

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

**NOTICE DENYING PETITION FOR RULEMAKING AND ORDER**

**INTRODUCTION**

The Shaw-Dupont Citizens Alliance (SDCA) petitioned the Alcoholic Beverage Control Board (Board) to impose a moratorium on the issuance of liquor licenses for an area extending 1800 feet in radius from 1211 U Street, N.W.

Pursuant to D.C. Official Code § 25-354, the Board held a hearing on the petition and considered extensive testimony from various stakeholders impacted by the proposed moratorium. As set forth more fully below, the Board concludes that the proposed moratorium for the U Street Corridor is not in the public interest as determined by the appropriateness standards set forth in D.C. Official Code §§ 25-313 and 25-314. In essence, while there are many licensed establishments in this area, and even more on the way, the Board does not find that the neighborhood suffers from an overconcentration of licensed establishments or that additional establishments will adversely affect this area. Rather, there is a revival of economic development that is attracting businesses and residents alike to the U Street Corridor. Indeed, rising real property values reflect the growing appeal of this neighborhood.

While there are some impacts on a small portion of the U Street Corridor, this does not justify the creation of a moratorium zone that extends far beyond the affected area. The Board is convinced that other tools exist to address the concerns raised in the Petition, such as settlement agreements and increased police reimbursable details. These tools, as well as other alternatives, can specifically target the problems raised by the SDCA and other proponents of the moratorium without bluntly imposing a large moratorium zone on the neighborhood. For these reasons, and for the reasons stated below, the Board denies the SDCA's Petition.

**BACKGROUND**

The SDCA and the Residential Action Coalition (Coalition) asked the Board to impose a moratorium on the issuance of liquor licenses in the U Street Corridor on December 10, 2012. In re The Shaw-Dupont Citizens Alliance, Inc., Board Order No. 2013-061, 1 (D.C.A.B.C.B. Mar. 20, 2013). On March 20, 2013, the Alcoholic Beverage Control Board found that the Shaw-Dupont Citizens Alliance (SDCA) filed a valid Moratorium Petition (Petition) under District of Columbia (D.C.) Official Code §§ 25-351 through 25-354. Id. at 4. The Board struck the Coalition from the Petition, because it lacked standing to file a moratorium request. Id. The Board then provided notice of the Petition to the public and various government entities in accordance with D.C. Official Code §§ 25-353 and 25-354.

On March 29, 2013, the Board announced that it would hold a public hearing on the Petition on May 22, 2013, and that the Board would accept written statements until May 24, 2013. 60 D.C. Reg. 004815 (Mar. 29, 2013). The Board convened a public hearing regarding the Petition on May 22, 2013, where members of the public and the affected Advisory Neighborhood

Commissions (ANC) had an opportunity to express their views on the moratorium proposed by the SDCA.

### **LEGAL AUTHORITY**

A moratorium request by nature is a rulemaking where the Board is tasked with evaluating whether the issuance of additional liquor licenses is appropriate under D.C. Official Code §§ 25-313 and 25-314.

A citizens association that satisfies the standing requirements of District of Columbia (D.C.) Official Code § 25-601(3) may request that the Alcoholic Beverage Control Board (Board) impose a moratorium on the issuance of liquor licenses or “amended licenses that constitute a substantial change, in . . . [a] locality, section, or portion of the District.” D.C. Code § 25-351(a), (b) (West Supp. 2013). Once the Board determines that the request complies with the pleading requirements of D.C. Official Code § 25-352, and that the notice requirements contained in D.C. Official Code § 25-353 have been fulfilled, the Board “shall hold a public hearing to review [the] . . . proposed moratorium. D.C. Code § 25-352 - 25-353, 25-354(a), (c) (West Supp. 2013).

Title 25 of the D.C. Official Code (Title 25) explicitly notes that a moratorium hearing is a rulemaking under D.C. Official Code § 2-505—not a contested case. § 25-354(a). During the public comment period, all interested parties may “give oral or written testimony” in opposition or support of the proposal. D.C. Code § 25-354(b) (West Supp. 2013).

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 2 of the appropriateness standards set forth in subchapter II of this chapter.” D.C. Code § 25-354(d) (West Supp. 2013); see also § 25-351(a).

The appropriate standards listed in subchapter II include: (1) “[t]he effect of the establishment[s] on real property values”; (2) “[t]he effect of the establishment[s] on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726; (3) “[t]he effect of the establishment[s] upon residential parking needs and vehicular and pedestrian safety”; (4) “[t]he proximity of the establishment[s] to schools, recreation centers, day care centers, public libraries, or other similar facilities”; (5) “[t]he effect of the establishment[s] on the operation and clientele of schools, recreation centers, day care centers, public libraries, or other similar facilities”; (6) “[w]hether school-age children using facilities in proximity to the establishment[s] will be unduly attracted to the establishment while present at, or going to or from, the school, recreation center, day care center, public library, or similar facility at issue”; (7) “[w]hether issuance of [additional] licenses would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment[s] [are] located. D.C. Code §§ 25-313(b)(1)-(3), 25-314(a)(1)-(4) (West Supp. 2013).

The Board may grant, deny, or modify a moratorium request in whole or in part. D.C. Code § 25-354(e), (f) (West Supp. 2013). “The decision of the Board shall be final and shall be issued in writing, including each member's vote.” § 25-354(g); see also 23 DCMR § 303.1 (West Supp.

2013). “If the Board acts on a moratorium request, a moratorium request for the same area, or an area covering substantially the same area, shall not be considered for 2 years from the date of the Board’s action.” D.C. Code § 25-351(f) (West Supp. 2013).

### **THE PETITION**

In brief, the Shaw-Dupont Citizens Alliance (SDCA) requests that the Board impose a five-year moratorium on the issuance of liquor licenses that extends 1800 feet from BCB Properties, LLC, t/a Next Door, holder of a Retailer’s Class CT License, ABRA License Number 077567, located at 1211 U Street, N.W., Washington, D.C. Petition, 3. As part of the proposed moratorium, the SDCA requests that the Board prohibit the transfer of licenses into the moratorium zone; prohibit the issuance of all new licenses, except Retailer’s Class B Licenses that qualify as full service grocery stores; place a cap on the number of Retailer’s Class CN and Retailer’s Class DN Licenses of zero; place a cap on the number of Retailer’s Class CT and Retailer’s Class DT Licenses of ten; and prohibit the expansion of existing licensees into adjoining spaces, properties, or lots.<sup>1</sup> Petition, 9-11.

The SDCA’s Petition makes the following arguments and points in favor of the proposed moratorium:

- (1) The District of Columbia Department of Consumer and Regulatory Affairs (DCRA) is not enforcing the Uptown Arts-Mixed Use (ARTS) Overlay District, which prohibits eating and drinking establishments from occupying more than 50 percent of blocks fronting 14th Street, N.W., or U Street, N.W. Petition, 5.
- (2) A five-year moratorium will encourage landlords to lease their properties to non-licensed establishments and will allow the community to evaluate whether a moratorium is beneficial. Id. at 9.
- (3) The SDCA is willing to exempt Retailer Class B license holders from the moratorium if their establishments qualify as a full-service grocery store. Id.
- (4) Nightclub licenses are responsible for “recent violent crimes . . . .” Id. at 10.
- (5) The proliferation of licensed establishments “crowd out other non-ABC uses.” Id.
- (6) Licensed establishments are having a negative impact on the area’s peace, order, and quiet, by creating “noise, trash, broken bottles, traffic, public urination, litter, property damage, theft, violent crimes, rodent infestation, drug activity, and sexual activity.” Id. at 12-13.

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<sup>1</sup> The SDCA also requested that we hold all pending and future applications for new licenses, expansions, or license class changes in the proposed moratorium zone until their request was resolved; however, we denied this request. Alcoholic Beverage Control Board, Supplemental Agenda (Feb. 13, 2013).

(7) Licensed establishments are having a negative impact on residential parking needs and vehicular and pedestrian safety. Id. at 14. The Petition argues there are only 293 metered spaces for cars, the Reeves Center parking garage is in “full use,” and licensed establishments do not have access to sufficient parking resources. Id. at 14. The Petition also claims that new buildings do not have sufficient parking to meet the demands of residents. Id. In addition, the Petition argues that metro service is not available at closing time. Id. at 15. Finally, the SDCA argues that drivers and valet services routinely violate traffic and parking laws, and taxis create additional congestion. Id. at 15-16.

(8) Lastly, the Petition argues that based on comparisons to the number of licensed establishments in other moratorium zones, their request should be granted. Id. at 16-17.

### **RECOMMENDATIONS OF ADVISORY NEIGHBORHOOD COMMISSIONS**

All of the Advisory Neighborhood Commissions (ANC) affected by the moratorium voted to oppose the Petition. Below, the Board recounts their issues and concerns, as well as the relevant, significant, and non-duplicative portions of their testimony.

#### ***Advisory Neighborhood Commission 1B***

ANC 1B, in which 90 percent of the proposed moratorium is located, voted unanimously to oppose the Petition. Letter from Marc Morgan, Secretary, ANC 2B, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (Apr. 6, 2013).

Commissioner Jeremy Leffler testified at the hearing on behalf of ANC 1B. *Transcript (Tr.)*, 5/22/13 at 133. He noted that ANC1B’s ABC committee held three meetings on the moratorium proposal, and at all three meetings, the attendees overwhelmingly opposed the Petition. Id. at 134-35. Further, ANC 1B noted that the SDCA has made no efforts to compromise or consider alternative proposals. Id. at 135. According to Commissioner Leffler, “more police, better management of facilities, street lights, widened sidewalks, and enforcement of standing laws and regulations” are the answer—not the “blunt instrument” of a moratorium. Id. at 135-36.

Further, he argued that a moratorium would have “unintended consequences.” Id. at 136. For example, developers are presently “signing deals with full service grocery stores, art galleries, [and] movie theaters . . .,” and these plans would be ruined if the Board imposes a moratorium. Id.

#### ***Advisory Neighborhood Commission 2B***

In a 6-1-1 vote, ANC 2B voted to oppose the SDCA’s request for a moratorium. Letter from ANC 2B to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (May 18, 2013).<sup>2</sup> Based on a March 2013 listening session and other community outreach efforts, ANC

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<sup>2</sup> ANC 2B also requested the Board to work with the Department of Consumer and Regulatory Affairs (DCRA) “to enforce the existing ARTS Overlay in the neighborhood.” Letter from ANC 2B to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 3 (May 18, 2013). The Board notes that as a matter of law, we have no role in

2B found that residents overwhelmingly oppose a moratorium. Id. ANC 2B further concluded that insufficient evidence exists to support the conclusion that a moratorium would benefit the community. Id. at 2. Furthermore, ANC 2B stated that existing tools, such as settlement agreements, should be used “to effectively manage noise, public safety, and parking concerns.” Id. ANC 2B also concluded that a moratorium would punish both “good and bad” license holders and artificially raise the price of liquor licenses in the neighborhood. Id. Finally, ANC 2B found that the “liquor licensed establishments in the proposed moratorium zone have been welcome and positive additions to the 14th and U Street neighborhood.” Id.

Commissioner Noah Smith, representing ANC 2B09, and on behalf of the Dupont Circle ANC, made additional comments in opposition to the Petition. Testimony of Commissioner Noah Smith, ANC 2B09, 1-2 (May 22, 2013). First, he recommended that the Board review each application for a liquor license on its individual merits, rather than institute a blanket prohibition. Id. at 2. Second, he suggested that the Board use other tools to address any negative impact caused by establishments holding liquor licenses. Id. For example, settlement agreements, enforcement of the zoning laws, reimbursable police details, specialized police units, and dedicated taxi stands could mitigate many of the problems indicated in the Petition. Id. Third, Commissioner Smith reported that the Metropolitan Police Department’s (MPD) Third District will “deploy 10 new officers dedicated solely to the 14th and U Street area during late night hours starting this year.” Id. Finally, Commissioner Smith pointed out that the zoning overlay already contains a limit on the number of food and beverage establishments that may locate in the neighborhood; therefore, the city should focus on enforcing this existing rule, rather than imposing a new overlapping provision. Id. In closing, Commissioner Smith argued that just because the law allows for a moratorium, this does not mean that the Board should implement one. Id.

### ***Advisory Neighborhood Commission 2F***

In a 7-0 vote, ANC 2F voted to oppose the Petition. ANC 2F, A Resolution by Advisory Neighborhood Commission 2F Regarding the Proposed Liquor License Moratorium in the Historic 14th and U Street Corridor (Apr. 3, 2013).<sup>3</sup> ANC 2F shared many of the same concerns expressed by ANC 2B. Id. In supporting its position, ANC 2F noted that the ARTS Overlay Review Committee found that “restaurants and bars are an important ingredient in having a vibrant ARTS Overlay District: they contribute foot traffic to the arts and retail uses, and play an important role in achieving a vibrant and safe nighttime street environment.” Id. ANC 2F also found that community sentiment opposed the moratorium based on its individual meetings, the joint listening session held on March 20, 2013, with ANC 1B and ANC 2B, and an online petition opposing the moratorium with 1,196 signatures as of April 3, 2013. Id. Consequently, ANC 2F urged the Board to dismiss the Petition’s “dubious” claims and reject the Petition. Id.

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determining whether a liquor license application complies with the ARTS Overlay; instead, this determination rests solely with the DCRA. Infra, at 25.

<sup>3</sup> The resolution is available at <http://www.anc2f.org/blog/2013/04/03/text-of-resolution-regarding-proposed-liquor-moratorium/>.

Commissioner Matt Raymond, Chairperson of ANC 2F, testified on behalf of his ANC. *Tr.*, 5/22/13 at 118 According to Commissioner Raymond, the Petition “has been the catalyst for much needed discussions about the current state and future of [the] community,” which has developed into “a renewed sense of purpose . . . [to] do everything possible to mitigate these impacts, albeit short of enacting” a moratorium. *Id.* at 119-20.

He noted that based on the listening session conducted by the ANCs on March 20, 2013, the public is overwhelmingly opposed to the Petition. *Id.* at 120. According to Commissioner Raymond, 150 people attended the listening session and 60 people offered public comments. *Id.* at 121. Only 14 percent of those speaking at the meeting favored the Petition, while 83 percent of the speakers opposed the SDCA’s proposal. *Id.* He also noted that an online petition opposing the Petition garnered 1,200 signatures, with at least 85 percent of the signatories reporting that they lived in zip codes that would be affected by the moratorium. *Id.*

Commissioner Raymond suggested that tools such as “reimbursable details, settlement agreements, and a BID would be more appropriate solutions to any problems caused by liquor licensed establishments in the U Street Corridor. *Id.* at 123-24. He also cautioned that a moratorium would distort the market and discourage development in the affected area. *Id.* at 124.

#### ***Advisory Neighborhood Commission 6E***

In a 4-0-1 vote, ANC 6E voted to oppose the petition. Letter from Rachelle P. Nigro, Chair, ANC 6E, to Ruthanne Miller, Chairperson, ABC Board (May 14, 2013). According to ANC 6E, the moratorium proposal would “hinder development not only in ANC 6E but in the surrounding neighborhoods.” *Id.* ANC 6E is concerned that a moratorium will “lead to vacant buildings and decreased property value.” *Id.*

Commissioner Alexander M. Padro also testified at the hearing on behalf of ANC 6E. *Tr.*, 5/22/13 at 6. Commissioner Padro called the proposed moratorium a “blunt instrument” that is “the wrong approach at the wrong time.” *Id.* at 6-7. A moratorium would freeze development along 7th and 9th Street, N.W. *Id.* at 8. He noted that there are “thousands of square feet of new retail space that is being constructed specifically for use as restaurants and taverns in [his ANC’s] service area.” *Id.* at 8-9. He is also concerned that the proponents of the moratorium have chosen to go forward without considering “the opinions of all the stakeholders that are involved.” *Id.* at 10, 51.

### **RECOMMENDATIONS OF COUNCILMEMBER IN WHOSE WARD THE PROPOSED MORATORIUM IS LOCATED**

#### ***Councilmember Jack Evans, Ward 2***

Councilmember Jack Evans, representing Ward 2, submitted a letter to the Board expressing his agreement with the views expressed by ANCs 1B, 2B, 2F and 6E. Letter from Jack Evans, Councilmember, Ward 2, to the Alcoholic Beverage Control Board, 1-2 (May 21, 2013).

Because all of the affected ANCs and his constituents oppose the proposed moratorium, he urges the Board to deny the Petition. Id. at 2.

### **PUBLIC TESTIMONY AND COMMENTS**

The Board also received testimony and numerous letters of support and opposition to the Petition. The following represents a summary of the relevant, significant and non-duplicative statements submitted by various members of the community.

#### ***Pat Davies***

Pat Davies lives on the 800 block of T Street, N.W., in the proposed moratorium zone and strongly opposes the Petition. Letter from Pat Davies to the Alcoholic Beverage Control Board, 1 (undated). According to Mr. Davies, the SDCA does not represent the views of his neighborhood. Id. He points out that the Petition does not consider the benefits provided to the community by such licensed establishments as “the Lincoln Theatre, the Source Theatre, Yes! Market, the Whitelaw Market, Cork, Busboys & Poets, and a whole host of other establishments . . . .” Id. at 1. Finally, Mr. Davies observes “that the overall crime rate in [the] neighborhood has dropped dramatically over the last decade as the city has encouraged development.” Id. at 2.

He also finds that the SDCA’s argument that the proposed moratorium zone has a greater concentration of licensed establishments than in other moratorium zones is “flat wrong.” Id. at 2. According to Mr. Davies, “the SDCA treats the 1800 foot radius of their proposed zone as only being 3 times bigger than the 600 foot radii of the Dupont West and Dupont East zones. In fact, an 1800 foot radius is NINE times bigger than a 600 foot radius.” Thus, Mr. Davies concludes “the concentration of liquor licenses in Dupont East, Dupont West, AND Adams Morgan is much . . . higher than the proposed SDCA zone.” Id. Mr. Davies also notes that nothing has changed since the Board recently concluded that the eastern portion of the proposed moratorium zone did not suffer from overconcentration in In re All Souls, LLC, t/a All Souls, Case Number 11-PRO-00090, Board Order No. 2012-278, ¶ 32 (D.C.A.B.C.B. Jun. 20, 2012). Id. at 2. Indeed, Mr. Davies notes that many portions of the proposed moratorium are “still lagging in terms of development.” Id. at 2. In addition, based on the construction of condominiums and apartment buildings in the neighborhood, the community needs “*more*, not fewer, new establishments.” Id. at 3.

Instead of a moratorium, Mr. Davies suggests that other types of actions and proposals would be more effective. Id. For example, Mr. Davies suggests the creation of a Business Improvement District (BID), tax incentives for non-liquor based businesses, and enforcement actions against bad actors. Id.

#### ***D.C. Nightlife Association***

The D.C. Nightlife Association, represented by Executive Director Skip Coburn, opposes the Petition, because it is a “short-sighted, ill-founded, and unnecessary measure.” Testimony, Skip Coburn, 1 (May 22, 2013). Mr. Coburn states that the SDCA only represents a small portion of the affected area. Id. He notes that this area is slated for “tremendous growth” that requires

more restaurant seats to accommodate the demand of residents and visitors to the neighborhood. Id. at 2.

Mr. Coburn disagrees with the SDCA that licensed establishments are driving out retail businesses from the neighborhood. Id. Instead, he points to competition between retailers and high rent costs as the culprit. Id.

Mr. Coburn also disagrees with the SDCA's contention that the ARTS Overlay is not being enforced. Id. Mr. Coburn notes that the Zoning Administrator, Matt LeGrant, disagrees with this claim, and notes that DCRA monitors applications to ensure they remain in compliance with the ARTS Overlay rules. Id.

Mr. Coburn also argues that the SDCA's concerns regarding noise are overblown. Id. at 2-3. According to him, noise coming from bars and restaurants is already well-regulated by Title 25. Id. at 3. SDCA's complaint regarding patrons walking through their neighborhood is not legitimate, because bars and restaurants should only be held responsible for what occurs on their premises. Id. The SDCA cannot hold licensed establishments responsible for the actions of patrons on public space, far from the control of a licensed establishment. Id. Furthermore, Mr. Coburn argues that the foot and vehicle traffic that the SDCA finds disagreeable is appropriate for the portion of the city where the SDCA is located. Id. at 4.

Mr. Coburn disagrees with the SDCA's complaint regarding parking. Id. at 3. In his view, "no one has a claim to parking" and any residents who desire guaranteed parking should purchase off-street parking or pay for a parking space. Id.

Mr. Coburn argues that the SDCA's accusation that bar patrons are committing crimes in the neighborhood is not supported by evidence. Id. Instead, crime is caused by "unsavory sorts who prey on DC residents in general and their property." Id. Indeed, MPD's statistics show that crime has decreased in the proposed moratorium zone. Id. Finally, he notes that licensed establishments have had a positive impact on property values. Id. at 4.

### ***Sharon Dreyfus***

Sharon Dreyfus is a 13-year resident of the neighborhood and the sponsor of the Change.org petition submitted to the Board. *Tr.*, 5/22/13 at 194. According to Ms. Dreyfus, she collected 1,212 signatures requesting that the Board reject the proposed moratorium. Id. She noted that 63 percent of the signatories live in zip codes 20001 and 20009, while 19 percent of the signatories live in zip codes 20005, 20010, and 20036. Id. at 194-95. She also noted that 3,500 new residences are being built in the neighborhood, and that a moratorium would deny residents on 8th Street, N.W., and 9th Street, N.W., access to neighborhood amenities. Id. at 195.

### ***Dupont Circle Citizens Association (DCCA)***

Robin Diener, Chair of Dupont Circle Citizens Association's Regulatory Committee, spoke in favor of the Petition. Testimony, Robin Diener, Chair, Dupont Circle Citizens Association, 1 (May 22, 2013) [Testimony (Diener)]. According to Ms. Diener, many residents admit that

problems exist with peace, order, and quiet in the neighborhood. Id. The DCCA believes that the moratoriums in Dupont have benefited the community, improved traffic and parking, preserved neighborhood retail options, and maintained the neighborhood's property values. Id. at 2, Report from DCCA Regulatory Committee [DCCA Report], at 3.

The DCCA reports that the proposed moratorium zone has 5,200 residents. DCCA Report, at 3. The collective total of seats available in licensed establishments in the proposed moratorium zone is 17,000. Id.

The DCCA suggests that the Board forbid the sale of licenses so that new entrepreneurs have an opportunity to obtain a license when a business closes or is sold. Testimony (Diener), at 2. The DCCA takes the position that the concentration of licensed establishments may have a negative impact on the community, even if individual licensees operate in accordance with the law. Id. Furthermore, the DCCA opines that moratoriums can be "flexible" and "tweaked over time." Id. The DCCA contends that the increase in the number of people coming to the neighborhood creates the potential for crime and that these types of areas require additional police resources. Id. at 4.

In the DCCA's view, a moratorium will restore the balance between residents and licensed establishments in the U Street, N.W., neighborhood. Id. at 1. Finally, according to the DCCA, "there is nothing else available, at this time, for communities to request to protect their interests if they feel they are being imposed upon by the sheer number of establishments." DCCA Report, at 1.

DCCA makes the following suggestions: (1) the District should pass legislation to support new businesses, including tax incentives, enterprise zones, and mandatory first floor retail requirements; (2) the District needs to engage in further planning for areas considered to be "nightclub zones"; (3) the District needs to develop new noise mitigation strategies; and (4) the District needs to promote further interagency cooperation. Id. at 5.

### ***Ramon Estrada***

Ramon Estrada, former ANC Commissioner for 2B09, supports the Petition. Testimony, Ramon Estrada, 1 (May 22, 2013). Mr. Estrada is of the view that the neighborhood has lost businesses "to alcohol serving establishments." Id. at 1. Mr. Estrada lives near the corner of 14th Street, N.W., and T Street, N.W. Id. He reports problems related to noise, parking, and overconcentration. Id. Mr. Estrada asserts that the District is not enforcing the ARTS Overlay, the MPD does not respond to calls regarding noise complaints and crime, and that the Alcoholic Beverage Regulation Administration (ABRA) does not adequately investigate and follow-up on noise complaints.<sup>4</sup> Mr. Estrada complains that the noise law will not protect new residents who move into the neighborhood's commercial zones.

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<sup>4</sup> We note that Mr. Estrada did not present the Board with any specific incidents regarding ABRA's failure to investigate noise complaints. Our jurisdiction over noise is limited by § 25-725, which among other exceptions, does not allow us to find that a violation occurred when noise is caused by the human voice or when the complainant's premises are located in a commercial zone. D.C. Code § 25-725 (West Supp. 2013). Generally,

Mr. Estrada criticizes the suggestion that the neighborhood create a BID. Id. Mr. Estrada argues that the businesses in the area previously voted against creating a BID, which would create an extra tax levy. Id. Finally, he argues that the proposal by a developer to fund a feasibility study does not address the tax levy, which is needed to support the BID and any reimbursable detail officer program created by the BID. Id.

***Doug Johnson***

Doug Johnson has lived in the neighborhood since 1988. *Tr.*, 5/22/13 at 129-30. In 1988, he believes residents were concerned with public safety, but now he believes that residents are concerned that they are no longer welcome in their neighborhood. Id. at 130.

***Mary Fellman***

Mary Fellman is a member of the SDCA and supports the Petition. Testimony, Mary Fellman, 1 (May 22, 2013). She complains that loud individuals awaken her in the middle of the week when they walk to their cars. Id. at 2. She is concerned about rising drunkenness, crime, and trash in the neighborhood. Id. at 2-3. She notes that the neighborhood has “improved dramatically” since the 1970s, but that the neighborhood is returning to the “shabbiness” of the prior era. Id. at 3. Ms. Fellman suggests that city planners focus on bringing new businesses that “enhance the city,” like shops, theaters, galleries, coffee shops, and specialty stores. Id. at 3-4.

***Dante Ferrando***

Dante Ferrando, the owner of the Black Cat, opposes the Petition, because the neighborhood has improved significantly over the past twenty-years. *Tr.*, 5/22/13 at 79. Mr. Ferrando noted that the neighborhood was an epicenter of drugs, prostitution, and violence in the late eighties and early nineties. Id. at 74-75. As a long-time business owner in the area, he feels that the U Street Corridor has become “progressively safer.” Id. at 75. For example, he would not feel safe walking a dog in the neighborhood around midnight ten years ago, but now he feels it is safe to be out late at night and in the early morning. Id. at 76.

Mr. Ferrando states that the moratorium would be “game changing” for the business community in the U Street Corridor. Id. at 77. He notes that a moratorium would scuttle the plans of many present and future license holders, including himself, by prohibiting expansion and class changes in the neighborhood. Id. Furthermore, a moratorium would significantly increase the value of licenses in the neighborhood. Id. at 77-78. According to Mr. Ferrando, this would encourage licensees to sell their licenses to chain restaurants and “high-volume bars.” Id. at 78.

***Elwyn Ferris***

Elwyn Ferris resides on the 1400 block of T Street, N.W., and supports the Petition. Testimony, Elwyn Ferris, 1 (May 22, 2013). Mr. Ferris is concerned that many retail businesses, like

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when it comes to noise complaints, when ABRA does not take an enforcement action, it is not because the agency failed to investigate the complaint, but rather, because the licensee’s actions are not in violation of § 25-725.

“Garden District, Green Pets, Arena Stage, and Urban Essentials” have left the area due to high rents and replaced by licensed establishments. Id. Mr. Ferris states that the area is overconcentrated with licensed establishments, and that the Office of Zoning is not enforcing the zoning rules regarding eating and drinking establishments. Id. at 2. He also notes that patrons leaving licensed establishments engage in antisocial behavior, such as littering, fighting, playing loud music, public defecation and urination, screaming, vandalism, and vomiting. Id. Mr. Ferris contends that the other moratoriums are successful and U Street, N.W., residents should be able to benefit from the same protection granted to other residents living in moratorium zones. Id.

Mr. Ferris also suggests that the Board consider a neighborhood overconcentrated when residents have to alter their routines. Letter from Elwyn Ferris to the Alcoholic Beverage Control Board, 1 (May 24, 2013). According to Mr. Ferris, the licensed establishments in the neighborhood cause residents to (1) forgo using their vehicle at certain times based on the availability of parking; (2) reconfigure their homes to create “quiet”; (3) install soundproof windows; (4) apply Crisco to iron fencing to prevent individuals from sitting on their property; (5) install motion sensor floodlights to discourage loitering; (6) wear earplugs to bed; (7) use air conditioners or noise machines to muffle noise; and (8) regularly clean the sidewalks and front yards in front of their homes. Id. at 1-2. Mr. Ferris notes that there is no mechanism in the protest process to provide for an outright denial of a license. Id. at 2.

### ***Frederick Harwood***

Frederick Harwood is the founder of the D.C. Nightlife Association. *Tr.*, 5/22/13 at 178. According to Mr. Harwood, the problem with noise is that all of the clubs close at the same time. Id. at 179-80. In addition, as a former club owner in the area, he has never had a problem with public urination or defecation. Id. at 180. On-premise establishments cannot be responsible for bottles and cups, because their customers are not permitted to leave with open containers. Id. at 180. Finally, the neighborhood has never been safer. Id. at 181. In addition, Mr. Harwood notes that a concentration of establishments can allow for focused policing of nightlife areas. Id. at 183.

Mr. Harwood also suggested that residents and licensed establishments should install soundproof windows to deal with noise. Id. at 182. He also suggests that the city allow licensed establishments to hire police officers and have them stationed inside establishments. Id.

### ***Gloria J. Hightower***

Gloria J. Hightower supports the Petition. Testimony, Gloria J. Hightower (May 22, 2013). Ms. Hightower argues that DCRA is not enforcing the zoning laws related to bars and taverns. Id. The neighborhood is geared for adults and does not provide “cultural entertainment, enrichment and education” for children and families. Id. She also asserts that the city is not enforcing District law related to the employment of District residents. Id. Finally, Ms. Hightower notes that licensed establishments cause disruptive noise and attract vermin to the community, and that current enforcement actions by the ABRA and the DCRA do not cure the negative impacts caused by licensed establishments. Id.

### ***Lane Hudson***

Lane Hudson testified that the development in the community is “overwhelmingly” good and beneficial to the community. *Tr.*, 5/22/13 at 205-06. Therefore, he opposes the Petition. *Id.* at 208.

### ***Lisa Kelly***

Lisa Kelly has resided in the 14th and U Street Corridor for 10 years and supports the Petition. Testimony, Lisa Kelly, 1 (May 22, 2013). Ms. Kelly asserts that the area suffers from an overconcentration of licensed establishments in the neighborhood. *Id.* Ms. Kelly further asserts that the local ANCs are not responding to the community’s needs. *Id.* According to Ms. Kelly, her neighborhood is plagued by late-night noise from bar patrons and automobiles. *Id.* at 2. In addition, intoxicated patrons engage in littering, fighting, fornication, public defecation and urination, and vomiting. *Id.* Ms. Kelly reports that during some neighborhood cleanups she is able to fill five 13-gallon bags of trash. *Id.* She is not convinced that other tools exist to cure the negative impacts of licensed establishments; therefore, she requests that the Board impose the moratorium requested by the SDCA. *Id.* at 3.

### ***Robert Lawrentz***

Robert Lawrentz supports the Petition and has resided in the U Street, N.W., neighborhood since 2008. Testimony, Robert Lawrentz, 1 (May 1, 2013). He contends that the developers in the community do not respect the impact their projects have on the neighborhood’s aesthetics or residents. *Id.* According to Mr. Lawrentz, developers are “set[ting] the tone for [the neighborhood]” and “dictate” the businesses that will be permitted in the community. *Id.* Mr. Lawrentz further asserts that developers are encouraging licensed establishments to move into the neighborhood at the expense of other retail options and that the police presence in the neighborhood has increased due to an increase in crime. *Id.* at 1-2. He argues that a moratorium is the only way to ensure that U Street, N.W., remains a community. *Id.*

### ***In My Backyard – DC (IMBYDC)***

Michael Hamilton, on behalf of In My Backyard – DC (IMBYDC), wrote that his 600 member group opposes the Petition. Letter from Michael Hamilton, In My Backyard – DC, to the Alcoholic Beverage Control Board, 1 (undated). According to IMBYDC, (1) the Petition contains inaccurate and unreliable information; (2) residents overwhelmingly oppose the Petition; and (3) a moratorium is inappropriate for the affected area. *Id.*

IMBYDC argues that the Petition contains “glaring errors.” *Id.* at 2. First, the Petition misreports the number of licensees in the proposed moratorium zone.<sup>5</sup> *Id.*; In re The Shaw-

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<sup>5</sup> The number contained in our prior Order in this matter was based on information provided by the Geographic Information System (GIS). After further review, we have determined that at the time we consulted the GIS, the database used by the GIS had not been updated to reflect the newer licenses added to the U Street Corridor. Based on our own review of the ABRA’s records, there are approximately 100 active licenses in the moratorium zone as of August 21, 2013.

Dupont Alliance, Inc., Board Order No. 2013-061, 3. Second, the SDCA’s claim that the proposed moratorium zone has the highest concentration of licenses is wrong. Id. According to IMBYDC, the concentration of liquor licenses in Adams Morgan is 75 percent higher than in the proposed moratorium zone. Id. The concentration of liquor licenses in the Dupont West moratorium zone is 114 percent higher than in the proposed moratorium zone. Id. Finally, the concentration of liquor licenses in the Dupont East moratorium zone is 271 percent higher than in proposed moratorium zone. Id. Third, the SDCA’s claims regarding crime are demonstrably false, because violent and property crimes “have dropped precipitously as more and more liquor licenses have been issued.” Id. at 2.

IMBYDC also urges the Board to reject the Petition based on overwhelming public opposition to the proposal. Id. at 2. According to IMBYDC, at a community forum held by the affected ANCs, 85 percent of the speakers opposed the Petition and all of the ANC’s voted against the Petition. Id. at 2. In addition, over 1,200 District residents have signed a petition to reject the proposed moratorium. Id. Therefore, the Board should not be persuaded by an organization that represents a minority of District residents. Id.

IMBYDC argues that the proposed moratorium is inappropriate for the area. Id. First, a moratorium “would simultaneously insulate liquor licensed establishments from competition and give them an extremely valuable asset: a transferable liquor license they can sell for tens of thousands of dollars,” which “would reward rather than punish,” establishments that negatively impact the community. Id. at 3. The proposals would also reduce competition in the neighborhood and encourage businesses “to move towards a high-volume, low-service model that would negatively impact peace, order, and quiet.” Id. In addition, a moratorium would not address the SDCA’s complaints, such as over serving customers and zoning violations. Id. Indeed, IMBYDC questions whether the Board is the appropriate body to deal with the SDCA’s complaints. Id.

Second, the proposed moratorium would not address parking issues in the area. The proposed moratorium zone has many public transportation options. Id. For example, the neighborhood has a Metro station, several major bus lines, and is well-served by taxis. Id. In addition, the neighborhood is very “walkable.” Id. Finally, IMBYDC believes a moratorium would encourage current license holders to increase the volume of their sales and thus, attract greater traffic to the neighborhood. Id.

### ***Logan Circle Community Association (LCCA)***

The Logan Circle Community Association opposes the Petition and endorses the resolution passed by Advisory Neighborhood Commission 2F. Letter from Timothy A. Christensen, President, to Sarah Fashbaugh, Adjudicative Assistant, ABRA, 1 (May 21, 2013).

### ***Caroline de Mariz***

Caroline de Mariz argues that a moratorium would protect residents and encourage business diversity. *Tr.*, 5/22/13 at 196. Currently, many residents and businesses are leaving the

neighborhood. Id. at 197. According to Ms. Mariz, intoxicated patrons, noise, trash, and vermin are responsible for the flight. Id.

### ***Daniel McKay***

Daniel McKay lives in the proposed moratorium zone and supports the Petition. Testimony, Daniel McKay, 1, 5 (May 22, 2013). According to Mr. McKay, “18 establishments of any type in an 1800 foot radius are over concentration.”<sup>6</sup> Id. at 1. Mr. McKay has observed that the neighborhood attracts many visitors from outside the neighborhood. Id. He states that the city is not properly policing residential parking rules and traffic is problematical in the neighborhood. Id. Furthermore, Mr. McKay also notes that noise from car horns, music, and people disturb residents on Thursdays and weekends, and that it is difficult for MPD to prevent these types of disturbances. Id. at 2. In addition, Mr. McKay has witnessed individuals engage in public drinking, littering, public defecation and urination, and vomiting. Id. at 2. He is also concerned that the licensed establishments are encouraging violent crime. Id. at 2-3.

Mr. McKay also criticizes alternative proposals to manage the issues facing the U Street Corridor. Id. at 3. Settlement agreements should not be relied on, because the ANCs do not have the resources to pursue cases against all of the establishments in the neighborhoods. Id. at 4. In addition, the alternatives proposed by the ANCs, such as a BID or increased enforcement, are not ready for implementation at this time. Id. at 4.

### ***Meridian Hill Neighborhood Association (MHNA)***

Christina Parascandola, President of the Meridian Hill Neighborhood Association (MHNA), expressed MHNA’s support for the Petition. Testimony, Christina Parascandola, President, Meridian Hill Neighborhood Association, 1 (May 22, 2013). The MHNA is of the view that the concentration of licensed establishments in the neighborhood increases the danger from drugs and violence in the community. Id. at 2. Intoxicated patrons are causing noise and fighting near residents’ homes. Id. Ms. Parascandola notes that the police have a difficult time responding quickly to these types of complaints. Id. In addition, the MHNA is concerned that increasing rents are pushing businesses out of the neighborhood, and that foot traffic in the neighborhood will be reduced as a result. Id. at 2-3. The MHNA is concerned that if the Board does not impose a moratorium, the neighborhood will return to an era of “abandoned clubs and empty storefronts.” Id. Finally, the MHNA collected 300 signatures in a petition in support of the proposed moratorium zone. Id. Ms. Parascandola personally requested that the Board extend the proposed moratorium to 16th Street, N.W. Id. at 3.

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<sup>6</sup> In order to impose an 1800-foot moratorium, the law states, “No moratorium request . . . shall be considered by the Board unless all the requirements of [§ 25-352(a)] have been met and . . . [at least 9 establishments of the same class or 18 establishments of any class or combination of classes [exist in the moratorium zone].” D.C. Code § 25-352(d), (d)(3) (West Supp. 2013). Thus, the 18-establishment threshold cited by supporters of the moratorium does not signify that the neighborhood suffers from overconcentration. Instead, this figure merely sets the minimum number of establishments that must exist in the proposed moratorium zone before the Board may lawfully create a moratorium. As a result, just because more than 18 establishments exist in the proposed moratorium zone, this does not mean that the U Street Corridor suffers from overconcentration as a matter of law.

### ***Abigail Nichols***

Abigail Nichols, the ANC Commissioner for ANC 2B05, supports the Petition. Testimony, ANC Commissioner Abigail Nichols (May 22, 2013). On May 5, 2013, between 1:30 a.m. and 3:00 a.m., Commissioner Nichols observed vomit on the street, a couple engage in a screaming match, a drug deal, and a man passed out near U Street, N.W. Id. Commissioner Nichols urges the Board to reject popular sentiment and rely on facts, because individuals who do not live near the affected areas do not understand the “daily problems” faced by the neighborhood. Id.

### ***Russell Page***

Russell Page, a 34-year resident of the neighborhood, supports the Petition. *Tr.*, 5/22/13 at 105. In his view, the concentration of liquor licenses is a quality of life and safety issue. Id. at 105-06.

### ***Mark Parascandola***

Mark Parascandola, a nine-year resident of the U Street Corridor, supports the Petition. Email from Mark Parascandola to the Alcoholic Beverage Regulation Administration, 2 (May 24, 2013). According to Mr. Parascandola, “alcohol licensed establishments do not bring substantial daytime foot traffic to the neighborhood.” Id.

### ***Guy Podgornik***

Guy Podgornik, a resident of Wallach Place, N.W., testified in support of the Petition. Testimony, Guy Podgornik, 1, (May 22, 2013). According to Mr. Podgornik the ARTS Overlay does not adequately protect the neighborhood, because the zoning laws “allow[] greater concentration[s] of eating and drinking establishments by stacking them over or under street level businesses,” which allows establishments to avoid the limits created by the ARTS Overlay. Id. Mr. Podgornik also argues that settlement agreements do not provide adequate protection to the neighborhood or address the cumulative problems created by multiple establishments. Id. at 1-2. Mr. Podgornik is afraid that ANC 1B will not “develop and enforce the kind of strong voluntary settlements” needed by the community. Id. at 2. He also criticized the suggestion that more reimbursable detail officers could be added, because license holders oppose this solution. Id. at 2. He also notes that there is no guarantee that a BID will be implemented. Id. Mr. Podgornik urges the Board to implement a moratorium, because the city does not have the resources to enforce the laws in the proposed moratorium zone and none of the proposed solutions will ever be acted upon. Id.

### ***Glenda Richmond***

Glenda Richmond, who lives at The Paul Lawrence Dunbar, testified in favor of the Petition. *Tr.*, 5/22/13 at 200-01. She supports the Petition, because of the “noise pollution” generated by licensed establishments and their patrons. Id. at 201-02.

### ***Allen Rotz***

Allen Rotz supports the Petition, because it creates “balance and equity” between residents and businesses. Testimony, Allen Rotz, 1 (May 24, 2013). According to Mr. Rotz, there are 18,000 seats in licensed establishments. Id. Liquor licensed establishments are pricing other types of businesses out of the neighborhood. Id.

### ***Sandra Schrauf***

Sandra Schrauf opposes the Petition. Email from Sandra Schrauf to ABRA, 1-2 (May 14, 2013). She currently owns and resides in a condo in the moratorium zone proposed by the SDCA. Id. Ms. Schrauf asserts that moratoriums are ineffective and “promote stagnation.” Id. She appreciates the new liquor licensed establishments in the neighborhood and finds they benefit the community by creating “foot traffic” in the neighborhood. Id. While Ms. Schrauf has concerns regarding litter and property crime in her neighborhood, she does not see how a moratorium will address those issues. Id. She advises the Board not to “throw the baby out with the bathwater” by imposing a moratorium. Id.

### ***Shaw-Dupont Citizens Alliance (SDCA)***

The Shaw-Dupont Citizens Alliance (SDCA) submitted additional written comments after the May 22, 2013 hearing. According to the SDCA, they collected over 420 signatures in support of the Petition. Letter from Joan Sterling, President, Shaw-Dupont Citizens Alliance to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board, 1 (May 24, 2013). The SDCA requested that the Board “strike” the online petition submitted by opponents from the record, because there is no way to identify the existence of the signatories. Id. The SDCA also requests that the Board consider the large R-4 and R-5 zones that are impacted by liquor licenses in the neighborhood. Id.

The SDCA maintains that the DCRA is not enforcing the ARTS Overlay District rules. Id. The SDCA urges the Board to reject the arguments made by ANC 6E, ANC 2F, and ANC 2B, because the proposed moratorium will only impact a small portion of the area within their respective jurisdictions. Id. at 4. The SDCA further argues that individuals have already attempted to implement the alternative proposals suggested by the ANCs, but have not been successful. Id. The SDCA further asks the Board not to consider property values, because the Petition did not raise that issue. Id. at 4-5. Finally, the SDCA also argues that the Board should not consider the fact that the price of liquor licenses sold on the private market may rise if a moratorium is implemented. Id. at 5.

### ***Shaw Main Streets***

Executive Director Alexander M. Padro, on behalf of Shaw Main Streets, expressed his organization’s opposition to the Petition. Letter from Alexander M. Padro, Executive Director, Shaw Main Streets, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (May 22, 2013). Shaw Main Streets, a nonprofit organization, works for commercial revitalization and the historic preservation of the 7th Street, N.W., and 9th Street, N.W., commercial corridors. Id.

According to Shaw Main Streets, it has encouraged liquor license holders to open businesses in the U Street, N.W., neighborhood. Id. Liquor licensed establishments are the largest category of businesses opening in the neighborhood. Id. Shaw Main Streets note that many retail spaces under construction are presently “leased to entrepreneurs with plans for ABC licensed establishments.” Id. Therefore, if the Board imposes a moratorium, “these businesses [would] locate elsewhere, leaving retail spaces vacant and causing irreparable harm to the Shaw neighborhood’s ongoing renaissance.” Id. Shaw Main Streets believes that any negative externalities related to liquor-licensed establishments can be managed through “existing processes.” Id.

### ***Ella Speck***

Ella Speck lives in the moratorium zone and is the mother of two young children. *Tr.*, 5/22/13 at 184. She opposes the moratorium, because she looks forward to the new restaurants and bars that are joining the community. Id. at 185.

### ***Shawn Steffy & Sean Sands***

Shawn Steffy and Sean Sands have lived in the proposed moratorium zone for twelve years and oppose the Petition. Letter from Shawn Steffy and Sean Sands to Jonathan Berman, Assistant Attorney General, ABRA (May 8, 2013). Mr. Steffy and Mr. Sands assert that the SDCA’s restrictive membership rules excluded them from joining the SDCA and that the SDCA does not represent the views of the community. Id. Mr. Steffy and Mr. Sands are especially concerned that the proposed moratorium will prevent innovative businesses from moving into the community by giving existing license holders a monopoly. Id.

### ***Karina St. Clair***

Karina St. Clair, a resident of the propose moratorium zone, spoke in favor of the Petition. *Tr.*, 5/22/13 at 187. She is concerned that patrons leaving licensed establishments have little respect for residents. *Tr.*, 5/22/13 at 186, 190. According to Ms. St. Clair the neighborhood lacks amenities for families and retail oriented businesses. Id. at 188-90. Finally, she notes that she does not feel safer in the neighborhood when she is walking on crowded sidewalks filled with bar patrons. Id. at 191.

### ***Joan Sterling***

Joan Sterling is the President of the SDCA and supports the Petition. Testimony, Joan Sterling, 1 (May 22, 2013). According to Ms. Sterling, the SDCA requests a moratorium, because it has failed to get its concerns addressed through “case-by-case license protests, working with our ANCs, [and] working with DCRA to plead for enforcement of the ARTS [O]verlay to no avail . . .” Id.

Ms. Sterling argues that the neighborhood is overconcentrated with liquor-licensed establishments. Id. at 2. Ms. Sterling notes that there are 120 licensed establishments, 16,500

seats, 5,700 residents, and five blocks that violate the ARTS Overlay rules in the proposed moratorium zone. Id. Ms. Sterling further argues that residential parking is an issue in the neighborhood. Id. According to Ms. Sterling, “it is nearly impossible for residents to park on the street in the evenings, especially on weekends.” Id. at 2. Ms. Sterling also notes that noise is an issue, because patrons returning to their vehicles create noise disturbances. Id. at 3. In addition, trash and vermin are a huge problem in the neighborhood. Id.

Ms. Sterling also notes that the overconcentration of licensed establishments create public safety concerns. Id. at 3. According to Ms. Sterling, the MPD has determined that city blocks with ten or more licensed establishments require four times the additional manpower than blocks with less establishments. Id. Finally, in her view, the ABRA does not have sufficient resources to monitor the entire city. Id. at 4.

### ***Daniel Winston***

Daniel Winston, a resident of 12th Street, N.W., opposes the Petition. Email from Daniel Winston to the Alcoholic Beverage Regulation Administration (May 23, 2013). According to Mr. Winston, the supporters of the Petition represent a “small minority of residents . . . clustered on one street.” Id. While “[t]heir concerns about trash, traffic, and crime are worth listening to . . . a moratorium would do little to address them.” Id.

### ***Daniel Wittels***

Daniel Wittels, a resident of Wallach Place, N.W., supports the Petition, and believes it will benefit the community. Testimony, Daniel Wittels, 1 (May 22, 2013). According to Mr. Wittels, the proposed moratorium will (1) attract daytime businesses; (2) reward bars and restaurants that invested early in the community; (3) incentivize development in areas, such as “Petworth, Columbia Heights, and Bloomingdale”; and (4) stem the loss of daytime businesses in the community. Id. Mr. Wittels does not believe that a BID will be implemented, because it creates a tax on local businesses. Id.

### ***Moshe Zosman***

Moshe Zosman, a resident in the proposed moratorium zone, supports the Petition. *Tr.*, 5/22/13 at 86. He noted that he and his wife have had to call the police on several occasions in response to people loitering in front of his window “singing, fighting, throwing items, puking, barfing, having sex, [and] urinating.” Id. at 87. He noted that the police are ineffective in curbing this type of behavior, which occurs every weekend. Id. Mr. Zosman is afraid that the neighborhood will become a “cemetery” during the daytime. Id. at 88.

## **ARTICLES, STUDIES, AND OTHER SOURCES**

The Board supplements the record with information from the following sources to provide further objective information regarding crime and property values in the proposed moratorium area.

### ***Alcohol Outlets as Attractors of Violence and Disorder: A Closer Look at the Neighborhood Environment***

The Urban Institute recently studied the relationship between the concentration of alcohol outlets and violence. Caterina Gouvis Roman, Shannon E. Reid, Avinash S. Bhati, and Bogdan Tereshchenko, *Alcohol Outlets as Attractors of Violence and Disorder: A Closer Look at the Neighborhood Environment, I* (April 30, 2008). The study compared crime to alcohol outlet density in Washington, D.C., by dividing the city into 433 block groups. *Id.* at II. The authors conclude that “the density of on-premise outlets is a significant predictor of aggravated assault,” while the “high densities of off-premise outlets . . . do not influence assaults.” *Id.* at 94. In addition, “the increased density of street lighting is associated with an increase in assault.” *Id.* at 95.

The authors also noted that “. . . the presence of metro station[s] have negative relationships with assault.” *Id.* at 95. The authors theorized that block groups with metro stations “are more likely to have place managers—security guards, extra police and/or transit officers.” *Id.* Furthermore, “. . . all metro station platforms in the city are underground, away from bar exits and entrances, creating a flow of patrons away from high risk street areas.” *Id.* The authors specifically noted that “areas with metro stations . . . were not magnets for crime, but instead, these areas had lower levels of disorder and assault.” *Id.* at 101.

The authors conclude that “high densities of on-premise alcohol outlets are associated with higher levels of aggravated assault both during the weekend and weekend late night periods.” *Id.* at 96. Nevertheless, the authors conclude that the concentration of “on-premise establishments are not related to assault during the weeknight.” *Id.* The authors further found that “levels of disorderly conduct are higher in block groups with concentrations of bars and off-premise outlets.” *Id.* at 97. Yet, “levels of more ‘fear-provoking’ social disorder are not affected by alcohol outlets . . . .” *Id.*

### ***Addressing Violence and Disorder Around Alcohol Outlets***

The District of Columbia Crime Policy Institute, affiliated with the Urban Institute, has suggested a number of reforms to the District’s alcohol laws. Sam Bieler, John Roman, Ph. D., *Addressing Violence and Disorder Around Alcohol Outlets*, 10 (Jan. 2013). According to the authors, among other suggestions, the city should encourage licensees to engage in practices such as “increasing the number of staff, training security staff in non-violent conflict resolution and mediation, and maintaining establishments with design features, like clear entry and exit lanes, that mitigate the risk of increased aggression.” *Id.* The authors also suggest that the city consider increasing the price of liquor or decreasing the maximum serving size of alcoholic beverages in the city. *Id.* Finally, the authors suggest that the city reform its intoxicated person law to allow for easier and “more aggressive enforcement . . . .” *Id.*

### ***Crime Count Comparison Within 1800-feet of 1211 U St NW***

The MPD Office of Research and Analytical Services provided crime statistics for the period between January 1, 2011, and December 31, 2012. Metropolitan Police Department, Crime

Count Comparison Within 1800-feet of 1211 U St NW, 1 (Jul. 16, 2013) [Crime Count Comparison]. According to the MPD, the rate of violent crime, which includes homicide, sex abuse, assault with a deadly weapon, and robbery, has decreased by 15 percent. Id. In addition, the rate of property crime, which includes burglary, motor vehicle theft, and theft, has increased 14 percent. Id. Finally, the MPD also included arrest reports for this area dating back to 2003, which shows that in 2004, the MPD made 239 disorderly conduct arrests, while in 2012, MPD only made 32 disorderly conduct arrests. Id. at 2, 6.

### ***U Street Corridor Home Prices and Home Values***

The Zillow Home Value Index shows that the median home price in the U Street Corridor was \$514,300 on July 19, 2013, as compared to \$431,000 on August 1, 2008. Zillow.com, U Street Corridor Home Prices and Home Values (Jul. 19, 2013) (on file with ABRA). The index shows that the U Street Corridor has experienced a 7.5 percent year-over-year increase in median home price over the past five years. Id.

### ***Trader Joe's Opening Another in D.C.***

According to the *Baltimore Business Journal*, the U Street Corridor is gaining grocery options. Michael Neibauer, *Trader Joe's opening another in D.C.*, *Baltimore Business Journal*, 1 (Apr. 29, 2013) (on file with ABRA). The article notes that Trader Joe's intends to open a 15,108 square foot store in the mixed-use development located at 1920 14th Street, N.W. Id. The article further notes that the P Street Whole Foods is located nine blocks to the south. Id.

### ***In D.C., a Street's Grit Gives Way to Glamour***

*The New York Times* reports that between 2012 and 2014, "virtually every block in a one-mile stretch of 14th is slated to gain a new or renovated building containing residential units and ground-floor retail space. Amanda Abrams, *In D.C., a Street's Grit Gives Way to Glamour*, *N.Y. Times*, 1 (May 1, 2012) (on file with ABRA). When this development finishes, the area will have" 1,200 additional housing units and more than 85,000 square feet of additional retail space." Id. The author notes that many of the apartment buildings will be considered "high end." Id.

The article notes that in 1986 the area was known "for the prostitutes and drug dealers who frequented it." Id. at 2. However, the article credits the expansion of the Studio Theater in 1987 and the arrival of the Whole Foods on P Street for turning the neighborhood around. Id.

The article suggests that the neighborhood's retail mix is in transition. Id. A retail strategist interviewed by the author suggests that the "corridor was still in transition from largely food-based tenants to merchandisers . . ." Id. He further predicts that the increased population in the neighborhood will attract "'junior box' stores." Id. A real estate executive interviewed by the author suggests that the area will shift from "mom-and-pop" stores to chain stores over time, similar to Georgetown and Bethesda. Id. The author notes that this shift has already begun as some small businesses leave the neighborhood. Id. at 3.

### ***First Class: 14th Street***

*Arrive* notes that 14th Street, N.W., has become a major shopping destination. David Sokol, *First Class: 14th Street*, *Arrive*, 38-39 (May/June 2013) (on file with ABRA). According to the article, the area draws residents and tourists to the area for its “independent fashion, unique dining, and modern design” scene. *Id.* at 38.

### ***Gentrification in Overdrive on 14th Street***

*The Washington Post* reports that the 14th Street, N.W., area is now the “densest area in the city.” Annys Shin, *Gentrification in overdrive on 14th Street*, *The Washington Post*, 2 (Jul 21, 2013) (on file with ABRA). According to the article, apartment rents average \$2,700 a month and two-bedroom condos may be found for over \$900,000. *Id.*

## **DISCUSSION**

The Board declines to impose the proposed moratorium, because the SDCA and proponents of the Petition have not established that a moratorium is appropriate for the U Street Corridor. Under the law, the Board must “. . . consider the extent to which the testimony and comments show that the requested moratorium is appropriate under at least 2 of the appropriateness standards” contained in Title 25. § 25-354(d). The Board goes beyond the minimum requirements of the law, and uses every appropriateness factor to analyze the proposed moratorium.

### **I. Real Property Values**

The Board determines that additional licenses will not harm the neighborhood’s real property values. Section 25-313(b)(1) requires the Board to consider the impact of additional licenses “on real property values.” § 25-313(b)(1).

The U Street Corridor has become one of the most popular areas in the city, and the neighborhood is slated to experience a remarkable amount of development in the near future. Abrams, 1. The Zillow Home Value Index shows that the median home price has gone from \$431,000 in 2008 to \$514,300 in 2013. U Street Corridor Home Prices and Home Values. Additionally, 1,200 additional housing units are being constructed and the price of some two-bedroom condos are selling for over \$900,000. Abrams, 1; Shin, 2. The record contains no convincing evidence that licensed establishments are harming property values or that additional licensed establishments will have a negative impact on property values. As a result, the Board concludes that a moratorium for the purpose of preserving property values is inappropriate.

### **II. Peace, Order, and Quiet**

Proponents of the moratorium have failed to show that the issuance of additional licenses in the U Street Corridor will negatively impact the neighborhood’s peace, order, and quiet. Section 25-313(b)(2) requires the Board to consider the impact of additional licenses “on peace, order, and

quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726. “ § 25-313(b)(2).

#### **a. Crime**

First, the Board finds that the crime situation in the U Street Corridor has improved significantly. One proponent submitted a study by the Urban Institute, which concluded that the density of on-premise establishments “is a significant predictor of aggravated assaults.” Gouvis, et al., at 94. The same study also explained that “areas with metro stations . . . were not magnets for crime, but instead, these areas had lower levels of disorder and assault.” Id. at 101.

According to the MPD’s Office of Research and Analytical Services, violent crime in the proposed moratorium zone has decreased 15 percent between January 1, 2011, and December 31, 2012. Crime Count Comparison, 1. In addition, since 2004, the number of disorderly conduct arrests per year in the U Street Corridor has decreased from a high of 239 arrests in 2004 to 32 arrests in 2012. Crime Count Comparison, 2, 6. Most likely, as theorized by the Urban Institute, the Board can partly attribute this decrease in crime and disorder to the presence of the U Street Metro Station in the neighborhood. We recognize that the MPD’s statistics also reveal that property crimes, such as burglary, motor vehicle theft, and theft have increased by 14 percent. However, there is no persuasive evidence in the record that permits us to attribute this increase in property crime to the presence of licensed establishments. Crime Count Comparison, 1. Accordingly, the Board concludes that licensed establishments are not exacerbating the crime situation in the neighborhood.

The Board also recognizes that some proponents of the moratorium reported experiencing repeated instances of antisocial behavior and disorder in their neighborhoods. Nevertheless, the MPD’s statistics indicate that the U Street Corridor has experienced a large drop in violent crime. As a result, the Board is persuaded that the antisocial behavior and disorder reported by some proponents is localized to specific portions of the U Street Corridor, and does not reflect the state of affairs for the majority of the proposed moratorium zone. Therefore, the Board concludes that the proposed moratorium will not have a significant impact on crime in the U Street Corridor as a whole, and will not address the problems regarding criminal activity raised by the Petition.

#### **b. Noise**

Second, a moratorium for the purpose of curbing noise is not appropriate when the record shows that the issuance of additional licenses in the U Street Corridor will not create noise in violation of D.C. Official Code § 25-725.

Under § 25-725, a “licensee under an on-premise retailer’s license shall not produce any . . . noise . . . of such intensity that it may be heard in any premises other than the licensed establishment” when the noise is caused by a “mechanical device, . . . instrument for amplification of the human voice[,] . . . noise making article, [or] instrument.” D.C. Code § 25-725(a)(1)-(3) (West Supp. 2013). The Board notes that these rules do not apply to areas located in the same building that “are not part of the licensed establishment”; an abutting “building owned by the licensee”; when the premise where the noise may be heard is located in a C-1, C-2,

C-3, C-4, C-M, or M zone; or when the noise observed is caused “by normal opening of entrance and exit doors for the purpose of ingress and egress.” D.C. Code § 25-725(b)(1)-(4) (West Supp. 2013). Finally, on-premise retailers must “comply with the noise level requirements set forth in Chapter 27 of Title 20 of the [D.C.] Municipal Regulations.” D.C. Code § 25-725(c) (West Supp. 2013).

The record contains no convincing evidence that licensees are directly generating noise or music that residents are hearing in their homes. Instead, most proponents of the moratorium focused on the noise created by patrons leaving various establishments or walking to their vehicles. Section 25-725, which is cited directly in § 25-313(b)(2), only covers instruments and mechanical devices, such as drums, televisions, and stereos and exempts the human voice. § 25-725(a)(1)-(3). Title 25’s noise provision only applies to the noise generated by licensees—it does not apply to the noise generated by patrons far from an establishment’s premises. § 25-725(a). The Board also notes that the record does not contain any evidence that the noise level in the U Street Corridor exceeds the maximum levels described in Chapter 27 of Title 20 of the D.C. Municipal Regulations. § 25-725(c). The Board will not impose a moratorium for the purpose of curbing noise when the record fails to demonstrate that the presence of additional establishments will create excessive noise in violation of Title 25’s noise provision.

### **c. Trash and Litter**

Third, the Board determines that the issuance of additional licenses in the U Street Corridor will not lead to trash and litter in violation of D.C. Official Code § 25-726.

Under § 25-726, a “licensee under a retailer’s license shall take reasonable measures to ensure that the immediate environs of the establishment including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter.” D.C. Code § 25-726 (a) (West Supp. 2013). Retailers must also comply with the Litter Control Expansion Amendment Act of 1987. D.C. Code § 25-726(b) (West Supp. 2013).

Proponents of the proposed moratorium have reported that patrons leaving licensed establishments regularly deposit trash and litter in their neighborhoods. Nevertheless, section § 25-726, which is cited directly in § 25-313(b)(2), only requires licensees to ensure that their immediate environs remain clean and orderly. § 25-726(a). It does not hold licensees responsible for the trash and litter left by patrons outside of their premises. *Id.* Furthermore, the record does not contain any evidence that licensees are responsible for or have caused violations of the Litter Control Expansion Amendment Act of 1987. Therefore, the Board finds that a moratorium for the purpose of curbing trash and litter is not appropriate for the U Street Corridor when there is no evidence that the presence of additional establishments will result in violations of Title 25’s trash and litter provisions.

### **III. Residential Parking and Traffic Safety**

Proponents of the moratorium have not presented sufficient evidence to show that the issuance of additional licenses in the U Street neighborhood will negatively impact residential parking needs

or vehicular and pedestrian safety. Section 25-313(b)(3) requires the Board to consider the impact of additional licenses “upon residential parking needs and vehicular and pedestrian safety.” § 25-313(b)(3).

The SDCA has informed the Board that there are only 293 metered spots, the Reeves Center is at capacity, the new buildings under development do not have sufficient parking to meet the demands of residents, Metro provides insufficient service, and that drivers in the neighborhood regularly violate the law and create congestion. Petition, 14-16. The Board also notes that individuals testified that they have trouble finding parking in the neighborhood.

Nevertheless, the Board is not persuaded by these comments. The information provided by the SDCA and other commentators falls short of what the Board has previously considered serious parking and traffic safety concerns. For example, in Club Illusions, the Board denied an application for a nightclub license, because, based on the testimony of a traffic engineer, the applicant’s parking plans potentially involved large, inebriated crowds crossing six lanes of traffic at one of the District’s most dangerous intersections. In re 2101 Venture, LLC, t/a Club Illusions, Case Number 12-PRO-00054, Board Order No. 2013-004, ¶¶ 15, 28 (D.C.A.B.C.B. Jan. 16, 2012). Here, the Board has been presented with no reliable information regarding the current availability of parking spaces, the projected future growth of parking demand and parking spaces, the number of traffic violations, or even whether dangerous traffic conditions exist in the proposed moratorium zone. In addition, many opponents of the moratorium observed that the neighborhood has ample public transportation resources, which include the U Street Metro Station and numerous bus routes. Therefore, it is not clear that increasing the number of licensed establishments will severely impact residential parking; especially, when many patrons will choose to travel by bus or rail.

Consequently, the Board finds that proponents of the proposed moratorium have not provided a sufficient basis for imposing a moratorium on the grounds of preserving residential parking or vehicular and pedestrian safety.

#### **IV. Overconcentration**

Section 25-314(a)(4) requires the Board to consider “[w]hether issuance of . . . license[s] would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment is located.” § 25-314(a)(4). Title 25 defines overconcentration as “the existence of several licensed establishments that adversely affect a specific locality, section, or portion of the District of Columbia, including consideration of the appropriateness standards under § 25-313(b).” D.C. Code § 25-101(35A) (West Supp. 2013).

In order to determine that a neighborhood suffers from overconcentration, the Board must consider the appropriateness factors listed in § 25-313(b). In Sections I through III, the Board concluded that the issuance of additional licenses will not negatively impact the U Street Corridor’s real property values; peace, order, and quiet; and residential parking needs and vehicular pedestrian safety. Therefore, the Board concludes that the area does not suffer from an overconcentration of licensed establishments.

## V. Schools and Other Similar Facilities

None of the proponents provided evidence related to the proximity or effect of licensed establishments on schools, recreation centers, day care centers, public libraries, and other similar facilities, or the people that they serve. See § 25-314(a)(1)-(4). Therefore, the Board concludes that a moratorium will have no impact on any of these facilities in the proposed moratorium zone or their respective clients.

## VI. The ARTS Overlay

Finally, in their Petition, the SDCA claims that the District of Columbia Department of Consumer and Regulatory Affairs (DCRA) is not enforcing the rules related to the Uptown Arts-Mixed Use (ARTS) Overlay District. The Board emphasizes that it does not have the jurisdiction to determine whether the DCRA is properly enforcing the zoning rules when issuing certificates of occupancy in the ARTS Overlay District. As stated by the District of Columbia Court of Appeals, “while the ABC Board’s regulations require applicants to hold licenses from other departments as a precondition to obtaining a liquor license, it ha[s] no authority to review the validity of [a] coordinate agency’s actions.” Craig v. District of Columbia Alcoholic Beverage Control Board, 721 A.2d 584, 588 (D.C. 1998). Indeed, the court has specifically stated that the Board cannot “go[] behind [a] certificate of occupancy to ascertain whether or not it was properly issued . . . .” Dupont Circle Citizens Ass’n v. District of Columbia Alcoholic Beverage Control Bd., 766 A.2d 59, 62 (D.C. 2001) citing Kopff v. District of Columbia Alcoholic Beverage Control Bd., 413 A.2d 152, 154 (D.C. 1980). If the SDCA has a complaint regarding the correct interpretation or enforcement of the ARTS Overlay District, then it must take its complaint to the Board of Zoning Adjustment—not the Alcoholic Beverage Control Board. See id. Therefore, as a matter of law, the Board must presume that the DCRA is properly enforcing the ARTS Overlay.<sup>7</sup>

On a separate note, the Board recognizes that the zoning regulations governing eating and drinking establishments are another regulatory tool for managing the number of licensed establishments in the neighborhood from an economic and development perspective. Proponents of the proposed moratorium failed to show that this regulatory scheme, like settlement agreements and other tools, is insufficient to address the concerns raised by the Petition.

## **COMPENDIUM OF BOARD RESPONSES TO COMMENTS**

The Board also responds to additional comments provided by the ANCs in satisfaction of the great weight requirement, as well as significant comments made by the public that we have not addressed above.<sup>8</sup>

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<sup>7</sup> We also note that the purpose of the ARTS Overlay includes “encourage[ing] pedestrian activity” and “[f]oster[ing] eighteen (18) hour activity.” 11 DCMR § 1900.2(a)-(h) (West Supp. 2013).

<sup>8</sup> The Board recognizes that an Advisory Neighborhood Commission’s (ANC) properly adopted written recommendations are entitled to great weight from the Board. See Foggy Bottom Ass’n v. District of Columbia ABC Bd., 445 A.2d 643 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2012). Accordingly, the Board “must elaborate, with precision, its response to the ANC[’s] issues and concerns.” Foggy Bottom Ass’n, 445 A.2d at 646.

**Response to ANC Comments**

| <b>No.</b> | <b>ANC COMMENT</b>  | <b>BOARD RESPONSE</b>   |
|------------|---|---|
| 1          | <i>The Board should deny the Petition.</i>  | The Board agrees with this recommendation.  |
| 2          | <i>Alternative proposals would resolve and mitigate the problems complained of in the Petition.</i> | <p>The Board agrees with the ANCs that alternative solutions, such as those referenced below, are more appropriate means of addressing the problems raised by the Petition. Furthermore, the Board agrees with the ANCs that these alternative solutions will likely ameliorate the problems cited in the Petition, and be more effective than a moratorium.</p> <p>The ANCs providing comments have indicated their desire to pursue alternative tools in addressing any negative impacts caused by licensed establishments in the proposed moratorium zone. Among other suggestions, the Board sees no reason why a Business Improvement District (BID) could not be used to increase the presence of MPD in the neighborhood by supporting additional reimbursable detail officers. In addition, a BID could address concerns regarding trash and litter by supporting street cleaning and additional trash pickup.</p> <p>Protests, settlement agreements, and enforcement actions can address specific issues caused by individual license holders. Further, dedicated taxi stands could reduce congestion. The Board also agrees that additional streetlights and widened sidewalks would discourage antisocial behavior by patrons.</p> <p>The Board also agrees with the ANCs that a moratorium will merely prevent the issuance of additional licenses without addressing any of the root causes of the SDCA’s complaints. Therefore, the Board agrees with the ANCs that more direct actions, outside of a moratorium, are appropriate for the U Street Corridor.</p> |
| 3          | <i>A moratorium will hurt development in the neighborhood and distort the market.</i>               | <p>The Board’s decision is based solely on the appropriateness factors listed in D.C. Official Code §§ 25-313 and 25-314.</p> <p>Nevertheless, the Board agrees that the proposed moratorium would artificially inflate the value of liquor licenses and discourage some forms of development. Specifically, the proposed moratorium will discourage full-service grocery stores seeking a Class A license, art galleries, and movie theaters that wish to incorporate alcoholic beverage service</p>   |

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|   |   | into their business models from locating in the neighborhood. In addition, the proposed moratorium would scuttle the existing plans of any developers and businesses seeking a license in the proposed moratorium zone. Finally, the Board agrees that a moratorium may make licenses cost-prohibitive for some establishments seeking to locate in the neighborhood.   |
| 4 | <i>The Petition is overwhelmingly opposed by residents.</i>                 | The decision to enact a moratorium is not a referendum, but a fact-based determination based on the relevant factors indicated in D.C. Official Code § 25-354(d).<br><br>Nevertheless, the Board considers the large amount of public opposition to the proposal as persuasive evidence that the licensed establishments in the neighborhood are not having a detrimental impact on the overall quality of life of residents. Further, the overwhelming public opposition to the proposed moratorium serves as persuasive evidence that a large majority of residents in the proposed moratorium zone do not experience the problems complained of by the SDCA. |
| 5 | <i>A moratorium will lead to vacant buildings and hurt property values.</i> | The record does not contain sufficient evidence to determine whether the proposed moratorium would hurt property values in the neighborhood or lead to vacant buildings. Nevertheless, the proposed moratorium would likely prevent new licensees from moving to undeveloped portions of the proposed moratorium zone.  |
| 6 | <i>Insufficient evidence exists to justify a moratorium</i>                 | The Board agrees with this conclusion.  |

***Response to Public Comments***

| <b>No.</b> | <b>PUBLIC COMMENT</b>  | <b>BOARD RESPONSE</b>  |
|------------|--|--|
| 1          | <i>There is an overconcentration of licensed establishments in the proposed moratorium zone based on the number of establishments in the neighborhood.</i> | The number of licensed establishments is not determinative of whether a neighborhood suffers from overconcentration.<br><br>Title 25 explicitly defines overconcentration as “the existence of several licensed establishments that adversely affect a specific locality, section, or portion of the District of Columbia, including consideration of the appropriateness standards under § 25-313(b).” D.C. Code § 25-101(35A) (West Supp. 2013). Therefore, in order to find that a neighborhood suffers from overconcentration, the Board must conclude that the issuance of additional licenses will |

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|   |  | be inappropriate under § 25-313(b). In this case, because the Board determines that the issuance of additional licenses will not violate any of the appropriateness criteria, the Board cannot conclude that the U Street Corridor suffers from an overconcentration of licensed establishments.   |
| 2 | <i>The community needs more establishments in the neighborhood to meet demand.</i>   | The Board finds that economic considerations regarding supply and demand do not fall within the appropriate standards upon which the Board's determination is made. This issue should be addressed by those agencies that have jurisdiction over economic development and planning.  |
| 3 | <i>Licensed establishments in the U Street Corridor are forcing other types of retail businesses to leave the community.</i> | Proponents claimed that licensed establishments are forcing daytime retail establishments to leave the community. The Board finds that there is insufficient evidence in the record to support this conclusion. While proponents identified establishments that have left the area, they failed to show that licensed establishments were the cause of their leaving or that licensed establishments were preventing new retail from moving in.  |
| 4 | <i>Licensed establishments in the U Street Corridor drain the resources of the Metropolitan Police Department.</i>           | The Board does not have sufficient information in the record to determine whether the resources of the MPD are insufficient to meet the demands of the U Street Corridor. The Board notes that the MPD has not submitted any comments related to the proposed moratorium; therefore, the Board can only presume that the MPD has no opinion on the issue at this time.   |
| 5 | <i>The alternative proposals suggested by ANCs and commentators opposing the moratorium will never be implemented.</i>       | <p>Proponents favoring the proposed moratorium suggested that the alternative proposals suggested by the ANCs and other opponents will never be implemented. The Board disagrees.</p> <p>The city is already responding to the needs of the U Street Corridor. As Commissioner Smith reported, the MPD's Third District will add ten new officers to the U Street Corridor in 2013 for the purposes of policing the area during late-night hours.</p> <p>In addition, many of the affected ANCs and opponents strongly advocated for alternative policies to protect the quality of life of residents. The Board finds no reason to doubt that the ANCs will follow-through on these pursuits.</p> |
| 6 | <i>District agencies are</i>   | The Board finds this claim conclusory and not supported by   |

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|    | <i>non-response to calls for service from the community and are not enforcing the law.</i>  | sufficient evidence or data in the record.   |
| 7  | <i>The noise law does not protect residents in commercial zones.</i>  | It is true that D.C. Official Code § 25-725 exempts noise heard in premises located in commercial zones. Nevertheless, in the case of moratorium, the Board’s determination as to whether the noise experienced in a community is appropriate or inappropriate should be guided by the objective measure provided by § 25-725.   |
| 8  | <i>A moratorium would cause establishments to focus on high-volume liquor sales.</i>  | The Board finds there is insufficient evidence in the record to determine whether a moratorium would encourage licensees to engage in high-volume liquor sales.  |
| 9  | <i>The Board should strike or not consider the online petition submitted to the Board.</i>  | <p>The record contains an online petition expressing opposition to the proposed moratorium. The SDCA has requested that the Board not consider the online petition. The Board denies this request, because the request is not germane to a rulemaking.</p> <p>It has been said that “Absent a specific statutory requirement, ‘rule making is not to be shackled . . . by importation of formalities developed for adjudicatory process and basically unsuited for policy rule making.” <u>Metropolitan Baptist Church v. District of Columbia Dept. of Consumer and Regulatory Affairs</u>, 718 A.2d 119, 126 (D.C. 1998). Ignoring the online petition would do a disservice to those who sincerely desire to participate in the democratic process. Consequently, the SDCA’s request must be denied, and the Board deems the online petition a credible expression of the signatories’ views.</p> |
| 10 | <i>The Board never denies an application for a liquor license; therefore, addressing each licensee on a case-by-case basis through the protest process will be ineffective.</i> | <p>This assertion is incorrect. The Board has denied applications submitted by potential and current license holders on a number of occasions. <u>See e.g., In re 2101 Venture, LLC, t/a Club Illusions</u>, Case No. 12-PRO-00054, Board Order No. 2013-004 (D.C.A.B.C.B. Jan. 16, 2013); <u>In re Panutat, LLC, t/a Sanctuary 21</u>, Case No. 10-PRO-00003, Board Order No. 2012-012 (D.C.A.B.C.B. Jan. 11, 2012).</p> <p>In addition, the approval or denial of an application is not the only possible outcome in the protest process. The Board routinely imposes conditions on licensees, rather than dismissing the application outright. <u>See e.g., In re</u></p>   |

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|    |  | <p><u>Amduffy, LLC, t/a Duffy's Irish Restaurant</u>, Case No. 13-PRO-0004, Board Order No. 2013-343 (D.C.A.B.C.B. Jul. 10, 2013). Further, many cases that could result in a denial never reach the Board, because many parties often resolve their disputes in the form of a settlement agreement.</p> <p>Based on the foregoing, the Board disagrees that the protest process is ineffectual, or that it fails to take into account the needs of the community.</p> |
| 11 | <i>The Board should conclude that crime is an issue based on the police calls for service data provided by the SDCA.</i>       | The Board finds that the <i>Crime Count Comparison Within 1800-feet of 1211 U St NW</i> to be the most reliable and informative document regarding crime in the proposed moratorium zone. A calls for service log provides little information regarding crime trends, whether the reported crimes actually occurred, or whether such activity is abnormal for the area. Therefore, this document is not persuasive.  |
| 12 | <i>The Board should not consider issues outside of the Petition.</i>   | A moratorium is a rulemaking, not a contested case; therefore, the Board may look at issues outside of the scope of the original request.  |
| 13 | <i>A moratorium will encourage development in other portions of the city.</i>  | The Board is not an economic development or planning body. The encouragement of economic development in other portions of the District is not an element of the appropriate standards that the Board may consider in its determination of whether to impose a moratorium on a specific area.   |
| 14 | <i>The U Street Corridor provides no social or cultural enrichment for families and the neighborhood is geared for adults.</i> | While these may be positive traits for a neighborhood, they are not elements by which the Board may determine whether it is appropriate to impose a moratorium on an area.   |
| 15 | <i>A moratorium is justified based on comparisons to other moratorium zones</i>  | The Board credits IMBYDC's assessment of the errors in the methodology used by the SDCA to compare the U Street Corridor to other moratorium zones. Therefore, the SDCA's arguments based on comparing their proposed moratorium zone to other moratoriums in the city is unpersuasive.  |

## CONCLUSION

For the foregoing reasons, the Board finds that a moratorium is not in the public interest or appropriate in accordance with § 25-354(d). First, the record shows that property values in the area have increased dramatically over the last few years. Second, the Board cannot conclude that the presence of additional licensed establishment in the U Street Corridor will negatively impact the neighborhood's peace, order, and quiet when violent crime has decreased dramatically in the last year, and the SDCA's complaints regarding noise and trash exceed the scope of §§ 25-725 and 25-726. Third, the record contains insufficient information to conclude that the area suffers from a parking problem or that the U Street Corridor is unsafe for pedestrians and vehicles. In fact, the neighborhood is well served by public transportation. Fourth, the Board determines that the U Street Corridor does not suffer from an overconcentration of licensed establishments, because the record does not show that multiple licensed establishments are negatively impacting the U Street Corridor's peace, order, and quiet; real property values; or residential parking needs and vehicular and pedestrian safety under § 25-313(b). Finally, the record fails to demonstrate that licensed establishments in the U Street Corridor are negatively impacting any schools, recreation centers, day care centers, public libraries or other similar facilities and their clients.

## ORDER

Therefore, for the foregoing reasons, the Board, on this 2nd day of October 2013, hereby concludes that the SDCA has provided insufficient information to justify the creation of a moratorium zone in the U Street Corridor. Therefore, the Board **DENIES** the Petition.

**IT IS FURTHER ORDERED**, in accordance with D.C. Official Code § 25-351(f), that the Board shall not consider any petitions to impose a moratorium for the same area proposed by the SDCA, or an area covering substantially the same area, for two years from the date of this Order.

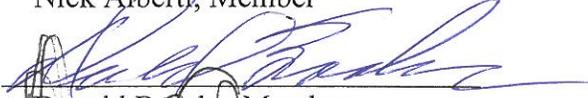
District of Columbia  
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, Member