SHAKER HEIGHTS

City Council Agenda
City Hall Council Chambers
Monday, January 13, 2020 at 7:00 pm

SPECIAL MEETING

Public Comment on Agenda Item

1. To approve the creation of a revised Outdoor Refreshment Area as permitted by Ohio law for the consumption of alcohol in specified public areas of the Van Aken Shopping Center.
   Ordinance No.
   By:
   1st Reading

   Documents:

   ORA REVISED.PDF

EXECUTIVE SESSION

To discuss the purchase, sale or the development of real property where premature disclosure of information would give an unfair competitive or bargaining advantage to a person, or otherwise adversely affect the general public interest; and personnel matters, including the appointment, employment, dismissal, discipline, promotion, demotion or compensation of one or more public employees or officials.

To request an accommodation for a person with a disability, call the City's ADA Coordinator at 216-491-1440, or Ohio Relay Service at 711 for TTY users.

SHAKER HEIGHTS

Memorandum

To: Members of Council

From: Joyce G. Braverman, Director, Planning

cc: Mayor David E. Weiss
Chief Administrative Officer Jeri E. Chaikin
William M. Ondrey Gruber, Director of Law
Jeff DeMuth, Police Chief

Date: January 3, 2020

Re: Revised Outdoor Refreshment Area in the Van Aken District

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RMS Corporation desires to establish an Outdoor Refreshment Area (ORA) to replace the ORA approved on July 22, 2019 per Ohio Revised Code Section 4301.82. This section of the state code is a recent code addition which allows open containers in entertainment and downtown districts. Originally aimed at large cities, the code has provisions for establishing these districts in municipalities of less than 35,000. The new ORA will include the indoor Market Hall per an opinion from the State Department of Commerce that concludes that the Market Hall is within the ORA boundaries.

The ORC Section 4301.82 provides regulations for establishing a district allowing open containers purchased by vendors of the district. The State makes provisions to establish district boundaries and related signage, establish hours of operations, provide for sanitation and safety plans, and consider area impact. RMS has submitted a petition to Mayor Weiss per the State code. Mayor Weiss is now submitting the petition to City Council.

Council approval is required to establish an ORA. The City process is dictated by State code. The City must comply with the following:

- A public hearing must be held and the City must publish a public notice within 45 days of receiving the petition, the notice requires a two week advertisement. The public hearing is scheduled for January 27, 2020. Notices will be published on January 9 and January 16, 2020 per State requirements.
- Council must act no less than 30 days nor more than 60 days after initial publication of notice on approval of the petition by ordinance.
- The City must notify the State division of liquor control and the Department of Public Safety of the application approval.
- The ordinance must include the boundaries, signage, hours of operation, number of personnel needed for public safety, sanitation plan and manpower, and requirement to service in a plastic cup.
- Council shall review the ORA five years after the date the ORA is created and again every 5 years.
- Council has the authority to dissolve all or part of the ORA with proper notice.

- City administration and RMS may agree to change the plan, within the terms set in the petition, as needed.

RMS has submitted a replacement petition and approval timeline. The petition describes the operation of the proposed ORA district:

- Boundaries of the district are contiguous with the area RMS controls.
- Signs are proposed at 11 locations at the entrances to the district. Signs will contain the hours and rules of operation.
- Plastic cups must be used to serve alcohol and will be printed with the Van Aken District logo and the rules. Cups will be compostable and RMS is working with Rust Belt Riders on the collection details. Cups will be color-coded by establishment.
- Hours and dates of operation are proposed.
    - Sunday 11 a.m. to 10 p.m.
    - Monday-Thursday 11 a.m. to 10 p.m.
    - Friday and Saturday 11 a.m. to 12 a.m.
- Additional security will be added during ORA hours.

The replacement petition also contains the following changes:

- Removed seasonal schedule of April 1 through October 31.
- Changed start time each day to 11 a.m.
- Updated permit numbers.
- Updated hours of operations for ORA establishments.
- Revised language on cups.
- Changed language to permit ORA beverage inside other non-liquor service premises with ORA.

This item is scheduled for first reading on January 13, 2020, and for second reading and a public hearing January 27, 2020. Third reading is scheduled for February 10, 2020. Per State code, approval of the petition may occur not earlier than 30 days, but not later than 60 days after the initial public notice. A full packet of information is included in your packet including the RMS petition, timeline, and ORC section.

The ORA is distinguishing the Van Aken District as an unique shopping and gathering place.

Enclosures

ORDINANCE NO.
BY:

To approve the creation of a revised Outdoor Refreshment Area as permitted by Ohio law for the consumption of alcohol in specified public areas of the Van Aken Shopping Center.

WHEREAS, Ohio law, in Revised Code Section 4301.82, permits a municipal corporation with a population of thirty-five thousand or less to create one outdoor refreshment area (ORA) if the proposed area will include at least four qualified State liquor permit holders and be composed of one hundred fifty or fewer contiguous acres; and

WHEREAS, Ohio law requires that the legislative authority of a municipal corporation must adopt an ordinance that establishes requirements for an ORA to ensure public health and safety within the area, and the law specifies certain information required to be included in the ordinance; and

WHEREAS, in Ordinance 19-47 enacted on July 22, 2019, this Council approved the Petition received on May 22, 2019, from RMS Investment Corporation, the operator of the Van Aken Shopping Center, which thus approved the creation of an ORA in the Van Aken District; and

WHEREAS, RMS has been advised by the Ohio Division of Liquor Control that patrons of the three liquor establishments in the Van Aken District Market Hall are allowed by law to leave the defined premises for each establishment within the Market Hall itself with open containers of alcohol within the rules of the ORA, since the Market Hall is located within the ORA; and

WHEREAS, based on this recent opinion concerning the Market Hall, RMS would now like to revise the ORA’s seasonal schedule and the start time to allow the ORA to operate inside the Market Hall throughout the year and, therefore, RMS has submitted a new Petition for an ORA, which Petition is attached to this legislation and is incorporated herein; and

WHEREAS, the attached Petition eliminates the seasonal schedule of the original ORA, changes the start time for the ORA, changes language to permit ORA beverages inside other non-liquor service premises within the ORA, includes the same specific boundaries of the ORA as currently exist, and includes all of the following: updated liquor permit numbers; updated hours of the establishments selling alcohol included in the ORA; street addresses; the number, spacing, and type of signage designating the area; the updated hours of operation for the ORA; the number of personnel needed to ensure public safety in the ORA; a sanitation plan that will help maintain the appearance and public health of the ORA; the number of personnel needed to execute the sanitation plan; and a requirement that beer and intoxicating liquor shall be served solely in landlord provided plastic containers in the ORA, which containers have revised language; and

WHEREAS, the public notices required by Ohio Revised Code Section 4301.82 have been provided, and a public hearing was held on January 27, 2020, after a two week advertisement.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Shaker Heights, State of Ohio:

Section 1. This Council approves the Petition to Shaker Heights City Council for the creation of the Van Aken District Outdoor Refreshment Area (ORA), pursuant to Ohio Revised Code Section 4301.82.

Section 2. This Council determines that all requirements of Ohio Revised Code Section 4301.82, including, but not limited to, public notice, advertisement for two weeks, and a public hearing, have been met.

Section 3. The Van Aken District Outdoor Refreshment Area (ORA) shall be operated as set forth in the Petition of RMS Investment Corporation submitted to the Mayor on December 18, 2019, or as it may be amended from time to time, with the approval of the City.

Section 4. The Clerk of Council is hereby instructed to forward a copy of this Ordinance to the Ohio Division of Liquor Control and to the Investigative Unit of the Ohio Department of Public Safety, in accordance with Ohio Revised Code Section 4301.82.

Section 5. This ordinance shall take effect from and after the earliest time allowed by law.

Enacted

Approved this ____ day of _____, 2020.

_____
DAVID E. WEISS, Mayor

Attest:

_____
JERI E. CHAIKIN
Clerk of Council

Coun20/0113REVISEDVanAkenOutdoorRefreshmentArea

PETITION TO
SHAKER HEIGHTS CITY COUNCIL
Van Aken District
Outdoor Refreshment Area

Presented by RMS Corporation and the Shaker Heights Mayor David Weiss

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I. INTRODUCTION

The Office of the Mayor of the City of Shaker Heights, Ohio and RMS Investment Corporation (the "RMS"), respectfully submit the following application ("Application") to the Council of the City of Shaker Heights, Ohio to approve and enact the Van Aken District Outdoor Refreshment Area ("ORA"), in accordance with R.C. § 4301.82 and Sub. H.B. No. 47 (2015).

Section 4301.82 of the Ohio Revised Code (ORC) authorizes municipalities under 35,000 in population to create Designated Outdoor Refreshment Areas. Upon creation, an outdoor refreshment area allows bar/restaurant patrons to legally walk around a designated outdoor area with an alcoholic beverage that has been served by a liquor-permit-holding establishment. Patrons would be required to stay within a predetermined boundary, and only during locally-established days/times/events.

Council approval of the ORA as set forth in this Application would create an Outdoor Refreshment Area, meeting or exceeding all of the requirements of R.C. § 4301.82, for the economic betterment of the businesses and residents within the ORA, as well as the City of Shaker Heights, by further establishing the Van Aken District, Shaker's downtown, as a destination for entertainment, gathering, and activity.

For decades, the City of Shaker Heights has planned for the redevelopment of the Van Aken District as an exciting, urban, pedestrian friendly district. The Warrensville/Van Aken Transit Oriented Development Plan was adopted in 2010 by the City of Shaker Heights, as a blue print for future improvements to the Van Aken District to boost development opportunities and connectivity. Many plans over the years have noted Warrensville/Van Aken as a core asset of the City of Shaker Heights. The Van Aken District is the culmination of these plans and extensive community meetings to create a unique visual identity for the district, while relating to the rich architectural history of the community. The District has become the commercial center of the City and the gathering place for many in the community. The Office of the Mayor and RMS firmly believe that Council approval of the ORA set forth in this Application will further the City of Shaker Heights in its pursuit of making the Van Aken District Shaker's new downtown.

RMS has a long history of providing adequate security, public health measures, and leadership for the many real estate developments it has managed over the years, and would use that experience to manage, administer, and enforce of the rules and of the ORA with assistance from the City of Shaker Heights. The Office of the Mayor, and many neighborhood stakeholders are very confident that RMS's experience and commitment to the overall advancement of the Van Aken District is the perfect foundation of skills to administer the ORA.

As outlined in this Application, the RMS will be working in conjunction with the Mayor's Office, Shaker Heights City Council, the Shaker Heights Police Department, Shaker Heights Planning Department and Downtown Cleveland Alliance to ensure a safe, professional implementation of the ORA. Through constant communication between the City of Shaker Heights and RMS, the security and sanitation needs will be tailored as time and experience progress, and as contemplated by R.C. § 4301.82.

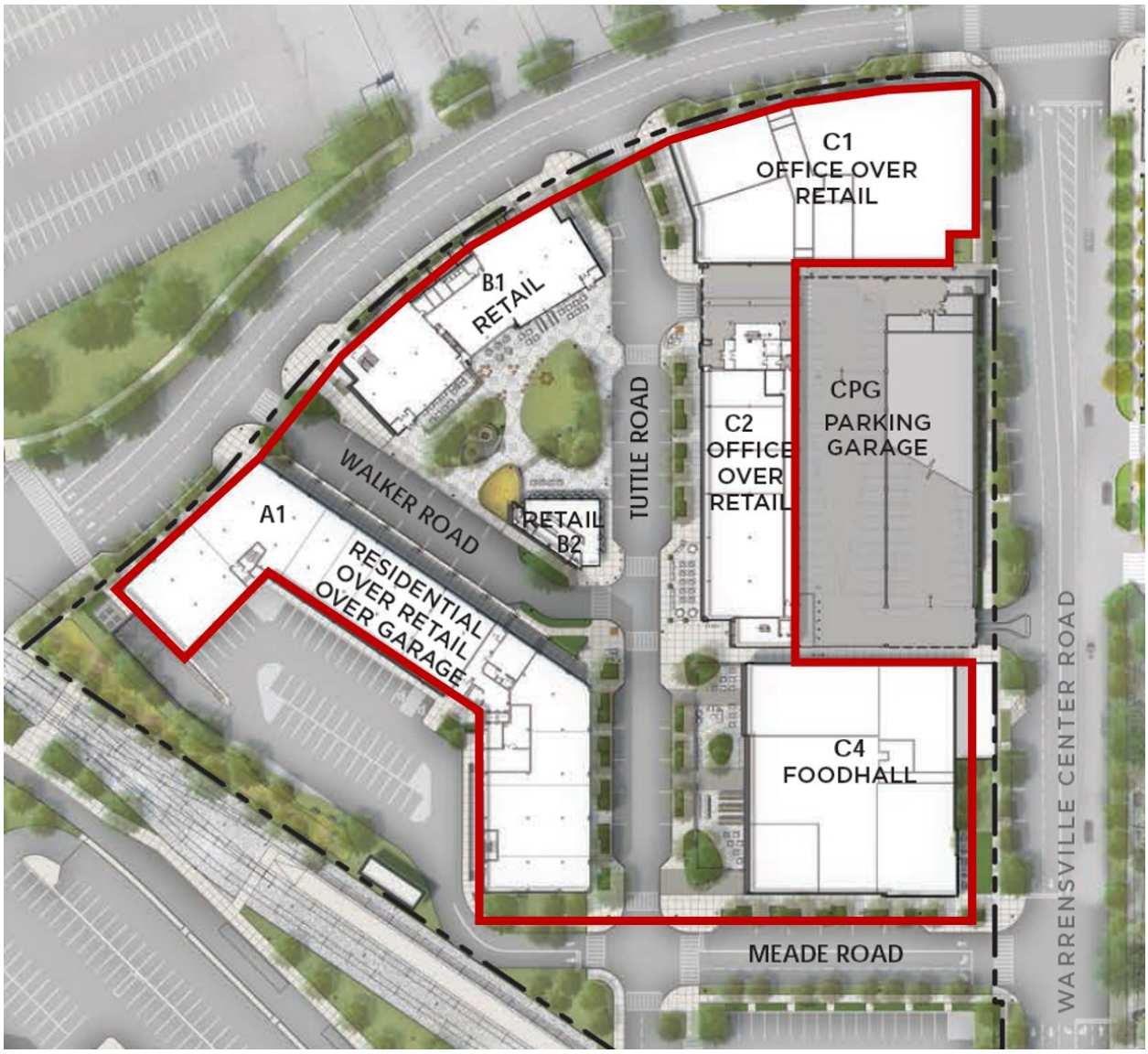
Respectfully Submitted,

Office of the Mayor **City of Shaker Heights**	**RMS Investment Corporation**
David Weiss, Mayor	Jason Russell, General Manager

DATED: December 18, 2019

II. BOUNDARIES

In accordance with R.C. § 4301.82(D) (3)(b) and (F)(1)(a), the boundaries of the ORA are depicted below and further depicted in Exhibit 1:



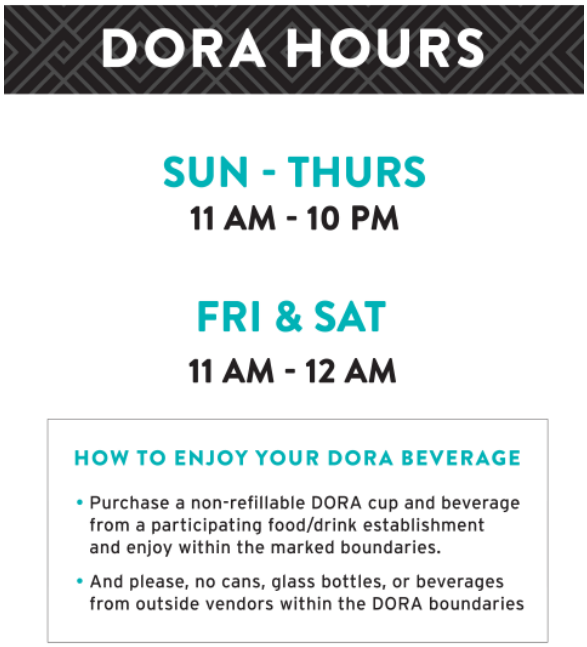
III. SIGNAGE

In accordance with R.C. § 4301 .82(B)(1)(a) and (F)(1)(b), the number, spacing, and type of signage designating the ORA are described as follows:

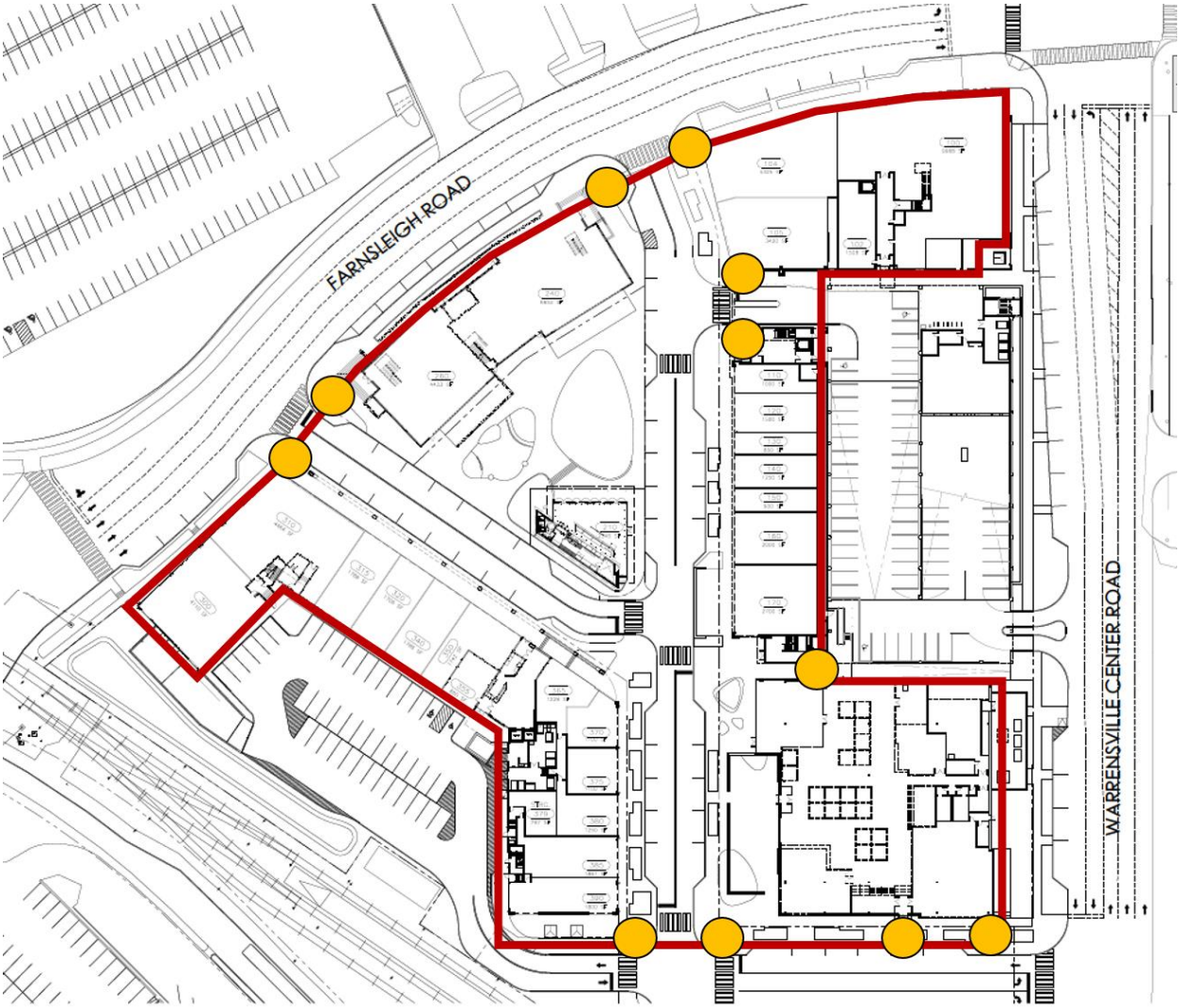
RMS has determined that approximately eleven (11) sign locations produced by RMS in a style consistent with the brand and design of the Van Aken District to describe the ORA. Signage will be on-display during the timeframe the ORA is in effect. Signs will be removed or covered when the calendar year for the ORA has passed. Signs will be in place for all special events.

The content and style of this signage shall, in sum or substance, consist of the following:

SIGNAGE DESIGN



SIGNAGE LOCATIONS



IV. HOURS OF OPERATION

In accordance with R.C. § 4301 .82(F)(1)(c), the hours of operation for the ORA shall be as follows:

Sunday, 11 AM to 10 PM

Monday through Thursday, 11 AM to 10 PM

Friday and Saturday, 11 AM to 12 AM

In the event of a special event, RMS, Mayor's Office and Shaker Heights Police Department may collectively agree to implement the outdoor refreshment area outside of the normal operating dates/times of the ORA, all guidelines set forth in this document will be in full effect.

V. SAFETY PLAN

In accordance with R.C. § 4301.82(B)(5) and (F)(1)(d), the requirements for the purpose of ensuring public safety within the ORA, the Safety Plan that will help maintain public safety within the ORA, and the number of personnel needed to execute the Safety Plan, are as follows :

At the commencement of the ORA, RMS will provide one (1) private security officer to patrol the ORA during ORA hours of operation on Monday through Sunday. In addition, the Shaker Heights Police Department shift patrol officer(s) assigned to patrol zone encompassing ORA will regularly patrol the ORA during all ORA hours of operation as may be practicable and as otherwise permitted in light of the patrol officer(s)'s responsibility to respond to calls for service of reported crime throughout the City of Shaker Heights. These assignments may be tailored as adequate and sufficient for public safety in the City of Shaker Heights in an efficient, ongoing basis.

The Chief of Police of the City of Shaker Heights, in his or her discretion and consistent with the Codified Ordinances of the City of Shaker Heights, may temporarily supplement, modify, or add to these requirements as may be required for any special events within the ORA or as other circumstances may require.

Each month after the commencement of the ORA, continuing for a period of six (6) consecutive months, and once every three (3) months thereafter, the Chief of Police of the City of Shaker Heights, and RMS shall meet and review the requirements herein for the purpose of determining whether updates, modifications, or supplementation to these requirements may be advisable or required, and in said event, such changes shall be presented to Council for consideration and implementation.

The Mayor and Chief of Police of the City of Shaker Heights have determined that the Safety Plan described herein is sufficient to maintain public safety within the ORA. This Safety Plan can be executed with the existing personnel of RMS and the additional personnel described above.

VI. SANITATION PLAN

In accordance with R.C. § 4301.82(B)(5), (F)(1)(e), and (F)(1)(f), the requirements for the purpose of ensuring public health within the ORA, the Sanitation Plan that will help maintain the appearance and public health of the ORA, and the number of personnel needed to execute the Sanitation Plan, are as follows:

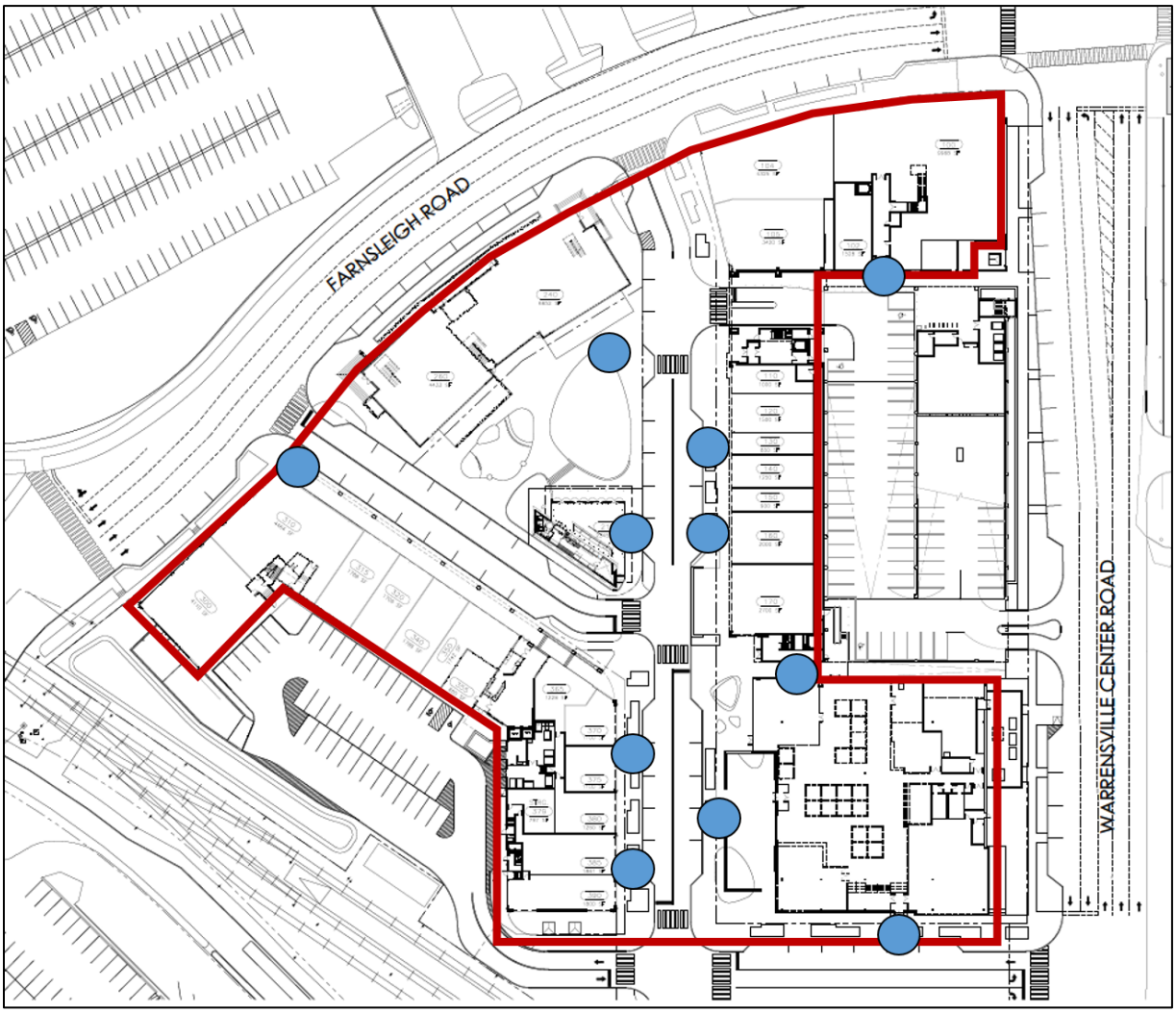
There are currently eleven (11) trash receptacles located throughout the ORA that are serviced daily by RMS. This shall continue upon the commencement of the ORA. Additional trash receptacles may be added within the ORA in the discretion of the RMS or by request by the City of Shaker Heights.

Litter control is the primary responsibility of RMS but receives assistance from the Van Aken District Ambassadors, a collaboration of RMS, City of Shaker Heights, Tower East and University Hospitals. This litter control shall continue upon the commencement of the ORA. In addition, each qualified permit holder located within the ORA shall be responsible for the collection of litter near or around the premises occupied by the permit holder. Compliance with this requirement shall be monitored by RMS. RMS will steadily evaluate the need and frequency of litter control in the ORA to maintain the appearance and public health of the ORA.

RMS currently sweeps the streets within the ORA, twice per week when during non-winter months. RMS will continue this current schedule of street sweeping within the ORA. RMS will steadily evaluate the need and frequency of street sweeping in the ORA to maintain the appearance and public health of the ORA.

The Director of Public Works for the City of Shaker Heights has determined that the Sanitation Plan described herein is sufficient to help maintain the appearance and public health within the ORA. This Sanitation Plan will be executed with RMS personnel with assistance from Van Aken District Ambassadors.

REFUSE RECEPTACLE LOCATIONS



VII. QUALIFIED PERMIT HOLDERS

In accordance with R.C. § 4301.82(B)(3), the ORA will encompass not fewer than four qualified permit holders as defined by R.C. § 4301 .82(A) , each of which are further identified as follows:

	Permit Holder	Address	Classes	Permit Number
1	Craft Collective	3449 Tuttle Road	A1A, A1C, D6	22737240010
2	Banter	3441 Tuttle Road	TBD	TBD
3	Brassica	20301 Meade Road	D1, D2, D6	65721610030
4	Michael's Genuine	3427 Tuttle Road	D5, D6	5896910
5	Nature's Oasis	3385 Tuttle Road	D1, D2	63158180005
6	Manifest	3440 Tuttle Road	D5, D6	5487871
7	Sawyer's	3396 Tuttle Road	D5, D6	2951575
8	Garden City Bar	3386 Tuttle Road	TBD	TBD

Hours of Operation

Permit Holder		Sunday – Thursday		Friday		Saturday	
		Open	Close	Open	Close	Open	Close
1	Craft Collective	11am	12am	11am	2am	11am	2am
2	Banter	11am	10pm	11am	10pm	11am	10pm
3	Brassica	11am	10pm	11am	10pm	11am	10pm
4	Michael's Genuine	5pm	9pm	5pm	10pm	5pm	10pm
5	Nature's Oasis	7am	8:30pm	7am	8:30pm	8am	8:30pm
6	Manifest	11am	8pm	11am	8pm	10am	7pm
7	Sawyer's	5pm	9pm	5pm	10pm	5pm	10pm
8	Garden City Bar	TBD	TBD	TBD	TBD	TBD	TBD

VIII. OFFICIAL CUP

In accordance with R.C. § 4301 .82(F)(1)(g), beer, wine, and intoxicating liquor shall only be consumed within the ORA as follows :

Beer, wine, and intoxicating liquor shall be served and consumed in the ORA in the specifically designated cup produced and provided by RMS (the "Official Cup"). No other container will be permitted. All ORA beverages must be served in a new, unused, Official Cup. Only one (1) Official Cup per person will be permitted in the ORA. Used Official Cups must be disposed of before entering any establishment in the ORA. Official Cups shall hold no more than sixteen (16) fluid ounces and shall be composed of compostable or recycled plastic materials. The design of the cups will remain consistent, but may vary in color for each qualified permit holder. The content and style of the Official Cup shall, in sum or substance, consist of the following:

RMS will supply each qualified permit holder with an initial PAR supply of one thousand (1000) Official Cups upon commencement of the ORA. Each qualified permit holder may attach a charge on every ORA beverage sold and accompanied by an Official Cup. RMS will charge each qualified permit holder for future supplies of Official Cups.

Official Cup charges collected by RMS may only be used to fund the direct costs incurred by the RMS in the administration of the ORA, or to otherwise directly benefit the operations of the ORA.

Front of Cup	Back of Cup

IX. ADDITIONAL RULES AND REQUIREMENTS

In. accordance with R.C. § 4301.82(B)(5), and in conjunction with all other rules, standards , and requirements set forth in this Application, additional rules and requirements for the purpose of ensuring public health and safety within the ORA are as follows:

A. A person may have in the person's possession an official ORA cup of beer, wine, or intoxicating liquor at an outdoor location within the ORA if the opened container of beer, wine, or intoxicating liquor was purchased from a qualified permit holder to which both of the following apply:

   i. The permit holder's premises is located within the ORA; and

   ii. The permit held by the permit holder has an outdoor refreshment area designation.

B. No person shall do any of the following :

   i. Enter the premises of an establishment within the ORA while possessing an official ORA cup of beer, wine, or intoxicating liquor acquired elsewhere, unless permitted by the owner of said establishment

   ii. Possess an opened container of beer, wine, or intoxicating liquor while being in or on a motor vehicle within the ORA.

C. Beer, wine, and intoxicating liquor may only be served and consumed in official ORA cup. In addition to all other rights and remedies pursuant to law, noncompliance by any qualified permit holder with any rule, standard, or requirement set forth in this Application shall constitute a failure to satisfy the public health and safety requirements of the ORA, and shall constitute adequate grounds for Council to request the Ohio Department of Commerce, Division of Liquor Control to revoke or otherwise fail to renew the outdoor refreshment area designation issued to such permit holder pursuant to R.C. § 4301.82(E).

D. If any provision of this Application is judged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder.

X. AREA IMPACT

Pursuant to R.C. § 4301.82(B)(2) and (B)(4), a general statement of the nature and types of establishments that will be located within ORA, and evidence that the uses of land within the ORA are in accord with the master zoning map of the City of Shaker Heights are as follows:

The types of establishments located within the ORA are primarily businesses in the retail, dining, or services. Residential housing within the ORA is limited, and consists exclusively of the 103 unit apartment buiding in the Van Aken District named Upstairs at Van Aken.

The entirety of the ORA is zoned CM, "Commercial Mixed-Use," pursuant to Codified Ordinances of Shaker Heights, Chapter 1243. No properties located within the ORA are zoned "Residential" as defined by Codified Ordinances of Shaker Heights.

Several cities have realized measured benefits as a result of the implementation of outdoor refreshment districts. Ohio examples include Canton, Lyndhurst, Lorain, Middleton, Toledo and Worthington. Shaker Heights, with the creation of a new downtown hub of activity is uniquely positioned to capitalize on this opportunity.

Both the Office of the Mayor and RMS are confident that the ORA will not only enhance the entertainment and cultural appeal of the Van Aken District, as a destination, but it will also serve to enhance the economic appeal of Shaker Heights and make the area more attractive to businesses and attract new residents to the community. This conclusion is consistent with, and reinforced by, the many plans conducted over the years, by the City of Shaker Heights, to create a vibrant, mixed use development at Van Aken and Warrensville.

Outdoor Refreshment Area Approval Timeline

Date	Task	Party	ORC	Note
12/18/2019	Submit plan and resolution to Mayor	RMS		
1/13/2020	Make application to City Council (1st reading)	City	4301.82(B)	The executive officer of a municipal corporation or the fiscal officer of a township may file an application with the legislative authority of the municipal corporation or township to have property within the municipal corporation or township designated as an outdoor refreshment area
1/9/2020	Public Notice #1	City	4301.82(C)	The legislative authority shall publish public notice of the application once a week for two consecutive weeks in one newspaper of general circulation in the municipal corporation or township.
1/16/2020	Public Notice #2	City	4301.82(C)	
1/27/2020	Public Hearing (2nd reading)	City/RMS		
2/10/2020	Final approval (3rd reading)	City/RMS	4301.82(C)	Not earlier than thirty but not later than sixty days after the initial publication of notice, the legislative authority shall approve or disapprove the application by either ordinance or resolution, as applicable. Approval of an application requires an affirmative vote of a majority of the legislative authority.