

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

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In the Matter of:)	
)	
McFadden & Sullivan, LLC)	
t/a Kitty O'Shea's DC)	
)	
Application for Substantial Change)	
(Extend the Sidewalk Café Hours of Operation)	License No. ABRA-083505
and Sales and Entertainment Endorsement))	Order No. 2012-372
to a Retailer's Class CR License)	
)	
at premises)	
4624 Wisconsin Avenue, N.W.)	
Washington, D.C. 20016)	
)	
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McFadden & Sullivan, LLC, t/a Kitty O'Shea's DC (Applicant)

Matthew Frumin, Chairperson, Advisory Neighborhood Commission (ANC) 3E

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER ON VOLUNTARY AGREEMENT

The official records of the Alcoholic Beverage Control Board (Board) reflect that McFadden & Sullivan, LLC, t/a Kitty O'Shea's DC, which filed an Application for a Substantial Change to extend its sidewalk café hours of operation and sales and include Entertainment Endorsement with dancing and cover charge to its Retailer's Class CR License, and ANC 3E have entered into a Voluntary Agreement (Agreement), signed on August 15, 2012, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson Matthew Frumin, on behalf of ANC 3E, are signatories to the Agreement.

Accordingly, it is this 3rd day of October, 2012, **ORDERED** that:

1. The above-referenced Voluntary Agreements submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modification:

Section 2 (Limited Hours and Other Restrictions on Live Music) – The following sentence shall be modified to read as follows: “McFadden has asked ABRA for permission to permit acoustic or non-amplified band to play live music at O’Shea’s (“Music”).”

The parties have agreed to this modification.

2. Copies of this Order shall be sent to the Applicant and ANC 3E.

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t/a Kitty O'Shea's DC
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District of Columbia
Alcoholic Beverage Control Board

Ruthanne Miller, Chairperson



Nick Alberti, Member

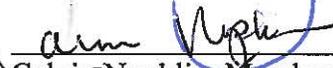


Donald Brooks, Member



Herman Jones, Member

Herman Jones, Member



Calvin Nophlin, Member



Mike Silverstein, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any Party adversely affected by this Order may file a Motion for Reconsideration within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, D.C. 20009.

VOLUNTARY AGREEMENT

This Voluntary Agreement (the "Agreement") is made and entered into as of the ^{August} 15th day of ~~March~~, 2012, by McFadden & Sullivan, LLC, the applicant in ABRA-083505 ("McFadden"), and Advisory Neighborhood Commission 3E ("ANC") (McFadden and ANC 3E each being a "Party" hereunder or collectively, the "Parties".)

WITNESSETH:

WHEREAS, McFadden has sought permission from the District of Columbia Alcoholic Beverage Administration (ABRA) to extend the hours it may serve liquor at its outside café and to permit live music at a restaurant / bar called "Kitty O'Shea's" ("O'Shea's") it operates at 4624 Wisconsin Avenue, N.W., which is located within the boundaries of ANC 3E; and

WHEREAS, ANC 3E agrees to support McFadden's application in ABRA-083505 ("Application"), in reliance in part on McFadden's agreement to certain restrictions contained herein that will reduce potential burden on nearby residents;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, the Parties agree as follows:

1. **Limited Hours for Outdoor Café.** McFadden hereby agrees that, notwithstanding any other permission from ABRA or any other agency, it will end operation of all café seating and other operations by 1:00 am on weeknights and 2:00 am on weekends. McFadden further agrees that no music, television, or other entertainment will be played in or around the café seating, or in any other spot except inside O'Shea's.

2. **Limited Hours and Other Restrictions on Live Music.** McFadden has asked ABRA for permission to permit a 2 or 3-piece acoustic band to play live music at O'Shea's ("Music"). McFadden hereby agrees that, notwithstanding any other permission from ABRA or any other agency, (a) it will not permit Music to be amplified through a public address system or otherwise at any time, (b) it will ensure that no Music can be heard at any residence in the neighborhood, and (c) it will end all Music by 12:30 am on weeknights, and by 1:00 am on weekend evenings.

3. **Attendance at ANC Meetings; Modification.** Should the ANC receive complaints from constituents related to O'Shea's operations, one or more ANC members may ask McFadden to attend an ANC meeting. Should McFadden receive such a request, it will make every reasonable effort to ensure that an officer or senior staff member attends the meeting (or, if impracticable, the next practicable meeting) and works in good faith with the ANC and the community reasonably to address such complaints.

McFadden may ask the ANC at any time to modify this Agreement. Such a request shall be made in writing. The ANC may ask McFadden to appear at a meeting to present the request to the community. If the ANC agrees to modify the Agreement, such modification may come only pursuant to a formal ANC resolution and a writing signed by the parties.

4. **Miscellaneous Provisions.**

ABRA Adoption: The Parties agree to ask ABRA to incorporate this Agreement to fullest extent possible into any order it may issue regarding the subject application.

Waiver: The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right subsequently to enforce and compel strict compliance with every provision of this Agreement.

Binding on Survivors: All covenants, stipulations, promises, agreements, and provisions in this Agreement shall apply to, bind and be obligatory on the Parties hereto, their heirs, executors, administrators, personal representatives, and successors.

Severability: If any provisions of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable.

Assignment and Subcontracts: Neither Party may assign any rights or delegate any duties under this Agreement without the express prior written consent of the other Party.

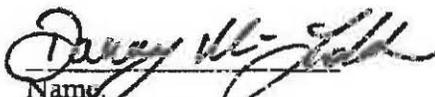
Headings and Paragraphs: Headings in this Agreement are for convenience only and shall not affect the meaning of this Agreement. References in this Agreement to any Section or paragraph are to the applicable numbered section of this Agreement unless otherwise noted.

Counterparts: This Agreement may be executed simultaneously in one or more counterparts, by original or facsimile signature, and when executed by all Parties shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the undersigned parties have executed this Agreement as of the date and year first written above.

MCFADDEN LLC

By:


Name: _____
Title: OWNER

Advisory Neighborhood Commission 3E

By:


Name: _____
Title: Chair, Secretary
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