

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)

FINAL

ORDER

Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees

SUMMARY OF THE EVIDENCE

1. Title 4, Section 304 of the Delaware Code authorizes the Alcoholic Beverage Control Commissioner to establish regulations in relation to all powers, duties and functions vested pursuant to the regulation of alcoholic beverages in Delaware.
2. Pursuant to 4 Del. C. § 304, the Alcoholic Beverage Control Commissioner intends to amend the Delaware Liquor Control Act by adding a new Rule 705. The regulations are being amended to provide for expansion of outdoor seating, to include procedures, standards and fees for such licensure.
3. Notice of the proposed regulation change was published in the April 1, 2022 edition of the *Delaware Register of Regulations*.
4. The Commissioner invited a period of thirty (30) days, until May 2, 2022, for written comment from the public.
5. Two written comments were received for the proposed regulation, both dated April 29, 2022 and received from the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD). The written comments focused on the concern and vital need to ensure liquor licensed establishments are compliant with the Americans with Disabilities Act (ADA).
6. Having solicited and requested public comment on the proposed regulations in accordance with the Delaware Administrative Procedures Act, 29 Del. C. Ch. 101, et. seq., and having considered the valued comments and concerns from the GACEC and SCPD, this is the Commissioner's Order adopting the proposed regulation, as published previously.

FINDINGS OF FACT

1. The Commissioner finds that it is necessary to adopt the proposed amended regulations to establish procedures, standards and fees for outdoor extension of premises, in order for the regulations to be consistent with the Delaware Liquor Control Act.
2. Public places, including restaurants and other specific licensees that may be able to obtain a license for expansion of outdoor seating, have been and are required to comply with federal and state laws and regulations. 4 Del. C. §§ 543, 561. Such compliance includes adherence with the ADA.

DECISION AND ORDER TO AMEND THE REGULATION

For the foregoing reasons, the Commissioner concludes that it is appropriate to amend the Delaware Liquor Control Act by adding a new Rule 705, and therefore the regulation shall be adopted in accordance with this Order. The regulation changes will be effective on July 11, 2022 following publication of this Order in the *Delaware Register of Regulations* on July 1, 2022.

IT IS SO ORDERED this 15th day of June, 2022 by the Office of the Delaware Alcoholic Beverage Control Commissioner.

The Honorable Jacqueline Paradee Mette, Esq.
Commissioner

Rule 705 - Expansion of Outdoor Seating: Procedures, Standards and Fees

1.0 Purpose and Scope

- 1.1 Licenses issued under the provisions of Title 4, Delaware Code (the Delaware Liquor Control Act) are approved based upon the physical plan as presented in the initial application. Under the provisions of 4 DE Admin. Code 703, all alterations to the licensed premises must be presented and approved by the Commissioner prior to execution of construction, renovation, or modification.
- 1.2 This rule provides procedures, standards, and inspection requirements.

2.0 Definitions

"Expansion of Outdoor Seating" includes the surrounding grounds, sidewalk and parking lot immediately adjacent to the building or buildings identified by a single address number or lease space number, to which a license to sell alcoholic liquors for consumption has been issued by the Commissioner. It does not mean the building or buildings to which a license to sell alcoholic liquors for consumption "on" or "off" has been issued by the Commissioner, nor does it include ancillary structures, contiguous water, still or moving, or piers, floating docks or buildings, patios covered or uncovered, or any other structure, modular or mobile home attached or connected to the licensed establishment by electrical, water, sewer or heating/air conditioning systems.

"Wet Bar" means as defined in 4 **DE Admin. Code** 704, Section 2.0.

3.0 Expansion of Outdoor Seating Permit

Approval of an expansion of outdoor seating for serving food and alcoholic beverages may be issued, and valid during the term of the basic license, providing the following procedures are followed and the expansion of outdoor seating is approved by the political subdivision before the request for an expansion of outdoor seating is submitted for review and approval by the Commissioner. Expansion of outdoor seating approval is separate from and does not include an extension of premises patio permit ("patio permit") governed by 4 **DE Admin. Code** 704.

4.0 Procedures

- 4.1 For an expansion of outdoor seating, the licensee shall submit to the Commissioner a letter of request, with the following attachments:
 - 4.1.1 A letter of approval from the appropriate political subdivision approving the request for expansion of outdoor seating explaining how the expansion will comply with 4 **Del.C.** §524(f)(2), including compliance with traffic patterns and the State's right of way, compliance with the Americans with Disabilities Act and adherence to noise ordinances. The letter shall also include the expiration date of the approval for expansion of outdoor seating, if applicable.
 - 4.1.2 A detailed floor or construction plan showing dimensions, point of contact with the licensed premises, elevation (if any) and identification of access and egress, seating and table arrangements, and appropriate fencing or enclosures for the expansion of outdoor seating that will permit the proper control over the distribution of alcoholic beverages.
 - 4.1.3 Intended construction start and finish dates, if applicable.
 - 4.1.4 Filing Fee (non-refundable).
- 4.2 If construction or modification is required, when completed, the Commissioner shall be notified for final inspection of the site.
- 4.5 Upon final inspection, approval, and upon payment of the non-refundable inspection fee, the Commissioner shall authorize use as an expansion of outdoor seating.

5.0 Fees

- 5.1 Filing Fee: \$25.00
- 5.2 Inspection fee: \$25.00

6.0 No Additions Permitted to An Expansion of Outdoor Seating

- 6.1 No live entertainment is permitted on an expansion of outdoor seating.
- 6.2 No external speakers, sound system or amplifiers are permitted on an expansion of outdoor seating.
- 6.3 No audible paging system is permitted on an expansion of outdoor seating.
- 6.4 No wet bar is permitted on an expansion of outdoor seating.

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