable environment, without unduly burdening businesses. Thus, if there is no evidence that the 60/40-split requirement is helping to meet those goals, Mr. Barnett questioned the reason for continuing to burden businesses with it.

Chairman Mochel asked if creating a desirable environment is to increase alcohol consumption. Mr. Barnett said the desirable environment, which they are trying to create, is one in which the existing level of "non-drinking and non-tavern-like" atmosphere would be maintained. However, it would also be an environment, which assists the EDC and Chamber of Commerce in attracting people to the community and he believes that it is important to get their input.

Ms. Gerloff said she believes that the DUI notification program lets licensees know that the Village is watching their activities and is concerned about over service. Ms. Gerloff said when an establishment receives a certain number of DUI notifications, Ms. Conforti conducts an on-site training seminar. If the problem continues, the licensee is requested to appear before the Liquor Commission to discuss the problem, although legally, the Commission can only monitor the situation. Ms. Gerloff said the DUI notification programs lets licensees know that the Village takes this problem very seriously.

Ms. Dietrich suggested trying to maintain the intent of the 60/40 split requirement through other means. Agreeing with Ms. Summers that the requirement interferes with the way business owners conducted their businesses, she suggested creating an alternate ordinance which would not increase the sale of liquor, but which would decrease the Village's control over the percentage split. Ms. Dietrich suggested that licensees be required to offer a full menu until one hour before closing. This would encourage establishments to sell food to offset the cost of keeping the kitchen open. Ms. Dietrich said she also felt that keeping the 20% maximum bar seating requirement would maintain the atmosphere that the Village is trying to achieve with the 60/40 split.

In addition, Ms. Dietrich said she believes there is also a problem with enforcement. She suggested focusing on the fines and disciplinary actions for the sale of alcohol to a minor and for DUI's. She said if the ordinances/procedures were changed to support that focus, the licensee would take the ordinances more seriously thus, maintaining the desired atmosphere.

Mr. Durkin asked if the Village has ever audited the percentage figures, which licensees submit for the 60/40 requirement. Ms. Conforti replied no. However, she said licensees must disclose the amount of their liquor sales to their dram shop insurance carrier. She said that the Village has had no reason to question the figures that have been submitted. Mr. Durkin asked how the Village knows the 60/40-split requirement is working if it has never been tested.

Ms. Conforti explained that because the Village "grandfathered" existing licensees when the Class "R" license was created, relatively few Class "R" and "R-1" licenses have been issued. If an establishment held a license prior to the creation of the Class "R" licenses in July 2000, they were allowed to renew their original license classification, rather than being transferred to the new classification. Mr. Barnett asked if the Village could require those licensees to transfer to a Class "R" license upon renewal. Ms. Conforti said existing licensees were not required to transfer because it would create a situation that might be difficult to defend legally. If a licensee could not comply with the 60/40 split they would have in their defense that the requirements of maintaining their liquor license were changed after they had met the requirements of their original license. Thus, the Village decided to "grandfather" the existing licensees. However, Naperville did not and consequently 16 licensees were unable to meet the new requirement. Since that time, Ms. Conforti said Naperville has eliminated the 60/40-split requirement.

Ms. Gerloff asked what Naperville is using in place of the 60/40 split requirement. She noted that they require that licensees have a kitchen, which has been inspected by the DuPage Health Department and that they require licensees to have food available if they are selling alcohol. Ms. Gerloff pointed out that the Village already has those requirements. With the 60/40 split requirement the Village has a control mechanism, which maintains that the focus in the Downers Grove is the sale of food not alcohol. She questioned how control would be maintained if the requirement is eliminated. If the restraints are removed, Ms. Gerloff was concerned that it would result in a "pub effect". She expressed concern about Ballydoyle's a new Irish restaurant and pub, which applied for a Class "R" license last month. Without the 60/40-split requirement, she felt there will be nothing to prevent such establishments from becoming drinking establishments and the focus would be alcohol rather than food. Ms. Gerloff said she believes the Village should have some way to monitor this activity.

Mr. Barnett agreed that if the 60/40 requirement is eliminated, new ways to monitor alcohol sales and service would be needed to retain the intent of the ordinance.

Mr. Kubes said it appears that everyone on the Commission is concerned about the Liquor Ordinance and they have brought up some good ideas. He asked staff to help the Commission draft an ordinance, which would act as a control mechanism if the 60/40 requirement is eliminated.

Mr. Kubes suggested increasing the fees and using the revenue to conduct more control buys and to monitor establishments more closely. He also suggested that the revenue be used to fund more legal research so the Village can defend revoking liquor licenses when necessary. Mr. Kubes said the Village should have a way to revoke the license of an establishment, which is detrimental to the community.

Mr. Kubes clarified that when he mentioned limiting the number of liquor licenses available in Downers Grove, he was not suggesting using that as a means of deterring businesses from locating in Downers Grove. Rather he was suggesting it as a means of control. Each new applicant would have to appear before the Commission and request that a new license be created. The Commission would have the ability to create a new license if the majority of the Commissioners felt the applicant would be an asset to Downers Grove and would fit into the overall plan for the community.

Mr. Kubes asked if the DUI notifications could be published in the newspaper in addition to sending letters to the establishments. Ms. Perez said DUI arrests are listed in the newspaper; however, the establishment at which the individual consumed the alcohol is not listed because it would be difficult to substantiate that information.

Mr. Kubes said before the Commission eliminates the 60/40-split requirement, he believes they should have some alternatives in mind for the maintaining standards, which have been achieved.

As a means of control, Ms. Perez said it might be a good idea for the Commission to conduct a certain number of license renewal hearings each year to give the Commission an opportunity to question the licensees about their performance/compliance over the past year with regard to DUI's, over service, etc. It would be a way to keep the licensees more involved with the Commission.

Mr. Kubes said he liked the idea of renewal hearings and he asked if the Commission would have the option to deny the licensee's application for renewal. Ms. Perez replied yes. However, the licensee could appeal to the State Liquor Commission, which would most likely reinstate the license.

Chairman Mochel said he believes there are two topics for discussion: 1) whether or not the 60/40 split regulation should be maintained, changed or eliminated; and 2) enforcement and control of whatever regulation is adopted. Chairman Mochel said he would like the Chamber to provide input from their constituents as these topics are discussed.

MR. BARNETT MOVED THAT THE DOWNERS GROVE LIQUOR COMMISSION REQUEST AN OFFICIAL OPINION FROM THE DOWNERS GROVE CHAMBER OF COMMERCE REGARDING THE 60/40 SPLIT ORDINANCE AND THAT SUCH AN OPINION BE DEVELOPED FROM A SURVEY OF EXISTING LIQUOR LICENSE HOLDERS. MR. DURKIN SECONDED.

Chairman Mochel asked Mr. Barnett to amend the motion to include the Downtown Development Corporation and/or the Downers Grove Economic Development Commission. Mr. Barnett and Mr. Durkin agreed to amend the motion and the second.

VOTE:

Aye: Mr. Barnett, Mr. Durkin, Ms. Gerloff, Mr. Kubes, Ms. Summers, Ms. Dietrich, Chairman Mochel

Nay: None

Abstain: None

MOTION CARRIED: 7:0:0

Mr. Kopsis said the Chamber would compile the survey data information and work with staff to prepare it for presentation to the Commission. The Commission agreed. Chairman Mochel also suggested that the Legal Department present their review and comments on the information. Mr. Kopsis said the information would be ready for the November Liquor Commission meeting. Chairman Mochel asked that it be put on the November meeting agenda.

Chairman Mochel said the next topic for discussion is restriction of liquor product advertising. Ms. Conforti explained that the issue of liquor product identification signs has come up in the past few months, especially with regard to patio umbrellas. The ordinance was enacted in 1993 to monitor and restrict licensees from promoting alcohol and to encourage licensees to promote themselves primarily as restaurants, rather than as drinking establishments. Ms. Conforti said she would like the Commission to consider whether or not this restriction is practical, fair, up-to-date, etc.

Ms. Dietrich said she feels that this ordinance is still current and is not outdated. She said she believes that restricting liquor signs adds to the Village's charm. Ms. Dietrich views the use of patio umbrellas with alcohol logos the same as any other liquor product identification sign and believes that they should also be prohibited. Ms. Dietrich said she feels the ordinance is fine as it is.

Mr. Barnett said on the surface he thinks the ordinance is okay. However, he wondered why the ordinance was limited to brand names as he found signs advertising \$5 pitchers, ½ price margaritas, etc. equally negative. If the goal of the ordinance is to prohibit advertising that promotes alcohol and to encourage establishments to promote themselves as restaurants, he feels the above advertising should also be prohibited.

Ms. Summers agreed with Mr. Barnett. She added that she viewed the recent issue of patio umbrellas as a problem of enforcement. The Village should have better methods of enforcement because some establishments do not respond well to the current methods.

Ms. Gerloff said she did not feel that the ordinance was outdated as the provision regarding patio umbrellas was enacted in 2000. She did not have a problem with the ordinance. She too believed that it was a problem of enforcement. When an establishment is aware of an ordinance and does not comply after repeated warnings, both verbal and written, Ms. Gerloff said she feels that it is time to take some action. After the establishment was notified that they would be fined daily, they finally removed the umbrellas. Ms. Gerloff said as long as the ordinance is in effect; she expects every establishment in Downers Grove to comply with it.

Ms. Gerloff said currently the Village has issued 13 liquor licenses for outdoor alcohol sales and only one establishment has not complied with the ordinance regarding patio umbrellas. She said she does not feel that the ordinance should be changed because one establishment does not wish to comply. Ms. Gerloff said she is in favor of keeping the ordinance as it is. She added that new applicants are aware of the restriction on alcohol product identification signs, including those on patio umbrellas.

Mr. Kubes said he does not condone violating Village ordinances. He believes the Village should follow up on all ordinance violations. He pointed out that banners advertising margaritas, pitchers of beer etc. advertise alcohol as much as alcohol product identification signs. He added that umbrellas advertising soft drinks and other products also let passersby know that an establishment has a beer garden or patio garden. However, he wondered how much of an impact eliminating the restriction on patio

umbrellas would make since outdoor seating is only available a few months out of the year and currently only 13 outdoor seating licenses have been issued. Mr. Kubes said the individuals with whom he has spoken do not find patio umbrellas with alcohol product identification offensive. Mr. Kubes suggested that the Commission discuss rewording the ordinance. He clarified that his suggestion is not based on one establishment not complying with the ordinance.

Mr. Kubes said he agrees with restriction on alcohol product identification signs in windows, however, the restriction on patio umbrellas was added fairly recently in July 2000. If the restriction was not needed until then, perhaps it is not needed now. Mr. Kubes said he does not feel that patio umbrellas with alcohol logos are that imposing and they should be allowed.

Chairman Mochel said he believed that the restriction on patio umbrellas was not added until July 2000 because prior to that time, the Village did not have outdoor seating areas.

Chairman Mochel asked if the Village could legally restrict all signs, which advertise or promote alcohol, i.e. ½ price margaritas, as well as those advertising a particular brand of alcohol. Ms. Perez replied yes.

Mr. Barnett asked why the current ordinance has been interpreted as restricting only brand specific alcohol advertising. Chairman Mochel said "product identification signs" is defined as brand specific. Ms. Perez said the ordinance could be changed to prohibit all alcohol-advertising signs.

Ms. Gerloff said the Village has an ordinance, which is in effect and is being followed by most licensees. She does not understand why the Commission should consider changing the ordinance because one establishment did not wish to comply.

Mr. Barnett said he believes that when an issue is raised it should be discussed. He said he believes that it is reasonable for any licensee to ask the Commission to discuss any portion of the ordinance.

Because the topic of patio umbrellas has come up at several meetings, Mr. Kubes said he felt the Commission should discuss whether or not the addition of patio umbrellas to the ordinance was a feasible, necessary change. Mr. Kubes emphasized that he does not condone violating Village ordinances.

Mr. Durkin asked why the issue of patio umbrella signs is not part of the Village's sign ordinance. Ms. Conforti said at the time the ordinance was adopted it was felt that it was more appropriate to keep all of the liquor related signage within the Liquor Code rather than including it in the general ordinance.

Mr. Durkin clarified that an establishment can put their own name on their patio umbrellas even if it is the same as the brand name for the alcohol that they sell, i.e. Founder's Hill. Ms. Conforti agreed.

Mr. Barnett said the issue of the ordinance seems to be one of control. He said discussion of the ordinance gives the Commission the opportunity to make the ordinance more or less restrictive and therefore he believes that such discussions are valid and worthwhile.

Ms. Dietrich asked why the ordinance was drafted to restrict only brand specific signs. Ms. Conforti said it might be because typical neon bar signs are usually brand specific. Chairman Mochel said it might have been the result of a compromise made when the ordinance was originally adopted. Ms. Dietrich noted that non-brand specific advertising is very common and she wondered if there would be a great deal of opposition if the Commission were to recommend restricting all alcohol advertising signage.

Mr. Kubes said he would like the Commission to discuss the alcohol product identification sign ordinance, re-word it and forward it to the Village Council for their comments.

MR. KUBES MOVED THAT THE LIQUOR COMMISSION CONSIDER AND DISCUSS RESTRUCTING THE DOWNERS GROVE LIQUOR ORDINANCE, SECTION 3.33.2 AT THE NOVEMBER 2003 MEETING AND FORWARD THE RESTRICTED ORDINANCE TO THE VILLAGE COUNCIL FOR THEIR COMMENTS. MR. DURKIN SECONDED.

VOTE:

Aye: Mr. Kubes, Mr. Durkin, Mr. Barnett, Ms. Dietrich,
Chairman Mochel

Nay: Ms. Gerloff

Abstain: Ms. Summers

MOTION CARRIED: 5:1:1

Chairman Mochel asked staff to research the consequences of the Commission recommending eliminating the above restriction and the consequences of keeping it brand specific.

Mr. Durkin said he would like to know whether or not patio umbrellas with alcohol logos are supplied to establishments free of charge. Ms. Conforti added that it would be helpful to know if other product identification signs are supplied free of charge. Mr. Kopis said he would include those questions on the Chamber's survey of local businesses.

Ms. Conforti informed the Commission that the licensee that was using patio umbrella with alcohol logos was ticketed for violating the ordinance. They are required to appear in court and could be fined from \$75 to \$150 depending on the judgment of the court.

Chairman Mochel said the final topic for discussion on the agenda is fines for servers involved in control buys. Ms. Conforti said at the last meeting the Commission discussed increasing the fine for servers involved in a control buy violation. Ms. Conforti said the fine for servers was increased from \$50 to \$75 a number of years ago and she asked for the Commission's comments regarding further increases.

Mr. Barnett said he feels that the Village should do whatever it can to help businesses conform to the Code and behave in a responsible manner. He acknowledged that employers cannot watch their employees at all times. Mr. Barnett said most of the background on control buys that he has seen involve individuals who served alcohol to a minor who presented a valid red under 21 driver's license upon request. He said the Commission might be able to help licensees by increasing the fine to servers involved in these violations. He said he felt that a higher fine would make servers more careful when serving alcohol. Mr. Barnett said he would be in favor of increasing the fine to \$500. The increased fine, along with the other ordinance changes that have been discussed this evening would increase the Village's control of alcohol and set a desirable tone for the community.

Chairman Mochel pointed out that when the last fine increase for servers was considered, the Police Department was not in favor of going above \$75, because they would be required to appear at the Court hearing with witnesses, etc. He asked Ms. Perez if these objections were still valid. Ms. Perez said currently, the violation is handled as an administrative citation. The officer issues the \$75 ticket at the time of the violation. If it is not paid within 10 days, the fine doubles to \$150 and if it is not paid within 30 days it goes to court. However, if the violation is not handled administratively and the officer has to make an arrest, and the server has to post bond and go to court, Ms. Perez said it is possible that the officers would be less likely to issue the ticket because it would take officers off the street for a long period of time. Ms. Perez pointed out that once a case goes to court, the Village has no control over the outcome and in many cases the judge will reduce the fine.

After doing some research, Mr. Barnett said he found that in the state of Ohio, the sale of alcohol to a minor is considered a first-degree misdemeanor and the fine for a first offense by a server, who is 18 years or older, to knowingly sell alcohol to a minor is \$1,000. Mr. Barnett said the object of this ordinance is to make servers think about the serious consequences of the violation before it occurs.

Ms. Dietrich asked if an administrative citation could be issued for more than \$75. Ms. Perez replied yes. She said the Village could create an administrative category in which the fine would be \$200 increasing to \$400 if it is not paid within ten days. Ms. Dietrich said she definitely believes that the fine should be increased so that the server will take the violation more seriously. She said she believes the server would be inclined to pay the ticket to avoid going to court.

Chairman Mochel asked if there is a dollar limit on the amount of administrative citation fines. Ms. Conforti said she believed the highest administrative citation fine is \$150.

However, she and Ms. Perez said they believed there is no limit on the amount of the fine for an administrative citation. The Village could create an administrative citation with a \$500 fine, which would increase to \$1,000 if it is not paid within ten days. Ms. Conforti said times have changed and she believes it would be appropriate to increase the fine to servers involved in the sale of alcohol to a minor.

Mr. Durkin asked if the Village is seeing an increase in alcohol sales to minors. Ms. Conforti replied no. However, applicants have mentioned that the \$75 fine for servers seems minimal when compared to the \$1,000 fine, \$1,000 hearing fees and possible suspension, which the licensee would incur. Ms. Conforti said licensees have indicated that they would be in favor of increasing the fine to servers. She added that servers could be advised of the fines involved in the sale of alcohol to a minor during training sessions.

Chairman Mochel agreed that servers might take the law more seriously if the fine were more substantial.

Mr. Durkin asked if the fine is increased to \$500 would the violation still be considered a petty offense. Ms. Conforti replied yes. She explained that as long as the fine is issued as an administrative citation, it would still be considered a petty offense. Mr. Durkin asked if the offender would have to post bond. Ms. Perez replied no. Ms. Conforti added that bond is not required with an administrative citation. Mr. Durkin said he would be in favor of increasing the fine, but he felt \$500 is too high because it might make it more difficult for restaurants to hire servers.

Mr. Barnett observed that servers would only receive this administrative citation as the result of a control buy failure, in which they served alcohol to a minor who was required to present a valid under 21 Illinois driver's license upon request. Chairman Mochel added that special employees must also state their correct age when asked.

Ms. Conforti noted that the number of control buy failures dropped dramatically when the fines and suspensions to licensees were increased.

Mr. Durkin said if there is no increased problem with failed control buys, why does the Commission want to raise the fine to the servers. He suggested waiting to increase the fine until there was a reason to do so.

Mr. Barnett said he would like to increase fine at this time because he believes that the Liquor Commission should be creating a quality of life environment and should be helping businesses to exist here. According to Ms. Conforti, licensees would appreciate this type of help to encourage their staff to be more careful when serving alcohol. For that reason, he said he is in favor of changing the ordinance.

Ms. Summers agreed with continuing to handle the violation with an administrative citation because the fine could be increased without requiring police officers to go to court or violators to post bond. She said she would be in favor of increasing the fine to \$250, because she believes that \$500 is too high.

Ms. Gerloff said she felt that increasing the fine from \$75 to \$250 was too great an increase. She agreed that the fine should be increased; however, she said she would like to see it increased to \$100 or \$150.

Mr. Kubes said he agreed that the fine should be increased and that the violation should be handled as an administrative citation. He would agree to increase the fine to \$150 and he would like to discuss further increases at future meetings as long as the violation would be handled as an administrative citation regardless of the amount of the fine. He agreed with Mr. Durkin that he did not want to burden licensees with a fine that was so high that it would make it more difficult for them to hire and keep good employees. He suggested that perhaps the Chamber survey could ask restaurant and business owners what they feel is an appropriate fine for servers involved in the sale of alcohol to a minor.

Chairman Mochel asked the restaurant owners in the audience how they felt about the Village increasing the fine to servers. John Anthony, with the Twist Corporation, said they are in the process of opening a steak house in the Station Crossing development in Downers Grove. He said he would be in favor of a \$250 fine to the server. Darlene Anthony, also of the Twist Corporation, said she believes that the higher the fine the more careful employees will be when serving alcohol.

Resident Tessa McGuire, 4910 Cornell, said she would be in favor of increasing the fine. She said she believes it would be another tool that the Village could use to control the environment.

Chairman Mochel asked if the Commission was ready to make a motion regarding increasing the fine.

Before making a motion, Ms. Dietrich and Mr. Kubes said they would like staff to check the limits of the current ordinance, if any, and verify whether or not the Commission can recommend an increase over that amount. Ms. Conforti agreed. Chairman Mochel and the Commission agreed to table this item and bring it up for further discussion next month.

Ms. Gerloff asked the Liquor Commissioner's findings for Pizza Hut's recent violation. Ms. Conforti said the Liquor Commissioner suspended their license for three days, October 13, 14, and 15, 2003. In addition, they were fined \$1,000 and required to pay administrative costs in the amount of \$680.

Ms. Gerloff said the Police Department is supposed to conduct at least one control buy per year at each establishment and she feels that it is important for them to do so. Ms. Conforti explained that the Police Department sometimes has difficulty finding an underage special employee to participate in the control buys. She added that money for control buys comes from the license fees paid by licensees and each licensee is tested every year. Those who fail are retested.

V. NEW BUSINESS

Ms. Conforti said the next meeting is scheduled for November 6, 2003. She said she has two potential applicants on the agenda.

VI. COMMENTS FROM THE PUBLIC

None

VII. ADJOURNMENT

MR. KUBES MOVED TO ADJOURN THE MEETING. MR. BARNETT SECONDED.

The meeting was adjourned by acclimation at 9:00 p.m.

Mr. Barnett asked how questions and suggested changes to the fee structure should be addressed. Ms. Conforti said she does a cost center analysis every few years to calculate the costs involved in administering the various types of licenses. She also compared the Village liquor license fees with those of other municipalities and found Downers Grove's fee to be competitive. She explained that the Village's license fees are based on the costs of administering each type of license. Mr. Barnett asked for a copy of the analysis and Ms. Conforti agreed to provide it.

Ms. Gerloff asked if the Village is required to conduct a certain number of control buys at every establishment each year. Ms. Conforti said each licensee is to be tested one to three times per year depending on the Police Department's schedule.

VII. NEW BUSINESS

Ms. Conforti said Mayor Krajewski requested that the Commission discuss the 60% - 40% food versus alcohol split requirements for the Class "R" licenses.

Mr. Kubes asked if other nearby communities have similar requirements. Ms. Conforti said Downers Grove based their ordinance on a similar ordinance created by Naperville. However, Naperville has since changed their requirements because their licensees were having problems meeting the 60/40 split. Ms. Conforti said Naperville has eliminated the food versus alcohol sales percentage requirements. In Naperville, restaurants with a service bar only, require patrons to order a meal in order to purchase alcohol. Restaurants with a full bar must have a full menu available until 10:00 p.m. Sunday through Thursday and until 11:00 p.m. on Friday and Saturday. After those hours, restaurants with a full bar must offer a late night menu.

Ms. Summers wondered if the Commission could offer an alternative to the 60/40 split to restaurants that are unable to meet the requirement after one year. She suggested creating a 50/50 split requirement for a period of one year for a fee of \$5,000 and offering it to licensees who present concrete evidence of their attempts to meet the 60/40 split. She said during the one-year time period, licensees would be required to submit documentation to Ms. Conforti verifying that they are meeting the 50/50 split each month. After one year, the licensee would return to the 60/40 split and be required to present a specific plan to the Liquor Commission detailing how they plan to meet the requirement.

Ms. Conforti observed that it is more difficult for owners of new restaurants to predict their sales and clientele than it is for a restaurant that is part of an established chain. Thus, Ms. Conforti said compliance with the 60/40 split has always been more difficult for the owners of new restaurants to predict.

Chairman Mochel said prior to amending the ordinance, it was somewhat vague and open to interpretation, requiring only that the majority of an establishment's revenue must be from food sales. The 60/40-split requirement was added to clarify the requirement. Chairman Mochel said the ordinance is designed specifically to prohibit a restaurant from becoming a bar.

Mr. Barnett said he was concerned that the 60/40 split would discourage new restaurants from opening in Downers Grove. Mr. Barnett said after researching a number of surrounding communities via the Internet, he has not found any evidence to demonstrate that this requirement helps the Village and thus far his research has not shown any evidence that anything, including crime rates, home prices, academic levels, and/or length of residency, is adversely affected by the lack of a 60/40 split requirement. In addition, many of the communities he has researched have ordinances, which permit taverns.

Ms. Conforti said the real issue is whether or not a licensee acts in a responsible manner, i.e. by not serving minors or over serving patrons, etc. Mr. Barnett said he feels those are different issues. He said the Village is not obligated to give anyone a liquor license and he feels that there are other ways to discourage undesirable establishments.

Mr. Kubes said since he has been on the Commission, the disciplinary hearings have involved restaurants that derive a very small percentage of their revenue from the sale of alcohol. He suggested that perhaps establishments that sell more alcohol also manage the sales better. Mr. Kubes said he believes that the Commission should address the issue of the 60/40 split. He added that when considering alternatives, the Commission should emphasize continuing food sales and maintaining the maximum 20% bar seating.

Ms. Petrarca said although there are relatively few Class "R" and "R-1" licenses in the Village, only Callaway's has had a problem meeting the requirements. Prior to creating the Class "R" license, the Village required an establishment to have 125 seats to qualify for a full liquor license. Ms. Petrarca said the Village adopted the 60/40 split because many of the smaller establishments could not meet the seating requirement for a full liquor license.

Ms. Summers said she believes that it is imperative that the Ordinance includes a numerical split, rather than using vague terms such as "majority of sales revenue" or "primary business". Ms. Conforti agreed.

Ms. Gerloff asked why the Mayor requested the Commission's opinion on this matter. Ms. Petrarca said the issue was discussed at a recent Chamber of Commerce meeting and they did not understand the reason for the 60/40-split requirement.

Mr. Barnett said he was concerned that new restaurant owners would be discouraged from opening an establishment in Downers Grove because of this requirement. He added that the communities that he surveyed do not have the problems that the Commission believes this ordinance is intended to prevent.

Ms. Conforti said she would supply the background and discussion surrounding the creation of the 60/40 split requirement.

Ms. Dietrich asked if Mr. Barnett was suggesting that the Village should have a tavern license. Mr. Barnett said the communities that he has researched do not use the term "tavern" license. However, they appear to exercise control through seating percentage requirements, square footage requirements, and operational requirements, i.e. requiring that the full menu be available at all times.

Ms. Summers said she would like the Mayor to know that when the Commission held a review hearing on Callaway's, they gave the owner a number of suggestions to help him meet the 60/40 split. However, Ms. Summers recalled that the owner did not appear to take note of them.

Ms. Dietrich asked what Callaway's revenue splits were. Ms. Conforti said their liquor sales have been 43% or 44% and although that is fairly close to the 40% requirement, it is still too high.

Ms. Conforti wondered if the 60/40 requirement was an accurate measure of an establishment's food and alcohol sales because there is a higher mark up on alcohol than on food.

Mr. Barnett said he felt that new, small, non-chain restaurants would have difficulty meeting the present 60/40 split.

Mr. Kubes noted that there are no seating requirements in the current ordinance, other than at least 80% must be restaurant seating and no more than 20% can be bar seating. Ms. Conforti agreed. Mr. Kubes said if the Mayor wants the Commission to review the ordinance, the Commission should maintain the 80/20 restaurant versus bar seating requirement and the full menu requirement.

Ms. Conforti said Naperville tried the 60/40 requirement and found that many of their license were unable to comply. Thus, they have changed the ordinance. Chairman Mochel pointed out that only one licensee is having a problem meeting the Downers Grove ordinance.

MR. BARNETT MOVED TO ADVISE THE MAYOR THAT THE LIQUOR COMMISSION IS REVIEWING THE 60/40 FOOD VERSUS ALCOHOL REVENUE SPLIT REQUIREMENT AND THAT THEY WILL REPORT THEIR FINDINGS AFTER REVIEWING THE BACKGROUND AND MINUTES SURROUNDING THE CREATION OF THE REQUIREMENT. MR. KUBES SECONDED THE MOTION.

The motion passed by acclamation.

Mr. Barnett suggested including a requirement for TIPS training on a recurring basis in the Liquor Control Ordinance. Ms. Conforti said some communities do have such a requirement.

points to server

Mr. Barnett noted that the issue of the red license frequently comes up during disciplinary hearings. Because managers cannot oversee every employee at all times, Mr. Barnett said that a substantial fine for the server involved in sale of alcohol to a minor might motivate servers to be more careful. He suggested amending the ordinance to increase the fine issued to the server. He added that increasing the fine would also be a help to restaurant owners and managers.

Chairman Mochel asked what the penalty is for a server who does not pay the current \$75 fine. Ms. Petrarca said the amount of the fine doubles in one week and the individual is required to go to court if they do not pay the fine.

Mr. Kubes agreed with Mr. Barnett's suggestion to increase the fine to the server. He added that establishments would also have to include the amount of the fine in their manual.

Ms. Petrarca said staff would look into amending the ordinance to increase the fine issued to servers.

Ms. Conforti distributed the monthly Liquor Commissioner's report for August, 2003 and miscellaneous new articles. She also pointed out that the date on which a licensee turns 21 is now printed on the face of the new under 21 Illinois driver's license. Therefore no calculations are necessary. Ms. Conforti said although the color of the header containing the card type is red, the State seal is surrounded by a red border and the date of birth is blocked in red, the red backdrop is no longer used behind the licensee's photo on an under 21 Illinois driver's license.

Ms. Gerloff asked if there was any need to keep the Class "E-1" and Class "E-2" liquor license classifications in the Ordinance. Ms. Conforti explained that the Class "E" licenses are transitional licenses that are used if necessary when property is annexed into the Village.

Ms. Conforti said the next meeting is scheduled for October 2, 2003.

VIII. COMMENTS FROM THE PUBLIC

None

IX. ADJOURNMENT

MR. BARNETT MOVED TO ADJOURN THE MEETING.

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

60/40
★

Ms. Summers asked if Ms. Conforti knew the percentage of Callaway's food versus alcohol revenue split before the establishment closed. Chairman Mochel explained that Callaway's holds a Class "R" restaurant license, which requires that the establishment maintain a 60/40 food versus alcohol revenue split. In the past Callaway's has had a difficult time complying with this license requirement. Ms. Gerloff added that Callaway's has been on probation for six months because they have been unable to meet and maintain the 60/40 revenue split.

Ms. Gerloff recalled that the last time the owner of Callaway's was before the Liquor Commission, he was complaining about the difficulties of meeting the 60/40 split.

Mr. Barnett asked if the Commission ever holds exit interviews, possibly in conjunction with the Economic Development Commission, to determine why a licensee has forfeited their license, what their problems were, why they closed their establishment, etc. Mr. Barnett said that as a member of the Liquor Commission, he would like to know if an establishment closed solely because it could not meet the 60/40 revenue split. Ms. Conforti said at this time there are no exit interviews. She said currently when applicants contact her initially, she refers them to the Economic Development Commission regarding suitable locations.

Ms. Gerloff said Mr. Barnett's idea for exit interviews was very good. She noted that Naperville recently changed their full liquor license 60/40 food versus alcohol revenue split requirement because their licensees were unable to meet it. Ms. Gerloff said the Class "R" license is a relatively new license classification in Downers Grove; however, the only licensee that has been unable to meet the requirements thus far has been Callaway's.

Ms. Gerloff said Callaway's has always had a problem meeting the 60/40 split in spite of all the help that Ms. Conforti provided. She added that everyone was aware that meeting the 60/40 split was a problem for Callaway's and that it was the reason that they were placed on probation. Ms. Gerloff explained that the Commission put Callaway's on probation and gave them 6 months to correct the problem, rather than revoking their liquor license immediately. Ms. Gerloff noted that from the very beginning Callaway's never met the 60/40 revenue split requirement.

Mr. Barnett said it appears that the nature of the site may have contributed to Callaway's inability to meet the 60/40 split. The restaurant clearly has a pub environment and a relatively small seating capacity.

Mr. Durkin asked if the Commission would put a licensee, who was succeeding financially, out of business because they were not in compliance with the 60/40 revenue split requirement. Ms. Conforti replied yes. She said that all potential licensees are informed of the license requirements when they submit their application.

Ms. Conforti explained that Downers Grove has always been a conservative community. Because they wanted to keep the restaurant image, Downers Grove decided to require a

60/40 food versus alcohol revenue split to keep the dining and food requirement. Prior to the 60/40 requirement, Downers Grove had stricter regulations, which required 125 dining seats in order to obtain a full liquor license. Ms. Conforti and Ms. Gerloff pointed out that the ordinance was changed to allow smaller establishments to obtain a full alcohol license. Ms. Gerloff said that by the time of the license application hearing, new applicants are well aware that they must meet the 60/40 revenue split to obtain and maintain a Class "R" liquor license.

As background, Chairman Mochel explained that the Village began noticing that they were not getting any new restaurants in Downers Grove because in order to operate a really successful restaurant, owners felt they must serve alcohol. Eventually the Village allowed alcohol to be served in restaurants as long as it was incidental to the dining experience. There were no taverns within the Village limits. Although there have been changes in the Liquor Ordinance over the years, Chairman Mochel said the community at large still does not favor bars/pubs/taverns in Downers Grove.

Ms. Gerloff said eventually there will be an Irish pub in downtown Downers Grove and it will have a bar, but it will also have a large restaurant.

Mr. Durkin said as a banker, it appears that the Village could put an otherwise successful establishment out of business by revoking their liquor license. Chairman Mochel agreed but reminded Mr. Durkin that licensees know from the beginning that they must meet and maintain a 60/40 revenue split in order to obtain and keep a liquor license.

Mr. Barnett observed that licensees fail for different reasons and when a license forfeiture occurs; he would like to hear the reasons from the licensee.

VI. NEW BUSINESS

Ms. Conforti said the next meeting is scheduled for September 4, 2003.

Ms. Summers asked when Carlucci's Restaurant was going to open. Ms. Conforti said they should open at the end of August, 2003.

Ms. Conforti said she distributed updated copies of Chapter 3 and updated copies of the Liquor Commission roster to all members. Members submitted changes to the roster.

Ms. Perez said since there are seven members on the Liquor Commission, two members can meet without violating the Open Meetings Act.

Ms. Conforti welcomed the new members of the Commission and offered to meet with any of them prior to the next meeting if they wished to do so.

VII. COMMENTS FROM THE PUBLIC

None

Conforti, Carol

From: Conforti, Carol
Sent: Thursday, January 22, 2004 2:34 PM
To: 'lindakunze@downersgrove.org'; 'bwyssocki@downersgrove.org'; Rockwell, Steven
Cc: Krajewski, Brian; Clark, Beth; Petrarca, Enza; Ginex, Riccardo; Daniel McInerney (E-mail); Judith Haider (E-mail); Kelly Dietrich; Michael Kubes (E-mail); Michele King (E-mail); Robert Barnett; Sean P. Durkin
Subject: Liquor Ordinance Amendments

Jan (via fax), Linda, Barb, Steve -

Attached find a copy of the draft ordinance regarding elimination of the 60-40 food v. alcohol split. [Note: The Commission also discussed other sections to be amended including a raise in the fine issued to servers involved in liquor sales to minors -increased from \$75 to \$200 (Section 1-16); Warning signs for employees regarding their involvement in the sale to a minor (Section 3-27).]

I told the Commission I would forward the draft ordinance to you for review and comment. Essentially, the draft ordinance regarding the 60/40 provides as follows:

Elimination of the 60-40% food v. alcohol split

20% max bar seating (keep current restriction for new licensees)

Food service required up until 1 hr. prior to close (current), with the addition that a full menu be available Sun-Thus until 10, Fri/Sat. till 11, and a reduced late night menu (including appetizers, sandwiches, hor d'vours) be available up until 1 hr. prior to close - this menu will need to be submitted if the licensee stays open past 10/11 respectively. These will need to be turned in at renewal and at application. *This mirrors Naperville's ordinance when they experienced similar problems with the 60/40.*

I think this address our main goal of restaurant business retention/attraction. The Commission had a lively discussion in which we touched on ways to maintain the integrity of the ordinance without being over-restrictive. Any additional thoughts?!?!?

We also addressed two aspects of BYOB (Bring your own booze). For liquor license holders, Section 3-29 was amended to allow customers to bring in their own alcohol (i.e. for a special occasion), but the licensee must maintain control of it. We want to be sure that nobody is over served or that underage customers are served.

The issue with the BYOB on unlicensed premises (such as the bead shop, Mad Potter) is still a touchy issue. There may be some resistance to it as no "food" would be required - which is a main component of the Liquor Ordinance. There also would be no control on the part of the establishment, there would be no way to charge anybody for a violation (ie if a minor is served); and there is no liquor liability insurance required (host liability and/or dram shop) to protect innocent victims if the patrons over consume and hurt someone (ie DUI). I am desperately trying to find other communities that allow this - most don't. Some just "avoid" it. Another problem I see with it is that the landlord may or may not be willing to allow this under any circumstances as they would ultimately be held liable if someone was intoxicated and tripped and fell, for example. I know the Village owns some retail property and highly doubt we would subject ourselves to this type of liability, but if we allow the BYOB without a license we essentially open ourselves up to it. Just some thoughts for you to ponder.....

Please give me your thoughts as soon as possible so that I may forward your comments to the Commission. We are meeting on February 5, 2004 at 6:30 p.m. in the Council Chambers. Let me know if you'd like to attend. Do any of you know if there was any more done on the survey of licensees which was discussed at the October meeting or did it get put by the wayside when the Commission changed?

Thanks for your time and consideration....

-C

PS. I have cc'd the Liquor Commission of this information to provide a "sneak peak" of the Ordinance. Due to

the Open Meeting Act regulations, if Liquor Commission members could please save any discussion for our meeting of Feb. 5 at 6:30 pm. However, if members have any individual comments/questions concerning the ordinance, you may contact me directly.



Liquor.pdf

Carol Conforti
Legal Department
Village of Downers Grove, Illinois
cconforti@vil.downers-grove.il.us
(630) 434-5542
(630) 434-5493 -fax

Tracking:

Recipient

Read

'lindakunze@downersgrove.org'

'bwysocki@downersgrove.org'

Rockwell, Steven

Read: 1/22/2004 2:42 PM

Krajewski, Brian

Clark, Beth

Read: 1/22/2004 3:36 PM

Petrarca, Enza

Ginex, Riccardo

Daniel McInerney (E-mail)

Judith Haider (E-mail)

Kelly Dietrich

Michael Kubes (E-mail)

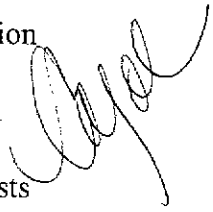
Michele King (E-mail)

Robert Barnett

Sean P. Durkin

VILLAGE OF DOWNERS GROVE
CORRESPONDENCE

Date: January 27, 2004
To: Members of the Downers Grove Liquor Commission
From: Carol Conforti, Liaison to the Liquor Commission
Subject: Request for Information - Bring Your Own Requests



I spoke with Linda Kunze of the Downtown Management Board who advised me that she was contacted by the following establishments concerning the Bring Your Own alcohol issue:

Lets Go Bistro - 970 Warren
Mad Potter - 5117 Main
Bead Heaven - 5150 Main
Yarn Store - Pending '04 occupancy-Main Street

In reviewing my inquiry file, the following establishments have contacted me and made requests concerning Bring Your Own alcohol:

Carlucci's - 1801 Butterfield
Nancy's Tea Room - 4912 Main
Sybaris - 600 Ogden
Earth Moon Sun Salon & Day Spa - 726 Ogden
Laser Quest -Butterfield

Feel free to contact me should you have any questions.

VILLAGE OF DOWNERS GROVE
CORRESPONDENCE

Date: November 25, 2003
To: Downers Grove Liquor Commission
From: Carol Conforti, Liaison to the Liquor Commission
Subject: Research



At our last meeting, we discussed amending the 60%-40% food vs. alcohol split requirements of the Class "R" and "R-1" liquor licenses. As you know, it is becoming difficult for licensees to meet the 60-40 split and that the requirement is turning away potential licensees.

I have attached the Village's current definition of "restaurant" as well as the "R" and "R-1" license classification requirements. I have researched the liquor ordinances of surrounding communities and have attached definition and classification information for your review. I believe that if we incorporate some of the wording from these and amend our existing definition of "restaurant" or Class "R" and "R-1" categories, we can successfully maintain the integrity of the Code (requiring establishments act as restaurants), while giving more flexibility to it.

Please review the attached and we can discuss at our upcoming meeting. Feel free to call me with any questions.

Attachments

cc: Mayor Krajewski, Mayor/Liquor Commissioner
Martin Tully, Deputy Liquor Commissioner
Enza Petrarca, Village Attorney
Rick Ginex, Village Manager
Barb Wysocki, Downers Grove Chamber of Commerce
Linda Kunze, Downtown Management Board
Steve Rockwell, Director of Economic Development

Village of Downers Grove

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.

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.

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.

Naperville

RESTAURANT AND TAVERN: Any public place kept, used, maintained, advertised and held out to the public as a place where meals are served, and where meals actually are served and regularly served, without sleeping accommodations, such space being provided with adequate and sanitary kitchen licensed and certified pursuant to DuPage County food service sanitation code, 77 Illinois administrative code 750 and dining room equipment and capacity and having employed therein a sufficient number and kind of employees to prepare, cook and serve suitable food for its guests. The intent of this definition is that the primary business conducted on premises to be licensed as a restaurant and tavern shall be the service of meals. A full menu, including entrees and appropriate side dishes, shall be available at all times liquor sales are being conducted until ten o'clock (10:00) P.M. Sunday through Thursday, and eleven o'clock (11:00) P.M. Friday and Saturday. After such times, in the event a full menu is not provided, a reduced menu, which includes only appetizers, sandwiches, snacks, hors d'oeuvres or other similar foods, shall be available. Provided, the kitchen may cease operating no sooner than one hour before closing.

Don Russell
Naperville
Illinois
Naperville
Illinois

Rich Moore

1630 S. Lorraine, Wheaton, IL 60187

Cell Phone: 272-4300

The Corner Clubhouse Phone: 985-5945

Dear Mayor Krajewski:

My name is Rich Moore and I own The Corner Clubhouse in Woodridge, Illinois. We are currently in our 4th year of business in the community. My brother Dennis Turek and I are considering the purchase of Callaway's Pint House, currently owned by Don Brown. Dennis is a CPA and was a CEO for Davis St. Fish Market and two other restaurants in Evanston, IL.

We have completed the asset purchase agreement, re-negotiated a 15-year lease and are in the process of filing for a liquor license. During the liquor license application process, I spoke to Carol Conforti about my concern about the 60/40 food requirement in Downers Grove and she suggested I express my concern to you and your staff.

After reviewing the financial information of Callaway's Pint House, it appears that the corporation has fallen short of fulfilling the 60/40 requirement. However, the lack of food being sold is not the main source of his problems. His initial menu had items as high as \$20.00. His intentions were good, but the marketplace dictated otherwise. His new menu has an average price of \$8.00 for food items.

The problem is that smaller businesses like Callaway's and the The Corner Clubhouse find it difficult to compete with larger franchise restaurants with similar menus. The larger franchises have the dollars for advertising, signage and special promotions, whereas smaller business have budget limitations.

I'm sure you can think of several small restaurants in the western suburbs that are privately owned that offer great food and good service and "that something special" that you don't get in a chain organization. If a community ordinance attempts to regulate how a small business arrives at its bottom line, a small business cannot effectively compete. In addition, the economy is very erratic. We have seen a significant drop off of food business after 911 and an increase in liquor sales. These situations are beyond our control. In fact, we at The Corner Clubhouse have lowered our lunch menu prices, and focused on catering to build our food business.

We find Callaway's facility very attractive and functional to accommodate our restaurant and catering needs. Mr. Brown has invested well over \$300,000 in building out the facility. We believe that we can do a better job in this location because we have the experience and are dedicated to working full time at building all aspects of the business.

The 80/20 seating requirement in the ordinance should be more than adequate to eliminate the potential of attracting "bar only" customers. Most "bar only" customers would prefer to sit at a bar and not a dining table. It would be difficult for a bar with 20 seats in the western suburbs to survive on bar-driven revenue alone. Therefore, Callaway's needs to build its food business to survive. We believe that we have what it takes to make this happen, however, whether or not we can meet your exact 60/40 requirements is a serious concern.

I am aware of several small restaurants in the western suburbs that have gone out of business because of poor management. However, it would be an injustice to the community and to the investors for a small restaurant to go out of business because they did not meet the 60/40 requirement in the ordinance.

Page 2 of 2

We are writing specifically to ask you to consider issuing a "Class D1" restaurant license or amending the 60/40 village ordinance for the "Class R" license.

It appears as though Callaway's may not survive if it is not sold on a timely basis. This would of course leave the building vacant and an investor like Don Brown with nothing to show for his 3 years of hard work.

We thank you in advance for considering our request and hope that we can open a dialog about these important issues. We are excited about doing business in the Downers Grove community and believe that we could fill a need for a smaller restaurant with "that something special."

Most Sincerely,

A handwritten signature in cursive script that reads "Rich Moore".

Rich Moore

Cc: The Downer's Grove Village Board, Steve Rockwell, Linda Kunzy, Barb Wysocki



http://www.vil.downers-grove.il.us

COMMUNITY RESPONSE

CENTER

630.434.CALL (2255)

CIVIC CENTER

801 Burlington Avenue

Downers Grove

Illinois 60515-4776

630.434.5500

TDD 630.434.5511

FAX 630.434.5571

FIRE DEPARTMENT

ADMINISTRATION

6701 Main Street

Downers Grove

Illinois 60516-3426

630.434.5980

FAX 630.434.5998

POLICE DEPARTMENT

825 Burlington Avenue

Downers Grove

Illinois 60515-4783

630.434.5600

FAX 630.434.5690

PUBLIC WORKS

DEPARTMENT

5101 Walnut Avenue

Downers Grove

Illinois 60515-4074

630.434.5460

FAX 630.434.5495

DEPARTMENT OF

SOCIAL AND HEALTH SERVICES

842 Curtiss Street

Downers Grove

Illinois 60515-4761

630.434.5595

FAX 630.434.5599

FAX TRANSMITTAL

DATE: 11/4/03 **TOTAL PAGES INCLUDING COVER** 3

TO: Barb // Linda - hand del recd @ V Hall
968-8368

FROM: **CAROL CONFORTI**
Liaison to the Liquor Commission
Village of Downers Grove Legal Department
801 Burlington Avenue
Downers Grove, IL 60515

PHONE: (630) 434-5542
(630) 434-5493 (fax)

COMMENTS: Just wanted to share this with you. As you can see, he makes valid arguments about the 60-40 food v. alcohol split. Share this with your groups. As I get applicants who think they may have trouble w/ these requirements, I will forward these on. I'm doing more research on what restrictions other communities have.

