

# Chapter 9

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## LIQUOR CODE

### **Sec. 1. PURPOSE**

The purpose of this ordinance is to provide administration for licenses and permits, and for local regulations and procedures for the conduct of sale and consumption of beer and alcoholic liquor, for the general welfare of this community.

### **Sec. 2. GENERAL PROHIBITION**

It shall be unlawful to sell, offer, or keep for sale, or possess for sale, alcoholic liquor or beer, except under the terms, conditions, limitations, and restrictions enumerated within this Code and the laws of the State of Illinois. A license issued by the Village of Downs Liquor Commissioner shall be required prior to the sale of alcoholic liquor within the corporate limits of the Village of Downs, in accordance with the terms of this Code.

### **Sec. 3. DEFINITIONS (Amended 5/1/2014, 10/6/2016)**

Unless the contents otherwise require, the following terms in this Code shall be construed according to the definitions given below:

- a. Alcohol: The product of distillation of any fermented liquid, whether rectified or diluted, whatever may be the origin thereof, and includes synthetic ethyl alcohol. It does not include denatured alcohol or wood alcohol.
- b. Alcoholic Liquor: Includes alcohol, spirits, wine, beer, and every liquid or solid, patented or not, containing alcohol, spirits, wine or beer, and capable of being consumed as a beverage by a human being. The provisions of this chapter shall not apply to alcohol used in the manufacture of denatured alcohol produced in accordance with acts of congress and regulations promulgated thereunder, nor to any liquid or solid containing one-half of one percent (0.5%) or less of alcohol by volume. No license fee provided for in this chapter shall apply to wine intended for use and used by any church or religious organization for sacramental purposes; provided, that such wine shall be purchased from a licensed manufacturer or importing distributor under this chapter.
- c. Retail Sale: The sale for the use or consumption not for resale.
- d. Restaurant: Any public place kept, used, maintained, advertised and held out to the public to be a place where meals are sold and served and where meals are actually and regularly served, without sleeping accommodations; said premises having thereon a seating capacity as approved by the Commissioner, with adequate and sanitary kitchen and dining room equipment, as defined under applicable building and zoning codes of the Village of Downs and McLean County, Illinois, and having employed therein a sufficient number and kinds of employees to prepare, cook and serve suitable food for its guests; provided, that fifty one percent (51%) or more of the activity and/or fifty one percent (51%) or more of the activity based on a dollar volume of income on an annual yearly basis for such establishment is not

from the sale of alcoholic liquor at retail, as determined by the local liquor control commissioner.

- e. Sale: Sale means transfer, exchange or barter in any manner, by any means whatsoever for a consideration and includes and means all sales made by any person, whether principal proprietor, agent, servant, or employee.
- f. To Sell: To sell includes to keep or expose for sale and to keep with intent to sell.
- g. Original Package: A bottle, flask, jug, can, cask, barrel, keg, or other receptacle or container whatsoever used, corked, or capped, sealed and labeled by the manufacturer of alcoholic liquor to contain and to convey any alcoholic liquor, except a bottle or can containing 12 ounces or less of beer shall not be considered an original package unless grouped or fastened in a receptacle containing no less than six (6) such bottles or cans, and further except a can containing 16 ounces or less of alcoholic liquor other than beer shall not be considered an original package unless grouped or fastened in a receptacle containing no less than four (4) such cans.
- h. Beer: Beer means the beverage obtained by the alcoholic fermentation of any infusion or concoction of barley or other grain, malt and hops in water, and includes, among other things, beer, ale, stout, lager beer, porter, and the like.
- i. Grocery Store: Grocery store shall mean an establishment whose principal stock is one of staple and fancy groceries and where the principal business is the sale and distribution of such stock.
- j. Minors: Minors as defined by the Dram Shop Act.
- k. Resident of the Village: Any person living in the Village of Downs for a period of not less than one (1) year.
- l. Applicant: Each individual applicant; each partner and each person entitled to share in the profits of a partnership; each officer, member of the Board of Directors, owner of stock, general manager, registered agent in Illinois and persons holding debenture notes or other obligations of a corporation, together with the date of incorporation, the state of incorporation and the object for which the corporation was organized; and all officers, directors, the general manager, registered agent in Illinois, all persons beneficially interested in the leasehold and ownership of the premises where the licensee shall conduct business under the license; and all members and persons otherwise interested beneficially or otherwise in a not-for-profit corporation, together with the date of incorporation, the state of incorporation, the purposes for which it is organized and a statement as to whether or not said corporation has been recognized by the Internal Revenue Service as a charitable, religious or educational institution, not required to pay income tax.
- m. Wine: "Wine" means any alcoholic beverage obtained by the fermentation of the natural contents of fruits or vegetables containing sugar, including such beverages when fortified by the addition of alcohol or spirits as defined in, "An Act Relating to Alcoholic Liquors" approved January 31, 1934, as heretofore or hereafter amended. (235 ILCS 5/1-3.03)
- n. Set-Up Establishment: A set-up establishment means any public or private institution:

1. Not holding a liquor license pursuant to this ordinance which sells, gives away, pours, stores, or otherwise dispenses liquor and/or glasses, mix, ice, water and soft drinks for the purpose of consumption of alcoholic beverages on the premises, or
  2. Which holds a liquor license and after the hours which it is permitted to be in operation, engages in any of the activities in the immediately preceding subsection.
- o. Church: Any building where regular public worship is held or those functions and facilities normally associated with a church, are conducted or available.
- p. Club:
1. A patriotic or veterans' society organized under the laws of the United States or the state of Illinois; or
  2. A corporation or limited liability company organized under the laws of the United States or the state of Illinois not for pecuniary profit, but solely for the promotion of some common object other than the sale or consumption of alcoholic liquors, kept, used and maintained by its members through the payment of annual dues and owning, hiring or leasing a building or space in a building of such extent and character as may be suitable and adequate for the reasonable and comfortable use and accommodation of its members and their guests, and provided with suitable and adequate kitchen and dining room space and equipment, and maintaining a sufficient number of servants and employees for cooking, preparing and serving food and meals for its members and guests; provided, that such club files with the local liquor control commissioner at the time of its application for a license under this chapter two (2) copies of a list of names and residences of its members and similarly files within ten (10) days of the election of any additional member, his name and address; provided further, that the affairs and management of the organization are conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting and that no member or any officer, agent or employee of the club is paid, or directly or indirectly receives, in the form of salary or other compensation, any profits from the distribution or sale of alcoholic liquor to the club or the members of the club or its guests introduced by members beyond the amount of such salary as may be fixed and voted at any annual meeting by the members or by its board of directors or other governing body out of the general revenue of the club and which:
  3. Is affiliated with a national club or organization and/or clubs or organizations in all fifty (50) states; or
  4. Maintains eating, golfing and swimming facilities on club premises for the use of members and their guests; or
  5. Is chartered as a not for profit corporation or limited liability company and regularly and routinely restricts admittance to the premises to members of the club and their guests.
- q. Keg: A cask, barrel, or container having a capacity of more than four (4) gallons.

**Sec. 4. VILLAGE OF DOWNS LIQUOR COMMISSIONER**

The President of the Board of Trustees of the Village of Downs is the Village of Downs' Liquor Commissioner (referred to throughout this Code as Commissioner) and his duties, powers, and

functions are set forth in this Code.

***Sec. 5. VILLAGE OF DOWNS LIQUOR COMMISSION (Amended 5/1/2014)***

The Commissioner (President) may appoint other persons to assist him in the exercise of the powers and performance of the duties herein provided for such Local Liquor Commissioner. In the event that the President makes such an appointment, the parties so named shall be considered to be the Village of Downs' Liquor Commission (referred throughout this Code as Commission) and shall act by majority vote, which act shall be an aide to the Commissioner and used by him as such in performing his administrative powers, functions, and duties.

In all other respects, where action of the Commission is not contrary to state statute, the President and members of the Commission shall constitute one body acting by majority vote.

The Chairman of the Commission shall be the Commissioner. Members of the Commission shall not be paid. Any expense incurred by the Commission may be paid from the Village general fund from monies budgeted to Boards and Commissions in the manner prescribed by administrative regulation upon presentation of the bill to the Village Clerk.

All meetings of the Commission shall be held at the call of the Commissioner or at such times as the Chairman of the Commission may determine and subject to the provisions of the Illinois Open Meetings Act.

***Sec. 6. POWERS OF THE LOCAL LIQUOR COMMISSIONER (Amended 5/1/2014)***

The Local Liquor Commissioner shall have the following powers, functions and duties:

- a. To receive applications, investigate applicants and grant or renew Liquor Licenses.
- b. To receive complaints from any citizen within its jurisdiction that any of the provisions of this Code have been or are being violated and to act upon such complaints in a manner hereinafter provided.
- c. To authorize any law enforcement officer to enter at any time upon the premises licensed hereunder, to determine whether any of the provisions of this Code have been or are being violated and at such time to examine such premises of said licensee, including books and records in connection therewith.
- d. In response to complaints or upon reports from an investigating agent of the Commissioner, to conduct hearings on alleged violations of this Code and to examine or cause to be examined under oath, complaints, license holders, and other interested parties. Furthermore, the Commissioner may examine or cause to be examined, the books and records of any licensee under this Code and may hear testimony and take proof as to the performance of the licensee's duties and for such purposes, may issue subpoenas. For the purpose of obtaining any of the information desired by the Commissioner under this Code, he may authorize the Commission to act on his behalf. For the purpose of administering or enforcing the provisions of this Code, the Commissioner may, at his discretion or at the request of one or more members of the Commission, hold public hearings at any time within the Village concerning any matter embraced within this Code.
- e. To issue written reprimands to license holders, to fine license holders, and/or to suspend or

revoke any liquor license(s) in the manner provided herein for any of the following reasons:

1. That the licensee has violated any of the laws of the United States relating to the sale of alcoholic liquor of any of the provisions of the Illinois Liquor Control Act, or of this Code, or any applicable rules and regulations adopted by the local Liquor Control Commissioner or by the State Commission.
  2. The willful making of any false statement as to a material fact in the application for such license or in any change of ownership application or request or affidavit for the renewal of any license. Making a false statement shall include not making a complete statement of all relevant facts which related to the situation.
  3. The permitting of any violation of state law or Village of Downs Municipal Code by any person upon the licensed premises.
  4. Failure to use and maintain a licensed premises in compliance with all codes and regulations pertaining to health and safety applicable within the Village of Downs, including, but not limited to, Building, Plumbing, Electric, and Fire Codes, Zoning Ordinances, McLean County Health Ordinances, and all regulations and orders of the McLean County Health Department.
  5. The refusal of any licensee to testify under oath to all relevant and material questions propounded to him at any hearing conducted by the Local Liquor Control Commissioner.
  6. Suspension or revocation of the license of the licensee by the State Commission.
  7. Permitting any gambling device or equipment to be located on the licensed premises except where allowed by Chapter 6, Article VII of the Village of Downs Code.
  8. Failure to adhere to any changes or requirements imposed as a condition of being issued a license by the Liquor Commissioner.
- f. To cause the initiation of legal proceedings under the penalty provisions hereof.
- g. To notify the Illinois Secretary of State where a club incorporated under the General Not For Profit Corporation Act (805 ILCS 105, et.seq.) or a foreign corporation functioning as a club in Illinois under a certificate authority issued under the Act, has violated the Illinois Liquor Control Act or this Code by selling or offering for sale at retail, alcoholic liquors without a retailer's license.
- h. Following submission to and review by the Liquor Commission, the Liquor Commissioner may adopt such rules and regulations consistent with the provisions of this Code, which shall be necessary to carry on his functions and duties to the end that the health, safety, and welfare of the people of the Village of Downs shall be protected and temperance in the consumption's of alcoholic liquor shall be fostered and promoted, and to distribute copies of such rules and regulations to all licensees affected thereby.
- i. To take any and all action necessary to incidental to the furtherance of his duties and functions, as set forth in this Code.

**Sec. 7. RECORDS TO BE KEPT BY THE COMMISSIONER**

The Village Clerk shall be the secretary to and shall keep for the Commissioner, a complete record of

all licenses issued by the Commissioner under this Code, minutes of meetings and hearings held by or under the direction of the Commissioner, and shall cause to be deposited all receipts, etc.

***Sec. 8. SET-UP ESTABLISHMENTS***

Set-up establishments as defined in this Code, are prohibited in the Village of Downs, and it shall be unlawful for any person, acting as an agent, barkeeper, clerk, or servant of another, to operate a set-up establishment.

***Sec. 9. LICENSE TO BE POSTED***

Every licensee shall cause his license to be framed and hung in plain view in a conspicuous place on the licensed premises.

***Sec. 10. BOND***

Each and every applicant for a license, or renewal thereof, shall, simultaneously with the application therefor and prior to the issuance thereof, execute and deliver a bond in the penal sum of five thousand dollars (\$5,000.00) to the Village as the obligee. Said bond shall be conditional for the faithful performance of all provisions of this Code and all amendments thereto and the payment of all fines and penalties by reason of the violation thereof with security to be approved by the Commissioner. The maximum liability of any and all sureties on said bonds shall be limited to the penalty thereof, to-wit, the sum of five thousand dollars (\$5,000.00).

***Sec. 11. DRAM SHOP INSURANCE***

Each applicant or licensee shall furnish, prior to issuance of any liquor license, evidence of insurance coverage against Dram Shop liability under 235 ILCS 5/6-21 covering the proposed licensee and the owner of the premises for a full twelve (12) month period from the date of the application. Evidence of similar coverage shall be furnished as a condition for each and every annual renewal of any license hereunder.

***Sec. 12. COMMISSIONER TO GRANT LICENSE***

With all things being equal, preference for all licenses shall be given to Village of Downs residents. All sole proprietors and their managers who receive a license herein shall be residents of the Village of Downs.

In case a licensee is not a resident of the Village of Downs, it shall appoint a person as his agent, who is a resident of the Village of Downs, and at all times, advise the Village Clerk of the name and correct address of such person. Notices, demands and summons served on said agent shall constitute proper service on the licensee.

Subject to the limitations and restrictions herein set forth and all other lawful limitations and restrictions, the Commissioner may, from time to time, grant licenses for the retail sale of alcoholic liquor to any Illinois resident, or any Illinois corporation, or any foreign corporation registered to do business in Illinois, or any company, association or partnership where one or more members thereof

are residents of the State of Illinois, provided, however, that an application is made by them in writing; and provided further, that any and all persons furnish sufficient evidence to satisfy the Commissioner that he, or she, or they are persons of good moral character, have not been convicted of a felony which occurred during the preceding ten years or a person who has been convicted of a felony under any Federal or State law, if the Commissioner determines, after investigation, that such person has now been sufficiently rehabilitated to warrant the public trust, and has never possessed a license to sell at retail alcoholic liquor that was revoked by any municipality or state authority.

**Sec. 13. APPLICATIONS (Amended 5/1/2014)**

Applications can be obtained from the Village of Downs website, Village Hall or Village Clerk. Applications for license shall be made in writing to the Commissioner, signed by the applicant, if an individual, and by all parties of a partnership, or by a duly authorized officer thereof, if a club or corporation, verified by affidavit, and shall be submitted to and filed with the Village Clerk, at least thirty (30) days prior to the issuance of any license. The applicant shall, at the time of application, file with the Village Treasurer, the annual fee for the first year of the license being applied for (as outlined in Section 19), evidence of \$5,000.00 bond (as outlined in Section 10), and evidence of insurance (as outlined in Section 11). Should the application be denied, the annual fee will be refunded to the applicant. Applications for license shall contain the following information and statements:

- a. The name, age, and address of the applicant.
- b. The citizenship of the applicant, his place of birth, and if a naturalized citizen, the time and place of their naturalization.
- c. The location and description of the premises or place of business which is to be operated under such license, and that the licensee owns said premises or has a lease thereon for the full term for which the license is requested. In the event the applicant has lease for the premises, a photostatic copy of the lease shall be attached to the application.
- d. A statement whether applicant has made similar application for a similar other license on premises other than described in this application, and the disposition of such application.
- e. A statement as to whether or not the applicant has ever been convicted of any state or federal felony.
- f. Whether a previous license by any state or subdivision thereof or by the Federal Government has been revoked, and the reasons therefor.
- g. Information pertaining to a Liquor License Security check, including a statement of the business and employment history of the applicant for the past ten (10) years, personal references, and business references.

**Sec. 14. RESTRICTION OF LICENSE**

No license shall be issued or re-issued to any applicant or to any applicant employing a resident manager or resident agent, which applicant, resident manager, or resident agent is:

- a. A person not of legal age or under any legal disability.
- b. A person who is not of good character and reputation in the community in which he resides.

- c. A person who has been convicted of a felony which occurred during the preceding ten (10) years or a person who has been convicted of a felony under any federal or state law if the Commissioner determines, after investigation, that such person has not been sufficiently rehabilitated to warrant the public trust.
- d. A person who has been convicted of being the keeper or is keeping a house of ill fame.
- e. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality within the last three (3) years.
- f. A person whose license issued under this Code has been revoked for cause.
- g. A person who at the time of application for renewal for any license issued hereunder, would not be eligible for such license upon a first application.
- h. A co-partnership, unless all of the members of such co-partnership shall be qualified to obtain a license.
- i. A corporation, if any stockholder owning in the aggregate, more than five percent (5%) of the stock of such corporation, would not be eligible to receive a license hereunder for any reason other than United States citizenship, or if it is not incorporated in Illinois, unless it is a foreign corporation which is qualified under the Illinois Business Corporation Act to transact business in the State of Illinois.
- j. A person who has been convicted of a violation of any federal or state law concerning the manufacture or sale of alcoholic liquor, after the passage of this Code, or shall have forfeited his bond by failure to appear in court to answer charges for any such violation.
- k. A person who does not own the premises for which a license is sought or does not have a lease thereon for the full period for which the license is to be issued.
- l. Any law enforcing public official, the president or member of the Village Board of Trustees, or any regular employee of the Village shall not be interested in any way, either directly or indirectly, in the manufacture, sale or distribution of alcoholic liquor within the Village's boundaries.
- m. Any person, association or corporation not eligible for a state retail liquor dealer's license.
- n. Any person, firm or corporation whose principal business in the premises described in the application, is the sale at retail of groceries or drugs, unless a physical separation is provided for between the sale of groceries or drugs, and packaged alcoholic liquor with separate check-out facilities.
- o. Any person who fails to furnish or falsely furnishes information or who fails to make or falsely makes statements required in the application for license as set forth in this Code.

**Sec. 15. HEARING ON LICENSE APPLICATION**

- a. Notice. Upon the filing of an application of a liquor license, the Commissioner shall fix a time and place of hearing thereon. Notice of the hearing shall be given the applicant not less than five (5) days prior to the hearing.
- b. Hearing and Evidence. The Commissioner shall receive and may require such evidence as he may deem necessary to make findings based upon the standards and factual criteria.



**Sec. 16. ISSUANCE OF NEW LICENSE-FINDINGS**

In deciding whether issuance of a new license is necessary, the Commissioner shall consider:

- a. The class of liquor license applied for.
- b. Whether most of the establishment's anticipated gross revenue will be from the sale of alcohol or other sources. It shall be required that the principal business activity of said establishment is not the sale of alcoholic liquor at retail, except for Class A and B licenses.
- c. The character and nature of the proposed establishment.
- d. The general design, layout and contents of the proposed establishment.
- e. The location of the proposed establishment and probable impact of a liquor establishment at that location upon the surrounding neighborhood or the Village as a whole.
- f. Probable demand for the proposed liquor establishment in the Village.
- g. The financial responsibility of the applicant.
- h. Whether the applicant intends to furnish live entertainment in the establishment and, if so, the nature of such entertainment.
- i. Whether the proposed establishment poses any problems to law enforcement officials or the Commissioner in the enforcement of Village Ordinances or state and federal laws.
- j. Whether the issuance of said license would be in the best interests of the Village of Downs.

**Sec. 17. TERM OF LICENSE, PAYMENT OF FEES (Amended 5/1/2014)**

- a. Term. Liquor licenses are valid, provided all fees are paid up, all other monies owed the Village are paid, all forms and supplemental information required by the Village Clerk have been submitted, and all other conditions of this ordinance are met, for a fiscal year beginning May 1st and ending April 30th of the succeeding year.
- b. License Fees. The initial license fee for the first year of operation shall be due with the Liquor License Application. The license fee for subsequent years, upon renewal, approved by the Commissioner, shall be due one month before the beginning of the fiscal year, that is on or before the last day of March. If the license is issued after May 1st, the initial license fee shall be that portion of the annual license fee pro-rated over the number of months from the day of issuance to April 30th.

**Sec. 18. LICENSE RENEWAL (5/5/2016)**

Any holder may renew his license at the expiration thereof, provided he is then qualified to receive a license, there has not been an unapproved change of ownership, and the location and premises for which the renewal license is sought are suitable for such use.

Each licensee will be notified by mail of their requirements for renewal by Commissioner in February of each year. In general, in order to renew a license, the licensee must submit payment of fee, a copy of their Illinois Liquor License, a copy of their active Dram Shop Insurance, a copy of their active \$5,000 bond, and an affidavit stating that the facts and statements made in the original license application

have not changed. In the event such facts and statements have changed, the licensee must number and outline in writing, each and every change and submit the request for renewal to the Commissioner by the end of March.

**Sec. 19. CLASSIFICATION AND FEES (Amended 9/5/2013, 5/1/2014, 5/5/2016, 10/6/2016)**

With the exception of Class C license, no license shall be issued for the sale at retail of any alcoholic liquor within one-hundred (100) feet from any church, school, or home for the aged, indigent persons, veterans, their spouses or children. The one-hundred (100) foot measurement provided in this Section shall be measured from the outside perimeter of the establishment in which alcoholic liquor is permitted to be sold (although not necessarily the outside perimeter of the building in which the establishment is located or the lot on which the building is placed) and the perimeter of the lot on which a church, school, or home for the aged, indigent persons, veterans, their spouses or children is located.

The fees for all new licenses shall be submitted with the license application and paid to the Village Treasurer by certified check, cashier's check, bank money order, personal money order, or postal money order; however, fees for all renewal licenses shall be paid by the last day of March for the period covering the next fiscal year and may be paid by any of the previously stated methods or by check drawn on the licensee's business account, and the proceeds thereof shall be deposited in the General Fund of the Village.

It shall be unlawful on any licensed premises to sell or offer for sale at retail or allow the consumption of any alcoholic beverages on any day of the week except between the hours of six o'clock (6:00) A.M. CST and two o'clock (2:00) A.M. CST the following day.

All licenses shall be and are hereby divided into three (3) classes, to-wit;

- a. Class A (Package) license shall authorize the sale of alcoholic liquor in an original package at retail on the premises specified, for consumption off said premises. The annual fee for such license shall be five hundred and 00/100s Dollars (\$500.00).
- b. Class B (Tavern) license shall authorize the retail sale on the specified premises of all types of alcoholic liquor for consumption only on the premises. The annual fee for such license shall be as follows:

○ Seating capacity of (50) or less (including dance space)	\$800.00
○ Seating capacity of 51-100 (including dance space)	\$900.00
○ Seating capacity of 100+ (including dance space)	\$1,000.00
- c. Class C (Restaurant) license shall authorize the retail sale of alcoholic liquor by only restaurants or clubs for consumption on the premises where sold. The annual fee for such license shall be as follows:

○ Seating capacity of 50 or less	\$300.00
○ Seating capacity of 51-100	\$400.00
○ Seating capacity of 100+	\$500.00

A restaurant shall provide to the Liquor Commission, on a quarterly basis and in such form as the Liquor Commission shall request, information itemizing the sale of alcoholic liquor when compared with the total sales of the restaurant. The restaurant must maintain a total sales ratio of fifty-one percent (51%) to forty-nine percent (49%, where no more than forty-nine percent (49%) of total sales are from alcoholic liquor.

If out of compliance during a particular quarter, the business will be issued a warning letter. The Commissioner will report both quarterly percentages and any warnings to the Commission and Village Board of Trustees.

Annual total sales percentage will be used to determine compliance and fines. If out of compliance on an annual basis, the following will be used to determine fines:

- 1) One time out of compliance will be a \$50 fine
- 2) Two time out of compliance will be a \$100 fine
- 3) Third time out of compliance will be a \$150 fine
- 4) Fourth time out of compliance will be a \$200 fine

Total max fine for a given year is \$500.

#### ***Sec. 20. TRANSFER OF LICENSE***

A license issued under provisions of this Code shall permit the sale of alcoholic liquor only on the premises described in the application and license and only under the conditions and restrictions imposed in this Code on the particular class of license described therein. The location described in the license application may be changed only upon a written permit to make such change issued by the Commissioner and only then if the proposed new location is a proper one for the retail sale of alcoholic liquor under the provisions of this Code and the laws of this state.

No license may be transferred in any way, including but not limited to, through the sale of assets of a firm, partnership, or corporation, without the consent of the Commissioner. That consent may include conditions, including, but not limited to, a request to supply information as if a new license were being issued.

#### ***Sec. 21. DEATH OR BANKRUPTCY OF LICENSEE***

A license issued under the provisions of this Code shall not be subject to attachment, garnishment or execution, nor shall be subject to be pledged or encumbered. Such license shall not descend by the laws of the State or transfer to the State, but shall cease upon the death of the licensee, provided that executors or administrators of the estate of any deceased licensee and the trustees of any licensee who is insolvent or has filed bankruptcy, may continue to operate under the license until the expiration of the lease, but no longer than six months after the death, bankruptcy, or insolvency of such licensee. Upon the death of a licensee, if the executor or administrator does not continue the business under such license, and upon the bankruptcy of a licensee, if the Trustee does not continue the business under the license, there shall be a refund made of that portion of the license for any period in which the executor, administrator or Trustee cannot or does not operate, provided that prior to making any refund, the Village Treasurer shall determine whether the licensee owes the Village any money, and if it is determined that the licensee owes the Village money, the Village Treasurer shall withhold payment of any refund until all monies owed by the Village have been paid in full.

#### ***Sec. 22. OWNERSHIP OF LICENSE***

The Commissioner shall not assign ownership of any liquor license to any firm, person, or corporation. The Village of Downs shall be the owner of all classes of liquor licenses.

**Sec. 23. PEDDLING**

It shall be unlawful to peddle or attempt to peddle any alcoholic liquor within the corporate limits of the Village of Downs.

**Sec. 24. SANITARY CONDITIONS**

All premises used for the retail sale of alcoholic liquor or for the storage of such alcoholic liquor for such sales, shall be kept in a clean and sanitary condition and shall be kept in full compliance with the provisions regulating conditions of the premises used for the storage or sale of food for human consumption, as regulated by the McLean County Board of Health.

**Sec. 25. EMPLOYEES (Amended 5/1/2014)**

It shall be unlawful to employ in any premises used for the retail sale of alcoholic liquor, any person who is afflicted with or is a carrier of any contagious, infectious disease, and it shall be unlawful for any person who is afflicted with or a carrier of any such disease, to work in or about any such premises or to engage in any way in the handling, preparation, or distribution of such liquor, provided the County Health Officer may require such employee to submit to a physical examination at the expense of the employer, by a duly licensed physician named by such officer if such officer suspects such employee of being afflicted as herein set forth.

**Sec. 26. AGE OF TRANSFEREE (Amended 5/1/2014)**

No licensee nor any officer, associate, member, representative, agent, or employee of such licensee shall sell, give or deliver alcoholic liquor to any person under the age of twenty-one (21) years or to any intoxicated person or to any person known by him to a habitual drunkard, spendthrift, insane or mentally ill.

**Sec. 27. PROHIBITED TRANSFER OF LIQUOR (Amended 5/1/2014)**

- a. It shall be unlawful for any person to whom the sale, gift or delivery of any alcoholic liquors prohibited because of age, to represent that he or she is of lawful age for the purposes of buying, accepting, or receiving alcoholic liquor from a licensee.
- b. No individual, partnership, or corporation shall give away any alcoholic liquor for commercial purposes or in connection with the sale of non-alcoholic products or to promote the sale of non-alcoholic products.
- c. No licensee shall give or offer to give away, alcoholic liquor in connection with the sale of non-alcoholic products or to promote the sale of non-alcoholic products.
- d. No licensee shall sell, give, deliver or offer to sell, give or deliver alcoholic liquor stored in a keg or kegs for consumption off the licensed premises between the hours of ten o'clock (10:00) p.m. and one o'clock (1:00) a.m., local time, Sunday through Saturday.
- e. No licensee shall give or offer to give away any alcoholic liquor in connection with a drawing

or game of chance, nor shall any licensee in connection with any drawing or game of chance, sell or offer to sell alcoholic liquor at less than fifty percent (50%) of the customary retail value of such alcoholic liquor.

**Sec. 28. LIGHTING AND DISPLAY AT LICENSED PREMISES**

All rooms where liquor is sold for consumption upon the premises shall be continuously lighted during business hours by natural light or artificial light so that all parts of the interior of the premises shall be clearly visible.

**Sec. 29. DISPLAY OF FETAL ALCOHOL SYNDROME WARNING**

- a. Any holder of a license to sell alcoholic liquor in the Village of Downs shall post and maintain, in a conspicuous location at the main point of ingress to the liquor establishment, a warning sign regarding the effects of fetal alcohol syndrome.
- b. The minimum size of the warning sign shall be six and one-half inches (6½") x eight inches (8") and shall contain the following warning in letter of 48 point type: "WARNING:", and the following in 36 point type: "CONSUMING ALCOHOLIC LIQUOR DURING PREGNANCY MAY CAUSE BIRTH DEFECTS" and the following in 18 point type: "A WARNING CONCERNING FETAL ALCOHOL SYNDROME."
- c. In lieu of the warning described in Subsection b. above, any holder of a license to sell alcoholic liquor in the Village of Downs, may post and maintain as required in Subsection a. above, a warning sign provided by the Illinois Department of Alcoholism and Substance Abuse through the Illinois Liquor Control Commission.

**Sec. 30. TRANSPORTING ALCOHOLIC LIQUOR (Amended 5/1/2014)**

The transporting of alcoholic liquor within the Village of Downs is restricted as follows:

- a. No person shall transport from a retail sale establishment, alcoholic liquor not intended for the personal use of the transporter, his family or guests.
- b. No person holding a distributor's license from the State of Illinois shall use his equipment to deliver alcoholic liquor, except to persons holding a license pursuant to this Code for the retail sale of alcoholic liquor.
- c. No person shall transport alcoholic liquor stored in a keg or kegs between the hours of ten o'clock (10:00) p.m. and five o'clock (5:00) a.m., local time, Sunday through Saturday, unless such person holds a distributor's license from the State of Illinois.

**Sec. 31. EMPLOYMENT OF UNDERAGE PERSONS: PURCHASE OR ACCEPTANCE OF GIFT LIQUOR BY PERSONS UNDER AGE (Amended 5/1/2014)**

Individuals employed by Class A establishments must be at least twenty-one (21) years of age to sell alcoholic beverages, it shall be unlawful for any individuals employed by Class A establishments to sell alcoholic beverages if these individuals are not at least twenty-one (21) years of age.

Individuals at least nineteen (19) years of age may be employed to handle, but not to sell, alcoholic beverages in Class A establishments, and it shall be unlawful for individuals not at least nineteen (19) years of age to handle alcoholic beverages in Class A establishments. It shall be unlawful for persons under the age of twenty-one (21) years to mix, pour, or serve alcoholic beverages in establishments licensed by the Village under Class B and Class C licenses.

Any person to whom the sale, gift or delivery of alcoholic liquor is prohibited because of age, shall not purchase or accept a gift of alcoholic liquor or have alcoholic liquor in his possession.

***Sec. 32. DEMAND FOR IDENTIFICATION (Amended 5/1/2014)***

For the purposes of preventing the sale or delivery of alcoholic liquor to any persons under the age of twenty-one (21) years, any licensee or his agents or his employees shall have the right, before making such a sale or delivery, to demand presentation of a valid driver's license, showing evidence of age and identity, issued by a public officer in performance of his official duties or some other form of identification issued by the Secretary of State or other public officer in the performance of his official duties, showing evidence of age and identity. Any person in the premises offering alcoholic liquor for retail sale, shall, upon demand of the person in charge of such premises, or of any law enforcement officer, show such written evidence of age and identity. If any such person fails to do so, he or she shall be regarded as a person under age and not entitled to purchase alcoholic liquor.

If a licensee or his agent or employee demands presentation of identification in the form required herein, showing evidence of age and identity issued by a public officer in the performance of his official duties, and if the identification required herein shows the prospective recipient to be at least the lawful age required for the purposes of buying, accepting or receiving alcoholic liquor and if a sale of alcoholic liquor is made in reasonable reliance thereon, the licensee shall not be subject to the penalty provisions of this Code, even if in fact, the age of the recipient is less than the lawful age for the purposes of buying, accepting, or receiving alcoholic liquor. In any hearing before the Commissioner, the burden of proving that a demand for identification as required herein was made, that such required identification was shown, and the content of the required identification presented and the reasonableness of the reliance thereon shall be on the licensee. It shall not, however, be an affirmative defense if the agent or employee accepted the written evidence of identification knowing it to be false or fraudulent.

No person shall transfer, alter or deface any written evidence of age or identity issued by a public officer in the performance of his official duties, use such evidence of another, carry or use false or forged identification or obtain such written evidence by means of false information.

***Sec. 33. ACTS OF AGENTS OR EMPLOYEES: LIABILITY OF LICENSEE: KNOWLEDGE***

Every act or omission, of whatsoever nature, constituting a violation of any of the provisions of this Code by any officer, director, manager or other agent or employee of any licensee shall be deemed to be held to the act of such employer and licensee, and said employer or licensee shall be punishable in the same manner as if said act or omission had been done or omitted by him personally.

**Sec. 34. HEARINGS**

License may be revoked or suspended, a fine imposed, or a reprimand issued by the Commissioner only after a public hearing as follows:

- a. No license shall be revoked or suspended, nor shall a fine be imposed or a reprimand issued except after a public hearing with a three (3) day written notice to the licensee affording the licensee an opportunity to appear and defend. The public hearing may be held by the Commissioner or by a hearing examiner appointed by the Commissioner. The hearing examiner shall present a written report of his findings and recommendations to the Commissioner within thirty (30) days after the public hearing.
- b. If the Commissioner has reason to believe that any continued operation of a particular licensed premises will immediately threaten the welfare of the community, he may, upon the issuance of a written order stating the reason for such conclusion and without notice or hearing, order the licensed premises closed for not more than seven (7) days, given the licensee an opportunity to be heard during that period, except that if such licensee shall also be engaged in the conduct of another business or businesses, on the licensed premises, such order shall not be applicable to such other business or businesses.
- c. The Commissioner shall review that report of the examiner, if any, and shall, within sixty (60) days after such hearing, if he determines that the license should be revoked or suspended or that the licensee should be fined or reprimanded, state the reason or reasons for such determination in a written order and either the amount of the fine, the period of suspension, or that the license has been revoked, and shall serve a copy of such order upon the licensee.
- d. The licensee, after receipt of such order of fine, suspension or revocation, shall have the privilege within a period of twenty (20) days after the receipt of such order of suspension or revocation, of appealing the order to the State Liquor Control Commission for a decision sustaining, reversing or modifying the order of the Commissioner. If the State Commission confirms the Commissioner's order to suspend or revoke the license at the first hearing, the appellant shall cease to engage in the business for which the license was issued until the Commissioner's order is terminated by its own provisions or reversed upon the rehearing or by the Courts.
- e. Hearing Procedures:
  1. The licensee shall at all times, be afforded due process, including the right to subpoena witnesses on his own behalf, the right to hear witnesses and evidence given against him, the right to counsel, the right to cross-examination, and the right to demand a written specification of charges against him in advance of the hearing.
  2. Witnesses shall be sworn, but in all other respects, the hearings shall be informal and strict rules of evidence shall not apply.
  3. A certified court reporter shall, at the public hearing, take the complete record of all evidence, testimony and comments and, upon notification by the Commissioner, shall prepare a certified official record of the proceedings suitable for filing with the State Liquor Commission and that all reviews of the proceedings of the Commission be "on the record" so that the State Commission's scope of review is limited to those three (3) instances stated therein. The cost of taking and preparing the

certified official record of the proceeding shall be shared equally between the Commissioner and the Licensee, with payment of the licensee's share to be made to the Village at or before the time of the order of the Commissioner becomes effective, provided, however, if the Order, action or decision of the Commissioner is reversed by the State Commission or a court of law, any such payment made by the Licensee shall be returned.

- f. No person shall make a false statement to the Commissioner, material to the issue or point in question, knowing such statement to be false.

### **Sec. 35. ENTERTAINMENT**

- a. Permits: An entertainment permit shall authorize entertainment which may consist of, but not be limited to, talking, reading, listening, singing, posing, walking, dancing, or wrestling. Application for an entertainment permit must be a part of the application for a liquor license.
  - 1. Conditions: Such permits shall be issued only to establishments having a regular seating capacity as enumerated earlier in this ordinance, at tables in accordance with existing Village and Public Health and Fire Prevention Ordinances and Statutes, and upon such terms and conditions imposed by the Liquor Commissioner.
  - 2. Term: Such a permit shall be issued for a term expiring on the next 30th day of April following issuance.
  - 3. Cancellation: Permits may be canceled for cause which is defined as that which adversely affects the protection of the public from:
    - a. Open and notorious conduct consisting of violent, abusive, indecent, or profane behavior with respect to language, quarreling, signing, or fighting;
    - b. Any other disorderly conduct which disturbs or promotes breaches of the peace.
    - c. Conduct which otherwise affects the community safety, health, accepted moral standards, and/or welfare.
  - 4. Notice of Hearings: In accordance with Section 35 (Hearings), no permit shall be canceled, except after a public hearing by the Commissioner with a three (3) day written notice to the licensee, according the licensee an opportunity to appear and defend.
- b. Prohibited Conduct: It shall be unlawful for any liquor licensee, agent or employee to provide, suffer or permit any conduct or entertainment within a liquor establishment in such a manner as to expose to public view:
  - 1. Male or female genitals, pubic hair, buttocks, perineum, anal region or pubic hair region;
  - 2. Any portion of the female breast at or below the areola thereof;
  - 3. Any device, film, costume, or covering which gives the appearance of, or simulates the above listed body parts;



4. The use of tassels, pasties, start, or transparent material for coverage of the above listed body parts;
  5. Sexual intercourse, masturbation, sodomy, bestiality, oral copulation, flagellation, or any other sexual acts prohibited by law;
  6. The touching, caressing or fondling of the breast, buttocks, anus, or genitals; or
  7. Excretory functions as part of or in connection with any activities set forth above.
- c. Penalty: Violation of Section 36 (Entertainment) will be considered grounds for fine and/or suspension or revocation of a license.

**Sec. 36. PENALTY**

Any person violating any provision of this Code, upon conviction, shall be fined no less than one hundred dollars (\$100.00) nor more than three thousand-five hundred dollars (\$3,500.00) for each offense.

**Sec. 37. REPRIMANDS, FINES, SUSPENSIONS, OR REVOCATIONS**

- a. After public hearing as provided herein, and if the Commissioner determines that any of the grounds for fine and/or suspension or revocation of a license exists as stated in Section 6 of this Code, the Commissioner may do any of the following:
  1. Direct a written reprimand to the licensee. A copy of said reprimand shall be made a part of the liquor license application file which is preserved in the office of the Village Clerk.
  2. Impose a fine against the licensee. Any fine imposed shall not exceed three thousand-five hundred dollars (\$3,500.00) for each violation. Each day on which a violation continues shall constitute a separate violation for which a separate fine may be assessed.
  3. Fines shall be payable in the manner indicated in any order which results from a hearing, or as the Liquor Commissioner may otherwise specify in writing, and the failure to pay any part of a fine as so indicated or specified, may result in the license being summarily suspended or revoked by the Liquor Commissioner. The licensee may request a hearing on such action; but, pending a hearing and a decision thereon by the Liquor Commissioner, the license shall remain suspended or revoked. It shall be the duty of each licensee who cannot make a fine payment as indicated or specified, to request a hearing at the earliest possible time to explain the situation and request that license(s) not be suspended or revoked, as provided for herein, or for any other reason. Any fine may be collected in court as provided by law.
  4. Suspend the liquor license of such licensee for a period of not more than ninety (90) days.
  5. Revoke the liquor license of such licensee.
- b. In making his determination to reprimand, fine, suspend, or revoke, or in determining the

amount of a fine imposed or the length of a suspension imposed, the Commissioner may consider any of the following:

1. The nature of the violation;
2. Past violations of the licensee occurring within the immediately preceding three (3) year period;
3. Past action of the Commissioner in comparable situations;
4. The factual situation and circumstances surrounding the violation as presented at the public hearing.

***Sec. 38. MISCELLANEOUS PROVISIONS (Amended 5/1/2014)***

Each Section, Paragraph, Sentence, Clause and Provision of this Ordinance is separate, and if any provision is held unconstitutional or invalid for any reason, such decision shall not affect the remainder of this Ordinance nor any part hereof, other than that part affected by such decision.