



REHOBOTH BEACH BOARD OF COMMISSIONERS

Support Document Packet

WORKSHOP MEETING:

June 6, 2016

****DISCLAIMER****

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City of Rehoboth Beach

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THE COMMISSIONERS OF REHOBOTH BEACH
Workshop Meeting
Second Floor of Rehoboth Beach Volunteer Fire Company
Monday, June 6, 2016; 9:00 a.m.

WORKSHOP AGENDA

1. Call to Order
2. Roll Call
3. Correspondence
4. Old Business
 - A. Discuss possible revisions to Chapters 215, Restaurants and 270, Zoning as they relate to the regulation and permitting of restaurants that serve alcohol including brewery-pubs.
5. New Business
 - A. Presentation by and discussion with representatives of the Delaware Department of Transportation of the ongoing planning effort to facilitate bicycle travel in the area of Rehoboth Avenue and the Canal.
 - B. Discussion by the Commissioners on the approach they wish to use in considering the August 2014 report of the Planning Commission and other issues related to the City's effort to plant and preserve trees.
 - C. Discuss matters related to parking in the city – Commissioner Kuhns.
 - D. Discuss a draft ordinance amending Chapter 227, Solid Waste, of the City Code, Section 227-9, to insert the time of day that refuse containers must be removed from city property, this provision having been inadvertently omitted from Ordinance No. 0416-02 which was passed by the Commissioners on April 4, 2016.
6. City Manager's Report
7. Committee Report
8. City Solicitor's Report
9. Commissioner Announcements/Comments
10. Discuss items to include on future agendas.
11. Citizen Comment
12. Adjournment

AGENDA ITEMS MAY BE CONSIDERED OUT OF SEQUENCE.

Citizen comment regarding Old Business, New Business and Committee Reports will be heard during each agenda topic after initial discussion by the Commissioners at the discretion of the chair. Speakers shall state their name and address. Comments are limited to three minutes or at the discretion of the chair. Comments on non-agenda items will be heard under "Citizen Comment".

*For additional information or special accommodations, please call (302) 227-6181 (TDD Accessible) 24 hours prior to the meeting.

**Next scheduled meeting – (Regular) Friday, June 17, 2016; 7:00 p.m.

amw: 05/27/16; posted 05/27/16

pc (via Fax) Cape Gazette, Coast Press, State News

Version 2B changes

- This version removes all redlining and notes from Version 2 dated May 1, 2016, to make it easier to see what the new format looks like.
- As redlining, the current 5,000 square foot total area limitation has been restored in lieu of the 2,500 square foot seated dining and bar area limitation of Version 2 and the maximum allowed bar area has been restored to 1,000 square feet.
- This version is intended to supplement not replace Version 2, thus the use of the nomenclature Version 2B.

Version 1

Below is my proposed rewrite of the sections of the zoning code related to restaurants and dinner theaters. This is to be paired with similar revisions to Chapter 215 which set out the permit of compliance process. Some of the goals and highlights:

- ~~• The major change is to go from a limit of 5,000 square feet for the total area of a restaurant to 2,500 square feet of combined seated dining and bar area. This change allows for unlimited support areas such as kitchen, food storage and restrooms. This figure was shown during previous discussions to be consistent with restaurants that have received a certificate of compliance under the current rules.~~
- ~~• By setting a limit based on the combined seated dining and bar area an incentive is created to reduce the size of the bar area in order to have more seating.~~
- All definitions have been moved to Section 270-4 where all other zoning code definitions are found whereas previously a number of definitions were contained in the body of the code and duplicated definitions have been removed.
- Many of the requirements previously contained in the definitions have been moved to the body of the code and more generic definitions have been used.
- A few additional requirements have been added.
- Previously there was a reference that a patio was to have a “special permit of compliance”, but did not develop this in anyway. The proposed calls for a “supplemental permit of compliance” for what is being termed a dining patio.
- Requirements for brewery-pubs are set out and they are required to obtain a supplemental permit of compliance. This has the effect of making brewery-pubs a special class of restaurant subject to all the requirements of a restaurant plus the additional brewery-pub requirements.

Version 2 changes

- Section 270-53-Relocation of nonconforming restaurant was added to this document and then shown as being deleted from the code.
- Section 270-54-Relocation of nonconforming patio was added to this document and then shown as being deleted from the code.

1 270-4 Definitions

2

3 **BAR AREA**

4 The floor space, not classified as permanent seated dining area, in any restaurant where
5 alcoholic liquor is served or consumed. It shall include but not be limited to the bar counter and
6 the contiguous floor and seating area where alcoholic liquor is dispensed or consumed, any

7 dance floor area and any area occupied by persons providing entertainment. Patron restrooms
8 are specifically excluded.

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10 **BREWERY-PUB**

11 An establishment which conforms to the requirements of a restaurant and where beer is
12 manufactured on the premises.

13
14 **CABARET**

15 An establishment where patrons are entertained by performers who dance, sing, play
16 instruments or perform other legal acts for entertainment, but not to include a dinner theater,
17 and where such entertainment may be performed during or after service of dinner, and where a
18 minor, as defined at 4 Del. C. §713, is to be denied admission to or permission to remain on the
19 premises after 9:00 p.m., official eastern time, unless accompanied by a parent or by a legal
20 guardian.

21
22 **CAFE**

23 An establishment, not a restaurant, where food and liquor is served or consumed.

24
25 **CATERER**

26 Any proprietorship, partnership or corporation engaged in the business of providing food and
27 beverages at social gatherings, such as weddings, dinners, benefits, banquets or other similar
28 events, for consideration on a regular basis and duly licensed by the state as caterers, with at
29 least 60% of its gross receipts resulting from the sale of food.

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31 **DANCE HALL**

32 Any establishment other than a restaurant where dancing by the patrons takes place.

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34 **DINING PATIO**

35 A deck or porch whether covered, uncovered, raised or at grade, used in connection with a
36 restaurant and not necessarily attached thereto.

37
38 **FOOD ESTABLISHMENT**

39 An establishment, not a restaurant, which serves various refreshments, not including alcoholic
40 beverages, for consideration.

41
42 **NIGHTCLUB, INCLUDING AFTER HOURS CLUB**

43 An establishment open for business in the evening and early morning hours which is not a
44 restaurant but at which entertainment is provided and food or alcoholic beverages are served or
45 consumed.

46
47 **PERMANENT SEATED DINING AREA**

48 The floor space in any restaurant or dinner theater where complete meals are served. A
49 permanently marked dance floor may be located in the permanent seated dining area, but the
50 square footage of its floor space shall not be included in the calculation of the square footage of
51 the permanent seated dining area, but rather shall be included in the calculation of the square
52 footage of the bar area.

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RESTAURANT

An establishment where meals are, for compensation, prepared and served on the premises and when alcohol is sold or consumed complies with §270-19.

TAPROOM

An establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

TAVERN

Any establishment with special space and accommodations for the sale by the glass and for consumption on the premises of beers.

270-19 Use Restrictions

A. Restaurants

In addition to the standards of the relevant zoning district an establishment that meets the definition of a restaurant where alcoholic liquor is sold or consumed on the premises shall comply with the following:

- 1) Be totally enclosed, excepting any area included in a validly issued dining patio supplemental certificate of compliance,
- 2) Is regularly used and kept open principally for the purpose of serving complete meals. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals.
- 3) Revenue from food sales shall constitute more than 50 percent of the total business revenues.
- 4) Have seating and tables for a minimum of 35 patrons. and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook.
- 5) The area in a given building devoted to restaurant purposes where alcoholic liquor is consumed on the premises shall not be larger than 5,000 total square feet of floor space, including but not limited to seated dining area, food storage and preparation area, passageways and entrance foyer, restrooms, dance floor and bar area, except that where a restaurant occupies space in a building also housing a hotel/motel containing at least 25 bedrooms, the area devoted to restaurant purposes may occupy up to but not more than 7,500 square feet. The sum of the floor space devoted to permanent seated dining area and bar area in any building shall not exceed 2,500 square feet, except that where a restaurant occupies space in a building also housing a hotel/motel containing at least 25 bedrooms, the area so devoted may be up to but not more than 3,750 square feet.
- 6) The bar area shall be no more than 25% of the square footage of the permanent seated dining area, but not to exceed a maximum of ~~500-1,000~~ square feet, except that any restaurant regardless of its permanent seated dining area may have a bar area of 350 square feet.

98 7) Tables and chairs in the permanent seated dining area may not be temporarily moved so as
99 to increase the space where patrons can consume alcoholic liquor without such
100 consumption being secondary to food consumption while seated at tables.

101 8) Patrons may not consume alcoholic liquor in the permanent seated dining area unless
102 seated at tables.

103

104 B. Dining Patios.

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106 Dining patios licensed, constructed or expanded after June 14, 1991, shall only be used for
107 consumption of food and beverages consistent with the following conditions:

108 1) The gross area devoted to dining patio purposes shall be limited to 750 square feet per
109 restaurant, which area shall be permitted in addition to the limitation contained in §270-
110 19A(5).

111 2) Food and beverages may be served only to seated patrons and no patrons may await on the
112 dining patio for seating.

113 3) There shall be no live entertainment on the dining patio.

114 4) There shall be no external speakers or amplifiers on the dining patio and no internal
115 speakers from the premises are to be directed to the dining patio.

116 5) There shall be no bar on the dining patio.

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

121 7) No one shall construct or operate a dining patio unless it is included in a supplemental
122 permit of compliance issued pursuant to Chapter [215](#) of the Municipal Code of Rehoboth
123 Beach, Delaware.

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125 8) A dining patio existing as of June 14, 1991, shall be considered a legal nonconforming use
126 but shall be subject to all of the provisions of this chapter if expanded pursuant to a
127 supplemental permit of compliance.

128

129 C. Brewery-pubs.

130

131 In addition to the standards of the relevant zoning district an establishment that meets the
132 definition of a brewery-pub shall comply with the following:

133 1) The brewery-pub must be situated on the premises of and be physically a part of a
134 restaurant which holds a valid certificate of compliance issued by the city.

135 2) No more than 50 percent of the total gross floor area of the establishment shall be used for
136 the brewery function including, but not limited to, the brewhouse, boiling and water
137 treatment areas, bottling and kegging lines, malt milling and storage, fermentation tanks,
138 conditioning tanks and serving tanks.

139 3) Retail carryout sale of beer produced on the premises shall be allowed in containers having
140 a capacity of no more than one U.S. gallon (3,785 ml / 128 US fluid ounces).

141 4) No beer produced on the premises shall be sold at wholesale, however beer may be
142 removed from the premises for serving at events where the purpose of the event is not for

- 143 commercial profit and where the beer is not wholesaled to the event sponsors but is
144 instead, dispensed by employees of the brewpub.
- 145 5) All aspects of the brewing process shall be completely confined within a building.
- 146 6) No outdoor storage of raw materials, supplies, beer containers (either full or empty) shall be
147 allowed. This prohibition includes the use of fixed or portable storage units, cargo
148 containers and tractor trailers.
- 149 7) The brewery function shall be designed and operated so as to have no offensive brewery-
150 related air-borne or water-borne emissions including odors from storage of solid or semi-
151 solid waste or by-product and create no public or private nuisance.
- 152 8) No one shall construct or operate a brewery-pub unless it is included in a supplemental
153 permit of compliance issued pursuant to Chapter 215 of the Municipal Code of Rehoboth
154 Beach, Delaware.

155
156 D. Dinner Theaters

157
158 In addition to the standards of the relevant zoning district an establishment that meets the
159 definition of a dinner theater where alcoholic liquor is sold or consumed on the premises shall
160 comply with the following:

- 161 1) Be totally enclosed.
- 162 2) Is regularly used and kept open for the purpose of presenting public performances featuring
163 live actor(s) in dramatic or musical productions after and not simultaneously with the
164 serving of complete meals. The service of only such food and victuals as sandwiches or
165 salads shall not be deemed to be the service of meals.
- 166 3) Must serve complete meals to at least 3/4 of the patrons at each performance, and they
167 shall be served in the permanent seated dining area in front of or surrounding the stage.
168 Seating at tables shall be provided for each patron.
- 169 4) Have seating and tables for a minimum of 35 patrons. and suitable kitchen facilities
170 connected therewith for cooking an assortment of foods under the charge of a chef or cook.
- 171 5) There shall be no more than one dinner theater in any public building, and, except for
172 motels and hotels, a dinner theater shall not share a building with any other commercial
173 activity.
- 174 6) No more than 2,500 square feet of floor space in any dinner theater shall be devoted to
175 permanent seated dining area.
- 176 7) Shall not have a bar area where patrons consume alcoholic beverages but may have a
177 service bar area where alcoholic beverages are stored and delivered to waiters for service to
178 the patrons seated in the permanent seated dining area.
- 179 8) Shall not serve alcoholic beverages more than one hour before the service of the complete
180 meal begins or more than two hours before the live stage production begins, whichever is
181 less. Alcoholic beverages may also be served during intermissions but not during or after the
182 performance.
- 183 9) The rules set forth herein apply to each and every performance. When repeated
184 performances are to be given, all patrons from the first performance must leave the
185 establishment before seating can begin for the next performance.
- 186 10) Shall close and all patrons must leave by 12:00 midnight.

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188 E. Certain prohibited uses citywide.

Version: Draft No. 2B

Date: June 1, 2016

Author: S. Cooper

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No structure or land shall be used or occupied anywhere in the City of Rehoboth Beach, regardless of whether the land is zoned residential or commercial, for the following uses: taproom, tavern, dance hall, cabaret, nightclub, after-hours club or cafe. Anything contained in Article [II](#), Use Regulations, or any other portion of Chapter [270](#), Zoning, of the Municipal Code of Rehoboth Beach, Delaware, which is inconsistent herewith is to the extent of such inconsistency repealed.

Version: Draft No. 2
Date: May 1, 2016
Author: S. Cooper

Below is my proposed rewrite of the sections of the zoning code related to restaurants and dinner theaters. This is to be paired with similar revisions to Chapter 215 which set out the permit of compliance process. Some of the goals and highlights:

- The major change is to go from a limit of 5,000 square feet for the total area of a restaurant to 2,500 square feet of combined seated dining and bar area. This change allows for unlimited support areas such as kitchen, food storage and restrooms. This figure was shown during previous discussions to be consistent with restaurants that have received a certificate of compliance under the current rules.
- By setting a limit based on the combined seated dining and bar area an incentive is created to reduce the size of the bar area in order to have more seating.
- All definitions have been moved to Section 270-4 where all other zoning code definitions are found whereas previously a number of definitions were contained in the body of the code and duplicated definitions have been removed.
- Many of the requirements previously contained in the definitions have been moved to the body of the code and more generic definitions have been used.
- A few additional requirements have been added.
- Previously there was a reference that a patio was to have a “special permit of compliance”, but did not develop this in anyway. The proposed calls for a “supplemental permit of compliance” for what is being termed a dining patio.
- Requirements for brewery-pubs are set out and they are required to obtain a supplemental permit of compliance. This has the effect of making brewery-pubs a special class of restaurant subject to all the requirements of a restaurant plus the additional brewery-pub requirements.

Version 2 changes

- Section 270-53-Relocation of nonconforming restaurant was added to this document and then shown as being deleted from the code.
- Section 270-54-Relocation of nonconforming patio was added to this document and then shown as being deleted from the code.

1 270-4 Definitions

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BAR AREA

~~The floor space, not classified as permanent seated dining area, in any restaurant where alcoholic liquor is served or consumed. It shall include but not be limited to the bar counter and the contiguous floor and seating area where alcoholic liquor is dispensed or consumed, any dance floor area and any area occupied by persons providing entertainment. Patron restrooms are specifically excluded. The floor space in any restaurant or dinner theater that is used primarily for the service or consumption of alcoholic liquor and not secondary to food consumption. It shall include but not be limited to the bar counter and the contiguous floor and seating area where alcoholic liquor is dispensed or consumed, together with all other areas of the restaurant, except the permanent seated dining area, whether contiguous to the bar or not, where patrons are served or consumed alcoholic liquor.~~

BREWERY-PUB

Commented [SC1]: This was added but I believe it has been practice.
Commented [SC2]: This was added.

16 An establishment which conforms to the requirements of a restaurant and where beer is
17 manufactured on the premises.

18
19 **CABARET**

20 An establishment where patrons are entertained by performers who dance, sing, play
21 instruments or perform other legal acts for entertainment, but not to include a dinner theater,
22 and where such entertainment may be performed during or after service of dinner, and where a
23 minor, as defined at 4 Del. C. § 713, is to be denied admission to or permission to remain on the
24 premises after 9:00 p.m., official eastern time, unless accompanied by a parent or by a legal
25 guardian.

26
27 **CAFE**

28 An establishment, not a restaurant, where food and liquor is served or consumed.

29
30 **CATERER**

31 Any proprietorship, partnership or corporation engaged in the business of providing food and
32 beverages at social gatherings, such as weddings, dinners, benefits, banquets or other similar
33 events, for consideration on a regular basis and duly licensed by the state as caterers, with at
34 least 60% of its gross receipts resulting from the sale of food.

35
36 **DANCE HALL**

37 Any establishment other than a restaurant where dancing by the patrons takes place.

38
39 **DINING PATIO**

40 A deck or porch whether covered, uncovered, raised or at grade, used in connection with a
41 restaurant and not necessarily attached thereto.

42
43 **FOOD ESTABLISHMENT**

44 An establishment, not a restaurant, which serves various refreshments, not including alcoholic
45 beverages, for consideration.

46
47 **NIGHTCLUB, INCLUDING AFTER HOURS CLUB**

48 An establishment open for business in the evening and early morning hours which is not a
49 restaurant but at which entertainment is provided and food or alcoholic beverages are served or
50 consumed.

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52
53 **PERMANENT SEATED DINING AREA**

54 The floor space in any restaurant or dinner theater where complete meals are served. A
55 permanently marked dance floor may be located in the permanent seated dining area, but the
56 square footage of its floor space shall not be included in the calculation of the square footage of
57 the permanent seated dining area, but rather shall be included in the calculation of the square
58 footage of the bar area. ~~Tables and chairs in the permanent seated dining area may not be~~
59 ~~temporarily moved so as to increase the space where patrons can consume alcoholic liquor~~
60 ~~without such consumption being secondary to food consumption while seated at tables. Patrons~~
61 ~~may not consume alcoholic liquor in the permanent seated dining area unless seated at tables.~~

~~The square footage of floor space of a dining patio, as defined at § 270-19A(1), shall not be included as part of the permanent seated dining area or as part of the bar area. The square footage of floor space of a patio which is not a dining patio, as defined at § 270-19A(1), shall be included as part of the bar area.~~

RESTAURANT

An establishment where meals are, for compensation, prepared and served on the premises and when alcohol is sold or consumed complies with §270-19.

~~A. Where no alcoholic liquor is sold or consumed on the premises, any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals.~~

~~B. Where alcoholic liquor is sold or consumed on the premises, a totally enclosed, except where a special patio license has been granted, commercial establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration and which has seating and tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals. The bar area shall be no more than 25% of the square footage of the permanent seated dining area, but not to exceed a maximum of 1,000 square feet, except that any restaurant regardless of its permanent seated dining area may have a bar area of 350 square feet. The occupancy capacity must conform with the Fire Marshal's guidelines.~~

TAPROOM

An establishment provided with special space and accommodations and operated primarily for the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a secondary object as distinguished from a restaurant where the sale of food is the primary object.

TAVERN

Any establishment with special space and accommodations for the sale by the glass and for consumption on the premises of beers.

270-19 Use Restrictions

A. Restaurants

In addition to the standards of the relevant zoning district an establishment that meets the definition of a restaurant where alcoholic liquor is sold or consumed on the premises shall comply with the following:

- 1) Be totally enclosed, excepting any area included in a validly issued dining patio supplemental certificate of compliance,

- 107 2) Is regularly used and kept open principally for the purpose of serving complete meals. The
108 service of only such food and victuals as sandwiches or salads shall not be deemed to be the
109 service of meals.
- 110 3) Revenue from food sales shall constitute more than 50 percent of the total business
111 revenues.
- 112 4) Have seating and tables for a minimum of 35 patrons, and suitable kitchen facilities
113 connected therewith for cooking an assortment of foods under the charge of a chef or cook.
- 114 5) The sum of the floor space devoted to permanent seated dining area and bar area in any
115 dining area shall not exceed 2,500 square feet, except that where a restaurant occupies space
116 in a building also housing a hotel/motel containing at least 25 bedrooms, the area so
117 devoted may be up to but not more than 3,750 square feet.
- 118 6) The bar area shall be no more than 25% of the square footage of the permanent seated
119 dining area, but not to exceed a maximum of 500 square feet, except that any restaurant
120 regardless of its permanent seated dining area may have a bar area of 350 square feet.
- 121 7) Tables and chairs in the permanent seated dining area may not be temporarily moved so as
122 to increase the space where patrons can consume alcoholic liquor without such
123 consumption being secondary to food consumption while seated at tables.
- 124 8) Patrons may not consume alcoholic liquor in the permanent seated dining area unless
125 seated at tables.

Commented [SC3]: This has been added and I got it from Georgetown's code. This split of revenues has been a topic in the past and I add it for discussion.

Commented [SC4]: This substitutes for the current total square foot restriction.

Commented [SC5]: This number is reduced from the current 1,000 sq. ft. The current 1,000 sq. ft. limitation is unrealistic in that the other 4,000 sq. ft. allowed would have to be all seated dining.

126 A-B.Dining Patios.

127 Dining Ppatios, as defined herein, licensed, constructed or expanded after June 14, 1991, and
128 located in a commercial zone shall only be used for consumption of food and beverages consistent
129 with the following conditions:

- 132 1) The gross area devoted to dining patio purposes shall be limited to 750 square feet per
133 restaurant, which area shall be permitted in addition to the limitation contained in §270-
134 19A(5). "Patio" shall mean a deck or porch, of no more than 750 square feet, whether
135 covered, uncovered, raised or at grade, used in connection with a restaurant and not
136 necessarily attached thereto.
- 137 2) Food and beverages may be served only to seated patrons and no patrons may await
138 seating on the dining patio for seating.
- 139 3) There shall be no live entertainment on the dining patio.
- 140 4) There shall be no external speakers or amplifiers on the dining patio and no internal
141 speakers from the premises are to be directed to the dining patio.
- 142 5) There shall be no bar on the dining patio.
- 143 ~~5)6)~~ There shall be a physical barrier around the perimeter of the dining patio no less than 42
144 inches high constructed of wood, concrete, plastic, wrought iron, dense vegetation or other
145 approved material such that entry and exit will be restricted to no more than two discrete
146 locations.
- 147 ~~6) (Reserved)~~
- 148 7) No one shall construct or operate a dining patio unless it is included in a special
149 supplemental permit of compliance issued pursuant to Chapter 215 of the Municipal Code
150 of Rehoboth Beach, Delaware.

Commented [SC6]: This was added in response to recent discussions and the granting of recent permits of compliance.

- 152 ~~8) For all patios, any overflow of patrons onto public ways, pedestrian or vehicular, is~~
153 ~~prohibited.~~
- 154
- 155 ~~9) For all patios, the blocking of the public ways, pedestrian or vehicular, by related activities is~~
156 ~~prohibited.~~
- 157
- 158 ~~10)8) A dining patio existing as of June 14, 1991, shall be considered a legal nonconforming~~
159 ~~use but shall be subject to all of the provisions of this chapter if expanded pursuant to a~~
160 ~~supplemental permit of compliance.~~

161

162 C. Brewery-pubs.

163

164 In addition to the standards of the relevant zoning district an establishment that meets the
165 definition of a brewery-pub shall comply with the following:

- 166 1) The brewery-pub must be situated on the premises of and be physically a part of a
167 restaurant which holds a valid certificate of compliance issued by the city.
- 168 2) No more than 50 percent of the total gross floor area of the establishment shall be used for
169 the brewery function including, but not limited to, the brewhouse, boiling and water
170 treatment areas, bottling and kegging lines, malt milling and storage, fermentation tanks,
171 conditioning tanks and serving tanks.
- 172 3) Retail carryout sale of beer produced on the premises shall be allowed in containers having
173 a capacity of no more than one U.S. gallon (3,785 ml / 128 US fluid ounces).
- 174 4) No beer produced on the premises shall be sold at wholesale, however beer may be
175 removed from the premises for serving at events where the purpose of the event is not for
176 commercial profit and where the beer is not wholesaled to the event sponsors but is
177 instead, dispensed by employees of the brewpub.
- 178 5) All aspects of the brewing process shall be completely confined within a building.
- 179 6) No outdoor storage of raw materials, supplies, beer containers (either full or empty) shall be
180 allowed. This prohibition includes the use of fixed or portable storage units, cargo
181 containers and tractor trailers.
- 182 7) The brewery function shall be designed and operated so as to have no offensive brewery-
183 related air-borne or water-borne emissions including odors from storage of solid or semi-
184 solid waste or by-product and create no public or private nuisance.
- 185 8) No one shall construct or operate a brewery-pub unless it is included in a supplemental
186 permit of compliance issued pursuant to Chapter 215 of the Municipal Code of Rehoboth
187 Beach, Delaware.

188

189 D. Dinner Theaters

190

191 In addition to the standards of the relevant zoning district an establishment that meets the
192 definition of a dinner theater where alcoholic liquor is sold or consumed on the premises shall
193 comply with the following:

- 194 1) Be totally enclosed.
- 195 2) Is regularly used and kept open for the purpose of presenting public performances featuring
196 live actor(s) in dramatic or musical productions after and not simultaneously with the

Commented [SC7]: Moved to Chapter 215. This does not belong here since it applies to all patios, including those grandfathered.

Commented [SC8]: Moved to Chapter 215. This does not belong here since it applies to all patios, including those grandfathered.

Commented [SC9]: These requirements were pulled together from a number of other codes, but principally Georgetown.

Commented [SC10]: This is intended to prevent the wholesaling of beer but allow brewery-pubs to market/promote their business at tasting events, festivals and the like.

- 197 servicing of complete meals. The service of only such food and victuals as sandwiches or
198 salads shall not be deemed to be the service of meals.
199 3) Must serve complete meals to at least 3/4 of the patrons at each performance, and they
200 shall be served in the permanent seated dining area in front of or surrounding the stage.
201 Seating at tables shall be provided for each patron.
202 4) Have seating and tables for a minimum of 35 patrons. and suitable kitchen facilities
203 connected therewith for cooking an assortment of foods under the charge of a chef or cook.
204 5) There shall be no more than one dinner theater in any public building, and, except for
205 motels and hotels, a dinner theater shall not share a building with any other commercial
206 activity.
207 6) No more than 2,500 square feet of floor space in any dinner theater shall be devoted to
208 permanent seated dining area.
209 7) Shall not have a bar area where patrons consume alcoholic beverages but may have a
210 service bar area where alcoholic beverages are stored and delivered to waiters for service to
211 the patrons seated in the permanent seated dining area.
212 8) Shall not serve alcoholic beverages more than one hour before the service of the complete
213 meal begins or more than two hours before the live stage production begins, whichever is
214 less. Alcoholic beverages may also be served during intermissions but not during or after the
215 performance.
216 9) The rules set forth herein apply to each and every performance. When repeated
217 performances are to be given, all patrons from the first performance must leave the
218 establishment before seating can begin for the next performance.
219 10) Shall close and all patrons must leave by 12:00 midnight.

Commented [SC11]: This was adapted to be consistent with the change limiting the patron area as opposed to total area, otherwise no change in the requirements for dinner theaters has been made.

220
221 **B.E.** Certain prohibited uses citywide.

222
223 No structure or land shall be used or occupied anywhere in the City of Rehoboth Beach, regardless
224 of whether the land is zoned residential or commercial, for the following uses: taproom, tavern,
225 dance hall, cabaret, nightclub, after-hours club or cafe. Anything contained in Article II, Use
226 Regulations, or any other portion of Chapter 270, Zoning, of the Municipal Code of Rehoboth Beach,
227 Delaware, which is inconsistent herewith is to the extent of such inconsistency repealed.

228
229 ~~1) Nothing in this section shall apply to restaurants or dinner theaters, as defined herein, whether~~
230 ~~now existing or established in the future, even if such restaurant or dinner theater is licensed to~~
231 ~~sell alcoholic beverages, and nothing in this section shall operate to restrict the right of the~~
232 ~~owner of such a restaurant or dinner theater to sell, transfer or relocate the restaurant or dinner~~
233 ~~theater license.~~

234
235 ~~2) As used in this section, in addition to their usual meaning, the following terms shall have the~~
236 ~~meanings indicated:~~

237 **CABARET**

238 ~~An establishment where patrons are entertained by performers who dance, sing, play instruments~~
239 ~~or perform other legal acts for entertainment, but not to include a dinner theater, and where such~~
240 ~~entertainment may be performed during or after service of dinner, and where a minor, as defined at~~
241 ~~4 Del. C. § 713, is to be denied admission to or permission to remain on the premises after 9:00~~
242 ~~p.m., official eastern time, unless accompanied by a parent or by a legal guardian.~~

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CAFE

~~An establishment, not a restaurant, where food and liquor is served or consumed.~~

DANCE HALL

~~Any establishment other than a restaurant where dancing by the patrons takes place.~~

DINNER THEATER

- ~~A. A totally enclosed commercial establishment which has seating and tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook which is regularly used and kept open for the purpose of presenting public performances featuring live actor(s) in dramatic or musical productions after and not simultaneously with the serving of complete meals. The establishment must close and all patrons must leave at 12:00 midnight. The service of only such food and victuals as sandwiches and salads shall not be deemed to be complete meals.~~
- ~~B. Each dinner theater and related activities in a building shall be limited in area to not more than 5,000 square feet. There shall be not more than one dinner theater in any public building, and, except for motels and hotels, a dinner theater shall not share a building with any other commercial activity. The occupancy capacity must conform to the Fire Marshal's guidelines.~~
- ~~C. A dinner theater must serve complete meals to at least 3/4 of the patrons at each performance, and they shall be served in the permanent seated dining area in front of or surrounding the stage. Seating at tables shall be provided for each patron.~~
- ~~D. The establishment, when licensed to serve alcoholic beverages, shall not have a bar area where patrons consume alcoholic beverages but may have a service bar area where alcoholic beverages are stored and delivered to waiters for service to the patrons seated in the permanent seated dining area. Such establishment shall not serve alcoholic beverages more than one hour before the service of the complete meal begins or more than two hours before the live stage production begins, whichever is less. Alcoholic beverages may also be served during intermissions but not during or after the performance.~~
- ~~E. The rules set forth herein apply to each and every performance. When repeated performances are to be given, all patrons from the first performance must leave the establishment before seating can begin for the next performance.~~

NIGHTCLUB, INCLUDING AFTER HOURS CLUB

~~An establishment open for business in the evening and early morning hours which is not a restaurant but at which entertainment is provided and food or alcoholic beverages are served or consumed.~~

RESTAURANT

- ~~A. Where no alcoholic liquor is sold or consumed on the premises, any establishment which is regularly used and kept open principally for the purpose of serving complete meals to persons for consideration, and which has seating at tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals.~~

288 ~~B. Where alcoholic liquor is sold or consumed on the premises, a totally enclosed, except where a~~
289 ~~special patio license has been granted, commercial establishment which is regularly used and~~
290 ~~kept open principally for the purpose of serving complete meals to persons for consideration~~
291 ~~and which has seating and tables for 35 or more persons and suitable kitchen facilities~~
292 ~~connected therewith for cooking an assortment of foods under the charge of a chef or cook. The~~
293 ~~service of only such food and victuals as sandwiches or salads shall not be deemed to be the~~
294 ~~service of meals. The bar area shall be no more than 25% of the square footage of the~~
295 ~~permanent seated dining area, but not to exceed a maximum of 1,000 square feet, except that~~
296 ~~any restaurant regardless of its permanent seated dining area may have a bar area of 350~~
297 ~~square feet. The occupancy capacity must conform to the Fire Marshal's guidelines.~~

299 **TAPROOM**

300 ~~An establishment provided with special space and accommodations and operated primarily for the~~
301 ~~sale by the glass and for consumption on the premises of alcoholic liquors with the sale of food as a~~
302 ~~secondary object as distinguished from a restaurant where the sale of food is the primary object.~~

304 **TAVERN**

305 ~~Any establishment with special space and accommodations for the sale by the glass and for~~
306 ~~consumption on the premises of beers.~~

309 **270-28 Limitation on Size of Restaurants**

311 ~~The area in a given building devoted to restaurant purposes where alcoholic liquor is consumed on the~~
312 ~~premises shall not be larger than 5,000 square feet of floor space, including seated dining area, food~~
313 ~~storage and preparation area, passageways and entrance foyer, restrooms, dance floor and bar area,~~
314 ~~except that where a restaurant occupies space in a building also housing a hotel/motel containing at~~
315 ~~least 25 bedrooms, the area devoted to restaurant purposes may occupy up to but not more than 7,500~~
316 ~~square feet.~~

319 **270-53 Relocation of nonconforming restaurant.**

321 ~~The owner or lessee of a restaurant where alcoholic liquor is served or consumed which does not~~
322 ~~comply with the internal dimensional ratios found at § 270-4 of this chapter under the definition of~~
323 ~~"restaurant" but which is validly nonconforming under § 215-7 of the Municipal Code of Rehoboth~~
324 ~~Beach, 1974, as amended, may relocate the restaurant to another lot in an appropriately zoned district,~~
325 ~~if approved as a special exception by the Board of Adjustment, subject to the following special~~
326 ~~requirements:~~

- 327 ~~A. The restaurant structure may not encroach on any of the setback or yard requirements of the~~
328 ~~zoning district in which it is relocated.~~
- 329 ~~B. The total floor area of the relocated restaurant cannot exceed the floor area of the existing~~
330 ~~restaurant.~~
- 331 ~~C. The ratio of the bar area and the permanent seated dining area of the relocated restaurant~~
332 ~~cannot exceed the ratio of the existing restaurant.~~

Commented [SC12]: This is eliminated because it becomes unnecessary with the other changes.

Commented [SC13]: This section was added in Version 2 and shown as being deleted.

- 333 ~~D. Only one relocation may be permitted by the Board of Adjustment as to any nonconforming~~
- 334 ~~restaurant~~
- 335 ~~E. Upon the relocation of such restaurant the building from which it is relocated will lose its~~
- 336 ~~nonconforming use status under §§ 270-4 and 215-7 of the Municipal Code of Rehoboth Beach,~~
- 337 ~~Delaware, 1974, as amended.~~

338

339

340 ~~270-54 Relocation of nonconforming patio.~~

341

342 ~~The owner or lessee of a patio associated with a restaurant where alcoholic liquor is served or~~

343 ~~consumed which does not comply with the requirements of § 270-19 of this chapter, but which is validly~~

344 ~~nonconforming under § 270-19 may relocate the patio with the restaurant but not without the~~

345 ~~restaurant to another lot in an appropriately zoned district, if approved as a special exception by the~~

346 ~~Board of Adjustment, subject to the following special requirements:~~

- 347 ~~A. The patio structure may not encroach on any of the setback or yard requirements of the zoning~~
- 348 ~~district in which it is relocated.~~
- 349 ~~B. The total floor area of the relocated patio cannot exceed the floor area of the existing patio.~~
- 350 ~~C. Only one relocation may be permitted by the Board of Adjustment as to any nonconforming~~
- 351 ~~patio.~~
- 352 ~~D. Upon the relocation of such patio the building or lot from which it is relocated will lose its~~
- 353 ~~nonconforming use status under §§ 270-19 and 215-7 of the Municipal Code of Rehoboth Beach,~~
- 354 ~~Delaware, 1974, as amended.~~

Commented [SC14]: This section was added in Version 2 and shown as being deleted.

Below is my proposed rewrite of Chapter 215 of the City Code titled Restaurants. Some of the goals and highlights:

- Coordinate the definitions that are used here and in the zoning code by referencing the zoning code definition in this chapter.
- Create Supplemental Permits of Compliance for dining patios and brewery-pubs that are approved in conjunction with permits of compliance for a restaurant where appropriate.
- Add a bit more specificity to what is required on the plans submitted with an application for a permit of compliance.
- Introduce and make clear that a suspension or revocation could be applied to a supplemental certificate of compliance when the violation(s) is related to a dining patio or brew-pub operation.
- Specify that the fee to accompany each application is \$1,000 no matter what is requested.
- Bring two provisions that refer to the blocking of a public way by the use of a dining patio over from the zoning code.
- Set, consistent with state law and rules, the hours when alcohol can be served and consumed in existing restaurants and new restaurants of 2,500 or fewer square feet of combined seated dining and bar area.
- Require that new restaurants of more than 2,500 square feet of combined seated dining and bar area stop the service and consumption of alcohol two hours earlier.
- Require, consistent with state rules, that a restaurant make food available at all hours that alcohol is available.

Version 2 changes

- A new Section 215-14 was added requiring that a necessary building permit and State approval be obtained within one year or else a permit of compliance expires.

1 Article I Definitions

2
3 215-1 Definitions

4
5 Unless the particular provision or the context otherwise requires, the definition provisions contained in
6 this section shall govern the construction, meaning and application of words and phrases used in this
7 chapter:

8
9 **BAR AREA**

10 ~~As found at §270-4. The floor space in any restaurant or dinner theater that is used primarily for the~~
11 ~~service or consumption of alcoholic liquor and not secondary to food consumption. It shall include~~
12 ~~but not be limited to the bar counter and the contiguous floor and seating area where alcoholic~~
13 ~~liquor is dispensed or consumed, together with all other areas of the restaurant, except the~~
14 ~~permanent seated dining area, whether contiguous to the bar or not where patrons are served or~~
15 ~~consume alcoholic liquor.~~

16
17 **BREWERY-PUB**

18 As found at §270-4

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DINING PATIO

As found at §270-4

DINNER THEATER

As found at §270-4.

- ~~A.—A totally enclosed commercial establishment which has seating and tables for 35 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook which is regularly used and kept open for the purpose of presenting public performances featuring live actor(s) in dramatic or musical productions after and not simultaneously with the serving of complete meals. The establishment must close and all patrons must leave at 12:00 midnight. The service of only such food and victuals as sandwiches and salads shall not be deemed to be complete meals.~~
- ~~B.—Each dinner theater and related activities in a building shall be limited in area to not more than 5,000 square feet. There shall be not more than one dinner theater in any public building, and, except for motels and hotels, a dinner theater shall not share a building with any other commercial activity. The occupancy capacity must conform to the Fire Marshal's guidelines.~~
- ~~C.—A dinner theater must serve complete meals to at least 3/4 of the patrons at each performance and shall be served in the permanent seated dining area in front of or surrounding the stage. Seating at tables shall be provided for each patron.~~
- ~~D.—The establishment, when licensed to serve alcoholic beverages, shall not have a bar area where patrons consume alcoholic beverages but may have a service bar area where alcoholic beverages are stored and delivered to waiters for service to the patrons seated in the permanent seated dining area. Such establishment shall not serve alcoholic beverages more than one hour before the service of the complete meal begins or more than two hours before the live stage production begins, whichever is less. Alcoholic beverages may also be served during intermissions but not during or after the performance.~~
- ~~E.—The rules set forth herein apply to each and every performance. When repeated performances are to be given, all patrons from the first performance must leave the establishment before seating can begin for the next performance.~~

LIQUOR LICENSE

A license issued by the Delaware Alcoholic Beverage Control Commission 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.

PERMANENT SEATED DINING AREA

~~As found at §270-4. The floor space in any restaurant or dinner theater where complete meals are served. A permanently marked dance floor may be located in the permanent seated dining area, but the square footage of its floor space shall not be included in the calculation of the square footage of the permanent seated dining area but rather shall be included in the calculation of the square footage of the bar area. Tables and chairs in the permanent seated dining area may not be temporarily moved so as to increase the space where patrons can consume alcoholic liquor without such consumption being secondary to food consumption while seated at tables. Patrons may not consume alcoholic liquor in the permanent seated dining area unless seated at tables. The square footage of floor space of a dining patio, as defined at § 270-19A(1)(b), shall not be included as part of the permanent seated dining area or as part of the bar area. The square footage of floor space of~~

66 ~~a patio which is not a dining patio, as defined at § 270-19A(1)(c), shall be included as part of the bar~~
67 ~~area.~~

68

69 **PERSON**

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

72

73 **RESTAURANT**

74 As found at §270-4.

75 ~~A.—Where no alcoholic liquor is sold or consumed on the premises, any establishment which is~~
76 ~~regularly used and kept open principally for the purpose of serving complete meals to persons~~
77 ~~for consideration and which has seating at tables for 35 or more persons and suitable kitchen~~
78 ~~facilities connected therewith for cooking an assortment of foods under the charge of a chef or~~
79 ~~cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to~~
80 ~~be the service of meals.~~

81 ~~B.—Where alcoholic liquor is sold or consumed on the premises, a totally enclosed, except where a~~
82 ~~special patio license has been granted, commercial establishment which is regularly used and~~
83 ~~kept open principally for the purpose of serving complete meals to persons for consideration~~
84 ~~and which has seating and tables for 35 or more persons and suitable kitchen facilities~~
85 ~~connected therewith for cooking an assortment of foods under the charge of a chef or cook. The~~
86 ~~service of only such food and victuals as sandwiches or salads shall not be deemed to be the~~
87 ~~service of meals. The bar area shall be no more than 25% of the square footage of the~~
88 ~~permanent seated dining area, but not to exceed a maximum of 1,000 square feet, except that~~
89 ~~any restaurant regardless of its permanent seated dining area may have a bar area of 350~~
90 ~~square feet. The occupancy capacity must conform with the Fire Marshal's guidelines.~~

91

92

93 Article II Permit of Compliance

94

95 215-2 Permit Required.

96

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

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

105 A.B. No person shall construct or operate a brewery-pub unless the owner or lessee has received a
106 supplemental permit of compliance for same in conjunction with a validly issued permit of
107 compliance for a restaurant.

108

109 215-3 Application for ~~restaurant or dinner theater~~ permit of compliance.

110

111 Any person desiring a restaurant or dinner theater permit of compliance and/or dining patio and/or
112 brewery-pub supplemental permit of compliance, as required by this chapter, shall file a written
113 application with the City Building Inspector on a form to be furnished by the Building Inspector. The
114 applicant shall accompany the application with a tender of the correct application fee as hereinafter
115 provided and shall, in addition, furnish the following information:

- 116 A. The type of ownership of the business, i.e., whether individual, partnership, corporation or
117 otherwise.
- 118 B. The name, style and designation under which the business or practice is to be conducted.
- 119 C. The business address and all telephone numbers where the business is to be conducted.
- 120 D. The plan of the proposed new, expanded or otherwise modified restaurant or dinner theater ~~or~~
121 ~~proposed expansion of an existing restaurant or dinner theater~~. Said plan shall show the
122 following information:
 - 123 1) The location of the restaurant or dinner theater.
 - 124 2) The location's zoning classification.
 - 125 3) The number and sizes of bar areas in the restaurant or dinner theater.
 - 126 4) The restaurant's or dinner theater's complete floor plan, including delineation of and square
127 footage of all areas of use including but not limited to permanent seated dining, bar,
128 restrooms, food storage and food preparation.
 - 129 5) The restaurant's or dinner theater's seating capacity.
 - 130 ~~6) The designated areas for storage and for preparation of food service.~~
 - 131 6) The distance to the nearest property line of the nearest church, public park and a lot zoned
132 residential from the proposed restaurant or dinner theater or existing restaurant or dinner
133 theater property.
 - 134 7) If the application includes a dining patio, the location, floor plan, area calculation and details
135 of the perimeter barrier.
 - 136 ~~7)8) If the application includes a brewery-pub, the location floor plan and area calculation of all~~
137 areas devoted to the brewing of beer and the storage of raw materials, waste matter and
138 finished product related thereto.
- 139 E. A statement that the establishment's primary purpose shall be that of a restaurant or dinner
140 theater as defined herein.
- 141 F. A statement containing an approximate percentage of projected revenue to be derived from the
142 sale of alcoholic beverage as compared to the percentage of projected revenue to be derived
143 from the sale of food.
- 144 G. An authorization for the City, its agents and employees to seek information and conduct an
145 investigation as to the truth of the statements set forth in the application
- 146 H. Written and dated declaration by the applicant, under verification, oath or affidavit, that the
147 foregoing information contained in the application is true and correct with said declaration
148 being duly dated and signed in the City.

149
150 215-4 Verification by Building Inspector required.

151
152 The Building Inspector shall verify the completeness and accuracy of the application and shall forward
153 said application to the City Manager within five days of the filing of said application.

154
155 215-5 Hearing required.

- 157 A. No applicant shall receive a permit of compliance or a supplemental permit of compliance from
158 the City until after a public hearing, at which hearing interested parties and citizens shall have an
159 opportunity to be heard. The City Manager shall place said application on the agenda for a
160 public hearing at the next scheduled regular meeting of the Mayor and Commissioners if the
161 date of such meeting is more than 25 days from the date the application is filed with the City;
162 otherwise the application shall be heard at the second scheduled regular meeting of the Mayor
163 and Commissioners or at a special meeting to be scheduled pursuant to the provisions of the
164 City's Code.
- 165 B. A permit of compliance or supplemental permit of compliance shall not be issued to the
166 applicant or to the Delaware Alcoholic Beverage Control Commission except by the favorable
167 vote of a majority of the members of the City Commissioners. In reaching their decision, the
168 Commissioners shall consider the following factors, including but not limited to:
- 169 1) Whether the applicant has demonstrated that the establishment's primary purpose will be
170 that of a restaurant or dinner theater as defined in this chapter.
 - 171 2) Whether the establishment meets all of the City's applicable zoning and licensing provisions.
 - 172 3) Whether the establishment would be a detriment to the peace, order and quiet of the
173 neighborhood and the City.
 - 174 4) Whether the establishment will have an adverse impact on the neighboring properties or on
175 the City of Rehoboth Beach, considering the impact on traffic, parking and noise.
 - 176 5) Whether the applicant had made any false representation or statements to the City's
177 employees or the Commissioners in order to induce or prevent action by the City not only in
178 regard to the pertinent pending application under this chapter, but also in regard to the
179 issuance of a building permit or business license for the subject establishment.

180
181 215-6 Notice of hearing.

182
183 At least 15 days' notice of the time and place of such hearing shall be sent to all City property owners
184 whose boundaries are within 200 feet of the boundaries of the proposed restaurant or dinner theater or
185 existing restaurant or dinner theater property. Notice shall be sent by regular United States mail to the
186 last known address to which City tax bills are sent, said mailing to be done by the City.

187
188 215-7 Applicability.

- 189
- 190 A. The provisions of this chapter shall apply to:
- 191 1) All restaurants or dinner theaters established on or after June 14, 1991, where alcoholic
192 liquor is to be sold or consumed.
 - 193 2) Any existing restaurant or dinner theater, where alcoholic liquor is sold or consumed,
194 desiring to extend or modify its premises, regardless of the date that said restaurant or
195 dinner theater was established.
 - 196 3) Any existing restaurant or dinner theater, where alcoholic liquor is sold or consumed, that is
197 being moved to a new location in the City, regardless of the date that said restaurant or
198 dinner theater was established.
- 199 B. An existing restaurant or dinner theater, where alcoholic liquor is sold or consumed, established
200 prior to June 14, 1991, is not required to obtain a permit of compliance pursuant to this chapter
201 unless required as a condition of extension or modification of the premises of the restaurant or

202 dinner theater. However, all such existing restaurants or dinner theaters shall have filed a floor
203 plan, including any patio areas, with the City Manager on or before May 15, 1992.

204 C. Where an existing restaurant or dinner theater, regardless of the date that said restaurant or
205 dinner theater was established, where alcoholic liquor is sold or consumed, is being transferred
206 to a new owner at the existing site, the present owner must file with the City Manager
207 documentation to prove that the floor plan of said restaurant or dinner theater is substantially
208 the same as the most recent floor plan approved by the City. Such documentation shall include
209 but not be limited to a scalable floor plan showing the location and size of the permanent
210 seated dining and bar areas. If the City Manager determines that the floor plan in respect to the
211 total square footage of the restaurant or dinner theater and percentage of floor area devoted to
212 bar area and percentage of floor area devoted to permanent seated dining area is substantially
213 the same as the most recent floor plan approved by the City, no hearing shall be required
214 pursuant to § 215-5A.

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

219
220 215-8 Enforcement.

221
222 The City Manager shall enforce the provisions of this chapter.

223
224 215-9 Revocation or suspension of permit; notice.

225
226 Any permit of compliance or supplemental permit of compliance issued pursuant to this chapter shall be
227 subject to suspension or revocation by the City Manager by reason of violation of any provision of this
228 chapter; provided, however, that before any permit of compliance or supplemental permit of
229 compliance is suspended or revoked ~~or suspended by~~ the City Manager, ~~he~~ shall give 10 days' written
230 notice in advance by certified mail with return receipt requested, directed to the permit holder at the
231 restaurant's or dinner theater's address within the corporate limits of the City of Rehoboth Beach, of the
232 reason for the intended suspension or revocation ~~or suspension~~, and upon the correction of the defect
233 within 15 days following receipt of said notice as determined by the City Manager, no suspension or
234 revocation or suspension shall take effect for the first offense. Upon a second or subsequent offense of
235 a similar nature, the City Manager shall suspend the permit of compliance or supplemental permit of
236 compliance and shall immediately notify the permit holder by certified mail, with return receipt
237 requested, directed to the permit holder at the restaurant's or dinner theater's address within the
238 corporate limits of the City of Rehoboth Beach. The period of suspension shall be for 10 days. A second
239 or subsequent offense shall be an offense occurring within 30 days of the preceding offense. If the
240 holder of a permit commits five similar offenses within a twelve-month period, the permit of compliance
241 shall be revoked by the City Manager, and notice of such revocation shall be given to the permit holder
242 as provided herein. The suspension or revocation of a permit of compliance shall include the suspension
243 or revocation of any associated supplemental permit of compliance under the same conditions, however
244 a supplemental permit of compliance may be suspended or revoked without suspending or revoking the
245 associated permit of compliance when the violation is solely related to the substance of the
246 supplemental permit of compliance.

247

248 215-10 Appeals from determination of revocation or suspension.

249

- 250 A. Any permit holder may appeal the decision of the City Manager to ~~suspend or~~ revoke ~~or~~
251 ~~suspend~~ a permit of compliance to the Commissioners of Rehoboth Beach. Such appeal shall be
252 in writing, setting forth the reasons for the appeal, and shall be filed with the Secretary of the
253 Commissioners of Rehoboth Beach by certified mail, with return receipt requested, together
254 with an appeal processing fee of \$500, within 10 days after the receipt of the notice from the
255 City Manager suspending the permit of compliance. Upon receipt of the notice of appeal, the
256 ~~City Manager~~Mayor shall fix a time and place for a public hearing of the appeal, with said time
257 for the hearing of the appeal to be not more than 30 days following receipt thereof by the
258 Secretary of the Commissioners of Rehoboth Beach.
- 259 B. The hearing shall be conducted by the Commissioners, and a record of the hearing shall be
260 made and kept by the Commissioners. All testimony shall be recorded but need not be
261 transcribed. The record shall include the evidence, the Commissioners' findings of fact, the
262 Commissioners' decision and a brief statement of the reasons therefor. At said hearing the
263 permit holder shall be entitled to legal representation and to present witnesses.
- 264 C. The filing of an appeal by a permit holder shall operate as a stay of the determination of the City
265 Manager to revoke or suspend the permit of compliance or supplemental permit of compliance.
266 However, if the appeal is withdrawn or if the suspension is upheld, the period of suspension
267 shall commence on the anniversary date of the original suspension. For example, if a ~~license~~
268 permit is suspended commencing July 1, 1991, and because of an appeal a stay occurs and the
269 issue is not finally resolved until December 1991, the permit ~~of~~ suspension will commence July
270 1, 1992.

271

272 215-11 Modification of floor plan.

273

- 274 A. It shall be illegal for any restaurant or dinner theater to substantially modify its floor plan,
275 seating arrangement and/or the location and number and sizes of bar areas and permanent
276 seated dining areas from the plans submitted to the City pursuant to the provisions of this
277 chapter without a public hearing and ~~certificate new permit~~ of compliance, except that a floor
278 plan may be substantially modified without a hearing with the approval of the City Manager if
279 ~~he the City Manager~~ determines that the changed plan does not violate the provisions of this
280 chapter and does not result in an increase of the bar area. This section shall be interpreted to
281 include dining patios. The Building Inspector shall inspect all restaurants or dinner theaters at
282 least annually to ensure compliance with this chapter.
- 283 B. "Modification," as used herein, means internal rearrangements limited to the interior walls of
284 only that portion of the structure used for restaurant or dinner theater purposes as shown on
285 the floor plan on file with the City Manager. It shall not authorize the extension of the
286 restaurant or dinner theater use into other parts of the structure not shown on the floor plan
287 filed with the City Manager.
- 288 C. Should the City Manager deny a request to modify a floor plan, the applicant may appeal his
289 decision to the Commissioners of Rehoboth Beach, who shall schedule a hearing on said appeal
290 within 45 days. The issue on appeal shall be whether the proposed modified floor plan violates
291 the provisions of this chapter or results in an increase in the size of the bar area.

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293 215-12 Violations and penalties.

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Any person violating any of the provisions of this chapter, upon conviction thereof, shall be fined not less than \$100 nor more than \$200 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.

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 \$1,000, 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 \$1,000.-

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.

215-~~14~~-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.

215-~~15~~-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~~Delaware Alcohol Beverage Control Commission~~ with respect to a liquor license.

Article III Dining Patios

215-17 Overflow of patrons prohibited from public ways.

For all dining patios, any overflow of patrons onto public ways, pedestrian or vehicular, is prohibited.

215-18 Blocking of public ways prohibited.

For all dining patios, the blocking of the public ways, pedestrian or vehicular, by related activities is prohibited.

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Article IV Hours of Service

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., except that for any restaurant receiving a permit of compliance after [Date of Adoption] which has more than 2,500 square feet of floor space devoted to permanent seated dining area plus bar area alcoholic liquor shall not be sold between the hours of 11:00 p.m. and 9:00 a.m. following and no alcoholic liquor shall be consumed on the premises between the hours of midnight and 9:00 a.m. following.

215-20 Food service.

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

**AN ORDINANCE TO AMEND CHAPTER 227, SOLID WASTE,
OF THE MUNICIPAL CODE OF THE CITY OF REHOBOTH BEACH, DELAWARE, 2001,
SECTION 227-9, RELATING TO
THE PLACEMENT AND COLLECTION OF WASTE CONTAINERS**

1
2 **WHEREAS**, on April 4, 2016, by Ordinance No. 0416-02, the Mayor and Commissioners
3 modified regulations relating to the storage, placement, and collection of wastes and recyclables within
4 the City to provide for the efficiency of City services and the orderly appearance of the City; and
5

6 **WHEREAS**, the time for collecting refuse containers was inadvertently not included in
7 Ordinance No. 0416-02, and the Mayor and Commissioners desire to remedy such deficiency.
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9 **BE IT ORDAINED** by the Commissioners of the City of Rehoboth Beach, in session met, a
10 quorum pertaining at all times thereto, in the manner following to-wit:
11

12 **Section 1.** Chapter 227, Section 227-9 of the Municipal Code of the City of Rehoboth
13 Beach, Delaware, 2001, as amended be and the same is hereby further amended by adding the phrase “not
14 later than 9:00 p.m. on collection day” to the end of the sentence “All waste containers shall be removed
15 from City property,” as such sentence appears therein, such that the amended sentence shall read as
16 follows: “All waste containers shall be removed from City property not later than 9:00 p.m. on collection
17 day.”
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19 **Section 2.** This Ordinance shall take effect immediately upon its adoption by the
20 Commissioners of the City of Rehoboth Beach.
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23 **SYNOPSIS:** This Ordinance establishes 9:00 p.m. on collection day as the time by which refuse
24 containers must be removed from City property.
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28 Adopted by the Commissioners
29 of the City of Rehoboth Beach
30 _____, 2016
31

32
33 _____
34 Secretary of the Commissioners of
35 the City of Rehoboth Beach