

**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 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of emergency rules replacing the existing section 304 of Title 23 DCMR to impose a five (5) year moratorium on the issuance of any new retailer’s license class CR, CN, CT, CX, DR, DN, DT, and DX in a portion of Adams Morgan which shall be known as the Adams Morgan Moratorium Zone.

The Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2008 Supp.), on April 2, 2008 to consider the written request of Advisory Neighborhood Commission (“ANC”) 1C, the Kalorama Citizens Association (“KCA”), and the Reed-Cooke Neighborhood Association (“RCNA”) to extend and modify the current Adams Morgan Moratorium Zone for a five (5) year period. The written request submitted to the Board would modify the existing Adams Morgan Moratorium Zone by no longer allowing the issuance of any additional Class CR or Class DR restaurant licenses within the Adams Morgan Moratorium Zone. The Board received a significant amount of testimony and comments on the moratorium request. The majority of the testimony received by the Board was in favor of the submitted moratorium proposal, including comments from ANC 1C, KCA, RCNA, and a number of ABC licensees and businesses located in Adams Morgan, including Asylum, Perry’s Restaurant, Cashion’s Eat Place, Idle Time Books, Las Canteras Restaurant, Little Fountain Café and Angles Bar. Additionally, the Board received testimony from various residents in support of the moratorium request. The Board also received testimony from MPD Lieutenant John Kutnewski who indicated that crime would increase if the Adams Morgan Moratorium Zone was lifted. The Board did receive testimony from some individuals, licensees, and business organizations that were in opposition to some or all of the provisions of the moratorium petition. This included testimony from property owner Bill Duggan, Rob Coltun, Chuck Brazie, and Lisa Duperior. However, the Board found the testimony provided by MPD, ANC 1C, KCA, RCNA and a number of Adams Morgan residents, licensees, and businesses to warrant an extension of the moratorium on any new retailer’s licenses class CR, CN, CT, CX, DR, DN, DT, and DX based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2008 Supp.)

In reaching its decision, the Board gave great weight to ANC 1C 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.), as amended, and D.C. Official Code § 25-609 (2001). ANC 1C voted 6 to 0 with a quorum present at its March 5, 2008 meeting to extend the existing moratorium for a five (5) year period and to also include a moratorium on the issuance of new restaurant licenses.

In considering the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2008 Supp.), the Board found the testimony and evidence put forward by MPD, ANC 1C, KCA, RCNA, several Adams Morgan businesses and licensees, and individual Adams Morgan residents to reveal that significant problems with peace, order, and quiet, particularly with respect to criminal activity, noise, litter, disorderly conduct, crowd control, and vehicular and pedestrian safety, as well as parking problems to continue to exist in Adams Morgan during late evening hours in the Adams Morgan Moratorium Zone. Additionally, the testimony provided by MPD and the KCA revealed a number of significant public safety issues, including a large number of calls for police service, including for disorderly conduct and assaults, and traffic congestion problems caused by taxis and patrons of ABC establishments in the Adams Morgan Moratorium Zone. The testimony of MPD Lieutenant John Kutnewski also indicated that crime would increase and that an increased police presence would be needed if the moratorium was lifted. Testimony from individual residents also reflected that late at night they have to deal with: loud noise, the disorderly departure of some patrons of ABC establishments, and a variety of parking and vehicular and pedestrian safety problems.

The Board found the testimony it received from ANC 1C, KCA, and RCNA to also warrant continuing the current limit of ten (10) on the number of Class CT or DT retailer's licenses permitted at any one time within the Adams Morgan Moratorium Zone based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2), 25-313(b)(3), and 25-314(c) (2008 Supp.) Based upon comments received from ANC 1C, KCA, and RCNA, the Board decided to place a cap of zero (0) on the number of nightclub licenses permitted in the Adams Morgan Moratorium Zone. To ensure that the current number of taverns in Adams Morgan does not exceed ten (10), the Board decided to continue prohibiting the holder of a retailer's license Class CR or Class DR from changing its license class to CT, CX, DT, or DX in the Adams Morgan Moratorium Zone except when the total number of retailer's licenses in all of these categories is fewer than ten (10). Consistent with the Board's decision in its August 2, 2006 Notice of Emergency Rulemaking, the Board is not applying the class change restrictions contained in this rulemaking to the pending change of license class applications that were filed with the Board prior to August 2, 2006.

While the Board decided to grant the moratorium request of ANC 1C, KCA, and RCNA in its entirety, the Board recognizes that the requested moratorium is only a partial solution to the current issues that exist due to the significant over concentration of on-premises establishments in the Adams Morgan Moratorium Zone. As such, it is important for the petitioners, licensees, residents, and other stakeholders to work together in exploring other possible solutions to alleviate this problem. During this five (5) year moratorium period, the Board believes that there are three additional issues worth examining. First, it might be helpful to explore whether having a lower cap of on-premises establishments in the Adams Morgan Moratorium Zone, primarily restaurants, would be helpful in an effort to start reducing the current number of on-premise establishments that exist rather than simply maintaining the status quo. For instance, the Georgetown historic district contains a cap of six (6) on the number of taverns and nightclubs. This cap was implemented to decrease rather than maintain the number of

these establishments that exist over time. As such, the Board would be willing to consider in two and one-half years, the halfway point of the moratorium, a request from the Petitioners to place a cap on the number of restaurant licenses that is intended to decrease during the moratorium period the number of these establishments located in the Adams Morgan Moratorium Zone. Second, the testimony received by the Board revealed that many of the problems in Adams Morgan are caused by non-patrons of ABC establishments who come to Adams Morgan from outside of the neighborhood and cause problems with noise, criminal activity, loitering, and pedestrian safety and take away valuable parking spaces in Adams Morgan from residents. A collective effort is needed between the petitioners, MPD, the Adams Morgan Bid, and the Council to address this issue, including possibly strengthening the District's loitering laws. Third, the testimony revealed a need to address problems with vehicular and pedestrian safety. The testimony of ANC 1C Chairperson Bryan Weaver noted that attempts in utilizing traffic officers were unsuccessful due to loud whistles being used to direct traffic. However, Chairperson Weaver's testimony indicated that problems with vehicular traffic are likely to be improved with a pilot traffic plan to implement taxicab stands. The Board is interested in hearing from ANC 1C and the Petitioners regarding the success and long-term viability of this program.

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 prevent the filing of applications for the issuance of new retailer's licenses class CR, CN, CT, CX, DR, DN, DT, and DX which the Board has determined pursuant to D.C. Official Code § 25-313(b) (2008 Supp.) 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 6, 2008. 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) (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 the expiration of the forty-five (45) day period of Council review or upon approval by Council resolution, whichever occurs first.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 304 to read as follows:

304 ADAMS MORGAN MORATORIUM ZONE

- 304.1 No new Retailer's License Class CR, CN, CT, CX, DR, DN, DT, or DX shall be issued for a period of five (5) years from the effective date of this section in the area that extends approximately fourteen (1400) hundred feet in all directions from the intersection of 18th Street and Belmont Road, N.W., Washington D.C. This area shall be known as the Adams Morgan Moratorium Zone.
- 304.2 The Adams Morgan Moratorium Zone is more specifically described as beginning at 18th Street and Vernon Street, NW ; and proceeding on both sides of all streets, unless otherwise noted; West on Vernon Street to 19th Street; Northwest on 19th Street to Wyoming Avenue; Southwest on Wyoming Avenue to 20th Street; Northwest on 20th Street to Belmont Road; East on Belmont Road to 19th Street; Northwest on 19th Street to Biltmore Street; East on Biltmore Street to Cliffbourne Street; North on Cliffbourne Street to Calvert Street; East on Calvert Street to Lanier Place; Northeast on Lanier Place to Adams Mill Road; Southeast on Adams Mill Road to Columbia Road; Northeast on Columbia Road to Ontario Road; South on Ontario Road to Euclid Street; East on Euclid Street to 17th Street; South on 17th Street to Kalorama Road; Southwest on Kalorama Road to Ontario Road; South on Ontario Road to Florida Avenue; Southwest on Florida Avenue to U Street; West on U Street (North side only); across 18th Street to the South corner of 18th and Vernon Streets, N.W., Washington D.C.
- 304.3 The following license classes shall be exempt from the Adams Morgan Moratorium Zone:
- (a) All hotels, whether present or future; and
 - (b) Retailer's licenses Class A and B
- 304.4 The number of Retailer's licenses Class CT, CX, DT, or DX located within the Adams Morgan Moratorium Zone shall not exceed ten (10). The number of Retailer's licenses Class CN or DN shall not exceed zero (0). 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 CT, CX, 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.
- 304.5 Nothing in this section shall prohibit the Board from approving the transfer of

ownership of a retailer's license Class CN, CT, CX, DN, DT, and DX within the Adams Morgan Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.

- 304.6 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Adams Morgan Moratorium Zone to a new location within the Adams Morgan Moratorium Zone.
- 304.7 A license holder outside the Adams Morgan Moratorium Zone shall not be permitted to transfer its license to a location within the Adams Morgan Moratorium Zone, unless exempt by section 304.3.
- 304.8 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 304.9 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.
- 304.10 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.

**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 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of emergency rules that amend existing subsection 307.1 of Title 23 DCMR by raising the current limit on Class CR and Class DR retailer’s licenses in the West Dupont Circle Moratorium Zone from seventeen (17) to twenty-one (21).

The Board received a written letter from Advisory Neighborhood Commission (“ANC”) 2B, dated May 15, 2008 requesting that the Board amend the existing West Dupont Circle Moratorium, as permitted by D.C. Official Code § 25-351(f), to allow for two additional Class “DR” licenses. ANC 2B’s letter indicates that permitting these additional licenses to restaurants will contribute to the revitalization of a neighborhood that suffered adverse effects from construction during the recent streetscape improvements. ANC 2B indicated that these two additional licenses would not adversely impact the peace, order, and quiet given that these licenses are only for restaurants in an area known as “Restaurant Row”. ANC 2B also asked that alcoholic beverage sales be limited to midnight to prevent further late night noise and other peace, order, and quiet problems in the neighborhood. The Board also received a May 8, 2008 written request from the Dupont Circle Merchants and Professionals Association (“DC MAP”) seeking to modify the West Dupont Circle Moratorium Zone to allow for the issuance of additional Class “CR” and “DR” licenses. The Board held a public hearing on the written requests of ANC 2B and DC MAP on September 17, 2008, pursuant to the notice requirements of D.C. Official Code § 25-354.

The Board received timely detailed testimony and comments on these two requests from ANC 2B, the Dupont Circle Citizens Association, DC MAP, and nearby Dupont Circle business owners. The Board found the testimony and comments provided in response to these two requests to warrant raising the current limit on Class “CR” and Class “DR” retailer’s licenses in the West Dupont Circle Moratorium Zone from seventeen (17) to twenty-one (21). While the request of DC MAP was to remove the current limit on additional restaurant licenses, the Board found the testimony at the September 17, 2008 public hearing to reflect that keeping a specific cap on the number of existing restaurant licenses in this area remains necessary. For example, the testimony of DCCA President Joel Lawson stressed the importance of keeping a limit on the number of restaurant licenses in the West Dupont Circle Moratorium Zone to preserve a proper balance in the 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) (2001), as amended, and D.C. Official Code § 25-609 (2001). ANC 2B’s initial May 15, 2008 letter requested two

additional licenses. Testimony received from ANC 2B Commissioner Mike Silverstein reflected that while ANC 2B believed that a limit on restaurant licenses was needed, it was not strictly wedded to just two additional licenses. The Board found that four additional licenses are appropriate for several reasons. First, testimony received from the Board, including from ANC 2B and several businesses referenced the need to promote the area as "Restaurant Row". The Board found that adding four (4) additional restaurant licenses was consistent with this effort. Second, at the September 17, 2008 public hearing, three businesses testified that they intended to apply for a new restaurant license, if eligible. Additional written correspondence provided to the Board from businesses not present at the hearing, as well as from DC MAP, revealed that more than the three businesses present at the September 17, 2008 public hearing intend to apply for a new restaurant license, if eligible. Given that the Board accepts applications on a first-come first-serve basis, the Board did not believe it was appropriate to potentially exclude businesses with neighborhood support, including from ANC 2B, which would likely occur if ANC 2B's recommendation for only two additional licenses were adopted by the Board.

ANC 2B also recommended to the Board that these new restaurants: (1) have alcoholic beverage sales limited to midnight to prevent further late night noise and other peace, order, and quiet problems in the neighborhood and (2) be limited to beer and wine only. The majority of business owners who either testified at the September 17, 2008 public hearing or submitted written correspondence indicated that their alcoholic beverage sale hours would end by midnight. The Board is generally supportive of ANC 2B's request to ensure that these new establishments do not have an adverse impact on peace order and quiet late at night. Along these lines, the Board intends to take into account ANC 2B's request when considering these new restaurant license applications. The Board believes, however, that some flexibility may be needed and that it makes more sense to put in place a restriction on alcoholic beverage sale hours through either a voluntary agreement or the protest process. The Board did not agree with ANC 2B's recommendation that these additional restaurant licenses be limited to wine and beer only. Specifically, the Board does not believe that allowing the sale of spirits will adversely impact the peace, order, and quiet of the West Dupont Circle Moratorium Zone if alcoholic beverage sale hours at these new restaurants will either end by midnight or be restricted in some manner. The Board is willing to consider such a restriction on a case-by-case basis as part of a voluntary agreement or the protest process.

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 West Dupont Circle Moratorium Zone. Specifically, the written testimony of ANC 2B indicated that the issuance of additional licenses to restaurants is necessary to contribute to the revitalization of a neighborhood that has suffered adverse effects from construction during the recent streetscape improvements. The testimony of DC MAP also stated that the long construction period to complete the P Street streetscape project has created a significant hardship on the residents and businesses in this area with several businesses closing during the construction period.

These emergency rules were adopted by the Board on October 1, 2008. 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 subsection 307.1 to read as follows:

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 – Twenty-One (21); 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.

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.

**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 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of emergency rules replacing the existing section 308 of Title 23 DCMR to impose a three (3) year moratorium on the issuance of any new retailer's license class A, B, CT, CN, CX, DT, DN, and DX in a portion of Glover Park which shall be known as the Glover Park Moratorium Zone. These rules also impose a cap of twelve (12) on the number of class CR retailer's licenses in the Glover Park Moratorium Zone. This will allow for the issuance of three (3) additional class CR retailer's licenses.

The Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2008 Supp.), on April 2, 2008 to consider the written request of Advisory Neighborhood Commission ("ANC") 3B and the Glover Park Citizens Association ("GPCA") to renew the current Glover Park Moratorium Zone for a five (5) year period. The written request of ANC 3B and GPCA also seeks to allow the issuance of three (3) additional class CR retailer's licenses. The Board gave great weight to ANC 3B and found the testimony provided by both ANC 3B and the GPCA to: (1) warrant an extension of the existing moratorium, and (2) allow for the issuance of three (3) additional class CR licenses, based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2008 Supp.) Specifically, under D.C. Official Code § 25-313(b) (2008 Supp.), the testimony put forward by ANC 3B and the GPCA revealed that problems still exist in the Glover Park Moratorium Zone with peace, order, and quiet. The Board heard testimony from Judith Blumenthal, President of the Glover Park Citizens' Association that there are continued problems with vandalism, beer bottle and cigarette butt litter, rowdy intoxicated individuals, public urination, and late night disturbances by patrons of ABC establishments located in the Glover Park Moratorium Zone.

The testimony of ANC 3B and GPCA revealed that the issuance of up to three (3) additional class CR retailer's licenses would not adversely affect the public peace, order, and quiet of the moratorium zone. Specifically, ANC 3B and GPCA indicated that establishments committed to serving food present much less of a problem with regard to peace, order, and quiet. Currently, there are nine (9) class CR licenses in the Glover Park Moratorium Zone. In allowing for three additional class CR retailer's licenses, the Board is creating a cap of twelve (12) on the number of class CR retailer's licenses in the Glover Park Moratorium Zone.

The Board also heard testimony from Glover Park residents Sherry Kaskey, Elizabeth Webber, and Karine Faden who shared concerns as to peace, order, and quiet; noise, litter, traffic congestion, public intoxication, public urination, vandalism, street brawls, street disturbances as people are returning to their cars at late hours, pedestrian traffic in front of ABC establishments, violence, and public vomiting. Glover Park residents also

expressed concerns regarding vehicular safety, parking, the impact on families with children, and the potential difficulty in selling a home located in close proximity to ABC establishments. The Board heard some testimony from GPCA that the moratorium had contributed to rising housing values.

ANC 3B and the GPCA have requested three (3) additional class CR licenses because there are empty storefronts that they would like to fill and believe that it may be challenging to fill these spaces with non-restaurant businesses. The Glover Park residents who testified supported the ANC 3B and GPCA request for a renewal of the moratorium. Some Glover Park residents did not support the issuance of three (3) additional class CR licenses as they felt their present concerns would be exacerbated by the addition of more ABC licenses whose operations and impact on the neighborhood they could not anticipate. The Board took the views of these Glover Park residents into consideration but found the proposal of both ANC 3B and GPCA to constitute a reasonable compromise.

Testimony provided by the petitioners and other individuals at the April 2, 2008 public hearing revealed that continued problems with peace, order, and quiet, and parking in the Glover Park Moratorium Zone justify an extension of the moratorium. However, while ANC 3B and GPCA requested a five (5) year extension, their testimony indicated that the three (3) additional class CR retailer's licenses would be helpful in attracting restaurants to some of the currently vacant commercial properties located in the Glover Park Moratorium Zone. The Board felt it appropriate to revisit the moratorium after three (3) years rather than five (5) years, because it is likely, based upon received testimony, that applications for the three (3) additional licenses will be made by Glover Park businesses with existing locations within the moratorium zone. As such, the issuance of three (3) additional licenses is not likely to assist the petitioners in attracting additional class CR restaurants to these vacant properties. The Board believes that it is appropriate to reexamine this issue with the petitioners after a three (3) year period.

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) prevent the filing of applications for new retailer's licenses class A, B, CN, CT, CX, DN, DT, and DX; and (2) to ensure that the limitation placed on the issuance of new retailer's licenses class CR is not exceeded, which the Board has determined pursuant to D.C. Official Code §§ 25-313 and 25-314 (2008 Supp.) would:

- (1) have an adverse effect on peace, order, and quiet;
- (2) have an adverse effect on residential parking needs and vehicular and pedestrian safety; and
- (3) contribute to an over concentration of licensed establishments adversely affecting the Glover Park Moratorium Zone area described below.

These emergency rules were adopted by the Board on August 6, 2008. 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) (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 the expiration of the forty-five (45) day period of Council review or upon approval by Council resolution, whichever occurs first.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 308 to read as follows:

308 GLOVER PARK MORATORIUM ZONE

- 308.1 No new retailer's license class A, B, CN, CT, CX, DN, DT, or DX shall be issued for a period of three (3) years from the effective date of this section in the area that extends approximately one thousand two hundred feet (1,200 ft.) in all directions from 2436 Wisconsin Avenue, N.W., Washington D.C. The number of class CR retailer's licenses permitted in this area shall not exceed twelve (12). This area shall be known as the Glover Park Moratorium Zone.
- 308.2 The Glover Park Moratorium Zone is more specifically described as beginning at Tunlaw Road and Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Edmunds Street; East on Edmunds Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to Observatory Circle; Southeast around Observatory Circle to Calvert Street; West on Calvert Street to Wisconsin Avenue; Southeast on both sides of Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven Parkway to 37th Street; North on 37th Street to U Street; West on U Street to a point of intersection of Huidekoper Place and W Street; West on W Street to 39th Street; North on 39th Street to Davis Place; East on Davis Place to Tunlaw Road; North and Northwest on Tunlaw Road to Fulton Street.
- 308.3 All hotels, whether present or future, shall be exempt from the Glover Park Moratorium Zone.
- 308.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class A, B, CN, CR, CT, CX, DN, DT, and DX within the Glover Park Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.

- 308.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Glover Park Moratorium Zone to a new location within the Glover Park Moratorium Zone.
- 308.6 A license holder outside the Glover Park Moratorium Zone shall not be permitted to transfer its license to a location within the Glover Park Moratorium Zone.
- 308.7 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 308.8 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.
- 308.9 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 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.

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 §§ 25-211(b), 25-798 (2008 Supp.) and Mayor's Order 2001-96 (June 28, 2001) as revised by Mayor's Order 2001-102 (July 23, 2001), hereby gives notice of the adoption of emergency rules that amend section 718 of Title 23 of the District of Columbia Municipal Regulations ("DCMR") to clarify those public gatherings licensed by the Board that qualify as an approved special event eligible for reimbursement under the pilot subsidy program.

The emergency action is necessary to help maintain and improve upon the public safety of patrons at Board approved special events by allowing the holder of a temporary license or one-day substantial change to participate in the pilot subsidy program for reimbursable details. The emergency action clarifies those public gatherings licensed by the Board that qualify as a special event eligible for reimbursement under the pilot subsidy program.

These emergency rules were adopted by the Board on September 17, 2008. 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.

Pursuant to Act 17-471, the Mt. Pleasant, Targeted Ward 2, and Targeted Ward 6 Single Sales Moratorium Emergency Act of 2008, effective July 28, 2008, these regulations are also being submitted to the Council of the District of Columbia (Council) for a thirty (30) day period of review. The proposed rules will become effective in not less than thirty (30) days from publication of this notice in the D.C. Register, or upon approval by the Council by resolution, whichever occurs later. If the Council does not approve or disapprove the proposed rules by resolution, in whole or in part, within the thirty (30) day review period, the proposed rules shall be deemed approved.

Title 23 DCMR Section 718 is amended by adding a new subsection 718.6 to read as follows:

718.6 Special events approved by the Board for a temporary license or a one-day substantial change shall also be eligible for reimbursement under the subsidy program for the area(s) where alcoholic beverages are to be sold, served, or consumed. For purposes of this section, a special event shall be limited to a festival, community fair, circus, performance or similar gathering that is open to the public and has food served for consumption.

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.

OFFICE OF PROPERTY MANAGEMENT**NOTICE OF EMERGENCY AND PROPOSED RULEMAKING**

The Chief Property Management Officer of the Office of Property Management, pursuant to the authority granted in Section 422(6) of the District of Columbia Home Rule Act, as amended, 87 Stat. 790, Pub. L. No. 93-198, D.C. Official Code § 1-204.22(6) (2006 Repl.), and by D.C. Official Code § 38-1802.09(b)(1)(C)(i) (2008 Supp.) and Mayor's Order 2007-260, hereby gives notice of adoption of the following emergency rules as a new Chapter 40 of Title 5 DCMR, entitled "Disposition of Former and Current School Property" describing how closed Board of Education properties will be offered for disposition, the right of first offer to eligible offerors, and how offers from eligible offerors will be considered. The emergency rulemaking was adopted on November 5, 2008.

Emergency rulemaking action, pursuant to section 105(c) of the District of Columbia Administrative Procedure Act, effective March 29, 1977 (82 Stat. 1206; D.C. Code, sec. 1-1506(c) (1999 Repl.)), is justified by the need to provide for the care and custody of the closed school properties to avoid such properties becoming blighted or the subject of theft, vandalism and a location for crime or other undesirable or illegal activities. This emergency action was taken to provide for the immediate preservation of the public health, safety and welfare.

The Chief Property Management Officer also gives notice of intent to take final rulemaking action to adopt this rulemaking in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

These emergency rules became effective immediately and shall remain in effect for one hundred and twenty (120) days from the effective date, or until publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

RULES FOR THE SOLICITATION AND CONSIDERATION OF FIRST OFFERS FROM ELIGIBLE OFFERORS FOR FORMER AND CURRENT SCHOOL PROPERTY**4000 IN GENERAL**

4000.1 This Chapter applies to offers, and negotiations of agreements, for the sale, lease, transfer, or use of a Former School Property or Current School Property to or with Eligible Offerors pursuant to the right of first offer set forth in section 2209 of the School Reform Act (D.C. Official Code § 38-1802.09).

4000.2 This Chapter does not apply to offers, or negotiations of agreements, for the sale, lease, transfer, or use of a Former School Property or Current School Property to or with Other Offerors.

4001 ISSUANCE OF SOLICITATION OF FIRST OFFERS

- 4001.1 If the Mayor decides to dispose of a Former School Property or Current School Property, the Mayor shall send, at a time and in a manner determined by the Mayor, a solicitation of first offers (“Request for First Offers”) to each Eligible Offeror.
- 4001.2 An Eligible Offeror is eligible to receive a Request for First Offers if it is an Eligible Offeror on the date that the Mayor sends a Request for First Offers.
- 4001.3 A Request for First Offers shall include, among other things:
- (a) A description of the Former School Property or Current School Property;
 - (b) A description or list of the information, documentation, and other materials that an Eligible Offeror must include in an offer;
 - (c) Minimum terms of an offer, if any;
 - (d) Factors the Mayor may use in selecting or rejecting an offer;
 - (e) Such other information, matters, or requirements the Mayor may include, in his or her sole discretion.
- 4001.4 The Mayor shall consider offers received pursuant to a Solicitation of First Offers before the Mayor may deliver a solicitation of offers to Other Offerors.

4002 CONSIDERATION OF FIRST OFFERS

- 4002.1 After receiving offers pursuant to a Solicitation of First Offers, the Mayor shall review the offers and determine whether to select an offer for negotiation.
- 4002.2 The Mayor may reject an offer if, among other factors, as determined in the sole discretion of the Mayor:
- (a) The offer does not contain all of the information required by the Request for First Offers, is inconsistent with the Request for First Offers, or is otherwise not responsive;
 - (b) The offeror proposes a use of the Former School Property or Current School Property that is not a school use or, if the Eligible Offeror is an Eligible Tenant Offer, the offeror proposes a use that is not consistent with the tenant’s then-current use of the Former School Property or Current School Property;
 - (c) The offeror has not demonstrated that it is able and authorized to assume custody, use, care, and maintenance of the Former School Property or

Current School Property immediately upon the date of the proposed purchase, lease, transfer, or use;

- (d) The offeror has not demonstrated that it has the organizational, administrative, financial, or other capacity, experience, abilities, or skills to carry out its proposed program and plan of use;
- (e) The offer is inconsistent with, or does not maximize, the long- or short-term community development, economic development, cultural, financial, or other goals of the Mayor or the District;
- (f) The offer is inconsistent with any applicable guideline, professional standard, regulation, or law; or
- (g) Acceptance of the offer is not in the best interests of the District.

4003 NEGOTIATION OF OFFERS

If the Mayor selects an offer for negotiation, the negotiation shall be in accordance with the following:

- (a) The Mayor and the offeror shall negotiate in good faith to enter into a purchase, lease, transfer, or use agreement that is financially, administratively, and otherwise feasible and likely to be successfully implemented, and is in the overall best interests of the District.
- (b) A term sheet setting forth the general terms and conditions of the purchase, lease, transfer, or use shall be executed within sixty (60) days after the date the offer is selected for negotiation. If the term sheet is not executed within the sixty (60)-day period, the offer shall be deemed rejected, unless the Mayor, in his or her sole discretion, extends the sixty (60)-day period.
- (c) An agreement setting forth all terms and conditions of the purchase, lease, transfer, or use, subject to Council approval if required by law, shall be executed by the offeror within one hundred and twenty (120) days after the date the offer is selected for negotiation. If the agreement, subject to Council approval if required by law, is not executed by the offeror within the one hundred and twenty (120)-day period, the offer shall be deemed rejected, unless the Mayor, in his or her sole discretion, extends the one hundred and twenty (120)-day period.
- (d) The purchase, lease, transfer, or use agreement shall contain the provisions set forth in section 4004, unless the Mayor determines, in his or her sole discretion, that inclusion of a provision is not in the best interests of the District.

4004 TERMS OF SALE, TRANSFER, LEASE, OR USE AGREEMENT

4004.1 Each purchase, lease, transfer, or use agreement shall contain the following provisions, unless the Mayor determines, in his or her sole discretion, that inclusion of the provision is not in the best interests of the District:

- (a) The Former School Property or Current School Property shall be sold, transferred, or leased on an "as is, where is," basis without representation or warranty of any kind as to condition or title.
- (b) The offeror shall maintain, construct, and operate the Former School Property or Current School Property only as authorized by the agreement, in compliance with all applicable laws and regulations, and in a manner that protects the residual interest of the District in the Former School Property or Current School Property.
- (c) The offeror shall not permit the use or operation of any portion of the Former School Property or Current School Property by an entity other than the offeror unless specifically authorized by the agreement.
- (d) The offeror shall not make any substantial alterations or improvements to the Former School Property or Current School Property, except as specifically authorized in the agreement.
- (e) The offeror shall not sell, assign, lease, sublease, rent, mortgage, or otherwise encumber all or a portion of the Former School Property or Current School Property or any interest therein without the prior, written approval of the Mayor.
- (f) The Former School Property or Current School Property shall be used by the Offeror only for school uses, unless the offeror is an Eligible Tenant Offeror, in which case the Former School Property or Current School Property shall be used only for uses consistent with the then-current uses of the Eligible Tenant Offeror at the Former School Property or Current School Property.
- (g) The offeror shall enter into a Certified Business Enterprise agreement with the District governing the obligations of the offeror under the Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*).
- (h) The offeror shall enter into a First Source Agreement with the District governing the obligations of the Offeror under the First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.03).

- (i) The offeror, if the offeror is a Eligible Charter Offeror, shall have a valid, current charter to operate as a charter school at all times during its occupancy of the Former School Property or Current School Property.
- (j) If the offeror fails to comply with a material term of the agreement, title or possession shall revert to the District, at the sole discretion of the Mayor,
- (k) Any other term or condition that the Mayor determines is appropriate.

4004.2 Each sale, lease, transfer, or use agreement with an Eligible Charter Offeror for a Former Public School shall also contain the following provisions, as required by section 2209(b)(1)(C) of the School Reform Act (D.C. Official Code § 38-1802.09(b)(1)(C)):

- (a) A rent or acquisition price, as applicable, which reflects the appraised value of the property based on use of the property for school purposes.
- (b) A lease period of not less than twenty-five (25) years, renewable for additional twenty-five (25) year periods as long as the eligible applicant or Board of Trustees maintains its charter.

4004.3 The Mayor shall not execute a sale, transfer, lease, or use agreement if the offeror is not in compliance with all applicable federal or local laws, regulations, executive orders, judicial decrees or orders, or other binding determination by a governmental agency or officer, unless the Mayor determines, in his or her sole discretion, that execution of the agreement is in the best interests of the District.

4005 SELECTION OF OTHER OFFER

4005.1 If the Mayor and an offeror selected for negotiation fail to execute a term sheet or sale, transfer, lease, or use agreement within the time periods established by section 4003(b) or (c) (as may be extended by the Mayor pursuant to those sections), if negotiations between the Mayor and the offeror otherwise fail, or if any required approval of the Council of a sale, transfer, lease, or use agreement does not occur within a reasonable time (as such reasonableness is determined by the Mayor, in his or her sole discretion), the Mayor may either select a different offer pursuant to the Solicitation of First Offers and this chapter or may offer the Former School Property or Current School Property to Other Offerors, in the Mayor's sole discretion.

4005.2 If the Mayor selects a different offer under subsection 4005.1, the Mayor shall negotiate with the different offeror in accordance with this chapter. If the Mayor does not choose another charter offeror, section 4006 of this chapter shall apply.

4006 SOLICITATION OF OFFERS FROM OTHER OFFERORS

- 4006.1 Subsequent to the issuance of a Request for First Offers, the Mayor may solicit offers, and negotiate an agreement, for the sale, lease, transfer, or use of a Former School Property or Current School Property to or with Other Offerors, and the right of first offer shall no longer apply to any Eligible Charter Offeror if among other things:
- (a) No Eligible Offeror responds to the Request for First Offers for the Former Public School or Current Public School;
 - (b) The Mayor does not select an offer for negotiation pursuant to the Request for First Offers;
 - (c) The Mayor and the offeror selected for negotiation pursuant to the Solicitation of First Offers fail to execute a term sheet or sale, transfer, lease, or use agreement within the time periods established by 4003(b) or (c) (as may be extended by the Mayor pursuant to those sections);
 - (d) Negotiations between the Mayor and the offeror selected for negotiation otherwise fail;
 - (e) After an offer is selected for negotiation, the Mayor or offeror is or becomes unable or unauthorized to execute the sale, transfer, lease, or use agreement;
 - (f) Any required approval Council of a sale, transfer, lease, or use agreement does not occur within a reasonable time (as such reasonableness is determined by the Mayor, in his or her sole discretion); or
 - (g) After an agreement of sale, transfer, lease, or use is executed, there is a failure to close on the sale, transfer, lease, or use or title or possession reverts to the District pursuant to the agreement or otherwise pursuant to law or regulation.
- 4006.2 A solicitation of offers, and negotiation of an agreement, for the sale, lease, transfer, or use of a Former School Property or Current School Property to or with Other Offerors shall be conducted pursuant to such procedures and standards as may be established by the Mayor, in his or her sole discretion, and the requirements, procedures, and standards established by this chapter shall not apply to such a solicitation or negotiation.

4099 DEFINITIONS

Board of Trustees – a Board of Trustees as defined in section 2002(6) of the School Reform Act (D.C. Official Code § 38-1800.02(5)).

Current School Property – a facility or real property described in 2209(b)(2)(B) of the School Reform Act (D.C. Official Code § 38-1802.09(b)(2)(B)).

Eligible applicant – an eligible applicant as defined in section 2002(16) of the School Reform Act (D.C. Official Code § 38-1800.02(16)).

Eligible Charter Offeror – a Board of Trustees or an eligible applicant whose petition to establish a public charter school has been conditionally approved under section 2203(d)(2) of the School Reform Act (D.C. Official Code § 38-1802.03(d)(2)).

Eligible Tenant Offerors – an existing tenant at a Former Public School as described in section 2209(b)(1)(A)(i)(I) and (II) of the School Reform Act (D.C. Official Code § 38-1802.09(b)(1)(A)(i)(I) and (II)).

Eligible Offerors – both Eligible Charter Offerors and Eligible Tenant Offerors.

Former School Property – a facility or real property described in 2209(b)(1)(B) of the School Reform Act (D.C. Official Code § 38-1802.09(b)(1)(B)), except for a facility or property previously purchased, leased, or transferred, or a facility or property that is under contract to be purchased, leased, or transferred, or the subject of a previously proposed resolution submitted by the Mayor on or before December 1, 2004, to the Council of the District seeking authority for disposition of such facility or property, or a facility or property under an exclusive rights agreement executed on or before December 1, 2004.

Mayor – the Mayor or the officer, employee, or agency to whom the Mayor has delegated his or her authority.

Other Offeror – (1) a person other than an Eligible Offeror or (2) an Eligible Offeror to which the right of first offer established by section 2209 of the District of Columbia School Reform Act (D.C. Official Code § 38-1802.09) no longer applies.

Request for First Offers – a solicitation of first offers from Eligible Offerors for the purchase, lease, transfer, or use of a Former School Property or Current School Property pursuant to section 4001.1.

School Reform Act – District of Columbia School Reform Act of 1995, approved April 26, 1996 (110 Stat. 1321; D.C. Official Code § 38-1800.01 *et seq.*)

All persons desiring to comment on the subject matter of this emergency and proposed rulemaking should file comments in writing not less than thirty (30) days after the date of publication of this notice in the Register. Comments should be filed with the Office of Property Management, 2000 14th Street, N.W., Suite 800, Washington, D.C. 20009. Copies of the emergency and proposed rules may be obtained from the Office of Property

Management at the address stated above. A copying fee will be charged for each copy of the emergency and proposed rules requested.