

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

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage and Cannabis Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2012 Repl. & 2015 Supp.) and in accordance with 23 DCMR § 303.1, hereby gives notice of the adoption of proposed rules that amend chapter 3 (Limitations on Licenses) of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR) to create a new section 312 entitled, the North Shaw Moratorium Zone. The proposed rulemaking would create a new moratorium zone for three (3) years that would extend approximately six hundred feet (600 ft.) in all directions from 1909 9th Street, N.W., which is the location of Noah Noal DC, LLC, t/a Sound Bar, holder of a Retailer's Class CT license (ABRA License No. 122864).

Specifically, the moratorium shall prohibit the following for a period of three (3) years:

- (1) New Retailer's Class CN and DN nightclub licenses;
- (2) New Retailer's Class CX and DX multipurpose facility licenses;
- (3) New entertainment endorsements for any on-premises licensed restaurant or tavern to offer entertainment, a cover charge, or facilities for dancing;
- (4) Existing entertainment endorsements for any on-premises licensed restaurant or tavern to add entertainment, a cover charge, or facilities for dancing;
- (5) A licensed nightclub, multipurpose facility, or restaurant or tavern with an entertainment endorsement from transferring from a location outside of the moratorium area to a location inside of the moratorium area; and
- (6) A license holder located within the moratorium area filing a change of license class application for a Class CN, DN, CX (multipurpose facility), or DX (multipurpose facility) retailer's license.

Because the proposed moratorium zone covers an area larger than the 1900 block of 9th Street, N.W., requested by the Westminster Neighborhood Association (WNA), the Board is scheduling an additional public hearing for Thursday, February 8, 2024, at 10:00 a.m. to receive public comment on the Board's proposed rulemaking.

Procedural Background

On September 14, 2023, the Board held a public rulemaking hearing related to the Moratorium Petition (Petition) filed by WNA based upon the Board's finding that the petition satisfied the

requirements of D.C. Official Code § 25-352. Notice of the hearing was published in the *D.C. Register* on August 18, 2023. Prior to the hearing and until the record closed, the Board also received numerous written comments from members of the public.

Public Comments

A complete summary of the background of the North Shaw Moratorium Zone, as well as public comment relevant for consideration received during the Board’s Public Hearing and public comment period are as follows:

Westminster Neighborhood Association

The WNA submitted the moratorium petition and a supplemental petition. The WNA is a registered District of Columbia community association located in the area near 9th Street, N.W. *Petition for the Establishment of a Moratorium Zone in the 1900 Block of 9th Street*, at 4 [Petition]. The petition requested a moratorium zone within a 600-foot radius centered at 1914 9th Street, N.W., which is the location of 1914 LLC, t/a Kolben, holder of a Retailer’s Class CT license (ABRA License No. 116067). *Id.* at 4-5. Specifically, the petition requests a moratorium on the issuance and transfer of restaurant, tavern, and nightclub licenses and off-premises alcohol retailers in the moratorium zone and changes in license class to the affected license classes; a moratorium on new entertainment endorsements, increased occupancy, and increased hours. *Id.* at 18. The petition indicates that it supports an exemption for hotels and restaurants without entertainment endorsements. *Id.* at 18-19. The requested period for the moratorium is 3 years. *Id.* at 19. The Petition further requests that the moratorium be called the “North Shaw & 9th Street Neighborhood Moratorium Zone.”¹ The Petition also requests a pause on liquor license applications in the targeted area, a reduction in licenses, and changes to the zoning code. *Id.* at 2-3.²

The Petition filed by the WNA indicated that there are 23 alcohol licenses issued in the relevant area. *Id.* at 6. The petition argued as a basis for its filing that licensees are contributing to a negative impact on peace, order, and quiet and that there exists an overconcentration of licensed establishments in the area and other appropriateness concerns.

The petition noted the occurrence of a number of violent crimes between 2021 and 2023, including various stabbings and gun violence. *Id.* at 7-8. It also contained reports of unruly crowds that engage in fighting that typically occurs when nightlife establishments are most active. *Id.* at 8-9. This included an incident occurring on March 13, 2022, where there were reports that a large fight involving approximately 60 nightlife patrons in the street occurred during the early morning hours. *Id.* at 9. The petition noted that there are also many complaints

¹ The Board designates the moratorium zone the “North Shaw Moratorium Zone” because the proposed name is too long and the term North Shaw effectively communicates the area targeted by the moratorium.

² The Board notes that some of the requests exceed the scope of a moratorium petition, and could only be enacted through legislation.

by residents that nightlife patrons congregate in front of their homes and create noise. *Id.* Residents also have concerns about frequent “car parties” in the neighborhood. *Id.* at 11. The petition stated that during these gatherings, witnesses describe persons consuming cannabis and alcohol, which creates a rowdy atmosphere in the streets. *Id.* Moreover, people engaging in such activity also play loud music outside which disturbs nearby residents. *Id.* The Board notes that the District’s open container law prohibits drinking in public, including vehicles located in public streets. D.C. Official Code § 25-1001(a)(2).

The Petition also complained about trash and litter in the neighborhood. *Id.* at 12. Specifically, residents find large amounts of litter in the street after heavy nightlife activity, including trash, condoms, liquor bottles, broken glass, vomit, and other human waste. *Id.*

The Petition also complained that nightlife establishments are generating noise and vibrations that disturb residents in their homes. *Id.* at 13-14.

The Petition further discusses residential parking and vehicular and pedestrian safety. *Id.* at 15. The petitioners complain that an influx of nightlife patrons to the neighborhood making parking difficult for residents and resulting in a high level of parking violations. *Id.* at 15-16. The petitioners further complain that the amount of patrons in the neighborhood makes it difficult to navigate the sidewalks when nightlife is active. *Id.* at 16.

Councilmember Brienne K. Nadeau

Councilmember Brienne K. Nadeau wrote in support of the petition and to delay the issuance of new licenses in the neighborhood until a decision is made regarding the moratorium. *Letter from Councilmember Brienne K. Nadeau* (Aug. 7, 2023).

Advisory Neighborhood Commission 1B

Advisory Neighborhood Commission (ANC) 1B supports the moratorium petition and requests that additional enforcement resources be directed to the community. *ANC 1B Resolution, 1* (Sept. 14, 2023).

Metropolitan Police Department

Captain Riley Hong of the Third District testified on behalf of the Metropolitan Police Department. *Transcript (Tr.)*, September 14, 2023 at 8. He indicated that reimbursable detail spots are not always filled, and based on the crime in the area he believes that the petition should be granted. *Id.* at 9. He noted that the area attracts vehicles that rev their engines, drag racing, and illegal all-terrain vehicles (ATV). *Id.*

Local Residents Comments

Local residents Alex Smith, Sudha Gollapudi, Paul O’Neill, Mattia D’Affuso, Amanda Toles, Gonzalo Gomez, David Greer, Elizabeth Baker, Craig Brownstein, Paul Williams, Justin Campbell, Tania Shand, Stergios Theologides, Reid Dunavant, Zoe Cordelia Lu, Andre Ory, Leola Smith, Frank Chauvin, Krishna M. Kumar, and Pierson Stoecklein support the petition for various reasons, including their experience as residents. *See Moratorium Rulemaking File.* Some of the reasons articulated by various local residents include concerns regarding the negative impact of the overconcentration of alcohol licenses, noise, crime, public safety concerns posed by patrons, and the litter caused by such patrons. *Id.* Mr. O’Neill blamed the expansion of The Uptown Arts-Mixed Use (ARTS) Overlay zone for encouraging overconcentration. *Id.* Mr. Williams noted that the buildings in the neighborhood were built to be residences and not nightlife businesses. *Id.* Ms. Shand presented various studies that show a correlation between the concentration of alcohol outlets and crime. *Id.* Ms. Kumar provided various crime statistics related to the neighborhood that showed a high level of reported crime.

Behzad Khani

Behzad Khani owns two properties in the neighborhood. *Tr.* 9/14/23 at 26-27. He supports the moratorium petition. *Id.* at 27. He complains about loiterers sitting on his property and engaging in drinking, smoking, and other activities that are detrimental to his property. *Id.* at 28.

Tesfit Kiflu

Tesfit Kiflu owns Cloud Lounge. *Id.* at 32. He complained about public drinking in the neighborhood. *Id.* at 32-33. He supports the petition generally but not restrictions on transferring or selling the business. *Id.* at 34.

Bill Spieler

Bill Spieler owns DC9 nightclub. *Id.* at 61. He opposes the petition because moratoriums are ineffective and do not address the problems targeted by moratoriums. *Id.* He also noted that moratoriums inflate the price of alcohol licenses. *Id.* at 62. He also noted that vendors are selling alcohol out of coolers in the neighborhood. *Id.* at 63-64.

Shaw Main Streets

Alexander Padro, the executive director of Shaw Main Streets testified in opposition to the petition. *Id.* at 90. The petition will hurt the business economically and harm “the largest cluster of Ethiopian and Eritrean American businesses” in the region. *Id.* at 90. He indicated that issues in the neighborhood stem from restaurants and taverns morphing into nightclubs. *Id.* at 91. He also noted that the moratorium would not have an effect on the concerns the moratorium is meant to address. *Id.* Instead, he recommended banning the use of outside promoters, enhanced security, and business consultations and training. *Id.* at 91-94. He also indicated that a local

building owner should allow businesses to remove trash through a local alley to address litter concerns. *Id.* at 94. He further noted that there has been no reduction in property values. *Id.* at 94-95. He also opposes calling the moratorium than the “1900 block of 9th Street, N.W.” moratorium zone. *Id.* at 95.

9th Street Association

Allan Ebert, the executive director of the 9th Street Association, represents various nightlife establishments, including Cloud, MK Lounge, Mirror, and Right Spot. *Id.* at 114-15. He complained that MPD is not stopping illegal alcohol sales on the streets, which contributes to the negative environment in the area. *Id.* at 116. He does not believe the moratorium will be effective. *Id.* at 118.

9th Street Nightlife Equity Coalition

The 9th Street Nightlife Equity Coalition (Coalition), representing several businesses in the proposed moratorium zone, filed comments opposing the Petition. *Position of the 9th Street Nightlife Equity Coalition*, at 1 (Nov. 3, 2023). The basis of the opposition is (1) the Petition is defective because it does not encompass a locality, section, or portion, but rather a portion of a locality, which the Coalition argues renders the petition defective under D.C. Official Code § 25-352(a), which requires moratoriums to encompass “either a locality, section, or portion” of the District, which are specifically defined areas in § 25-101 of the D.C. Official Code; (2) the information provided by the Petitioners is too generalized because the proposed area is smaller than the area encompassed by the information provided; (3) the proposed moratorium is discriminatory because it targets an area where businesses are largely owned by immigrants from Ethiopia and North Africa and will have a negative impact on the area serving as a “Little Ethiopia” enclave; (4) any issues in the area are a failure of the District to provide appropriate policing and traffic management; and (5) the proposed moratorium will not address the issues that the community seeks to address. *Id.* at 1-15.

Westminster Neighborhood Association (Response to Coalition)

The Westminster Neighborhood Association (WNA) responded to the comments filed by the Coalition. *Westminster Neighborhood Association’s Opposition to Motion for Reconsideration, Rehearing, and in the Alternative to Dismiss the Petition*, 1 [Opposition].³ The WNA admitted that the Petition “ultimately identified the Moratorium Zone as a portion of the identified locality.” *Id.* at 3. The WNA notes that this limited area satisfies the minimum requirements for implementing a moratorium zone and the language of D.C. Official Code 25-354(e) allows for an area smaller than a locality. *Id.* The WNA further argues that there are sufficient race neutral reasons for creating the proposed moratorium zone, such as safety concerns. *Id.* at 7-8.

³ The Board notes that various parties have filed motions which the Board treats as rulemaking comments because a rulemaking is not a contested proceeding. To the extent parties have filed legal opinions regarding the moratorium, the Board is only taking them under advisement and has no intent to issue an order resolving, granting, or denying the motions.

The Board's Decision

The Board considered the oral and written testimony, resolutions and exhibits filed by the Westminster Neighborhood Association, the 9th Street Association, the 9th Street Nightlife Equity Coalition, and other witnesses and residents. In reaching its decision, the Board also gave great weight to the written recommendations of ANC 1B, as required by section 13(d)(3) of the Advisory Neighborhood Commissions Act of 1975, effective March 26, 1976 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3)), and D.C. Official Code § 25-609.

Pursuant to D.C. Official Code § 25-351, the Board determined that it was in the public interest to establish a new moratorium with some restrictions for three (3) years, and in doing so, the Board based its decision upon the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314. 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 2 of the appropriateness standards set forth in subchapter II of this chapter.” D.C. Official Code § 25-354(d); *see also* D.C. Official Code § 25-351(a).

The relevant appropriateness standards listed in subchapter II include: (1) “[t]he effect of the establishment[s] on real property values”; (2) “[t]he effect of the establishment[s] on peace, order, and quiet, including the noise and litter provisions set forth in [D.C. Official Code] §§ 25-725 and 25-726; (3) “[t]he effect of the establishment[s] upon residential parking needs and vehicular and pedestrian safety”; (4) “[t]he proximity of the establishment[s] to schools, recreation centers, day care centers, public libraries, or other similar facilities”; (5) “[t]he effect of the establishment[s] on the operation and clientele of schools, recreation centers, day care centers, public libraries, or other similar facilities”; (6) “[w]hether school-age children using facilities in proximity to the establishment[s] will be unduly attracted to the establishment while present at, or going to or from, the school, recreation center, day care center, public library, or similar facility at issue”; and (7) “[w]hether issuance of [additional] licenses would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment[s] [are] located.” D.C. Official Code §§ 25-313(b)(1)-(3), 25-314(a)(1)-(4).

Based upon the public comment related to the proposal, the Board is persuaded that the issuance of a new moratorium described in this rulemaking in the selected area is appropriate to preserve peace, order, and quiet; pedestrian and vehicular safety; and to prevent the overconcentration of licensed establishments in accordance with D.C. Official Code § 25-354(d). In particular, the Board is persuaded that the issuance of new nightclub and multipurpose facility licenses and entertainment endorsements will have a detrimental effect on public safety in the area around the 1900 block of 9th Street, N.W.

The Board considered arguments regarding the impact of the moratorium on minority business owners but is persuaded that the area suffers from significant issues regarding crime and public safety that justify the moratorium. The Board further considered the argument that the information justifying the moratorium was too generalized and did not specifically apply to the

limited area targeted by the proposal; nevertheless, this argument is moot as the Board has selected a larger area than the one proposed.

The Board notes that in future proceedings related to the renewal of the moratorium, the Board may consider changes in behavior and policing in the area, among other factors. The Board suggests that various governmental and non-governmental stakeholders consult and work together to address various problems identified in the petition and by supporters of the moratorium. Discussions could entail various initiatives to address quality of life issues, such as public drinking and illegal alcohol sales in the streets; promoting the use of street facing security cameras by businesses and residents; the provision of free parking, ride share, Metro rides, and other transportation options; community wide traffic and noise studies; staggering let out at establishments, among other things.

The Board notes that it selected a different location from the one designated by the Petitioner and chose to enact a moratorium of 600 feet, rather than the smaller one proposed by the Petitioner. The Board selected a broader area for the moratorium because the data presented at the hearing and in comments submitted by community residents demonstrated that problems, such as crime, go beyond the Petitioner's selected area. Moreover, patrons are coming and going to the area from public transportation and vehicles parked outside the initially proposed moratorium. Therefore, a larger moratorium area is warranted as the problems are tied to activity outside of the initially proposed area.

In imposing a new moratorium, the Board is primarily limiting the moratorium restrictions to prohibiting the issuance of new nightclubs, new multipurpose facilities, and new entertainment endorsements to restaurants and taverns. This will allow for the licensing of new restaurant and taverns without entertainment endorsements. These restrictions will help to ensure that these new establishments are focused primarily on eating and drinking, which have not been shown to relate to any of the problems identified by the Petitioner and other supporters. Additionally, many restaurants and taverns generally close earlier than nightclubs. To help preserve the peace, order, and quiet of the neighborhood and address overconcentration issues, the Board is also precluding existing restaurants and taverns that hold partial entertainment endorsements from adding entertainment, a cover charge, or facilities for dancing. The Board is also prohibiting a licensed nightclub, multipurpose facility, or restaurant or tavern with an entertainment endorsement from transferring from a location outside the moratorium area to a location inside the moratorium area. Furthermore, the Board is precluding a licensed establishment located within the moratorium area from filing a class change application for a nightclub or multipurpose facility. The Board further rejected other proposed restrictions for various reasons, including the fact that some restrictions could unfairly threaten the financial viability of businesses, some suggestions could be deemed to have gone beyond the scope of D.C. Official Code § 25-351, some were sufficiently addressed by the restrictions selected by the Board, or were otherwise too tangential, or speculative in effect to merit including as part of the rulemaking.

The statements set forth above reflect the written reasons for the Board's decision as required by 23 DCMR § 303.1. Thus, the Board gives notice that on December 14, 2023, it approved the

North Shaw Moratorium Zone Notice of Proposed Rulemaking, by a three (3) to zero (0) vote. The rulemaking would (a) establish the North Shaw Moratorium Zone for three (3) years; (b) prohibit the issuance of new Retailer Class CN/DN licenses and new Retailer's Class CX/DX multipurpose facility licenses, (c) prohibit the issuance of new entertainment endorsements to Retailer Class CR/DR and CT/DT licenses, (d) prohibit existing Retailer Class CR/DR and CT/DT licensees with entertainment endorsements from adding entertainment, a cover charge, or facilities for dancing, (e) prohibit a licensed nightclub, multipurpose facility, or restaurant or tavern with an entertainment endorsement from transferring from a location outside of the moratorium area to a location inside of the moratorium area, and (f) prohibit a license holder located within the moratorium area from filing a change of license class application for a Class CN or DN retailer's license or Class CX or DX multipurpose facility license.

The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not fewer than thirty (30) days after the date of publication of this notice in the *D.C. Register*. Further, the Board will transmit the proposed rulemaking to the Council of the District of Columbia for a ninety (90)-day period of review in accordance with D.C. Official Code § 25-211(b)(2)(2012 Repl.), whereby Council approval of the rulemaking is required prior to adoption.

The rules enacting the North Shaw Moratorium Zone are as follows:

Chapter 3 (Limitations on Licenses) of title 23 (Alcoholic Beverages) of the DCMR is amended by adding a new section 312 to read as follows:

312 NORTH SHAW MORATORIUM ZONE

- 312.1 No application for a new Retailer's Class CN or DN or Retailer's Class CX or DX multipurpose facility license shall be approved or issued in the North Shaw Moratorium Zone, which extends approximately six hundred feet (600 ft.) in all directions from 1909 9th Street, N.W.
- 312.2 No application for a new entertainment endorsement or change to an existing entertainment endorsement to have or add entertainment, a cover charge, or offer facilities for dancing filed by a licensee under a retailer's license class CR, DR, CT or DT shall be approved or issued in the North Shaw Moratorium Zone, which extends approximately six hundred feet (600 ft.) in all directions from 1909 9th Street, N.W.
- 312.3 The North Shaw Moratorium Zone is more specifically described as an area bounded by a line beginning at the 1900 block of 9th Street N.W.; continuing in a northeast direction to the southside of the 800 block of V Street N.W.; continuing east to a portion of the 600 block of Florida Avenue N.W.; continuing in a southeast direction along the east side of the 1800 block of 7th Street N.W.; continuing south and southwest along the north side of the 700 and 800 blocks of

S Street N.W.; continuing in a northwest direction to the 1900 block of Vermont Avenue N.W.; continuing north to the 900 block of U Street N.W.

- 312.4 The North Shaw Mortarium shall not apply to any Retailer's Class CH or DH (Hotel) License."
- 312.5 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CR, CT, CX, CN, DR, DT, DX, or DN within the North Shaw Moratorium Zone.
- 312.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the North Shaw Moratorium Zone to a new location within the North Shaw Moratorium Zone.
- 312.7 A Retailer's Class CN or DN, Retailer's Class CX or DX multipurpose facility, or a restaurant or tavern with an entertainment endorsement located outside of the North Shaw Moratorium Zone shall not be permitted to transfer its license to a location within the North Shaw Moratorium Zone.
- 312.8 A license holder located within the North Shaw Moratorium Zone shall not be permitted to file a change of license class application for a class CN or DN or CX or DX multipurpose facility retailer's license.
- 312.9 The moratorium shall not apply to any license or endorsement application that was pending on the effective date of this section.
- 312.10 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in *D.C. Register*.

Copies of the proposed rulemaking can be obtained from by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Cannabis Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions and comments concerning the rulemaking should contact Martha Jenkins at (202) 442-4456 or via e-mail at martha.jenkins@dc.gov. Comments should be submitted, in writing, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.