

**AN ORDINANCE AMENDING TITLE XI BUSINESS REGULATIONS
OF THE CITY OF FORT WAYNE CODE OF ORDINANCES TO ADD
A NEW CHAPTER 122, ESTABLISHING THE DESIGNATED
OUTDOOR REFRESHMENT AREA.**

WHEREAS, new legislation was recently passed by the State of Indiana as I.C. § 7.1-3-31 *et. seq.* ("DORA Act") which authorizes the City of Fort Wayne ("City") to establish not more than seven (7) designated outdoor refreshment area ("DORA") provided that the Common Council of the City of Fort Wayne ("Council") adopts an ordinance with certain findings and provisions adhering to the DORA Act; and

WHEREAS, Council and the City Administration believe it is in the best interests of the citizens of the city to establish a designated DORA to support growth, investment, walkability, vendor flexibility, recreation, customer spending, and overall revenue while ensuring that the DORA is administered in an orderly fashion in accordance with state and local laws and regulations.

NOW, THEREFORE, BE IT ORDAINED, by the Common Council of the City of Fort Wayne, Indiana, as follows:

Section 1.

**CHAPTER 122: DESIGNATED OUTDOOR
REFRESHMENT AREA**

- 122.01 Definitions
- 122.02 Effect of Chapter
- 122.03 Application of State and Local Laws
- 122.04 Insurance and Public Liability
- 122.05 DORA Regulations
- 122.99 Penalty

§ 122.01 DEFINITIONS.

(A) *Definitions.* All definitions in I.C. §7.1-3-31 *et seq.*, as amended, shall apply to this Ordinance. The following terms shall also have the meanings ascribed to them herein:

(1) **CRAFT MANUFACTURER.** An entity that holds:

- a. A small brewery permit under I.C. 7.1-3-2-7(5); or
- b. A farm winery permit under I.C. 7.1-3-12; or
- c. An artisan distiller's permit under I.C. 7.1-3-27.

(2) **DESIGNATED PERMITTEE.** A retailer permittee that operates a Licensed Premises which is located within and has received all applicable approvals to participate in a DORA.

- 1 (3) **DESIGNATED OUTDOOR REFRESHMENT AREA ("DORA").** An area
2 established pursuant to I.C. §7.1-3-31 et seq, where an individual may:
3 (i) exit the Licensed Premises of a Designated Permittee or Vendor with
4 not more than two (2) open containers of an alcoholic beverage at a
5 time, and (ii) consume the alcoholic beverages within such area.
- 6 (4) **LICENSED PREMISES.** A building, or part of a building, in which
7 alcoholic beverages are authorized to be kept, manufactured, or sold,
8 pursuant to all applicable laws and regulations.
- 9 (5) **RETAILER PERMITTEE** – Retail establishments licensed by the Indiana
10 Alcohol and Tobacco Commission ("ATC") to sell individual drinks of beer,
11 wine and liquor for consumption on the retailer's premises.
- 12 (6) **VENDOR.** An entity issued a temporary vendor designation pursuant to
13 all applicable laws and regulations and either: (i) a temporary beer or
14 wine permit, or (ii) a supplemental catering permit.

15 § 122.02 EFFECT OF CHAPTER

- 16 A. This Chapter is applicable to Retailer Permittees and Vendors who wish to
17 participate in any DORA established by the City and any person(s) who consume
18 or wish to consume alcoholic beverages within a DORA.
- 19 B. Any Retailer Permittee or Vendor wishing to participate in any DORA established
20 by the City shall abide by state and local laws.
- 21 C. It shall be unlawful for any person, sole proprietor, partnership, company,
22 corporation, applicant, vendor, restaurant, establishment, or venue to operate as
23 a Designated Permittee or Vendor within a DORA unless registered as such with
24 the City as provided in this Chapter.

25 § 122.03 APPLICATION OF STATE AND LOCAL LAWS

- 26 A. Any Designated Permittee shall follow any and all other applicable state and local
27 laws and regulations, not otherwise outlined herein, including, but not limited to,
28 littering laws, noise nuisance laws, and alcoholic beverage consumption laws.
- 29 B. Any person, sole proprietor, partnership, company, corporation, applicant,
30 vendor, restaurant, establishment, or venue who violates any state or local law
may be fined accordingly.
- C. In accordance with I.C. 7.1-3-31-11, Council may adopt an ordinance dissolving
a DORA at any time. The Council shall notify the chair of the ATC that the DORA
is dissolved.

§ 122.04 INSURANCE AND PUBLIC LIABILITY

As a condition of registration and applicant approval by the City, the City may require an owner or operator of an establishment wishing to participate as a Designated Permittee or Vendor to furnish annual certificates of insurance to the Department of Community Development naming the City as an additional insured, primary and non-contributory with coverages deemed to be acceptable to the City.

§ 122.05 DORA REGULATIONS

- A. The following regulations are intended to be in substantial compliance with I.C. § 7.1-3-31 et. seq., which may be amended from time to time.
- B. Upon the City's designation of a DORA, a person may:
 - a. Exit the Licensed Premises of a Designated Permittee with not more than two (2) open containers of an alcoholic beverage at a time; and
 - b. Consume the alcoholic beverage(s) within the DORA.
- C. Council may not establish more than seven (7) DORAs and at least one (1) Designated Permittee shall be established by Council for each DORA approved by the ATC and the City.
- D. To designate a DORA, Council must adopt an ordinance that includes at least the following in each ordinance for a proposed DORA:
 - a. A map of the proposed DORA in sufficient detail to identify the boundaries;
 - b. The boundaries of the proposed DORA, by street addresses, including street and/or block descriptions;
 - c. The locations of the proposed Designated Permittees and Vendors within the proposed DORA;
 - d. A statement conforming that the proposed DORA is consistent with the City of Fort Wayne Zoning Code;
 - e. The number, spacing and type of signage designating the DORA; and
 - f. The dates and hours of operation for the DORA, which may not violate I.C. § 7.1-3-1-14.
- E. Prior to any submission by the City to the ATC, the City, by and through its Department of Community Development, shall collect the below-described application, which may include a processing fee, and shall review all applications for completion, accuracy, proper execution, and inclusion of all necessary documentation identified on the application form and/or as determined by the City based on specific circumstances of the particular application or the particular DORA. When an application form and/or packet is complete, the City shall submit the following to the ATC:
 - a. The application for approval of the DORA;
 - b. The completed applications received by the City from retailer permittees to participate in the DORA as Designated Permittees; and
 - c. The designating ordinance adopted by the City under I.C. § 7.5-3-31-8, which designating ordinance shall be reviewed by the ATC for compliance.

- 1 F. If the designating ordinance is approved, the ATC shall issue a DORA
2 designation to each Retailer Permittee whose application was submitted to the
3 City and approved by the ATC. The ATC may approve a DORA and issue DORA
4 designations to Retailer Permittees without publication of notice or investigation
5 before the local Alcoholic Beverage Commission ("Local Commission").
- 6 G. A Vendor who is not a Designated Permittee may participate in an event or
7 festival held within a DORA as long as it has complied with I.C. § 7.1-3-31-5. A
8 Craft Manufacturer may participate in an event or festival held within a DORA as
9 provided in the Craft Manufacturer's scope of permit. The ATC may issue the
10 permit and designation without publication of notice or investigation before the
11 Local Commission.
- 12 H. A Designated Permittee may allow a person to exit the Licensed Premises with
13 not more than two (2) open containers of an alcoholic beverage at a time. The
14 contents of an open container of alcoholic beverage may not exceed the
15 following:
16 a. Beer or flavored malt beverage of not more than sixteen (16) ounces.
17 b. Wine, cider, or hard seltzer of not more than twelve (12) ounces.
18 c. A mixed drink of not more than ten (10) ounces containing not more
19 than two (2) ounces of liquor.
- 20 I. A person may consume an alcoholic beverage purchased from a Designated
21 Permittee or Vendor anywhere within the DORA, subject to the right of any
22 Designated Permittee or business within the DORA to refuse to allow individuals
23 to enter the Licensed Premises or business with an alcoholic beverage. The City
24 may designate an "official cup", "official logo" or other means of identification for
25 purposes of administering this ordinance. Each DORA may have its own means
26 of identification as determined by the City.
- 27 J. A person may not consume an alcoholic beverage within a DORA that was
28 purchased outside of the DORA.
- 29 K. If a Designated Permittee in a DORA includes outdoor dining:
30 a. The Designated Permittee may serve alcoholic beverages in open
containers during the hours of operation and in the areas authorized by
the retailer permit; and
b. Glass containers may be allowed in the outdoor dining areas but may not
be removed from those areas into the DORA; and
c. No fencing or other enclosure of the outdoor dining area is required.
- L. A sign must be posted at each exit of a Designated Permittee and on the
Licensed Premises that informs the public of the following:
a. Any open alcoholic beverage containers purchased within the DORA must
remain within the DORA;
b. Possessing an open container of alcoholic beverages in a motor vehicle
may constitute a Class C infraction under IC 9-30-15; and
c. The dates the DORA will be open if the DORA has date restrictions.

- 1 M. The City maintains full authority and control over the sidewalks and common
2 public areas regardless of an area's status within a DORA for purposes of
3 enforcement of applicable state and local laws such as, but not limited to, public
4 intoxication, disturbing the peace, soliciting, open containers in a moving vehicle,
5 maintaining a common nuisance, or other forms of disruptions of the public
6 being able to legally traverse upon sidewalks or public ways. The City may
7 further temporarily limit the hours of operation of the DORA or temporarily limit
8 areas where open alcoholic beverages are allowed within the DORA
- 9 N. Nothing herein prohibits a business or establishment from prohibiting open
10 containers of alcoholic beverages to enter its establishment or premises nor from
11 prohibiting food or beverages purchased from another establishment to enter its
12 premises.

13 **§ 122.99 PENALTY**

- 14 A. Any person, entity, applicant, vendor or permittee who violates any provision of
15 this Chapter may be subject to the fines as follows:
16 a. Up to \$2,500 for the first violation; or
17 b. Up to \$7,500 for the second or subsequent violation.
- 18 B. Each day of the existence of any violation of this Chapter shall be a separate
19 offense.

20 SECTION 2. That this Ordinance shall be in full force and effect from and after its
21 passage, any and all necessary approval by the Mayor.

22 _____
23 Council Member

24 APPROVED as to form and legality

25 _____
26 Malak Heiny, City Attorney

27

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DIGEST SHEET

TITLE OF ORDINANCE. An Ordinance of the Common Council of the City of Fort Wayne, Indiana, Establishing the Designated Outdoor Refreshment Area.

DEPARTMENT REQUESTING RESOLUTION. Community Development

SYNOPSIS OF ORDINANCE. In accordance with I.C. §7.1-3-31, this ordinance authorizes the Fort Wayne Common Council to establish Designated Outdoor Refreshment Areas ("DORAs"), which are defined outdoor spaces where patrons can responsibly enjoy alcoholic beverages. This ordinance contains the general legislative framework that will apply to any DORA created within the City. A separate ordinance must be adopted in order to establish an actual DORA.

The ordinance underscores the importance of compliance with state and local laws and regulations, extending to matters such as littering, nuisances, and alcoholic beverage consumption. Furthermore, it grants the Council the authority to dissolve a DORA at any time.

Other provisions encompass topics such as the designation process, including the submission of a map delineating boundaries, locations of designated permittees and vendors, compliance with zoning codes, signage requirements, and permissible dates and hours of operation. The ordinance outlines the application process, review by the Department of Community Development, and the subsequent approval by the Indiana Alcohol and Tobacco Commission (ATC). Additionally, the ordinance specifies the permissible content of open containers and the City's authority to regulate public spaces within the DORA.

EFFECT OF PASSAGE. The primary objective of the program is to foster growth, investment, walkability, vendor flexibility, recreation, and business development within Fort Wayne. Similar programs have existed in the Midwest for several years, and many programs have been established in Indiana since the State created the program earlier this year.

EFFECT OF NON-PASSAGE. Failure to pass this ordinance could result in missed opportunities for the city, hindering its ability to capitalize on the economic and social benefits associated with DORAs. The city risks falling behind other municipalities that have embraced similar initiatives, potentially losing its competitive edge in attracting investment, fostering growth, and enhancing the overall quality of life for residents.

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS). This ordinance enables the Common Council to establish DORAs. There is no cost associated with adopting this ordinance.

ASSIGNED TO COMMITTEE (PRESIDENT). _____



COMMUNITY DEVELOPMENT

Vibrant. Prosperous. Growing.

Thomas C. Henry, Mayor

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Community Development
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260 427-1127 fwcommunitydevelopment.org

MEMO

To: City of Fort Wayne Common Council

Copy: City of Fort Wayne Community Development Division

From: Nancy Townsend, Community Development Director 427-2323

Subject: Approving an Ordinance Establishing Designated Outdoor Refreshment Areas

Date: December 7, 2023

Earlier this year, the Indiana Legislature passed I.C. §7.1-3-31, which allows a municipality's legislative body to establish Designated Outdoor Refreshment Areas (DORAs), which are defined outdoor spaces where patrons can responsibly enjoy alcoholic beverages. They have proven successful in neighboring states for several years, and many Indiana communities have already taken advantage of this legislation as a way to create vibrant settings that promote economic development and enhance the overall downtown experience.

In partnership with other City departments, the DID, and local business owners, Community Development has researched best practices from other cities, integrated relevant State laws, and devised a comprehensive plan for the local administration of the DORA program, which includes the following key elements:

- A community can designate up to 7 different DORAs.
- Establishments with existing liquor licenses can apply for a Designated Permittee permit, which will allow them and their customers to participate in the DORA.
- Locations that host frequent public events, such as the Plaza at the Downtown Library, can also participate by allowing vendors to obtain permits and customers to participate.
- The type and quantity of alcoholic beverages patrons can have while walking around the DORA are limited by State law.
- The DID will act as "boots on the ground" in administration of the Downtown DORA, including maintaining signage, sanitation, and communication with businesses and other entities.
- Community Development will administer and manage the local and State permitting associated with the DORA.

Community Development hereby requests that the Common Council approve the attached ordinance enabling the creation of DORAs in Fort Wayne, as well as a companion ordinance establishing the city's first DORA in a portion of downtown.

Thank you for your consideration. Please do not hesitate to reach out if you have any questions.

Nancy Townsend

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