

ORDINANCE NO.: 29-2015

AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, ADOPTING AMENDED CRITERIA FOR LICENSE ALLOCATION AND APPLICANT COMPLAINT REQUIREMENTS AND APPROVING A FORMAL WRITTEN COMMITMENT AS A CONDITION OF ELIGIBILITY FOR A HISTORIC DOWNTOWN LIQUOR LICENSE

WHEREAS, pursuant to Ind. Code §7.1-3-20-16(g), the Indiana Alcohol and Tobacco Commission (“IATC”) was authorized after June 30, 2005, to issue ten (10) additional on-premises alcoholic beverage permits, without regard to the quota provisions of I.C. 7.1-3-22, within the historic downtown district in Valparaiso, Indiana (“Downtown License”); and

WHEREAS, on August 22, 2005, the Common Council of the City of Valparaiso, Indiana (“Common Council”) adopted Resolution No. 15-2005 which adopted Objectives and Criteria for the Issuance of Valparaiso Downtown Alcoholic Beverage Permits (“Objectives and Criteria”) and established the Valparaiso Downtown Alcoholic Beverage Licensing Committee (“Licensing Committee”); and

WHEREAS, Resolution No. 15-2005 remains in full force and effect; and

WHEREAS, during the 2015 legislative session, the Indiana General Assembly enacted and the Indiana Governor signed P.L. 121-2015 which is at codified Ind. Code § 7.1-3-19-17; and

WHEREAS, Ind. Code § 7.1-3-19-17 includes provisions that: (1) further clarify the prohibition on the transfer of Downtown Licenses; (2) require a holder of a Downtown License to execute Written Commitments with the City as to the “character and type” of restaurant; (3) afford a greater oversight role to the Licensing Committee and City in the Downtown License renewal process; and (4) terminate a Downtown License if the holder ceases business operations for more than six (6) months; and

WHEREAS, in response to the passage of P.L. 121-2015, City Staff has drafted an amendment to the Objective and Criteria. The Amended Criteria for License Allocation and Applicant Compliance Requirements is attached hereto, incorporated herein and marked as **Exhibit “A”** to this Ordinance; and

WHEREAS, also in response to the passage of P.L. 121-2015, City Staff has drafted a Formal Written Commitment and Use Agreement. The Formal Written Commitment and Use Agreement is attached hereto, incorporated herein and marked as **Exhibit “B”** to this Ordinance; and

WHEREAS, the Licensing Committee previously met in order to review both the Amended Criteria for License Allocation and Applicant Compliance Requirements and Formal Written Commitment and Use Agreement; and

WHEREAS, in accordance with the requirements of Ind. Code § 7.1-3-19-17, the Common Council is desirous of adopting this Ordinance in order to both formally adopt and approve the Amended Criteria for License Allocation and Applicant Compliance Requirements and Formal Written Commitment and Use Agreement.

NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF THE CITY OF VALPARAISO, INDIANA, AS FOLLOWS:

Section 1. *Incorporation of Recitals.* The foregoing recitals (or “whereas clauses”) are findings of fact by the Common Council and are incorporated into this Ordinance by reference.

Section 2. *Approval of Amended Criteria for License Allocation and Applicant Compliance Requirements.* The Common Council hereby approves and formally adopts the Amended Criteria for License Allocation and Applicant Compliance Requirements attached as ***Exhibit “A”*** to this Ordinance. The Amended Criteria for License Allocation and Applicant Compliance Requirements shall supersede and replace, in all respects, the Objectives and Criteria for the Issuance of Valparaiso Downtown Alcoholic Beverage Permits previously adopted by the Common Council on August 22, 2005.

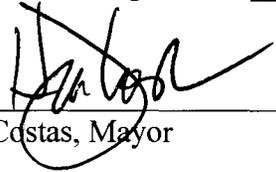
Section 3. *Approval of the Formal Written Commitment and Use Agreement.* The Common Council hereby approves and formally adopts the Formal Written Commitment and Use Agreement attached as ***Exhibit “B”*** to this Ordinance. In conformance with the requirements of Ind. Code §7.1-3-19-17, as a condition of eligibility for a Downtown License, all applicants are required to enter into the Formal Written Commitment and Use Agreement with the City. The Formal Written Commitment and Use Agreement shall be binding upon the permit holder of the Downtown License and on any lessee or proprietor of the permit premises.

Section 4. *Severability.* If any portion of this Ordinance shall be held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect any other portion of provision of this Ordinance.

Section 5. *Repealer.* All ordinances or resolutions or parts of ordinances or resolutions inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency. It is provided, however, that such repeal shall be only to the extent of such inconsistency, and in all other respects the ordinances or resolutions or parts of ordinances or resolutions are hereby ratified, re-established and confirmed.

Section 6. *Effective Date.* This Ordinance shall be in full force and effect from and after its adoption and the procedures required by law.

PASSED AND ADOPTED by the Common Council of the City of Valparaiso, Indiana, by a _____ vote of all members present and voting this 14th day of Dec., 2015.



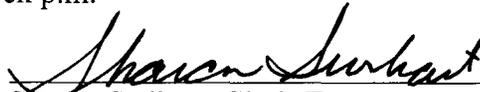
Jon Costas, Mayor

ATTEST:



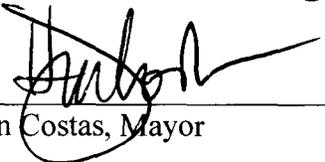
Sharon Swihart, Clerk-Treasurer

Presented by me to the Mayor of the City of Valparaiso, Indiana, this 14th day of Dec., 2015, at 8:10 o'clock p.m.



Sharon Swihart, Clerk-Treasurer

This Ordinance approved and signed by me this 14th day of Dec., 2015, at 8:10 o'clock p.m.



Jon Costas, Mayor

Formal Written Commitment

This Formal Written Commitment and Use Agreement (“Commitment”) is entered into this ____ day of _____, 2015, by and between the Common Council of the City of Valparaiso, Indiana (“City”) and _____, a current holder of an alcoholic beverage District Permit (“Holder”).

Whereas, IND. CODE § 7.1-3-20-16(g) (“Enabling Statute”) allows the Indiana Alcohol and Tobacco Commission (“IATC”) to issue ten (10) additional on-premises alcoholic beverage permits, without regard to the quota provisions of IND. CODE § 7.1-3-22, within the historic district (as defined within the Enabling Statute) of the City of Valparaiso, Indiana (“District Permits”);

Whereas, pursuant to IND. CODE § 7.1-3-19-17 (“Local Approval Statute”), the Common Council of the City of Valparaiso, Indiana adopted Ordinance _____, 2015 (“Ordinance”) requiring a formal written commitment as a condition of continued eligibility for all Holders of a District Permit;

Whereas, subject to the Enabling Statute, the Local Approval Statute, *Criteria for License Allocation and Applicant Compliance Requirements* and the Ordinance, Holder is required to enter into this Commitment regarding the character and type of business that will be conducted on the Permit Premises (as defined below);

Whereas, Holder acknowledges that the cost of the District Permit was substantially below the cost of a 3-Way Liquor License and that the reduction in cost was meant, in part, to allow the Holder to expend greater resources on food offerings; and

Whereas, the intent of this Commitment is to: i) insure that the Holder operates a restaurant within the downtown historic district area that provides an upscale dining experience and is consistent with the Holder’s representations to the City; and, ii) prevent Holder from operating a bar or similar establishment.

Now, therefore, in consideration of receiving favorable continued support from the City for its District Permit, Holder hereby agrees to the following requirements, covenants, and restrictions on the use of the Permit Premises licensed by the Indiana Alcohol and Tobacco Commission:

Section 1. **Recitals.** The Recitals set forth above are hereby fully incorporated in and made a part of this Commitment by reference.

Section 2. **Location.** The location where alcoholic beverages will be dispensed is _____, Valparaiso, Indiana 46383 (“Permit Premises”). A District Permit may not be transferred to a new location without the written consent of the City. Any attempt to transfer the District Permit to a new location, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC.

Any change in location renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

Section 3. **Ownership and Management.** A District Permit may not be transferred to a new owner without the written consent of the City. Any attempt to transfer a District Permit, without written consent, shall be void and shall constitute a violation of this Commitment, which could cause the District Permit to be revoked by the IATC. As provided in the *Criteria for License Allocation and Applicant Compliance Requirements*, any Holder that is a business entity is required to disclose a list of all owners. To the extent that any change in ownership occurs, Holder must provide writ ten notice to the City within 30 days of the effective date. Any material change in the equity ownership or management of the Holder or Permit Premises renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment. For purposes of this Commitment, “material change” shall include, but not be limited to, any change that alters the ownership structure as represented in **Appendix A**.

Section 4. **Permit Application and Renewals.** Holder has provided the City with its IATC Application for New Permit as set forth in **Appendix B** to this Commitment. All additional renewals, forms, applications, questionnaires, and disclosures that Holder submits to the IATC, at any time, must be submitted to the City of Valparaiso Mayor’s Office with a copy to the City of Valparaiso’s Economic Development Director within two business days following submission to the IATC.

Section 5. **Character and Uses.** Holder shall use the Permit Premises for the operation of a full service upscale **[Italian/Mexican/Mediterranean]** restaurant; meaning, a restaurant where food and drink orders are primarily taken from, and served to, seated customers at tables, by wait staff that are not bartenders. The menu and offerings of the Permit Premises shall be primarily designed to provide an upscale dining experience to the public. The Holder shall, at all times of operation, provide to the public its full menu from its kitchen facility. The Holder shall operate a minimum of **five (5) days per week and four (4) consecutive hours** during each day of operation. The City may void this Commitment or publicly advise against the renewal of Holder’s District Permit if the use of the Permit Premises is merely designed to provide customers with an alcohol consumption experience (e.g., a majority of sales or transactions occur at the bar counter). If the Holder desires to change or amend its use of the Permit Premises, Holder must first receive City’s written consent, which shall become a part of this Commitment. Any unauthorized change in use renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the permit in lieu of formally voiding this Commitment.

Section 6. Additional Obligations. Holder covenants the following:

- (a) All representations and commitments written in Appendix A of this Commitment, as amended or supplemented over time, are full and binding obligations of Holder.
- (b) Permit Premises shall be fully non-smoking and Holder must operate the Permit Premises in strict compliance with the City's Smoking Ordinance.
- (c) Holder must be a full and current dues paying contributor to the Downtown Dining Marketing Fund at all times it possesses a District Permit.
- (d) Both Holder and the Permit Premises must remain in compliance with all State and City laws and ordinances, including, but not limited to, all building, health, and zoning laws, as well as all architectural standards established by the Architecture Review Committee of the City of Valparaiso. The burden of evidencing compliance is on the Holder.
- (e) Holder agrees to comply with the Enabling Statute, the Local Approval Statute, and the Ordinance, as amended, regardless of whether such provisions are specifically expressed in this Commitment.
- (f) Holder has received a copy of the *Criteria for License Allocation and Applicant Compliance Requirements*, as amended from time to time. Such is incorporated by reference into this Commitment. Holder accepts the terms and agrees to be bound by its provisions, as amended.
- (g) Holder acknowledges that the City has adopted rules for outdoor dining on public walkways/easements/property. The rules, in large part, balance the desire of providing outdoor dining options with the need to assure that all pedestrians have sufficient space to safely move in the downtown area. Holder agrees to abide by all such rules relating to outdoor dining.
- (h) Holder acknowledges the benefit of collaboration with other restaurants in the Valparaiso downtown. Holder shall be an active member of the Valpo Downtown Dining group and shall make reasonable best efforts to attend group meetings and participate in group promotional activities.
- (i) Any breach of the foregoing covenants renders this Commitment voidable at the sole discretion of the City. The City may publicly advise against the renewal of the District Permit in lieu of formally voiding this Commitment.

Section 7. **General Provisions.** The Parties agree as follows:

- (a) This Commitment shall extend to and be binding upon the heirs, personal representatives, and successors of the Holder.
- (b) This Commitment may not be modified or amended unless agreed upon in writing and signed by the Parties.
- (c) This Commitment may be executed in counterparts, each of which shall be an original but all of which shall constitute one and the same instrument.
- (d) This Commitment and its Appendices constitute the entire agreement of the Parties with respect to this matter, and it supersedes all prior negotiations, representations, or agreements, either written or oral, between the Parties.
- (e) The Commitment shall be governed by and interpreted in accordance with the laws of the State of Indiana. Any proceeding seeking to enforce any provision of this Commitment may only be brought in a court sitting in Porter County, Indiana.
- (f) The IATC and its associated Local Board has independent regulatory authority over these matters and the City of Valparaiso cannot be held liable or responsible for any act of the IATC. Furthermore, the City of Valparaiso has no duty or responsibility to advocate or intervene in any proceeding before the IATC or its associated Local Board.

Section 8. **Notice.** Whenever any notice, statement or other communication is required under this Commitment, it shall be sent by first class mail or via an established courier or delivery service to the following addresses, unless otherwise specifically advised.

Notices to the City shall be sent to:

City of Valparaiso Economic Development Director
166 W. Lincolnway
Valparaiso, IN 46383
Attn: Downtown Liquor License

Notices to the Holder shall be sent to:

Section 9. **Term.** The Commitment shall become effective upon approval by the City and shall remain effective so long as the Holder continues to hold an active unexpired District Permit with the IATC.

Section 10. **Breach and Remedies.** Notwithstanding anything to the contrary contained herein, the City shall have the right to seek legal, injunctive, or other equitable relief from a court of competent jurisdiction in the event of a breach. All rights and remedies provided in this Commitment are cumulative and not exclusive of any other rights or remedies that may be available herein. The City is not required to exhaust remedies with the IATC before proceeding against Holder in event of breach.

Section 11. **Authorized Party.** Each individual executing this Commitment represents that he/she has the requisite authority to sign this Commitment.

Section 12. **Additional Commitments.** [to be added if necessary].

[Signature Page Immediately Following]

All of this having been agreed to by the Parties on the date first indicated above and memorialized by the signatures contained herein.

Holder: _____

Valparaiso Common Council

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A

Revised and Restated Application for District Permit

[See Next Page for Attached Application]

Appendix B

Application to the Indiana Alcohol and Tobacco Commission
for New or Renewal Permit

[See Next Page for Attached Application]

AMENDED

Valparaiso Downtown Alcoholic Beverage License Committee Criteria for License Allocation and Applicant Compliance Requirements

During the 2005 legislative session, the Indiana General Assembly enacted Senate Enrolled Act 282 (“Act”) which was codified at Ind. Code § 7.1-3-20-16(g). The Act permitted the Indiana Alcoholic and Tobacco Commission (“IATC”) to issue up to ten (10) additional liquor licenses (one, two, or three-way) (“Downtown Licenses”) in the historic downtown Valparaiso area. Pursuant to the Act, the Valparaiso City Council (“Council”), as the fiscal body for the City, is responsible for making recommendations to the IATC for locations that are eligible for Downtown Licenses.

The Mayor has appointed a four-member committee (“Committee”) to recommend to the Council those locations and restaurant owners that meet the qualifications in this Policy and satisfy the requirements for Downtown Licenses. The Committee is also responsible for making recommendations to the Council concerning both proposed changes to restaurants holding Downtown Licenses and compliance issues. In 2015, the City Council expanded the Committee to include one non-voting member to be appointed by the Valpo Dining Group. Such member shall advise the Committee on issues relating to downtown restaurants and be a conduit between the Committee and downtown restaurants. Such member shall not be allowed to review information relating to other restaurants.

During the 2015 legislative session, the Indiana General Assembly enacted certain amendments to the Act, which included provisions that: i) further clarified the prohibition on the transfer of Downtown Licenses; ii) required a holder of a Downtown License to execute Written Commitments with the City as to the “character and type” of restaurant; iii) afforded a greater oversight role to the Committee and City in the Downtown License renewal process and, iv) terminated a Downtown License if the holder ceases business operations for more than 6 months.

Purposes and Goals

The purpose behind the Act was to further the City’s downtown strategic plan by encouraging the location and operation of upscale restaurants in the historic downtown area. The City’s goal was to provide the finest dining environment in Northwest Indiana in a single downtown district.

The Act also intended to assist small business owners, who might be unable to secure a conventional Liquor License (because of lack of availability and/or cost), but otherwise have the ability to successfully operate an upscale restaurant in the historic downtown Valparaiso area. These business owners invest not only in their business but in our community. They are often active within the local business community, sit on civic boards, and more fully participate in the local community. This adds to the overall business vibrancy of Valparaiso.

The City, through implementation of the Act and this Policy, seeks to achieve the following:

A. Increase the number and variety of distinctive and unique restaurants that operate in Valparaiso's downtown to a degree that distinguishes it as the best dining environment in Northwest Indiana.

B. Assist local, talented restaurant owners to achieve success by providing them the ability to offer a full line of beverages to their clientele.

C. Use the license allocation program to encourage recipients to make improvements to their buildings, participate in unified marketing efforts, encourage a healthy and fun atmosphere in the downtown, and to generally improve the downtown commerce activity and the City.

Preliminary Results

As of January 2014, all ten (10) Downtown Licenses were issued. On a whole, the City has realized its original goals and the Downtown Licenses have contributed to new investment and the resurgence of the City's downtown. That said, maintaining the success will need the Committee's continued vigilance. Of most concern is maintaining the quality level of the restaurants and to avoid restaurants moving from fine dining establishment to bars that sell food. The holders of Downtown Licenses must strive to make their restaurants a destination location where food is the primary driver. Of almost equal concern is insuring that the applicants who secured the Downtown Licenses operate the restaurants and do not attempt to sell/transfer their Downtown Licenses to individuals and entities that have not been properly vetted by the Committee and may not be able to maintain the restaurant's quality level.

As of the enactment of the 2015 legislation, one Downtown License is not being actively used and may become available for reissuance. Also, the Committee recognizes that additional restaurant ownership turnover is inevitable. As the Committee evaluates these events and opportunities, it will continue to follow its Guiding Factors.

Guiding Factors

Committee's recommendation will be based on several factors.

Corporate Condition and Operations. The Committee will consider the Applicant's (1) financial and ownership strength, which may best be demonstrated by a business plan, (2) history of operation, (3) general reputation in the Valparaiso community and, if from other than Valparaiso, the Applicant's reputation in other communities, (4) the Applicant's owners' past participation in the Valparaiso community and the likelihood of continued participation of the owners in the future, (5) the control and participation of the owners of the Applicant in the day to

day operation of the business, and (6) the nature of the jobs added to or retained in the Valparaiso employment base.

Restaurant Operations. The Committee will consider the Applicant's (1) experience operating a restaurant similar to that proposed, (2) the upscale nature of the restaurant and its proposed menu, (3) the unique features of the proposed restaurant, (4) the restaurant's ability to draw people to Valparaiso and, specifically, the downtown area, and (5) the focus of the restaurant to provide a dining experience rather than an alcohol consumption experience.

Community Participation and Commitment. The Committee will consider the Applicant's (1) commitment to the downtown area and the Valparaiso community in general and (2) the proposed/actual impact of the business on the downtown and Valparaiso in general.

Location and Physical Elements. The Committee will consider (1) the location of the restaurant, (2) the size, floor plan, and layout of the restaurant and exterior dining areas, if any, (3) the Applicant's plans to improve the facility in which they will operate and the consistency of such plans with the nature and architecture of the downtown area, (4) any physical improvements to the restaurant, and (5) the expected timetable for work and business commencement.

Other Considerations. The Committee encourages Applicants to include in the Application any other factors that will aid the Committee and City to evaluate the application. All other relevant considerations, favorable and unfavorable, will be considered.

Dining Experience. Consistent with the objectives and goals of the City, it is not the intention of the Committee to encourage the establishment and/or recommend to the IATC, any restaurant establishment that focus, whether intentionally or otherwise, is on alcohol sales. Alcohol sales must compliment an upscale food menu and dining experience. Businesses that seek to establish a bar/restaurant environment have the option to seek a conventional Liquor License from the IATC. The City and Committee cannot stress more the importance of this factor.

Application/Renewal Process

The application process is as follows:

1. The City, through the Committee, will provide notice to the public that a District License is available and the Committee is prepared to receive and evaluate proposals. The notice will also provide the deadline for submitting proposals for consideration and any special requirements.

2. The Applicant should meet with the Valparaiso Economic Development Director to review the application requirements and the proposed/current location prior to submitting a proposal for consideration. The Committee may establish a date for a public meeting of interested parties for the purpose of having questions answered. All communications concerning the application process shall be made through the Valparaiso Economic Development

Director. No direct communication will be made by the Applicant or others associated with the Applicant, to the Committee members.

3. The Applicant will file, consisted with process outlined in the notice, a completed Application for a Downtown License. The Application will be in the form promulgated by the Committee. Where appropriate, the form may include forms used by the IATC. These forms must be completed to apply with the IATC for the Downtown License.

4. After review of all proposals, the Applicant may be invited to attend a public meeting of the Committee to present its project and to offer evidence to support its Application. The Committee reserves the right to limit public presentations to those applications it determines to be within the general parameters of the Guiding Factors. Upon completion of the public meeting(s) and receipt by the Committee of all requested information from the Applicant(s) that the Committee believes is necessary to make an informed decision; the Committee will issue a written recommendation to the City Council. As part of the Application process, the Committee may request the Applicant to accept certain requirements/conditions that will be memorialize representation made to the Committee. Such requirements/conditions shall be executed by the Applicant and attached to the written recommendation that is provided to the Valparaiso City Council.

5. The Applicant will attend a public meeting of the Valparaiso City Council to present its project and to offer evidence to support the application. Upon completion of the public meeting and receipt by the Council of all requested information from the Applicant that the Council believes is necessary to make an informed decision on the Application; the Council may issue a written recommendation to be provided to the IATC. As part of the Application process, the Council is free to accept/reject the Committee's written recommendation and to add/remove requirements/conditions recommended by the Committee and accepted by the Applicant.

6. Any City Council recommendation shall be subject to the Applicant executing a Written Commitment as required by Indiana law. Such document may include the requirements/conditions suggest by the Committee and approved by the City Council.

7. The Applicant, upon a favorable recommendation from the Council and execution of the approved Written Commitment, will move forward with the IATC to secure its Downtown License.

8. If, in the opinion of the City Council, Committee and/or the City's Economic Development Director, the Applicant fails to adhere to the requirements of the *Criteria for License Allocation and Applicant Compliance Requirements (as amended)*; violates any requirements/conditions accepted as part of the Applicant's Application, and/or breaches any provision of the Written Commitments, the City Council, Committee and/or the City's Economic Development Director may object to the issuance of the Downtown License and/or take any other action, including legal enforcement, to seek compliance and/or revocation of the Downtown License.

The renewal process is as follows:

1. Under the terms of the 2015 legislation (IC 7.1-3-19-17), holders seeking a renewal of their Downtown License must forward a copy of all filings to the City.

2. Notwithstanding any other notice requirements established by rule, regulation and/or the IATC, a holder of a Downtown License shall notify the City's Economic Development Director or his designee, in writing, at least **45 days** prior to the expiration of its Downtown License of its intent to seek renewal. This notice shall be in addition to any requirements under IC 7.1-3.19-17.

3. The Committee may, in its sole discretion, request that the holder of the Downtown License appear before the Committee to address Committee and/or public questions prior to the IATC's action on the renewal of its Downtown License.

4. The City, Committee and/or the City's Economic Development Director may appear before the IATC to support, object, or otherwise participate in any proceeding.

5. If, in the opinion of the City Council, Committee and/or the City's Economic Development Director, the Applicant fails to adhere to the requirements of the *Criteria for License Allocation and Applicant Compliance Requirements (as amended)*; violates any requirements/conditions accepted as part of the Applicant's Application, and/or breaches any provision of the Written Commitments, the City Council, Committee and/or the City's Economic Development Director may object to the reissuance of the Downtown License and/or take any other action, including legal enforcement, to seek compliance and/or revocation of the Downtown License.

Additional Requirements of Restaurants

1. The Act provides that an Applicant is not eligible to obtain a liquor license if, less than two years before the date of application, the applicant sold a retailer's permit that was subject to Indiana Code 7.1-3-22 and that was for a site within the downtown district or within 500 feet of the district. Downtown Licenses **are nontransferable**.

2. All restaurants must be fully non-smoking and in full compliance with the City's Smoking Ordinance.

3. If established and applicable, holders will be full paying members of the downtown BID.

4. Holders will be full paying members in the Downtown Dining Marketing Fund. Monthly contributions shall not exceed \$200 per month. Holders shall at all times remain current in the payment of their dues to the Downtown Dining Marketing Fund.

5. The restaurant must comply with all building, health, and zoning laws and ordinances. The restaurant shall also comply with the architectural standards for the downtown area established by the Architecture Review Committee and, upon request, provide evidence of the restaurant's architectural approval by such body.

6. The Holder/Applicant will enter into a Written Commitment with the City to comply with the rules and any conditions that the City places on the restaurant. Failure to abide by Written Commitment shall constitute grounds for the City to seek suspension/termination of Applicant's ability to offer alcohol in its restaurant.

7. Upon request, Holder shall provide information and documentation to the Committee that is requested for the purpose of determining compliance with the Written Commitment.

Compliance/Review/Enforcement

Successful Applicants that obtain Downtown Licenses from the IATC are responsible for at all times operating their restaurants in compliance with their Application, Written Commitments and supporting information presented to the Committee and Council. Successful Applicants shall not change the name, location, ownership and/or otherwise make substantial changes in the operation of their restaurants (i.e. change in type of restaurant and/or cuisine, etc.) without notifying the City's Economic Development Director and, if deemed necessary, obtaining the approval of the Committee and City. Requests for approval of the above changes must be submitted in writing to the Valparaiso Economic Development Director. Each Applicant will designate one key individual, who will maintain a direct association with the City, while the Applicant maintains a Downtown License.

Successful Applicants for Downtown Licenses shall, upon request, be responsible for attending a meeting of the Committee and providing a report to the Committee concerning their operations. Applicants will be notified by the Committee in advance of the scheduling of a meeting. Applicants may be requested to provide documentation to the Committee in advance of the meeting including, but not limited to, alcohol/food sales, menu, hours of operation, documentation provided to the IATC in support of a request for a renewal of the Downtown License.

Sale of Restaurant

The Committee has struggled with the issue of restaurant owners who wish to sell their restaurant. It was never the intent of the City that the Downtown Licenses would be transferred at a profit. Besides being an unearned windfall to the previous holder, it defeats one of the primary goals – make a Liquor License available to a restaurant entrepreneur at a nominal fee, so that funds that might have been needed to secure a Liquor License could be invested into the

restaurant and food offerings. That said, the Committee appreciates that restaurant owners will, at some point, want to sell their business to new ownership and that, in certain circumstances, there may be value to the downtown to have the Downtown License transferred to another holder. In keeping with Purposes and Goals as well as of Guiding Facts of the Downtown License program contained herein, the Committee notes the following:

The Committee is willing to consider a request from a holder of a Downtown License to transfer to another entity if: i) the current holder is in good standing; ii) the current holder has operated their restaurant with a Downtown License for a minimum of 5 years; iii) the proposed holder intends to maintain and operate the restaurant in a substantially similar manner; iv) the proposed owner submits an Application, as required by the Committee; v) the current holder and proposed owner provide documents and information requested by the Committee to substantiate that a substantial portion of the value of the Downtown License is not included in the purchase price; and, vi) the current holder and proposed owner follow all applicable rules relating to the issuance of a Downtown License.

Nothing in this provision shall be interpreted to suggest that a current holder has any right or the City/Committee has any obligation to approve (or even consider) a transfer and such shall be at the sole and absolute discretion of the City and Committee.

Valparaiso Downtown Alcoholic Beverage License Application

In addition to completing the attached Indiana State Form (TBA) "Application for New Downtown Alcoholic Beverage License" for the Indiana Alcohol & Tobacco Commission, the Committee requires each applicant to provide complete answers to the following:

Corporate Condition and Operations:

Provide an executive summary of your business plan, including indicators of:

- the demonstrated financial strength of the business and the owners;
- a description and history of the operation;
- your reputation in your business community;
- the participation of owner(s) in the day-to-day operation of the business;
- the number and nature of the jobs added or retained in Valparaiso.
- if the applicant is a corporation, limited liability company, partnership or other business entity, a list of all owners.

Restaurant Operations:

Provide a summary of your restaurant operations which includes references to:

- experience operating a restaurant similar to that proposed;
- the upscale nature of the restaurant and its proposed menu;
- the unique features of the proposed restaurant;
- the restaurant's ability to draw people to downtown Valparaiso;
- quantifiable information indicating the focus of providing a dining experience rather than an alcohol consumption experience.

Community Participation and Commitment:

Provide information supporting your demonstrated commitment to the Community by addressing the following with specific responses:

- commitment to the Valparaiso community, and the downtown area;
- indicators of the impact of the business on the downtown and Valparaiso in general.

Location and Physical Elements:

Provide information on the following:

- the location of the establishment;
- the size, floor plan, and layout of the establishment;
- exterior dining areas, if any;
- consistency of the architectural elements with the downtown architecture;

- describe, in detail, the estimated investment in personal property and real property improvements;
- Expected date of business commencement.

Other Considerations:

Please outline any other factors which may aid the Committee in the consideration your application.