

Second Amended Criteria for License Allocation and Applicant Compliance

I. Background

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 additional liquor licenses (one, two, or three-way) (“Downtown Licenses”) in the 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 IATC for locations that are eligible for Downtown Licenses.

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 a Written Commitment with the City as to the “character and type” of restaurant; iii) afforded a greater oversight role to the City in the Downtown License renewal process and, iv) terminated a Downtown License if the holder ceases business operations for more than 6 months.

During the 2022-23 legislative session, the Indiana General Assembly enacted certain amendments to the Act, which included: i) increasing the number of available liquor licenses to fifteen (15); ii) expanding the area where Downtown Licenses can be issued to 1,500 feet beyond the existing area designated by the National Register of Historic Places maintained under the National Historic Preservation Act of 1966; and, iii) raising the cost paid to the IATC for the Downtown Licenses.

II. Purposes and Goals

The purpose behind the Act is to further the City’s downtown strategic plan by encouraging the location and operation of quality restaurants in the downtown area. The City’s goal continues to be to provide a premier and diverse dining environment within the City’s downtown.

The Act also intends 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 a restaurant in the downtown 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 a premier dining destination in Northwest Indiana.

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

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 downtown commercial activity.

III. Current Status

As of August 2023, nine Downtown Licenses have been issued. On 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 City's continued vigilance. Of most concern is maintaining the quality level of the restaurants and to avoiding restaurants moving from dining focused establishments 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 ensuring that the applicants who secured 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 City and may not be able to maintain the restaurant's quality level.

IV. Application/Renewal Process

a. The application process is as follows:

1. The City will provide public notice on the City's webpage that a District License is available and the City is prepared to receive and evaluate proposals. The notice will provide the deadline for submitting proposals and any special requirements. Material relating to the application process will be available on the City's webpage.

2. The Applicant should meet with the City Attorney to review the application requirements and the proposed/current location of the restaurant prior to submitting a proposal for consideration. All communications concerning the application process shall be made through the City Attorney. No direct communication will be made by the Applicant or others associated with the Applicant, to the Mayor, Council members, or City Staff.

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 City.

4. Timely filed applications will be reviewed by City Staff. In addition, the City Council may appoint one of its members to serve as a liaison to City Staff as applications are reviewed. An Applicant may be invited to attend a meeting with City Staff to discuss the application. Upon review, City Staff will provide a confidential written analysis of the applications for the entire Council. Upon review, the Council President and Vice President shall notify the

Mayor as to which Applicants (if any), the Council would like to have make a public presentation to the Council. The Mayor and City Staff will coordinate having the Applicants appear at a Council meeting to present its proposal and to offer evidence to support its Application. Upon completion of the public meeting(s) and receipt of all requested information from the Applicant(s) that the Council believes is necessary to make an informed decision; the Council may issue a written recommendation to be provided to IATC. **As part of the Application process, the Council may request that the Applicant accept certain requirements/conditions.**

5. Any Council recommendation shall be subject to the Applicant executing a Written Commitment as required by Indiana law.

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

7. If, in the opinion of the Council and/or the City's Attorney, the Applicant fails to adhere to the requirements of the *Criteria for License Allocation and Applicant Compliance*; violates any requirements/conditions accepted as part of the Applicant's Application, and/or breaches any provision of the Written Commitment, the Council and/or the City's Attorney 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.

b. 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 IATC, a holder of a Downtown License shall notify the City's Attorney 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 City may, in its sole discretion, request that the holder of the Downtown License appear before the Council to address Council and/or public questions prior to IATC's action on the renewal of its Downtown License.

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

5. If, in the opinion of the Council and/or the City's Attorney, the Applicant fails to adhere to the requirements of the **Criteria for License Allocation and Applicant Compliance**; violates any requirements/conditions accepted as part of the Applicant's Application, and/or breaches any provision of the Written Commitment, the Council and/or the City's Attorney 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.

V. Guiding Factors in recommending a Downtown License

a. **Corporate Condition and Operations.** The City 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 past participation in the Valparaiso community and the likelihood of continued participation in the future, (5) the control and participation 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.

b. **Restaurant Operations.** The City will consider the Applicant's (1) experience operating a restaurant similar to that proposed, (2) the nature and quality 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. **Although not a limiting factor, it is the stated preference of the City to not recommend a Downtown License to an Applicant that is presenting a concept substantially similar to an existing downtown restaurant.**

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

d. **Location and Physical Elements.** The City 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 building, and (5) the expected timetable for work and business commencement.

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

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

VI. Additional Requirements of Restaurants

- a. The Act provides that an Applicant is not eligible to obtain a Downtown 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. **DOWNTOWN LICENSES ARE NONTRANSFERABLE.**
- b. All restaurants must be fully non-smoking and in full compliance with the City's Smoking Ordinance.
- c. If ever established and applicable, holders will be full paying members of a downtown Business Improvement District.
- d. 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. Upon direction from the City, monthly contributions may be paid directly to Valparaiso Events, a nonprofit organization that oversees many of the downtown marketing efforts.
- e. 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.
- f. 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.
- g. Upon request, Holder shall provide information and documentation to the City that is requested for the purpose of determining compliance with the Written Commitment.
- h. Holder acknowledges that the City has adopted rules for outdoor dining on public walkways/easements/property. The rules, in large part, balance the desire to provide 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.

VII. Compliance/Review/Enforcement

Successful Applicants that obtain Downtown Licenses from IATC are responsible for operating their restaurants in compliance with their Application, Written Commitment and supporting information presented to the Council. Holders 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 Attorney and, if deemed necessary, obtaining the approval of the Council. Requests for approval of the above changes must be submitted in writing to the City Attorney. Each Applicant will designate one key individual, who will maintain a direct association with the City.

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

VIII. Sale of Restaurant

The City 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 holder, it defeats one of the primary goals of the Downtown License program – 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 City 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 held by another holder. In keeping with Purposes and Goals as well as of Guiding Facts of the Downtown License program contained herein, the City notes the following:

The City 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 **10 years**; iii) the proposed holder intends to maintain and operate the restaurant in a substantially similar manner; iv) the proposed owner submits an Application; v) the current holder and proposed owner provide documents and information requested by the City 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 holder follow all applicable rules relating to the issuance of a Downtown License – including appearing before the Council, if requested and expecting a revised Written Commitment.

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