

VILLAGE OF LOMBARD
REQUEST FOR BOARD OF TRUSTEES ACTION
For Inclusion on Board Agenda


Resolution or Ordinance (Blue) X *Waiver of First Requested*
 X Recommendations of Boards, Commissions & Committees (Green)
Other Business (Pink)

TO: PRESIDENT AND BOARD OF TRUSTEES

FROM: David A. Hulseberg, Village Manager

DATE: April 25, 2012 (B of T) Date: May 3, 2012

TITLE: Amendments to Title 11, Chapter 119, Sections 119.20 through 119.24 of the
Lombard Village Code - Outdoor Cafes and Seating

SUBMITTED BY: Department of Community Development 

BACKGROUND/POLICY IMPLICATIONS:

The Economic and Community Development Committee through the Department of Community Development transmits for your consideration its recommendation relative to approving text amendments to Title 11, Chapter 119, Sections 119.20 through 119.24 of the Village Code as it pertains to outdoor dining within the public right-of-way.

Staff is requesting a waiver of first reading.

Please place this item on the May 3, 2012 Board of Trustees agenda.

Fiscal Impact/Funding Source:

Review (as necessary):
Village Attorney X _____ Date _____
Finance Director X _____ Date _____
Village Manager X _____ Date _____

NOTE: All materials must be submitted to and approved by the Village Manager's Office by 12:00 noon, Wednesday, prior to the Agenda Distribution.



MEMORANDUM

TO: David A. Hulseberg, AICP, ICMA-CM

FROM: William J. Heniff, AICP, Community Development Director *WJH*

DATE: May 3, 2012

RE: **Proposed Amendments to Section 119 of the Village Code: Outdoor Cafés and Seating within the Public Right of Way**

Background

On April 19, 2012, the Village Board considered the recommendation from the Economic and Community Development Committee (ECDC) to amend portions of Section 119 of the Village Code, as it pertains to outdoor dining within the public rights of way in Downtown Lombard. As part of their review and in consideration of subsequent review of the matter by Village Counsel as it relates to liquor licensure, the Village Board remanded the item back to the ECDC to add any additional provisions that should be codified into Section 119 for Village Board consideration, in lieu of amending provisions of Chapter 112 (Liquor Licensing). This approach will require that the provisions of Section 119 would need to comprehensively address all matters pertaining to outdoor cafés and outdoor seating within the public right of way within the Downtown Lombard area.

ECDC Findings

The ECDC held a special meeting on April 24, 2012 to review the proposed changes to Section 119 and to consider any additional provisions that should be included within its recommendation back to the Village Board. To assist the ECDC with its efforts, staff attached Section 119.20 et. seq. for review, along with suggested modifications to the existing code and rationale for the changes (attached). Attached for the Village Board's consideration is a draft Ordinance amending Section 119 of the Village Code as it pertains to outdoor cafés and outdoor dining within the public rights of way in Downtown Lombard. The following is a summary of the key changes recommended by the ECDC:

- Amended the provisions changing eligible businesses from restaurants to business establishments subject to the places for eating tax, as set forth within Section 98.111 of the Village Code.
- Waiving the permit fee for 2012.
- Restricting businesses with outdoor seating areas in the public rights of way from using the public waste receptacles.
- Allow the Village the right to require the establishment to remove or modify their outdoor seating on the public rights of way if deemed necessary by the Village at any time. This could accommodate Public Works activities or special events.

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Outdoor Seating/Dining in the Public Right of Way

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- Limitations on the hours for outside music and entertainment were established. Also limited hours for the use of the outdoor seating areas. The restrictions proposed are consistent with limitations established for Praga/Bon Ton's outdoor seating.
- Permitted outdoor seating to the buildable area of a lot.
- Restricted the expansion of outdoor seating beyond the front area of the eligible business, unless approved by the affected business or occupant.
- Require the availability of public restrooms for patrons of the outdoor seating area.
- Restricted the consumption of alcohol to within the defined outdoor seating area.
- Removed the previous requirement of having a lunch or dinner entrée with the consumption of alcohol within the outside seating areas within the public rights of way.
- Outdoor cafes and outdoor seating areas shall be regularly monitored and bussed by an employee or contractor of the establishment.
- Outside seating areas on private property, not in conjunction with outdoor seating on the public rights of way, shall be fenced or screened in a manner that prevents patrons from congregating outside of the designated seating areas. This may be modified by the Director of Community Development.
- The ECDC also made a finding that staff shall prepare a report for the December 2012 ECDC meeting identifying any issues as result of the revised provisions.

Following the ECDC meeting, Village Counsel reviewed the proposed Ordinance changes and made some additional edits; however no substantive changes were made from what the ECDC had recommended.

RECOMMENDATION

Please place this item on the May 3, 2012 Village Board agenda for consideration. As noted, the ECDC recommends approval of the proposed text amendments to Chapter 119 of the Village Code as it pertains to outdoor cafes and outdoor dining within the public right of way. Staff is requesting a waiver of first reading.



MEMORANDUM

TO: Trustee Peter Breen, Chairperson
Economic and Community Development Committee Members

FROM: William J. Heniff, AICP
Director of Community Development *WJH*

DATE: April 24, 2012

SUBJECT: **Proposed Amendments to Section 119 of the Village Code: Outdoor Cafes and Seating within the Public Right of Way**

On April 19, 2012, the Village Board considered the recommendation from the Economic and Community Development Committee (ECDC) to amend portions of Section 119 of the Village Code, as it pertains to outdoor dining within the public rights of way in Downtown Lombard. As part of their review and in consideration of subsequent review of the matter by Village Counsel as it relates to liquor licensure (attached), the Village Board remanded the item back to the ECDC to add any additional provisions that should be codified into Chapter 119 for Village Board consideration, in lieu of amending provisions of Chapter 112 (Liquor Licensing). This approach will require that the provisions of Chapter 119 would need to comprehensively address all matters pertaining to outdoor cafés and outdoor seating within the public right of way within the Downtown Lombard area.

ACTION REQUESTED

The ECDC is being asked to consider any additional provisions within Section 119 that should be included within its recommendation back to the Village Board. These items may pertain to the applicable liquor classes or establishments which could receive such a permit, confinement elements, visibility/monitoring, occupancy/capacity limitations, seating requirements, time or date constraints, or any other considerations during special events, such as Cruise Nights. Such provisions would be reviewed in the context of the establishments that may consider applying for such permits in the future. To assist the ECDC with these efforts, staff has attached Section 119.20 et. seq. for review, along with suggested modifications to the existing code and rationale for the changes.

RECOMMENDATION

Staff requests that the Economic and Community Development Committee review the proposed changes to Section 119 and make a recommendation to the Village Board for their final consideration at their May 3, 2012 meeting.

OUTDOOR CAFES AND OUTDOOR SEATING ON THE PUBLIC RIGHT-OF-WAY PROPOSED ECDC REVIEW CONSIDERATIONS

Below are the relevant sections of Section 119.20 et. seq. for review as it pertains to the amendments to outdoor seating. Within each section proposed code changes for consideration are noted in underscore or ~~strikeout~~. Staff commentary and discussion is noted below each section in *italics* to discuss the proposed amendment changes in greater detail.

SECTION 119.20 et. seq. – OUTDOOR CAFÉS AND SEATING IN THE PUBLIC RIGHT OF WAY

§ 119.20 PERMIT REQUIRED

Notwithstanding any other provision in this Code it is unlawful for any person, firm, corporation, organization or association to operate an outdoor café in compliance with Section 155.4186 of this Ordinance or to use the public right-of-way for outdoor seating or to provide entertainment in conjunction with such outdoor cafes or outdoor seating without obtaining a permit. Permits will be issued for outdoor cafes and/or outdoor seating on public right-of-way only to ~~public restaurants~~ business establishments subject to the places for eating tax, as set forth within Section 98.111 of the Village Code (i.e., eligible businesses) which have obtained a license under this Chapter of the Lombard Village Code. Such permit may be purchased at any time during a calendar year, but all permits shall expire on December 31 of the same calendar year. No permit shall be issued to any business which is not in compliance with all provisions of the Lombard Village Code.

Staff Comment: The proposed amendment is to correct a past scrivener's error. The citation is intended to correspond to the downtown Lombard B5 District regulations. The removal of the term restaurant and inclusion of the term "places for eating" is intended to account for additional types of establishments that could benefit from outdoor seating activity. Staff also suggests a companion amendment to Section 98.111 to clarify that outdoor seating includes outdoor seating on the premises as well as provided for within this sub-section.

§ 119.21 APPLICATION AND FEE

All applicants for outdoor cafe permits and/or outdoor seating on the public right-of-way permits must complete an application in a form approved by the Village which must be submitted to the Village's ~~Director~~ Department of Community Development with a nonrefundable fee of \$150.00 or a non-refundable renewal fee of \$50.00 for those renewing a permit from the previous year where no substantial changes have been made to the site plan. Applicants applying for both permits simultaneously may pay one (1) \$150.00 fee, otherwise the \$150.00 fees are payable at the time of ~~each application~~ permit issuance. All applications shall include the following information:

Staff Comment: As with other building/development permits, the Village collects fees at the time of permit issuance rather than at the time of application. Staff recommends the same approach be utilized for outdoor seating/dining as well.

(A) Name of the proprietor and the ~~restaurant~~ establishment for which the outdoor cafe permit and/or the outdoor seating on the public right-of-way permit is sought.

(B) The address and phone number of the proprietor and the ~~restaurant~~ establishment.

(C) A detailed site plan showing all existing objects on the property and on the public right-of-way adjacent to the ~~restaurant~~ establishment including a depiction of on-street parking adjacent to the restaurant, and the proposed location of each chair and table. When music or other entertainment is provided outdoors on the private property of the petitioner requesting the permit, the site plan shall include the area and placement of said music or entertainment.

(D) Permit applications for outdoor seating on the public right-of-way must include Certificates of Insurance in the following amounts:

1) Comprehensive General Liability Insurance - \$1,000,000, showing the Village, its officers, employees, agents and volunteers as additional insureds and containing a statement that said policies shall not be changed or canceled without thirty (30) days written notice to the Village of Lombard; and 2) Workers' Compensation - Statutory amount.

(E) Permit applications for outdoor seating on the public right-of-way must include a signed indemnification statement on the form provided by the Village. An inspection of the property to document existing conditions of public improvements shall be performed by the Village prior to issuance of an outdoor cafe permit and/or an outdoor seating on the public right-of-way seating permit. Applications should be filed at least two weeks prior to scheduled use to allow sufficient time for such inspection.

(F) Permit applications applied for the 2012 calendar year shall be exempted from the associated permit fee requirement, as set forth within subsection (C) above, for the 2012 season.

Staff Comment: This modification was recommended by the ECDC to encourage activity within the 2012 year.

§ 119.22 REGULATIONS

All permit holders shall be subject to the following regulations:

(A) The outdoor cafe area and the right-of-way area shall be maintained clean and free from refuse or clutter at all times regardless of the source of such refuse and clutter. Refuse from the outdoor dining activity shall not be disposed of in public waste receptacles.

Staff Comment: This amendment was recommended by the ECDC.

(B) All outside tables and chairs shall not be permanently attached and shall be removed when ~~the business is closed and when~~ not in use during cold weather months (generally October through March). Any sidewalk dining elements owned by the establishment that are intended to be placed within the public right of way outside of established business hours shall be identified within the annual permit application and shall be subject to review by Director of Community Development. If approved, the Village reserves the right to require the establishment to remove or modify the elements if deemed necessary by the Village at any time.

Staff Comment: This in an area which was identified by the Village Board for discussion. Many governmental entities do require such decorations to be removed at the end of the business day. Staff notes that selected establishments (such as Café 101) have placed sidewalk tables in the right of way rear around. The sizeable nature of the tables would functionally preclude the tables from being removed and placed inside the establishment on a daily basis. However, in other locations, it may not be deemed to be desirable to have sidewalk tables and chairs for the majority of the year and/or during special events in the downtown area. As such, staff would recommend that if such tables or decorations are intended to be placed within the public right of way beyond business hours that the Village reserve the right to require their removal as needed. Such a request by the Village could include, but not be limited to, requisite Public Works activities or special events.

(C) For outdoor seating on the public right-of-way, all public improvements shown on the site plan, including, but not limited to, pavers, benches, light poles and trees shall be maintained in the condition in which they existed immediately prior to the issuance of the permit, excluding normal wear and tear. The pPermit holder shall immediately report any damage to such improvements to the Community Development Department. The Village shall repair or replace such improvement at its discretion and shall charge the cost of repair or replacement to the permit holder unless the damage can be clearly shown to have resulted from a cause not related to the issuance of the outdoor restaurant right-of-way seating permit.

(D) Activities involving the outdoor seating shall be conducted in a manner that does not interfere with pedestrians, parking or traffic.

(E) Outdoor cafe permits and/or outdoor seating on the public right-of-way permits shall be posted in a conspicuous place inside the ~~restaurant~~ establishment.

(F) The source of music or other entertainment provided outdoors in conjunction with an Outdoor Café or Outdoor Seating permit, shall be located only on the private property of the petitioner requesting the permit, and shall be provided, and noise levels maintained, in strict compliance with the provision of Title 9, Chapter 93 of the Lombard Code of Ordinances or other codes which may be established with regard to noise or public nuisances. Furthermore, all

outdoor music or entertainment shall cease by 10:30 p.m. on Sunday through Thursday and 11:30 p.m. on Friday and Saturday.

Staff Comment: This addition is intended to reflect the previous regulations established for Praga/Bon Ton in Downtown Lombard.

(G) Outdoor seating areas on private property shall be permitted for establishments in which the designated seating area is on the same lot of record as the business establishment and located within the buildable area of the lot. For outdoor seating within public rights of way, the outdoor seating area shall be limited to the areas designated on the permit. Furthermore, the outdoor seating area shall not be located in front of any other business establishment unless the applicant provides authorization to the Village from the adjacent property or business owner stating that he/she consents to the sidewalk seating elements to be placed in front of his/her property.

Staff Comment: This provision is to clarify that establishments such as Punky's could utilize their existing fenced area to the rear of their establishment for such purposes. For public rights of way, the provision is to ensure that such seating activity does not spill over and in front of other establishment, unless consent is granted by the affected property owner.

(H) Establishments must meet all provisions as set forth within the Smoke Free Illinois Act.

Staff Comment: This reference is added for reference purposes to denote that the regardless of any other provisions within Village Code, the Smoke Free Illinois Act provision still apply to all establishments.

(I) Establishments with outdoor seating must provide public restrooms for patrons, per Code.

Staff Comment: This reference is added to ensure that all establishments with outdoor seating provide a full level of accommodation that would be required if the seating was located indoors.

§ 119.23 RESTRICTIONS

(A) Tables, Chairs, Temporary Fencing, Decorations and Umbrellas:

(1) shall be located so that a four (4) foot wide unobstructed walkway, as measured from the table edge to any other obstructions on the opposite side of the unobstructed walkway, is maintained at all times;

(2) shall be located in accordance with the approved site plan, shall generally be immediately adjacent to the building and in no instance less than forty-two (42) inches from the back of curb, except that tables and chairs can be located closer than forty-two (42) inches from the back of curb when there is no parallel parking adjacent to ~~them~~ it (said modification to these requirements may be varied by the Director of Community Development, if granting such approval provides for a better design and layout of the seating area);

(3) shall not obstruct normal ingress and egress from the restaurant or from other businesses.

(4) shall be located so that clearances required will be maintained when the chair is pulled out from the table, particularly where chair backs face the street or pedestrian walkway; ~~and~~,
(5) shall not be of a design and/or weight that will create a wind-blown hazard, and,
(6) shall meet all provisions of the Americans with Disabilities Act and the Illinois Accessibility Code.

Staff Comment: The modifications above are intended to provide some level of flexibility based upon unique circumstances that may present itself within the public right of way and to clarifying the applicable controlling documents.

(B) The following items or actions are prohibited in the outdoor right-of-way seating area:

(1) table/patio umbrellas in locations not approved by the Department of Community Development, and

(2) electrical appliances; ~~and~~

~~(3) service or consumption of alcoholic beverages if not accompanied by service of a dinner or lunch entrée.~~

Staff comment: Item 3 above is being amended to reflect the language in subsection C(3) below.

(C) The following provisions are required for establishments where the service or consumption of alcohol associated with outdoor cafes or outdoor seating:

(1) Any establishment that intends on serving alcoholic beverages associated with an Outdoor Café or Outdoor Seating permit shall have a valid liquor license issued by the Village that provides for the serving of the type of alcoholic beverages as regulated through the license.

Staff Comment: The provision is to ensure that the outdoor seating activity is tied to the liquor license provisions within Section 112 as well.

(2) Alcohol consumption shall only be permitted within the designated outdoor seating area only.

Staff comment: This provision was added by the ECDC to ensure that outside alcohol consumption does not violate other provisions of Village Code.

(3) Service or consumption of alcoholic beverages within public rights of way shall only be permissible in which the establishment also makes for the service of a dinner or lunch entrée available to patrons in the outdoor seating area.

Staff Comment: This was previously identified by the ECDC as a desirable modification to the existing regulations.

- (4) To ensure that consumption of alcohol is limited to the designated outdoor seating areas and operated in compliance with Village Code, outdoor cafes and outdoor seating areas shall be regularly monitored and bussed by an employee or contractor of the establishment.

Staff Comment: This item is an area for which there has been significant discussion as to the appropriate level of monitoring or visual observation by the establishment. This provision is intended to ensure that there is a level of responsiveness and accountability for the establishment as it pertains to the consumption of alcohol served by the proprietor. However, it also attempts to strike a balance to not mandate constant attention by the proprietor in these seating areas or mandating that all alcoholic beverages are exclusively served by wait staff.

- (5) Hours of the outdoor seating shall not extend beyond the hours of operation of the inside establishment. Additionally, the outdoor seating shall area not be occupied beyond the following times:
Sunday through Thursday evenings: 12:30 a.m. (the following day)
Friday and Saturday evenings: 1:30 a.m. (the following day)

Staff Comment: The provisions should be comparable to what was approved by the Village Board for Praga/BonTon.

- (6) Outside seating areas on private property shall be fenced or screened in a manner that prevents patrons from congregating outside of the designated seating areas. Fencing shall be of a wood or metal design and may be permanently secured to the ground or removable during period in which outdoor seating is not open. Said fencing shall also meet the design and access/egress provisions as required by Village Code.

Staff Comment: This addition is intended to be consistent with past practices.

- (7) Occupancy of outdoor seating areas within public rights of way shall not exceed the number of seats within the designated outdoor seating areas as well as any provisions set forth within Village Code.

Staff Comment: This provision is to ensure that such fenced areas within the right of way remain consistent with outdoor dining and do not become or function like beer gardens.

§ 119.24 ENFORCEMENT; REVOCATION

(A) Notice of a violation of Section 119.22 and/or 119.23 shall be issued in the form of a compliance ticket. Failure to comply with the terms of that notice shall result in a charge of ordinance violation(s) which upon conviction will result in a penalty of not less than \$50.00 nor

more than \$750.00 for each day on which the violation occurs or continues to occur and revocation of the outdoor café permit and the outdoor seating on the public right-of-way permit.

(B) The Chief of Police, ~~or the Fire Chief or the Community Development Director~~ of the Village of Lombard upon determining that the method or manner of use of the outdoor seating permit or the conduct of persons serving or using such facilities pose a threat to the public health, safety or welfare, or operating outside the provisions of this Ordinance or not in compliance with their approved permit, shall have the power and authority to cause the table and chairs to be removed immediately and to revoke the permit.

(Ord. 3733, passed 7/22/93, Ord. 4331, passed 6/19/97)

Staff Comment: This is being amended to reflect that the Building Division, which was under the jurisdiction of the Fire Department, is now under the Community Development Department.

§ 119.99 PENALTY.

(A) Penalty for violation of §§ 119.01 through 119.04 shall be not less than \$50.00 or more than \$750.00. Revocation or termination of DuPage County ~~Board of Health~~ Department permit shall result in a concurrent termination of the license granted under this chapter.

('70 Code, § 5.60.060) (Ord. 1736, passed 4-2-73)

(B) Any person, firm, or corporation violating any provision of §§ 119.10 through 119.13 shall be fined not less than \$50.00 nor more than \$750.00 for each offense; and a separate offense shall be deemed committed on each day during or on which a violation occurs or continues.



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To: David A. Hulseberg, Village Manager, Village of Lombard

**From: Thomas P. Bayer, Village Attorney
Jason A. Guisinger, Assistant Village Attorney**

Via e-mail only

Date: April 10, 2012

**Re: Outdoor Seating in the Right-of-Way and
the Sale of Alcoholic Liquor in Relation Thereto**

Please accept this memorandum as our response your questions regarding the service of alcoholic liquor in outdoor seating areas on the public right-of-way ("ROW"). It is our understanding that the corporate authorities of the Village of Lombard (the "Corporate Authorities") are considering whether to allow establishments holding a liquor license to serve alcoholic liquor to patrons in an outdoor seating area that extends onto the ROW, without also requiring the service of a lunch or dinner entrée or other food with the alcoholic liquor. This memorandum addresses the current provisions of the Village Code relative to outdoor seating and the service of alcoholic liquor, as well as options for amending the Village Code to allow licensed establishments to serve alcoholic liquor in the manner being contemplated. Further, we have, at your request, outlined the ramifications of the potential amendments to the Village Code on the Village Liquor Commissioner's (the "Commissioner") statutory powers over liquor licensing.

Village Code Provisions Regarding Outdoor Seating in the Right-of-Way and the Sale of Alcoholic Liquor in Relation Thereto

Chapter 112 of the Village Code regulates the retail sale of alcoholic liquor in the Village. Generally, Chapter 112 authorizes an alcoholic liquor licensee to sell alcoholic liquor within the boundaries of the licensee's private property for either consumption on the premises, or off-premise consumption (package sales). Thus, Chapter 112 of the Village Code does not expressly authorize the sale of alcoholic liquor in outdoor ROW seating areas.

Chapter 119 of the Village Code regulates, in part, outdoor seating at restaurants and cafes on a ROW. Section 119.20 of the Village Code prohibits outdoor seating on a ROW without first obtaining an outdoor café/ROW permit. Further, Section 119.23(B) prohibits the service of alcoholic liquor in ROW seating unless the alcoholic liquor is being served with a lunch or dinner entrée.

Hence, while Chapter 112 of the Village Code does not explicitly address the sale of alcoholic liquor in outdoor ROW seating, Section 119.23(B) of the Village Code authorizes said sales, by an alcoholic liquor licensee who also holds an outdoor café/ROW permit under Section 119.20 of the Village Code, as long as the alcoholic liquor is served with a lunch or dinner entrée.

Potential Amendments to the Village Code

It is our understanding that the Corporate Authorities are considering whether to allow the sale of alcoholic liquor in outdoor ROW seating without also requiring that the alcoholic liquor be served with a lunch or dinner entrée. This could be accomplished in two (2) general ways: (1) creating a new “overlay” class of liquor license for such sales, which would be in addition to the alcoholic liquor licensee’s underlying alcoholic liquor license; or (2) creating a new provision of the Village Code that allows current alcoholic liquor licensees, in certain existing alcoholic liquor license classes, to make such sales, provided the alcoholic liquor licensee also has obtained an outdoor café/ROW permit.

The first option would involve an amendment to Section 119.23(B) of the Village Code providing that the service of alcoholic liquor in a ROW is prohibited by all except for holders of an alcoholic liquor license under a new “overlay” liquor license class created for outdoor ROW seating. Also, Chapter 112 of the Village Code would be amended to create and define the new “overlay” liquor license class that allows the service of alcoholic liquor in outdoor ROW seating without also requiring the service of a lunch or dinner entrée. The new “overlay” liquor license class could also place additional requirements on the service of alcoholic liquor in outdoor ROW seating, such as requiring that food service be available.

The second option would not involve the creation of a new “overlay” liquor license class. Rather, Section 119.23(B) of the Village Code would be amended to eliminate the requirement that alcoholic liquor be served with a lunch or dinner entrée. Again, additional requirements could be added, such as requiring that food service be available while alcoholic liquor is served. Under this option, a new provision could also be added to Chapter 112 of the Village Code, limiting and defining the right to sell alcoholic liquor in this manner to only certain classes of alcoholic liquor licensees.

Local Liquor Control Commissioner’s Powers

Under State law, the respective duties of the Commissioner and the Corporate Authorities are separate and distinct. The Corporate Authorities have the exclusive legislative power in regard to local control of alcoholic liquor licensing. In this regard, Section 4-1 of the State Liquor Control Act (“Act”) provides in pertinent part as follows:

In every city, **village** or incorporated town, **the** city council or **president and board of trustees**, and in counties in respect of territory outside the limits of any such city, village or incorporated town the county board **shall have the power** by

general ordinance or resolution to determine the number, kind and classification of licenses, for sale at retail of alcoholic liquor not inconsistent with this Act and the amount of the local licensee fees to be paid for the various kinds of licenses to be issued in their political subdivision, except those issued to the specific non-beverage users exempt from payment of license fees under Section 5-3 which shall be issued without payment of any local license fees, and the manner of distribution of such fees after their collection; to regulate or prohibit the presence of persons under the age of 21 on the premises of licensed retail establishments of various kinds and classifications where alcoholic liquor is drawn, poured, mixed or otherwise served for consumption on the premises; to prohibit any minor from drawing, pouring, or mixing any alcoholic liquor as an employee of any retail licensee; and to prohibit any minor from at any time attending any bar and from drawing, pouring or mixing any alcoholic liquor in any licensed retail premises; and to establish such further regulations and restrictions upon the issuance of and operations under local licenses not inconsistent with law as the public good and convenience may require; and to provide penalties for the violation of regulations and restrictions, including those made by county boards, relative to operation under local licenses. (emphasis added) 235 ILCS 5/4-1.

On the other hand, the Commissioner is given the executive authority to enforce and administer the regulations promulgated by the Corporate Authorities. 235 ILCS 5/4-2. Further, the Commissioner is empowered to grant or deny alcoholic liquor license applications, to hold hearings on alcoholic liquor license violations, and to impose discipline on offending alcoholic liquor licensees, up to and including license revocation. 235 ILCS 5/4-4. These powers are also embodied in Chapter 112 of the Village Code.

Given the distinct roles given to the Commissioner and the Corporate Authorities in regard to local alcoholic liquor licensing, the Commissioner does not have any legislative power to override legislative decisions made by the Corporate Authorities, except for the Village President's general veto power.

Thus, if the Corporate Authorities took action to allow existing alcoholic liquor licensees to serve alcoholic liquor in outdoor ROW seating, without the need for a patron to purchase a lunch or dinner entrée, the Commissioner would have no power to prevent the Corporate Authorities from doing so. Of course, the Commissioner, in his capacity as Village President, could veto any such action by the Corporate Authorities. However, the Village President's veto could be overridden by the affirmative vote of four (4) Village Trustees. 65 ILCS 5/3.1-40-50 and 5/3.1-45-5. Therefore, a veto by the Village President might only delay the action of the Corporate Authorities, rather than prevent it.

In the event that the Corporate Authorities chose to create a new "overlay" liquor license class for outdoor/ROW alcoholic liquor service (the first option set forth above), the Commissioner would have the power to refuse to grant alcoholic liquor licenses under this category, as the decision to grant alcoholic liquor licenses in the Village is made by the Commissioner, not the Corporate Authorities. 235 ILCS 5/4-4. However, if the denial of such an alcoholic liquor license application was based solely on the

Commissioner's dislike for this particular type of alcoholic liquor license, and the Corporate Authorities had authorized an additional license in this "overlay" liquor license class, thereby making such an alcoholic liquor license available, the denial could be reviewed, pursuant to a petition filed by the applicant, by the State Liquor Control Commission, and overturned. Indeed, the Act and the Village Code both delineate the basis upon which an alcoholic liquor license may be denied. 235 ILCS 5/1-1, *et seq.* In this regard, the Commissioner's dislike for a new alcoholic liquor license class, created by valid legislative action of the Corporate Authorities, is not a valid basis for denying an alcoholic liquor license application.

Conclusion

In summary, Section 119.23(B) of the Village Code currently allows for the service of alcoholic liquor in outdoor ROW seating, provided that it is served with a lunch or dinner entrée, by an alcoholic liquor licensee also holding an outdoor café/ROW permit under Section 119.20 of the Village Code. The Corporate Authorities, pursuant to their statutory power to regulate the retail sale of alcoholic liquor in the Village, have the exclusive legislative authority to expand the right to serve alcoholic liquor in outdoor ROW seating by local ordinance. The Commissioner, on the other hand, is only empowered to enforce and administer the alcoholic liquor regulations enacted by the Corporate Authorities. Thus, if the Corporate Authorities decided to take the legislative act of expanding the service of alcoholic liquor in outdoor ROW seating, the Commissioner would be required to enforce and administer those regulations.

If there are any questions, please feel free to contact us.

ORDINANCE NO. _____

**AN ORDINANCE AMENDING TITLE 11, CHAPTER 119,
SECTIONS 119.20, 119.21, 119.22, 119.23 AND 119.24
OF THE LOMBARD VILLAGE CODE IN REGARD TO
OUTDOOR CAFES AND OUTDOOR SEATING
WITHIN THE PUBLIC RIGHT-OF-WAY**

WHEREAS, the Village of Lombard maintains business regulations for restaurants and food which are found in Title 11, Chapter 119 of the Lombard Village Code, and

WHEREAS, the Village of Lombard (the "Village") is also responsible for, among other things, the issuance of permits for the utilization of public right-of-way owned and maintained by the Village; and

WHEREAS, in an effort to promote, facilitate and stimulate immediate utilization of sidewalk seating associated with adjacent businesses, the Economic and Community Development Committee (ECDC) of the Village has offered a recommendation to amend the existing regulations set forth within Chapter 119 of the Lombard Village Code; and

WHEREAS, the President and Board of Trustees of the Village deem it reasonable to periodically review the Lombard Village Code, and make necessary changes thereto;

NOW THEREFORE, BE IT ORDAINED BY THE PRESIDENT AND BOARD OF TRUSTEES OF THE VILLAGE OF LOMBARD, DU PAGE COUNTY, ILLINOIS, AS FOLLOWS:

SECTION 1: That Title 11, Chapter 119, Sections 119.20, 119.21, 119.22, 119.23 and 119.24. of the Lombard Village Code is hereby amended by adding those words that are underlined, and deleting those words that are lined through, as set forth below:

**OUTDOOR CAFES AND OUTDOOR SEATING ON THE PUBLIC RIGHT-OF-WAY
§ 119.20 PERMIT REQUIRED**

Notwithstanding any other provision in this Code it is unlawful for any person, firm, corporation, organization or association to operate an outdoor café in compliance with Section 155.4186 of this Ordinance or to use the public right-of-way for outdoor seating, as an extension of the establishment, or to provide entertainment in conjunction with such outdoor cafes or outdoor seating, without obtaining a permit. Permits will be issued for outdoor cafes and/or outdoor seating on public right-of-way only to ~~public restaurants~~ business establishments subject to the places for eating tax, as set forth in Section 98.111 of this Code. ~~which have obtained a license under this Chapter of the Lombard Village Code.~~ Such permit may be purchased at any time during a calendar year, but all permits shall expire on December 31st of the same calendar year. No permit shall be issued to any business establishment which is not in compliance with all provisions of this Code.

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§ 119.21 APPLICATION AND FEE

All applicants for outdoor cafe permits and/or outdoor seating on the public right-of-way permits must complete an application in a form approved by the Village, which must be submitted to the Village's ~~Director~~ Department of Community Development with a nonrefundable fee of \$150.00, or a non-refundable renewal fee of \$50.00 for those renewing a permit from the previous year where no substantial changes have been made to the site plan. Applicants applying for both permits simultaneously may pay one (1) \$150.00 fee. ~~otherwise the \$150.00 fees are payable at the time of each application.~~ All applications shall include the following information:

(A) Name of the proprietor and the ~~restaurant~~ business establishment for which the outdoor cafe permit and/or the outdoor seating on the public right-of-way permit is sought.

(B) The address and phone number of the proprietor and the ~~restaurant~~ business establishment.

(C) A detailed site plan showing all existing objects on the property and on the public right-of-way adjacent to the ~~restaurant~~ business establishment including a depiction of on-street parking adjacent to the business establishment, and the proposed location of each chair and table. When music or other entertainment is provided outdoors on the private property of the petitioner requesting the permit, the site plan shall include the area and placement of said music or entertainment.

(D) Permit applications for outdoor seating on the public right-of-way must include Certificates of Insurance in the following amounts:

1) Comprehensive General Liability Insurance - \$1,000,000, showing the Village and, its officers, employees, agents and volunteers as additional insureds, and containing a statement that said policies shall not be changed or canceled without thirty (30) days written notice to the Village of Lombard; ~~and~~ 2) Workers' Compensation - Statutory amount; and 3) if alcoholic beverages will be served, Dram Shop insurance as required by Section 112.18(A)(17) of this Code.

(E) Permit applications for outdoor seating on the public right-of-way must include a signed indemnification statement on the form provided by the Village. An inspection of the property to document existing conditions of public improvements shall be performed by the Village prior to issuance of an outdoor cafe permit and/or an outdoor seating on the public right-of-way seating permit. Applications should be filed at least two (2) weeks prior to scheduled use to allow sufficient time for such inspection.

(F) Permit applications applied for relative to the 2012 calendar year shall be exempted from the associated permit fee requirement, as set forth above, for the 2012 season.

§ 119.22 REGULATIONS

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All permit holders shall be subject to the following regulations:

(A) The outdoor cafe area and the outdoor seating on the public right-of-way area shall be maintained clean and free from refuse or clutter at all times, regardless of the source of such refuse and clutter. Refuse from the outdoor seating area shall not be disposed of in public waste receptacles.

(B) Outdoor seating elements (as defined in Section 119.23 below) All outside tables and chairs shall not be permanently attached, and shall be removed when the business is closed and when not in use during cold weather months (generally October through March). Any outdoor seating elements owned by the business establishment, that are intended to be placed within the public right-of-way outside of established business hours, shall be identified within the annual permit application, and shall be subject to review by the Director of Community Development. If approved, the Village reserves the right to require the establishment to remove or modify the outdoor seating elements, if deemed necessary by the Village at any time.

(C) For outdoor seating on the public right-of-way, all public improvements shown on the site plan, including, but not limited to, pavers, benches, light poles and trees shall be maintained in the condition in which they existed immediately prior to the issuance of the permit, excluding normal wear and tear. The pPermit holder shall immediately report any damage to such public improvements to the Community Development Department. The Village shall repair or replace such public improvement at its discretion, and shall charge the cost of repair or replacement to the permit holder, unless the damage can be clearly shown to have resulted from a cause not related to the issuance of the outdoor seating on the public restaurant right-of-way seating permit.

(D) Activities involving the outdoor seating on the public right-of-way shall be conducted in a manner that does not interfere with pedestrians, parking or traffic.

(E) Outdoor cafe permits and/or outdoor seating on the public right-of-way permits shall be posted in a conspicuous place inside the business restaurant establishment.

(F) The source of music or other entertainment provided outdoors in conjunction with an outdoor ~~C~~café or ~~O~~utdoor ~~S~~seating in the public right-of-way permit, shall be located only on the private property of the permit holder petitioner requesting the permit, and shall be provided, with and noise levels maintained, in strict compliance with the provision of Title 9, Chapter 93 of this the Lombard Code of Ordinances or any other codes which may be established with regard to noise or public nuisances. Furthermore, all outdoor music or entertainment shall cease by 10:30 p.m. on Sunday through Thursday, and by 11:30 p.m. on Friday and Saturday.

(G) Outdoor seating areas on private property shall be permitted for establishments in which the designated seating area is on the same lot of record as the business establishment and located within the buildable area of the property. For outdoor seating within public rights-of-way, the

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outdoor seating area shall be limited to the areas designated on the permit, and, shall not be located in front of any other business establishment or use unless the permit holder provides authorization to the Village, from the adjacent business owner or occupant stating that he/she/it consents to the sidewalk seating elements being placed in front of his/her/its business establishment or use.

(H) Business establishments must meet all provisions as set forth within the Smoke Free Illinois Act.

(I) Business establishments must provide public restrooms for patrons, as required by this Code.

(J) Business establishments shall be entitled to remove or exclude persons from the outdoor seating on the public right-of-way area during the hours of business operation, and are authorized to give notice to any such persons to prevent such entry, in the same manner as applicable to the non-public right-of-way portion of the business establishment.

§ 119.23 RESTRICTIONS

(A) Tables, Chairs, Temporary Fencing, Decorations and Umbrellas (the “outdoor seating elements”):

(1) shall be located so that a four (4) foot wide unobstructed walkway, as measured from the outdoor seating element to any other obstructions on the opposite side of the unobstructed walkway, is maintained at all times;

(2) shall be located in accordance with the approved site plan, shall generally be immediately adjacent to the building and in no instance less than forty-two (42) inches from the back of curb, except that outdoor seating elements can be located closer than forty-two (42) inches from the back of curb when there is no parallel parking adjacent to them (said modification to these requirements may be varied by the Director of Community Development, if granting such approval provides for a better design and layout of the seating area);

(3) shall not obstruct normal ingress and egress from the ~~restaurant or from other~~ businesses establishment;

~~(4) shall be located so that clearances required will be maintained when the chair is pulled out from the table, particularly where chair backs face the street or pedestrian walkway; and,~~

~~(5) (4) shall not be of a design and/or weight that will create a wind-blown hazard, and,~~

~~(6) (5) shall meet all provisions of the Americans with Disabilities Act and the Illinois Accessibility Code.~~

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(B) The following items or actions are prohibited in the outdoor ~~right-of-way~~ seating on the public right-of-way area:

- (1) outdoor seating elementstable/patio umbrellas in locations not approved by the Department of Community Development, and
- (2) electrical appliances; ~~and~~
- ~~(3) service or consumption of alcoholic beverages if not accompanied by service of a dinner or lunch entrée.~~

(C) The following provisions are required for business establishments where the service or consumption of alcoholic beverages will take place in the outdoor cafe or outdoor seating on the public right-of-way:

- (1) The business establishment shall have a valid liquor license issued by the Village, that allows for the service of the type of alcoholic beverages being served.
- (2) Alcoholic beverage consumption shall only be permitted within the designated outdoor seating area, or any other portion of the business establishment to which the liquor license relates. The permit holder shall not allow or permit any customer, employee or other person to remove alcoholic beverages from the area designated in the outdoor cafe or outdoor seating area in the right-of-way permit, other than to another location within the business establishment to which the liquor license relates.
- (3) To ensure that consumption of alcoholic beverages is limited to the designated outdoor seating areas and operated in compliance with this Code, outdoor cafes and outdoor seating areas on the public right-of-way shall be regularly monitored and bussed by an employee or contractor of the business establishment.
- (4) The hours during which patrons may occupy the outdoor café or outdoor seating on the public right-of-way shall not extend beyond the hours of operation of the other portions of the business establishment. Notwithstanding the foregoing, the outdoor café or outdoor seating on the right-of-way shall not be occupied during the following times:

Between 12:30 a.m. and 6:00 a.m. on Monday, Tuesday, Wednesday, Thursday and Friday; between the hours of 1:30 a.m. and 6:00 a.m. on Saturday; and between the hours of 1:30 a.m. and 12:00 p.m. (noon) on Sunday, except for Class "M" liquor licensees, whose hours of operation shall be controlled by Section 112.36(B) of this Code.

- (5) Outside seating areas on private property, not in conjunction with outdoor seating on the public right of way, shall be fenced or screened in a manner that prevents patrons from congregating outside of the designated seating area. Fencing shall be of a wood or metal

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design, and may be permanently secured to the ground or removable during the period in which outdoor seating is not open. Said fencing shall also meet the design and ingress/egress provisions as required by this Code. Modification to these requirements may be varied by the Director of Community Development, if granting such approval provides for a better design and layout of the outdoor seating area.

§ 119.24 ENFORCEMENT; REVOCATION

(A) Any person, firm or corporation who violates the provisions of Sections 119.20, 119.21, 119.22 or 119.23 of this Code shall be fined Notice of a violation of Section 119.22 and/or 119.23 shall be issued in the form of a compliance ticket. Failure to comply with the terms of that notice shall result in a charge of ordinance violation(s) which upon conviction will result in a penalty of not less than \$50.00 nor more than \$750.00 for each day on which the violation occurs or continues to occur. In addition, and revocation of the outdoor café permit and/or the outdoor seating on the public right-of-way permit may be revoked as a result of any such violation.

(B) The Chief of Police, ~~or the Fire Chief~~ or the Community Development Director of the Village, ~~of Lombard~~ upon determining that the method or manner of use of the outdoor café or the outdoor seating permit or the conduct of persons serving within or using such facilities pose an immediate threat to the public health, safety or welfare, shall have the power and authority to cause the outdoor dining element table and chairs to be removed immediately, and to revoke the permit issued pursuant to Sections 119.20 and 119.21 of this Code.
(Ord. 3733, passed 7/22/93, Ord. 4331, passed 6/19/97)

SECTION 2: That this Ordinance shall be in full force and effect from and after its passage, approval and publication in pamphlet form as provided by law.

Passed on first reading this _____ day of _____, 2012.

First reading waived by action of the Board of Trustees this _____ day of _____, 2012.

Passed on second reading this _____ day of _____, 2012, pursuant to a roll call vote as follows:

AYES : _____

NAYS : _____

ABSENT : _____

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APPROVED by me this _____ day of _____, 2012.

ATTEST:

Brigitte O'Brien
Village Clerk

William J. Mueller
Village President

Published by me in pamphlet form this _____ day of _____, 2012.

Brigitte O'Brien
Village Clerk