

T-A-B-L-E O-F C-O-N-T-E-N-T-S

INTRODUCTORY REMARKS

Ruthanne Miller3

PUBLIC TESTIMONY

Andrew Kline6

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

4:36 p.m.

CHAIRPERSON MILLER: Okay. We're back on the record for our last rulemaking hearing for the day, and that's the Technical Amendment Rulemaking with respect to multiple sections of the DCMR.

We're here today pursuant to D.C. Official Code 25-211(b) to conduct a public hearing and take comment on a proposed rulemaking that makes several technical amendments to Title 23 of the District of Columbia Municipal Regulations to conform changes contained in the Omnibus Alcoholic Beverage Regulation Emergency Amendment Act of 2012 to the DCMR. Additionally this rulemaking makes other administrative changes not related to the Act.

Okay. I'll begin this hearing by calling on those witnesses who notified the Agency in advance regarding their desire to address the Board, and each witness will be

1 granted five minutes to speak. The Board will
2 also entertain comments from other interested
3 parties who wish to be heard. If there's any
4 time left at the end of the hearing, the Board
5 may consider granting additional time to
6 individuals.

7 If you have prepared written
8 remarks, would you please hand them to Ms.
9 Jenkins and she'll make sure that they're
10 properly filed. And after this hearing is
11 convened today the record will remain open
12 until March 22nd, 2013 at 4:00 p.m.

13 Okay. Those of you who would like
14 to testify, please come forward, take a seat
15 at the table.

16 All right. We have Andrew Kline
17 and Mr. James. You are in a hurry? You'd
18 like to go first? Is that my understanding?

19 MR. JAMES: Well, if you wouldn't
20 mind. And I just have one item that I would
21 like to talk about.

22 CHAIRPERSON MILLER: Good. Okay.

1 MR. JAMES: Actually I'm not sure
2 that I'm at the right hearing, but I think
3 this is the last one.

4 CHAIRPERSON MILLER: Yes, it is.
5 Technical Amendment Rulemaking.

6 MR. JAMES: Is the brew pub party
7 included in that?

8 CHAIRPERSON MILLER: We already
9 did that one.

10 MR. JAMES: But the timing on the
11 posted notice says otherwise.

12 CHAIRPERSON MILLER: Brew pub was
13 supposed to be 3:30, on my notice.

14 MR. JAMES: I was here through the
15 period of 3:30.

16 MEMBER JONES: Were you in the
17 room when she called for brew pub? Were you
18 in the room when she called for --

19 MR. JAMES: I stepped outside just
20 for a second, but I was between here and
21 the --

22 CHAIRPERSON MILLER: Okay. Do you

1 just have a --

2 MR. JAMES: I just have the
3 slightest comment.

4 CHAIRPERSON MILLER: Okay. Let me
5 just reopen the record in that case since
6 that's the one that we just left, so it would
7 continue.

8 MR. JAMES: Thank you so much.
9 (Whereupon, at 4:39 p.m. off the
10 record until p.m.)

11 CHAIRPERSON MILLER: Okay. So
12 we'll re-close that hearing on the Brew Pub
13 and Wine Pub Hours Rulemaking and come back to
14 the hearing on the Technical Amendment
15 Rulemaking.

16 So we have one witness, Mr. Kline.

17 MR. KLINE: Yes, good afternoon.
18 Andrew Kline here on behalf of Restaurant
19 Association of Metropolitan Washington. For
20 the record, you've heard me live say several
21 times today, but since this is a separate
22 record I'll say it again, the Restaurant

1 Association has over 700 members and its the
2 principal representative of the hospitality
3 industry in the District of Columbia. We just
4 have a few very short points on this proposed
5 rulemaking.

6 First of all, in connection with
7 the proposed amendment to 23 DCMR Section 717,
8 which is on page 3 of the proposed rulemaking,
9 we're respectfully requesting that while we
10 are looking at this section that an additional
11 provision be amended, and that is Section
12 717.2. That puts a cap of \$25 on corkage.
13 It's something that our members have been
14 complaining about for a number of years. We
15 don't think there should be any cap, but a \$25
16 in today's environment is woefully small.

17 Typically what happens in the
18 corkage situation is a restaurant, usually a
19 fine restaurant -- it's not one where someone
20 says, oh, yes, bring in wine and we'll serve
21 it for you. It's usually a fine dining
22 experience. Someone has a special bottle of

1 wine. It may be a several hundred dollar
2 bottle of wine and they want to bring it in
3 and have it with their meal. And that's
4 perfectly permissible under our regulations,
5 however, there's a limit on the amount that
6 the restaurant can charge to uncork the
7 bottle. So rather than selling the dining
8 patron a several hundred dollar bottle that
9 they might otherwise buy with a margin of
10 perhaps 50 percent, they're stuck with a \$25
11 limit.

12 So we're respectfully requesting
13 that that be removed. We don't know why from
14 a regulatory standpoint there needs to be any
15 limit. The market should govern. We're not
16 aware of any abuses with respect to this.
17 We're not even sure why it's in the statute,
18 or in the regulations. But if it's not to be
19 removed, we would respectfully request that it
20 be increased to some figure appropriate to
21 today's dollar, rather than whenever it was
22 enacted.

1 Second point is in Section 1204,
2 also on page 3, just a technical amendment,
3 and we'd actually tried to raise this when
4 this provision was passed at the Council.
5 This of course allows retailers to keep and
6 maintain records electronically. The phrase
7 "maintain upon the licensed premises" is
8 troubling because as most of us know, if
9 they're stored electronically they may not be
10 physically on the licensed premises. They
11 could be on a server somewhere else. They
12 could be in the cloud. So we don't think it
13 really comports with today's technology.

14 We would simply suggest that you
15 add the word "available" after "maintain" and
16 before "upon" so that it reads "Each holder of
17 a retailer's license shall keep and maintain
18 available upon the licensed premises." As
19 long as they can be accessed on the licensed
20 premises where the data is physically located
21 shouldn't matter. I don't think the Board
22 would ever enforce it that way, but we just

1 want to make it clear.

2 Lastly, the Section 1609 on page
3 4, we would request that the term "cooperative
4 or voluntary agreement," the header, be
5 changed to "settlement agreements" so that it
6 is consistent with the amendment to the
7 statute.

8 CHAIRPERSON MILLER: Yes.

9 MR. KLINE: And that's all we have
10 and we're obviously happy to entertain any
11 questions that the Board might have on those
12 few points.

13 CHAIRPERSON MILLER: Any
14 questions?

15 MEMBER ALBERTI: Yes.

16 CHAIRPERSON MILLER: Okay.

17 MEMBER ALBERTI: With respect to
18 the corkage fee --

19 MR. KLINE: Yes.

20 MEMBER ALBERTI: -- if I
21 understood your remarks, the objections to the
22 current corkage fee has to do with level of

1 desired profit on a bottle of wine.

2 MR. KLINE: That's one way to
3 characterize it.

4 MEMBER ALBERTI: And there's no
5 other considerations for setting a corkage
6 fee? Or are there, and what are they? What
7 should the be?

8 MR. KLINE: The market. Simply
9 put, restaurants -- they don't have to offer
10 corkage. In fact, we had this fight in
11 Virginia a couple of years ago where the our
12 counterpart organization, the Virginia
13 Hospitality and Tourism Association, I think
14 they're called, VHTA, opposed corkage. And we
15 didn't understand it. We said, well, it's a
16 matter of choice. You don't have to do it.
17 But it is an amenity that's available. It
18 makes the dining experience more pleasurable
19 for people who have some favorite wine. Most
20 restaurants aren't going to do it for the run
21 of the mill bottle of -- they're not going to
22 do it for Two Buck Chuck.

1 I mean, you know, it's a fine
2 dining experience. Someone wants to celebrate
3 some of that. They've had some special bottle
4 of wine. They want to bring it in. And our
5 position as an association is we think
6 restaurants should be able to do that, but if
7 there's a \$25 limit, then our restaurant
8 members are discouraged from doing that
9 depending on what the price points are.

10 Because obviously if they can sell the diner
11 a \$200 bottle of wine or a \$300 bottle of
12 wine, they'll say, well, I don't want to do
13 this corkage. I mean, why do I want to be
14 bothered with this for \$25? It doesn't make
15 any sense. I got to provide the glasses, I
16 got to have a server, all of that. That's it.

17 So we think it should be market
18 driven. We don't know why -- you know, it
19 baffles us that it's even a regulatory issue
20 in terms of the price.

21 MEMBER ALBERTI: So the next
22 question I have then is is there a fear or is

1 there a known outcome that businesses are
2 losing money because they don't offer that
3 service?

4 MR. KLINE: I don't have any --

5 MEMBER ALBERTI: Are they losing
6 diners because of that?

7 MR. KLINE: I don't have any data,
8 but we think it's certainly a scenario.
9 Virginia there is no corkage limit set. They
10 only have corkage. And, you know, the fear is
11 that someone that has a fine bottle of wine,
12 if they have a choice between going to a
13 Virginia restaurant that might allow them the
14 opportunity to uncork it and consume and a
15 D.C. restaurant where the opportunity might
16 not be offered because the restaurant doesn't
17 want to get stuck with the \$25 limit, we don't
18 want that scenario. We want them coming to
19 the District, having that opportunity and
20 leaving their tax dollars here.

21 MEMBER ALBERTI: Quite personally
22 I'll tell you my view here is that -- and this

1 doesn't speak to the level of a limit, but it
2 speaks to the fact of whether we have a limit.
3 It's sort of a consumer protection regulation.
4 Because actually I personally have heard of
5 stories where someone had an outstanding
6 corkage fee before there was a limit and they
7 were quite surprised.

8 So, you know, there has to be some
9 consumer protection built in here, and you
10 could say that the consumer should ask before
11 they bring the wine, but if they don't, they
12 may be subject to the whim of the
13 restaurateur. And you can remark on that
14 after I ask my next question.

15 I mean if we're judging the level
16 of the corkage fee, shouldn't we more look to
17 what the costs are to the restaurateur? I
18 mean isn't that a fairer way of judging what
19 a reasonable cost would be? Given that I'm
20 viewing this as a consumer protection
21 regulation, wouldn't it be fairer to think
22 about what is the cost to the restaurateur?

1 And I know there are many costs. It's not
2 only just personnel time, the staff person
3 having to do it, it's the risk of breakage of
4 glasses. I mean these glasses can be \$10 or
5 more apiece. I understand that. So you want
6 to speak to that?

7 MR. KLINE: Sure, I'll speak to
8 that. In fact, my client who was here earlier
9 who now owns a market used to be in the
10 restaurant business. We were discussing this
11 issue and he was relating a story when he was
12 in the business where someone brought in a
13 bottle of wine that they wanted uncorked. The
14 establishment was able to charge \$25. And
15 during the course of that meal apparently the
16 diner and his group broke five glasses. And,
17 you know, they didn't make any money. They
18 lost money. And not that the price should be
19 set expecting that you're going to lose five
20 glasses, but you get the point.

21 Certainly, yes, the cost to
22 establishment is one way to look at it. The

1 value to the diner is the other way to look at
2 it. I mean I think one of the things that we
3 find objectionable is it's really price
4 fixing. So maybe if there's a consumer
5 concern, maybe a disclosure requirement rather
6 than price fixing is a better way to go. I
7 mean you're basically saying, well, gee, we
8 should set a price because somebody might be
9 cheated, but it sounds like what you're really
10 talking about is disclosure.

11 What I was going to remark on that
12 before was the -- we see it a lot and I'm sure
13 we've read about it a lot and perhaps even
14 experienced it with respect to specials. When
15 you come in and, you know, you order, they
16 give you the specials, but some of the places
17 give you the prices now, but some don't. And,
18 you know, the dining critics always say, well,
19 gee, yes, if the specials are proportionately
20 higher than the highest item on the menu, then
21 there should be an obligation to disclose.
22 Well, there's no law.

1 I mean so you go in and you order
2 a special and all of the entr,es are, you
3 know, \$30 and they read the specials off and
4 they don't give you the prices. There have
5 been circumstances where someone has been
6 served a special and then the restaurant's
7 charging \$50 and it wasn't disclosed. Doesn't
8 sound very fair, but guess what, the diner
9 doesn't go back.

10 So we think that the marketplace
11 really takes care of that. We don't see that
12 as a consumer protection issue. If people are
13 unhappy because of what they were charged, our
14 experience is they pick another place next
15 time. We think it's self-regulating. We
16 don't think that the government needs to set
17 prices on issues such as corkage, or even what
18 the specials are, with the other example that
19 I used.

20 MEMBER ALBERTI: Okay. I have no
21 further questions.

22 CHAIRPERSON MILLER: Others?

1 (No audible response.)

2 CHAIRPERSON MILLER: Do they have
3 corkage fees in Virginia and Maryland?

4 MR. KLINE: They do now. Well, in
5 Virginia. They didn't pass up in Maryland, so
6 that's still an ongoing battle. But if
7 corkage is done, yes, there are fees
8 associated with it.

9 CHAIRPERSON MILLER: What is it in
10 Virginia?

11 MR. KLINE: There's no limit.
12 They have fees, but they don't have a limit.

13 MEMBER ALBERTI: There's no
14 corkage in Maryland?

15 CHAIRPERSON MILLER: Oh, the fees
16 meaning they can charge whatever they want?
17 Is that what you're saying? They don't have
18 limits?

19 MR. KLINE: Right, they don't have
20 limits.

21 CHAIRPERSON MILLER: Oh, they
22 don't have limits in Virginia either?

1 MEMBER ALBERTI: They don't have
2 corkage.

3 MR. KLINE: They don't have limits
4 in Virginia. The District is the only place
5 that we're aware of that has a limit on what
6 you can charge.

7 CHAIRPERSON MILLER: Okay. And
8 you think this is a technical amendment?

9 MR. KLINE: No.

10 CHAIRPERSON MILLER: Okay.

11 MR. KLINE: I'll be honest, I
12 think it's a --

13 CHAIRPERSON MILLER: It's just
14 something we ought to consider since we're
15 looking at that part of the regs? Okay.

16 MR. KLINE: I know that when we
17 were briefing our membership on the Omnibus
18 Bill more than one member pulled me to the
19 side and said when are you guys going to get
20 rid of that corkage fee limitation? So I saw
21 it here and I thought it was an opportunity to
22 raise it.

1 CHAIRPERSON MILLER: Maybe it's a
2 draw to the restaurant.

3 MR. KLINE: I beg your pardon?

4 CHAIRPERSON MILLER: I said maybe
5 it's a draw. It sounds like a good thing to
6 be able to bring your wine for \$25. So maybe
7 people actually go to that restaurant because
8 of that.

9 MR. KLINE: Well, except, you
10 know, many places won't do it. If the margins
11 aren't high enough, they're going to say we
12 don't need to do that. We're not going to do
13 it.

14 CHAIRPERSON MILLER: Yes. Okay.

15 MR. KLINE: And make the choice as
16 to whether to do it or not.

17 CHAIRPERSON MILLER: But we don't
18 have any stats on that now, right?

19 MR. KLINE: I think it's difficult
20 to have data on. It's all anecdotal, but
21 certainly anecdotally we hear from our members
22 about this issue pretty regularly.

1 CHAIRPERSON MILLER: So it's
2 something you've heard from your members that
3 they're interested in?

4 MR. KLINE: Right. They say why
5 is there a limitation on what I can charge
6 someone to uncork their bottle? Why is the
7 government setting my prices? I don't
8 understand. And I've heard that, you know,
9 repeatedly.

10 CHAIRPERSON MILLER: Okay. All
11 right. Is there anything else?

12 MR. KLINE: No, other than, you
13 know, those are the points I raise.

14 CHAIRPERSON MILLER: Well, thank
15 you for spending your day with us.

16 (Laughter.)

17 MR. KLINE: Hey, I had a public
18 space hearing in between.

19 CHAIRPERSON MILLER: Oh, really?
20 Okay. Oh, do you wish to testify?

21 (Laughter.)

22 MR. KLINE: Thank you.

1 CHAIRPERSON MILLER: Thank you
2 very much. Okay. So if there aren't any
3 comments by Board Members, then that concludes
4 our hearing on the Technical Amendment
5 Rulemaking. And the record is open on this
6 rulemaking until March 22nd, 2013 at 4:00 p.m.

7 Okay. Thank you, Mr. Kline.

8 MR. KLINE: Thank you.

9 CHAIRPERSON MILLER: Okay.

10 (Whereupon, at 4:55 p.m. off the
11 record until 5:04 p.m.)

12 CHAIRPERSON MILLER: As
13 Chairperson of the Alcoholic Beverage Control
14 Board for the District of Columbia and in
15 accordance with Section 405 of the Open
16 Meetings Amendment Act of 2010, I move that
17 the ABC Board hold a closed meeting for the
18 purpose of seeking legal advice from our
19 counsel on the following rulemakings: Safety
20 Plan Rulemaking regarding Section 720 of the
21 DCRM; Full Service Grocery Store Definition
22 Rulemaking regarding Section 199 of the DCMR;

1 and Brew Pub and Wine Pub Hours Rulemaking
2 regarding Section 705 of the DCMR on March
3 13th, 2013, and that we have a closed meeting
4 in order to seek legal advice from our counsel
5 on rulemakings making on Alcoholic
6 Certification Provider Rulemaking, Section 211
7 of the DCMR, and Technical Amendment
8 Rulemaking regarding multiple sections of the
9 DCMR on March 27th, 2013.

10 Is there a second?

11 MEMBER BROOKS: Second.

12 CHAIRPERSON MILLER: The motion's
13 been seconded by Mr. Brooks. I'm going to
14 take a roll call. Mr. Brooks?

15 MEMBER BROOKS: I agree.

16 CHAIRPERSON MILLER: Mr. Alberti?

17 MEMBER ALBERTI: I agree.

18 CHAIRPERSON MILLER: Ms. Miller
19 agrees. Mr. Jones?

20 MEMBER JONES: I agree.

21 CHAIRPERSON MILLER: Okay. It
22 appears that the motion has passed by a vote

1 of 4-0-0. I hereby give notice that the ABC
2 Board will hold the closed meetings in the ABC
3 Board conference room pursuant to the Open
4 Meetings Amendment Act of 2010 on the dates
5 identified.

6 And that concludes our business
7 for February 28th, 2013, and we are adjourned.

8 (Whereupon, the hearing was
9 concluded at 5:05 p.m.)

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