

1st Reading 5/6/24
2nd Reading 7/15/24
Passed 7/15/24
Failed
Continued To

PROPOSED ORDINANCE NO. 2024-12

ORDINANCE NO. 5898
AS AMENDED

**AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF MISHAWAKA,
INDIANA, ESTABLISHING A DESIGNATED OUTDOOR REFRESHMENT AREA**

WHEREAS, Indiana Code 7.1-3-31 authorizes the establishment of a Designated Outdoor Refreshment Area;

WHEREAS, the Common Council believes it is in the best interests of the City to create a Designated Outdoor Refreshment Area in the City's downtown, as authorized by Indiana Code 7.1-3-31 et seq, which Area is shown on the attached Map- Exhibit A.

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

Section 1. All definitions in Ind. Code 7.1-3-31 *et seq.* shall apply to this Ordinance.

Section 2. The Common Council hereby adopts the Map of the City of Mishawaka Downtown Designated Outdoor Refreshment Area attached hereto as Exhibit A and incorporated herein by reference.

Section 3. That the following area is designated as the City of Mishawaka Downtown Designated Outdoor Refreshment Area (hereinafter "Downtown DORA"):

LEGAL DESCRIPTION – A PART OF THE NORTHEAST QUARTER OF SECTION 16, TOWNSHIP 37 NORTH, RANGE 3 EAST, PENN TOWNSHIP, CITY OF MISHAWAKA, ST. JOSEPH COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 1 IN THE MILL AT IRONWORKS AS RECORDED UNDER INSTRUMENT NUMBER 1735080 IN THE OFFICE OF RECORDER OF ST. JOSEPH COUNTY, INDIANA; THENCE NORTH ALONG THE EAST RIGHT-OF-WAY LINE OF HILL STREET TO THE NORTHWEST CORNER OF SAID LOT 1; THENCE EAST ALONG THE SOUTH RIGHT-OF-WAY LINE OF IRONWORKS AVENUE, A DISTANCE OF 450' MORE OR LESS TO A WEST WALL OF COMMERCIAL TENANT SPACES AT 235 IRONWORKS AVENUE, SUITES C, D, AND E, CURRENTLY OCCUPIED BY SUN KING BREWERY; THENCE SOUTH ALONG SAID WEST WALL, A DISTANCE OF 50' MORE OR LESS TO A SOUTH WALL OF SAID COMMERCIAL TENANT SPACES; THENCE EAST ALONG SAID SOUTH WALL, A DISTANCE OF 13' MORE OR LESS TO A WEST WALL OF COMMERCIAL TENANT SPACES AT 235 IRONWORKS AVENUE, SUITES C, D, AND E; THENCE SOUTH ALONG SAID WEST WALL, A DISTANCE OF 180' MORE OR LESS TO A NORTH WALL OF A COMMERCIAL TENANT SPACE

AT 235 IRONWORKS AVENUE, SUITE A, CURRENTLY OCCUPIED BY SOCIAL CANTINA; THENCE WEST ALONG SAID NORTH WALL, A DISTANCE OF 10' MORE OR LESS TO A WEST WALL OF SAID COMMERCIAL TENANT SPACE; THENCE SOUTH ALONG SAID WEST WALL AND THE EAST EDGE OF PAVEMENT OF A ENTRANCE DRIVE TO A PUBLIC PARKING GARAGE, A DISTANCE OF 90' MORE OR LESS TO THE NORTHERN EDGE OF PAVEMENT OF W. FRONT STREET; THENCE NORTHEASTERLY ALONG SAID NORTHERN EDGE OF PAVEMENT, A DISTANCE OF 400' MORE OR LESS TO THE SOUTHERLY PROJECTED EAST LINE OF LOT 2 IN IRON WORKS PHASE II AS RECORDED UNDER INSTRUMENT NUMBER 0833003 IN SAID OFFICE OF RECORDER; THENCE NORTH ALONG THE WEST RIGHT-OF-WAY LINE OF NORTH MAIN STREET TO A NORTHEAST CORNER OF OUTLOT A IN SAID THE MILL AT IRONWORKS; THENCE NORTHWESTERLY ALONG A LINE PARALLEL TO AND 30' MORE OR LESS SOUTH OF THE SOUTH BANK OF THE ST. JOSPEH RIVER, A DISTANCE OF 185'; THENCE NORTH PARALLEL WITH SAID WEST RIGHT-OF-WAY LINE, A DISTANCE OF 7' MORE OR LESS TO THE SOUTH EDGE OF PAVEMENT OF THE RIVERWALK; THENCE WESTERLY ALONG SAID SOUTH EDGE OF PAVEMENT OF THE RIVERWALK, A DISTANCE OF 690' MORE OR LESS TO A NORTHERLY PROJECTED WEST LINE OF SAID OUTLOT A; THENCE SOUTH ALONG SAID PROJECTED WEST LINE, A DISTANCE OF 5' MORE OR LESS TO A SOUTH LINE OF SAID OUTLOT A ALSO BEING THE NORTH RIGHT-OF-WAY OF N. HILL STREET; THENCE WESTERLY ALONG SAID NORTH RIGHT-OF-WAY LINE OF N. HILL STREET, AND THE NORTH LINE OF LOT 2 IN SAID THE MILL AT IRONWORKS, A DISTANCE OF 260' MORE OR LESS TO A POINT 90' WEST OF THE WEST RIGHT-OF-WAY LINE OF N. HILL STREET; THENCE SOUTH PARALLEL TO SAID WEST RIGHT-OF-WAY LINE OF N. HILL STREET, A DISTANCE OF 550' MORE OR LESS TO THE SOUTH EDGE OF A SIDEWALK NORTH OF W. FRONT STREET; THENCE EAST ALONG SAID SOUTH EDGE OF A SIDEWALK, A DISTANCE OF 250' MORE OR LESS TO THE SOUTHERLY PROJECTED WEST LINE OF SAID LOT 1 IN THE MILL AT IRONWORKS; THENCE NORTH ALONG SAID PROJECTED WEST LINE, A DISTANCE OF 12' MORE OR LESS TO THE POINT OF BEGINNING. SAID DESCRIBED TRACT CONTANING 11.89 ACRES, MORE OR LESS.

Except all residential property is excluded.

Section 4. The Common Council hereby adopts the Map of the City of Mishawaka Downtown Designated Outdoor Refreshment Area attached hereto as Exhibit B and incorporated herein by reference. This map reflects designated permittee and event vendor locations within the Downtown DORA as follows:

- A. Sun King Brewing, 235 Ironworks Avenue, Suite C, Mishawaka, Indiana 46544;
- B. Ball Band Biergarten, 230 Ironworks Avenue, Mishawaka, Indiana 46544;
- C. Mishawaka Public House, 330 N. Hill Street, Mishawaka Indiana 46544;
- D. Ironworks Event Center, 414 N. Hill Street, Mishawaka, Indiana 45644;
- E. Social Cantina, 235 Ironworks Avenue, Suite A, Mishawaka, Indiana 46544;
- F. Future – Mill at Ironworks, Phase II
- G. Future – Mill at Ironworks, Phase II
- H. Temporary Event Vendor

Section 5. The Common Council finds that the establishment of the Downtown DORA is consistent with the City of Mishawaka's Zoning Code.

Section 6. The Common Council hereby approves and adopts the minimum signage designating the Downtown DORA attached hereto as Exhibit C and incorporated herein by reference and directs the City to place the signage at the designated locations on Exhibit C. The Common Council further recognizes that additional signage designating the Downtown DORA may be warranted and necessary. Therefore, the Council hereby authorizes the City of Mishawaka Board of Public Works and Safety (hereinafter "BPWS") full authority to increase the number of or otherwise change the signage in its sole discretion.

Section 7. The Common Council hereby establishes the following dates and hours of operation for the Downtown DORA:

- A. The Downtown DORA will be only open on the days of the week and hours established under the terms of this ordinance and consistent with the terms of I.C. 7.1-3.1-14. The Downtown DORA shall be in effect following the passage of this Ordinance on Wednesdays, Thursday, and Friday from 4:00 p.m. to 10:00 p.m., with last call at 9:30 p.m.; from 12:00 p.m. to 10:00 p.m. on Saturday with last call at 9:30 p.m.; and from 11:00 a.m. to 4:00 p.m. on Sunday with last call at 3:30 p.m.
- B. By no later than October 31, 2024, the Common Council's Public Health and Safety Committee shall conduct a review and evaluation of the operation of the Downtown DORA. This review and operation will include the consideration of whether the Downtown DORA will continue in operation indefinitely. Additionally, the review and evaluation will include consideration of the expansion of the Downtown DORA to include a larger portion of the Central Business District. The Common Council must take formal action by ordinance to make changes to the Downtown DORA and all such changes must comply with the requirements of Indiana law, particularly Indiana Code 7.1-3-31, as from time to time amended.
- C. The Mayor of the City of Mishawaka, acting in conjunction with the Chief of Police, is authorized to further restrict days and hours of operation and/or to suspend the operation of the Downtown DORA on a temporary basis and as is necessary in order to preserve the public health and safety of the community, subject to the subsequent approval of the Common Council.
- D. Consistent with general principles of Indiana law, the Common Council retains the general authority to terminate the operation of the Downtown DORA at any time following the passage of an appropriate ordinance.

Section 8. The following retailer permittees have submitted a completed application to the City to participate in the Downtown DORA as a Designated Permittee and the City finds that each of them is an appropriate Designated Permittee and requests that the Indiana Alcohol and Tobacco Commission issue each a "refreshment area designation:

- A. Mishawaka Public House, 330 N. Hill Street, Mishawaka Indiana 46544; and
- B. Social Cantina, 235 Ironworks Avenue, Suite A, Mishawaka, Indiana 46544.

The Common Council hereby authorizes the BPWS to administer the approval of any and all requests for designated permittee status within the Downtown DORA, subject to the requirements

of Indiana law. This delegation of authority to the BPWS shall include the approval of a request by a designated permittee to expand operations into an area within the Downtown DORA that is outside of a designated patio area and the approval of a request by a vendor holding a temporary vendor designation to participate in an event or festival held within the Downtown DORA. However, in no event shall the BPWS approve a request by a temporary vendor to establish a permanent presence in the Downtown DORA until and unless the temporary vendor is able to meet the statutory requirements for consideration as a designated permittee.

Section 9. The Common Council finds that nothing in this ordinance prohibits a business, landlord, or other establishment located within the Downtown DORA from prohibiting open containers of alcoholic beverages to enter their premises or from prohibiting alcoholic beverages purchased from another establishment to enter their premises. However, the City of Mishawaka maintains full authority and control over the sidewalks and common area in the Downtown DORA and no individual or entity may prohibit or limit open containers in such public spaces within the Downtown DORA except for the Mishawaka Police Department.

Section 10. Upon receipt of a “refreshment area designation” from the Indiana Alcohol and Tobacco Commission, a designated permittee as defined by Indiana law shall remove all stanchions, fencing, or other means of separation previously required by law from all common areas, sidewalks, and right of way of the City of Mishawaka as provided by Ind. Code 7.1-3-31-15. The failure to remove said enclosures within seventy-two (72) hours of receiving notice from the City shall result in a fine in accordance with the terms of the municipal code.

Section 11. In accordance with Ind. Code 7.1-3-31 *et seq.*:

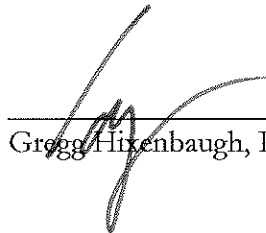
- A. A person may consume an alcoholic beverage purchased from a designated permittee or vendor anywhere within the refreshment area boundaries, subject to the right of any retailer permittee or business within the refreshment area to refuse to allow individuals to enter the licensed premises or business with an alcoholic beverage.
- B. All designated permittees and vendors may allow a person to exit the designated permittee’s or vendor’s licensed premises with not more than two (2) open containers of an alcoholic beverage at a time. The contents of an open container may not exceed the following:
 - 1. Beer or flavored malt beverage of not more than sixteen (16) ounces;
 - 2. Wine, cider, or hard seltzer of not more than twelve (12) ounces; or
 - 3. A mixed drink of not more than ten (10) ounces containing not more than two (2) ounces of liquor.
- C. A sign, as required by Ind. Code 7.1-3-31-16, must be posted at each exit of a designated permittee and on the licensed premises of a vendor.
- D. Designated permittees and vendors operating within the Downtown DORA are required to use only non-breakable plastic bottles, plastic cups, or paper cups for alcoholic beverages consumed outside of licensed premises but within the refreshment area. Furthermore, all such bottles or cups must be affixed with a logo approved by the BPWS that indemnifies the container for use only in the Downtown DORA.
- E. The BPWS shall approve an appropriate public safety plan for the Downtown DORA. The public safety plan must reflect the Common Council’s expectation that the provision of public safety services to the Downtown DORA will not result in the

dedication of public safety personnel and resources to the Downtown DORA in a manner that is detrimental to the City of Mishawaka as a whole. In addition, the public safety plan must authorize the Chief of Police in his or her sole discretion to mandate the use of private security resources within the Downtown DORA as is necessary.

- F. The BPWS shall also approve an appropriate sanitation plan for the Downtown DORA.
- G. Glass containers may only be allowed in a designated permittee's outdoor dining area and may not be removed into the Downtown DORA.

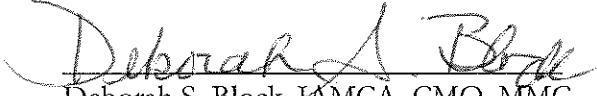
This Ordinance shall be in full force and effect upon its passage, approval, and publication pursuant to Indiana law.

Passed by the Common Council of the City of Mishawaka, Indiana, on this 15 day of July, 2024.




Gregg Hixenbaugh, President

ATTEST:

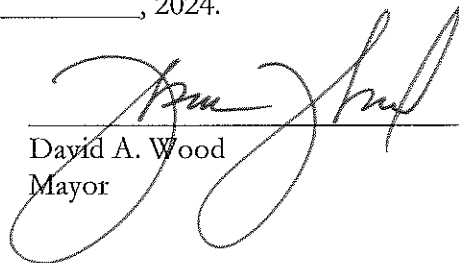

Deborah S. Block, IAMCA, CMO, MMC
City Clerk

Presented to the Mayor this 16 day of July, 2024.



Deborah S. Block, IAMCA, CMO, MMC
City Clerk

Approved this 16th day of July, 2024.



David A. Wood
Mayor