

**AN ORDINANCE ESTABLISHING A MUNICIPAL RIVERFRONT
DEVELOPMENT PROJECT TO BE KNOWN AS THE “DOWNTOWN DINING
DISTRICT”
IN THE CITY OF FORT WAYNE**

WHEREAS, in 2003, the City of Fort Wayne (“City”) adopted a long-term downtown action plan known as the “Downtown Fort Wayne Blueprint for the Future” to establish the foundational economic development tools for enhanced downtown development opportunities (the “Blueprint”); and

WHEREAS, the City incorporated the Blueprint into the Allen County-Fort Wayne Comprehensive Plan in 2007; and

WHEREAS, the City desires to continue the current progress in the redevelopment of downtown as envisioned by the Blueprint; and

WHEREAS, Ind. Code § 7.1-3-20-16, a copy of which is attached hereto as Appendix “A”, authorizes the issuance of certain, non-transferrable permits to sell alcoholic beverages for on-premise consumption in a restaurant on land or in a historic river vessel within a municipal riverfront development project without regard to the quota provisions of Ind. Code § 7.1-3-22; and

WHEREAS, Ind. Code § 7.1-3-20-16(d), Ind. Code § 7.1-3-20-16.1(b), and 905 Ind. Admin. Code 1-20-1 (copies of Ind. Code § 7.1-3-20-16.1 and 905 Ind. Admin. Code 1-20-1 are attached hereto as Appendices “B” and “C” respectively) specify the criteria that an applicant must meet to qualify for an alcohol permit within a municipal riverfront development project; and

WHEREAS, 905 Ind. Admin. Code 1-47-2, a copy of which is attached hereto as Appendix “D”, specifies additional criteria to qualify for an alcohol permit within a municipal riverfront development project for certain applicants that do not meet the distance criteria set forth in Ind. Code § 7.1-3-20-16(b); and

1 WHEREAS, Ind. Code § 7.1-3-19-17, (attached hereto as Appendix “E”) permits the
2 local legislative body to require formal written commitments as a condition of eligibility for
3 a license within a municipal riverfront development project; and

4 WHEREAS, communities across the State of Indiana have used municipal riverfront
5 development projects as an effective means of encouraging riverfront and/or downtown
6 development; and

7 WHEREAS, in part because of the success of municipal riverfront development
8 projects in other communities, the City’s Common Council (“Common Council”) finds it in
9 the best interest of the City to designate an area of the downtown as a municipal riverfront
10 development project (the “Project”) as authorized by Ind. Code § 7.1-3-20-16(d); and

11 WHEREAS, the designation will allow the Indiana Alcohol and Tobacco
12 Commission (“ATC”) to issue off-quota permits to sell alcoholic beverages within the
13 boundaries of the Project to those proprietor-applicants that meet the requirements under the
14 foregoing state statutes and corresponding administrative rules, which, in turn, will encourage
15 additional development downtown as envisioned by the Blueprint.

16 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF**
17 **THE CITY OF FORT WAYNE, INDIANA:**

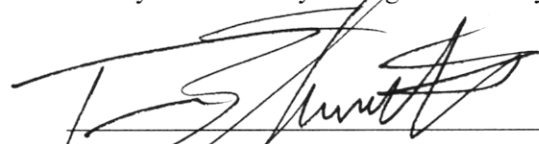
18 Section 1. That the City of Fort Wayne hereby establishes a municipal
19 riverfront development project to be known as the “Downtown Dining District”, the
20 boundaries of which are set forth on the attached Exhibit “A” which is incorporated by
21 reference and adopted herein. The Downtown Dining District boundaries shall be deemed
22 to include those properties on the exterior of, but contiguous with the streets and right of
23 ways that comprise the exterior boundary of the Downtown Dining District as depicted on
24 Exhibit “A.”

25 Section 2. That the City of Fort Wayne hereby requires an applicant for a
26 liquor license within the municipal riverfront development project boundaries, to enter into a
27 formal written commitment as contemplated in Ind. Code § 7.1-3-19-17, a copy of which is
28 set forth on the attached Exhibit “B” which is incorporated by reference and adopted herein.

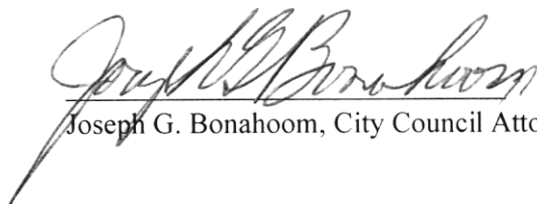
1 Section 3. That all proprietor-applicants within the Downtown Dining District
2 that satisfy the requirements of Ind. Code § 7.1-3-19-17, Ind. Code § 7.1-3-20-16(d) and §
3 7.1-3-20-16.1(b) and the corresponding administrative rules set forth in 905 Ind. Admin.
4 Code 1-20-1 and 905 Ind. Admin. Code 1-47-2 (if applicable) shall be eligible to apply for a
5 221-3 Riverfront alcohol permit in accordance with state law.

6 Section 4. Documentation and information required of any applicant as part of
7 the applicant's application for a 221-3 Riverfront alcohol permit as outlined in Section 7.1-3-
8 20-16.1, which documentation and information is only obtainable from the City of Fort
9 Wayne including, but not limited to, a detailed map showing the definite boundaries of the
10 entire Municipal Riverfront Development Project, the location of the proposed permit within
11 the project and detailed information concerning the expenditures of the State and City funds
12 on the Municipal Riverfront Development Project, shall be provided by the City of Fort
13 Wayne to the applicant within thirty (30) days of the date the applicant has requested the
14 information in writing.

15 Section 5. That this resolution shall be in full force and effect from and after its
16 passage and approval by the Mayor, unless rescinded by resolution by the legislative body.

17 
18 Thomas E. Smith, Council Member

19 Approved as to Form and Legality:

20 
21 Joseph G. Bonahoom, City Council Attorney



Joseph G. Bonahoom
joeb@b-blegal.com

Otto M. Bonahoom
of Counsel

December 10, 2015

VIA EMAIL

diane.brown@cityoffortwayne.org

michelle.chambers@cityoffortwayne.org

Diane Brown
Michelle Chambers
City of Fort Wayne

**Re: Resolution No. 15-11-03 – Municipal Riverfront Development Project
Downtown Dining District**

Dear Diane & Michelle:

I am forwarding to you Resolution No. 15-11-03. At the Council meeting on December 8, 2015, this particular resolution was passed as twice amended. For your review and for completion of this resolution so that it may be passed on to the Mayor and then properly documented, I am providing you with both a red-lined and clean copy.

The amendments are as noted in red-line form on the red-lined copy. The first amendment is the amendment that appears in Section 1. The second amendment is the language that now appears in Section 4. The previous Section 4 has been renumbered to Section 5.

I would appreciate it if you would process this through normal channels. I cannot recall what the vote was on this particular resolution, I only remember that it passed.

Very truly yours,

BONAHOOM & BOBILYA, LLC

Joseph G. Bonahoom

JGB:pao

Attachments

X:\City Council of Fort Wayne-373-JGB\CC members Past\Smith, Tom\Downtown Dining\1001.Brown.Chambers.letter.enclosing.ordinance.doc

Public Hearing Date, if applicable _____

Read the first time in full and on motion by Councilman Thomas Smith,
Read the second time by title and referred to the Regulations
Committee. Read the third time in full and on motion by Councilman
Thomas Smith, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	<u>9</u>	_____	_____	_____
BENDER	<u>✓</u>	_____	_____	_____
CRAWFORD	<u>✓</u>	_____	_____	_____
DIDIER	_____	_____	<u>✓</u>	_____
HARPER	<u>✓</u>	_____	_____	_____
HINES	<u>✓</u>	_____	_____	_____
JEHL	<u>✓</u>	_____	_____	_____
PADDOCK	<u>✓</u>	_____	_____	_____
SHOAFF	<u>✓</u>	_____	_____	_____
SMITH	<u>✓</u>	_____	_____	_____

DATED: 12-8-15 _____
Michelle D. Chambers
MICHELLE D. CHAMBERS, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as
(ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE
(RESOLUTION) NO. R-106-15 on the 8th day of
December, 2015

ATTEST: _____
Michelle D. Chambers
MICHELLE D. CHAMBERS,
CITY CLERK
John N. Crawford
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 16th day
of December, 2015, at the hour of 10:00 o'clock Am. E.S.T.

Michelle D. Chambers
MICHELLE D. CHAMBERS, CITY CLERK

Approved and signed by me this 16th day of December
2015, at the hour of 1:30 O'clock PM E.S.T.

Thomas C. Henry
THOMAS C. HENRY, MAYOR



Joseph G. Bonahoom
joeb@b-blegal.com

Otto M. Bonahoom
of Counsel

December 10, 2015

VIA EMAIL

diane.brown@cityoffortwayne.org

michelle.chambers@cityoffortwayne.org

Diane Brown
Michelle Chambers
City of Fort Wayne

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Joseph G. Bonahoom

JGB:pao

Attachments

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**AN ORDINANCE ESTABLISHING A MUNICIPAL RIVERFRONT
DEVELOPMENT PROJECT TO BE KNOWN AS THE “DOWNTOWN DINING DISTRICT”
IN THE CITY OF FORT WAYNE**

WHEREAS, in 2003, the City of Fort Wayne (“City”) adopted a long-term downtown action plan known as the “Downtown Fort Wayne Blueprint for the Future” to establish the foundational economic development tools for enhanced downtown development opportunities (the “Blueprint”); and

WHEREAS, the City incorporated the Blueprint into the Allen County-Fort Wayne Comprehensive Plan in 2007; and

WHEREAS, the City desires to continue the current progress in the redevelopment of downtown as envisioned by the Blueprint; and

WHEREAS, Ind. Code § 7.1-3-20-16, a copy of which is attached hereto as Appendix “A”, authorizes the issuance of certain, non-transferrable permits to sell alcoholic beverages for on-premise consumption in a restaurant on land or in a historic river vessel within a municipal riverfront development project without regard to the quota provisions of Ind. Code § 7.1-3-22; and

WHEREAS, Ind. Code § 7.1-3-20-16(d), Ind. Code § 7.1-3-20-16.1(b), and 905 Ind. Admin. Code 1-20-1 (copies of Ind. Code § 7.1-3-20-16.1 and 905 Ind. Admin. Code 1-20-1 are attached hereto as Appendices “B” and “C” respectively) specify the criteria that an applicant must meet to qualify for an alcohol permit within a municipal riverfront development project; and

WHEREAS, 905 Ind. Admin. Code 1-47-2, a copy of which is attached hereto as Appendix “D”, specifies additional criteria to qualify for an alcohol permit within a municipal riverfront development project for certain applicants that do not meet the distance criteria set forth in Ind. Code § 7.1-3-20-16(b); and

WHEREAS, Ind. Code § 7.1-3-19-17, (attached hereto as Appendix “E”) permits the local legislative body to require formal written commitments as a condition of eligibility for a license within a municipal riverfront development project; and

WHEREAS, communities across the State of Indiana have used municipal riverfront development projects as an effective means of encouraging riverfront and/or downtown development; and

WHEREAS, in part because of the success of municipal riverfront development projects in other communities, the City’s Common Council (“Common Council”) finds it in the best interest of the City to designate an area of the downtown as a municipal riverfront development project (the “Project”) as authorized by Ind. Code § 7.1-3-20-16(d); and

WHEREAS, the designation will allow the Indiana Alcohol and Tobacco Commission (“ATC”) to issue off-quota permits to sell alcoholic beverages within the boundaries of the Project to those proprietor-applicants that meet the requirements under the foregoing state statues and corresponding administrative rules, which, in turn, will encourage additional development downtown as envisioned by the Blueprint.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

Section 1. That the City of Fort Wayne hereby establishes a municipal riverfront development project to be known as the “Downtown Dining District”, the boundaries of which are set forth on the attached Exhibit “A” which is incorporated by reference and adopted herein. The Downtown Dining District boundaries shall be deemed to include those properties on the exterior of, but contiguous with the streets and right of ways that comprise the exterior boundary of the Downtown Dining District as depicted on Exhibit “A.”

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Section 4. Documentation and information required of any applicant as part of the applicant’s application for a 221-3 Riverfront alcohol permit as outlined in Section 7.1-3-20-16.1, which documentation and information is only obtainable from the City of Fort Wayne including, but not limited to, a detailed map showing the definite boundaries of the entire Municipal Riverfront Development Project, the location of the proposed permit within the project and detailed information concerning the expenditures of the State and City funds on the Municipal Riverfront Development Project, shall be provided by the City of Fort Wayne to the applicant within thirty (30) days of the date the applicant has requested the information in writing.

Section 54. That this resolution shall be in full force and effect from and after its passage and approval by the Mayor, unless rescinded by resolution by the legislative body.

Thomas E. Smith, Council Member

Approved as to Form and Legality:

Joseph G. Bonahoom, City Council Attorney

X:\City Council of Fort Wayne-373-JGB\CC members Past\Smith, Tom\Downtown Dining\Downtown Dining District--Proposed Ordinance
(revised 12.9.15).doc

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Approved as to Form and Legality:

Joseph G. Bonahoom, City Council Attorney

X:\City Council of Fort Wayne-373-JGB\CC members Past\Smith, Tom\Downtown Dining\Downtown Dining District--Proposed Ordinance
(revised 12.9.15).clean.doc

**CITY OF FORT WAYNE
AGREEMENT**

**WITH _____
REGARDING AN APPLICATION FOR A RIVERFRONT LIQUOR LICENSE**

This Agreement (the "Agreement") is entered as of the Effective Date (as hereinafter defined) by the City of Fort Wayne, Indiana (the "City") and _____ ("Applicant") (the City and Applicant being collectively referred to herein as the "Parties"), regarding the establishment proposed at _____, Fort Wayne, IN 46802. The Parties, in consideration of the mutual covenants, obligations and agreements set forth herein, agree as follows:

WHEREAS, Fort Wayne Common Council Ordinance _____-15 (the "Ordinance") provides that all applicants seeking a Riverfront liquor license as described in Ind. Code 7.1-3-20-16 shall enter into a formal agreement with the City; and

WHEREAS, the Parties desire to enter into this Agreement to encourage: (a) downtown revitalization; (b) expansion and strengthening of the downtown dining landscape; and (c) encourage riverfront development; and

WHEREAS, the Applicant will be investing in the development and construction of a dining establishment within the boundaries of the municipal riverfront development area;

NOW, THEREFORE, for and in consideration of the mutual considerations hereinafter set forth, the parties hereto agree as follows:

1. **Purpose of the Agreement.** The purpose of this Agreement is to establish the mutually contemplated and agreed upon requirements for initial and annual renewal recommendations for the Applicant's Riverfront liquor license
2. **Definitions.**
 - a. The "Application" means the Downtown Dining District Liquor License Application, dated _____, a copy of which is attached hereto as Exhibit 1 and incorporated hereby by reference.
 - b. "Permit" means the Applicant/Permit Holder's type 221-3 Riverfront Liquor License as issued by the Indiana Alcohol and Tobacco Commission.
 - c. "Effective Date" means the date on which the second of the Parties executes the Agreement.
3. **Term of the Agreement.** This Agreement shall commence on the Effective Date and shall continue until such time as the permit is lost, revoked, or not renewed.
4. **Responsibilities of Recipient.** Recipient has made certain representations and covenants to the City in the Application regarding the planned Permit premises, including the amount of private sector investment, the number of jobs to be created, and the type of establishment planned. Applicant represents and covenants that it will use its best efforts to continuously maintain in all material respects the following Eligibility Requirements and District Requirements:

Eligibility criteria:

- a. The focus of operation will be on a dining, entertainment or cultural experience rather than solely an alcohol consumption experience.
- b. The establishment is not and will not convert to be a private club, nightclub, or adult entertainment venue.

District Requirements:

- a. Establishments receiving permits within the Downtown Dining District are required to achieve within thirty-six (36) calendar months following the date on which applicant's business is open to the public, and thereafter maintain, an annual ratio of non-liquor sales to total sales of at least 50%.
- b. The licenses establishment will be actively open for business and fully operational during normal evening hours a minimum of 300 (three hundred) days per year.
- c. The Applicant shall comply with all local and ATC application and renewal procedures.
- d. The Applicant shall contribute to the Downtown Dining Association, annual dues of \$2500 (twenty five hundred dollars) for membership, payable through the Downtown Improvement District.

5. Reporting Obligations of Applicant.

- a. The Applicant shall submit to the City documentation of compliance including the following reports:
 - i. A revenue report indicating the total annual non-liquor and liquor sales.
 - ii. A report indicating the total number of days open during the last year, along with a schedule of current operating hours.
 - iii. Proof of payment to the Downtown Improvement District for the annual Downtown Dining Association dues.
- b. Annual compliance reports will be submitted to the City during the term of the agreement, no later than 90 days prior to the annual renewal date of the establishment's permit.
- c. Applicant agrees to provide supplemental and/or clarifying information and data which the City may request in writing after reviewing the information submitted by Applicant pursuant to sub paragraph a. of this Section 5, within fifteen (15) days following City's request.

Applicant shall certify under oath the accuracy of all information submitted to the City under this Section 5.

6. Non-Compliance: If the City determines in its sole discretion that the Applicant is not in compliance with the requirements of this Agreement in any material respect, the City may, following thirty (30) days written notice to Applicant which shall provide the Applicant an opportunity to explain the reasons for the noncompliance and the opportunity to cure, take any action the City deems appropriate, including the following steps:

- a. Termination of this Agreement

- b. Notice to the Indiana Alcohol and Tobacco Commission of non-compliance with the agreement, including a request for non-renewal of the Applicant/Permit Holder's Riverfront liquor license.
- c. A copy of the notice in Section 9 item b., above provided to the local ATC board and Excise office, requesting a recommendation to the state ATC office for non-renewal of the Applicant/Permit Holder's Riverfront liquor license.

Recipient hereby forever releases the City, it's officers, employees, agents, representatives, departments and divisions, from any and all claims, demands, liabilities or causes of action of every kind and nature, whether now existing or hereafter arising, both known and unknown, which Recipient has or may have against the City which is in any manner related to (a) the termination of this Agreement by the City or the Recipient for any reason or (b) the less of the Grant or the requirement to repay the Grant in any portion thereof to the City.

7. **Notice to Parties.** Any notice, statement or other communications sent to the City or the Recipient shall be sent to the following addresses, unless otherwise specifically advised.

To the City of Fort Wayne:

Carol Helton
 City Attorney – City of Fort Wayne
 200 East Berry St., Suite 430
 Fort Wayne, IN 46802
 PH: (260) 427-1395
 e-mail: Carol.Helton@cityoffortwayne.org

To _____:

 Fort Wayne, IN 46802
 PH: (260) _____
 e-mail: _____

8. **Authority to Bind.** Notwithstanding anything in this Agreement to the contrary, the signatory for the Recipient represents that he/she has been duly authorized by the Recipient to execute this Agreement and to bind the Recipient to each of the representations, covenants, and obligations of Recipient contained herein.

9. **Amendment of this Agreement.** This Agreement or any portion hereof may only be amended by a writing executed by the Parties.

10. **Assignability**. The Recipient shall not assign this Agreement or any portion thereof without the prior written consent of the City, which consent may be withheld at the City's discretion.

11. **Remedies not Impaired**. No delay or omission of any party in exercising any right or remedy available under this Agreement shall impair any such right or remedy, or constitute a waiver of any default or acquiescence thereto.

12. **Compliance with Laws**. The Recipient agrees to comply with all applicable federal, state and local laws, rules, regulations and ordinances and all provisions required thereby, whether now existing or hereafter enacted, which are included and incorporated by reference herein, in the design, development and construction of the Project, in the management and operation of the Facility, in the community outreach programs and activities, and in Recipient's performance under this Agreement.

Pursuant to I.C. '22-9-1-10 and the Civil Rights Act of 1964, Recipient shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to the hire, tenure, terms, conditions or privileges of employment, or any matter directly or indirectly related to employment, because of such person's race, color, religion, sex, disability, national origin, handicap or ancestry. Breach of this covenant may be regarded as a material breach of this Agreement.

The Recipient affirms under the penalties of perjury that the Recipient does not knowingly employ an unauthorized alien. The Recipient affirms under the penalties of perjury that the Recipient has enrolled and is participating in the E-Verify program as defined in IC 22-5-1.7-3. The Recipient agrees to provide documentation to the State of Indiana that the Recipient has enrolled and is participating in the E-Verify program. Additionally, the Recipient is not required to participate if the Recipient is self-employed and does not employ any employees. The City may terminate for default if the Recipient fails to cure a breach of this provision no later than thirty (30) days after being notified by the City.

13. **Governing Laws**. This Agreement shall be construed in accordance with and governed by the laws of the State of Indiana, notwithstanding its choice of law rules to the contrary or any other state's choice of law rules. Suit, if any, shall be brought in a court of applicable jurisdiction situated in Allen County, Indiana.

14. **Entire Agreement**. This Agreement, entered into of even date herewith, and any attachments hereto, contain the entire understanding of the Parties and this Agreement supersedes all prior agreements and understandings, oral or written, with respect to the subject matter enclosed herein and contemplated hereby.

15. **Indemnification and Release**. The Recipient shall indemnify, defend and hold harmless the City and its divisions, department, officers, employees, representatives and agents (collectively, the "Indemnitees") from and against all claims, demands, charges, lawsuits, costs and expenses (including legal costs and attorney's fees) caused by or associated with any act or omission of the Recipient and/or any of its contractors, subcontractors, vendors, suppliers, employees, representatives, licensees, invitees and/or authorized agents in connection with (a) the design, development, construction, operation, management and control of the Facility and (b) any and all activities of every kind and nature which occur in, on or about the Facility. The City shall not provide any indemnification hereunder to the Recipient. The Recipient hereby forever releases Indemnitees and each of them from any and all

claims, demands and charges, of every kind and nature, both known and unknown, whether now existing or hereafter arising, that Recipient has or may at any time in the future have against Indemnitees, or any of them, under this Agreement. In no event shall the City be liable for any direct, indirect, special, incidental, consequential or punitive damages, costs or expenses arising from any act or omission to act by any party relating in any manner to this Agreement, the Application "as amended" or the activities described herein or therein or contemplated hereby or thereby. The covenants contained in this Section 18 shall survive the expiration or termination of the Agreement for any reason.

16. **Severability**. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses, or provisions of this Agreement.

IN WITNESS WHEREOF, the Parties, by their respective duly authorized representatives, have executed this Agreement on the dates entered below.

The City of Fort Wayne

By: _____ Date: _____, 20__
Thomas C. Henry, Mayor

By: _____ Date: _____, 20__

(Repealed by Acts 1975, P.L.72, SEC.4.)

IC 7.1-3-20-16

Airport restaurants; restaurants in certain economic development areas; redevelopment projects or districts, historic river vessels, cultural centers, historic districts

Sec. 16. (a) A permit that is authorized by this section may be issued without regard to the quota provisions of IC 7.1-3-22.

(b) The commission may issue a three-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant facility in the passenger terminal complex of a publicly owned airport. A permit issued under this subsection shall not be transferred to a location off the airport premises.

(c) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a redevelopment project consisting of a building or group of buildings that:

- (1) was formerly used as part of a union railway station;
- (2) has been listed in or is within a district that has been listed in the federal National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended; and
- (3) has been redeveloped or renovated, with the redevelopment or renovation being funded in part with grants from the federal, state, or local government.

A permit issued under this subsection shall not be transferred to a location outside of the redevelopment project.

(d) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant:

- (1) on land; or
- (2) in a historic river vessel;

within a municipal riverfront development project funded in part with state and city money. A permit issued under this subsection may not be transferred.

(e) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a renovation project consisting of a building that:

- (1) was formerly used as part of a passenger and freight railway station; and
- (2) was built before 1900.

The permit authorized by this subsection may be issued without regard to the proximity provisions of IC 7.1-3-21-11.

(f) The commission may issue a three-way permit for the sale of alcoholic beverages for on-premises consumption at a cultural center for the visual and performing arts to the following:

(1) A town that:

(A) is located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); and

(B) has a population of more than twenty thousand (20,000) but less than twenty-three thousand seven hundred (23,700).

(2) A city that has an indoor theater as described in section 26 of this chapter.

(g) The commission may issue not more than ten (10) new three-way, two-way, or one-way permits to sell alcoholic beverages for on-premises consumption to applicants, each of whom must be the proprietor, as owner or lessee, or both, of a restaurant located within a district, or not more than seven hundred (700) feet from a district, that meets the following requirements:

(1) The district has been listed in the National Register of Historic Places maintained under the National Historic Preservation Act of 1966, as amended.

(2) A county courthouse is located within the district.

(3) A historic opera house listed on the National Register of Historic Places is located within the district.

(4) A historic jail and sheriff's house listed on the National Register of Historic Places is located within the district.

The legislative body of the municipality in which the district is located shall recommend to the commission sites that are eligible to be permit premises. The commission shall consider, but is not required to follow, the municipal legislative body's recommendation in issuing a permit under this subsection. An applicant is not eligible for a permit if, less than two (2) years before the date of the application, the applicant sold a retailer's permit that was subject to IC 7.1-3-22 and that was for premises located within the district described in this section or within seven hundred (700) feet of the district. A permit issued under this subsection shall not be transferred. The total number of active permits issued under this subsection may not exceed ten (10) at any time. The cost of an initial permit issued under this subsection is six thousand dollars (\$6,000).

(h) The commission may issue a three-way permit for the sale of alcoholic beverages for on-premises consumption to an applicant who will locate as the proprietor, as owner or lessee, or both, of a restaurant within an economic development area under IC 36-7-14 in:

(1) a town with a population of more than twenty thousand (20,000); or

(2) a city with a population of more than forty-four thousand five hundred (44,500) but less than forty-five thousand (45,000);

located in a county having a population of more than one hundred ten thousand (110,000) but less than one hundred eleven thousand (111,000). The commission may issue not more than five (5) licenses under this section to premises within a municipality described in subdivision (1) and not more than five (5) licenses to premises within a municipality described in subdivision (2). The commission shall

conduct an auction of the permits under IC 7.1-3-22-9, except that the auction may be conducted at any time as determined by the commission. Notwithstanding any other law, the minimum bid for an initial license under this subsection is thirty-five thousand dollars (\$35,000), and the renewal fee for a license under this subsection is one thousand three hundred fifty dollars (\$1,350). Before the district expires, a permit issued under this subsection may not be transferred. After the district expires, a permit issued under this subsection may be renewed, and the ownership of the permit may be transferred, but the permit may not be transferred from the permit premises.

(i) After June 30, 2006, the commission may issue not more than five (5) new three-way, two-way, or one-way permits to sell alcoholic beverages for on-premises consumption to applicants, each of whom must be the proprietor, as owner or lessee, or both, of a restaurant located within a district, or not more than five hundred (500) feet from a district, that meets all of the following requirements:

(1) The district is within an economic development area, an area needing redevelopment, or a redevelopment district as established under IC 36-7-14.

(2) A unit of the National Park Service is partially located within the district.

(3) An international deep water seaport is located within the district.

An applicant is not eligible for a permit under this subsection if, less than two (2) years before the date of the application, the applicant sold a retailers' permit that was subject to IC 7.1-3-22 and that was for premises located within the district described in this subsection or within five hundred (500) feet of the district. A permit issued under this subsection may not be transferred. If the commission issues five (5) new permits under this subsection, and a permit issued under this subsection is later revoked or is not renewed, the commission may issue another new permit, as long as the total number of active permits issued under this subsection does not exceed five (5) at any time. The commission shall conduct an auction of the permits under IC 7.1-3-22-9, except that the auction may be conducted at any time as determined by the commission.

(j) Subject to section 16.2 of this chapter, the commission may issue not more than six (6) new three-way, two-way, or one-way permits to sell alcoholic beverages for on-premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant on land within a municipal lakefront development project funded in part with state, local, and federal money. A permit issued under this subsection may not be transferred. If the commission issues six (6) new permits under this subsection, and a permit issued under this subsection is later revoked or is not renewed, the commission may issue another new permit, as long as the total number of active permits issued under this subsection does not exceed six (6) at any time. The commission shall conduct an auction of the permits under IC 7.1-3-22-9, except that the auction

may be conducted at any time as determined by the commission. Notwithstanding any other law, the minimum bid for an initial permit under this subsection is ten thousand dollars (\$10,000).

(Formerly: Acts 1973, P.L. 55, SEC. 1.) As amended by P.L. 85-1985, SEC. 14; P.L. 78-1986, SEC. 6; P.L. 103-1989, SEC. 2; P.L. 72-1991, SEC. 2; P.L. 12-1992, SEC. 56; P.L. 277-1993(ss), SEC. 131; P.L. 15-1994, SEC. 6; P.L. 170-2002, SEC. 55; P.L. 155-2005, SEC. 1; P.L. 214-2005, SEC. 48; P.L. 224-2005, SEC. 16; P.L. 1-2006, SEC. 148; P.L. 165-2006, SEC. 27; P.L. 10-2010, SEC. 7; P.L. 71-2012, SEC. 3; P.L. 119-2012, SEC. 80; P.L. 176-2013, SEC. 1.

Appendix B

may be conducted at any time as determined by the commission. Notwithstanding any other law, the minimum bid for an initial permit under this subsection is ten thousand dollars (\$10,000).

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by P.L.85-1985, SEC.14; P.L.78-1986, SEC.6; P.L.103-1989, SEC.2; P.L.72-1991, SEC.2; P.L.12-1992, SEC.56; P.L.277-1993(ss), SEC.131; P.L.15-1994, SEC.6; P.L.170-2002, SEC.55; P.L.155-2005, SEC.1; P.L.214-2005, SEC.48; P.L.224-2005, SEC.16; P.L.1-2006, SEC.148; P.L.165-2006, SEC.27; P.L.10-2010, SEC.7; P.L.71-2012, SEC.3; P.L.119-2012, SEC.80; P.L.176-2013, SEC.1.

IC 7.1-3-20-16.1

Municipal riverfront development project; alcoholic beverage permit requirements

Sec. 16.1. (a) This section applies to a municipal riverfront development project authorized under section 16(d) of this chapter.

(b) In order to qualify for a permit, an applicant must demonstrate that the municipal riverfront development project area where the permit is to be located meets the following criteria:

(1) The project boundaries must border on at least one (1) side of a river.

(2) The proposed permit premises may not be located more than:

(A) one thousand five hundred (1,500) feet; or

(B) three (3) city blocks;

from the river, whichever is greater. However, if the area adjacent to the river is incapable of being developed because the area is in a floodplain, or for any other reason that prevents the area from being developed, the distances described in clauses (A) and (B) are measured from the city blocks located nearest to the river that are capable of being developed.

(3) The permit premises are located within:

(A) an economic development area, a redevelopment project area, an urban renewal area, or a redevelopment area established under IC 36-7-14, IC 36-7-14.5, or IC 36-7-15.1;

(B) an economic development project district under IC 36-7-15.2 or IC 36-7-26; or

(C) a community revitalization enhancement district designated under IC 36-7-13-12.1.

(4) The project must be funded in part with state and city money.

(5) The boundaries of the municipal riverfront development project must be designated by ordinance or resolution by the legislative body (as defined in IC 36-1-2-9(3) or IC 36-1-2-9(4)) of the city in which the project is located.

(c) Proof of compliance with subsection (b) must consist of the following documentation, which is required at the time the permit application is filed with the commission:

(1) A detailed map showing:

(A) definite boundaries of the entire municipal riverfront

development project; and

(B) the location of the proposed permit within the project.

(2) A copy of the local ordinance or resolution of the local governing body authorizing the municipal riverfront development project.

(3) Detailed information concerning the expenditures of state and city funds on the municipal riverfront development project.

(d) Notwithstanding subsection (b), the commission may issue a permit for premises, the location of which does not meet the criteria of subsection (b)(2), if all the following requirements are met:

(1) All other requirements of this section and section 16(d) of this chapter are satisfied.

(2) The proposed premises is located not more than:

(A) three thousand (3,000) feet; or

(B) six (6) blocks;

from the river, whichever is greater. However, if the area adjacent to the river is incapable of being developed because the area is in a floodplain, or for any other reason that prevents the area from being developed, the distances described in clauses (A) and (B) are measured from the city blocks located nearest to the river that are capable of being developed.

(3) The permit applicant satisfies the criteria established by the commission by rule adopted under IC 4-22-2. The criteria established by the commission may require that the proposed premises be located in an area or district set forth in subsection (b)(3).

(4) The permit premises may not be located less than two hundred (200) feet from facilities owned by a state educational institution.

(e) A permit may not be issued if the proposed permit premises is the location of an existing three-way permit subject to IC 7.1-3-22-3. *As added by P.L. 72-2004, SEC. 11. Amended by P.L. 155-2005, SEC. 2 and P.L. 214-2005, SEC. 49; P.L. 185-2005, SEC. 2; P.L. 1-2006, SEC. 149; P.L. 2-2007, SEC. 131.*

ALCOHOL AND TOBACCO COMMISSION

905 IAC 1-20-1 Minimum menu requirements

Authority: IC 7.1-2-3-7; IC 7.1-3-24-1

Affected: IC 7.1-3-20-9

Sec. 1. Under the qualification requiring that a retail permittee to sell alcoholic beverages by the drink for consumption on the premises must be the proprietor of a restaurant located, and being operated, on the premises described in the application of the permittee; and under the definition of a "restaurant" as "any establishment provided with special space and accommodations where, in consideration of payment, food without lodging is habitually furnished to travelers,"—and "wherein at least twenty-five (25) persons may be served at one time;" the Commission will, hereafter, require that the retail permittee be prepared to serve a food menu to consist of not less than the following:

Hot soups.

Hot sandwiches.

Coffee and milk.

Soft drinks.

Hereafter, retail permittees will be equipped and prepared to serve the foregoing foods or more in a sanitary manner as required by law. (*Alcohol and Tobacco Commission; Reg 36; filed Jun 27, 1947, 3:00 pm: Rules and Regs. 1948, p. 58; readopted filed Oct 4, 2001, 3:15 p.m.: 25 IR 941; readopted filed Sep 18, 2007, 3:42 p.m.: 20071010-IR-905070191RFA; readopted filed Oct 29, 2013, 3:39 p.m.: 20131127-IR-905130360RFA*)

ALCOHOL AND TOBACCO COMMISSION

7.1.

(Alcohol and Tobacco Commission; 905 IAC 1-46-1; filed Oct 18, 2004, 1:25 p.m.: 28 IR 969; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)

Rule 47. Municipal Riverfront Development Projects**905 IAC 1-47-1 Application**

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 1. Application. This rule applies to an application for a permit located in a municipal riverfront development project pursuant to IC 7.1-3-20-16 where the proposed premises is located more than one thousand five hundred (1,500) feet but not more than three thousand (3,000) feet or more than three (3) blocks but not more than six (6) blocks from the river, whichever is greater. *(Alcohol and Tobacco Commission; 905 IAC 1-47-1; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)*

905 IAC 1-47-2 Eligibility for permit

Authority: IC 7.1-2-3-7

Affected: IC 4-23-2; IC 7.1-3-20-16; IC 36-7

Sec. 2. The commission may issue a permit pursuant to IC 7.1-3-20-16 for a premises, which is located within the area described in section 1 of this rule, if the following conditions are met:

- (1) The proposed permit premises must be located within the original boundaries of the municipal riverfront development project as set forth in IC 7.1-3-20-16.1(c)(1)(A).
- (2) The area within the original boundaries of the municipal riverfront development project is:
 - (A) blighted under IC 36-7-14 or IC 36-7-15.1;
 - (B) a redevelopment area under IC 36-7-14.5;
 - (C) an economic development area under IC 36-7-15.2 or IC 36-7-26; or
 - (D) a historic district established under IC 36-7-11, IC 36-7-11.1, IC 36-7-11.3, or IC 14-3-3.2 (before its repeal); and
- (3) The proposed permit premises is located in a building or structure which is designated historical pursuant to subdivision 2(D) of this rule and used primarily in connection with a community-based activity or event that is artistic or cultural in nature, including, but not limited to, music, including folk, contemporary, classical, or jazz; theatre, including media arts; dance, including contemporary or ballet; painting; sculpture; and architecture; and which may be eligible for funding from the Indiana arts commission pursuant to IC 4-23-2.

(Alcohol and Tobacco Commission; 905 IAC 1-47-2; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)

905 IAC 1-47-3 Proof of compliance criteria

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 3. Proof of compliance with this rule must consist of the following documentation, which is required at the time the permit application is filed with the commission:

- (1) A detailed map showing:
 - (A) definite boundaries of the entire municipal riverfront development project; and
 - (B) the location of the proposed permit within the project.
- (2) A copy of the local ordinance or resolution of the local governing body authorizing the municipal riverfront development project.
- (3) Detailed information concerning the expenditures of state and city funds on the municipal riverfront development project.

ALCOHOL AND TOBACCO COMMISSION

- (4) A listing of the types of events being held at the proposed permit premises pursuant to section 2(3) of this rule; and
(5) Information concerning historical characteristics of the permit premises, including, but not limited to, the age and significance within the municipality.

(Alcohol and Tobacco Commission; 905 IAC 1-47-3; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)

905 IAC 1-47-4 Nude dancing excluded

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 4. For purposes of this rule, subsection (2)(c) *[sic.]* does not include activities described in 905 IAC 1-16.1-3. *(Alcohol and Tobacco Commission; 905 IAC 1-47-4; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)*

905 IAC 1-47-5 Area incapable of development; alternative measurements

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 5. If the area adjacent to the river is incapable of being developed because the area is in a floodplain, or for any other reason that prevents the area from being developed, the distances described in section 1 of this rule are measured from the city blocks located nearest to the river that are capable of being developed. *(Alcohol and Tobacco Commission; 905 IAC 1-47-5; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)*

905 IAC 1-47-6 "Original boundaries" defined

Authority: IC 7.1-2-3-7

Affected: IC 7.1-3-20-16

Sec. 6. For purposes of this rule, the term "original boundaries" means the initial geographic parameters or boundaries of the municipal riverfront development project as determined by the governing body. *(Alcohol and Tobacco Commission; 905 IAC 1-47-6; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4021; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)*

905 IAC 1-47-7 For-profit status; not disqualifying

Authority: IC 7.1-2-3-7

Affected: IC 4-23-2; IC 7.1-3-20-16

Sec. 7. For purposes of this rule, the for-profit status of an entity applying for a permit shall not disqualify it for further consideration by the commission if it otherwise meets the criteria for eligibility of funding by the Indiana arts commission pursuant to IC 4-23-2. *(Alcohol and Tobacco Commission; 905 IAC 1-47-7; filed Aug 10, 2004, 3:30 p.m.: 27 IR 4022; readopted filed Nov 22, 2010, 2:11 p.m.: 20101222-IR-905100555RFA)*

Rule 48. (Reserved)

Rule 49. (Reserved)

Rule 50. (Reserved)

Rule 51. (Reserved)

Rule 52. Posting Signs Authorized by IC 7.1-3-1-28

(Formerly: Acts 1973, P.L.55, SEC.1.) As amended by Acts 1979, P.L.83, SEC.5.

IC 7.1-3-19-17

Formal written commitments with municipal legislative body; adopt ordinance; recommendations to local board; deny or revoke permit

Sec. 17. (a) This section applies to a permit issued under IC 7.1-3-20-16(d), IC 7.1-3-20-16(g), IC 7.1-3-20-16(k), or IC 7.1-3-20-16(l) if a local unit has adopted an ordinance requiring a formal written commitment as a condition of eligibility for a permit, as described in subsection (b).

(b) As a condition of eligibility for a permit, the applicant must enter into a formal written commitment with the municipal legislative body regarding the character or type of business that will be conducted on the permit premises. The municipal legislative body must adopt an ordinance approving the formal written commitment. A formal written commitment is binding on the permit holder and on any lessee or proprietor of the permit premises. When an application for renewal of a permit is filed, the applicant shall forward a copy of the application to the municipal legislative body. The municipal legislative body shall receive notice of any filings, hearings, or other proceedings on the application for renewal from the applicant.

(c) A formal written commitment may be modified by the municipal legislative body with the agreement of the permit holder.

(d) Except as provided in subsection (f), the amount of time that a formal written commitment is valid may not be limited or restricted.

(e) A formal written commitment is terminated at the time a permit is lost, revoked, or not renewed.

(f) If the character or type of business violates the formal written commitments, the municipality may adopt a recommendation to the local board and the commission to:

- (1) deny the permit holder's application to renew the permit; or
- (2) revoke the permit holder's permit.

(g) The commission shall consider evidence at the hearing on the issue of whether the business violated the formal written commitments. If the commission determines there is sufficient evidence that the commitments have been violated by the permittee, the commission may:

- (1) deny the application to renew the permit; or
- (2) revoke the permit;

as applicable.

As added by P.L.121-2015, SEC.1.



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COMMUNITY DEVELOPMENT

Thomas C. Henry, Mayor

MEMO

To: Common Council Members

From: Sharon Feasel – Manager-Downtown, Community Development Division

Date: November 10, 2015

Re: Municipal Riverfront Development Project

The purpose of this Ordinance is to designate the district to provide an economic development tool to encourage hospitality venues in downtown Fort Wayne. The initial purchase of a three-way liquor license is both a necessity to compete and a barrier to entry for the small owner or niche restaurateur.

The boundaries were carefully drawn taking into account the many legislative restrictions, including distance from the river, inclusion in specific types of redevelopment areas, and in an area where federal, state and/or local funds have been expended for improvements.

The incentive is valuable for Fort Wayne, as it has no cost to the General Budget, CEDIT, or any other local funding stream.

The special Riverfront liquor license (Type 221-3) obtained through this legislation does not have the same value of those owned by other established bar and restaurant owners in the downtown. These licenses may not be moved or sold, and alcohol is for on-premise consumption only.

Thank you for your consideration and if you have any questions please contact me at 427-2107.

Public Hearing Date, if applicable _____

Read the first time in full and on motion by Councilman _____,

Read the second time by title and referred to the _____

Committee. Read the third time in full and on motion by Councilman _____, placed on passage by the following vote:

	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
<u>TOTAL VOTES</u>	8		1	
BENDER	✓			
CRAWFORD	✓			
DIDIER			✓	
HARPER	✓			
HINES	✓			
JEHL	✓			
PADDOCK	✓			
SHOAFF	✓			
SMITH	✓			

DATED: _____

Michelle D. Chambers
MICHELLE D. CHAMBERS, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE (RESOLUTION) NO. _____ on the _____ day of _____, 2015

Michelle D. Chambers
ATTEST:
MICHELLE D. CHAMBERS,
CITY CLERK

John N. Crawford
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the _____ day of _____, 2015, at the hour of _____ o'clock _____ E.S.T.

Michelle D. Chambers
MICHELLE D. CHAMBERS, CITY CLERK

Approved and signed by me this _____ day of _____

2015, at the hour of _____ O'clock _____ E.S.T.

THOMAS C. HENRY, MAYOR

BILL NO. R-15-11-03

REPORT OF COMMITTEE ON REGULATIONS

December 1, 2015

*Glynn Hines, Chair
Mitch Harper, CO-Chair
All Council Members*

AN ORDINANCE ESTABLISHING A MUNICIPAL RIVERFRONT DEVELOPMENT PROJECT TO BE KNOWN AS THE "DOWNTOWN DINING DISTRICT" in the City of Fort Wayne, Indiana. **COMMITTEE ON REGULATIONS HAVE HAD SAID** Ordinance under consideration and beg leave to report back to the Common Council that said ordinance

DO PASS

DO NOT PASS

ABSTAIN

NO REC

[Handwritten signatures under DO PASS]

[Handwritten signature under ABSTAIN]

MICHELLE D. CHAMBERS

CITY CLERK

[Handwritten signature]