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, gives notice of its intent to amend Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). The emergency rulemaking suspends, for the duration of the Coronavirus pandemic, the requirement that licensed establishments must not be closed for more than thirty (30) days prior to requesting a Temporary Operating Retail Permit (TORP).

In response to the Coronavirus pandemic, Mayor Bowser declared a Public Health Emergency and a Public Emergency. *See* Mayor's Orders 2020-045 and 2020-046 (March 11, 2020). Since the initial declaration, Mayor Bowser has issued a series of Mayor's Orders extending Public Health Emergency and a Public Emergency. Most recently, Mayor Bowser issued Mayor's Order 2021-004, dated January 22, 2021.

The pandemic has had a negative effect on the restaurant and nightlife industries. Many licensed establishments have seen a decline in their alcoholic beverage sales despite the emergency and temporary legislation the Council of the District of Columbia passed to assist District business establishments. The Board has also adopted several emergency rulemakings to aid the alcoholic beverage industry. Notwithstanding these measures, many ABC-licensed establishments continue to suffer financially due to the pandemic. Many ABC-licensed establishments have shuttered or have been closed for thirty (30) days or more.

For those closed establishments whose license is transferring to a new owner, the buyer must obtain a TORP in order to operate pending final Board approval on the transfer application. However, 23 DCMR § 703.1(b) provides that the premises that is the subject of the sale must not have been closed nor the sale or service of alcoholic beverages discontinued during the thirty (30) days prior to the filing of the TORP application. Given that many of these establishments have been closed for more than thirty (30) days due the pandemic, many buyers are barred from obtaining a TORP permit. The inability of these buyers from being able to operate pending final approval of the transferred license exacerbates the adverse impact on the alcoholic beverage industry.

On October 28, 2020, the Board adopted the *Temporary Operating Retail Permit Notice of Emergency Rulemaking*. *See* 67 DCR 014722 (December 18, 2020). The emergency rulemaking is necessary to extend the duration of the emergency rules in order to provide further relief to the alcoholic beverage industry. Specifically, in order to promote the welfare, public safety, and health of the community, the Board finds emergency action is necessary. The Board finds that emergency action is warranted at this time to allow purchasers of ABC-licensed establishments to obtain a TORP notwithstanding the number of days the purchased establishment has been closed prior to the filing of the transfer application.

Thus, on March 3, 2021, the Board adopted the *Temporary Operating Retail Permit Notice of Second Emergency Rulemakin*g, by a vote of seven (7) to zero (0). This 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 July 1, 2021, unless superseded. The emergency rulemaking shall take effect immediately.

Chapter 7, GENERAL OPERATING REQUIREMENTS, of 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 703, TEMPORARY OPERATING RETAIL PERMIT, is amended by adding a new § 703.6 to read as follows:

703.6 The requirement that an establishment be closed for not more than thirty (30) days prior to the filing of the permit application shall not apply during a public health emergency.