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OFFICE OF THE  
SECRETARY

MURIEL BOWSER  
MAYOR

FEB 19 2019

The Honorable Phil Mendelson  
Chairman  
Council of the District of Columbia  
1350 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Dear Chairman Mendelson:

Enclosed for consideration and approval by the Council of the District of Columbia is a proposed resolution entitled the "Full-service Grocery Store Resolution of 2019."

The proposed resolution would memorialize the Alcoholic Beverage Control Board's current practice of requiring applicants for an off-premises retailer's license, class B, which is a full-service grocery store to submit an architectural drawing along with their applications. The drawing would identify the selling, non-selling, food selling, and non-food selling areas. Additionally, the rulemaking sets forth a methodology for ensuring that applicants' floor plans comport with 23 DCMR §199.

If you have any questions on this matter, please contact Donovan Anderson, Chair, Alcoholic Beverage Control Board, at (202) 442-4423.

Sincerely,

A handwritten signature in black ink that reads "Muriel Bowser".

Muriel Bowser

Enclosures



Chairman Phil Mendelson  
at the request of the Mayor

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4 PROPOSED RESOLUTION

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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10 Chairman Mendelson, at the request of the Mayor, introduced the following resolution,  
11 which was referred to the Committee on \_\_\_\_\_.

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13 To approve proposed rules of the District of Columbia Alcoholic Beverage Control Board  
14 that would amend Title 23 of the District of Columbia Municipal Regulations by  
15 adding a new section 505, Architectural Drawing.

16  
17 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
18 resolution may be cited as the "Full-service Grocery Store Resolution of 2019".

19 Sec. 2. Pursuant to D.C. Official Code § 25-211(b)(2), the Council of the District  
20 of Columbia approves the proposed rulemaking by the District of Columbia Alcoholic  
21 Beverage Control Board ("Board") that would require applicants for an off-premises  
22 retailer's license ("Applicants"), class B, that intend to operate as a full-service grocery  
23 store to submit an architectural drawing along with their applications.

24 Sec. 3 The proposed rulemaking also sets forth a methodology that the Board can  
25 employ in order to ensure that Applicants are in compliance with the definition of full-  
26 service grocery store as defined by 23 DCMR § 199.

1           Sec. 4. The Secretary to the Council of the District of Columbia shall transmit a  
2 copy of this resolution, upon its adoption, to both the Mayor and the Chairperson of the  
3 Alcoholic Beverage Control Board.

4           Sec. 5. This resolution shall take effect immediately.

**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 § 25-211(b) (2012 Repl. & 2017 Supp.) and delegated in Mayor's Order 2001-96, dated June 28, 2001, as revised by Mayor's Order 2001-102, dated July 23, 2001, hereby gives notice of its intent to amend chapter 5 (License Applications), of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations.

In 2013, the Council of the District of Columbia (Council) passed the Omnibus Alcoholic Beverage Regulation Amendment Act of 2012 (L19-310; D.C. Official Code § 25-112(a-1)(2)(A)), which, among other things, required the Board to promulgate rules defining the term, "full-service grocery store". . The Board fulfilled this requirement in July 2013 when it adopted the *Full-Service Grocery Store Definition Notice of Final Rulemaking* on August 9, 2013 (60 DCR 11574).

Further clarification is necessary to eliminate confusion regarding the layout of the grocery store and the percentage of the store, aisles, and shelves that are to be dedicated to food and non-food items. The Board finds that the submission of architectural drawings by an applicant seeking to qualify as a full-service grocery store benefits both the Board and the applicant by addressing many issues the Board may initially have when reviewing the application; thereby, reducing the amount of time needed to review the application.

This proposed rulemaking seeks to amend chapter 5 (License Applications) by adding a new section 505 which would require applicants for a new off-premises retailer's license, class B, to submit an architectural drawing of their floor plan at the time their application is submitted to the Board. Additionally, the proposed rulemaking would create a methodology for calculating whether an applicant's floor plan satisfies the necessary criteria for qualifying as a full-service grocery store as defined by 23 DCMR § 199.

On September 26, 2018, the Board voted, seven (7) to zero (0), to approve the *Full-Service Grocery Store Notice of Proposed Rulemaking*. The proposed rulemaking was published in the *D.C. Register* on December 14, 2018, at 65 DCR 13539, for thirty (30)-day notice and comment. The Board did not receive any comments from the public during the comment period. As such, this rulemaking is now ripe to be sent to the Council for the District of Columbia for a ninety (90)-day period of review pursuant to D.C. Official Code § 25-211(b) (2012 Repl.).

On January 16, 2019, the Board voted, six (6) to zero (0), to send the proposed rulemaking to the Council for review. These rules will not be adopted as final unless approved, in whole or in part by the Council, and after having been published in *the D.C. Register* for five (5) days.

**A new section, ARCHITECTURAL DRAWING, is added to CHAPTER 5, LICENSE APPLICATIONS of Title 23, ALCOHOLIC BEVERAGES, of the DCMR to read as follows:**

**505 ARCHITECTURAL DRAWING**

505.1 An applicant for a new off-premises retailer's license, class B, that meets the definition of a full-service grocery store (hereinafter referred to as a "full-service grocery store") shall submit with their application an architectural drawing of their floorplan that satisfies the full-service grocery store requirements set forth in 23 DCMR § 199 and includes, at a minimum, the dimensions (i.e., length and width measurements) and total square footage of the establishment's:

- (a) Entire leased or operated area;
- (b) Non-selling area;
- (c) Selling area;
- (d) Food-selling area; and
- (e) Non-food selling area.

505.2 For purposes of this section, the following terms shall have the meanings ascribed:

- (a) **Entire leased or operated area**- the portion of the building where the retail establishment is located and is under the applicant's control.
- (b) **Food category** – includes the following products:
  - (1) Fresh fruits and vegetables;
  - (2) Fresh and uncooked meats, poultry, and seafood;
  - (3) Dairy products;
  - (4) Canned foods;
  - (5) Frozen foods;
  - (6) Dry groceries and baked goods; and

(7) Non-alcoholic beverages.

- (c) **Food-selling area** – the portion of the retail establishment that is dedicated to the sale of the seven (7) food categories as defined in paragraph (b) of this subsection.
- (d) **Non-food selling area** – the portion of the retail establishment that is dedicated to selling of items other than the seven (7) food categories as defined in paragraph (b) of this subsection.
- (e) **Non-selling Area** – the portion of the retail establishment that is not open to the public (*e.g.*, storage areas, preparation areas, and administrative offices) and the establishment’s restrooms.
- (f) **Selling area** – the area in the retail establishment that is open to the public and does not include storage areas, preparation areas or restrooms.

505.3 An applicant for a full-service grocery store license must establish that either:

- (a) A minimum of fifty percent (50%) of the store’s square feet of selling area is dedicated to the sale of the seven (7) food categories; or
- (b) A minimum of six thousand square feet (6,000 sq. ft.) of the store’s selling area is dedicated to the sale of the seven (7) food categories.

505.4 The architectural drawing for an establishment whose selling area is dedicated to the sale of the seven (7) food categories or is equal to or greater than six thousand square feet (6,000 sq. ft.) shall identify the portion of the store that is being sought to qualify under the full-service grocery store definition.

505.5 The architectural drawing shall include the dimensions (*i.e.*, length and width measurements) for each of the establishment’s shelving or display cases and flooring used for displaying items identified in the seven (7) food categories. The architectural drawing shall also include the dimensions of the publicly accessible areas, including but not limited to the publicly accessible store aisles.

505.6 The architectural drawing shall include the following:

- (a) The display area dedicated to each of the seven (7) food categories

which shall, themselves, be identified and color-coded on the applicant's proposed floor plan;

- (b) A listing of the total square footage of the selling area dedicated to each of the seven (7) food categories; and
- (c) The square footage of each individual display area if one food category is divided between two (2) or more unconnected display areas separated by an area not associated with the food category (*i.e.*, non-food selling area, non-selling area or different food category).

505.7

For purposes of this section, the following shall apply:

- (a) The **square footage of the "selling area" dedicated to a food category** shall be calculated by adding up to three feet (3 ft.) of available aisle space in all directions to the length and width of the dimensions of the display area containing the items of the food category;
- (b) The **square footage of an applicant's non-selling area** shall be calculated by adding together the square footage of each area of the retail establishment that is not open to the public (*e.g.*, storage and food preparation areas) and the establishment's restrooms;
- (c) The **total selling area** shall be calculated by subtracting the establishment's non-selling area from the total square footage of the establishment's entire leased or operated area;
- (d) The **non-food selling area** shall be calculated by adding together the square footage of each selling area dedicated to items other than the seven (7) food categories (*i.e.*, non-food items). The square footage of a selling area dedicated to non-food items shall be calculated by adding up to three (3) feet of available aisle space in all directions to the length and width of the dimensions of the display area holding the non-food items;
- (e) The **food selling area** shall be calculated by subtracting the establishment's non-food selling area from the establishment's selling area; and
- (f) The **amount of a store's square footage of selling area dedicated to the sale of each of the seven (7) food categories** shall be calculated by dividing the establishment's food selling area (numerator) by the establishment's total selling area (denominator).

505.8 The indoor seating area shall also be measured as part of an establishment's non-food selling area, whereas the establishment's outdoor seating area shall not be measured as part of the establishment's selling area or non-food selling area;

505.9 An applicant for a full-service grocery store class B retailer's license must dedicate a minimum of five percent (5%) of the store's food selling area to at least six (6) of the seven (7) food categories. The amount of the store's food selling area dedicated to each food category shall be calculated by dividing the total square footage of the selling area dedicated to that particular food category (numerator) by the square footage of the establishment's total food selling area (denominator).



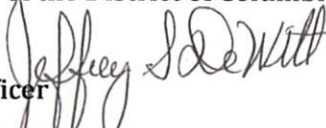
Government of the District of Columbia  
Office of the Chief Financial Officer



Jeffrey S. DeWitt  
Chief Financial Officer

**MEMORANDUM**

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

**FROM:** Jeffrey S. DeWitt  
Chief Financial Officer 

**DATE:** December 31, 2018

**SUBJECT:** Fiscal Impact Statement – Full-service Grocery Store Resolution of 2019

**REFERENCE:** Draft Proposed Resolution as shared with the Office of Revenue Analysis on December 31, 2018

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**Conclusion**

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution.

**Background**

The proposed resolution approves proposed rules regulating the licensing of full-service grocery stores<sup>1</sup> applying for an off-premises retailer's class B alcohol and beverage license.<sup>2</sup> The rules require an applicant to submit architectural drawings that identify selling, non-selling, food-selling, and non-food selling areas. Applicants must dedicate at least 50 percent or at least 6,000 square feet of their food-selling areas to seven enumerated food categories<sup>3</sup> to be eligible for the class B license. The rules establish the specific dimensions and labeling the applicant must include in the drawings.

**Financial Plan Impact**

Funds are sufficient in the fiscal year 2019 through fiscal year 2022 budget and financial plan to implement the proposed resolution. The Alcoholic Beverage Regulation Administration currently

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<sup>1</sup> Definitions, effective February 10, 2017 (23 DCMR § 199.1).

<sup>2</sup> D.C. Official Code § 25-112.

<sup>3</sup> Food categories include fresh fruits and vegetables; fresh and uncooked meats, poultry, and seafood; dairy products; canned foods; frozen foods; dry groceries and baked goods; and non-alcoholic beverages.

**The Honorable Phil Mendelson**

**FIS: "Full-service Grocery Store Resolution of 2019," Draft Proposed Resolution as shared with the Office of Revenue Analysis on December 31, 2018**

**reviews full-service grocery store applicants under these rules and there are no additional costs to codify them.**

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
Office of the Attorney General



ATTORNEY GENERAL  
KARL A. RACINE



Legal Counsel Division

**MEMORANDUM**

**TO:** Alana Intrieri  
Executive Director  
Office of Policy & Legislative Affairs

**FROM:** Janet M. Robins  
Deputy Attorney General  
Legal Counsel Division

**DATE:** October 22, 2018

**SUBJECT:** Legal Sufficiency Review of Proposed Resolution to Amend Chapter 5  
(License Application of Title 23 (Alcoholic Beverages), of the District of  
Columbia Municipal Regulations (DCMR)  
(AR-18-566)

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**This is to Certify that** this Office has reviewed the above-referenced proposed resolution 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.

  
Janet M. Robins