

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

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth Title 25, D.C. Code Enactment and Related Amendments Act of 200, effective May 1, 2001 (D.C. Law 13-298; D.C. Official Code §§ 25-211), as amended; and Mayor’s Order 2001-96, dated June 28, 2001, as revised by Mayor’s Order 2001-102, dated July 23, 2001, hereby gives notice of its intent to amend chapter 5 (License Applications), of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations.

Specifically, the proposed rules would add a new section 505 to chapter 5. This new section would require persons applying for a new class B full-service grocery store license, as defined in 23 DCMR § 199, to submit an architectural drawing of their floor plan along with their completed application to the Board. The proposed rules would also establish a methodology for calculating whether an applicant’s floor plan satisfies the necessary criteria for qualifying as a full-service grocery store as defined in 23 DCMR § 199.

These proposed rules were adopted by the Board on May 11, 2016, by a five (5) to zero (0) vote.

Pursuant to D.C. Official Code § 25-211(b) (2012 Repl.), these proposed rules will be transmitted to the Council of the District of Columbia (Council) for a ninety (90)-day review period. The Board will not adopt the rules as final unless approved by the Council. The Board further gives notice of its intent to adopt in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*.

A new section, ARCHITECTURAL DRAWING, is added to CHAPTER 5, LICENSE APPLICATIONS of Title 23, ALCOHOLIC BEVERAGES, of the DCMR to read as follows:

505 ARCHITECTURAL DRAWING

- 505.1 An applicant for a new class B full-service grocery store license shall submit with their application and an architectural drawing of their floorplan that satisfies the full-service grocery store requirements as set forth in 23 DCMR § 199 and this section.

- 505.2 The architectural drawing shall contain at a minimum the dimensions (*i.e.*, length and width measurements) and total square footage of the establishment’s: (1) entire leased or operated area; (2) non-selling area; (3) selling area; (4) food-selling area; and (5) non-food selling area. The drawing shall include length and width measurements for each of these

five (5) areas.

505.3

When used in this section, the following terms shall have the meanings ascribed:

- (a) **Entire leased or operated area**- the portion of the Applicant's building that is under the control of the Applicant.
- (b) **Non-selling Area** – the portion of the retail establishment that is not open to the public and the establishment's restrooms.
- (c) **Selling area** – the area in the retail establishment that is open to the public and does not include storage areas, preparation areas or restrooms.
- (d) **Food-selling area** – the portion of the retail establishment that is dedicated to the sale of the seven (7) food categories as defined in paragraph (e) of this subsection.
- (e) **Non-food selling area** – the portion of the retail establishment that is dedicated to selling items other than the seven (7) food categories as defined in paragraph (f) of this subsection.
- (f) **Food category** – includes the following products:
 - (1) Fresh fruits and vegetables;
 - (2) Fresh and uncooked meats, poultry, and seafood;
 - (3) Dairy products;
 - (4) Canned foods;
 - (5) Frozen foods;
 - (6) Dry groceries and baked goods; and
 - (7) Non-alcoholic beverages.

505.4

An applicant for a new class B full-service grocery store license must establish that either:

- (a) A minimum of fifty percent (50%) of the store's square feet of selling area is dedicated to the sale of the seven (7) food categories; or

- (b) A minimum of six thousand square feet (6,000 sq. ft.) of the store's selling area is dedicated to the sale of the seven (7) food categories.
- 505.5 The drawing for an establishment whose selling area dedicated to the sale of the seven (7) food categories is greater than six thousand square feet (6,000 sq. ft.) shall specify the portion of the store that is being sought to qualify under the full service grocery store definition.
- 505.6 The drawing shall include the dimensions (*i.e.*, length and width measurements) for each of the establishment's shelving or display cases and flooring used for displaying items in the seven (7) food categories. The drawing shall also include the dimensions of the publicly assessable areas, including but not limited to the publicly assessable store aisles.
- 505.7 The drawing shall identify the display area dedicated to each of the seven (7) food categories. The display area of each food category shall be identified and color-coded on the applicant's proposed floor plan. The plan shall list the total square footage of the selling area dedicated to each of the seven (7) food categories. If one food category is divided between two (2) or more unconnected display areas separated by an area not associated with the food category (*i.e.*, non-food selling area, non-selling area or different food category), the plan shall list the square footage of each individual display area.
- 505.8 For the purpose of this section the square footage of the 'selling area' dedicated to a food category shall be calculated by adding up to three feet (3 ft.) of available aisle space in all directions to the length and width the dimensions of the display area containing the items of the food category.
- 505.9 The square footage of an applicant's non-selling area shall be calculated by adding together the square footage of each area of the retail establishment that is not open to the public (*e.g.*, storage and food preparation areas) and the establishment's restrooms.
- 505.10 An applicant's total selling area shall be calculated by subtracting the establishment's non-selling area from the total square footage of the establishment's entire leased or operated area.
- 505.11 An applicant's non-food selling area shall be calculated by adding together the square footage of each selling area dedicated to items other than the seven (7) food categories ("non-food items"). The square footage of a selling area dedicated to non-food items shall be calculated by adding up to three (3) feet of available aisle space in all directions to the length and width of the dimensions of the display area holding the non-food items.

- 505.12 An establishment's indoor seating area shall also be counted as part of an establishment's non-food selling area, whereas the establishment's outdoor seating area shall not be counted as being a part of the establishment's selling area or non-food selling area.
- 505.13 An applicant's food selling area shall be calculated by subtracting the establishment's non-food selling area from the establishment's selling area.
- 505.14 The amount (proportion) of a store's square footage of selling area dedicated to the sale of each of the seven food categories shall be calculated by dividing the establishment's food selling area (numerator) by the establishment's total selling area (denominator).
- 505.15 An applicant for a new class B full-service grocery store license must dedicate a minimum of five percent (5%) of the store's food selling area to at least six (6) of the seven (7) food categories. The amount of the store's food selling area dedicated to each food category shall be calculated by dividing the total square footage of the selling area dedicated to that particular food category (numerator) by the square footage of the establishment's total food selling area (denominator).

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400, Washington, D.C. 20009. Persons with questions concerning the rulemaking should contact Martha Jenkins at 202-442-4456 or email martha.jenkins@dc.gov. All persons desiring to comment on the proposed rulemaking must submit their written comments, no later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to the above address.