

EAST DUNDEE

PLANNING AND ZONING & HISTORIC COMMISSION AGENDA

Thursday, March 2, 2023

6:00 PM

East Dundee Police Station, 2nd Floor Meeting Room
115 E. 3rd Street, East Dundee, IL 60118

CALL TO ORDER

ROLL CALL / DECLARATION OF QUORUM

APPROVAL OF MINUTES

- 1) Draft Minutes from November 03, 2022 Meeting
- 2) Draft Minutes from February 02, 2023 Meeting

PUBLIC COMMENT

NEW BUSINESS

- 1) Discussion on Live Entertainment

OTHER BUSINESS

ADJOURNMENT

CALL TO ORDER

Chairperson Brunner called to order the Planning and Zoning & Historic Commission (“PZHC”) meeting on Thursday, November 3, 2022, at 6:00 pm.

ROLL CALL:

Commissioners Brunner, Feck, Myers, Scarpelli, and Steneck were present.

Commissioners Reyes-Brahar and Krueger were absent.

Also in attendance: Management Analyst Franco Bottalico, Building Inspector Chris Ranieri, and Village Engineer Joe Heinz

APPROVAL OF MINUTES:

1. Planning & Zoning and Historic Commission Meeting Minutes dated October 6, 2022

Motion to approve the October 6, 2022 meeting minutes with corrections to the motion in item two, and a correction to a vote made by Chair Brunner by Scarpelli/Feck.

5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

PUBLIC COMMENT: None

NEW BUSINESS:

Public Hearing Regarding Petition from 590 Healy, LLC for:

1. A request for a Special Use for outside vehicle and equipment parking and storage for the property with 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.
2. A request for a Special Use for CCDD Salvage and Reprocessing of concrete and asphalt for the property 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.
3. A variance request from Section 157.147(B)(2) and 157.149(B) requiring off-street parking areas shall be paved with asphaltic concrete or comparable hard-surfaced, all-weather, dustless material at 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.
4. A variance from Section 157.149(D) requiring lighting illumination of an off-street parking area shall be arranged so as not to reflect rays of light into adjacent residential districts and street. All lighting shall be extinguished not later than 30 minutes after the close of business of the use being served, except as may be otherwise authorized by the Village Board of Trustees. 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.

Motion to open the public hearing by Scarpelli/Steneck.

5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

Persons wishing to be heard were sworn in by Management Analyst Bottalico.

Steve Kaminski of Mackie Civil Engineering Consultants gave the PZHC a background and their intent.

Prairie Materials owned this lot prior to the Petitioners owning it where they conducted aggregate mining. They procured a Clean Construction Demolition Debris ("CCDD") permit from the State which involves a lot of testing of the material. This is to allow filling back in to grade of previously mined area(s) so the property can return to economically viable property. Prairie Materials' permit for CCDD was transferred over to 590 Healy for this location when 590 Healy. LLC (ALamp) acquired ownership in 2019.

Steve Kaminski explained the concept future use plan for this location including semi-truck parking, CCDD area, and industrial buildings south of the future Heinz Road expansion. He asked for interim permission to park trucks on the south side of this property until the Heinz Road extension is constructed with regards to item number one of the public hearing.

With regards to the second item of the public hearing Steve Kaminski states this will serve as an efficient use to the property to continue to make the property viable for future development or use.

Steve Kaminski states the third request for the truck parking area only of the public hearing is related to the first request. Over time the trucks parking on the surface may damage the finished pavement where the crushed, recycling asphalt makes for a better suitable material for settlement when trucks are parked and traverse over it.

Lastly, he stated that due to the nature of the business and it is not open to the general public and adjacent forest preserve habitat the Petitioners for a variation from the lighting code.

A discussion ensued.

Motion to close the public hearing by Scarpelli/Myers.
5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

Motions on Recommendations

Motion to amend the order of the agenda to hear items 3 and 4 first before numbers 1 and 2 made by Scarpelli/Myers
5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

Chair gave a background and refresher for when recommending approval or denials to the village board. A discussion ensued. Commissioner Scarpelli reminded the commission that a petitioner needs to prove a hardship.

- 1.) A variance request from Section 157.147(B)(2) and 157.149(B) requiring off-street parking areas shall be paved with asphaltic concrete or comparable hard-surfaced, all-weather, dustless material at 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.
- 2.) A variance from Section 157.149(D) requiring lighting Illumination of an off-street parking area shall be arranged so as not to reflect rays of light into adjacent residential districts and street. All lighting shall

be extinguished not later than 30 minutes after the close of business of the use being served, except as may be otherwise authorized by the Village Board of Trustees. 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.

Motion to recommend denial for both of the variations above by Scarpelli/Myers
5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

3.) A request for a Special Use for outside vehicle and equipment parking and storage for the property with 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.

A discussion ensued and the consensus was that this use is appropriate for the area.

Motion to recommend denial for both of the variations above by Myers/Feck
5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

4.) A request for a Special Use for CCDD Salvage and Reprocessing of concrete and asphalt for the property 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.

Motion to table this request by staff to December's meeting due to more information needed by Scarpelli/Steneck

5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

Findings of Fact

i.) Chair Brunner moved on to the Findings of Fact for the special use request regarding outside vehicle and equipment parking and storage. Chair Brunner read each Findings of Fact and the PZHC agreed with Staff's pre-filled replies as submitted.

Motion to approve the Findings of Fact regarding outside vehicle and equipment parking and storage by Scarpelli/Feck.

5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

ii.) Chair Brunner discussed the Findings of Fact regarding a variance request from Section 157.147(B)(2) and 157.149(B) requiring off-street parking areas shall be paved with asphaltic concrete or comparable hard-surfaced, all-weather, dustless material. Chair Brunner read each finding and the PZHC answered as follows regarding this variance request:

- 1.) No
- 2.) No
- 3.) Yes
- 4.) No
- 5.) No
- 6.) Yes – amended from Staff's pre-filled reply.
- 7.) No

- 8.) Yes
- 9.) Yes

Motion to approve the revised Findings of Fact regarding Section 157.147(B)(2) and 157.149(B) requiring off-street parking areas shall be paved with asphaltic concrete or comparable hard-surfaced, all-weather, dustless material by Scarpelli/Myers.

5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

- iii.) Chair Brunner discussed the Findings of Fact regarding a variance request from Section 157.149(D) in regards to lighting. Chair Brunner read each Findings of Fact and the PZHC agreed with Staff's pre-filled replies as submitted.

Motion to approve the Findings of Fact on a variance from Section 157.149(D) regarding lighting by Myers/Feck

5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

OTHER BUSINESS:

Chair Brunner recommended all commissioner members to conduct site visits regarding upcoming agenda items and potentially asked for ID Badges for each commissioner.

Management Analyst Bottalico asked if Fences Section should be under the PZHC's authority to hear first. The PZHC agreed to proceed with exploring that adoption.

ADJOURNMENT:

Motion to adjourn the PZHC meeting at 7:13 pm by Commissioner Steneck, seconded by Commissioner Myers. Motion Carries by unanimous voice vote.

Respectfully submitted,
Franco Bottalico, Management Analyst

CALL TO ORDER

Chairperson Brunner called to order the Planning and Zoning & Historic Commission (“PZHC”) meeting on Thursday, February 2, 2023, at 6:00 pm.

ROLL CALL:

Commissioners Brunner, Krueger, Reyes-Brahar, Scarpelli, and Steneck were present.

Commissioners Feck and Myers were absent.

Also in attendance: Management Analyst Franco Bottalico and Building Inspector Chris Ranieri.

APPROVAL OF MINUTES: None

PUBLIC COMMENT: None

Motion to amend the order of the agenda to hear the 590 Healy, LLC item before the Elgin Mall Corp. item by Scarpelli/Steneck.

5 Ayes (Brunner, Krueger, Reyes-Brahar, Scarpelli, Steneck). 0 Nays. Motion Carries.

NEW BUSINESS:

1.) Public Hearing Regarding Petition from 590 Healy, LLC for:

A request for a Special Use for CCDD Salvage and Reprocessing of concrete and asphalt for the property 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.

Motion to open the public hearing by Krueger/Reyes-Brahar.

5 Ayes (Brunner, Krueger, Reyes-Brahar, Scarpelli, Steneck). 0 Nays. Motion Carries.

Persons wishing to be heard were sworn in by Management Analyst Bottalico.

Jeff Moyer of 590 Healy, LLC and Steve Kaminski of Mackie Civil Engineering Consultants gave the PZHC a background and their belief for this use in this area. Steve Kaminski stated that they are asking for a special use permit for the specific site located on that property to continue this CCDD use.

Jeff Moyer stated a permanent irrigation system for dust control is the plan.

A discussion ensued.

Motion to close the public hearing by Krueger/Reyes-Brahar.

5 Ayes (Brunner, Krueger, Reyes-Brahar, Scarpelli, Steneck). 0 Nays. Motion Carries.

Motions on Recommendations

A request for a Special Use for CCDD Salvage and Reprocessing of concrete and asphalt for the property 590 Healy Road, East Dundee IL, 60118 PIN 01-30-300-009-0000 in the M-1 Manufacturing District.

Motion to recommend approval of the special use request by Scarpelli/Steneck with the following conditions: i) crushing and recycling of concrete and asphalt and the resale would only apply, and all other uses under the special use permit would not apply; ii) hours of operation between 6am to 4pm Monday through Saturday; iii) applicant will provide staff-approved screening around the special use site; iv) work

with staff to provide a finished hard-surface area near the street visible entrance and within 48 months of the start of their operation

5 Ayes (Brunner, Krueger, Reyes-Brahar, Scarpelli, Steneck). 0 Nays. Motion Carries.

Findings of Fact

Chair Brunner moved on to the Findings of Fact for the special use request regarding CCDD Salvage and Reprocessing of concrete and asphalt. Chair Brunner read each finding and the PZHC answered as follows regarding this variance request:

- 1.) Yes – amended from Staff’s pre-filled reply.
- 2.) Yes
- 3.) Yes
- 4.) Yes
- 5.) Agreed with staff’s pre-filled reply.

Motion to approve the amended Findings of Fact to number one regarding salvage and reprocessing of concrete and asphalt by Steneck/Scarpelli.

5 Ayes (Brunner, Feck, Myers, Steneck, Scarpelli). 0 Nays. Motion Carries.

2.) Public Hearing Regarding Petition Elgin Mall Corp for:

Motion to open the public hearing by Krueger/Reyes-Brahar.

5 Ayes (Brunner, Krueger, Reyes-Brahar, Scarpelli, Steneck). 0 Nays. Motion Carries.

Chair Brunner gave a background to the text amendment recommendation and the reason for it. Management Analyst Bottalico advised this definition would make sense for this use and was reviewed and approved by the village attorney.

Persons(s) wishing to be heard were sworn in by Management Analyst Bottalico and a discussion ensued. Applicants’ attorney, Dan Shapiro, answered some questions to the PZHC and then provided the PZHC with a background and plan for the indoor mall at this location.

Applicant, Rosa Lael, advised the board that her smaller scale indoor mall like her company’s would be a good fit as larger malls are scaling down/slowing down. She stated that out of her vendors 30 out of 87 carpool or are dropped off with respects to an parking concerns at this location. Applicant stated about 1-2 employees work each vendor/unit.

Commissioner Reyes-Brahar inquired on garbage pickup, the applicant stated they will pick up every other Wednesdays but they have a compactor and recycling baler on site, but can be changed if needed.

A discussion ensued on construction methods.

Commissioner Scarpelli advised the applicant that the tattoo vendor would need a special use permit.

Attorney Shapiro advised all of the applicants’ businesses would have individual licenses.

Motion to close the public hearing by Steneck/Krueger.

4 Ayes (Brunner, Krueger, Scarpelli, Steneck). 0 Nays. Reyes-Brahar Abstained. Motion Carries.

- i) A text amendment to Chapter 157 of the Village of East Dundee Zoning Ordinance in Section 157.003 *Rules and Definitions*, to add "Indoor Mall" and to Section 157.050(F)(1)(c)(1), *Retail uses*, to add "Indoor Mall" as "S" Special Use in the B-3 Business District.

A motion made to add indoor mall to allowable use table was made by Commissioner Scarpelli but died due to a lack of a second.

The PZHC crafted the following definition for indoor mall:

INDOOR MALL. A retail complex over 50,000 sq. ft. with one singular address containing a variety of individual stores and often restaurants and other individual business establishments housed in a single building sharing a common interior space where no other clear primary use can be assigned. All permitted uses in the Business District B-3 shall be permitted in an Indoor Mall.

Motion to recommend the definition to Section 157.003 as drafted by the PZHC by Scarpelli/Krueger.
3 Ayes (Brunner, Krueger, Steneck). 1 Nays. Reyes-Brahar Abstained. Motion Carries

Motion to approve the text amendment to Section 157.050(F)(1)(c)(1) to add Indoor Mall as a special use in the B-3 by Krueger/Scarpelli.

3 Ayes (Brunner, Krueger, Steneck). 1 Nays. Reyes-Brahar Abstained. Motion Carries.

- ii) A request for a Special Use for an Indoor Mall multi-tenant facility for the property located at 535 Dundee Ave., East Dundee IL, 60118 portion of PIN 03-26-227-007 in the B-3 Business District; and

Chair Brunner moved on to the Findings of Fact for the special use request regarding the indoor mall. Chair Brunner read each finding and the PZHC agreed with staff's pre-filled reply.

Motion to approve the Findings of Fact for 535 Dundee Ave. special use as presented by staff by Steneck/Scarpelli.

3 Ayes (Brunner, Krueger, Steneck). 1 Nays. Reyes-Brahar Abstained. Motion Carries.

A discussion ensued on the indoor mall's operation and grounds. Further, applicant stated that US Mail is addressed to the business with each individual business's suite number on it.

Applicant stated the flooring is currently polished concrete but have not decided on the flooring type.

Motion to recommend approval of the special use by Scarpelli/Brunner with the following condition: no tenant's storage / display shall reach above the wall line of each individual tenant's unit.

3 Ayes (Brunner, Krueger, Steneck). 1 Nays. Reyes-Brahar Abstained. Motion Carries.

ADJOURNMENT:

Motion to adjourn the PZHC meeting at 8:15 pm by Commissioner Steneck, seconded by Commissioner Krueger.

5 Ayes (Brunner, Krueger, Reyes-Brahar, Scarpelli, Steneck). 0 Nays. Motion Carries

Respectfully submitted,

Franco Bottalico, Management Analyst

DRAFT

Memorandum



To: Planning and Zoning & Historic Commission

From: Franco Bottalico, Assistant to the Village Administrator

Subject: Live Entertainment Discussion

Date: March 2, 2023

Action Requested:

Staff recommends the Planning and Zoning & Historic Commission (“PZHC”) review the attached information regarding live entertainment/music and DJ’s (both indoor and outdoor) and determine a direction to proceed with that supports the business community and the residential neighbors. This may be a recommendation to staff to bring existing businesses into compliance via the special use process, or requesting that staff work with the Village attorneys to draft proposed amendments to definitions, regulations, and the Zoning Ordinance for the PZHC and/or village board to consider at a future meeting. No official action will be taken at the meeting on March 2, 2023.

Background and Summary:

East Dundee is fortunate to have many restaurant/bar establishments that offer a variety of entertainment to patrons. Some of these businesses have been hosting live bands and/or DJs on various days of the week, inside and outside of their building on their property. This has created some issues with nearby residents who have voiced concerns that this sometimes occurs on weekdays, often times outdoors, or sometimes the level of noise emanating from inside becomes too loud.

The above concerns could be regulated via the special use process which would have been required prior to a business that matches this use commencing operation, but were never put in place. The PZHC should discuss and recommend if the special use process is the preferred path for staff to proceed in bringing the existing businesses into compliance. Alternatively, should the PZHC determine that the special use process is not the preferred path, the PZHC can recommend to the village board of trustees updated definitions, regulations, and text amendments to consider to address the issues.

Staff has asked a representative from the police department and village attorney to be present at the March 2, 2023 PZHC meeting to help guide the PZHC in discussing these matters and drafting recommendations for the village board to consider.

Staff Analysis and Recommendations:

The table from Section 157.050(F)(1) is below, and states that a restaurant with live entertainment or dancing requires a special use permit in B-1, B-2, and B-3. Currently, no restaurant holds a special use permit to allow live entertainment or dancing. The only tool village staff have at regulating this is by referring to Section 93.11, *Noises* - its copy is attached.

Allowable uses of land and buildings: P: Permitted by-right S: Permitted by special use permit	Downtown Business District (B-1)	Community Business District (B-2)	Service Business District (B-3)	Automotive Service Business District (B-4)	Office District (O-D)
(d) Clubs, restaurants, taverns and lodging uses.					
1. Clubs, lodges and meeting halls.					
Clubs, lodges and meeting halls; private, fraternal or religious with no <u>live entertainment</u> or dancing	P	P	P		P
Clubs, lodges and meeting halls; private, fraternal or religious with <u>live entertainment</u> or dancing	S	S	S		S
2. Restaurants, specialty foods and taverns.					
Brew pub	P	P	P		
Delicatessen	P	P	P	P	S
Ice cream shop	P	P	P	P	S
Restaurant; no <u>live entertainment</u> or dancing	P	P	P	P	S
Restaurant; with <u>live entertainment</u> or dancing	S	S	S	P	
Restaurant; drive-in or drive-through facilities		S	S	P	
Taverns	P	P	P		S

Definition:

Currently, the Zoning Ordinance does not define what live entertainment can be considered and how it may differ from live music, whether a band or a DJ is present to perform on site. Also, East Dundee's municipal code does not specify a business that is both a restaurant and a tavern; this may be referred to a "bar" at times. In West Dundee's Zoning Regulations, Section 10-2-1 provides the following definition:

NIGHTCLUB: An establishment serving food and/or liquor and providing music and space for dancing by patrons only. A nightclub shall not include an "adult business".

Permitted Hours and Days:

The East Dundee Zoning Ordinance does not specify permitted hours and days or areas of a property where live entertainment can occur. Because live entertainment is part of a special use, it would have been potentially made a condition by the village board of trustees, however there are no operating restaurants at present that have a special use permit for this topic.

Frequency:

The duration of how many times per day or per week to allow such use should be considered in order to preserve a balance between businesses and residential neighbors and to discourage an establishment from become a nuisance to neighboring properties, whether they be commercial or residential.

Special Use vs Permitted Use Designation:

As mentioned above, no restaurant to date has been granted a special use for this. The PZHC can consider either continuing the requirement on a case by case basis when an application is submitted, or can draft regulations on definition and scope of use and not require a special use.

Existing Tools in the Municipal Code:

Two sections in our code exist that help guide staff: One is the noise ordinance which is a reactive solution, the other is similar to a special use permit but only relates to outside dining with respects to live entertainment.

1.) Section 93.11(D) in the East Dundee Noise ordinance states the following:

(D) Application for special permit.

(1) Applications for a special permit for relief from the noise restrictions designated in this section on the basis of undue hardship may be made to the

Village Administrator. Any permit granted hereunder shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that the permit shall be effective.

(2) Permit issuance shall be provided if the following conditions are found:

(a) The additional time is necessary for the applicant to alter or modify his or her activity or operation to comply with this section; or

(b) The activity, operation, or noise source will be of temporary duration and cannot be done in a manner that would comply with other divisions of this section; or

(c) No other reasonable alternative is available to the applicant.

(3) The Village Administrator may prescribe any conditions or requirements he or she deems necessary to minimize the adverse effects upon the community or the surrounding community or the surrounding neighborhood.

2.) Section 151.027(A)(9), titled “*Specifications for outside dining area requires a license*”, states the following: *Live entertainment shall be governed by the rules set forth in this chapter.* However, no further guidance on this matter can be interpreted in this Chapter. Attached is a copy of this ordinance for the PZHC’s review.

Attachments:

Memo from Chief of Police


Section 93.11 Noise Ordinance

Section 151.027 Specifications for Outside Dining License Ordinance

Memorandum



To: Franco Bottalico, Assistant to the Village Administrator

From: James R Kruger, Chief of Police 

Subject: PZH Commission Music Discussion

Date: February 23, 2023

The Police Department has received a number of loud music complaints over the last several years. The majority of the complaints have been focused on live music rather than recorded music. We have also experienced different levels of concern whether the complaints were emanated from the central business district or in a residential area.

In the past, the Police Department has received calls related to loud live music from Diamond Jim's. These calls precipitated an amendment to Title 93, Section 11.E, Prohibited Noises in 2014. This amendment added the decibel standard. After some enforcement and a change of ownership this business has not experienced any recent complaints.

We have also received complaints from Rosie O'Hare's due to live music. Some of these complaints were from the special event they sponsored last year, but we have also received some complaints from our nearby residents and West Dundee residents due to live music. There are no barriers or any sound baffling at all.

There is some contraction in our ordinance as the original "plainly audible" standard for amplified music is still in the code in Title 93, Section 11.B.3.b.2. It prohibits sound in any zoning district that is heard 50 feet from the property line 10:30 PM to 7:00 AM weekdays, and Midnight to 7:00 AM weekends. This standard states:

"For the purposes of this section, PLAINLY AUDIBLE means any sound which clearly can be heard, by unimpaired auditory senses based upon a direct line of sight of 50 feet or more. However, words or phrases need not be discernable. The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound."

While there is an understanding the decibel standard was passed to address the business district, the ordinance text does not limit it to a specific geographic area and it does have a different standard of 25 feet from the property line and allows up to 65 dBA 6:00 PM to 11:00 PM weekdays and 75 dBA on weekends.

Based upon our experience, the Police Department recommends the following for consideration:

- Live music should be contained within four walls for sound baffling. Whether inside a structure, or four opaque walls of an outside garden type facility designed to baffle sound to direct music and other noise upward if there is no roof.
- Live music, in all cases should cease no later than 11:00 PM.
- Recorded music emanating from outside speakers of an establishment should cease by 11:00 PM, such as from a terrace or open patio.
- Building codes should be addressed to require sound baffling between adjacent businesses within the same structure.
- Outside patios that adjoin more than one business should be required to lower the sound level to a mutually compatible level or be required to be a joint or common feed.

If you have any other questions, please let us know.

§ 93.11 NOISE.

(A) *Findings.* It is hereby declared that it is in the interest of the public health and welfare of the people of the village that the hours and days of operation of strip mines, stone quarries, gravel mines, saw mills and all other uses, operations and endeavors which do or are likely to produce loud and disturbing noises need regulation.

(B) *Prohibited noises.*

(1) *Prohibitions generally.*

(a) It is unlawful to make or cause to have made any noise or sounds of such volume or of such nature as to cause annoyance to the residents of the village.

(b) It is unlawful to disturb the peace or quiet by the creating of excessive and unnecessary noise.

(2) *Horns and whistles.* It is unlawful to blow or cause to be sounded any horn, whistle, or other signaling device of any unreasonably loud or harsh sound in the village except as a signal for starting or stopping work or in emergencies as to avoid or to prevent injury to persons or property.

(3) *Audio, musical, and similar equipment.*

(a) It is unlawful to play, use, operate, or permit to be played or operated, in any building or on any public or private premises any radio, phonograph, microphone, musical instrument, television, loudspeaker, sound amplifier, or similar equipment in such a manner as to disturb the peace, quiet, or comfort of neighboring residents, except in conjunction with a village-permitted special event or block party.

(b) 1. In all zoning districts, the operation of any radio, phonograph, microphone, musical instrument, television, loudspeaker, sound amplifier, commercial music amplification or reproduction equipment or similar equipment between the hours of 10:30 p.m. and 7:00 a.m. Sunday through Thursday, and between the hours of midnight and 7:00 a.m. Friday and Saturday, in such a manner as to be plainly audible more than 50 feet beyond the property line of the premises from which the noise is emanating, shall be *prima facie* evidence of a violation of this section.

2. For the purposes of this section, **PLAINLY AUDIBLE** means any sound which clearly can be heard, by unimpaired auditory senses based upon a direct line of sight of 50 feet or more. However, words or phrases need not be discernable. The detection of the rhythmic bass component of the music is sufficient to constitute a plainly audible sound.

(c) No person shall cause or permit to be emanated or emitted from any such device any lewd, obscene, profane, or indecent language or sounds, or any false representation of any matter, product, or project advertised thereby, the sale of which is prohibited by law, ordinance, or statute.

(d) It is prohibited to play, use, operate, or permit to be played, used, or operated any radio, television, musical instrument, phonograph, loudspeaker, sound amplifier, or similar equipment for producing sound which is audible upon the public streets of the village for the purpose of commercial advertising or of attracting the attention of the public to any building or structure except when a permit has been first procured from the Village Administrator as required by this code.

(4) *Engine exhaust.* It is unlawful to discharge into the open air the exhaust of any steam engine, stationary internal combustion engine, motorboat, or motor vehicle except through a muffler or other device which will effectively prevent loud or explosive noises therefrom.

(5) *Defect in vehicle or load.* It is unlawful to use any automobile, motorcycle, vehicle, wagon, or cart so defective or loaded in such a manner as to create loud or unnecessary grating, grinding, rattling, or other noises.

(6) *Refuse collection.* It is unlawful for any refuse collector or firm to collect, gather, load, remove, empty, haul, or otherwise transport any refuse, recycling, or other waste materials from any container, dumpster, or other storage unit within the village, except between the hours of 6:00 a.m. and 7:00 p.m. on any day.

(7) *Construction activities.* Any activity in the construction of any building or structure (including excavation, demolition, alteration, or repair), or the laying of pavement, including but not limited to the making of an excavation, clearing of surface land, and loading or unloading materials, equipment, or supplies, anywhere in the village shall be permitted only between the hours of 7:00 a.m. and 8:00 p.m., Monday through Saturday; 8:00 a.m. and 8:00 p.m., on Sunday.

(8) *Lawn, garden, and landscape maintenance activities.* Any lawn, garden, or landscape maintenance activities involving the operations of any gasoline or electric powered equipment, including without limitation mowers, tractors, trimmers, vacuums, blowers, tillers, hedge clippers, grinders, shredders, chainsaws, sod cutters, or other equipment the use of which is attended with a noise that is plainly audible at a distance of 50 feet from the boundaries of the premises upon which such equipment is operated or used, shall be permitted only between the hours of 7:00 a.m. and 8:00 p.m., Monday through Saturday; 8:00 a.m. and 8:00 p.m., on Sunday.

(C) *Exemptions.* The following exemptions shall be provided from the terms and restrictions provided in this section:

(1) Street sweeping operations on public right-of-ways, public parking lots, or private parking lots in non-residential zoning districts.

(2) Construction and lawn maintenance operations performed by or on behalf of the village or Dundee Township Park District on publicly owned property.

(3) Construction and/or lawn maintenance activities required as a result of a storm or emergency situation to provide for the protection, safety, and welfare of the village.

(4) Work related to sewer, water, power, or utility interruptions.

(5) Snow removal operations on any public or private property, parking lot, or right-of-way.

(D) *Application for special permit.*

(1) Applications for a special permit for relief from the noise restrictions designated in this section on the basis of undue hardship may be made to the Village Administrator. Any permit granted hereunder shall contain all conditions upon which the permit has been granted and shall specify a reasonable time that the permit shall be effective.

(2) Permit issuance shall be provided if the following conditions are found:

(a) The additional time is necessary for the applicant to alter or modify his or her activity or operation to comply with this section; or

(b) The activity, operation, or noise source will be of temporary duration and cannot be done in a manner that would comply with other divisions of this section; or

(c) No other reasonable alternative is available to the applicant.

(3) The Village Administrator may prescribe any conditions or requirements he or she deems necessary to minimize the adverse effects upon the community or the surrounding community or the surrounding neighborhood.

(E) *Prohibited noises.*

(1) *Noise measurement.* Sound level measurements for this division (E) shall be made with a properly calibrated sound level meter Type 2 or better using the A-weighted network in accordance and conforming with the noise measurement standards, promulgated by the American National Standards Institute and Testing Procedures (ANSI) for measurement of sound levels on an averaged A-weighted sound pressure level which is exceeded 10% of the time in any measurement period designated as dBA.

(2) *Noise limitation.* No person or business shall cause, allow or permit the emission of sound within the village that exceeds 65 dBA, except between 6:00 p.m. and 11:00 p.m. on Friday and Saturday that exceeds 75dBA, when measured 25 feet or more from the property line of private property or noise source if not on private property.

(1981 Code, § 12.11) (Am. Ord. 00-29, passed 12-18-2000; Am. Ord. 12-53, passed 7-16-2012; Am. Ord. 14-39, passed 11-17-2014) Penalty, see § 93.99

§ 151.027 SPECIFICATIONS FOR OUTSIDE DINING AREA REQUIRES A LICENSE.

(A) Outside dining areas are a privilege provided pursuant to a license. Said license may be granted by the Village Board upon recommendation from the Liquor Commission. If no alcohol is to be served, the license may be granted by the Village Board in its sole and exclusive discretion at their regular board meeting or any special board meeting. Outside dining areas permitted in this section are defined as those areas on private property. The issuance of this license does not waive any other ordinance requirements. The intent is to provide outside dining areas that are beneficial to patrons, residents, and businesses in East Dundee, as determined by:

(1) The outside dining area shall be enclosed by a minimum three-foot high wall, fence, or structure designed to be decorative and to prevent unauthorized entry. The maximum height of such fence or wall shall be eight feet.

(2) At least five feet of public right-of-way must be provided and maintained at all times for pedestrian traffic.

(3) At least ten feet of public right-of-way traffic must be provided between the outdoor dining area and vehicular traffic.

(4) The outside dining area shall have ingress and egress for emergency purposes and for handicap accessibility.

(5) The outside dining area shall not have a covered roof, although umbrellas, awnings, screening, and the like may be allowed, and a limited roof structure may be permitted over any service bar.

(6) No signs shall be attached to any furniture, umbrellas, awnings, or other structure related to the operation of the outdoor dining area.

(7) No permanent fixtures are to be installed and only those fixtures authorized by the permit and shown in the diagram may be stored in the public right-of-way when the outdoor dining area is not in operation. Should the licensee not utilize the sidewalk as authorized for a period of 48 hours or more, all the tables and materials must be removed.

(8) A service bar or service window for the service of alcoholic beverages may be permitted in the outside dining area. Permission for the sale of alcoholic beverages must be secured from the Liquor Commission prior to issuance of an Outdoor Dining/Sidewalk Café Permit.

(9) Live entertainment shall be governed by the rules set forth in this chapter.

(10) Outside meal seating will be permitted; however, no alcohol shall be served or consumed in the outside seating area no later than 12:00 a.m. Sunday through Thursday, and 1:00 a.m. Friday and Saturday.

(11) The outside dining area seating shall not be used in division (A) above for calculating the required number of seats for this liquor license classification.

(12) Seating for the outdoor dining area is to be restricted to the right-of-way approved by the village.

(13) The outside dining area seating capacity when combined with the indoor seating capacity shall meet the requirements of the State Plumbing Code and village plumbing ordinances with regard to restroom facilities.

(14) Persons issued a permit for an outdoor dining area/sidewalk café shall maintain the sidewalk area in a clean and safe condition. The permit holder shall clean said area at the end of each business day, so as not to have any food or drink leftovers remaining. The permit holder shall wash daily the sidewalk area approved by the village for the outdoor dining area/sidewalk café removing any food or drink residue.

(15) If the outdoor dining area interferes with a public event planned on the public right-of-way, the public event shall take precedence. The village will endeavor to notify the licensee 30 days in advance of the scheduled event.

(16) Such other requirements as may reasonably be imposed by the Liquor Commission taking into account the unique circumstances of the licensee's premises and location.

(B) Every applicant for a permit to maintain, operate or conduct an outdoor seating area shall file an application with the Village Clerk upon a form provided by the Village Clerk and pay a filing fee as set forth in the Village Annual Fee Schedule, which shall not be refundable.

(C) Application/policy requirements.

(1) Permits for operation of an outdoor dining area will be issued for operation between May 1 and November 1.

(2) The application for a permit to operate an outdoor dining area must include the following:

(a) A certificate of insurance in the amount of \$1,000,000 naming the Village of East Dundee as an additional insured, which must be renewed each year the outdoor dining area is in operation.

(b) A signed hold harmless agreement.

(c) A diagram of the proposed layout of the outdoor dining area, including sizes of fixtures and their location. A layout is to be submitted for approval should the layout change in any way from the layout originally approved by the village. The village may reduce the requested number of tables to provide for safe pedestrian passage.

(d) A formal letter requesting permission including information such as dates and right-of-way requested is required for first-time applicants.

(D) The permit is not transferable in any manner.

(E) Periodic inspections and response to complaints will be conducted by the Building Official.

(F) Any violation of the requirements set forth herein will result in the following:

(1) First notice of violation will result in a written notice of correction.

(2) Second notice of violation will result in a suspension of the permit for a two week period.

(3) Third notice of violation will result in revocation of the permit for the remainder of the calendar year.

(G) All licenses issued in accordance with this section shall be governed by the General Licensing Provisions as contained within Title XI, Business Regulations, Chapter 110, of the Village Code.

(Ord. 2001-17, passed 9-17-2001; Am. Ord. 04-22, passed 6-21-2004; Am. Ord. 06-17, passed 6-5-2006; Am. Ord. 06-33, passed 8-21-2006; Am. Ord. 16-13, passed 4-25-2016)