

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

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in 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. & 2014 Supp.), hereby gives notice of the adoption of emergency and proposed rules to amend existing Subsection 718.2 of Chapter 7 (General Operating Requirements) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

The rulemaking would increase the number of days covered by the Reimbursable Detail Subsidy Program (Program) from two (2) to seven (7) days a week. The rules would also allow reimbursement under the Program for certain Board approved outdoor Special Events where alcohol is to be sold or served.

By way of background, these rules were modified by the Board in September 2013 to allow for reimbursement under the Program for hours worked on District or Federal holidays in addition to Friday and Saturday nights. The expansion of the Program resulted from the Board's implementation of the Fiscal Year 2013 Budget Support Act of 2012, which allowed eligible on-premise licensees to sell and serve alcoholic beverages until 4:00 a.m. and operate 24 hours a day on District or Federal holidays and certain holiday weekends. As a result of this additional hour of alcohol sales on District or Federal holidays and certain holiday weekends, the Board also made the subsidy available to on-premise licensees until 5:00 a.m.

Given the importance of this Program to public safety, the Board regularly monitors the Program's funding to make adjustments for the distribution of subsidies to cover the costs incurred by Alcoholic Beverage Control (ABC) licensees for Metropolitan Police Department (MPD) officers working reimbursable details under the Program.

The rules were modified again on June 11, 2014. The Board voted seven (7) to zero (0) to amend the existing subsidy coverage because adequate funding was available in ABRA's Fiscal Year 2014 budget to expand the distribution of subsidies paid by ABRA to MPD under the Program from two days a week to seven days. The expansion of the Program also allowed for reimbursable detail coverage for certain Special Events. Special Events are deemed to be those events sponsored by a Licensee who has received approval from the Board for a One Day Substantial Change License or a Temporary License. The hours per day covered by the Program under existing rules remained the same for the modified rules.

On August 13, 2014, the Board held a hearing to receive public comment on the emergency and proposed rules. The Board heard testimony from Kristen Barden, Executive Director of the Adams Morgan Partnership Business Improvement District (BID). Ms. Barden stated that the BID has participated in the Program since 2007, and that the Program is necessary and essential to maintain public safety in the Adams Morgan neighborhood. Ms. Barden further testified that her organization supports the expansion of the Program as long as funds are available, and she

encouraged the agency to ensure adequate funding throughout the budget cycle. Ms. Barden also indicated that if sufficient funding exists, the Board should consider covering events such as the Adams Morgan Day Festival.

The Board also heard from Skip Coburn, Executive Director of the DC Nightlife Association. Mr. Coburn praised the Board and the agency for the implementation of the Program for purposes of aiding MPD and licensees in public safety situations. He also suggested that the Program could be expanded to assist with Special Events held during daytime hours.

The Board took the testimony into consideration, and determined that further expansion of the Program is warranted to meet the public safety needs of outdoor Special Events where alcohol is to be sold or served regardless of the hours of the event. Two factors were relevant to this conclusion: (1) Special Events are generally held during the day and on public streets, and (2) Special Events are attended by crowds in excess of hundreds of people.

To this end, the Board modifies its emergency and proposed rules, initially adopted on June 11, 2014, to allow for the distribution of subsidies for all outdoor Special Events operating under a One Day Substantial Change License or Temporary License. Under these emergency and proposed rules there are no longer any reimbursement restrictions on the time of day, or the number of hours worked by MPD for an outdoor Special Event.

This emergency action is necessary to immediately expand the Program for the remainder of fiscal year 2014, most notably the summer months where public safety is at greater risk. This subsidy assists licensed establishments to defray the costs of retaining off-duty MPD officers to patrol the surrounding area of an establishment or an outdoor Special Event for the purpose of maintaining public safety, including the remediation of traffic congestion and the safety of public patrons, during their approach and departure from the establishment or Special Event.

These revised emergency rules were adopted by the Board on August 15, 2014, by a five (5) to zero (0) vote. The rules will become effective on September 1, 2014. The emergency rules will expire one hundred twenty (120) days from the date these rules were adopted, December 20, 2014, or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

Pursuant to D.C. Official Code § 25-211(b)(2) (2012 Repl. & 2014 Supp.), these emergency and proposed rules are also being transmitted to the Council of the District of Columbia (Council) for a ninety (90) day period of review. The final rules shall not become effective absent approval by the Council. The Board also gives notice of its intent to take final rulemaking action to adopt these rules on a permanent basis in not fewer than thirty (30) days after the date of publication of this notice in the *D.C. Register*.

Subsections 718.2 through 718.5 of Section 718, REIMBURSABLE DETAIL SUBSIDY PROGRAM, of Chapter 7, GENERAL OPERATING REQUIREMENTS, of Title 23, ALCOHOLIC BEVERAGES, of the DCMR are amended and renumbered to read as follows:

- 718.2 ABRA will reimburse MPD fifty percent (50%) of the total cost of invoices submitted by MPD to cover the costs incurred by licensees for MPD officers working reimbursable details on Sunday through Saturday nights. The hours eligible for reimbursement for on-premises retailer licensees shall be 11:30 p.m. to 5:00 a.m. ABRA will also reimburse MPD fifty percent (50%) of the total costs of invoices submitted by MPD to cover the costs incurred for outdoor Special Events where the Licensee has been approved for a One Day Substantial Change License or a Temporary License. The hours eligible for an outdoor Special Event operating under a One Day Substantial Change License or a Temporary License shall be 24 hours a day.
- 718.3 MPD shall submit to ABRA on a monthly basis invoices documenting the fifty percent (50%) amount owed by each licensee. Invoices will be paid by ABRA to MPD within thirty (30) days of receipt in the order that they are received until the subsidy program's funds are depleted.
- 718.4 ABRA shall notify MPD when funds in the subsidy program fall below two hundred and fifty thousand dollars (\$250,000).
- 718.5 Any invoices unpaid by ABRA either for good cause or a lack of sufficient funds left in the subsidy program shall remain the responsibility of the licensee.
- 718.6 ABRA shall not be involved in determining the number of MPD officers needed to work a reimbursable detail.

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