



MURIEL BOWSER
MAYOR

July 13, 2023

Honorable Phil Mendelson
Chairman
Council of the District of Columbia
John A. Wilson Building
1350 Pennsylvania Avenue, NW, Suite 504
Washington, DC 20004

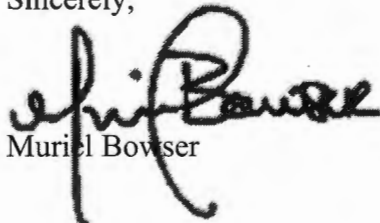
Dear Chairman Mendelson:


Enclosed for consideration and approval by the Council of the District of Columbia is a proposed resolution entitled the "ABCA Civil Penalty Schedule Approval Resolution of 2023."

The resolution will approve a proposed final rulemaking of the Alcoholic Beverage and Cannabis Board that will amend the alcoholic beverage civil penalty schedule in accordance with recent changes to the underlying law made by the Reopen Washington DC Alcoholic Beverage Regulation Amendment Act of 2022, effective June 30, 2022 (D.C. Law 24-127; 69 DCR 5071) Specifically, the rules will update the schedule by (1) incorporating new infractions and penalties; (2) repealing obsolete infractions; and (3) amending the descriptions of existing infractions.

If you have any questions regarding this legislation, please contact Donovan Anderson, Chairperson, Alcoholic Beverage and Cannabis Board, at (202) 442-4423.

Sincerely,


Muriel Bowser


Chairman Phil Mendelson
at the request of the Mayor

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A PROPOSED RESOLUTION

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To approve a proposed final rulemaking of the Alcoholic Beverage and Cannabis Board that would amend the alcoholic beverage civil penalty scheduled codified in Section 800 of Title 23 of the District of Columbia Municipal Regulations.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That

this resolution may be cited as the “Alcoholic Beverage Civil Penalty Schedule Approval Resolution of 2023”.

Sec. 2. Pursuant to D.C. Official Code § 25-830(f), the Council approves the proposed final rulemaking of the Alcoholic Beverage and Cannabis Board, transmitted by the Mayor to the Council on _____, 2023, which amends the alcoholic beverage civil penalty schedule codified in Section 800 of Title 23 of the District of Columbia Municipal Regulations.

Sec. 3. The Council shall transmit a copy of this resolution, upon its adoption, to both the Mayor and the Chairperson of the Alcoholic Beverage and Cannabis Board.

Sec. 4. This resolution shall take effect immediately.

**ALCOHOLIC BEVERAGE AND CANNABIS ADMINISTRATION
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage and Cannabis Board (Board), pursuant to the authority set forth in D.C. Official Code § 25-830(f) hereby gives notice of the adoption of amendments to the existing ABCA Civil Penalty Schedule (Schedule) set forth in Chapter 8 (Enforcement, Infractions, and Penalties) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR).

This final rulemaking makes conforming amendments to the Schedule in accordance with recent changes made by the Reopen Washington DC Alcoholic Beverage Regulation Amendment Act of 2021, effective June 30, 2022 (D.C. Law 24-0127; 69 DCR 5071). Specifically, these final rules will update the Schedule by (1) incorporating new infractions and penalties; (2) repealing obsolete infractions; and (3) amending the descriptions of existing infractions.

On August 10, 2022, the Board voted five (5) to zero (0) to approve the Civil Penalty Notice of Proposed Rulemaking. The proposed rules were published in the *District of Columbia* on February 24, 2023 for a thirty (30)-day notice and comment period. The Board did not receive any comments during the comment period. On March 1, 2023, the Board held a public hearing to receive comments from the public concerning the rulemaking. No one appeared to testify at the hearing and the Board did not receive any comments.

On May ____, 2023, the proposed rules were submitted to the Council of the District of Columbia (Council). See Alcoholic Beverage Civil Penalty Schedule Amendments Approval Resolution of 2023 (PR-____). The Council approved the proposed rules on _____, 2023, and the Board adopted the ABCA Civil Penalty Schedule Notice of Final Rulemaking by a vote of five (5) to zero (0) on _____, 2023. The final rules shall take effect five (5) days after publication of this notice in the *District of Columbia Register*.

Chapter 8, ENFORCEMENT, INFRACTIONS, AND PENALTIES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

Section 800, ABRA CIVIL PENALTY SCHEDULE, is amended by removing the following infractions from the ABRA Civil Penalty Schedule:

Section	Description	Violation	Warning
25-741(b)	Serving Back-up Drinks to Customers	Secondary	Y (Repealed)
23 DCMR 206.2	Retailer's Class DR or DT With Common Dining Area Fails to Sell Alcoholic Beverages in Containers Identifiable with	Secondary	Y

	Business		
23 DCMR 206.4	Off-premises Retailer Class A or Class B failed to Inform Board in Application of Table Use	Secondary	Y – Mandatory

Section 800 is amended by adding the following infractions to the ABRA Civil Penalty Schedule in numerical order:

Section	Description	Violation	Warning
25-113(a)(3)(D)(i)	Selling alcoholic beverages for carryout or delivery to a consumer at an unregistered location	Secondary	Y
25-113(a)(3)(D)(v)	Selling Alcoholic Beverages for Carryout or Delivery to a Consumer Outside of the Approved Hours	Primary	Y
25-113(i)(6)	Holding a Catered Event on a Public Street Closed by the District Government	Primary	N
25-113.01(c)	Operating a Summer Garden or Sidewalk Café Without the Endorsement	Primary	Y
25-117(a)(5)(B)	Licensee Holding a Brew Pub Endorsement Using a Third-Party Delivery Company or Platform to Deliver to Other Licensees	Primary	Y
25-118(e)	Offering Tasting Outside of the Approved Hours – Manufacturers	Secondary	Y
25-118(f)(1)	Offering Tasting Outside of the Approved Hours – Wholesalers	Secondary	Y
25-118(g)(1)	Offering Tasting Outside of the Approved Hours – Private Collector	Secondary	Y
25-125(b)	Operating as a Distillery Pub Without a Distillery Pub Endorsement	Primary	Y
25-125(d)(2)	Operating as Distillery Pub Outside of the Approved Hours	Primary	Y
25-130	Violating Terms of Third-Party Alcohol Delivery License in a Manner Not Otherwise Specified in This Table	Primary	Y
25-130(f)	Failure of Third-Party Alcohol Delivery Licensee to Timely File Semi-Annual Report	Secondary	Y – Mandatory
25-130(g)	Failure of Third-Party Alcohol Delivery Licensee to Keep or Maintain its Books and Records for 3 Years	Primary	Y
25-130(g)	Failure of Third-Party Alcohol Delivery Licensee to Maintain Books and Records on Premises or at a Board-approved location	Primary	Y – Mandatory
25-130(h)	Failure of Licensee that Utilizes the Service	Primary	Y

	of a Third-Party Delivery Company to Register with the Board		
25-131	Violating Terms of Commercial Lifestyle Center License (CLC License) in a Manner Not Otherwise Specified in This Table	Primary	Y
25-131(e)(8)	Failure of CLC Licensee to Control Litter, Trash, and Debris	Secondary	Y
25-402(e)(1)	Failure to Complete a Mandatory Licensee Training	Secondary	Y
25-704(a)	Failure to Timely Provide to the Board a Copy of a Management Agreement with a Third-Party for the Management of a Licensed Premises	Secondary	Y
25-711(a)(3)(A)	Failure to Make Immediately Accessible to an ABRA Official or MPD, Upon Request, a Settlement Agreement or Security Plan	Secondary	Y
25-723(b-1)	Delivering Alcoholic Beverages Outside of Approved Hours - On-Premises Retailer's License or Manufacturer's Licensee with an On-Site Sales and Consumption Permit	Primary	Y
25-723(b-2)	Operating or Permitting the Sale, Service, and Consumption of Alcoholic Beverages Outside of Approved Hours – Commercial Lifestyle Center Licensees	Primary	Y
25-767	Violating Terms of Outdoor Common Seating Area – Commercial Lifestyle Center Licensee	Primary	Y
25-823(a)(5)(C)	Providing False or Misleading Statements with the Intention of Influencing, Impeding, or Obstructing an ABRA or Metropolitan Police Department Investigation	Primary	Y
25-823(a)(5)(D)	Destroying or Concealing Evidence in Connection with an ABRA or Metropolitan Police Department Investigation	Primary	N
25-823(a)(5)(E)	Failure to Produce Documents, Records, or Videos Within 48 Hours of a request in an ABRA or Metropolitan Police Department Investigation	Primary	Y
25-836(a)(1)-(2)	Failure of a Covered License Holder to File and Maintain a Written and Compliant Security Plan	Primary	Y
25-836(g)(1)	Failure of a Covered Licensee to Ensure that Security Cameras are Operational, Capable of Recording, and Actually Recording While the Establishment is in Operation	Primary	Y
25-836(g)(2)	Failure of a Covered Licensee to Maintain	Primary	Y

	Video Footage of a Crime of Violence or a Crime Involving a Gun for 30 days		
25-836(g)(3)	Failure to Make Video Footage Available Within 48 Hours of a Request from an ABRA Investigator or Member of the Metropolitan Police Department	Primary	Y
25-836(g)(4)	Failure of a Covered Licensee to Ensure that the Establishment and Security Cameras Comply with All Technological and Operational Standards Established by the Board	Primary	Y
25-836(i)(1)	Failure of a Covered Licensee to File an Amended Security Plan Within 10 days	Secondary	Y

Section 800 is amended by amending the following existing infractions in the ABRA Civil Penalty Schedule to read as follows:

Section	Description	Violation	Warning
25-112(e)(1)	Failure to Timely File a Statement of Expenditures and Receipts	Secondary	Y
25-113.01(b)(1)	Offering Entertainment Without an Entertainment Endorsement	Primary	Y
25-113.01(b)(1)	Imposing a Cover Charge Without an Entertainment Endorsement	Secondary	Y
25-113.01(b)(1)	Offering Dancing Facilities Without an Entertainment Endorsement	Secondary	Y
25-113.01(b)(2)	Offering Entertainment Outside of the Approved Entertainment Hours - Manufacturer Licenses Holding an On-Site Sales and Consumption Permit	Secondary	Y
25-113.01(c)	Operating a Summer Garden or Sidewalk Café Outside of the Approved Hours - Manufacturer Licenses Holding an On-Site Sales and Consumption Permit	Primary	Y
25-117	Violating Terms of Brew Pub Endorsement	Primary	Y
25-711(a)(1)	Failure to Post Licenses	Secondary	Y - Mandatory
25-712(a)	Failure to Post Sign: Warning: Drinking alcoholic beverages during pregnancy can cause birth defects.	Secondary	Y - Mandatory
25-823(a)(5)(A)	Refusing to Allow ABRA or MPD to Enter or Inspect Premises without Delay	Primary	N
25-823(a)(5)(B)	Refusing to Allow the Examination of Books and Records	Primary	Y
23 DCMR	Sale By a Retailer of Spirits, Wine, or Beer On	Primary	Y

206	Their Premises Without a Retailer Purchasing Permit		
23 DCMR 209	Establishing a Bonded Warehouse as a Storage Facility for Alcoholic Beverages Without a Storage Facility Permit	Secondary	Y
23 DCMR 210	Storing Alcoholic Beverages at a Storage Facility Without an Off-premises Storage Permit	Primary	Y
23 DCMR 214.17	Submission of Knowingly False or Misleading Affidavit	Primary	N

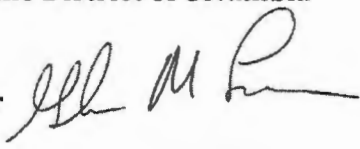
Government of the District of Columbia
Office of the Chief Financial Officer



Glen Lee
Chief Financial Officer

MEMORANDUM

TO: The Honorable Phil Mendelson
Chairman, Council of the District of Columbia

FROM: Glen Lee
Chief Financial Officer 

DATE: May 3, 2023

SUBJECT: Fiscal Impact Statement - ABCA Civil Penalty Schedule Resolution of 2023

REFERENCE: Draft Resolution as provided to the Office of Revenue Analysis on April 3, 2023

Conclusion

Funds are sufficient in the fiscal year 2023 budget and proposed fiscal year 2024 through fiscal year 2027 budget and financial plan to implement the bill.

Background

The Alcoholic Beverage and Cannabis Board (Board) and the Alcoholic Beverage and Cannabis Administration (ABCA) regulate, enforce, and adjudicate laws governing alcoholic beverages and medical marijuana, and violations of those laws.

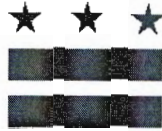
The proposed resolution approves an ABCA rulemaking that is technical in nature by updating the schedule of civil penalties to include new infractions¹; clarifying existing language; and removing obsolete references.

Financial Plan Impact

Funds are sufficient in the fiscal year 2023 budget and proposed fiscal year 2024 through fiscal year 2027 budget and financial plan to implement the bill. ABCA can implement the regulation within its existing resources.

¹ Including infractions added by the Reopen DC Alcoholic Beverage Regulations Amendment Act of 2021, effective June 30, 2022 (D.C. Law 24-0127; 69 DCR 5071).

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



BRIAN L. SCHWALB
ATTORNEY GENERAL

PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION

Legal Counsel Division

Memorandum

TO: Tommy Wells
Director
Office of Policy and Legislative Affairs

FROM: Megan D. Browder
Deputy Attorney General
Legal Counsel Division

DATE: January 19, 2023

RE: Legal Sufficiency Certification – Draft “ABRA Civil Penalty Schedule
Resolution of 2023”
(AR-22-463)

This is to Certify that this Office has reviewed the above-referenced draft legislation and found it to be legally sufficient. If you have any questions in this regard, please do not hesitate to call me at 724-5524.

A handwritten signature in black ink that reads "Megan D. Browder". The signature is written in a cursive style.

Megan D. Browder