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 (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.

Specifically, 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), which took effect on Thursday, March 19, 2020 at 4:00 p.m.

On March 20, 2020, in response to the ever increasing 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 Order 2020-053, temporarily closing of all non-essential businesses in the District, and further prohibiting large gatherings.

The Board now seeks to further amend the emergency rules adopted March 18, 2020 (published March 27, 2020 at 67 DCR 3588), to make clear that in addition to restaurants and taverns, hotels and Class C/X and D/X licensees, including multi-purpose facilities and private clubs that register with the Board and obtain a temporary restaurant endorsement to operate as a restaurant in the District of Columbia, are also permitted to offer carry-out and delivery services for sales of alcoholic beverages with prepared food. All other provisions of the Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency Notice of Second Emergency Rulemaking regarding the prohibition of sales for on-premises consumption remain unchanged.

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 to District residents. Therefore, the Board gives notice that on March 25, 2020, it has further amended and adopted the Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency Notice of Second 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 Extensions of Public Emergency and Public Health Emergency but in no event longer than one hundred twenty (120) days from the date of adoption (July 23, 2020), unless superseded.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, 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 of alcoholic beverages for on-premises consumption 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 of alcoholic beverages for on-premises consumption 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 A licensed restaurant, tavern, hotel 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.

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

810.4 The prohibition of on-premises sales and consumption 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).

810.5 A registered licensed restaurant, tavern, hotel or Class C/X and D/X licensee, including multi-purpose 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.

810.6 Under no circumstances shall a registered licensed restaurant, tavern, hotel or Class C/X and D/X licensee, including multi-purpose facilities and private clubs permit the consumption of beer, wine or spirits on the licensed premises.

810.7 Any person delivering beer, wine or spirits to the homes of District residents shall be eighteen (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.

810.8 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.

810.9 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.

810.10 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.

810.11 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.