

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

NOTICE OF SEVENTEENTH 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(b) - (c) (2012 Repl. & 2019 Supp.), Mayor's Order 2001-96, dated June 28, 2001, as amended by Mayor's Order 2001-102, dated July 23, 2001, and Mayor's Order 2021-097, dated July 29, 2021, amends Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR) by adding a new Section 810 (Conditions of On-Premises Alcohol Sales and Consumption During the Public Emergency) on an emergency basis.

The COVID-19 pandemic struck in February 2020, and the first case in the District of Columbia (District) was confirmed in mid-March 2020. In response to the outbreak, Mayor Muriel Bowser and the Council of the District of Columbia (Council) took immediate and deliberate action to protect District residents and businesses.

The Board followed suit by taking immediate action to safeguard ABC-licensed establishments and their patrons. During the early months of the pandemic, District businesses, including ABC-licensed establishments, initially experienced a suspension of their operations. As businesses began to reopen, the Board adopted a series of emergency rulemakings that aligned with the Mayor's Orders. The Board adopted the first emergency rulemaking, the *Suspension of On-premises Alcohol Sales and Consumption Notice of Emergency Rulemaking*, on March 18, 2020. See 67 DCR 4589 (March 27, 2020). Since the adoption of the first emergency rulemaking, the Board has adopted numerous emergency rulemakings, each in response to Mayor's Orders issued by Mayor Bowser for purposes of ensuring that ABRA's regulations are consistent with the Mayor's directives. See 67 DCR 4310 (April 10, 2020); 67 DCR 5600 (May 29, 2020); 67 DCR 7930 (June 26, 2020); 67 DCR 9232 (July 31, 2020); 67 DCR 11139 (September 18, 2020); 67 DCR 12724 (October 30, 2020); 68 DCR 919 (January 15, 2021); 68 DCR 1291 (January 22, 2021); 68 DCR 2334 (February 26, 2021); and 68 DCR 4046 (April 16, 2021); 68 DCR 6176 (June 11, 2021); 68 DCR 6687 (July 2, 2021); 68 DCR 7581 (July 30, 2021), 68 DCR 8955 (August 27, 2021).

On November 19, 2021, Mayor Bowser repealed the indoor mask requirement imposed by Mayor's Order 2021-097, dated July 29, 2021, effective Monday, November 22, 2021, at 5:00 a.m. On December 20, 2021, Mayor Bowser issued Mayor's Order 2021-147 which reinstated the indoor mask requirement effective Tuesday, December 21, 2021, at 6:00 a.m. The reinstatement of the indoor mask mandate is due to the highly transmissible Omicron variant which continues to threaten the health and welfare of District residents, workers and visitors. The indoor mask mandate is currently scheduled to remain in place until January 31, 2022 at 6:00 a.m.

In addition to the reinstatement of the indoor mask mandate, the Mayor also announced the launch of a city-wide vaccination entry requirement (VaxDC) to help stop the spread of COVID-

19. Effective January 15, 2022, at 6 a.m., Mayor’s Order 2021-148, issued December 22, 2021 requires that businesses verify that its patrons who are twelve (12) years of age and older are vaccinated against COVID-19 in order for them to enter indoor facilities within the District of Columbia. Businesses are required to prominently post a notice at the entrance, notifying patrons of the proof of vaccination requirement for entry into the establishment. Patrons entering an establishment for a quick and limited purpose, such as placing or picking up a take-out order or to use the restroom, are not required to provide proof of vaccination. Additionally, individuals who are entitled under the law to a reasonable accommodation due to a medical condition or a sincerely held religious belief are not required to provide proof of vaccination.

More recently, on January 11, 2022, Mayor Bowser issued Mayor’s Order 2022-007 which extended the public emergency declared by Mayor’s Order 2020-045, dated March 11, 2020 to March 17, 2022. The Mayor’s Order also clarified that the vaccination entry requirements apply to persons twelve (12) years of age and older and that persons eighteen (18) years and older who are subject to the vaccination entry requirements shall be required to provide proof of their identity with their proof of vaccination.

In order to ensure that the District’s alcoholic beverage regulations are consistent with the Mayor’s two recent Orders, the Board finds immediate action is necessary to adopt emergency rules. These rules set forth the requirements to ensure that employees and patrons of on-premises ABC licensed establishments wear a mask while indoors and that patrons who are twelve (12) years of age and older show proof of vaccination prior to entering the licensed premises. The emergency rulemaking is necessary for the protection of the health, welfare, and safety of District residents. Thus, on January 12, 2022, the Board adopted the *Suspension of On-premises Alcohol Sales and Consumption Notice of Seventeenth Emergency Rulemaking*, by a vote of six (6) to zero (0).

These emergency rules supersede the emergency rules that the Board adopted on November 19, 2021. The emergency rules will take effect on January 12, 2022 and will expire in one hundred twenty (120) days, or by May 12, 2022, unless superseded.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended by adding a new Section 810, CONDITIONS OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DURING THE PUBLIC EMERGENCY, to read as follows:

810 CONDITIONS OF ON-PREMISES ALCOHOL SALES AND CONSUMPTION DURING THE PUBLIC EMERGENCY

810.1 The sale and service of alcoholic beverages for on-premises consumption indoors and outdoors shall be permitted in the District of Columbia for the remainder of the Mayor’s Public Emergency by authorized licensees, provided, that they comply with the requirements set forth in this section. The sale and service of alcoholic beverages for on-premises consumption indoors and outdoors shall be conditionally permitted by the following license classes:

- (a) The holders of a retailer’s license class C or D, including licensed caterers;

- (b) Class A or B manufacturers holding an on-site sales and consumption permit;
- (c) Festival and temporary license holders; and
- (d) Any other license or permit category set forth under Title 25 of the D.C. Official Code.

810.2 The holder of a restaurant, tavern, hotel, private club, nightclub, multipurpose facility, or common carrier on-premises retailer's license, or manufacturer's license holding an on-site sales and consumption permit, or a festival or temporary license shall be permitted to operate up to one hundred percent (100%) of its Board approved occupancy load.

810.3 A licensee who holds an on-premises retailer license, class C/R, D/R, C/T, D/T, C/N, D/N, C/H, D/H, C/X, or D/X, including a multipurpose facility or private club, a manufacturer license, class A or B, with an on-site sales and consumption permit, a festival or temporary license, or any other license or permit set forth in Title 25 of the D.C. Official Code, may sell, serve and allow the consumption of beer, wine, or spirits indoors or on a Board-approved outdoor sidewalk café or summer garden, including an existing rooftop patio, pursuant to the terms of its license. When operating, the licensee:

- (a) May permit indoor or outdoor tables on the sidewalk café or summer garden to be placed less than six feet (6 ft.) apart from one another;
- (b) May permit dancing or recreational activities that require patrons to be standing, including pool, ping-pong, pinball, playgrounds, games of skill, throwing axes or darts or any other activity that ordinarily requires one to stand;
- (c) May play background or recorded music;
- (d) May offer indoor entertainment with an entertainment endorsement, including but not limited to live music, disc jockeys, comedy shows, poetry readings, and trivia inside of the licensed establishment in accordance with the terms of its ABC license;
- (e) May offer outdoor entertainment, including live music, with an entertainment endorsement, except for nude dancing, on a licensed sidewalk café or summer garden in accordance with the terms of its ABC license;
- (f) May permit patrons to bring their own alcoholic beverages;

- (g) May permit standing receptions, cocktail hours, buffets, or self-serving stations;
- (h) May permit patrons to sit indoors without having to purchase one (1) or more prepared food items per table;
- (i) Shall ensure that prepared food items offered for sale or served to patrons are prepared on the licensed premises or off-premises at another licensed entity that has been approved to sell and serve food by the District of Columbia Department of Health (DC Health);
- (j) May operate, sell, serve and permit the consumption of alcoholic beverages during the hours permitted by D.C. Code § 25-723 and the terms of its Board approved license;
- (k) May serve alcoholic beverages or food to standing patrons;
- (l) May allow standing at indoor or outdoor bars, and may seat patrons at indoor or outdoor bars regardless of whether they are staffed or utilized by a bartender;
- (m) Shall abide by the terms of its public space permit concerning the allowable placement of alcohol advertising, if any, in outdoor public space;
- (n) Shall require its wait staff to wear masks or face coverings;
- (o) Shall require patrons to wear masks or face coverings to enter inside of the establishment unless the patron is under the age of two (2) years old or has a medical or mental health condition or a disability that prevents the patron from wearing a mask or face covering;
- (p) Shall require, starting at 6 a.m. on January 15, 2022, that patrons who are twelve (12) years of age and older provide proof of vaccination against COVID-19 prior to entering the indoor premises. A patron shall not be required to provide proof of vaccination against COVID-19 to enter the on-premises establishment for a quick and limited purpose such as placing or picking up a take-out order or to use the restroom. Persons who are entitled under law to a reasonable accommodation due to a medical condition or a sincerely held religious belief shall not be required to provide the establishment with proof of vaccination;
- (q) Shall verify the identify along with the vaccination status of patrons who are eighteen (18) years of age and older with a valid photo identification, such as a state issued driver's license or limited purpose driver's license, any other state issued identification card, passport, military identification card, DC One card, or student identification document;

- (r) Shall post a sign visible to patrons prior to entry, informing patrons of the licensed establishment's mask or face covering requirements;
- (s) Shall post a sign visible to patrons prior to entry, informing patrons who are twelve (12) years of age and older that proof of vaccination is required to enter any indoor portion of a covered location;
- (t) May implement a reservation system by telephone, on-line, or on-site;
- (u) May maintain customer logs on the licensed premises to facilitate contact tracing, if necessary; and
- (v) May utilize up to two (2) additional locations registered for alcohol carry-out and delivery. The use of outdoor space adjacent to or near the additional location shall be required to be registered pursuant to D.C. Official Code § 25-113(a)(6) to be utilized for outdoor dining.

810.4 A licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including a multi-purpose facility or private club, that registers with the Board may sell beer, wine, or spirits in closed containers for individuals to carry-out and consume outside of the establishment, or deliver beer, wine, or spirits in closed containers to the homes of District residents, if each carry-out or delivery order is accompanied by one (1) or more prepared food items.

810.5 A restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs, shall receive Board approval from ABRA before beginning carry-out or delivery of beer, wine, or spirits.

810.6 A registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multipurpose facilities and private clubs, may sell beer, wine, or spirits for carry-out and delivery only between the hours of 6:00 a.m. and 1:00 a.m. each day.

810.7 Except as provided in §§ 810.2 and 810.3, a registered licensed restaurant, tavern, hotel, nightclub, or Class C/X and D/X licensee, including multi-purpose facilities and private clubs, shall not permit the consumption of beer, wine, or spirits on the licensed premises.

810.8 Any person delivering beer, wine, or spirits to the homes of District residents shall be eighteen (18) years of age or older and shall take reasonable steps to ascertain that the person receiving the delivered beer, wine, or spirits is twenty-one (21) years of age or older.

810.9 The Board, in its discretion, may immediately suspend or revoke without prior notice or advertisement, the ABC license of an establishment licensed under

Title 25 of the District of Columbia Official Code that is in violation of this section. Nothing in this subsection shall prohibit the Board or ABRA from issuing a written or verbal warning for a violation of this section.

810.10 The Board shall conspicuously post two (2) summary suspension or revocation notices at or near the main street entrance of the outside of an establishment whose license has been suspended or revoked in accordance with § 810.9.

810.11 If the Board summarily suspends or revokes a license in accordance with § 810.9, the licensee may request a hearing within three (3) business days after service of a Notice of Suspension or Revocation. The Board shall hold a hearing within two (2) business days of receipt of a timely request and shall issue a decision within three (3) business days after the hearing.

810.12 A licensee aggrieved by a final summary action may file an appeal in accordance with the procedures set forth in Subchapter I of Chapter 5 of Title 2.