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OFFICE OF THE
SECRETARY

MURIEL BOWSER
MAYOR

APR 11 2019

The Honorable Philip Mendelson
Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W., Suite 506
Washington, D.C. 20004

Dear Chairman Mendelson:

I am transmitting to the Council of the District of Columbia, for its consideration and enactment, the *Alcoholic Beverage Procedural and Technical Amendment Act of 2019*. The proposed bill would make technical and procedural updates to Title 25 of the D.C. Official Code. These technical updates include removing archaic terminology and updating the zoning districts. Other amendments include the following:

1. Clarifying the requirements for filing successive applications;
2. Clarifying what it means to be an “abutting property owner” for purposes of filing a protest;
3. Prohibiting other ABC license holders from filing protests unless they otherwise meet the criteria for another protest category; and
4. Establishing parameters for licenses in safekeeping.


I urge the Council to take prompt and favorable action on the enclosed legislation.

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser". The signature is stylized and cursive.

Muriel Bowser

enclosure


Chairman Phil Mendelson
at the request of the Mayor

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A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Chairman Phil Mendelson, at the request of the Mayor, introduced the following bill,
which was referred to the Committee on _____.

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To amend Title 25 of the District of Columbia Official Code to allow for passive approval of regulations after the expiration of the 90-day Council review period; to replace “Corporation Counsel” with the “Office of the Attorney General for the District of Columbia” throughout the Title; to update the zoning district references contained in Title 25 of the D.C. Official Code; to clarify the requirements for successive applications which are submitted within five years of the applicant withdrawing the application; to repeal the prohibition on the application of the Ward 4 restrictions on applications pending before the Board as of September 30, 2004; to require an applicant and licensee to provide the Board with the owner’s name, address, telephone number, and e-mail address for receiving correspondence from the Board and ABRA; to provide the Board with the authority to dismiss an application or a protest due to either party’s failure to attend the settlement conference; to clarify that parties can enter into a settlement agreement without having to file a protest; to allow parties to include settlement agreement terms which address the safety and security procedures a licensee must have in place; to replace the phrase “settlement conference” with the term “mediation” wherever it appears; to define the term abutting property; to prohibit current license holders from protesting an application for a new or renewal license, substantial change, or transfer to a new location unless they reside in the neighborhood; to require the placement of a license into safekeeping if the licensee will be closed for 14 or more calendar days; to define what constitutes “reasonable progress” for purposes of maintaining licenses in safekeeping; and to clarify that holders of licenses that are in safekeeping are required to pay their renewal fees prior to the license expiring.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

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That this act may be cited as the “Alcoholic Beverage Procedural and Technical

1 Amendment Act of 2019”.

2 Sec. 2. Title 25 of the District of Columbia Official Code is amended as follows:

3 (a) Chapter 2 is amended as follows:

4 (1) Section 25-201(c)(8) is amended by striking “Corporation Counsel” and
5 inserting the phrase “Office of the Attorney General for the District of Columbia” in its
6 place.

7 (b) Chapter 3 is amended as follows:

8 (1) Section 25-338 is amended to read as follows:

9 “(a) The Board shall not consider an application for the same class of license,
10 permit, endorsement, or substantial change by the same applicant if the Board has denied
11 a previously filed application within 5 years.

12 “(b) Notwithstanding subsection (a), if an application is withdrawn for good
13 cause, as determined by the Board, and prior to the protest status hearing, or if a
14 previously filed application for the same license class, permit, endorsement, or substantial
15 change was denied by the Board on purely technical or procedural grounds, an
16 application by the same applicant can be made at any time.”.

17 (2) Section 25-340.01(c) is repealed.

18 (c) Chapter 4 is amended as follows:

19 (1) Section 25-402(a) is amended as follows:

20 (A) Paragraph (1) and (2) are amended by striking the phrase “name and
21 address” and inserting the phrase “name, address, and telephone number” wherever they
22 appear.

23 (B) New paragraphs (2A) and (2B) are added to read as follows:

1 “(2A) The name and e-mail address of the owner of the establishment, or
2 his or her designee, for purposes of receiving communications from ABRA, including
3 correspondence, hearing notices and other types of service of process, and Board Orders.

4 “(2B)(I) The licensee or applicant shall notify ABRA within 30 days of any
5 changes to the information required by paragraphs (1), (2), or (2A).

6 “(II) Failure to comply with subparagraph (I) may result in the Board issuing a
7 fine against the licensee, or suspending or revoking the license in accordance with
8 chapter 8 of this title.”.

9 (2) Section 25-432 is amended by striking the phrase “settlement conference” and
10 inserting the phrase “mediation” wherever it appears.

11 (3) Section 25-445(e) is repealed.

12 (4) Section 25-446 is amended by adding a new subsection (a-1) to read as
13 follows:

14 “(a-1) Notwithstanding subsection (a), the applicant and any person or entity
15 who would otherwise have standing to protest an application pursuant to § 25-601 may,
16 at any time, negotiate a settlement and enter into a written agreement setting forth the
17 terms of the settlement.”.

18 (5) Section § 25-446.01 is amended by adding a new subsection (10) to read as
19 follows:

20 “(10) Descriptions of safety and security procedures, including the hiring of
21 Metropolitan Police Department Reimbursable Detail Officers or having a security plan.”

22 (d) Chapter 6 is amended as follows:

23 (1) Section 25-601 is amended to read as follows:

1 (A) The existing section is relabeled as subsection (a).

2 (B) A new subsection (b) is added to read as follows:

3 “(b) As used in subsection (a)(1), an “abutting property” is one where any
4 portion of the property is immediately adjacent to any portion of the licensed
5 establishment.”.

6 (C) A new subsection (c) is added to read as follows:

7 “(c)(1) An individual or entity that holds a valid wholesaler’s license,
8 manufacturer’s license, or retailer’s license shall not be permitted to protest the issuance
9 or renewal of a license, the approval of a substantial change in the nature of operation as
10 determined by the Board under § 25-404, or the transfer of a license to a new location.

11 “(2) Notwithstanding subsection (c)(2), an individual that resides in the
12 neighborhood where the establishment is to be licensed and who also holds a
13 wholesaler’s license, manufacturer’s license, or retailer’s license may protest the issuance
14 or renewal of a license, the approval of a substantial change in the nature of operation as
15 determined by the Board under § 25-404, or the transfer of a license to a new location if
16 he or she otherwise has standing pursuant to subsection (a)(1) or (a)(2).”.

17 (e) Chapter 7 is amended as follows:

18 (1) Section 25-725(b)(3) is amended by striking the phrase, “ which are located
19 within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in zoning regulations for the
20 District”, and inserting the phrase, “ that are located within a commercial or
21 manufacturing zone, as defined in the zoning regulations and shown in the official atlases
22 of the Zoning Commission for the District”.

23 (2) Section 25-791 is amended as follows:

1 (A) Subsection (a) is amended to read as follows:

2 “(a)(1) If a licensee closes or ceases to operate at the licensed premises
3 for 14 or more calendar days, the licensee shall immediately notify the Board in writing
4 of the closure and surrender the license for safekeeping. The licensee’s written notice
5 shall include the estimated length of closure and the licensee’s future intentions as to the
6 use of the license.

7 “(2) The Board shall hold the license until the licensee resumes
8 operation at the licensed premises or the license is transferred to a new location or owner.

9 “(3) If the licensee has not initiated proceedings to resume operations or
10 to transfer the license within 60 days after surrendering the license for safekeeping, the
11 Board may deem the license abandoned after giving notice to the licensee. The licensee
12 shall have 14 calendar days to respond to the Board’s notice to request continued
13 safekeeping.”.

14 (B) Subsection (c)(1) is amended to read as follows:

15 “(c)(1) Licenses in safekeeping beyond 60 days, as extended by the
16 Board, shall be reviewed by the Board every 6 months to ensure that the licensee is
17 making reasonable progress on returning to operation.

18 “(2) For purposes of paragraph (1) of this subsection, “reasonable
19 progress,” shall mean taking deliberate steps to resume business operations, including but
20 not limited to acquiring necessary permits or approvals from the Department of
21 Consumer and Regulatory Affairs, the Office of Zoning, the Historic Preservation Board,
22 or any other District agency, executing contractual agreements or lease agreements,
23 retaining contractors, or transferring the license to a new owner or new location.”.

1 (D) Subsection (d) amended to read as follows:

2 “(d) This section shall not relieve a licensee from the responsibility of
3 renewing the license.”.

4 (f) Chapter 8 is amended as follows:

5 (1) Section 25-801 is amended by striking the phrase “Corporation Counsel”
6 and inserting the phrase “Office of the Attorney General for the District of Columbia”
7 wherever it appears.

8 (2) Section 25-805(b) is amended by striking the phrase “Corporation Counsel”
9 and inserting the phrase “Office of the Attorney General for the District of Columbia” in
10 its place.

11 (3) Section 25-831(c) is amended by striking the phrase “Corporation
12 Counsel” and inserting the phrase “Office of the Attorney General for the District of
13 Columbia” in its place.

14 (g) Chapter 9 is amended as follows:

15 (2) Section 25-911(c) is amended by striking the phrase “Corporation Counsel”
16 and inserting the phrase “Office of the Attorney General for the District of Columbia” in
17 its place.

18 Sec. 3. Fiscal impact.

19 The Council adopts the fiscal impact statement in the committee report as the
20 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
21 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
22 206.02(c)(3)).

23 Sec. 4. Effective Date.

1 This act shall take effect following approval by the Mayor (or in the event of veto
2 by the Mayor, action by the Council to override the veto), a 30-day period of
3 Congressional review as provided in section 602(c)(1) of the District of Columbia Home
4 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
5 206.02(c)(1)), and publication in the District of Columbia Register.

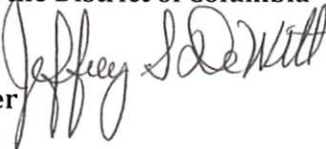
Government of the District of Columbia
Office of the Chief Financial Officer



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: March 7, 2019

SUBJECT: Fiscal Impact Statement – Alcoholic Beverage Procedural and Technical Amendment Act of 2019

REFERENCE: Draft Bill as shared with the Office of Revenue Analysis on February 25, 2019

Conclusion

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill.

Background

The Alcoholic Beverage Regulation Administration (ABRA) and the Alcoholic Beverage Control Board (Board) control, regulate, enforce, and adjudicate alcoholic beverages, laws governing alcoholic beverages, and violations of those laws. The bill changes and clarifies licensing, protest, and settlement procedures.

The bill clarifies that an applicant cannot reapply for the same class license, permit, endorsement, or change if a previously filed application was denied in the prior five years. An applicant can reapply if the previous application was denied for good cause or on technical grounds. The bill establishes that any licensee that closes or ceases to operate at the licensed establishment for fourteen or more calendar days must notify the Board and surrender the license for safekeeping until operations are resumed or the license is transferred. Current law¹ requires the Board to review any license kept in

¹ 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 § 25-791(c)).

The Honorable Phil Mendelson

FIS: "Alcoholic Beverage Procedural and Technical Amendment Act of 2019," Draft Bill as shared with the Office of Revenue Analysis on February 25, 2019

safekeeping longer than sixty days to ensure the licensee is making reasonable progress² toward resuming operations. The bill also expands the information that must be included in a manufacturer's, wholesaler's, or retailer's application to include a telephone number and email address for the receipt of ABRA correspondence. These applicants must notify ABRA of any contact information changes.

The bill amends provisions related to mediation, protests, and settlement agreements. The bill clarifies the definition of an abutting property to include one where any portion of the property is immediately adjacent to any portion of the licensed property to prove standing for filing a protest.³ The bill prohibits a current license holder from protesting another license holder or seeker unless the current license holder resides in the neighborhood where the applicant is seeking licensure and is otherwise lawfully eligible to protest.⁴ The bill no longer requires the Board to deem an application withdrawn if a party to the mediation refuses to make herself or himself available to attend. The bill allows an applicant and any other person who could file a protest, but has not filed a protest, to enter into a written settlement agreement. The bill also expands what can be included in a settlement agreement to include a security plan, including whether the establishment will participate in the Metropolitan Police Department reimbursable detail program, thus authorizing the Board to enforce the security plan as part of the agreement.

Establishments located in commercial and manufacturing zones are currently exempt from on-premises retailer's noise restrictions.⁵ The bill updates this provision to conform to recent zoning changes by more broadly defining the restricted areas as commercial and manufacturing zones.

The bill also repeals an outdated exemption to Ward 4 class A and B off-premises retailer's licensing restrictions that applied to any license applications pending on September 30, 2004.

Financial Plan Impact

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the bill. ABRA and the Board can implement the clarifications and changes to the licensing, protest, and settlement procedures within its existing budgeted resources.

² The bill defines reasonable progress as taking deliberate steps to resume operations, such as seeking approvals from the Department of Consumer and Regulatory Affairs, the Office of Zoning, the Historic Preservation Board, or executing contractual agreements or leases.

³ D.C. Official Code § 25-601(1).

⁴ D.C. Official Code § 25-601.

⁵ D.C. Official Code § 25-725.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

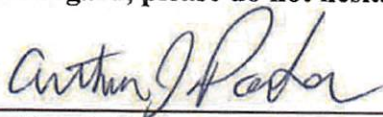
TO: Alana Intrieri
Executive Director
Office of Policy & Legislative Affairs

FROM: Arthur J. Parker
Acting Deputy Attorney General
Legal Counsel Division

DATE: February 21, 2019

SUBJECT: Legal Sufficiency Review of the “Alcoholic Beverage Procedural and
Technical Amendment Act of 2019”
(AE-19-061)

This is to Certify that this Office has reviewed the above-referenced proposed bill and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5565.



Arthur J. Parker