ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF 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 § 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, hereby gives notice of the intent to amend Chapters 7 (General Operating Requirements) and 10 (Endorsements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). Specifically, the emergency rules:

1. Delay the start of the twenty-one (21) day period for licensees who have 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, the D.C. Department of Health's (Department) March 13, 2020, emergency rules, or as a result of the Coronavirus pandemic, and otherwise would have had to place their license into safekeeping pursuant to D.C. Official Code § 25-791; and
2. Create a temporary restaurant endorsement for on-premises retailer's licenses, class C/H, D/H, C/X, or D/X, including multipurpose facilities and private clubs, and retailers that sell food and have a commercial street footage at the Walter E. Washington Convention Center so that they may be allowed to sell beer, wine, and spirits in closed containers for carry-out and delivery with one or more prepared food items.

The world is facing an unprecedented global health crisis. The Coronavirus, the viral strand that causes COVID-19, has rapidly spread around the world. The District of Columbia (District) is not immune and there are now over one hundred eighty (180) known cases of COVID-19 in the District. In addition, the World Health Organization has declared the outbreak of COVID-19 a pandemic, President Trump has declared it a national emergency, and Mayor Muriel Bowser has declared both a Public Emergency and a Public Health Emergency. *See* Mayor's Orders 2020-045, dated March 11, 2020, 2020-046, dated March 11, 2020 and 2020-050, dated March 20, 2020. On March 24, 2020, the Mayor issued Mayor's Order 2020-053, temporarily closing of all non-essential businesses in the District, and further prohibiting large gatherings.

To ease the impact of the pandemic on the hospitality industry to some extent, the Council of the District of Columbia passed the COVID-19 Response Emergency Amendment Act of 2020, effective March 17, 2020 (D.C. Act 23-247; D.C. Official Code § 2-532, *passim*) (COVID-19 Act). The emergency legislation, among other things, allows restaurants and taverns to sell alcoholic beverages in closed containers for carry-out and delivery only to District residents.

On March 18, 2020, the Board adopted the Suspension of On-premises Alcohol Sales and Consumption Due to Public Emergency Notice of Emergency Rulemaking, to take effect on Thursday, March 19, 2020, at 4:00 p.m. Since adopting the emergency rules, the Board has determined assistance is needed for additional ABC-licensed establishments.

These licensees, like restaurants and taverns, have seen a significant reduction in sales as a result of the Coronavirus pandemic. Licensed establishments in these industries are vital to the District's

economy and the neighborhoods where they are located. Therefore, this emergency rulemaking seeks to allow on-premises retailer's licenses, class C/H, D/H, C/X, or D/X, including multipurpose facilities and private clubs, and retailer licensees with commercial street frontage at the Walter Washington Convention Center that sell food to obtain a temporary restaurant endorsement in order to sell alcoholic beverages only for carry-out and delivery.

In addition, the Board recognizes that some licensees have had to cease operations or close their licensed premises. Under current law, a licensee that ceases operations or closes its licensed premises for twenty-one (21) or more days is required to place their ABC license in safekeeping. *See* D.C. Official Code § 25-791(a). Yet, many licensed establishments have ceased operations or are closing due to the financial hardship experienced by the pandemic. The Board recognizes these changes in business operations are unforeseeable and unexpected. As a result, the Board seeks to toll the beginning of the twenty-one (21) day period that a licensee has to place their license into safekeeping until the Public Emergency and the Public Health Emergency have ended.

The Board finds the adoption of these emergency rules to not only be essential to promoting the public health, welfare, and safety of the community, but also to allow an increased number of ABC licensees to provide carry-out and delivery services of alcoholic beverages, with a prepared food item or items, to District residents. Therefore, the Board gives notice that on March 25, 2020, it has adopted the Temporary Restaurant Endorsement and Safekeeping of License Notice of Emergency Rulemaking by a vote of seven (7) to zero (0), to take effect on Wednesday, March 25, 2020 at 12:00 p.m.

The emergency rulemaking 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 (July 16, 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 on an emergency basis 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, of 23 DCMR, ALCOHOLIC BEVERAGES, 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/X or D/X 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.