ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF NINTH 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 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 (Conditions of On-Premises Alcohol Sales and Consumption During the Public Emergency) on an emergency basis.

On March 20, 2020, in response to the spread of COVID-19, Mayor Bowser issued Mayor's Order 2020-050, Extensions of Public Health Emergency: COVID-19 (COVID-19) and Mayor's Order 2020-051, Prohibition on Mass Gatherings During Public Health Emergency – COVID-19 (COVID-19). These Orders served 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 Mayor's Order 2020-053, temporarily closing all non-essential businesses in the District, and further prohibiting large gatherings. On April 15, 2020, Mayor Bowser extended the public emergency and public health emergency in the District through May 15, 2020, (Mayor's Order 2020-063), and on May 13, 2020, the Mayor extended the public emergency and public health emergency once again through June 8, 2020 (Mayor's Order 2020-066).

Recognizing that other types of ABC licensed establishments sought to offer alcoholic beverages for carry-out and delivery, 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 the Suspension of On-premises Alcohol Sales and Consumption Notice of Emergency Rulemaking by a vote of six (6) to zero (0). *See* 67 DCR 3588 (March 27, 2020). The Board adopted a second emergency rulemaking on March 25, 2020, by a vote of seven (7) to zero (0), which superseded the emergency rulemaking that the Board had previously adopted.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).

On April 22, 2020, by a vote of seven (7) to zero (0), the Board took further emergency action in response to the Council of the District of Columbia's (Council) expansion of carry-out and delivery authorization to nightclubs. Specifically, the Suspension of On-premise Alcohol Sales and Consumption Notice of Third Emergency Rulemaking, which superseded the previously adopted emergency rulemaking, permitted nightclub licensees to obtain a temporary restaurant endorsement so that they can offer alcoholic beverages for carry-out and delivery with at least one (1) prepared food item. *See* 67 DCR 5600 (May 29, 2020).

After the Board adopted the third emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-067, dated May 27, 2020, implementing Phase One of Washington D.C.'s reopening. Among other things, Mayor's Order 2020-067 partially lifted the restriction prohibiting on-site dining by allowing restaurants, taverns, nightclubs, mixed-use facilities, and other licensed food

establishments to offer table service to seated patrons on outdoor public or private space. The Board interpreted the phrase "mixed-use" facilities to include hotels, multipurpose facilities, private clubs and other class CX and DX licensees, and licensed manufacturers that serve food and satisfy the requirements set forth below. Thus, on May 28, 2020, the Board adopted the Suspension of On-premises Alcohol Sales Notice of Fourth Emergency Rulemaking, by a vote of six (6) to zero (0). This emergency rulemaking superseded the previously adopted emergency rulemaking. *See* 67 DCR 7930 (June 26, 2020).

After adopting the fourth emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-075, dated June 19, 2020, which implemented Phase Two of Washington, D.C.'s reopening. Mayor's Order 2020-075, among other things, allows restaurants, taverns, nightclubs, mixed-use facilities, and other licensed food establishments to: (1) offer on-site dining indoors; (2) limits indoor capacity to no more than fifty percent (50%), excluding staff and outdoor seating; and (3) allow bar seating provided the bar is not being staffed or utilized by a bartender.

In response to the issuance of Mayor's Order 2020-075, the Board adopted the Suspension of On-premises Alcohol Sales and Consumption Notice of Fifth Emergency Rulemaking on June 19, 2020, by a vote of six (6) to zero (0). *See* 67 DCR 9232 (July 31, 2020). The emergency rulemaking, which superseded the emergency rules the Board had previously adopted, amended § 810 by modifying the conditions under which licensees may sell, serve and allow the consumption of beer, wine, or spirits indoors or outdoors during the public emergency.

Since the adoption of the fifth emergency rulemaking, the Council passed the Streatery Program and Pop Up Locations Emergency Amendment Act of 2020 (A23-346; 67 DCR 9387 (August 7, 2020)), which further modified requirements for ABC-licensed establishments seeking to offer alcoholic beverages for on-site sales and consumption and carryout, as well as those licensees who seek to use expanded or new outdoor public or private spaces. Some of those additional requirements in the Act were absent from the Board's fifth emergency rulemaking. Thus, in order to ensure that the District's regulations and the Code were consistent, the Board deemed it necessary to take emergency action. Thus, on August 19, 2020, the Board adopted the Suspension of On-premises Alcohol Sales and Consumption Notice of Sixth Emergency Rulemaking, which superseded the emergency rules the Board had previously adopted. *See* 67 DCR 11139 (September 18, 2020).

After adopting the sixth emergency rulemaking, the ABC Board adopted the Suspension of On-premises Alcohol Sales and Consumption Notice of Seventh Emergency Rulemaking, on September 30, 2020, by a vote of seven (7) to zero (0). *See* 67 DCR 12724 (October 30, 2020). The Board adopted these emergency rules in response to the Council's adoption of the Fiscal Year 2021 Budget Support Emergency Act of 2020 (D.C. Act 23-404, 67 DCR 10098).

After the Board adopted the seventh emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-119, dated November 23, 2020. Amongst other things, Mayor's Order 2020-119 established new restrictions for restaurants and other licensed food establishments where alcoholic beverages are purchased and sold for on-premises consumption. In response to this new Mayor's Order, the Board adopted the Suspension of On-premises Alcohol Sales and Consumption Notice of Eighth

Emergency Rulemaking, by a vote of four (4) to one (1), on November 24, 2020 (*See* 68 DCR 000919 (January 15, 2021).

Since adopting the eighth emergency rulemaking, Mayor Bowser issued Mayor's Order 2020-127, dated December 18, 2020, which, among other things, orders restaurants to cease indoor dining effective Wednesday, December 23, 2020, at 10 p.m. until 5:00 a.m. on Friday, January 15, 2021. The Mayor's Order permits restaurants to continue to offer carryout and delivery services, as well as outdoor dining.

In response to Mayor's Order 2020-127, the Board finds immediate emergency action is necessary in order to ensure that the Board's regulations are consistent with the new COVID-19 restrictions. Consistent with the Mayor's Order, the Board finds emergency action is necessary for the preservation of public health, welfare, and safety. Specifically, amending the Board's regulations on an emergency basis to be consistent with Mayor's Order 2020-127 will serve to further the Mayor's and Board's objective to curb the spread of COVID-19.

Thus, on December 23, 2020, the Board adopts the Suspension of On-premises Alcohol Sales and Consumption Notice of Ninth Emergency Rulemaking, by a vote of six (6) to zero (0). These emergency rules, which shall take effect on Wednesday, December 23, 2020, at 10 p.m., and supersede the Board's previously adopted emergency rulemaking, shall remain in effect until 5:00 a.m. on Friday, January 15, 2021, unless superseded.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by adding a new § 810 to read as follows:

810 CONDITIONS OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DURING THE PUBLIC EMERGENCY

810.1 The sale and service of alcoholic beverages for on-premises consumption indoors shall be prohibited in the District of Columbia effective Wednesday, December 23, 2020, at 10 p.m. until 5:00 a.m. on Friday, January 15, 2021. Notwithstanding the cessation of the sale, service, and consumption of alcoholic beverages for indoor consumption, ABC-licensed establishments are authorized to continue to sell alcoholic beverages for carryout and delivery, as well as for consumption on outdoor sidewalk cafés and summer gardens for the remainder of either or both the Mayor's Public Emergency and Public Health Emergency by authorized licensees, provided that they comply with the requirements set forth in § 810.3.

810.2 The sale, service, and consumption of alcoholic beverages for consumption on a sidewalk café or summer garden, or for carryout and delivery shall be conditionally permitted 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.

810.3 An on-premises retailer license, class C/R, D/R, C/T, D/T, C/N, D/N, C/H, D/H, C/X, or D/X, including a multipurpose facility or private club, a manufacturer license, class A or B, holding an on-site sales and consumption permit, a festival or temporary license holder, and the holder of any other license or permit set forth under Title 25 of the D.C. Official Code, may sell, serve and allow the consumption of beer, wine, or spirits on a Board-approved outdoor sidewalk café or summer garden, including an existing rooftop patio; provided that the licensee shall:

(a) Place outdoor tables on the sidewalk café or summer garden so that separate parties are at least six feet (6 ft.) apart from one another;

(b) Ensure for non-movable communal tables that parties are seated at least six feet (6 ft.) apart from one another and that the communal table is marked with six-foot (6 ft.) divisions, such as with tape or signage;

(c) Ensure that all outdoor dining customers are seated and place orders and are served food or alcoholic beverages at tables that have been cleaned and sanitized between parties;

(d) Prohibit events and activities that would require patrons to be standing or in cluster or be in close contact with one another, including dancing, playing darts, video games including games of skill, bowling, ping pong, pool, throwing axes, or indoor playgrounds;

(e) Prohibit patrons from bringing their own alcoholic beverages;

(f) Prohibit self-service buffets;

(g) Have a menu in use containing a minimum of three (3) prepared food items available for purchase by patrons;

(h) Require the purchase of one (1) or more prepared food items per table;

(i) Ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by the District of Columbia Department of Health (DC Health);

(j) Cease outdoor sales, service, and consumption of alcoholic beverages, excluding carry-out and delivery, at 10:00 p.m., seven (7) days a week, and

cease operations at midnight, seven (7) days a week, in accordance with Mayor's Order 2020-119, dated November 23, 2020;

(k) Not have more than six (6) individuals seated at a table or a joined table outside;

(l) Require patrons to wait outside at least six feet (6 ft.) apart until they are ready to be seated or make an on-site reservation;

(m) Not provide live music or entertainment on the licensed premises without first obtaining a waiver from the District of Columbia Homeland Security and Emergency Management Agency;

(n) Be allowed to play background or recorded music at a conversational level that is not heard in the homes of District residents;

(o) Not serve alcoholic beverages or food to standing patrons;

(p) Prohibit standing at outdoor bars and only permit seating at outdoor bars that are not being staffed or utilized by a bartender;

(q) Require a minimum of six feet (6 ft.) between parties seated at outdoor bars, rail seats, or communal tables;

(r) Abide by the terms of their public space permit with regard to the allowable placement of alcohol advertising, if any, in outdoor public space;

(s) Provide and require that wait staff wear masks;

(t) Require that patrons wear masks or face coverings when waiting in line outside of the establishment and while traveling to use the restroom and until they are seated and eating or drinking;

(u) Implement a reservation system by phone, on-line, or on-site and consider keeping customer logs to facilitate contact tracing by DC Health;

(v) Implement sanitization and disinfection protocols including the provision of single use condiment packages;

(w) Be permitted to utilize an additional location registered for alcohol carry-out and delivery. The use of outdoor space adjacent to or near the additional location shall be required to be registered pursuant to D.C. Official Code § 25-113(a)(6) in order to be utilized for outdoor dining;

(x) Have its own clearly delineated outdoor space and not share tables and chairs with another business;

(y) Have no more than two (2) side flaps or walls and a roof on outdoor dining structures, tents, or canopies that are intended to seat more than one (1) party. Enclosed outdoor structures that are intended for one (1) party of six (6) guests or fewer, including single party igloos or plastic domes, shall also be permitted; and

(z) Not operate a sidewalk café during a snow emergency.

810.4 A manufacturer's license, class A or B, with an on-site sales and consumption permit, a retailer's license class C/T, D/T, C/N, D/N, C/X, or D/X, a festival or temporary license holder, and the holder of any other license or permit set forth under Title 25 of the D.C. Official Code, may partner with a food vendor during its operating hours to satisfy the use of a menu containing a minimum of three (3) prepared food items available to patrons requirement set forth in § 810.3(g), provided, that patrons are seated when ordering and ordered food is delivered by the licensee to the seated patron.

810.5 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.

810.6 Board approval shall not be required for registration; however, a restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs, shall receive written authorization from ABRA prior to beginning carry-out or delivery of beer, wine or spirits.

810.7 A registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs, may sell beer, wine or spirits for carry-out and delivery only between the hours of 6:00 a.m. and midnight, seven (7) days a week.

810.8 Except as provided in § 810.3, a registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs, shall not permit the consumption of beer, wine or spirits on the licensed premises.

810.9 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.

810.10 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.

810.11 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.

810.12 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.

810.13 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.