



City of Rehoboth Beach

2022 Application

Outdoor Dining on Public Space

**Revised
March 18, 2022**

Considerations When Applying:

We look forward to working with you to offer an annual license for **Outdoor Dining on Public Space**. As you consider applying, please keep in mind the following:

- 1) Authority to utilize outdoor dining areas on public space is by license issued on an annual basis.
- 2) Licenses granted through this application expire on December 31, 2022. The State of Delaware or the City of Rehoboth Beach may also revoke the license at any time, with due cause.
- 3) Favorable issuance of a City license to establish an outdoor dining area on public space is based on meeting all criteria contained in the City Policy for Outdoor Dining on Public Space.
- 4) The City Manager may revoke a permit for failure to maintain compliance with the policy criteria or failure of an establishment to observe City ordinances.
- 5) The City's Building and Licensing Department will review and approve or deny all applications.
- 6) The City's Building and Licensing Department will conduct a design review of the proposed outdoor dining area to verify the designs:
 - i) Are safe
 - ii) Meet dimensional requirements specified in the City Policy,
 - iii) Comply with all requirements of the City Policy
 - iv) Use materials that are suitable and safe
 - v) Will not damage or restrict access to existing sidewalks, street trees or other infrastructure.
- 7) The design review will also consider 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.
- 8) Restaurants using dining areas on public space must meet and abide by 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, Office of Alcohol Board Control Commission, and the American with Disabilities Act.
- 9) If possessing a valid Delaware OABBC license, the restaurant must abide by all existing rules and regulations for the service of alcohol as directed by the Delaware Office of the Alcohol Beverage Control Commissioner (OABBC).
- 10) All applications for outdoor dining areas on public space received from establishments with liquor licenses, once approved by the City, will then be provided to the Delaware Office of Alcohol Beverage Control for their approval. For restaurants serving alcohol, a city outdoor dining on public space license becomes effective only upon a separate approval by the OABCC.
- 11) Outdoor dining area cannot be set up until you have received an outdoor dining on public space license from the City.

- 12) The City's outdoor dining on public space license only allows for the setup of outdoor dining on public space.
- 13) All food and beverage must be prepared using only the facilities inside the restaurant.
- 14) In granting a license the following factors also shall be considered:
 - a) Whether the applicant has demonstrated that the establishment's primary purpose will be that of a restaurant.
 - b) Whether the establishment meets all of the City's applicable zoning and licensing provisions.
 - c) Whether the establishment would be a detriment to the peace, order and quiet of the neighborhood and the City.
 - d) 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.
 - e) 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 policy, but also in regard to the issuance of a building permit or business license for the subject establishment.
 - f) If proposed to be located within the State's right of way, whether such location has been approved by the Delaware Department of Transportation in writing.
 - g) If access from a State Road will be altered or blocked, whether the Delaware Department of Transportation has approved the proposal in writing.
 - h) Whether proper access to the property for all emergency services will be maintained.
 - i) Whether the proposal complies with the Americans with Disabilities Act.
- 15) Dining establishments must not exceed total seating capacity requirements approved as established in each City license and by the State Fire Marshal.
- 16) Dining establishments must follow all existing rules and regulations for food safety and alcoholic beverages.
- 17) Must abide by City noise ordinance Chapter 189.
- 18) A fee of \$150.00 shall accompany an application seeking a license for outdoor dining on public space. Upon granting of the license, the applicant shall pay an additional annual fee of \$163.00 for non-alcohol establishments and \$325 for restaurants serving alcohol (subsequent changes would be subject to existing plan review fee and application processing fees).

License Application Checklist:

In order to be approved, the following items must accompany an application for Outdoor Dining on Public Space:

- 1) A copy of your current City-issued business license for the restaurant.
- 2) If currently serving alcohol indoors, a copy of your approved City Permit of Compliance for indoor food service operation.
- 3) A diagram showing:
 - a) The exterior perimeter measurements of the outdoor seating proposed.
 - b) The extension of the outdoor dining on public space relative to the main licensed premise, indicating square footage of the area.
 - c) Location of sidewalk, buffer zone, pedestrian access route, sidewalk depth, outdoor dining area depth, separation barrier, and service aisle.
 - d) Placement of tables, chairs, service aisle and separation barrier, indicating distance between them.
 - e) The design of and materials used to construct the separation barrier.
- 4) A valid copy of the current Delaware State Fire Marshall maximum occupancy certificate.
- 5) 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.
- 6) A complete and valid waiver of indemnification agreement (form attached).
- 7) An explanation of how ADA compliance will continue.
- 8) Indications of how separation barriers will be placed to prevent alcoholic beverages from being removed from premises.

Each of the above items must accompany, or be present in, the plan submitted with the application for approval to be granted.

Restaurant Information

Restaurant Name:

Date:

Restaurant Address:

Address Line 2:

City:

State:

Zip:

Manager Contact Information

First:

Last:

Phone:

After hours contact number:

Email:

Owner Contact Information

First:

Last:

Phone:

After hours contact number:

Email:

Property Information

Do you own the property, or do you lease it?

Own

Lease

If you lease the property, do you have permission from the property owner to provide outdoor seating?

Yes (Please provide a copy of landlord/property owner approval with this application)

No

If applicable, do you presently have a liquor license?

- Yes
- No

If applicable, do you plan to serve alcohol in the outdoor dining area requested?

- Yes
- No

Describe and provide drawings of the separation barriers you are proposing to use, be as specific as possible (height, width, and materials):

Please explain how ADA compliance will continue:

Please provide a diagram of the outdoor seating proposed:

Acknowledgement

By checking "I UNDERSTAND", I hereby acknowledge:

- I will comply with all conditions as specified in the City Policy for Outdoor Dining on Public Space.
- That any approvals received, and a license issued to operate Outdoor Dining on Public Space are conditional and can be revoked or amended by the City of Rehoboth Beach at any time.
- That there may be additional approvals required from other agencies, such as the Delaware Division of Public Health and the Office of the Alcoholic Beverage Control Commissioner, and that, if necessary, I will obtain those approvals before operating.
- The risks involved in providing Outdoor Dining on Public Space and I will obey all required safety precautions.
- That by signing below, I waive all rights to bring any legal action against the City of Rehoboth Beach for any injury or accident associated with providing Outdoor Dining on Public Space.

I UNDERSTAND

Printed Name: _____

Signature: _____

Restaurant Name: _____

Restaurant Address: _____

Date: _____

Please provide a copy of your completed application to the Building and Licensing Department at code.enforcement@cityofrehoboth.com

WAIVER AND INDEMNIFICATION AGREEMENT

THIS WAIVER AND INDEMNIFICATION AGREEMENT is made and entered into this _____ day of _____, 2022, by and among THE CITY OF REHOBOTH BEACH, a municipal corporation of the State of Delaware (hereinafter referred to as the "Indemnitee") and _____(entity), D. B. A. _____(business name) located at _____(business address) (hereinafter referred to as the "Indemnitor").

WHEREAS, the Indemnitee is the owner of public lands in the City of Rehoboth Beach (hereinafter referred to as the "Property"); and

WHEREAS, Indemnitor desires to expand its business operations onto the Property; and

WHEREAS, the Indemnitee is willing to allow the Indemnitor to expand its business operations onto the Property in accordance with all applicable laws, and licensing regulations, subject to the terms and conditions of this Agreement for a limited period of time to be terminated at the sole discretion of the Indemnitee;

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties to this Agreement do hereby agree as follows:

1. Consent to Expand Business Operations on the Property.

The Indemnitee does hereby grant consent and permission to the Indemnitor to enter onto the Property, beginning on January 1, 2022 and terminating on a date to be determined in the sole discretion of the Indemnitee for the purpose of expanding the Indemnitor's business operations on the Property, subject to the following terms and conditions:

(a) The Indemnitor shall at all times perform its business operations in accordance with all applicable laws, and licensing regulations.

(b) The Indemnitor shall be responsible for securing comprehensive general liability insurance to insure against any and all foreseeable risks of injury to person(s) or property.

2. Waiver and Indemnification.

The Indemnitor does hereby waive and release any and all claims and/or causes of action whatsoever which the Indemnitor may have had, may now have, or may in the future have against the Indemnitee, arising out of, related to, or in connection with the Indemnitor's performance of its business operations upon the Property, and further, the Indemnitor agrees to indemnify, defend, and hold the Indemnitee harmless, to the fullest extent permitted by law, from and against any and all claims, causes of action, costs, expenses, judgments, damages, liabilities, fines, penalties, or attorneys' fees incurred, arising out of or in connection with the Indemnitor's performance of its business operations on the Property.

3. Amendments. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all of the parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions hereof (whether or not similar) nor shall such waiver constitute a continuing waiver.

4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of, and be enforceable by, the parties hereto and their respective agents, representatives, successors, heirs, and assigns.

5. Severability. The provisions of this Agreement shall be severable in the event that any of the provisions hereof are held by a court of competent jurisdiction to be invalid, void, or otherwise unenforceable, and the remaining provisions shall remain enforceable to the fullest extent permitted by law. Furthermore, to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of this Agreement containing any provision held to be invalid, void, or otherwise unenforceable, that is not itself invalid, void, or unenforceable) shall be construed so as to give effect to the intent manifested by the provision held invalid, void, or unenforceable.

6. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Delaware applicable to contracts made and to be performed in such state without giving effect to the principles of conflicts of laws.

7. Authority. By their signatures below, each of the parties to this Agreement represents that they have read the Agreement, understand the legal significance of this Agreement, and voluntarily enter into this Agreement. They further warrant that they have the legal authority to bind the entity for which they are signing.

IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the _____ day of _____, 2022.

The Indemnitor:

Authorized Representative

The Indemnitee
THE CITY OF REHOBOTH BEACH:

BY: _____
City Manager