ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF THIRD 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.

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 Order 2020-053, temporarily closing of 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 March 18, 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 3588 (March 27, 2020).

Recognizing that other ABC licensed establishments needed additional assistance, 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. 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to Public Emergency Notice of Second Emergency Rulemaking* on March 25, 2020, by a vote of seven (7) to zero (0), which superseded the emergency rulemaking that the Board had previously adopted.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).

Since the Board's adoption of the notice of second emergency rulemaking, 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 ABC licensed nightclubs. This emergency rulemaking amends the previously adopted emergency rulemaking by expanding the ABC licensed establishments that may offer alcoholic beverages for carry-out and delivery. Specifically, holders of nightclub licenses will now be allowed to obtain a temporary restaurant endorsement so that they can offer alcoholic beverages only for carry-out and delivery with at least one prepared food item.

The Board gives notice that on April 22, 2020, it has further amended and adopted the *Suspension of On-Premises Alcohol Sales and Consumption Due to Public Emergency Notice*

of Third Emergency Rulemaking by a vote of seven (7) to zero (0), to take effect on Wednesday, April 22, 2020 at 12:00 p.m. This third 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; expiring on or before August 20, 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, 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.

810.3 Board approval shall not be required for registration; however, a restaurant, tavern, hotel, nightclub, 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, nightclub, 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, nightclub, 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 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.