

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

**NOTICE OF EMERGENCY AND PROPOSED 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 307 of Title 23 of the District of Columbia Municipal Regulations (DCMR), hereby gives notice of the adoption of emergency and proposed rules that amend section 307 (West Dupont Circle Moratorium Zone) of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

In summary, these emergency and proposed rules renew the existing West Dupont Circle Moratorium Zone (WDCMZ) with certain modifications for a period of three (3) years. Specifically, the rules amend Section 307 to maintain the current limit on the number of retailer's Class CN and DN licenses, and remove the previous limitation on all other retailer class licenses in the WDCMZ.

By way of background, the existing moratorium expired on May 17, 2015. Prior to the expiration, on February 23, 2015, the Board received a request from Advisory Neighborhood Commission (ANC) 2B for a one hundred twenty (120) day extension of the existing moratorium. The ANC requested the extension in order to analyze the impact of a potential request for renewal of the moratorium on the peace, order and quiet of the neighborhood.

Earlier this year, the ANC formed a working group tasked with engaging the public and receiving feedback on the future of the moratorium. The working group consisted of current commissioners, one former commissioner, and the ANC's liquor liaison for ANC 2B06. The working group held three public meetings from January through April 2015, and published an on-line questionnaire for additional public comments. The working group voted to allow the existing moratorium to expire across all licenses. This recommendation was not adopted by the full ANC and a resolution to support a modified moratorium was forwarded to the Board on a 4-2-1 vote.

On May 13, 2015, the Board adopted emergency rules to preserve the existing moratorium for one hundred and twenty (120) days in order to maintain the moratorium's status quo while the Board considered the ANC proposal and take testimony from members of the community who had a different view.

On July 22, 2015, the Board held a public hearing on the request of ANC 2B to renew a modified moratorium. ANC 2B was represented by Commissioner Daniel Warwick who testified in support of the renewal of a modified moratorium for a three (3) year period. The ANC resolution proposal retains the cap on retailer class CN licenses at zero (0) and eliminates the cap on all other retailer's class licenses. Furthermore the ANC recommended that it works collaboratively with ABRA, the Joint Noise Force Task Force, MPD, DCRA, the DC Zoning

Commission, neighbors, businesses and other stakeholders to codify a city-wide restriction on locating nightclubs next to residential buildings.

Commissioner Warwick testified to the history of West Dupont Circle and noted that his ANC first petitioned the Board for a moratorium on all liquor-selling establishments over twenty (20) years ago. Over the intervening years, the moratorium has renewed, and many of the renewals have loosened the restrictions to fit the changing needs of the neighborhood. By way of example, in 2006 the total number of licenses increased from twenty-nine (29) to thirty (30) and in 2008, the number increased to thirty-four (34). In 2009, the moratorium zone carved out the 1500 block of Connecticut Avenue N.W., and in 2011, the restrictions on restaurants was lifted.

Commissioner Warwick described West Dupont Circle as a thriving, mixed-use historic neighborhood where many businesses and thousands of residents are located. While the amenities of late-night retail and entertainment contribute to the livelihood of the neighborhood, problems also stem from late-night activity. For example, the neighborhood has taverns located next to residential buildings which can be heard in residential units.

Commissioner Warwick noted that not all businesses are appropriate for the neighborhood, and thus the ANC seeks to retain the cap on nightclub licenses. Lifting the moratorium in its entirety, as the working group suggested, would be disruptive to the peace, order and quiet of any mixed-use neighborhood. It would also impair the public safety of the neighborhood for residents and other pedestrians. He further noted that of the six (6) permitted CT/DT licenses located in the moratorium zone, two (2) continue to present problems so that retaining the cap on tavern licenses will not eliminate the concerns.

He explained that the current moratorium limits healthy competition for existing businesses and it restricts new licenses for art galleries, distilleries, breweries, wineries or multi-purpose facilities. The only way for new businesses to enter into the neighborhood is to purchase existing licenses and those may not be available. The ANC is concerned that this type of structure leads to the creation of a secondary market that serves as a barrier to entry for new businesses.

The ANC desires to create and maintain a vibrant mixed-use neighborhood that offers amenities to businesses and residents alike. However, leaving the restrictions on certain licenses in place impairs the ANC's ability to review the merits of new applications on a case by case basis, which may drive good businesses away.

Karyn Siobhan Robinson is a former ANC Commissioner who has lived at the corner of 22<sup>nd</sup> and O Streets NW since 1991. She also served on the ANC's working group. She supports eliminating the moratorium in its entirety, to include the cap on nightclub licenses, because the existing moratorium has outlived its usefulness.

Specifically, Ms. Robinson addressed the concerns of peace, order and quiet, and noted that noise from night life activity comes with living in the city and is a part of an urban environment. She further noted that urban living is not for everybody. It is her belief that the Board and the neighborhood should not bend to the whims of a small vocal minority. The neighborhood brings

in many different people and businesses, and noise is a part of that life. She acknowledged that streets adjacent to 22<sup>nd</sup> and P Streets N.W. are where many of the patrons park and congregate, but she is willing to drive around the neighborhood to find available parking.

Ms. Robinson also supports eliminating the cap on nightclubs because market forces make it unrealistic for a nightclub to locate to West Dupont. She also noted that maintaining the moratorium keeps rents artificially high and chokes out viable retailers who can't afford to enter the neighborhood.

She believes that concerns regarding peace, order and quiet, and public safety can be adequately addressed in individual settlement agreements. Furthermore, she points out that ANC 2B and the Board are well equipped and experienced to handle ABC licensed establishments on a case by case basis should there be any concerns regarding their operations.

Mr. Pellegrini testified as a resident of Dumbarton Place located at 1414 22<sup>nd</sup> Place N.W., and on behalf of the other thirty six (36) residents in his building. He stated that his fellow residents enjoy living in a vibrant neighborhood, but there are a couple of existing establishments that affect their quality of life. The residents are not concerned with routine noise from living in the city nor are they concerned with the noise produced in the interior of the establishments.

Mr. Pellegrini stated that the problems in the neighborhood that concern the residents the most stem from the patrons who congregate outside after closing time. The drinking continues in and outside the parked vehicles, the patrons are disorderly and verbally abusive to the residents, and the encounters can be alarming. Additionally, residents wake up to litter, garbage, broken bottles, used condoms tossed in common areas and the smell of human urination.

Residents spend their weekends cleaning up after the establishments and their patrons. The residents call MPD who try to be responsive, but by the time MPD arrives, the behavior has curtailed or moved onward. He also appreciates that enforcement by ABRA investigators may be difficult. He believes that stricter enforcement of the settlement agreements and employment of MPD Reimbursable Detail would help to mitigate the bad patron behavior. A third measure of enforcement would be monitoring by the United States Park Police.

Additionally, Mr. Pellegrini does not believe that it is necessary to lift the cap on tavern licenses when the existing cap has not been reached. Of the six (6) permitted licenses, only four (4) are in use. There is no logic to compounding the already challenging issue of tavern licenses by allowing more of them to locate in the neighborhood. Moreover, he argues that there is little distinction between nightclubs and taverns, especially those taverns that offer entertainment.

Mr. Pellegrini suggested that the Board take a pragmatic approach and lift the moratorium on all license classes with the exception of taverns and nightclubs. The residents of his condominium building fully support the removal of the cap on CX and off-premises licenses. With this incremental modification, the community and ABRA can continue to work together for better solutions over the next moratorium period to mitigate or minimize the illegal behavior that stems from the bad operators. This compromise solution would be a win-win for the neighborhood and the businesses.

Judith Snyder appeared on behalf of Dupont West Condominium located at 2141 P Street N.W., Jonathan Padget is also a resident of Dupont West, and stated that about 150 to 175 residents live in the condominiums. He listed Westpark Apartments, located at 2130 P Street N.W., with its 200 to 300 residents, and Georgetown Gate Condominiums, located 1511 22<sup>nd</sup> Street N.W. as nearby residences. He also noted that hotel guests are affected by the disorderly nightlife generated by some of the establishments and their patrons.

Jessie Vasquez is also a resident of Dumbarton Place Condominium. She testified regarding the noncompliance of the establishments with the terms of their settlement agreements. One establishment in particular is required to have a doorman who is supposed to traverse the area and encourage patrons to disperse once they've left the club. She has observed the doorman's presence but she has not observed that he carries out his duties as set forth in the settlement agreement.

Mr. Padget further noted that the residents have difficulty with the patrons' use of the alleyways that serve as a part of the residential space. His balcony overlooks one alleyway and he has witnessed patrons using illegal drugs, urinating and fornicating outside his window. He believes that the taverns contribute to this detrimental behavior and that eliminating the cap on tavern licenses is not the answer.

Indeed, all of the representatives from the condominium associations noted that the tavern licenses are the primary source of problems for the neighborhood. Maintaining the existing cap on these license classes would help to ensure that these problems are not exacerbated. They urged the Board to leave the cap on the six (6) tavern licenses and the prohibition on nightclub licenses.

In addition to the testimony received by those in attendance at the public hearing, the Board also received written comments from several parties.

Robert Oaks, President of the Dupont West Condominium (Dupont West) located at 2141 P Street N.W., submitted written comments on behalf of the Board of Directors who voted unanimously to recommend continuation of the West Dupont Circle Moratorium. It strongly urges the Board to do the same. Dupont West is a 95 unit building whose owners and residents appreciate the thriving neighborhood, but are regularly disturbed by the patrons of a few licensed establishments. Dupont West actively supports the settlement agreements and cooperates with MPD, ABRA and other civic organizations to no avail. The taverns in the neighborhood operate in reality as nightclubs. They serve alcohol but not food, offer entertainment at levels that can be heard outside their premises, and release patrons in large rowdy crowds onto the streets in the early morning hours. For these reasons, Dupont West does not support the ANC Resolution to lift the cap on tavern licenses.

Glenn M. Engelmann resides at 1412 Hopkins Street N. W. He requested that the Board leave the existing moratorium in place because the neighborhood is currently vibrant with a good mixture of restaurants and other retail establishments. He credits the moratorium with enabling a strong business climate while preserving the significant residential character of the

neighborhood. At a minimum, Mr. Engelmann asks the Board to maintain the moratorium on prohibiting nightclubs as the ANC proposes.

Skip Perry has resided at 1400 20<sup>th</sup> Street N.W. for six (6) years. He supports Ms. Robinson and working group's position that the moratorium should expire in its entirety. He believes the vibrancy and attractiveness of the neighborhood has atrophied and continues to do so. There is a noticeable decline in foot traffic and former ABC licensed locations sit empty. Mr. Perry observes that the moratorium has loosened since its inception over the years with no apparent negative impact on the neighborhood. It is his opinion that new businesses should be permitted to apply and then be vetted by ABRA for their appropriateness.

Alan Rueckgauer has been President of the Westpark Tenant Association (WTA) since 2007. He has resided at the Westpark Apartments, located at 2130 P Street N. W. for over 25 years. The Westpark has 250 units containing 300-350 individual residents. The WTA surveyed its members in April 2015 and more than 85% of the membership supported maintaining the current moratorium. The unanimous concern is the demonstrated inability of the District to address complaints, public safety issues, and the ongoing problems with bad operators. There are countless altercations, fights and assaults, some with deadly weapons, centered on the corner of 22<sup>nd</sup> and P Streets N.W. The WTA has been actively engaged with the ANC, MPD and ABRA for many years to address these concerns, yet the noise and bad, if not illegal behavior, continues. For these reasons, the WTA urges the Board to maintain the moratorium on tavern and nightclub licenses.

The Georgetown Gate Condominium located at 1511 22<sup>nd</sup> Street N.W. offered similar written comments requesting the Board to keep the moratorium on taverns and nightclubs intact. Their members have had their fill of fights, vandalism, rowdy and unsavory behavior, all of which is carried out on public and private property. The Georgetown Gate is concerned that the attitude of the ANC and District officials appears to favor the business interests over the residential interests.

Lastly, residents of Dumbarton Place Condominium supplemented the testimony of Mr. Pellegrini and Ms. Vazquez with written comments. The residents requested the Board to keep the existing moratorium in place for taverns and nightclubs. They raise three points in support of their position: 1) the existing taverns cause disorderly conduct, public safety issues, and excessive noise in the neighborhood; 2) the owners of the taverns have exhibited no interest in being good neighbors; and 3) the ANC's recommendation is inconsistent with the will and desire of the greater residential neighborhood. The residents support allowing the moratorium to expire for restaurants and multi-purpose facilities.

#### Decision of the Board

The Board took the views of ANC 2B and all other witnesses and written comments into consideration. The Board determined that the ANC proposal to lift the moratorium on all license classes with the exception of CN/DN licenses constitutes a reasonable, measured, and appropriate solution for the West Dupont neighborhood.

In reaching its decision, the Board gave great weight to the written recommendations of ANC 2B as required by Section 13(d)(3) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3) (200612 Repl. & 20142 Supp.), and D.C. Official Code § 25-609 (20012 Repl. & 2014 Supp. ed.)). After evaluating all of the testimony and comments, the Board finds that ANC 2B's proposal is appropriate. Specifically, the Board agrees that maintaining the current cap on nightclub licenses is warranted to ensure that problems in the neighborhood are not exacerbated.

The Board also based its decision upon the appropriateness standards. Pursuant to D.C. Official Code § 25-351 (2012 Repl. & 2014 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 (b)(2) and (b)(3) (2012 Repl. & 2014 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) (West 2012 Repl.Supp. 2013); see also D.C. Official Code § 25-351(a) (2012 Repl. & 2014 Supp.).

With regard to peace, order and quiet, the testimony presented at the hearing as well as the proposal submitted by ANC 2B revealed that there are significant problems in the West Dupont neighborhood with regard to peace, order, and quiet, particularly with regard to late night noise, litter, and public urination.

Additionally, the Board concluded that issues with vehicular and pedestrian safety continue to exist in the WDMZ. Specifically, the testimony of Mr. Pellegrini revealed that patrons are drinking inside and outside of parked vehicles and congregating outside the establishment after closing time. Thus, the Board concluded that maintaining a modified moratorium is in the public interest as determined by the appropriateness standards set forth in D.C. Official Code §§ 25-313 (b)(2) and (b)(3) (2012 Repl. & 2014 Supp.).

As noted above, the Board agrees with and adopts the ANC proposal. Specifically, the Board agrees to: (1) renew a modified moratorium; (2) lift the restrictions on all license classes with the exception of the number of Retailer Class CN/DN licenses; (3) retain the existing language pertaining to the transfer of ownership; (4) retain the prohibition on the transfer of Retailer Class CN/DN from outside the moratorium zone to inside the moratorium zone; and (5) retain the prohibition restricting the change of license class to all CN/DN licenses.

The Board rejects modifications to the ANC proposal suggested by the various condominium residents regarding retaining the cap on tavern licenses. The Board believes that there are enough safeguards in place to protect the neighborhood as discussed more fully below. The Board also notes that the current cap on tavern licenses has not been reached so clearly the demand to locate new taverns in the neighborhood may be overestimated.

While it is sympathetic to their concerns about the social ills that accompany a vibrant nightlife, the Board would encourage the condominium residents to participate fully in the protest process when the tavern licenses are scheduled for renewal in 2016. Additionally, the Board would

encourage the neighborhood to utilize the ABRA hotline in the evenings and early morning hours. The agency has recently deployed additional investigators whose duty hours now cover seven nights of the week. Lastly, the residents are encouraged to access the ABRA electronic complaint form on the agency website anytime they witness a breach in the establishments' settlement agreements. The Board assures the community that complaints submitted telephonically or electronically will be investigated.

The Board also believes that limiting the modified moratorium to three years will allow the Board, the ANC, and the community to assess the effectiveness of the proposed changes. Additionally, this timeframe allows the community the greatest degree of flexibility to adapt and adjust the moratorium to respond to the changing needs of the 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.

In removing the cap on tavern licenses, the Board makes clear that it will not tolerate tavern licensees who operate in such a manner that their operations create a nightclub atmosphere. It cautions all licensees to understand that West Dupont is a unique neighborhood. As such, the Board will give great scrutiny to any licensing 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 recent expansion of the Civil Penalty Schedule 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 civil penalty regulations 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.

The Board 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 efforts to solicit the community members' perspectives on positive steps to transform the West Dupont'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 West Dupont moratorium that allows for responsible growth is warranted.

The statements set forth above reflect the written reasons for the Board's decision as required by 23 DCMR § 303.1.

Emergency rulemakings are used only for the immediate preservation of the public peace, health, safety, welfare, or morals, pursuant to 1 DCMR 311.4(e). The existing WDMZ expires on September 13, 2015, requiring the Board to make a determination regarding the future of the WDMZ. The emergency action is necessary for the preservation of the health, safety and welfare of the District residents in order to ensure that the prohibitions provided in the modified moratorium are maintained.

These emergency and proposed rules were adopted by the Board on August 12, 2015, by a six (6) to zero (0) vote and became effective on that date. The rules will remain in effect for up to one hundred twenty (120) days, expiring December 12, 2015, unless earlier superseded by proposed and final rulemakings or upon publication of a Notice of Final Rulemaking in the D.C. Register, whichever occurs first.

The Board gives notice of its intent to adopt these rules in not less than thirty (30) days from the date of publication of this notice in the D.C. Register.

Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl. & 2014 Supp.), these proposed rules are also being transmitted to the Council of the District of Columbia, and the final rules may not become effective until their approval by Council resolution during the ninety (90) day period of Council review.

**Chapter 3, LIMITATIONS ON LICENSES, of title 23, ALCOHOLIC BEVERAGES, is amended as follows:**

**Section 307 is amended to read as follows:**

**307 WEST DUPONT CIRCLE MORATORIUM ZONE**

307.1 A limit shall exist on the number of retailer's licenses issued in the area that extends approximately six hundred feet (600 ft.) in all directions from the intersection of 21st and P Streets, N.W., Washington, D.C., as follows: Class CN or DN - Zero (0). This area shall be known as the West Dupont Circle Moratorium Zone.

307.2 The West Dupont Circle Moratorium Zone is more specifically described as the area bounded by a line beginning at 22nd Street and Florida Avenue, N.W.; continuing north on Florida Avenue, N.W., to R Street, N.W.; continuing east on R Street, N.W., to 21st Street, N.W.; continuing south on 21st Street, N.W., to Hillyer Place, N.W.; continuing east on Hillyer Place, N.W., to 20th Street, N.W.; continuing south on 20th Street, N.W., to Q Street, N.W.; continuing east on Q Street, N.W., to Connecticut Avenue, N.W.; continuing southeast on Connecticut Avenue, N.W., to Dupont Circle; continuing southwest around Dupont Circle to



New Hampshire Avenue, N.W.; continuing southwest on New Hampshire Avenue, N.W., to N Street, N.W.; continuing west on N Street, N.W., to 22nd Street, N.W.; and continuing north on 22nd Street, N.W., to Florida Avenue, N.W. (the starting point).

- 307.3 All hotels, whether present or future, shall be exempt from the West Dupont Circle Moratorium Zone. The 1500 block of Connecticut Avenue, N.W., shall be exempt from the West Dupont Circle Moratorium Zone. Establishments located in, or to be located in, the New Hampshire side of One Dupont Circle, N.W., shall be exempt from the West Dupont Circle Moratorium Zone.
- 307.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class A, B, CR, CT, CX, DR, DT, or DX located within the West Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.
- 307.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the West Dupont Circle Moratorium Zone to a new location within the West Dupont Circle Moratorium Zone.
- 307.6 A CN/DN license holder outside the West Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the West Dupont Circle Moratorium Zone.
- 307.7 Subject to the limitation set forth in subsection 307.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.
- 307.8 No licensee in the West Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CN, or DN.
- 307.9 A current holder of a retailer's license Class A, B, C, or D within the West Dupont Moratorium Zone shall not be permitted to apply to the Board for expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, unless:
- (a) the prior owner or occupant has held within the last five (5) years a retailer's license Class A, B, C, or D; or
  - (b) the applicant is a Class CR or DR licensee and the prior owner or occupant has held during the last three (3) years, and continues to hold at the time of application, a valid restaurant license from the Department of Consumer and Regulatory Affairs.
- 307.10 The number of substantial change applications approved by the Board for expansion of service or sale of alcoholic beverages into an adjoining or adjacent

space, property, or lot, as allowed under subsection 307.9, shall not exceed three (3) during the three (3) year period of the West Dupont Circle Moratorium Zone.

307.11 Nothing in this section shall prohibit holders of a retailer's license Class C or D from applying for outdoor seating in public space.

307.12 This section shall expire three (3) years after the date of publication of the notice of final rulemaking.

Copies of the proposed rulemaking can be obtained by contacting Martha Jenkins, General Counsel, Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., 4th Floor, Washington, D.C. 20009. All persons desiring to comment on the emergency and proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the D.C. Register, to the above address or via email to [martha.jenkins@dc.gov](mailto:martha.jenkins@dc.gov).