

**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 the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(b) (2012 Repl. & 2017 Supp.)), hereby gives notice of the adoption of final rules that amend § 718.2 and § 718.3 of Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The final rulemaking amends 23 DCMR § 718.2 and 718.3 by reducing the percentage of distribution of subsidies paid by the Alcoholic Beverage Regulation Administration (ABRA) to the Metropolitan Police Department (MPD) from seventy percent (70%) to sixty percent (60%) when covering the costs incurred by Alcoholic Beverage Control (ABC) licensees from MPD officers working reimbursable details under the Reimbursable Detail Subsidy Program (“RDO Program” or “Program”). The rulemaking also amends 23 DCMR § 718.2 by including pub crawls among the types of events which may participate in the RDO Program.

I. BACKGROUND

The RDO Program assists licensed establishments to defray the costs of retaining off-duty MPD officers to patrol the surrounding area of an establishment or an outdoor Special Event or Pub Crawl Event for the purpose of maintaining public safety, including the remediation of traffic congestion and the safety of public patrons, during their arrival and departure from the establishment or Special Event or Pub Crawl Event. Over the past several years, the Board has revised the reimbursable detail coverage percentages on an as needed basis. For example, previous Program revisions have included modifying the percentage of the reimbursed subsidy amount, the number of hours worked by MPD, the number of nights of the week worked by MPD, and the addition of federal and District holidays, and certain holiday weekends.

The Board last amended the rules on February 19, 2016. *See* <https://dcregs.dc.gov/Common/DCMR/RuleDetail.aspx?RuleId=R0018361>. At that time, the Board increased the number of days covered by the RDO Program from two (2) days to seven (7) days a week, and to increase the reimbursement percentage from fifty percent (50%) to seventy percent (70%).

The Board has observed an increase in the number of pub crawl events taking place in the District of Columbia. In Fiscal Year 2016, the Board approved twenty-four (24) pub crawl applications. This is a significant increase in comparison to previous years. Although a source of entertainment, pub crawls pose safety risks to the public. It is for this reason that the Mayor and the Council for the District of Columbia included a provision in the Fiscal Year 2017 Budget which allows for the expansion of the RDO Program to include pub crawls. In order to ensure ABRA’s regulations comport with current law, the Board deems it necessary to amend 23

DCMR § 718.2 to include pub crawl events among the events which may participate in the RDO Program.

Notwithstanding the expansion of the RDO Program to include pub crawls, the overall funding levels for the Program will remain the same in Fiscal Year 2017. This, in turn, will place a strain on ABRA's ability to reimburse MPD for its RDO associated costs. Recognizing the public safety benefits of the RDO Program, the Board desires to continue to reimburse MPD for a percentage of the costs incurred by licensees for MPD officers working reimbursable details, but it will have to do so at a lower percentage rate. Therefore, the Board finds it necessary to reduce the Program's reimbursement percentage from seventy percent (70%) to sixty percent (60%). Given the importance of this Program to public safety, the Board will continue to regularly monitor the Program's funding and make any necessary adjustments to the distribution of subsidies to cover the costs incurred by licensees.

On January 25, 2017, the Board adopted the MPD RDO Program Notice of Emergency and Proposed Rulemaking, six (6) to zero (0), with an effective date of March 1, 2017. On February 15, 2017, the Board held a Public Hearing in which it allowed members of the public and the industry to comment on the proposed rules. The Board received written and oral testimony from the D.C. Nightlife Hospitality Association (DCNHA).

Mark Lee, Executive Director of the DCNHA, testified on behalf of the association. Mr. Lee praised the Board's efforts to expand the RDO Program to other events, including pub crawls. Mr. Lee, however, expressed the organization's concerns of how the rules will adversely affect its members.

Specifically, DCNHA is concerned that the reduction in the reimbursement percentage from seventy percent (70%) to sixty percent (60%) would increase the financial burden on its members, including smaller establishments. DCHNA anticipates establishments which hire two (2) RDO officers for four (4) hours twice a week will see an annual increase of six thousand (\$6,000), and that establishments that hire four (4) RDO officers for the same amount of hours and days per week can see their annual expenditure increase to one hundred thousand dollars (\$100,000).

It is DCHNA's position that when facing this financial dilemma, some of its members may cease participating in the RDO Program or reduce the number of officers they retain as well the number or hours and days per week sought. DCHNA encourages the Board to return to the previous reimbursement percentage of seventy percent (70%) and craft a formula which will allow it to maintain the funding levels into perpetuity and alleviate the need for future emergency and proposed rulemakings.

The MPD RDO Notice of Emergency and Proposed Rulemaking was published in the *D.C. Register* on April 14, 2017, at 64 DCR 3546, for a thirty (30)-day comment period. See <http://dcregs.dc.gov/Gateway/RuleHome.aspx?RuleNumber=23-718>. The Board did not receive any comments from the public during the comment period which ended on May 14, 2017.

After the publication of the Notice of Emergency and Proposed Rulemaking, but prior to the rules being submitted to the Council for review, the Board adopted the Notice of Emergency Rulemaking on May 24, 2017, by a vote of six (6) to zero (0). The emergency rules were published in the *D.C. Register* on August 4, 2017, at 64 DCR 7520 [EXPIRED]. The Board, once again, adopted emergency rules on September 27, 2017, by a vote of five (5) to zero (0), to ensure the emergency rules were in effect while the rules were undergoing Council review. These emergency rules were published at 64 DCR 11640 (November 3, 2017) [EXPIRED]. Once again, the Board voted, seven (7) to zero (0), to adopt emergency rules on January 24, 2018, to ensure that the current spending levels remained in place pending enactment of the final rulemaking. These emergency rules were published in the *D.C. Register* on April 20, 2018, at 65 DCR 4464.

The emergency rules that the Board adopted since the adoption of the original emergency and proposed rules were identical, as no substantive changes were made to the rules since they were originally published in the *D.C. Register* or as they were submitted to the Council for review.

On January 9, 2018, the Council approved the MPD RDO Subsidy Notice of Emergency and Proposed Rulemaking. See Reimbursable Detail Subsidy Program Resolution of 2017 (PR22-527), at <http://lims.dccouncil.us/Legislation/PR22-0527?FromSearchResults=true>. Therefore, these rules are now ripe for the Board to approve as final.

By a vote of seven (7) to zero (0), the Board voted to adopt the MPD RDO Subsidy Program Notice of Final Rulemaking. No substantive changes have been made to the rulemaking since it was published as proposed. In accordance with D.C. Official Code § 25-211(d), these final rules will take effect five (5) days after they are published in the *D.C. Register* and will supersede any previously adopted emergency rules.

Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, is amended by replacing Subsections 718.2 and 718.3 to read as follows, and renumbering the following subsections:

718.2 ABRA will reimburse MPD sixty percent (60%) of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. The hours eligible for reimbursement for on-premises retailer licensees shall be 11:30 p.m. to 5:00 a.m. ABRA will also reimburse MPD sixty percent (60%) of the total costs of invoices submitted by MPD to cover the costs incurred for Pub Crawl Events and for outdoor Special Events where the Licensee has been approved for a One Day Substantial Change License or a Temporary License. The hours eligible for an outdoor Special Event operating under a One Day Substantial Change License or a Temporary License or a Pub Crawl Event operating under a Pub Crawl License shall be twenty-four (24) hours a day.

718.3

MPD shall submit to ABRA on a monthly basis invoices documenting the sixty percent (60%) amount owed by each licensee. Invoices will be paid by ABRA to MPD within thirty (30) days of receipt in the order that they are received until the subsidy program's funds are depleted.