

GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION



January 7, 2009

Dear Licensee,

Please be advised that Bill 17-846, the "Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008," became law on December 24, 2008 (copy attached). The Bill establishes single sale moratoriums in all of Ward 2 and Ward 6 on the sale of beer, malt liquor, and ale in sizes of 70 ounces or less and also prohibits the sale of spirits in sizes of a half-pint or smaller.

Specifically, the Bill creates new D.C. Official Code §§ 25-345 and 25-346, which prohibit the holder of an off-premises retailer's license, Class A or B, located in Wards 2 and 6 from:

1. **Dividing 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 container is 70 ounces or less; and**
2. **Selling, giving, offering, exposing for sale, or delivering an individual container of beer, malt liquor, or ale if the container is 70 ounces or less, as well as spirits (liquor) sold in half-pints or smaller volumes.**

The Bill allows an off-premises retailer's license Class A or B to apply to the Alcoholic Beverage Control Board (Board) for an exception to the above restrictions. The Application for this process is attached and should be mailed or delivered to ABRA. The Board is required to consider the following factors in making its determination on a request for an exception:

1. **The input of the ANC in which the licensee is located, as evidenced by a vote of the ANC, which shall be given great weight;**
2. **Whether the exception will negatively impact the enforceability and effectiveness of the ban;**
3. **The absence or presence of any primary or secondary tier violations within the 12 months preceding the application for an exception, including sales to minors, use of premises for unlawful purposes, or sale to persons without valid identification violations;**
4. **Evidence of licensee participation in the community, such as attendance at ANC and Police Service Area community meetings; and**

5. Clear and convincing evidence that there have been no significant adverse community impacts, such as loitering, littering, or other anti-social behavior in the vicinity of the licensee establishment.

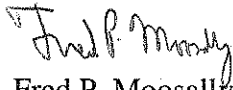
Please be advised that a new licensee may not apply for an exception within the first 12 months of having obtained a license. The restrictions listed above do not apply to a Ward 2 or Ward 6 licensee who is located in a federal building, or a full-service grocery store as described in Title 25 of the D.C. Official Code.

Licensees who have not been approved for an exception, have until February 9, 2009 to comply with the provisions of the "Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008." ABRA will begin enforcement of the Bill **on February 10, 2009**. The February 9, 2009 date for compliance does not apply to Class "A" and Class "B" retail licensees who currently have voluntary agreements which prohibit the sale of individual containers of beer, malt liquor, or ale which are 70 ounces or less, or spirits of a half-pint or smaller in volume. ABC licensees are expected to comply fully with the terms of their voluntary agreements, and any violation of a voluntary agreement may lead to enforcement action by the Board.

On or after February 10, 2009, all holders of off-premises retailer's licenses, Class A and B, who are found in violation of the "Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008," may be subject to such penalties as provided by District of Columbia law.

If you have any questions regarding the Bill, please contact Assistant Attorney General Jennifer Johnson, at (202) 442-4468.

Sincerely,


Fred P. Moosally
Interim Director

Attachments (2)

AN ACT

*Codification
District of
Columbia
Official Code*

2001 Edition

2009 Winter
Supp.

West Group
Publisher

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 3 of Title 25 of the District of Columbia Official Code to proscribe the sales of single containers by off-premises retailers located in Mt. Pleasant, in Ward 1; in Ward 2; and in Ward 6.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008".

Sec. 2. Chapter 3 of Title 25 of the District of Columbia Official Code is amended as follows:

(a) The table of contents for Subchapter III is amended by adding 3 new section designations to read as follows:

"25-344. Special restrictions for off-premises retailer's license in Mt. Pleasant.

"25-345. Ward 2 restrictions for off-premises retailer's license.

"25-346. Ward 6 restrictions for off-premises retailer's license."

(b) A new section 25-344 is added to read as follows:

"§ 25-344. Special restrictions for off-premises retailer's license in Mt. Pleasant.

"(a) For the purposes of this section, the term "Mt. Pleasant" means the area defined as ANC-1D, delimited by Piney Branch Parkway to the north, 16th Street to the east, Harvard Street to the south, and Adams Mill and Klingle Roads to the west, on the effective date of this section.

"(b) A licensee under an off-premises retailer's license in Mt. Pleasant, class A or B, shall not:

"(1) 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; or

"(2) 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."

(c) A new section 25-345 is added to read as follows:

New
§ 25-344

ENROLLED ORIGINAL

“§ 25-345. Ward 2 restrictions for off-premises retailer’s license.

New
§ 25-345

“(a) For the purposes of this section, the term “Ward 2” means the area defined as Ward II in § 1-1041.03 on the effective date of this section.

“(b) A licensee under an off-premises retailer’s license, class A or B, located in Ward 2, shall not:

“(1) 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; or

“(2) 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, as well as spirits (liquor) sold in half-pints or smaller volumes.

“(c)(1) An existing licensee may apply to the Alcoholic Beverage Control Board for an exception to the restrictions in subsection (b) of this section. The Board shall notify the Advisory Neighborhood Commission in which the licensee is located when a licensee applies for an exception and provide a copy of the application. The copy of the application shall be provided at the address of the ANC’s office of record. The Board shall make its determination on the licensee application within 60 calendar days of receipt of the application.

“(2) In making a determination on the licensee application under this subsection, the Board shall consider the following factors:

“(A) The input, if any, of the ANC in which the licensee is located, as evidenced by a vote of the ANC, which shall be given great weight;

“(B) Whether the exception will negatively impact the enforceability and effectiveness of the ban;

“(C) The absence or presence of any primary or secondary tier violations within the 12 months immediately preceding the date of application, including sales to minors, use of premises for unlawful purposes, or sale to persons without a valid identification;

“(D) Evidence of licensee participation in the community, such as attendance at ANC and Police Service Area community meetings; and

“(E) Clear and convincing evidence that there have been no significant adverse community impacts, such as loitering, littering, or other anti-social behavior in the vicinity of the licensee establishment.

“(3) A new licensee under an off-premises retailer’s license, class A or B, may not apply for an exception under this subsection within the first 12 months of having obtained a license under this title.

“(d) The restrictions in subsection (b) of this section shall not apply to a licensee located in a federal building, or to a licensee that is a full-service grocery store, as described in this title.”.

(d) A new section 25-346 is added to read as follows:

“§ 25-346. Ward 6 restrictions for off-premises retailer’s license.

New
§ 25-346

“(a) For the purposes of this section, the term “Ward 6” means the area defined as Ward VI in § 1-1041.03 on the effective date of this section.

ENROLLED ORIGINAL

“(b) A licensee under an off-premises retailer’s license, class A or B, located in Ward 6 shall not:

“(1) 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; or

“(2) 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, as well as spirits (liquor) sold in half-pints or smaller volumes.

“(c)(1) An existing licensee may apply to the Alcoholic Beverage Control Board for an exception to the restrictions in subsection (b) of this section. The Board shall notify the Advisory Neighborhood Commission in which the licensee is located when a licensee applies for an exception and provide a copy of the application. The copy of the application shall be provided at the address of the ANC’s office of record. The Board shall make its determination on the licensee application within 60 calendar days of receipt of the application.

“(2) In making a determination on the licensee application under this subsection, the Board shall consider the following factors:

“(A) The input, if any, of the ANC in which the licensee is located, as evidenced by a vote of the ANC, which shall be given great weight;

“(B) Whether the exception will negatively impact the enforceability and effectiveness of the ban;

“(C) The absence or presence of any primary or secondary tier violations within the 12 months immediately preceding the date of application, including sales to minors, use of premises for unlawful purposes, or sale to persons without a valid identification;

“(D) Evidence of licensee participation in the community, such as attendance at ANC and Police Service Area community meetings; and

“(E) Clear and convincing evidence that there have been no significant adverse community impacts, such as loitering, littering, or other anti-social behavior in the vicinity of the licensee establishment.

“(3) A new licensee under an off-premises retailer’s license, class A or B, may not apply for an exception under this subsection within the first 12 months of having obtained a license under this title.

“(d) The restrictions in subsection (b) of this section shall not apply to a licensee located in a federal building, or to a licensee that is a full-service grocery store, as described in this title.”.

Sec. 3. Subsidies for officers.

As of July 28, 2008, the Alcoholic Beverage Regulation Administration shall provide subsidies for officers that participate in the Pilot Subsidy Program for Reimbursable Details, in entertainment areas during late night closing times and approved special events. Receipts for weekend nights prior to July 28, 2008 shall be considered under the law in place prior July 28, 2008.

ENROLLED ORIGINAL

Sec. 4. Rules.

The Mayor, pursuant to Title I of the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), may issue rules to implement the provisions of this act. The proposed rules shall be submitted to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays, and days of Council recess. If the Council does not approve or disapprove the proposed rules, in whole or in part, by resolution, within this 30-day review period, the proposed rules shall be deemed approved.

Note,
§ 25-344

Sec. 5. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Budget Director 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)).

Sec. 6. 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

APPLICATION FOR EXCEPTION TO SINGLE SALES RESTRICTIONS

Owner's Name: _____ Date: _____

License Number: _____ Trade Name: _____

Address: _____ Ward/ANC: _____

Exception Requested:

Justification:

EXTERNAL DOCUMENTATION (provided by Licensee):

- Letter of support from ANC where located indicating that support is based on vote of ANC
- Clear and convincing evidence of no adverse community impacts
- No ABRA violations within previous 12 months
- Evidence of licensee participation in community

INTERNAL DOCUMENTATION (provided by ABRA):

- Investigative History

I certify that all of the information I have submitted to support my request for an exception to the Single Sales restriction is true and accurate.

Owner's Signature: _____

Printed Name: _____

EXCEPTION TO SINGLE SALES RESTRICTIONS
FOR WARD 2 AND WARD 6

1. The “Consolidated Mt. Pleasant, Ward 2, and Ward 6 Single Sales Moratorium Act of 2008” grants licensees the opportunity to apply to the Alcoholic Beverage Control Board (Board) for an exception to the restrictions prohibiting the licensee from (1) dividing 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 individual container is 70 ounces or less and (2) selling spirits in sizes of a half-pint or smaller. The law sets forth the factors the Board shall consider in granting the exception.
2. Licensees in Ward 2 and Ward 6 may apply to the Board for an exception to the single sales restrictions. Exceptions to the restrictions are unique in nature and will be considered on a case-by-case basis. The Board will consider and give great weight to the written position of the ANC where the licensee is located. The Board will only grant an exception if it finds the request to be in the best interests of the community. Additionally, the Board will take into consideration: (1) the absence or presence of any primary or secondary tier violations within the 12 months preceding the date of the application; (2) evidence of the licensee’s participation in the community and (3) clear and convincing evidence that there have been no significant adverse community impacts such as loitering, littering or other anti-social behavior. Each Applicant should explain in a justification letter why the exception to the restrictions should be granted.
3. All requests for an exception to the single sales restrictions shall be processed through the Board. Applicants are required to submit a complete package consisting of (1) a copy of the application, (2) either a copy of a supporting letter from the Advisory Neighborhood Commission where the licensee is located or proof that a copy of the application has been provided to the ANC, and (3) the licensee’s justification letter in response to the Board’s consideration factors outlined above. Applicants are permitted to submit other documents that will support and strengthen their application.
4. The exception package shall be mailed or delivered to the Alcoholic Beverage Regulation Administration (ABRA). Once the package is received by ABRA, if it is sufficiently completed, it will be coordinated through the Office of the General Counsel for the Board’s review and consideration. Once received, the Board may pursue one of two tracks:
 - a. If the application is supported by the ANC where the licensee is located, the Board may consider the application without holding a public hearing.
 - b. If the application does not have the support of the ANC where the licensee is located, the Board will conduct a Fact Finding hearing to further ascertain the licensee’s responses to the consideration factors. The applicant and the ANC where the licensee is located will be notified in writing regarding when the licensee will need to appear before the Board on the application.

5. The Board has 60 days from the date of the submission of a completed package to determine whether the application will be granted. The hearing, if one is needed, will be set no sooner than 30 days after submission of the completed application package. The ANC will be given an opportunity until the date of the hearing to respond to the Board with its position on the application if the licensee has proceeded without the ANC's support.
6. The Applicant and the ANC will be notified in writing of the Board's decision regarding the request for the exception.
7. The Board will review this policy regarding Exceptions to Single Sale Restrictions six months from implementation and it reserves the right to make any modifications to this policy.