

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

NOTICE OF 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 following emergency and proposed amendments to section 311 (Langdon Park Moratorium Zone) of chapter 3 (Limitations on Licenses) of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations.

Specifically, this emergency and proposed rulemaking renews, renames, and modifies the Langdon Park Moratorium Zone (LPMZ).

BACKGROUND

On March 20, 2024, Advisory Neighborhood Commission (ANC) 5C submitted a resolution requesting that the Board renew the Langdon Park moratorium for three (3) years, maintain the prohibition on issuing new Retailer Class CN or DN (Nightclub) licenses, but increase the number of allowable Retailer Class CX or DX (Multi-purpose) licenses. ANC 5C also requested that the Board remove the prohibition on Entertainment Endorsements issued to Retailer Class CR or DR (Restaurant) and Retailer Class CT or DT (Taverns) licensees, and that the Board consider renaming the moratorium zone to better reflect the neighborhoods covered by the moratorium. Finally, ANC 5C requested that the Board apply the moratorium to medical cannabis facilities located in the proposed zone. The resolution was adopted by the ANC at a duly noticed public meeting held on March 20, 2024, by a vote of six (6) to zero (0).

On June 4, 2024, the Board held a hearing concerning the Langdon Park Moratorium Zone. Notice of the hearing was published in the *District of Columbia Register*, and the Board sent notice to those required to receive notice in accordance with Title 25 of the D.C. Official Code. Jackie Manning, Chair of ANC 5C, Gilbert Smith, President of Gateway Community Association (GCA) and Matthew Cronin, Vice-President of Glow, D.C., testified at the hearing.

Given the pending expiration of the existing rules, the Board, on June 12, 2024, adopted the Langdon Park Moratorium Zone Notice of Emergency Rulemaking, by a vote of three (3) to zero (0). The Board concluded that the appropriateness considerations that justified the prior moratorium, pursuant to D.C. Official Code § 25-351(a), likewise indicated that a temporary extension was in the public interest. Although the Notice of Emergency Rulemaking was not published in the *District of Columbia Register*, the rulemaking was posted to the agency's website on June 12, 2024, while the rulemaking underwent approval certification for publication.

The additional time granted under the emergency rules allowed the Board to review and consider the ANC resolution and related testimony. Additionally, it served to promote the health, safety, and welfare of the community until further action could be taken by the Board by: (1) ensuring

that the limitations placed on the issuance of new retailer's licenses are maintained; and (2) keeping the moratorium in place until the Board determined the moratorium's future.

TESTIMONY AT PUBLIC HEARING

The Board received written or oral testimony from the following individuals concerning the Langdon Park moratorium rulemaking:

Jacking Manning, Chair of ANC 5C, testified that the Langdon Park Moratorium Zone has been in effect since 2017, and it caps or prohibits certain alcoholic beverage licensing for ABC establishments located in the Landon and Gateway neighborhoods. Ms. Manning testified that several nightlife establishments continue to create a consistent and undue burden on the community, disrupting the peace, order and quiet of the residential areas. Patrons of the nightclubs also monopolize the available residential parking as well as contribute to the litter, public intoxication and crime. She stated that even for those establishments that hire MPD Reimbursable Detail, the patrons far outnumber security thus creating challenging situations regarding crowd control and traffic patterns and parking.

As a result of the concerns raised above, Commissioner Manning requested that the Board renew the moratorium for a period of three (3) years, and that the Board maintain the cap on nightclubs, lift the cap on multipurpose facilities, and remove the prohibition on entertainment endorsements for restaurants and taverns. Additionally, Ms. Manning testified the ANC would like the moratorium applied to medical cannabis licensees. Lastly, Ms. Manning testified the ANC was seeking a new name for the moratorium to adequately describe the geographic area covered by the moratorium.

Gilbert Smith, President of the GCA, described five (5) relevant factors for the Board to consider when renewing the moratorium: 1) the effect of licensed establishments on real property values; 2) the effect of establishments on peace, order and quiet, including noise and litter; 3) the effect of establishments on residential parking needs and vehicular and pedestrian safety; 4) the effect of establishments being within the existing moratorium zone and a cap or moratorium on medical cannabis cultivation centers, manufacturers, retailers, internet retailers and testing laboratories; and 5) the distance of establishments to nearby schools, parks and other areas frequented by small children and youth.

Matthew Cronin, Vice President of Glow, D.C. also testified. Glow, D.C. operates a number of venues within the District of Columbia, to include Echostage, located at 2135 Queens Chapel Road, N. E. Mr. Cronin noted the oddity of testifying in support of the moratorium request as the owner of an ABC establishment. He indicated that Echostage has been operating in the moratorium zone for thirteen (13) years and that they work very closely with the ANC to mitigate the negative impact on the community. As a result, they 1) have installed sound and noise containment, 2) fund the trash pick-up in the absence of a Business Improvement District, 3) secure the presence of six (6) reimbursable detail officers for every night they're operating, and 4) assist with traffic and parking. Mr. Cronin further testified that Echostage is the only licensee to take on these mitigation efforts and solely at their own costs and that no other

establishment is assisting with security, trash or noise issues. Mr. Cronin expressed concern that adding additional medical cannabis facilities will only serve to exacerbate the concerns, and impact to the community.

BOARD DECISION

The Board takes the decision to renew and modify a moratorium very seriously and it makes every effort to strike a balance to ensure the peace, order, and quiet of the neighborhood, while not inadvertently impeding economic growth and commercial development in the designated area. In reaching its decision, the Board gave great weight to the written recommendations of ANC 5C as required by Section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)).

The Board originally adopted the Langdon Park Moratorium Zone in 2017 because it recognized the frustration of the Langdon Park and Gateway neighborhoods. This frustration resulted from ABC licensees who contributed to the litter, loud noise, and loss of parking availability on residential streets. Seven (7) years later, many of those concerns remain, as evidenced by the testimony provided at the public hearing. For instance, patrons parking in the residential neighborhood prevent residents and their guests from parking in front of or near their homes. Additionally, patrons departing the ABC-licensed establishments to return to their vehicles late at night often disrupt residents in their homes.

For these reasons, the Board finds it necessary to continue the moratorium. Doing so will aid in addressing the adverse impact on peace, order, and quiet that the ABC-licensed establishments in the area continue to have on the community. The Board is grateful for the moratorium stakeholders' continued efforts to create positive change and to advance local economic recovery and growth, notwithstanding the difficulties that some of this growth brings about. To address the question of what a renewed moratorium will look like, the Board examined each of the modifications requested by the proponents of the moratorium's renewal.

The Board agrees with the ANC's recommendation to renew the moratorium for an additional three (3) years. This timeframe allows flexibility for the Board and neighborhood to respond to an everchanging cityscape that may warrant further modifications in the near term, rather than locking in for a more extended period. Because the District of Columbia and its neighborhoods are not stagnant, but rather growing and changing at a fairly rapid pace, the Board agrees that it is in the best interest to review the merits of the moratorium every three (3) years.

Likewise, the Board supports the request from the ANC and the GCA to limit the number of Retailer Class CN/DN (Nightclubs) licenses to three (3), and to lift the cap on Retailer Class CX/DX (Multipurpose) licenses. The Board agrees with the ANC and the GCA that retaining the cap on Nightclubs while lifting the cap on Multipurpose facilities will help to attract the sort of businesses that contribute to the development of cultural activities while keeping in check the sort of businesses that only serve to promote the consumption of alcohol and the perpetuation of social ills. Opening the neighborhood to multipurpose facilities will assist the ANC to create a more supportive business environment.

The Board also agrees with the ANC and GCA for its recommendation to remove the prohibition imposed on Retailer Class CR/DR (Restaurants) and Retailer CT/DT (Taverns) from obtaining Entertainment Endorsements. As noted in the testimony provided by the ANC, ABCA's protest process provides safeguards for protestants to address concerns associated with entertainment endorsements. More importantly, the protest process helps to shape what types of entertainment might entail in any given establishment. For instance, protestants may have no objection to entertainment but would prefer that outdoor spaces not have live music. The approach requested by the ANC in its resolution allows the tailoring of entertainment offerings through the protest process that better serves both the community and the licensees.

The Board does not agree with the proponents to apply a moratorium on medical cannabis licensees. While not unsympathetic to their concerns, the Board does not have the ability to impose a moratorium on medical cannabis facilities in that particular neighborhood. Under DC Official Code §25-352(d)(1), no moratorium can be considered by the Board in an ANC where there are fewer than six (6) establishments of the same class or twelve (12) establishments of any class or a combination of classes. Utilizing the District of Columbia's geographical information system (GIS), the Board has determined that only one medical cannabis licensee exists in the moratorium zone. Thus, the Board cannot apply the moratorium to medical cannabis licensees at this time.

Lastly, the Board is in agreement to rename the seven (7) year old moratorium zone to better reflect the area covered by the moratorium. Both the ANC and the GCA recommended that the name be changed to Arboretum/Gateway/Langdon Park. The Board agrees to the renaming of the moratorium zone and believes Gateway/Langdon Park best reflects the geographical area covered by the moratorium zone.

For the reasons discussed above, the Board gives notice that on October 9, 2024, the Board adopted the Gateway/Langdon Park Moratorium Zone Notice of Emergency and Proposed Rulemaking, by a vote of three (3) to zero (0) and it became effective on that date. The emergency rulemaking: (a) supersedes the emergency rulemaking that the Board adopted on June 12, 2024, (b) renames the moratorium zone to the Gateway/Langdon Park Moratorium, (c) renews the moratorium for three (3) years, (d) maintains the cap of three (3) permitted licenses for Retailer Class CN/DN (Nightclubs), (e) lifts the cap on Retailer Class CX/DX (Multipurpose Facilities) and (d) removes the prohibition of entertainment endorsements for Retailer Class CR/DR (Restaurants) and CT/DT (Taverns). These emergency and proposed rules will remain in effect for one hundred and twenty (120) days, expiring February 6, 2025.

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 *District of Columbia 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 earlier approved by Council resolution, and the rules will not take effect until five (5) days after publication in the *District of Columbia Register*.

Section 311, LANGDON PARK MORATORIUM ZONE, of Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended to read as follows:

311 GATEWAY/LANGDON PARK MORATORIUM ZONE

- 311.1 The number of retailer's licenses class CN and DN permitted in the Gateway/Langdon Park Moratorium Zone, which extends approximately six hundred feet (600 ft.) in all directions from the intersection of Bladensburg Road, N.E. and 24th Place, N.E., Washington, D.C., as specifically described in § 311.3, shall not exceed three (3).
- 311.2 On-premises retailer's licenses, class CN and DN, in the Gateway/Langdon Park Moratorium Zone shall be prohibited from expanding their licensed premises to adjacent properties or lots, except for purposes of increasing onsite parking.
- 311.3 The Gateway/Langdon Park Moratorium Zone is more specifically described as the area bounded by a line beginning at the 2200 block of 24th Place, N.E.; continuing in a northeast direction to the 2200 block of 25th Place, N.E.; continuing east to the 2400 block of Bladensburg Road N.E.; continuing in a southeast direction to the 2800 block of V Street N.E.; continuing southwest along the north side of the 2700 block of New York Avenue, N.E. to the 2000 block of Bladensburg Road, N.E.; continuing in a northwesterly direction to the 2200 block of Adams Place, N.E.; continuing north to the 2100 block of Queens Chapel Road, N.E.
- 311.4 Any license application may be subject to additional review and measurement by the Board or ABCA to determine if the moratorium is applicable.
- 311.5 All hotels, whether present or future, shall be exempt from the Gateway/Langdon Park Moratorium Zone.
- 311.6 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CN or DN within the Gateway/Langdon Park Moratorium Zone subject to the requirements of Title 25 of the D.C. Official Code and this title.
- 311.7 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Langdon Park Moratorium Zone to a new location within the Langdon Park Moratorium Zone.
- 311.8 A license holder outside the Gateway/Langdon Park Moratorium Zone shall not be permitted to transfer its license to a location within the Gateway/Langdon Park

Moratorium Zone if the transfer would result in more than three (3) class CN and DN licenses in the Gateway/Langdon Park Moratorium Zone.

- 311.9 Nothing in this section shall prohibit a valid protest of any transfer or change of license class.
- 311.10 The moratorium imposed by this section shall have a prospective effect and shall not apply to any license granted before the effective date of this section or to any application for licensure pending on the effective date of this section.
- 311.11 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in *District of Columbia Register*.

All persons desiring to comment on the subject matter of the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the *District of Columbia Register*, to abca.lega.@dc.gov or by mail or hand delivery to Jonathan Berman, Assistant General Counsel, Alcoholic Beverage and Cannabis Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. Copies of the proposed rulemaking can be obtained by contacting Jonathan Berman at the above address.