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(b) - (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, hereby gives notice of the intent on an emergency basis to amend Chapters 2 (License and Permit Categories) and 5 (License Applications) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). The Board had previously adopted the *Temporary Suspension of Late Fees Notice of Emergency Rulemaking*, on August 5, 2020, by a vote of seven (7) to zero (0). See 67 DCR 10970 (September 11, 2020) [EXPIRED].

Similar to the previous emergency rulemaking, this emergency rulemaking: (1) suspends the late fee for a licensee's failure to timely remit the second or third year license fee or renewal license fee for certain license categories in 2020; (2) provides the cease and desist and cancellation dates for a licensee's failure to remit payment for the annual or renewal license fees that are due on July 31, 2020, or September 30, 2020; and (3) establishes a process for non-District applicants to consent to a national background check in lieu of criminal background checks performed by their state's law enforcement agency where doing so has been delayed by COVID-19. In addition to the aforementioned changes, the second emergency rulemaking amends 23 DCMR § 208 and 209 by (1) adding the carryout and delivery endorsement as established by the Council of the District of Columbia in the Fiscal Year 2021 Budget Support Act of 2020, effective December 3, 2020 (D.C. Law 23-149; D.C. Official Code 25-§§ 25-112, 25-113, and 25-113.01), (2) giving licensees and applicants until June 30, 2021, to pay the carryout and delivery endorsement fee without penalty; and (3) giving on-premises retailers class CR, DR, CH, DH, CX and DX until June 30, 2021 to make their annual third year payment.

The COVID-19 Pandemic continues to adversely affect District ABC-licensed establishments. Despite the production of a Coronavirus vaccine, restrictions are still in place to protect against the transmission of the Coronavirus. As such, ABC-licensed establishments are not operating at pre-COVID-19 levels. Because certain on-premises retailer licensees have annual fees coming due in the near future, the Board finds the adoption of these emergency rules are not only essential to preserving the public health, welfare, and safety of the community so that establishments continue to be properly and timely licensed, but also to address the immediate financial hardship many ABC-licensed establishments are experiencing as a result of the public emergency and public health emergency.

In addition to the annual on-premises license fees that are about to become due for some ABC-licensed establishments by March 31, 2021, ABC-licensed establishments and retailers with commercial street frontage at the Walter E. Washington Convention Center that sell food and are approved by the Washington Convention and Sports Authority to sell alcoholic beverages for on-premises consumption (Convention Center food and alcohol businesses) that would like to continue to offer alcoholic beverages for carryout and delivery currently have to apply for a carryout and delivery endorsement from the Board by the March 31, 2021 date. Prior to March

31, 2021, those ABC-licensed establishments and Convention Center food and alcohol businesses seeking to offer alcoholic beverages for carryout and delivery were only required to request written approval from the Board. Nonetheless, the Board recognizes that requiring the new endorsement fee to be paid by March 31, 2021 may prove burdensome for some on-premises retailers in light of the extended COVID-19 pandemic, and therefore, finds it necessary to give licensees and applicants until June 30, 2021 to pay the endorsement fee without incurring a penalty. For the same reasons above, the Board is also giving on-premises retailers class CR, DR, CH, DH, CX and DX until June 30, 2021 to make their annual third year payment.

Lastly, the public health emergency continues to impede certain applicants from obtaining a police clearance from their state of residency. Under existing rules, applicants are required to provide ABRA with a police clearance from the Metropolitan Police Department, as well as from their state of residency if they are not a District resident. However, the pandemic has caused disruptions to many local and state governmental operations, resulting in a delay in processing police clearance requests. The Board finds it necessary to take this emergency action to preserve the ability of applicants to obtain police clearance by temporarily allowing them to consent to a national criminal background check in lieu of a criminal background check from their domicile state. Thus, the Board finds emergency action is necessary to protect the public welfare while also preserving public safety.

Thus, on February 10, 2021, the Board adopted the *Temporary Suspension of Late Fees Notice of Second Emergency Rulemakin*g, by a vote of seven (7) to zero (0). This rulemaking shall take effect on this date and shall remain in effect for no longer than one hundred twenty (120) days from the Board's adoption; expiring on or before June 10, 2021, unless superseded.

Chapter 2, LICENSE AND PERMIT CATEGORIES, of 23 DCMR, ALCOHOLIC BEVERAGES, is as follows:

Section 208, LICENSE FEES, is amended by (1) adding a new Subsection 208.3; and (2) renumbering § 208.3 through 208.18 as § 208.4 through 208.19 to read as follows:

208.3 Notwithstanding § 208.2, the Board shall not impose the daily fifty dollar ($50) late fee upon a licensee for failing to timely remit the annual and renewal license fees for the following license classes when those fees become due on July 31, 2020, or September 30, 2020.

(a) All on-premises retailers;

(b) Caterers;

(c) Manufacturer and wholesaler licenses, class A and B; and

(d) Solicitor and ABC manager licenses.

Section 208, LICENSE FEES, is further amended by adding new Subsections 208.20, 208.21 and 208.22 to read as follows:

208.20 The date for licensees to cease and desist operations due to their failure to make annual or renewal license fee payments due on July 31, 2020, or to renew their license by no later than September 30, 2020, shall be October 21, 2020, and the license cancellation date for these licensees shall be November 4, 2020.

208.21 Those licensees whose licenses were cancelled by the Board on November 4, 2020, in accordance with § 208.20, solely due to the non-payment of the annual or renewal license fees shall be permitted to request reinstatement of the license from the Board until May 3, 2021, without the payment of any late fees, provided that all outstanding annual and renewal licensing fees have been paid.

208.22 On-premises retailer licensees, class CR, DR, CH, DH, CX and DX shall have until June 30, 2021 to make their annual third year payment.

Section 209, PERMIT AND ENDORSEMENT FEES, is amended by adding the carryout and delivery endorsement and its corresponding fee to the chart located in Subsection 209.1 as follows:

Permit/Endorsement	**Fee**
Carryout and delivery endorsement	$200

Section 209, PERMIT AND ENDORSEMENT FEES, is amended further by adding a new Subsection 209.2 to read as follows:

209.2 Effective April 1, 2021, on-premises retailer licensees, class C/R, D/R, C/T, D/T, C/H, D/H, C/N, D/N, C/X, or D/X, including a multipurpose facility or private club, or retailers with commercial street frontage at the Walter E. Washington Convention Center that sell food and are approved by the Washington Convention and Sports Authority to sell alcoholic beverages for on-premises consumption that apply to the Board for a carryout and delivery endorsement shall have until June 30, 2021, to pay the endorsement fee.

Chapter 5, LICENSE APPLICATIONS, is amended as follows:

Section 502, POLICE CLEARANCE, is amended by adding a new Subsection 502.8 to read as follows:

502.8 An applicant who is not a District resident and is having difficulty or is unable to obtain a police clearance from a comparable authority from the state in which they reside due to the COVID-19 emergency may allow ABRA to conduct a national criminal background check to satisfy the out-of-state police clearance requirement set forth in § 502.5. Prior to conducting the criminal background check, ABRA shall:

(a) Inform the applicant that a national criminal background check will be conducted; and

(b) Obtain written approval from the applicant to conduct a national criminal background check.