

VILLAGE OF DOWNERS GROVE
COUNCIL ACTION SUMMARY

INITIATED: Village Attorney **DATE:** May 3, 2005
(Name)

RECOMMENDATION FROM: _____ **FILE REF:** _____
(Board or Department)

NATURE OF ACTION:

- Ordinance
- Resolution
- Motion
- Other

STEPS NEEDED TO IMPLEMENT ACTION:

Motion to Adopt "AN ORDINANCE AMENDING THE USE OF PUBLIC PROPERTY AND TEMPORARY USE PROVISIONS", as presented.



SUMMARY OF ITEM:

Adoption of the attached ordinance will make certain amendments to temporary use provisions and the provisions concerning the use of public property.

RECORD OF ACTION TAKEN:

ORDINANCE NO. _____

**AN ORDINANCE AMENDING THE USE OF PUBLIC PROPERTY
AND TEMPORARY USE PROVISIONS**

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

Section 1. That Section 8.75. is hereby amended to read as follows:

8.75. Temporary use; in general.

"Temporary Use" shall mean an activity which is open to the public and conducted upon the exterior portion of a zoning lot, or within an approved temporary structure, for a limited and defined period of time, with the intent to discontinue such activity on the expiration of the time period. Provided:

- 1) A bona fide private function not exceeding two days, such as an employee picnic, shall not require a temporary use permit.
- 2) A garage or rummage sale conducted in conformance with the Downers Grove Zoning Ordinance shall not require a temporary use permit.
- 3) In addition to a temporary use permit, certain activities may require an amusement license as well.

(Ord. No. 2390, § 1; Ord. No. 3383, § 1.)

Section 2. That Section 8.76. is hereby amended to read as follows:

8.76. Same--License required; application; standards for issuance.

No person shall conduct any temporary use without first having obtained a license therefor from the Village Clerk. Application for such license shall be made as provided in Section 8-3. In addition to any other requirements, a plat of survey for the area where the activity will take place is required in order to obtain a temporary use permit. Except as otherwise set forth below, such license shall be issued in accordance with the standards established by Section 8-2 herein. A temporary use shall be subject to the following conditions and standards:

- 1) Vacant lots. Except for holiday tree sales, a temporary use shall not be permitted on any vacant or abandoned lots.
- 2) ~~Holiday tree sales. -- Holiday tree sales shall be permitted as a temporary use during the months of November and December.~~
- 3) Relation to principal use. Except for holiday tree sales and as otherwise provided herein, a temporary use shall be an activity accessory to, and consistent with, the principal use of the property. However, a temporary use which is not accessory to, and consistent with, the principal use of the property may be conducted pursuant to this section provided the business conducting the temporary use is a not-for-profit organization registered with the Illinois Secretary of State or qualified as tax exempt pursuant to the Internal Revenue Code, and further, the property shall not be used for such non-consistent temporary uses for more than seven (7) consecutive days in any calendar year.
 - 3) Exceptions:
 - A. Holiday tree sales. Holiday tree sales shall be permitted as a temporary use during the months of November and December.
- 4) Uses allowed. A temporary use shall be limited to those permitted uses, conditional uses, and accessory uses allowed in the zoning district in which the temporary use is to be located.
- 5) Temporary structures. A temporary use may be conducted in a temporary structure such as

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a tent, awning, spectator stand or seating, shed or other similar item, provided such temporary structure shall comply with all applicable building and health and safety ordinances of the Village. Such temporary structures shall be subject to inspection by the Code Services Department and fire department officials of the Village prior to commencing any activity or event for which the temporary use license was issued. A temporary structure shall not be maintained or used for more than 180 days in any calendar year.

6) Operation. No temporary use shall be operated in such a manner as to cause a public nuisance including, but not limited to stormwater runoff onto adjoining property; soil erosion; unsafe or inadequate pedestrian or vehicular access, egress, parking or on-site vehicular circulation; excessive noise; unruly crowds; or any other activity that jeopardizes the public peace, health, safety, or welfare.

7) Applicant shall not reduce the open, unobstructed portion of the public sidewalk to less than five (5) feet.

78) Other codes and ordinances. Unless specifically otherwise authorized, a temporary use shall comply with all other codes and ordinances of the Village. Deviations from other codes and ordinances shall only be allowed if it is determined that such deviation will not endanger the public health, safety and welfare. (Ord. No. 2390, § 1; Ord. No. 3383, § 1.)

Section 3. That Section 19.49. is hereby amended to read as follows:

19.49. Sidewalk Cafes.

(a) ~~Sidewalk cafes may be authorized by the Village Council within the Concentrated Central Business District, subject to a license agreement and any other such terms and conditions as the Village Council may direct. Applications for a sidewalk cafe shall be made on forms provided by the Village by the owner or lessee of the property on which such sidewalk cafe is to be operated or maintained. No sidewalk cafe license shall be issued unless the Village Manager has given notice to the Village Council at least seventy-two (72) hours prior to a regularly scheduled Village Council meeting. At such meeting the Village Council may, in its discretion, direct the Village Manager to deny the sidewalk cafe license to the applicant therefor, or impose any additional conditions or restrictions as it deems appropriate.~~ For purpose of this section, the following terms are defined:

1. "Sidewalk Cafe" means a dining area situated upon public property, including a sidewalk, and operated as an integral part of an adjacent restaurant where food and beverages are sold or served for consumption on premises.

2. "Concentrated Central Business District" means that area so described in the Downers Grove Zoning Ordinance.

3. "Restaurant" means an establishment where food or beverages are sold or served and which includes table seating within such establishment for consumption on premises. Such business may also include "take out" sales in addition to sales for on-site consumption.

(b) The decision to grant or deny an application under this section shall be within the sole discretion of the Village Council. Because each application will involve different property and issues, the Village Council is expected to consider a number of factors, including but not limited to the following:

- (1) The location and area surrounding the proposed sidewalk cafe.
- (2) Any safety concerns.
- (3) The impact on surrounding properties, uses and occupants.
- (4) The impact on pedestrian and vehicular traffic.
- (5) The nature of the property and whether a sidewalk cafe is appropriate within this area.
- (6) The operation of the proposed sidewalk cafe.
- (7) The past operation of the licensee within the Village.
- (8) Whether alcoholic liquor will be served within the sidewalk cafe.

(c) A sidewalk cafe shall be subject to such conditions and restrictions as may be directed by the

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Village Council to protect the public health, safety or welfare, including but not limited to the following:

(1) The applicant's restaurant shall be located within the Concentrated Central Business District and in a building immediately adjacent to the public area designated in the license application.

(2) Fencing or a removable barrier may be required.

(3) Sidewalk cafes shall only be open to the public during the normal business hours of the adjacent restaurant, or such hours as the Village Council may direct. Operation of the cafe shall be limited to April 1st through October 31st. Appurtenances and/or portable fencing shall be removed from the public property when the sidewalk cafe is not in use or operation.

(4) Entertainment and electronically amplified or reproduced music or sound may be prohibited or restricted as the Village Council may direct. Live entertainment is expressly prohibited in the Sidewalk cafe.

(5) The sidewalk cafe shall be established and operated in a safe and reasonable manner with due regard for the health and safety of persons and property. In no event shall the sidewalk cafe obstruct vehicular or pedestrian traffic in an unsafe or unreasonable manner.

(6) The sidewalk cafe shall be established and operated in a clean, well maintained and sanitary manner. In particular, but without limitation, the licensee shall promptly and properly collect and dispose of all litter, trash and other waste materials associated with the sidewalk cafe, including materials in the adjacent public right of way originating from the sidewalk cafe. The Village shall have the right to remove or cause the removal of any debris, and otherwise maintain the public property of the sidewalk cafe, in the event the licensee fails to promptly and properly clean and maintain such area. In such event, the licensee shall promptly reimburse the Village in taking such action. The Village reserves all rights to collect the costs associated with such clean-up, including the right to draw upon the letter of credit. If the costs exceed the letter of credit, the Village shall reserve the right to file a lien against the property.

(7) Except as expressly authorized in the license agreement, no cooking or food preparation shall be permitted in a sidewalk cafe.

(8) Except as expressly authorized in the license agreement, all tables, chairs, furnishings, equipment and other items of personal property shall be removed from the public right of way at the close of business each day.

(9) Except as expressly authorized in the license agreement, where a structure or other facility, such as deck, is permitted as part of the sidewalk cafe, it shall be removed, and the right of way restored, within 30 days following expiration or termination of the license agreement.

(10) The licensee applicant shall provide the Village with a letter of credit, in amounts and on upon terms as may be directed by the Village Manager, to guarantee prompt and proper removal of such structure. The letter of credit shall be maintained by the licensee throughout the term of the license and such other period of time during which licensee operates or is engaged in the removal of its facilities. Such letter of credit shall be retained until an inspection is completed upon the public property to ensure that there has been no damage to it as a result of the use thereof. Applicant shall be responsible for any and all fees associated with said inspections.

(101) To the fullest extent permitted by law, the licensee applicant shall defend, indemnify and hold harmless the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees, for any and all claims for damages arising out of injuries which may be incurred as a result of the use of the right of way by the licensee.

(142) Licensee Applicant shall maintain throughout the term of the license, general comprehensive liability insurance; hazard insurance, including comprehensive form, premises-operations, explosions and collapse hazard, underground hazard and products completed hazard; liquor liability insurance, commonly known as dram shop, if applicable; automobile liability insurance; and workers compensation insurance-all naming as additional insured the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees, in such minimum amounts as may be set by the Village Manager. The insurance required by this section shall be maintained by the licensee throughout the term of the license and such other period of time during which licensee applicant operates or is engaged in

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the removal of its facilities.

(123) ~~The licensee applicant shall be required to pay such fees or rentals and enter into a written license agreement with the Village, in such form as may be approved by the Village Council, incorporating applicable conditions and restrictions.~~

(134) ~~The licensee applicant shall not be permitted to sell or serve alcoholic liquor at the sidewalk cafe except in conformance with an appropriate liquor license issued pursuant to Chapter 3 of the Downers Grove Municipal Code. Alcohol shall be served at sidewalk cafes only in conjunction with meal service. The cafe shall not function or shall not otherwise be advertised as a "beer garden". All alcoholic liquor shall be provided from the interior bar or service area. No portable bars or service counters shall be permitted in the sidewalk cafe.~~

(15) ~~Applicant shall be required to pay a license fee in the amount of one dollar (\$1.00) per square foot of the public right of way to be occupied.~~

(16) ~~Applicant shall not interfere with pedestrian or vehicular traffic or reduce the open, unobstructed portion of the public sidewalk to less than five (5) feet.~~

(d) Any person seeking approval of a sidewalk cafe shall submit to the Village Manager a written application for a license to conduct a sidewalk cafe in a form provided by the Village and the required application fee as provided in paragraph e. below to the Village Manager. Such application shall include such information as the Manager may direct, including but not limited to, the following:

(1) The name, address and telephone number of the applicant and of the adjacent restaurant and its manager.

(2) An overall site plan showing the proposed location and dimension of the sidewalk cafe in relation to the adjacent street and sidewalk including that part of the sidewalk to remain outside of the cafe. This shall include a detailed description and site plan regarding any proposed improvements within the public right of way.

(3) A floor plan specifying the location of ingress, egress, tables, decorations, furnishings, equipment, removable perimeter barriers, the total square footage to be occupied by the sidewalk cafe and the maximum seating capacity.

(4) An operations plan specifying the proposed dates, days and hours of operation of the adjacent restaurant, the number of wait staff, security staff and maintenance personnel and a proposed menu, including alcoholic beverages, if applicable.

(5) A statement regarding whether the applicant will be serving alcoholic liquor at the sidewalk cafe as well as information regarding the current or proposed liquor license status of the applicant.

(6) A proposed license agreement on forms provided by the Village Manager.

(7) Such other information as the Manager may direct.

(e) ~~An application fee shall be included in the initial submission of the application in order for the application to be considered. The application fee shall be as follows:~~

(1) Application fee \$150.00

(f) ~~In order to protect the public health, safety and welfare, the Sidewalk cafe shall be inspected prior to opening the cafe and at the conclusion of the license agreement. Licensee shall be responsible for any and all fees associated with said inspections.~~

(g) ~~In order to allow staff review and provide adequate time for consideration, applications and all required submittals must be furnished to the Village Manager one (1) month prior to the requested opening of the cafe. Late applications may result in a delayed opening.~~

(eh) The Village Manager shall review the completed application and transmit this ~~it~~ to the Village Council along with such recommendations as the Manager may have regarding whether the application should be approved and, if so, upon what conditions. ~~The Village Council will render the final decision regarding whether the license will be granted and, if so, upon what terms.~~

(fi) A license issued pursuant to this Section shall not be transferable or assignable and shall not confer any property rights in the underlying right of way.

(gj) Any license granted under this Section shall be subject to the absolute and primary right of the

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Village to protect the public health safety and welfare. In the event of an emergency, or to prevent or protect against an immediate threat to the public health safety and welfare, the Village Manager may order the immediately cessation of business, and removal of any or all equipment and facilities from public right of way. In addition, the Village Manager may suspend or revoke any license issued under this Section in the event it is determined that the licensee has failed or refused to truthfully complete the application, or if the licensee has failed or refused to comply with the regulations of this Section, the license agreement or with other applicable law.

(hk) The Village Manager may delegate any duty or power set forth in this section, including but not limited to, the conduct of the informal hearing and issuance of any final order, to such person as the Village Manager may designate.

(il) The Village shall have the right to remove or cause the removal of any equipment, structure or other facility of the licensee applicant, and/or restoration of the right of way, in the event such items are not promptly and properly removed by the licensee and/or the right of way restored, pursuant to this Section, the license agreement or a lawful order of the Village Manager. In such event, the Village, at its discretion, may store, sell or otherwise dispose of such items as it deems appropriate. The licensee applicant shall promptly reimburse the Village for all expenses in removing storage or disposal of such items and restoring the right of way. The Village reserves all rights to collect the costs associated with such actions, including the right to draw upon the letter of credit. If the costs exceed the letter of credit, the Village shall reserve the right to file a lien against the property.

(m) In the event that a Sidewalk Cafe interferes with a public event planned on the public right-of-way, the public event shall take precedence. The Village will endeavor to notify the applicant thirty (30) days in advance of the scheduled event that will require the closure of the sidewalk cafe and the use of the public right-of-way.

Section 4. That Section 19.50. is hereby amended to read as follows:

19.50. Special Commercial Events.

(a) Special commercial events may be authorized by the Village Council subject to a license agreement and such terms and conditions as the Village Council may direct. For purpose of this section, a "special commercial event" means an event, such as a festival, involving retail sales and similar commercial activities and which occurring on Village-owned property streets, rights-of-way, parking lots, or other open green space, but which is not sponsored or conducted by the Village.

(b) Applications for a special commercial event shall be made on forms provided by the Village. An application fee shall be included in the initial submission of the application in order for the application to be considered. The application fee shall be \$150.00. In order to allow staff review and provide adequate time for consideration by the Village Council and other boards or commissions, applications and all required submittals must be furnished to the Village sixty (60) days prior to the scheduled event.

(c) Any person seeking approval of a special commercial event shall submit a written application for a license to conduct a special commercial event to the Village Manager. Such application shall include such information as the Manager may direct, including but not limited to, the following:

(1) The name, address and telephone number of the applicant.

(2) An overall site plan showing the proposed location and dimension of the special commercial event showing the location of ingress, egress, tables, decorations, furnishings, equipment, removable perimeter barriers, the total square footage to be occupied by the special commercial event and the maximum seating capacity.

(3) An operation plan specifying the proposed dates, days and hours of operation, the number of people expected, the number of wait staff, security staff and maintenance personnel and a proposed menu, including beverages, if applicable.

(4) A statement regarding whether the applicant will be serving alcoholic liquor at the special commercial event as well as information regarding the current or proposed liquor license status of

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the applicant.

(5) A proposed license agreement on forms provided by the Village Manager.

(6) Such other information as the Manager may direct.

(d) The Village Manager shall review the completed application and transmit this to the Village Council along with such recommendations as the Manager may have regarding whether the application should be approved and, if so, upon what conditions. The Village Council will render the final decision regarding whether the license will be granted and, if so, upon what terms.

(be) The decision to grant or deny an application under this section shall be within the sole discretion of the Village Council. Because each application will involve different property and issues, the Village Council is expected to consider a number of factors, including but not limited to the following:

- (1) The location and area surrounding the proposed special commercial event.
- (2) Any safety concerns.
- (3) The impact on surrounding properties, uses and occupants.
- (4) The impact on pedestrian and vehicular traffic.
- (5) The nature of the property and whether a special commercial event is appropriate within

this area.

(6) The operation of the proposed special commercial event.

(7) The past operation of the licensee within the Village.

(8) Whether alcoholic liquor will be served within the special commercial event.

(ef) A special commercial event shall be subject to such conditions and restrictions as may be directed by the Village Council to protect the public health, safety or welfare, including but not limited to the following:

(1) Fencing or a removable barrier may be required.

(2) The special commercial event shall be established and operated in a safe and reasonable manner with due regard for the health and safety of persons and property. In no event shall the special commercial event obstruct vehicular or pedestrian traffic in an unsafe or unreasonable manner.

(3) The special commercial event shall be established and operated in a clean, well maintained and sanitary manner. In particular, but without limitation, the ~~licensee~~applicant shall promptly and properly collect and dispose of all litter, trash and other waste materials associated with the special commercial event, including materials in the adjacent public right of way originating from the special commercial event. The Village shall have the right to remove or cause the removal of any debris, and otherwise maintain the public property of the special commercial event, in the event the ~~licensee~~applicant fails to promptly and properly clean and maintain such area. In such event, the ~~licensee~~applicant shall promptly reimburse the Village in taking such action.

(4) The applicant shall provide the Village with a security deposit, in an amount as may be directed by the Village Manager, to guarantee prompt and proper removal of any structures and/or clean-up of the area. The security deposit shall be withheld throughout the term of the license and such other period of time during which licensee operates or is engaged in the removal of any facilities. Such security deposit shall be retained until an inspection is completed upon the public property to ensure that there has been no damage to it as a result of the use thereof. Applicant shall be responsible for any and all fees associated with said inspections.

(45) To the fullest extent permitted by law, the ~~licensee~~applicant shall defend, indemnify and hold harmless the Village, and its officers, boards, commissions, elected and appointed officials, agents and employees, for any and all claims for damages arising out of injuries which may be incurred as a result of the use of the right of way by the ~~licensee~~applicant.

(56) ~~Licensee~~The applicant shall maintain throughout the term of the license, general comprehensive liability insurance; hazard insurance, including comprehensive form, premises-operations, explosions and collapse hazard, underground hazard and products completed hazard; liquor liability insurance, commonly known as dram shop, if applicable; automobile liability insurance; and workers compensation insurance - all naming as additional insured the Village, and its officers, boards,

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commissions, elected and appointed officials, agents and employees, in such minimum amounts as may be set by the Village Manager. The insurance required by this section shall be maintained by the licensee applicant throughout the term of the license and such other period of time during which licensee applicant operates or is engaged in the removal of its facilities.

(67) The licensee applicant shall be required to pay such fees or rentals and enter into a written license agreement with the Village, in such form as may be approved by the Village Council, incorporating applicable conditions and restrictions.

(78) The licensee applicant shall not be permitted to sell or serve alcoholic liquor at the special commercial event except in conformance with an appropriate liquor license issued pursuant to Chapter 3 of the Downers Grove Municipal Code.

(9) Depending upon the nature and complexity the event and as determined by the Chief of Police, the applicant may be required obtain Downers Grove Police Department personnel to serve as security for the special commercial event. The applicant shall be required to pay any and all costs associated with the security detail.

(10) Depending upon the nature and complexity the event and as determined by the Public Works Director, the applicant shall be required to pay any and all costs associated with Village personnel involved in the set up, breakdown or aid rendered to the applicant during the course of the event which will ensure adequate traffic and pedestrian flow.

(11) Depending upon the nature of the event, the applicant may be required to obtain approval from the DuPage County Health Department.

(12) Applicant shall not interfere with pedestrian or vehicular traffic, or reduce the open, unobstructed portion of the public sidewalk to less than five (5) feet.

~~(d) Any person seeking approval of a special commercial event shall submit a written application for a license to conduct a special commercial event to the Village Manager. Such application shall include such information as the Manager may direct, including but not limited to, the following:~~

~~(1) The name, address and telephone number of the applicant.~~

~~(2) An overall site plan showing the proposed location and dimension of the special commercial event in relation to the adjacent street and sidewalk and showing the location of ingress, egress, tables, decorations, furnishings, equipment, removable perimeter barriers, the total square footage to be occupied by the special commercial event and the maximum seating capacity.~~

~~(3) An operations plan specifying the proposed dates, days and hours of operation, the number of wait staff, security staff and maintenance personnel and a proposed menu, including alcoholic beverages, if applicable.~~

~~(4) A statement regarding whether the applicant will be serving alcoholic liquor at the special commercial event as well as information regarding the current or proposed liquor license status of the applicant.~~

~~(5) A proposed license agreement on forms provided by the Village Manager.~~

~~(6) Such other information as the Manager may direct.~~

~~(e) The Village Manager shall review the completed application and transmit this to the Village Council along with such recommendations as the Manager may have regarding whether the application should be approved and, if so, upon what conditions. The Village Council will render the final decision regarding whether the license will be granted and, if so, upon what terms.~~

~~(fg) A license issued pursuant to this Section shall not be transferable or assignable and shall not confer any property rights in the underlying right of way.~~

(gh) Any licensee applicant granted a license under this Section shall be subject to the absolute and primary right of the Village to protect the public health safety and welfare. In the event of an emergency, or to prevent or protect against an immediate threat to the public health safety and welfare, the Village Manager may order the immediately cessation of business, and removal of any or all equipment and facilities from public right of way. In addition, the Village Manager may suspend or revoke any license issued under this Section in the event it is determined that the licensee applicant has failed or refused to

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truthfully complete the application, or if the ~~licensee~~applicant has failed or refused to comply with the regulations of this Section, the license agreement or with other applicable law.

(h) The Village Manager may delegate any duty or power set forth in this section, including but not limited to, the conduct of the informal hearing and issuance of any final order, to such person as the Village Manager may designate.

(i) The Village shall have the right to remove or cause the removal of any equipment, structure or other facility of the ~~licensee~~applicant, and/or restoration of the right of way, in the event such items are not promptly and properly removed by the licensee and/or the right of way restored, pursuant to this Section, the license agreement or a lawful order of the Village Manager. In such event, the Village, at its discretion, may store, sell or otherwise dispose of such items as it deems appropriate. The licensee shall promptly reimburse the Village for all expenses in removing storage or disposal of such items and restoring the right of way.

Section 5. That all ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 6. 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