

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

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-211 (2012 Repl. & 2019 Supp.), and D.C. Official Code §§ 25-351, *et seq.* (2012 Repl.), as amended, hereby gives notice of the following emergency and proposed rulemaking which would amend Section 311 (Langdon Park Moratorium Zone) of Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). Specifically, the rulemaking:

1. Renews the moratorium for an additional three (3) years; and
2. Amends the moratorium to prohibit ABC-licensed establishments located within the moratorium zone from expanding their licensed premises onto adjoining properties or lots, except for purposes of increasing onsite parking.

BACKGROUND

On May 24, 2017, the Board adopted the Langdon Park Moratorium Zone by a vote of six (6) to zero (0), and it took effect on August 2, 2017. The moratorium (1) established a cap of three (3) on-premises retailer licenses, class CN and CX licenses; and (2) prohibited the issuance of any new entertainment endorsements for on-premises retailer licenses, class CR or CT in the 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. The duration of the moratorium was three (3) years, and is scheduled to expire on July 27, 2020, unless it is renewed by the Board.

On May 28, 2020, Advisory Neighborhood Commission (ANC) 5C convened a meeting with a quorum present, and voted five (5) to zero (0) to renew the moratorium. The ANC informed the Board that the moratorium has served the community well and its continuation is necessary to address the adverse effects that ABC-licensed establishments are having on the community's residential parking needs. ANC 5C also expressed the need for the moratorium as a means of addressing ongoing public safety concerns such as vehicular and pedestrian safety. Lastly, they assert that the moratorium is necessary for maintaining the peace, order, and quiet of the community.

On June 17, 2020, ANC 5C submitted a resolution to the Board requesting that it not only renew the Langdon Park Moratorium Zone, but that the Board consider additional conditions to include the following:

1. Increase the duration of the moratorium from three (3) years to five (5) years;
2. Prohibit ABC licensees from expanding their premises into adjoining properties or lots except for purposes of increasing their onsite parking; and
3. Change the name of the moratorium zone from "Langdon Park Moratorium Zone" to "ANC 5C Moratorium".

In order to afford the Board time to fully consider ANC 5C's request, as well as to hear from other interested persons, the Board adopted the Langdon Park Moratorium Notice of Emergency Rulemaking (emergency rulemaking) on July 15, 2020, by a vote of seven (7) to zero (0). See 67 DCR 10402 (August 28, 2020). The Board adopted the emergency rulemaking for purposes of preventing the moratorium from expiring on July 27, 2020, as originally scheduled.

On September 30, 2020, the Board held a hearing concerning the Langdon Park Moratorium Zone. Notice of the hearing was published in the D.C. Register and the Board sent notice to those required to receive notice in accordance with Title 25 of the D.C. Official Code. Commissioner Jeremiah Montague, Jr., Vice-chairman of ANC 5C, testified on behalf of the ANC. Commissioner Montague reiterated the ANC's request that the Board (a) renew the moratorium for five (5) years; (b) prohibit licensees from expanding their premises to adjoining premises or lots except for purposes of increasing onsite parking; and (c) renaming the moratorium zone "ANC 5C Moratorium" because the Langdon Park Neighborhood Association is now defunct.

BOARD'S DECISION

The Board appreciates the time that ANC 5C has given to the renewal of the Langdon Park Moratorium Zone and for its testimony and appearance before the Board at the public hearing. The Board takes the decision to impose or renew a moratorium very seriously and 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 area.

The Board recognizes that residents in the Langdon Park neighborhood have been frustrated by certain ABC licensees who contribute to the litter, loud noise, and loss of parking availability on residential streets. In order to address the community's concerns, the Board adopted the Langdon Park Moratorium Zone in 2017.

Since the adoption of the moratorium there have been some improvements but to some degree the lack of peace, order, and quiet are still a concern for the community. For instance, patrons parking in the residential neighborhood prevent residents and their guests from parking in front of or near their homes. Additionally, when these individuals leave the ABC-licensed establishments to return to their vehicles, oftentimes late at night, they cause disruption to the residents in their homes. For these reasons, the Board finds it necessary to continue the moratorium because doing so will aid in addressing the adverse impact on peace, order, and quiet the ABC-licensed establishments in the area are continuing to have on the community.

Although the Board agrees with the ANC's recommendation to renew the moratorium it does not support renewing the moratorium for an additional five (5) years. The Board believes continuing the moratorium for an additional three (3) years is sufficient to meet the community's needs. The community will have the protection of the moratorium for an extended period of time and the Board will be afforded an opportunity to review the value of the moratorium in another three (3) years. Because the city and its neighborhoods are not stagnant, but rather growing and changing at a rapid pace, the Board believes that it is in the best interest to review the merits of

the moratorium every three years. This will also allow the Board to act sooner if further modifications to the moratorium are warranted.

The Board agrees with the ANC's recommendation to amend the moratorium to specifically prohibit ABC-licensed establishments from expanding its licensed premises to adjacent properties and lots, except for purposes of increasing onsite parking. As previously mentioned, the Board is concerned about the ongoing noise and parking difficulties for the neighborhood due to the presence of ABC licensed establishments. Area homeowners deserve peace and quiet free from the late night activities brought about by the nearby commercial businesses. Thus, the Board finds adding this prohibition to the moratorium to be necessary to promote the peace, order, and quiet of the community.

Finally, the Board does not agree with renaming the moratorium. The Board acknowledges that the Langdon Park Neighborhood Association, the entity that initiated the creation of the moratorium, no longer exists. This, however, is not sufficient rationale to rename the moratorium, especially to rename it after the ANC commission district. Additionally, renaming the moratorium may cause one to erroneously believe that the moratorium covers the entire boundary of ANC 5C. The Board believes that the name "the Langdon Park Moratorium Zone" is appropriate and easily understood and therefore rejects the request to have the moratorium renamed.

Thus, for the reasons discussed above, the Board gives notice, that on October 21, 2020, it has approved the Langdon Park Moratorium Zone Notice of Emergency and Proposed Rulemaking, by a vote of seven (7) to zero (0). The emergency rulemaking (a) supersedes the emergency rulemaking that the Board adopted on July 15, 2020; (b) renews the Langdon Park Moratorium for three (3) years; and (c) prohibits ABC-licensed establishments from expanding onto adjacent properties and lots, unless for purposes of increasing onsite parking. The emergency rules shall remain in effect for one hundred twenty (120) days, expiring on February 18, 2021, unless superseded by an emergency or 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 *D.C. 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 approved by Council resolution, and that the rules will not take effect until five (5) days after publication in the *D.C. Register*.

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

311 LANGDON PARK MORATORIUM ZONE

311.1 The number of retailer's licenses class CN and CX permitted in the 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., shall not exceed three (3). No new entertainment endorsements for class CR and CT retailer's licenses shall be issued in the moratorium zone.

- 311.2 On-premises retailer's licenses, class CR, DR, CT, DT, CN, DN, CX, and DX, shall be prohibited from expanding their licensed premises to adjacent properties or lots, except for purposes of increasing onsite parking.
- 311.3 The 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 All hotels, whether present or future, shall be exempt from the Langdon Park Moratorium Zone.
- 311.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CN or CX within the Langdon Park Moratorium Zone that was in effect or for which an application was pending prior to August 2, 2017, the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.
- 311.6 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.
- 311.7 A license holder outside the Langdon Park Moratorium Zone shall not be permitted to transfer its license to a location within the Langdon Park Moratorium Zone.
- 311.8 Nothing in this section shall prohibit a valid protest of any transfer or change of license class.
- 311.9 The moratorium shall have a prospective effect and shall not apply to any license granted prior to August 2, 2017, the effective date of this section, or to any application for licensure pending on the effective date of this section.
- 311.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in the *D.C. Register*.