

NOTICE

THE COMMISSIONERS OF THE CITY OF REHOBOTH BEACH ON DECEMBER 16, 2022,
ADOPTED ORDINANCE NO. 1222-01 WHICH READS AS FOLLOWS:

**AN ORDINANCE TO AMEND CHAPTER 215, RESTAURANTS, OF
THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, 2001, BY
AMENDING SECTIONS 215-1, 215-2, 215-3, 215-10, 215-11, 215-12, 215-13, 215-17, 215-
18, INSERTING NEW SECTION 215-21, AND INSERTING A NEW ARTICLE V
RELATING TO ESTABLISHING REGULATIONS FOR OUTDOOR DINING ON
PUBLIC SPACE AND A LICENSING PROCEDURE FOR
OUTDOOR DINING ON PUBLIC SPACE**

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

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

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

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

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

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

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

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

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

§ 215-1 Terms defined.

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

BAR AREA

As found at § 270-4.

BUFFER

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

DINNER THEATER

As found at § 270-4.

LIQUOR LICENSE

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

OUTDOOR DINING AREA DEPTH

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

OUTDOOR DINING AREA ON PUBLIC SPACE

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

PEDESTRIAN ACCESS ROUTE (PAR)

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

PERMANENT SEATED DINING AREA

As found at § 270-4.

PERSON

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

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.

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.

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

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

§ 215-3 Application for permit of compliance.

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

- A. The type of ownership of the business, i.e., whether individual, partnership, corporation or otherwise.
- B. The name, style and designation under which the business or practice is to be conducted.
- C. The business address and all telephone numbers where the business is to be conducted.
- D. The plan of the proposed new, expanded or otherwise modified restaurant or dinner theater. Said plan shall show the following information:
 - (1) The location of the restaurant or dinner theater.
 - (2) The location's zoning classification.
 - (3) The number and sizes of bar areas in the restaurant or dinner theater.
 - (4) The restaurant's or dinner theater's complete floor plan, including 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.
 - (5) The restaurant's or dinner theater's seating capacity.
 - (6) The distance to the nearest property line of the nearest church, public park and a lot zoned residential from the proposed restaurant or dinner theater or existing restaurant or dinner theater property.
 - (7) If the application includes a dining patio, the location, floor plan, area calculation and details of the perimeter barrier.
 - (8) If the application includes a brewery-pub, the location, floor plan, and area calculation of all areas devoted to the brewing of beer and the storage of raw materials, waste matter and finished product related thereto.
 - (9) If the application includes an outdoor dining area on public space, a completed outdoor dining on public space license application.

- E. A statement that the establishment's primary purpose shall be that of a restaurant or dinner theater as defined herein.
- F. A statement containing an approximate percentage of projected revenue to be derived from the sale of alcoholic beverage as compared to the percentage of projected revenue to be derived from the sale of food.
- G. An authorization for the City, its agents and employees to seek information and conduct an investigation as to the truth of the statements set forth in the application.
- H. Written and dated declaration by the applicant, under verification, oath or affidavit, that the foregoing information contained in the application is true and correct with said declaration being duly dated and signed in the City.

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

§ 215-4 Verification by Building Inspector required.

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

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

§ 215-5 Hearing required.

- A. No applicant shall receive a permit of compliance or a supplemental permit of compliance from the City until after a public hearing, at which hearing interested parties and citizens shall have an opportunity to be heard. The City Manager shall place said application on the agenda for a public hearing at the next scheduled regular meeting of the Mayor and Commissioners if the date of such meeting is more than 30 days from the date the application is filed with the City; otherwise the application shall be heard at the second scheduled regular meeting of the Mayor and Commissioners or at a special meeting to be scheduled pursuant to the provisions of the City's Code.
- B. A permit of compliance or a supplemental permit of compliance shall not be issued to the applicant or to the Delaware Alcoholic Beverage Control Commission except by the favorable vote of a majority of the members of the City Commissioners. In reaching their decision, the Commissioners shall consider the following factors, including but not limited to:
 - (1) Whether the applicant has demonstrated that the establishment's primary purpose will be that of a restaurant or dinner theater as defined in this chapter.
 - (2) Whether the establishment meets all of the City's applicable zoning and licensing provisions.

- (3) Whether the establishment would be a detriment to the peace, order and quiet of the neighborhood and the City.
- (4) Whether the establishment will have an adverse impact on the neighboring properties or on the City of Rehoboth Beach, considering the impact on traffic, parking and noise.
- (5) Whether the applicant had made any false representation or statements to the City's employees or the Commissioners in order to induce or prevent action by the City not only in regard to the pertinent pending application under this chapter, but also in regard to the issuance of a building permit or business license for the subject establishment.

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

§ 215-6 Notice of hearing.

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

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

§ 215-7 Applicability.

A. The provisions of this chapter shall apply to:

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

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

C. Where an existing restaurant or dinner theater, regardless of the date that said restaurant or dinner theater was established, where alcoholic liquor is sold or consumed, is being

transferred to a new owner at the existing site, the present owner must file with the City Manager documentation to prove that the floor plan of said restaurant or dinner theater is substantially the same as the most recent floor plan approved by the City. Such documentation shall include but not be limited to a scalable floor plan showing the location and size of the permanent seated dining and bar areas. If the City Manager determines that the floor plan in respect to the total square footage of the restaurant or dinner theater and percentage of floor area devoted to bar area and percentage of floor area devoted to permanent seated dining area is substantially the same as the most recent floor plan approved by the City, no hearing shall be required pursuant to § 215-5A.

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

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

§ 215-8 Enforcement.

The City Manager shall enforce the provisions of this chapter.

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

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

Any permit of compliance or supplemental permit of compliance issued pursuant to this chapter shall be subject to suspension or revocation by the City Manager by reason of violation of any provision of this chapter; provided, however, that before any permit of compliance or supplemental permit of compliance is suspended or revoked by the City Manager shall give 10 days' written notice in advance by certified mail with return receipt requested, directed to the permit holder at the restaurant's or dinner theater's address within the corporate limits of the City of Rehoboth Beach, of the reason for the intended suspension or revocation and upon the correction of the defect within 15 days following receipt of said notice as determined by the City Manager, no suspension or revocation shall take effect for the first offense. Upon a second or subsequent offense of a similar nature, the City Manager shall suspend the permit of compliance or supplemental permit of compliance and shall immediately notify the permit holder by certified mail, with return receipt requested, directed to the permit holder at the restaurant's or dinner theater's address within the corporate limits of the City of Rehoboth Beach. The period of suspension shall be for 10 days. A second or subsequent offense shall be an offense occurring within 30 days of the preceding offense. If the holder of a permit commits five similar offenses within a twelve-month period, the permit of compliance shall be revoked by the City Manager, and notice of such revocation shall be given to the permit holder as provided herein. The suspension or revocation of a permit of compliance shall include the suspension or revocation of any associated supplemental permit of compliance under the same conditions, however a supplemental permit of compliance may be suspended or

revoked without suspending or revoking the associated permit of compliance when the violation is solely related to the substance of the supplemental permit of compliance.

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

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

- A. Any permit holder may appeal the decision of the City Manager to suspend or revoke a permit of compliance to the Commissioners of Rehoboth Beach. Such appeal shall be in writing, setting forth the reasons for the appeal, and shall be filed with the Secretary of the Commissioners of Rehoboth Beach by certified mail, with return receipt requested, together with an appeal processing fee of \$500, within 10 days after the receipt of the notice from the City Manager suspending the permit of compliance. Upon receipt of the notice of appeal, the Mayor shall fix a time and place for a public hearing of the appeal, with said time for the hearing of the appeal to be not more than 45 days following receipt thereof by the Secretary of the Commissioners of Rehoboth Beach.
- B. The hearing shall be conducted by the Commissioners, and a record of the hearing shall be made and kept by the Commissioners. All testimony shall be recorded but need not be transcribed. The record shall include the evidence, the Commissioners' findings of fact, the Commissioners' decision and a brief statement of the reasons therefor. At said hearing the permit holder shall be entitled to legal representation and to present witnesses.
- C. The filing of an appeal by a permit holder shall operate as a stay of the determination of the City Manager to revoke or suspend the permit of compliance or supplemental permit of compliance. However, if the appeal is withdrawn or if the suspension is upheld, the period of suspension shall commence on the anniversary date of the original suspension. For example, if a permit is suspended commencing July 1, 1991, and because of an appeal a stay occurs and the issue is not finally resolved until December 1991, the permit suspension will commence July 1, 1992.

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

§ 215-11 Modification of floor plan.

- A. It shall be illegal for any restaurant or dinner theater to substantially modify its floor plan, seating arrangement and/or the location and number and sizes of bar areas and permanent seated dining areas from the plans submitted to the City pursuant to the provisions of this chapter without a public hearing and new permit of compliance. This section shall be interpreted to include dining patios and areas dedicated to outdoor dining on public space.

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

§ 215-12 Violations and penalties.

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

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

§ 215-13 Application fee.

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

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

§ 215-14 Expiration of permits of compliance.

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

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

§ 215-15 Reapplication.

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

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

§ 215-16 Notice of request for variance.

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

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

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

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

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

§ 215-18 Blocking of public ways prohibited.

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

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

§ 215-19 Hours of alcohol sale and consumption.

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

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

§ 215-20 Food service.

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

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

§ 215-21 Annual inspection for compliance.

The Building Inspector or designee shall inspect all restaurants or dinner theaters at least annually to ensure compliance with this chapter.

Section 22. Chapter 215, Restaurants, of the Municipal Code of the City of Rehoboth Beach, Delaware, 2001, is hereby amended by inserting a new Article V in its entirety as follows:

CHAPTER 215 RESTAURANTS

ARTICLE V

OUTDOOR DINING ON PUBLIC SPACE

§ 215-22 Applicability.

- A. The provisions of this Article apply to all Restaurants in the municipal boundaries of the City of Rehoboth Beach.
- B. Restaurants that comply with all provisions of this Article, and satisfy any other requirements established by the City may apply for a license to locate outdoor dining areas on public space.

§ 215-23 License Application.

- A. Authority to utilize outdoor dining areas on public space is by license issued on an annual basis by the Board of Commissioners.
- B. Licenses are valid from January 1 through December 31 for the year issued.
- C. Issuance of a license to establish an outdoor dining area on public space is based on compliance with the "*City of Rehoboth Beach Design Manual for Outdoor Dining on Public Space*," which is kept on file at the Building & Licensing Department, and which is incorporated into this code.
- D. The City Manager may revoke a license when the city desires to use the area for a different purpose, or for failure to maintain compliance with this Chapter, or for failure of an establishment to observe a City ordinance.
- E. The Building and Licensing Department will conduct a design review of the proposed outdoor dining area to verify the design is safe, that the materials are suitable, and that the design will not damage or restrict access to existing sidewalks, street trees or other infrastructure.
- F. The Building and Licensing Department will review the cumulative impact to the general area to verify that adequate space remains for the other sidewalk functions that exist at and around the site.

§ 215-24 Fees.

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

§ 215-25 Design Manual.

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

§ 215-26 Application Requirements.

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

- A. A current City-issued business license.
- B. An approved or pending Permit of Compliance for indoor food service operation, if serving alcohol.
- C. A completed outdoor dining on public space license application. This application must contain a two-dimensional drawing to scale depicting the outdoor dining proposed, including the details of construction, table layout, and service isle, prepared by an architect or engineer.
- D. Restaurants using dining areas on public space must meet all codes and regulations of all City, State, and Federal Agencies, including but not limited to City of Rehoboth Beach Code, State Fire Code, State Department of Public Health, and the Americans with Disabilities Act.
- E. Applications for outdoor dining areas on public space that will include alcohol service will additionally require approval by the OABCC. The City license becomes effective upon licensing by the OABCC.
- F. The outdoor dining license shall not become effective until the applicant files with the City a certificate of liability insurance confirming that the applicant has procured a policy of commercial general liability insurance issued by an insurance company authorized to do business in the state of Delaware. The policy shall provide in substance that the insurer will defend against all claims and lawsuits which arise and will pay any final judgment of a court of competent jurisdiction against the City, its officers, agents, or employees. The insurance shall provide coverage in an amount of not less than \$1,000,000.00 for each single occurrence. The policy of insurance shall name both the applicant and the City of Rehoboth Beach as insured parties to the full amount of the policy limits. If the policy is not kept in full force and effect throughout the term of this sidewalk dining license, the license may be terminated by the City upon providing written notice of termination to applicant.
- G. The owner or operator shall execute an indemnification agreement indemnifying the City for all claims arising from the operation of an outdoor dining area on public property.

§ 215-27 Maintenance of outdoor dining area.

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

§ 215-28 Outdoor Dining Area Use Restrictions.

- A. Outdoor dining areas on public space must comply with the use restrictions specified in §270-19B.
 - (1) Food and beverages may be served only to seated patrons and no patrons may wait in the outdoor dining area for seating.
 - (2) There shall be no live entertainment in the outdoor dining area.
 - (3) There shall be no external speakers or amplifiers in the outdoor dining area and no internal speakers from the premises are to be directed to the outdoor dining area.
 - (4) There shall be no bar in the outdoor dining area.
 - (5) There shall be no food and or beverage preparation in the outdoor dining area.
 - (6) There shall be a physical barrier around the perimeter of the dining patio no less than 42 inches high constructed of wood, concrete, plastic, wrought iron, dense vegetation or other approved material such that entry and exit will be restricted to no more than two discrete locations.

§ 215-29 License Suspension and Closure.

- A. Outdoor dining may be suspended by the City Manager for community or special events, utility, sidewalk or road repairs, or emergency situations or violation of provision contained in this Chapter. The length of the suspension will be for a duration as determined necessary by the City Manager.
- B. When the outdoor dining area is closed for the season:
 - (1) The PAR 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. Tarps or other covers shall not be permitted.
 - (3) Operational items, e.g., hostess and menu stands, usually placed outside of the designated outdoor dining area, shall be removed.

§ 215-30 Enforcement.

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

§ 215-31 Violations.

- A. An outdoor dining license is conditional at all times.
- B. Noncompliance with any of the provisions in the Article shall constitute grounds for license revocation.

- C. An outdoor dining license may be suspended by the City Manager upon a finding that one or more conditions of this Article have been violated, the outdoor dining is not operated in a manner that is consistent with the approved license, the outdoor dining is being operated in a manner which constitutes a nuisance, the outdoor dining is being operated in a manner that unduly impedes or restricts the movement of pedestrians, or the outdoor dining is being operated in a manner that is detrimental to the public health, safety or welfare of the residents of the City.
- D. The notice of suspension will be in writing, setting forth specific reasons and providing an effective date. Restaurants receiving one or more suspensions may be denied future licenses for outdoor dining on public space.

§ 215-32 Appeals.

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.

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 and a licensing procedure for outdoor dining on public space.