ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF FOURTH 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 Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, amends Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR) by adding a new Section 810 (Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency) on an emergency basis.

On March 20, 2020, in response to the spread of COVID-19, the Mayor issued Mayor's Order 2020-050, Extensions of Public Health Emergency Coronavirus: (COVID-19) and Mayor's Order 2020-051, Prohibition on Mass Gatherings During Public Health Emergency – Coronavirus (COVID-19). These Orders serve to extend with some changes the two previous Mayor's Orders issued March 11, 2020, (Mayor's Orders 2020-045 and 2020-046) through April 24, 2020. On March 24, 2020, the Mayor issued Mayor's Order 2020-053, temporarily closing all non-essential businesses in the District, and further prohibiting large gatherings. On April 15, 2020, the Mayor extended the public emergency and public health emergency in the District through May 15, 2020. (Mayor's Order 2020-0063). On May 13, 2020, the Mayor extended the public emergency and public health emergency in the District through June 8, 2020. (Mayor's Order 2020-066).

Recognizing that other types of ABC licensed establishments sought to offer alcoholic beverages for carry-out and delivery, the Board took further emergency action to allow hotels, multipurpose facilities, and private clubs to obtain temporary restaurant endorsements so that they also could offer alcoholic beverages for carry-out and delivery. On March 20, 2020 the Board adopted the *Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency Notice of Emergency Rulemaking* by a vote of six (6) to zero (0). *See* 67 DCR 4589 (March 27, 2020). The Board adopted a second emergency rulemaking entitled the *Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency Notice of Second Emergency Rulemaking* on March 25, 2020, by a vote of seven (7) to zero (0), which superseded the emergency rulemaking that the Board had previously adopted. *See* 67 DCR 4130 (April 10, 2020).

On April 22, 2020, by a vote of seven (7) to zero (0), the Board took further emergency action in response to the Council of the District of Columbia's expansion of carry-out and delivery authorization to nightclubs. Specifically, the *Suspension of On-premises Alcohol Sales and Consumption due to Public Emergency Notice of Third Emergency Rulemaking* permitted nightclub licensees to obtain a temporary restaurant endorsement so that they can offer alcoholic beverages for carry-out and delivery with at least one prepared food item. *See* 67 DCR 5600 (May 29, 2020 – Part 1).

Since the adoption of the third emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-067, dated May 27, 2020, which announced that the District has entered Phase 1 of Washington D.C.'s reopening. Among other things, Mayor's Order 2020-067 partially lifts the restriction prohibiting on-site dining by allowing restaurants, taverns, nightclubs, mixed-use facilities and other licensed food establishments to offer table service to seated patrons on outdoor public or private space. The Board interprets the phrase "mixed-use" facilities to include hotels, multipurpose facilities, private clubs and other class CX and DX licensees, and licensed manufacturers that serve food and satisfy the requirements set forth below. The Mayor's Order retains the prohibition on indoor dining during Phase 1.

In light of Mayor's Order 2020-067, the Board finds that emergency action is warranted to continue the existing suspension of on-premises alcoholic beverage sales, service and consumption indoors but to allow the sale, service and consumption of alcoholic beverages as part of table service to seated patrons on existing outdoor public or private space. Specifically, the Board finds that emergency action is necessary to modify the current suspension of on-premises alcoholic beverage sales and service in the District to allow on-premises retailer licenses and manufacturer licenses, class A or B, holding an on-site sales and consumption permit, to sell, serve, and allow the consumption of alcoholic beverages on approved outdoor public and private space. This emergency action will continue to protect the public health by prohibiting the sale, service, and consumption of alcoholic beverages indoors.

Thus, on May 28, 2020, the Board adopted the *Suspension of On-premises Alcohol Sales and Consumption Due to Public Emergency Notice of Fourth Emergency Rulemaking*, by a vote of six (6) to zero (0). This emergency rulemaking supersedes the previously adopted emergency rulemaking and shall remain in effect for the duration of the Extensions of Public Emergency and Public Health Emergency but in no event longer than one hundred twenty (120) days from the Board's adoption; expiring on or before September 25, 2020, unless superseded. The emergency rulemaking shall take effect on Friday, May 29, 2020.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND VIOLATIONS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by adding a new Section 810, SUSPENSION OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DUE TO PUBLIC EMERGENCY, to read as follows:

810 SUSPENSION OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DUE TO PUBLIC EMERGENCY

810.1 The sale and service of alcoholic beverages for on-premises consumption indoors shall be prohibited in the District of Columbia for the length of either or both the Mayor's Public Emergency and Public Health Emergency. Specifically, the sale and service of alcoholic beverages for on-premises consumption indoors shall be prohibited by the following license classes:

(a) The holders of a retailer's license class C or D, including licensed caterers;

(b) Class A or B manufacturers holding an on-site sales and consumption permit;

(c) Festival and temporary license holders; and

(d) Any other license or permit category set forth under Title 25 of the D.C. Official Code.

810.2 Notwithstanding § 810.1, an on-premises retailer license, class C/R, D/R, C/T, D/T, C/N, D/N, C/H, D/H, C/X, or D/X, including a multipurpose facility or private club, and a manufacturer license, class A or B, holding an on-site sales and consumption permit may sell, serve and allow the consumption of beer, wine, or spirits on a Board-approved outdoor sidewalk café or summer garden, including an existing rooftop patio; provided that the licensee shall:

(a) Place tables on the sidewalk café or summer garden serving separate parties at least six (6) feet apart from one another;

(b) Ensure that all outdoor dining customers are seated and place orders and are served food or alcoholic beverages at tables;

(c) Prohibit events and activities that would require patrons to cluster or be in close contact with one another, including dancing, playing darts, video games, or other outdoor games;

(d) Prohibit patrons from bringing their own alcoholic beverages;

(e) Prohibit self-service buffets;

(f) Have a menu in use containing a minimum of three (3) prepared food items available for purchase by patrons;

(g) Require the purchase of one or more prepared food items per table;

(h) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by the District Department of Health;

(i) Restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages outdoors for on-premises consumption to the hours between 8:00 a.m. and midnight, Sunday through Saturday, unless further restricted by settlement agreement or Board Order;

(j) Not have more than six (6) individuals seated at a table or a joined table;

(k) Require patrons to wait outside at least six (6) feet apart until they are ready to be seated;

(l) Not provide live music or entertainment, except for background or recorded music played at a conversational level that is not heard in the homes of District residents;

(m) Not serve alcoholic beverages or food to standing patrons;

(n) Prohibit standing or seating at an outdoor bar provided tables or counter seats that do not line up may be used for patron seating provided that there is a minimum of six feet (6 ft.) between parties;

(o) Prohibit the placement of alcohol advertising, excluding non-contact menus, on outdoor public space;

(p) Provide and require that wait staff wear masks;

(q) Request that patrons wear masks when waiting in line outside of the establishment or while traveling to use the restroom or until they are seated and eating or drinking;

(r) Implement a reservation system by phone or on-line and consider keeping customer logs to facilitate contact tracing by DC Health;

(s) Implement sanitization and disinfection protocols including the provision of single use condiment packages; and

(t) Have its own clearly delineated outdoor space and shall not share tables and chairs with another business.

810.3 A manufacturer's license, class A or B, with an on-site sales and consumption permit or a retailer's license class C/T, D/T, C/N, D/N, C/X, or D/X, may partner with a food vendor during its operating hours to satisfy the use of a menu containing a minimum of three (3) prepared food items available to patrons requirement set forth in § 810.2(f), provided patrons are seated when ordering and ordered food is delivered by the licensee to the seated patron.

810.4 A licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs that register with the Board may sell beer, wine or spirits in closed containers for individuals to carry-out to their home or deliver beer, wine or spirits in closed containers to the homes of District residents; provided that each such carry-out or delivery order is accompanied by one or more prepared food items.

810.5 Board approval shall not be required for registration; however, a restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs shall receive written authorization from ABRA prior to beginning carry-out or delivery of beer, wine or spirits.

810.6 The prohibition of on-premises sales, service and consumption of alcoholic beverages indoors shall not apply to the holder of a hotel license for purposes of:

(a) Delivering alcoholic beverages for consumption in the private rooms of registered adult guests; or

(b) Making available in the room of a registered adult guest, miniatures as defined in D.C. Official Code § 25-101(32B).

810.7 A registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs may sell beer, wine or spirits for carry-out and delivery only between the hours of 7:00 a.m. and midnight, Monday through Sunday.

810.8 Except as provided in § 810.2, a registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs shall not permit the consumption of beer, wine or spirits on the licensed premises.

810.9 Any person delivering beer, wine or spirits to the homes of District residents shall be 18 years of age or older and shall take reasonable steps to ascertain that the person receiving the delivered beer, wine or spirits is twenty-one (21) years of age or older.

810.10 The Board, in its discretion, may immediately suspend or revoke without prior notice or advertisement, the ABC license of an establishment licensed under Title 25 of the District of Columbia Official Code that is in violation of this section. Nothing in this subsection shall prohibit the Board or ABRA from issuing a written or verbal warning for a violation of this section.

810.11 The Board shall conspicuously post two (2) summary suspension or revocation notices at or near the main street entrance of the outside of the establishment.

810.12 A licensee may request a hearing within three (3) business days after service of a Notice of Suspension or Revocation for a violation of this section. The Board shall hold a hearing within two (2) business days of receipt of a timely request and shall issue a decision within three (3) business days after the hearing.

810.13 A licensee aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in subchapter I of Chapter 5 of Title 2.