



REHOBOTH BEACH BOARD OF COMMISSIONERS

Support Document Packet

WORKSHOP MEETING:

April 4, 2016

****DISCLAIMER****

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City of Rehoboth Beach

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City Manager

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THE COMMISSIONERS OF REHOBOTH BEACH
Workshop Meeting
Second Floor of Rehoboth Beach Volunteer Fire Company
Monday, April 4, 2016; immediately following Special Meeting at 9:00 a.m.

WORKSHOP AGENDA

1. Call to Order
2. Roll Call
3. Correspondence
4. Old Business
 - A. Discuss possible revisions to Chapter 215, Restaurants and 270, Zoning, as they relate to the regulation and permitting of restaurants that serve alcohol.
 - B. Discuss refuse, recycling and yard waste issues and changes to Chapter 227, Solid Waste, and Chapter 270, Section 27, Storage of Refuse – Commissioners McGuinness and Mills.
5. New Business
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, April 15, 2016; 7:00 p.m.

amw: 03/28/16; posted 03/28/16

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

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.

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

19

20 **DINING PATIO**

21 As found at §270-4

22

23 **DINNER THEATER**

24 As found at §270-4.

25 ~~A.—A totally enclosed commercial establishment which has seating and tables for 35 or more~~
26 ~~persons and suitable kitchen facilities connected therewith for cooking an assortment of foods~~
27 ~~under the charge of a chef or cook which is regularly used and kept open for the purpose of~~
28 ~~presenting public performances featuring live actor(s) in dramatic or musical productions after~~
29 ~~and not simultaneously with the serving of complete meals. The establishment must close and~~
30 ~~all patrons must leave at 12:00 midnight. The service of only such food and victuals as~~
31 ~~sandwiches and salads shall not be deemed to be complete meals.~~

32 ~~B.—Each dinner theater and related activities in a building shall be limited in area to not more than~~
33 ~~5,000 square feet. There shall be not more than one dinner theater in any public building, and,~~
34 ~~except for motels and hotels, a dinner theater shall not share a building with any other~~
35 ~~commercial activity. The occupancy capacity must conform to the Fire Marshal's guidelines.~~

36 ~~C.—A dinner theater must serve complete meals to at least 3/4 of the patrons at each performance~~
37 ~~and shall be served in the permanent seated dining area in front of or surrounding the stage.~~
38 ~~Seating at tables shall be provided for each patron.~~

39 ~~D.—The establishment, when licensed to serve alcoholic beverages, shall not have a bar area where~~
40 ~~patrons consume alcoholic beverages but may have a service bar area where alcoholic~~
41 ~~beverages are stored and delivered to waiters for service to the patrons seated in the~~
42 ~~permanent seated dining area. Such establishment shall not serve alcoholic beverages more~~
43 ~~than one hour before the service of the complete meal begins or more than two hours before~~
44 ~~the live stage production begins, whichever is less. Alcoholic beverages may also be served~~
45 ~~during intermissions but not during or after the performance.~~

46 ~~E.—The rules set forth herein apply to each and every performance. When repeated performances~~
47 ~~are to be given, all patrons from the first performance must leave the establishment before~~
48 ~~seating can begin for the next performance.~~

49
50 **LIQUOR LICENSE**

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

54
55 **PERMANENT SEATED DINING AREA**

56 ~~As found at §270-4. The floor space in any restaurant or dinner theater where complete meals are~~
57 ~~served. A permanently marked dance floor may be located in the permanent seated dining area, but~~
58 ~~the square footage of its floor space shall not be included in the calculation of the square footage of~~
59 ~~the permanent seated dining area but rather shall be included in the calculation of the square~~
60 ~~footage of the bar area. Tables and chairs in the permanent seated dining area may not be~~
61 ~~temporarily moved so as to increase the space where patrons can consume alcoholic liquor without~~
62 ~~such consumption being secondary to food consumption while seated at tables. Patrons may not~~
63 ~~consume alcoholic liquor in the permanent seated dining area unless seated at tables. The square~~
64 ~~footage of floor space of a dining patio, as defined at § 270-19A(1)(b), shall not be included as part~~
65 ~~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.

- 156
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.

292
293 215-12 Violations and penalties.

294
295 Any person violating any of the provisions of this chapter, upon conviction thereof, shall be fined not
296 less than \$100 nor more than \$200 for each offense and shall pay the costs of prosecution. For the
297 purpose of this chapter, a separate offense shall be deemed to be committed on each day during or on
298 which a violation occurs or continues after receipt of notice of violation.
299

300 215-13 Application fee.

301
302 Each application for a permit of compliance shall be accompanied by a fee payable to the City in the
303 amount of \$1,000, which fee shall include any supplemental permits of compliance requested at the
304 same time, however a supplemental permit of compliance application filed independent of a permit of
305 compliance shall be accompanied by fee of \$1,000.-

306
307 215-14 Reapplication.

308
309 No new application shall be acted upon by the City Commissioners, if within a six-month period
310 immediately preceding the filing of the new application they have rendered a decision regarding the
311 same application. However, this limitation shall not be applicable if the Commissioners shall find that
312 the facts and circumstances existing at the time of their prior decision have undergone a substantial
313 change justifying the Commissioners' reconsideration.

314
315 215-15 Notice of request for variance.

316
317 The owner or licensee of any restaurant subject to the provisions of this chapter shall notify the City
318 Manager prior to requesting a variance from the Office of the Delaware Alcoholic Beverage Control
319 Commissioner~~Delaware Alcoholic Beverage Control Commission~~ with respect to a liquor license.

320
321
322 Article III Dining Patios

323
324 215-16 Overflow of patrons prohibited from public ways.

325
326 For all dining patios, any overflow of patrons onto public ways, pedestrian or vehicular, is prohibited.

327
328 215-17 Blocking of public ways prohibited.

329
330 For all dining patios, the blocking of the public ways, pedestrian or vehicular, by related activities is
331 prohibited.

332
333
334 Article IV Hours of Service

335
336 215-18 Hours of alcohol sale and consumption.

337
338 No restaurant shall sell alcoholic liquor between the hours of 1:00 a.m. and 9:00 a.m. and no alcoholic
339 liquor shall be consumed on the premises between the hours of 2:00 a.m. and 9:00 a.m., except that for
340 any restaurant receiving a permit of compliance after [Date of Adoption] which has more than 2,500
341 square feet of floor space devoted to permanent seated dining area plus bar area alcoholic liquor shall
342 not be sold between the hours of 11:00 p.m. and 9:00 a.m. following and no alcoholic liquor shall be
343 consumed on the premises between the hours of midnight and 9:00 a.m. following.

344
345 215-19 Food service.

346

347

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

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

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- 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.

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6 this section shall govern the construction, meaning and application of words and phrases used in this
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15 **DINING PATIO**

16 As found at §270-4

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18 **DINNER THEATER**

19 As found at §270-4.

20

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23 restaurant for the purchase, sale and dispensing of alcoholic beverages pursuant to Title 4, Delaware
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31 controls activities authorized by this chapter.

32

33 **RESTAURANT**

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37 **Article II Permit of Compliance**

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39 215-2 Permit Required.

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42 this chapter until the owner or lessee has received a permit of compliance from the City stating that said
43 restaurant or dinner theater is in compliance with all of the City's applicable zoning and licensing
44 requirements. A copy of such permit of compliance shall be issued by the City to the Office of the
45 Delaware Alcoholic Beverage Control Commissioner.

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

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

52

53 215-3 Application for permit of compliance.

54

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

60 A. The type of ownership of the business, i.e., whether individual, partnership, corporation or
61 otherwise.

62 B. The name, style and designation under which the business or practice is to be conducted.

63 C. The business address and all telephone numbers where the business is to be conducted.

64 D. The plan of the proposed new, expanded or otherwise modified restaurant or dinner theater.

65 Said plan shall show the following information:

66 1) The location of the restaurant or dinner theater.

67 2) The location's zoning classification.

- 68 3) The number and sizes of bar areas in the restaurant or dinner theater.
- 69 4) The restaurant's or dinner theater's complete floor plan, including delineation of and square
70 footage of all areas of use including but not limited to permanent seated dining, bar,
71 restrooms, food storage and food preparation.
- 72 5) The restaurant's or dinner theater's seating capacity.
- 73 6) The distance to the nearest property line of the nearest church, public park and a lot zoned
74 residential from the proposed restaurant or dinner theater or existing restaurant or dinner
75 theater property.
- 76 7) If the application includes a dining patio, the location, floor plan, area calculation and details
77 of the perimeter barrier.
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79 areas devoted to the brewing of beer and the storage of raw materials, waste matter and
80 finished product related thereto.
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82 theater as defined herein.
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84 sale of alcoholic beverage as compared to the percentage of projected revenue to be derived
85 from the sale of food.
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87 investigation as to the truth of the statements set forth in the application
- 88 H. Written and dated declaration by the applicant, under verification, oath or affidavit, that the
89 foregoing information contained in the application is true and correct with said declaration
90 being duly dated and signed in the City.

91
92 215-4 Verification by Building Inspector required.

93
94 The Building Inspector shall verify the completeness and accuracy of the application and shall forward
95 said application to the City Manager within five days of the filing of said application.

96
97 215-5 Hearing required.

- 98
99 A. No applicant shall receive a permit of compliance or a supplemental permit of compliance from
100 the City until after a public hearing, at which hearing interested parties and citizens shall have an
101 opportunity to be heard. The City Manager shall place said application on the agenda for a
102 public hearing at the next scheduled regular meeting of the Mayor and Commissioners if the
103 date of such meeting is more than 25 days from the date the application is filed with the City;
104 otherwise the application shall be heard at the second scheduled regular meeting of the Mayor
105 and Commissioners or at a special meeting to be scheduled pursuant to the provisions of the
106 City's Code.
- 107 B. A permit of compliance or supplemental permit of compliance shall not be issued to the
108 applicant or to the Delaware Alcoholic Beverage Control Commission except by the favorable
109 vote of a majority of the members of the City Commissioners. In reaching their decision, the
110 Commissioners shall consider the following factors, including but not limited to:
111 1) Whether the applicant has demonstrated that the establishment's primary purpose will be
112 that of a restaurant or dinner theater as defined in this chapter.
113 2) Whether the establishment meets all of the City's applicable zoning and licensing provisions.

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

122
123 215-6 Notice of hearing.

124
125 At least 15 days' notice of the time and place of such hearing shall be sent to all City property owners
126 whose boundaries are within 200 feet of the boundaries of the proposed restaurant or dinner theater or
127 existing restaurant or dinner theater property. Notice shall be sent by regular United States mail to the
128 last known address to which City tax bills are sent, said mailing to be done by the City.

129
130 215-7 Applicability.

- 131 A. The provisions of this chapter shall apply to:
 - 132 1) All restaurants or dinner theaters established on or after June 14, 1991, where alcoholic
133 liquor is to be sold or consumed.
 - 134 2) Any existing restaurant or dinner theater, where alcoholic liquor is sold or consumed,
135 desiring to extend or modify its premises, regardless of the date that said restaurant or
136 dinner theater was established.
 - 137 3) Any existing restaurant or dinner theater, where alcoholic liquor is sold or consumed, that is
138 being moved to a new location in the City, regardless of the date that said restaurant or
139 dinner theater was established.
- 140 B. An existing restaurant or dinner theater, where alcoholic liquor is sold or consumed, established
141 prior to June 14, 1991, is not required to obtain a permit of compliance pursuant to this chapter
142 unless required as a condition of extension or modification of the premises of the restaurant or
143 dinner theater. However, all such existing restaurants or dinner theaters shall have filed a floor
144 plan, including any patio areas, with the City Manager on or before May 15, 1992.
- 145 C. Where an existing restaurant or dinner theater, regardless of the date that said restaurant or
146 dinner theater was established, where alcoholic liquor is sold or consumed, is being transferred
147 to a new owner at the existing site, the present owner must file with the City Manager
148 documentation to prove that the floor plan of said restaurant or dinner theater is substantially
149 the same as the most recent floor plan approved by the City. Such documentation shall include
150 but not be limited to a scalable floor plan showing the location and size of the permanent
151 seated dining and bar areas. If the City Manager determines that the floor plan in respect to the
152 total square footage of the restaurant or dinner theater and percentage of floor area devoted to
153 bar area and percentage of floor area devoted to permanent seated dining area is substantially
154 the same as the most recent floor plan approved by the City, no hearing shall be required
155 pursuant to § 215-5A.
- 156 D. For purposes of this section, in addition to any and all usual interpretations, "extensions or
157 modifications of premises," shall be interpreted to include the construction, expansion, location
158

159 or operation of dining patios and brewery operations pursuant to Chapter 270, Zoning, of the
160 Code of the City of Rehoboth Beach.

161

162 215-8 Enforcement.

163

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

165

166 215-9 Revocation or suspension of permit; notice.

167

168 Any permit of compliance or supplemental permit of compliance issued pursuant to this chapter shall be
169 subject to suspension or revocation by the City Manager by reason of violation of any provision of this
170 chapter; provided, however, that before any permit of compliance or supplemental permit of
171 compliance is suspended or revoked the City Manager shall give 10 days' written notice in advance by
172 certified mail with return receipt requested, directed to the permit holder at the restaurant's or dinner
173 theater's address within the corporate limits of the City of Rehoboth Beach, of the reason for the
174 intended suspension or revocation, and upon the correction of the defect within 15 days following
175 receipt of said notice as determined by the City Manager, no suspension or revocation shall take effect
176 for the first offense. Upon a second or subsequent offense of a similar nature, the City Manager shall
177 suspend the permit of compliance or supplemental permit of compliance and shall immediately notify
178 the permit holder by certified mail, with return receipt requested, directed to the permit holder at the
179 restaurant's or dinner theater's address within the corporate limits of the City of Rehoboth Beach. The
180 period of suspension shall be for 10 days. A second or subsequent offense shall be an offense occurring
181 within 30 days of the preceding offense. If the holder of a permit commits five similar offenses within a
182 twelve-month period, the permit of compliance shall be revoked by the City Manager, and notice of
183 such revocation shall be given to the permit holder as provided herein. The suspension or revocation of
184 a permit of compliance shall include the suspension or revocation of any associated supplemental
185 permit of compliance under the same conditions, however a supplemental permit of compliance may be
186 suspended or revoked without suspending or revoking the associated permit of compliance when the
187 violation is solely related to the substance of the supplemental permit of compliance.

188

189 215-10 Appeals from determination of revocation or suspension.

190

191 A. Any permit holder may appeal the decision of the City Manager to suspend or revoke a permit
192 of compliance to the Commissioners of Rehoboth Beach. Such appeal shall be in writing, setting
193 forth the reasons for the appeal, and shall be filed with the Secretary of the Commissioners of
194 Rehoboth Beach by certified mail, with return receipt requested, together with an appeal
195 processing fee of \$500, within 10 days after the receipt of the notice from the City Manager
196 suspending the permit of compliance. Upon receipt of the notice of appeal, the Mayor shall fix a
197 time and place for a public hearing of the appeal, with said time for the hearing of the appeal to
198 be not more than 30 days following receipt thereof by the Secretary of the Commissioners of
199 Rehoboth Beach.

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

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

211

212 215-11 Modification of floor plan.

213

214 A. It shall be illegal for any restaurant or dinner theater to substantially modify its floor plan,
215 seating arrangement and/or the location and number and sizes of bar areas and permanent
216 seated dining areas from the plans submitted to the City pursuant to the provisions of this
217 chapter without a public hearing and new permit of compliance, except that a floor plan may be
218 substantially modified without a hearing with the approval of the City Manager if the City
219 Manager determines that the changed plan does not violate the provisions of this chapter and
220 does not result in an increase of the bar area. This section shall be interpreted to include dining
221 patios. The Building Inspector shall inspect all restaurants or dinner theaters at least annually to
222 ensure compliance with this chapter.

223 B. "Modification," as used herein, means internal rearrangements limited to the interior walls of
224 only that portion of the structure used for restaurant or dinner theater purposes as shown on
225 the floor plan on file with the City Manager. It shall not authorize the extension of the
226 restaurant or dinner theater use into other parts of the structure not shown on the floor plan
227 filed with the City Manager.

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

232

233 215-12 Violations and penalties.

234

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

239

240 215-13 Application fee.

241

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

246

247 215-14 Reapplication.

248

249 No new application shall be acted upon by the City Commissioners, if within a six-month period
250 immediately preceding the filing of the new application they have rendered a decision regarding the

251 same application. However, this limitation shall not be applicable if the Commissioners shall find that
252 the facts and circumstances existing at the time of their prior decision have undergone a substantial
253 change justifying the Commissioners' reconsideration.

254

255 215-15 Notice of request for variance.

256

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

260

261

262 Article III Dining Patios

263

264 215-16 Overflow of patrons prohibited from public ways.

265

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

267

268 215-17 Blocking of public ways prohibited.

269

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

272

273

274 Article IV Hours of Service

275

276 215-18 Hours of alcohol sale and consumption.

277

278 No restaurant shall sell alcoholic liquor between the hours of 1:00 a.m. and 9:00 a.m. and no alcoholic
279 liquor shall be consumed on the premises between the hours of 2:00 a.m. and 9:00 a.m., except that for
280 any restaurant receiving a permit of compliance after [Date of Adoption] which has more than 2,500
281 square feet of floor space devoted to permanent seated dining area plus bar area alcoholic liquor shall
282 not be sold between the hours of 11:00 p.m. and 9:00 a.m. following and no alcoholic liquor shall be
283 consumed on the premises between the hours of midnight and 9:00 a.m. following.

284

285 215-19 Food service.

286

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

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.

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

14
15 **BREWERY-PUB**

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

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

Commented [SC2]: This was added.

minor, as defined at 4 Del. C. § 713, is to be denied admission to or permission to remain on the premises after 9:00 p.m., official eastern time, unless accompanied by a parent or by a legal guardian.

CAFE

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

CATERER

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

DANCE HALL

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

DINING PATIO

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

FOOD ESTABLISHMENT

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

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.

PERMANENT SEATED DINING AREA

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), 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,
- 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.

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.

- 114 ~~5) The sum of the floor space devoted to permanent seated dining area and bar area in any~~
115 ~~building 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.~~

126
127 A-B. Dining Patios.

128
129 ~~Dining Ppatios, as defined herein,~~ licensed, constructed or expanded after June 14, 1991, ~~and~~
130 ~~located in a commercial zone~~ shall only be used for consumption of food and beverages consistent
131 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.

151
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

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.

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

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.

~~10)8)~~ A dining patio existing as of June 14, 1991, shall be considered a legal nonconforming use but shall be subject to all of the provisions of this chapter if expanded pursuant to a supplemental permit of compliance.

C. Brewery-pubs.

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

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

D. Dinner Theaters

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

- 1) Be totally enclosed.
- 2) 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 service of only such food and victuals as sandwiches or salads shall not be deemed to be the service of meals.
- 3) 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.
- 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.

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.

- 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 ~~2) 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 ~~3) 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.~~

243
244 ~~**CAFE**~~

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

246
247 ~~**DANCE HALL**~~

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

250 **DINNER THEATER**

- 251 A. ~~A totally enclosed commercial establishment which has seating and tables for 35 or more~~
252 ~~persons and suitable kitchen facilities connected therewith for cooking an assortment of foods~~
253 ~~under the charge of a chef or cook which is regularly used and kept open for the purpose of~~
254 ~~presenting public performances featuring live actor(s) in dramatic or musical productions after~~
255 ~~and not simultaneously with the serving of complete meals. The establishment must close and~~
256 ~~all patrons must leave at 12:00 midnight. The service of only such food and victuals as~~
257 ~~sandwiches and salads shall not be deemed to be complete meals.~~
258 B. ~~Each dinner theater and related activities in a building shall be limited in area to not more than~~
259 ~~5,000 square feet. There shall be not more than one dinner theater in any public building, and,~~
260 ~~except for motels and hotels, a dinner theater shall not share a building with any other~~
261 ~~commercial activity. The occupancy capacity must conform to the Fire Marshal's guidelines.~~
262 C. ~~A dinner theater must serve complete meals to at least 3/4 of the patrons at each performance,~~
263 ~~and they shall be served in the permanent seated dining area in front of or surrounding the~~
264 ~~stage. Seating at tables shall be provided for each patron.~~
265 D. ~~The establishment, when licensed to serve alcoholic beverages, shall not have a bar area where~~
266 ~~patrons consume alcoholic beverages but may have a service bar area where alcoholic~~
267 ~~beverages are stored and delivered to waiters for service to the patrons seated in the~~
268 ~~permanent seated dining area. Such establishment shall not serve alcoholic beverages more~~
269 ~~than one hour before the service of the complete meal begins or more than two hours before~~
270 ~~the live stage production begins, whichever is less. Alcoholic beverages may also be served~~
271 ~~during intermissions but not during or after the performance.~~
272 E. ~~The rules set forth herein apply to each and every performance. When repeated performances~~
273 ~~are to be given, all patrons from the first performance must leave the establishment before~~
274 ~~seating can begin for the next performance.~~

275 ~~**NIGHTCLUB, INCLUDING AFTER HOURS CLUB**~~

276 ~~An establishment open for business in the evening and early morning hours which is not a~~
277 ~~restaurant but at which entertainment is provided and food or alcoholic beverages are served or~~
278 ~~consumed.~~
279

280 **RESTAURANT**

- 281 A. ~~Where no alcoholic liquor is sold or consumed on the premises, any establishment which is~~
282 ~~regularly used and kept open principally for the purpose of serving complete meals to persons~~
283 ~~for consideration, and which has seating at tables for 35 or more persons and suitable kitchen~~
284 ~~facilities connected therewith for cooking an assortment of foods under the charge of a chef or~~
285 ~~cook. The service of only such food and victuals as sandwiches or salads shall not be deemed to~~
286 ~~be the service of meals.~~
287 B. ~~Where alcoholic liquor is sold or consumed on the premises, a totally enclosed, except where a~~
288 ~~special patio license has been granted, commercial establishment which is regularly used and~~
289 ~~kept open principally for the purpose of serving complete meals to persons for consideration~~
290 ~~and which has seating and tables for 35 or more persons and suitable kitchen facilities~~
291 ~~connected therewith for cooking an assortment of foods under the charge of a chef or cook. The~~
292 ~~service of only such food and victuals as sandwiches or salads shall not be deemed to be the~~
293 ~~service of meals. The bar area shall be no more than 25% of the square footage of the~~
294 ~~permanent seated dining area, but not to exceed a maximum of 1,000 square feet, except that~~
295

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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.~~

298
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.~~

303
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.~~

307
308
309 ~~270-28 Limitation on Size of Restaurants~~

310
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.~~

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

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.

1 270-4 Definitions

2

3

BAR AREA

4

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.

9

10

BREWERY-PUB

11

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

12

13

14

CABARET

15

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

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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.
30

31 **DANCE HALL**

32 Any establishment other than a restaurant where dancing by the patrons takes place.
33

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.
53

54 **RESTAURANT**

55 An establishment where meals are, for compensation, prepared and served on the premises and
56 when alcohol is sold or consumed complies with §270-19.
57

58 **TAPROOM**

59 An establishment provided with special space and accommodations and operated primarily for
60 the sale by the glass and for consumption on the premises of alcoholic liquors with the sale of
61 food as a secondary object as distinguished from a restaurant where the sale of food is the
62 primary object.
63

64 **TAVERN**

65 Any establishment with special space and accommodations for the sale by the glass and for
66 consumption on the premises of beers.
67

68 270-19 Use Restrictions

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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 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 square feet, except that any restaurant regardless of its permanent seated dining area may have a bar area of 350 square feet.
- 7) 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.
- 8) Patrons may not consume alcoholic liquor in the permanent seated dining area unless seated at tables.

B. Dining Patios.

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

- 1) The gross area devoted to dining patio purposes shall be limited to 750 square feet per restaurant, which area shall be permitted in addition to the limitation contained in §270-19A(5).
- 2) Food and beverages may be served only to seated patrons and no patrons may await on the dining patio for seating.
- 3) There shall be no live entertainment on the dining patio.
- 4) There shall be no external speakers or amplifiers on the dining patio and no internal speakers from the premises are to be directed to the dining patio.
- 5) There shall be no bar on the dining patio.
- 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.

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

117
118 8) A dining patio existing as of June 14, 1991, shall be considered a legal nonconforming use
119 but shall be subject to all of the provisions of this chapter if expanded pursuant to a
120 supplemental permit of compliance.

121
122 C. Brewery-pubs.

123
124 In addition to the standards of the relevant zoning district an establishment that meets the
125 definition of a brewery-pub shall comply with the following:

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

148
149 D. Dinner Theaters

150
151 In addition to the standards of the relevant zoning district an establishment that meets the
152 definition of a dinner theater where alcoholic liquor is sold or consumed on the premises shall
153 comply with the following:

- 154 1) Be totally enclosed.
- 155 2) Is regularly used and kept open for the purpose of presenting public performances featuring
156 live actor(s) in dramatic or musical productions after and not simultaneously with the
157 serving of complete meals. The service of only such food and victuals as sandwiches or
158 salads shall not be deemed to be the service of meals.

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

180
181 E. Certain prohibited uses citywide.

182
183 No structure or land shall be used or occupied anywhere in the City of Rehoboth Beach, regardless
184 of whether the land is zoned residential or commercial, for the following uses: taproom, tavern,
185 dance hall, cabaret, nightclub, after-hours club or cafe. Anything contained in Article [II](#), Use
186 Regulations, or any other portion of Chapter [270](#), Zoning, of the Municipal Code of Rehoboth Beach,
187 Delaware, which is inconsistent herewith is to the extent of such inconsistency repealed.
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