

**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) (2001) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 51 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of emergency rules that replace existing section 307 of Title 23 DCMR and impose a limit on the number of retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX issued in a portion of West Dupont Circle, which shall be known as the West Dupont Circle Moratorium Zone, for a five (5) year period.

On June 10, 2005 the Board received a joint request from Advisory Neighborhood Commission ("ANC") 2B and the Dupont Circle Citizens Association ("DCCA") to extend, with certain modifications, the existing West Dupont Circle Moratorium Zone for a five (5) year period ("Petitioners' moratorium request"). The Board subsequently conducted a public hearing on July 27, 2005, pursuant to the requirements of D.C. Official Code § 25-354 (2001), to consider the Petitioners' moratorium request. At the July 27, 2005 public hearing, the Board decided to keep the record open for the submission of written comments on the Petitioners' moratorium request until July 29, 2005.

The Board received timely detailed testimony and comments on the Petitioners' moratorium request from ANC 2B, DCCA, the Dupont Circle Merchants and Professionals Association ("DC MAP"), and nearby Dupont Circle residents and business owners. The Board found the testimony and comments provided in response to the Petitioners' moratorium request to warrant imposing a limit on the number of retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX issued in the West Dupont Circle Moratorium Zone, based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001). It is worth noting that all of the testimony received by the Board supported the renewal of the West Dupont Circle Moratorium Zone in some form.

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) (2001), as amended, and D.C. Official Code § 25-609 (2001). ANC 2B voted to renew the existing West Dupont Circle Moratorium Zone, with certain modifications, by a 8-0 vote taken at a duly called public meeting on June 8, 2005. In reviewing the recommendation of ANC 2B as contained in its joint petition with DCCA, the Board finds based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001), that the testimony and evidence put forward by DCCA, ANC 2B, and various individual residents located in or in proximity to the West Dupont Circle Moratorium Zone reveals that significant problems with peace, order, and quiet, particularly with respect to late night noise, litter, public urination, and vehicular and pedestrian safety, as well as parking problems, continue to exist in the West Dupont Circle Moratorium Zone. For example, the testimony of Carol Theodore revealed that there are problems with public urination, late night noise, and rowdy behavior caused by patrons of ABC establishments

in the West Dupont Circle Moratorium Zone. Additionally, the testimony of Bill Glew, President, DCCA, with regard to the DCCA Dupont West Parking Survey revealed that there are significant residential parking and vehicular and pedestrian safety problems, including illegal parking with fire hydrants and stop signs routinely obstructed, caused in part by patrons of ABC establishments located in the West Dupont Circle Moratorium Zone. Furthermore, the DCCA Dupont West Parking Survey revealed that parking problems are much worse in the evening, around 9 p.m., than in the morning, around 9 a.m., in the West Dupont Circle Moratorium Zone. These residential parking and vehicular and pedestrian safety problems were also supported by testimony and written comments from various nearby residents, such as Carol Theodore and Morton J. Schussheim. The Board did not find, however, that the ABC establishments in the West Dupont Circle Moratorium Zone are adversely affecting real property values in the surrounding area.

Currently, there are twenty-nine (29) valid ABC licenses, excluding hotels, located in the West Dupont Circle Moratorium Zone. The Board agreed with the recommendation of ANC 2B and DCCA that a "cap" system be established that fixes the maximum number of licenses within each class and allows defunct licenses to be replaced. Additionally, the joint petition and testimony of ANC 2B and DCCA recommended that one additional restaurant license be permitted. The Board found the testimony it received, including from ANC 2B Commissioner Karyn-Siobhan Robinson, to support this recommendation. As a result, the Board has decided to modify the existing moratorium to permit the issuance of one (1) additional Class CR or Class DR retailer's license and to place a limit on the number of retailer's licenses in the West Dupont Circle Moratorium Zone as follows: Class A – Two (2); Class B – Three (3); Class CR or Class DR – Seventeen (17); Class CT or Class DT – Six (6); Class CN or DN – Zero (0); and Class CX or Class DX – Two (2).

ANC 2B voted on June 8, 2005 in favor of a five (5) year extension of the West Dupont Circle Moratorium Zone. After evaluating all the testimony and comments, the Board concluded that the five (5) year extension period, as sought in the Petitioners' moratorium request, is appropriate. Specifically, the testimony of ANC 2B Commissioners Karyn-Siobhan Robinson and Mike Silverstein indicated that a five (5) year extension would provide residents and businesses with an appropriate amount of time to assess the impact of the upcoming P Street Streetscape project. Individual residents such as Carol Theodore and several business owners such as Perry Morehouse also supported a five (5) year extension.

ANC 2B recommended four (4) modifications to the existing moratorium, all of which are supported by DCCA, as part of the Petitioners' moratorium request. The first modification deals with allowing existing Class DR licensees to request a change of license class from Class DR to Class CR. Specifically, the joint petition of ANC 2B and DCCA, dated June 10, 2005, requests that the three (3) existing Class DR licenses be permitted to request a change of license class from Class DR to Class CR. At the July 27, 2005 public hearing, ANC 2B revised its position indicating that it would like only two (2) Class DR establishments – Pizzeria Paradiso and Pesce – to be eligible to apply for a Class CR license. This change in position was supported by DCCA. However, the Board agreed with the testimony of Edward Grandis, Esq., on behalf of DC MAP, that all three (3) Class DR licensees should be treated the same and have the opportunity to apply for a Class CR license.

Second, ANC 2B recommended the use of a "cap" system that fixes the maximum number of licenses within each class and allows defunct licenses to be replaced. The Board finds merit in this recommendation contained in the Petitioners' moratorium request which is intended to prevent the overall number of licensed establishments from being reduced merely because an existing licensee goes out of business.

Third, ANC 2B recommended that restaurant licensees within the West Dupont Circle Moratorium Zone not be permitted to request a change of license class to Class CT or Class CN. This recommendation was also supported by DCCA. In light of the Board's decision to allow for one (1) additional Class CR or Class DR license, the Board found merit in not allowing restaurants to convert to tavern or nightclub licenses. Specifically, not permitting establishments licensed as restaurants to change their class of license to taverns or nightclubs will help to limit further problems of late night noise in the neighborhood, of which many nearby residents complained. Prohibiting conversion of restaurant licenses to tavern or nightclub licenses will also help to focus new restaurants on their food sale requirements in order to qualify as restaurants in the neighborhood.

Fourth, ANC 2B recommended that the holder of a retailer's license Class C or Class D within the West Dupont Circle Moratorium Zone should be able to apply for outdoor seating in public space. This position is supported in the joint petition by DCCA. The Board agrees with this recommendation as the Board found it helpful in clarifying that the existing limitations on lateral expansion are not intended to apply to outdoor seating in public space.

The Board also heard and received testimony from Mr. Grandis, and several licensees, including Mark Medley, Owner, Mark and Orlando's, and Regine Palladin, Owner, Pesce Restaurant, requesting that the Board clarify and relax the existing limitations on lateral expansion, which would be continued under the Petitioners' moratorium request. For example, Mr. Grandis suggested that the lateral expansion provision be relaxed to permit Class CR or Class DR licensees to expand into an adjoining or adjacent space, property, or lot that holds a restaurant license from the Department of Consumer and Regulatory Affairs ("DCRA"). Additionally, Mr. Grandis expressed the view that the meaning of the language contained in the existing lateral expansion provision is unclear and should be clarified by the Board.

The existing limitation on lateral expansion allows a current holder of a retailer's license Class A, B, C, or D to apply for expansion of service or sale of alcoholic beverages into an adjoining or adjacent space, property, or lot, if the owner or occupant of such other property has held a retailer's license Class A, B, C, or D within the previous five (5) years. The existing lateral expansion provision also contains a second exception which the Board interprets as allowing the holder of a retailer's license Class A, B, C, or D to apply for an expansion of service or sale of alcoholic beverages into an adjoining or adjacent space, property, or lot for which the licensee has held a certificate of occupancy or building permit at any time within a period of five (5) years. The Board found merit in making the lateral expansion provision slightly more flexible by creating a new exception that would allow Class CR or Class DR licensees to expand into an adjoining or adjacent space, property, or lot that has held a valid restaurant license from DCRA during the last three (3) years.

The uncertainty that several ABC establishments in the West Dupont Circle Moratorium Zone may face as a result of the upcoming P Street Streetscape project provides further support for allowing this added flexibility. The Board notes that the testimony from DCCA indicated that this modification to the lateral expansion provision, because it would be limited to expansion by an existing ABC-licensed restaurant into an adjacent restaurant space, would have less adverse impact on the community than permitting lateral expansion into non-restaurant spaces. The Board is requiring a valid DCRA restaurant license to have existed at the property, lot, or space where expansion is sought for at least the last three (3) years to ensure that DCRA restaurant licenses are not subsequently sought for existing non-restaurant spaces for the sole purpose of filing a lateral expansion application with the Board.

In making this decision, the Board also took into account the views of ANC 2B, DCCA, and various Dupont Circle residents, who raised concerns that allowing ABC licensees to expand into existing ABC licensed spaces or non-ABC licensed spaces that hold a restaurant license from DCRA could have negative consequences, such as a reduction in the variety of restaurants that currently exist on P Street. In light of these concerns, the Board is placing a combined limit of three (3) on the number of substantial change applications that can be approved by the Board during the five (5) year period of the West Dupont Circle Moratorium Zone for the expansion of service or sale of alcoholic beverages into an adjoining or adjacent space, property, or lot where the prior owner or occupant has held either: (1) a Retailer's license Class A, B, C, or D within the last five (5) years, or (2) a valid restaurant license from DCRA during the last three (3) years.

Additionally, based upon concerns from ANC 2B, DCCA, and various Dupont Circle residents about the impact of lateral expansion on non-ABC licensed and non-restaurant businesses, the Board is not adopting the second exception contained in the existing lateral expansion provision, which the Board interprets to allow the holder of a Retailer's license Class A, B, C, or D to apply for an expansion into an adjacent space, property, or lot that the licensee has held a certificate of occupancy or building permit at any time within a period of five (5) years. This exception potentially allows applicants to file applications to expand into adjacent or adjoining space even if the owner or occupant of such space does not have either an ABC or a DCRA restaurant license. The Board concluded that renewing this exception would pose a risk to the continued diversity of businesses in the West Dupont Circle community, a problem about which many residents expressed serious concern. The Board notes that D.C. Official Code § 25-351(a)(2) provides the Board with the authority to renew and modify this lateral expansion prohibition as it allows the Board to declare a moratorium on the issuance of licenses that constitute a substantial change.

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: (1) ensure that the limitations placed on the issuance of new retailer's licenses Class A, B, CR, CT, CN, CX, DR, DT, DN, and DX are not exceeded; and (2) prevent the filing of license applications involving lateral expansion requests, except as permitted below, which the Board has determined pursuant to D.C. Official Code §§ 25-313(b)(2) and 25-313(b)(3) (2001) would:

- (1) have an adverse effect on peace, order, and quiet; and
- (2) have an adverse effect on residential parking needs and vehicular and pedestrian safety.

These emergency rules were adopted by the Board on August 3, 2005. 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 also 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) (2001), 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 section 307 to read as follows:

307. WEST DUPONT CIRCLE MORATORIUM ZONE

307.1 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 21st and P Streets, N.W., Washington, D.C., as follows: Class A – Two (2); Class B – Three (3); Class CR or Class DR – Seventeen (17); Class CT or Class DT – Six (6); Class CN or DN – Zero (0); and Class CX or Class DX – Two (2). This area shall be known as the West Dupont Circle Moratorium Zone.

307.2 The West Dupont Circle Moratorium Zone is more specifically described as beginning at 22nd Street and Florida Avenue; North on Florida Avenue to R Street; East on R Street to 21st Street; South on 21st Street to Hillyer Place to 20th Street; South on 20th Street to Q Street; East on Q Street to Connecticut Avenue; Southeast on Connecticut Avenue to Dupont Circle; Southwest around Dupont Circle to New Hampshire Avenue; Southwest on New Hampshire Avenue to N Street; West on N Street to 22nd Street; North on 22nd Street to Florida Avenue.

307.3 All hotels, whether present or future, shall be exempt from the West Dupont Circle Moratorium Zone.

307.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class A, B, CR, CT, CX, DR, DT, or DX located within the West Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.

307.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the West Dupont Circle Moratorium Zone to a new location within the West Dupont Circle Moratorium Zone.

307.6 A license holder outside the West Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the West Dupont Circle Moratorium Zone unless the

transfer will not exceed the number of licenses permitted in the West Dupont Circle Moratorium Zone for that particular class or sub-class, as set forth in Section 307.1.

307.7 Subject to the limitation set forth in Section 307.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.

307.8 No Class CR or Class DR licensee in the West Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CT, DT, CN, or DN.

307.9 A current holder of a retailer's license Class A, B, C, or D within the West Dupont Moratorium Zone shall not be permitted to apply to the Board for expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, unless: (1) the prior owner or occupant has held within the last five (5) years a retailer's license Class A, B, C, or D; or (2) the applicant is a Class CR or DR licensee and the prior owner or occupant has held during the last three (3) years, and continues to hold at the time of application, a valid restaurant license from the Department of Consumer and Regulatory Affairs. The number of substantial change applications approved by the Board for expansion of service or sale of alcoholic beverages into an adjoining or adjacent space, property, or lot, as allowed under this subsection, shall not exceed three (3) during the five (5) year period of the West Dupont Circle Moratorium Zone. Nothing in this section shall prohibit holders of a retailer's license Class C or D from applying for outdoor seating in public space.

307.10 This section shall expire five (5) years after the date of publication of the notice of final rulemaking.

Copies of the proposed rulemaking can be obtained by contacting Fred Moosally, General Counsel, Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., 7th Floor, Washington, D.C. 20002. 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.

DEPARTMENT OF HUMAN SERVICES

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Human Services, pursuant to authority set forth in section 2(i) of the District of Columbia Emergency Overnight Shelter Amendment Act of 1990, effective March 6, 1991 (D.C. Law 8-197; D.C. Official Code, § 4-708) ("Act"), and Mayor's Order 91-71, dated May 8, 1991, hereby gives notice of the adoption on an emergency basis of the following amendments to § 2502, § 2503, § 2504, and § 2599 of Chapter 25 of Title 29 of the District of Columbia Municipal Regulations entitled "Temporary Housing for Families and Emergency Overnight Shelter for Individual Adults." These emergency and proposed rules will provide guidelines for dedicated shelter spaces for employed persons.

The emergency rules will be adopted and become effective on October 24, 2005. These rules will expire one hundred and twenty (120) days from the date of adoption, or upon publication of a Notice of Final Rulemaking in the *DC Register*, whichever comes first. This emergency action is necessary because the first shelter for homeless employed persons, which will be for men, is scheduled to open on October 24, 2005. Pursuant to Section 2(i) of the Act the proposed rules must be submitted to the Council for a period of forty five (45) working days (excluding weekends, holidays and days of Council recess); thus, issuing the rules on an emergency basis will allow the shelter to be opened as scheduled and provide needed spaces for employed homeless persons, with the goal of quickly transitioning these persons from shelter to affordable permanent housing. The work bed shelter is a critical step in helping employed persons make the transition out of the District of Columbia shelter system. Simultaneously with the publication of these proposed rules, the rulemaking was transmitted to the Council for its 45-day review period. The proposed rules will become final upon publication in the *DC Register*, which publication cannot occur until affirmative approval of the Council or until the 45-day review period has expired if the Council has taken no action and the proposed rules are deemed approved.

**CHAPTER 25 TEMPORARY HOUSING FOR FAMILIES AND EMERGENCY
OVERNIGHT SHELTER FOR INDIVIDUAL ADULTS****2502 ELIGIBILITY CRITERIA**

Section 2502 of Chapter 25 is amended by adding the following new subsections:

- 2502.5 In addition to the eligibility requirements set forth in 2502.1 through 2502.3, an applicant individual to a work bed shelter is eligible if the applicant is employed in verifiable employment twenty (20) hours per week or more.
- 2502.6 Individuals employed in day labor or temporary employment, as defined in 2599, may be eligible for work bed shelters.

2502.7 If an individual in a work bed shelter loses employment, the employment staff shall work with that individual to help them to secure employment for a period of at least thirty (60) days. If the individual is unable to secure appropriate employment during this period, the individual may be transferred pursuant to 2504.1.

2503 INTAKE

Section 2503 of Chapter 25 is amended by adding the following new subsections:

2503.18 The Department or its designee may require an applicant individual to a work bed shelter to provide, in addition to any other required information under this section, any of the following information to verify employment:

- (a) copy of check stubs or other forms of payroll receipts;
- (b) copy of work schedule, if appropriate;
- (c) letter from an employer; or
- (d) other proof that may reasonably verify employment.

2503.19 The Department or its designee shall not deny eligibility to a work bed shelter to any individual if the individual makes a good faith effort to obtain proof of employment from an employer or employers but is unable to do so. In such cases, the individual need only provide a statement listing recent employers (to the extent that these are known) and date(s) employed. The Department reserves the right to make collateral contacts to these employers to verify the individual's employment, provided that such contacts would not result in adverse consequences to the future employment of the individual.

2504 PLACEMENT AND TRANSFER

Section 2504.1 of Chapter 25 is amended by deleting the existing paragraph and replacing it with the following amended paragraph:

2504.1 The Department shall determine the placement of each person receiving temporary family housing, emergency overnight shelter for individual adults, or individual adult shelter at a work bed shelter, as well as the type of accommodation that is appropriate.

2599 DEFINITIONS

Section 2599 of Chapter 25 is amended by adding the following to the list of definitions:

2599 Day Labor – Employment during the past thirty (30) days, at the time of intake, and working on average twenty (20) hours per week in intermittent, short-term, or long term employment, with one or more employers, without a formal employment agreement.

Temporary Work - Employment for a work assignment that is at least ninety (90) days in duration, and at least twenty (20) hours per week.

Work Bed Shelter - Shelter with supportive services tailored to the needs of eligible employed persons for the purpose of achieving self sufficiency.

Persons who wish to comment on these proposed rules may do so in writing no later than thirty (30) days after the publication of this notice in the D.C. Register. Comments should be forwarded to Ricardo Lyles, Administrator, Family Services Administration, 2146 24th Place, N.E., Washington, D.C. 20018. Copies of these rules may be obtained by writing to the above address or by walk-in to the above address.