

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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MEETING

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IN THE MATTER OF: :

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: Agenda

A.B.R.A Agenda : Hearing

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September 11, 2013

The Alcoholic Beverage Control Board met in the Alcoholic Beverage Control Hearing Room, Reeves Building, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009, Chairperson Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

MIKE SILVERSTEIN, Member

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

(9:05 p.m.)

CHAIRPERSON MILLER: Okay. We are back on the record for the agenda for September 11, 2013.

The first item on the agenda is a change of hours to add Monday hours for The Elroy located at 1423 H Street, N.E., License No. 91452.

I would move to approve. Do I have a second?

MEMBER BROOKS: Second.

CHAIRPERSON MILLER: Mr. Brooks seconded the motion.

All those in favor say aye.

ALL: Aye.

CHAIRPERSON MILLER: All those opposed? All those abstaining? The motion passes 3-0-0.

No. 2 involves reviewing updated information regarding Each Peach Market, 3068 Mount Pleasant Street, N.W., License No.

1 92449.

2 I move that we postpone our review
3 of this matter.

4 Do I have a second?

5 MEMBER BROOKS: Second.

6 CHAIRPERSON MILLER: Mr. Brooks
7 has seconded the motion.

8 All those in favor of postponing
9 this review say aye.

10 ALL: Aye.

11 CHAIRPERSON MILLER: All those
12 opposed? All those abstaining? The motion
13 passes 3-0-0.

14 Next is a request to extend
15 safekeeping for G Spot Tavern located at 5413
16 Georgia Avenue, N.W., License No. 085208.

17 I move that we hold a Fact-Finding
18 Hearing on this request.

19 Do I have a second?

20 MEMBER BROOKS: Second.

21 CHAIRPERSON MILLER: Mr. Brooks
22 has seconded the motion.

1 All those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? All those abstaining? The motion
5 passes 3-0-0.

6 No. 4 is a request for safekeeping
7 for Grill Kabob of Georgetown, 3299 M Street,
8 N.W., License No. 090419.

9 I move that we grant the request
10 for safekeeping for a period of six months.

11 Do I have a second?

12 MEMBER BROOKS: Second.

13 CHAIRPERSON MILLER: Mr. Brooks
14 has seconded the motion.

15 All those in favor say aye.

16 ALL: Aye.

17 CHAIRPERSON MILLER: All those
18 opposed? All those abstaining? The motion
19 passes 3-0-0.

20 No. 5 and 6 are two requests for
21 change of hours for Whole Foods Market. One
22 is located at 2323 Wisconsin Avenue, N.W. It

1 is License No. 22045. And the other is
2 located at 2201 I Street, N.W., License No.
3 86916. It is asking for the same change in
4 hours to add two hours earlier, Monday through
5 Friday, and one hour earlier on Saturday.

6 I move that we approve both these
7 requests.

8 Do I have a second?

9 MEMBER BROOKS: Second.

10 CHAIRPERSON MILLER: Mr. Brooks
11 has seconded the motion.

12 All those in favor say aye.

13 ALL: Aye.

14 CHAIRPERSON MILLER: All those
15 opposed? All those abstaining? The motion
16 passes 3-0-0.

17 No. 7 is a change of hours for
18 Rafael Grocery Deli located at 233 Florida
19 Avenue, N.W., License No. 60359.

20 I move that we approve this
21 request for a change of hours.

22 Do I have a second?

1 MEMBER BROOKS: Second.

2 CHAIRPERSON MILLER: Mr. Brooks
3 has seconded the motion.

4 All those in favor say aye.

5 ALL: Aye.

6 CHAIRPERSON MILLER: All those
7 opposed? All those abstaining? The motion
8 passes 3-0-0.

9 No. 8 is a request for change of
10 hours of operations and sales for Weygandt
11 Wines located at 3519 Connecticut Avenue,
12 N.W., License No. 81464. This is to add
13 Sunday hours, which are now legal in the
14 District.

15 And I would move that we approve
16 this change in hours.

17 Do I have a second?

18 MEMBER BROOKS: Second.

19 CHAIRPERSON MILLER: Mr. Brooks
20 has seconded the motion.

21 All those in favor say aye.

22 ALL: Aye.

1 CHAIRPERSON MILLER: All those
2 opposed? All those abstaining? The motion
3 passes 3-0-0.

4 No. 9 is a request for change of
5 hours of operations, sales and inside premise
6 entertainment and request for summer garden
7 change of hours of operation and sales for
8 Vendetta located at 1210 through 1212 H
9 Street, N.E., License No. 72734. This change
10 is to earlier hours beginning from 5:00 p.m.
11 down to 11:00 a.m. on all days except Friday,
12 which looks like 4:00 p.m. to 11:00 a.m.

13 And also --

14 MEMBER ALBERTI: Which one are you
15 on?

16 CHAIRPERSON MILLER: I'm on 9.
17 I'm just wondering if all the changes --

18 MEMBER ALBERTI: The change is --

19 CHAIRPERSON MILLER: I don't think
20 they are seeking entertainment change, are
21 they?

22 MEMBER ALBERTI: They are sticking

1 to earlier hours for --

2 CHAIRPERSON MILLER: Or they are.

3 MEMBER ALBERTI: -- sales and
4 consumption --

5 CHAIRPERSON MILLER: Yes.

6 MEMBER ALBERTI: -- entertainment
7 and for sidewalk cafe consumption and
8 operation. That's all for earlier hours.

9 CHAIRPERSON MILLER: Except live
10 entertainment looks like they might start a
11 little later in the morning on Friday and
12 Saturday, right, from 9:00 moving to 11:00?
13 Am I reading that right?

14 MEMBER ALBERTI: I don't think so.

15 CHAIRPERSON MILLER: Well, look.

16 MEMBER ALBERTI: Oh, yeah.

17 CHAIRPERSON MILLER: Okay.

18 MEMBER ALBERTI: Right.

19 CHAIRPERSON MILLER: Okay. All
20 right. So those are the changes. And they
21 wish to include the request for change of
22 hours.

1 Do I have a second?

2 MEMBER BROOKS: Second.

3 CHAIRPERSON MILLER: Mr. Brooks
4 has seconded the motion.

5 All those in favor say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: All those
8 opposed? All those abstaining? The motion
9 passes 3-0-0.

10 No. 10 is also a request for
11 change of hours for Shake Shack located at 800
12 F Street, N.W., License No. 90756. It is just
13 a change of hours to operate two hours later
14 on Friday and Saturday evenings, moving that
15 from 11:00 to 12:00. Okay. Just hold on one
16 second. Okay. All right.

17 Then I would move approval of this
18 request for change of hours for Shake Shack.

19 MEMBER BROOKS: Second.

20 MEMBER SILVERSTEIN: Second.

21 CHAIRPERSON MILLER: Okay. Mr.
22 Brooks has seconded the motion.

1 All those in favor say aye.

2 ALL: Aye.

3 CHAIRPERSON MILLER: All those
4 opposed? The motion passes 4-0-0.

5 Okay. No. 11 is a request for
6 temporary extension of the East Dupont Circle
7 Moratorium Zone dated August 12, 2013 from
8 Dupont Circle Citizens Association.

9 I would move that we set this
10 request for hearing.

11 MEMBER BROOKS: Second.

12 CHAIRPERSON MILLER: Okay. Mr.
13 Brooks has seconded the motion.

14 All those in favor say aye.

15 ALL: Aye.

16 CHAIRPERSON MILLER: All those
17 opposed? All those abstaining? The motion
18 passes 4-0-0.

19 No. 12 is a request for off-site
20 storage of records for Woodward Table located
21 at 1426 H Street, N.W., License No. 90596.

22 I move that we approve this

1 request.

2 CHAIRPERSON MILLER: Second.

3 MEMBER SILVERSTEIN: Second.

4 CHAIRPERSON MILLER: Mr. Brooks

5 has seconded the motion.

6 All those in favor say aye.

7 ALL: Aye.

8 CHAIRPERSON MILLER: All those
9 opposed? All those abstaining? The motion
10 passes 4-0-0.

11 Okay. No. 13 is a review of a
12 settlement agreement between ANC-6D and Park
13 Tavern. Park Tavern is located at 202 M
14 Street, S.E., License No. 089126. This is
15 actually an amendment to an underlying
16 settlement agreement.

17 I move that we approve this
18 amendment with modification to define events
19 and to attach a settlement agreement, the
20 underlying settlement agreement and/or explain
21 what is referred to by their mention of music
22 in the area's "described below." Not evident

1 on the face of the amendment.

2 Do I have a second?

3 MEMBER BROOKS: Second.

4 MEMBER SILVERSTEIN: Second.

5 CHAIRPERSON MILLER: Mr.

6 Silverstein has seconded the motion.

7 All those in favor say aye.

8 ALL: Aye.

9 CHAIRPERSON MILLER: All those
10 opposed? All those abstaining? The motion
11 passes 4-0-0.

12 No. 14 is a review of a settlement
13 agreement between ANC-6C and TD Burger, LLC.
14 TD Burger is located at 250 K Street, N.W.,
15 License No. 92242.

16 I move that we approve the
17 settlement agreement with modifications to
18 paragraph 8 and 10 of the settlement
19 agreement.

20 Do I have a second?

21 MEMBER BROOKS: Second.

22 MEMBER SILVERSTEIN: Second.

1 CHAIRPERSON MILLER: Mr. Brooks
2 has seconded the motion.

3 All those in favor say aye.

4 ALL: Aye.

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining? The motion
7 passes 4-0-0.

8 No. 15 is a review of an amendment
9 to a settlement agreement between ANC-6B and
10 Congressional Liquors. Congressional Liquors
11 is located at 404 1st Street, S.E., License
12 No. 089418.

13 I move that we approve this
14 settlement agreement.

15 MEMBER SILVERSTEIN: Second.

16 CHAIRPERSON MILLER: Mr.
17 Silverstein has seconded the motion.

18 All those in favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed? All those abstaining? The motion
22 passes 4-0-0.

1 Okay. No. 15 -- is it 15?

2 Actually, I have two different versions. This
3 is No. 15 and I'm dealing with number -- it's
4 a different number and another version I'm
5 looking at. So are you all looking at No. 15,
6 Penn Social?

7 MEMBER ALBERTI: No.

8 CHAIRPERSON MILLER: No?

9 MEMBER ALBERTI: Oh, yes.

10 CHAIRPERSON MILLER: 16, Penn
11 Social?

12 MEMBER ALBERTI: Wait. What was
13 number --

14 CHAIRPERSON MILLER: See that's
15 where --

16 MEMBER ALBERTI: Congressional?

17 CHAIRPERSON MILLER: Congressional
18 Liquors was 15. This version that I have,
19 that I have been marking up, skips one of
20 them. So let me go back and I'll change the
21 numbers.

22 MEMBER ALBERTI: Okay.

1 CHAIRPERSON MILLER: Okay.

2 Because my numbers are mixed up.

3 MEMBER ALBERTI: Yes. On the
4 correct version, 13 should be Park Tavern. On
5 the correct version 14 should be TD Burger.

6 CHAIRPERSON MILLER: Okay. So 13
7 is missing, this version that I was talking
8 about. So we need to go back to Park Tavern,
9 correct? We did not vote on that one then.

10 MEMBER ALBERTI: I don't know.
11 You tell me. I don't know which version you
12 are working with.

13 CHAIRPERSON MILLER: Okay. 16 is
14 an inquiry from John Xereas regarding the
15 status of the license and request for an
16 investigation of Penn Social. Penn Social is
17 located at 801 E Street, N.W., License No.
18 086808.

19 Okay. There are several questions
20 in this inquiry and I would move that we refer
21 this to the Director, Mr. Moosally, to have
22 the Agency respond to those questions that are

1 appropriate for this Agency to respond to.

2 So do I have a second to refer
3 this to Director Moosally?

4 MEMBER ALBERTI: Second.

5 CHAIRPERSON MILLER: Okay. Mr.
6 Alberti has seconded the motion.

7 All those in favor say aye.

8 ALL: Aye.

9 CHAIRPERSON MILLER: All those
10 opposed? All those abstaining? The motion
11 passes 4-0-0.

12 No. 17 is a request dated July 20,
13 2013 and August 5, 2013 from E & J Gallo
14 Winery for approval to provide retailers with
15 products valued at more than \$50 and less than
16 \$500.

17 I move that we approve.

18 MEMBER ALBERTI: Second.

19 CHAIRPERSON MILLER: Mr. Alberti
20 has seconded the motion.

21 All those in favor say aye.

22 ALL: Aye.

1 CHAIRPERSON MILLER: All those
2 opposed? All those abstaining? The motion
3 passes 4-0-0.

4 No. 18 is a request from Capital
5 Eagle, Inc. for approval to provide retailers
6 with products valued at more than \$50 and less
7 than \$500.

8 I move that we approve.

9 MEMBER ALBERTI: Second.

10 CHAIRPERSON MILLER: Mr. Alberti
11 seconded the motion.

12 All those in favor say aye.

13 ALL: Aye.

14 CHAIRPERSON MILLER: All those
15 opposed? All those abstaining? The motion
16 passes 4-0-0.

17 No. 19 is a request dated August
18 29, 2013 from E & J Gallo Winery for approval
19 to provide retailers with products valued at
20 more than \$50 and less than \$500.

21 I move that we approve.

22 MEMBER ALBERTI: Second.

1 CHAIRPERSON MILLER: Mr. Alberti
2 seconded the motion.

3 All those in favor say aye.

4 ALL: Aye.

5 CHAIRPERSON MILLER: All those
6 opposed? All those abstaining? The motion
7 passes 4-0-0.

8 Okay. Finally, No. 20 in our
9 agenda is our review of Civil Penalty Final
10 Rulemaking. This rulemaking has been already
11 approved by the Council and it's our final
12 approval of this rulemaking.

13 And I move that we approve.

14 Do I have a second?

15 MEMBER ALBERTI: Second.

16 CHAIRPERSON MILLER: Mr. Alberti
17 seconded the motion.

18 All those in favor say aye.

19 ALL: Aye.

20 CHAIRPERSON MILLER: All those
21 opposed? All those abstaining? The motion
22 passes 4-0-0.

1 Okay. That completes the agenda.

2 And then we have a supplemental agenda.

3 No. 1 on the supplemental agenda
4 is a request for immediate cancellation of
5 license in safekeeping by the Anacostia
6 Warehouse Supermarket located at 1918 14th
7 Street, S.E., License No. 12327.

8 I move that we approve this
9 cancellation request.

10 Do I have a second?

11 MEMBER BROOKS: Second.

12 CHAIRPERSON MILLER: Mr. Brooks
13 has seconded the motion.

14 All those in favor say aye.

15 ALL: Aye.

16 CHAIRPERSON MILLER: All those
17 opposed? All those abstaining? The motion
18 passes 4-0-0.

19 No. 2 is a request to convert a
20 summer garden endorsement to a sidewalk cafe
21 endorsement. This is Hampton Inn-DC
22 Convention Center, 901 6th Street, N.W.,

1 License No. 90214.

2 I move that we approve this
3 request.

4 Do I have a second?

5 MEMBER BROOKS: Second.

6 CHAIRPERSON MILLER: Mr. Brooks
7 has seconded the motion.

8 All those in favor say aye.

9 ALL: Aye.

10 CHAIRPERSON MILLER: All those
11 opposed? All those abstaining? The motion
12 passes 4-0-0.

13 No. 3 is a request for an
14 entertainment endorsement by Ghana Cafe
15 located at 1336 14th Street, N.W., License No.
16 82751.

17 I move that we placard this
18 request.

19 MEMBER BROOKS: Second.

20 CHAIRPERSON MILLER: Mr. Brooks
21 has seconded the motion.

22 All those in favor say aye.

1 ALL: Aye.

2 CHAIRPERSON MILLER: All those
3 opposed? All those abstaining? The motion
4 passes 4-0-0.

5 No. 4 is a Motion to Dismiss a
6 protest from Stephen J. O'Brien, counsel for
7 Eastonville located at 2121 14th Street, N.W.,
8 License No. 078882. No. 5, 6 and 7 are all
9 pleadings related to this motion.

10 And I would move that the Motion
11 to Dismiss is based on issues of basically,
12 res judicata and I would move that we deny the
13 Motion to Dismiss. And I rely, in large part,
14 upon the Court of Appeals case Gallothom, Inc.
15 at 828 2d 530 and I just want to read one
16 sentence, because I think it is very on-point.

17 And it dealt with another claim
18 similar in a renewal case and it says "The
19 claim is not precluded under theory of either
20 res judicata or collateral estoppel because
21 the legislator clearly intended that each
22 renewal of a liquor license is a new factual

1 transaction separate and distinct from both
2 the original transaction of acquiring the
3 license and prior renewals of the license."

4 So I found that case persuasive.
5 Also, I would move to deny the motion.

6 Is there a second?

7 MEMBER ALBERTI: Second.

8 CHAIRPERSON MILLER: Mr. Alberti
9 has seconded the motion.

10 All those in favor say aye.

11 ALL: Aye.

12 CHAIRPERSON MILLER: All those
13 opposed? All those abstaining? The motion is
14 denied.

15 Finally, we have No. 8, on the
16 supplemental agenda, a resolution to extend
17 and modify the East Dupont Circle Liquor
18 Moratorium from ANC-2B. And this item is
19 related to No. 11 on the regular agenda.

20 And I would therefore move that we
21 schedule a hearing on this resolution for the
22 same day.

1 Do I have a second?

2 MEMBER SILVERSTEIN: Second.

3 CHAIRPERSON MILLER: Mr.

4 Silverstein has seconded the motion.

5 All those in favor say aye.

6 ALL: Aye.

7 CHAIRPERSON MILLER: All those

8 opposed? All those abstaining? And the

9 motion passes. It will be scheduled the same

10 day as Item No. 11 on the Board's regular

11 agenda of today.

12 Okay. So that completes the

13 supplemental agenda. Okay. And I think we

14 will just take a vote on closing the meetings

15 for next week.

16 Okay. As Chairperson of the

17 Alcoholic Beverage Control Board for the

18 District of Columbia and in accordance with ^U

19 405 of the Open Meetings Amendment Act of

20 2010, I move that the ABC Board hold a closed

21 meeting on September 25, 2013 for the purpose

22 of seeking legal advice from our counsel on

1 the matters identified on the Board's agenda
2 for September 25, 2013 as published in the DC
3 Register on September 20, 2013.

4 Is there a second?

5 MEMBER BROOKS: Second.

6 MEMBER SILVERSTEIN: Second.

7 CHAIRPERSON MILLER: Mr. Brooks
8 has seconded the motion. I'll now take a roll
9 call vote.

10 Mr. Brooks?

11 MEMBER BROOKS: I agree.

12 CHAIRPERSON MILLER: Mr. Alberti?

13 MEMBER ALBERTI: Oh, wait. Our
14 next hearing is September 17th.

15 CHAIRPERSON MILLER: Oh, excuse
16 me. He's right.

17 MEMBER ALBERTI: Or the 18th
18 rather.

19 CHAIRPERSON MILLER: You're right.

20 MEMBER SILVERSTEIN: 18th.

21 CHAIRPERSON MILLER: It's the 18th
22 and the 13th. Okay. We will hold --

1 correction.

2 This is to hold a closed meeting
3 on September 18, 2013 for the purposes of
4 seeking legal advice from our counsel on
5 matters identified on the Board's agenda for
6 September 18, 2013 as published in the DC
7 Register on September 13, 2013.

8 Is there a second?

9 MEMBER BROOKS: Second.

10 MEMBER SILVERSTEIN: Second.

11 CHAIRPERSON MILLER: Okay. Mr.

12 Brooks has seconded the motion. I'll now take
13 a roll call vote.

14 Mr. Brooks?

15 MEMBER BROOKS: I agree.

16 CHAIRPERSON MILLER: Mr. Alberti?

17 MEMBER ALBERTI: I agree.

18 CHAIRPERSON MILLER: Ms. Miller
19 agrees.

20 Mr. Silverstein?

21 MEMBER SILVERSTEIN: I agree,

22 Madam Chair.

1 CHAIRPERSON MILLER: Thank you
2 very much. Okay. It appears that the motion
3 has passed.

4 I hereby give notice that the ABC
5 Board will hold this aforementioned closed
6 meeting pursuant to the Open Meetings
7 Amendment Act of 2010. Notice will also be
8 posted on the ABC Board hearing room bulletin
9 board, placed on the electronic calendar on
10 ABRA's website and published in the DC
11 Register in as timely manner as practicable.

12 As Chairperson of the Alcoholic
13 Beverage Control Board for the District of
14 Columbia and in accordance with ^U 405 of the
15 Open Meetings Amendment Act of 2010, I move
16 that the ABC Board hold a closed meeting on
17 September 18, 2013 for the purpose of
18 discussing and hearing reports concerning
19 ongoing or planned investigations of alleged
20 criminal or civil misconduct or violations of
21 law or regulations and seeking legal advice
22 from our counsel on the Board's investigative

1 agenda for September 18, 2013, as published in
2 the DC Register on September 13, 2013.

3 Is there a second?

4 MEMBER BROOKS: Second.

5 CHAIRPERSON MILLER: Mr. Brooks
6 has seconded the motion. I'll now take a roll
7 call vote on the motion.

8 Mr. Brooks?

9 MEMBER BROOKS: I agree.

10 CHAIRPERSON MILLER: Mr. Alberti?

11 MEMBER ALBERTI: I agree.

12 CHAIRPERSON MILLER: Ms. Miller
13 agrees.

14 Mr. Silverstein?

15 MEMBER SILVERSTEIN: I agree.

16 CHAIRPERSON MILLER: It appears
17 that the motion has passed by a 4-0-0 vote.

18 I hereby give notice that the ABC
19 Board will hold this aforementioned closed
20 meeting pursuant to the Open Meetings
21 Amendment Act of 2010. Notice will also be
22 posted on the ABC Board hearing room bulletin

1 board, placed on the electronic calendar on
2 ABRA's website and published in the DC
3 Register in as timely a manner as practicable.

4 And that concludes our business on
5 September 11, 2013. It is now 9:29 p.m.

6 Okay.

7 (Whereupon, the A.B.R.A. agenda in
8 the above-entitled matter was concluded at
9 9:29 p.m.)

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