

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

NOTICE OF FOURTEENTH 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.

The Coronavirus Pandemic struck the nation in March 2020. The first confirmed case in the District of Columbia (District) was made in mid-March 2020. In response to the outbreak, which plagued the nation and the District the same, Mayor Muriel Bowser and the Council of the District of Columbia (Council) took immediate and deliberate action to protect District residents and businesses.

Like the Mayor, the Board recognized the need to take immediate action as it related to ABC-licensed establishments located in the District. Due to the COVID-19 Pandemic, District businesses, including ABC-licensed establishments, experienced a suspension of their operations. This proved to be financially detrimental to ABC-licensed establishments. Recognizing that these establishments needed assistance so that they can remain vital while at the same protecting its customers, the Board adopted a series of emergency rulemakings. The Board adopted the first emergency rulemaking, the *Suspension of On-premises Alcohol Sales and Consumption Notice of Emergency Rulemaking*, on March 18, 2020. See 67 DCR 4589 (March 27, 2020). Since the adoption of the first emergency rulemaking, the Board has adopted numerous emergency rulemakings, each in response to Mayor's Orders issued by Mayor Bowser for purposes of ensuring the District's alcoholic beverage regulations are consistent with the Mayor's directives. See 67 DCR 4310 (April 10, 2020); 67 DCR 5600 (May 29, 2020); 67 DCR 7930 (June 26, 2020); 67 DCR 9232 (July 31, 2020); 67 DCR 11139 (September 18, 2020); 67 DCR 12724 (October 30, 2020); 68 DCR 919 (January 15, 2021); 68 DCR 1291 (January 22, 2021); 68 DCR 2334 (February 26, 2021); and 68 DCR 4046 (April 16, 2021). On April 28, 2021, the Board adopted the *Suspension of On-premises Sales and Alcoholic Beverages Notice of Twelfth Emergency Rulemaking*, by a vote of six (6) to zero (0).

As the District continues to see a decline in the number of positive COVID-19 cases, hospitalizations, and deaths due to the disease, Mayor Bowser and the Board continue to adjust the COVID-19-related restrictions. Most recently, Mayor Bowser issued Mayor's Order 2021-069, dated May 17, 2021, which further loosened the COVID-19 restrictions. In response, the Board adopted the *Suspension of On-premises Sales and Consumption Notice of Thirteenth Emergency Rulemaking*, on May 19, 2021.

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 June 9, 2021, the Board adopted the *Suspension of On-premises Alcohol Sales and Consumption Notice of Fourteenth 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 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by adding a new Section 810, CONDITIONS OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DURING THE PUBLIC EMERGENCY, 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 and outdoors shall be permitted in the District of Columbia 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 this section. The sale and service of alcoholic beverages for on-premises consumption indoors and outdoors 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.

810.2 The holder of a restaurant, tavern, hotel, private club, nightclub, multipurpose facility, or common carrier on-premises retailer's license, or manufacturer's license holding an on-site sales and consumption permit, or a festival or temporary license shall be permitted to operate up to one hundred percent (100%) of its Board approved occupancy load starting at 5:00 a.m. on Friday, June 11, 2021.

810.3 A licensee who holds 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, with an on-site sales and consumption permit, a festival or temporary license, or any other license or permit set forth in Title 25 of the D.C. Official Code, may sell, serve and allow the consumption of beer, wine, or spirits indoors or on a Board-approved outdoor sidewalk café or summer garden, including an existing rooftop patio, pursuant to the terms of its license. When operating, the licensee:

- (a) May permit indoor or 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, including pool, ping-pong, pinball, playgrounds, games of skill, throwing axes or darts or any other activity that ordinarily requires one to stand;
- (c) May play background or recorded music;
- (d) May offer indoor entertainment with an entertainment endorsement, including but not limited to live music, disc jockeys, comedy shows, poetry readings, and trivia inside of the licensed establishment in accordance with the terms of its ABC license;
- (e) May offer outdoor entertainment, including live music, with an entertainment endorsement, except for nude dancing, on a licensed sidewalk café or summer garden in accordance with the terms of its ABC license;
- (f) May permit patrons to bring their own alcoholic beverages;
- (g) May permit standing receptions, cocktail hours, buffets, or self-serving stations;
- (h) May permit patrons to sit indoors without having to purchase one (1) or more prepared food items per table;

- (i) 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);
- (j) May operate, sell, serve and permit the consumption of alcoholic beverages during the hours permitted by D.C. Code § 25-723 and the terms of its Board approved license;
- (k) May serve alcoholic beverages or food to standing patrons;
- (l) May allow standing at indoor or outdoor bars, and may seat patrons at indoor or outdoor bars regardless of whether they are staffed or utilized by a bartender;
- (m) Shall abide by the terms of its public space permit concerning the allowable placement of alcohol advertising, if any, in outdoor public space;
- (n) Shall permit its wait staff to wear masks;
- (o) 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;
- (p) 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;
- (q) May implement a reservation system by telephone, on-line, or on-site;
- (r) May maintain customer logs on the licensed premises to facilitate contact tracing, if necessary; and
- (s) May utilize up to two (2) additional locations 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) to be utilized for outdoor dining.

810.4

A licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including a multi-purpose facility or private club, that registers with the Board may sell beer, wine, or spirits in closed containers for individuals to carry-out and consume outside of the establishment, or deliver beer, wine, or spirits in closed containers to the homes of District residents, if each carry-out or delivery order is accompanied by one (1) or more prepared food items.

- 810.5 A restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs, shall receive Board approval from ABRA before beginning carry-out or delivery of beer, wine, or spirits.
- 810.6 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 1:00 a.m. each day.
- 810.7 Except as provided in §§ 810.2 and 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.
- 810.8 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.
- 810.9 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.
- 810.10 The Board shall conspicuously post two (2) summary suspension or revocation notices at or near the main street entrance of the outside of an establishment whose license has been suspended or revoked in accordance with § 810.9.
- 810.11 If the Board summarily suspends or revokes a license in accordance with § 810.9, the licensee may request a hearing within three (3) business days after service of a Notice of Suspension or Revocation. 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.
- 810.12 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.