

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

NOTICE OF SECOND 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 its adoption 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 second 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). In response, the Board sent notice to those required to receive notice in accordance with Title 25 of the D.C. Official Code. Jacqueline 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. Notice of the hearing was published in the *District of Columbia Register*, on May 3, 2024, at 71 DCR 005074.

On June 5, 2024, the Board held a hearing concerning the Langdon Park Moratorium Zone. 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.

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 superseded the emergency rulemaking that the Board adopted on June 12, 2024, renamed the moratorium zone to the Gateway/Langdon Park Moratorium, renewed the moratorium for three (3) years, maintained the cap of three (3) permitted licenses for Retailer Class CN/DN (Nightclubs), lifted the cap on Retailer Class CX/DX (Multipurpose Facilities) and removed the prohibition on entertainment endorsements for Retailer Class CR/DR (Restaurants) and CT/DT (Taverns). The rules were published on the agency's website on October 9, 2024. These emergency and proposed rules were set to expire within one hundred and twenty (12) days, and were set to expire on February 6, 2025. The second emergency and proposed rulemaking adopted by the Board through this notice supersedes the emergency and proposed rulemaking previously adopted by the Board on October 9, 2024.

TESTIMONY AT PUBLIC HEARING

At the hearing held by the Board on June 5, 2024, the Board received written or oral testimony from the following individuals concerning the Langdon Park moratorium rulemaking:

Jacqueline 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. She stated that patrons of the nightclubs also monopolize the available residential parking as well as contribute to litter, public intoxication, and crime. Ms. Manning also testified that even for those establishments that hire police officers to provide security through the Metropolitan Police Department Reimbursable Detail Program, 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 that 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, provided testimony related to the factors under consideration. In particular, related to the negative impact on real property values, the GCA noted that residents have experienced an increase in insurance rates due to crime, such as break-ins, car thefts, and shootings. On the matter of peace, order, and quiet, the GCA noted that the operations of nightclubs are tied to an increase in noise, trash, and litter. On the matter of

residential parking and traffic safety, the GCA noted that nightclub patrons are taking residential parking. Mr. Smith stated that GCA is further concerned that granting additional alcohol licenses will lead to overconcentration and have a negative impact on the many children that patronize local daycares and schools.

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, Mr. Cronin stated, 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 seriously and strives 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 ABC-licensed establishments in the area contributed to litter, loud noise, and loss of parking availability on residential streets. Seven 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 prevents residents and their guests from parking in front of or near their homes. Additionally, patrons departing 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 prevent the further overconcentration of licensed establishments from exacerbating issues facing the community by attracting more patrons to 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 ever-changing 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 limiting the number of businesses that primarily promote the consumption of alcohol and often result in negative external impacts.

In light of this testimony, the Board concludes that eliminating the cap on multipurpose licenses will have a minimal impact on the issues facing the community. As noted in D.C. Official Code § 25-113(g)(1), multipurpose facilities by law are limited to "legitimate theaters, universities, museums, conference centers, art galleries, facilities for the performance of sports, cultural, or tourism-related activities, and to indoor parks, buildings, and facilities that primarily serve as recreational playgrounds or workspaces." D.C. Code § 25-113(g)(1). Therefore, there is a low risk that businesses and institutions operating under the license will have a negative impact on the community where their business models are not likely to focus on late night alcohol service or generate inebriated crowds. Therefore, the Board agrees with the ANC and GCA that lifting the cap on multipurpose facilities will not have a negative impact on the community.

The Board also agrees with the ANC and GCA recommendation to remove the prohibition on Retailer Class CR/DR (Restaurants) and Retailer CT/DT (Taverns) 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 may result in a decision that limits the time, place, and manner of entertainment, including the location of performances, the location of speakers, and the hours of entertainment. Therefore, the Board agrees to remove the restriction on these types of licenses.

The Board does not agree with the proponents' proposal to apply a moratorium on medical cannabis licensees. While not unsympathetic to their concerns, the Board does not have the authority to impose a moratorium on medical cannabis facilities in the targeted neighborhood under the District's alcohol moratorium rules. The Board advises the public that a moratorium request related to medical cannabis licenses may be filed separately under Chapter 16B of Title 7 of the D.C. Official Code and Title 22-C of the D.C. Municipal Regulations.

Lastly, the Board agrees to rename the seven-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.

In light of the findings above, on February 5, 2025, the Board renewed the Gateway/Langdon Park moratorium zone through this Second Emergency and Proposed Rulemaking, by a vote of five (5) to zero (0). It became effective on that date. The emergency and proposed rulemaking keeps the moratorium in place but replaces § 311.3, adds a new § 311.4, and renumbers the other provisions in section 311 accordingly. The purpose of the change is to clarify the specific area covered by the moratorium by relying on a map and describing how the map should be read to determine whether a location is within the moratorium zone. This new rule will make it easier for the public to determine whether a proposed or existing business falls within the moratorium zone. In a change from prior versions of this rulemaking, the Board selected 2135 Queens Chapel Road, N.E., for the focus of the moratorium, which is the location of Ekho Events, Inc., t/a Echostage, ABRA License No. 090250, holder of a Retailer's Class CN License, located at 2135 Queens Chapel Road, N.E., in order to ensure the rules comply with D.C. Official Code § 25-352(b).

The Board notes that these emergency and proposed rules will remain in effect for one hundred and twenty (120) days, expiring June 5, 2025, unless earlier amended or superseded by a final rulemaking.

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.

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 2135 Queens Chapel Road, N.E., as specifically depicted 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 the purpose of increasing onsite parking.

311.3 The Gateway/Langdon Park Moratorium Zone is specifically described as the area bounded by the line on the following map, which extends approximately six

hundred feet (600 ft.) in all directions from Ekho Events, Inc., t/a Echostage, ABRA License No. 090250, holder of a Retailer's Class CN License, located at 2135 Queens Chapel Road, N.E.:

This section contains a map depicting a moratorium on alcoholic beverage licenses and permits for the Gateway/Langdon Park neighborhood in Northeast D.C. The boundary line extends approximately 600 feet in all directions from 2135 Queens Chapel Road, N.E., Washington, D.C., including portions of Adams Place, N.E., Queens Chapel Road, N.E., Bladensburg Road, N.E., 24th Place, N.E. and 25th Place, N.E. For assistance with reading or reviewing this map, please contact ABCA at 202-442-4423 or email ABCA at abca.director@dc.gov.

311.4 A proposed or existing licensed establishment shall be deemed within the moratorium zone described in this section if any portion of a property line of the premises falls within the area bound by the line or touches the line drawn in §

- 311.3. The moratorium zone does not include any area or property located entirely outside the boundary lines.
- 311.5 Any license application may be subject to additional review and measurement by the Board or ABCA to determine if the moratorium is applicable.
- 311.6 All hotels, whether present or future, shall be exempt from the Gateway/Langdon Park Moratorium Zone.
- 311.7 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.
- 311.9 Nothing in this section shall prohibit the Board from approving the transfer of a license from an existing location within the Gateway/Langdon Park Moratorium Zone to a new location within the Gateway/Langdon Park Moratorium Zone.
- 311.10 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.
- 311.11 Nothing in this section shall prohibit a valid protest of any transfer or change of license class.
- 311.12 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.
- 311.13 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.legal@dc.gov or by mail or hand delivery to Jonathan Berman, Assistant General Counsel, Alcoholic Beverage and Cannabis Administration, 899 North Capitol Street N.E., Suite 4200-B, Washington, D.C. 20002. Copies of the proposed rulemaking can be obtained by contacting Jonathan Berman at the above address.