

ORDINANCE 2025-09

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MARTINSBURG AMENDING ORDINANCE 2025-07 ADOPTING CHAPTER 5, ARTICLE 156 "PRIVATE OUTDOOR DESIGNATED AREAS."

156.01 Purpose and Intent

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

156.02 Definitions

- (a) PODA Permit means the permit issued by the City to Class A or **S4N** Licensees allowing them to participate in the Private Outdoor Designated Area and to apply for an S4 license from the West Virginia Alcohol Beverage Control Administration (WVABCA).
- (b) 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.

156.03 Permit Required

- (c) Any Class A license holder under W. Va. Code § 60-7-1 et seq. that operates within the boundaries of a private outdoor designated area may apply for a PODA Permit to participate in the Private Outdoor Designated Area by submitting an application to the City Manager on such forms as the City Manager shall prescribe. The City Manager 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 private 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 Class A private club license under W. Va. Code § 60-7-1 et seq, **or is a qualified non-profit possessing a Class S4N.**
- (ci) Once the PODA Permit is granted by the City Manager, the license holder may apply to the West Virginia Alcohol Beverage Control Administration ("WVABCA") for a special Class S4 permit, as detailed in W. Va. Code § 60-7-8g, to participate in a private outdoor designated area, as further detailed in this article, in the West Virginia Code, and in any applicable rules of the WVABCA. Upon approval by the WVABCA, the Class S4 permit holder shall notify the City Manager's office. Any business that receives the approval of the City Manager and a Class S4 permit from the WVABCA may participate in a private outdoor designated area.

- (e) 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. 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.

156.04 Containers

All beverages served from valid Class S4 permit holders for consumption in a private outdoor designated area shall be served in a non-glass container not greater than 16 fluid ounces, which has been approved by the City Manager and the WVABCA.

156.05 Signage and prohibitions

- (a) Prior to the operation of a private outdoor designated area, the City shall erect conspicuous signage. The signs shall be located at every reasonable point where a pedestrian may exit the private outdoor designated area by way of a public sidewalk. The signs shall clearly state that alcohol beverages must be in a PODA cup, stay within PODA district and provide clear notice that a person is leaving the private outdoor designated area.
- (b) A person may not leave a private outdoor designated area while possessing an open container of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer.
- (c) Nothing in this Article shall be construed to permit a person to possess an open container of liquor, wine, nonintoxicating beer, or nonintoxicating craft beer, that contains liquid while being in, on, or operating a motor vehicle within a private outdoor designated area.
- (d) 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 a Class A license from the WVABCA Commissioner.
- (e) Special event sponsors that have been granted a special event permit to operate on a City Street that is included in the PODA area may choose to allow or prohibit alcohol consumption on that portion of the City street during the special event.

156.06 Public health, safety, and sanitation

- (a) All private outdoor designated areas shall be operated in a manner consistent with all state and municipal laws. The Martinsburg Police Department shall be responsible for ensuring compliance and may issue citations within the private outdoor designated areas as necessary. The Martinsburg Department shall provide a copy of any citation issued within a private outdoor designated area to the WVABCA.
- (b) In addition to any public restrooms in a private outdoor designated area, participating Class S4 permit holders shall make available adequate restroom facilities, whether permanent or portable, to serve their members and guests during all hours of operation of the private outdoor designated area.

- (c) All businesses operating within a private outdoor designated area shall comply with all requirements of the Berkeley County Health Department.
- (d) All S4 permit holders, when they are open for business and serving customers within a private outdoor designated area, shall make waste receptacles available during the operating hours of the private outdoor designated area in a number sufficient to contain the waste generated within the area and which are emptied regularly by each participating business as needed to ensure availability.

156.07 Revocation of City Manager Approval; and General Policy Authority

- (a) The City Manager or Mayor may revoke the letter of approval of any Class S4 permit holder when doing so is in the interest of public safety by sending a revocation letter to both the permit holder and the WVABCA.
- (b) The City Manager is authorized to create policies and procedures as necessary for the efficient operation of the private outdoor designated areas, including, but not limited to, signage language approval, container approval, identification of participating businesses and non-participating businesses, review of security plans proposed to the WVABCA, the interaction and interplay between a fair or festival and the private outdoor designated areas, and the duties and responsibilities of all participating businesses with respect to clean up and other sanitation matters.

156.08 Suspension of Private Outdoor Designated Area

- (a) The City Manager or Mayor has the authority to suspend the operation of a private outdoor designated area immediately when in the interest of public safety by providing notice to all Class S4 permit holders within the private outdoor designated area, City Council, any business association participating in the marketing or advertising of the private outdoor designated area, and the WVABCA.

156.09 Penalties

- (a) An individual who violates any provision of this article relating to private outdoor designated areas is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$100.00.
- (b) Any person who owns or operates a business that is a PODA permittee or is employed by such a business and who violates any provision of this article is guilty of a misdemeanor and, upon conviction, shall be fined not less than \$5.00 and not more than \$1,000.00. Any owner, operator, or employee who violates a provision of this article and is convicted of a third such offense, upon conviction, may be confined for up to 30 days. These penalties for owners, operators, and employees of private outdoor designated areas are in addition to any penalty from the WVABCA.

156.10 Creation and Boundaries

- (a) City Council for the City of Martinsburg hereby establishes a private outdoor designated area known as "Martinsburg Downtown PODA," which shall have the boundary as stated in subsection (b) of this section and which shall meet all of the requirements of this article and applicable West Virginia Code.
- (b) The attached map of the Martinsburg Downtown District PODA is incorporated by reference herein and made a part of this article. The attached map shall be the controlling document designating the boundary.
- (c) The area within the City Center PODA is in a zoning area that allows for the sale and consumption of liquor, wine, nonintoxicating beer and nonintoxicating craft beer, and is in compliance with the City's zoning ordinance.

156.11 Days and Hours of Operation

The Martinsburg Downtown PODA may operate year-round on any Saturday and Sunday from 10:00 a.m. until 10:00 p.m., and Monday through Friday from 5:00 p.m. until 10:00 p.m.. Drinks may not be sold in PODA cups or consumed within the Martinsburg Downtown PODA outside of the hours of operation.

156.12 Personnel Needed

The PODA district is regularly patrolled by the Martinsburg City Police Department on routine patrols.

156.13 Appeals Process

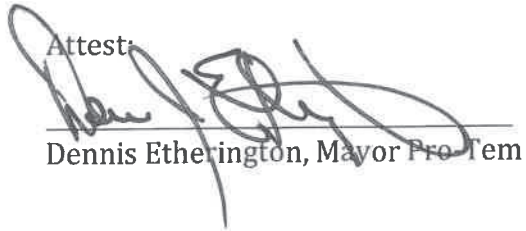
- (a) Any S4 permit holder may appeal to the City Council the suspension the entire PODA district or the permit holder's individual suspension.
- (b) Any denial of a PODA permit application may be appealed to the City Council.
- (c) Any appeal must be filed in writing with the City Clerk within 15 calendar days of the adverse action.
- (d) Suspensions lasting less than 7 calendar days are not subject to appeal.
- (e) The City Manager shall place consideration of the appeal on the City Council's agenda within 30 days after receipt of an appeal.
- (f) The City Council will issue a decision within 30 days after consideration of appeal.
- (g) All decisions of the City Council will be final and not subject to further appeal.

This Ordinance shall become effective upon the date of adoption.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

INTRODUCED: June 12, 2025

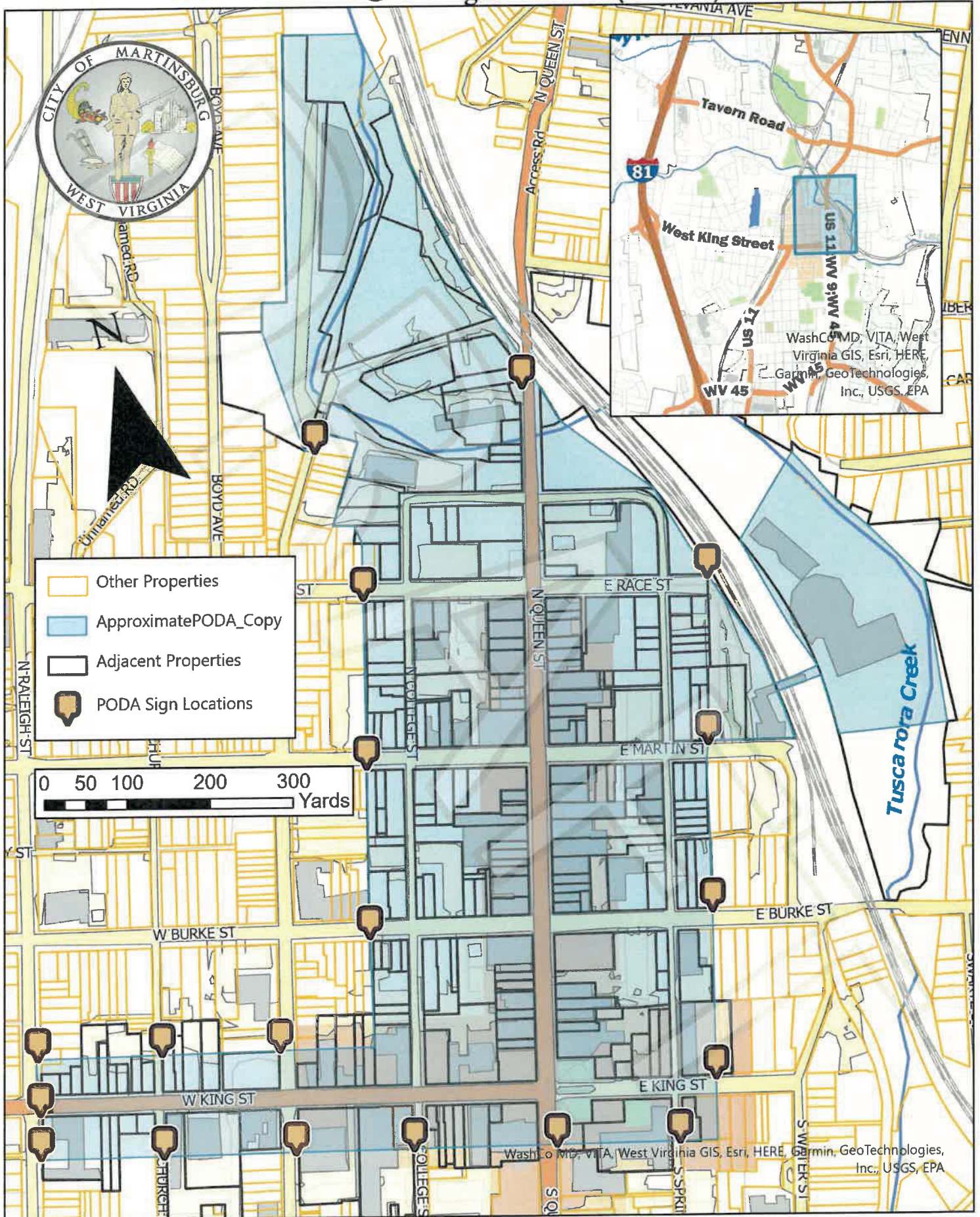
ADOPTED:

Attest:

Dennis Etherington, Mayor Pro Tem


Kevin Knowles, Mayor



Martinsburg Public Outdoor Designated Area (PODA)





Marktstraße

P O D A