

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

2001 Edition

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To amend Title 25 of the District of Columbia Official Code to increase the term of licenses from 2 years to 3 years, to prohibit the issuance or transfer of licenses in Ward 4, to impose a 4-year moratorium on the sale of single containers of certain alcoholic beverages in certain areas of Ward 4, to strengthen the requirements for holding an Alcoholic Beverage Control manager's license, to streamline the notice requirements with respect to the issuance, renewal, substantial changes in, or transfer of retailer's alcoholic beverage licenses, to expand and clarify the caterer's license fees, to vest greater regulatory authority in the Alcoholic Beverage Regulation Administration Enforcement Division, to change the tasting permit renewal period, to grant tasting permits to genuine grocery stores, to clarify the catering licenses with respect to new and renewal catering license applications, to clarify the appropriateness standard as applied to catering licenses, to amend the notice requirements of catering license application proceedings, to repeal the referendum process in all circumstances, to provide for expanded operating hours for licensees under an off-premises retailers license, class A and B, upon approval by the Board, to clarify the regulation of restaurants and other establishments licensed to sell alcoholic beverages for on-premises consumption, and to allow for the establishment of pool buying groups to permit participants to purchase alcoholic beverages from a licensed retail agent; to amend the District of Columbia Government Comprehensive Merit Personnel Act of 1978 to clarify the independent personnel authority of the Alcoholic Beverage Control Board and the Alcoholic Beverage Regulation Administration, and to establish pay parity of the members of the Alcoholic Beverage Control Board with the members of the Board of Zoning Adjustment and the members of the Zoning Commission; to amend Title 23 of the District of Columbia Municipal Regulations to add a new Chapter 10 to create an entertainment endorsement, sidewalk café endorsement, and a summer garden endorsement, to amend the size of the section geographic area to be 1200 feet, to specify the subjects to be contained in a voluntary agreement, and to permit the Board to amend voluntary agreements, to add a new Chapter 20 to create standards for the regulation of caterer's, and to add a new Chapter 21 to create new standards for regulating restaurants and determining if a restaurant

qualifies to be a restaurant; and to amend Title 47 of the District of Columbia Official Code to reduce a technical overlap between the Department of Consumer and Regulatory Affairs's licensing procedures and those of the Alcoholic Beverage Regulation Administration.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Omnibus Alcoholic Beverage Amendment Act of 2004".

TITLE I. GENERAL AMENDMENTS TO ALCOHOL LAWS

Sec. 101. Title 25 of the District of Columbia Official Code is amended as follows:

(a) Section 25-104(b) is amended by striking the phrase "a term of 2 years" and inserting the phrase "a term of 3 years" in its place.

(b) Section 25-112(e)(2) is amended by striking the phrase "each of the 2 years" and inserting the phrase "each of the 3 years" in its place.

(c) Section 25-113(i)(3) is amended by striking the phrase "be valid for 2 years" and inserting the phrase "be valid for 3 years" in its place."

(d) Section 25-118 is amended as follows:

(1) Subsection (a) is amended by striking the phrase "class A" and inserting the phrase "class A, or an applicant which is a full service grocery store and meets the requirements of § 25-303(c)(1), (2), and (3)" in its place.

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

"(d) A tasting permit shall be valid for 2 years."

(e) Section 25-120(f) is amended by striking the phrase "within 90 days after receiving" and inserting the phrase "prior to receiving" in its place.

(f) Section 25-205(d) is amended to read as follows:

"(d) The Board shall provide to the office of each ANC, on a quarterly basis, a list of all licenses due to expire during the ensuing 6 months."

(g) Section 25-211(b) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase "45-day period of review" and inserting the phrase "90-day period of review" in its place.

(2) Paragraph (2) is amended by striking the phrase "45-day review period, the regulations shall be deemed approved" and inserting the phrase "90-day review period, the regulations shall be deemed disapproved" in its place.

(h) The table of contents for Chapter 3 is amended as follows:

(1) Strike the section designation "25-334. Denial-Board-certified referendum." and insert the section designation "25-334. Repealed." in its place.

(2) Add new section designations "25-340. Special restrictions for Ward 4. 25-341. Targeted Ward 4 Moratorium Zone." after the section designation "25-339. Special

restrictions for the Georgetown Historic district.”.

(i) Section 25-303 is amended as follows:

(1) Subsection (c)(5) is amended to read as follows:

“(5) The opinion of the ANC, if any, has been given great weight.”

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

“(d)(1) A manufacturer, or its affiliate, licensed under this title, may hold an interest in a limited partnership providing financial assistance to a general partner wholesaler as described in paragraph (2) of this subsection, but shall only exercise such control of the limited partnership business as is permitted by this chapter. The limited partner shall not have or exercise managerial control or decision-making authority with respect to daily operations of the limited partnership. Upon a default by the general partner wholesaler, the limited partner shall not acquire or assume additional control, ownership, or financial interest in the limited partnership. The manufacturer, or its affiliate licensed in the District shall not have a financial or ownership interest in the general partner wholesaler.

“(2) The only financial assistance allowed pursuant to paragraph (1) of this subsection shall be the initial financial assistance to the limited partnership to acquire a licensed beer wholesaler. In that arrangement for financial assistance, the wholesaler license issued under this title shall be issued in the name of the general partner wholesaler on behalf of the limited partnership, and shall not be issued in the name of the limited partnership nor in the name of the manufacturer, or its affiliate.

“(3) The limited partnership providing the financial assistance described in this section shall not exist for more than 10 years from the date of its creation, and shall not be recreated, renewed, or extended beyond that date.

“(4) This section shall not amend or otherwise alter this title, except for the limited purpose of allowing a manufacturer, or its affiliate, which is licensed in the District, to provide financial assistance to a limited partnership for the exclusive purpose of acquiring a licensed beer wholesaler. A manufacturer or its affiliate shall not require the wholesaler to use the financial assistance as described above.”.

(j) Section 25-311 is amended as follows:

(1) Subsection (c) is amended by striking the phrase “or a temporary license”.

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

“(d) If a temporary license is sought for an outdoor event or a private residential home used for non-commercial purposes, the applicant shall not be required to provide a valid certificate of occupancy.”.

(k) Section 25-331(d)(5) is amended to read as follows:

“(5) The opinion of the ANC, if any, has been given great weight.”

(l) Section 25-332(c)(5) is amended to read as follows:

“(5) The opinion of the ANC, if any, has been given great weight.”

(m) Section 25-333(c)(5) is amended to read as follows:”

“(5) The opinion of the ANC, if any, has been given great weight.”

(n) Section 25-334 is repealed.

(o) New sections 25-340 and 25-341 are added to read as follows:

“§ 25-340. Special restrictions for Ward 4.

“No class A or B license shall be issued in or transferred into Ward 4; provided, that this section shall not prohibit the transfer of a class A or B license within Ward 4. For the purposes of this section, "Ward 4" means the area defined as Ward 4 in § 1-1041.03 on the effective date of the Omnibus Alcoholic Beverage Amendment Act of 2004, passed on 2nd reading on May 18, 2004 (Enrolled version of Bill 15-516). This section shall not apply to any application for a new or transferred license pending on the effective date of the Omnibus Alcoholic Beverage Amendment Act of 2004, passed on 2nd reading on May 18, 2004 (Enrolled version of Bill 15-516).

“§ 25-341. Targeted Ward 4 Moratorium Zone.

“(a) For the purposes of this section, the term “Targeted Ward 4 Moratorium Zone” means the area bounded by the line starting at 13th Street, N.W., and Eastern Avenue, N.W.; thence in a southerly direction along 13th Street, N.W., to Fern Street, N.W.; thence in an easterly direction along Fern Street, N.W., to Georgia Avenue, N.W.; thence in a southerly direction along Georgia Avenue, N.W., to Aspen Street, N.W.; thence in a westerly direction along Aspen Street, N.W., to 13th Street, N.W.; thence in a southerly direction along 13th Street, N.W., to Piney Branch Road, N.W.; thence in a southerly direction along Piney Branch Road, N.W., to 13th Street, N.W.; thence in a southerly direction along 13th Street, N.W., to Colorado Avenue, N.W.; thence in a southwesterly direction along Colorado Avenue, N.W., to Madison Street, N.W.; thence in a westerly direction along Madison Street, N.W., to 16th Street, N.W.; thence in a southerly direction along 16th Street, N.W., to Spring Road, N.W.; thence in an easterly direction along Spring Road, N.W. to 13th Street, N.W.; thence in a northerly direction along 13th Street, N.W., to Randolph Street, N.W.; thence in an easterly direction along Randolph Street, N.W. to 10th Street, N.W.; thence in a southerly direction along 10th Street, N.W., to Spring Road, N.W.; thence in an easterly direction along Spring Road, N.W., to Rock Creek Church Road, N.W.; thence in an easterly direction along Rock Creek Church Road, N.W., to 7th Street, N.W., thence in a northerly direction along 7th Street, N.W., to Randolph Street, N.W., thence in an easterly direction along Randolph Street, N.W., to Rock Creek Church Road, N.W.; thence in a northeasterly direction along Rock Creek Church Road, N.W., to Varnum Street, N.W.; thence in a westerly direction along Varnum Street, N.W., to Grant Circle, N.W.; thence in a westerly direction along the southern circumference of Grant Circle, N.W., to Varnum Street, N.W.; thence in a westerly direction along Varnum Street, N.W., to 8th Street, N.W.; thence in a northerly direction along 8th Street, N.W., to Ingraham Street, N.W.; thence in an easterly direction along Ingraham Street, N.W., to 2nd Street, N.W.; thence in a southerly direction along 2nd Street, N.W., to Farragut Street, N.W.; thence in a southeasterly direction along Farragut Street, N.W., to 1st Street, N.W.; thence in a northeasterly direction

along 1st Street, N.W., to Gallatin Street, N.W.; thence in an easterly direction along Gallatin Street, N.W., to North Capitol Street; thence in a northerly direction along North Capitol Street to Riggs Road, N.E.; thence in an easterly direction along Riggs Road, N.E., to South Dakota Avenue, N.E.; thence in a southeasterly direction along South Dakota Avenue, N.E., to Kennedy Street, N.E.; thence in a northeasterly direction along Kennedy Street, N.E., to Madison Street, N.E.; thence in a northwesterly direction along Madison Street, N.E., to 6th Street, N.E.; thence in a northeasterly direction along 6th Street, N.E., to Nicholson Street, N.E.; thence in a northwesterly direction along Nicholson Street, N.E., to 6th Street, N.E.; thence in a northerly direction along 6th Street, N.E., to Eastern Avenue, N.E.; thence in a northwesterly direction along Eastern Avenue, N.E., to New Hampshire Avenue, N.E.; thence in a southwesterly direction along New Hampshire Avenue, N.E. to Blair Road, N.E.; thence in a northwesterly direction along Blair Road, N.E., to North Capitol Street; thence in a northwesterly direction along Blair Road, N.W., to Aspen Street, N.W.; thence in an easterly direction along Aspen Street, N.W., to Willow Street, N.W.; thence in a northeasterly direction along Willow Street, N.W., to Eastern Avenue, N.W.; thence in a northwesterly direction along Eastern Avenue, N.W., to the point of beginning at the intersection of 13th Street, N.W., and Eastern Avenue, N.W.; provided, that the Targeted Ward 4 Moratorium Zone shall not include the area bounded by the line starting at the intersection of 8th Street, N.W., and Dahlia Street, N.W.; thence in a southerly direction along 8th Street, N.W., to Aspen Street, N.W.; thence easterly along Aspen Street, N.W., to Piney Branch Road, N.W.; thence southwesterly along Piney Branch Road, N.W., to 8th Street, N.W.; thence in a southerly direction along 8th Street, N.W., to Madison Street, N.W.; thence in an easterly direction along Madison Street, N.W., to 3rd Street, N.W.; thence in a northerly direction along 3rd Street, N.W., to Whittier Street, N.W.; thence in a westerly direction along Whittier Street, N.W., to 5th Street, N.W.; thence in a northerly direction along 5th Street, N.W., to Dahlia Street, N.W.; thence in a westerly direction along Dahlia Street, N.W., to the point of beginning at the intersection of 13th Street, N.W., and Dahlia Street, N.W.

“(b) Within the Targeted Ward 4 Moratorium Zone, a licensee under an off-premises retailer’s license, class A or B, shall not divide a manufacturer’s package of more than one container of beer, malt liquor, or ale, to sell an individual container of the package if the capacity of the individual container is 70 ounces or less.

“(c) Within the Targeted Ward 4 Moratorium Zone, a licensee under an off-premises retailer’s license, class A or B, shall not sell, give, offer, expose for sale, or deliver an individual container of beer, malt liquor, or ale with a capacity of 70 ounces or less.

“(d) This section shall expire 4 years after the effective date of the Omnibus Alcoholic Beverage Amendment Act of 2004, passed on 2nd reading on May 18, 2004 (Enrolled version of Bill 15-516). No later than 60 days before the expiration of this section, the Council Committee having jurisdiction over the Alcoholic Beverage Control Board shall hold a public hearing on the present need and appropriateness of the Targeted Ward 4 Moratorium Zone.”

(p) Section 25-353 is amended by striking the phrase “§§ 25-421 and 25-422; provided, that, for purposes of this section, the responsibilities of the applicant prescribed in § 25-422 shall be assumed by the Board” and inserting the phrase “§ 25-421” in its place.

(q) Section 25-354(c)(2) is amended by striking the phrase “is located” and inserting the phrase “is located and any other ANC abutting the proposed moratorium area” in its place.

(r) Section 25-410 is amended as follows:

(1) Paragraph (1) is amended by striking the word “and”.

(2) Paragraph (2) is amended by striking the period and inserting the phrase “; and” in its place.

(3) A new paragraph (3) is added to read as follows:

“(3) A copy of the applicant’s alcohol training and education certificate.”.

(s) Section 25-421(a) is amended as follows:

(1) Paragraphs (2) and (3) are repealed.

(2) Paragraph (4) is amended to read as follows:

“(4) Any ANC within 600 feet of where the establishment is or will be located.”.

(t) Section 25-446(d) is amended to read as follows:

“(d)(1) Unless a shorter term is agreed upon by the parties, a voluntary agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board.

“(2) The Board may accept an application to amend or terminate a voluntary agreement by fewer than all parties in the following circumstances:

“(A) During the license’s renewal period; and

“(B) After 4 years from the date of the Board’s decision initially approving the voluntary agreement.

“(3) Notice of an application to amend or terminate a voluntary agreement shall be given both to the parties of the agreement and to the public at the time of the applicant’s renewal application according to the renewal procedures required under §§ 25-421 through 25-423.

“(4) The Board may approve a request by fewer than all parties to amend or terminate a voluntary agreement for good cause shown if it makes each of the following findings based upon sworn evidence:

“(A)(i) The applicant seeking the amendment has made a diligent effort to locate all other parties to the voluntary agreement; or

“(ii) If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the voluntary agreement;

“(B) The need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant’s establishment is located; and

“(C) The amendment or termination will not have an adverse impact on

the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.

“(5) To fulfill the good faith attempt criteria of paragraph (4)(A)(ii) of this subsection, a sworn affidavit from the applicant shall be filed with the Board at the time that an application to amend a voluntary agreement by fewer than all parties is filed stating that either:

“(A) A meeting occurred between the parties which did not result in agreement; or

“(B) The non-applicant parties refused to meet with the applicant.”.

(u) Section 25-447(a) is amended by striking the phrase “the ANC representing the area in which the licensee exists” and inserting the phrase “an affected ANC” in its place.

(v) Section 25-504 is amended as follows:

(1) Add a new row after the row designated “Nightclub” to read as follows:

“[Blank] 100 to 199 \$2,000 \$1,250”.

(2) Strike the rows designated as “Caterer”.

(3) Add 8 new rows to read as follows:

“Caterer	More than \$1,000,000	\$5,000	

	per year gross annual receipts		
“Caterer	\$1,000,000 or less	\$4,000	----
	per year gross annual receipts		
“Caterer	\$500,000 or less	\$3,000	----
	per year gross annual receipts		
“Caterer	\$300,000 or less	\$2,000	----
	per year gross annual receipts		
“Caterer	\$200,000 or less	\$1,000	----
	per year gross annual receipts		
“Caterer	\$100,000 or less per	\$750	----
	year gross annual receipts		
“Caterer	\$50,000 or less per	\$500	----
	year gross annual receipts		
“Caterer	\$25,000 or less per	\$300	----
	year gross annual receipts”.		

(w) The table of contents for Chapter 6 is amended by striking the section designations “25-603. Referendum process—general provisions. 25-604. Application to initiate a referendum process. 25-605. Referendum—ANC review of petition proposal and statement. 25-606. Circulation of approved statement. 25-607. Approval of petitions submitted to the Board. 25-608. Licenses exempt from referendum process.” and inserting the section designations “25-603.

Repealed. 25-604. Repealed. 25-605. Repealed. 25-606. Repealed. 25-607. Repealed. 25-608. Repealed.” in its place.

(x) Section 25-601 is amended as follows:

(1) The lead-in text is amended by striking the phrase “, or initiate a referendum as set forth in § 25-604”.

(2) Paragraph (3) is amended to read as follows:

“(3) A citizens association incorporated under the laws of the District of Columbia located within the affected area; provided, that the following conditions are met:

“(A) Membership in the citizens association is open to all residents of the area represented by the association; and

“(B) A resolution concerning the license application has been duly approved in accordance with the association's articles of incorporation or bylaws at a duly called meeting, with notice of the meeting being given at least 10 days before the date of the meeting.”.

(y) Sections 25-603, 25-604, 25-605, 25-606, 25-607, and 25-608 are repealed.

(z) Section 25-722 is amended as follows:

(1) A new subsection (a-1) is added to read as follows:

“(a-1)(1) A licensee under an off-premises retailer’s license, class A, may sell and deliver alcoholic beverages between the hours of 9:00 a.m. and 10:00 p.m., Monday through Friday, during the same hours on December 24 and 31 of each year, and between the hours of 9:00 a.m. and midnight on Saturday.

“(2) A licensee under an off-premises retailer's license, class B, may sell and deliver alcoholic beverages only between the hours of 9:00 a.m. and midnight, Monday through Saturday, and 9:00 a.m. and midnight, on December 24 and December 31 of each year.

“(3) The operating hours permitted by this subsection shall apply only after an application has been filed by the licensee to operate during these hours and the application has been approved by the Board.

“(4) Within 30 days after effective date of the Omnibus Alcoholic Beverage Amendment Act of 2004, passed on 2nd reading on May 18, 2004 (Enrolled version of Bill 15-516), the Board, through the Mayor, shall submit rules setting forth the criteria for reviewing and approving applications submitted by licensees pursuant to paragraph (3) of this subsection to the Council for a 30-day review period.”.

(2) Subsection (c) is amended to read as follows:

“(c) The Board may require each class to display a distinctive sign in a place on the premises to note the type of license and the hours that the specific establishment may be open. The Board may establish the physical requirements of the distinctive mark, including the size of the written characters on the sign. The mark shall be posted in a place that is clearly visible to the public. The Board shall establish fines for the posting of a sign that contains inaccurate information.”.

(aa) Section 25-735 is amended as follows:

(1) Subsection (b) and (c) are amended by striking the phrase “wholesale or” wherever it appears.

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

“(d) Notwithstanding subsections (a), (b), and (c) of this section, with the prior approval of the Board, a manufacturer may sell, give, rent, or loan to a retail licensee computer equipment for the purpose of tracking the sale or delivery of alcoholic beverages.”

(bb) Section 25-736 is amended by adding a new subsection (d) to read as follows:

“(d) Notwithstanding subsections (a), (b), and (c) of this section, with the prior approval of the Board, a wholesaler may sell, rent, give, loan to a retail licensee computer equipment for the purpose of tracking the sale or delivery of alcoholic beverages.”

(cc) Section 25-772(c) is amended to read as follows:

“(c) This section shall not apply to persons possessing old stocks who are moving into the District, to embassies or diplomatic representatives of foreign countries, to wines imported for religious or sacramental purposes, to wine, spirits, and beer to be delivered to the licensee under a manufacturer's, wholesaler's, or retailer's license, or to any persons wishing to have liquor chocolates delivered to their residence. The term “liquor chocolates” may include other types of candies that have small amounts of liquor contained in the candy.”

(dd) Section 25-801 is amended by adding a new subsection (f) to read as follows:

“(f) ABRA investigators may request and check the identification of a patron inside of or attempting to enter an establishment with an alcohol license. ABRA investigators may seize evidence that substantiates a violation under this title, which shall include seizing alcoholic beverages sold to minors and fake identification documents used by minors.”

(ee) Section 25-823 is amended as follows:

(1) Paragraph (2) is amended by striking the phrase “, or” and inserting a semi-colon in its place.

(2) Paragraph (3) is amended by striking the period and inserting the phrase “; or” in its place.

(3) A new paragraph (4) is added to read as follows:

“(4) The licensee allows its employees or agents to engage in prostitution, as defined under § 22-2701.01(1), or engage in sexual acts or sexual contact, as defined under § 22-3001, at the licensed establishment.”

(ff) Section 25-828 is amended by adding a new subsection (c) to read as follows:

“(c) Any person willfully removing, obliterating, or defacing the notice shall be guilty of a violation of this chapter.”

(gg) Section 25-1002(c) is amended as follows:

(1) Designate the existing text as paragraph (1).

(2) Add a new paragraph (2) to read as follows:

“(2) Officers of the Metropolitan Police Department may enforce provisions of this section by issuing to a person alleged to have violated this section a citation under § 23-

1110(b)(1). The person shall not be eligible to forfeit collateral.”.

Sec. 102. The District of Columbia Government Comprehensive Merit Personnel Act of 1978, effective March 3, 1979 (D.C. Law 2-139; D.C. Official Code § 1-601.01 *et seq.*), is amended as follows:

(a) Section 406(b) (D.C. Official Code § 1-604.06(b)) is amended by adding a new paragraph (17) to read as follows:

“(17) For the Director of the Alcoholic Beverage Regulation Administration, the personnel authority shall be the members of the Alcoholic Beverage Control Board for the District of Columbia, and for any other employee of the Alcoholic Beverage Regulation Administration, the personnel authority shall be the Director of the Alcoholic Beverage Regulation Administration.”.

(b) Section 1108(c)(2)(i) (D.C. Official Code § 1-611.08(c)(2)(i)) is amended by striking the phrase “\$6,000” and inserting the phrase “\$12,000” in its place.

Sec. 103. Title 23 of the District of Columbia Municipal Regulations is amended as follows:

(a) Chapter 2 is amended to read as follows:

(1) Subsection 207.1 is amended by striking the phrase “for two (2) years” and inserting the phrase “for three (3) years” in its place.

(2) Subsection 207.2 is amended as follows:

(A) Strike the phrase “The two year period for each license shall begin and end with the end of the license year being an even or odd year as follows:” and insert the phrase “The three year renewal period for each license listed below shall occur sequentially every three years starting with the following dates:”.

(B) In the chart, strike the words “Even” and “Odd” and, in the cases of Class A licenses, insert the date “2006”, in the cases of Class B licenses and Solicitor’s licenses, insert the date “2005”, and, in the cases of Classes C and D licenses and Caterer’s licenses, insert the date “2004”.

(3) Subsection 208.1(b) is amended to read as follows:

“(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.”.

(4) Subsection 208.2 is amended to read as follows:

“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 licensee who has not renewed timely shall not be permitted to sell or serve alcoholic beverages with an expired license.”.

(b) Chapter 4 is amended as follows:

(1) Subsection 400.1 is amended by adding a new paragraph (e) to read as follows:

“(e) The establishment will not have an adverse impact on real property values in the locality, section, or portion of the District of Columbia where it is to be located.”.

(2) Subsection 401.1 is amended to read as follows:

“401.1 The Board may deny a license to an applicant if evidence shows that the applicant has permitted at the establishment conduct which is in violation of this title.”.

(c) Subsection 1207.8 is amended by striking the phrase “two (2) years” and inserting the phrase “three (3) years” in its place.

(d) Chapter 16 is amended as follows:

(1) Subsection 1607.2 is amended to read as follows:

“1607.2 Upon recognition by the Board of a properly filed protest at a roll call hearing, the applicant shall be required to select one of the geographic areas listed below that the applicant proposes be considered in determining the appropriateness of the establishment. The applicant shall submit the proposed boundaries to the Board and the protestants no later than ten (10) calendar days after the roll call hearing. The applicant shall be deemed to have selected the “section” geographic area if it fails to submit boundaries to the Board within the ten (10) calendar day period.”.

(2) Subsection 1607.3 is amended to read as follows:

“1607.3 Any protestant may object to the area and boundaries proposed by an applicant by filing a written objection with the Board no later than thirty (30) calendar days after receipt of the applicant’s proposed boundaries. The objection shall also be served on the applicant by any of the means set forth in § 1703. The objection shall state in detail the following:

“(a) The reasons for objecting to the boundaries proposed by the applicant;

“(b) The boundaries proposed by the objector; and

“(c) The reasons why the objector’s boundaries should be adopted by the Board.”.

(3) A new subsection 1609.1 is added to read as follows:

“1609.1 The terms of a cooperative/voluntary agreement submitted by the parties shall be consistent with District of Columbia law and shall relate to either:

“(a) The operations of the establishment;

“(b) The sale, service, and consumption of alcoholic beverages at the establishment; or

“(c) A topic covered in Title 25 of the D.C. Official Code or this title, including the appropriateness standards contained in D.C. Official Code § 25-313.”.

(4) A new subsection 1609.4 is added to read as follows:

“1609.4 Upon finding that a licensee has materially violated certain conditions required by the Board, as authorized by this section, the Board may also fine a licensee pursuant to the range of fines set forth in D.C. Official Code § 25-830.”

(e) Chapter 19 is amended as follows:

(1) A new subsection 1903.1 is added to read as follows:

“1903.1 Any licensee or applicant for a license may make a written request to the Board to issue a declaratory order, as provided in D.C. Official Code § 2-508, regarding the applicability of Title 25 of the D.C. Official Code, this title, or any other statute enforceable by the Board, to terminate a controversy other than a contested case or to remove uncertainty regarding a specific factual situation. Any request filed with the Board that involves an existing voluntary agreement shall be considered a contested case by the Board and not subject to the issuance of a declaratory order.”

(2) A new subsection 1903.4 is added to read as follows:

“1903.4 All facts asserted in a request for a declaratory order shall be supported by sworn affidavit of the requestor. If the Board determines that further facts are necessary, it shall request the requestor to provide those facts by written affidavit or may receive those facts by stipulation at a non-contested case fact-finding hearing.”

Sec. 104. Section 13(c)(2)(A) of the Advisory Neighborhood Commission Act of 1975, effective March 26, 1976 (D.C. Law 1-58; D.C. Official Code § 1-309.10(c)(2)(A)), is amended by striking the first sentence and inserting the sentence “The Alcoholic Beverage Control Board (“ABC Board”) or its designee shall give notice to Advisory Neighborhood Commissions, the Office of Advisory Neighborhood Commissions, the Commission or Commissions representing the area within 600 feet of where the applicant’s establishment is located, and the Commissioner representing an affected single-member district at least 45 calendar days prior to a hearing on applications for issuance or renewal of retailer’s licenses, class A, B, C/R, C/T, C/N, C/H, C/X, D/R, D/T, D/N, D/H, D/X, and consumption licenses for clubs, or for transfer of a license of any of these classes to a different location.” in its place.

TITLE II. CATERING AMENDMENT

Sec. 201. Title 25 of the District of Columbia Official Code is amended as follows:

(a) Section 25-313(c) is amended as follows:

(1) Designate the existing text as paragraph (1).

(2) A new paragraph (2) is added to read as follows:

“(2) Applicants for a caterer’s license shall apply according to the procedures under Chapter 20 of the District of Columbia Municipal Regulations.”

(b) Section 25-314(b)(2) is amended to read as follows:

“(2) The 400-foot restriction shall not apply to hotel licenses, club licenses, caterer’s licenses, or temporary licenses.”

(c) Section 25-351 is amended by adding a new subsection (g) to read as follows:

“(g) The requirements of this section shall not apply to solicitor’s licenses, manager’s licenses, caterer’s licenses, or to temporary licenses.”.

(d) Section 25-352 is amended by adding a new subsection (f) to read as follows:

“(f) The requirements of this section shall not apply to solicitor’s licenses, manager’s licenses, caterer’s licenses, or to temporary licenses.”.

(e) Section 25-421 is amended by adding a new subsection (h) to read as follows:

“(h) The requirements of this section shall not apply to applicants for a caterer’s license.”.

(f) Section 25-423 is amended by adding a new subsection (f) to read as follows:

“(f) The requirements of this section shall not apply to applicants for a solicitor’s license, manager’s license, caterer’s license, or a temporary license.”.

Sec. 202. Title 23 of the District of Columbia Municipal Regulations is amended by adding a new Chapter 20 to read as follows:

“Chapter 20. Catering License

“Secs.

“2000 Caterer’s License

“2001 Caterer’s Application

“2002 Purchase of Alcoholic Beverages

“2003 Storage of Alcoholic Beverages

“2004 Importation and Transportation of Alcoholic Beverages

“ 2005 Manager Attendance at Catered Events

“2006 Caterers’ Reports

“2007 Notice to the Public

“2008 Catered Site Protest Hearing

“2009 Caterer Show Cause and Summary Suspension Proceedings”.

“2000 CATERER’S LICENSE

“2000.1 A Caterer’s license, issued under D.C. Official Code § 25-113(i), shall authorize the licensee to sell, deliver, and serve alcoholic beverages for consumption on the premises of a catered event at which the licensee is also serving prepared food. A Caterer is a business entity engaged principally in the processing, preparation, and service of food products which it has prepared especially for the customer for an event, and the service of alcoholic beverages is incidental to the food preparation and service. A Caterer’s license shall not be granted to or maintained by entities which only serve snack items. Snack items shall include, but not be limited to, potato chips, popcorn, pretzels, nuts, cookies, and candy. A violation of this subsection 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).

“2000.2 The licensee under a Caterer’s license or its designated manager shall remain on the premises of a catered event for the period during which alcoholic beverages are sold, served, and consumed.

“2000.3 Wholesalers and holders of an off-premises license, class A, may sell alcoholic beverages to caterers licensed under this section for catered events of one hundred (100) persons or less. Only holders of an off-premises license, class A, shall sell alcoholic beverages to caterers licensed under this section for catered events in excess of one hundred (100) persons.

“2001. CATERER’S APPLICATION

“2001.1 Application for a Caterer’s license shall be made on a form prescribed by the Board that shall include, at a minimum, the name, address, and federal and D.C. tax identification numbers of the catering business, the date of application, and a notarized statement that the applicant for the Caterer’s license is informed of and agrees to abide by Title 25 of the D.C. Official Code and this title. Caterers without a place of business within the District of Columbia shall also designate a registered agent upon whom service of process may be served. The Board may require documentation evidencing the applicant’s qualification to transact business in the District of Columbia.

“2001.2 The Board may issue a Caterer’s license to an applicant who meets the criteria set forth in D.C. Official Code §§ 25-301 and 25-303(a)(2). An applicant for a Caterer’s license shall not be subject to the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314 and § 400 to qualify for the issuance or renewal of a Caterer’s license; provided, that the licensee under a Caterer’s license shall be subject to the appropriateness standards set forth in D.C. Official Code § 25-313 for purposes of the catered site protest hearing set forth in § 2008.

“2001.3 The licensee under a Caterer’s license shall be eligible to sell, deliver, and serve alcoholic beverages for consumption on premises designated by its customers in the District of Columbia.

“2001.4 The licensee under an on-premises license, class C or class D, shall be required to file a separate application for the issuance or renewal of a Caterer’s license.

“2001.5 The Board in its discretion may grant temporary licenses to a caterer pending approval of its catering license application.

“2002. PURCHASE OF ALCOHOLIC BEVERAGES

“2002.1 A Caterer licensed under § 2000.1 shall not purchase alcoholic beverages from a Wholesaler other than for scheduled events to be attended by one hundred (100) persons or less. Upon purchasing alcoholic beverages for an event of one hundred (100) persons or less from a Wholesaler, a Caterer shall immediately provide the following information to the Wholesaler on a form prescribed by ABRA:

“(a) A description of the alcoholic beverages being purchased; and

“(b) A description, including the location, of the scheduled event for which the alcoholic beverages are being purchased.

“2002.2 Caterers shall maintain distinct records identifying the alcoholic beverages purchased from Wholesalers for each scheduled event of one hundred (100) persons or less and shall make such records available for inspection, upon request, by the Board and by the Wholesaler from which the alcoholic beverages were purchased. A Caterer licensed under § 2000.1 shall, concurrent with the information required in § 2006, provide to the Board a sworn affidavit on a form prepared by ABRA attesting that, in the preceding reporting period, it has used alcoholic beverages purchased from Wholesalers only for events of one hundred (100) persons or less. Upon request of the Board, the Caterer shall identify the Wholesaler(s) from whom alcoholic beverages have been purchased. 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) and Chapter 8.

“2003. STORAGE OF ALCOHOLIC BEVERAGES

“2003.1 The licensee under a Caterer’s license may store alcoholic beverages in the District of Columbia upon the approval of the Board. The licensee under a Caterer’s license shall not store alcoholic beverages intended for use in the District of Columbia outside of the District of Columbia.

“2004. IMPORTATION AND TRANSPORTATION OF ALCOHOLIC BEVERAGES

“2004.1 The licensee under a Caterer’s license may transport alcoholic beverages within the District of Columbia subject to the requirements of § 1303. The importation of alcoholic beverages by the licensee under a Caterer’s license into the District of Columbia from outside of the District of Columbia shall be prohibited pursuant to D.C. Official Code § 25-772, and said alcoholic beverages shall be deemed illegal contraband goods subject to seizure and forfeiture to the District of Columbia pursuant to D.C. Official Code § 25-911.

“2004.2 The licensee under a Caterer’s license shall be permitted to remove sealed containers of alcoholic beverages from an event site, but shall not be permitted to remove unsealed containers from the premises. Customers who purchase or receive alcoholic beverages at the event site shall be permitted to remove sealed containers of alcoholic beverages from the premises and retain possession of unsealed containers on the premises.

“2004.3 Unopened containers of alcoholic beverages purchased from an on-premises licensee, class A, may be returned by the licensee under a Caterer’s license either to a class A licensee or stored at a location within the District of Columbia that has been approved by the Board.

“2005. MANAGER ATTENDANCE AT CATERED EVENTS

“2005.1 Either the licensee under a Caterer’s license or a designated manager shall remain on the premises during the hours that alcoholic beverages are sold, served, or consumed at the event.

“2005.2 The licensee under a Caterer’s license shall place a copy of the license in the possession of a designated manager for the duration of the catered event and the manager shall make the license available for public inspection upon request.

“2006. CATERERS’ REPORTS

“2006.1 Licensees subject to this section shall, semiannually, furnish to the Board, on a form to be prescribed by the Board, a report under oath that includes the following information:

“(a) The quantity of alcoholic beverages sold by the licensee in gallons during the preceding six (6) months for beverage purposes;

“(b) The total dollar amount of receipts for the sale of alcoholic beverages and food;

“(c) Of the total in paragraph (b) above, the amount received for the sale of alcoholic beverages and the amount received for the sale of food, and the percentages of the total receipts represented by the respective amounts;

“(d) The amount expended for alcoholic beverages and the amount expended for food, and the percentages of the total expenditures represented by the respective amounts;

“(e) The method used to compute the amounts and percentages; and

“(f) An affidavit executed by an individual licensee, partner of an applicant partnership, or the appropriate officer of an applicant corporation, attesting to the truth of the statement.

“2006.2 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 penalty imposed based upon the primary tier schedule set forth in D.C. Official Code § 25-830(c).

“2006.3 Licensees subject to this section shall semiannually furnish to the Board, on a form prescribed by the Board, a summary report of the alcoholic beverage purchases it has made from Wholesalers for events for one hundred (100) persons or less.

“2006.4 In computing the amounts received and expended for alcoholic beverages and for food, a licensee shall exclude all amounts received for taxes and gratuities in conjunction with these transactions, and all amounts, including surcharges, related to the obtaining and providing of entertainment or other goods and services at the licensed establishment.

“2006.5 Failure to timely submit the reports listed in § 2006.1 to the Board shall constitute grounds for the Board to fine the licensee or suspend the license. Violation of this subsection shall be deemed a secondary tier violation subject to the penalties set forth in D.C. Official Code § 25-830(d) and Chapter 8.

“2007. NOTICE TO THE PUBLIC

“2007.1 A list of licensed caterers shall be sent by the Board at the beginning of the (i) renewal period, (ii) the second year payment period, and (iii) the third year payment period for Caterers’ licenses to the following groups:

“(a) The Council;

“(b) The Board of Education; and

“(c) The Advisory Neighborhood Commissions.

“2007.2 The list of licensed caterers shall contain the legal name and trade name of the licensee and the licensee’s address of record.

“2007.3 The list shall be sent to the ANC by first-class mail and addressed to the following persons:

“(a) The ANC office, with a copy for each ANC member;

“(b) The ANC chairperson, at his or her home address of record; and

“(c) Each ANC member at his or her home address of record.

“2007.4 The list of licensed caterer’s shall also be published by the Board in the District of Columbia Register.

“2007.5 A list of Caterers licensed to sell alcoholic beverages shall be made available to the public by ABRA upon request.

“2008. CATERED SITE PROTEST HEARING

“2008.1 Protestants with standing pursuant to D.C. Official Code § 25-601 may file a written request for a catered site protest hearing (“protest request”) with the Board to prohibit or place restrictions on the number, nature, and size of events held at an event site at which the service of alcoholic beverages by caterers is permitted.

“2008.2 All protest requests for a catered site protest hearing shall initially be scheduled by the Board for a preliminary hearing. All parties named in the protest request for a catered site protest hearing shall be afforded notice of both the preliminary hearing and the catered site protest hearing. Upon notice of the protest request filed with the Board, the owner of the event site or its designated representative shall provide at the preliminary hearing a list of caterers who have previously provided catering services at the event site, including the date of each event and the number of people who attended each event, within the previous two (2) years and any additional caterers currently scheduled at the event site.

“2008.3 The written protest request shall be filed within thirty (30) days of the last problem event and shall address only those events which occurred in a period not before the preceding year. The request shall identify the site and the date(s) of the event(s) which give rise to the protest and the reason for protesting, based upon the appropriateness standards set forth in D.C. Official Code § 25-313. The catered site protest hearing shall be limited to no more than two (2) hours total or one (1) hour for each side.

“2008.4 Notice of receipt of the protest request and the scheduled hearing shall be served by the Board on the protestants, the owner of an event site, and all caterers who have catered or are scheduled to cater an event at the site.

“2008.5 At the preliminary hearing, the Board shall determine that the protestants have standing pursuant to D.C. Official Code § 25-601. Upon determining that standing exists, the Board shall schedule and conduct a catered site protest hearing pursuant to the procedures set forth in Chapter 4 of Title 25 of the D.C. Official Code.

“2008.6 The protestants, the owner of an event site, and the caterer(s) for the event(s) in question shall be considered parties to the catered site protest hearing and shall have the right to present and cross-examine witnesses.

“2008.7 The parties may agree to continue the catered site protest hearing in order to facilitate resolution of complaints or to reach a cooperative/voluntary agreement. The Board may also require that a settlement conference be held pursuant to D.C. Official Code § 25-445 prior to holding a catered site protest hearing.

“2008.8 The Board, upon the completion of a catered site protest hearing, may prohibit or place restrictions upon the number, nature, or size of events, or caterers permitted at a site in its written order, which shall be issued pursuant to the procedures set forth in D.C. Official Code § 25-433.

“2008.9 An event site may have catered events pending the outcome of the catered site protest hearing.

“2008.10 An event site shall not be subject to a catered site protest hearing more than once every two (2) years from the same individual or entity.

“2008.11 Events held in private residences that do not require a license under D.C. Official Code § 25-102 shall not be subject to catered site protest hearings.

“2008.12 The Board may deny a protest request if the protest request is found to be facially deficient or meritless.

**“2009. CATERER SHOW CAUSE AND SUMMARY SUSPENSION
PROCEEDINGS**

“2009.1 The Board, in response to written complaints from the public expressing concerns about disruptive activity or unlawful conduct at an event site or as a result of its own investigation, may order a show cause hearing pursuant to the procedures set forth in § 1604 or a summary suspension or summary revocation hearing pursuant to the procedures set forth in D.C. Official Code § 25-826.

“2009.2 Notice of a show cause hearing or a summary suspension or summary revocation hearing shall be provided by the Board to the licensee under a Caterer’s license. If the issues at the hearing may involve the interests of an event site, the owner of an event site shall also be given notice of the hearing.

“2009.3 If the Board determines that disruptive activity or unlawful conduct has occurred at the event site, the Board may place restrictions upon the number, nature, or size of events permitted at a site. If the Board determines that the activity or conduct is the product of the actions of a specific caterer, the Board may fine, suspend, or revoke the Caterer’s license pursuant to Chapter 8 of Title 25 of the D.C. Official Code.”.

TITLE III. THE RESTAURANT AMENDMENT ACT

Sec. 301. Title 25 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation “25-113a. License endorsements.” after the section designation “25-113. On-premises retailer’s licenses.”.

(b) Section 25-101 is amended as follows:

(1) A new paragraph (21A) is added to read as follows:

“(21A) “Entertainment” means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term “entertainment” shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.”.

(2) Paragraph (24) is amended by adding a sentence to the end of the paragraph to read as follows:

“Gross annual receipts are subject to audit and examination under § 25-802.”.

(3) A new paragraph (24A) is added to read as follows:

“(24A) “Gross annual food sales” means the total amount of food sold during the most recent one-year accounting period. Gross annual food sales are subject to audit and examination under § 25-802.”.

(4) Paragraph (43) is amended to read as follows:

“(43) Restaurant means a space in a building which shall:

“(A)(i) Be regularly ready, willing, and able to prepare and serve food, have a kitchen which shall be regularly open, have a menu in use, have sufficient food on hand to serve the patrons from the menu, and have proper staff present to prepare and serve the food;

“(ii) Be held out to and known by the public as primarily a food-service establishment;

“(iii) Have all advertising and signs emphasize food rather than alcoholic beverages or entertainment;

“(iv) Be open regular hours that are clearly marked with no unusual barriers to entry (such as cover charges or membership requirements);

“(v) Have its kitchen facilities open until at least 2 hours before closing;

“(vi) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or offering facilities for dancing;

“(vii) If possessing an entertainment endorsement, be permitted to charge a cover and advertise entertainment, but shall not primarily advertise drink specials;

“(viii) Be permitted to have recorded and background music without obtaining an entertainment endorsement;

“(ix) Not have nude performances; and

“(x) Have annual gross food sales of \$1500 or \$2000 per occupant (as determined by the establishment’s Board-approved certificate of occupancy), depending on license class; or

“(B)(i) Have adequate kitchen and dining facilities;

“(ii) Keep its kitchen facilities open until 2 hours before closing;

“(iii) Obtain an entertainment endorsement prior to offering entertainment, charging a cover, or having facilities for dancing;

“(iv) Be permitted to have recorded and background music without obtaining an entertainment endorsement;

“(v) Not have nude performances; and

“(vi) Have the sale of food account for at least 45% of the establishment’s gross annual receipts.”

“(C) Any licensee operating under a C/R, D/R, C/H, or D/H license who is not in compliance with the food sales requirements of § 25-101(43) as of the effective date of the Omnibus Alcoholic Beverage Amendment Act of 2004, passed on 2nd reading on May 18, 2004 (Enrolled version of Bill 15-516) (“2004 act”), shall be permitted to maintain its current license and operations for a period of 2 years from the effective date of the 2004 act; provided, that there is no substantial change in operations during that period without a substantial change application.”

(5) Subparagraph (52)(B) is amended by striking the phrase “may allow dancing for its patrons only” and inserting the phrase “offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement” in its place.”

(c) Section 25-113 is amended as follows:

(1) Subsection (b)(3) is amended to read as follows:

“(3)(A) There shall be 2 classes of restaurant licenses:

“(i) Class C/R (spirits, wine, and beer); and

“(ii) Class D/R (wine and beer).

“(B)(i) A class C/R license may be issued to:

“(I) An establishment which qualifies as a restaurant under § 25-101(43)(A) and has gross annual food sales of at least \$2000 per occupant (as determined by the establishment’s Board-approved certificate of occupancy); or

“(II) An establishment which qualifies as a restaurant under § 25-101(43)(B).

“(ii) A class D/R license may be issued to:

“(I) An establishment which qualifies as a restaurant under § 25-101(43)(A) and has gross annual food sales of at least \$1500 per occupant (as determined by the establishment’s Board-approved certificate of occupancy); or

“(II) An establishment which qualifies as a restaurant under § 25-101(43)(B).

“(iii) The Board shall, by rule, adjust for inflation the gross annual food sales per occupant requirements established under subparagraphs (B)(i)(I) and (B)(ii)(I) of this paragraph once every 5 years. The first adjustment shall be effective January 1, 2010. In determining the appropriate inflation index to be applied, the Board may consider the inflation indices customarily employed by the federal and District governments for similar purposes.”.

(2) Subsection (c)(2) is amended by striking the phrase “a tavern shall” and inserting the phrase “a tavern that does not possess an entertainment endorsement shall” in its place.

(3) Subsection (e) is amended as follows:

(A) Paragraph (1) is amended to read as follows:

“(1) A hotel license (H) shall be issued only for a hotel license.”.

(B) Paragraph (5) is amended to read as follows:

“(5)(A) There shall be 2 classes of hotel licenses:

“(i) Class C/H (spirits, beer, and wine); and

“(ii) Class D/H (beer and wine).

“(B)(i) A class C/H license may be issued to:

“(I) An establishment that has annual gross food sales in a hotel dining room of at least \$2000 per occupant (as determined by the establishment’s Board-approved certificate of occupancy); or

“(II) An establishment that has sales of food in a hotel dining room which accounts for at least 45% of gross annual receipts from the operation of the dining room; provided, that in the case of a hotel that has 200 or fewer rooms and was built before January 1, 1940, sales of food shall account for at least 25% of gross annual receipts from the operation of the dining room.

“(ii) A class D/H license may be issued to:

“(I) An establishment that has annual gross food sales in a hotel dining room of at least \$1500 per occupant (as determined by the establishment’s Board-approved certificate of occupancy); or

“(II) An establishment that has sales of food in a hotel dining room which accounts for at least 45% of gross annual receipts from the operation of the dining room; provided, that in the case of a hotel that has 200 or fewer rooms and was built before January 1, 1940, sales of food shall account for at least 25% of gross annual receipts from the operation of the dining room.”.

(4) Subsection (g)(1) is amended to read as follows:

“(g)(1) A multipurpose facility license shall be issued only to legitimate theaters, universities, museums, conference centers, art galleries, or facilities (such as the Washington

Convention Center, the Lincoln Theatre, or the D.C. Arena) for the performance of sports, cultural, or tourism-related activities.”.

(5) A new subsection (j) is added to read as follows:

“(j)(1) Cover charges or the sale of items other than food or beverage shall not be included in determining an establishment’s gross annual food sales or whether the sale of food accounts for at least 45% of the establishment’s gross annual receipts; provided, that minimum charges that are readily identifiable as food or beverage shall be included in calculating whether the establishment is meeting the food sales requirements set forth in § 25-101(43) and § 25-113.

“(2) Off-site food sales by a licensee under a license, class C/R, D/R, C/H, or D/H, shall also not be included for purposes of calculating whether the establishment is meeting the food sales requirement set forth in either § 25-101(43) or § 25-113.

“(3)(A) Each licensee under a license, class C/R, D/R, C/H, or D/H, shall keep and maintain on the premises for a period of 3 years adequate books and records showing all sales, purchase invoices, and dispositions, including the following:

“(i) Sales information that includes the date, the price of food sold, the price of alcoholic beverages sold, and the amount of total sales;

“(ii) Purchase information that includes the date and quantity of the purchase, the name, address, and phone number of the wholesaler and or vendor with the original invoice; and

“(iii) Register receipts or guest checks, which may be kept daily or weekly that include the food sold, the alcoholic beverages sold, and the amount of total sales.

“(B) Any licensee may file a written request with the Board to have his books and records, except the day to day records or register receipts, kept at an accountant’s office or the licensee’s office; provided, that the records are made available within 3 days of request by ABRA staff.

“(C) The failure of a licensee under a license, class C/R, D/R, C/H, or D/H, to keep and maintain records as required by this section shall be subject to the following penalties:

“(i) One-quarter of non-compliance shall result in a penalty not to exceed \$3,000 and ABRA monitoring;

“(ii) Non-compliance after 2 quarters shall result in a penalty not to exceed \$4,500 or license suspension for a period not to exceed 5 days; or

“(iii) Non-compliance after 3 or more quarters shall result in a show cause hearing for revocation or a mandatory change in license class.

“(D) A violation of this section shall also be a primary tier violation under § 25-830(c).”.

(c) A new section 25-113a is added to read as follows:

“§ 25-113a. License endorsements.

“(a) All license endorsements shall be placed on the applicant’s license.

“(b) The licensee under a license, class C/R, D/R, C/H, D/H, C/T, and D/T, shall obtain an entertainment endorsement from the Board to be eligible to have entertainment, a cover charge, or offer facilities for dancing.

“(c) The licensee under an on-premises license, class C/R, D/R, C/H, D/H, C/T, D/T, C/N, and D/N, shall obtain a sidewalk café endorsement or summer garden endorsement from the Board to be eligible to conduct business operations on a sidewalk café or summer garden, which may include the sale, service, and consumption of alcoholic beverages on outdoor public or private space.”.

Sec. 302. Title 47 of the District of Columbia Official Code is amended as follows:

(a) Section 47-2820(b-2) is amended by striking the phrase “Title 25 shall be exempt from the provisions of subsection (b-1)” and inserting the phrase “Title 25, and which holds a certificate of occupancy for less than 401 persons,” in its place.

(b) Section 47-2851.03(a)(1) is repealed.

(c) Section 47-2851.03a(a) is repealed.

Sec. 303. Title 23 of the District of Columbia Municipal Regulations is amended as follows:

(a) A new Chapter 10 is added to read as follows:

“Chapter 10. Endorsements

“Secs.

“1000 Entertainment Endorsement

“1001 Entertainment Endorsement Application

“1002 Cover Charge

“1003 One-Day Substantial Change Exception

“1004 Sidewalk Café or Summer Garden Endorsement

“1005 Sidewalk Café or Summer Garden Application

“CHAPTER 10. ENDORSEMENTS

“1000 ENTERTAINMENT ENDORSEMENT

“1000.1 No licensee under a license, class C/R, D/R, C/H, or D/H, may have entertainment, dancing, or charge a cover charge without obtaining an entertainment endorsement.

“1000.2 No licensee under a license, class C/T or D/T, may have entertainment, a dance floor or dance area larger than 140 square feet, or charge a cover without an entertainment endorsement. A tavern may have a dance floor or dance area up to 140 square feet without an entertainment endorsement.

“1000.3 The licensee under a license, class C/N or D/N, may have entertainment, dancing, or charge a cover without an entertainment endorsement.

“1000.4 An entertainment endorsement shall not be issued to the licensee under a license, class C/R, D/R, C/H, or D/H, that has been determined by the Board not to be in substantial compliance with the minimum food sales requirement as set forth in Chapter 21.

“1000.5 An entertainment endorsement shall be placed by ABRA on the establishment’s license and shall indicate the establishment’s hours of operation and whether entertainment, dancing, or charging a cover is permitted.

“1001. ENTERTAINMENT ENDORSEMENT APPLICATION

“1001.1 An applicant for a new or an amended entertainment endorsement shall apply by a separate application form provided by ABRA. The application form shall include, at a minimum, information from the applicant in response to the following questions: (a) Do you intend to have entertainment?; (b) What is the nature of your entertainment?; (c) What hours will your entertainment occur?; (d) Do you intend to provide an area for dancing?; (e) What size will your dance area be?; and (f) Do you intend to have a cover charge?

“1001.2 An application for a new entertainment endorsement may be filed with an application for a new license, class C/R, D/R, C/H, D/H, C/T, or D/T. The Board shall provide notice of both the new license application and the entertainment endorsement application at the same time pursuant to the requirements of D.C. Official Code §§ 25-421 through 25-423.

“1001.3 An application for a new or amended entertainment endorsement filed by the licensee under an existing license, class C or D, shall be considered by the Board pursuant to the substantial change procedures set forth in D.C. Official Code § 25-404. The Board shall provide notice of entertainment endorsement applications that constitute a substantial change pursuant to the requirements of D.C. Official Code §§ 25-421 through 25-423.

“1001.4 Pursuant to the requirements of § 1001.1(c), an applicant for an entertainment endorsement shall be required to list the hours it intends to begin and end entertainment, including live music; provided, that the applicant shall only be required to specify the hours of entertainment starting after 6:00 p.m.

“1001.5 The licensee under a license, class C/R, D/R, C/H, D/H, C/T, or D/T, shall be eligible to receive automatic conversion to an entertainment endorsement for the entertainment, cover charge, and dancing activities for which the licensee has previously obtained permission from the Board. Automatically converted establishments shall be required to file an entertainment endorsement application, but shall be exempt from the procedures set forth in § 1001.3.

“1001.6 The licensee under a license, class C/R, D/R, C/H, D/H, C/T, or D/T, may file a written request with the Board to amend its entertainment endorsement subject to the procedures set forth in § 1001.3. An amendment to an entertainment endorsement shall not be required for changes to an establishment’s entertainment or dancing format if: (a) the licensee’s entertainment endorsement is approved for entertainment or dancing; and (b) the change is not restricted by Board order or cooperative/voluntary agreement.

“1001.7 The entertainment endorsement fee shall be twenty percent (20%) of an establishment’s base license fee.

“1002. COVER CHARGE

“1002.1 The licensee under a license, class C/R, D/R, C/H, D/H, C/T, or D/T, shall obtain an entertainment endorsement to have a cover charge. For purposes of this section, a cover charge is a fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink.

“1002.2 An applicant shall follow the entertainment endorsement application and notice procedures set forth in § 1001; provided, that an entertainment endorsement application that solely requests approval from the Board to charge a cover charge shall not be considered a substantial change under D.C. Official Code § 25-404. Opposition to a cover charge shall also not be considered grounds for filing an objection under D.C. Official Code § 25-602(a) to an entertainment endorsement application.

“1002.3 The licensee under a license, class C/N or D/N, shall be permitted to have a cover charge without an entertainment endorsement unless restricted by Board order or cooperative/voluntary agreement.

“1002.4 The licensee under a license, class C or D, with a certificate of occupancy over 400 persons shall also be required to obtain a public hall certificate of occupancy from the Zoning Administrator and an entertainment endorsement for a public hall from the Department of Consumer and Regulatory Affairs pursuant to D.C. Official Code § 47-2820 to be eligible to charge a cover charge.

“1003. ONE-DAY SUBSTANTIAL CHANGE EXCEPTION

“1003.1 The licensee under a license, class C/R, D/R, C/H, D/H, C/T, or D/T, who does not possess an entertainment endorsement may file a one-day substantial change request with the Board pursuant to § 716 for permission to have entertainment, a cover charge, or dancing not permitted by the applicant’s license as part of a specific event. The one-day substantial change request may be granted, in the Board’s discretion, unless the activities sought by the applicant are otherwise prohibited by the establishment’s license.

“1003.2 A request under § 1003.1, when considered together with § 716.1, shall not be granted by the Board more than six (6) times in a calendar year.

“1004. SIDEWALK CAFÉ OR SUMMER GARDEN ENDORSEMENT

“1004.1 No licensee under an on-premises retailer’s license shall be permitted to serve alcoholic beverages on either outdoor public or private space without obtaining a sidewalk café endorsement for outdoor public space or a summer garden endorsement for outdoor privately owned space. The sidewalk café or summer garden endorsement shall be placed by ABRA on the license.

“1005. SIDEWALK CAFÉ OR SUMMER GARDEN APPLICATION

“1005.1 An applicant for a sidewalk café or summer garden endorsement shall apply by a form provided by ABRA. The form shall include, at a minimum, the name of the licensee, the

address of the establishment, the requested number of outdoor seats for the service of alcoholic beverages, and the hours of operation for the outdoor area. The applicant shall submit with the application: (a) a copy of its certificate of occupancy; (b) a diagram or photograph showing the designated area for the sidewalk café or summer garden; and (c) a public space permit and certificate of use for sidewalk café applications. The failure to provide a public space permit or certificate of use, as required by this subsection, shall not be grounds for refusal of the application for processing; provided, that the applicant shall provide ABRA with a copy of the public space permit and the certificate of use prior to receiving the sidewalk café endorsement.

“1005.2 An application for a sidewalk café or summer garden endorsement may be filed in conjunction with an application for a new license, class C or class D.

“1005.3 An application for a sidewalk café or summer garden endorsement shall be considered by the Board pursuant to the substantial change procedures set forth in D.C. Official Code § 25-404. Licensees currently permitted by the Board to use a sidewalk café or a summer garden shall be eligible to amend their license, class C or class D, to include a sidewalk café or summer garden endorsement without being subject to the substantial change procedures set forth in D.C. Official Code § 25-404.

“1005.4 The fee for the sidewalk café or summer garden endorsement shall be seventy five dollars (\$75) as set forth in § 209.7. An inspection shall be required prior to conducting business operations on a new or remodeled sidewalk café or summer garden, which may include the sale, service, or consumption of alcoholic beverages on outdoor public or private space. A separate inspection fee shall not be required.

“1005.5 The transfer of ownership of a license shall also include a transfer of any sidewalk café or summer garden endorsement.

“1005.6 The licensee under a sidewalk café endorsement shall be required to post its public space permit, which indicates the establishment’s number of permitted seats, adjacent to its license.”

(b) A new Chapter 21 is added to read as follows:

“Chapter 21. Restaurant and Hotel Food Sales Requirements

“Secs.

“2100 Restaurant and Hotel Qualifications

“2101 Food Sales Requirement Compliance

“2100 RESTAURANT AND HOTEL QUALIFICATIONS

“2100.1 A class C/R or D/R license shall be issued only to a restaurant as defined in D.C. Official Code § 25-101(43). A class C/H or D/H license shall be issued only to a hotel as defined in D.C. Official Code § 25-101(25). To qualify for or renew a class C/R, D/R, C/H, or D/H, license, a restaurant or hotel shall meet the requirements of D.C. Official Code §§ 25-101(43) and 25-113.

“2101. FOOD SALES REQUIREMENT COMPLIANCE

“2101.1 The Board shall monitor licensed establishments, class C/R, D/R, C/H, and D/H, for compliance with the food sales requirements set forth in D.C. Official Code §§ 25-101(43) and 25-113.

“2101.2 The initial auditing period to monitor compliance shall be not less than one (1) quarter. The Board shall continue to monitor an establishment which is found not to be in compliance for a period of one (1) year.

“2101.3 Substantial lack of compliance by the licensee under a license, class C/R, D/R, C/H, or D/H, for a single year shall result in sanctions and continued monitoring, and may be used as contributing evidence of non-compliance with Title 25 of the D.C. Official Code and this title in protests or other proceedings. Substantial lack of compliance during or more than a full year shall result in sanctions that may include revocation by the Board or a change in license class, if permissible. The Board shall follow the show cause notice procedures prior to imposing any sanction against a licensee.

“2101.4 Minimal lack of compliance by the licensee under a license, class C/R, D/R, C/H, or D/H, for a single year shall result in a show cause hearing with the Board imposing one or more of the penalties set forth in § 2101.5, excluding revocation. The Board may issue a warning and continue monitoring of an establishment with a minimal lack of compliance if the establishment was in compliance with the food sales requirements of D.C. Official Code §§ 25-101(43) and 25-113 for the majority of the year that the establishment was monitored. An establishment found by the Board to have a minimal lack of compliance for two (2) or more successive years shall be deemed to have a substantial lack of compliance with the food sales requirement.

“2101.5 The Board may impose the following additional or alternative sanctions against an establishment which is in non-compliance with the minimum food sales requirement:

- (a) Revocation of the establishment’s entertainment endorsement, if any;
- (b) A reduction in the establishment’s operating hours;
- (c) A fine based upon the primary tier fine schedule set forth in D.C. Official Code §§ 25-830(c) and 25-801;
- (d) Revocation or suspension of the license; or
- (e) Require a change in license class, if permissible.”.

TITLE IV. ALCOHOL POOL BUYING GROUPS

Sec. 401. Title 25 of the District of Columbia Official Code is amended as follows:

(a) The table of contents for Chapter 1 is amended by adding a new section designation at the end to read as follows:

“25-122. Pool buying groups.”.

(b) Section 25-101 is amended by adding new paragraphs (37A) and (37B) to read as follows:

"(37A) "Pool buying agent" means the licensed vendor who is registered by the pool buying group with the Alcohol Beverage Regulation Administration.

"(37B) "Pool buying group" means a group of 2 or more licensees under an on-premises restaurant license (R), as defined in § 25-113(b), who have been approved by the Alcohol Beverage Regulation Administration to consolidate orders for alcoholic beverages ordered through a licensed pool buying agent from any lawful source in a single order."

(c) Section 25-102 is amended by adding a new subsection (e) to read as follows:

"(e)(1) No person shall sell or transfer alcoholic beverages between members of a pool buying group, except for the combination of individual orders and the placement of a pool order with a distributor.

"(2) To effectuate convenience or economies of delivery of pool orders, a pool member other than the buying agent may transfer to another pool member any portion of the alcoholic beverages ordered by the transferee retailer as part of the single transaction pool purchase; provided, that:

"(A) The acquisition of alcoholic beverage product is recorded on an invoice maintained by both participating retailers for 3 years and the invoice includes:

"(i) That the transferee retailer has properly ordered the alcoholic beverages as part of the pool order;

"(ii) The date of acquisition;

"(iii) The business names and addresses, the license names, and numbers of both licenses involved; and

"(iv) The resale certificate number of the licensee acquiring the products for resale; and

"(B) The transfer is being made without cost or charge by the transferor retailer of any nature whatsoever.

"(3) A transfer pursuant to this subsection shall be made within 7 days of the pool delivery without any cost or charge whatsoever to the transferee retailer."

(d) Section 25-112(c) is amended by adding a new paragraph (3) as follows:

"(3) If the licensee that is a member of a pool buying group, to other members of the same pool buying group any alcoholic beverages if:

"(A) A pool member other than the buying agent transfers to another pool member any portion of the alcoholic beverages ordered by the transferee retailer as part of the single transaction pool purchase;

"(B) A transfer pursuant to this section is made within 7 days of the pool delivery without any cost or charge whatsoever being made against the transferee retailer;

"(C) The acquisition of alcoholic beverage products is recorded in an invoice maintained by both participating retailers for 3 years and includes:

"(i) Business name, address, and license number of each licensee;

"(ii) Names, sizes, and quantities of the products transferred;

“(iii) Date that the delivery of products was received;
“(iv) Date that the physical transfer of products was made;
“(v) Unique identifier that links the record with a specific pool order; and
“(vi) The resale certificate number of the licensee acquiring the products for resale.”.

(e) Section 25-119(a) is amended by striking the phrase "an importation permit shall be issued to the licensee under a retailer's license, class A, B, C, or D," and inserting the phrase “an importation permit shall be issued to the licensee under a retailer’s license, class A, B, C, or D, and a pool buying agent” in its place.

(f) A new section 25-122 is added to read as follows:

“§ 25-122. Pool buying groups.”.

“(a) A pool buying group shall be created in the following manner:

“(1) Prior to commencing operations, a pool buying group shall file with ABRA a copy of the agreement under which the pool buying group will operate. The ABRA shall review the agreement and, if the requirements of applicable law and rules are met, shall approve the agreement.

“(2) Any proposed amendment to a pool buying group agreement shall be filed with, and be approved by, ABRA in the same manner as original agreements before the proposed amendments shall be effective.

“(3) Pool buying agreements shall include:

“(A) The name and address the cooperative or pool buying group;

“(B) The name of the buying agent for the group;

“(C) The cooperative buying group's bylaws;

“(D) For each member, the licensee's name, business name, business address, business phone number, license number, and the date each licensee joined the group;

“(E) The signatures of all the members of the pool buying group;

“(F) An attestation that the licensee is not a member of more than one pool buying group at that time; and

“(G) The license status of each member.

“(b) The buying agent shall be a licensed retailer of alcoholic beverages in the District.

“(c) A member of the pool buying group shall not be eligible to place an order with the group until the member has executed the pool buying agreement and the licensee's name, business name, license number, and the date of membership have been filed with, and approved by, the ABRA.

“(d) Any addition or termination to the membership of the pool buying group shall be provided to ABRA under the signature of the buying agent. The notice shall include the effective date of the addition of a new member or the termination of an existing member. The notice may be in letter form or on official forms which may be promulgated by ABRA.

“(e) The transfer, suspension, or revocation of a license held by a member of a pool buying group shall automatically terminate the licensee from membership in the pool buying group.”.

(g) The table of contents for Chapter 4 is amended to a new section designation after the section designation “25-410. Application for a manager’s license.” to read as follows:

“§ 25-411. Application and responsibilities of pool buying retail agent.”.

(h) Chapter 4 is amended by adding a new section 25-411 to read as follows:

“§ 25-411. Application and responsibilities of pool buying retail agent.”.

“(a) The application for a pool buying group retail agent permit shall include:

“(1) The name of the pool buying group;

“(2) The appointed license retail agent for the pool buying group; and

“(3) A statement that the agent will fully comply with Chapter 9 and other regulations regarding recordkeeping.

“(b) All taxes due on alcoholic beverages imported by an agent who has been issued an importation license shall be paid as prescribed in Chapter 9.

“(c) Pool buying agents shall maintain the records of each pool order placed for 3 years. The records shall include:

“(1) The date the pool order was placed and each date it was revised;

“(2) The distributor who was given the order;

“(3) The names and license numbers of each pool member participating in the pool order;

“(4) The price, discounts, and net price of all alcoholic beverages ordered by each member in the pool order; and

“(5) The date when deliveries of pool orders are made to the pool buying agent's premises, which is a permitted off-premises storage area.

“(d) The pool buying agent shall place the order under the name of the pool buying group and provide instructions for delivery as well as each licensed retailer's part of the pool order.

“(e) Upon written request, a pool buying agent shall make available for inspection all papers and reports related to pool orders, purchases, and payments within 10 days to any ABRA employee.

“(f)(1) Individual members of a pool buying group shall place their orders and remit their payment to the pool buying agent.

“(2) Payments shall be made payable to the pool buying agent or the distributor.

“(3) Distributors of alcoholic beverages may accept pool orders and payment only from the designated pool buying agent of a pool buying group.”.

(i) The table of contents for Chapter 5 is amended by adding a new section designation at the end to read as follows:

“§ 25-511. Minimum fee for pool buying group retail importation permit.”.

(j) A new section 25-511 is added to read as follows:

"§ 25-511. Minimum fee for pool buying group retail importation permit.

“The minimum annual license fee for a pool buying group agent importation permit shall be \$1000, in addition to any other license fees prescribed in this title.”.

Sec. 402. Rules and regulations.

The Mayor shall promulgate proposed rules and regulations to administer this title within 180 days of its effective date. The proposed rules and regulations, as well as any subsequent rules and regulations amending this title, shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the rules and regulations, in whole or in part, by resolution with the 45-day review period, the proposed rules and regulations shall be deemed approved.

Sec. 403. Applicability.

Section 402 shall apply upon the effective date of the regulations promulgated under section 403.

TITLE V. FISCAL IMPACT STATEMENT

Sec. 501. Fiscal impact statement.

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

TITLE VI. EFFECTIVE DATE

Sec. 601. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December

24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia