

DISTRICT OF COLUMBIA
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ALCOHOLIC BEVERAGE CONTROL BOARD
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MEETING

IN THE MATTER OF:

ABRA LEGAL AGENDA

August 15, 2014

The Alcoholic Beverage Control Board met in Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street N.W., Washington, D.C., Chairperson Ruthanne Miller presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

HECTOR RODRIGUEZ, Member

JAMES SHORT, Member

MICHAEL SILVERSTEIN, Member

1 P-R-O-C-E-E-D-I-N-G-S

2 (2:20 p.m.)

3 CHAIR MILLER: Okay, we're back on
4 the record to do a legal agenda for Friday,
5 August 15, 2014, as we were here for a special
6 hearing today anyway. First item is review of
7 Emergency and Proposed Rulemaking for MPD
8 Reimbursable Detail.

9 This is a revised, since our
10 Wednesday hearing in which we've incorporated
11 some suggestions. So I move that we approve
12 this rulemaking. Do I have a second?

13 MEMBER SHORT: Second.

14 CHAIR MILLER: Mr. Short has
15 seconded the motion. Any other comments? All
16 those in favor then say aye.

17 (Chorus of ayes)

18 CHAIR MILLER: All those opposed,
19 all those abstaining. Motion passes 5-0-0.
20 The second item on the agenda is an amendment
21 to a Settlement Agreement dated, August 9,
22 2014, between Big Chair Coffee and Grill and

1 ANC 8A.

2 Big Chair Coffee and Grill is
3 located at 2122 Martin Luther King Jr. Ave.
4 SE, CR License Number 084376. I move that we
5 approve with the following modifications to
6 Paragraph 3 that would be changing 12:00 p.m.
7 to a.m. and Number 4, Provision 8(e) and 8(c).

8 MEMBER ALBERTI: 8(b)?

9 CHAIR MILLER: Let me double
10 check. I think it's 8(b)1.

11 MEMBER ALBERTI: What's wrong with
12 8(b)?

13 CHAIR MILLER: Okay. Pausing to
14 pull that paragraph. I think 8(b) one we were
15 going to add language to that, yes, to
16 coincide with our language in the statute and
17 that would be with respect to the cameras that
18 the cameras utilized by the establishment are
19 operational.

20 That any footage of a crime of
21 violence or a crime involving a gun is
22 maintained for a minimum of 30 days. The

1 security footage is made available within 48
2 hours upon the request of ABRA or the MPD.

3 We've recently started adding that
4 to settlement agreements. It's, but it's
5 right out of the law. It's right out of our
6 statute.

7 MEMBER ALBERTI: And the other
8 one?

9 CHAIR MILLER: 8(c), we
10 recommended changing the provision of cell
11 phone numbers of managers to contact
12 information for the establishment. I believe
13 that's, let me double check if there's
14 anything else.

15 (Off the record comments)

16 CHAIR MILLER: I'm looking at
17 Number 4. There's been a, the parties
18 themselves asked that there be a cross out.
19 And I believe it's Paragraph 4. In Paragraph
20 4 crossing out Applicant agrees to keep its
21 doors and windows closed when live music is
22 being played at the establishment after 8:00

1 p.m. on Friday and Saturday.

2 They actually requested that be
3 removed. And correction, that sentence should
4 not be crossed out. The following sentence
5 should be crossed out. And that reads however
6 it is understood by the parties that applicant
7 may open its window panels and that music may
8 be played at such times at a level not audible
9 beyond the street curbside.

10 All right. Let me look further.
11 I think that's it. Are there any others that
12 other know about? Okay. And we have a
13 written order that is going out today that
14 sets forth these changes. It's Order Number
15 2014-326. And it also says that all terms and
16 conditions of the original agreement remain in
17 full force and effect.

18 Okay. So I move that we approve
19 the amendment with the modifications.

20 MEMBER SHORT: Second.

21 CHAIR MILLER: Mr. Short has
22 seconded the motion. All those in favor say

1 aye.

2 MEMBER ALBERTI: I would like to
3 make a comment before we vote.

4 CHAIR MILLER: Okay.

5 MEMBER ALBERTI: While I agree
6 with the modifications that you've enumerated
7 there are other conditions in here that I find
8 very troubling. Under the section labeled
9 entertainment endorsement it says that live
10 entertainment such as a jazz trio is allowed
11 inside and in the center garden.

12 Later in that same section it says
13 that bands are prohibited. This appears to me
14 to be a conflict in language because any
15 logical interpretation of a jazz trio and band
16 would be that a jazz trio is a band. I think
17 it fits the definition that you would find in
18 any dictionary.

19 Additionally, and maybe even more
20 troubling is that they are discriminating on,
21 by singling out jazz trios as being allowed
22 they're discriminating on genre music and

1 quite possibly discriminating on cultural
2 preference. They seem to think that jazz is
3 acceptable where music and types of bands
4 maybe a hip-hop, small hip-hop band would not
5 be allowed there certainly seems to be some
6 cultural bias here.

7 So I find this very troubling and
8 I will vote to not accept this, well to deny
9 the motion.

10 CHAIR MILLER: Other comments?
11 Okay. I would just say that I don't find it
12 troubling in that I find language such as
13 light entertainment such as a jazz trio to
14 include more than a jazz trio. So I don't see
15 anything discriminatory. Any other comments?

16 MEMBER ALBERTI: Since we don't
17 know what else is allowed you can't conclude
18 that. I can only go by what they've told us.

19 CHAIR MILLER: Okay. Any other
20 comments? All right. Thank you. And so
21 there is a motion to approve the amendment to
22 the settlement agreement and it's been

1 seconded by Mr. Short.

2 MEMBER SHORT: Yes, ma'am.

3 CHAIR MILLER: Okay. All those in
4 favor say aye.

5 (Chorus of ayes)

6 CHAIR MILLER: All those opposed.

7 MEMBER ALBERTI: Opposed.

8 CHAIR MILLER: Okay. The motion
9 passes 4-1-0. Next is Number 3, Withdrawal of
10 Protest dated August 15, 2014, submitted by
11 Commissioner William Stephens of ANC 2B.
12 That's with respect to Cities located at 919
13 19th Street NW, License Number 086319.

14 I move that we approve this
15 withdrawal. Do I have a second?

16 MEMBER SILVERSTEIN: Second.

17 CHAIR MILLER: Mr. Silverstein
18 seconded the motion. Any comments? All those
19 in favor say aye.

20 (Chorus of ayes)

21 CHAIR MILLER: All those opposed,
22 all those abstaining. Motion passes 5-0-0.

1 Number 4 is a request to vacate Ultra Cease
2 and Desist Order, dated, Order 2014-271, dated
3 August 14, 2014. I move that we approve the
4 vacating this cease and desist order. Do I
5 have a second?

6 MEMBER SILVERSTEIN: Second.

7 CHAIR MILLER: Mr. Silverstein has
8 seconded the motion. One second. Correction,
9 we have an order that's been dated today's
10 date for our signature August 15, 2014. Okay.
11 So I move that we approve that order.

12 MEMBER SILVERSTEIN: Second.

13 CHAIR MILLER: Mr. Silverstein
14 seconded the motion. All those in favor say
15 aye.

16 (Chorus of ayes)

17 CHAIR MILLER: All those opposed.
18 The motion passes 5-0-0. Okay. And finally
19 we have Number 5, a Review of Proposed
20 Amendment to Settlement Agreement dated April
21 5, 2014, between ANC2B, Group of five or more
22 and Inner Circle 1223, trading as Dirty

1 Martini/Dirty Bar located at 1223 Connecticut
2 Avenue NW, License Number 083919.

3 This is a proposed settlement
4 agreement from them but also I believe we
5 received some others that were exactly the
6 same related to nearby establishments. And I
7 would move that we disapprove these settlement
8 agreements because as written they are not
9 enforceable.

10 And it doesn't do anyone any good
11 to have unenforceable agreements. I know they
12 want to solve the noise problem and attempt
13 good relations between communities and
14 restaurants and night clubs.

15 And I would propose that they be
16 allowed to confer with our general counsel as
17 to different ways to approach the settlement
18 so that they can submit another settlement
19 that will be enforceable.

20 And I think they can explore ways
21 to do that with our general counsel. But I
22 would also say that I believe that there

1 should be some best practices out there and
2 some successful establishments where there are
3 really tangible and measurable solutions. So
4 that's my motion. Do I have a second?

5 MR. RODRIGUEZ: Second it.

6 CHAIR MILLER: Mr. Rodriguez has
7 seconded the motion. Do we have some
8 comments?

9 MEMBER ALBERTI: I have some
10 questions, well questions, comments. I mean
11 you mentioned Dirty Martini, is that the only
12 one that you're moving that we deny?

13 CHAIR MILLER: I mentioned that
14 there are other like it that have the exact
15 same provisions. So I would, Dirty Martini is
16 the only one that's listed on our agenda. But
17 it is exactly the same as the others.

18 MEMBER ALBERTI: So I'm still not
19 sure what your motion is then. Is it to deny
20 Dirty Martini?

21 CHAIR MILLER: Yes, it's to deny
22 Dirty Martini.

1 MEMBER ALBERTI: And no others?

2 CHAIR MILLER: Well they're not on
3 the agenda here. I said they were exactly the
4 same so that I think that our action would be
5 the same for the others.

6 MEMBER ALBERTI: Well we don't
7 know because we haven't taken it, right?

8 CHAIR MILLER: We haven't taken
9 what? We've looked at it.

10 MEMBER ALBERTI: We haven't taken
11 action on the others.

12 CHAIR MILLER: No.

13 MEMBER ALBERTI: We're only, I
14 want to make it clear for the record we're
15 only taking action on Dirty Martini. Is that
16 correct?

17 CHAIR MILLER: Well let me just
18 ask general counsel whether we can add the
19 other names to it. But they're not on the
20 agenda as stated.

21 MEMBER ALBERTI: Well are you
22 amending your motion?

1 CHAIR MILLER: No, I said I was
2 conferring with general counsel.

3 (Off the record comments)

4 CHAIR MILLER: Okay, Dirty Bar,
5 Dirty Martini and Dirty Bar is the only one
6 that is referenced.

7 MEMBER ALBERTI: Dirty Bar is
8 Dirty Martini?

9 CHAIR MILLER: That's the name.

10 MEMBER ALBERTI: That's the name
11 of this, okay.

12 CHAIR MILLER: It is the only one
13 referenced. So it is probably the only one we
14 should take action on with respect to
15 disapproving today officially. But I
16 understand that they are a lot of the same
17 parties and I want them, the purpose of this
18 is to let them know that they should, that
19 we're not accepting that settlement agreement.

20 It's the same for all of them.
21 And that while we're on recess I would just
22 want to authorize our general counsel to work

1 with the parties on being able to move forward
2 in crafting a different type of agreement
3 that's enforceable.

4 MEMBER ALBERTI: So how, when was
5 Dirty Martini submitted?

6 CHAIR MILLER: It says April 5,
7 2014, on the notice.

8 MEMBER ALBERTI: April 5th. See
9 I'm having a concern here with the motion to
10 deny this because now the next step would be
11 to schedule the protest hearing. I thought we
12 had promised counsel and certainly --

13 CHAIR MILLER: I'm not proposing
14 that.

15 MEMBER ALBERTI: Well let me
16 finish. Certainly we have made promises and
17 tried very much so to resolve these protest
18 hearings in a reasonable time frame.

19 This goes back, way back to April
20 and now we're going to reopen the protest by
21 denying this settlement agreement. Is that
22 the result of this?

1 CHAIR MILLER: I don't know, Mr.
2 Alberti. I'm not suggesting that they go
3 forward with the protest. I'm suggesting that
4 they, that we're authorizing our agent, our
5 general counsel to work with them on
6 resubmitting another settlement agreement.

7 MEMBER ALBERTI: But that is one
8 possibility that they go forward with a
9 protest, is it not?

10 CHAIR MILLER: I don't know.
11 That's not what I'm moving.

12 MEMBER ALBERTI: No, but that's a
13 possibility. I know that you're not moving
14 that, but that's --

15 CHAIR MILLER: I think they would
16 do that anyway.

17 MEMBER ALBERTI: Well I will tell
18 you that is a real possibility whether you
19 realize that or not, that is a real
20 possibility. I'll just put that on the
21 record.

22 MR. RODRIGUEZ: Madam Chair, if I

1 may. We're voting on what's at hand in this
2 agenda today. Possibilities are things later
3 to be dealt with. But right now we're dealing
4 with what's on the agenda.

5 CHAIR MILLER: Yes, but I don't
6 know if Mr. Alberti is concerned about some
7 ramification of voting today.

8 MEMBER ALBERTI: Well I want to
9 make sure that my fellow Board Members
10 understand the ramifications, possible,
11 potential ramifications of their actions
12 today.

13 CHAIR MILLER: Okay.

14 MEMBER SHORT: Thank you.

15 CHAIR MILLER: Any other comments?
16 Okay.

17 MR. RODRIGUEZ: So are you
18 suggesting we table it?

19 CHAIR MILLER: I am moving, is
20 there more?

21 MR. RODRIGUEZ: I think you have a
22 motion --

1 CHAIR MILLER: I have a motion to
2 disapprove relief to resubmit after
3 consultation with general counsel.

4 MR. RODRIGUEZ: But, Madam Chair,
5 I withdraw my second so that we reconsider
6 this matter. If there are questions by other
7 Board Members --

8 MEMBER SILVERSTEIN: Then I second
9 it.

10 CHAIR MILLER: So we have a motion
11 that's been seconded. Do you have any other,
12 we were about to vote but if you have another
13 comment or question? No.

14 MR. RODRIGUEZ: I withdrew my
15 second, Madam Chair, and Mr. --

16 CHAIR MILLER: Silverstein has
17 seconded the motion.

18 MR. RODRIGUEZ: -- Silverstein
19 then seconded it.

20 CHAIR MILLER: Okay. All those in
21 favor. Any questions on the motion? All
22 those in favor say aye.

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(Chorus of ayes)

CHAIR MILLER: All those opposed.

All those abstaining.

MR. RODRIGUEZ: Abstaining.

CHAIR MILLER: Did you vote?

MEMBER ALBERTI: I'm abstaining.

CHAIR MILLER: So the motion passes 3-0-2. Okay. That completes our agenda for August 15, 2014. And we are adjourned and on official recess. See you in September.

(Whereupon, the above-entitled matter went off the record at 2:39 p.m.)

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