



Legislation Details (With Text)

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**Type:** Ordinance      **Status:** Passed

**File created:** 5/11/2022      **In control:** City Council

**On agenda:** 5/17/2022      **Final action:** 5/17/2022

**Title:** Waive the first reading and pass the ordinance amending Section 3-3-11:3 of the Naperville Municipal Code to eliminate the cap on Outdoor Seating permits (requires six positive votes)

[ORIGINAL AGENDA ITEM PUBLISHED ON MAY 11, 2022, AMENDED & REPUBLISHED ON MAY 13, 2022]

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. Lantern Outdoor Seating Site Plan 2, 2. Liquor Commission Meeting Minutes 050522 DRAFT, 3. DNA Outdoor Dining Request\_051322, 4. Amended Ordinance - Liquor Code Outdoor Seating

| Date      | Ver. | Action By    | Action | Result |
|-----------|------|--------------|--------|--------|
| 5/17/2022 | 1    | City Council | passed | Pass   |

**CITY COUNCIL AGENDA ITEM**

**ACTION REQUESTED:**

Waive the first reading and pass the ordinance amending Section 3-3-11:3 of the Naperville Municipal Code to eliminate the cap on Outdoor Seating permits (requires six positive votes)

**[ORIGINAL AGENDA ITEM PUBLISHED ON MAY 11, 2022, AMENDED & REPUBLISHED ON MAY 13, 2022]**

**DEPARTMENT:** Legal Department

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

**BOARD/COMMISSION REVIEW:**

On May 5, 2022, the Naperville Liquor Commission voted unanimously to recommend to City Council that the Outdoor Seating Permit cap be increased to accommodate the Lantern.

**BACKGROUND:**

**Outdoor Seating Permit**

The City of Naperville requires liquor licensed establishments to obtain a permit to engage in the sale and service of alcohol outdoors. Permit holders must complete an application and an inspection of the property is performed by City staff including, but not limited to, the review of site plans, usage of heaters and/or amplification of music, and security cameras. For all licensed premises, certificates of insurance naming the City of Naperville as an additional insured and a signed indemnification statement is required.

The following regulations are in place for licensed premises in the Downtown using the public way:

1. the public way must be always kept free from refuse and no food preparation is permitted;
2. all public improvements on the public way must be maintained in the existing condition as the time the permit was issued;
3. the permit holder shall be responsible to the City for any damage to any public improvements where such damage arises due to the operation of the outdoor seating area;
4. use of the Outdoor Seating permit must be conducted in a way that does not interfere with pedestrian use;
5. all items placed on the public way for the operation of an outdoor seating area must be located so that a clear path of at least six contiguous feet and, when possible, eight contiguous feet, shall be provided for passage of pedestrians and so as not to obstruct ingress and egress from the licensed establishment or any other establishment;
6. any items placed on the public way for the operation of an outdoor seating area may remain on the public way from April 1 through November 1 and must be removed from the public way between November 2 and March 31;
7. the outdoor seating area shall be clearly designated with a distinct and functional barrier as approved by the City;
8. permitted outdoor seating areas may not extend beyond the boundary of an establishment's façade;
9. amplified sound from the establishment shall not be audible at 50 feet of originating property's lot lines and its purpose is only to create ambiance for the licensed premises;
10. no smoking is allowed within the outdoor seating area;
11. patrons shall remain seated at the outdoor seating area when consuming alcohol and no patron shall leave the outdoor seating area with alcohol;
12. alcohol shall only be served and transferred for patrons by a BASSET trained server, no carry-in or carry-out of alcohol by a patron to and from the outdoor seating area;
13. alcohol service on public property shall cease by 10:00 p.m.; and
14. the fee is \$500 for an outdoor seating permit on public way in the Downtown with alcohol service.

Outdoor Seating permits are capped at five and all five are currently in use as follows: (1) Front Street Cantina; (2) Catch 35; (3) Quiubo; (4) Fat Rosie's; and (5) Hugo's.

In 2020 during the COVID-19 pandemic, Mayor Chirico used his emergency authority to issue an Executive Order relaxing liquor code regulations and temporarily allowing several Downtown establishments to provide outdoor seating for food and alcohol service. In 2021, when the Executive Order expired, the City Council passed an ordinance temporarily extending the ability for Downtown establishments to provide outdoor seating. The outdoor seating permissions expired on May 1, 2022.

### **The Lantern**

On May 5, 2022, representatives from the Lantern appeared before the City's Liquor Commission. The Lantern representatives shared that the ability to serve customers outdoors on the public way has been a significant benefit and likely allowed the establishment to remain open and survive the negative economic impact of the pandemic. With its temporary permit expired, the Lantern petitioned the Liquor Commission to recommend to the City Council that the Outdoor Seating permit cap be increased from five to six so it may continue to provide outdoor seating on the public way.

### **DISCUSSION:**

If permitted, the Lantern intends to continue to provide outdoor seating on Chicago Avenue, between the street curb and the sidewalk. No outdoor seating will be offered along Washington Street. Attached is a copy of the site plan submitted by the Lantern.

The Liquor Commission commented on the appearance of the tables, chairs, and fencing currently being used by the Lantern and encouraged the Lantern to improve the aesthetic appearance of its outdoor furniture. The Lantern agreed and shared that it borrowed the current furniture and has been hesitant to invest in a better solution due to the temporary nature of the permit. If issued an Outdoor Seating Permit, the Lantern intends to upgrade the furniture.

The Liquor Commission also considered recommending to the City Council increasing the Outdoor Seating Permit cap beyond six to accommodate anticipated requests from other Downtown establishments. Ultimately, the Commission determined the best practice would be to review and consider any such future requests on a case-by-case basis.

The Liquor Commission voted unanimously (8-0) to recommend to City the Council that the Outdoor Seating Permit cap be increased to accommodate the Lantern. A copy of the draft minutes from the May 5, 2022 Liquor Commission meeting is attached.

An increase of the Outdoor Seating Permit cap requires a municipal code text amendment. If Council increases the cap, the Liquor Commissioner intends to issue the newly available permit to the Lantern. A copy of the ordinance amending the municipal code to increase the cap from five to six is attached.

#### **[ADDED TO AGENDA ITEM MEMORANDUM ON MAY 13, 2022]**

##### **Downtown Naperville Alliance**

Following the publication of the May 17, 2022 City Council agenda, staff met with representatives from the Downtown Naperville Alliance (DNA) concerning outdoor seating permits in the Downtown. DNA shared that in addition to the Lantern, other restaurants in the Downtown, including Allegory, Tasting deVine, and Le Chocolat du Bouchard, would like to begin using or continue to use the public way for outdoor seating. Therefore, DNA recommends that instead of increasing the cap by one, the cap be eliminated to allow more restaurants to benefit from outdoor seating. If the cap is eliminated, restaurants wanting to have outdoor seating on the public way will still need to meet the requirements of the municipal code, including applying with a detailed site plan that requires the Liquor Commissioner's approval. Attached is a letter from DNA in support of its proposal.

The Liquor Commissioner agrees with DNA's request to modify this agenda item to propose, for Council's consideration, the elimination of the outdoor seating permit cap.

DNA also requests that the City reduce the outdoor seating six-to-eight-foot clearance requirement to five feet. Currently, the Liquor Code requires all items placed on the public way for the operation of an outdoor seating area must be located so that a clear path of at least six contiguous feet and, when possible, eight contiguous feet, shall be provided for passage of pedestrians and so as not to obstruct ingress and egress from the licensed establishment or any other establishment (except for Quiubo's location which is statutorily only required to maintain a clear path of five feet). If Council wants to consider reducing the six-to-eight-foot clearance requirement to five feet, Council should direct staff to bring back an ordinance reflecting said change for Council's consideration at its next meeting.

The original ordinance amending the municipal code to increase the cap from five to six has been replaced with an amended ordinance amending the municipal code to eliminate the Outdoor Seating Permit cap.

**FISCAL IMPACT:**

Annual Outdoor Seating Permit fee (\$500) and corresponding increase in sales taxes related to outdoor sales.