

AN ORDINANCE TO AMEND AND REENACT PART NINE
ENTITLED STREETS, UTILITIES, AND PUBLIC SERVICE
CODE OF THE CODIFIED ORDINANCE OF THE CITY OF
WHEELING BY CREATING A NEW SECTION IN ARTICLE
903 DESIGNATED AS SECTION 903.09 ENTITLED PRIVATE
OUTDOOR DESIGNATED AREAS IN THE CITY OF
WHEELING, WV

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF WHEELING:

WHEREAS, the West Virginia legislature has enacted 2023 Senate Bill 534 which included provisions authorizing municipalities to establish Private Outdoor Designated Areas, as defined by *W. Va. Code* §§ 8-12-26 and 60-7-8g, where customers of West Virginia Alcohol and Beverage Control Administration Class A license holders can carry their drinks with them outside of the bar, restaurant, or other establishment where it was purchased and socialize and visit other businesses within the area; and

WHEREAS, similar programs, such as the Designated Outdoor Refreshment Area (DORA) program in Ohio, have been implemented successfully to encourage community activities and promote local businesses; and

WHEREAS, similar programs for Private Outdoor Designated Areas (PODA) have been implemented in several West Virginia municipalities; and

WHEREAS, the City of Wheeling, WV wishes to establish a designated area for these purposes by adoption of an ordinance; and

WHEREAS, the West Virginia legislature has since enacted 2024 House Bill 5295, which makes certain amendments to Private Outdoor Designated Areas, including removal of the requirement that participating bars and restaurants enter a joint and several liability agreement and expansion of the licensees who may participate to any holder of a Class A, Class B, or Class S2 license issued by the West Virginia Alcohol Beverage Control Administration; and

NOW, THEREFORE, The City of Wheeling, WV hereby ordains that a new Section in Article 903 of the City Code is established, 903.09 entitled "Private Outdoor Designated Areas," as follows:

SECTION 903.09 PRIVATE OUTDOOR DESIGNATED AREA

I. Purpose and Intent.

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

II. Definitions.

Commissioner means the West Virginia Alcohol Beverage Control Commissioner.

PODA Permit means the permit issued by the City to qualified applicants allowing them to participate in the Private Outdoor Designated Area and to apply for an S4 license from the Commissioner.

Private Outdoor Designated Area means public property that has become a legally demarcated area established by a municipal ordinance as set forth in W. Va. Code § 8-12-26 for the consumption of liquor, wine, nonintoxicating beer, and nonintoxicating craft beer.

Qualified Permit Holder means the holder of a Class A, Class B or Class S2 license that elects to operate within a private outdoor designated area and that has been issued a Class S4 license pursuant to W. Va. Code §§ 60-7-1 et seq.

III. Private Outdoor Designated Areas

(a) The following area(s) is/are established as Private Outdoor Designated Areas (PODAs) in accordance with applicable state law and the provisions of this Article:

(1) Downtown/Wharf District Private Outdoor Designated Area ("PODA").

(A) Boundary. The PODA consists of the area depicted and described as follows:

(B) Map. A map of the PODA, showing all included structures, is attached and incorporated herein as well as being on file in the City Building and Planning Department; and

(C) Zoning. The zoning classification for all properties within the PODA is D-1, D-2, D-3 of the Downtown Business District and C-2 General Commercial, and consumption of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer is consistent with the zoning ordinances applicable to this area.

(D) Personnel. The PODA is regularly patrolled by police officers. In addition, Public Works employees regularly collect waste or debris left in public areas in the PODA and operate a street sweeper in the area.

- (E) Sanitation Regular waste collection includes public trash receptacles within the PODA. Participating businesses within the PODA will make available adequate restroom facilities, permanent or portable, to serve their members and guests during all hours the area is open, consistent with W. Va. Code § 60-7-8g(c)(7). All businesses operating within the PODA must comply with all requirements of the Ohio County Health Department.

(F) Operating Times. The PODA will operate Monday through Friday from 4 p.m. to 11 p.m. and Saturday and Sunday from 10 a.m. to 11 p.m. The City Manager is authorized to limit or expand the operating hours when appropriate to address events, public safety, or other business or community needs, but all expansions or limitations must be made in writing and delivered to the City Clerk to be kept with the official records of the City, and the City will make reasonable efforts to advise the public of any such changes by taking measures such as posting information on its website and/or posting signs in public areas noting the change.

Sec. IV. Private Outdoor Designated Area

A Private Outdoor Designated Area includes the public property that has become a legally demarcated area established by a municipal ordinance as set forth in West Virginia code §8-12-26 for the consumption of liquor, wine, nonintoxicating beer, and non-intoxicating craft beer. Notwithstanding other provisions of this Code, a person may possess and consume an approved container of liquor wine, nonintoxicating beer or nonintoxicating craft beer sold from a qualified applicant and permit holder, as further detailed in this Article, outdoors within a Private Outdoor Designated Area. A business operating within a Private Outdoor Designated Area may choose whether or not to permit people to enter its business with an approved open container of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer sold from a qualified applicant and permit holder.

Sec. V. Permit Required for Participating Licensees _

(a) Any restaurant, bar, or other business. person, or entity with a valid Class A, Class B. or Class S2 license issued by the Commissioner may apply for a PODA Permit to participate in the Private Outdoor Designated Area by submitting an application on forms supplied by the City.

(b) Applicants for a PODA Permit must meet the following minimum requirements:

- (1) Located in a Private Outdoor Designated Area;
- (2) Submit a floor plan showing the Class A license area for the operator;
- (3) Possess a valid City and State business license and is in good standing with the City, concerning taxes, fees and code compliance;
- (4) Possess a valid Class A, Class B or Class S2 license from the Commissioner;
- (5) Agree to use cups and/or other indicators such as wristbands to identify permitted PODA patrons, which may include purchasing authorized merchandise from the City or its affiliate;

(6) Identify all areas from which you propose to serve drinks that may be consumed in the PODA, and the entrances and exits the license area;

Sec. VI. Participation in a Private Outdoor Designated Area

- (a) Any valid Class A, Class B or Class 2 license holder issued by the Commissioner that operates in a Private Outdoor Designated Area may apply to the City Manager for the approval to operate in a Private Outdoor Designated Area, The City Manager or his/her designee shall review the application to ensure it is complete and meets the following requirements:
1. The applicant is located in an established Private Outdoor Designated Area, pursuant to this Article, with a front door in compliance with all building and fire codes for the safe ingress and egress of members patrons, and guests to and from the Public Outdoor Designated Area.
 2. The applicant has a valid city and state business license and is in good standing with the city.
 3. The applicant has a valid and appropriate private club license under West Virginia Code §60-7-1 et seq.
- (b) Once approved by the City Manager, as indicated by a letter of approval to the applicant, the license holder may apply to the West Virginia Alcohol Beverage Control Administration (“WVABCA”) for the required permit, to participate in a Private Outdoor Designated Area, as further detailed in the West Virginia Code, and in any applicable rules of the WVABCA. Upon approval by the WVABCA, the permit holder shall notify the City Manager’s office. Any business that receives the approval of the City Manager and the appropriate permit from the WVABCA may participate in a Private Outdoor Designated Area.
- (c) Participation in a Private Outdoor Designated Area does not provide a business with any authority to operate outdoor dining on the public right of way. Any business interested in participating in outdoor dining shall follow the requirements set by the City. A business with an approved outdoor dining area that is within a Private Outdoor Designated Area may operate its outdoor dining area simultaneously with its participation in a Private Outdoor Designated Area.

Sec. VII. Signs.

At minimum, every point where a pedestrian may exit the PODA by way of a public sidewalk shall have 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 it is clearly visible to patrons of the PODA.

Sec. VIII. Rules.

(a) The rules in this section, and all other provisions of this Article, establish requirements for the purpose of ensuring compliance with all state and municipal laws, and public health and safety within a private outdoor designated area. All persons entering and/or participating in a private outdoor designated area shall comply with applicable laws.

(b) Liquor, wine, nonintoxicating beer, and nonintoxicating craft beer that is taken

outside of a licensed premises into the private outdoor designated area shall be served in non-glass containers, not greater than 18 fluid ounces, approved by the City and the Commissioner in accordance with W. Va. Code§ 60-7-8g.

(c) Notwithstanding any other provision of this Code to the contrary, a person may possess an opened container of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer within a private outdoor designated area during the operating hours of the area when (1) the open container was purchased from a Qualified Permit Holder duly licensed to operate in the private outdoor designated area; and (2) the beverage is in a container authorized by this ordinance, except that this provision does not authorize possession or consumption of any liquor, wine, nonintoxicating beer, or nonintoxicating craft beer while operating or traveling in a motor vehicle.

(d) No liquor, wine, nonintoxicating beer, or nonintoxicating craft beer may be taken outside of the private outdoor designated area.

(e) All cups, containers, and other trash or litter must be disposed of in trash, recycling, or compost receptacles available within the private outdoor designated area.

(f) Businesses in the private outdoor designated area may choose to allow or prohibit alcohol consumption in their business. Liquor, wine, nonintoxicating beer, or nonintoxicating craft beer may only be brought into structures or businesses that have indicated by a posted sign that they are participating in the private outdoor designated area, whether or not they hold an appropriate license from the Commissioner.

(g) Establishment of a Private Outdoor Designated Area does not authorize any establishment to create or maintain an Outdoor Dining area on the public right-of-way except with a permit issued by the office of the City Manager.

(h) The City Manager is authorized to adopt any and all regulations necessary and convenient in implementing this Article, and to issue authoritative interpretations of any questions or inquiries regarding application of this Article to a particular situation.

(i) The City Manager may, at any time, suspend the operation of a private outdoor designated area, or portion thereof, when determined necessary in the interest of public safety or convenience, including but not limited to situations where a fair or festival is occurring in the PODA area which also serves alcoholic beverages.

