ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF 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 15-87; 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, hereby gives notice of the intent to amend 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.

The world is facing an unprecedented global health crisis. The Coronavirus, the viral strand that causes COVID-19, has rapidly spread around the world. The District of Columbia (District) is not immune. There are over thirty (30) known cases of COVID-19 in the District and more than one hundred eighty (180) cases across the Metropolitan area. Since the first case was detected in the District, the World Health Organization has declared the outbreak of COVID-19 a pandemic and President Trump has declared it a national emergency.

COVID-19 is a highly contagious communicable disease. Presently, there is neither a vaccine to protect against nor a medical treatment to combat COVID-19. To slow the spread of COVID-19, public health measures are necessary to protect District residents and persons who work and visit the city. As such, Mayor Muriel Bowser issued Mayor's Orders 2020-045 and 2020-046 to declare both a Public Emergency and a Public Health Emergency.

The Center for Disease Control advises that one way of slowing the spread of COVID-19 is for people to avoid large crowds. To that end, on March 13, 2020, the Department of Health (Department) issued emergency rules prohibiting mass gatherings. On March 16, 2020, the Mayor issued Mayor's Order 2020-048, which in relevant part: (1) prohibits nightclubs and multi-purpose facilities from operating; (2) limits restaurants and taverns to operating delivery and grab-and-go operations only; and (3) prohibits mass gatherings of more than fifty (50) persons.

The Board believes that additional emergency rules are needed to support the provisions of Mayor's Order 2020-045 and the emergency rules issued by the Department, to ensure that licensed establishments take proper precautions to reduce the spread of COVID-19. To assist with this effort, the Board is suspending all on-premises alcohol sales and consumption at licensed establishments for the duration of both the public emergency and public health emergency. The global health risk that the District is facing warrants immediate action. To that end, the Board finds it necessary to adopt emergency rules that further support the District's goal of promoting public health and safety, including social distancing, during this public emergency. Additionally, the emergency rules provide notice to on-premises licensees that their liquor license may be summarily suspended or revoked for their failure to comply with the emergency rulemaking.

The Board finds the adoption of these emergency rules to be essential to promoting the public health, welfare, and safety of the community. Therefore, the Board gives notice that on March 18, 2020, it has 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), to take effect on Thursday, March 19, 2020 at 4:00 p.m.

The emergency rulemaking shall remain in effect for the duration of the Public Emergency and Public Health Emergency but in no event longer than one hundred twenty (120) days (July 16, 2020), unless superseded.

Chapter 8, Enforcement, Infractions, and Violations, of Title 23 DCMR, Alcoholic Beverages, is amended by adding a new Section 810 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 or tavern that registers 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 or tavern 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(32A).

810.5 A registered licensed restaurant or tavern 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 or tavern 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 25.