

Version: #3

Authors: Mayor Mills, Commissioner Gossett, Glenn Mandalas, Alex Burns, and Evan Miller

Topic: Outdoor Dining on Public Space Codification

Date: December 2, 2022

Presentation Date: Commissioners Workshop Meeting on December 5, 2022

1 **AN ORDINANCE TO AMEND CHAPTER 215, RESTAURANTS, OF**
2 **THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, 2001, BY**
3 **AMENDING SECTIONS 215-1, 215-2, 215-3, 215-11, AND INSERTING A NEW**
4 **ARTICLE V RELATING TO ESTABLISHING REGULATIONS FOR OUTDOOR**
5 **DINING ON PUBLIC SPACE AND A LICENSING PROCEDURE FOR**
6 **OUTDOOR DINING ON PUBLIC SPACE**

7
8 **WHEREAS,** During the State of Emergency declared by Governor Carney due to the
9 COVID-19 pandemic, the allowable number of indoor restaurant patrons was significantly
10 reduced;

11
12 **WHEREAS,** In an effort to help alleviate the economic challenges created by the reduction
13 in indoor patrons, the City of Rehoboth Beach permitted restaurant proprietors complying with
14 certain parameters to use public space for outdoor dining;

15
16 **WHEREAS,** Given the success of the City's outdoor dining on public space program during
17 the State of Emergency Order, the Commissioners of the City of Rehoboth Beach on March 18,
18 2022, adopted Resolution No. 0322-02 which established a policy for outdoor dining on public space
19 and the licensing procedure for outdoor dining on public space;

20
21 **WHEREAS,** Indoor restaurant capacity has returned to 100% after the restrictions
22 imposed by Governor's Emergency Order were lifted;

23
24 **WHEREAS,** Pedestrians' use of public sidewalks has returned to pre-COVID density or
25 greater;

26
27 **WHEREAS,** Safe transit of pedestrians on the sidewalk including passage around on-
28 sidewalk outdoor dining areas and ADA accessibility is a priority;

29
30 **WHEREAS,** Given the ongoing success of the City's outdoor dining on public space, the
31 Mayor and Commissioners desire a licensing procedure to be made permanent in an effort to ensure a
32 healthy, sustainable, vibrant community, and to help strengthen the local economy;

33
34 **BE IT ORDAINED** by the Commissioners of the City of Rehoboth Beach, in session met, a
35 quorum pertaining at all times thereto, in the manner following to-wit:
36

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37 **Section 1.** Chapter 215, Article I, Section 215-1 of the Municipal Code of the City of
38 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
39 underlining as follows:

40

41 **§ 215-1 Terms defined.**

42

43 Unless the particular provision or the context otherwise requires, the definition provisions
44 contained in this section shall govern the construction, meaning and application of words and
45 phrases used in this chapter:

46

47 **BAR AREA**

48 As found at § 270-4.

49

50 **BUFFER**

51 The area between the curblin
52 e and the pedestrian access route, which may contain obstacles
53 such as ADA access ramps, benches, bike racks, brick, crosswalks, fire hydrants, grass,
54 news racks, parking meters, pavers, planter boxes, stone, streetlights, street signs, street
55 trees, transformers, tree wells, utility poles, etc.

56

57 **DINNER THEATER**

58 As found at § 270-4.

59

60 **LIQUOR LICENSE**

61 A license issued by the Delaware Alcoholic Beverage Control Commissioner to an owner
62 or lessee of a restaurant for the purchase, sale and dispensing of alcoholic beverages
63 pursuant to Title 4, Delaware Code, § 511 et seq.

64

65 **OUTDOOR DINING AREA DEPTH**

66 The maximum dimension perpendicular to the building façade on which a permitted
67 outdoor dining area can be located on a portion of a City sidewalk or property.

68

69 **OUTDOOR DINING AREA ON PUBLIC SPACE**

70 A permitted outdoor dining area on a portion of a City sidewalk or property.

71

72 **PEDESTRIAN ACCESS ROUTE (PAR)**

73 The primary pedestrian way within a sidewalk defined by parallel sides, free of obstacles.

74

75 **PERMANENT SEATED DINING AREA**

76 As found at § 270-4.

77

78 **PERSON**

79 Any individual, partnership, corporation or other entity which either owns, manages,
directs or controls activities authorized by this chapter.

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PUBLIC SPACE

City owned sidewalks or property excluding the Boardwalk.

RESTAURANT

As found at § 270-4.

SEPARATION BARRIER

A physical, freestanding obstruction designed to define a dining area and constrain entry and exit to the dining area. Separation barriers must comply with 270-19B (6), be self-supporting without the use of attachments to the sidewalk or other structures, and must be substantive enough to withstand strong winds or other pressures.

SERVICE AISLE

Open space without obstruction between a table or seating area and the separation barrier or between a table or seating area and the front façade of a building that is at least 3 feet in depth and used for accessing and servicing tables.

SIDEWALK

An impervious surface parallel to a street between a curb line and a property line intended for use by pedestrians.

SIDEWALK DEPTH

The measurement from the outer edge of the pedestrian access route (PAR) closest to the street, to the face of the building, excluding any buffer area. Sidewalk depths are established by the City Building and Licensing Department and will vary from location to location.

SUBSTANTIALLY MODIFY

Modification to a restaurant or dinner theater’s delineation of and square footage of all areas of use including but not limited to permanent seated dining, bar, restrooms, food storage and food preparation. Additionally, this includes modification to the restaurant or dinner theater’s seating capacity, number and sizes of bar areas, and extension of the restaurant or dinner theater into other parts of the structure not shown on the approved floor plan. Rearrangement of tables or seating does not constitute a substantial modification.

Section 2. Chapter 215, Article II, Section 215-2 of the Municipal Code of the City of Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by underlining as follows:

§ 215-2 Permit Required.

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123 No person shall operate, maintain or carry on the business of a restaurant or dinner theater
124 governed by this chapter until the owner or lessee has received a permit of compliance from the
125 City stating that said restaurant or dinner theater is in compliance with all of the City's applicable
126 zoning and licensing requirements. A copy of such permit of compliance shall be issued by the
127 City to the Office of the Delaware Alcoholic Beverage Control Commissioner.

128
129 A. No person shall construct or operate a dining patio unless the owner or lessee has received
130 a supplemental permit of compliance for same in conjunction with a validly issued permit
131 of compliance for a restaurant.

132
133 B. No person shall construct or operate a brewery-pub unless the owner or lessee has received
134 a supplemental permit of compliance for same in conjunction with a validly issued permit
135 of compliance for a restaurant.

136
137 ~~B.C.~~ No person shall construct and/or operate an outdoor dining area on public space
138 unless the owner or lessee has received a supplemental permit of compliance for same in
139 conjunction with a validly issued permit of compliance for that same restaurant.

140
141
142 **Section 3.** Chapter 215, Article II, Section 215-3 of the Municipal Code of the City of
143 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
144 underlining as follows:

145
146
147 **§ 215-3 Application for permit of compliance.**

148
149 Any person desiring a restaurant or dinner theater permit of compliance and/or dining patio
150 supplemental permit of compliance and/or outdoor dining area on public space supplemental
151 permit of compliance and/or brewery-pub supplemental permit of compliance as required by this
152 chapter, shall file a written application with the City Building Inspector on a form to be furnished
153 by the Building Inspector. The applicant shall accompany the application with a tender of the
154 correct application fee as hereinafter provided and shall, in addition, furnish the following
155 information in paper form and in digital format acceptable to the City.

156
157 A. The type of ownership of the business, i.e., whether individual, partnership, corporation or
158 otherwise.

159
160 B. The name, style and designation under which the business or practice is to be conducted.

161
162 C. The business address and all telephone numbers where the business is to be conducted.

163
164 D. The plan of the proposed new, expanded or otherwise modified restaurant or dinner theater.
165 Said plan shall show the following information:

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- 166 (1) The location of the restaurant or dinner theater.
167 (2) The location's zoning classification.
168 (3) The number and sizes of bar areas in the restaurant or dinner theater.
169 (4) The restaurant's or dinner theater's complete floor plan, including delineation of and
170 square footage of all areas of use including but not limited to permanent seated
171 dining, bar, restrooms, food storage and food preparation.
172 (5) The restaurant's or dinner theater's seating capacity.
173 (6) The distance to the nearest property line of the nearest church, public park and a lot
174 zoned residential from the proposed restaurant or dinner theater or existing
175 restaurant or dinner theater property.
176 (7) If the application includes a dining patio, the location, floor plan, area calculation
177 and details of the perimeter barrier.
178 (8) If the application includes a brewery-pub, the location, floor plan, and area
179 calculation of all areas devoted to the brewing of beer and the storage of raw
180 materials, waste matter and finished product related thereto.
181 ~~(8)~~(9) If the application includes an outdoor dining area on public space, a
182 completed outdoor dining on public space license application.
183
184 E. A statement that the establishment's primary purpose shall be that of a restaurant or dinner
185 theater as defined herein.
186
187 F. A statement containing an approximate percentage of projected revenue to be derived from
188 the sale of alcoholic beverage as compared to the percentage of projected revenue to be
189 derived from the sale of food.
190
191 G. An authorization for the City, its agents and employees to seek information and conduct an
192 investigation as to the truth of the statements set forth in the application.
193
194 H. Written and dated declaration by the applicant, under verification, oath or affidavit, that
195 the foregoing information contained in the application is true and correct with said
196 declaration being duly dated and signed in the City.
197

198 **Section 4.** Chapter 215, Article II, Section 215-4 of the Municipal Code of the City of
199 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
200 underlining as follows:

201
202 **§ 215-4 Verification by Building Inspector required.**

203
204 The Building Inspector shall verify the completeness and accuracy of the application and shall
205 forward said application to the City Manager within five days of the filing of said application.
206

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207 **Section 5.** Chapter 215, Article II, Section 215-5 of the Municipal Code of the City of
208 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
209 underlining as follows:

210

211 **§ 215-5 Hearing required.**

212

213 A. No applicant shall receive a permit of compliance or a supplemental permit of compliance
214 from the City until after a public hearing, at which hearing interested parties and citizens
215 shall have an opportunity to be heard. The City Manager shall place said application on the
216 agenda for a public hearing at the next scheduled regular meeting of the Mayor and
217 Commissioners if the date of such meeting is more than 30 days from the date the
218 application is filed with the City; otherwise the application shall be heard at the second
219 scheduled regular meeting of the Mayor and Commissioners or at a special meeting to be
220 scheduled pursuant to the provisions of the City's Code.

221

222 B. A permit of compliance or a supplemental permit of compliance shall not be issued to the
223 applicant or to the Delaware Alcoholic Beverage Control Commission except by the
224 favorable vote of a majority of the members of the City Commissioners. In reaching their
225 decision, the Commissioners shall consider the following factors, including but not limited
226 to:

227

228 (1) Whether the applicant has demonstrated that the establishment's primary purpose
229 will be that of a restaurant or dinner theater as defined in this chapter.

230 (2) Whether the establishment meets all of the City's applicable zoning and licensing
231 provisions.

232 (3) Whether the establishment would be a detriment to the peace, order and quiet of
233 the neighborhood and the City.

234 (4) Whether the establishment will have an adverse impact on the neighboring
235 properties or on the City of Rehoboth Beach, considering the impact on traffic,
236 parking and noise.

237 (5) Whether the applicant had made any false representation or statements to the City's
238 employees or the Commissioners in order to induce or prevent action by the City
239 not only in regard to the pertinent pending application under this chapter, but also
240 in regard to the issuance of a building permit or business license for the subject
241 establishment.

242

243 **Section 6.** Chapter 215, Article II, Section 215-6 of the Municipal Code of the City of
244 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
245 underlining as follows:

246

247 **§ 215-6 Notice of hearing.**

248

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249 At least 15 days' notice of the time and place of such hearing shall be sent to all City property
250 owners whose boundaries are within 200 feet of the boundaries of the proposed restaurant or dinner
251 theater or existing restaurant or dinner theater property. Notice shall be sent by regular United
252 States mail to the last known address to which City tax bills are sent, said mailing to be done by
253 the City.
254

255 **Section 7.** Chapter 215, Article II, Section 215-7 of the Municipal Code of the City of
256 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
257 underlining as follows:
258

259 **§ 215-7 Applicability.**

- 260 A. The provisions of this chapter shall apply to:
- 261
- 262 (1) All restaurants or dinner theaters established on or after June 14, 1991, where
263 alcoholic liquor is to be sold or consumed.
264 (2) Any existing restaurant or dinner theater, where alcoholic liquor is sold or
265 consumed, desiring to extend or modify its premises, regardless of the date that said
266 restaurant or dinner theater was established.
267 (3) Any existing restaurant or dinner theater, where alcoholic liquor is sold or
268 consumed, that is being moved to a new location in the City, regardless of the date
269 that said restaurant or dinner theater was established.
270
- 271 B. An existing restaurant or dinner theater, where alcoholic liquor is sold or consumed,
272 established prior to June 14, 1991, is not required to obtain a permit of compliance pursuant
273 to this chapter unless required as a condition of extension or modification of the premises
274 of the restaurant or dinner theater. However, all such existing restaurants or dinner theaters
275 shall have filed a floor plan, including any patio areas, with the City Manager on or before
276 May 15, 1992.
277
- 278 C. Where an existing restaurant or dinner theater, regardless of the date that said restaurant or
279 dinner theater was established, where alcoholic liquor is sold or consumed, is being
280 transferred to a new owner at the existing site, the present owner must file with the City
281 Manager documentation to prove that the floor plan of said restaurant or dinner theater is
282 substantially the same as the most recent floor plan approved by the City. Such
283 documentation shall include but not be limited to a scalable floor plan showing the location
284 and size of the permanent seated dining and bar areas. If the City Manager determines that
285 the floor plan in respect to the total square footage of the restaurant or dinner theater and
286 percentage of floor area devoted to bar area and percentage of floor area devoted to
287 permanent seated dining area is substantially the same as the most recent floor plan
288 approved by the City, no hearing shall be required pursuant to § 215-5A.
289
290

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291 D. For purposes of this section, in addition to any and all usual interpretations, “extensions or
292 modifications of premises,” shall be interpreted to include the construction, expansion,
293 location or operation of dining patios and brewing operations pursuant to Chapter 270,
294 Zoning, of the Code of the City of Rehoboth Beach.
295

296 **Section 8.** Chapter 215, Article II, Section 215-8 of the Municipal Code of the City of
297 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
298 underlining as follows:
299

300 **§ 215-8 Enforcement.**
301

302 The City Manager shall enforce the provisions of this chapter.
303

304 **Section 9.** Chapter 215, Article II, Section 215-9 of the Municipal Code of the City of
305 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
306 underlining as follows:
307

308 **§ 215-9 Revocation or suspension of permit; notice.**
309

310 Any permit of compliance or supplemental permit of compliance issued pursuant to this chapter
311 shall be subject to suspension or revocation by the City Manager by reason of violation of any
312 provision of this chapter; provided, however, that before any permit of compliance or supplemental
313 permit of compliance is suspended or revoked by the City Manager shall give 10 days' written
314 notice in advance by certified mail with return receipt requested, directed to the permit holder at
315 the restaurant's or dinner theater's address within the corporate limits of the City of Rehoboth
316 Beach, of the reason for the intended suspension or revocation and upon the correction of the defect
317 within 15 days following receipt of said notice as determined by the City Manager, no suspension
318 or revocation shall take effect for the first offense. Upon a second or subsequent offense of a similar
319 nature, the City Manager shall suspend the permit of compliance or supplemental permit of
320 compliance and shall immediately notify the permit holder by certified mail, with return receipt
321 requested, directed to the permit holder at the restaurant's or dinner theater's address within the
322 corporate limits of the City of Rehoboth Beach. The period of suspension shall be for 10 days. A
323 second or subsequent offense shall be an offense occurring within 30 days of the preceding offense.
324 If the holder of a permit commits five similar offenses within a twelve-month period, the permit
325 of compliance shall be revoked by the City Manager, and notice of such revocation shall be given
326 to the permit holder as provided herein. The suspension or revocation of a permit of compliance
327 shall include the suspension or revocation of any associated supplemental permit of compliance
328 under the same conditions, however a supplemental permit of compliance may be suspended or
329 revoked without suspending or revoking the associated permit of compliance when the violation
330 is solely related to the substance of the supplemental permit of compliance.
331

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332 **Section 10.** Chapter 215, Article II, Section 215-10 of the Municipal Code of the City of
333 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
334 underlining as follows:
335

336 **§ 215-10 Appeals from determination of revocation or suspension.**
337

338 A. Any permit holder may appeal the decision of the City Manager to suspend or revoke a
339 permit of compliance to the Commissioners of Rehoboth Beach. Such appeal shall be in
340 writing, setting forth the reasons for the appeal, and shall be filed with the Secretary of the
341 Commissioners of Rehoboth Beach by certified mail, with return receipt requested,
342 together with an appeal processing fee of \$500, within 10 days after the receipt of the notice
343 from the City Manager suspending the permit of compliance. Upon receipt of the notice of
344 appeal, the Mayor shall fix a time and place for a public hearing of the appeal, with said
345 time for the hearing of the appeal to be not more than 45~~30~~ days following receipt thereof
346 by the Secretary of the Commissioners of Rehoboth Beach.
347

Commented [EM1]: ECODE: Is any revision desired?

348 B. The hearing shall be conducted by the Commissioners, and a record of the hearing shall be
349 made and kept by the Commissioners. All testimony shall be recorded but need not be
350 transcribed. The record shall include the evidence, the Commissioners' findings of fact, the
351 Commissioners' decision and a brief statement of the reasons therefor. At said hearing the
352 permit holder shall be entitled to legal representation and to present witnesses.
353

354 C. The filing of an appeal by a permit holder shall operate as a stay of the determination of
355 the City Manager to revoke or suspend the permit of compliance or supplemental permit
356 of compliance. However, if the appeal is withdrawn or if the suspension is upheld, the
357 period of suspension shall commence on the anniversary date of the original suspension.
358 For example, if a permit is suspended commencing July 1, 1991, and because of an appeal
359 a stay occurs and the issue is not finally resolved until December 1991, the permit
360 suspension will commence July 1, 1992.
361

362 **Section 11.** Chapter 215, Article II, Section 215-11 of the Municipal Code of the City of
363 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
364 underlining as follows:
365

366 **§ 215-11 Modification of floor plan.**
367

368 A. It shall be illegal for any restaurant or dinner theater to substantially modify its floor plan,
369 seating arrangement and/or the location and number and sizes of bar areas and permanent
370 seated dining areas from the plans submitted to the City pursuant to the provisions of this
371 chapter without a public hearing and new permit of compliance, ~~except that a floor plan~~
372 ~~may be substantially modified without a hearing with the approval of the City Manager if~~
373 ~~the City Manager determines that the changed plan does not violate the provisions of this~~
374 ~~chapter and does not result in an increase of the bar area.~~ This section shall be interpreted

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375 to include dining patios and areas dedicated to outdoor dining on public space. ~~The~~
376 ~~Building Inspector shall inspect all restaurants or dinner theaters at least annually to ensure~~
377 ~~compliance with this chapter.~~

378
379 B. ~~"Modification," as used herein, means internal rearrangements limited to the interior walls~~
380 ~~of only that portion of the structure used for restaurant or dinner theater purposes as shown~~
381 ~~on the floor plan on file with the City Manager. It shall not authorize the extension of the~~
382 ~~restaurant or dinner theater use into other parts of the structure not shown on the floor plan~~
383 ~~filed with the City Manager.~~

384
385 C. ~~Should the City Manager deny a request to modify a floor plan, the applicant may appeal~~
386 ~~his decision to the Commissioners of Rehoboth Beach, who shall schedule a hearing on~~
387 ~~said appeal within 45 days. The issue on appeal shall be whether the proposed modified~~
388 ~~floor plan violates the provisions of this chapter or results in an increase in the size of the~~
389 ~~bar area.~~

390
391 **Section 12.** Chapter 215, Article II, Section 215-12 of the Municipal Code of the City of
392 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
393 underlining as follows:

394
395 **§ 215-12 Violations and penalties.**

396
397 Any person violating any of the provisions of this chapter, upon conviction thereof, shall be fined
398 not less than \$100 nor more than \$500~~200~~ for each offense and shall pay the costs of prosecution.
399 For the purpose of this chapter, a separate offense shall be deemed to be committed on each day
400 during or on which a violation occurs or continues after receipt of notice of violation.

Commented [EM2]: ECODE: The section establishes the penalty for violation of this chapter. Is any revision desired?

Commented [EM3R2]: EM: Consider revising \$200 to \$500. Enumeration of Powers section of Charter reads, "To provide for the punishment of a violation of any ordinance of the City by fine or imprisonment, or both, not exceeding Five Hundred Dollars (\$500.)..."

401
402 **Section 13.** Chapter 215, Article II, Section 215-13 of the Municipal Code of the City of
403 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
404 underlining as follows:

405
406 **§ 215-13 Application fee.**

407
408 Each application for a permit of compliance shall be accompanied by a fee payable to the City in
409 the amount of \$1,250~~000~~, which fee shall include any supplemental permits of compliance
410 requested at the same time, however a supplemental permit of compliance application filed
411 independent of a permit of compliance shall be accompanied by fee of \$1,250~~000~~.

Commented [EM4]: ECODE: This section establishes the fee for a permit of compliance and/or supplemental permit of compliance. Is any revision desired?

Commented [EM5R4]: EM: A review of time spent by staff and costs incurred to the city reflect a current cost of approximately \$1250.

412
413 **Section 14.** Chapter 215, Article II, Section 215-14 of the Municipal Code of the City of
414 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
415 underlining as follows:

416
417 **§ 215-14 Expiration of permits of compliance.**

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418
419 A permit of compliance or supplemental permit of compliance shall expire if the applicant fails to
420 obtain any necessary building permit or fails to receive the applicable license and/or approvals
421 from the Office of the Delaware Alcoholic Beverage Control Commissioner within one year from
422 the date the permit of compliance or supplemental permit of compliance was issued. The
423 Commissioners may grant one extension of this time limit for a maximum of six months based on
424 a showing of good cause.
425

426 **Section 15.** Chapter 215, Article II, Section 215-15 of the Municipal Code of the City of
427 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
428 underlining as follows:
429

430 **§ 215-15 Reapplication.**

431
432 No new application shall be acted upon by the City Commissioners, if within a six-month period
433 immediately preceding the filing of the new application they have rendered a decision regarding
434 the same application. However, this limitation shall not be applicable if the Commissioners shall
435 find that the facts and circumstances existing at the time of their prior decision have undergone a
436 substantial change justifying the Commissioners' reconsideration.
437

438 **Section 16.** Chapter 215, Article II, Section 215-16 of the Municipal Code of the City of
439 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
440 underlining as follows:
441

442 **§ 215-16 Notice of request for variance.**

443
444 The owner or licensee of any restaurant subject to the provisions of this chapter shall notify the
445 City Manager prior to requesting a variance from the Office of the Delaware Alcoholic Beverage
446 Control Commissioner with respect to a liquor license.
447

448 **Section 17.** Chapter 215, Article III, Section 215-17 of the Municipal Code of the City of
449 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
450 underlining as follows:
451

452 **§ 215-17 Overflow of patrons prohibited from public ways.**

453
454 For all dining patios and outdoor dining areas on public space, any overflow of patrons onto public
455 ways, pedestrian or vehicular, is prohibited.
456

457 **Section 18.** Chapter 215, Article III, Section 215-18 of the Municipal Code of the City of
458 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
459 underlining as follows:
460

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461 **§ 215-18 Blocking of public ways prohibited.**

462
463 For all dining patios [and outdoor dining areas on public space](#), the blocking of the public ways,
464 pedestrian or vehicular, by related activities is prohibited.

465
466 **Section 19.** Chapter 215, Article IV, Section 215-19 of the Municipal Code of the City of
467 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
468 underlining as follows:

469
470 **§ 215-19 Hours of alcohol sale and consumption.**

471
472 No restaurant shall sell alcoholic liquor between the hours of 1:00 a.m. and 9:00 a.m. and no
473 alcoholic liquor shall be consumed on the premises between the hours of 2:00 a.m. and 9:00 a.m.

474
475 **Section 20.** Chapter 215, Article IV, Section 215-20 of the Municipal Code of the City of
476 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
477 underlining as follows:

478
479 **§ 215-20 Food service.**

480
481 Food shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.

482
483 [Section 21.](#) Chapter 215, Restaurants, of the Municipal Code of the City of Rehoboth Beach,
484 Delaware, 2001, is hereby amended by inserting a new Section 21 in its entirety as follows:

485
486 [§ 215-21 Annual inspection for compliance.](#)

487
488 [The Building Inspector or designee shall inspect all restaurants or dinner theaters at least annually](#)
489 [to ensure compliance with this chapter.](#)

490
491 [Section 22.](#) Chapter 215, Restaurants, of the Municipal Code of the City of Rehoboth Beach,
492 Delaware, 2001, is hereby amended by inserting a new Article V in its entirety as follows:

493
494
495 [CHAPTER 215 RESTAURANTS](#)

496
497 [ARTICLE V](#)

498
499 [OUTDOOR DINING ON PUBLIC SPACE](#)

500
501 [§ 215-22 Applicability.](#)

502
503 [A. The provisions of this Article apply to all Restaurants in the municipal boundaries of the](#)

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504 [City of Rehoboth Beach.](#)

505
506 [B. Restaurants that comply with all provisions of this Article, and satisfy any other](#)
507 [requirements established by the City may apply for a license to locate outdoor dining areas](#)
508 [on public space.](#)

509
510 **[§ 215-23 License Application.](#)**

511 [A. Authority to utilize outdoor dining areas on public space is by license issued on an annual](#)
513 [basis by the Board of Commissioners.](#)

514
515 [B. Licenses are valid from January 1 through December 31 for the year issued.](#)

516
517 [C. Issuance of a license to establish an outdoor dining area on public space is based on](#)
518 [compliance with the “City of Rehoboth Beach Design Manual for Outdoor Dining on](#)
519 [Public Space,” which is kept on file at the Building & Licensing Department, and which is](#)
520 [incorporated into this code.](#)

521
522 [D. The City Manager may revoke a license when the city desires to use the area for a different](#)
523 [purpose, or for failure to maintain compliance with this Chapter, or for failure of an](#)
524 [establishment to observe a City ordinance.](#)

525
526 [E. The Building and Licensing Department will conduct a design review of the proposed](#)
527 [outdoor dining area to verify the design is safe, that the materials are suitable, and that the](#)
528 [design will not damage or restrict access to existing sidewalks, street trees or other](#)
529 [infrastructure.](#)

530
531 [F. The Building and Licensing Department will review the cumulative impact to the general](#)
532 [area to verify that adequate space remains for the other sidewalk functions that exist at and](#)
533 [around the site.](#)

534
535
536 **[§ 215-24 Fees.](#)**

537
538 [A non-refundable fee of \\$150.00 shall accompany any new application or reapplication seeking](#)
539 [a license for outdoor dining on public space. Upon granting of the license, the applicant shall](#)
540 [pay an additional annual non-refundable fee \\$325.00. Fees will not be pro-rated.](#)

541
542 **[§ 215-25 Design Manual.](#)**

543
544 [The Building & Licensing Department maintains a “City of Rehoboth Beach Design Manual for](#)
545 [Outdoor Dining on Public Space.” The Design Manual is incorporated into this Article by](#)

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546 [reference, and no outdoor dining area on public space shall be approved unless it conforms to the](#)
547 [Design Manual. A copy of the manual is kept on file at the Building and Licensing Department](#)

548
549 **§ 215-26 Application Requirements.**

550
551 [The following criteria are the minimum criteria for an applicant to be eligible for an annual license](#)
552 [to provide outdoor dining on public space. However, satisfaction of the following does not](#)
553 [necessitate the issuance of a license:](#)

554
555 [A. A current City-issued business license.](#)

556
557 [B. An approved or pending Permit of Compliance for indoor food service operation, if serving](#)
558 [alcohol.](#)

559
560 [C. A completed outdoor dining on public space license application. This application must](#)
561 [contain a two-dimensional drawing to scale depicting the outdoor dining proposed,](#)
562 [including the details of construction, table layout, and service isle, prepared by an architect](#)
563 [or engineer.](#)

564
565 [D. Restaurants using dining areas on public space must meet all codes and regulations of all](#)
566 [City, State, and Federal Agencies, including but not limited to City of Rehoboth Beach](#)
567 [Code, State Fire Code, State Department of Public Health, and the Americans with](#)
568 [Disabilities Act.](#)

569
570 [E. Applications for outdoor dining areas on public space that will include alcohol service will](#)
571 [additionally require approval by the OABCC. The City license becomes effective upon](#)
572 [licensing by the OABCC.](#)

573
574 [F. The outdoor dining license shall not become effective until the applicant files with the City](#)
575 [a certificate of liability insurance confirming that the applicant has procured a policy of](#)
576 [commercial general liability insurance issued by an insurance company authorized to do](#)
577 [business in the state of Delaware. The policy shall provide in substance that the insurer will](#)
578 [defend against all claims and lawsuits which arise and will pay any final judgment of a](#)
579 [court of competent jurisdiction against the City, its officers, agents, or employees. The](#)
580 [insurance shall provide coverage in an amount of not less than \\$1,000,000.00 for each](#)
581 [single occurrence. The policy of insurance shall name both the applicant and the City of](#)
582 [Rehoboth Beach as insured parties to the full amount of the policy limits. If the policy is](#)
583 [not kept in full force and effect throughout the term of this sidewalk dining license, the](#)
584 [license may be terminated by the City upon providing written notice of termination to](#)
585 [applicant.](#)

586
587 [G. The owner or operator shall execute an indemnification agreement indemnifying the City](#)
588 [for all claims arising from the operation of an outdoor dining area on public property.](#)

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589
590 § 215-27 Maintenance of outdoor dining area.

591
592 The restaurant owner/operator will be responsible for maintaining the sidewalk within
593 or adjacent to the dining area in a clean and orderly manner. All food or drink spills,
594 and trash of any kind, must be immediately removed from the sidewalk area. Outdoor
595 dining trash must be collected and deposited in private trash receptacles, and not placed
596 in City trash receptacles.

597
598 § 215-28 Outdoor Dining Area Use Restrictions.

599
600 A. Outdoor dining areas on public space must comply with the use restrictions
601 specified in §270-19B.

- 602 (1) Food and beverages may be served only to seated patrons and no patrons
603 may wait in the outdoor dining area for seating.
604 (2) There shall be no live entertainment in the outdoor dining area.
605 (3) There shall be no external speakers or amplifiers in the outdoor dining
606 area and no internal speakers from the premises are to be directed to the
607 outdoor dining area.
608 (4) There shall be no bar in the outdoor dining area.
609 (5) There shall be no food and or beverage preparation in the outdoor dining
610 area.
611 (6) There shall be a physical barrier around the perimeter of the dining patio
612 no less than 42 inches high constructed of wood, concrete, plastic,
613 wrought iron, dense vegetation or other approved material such that
614 entry and exit will be restricted to no more than two discrete locations.

615
616 § 215-29 License Suspension and Closure.

617
618 A. Outdoor dining may be suspended by the City Manager for community or
619 special events, utility, sidewalk or road repairs, or emergency situations or
620 violation of provision contained in this Chapter. The length of the suspension
621 will be for a duration as determined necessary by the City Manager.

622 B. When the outdoor dining area is closed for the season:

- 623 (1) The PAR is to be maintained clear of snow
624 (2) The dining patio is not to be used for storage of materials other than tables and
625 chairs. Tarps or other covers shall not be permitted.
626 (3) Operational items, e.g., hostess and menu stands, usually placed outside of the
627 designated outdoor dining area, shall be removed

628
629 § 215-30 Enforcement.

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631 The City Code Enforcement Officer shall be responsible for monitoring and assuring compliance
632 with this Article.

633
634 § 215-31 Violations.

635
636 A. An outdoor dining license is conditional at all times.

637
638 B. Noncompliance with any of the provisions in the Article shall constitute grounds for license
639 revocation.

640
641 C. An outdoor dining license may be suspended by the City Manager upon a finding that one
642 or more conditions of this Article have been violated, the outdoor dining is not operated in
643 a manner that is consistent with the approved license, the outdoor dining is being operated
644 in a manner which constitutes a nuisance, the outdoor dining is being operated in a manner
645 that unduly impedes or restricts the movement of pedestrians, or the outdoor dining is being
646 operated in a manner that is detrimental to the public health, safety or welfare of the
647 residents of the City.

648
649 D. The notice of suspension will be in writing, setting forth specific reasons and providing an
650 effective date. Restaurants receiving one or more suspensions may be denied future
651 licenses for outdoor dining on public space.

652
653 § 215-32 Appeals.

654
655 Appeals of the denial of a license authorizing establishment of an outdoor dining area on public
656 space shall be in writing to the City Manager. The written appeal shall include a statement
657 describing the provision of this Article alleged to have been misapplied by the City.

658
659 **Section 23.** If any provision of this Ordinance shall be deemed or held to be invalid or
660 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
661 any other provision of this Ordinance which may be given effect without such invalid or
662 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
663 be severable.

664
665 **Section 24.** This Ordinance shall take effect immediately upon its adoption by the
666 Commissioners of the City of Rehoboth Beach.

667
668 Adopted by the Commissioners
669 of the City of Rehoboth Beach

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670 _____, 2022

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675 Secretary of the Commissioners of

676 the City of Rehoboth Beach

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678 SYNOPSIS: This Ordinance revises Chapter 215, Restaurants, of the Municipal Code of the City
679 of Rehoboth Beach, Delaware, 2001, for the purpose of establishing permanent rules for outdoor
680 dining on public space.

DRAFT