

DEPARTMENT OF SAFETY AND HOMELAND SECURITY
OFFICE OF THE ALCOHOLIC BEVERAGE CONTROL COMMISSIONER
Statutory Authority: 4 Delaware Code, Section 304 (4 Del.C. §304)
4 DE Admin. Code 202

PROPOSED

PUBLIC NOTICE

Rule 202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

In compliance with the State's Administrative Procedures Act (Title 29, Chapter 101 of the Delaware Code) and under the authority of 4 Del.C. §304, the Delaware Alcoholic Beverage Control Commissioner proposes to update its rules related to on-premise licensees, specifically seating in restaurants licensed by the OABCC.

In accordance with 29 Del.C. §10116, persons wishing to submit written comments, suggestions, briefs, and compilations of data or other written materials concerning the proposed regulations should direct them to the following address:

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

Comments may also be directed via electronic mail to OABCCrulescomments@delaware.gov. Any written submission in response to this notice and relevant to the proposed regulations must be received by the Delaware Alcoholic Beverage Control Commissioner no later than 4:00 p.m. EST, July 1, 2023.

The action concerning determination of whether to adopt the proposed regulations will be based upon consideration of the written comments and any other written materials filed by the public.

Background

The Delaware Alcoholic Beverage Control Commissioner ("Commissioner" or "Office") is authorized by the General Assembly of the State of Delaware, to establish, by rules and regulations, an effective control of the business of manufacture, sale, dispensation, distribution and importation of alcoholic liquors within and into the State of Delaware, including the time, place and manner in which alcoholic liquors shall be sold and dispensed, not inconsistent with Title 4 of the Delaware Code, known as the Delaware Liquor Control Act ("DLCA") or with any other law of the State. The Commissioner is further authorized to adopt and promulgate rules and regulations not inconsistent with Title 4 or of any other law of the State, and such rules and regulations shall have the force and effect of law; provided, however that no such rule or regulation shall extend, modify or conflict with any law of this State or the reasonable implications thereof; and provided further, however, that such rules and regulations, as established by the Commissioner, shall focus primarily on public safety and the best interests of the consumer and shall not unduly restrict competition within the alcoholic beverage industry.

4 DE Admin. Code 202, subsection 3.1 is updated to change the dining seat to bar seat ratio in restaurants from a 4:1 ratio to a 3:1 ratio. Subsection 3.1 of 4 DE Admin. Code 202 has not been modified for decades while restaurants, in an effort to meet the needs of its consumers, have requested variances for additional bar seat options as part of their floor plans to serve complete meals to those who prefer a bar seat over a dining table. This update to the requirements of a licensed restaurant's floor plan will make it easier for restaurants to meet the needs of its consumers, not impact public safety, and preserve the distinction between a taproom and a restaurant.

Restaurants are distinguished from taprooms and taverns in the DLCA in that restaurants are required to provide complete meals at all times the establishment is open for business and have sufficient kitchen space on its floor plan with suitable equipment to prepare and serve complete meals. If a restaurant chooses to provide complete meals at its bar seating for its patrons, the requirement that a restaurant be open principally for the purpose of serving complete meals can be achieved even with a slightly lower dining seat to bar seat ratio, and still ensure public safety and a clear distinction between restaurants and taprooms and taverns. Adults dining in restaurants want to have more seating options, and restaurants will have more flexibility to serve its customers, thereby satisfying consumer demand while not impacting public safety.

Summary of Proposal

Restaurants must meet certain requirements to be licensed to sell and serve alcoholic beverages. One such requirement is providing complete meals to customers. In furtherance of that requirement, a licensed restaurant must have sufficient kitchen and dining space, and the dining space must meet the current requirement of 4 dining seats to 1 bar seat. This rule was written years ago, in part to distinguish a restaurant from a taproom or tavern that is licensed to sell alcoholic beverages, but is not required to provide food or complete meals. The Office has received a number of requests for variances from this rule to respond to increasing consumer demand to enjoy a complete meal while seated at the bar. In furtherance of updating the rules that apply to restaurants, subsection 3.1 of 4 **DE Admin. Code** 202 will be updated, consistent with demand, to permit a restaurant to offer seats at a bar not to exceed 1/3 of the total dining seats of the establishment.

Statutory Authority 4 Del. C. §304.

4 **Del.C.** §304 enables the Delaware Alcoholic Beverage Control Commissioner to adopt and promulgate rules and regulations not inconsistent with Title 4 of the Delaware Code and all such rules and regulations shall have the force and effect of law; provided, that no such rule or regulation shall extend, modify or conflict with any law of the State of Delaware or the reasonable implications thereof.

202 (Formerly Rule 19) A Rule Defining the Words Hotel, Motel, Restaurant and Dinner Theater

1.0 Purpose and Scope

This Rule supplements the definition of Hotel, Motel, Dinner Theater and Restaurant contained in the Liquor Control Act, 4 Delaware Code, Section 101 et seq.

4.0 2.0 Hotel and Motel

4.1 2.1 **"Hotel"** means any establishment provided with special space and accommodation, where, in consideration of payment, food and lodging are habitually furnished to travelers.

2.2 **"Motel"** means the same as the word "hotel" except that a motel may consist of one or more buildings so long as it otherwise qualifies with the requirements set forth in the above definition of "hotel". The provisions of the Liquor Control Act shall likewise apply to applications to sell alcoholic liquor in a motel.

4.2 2.3 There shall also be adequate and sanitary kitchen and dining room equipment and an approved storage space where alcoholic liquor may be kept. A hotel and motel shall be advertised as such. A State or County license to operate the premises as a hotel and motel shall also be issued and in possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

2.0 Motel

~~"Motel" shall mean the same as the word "hotel" except that a motel may consist of one or more buildings so long as it otherwise qualifies with the requirements set forth in the above definition of "hotel". The provisions of the Liquor Control Act shall likewise apply to applications to sell alcoholic liquor in a motel.~~

3.0 Restaurant

3.1 **"Restaurant"** means 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 12 or more persons and suitable kitchen facilities connected therewith for cooking an assortment of foods under the charge of a chef or cook.

3.2 Additional requirements to operate as a restaurant are:

3.2.1 Seats at a bar shall not exceed ~~25%~~ 1/3 of the dining seats.

3.2.2 The service of only such food ~~and victuals~~ as sandwiches or salads shall not be deemed to be the service of "meals".

~~3.1.4~~ 3.2.3 Complete meals shall be available at all hours that any restaurant is open for the sale of alcoholic liquor.

~~3.1.2~~ 3.2.4 There shall also be adequate and sanitary kitchen and dining room equipment, and an approved storage space where alcoholic liquor may be kept.

~~3.1.3~~ 3.2.5 A State or County license to operate the premises as a "restaurant" shall also be issued and in the possession of the applicant prior to the issuance of the license and at all times thereafter during the term of the license.

4.0 Complete Meals - Hotel, Motel, and Restaurant

- 4.1 The sale of alcoholic beverages by a hotel, motel, or restaurant shall be considered as a supplement to the original purpose of providing food and lodging and furnishing food, respectively.
- 4.2 "Complete Meals" shall be considered to mean the normal meals provided at breakfast, lunch and dinner, offered from menus consisting of, but not limited to: breakfast foods, soups, appetizers, entrees, salads, vegetables, ~~desserts~~ desserts, and beverages other than alcoholic.
- 4.3 Restaurants licensed to sell "Beer Only" and "Wine Only" shall be required to furnish only two out of the four following accompaniments to meals: appetizers, soups, salads and vegetables.

5.0 Dinner Theater

- 5.1 The dinner theater shall serve at least one meal consisting of, but not limited to, appetizers, entrees, salads, vegetables, desserts and beverages other than alcoholic. There shall also be an adequate and sanitary kitchen and dining equipment with an approved storage space where alcoholic liquor may be kept.
- 5.2 The dinner theater licensee shall supply to the Commissioner the hours during which the licensee shall permit consumption of alcoholic beverages on its premises. In no event shall the dinner theater licensee allow consumption of alcoholic liquors on its premises at times other than in conjunction with meals served at the theatrical performances and during intermissions or at any other time which is not permitted by the Delaware Liquor Control Act. The hours of consumption of alcoholic liquors shall first be approved by the Commissioner before the issuance of a license.
- 5.3 Persons not of sufficient age to consume alcoholic liquors shall be allowed and permitted to be on the licensed premises of the dinner theater so long as all of the other provisions of the Liquor Control Act and Rules of this Commissioner are being complied with.

19 DE Reg. 775 (02/01/16)

26 DE Reg. 1041 (06/01/23) (Prop.)