

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF FINAL 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 (2012 Repl. & 2019 Supp.)), and D.C. Official Code §§ 25-351, *et seq.* (2012 Repl.), as amended, hereby gives notice of the adoption 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 (DCMR).

Specifically, the final rulemaking would: (1) continue the moratorium on on-premises retailer's licenses, classes CN, DN, CT, DT, CX, and DX, issued in a portion of Adams Morgan; (2) cap the total number of tavern and multipurpose facility licenses in this area at ten (10); (3) extend the moratorium zone to cover eighteen hundred feet (1,800 ft.) in all directions from 2459 18th St., N.W., Washington, D.C. 20009; and (4) keep the moratorium in place for three (3) years.

I. PROCEDURAL BACKGROUND

The Adams Morgan Moratorium Zone (AMMZ), promulgated at 23 DCMR § 304, was scheduled to expire on August 27, 2018. On August 15, 2018, the Board adopted emergency rules to prevent the moratorium from expiring and to give it the opportunity to hold a public hearing concerning the future of the AMMZ. *See* Adams Morgan Moratorium Zone Notice of Emergency Rulemaking, at 65 DCR 11521 (October 12, 2018)[EXPIRED].

On October 3, 2018, the Board held a public hearing for purposes of hearing from the public about the future of the Adams Morgan Moratorium. The following entities testified at the hearing: (a) the Adams Morgan Partnership Business Improvement District; (b) Advisory Neighborhood Commission 1C; (c) the Kalorama Citizens Association; and (d) the Reed-Cooke Neighborhood Association. Several residents also submitted oral or written comments to the Board. *See* the Adams Morgan Moratorium Zone Notice of Emergency and Proposed Rulemaking, at 66 DCR 3502 (March 22, 2019)[EXPIRED], for a complete summary of all the comments received.

After duly considering the public's comments, the Board voted six (6) to zero (0), on November 28, 2018, to adopt the Adams Morgan Moratorium Zone Notice of Emergency and Proposed Rulemaking. *Id.* In reaching its decision, the Board was persuaded by the public's comments concerning the adverse impact that ABC-licensed establishments in Adams Morgan have on the peace, order, and quiet in the Adams Morgan community, particularly as it relates to noise. The Board also noted the impact ABC-licensed establishments have on the residential parking needs of the community, traffic congestion, and pedestrian safety. *Id.*

The emergency and proposed rulemaking was published in the *D.C. Register* for public comment on March 22, 2019, at 66 DCR 3502. The Board did not receive any comments from the public during this time. Having not received any comments to the emergency and proposed rulemaking, the Board voted six (6) to zero (0) on April 24, 2019, to send the rulemaking to the Council for the

District of Columbia (Council) for the mandatory ninety (90)-day Council Review Period. The rulemaking was introduced to the Council on July 9, 2019, and assigned proposed resolution number, PR23-0442. See <http://lims.dccouncil.us/Legislation/PR23-0442>.

Prior to sending the emergency and proposed rulemaking to the Council, the Board adopted a second emergency rulemaking. The Board took this course of action in order to prevent the emergency rules from expiring while the Council reviews the proposed rules. See Adams Morgan Moratorium Zone Notice of Second Emergency Rulemaking, at 66 DCR 6208 (May 17, 2019) [EXPIRED]. The Board adopted two subsequent emergency rules during the pendency of the Council review period. See Adams Morgan Moratorium Zone Notice of Third Emergency Rulemaking, at 66 DCR 14499 (August 23, 2019)[EXPIRED]; and Adams Morgan Moratorium Zone Notice of Fourth Emergency Rulemaking, at 66 DCR 443 (January 17, 2020).

II. THE BOARD'S DECISION TO ADOPT THE FINAL RULES

In accordance with D.C. Official Code § 25-211(b)(2), these moratorium rules were deemed approved on December 17, 2019, absent affirmative disapproval by the Council. As such, the rules are now ripe for the Board to take final action. Therefore, on January 8, 2020, the Board voted five (5) to zero (0) to adopt the rules as final.

These final rules shall supersede the fourth emergency rules. The Board did not make any substantive changes to the rulemaking since it was published in the *D.C. Register* at 66 DCR 3502 (March 22, 2019).

The rules will take effect five (5) days after the notice of final rulemaking is published in the *D.C. Register*.

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

Strike the current Section 304, ADAMS MORGAN MORATORIUM ZONE, in its entirety, and insert the following in its place, 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 this section 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 more specifically described as beginning at 18th Street and Vernon Street, NW; and proceeding on both sides of all streets, unless otherwise noted; West on Vernon Street to 19th Street; Northwest on 19th Street to Wyoming Avenue; Southwest on Wyoming Avenue to 20th Street; Northwest on 20th Street to Belmont Road; West on Belmont Road to Waterside

Drive; North on Waterside Drive to Allen Place; East on Allen Place to 20th Street; North on 20th Street to Biltmore Street; North on Biltmore Street to Calvert Street; East on Calvert Street to Lanier Place; Northeast on Lanier Place to Adams Mill Road; Northwest on Adams Mill Road, and then Northeast to Ontario Road; East on Ontario Road to Lanier Place; Northeast on Lanier Place to Quarry Road; Southeast on Quarry Road to Columbia Road; Northeast on Columbia Road to Mozart Place; South on Mozart Place to Euclid Street; East on Euclid Street to 16th Street; South on the West side of 16th Street to Florida Avenue; Southwest on Florida Avenue to U Street, and West on U Street to 18th Street, 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 ten (10). 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 ten (10). Nothing in this subsection shall prohibit the Board from approving a change of license class application that was filed with the Board by the holder of a Retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone prior to August 2, 2006.
- 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 or change of a license class.
- 304.9 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on 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.