

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

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in Title 25, D.C. Code Enactment and Related Amendments Act of 2001, effective May 3, 2001 (D.C. Law 13-298; D.C. Official Code § 25-351(a) (2012 Repl.)), and Section 304 of Title 23 of the District of Columbia Municipal Regulations (DCMR), hereby gives notice of the adoption of final rules that amend Section 304 (Adams Morgan Moratorium Zone) of Title 23 (Alcoholic Beverages) of the DCMR.

These rules extend the existing Adams Morgan Moratorium Zone (AMMZ), with certain modifications, for a period of three (3) years.

By way of background, the existing moratorium expired on April 16, 2014. On March 12, 2014, the Board voted, seven (7) to zero (0), on an emergency basis to keep the existing moratorium temporarily in place. The Board required additional time to consider two (2) proposals submitted by Advisory Neighborhood Commission (ANC) 1C and the Kalorama Citizens Association (KCA) regarding the future of AMMZ.

On February 28, 2014, ANC 1C filed a Petition for Renewal of and Modification to the Adams Morgan Moratorium Zone (ANC Petition). The ANC Petition resulted from a series of public meetings that were held from September 2013 through December 2013. The ANC held the public meetings to receive input from stakeholders and constituents in order to formulate a recommendation for the Board.

In summary, the ANC seeks renewal of the existing AMMZ for a five (5) year period with certain modifications. The ANC's proposal includes: maintaining the prohibition on Retailer Class CN/DN; prohibiting new or conversions to Retailer Class CT/DT licenses; permitting new licenses for Retailer Class CR/DR; prohibiting new Entertainment Endorsements of the kind that characterizes nightclub activity, specifically cover charges and live music; and prohibiting pub crawls and the use of promoters. The proposal does not seek to change the boundaries of the current moratorium zone.

The second proposal was submitted by the Kalorama Citizens Association (KCA) on March 4, 2014. The KCA requests that the Board renew the existing moratorium zone for another five (5) years with no modifications to the current restrictions.

The Board found that both proposals merited further evaluation and thus held a hearing on May 7, 2014, pursuant to D.C. Official Code § 25-354 (2012 Repl.), to receive public comment on the written proposals. At the public hearing, the Board received testimony from over fifty (50) people, including business owners and residents, from the Adams Morgan neighborhood. Following is a synopsis of the testimony presented at the hearing.

ANC 1C

William Simpson, Commissioner of ANC 1C, testified that Adams Morgan has been subject to a moratorium in one form or another since 2000. The ANC would now like to see the moratorium taken in a new direction with modifications that are based on the standards pursuant to D.C. Official Code 25-313(b) (2012 Repl. & 2015 Supp.).

Commissioner Simpson stated that the ANC voted to continue the prohibition on nightclub licenses and new tavern licenses. Unlike the existing moratorium, there would no longer be a cap on the number of new restaurant licenses. Commissioner Simpson testified that the decision to allow new restaurants in the moratorium zone was not taken lightly by the ANC.

There is a recognition by the ANC that the concerns raised by the Board at the renewal of the moratorium in 2009 still exist; criminal activity, noise, litter, disorderly conduct, crowd control, and vehicular and pedestrian safety. The ANC believes that the existing moratorium has not made the neighborhood better, but it can be credited with not exacerbating the problems. The ANC's rationale for lifting the cap on new restaurants is to encourage the forces of competition that allow good licensees to thrive while driving out the bad licensees. This will result in a revitalized Business Improvement District, and will encourage entrepreneurs to offer fresh ideas and menu options.

Commissioner Simpson testified that the ANC's position has broad support from within the community. The ANC undertook extensive outreach over the last year and one half. The public was put on early notice that the moratorium would expire in 2014. The ANC held a series of meetings and reached out to constituents via email as well. Individual ANC commissioners contacted their respective constituents. The ANC's ABC Committee dedicated a meeting on just the topic of the moratorium and the neighborhood was encouraged to attend a subsequent meeting of the full Committee when the ANC proposal was scheduled for consideration. The ANC received hundreds of comments, verbally and electronically. The Reed-Cooke Neighborhood Association also supports the ANC position.

The consensus of the neighborhood was to continue the prohibition on nightclubs and to discourage establishments that are focused solely on serving alcohol. The ANC seeks a balance that protects the community from the more egregious nightclub type activity, but allows bona fide restaurants to thrive and flourish.

In this vein, the ANC requests that the Board consider the difference between bona fide restaurants that successfully sell food versus de facto nightclubs that have restaurant licenses, but whose operations are driven by alcohol and entertainment. The bona fide restaurants tend not to stay open until the legally permitted hours, and the ones that do, continue to serve food. It is the de facto nightclubs, on the other hand, that over-serve their already intoxicated clientele who become boisterous and unruly. It is the ANC's opinion that the Board has not always made that distinction in the past, resulting in decisions that are harmful to the neighborhood.

To that end, the ANC seeks the Board's aggressive enforcement to protect the community by ensuring licensee's compliance with the laws. The ANC requests that the Board specifically prohibit new entertainment endorsements for any licensee whose business model is akin to nightclub activity. Specifically, the ANC seeks the prohibition of cover charges, live bands, dancing, promoters and pub crawls.

Jimmy R. Rock, ANC Commissioner for Single Member District (SMD) for 1C08, echoed Commissioner Simpson. He testified that allowing new restaurants with certain conditions was a far better approach to improving the neighborhood than banning new restaurants altogether. He said that the hardcore nightlife scene has shifted away from Adams Morgan to other parts of the District, thus allowing the neighborhood to take a different approach to addressing the problems that remain. The existing moratorium is too focused on the past nightlife experiences and does not look to the future. There is an influx of new residents to the Adams Morgan neighborhood and those new residents will help to transition the neighborhood away from the old nightlife and toward vibrant restaurants and fine dining. He also asked the Board to be intentional about its enforcement efforts.

Brain Hart is an ANC Commissioner for 1C01, and he chairs the ANC's ABC and Public Safety Committee. He shared with the Board the time, effort and energy the ANC committed to educating the community to reach a solution that was in the best interests of the neighborhood and small businesses. The ANC undertook a great deal of internal work and six of seven members voted to support the proposal. The ANC created a public hearing schedule and received feedback from the community throughout the year. He noted that there were two polarized views; one that sought a complete moratorium on all classes of retailers, and another that sought to lift the moratorium on all classes.

The ANC also studied the conditions contained in other neighborhood moratoriums throughout the District. Commissioner Hart noted that the Adams Morgan neighborhood is unique and cannot be compared to the other communities. Notably, Adams Morgan has a greater density of licensed establishments, and secondly, the neighborhood has a historic preservation quality to it. This naturally requires a tailored solution to address the unique concerns of Adams Morgan.

Commissioner Hart reiterated the ANC Chair's statement that the allowance of nightclubs would be harmful to the neighborhood and would foster crime and nuisance. Additionally, the ANC concludes it would be a risk to lift the cap on taverns, such that without proper enforcement by ABRA, might become de facto nightclubs. On the other hand, new restaurants would contribute to the business and foot traffic, thereby enriching the neighborhood.

Gabriela Mossi represents ANC 1C04, which is the Lanier Heights neighborhood in Adams Morgan. Commissioner Mossi testified that more restaurants bring more choice and diversity. However, new restaurants will not cure all social ills and thus better enforcement of regulations and laws is required.

Ted Guthrie is an ANC Commissioner whose SMD, 1C03, is the heart of Adams Morgan. He represents five blocks between 18th and 19th streets from Wyoming Avenue to Biltmore Street

NW. His SMD has seventeen (17) restaurants, and six (6) tavern licenses. Three more restaurant licenses are held in Safekeeping with ABRA.

Commissioner Guthrie is the lone dissenter on the ANC proposal. His constituents strongly support the continuation of the existing Adams Morgan Moratorium for the following reasons: they are regularly disturbed in the early morning hours by the hordes of drunk people who stream into the neighborhood, there is litter and property damage, and patrons urinate and vomit wherever it is convenient for them to do so. The singular source of this antisocial behavior according to Commissioner Guthrie is the over concentration of alcohol purveyors in Adams Morgan.

The quality of life for his constituents is overwhelmed by the nightlife establishments and the existing infrastructure cannot accommodate it. There are no roads, public parking, or Metro access to handle the number of patrons who see Adams Morgan as an entertainment destination.

Commissioner Guthrie believes that ABRA has been unable or unwilling to prevent the restaurants from morphing into nightclubs. This is due in part because the agency only counts seats to enforce the food sales requirement. Restaurants have turned into nightclubs and exceed their permitted occupancy. The excess capacity and the overconcentration make the policing efforts random and palliative. The Metropolitan Police Department (MPD) places twenty (20) officers in Adams Morgan on the weekends, yet the limited resources only serve to contain the problems, not prevent them.

Finally, Commissioner Guthrie argues that the neighborhood does not need more licenses; they need better licenses. There are both storefronts and licenses for anybody who wants to open a restaurant today. The licenses currently held in Safekeeping can be used by new restaurants without lifting the moratorium restrictions. He stated that the ANC proposal will not work because more bars just means more noise, more problems, and fewer regulatory resources. Unfettered commercial competition is not the answer.

KCA

Denis James, President of the KCA, testified that the ANC has gone too far in lifting the restrictions from the existing moratorium. Many of the most challenged establishments in the neighborhood are licensed as restaurants. Mr. James believes that too many licenses were issued prior to the imposition of the original moratorium in 2000, and that the best terms of the moratorium are the ones in existence now. Those terms are no new licenses except for hotels and no existing licensed establishment can change its retailer class.

Mr. James believes that the current moratorium has succeeded on two fronts. It has prevented new licensees from taking over commercial space, and it has prevented nightlife conditions from worsening. Mr. James argues that, notwithstanding the moratorium, problems continue to exist; large trucks unload in the middle of the street, unclosed dumpsters attract vermin, alcohol products litter the streets, and illegal advertising is posted to public light and utility poles.

Mr. James further argues that adding an unlimited number of new licenses to the existing problems would be irrational and nonsensical. He is also concerned that the mere availability of new licenses will not necessarily attract high-end restaurants. Rather, he believes that “hole-in-the-wall” businesses and “hookah joints” that are currently succeeding without an alcohol license will apply for an ABC license.

Mr. James noted that recent business arrivals have brought about a shopping diversity to the neighborhood. Bakeries, barber shops, record stores and vintage clothing stores now flourish in the south end of Adams Morgan. Mr. James requests the Board to maintain the moratorium for another five (5) years, and allow the community to benefit from non-alcohol driven businesses.

Fiscal Policy Institute

Ed Lazere is Director of the DC Fiscal Policy Institute (Institute). The Institute is a policy research and advocacy organization that focuses on issues related to the fiscal and economic health of the District of Columbia. The Institute undertook a study, researched available data and literature, and conducted numerous interviews with businesses and stakeholders in Adams Morgan. The central focus of the study was to determine the best manner to achieve the goal of a vital, dynamic, thriving commercial corridor that meets the needs of the residents while protecting their interests through peace, order and quiet. Mr. Lazere testified that the Institute concluded that the existing moratorium is a blunt instrument that has resulted in negative and unintended consequences.

One unintended consequence is the high cost of a license, which serves as a barrier to entry in the marketplace. Several of the stakeholders who were interviewed by the Institute indicated that had the moratorium been in place when they first opened for business, they would either not have opened or they would have located to another neighborhood. As Mr. Lazere testified, an entrepreneur might have the resources to launch a new business, but not the resources to purchase the artificially high cost of a license. He states further that it is harder for a dining establishment to succeed without an alcohol license.

A second unintended consequence, related to the first, is that the barrier to entry has allowed other neighborhoods to flourish with new restaurants. The Adams Morgan moratorium is driving development on the H Street NE corridor and the City Centre NW because of the ability to obtain a relatively low cost license.

Thirdly, the moratorium serves to protect the bad businesses that are already located there. Basic economics dictates that the harder it is for good licensees to enter the market, the easier it is for bad actors to stay. This has a direct effect on Adams Morgan. The issues of peace, order and quiet will continue to be a problem if the moratorium serves to protect the problem establishments.

The important issue, according to Mr. Lazere, is how the community responds to the pressures that are created by growth. Other neighborhoods are growing and expanding, and part of that success is due to exciting new entertainment, dining and drinking opportunities. Yet, in Adams

Morgan, the moratorium is creating vacancies or longer vacancy, and it becomes harder to fill those spaces. Vacant spaces create blight and tend to be the area where people loiter. A community that does not allow dynamic change to happen will be left behind.

Mr. Lazere argues that it is shortsighted to merely count the number of licenses to determine if there is an over concentration, rather than to look at the quality of the number of licenses. A concentration of high quality establishments may not be a problem at all.

He states that the better approach is to loosen the moratorium, if not eliminate it altogether, let the competition into the marketplace, and allow the city's dynamic profile come to Adams Morgan. This approach, coupled with greater enforcement from ABRA and DCRA, will help to encourage the best behavior for those establishments who want to attract patrons and capture the growth. The Adams Morgan community needs to take steps to support the growth, rather than adopt proposals that hinder it.

Adams Morgan Residents

Ms. Delagran is an economist who has lived on the 1800 block of Wyoming Street NW for twenty (20) years. As an economist, she has performed a number of analysis and cost benefit studies. She disagrees with the Institute's conclusion that allowing unlimited restaurant licenses will lead to positive development on the 18th Street corridor. Rather, commercial values will rise if ABC licenses are freely available and with that rise, rents will also increase. Rising commercial rents will feed the vicious cycle of alcohol sales to pay for the rents where other non-alcohol businesses have been squeezed out. In other words, higher rents will add pressure for ABC licensed businesses to increase alcohol sales volume and the expansion of premises.

Ms. Delagran further testified that currently too many bars are disguised as restaurants and this will not be abated by lifting the moratorium and allowing for new licenses. Existing problems will be further compounded; criminal activity, noise, litter and a lack of available parking. Ms. Delagran has little confidence that ABRA's enforcement measures will improve. Adams Morgan has a negative reputation and the people who patronize the neighborhood are more of a "partying crowd", rather than a "dining crowd."

The Board also received written testimony from numerous Adams Morgan residents who agreed with the KCA proposal and requested the Board to hold firm on retaining the existing moratorium. These residents remain concerned about the disruption to peace, order and quiet in the neighborhood and believe that allowing for more licenses will only exacerbate the problem. Another frequent complaint is the lack of parking for those who reside there due to the absence of a nearby metro stop. Additionally, some residents argued that new ABC licensees will occupy real estate limiting the introduction of other types of businesses that would better serve the neighborhood. Lastly, a number of residents testified that the moratorium must remain in effect until ABRA and the Board strengthen their enforcement efforts.

Conversely, the Board also heard from residents who believe that the moratorium serves no useful purpose and it should be allowed to expire. Alan Roth is the former Chair of the Adams

Morgan ANC. He believes the Board should reject both proposals and that the Board should develop a new approach by broadening public policy based on existing regulations. Josh Gibson is the founder of the Adams Morgan Partnership Business Improvement District (AMPBID). He opposes the moratorium and believes that it does not adequately address the social ills and challenges faced by the community. Lisa Duperier is a Ward One resident and she believes that the moratorium serves to perpetuate the status quo and protect the bad operators. It is her opinion that the concerns raised by others regarding residential parking and vehicular safety are made worse by the effects of the moratorium. Charles Brodsky is a resident of Adams Morgan and is a former Chair of the Board. He is opposed to the moratorium and believes that it has had a negative economic impact and discourages new business development.

Business Owners

The Board also heard from members of the business community who support retaining the moratorium. Bardia Ferdowski is the owner of New Orleans Café. He believes the moratorium ensures safety for those who live and work in the neighborhood. He purposely closes his business early because he does not feel safe after closing hours. He has witnessed gang activity, loitering and drug dealing near his establishment.

James Nixon is a local business owner who supports the moratorium. He does not believe that AMPBID represent the views of all of the Adams Morgan business owners and resident. He is concerned that new licensees will operate as nightclubs and that ABRA investigators will not adequately address the behavior.

The Board also received comments from Adams Morgan business owners who oppose the moratorium. They believe that eliminating the moratorium altogether will promote growth and diversity in the neighborhood. They are concerned that prohibiting the issuance of new restaurant licenses will thwart the effort to truly diversify the eateries in the neighborhood.

Additionally, proponents of the elimination of the moratorium in its entirety state that it will create new possibilities for existing retail vacancies and any vacancies that may arise in the future. They also argued that any increase in patron-related problems or issues concerning peace, order, and quiet if the moratorium were to expire, should be mitigated by the operators of ABC-licensed establishments, with enhanced enforcement by ABRA.

Steven Greenleigh has been involved in the Adams Morgan community for thirty (30) years as a commercial property owner and as a leader in the business community. He opposes the moratorium because it fosters stagnation as businesses locate to neighborhoods that are not encumbered by a moratorium. The moratorium has also contributed to the placement of unused licenses in Safekeeping rather than allowing those licenses to cancel. The licenses in Safekeeping are only available to those who are willing to pay the inflated price for them.

Lynn Skyneer has owned Skyneer Designs and Gallery since 1988. She opposed the moratorium and stated that one of the unintended consequences of the moratorium is the proliferation of fast food and convenience type eateries. These types of establishments generate the vast majority of

the trash and litter on the streets. Lifting the moratorium will create an incentive for transforming the neighborhood and will help to attract a more sophisticated clientele to the dining establishments.

Office of the Mayor

Lastly, while the Board did not hear from members of the Council or the District Commander of the MPD, the Board did receive written correspondence from the Office of the Deputy Mayor for Planning and Economic Development. Specifically, Deputy Mayor Victor Hoskins commented that fourteen (14) years of moratoria appears to have led to systemic long-term vacancies with commercial development lagging behind the robust residential building market in Adams Morgan. The Deputy Mayor's Office encouraged the Board to lift the moratorium, or at a minimum, allow for new Retailer Class CR and DR licenses.

Decision of the Board

The Board took the views of ANC 1C, the KCA, the Mayor's Office and all other witnesses and written testimony into consideration. The Board did not find that the testimony supported the renewing of the existing moratorium for another five (5) years. Rather, the Board determined that the ANC proposal to continue the moratorium while allowing for modifications to lift certain restrictions constitutes a reasonable, measured, and appropriate solution for the Adams Morgan neighborhood. However, the Board did not adopt the entirety of the ANC proposal and modified the moratorium described more fully below.

In reaching its decision, the Board gave great weight to the written recommendations of 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) (2012 Repl. & 2015 Supp.), and D.C. Official Code § 25-609 (2012 Repl. & 2015 Supp.)).

The Board also based its decision upon the appropriateness standards. Pursuant to D.C. Official Code § 25-351 (2012 Repl. & 2015 Supp.), the Board determined that it was in the public interest to renew the moratorium with certain modifications, and in doing so, the Board based its decision upon the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2012 Repl. & 2015 Supp.). In reviewing a moratorium request, the Board must "consider the extent to which the testimony and comments show that the requested moratorium is appropriate under at least two of the appropriateness standards set forth in subchapter II of this chapter." D.C. Official Code § 25-354(d) (2012 Repl.); *see also* D.C. Official Code § 25-351(a) (2012 Repl. & 2015 Supp.).

The appropriateness standards listed in Subchapter II include: (1) "[t]he effect of the establishment[s] on real property values"; (2) "[t]he effect of the establishment[s] on peace, order, and quiet, including the noise and litter provisions set forth in D.C. Official Code §§ 25-725 and 25-726 (2012 Repl. & 2015 Supp.); (3) "[t]he effect of the establishment[s] upon residential parking needs and vehicular and pedestrian safety"; (4) "[t]he proximity of the establishment[s] to schools, recreation centers, day care centers, public libraries, or other similar

facilities”; (5) “[t]he effect of the establishment[s] on the operation and clientele of schools, recreation centers, day care centers, public libraries, or other similar facilities”; (6) “[w]hether school-age children using facilities in proximity to the establishment[s] will be unduly attracted to the establishment while present at, or going to or from, the school, recreation center, day care center, public library, or similar facility at issue”; and (7) “[w]hether issuance of [additional] licenses would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment[s] [are] located.” D.C. Official Code §§ 25-313(b)(1)-(3), 25-314(a)(1)-(4) (2015 Supp.).

Specifically, under D.C. Official Code § 25-313(b) (2012 Repl. & 2015 Supp.), the testimony presented at the hearing as well as written comments and the proposals submitted by ANC 1C and the KCA revealed that problems still exist in the Adams Morgan Moratorium Zone with regard to peace, order, and quiet, justifying the need for the renewal of the moratorium zone. However, the Board concluded that a modified moratorium is in the public interest as determined by the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 (2012 Repl. & 2015 Supp.). In essence, while there are many licensed establishments in the Adams Morgan neighborhood, the Board does not find that the neighborhood suffers from an overconcentration of licensed establishments or that additional restaurants will adversely affect this area. Rather, testimony bears out that an increase in economic development and new construction is attracting businesses and residents alike to Adams Morgan.

Additionally, the Board finds that the limited renewal of the moratorium is warranted due to the effect of the establishments upon residential parking needs and vehicular and pedestrian traffic. Testimony from residents indicated that one of the more significant problems resulting from the night life destination in Adams Morgan is the shortage of residential parking because demand outstrips supply. The problem is further compounded by the absence of a metro stop. And while the Board agrees that the multi-million dollar street scape has improved pedestrian safety, it recognizes that the pilot program using taxicab stands to relieve congestion was not successful. Thus, the Board finds that the continuation of the moratorium helps the neighborhood to address the abundance of cars by reducing the loss of available residential parking.

The Board agrees with certain provisions of the ANC proposal. Specifically, the Board agrees to: (1) renew a modified moratorium; (2) lift the restrictions on the number of Retailer Class CR/DR licenses; (3) maintain the cap on Retailer Class CT/DT and CX/DX licenses; (4) retain the prohibition on Retailer Class CN/DN licenses; (5) retain the current exemptions for Retailer Class CH/DH licenses; (6) retain the existing language pertaining to the transfer of ownership; (7) retain the prohibition on the transfer of Retailer Class CT/DT, CX/DX or CN/DN from outside the moratorium zone to inside the moratorium zone; and (8) retain the prohibition on the change of all Retailer Class CT/DT or CN/DN licenses.

There were a couple of provisions in the ANC proposal with which the Board did not agree. Rather than a five (5) year renewal period, the Board will instead approve the renewal of the modified moratorium for three (3) years. This shorter renewal period will allow the Board, the ANC, and the community to assess the effectiveness of the proposed changes. Additionally, a shorter timeframe allows the community the greatest degree of flexibility to adapt and adjust the

moratorium to respond to the changing needs of the Adams Morgan neighborhood. The Board too, will have an opportunity to reevaluate the effectiveness of the limited moratorium, and to explore solutions that will balance, not inhibit, the neighborhood's ability to pursue economic opportunities.

Likewise, the Board does not agree with the provision of the ANC proposal to prohibit the issuance of Entertainment Endorsements to those licensees whose operations share similar characteristics of those who operate nightclubs. Like the ANC, the Board encourages food centric restaurants rather than those that are driven by the sale of alcoholic beverages, but the Board will not adopt a blanket prohibition against the issuing of endorsements. This is especially true where there are currently licensees in Adams Morgan who already enjoy the privilege of an Entertainment Endorsement, and whose privilege will be grandfathered. To prohibit Entertainment Endorsements to new licensees only contributes to the disparity of the have and have-nots currently experienced by retailers who are licensed as taverns and restaurants.

The ANC's proposal with regard to the Entertainment Endorsement raises two economic concerns. First, the prohibition may contribute to the artificial pricing of those licenses that already have the privilege attached. Secondly, licensees who do not have an Entertainment Endorsement and who otherwise would operate with an endorsement in accordance with the appropriateness standards would be competitively disadvantaged. The Board is not inclined to exacerbate the problem of ABC licenses being sold for extortionate prices, but instead to diminish this phenomenon while protecting the peace, order and quiet of the Adams Morgan community.

The Board is of the view that it is best to consider requests for an Entertainment Endorsement on a case by case basis. Additionally, as the Board held in its moratorium decision for the U and 14th Streets NW corridor in 2013, there exist already tools available to the community, such as Settlement Agreements, to limit the use of cover charges, or to prohibit promoters and pub crawls. Furthermore, the Board has the regulatory authority to strip a licensee of its Entertainment Endorsement if the licensee is not compliant with the food sales requirements pursuant to 23 DCMR § 2101.5(a).

It should be understood that the Board will not tolerate licensees who seek an Entertainment Endorsement for purposes of creating a nightclub atmosphere when food service ends. It cautions licensees who seek an Entertainment Endorsement to do so with an understanding that Adams Morgan is a unique neighborhood. As such, the Board will give great scrutiny to any request that profoundly changes the nature and character of the neighborhood.

Additionally, the Board recognizes that enforcement and compliance efforts both safeguard and enhance neighborhoods. In any regulatory environment, some licensees will comply voluntarily, some will not comply, and some will comply only if they see that others receive a sanction for non-compliance. The Board's adoption in 2013 of the new Civil Penalty Schedule rules gives greater discretion to the Board and to ABRA investigators with regard to enforcing laws and regulations. Investigators can now issue Warnings for a greater range of offenses, thus ensuring that their response to violations is immediate and predictable. The new penalty rules also grant

the Board more appropriate sanctions that are commensurate with the offense. So where Warnings put licensees on notice for a first offense, the Board can now levy a heavier penalty for second and third offenses.

Furthermore, with two (2) Board Members who reside in the community, the Board itself is a witness to the forthcoming surge of new residents in the greater Adams Morgan neighborhood. With the construction of thirty eight (38) condominiums at the AdamO located at Lanier and Adams Mill Road NW, eighty (80) condominiums at the Ontario17 at Columbia Road and 17th Street NW, and the new hotel at Columbia Road and Euclid Street NW, there will be a large influx of new residents and guests adding to the vitality and energy of a revitalized Adams Morgan neighborhood. This population will help to curb the late night, antisocial antics because it is in their best interests and investment to do so. As Commissioner Guthrie pointed out in his testimony, the destination patrons do not care about their behavior because they do not live there.

Lest it gets lost in the greater discussion, the Board makes clear that it appreciates the balance that must be struck between the interests of the residents in the neighborhood, and the interests that promote a nightlife economy. The Board recognizes that a diverse, dynamic and safe dining and entertainment environment is part of the fabric of the District, and yet, nightlife activity needs to be carefully managed in order to reduce antisocial behavior, noise, public disturbance and other problems.

The Board applauds the ANC's outreach and educational efforts that brought licensees, residents and representatives from the Business Improvement District to share their perspectives and their focus on positive steps to transform the Adams Morgan's neighborhood and improve urban vibrancy. Like the ANC, the Board believes that if managed properly, a thriving and safe nightlife can act as an economic engine by attracting new businesses and restaurants, diversifying the range of cultural offerings, creating employment opportunities, and increasing tourism. To this end, the Board is in agreement with the ANC that a new direction for the Adams Morgan moratorium that allows for responsible growth is warranted.

These rules were initially published in the *D.C. Register* as a Notice of Proposed Rulemaking on August 29, 2014 at 61 DCR 8999. Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Supp.), the proposed rules were transmitted to the Council of the District of Columbia (Council), for a ninety (90) day period of Council review on March 23, 2015. The rules were approved by Council Resolution, R21-130, the "Adams Morgan Moratorium Zone Approval Resolution of 2015" on June 30, 2015. These final rules were adopted by the Board on July 8, 2015, on a vote of three (3) to zero (0) and they will become effective five (5) days after publication in the *D.C. Register*.

Section 304, ADAMS MORGAN MORATORIUM ZONE, of Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended to read as follows:

304 ADAMS MORGAN MORATORIUM ZONE

- 304.1 No new Retailer's License Class 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 fourteen hundred (1400) 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 restaurants, whether present or future;
 - (b) All hotels, whether present or future; and
 - (c) 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 CR, CT, CX, DR, 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 Subsection 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 three (3) years after the date of publication of the notice of final rulemaking.