

ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION  
ALCOHOLIC BEVERAGE CONTROL BOARD

NOTICE OF PROPOSED RULEMAKING

The Alcoholic Beverage Control Board ("Board"), pursuant to the authority set forth in D.C. Official Code § 25-351(a) (2001) and Section 303 of Title 23 of the District of Columbia Municipal Regulations ("DCMR"), 51 DCR 4309 (April 30, 2004), hereby gives notice of the intent to adopt the following proposed rules that would create a new section 310 of Title 23 DCMR and impose a three (3) year moratorium on the sale of single containers of beer, malt liquor, and ale, as well as spirits (liquor) sold in half-pints or smaller volumes by the holders of retailer's licenses class A and B located on both sides of the street on H Street, N.E., between and including the 700 block of H Street, N.E., and the 1400 block of H Street, N.E., which shall be known as the H Street Moratorium Zone.

On September 20, 2006, the Board received a written request from Advisory Neighborhood Commission ("ANC") 6A (hereinafter, "ANC 6A Moratorium Petition") to issue regulations declaring a moratorium on the sale of single containers of alcohol by current and future class A and B retail license holders in the portion of the District of Columbia centered at Me & My Supermarket, located at 1111 H Street, N.E., effective to those license holders along the H Street, N.E., corridor. The Board conducted a public hearing, pursuant to D.C. Official Code § 25-354 (2001), on January 17, 2007, to consider ANC 6A's petition request. The Board received a significant amount of detailed testimony and written comments from ANC 6A, the Office of the Deputy Mayor for Planning and Economic Development ("DMPED"), the Metropolitan Police Department ("MPD"), including comments from Mayor Adrian M. Fenty and Ward Six Councilmember Tommy Wells, Laurie Collins, President, Mount Pleasant Neighborhood Alliance ("MPNA"), Paul Pascal, on behalf of the D.C. Association of Beverage Alcohol Wholesalers, Gary Cha, on behalf of the Korean American Grocers Association ("KAGRO"), numerous District of Columbia residents, and business owners. The Board found the testimony provided by ANC 6A, MPD, DMPED, and a number of nearby residents to warrant the issuance of a moratorium on the sale of single containers of alcoholic beverages, including beer, malt liquor, and ale, as well as spirits (liquor) sold in half-pints or smaller volumes by holders of retailer's licenses class A and B located on both sides of the street on H Street, N.E., between and including the 700 block of H Street, N.E., and the 1400 block of H Street, N.E., based upon the appropriateness standards set forth in D.C. Official Code § 25-313(b) (2001).

In reaching its decision, the Board gave great weight to the written recommendations of ANC 6A as required by section 13(d)(3) of the Advisory Neighborhood Councils Act of 1975, effective October 10, 1975, D.C. Law 1-21, D.C. Official Code § 1-309.10(d)(3) (2001), as amended, and D.C. Official Code § 25-609 (2001). At a regularly scheduled public meeting on May 12, 2005, ANC 6A voted to support a moratorium on the sale of single containers of alcoholic beverages by the holders of retailer's licenses class A and B

on the portion of H Street, N.E., that is centered at Me & My Supermarket located at 1111 H Street, N.E. The Board found merit in ANC 6A's reasoning for requesting a moratorium on the sale of singles, which included improving the quality of life of ANC 6A residents by reducing the negative impact on the community caused by the sale of singles, such as litter, public drunkenness, and loitering, and encouraging and contributing to the economic revitalization of the H Street, N.E., corridor. In considering the appropriateness of the request, the Board found the testimony and comments submitted by ANC 6A, MPD, and individual citizens of the surrounding neighborhood to reveal that chronic problems with peace, order, and quiet, more pointedly with respect to litter, loitering, public drunkenness, public urination, and criminal activity persist throughout the H Street, N.E., corridor because of the sales of single containers of alcoholic beverages. The Board notes that based upon the testimony of community residents regarding the types of containers found littered in the neighborhood, and the written comments of Councilmember Wells, the moratorium is specifically limiting the sale of: (1) individual containers of beer, malt liquor, or ale; and, (2) liquor sold in half-pints or smaller volumes.

The ANC 6A Moratorium Petition noted that criminal activity, such as the public consumption of alcoholic beverages, public urination, public intoxication, and other disorderly conduct occur as a result of the sale of single containers of alcoholic beverages. The ANC 6A Moratorium Petition cited the successful enactment of a similar ban on single sales in the Mount Pleasant neighborhood, which over the course of four (4) years has resulted in a forty-one percent (41%) reduction in total calls for MPD service, and a fifty-one percent (51%) reduction in calls complaining of disorderly conduct, which has allowed MPD officers to focus on more serious crimes in the neighborhood. These statistics were affirmed by testimony received from Laurie Collins, President, on behalf of MPNA – the community association that initiated the Mount Pleasant ban on single sales – who also noted that there is noticeably less public urination, less littering of empty bottles and cans on the street, and less public drinking since off-premises retailers in the Mount Pleasant neighborhood were prohibited from selling single containers of alcohol. The testimony and comments provided by MPD revealed that between January 1, 2006 and December 10, 2006, between the 800 and 1400 block of H Street, N.E., there were three hundred and thirty (330) calls for service for quality of life crimes, which consist of urinating in public, drinking in public, public intoxication, and general disorderly conduct, requiring two hundred and ninety-seven (297) MPD man hours to handle all of the calls. Additionally, during that same time period, there were two hundred and forty-five (245) quality of life arrests made, which required four hundred and ninety (490) MPD hours of work to process all of the arrests. Based on his professional experience and familiarity with the H Street, N.E., corridor, Sergeant James Rogers indicated that the quality of life crimes along the H Street, N.E., corridor are directly related to the sale of single containers of alcoholic beverages because of the easy access individuals have to the alcohol. He supported the enactment of a moratorium because it will allow MPD officers to spend more time on the streets fighting or preventing more serious crimes.

The Board found based upon the testimony and evidence submitted by Commissioner Mary Beatty, Commissioner Raphael Marshall, and residents of the neighborhood that prohibiting the sale of single containers of alcoholic beverages will have a positive impact not only on the littering and loitering that is occurring along the H Street, N.E., corridor, but also on improving existing problems with pedestrian safety in this area. The testimony of residents David Burnheart and Malcolm Ross revealed that individual beer cans, malt liquor cans, and half pints of alcohol are littered throughout the neighborhood causing both an eyesore and a daily cleaning burden for community residents. Also, the Board found the testimony and pictorial evidence submitted by Commissioners Beatty and Marshall to reveal that the H Street, N.E., corridor has become a destination for alcohol as people are often seen getting off buses and out of cars going into licensed establishments and then using the curbsides as open-air bars, drinking alcoholic beverages from brown paper bags. The testimony and comments further revealed to the Board that the loiterers engaging in public drinking then have a negative impact on pedestrian safety as community residents are afraid to walk along the H Street, N.E., corridor for fear of encountering inebriated individuals.

In rendering its decision, the Board agreed with ANC 6A that the crime, littering, loitering, and public intoxication associated with the sale of single containers of alcoholic beverages is a major impediment to the economic revitalization of the H Street, N.E., corridor because each of those factors contributes to the perception that the area is unsafe, ultimately discouraging community residents from patronizing retail businesses along the corridor. The Board's assessment was also based upon the written comments of Mayor Fenty and Councilmember Wells, who each expressed support for the moratorium as an effective mechanism to improve the general quality of life along the H Street, N.E., corridor and to hasten the revitalization of the neighborhood by reducing the loitering, public drunkenness, littering, and crime. The testimony and evidence provided by Derrick Lanardo Woody, a coordinator with DMPED, confirmed that the government of the District of Columbia has committed millions of dollars towards improving the infrastructure along the H Street, N.E., corridor. In his view, the enactment of a moratorium will assist in attracting those commercial and residential developers that have expressed skepticism about investing in the area because of the pervasive loitering and public intoxication problems along the corridor. The Board notes that it received testimony and comments in opposition to the moratorium from Paul Pascal, on behalf of the D.C. Association of Beverage Alcohol Wholesalers, Gary Cha, on behalf of KAGRO, neighborhood residents Bobby Pittman and Hannah Goldstein, and Lincoln Jerome Hodges, manager of Family Liquors, located at 710 H Street, N.E. However, the Board found the arguments put forth by those in opposition to the moratorium to be less convincing in the face of a wide spread consensus as presented by ANC 6A, MPD, government leaders, and neighborhood residents that a moratorium on the sale of single containers of alcoholic beverages is vital to improving the current overall condition of the H Street, N.E., corridor.

The statements set forth above reflect the written reasons for the Board's decision as required by 303.1 of Title 23 DCMR (2004).

Pursuant to D.C. Official Code § 25-211(b)(2) (2001), these proposed rules are also being transmitted to the Council of the District of Columbia, for a ninety (90) day period of review. The proposed rules will become effective in not less than thirty (30) days from publication of this notice in the D.C. Register, or upon approval by the Council by resolution, whichever occurs later. If the Council does not approve or disapprove the proposed rules by resolution, in whole or in part, within the ninety (90) day review period, the proposed rules shall be deemed disapproved.

Title 23 DCMR, Chapter 3 (Limitations on Licenses), is amended by inserting a new section 310 to read as follows:

### **310 H STREET MORATORIUM ZONE**

- 310.1 The H Street Moratorium Zone shall consist of both sides of the street on H Street, N.E., between and including the 700 block of H Street, N.E., and the 1400 block of H Street, N.E.
- 310.2 Within the H Street 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 either: (1) an individual container of beer, malt liquor, or ale; or, (2) spirits (liquor) in sizes of half-pint or smaller volumes.
- 310.3 Within the H Street 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 a sell less than the manufacturer's original package.
- 310.4 This section shall also apply to new class A or B retailer's licenses issued during the moratorium period within the H Street Moratorium Zone and to any class A or class B retailer's licenses transferred into or within the H Street Moratorium Zone during the moratorium period.
- 310.5 The section shall expire three (3) years after the date of publication of the notice of final rulemaking.

Copies of the proposed rulemaking can be obtained by contacting Fred Moosally, General Counsel, Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., 7<sup>th</sup> Floor, Washington, D.C. 20002. All persons desiring to comment on the proposed rulemaking must submit their written comments, not later than thirty (30) days after the date of the publication of this notice in the D.C. Register, to the above address.