

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD**

**NOTICE OF PROPOSED RULEMAKING**

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-211(b)(2012 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 its intent to adopt the following proposed rules to amend and reorganize Chapter 16 of Title 23 of the District of Columbia Municipal Regulations (DCMR).

These proposed rules were adopted by the Board on October 15, 2014 by a six (6) to zero (0) vote. Directions for submitting comments may be found at the end of this Notice. A public hearing on the proposed rules will be held following publication of a hearing notice in the *D. C. Register*. The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Pursuant to D.C. Official Code § 25-211(b)(2), these proposed rules are also being transmitted to the Council of the District of Columbia (Council) for a ninety (90) day period of review. The final rules shall not become effective absent approval by the Council.

Title 23 of the D.C. Municipal Regulations is amended by replacing Chapter 16 in its entirety with the following:

**CHAPTER 16, CONTESTED HEARINGS, NON-CONTESTED  
HEARINGS, PROTEST HEARINGS, AND PROCEDURES.**

**1600. General Provisions**

**Subchapter I. Protest Provisions**

- 1601. Administrative Review
- 1602. Filing a Protest
- 1603. Roll Call Hearing
- 1604. Protest Status Hearing
- 1605. Party Standing
- 1606. Party Dismissal
- 1607. Establishment of Geographic Boundaries
- 1608. Settlement Conferences
- 1609. Mediation
- 1610. Settlement Agreements

## **Subchapter II. Contested Hearings**

1611. Show Cause Hearings

1612. Protest Hearings

1613. Summary Suspension and Summary Revocation Hearings

## **Subchapter III. Non-Contested Hearings**

1614. Fact-Finding Hearings

1615. Moratorium Hearings

## **1600. GENERAL PROVISIONS**

1600.1 The provisions of this chapter shall govern the following items: (a) Administrative review hearings, roll call hearings, or status hearings regarding the issuance, transfer, or renewal of a license, or the making of substantial changes to a licensee's business operations under authority of the Act; (b) Protest hearings regarding the issuance, transfer or renewal of a license, or the making of substantial changes to a licensee's business operations under authority of the Act; (c) Fact-finding hearings on any matter governed by the Act regarding an applicant for a license or a licensee; and (d) Show cause hearings, summary suspension hearings or summary revocation hearings regarding the revocation or suspension of a license issued under the Act.

1600.2 The Board may, for good cause shown and in the interest of justice or to prevent hardship, waive any provision of this chapter which is not required by the Act in any proceeding after duly advising the parties of its intention to do so.

1600.3 The following hearings held before the Board shall be considered to be contested cases: (a) Protest hearings; (b) Show cause hearings; (c) Summary suspension or summary revocation hearings; (d) Cease and desist hearings; and (e) Safekeeping hearings.

1600.4 The following hearings held before the Board shall not be considered to be contested cases: (a) Fact-finding hearings; and (b) Moratorium hearings and other rulemaking hearings.

1600.5 The provisions of this chapter are intended to be consistent with the District of Columbia Administrative Procedure Act (D.C. Official Code §§ 2-501 et seq.). If there is any conflict between this chapter and the District of Columbia Administrative Procedure Act, the District of Columbia Administrative Procedure Act shall govern.

1600.6 If there is any conflict within this chapter, provisions of specific application shall supersede those of general application.

## **SUBCHAPTER I. PROTEST PROVISIONS**

### **1601. ADMINISTRATIVE REVIEW**

1601.1 The phrase “administrative review” found in Title 25 of the D.C. Official Code shall be considered synonymous with the phrase “roll call hearing” and shall have the same meaning in these regulations.

### **1602. FILING A PROTEST**

1602.1 Only those individuals or entities listed in D.C. Official Code § 25-601 may file a protest against:

- (a) The issuance of a new license;
- (b) The renewal of an existing license;
- (c) The transfer of a license to a new location;
- (d) Substantial changes to the nature of the operations of a licensed establishment;  
and
- (e) Changes in license classes.

1602.2 All protests shall be in writing, shall be received by the Board prior to the end of the protest period, and shall state, as grounds for the protest, why the matter being objected to is inappropriate under one (1) or more of the appropriateness standards set out in D.C. Official Code §§ 25-313 and 25-314 and § 400 of this title.

1602.3 All protests shall be signed by the protestant and contain the protestant's full name, email address if one exists, and mailing address.

1602.4 The Board may require protestants to appear in person before the Board for the purpose of determining that a sufficient number of individuals exist to have standing pursuant to D.C. Official Code § 25-601.

1602.5 In addition to, or instead of, filing a protest, any person may circulate or sign Protest Petitions in opposition to any of the licensing actions listed in § 1602.1.

### **1603. ROLL CALL HEARING**

1603.1 The roll call hearing is a non-adversarial hearing conducted by the Board’s agent to identify timely filed protests received during the protest period, confer standing to protestant groups, and to set a date for mediation, the status hearing, and the protest hearing. For purposes of this section, the Board’s agent shall be defined as

an ABRA Office of the General Counsel employee at or above the Grade 12 level, excluding the ABRA General Counsel.

1603.2 Each applicant and each person or group submitting a protest shall attend the roll call hearing in person or appear through a designated representative.

1603.3 Failure to appear in person or through a designated representative at the roll call hearing may result in denial of the license application or dismissal of a protest, unless, in the discretion of the Board, good cause is shown for the failure to appear: Examples of good cause for failure to appear include, but are not limited to:

- (a) Sudden, severe illness or accident;
- (b) Death or sudden illness in the immediate family, such as spouse, partner children, parents, siblings;
- (c) Incarceration;
- (d) Severe inclement weather; or
- (e) Arriving after the roll call hearing has concluded.

1603.4 A recommendation by the Board's Agent to dismiss a license application or dismiss a protest for failure to attend the roll call hearing shall be forwarded to the Board for issuance of a written Order. A request for reinstatement of the license application or the protest must be filed with the Board within ten (10) days after receipt of the Order. In reviewing the request for reinstatement of the license application or the protest, the Board shall consider whether, in the discretion of the Board, the party has shown good cause for his or her failure to appear at the roll call hearing.

1603.5 At the roll call hearing, the Board's agent shall have the authority to:

- (a) Regulate the course of the hearing;
- (b) Request the persons appearing at the hearing to identify themselves, and provide contact information including email addresses;
- (c) Request or accept written documentation from the parties including letters of representation;
- (d) Identify the parties with standing and the filed protest issues, if undisputed;
- (e) Approve a joint request from the parties to schedule mediation;
- (f) Adjourn a hearing and establish the date when the hearing will be continued; and
- (g) Take any other action authorized by, or necessary under, this section.

1603.6 Upon the scheduling of the roll call hearing, all parties shall be prohibited from participating in any ex parte communication with the Board's agent relevant to the merits of the proceeding. This shall include any oral or written communication

not in the public hearing record with respect to which reasonable prior notice is not given to all parties to the proceeding.

1603.7 The roll call hearing shall be open to the public and transcribed by a certified court reporter.

#### **1604. PROTEST STATUS HEARING**

1604.1 The protest status hearing is a proceeding held by the Board at which the parties address any unresolved legal issues from the Roll Call hearing or address motions or pleadings previously filed with the Board.

1604.2 At the protest status hearing, the parties also inform the Board of their progress in reaching a settlement agreement. The Board in its discretion may set another status hearing if the Board determines that the parties are close to reaching a settlement agreement or that mediation might be helpful.

#### **1605. PARTY STANDING OF A GROUP OF FIVE OR MORE RESIDENTS OR PROPERTY OWNERS**

1605. 1 A protestant group of five or more residents or property owners of the District sharing common ground will be granted standing once five or more individuals of the group have appeared at either the roll call hearing or at the protest status hearing.

1605.2 Members of a protestant group of five or more residents or property owners may submit written statements of designation of a representation. A member of a protestant Group of Five or More Individuals may be represented by a designated representative before the Board once the protestant Group of Five or More Individuals has been granted standing.

1605.3 A Group of Five or More Individuals will be defined by the members set forth in the protest or protest petition.

#### **1606. PARTY DISMISSAL**

1606.1 In the event that an applicant or a protestant is dismissed and not reinstated by the Board for good cause after failing to appear at either an administrative review, roll call hearing, status hearing, or protest hearing, the Board may deny the license application and/or dismiss the protest.

1606. 2 In the event that an applicant's request to renew its license is dismissed and not reinstated by the Board, the applicant shall be permitted to re-submit a second renewal application upon the filing of a late fee of \$1,000.

1606.3 The re-filed second renewal application shall be submitted to ABRA within ten (10) calendar days of receipt of the Board's order dismissing the license application or not reinstating the license application in the event that a request for reinstatement was filed by the applicant. In the event that the applicant fails to resubmit its second renewal application within ten (10) calendar days, the Board shall issue a cease and desist order to the applicant notifying the business to immediately cease the sale and/or service of alcoholic beverages.

1606.4 In the event that a second renewal application is re-filed by an applicant within ten (10) calendar days, any protestants that appeared at the administrative hearing, roll call hearing, or status hearing where the applicant was dismissed for failure to appear shall not be required to refile a previously submitted valid protest letter.

1606.5 In the event that an applicant's re-filed second renewal application is dismissed for failure to appear at a hearing and not reinstated by the Board, the license renewal application shall be denied. The applicant shall be required to file a new license application, unless prohibited by a liquor license moratorium, and shall not be permitted to file a third license renewal application. The Board shall issue a cease and desist order to the applicant notifying the business to immediately cease the sale and/or service of alcoholic beverages. The cease and desist order shall be sent to the applicant after ten (10) calendar days of the applicant's receipt of the Board's order dismissing the license application or not reinstating the license application in the event that a request for reinstatement was filed by the applicant.

1606.6 In the event that an applicant's request to terminate or amend its settlement agreement is dismissed and not reinstated by the Board, the applicant shall not be permitted to file a subsequent request to terminate or amend its settlement agreement until the next three-year renewal period.

## **1607. ESTABLISHMENT OF GEOGRAPHIC BOUNDARIES**

1607.1 Upon recognition by the Board of a properly filed protest at a roll call hearing, the applicant shall be required to select one of the geographic areas listed below that the applicant proposes be considered in determining the appropriateness of the establishment. The applicant shall submit the proposed boundaries to the Board and the protestants no later than ten (10) calendar days after the roll call hearing.

1607.2 Upon recognition by the Board of a properly filed protest at a roll call hearing, the applicant shall be required to select one of the geographic areas listed below that the applicant proposes be considered in determining the appropriateness of the establishment. The applicant shall submit the proposed boundaries to the Board and the protestants no later than ten (10) calendar days after the roll call hearing. The applicant shall be deemed to have selected the "section" geographic area if it fails to submit boundaries to the Board within the ten (10) calendar day period.

1607.3 Any protestant may object to the area and boundaries proposed by an applicant by filing a written objection with the Board no later than thirty (30) calendar days after receipt of the applicant's proposed boundaries. The objection shall also be served on the applicant by any of the means set forth in § 1703. The objection shall state in detail the following:

- (a) The reasons for objecting to the boundaries proposed by the applicant;
- (b) The boundaries proposed by the objector; and
- (c) The reasons why the objector's boundaries should be adopted by the Board.

1607.4 The applicant's submission shall be served on the objector by any of the means set out in § 1703 and received by the Board no later than eight (8) calendar days after receipt of the applicant's submission.

1607.5 Any objector or applicant who makes a submission to the Board pursuant to §§ 1607.1, 1607.2, 1607.3, or 1607.4, may forward written argument or documentary evidence to the Board in support of the boundaries he or she proposes.

1607.6 The Board, pursuant to D.C. Official Code § 25-312(b), shall determine, on a case-by-case basis, the size of the area relevant for the appropriateness review. In making this determination, the Board shall consider the overall characteristics of the area, including population, density, and general commercial and residential activities.

1607.7 For the purpose of determining the appropriateness of a license, the geographic areas to be considered by the Board shall be measured pursuant to § 101.1 and shall be as follows:

- (a) A “locality,” which shall be the immediate neighborhood of the establishment and whose boundary shall be at a distance of six hundred feet (600 ft.) from the establishment;
- (b) A “section,” whose boundary shall be at an area larger than the immediate neighborhood and whose boundary shall be at a distance of twelve hundred feet (1,200 ft.) from the establishment; and
- (c) A “portion,” whose boundary shall be at an area larger than a “section” and whose boundary shall be at a distance of eighteen hundred feet (1,800 ft.) from the establishment.

1607.8 In determining the area to be considered, the Board shall consider the report of the Board's investigators concerning the overall characteristics of the alternative areas, including the following:

- (a) The population and density of the areas surrounding the establishment;
- (b) The general commercial and residential activities in the areas surrounding the establishment; and
- (c) Geographical factors, such as parks, rail lines, major thoroughfares, bodies of water, cemeteries, and unimproved or unused property, which may tend to define physically an area to be considered.

1607.9 In determining the area to be considered, the Board shall also consider the evidence and testimony of a party proposing a particular area of consideration, when the proposal is based on an assertion of:

- (a) Historical patterns of commercial or residential activity leading to an identification of a given area as a distinct, generally-recognized neighborhood, or larger area; or
- (b) Any other reason not included in § 1607.2.

1607.10 The Board shall make a final decision on the boundaries without a hearing and based on the submissions received from the applicant and the objector.

1607.11 The Board's final decision shall be made and announced at the first status hearing for the application at issue.

## **1608. SETTLEMENT CONFERENCES**

1608.1 The phrase “settlement conference” found in Title 25 of the D.C. Official Code shall be considered synonymous with the phrase “mediation” and shall have the same meaning in these regulations.

## **1609. MEDIATION**

1609.1 Whenever a protest is filed, all parties shall attend mediation on a mutually convenient date prior to the scheduled protest status hearing or the protest hearing. The date of the mediation may be arranged at the roll call hearing or may be arranged at any other time.

1609.2 The parties at a mediation may enter into a settlement agreement, as provided for in § 1610, and shall submit, on or before the date of the scheduled protest status hearing or the protest hearing, the settlement agreement to the Board for approval.

1609.3 If the parties fail to reach a settlement agreement on one or more of the protest issues, they shall so state at the scheduled protest status hearing or the protest hearing and the Board shall thereupon proceed with a protest hearing as to all unresolved issues of fact.

## **1610. SETTLEMENT AGREEMENTS**

- 1610.1 The terms of a settlement agreement submitted by the parties shall be consistent with District of Columbia law and shall be in compliance with D.C. Official Code §§ 25-446.01 and 25-446.02.
- 1610.2 The Board may initiate a “Notice to Show Cause Hearing” upon evidence that the holder of a license has violated the material terms of the agreement. Upon a determination that the licensee has materially violated the agreement, the Board may suspend or revoke the license or impose any other penalty authorized by the Act or this title.
- 1610.3 A request to amend a cooperative/voluntary agreement shall be considered by the Board pursuant to the substantial change and notice procedures set forth in D.C. Official Code §§ 25-404 and 25-762.
- 1610.4 Upon finding that a licensee has materially violated certain conditions required by the Board, as authorized by this section, the Board may also fine a licensee pursuant to the range of fines set forth in D.C. Official Code § 25-830.
- 1610.5 The phrase “cooperative agreement” often used in agreements reached between applicants and protestants that are submitted to the Board for approval shall be considered synonymous with the phrase “voluntary agreement” and shall have the same meaning in these regulations.
- 1610.6 The phrase “settlement agreement” found in Title 25 of the D.C. Official Code shall be deemed equivalent to the term “cooperative agreement”, or “voluntary agreement” used in Title 23 of the D.C. Municipal Regulations.
- 1610.7 If the Board determines that a settlement agreement submitted by the parties does not comply with all applicable laws and regulations, or otherwise exceeds the Board's expertise to enforce, the Board may condition approval of the settlement agreement on the parties' acceptance of modifications of the agreement proposed by the Board. If the parties reject the modifications proposed by the Board, they may submit a new settlement agreement for Board review that complies with D.C. Official Code §§ 25-446.01 and 25-446.02 and is within the Board's expertise to enforce, or proceed to a protest hearing.
- 1610.8 Settlement agreements must be submitted by the parties to the Board for the Board's consideration no later than ninety (90) days after the execution of the settlement agreement by parties who are signatories to the settlement agreement.

## **SUBCHAPTER II. CONTESTED HEARINGS**

### **1611. SHOW CAUSE HEARINGS**

- 1611.1 Whenever the Board has reasonable cause to believe that any license or permit should be fined, revoked, or suspended pursuant to Chapter 8 of Title 25 of the D.C. Official Code, it shall notify the person to whom the license or permit was issued by personal service or certified mail at the last address recorded by that person with the Board, citing that person to appear before the Board not less than thirty (30) days thereafter. The notice shall state the time and place set by the Board for the hearing.
- 1611.2 The licensee or permittee shall appear in his or her defense in person and may have representation by counsel or other designated representative, and shall be entitled to offer evidence before the Board with respect to the charges.
- 1611.3 If the person whose license or permit is sought to be fined, revoked, or suspended waives the hearing or fails to appear at the time and place set for the hearing, the Board may proceed ex parte, unless the Board extends the time for the hearing.
- 1611.4 The Board shall make its findings of fact based upon the evidence which has been presented to it.
- 1611.5 The Board may, in its discretion, accept from both (1) the licensee or permittee and (2) the Office of the Attorney General or the prosecuting entity an offer in compromise and settlement to resolve the charges brought at the show cause hearing by the District of Columbia against the licensee. An offer in compromise and settlement may be tendered to the Board at any time prior to the issuance of a decision by the Board on the contested matter.
- 1611.6 An offer submitted by the parties and accepted by the Board shall constitute a waiver of appeal and judicial review.
- 1611.7 Any fines collected by the Board shall be paid forthwith, unless otherwise ordered by the Board, to the D.C. Treasurer and credited to the General Fund.
- 1611.8 The issuance of an advisory opinion by the Board pursuant to § 1902 of this title may also result in the issuance of a show cause notice under this section.

### **1612. PROTEST HEARINGS**

- 1612.1 Whenever any objection is filed to any of the licensing actions set out in § 1602.1, whether by protest or by submission of Protest Petitions, the Board shall hold an adjudicatory proceeding, known as a “protest hearing,” for the purpose of receiving evidence and testimony regarding the appropriateness of the licensing action.

- 1612.2 The parties to a protest hearing shall be the applicant or licensee and the protestants. For the purpose of this section, "protestant" shall mean any eligible person, group, ANC, government agency or organization with standing under D.C. Official Code § 25-601 that has submitted a written protest or who has submitted a circulated Protest Petition.
- 1612.3 At the protest hearing, an applicant or licensee may give a brief opening statement summarizing the evidence and testimony he or she intends to produce regarding the appropriateness of the application or license at issue. Thereafter, the protestant may give a brief opening statement summarizing the evidence he or she intends to present to rebut or overcome the evidence and argument presented by the applicant or licensee.
- 1612.4 At the conclusion of the opening statements, the Board shall call its own witnesses, if any, who shall testify to the results of their investigation into the appropriateness of the establishment.
- 1612.5 At the conclusion of testimony by the Board's witnesses, if any, the applicant shall call its witnesses to give testimony and present evidence regarding the appropriateness of the establishment, as set forth in § 400 of this title.
- 1612.6 At the conclusion of testimony by the applicant's witnesses, the protestant shall call witnesses to give testimony and present evidence.
- 1612.7 All witnesses shall testify under oath and shall be subject to questioning by the Board and to cross-examination by the opposing party.
- 1612.8 In any case where there is more than one (1) protestant, the Board, in its discretion, may request that the protestants designate one (1) person to conduct the protestants' case, to give the opening and closing statements, and to cross-examine the applicant's witnesses.

### **1613. SUMMARY SUSPENSION AND SUMMARY REVOCATION HEARINGS**

- 1613.1 In rendering a decision on a summary suspension hearing, the Board may suspend or restrict the license of the licensee. Additionally, the Board may keep the licensee in the summary suspension proceeding to monitor the licensee to make a determination if the conditions placed by the Board on the licensee are effective. The Board shall schedule a show cause hearing to revoke the license if it determines that the operations of the licensee present an imminent danger to the health and safety of the public pursuant to D.C. Official Code §§ 25-826 and 25-827.
- 1613.2 In rendering a decision on a summary revocation hearing, the Board may revoke, suspend, or restrict an applicant's license.

### **SUBCHAPTER III. NON-CONTESTED HEARINGS**

#### **1614. FACT-FINDING HEARINGS**

1614.1 Prior to rendering a final decision on a licensing request or an ABRA Investigative Report, the Board may hold a fact-finding hearing to obtain further information from an applicant or licensee.

1614.2 A licensee shall not be fined, suspended, or revoked at a fact-finding hearing. However, information provided at a fact-finding hearing may result in the issuance of a show cause notice pursuant to § 1611 or other enforcement action permitted under the Act or this title.

#### **1615. MORATORIUM HEARINGS**

1615.1 The Board shall hold moratorium hearings pursuant to the requirements set forth in D.C. Official Code §§ 25-353 and 25-354.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. All persons desiring to comment on the emergency and proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the *D.C. Register*, to the above address or via email to [martha.jenkins@dc.gov](mailto:martha.jenkins@dc.gov).