

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

NOTICE OF THIRD EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in section 101(a) of the Moratorium Amendment Act of 1999, effective May 3, 2001 (D.C. Law 13-298; D.C. Official Code § 25-351(a)) (Repl.), as amended, and in accordance with section 6(c) of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), as amended, hereby gives notice of its intent to amend section 308 (Glover Park Moratorium Zone) of chapter 3 (Limitations on Licenses) of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations. Specifically, the emergency and proposed rulemaking renews the Glover Park Moratorium Zone (GPMZ) for another three (3) years.

The existing moratorium expired on February 10, 2022. On February 11, 2022, the Board received a Petition to Extend and Amend the Glover Park Liquor License Moratorium from Advisory Neighborhood Commission (ANC) 3B. ANC 3B requested a ninety (90) day extension of the expiring moratorium in order to consult with the residents of Glover Park regarding the future of the moratorium. The resolution was adopted by ANC 3B at a duly noticed public meeting held on February 10, 2022, by a vote of four to zero (4-0).

In response to the ANC's resolution, the Board adopted emergency rules on February 16, 2022, to extend the Glover Park Moratorium by a vote of six (6) to zero (0). Rather than extend it for the ninety (90) days requested by the ANC, the Board extended the moratorium for one hundred and twenty (120) days to allow the public an opportunity to comment. Although the initial emergency rules were not published in the *D.C. Register*, the emergency rules were posted to the Alcoholic Beverage Regulation Administration's website on February 18, 2022. No applications for a new license were filed during since the expiration of the moratorium on February 10, 2022, and no new licenses were issued during the same period.

On May 25, 2022, the Board held a public hearing to receive comments from the public concerning the Glover Park Moratorium. Notice of the public hearing was posted on the ABRA website as well as published in the *D.C. Register* at 69 DCR 18 (May 6, 2022). The Board received testimony from ANC Commissioner Jackie Blumenthal on behalf of Advisory Neighborhood Commission (ANC) 3B and Maggie Simpson, President of the Glover Park Citizen's Association (GPCA). A summary of those comments is set forth below.

ANC Commissioner Jackie Blumenthal testified at the public hearing on behalf of ANC 3B. She reiterated the ANC's support for renewing the moratorium for three (3) years on tavern and nightclub licenses. She stated that the moratorium has helped to maintain the peace, order and quiet of their neighborhood commercial area by limiting the availability of certain license classes. The Glover Park neighborhood is three blocks long and is zoned for mixed use. It houses condominium units and apartment buildings, and backs onto densely packed rowhouses. She testified that street parking and public transportation in the neighborhood are limited.

ANC 3B also credits the moratorium for helping to maintain a stable and diverse mix of businesses in this commercial area. Despite the economic downturn caused by the pandemic, the Glover Park neighborhood still supports twenty (20) active ABC licensed establishments. ANC 3B is requesting a renewal of the moratorium to give the community additional time to attract new restaurants that meet the family-friendly needs of the Glover Park residents. The ANC is opposed to allowing establishments that provide nothing but alcohol, specifically taverns and nightclubs, to locate in Glover Park due to the potential for disrupting the peace, order and quiet of the neighborhood. The moratorium has helped to balance the neighborhood's nightlife and the livability of its residents.

Maggie Simpson, GPCA President, submitted testimony in support of maintaining the existing moratorium for another three (3) years. Similar to the position taken by the ANC, the GPCA believes three (3) years will allow the community to attract more family-friendly restaurants to their neighborhood. They find no benefit to attracting taverns or nightclubs as the one nightclub that is currently allowed by historic precedent to continue operations in the neighborhood is a source of continual disruption for the area residents.

The Board considered the comments provided by ANC 3B and the GPCA. The Board supports their request to renew the Glover Park Moratorium for a three (3) year period. In reaching its decision, the Board has given great weight to the written recommendations of ANC 3B as required by Section 13(d)(3) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3), and D.C. Official Code § 25-609. After evaluating the testimony and comments, the Board finds that ANC 3B's proposal to renew the moratorium is appropriate. Specifically, the Board agrees that maintaining the restrictions on taverns and nightclubs helps to promote peace, order and quiet to the benefit of neighborhood.

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 two (2) of the appropriateness standards set forth in subchapter II of this chapter." D.C. Official Code § 25-354(d). After considering the comments it received and the testimony provided at the public hearing, the Board determines that it is in the public's interest to renew the moratorium for three (3) years.

The Board gives great weight to the ANC and finds that its proposal constitutes a reasonable, measured, and appropriate solution for the Glover Park neighborhood. The Board concluded that maintaining the existing moratorium is in the public's interest as determined by the appropriateness standards set forth in D.C. Official Code §§ 25-313 (b)(2) and (b)(3).

The Board also finds that emergency rulemaking action is warranted. In accordance with section 6(c) of the DC APA, emergency action is necessary for the immediate preservation of health, safety, and welfare of District of Columbia residents. Emergency action is necessary to (1) maintain the limitations placed on the issuance of new retailer's licenses for taverns, nightclubs,

multipurpose facilities, and private clubs are maintained; and (2) keep the existing GPMZ in place until the Board can adopt final rules regarding its renewal.

For these reasons, the *Glover Park Moratorium Zone Notice of Second Emergency and Proposed Rulemaking* was adopted by the Board on June 8, 2022, by a six (6) to zero (0) vote and became effective on that date. They were published in the *D.C. Register* at 69 DCR 28 (July 15, 2022). The Second Emergency and Proposed Rulemaking superseded the emergency rules adopted by the Board on February 16, 2022, and are scheduled to expire on October 6, 2022. No other comments were filed in response to these rules.

In order to ensure that the moratorium does not expire while the proposed rulemaking is undergoing Council review, the Board finds it necessary to take emergency action. More specifically, the Board finds taking emergency action will preserve the protections afforded by the moratorium, which are necessary to preserve the health, safety, and welfare of the community during the Council review period.

Thus, on October 5, 2022, the Board adopts the *Glover Park Moratorium Zone Notice of Third Emergency Rulemaking*, by a vote of six (6) to zero (0). These emergency rules supersede those adopted by the Board on June 8, 2022, and shall remain in effect for no longer than one hundred twenty (120) days from its effective date; expiring on February 2, 2023, unless superseded.

The Board gives notice of 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 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.

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

308. GLOVER PARK MORATORIUM ZONE

308.1 No new retailer’s license class CT, CN, 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 one thousand two hundred feet (1,200 ft.) in all directions from 2436 Wisconsin Avenue, N.W., Washington, D.C. 20007.

308.2 The Glover Park Moratorium Zone is more specifically described as beginning at Tunlaw Road and Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Edmunds Street; East on Edmunds Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to Observatory Circle; Southwest around Observatory Circle to Calvert Street; West on Calvert Street to Wisconsin Avenue; Southeast on both sides of Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven Parkway to 37th Street; North on 37th Street to U Street; West on U Street to a point of intersection of Huidekoper Place and W Street; West on W Street to 39th

Street; North on 39th Street to Davis Place; East on Davis Place to Tunlaw Road; North and Northwest on Tunlaw Road to Fulton Street.

- 308.3 All hotels, whether present or future, shall be exempt from the Glover Park Moratorium Zone.
- 308.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CT, CN, CR, CX, DN, DT, or DX within the Glover Park 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.
- 308.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Glover Park Moratorium Zone to a new location within the Glover Park Moratorium Zone.
- 308.6 A license holder outside the Glover Park Moratorium Zone shall not be permitted to transfer its license to a location within the Glover Park Moratorium Zone.
- 308.7 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 308.8 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.
- 308.9 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in the *D.C. Register*.