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ARTICLE 711
PRIVATE OUTDOOR DESIGNATED AREAS

711.01 Purpose and Intent

Pursuant to the provisions of West Virginia Code §8-12-26 and §60-7-8g, one or more private outdoor designated areas may be created within the City.

711.02 Definitions.

- (a) “Commissioner” means the West Virginia Alcohol Beverage Control Commissioner.
- (b) “Private Outdoor Designated Area” means public property that has become a legally demarcated area established by a municipal ordinance as set forth in §8-12-26 of this code for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.
- (c) “Qualified permit holder” means the holder of a Class A license issued under §60-7-1 et seq. of the West Virginia State Code.

711.03 Private Outdoor Designated Area

- (a) There is hereby established Private Outdoor Designated Areas, hereinafter “PODAs,” which shall be designated and managed as described herein and applicable state code.

- (1) Downtown PODA. The Downtown PODA shall begin at the intersection of the eastern 8th Street sidewalk and the northern boundary of 4 1/2 Alley and shall continue northerly parallel to 8th Street to a point ±230 feet south/southeast of Veterans Memorial Boulevard, then continue northeast to a point on the western sidewalk of 10th Street that is ±185 feet south/southeast of the intersection of 10th Street and Veterans Memorial Boulevard, then continue southerly parallel to the western 10th Street sidewalk to the intersection with the southern 3rd Avenue sidewalk and 10th St, then continue easterly to a point ±160 feet east/northeast of the intersection of the eastern 10th Street sidewalk and the southern 3rd Avenue sidewalk, then continue southerly to a point ±160 feet east/northeast of the intersection of eastern 10th Street sidewalk and the southern boundary of 4 1/2 Alley, then shall continue westerly the intersection of western 10th Street sidewalk and the southern boundary of 4 1/2 Alley, then north to the intersection of western 10th Street sidewalk and the northern boundary of 4 1/2 Alley, then shall continue westerly to the beginning point. The Downtown PODA shall include the public rights-of-way within the boundary area and the buildings at or within the following addresses:

3-61 Pullman Square; 412-418 8th Street; 220-289 Ninth Street; 301-335 Ninth Street; 404-420 Ninth Street; 310-322 Tenth Street; 410-422 Tenth Street; 800-898 Third Avenue; 900-952 Third Avenue; 1001 Third Avenue; 801-848 Fourth Avenue; 900-999 Fourth Avenue; 1001-1019 Fourth Avenue.

A map of the Downtown PODA is made a part of this ordinance.

The Downtown PODA is, at the time of the passage of this ordinance, zoned C-3, Downtown Commercial, which permits the service and consumption of liquor, wine, nonintoxicating beer and nonintoxicating craft beer.

It is estimated that a minimum of two police officers and one public works employee will be needed to be available to ensure public safety and efficient operations in the Downtown PODA.

(2) RESERVED.

711.04 Special Exception Permit Required.

(a) Any restaurant, bar, or other business licensed by the State of West Virginia with a valid business license that authorizes the sale of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer by the drink may apply for an annual Private Outdoor Designated Area Special Exception Permit (PODA Permit) to allow service to patrons for on-premises consumption at a certain public property designated by ordinance as a private outdoor designated area.

(b) Requirements.

(1) Applicant must be located in an established PODA with a door for the safe ingress and egress of members, patrons, and guests to and from the PODA. The door shall comply with all building and fire codes.

(2) Applicant must submit an application to the City on the form that shall be provided.

(3) Applicant must submit a copy of the intended floor plan of any private outdoor area. The floor plan should indicate at minimum the placement of the door used for ingress and egress.

(4) Applicant must possess an active business license.

(5) No PODA permit shall be granted without approval of the City's Planning Division.

(6) Any applicant that intends to place tables, chairs, or other items on the public sidewalk and either does not have an active outdoor dining permit at the time of application or intends to expand an established outdoor service area must have approval from the fire marshal's office and the public works director or designee.

(7) Verification of zoning approval including a conditional use permit that includes any private outdoor area to be utilized for seating and serving patrons.

(c) Upon approval of the PODA Permit, the mayor or designee shall notify the commissioner of the identity of qualified permit holders that will be applying for permits set forth in West Virginia Code §60-7-8g.

(d) The mayor or designee may suspend a private outdoor designated area immediately when in the interest of public safety.

(e) Any business with a PODA Permit that also holds a valid outdoor dining area permit in accordance with Article 1340 *et seq.* of this code may continue to operate those areas in conjunction with the private outdoor designated area subject to the commissioner's requirements.

711.05 Signage.

At a minimum, every point where a pedestrian may exit the PODA by way of a public sidewalk shall have minimum of one sign placed designating the end of the PODA. The sign must be mounted in such a way and be made of a material that will ensure the sign will last for the entirety of the season the PODA is open.

711.06 Days/Hours of Operation.

Any PODA may operate from April through October. No PODA may be open except for the days and times listed herein.

(a) The hours of operation for the Downtown PODA shall be will be Thursday from 5:00 p.m. to 11:00 p.m., Friday from 5:00 p.m. to 11:00 p.m., and Saturday from 11:00 a.m. to 11:00 p.m.

(b) RESERVED.

711.07 Safety, Health, and Sanitation.

- (a) All alcoholic beverages including, but not limited to, liquor, wine, nonintoxicating beer, and nonintoxicating craft beer shall be served in approved, non-glass containers, not greater than 18 fluid ounces.
- (b) Public Waste Receptacles in the PODA.
 - (1) The mayor or designee shall make available to the public disposable waste receptacles the hours of PODA operation. This requirement may be modified by the mayor or designee when inclement weather or other outside factors make placement of disposable waste receptacles unsafe or unreasonable.
 - (2) Public waste receptacles, including both permanent and disposable receptacles, shall be placed no less than 1 per half-block.
 - (3) Public waste receptacles, including both permanent and disposable receptacles, shall be emptied as needed, but at a minimum of once per day of operation. The mayor or designee shall cause permanent public waste receptacles to be emptied every Thursday before the PODA hours of operation begin and at least once a day on all other days of operation.
- (c) Participating businesses within the PODA shall make available adequate restroom facilities, whether permanent or portable, to serve their members and guests during all the hours of PODA operation in accordance with West Virginia Code §60-7-8g(c)(7).
- (d) All businesses operating within the PODA must comply with all requirements of the Cabell-Huntington Health Department.

711.08 Rules Governing Patrons in Private Outdoor Designated Areas.

- (a) Notwithstanding any prohibition in Article 521 of this code, a person may possess an opened container of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer at an outdoor location within a PODA during the hours of operation authorized by this ordinance if all of the following apply:
 - (1) opened container of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer was purchased from a PODA permit holder located in the PODA; and
 - (2) the liquor, wine, nonintoxicating beer, and nonintoxicating craft beer is in a container approved under this ordinance and by the West Virginia Alcohol Beverage Control Commissioner.
- (b) Subsection (a) of this section does not authorize a person to do either of the following:
 - (1) Leave a PODA while possessing an open container of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer
 - (2) Possess an opened container of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer while being in or on a motor vehicle within a PODA.

711.99 Enforcement.

The City shall provide the commissioner copies of all non-compliance and violations including criminal violations. The commissioner shall enforce all qualified permit holders operate in accordance with requirements set forth in West Virginia Code §11-16-1 *et seq.* and West Virginia Code chapter 60.
