

## **CITY COUNCIL AGENDA ITEM**

### **ACTION REQUESTED:**

Pass the ordinance amending Chapter 3, Title 3, Section 11 (Liquor License and Permit Classifications) of the Naperville Municipal Code eliminating the sunset provision contained within the outdoor seating permit and increasing the required sidewalk clearance for liquor licensed establishments from five to eight feet.

**DEPARTMENT:** Legal Department

**SUBMITTED BY:** Michael DiSanto, City Attorney

### **BOARD/COMMISSION REVIEW:**

On February 8, 2018, the Naperville Liquor Commission voted unanimously to recommend to City Council the elimination of the sunset provision for the outdoor seating permit which permits liquor consumption on public property.

### **BACKGROUND:**

At the June 20, 2017 City Council meeting, Council passed an ordinance allowing for liquor consumption on the public way through an outdoor seating permit. The permit was capped at no more than five (5) liquor licensed establishments in the Downtown. It also contained a sunset provision which causes the outdoor seating permit allowing the consumption of liquor on the public way to expire on March 31, 2018.

Five liquor licensed establishments in the Downtown are eligible for the permit, the Craftsmen, Quiubo, Front Street Cantina, Sullivan's, and Mod Pizza. Only the Craftsman and Quiubo obtained permits during the initial one year term. The other three locations expressed interest in the permit but were unwilling to incur costs due to the uncertainty created by the one year sunset provision. If the sunset is eliminated, all five eligible establishments have indicated that they intend to participate moving forward. The City did not receive any general or public safety complaints regarding Craftsman or Quiubo's outdoor seating.

### **DISCUSSION:**

On March 6, 2018, Council conducted the first reading of an ordinance eliminating the outdoor seating sunset provision. After deliberations, Council directed staff to bring back two versions of the ordinance for Council consideration. One version eliminates the sunset provision and the other version establishes a one year sunset that would cause the outdoor seating permit that allows liquor consumption on public property to expire as of April 30, 2019, unless extended by Council.

Based on Council deliberations, both versions of the ordinance have been modified from the original ordinance to provide the following:

1. Increases the required sidewalk clearance from five feet (5') to eight feet (8'). Staff recommends that the eight feet (8') of clearance only be required for

outdoor seating permits that involve the consumption of liquor and that five feet (5') of clearance continue to be required for outdoor seating permits that do not involve the consumption of liquor. Several non-liquor establishments that currently offer outdoor seating, (e.g. David's Tea, Cookie Dough Creations, Coldstone, and Le Chocolat) would not be able to maintain eight feet (8') of sidewalk clearance and are ineligible for a variance. Staff believes that since those non-liquor licensed establishments are not required to maintain a barrier around their outdoor seating, five feet (5') of sidewalk clearance is appropriate because their tables and chairs can be easily moved.

It is notable that the minimum width of a pedestrian accessible route is three and a half feet (3.5') per federal standards. Throughout Naperville most sidewalks are five feet (5') wide.

Quiubo, one of the restaurants that has an outdoor seating permit for liquor consumption on public property, will not be able to maintain eight feet (8') of clearance on the Webster St. sidewalk where it locates its outdoor seating. If eight feet (8') of clearance is required by ordinance, Quiubo will have to seek a variance which costs \$450. The variance request must be reviewed by the Liquor Commission and is subject to City Council approval.

2. Specifies that permitted outdoor seating areas may not extend beyond the boundary of the façade of the permit holder's licensed premises.
3. Modifies the language concerning the barrier required for outdoor seating with liquor consumption to state that said barrier must be "distinct and functional" rather than "permanent or semi-permanent."
4. Modifies the original outdoor seating permit's annual licensing term from April 1 until March 30 to May 1 until April 30 so that it mirrors the City's annual liquor licensing term.

Lastly, Council inquired whether the Downtown Advisory Commission or other City community groups had opined on this matter. Staff has reached out to DAC and 360 Youth Services and will share their input with Council once it is received.

**FISCAL IMPACT:**

An outdoor seating permit on the public way in the Downtown with liquor service costs \$500 per year. If allowed, the availability of this permit is expected to generate revenues of \$2,500 per year.