

DISTRICT OF COLUMBIA

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ALCOHOLIC BEVERAGE CONTROL BOARD

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PUBLIC HEARING

June 13, 2012

The Alcoholic Beverage Control

Board met in Alcoholic Beverage Control

Hearing Room, Reeves Building, 2000 14th

Street, N.W., Washington, D.C., Ruthanne

Miller, Chairperson, presiding.

PRESENT

RUTHANNE MILLER, Chairperson

NICK ALBERTI, Member

DONALD BROOKS, Member

CALVIN NOPHLIN, Member

MIKE SILVERSTEIN, Member

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

11:03 a.m.

CHAIRPERSON MILLER: Okay. We're ready to proceed with our proposed rulemaking regarding egregious sale to minors. And this is a proposed rulemaking that would amend Section 807 of Title 23 of the DCMR regarding sale to minor violations.

Specifically, the proposed rules would clarify that selling alcoholic beverages to a minor where the minor was not asked by the licensee to produce identification constitutes an egregious first time sale to minor violation.

So I'll start this hearing by calling on witnesses who notified the Agency in advance regarding their desire to address the Board. So that's -- Mr. Andrew Kline is here on behalf of the Restaurant Association. Denis James was going to appear, but has submitted a letter instead. And then I will entertain comments from other interested

1 parties who wish to be heard.

2 Additionally, interested parties
3 are permitted to submit written comments for
4 the Board's consideration by no later than
5 4:00 p.m. Friday, June 15th, 2012.

6 Okay. So I'll start with Mr.
7 Kline. Do you want to identify yourself for
8 the record and then provide your comments?

9 MR. KLINE: Yes, thank you very
10 much, Madam Chairperson and members of the
11 Board.

12 As you know, I'm Andrew Kline.
13 I'm here today in my capacity as legislative
14 representative of the Restaurant Association
15 of Metropolitan Washington, otherwise known as
16 RAMW.

17 RAMW is the principal spokesperson
18 for the restaurant industry in the District of
19 Columbia, has over 700 members, including over
20 400 licensees in the District. We also have
21 members in Virginia, but primarily our
22 licensed membership is in the District of

1 Columbia.

2 The provision of the Code which
3 gives rise to today's rulemaking was urged by
4 RAMW more than three years ago and passed by
5 the Council. And the reason that that was
6 done is there was a sense that there were good
7 actors out there, good operators who did what
8 they were supposed to do with respect to the
9 sale and service of those that are of age who
10 sometimes had employees who didn't do what
11 they were supposed to do. And there was a
12 recognition by the committee that has
13 oversight over the Board that some of these
14 good businesses would find themselves in
15 situations where they would provide the
16 training, they would provide the instruction,
17 they would hire who they believed to be
18 competent people to implement their very clear
19 rules that those who are under age were not to
20 be served, and sometimes those rules were
21 violated. And there was a feeling that it
22 made sense to give a one-strike warning as a

1 wake-up call to say, well, maybe you're not
2 doing as well as you think you are, because
3 this is, as the Board knows, a virtually a
4 strict liability situation.

5 If it's sold, it doesn't matter
6 how much training you provide, it doesn't
7 matter what you get your employees to sign,
8 how well you do in picking your employees and
9 hiring them. There are still some that are
10 not going to do what's supposed to be done and
11 make mistakes.

12 So we urged the Council to pass
13 this provision, and they did so. And the
14 provision, as the Board knows, says that those
15 who sell or serve to someone who's underage,
16 as long as it's not an egregious offense, will
17 for the first offense receive a warning. And
18 of course what we're here to talk about today
19 is what is the definition of "egregious?"

20 The Restaurant Association thanks
21 you for holding this hearing and for allowing
22 up to participate. Now let me address the

1 provisions that are at hand.

2 We have three issues with the
3 proposed rule: No. 1, 807.1, as proposed,
4 says that the Board "may" give a warning. We
5 believe that that should be changed to "shall"
6 give a warning, because without any standards
7 as to when a warning would be given, other
8 than the definition of "egregious," which is
9 what we're here to talk about, it's not really
10 clear under what circumstances, if it wasn't
11 an egregious offense, the Board would or would
12 not give a warning. So our position is, so
13 that there's absolute clarity, as long as it's
14 not an egregious offense, which we're here to
15 talk about the definition of, and as long as
16 it's a first offense, then the language should
17 be mandatory and that the licensee should
18 receive a warning.

19 Now, in the passage of this
20 legislation there's a provision that talks
21 about a report, how effective this has been,
22 what the effect is on sale to minors in the

1 District of Columbia. I don't know how we
2 measure that in terms of causation, but I can
3 tell you this; and I believe your director
4 will tell you this: As I understand it from
5 your director, in the compliance checks the
6 compliance rate for District of Columbia
7 businesses, licensees, is 89 percent. In
8 other words, only about 11 percent serve when
9 faced with a sting operation. Now you may
10 think that's high. That's still 1 of 10. But
11 I'm also told that the national average is 17
12 percent, and many of the surrounding
13 jurisdictions are much higher than that. The
14 11 percent represents, if not the lowest rate
15 of service in these compliance stings,
16 certainly one of the lowest.

17 So that means two things are
18 happening: One is the licensees are doing a
19 pretty good job. There's still a failure rate.
20 Would we like it to be zero? Absolutely. We
21 don't disagree with you on that. But the fact
22 of the matter is, and the reason we're here to

1 talk about this is, every once in awhile
2 somebody serves.

3 The second thing that's happened
4 is ABRA, the agency that works for you, has
5 done a good job in terms of educating
6 licensees, making sure that they are aware
7 what the rules are and what the penalties are.
8 We see all of that as a good thing. Can we
9 say that this provision is what led to that?
10 No. I can't tell you that there's causation.
11 But what I would say to you is if we have a
12 situation that's positive and there are a
13 number of factors, let's not change any of
14 them, because we don't really know which of
15 those that we might change that may put us
16 back in the middle of the pack rather than a
17 leader in terms of having one of the lowest
18 sale rates.

19 So we believe this program has
20 been effective. I'm not going to pretend to
21 you that I can prove causation, but we would
22 suggest that the fact that they're coincident

1 is no accident. So that's our first issue.

2 The second issue is we have no
3 problem with 1 and 3 of the proposed 807.1,
4 which says that it an egregious offense if one
5 sells to a minor who's unable to produce a
6 valid ID after being requested to do so. That
7 makes sense. Someone comes into an
8 establishment, says I want to purchase, I want
9 to be served, whatever the case may be, and
10 the server or the cashier or the seller says
11 I need to see your ID and the person says,
12 well, I don't have one, and they go ahead and
13 sell anyway, yes, we think that's pretty
14 egregious. We agree with that. We have no
15 quarrel with that whatsoever.

16 The third situation in terms of
17 intentionally selling an alcoholic beverage to
18 a minor, absolutely egregious. We believe
19 most of the business people in the District of
20 Columbia, including our restaurant members,
21 want to do the right thing. It's a very small
22 percentage of people who are business people

1 who would seek to profit from selling to those
2 underage. If there are people like that, then
3 absolutely they don't deserve a warning. The
4 Board should be as harsh with them as is
5 necessary to put them out of business or deter
6 the conduct.

7 We do have a quarrel with the
8 second provision which states that it's an
9 egregious offense if one did not ask the minor
10 for identification. This is exactly the
11 situation that our licensees face on a daily
12 basis. They train their people, they give
13 them instruction in terms of what they are
14 supposed to do, how to card, how to check
15 identification cards, when to card; the
16 preferable situation being when one looks
17 under 35 years of age, card them all. And
18 every once in awhile an employee will not
19 follow the program, won't do what they're
20 supposed to do. And we believe that is
21 exactly the type of situation that was being
22 talked about at the Council when this

1 provision was passed. So we would ask that
2 you eliminate the second provision.

3 Our third issue is not really any
4 problem with the proposed rulemaking, but I
5 have to ask this, which is where are the rest
6 of the regulations under Section 325(e)(3)(A)?

7 There was a provision that was
8 passed that said within 60 days of March 25th,
9 2009 the Board would come up with a schedule
10 of warnings for minor first offenses. This is
11 not related to sale to minors, but it relates
12 to the same section of the Code that we're
13 talking about. It's three years later. That
14 schedule still has not been done. The
15 warnings on minor first offenses has never
16 been implemented despite the clear language of
17 the statute. I'll just say to you if one of
18 your licensees didn't do something that by law
19 they were supposed to do for three years, I
20 think you might have a sanction or penalty for
21 that.

22 So we would plead with you and beg

1 you to please follow the law and implement the
2 regulations that should have been done, as of
3 I believe May 25th of 2012, three years ago.
4 They're three years overdue. Please, please
5 do them and move forward with those as well.

6 Thank you. I'd be happy to take
7 any questions that you might have.

8 CHAIRPERSON MILLER: Thank you.
9 Well, are there Board questions? I'll let
10 others start if someone has a burning
11 question.

12 MEMBER ALBERTI: Go ahead.

13 CHAIRPERSON MILLER: All right.
14 Well, otherwise -- well, so, Mr. Kline, it
15 sounds like you basically support what's
16 already in the regulations, which the
17 Restaurant Association was in favor of when
18 this first came about.

19 MR. KLINE: The Code provision,
20 yes.

21 CHAIRPERSON MILLER: But the regs
22 would now -- they call for, you know, if it's

1 intentionally sold, it's egregious and if it's
2 sold to a minor who doesn't produce a valid
3 ID. So that's already in the regs.

4 MR. KLINE: Right. We support
5 that.

6 CHAIRPERSON MILLER: Okay. So
7 basically you're happy with whatever, the way
8 the regs are right now?

9 MR. KLINE: Right, and we think
10 that was the intent of the Council when it was
11 discussed.

12 CHAIRPERSON MILLER: Okay. What's
13 so different about this new one that -- do not
14 -- it's you don't want -- you're saying it's
15 hard to get the -- you can't enforce what the
16 employees -- you know, 100 percent that they
17 ask for an ID.

18 MR. KLINE: Well, we're not saying
19 you can't enforce. We're saying that the
20 reason this provision was passed is a
21 recognition that people who run businesses
22 manage a variety of different people. They do

1 -- and the statistics prove that they do
2 pretty well. But every once in awhile you're
3 going to get an employee that's not going to
4 follow the rules and is not going to step out
5 of -- is going to step out of line, or they're
6 going to get busy and ignore the importance of
7 it. And we're not undermining the importance
8 of it. We understand if they look under 35,
9 you need to ask for an ID, period, end of
10 story. That's what we tell our members.

11 But we're just saying that we
12 don't see that any different than other
13 situations which aren't termed egregious in
14 terms of selling alcoholic beverages. I mean,
15 asking for an ID and misreading the date, for
16 example, is not egregious. We don't think it
17 should be. Similarly, we think if someone
18 forgets to ask for the ID, that also is not
19 egregious. It doesn't rise to the same level
20 as the other two circumstances we're talking
21 about.

22 CHAIRPERSON MILLER: Okay. Also

1 except that the way the regs are now, they now
2 talk in -- or speak in terms of "may" give a
3 warning, I think. And so you think that that
4 should be changed to "shall" give a warning?

5 MR. KLINE: Yes, we believe it
6 should be "shall."

7 CHAIRPERSON MILLER: Okay. And --

8 MR. KLINE: And if it's not, then
9 I guess I would query what would be the
10 criteria as to when a warning would be given
11 and when it wouldn't be given?

12 CHAIRPERSON MILLER: Right.

13 MR. KLINE: It would seem to if
14 it's "may," then there would need to be some
15 guidelines as to when you would and when you
16 wouldn't. Otherwise, it would seem to be
17 somewhat arbitrary. I think the Board's
18 practice, which we applaud, has been to give
19 the warnings. And I don't know of any
20 instances where there was a non-egregious sale
21 of minors that the Board didn't give a
22 warning. And we applaud that. I mean, we

1 think that that's the procedure. But for sake
2 of clarity, we just want to make sure that we
3 think that that's what should be done all the
4 time and there shouldn't be any question about
5 that.

6 CHAIRPERSON MILLER: Okay. I have
7 one other question. I think you were talking
8 about when, you know, this first came before
9 the Council about the warnings. Did you say
10 that the issue in fact regarding what we're
11 considering today where you don't ask a minor
12 for identification was discussed at that time
13 and decided that that wasn't -- didn't rise to
14 the same level of egregiousness?

15 MR. KLINE: I can't say as I sit
16 here now that that was discussed. I'm not
17 going to tell you that. I will go back and
18 look and see if there's anything in the
19 legislative history. I do believe, however,
20 that that's consistent with the concepts that
21 were discussed, which is this notion of
22 employees doing things that they're not

1 supposed to do, or failing to do things that
2 they're supposed to do. And that needs to be
3 visited upon the owner, the licensee. And
4 certainly the 1 and 3 of the proposed reg are
5 certainly different than that.

6 CHAIRPERSON MILLER: Okay. Did
7 you have a question?

8 MEMBER SILVERSTEIN: I'd like to
9 engage in a colloquy with Mr. Kline.

10 The Board's general policy has
11 been to issue warnings, but there may be cases
12 that come up where perhaps a warning would not
13 suffice. You get a first offense and the kid
14 gets killed or ends up killing a family as he
15 drives home drunk and we find out that he'd
16 had -- he'd been served there. Maybe a
17 warning wouldn't suffice. We don't know
18 exactly what these cases are going to be, but
19 do you see a harm, does the Restaurant
20 Association see a harm in allowing that type
21 of choice, rather than locking us in in cases
22 where maybe a first offense was -- the

1 circumstance were themselves egregious? Let
2 me ask you what your thoughts are on that.

3 MR. KLINE: Sure. I suspect we
4 may disagree about this, but we're opposed to
5 results-based analysis. In other words, the
6 issue is what happened at the time of service?
7 What happens afterwards, however tragic or
8 however innocent, as the case may be, is
9 irrelevant to what happened at the time. And
10 I disagree with the notion that an
11 administrative body or this Board should look
12 at the results that are removed from the
13 underlying incident in terms of how to impose
14 punishment or whether there should be a
15 warning. I mean, it seems to us that selling
16 to a minor; or selling to someone under 21, to
17 be more accurate, is against the law. And
18 whether that minor goes out and kills someone
19 or goes home and arrives safely in their bed,
20 the violation is exactly the same. And that's
21 our position on that.

22 MEMBER SILVERSTEIN: Well, how

1 would this affect a situation where our people
2 walk into a place and they discover there's 50
3 underage kids in there drinking, and it's the
4 first offense? Or there's a situation where
5 we learn maybe through a community newspaper
6 that a place has a reputation for serving and
7 the first offense we go out there and we find
8 something, and it's something that everybody
9 has known about for a long time?

10 MR. KLINE: I think that kicks in
11 to your No. 3. I mean, if someone is that
12 notorious about it and the evidence is educed
13 before the Board that this is going on,
14 everybody knows it goes on, this is the place
15 where they go, then assuming that my
16 counterpart at the other table develops the
17 record and the thoughtful Board members'
18 questions develop the record; because
19 frequently I find that you're better than the
20 two of us sitting out here, then the Board
21 will make a finding that based on the totality
22 of the circumstances this licensee

1 intentionally sold to people that were
2 underage.

3 MEMBER SILVERSTEIN: And then
4 finally one other thing: Big article
5 yesterday in USA Today about how widespread
6 these really high-quality fake IDs are.

7 MR. KLINE: Yes.

8 MEMBER SILVERSTEIN: And you've
9 got young people out there who are willing to
10 spend \$200 to buy one in China. Would the
11 Restaurant Association favor a campaign for
12 laws that would impose heavy fines or heavier
13 fines on those who purchase and use these?

14 MR. KLINE: I'm glad you asked me
15 that, because that was actually my final point
16 and it kind of got lost as we were discussing
17 about the other issues.

18 Our position is that frequently
19 the merchant or the restaurant that sells or
20 serves to someone underage is merely
21 negligent. It doesn't mean that you don't
22 punish them. It doesn't mean that they

1 haven't violated. But they're merely
2 negligent. In many cases, particularly in the
3 District of Columbia with the law the way it
4 is, these underage people intentionally set
5 out to break the law. They go out. They get
6 dolled up, dressed up, as the situation may
7 be, and they're going out into our bars and
8 restaurants to be served knowing that they're
9 breaking the law.

10 Now I'll give you the best example
11 of it. You've probably heard it before
12 Government it's an example I've used many,
13 many, many times. Several years ago there was
14 a young woman who was working in the same
15 suite where I am working for a law firm. She
16 was putting herself through school, working as
17 a bartender, 22 years old. Came into my
18 office hysterical. The night before she had
19 been caught up in an underage serving
20 situation. She got a criminal citation.
21 Twenty-two years old.

22 Now some of our lawmakers say,

1 well, but we don't want our young people to
2 have records. This is a young person who did
3 not intentionally set out to break the law.
4 This was a young person who was trying to do
5 the right thing, got busy and made a mistake,
6 and was negligent. She was merely negligent.
7 She gets a criminal citation. The kids that
8 go out and seek to buy, they're intentionally
9 seeking to break the law.

10 So the short answer, after my long
11 answer, to your question is, yes, we support
12 not only clear and heavy sanctions for fake
13 identification cards, which we think not only
14 implicate the underage drinking laws, but also
15 frankly pose questions of national security,
16 and also sanctions, criminal sanctions which
17 will likely result in diversion, just like my
18 22-year-old server, for those who attempt to
19 purchase alcohol in a licensed establishment
20 even without a fake ID. In other words, if
21 they walk in and say, you know, I'm ordering
22 drink, we think they should be in violation

1 and we think that there should be a criminal
2 penalty.

3 And RAMW would ask the ABC Board
4 to join with us and with others, because I
5 know WRAP, the Washington Regional Alcohol
6 Program, feels the same way. I've spoken to
7 Chief Burke about this issue. He feels the
8 same way. There are a number of us who
9 believe that this needs to be changed. We
10 would ask you to go with us to the Council and
11 ask them to change it.

12 MEMBER SILVERSTEIN: Thank you.

13 CHAIRPERSON MILLER: You have a
14 question?

15 MEMBER ALBERTI: Yes.

16 CHAIRPERSON MILLER: Okay.

17 MEMBER ALBERTI: First of all, Mr.
18 Kline, I want to address your comment that the
19 regulation should use the word "shall" instead
20 of "may" with respect to warnings.

21 In the example that Mr.
22 Silverstein gave about 50 underage kids in an

1 establishment and we go in and spot them, your
2 correct that No. 3, item 3 could kick in. We
3 could assume or we could conclude that they
4 intentionally sold alcoholic beverage to a
5 minor. All right? But as I see it, having
6 "may" in there, giving the Board flexibility
7 sort of strengthens our ability to fine
8 someone in that situation, and I don't want to
9 take that flexibility away from the Board in
10 those situations. All right. Kind of weakens
11 our hand in that situation. And we've seen
12 it. We've seen places where there are 50
13 kids, 50 underage people drinking. And I
14 don't want to take that away from the Board.
15 I wouldn't want to take that away from the
16 Board.

17 I think the only danger of having
18 "may" in there instead of "shall" is if the
19 Board is not responsible in applying the
20 statute. The D.C. Council has oversight over
21 this Board. I believe that the Board has
22 acted responsibly over the last several years,

1 or ever since the inception of this
2 regulation. I believe we've acted responsibly
3 in applying this law. And if the Council
4 didn't think so, well, they would tell us.
5 And I think everyone's in agreement that we
6 have responsibly applied this law.

7 So unless you can convince me that
8 there's some overriding danger in leaving it
9 as is with the word "may" there, I'm not
10 convinced. Do you want to speak to that?

11 MR. KLINE: Sure. There are a
12 couple issues: One is the danger without some
13 sort of bright-line test is that -- and this
14 is part and parcel of administrative process
15 and it's something that I struggle with all
16 the time. But you're making decisions, you're
17 seeing reports and making decisions in the
18 back room, so to speak. I mean, I don't mean
19 that pejoratively, but without a hearing on
20 the record. So those decisions get made.

21 You've only heard one side of the
22 story and all of a sudden it's kicked up to a

1 punishment standpoint without even having
2 heard the other side of the story. That's why
3 we like a bright-line test where it's very
4 clear that the warning shall be given. There
5 isn't any question about it. Because we don't
6 have any way to adjudicate whether they're
7 entitled to a warning or whether they're
8 entitled to -- or whether they're going to go
9 straight to a punishment. I mean, that's not
10 really a part of the process.

11 So our fear is that based on only
12 hearing one side of the story they're deprived
13 of the right to a warning. They don't get a
14 hearing. They do get a hearing under the
15 underlying offense, which they're probably
16 guilty of. I'm not going to quarrel that.
17 But the question is whether they get their
18 warning or not. And that's our fear with
19 that.

20 The second point is; and it speaks
21 directly to what you said, I agree with you.
22 this Board has -- we don't always agree, but

1 in my experience with its current makeup and
2 its most previous makeup, most recent previous
3 makeup, in my experience has been
4 professional, has tried to apply the law, and
5 I don't have any quarrel with that. Again, we
6 may not always agree, but you know, people are
7 paying attention. All of you are engaged.
8 You know what's going on. That hasn't always
9 been the case.

10 Now I hope that we will not see a
11 return to those earlier days, that when your
12 time is up here on the Board and the others'
13 time is up, that we will have the same caliber
14 of people, who I still may not always agree
15 with, but will be engaged and will take the
16 same position. But based on my; you know, I
17 hate to say 30 years experience coming down
18 here, I've known that that hasn't always been
19 the case. So that's the fear.

20 MEMBER ALBERTI: For the second
21 time I'll leave you with the last word on
22 that.

1 Now the next issue is your
2 rationale that -- that's it. What we have
3 here is we have responsible owners who train
4 their staff and you have one staff who just
5 isn't doing their job and now they're found
6 with an offense, they're found to be in
7 violation because they didn't ask for an ID.

8 MR. KLINE: Right, didn't do their
9 job one time. Let's be clear.

10 MEMBER ALBERTI: Didn't do their
11 job one time. All right. Maybe you don't see
12 this as different than other violations, but
13 there are many of the violations where a staff
14 member may not be doing their job one time --
15 we don't know if it's one time, but for the
16 sake of argument we'll say they're not doing
17 their job one time and they're found in
18 violation and we don't give them warnings. We
19 don't have warnings for those. You know, the
20 list is extensive. I mean --

21 MR. KLINE: Well, I guess my other
22 comment --

1 MEMBER ALBERTI: -- and then a
2 variety of things that an employer relies on
3 their staff to do, everything from filing
4 reports, to keeping records, to serving backup
5 drinks, to, you know, making sure their
6 license is posted. Do you think we should be
7 giving warnings for all of those?

8 MR. KLINE: Yes, that's why the
9 provision was passed. My complaint about the
10 rulemaking that hasn't been done for three
11 years.

12 MEMBER ALBERTI: So every
13 violation should have a warning?

14 MR. KLINE: No. Those as the
15 statute says, less serious violations, yes.
16 I mean, that was what the Council -- that's
17 what the Council passed three years ago and
18 commanded this Board to do. So, yes, you make
19 my point.

20 MEMBER ALBERTI: No, but I want to
21 stay on focus here.

22 MR. KLINE: Okay.

1 MEMBER ALBERTI: This is not a
2 less-serious violation. This is a serious --

3 MR. KLINE: No, well, this is a
4 different category.

5 MEMBER ALBERTI: -- violation. So
6 let's talk about -- so just so that we're on
7 the same page here, Mr. Kline, let's just talk
8 about serious violations. Do you think in all
9 serious violations we should have the -- we
10 should be giving warnings?

11 MR. KLINE: No, I haven't
12 advocated for that. Absolutely not. Never
13 advocated that.

14 MEMBER ALBERTI: So there are some
15 instances, even though you could conclude that
16 a singular employee has just not followed the
17 directive of their employer and messed up one
18 time -- even in those cases we should be
19 finding them in violation?

20 MR. KLINE: Right, we just don't
21 think failing to ask for an ID is one of them.

22 MEMBER ALBERTI: Well, how does

1 this set this apart from those other
2 violations? Why is this different than those
3 other violations?

4 MR. KLINE: Because the Council of
5 the District of Columbia in its imminent
6 wisdom passed a piece of legislation that said
7 for a first offense sale to minor, other than
8 an egregious violation, there should be a
9 warning. That's why.

10 Now in terms of egregious, if you
11 look at the other two categories, they're
12 clearly egregious. I mean, if you ask someone
13 for an ID and they I don't have it and you
14 serve them anyway, well, okay, I mean, that's
15 -- seems to me you're asking for it. Well,
16 you asked them for an ID, they didn't produce
17 it, you're going to sell to them anyway? It's
18 on your mind. You know that they might be
19 underage at that point because you've asked
20 for the ID and they didn't give you the ID.
21 Well, that's egregious. If you're in the
22 business to sell to people who are underage,

1 that's egregious. I mean, there isn't any
2 question about that. If someone forgets to
3 ask for an ID, I don't see how that's in the
4 same category.

5 MEMBER ALBERTI: Mr. Kline, I'm
6 going to give you my perspective, not the
7 Board's perspective on this. We have, I would
8 say -- and I'm just guessing here, but I would
9 say, it's been my experience, well over 90
10 percent of the sale to minors that we see come
11 from our compliance check.

12 MR. KLINE: Yes.

13 MEMBER ALBERTI: All right? A
14 compliance check we send in underage persons
15 who we screen and vet to see -- well, we
16 screen to make sure that they look like
17 they're under 18. I mean, this is the way we
18 design -- the program is designed. And we ask
19 unbiased individuals how do you think this
20 person is? If they think they look they're
21 over 18, we don't use them for the program.

22 Now someone who clearly looks

1 under 18, not just looks like they're under
2 21, they clearly look like they're under 18;
3 which even when I was a youngster was the
4 legal drinking age, goes into an establishment
5 and someone doesn't ask them for an ID, I
6 don't think that's just merely not doing your
7 job one time. To me that's egregious. That's
8 pretty --

9 MR. KLINE: That's not it says
10 though.

11 MEMBER ALBERTI: No, it doesn't.
12 It doesn't. I mean, it doesn't. If you fail
13 to ask for the ID and that person looks like
14 they're under 18, currently it's not a
15 violation. Well, apparently our policy is to
16 give a warning. And I think when the person's
17 clearly under 18 and you don't ask for an ID,
18 you have consciously not done your job. It's
19 not just being lax. You have consciously not
20 done your job.

21 MR. KLINE: Well, then maybe we
22 need to split it a little differently, because

1 lumped in the same group, okay, is the bearded
2 20-year-old who looks 35, who walks into a
3 place with people who are of age and doesn't
4 get carded because he's with a group and
5 everyone is of age, and maybe the others are
6 even known to the establishment as being of
7 age. And so that's the other end of the
8 spectrum. And they don't get a warning? I
9 mean, so maybe we need to look at splitting it
10 differently.

11 So I mean, I think that what we
12 might be able to get behind, and I am -- this
13 is seat-of-the-pants, so I have to think about
14 it a little bit more, but I think if the
15 Board's policy -- and I know that's the policy
16 and we applaud that as well. We've been aware
17 of that for quite some time and have worked
18 with the director and the previous director in
19 making sure that the standards that you
20 articulated are adhered to.

21 But maybe if that were
22 institutionalized in terms of that's the

1 policy, that's the way we're going to run the
2 program, then we might be able to get behind
3 if it's a compliance check meeting those
4 parameters, then no warning would be
5 appropriate. I'm not going to disagree with
6 you. And we can both carve out the extreme
7 situations, but we just don't think that your
8 extreme situation obviates the appropriateness
9 of a warning in other situations.

10 MEMBER ALBERTI: I understand.

11 Thank you.

12 MR. KLINE: Thank you.

13 CHAIRPERSON MILLER: Are there
14 other Board questions?

15 (No audible response.)

16 CHAIRPERSON MILLER: Okay. I just
17 want to comment or ask you, Mr. Kline,
18 basically No. 2 which is at issue here, did
19 not ask the minor for identification, I mean,
20 on the one hand you say it's clearly in a
21 different category from the other two. But
22 then I hear others say, no, it's clearly

1 egregious. And I think it's subjective. So
2 if there is anything else you want to
3 supplement the record with later with respect
4 to it being, you know, not what the Council
5 anticipated or if there are other ways to
6 capture maybe some things that aren't being
7 captured right now, but not this way, I would
8 welcome your submission.

9 MR. KLINE: We'd be happy to work
10 with you on it.

11 CHAIRPERSON MILLER: Okay. All
12 right. But I think that concludes your
13 testimony?

14 MR. KLINE: Thank you.

15 CHAIRPERSON MILLER: All right.
16 Thank you very much. Is there anyone else who
17 wishes to testify on this?

18 MR. SINDRAM: There is, Madam
19 Chair.

20 CHAIRPERSON MILLER: Okay. Come
21 on forward, Mr. Sindram.

22 Okay. Go ahead, Mr. Sindram. Do

1 you think you'll be more than five minutes?

2 MR. SINDRAM: If I'm not
3 interrupted, I do not, Madam Chair.

4 CHAIRPERSON MILLER: Okay. Thank
5 you.

6 MR. SINDRAM: Thank you. Michael
7 Sindram, disabled veteran, once again.

8 As I listened carefully and
9 intently to the testimony previously, it's
10 been said intent is nine-tenths of the law.
11 And the term "shall" versus "may;" "may,"
12 discretionary, "shall," mandatory. There
13 needs to be that bright line.

14 Now I hear the argument from the
15 Board the discretion and the gradients of
16 offense, but if you don't have a given
17 standard, it obviates what is justice, and
18 that's the question before you here and now in
19 rulemaking. What is your definition of
20 justice? One of the better ones I find is to
21 treat equals equally and unequals unequally,
22 so said Aristotle.

1 With regard to carding, it was
2 indicated if one looks over 35. That could be
3 relative. Why not card across the board?
4 Then there will be no issue. Thirty-five,
5 twenty-five, whatever. Now the older folk I
6 think would be flattered. The younger folk
7 obviously may take issue. But if you card
8 across the board, then there's no question.

9 Now the other side of the table
10 may say, well, it's onerous. But to protect
11 -- in the best interest of the community that
12 ID is crucial. And we speak of ID, to not
13 have a fake ID, the primary ID that's required
14 when you cash a check; a driver's license, a
15 passport, a picture ID, something authentic
16 normally issued by the government, I think
17 would suffice and would curtail a lot of open-
18 ended situation. Again, how do you look,
19 which is relative, and what kind of ID have
20 you produced? If you've got a clear-cut, as
21 the term was used, bright-line, then there's
22 no issue. All right? Plain and simple.

1 First time offense. And, you
2 know, as was indicated, you deal with a number
3 of different folks in an establishment. Some
4 are seasoned. Some are not. If it is deemed,
5 you know, an oversight, the punishment, you
6 know, should not be Draconian. If it's a
7 planned scheme where someone, you know, knows
8 what they are doing and intended such, then
9 the punishment should increase and be
10 commensurate with the offense. In other
11 words, treat equals equally, unequals
12 unequally.

13 I'd like to conclude. There are
14 going to be two bills on tap tomorrow before
15 Council Mendelson and I want to put out some
16 hypotheticals here, and I want to provoke some
17 thought, plant some seeds, if you will.

18 The two bills tomorrow is one
19 involving a flash mob theft act, and it
20 indicates here to allow the aggregation of a
21 total amount of theft to determine the grade
22 of the offense where the theft is done by a

1 group of persons. In other words, you've got
2 a group of folks and everything that's taken
3 is assessed against the one. Okay?

4 Councilman Mendelson has a
5 daughter. And as my hypothetical would be,
6 suppose daughter goes to 7-Eleven with a group
7 of folks who decided to do whatever, but his
8 daughter wants to do the right thing. She
9 picks up a candy bar in route to the cash
10 register, but this flash mob takes place. You
11 with me, Madam Chair?

12 CHAIRPERSON MILLER: I'm
13 listening, but is this connected to our
14 rulemaking?

15 MR. SINDRAM: It is to the extent
16 of a hypothetical, again a treat equals
17 equally and unequals unequally. The sum is
18 the whole of its parts, so again provoking a
19 little bit of thought here.

20 CHAIRPERSON MILLER: Okay. I'll
21 give you a little leeway, but we're kind of on
22 a tight schedule, so -- but we really want to

1 hear your remarks on this rulemaking. But --
2 so if you can tie it --

3 MR. SINDRAM: With the latitude
4 it's tied in.

5 CHAIRPERSON MILLER: Okay.

6 MR. SINDRAM: So the flash mob,
7 you know, congregates, the law is called, and
8 daughter is given this criminal citation when
9 it was her intent to pay for the candy bar.
10 She just, as it were, got caught up. Are you
11 with me?

12 CHAIRPERSON MILLER: Yes.

13 MR. SINDRAM: So in the pursuit
14 right, reason and fairness, is it equitable to
15 charge in that instance with the
16 aggrandizement of everything when the intent
17 was to pay for the candy bar?

18 The other bill; and I'll conclude
19 with this, is the Sexual Harassment Prevention
20 Act of 2012. It goes to amend a section of
21 D.C. Code to enhance enforcement of the
22 indecent exposure law by allowing police

1 officers to arrest suspects without a warrant.

2 CHAIRPERSON MILLER: This doesn't
3 sound related to our rulemaking.

4 MR. SINDRAM: Well, it is to the
5 extent that it goes back to the issue about
6 premeditation, intent. Suppose someone has
7 a --

8 MEMBER SILVERSTEIN: Mr. Sindram,
9 you're here primarily for the Mood Lounge
10 hearing, correct?

11 MR. SINDRAM: I didn't say Mood
12 Lounge. That's going to happen later on.

13 MEMBER SILVERSTEIN: That's a
14 hearing later in the day. We're trying to
15 stay on schedule so that we can accommodate
16 everyone and we have a whole lot of business
17 that we have to take care of before that
18 hearing. And if you can finish up, I would
19 really appreciate it, because we don't want to
20 inconvenience all of the people for the rest
21 of the day by getting behind schedule. We
22 can't deal with those particular bills. We

1 can't in any way lobby them or anything else.
2 They're totally out of our purview.

3 MR. SINDRAM: I'm not asking you
4 to, Mr. Silverstein, and I could have
5 concluded actually half of what your
6 interjection was.

7 My point is that if someone has a
8 grudge, okay, against an establishment and
9 you're set up, right, that intent should be
10 taken into consideration. That's the point
11 I'm making.

12 CHAIRPERSON MILLER: Okay.

13 MR. SINDRAM: All right?

14 CHAIRPERSON MILLER: Yes.

15 MR. SINDRAM: I think the best
16 definition of justice, do to others as you
17 would have them to do you. Thank you.

18 CHAIRPERSON MILLER: Thank you
19 very much.

20 Do we have another gentleman who
21 wants to testify?

22 (No audible response.)

1 PARTICIPANT: Yes, I'm okay.

2 CHAIRPERSON MILLER: You don't
3 want to testify?

4 (No audible response.)

5 CHAIRPERSON MILLER: Okay. You're
6 welcome to submit then in writing.

7 Okay. All right. Are there any
8 other witnesses who wish to testify in this
9 rulemaking?

10 (No audible response.)

11 CHAIRPERSON MILLER: Okay. Well,
12 thank you very much, those of you who did come
13 to testify. And the record is open until June
14 15th at 4:00.

15 All right. Thank you all very
16 much. And the Board is now in recess.

17 (Whereupon, the hearing was
18 concluded at 11:47 a.m.)

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