

**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 § 25-351(a) (2012 Repl.) and Section 303 of Title 23 of the District of Columbia Municipal Regulations (DCMR), hereby gives notice of the following emergency and proposed rules that replace existing Section 306 of Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the DCMR to impose a three (3) year moratorium on the issuance of any new Retailer Class CT/DT and CN/DN licenses issued in a portion of East Dupont Circle which shall be known as the East Dupont Circle Moratorium Zone (EDCMZ).

These emergency and proposed rules also lift the restrictions on the number of Retailer Class A, Class B, Class CR/DR, and Class CX/DX licenses; retain the current exemptions for hotels; retain the existing language pertaining to the transfer of ownership; retain the prohibition on the transfer of Retailer Class CT/DT or CN/DN from outside the moratorium zone to inside the moratorium zone; and retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

By way of background, the existing moratorium expired on September 23, 2013. The Board voted on an emergency basis on September 18, 2013, by a vote of five (5) to zero (0) to keep the existing moratorium temporarily in place. The Board required additional time to consider two proposals submitted by community groups regarding the future of the EDCMZ.

On August 19, 2013, Advisory Neighborhood Commission (ANC) 2B filed a Resolution to Extend and Modify the East Dupont Circle Liquor Moratorium (Resolution). This Resolution was adopted by the ANC on August 14, 2013. The ANC Resolution resulted from a series of public meetings that were held by the ANC from May 2013 through August 2013, with the purpose of receiving public input from stakeholders and constituents in order to formulate a recommendation for the Board.

In summary, the ANC seeks renewal of the existing EDCMZ for a three (3) year period with certain modifications. Those modifications include maintaining the cap on Retailer Class CT/DT and CN/DN; lifting the restrictions on the number of Retailer Class A, Class B, Class CR/DR, and Class CX/DX licenses; retaining the current exemptions for hotels; retaining the existing language pertaining to the transfer of ownership; retaining the prohibition on the transfer of Retailer Class CT/DT or CN/DN from outside the moratorium zone to inside the moratorium zone; and retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

The second proposal was submitted by the Dupont Circle Citizens Association (DCCA) on August 13, 2013. The DCCA requests a temporary one hundred twenty (120) day extension to allow time for further research. Additionally, the DCCA seeks to collect additional data it deems relevant to the undertaking of this rulemaking; specifically the status of inactive licenses, and the analysis of the potential effects of all options. Furthermore, the DCCA desires to form a working

group on retail and arrive at a collaborative agreement with other interested parties.

The Board believed that both proposals merited further evaluation and thus held a hearing on October 24, 2013, pursuant to D.C. Official Code § 25-354 (2011 Supp.), to receive public comment on the written proposals. At the public hearing, the Board heard testimony from Will Stephens, Chairperson of ANC 2B, in support of the ANC proposal, and from Robin Diener and Ramon Estrada, on behalf of the DCCA proposal. Ms. Diener is the Chair of the Regulatory Committee of the DCCA and Mr. Estrada is the President of DCCA.

Commissioner Stephens testified that his ANC held a series of listening sessions that were noticed and open to the public to receive comment on the existing moratorium. These sessions were constructive and well attended, and were held for the benefit of the affected 17th Street NW residents, as well as the businesses located in the broader neighborhood of Dupont Circle. A wide range of comments from those in attendance guided the ANC in shaping its proposal. Additionally, the ANC held another round of listening sessions following publication of the draft proposal. After the second round of listening sessions concluded, the proposal was considered by the full Commission at its August 2013 meeting. The ANC adopted the proposal as described above, when Commissioner Stephens broke a tie on the four (4) to four (4) vote. The four non-prevailing votes desired to lift the existing moratorium altogether.

Commissioner Stephens believes that a modification of the existing moratorium is the appropriate solution to incorporate the concerns of the community who desire to enliven the neighborhood, and those who fear that a complete lifting may result in unintended consequences. There is also a desire on the part of the ANC and the community to ensure that the neighborhood does not foreclose opportunities for liveable retail such as hardware stores, dry cleaners, and flower shops.

Commissioner Stephens further testified that the process used by the ANC to gather and discern community input is consistent with their past processes used in other moratoria hearings, to include the recently considered moratorium at 14th and U Streets NW.

Commissioner Stephens explained that the rationale for retaining the restrictions on CT/DT and CN/DN licenses is due to the issues of peace, order and quiet that remain an ongoing concern for the neighborhood. Thus, the cap on restaurants was lifted to allow for continued growth of a vibrant and active neighborhood, without risking public safety that sometimes accompanies taverns and nightclubs.

Commissioner Stephens testified that the ANC made no recommendations with respect to amending 23 DCMR § 307.9 regarding the limitations on expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot.

Ms. Diener, on behalf of the DCCA, testified that her organization sought a more robust report from the ANC, specifically regarding the preservation of neighborhood retail businesses. She doesn't believe that enough data was provided in the ANC report to guide the Board in its decision-making. Ms. Diener submitted that further study is necessary to examine this particular

issue in greater detail, and that an additional one hundred and twenty (120) days would allow all concerned parties to address this issue. She testified that the DCCA was prepared to assist the ANC in this undertaking, but was not invited to contribute when the proposal was initially drafted. She also stated that she was unaware that the business community had provided input on the ANC's proposal.

The DCCA has requested additional time to work with the ANC, Main Streets and local businesses, in order to develop a more comprehensive report for the Board's consideration. Ms. Diener further testified that merely lifting the cap on restaurants does not guarantee that the community will receive the kind of restaurants that are appropriate for that neighborhood. She stated that the churn in ABC-licensed establishments sought by some residents is a sign of businesses failing, and that the Dupont Circle neighborhood is currently enjoying a stable environment due to the success of the businesses located there.

Mr. Estrada testified that part of the study proposed by the DCCA would include interviewing property brokers, landlords and surrounding businesses. He further stated that these broader interviews were originally the objective of the ANC, but that it was never accomplished. The DCCA would like to explore all options to understand whether a more measured relaxation of the moratorium isn't more appropriate than the lifting of the cap on the licenses of an entire retailer's class.

The Board took the views of ANC 2B and DCCA into consideration and determined that the ANC proposal to continue the moratorium while allowing for modifications to lift certain restrictions constitutes a reasonable, measured, and appropriate solution for the Dupont Circle neighborhood.

In reaching its decision, the Board gave great weight to the written recommendations of ANC 2B 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) (2006 Repl. & 2012 Supp.), and D.C. Official Code § 25-609 (2001 ed.).

Specifically, the Board agrees with the testimony provided by ANC 2B to: (1) renew the existing EDCMZ for a three (3) year period; (2) maintain the cap on Retailer Class CT/DT and CN/DN; (3) lift the restrictions on the number of Retailer Class A, Class B, Class CR/DR and Class CX/DX licenses; (4) retain the current exemptions for hotels; (5) retain the existing language pertaining to the transfer of ownership; (6) retain the prohibition on the transfer of Retailer Class CT/DT or CN/DN from outside the moratorium zone to inside the moratorium zone; and (7) retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

Additionally, notwithstanding the absence of a recommendation from the ANC, the Board will further modify the existing moratorium by lifting the limitations on the expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot. In doing so, the Board cautions licensees who seek a lateral expansion to do so with an understanding that Dupont Circle is a historical neighborhood and as such, the Board will give great scrutiny to any request that profoundly changes the nature and character of the neighborhood.

Furthermore, the Board finds that the DCCA has had plenty of time and opportunity to produce a more substantive proposal for the Board's consideration. By virtue of the adoption of the emergency rulemaking, the DCCA has received its requested additional time to produce a more detailed study. Sufficient time has passed since the filing of DCCA's proposal on August 13, 2013, to have allowed the DCCA its desired undertaking, and even more time will be granted while these proposed rules are published for another thirty (30) day comment period. Indeed, the Board was surprised to learn at the October 24, 2013, hearing that the DCCA had not begun any preliminary steps to demonstrate good faith in its efforts to convene a task force or seek input from neighborhood community groups and retail businesses.

Pursuant to § 25-351, the Board determined that it was in the public interest to renew the moratorium with certain modifications, 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 (2012 Supp.). Specifically, under D.C. Official Code § 25-313(b), the testimony presented at the hearing as well as the written proposal with regard to peace, order, and quiet, justified the need for the renewal of the moratorium zone with a relaxation of some of the current restrictions.

The statements set forth above reflect the written reasons for the Board's decision as required by 23 DCMR § 303.1.

Emergency rulemakings are used only for the immediate preservation of the public peace, health, safety, welfare, or morals, pursuant to 1 DCMR § 311.4(e). The existing EDCMZ expires on January 18, 2014, requiring the Board to make a determination regarding the future of the EDCMZ. The emergency action is necessary for the preservation of the health, safety and welfare of the District residents in order to: (1) ensure that the limitations placed on the issuance of new retailer's licenses Class CT, CN, DT, or DN, are maintained; and (2) keep the existing EDCMZ in place until the Board can adopt final rules regarding its renewal.

These emergency and proposed rules were adopted by the Board on November 20, 2013, by a four (4) to zero (0) vote with one abstention and became effective on that date. The rules will remain in effect for up to one hundred twenty (120) days, expiring March 20, 2014, unless earlier superseded by proposed and final rulemakings.

Section 306, EAST DUPONT CIRCLE MORATORIUM ZONE, of Chapter 3, LIMITATIONS ON LICENSES, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR, is amended to read as follows:

306 EAST DUPONT CIRCLE MORATORIUM ZONE.

306.1 A limit shall exist on the number of Retailer's licenses issued in the area that extends approximately six hundred (600) feet in all directions from the intersection of 17th and Q Streets, N.W., Washington, D.C., as follows: Class CT or Class DT – Two and (2); Class CN or DN – Zero (0). This area shall be known as the East Dupont Circle Moratorium Zone.

- 306.2 The East Dupont Circle Moratorium Zone is more specifically described as the area bounded by a line beginning at New Hampshire Avenue and S Street, N.W.; continuing east on S Street, N.W., to 17th Street, N.W.; continuing south on 17th Street, N.W., to Riggs Place, N.W.; continuing east on Riggs Place, N.W., to 16th Street, N.W.; continuing south on 16th Street, N.W., to P Street, N.W.; continuing west on P Street, N.W., to 18th Street, N.W.; continuing north on 18th Street, N.W., to New Hampshire Avenue, N.W.; and continuing northeast on New Hampshire Avenue, N.W. to S Street, N.W.
- 306.3 All hotels, whether present or future, shall be exempt from the East Dupont Circle Moratorium Zone.
- 306.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a CT or DT located within the East Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.
- 306.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the East Dupont Circle Moratorium Zone to a new location within the East Dupont Circle Moratorium Zone.
- 306.6 A license holder outside the East Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the East Dupont Circle Moratorium Zone unless the transfer will not exceed the number of licenses permitted in the East Dupont Circle Moratorium Zone for that particular class or type, as set forth in Section 306.1.
- 306.7 Subject to the limitation set forth in Section 306.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.
- 306.8 No licensee in the East Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CT, DT, CN, or DN.
- 306.9 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions concerning the rulemaking should contact Martha Jenkins at 202-442-4456 or email martha.jenkins@dc.gov. All persons desiring to comment on the proposed rulemaking must submit their written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.