



MURIEL BOWSER
MAYOR

October 31, 2022

The 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:

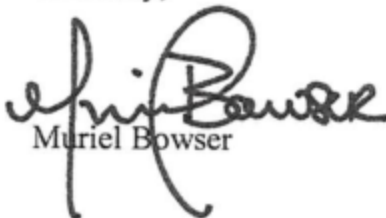
Enclosed for consideration and approval by the Council of the District of Columbia is a proposed resolution entitled the "Glover Park Moratorium Zone Resolution of 2022."

The proposed resolution would approve proposed rules that the District of Columbia Alcoholic Beverage Control Board adopted on June 8, 2022, on a vote of six (6) to zero (0) to amend section 308 of Title 23 of the DCMR.


Specifically, the attached draft Notice of Final Rulemaking would amend section 308 of Title 23 of the DCMR to renew the existing Glover Park Moratorium Zone for three (3) years. The proposed rules also maintain the existing restrictions on Retailer Class CT and CN licenses.

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

Sincerely,


Muriel Bowser

Enclosures


Chairman Phil Mendelson
at the request of the Mayor

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7 A PROPOSED RESOLUTION

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9 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA
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11 To approve proposed rules of the Alcoholic Beverage Control Board to renew the Glover Park
12 Moratorium Zone.

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14 RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this
15 resolution may be cited as the “Glover Park Moratorium Zone Approval Resolution of 2022”.

16 Sec. 2. Pursuant to section 25-211(b)(2) of the District of Columbia Official Code, the
17 Council approves the proposed final rulemaking by the Alcoholic Beverage Control Board,
18 which was transmitted to the Council by the Mayor on October 31, 2022, the notice of proposed
19 rulemaking for which was published in the *D.C. Register* on July 15, 2022 at 69 DCR 8495, to
20 renew the Glover Park Moratorium Zone for a 3-year period and retain the restrictions on
21 Retailer licenses for tavern, nightclub, and multipurpose facility establishments.

22 Sec. 3. Transmittal.

23 The Council shall transmit a copy of this resolution, upon its adoption, to the Mayor, the
24 Chairperson of the Alcoholic Beverage Control Board, and the Administrator of the Office of
25 Documents and Administrative Issuances.

26 Sec. 4. Fiscal impact statement.

27 The Council adopts the fiscal impact statement in the committee report as the fiscal
28 impact statement required by section 4a of the General Legislative Procedures Act of 1975,
29 approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

30 Sec. 5. Effective date.

31 This resolution shall take effect immediately.

**ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD**

NOTICE OF FINAL RULEMAKING

The Alcoholic Beverage Control Board (Board), pursuant to the authority set forth in section 101(a) of the Moratorium Amendment Act of 1999, effective May 3, 2001 (D.C. Law 13-298; D.C. Official Code § 25-351(a)) (Repl.), as amended, and in accordance with section 6(c) of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1206; D.C. Official Code § 2-505(c)), as amended, hereby gives notice of its intent to amend section 308 (Glover Park Moratorium Zone) of chapter 3 (Limitations on Licenses) of title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations. Specifically, the emergency and proposed rulemaking renews the Glover Park Moratorium Zone (GPMZ) for another three (3) years.

The existing moratorium expired on February 10, 2022. On February 11, 2022, the Board received a Petition to Extend and Amend the Glover Park Liquor License Moratorium from Advisory Neighborhood Commission (ANC) 3B. ANC 3B requested a ninety (90) day extension of the expiring moratorium in order to consult with the residents of Glover Park regarding the future of the moratorium. The resolution was adopted by ANC 3B at a duly noticed public meeting held on February 10, 2022, by a vote of four to zero (4-0).

On February 16, 2022, the Board adopted emergency rules to extend the Glover Park Moratorium by a vote of six (6) to zero (0) for another one hundred and twenty (120) days. Although the initial emergency rules were not published in the D.C. *Register*, the emergency rules were posted to the Alcoholic Beverage Regulation Administration's website on February 18, 2022. The Glover Park Moratorium Zone Notice of Emergency Rulemaking expired on June 10, 2022, but it was replaced by the rules set forth below, avoiding a gap in the moratorium.

On May 25, 2022, the Board held a public hearing to receive comments from the public concerning the Glover Park Moratorium. Notice of the public hearing was provided in the D.C. *Register* at 69 DCR 18 (May 6, 2022). The Board received testimony from ANC Commissioner Jackie Blumenthal on behalf of Advisory Neighborhood Commission (ANC) 3B and Maggie Simpson, President of the Glover Park Citizen's Association (GPCA). A summary of those comments is set forth below.

ANC Commissioner Jackie Blumenthal testified at the public hearing on behalf of ANC 3B. She reiterated the ANC's support for renewing the moratorium for three (3) years on tavern and nightclub licenses. She stated that the moratorium has helped to maintain the peace, order and quiet of their neighborhood commercial area by limiting the availability of certain license classes. The Glover Park neighborhood is three blocks long and is zoned for mixed use. It houses condominium units and apartment buildings, and backs onto densely packed rowhouses. She testified that street parking and public transportation in the neighborhood are limited.

ANC 3B also credits the moratorium for helping to maintain a stable and diverse mix of businesses in this commercial area. Despite the economic downturn caused by the pandemic, the Glover Park neighborhood still supports twenty (20) active ABC licensed establishments. ANC 3B is requesting a renewal of the moratorium to give the community additional time to attract new restaurants that meet the family-friendly needs of the Glover Park residents. The ANC is opposed to allowing establishments that provide nothing but alcohol, specifically taverns and nightclubs to locate in Glover Park due to the potential for disrupting the peace, order and quiet of the neighborhood. The moratorium has helped to balance the neighborhood's nightlife and the livability of its residents.

Maggie Simpson, GPCA President, submitted testimony in support of maintaining the existing moratorium for another three (3) years. Similar to the position taken by the ANC, the GPCA believes three (3) years will allow the community to attract more family-friendly restaurants to their neighborhood. They find no benefit to attracting taverns or nightclubs as the one nightclub that is currently grandfathered into the neighborhood is a source of continual disruption for the area residents.

The Board considered the comments provided by ANC 3B and the GPCA. The Board supports their request to renew the Glover Park Moratorium for a three (3) year period. In reaching its decision, the Board has given great weight to the written recommendations of ANC 3B as required by Section 13(d)(3) of the Advisory Neighborhood Commissions Act of 1975, effective October 10, 1975 (D.C. Law 1-21; D.C. Official Code § 1-309.10(d)(3) (Repl. & Supp.), and D.C. Official Code § 25-609 (Repl. & Supp. ed.)). After evaluating the testimony and comments, the Board finds that ANC 3B's proposal to renew the moratorium is appropriate. Specifically, the Board agrees that maintaining the restrictions on taverns and nightclubs ensures peace, order and quiet to the benefit of neighborhood.

In reviewing a moratorium request, the Board must "consider the extent to which the testimony and comments show that the requested moratorium is appropriate under at least two (2) of the appropriateness standards set forth in subchapter II of this chapter." D.C. Official Code § 25-354(d). After considering the comments it received and the testimony provided at the public hearing, the Board determines that it is in the public's interest to renew the moratorium for three (3) years.

The Board gives great weight to the ANC and finds that its proposal constitutes a reasonable, measured, and appropriate solution for the Glover Park neighborhood. The Board concluded that maintaining the existing moratorium is in the public's interest as determined by the appropriateness standards set forth in D.C. Official Code §§ 25-313 (b)(2) and (b)(3).

The Board also finds that emergency rulemaking action is warranted. In accordance with section 6(c) of the DC APA, emergency action is necessary for the immediate preservation of health, safety, and welfare of District of Columbia residents. Emergency action is necessary to (1) ensure that the limitations placed on the issuance of new retailer's licenses for taverns, nightclubs, multipurpose facilities and private clubs are maintained; and (2) keep the existing GPMZ in place until the Board can adopt final rules regarding its renewal.

For these reasons, the *Glover Park Moratorium Zone Notice of Second Emergency and Proposed Rulemaking* was adopted by the Board on June 8, 2022, by a six (6) to zero (0) vote and became effective on that date. These rules superseded the emergency rules adopted by the Board on February 16, 2022, and expired on October 6, 2022.

However, on October 5, 2022, the Board adopted the *Glover Park Moratorium Zone Notice of Third Emergency Rulemaking*, by a vote of six (0) to zero (0). The Board took this emergency action to preserve the protections afforded by the moratorium, which are necessary to safeguard the health, safety, and welfare of the community while the final rules undergo Council review.

On _____, 2022, the Board adopted the *Glover Park Moratorium Zone Notice of Final Rulemaking*, by a vote of six (0) to zero (0). No changes have been made to the rules since they were published as proposed in the *D.C. Register*. The final rules shall supersede the Third Notice of Emergency Rulemaking.

The final rules shall not take effect until five (5) days after they are published in the *D.C. Register* in accordance with D.C. Official Code § 25-211(d)(1).

Chapter 3, LIMITATIONS ON LICENSES, of Title 23 DCMR, ALCOHOLIC BEVERAGES, is amended as follows:

308. GLOVER PARK MORATORIUM ZONE

308.1 No new retailer's license class CT, CN, CX, DN, DT, or DX shall be issued for a period of three (3) years from the effective date of this section in the area that extends approximately one thousand two hundred feet (1,200 ft.) in all directions from 2436 Wisconsin Avenue, N.W., Washington, D.C. 20007.

308.2 The Glover Park Moratorium Zone is more specifically described as beginning at Tunlaw Road and Fulton Street; East on Fulton Street to Wisconsin Avenue; South on Wisconsin Avenue to Edmunds Street; East on Edmunds Street to Massachusetts Avenue; Southeast on Massachusetts Avenue to Observatory Circle; Southwest around Observatory Circle to Calvert Street; West on Calvert Street to Wisconsin Avenue; Southeast on both sides of Wisconsin Avenue to 35th Street; South on 35th Street to Whitehaven Parkway; West on Whitehaven Parkway to 37th Street; North on 37th Street to U Street; West on U Street to a point of intersection of Huidekoper Place and W Street; West on W Street to 39th Street; North on 39th Street to Davis Place; East on Davis Place to Tunlaw Road; North and Northwest on Tunlaw Road to Fulton Street.

308.3 All hotels, whether present or future, shall be exempt from the Glover Park Moratorium Zone.

308.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license class CT, CN, CR, CX, DN, DT, or DX within

the Glover Park Moratorium Zone that was in effect or for which an application was pending prior to the effective date of this section, subject to the requirements of Title 25 of the D.C. Official Code and this title.

- 308.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the Glover Park Moratorium Zone to a new location within the Glover Park Moratorium Zone.
- 308.6 A license holder outside the Glover Park Moratorium Zone shall not be permitted to transfer its license to a location within the Glover Park Moratorium Zone.
- 308.7 Nothing in this section shall prohibit a valid protest of any transfer or change of a license class.
- 308.8 The moratorium shall have a prospective effect and shall not apply to any license granted prior to the effective date of this section or to any application for licensure pending on the effective date of this section.
- 308.9 This section shall expire three (3) years after the date of publication of the notice of final rulemaking in the *D.C. Register*.

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF THE ATTORNEY GENERAL

KARL A. RACINE
ATTORNEY GENERAL



*PRIVILEGED AND CONFIDENTIAL
ATTORNEY-CLIENT COMMUNICATION*

LEGAL COUNSEL DIVISION

MEMORANDUM

TO: Martha Jenkins
General Counsel
Alcoholic Beverage Regulation Administration

FROM: Brian K. Flowers *BKF*
Deputy Attorney General
Legal Counsel Division

DATE: August 23, 2022

SUBJECT: Legal Sufficiency Review of Draft “Glover Park Moratorium Zone Approval Resolution of 2022”
(AE-22-393-C)

This memorandum responds to your request that this Office conduct a legal sufficiency review of the above-referenced draft proposed resolution (“Proposed Resolution”).

The Proposed Resolution would provide for affirmative Council approval of the Alcoholic Beverage Control Board’s proposed rules (“Proposed Rulemaking”) to amend Section 308 (Glover Park Moratorium Zone) of Chapter 3 (Limitations on Licenses) of Title 23 (Alcoholic Beverages) of the District of Columbia Municipal Regulations (DCMR). The Proposed Rulemaking will renew the existing Glover Park Moratorium Zone for another three years. Notice of the Proposed Rulemaking, as part of a Notice of Second Emergency and Proposed Rulemaking, was published in the *D.C. Register* on July 15, 2022 at 69 DCR 8495.

The Proposed Resolution and Proposed Rulemaking are being transmitted to the Council pursuant to section 25-211(b)(2) of the District of Columbia Official Code. The Proposed Rulemaking shall not become effective until the Council adopts the Proposed Resolution approving the Proposed Rulemaking, or 90 days after submission if the Council has not disapproved the Proposed Rulemaking, and five days following publication of the final rules in the *D.C. Register*, pursuant to D.C. Official Code § 25-211(d).

I have reviewed the draft Proposed Resolution and find it to be legally sufficient with the incorporated technical revisions suggested by this Office and approved by you. If you have any

questions regarding this memorandum, please contact Kevin Hilgers, Assistant Attorney General, Legal Counsel Division, at 320-8007, or me at 724-5524.

BKF/kmh

GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of the Attorney General



ATTORNEY GENERAL
KARL A. RACINE



Legal Counsel Division

MEMORANDUM

TO: Bryan Hum
Interim Director
Office of Policy & Legislative Affairs

FROM: Brian K. Flowers
Deputy Attorney General
Legal Counsel Division

DATE: August 23, 2022

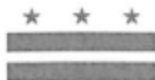
SUBJECT: Legal Sufficiency Review – Draft “Glover Park Moratorium Zone Approval Resolution of 2022”
(AE-22-393-C)

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.

Brian K. Flowers

Brian K. Flowers

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: September 9, 2022

SUBJECT: Fiscal Impact Statement – Glover Park Moratorium Zone Approval
Resolution of 2022

REFERENCE: Draft Approval Resolution as provided to the Office of Revenue
Analysis on September 2, 2022

Conclusion

Funds are sufficient in the fiscal year 2022 budget and fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the proposed resolution.

Background

The Alcoholic Beverage Control Board (Board) and the Alcoholic Beverage Regulation Administration (ABRA) currently enforce a prohibition on new tavern, nightclub, and multipurpose licenses in the District's Glover Park neighborhood. The prohibitions are effective for all properties located within a radius of about 1,200 feet from 2436 Wisconsin Avenue, N.W. The rules exempt hotels from the prohibition and allow licensees within the moratorium zone to transfer to another location within the zone. The permanent prohibition expired in February 2022 but was extended twice by the Board under emergency rulemakings. The current prohibition will expire October 8, 2022.¹

The resolution approves an extension of the moratorium for three years from the date of publication of the final rulemaking. The underlying rulemaking does not change the parameters of the Glover Park moratorium.

¹ Glover Park Moratorium Zone Notice of Second Emergency and Proposed Rulemaking, adopted June 8, 2022.

The Honorable Phil Mendelson

FIS: "Glover Park Moratorium Zone Approval Resolution of 2022," Draft Approval Resolution as provided to the Office of Revenue Analysis on September 2, 2022

Financial Plan Impact

Funds are sufficient in the fiscal year 2022 budget and fiscal year 2023 through fiscal year 2026 budget and financial plan to implement the proposed resolution. The proposed resolution and underlying rulemaking approve a three-year extension for the existing Glover Park moratorium zone. The Board and ABRA can continue to enforce the moratorium with their existing budgeted resources.