

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

NOTICE OF FIFTH EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage and Cannabis Board (“Board”), pursuant to the authority set forth in D.C. Official Code § 25-351(a), and in accordance with section 6(c) of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), hereby gives notice of the adoption, on an emergency and proposed basis, of amendments to section 304 (Adams Morgan Moratorium Zone) of chapter 3 (Limitations on Licenses) of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations. Specifically, this fifth emergency and proposed rulemaking increases the cap on the number of permitted Retailer Class CT or DT (tavern) licenses to sixteen (16), maintains the moratorium on Retailer Class CN or DN (nightclub) licenses and renews the Adams Morgan Moratorium Zone (“AMMZ”) for three (3) years.

I. PROCEDURAL BACKGROUND

The moratorium was scheduled to expire on February 6, 2023. On January 7, 2023, the Board received a resolution from Advisory Neighborhood Commission (ANC) 1C requesting a ninety (90) day extension of the expiring moratorium to inform and consult with the residents of Adams Morgan regarding the future of the moratorium. The resolution was adopted by ANC 1C at a duly noticed public meeting held on January 4, 2023, by a vote of seven (7) to zero (0).

On February 1, 2023, the Board adopted the AMMZ Notice of Emergency Rulemaking, to extend the moratorium until June 1, 2023, by a vote of six (6) to zero (0), and it became effective on that date. The emergency rules were published in the *D.C. Register* on March 24, 2023, at 70 DCR 3590.

On May 4, 2023, ANC 1C submitted a resolution requesting that the Board renew the moratorium on Retailer Class CN or DN (Nightclub) licenses, but increase the number of permitted Retailer Class CT or DT (Tavern) licenses to twenty-five (25) to be phased in with no more than four (4) additional Class CT or DT Retailer licenses available per year. The resolution was adopted by ANC 1C at a duly noticed public meeting held on May 3, 2023, by a vote of eight (8) to zero (0).

On May 24, 2023, the Board adopted the Adams Morgan Moratorium Zone Notice of Second Emergency Rulemaking, to further extend the moratorium until September 21, 2023, by a vote of five (5) to zero (0). The Board determined emergency action was necessary to extend the AMMZ. The Board concluded that the appropriateness considerations that justified the prior moratorium, pursuant to D.C. Official Code § 25-351(a), likewise indicate that a temporary extension is in the public interest. The additional time granted under the emergency rules allowed the Board to hold a hearing and take public comment on the ANC 1C resolution.

On August 16, 2023, the Board adopted the Adams Morgan Moratorium Zone Notice of Third Emergency and Proposed Rulemaking to further extend the moratorium by a vote of four (4) to

zero (0). The rulemaking (a) renewed the Adams Morgan Moratorium for three (3) years; (b) increased the cap on the number of CT, DT, CX, and DX retailer licenses; and (c) maintained all other restrictions in the existing moratorium. The emergency rulemaking superseded the emergency rules that the Board adopted on May 24, 2023, and expired on December 14, 2023.

On December 13, 2023, the Board adopted the Adams Morgan Moratorium Zone Notice of Fourth Emergency and Proposed Rulemaking to further extend the moratorium by a vote of three (3) to zero (0). The rulemaking (a) renewed the Adams Morgan Moratorium for three (3) years; (b) increased the cap on the number of CT, DT, CX, and DX retailer licenses; and (c) maintained all other restrictions in the existing moratorium. The emergency rulemaking superseded the emergency rules that the Board adopted on December 14, 2023.

II. PUBLIC HEARING AND TESTIMONY

On July 13, 2023, the Board held a hearing to receive public comment. Notice of the hearing was published to the *D.C. Register* on May 19, 2023, at 70 DCR 7089. At the hearing, representatives from ANC 1C, the Adams Morgan Partnership Business Improvement District (BID), the Kalorama Citizens Association (KCA), as well as several members of the public testified before the Board. Prior to the hearing and until the record closed, the Board also received numerous written comments from members of the public.

The Board has reviewed and considered the comments and testimony received in this matter. A summary of those comments and testimony follows:

Advisory Neighborhood Commission (ANC) 1C

Peter Wood, Commissioner of ANC 1C03 and Chair of the ANC, presented testimony at the public hearing and filed written testimony. His testimony represented the full Commission's unanimous vote taken at the ANC 1C meeting on July 5, 2023. He testified that Adams Morgan has been subject to a moratorium in one form or another since 2000. He noted that in 2014, the moratorium was modified to remove the cap on Retailer Class CR and DR (Restaurant) licenses. He emphasized that the ANC's goal is and has been to find a livable compromise between commercial and residential interests.

Chair Wood described the Adams Morgan neighborhood as one that suffers from real estate vacancies and high business turnover rates. Notwithstanding the progress that has been made over the years, the ANC believes that an opportunity exists to continue directing Adams Morgan toward an even more robust future. The ANC has proposed modifying the moratorium to increase the number of tavern licenses in Adams Morgan to a total cap of twenty-five (25) licenses with no more than four (4) licenses issued per year until the cap is met.

Chair Wood stated that the ANC held ten (10) different public meetings with the community as well as discussing the moratorium at its Alcohol Beverage Control and Public Safety Committee. The ANC examined three (3) key concerns: 1) retail diversity – what is the ideal mix of business types in the neighborhood; 2) ridding bad actors to ensure good operators benefit; and 3) the quality

of life for area residents. The quality-of-life issues examined by the ANC included vacant storefronts, business turnover, traffic patterns, parking constraints, noise pollution, waste management and rodent mitigation, and pedestrian safety.

Chair Wood noted that the ANC resolution drew three (3) conclusions: 1) the moratorium zone has had a detrimental effect on the neighborhood; 2) there was a strong need to pursue a diverse mix of businesses because not all vendors are the same, and 3) that other areas in the District of Columbia have demonstrated that moratorium zones are not as desirable or effective as once believed.

Chair Wood explained that the resolution proposes an increase of tavern licenses to twenty-five (25), with no more than four (4) new tavern licenses issued in a year. This limited opening of new taverns is intentional so that twenty-five (25) new tavern licenses don't enter the marketplace all at once. Commissioner Wood stated that the ANC's position represents a middle ground where some constituents wanted the cap on taverns lifted entirely, and others wanted to maintain the existing moratorium, limiting the cap to ten (10) tavern licenses.

Chair Wood strongly supports enforcement measures and believes that ABCA, along with support from other agencies, will hold licensees accountable. He stated that the resolution makes no changes to current policy on nightclubs (0) and restaurants (unlimited). Commissioner Wood indicated that there were two (2) aspects of the moratorium for which the ANC did not take a position: the geographical boundaries of the moratorium zone and the length of the moratorium renewal.

In sum, Chair Wood believes that twenty-three (23) years is sufficient time to assess the effectiveness of the moratorium and that now is the appropriate moment to diversify the neighborhood even more. He believes that the Board can offer enough flexibility, without sacrificing the quality of life residents deserve, to better pursue this growth.

Adams Morgan Partnership Business Improvement District (BID)

Kristen Barden is the Executive Director of the BID. She testified in support of the ANC resolution to increase the number of tavern licenses in Adams Morgan. The BID's preference, however, is that the Board eliminate the moratorium altogether with the exception of retaining the prohibition on nightclubs.

Ms. Barden stated that the Adams Morgan Partnership BID, like other BIDs in D.C., is funded mostly through a special assessment tax on the commercial properties in Adams Morgan. She indicated that the special assessment tax is based on the commercial value of the building and not based on occupancy or tenancy. The assessed value of the commercial properties is set by the Office of Tax and Revenue.

Ms. Barden noted that the BID is a nonprofit organization focused on enhancing the quality of life for businesses, commercial property owners, residents, visitors and employees in one of the

District's most vibrant and eclectic neighborhoods. The BID provides daily street cleaning, fun neighborhood events, creative marketing, and economic development initiatives.

Ms. Barden testified that the BID's Board of Directors passed a resolution on November 8, 2022, requesting that ABCA vacate the moratorium zone except for the restriction on nightclubs. She believes that the resolution will have a positive impact on the neighborhood and will contribute to the continued growth and vitality of Adams Morgan. She further believes that the resolution adopted by the ANC, while retaining some form of a cap on tavern licenses, is a step in the right direction, but that it does not go far enough.

She referenced a D.C. Fiscal Policy Institute report that found the moratorium zone actually limited economic development in the neighborhood. The report revealed four (4) key points: 1) that the Adams Morgan commercial area is growing more slowly than other non-moratorium parts of the city; 2) that Adams Morgan faces stagnation and system vacancies; 3) that the moratorium has not resulted in the expansion of non-restaurant retail; and 4) that it makes it harder for ABC licensed establishments to enter into the marketplace. Moreover, the report found that the moratorium has had no direct effect on improving peace, order and quiet.

Ms. Barden stated that another report found that the appropriate approach to address peace, order and quiet is to target problem establishments regardless of their license class. She noted that this is a much more productive approach than adopting a blanket moratorium singling out certain license classes. Ms. Barden contends that the ABCA Board has plenty of mechanisms through the use of settlement agreements and enforcement regulations to hold licensees accountable.

Ms. Barden further testified that other moratoriums in the District such as Dupont Circle, Georgetown and Glover Park have been modified or allowed to expire. She also noted that efforts to establish moratoriums in the Trinidad and 14th and U Streets neighborhoods were not successful.

Ms. Barden pointed out that because of the moratorium on new tavern licenses, acquiring a tavern license can be very expensive. She stated that as a result, most small business owners cannot afford to purchase an existing tavern license even if one were to become available. She further noted that many of the available commercial properties in Adams Morgan are converted townhouses that have small spaces and no kitchens. This precludes the opening of a restaurant because restaurants are required by law to sell food. She noted that having limitations on what the marketplace can invite is detrimental to long term growth of the neighborhood.

Ms. Barden stated that Adams Morgan has long been known as a vibrant and diverse neighborhood, attracting residents and visitors with its rich heritage, thriving local businesses, and a lively entertainment scene. She contends that the existing moratorium on tavern licenses has created unintended consequences that hinder the neighborhood's ability to adapt to changing needs and demands. Increasing the number of tavern licenses will help to create a more inclusive and diverse social landscape that caters to a broader range of interests and preferences. Ms. Barden testified that allowing more tavern licenses will also foster an environment that encourages entrepreneurship, innovation, and healthy competition – all of which are essential for a thriving local economy and more sales taxes for the D.C. government.

Ms. Barden closed her testimony by stating that the BID has full confidence that the increase in tavern licenses, coupled with effective regulation and oversight by ABCA, will not only preserve the unique character of Adams Morgan, but it will also enhance the appeal to entrepreneurs, residents and visitors. She believes that allowing the moratorium to expire with the exception of the prohibition on nightclubs, will foster a dynamic and inclusive community that embraces growth, encourages entrepreneurship and provides residents and visitors with a diverse array of social and cultural experiences.

Kalorama Citizens Association (KCA)

Denis James is the President of the KCA, a 501(c)(3) citizens association, incorporated under the laws of the District of Columbia. The KCA and its 171 residential members filed a petition requesting the Board renew the existing moratorium with only one (1) modification – extending the term of the moratorium to five (5) years rather than three (3). Many of the KCA members who signed the petition are long-term residents who live on the blocks closest to 18th Street N.W. and Columbia Road N.W. Mr. James' written testimony indicates that most of the ABC licensed establishments are located on these two streets.

The KCA's objection to increasing the number of tavern licenses is based on the appropriateness standards, in particular, peace, order and quiet, residential parking needs, vehicular and pedestrian safety. The KCA also believes that there is currently an overconcentration of licensed establishments within the Adams Morgan neighborhood. He stated that adding fifteen (15) additional tavern licenses as proposed by the ANC would put too much pressure on the community and the neighborhood.

Mr. James argued that two (2) of the appropriateness standards, peace, order and quiet, as well as trash and litter, are regularly abused by the licensed establishments and their patrons. He described that practically every night, residential neighbors are disturbed by loud and rowdy patrons who routinely shout and sing boisterously when returning to their parked cars. Mr. James further described that loud noise also emits from off-road vehicles, motorcycles, and people driving vehicles equipped with loud sound systems.

With regard to trash and litter, Mr. James stated that existing licensed establishments often have overflowing dumpsters and recycling bins. He noted that rats are rampant and now people are visiting alley dumpsters late at night with terriers to hunt and kill the rats as some sort of sporting event.

Mr. James pointed out that in the post-COVID era, a number of new restaurants have opened in Adams Morgan. The KCA would like the restaurant trend to continue rather than have new taverns opening in their stead. He stated that there are already sixteen (16) taverns in Adams Morgan and a few of them are bad operators. Mr. James testified that the KCA attempts to enter into constructive settlement agreements with every on-premise licensee. Aside from the use of settlement agreements, the KCA believes that the only remaining protection for the neighborhood is the moratorium.

The KCA is also concerned that if additional tavern licenses are made available, existing restaurants would simply convert their Retailer Class CR (Restaurant) licenses to Retailer Class CT (Tavern) licenses. He is also concerned about restaurants that operate like nightclubs because they have entertainment endorsements, cover charges, and offer music and dancing.

Further concerns raised by Mr. James include the unsightly streateries that serve to negatively affect sight lines for vehicles and pedestrians, as well as the uptick in crime, violence and robberies. The KCA submitted supplemental information that represented MPD's Calls for Service in the Adams Morgan neighborhood to support their position.

Leslie Delagran

Ms. Delagran testified at the hearing and she also submitted written testimony. She currently resides on the 1800 block of Wyoming Avenue N.W. and has been a resident of Adams Morgan for over thirty (30) years. She remembers the nightlife activities prior to the existence of the moratorium and described it as broken bottles and wild parties. She believes the moratorium has benefitted the community, though she thinks there are still too many taverns. She countered that the D.C. Fiscal Policy Institute report relied upon by the ANC was over ten (10) years old and the data was flawed because it did not consider the growth in restaurants.

Ms. Delagran believes that changing the existing moratorium to increase the number of tavern licenses will have a detrimental effect on the neighborhood. She commented that because of the current density of taverns, residents already have an excess of late-night noise from revelers and their vehicles. Furthermore, she noted that on weekend mornings the neighborhood has to clean up litter and fast food remnants from the sidewalks. However, her greatest concern is that the concentration of taverns creates an atmosphere that attracts illegal activity. The disturbances and in particular the shootings outside a tavern on 18th street last year highlighted for her the increasing threat to personal safety in the neighborhood.

Ms. Delagran further stated that trash and rodents are a concern, and she doesn't believe the community should be responsible for cleaning up the licensees' mess. She is also concerned that if more taverns are permitted, it would discourage the ability to attract daytime retail such as bakeries. She believes that area residents want daytime dining, as well as bakeries and hardware stores. She requested that the Board support the existing moratorium for another five (5) years.

Ted Guthrie

Ted Guthrie is a former ANC Commissioner who has participated in several renewals of the Adams Morgan moratorium over the years. He believes the moratorium has been successful and should be maintained with no changes, with the exception of increasing it from three (3) years to five (5).

Mr. Guthrie believes tavern licensees have very little responsibility toward the community because they do not provide the services that are desired by the area residents. Instead, he notes that taverns

provide large quantities of alcohol without providing food. He believes this puts patrons in a situation where they become inebriated and commit antisocial acts that are detrimental to the residents who live in the neighborhood, such as disturbing the peace and quiet.

He also stated that other neighborhoods in the District that do not have moratoriums also have empty storefronts. Although the economy and the neighborhood may be struggling, the answer according to Mr. Guthrie, is not to add additional taverns to the neighborhood.

Jean Stewart

Ms. Stewart testified at the hearing and she also filed written comments. In her testimony, she indicated that she has been a resident of Adams Morgan for over fifty-three (53) years. She is a member of the Executive Committee of the KCA. She is opposed to the ANC proposal and supports renewing the existing moratorium for another five (5) years. She noted that although the current regulations cap tavern licenses at ten (10), there are actually sixteen (16) tavern licenses in Adams Morgan. She testified that expanding the number of tavern licenses to twenty-five (25) is totally unnecessary because there are more than enough drinking establishments now. She stated that taverns are nothing more than bars with no requirement to serve food.

Ms. Stewart also believes that there is currently an overconcentration of taverns now which results in disturbances of peace, order and quiet, spoiling the quality of life for area residents. Additionally, she argued that more taverns would lead to more traffic which affects pedestrian safety and limits residential parking.

Ms. Stewart contends that what Adams Morgan needs in terms of additional commercial spaces are more small businesses serving the daily needs of residents such as groceries, a drycleaner, pharmacies, coffee shops and cafes, and bakeries. Her written comments reflected her hearing testimony, and she closed by saying that she encouraged the Board to retain the existing moratorium and extend it for another five (5) years.

Larry Hargrove

Mr. Hargrove filed written testimony requesting the Board to renew the existing moratorium without embellishment for another five (5) years. He objects to the ANC's resolution to increase the number of tavern licenses. He believes that increasing the number of licenses will likely lead to an increase in disruptions of peace order and quiet, diminishment of the prospect of greater commercial diversity, and an exacerbation of an existing over-concentration of ABC licenses, among other considerations.

Mr. Hargrove's perspective comes from having lived in Adams Morgan since before the original moratorium was put in place in 2000. He commented that the residents sought a moratorium because it was necessary to restore and maintain a healthy balance in the neighborhood among: (1) ABC establishments with a predominantly non-resident weekend clientele, (2) principally neighborhood-serving businesses, including restaurants, and (3) the interests of residents who

live in the Adams Morgan neighborhood. He believes that those widely shared imperatives remain unchanged.

Mark McConnell

Mr. McConnell submitted written testimony in support of maintaining the existing moratorium. He has been a resident of Adams Morgan for thirty (30) years. He recalls the conditions of the neighborhood before the moratorium zone was established. He indicated that the neighborhood still suffers from too many taverns which he believes brings noise congestion and crime into the neighborhood. He contends that ending the moratorium would only make conditions in Adams Morgan worse.

Mr. McConnell further noted that the ANC resolution was highly controversial, and he believes it does not represent a neighborhood consensus. His concern is that the proponents of adding more tavern licenses never produced a coherent statement as to how lifting the moratorium on taverns would improve life in the Adams Morgan neighborhood.

Rolando Frias

Mr. Frias is the owner of three (3) ABC licensed restaurants in Adams Morgan. Those establishments are Al Volo, Taqueria Al Lado, and Retrobottagia. He also owns a small bakery and coffee shop in the neighborhood, Soleluna. As a result of his business ownership, he is heavily invested and involved in the Adams Morgan community.

He opposes the recommendation that the number of tavern licenses increase to twenty-five (25) as proposed by the ANC. He believes that adding alcohol-only bars to the neighborhood that already has sixteen (16) such licenses would reverse the progress the community has made to ensure that Adams Morgan is safe and desirable. He noted that the global pandemic slowed the progress but dining customers are finally returning to Adams Morgan. He requests that the Board continue the current conditions for another five (5) years.

Comments from Various Adams Morgan Residents

The Board received over fifty (50) emailed comments from residents within the Adams Morgan community. Every commenter supported keeping the current moratorium in place and asked the Board to renew it for five (5) years. All expressed collective concerns about the adverse impact alcohol establishments have had on the community, especially as it relates to noise, traffic, litter, and violence.

Specifically, some residents remain concerned about the disruption to peace, order and quiet in their neighborhood and believe that allowing more tavern licenses will only exacerbate the problem. In addition to the concern regarding an increase in crime; several residents cited property damage, and overflowing dumpsters or improperly stored garbage as consequences of more taverns. Another frequent complaint was the lack of parking for those who reside in Adams Morgan due to the presence of the streateries.

Additionally, some residents argued that new ABC licensees will occupy available commercial real estate; thereby, limiting the introduction of other types of businesses that would better serve the neighborhood, such as bakeries and hardware stores. Lastly, a number of residents testified that the moratorium must remain in effect because Adams Morgan has reached critical mass with regard to licensed establishments.

III. DECISION OF THE BOARD

The Board considered the oral and written testimony, resolutions and exhibits filed by ANC 1C, the BID, the KCA and other witnesses and residents. The Board was not persuaded that it was in the public interest to increase the cap on tavern licenses to twenty-five (25) over the next four (4) years. The Board found that an increase of this size was not supported by the testimony. The Board did however, believe that an increase in the cap on tavern licenses to sixteen (16) was warranted given that there are currently sixteen (16) tavern licensees licensed to operate in Adams Morgan.

The Board determined that the increase in the cap on tavern licenses to sixteen (16) will also make it easier for a business to obtain a tavern license without increasing the total number of tavern licenses operating in Adams Morgan. In other words, under the current moratorium regulations, because the number of tavern licenses exceeds the cap by five (5), six (6) licenses would have to be cancelled or revoked before one (1) tavern license would be available. However, under these emergency and proposed rules one (1) new tavern license will become available in the Adams Morgan Moratorium Zone when one (1) of the existing tavern licenses is cancelled or revoked, as long as the total number of tavern licenses remains capped at sixteen (16).

The Board was also not convinced that the moratorium should be renewed for five (5) years given the significant difference in recommendations that the Board received regarding the moratorium from the Adams Morgan community. Rather, the Board believes that a three (3) year renewal is more appropriate, which will allow the Board to monitor the effectiveness of extending the moratorium, while still providing the necessary safeguards for the neighborhood and its residents.

The Board's decision and its reasoning is more fully described below.

The Board determined that ANC 1C's proposal to continue the moratorium while allowing for a modification to the cap of ten (10) tavern licenses constitutes a reasonable, measured, and appropriate solution for the Adams Morgan neighborhood. In reaching its decision, the Board gave great weight to the written recommendations of ANC 1C as required by section 13(d)(3) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)), and D.C. Official Code § 25-609.

Pursuant to D.C. Official Code § 25-351, the Board determined that it was in the public interest to renew the moratorium with certain modifications, and in doing so, the Board based its decision upon the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314. In reviewing a moratorium request, the Board must "consider the extent to which the testimony and comments show that the requested moratorium is appropriate under at least 2 of the

appropriateness standards set forth in subchapter II of this chapter.” D.C. Official Code § 25-354(d); *see also* D.C. Official Code § 25-351(a).

The relevant appropriateness standards listed in subchapter II include: (1) “[t]he effect of the establishment[s] on real property values”; (2) “[t]he effect of the establishment[s] on peace, order, and quiet, including the noise and litter provisions set forth in [D.C. Official Code] §§ 25-725 and 25-726; (3) “[t]he effect of the establishment[s] upon residential parking needs and vehicular and pedestrian safety”; (4) “[t]he proximity of the establishment[s] to schools, recreation centers, day care centers, public libraries, or other similar facilities”; (5) “[t]he effect of the establishment[s] on the operation and clientele of schools, recreation centers, day care centers, public libraries, or other similar facilities”; (6) “[w]hether school-age children using facilities in proximity to the establishment[s] will be unduly attracted to the establishment while present at, or going to or from, the school, recreation center, day care center, public library, or similar facility at issue”; and (7) “[w]hether issuance of [additional] licenses would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment[s] [are] located.” D.C. Official Code §§ 25-313(b)(1)-(3), 25-314(a)(1)-(4).

The Board takes administrative notice that its official ABCA licensing records indicate that there are currently sixteen (16) Retailer Class CT (Tavern) licenses within the Adams Morgan moratorium zone. Denis James, on behalf of the KCA, as well as many of its members also testified that there are sixteen (16) Retailer Class CT (Tavern) licenses.

The testimony presented at the hearing, as well as written comments submitted by area residents, revealed that problems still exist in Adams Morgan regarding peace, order, and quiet, justifying the need for the renewal of the moratorium zone. However, the Board concluded that a modified moratorium is in the public interest as determined by the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314. Specifically, while there are many licensed establishments in the Adams Morgan neighborhood, the Board does not find that increasing the cap on the number of licensed taverns to reflect the current number of operating tavern licenses in the Adams Morgan Moratorium Zone will contribute to an overconcentration of licensed establishments.

Additionally, the Board finds that the renewal of the moratorium is warranted because of the accumulative impact of rowdy late-night behavior by licensed establishments and their patrons. The density of alcohol-licensed establishments in a small area presents numerous quality of life concerns for the community according to opponents of increasing the tavern cap, including litter, rat infestation, noise, traffic, crime, and violence. While the Board did not tie all crime or even the use of loud vehicles to the operations of licensed establishments, the Board did recognize that alcohol consumption may lead to some disturbances.

The Board further found that the moratorium was needed to address residential parking needs and vehicular and pedestrian safety. Testimony from residents indicated that one of the more significant problems resulting from Adams Morgan as a nightlife destination is the shortage of residential parking because demand outstrips supply. The problem is further compounded by the placement of streateries that run curbside adjacent to the licensed establishments. Thus, the Board

finds that the continuation of the moratorium helps the neighborhood by not exacerbating problems with residential parking availability and vehicular and pedestrian safety that would result from significantly increasing the number of operating taverns in the Adams Morgan Moratorium Zone.

The Board agrees with certain provisions of ANC 1C's proposal. Specifically, the Board agrees to: (1) renew a modified moratorium; (2) increase the cap on Retailer Class CT/DT and CX/DX licenses; (3) retain the prohibition on Retailer Class CN/DN licenses; (4) retain the current exemptions for Retailer Class CH/DH licenses; (5) retain the existing language pertaining to the transfer of ownership; (6) retain the prohibition on the transfer of Retailer Class CT/DT, CX/DX or CN/DN from outside of the moratorium zone to inside of the moratorium zone; and (7) retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

One proposal that the Board did not agree with was the request from the KCA and its membership to renew the moratorium for five (5) years. Rather than a five (5) year renewal period, the Board will instead approve the renewal of the modified moratorium for three (3) years. This shorter renewal period will allow the Board, the ANC, and the community to assess the effectiveness of the proposed changes. Additionally, a shorter timeframe allows the community the greatest degree of flexibility to adapt and adjust the moratorium to respond to the changing needs of the Adams Morgan neighborhood. The Board too, will have an opportunity to reevaluate the effectiveness of renewing the moratorium, and to explore solutions that will balance, not inhibit, the neighborhood's ability to pursue economic opportunities.

The Board understands that Adams Morgan is a unique neighborhood. As such, the Board will give great scrutiny to any request that profoundly changes the nature and character of the neighborhood. To that end, the Board recognizes that enforcement and compliance efforts both safeguard and enhance neighborhoods. The Board's civil penalty structure gives greater discretion to the Board and to ABCA investigators to issue warnings and fines for a broad range of offenses; thus, ensuring that their response to violations is immediate and predictable.

The Board appreciates the balance that must be struck between the interests of the residents in the neighborhood and the interests that promote a vibrant and healthy economy. The Board recognizes that a diverse, dynamic and safe dining and entertainment environment is part of the fabric of the District, and yet, nightlife activity needs to be carefully managed in order to reduce noise, public disturbance, and other problems that the statutory appropriateness standards safeguard against.

The Board applauds the ANC's outreach and educational efforts that brought licensees, residents and representatives from the BID to share their perspectives on ways to transform the Adams Morgan's neighborhood and improve urban vibrancy. Like the ANC, the Board believes that if managed properly, a thriving and safe nightlife can act as an economic engine by attracting new businesses and restaurants, diversifying the range of cultural offerings, creating employment opportunities, and increasing tourism. To this end, the Board is in agreement with the ANC that a new direction for the Adams Morgan moratorium is warranted. The increase in the tavern cap from ten (10) to sixteen (16) represents a policy change by allowing any cancelled or revoked tavern retailer licenses to be replaced with a new tavern retailer license. In contrast, the policy of the previous moratorium was to not allow any new tavern licenses to be issued in the Adams

Morgan moratorium until the number of existing taverns in the moratorium zone was fewer than ten (10).

The statements set forth above reflect the written reasons for the Board’s decision as required by 23 DCMR § 303.1. Thus, the Board approved the Adams Morgan Moratorium Zone Notice of Fifth Emergency and Proposed Rulemaking, by a three (3) to zero (0) vote on April 11, 2024. The rulemaking (a) renews the Adams Morgan Moratorium for three (3) years; (b) increases the cap on the number of CT, DT, CX, and DX retailer licenses to sixteen (16); and (c) maintains all other restrictions in the existing moratorium.

Further, the Board gives notice of its intent to take final rulemaking action in not less than thirty (30) days after publication of this notice in the *D.C. Register*. In accordance with D.C. Official Code § 25-211(b), these proposed rules will be transmitted to the Council for the District of Columbia (Council) for a ninety (90)-day period of review. The Board will not adopt the rules as final prior to the expiration of the ninety (90)-day review period, unless approved by Council resolution.

The emergency rules shall remain in effect for one hundred twenty (120) days, expiring on August 9, 2024, unless superseded by an emergency or final rulemaking. The emergency action is necessary for the preservation of the health, safety and welfare of District residents in order to keep the AMMZ in place until the Board can adopt final rules regarding its renewal.

Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended to read as follows:

304 ADAMS MORGAN MORATORIUM ZONE

304.1 No new Retailer’s License Class CN, CT, CX, DN, DT, or DX shall be issued for a period of three (3) years from the effective date of final rules, in the area that extends approximately eighteen hundred (1800) feet in all directions from 2459 18th St., N.W., Washington, D.C. 20009. This area shall be known as the Adams Morgan Moratorium Zone.

304.2 The Adams Morgan Moratorium Zone is defined as the area bound by a line beginning at 18th Street and Vernon Street, NW, and proceeding on both sides of all streets unless otherwise noted; west on Vernon Street, NW to 19th Street, NW; northwest on 19th Street, NW to Wyoming Avenue, NW; southwest on Wyoming Avenue, NW to 20th Street, NW; northwest on 20th Street, NW to Belmont Road, NW; west on Belmont Road, NW to Waterside Drive, NW; north on Waterside Drive, NW to Allen Place, NW; east on Allen Place, NW to 20th Street, NW; north on 20th Street, NW to Biltmore Street, NW; north on Biltmore Street, NW to Calvert Street, NW; east on Calvert Street, NW to Lanier Place, NW; northeast on Lanier Place, NW to Adams Mill Road, NW; northwest on Adams Mill Road, NW and then northeast to Ontario Road, NW; east on Ontario Road, NW to Lanier Place,

NW; northeast on Lanier Place, NW to Quarry Road, NW; southeast on Quarry Road, NW to Columbia Road, NW; northeast on Columbia Road, NW to Mozart Place, NW; south on Mozart Place, NW to Euclid Street, NW; east on Euclid Street, NW to 16th Street, NW; south on the west side of 16th Street to Florida Avenue; southwest on Florida Avenue to U Street, and west on U Street, NW to 18th Street, NW, Washington, D.C.

- 304.3 The following license classes shall be exempt from the Adams Morgan Moratorium Zone:
- (a) All restaurants, whether present or future;
 - (b) All hotels, whether present or future; and
 - (c) Retailer's licenses Class A and B.
- 304.4 The number of Retailer's licenses Class CT, CX, DT, or DX located within the Adams Morgan Moratorium Zone shall not exceed sixteen (16). The number of Retailer's licenses Class CN or DN shall not exceed zero (0). The holder of a Retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone shall be prohibited from changing its license class except when the number of Retailer's licenses Class CT, CX, DT, or DX in the Adams Morgan Moratorium Zone is fewer than sixteen (16).
- 304.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class CR, CT, CX, DR, DT, and DX within the Adams Morgan Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.
- 304.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Adams Morgan Moratorium Zone to a new location within the Adams Morgan Moratorium Zone.
- 304.7 A license holder outside the Adams Morgan Moratorium Zone shall not be permitted to transfer its license to a location within the Adams Morgan Moratorium Zone, unless exempt by § 304.3.
- 304.8 Nothing in this section shall prohibit a valid protest of any transfer of a license or change of a license class.
- 304.9 The limitations imposed by this section shall not apply to any license granted prior to the effective date of this section.

304.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in the District of Columbia Register.

Copies of the proposed rulemaking can be obtained from by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Cannabis Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions and comments concerning the rulemaking should contact Martha Jenkins at (202) 442-4456 or via e-mail at martha.jenkins@dc.gov. Comments should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.