

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:)	
)	
Jaime T. Carrillo)	License Number: 21925
t/a Don Jaime)	Case Number: 10-PRO-00115
)	Order Number: 2011-143
Petition to)	
Terminate a Voluntary Agreement)	
for a Retailer's Class CR License)	
)	
at premises)	
3209 Mt. Pleasant Street, N.W.)	
Washington, D.C. 20010)	

ALSO PRESENT: Jaime T. Carrillo, t/a Don Jaime, Applicant

Rick Massumi, on behalf of the Applicant

Sam Broeksmit, on behalf of the Mount Pleasant Neighborhood Alliance (MPNA), Protestant

BEFORE: Charles Brodsky, Chairperson
Mital Gandhi, Member
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

Jaime T. Carrillo, t/a Don Jaime (Petitioner), filed a Petition to Terminate a Voluntary Agreement (Petition) in order to terminate the Mount Pleasant Neighborhood Alliance (MPNA) Voluntary Agreement and to extend the establishment's hours of entertainment to correspond with its hours of sale and service of alcoholic beverages. Both the MPNA and Hear Mount Pleasant have executed Voluntary Agreements with the Petitioner that are currently in effect. The MPNA Voluntary Agreement was executed on August 2, 2000, while the Hear Mount Pleasant Voluntary Agreement was executed by Board Order No. 2008-190. The Petition initially came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on August 16, 2010, and a Status Hearing was held on September 22, 2010.

Protests against the Petition were timely filed by the MPNA by letter dated August 2, 2010, and August 16, 2010, respectively. The MPNA also passed a resolution opposing the Petition on July 23, 2010. See *ABRA Protest File No. 10-PRO-00115, Mount Pleasant Neighborhood Alliance Resolution*.

The parties attended Mediation on September 9, 2010. The Petitioner and the Protestant could not agree on a revised Voluntary Agreement before the Protest Hearing. The Protest Hearing was held on November 17, 2010, and December 7, 2010. The Board notes that Advisory Neighborhood Commission (ANC) 1D timely submitted a recommendation under D.C. Code § 25-609 (2001).

Pursuant to D.C. Code §§ 25-602(a) (2001) and 25-446(d)(4)(C), the protest issues raised by the Protestant are whether the Petition would adversely impact the peace, order, and quiet and residential parking and pedestrian safety of the neighborhood. The Board, having considered the evidence, the testimony of witnesses, the arguments of counsel, and the documents comprising the Board's official file, makes the following:

FINDINGS OF FACT

1. The Petitioner requests that the Board to terminate its Voluntary Agreement with the MPNA and have its entertainment hours correspond with the establishment's hours of sale and service of alcoholic beverages. *ABRA Protest File No. 10-PRO-00115, Notice of Public Hearing*. The Board takes administrative notice that the Petition was submitted during the Petitioner's renewal period and more than four years after the current Voluntary Agreement was approved by the Board. *ABRA Licensing File No. 21925; see also ABRA Protest File No. 10-PRO-00115*. The Board also takes administrative notice that the notice provisions under §§ 25-421 through 25-423 were satisfied in this matter. See *ABRA Protest File No. 10-PRO-00115*.
2. The Petitioner's establishment is located at 3209 Mount Pleasant Street, N.W. *ABRA Licensing File No. 024663*. It is located within a C-2-A zone. *ABRA Protest File No. 10-PRO-00115, Protest Report, 2*. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *ABRA Protest File No. 10-PRO-00115, Protest Report, 4*. Finally, there are 18 ABC licensed establishments within 1200 feet of the Petitioner. *ABRA Protest File No. 10-PRO-00115, Protest Report, 3-4*.
3. The Petitioner's current hours of operation are from 7:00 a.m. to 2:00 a.m., Monday through Thursday, and 7:00 a.m. to 2:30 a.m., Friday and Saturday; and 7:00 a.m. to 2:00 a.m. on Sunday. *ABRA Licensing File No. 21925*. The Petitioner's current hours to sell and serve alcohol are from 8:00 a.m. to 2:00 a.m., Monday through Thursday; and 8:00 a.m. to 2:30 a.m., Friday and Saturday; and 10:00 a.m. to 2:00 a.m. on Sunday. *ABRA Licensing File No. 21925*. Finally, the Petitioner's hours of entertainment are 6:00 p.m. to 11:00 p.m., Sunday through Wednesday; 6:00 a.m. to 12:00 a.m. on Thursday; and 6:00 a.m. to 1:00 a.m., Friday and Saturday. *ABRA Licensing File No. 21925*. The Petitioner seeks to expand its entertainment hours to correspond with its hours of sale and service of alcoholic beverages. *ABRA Protest File 10-PRO-00115, Notice of Public Hearing*.

4. The Board called Investigator Jabriel Shakoor to testify. *Transcript (Tr.)*, November 17, 2010 at 12. The Alcoholic Beverage Regulation Administration (ABRA) sent investigators to monitor the Petitioner on 25 separate occasions between September 28, 2010, and October 30, 2010. *Tr.*, 11/17/10 at 15. Investigator Shakoor reported that investigators did not hear noise or observe loitering, criminal activity, or excessive trash near the Applicant's establishment during the investigation period. *Tr.*, 11/17/10 at 15. No ABC violations were observed during the investigation. *Tr.*, 11/17/10 at 33.
5. Investigator Shakoor testified that he observed the interior of the establishment. *Tr.*, 11/17/10 at 16. The establishment has two floors. *Tr.*, 11/17/10 at 16. The first floor is the main restaurant area of the establishment and has approximately 24 seats. *Tr.*, 11/17/10 at 16. In the evening, only the second floor is operational and it contains 24 seats as well. *Tr.*, 11/17/10 at 16. The establishment only offers entertainment on the second floor. *Tr.*, 11/17/10 at 16-17.
6. Investigator Shakoor discussed the parking situation in Mount Pleasant. *Tr.*, 11/17/10 at 18. Two bus stops are in Mount Pleasant and the Columbia Heights Metro Station, located at 3030 14th Street, N.W., is nearby. *Tr.*, 11/17/10 at 18-19. He also noted that there was a bike sharing facility nearby. *Tr.*, 11/17/10 at 25. Investigator Shakoor noted that there were few public parking spaces available on Mount Pleasant Street, N.W., and the adjoining streets. *Tr.*, 11/17/10 at 17-18. Investigator Shakoor did not believe that the establishment had an impact on parking because the parking situation did not change whether the Petitioner was closed or open for business. *Tr.*, 11/17/10 at 20.
7. Investigator Shakoor testified that he observed the establishment offer live entertainment on October 29, 2010. *Tr.*, 11/17/10 at 21. The entertainment featured a DJ playing Latin music. *Tr.*, 11/17/10 at 22. Investigator Shakoor did not hear any noise or observe rowdy behavior. *Tr.*, 11/17/10 at 21. He noted that the crowd was largely filled with Hispanic males in their twenties and thirties who had just gotten off work. *Tr.*, 11/17/10 at 22. After speaking with some of the patrons who were in the crowd, Investigator Shakoor believes that the majority of the people in the crowd were local residents. *Tr.*, 11/17/10 at 22.
8. Investigator Shakoor noted that the Petitioner's establishment and Mount Pleasant Street, N.W., is surrounded by residential properties. *Tr.*, 11/17/10 at 28, 30. He stated that there are apartments, condos, and single family houses near the establishment. *Tr.*, 11/17/10 at 29.
9. The Petitioner made its case through the testimony of five witnesses. Professor David Schartzman, Jaime Carillo, Eric Carillo, Commissioner Greg Edwards, and Jane Zara testified before the Board. *Tr.*, 11/17/10 at 36, 54-55
10. The Petitioner called Professor David Schwartzman to testify. *Tr.*, 11/17/10 at 36. Professor Schwartzman works at Howard University and lives a few miles from Mount Pleasant. *Tr.*, 11/17/10 at 36-37. Professor Schwartzman states that he usually takes the bus to Mount Pleasant in order to visit the Petitioner's establishment. *Tr.*, 11/17/10 at 40. Professor Schwartzman is a patron of the Petitioner. *Tr.*, 11/17/10 at 37. He testified that Mount Pleasant is a diverse neighborhood that provides many cultural opportunities for the entire metro area. *Tr.*, 11/17/10 at 38-39. He stated that he also enjoys the local

performers who frequent the Petitioner's establishment. *Tr.*, 11/17/10 at 40-41. Professor Schwartzman did not believe the establishment produced enough noise to disturb its neighbors. *Tr.*, 11/17/10 at 49.

11. The Petitioner then called Mr. Carillo to testify. *Tr.*, 11/17/10 at 54-55. Mr. Carillo lives in Mount Pleasant and has owned Don Jaime since 1994. *Tr.*, 11/17/10 at 55. He stated that his establishment has an occupancy of 50 people. *Tr.*, 11/17/10 at 56.

12. Mr. Carillo opposes the existing MPNA Voluntary Agreement attached to his license because it is hurting his business. *Tr.*, 11/17/10 at 58. He stated that he cannot sell pitchers of beer or offer happy hours like other businesses in the neighborhood. *Tr.*, 11/17/10 at 58. He also stated that the current economic climate has had a severe impact on the businesses in Mount Pleasant. *Tr.*, 11/17/10 at 62. Finally, he noted that the recent development in neighboring Columbia Heights has been drawing customers away from his establishment. *Tr.*, 11/17/10 at 63.

13. Mr. Carillo testified that he is well known in the community and works to improve the community. *Tr.*, 11/17/10 at 60. He stated that he is a member of the Mainstreet Board and does volunteer work in the community. *Tr.*, 11/17/10 at 60. Mr. Carillo stated that he operates a family business. *Tr.*, 11/17/10 at 64.

14. Mr. Carillo testified that parking is an issue in the neighborhood. *Tr.*, 11/17/10 at 62. Nevertheless, he testified that the majority of his customers walk to the establishment or take the bus. *Tr.*, 11/17/10 at 62. He noted that some of his patrons ride bikes to the establishment and he will keep bikes overnight for customers if they become intoxicated at the establishment. *Tr.*, 11/17/10 at 62.

15. Mr. Carillo testified that he has only received one complaint regarding his business. *Tr.*, 11/17/10 at 69. He stated that one neighbor complained that the establishment's window was open during an open mic night. *Tr.*, 11/17/10 at 68. Mr. Carillo stated that he closed the window in response to the complaint. *Tr.*, 11/17/10 at 68

16. Mr. Carillo testified that his current entertainment hours were hurting his business. *Tr.*, 11/17/10 at 65. He noted that his customers are going to Marx Café next door after he is forced to stop providing entertainment at 1:00 a.m. *Tr.*, 11/17/10 at 66. In addition, many of his customers come after 10:00 p.m. and 11:00 p.m., which means they can only remain in his establishment a short time. *Tr.*, 11/17/10 at 67. He stated that many customers go to Marx Café, which can have entertainment until 2:30 a.m. *Tr.*, 11/17/10 at 100-01.

17. Mr. Carillo stated that allowing the establishment to have entertainment would benefit Mount Pleasant. *Tr.*, 11/17/10 at 70. He stated that attracting more customers would encourage more people to be in the street late at night and reduce crime. *Tr.*, 11/17/10 at 70. He also stated that his establishment does not create traffic nor does it reduce parking. *Tr.*, 11/17/10 at 72.

18. Mr. Carillo testified that he does not oppose the Hear Mount Pleasant Voluntary Agreement. *Tr.*, 11/17/10 at 87-88.

19. The Petitioner called Mr. Eric Carillo to testify. *Tr.*, 11/17/10 at 105. He is the son of Jaime Carillo. *Tr.*, 11/17/10 at 106. He has worked in the establishment consistently since 2001. *Tr.*, 11/17/10 at 107, 112. He stated that the establishment serves American and Latin-influenced cuisine. *Tr.*, 11/17/10 at 108. He further testified that the establishment intends to offer family-friendly entertainment that is “culturally centered.” *Tr.*, 11/17/10 at 109. He noted that the establishment has had puppet shows and acoustic performances. *Tr.*, 11/17/10 at 110.

20. The Petitioner then called ANC Commissioner Gregg Edwards. *Transcript (Tr.)*, *December 7, 2010* at 5. Commissioner Edwards lives approximately 300 feet from the Petitioner and has lived in Mount Pleasant for 36 years. *Tr.*, 12/7/10 at 6. Commissioner Edwards stated that the establishment has never disturbed him. *Tr.*, 12/7/10 at 7

21. Commissioner Edwards believes that removing the MPNA Voluntary Agreement would benefit Mount Pleasant. *Tr.*, 12/7/10 at 12. He stated that removing the MPNA would allow more cultural activities, improve public safety by encouraging more people to be on the streets, and improve property values in Mount Pleasant. *Tr.*, 12/7/10 at 12. He noted that ANC 1D supports terminating the MPNA Voluntary Agreement. *Tr.*, 12/7/10 at 26.

22. Commissioner Edwards discussed the parking situation in Mount Pleasant. *Tr.*, 12/7/10 at 18. There are about 1,800 public parking spots and 2,200 private parking spots in Mount Pleasant. *Tr.*, 12/7/10 at 18. Commissioner Edwards stated that many parking spots in Mount Pleasant are available during the daytime hours and parking is limited during the evening. *Tr.*, 12/7/10 at 18, 33. Commissioner Edwards believes that many of the Petitioner’s customers use public transportation or walk to the establishment. *Tr.*, 12/7/10 at 19, 35. Commissioner Edwards noted that people often travel by car to the restaurant between 6:30 p.m. to 7:00 p.m. but generally use other forms of transportation at other times. *Tr.*, 12/7/10 at 36. Commissioner Edwards noted that Metro buses run through Mount Pleasant until approximately 3:30 a.m. *Tr.*, 12/7/10 at 22-25.

23. Commissioner Edwards discussed the specific provisions of the MPNA Voluntary Agreement that he disagreed with. *Tr.*, 12/7/10 at 28. He disagrees with the provision that requires the Petitioner to comply with all applicable laws and regulations because this provision leads to “over-regulation” and is repetitious. *Tr.*, 12/7/10 at 28, 41. He believes the provision requiring the Petitioner to cooperate with the ANC, the MPNA or support community organizations cannot be enforced because they are vague. *Tr.*, 12/7/10 at 29, 42. Commissioner Edwards also believes that Item G, which deals with working cooperatively with the ANC and the MPNA, and Item H, which deals with how the Petitioner may sell the business, are vague and unenforceable as well. *Tr.*, 12/7/10 at 44. He also believes that the Voluntary Agreement should not make the Applicant steam wash the front of his establishment. *Tr.*, 12/7/10 at 44. He further argued that Item J and Item K, which deals with trash, merely repeat the current law. *Tr.*, 12/7/10 at 45-46. Commissioner Edwards stated that Item L, which deals with loitering, is unconstitutional. *Tr.*, 12/7/10 at 46. Commissioner Edwards also objects to Item M, which requires the Petitioner to post signs, because he believed such measures are racist. *Tr.*, 12/7/10 at 46. Commissioner Edwards objected to Item N because it makes the petitioner the “thrall . . . of one very narrow portion of the neighborhood.” *Tr.*, 12/7/10 at 47. Commissioner Edwards believes that Item R, which deals with go-cups, merely repeats the current law.

Tr., 12/7/10 at 49. Commissioner Edwards also believes that Item T, which restricts the Petitioner's use of pitchers, prevents from engaging in a normal practice of the hospitality industry. *Tr.*, 12/7/10 at 49. He also noted that Item V, which prohibits the sale of alcoholic beverages after legal hours, merely repeats the law. *Tr.*, 12/7/10 at 49. Finally, Commissioner Edwards believes that Item W, which required the Petitioner to make verbal reports to the MPNA, is inappropriate. *Tr.*, 12/7/10 at 48-49.

24. The Petitioner then called Jane Zara to testify. *Tr.*, 12/7/10 at 55. She stated that ANC 1D passed between 20 to 23 resolutions regarding voluntary agreements in Mount Pleasant. *Tr.*, 12/7/10 at 58-59. She stated that many people in the community opposes the MPNA Voluntary Agreement. *Tr.*, 12/7/10 at 59-60. She stated that the MPNA does not operate transparently. *Tr.*, 12/7/10 at 66-67.

25. Ms. Zara testified that Don Jaime is her favorite place in Mount Pleasant. *Tr.*, 12/7/10 at 64. She stated that allowing pitchers and dancing would stimulate businesses in Mount Pleasant. *Tr.*, 12/7/10 at 65. She stated that approving the Petition would lead to more foot traffic in the evening and reduce crime. *Tr.*, 12/7/10 at 68-69. She stated that Mount Pleasant is desolate after 10:00 p.m. and having more people on the streets late at night would make the neighborhood safer. *Tr.*, 12/7/10 at 69, 83.

26. Ms. Zara stated that Don Jaime has never caused any problems in the neighborhood. *Tr.*, 12/7/10 at 71. She stated that terminating the MPNA Voluntary Agreement would have no negative impact on the neighborhood. *Tr.*, 12/7/10 at 72. She stated that she supports lifting the Hear Mount Pleasant Voluntary Agreement as well. *Tr.*, 12/7/10 at 90-91.

27. The MPNA called Sam Broeksmit to testify. *Tr.*, 12/7/10 at 96. Mr. Broeksmit stated that if the MPNA Voluntary Agreement is terminated that would only leave the Hear Mount Pleasant Voluntary Agreement in effect. *Tr.*, 12/7/10 at 99. He noted that many of the Hear Mount Pleasant Voluntary Agreement provisions did not match the provisions contained in the MPNA Voluntary Agreement. *Tr.*, 12/7/10 at 99.

28. The MPNA submitted a report written in 2009 by Daniel Consultants, Inc., for the District Department of Transportation (DDOT), titled: "Mt. Pleasant Transportation Study." *Tr.*, 11/17/10 at 163. The report projected that the delays at the intersection of 16th Street, N.W., and Irving Street, N.W., and the intersection of 16th Street, N.W., and Lamont Street, N.W., will degrade to between 55 seconds and 80 seconds per vehicle over the next 10 years during the morning peak traffic period and over the next 20 years during the afternoon peak traffic period. *Mt. Pleasant Transportation Study, I-53*. Mr. Broeksmit testified that "increasing the hours of entertainment or anything else . . . would make Mount Pleasant . . . a destination zone [and] exacerbate the parking problems." *Tr.*, 12/7/10 at 108. Mr. Broeksmit noted that parking occupancy in Mount Pleasant is always between 78 and 94 percent. *Tr.*, 12/7/10 at 107.

29. The MPNA submitted a report written in 2008 by The Urban Institute for the District of Columbia Office of Planning, titled: "State of Washington, D.C.'s Neighborhoods." *Tr.*, 11/17/10 at 171. The report notes that Columbia Heights, Mount Pleasant, Pleasant Plains, Park View, located in Cluster 2 in Ward 1, have the third highest concentration of public school and public charter school students in the District of

Columbia. *State of Washington, D.C.'s Neighborhoods*, pg. 48. The report also noted that 11.5 percent of Cluster 2's married couples had children and that 21.8 percent of the population in Cluster 2 was comprised of children in 2000. *State of Washington, D.C.'s Neighborhoods*, A-39, A-42. The report also stated that 49.8 percent of the households in Cluster 2 are nonfamily households. *State of Washington, D.C.'s Neighborhoods*, A-41. The report noted that the birthrate in Washington, D.C., in 2005, was 13.9 percent but the birthrate in Cluster 2 was 17.6 percent, approximately 26 percent higher than the city's average birthrate. *State of Washington, D.C.'s Neighborhoods*, A-78. Mr. Broeksmit noted that Cluster 2 "has the third largest number of young [children] in school in the city." *Tr.*, 12/7/10 at 117-18.

30. The MPNA submitted the "Mount Pleasant Street Commercial Revitalization Strategy." Mr. Broeksmit noted that the document shows that Mount Pleasant cannot support "destination oriented traffic." *Tr.*, 12/7/10 at 125. The report states that it would be desirous to "create and implement a new pilot program to replace existing voluntary agreements and create a new process for managing alcohol licensure in the neighborhood." *Mount Pleasant Street Commercial Revitalization Strategy*, 8.

31. The MPNA submitted a report written by PES/Retail Compass on behalf of the District of Columbia Office of Planning, titled: "Mt. Pleasant Market Analysis." *Tr.*, 11/17/10 at 174-75. The report stated that "Mt. Pleasant Street does not have the dimensions or the capacity to support destination-oriented traffic." *Mt. Pleasant Market Analysis*, pg. 20. The report further noted that the neighborhood has parking concerns and there is limited space for new parking construction. *Mt. Pleasant Market Analysis*, pg 20. The report concluded that "resources [in Mt. Pleasant] will be better allocated to enhancing and improving the neighborhood-serving elements of this retail district." *Mt. Pleasant Market Analysis*, pg 20.

32. Mr. Broeksmit argued that Mount Pleasant is a highly residential neighborhood. *Tr.*, 12/7/10 at 126. He noted that the area has one of the highest concentrations of children and students in the District of Columbia. *Tr.*, 12/7/10 at 126. Further, the commercial strip where the Petitioner is located is surrounded by residences and is very narrow. *Tr.*, 12/7/10 at 126, 153. Finally, Mr. Broeksmit noted that the area suffers from severe traffic problems and parking spaces are heavily utilized in the neighborhood *Tr.*, 12/7/10 at 126-27.

33. Mr. Broeksmit stated that the MPNA supports allowing the Petitioner to have the live entertainment hours indicated in the Hear Mount Pleasant Voluntary Agreement. *Tr.*, 12/7/10 at 128.

34. Mr. Broeksmit stated that Item A of the MPNA Voluntary Agreement, which asks the Petitioner to comply with the laws of the District of Columbia, does not add any restrictions and merely repeats the ABC laws. *Tr.*, 12/7/10 at 148.

35. Mr. Broeksmit admitted that Item C of the MPNA Voluntary Agreement, which requires the Petitioner to cooperate with appropriate enforcement agencies, merely repeats the current law in the District of Columbia. *Tr.*, 12/7/10 at 160. Item C also requires the Petitioner to cooperate with the ANC and the MPNA to address alleged violations of the law. *Tr.*, 12/7/10 at 160. Mr. Broeksmit stated that requiring cooperation with the ANC

and the MPNA “provides an alternative means of [maintaining peace, order, and quiet] without [requiring] Board or ABRA action.” *Tr.*, 12/7/10 at 160-61.

36. Item D of the MPNA Voluntary Agreement requires the Petitioner to not serve alcoholic beverages after its licensed hours, limits patrons to one drink at a time fifteen minutes prior to closing, and requires the licensee to keep its kitchen open no less than one hour before closing. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item D.* The parties agreed to review this provision one year after the Voluntary Agreement was approved by the Board. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item D.* The Board notes that the only provision that does not merely repeat the law in Item D is the provision requiring the Petitioner to close its kitchen at least one hour before closing. *See Tr.*, 12/7/10 at 161; D.C. Code § 25-741 (2001). Mr. Broeksmit stated that Item D, “is a vital part of [the Petitioner] remaining primarily a restaurant and not a bar or a club.” *Tr.*, 12/7/10 at 162.

37. Mr. Broeksmit admitted that Item E of the MPNA Voluntary Agreement, which requires the Petitioner to participate in programs regarding alcohol abuse, is unnecessary. *Tr.*, 12/7/10 at 163.

38. Mr. Broeksmit admitted that Item F of the MPNA Voluntary Agreement, which requires the Petitioner to be the true and actual owner of the establishment, merely repeats the current ABC law. *Tr.*, 12/7/10 at 164; 28 DCMR § 501.1(a) (2008).

39. Item G of the MPNA Voluntary Agreement states that the Petitioner will:

support the Mount Pleasant business community in an effort to enlist wider business support for clean-up, responsible alcohol service, support of alcohol abuse assistance organizations, and law enforcement activities, including leading efforts to hire private trash services to keep Mount Pleasant Street clean on a daily basis. This role includes, but is not limited to, active participation by principles of licensee in Police Service Areas (“PSA”) meetings, and consultation with MPNA and the ANC when reasonably requested by such organizations. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item G.*

Mr. Broeksmit supported terminating Item G of the MPNA Voluntary Agreement because it is vague and lacks clear enforcement guidelines. *Tr.*, 12/7/10 at 164-65.

40. Item I of the MPNA Voluntary Agreement requires the Petitioner to keep the front of the establishment clean, sweep the front of the establishment every day, and steam wash the front of the building at least once every two months. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item I.* Mr. Broeksmit stated that the MPNA would support adopting the Hear Mount Pleasant Voluntary Agreement’s provisions instead of the MPNA Voluntary Agreement’s version. *Tr.*, 12/7/10 at 166. The Hear Mount Pleasant Voluntary Agreement states: “Licensee will keep the sidewalk in front of the establishment free of debris, trash and litter and shall provide appropriate receptacles for the deposit of cigarette butts.” *ABRA Protest File No. 10-PRO-00115, Hear Mount Pleasant Voluntary Agreement, Item 18.*

41. Item J of the MPNA Voluntary Agreement states:

Licensee agrees to maintain trash, garbage and recycle material storage facilities in which all containers have lids which are kept securely closed at all times, which containers shall be sufficient to contain all trash, garbage and recycle materials generated by the establishment, and to assure that trash, garbage, and recycle materials are removed at least daily, and only during the hours between 9:00 AM and 9:00 PM. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item J.*

In turn, the Hear Mount Pleasant Voluntary Agreement states:

Licensee will keep the alley behind the establishment free of debris, trash and litter. Licensee will store garbage and recyclable materials in containers with secure lids. Licensee will arrange to have garbage and recyclables picked up at least two times per week during the hours between 9:00 a.m. and 8:00 p.m. *ABRA Protest File No. 10-PRO-00115, Hear Mount Pleasant Voluntary Agreement, Item 19.*

Mr. Broeksmit testified that the MPNA Voluntary Agreement “make[s] it very clear what the trash handling requirements are so that there is not [an] adverse impact in the way trash is handled.” *Tr.*, 12/7/10 at 167. Mr. Broeksmit further stated that if the Petitioner picked up trash at 8:00 a.m. on a Saturday it would disturb neighbors trying to sleep. *Tr.*, 12/7/10 at 167. Mr. Broeksmit stated that the MPNA agreed with the Hear Mount Pleasant Voluntary Agreement’s language. *Tr.*, 12/7/10 at 167. He further noted that Item K, which dealt with recycling, was inserted because throwing out glass can create noise. *Tr.*, 12/7/10 at 168.

42. Item L of the MPNA Voluntary Agreement states that: “. . . Licensee will make [a] best effort to prohibit loitering in front of the establishment during operating hours.” *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item L.*

43. Item M of the MPNA Voluntary Agreement states that the establishment will post signs instructing patrons to respect the community but does not state what the signs should say. *Tr.*, 12/7/10 at 168. Alternatively, the Hear Mount Pleasant Voluntary Agreement states:

Licensee shall post signs in English and in Spanish, in not less than 1 inch type, in the public restrooms and in a position prominently visible to patrons exiting, with the following text: “Please be considerate of our neighbors. Keep noise to a minimum when you leave. And please help keep our neighborhood clean and safe.” *ABRA Protest File No. 10-PRO-00115, Hear Mount Pleasant Voluntary Agreement, Item 14.*

Mr. Broeksmit stated that Item M in the MPNA Voluntary Agreement “could be written similar to the one like [the] Hear Mount Pleasant [Voluntary Agreement]. . . .” *Tr.*, 12/7/10 at 169.

44. Item N of the MPNA Voluntary Agreement requires the Petitioner to “work cooperatively with MPNA[] to improve the overall environment on Mount Pleasant Street. . . .” *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item N.* Mr.

Broeksmit stated that the Board could enforce this provision by examining whether the licensee had “meetings to try and resolve issues” or had “engage[d] with the community.” *Tr.*, 12/7/10 at 169. Mr. Broeksmit admitted that the provision was “hard to define.” *Tr.*, 12/7/10 at 169.

45. Item O of the MPNA Voluntary Agreement forbids the Petitioner from serving intoxicated persons. *Tr.*, 12/7/10 at 170. However, the Board notes that this prohibition is already contained in D.C. Code § 25-781 (2001) (sale to the intoxicated).

46. Item P of the MPNA Voluntary Agreement forbids sales to minors and requires the posting of signs relating to the sale of minors. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item O.* The Board notes that this provision is already mandated by law in D.C. Code §§ 25-781 (sale minors) and 25-731 (posting of signs).

47. Item Q of the MPNA Voluntary Agreement states:

That Licensee will not, sell or deliver alcoholic beverages to anyone accompanying a person who has been denied service if there is an apparent attempt to deliver the alcoholic beverage to the person who has been denied service. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item Q.*

Alternatively, Item 16 of the Hear Mount Pleasant Agreement states:

Licensee will not sell or deliver alcoholic beverages to anyone who is intoxicated and shall not sell or deliver alcoholic beverages to anyone accompanying a person who has been denied service if there is an apparent attempt to deliver alcoholic beverages to the person who has been denied service. *ABRA Protest File No. 10-PRO-00115, Hear Mount Pleasant Voluntary Agreement, Item 16.*

48. Item R of the MPNA Voluntary Agreement forbids the Petitioner from selling go-cups. *Tr.*, 12/7/10 at 172. The Board notes that this provision does not apply to the Petitioner because it is a restaurant and permitted to sell open containers of alcoholic beverages.

49. Item S of the MPNA Voluntary Agreement states:

That Licensee will participate in and have all alcoholic beverage serving staff participate in alcoholic beverage server training of the type offered by Training for Intervention Procedures (TIPS), and that the Licensee will assure that the ABC approved manager on duty in the establishment is wearing identification as an ABC approved manager. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item S.*

Alternatively, Item 17 of the Hear Mount Pleasant Voluntary Agreement states:

Licensee will assure that any persons serving in capacity as “night manager” and all alcoholic beverage serving staff receive appropriate training regarding the terms of this Agreement and in the sale, service and handling of alcoholic beverages as

required by law and regulation. *ABRA Protest File No. 10-PRO-00115, Hear Mount Pleasant Voluntary Agreement, Item 17.*

50. Item T of the MPNA Voluntary Agreement prohibits pitchers and alcoholic beverage promotions. *ABRA Protest File No. 10-PRO-00115, MPNA Voluntary Agreement, Item T.* Mr. Broeksmit agreed that the provision should be modified. *Tr.*, 12/7/10 at 128, 173.

51. Item U of the MPNA Voluntary Agreement prohibits the Applicant from obscuring its windows or hanging banners outside its premises. *ABRA Protest File No. 10-PRO-00115, Mount Pleasant Voluntary Agreement, Item U.* Mr. Broeksmit stated that the MPNA wants to “see what’s happening inside” the establishment. *Tr.*, 11/17/10 at 174.

52. Item V of the MPNA Voluntary Agreement prohibits the Petitioner from selling alcohol before or after the legal hours of sale and service of alcoholic beverages. *Tr.*, 12/7/10 at 175. Mr. Broeksmit noted that this restriction is already contained in the ABC laws. *Tr.*, 11/17/10 at 175; *see* D.C. Code § 25-723 (2001).

53. Mr. Broeksmit stated that the Petitioner is a “good operation.” *Tr.*, 12/7/10 at 177. Mr. Broeksmit stated that the MPNA Voluntary Agreement is the reason that the Petitioner is a “good operation.” *Tr.*, 12/7/10 at 177.

54. The Board takes administrative notice that Item B and Item H of the MPNA Voluntary Agreement were previously struck by the Board.

CONCLUSIONS OF LAW

55. Pursuant to D.C. Official Code §§ 25-313(a) (2001), 23 DCMR § 400.1(a) (2008), and 25-446(d)(4)(C) (Supp. 2010), a Petitioner must demonstrate to the Board’s satisfaction that the establishment for which a Petition to Terminate a Voluntary Agreement and request to extend an establishment’s entertainment hours has been filed are appropriate for the neighborhood in which it is located. The Protestant challenged the Petition under §§ 25-602(a) and 25-446, arguing that the Petition would adversely impact the peace, order, and quiet and residential parking and pedestrian safety of the neighborhood. The Board concludes that the Petitioner has demonstrated that both of its requests are appropriate and approves the Petition.

56. The Board recognizes that pursuant to D.C. Official Code § 1-309.10(d) (Supp. 2010) and D.C. Official Code § 25-609 (2001), an ANC’s 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). Accordingly, the Board “must elaborate, with precision, its response to the ANC issues and concerns.” *Foggy Bottom Ass’n*, 445 A.2d at 646. In order to comply with the great weight requirements, the Board must address ANC 1D’s resolution passed on June 15, 2010, which argues that the Board should terminate the MPNA Voluntary Agreement because: ANC 1D wants to enter into voluntary agreements that encourage conflict resolution and “responsible hospitality” principles; the MPNA Voluntary Agreement is obsolete based on demographic and income changes to the neighborhood; and the MPNA Voluntary Agreement merely repeats restrictions already contained in the ABC laws. *See ABRA Protest File 10-PRO-00113.*

The Board agrees with ANC 1D and for the reasons stated below, grants the Petition in its entirety.

57. The Petitioner also submitted a number of other resolutions, contained in Petitioner's Exhibit A-8. These resolutions were not submitted within seven days of the hearing as part of the ANC's recommendation, as required under § 25-609. Therefore, the Board will not accord them "great weight." § 25-609.

58. The procedures to terminate a voluntary agreement are described in D.C. Code § 25-446 (2001). In order to terminate a voluntary agreement, a party's "application to amend or terminate a voluntary agreement by fewer than all the parties" must occur during the licensee's "renewal period" and be at least "4 years from the date of the Board's decision initially approving the voluntary agreement." § 25-446(d)(2)(A)-(B). Further, notice of "an application to amend or terminate a voluntary agreement shall be given" in accordance with the notice provisions of §§ 25-421 through 25-423." § 25-446(d)(3). A party seeking to amend a voluntary agreement must make "a diligent effort to locate all other parties to the voluntary agreement" or, if located and the party is the Petitioner, the party must negotiate an amendment in "good faith." § 25-446(d)(4)(A)(i). A party seeking an amendment must also show that the amendment is needed because there exist "circumstances beyond the control of the Petitioner or is due to a change in the neighborhood where the Petitioner's establishment is located." § 25-446(d)(4)(B). Finally, "[t]he Board may approve a request by fewer than all parties to amend or terminate a voluntary agreement for good cause shown" if the party seeking "termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable." § 25-446(d)(4)(C).

59. The Protestant has asserted that the Board must apply §§ 25-446(4)(A)(i)-(ii) and 25-446(4)(B) even though the Petitioner has not applied to amend the MPNA Voluntary Agreement. The Board disagrees with the Protestants' interpretation because § 25-446 distinguishes between a party that seeks to amend a voluntary agreement versus a party that seeks to terminate a voluntary agreement. Indeed, this point is emphasized by the fact that neither §§ 25-446(d)(4)(A)(i)-(ii) or 25-446(d)(4)(B) mention the word "terminate" or "termination" while § 25-446(4)(C) does. Consequently, the Board finds that the Petitioner does not have to satisfy § 25-446(4)(A)(i)-(ii) or § 25-446(4)(B) in order to terminate the MPNA Voluntary Agreement. Arguments regarding whether the parties engaged in good faith negotiations or changing circumstances in the neighborhood are irrelevant to this proceeding.

60. As indicated in the Findings of Fact above, the Petitioner properly applied for the termination of the MPNA Voluntary Agreement after four years from the date the Voluntary Agreement was originally approved by the Board and during its renewal period. The Board also notes that the notice requirements were properly satisfied. As such, the Board finds that the Petitioner has satisfied §§ 25-446(d)(2)(A)-(B) and 25-446(d)(3).

61. The Board further finds that terminating the MPNA Voluntary Agreement will not have an adverse impact on Mount Pleasant.

62. As indicated during the hearing, Item A, Item C, Item D, Item F, Item O, Item P, and Item V merely repeat the law. The Board finds that provisions that merely repeat the

law provide no benefit to the community because ABRA already enforces these restrictions. As such, there is no reason to maintain these provisions as part of the Petitioner's ABC license.

63. In addition, during the hearing, the MPNA admitted that a number of provisions are unnecessary or could be modified. Mr. Broeksmit stated that Item E and Item G were unnecessary and the Board sees no reason to continue enforcing them. Mr. Broeksmit also suggested that the Board modify Item T, which prohibits drink specials and pitchers. However, the Board feels there is no evidence that such activity by the Petitioner threatens the peace, order, and quiet, or the parking or traffic situation in Mount Pleasant. Indeed, other establishments do not face such restrictions and there is no indication that they are having an adverse impact on the neighborhood.

64. The Board also notes that many of the provisions in the MPNA Agreement are already adequately covered by the Hear Mount Pleasant Agreement. First, Item I of the MPNA Voluntary and Item 18 of the Hear Mount Pleasant Voluntary Agreement both require the Petitioner to keep the front of its premises, including the public space. The Board finds that removing the additional requirement to steam wash the front of the Petitioner's premises in the MPNA Voluntary Agreement insignificantly impacts peace, order, and quiet in Mount Pleasant. Second, Item J in the MPNA Voluntary Agreement and Item 19 in the Hear Mount Pleasant Voluntary Agreement do not differ in any significant fashion. Third, Item 14 in the Hear Mount Pleasant Voluntary Agreement is much more specific and easier to enforce than Item M in the MPNA Voluntary Agreement, which does not indicate where or what type of sign the Petitioner should post in his establishment. Fourth, Item Q in the MPNA Voluntary Agreement does not differ in any significant manner from Item 16 in the Hear Mount Pleasant Voluntary Agreement. Fifth, Item S in the MPNA Voluntary Agreement and Item 17 in the Hear Mount Pleasant Voluntary Agreement do not differ significantly. Contrary to Mr. Broeksmit's testimony, Item S does not require the Petitioner to provide TIPS training. Instead, it merely requires the Applicant to provide "training of the type offered by [TIPS]," which is not substantially different than the requirement in the Hear Mount Pleasant Voluntary Agreement. Furthermore, the Board finds that requiring the establishment's ABC to wear his or her identification has no value. As such, there is no reason to maintain the MPNA Voluntary Agreement when the Hear Mount Pleasant Agreement includes the same or similar restrictions.

65. The Board further notes that Item R, which discusses go-cups, is not applicable to the Petitioner.

66. Finally, the Board finds that the remaining provisions of the MPNA Voluntary Agreement, which include Item C, Item D, Item L, Item N, Item U, and Item W are simply too vague or make little difference to the peace, order, and quiet or the parking situation in Mount Pleasant to be of value.

67. Part of Item C requires the Petitioner to "cooperate" with the ANC and the MPNA to address any violations of the law. The local ANC and the MPNA have no power to address legal violations. If the Petitioner is in violation of the ABC laws it is subject to the Board's remedial powers; ANC's and the MPNA do not have the power to cure violations of the law. Furthermore, determining whether the Petitioner is cooperating is ultimately a

subjective exercise and does not provide any enforcement guidelines for the Board. As a result, Item C provides no benefit to Mount Pleasant and as such, there is no reason to let the provision remain in effect.

68. Part of Item D requires the Petitioner to keep its kitchen open at least one hour before closing, instead of at least two hours, as required by the ABC laws. Mr. Broeksmit claimed that this provision would prevent the restaurant from morphing into a nightclub or bar. Nevertheless, in the Board's experience, keeping a restaurant's kitchen open for solely an additional hour has no effect whatsoever on whether a restaurant engages in nightclub activities or morphs into a bar. As such, removing this restriction will have no impact on peace, order, and quiet or parking and traffic issues in Mount Pleasant.

69. Item L of the MPNA Voluntary Agreement requires the Petitioner to use its "best effort[s]" to prevent loitering in front of its establishment. Considering that the Petitioner lacks police powers, the term "best effort[s]" makes the provision hortatory. As such, this provision provides no benefit to Mount Pleasant.

71. Item N of the MPNA Voluntary Agreement requires the Petitioner to "work cooperatively with [the] MPNA to improve the overall environment [in Mount Pleasant]." The term "work cooperatively" is so vague that the Board can only presume that it is hortatory and has no binding impact on the Petitioner. Furthermore, the provision raises troubling First Amendment concerns. As such, Mount Pleasant will suffer no adverse impacts from terminating this provision.

72. Item U of the MPNA Voluntary Agreement orders the Petitioner not to obscure their windows with advertising and forbids the Petitioner from utilizing banners. Mr. Broeksmit stated the MPNA wanted the windows free of advertising so it could see what is happening in the Petitioner's establishment. Nevertheless, the ABC laws already prevent the Petitioner from utilizing more than 25 percent of its window space for signage. D.C. Code § 25-765 (2001). As a result, Item U provides no benefit to Mount Pleasant because the Petitioner's windows are already required to remain uncovered.

73. Lastly, Item W requires the Petitioner to make an annual verbal report to the MPNA regarding its compliance with the Voluntary Agreement. As stated above, the MPNA has no enforcement powers regarding the District of Columbia's ABC laws. Furthermore, such provisions raise troubling First and Fifth Amendment concerns. As such, the Board finds that Mount Pleasant will suffer no adverse impact from terminating Item W.

74. The Protest Hearing emphasized to the Board that the additional protection afforded to the community by the MPNA Voluntary Agreement is highly dubious. During the Protest Hearing, the MPNA proffered that portions of the MPNA Voluntary Agreement could be eliminated and that other portions should be clarified or modified. Taking into account this lukewarm defense of the MPNA Voluntary Agreement, coupled with the fact that the majority of the provisions are vague and merely repeat the law, the Board is hard pressed to justify keeping it in place when the MPNA Voluntary Agreement will only be replaced by the Hear Mount Pleasant Voluntary Agreement and the Petitioner has the support of ANC 1D.

75. Indeed, the only major difference between the MPNA Voluntary Agreement and the Hear Mount Pleasant Voluntary Agreement is that the Hear Mount Pleasant Voluntary Agreement allows the Petitioner to apply for greater entertainment hours and make use of drink specials and happy hours. Based on the testimony and documentary evidence provided by the MPNA, the Board recognizes that Mount Pleasant is a highly residential neighborhood. Nevertheless, the Board has a clear precedent of allowing ABC establishments to operate near residential zones. *See, e.g., Board Order No. 2010-548 amended by Board Order 2010-603; Board Order No. 2010-595.* Certainly, the Board is concerned about the impact of the establishment on its residential neighbors. But, here, where residents are protected by the noise provisions of D.C. Code § 25-725, residents have little to fear from entertainment at the Petitioner's establishment. If noise from the Petitioner's establishment is heard in nearby residences, this would result in a violation and lead to remedial action by the Board. *See* D.C. Code § 25-725 (2001).

76. Finally, the Board is not convinced that granting the Petition will adversely impact residential parking and pedestrian safety in Mount Pleasant. Although Mount Pleasant has issues with residential parking, there is no evidence that termination of the MPNA Voluntary Agreement will contribute to this problem. The Petitioner is already open for business and the current hours of operation and the hours in which it sells, serves, or permits the consumption of alcoholic beverages on its premises will not be changed. The Board also has to consider that the Petitioner only has an occupancy of approximately 50 people. As a result, there is no reason to believe that terminating the MPNA Voluntary Agreement will further exacerbate residential parking and traffic safety issues in Mount Pleasant.

77. Based on the above, the Board is convinced that terminating the MPNA Voluntary Agreement will have no impact on peace, order, and quiet or residential parking and pedestrian safety in the neighborhood.

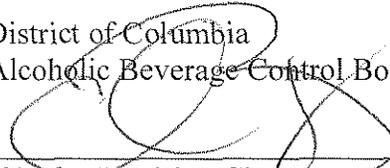
78. For the same reasons that the Board terminated the MPNA Voluntary Agreement, the Board also grants the Petitioner's request to extend its entertainment hours to correspond with its hours of sale and service of alcoholic beverages. The Board finds that granting the Petition will not have an adverse impact on peace, order, and quiet or residential parking and pedestrian safety in the neighborhood. First, even though Mount Pleasant is a highly residential area, as stated above, D.C. Code § 25-725, which prohibits licensees from generating noise that can be heard inside residentially zoned buildings, provides sufficient protection. § 25-725. Second, the community can still rely on the Hear Mount Pleasant Voluntary Agreement, which is still in effect even though the MPNA Voluntary Agreement will no longer be in force. Third, other ABC establishments in Mount Pleasant offer entertainment late into the night and have not had an adverse effect on the community; making it unlikely that the Petitioner, if it follows the ABC laws, will have a negative impact on the community. Finally, it is hard to imagine the Petitioner having an impact on residential parking and traffic safety in the neighborhood when the Petitioner has already been open for business for many years and is maintaining its current hours of operation and the hours in which it sells, serves, or permits the consumption of alcoholic beverages on its premises. Thus, increasing the Petitioner's hours of entertainment is not a significant change. Therefore, pursuant to §§ 25-313(a), 25-446(d)(4)(C), and 23 DCMR § 400.1(a), the Board grants the Petition.

ORDER

Therefore, it is hereby **ORDERED** on this 23rd day of February 2011, that the Petition to Terminate a Voluntary Agreement filed by Jaime T. Carrillo, t/a Don Jaime (Petitioner), at premises 3209 Mount Pleasant Street, N.W., Washington, D.C., is hereby **GRANTED**.

- (1) The Petitioner's hours of entertainment will now be from 8:00 a.m. to 2:00 a.m., Monday through Thursday, and 8:00 a.m. to 2:30 a.m., Friday and Saturday; and 10:00 a.m. to 2:00 a.m. on Sunday.
- (2) Copies of this Order shall be sent to the Petitioner and the Mount Pleasant Neighborhood Alliance.

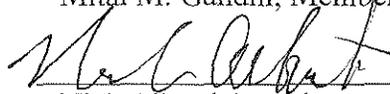
District of Columbia
Alcoholic Beverage Control Board



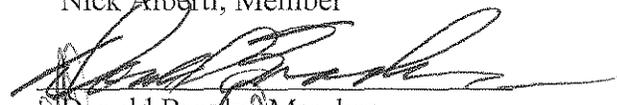
Charles Brodsky, Chairperson



Mital M. Gandhi, Member



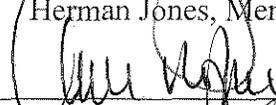
Nick Alberti, Member



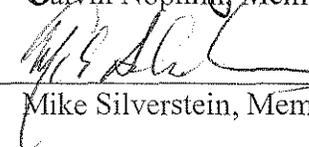
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (2008), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 1250 U Street, N.W., 3rd Floor, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code § 2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. *See* D.C. App. Rule 15(b) (2004).