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OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

DEC 20 2017

The Honorable Phil Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, NW, Suite 504
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is the Civil Penalty Schedule Notice of Proposed Rulemaking and proposed resolution entitled the "Revised ABRA Civil Penalty Schedule Resolution of 2017".

The proposed rules would amend the penalties associated with several infractions contained in the existing ABRA Civil Penalty Schedule set forth in section 800 of Title 23 of the District of Columbia Municipal Regulations. Specifically, the proposed rules would update the Schedule by (1) incorporating new infractions and penalties, including those passed by the Council of the District of Columbia in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-260: D.C. Official Code § 25-101 *et seq.);* (2) changing the tier for certain infractions from "primary" to "secondary" or "secondary" to "primary"; (3) allowing the Board to issue discretionary warnings for infractions that are not presently eligible for receiving a warning; and (4) correcting D.C. Official Code and DCMR citations.

If you have any questions on this matter, please contact Donovan Anderson, Chairperson, Alcoholic Beverage Control Board, at (202) 442-4423.

Sincerely,

Muriel Bowser

Enclosures

Chairman Phil Mendleson
at the request of the Mayor

PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve proposed rules of the Alcoholic Beverage Control Board that would amend Title 23 of the District of Columbia Municipal Regulations by amending section 800, ABRA Civil Penalty Schedule, to conform the schedule to changes contained in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, modify the tiers for certain infractions, and make administrative and technical changes.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Revised ABRA Civil Penalty Schedule Resolution of 2017".

Sec. 2. Pursuant to D.C. Official Code § 25-211(b)(2), the Council of the District of Columbia approves the proposed rulemaking by the Alcoholic Beverage Control Board that amends the agency's Civil Penalty Schedule to include new infractions and penalties adopted by the Council in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-260: D.C. Official Code § 25-101 *et seq.*). Furthermore, the proposed rulemaking would empower the Alcoholic Beverage Control Board to issue discretionary warnings for certain infractions and amend the penalty tiers for certain infractions. Lastly, the proposed rulemaking makes various administrative and technical amendments to 23 DCMR § 800.

Sec. 3. The Secretary to the Council of the District of Columbia shall transmit a copy of this resolution, upon its adoption, to both the Mayor and the Chairperson of the Alcoholic Beverage Control Board.

Sec. 4. This resolution shall take effect immediately.

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), 25-830(f) (2012 Repl. and 2016 Supp.) and Mayor's Order 2001-96 (June 28, 2001), as amended by Mayor's Order 2001-102 (July 23, 2001), hereby gives notice of the intent to amend the existing ABRA civil penalty schedule (Schedule) set forth in section 800 of Title 23 of the District of Columbia Municipal Regulations ("DCMR").

On June 21, 2017, the Board voted, six (6) to zero (0), to approve the *Civil Penalty Schedule Notice of Proposed Rulemaking.* The proposed rules are intended to update the Schedule by (1) incorporating new infractions and penalties, including those passed by the Council for the District of Columbia in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-260); (2) changing the tier for certain infractions from "primary to secondary" or "secondary to primary"; (3) allowing the Board to issue discretionary warnings for infractions that are not presently eligible for receiving a warning; and (4) correcting D.C. Official Code and DCMR citations. The Board made it clear in the rulemaking that any infractions that were not listed in the proposed rulemaking were to remain in full effect and were not being amended by the rulemaking.

On August 9, 2017, the Board held a Public Hearing to receive testimony from the public and the alcoholic beverage industry. The Board received oral testimony from Joe Gibbons, Commissioner for Advisory Neighborhood Commission (ANC) 2E, and Marc Barnes, an ABC Licensee. .

Commissioner Gibbons testified, generally, in support of the proposed rulemaking. He is concerned however, that the rulemaking treats violations of settlement agreements as Secondary Tier Violations. Commissioner Gibbons argued that the ANC 2E works tirelessly with establishments to draft licensee-specific settlement agreements, as opposed to utilizing templates. To enforce its settlement agreements, Commissioner Gibbons stated that the ANC uses a plethora of enforcement tools. By making settlement agreement violations a secondary tier violation, the Board undermines the ANC's efforts to enter into and enforce settlement agreements.

Mr. Barnes sought guidance from the Board concerning the interpretation or application of several offenses listed on the Civil Penalty Schedule. First, Mr. Barnes asked the Board to consider further clarifying or re-defining what "bottle service" means. Second, Mr. Barnes sought guidance from the Board concerning the Board's requirement that one provide ABRA with its ABC Manager's License upon request. Additionally, Mr. Barnes asked the Board for guidance as to when "last call" ends so that it can be uniform among all licensed establishments. Lastly, he sought guidance from the Board about establishments' liability when a patron wears revealing clothing as well as when licensees

would be liable for serving an intoxicated person.

After the public hearing, the proposed rulemaking was published in the *D.C. Register* for thirty (30)-day public comment. *See* 64 DCR 8604 (September 1, 2017). The comment period ended on October 2, 2017. The Board did not receive any additional comments during the comment period.

The Board carefully considered the testimony it received from Commissioner Gibbons and Mr. Barnes concerning the proposed rulemaking. Commissioner Gibbons asked the Board to change settlement agreement violations to a primary tier violation from the current designation of a secondary tier violation. The Board, however, rejects this recommendation.

The Board recognizes the hard work, time, and effort the Advisory Neighborhood Commissioners, citizens associations, community members, and the establishments put in to crafting their settlement agreements. This takes a great amount of cooperation by all parties involved. The Board, however, does not support the recommendation to treat violations of settlement agreements as primary tier violations. Oftentimes, settlement agreements include terms that merely restate the law which, by themselves, would be enforceable by the Board. These infractions, absent of any inclusion in the settlement agreements, may not constitute primary tier violations, but rather secondary tier violations (*e.g.*, noise violations). The Board does not find any justifiable reason to make these violations primary tier violations simply because they are included in a settlement agreement.

Similarly, many establishments with settlement agreements are also subject to Board Orders which include provisions that are mirrored in their settlement agreement. If the establishment violates the Board Order, their violation would constitute a primary tier violation. The Board wants to ensure the peace, order, and quiet of the community but it does not believe that this achieved by charging an establishment with multiple primary tier violations simply because they violate a provision that is covered by both a settlement agreement and a Board Order.

The Board appreciates Mr. Barnes' testimony and his desire for additional guidance from the Board. His comments, however, are outside the scope of this rulemaking which seeks to address the Civil Penalty Schedule, solely, and not the interpretation or definition of offenses listed in the penalty schedule. Such amendments are best reserved for the ABC Board Technical Rulemakings that it prepares every year or a future Alcoholic Beverage Regulation Administration Omnibus Bill. As the Board suggested to Mr. Barnes at the hearing, we encourage him to continue to work with the Board by submitting any comments or recommendations he has for future amendments to Title 23 of the DCMR.

In light of the conclusion of the public comment period, the Board, on October 4, 2017, by a vote of six (6) to zero (0), to approve the transmittal of the Civil Penalty Schedule Notice of Proposed Rulemaking to the Council for the District of Columbia, in accordance with D.C. Official Code § 25-211(b)(2) (2001) for a ninety (90- day period of

review. If the Council does not approve or disapprove the proposed rules by resolution, in whole or in part, within the ninety (90) day review period, the proposed rules shall be deemed disapproved.

No substantive changes have been made to the proposed rulemaking since it was published in the *D.C. Register* for public comment.

Section 800 (ABRA Civil Penalty Schedule) of chapter 8 (Enforcement, Infractions, and Penalties) of title 23 (Alcoholic Beverages) is amended by inserting and replacing the following infractions to the ABRA Civil Penalty Schedule in numerical order:

800 ABRA CIVIL PENALTY SCHEDULE

Section	Description	Violation	Warning
25-110	Violating Terms of Manufacturer's License	Primary	Y
25-111	Violating Terms of Wholesaler's License	Primary	Y
25-112(a)-(c)	Violating Terms of Off-Premise Retailer's License	Primary	Y
25-113	Violating Terms of On-Premise Retailer's License	Primary	Y
25-113(a)(5)(A)	Retailer's Class C or D Purchased Alcoholic Beverages from an Off-Premises Retailer's Class A or B	Primary	N
25-113a(b)(1)	Failure to Obtain Entertainment Endorsement	Primary	Y
25-113a(b)(1)	Cover Charge Without Endorsement	Secondary	Y
25-113a(b)(1)	Dancing Without Endorsement	Secondary	Y
25-113a(c)	Operating a Summer Garden or a Sidewalk Café Outside of Allowed Hours	Primary	Y
25-114(a)	Violating Terms of Arena C/X License	Primary	Y
25-115(a)	Violating Terms of Temporary License	Primary	Y
25-116	Violating Terms of Solicitor's License	Primary	Y
25-117	Violating Terms of Brew Pub Permit	Primary	Y
25-118	Failure to Obtain Tasting Permit, or Exceeding Scope of Tasting Permit	Primary	Y
25-120(i)(A)(i)	A Manager Directly Sold an Alcoholic Beverage to a Minor	Primary	Y
25-120(i)(A)(ii)	A Manager Directly Interfered with an ABRA or MPD Investigation	Primary	N
25-120(i)(A)(iii)	A Manager Made False or Misleading Statements During or After a RI or Investigation	Primary	N
25-120(i)(A)(iv)	A Manager Aided, Abetted, or Conspired with a Licensed or Unlicensed Person to	Primary	N

	Evade Compliance with ABRA Requirements		
25-120(i)(A)(v)	A Manager Allowed the Manager's License to be Used by an Unlicensed Person	Primary	N
25-123	Violating Terms of Farm Winery License	Primary	Y
25-126(a)	Sale, Service and/or Consumption Without the On-Site Sale and Consumption Permit – Manufacturer Licenses	Primary	Y
25-126(b)	Sale, Service, and/or Consumption Outside of the On-Site Sale and Consumption Permit Approved Hours- Manufacturer Licenses	Primary	Y
25-127	Violating Terms of Festival License	Primary	Y
25-371	Allowing Nude Dancing Without a License	Primary	Y
25-372	Violating Restrictions on Nude Dancing Performances	Primary	Y
25-401	False Statement on an Application or in Any Accompanying Statement required by the Board	Primary	N
25-405	Transfer of Ownership Without Board Approval	Primary	Y
25-701	Board-Approved Manager Required	Secondary	Y
25-703	Licensee or Board Approved Manager Superintending the Licensed Establishment under the Influence of Alcohol or Illegal Drugs	Primary	Y
25-711(f)	Owner or Licensed Manager Failure to Produce a Valid ID to ABRA or MPD	Secondary	Y
25-721	Sale and Delivery Outside of Allowed Hours for Manufacturer & Wholesaler	Primary	Y
25-722	Sale and Delivery Outside of Allowed Hours - Off Premises Licensees	Primary	Y
25-723(b)	Sale and Delivery Outside of Allowed Hours - On-Premises Licensees	Primary	Y
25-723(b)	Sale and Service Outside of Licensed Hours	Primary	Y
25-724	Operating After Board Restricted Hours	Primary	Y
25-725	Noise from Licensed Establishment	Secondary	Y
25-753	Keg Registration Required	Primary	Y
25-762(b)(10)	Failure to Obtain Approval to Change Entertainment to Include Nude Performances	Primary	Y
25-762(b)(13)	Failure to Obtain Approval to Extend Hours of Operation	Primary	Y
25-762(b)(18)	Failure to Obtain Approval to Increase Number of Vessels Under On-Premises	Primary	Y
25-781	Sale to Minors - Egregious	Primary	Y
25-781	Sale to Minors - Non-egregious	Primary	Y -

			Mandatory
25-781	Sale to Intoxicated Persons	Primary	Y
25-802	Failure to Allow Examination of Premises, Books and Records	Primary	Y
25-823(a)(1)	Violation of Any Law Outside of Title 25 of the District of Columbia Code or Title 23 of the District of Columbia Municipal Regulations	Primary	Y
25-823(a)(2)	Allowing Establishment to be Used for an Unlawful or Disorderly Purpose	Primary	N
25-823(a)(3)	Failure by Owner or ABC Manager to Superintend Licensed Business	Secondary	Y
25-823(a)(4)	Allowing Employees or Agents to Engage in Prostitution, Sexual Acts, or Sexual Contact	Primary	Y
25-823(a)(5)	Failure to Allow/Delays ABRA or MPD to Inspect Premises or Books and Records	Primary	N
25-823(a)(5)	Interferes With ABRA or MPD Investigation	Primary	Y
25-823(a)(6)	Failure to Follow Settlement Agreement	Secondary	Y
25-823(a)(6)	Failure to Follow Security Plan	Primary	Y
25-823(a)(6)	Failure to Follow a Board Order	Primary	Y
25-828(c)	Licensee Defaces Notice of Suspension Placard	Secondary	Y
25-833	Tampering or Refilling Bottles	Primary	N
25-834	Sell or Offer to Sell Powdered Alcohol	Primary	N
25-835	Forged, Counterfeit, or Endorse a Document Issued by ABRA	Primary	N
23 DCMR 705.9	Retailer's Class C, D, F, G, or Caterer Permits the Consumption of Alcoholic Beverages After Hours	Primary	Y
23 DCMR 706	Remaining Open Without Securing Beverages or Having an ABC Manager or Owner Present	Secondary	Y
23-DCMR 707.1	Licensee or Board Approved Manager on Licensed Premises During Hours of Sale, Service or Consumption	Secondary	Y
23-DCMR 721.1	Allowing Establishment to Provide Bottle Service of Alcoholic Beverages to One (1) or More Non-seated Patrons	Secondary	Y
23-DCMR 721.2	Allowing Establishment to Serve a Bucket filled with Containers of Beer to One (1) or More Non-seated Patrons	Secondary	Y
23-DCMR 721.3	Failure by the Server to Open All Closed Containers Before Serving Them to the Seated Patrons	Secondary	Y

23-DCMR 721.4	Allowing Patrons to Remove the Bottle or Pitcher from the Table, Bar or Other Seating Area Where Served	Secondary	Y
23 DCMR 902	Open Container or Package in Vehicle	Primary	Y
23 DCMR 1207.9	False Statement on a Quarterly Statement or Annual Report	Primary	N
23 DCMR 2002.2	Failure to Maintain Caterer Records	Primary	Y

Government of the District of Columbia
Office of the Chief Financial Officer

Jeffrey S. DeWitt
Chief Financial Officer

MEMORANDUM

TO:	**The Honorable Phil Mendelson** **Chairman, Council of the District of Columbia**
FROM:	**Jeffrey S. DeWitt** **Chief Financial Officer**
DATE:	**November 2, 2017**
SUBJECT:	**Fiscal Impact Statement – Revised ABRA Civil Penalty Schedule Resolution of 2017**
REFERENCE:	**Draft proposed resolution provided to the Office of Revenue Analysis on October 5, 2017**

Conclusion

Funds are sufficient in fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the resolution.

Background

The resolution approves rulemaking[1] by the Alcoholic Beverage Control Board that changes a variety of civil infractions and penalties related to the sale and manufacture of alcoholic beverages. It creates six new infractions, changes two infractions from a primary tier[2] violation to a secondary tier[3] violation, changes 11 violations from a secondary tier to a primary tier violation, and allows discretionary warnings to be issued for 32 infractions.

Financial Plan Impact

Funds are sufficient in the fiscal year 2018 through fiscal year 2021 budget and financial plan to implement the resolution. The new infraction categories and the net increase of primary tier violations may increase fine revenue, but the exact amount cannot be determined due to a lack of

[1] As published in the D.C. Register – see 64 DCR 8604 (September 1, 2017).
[2] D.C. Official Code § 25-830 sets primary tier violation penalties at no less than $250 for the first violation, up to $4,000 for the sixth violation.
[3] D.C. Official Code § 25-830 sets primary tier violation penalties at no less than $1,000 for first violation, up to $30,000 for the fourth violation.

pertinent data. Any additional revenues will be deposited into the Alcoholic Beverage Regulation Administration Fund[4], but the Mayor must initiate a budget action to spend any new resources.

[4] 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 § 25-210).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

TO: **Alana Intrieri**
Executive Director
Office of Policy and Legislative Affairs

FROM: **Janet M. Robins**
Deputy Attorney General
Legal Counsel Division

DATE: **December 19, 2017**

SUBJECT: **Legal Sufficiency Review of Resolution, the "Revised ABRA Civil Penalty Schedule Retention Resolution of 2017" (AR-17-401)**

This is to Certify that this Office has reviewed the above-referenced resolution and found it to be legally unobjectionable. If you have any questions, please do not hesitate to call me at 724-5524.

Janet M. Robins

JMR/jmr