

**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) (2008 Supp.) and section 303 of Title 23 of the District of Columbia Municipal Regulations (“DCMR”), 51 DCMR 4309 (April 30, 2004), hereby gives notice of its intent to adopt emergency and proposed rules that amend existing subsection 304.4 of Title 23 DCMR by modifying the Adams Morgan Moratorium Zone to permit the issuance of one new Class DR retailer’s license in the 1700 block of Florida Avenue, N.W.

The Board received a written letter from Advisory Neighborhood Commission (ANC) 1C, dated October 8, 2009 requesting that the Board amend the existing Adams Morgan Moratorium Zone, as permitted by D.C. Official Code § 25-351(f), to allow the issuance of new Class DR licenses in the 1700 block of Florida Avenue N.W. ANC 1C also submitted a Resolution adopted by the Commission on October 7, 2009 at a regularly scheduled meeting with a quorum present. ANC 1C voted 7-0 to support amending the current Adams Morgan Moratorium Zone. ANC 1C’s resolution states that the 1700 block of Florida Avenue N.W. has long been void of commercial endeavors and that an opportunity now exists to provide restaurant space on that block. As such, ANC 1C is supporting the issuance of new Class DR retail licenses in the 1700 block of Florida Avenue, NW, which would not be eligible for a license class change.

At the November 18, 2009 public hearing, the Board received testimony from ANC 1C. ANC Vice-Chair Mindy Moretti testified that ANC 1C supported this request on a 7-0 vote and that no one present from the Commission or the community spoke in opposition to the proposal. Vice-Chair Moretti also stated that the portion of the moratorium zone where the 1700 block of Florida Avenue is located, is not a concern for the neighborhood with respect to noise, litter and peace, order and quiet.

The District of Columbia Association of Beverage Alcohol Wholesalers (Wholesalers) also indicated its support for the proposed rulemaking. In its written comments, the Wholesalers indicated that permitting the issuance of new Class DR retailer’s licenses in the 1700 block of Florida Avenue N.W. will allow the ANC to respond to the changing needs of the Adams Morgan neighborhood. Additionally, new DR licenses will further strengthen the economic base of the commercial district and will contribute to the revitalization efforts of Adams Morgan. The Wholesalers also urged the Board to reevaluate the effectiveness of moratorium zones and to explore solutions that will balance, not inhibit, a community’s ability to pursue economic opportunities.

Written comment was also received from Denis James, President of the Kalorama Citizen’s Association (KCA). KCA urged the Board to not disturb the carefully crafted and discreet moratorium that was petitioned for and approved by the Board in April 2008. KCA indicated that nothing has changed within the existing moratorium zone to justify the Board’s modification of it. The basis of the April 2008 moratorium request still remain a concern today and those concerns are disturbance of the peace, order and quiet, noise and litter, and the effect that

additional licenses will have upon residential parking needs and vehicular and pedestrian safety. KCA is also concerned that if the Board grants this request to remove a single block from the existing moratorium, it will be setting a precedent such that the future removal of single blocks or areas will further erode the moratorium itself and defeat the purpose for which it was intended. However, KCA further stated that by allowing one additional DR license for the 1700 block of Florida Avenue N.W., the Board could satisfy ANC 1C's amendment request and yet still respect the spirit of the existing moratorium.

The Board has long been supportive of efforts by ANC Commissions to encourage business development in their communities and neighborhoods. In this instance, the Board gave ANC 1C's request great weight, but upon considering the testimony as a whole, the Board found ANC 1C's request to open the 1700 block of Florida Avenue to an unlimited number of Retailer's Class DR licenses to be too broad. Instead, the Board is adopting the KCA recommendation to lift the moratorium to allow for the issuance of one new Class DR retailer's license at this time. The Board encourages ANC 1C to reevaluate the effectiveness of its moratorium, at least for those neighborhoods where peace, order and quiet is not a concern, when the existing moratorium expires.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

The emergency action is necessary to ensure the public health and welfare of the Adams Morgan Moratorium Zone. Specifically, the testimony supported the issuance of one additional Class DR restaurant license as necessary to contribute to the revitalization and health of the neighborhood that occupies the 1700 block of Florida Avenue N.W.

These emergency rules were adopted by the Board on December 9, 2009 by a 5-0 vote. The rules became effective on that date. The emergency rules will expire 120 days from the date of effectiveness or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Board gives notice of its intent to adopt these proposed rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register. Pursuant to D.C. Official Code § 25-211(b)(2) (2008 Supp.), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until their approval by Council resolution during the ninety (90) day period of Council review.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing subsection 304.4 to read as follows:

304.4 The number of Retailer's licenses Class CN, CT, CX, DN, DT, or DX located within the Adams Morgan Moratorium Zone shall not exceed ten (10). The holder of a Retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone shall be prohibited from changing its license class except when the number of Retailer's licenses Class CN, CT, CX, DN, DT, or DX in the Adams Morgan Moratorium Zone is fewer than ten (10). Nothing in this subsection shall prohibit the Board from approving a change of license class application that was

filed with the Board by the holder of a retailer's license Class CR or DR located within the Adams Morgan Moratorium Zone prior to August 2, 2006. Notwithstanding the limitation on licenses contained in subsection 304.1, one (1) new Class DR retailer's license shall be permitted in the 1700 block of Florida Avenue, N.W. The new Class DR retailer's license shall not be eligible for a license class change during the existing moratorium period.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 1250 U Street, N.W., 2nd Floor, Washington, D.C. 20009. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of publication of this notice in the D.C. Register, to the above address.