

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

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**NOTICE OF FINAL RULEMAKING**

The Alcoholic Beverage Control Board (“Board”), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2008 Supp.) and Section 303 of Title 23 of the District of Columbia Municipal Regulations (“DCMR”), 51 DCR 4309 (April 30, 2004), hereby gives notice of the adoption of the following final rules that replace existing section 304 of Title 23 DCMR and impose a five (5) year moratorium on the issuance of any new retailer’s license class CR, CN, CT, CX, DR, DN, DT, and DX in a portion of Adams Morgan which shall be known as the Adams Morgan Moratorium Zone. The final rules were adopted by the Board on January 22, 2009. The text of the final rules is substantively identical to the text of the notice published in the D.C. Register on November 28, 2008, at 55 DCR 12164.

The Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2008 Supp.), on April 2, 2008 to consider the written request of Advisory Neighborhood Commission (“ANC”) 1C, the Kalorama Citizens Association (“KCA”), and the Reed-Cooke Neighborhood Association (“RCNA”) to extend and modify the current Adams Morgan Moratorium Zone for a five (5) year period. The written request submitted to the Board would modify the existing Adams Morgan Moratorium Zone by no longer allowing the issuance of any additional Class CR or Class DR restaurant licenses within the Adams Morgan Moratorium Zone. The Board received a significant amount of testimony and comments on the moratorium request. The majority of the testimony received by the Board was in favor of the submitted moratorium proposal, including comments from ANC 1C, KCA, RCNA, and a number of ABC licensees and businesses located in Adams Morgan, including Asylum, Perry’s Restaurant, Cashion’s Eat Place, Idle Time Books, Las Canteras Restaurant, Little Fountain Café and Angles Bar. Additionally, the Board received testimony from various residents in support of the moratorium request. The Board also received testimony from MPD Lieutenant John Kutnewski who indicated that crime would increase if the Adams Morgan Moratorium Zone was lifted. The Board did receive testimony from some individuals, licensees, and business organizations that were in opposition to some or all of the provisions of the moratorium petition. This included testimony from property owner Bill Duggan, Rob Coltun, Chuck Brazie, and Lisa Duperior. However, the Board found the testimony provided by MPD, ANC 1C, KCA, RCNA and a number of Adams Morgan residents, licensees, and businesses to warrant an extension of the moratorium on any new retailer’s licenses class CR, CN, CT, CX, DR, DN, DT, and DX based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2008 Supp.)

In reaching its decision, the Board gave great weight to 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) (2006 Repl.), as amended, and D.C. Official Code § 25-609 (2001). ANC 1C voted 6 to 0 with a quorum present at its

March 5, 2008 meeting to extend the existing moratorium for a five (5) year period and to also include a moratorium on the issuance of new restaurant licenses.

In considering the appropriateness standards set forth in D.C. Official Code §§ 25-313(b) (2008 Supp.), the Board found the testimony and evidence put forward by MPD, ANC 1C, KCA, RCNA, several Adams Morgan businesses and licensees, and individual Adams Morgan residents to reveal that significant problems with peace, order, and quiet, particularly with respect to criminal activity, noise, litter, disorderly conduct, crowd control, and vehicular and pedestrian safety, as well as parking problems to continue to exist in Adams Morgan during late evening hours in the Adams Morgan Moratorium Zone. Additionally, the testimony provided by MPD and the KCA revealed a number of significant public safety issues, including a large number of calls for police service, including for disorderly conduct and assaults, and traffic congestion problems caused by taxis and patrons of ABC establishments in the Adams Morgan Moratorium Zone. The testimony of MPD Lieutenant John Kutnewski also indicated that crime would increase and that an increased police presence would be needed if the moratorium was lifted. Testimony from individual residents also reflected that late at night they have to deal with: loud noise, the disorderly departure of some patrons of ABC establishments, and a variety of parking and vehicular and pedestrian safety problems.

The Board found the testimony it received from ANC 1C, KCA, and RCNA to also warrant continuing the current limit of ten (10) on the number of Class CT or DT retailer's licenses permitted at any one time within the Adams Morgan Moratorium Zone based upon the appropriateness standards set forth in D.C. Official Code §§ 25-313(b)(2), 25-313(b)(3), and 25-314(c) (2008 Supp.) Based upon comments received from ANC 1C, KCA, and RCNA, the Board decided to place a cap of zero (0) on the number of nightclub licenses permitted in the Adams Morgan Moratorium Zone. To ensure that the current number of taverns in Adams Morgan does not exceed ten (10), the Board decided to continue prohibiting the holder of a retailer's license Class CR or Class DR from changing its license class to CT, CX, DT, or DX in the Adams Morgan Moratorium Zone except when the total number of retailer's licenses in all of these categories is fewer than ten (10). Consistent with the Board's decision in its August 2, 2006 Notice of Emergency Rulemaking, the Board is not applying the class change restrictions contained in this rulemaking to the pending change of license class applications that were filed with the Board prior to August 2, 2006.

While the Board decided to grant the moratorium request of ANC 1C, KCA, and RCNA in its entirety, the Board recognizes that the requested moratorium is only a partial solution to the current issues that exist due to the significant over concentration of on-premises establishments in the Adams Morgan Moratorium Zone. As such, it is important for the petitioners, licensees, residents, and other stakeholders to work together in exploring other possible solutions to alleviate this problem. During this five (5) year moratorium period, the Board believes that there are three additional issues worth examining. First, it might be helpful to explore whether having a lower cap of on-premises establishments in the Adams Morgan Moratorium Zone, primarily restaurants, would be helpful in an effort to start reducing the current number of on-premise

establishments that exist rather than simply maintaining the status quo. For instance, the Georgetown historic district contains a cap of six (6) on the number of taverns and nightclubs. This cap was implemented to decrease rather than maintain the number of these establishments that exist over time. As such, the Board would be willing to consider in two and one-half years, the halfway point of the moratorium, a request from the Petitioners to place a cap on the number of restaurant licenses that is intended to decrease during the moratorium period the number of these establishments located in the Adams Morgan Moratorium Zone. Second, the testimony received by the Board revealed that many of the problems in Adams Morgan are caused by non-patrons of ABC establishments who come to Adams Morgan from outside of the neighborhood and cause problems with noise, criminal activity, loitering, and pedestrian safety and take away valuable parking spaces in Adams Morgan from residents. A collective effort is needed between the petitioners, MPD, the Adams Morgan Bid, and the Council to address this issue, including possibly strengthening the District's loitering laws. Third, the testimony revealed a need to address problems with vehicular and pedestrian safety. The testimony of ANC 1C Chairperson Bryan Weaver noted that attempts in utilizing traffic officers were unsuccessful due to loud whistles being used to direct traffic. However, Chairperson Weaver's testimony indicated that problems with vehicular traffic are likely to be improved with a pilot traffic plan to implement taxicab stands. The Board is interested in hearing from ANC 1C and the Petitioners regarding the success and long-term viability of this program.

The statements set forth above reflect the written reasons for the Board's decision as required by subsection 303.1 of Title 23 DCMR (2004).

Pursuant to D.C. Official Code § 25-211(b)(2) (2008 Supp.), the proposed rules were transmitted to the Council of the District of Columbia ("Council"), for a ninety (90) day period of review on November 28, 2008. These proposed rules were approved by Council Resolution 17-912, the Adams Morgan Liquor License Moratorium Approval Resolution of 2008, adopted by the Council at its December 16, 2008 legislative meeting. These final rules will become effective five (5) days after being published in the D.C. Register.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by replacing the existing section 304 to read as follows:

### **304 ADAMS MORGAN MORATORIUM ZONE**

304.1 No new Retailer's License Class CR, CN, CT, CX, DR, DN, DT, or DX shall be issued for a period of five (5) years from the effective date of this section in the area that extends approximately fourteen (1400) hundred feet in all directions from the intersection of 18<sup>th</sup> 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 18<sup>th</sup> Street and Vernon Street, NW ; and proceeding on both sides of all streets, unless otherwise noted; West on Vernon Street to 19<sup>th</sup> Street; Northwest on 19<sup>th</sup> Street to Wyoming Avenue; Southwest on Wyoming Avenue to 20<sup>th</sup> Street; Northwest on 20<sup>th</sup> Street to Belmont Road; East on Belmont Road to 19<sup>th</sup> Street; Northwest on 19<sup>th</sup> 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 17<sup>th</sup> Street; South on 17<sup>th</sup> 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 18<sup>th</sup> Street to the South corner of 18<sup>th</sup> 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 hotels, whether present or future; and
  - (b) 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 CN, CT, CX, DN, 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 section 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 five (5) years after the date of publication of the notice of final rulemaking.