

Version: #2

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

Topic: Outdoor Dining on Public Space Codification

Date: November 17, 2022

Presentation Date: Commissioners Regular Meeting on November 18, 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 curbline and the pedestrian access route, which may contain obstacles
52 such as ADA access ramps, benches, bike racks, brick, crosswalks, fire hydrants, grass,
53 news racks, parking meters, pavers, planter boxes, stone, streetlights, street signs, street
54 trees, transformers, tree wells, utility poles, etc.

55

56 **DINNER THEATER**

57 As found at § 270-4.

58

59 **LIQUOR LICENSE**

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

63

64 **OUTDOOR DINING AREA DEPTH**

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

67

68 **OUTDOOR DINING AREA ON PUBLIC SPACE**

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

70

71 **PEDESTRIAN ACCESS ROUTE (PAR)**

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

73

74 **PERMANENT SEATED DINING AREA**

75 As found at § 270-4.

76

77 **PERSON**

78 Any individual, partnership, corporation or other entity which either owns, manages,
79 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.

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.

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.

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.

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

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

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123
124 B. No person shall construct or operate a brewery-pub unless the owner or lessee has received
125 a supplemental permit of compliance for same in conjunction with a validly issued permit
126 of compliance for a restaurant.

127
128 ~~B.C.~~ No person shall construct and/or operate an outdoor dining area on public space
129 unless the owner or lessee has received a supplemental permit of compliance for same in
130 conjunction with a validly issued permit of compliance for that same restaurant.

131
132
133 **Section 3.** Chapter 215, Article II, Section 215-3 of the Municipal Code of the City of
134 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
135 underlining as follows:

136
137
138 **§ 215-3 Application for permit of compliance.**

139
140 Any person desiring a restaurant or dinner theater permit of compliance and/or dining patio
141 supplemental permit of compliance and/or outdoor dining area on public space supplemental
142 permit of compliance and/or brewery-pub supplemental permit of compliance as required by this
143 chapter, shall file a written application with the City Building Inspector on a form to be furnished
144 by the Building Inspector. The applicant shall accompany the application with a tender of the
145 correct application fee as hereinafter provided and shall, in addition, furnish the following
146 information in paper form and in digital format acceptable to the City.

- 147
148 A. The type of ownership of the business, i.e., whether individual, partnership, corporation or
149 otherwise.
150
151 B. The name, style and designation under which the business or practice is to be conducted.
152
153 C. The business address and all telephone numbers where the business is to be conducted.
154
155 D. The plan of the proposed new, expanded or otherwise modified restaurant or dinner theater.
156 Said plan shall show the following information:
157 (1) The location of the restaurant or dinner theater.
158 (2) The location's zoning classification.
159 (3) The number and sizes of bar areas in the restaurant or dinner theater.
160 (4) The restaurant's or dinner theater's complete floor plan, including delineation of and
161 square footage of all areas of use including but not limited to permanent seated
162 dining, bar, restrooms, food storage and food preparation.
163 (5) The restaurant's or dinner theater's seating capacity.

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- 164 (6) The distance to the nearest property line of the nearest church, public park and a lot
165 zoned residential from the proposed restaurant or dinner theater or existing
166 restaurant or dinner theater property.
167 (7) If the application includes a dining patio, the location, floor plan, area calculation
168 and details of the perimeter barrier.
169 (8) If the application includes a brewery-pub, the location, floor plan, and area
170 calculation of all areas devoted to the brewing of beer and the storage of raw
171 materials, waste matter and finished product related thereto.
172 ~~(8)~~(9) If the application includes an outdoor dining area on public space, a
173 completed outdoor dining on public space license application.
174
175 E. A statement that the establishment's primary purpose shall be that of a restaurant or dinner
176 theater as defined herein.
177
178 F. A statement containing an approximate percentage of projected revenue to be derived from
179 the sale of alcoholic beverage as compared to the percentage of projected revenue to be
180 derived from the sale of food.
181
182 G. An authorization for the City, its agents and employees to seek information and conduct an
183 investigation as to the truth of the statements set forth in the application.
184
185 H. Written and dated declaration by the applicant, under verification, oath or affidavit, that
186 the foregoing information contained in the application is true and correct with said
187 declaration being duly dated and signed in the City.
188

189 **Section 4.** Chapter 215, Article II, Section 215-4 of the Municipal Code of the City of
190 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
191 underlining as follows:
192

193 **§ 215-4 Verification by Building Inspector required.**

194 The Building Inspector shall verify the completeness and accuracy of the application and shall
195 forward said application to the City Manager within five days of the filing of said application.
196
197

198 **Section 5.** Chapter 215, Article II, Section 215-5 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 **§ 215-5 Hearing required.**

- 203
204 A. No applicant shall receive a permit of compliance or a supplemental permit of compliance
205 from the City until after a public hearing, at which hearing interested parties and citizens
206 shall have an opportunity to be heard. The City Manager shall place said application on the

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212 agenda for a public hearing at the next scheduled regular meeting of the Mayor and
213 Commissioners if the date of such meeting is more than 30 days from the date the
214 application is filed with the City; otherwise the application shall be heard at the second
215 scheduled regular meeting of the Mayor and Commissioners or at a special meeting to be
216 scheduled pursuant to the provisions of the City's Code.

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

- 222 (1) Whether the applicant has demonstrated that the establishment's primary purpose
223 will be that of a restaurant or dinner theater as defined in this chapter.
- 224 (2) Whether the establishment meets all of the City's applicable zoning and licensing
225 provisions.
- 226 (3) Whether the establishment would be a detriment to the peace, order and quiet of
227 the neighborhood and the City.
- 228 (4) Whether the establishment will have an adverse impact on the neighboring
229 properties or on the City of Rehoboth Beach, considering the impact on traffic,
230 parking and noise.
- 231 (5) Whether the applicant had made any false representation or statements to the City's
232 employees or the Commissioners in order to induce or prevent action by the City
233 not only in regard to the pertinent pending application under this chapter, but also
234 in regard to the issuance of a building permit or business license for the subject
235 establishment.

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

239 **§ 215-6 Notice of hearing.**

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

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

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250 § 215-7 Applicability.

251
252 A. The provisions of this chapter shall apply to:

- 253
254 (1) All restaurants or dinner theaters established on or after June 14, 1991, where
255 alcoholic liquor is to be sold or consumed.
256 (2) Any existing restaurant or dinner theater, where alcoholic liquor is sold or
257 consumed, desiring to extend or modify its premises, regardless of the date that said
258 restaurant or dinner theater was established.
259 (3) Any existing restaurant or dinner theater, where alcoholic liquor is sold or
260 consumed, that is being moved to a new location in the City, regardless of the date
261 that said restaurant or dinner theater was established.

262
263 B. An existing restaurant or dinner theater, where alcoholic liquor is sold or consumed,
264 established prior to June 14, 1991, is not required to obtain a permit of compliance pursuant
265 to this chapter unless required as a condition of extension or modification of the premises
266 of the restaurant or dinner theater. However, all such existing restaurants or dinner theaters
267 shall have filed a floor plan, including any patio areas, with the City Manager on or before
268 May 15, 1992.

269
270 C. Where an existing restaurant or dinner theater, regardless of the date that said restaurant or
271 dinner theater was established, where alcoholic liquor is sold or consumed, is being
272 transferred to a new owner at the existing site, the present owner must file with the City
273 Manager documentation to prove that the floor plan of said restaurant or dinner theater is
274 substantially the same as the most recent floor plan approved by the City. Such
275 documentation shall include but not be limited to a scalable floor plan showing the location
276 and size of the permanent seated dining and bar areas. If the City Manager determines that
277 the floor plan in respect to the total square footage of the restaurant or dinner theater and
278 percentage of floor area devoted to bar area and percentage of floor area devoted to
279 permanent seated dining area is substantially the same as the most recent floor plan
280 approved by the City, no hearing shall be required pursuant to § 215-5A.

281
282 D. For purposes of this section, in addition to any and all usual interpretations, “extensions or
283 modifications of premises,” shall be interpreted to include the construction, expansion,
284 location or operation of dining patios and brewing operations pursuant to Chapter 270,
285 Zoning, of the Code of the City of Rehoboth Beach.

286
287 **Section 8.** Chapter 215, Article II, Section 215-8 of the Municipal Code of the City of
288 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
289 underlining as follows:

290
291 § 215-8 Enforcement.

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293 The City Manager shall enforce the provisions of this chapter.

294
295 **Section 9.** Chapter 215, Article II, Section 215-9 of the Municipal Code of the City of
296 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
297 underlining as follows:

298
299 **§ 215-9 Revocation or suspension of permit; notice.**

300
301 Any permit of compliance or supplemental permit of compliance issued pursuant to this chapter
302 shall be subject to suspension or revocation by the City Manager by reason of violation of any
303 provision of this chapter; provided, however, that before any permit of compliance or supplemental
304 permit of compliance is suspended or revoked by the City Manager shall give 10 days' written
305 notice in advance by certified mail with return receipt requested, directed to the permit holder at
306 the restaurant's or dinner theater's address within the corporate limits of the City of Rehoboth
307 Beach, of the reason for the intended suspension or revocation and upon the correction of the defect
308 within 15 days following receipt of said notice as determined by the City Manager, no suspension
309 or revocation shall take effect for the first offense. Upon a second or subsequent offense of a similar
310 nature, the City Manager shall suspend the permit of compliance or supplemental permit of
311 compliance and shall immediately notify the permit holder by certified mail, with return receipt
312 requested, directed to the permit holder at the restaurant's or dinner theater's address within the
313 corporate limits of the City of Rehoboth Beach. The period of suspension shall be for 10 days. A
314 second or subsequent offense shall be an offense occurring within 30 days of the preceding offense.
315 If the holder of a permit commits five similar offenses within a twelve-month period, the permit
316 of compliance shall be revoked by the City Manager, and notice of such revocation shall be given
317 to the permit holder as provided herein. The suspension or revocation of a permit of compliance
318 shall include the suspension or revocation of any associated supplemental permit of compliance
319 under the same conditions, however a supplemental permit of compliance may be suspended or
320 revoked without suspending or revoking the associated permit of compliance when the violation
321 is solely related to the substance of the supplemental permit of compliance.

322
323 **Section 10.** Chapter 215, Article II, Section 215-10 of the Municipal Code of the City of
324 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
325 underlining as follows:

326
327 **§ 215-10 Appeals from determination of revocation or suspension.**

328
329 A. Any permit holder may appeal the decision of the City Manager to suspend or revoke a
330 permit of compliance to the Commissioners of Rehoboth Beach. Such appeal shall be in
331 writing, setting forth the reasons for the appeal, and shall be filed with the Secretary of the
332 Commissioners of Rehoboth Beach by certified mail, with return receipt requested,
333 together with an appeal processing fee of \$500, within 10 days after the receipt of the notice
334 from the City Manager suspending the permit of compliance. Upon receipt of the notice of
335 appeal, the Mayor shall fix a time and place for a public hearing of the appeal, with said

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

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336 time for the hearing of the appeal to be not more than 30 days following receipt thereof by
337 the Secretary of the Commissioners of Rehoboth Beach.

Commented [EM2]: SM: Is this realistic? 45 days?

338
339 B. The hearing shall be conducted by the Commissioners, and a record of the hearing shall be
340 made and kept by the Commissioners. All testimony shall be recorded but need not be
341 transcribed. The record shall include the evidence, the Commissioners' findings of fact, the
342 Commissioners' decision and a brief statement of the reasons therefor. At said hearing the
343 permit holder shall be entitled to legal representation and to present witnesses.

344
345 C. The filing of an appeal by a permit holder shall operate as a stay of the determination of
346 the City Manager to revoke or suspend the permit of compliance or supplemental permit
347 of compliance. However, if the appeal is withdrawn or if the suspension is upheld, the
348 period of suspension shall commence on the anniversary date of the original suspension.
349 For example, if a permit is suspended commencing July 1, 1991, and because of an appeal
350 a stay occurs and the issue is not finally resolved until December 1991, the permit
351 suspension will commence July 1, 1992.

352
353 **Section 11.** Chapter 215, Article II, Section 215-11 of the Municipal Code of the City of
354 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
355 underlining as follows:

356
357 **§ 215-11 Modification of floor plan.**

358
359 A. It shall be illegal for any restaurant or dinner theater to substantially modify its floor plan,
360 seating arrangement and/or the location and number and sizes of bar areas and permanent
361 seated dining areas from the plans submitted to the City pursuant to the provisions of this
362 chapter without a public hearing and new permit of compliance, except that a floor plan
363 may be substantially modified without a hearing with the approval of the City Manager if
364 the City Manager determines that the changed plan does not violate the provisions of this
365 chapter and does not result in an increase of the bar area. This section shall be interpreted
366 to include dining patios and areas dedicated to outdoor dining on public space. The
367 Building Inspector shall inspect all restaurants or dinner theaters at least annually to ensure
368 compliance with this chapter.

Commented [EM3]: PG: Consider removing this option and requiring that all changes be approved by the Commissioners.

Commented [EM4]: PG: The City currently is not able to complete these inspections based on staffing levels. This needs to change.

Commented [EM5R4]: EM: Consider amending to Building Inspector or designee

Commented [EM6]: SM: Consider breaking out this sentence into its own section.

Commented [EM7]: SM: Make it more clear that rearrangement of a dining patio or an area dedicated to outdoor dining on public space includes the reconfiguration of tables and chairs.

369
370 B. "Modification," as used herein, means rearrangement of a dining patio, rearrangement of
371 an area dedicated to outdoor dining on public space, and internal rearrangements limited
372 to the interior walls of only that portion of the structure used for restaurant or dinner theater
373 purposes as shown on the floor plan on file with the City Manager. It shall not authorize
374 the extension of the dining patio, area dedicated to outdoor dining on public space,
375 restaurant or dinner theater use into other parts of the structure not shown on the floor plan
376 filed with the City Manager.

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

Commented [EM8]: PG: If we remove the City Manager approval of a "substantially modification" this section is not needed.

383
384 **Section 12.** Chapter 215, Article II, Section 215-12 of the Municipal Code of the City of
385 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
386 underlining as follows:

387
388 **§ 215-12 Violations and penalties.**

389
390 Any person violating any of the provisions of this chapter, upon conviction thereof, shall be fined
391 not less than \$100 nor more than \$200 for each offense and shall pay the costs of prosecution. For
392 the purpose of this chapter, a separate offense shall be deemed to be committed on each day during
393 or on which a violation occurs or continues after receipt of notice of violation.

Commented [EM9]: ECODE: The section establishes the penalty for violation of this chapter. Is any revision desired?

394
395 **Section 13.** Chapter 215, Article II, Section 215-13 of the Municipal Code of the City of
396 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
397 underlining as follows:

398
399 **§ 215-13 Application fee.**

400
401 Each application for a permit of compliance shall be accompanied by a fee payable to the City in
402 the amount of \$1,000, which fee shall include any supplemental permits of compliance requested
403 at the same time, however a supplemental permit of compliance application filed independent of a
404 permit of compliance shall be accompanied by fee of \$1,000.

Commented [EM10R9]: 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.)..."

405
406 **Section 14.** Chapter 215, Article II, Section 215-14 of the Municipal Code of the City of
407 Rehoboth Beach, Delaware, 2001, is hereby amended by making insertions as shown by
408 underlining as follows:

409
410 **§ 215-14 Expiration of permits of compliance.**

411
412 A permit of compliance or supplemental permit of compliance shall expire if the applicant fails to
413 obtain any necessary building permit or fails to receive the applicable license and/or approvals
414 from the Office of the Delaware Alcoholic Beverage Control Commissioner within one year from
415 the date the permit of compliance or supplemental permit of compliance was issued. The
416 Commissioners may grant one extension of this time limit for a maximum of six months based on
417 a showing of good cause.
418

Commented [EM11]: ECODE: This section establishes the fee for a permit of compliance and/or supplemental permit of compliance. Is any revision desired?

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

422

423 **§ 215-15 Reapplication.**

424

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

430

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

434

435 **§ 215-16 Notice of request for variance.**

436

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

440

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

444

445 **§ 215-17 Overflow of patrons prohibited from public ways.**

446

447 For all dining patios and outdoor dining areas on public space, any overflow of patrons onto public
448 ways, pedestrian or vehicular, is prohibited.

449

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

453

454 **§ 215-18 Blocking of public ways prohibited.**

455

456 For all dining patios and outdoor dining areas on public space, the blocking of the public ways,
457 pedestrian or vehicular, by related activities is prohibited.

458

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

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462

463 **§ 215-19 Hours of alcohol sale and consumption.**

464

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

467

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

471

472 **§ 215-20 Food service.**

473

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

475

476 Section 21. Chapter 215, Restaurants, of the Municipal Code of the City of Rehoboth Beach,
477 Delaware, 2001, is hereby amended by inserting a new Article V in its entirety as follows:

478

479

480 CHAPTER 215 RESTAURANTS

481

482 ARTICLE V

483

484 OUTDOOR DINING ON PUBLIC SPACE

485

486 § 215-21 Applicability.

487

488 A. The provisions of this Article apply to all Restaurants in the municipal boundaries of the
489 City of Rehoboth Beach.

490

491 B. Restaurants that comply with all provisions of this Article, and satisfy any other
492 requirements established by the City may apply for a license to locate outdoor dining areas
493 on public space.

494

495 § 215-22 License Application.

496

497 A. Authority to utilize outdoor dining areas on public space is by license issued on an annual
498 basis by the Board of Commissioners.

499

500 B. Licenses are valid from January 1 through December 31 for the year issued.

501

502 C. Issuance of a license to establish an outdoor dining area on public space is based on
503 compliance with the "City of Rehoboth Beach Design Manual for Outdoor Dining on

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504 Public Space,” which is kept on file at the Building & Licensing Department, and which is
505 incorporated into this code.

506
507 D. The City Manager may revoke a license when the city desires to use the area for a different
508 purpose, or for failure to maintain compliance with this Chapter, or for failure of an
509 establishment to observe a City ordinance.

510
511 E. The Building and Licensing Department will conduct a design review of the proposed
512 outdoor dining area to verify the design is safe, that the materials are suitable, and that the
513 design will not damage or restrict access to existing sidewalks, street trees or other
514 infrastructure.

515
516 F. The Building and Licensing Department will review the cumulative impact to the general
517 area to verify that adequate space remains for the other sidewalk functions that exist at and
518 around the site.

519
520
521 **§ 215-23 Fees.**

522
523 A non-refundable fee of \$150.00 shall accompany any new application or reapplication seeking
524 a license for outdoor dining on public space. Upon granting of the license, the applicant shall
525 pay an additional annual non-refundable fee \$325.00. Fees will not be pro-rated.

526
527 **§ 215-24 Design Manual.**

528
529 The Building & Licensing Department maintains a “City of Rehoboth Beach Design Manual for
530 Outdoor Dining on Public Space.” The Design Manual is incorporated into this Article by
531 reference, and no outdoor dining area on public space shall be approved unless it conforms to the
532 Design Manual. A copy of the manual is kept on file at the Building and Licensing Department

533
534 **§ 215-25 Application Requirements.**

535
536 The following criteria are the minimum criteria for an applicant to be eligible for an annual license
537 to provide outdoor dining on public space. However, satisfaction of the following does not
538 necessitate the issuance of a license:

539
540 A. A current City-issued business license.

541
542 B. An approved Permit of Compliance for indoor food service operation, if serving alcohol.

543
544 C. A completed outdoor dining on public space license application. This application must
545 contain a two-dimensional drawing to scale depicting the outdoor dining proposed.

Commented [EM12]: SM: What comes first? POC approval then application for outdoor patio license?

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546 including the details of construction, table layout, and service isle, prepared by an architect
547 or engineer.

548
549 D. Restaurants using dining areas on public space must meet all codes and regulations of all
550 City, State, and Federal Agencies, including but not limited to City of Rehoboth Beach
551 Code, State Fire Code, State Department of Public Health, and the Americans with
552 Disabilities Act.

553
554 E. Applications for outdoor dining areas on public space that will include alcohol service will
555 additionally require approval by the OABCC. The City license becomes effective upon
556 licensing by the OABCC.

557
558 F. The outdoor dining license shall not become effective until the applicant files with the City
559 a certificate of liability insurance confirming that the applicant has procured a policy of
560 commercial general liability insurance issued by an insurance company authorized to do
561 business in the state of Delaware. The policy shall provide in substance that the insurer will
562 defend against all claims and lawsuits which arise and will pay any final judgment of a
563 court of competent jurisdiction against the City, its officers, agents, or employees. The
564 insurance shall provide coverage in an amount of not less than \$1,000,000.00 for each
565 single occurrence. The policy of insurance shall name both the applicant and the City of
566 Rehoboth Beach as insured parties to the full amount of the policy limits. If the policy is
567 not kept in full force and effect throughout the term of this sidewalk dining license, the
568 license may be terminated by the City upon providing written notice of termination to
569 applicant.

570
571 G. The owner or operator shall execute an indemnification agreement indemnifying the City
572 for all claims arising from the operation of an outdoor dining area on public property.

573
574 **§ 215-30 Maintenance of outdoor dining area.**

575
576 The restaurant owner/operator will be responsible for always maintaining the sidewalk
577 within or adjacent to the dining area in a clean and orderly manner. All food or drink
578 spills, and trash of any kind, must be immediately removed from the sidewalk area.
579 Outdoor dining trash must be collected and deposited in private trash receptacles, and
580 not placed in City trash receptacles.

581
582 **§ 215-31 Outdoor Dining Area Use Restrictions.**

583
584 A. Outdoor dining areas on public space must comply with the use restrictions
585 specified in §270-19B.

586 (1) Food and beverages may be served only to seated patrons and no patrons
587 may wait in the outdoor dining area for seating.

588 (2) There shall be no live entertainment in the outdoor dining area.

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589 (3) There shall be no external speakers or amplifiers in the outdoor dining
590 area and no internal speakers from the premises are to be directed to the
591 outdoor dining area.

592 (4) There shall be no bar in the outdoor dining area.

593 (5) There shall be no food and or beverage preparation in the outdoor dining
594 area.

595 (6) There shall be a physical barrier around the perimeter of the dining patio
596 no less than 42 inches high constructed of wood, concrete, plastic,
597 wrought iron, dense vegetation or other approved material such that
598 entry and exit will be restricted to no more than two discrete locations.
599

600 § 215-32 License Suspension and Closure.

601 A. Outdoor dining may be suspended by the City Manager for community or
602 special events, utility, sidewalk or road repairs, or emergency situations or
603 violation of provision contained in this Chapter. The length of the suspension
604 will be for a duration as determined necessary by the City Manager.
605

606 § 215-34 Enforcement.

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

609 § 215-35 Violations.

610 A. An outdoor dining license is conditional at all times.

611 B. Noncompliance with any of the provisions in the Article shall constitute grounds for license
612 revocation.

613 C. An outdoor dining license may be suspended by the City Manager upon a finding that one
614 or more conditions of this Article have been violated, the outdoor dining is not operated in
615 a manner that is consistent with the approved license, the outdoor dining is being operated
616 in a manner which constitutes a nuisance, the outdoor dining is being operated in a manner
617 that unduly impedes or restricts the movement of pedestrians, or the outdoor dining is being
618 operated in a manner that is detrimental to the public health, safety or welfare of the
619 residents of the City.

620 D. The notice of suspension will be in writing, setting forth specific reasons and providing an
621 effective date.
622

623 § 215-36 Appeals.
624
625
626
627
628
629
630
631

Commented [EM13]: SM: When the outdoor dining area is closed for the season:
(1) The pedestrian access route is to be maintained clear of snow;
(2) The dining patio is not to be used for storage of materials other than tables and chairs;
(3) Operational items, e.g. hostess stands and menu stands, usually placed outside of the designated outdoor dining area shall be removed.

Commented [EM14]: PG: Consider adding "If more than three violations are received within a 12-month period, no license for outdoor dining on public space shall be issued for the next license period."

Commented [EM15R14]: EM: Do we need to add a fine to the violations section?

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

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

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

Adopted by the Commissioners
of the City of Rehoboth Beach
_____, 2022

Secretary of the Commissioners of
the City of Rehoboth Beach

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