

OFFICE OF THE SECRETARY



2020 MAR 11 PM 4:24

MURIEL BOWSER
MAYOR

MAR 11 2020

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 the Civil Penalty Schedule Notice of Proposed Rulemaking and proposed resolution entitled the "Revised ABRA Civil Penalty Schedule Approval Resolution of 2020."

The proposed rules would amend several infractions contained in the existing ABRA Civil Penalty Schedule set forth in 23 DCMR § 800. Specifically, the proposed rulemaking would: (1) add new infractions and penalties; (2) remove duplicative infractions; and (3) amend the descriptions of existing infractions so that they are clearer and easier for the public and licensees to understand.

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".

Muriel Bowser

Enclosures


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Chairman Phil Mendelson
at the request of the Mayor

PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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

To approve proposed rules of the District of Columbia Alcoholic Beverage Control Board
that would amend Title 23 of the District of Columbia Municipal Regulations by
amending section 800, ABRA Civil Penalty Schedule.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
resolution may be cited as the “Revised ABRA Civil Penalty Schedule Resolution of
2020”.

Sec. 2. Pursuant to D.C. Official Code § 25-830(f), the Council of the District of
Columbia approves the proposed rulemaking by the District of Columbia Alcoholic
Beverage Control Board that amends the agency’s Civil Penalty Schedule to include new
infractions and penalties. Furthermore, the proposed rulemaking would delete
duplicative infractions listed in the Civil Penalty Schedule. Lastly, the proposed
rulemaking would amend the descriptions of certain infractions for clarity and
completeness.

1 Sec. 3. The Secretary to the Council of the District of Columbia shall transmit
2 a copy of this resolution, upon its adoption, to both the Mayor and the Chairperson of the
3 Alcoholic Beverage Control Board.

4 Sec. 4. Fiscal impact statement.

5 The Council adopts the fiscal impact statement in the committee report as the
6 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home
7 Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-
8 206.02(c)(3)).

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

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

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in D.C. Official Code §§ 25-211(b) and 25-830(f) (2012 Repl. and 2016 Supp.), and Mayor’s Order 2001-96 (June 28, 2001), as amended by Mayor’s Order 2001-102 (July 23, 2001), hereby gives notice of the intent to submit its Civil Penalty Schedule Notice of Proposed Rulemaking to the Council of the District of Columbia (Council) for a mandatory sixty (60)-day review in accordance with D.C. Official Code § 25-830(f). In accordance with § 25-830(f), the Council can approve the rules in whole or in part.

BACKGROUND INFORMATION

On September 11, 2019, the Board voted four (4) to zero (0) to amend the existing Civil Penalty Schedule (Schedule) as set forth in section 800 of Title 23 of the District of Columbia Municipal Regulations (“DCMR”). Specifically, the proposed rules sought to update the Schedule by (1) incorporating new infractions and penalties; (2) removing duplicative infractions; and (3) amending the descriptions of existing infractions. The rulemaking made it clear, however, that *those infractions not listed on the Schedule below shall remain in full effect and not be impacted by the proposed rulemaking.*

The proposed rulemaking was subsequently published in the *D.C. Register* on October 25, 2019, at 66 DCR 14905, for public comment. The public comment period ended on November 24, 2019, with no comments received. Similarly, the Board held a public hearing on November 20, 2019, but no one appeared to testify.

BOARD’S DECISION

In light of the Board having not received any comments in response to the proposed rulemaking, it is now ripe for the Board to send the rules to the Council for review. Therefore, on this day, December 11, 2019, the Board votes, four (4) to zero (0), to send the rules to the Council for review. The Board shall not take final rulemaking action unless the rules are affirmatively approved by the Council, in whole or in part, prior to the conclusion of the sixty (60)-day review period.

Section 800 (ABRA Civil Penalty Schedule) of Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the DCMR is amended by removing the following infractions to the ABRA Civil Penalty Schedule:

800 ABRA CIVIL PENALTY SCHEDULE

Section	Description	Violation	Warning
25-113(j)(3)	Failure to Obtain Board Approval for Off-site Storage	Secondary	Y – Mandatory

25-113(j)(3)(A)	Failure to Maintain Records on Premises	Primary	Y – Mandatory
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Section 800 (ABRA Civil Penalty Schedule) of Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the DCMR is amended by adding the following infractions to the ABRA Civil Penalty Schedule in numerical order:

800 ABRA CIVIL PENALTY SCHEDULE

Section	Description	Violation	Warning
23 DCMR 203	Failure to Obtain Retailer Purchasing Permit	Primary	Y
23 DCMR 205.3	Failure to Obtain Off-premises Storage Permit	Primary	Y

Section 800 (ABRA Civil Penalty Schedule) of Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the DCMR is amended by renaming the following infractions in the ABRA Civil Penalty Schedule:

800 ABRA CIVIL PENALTY SCHEDULE

Section	Description	Violation	Warning
25-113(j)(3)	Failure to Maintain Books and Records on Premises	Primary	Y - Mandatory
25-113(j)(3)(C)	Failure of the Licensee to Keep or Maintain its Books, Records, or Invoices for 3 Years	Primary	Y
25-113(j)(3)(B)	Failure to Obtain Board Approval for Off-site Storage of Books and Records	Secondary	Y - Mandatory
25-721	Sale and Delivery Outside of Legal Hours for Manufacturer & Wholesaler	Primary	Y
25-722	Sale and Delivery Outside of Legal Hours for Off-site Premises Licensees	Primary	Y
25-723(b)	Sale, Service, and Consumption Outside of Legal Hours – On-premises Licensees	Primary	Y
25-724	Sale and Delivery Outside of Hours Restricted by Board Order or Settlement Agreement	Primary	Y
25-762(b)(13)	Failure to Obtain Approval to Extend the Board-approved Hours of Operation	Primary	Y
23 DCMR 205.2	Failure to Obtain Storage Facility Permit	Secondary	Y

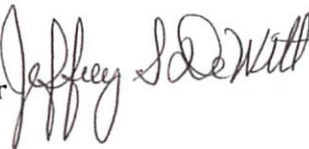
Government of the District of Columbia
Office of the Chief Financial Officer



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: December 4, 2019

SUBJECT: Fiscal Impact Statement – Revised ABRA Civil Penalty Schedule
Resolution of 2019

REFERENCE: Draft Proposed Resolution as shared with the Office of Revenue
Analysis on November 20, 2019

Conclusion

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the proposed resolution.

Background

The Alcoholic Beverage Regulation Administration (ABRA) enforces the District's alcoholic beverage laws and regulations and issues warnings, citations, and fines to businesses for civil violations. ABRA investigators or the Alcoholic Beverage Control Board (Board) enforce primary and secondary violations through the issuance of citations¹ and show cause hearings, respectively. ABRA issues primary citations carrying fines ranging from \$1,000 for a first violation up to \$4,000 for a third violation within three years.² The Board issues penalties at a show cause hearing ranging from \$1,000 to \$2,000 for a first primary violation and no less than \$30,000 for a fourth primary violation within four years.³ The Board can also suspend or revoke a license for four or more primary violations.

¹ The Metropolitan Police Department can also issue primary and secondary citations.

² Citations for Primary Tier Violations, effective September 20, 2013 (23 DCMR § 803; 60 DCR 13,044).

³ Primary Tier Violations, effective September 20, 2013 (23 DCMR § 801; 60 DCR 13,044).

The Honorable Phil Mendelson

FIS: "Revised ABRA Civil Penalty Schedule Resolution of 2019," Draft Proposed Resolution as shared with the Office of Revenue Analysis on November 20, 2019

The proposed resolution approves rules that add two new primary violations. These violations are for the failure to obtain a retailer purchasing permit⁴ and the failure to obtain an off-premises storage permit.⁵ Both violations allow ABRA to enforce with a warning first. The proposed rules also delete two duplicate fines and amend the names of nine others to provide enforcement clarity.

Financial Plan Impact

Funds are sufficient in the fiscal year 2020 through fiscal year 2023 budget and financial plan to implement the proposed resolution. ABRA and the Board can issue citations and fines against the two new primary violations with enforcement resources in the agencies' existing budgets. There are no costs associated with the technical changes to the other civil violations. ABRA collected approximately \$550,000 in civil fines in fiscal year 2019 and any revenue from these two new violations is expected to be minimal.

⁴ Wine and Beer Purchasing Permit, effective August 9, 2013 (23 DCMR § 203; 60 DCR 11,580).

⁵ Storage Facility Permit and Off-Premises Storage Permit, effective February 8, 2019 (23 DCMR § 205.3; 66 DCR 1,822).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE

Legal Counsel Division

MEMORANDUM

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

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: October 2, 2019

SUBJECT: Legal Sufficiency Review of Proposed Resolution, the “Revised ABRA Civil
Penalty Schedule Resolution of 2019”
(AR-19-620)

This is to Certify that this Office has reviewed the above-referenced proposed resolution and 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, appearing to read 'Brian K. Flowers', written over a horizontal line.

Brian K. Flowers