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 15-187; 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 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; (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.

The public health emergency, as a result of COVID-19, has resulted in a financial hardship for many ABC-licensed establishments. Specifically, many licensees are operating in a limited fashion or not at all. Because certain licensees have annual and renewal fees coming due in the near future, the Board finds the adoption of these emergency rules to not only be 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 concerns facing many ABC-licensed establishments as a result of the public health emergency.

The public health emergency has also impeded 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, COVID-19 has caused disruptions to many local and state governmental operations, resulting in a delay to process requests for police clearances. The Board finds it necessary to take this emergency action to preserve the ability of applicants to obtain police clearance by temporarily allowing applicants to consent to a national criminal background check in lieu of a criminal background check from the applicant's resident state. Thus, the Board finds this rulemaking necessary to protect the public welfare while also preserving public safety.

Thus, on August 5, 2020, the Board adopted the *Temporary Suspension of Late Fees Notice of Emergency Rulemakin*g, by a vote of seven (7) to zero (0). This rulemaking shall take effect August 5, 2020 and shall remain in effect for no longer than one hundred twenty (120) days from the Board's adoption; expiring on or before December 3, 2020, 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 and 208.21 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.

Chapter 5, LICENSE APPLICATION, 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.