



2018 OCT -1 PM 9:08

OFFICE OF THE  
SECRETARY

**MURIEL BOWSER**  
MAYOR

OCT - 1 2018

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Ave., NW, Suite 504  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is a proposed resolution entitled the "Technical Amendment Approval Resolution of 2018."

The proposed resolution would amend existing sections and create new sections in Title 23 of the District of Columbia Municipal Regulations. Specifically, these proposed rules make technical amendments to conform to changes contained in the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-60; D.C. Official Code §§ 25-101, *et seq.*). The proposed rules also make other administrative and technical changes not related to the Act.


If you have any questions on this matter, please contact Donovan Anderson, Chairperson, Alcoholic Beverage Control Board, at (202) 442-4423.

Sincerely,

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

Muriel Bowser

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Chairman Phil Mendelson  
at the request of the Mayor

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PROPOSED RESOLUTION

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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10 To approve proposed rules of the District of Columbia Alcoholic Beverage Control Board  
11 that make technical amendments to Title 23 of the District of Columbia Municipal  
12 Regulations to conform to changes contained in the Omnibus Alcoholic Beverage  
13 Regulation Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-260;  
14 D.C. Official Code § 25-101 *et seq.*) and other administrative and technical  
15 changes not related to the Act.

16  
17 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That  
18 this resolution may be cited as the “Technical Amendment Approval Resolution of  
19 2018.”

20 Sec. 2. Pursuant to D.C. Official Code § 25-211(b)(2), the Council of the District  
21 of Columbia approves the District of Columbia Alcoholic Beverage Control Board’s  
22 Technical Amendment Second Notice of Proposed Rulemaking, as published at 65 DCR  
23 6845 (June 22, 2018). The proposed rulemaking would make technical amendments to  
24 Title 23 of the District of Columbia Municipal Regulations to conform to changes  
25 contained in the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016 and  
26 to make other administrative changes not related to the Act.

27 Sec. 3. The Secretary to the Council of the District of Columbia shall transmit  
28 a copy of this resolution, upon its adoption, to the Mayor, the Chairperson of the

29 Alcoholic Beverage Control Board, and the Administrator of the Office of Documents  
30 and Administrative Issuances.

31           Sec. 4.    The Council adopts the fiscal impact statement in the committee report  
32 as the fiscal impact statement required by section 4a of the General Legislative  
33 Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code  
34 § 1-301.47a).

35           Sec. 5.    This resolution shall take effect immediately.

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

**NOTICE OF SECOND PROPOSED 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) (2012 Repl. & 2017 Repl.)) 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 proposed rulemaking action to amend Chapters 1 (Provisions of General Applicability), 2 (License and Permit Categories), 3 (Limitations on Licenses), 5 (License Applications), 7 (General Operating Requirements), 8 (Enforcement, Infractions, and Penalties), 9 (Prohibited and Restricted Activities), 10 (Endorsements), 12 (Records and Reports), 13 (Transport of Beverages), 15 (Applications: Notice of Hearings Involving Licenses), 16 (Contested Hearings, Non-contested Hearings, Protest Hearings, and Procedures), and 17 (Procedural Requirements for Board Hearings) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The proposed amendments to Chapter 1 include clarifying the language in § 100 (Extension of Expiration Dates of Protested Licenses) and revising the definition of "Roll Call Hearings" in § 199 (Definitions). The proposed amendments to Chapter 2 include establishing the reports and records requirements for holders of a storage facility permit. Additionally, the proposed rulemaking would amend Chapter 2 by updating the renewal periods in § 207, and reorganizing the licensing fees, permit and endorsement fees, and the application fees located in §§ 208 through 210.

The proposed amendments to Chapter 3 include reducing the quota limit for off-premises retailer's licenses, Class B, in § 300 (Limitation on the Number of Class A and Class B Retailer's Licenses) and making clear that quota limits on off-premises retailer's license, Class A and B, do not apply to internet licenses (*i.e.*, off-premises retailer's licenses, class IA and IB). Additionally, § 302 (Licenses Near Schools, Colleges, Universities, and Recreation Areas) is amended by exempting off-premises retailer's licenses classes B which are located inside of a hotel and IA and IB, from the four hundred foot (400 ft.) restriction requirement.

The proposed amendments to Chapter 5 would clarify what documentation an applicant seeking to transfer a license to a new owner is required to submit to the Board. Chapter 7 would be amended by requiring the purchaser of an ABC license to apply for a Temporary Operating Retail Permit pending the Board's decision on an application to transfer the license to a new owner. In addition, the proposed rulemaking would amend § 705 (Hours of Sale and Delivery for Off-premises Retailer Licenses) by correcting the Sunday hours set forth in § 705.9 to make them consistent with the other hours listed in the subsection.

The proposed rulemaking would amend Chapter 8 by limiting the look-back period for mandatory warnings to four years as well as correcting the D.C. Official Code citation in Chapter 9. Chapter 10 is amended by clarifying that holders of tavern, restaurant, and hotel licenses, without an entertainment endorsement, are prohibited from repositioning the establishment's

furniture for purposes of creating a dance floor in excess of one hundred forty square feet (140 ft.<sup>2</sup>).

In accordance with the Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-260; D.C. Official Code §§ 25-101, *et al.* (2017 Supp.)), the proposed rulemaking would amend Chapter 12 by repealing § 1206. Furthermore, technical revisions are proposed for § 1208 (Retention and Inspection of Books and Records). The proposed rulemaking would also amend Chapter 13 by clarifying what information is required for importation permits in § 1301 (Importation Permits for Retailers of Alcoholic Beverages).

The proposed amendments to Chapter 15 include revising the notice requirements for marine vessels and off-premises retailer's licenses, class IA and IB, as provided for in § 1502 (Notice of an Application for a New License, Renewal of a License, or Transfer of a License to a New Location). Section 1502 is further amended by ensuring the language in the regulation is consistent with D.C. Official Code § 25-422 and repealing § 1502.4.

The proposed rulemaking would amend Chapter 16 by (1) requiring Groups of Five or More, or Groups of Three or More located in a moratorium zone, to designate a representative for the group in their protest letter; (2) allowing for the use of electronic signatures; (3) authorizing the Board to dismiss a party for the failure to appear at the Protest Status Hearing; (4) authorizing the expiration of a license in those instances where the licensee's second re-filed renewal application is dismissed due their failing to attend a hearing and the application is not reinstated; (5) prohibiting the use of recording devices or transcription during mediation proceedings; (6) authorizing the Board to deny a settlement agreement when either signatory to the agreement fails to respond to the Board's request for modifications within thirty (30) days; (7) allowing the Board to limit the duration of questioning during Protest Hearings; (8) establishing rules for consolidating cases as well as creating a rule on witnesses; (9) revising the Fact Finding Hearing requirements; and (10) allowing for the dismissal of an application due to the failure of the Applicant to pursue adjudication of an application.

Lastly, the proposed rulemaking amends Chapter 17 by amending (1) the service of papers requirement so that it conforms with the ABC Board's practices; (2) the requirements for obtaining a continuance; (3) the length of time ABRA has for complying with a request for the inspection of documents; (4) the requirements for serving parties to a proceeding with documentary evidence prior to the hearing; (5) the rules for filing motions with the ABC Board; (6) the requirements for submitting Proposed Findings for Fact and Conclusions of Law to the ABC Board; and (7) the requirement that six (6) copies of a petition for reconsideration, re-argument, or rehearing must be filed with the ABC Board.

On July 12, 2017, the Board voted six (6) to zero (0) to adopt the Technical Amendment Notice of Proposed Rulemaking (1<sup>st</sup> NOPR). The 1<sup>st</sup> NOPR was published in the *D.C. Register* on October 13, 2017, at 64 DCR 10320 for public comment. Contemporaneously with the public comment period, the Board held a public hearing on October 18, 2017. Between the public comment period and the public hearing, the Board received numerous comments concerning the 1<sup>st</sup> NOPR. Based on the comments it received, the Board made several substantive changes to the 1<sup>st</sup> NOPR for purposes of addressing the public's and the industry's concerns. These

substantive changes to the rulemaking necessitated the Board adopting a second proposed rulemaking.

On January 10, 2018, the Board voted five (5) to zero (0) to adopt the Technical Amendment Second Notice of Proposed Rulemaking (2<sup>nd</sup> NOPR). The 2<sup>nd</sup> NOPR was published in the *D.C. Register* for public comment on June 27, 2018, at 65 DCR 6845. The thirty (30)-day comment period ended on July 28, 2018. Thus, the 2<sup>nd</sup> NOPR is now ripe for the Board to consider submitting the rulemaking to the Council of the District of Columbia (Council) for the mandatory ninety (90)-day review period. *See* D.C. Official Code § 25-211(b)(1).

The Board received one (1) comment during the comment period for the 2<sup>nd</sup> NOPR. The District of Columbia Association of Beverage Alcohol Wholesalers (DCABAW) submitted a comment concerning the Board's proposed amendment to 23 DCMR § 205.6. Specifically, DCABAW contends that the phrase, "physically separated from any other use" is overbroad and requires clarification. The Board disagrees.

The proposed amendment to 23 DCMR § 205.6 reads as follows: "The Board-approved storage facility shall be physically secure, zoned for the intended use and physically separated from any other use." The proposed revision is consistent with the Board's ongoing practice regarding establishments that possess an ABC license and a storage permit. The Board's practice has not posed a problem in the past. The Board believes in transparency and simply seeks to memorialize its practice so that the public is aware. The Board has allowed, and will continue to allow, an ABC licensed establishment to be co-located with a storage facility so long as the space used for the storage facility is zoned for such usage, physically secure, and separate from the other licensed use so as to prevent any misuse, conflicts, or impropriety.

Having duly considered the DCABAW's comments but determining that no additional revisions are necessary, the Board on August 15, 2018, voted six (7) to zero (0), to transmit the 2<sup>nd</sup> NOPR to the Council for the ninety (90)-day period of review in accordance with D.C. Official Code § 25-311(b)(1).

No substantive changes have been made to the rulemaking since it was published as proposed in the *D.C. Register* for public comment. So that the Council can understand the changes that the Board made to the since the 1<sup>st</sup> NOPR, the comments that the Board received at that time and its responses thereto are included in this transmittal.

## **PUBLIC COMMENTS RECEIVED IN RESPONSE TO THE 1<sup>ST</sup> NOPR**

### **1. Advisory Neighborhood Commission 6D**

Advisory Neighborhood Commission (ANC) ANC 6D submitted written comments to the Board concerning the Board's modifications to § 1600. Specifically, ANC 6D requested clarification from the Board about who can have access to items discussed and information shared in the mediation. Instead of dismissing the settlement agreement when a party does not respond to the Board's modifications, ANC 6D suggested the Board should notify the parties of its intent to adopt the Board's modified language if it does not hear from the parties within thirty (30) days.

The ANC opposes the Board's modification to § 1610.7 because it believes the amendment would force the ANC to file protests for all license applications even if it does not intend to move forward with the protest because the parties are working on a settlement agreement. Lastly, ANC 6D recommends that the Board afford the parties the opportunity to show that its evidence is not redundant before it disallows the evidence.

## 2. Naima Jefferson, Resident

Ms. Jefferson submitted written comments which addressed a variety of sections. Regarding § 100.3, Ms. Jefferson contends that the public should receive notice of transfers of ownership, and thus, be allowed to comment. Ms. Jefferson objects to storage facility permit holders being allowed to offer tastings on the premises. She further contends that storage facility permit holders should submit quarterly reports as opposed to annual reports.

Additionally, Ms. Jefferson stated that she opposes the Board's amending the quotas for off-premises retailer's license Class B, as well as the four hundred foot (400 ft.) requirement for internet licenses and licensed establishments within hotels. Ms. Jefferson does not believe the Board should change the operating hours from 10 a.m. to 8 a.m. in § 705.9.

Ms. Jefferson also suggested several proposed changes. First, she recommends that the Board amend § 1000.1 to prohibit CR, DR, CH, and DH from moving furniture for purposes of creating a dance space larger than one hundred forty square feet (140 ft.<sup>2</sup>). Ms. Jefferson recommends that the Board further amend § 1502.5 to require applicants and licensees to place the placard in a prominent place that is not obstructed by other items. Additionally, Ms. Jefferson recommends the Board modify § 1602.3 to allow for persons who do not have e-mail. Further, Ms. Jefferson suggests that the Board should state that protest hearings are open to the public and transcribed. Lastly, she opposes the provision which would allow the Board to exclude evidence at Fact Finding Hearings.

## 3. D.C. Association of Beverage Alcohol Wholesalers

The D.C. Association of Beverage Alcohol Wholesalers (DCABAW) raised several concerns regarding the Board's revisions to § 205 (Storage Facility Permit and Off-premises Storage Permit). To address some of its concerns, DCABAW submitted alternative language for § 205.

First, the DCABAW is concerned that the proposed amendment would prohibit licensees whose licensed location is a storage facility from shipping alcoholic beverage products to Class B retailers. In this same vein, DCABAW wants clarification on the phrase, "separated from any other use" as it is used § 205.6. The DCABAW contends it would be burdensome for a holder of a storage facility permit to have to obtain a tasting permit if all they want to do is sell their products as opposed to allow for on-site consumption. Lastly, the organization argues that the annual reporting requirement is burdensome and duplicative since Chapter 12 (Records and Reports) require licensees to file reports.

DCABAW also addressed two other proposed amendments. The first is regarding § 1208.4. DCABAW seeks clarification as to whether the amendment would prohibit one from possessing

electronic records. Finally, DCABAW wants clarification as to whether the Board's amendment to § 1301.3 is expanding the list of entities which can possess an import permit as otherwise allowed for in D.C. Official Code § 25-119. If so, the organization submitted alternative language.

#### 4. National Nightlife Association of Washington

In response to the proposed rulemaking, the National Nightlife Association of Washington (NNAW) asked the Board to ensure that the ABRA's investigators understand and uniformly employ the definition of "dance floors" when ensuring licensees are in compliance with § 1000.3. The association supports the Board's amendment to § 1208.4 but wants to ensure that licensees are still able to possess electronic records. Lastly, the NNAW supports the amendment to § 1713.2 but asks that the Board require the Government disclose its evidence to respondents fourteen (14) days in advance so that respondents would have more time to raise objections if necessary.

#### 5. Kalorama Citizens Association

The Kalorama Citizens Association (KCA) submitted comments objecting to the Board's amendment to § 1602.3. The KCA opposes the Board's proposal which would require protestant groups to identify a designated representative when it files its protest petition. The association contends that oftentimes members of the group do not know one another, and thus, do not meet until the Roll Call Hearing. It is the KCA's position that protestant groups should be permitted to select their designated representative at the Roll Call Hearing.

#### 6. Advisory Neighborhood Commission 6B

Advisory Neighborhood Commission (ANC) 6B raised several concerns regarding the proposed rulemaking to the Board. First, it objects to the Board's amendment to § 805.3 which would set the "look back" period for warnings to four years. ANC 6B contends discretion should be given to allow ABRA investigators to look further back in an establishment's investigative history. ANC 6B, like ANC 6D, objects to the Board's amendment to § 1610.6 which would allow it to dismiss a protest if one or both parties fail to respond to the Board's modifications. ANC 6D suggests amending the language to say that the Board would adopt the modification(s) if the ANC consents.

In addition to objecting to the amendment to § 1610.6, ANC 6D objects to the amendment to § 1610.7 for the same reasons stated by ANC 6B. ANC 6B is concerned about situations where the Board rejects a settlement agreement and the ANC had not filed a protest. It is ANC 6B's practice not to always protest license applications, and thus, believes this amendment would encourage them to do so even if they have no intentions of pursuing it.

ANC 6B also noted that there appears to be a conflict between the amendment to §§ 1703.5 and 1703.7. Lastly, the ANC asks the Board for specifics as to what it would deem acceptable forms of proof.



7. Tony Caffrey

Tony Caffrey, a holder of an off-premises retailer's license class IA is concerned that internet licensees would be charged twice under the Board's amendment to § 205. Since internet licensees do not have store fronts, Mr. Caffrey is concerned that licensees like him would have to pay for the off-premises retailer's license class IA and storage facility permit. As such, he requested clarification from the Board.

8. Linden Neighborhood Association, Inc.

Robert Pittman, on behalf of the Linden Neighborhood Association, Inc., (LNA), submitted comments in response to the proposed rulemaking. First, the LNA suggested that the Board amend § 199.1 to allow for an expedited protest path for those protest proceedings involving parties that agree on the items being protested. Secondly, the LNA recommends amending § 208.1 to include a fee for the Clean Hands Certificate biannually. Additionally, LNA recommends that the Board consider waiving the two placard requirements under § 1502.5 for those establishments that do not have enough space for two placards. In that same vein, the association encouraged the Board to consider an alternative to requiring establishments to re-post their placards once the first one is damaged or destroyed. According to the LNA, establishments should not be held responsible if the placard is lost or destroyed.

To assist in the protest process, LNA recommends that applicants should receive a list of common issues that communities, civic associations, and the ANC raise in their protest petitions. LNA believes this may assist in easing or preventing a protest because the applicant may be encouraged to make operational changes voluntarily; thus, avoiding a protest. Lastly, LNA asked the Board to revisit the duration of settlement agreements. The association stated that the Board should consider whether a settlement agreement should continue where the neighborhood or other causes for the settlement agreement have changed or no longer exist.

9. Paula Edwards

Ms. Edwards submitted written comments to the Board asking it to, one, require storage facility permit holders, to submit quarterly reports as opposed to annual reports. She also asked the Board to retain the quotas in § 302.5, as well as the four hundred foot (400 ft.) restriction in §§ 302.9 and 302.10. Lastly, Ms. Edwards expressed her opposition to changing the time in which one could sell alcohol from 10 a.m. to 8 a.m.

10. Meridian Hill Neighborhood Association

The Meridian Hill Neighborhood Association (MHNA) encouraged the Board to revisit its licensing fees in § 208.8. Like the KCA, the MHNA opposes the proposed amendment to require protest groups to identify a designated representative when it files its protest report. The association expressed its support for the amendment to § 1602.4 to allow for electronic signatures, but it seeks more details from the Board as to what will be required.

In response to the proposed amendment to § 1604.3(e), the MHNA asks the Board for more information about what “good cause for failure to appear at a Protest Status Hearing, includes arriving after the hearing has concluded,” which it finds to be too vague. Along these same lines, MHNA believes that § 1614 needs more specificity as to when a party can object to the Board’s decision to consolidate cases. MHNA also expressed its support of the Board’s amendment to § 1615 but requests that it be applied prospectively and that ABRA ensure that witnesses not talk to one another during the hearing. Finally, the MHNA expressed its opposition to the amendment which would take into consideration attorneys who seek a continuance.

#### 11. Advisory Neighborhood Commission 2F

Advisory Neighborhood Commission (ANC) 2F submitted comments to express its position that the community should be afforded an opportunity to comment on a transfer of ownership application.

#### 12. Abigail Nichols

Ms. Nichols testified at the Board’s public hearing regarding §§ 199, 1604, and 1609. Specifically, Ms. Nichols expressed her position that the Board should require applicants and licensees to appear, personally, at the Roll Call Hearing so that the parties can meet one another. In addition, Ms. Nichols requested clarification as to whether parties can take notes during mediation proceedings and whether non-parties can attend the proceedings. Lastly, Ms. Nichols suggested that the Board provide additional guidance or regulations about settlement agreements, and that the Board should review ABRA’s enforcement practices especially as it relates to noise violations.

### **BOARD’S RESPONSE**

The Board appreciates all of the comments that it has received in response to the Technical Amendment Proposed Rulemaking. The Board has carefully reviewed and considered each of the comments. Although the Board elected not to adopt all of the suggested revisions, it did accept several of them which are substantive in nature. In light of the substantive changes that have been made to the proposed rulemaking, the Board has adopted a second proposed rulemaking which will be published for public comment in the *D.C. Register*.

#### 1. Chapter 1 – Provisions of General Applicability

Ms. Jefferson recommended that the Board amend § 100.3 to allow the public to protest Transfer of Ownership Applications. D.C. Official Code § 25-421 does not require the Board to provide notice of transfer of ownership application. Thus, the amendment Ms. Jefferson is seeking would require a statutory change by the Council of the District of Columbia (Council); not a regulatory amendment by the Board.

Similarly, the LNA asked the Board to amend § 199 by allowing for the creation of expedited protest hearings. The protest hearing process is governed by the regulations and Title 25 of the

D.C. Official Code. Title 25 does not recognize expedited protest hearings. In order for the Board to allow expedited protest hearings, the Council would need to amend the Code to include it as a type of hearing that may come before the Board.

## 2. Chapter 2 – License and Permit Categories

The Board received quite a few comments regarding its proposed amendments to § 205. After further consideration, the Board recognizes additional revisions are necessary. At the outset, it should be noted that storage facility permits are only required for owners of storage facilities storing alcoholic beverages; not the licensee. Mr. Caffrey, a holder of an off-premises retailer's license class IA for example, would not be required to obtain a storage facility permit (or incur additional fees) unless he is planning on storing the alcoholic beverages at a storage facility. If not, as the licensee, he would not be required to obtain the storage facility permit.

Regarding the proposed amendments to § 205, the Board agrees with the DCABAW that the rules should clarify that holders of storage facility permits are permitted to ship products to off-premises retailer's license class B holders. This is consistent with the Board's practice. Therefore, in the present rulemaking, the Board clarifies this in § 205.5.

The Board rejects the other suggested amendments to § 205 at this time. Regarding off-premises retailer's license class B licensees, Title 25 of the D.C. Official Code precludes them from being able to hold storage facility permits. Therefore, in order for a holder of an off-premises retailer's license class B to be able to hold a storage facility permit, the Council would need to amend the Code. Nothing in the proposed amendment would preclude a wholesaler whose licensed premise is the storage facility from being able to return damaged goods to the manufacturer. The Board does not believe requiring a storage facility permit holder to possess a tasting permit to sell, consume, or serve alcoholic beverages at the location is burdensome. Thus, the Board rejects DCABAW's argument against § 205.9. And although Ms. Jefferson does not believe storage facility permit holders should be allowed to serve alcohol at the warehouse, the law already allows it for private collectors who must comply with the District's alcoholic beverage laws pertaining to underage drinking. The Board's amendment is consistent with this practice.

Lastly, the Board does not agree with the argument that requiring storage facility permit holders to file reports would be burdensome or duplicative. The reporting requirements in Chapter 12 of Title 23 DCMR are distinct from those required by § 205.12. This subsection applies solely to storage facility permit holders and will include different information with some possible overlap. Furthermore, it should be noted that the current law also requires storage facility permit holders to submit reports to the Board. The proposed rulemaking clarifies when those reports are due. The Board does not believe quarterly filings would be necessary.

In response to the comments concerning the Board's licensing fees; the Board rejects them at this time. The Board has not made any changes to the licensing fees in this Technical rulemaking. The Board recognizes changes may be necessary, but it will address those in a separate rulemaking. Finally, the Board does not believe licensees should be required to submit a Clean Hands Certificate biannually as the LNA suggests. As such, the Board will not amend § 208.1.

### 3. Chapters 3 (Limitations on Licenses) and 5 (License Applications)

Both Ms. Edwards and Ms. Jefferson oppose the Board's amendments to §§ 302.5, 302.9, and 302.10. These amendments are conforming amendments. The Council changed the quota limit for Class B Retailer licenses and the four hundred foot (400 ft.) restriction for internet licenses and licensed establishments in hotels in the Alcoholic Omnibus Regulation Amendment Act of 2016 which took effect on April 7, 2017. The Board's amendment to these sections seeks to ensure that the Code and the regulations are consistent.

In that same vein, ANC 2F suggested that the Board amend § 501 to require applicants seeking to transfer ownership provide notice to the ANC. The Board rejects this recommendation. D.C. Official Code § 25-421 does not require that the Board to provide notice of transfer of ownership applications. What Ms. Jefferson and ANC 2F are seeking would require a statutory change by the Council; not a regulatory amendment by the Board.

### 4. Chapters 7 (General Operating Requirements) and 8 (Enforcement, Infractions, and Penalties)

The proposed rulemaking seeks to amend § 705.9 by changing 10 a.m. to 8 a.m. The Board received opposition to this change. The purpose of the change is to correct an error in the regulations. D.C. Official Code § 25-723 provides for 8:00 a.m., not 10:00 a.m. This amendment will correct the error and ensure that the regulations and the statute are consistent.

ANC 6B opposes the Board's amendment to § 805.3 which would create a four (4) year look back for warnings. The Board does not believe ABRA's Investigators should have the discretion to determine whether it will consider an establishment's investigative history from more than four (4) years ago. Additionally, applying a four (4) year look back is consistent with how the Board determines the fine amount for other violations. Thus, the Board does not believe the Board's practice should differ for warnings.

### 5. Chapter 10 (Endorsements)

The proposed rulemaking adds a new § 1000.3 which would clarify that holders of on-premises retailer's licenses, class CT and DT, are precluded from positioning furniture in such a way as to create a dance floor of greater than one hundred forty square feet (140 ft.<sup>2</sup>). Ms. Jeffers recommends amending § 1001.1 to prohibit restaurants and hotels from repositioning furniture to create a dance floor in excess of one hundred forty square feet (140 ft.<sup>2</sup>). The Board agrees with Ms. Jeffers' amendment and will make the change to the proposed § 1000.3 in the present rulemaking.

### 6. Chapters 12 Records and Reports)

The Board received comments concerning its amendment to § 1208.4. Title 25 of D.C. Official Code requires licensees to retain their original receipts and invoices. The law, however, allows for the retention of electronic copies so long as the originals are made available to ABRA upon

request. The Board finds the retention of electronic and original invoices to be sufficient, and therefore no longer believes it is necessary for licensees to also retain duplicates of their invoices.

#### 7. Chapter 13 (Transport of Beverages)

DCABAW commented on the Board's proposed amendment to § 1301. Specifically, it requested clarification on the Board's amendment which it believes may run afoul of D.C. Official Code § 25.119.

The Board's amendment to § 1301 does not seek to expand the list of licensees who are required to obtain an ABC license. The amendment, however, takes into account those manufacturers, wholesalers, and retailers that are not otherwise licensed by the District but shipping alcoholic beverages into the District under certain circumstances. The first is if they are delivering alcoholic beverages to federal property (*e.g.*, embassy) or any other property that is exempt from Title 25 of the D.C. Official Code, and thus, the Board's purview. The other situation involves federally-licensed importers who are shipping alcoholic beverages into the District. The Board does not have jurisdiction over these importers. Lastly, the amendment would apply to state licensed manufacturers or wholesalers who are delivering alcoholic beverages to a non-profit organization, charity, or for another temporary event licensed holder. The Board does not have jurisdiction over the manufacturer or wholesaler, but it does have jurisdiction over the individual hosting the event.

Ultimately, the Board is trying to ensure that alcoholic beverages are entering the District lawfully and trying to come up with a way to track these deliveries. Currently, deliveries which fall under these situations are not being tracked.

#### 8. Chapter 15 (Applications: Notice of Hearings Involving Licenses)

The Board received a few comments in response to its proposed amendments to § 1502 (Notice of an Application for a New License, Renewal of a License, or Transfer of a License to a New Location). Specifically, Ms. Jeffers recommended adding language to clarify that the licensee must place placards in a prominent and unobstructed spot. The LNA suggested that the Board waive the posting of two placards where an establishment does not have the room to post two notices on its building. The LNA also recommended that the Board reconsider how it handles situations where an establishment's placard is damaged or destroyed.

The Board appreciates Ms. Jeffers' and LNA's comments; however, the Board does not believe further action is necessary at this time. The proposed amendments are being made to conform with the recent changes to Title 25 of the D.C. Official Code. Further amendments to the notice requirement would need to be addressed by the Council by amending the Code as opposed to by the Board.

#### 9. Chapter 16 (Contested Hearings, Non-contested Hearings, and Protest Hearings and Procedures)

The majority of the comments the Board received from the public pertained to its amendments to Chapter 16. The Board agrees with Mr. Jeffers' comment that its amendment to § 1602.3 should take into consideration those persons who may not have e-mail addresses. This is consistent with the Board's practice. As such, in the present proposed rulemaking, the Board recognizes this scenario.

The Board understands KCA's and MHNA's concerns about the proposed amendment to §1602.4 which would require Groups of Five or More to name a designated representative in their protest petitions filed with the Board. Although they may find the requirement to be burdensome, the Board believes the benefits outweigh the burden.

Currently, ABRA staff mail notices to each member of the group, regardless of its size. This may not be taxing for small groups, but where there are a large number of group members this is quite expensive and it requires the use of a lot of paper. Although the KCA and MHNA suggest that group members do not ordinarily meet until the Roll Call Hearing and should be allowed to appoint a representative at that time, it is the Board's experience that not all members of the group attend the Roll Call Hearing. This is particularly the case with groups with more than ten (10) members. Thus, for the reasons stated, the Board rejects the KCA's and MHNA's suggestion that it not require protestant groups to identify a designated representative in the protest petition.

The Board notes that it omitted Groups of Three or More. If an establishment is located in a moratorium zone, District law allows Groups of Three or More to file a protest. The Board inadvertently omitted them in the proposed amendments to § 1602.4. Thus, the present proposed rulemaking includes this protestant group as well.

The MHNA also submitted comments in response to the Board's proposed amendment to § 1604. The amendment seeks to correct the erroneous removal of this subsection during the drafting of Technical Amendment 2016. The amendment is consistent with the Board's practice of recognizing parties who are late for their hearing so long as they arrive before the close of the record. Additionally, this language is consistent with § 1603.4(e).

The MHNA also requested clarification about what will be required for an acceptable electronic signature. The Mayor delegated to the Office of the Secretary (OS) the authority to set forth guidelines for acceptable electronic signatures. When these rules take effect, the Board will follow OS's electronic signatures requirements.

Ms. Jeffers suggested that the Board further amend § 1604.3 by stating that protest hearings shall be open to the public and transcribed. The Board rejects this amendment. The Board's proceedings are open to the public in accordance with the District's Open Meetings Act (D.C. Official Code §§ 2-571, et seq.) and D.C. Official Code § 25-204.01. Adding this requirement to § 1604.3 is not necessary.

ANC 6B and 6D raised their objection to the Board's amendment to §§ 1610.6 and 1610.7 which would give the Board the authority to dismiss a settlement agreement due to either party's failure to respond to the Board's modifications within thirty (30) days. ANC 6D suggests that the Board

should amend § 1610.6 to state that the Board will adopt the modification if neither party responds within thirty (30) days. Conversely, ANC 6B suggests the Board should amend the language to state that the Board will adopt the modification if the ANC approves of the change(s). The Board rejects both of these modifications.

The Board, historically, has been plagued by situations where either party to a settlement agreement either rejects the Board's modifications without explanation or fails to respond to the Board's modifications. These settlement agreements languish to the detriment of applicants and licensees because the Board cannot issue or renew their license until the issues concerning the settlement agreement are addressed. This is not fair to the applicant or the licensee, and it prevents the Board from resolving matters.

The Board appreciates ANC 6B's and ANC 6D's proposed amendments, but it does not believe that adopting either would be advantageous to the licensee or applicant who has entered into an enforceable agreement. The Board is not a party to the agreement, and thus, cannot incorporate its amendments without the parties' agreement. And although the Board must give great weight to the ANC, it does not agree with adopting amendments to the settlement agreement because the ANC agrees with the modification. This recommendation also does not take into account settlement agreements that are not with the ANC or where the ANC is the party that fails to respond. For these reasons, the Board rejects these modifications.

The Board also understands the argument against its amendment to § 1610.7. The amendment, however, is consistent with District law. D.C. Official Code § 25-446 provides that the parties to a protest can enter into settlement agreements. The Board has interpreted this language to allow parties to enter into settlement agreements notwithstanding the absence of a protest. The Board's interpretation of the statute has been upheld by the Court of the Appeals for the District of Columbia. *Kingman Park Civic Association, Et al. v. D.C. Alcoholic Beverage Control Board*, No. 110AA0831 (D.C. 2012)(unpublished). When the Board provides the public with notice of a new license application, renewal, substantial change, or transfer to a new location, persons who are legally permitted to file a protest under Title 25 of the D.C. Official Code may do so. If the application is not protested, the Board may grant the license subject to any conditions it imposes.

In lieu of filing a protest, the potential protestant and the licensee or applicant can enter into a settlement agreement if they choose to do so. When doing so, however, they should weigh the pros and cons. Alternatively, a protest could be filed and withdrawn upon the parties entering into a settlement agreement. After considering the ANCs' arguments, the Board is not persuaded that further amendment is necessary. The Board however, has amended § 1610 in the present rulemaking to clarify the Board's authority grant an application if a protest has not been filed subject to any Board-imposed conditions.

Regarding settlement agreements, the LPNA suggested that the Board revisit the duration of settlement agreements. It argues that situations change overtime; thereby, no longer necessitating the need for a settlement agreement. The Board agrees with the LPNA's position; however, the law already allows for what it is seeking. At any time, both parties to a settlement agreement may agree to amend or terminate their agreement with the Board's approval. In addition, during the license renewal period, a licensee can unilaterally petition the Board for the

termination or amendment of its settlement agreement so long as it meets the statutory requirements set forth in D.C. Official Code § 25-446. Thus, further clarification regarding this matter is not necessary.

In response to the Board's amendment to §1612.9, ANC 6D suggested that the Board allow parties to show that their evidence is not redundant. Similarly, Ms. Jefferson, in response to the amendments to § 1616.4, recommended that the Board not exclude any evidence introduced at the Fact Finding Hearing. By virtue of the Board's authority to manage and oversee matters before the Board, it already has the authority to determine what evidence it will allow or disallow. The Board recognizes that parties have the right to present argument in support of their position before it decides to admit or reject evidence. Thus, further amendments to these two subsections are not necessary.

The MHNA raises a few additional concerns regarding the Board's proposed amendments to chapter 16. In regards to § 1614, the MHNA contends that the proposed amendment does not specify how much time a party has to object to the Board's decision to consolidate its cases. This matter, however, is addressed in D.C. Official Code § 25-443(d) and 23 DCMR § 1719.1 which both provide that one has ten (10) days from receiving the Board's decision to request reconsideration. Since this is already addressed elsewhere, the Board does not believe it is necessary to add it to § 1614.

#### 10. Chapter 17 (Procedural Requirements for Board Hearings)

ANC 6B weighed in on the Board's amendments to § 1703. The Board agrees with the ANC, that as drafted, § 1703.5 and 1703.7 conflict. Thus, the Board has removed paragraph (d) from § 1703.7 in the present rulemaking. The Board, however, rejects the ANC's recommendation that further clarification is needed as to what are acceptable forms of proof of service. The regulation, itself, provides examples.

In addition to amending § 1703, the Technical Amendment Proposed Rulemaking sought to amend § 1705.2. Specifically, the Board sought to address those instances where attorneys request continuances the day of or shortly before a hearing. Sometimes these untimely requests are justifiable, but other times they are not. To address this problem, the Board sought to amend § 1705.2. The MHNA, however, opposes the amendment which it interprets as the Board treating attorneys different from other professionals or non-professionals. That is not accurate. The amendment does not preclude anyone from filing a continuance when an emergency arises. See D.C. Official Code § 25-441(d).

Finally, the NNAW weighed in on the Board's amendment to § 1713.2. Specifically, the Board sought to clarify that parties to show cause proceedings are required to share their evidence with the other side seven (7) days prior to the hearing. Currently, the law is silent on this. This amendment is to the respondent's benefit. The NNAW, however, requests ten (10) days' notice. Although the Board understands the NNAW's desire for additional time, it does not believe that it should deviate from its requiring the parties to disclose their evidence seven (7) days prior to the hearing.



**BOARD'S ACTION IN RESPONSE TO THE 1<sup>ST</sup> NOPR**

Due to the Board's decision to make amendments to the proposed rulemaking, many of which are substantive in nature, an additional round of notice and public comment are required. The present Technical Amendment Notice of Second Proposed Rulemaking was adopted by the Board on January 10, 2018, by a vote of five (5) to zero (0). The changes the Board discussed above are reflected in the present rulemaking in **bold underlined text**.

**Chapter 1, PROVISIONS OF GENERAL APPLICABILITY, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:**

**Section 100, EXTENSION OF EXPIRATION DATES OF PROTESTED LICENSES, is amended by amending §§ 100.3 and 100.4 as follows:**

- 100.3            In the case of protested applications for renewal of a license, the license shall continue in effect until the Board has rendered a final decision.
- 100.4            In the case of protested applications for a transfer to a new location, the license shall continue in effect only for purposes of the original location, and operations at the new location shall be prohibited until the Board has rendered a final decision.

**Section 199, DEFINITIONS, is amended by revising the definition of "Roll Call Hearing" as follows:**

**199            DEFINITIONS**

**Roll call hearing** – the proceeding specified in a placard posted at an applicant's premises. It is at this hearing that the applicant and the protestant(s) are introduced to each other and where the grounds for objection to the license application are read to the public.

**Chapter 2, LICENSE AND PERMIT CATEGORIES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:**

**Section 205, STORAGE FACILITY PERMIT AND OFF-PREMISES STORAGE PERMIT, is amended in its entirety to read as follows:**

**205            STORAGE FACILITY PERMIT AND OFF-PREMISES STORAGE PERMIT**

- 205.1            A storage facility permit shall allow the holder to establish a bonded warehouse in the District of Columbia for the storage of alcoholic beverages by the holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, Class C, Class D, or a Caterer's license who possesses an off-premises storage permit, or for the accounts of other persons.

- 205.2 The holder of a storage facility permit shall be authorized to handle alcoholic beverages. The handling of alcoholic beverages under this subsection shall include packaging and repackaging services; bottle labeling services; creating buckets or variety packs that may include non-alcoholic products; and picking, packing, and shipping alcoholic beverage orders directly to the consumer.
- 205.3 The holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, Class C, Class D, or a Caterer's license shall obtain an off-premises storage permit to store alcoholic beverages at a storage facility approved by the Board.
- 205.4 The fee for the off-premises storage permit shall be in accordance with 23 DCMR § 209.
- 205.5 Alcoholic beverages stored in a bonded storage facility pursuant to this section may be removed from the storage facility only for the purpose of being (a) exported from the District; (b) shipped to a holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, B, C, or D, or a Caterer's license located in the District; (c) returned to a bonded storage facility, (d) shipped or delivered to a consumer, or (e) returned to a private collector who is a tenant.
- 205.6 The Board-approved storage facility shall be physically secure, zoned for the intended use and physically separated from any other use.
- 205.7 Delivery of alcoholic beverages to a Board-approved storage facility shall create a bailment in favor of the holder of a storage facility permit.
- 205.8 Warehousing of alcoholic beverages by any person other than a holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, C, or D, a Caterer's license, or a private collector with a tenant agreement is prohibited.
- 205.9 The sale, service, or consumption of alcoholic beverages at a Board-approved storage facility shall be prohibited without a tasting permit.
- 205.10 The holder of a storage facility permit shall post, in a conspicuous place, the following:
- (a) A warning sign, in accordance with the requirements set forth in § 719.1;
  - (b) A copy of the storage permit; and
  - (c) A copy of the Wholesaler's, Manufacturer's, Retailer's Class A, C, or D, or the Caterer's license in its licensed portion of the Board-approved storage facility.

- 205.11 The holder of the storage facility permit shall, upon request, provide an ABRA investigator or member of the Metropolitan Police Department with its permit for inspection.
- 205.12 The holder of a Manufacturer's license, Wholesaler's license, Retailer's license Class A, C, or D, or a Caterer's license, that stores alcoholic beverages at a storage facility shall maintain and report to the Board, on an annual basis, the following:
- (a) Records identifying the kind and quantity of alcoholic beverages being stored at the Board-approved storage facility; and
  - (b) The movement of alcoholic beverages to and from the storage facility.
- 205.13 The Board shall have the right to inspect the warehouse of a storage facility permit holder as it may deem necessary for the proper regulation of the storage of alcoholic beverages.
- 205.14 A storage facility permit shall be valid for three (3) years.

**Section 207, LICENSURE PERIODS, is amended to read as follows**

**207 LICENSURE PERIODS**

- 207.1 Except as provided for in § 207.2, the following licenses or permits issued by the Board shall be valid for three (3) years:
- (a) Manufacturer's license;
  - (b) Wholesaler's license;
  - (c) Off-premises Retailer's license;
  - (d) On-premises Retailer's license;
  - (e) Caterer's license;
  - (f) Solicitor's license;
  - (g) Farm winery retail licenses;
  - (h) Alcohol certification permit;
  - (i) Tasting permit; and
  - (j) Storage facility permit.

207.2 Licenses issued by the Board shall be valid for less than three (3) years in the following instances:

- (a) When suspended or revoked;
- (b) In the case of Temporary festival, and farmer's market licenses;
- (c) When the license takes effect on a date in between the dates established by the Board for the regular licenses period of each license class, in which case the license shall be valid only until the end of the licensure period; and
- (d) In the case of stipulated licenses.

207.3 The three (3)-year renewal period for each license listed below shall occur sequentially every three (3) years starting with the following dates:

<b>License Class</b>	<b>Licensure Period</b>	<b>Ending Year</b>
Manufacturer A	Apr. 1 to Mar. 31	2018
Wholesaler A	Apr. 1 to Mar. 31	2018
Retailer A	Apr. 1 to Mar. 31	2018
Manufacturer B	Oct. 1 to Sept. 30	2020
Wholesaler B	Oct. 1 to Sept. 30	2020
Retailer B	Oct. 1 to Sept. 30	2020
Retailer CR	Apr. 1 to Mar. 31	2019
Retailer CT	Oct. 1 to Sept. 30	2019
Retailer CN	Oct. 1 to Sept. 30	2019
Retailer CH	Apr. 1 to Mar. 31	2019
Multipurpose facility CX	Apr. 1 to Mar. 31	2019
Common Carrier CX	Apr. 1 to Mar 31	2019
Retailer Arena CX	Apr. 1 to Mar 31	2019
Retailer DR	Apr. 1 to Mar. 31	2019
Retailer DT	Oct. 1 to Sept. 30	2019
Retailer DN	Oct. 1 to Sept. 30	2019
Retailer DH	Apr. 1 to Mar. 31	2019
Multipurpose facility DX	Apr. 1 to Mar. 31	2019
Common carrier DX	Apr. 1 to Mar 31	2019
Caterer	Apr. 1 to Mar 31	2019

Solicitor	July 1 to June 30	2020
Club CX	Apr. 1 to Mar 31	2019
Club DX	Apr. 1 to Mar 31	2019
Farm winery retail	Oct. 1 to Sept. 30	2018
Alcohol certification provider permit	July 1 to June 30	2020

**Section 208, LICENSE FEES, is amended in its entirety to read as follows:**

**208 LICENSE FEES**

208.1 All license fees shall be paid by credit card, certified check, money order, business check, attorney's check, or personal check payable to ABRA. Applicants and licensees shall pay the annual license fees specified by the Board in the following manner:

- (a) The fee for the first year shall be paid at the time an application is filed, but shall be returned to an applicant, minus the prescribed processing fee, if the application is denied; and
- (b) The fees for the second and third year shall be paid no later than one (1) and two (2) years, respectively, from the date of the issuance of the license; provided, that a licensee may pay the second and third year fees when the first year fee is paid. The payment of the second and third year license fees shall not require the filing of a clean-hands certificate by the applicant.

208.2 The Board may impose a late fee upon a licensee for failure to timely remit the second or third year fee, or the renewal fee, in the amount of fifty dollars (\$50) for each day after the due date of payment. The total amount of the late fee to be paid to ABRA shall not exceed the annual cost of the license. The Board may suspend a license until the licensee pays the second or third year fee and any additional fee imposed by the Board for late payment. A license not renewed timely shall be deemed expired and the licensee shall not be permitted to sell or serve alcoholic beverages.

208.3 The Board may suspend a license, permit, or endorsement where payment was made by the applicant to ABRA with a check returned unpaid. The applicant, in addition to any late fees imposed by the Board pursuant to § 208.2, shall also be charged by ABRA with a one hundred dollar (\$100) returned check fee.

208.4 The annual license fees for manufacturer's licenses shall be as follows:

<b>Class</b>	<b>Fee</b>
Manufacturer's class A (rectifying plant)	\$ 6,000
Manufacturer's class A (distillery)	\$ 6,000

Manufacturer's class A (distillery producing more than 50% non-beverage alcohol)	\$ 3,000
Manufacturer's class A (winery)	\$ 1,500
Manufacturer's class B (brewery)	\$ 5,000
Manufacturer's class C (alcohol-infused confectionary food products)	\$ 1,000

208.5 The annual license fees for wholesaler's licenses shall be as follows:

Class	Fee
Wholesaler's class A	\$ 5,200
Wholesaler's class B	\$ 2,600

208.6 The annual license fees for off-premises retailer's licenses shall be as follows:

Class	Fee
Retailer's class A	\$ 2,600
Retailer's class B	\$ 1,300
Internet retailer's class IA	\$ 2,600
Internet retailer's class IB	\$ 1,300
Farmer's market class J	\$ 300
Farmer's market class K	\$ 500

208.7 The annual license fees for all Class C licenses, except the DC Arena **and the soccer stadium**, shall be based on its capacity load, which shall be defined as the maximum number of patrons that may be in the establishment at any one time. The holder of a Class C license shall submit both its capacity placards identifying the maximum number of patrons and certificate of occupancy identifying the number of seats from the Department of Consumer and Regulatory Affairs with both its initial and renewal license applications.

208.8 The annual license fees are as follows:

Class	Capacity	Fee
CR restaurant	99 or fewer	\$1,000
CR restaurant	100 to 199	\$1,300
CR restaurant	200 to 499	\$1,950
CR restaurant	500 or more	\$2,600
CT tavern	99 or fewer	\$1,300
CT tavern	100 to 199	\$2,080
CT tavern	200 or more	\$3,120
CN nightclub	99 or fewer	\$1,950
CN nightclub	100 to 199	\$2,600
CN nightclub	200 to 499	\$3,250

CN nightclub	500 to 999	\$4,550
CN nightclub	1,000 or more	\$5,850
CH hotel	99 or fewer guest rooms	\$2,600
CH hotel	100 or more guest rooms	\$5,200
CB bed and breakfast		\$ 1,000
CX club		\$1,950
CX multipurpose facility		\$1,950
CX marine vessel, single vessel		\$1,950
CX marine vessel line, for 3 or fewer vessels and dockside waiting areas		\$3,250
For each additional vessel or dockside waiting area		\$1,950
CX railroad dining or club car, single car		\$650
CX railroad company, all dining or club cars		\$1,950

208.9 The annual license fees for all Class D licenses, except the DC Arena and the soccer stadium, shall be based on its capacity load, which shall be defined as the maximum number of patrons that may be in the establishment at any one time. The holder of a Class D license shall submit both its capacity placards identifying the maximum number of patrons and certificate of occupancy identifying the number of seats from the Department of Consumer and Regulatory Affairs with both its initial and renewal license applications.

208.10 The annual license fees are as follows:

Class	Capacity	Fee
DR restaurant	99 or fewer	\$600
DR restaurant	100 to 199	\$780
DR restaurant	200 to 499	\$1,170
DR restaurant	500 or more	\$1,560
DT tavern	99 or fewer	\$1,000
DT tavern	100 to 199	\$1,300
DT tavern	200 or more	\$1,950
DN nightclub	99 or fewer	\$1,300
DN nightclub	100 to 199	\$1,625
DN nightclub	200 to 499	\$1,950
DN nightclub	500 to 999	\$2,600
DN nightclub	1,000 or more	\$4,550
DH hotel	99 or fewer guest rooms	\$1,300
DH hotel	100 or more guest rooms	\$2,600

DB bed and breakfast	\$ 650
DX club	\$650
DX multipurpose facility	\$650
DX marine vessel, single vessel	\$975
DX marine vessel line, for 3 or fewer vessels and dockside waiting areas	\$1,300
For each additional vessel or dockside waiting area	\$650
DX railroad dining or club car, single car	\$325
DX railroad company, all dining or club cars	\$650

208. 11 The daily fee for a Temporary license shall be as follows:

Class	Fee
Temporary class F	\$ 130
Temporary class G	\$ 300

208. 12 The annual fee for a Solicitor's and a Manager's license shall be as follows:

Type	Fee
Solicitor's license	\$ 325
Manager's license	\$ 130

208. 13 The annual fee for a Class Arena CX license shall be as follows:

Class	Fee
Retailer's license Class Arena CX <del>multipurpose facility</del>	\$ 10,000

208.14 The annual license fee for a Catering license shall be based on the caterer's annual revenue for the previous year as follows:

Class	Gross Annual Revenue	Fee
Caterer	More than \$1,000,000 per year gross annual revenue	\$5,000
Caterer	\$1,000,000 or less per year gross annual revenue	\$4,000
Caterer	\$500,000 or less per year gross annual revenue	\$3,000
Caterer	\$300,000 or less per year gross annual revenue	\$2,000
Caterer	\$200,000 or less per year gross annual revenue	\$1,500
Caterer	\$100,000 or less per year gross annual revenue	\$1,000
Caterer	\$50,000 or less per year gross annual revenue	\$750
Caterer	\$25,000 or less per year gross annual revenue	\$500

208. 15 The annual fee for a Farm Winery license, a Pub Crawl license, and a festival license shall be as follows:



Type/Class	Fee
Farm winery retailer's license	\$ 2,500
Pub crawl license	\$ 500
Festival license class H	\$ 1,000
Festival license class I	\$ 2,000

208.16 For purposes of determining the catering fee set forth in § 208.14, the applicant, as part of its submitted application, shall provide the Board with a signed affidavit on a form provided by ABRA, which shall include a statement of the applicant's annual gross revenue from catering for the previous year, as well as any additional supporting documentation necessary to verify the statement of the applicant.

208.17 The submission of a knowingly false or misleading affidavit shall be grounds for the Board to order the licensee to show cause why the license should not be suspended or revoked, or a civil fine imposed based upon the primary tier schedule set forth in D.C. Official Code § 25-830(c).

208.18 The fee for a duplicate license or replacement of a lost license shall be ten dollars (\$10).

**Section 209, PERMIT AND ENDORSEMENT FEES, is amended in its entirety to read as follows:**

**209 PERMIT AND ENDORSEMENT FEES**

209.1 The fee for permits and endorsements shall be as follows:

Permit/Endorsement	Fee
Importation permit	\$ 5
Pool buying group agent importation permit	\$ 1,000/year
Tasting permit for off-premises retailers, wholesalers, manufacturers, and private collectors	\$ 130/year
Brew pub permit	\$ 3,900/year
Storage facility permit	\$ 300/year
Off-premises storage permit	\$ 25/year
Alcohol certification provider permit	\$ 100
Personal auction permit	\$ 30
Nonprofit corporation auction permit	\$ 30
Wine and beer purchasing permit	\$ 35
Wine pub permit	\$ 5,000/year
Distillery pub permit	\$7,500/year
On-site sales and consumption permit	\$ 1,000/year
Sidewalk café or summer garden endorsement	\$ 75/year
Entertainment endorsement (twenty percent (20%) of the base license fee)	20%
Amendment to a license which results in an inspection	\$ 50

**Section 210, APPLICATION FEES, is amended in its entirety to read as follows:**

**210 APPLICATION FEES**

210.1 Application fees shall be as follows:

<b>Application</b>	<b>Fee</b>
Filing of a new license (excluding manager and solicitor license applications)	\$ 75
Transfer of a license to a new owner	\$ 250
Transfer of a license to a new location	\$ 250
Change of officer, director, stockholder, or general or limited partner in a partnership	\$ 100
Corporate or trade name change	\$ 50
Keg registration (six dollars (\$6) per keg registration book. A registration book shall be valid for the registration of ten (10) kegs	\$ 6
Stipulated license	\$100

**Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR is amended as follows:**

**Section 300, LIMITATION ON THE NUMBER OF CLASS A AND CLASS B RETAILER'S LICENSES, is amended by (a) amending § 300.2 and (b) adding new §§ 300.3 through 300.5 to read as follows:**

- 300.2 The two hundred seventy-five (275) quota limit set forth in D.C. Official Code § 25-331(b) shall not apply to Class B Retailer's license renewal applications.
- 300.3 Off-premises Retailer's license Class IA shall not be counted toward the quota limit set forth in § 300.1.
- 300.4 Off-premises Retailer's license Class IB shall not be counted toward the quota limit set forth in § 300.2.
- 300.5 The quotas set forth in § 300.1 and 300.2 shall not prohibit the issuance of a license for an off-premises retailer's license, Class IA or IB.

**Section 300, LIMITATION ON THE NUMBER OF CLASS A AND CLASS B RETAILER'S LICENSES, is further amended by renumbering the former §§ 300.3 through 300.6 as §§ 300.6 through 300.9.**

**Section 302, LICENSES NEAR SCHOOLS, COLLEGES, UNIVERSITIES, AND RECREATION CENTERS, is amended by adding new §§ 302.9 and 302.10.**

- 302.9 The four hundred foot (400 ft.) restriction shall not apply to an application for a Retailer's license, Class IA or IB.

302.10 The four hundred foot (400 ft.) restriction shall not apply to an applicant for a Retailer's license Class B if the applicant's establishment will be located inside of a hotel and will have no direct public access to the street or the outside of the hotel's building.

**Section 501, REQUIRED STATEMENTS, of Chapter 5, LICENSE APPLICATIONS, of Title 23 DCMR is amended by amending § 501.3 to read as follows:**

501.3 An applicant requesting the transfer of a license to a new owner pursuant to D.C. Official Code § 25-405 shall submit a completed transfer application and any documentation and other written statements evidencing the legal transfer of the license, including the financial details surrounding the transfer, and establishing to the Board's satisfaction that the new owner meets all of the qualifications of D.C. Official Code § 25-301.

**Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23 DCMR is amended as follows:**

**Section 703, TEMPORARY OPERATING RETAIL PERMIT, is amended by amending § 703.1 to read as follows:**

703.1 The purchaser of an ABC licensed establishment that seeks to continue business operations while awaiting Board approval on a transfer of ownership application where no substantial change will occur shall apply to the Board for a permit to temporarily operate under the license pursuant to the following conditions:

- (a) The transfer application must be filed with or before the application for temporary authority;
- (b) The subject premises must not have been closed nor the sale or service of alcoholic beverages discontinued during the thirty (30) days immediately prior to the filing of the permit application; and
- (c) That no substantial changes to the licensed premises will occur.

**Section 705, HOURS OF SALE AND DELIVERY FOR OFF-PREMISES RETAIL LICENSES, is amended by amending § 705.9(c) to read as follows:**

705.9(c) 3:00 a.m. and 8:00 a.m., on Sunday.

**Section 805, WARNINGS, of Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23 DCMR is amended by amending § 805.3 to read as follows:**

805.3 A licensee entitled to a mandatory administrative written warning for a first violation shall not be entitled to a mandatory administrative written warning for a second or subsequent violation of the same offense committed within four (4) years of issuance of the first mandatory administrative written warning.

**Section 905, RESTRICTIONS ON ENTRANCE INTO LICENSED PREMISES, of Chapter 9 (PROHIBITED AND RESTRICTED ACTIVITIES) of Title 23 DCMR is amended by amending § 905.1 to read as follows:**

905.1 The admittance requirement of those persons displaying a valid identification as set forth in D.C. Official Code § 25-782(d) shall not preclude establishments from enforcing a dress code or an age restriction, provided those establishments do not discriminate on any basis prohibited by Chapter 14 of Title 2 of the D.C. Official Code.

**Chapter 10, ENDORSEMENTS, to Title 23 DCMR is amended as follows:**

**Section 1000, ENTERTAINMENT ENDORSEMENT, is amended by adding a new § 1000.3 to read as follows:**

1000.3 A licensee under a Class C/R, D/R, C/T, D/T, C/H, or D/H license that does not possess an entertainment endorsement, shall not position furniture in a manner that creates a dance floor area greater than one hundred forty square feet (140 ft.<sup>2</sup>).

**Section 1000, ENTERTAINMENT ENDORSEMENT, is further amended by renumbering the former §§ 1000.3 through 1000.5 as §§ 1000.4 through 1000.6.**

**Chapter 12, RECORDS AND REPORTS, of Title 23 DCMR is amended as follows:**

**Section 1206, MANUFACTURER'S REPORTS, is amended in its entirety to read as follows:**

**1206 REPEALED**

**Section 1208, RETENTION AND INSPECTION OF BOOKS AND RECORDS, is amended by amending §§ 1208.4 and 1208.5 as follows:**

1208.4 The holder of a Retailer's, Manufacturer's, or Wholesaler's license may maintain its records at a location in the District of Columbia other than the licensed premises with the approval of the Board. Any requested location must: (1) maintain the original invoices; and (2) be available for inspection by ABRA investigators at any time during business hours.

1208.5 The holder of a Retailer's license may maintain its original invoices outside of the District of Columbia upon a determination by the Board that good cause exists. However, duplicate invoices must be maintained in the District of Columbia at either the licensed premises or a location approved by the Board and the applicant is responsible for providing the original invoices to the Board within three (3) days of receiving a written request from the Board. Failure to make the original

invoices available to the Board within three (3) days of its written request shall constitute a violation of § 1208.1.

**Section 1301, IMPORTATION PERMITS FOR RETAILER'S OF ALCOHOLIC BEVERAGES, of Chapter 13, TRANSPORT OF BEVERAGES, of Title 23 DCMR is amended by (a) amending § 1301.1 and (b) adding a new § 1301.3 to read as follows:**

1301.1 An importation permit issued under D.C. Official Code § 25-119 to the holder of a Retailer's license Class A, B, C, or D, or any other entity authorized to obtain an importation permit in accordance with 23 DCMR § 1302.3 must bear the full brand or trade name of the alcoholic beverage to be imported. If the brand of alcoholic beverage to be imported is listed by a licensed manufacturer or wholesaler under these regulations, then upon application made to the Board, the retailer shall certify that the brand of alcoholic beverage sought to be imported is not available from a licensed manufacturer or wholesaler in sufficient kind or quantity to reasonably satisfy the immediate needs of the licensee.

1301.3 An importation permit issued under D.C. Official Code § 25-119 shall be obtained by:

- (a) Any unlicensed alcohol manufacturer, wholesaler, or retailer located outside of the District of Columbia that ships alcohol to the property of an official embassy, federal exempt property, or any other property exempt from Title 25 of the D.C. Official Code. Federal property exempt from Title 25 includes, but is not limited to, property under the control of the National Park Service and the Smithsonian Institute;
- (b) A federally licensed importer that does not hold a District of Columbia alcohol license importing alcohol into the District of Columbia. The issuance of this permit shall be conditioned on the importer until an appropriate District alcohol license is obtained; and
- (c) A state licensed manufacturer or wholesaler that does not hold a District of Columbia alcohol license donating alcoholic beverages to a non-profit organization, charity, or for a temporary event license holder.

**Section 1502, NOTICE OF AN APPLICATION FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO A NEW LOCATION, is amended in its entirety to read as follows:**

**1502 NOTICE OF AN APPLICATION FOR A NEW LICENSE, RENEWAL OF A LICENSE, OR TRANSFER OF A LICENSE TO A NEW LOCATION**

1502.1 The provisions of this section shall govern notice to the public of all applications for new licenses, renewals, or a transfer to a new location, including Manufacturer, Wholesaler, and Retailer licenses, but shall not apply to Solicitor's

licenses, Manager's licenses, Caterer's licenses, Wholesaler's licenses, or to Temporary licenses.

1502.2 Upon acceptance of an application, the Board shall establish the date for a roll call hearing on the application, which shall be at least forty-five (45) days after the application is accepted.

1502.3 At least forty-five (45) days prior to the roll call hearing, the Board shall give notice of an application to the entities set forth in D.C. Official Code § 25-421(a). This notice requirement shall not apply to renewal applications in those instances where the Applicant's new license or transfer to a new location application has a forty-five (45) day public comment period ending within thirty (30) days of the renewal deadline for that license class.

1502.4 Repealed.

1502.5 Except as provided for in §§ 1502.6 and 1502.7, at least forty-five (45) days before the roll call hearing, the applicant shall post at least two (2) notice placards, provided by the Board, in conspicuous places on the outside of the establishment for the duration of the protest period.

1502.6 Subsection 1502.5 shall not apply to new or renewal license applications for a common carrier license for a passenger-carrying marine vessel that does not possess a physical location in the District of Columbia.

1502.7 At least forty-five (45) days before the roll call hearing, the applicant for a new or renewal license application for a Retailer's license Class IA or IB shall have a copy of the placard notice provided by the Board on its website.

1502.8 The Board shall inspect the premises at least once before the date of the roll call hearing specified on the notice to ensure that the placards continue to be prominently and visibly displayed to the public. If the placards have been removed or are posted in a manner not visible from the street, the establishment shall be re-advertised and replacarded for a further forty-five (45) calendar day period.

**Chapter 16, CONTESTED HEARINGS, NON-CONTESTED HEARINGS, PROTEST HEARINGS AND PROCEDURES, of Title 23 DCMR is amended as follows:**

**Section 1602, FILING A PROTEST, is amended by (a) amending § 1602.3 and (b) add a new § 1602.4 to read as follows:**

1602.3 All protests shall be signed by the protestant and contain the protestant's full name, e-mail address, if any, and mailing address. Protestant groups of five or more residents or property owners of the District sharing common ground, or in a moratorium zone established under D.C. Official Code § 25-351, a

**group of no fewer than three residents or property owners of the District, shall identify a designated representative(s) who shall represent the group and receive correspondence from the Board on the group's behalf.**

1602.4 For purposes of § 1602.3, electronic signatures on protest letters are permitted.

**Section 1602, ROLL CALL HEARING, is further amended by renumbering the former § 1602.4 as § 1602.5.**

**Section 1604, PROTEST HEARING STATUS, is amended by adding a new § 1604.3 follows:**

1604.3 Failure to appear at the Protest Status Hearing either in person or through a designated representative may result in denial of the license application or dismissal of a protest, unless, in the discretion of the Board, good cause is shown for the failure to appear. Examples of good cause for failure to appear include, but are not limited to:

- (a) Sudden, severe illness or accident;
- (b) Death or sudden illness in the immediate family, such as spouse, partner, children, parents, or siblings;
- (c) Incarceration;
- (d) Severe inclement weather; or
- (e) Arriving after the Protest Status Hearing has concluded.

**Section 1604, PROTEST HEARING STATUS, is further amended by renumbering former § 1604.3 as § 1604.4.**

**Section 1606, PARTY DISMISSAL, is amended by amending § 1606.5 as follows:**

1606.5 In the event that an applicant's re-filed second renewal application is dismissed for failure to appear at a hearing and not reinstated by the Board for good cause, the license renewal application shall be denied and the license expired. The applicant shall be required to file a new license application, unless prohibited by a liquor license moratorium, and shall not be permitted to file a third license renewal application.

**Section 1609, MEDIATION, is amended by adding a new § 1609.2 to read as follows:**

1609.2 Mediation proceedings are confidential to the extent agreed to by the parties or provided by other law or rule of the District of Columbia. Mediation proceedings shall not be recorded or transcribed in any fashion. Statements made during

mediation and documents and other evidence disclosed during mediation are not discoverable unless otherwise required by District or Federal law.

**Section 1609, MEDIATION, is further amended by renumbering former §§ 1609.2 and 1609.3 as §§ 1609.3 and 1609.4.**

**Section 1610, SETTLEMENT AGREEMENTS, is amended by adding new §§ 1610.6 through 1610.8 to read as follows:**

1610.6 The Board shall issue an Order denying the settlement agreement if the parties to a settlement agreement reject the modifications proposed by the Board and fail to submit a new settlement agreement in accordance with § 1610.5 or fail to respond to the Board's modifications within thirty (30) days of receiving notice of the modifications.

1610.7 If the Board issues an Order denying the settlement agreement pursuant to § 1610.6 and a protest has been filed against the Application, the matter will be scheduled for a Protest Hearing.

**1610.8 If the Board issues an Order denying the settlement agreement pursuant to § 1610.6, and a protest was not filed against the Application, the Board may grant the Application in accordance with D.C. Official Code § 25-104 if the applicant or licensee meets the requirements set forth in Title 25 of D.C. Official Code.**

**Section 1610, SETTLEMENT AGREEMENTS, is further amended by renumbering former § 1610.6 as § 1610.9.**

**Section 1612, PROTEST HEARINGS, is amended by adding new § 1612.10 to read as follows:**

1612.10 The Board may, on a motion from either party or on its own motion, limit the number of persons who may testify on behalf of the Applicant, Licensee, or protestant if the Board determines the testimony would be redundant.

**A new section 1614, CONSOLIDATED HEARINGS BEFORE THE BOARD, is added to read as follows:**

**1614 CONSOLIDATED HEARINGS BEFORE THE BOARD**

1614.1 A consolidated protest hearing or show cause hearing may be held if the issues to be considered at the hearing are the same issues that are involved in another proceeding with the same Applicant pending before the Board.

1614.2 It is within the discretion of the Board to grant or deny a party's request for consolidation. In considering the request, the Board may consider factors such as



whether the issue(s) may be more efficiently decided if the hearings are combined.

- 1614.3 In considering a party's request for consolidation, the Board must take into account the adjudication deadlines for each case and may require a party to waive the adjudication deadline associated with one (1) or more cases if consolidation otherwise prevents the Board from deciding all of the cases at issue within their respective deadlines.
- 1614.4 The Board may also propose on its own motion to consolidate two (2) or more cases in one (1) hearing for administrative efficiency.
- 1614.5 Before consolidating a hearing, the Board must notify the parties of its intention to do so, to provide the parties with an opportunity to file any objection.
- 1614.6 If the Board decides to hold a consolidated hearing, the Board may make either a consolidated decision and record or a separate decision and record on each issue. The Board shall ensure that any evidence that is common to all cases and material to the common issue to be decided is included in the consolidated record or each individual record, as applicable.

**A new section 1615, RULE ON WITNESSES, is added to read as follows:**

**1615 RULE ON WITNESSES**

- 1615.1 At the request of a party, or on its own motion, and subject to § 1615.2, the Board shall order witnesses excluded so that they will not hear the testimony of other witnesses.
- 1615.2 Notwithstanding § 1615.1, the following persons shall not be excluded from hearings before the Board:
- (a) The Applicant or the Licensee;
  - (b) The Designated Representative for a party to a proceeding; or
  - (c) Any person whose presence is shown by a party to be essential to the presentation of his or her case.

**Former Section 1614, FACT-FINDING HEARINGS, is amended by (a) renumbering it § 1616 and (b) amending it in its entirety to read as follows:**

**1616 FACT-FINDING HEARINGS**

- 1616.1 Prior to rendering a final decision on a licensing request or an ABRA Investigative Report, the Board may hold a non-evidentiary fact-finding hearing to obtain further information from an applicant, licensee, witness, government official, or any other member of the public with the permission of the Board.

- 1616.2 A licensee shall not be fined or have its license suspended or revoked at a fact-finding hearing. However, information provided at a fact-finding hearing may result in the issuance of a show cause notice pursuant to 23 DCMR § 1611 or other enforcement action permitted under the Act or this title. The fact-finding hearing may also result in the Board initiating an action to deny, modify, place conditions, or approve an application, as well as any other action authorized by this Title.
- 1616.3 An applicant or licensee that fails to appear at a fact-finding hearing without good cause or refuses to respond to questions asked by the Board may have their application deemed abandoned, which shall result in the denial of the application. A denial issued under this provision shall not be deemed technical or procedural under D.C. Official Code § 25-338(b).
- 1616.4 At any time, in its discretion, the Board may limit or exclude the submission of evidence, statements, and testimony at the hearing.
- 1616.5 All fact-finding hearings shall be open to the public unless closed to the public in accordance with section 405 of the Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-575), as amended.

**Former Section 1615, MORATORIUM HEARINGS, is renumbered § 1617.**

**A new section 1618, DISMISSAL FOR FAILURE TO PURSUE AN APPLICATION OR PROTEST, is added to read as follows:**

- 1618 DISMISSAL FOR FAILURE TO PURSUE AN APPLICATION OR PROTEST**
- 1618.1 Absent good cause, where the applicant to a pending liquor license application fails to appear for a fitness hearing or fact-finding hearing, fails to file requested pleadings, or comply with a Board order, the Board shall, on its own motion, dismiss the application.
- 1618.2 Examples of good cause include, but are not limited to:
- (a) The Applicant did not receive notice of a scheduled hearing;
  - (b) The Applicant had an emergency that prevented him or her from appearing at the hearing; or
  - (c) The Applicant was not aware of the Board order or the Board's pleadings request.

**Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of Title 23 DCMR is amended as follows:**

**Section 1703, SERVICE OF PAPERS, is amended by amending § 1703.1 and § 1703.5(e) as follows:**

1703.1 Any papers filed with the Board or on opposing parties in a contested case shall be served by personal delivery, first class U.S. mail, registered or certified mail, or by electronic mail. Proof of service shall be shown as required in § 1703.7.

1703.5(e) By electronic mail at the e-mail address on file with ABRA;

**Chapter 17, PROCEDURAL REQUIREMENTS FOR BOARD HEARINGS, of Title 23 DCMR is further amended by amending § 1703.7(d) as follows:**

**1703.7(d) Repealed.**

**Section 1705, CONTINUANCES, is amended by amending § 1705.2 to read as follows:**

1705.2 An attorney who knows or should know of a scheduling conflict shall immediately, but no later than two (2) days before the scheduled hearing, file a motion for continuance with the Board, with copies submitted to the opposing party or parties. A scheduling conflict with another tribunal may be considered good cause for continuing the proceeding.

**Section 1708, INSPECTION OF BOARD FILES, is amended by amending § 1708.1 to read as follows:**

1708.1 The records of the Board shall be available for inspection and copying during normal business hours at the request of any interested party or member of the public. The Board shall make the records available within five (5) business days from when the request is made.

**Section 1713, DOCUMENTARY EVIDENCE, is amended by amending § 1713.2 to read as follows:**

1713.2 Any party who intends to offer documentary evidence at a hearing shall, seven (7) calendar days prior to the hearing, disclose the evidence to the opposing party. Absent good cause, failure to disclose documentary evidence seven (7) calendar days prior to the hearing may result in the Board excluding the evidence.

**Section 1716, MOTIONS, is amended to read as follows:**

**1716 MOTIONS**

1716.1 Any party to a protest may seek relief from the Board against an opposing party by filing a motion with the Board. Unless otherwise specified, motions shall conform to the following requirements:

- (a) Be in writing;
- (b) Served upon the other parties to the protest by electronic mail or the first-class U.S. Postal Service; and

(c) Filed with the Board.

1716.2 Motions for a continuance shall conform with 23 DCMR § 1705.

1716.3 Any party may file a response in opposition to a motion within seven (7) calendar days after service of the motion. In the case of motions for continuances which have been filed by a party on the sixth (6th) calendar day before a scheduled hearing, pursuant to § 1705.1, responses thereto shall either be made in writing and served by personal delivery on all parties prior to the hearing or shall be made orally on the date of the hearing.

1716.4 A response to a motion shall not include a motion for other affirmative relief against the moving party.

1716.5 If a party filing an opposition desires to submit a motion for other affirmative relief, it shall be done by separate pleading.

1716.7 Repealed.

1716.7 A reply may be filed within three (3) calendar days after service of a response in opposition to a motion, but the reply shall not re-argue propositions presented in the motion, nor present matters which are not strictly in reply to the opposition.

1716.8 No further pleading shall be filed except by leave of the Board.

**Section 1717, POST-HEARING SUBMISSIONS, is amended in its entirety to read as follows:**

**1717 POST-HEARING SUBMISSIONS**

1717.1 No document or other information shall be accepted for the record after the close of a hearing except as **follows**:

(a) Unless accompanied by a Motion to Re-open the Record demonstrating good cause and the lack of prejudice to any party;

(b) Until all parties are afforded due notice and an opportunity to rebut the information; or

(c) Upon official notice of a material fact not appearing in the evidence in the record in accordance with D.C. Official Code § 2-509(b).

1717.2 The Board shall afford parties an opportunity to file Proposed Findings of Fact and Conclusions of Law within thirty (30) calendar days after receipt of the transcript from the hearing. The Board may, in its discretion, grant an extension

to file Proposed Findings of Fact and Conclusions of Law for good cause. An extension granted by the Board shall not exceed twenty (20) calendar days after the initial deadline.

1717.3 Repealed.

1717.4 Repealed.

1717.5 A copy of the Proposed Findings of Fact and Conclusions of Law shall be served on each party.

1717.6 Proposed Findings of Fact and Conclusions of Law shall be limited to the record and refrain from including new legal issues or evidence not previously raised at the hearing.

**Section 1719, RECONSIDERATION, REHEARING, AND REARGUMENT, is amended by amending § 1719.2 to read as follows:**

1719.2 An original copy of the Petition shall be filed with the Board, and a copy shall be served on each party and intervenor.

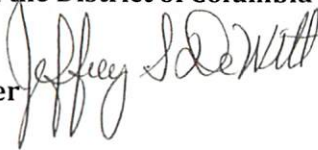
Government of the District of Columbia  
Office of the Chief Financial Officer



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:** September 14, 2018

**SUBJECT:** Fiscal Impact Statement – Technical Amendment Approval Resolution  
of 2018

**REFERENCE:** Draft Proposed Resolution as shared with the Office of Revenue  
Analysis on August 30, 2018

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**Conclusion**

Funds are sufficient in the fiscal year 2018 budget and the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution.

**Background**

The proposed resolution approves changes to the rules that govern the Alcoholic Beverage Regulation Administration's (ABRA) licensing and oversight of alcoholic beverage sales in the District. Many of these rule changes conform to changes approved by the Council of the District of Columbia in 2016 legislation<sup>1</sup> while others are unrelated administrative changes. The regulations' changes include:

- Clarifies how an operator's license should be viewed when a renewal or relocation application is under protest;
- Establishes reporting requirements for holders of storage facility permits;
- Updates the renewal periods for all types of licenses;
- Reorganizes the presentation of license, permit, endorsement, and application fees;
- Adds new license and permit fees for certain categories of alcohol sales, ranging from \$300 for a Class J farmer's market retail license to \$7,500 for a distillery pub permit;<sup>2</sup>

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<sup>1</sup> Omnibus Alcoholic Beverage Regulation Amendment Act of 2016, effective April 7, 2017 (D.C. Law 21-260; D.C. Official Code §§ 25-101, et seq.).

<sup>2</sup> Adds annual fees for a manufacturer's class C license for alcohol-infused confectionary products (\$1,000), Internet retailer's Class IA and IB licenses (\$2,600 and \$1,300), farmer's market Class J and K off-premises

The Honorable Phil Mendelson

FIS: "Technical Amendment Approval Resolution of 2018," Draft Proposed Resolution as shared with the Office of Revenue Analysis on August 30, 2018

- Reduces the maximum number of Class B off-premises retailers from 300 to 275 and exempts Internet Class IA and IB licenses from being subject to this limit;
- Exempts Internet retailers and Class B retailers located exclusively within a hotel from 400-foot location restrictions near schools and recreational areas;
- Clarifies what documentation is required in the application to transfer a license to a new owner;
- Adjusts the ending time of Sunday operating prohibitions for Class C, D, F, or G or a caterer's license from 10:00 a.m. to 8:00 a.m.;
- Institutes a look-back period of four-years under which an enforcement officer can issue a mandatory administrative written warning for the violation of an offense;<sup>3</sup>
- Establishes that the holders of tavern, restaurant, and hotel licenses that do not have an entertainment endorsement may not rearrange furniture to create a dance floor larger than 140 square feet;
- Repeals a monthly reporting requirement for holders of a Manufacturer's Class A license;
- Clarifies who must obtain an importation permit for the importation of alcoholic beverages;
- Revises the notice requirement to exempt Internet Class IA and IB licensees and marine vessel licensees from posting physical placard notices regarding a new, renewal, or location transfer application;
- Makes several changes around the protest process including naming a single representative for a party of protestants, allowing electronic signatures, and denying an application or dismissal of a protest for failure of the applicant or protestant to appear at a protest hearing;
- Authorizes the expiration of a license for an applicant's failure to appear at a hearing for a second re-filed renewal application;
- Prohibits the use of recording devices or transcription during a mediation proceeding;
- Authorizes the Alcoholic Beverage Control (ABC) Board to dismiss a settlement agreement if either signatory fails to respond to the Board's requested modifications within thirty days;
- Allows the ABC Board to limit testimony at a protest hearing if it believes subsequent testimony will be redundant;
- Establishes rules for consolidating cases at request of the parties or the ABC Board and rules for when witnesses might be excluded from part of any hearing;
- Revises Fact-Finding Hearing requirements;
- Authorizes the ABC Board to deny an application if the applicant fails to, without good cause, appear, provide requested pleadings, or comply with a Board order; and
- Amends the ABC Board's requirements related to service of papers, provision of a continuance, filing of motions, servicing documentary evidence to involved parties,<sup>4</sup> submitting a Proposed Findings for Fact and Conclusions of Law, the length of time in which the Board must make its records available for inspection,<sup>5</sup> and to whom and the number of petitions for reconsideration that must be filed.

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retail licenses (\$300 and \$500), Class CB and DB bed and breakfast licenses (\$1,000 and \$650), pub crawl license (\$500), festival class H and I licenses (\$1,000 and \$2,000), a pool buying group agent importation permit (\$1,000), distillery pub permit (\$7,500), and on-site sales and consumption permit (\$1,000).

<sup>3</sup> Previously, there was no look-back period and a violator could only receive one written warning for a repeat offense.

<sup>4</sup> Evidence must be provided to all parties at least seven days prior to the hearing.

<sup>5</sup> Documents must be made available within five days of a request for review.

The Honorable Phil Mendelson

FIS: "Technical Amendment Approval Resolution of 2018," Draft Proposed Resolution as shared with the Office of Revenue Analysis on August 30, 2018

**Financial Plan Impact**

Funds are sufficient in the fiscal year 2018 budget and the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution. ABRA can administer and enforce these changes within its existing resources. We expect any revenues from new permit fees to be de minimis.



GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the Attorney General



Legal Counsel Division

MEMORANDUM

**TO:** Alana Intrieri  
Executive Director  
Office of Policy and Legislative Affairs

**FROM:** Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

**DATE:** September 19, 2018

**SUBJECT:** Legal Sufficiency Review of the "Technical Amendment Approval Resolution of 2018"  
(AE-17-466C)

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**This is to Certify that** this Office has reviewed the above-referenced legislation and that we have found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

A handwritten signature in black ink that reads "Janet M. Robins". The signature is written in a cursive style and is positioned above a horizontal line.

Janet M. Robins