

City of Fayetteville Staff Review Form

2020-1089

Legistar File ID

12/15/2020

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Devin Howland

12/4/2020

ECONOMIC DEVELOPMENT (050)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

STAFF IS RECOMMENDING APPROVAL OF AN ORDINANCE DESIGNATING AN ENTERTAINMENT DISTRICT PURSUANT TO ACT 812 ON A PORTION OF THE EVELYN HILLS SHOPPING CENTER, THE EVELYN HILLS OUTDOOR REFRESHMENT AREA FOR EXPANDED OUTDOOR DINING OPTIONS AND TO APPROVE AN EMERGENCY CLAUSE.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>No</u>	Item Cost
Budget Adjustment Attached? <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

Purchase Order Number: _____ Previous Ordinance or Resolution # **6322** V20180321

Change Order Number: _____ Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 15, 2020

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Devin Howland, Director of Economic Vitality
Blake Pennington, Assistant City Attorney

DATE: December 3, 2020

SUBJECT: An ordinance to create the Evelyn Hills Outdoor Refreshment Area and approve an emergency clause

RECOMMENDATION:

Staff is recommending approval of an ordinance establishing an entertainment district, pursuant to Act 812, on a portion of the Evelyn Hills Shopping Center and to approve an emergency clause.

BACKGROUND:

Following the success of Fayetteville's first Outdoor Refreshment Area in downtown, staff began exploring the expansion of entertainment districts throughout Fayetteville. The first area which was identified was the Evelyn Hills shopping center, not for the purpose of generating increased activity within the center, but rather to help Mocking Bird Kitchen and future restaurant operators.

The pursuit of the ORA came at the request of the property owner, J.C. Burciaga. The request came with the intention of providing increased flexibility to his tenants as they adapt to the challenges of the COVID-19 pandemic. The importance of designating an ORA on the property became more apparent when it became clear the State would not permit areas in front of the restaurants for outdoor service.

DISCUSSION:

The Evelyn Hill's ORA enables the two restaurants (one open, one opening soon) to allow their patrons to consume alcoholic beverages at socially distanced dining options such as sidewalk café seating and expanded dining in the parking lot. The ordinance also allows, should it be applicable, for event applications to be submitted which would not require fenced-in beer gardens to be in place.

The same rules and conditions that guide behavior in the primary ORA are applicable here as well. The exceptions are beverages consumed outside of the establishments are not required to be in designated cups or visible identifiers be used. Staff's reasoning for excluding this requirement is this district's focus of outdoor dining. During events, additional regulations,

including using specific cups or wristbands, can be added by the City on an as needed basis. The area will be marked with signs clearly indicating the boundary.

When compared to the existing downtown Outdoor Refreshment Area the goal of the proposed Evelyn Hills ORA is drastically different. The primary purpose of this district is to help Mockingbird Kitchen with expanded outdoor dining options. The current ordinance restricts open consumption to sidewalk cafes or outdoor dining areas. As seen when the center’s property was used for the Farmers Market, the site is well positioned for socially distanced events.

ORA Comparison	
Evelyn ORA	Downtown ORA
Size:7 acres (4.2 usable)	Size:150 acres+
Potential Participating Businesses: 2	Potential Participating Businesses: 63
Cups in program: N/A	Cups in program: 140,000+

The current ORA in downtown has performed at such a high level, without posing any insurmountable or long-standing issues, that staff feels confident the Evelyn Hills ORA will operate in the manner which it is designed. Staff’s intent is a calm district, while providing meaningful relief to the restaurants, without posing any negative impacts on other tenants or neighbors.

Status of Downtown ORA	
Participating Businesses	60
Anchor Participation	100%
Citations given	0
Littered Cups	>35 found or reported
Cups in program	140,000+
Estimated Direct Economic Impact	\$1,000,000+ in taxable sales

Concerns:

Given the precedent set by the downtown ORA, as well as other successful entertainment districts in the State, staff has no concerns that the district will produce any negative impacts. One point of concern that was received from an adjacent property owners’ representative was that the district could potentially create an increase in insurance and legal costs, or externalities outside of their control.

Respecting these concerns, the district was scaled back in size to provide a buffer from the adjacent property, enabling access to the building and other pad sites without having to enter the “ORA”. Staff also expressed support for designating the district be “outdoor dining” and events only, since events require notification of adjacent property owners. These changes were delivered on November 18th. Staff proceeded to send updated copies of the information to this entity, as well as all tenants within the center on December 4th.

Staff has not been made aware of any instances in Fayetteville where the primary ORA in downtown has created an increase in insurance costs or legal costs for property owners. Staff also consulted with other municipalities on this topic and could not find an instance where this issue arose.

BUDGET/STAFF IMPACT:

The item will have minimal impact on staff time. The only planned cost to the City is posting signs to mark the boundary.

Attachments:

Boundary Map

Ordinance Text

Letter of Support from Mocking Bird Kitchen

Letter of Support from Startup Junkie Consulting



 Outdoor Refreshment Area



Evelyn Hills ORA

Fayetteville, AR



The data contained herein was compiled from various sources for the sole use and benefit of the City of Fayetteville Geographic Information System and the public agencies it serves. Any use of the data by anyone other than the City of Fayetteville is at the sole risk of the user, and by acceptance of this data, the user does hereby agree to indemnify the City of Fayetteville and hold the City of Fayetteville harmless from and without liability for any claims, actions, cost for damages of any nature, including the city's cost of defense, asserted by user or by another arising from the use of this data. The City of Fayetteville makes no express or implied warranties with reference to the data. No word, phrase, or clause found herein shall be construed to waive that tort immunity set forth under Arkansas law.

Map Created: 12/3/2020

Path: G:\GIS2\Projects\2020\DORA\All_ORA.aprx

EXHIBIT A

“111.07 - Outdoor Refreshment Area

(A) *Definitions*

- (1) *Customer* shall include a patron, guest, or member.
- (2) *Owner* shall include the owner, manager, or operator of an establishment permitted to sell alcoholic beverages.
- (3) *Permittee* shall mean the person or entity who has received an event permit from the City of Fayetteville allowing the outdoor consumption of alcoholic beverages within an established entertainment district.
- (4) *Limited open consumption district pilot program* shall mean a series of specific dates and times which occur on a limited basis in which a person or customer may purchase alcohol from participating businesses and consume said alcohol within a defined area with open streets within the Outdoor Refreshment Area. The dates and times, as well as any rules applicable to such a pilot program, shall be established by the Mayor.

(B) *Creation and establishment of districts.* Pursuant to the authority granted by Ark. Code Ann. § 14-54-1412, the following entertainment districts are hereby created with the areas and boundaries as set forth and designated on the maps which are attached hereto as Exhibits and incorporated herein.:

- (1) Downtown Outdoor Refreshment Area
- (2) Evelyn Hills Outdoor Refreshment Area.

(C) *Outdoor consumption of alcohol in public places.* The consumption of alcoholic beverages or possession of open containers of alcoholic beverages in public outdoor areas within the Outdoor Refreshment Areas is prohibited with the exception of:

- (1) *Events with standing approval.* The outdoor consumption of alcohol may be allowed on public streets, sidewalks, rights-of-way, parking lots, or outdoor public areas within the areas designated for events with standing approval pursuant to the Fayetteville City Code. The prior written authorization of the Mayor shall be required, and additional conditions may be placed on the permittee, the event, and any owner who wishes to allow the owner’s customers to participate in the event as part of the authorization. The areas designated for the outdoor consumption of alcohol at standing events shall be closed to vehicular traffic unless those areas fall within a limited consumption district pilot program in which case the rules for the open consumption district shall apply.
- (2) *Special event permits with specific approval.* A special event permit issued by the Mayor pursuant to § 72.58(M) may authorize the outdoor consumption of alcohol on public streets, sidewalks, rights-of-way, parking lots, or outdoor public areas in certain areas and only during the times specified in the permit. Additional conditions may be placed on the permittee, the event, and any owner who wishes to allow the owner’s customers to participate in the event as part of the authorization. Such areas may be closed to vehicular traffic.

- (a) Organizers of events who wish to apply for the special event permit to allow open consumption of alcohol within the entire event area, rather than confining alcohol consumption to a limited area, shall complete the appropriate Notice of Proposed Closure for a Outdoor Refreshment Area Event Form as well as the standard Notice of Proposed Closure form.
- (b) A business located adjacent to or within the event area may sell alcohol for open consumption in the event area only with the approval of the event organizer. If an event occurs during a time and within the area of a limited consumption district pilot program, business sales of alcohol for open consumption shall be permitted.

(3) *Limited open consumption district pilot programs.* The Mayor may identify specific dates and times to authorize the implementation of limited open consumption district pilot programs within the Outdoor Refreshment Areas. Such pilot program areas will not require street closures. Rules established by the Mayor applying to pilot program areas shall be distributed to business owners and signs shall posted in conspicuous locations within the pilot program area.

- (a) At least 21 days prior to the beginning of an open consumption pilot program, City staff will notify nearby businesses and identify participating businesses.
- (b) The Mayor, by and through staff, shall notify the City Council Members by email or otherwise of the decision to implement a limited open consumption district pilot program. If at least two (2) City Council Members notify the City Clerk's Office in writing within seven (7) days of the Mayor's notification of his or her decision that they wish to appeal such decision, then the issue will be presented on the next City Council meeting in which the Mayor's decision could reasonably be considered. The City Council would then be able to decide by Resolution whether to reverse the Mayor's decision or upon what conditions (if any) the permit would be granted.
- (c) The provisions of subsection 111.07(C)(3) shall expire on January 30, 2021.

(4) *Permanent open consumption districts.* The City Council may establish permanent open consumption districts with such rules and regulations as may be required for the district.

(D) *Conditions for consumption of alcoholic beverages in the Downtown Outdoor Refreshment Area.* Any owner within a designated area may allow a customer to exit the owner's premises during the hours designated in the special event permit or in an area defined in a limited consumption district pilot program with no more than one (1) open container of alcoholic beverages and consume said alcoholic beverages anywhere within the confines of the designated area in which the alcoholic beverage was obtained, subject to the following regulations:

- (1) An owner within the designated event area or in an area defined in a limited consumption district pilot program may allow alcoholic beverages to be removed from the licensed premises during special events with specific approval who have requested businesses be able to sell to attendees and/or during the times of the limited consumption district pilot program and only in a compostable or reusable cup, or other alternative container as certified by the Environmental Director as compatible with the city's recyclables collection program, that bears the proper city approved logo, and no such alcoholic beverages shall be removed from the permitted premises in a can, bottle, or glass container.
- (2) No owner shall allow a customer to exit its premises with an open container of alcoholic beverage until the owner has placed a designated visible identifier on the customer, and it shall be unlawful for any person to exit such licensed premises with an open container without the required visible identifier.
- (3) It shall be unlawful for a customer to enter any business regulated by the Arkansas Alcoholic Beverage Control Division with any alcoholic beverage that was not acquired at that location. A customer may not enter any other establishment with an open or closed container of alcoholic beverage without the consent of the owner or manager of the establishment.
- (4) It shall be unlawful for any person to drink or attempt to drink any alcoholic beverage from a can, bottle, or glass container, or to possess any open can, bottle, or glass container of alcoholic beverages on the public streets, sidewalks, rights-of-way, and parking lots located within the Outdoor Refreshment Area.
- (5) No container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed sixteen (16) fluid ounces in size.
- (6) No person shall possess on the public streets, sidewalks, rights-of-way, parking lots, or outdoor public areas located within the designated area any open alcoholic beverage container which exceeds sixteen (16) fluid ounces in size.
- (7) No person shall possess on the sidewalks, public streets, rights-of-way, parking lots, or outdoor public areas any open alcoholic beverage container outside of the approved area of an event or the district.
- (8) It shall be unlawful for a customer to distribute alcohol for open consumption obtained from a business participating in the Outdoor Refreshment Area to any other individual.
- (9) It shall be unlawful to create, possess, or distribute fraudulent or unauthorized visible identifiers or cups within the Outdoor Refreshment Area.

- (10) No person shall publicly consume within the Outdoor Refreshment Area any alcoholic beverage purchased outside of the Outdoor Refreshment Area.

(E) *Conditions for consumption of alcoholic beverages in the Evelyn Hills Outdoor Refreshment Area.* Any owner within the *Evelyn Hills Outdoor Refreshment Area* may allow a customer to exit the owner's premises during regular hours of operation with no more than one (1) open container of alcoholic beverages and consume said alcoholic beverages in a sidewalk café, outdoor dining area, or approved event area in the Outdoor Refreshment Area in which the alcoholic beverage was obtained, subject to the following regulations:

- (1) It shall be unlawful for a customer to enter any business regulated by the Arkansas Alcoholic Beverage Control Division with any alcoholic beverage that was not acquired at that location. A customer may not enter any other establishment with an open or closed container of alcoholic beverage without the consent of the owner or manager of the establishment.
- (2) It shall be unlawful for a customer to distribute alcohol for open consumption obtained from a business participating in the Outdoor Refreshment Area to any other individual.
- (3) No person shall publicly consume within the Outdoor Refreshment Area any alcoholic beverage purchased outside of the Outdoor Refreshment Area.
- (4) Beverages may be taken from the premises in containers made of glass, aluminum, plastic, or other materials; however, no container in which an alcoholic beverage is dispensed and removed from the licensed premises shall exceed sixteen (16) fluid ounces in size.

(F) *Sidewalk Cafes and Outdoor Spaces in Outdoor Refreshment Areas.* If an owner within the Outdoor Refreshment Area has also received a sidewalk café permit pursuant to §178.02 of the Unified Development Code or has an outdoor space located on private property:

- (1) The owner may serve and allow the possession and consumption of alcoholic beverages in open containers during the hours of operation and in the areas authorized by the sidewalk café permit or in the outdoor space during the owner's posted hours of operation;
- (2) Glass containers, aluminum cans, and other types of drinkware shall be allowed in sidewalk cafes and outdoor spaces but shall not be removed from those areas; and
- (3) No fencing or other enclosure of a permitted sidewalk café or outdoor space located within a designated outdoor refreshment area shall be required.
- (4) Outdoor spaces include, but are not limited to, parking areas, fields, lawns, patios, and gardens as long as they are located on private property and the owner is authorized to utilize those spaces.

(G) *State laws applicable to Outdoor Refreshment Areas.* All other Arkansas laws including, but not limited to, Ark. Code Ann. § 3-3-201, *et seq* (prohibited practices regarding alcoholic beverages), Ark. Code Ann. § 5-71-207 (disorderly conduct), Ark. Code Ann. § 5-71-212 (public intoxication), Ark. Code Ann. § 5-71-218 (consumption of alcohol in a

motor vehicle) remain in effect and will be enforced within the Outdoor Refreshment Area.

(H) *Littering Prohibited*. No person shall violate the littering prohibition set forth in § 98.07 of the Fayetteville City Code.

Dear Mayor Jordan and City Council Members,

We are excited to learn of the City of Fayetteville's discussion concerning the "ORAs", Outdoor Refreshment Areas. The creation of these areas will be another avenue for city businesses to increase sales, customers to enjoy their favorite establishments and the city to generate needed tax revenue. A "win win" for everyone.

Currently, as you know, restaurants are open for 66% dining capacity. This includes both in order and outdoor dining. The creation of ORAs throughout the city would help us give our customers the options of dining outdoors, first to enhance their dining experience and secondly outdoor dining is deemed safer in this pandemic environment.

Midtown, Uptown, West and East Fayetteville restaurant businesses, the citizens of Fayetteville and our out of town guests will benefit from the creation of ORAs throughout the city. We encourage you and the city council members to consider this idea to help guide us through this part of the pandemic as we try to rebuild our vibrant restaurant culture.

The creation of an ORA in Evelyn Hills will make the shopping center a destination in Midtown and help the businesses increase sales and tax revenue.

Thank you for your consideration.

Sincerely,

Chef Chrissy Sanderson
Mockingbird Kitchen
Fayetteville, Arkansas



December 3, 2020

City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Purpose: Letter of Support for Evelyn Hills Outdoor Refreshment Area

Startup Junkie is a key economic development catalyst in the City of Fayetteville, and has proven to be an important leader in the advancement of the innovation and entrepreneurial ecosystem in the City. Through our work with local entrepreneurs, innovators, and business leaders, it has become clear that we must maximize the utilization of the Outdoor Refreshment Area initiative, as it is a vital economic catalyst for the City. We are excited for the increased vibrance and quality of life improvement that the Evelyn Hills Outdoor Refreshment Area will have on the City.

Let this letter of support make it clear that we support the Evelyn Hills Outdoor Refreshment Area.

Regards,

Jeff Amerine
Startup Junkie Team



December 8, 2020

Mayor Jordan & Fayetteville City Council
113 W Mountain Street
Fayetteville, Arkansas 72701

Mayor Jordan and City Council Members,

We are writing to ask for your support in creating extended Outdoor Refreshment Areas to support the hospitality businesses of Fayetteville.

Our local businesses have struggled to adapt and survive throughout the pandemic and deserve every opportunity to succeed. We have seen the downtown Outdoor Refreshment Area provide relief to businesses and safer experiences to guests and hope to see that become a reality for businesses in other areas within Fayetteville.

Although hospitality businesses are allowed to operate within 2/3 of their capacity, we see many businesses struggle against impossible odds to fill enough seats while maintaining a six foot distance between different parties. This dedication to safe distancing for guests often results in less capacity than the allowed 2/3. By providing extended ORAs, the city will be providing a unique opportunity for our local businesses to continue to be creative in providing safe experiences for customers.

We envision our “Funky Fayetteville” developing stronger bonds with neighborhood businesses to encourage each district as a dining, imbibing and shopping destination. What better way to encourage our citizens to shop local this holiday season – and have a safe time while doing so!

In the hospitality industry, we are familiar with adapting to meet new challenges. We ask that you allow our Fayetteville businesses to provide an example of how to overcome.

Thank you for your time and consideration,

Fayetteville Independent Restaurant Alliance – Board of Directors
Reese Roberts, Hannah Withers, Chrissy Sanderson, Elliot Hunt