**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION**
**ALCOHOLIC BEVERAGE CONTROL BOARD**

# NOTICE OF SECOND EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(c) (2012 Repl. & 2019 Supp.)) and D.C. Official Code § 25-502 (2012 Repl. & 2019 Supp.), and Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, amends, on an emergency basis, Chapters 7 (General Operating Requirements) and 10 (Endorsements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

On March 25, 2020, the Board adopted an emergency rulemaking that (1) delayed the start of the twenty-one (21) day period for licensees who ceased operations or closed the licensed premises in accordance with Mayor's Orders 2020-048, dated March 16, 2020, and 2020-051, dated March 20, 2020, and the Department of Health's emergency regulations, dated March 13, 2020; and (2) created a temporary restaurant endorsement for on-premises retailer's licenses, C/H, D/H, C/X, or D/X, including multipurpose facilities and private clubs. These emergency rules would have expired on July 16, 2020. *See* 67 DCR 4127 (April 10, 2020).

Since adopting the emergency rulemaking on March 25, 2020, the Mayor extended the public emergency and public health emergency in District of Columbia through May 15, 2020. (Mayor's Order 2020-063). Additionally, the Council for the District of Columbia voted on April 21, 2020 to expand the restaurant carry-out and delivery authorization at the request of the Executive to include nightclubs. As such, this rulemaking will allow holders of nightclub licenses to obtain a restaurant endorsement in order to offer alcoholic beverages for carry-out and delivery services to District residents if accompanied by at least one prepared food item.

The Board finds the adoption of these emergency rules necessary to expand the types of ABC licensees who can remain open during the pandemic to provide carry-out and delivery services of alcoholic beverages, while at the same time adhering to the Mayor's Orders to protect the health, welfare, and safety of the public. Therefore, the Board gives notice that on April 22, 2020, it has adopted the Temporary Restaurant Endorsement and Safekeeping of License Notice of Second Emergency Rulemaking by a vote of seven (7) to zero (0), to take effect on Wednesday, April 22, 2020 at 12:00 p.m.

The emergency rulemaking supersedes the previously adopted emergency rulemaking and shall remain in effect for the duration of the Public Emergency and Public Health Emergency but in no event longer than one hundred twenty (120) days from adoption, expiring on or before August 20, 2020, unless superseded.

**Chapter 7, GENERAL OPERATING REQUIREMENTS, of 23 DCMR, ALCOHOLIC BEVERAGES, is amended by amending Section 704, SURRENDER OF LICENSE, in its entirety, to read as follows:**

**704 SURRENDER OF LICENSE**

704.1 A licensee that closes its licensed premises or ceases to operate for twenty-one (21) or more days, shall be required to place its license into safekeeping pursuant to D.C. Official Code § 25-791.

704.2 The twenty-one (21) day time period shall not begin to toll until after the Mayor lifts both the Extensions of Public Emergency and Public Health Emergency issued March 20, 2020, that are currently in effect.

704.3 Subsection 704.2 shall not apply to those licenses that are in safekeeping as of March 25, 2020.

704.4 A request by the licensee to place the license in safekeeping shall be in writing and must state the:

(a) Reason that the license is being placed in safekeeping; and

(b) Length of time that the licensee is seeking to keep the license in safekeeping.

704.5 An initial safekeeping period granted by the Board may be extended for reasonable cause as set forth in D.C. Official Code § 25-791(b). The Board shall hold a safekeeping hearing for any license in safekeeping longer than six (6) months to determine whether the licensee has made sufficient progress toward reopening or whether the license should be cancelled by the Board.

704.6 Whenever a license has been in safekeeping with the Board for longer than two (2) years, the licensee shall, upon requesting removal of the license from safekeeping, submit for Board approval, detailed plans of its operations upon reopening, and shall notify the Board of the anticipated reopening date.

**Chapter 10, ENDORSEMENTS, is amended by adding a new Section 1006, TEMPORARY RESTAURANT ENDORSEMENT, on an emergency basis, to read as follows:**

**1006 TEMPORARY RESTAURANT ENDORSEMENT**

1006.1 A licensee under an on-premises retailer's license, class C/H or D/H, C/N or D/N, C/X or D/X, including multipurpose facilities and private clubs, shall be permitted to obtain a temporary restaurant endorsement to sell beer, wine, or spirits only for carry-out or delivery with one (1) or more food items

1006.2 A retailer with commercial street footage at the Walter E. Washington Convention Center that currently sells prepared food shall be permitted to obtain a temporary restaurant endorsement to sell beer, wine, or spirits for carry-out or delivery with one (1) or more food item.

1006.3 A licensee that possesses a temporary restaurant endorsement pursuant to this section shall be permitted to only sell beer, wine, or spirits in closed containers to individuals for carry-out or to deliver beer, wine, or spirits in closed containers to the homes of District residents; provided that each such carry-out or delivery is accompanied by one (1) or more prepared food items.

1006.4 A licensee that registers for a temporary restaurant endorsement shall not be required to obtain Board approval. However, an eligible licensee shall receive written authorization from ABRA prior to beginning off-premises sales under the temporary restaurant endorsement. The registration form shall include, at a minimum, the name of the licensee and the address of the licensed establishment.

1006.5 The written authorization the licensee receives from ABRA pursuant to § 1006.3 shall be posted on the establishment's licensed premises.