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GOVERNMENT OF THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE REGULATION ADMINISTRATION
ALCOHOLIC BEVERAGE CONTROL BOARD

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IN THE MATTER OF: :
Computation of Violation : Public Hearing
History Rulemaking :

- - - - -X

Wednesday, October 7, 2015

Whereupon, the above-referenced matter
came on for hearing at the Alcoholic Beverage
Control Board, Reeves Center, 2000 14th Street,
N.W., Suite 400S, Washington, D.C. 20009.

1 CHAIRPERSON:

2 RUTHANNE MILLER, Presiding

3

4 BOARD MEMBERS:

5 DONALD BROOKS

6 MICHAEL SILVERSTEIN

7 JAMES SHORT

8 HERMAN JONES

9

10 ALSO PRESENT:

11 DANTE FERRANDO, Black Cat Nightclub

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

2 CHAIRPERSON MILLER: I think we can start
3 because I am going to make a few preliminary
4 remarks. Hopefully, by the time I get through
5 that, our other Board member will be here.

6 So we're here today to conduct a public
7 hearing and take comments on a proposed
8 rulemaking that creates a new Section 808 within
9 Chapter 8 of Title 23 of the DCMR.

10 Specifically, the proposed rules
11 establish a methodology for computing prior
12 violations when assessing a penalty for an
13 adjudicated violation under the graduated penalty
14 scheme set forth in D.C. Official Code Section
15 25-830 and Chapter 8 of Title 23 of the DCMR.

16 These proposed rules would also amend
17 Chapter 1 by adding relevant definitions to
18 Section 199 in order to make clear the terms used
19 in the computation methodology.

20 These proposed rules were initially
21 adopted by the Board on August 12th, 2015, by a
22 7-to-zero vote.

1 I will begin this hearing by calling on
2 the one witness who notified the agency in
3 advance regarding his desire to address the
4 Board, Dante Ferrando from the Black Cat. I will
5 also entertain comments from other interested
6 parties who may show up, who may wish to be
7 heard.

8 Additionally, interested parties are
9 permitted to submit written comments for the
10 Board's consideration by no later than 4 p.m.,
11 Monday, November 2nd, 2015.

12 So, okay. Why don't you identify
13 yourself for the record.

14 MR. FERRANDO: I am Dante Ferrando from
15 the Black Cat Nightclub and from The Live Life
16 Performance Coalition.

17 I had a fairly small concern here, but I
18 wanted to voice it. My concern is with some of
19 the secondary tier violations, and it's my
20 understanding, if I am reading it right, that
21 basically over the course of 4 years, seven
22 secondary tier violations would result in

1 closure.

2 I feel like some of these secondary tier
3 violations, a number of them are purely clerical
4 in nature and don't have any direct effect on
5 public safety, things such as a manager whose
6 license is recently out of date or not carrying
7 their license, maybe some of the posting
8 requirements, some of the more minor ones.

9 In the owner community and the managers
10 that I've spoken to, there's already a feeling
11 out there that ABRA is an agency that is sort of
12 out to get you in general. There's very few
13 programs that have ABRA working along with the
14 business owners, but there are a lot of times
15 where you come in and get inspected and they're
16 looking for, and you get busted for very little
17 things.

18 And I feel like when you have these
19 non-danger-to-the-public type of violations and
20 they're adding up and they're on the path to
21 closure creates an added level of tension that I
22 don't think is necessary, especially because

1 you've got the manager is the one getting busted
2 and getting the ticket, and the owner is the one
3 that's going to be yelling at the manager about
4 the fact that maybe the license was out of date
5 or they didn't have something up there.

6 So it creates a lot of tension when
7 there's no -- where I have trouble seeing the
8 actual harm to the public. I would like to see
9 something, if possible, that would take those few
10 secondary tier violations out of the path towards
11 closure, something where they were simply a fine,
12 maybe more akin to the way you have a parking
13 violation versus a moving violation where you
14 have points on your record on a moving violation.
15 In lieu of having a secondary system, maybe a few
16 more definitions in there, with mandatory
17 warnings, I think would be helpful.

18 Those are the only two suggestions that I
19 could think of off of the top of my head to solve
20 that problem. I think, at minimum, expanding the
21 warnings would be nice, the mandatory warnings,
22 because I know in practice, if it's not a penalty

1 that requires a mandatory warning, you usually
2 don't get warnings. You usually just get a
3 penalty.

4 CHAIRPERSON MILLER: Mm-hmm.

5 MR. FERRANDO: And that's basically it.

6 MR. SHORT: Madam Chair?

7 CHAIRPERSON MILLER: Yes. Oh, did you
8 want to say something?

9 MR. SHORT: Yeah.

10 CHAIRPERSON MILLER: Okay.

11 MR. SHORT: Can you give an example of
12 something that you mentioned about public safety
13 that maybe should get a warning rather than --

14 MR. FERRANDO: Well, the two things that
15 come up from my business the last 5 years, one
16 was a situation -- we get very regularly
17 inspected. A lot of this wouldn't be relevant in
18 the old system where inspections happen maybe
19 once a year. We've been inspected twice in the
20 last month, and that's not uncommon.

21 One of the inspections a few years ago,
22 my license was valid but not on the wall because

1 we had put it in the fax machine. We were
2 sending it out to a distributor to prove that we
3 could do the distributor that we hooked up with,
4 so that was a penalty. That's a situation where
5 a license is valid. There's no harm to the
6 public. We did make a mistake. It should have
7 been on the wall.

8 MR. SHORT: Why do you think that law is
9 that you have to have it conspicuously posted?
10 Why is that the law?

11 MR. FERRANDO: I think -- I would assume
12 it's the law because if somebody wants to come in
13 and complain or has an issue, they want to make
14 sure that the place is legit, that they don't
15 have an invalid license. So I definitely see
16 that it's needed in there.

17 MR. SHORT: Let's say I'm visiting your
18 club. I'm from Houston, Texas, or from
19 California --

20 MR. FERRANDO: Mm-hmm.

21 MR. SHORT: -- and I -- maybe I'm an
22 attorney or maybe I have a club where I come

1 from, and I know your laws. It's the first time
2 I ever come to your place, and I look around and
3 say, "Well, wow! Washington, D.C., doesn't
4 enforce this because a guy can take it in the
5 back or make a xerox copy or whatever reason.
6 It's not posted, and that's the law."

7 MR. FERRANDO: Right. No, I definitely
8 understand.

9 MR. SHORT: Well, if you don't have to do
10 that law, why do any of the laws?

11 MR. FERRANDO: Well, I do think there's a
12 dc. I think my point would be there's a
13 difference between something that is not
14 currently causing a danger, say -- the laws are
15 up there and decide that serving an underage
16 person is a danger to the public in some way, or
17 double-serving a drink or any of those things
18 that are actual -- not ID-ing correctly, any of
19 those things. I just feel like there's a
20 difference between that and a clerical error.

21 Your license is -- you have a wall full
22 of, say, seven licenses up there, and one is

1 taken out of the frame, and all the other ones
2 are posted. And you've got a thing on your front
3 door that says your license number and all that.
4 It's all very clear. Yeah, it's a mistake. We
5 made a mistake. We should get a fine for that.

6 I'm just concerned that if you have a
7 situation where you've accumulated a number of
8 these secondary tier violations in the past and
9 with the system that you've got in place where
10 that timeline gets expanded and you start having
11 4 years and seven within 4 years, you could have
12 somebody who maybe had some problems a few years
13 back. Maybe they had a bad manager, messed up a
14 few things, stacked up four minor violations on
15 the record. Now it's 2 or 3 years later, and
16 they have one little thing wrong. Their manager
17 left their license at home, or the manager messed
18 up and didn't renew their license. That's
19 another one that we've run into.

20 Those are mistakes, and I definitely feel
21 like they're mistakes, and they should be fines.
22 I just question whether, with the penalty system

1 you have in place, as soon as you've got those
2 four secondary tier violations, each secondary
3 tier violation coming in is now a primary tier.
4 And because of that stacking, you have a
5 situation where one bad year, one bad manager,
6 let's say you get four of those violations
7 because they totally messed up. I'm the owner.
8 I fire the manager. I say, "You don't know what
9 you're doing. You messed up."

10 It's now 3 years later. I've got a
11 perfectly great track record, and I get one more
12 secondary tier violation. That's a primary tier,
13 and that's where it concerns me.

14 You mess up; you should slap the person
15 with a fine. I definitely agree with that. I
16 just worry that you're setting up -- because of
17 the tier system and the stacking of the tiers,
18 you're setting somebody up for a primary tier
19 violation in a situation where they left their
20 license at home. Their manager's license
21 expired. They've been a manager for 10 years,
22 but it expired last month, and they didn't

1 notice. Small clerical errors that I don't think
2 represent a -- poor management.

3 MR. SHORT: Okay. Lastly, let me
4 comment. You mentioned earlier that, like,
5 speeding tickets or traffic tickets, some you get
6 tick points on, some you don't. Can you give me
7 an instance where you leave your driver's license
8 at home and you tell the police officer, "You
9 shouldn't give me a ticket today. I just left my
10 driver's license at home"?

11 MR. FERRANDO: Oh, yeah. No, that's a
12 moving -- that is a moving violation. I'd agree
13 with that, and that -- I guess at heart, when
14 you're talking about the manager's stuff, I do
15 feel like there's a difference between somebody
16 have an invalid driver's license to some degree
17 and their manager's license being left at home or
18 being a month out of date.

19 Not having a manager at all, I think
20 that's totally different. You just don't have a
21 manager, so -- or -- and I don't know which of
22 these things that you would think would rise to

1 which level. It may be some of the ones I would
2 think that wouldn't be -- would be a big deal,
3 maybe you think wouldn't or vice versa, so --

4 CHAIRPERSON MILLER: Mr. Jones has his
5 hand up. Are you finished, Mr. Short?

6 MR. SHORT: Thank you.

7 CHAIRPERSON MILLER: Okay. Mr. Jones?

8 MR. JONES: Thank you, Madam Chair.

9 Just to help clarify it in my mind, so in
10 the example that Board Member Short presented
11 where you're driving in a car, you left your
12 license at home, you get pulled over, you're not
13 saying in any way, shape, or form in that
14 instance that that person isn't guilty --

15 MR. FERRANDO: Right.

16 MR. JONES: -- hasn't violated and
17 therefore should receive a ticket?

18 MR. FERRANDO: Mm-hmm.

19 MR. JONES: Right?

20 However, you are saying that in that
21 instance, that person shouldn't receive points on
22 their license towards having their license

1 revoked.

2 MR. FERRANDO: That would be my
3 suggestion.

4 MR. JONES: I'm just trying to
5 understand.

6 MR. FERRANDO: Yeah.

7 MR. JONES: Okay. In that instance, so
8 that's what you're trying to help us -- so there
9 are some things that you can get tickets for, for
10 driving, that wouldn't necessarily be counted as
11 points towards you losing --

12 MR. FERRANDO: Or parking or something.

13 MR. JONES: Parking, right. Okay.

14 MR. FERRANDO: Something that's wrong --

15 MR. JONES: Right.

16 MR. FERRANDO: -- but not harming the
17 public.

18 MR. JONES: Got it. Okay.

19 MR. FERRANDO: And my only fear -- I
20 wouldn't even worry about that if it was just
21 secondary tier violations, were secondary tier
22 violations.

1 MR. JONES: Right.

2 MR. FERRANDO: It's the fact that with
3 this system in place, as soon as you have four of
4 them, they are primary tier violations.

5 MR. JONES: Right.

6 MR. FERRANDO: So the little plaque that
7 I got hanging on my window that says Black Cat
8 and my license number falls off one day, yeah,
9 somebody should have noticed it fell off, but if
10 you don't, I don't think that should ever be a
11 primary tier violation. I don't think that
12 somebody messed up 3 years ago, they should be on
13 the path to closure because of that. I don't
14 think that's the same as double drinking. That's
15 --

16 MR. JONES: Okay, I understand. I
17 understand the point that you're making, so I
18 appreciate it. Thank you.

19 CHAIRPERSON MILLER: Others?

20 [No audible response.]

21 CHAIRPERSON MILLER: Okay. So I'd like
22 to respond a little bit. I definitely appreciate

1 your concern about an accumulation of minor
2 violations leading to closure, and it sounds like
3 -- I don't know whether -- that's a legislative
4 issue. We're not really touching that.

5 We can address it, but we're not touching
6 that in these regs. I don't know whether you
7 think that there should be, you know, minor --
8 another tier created for these kind of violations
9 that are less harmful, like window lettering or
10 things like that. Do you think that would --

11 MR. FERRANDO: That is basically what --

12 CHAIRPERSON MILLER: -- take them into a
13 different category a little bit?

14 MR. FERRANDO: That's what I'm
15 suggesting. I know that that might not be within
16 the purview of this since the law is already
17 written. That's why I suggest that maybe
18 specifying a few more situations with warnings
19 would at least help alleviate the problem.

20 CHAIRPERSON MILLER: Okay. It seems like
21 this agency often looks at possible changes to
22 law at different times, so it's something that we

1 can think about. So it's not a waste of your
2 time to address it here in this forum.

3 What I wanted to say is what this does is
4 this doesn't change at all the whole graduated
5 penalty schedule, but what it does -- I would
6 characterize it as being transparent as to how
7 the agency and the Board are actually using the
8 penalty schedule in deciding when it becomes a
9 secondary, third tertiary, whatever, so it's how
10 we count that, you know, from what date to what
11 date and things like that.

12 MR. FERRANDO: Right. The clarification
13 is very seriously appreciated.

14 CHAIRPERSON MILLER: Yeah.

15 MR. FERRANDO: And I think that's very
16 important that the whole system is transparent,
17 so you have an idea of what you're dealing with,
18 so --

19 CHAIRPERSON MILLER: Exactly. I mean,
20 this is basically what the Board has been doing,
21 but it's just never really been articulated this
22 way, so now it is, and so if anybody thinks there

1 should be something different about it, you can
2 let us know.

3 Okay. That's all my reaction. Anything
4 else? Anything else?

5 [No audible response.]

6 CHAIRPERSON MILLER: Okay. If you think
7 of anything else, you can always submit it in
8 writing by November 2nd at 4 p.m.

9 MR. FERRANDO: Right.

10 CHAIRPERSON MILLER: Okay. Thanks for
11 coming down.

12 MR. SHORT: Thank you, Dante.

13 CHAIRPERSON MILLER: Anybody else here to
14 address the proposed rulemaking?

15 [No audible response.]

16 CHAIRPERSON MILLER: Okay. Then we'll
17 complete the hearing on the rulemaking now, and
18 the record is open for anyone to submit in
19 writing, comments for the Board's consideration
20 by four o'clock p.m., Monday, November 2nd, 2015.

21 Okay. So the Board will recess, and we
22 will be returning shortly for the afternoon

1 hearings that are following.

2 [Whereupon, the above-entitled matter
3 concluded.]

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