



# City of Fayetteville, Arkansas

113 West Mountain Street  
Fayetteville, AR 72701  
(479) 575-8323

## Legislation Text

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**File #:** 2024-1671

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### **Outdoor Refreshment Area Amendments**

AN ORDINANCE TO AMEND §111.07 OUTDOOR REFRESHMENT AREA TO AMEND THE EVELYN HILLS OUTDOOR REFRESHMENT AREA PROVISIONS, AND TO CREATE PROVISIONS FOR SUSPENDING OR REVOKING A BUSINESS'S ABILITY TO PARTICIPATE IN AN OUTDOOR REFRESHMENT AREA

**WHEREAS**, pursuant to Ark. Code Ann. § 14-54-1412, the City has established both temporary and permanent entertainment districts, called Outdoor Refreshment Areas (ORAs) permitting alcohol possession in outdoor public spaces; and

**WHEREAS**, the Evelyn Hills ORA was created in part so that patrons of Mockingbird Kitchen could possess and consume alcoholic beverages on an outdoor patio and, after three years of operation, Mockingbird Kitchen has requested an amendment to the ordinance, which City staff supports, to permit a customer to carry up to four alcoholic beverages from the restaurant to their table for other members of their party (who have been verified to be of legal drinking age) with an employee present; and

**WHEREAS**, City staff also recommends adopting provisions for suspending or revoking a business's ability to participate in an ORA to ensure businesses are being good neighbors and adhering to all other federal or state law or city ordinances.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby repeals subsection (E) of § **111.07 - Outdoor Refreshment Area** of the Fayetteville City Code and enacts a new subsection (E) as follows:

“(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 customers to exit the owner's premises during regular hours of operation with alcoholic beverages and consume said alcoholic beverages anywhere within the confines of 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) A customer may purchase and exit the owner's premises and travel to an approved outdoor dining area with up to four alcoholic beverages as long as the beverages are for the customer and other individuals of legal drinking age in the same party and sitting at the same table as the customer. It shall be unlawful for a customer to distribute alcohol to any person under the age of 21.

(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 in containers made of glass, aluminum, plastic, or other materials; however, no container shall exceed sixteen (16) fluid ounces in size."

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby enacts a new subsection (J) in § 111.07 – **Outdoor Refreshment Area** of the Fayetteville City Code as follows:

“(J) Suspending or Revoking a Business’s Ability to Participate in an Outdoor Refreshment Area

(1) Grounds for Suspension or Revocation

(a) Valid complaints that the business is operating in a dangerously unsanitary or unhealthy manner, or in such manner as to unreasonably and adversely affect the peace, health or safety of neighbors or other Fayetteville residents.

(b) The business is delinquent in submitting Hotel, Motel and Restaurant or city alcohol tax forms or in payment of the city's Hotel, Motel and Restaurant taxes or any other city or state taxes or required fees.

(c) The business is being operated in violation of any federal or state law or city ordinance or has had a necessary state or city license suspended or revoked.

(2) Suspension or Revocation. Upon finding sufficient grounds, the Mayor or the Mayor’s designee may do one of the following depending upon the seriousness of the grounds and any previous actions against the business under this subsection:

(a) Probation. A business may be placed on probation status for not more than ninety (90) days on condition that the grounds causing the problems will be remedied by the owner and not be allowed to reoccur. If the owner complies with the probation, the probation status may be lifted with no further action taken. If the Mayor or the Mayor’s designee determines that the owner has failed to correct the problems or new grounds for suspension or revocation have occurred, the business shall be subject to an extended probationary period, suspension, or revocation.

(b) Suspension. A business may be suspended from participating in the ORA program for a period of up to ninety (90) days.

(c) Revocation. A business’s ability to participate in the ORA program may be revoked. Upon revocation, a business shall not be eligible to participate in the ORA program for a period of at least one year, after which time it may submit a request to the City to return as a program participant.

(3) Notice. The Mayor or the Mayor’s designee shall mail a letter to the business mailing address shown in its business license application by first class mail notifying the business owner of the suspension or revocation. The Mayor or the Mayor’s designee shall also telephone the business owner using the business phone number provided in the business license application (as well as the emergency phone number if the owner cannot be reached on the business phone number) and provide the same information as is within the letter.

(4) Appeal to City Council. Any person or entity may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten (10) business days of the issuance of the suspension or revocation. The City Council may then determine, after a public hearing in which the business license owner may present evidence and explanations, whether the business's ability to participate in the ORA program should be suspended for not more than ninety (90) days, revoked because of the grounds presented, or that no suspension or revocation is warranted.

(5) Additional Conditions After Suspension or Revocation. The Mayor or Mayor's designee or, if appealed, the City Council, may place additional conditions on any business that has been subjected to suspension or revocation before the business is allowed to return as an ORA program participant.”



**MEETING OF FEBRUARY 6, 2024**

**TO:** Mayor Jordan and City Council  
**THRU:** Susan Norton, Chief of Staff  
**FROM:** Devin Howland, Director of Economic Vitality  
**DATE:**  
**SUBJECT:** **Outdoor Refreshment Area Amendments**

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**RECOMMENDATION:**

Staff recommend approval of two amendments to the Outdoor Refreshment Area (ORA) ordinance to include a suspension or revocation clause as well as an amendment to the Evelyn Hills Outdoor Refreshment Area to better support Mockingbird Kitchen's outdoor patio.

**BACKGROUND:**

Over the past four years, the Outdoor Refreshment Area has operated responsibly in full thanks to the stewardship of participating businesses, non-profits, and anchor institutions. Over the years, staff and City Council have made alterations and additions to the program to bring certain program elements to other areas of the City, such as Evelyn Hills Shopping Center and Centennial Park. Following the transition of ORA's management to the Downtown Fayetteville Coalition in 2023, staff have been able to focus their time refining the ordinance.

**DISCUSSION:**

Staff propose two amendments to Ordinance 6509:

- Alter the total number of drinks a customer is able to carry to an approved outdoor seating area in the Evelyn Hills Shopping Center ORA
- Include a suspension or revocation clause for all current and future ORAs in Fayetteville

The Evelyn Hills Outdoor Refreshment Area was created so that patrons of Mockingbird Kitchen could possess and consume alcoholic beverages on their outdoor patio. An ORA was needed to allow the alcoholic beverage to traverse less than 20 feet of privately owned sidewalk that stood between the restaurant's front entrance and its patio. After three years of operation, staff request an amendment to the ordinance to permit a customer (who has been verified to be of legal drinking age) to carry up to four alcoholic beverages from the restaurant to their table for other members of their party (who have been verified to be of legal drinking age) with an employee present. Currently, when a party of any size orders alcoholic beverages, each guest must walk to the restaurant to obtain their drink. As a reminder, the Evelyn Hills ORA does not allow patrons to walk around in public with their alcoholic beverage; it only allows for special events and outdoor seating. This amendment applies only to the Evelyn Hills ORA and does not apply to the Downtown ORA.

Staff also recommend an amendment to include a suspension or revocation clause that will be applied to all

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ORAs in Fayetteville. This clause is proposed not because an ORA has experienced non-compliance with the program's rules, but instead because ORA can be used to ensure participating businesses are being good neighbors and adhering to all other federal or state law or city ordinances. Other grounds for suspension or revocation include valid complaints that the business is operating in a dangerously unsanitary or unhealthy manner or if the business is delinquent in submitting Hotel, Motel, and Restaurant or city alcohol tax.

An appeal process to the City Council has also been included, where any person or entity may appeal a suspension or revocation within ten business days of its issuance. Lastly, the Mayor or Mayor's designee or, if appealed, the City Council, may place additional conditions on any business that has been subjected to suspension or revocation before the business is allowed to return as an ORA program participant.

Staff worked closely with the Fayetteville Police Department and City Attorney's Office on the development of this ordinance amendment.

**BUDGET/STAFF IMPACT:**

N/A

**ATTACHMENTS:** Proposed Amendments to Section 111.07 (#3), Downtown Fayetteville Coalition Letter of Support (#4), Mockingbird Kitchen Letter of Support (#5)

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## Evelyn Hills

(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~~s 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 anywhere within the confines of 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) A customer may purchase and exit the owner's premises and travel to an approved outdoor dining area with up to four alcoholic beverages as long as the beverages are for the customer and other individuals of legal drinking age in the same party and sitting at the same table as the customer. 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. to any person under the age of 21.~~

(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.

## Suspension or Revocation

- (J) Suspending or Revoking a Business's Ability to Participate in an Outdoor Refreshment Area
- (1) Grounds for Suspension or Revocation
    - (a) Valid complaints that the business is operating in a dangerously unsanitary or unhealthy manner, or in such manner as to unreasonable and adversely affect the peace, health or safety of neighbors or other Fayetteville residents.
    - (b) The business is delinquent in submitting Hotel, Motel and Restaurant or city alcohol tax forms or in payment of the city's Hotel, Motel and Restaurant taxes or any other city or state taxes or required fees.
    - (c) The business is being operated in violation of any federal or state law or city ordinance or has had a necessary state or city license suspended or revoked.
  - (2) Suspension or Revocation. Upon finding sufficient grounds, the Mayor or the Mayor's designee may do one of the following depending upon the seriousness of the grounds and any previous actions against the business under this subsection:
    - (a) Probation. A business may be placed on probation status for not more than ninety (90) days on condition that the grounds causing the problems will be remedied by the owner and not be allowed to reoccur. If the owner complies with the probation, the probation status may be lifted with no further action taken. If the Mayor or the Mayor's designee determines that the owner has failed to correct the problems or new grounds for suspension or revocation have occurred, the business shall be subject to an extended probationary period, suspension, or revocation.
    - (b) Suspension. A business may be suspended from participating in the ORA program for a period of up to ninety (90) days.
    - (c) Revocation. A business's ability to participate in the ORA program may be revoked. Upon revocation, a business shall not be eligible to participate in the ORA program for a period of at least one year, after which time it may submit a request to the City to return as a program participant.
  - (3) Notice. The Mayor or the Mayor's designee shall mail a letter to the business mailing address shown in its business license application by first class mail notifying the business owner of the suspension or revocation. The Mayor or the Mayor's designee shall also telephone the business owner using the business phone number provided in the business license application (as well as the emergency phone number if the owner cannot be reached on the business phone number) and provide the same information as is within the letter.
  - (4) Appeal to City Council. Any person or entity may appeal such suspension or revocation to the City Council by providing the City Clerk's Office with a written request for City Council review within ten (10) business days of the issuance of the suspension or revocation. The City Council may then determine, after a public hearing in which the business license owner may present evidence and explanations, whether the business's ability to participate in the ORA program should be suspended for not more than ninety (90) days, revoked because of the grounds presented, or that no suspension or revocation is warranted.
  - (5) Additional Conditions After Suspension or Revocation. The Mayor or Mayor's designee or, if appealed, the City Council, may place additional conditions on any business that has been subjected to suspension or revocation before the business is allowed to return as an ORA program participant.



**DOWNTOWN**  
FAYETTEVILLE  
COALITION

January 12, 2024

To the Fayetteville City Council,

The Downtown Fayetteville Coalition would like to share its **SUPPORT** of the ordinance update to include suspension or revocation rules for the City of Fayetteville's Outdoor Refreshment Area (ORA) program. These updates will help the City and FPD effectively monitor participating businesses and enforce when necessary to keep the integrity of the program intact.

DFC appreciates our continued collaboration with city leadership and being allowed to give input on these downtown conversations. Please join us by voting yes on the proposed ordinance update.

Thank you for your continued efforts in making a strong and successful downtown.

Kelly Rich, Executive Director  
Downtown Fayetteville Coalition (DFC)

# MOCKINGBIRD KITCHEN LEIGH HELM AND CHRISTINE SANDERSON

1466 North College Ave Fayetteville, AR

479-435-6333 | [business@mockingbirdkitchen.com](mailto:business@mockingbirdkitchen.com)

**1/11/2024**

Devin Howland  
Director Economic Vitality  
City of Fayetteville  
113 West Mountain St.  
Fayetteville, AR

**Dear Devin Howland:**

The ability for customers to have alcoholic beverages on our patio has been an asset to our business. Currently each customer is only able to carry their own drink to the table and not anyone else's. It would be helpful if one customer could carry multiple drinks to their table for properly carded others.

We ask that the City council allow our customers to be able to carry more than one drink at a time to our patio.

Sincerely,

**Leigh Helm and Christine Sanderson**