Town of Dewey Beach
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ORDINANCE NO.

AN ORDINANCE TO AMEND CHAPTER 185-25 OF THE MUNICIPAL CODE OF THE TOWN OF DEWEY BEACH RELATING TO ALCOHOL SERVICE AND SALES

WHEREAS, the Delaware General Assembly has considered House Bill 433, which, if enacted, would amend Title 4 of the Delaware Code to allow municipalities, by formal ordinance, to permit certain establishments licensed by the Delaware Alcoholic Beverage Control Commissioner to serve alcohol until 2:00 a.m.; and

WHEREAS, House Bill 433 has not been enacted as of the date of adoption of this Ordinance, but the Mayor and Commissioners find it prudent to establish local regulations that would remain in effect should House Bill 433 become law; and

WHEREAS, establishments licensed for on-premise consumption of alcoholic beverages are generally required to cease operations at 1:00 a.m., and the Town Commissioners find that continuation of that closing time is necessary and appropriate for the unique circumstances of the Town of Dewey Beach; and

WHEREAS, the Town Commissioners further find that concentrations of patrons leaving establishments during the late-night and early-morning hours generate a disproportionate demand for police, emergency medical, and other public safety resources; and

WHEREAS, the Town Commissioners find that requiring establishments to cease alcohol service and sales by 1:00 a.m. will assist in reducing alcohol-related disturbances, disorderly conduct, noise complaints, and other incidents requiring police response.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Commissioners of the Town of Dewey Beach, Sussex County, Delaware, in session met, as follows:

Section 1. Amend Chapter 185-25 of the Code of Ordinances as depicted by strikeouts and substitutions depicted below:

§ 185-25 RB-1 Resort Business District.

A. Purpose of the district.

1) The purpose of this district is to provide sufficient space in appropriate locations for a wide variety of commercial and miscellaneous service activities. This district permits the most intense development of such activities. Its features include structures that are both entirely dedicated to commercial use or mixed-use structures with floor area square footage of not less than 1/3 commercial land use and not greater than 2/3 residential land use. Single-family detached dwellings and buildings or structures dedicated to residential uses are prohibited.

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B. Permitted uses. See Table 3, Uses in Resort Business Districts.

C. Permitted accessory uses. See Table 3, Uses in Resort Business Districts.

D. Conditional uses. See Table 3, Uses in Resort Business Districts. The following additional conditions shall apply:

1) Restaurants and other uses.

a) Any new facility or expansion of an existing facility which is enclosed, outdoor or open air, and is defined by any one of the following general categories:

[1] Restaurant, with or without an ABCC license, provided that:

[a] Seated dining for 35 or more patrons must be provided.

[b] A minimum of 80% of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, must be permanently committed to seated dining, and said seating areas may not be altered, moved or removed.

[c] A maximum of 20% of the patron area, exclusive of kitchens, storage areas, offices, outside service areas, and rest rooms, may be designated as bar area, where seated and stand-up consumption of alcoholic beverages by patrons is permitted.

[d] In the area designated for seated food service, alcoholic beverages shall only be served to dining patrons.

[e] No stand-up consumption of alcoholic beverages in the area designated for seated food service is permitted.

[f] All tables and chairs shall be maintained in the configuration shown in the approved conditional use application.

[g] If the bar area is separated from the dining area by walls or partitions, the number of patrons in the bar area cannot exceed the Fire Marshal's occupancy limit for that area.

[h] Kitchen facilities shall be under the direction of a chef or cook.

[i] Restaurants conforming to this subsection shall be permitted to apply for a conditional use permit for an outside service area.

[j] Restaurants not conforming to this subsection are prohibited from expanding or adding an outside service area.

[2] Entertainment or amusement facility, with or without an ABCC license.

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[3] Any commercial, outdoor, open-air operation, or outside service area, provided that:

[a] There shall be no stand-up consumption of alcoholic beverages.

[b] There shall be no external speakers or amplifiers.

[c] Any interior speakers on the premises shall not be directed toward such outside service area(s).

[d] The area shall be cleared of patrons by 11:00 p.m.

[4] Eateries or cabarets, provided that:

[a] Alcoholic beverages shall be not be served, nor shall foods containing or infused with alcohol be served.

[b] If indoor seating is provided, it shall be limited to a maximum of 35 patrons.

[c] If indoor patron area or outdoor seating on premises is provided, a minimum of one handicapped unisex restroom shall be provided. Said restroom shall have unimpeded access directly from the patron area of the eatery and not through the food preparation area or storage area.

[d] If outdoor or unenclosed tables or chairs are provided by the eatery, the hours of operation of the outdoor or unenclosed area shall not extend beyond 11:00 p.m.

[e] Outside loudspeakers for the amplification of sound shall not be permitted.

[f] Portable toilets shall not be permitted.

[g] Hours of operation shall not be earlier than 6:00 a.m. and not after 1:00 a.m. of the following day.

[h] Additionally, operation of an eatery or cabaret shall meet any and all other conditions established by the Town Commissioners at the time of any initial or subsequent approval.

b) Expansion of an existing nonconforming bar, tavern or nightclub, whether involved in the sale of food or not, not to exceed 50% of the existing facility, provided that only one such expansion shall be permitted for such facility during the lifetime of the establishment operating as a conditional use, and further provided that the provisions of § 185-60A of this Code shall not be applicable to an application for expansion of a nonconforming use pursuant to this subsection.

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c) All restaurants, bars and eateries in existence as of the date of the adoption of Ordinance No. 228 (April 11, 1992) may continue to operate the facility as before the adoption of said ordinance as a nonconforming ("grandfathered") facility. The status of the nonconforming, grandfathered facility shall terminate and the facility shall be required to operate in conformity with this Code, § 185-25D, § 185-35A, and § 185-35B, if there is a(n):

[1] Expansion of or addition to the existing building or existing outside service area except as required by applicable codes or insurance requirements.

[2] Reduction of the percentage of patron area committed to seated dining.

[3] Reduction of service areas by internal rearrangement for the purpose of creating an increase in the bar areas of more than 100 square feet of floor space as of the date of the adoption of Ordinance No. 234 (July 10, 1992).

<u>d) Hours of alcohol service and closing.</u>

[1] <u>Any establishment holding a license issued by the Delaware Alcoholic Beverage Control Commissioner permitting the sale or service of alcoholic beverages shall cease alcohol service and sales by 1:00 a.m.</u>

[2] <u>The provisions of this subsection shall apply to all establishments, whether conforming, nonconforming, or operating pursuant to a conditional use approval, notwithstanding any prior approval, variance, or grandfathered status.</u>

Section 2. If any provisions of this Ordinance shall be deemed or held to be invalid or unenforceable for any reason whatsoever, then such invalidity or unenforceability shall not affect any other provision of this Ordinance which may be given effect without such invalid or unenforceable provision, and to this end, the provisions of this Ordinance are hereby declared to be severable.

Section 3. This Ordinance shall take effect immediately upon its passage by a majority vote of the Commissioners of the Town of Dewey Beach.

Adopted by at least a majority of the Commissioners of the Town of Dewey Beach on this 20th day of November, 2026.

<u>SYNOPSIS</u>

This ordinance amends Chapter 185 of the Code of the Town of Dewey Beach to establish hours of alcohol service and operation for ABCC-licensed establishments. The ordinance requires alcohol service and sales to cease by 1:00 a.m.

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Mayor, William Stevens Town Manager, Bill Zolper

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