

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

NOTICE OF ELEVENTH 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.)), 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, gives notice of the amendment, on an emergency basis, of Chapter 10 (Endorsements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

In response to the COVID-19 public health emergency, Mayor Muriel Bowser and the Council of the District of Columbia (Council) took immediate and deliberate action to protect District residents and businesses. On May 27, 2020, Mayor Bowser issued Mayor's Order 2020-067, implementing Phase One of Washington, D.C.'s reopening. *See* 67 DCR 5612 (May 29, 2020). 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. In response to Mayor's Order 2020-067, the Board adopted the *Addition of Outdoor Public and Private Space Notice of Emergency Rulemaking* on May 28, 2020, by a vote of six (6) to zero (0). *See* 67 DCR 8507 (July 10, 2020).

Since the adoption of the first emergency rulemaking, the Board has adopted several additional emergency rulemakings to assist ABC-licensed establishments while at the same time safeguard the health and safety of its patrons. *See* 67 DC 9096 (July 24, 2020); 67 DCR 11259 (September 25, 2020); 67 DCR 12730 (October 30, 2020); 68 DCR 926 (January 15, 2021); 68 DCR 1298 (January 22, 2021); 68 DCR 2328 (February 26, 2021); and 68 DCR 4054 (April 16, 2021). On April 28, 2021, the Board adopted the *Addition of Outdoor Public and Private Space Notice of Ninth Emergency Rulemaking*, which was issued in response to Mayor's Order 2021-060, dated April 26, 2021.

On May 17, 2021, Mayor Bowser further announced the additional relaxation of the District's COVID-19 restrictions in Mayor's Order 2021-069. In response to Mayor's Order 2021-069, the Board adopted the *Addition of Outdoor Public and Private Space Notice of Tenth Emergency Rulemaking* on May 19, 2021, by a vote of five (5) to zero (0).

The emergency rulemaking implemented most of the Mayor's loosened COVID-19-related restrictions with the exception of the requirement that ABC-licensed establishments implement a reservation system for contact tracing. As of 5:00 a.m. on Friday, June 11, 2021, Mayor's Order 2021-069 lifts the remaining restrictions on alcohol licensed establishments with: (1) the capacity for nightclubs and multi-purpose facilities increasing from fifty percent (50%) to one-hundred percent (100%) and (2) all large entertainment venues being able to resume activities with no COVID-19 restrictions. With all COVID-19 restrictions on all alcohol licensed establishments being lifted in Mayor's Order 2021-069 starting at 5 a.m. on Friday, June 11, 2021, these

emergency rules clarify that the utilization of a reservation system for contact tracing purposes is permitted but no longer required and is now within the discretion of alcohol licensees.

The Board finds immediate action is necessary to remove this requirement from the regulations. Doing so will ensure that the District's ABC regulations are consistent with the most recent Mayor's Order. The emergency rulemaking is also necessary for the protection of the health and welfare of District residents and ensures that the Board's regulations are consistent with the new COVID-19 requirements. Thus, on this day, June 9, 2021, the Board adopts the Addition of Outdoor Public and Private Space Notice of Eleventh Emergency Rulemaking by a vote of six (6) to zero (0).

The emergency rules shall take effect beginning on Friday, June 11, 2021 at 5:00 a.m. and will expire in one hundred twenty (120) days, or by October 7, 2021, unless superseded. These emergency rules supersede starting at 5:00 a.m. on Friday, June 11, 2021 the emergency rules that the Board adopted on May 19, 2021.

Chapter 10, ENDORSEMENTS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR is amended by adding a new Section 1007, ADDITIONAL OUTDOOR SEATING ON PUBLIC AND PRIVATE SPACE, to read as follows:

1007 ADDITIONAL OUTDOOR SEATING ON PUBLIC AND PRIVATE SPACE

1007.1 A licensee who holds an on-premises retailer's license, class C/R, D/R, C/T, D/T, C/N, D/N, C/H, D/H, C/X, or D/X, including multipurpose facilities and private clubs, a manufacturer's license, class A or B, with an on-site sales and consumption permit, or a Convention Center food and alcohol business shall be permitted to sell, serve, and allow the consumption of alcoholic beverages to seated patrons on new or expanded temporary ground floor or street level outdoor public or private space not listed on its existing license, provided, that the licensee:

- (a) Registers with the Board, at no cost, and receives written authorization from ABRA prior to selling, serving, or permitting the consumption of alcoholic beverages on the proposed outdoor public or private space;
- (b) Registers with DDOT prior to operating on any proposed outdoor public space or receives written approval from the property owner prior to utilizing any proposed outdoor private space; and
- (c) Agrees to follow all applicable District laws, regulations, guidance documents, administrative orders including Mayor's Orders, and permit requirements or conditions, which may contain requirements that supersede provisions contained in this section.

1007.2 A licensee who holds an on-premises retailer's license, class C/R, D/R, C/T, D/T, C/N, D/N, C/H, D/H, C/X, or D/X, including multipurpose facilities and private clubs, a manufacturer's license with an on-site sales and consumption permit, class A or B, or a Convention Center food and alcohol business that registers with the

Board in accordance with § 1007.1 to sell, serve, and allow the consumption of alcoholic beverages to seated patrons on new or expanded ground floor or street level outdoor public or private space not listed on its existing license:

- (a) May permit outdoor tables on the sidewalk café or summer garden to be placed less than six feet (6 ft.) apart from one another;
- (b) May permit dancing or recreational activities that require patrons to be standing or in cluster or be in close contact with one another, including pool, video games including games of skill, bowling, ping pong, or throwing axes or darts;
- (c) May permit patrons to bring their own alcoholic beverages;
- (d) May permit standing receptions, cocktail hours, buffets, or self-serving stations;
- (e) May permit patrons to sit outdoors without having to purchase one (1) or more prepared food items per table;
- (f) Shall 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);
- (g) Shall ensure that the proposed outdoor public or private space is located in a commercial or mixed-use zone as defined in the District's zoning regulations;
- (h) Shall restrict its operations, excluding carry-out and delivery, and the sale, service, or the consumption of alcoholic beverages outdoors for on-premises consumption to the hours between 8:00 a.m. and 12:00 Midnight, Sunday through Saturday, unless otherwise prohibited by settlement agreement;
- (i) May play background or recorded music;
- (j) May offer outdoor entertainment, including live music, with an entertainment endorsement, except for nude dancing, on a sidewalk café or summer garden registered under the District's streatery program between the hours of 10:00 a.m. and 10:00 p.m.;
- (k) Shall not commission musicians for live music or entertainers in parklets or on the street near streateries, which may attract standing crowds;
- (l) May serve alcoholic beverages or food to standing patrons;

- (m) May allow standing at outdoor bars and shall be permitted to seat patrons at outdoor bars regardless of whether they are staffed or utilized by a bartender;
- (n) Shall abide by the terms of their public space permit with regard to the allowable placement of alcohol advertising, if any, in outdoor public space;
- (o) Shall permit their wait staff to wear masks;
- (p) May require that patrons wear masks or face coverings when entering the establishment unless the patron is under the age of two (2) years old or has a medical or mental health condition or a disability that prevents the patron from wearing a mask or face covering;
- (q) Shall post a sign that indicates a mask requirement at or near the establishment's exterior entrance if the establishment requires patrons to wear a mask or face covering to enter the licensed premises;
- (r) May implement a reservation system by telephone, on-line, or on-site;
- (s) May maintain customer logs on the licensed premises to facilitate contact tracing, if necessary;
- (t) Shall have its own clearly delineated outdoor space and not share tables and chairs with another business; and
- (u) Shall have no more than two (2) side flaps or walls and a roof on outdoor dining structures, tents, or canopies.

1007.3 Registration under § 1007.1 shall be valid from May 29, 2020 to December 31, 2021, unless extended by the Mayor or the Council of the District of Columbia.

1007.4 The Board may fine, suspend, or revoke an on-premises retailer's license, class C or D, or a manufacturer's license, class A or B, with an on-site sales and consumption permit, and shall revoke the registration issued in accordance with § 1007.1 if the licensee fails to comply with requirements set forth in § 1007.1 or 1007.2. The provisions of D.C. Official Code §§ 25-826 and 25-828 pertaining to notice and an opportunity to be heard in connection with the suspension or revocation of licenses shall also apply to the revocation of registrations issued in accordance with § 1007.1.

1007.5 Notwithstanding § 1007.2, if licensee with an on-premises retailer's license, class C or D, or a manufacturer's license, class A or B, with an on-site sales and consumption permit, has a settlement agreement governing its operations, the Board:

- (a) Shall interpret settlement agreement language that restricts sidewalk cafes or summer gardens as applying only to those outdoor spaces that are currently licensed by the Board as sidewalk cafes or summer gardens;
- (b) Shall not interpret settlement agreement language that restricts or prohibits sidewalk cafes or summer gardens to apply to new or extended outdoor space, the use of which is now permitted under this subsection;
- (c) Shall not interpret settlement agreement language that restricts or prohibits the operation of permanent outdoor space to prohibit the temporary operation of sidewalk cafes or summer gardens; and
- (d) Shall require all on-premises retailer licenses, class C or D, or manufacturer licenses, class A or B, with an on-site sales and consumption permit, to delineate or mark currently licensed outdoor space from new or extended outdoor space authorized by DDOT or the property owner.

1007.6 With regard to existing outdoor public or private space, parties to a settlement agreement shall be permitted to waive provisions of settlement agreements that address currently licensed outdoor space for a period not to exceed one hundred eighty (180) days.

1007.7 For purposes of this section:

- (a) Ground floor or street level sidewalk cafes or summer gardens enclosed by awnings or tents having no more than two (2) sides and a roof shall be considered outdoor space;
- (b) Enclosed outdoor seating structures such as plastic domes or igloos that are intended for individual parties shall be considered outdoor space;
- (c) Areas enclosed by retractable glass walls and other forms of operable walls shall be considered indoor dining; and
- (d) Temporary unlicensed rooftops and summer gardens not located on the ground floor or street level are not eligible for registration under § 1007.1.