

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

NOTICE OF FIFTH EMERGENCY RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in the Omnibus Alcoholic Beverage Amendment Act of 2004, effective September 30, 2004 (D.C. Law 15-187; D.C. Official Code § 25-211(c) (2012 Repl. & 2019 Supp.)) and D.C. Official Code § 25-502 (2012 Repl. & 2019 Supp.), and Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, adopted, on an emergency basis, amendments to Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). These fifth emergency rules were adopted by the Board on October 6, 2021, by a vote of six (6) to zero (0).

The emergency rulemaking modified the Metropolitan Police Department Reimbursable Detail Subsidy Program (RDO Subsidy Program) by:

1. Restoring the hours of eligibility for obtaining reimbursement for RDO services to the pre-COVID-19 pandemic hours of 11:30 p.m. to 5:00 a.m., Sunday through Saturday;
2. Restoring the hours of eligibility for obtaining reimbursement for RDO services for temporary license holders or those approved for a one-day substantial change permit to the pre-COVID-19 pandemic hours of twenty-four (24) hours a day; and
3. Including the DC Main Streets Program to the list of entities eligible for participation in the RDO Subsidy Program, and thus allowing reimbursement in accordance with 23 DCMR § 718.

BACKGROUND

Since the first confirmed case of COVID-19 in the District of Columbia, Mayor Bowser has taken deliberate steps to protect District residents and its visitors. On March 11, 2020, Mayor Bowser declared a Public Health Emergency and Public Emergency in the District, and in turn, instituted a range of COVID-19-related restrictions for bars and restaurants. *See* Mayor's Orders 2020-045 and 2020-046 (March 11, 2020). *See* 67 DCR 002956 and 002961. Similarly, the Board has taken a series of steps to address ABC-licensed establishments' operations during the pandemic so that they could continue to operate while at the same protecting their patrons' health and safety. One such action that the Board took was to reduce the hours of eligibility for reimbursement of RDO services considering ABC-licensed establishments' reduced operations. *See MPD Reimbursement Detail Subsidy Program Hours of Eligibility Notice of Second Emergency Rulemaking*, adopted on February 24, 2021; *MPD Reimbursable Detail Subsidy Program Hours of Eligibility Notice of Emergency Rulemaking*, adopted on November 4, 2020 [SUPERSEDED]. *See* 68 DCR 005713 - 005716 (May 28, 2021).

Although the District's Public Health Emergency and Public Emergency have been extended, the number of District residents testing positive for COVID-19 continues to decrease. As a result of this positive trend, Mayor Bowser announced that as of 5:00 a.m. on May 21, 2021, restaurants and taverns were permitted to operate at one hundred percent (100%) of their occupancy load without restrictions as to time or activities. *See* Mayor's Order 2021-069, dated May 18, 2021, 68 DCR 005480 (May 21, 2021). Mayor's Order 2021-069 further provided that effective 5:00 a.m.

on June 11, 2021, the remaining classes of on-premises retailers would be permitted to operate at full capacity without restrictions as to hours of eligibility or activities.

Recognizing that ABC-establishments would return to pre-COVID-19 operations, and especially as we approach the warmer summer months and upcoming holiday weekends, the Board adopted the *MPD Reimbursable Detail Subsidy Program Hours of Eligibility Notice of Third Emergency Rulemaking* on May 26, 2021, which reinstated the pre-COVID full hours of eligibility for reimbursement for RDO services (*e.g.*, 11:30 p.m. to 5:00 a.m., Sunday through Saturday), effective July 1, 2021. Lastly, the third emergency rulemaking amended 23 DCMR § 718.1 to include the DC Main Streets Program as a recognized entity eligible for participation in the RDO Subsidy Program. *See* 68 DCR 006852 (July 9, 2021) [SUPERSEDED].

After the adoption of the third emergency rulemaking, the Board determined that not only was emergency action necessary but that allowing the DC Main Streets Program to participate in the RDO program warranted permanent adoption. As such, the Board adopted the *MPD Reimbursable Detail Subsidy Program Hours of Eligibility Notice of Fourth Emergency and Proposed Rulemaking* for purposes of taking the steps necessary to adopt the rules on a permanent basis. The fourth emergency and proposed rulemaking superseded the emergency rules the Board adopted on May 26, 2021, and will expire on October 14, 2021.

This fourth emergency and proposed rulemaking was published in *D.C. Register* for public notice and comment on July 16, 2021, at 68 DCR 7062. The thirty (30)-day comment period ended on August 16, 2021, without the comment from the public. The Board also held a public hearing on August 11, 2021. No one appeared to testify at the hearing and no comments were submitted.

Considering the pending expiration of the current emergency rules on October 14, 2021, and in the interest of maintaining the welfare, public safety, and health of the community while the proposed rulemaking is under consideration by the Council of the District of Columbia (Council), the Board takes additional emergency action. Thus, on October 6, 2021, the Board adopts the *MPD Reimbursement Detail Subsidy Program Hours of Eligibility Notice of Fifth Emergency Rulemaking*, by a vote of six (6) to zero (0). This rulemaking supersedes the emergency rules the Board adopted on May 26, 2021, and shall remain in effect for one hundred twenty (120) days from the Board's adoption; expiring on or before February 3, 2022, unless superseded.

Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, is amended as follows:

Subsection 718.1 is amended to read as follows:

718.1 This section sets forth the procedures for receiving reimbursement from ABRA under the subsidy program for monies paid to the Metropolitan Police Department (MPD) by licensees for the hiring of MPD officers to work a reimbursable detail. A licensee, a group of licensees, a Business Improvement District on behalf of licensees, or a DC Main Streets Program on behalf of licensees, may enter into an agreement with MPD to provide for reimbursable detail and are eligible for

reimbursement under the subsidy program. This section shall apply only to the extent that:

- (a) Funds are appropriated for the subsidy program; and
- (b) ABRA has sufficient funds allocated for this program remaining to reimburse MPD for costs incurred by licensees for MPD officers working reimbursable details.

Subsection 718.2 is amended to read as follows:

718.2 ABRA will reimburse MPD for a percentage, as published in the *D.C. Register*, of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. Effective July 1, 2021, the hours eligible for reimbursement for on-premises retailer licensees shall be 11:30 p.m. to 5:00 a.m. Prior to July 1, 2021, the hours of eligibility shall be 2 p.m. to 2 a.m., Sunday through Saturday.

A new Subsection 718.3 is added to read as follows:

718.3 Effective July 1, 2021, ABRA will also reimburse MPD a percentage, as published in the *D.C. Register*, of the total costs of invoices submitted by MPD to cover the costs incurred for outdoor special events where the licensee has been approved for a one-day substantial change license or temporary license. The hours eligible for an outdoor special event operating under a one-day substantial change license, a temporary license, or a pub crawl event operating under a pub crawl license shall be twenty-four (24) hours a day.

Existing Subsections 718.3 through 718.6 are renumbered 718.4 through 718.7.