



Governor's Advisory Council for Exceptional Citizens (GACEC)
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April 29, 2022

Wendy Hudson
Deputy Commissioner
Office of the Delaware Alcoholic Beverage Control Commissioner
820 N. French St., 3rd Floor
Wilmington, DE 19801

RE: 25 DE Reg. 940/DSHS Proposed Expansion of Outdoor Seating: Procedures, Standards and Fees on Alcoholic Beverages regulation (April 1, 2022)

Dear Ms. Hudson:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Department of Safety and Homeland Security (DSHS) proposed rules in regard to the expansion of outdoor seating for serving food and drinks. The proposed amendments also include procedures on curbside service provided by package stores, containers used for alcohol to-go from restaurants, taprooms, and taverns, and the age of employed persons who can sell and serve alcohol to customers.

Governor Carney declared a State of Emergency on March 12, 2020 because of COVID-19. In subsequent modifications to the original declaration, accommodations were made to lessen the devastating effects of the closure of all restaurants, bars, and taverns. Restaurants, brewpubs, and taverns with a license were permitted to sell alcoholic beverages as part of take out or drive through orders for food. Food and drink establishments were permitted to expand their outdoor seating for serving food and drinks with certain limitations. The provisions of the Second and Nineteenth Modification of the State of Emergency allowing food and drink places to sell alcohol for off-premise consumption and allowing establishments to expand their outdoor seating were codified in House Bill 349, which Governor Carney signed on July 16, 2020. Before House Bill 349 expired, the General Assembly enacted and the Governor signed House Bill 1 as amended by Senate Amendment 1 on March 23, 2021. This law amended 4 *Del. C.* §§ 512, 524, 543, 561, and 562, and provided, *inter alia*, that establishments with a valid on-premises license could sell alcoholic beverages in transactions for take-out, curbside, or drive through service (with limitations) and establishments could expand their outdoor seating (with limitations).

The steps mentioned, although temporary, were taken by the General Assembly and Governor to help food and drink establishments in particular and the foodservice industry in general. In an effort to make these changes permanent (so they did not expire or sunset), the General Assembly passed House Bill 289 which the Governor signed on February 7, 2022, and House Bill 290, which the Governor signed on February 16, 2022. The laws became effective immediately and permit curbside service for package stores, takeout

alcohol sales by restaurants, taprooms, and taverns with a valid license, and an expansion by restaurants of outdoor seating for serving food and drinks.

These rules were promulgated by the Alcoholic Beverage Control Commissioner to implement the changes required by House Bill 289 and House Bill 290. Rule 705 deals with the expansion of outdoor seating. The establishment must first have a license to sell alcohol for consumption and then submit a request to expand the outdoor seating to serve food and alcoholic beverages for review and approval by the Commissioner. This request must be accompanied by the following documentation: a letter from the political subdivision where the establishment is located approving the expansion request and addressing compliance with traffic patterns and the Americans with Disabilities Act (ADA) and adherence to noise ordinances; a detailed floor or construction plan showing the expansion of the outdoor seating; and the starting and completion times for any intended construction (4.1). Once the expansion passes final inspection and approval, the Commissioner then authorizes the establishment to use the area as an expansion of outdoor seating. (4.5). The expansion of outdoor seating is for serving food and drinks and there is to be no live entertainment; speakers, sound systems or amplifiers; “audible paging system;” and wet bar. (6.0).

The rules announced by the Alcoholic Beverage Control Commissioner are extremely detailed and directed, and address a specific need and purpose, specifically, to help establishments severely affected by COVID-19 and the pandemic. The emergency declaration and statutory provisions allowed the changes to Title 4 to be implemented on a trial basis so to speak, because they ended or expired. Since those interim measures were successful in helping the affected businesses financially, they were made permanent. These rules implement the changes and provide the details that establishments must comply with to take advantage of the increased opportunities to sell alcoholic beverages.

People with disabilities have noted and complained about businesses who failed to comply with ADA standards when encroaching on sidewalks. Therefore, Council would like to recommend the inclusion of ADA compliance in these regulations to put businesses on notice that they can only expand into outside areas when they have taken care to comply with accessibility guidelines. We understand and appreciate the need to improve circumstances for businesses affected by the pandemic. However, we ask that the needs of individuals with disabilities who need access to the sidewalks be addressed as well. Accessibility has been and continues to be an issue that should be considered carefully.

Thank you for this opportunity to share our observations and recommendations with you. Please contact Pam Weir or me at the GACEC office if you have any questions on our comments.

Sincerely,

Ann C Fisher

Ann C. Fisher
Chairperson

ACF: kpc