

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

NOTICE OF FINAL 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.), and Mayor’s Order 2001-96, dated June 28, 2001, as amended by Mayor’s Order 2001-102, dated July 23, 2001, hereby gives notice of the adoption of final rules that amend section 311 (Langdon Park Moratorium) 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.

A complete summary of the Langdon Park Moratorium Zone (LPMZ), as well as the witness testimony that was received during the Board’s September 30, 2020, Public Hearing, can be found in the Notice of Second Emergency and Proposed Rulemaking as published in the *D.C. Register* at 67 DCR 14020 (November 27, 2020). See <https://dcregs.dc.gov/Common/DCR/Issues/IssueDetailPage.aspx?issueID=848>.

PROCEDURAL BACKGROUND

The Langdon Park Moratorium Zone (LPMZ) was created by the Board in 2017. Specifically, 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 was scheduled to expire on July 27, 2020, unless it is renewed by the Board.

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

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)[SUPERSEDED].

On September 30, 2020, the Board held a hearing concerning the Langdon Park Moratorium Zone. 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 (1) renew the moratorium for five (5) years; (2) prohibit licensees from expanding their premises to adjoining premises or lots except for purposes of increasing onsite parking; and (3) rename the moratorium zone "ANC 5C Moratorium" because the Langdon Park Neighborhood Association is now defunct.

After carefully considering ANC 5C's resolution and Commissioner Montague's testimony, the Board voted seven (7) to zero (0) to adopt the Langdon Park Moratorium Zone Notice of Second Emergency and Proposed Rulemaking on October 21, 2020. The emergency and proposed rulemaking, which superseded the emergency rules the Board adopted in July 2020, sought to renew the moratorium for an additional three (3) years and prohibit ABC-licensed establishments from expanding its licensed premises to adjacent properties and lots, except for purposes of increasing onsite parking. *See* 67 DCR 14020 (November 27, 2020)[EXPIRED].

In reaching its decision, the Board acknowledged the Langdon Park residents' ongoing concerns with peace, order, and quiet in their community notwithstanding the Board's adoption of the moratorium in 2017. Since the adoption of the moratorium there have been some improvements, but the lack of peace, order, and quiet is still a concern for the community, as expressed by Commissioner Montague in his testimony and the ANC's resolution. After carefully considering ANC 5C's testimony and resolution, the Board decided to renew the moratorium for an additional three (3) years as opposed to five (5) years as the ANC requested. The Board believed continuing the moratorium for an additional three (3) years is sufficient to meet the community's needs. Specifically, the Board determined that the shorter moratorium period would provide it with an opportunity to review the benefit of the moratorium within a shorter period of a time, and thus, make adjustments if necessary.

The Board also agreed 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. Like the community, the Board is concerned about the ongoing noise and parking difficulties for the neighborhood due to the presence of ABC-licensed establishments.

The Board, however, did not agree with renaming the moratorium. The Board acknowledged that the Langdon Park Neighborhood Association, the entity that initiated the creation of the moratorium, no longer exists. The Board, however, did not find this to be a sufficient reason for changing the moratorium's name. Additionally, the Board noted that renaming the moratorium "ANC 5C Moratorium" would give the impression that the moratorium covers the entire ward, which is not accurate.

BOARD'S DECISION TO ADOPT THE RULES AS FINAL

At the conclusion of the thirty (30)-day comment period, the Board transmitted the proposed rules to the Council of the District of Columbia for a ninety (90)-day review period. Unlike the Board's other rules, rulemakings to establish or amend moratoria do not require affirmative approval by the conclusion of the Council review period. *See* D.C. Official Code § 25-211(b). During the pendency of the Council review period, the emergency rules were slated to expire. In order to prevent this from happening, the Board adopted the Langdon Park Moratorium Zone Notice of Third Emergency Rulemaking on February 10, 2021. *See* 68 DCR 4575 (April 2, 2021).

The Council review period ended on May 10, 2021, and the proposed rules were deemed approved at that time. *See* Langdon Park Moratorium Zone Approval Resolution of 2021 (PR 24-0058), at <https://lims.dccouncil.us/Legislation/PR24-0058>. Thus, the rules are ripe for final adoption.

The Board gives notice that on May 19, 2021, it voted five (5) to zero (0) to adopt the Langdon Park Moratorium Zone Notice of Final Rulemaking. These rules will go into effect five (5) days after they are published in the *D.C. Register*. The Board did not make any changes to the rulemaking since it was published as proposed in November 2020.

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*.