



**Office of the City Manager**  
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# Memo

**To:** Members of Dublin City Council  
**From:** Dana L. McDaniel, City Manager   
**Date:** January 21, 2016  
**Initiated By:** Terry Foegler, Dir. of Strategic Initiatives/Special Projects  
Jennifer Readler, Assistant Law Director  
**Re:** Community Entertainment Districts

## **I. INTRODUCTION**

Because of their contribution in helping create vibrant, mixed-use environments, the establishment of one or more Community Entertainment Districts ("CEDs") within the Bridge Street District ("BSD") has been contemplated by the City since the early stages of the BSD planning process. The Development Agreement between the City of Dublin and Crawford Hoying Development Partners, LLC also contains a commitment by the City to use its best efforts to create one or more CEDs in the BSD that would include the Bridge Park project. This memorandum will provide background information and outline the process for creating CEDs. This informational memorandum is being put forth prior to the formal consideration of any specific CEDs by City Council in order to provide background information to Council and the community regarding the statutory provisions for CEDs, and to set the stage for a process for moving forward with Council's consideration of the creation of one or more new CEDs within the City's BSD.

## **II. DISCUSSION**

### **A. How are Liquor Licenses apportioned in Ohio?**

Ohio law generally limits the number of liquor licenses available within an area, and establishes an allotment for each type of liquor permit based upon the population of that area. According to the Ohio Department of Liquor Control, the following reflects Dublin's current liquor permit allotment status, by permit type:

<b>25</b>	<b>Franklin</b>	<b>066 Dublin</b>	<b>Population</b>	<b>44,214</b>	
<b>Class</b>	<b>Ratio</b>	<b>Permit Quota</b>	<b>Permits Issued</b>	<b>Permits Available</b>	<b>Applications On File</b>
C1	1,000	45	13	32	1
C2	1,000	45	14	31	2
D1	2,000	23	21	2	12
D2	2,000	23	22	1	5
D3	2,000	23	15	8	1
D3A	0	0	5	10	0
D4	2,000	23	1	22	0
D5	2,000	23	22	1	4

As the chart reflects, the available supply of D5 permits (those most analogous to the permits enabled by a CED and needed by restaurants that wish to serve beer, wine and mixed drinks) are largely spoken for, with four permit applications pending.

By way of comparison, the following represents the allotment status of D5 liquor permits for other Central Ohio communities:

- Bexley – 1 available; 2 pending applications
- Canal Winchester – 0 available; 1 pending application
- Columbus – 18 available; 72 pending applications
- Gahanna – 2 available; 3 pending applications
- Grandview Heights – 0 available; 4 pending applications
- Grove City – 2 available; 1 pending application
- Hilliard – 1 available; 2 pending applications
- Upper Arlington – 1 available; 1 pending application
- Worthington – 1 available; 4 pending applications

## **B. What is a Community Entertainment District?**

In 2005 the State of Ohio enacted legislation authorizing the creation of Community Entertainment Districts. The Ohio Revised Code defines a “community entertainment district” as “a bounded area that includes or will include a combination of entertainment, retail, educational, sporting, social, cultural, or arts establishments within close proximity to some or all of the following types of establishments within the district, or other types of establishments similar to these: (1) Hotels; (2) Restaurants; (3) Retail sales establishments; (4) Enclosed shopping centers; (5) Museums; (6) Performing arts theaters; (7) Motion picture theaters; (8) Night clubs; (9) Convention facilities; (10) Sports facilities; (11) Entertainment facilities or complexes; (12) Any combination of the establishments described in division (A)(1) to (11) of this section that provide similar services to the community.”

In plain terms, the creation of a CED is a tool to help facilitate the establishment of restaurants and other similar venues as part of larger scale development and redevelopment-revitalization areas that include the types of uses outlined by the statutes. Once the CED is established, it creates a new “pool” of liquor licenses (in addition to the City’s normal “allocation”) that can only be issued within that CED.

## **C. Key Provisions Regarding CEDs in the Ohio Revised Code – Liquor Permits and Development Investments**

Specifically, a CED allows for an additional pool of liquor permits, above the mandated quota, to be issued within the defined CED area. The CED must include a minimum of 20 acres and may have one such permit for every five acres, up to a maximum of 15 permits. Accordingly, the minimum size required for a CED to take full advantage of the maximum number of permits per CED would be 75 acres. These permits may be transferred from location to location and from owner to owner but only within the specific CED boundaries in which they

were issued. So in this way, these permits have far less mobility than traditional liquor permits, but they remain for the benefit the District into the future.

These CED liquor permits are identified as D5-j permits, and can be obtained at a significantly lower price than a traditional liquor permit. While traditional liquor permits are based on current market conditions and can be bought and sold in today's market for upwards of \$30,000, depending upon level of availability, D-5j liquor permits cost \$2,344 (Ohio Revised Code Section 4303.181(J)).

The holder of a D-5j permit may exercise the same privileges, and must observe the same restrictions, such as hours of operation, as the holder of a D-5 permit, and must obtain a food service license as well. D-5 liquor permits allow spirituous liquor for on premises consumption only, and beer, wine, and mixed beverages for on premises consumption, or off premises in original sealed containers, until 2:30am.

While the City controls the creation of a CED (as outlined below), the Ohio Division of Liquor Control (the "Division") still controls the issuance of liquor permits, including the issuance of D-5j permits for CED properties, just as it would for the issuance of other liquor permits. In order for the Division to issue a D-5j liquor permit within a CED located in a city with a population of at least 20,000, R.C. 4303.181(J)(2)(b) requires that "[n]ot less than fifty million dollars will be invested in development and construction in the community entertainment district's area located in the municipal corporation." So clearly, these designations are intended to go hand in hand with a substantial amount of planned private and public development investment within the CED.

We contacted the Division to inquire whether the investment requirement needed to be "new" investments or whether existing investments, which presumably were relatively recent, could be included toward this requirement. The Division advised us that only new investment will be applied toward the \$50 million minimum investment threshold. The Division also stated that it will consider investments in public infrastructure as applying toward that minimum investment threshold. The Division further maintains this level of anticipated investment should be expected to occur over the following 5-10 year period and encourages detailed projections of what items the projected investments will include.

#### **D. Application and Approval Process Under the Ohio Revised Code**

Section 4301.80 of the Ohio Revised Code outlines the CED application process and addresses the various actions and timing of those actions with regard to processing a CED application.

The pertinent language in R.C. 4301.80(C) regarding timing of the CED application process is as follows:

An application described in division (B) of this section relating to an area located in a municipal corporation shall be addressed and submitted to the mayor of the municipal corporation in which the area described in the application is located. The

mayor, *within thirty days* after receiving the application, shall submit the application with the mayor's recommendation to the legislative authority of the municipal corporation.

\* \* \*

*Within thirty days after it receives the application and the mayor's recommendations relating to the application*, the legislative authority of the municipal corporation, by notice published once a week for two consecutive weeks in one newspaper of general circulation in the municipal corporation or as provided in Section 7.16 of the Revised Code, shall notify the public that the application is on file in the office of the clerk of the municipal corporation and is available for inspection by the public during regular business hours.

\* \* \*

*Within seventy-five days after the date the application is filed with the mayor of a municipal corporation*, the legislative authority of the municipal corporation *by ordinance or resolution* shall approve or disapprove the application based on whether the proposed community entertainment district does or will substantially contribute to entertainment, retail, educational, sporting, social, cultural, or arts opportunities for the community. The community considered shall at a minimum include the municipal corporation in which the community is located. Any approval of an application shall be by an affirmative majority vote of the legislative authority.

\* \* \*

Any owner of property (including the City of Dublin) located in the City may file an application to create a CED. At a minimum, an application to create a CED must contain the following information pursuant to R.C. 4301.80(B):

- The applicant's name and address.
- A map or survey of the proposed CED in sufficient detail to identify the boundaries of the district and the property owned by the applicant (the CED can include properties owned by parties other than the applicant).
- A general statement of the nature and types of establishments that are or will be located in the CED.
- If some or all of the establishments have not yet been developed the proposed time frame for completing the development of these establishments.
- Evidence that the uses of land within the proposed CED are in accord with the City's master zoning plan or map.
- A certificate from a surveyor or engineer that the area encompassed by the proposed CED contains no less than 20 contiguous acres.
- A handling and processing fee, payable to the applicable municipal corporation, in an amount determined by that municipal corporation.

**E. Applications from Other Cities**

The proposed application form that staff has prepared fundamentally mirrors these statutory requirements (see attachment A). In our research, we contacted other cities for currently-existing CEDs in Ohio to obtain copies of their applications.<sup>1</sup> We received copies of applications from Toledo, West Carrollton, and Upper Arlington. The application fees ranged from \$25 to \$1,000.

Other than as noted below, all of the applications that we obtained generally mirror the Ohio Revised Code's application requirements.

Although the Revised Code describes the minimum requirements for a CED application, municipal corporations may add additional items to the application. Below are additional items included by various other cities in Ohio in their CED applications:

- In order to obtain a D-5j liquor permit (the type of permit issued within the CED designation, only valid within that CED, and not transferable outside the CED, as previously discussed), an applicant must demonstrate that at least \$50 million will be invested in development and construction in the CED's area (see Section A. above regarding liquor permits and threshold investment requirements). Although municipal corporations have no control over the actual issuance of liquor permits for CEDs, it may be helpful for the applicant to provide that information since that will need to be provided eventually to the Ohio Division of Liquor Control if the applicant applies for a D-5j liquor permit.
- Upper Arlington's CED application contains a section that generally describes the process for obtaining a D-5j permit and requires acknowledgement that any proposed use applying for such a permit must also comply with the City's Zoning Code.
- Toledo has a section for the mayor to acknowledge approval or disapproval of the application. Utilizing this form would be easier than creating a separate letter to demonstrate the mayor's approval. The section in the Toledo application appears as follows:

In accordance with the provisions contained in the Ohio Revised Code Section 4301.80(C), the Mayor of the City of Toledo recommends that this action be:

Approved \_\_\_\_\_ Disapproved \_\_\_\_\_

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

Staff recommends that these items be included in Dublin's CED application form.

<sup>1</sup> A complete list of all CEDs currently in place in Ohio is attached. The list was provided by the Ohio Division of Liquor Control and includes both municipal CEDs and township CEDs, with a total of 67 CEDs in Ohio.

#### **F. Recent Amendments to the CED Statutes**

Pursuant to Amended Substitute House Bill 494, which became effective on or about March 20, 2015, there is an alternative method for creating a CED, which we believe will **not** be applicable to the BSD nor elsewhere in Dublin. New R.C. 4301.80(D) permits a municipal corporation to designate property as a CED pursuant to a joint economic development district ("JEDD") entered into under R.C. 715.70 or 715.71, or R.C. 715.72 to 715.81. The following requirements apply to this alternative method:

- The property is located in the JEDD.
- The owner of the property consents in writing to designation of the property as a CED.
- Designation of the property as a CED will substantially contribute to entertainment, retail, educational, sporting, social, cultural, or arts opportunities for the community. The proposed community to be considered for this purpose shall at a minimum include the township or municipal corporation in which the community is located and the entire area included in the JEDD.

#### **G. Recent Adoption of Open Container Law**

Ohio also recently passed a law (Sub. H.B. 47) that authorizes municipal corporations and townships to create outdoor refreshment areas ("ORAs") that are exempted from the Open Container Law, *i.e.*, areas in which individuals are permitted to carry open containers of beer or intoxicating liquor within an ORA, provided that the container is purchased from a specified liquor permit holder with an ORA designation. **Dublin's proposed creation of CEDs does not permit individuals to carry open containers of beer or intoxicating liquor and is unrelated to the provisions of Sub. H.B. 74.**

### **III. CONCLUSION**

The creation of CEDs in the City will permit the issuance of one D-5j liquor permit for each five acres of land located within the CED, while not exceeding 15 total permits per district. Creation of CEDs will not permit individuals to carry open containers of beer and intoxicating liquors. A separate outdoor refreshment area would need to be created to permit open carry of such beverages.

It is important to emphasize that the CED designation and its associated liquor permit provisions have no impact on the City's normal zoning and regulatory land use controls that establish where and under what circumstance such liquor establishments are permitted. It simply improves the likely availability and cost of such permits for establishments located within the designated areas. Similarly, a CED designation provides no limitations on the normal objection rights of schools, churches and other organizations. The CED designation does not have any impact on any Sunday sales limitations that may exist, and all applicable rules related to outdoor eating areas continue to apply to holders of D-5j licenses. Basically, the CED has no additional affects other than increasing the pool of licenses for restaurants, and reducing the

cost of those licenses within its boundaries. City Council can amend the boundaries of a CED in the future.

It is our understanding that existing establishments located within the new CEDs, with pre-existing conventional liquor permits, would be able to sell those permits (with their enhanced portability) and procure at minimal cost, one of the new D-5j CED permits. In addition to benefitting these current permit holders, the effective "trading" of a conventional, quota-based D-5 permit for a CED based D-5j would free up the availability of traditional D-5 permits for other portions of the City.

Moreover, neither the City nor a CED applicant gets to choose who actually receives the D-5j license. The State of Ohio processes the applications for these permits on a first come first serve basis. The City will still receive notice whenever there is an application for a liquor permit for premises located within City limits, including those applications for D-5j permits within a CED.

Given the extensive amount of planned private and public investment currently underway within and around the River Corridor portion of the Bridge Street District, and the nature of the uses that exist and that are being developed planned for in that area, Staff believes that the City could easily move forward with the immediate creation of two (2) CEDs within the River Corridor portion of the BSD, and comply with all of the applicable criteria. Staff believes that the formation of two such CEDs would provide an important benefit in advancing the implementation of the lively, mixed-use environment planned for portions of the BSD, would benefit existing Dublin businesses, and would be consistent with the intent of the statutes.

As part of any effort to move forward with the creation of one or more CEDs in Dublin, the City will of course undertake a comprehensive communications and community outreach effort to seek additional public input, provide information about CEDs and answer any questions community stakeholders may have. The community engagement approach will include one or more public meetings, and will also provide information and respond to questions and suggestions via all the City's communications tools – website/digital, video and printed handouts. Ongoing community engagement efforts such as "Coffees with the City Manager" and neighborhood association meetings will be used as additional opportunities for providing information, responding to questions and seeking community input.

Staff requests approval and/or direction from Council to move forward with assessing and proposing appropriate locations/geography for potential CED boundaries and with the preparation of applications for the creation of those CEDs for further Council consideration. As part of that effort, Staff be directed to meet and communicate with interested community members to seek input and provide information regarding this initiative. Once Staff receives Council's approval and any feedback regarding the boundaries of potential CEDs and the CED application, Staff will prepare a resolution authorizing the creation of the CEDs for Council's consideration.

As always, please do not hesitate to contact us if you have any questions on the items discussed in this memorandum.





**ADDITIONAL BACKGROUND INFORMATION REGARDING THE LIQUOR PERMITS THAT MAY BE CONSIDERED BY THE DIVISION OF LIQUOR CONTROL IF A CED IS APPROVED BY DUBLIN CITY COUNCIL:**

**Issuance of Permits:** A "D-5j" liquor permit may be issued to the owner or operator of a retail food establishment or a food service operation licensed under the Ohio Revised Code to sell beer and intoxicating liquor at retail, only by the individual drink and glass and from the container, for consumption on the premises where sold, and to sell beer and wine in the appropriate container and amounts not for consumption on the premises as set for in the Ohio Revised Code. (O.R.C. §4303.181(J))

Following the designation of CED in the City of Dublin as a Community Entertainment District, each individual application of any owner or operator for a "D-5j" liquor permit within the Community Entertainment District must still be approved pursuant to Ohio Revised Code and the rules and regulations of the Ohio Division of Liquor Control. In addition, any proposed use for any owner or operator for a "D-5j" liquor permit within the Community Entertainment District must comply with the City's current zoning for the applicable property and any restriction of record in Franklin County, Ohio affecting the applicable property.

**Ohio Revised Code 4303.181(J):** The D-5j permit shall be issued only within a community entertainment district that is designated under section 4301.80 of the Revised Code. The permit shall not be issued to a community entertainment district that is designated under divisions (B) and (C) of section 4301.80 of the Revised Code if the district does not meet one of the following qualifications:

- (1) It is located in a municipal corporation with a population of at least one hundred thousand.
- (2) It is located in a municipal corporation with a population of at least twenty thousand, and either of the following applies:
  - (a) It contains an amusement park the rides of which have been issued a permit by the department of agriculture under Chapter 1711. of the Revised Code.
  - (b) Not less than fifty million dollars will be invested in development and construction in the community entertainment district's area located in the municipal corporation.
- (3) It is located in a township with a population of at least forty thousand.
- (4) It is located in a township with a population of at least twenty thousand, and not less than seventy million dollars will be invested in development and construction in the community entertainment district's area located in the township.
- (5) It is located in a municipal corporation with a population between ten thousand and twenty thousand, and both of the following apply:
  - (a) The municipal corporation was incorporated as a village prior to calendar year 1860 and currently has a historic downtown business district.
  - (b) The municipal corporation is located in the same county as another municipal corporation with at least one community entertainment district.
- (6) It is located in a municipal corporation with a population of at least ten thousand, and not less than seventy million dollars will be invested in development and construction in the community entertainment district's area located in the municipal corporation.
- (7) It is located in a municipal corporation with a population of at least five thousand, and not less than one hundred million dollars will be invested in development and construction in the community entertainment district's area located in the municipal corporation.

The location of a D-5j permit may be transferred only within the geographic boundaries of the community entertainment district in which it was issued and shall not be transferred outside the geographic boundaries of that district.

Not more than one D-5j permit shall be issued within each community entertainment district for each five acres of land located within the district. Not more than fifteen D-5j permits may be issued within a single community entertainment district. Except as otherwise provided in division (J)(4) of this section, no quota restrictions shall be placed upon the number of D-5j permits that may be issued.

The fee for a D-5j permit is two thousand three hundred forty-four dollars.

**FOR CITY USE ONLY**

In accordance with the provisions contained in the Ohio Revised Code Section 4301.80(C), the Mayor of the City of Dublin recommends that this action be:

Approved

Disapproved

Resolution No. \_\_\_\_\_

Date \_\_\_\_\_

Mayor's Signature \_\_\_\_\_

Date \_\_\_\_\_

# **COMMUNITY ENTERTAINMENT DISTRICTS D5J**

## **BUTLER**

**Downtown Middletown  
I-75 Monroe  
Jungle Jims  
Liberty Township #1  
Liberty Township #2  
Voice of America  
Town Centre**

## **CLERMONT**

**Jungle Jims Eastgate**

## **CUYAHOGA**

**Cleveland Hopkins Inter Airport  
Crocker Park  
Flats East Bank  
Gordon Square  
Playhouse Square  
Uptown CED  
Waterloo Community District**

## **ERIE**

**Sandusky State Theater**

## **FRANKLIN**

**Arena  
Brewers Yard  
Continent  
Easton Town Center I  
Easton Town Center II  
Easton Town Center III  
Grandview Yard  
Kingsdale CED  
Lane Avenue CED  
Shops at Worthington Place**

**GREENE**

**Greene Town Center**

**HAMILTON**

**Anderson Township  
College Hill  
CUF CED  
DeSales Corner (E.Walnut Hills)  
Downtown East (Cincinnati)  
Downtown West (Cincinnati)  
East Price Hill Incline Dist  
Eastern Banks  
Green Township  
Madisonville CED  
Northern Lights (Chester Road)  
Northside CED  
Over The Rhine CED  
Short Vine CED  
The Ridge  
Three East  
Walnut Hills  
Western Banks  
Westwood Family Arts & Entertainment**

**LORAIN**

**Waterfront (City of Lorain)**

**LUCAS**

**Downtown Toledo 1  
Downtown Toledo 2  
Fallen Timbers (Maumee)  
Franklin Park Mall (Toledo)  
Midtown Downtown  
Uptown Toledo**

**MAHONING**

**Youngstown**

**MONTGOMERY**

**Austin Landing  
CED 1 Dayton  
CED 2 Dayton  
Cornerstone of Centerville North  
Miami Bend (West Carrollton)**

**PORTAGE**

**Kent CED  
Ravenna Arts & Venture Enterprise  
(RAVE)**

**SUMMIT**

**Massillon Road CED  
Northside Downtown CED  
Portage Crossing CED  
(Cuyahoga Falls)  
Southside Downtown CED**

**WOOD**

**Harbortown Community  
Levis Commons Community  
Meridian Business Center  
North Meridian Business Center**

**January 11, 2016**

**Total: 68**