

Version: #1

Date: January 6, 2022

Authors: Evan Miller, Matt Janis, Corey Shinko, Glenn Mandalas, and Alex Burns

Topic: Regulations for awnings, canopies and marquees that encroach into and over public property.

Presentation Date: Commissioners Workshop Meeting, January 9, 2023

1 **AN ORDINANCE TO AMEND CHAPTER 102, BUILDING CONSTRUCTION, OF**
2 **THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, 2001, RELATING**
3 **TO ESTABLISHING REGULATIONS FOR AWNINGS, CANOPIES, AND MARQUEES**

4
5 **WHEREAS**, awnings, canopies and marquees are currently attached to various buildings
6 in the City of Rehoboth Beach; and

7
8 **WHEREAS**, some of those awnings, canopies and marquees encroach into and over public
9 property; and

10
11 **WHEREAS**, a minority of the awnings, canopies, and marquees that encroach into and
12 over public property are currently licensed by the City of Rehoboth Beach; and

13
14 **WHEREAS**, the Board of Commissioners desire to execute license agreements for all
15 awnings, canopies and marquees, which encroach into and over public property, including those
16 that currently exist,

17
18 **BE IT ORDAINED** by the Commissioners of the City of Rehoboth Beach, in session met, a
19 quorum pertaining at all times thereto, in the manner following to-wit:

20
21 **Section 1.** Chapter 102, Article II, of the Municipal Code of the City of Rehoboth Beach,
22 Delaware, 2001, as amended be and the same is hereby further amended by deleting Section 102-
23 6 in its entirety and inserting in lieu thereof a new Section 102-6 as follows:

24
25 **§ 102-6 Amendment to Chapter 2.**

26
27 A. Section 201.3 of the Building Code of the City of Rehoboth Beach be and the same is
28 amended by inserting a new sentence at the end of Section 201.3 as follows:

29
30 "Where terms are explicitly defined in the Municipal Code of the City of Rehoboth Beach,
31 such definitions shall be controlling in all instances, unless inconsistent with the manifest
32 intent of the Commissioners or the context clearly requires otherwise."

33
34 B. Section 202 of the Building Code of the City of Rehoboth Beach be and the same is
35 amended by deleting the following three definitions in their entirety: AWNING, CANOPY,
36 and MARQUEE, and inserting in lieu thereof the following three definitions:

37
38 **AWNING**

39 A detachable roof-like structure, supported entirely by the exterior wall of a building
40 without posts and which consists of a rigid frame covered with fabric, plastic or metal and
41 extends over doors and/or windows for the purpose of providing protection from the

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42 elements and/or providing embellishment of the façade. This definition includes retractable
43 awnings.

44
45 **CANOPY**

46 A rigid roof-like structure, other than an awning or marquee, made of fabric, metal or other
47 materials that is supported through connection to the building as well as by columns or
48 posts affixed to the ground.

49
50 **MARQUEE**

51 For the purposes of this article, a rigid flat or slightly sloped roof-like structure, other than
52 an awning or canopy, which is integral to the building and is in entirety attached to,
53 supported by, and projecting/cantilevered from a building and which provides protection
54 from the elements.

55
56 **Section 2.** Chapter 102, Article II, of the Municipal Code of the City of Rehoboth Beach,
57 Delaware, 2001, is hereby amended by inserting a new Section 102-9 as follows:

58
59 Section 3202 of the Building Code of the City of Rehoboth Beach be and the same is hereby
60 amended by making insertions as shown by underline and deletions as shown by strikethrough as
61 follows:

62
63 **Section 3202**
64 **ENCROACHMENTS**

65
66 **3202.1 Encroachments below grade.**

67 Encroachments below grade shall comply with Sections 3202.1.1 through 3202.1.3.

68
69 **3202.1.1 Structural support.**

70 A part of a building erected below grade that is necessary for structural support of the
71 building or structure shall not project beyond the lot line, except that the footings of street
72 walls or their supports that are located not less than 8 feet (2438 mm) below grade shall
73 not project more than 12 inches (305 mm) beyond the street lot line.

74
75 **3202.1.2 Vaults and other enclosed spaces.**

76 The construction and utilization of vaults and other enclosed spaces below grade shall not
77 project more than 12 inches (305 mm) beyond the street lot line.

78
79 **3202.1.3 Areaways.**

80 Areaways shall be protected by grates, guards, or other approved means.

81
82 **3202.2 Encroachments above grade and below 8 feet in height.** Encroachments into the public
83 right-of-way above grade and below 8 feet (2438 mm) in height shall be prohibited except as

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84 provided for in Sections 3202.2.1 through 3202.2.3. Doors and windows shall not open or project
85 into the public right-of-way.

86
87 **3202.2.1 Steps.** Steps shall not project more than 12 inches (305 mm) and shall be
88 guarded by *approved* devices not less than 3 feet (914 mm) in height, or shall be located
89 between columns or pilasters.

90
91 **3202.2.2 Architectural features.** Columns or pilasters, including bases and moldings,
92 shall not project more than 12 inches (305 mm). Belt courses, lintels, sills, architraves,
93 pediments and similar architectural features shall not project more than 4 inches (102
94 mm).

95
96 ~~**3202.2.3 Awnings.** The vertical clearance from the public right of way to the lowest part
97 of any awning, including valances, shall be not less than 7 feet (2134 mm).~~

98
99 **3202.3 Encroachments 8 feet or more above grade.** Encroachments 8 feet (2438 mm) or more
100 above grade shall comply with Sections 3202.3.1 through 3202.3.4.

- 101
102 A. **3202.3.1 Awnings, canopies, marquees and signs.** ~~Awnings, canopies, marquees and
103 signs shall be constructed so as to support applicable loads as specified in Chapter 16.
104 Awnings, canopies, marquees and signs with less than 15 feet (4572 mm) of clearance
105 above the sidewalk shall not extend into or occupy more than two thirds the width of the
106 sidewalk measured from the building. Stanchions or columns that support awnings,
107 canopies, marquees and signs shall be located not less than 2 feet (610 mm) in from the
108 curb line.~~ Awnings, canopies, marquees and signs shall be constructed so as to support
109 applicable loads as specified in Chapter 16. Awnings with less than 15 feet (4572 mm) of
110 clearance above the sidewalk shall not extend more than four (4) feet over the sidewalk
111 measured from the building. Canopies with less than 15 feet (4572 mm) of clearance above
112 the sidewalk shall extend far enough so that stanchions or columns that support the canopy
113 are located no more than 2 feet (610 mm) in from the curb line. Marquees with less than
114 15 feet (4572 mm) of clearance above the sidewalk shall not extend more than two thirds
115 the width of the sidewalk measured from the building façade.

116
117 **3202.3.2 Windows, balconies, architectural features and mechanical equipment.**

118 Where the vertical clearance above grade to projecting windows, balconies, architectural
119 features or mechanical equipment is more than 8 feet (2438 mm), 1 inch (25 mm) of
120 encroachment is permitted for each additional 1 inch (25 mm) of clearance above 8 feet
121 (2438 mm), but the maximum encroachment shall be 4 feet (1219 mm).

- 122
123 B. **3202.3.3 Encroachments 15 feet or more above grade.** Encroachments 15 feet (4572
124 mm) or more above grade shall not be limited. Awnings with 15 feet (4572 mm) or more
125 of clearance above the sidewalk shall not extend more than four (4) feet over the

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126 [sidewalk measured from the building. Canopies with 15 feet \(4572 mm\) or more of](#)
127 [clearance above the sidewalk shall extend far enough so that stanchions or columns that](#)
128 [support the canopy are located not less than nor more than 2 feet \(610 mm\) in from the](#)
129 [curb line. Marquees with 15 feet \(4572 mm\) or more of clearance above the sidewalk](#)
130 [shall not extend more than two thirds the width of the sidewalk measured from the](#)
131 [building façade.](#)

132
133 **3202.3.4 Pedestrian walkways.** The installation of a pedestrian walkway over a public
134 right-of-way shall be subject to the approval of the applicable governing authority. The
135 vertical clearance from the public right-of-way to the lowest part of a *pedestrian walkway*
136 shall be not less than 15 feet (4572 mm).
137

138 **3202.4 Temporary encroachments.** Where allowed by the applicable governing authority,
139 vestibules and storm enclosures shall not be erected for a period of time exceeding 7 months in
140 any one year and shall not encroach more than 3 feet (914 mm) nor more than one-fourth of the
141 width of the sidewalk beyond the street *lot line*. Temporary entrance *awnings* shall be erected
142 with a clearance of not less than 7 feet (2134 mm) to the lowest portion of the hood or *awning*
143 where supported on removable steel or other *approved* noncombustible support.
144

145 **Section 3.** [Chapter 102, Building Construction, of the Municipal Code of the City of Rehoboth](#)
146 [Beach, Delaware, 2001, is hereby amended by inserting a new Article XIX in its entirety as](#)
147 [follows:](#)

148
149
150 **CHAPTER 102 BUILDING CONSTRUCTION**

151
152 **ARTICLE XIX**

153
154 **LICENSING OF AWNINGS, CANOPIES AND MARQUEES**

155
156 **§ 102-57 Applicability.**

157
158 [The provisions of this Article apply to awnings, canopies, and marquees encroaching into and over](#)
159 [public property in the municipal boundaries of the City of Rehoboth Beach.](#)

160
161 **§ 102-58 Requirements.**

162
163 **A.** [Awnings, canopies and marquees that encroach into and over public property, shall have](#)
164 [lighting installed underneath to reflect onto the sidewalk ~~or public property~~, such lighting](#)
165 [fixtures shall provide for a minimum clearance of eight \(8\) feet above the sidewalk or](#)
166 [public space.](#)
167

Commented [EM1]: Desire to only require lights if the encroachment is over a sidewalk?

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168 B. The space or portion of the sidewalk underneath the awning, canopy, or marquee shall be
169 kept clear of obstructions.

170
171 C. Canopies and marquees shall be constructed to allow for the proper discharge of water
172 through use of a gutter system as approved by the Building and Licensing Department.

173
174 D. Awning signs must comply with Chapter 270 Article VII.

175
176 **§ 102-59 License Agreement.**

177
178 No awning, canopy, or marquee shall be erected or maintained, and extend into and over public
179 property unless and until the Board of Commissioners have entered into a license agreement
180 authorizing such encroachment.

181
182 **§ 102-60 Fees.**

183
184 A fee of \$325.00 shall accompany a request for a license for an awning, canopy or marquee
185 encroaching into and over public property. Upon granting of the license, the applicant shall pay
186 an annual fee, which will be determined by the Board of Commissioners, plus an annual
187 administrative fee of \$30.00.

188
189 **§ 102-61 Application Requirements.**

190
191 The following are the minimum criteria for an applicant to be eligible for a license for an awning,
192 canopy, or marquee encroaching into and over public property. However, satisfaction of the
193 following does not necessitate the issuance of a license:

194
195 A. Name and address of applicant.

196
197 B. If a business, a current City-issued business license.

198
199 C. Exact location where such awning is to be erected and maintained.

200
201 D. Name of the owner or lessee of the premises where such awning is to be erected and
202 maintained.

203
204 E. Plans drawn to scale, prepared by an architect or engineer, with specifications sufficient in
205 detail to show the size, nature and construction of the awning, canopy or marquee proposed,
206 together with the manner of attaching same to structure or building intended to be served.
207 For awnings and canopies (using fabric or vinyl coverings), a certificate of flame resistance
208 from the fabric manufacturer in accordance with appropriate standards set forth in Chapter
209 102 Articles I and II.

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210
211 F. Awnings placed on storefronts with multiple ground-floor tenants shall be coordinated by
212 the property owner in terms of dimensions, placement, materials, and shape.

213
214 G. A certificate of liability insurance filed with the City confirming that the applicant has
215 procured a policy of commercial general liability insurance or building liability insurance
216 issued by an insurance company authorized to do business in the state of Delaware. The
217 policy shall provide in substance that the insurer will defend against all claims and lawsuits
218 which arise and will pay any final judgment of a court of competent jurisdiction against
219 the City, its officers, agents, or employees. The commercial general liability insurance shall
220 provide coverage in an amount of not less than \$1,000,000.00 for each single occurrence.
221 The policy of insurance shall name both the applicant and the City of Rehoboth Beach as
222 insured parties to the full amount of the policy limits. If the policy is not kept in full force
223 and effect throughout the term of this license, the license may be terminated by the City
224 upon providing written notice of termination to applicant.

225
226 H. The applicant shall execute an indemnification agreement indemnifying the City for all
227 claims arising from the awning, canopy or marquee encroaching into and over public
228 property.

229
230 § 102-62 Licensing of awnings, canopies and marquees.

231
232 Awnings, canopies and marquees existing prior to (date of adoption) are unlicensed and shall be
233 permitted to remain under the following conditions:

234
235 A. Within 60 days of the enactment of this section, the City Manager shall issue a notice of
236 the requirements contained herein, sent by certified mail to the last known address to
237 which tax bills are mailed, to all property owners of record for the C-1, C-2, and C-3
238 Districts of Rehoboth Beach.

239
240 B. Within 210 days of enactment of this chapter, each owner of property that is i) located in
241 the C-1, C-2, and C-3 Districts of Rehoboth Beach; and ii) has an unlicensed awning,
242 canopy, or marquee that encroaches into and over public property, having been duly
243 notified of this requirement by the licensing procedure described herein, shall file with
244 the Building and Licensing Department Office, an application for a license agreement
245 which provides the following information:

246
247 1. Name and address of applicant.

248
249 2. If a business, a current city-issued business license.
250

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251 3. A copy of existing plans, drawn to scale, and including specifications therefor
252 which show the existing size, nature and construction of the awning, canopy or
253 marquee, together with the manner of attaching same to structure or building
254 served.

255
256 4. A certificate of liability insurance filed with the City confirming that the applicant
257 has procured a policy of commercial general liability insurance or building
258 liability insurance issued by an insurance company authorized to do business in
259 the state of Delaware. The policy shall provide in substance that the insurer will
260 defend against all claims and lawsuits which arise and will pay any final judgment
261 of a court of competent jurisdiction against the City, its officers, agents, or
262 employees. The insurance shall provide coverage in an amount of not less than
263 \$1,000,000.00 for each single occurrence. The commercial general liability policy
264 of insurance shall name both the applicant and the City of Rehoboth Beach as
265 insured parties to the full amount of the policy limits. If the policy is not kept in
266 full force and effect throughout the term of this license, the license may be
267 terminated by the City upon providing written notice of termination to applicant.

268
269 5. The applicant shall execute an indemnification agreement indemnifying the City
270 for all claims arising from the awning, canopy or marquee encroaching into and
271 over public property.

272
273 C. The Building and Licensing Department shall perform an inspection of the existing
274 awning, canopy or marquee. Should the inspection reveal that the condition of the
275 existing encroachment compromises pedestrian safety and is required to be repaired, it
276 shall be allowed to be repaired provided the encroachment remains unchanged in size,
277 shape, and location. Should the inspection reveal that the encroachment is required to be
278 removed and replaced, it shall be allowed to be removed and replaced provided it
279 complies with the requirements set forth in §102-9 and this Article XIX.

280
281 D. After termination of this period of registration, all awnings, canopies, and marquees so
282 licensed may remain. Any awning, canopy, or marquee erected, altered, or not registered
283 in accordance with §102-9 and this Article XIX, will be presumed to have been illegally
284 erected or altered and is a violation of this article as set forth in §102-64.

285
286 **§ 102-63 License revocation and encroachment removal.**

287
288 A. Any license agreement granted hereunder may be revoked at any time by the Board of
289 Commissioners whenever, in the opinion of the City Manager, it would be in the best
290 interest of the public to do so. Any license issued hereunder shall not grant to the holder
291 thereof any permanent easement to encroach into and over public property but rather shall
292 only entitle the holder thereof to a revocable license agreement.

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- 293
294 B. Whenever the holder of the license ceases to own or occupy the premises for which the
295 license is issued, the license shall expire.
296
297 C. Upon the expiration or revocation of the license, any awning, canopy or marquee
298 encroaching into and over public property shall be removed within 90 days. In the event
299 the licensee fails to remove such encroachment after 90 days, the City may remove such
300 awning and charge the licensee the cost of such removal. In addition, the applicant shall be
301 subject to a civil assessment as set forth in § 102-64 hereof.
302
303 D. Nothing herein contained nor the payment of any fees herein required shall abridge or be
304 construed as denying the City the right to cause the person, firm or corporation to whom a
305 license is granted or from whom a charge is collected under this chapter, to remove the
306 awning, canopy or marquee previously authorized.
307

308 **§ 102-64 Violations and penalties.**
309

- 310 A. Violation of the provisions of this article shall be a civil offense pursuant to Chapter 126
311 of the Municipal Code of the City of Rehoboth Beach. Any person who violates this article
312 shall pay a civil assessment of not less than \$100 nor more than \$500. Each day that a
313 violation continues after due notice has been served shall be deemed a separate offense.
314

315 **Section 4.** If any provision of this Ordinance shall be deemed or held to be invalid or
316 unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect
317 any other provision of this Ordinance which may be given effect without such invalid or
318 unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to
319 be severable.
320

321 **Section 5.** This Ordinance shall take effect immediately upon its adoption by the
322 Commissioners of the City of Rehoboth Beach.
323

324 Adopted by the Commissioners
325 of the City of Rehoboth Beach
326 _____, 2023
327
328
329
330

331 _____
332 Secretary of the Commissioners of
333 the City of Rehoboth Beach

Commented [EM2]: Is there a desire to allow licenses to be transferred rather than expiring?

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334 SYNOPSIS: This Ordinance revises Chapter 102, Building Construction, of the Municipal Code
335 of the City of Rehoboth Beach, Delaware, 2001, for the purpose of establishing regulations and a
336 licensing procedure for awnings, canopies and marquees encroaching into and over public
337 property.

DRAFT