

DISTRICT OF COLUMBIA  
 + + + + +  
 ALCOHOLIC BEVERAGE CONTROL BOARD  
 + + + + +  
 MEETING

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IN THE MATTER OF:	*
	*
Neighborhood Restaurant Group XV,	*
LLC t/a Red Apron Butchery/The	* Show
Partisan	* Cause
709 D Street, NW	* Hearing
Retailer CR - ANC-2C	*
License No. 90742	*
Case #15-CMP-00059	*
	*
(Failed to Take Steps Necessary	*
to Ensure Property is Free of	*
Litter)	*

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September 9, 2015

The Alcoholic Beverage Control Board  
 met in the Alcoholic Beverage Control Hearing  
 Room, Reeves Building, 2000 14th Street, N.W.,  
 Suite 400S, Washington, D.C. 20009, Chairperson  
 Ruthanne Miller, presiding.

PRESENT:

RUTHANNE MILLER, Chairperson  
 NICK ALBERTI, Member  
 DONALD BROOKS, Member  
 HERMAN JONES, Member  
 MIKE SILVERSTEIN, Member  
 HECTOR RODRIGUEZ, Member  
 JAMES SHORT, Member

ALSO PRESENT:

CHRISSY GEPHARDT, OAG  
 EARL JONES, ABRA Investigator

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

Opening Statement by Government. . . . .	4
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WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
Earl Jones	5	15	36	--
Peter Koll	38	46	67	73

## E-X-H-I-B-I-T-S

## BOARD

No.	Description	Mrk'd	Rec'd
1	Red Apron Front/Alley Photo	8	--
2	Dumpster Area Photo	9	--

## LICENSEE

No.	Description	Mrk'd	Rec'd
1	Trash Photo	78	78
3	Dumpster Photo	40	--

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

2 3:55 p.m.

3 MEMBER SILVERSTEIN: The parties  
4 forward, please.

5 CHAIRPERSON MILLER: All right. The  
6 next case on our calendar is the second Red  
7 Apron Butchery/The Partisan, 709 D Street, N.W.,  
8 License No. 90742, in ANC-2C. And this is Case  
9 No. 15-CMP-00059.

10 All right. Would the parties  
11 identify themselves for the record, please?

12 MS. GEPHARDT: Chrissy Gephardt on  
13 behalf of the Office of the Attorney General.

14 MR. KOLL: Peter Koll, General  
15 Manager of Red Apron and The Partisan.

16 MS. BABIN: Stephanie Babin,  
17 Neighborhood Restaurant Group.

18 CHAIRPERSON MILLER: Okay. So this  
19 is also a Show Cause Hearing. We just went  
20 through one, so I'm not going to explain, you  
21 know, the process. You know the process, so are  
22 there any preliminary matters?

1 MS. GEPHARDT: No, there are not.

2 CHAIRPERSON MILLER: All right.

3 Then let her roll. Ms. Gephardt, opening  
4 statement?

5 MS. GEPHARDT: Yes. Okay. Board  
6 Members, this is a case that is very similar to  
7 the last case where the Government is alleging  
8 that on December 18, 2014, an ABRA Investigator  
9 visited the establishment and noticed that there  
10 was litter and other trash spilling out of the  
11 dumpster that belongs to Red Apron.

12 And the evidence that you will hear  
13 today will show that it was their dumpster and  
14 it was their trash and, therefore, they are  
15 guilty of Charge 1, failing to take reasonable  
16 measures to ensure that litter is properly  
17 disposed of. Thank you.

18 CHAIRPERSON MILLER: Okay. Do you  
19 want to reserve your --

20 MS. BABIN: Yes.

21 CHAIRPERSON MILLER: -- opening?  
22 Okay. First witness then?

1 MS. GEPHARDT: Mr. Earl Jones.

2 CHAIRPERSON MILLER: Good afternoon.

3 Whereupon,

4 INVESTIGATOR EARL JONES

5 was called as a witness by Counsel for the  
6 Government, and having been first duly sworn,  
7 assumed the witness stand and was examined and  
8 testified as follows:

9 INVESTIGATOR JONES: I do.

10 CHAIRPERSON MILLER: Thank you.

11 Okay.

12 DIRECT EXAMINATION

13 MS. GEPHARDT: All right. Mr.  
14 Jones, can you, please, state your name and  
15 spell it for the record?

16 INVESTIGATOR JONES: Earl Jones.  
17 First name E-A-R-L last name J-O-N-E-S.

18 MS. GEPHARDT: And where do you  
19 work?

20 INVESTIGATOR JONES: For the  
21 Alcoholic Beverage Regulation Administration.

22 MS. GEPHARDT: And what is your

1 title?

2 INVESTIGATOR JONES: ABRA

3 Investigator.

4 MS. GEPHARDT: And how long have you  
5 been an Investigator for ABRA?

6 INVESTIGATOR JONES: Since September  
7 2009.

8 MS. GEPHARDT: And are you familiar  
9 with an establishment by the name of Red Apron  
10 Butchery/The Partisan?

11 INVESTIGATOR JONES: Yes, ma'am.

12 MS. GEPHARDT: And did you have  
13 occasion to visit Red Apron on December 18, 2014  
14 at, approximately, 11:15 p.m.?

15 INVESTIGATOR JONES: Yes, ma'am.

16 MS. GEPHARDT: And what was the  
17 purpose of your visit?

18 INVESTIGATOR JONES: I was  
19 monitoring the area for trash and litter issues  
20 as well as other areas.

21 MS. GEPHARDT: Okay. And how did  
22 you -- what brought you upon Red Apron?

1                   INVESTIGATOR JONES: I have several  
2 different areas that I monitor. D Street, 700  
3 Block of D Street. I was going up there,  
4 because I had a previous issue here in October  
5 2014.

6                   MS. GEPHARDT: Okay. And when you  
7 approached the establishment, what did you  
8 observe?

9                   INVESTIGATOR JONES: When I  
10 approached the alleyway to the establishment, I  
11 observed rodents running from the alleyway as  
12 well as I observed the green color receptacles  
13 that had trash on top of.

14                   MS. GEPHARDT: Okay. I would like  
15 to show the witness what I have marked as  
16 Government exhibit -- well, actually, it's Board  
17 Exhibit No. 1 and Exhibit No. 2. I am showing  
18 the defense.

19                   CHAIRPERSON MILLER: And Board  
20 Exhibit No. 1 is?

21                   MS. GEPHARDT: It is a -- well, I  
22 will have the witness explain.

1 CHAIRPERSON MILLER: Okay.

2 MS. GEPHARDT: Mr. Jones, what is  
3 Board Exhibit No. 1?

4 INVESTIGATOR JONES: No. 1 is a  
5 photograph of the front of the establishment as  
6 well as the side alleyway.

7 (Whereupon, the above-referred to  
8 document was marked as Board Exhibit No. 1 for  
9 identification.)

10 MS. GEPHARDT: And what date was  
11 this photograph taken?

12 INVESTIGATOR JONES: This was  
13 actually taken from the December 18th.

14 MS. GEPHARDT: Okay. 2014?

15 INVESTIGATOR JONES: I'm sorry. I  
16 don't have that case in front of me.

17 MS. GEPHARDT: No, you said December  
18 18th.

19 INVESTIGATOR JONES: 18th.

20 MS. GEPHARDT: I was just clarifying  
21 the year.

22 INVESTIGATOR JONES: Yes, oh, 2014.

1 MS. GEPHARDT: Yes, yes, okay. And  
2 if you can, please, turn the second page, which  
3 is Board Exhibit No. 2, can you please explain  
4 what is depicted in the photograph?

5 INVESTIGATOR JONES: The photograph  
6 is of the dumpster area, the alleyway where the  
7 dumpsters are housed. Not only Red Apron's  
8 dumpsters, but as well as other ABC  
9 establishments.

10 (Whereupon, the above-referred to  
11 document was marked as Board Exhibit No. 2 for  
12 identification.)

13 MS. GEPHARDT: Okay. And, Mr.  
14 Jones, how did you know -- well, first of all,  
15 which dumpster is Red Apron's?

16 INVESTIGATOR JONES: From my first  
17 visit when I made notification of the violation  
18 on October 22, 2014, I had spoken to Mr. Koll,  
19 the General Manager of the establishment, and at  
20 that point in time he identified that this  
21 dumpster was their dumpster.

22 MS. GEPHARDT: Well, which dumpster

1 are you referring to in the photograph?

2 INVESTIGATOR JONES: It would have  
3 been the second dumpster.

4 MS. GEPHARDT: Okay. The one with  
5 the lid ajar?

6 INVESTIGATOR JONES: Yes, ma'am.

7 MS. GEPHARDT: Okay. And what about  
8 this dumpster tipped you off that there was a  
9 violation or there may be a violation?

10 INVESTIGATOR JONES: For me, it was  
11 the exposed trash, which also is -- which leads  
12 to a lot of rodents or vermin issues that we  
13 have in the D.C. area.

14 MS. GEPHARDT: Okay. So is the way  
15 in which this trash receptacle appears in this  
16 photograph is that not the standard that it's  
17 supposed to be at?

18 INVESTIGATOR JONES: Correct.

19 MS. GEPHARDT: Okay.

20 INVESTIGATOR JONES: And I would  
21 like to make a correction.

22 MS. GEPHARDT: Um-hum.

1           INVESTIGATOR JONES: Exhibit 1 was  
2 actually taken from -- I'm sorry, Exhibit 1 was  
3 actually taken from October 22, 2014.

4           MS. GEPHARDT: Oh, okay, okay, okay.  
5 And so upon seeing the dumpster in Board Exhibit  
6 No. 2, what did you do after you witnessed that  
7 dumpster?

8           INVESTIGATOR JONES: I went into the  
9 establishment and I was again greeted by Mr.  
10 Koll. At that point in time, I advised him what  
11 I had observed again and, at that point in time,  
12 he did tell me that the establishment had taken  
13 a lot of steps that he and I had spoken about  
14 previously in October regarding switching out  
15 the dumpsters and trying to be -- you know,  
16 trying to see -- as well as speaking to the  
17 other ABC establishment that has been dumping  
18 trash into their dumpster. However, he did say  
19 they were still having issues with that.

20           MS. GEPHARDT: He was still having  
21 issues with that?

22           INVESTIGATOR JONES: Yes, with

1 other--

2 MS. GEPHARDT: With other --

3 INVESTIGATOR JONES: -- ABC

4 establishments.

5 MS. GEPHARDT: Okay.

6 INVESTIGATOR JONES: Yes.

7 MS. GEPHARDT: And did he

8 specifically identify this dumpster that was

9 causing concern to you and their dumpsters?

10 INVESTIGATOR JONES: Now again, I

11 think there is a -- I know I showed a picture

12 from my phone and from that standpoint it was

13 agreed that this was their dumpster. Now again,

14 from the first time he admitted that this was

15 the dumpster, so it was next to the same orange

16 container that had the chain around it.

17 MS. GEPHARDT: Okay. So just to

18 clarify what you said, that he did identify this

19 as the dumpster that they had been using or that

20 they are using?

21 INVESTIGATOR JONES: Yes.

22 MS. GEPHARDT: Okay. What else did

1 you talk to Mr. Koll about?

2 INVESTIGATOR JONES: I told him that  
3 I had spoken to the other ABC establishments  
4 that has been causing a lot of issues within the  
5 alleyway and I did advise them, at that point in  
6 time, that I would no longer do the monitoring  
7 with them, because I didn't want it to appear as  
8 harassment. And I wanted to see if there could  
9 have been some sort of possibility, effort to  
10 try to get this issue resolved, because I did,  
11 at that point on my second visit here, during  
12 the monitoring period, observe that from his  
13 testimony to me or his statements to me, I did  
14 notice that this was an issue for everyone, not  
15 just Red Apron.

16 MS. GEPHARDT: Okay. And just to  
17 conclude, again, did Mr. Koll -- did he verify  
18 or did he acknowledge that this dumpster was a  
19 problem for Red Apron?

20 INVESTIGATOR JONES: He acknowledged  
21 that that dumpster was a problem, but he also  
22 acknowledged that a lot of the trash that was

1 being dumped is not their trash.

2 MS. GEPHARDT: Okay. And was this  
3 the only receptacle that Red Apron was using or  
4 is there another one on this -- in this alley  
5 that they are using as well?

6 INVESTIGATOR JONES: From what I  
7 understood, they are using one trash and one  
8 recycle.

9 MS. GEPHARDT: And is the recycling  
10 one visible in this photograph?

11 INVESTIGATOR JONES: Honestly, I  
12 couldn't tell you.

13 MS. GEPHARDT: Okay.

14 INVESTIGATOR JONES: I couldn't tell  
15 you.

16 MS. GEPHARDT: Okay. And what you  
17 see here in these photographs, is this an  
18 accurate depiction of what you saw that day?

19 INVESTIGATOR JONES: Yes, ma'am.

20 MS. GEPHARDT: Okay. I would ask  
21 that the exhibits be admitted, but they are  
22 already part of the Board file, so I'm assuming

1 that doesn't need to be done.

2 CHAIRPERSON MILLER: Okay. They are  
3 in the record, correct.

4 MS. GEPHARDT: Okay.

5 CHAIRPERSON MILLER: Okay.

6 MS. GEPHARDT: All right. That's  
7 all I have for this witness.

8 CHAIRPERSON MILLER: Okay. Cross?

9 CROSS-EXAMINATION

10 MS. BABIN: Inspector Jones, is  
11 there something specific about this dumpster, an  
12 identifying mark or that it identifies it as Red  
13 Aprons?

14 INVESTIGATOR JONES: Um, they have  
15 their signs on the dumpster, but again, I took  
16 this picture from the front of the alleyway.

17 MS. BABIN: Um-hum.

18 INVESTIGATOR JONES: And once I went  
19 in to advise Mr. Koll, I think the acknowledge  
20 was that that was the dumpster for the  
21 establishment.

22 MS. BABIN: And so you don't see

1 anything on here that clearly identifies this as  
2 Red Apron's dumpster?

3 INVESTIGATOR JONES: I see that  
4 there are stickers on here or I guess signs for  
5 on the dumpsters, but I don't -- I can't see  
6 what they say.

7 MS. BABIN: And, Inspector Jones,  
8 how many other businesses are you aware of that  
9 maintain dumpsters in this alley?

10 INVESTIGATOR JONES: Maybe one or  
11 two.

12 MS. BABIN: And do you have any way  
13 of separating those dumpsters from this  
14 dumpster?

15 INVESTIGATOR JONES: Yes, ma'am.

16 MS. BABIN: Okay. Could you tell me  
17 what that is?

18 INVESTIGATOR JONES: From what I  
19 understand, the -- one of the other main  
20 culprits that is causing a lot of the issues in  
21 the alleyway have the further -- have the  
22 dumpster that is further down the alleyway.

1 MS. BABIN: Okay. And where there  
2 any other citations issued, at this time?

3 INVESTIGATOR JONES: No, ma'am.

4 MS. BABIN: So no citations were  
5 issued to the company that we all agreed were  
6 dumping their trash --

7 INVESTIGATOR JONES: Oh, you are  
8 talking about the other establishment?

9 MS. BABIN: Yes.

10 INVESTIGATOR JONES: I had, on  
11 October 22nd, spoke with them and advised them  
12 of a violation that was found as well as this  
13 night as well, December 18th.

14 MS. BABIN: So was there a citation  
15 issued?

16 INVESTIGATOR JONES: There were --  
17 there are cases that are --

18 MS. BABIN: Pending?

19 INVESTIGATOR JONES: -- pending.  
20 Yes, yes, ma'am.

21 MS. BABIN: Okay. And to our  
22 recollection, Mr. Koll identified positively the

1 dumpsters as being Red Aprons?

2 INVESTIGATOR JONES: Again, when I  
3 went into the establishment, I -- he immediately  
4 remembered who I was. We spoke about the  
5 dumpsters. I showed him the picture. At that  
6 point in time, he said we have been trying to  
7 rectify the situation. We switched over  
8 everything as far as -- you know, we have taken  
9 a lot of things, opinions and things that you  
10 have asked us to do. He said that we have  
11 looked into those things. We have changed  
12 things as far as dumpsters were concerned. And  
13 then he, you know, acknowledged again that a lot  
14 of trash is being dumped into Red Apron's  
15 dumpsters by the other establishments.

16 MS. BABIN: By others.

17 INVESTIGATOR JONES: So at that  
18 point in time, it appeared to me that it was an  
19 agreement that this was the same dumpster that I  
20 observed on October 22nd.

21 MS. BABIN: Did Mr. Koll go outside  
22 and look at the dumpsters with you, at that

1 time?

2 INVESTIGATOR JONES: I don't recall.

3 MS. BABIN: We have no further  
4 questions.

5 CHAIRPERSON MILLER: Okay. Board  
6 questions? Mr. Alberti?

7 MEMBER ALBERTI: Okay. Investigator  
8 Jones, thank you for your report. So I think  
9 you stated that you had visited this  
10 establishment and observed the problem in  
11 October?

12 INVESTIGATOR JONES: Yes, sir.

13 MEMBER ALBERTI: Okay. The previous  
14 October?

15 INVESTIGATOR JONES: Yes, sir.

16 MEMBER ALBERTI: And at that time,  
17 did you examine the dumpsters in the alley?

18 INVESTIGATOR JONES: Yes, sir.

19 MEMBER ALBERTI: Okay. Did you take  
20 pictures of the dumpsters in the alley, at that  
21 time?

22 INVESTIGATOR JONES: Not up close.

1       Probably about the same -- from the same  
2       distance as this one.

3               MEMBER ALBERTI:   And at that time,  
4       did you ascertain -- did you identify a dumpster  
5       that was the problem at that time?

6               INVESTIGATOR JONES:   Yes, sir.

7               MEMBER ALBERTI:   Did you ascertain  
8       whose dumpster that was in October?

9               INVESTIGATOR JONES:   Again, from  
10      what I understood, it was Red Apron's dumpster.

11              MEMBER ALBERTI:   Okay.   And how did  
12      you identify it?

13              INVESTIGATOR JONES:   It was from Mr.  
14      Koll.

15              MEMBER ALBERTI:   Okay.   And so the  
16      evening that you observed it from Mr. Koll, was  
17      the establishment open?

18              INVESTIGATOR JONES:   No, it was 1:30  
19      in the morning.

20              MEMBER ALBERTI:   Do you know what  
21      time the establishment closes?

22              INVESTIGATOR JONES:   I can't tell

1 you offhand, sir.

2 MEMBER ALBERTI: Okay. So you went  
3 back when, a couple days later?

4 INVESTIGATOR JONES: Yes, sir.

5 MEMBER ALBERTI: All right. And did  
6 you show Mr. Koll a picture --

7 INVESTIGATOR JONES: Yes, sir.

8 MEMBER ALBERTI: -- that you took  
9 that evening?

10 INVESTIGATOR JONES: Yes, sir.

11 MEMBER ALBERTI: Did you go outside  
12 and examine the dumpsters --

13 INVESTIGATOR JONES: Yes, sir.

14 MEMBER ALBERTI: -- in the alley, at  
15 that time?

16 INVESTIGATOR JONES: Yes, sir.

17 MEMBER ALBERTI: So between those  
18 two -- between the showing of the picture and  
19 going out in the alley, were you able to -- was  
20 he able -- did he -- were you able to get a  
21 confirmation from him as to which dumpster  
22 belonged to the establishment?

1           INVESTIGATOR JONES: At that point  
2 in time, I pointed to the dumpster that was in  
3 the picture and from what I understood, he  
4 acknowledged that that was their dumpster, at  
5 that time.

6           MEMBER ALBERTI: Okay.

7           MS. BABIN: Can you clarify what day  
8 we are talking about?

9           MEMBER ALBERTI: We are talking  
10 about October 22nd. I will clarify my question.  
11 The 22nd, I thought that we mentioned that at  
12 the beginning of my question.

13           So is the -- describe to me what is  
14 similar between that picture and this picture.  
15 And I'm looking for the arrangement of the  
16 dumpsters. Dumpsters that are easily  
17 identifiable, that were there then, that are  
18 there. So I'm trying to figure out how do you  
19 know? How do we know that this -- you know, you  
20 have got Mr. Koll telling you, but how can you  
21 be confident that this was the same?

22           INVESTIGATOR JONES: Well --

1                   MEMBER ALBERTI: So describe to me  
2 the similarities with the pictures.

3                   INVESTIGATOR JONES: Between  
4 October--

5                   CHAIRPERSON MILLER: Okay. Just for  
6 the record, Mr. Jones --

7                   INVESTIGATOR JONES: Yes.

8                   CHAIRPERSON MILLER: -- you are, Mr.  
9 Alberti, you are referring to Exhibit 2?

10                  MEMBER ALBERTI: Well, I'm talking  
11 about what he observed. The arrangement and the  
12 dumpsters that he observed on the 22nd which is  
13 what we are seeing in these pictures in this  
14 exhibit.

15                  INVESTIGATOR JONES: I have to be  
16 honest with you, sir, I don't memorize the  
17 arrangement of dumpsters in the city, so I  
18 couldn't really tell you. However, I will tell  
19 you, however, I do know from my first visit --

20                  MEMBER ALBERTI: Investigator Jones,  
21 I thought you were -- I apologize.

22                  INVESTIGATOR JONES: I do have to

1 tell you that I do acknowledge that I can verify  
2 that these first two or three dumpsters that you  
3 see in the picture are in the same order.

4 MEMBER ALBERTI: The same order as  
5 the ones --

6 INVESTIGATOR JONES: Yes, sir.

7 MEMBER ALBERTI: -- that you saw on  
8 October 22nd?

9 INVESTIGATOR JONES: As on October  
10 22nd, yes, sir.

11 MEMBER ALBERTI: All right.

12 INVESTIGATOR JONES: Yes, sir.

13 MEMBER ALBERTI: Okay. All right.

14 And, Mr. Koll, didn't deny that the dumpster  
15 that is overflowing -- he didn't deny that that  
16 belonged to the establishment when you went in  
17 that evening, right?

18 INVESTIGATOR JONES: No, but he --  
19 but he emphatically, you know, let me know and I  
20 could tell that it was a really big issue,  
21 because I also spoke with the other ABC  
22 establishment back on October -- in October.

1 That this is a community issue. So I understood  
2 that at that point in time.

3 MEMBER ALBERTI: Okay.

4 INVESTIGATOR JONES: And I let him  
5 know that.

6 MEMBER ALBERTI: All right. That --  
7 yes. I gotcha. All right. I have no further  
8 questions.

9 CHAIRPERSON MILLER: Okay. Others?  
10 Mr. Short?

11 MEMBER SHORT: Investigator Jones,  
12 again thank you. In reading the law on control  
13 of little --

14 INVESTIGATOR JONES: Um-hum.

15 MEMBER SHORT: -- it says that "The  
16 licensee or retailer shall take reasonable  
17 measures to ensure that the immediate  
18 environment of the establishment including  
19 adjacent alleys, sidewalks and other public  
20 property immediately adjacent to the  
21 establishment or other property used b the  
22 licensee to conduct its business are kept free

1 of litter."

2 Did you explain that to him when you  
3 wrote the violation?

4 INVESTIGATOR JONES: Yes, sir, the  
5 first time. And I think again he explained --  
6 he expressed to me he recognized that it is an  
7 issue, because of the sharing of the dumpsters  
8 not by choice, but the sharing of the dumpsters  
9 between them and the other ABC establishments.  
10 But he does -- he did understand that.

11 MEMBER SHORT: Are there any  
12 remedies that a business person can take to  
13 ensure that they don't get the blame or they  
14 don't have the shared responsibility for  
15 irresponsible businesses?

16 INVESTIGATOR JONES: Well, and this  
17 was the reason why I advised that I wanted to  
18 see if there could be some sort of community  
19 resolution, because I didn't want to keep coming  
20 back and I didn't want it to appear that ABRA is  
21 harassing establishments.

22 So you know, I did tell him that I'm

1 going to go again and speak with the other  
2 establishment, ABC establishment and see what  
3 their rendition of -- what's going on. And  
4 which they admitted this is what they were  
5 doing. They did admit that they were dumping --  
6 just dumping trash.

7 So you know, I told them that I was  
8 going to not monitor the area as far as trying  
9 to come out and filing -- you know, in turn try  
10 to educate and try to turn this thing around.  
11 So outside of that, I think, at this point in  
12 time, the other establishment had gotten another  
13 dumpster, which is all the way to the end of the  
14 alleyway, I believe.

15 MEMBER SHORT: At the end of the --

16 MEMBER SILVERSTEIN: Say that again,  
17 Mr. Jones?

18 INVESTIGATOR JONES: The other  
19 establishment that was causing some of the  
20 issues, from what I understood, they had gotten  
21 another dumpster, which is the last one at the  
22 end of the alley.

1 MEMBER SHORT: So they own this?

2 INVESTIGATOR JONES: Yes, sir, all  
3 the way on the left. This is what they told me.  
4 So and again, this is a very narrow alleyway.  
5 It's not much space to maneuver. There is not -  
6 - there is not any more space where you can, you  
7 know, stick dumpsters or those types of things.  
8 So outside of trying to lock your container,  
9 there is really nothing else you can do.

10 MEMBER SHORT: Okay. Well, from the  
11 very first time you had been there on the  
12 October date, the 22nd, until this date, the  
13 12/18, were there any improvements? I can see  
14 some lighting in the picture. But were there  
15 any improvements at all?

16 INVESTIGATOR JONES: Now, again,  
17 from October to December when I made the second  
18 advisement, Mr. Koll did advise as to the things  
19 that hey had done. They had gotten new  
20 containers. He said that they tried to label  
21 the containers and those types of things. For  
22 me, it was going in to do the advisement and I

1 was moving on.

2 So I couldn't tell you anything else  
3 that they may have done, that's the extent of my  
4 knowledge of this situation.

5 MEMBER SHORT: But it is your  
6 testimony you saw rats the very first time you  
7 went out?

8 INVESTIGATOR JONES: Yes, sir.

9 MEMBER SHORT: And then rats again  
10 the second time?

11 INVESTIGATOR JONES: Yes, sir.

12 MEMBER SHORT: Thank you. That's  
13 all I have, Madam Chair.

14 CHAIRPERSON MILLER: Okay. Others?  
15 Mr. Rodriguez?

16 MEMBER RODRIGUEZ: Yes. Mr. Jones,  
17 again, thank you for your effort.

18 INVESTIGATOR JONES: Yes, sir.

19 MEMBER RODRIGUEZ: Do they have  
20 cameras that can oversee the trash area or their  
21 security?

22 INVESTIGATOR JONES: I have no idea,

1       sir.  When -- a lot of times when we do these  
2       monitoring efforts, we are kind of going in.  We  
3       are doing advisements and we are moving on to  
4       the next area.  So I couldn't tell you if they  
5       have cameras or not.

6                   MEMBER RODRIGUEZ:  I'll reserve my  
7       question then for the other party.  And thank  
8       you, sir.

9                   INVESTIGATOR JONES:  Yes.

10                  CHAIRPERSON MILLER:  Others?  Mr.  
11       Jones?

12                  MEMBER JONES:  Thank you, Madam  
13       Chair.  Really quickly, Investigator Jones,  
14       thank you for the report.

15                  INVESTIGATOR JONES:  Yes, sir.

16                  MEMBER JONES:  Did you -- I think  
17       you indicated this, but just for clarification  
18       purposes, did you -- on the night of 12/18, did  
19       you walk down the alleyway beyond the entrance  
20       to the alleyway?

21                  INVESTIGATOR JONES:  No, sir.

22                  MEMBER JONES:  Okay.  And for

1 further clarification, for the dumpster in  
2 question that is direct -- in looking at Exhibit  
3 2 that is directly to the right of the dumpster  
4 that is chained up --

5 INVESTIGATOR JONES: Yes, sir.

6 MEMBER JONES: -- at the time when  
7 you were physically in front of or near that  
8 dumpster, could you clearly read what that label  
9 said, although we can't read it in this  
10 particular photograph?

11 INVESTIGATOR JONES: I couldn't read  
12 it and I'll be honest with you, I was standing  
13 at the mouth of the alleyway.

14 MEMBER JONES: Yes.

15 INVESTIGATOR JONES: And this  
16 picture was actually -- it's further away than  
17 what it appears.

18 MEMBER JONES: Appears.

19 INVESTIGATOR JONES: Yes, sir.

20 MEMBER JONES: Got it. So objects  
21 in -- gotcha, gotcha.

22 INVESTIGATOR JONES: Yes, sir.

1                   MEMBER JONES: Okay. Thank you very  
2 much, sir. That's all I have. Thank you, Madam  
3 Chair.

4                   CHAIRPERSON MILLER: Okay. Others?  
5 Mr. Jones, did you monitor this establishment  
6 for trash in between October and December?

7                   INVESTIGATOR JONES: No, ma'am.

8                   CHAIRPERSON MILLER: Okay. And I  
9 want to commend you for your efforts with  
10 respect to recognizing that this was a community  
11 issue. And I just want to ask you just a little  
12 bit more about that, whether -- how successful  
13 is -- has it been or what could you do, you  
14 know, to solve this type of community issue?

15                   INVESTIGATOR JONES: I'm trying to  
16 do this in multiple areas around the city. This  
17 one is a little harder than a lot of the other  
18 areas, just because of the location of the  
19 dumpsters and the, I guess, lack of space. So  
20 again, you know, my thing was to try to do the  
21 educational piece and to try to figure out,  
22 okay, what can we do to try to figure this whole

1 thing out versus coming down and to keep just  
2 doing violations, because I don't think that's  
3 fair.

4 CHAIRPERSON MILLER: Yes.

5 INVESTIGATOR JONES: So --

6 CHAIRPERSON MILLER: Be careful with  
7 the mike.

8 INVESTIGATOR JONES: I'm sorry, I  
9 didn't mean --

10 CHAIRPERSON MILLER: It's somebody.

11 MS. BABIN: Oh, I apologize that was  
12 me.

13 CHAIRPERSON MILLER: Okay. Go  
14 ahead.

15 INVESTIGATOR JONES: Well, the other  
16 establishment admitted to the things that they  
17 were doing. You know, they admitted that they  
18 had just an influx of trash and they were just  
19 trying to get the stuff out of the restaurant  
20 and that type -- those types of things.

21 They, you know, at that point in  
22 time, told me that they would get another

1 dumpster, which I see that they have. Well, at  
2 least it looks like there is more dumpsters than  
3 there was in October.

4 CHAIRPERSON MILLER: Yes.

5 INVESTIGATOR JONES: And at this  
6 point, it didn't appear that, although the tops  
7 are up, the trash was as egregious as the first  
8 time.

9 CHAIRPERSON MILLER: Right.

10 INVESTIGATOR JONES: I'll say that.

11 CHAIRPERSON MILLER: Yes.

12 INVESTIGATOR JONES: So there are  
13 some things that we could still talk about,  
14 maybe locking certain things, those types of  
15 things, but it looked like it was a little -- it  
16 was a lot cleaner than the first time I had  
17 talked to them.

18 CHAIRPERSON MILLER: So is it --  
19 without mentioning any names though, this  
20 particular alley has two ABC establishments  
21 using it or more than that?

22 INVESTIGATOR JONES: It's two that I

1 know of.

2 CHAIRPERSON MILLER: Yes.

3 INVESTIGATOR JONES: So it could be  
4 more. I'm not sure.

5 CHAIRPERSON MILLER: Yes.

6 INVESTIGATOR JONES: But it's  
7 definitely two though.

8 CHAIRPERSON MILLER: Okay.

9 INVESTIGATOR JONES: And one has an  
10 extremely high volume.

11 CHAIRPERSON MILLER: Right. Okay.  
12 Okay. I don't have any other questions.

13 MEMBER JONES: Just a quick follow-  
14 up, Madam Chair.

15 CHAIRPERSON MILLER: Yes.

16 MEMBER JONES: I think you have  
17 spoken to this, Investigator Jones, but just to  
18 make sure I'm clear, the general manager did not  
19 deny -- well, excuse me. When you went back to  
20 the establishment on December 19th and you  
21 presented the photograph and you indicated the  
22 reason why you were there, and just to make sure

1 I'm clear, did you clearly indicate the reason  
2 why you were there on December 19th?

3 INVESTIGATOR JONES: Yes, sir.

4 MEMBER JONES: Okay. Did you show  
5 the photograph to the general manager?

6 INVESTIGATOR JONES: Yes, sir.

7 MEMBER JONES: Did the general  
8 manager, at any point, deny or speak to the fact  
9 that that was not their trash receptacle or  
10 recycling bin?

11 INVESTIGATOR JONES: Not that I can  
12 recall.

13 MEMBER JONES: Thank you very much.  
14 Thank you, Madam Chair.

15 CHAIRPERSON MILLER: Okay.  
16 Questions on Board questions?

17 MS. GEPHARDT: I just have a brief  
18 question.

19 CHAIRPERSON MILLER: Okay.

20 REDIRECT

21 MS. GEPHARDT: So despite the  
22 improvements that Mr. Koll talked to you about

1 that they have been making in the alley, did he  
2 have an explanation for why the dumpster looked  
3 the way it did that night in this photograph?

4 INVESTIGATOR JONES: Not that I can  
5 recall, no.

6 MS. GEPHARDT: Okay. That's all I  
7 have.

8 CHAIRPERSON MILLER: All right.  
9 Anything else? All right. Then you can be  
10 excused.

11 INVESTIGATOR JONES: Thank you.

12 CHAIRPERSON MILLER: Thank you very  
13 much.

14 CHAIRPERSON MILLER: Okay. Does  
15 that conclude your case, Ms. Gephardt?

16 MS. GEPHARDT: Yes, it does. Thank  
17 you.

18 CHAIRPERSON MILLER: All right. Ms.  
19 Babin?

20 MS. BABIN: We would like to call  
21 Peter Koll back up to the witness stand.

22 CHAIRPERSON MILLER: Okay.

1 Whereupon,

2 PETER KOLL

3 was called as a witness by Counsel for the  
4 Licensee, and having been first duly sworn,  
5 assumed the witness stand and was examined and  
6 testified as follows:

7 MR. KOLL: I do.

8 CHAIRPERSON MILLER: Okay. Thank  
9 you.

10 DIRECT EXAMINATION

11 MS. BABIN: Could you identify  
12 yourself for the record, please?

13 MR. KOLL: Peter Koll, P-E-T-E-R K-  
14 O-L-L, General Manager of Red Apron/The  
15 Partisan.

16 MS. BABIN: Mr. Koll, could you  
17 describe the regularity in which the dumpsters  
18 are place in the same order in the alley?

19 MR. KOLL: After every trash pickup  
20 it can vary. Typically, at this point, the  
21 orange trash receptacles are all placed in the  
22 back of the alley and the green recycling bins

1 are place in the front.

2 MS. BABIN: Are there any  
3 identifying marks by the -- by December were  
4 there any identifying marks that labeled  
5 dumpsters as ours particularly?

6 MR. KOLL: All of our dumpsters have  
7 been labeled with The Partisan Recycling or The  
8 Partisan Trash.

9 MS. BABIN: And that was the case on  
10 December 18th?

11 MR. KOLL: Yes.

12 MS. BABIN: Do you see anything on  
13 this dumpster that identifies it as a Partisan  
14 dumpster?

15 MR. KOLL: The labeling on the  
16 dumpster, I could -- do not see anything that is  
17 reflective of our labeling.

18 MS. BABIN: Did you -- when you  
19 spoke to -- you had a conversation with  
20 Inspector Jones, who we very much appreciate is  
21 trying to help us solve what is an onerous  
22 problem for us and the community, did you tell

1 Mr. Jones that this was definitely our dumpster?

2 MR. KOLL: I don't know.

3 MS. BABIN: And did you think at the  
4 time it was definitely our dumpster?

5 MS. GEPHARDT: Leading questions.

6 MS. BABIN: Would you speak to  
7 whether or not you -- your opinion on the  
8 ownership clarity of this dumpster?

9 MR. KOLL: When he showed me the  
10 picture, we began discussing the issues that we  
11 were continuing to have and we, from what I  
12 recall, just chatted about it while we were  
13 still within the restaurant.

14 MS. BABIN: Okay. I would like to  
15 call your attention to Defense Exhibit No. 3  
16 from the last hearing. Do I need to do anything  
17 to reenter that?

18 CHAIRPERSON MILLER: Okay.

19 (Whereupon, the above-referred to  
20 document was marked as Licensee Exhibit No. 3  
21 for identification.)

22 MS. BABIN: Which is this picture

1 right here.

2 MS. GEPHARDT: Oh.

3 MS. BABIN: This is part of the  
4 other -- an exhibit from the other case.

5 MS. GEPHARDT: Oh, okay. Again, I  
6 just renew my objection on that one, just  
7 because it's not dated.

8 CHAIRPERSON MILLER: Okay.

9 MS. BABIN: Mr. Koll, did you have  
10 an opportunity to check the dates?

11 MR. KOLL: No.

12 MS. BABIN: Okay. Could you just  
13 briefly describe what the order of the dumpsters  
14 are in this case? What is to the left of the  
15 dumpster that is marked The Partisan?

16 MR. KOLL: So the orange dumpsters  
17 are all located in the back of the alley past  
18 the side entrance door to our restaurant.

19 MS. BABIN: And what is to -- and so  
20 what is to the left of that dumpster?

21 MS. GEPHARDT: Just leading  
22 questions.

1 MS. BABIN: Could you just tell us -

2 -

3 MS. GEPHARDT: Very directive.

4 CHAIRPERSON MILLER: What's to the  
5 left of them is leading?

6 MS. GEPHARDT: No, I mean, she is  
7 asking him, you know, pointed one-word answers.  
8 They are leading.

9 CHAIRPERSON MILLER: Okay. I'm  
10 sorry, I just -- that didn't sound like a  
11 leading question, what's to the left of the  
12 picture. Is that what you said?

13 MS. BABIN: I'm asking what is to --  
14 well, Mr. Koll can probably answer the question.

15 CHAIRPERSON MILLER: Okay.

16 MR. KOLL: In the picture on The  
17 Partisan trash can is on the right and the  
18 separate trash can is on the left hand side.

19 MS. BABIN: And have you seen  
20 pictures earlier that depicted a different  
21 order?

22 MR. KOLL: Yes.

1 MS. BABIN: And is this -- and can  
2 you describe how this appears in relation to the  
3 order of the earlier pictures?

4 MR. KOLL: This is a different order  
5 than the one in the photo.

6 MS. BABIN: So in your experience,  
7 do you have an opinion on the regularity of the  
8 order of the dumpsters?

9 MR. KOLL: As I mentioned earlier,  
10 they can vary with the individual location of  
11 each dumpster.

12 MS. BABIN: And is there trash -- or  
13 can you describe the condition of the dumpster  
14 in this picture?

15 MR. KOLL: One is labeled Partisan  
16 Trash is completely closed. The one that is not  
17 is overflowing.

18 MS. BABIN: And in the -- I'm going  
19 to refer your attention back to the picture on  
20 the-- on December 18th, is there any trash on  
21 the ground in this picture? Can you describe  
22 the conditions of the ground as you see them in

1 this picture? Is do you recall them the night  
2 you looked at the picture?

3 MR. KOLL: The grounds appear --

4 CHAIRPERSON MILLER: What was the  
5 question you asked him?

6 MS. BABIN: I'm asking him  
7 essentially to describe whether or not there is  
8 trash on the ground. But --

9 CHAIRPERSON MILLER: And what is he  
10 looking at?

11 MS. BABIN: He is looking at the  
12 advisement photograph.

13 CHAIRPERSON MILLER: Okay. December  
14 18th?

15 MR. KOLL: Yes, ma'am.

16 CHAIRPERSON MILLER: Okay.

17 MR. KOLL: All of the trash seems to  
18 be contained within or on top of the dumpsters  
19 in the alley.

20 MS. BABIN: And what -- after --  
21 could you describe the chain of events that led  
22 us to change the style of dumpster that we dump

1 trash into and the time line?

2 MR. KOLL: Certainly. So after Mr.  
3 Jones first visit on -- in October the 25th I  
4 believe is when he came the first time, he made  
5 recommendations to label our dumpsters and  
6 switch over to metal containers that would help  
7 better contain trash and trash overflow as well  
8 as potential rodent infestation of the  
9 individual dumpsters.

10 In the time that it took for him to  
11 come back about a month and a half later, on  
12 December 18th, the dumpsters were both labeled  
13 as well as our two dumpsters, both trash and  
14 recycling had been switched over to metal.

15 MS. BABIN: So my final question for  
16 you, on -- when Mr. -- when Inspector Jones came  
17 back, our dumpsters were no longer plastic?  
18 Were they plastic or metal dumpsters?

19 MR. KOLL: They were metal.

20 MS. BABIN: Okay. I have no further  
21 questions.

22 CHAIRPERSON MILLER: Okay. Cross?

1 MS. GEPHARDT: Yes.

2 CROSS-EXAMINATION

3 MS. GEPHARDT: Mr. Koll,  
4 Investigator Jones testified that he entered  
5 your establishment after the picture he took on  
6 December the 18th. He stated that you didn't  
7 deny that that was your dumpster. Is that true?

8 MR. KOLL: That I did not deny it  
9 was our dumpster?

10 MS. GEPHARDT: He said when he  
11 walked in your establishment, he showed you the  
12 photograph, I guess on his iPad, and he said  
13 yes, he didn't deny that this was his dumpster.

14 MR. KOLL: I don't recall being  
15 asked directly if it was our dumpster or not.

16 MS. GEPHARDT: You had explained  
17 that you had made a lot of improvements. You  
18 got a metal dumpster versus a plastic dumpster  
19 to try to remedy the situation. Can you explain  
20 why your dumpsters look like this on that  
21 evening?

22 MS. BABIN: Objection. He did not

1 say this was our dumpster.

2 CHAIRPERSON MILLER: Objection what?

3 MS. BABIN: I don't believe he  
4 stated that this was our dumpster. Are you  
5 talking about Exhibit 2 for the --

6 MS. GEPHARDT: Exhibit 2 for -- yes,  
7 on December 18th, Exhibit 2.

8 MS. BABIN: I don't --

9 CHAIRPERSON MILLER: Okay. I would  
10 say this. I think that he can say that. He  
11 should be answering the questions. You think  
12 she is mischaracterizing the testimony?

13 MS. BABIN: Yes. H never said this  
14 was our dumpster. Is that what you were going  
15 to say?

16 MS. GEPHARDT: Well, so -- what's  
17 the -- so is it -- let me ask this.

18 CHAIRPERSON MILLER: Okay.

19 MS. GEPHARDT: Is this your  
20 dumpster? This is -- I'm referring to Exhibit  
21 2. I'm referring to the dumpster next to the  
22 orange one with a chain on it.

1 MR. KOLL: I can't tell what the  
2 labeling is on that dumpster.

3 MS. GEPHARDT: But just by the  
4 position, is this your dumpster?

5 MR. KOLL: As I mentioned before,  
6 positioning varied often.

7 MS. GEPHARDT: So but when  
8 Investigator Jones entered and talked to you  
9 about the litter and the trash problem, did you  
10 just think he was talking about somebody else? I  
11 mean, what did you think he was -- why was he  
12 bringing that to your attention?

13 MR. KOLL: I was aware of the  
14 situation of overflowing trash in general in  
15 that alley. When he came in, we had a  
16 conversation about the steps that he had  
17 suggested we take and the ones that we did. We  
18 also talked about the continued issues that we  
19 were having with other establishments.

20 MS. GEPHARDT: Did he tell you at  
21 any time during that conversation that you were  
22 in violation that evening?

1 MR. KOLL: He said that the alley --  
2 that the dumpsters in the alley were in  
3 violation.

4 MS. GEPHARDT: Okay. One moment.  
5 Okay. That's all I have. Thank you.

6 CHAIRPERSON MILLER: Okay. Board  
7 questions?

8 MEMBER SHORT: Madam Chair?

9 CHAIRPERSON MILLER: Yes, Mr. Short?

10 MEMBER SHORT: Mr. Koll, again, how  
11 long have you been in business there at that  
12 location?

13 MR. KOLL: Since March of 2014.

14 MEMBER SHORT: When you purchased  
15 that business, did this alley look like that?

16 MR. KOLL: It looked similarly.

17 MEMBER SHORT: And do you -- did you  
18 have a plan to improve it or improve the  
19 situation or try to help the situation? As a  
20 businessman, you said you purchased it in March  
21 of --

22 MR. KOLL: I --

1 MEMBER SHORT: -- '14.

2 MR. KOLL: -- did not personally --

3 MEMBER SHORT: -- and you said it

4 looked --

5 MR. KOLL: -- purchase the business.

6 MEMBER SHORT: Excuse me?

7 MR. KOLL: I did not -- I don't

8 personally own this business. I'm the general

9 manager.

10 MEMBER SHORT: When you started

11 working there as general manager, did the alley

12 look like this?

13 MR. KOLL: This being the picture

14 and --

15 MEMBER SHORT: Well, either picture

16 from the first incident you had with Inspector

17 Jones and the second picture.

18 MR. KOLL: It looked similarly, yes.

19 MEMBER SHORT: Was that acceptable

20 to you?

21 MR. KOLL: No, sir.

22 MEMBER SHORT: Did you do anything

1 to try to cure that situation? And if you did,  
2 what?

3 MR. KOLL: We took steps to contain  
4 our trash.

5 MEMBER SHORT: Okay. Tell me what  
6 those steps were? I'm looking at the picture.  
7 And as I look at the picture will you tell me  
8 from the very first one and this one what you  
9 did, what steps you took?

10 MR. KOLL: Are you asking if I felt  
11 responsible to clean up and existing issue from  
12 another establishment?

13 MEMBER SHORT: I'm asking you as a  
14 responsible business person in Washington, D.C.,  
15 yes, I am asking that question.

16 MR. KOLL: No, I do not feel it is  
17 our responsibility to contain someone else's  
18 trash.

19 MEMBER SHORT: Okay. Again, you are  
20 familiar with the laws and rules as you are a  
21 general manager, correct?

22 MR. KOLL: Yes, sir.

1                   MEMBER SHORT: Again I'll read 25-  
2                   726, control of litter. And it says that a  
3                   licensee will take all the necessary steps, just  
4                   paraphrasing --

5                   MS. BABIN: Paraphrasing, yes.

6                   MEMBER SHORT: -- and that they will  
7                   in their immediate environment.

8                   MR. KOLL: Okay.

9                   MEMBER SHORT: Does that apply to  
10                  you?

11                  MR. KOLL: Yes, sir.

12                  MEMBER SHORT: Okay. So if it  
13                  applies to you, what have you done, especially  
14                  since Inspector Jones has been there, to help  
15                  cure the situation?

16                  MR. KOLL: We have tightened up the  
17                  regularity in which we check the condition of  
18                  the alley. We have switched over to metal  
19                  dumpsters. We have labeled our dumpsters. And  
20                  we have participated in the community  
21                  conversations that he had suggested we partake  
22                  in to make sure that all of the establishments

1 are paying attention to the cleanliness of the  
2 alley.

3 MEMBER SHORT: Okay. And you  
4 testified earlier that your trash pickup is only  
5 once a day, correct?

6 MR. KOLL: Yes, sir.

7 MEMBER SHORT: Do you think if you  
8 had multiple trash pickups it would help the  
9 situation?

10 MR. KOLL: With regards to our  
11 trash?

12 MEMBER SHORT: Yes, with regards to  
13 your trash.

14 MR. KOLL: I don't believe that our  
15 trash is full by the appropriate time that a  
16 second pickup would make any difference.

17 MEMBER SHORT: So if you don't think  
18 it is going to make a difference, you haven't  
19 made any changes, again, I'll ask is this  
20 acceptable to you?

21 MR. KOLL: I believe I answered  
22 that. We have made several changes.

1                   MEMBER SHORT: Have the changes made  
2 a difference?

3                   MR. KOLL: Yes, sir.

4                   MEMBER SHORT: Tell me what. Tell  
5 me some of the differences?

6                   MR. KOLL: There is significant  
7 reduction of any rodent population in that area.  
8 There is very rarely, if ever, trash on the  
9 ground or around the dumpsters. The dumpsters  
10 themselves are frequently, if not always, shut.  
11 I don't know what else --

12                   MEMBER SHORT: Investigator Jones  
13 testified that he saw rats running out of that  
14 alley the first time he went and he saw rats  
15 coming out the second time. And these pictures  
16 would indicate that it would be not a problem at  
17 all for rats to get in and out of these trash  
18 cans. Do you think he was not telling the  
19 truth?

20                   MR. KOLL: That's not --

21                   MEMBER SHORT: Excuse me?

22                   MR. KOLL: That's not at all --

1 that's not what I said.

2 MEMBER SHORT: I didn't say what you  
3 said. I said Investigator Jones said he saw  
4 rats the very first time he came. He saw rats  
5 the second time he came. You said -- you made a  
6 comment about rats. What was your comment about  
7 rats?

8 MR. KOLL: I said that the  
9 infestation had complete -- I had -- had  
10 reduced.

11 MEMBER SHORT: Thank you, Mr. Koll.  
12 That's all I have, Madam Chair.

13 CHAIRPERSON MILLER: Okay. Mr.  
14 Rodriguez?

15 MEMBER RODRIGUEZ: Yes, sir. Did  
16 you ever think of using canvas back there?

17 MR. KOLL: Honestly, it was not  
18 something that crossed our mind. After  
19 conversations with Mr. Jones about his  
20 recommendations, we -- I felt those were good  
21 steps. They were coming from someone who  
22 clearly knew about these situations and I

1 thought that following his guidance was probably  
2 the best way to approach the situation.

3 MEMBER RODRIGUEZ: So you're saying  
4 you thought about it?

5 MR. KOLL: No, I did not think  
6 about.

7 MEMBER RODRIGUEZ: You did not think  
8 about it. Okay. So have any of the city's rat  
9 control people been there? And when was the  
10 last time?

11 MR. KOLL: I honestly can't remember  
12 the last time. I know we have seen them at some  
13 point this year. I believe in the spring when a  
14 lot of the community conversation started, but I  
15 don't recall exactly when it was.

16 MEMBER RODRIGUEZ: Did you ever  
17 think of calling them to come in?

18 MR. KOLL: We spoke with our  
19 exterminating company as well as with the people  
20 who came by.

21 MEMBER RODRIGUEZ: Okay. That's all  
22 I have.

1                   CHAIRPERSON MILLER: Others? Mr.  
2                   Alberti?

3                   MEMBER ALBERTI: Hi, Mr. Koll. I'll  
4                   try to keep this quick and forgive me if I ask  
5                   questions that we have already -- you have  
6                   already answered. I need to go over some of it.

7                   So this was December 18, 2014?

8                   MR. KOLL: Yes.

9                   MEMBER ALBERTI: How -- what attempt  
10                  had you made, at that point in time, to make  
11                  your receptacles identifiable?

12                  MR. KOLL: We printed signs that had  
13                  our business name as well as trash and recycling  
14                  to differentiate the two. We laminated them and  
15                  used duct tape to secure them to the  
16                  receptacles.

17                  MEMBER ALBERTI: Okay. How many  
18                  receptacles are you responsible for? And by  
19                  that, I mean, I guess you rent them from the  
20                  trash company, so how many are supplied to you?

21                  MR. KOLL: We have the one recycling  
22                  and the one trash.

1                   MEMBER ALBERTI: Okay. Describe  
2 that label for me.

3                   MR. KOLL: Certainly. It is white  
4 paper, black labeling or black lettering,  
5 probably 64.1, if I were to take a guess.

6                   MEMBER ALBERTI: Okay. I get the  
7 idea.

8                   MR. KOLL: Yes. It says Partisan on  
9 top and then trash on the bottom or recycling on  
10 the bottom as indicated, I believe, in Exhibit  
11 3.

12                   MEMBER ALBERTI: And so where are  
13 those signs affixed? You always get the same  
14 receptacles back, don't you, from the trash  
15 company?

16                   MR. KOLL: Yes, sir.

17                   MS. BABIN: Is that correct?

18                   MR. KOLL: Yes.

19                   MEMBER ALBERTI: Okay. So they be  
20 fixed ones and you -- they be there. When were  
21 they affixed prior to this?

22                   MR. KOLL: I'm sorry?

1                   MEMBER ALBERTI: Prior to -- when  
2 was the first time you affixed those labels to  
3 the trash cans?

4                   MR. KOLL: Within a week after Mr.  
5 Jones made his first visit in October.

6                   MEMBER ALBERTI: Okay. So it was  
7 several weeks before --

8                   MR. KOLL: Yes, sir.

9                   MEMBER ALBERTI: -- the incident we  
10 are talking about?

11                   MR. KOLL: Yes, sir.

12                   MEMBER ALBERTI: And where are those  
13 labels affixed on each of those receptacles?

14                   MR. KOLL: There is one in the  
15 center of the front and one on each of the top  
16 lids.

17                   MEMBER ALBERTI: One on the top?

18                   MR. KOLL: On the lids, yes.

19                   MEMBER ALBERTI: When you say  
20 center, direct center, off to the side, where  
21 would it be?

22                   MR. KOLL: In the center.

1                   MEMBER ALBERTI: Is there only two  
2 lines on your sign?

3                   MR. KOLL: Yes, sir. Just two words  
4 Partisan Trash or Partisan Recycling.

5                   MEMBER ALBERTI: Okay. I have no  
6 further questions.

7                   CHAIRPERSON MILLER: Okay. Others?  
8 Okay. I have a few follow-up. All right. So  
9 the statute speaks in terms of taking reasonable  
10 measures to ensure that litter is properly  
11 disposed of in the immediate environment of the  
12 establishment.

13                   So since Mr. Jones visited you in  
14 October, I believe you testified that you -- did  
15 you change both of your receptacles to metal or  
16 just one?

17                   MR. KOLL: Yes, both of them.

18                   CHAIRPERSON MILLER: Both. Okay.  
19 So you changed to metal because that was more  
20 efficient in keeping out the rodents, right?

21                   MR. KOLL: As well as containing the  
22 top of the trash can, yes.

1 CHAIRPERSON MILLER: All right. And  
2 also being heavier for others to lift?

3 MR. KOLL: Correct.

4 CHAIRPERSON MILLER: Okay. That you  
5 labeled your receptacles?

6 MR. KOLL: Yes, ma'am.

7 CHAIRPERSON MILLER: Okay. And that  
8 you participated in some community conversations  
9 to resolve this?

10 MR. KOLL: Not me personally, but  
11 someone from the restaurant, yes.

12 CHAIRPERSON MILLER: Okay. Can you  
13 just elaborate on that a little bit more? Like  
14 who participated in the community conversations?  
15 I mean, did the ANC participate or did -- was it  
16 just the businesses or ABRA or who participated?

17 MR. KOLL: I thought at the time  
18 that it was ABRA-organized, but I could be  
19 mistaken. The director of operations for our  
20 group went to multiple meetings with other  
21 businesses in the area as well as, I believe, a  
22 representative from the office building on that

1 corner that shares that alleyway with us. And  
2 the residential area or residential building  
3 that is up the street from the other ABC  
4 establishment that shares the alley with us.  
5 And they discussed the steps that we have all  
6 taken to help alleviate the rodent situation.

7 CHAIRPERSON MILLER: Did you -- so  
8 you didn't participate, so you are not exactly  
9 sure who participated?

10 MR. KOLL: I did not personally  
11 participate.

12 CHAIRPERSON MILLER: Yes. Did some  
13 Government officials participate? Like DCRA or  
14 somebody to say, you know, this is --

15 MR. KOLL: I am not 100 percent sure  
16 of who was there as far as a Government  
17 representative.

18 CHAIRPERSON MILLER: Okay. And are  
19 they still continuing?

20 MR. KOLL: I don't believe that they  
21 are. I don't believe they have held one since  
22 the end of the spring or the early summer.

1                   CHAIRPERSON MILLER: So according to  
2 this picture, which is Exhibit 2 in this case --

3                   MR. KOLL: Yes, ma'am.

4                   CHAIRPERSON MILLER: -- it appears  
5 that, to me, things are better, but there is  
6 still a problem.

7                   MR. KOLL: Yes, ma'am.

8                   CHAIRPERSON MILLER: All right.  
9 That's basically it. And so are there any  
10 solutions being addressed to resolve this  
11 problem?

12                   MR. KOLL: We were in the process of  
13 it from the original recommendations from  
14 October from Mr. Jones.

15                   CHAIRPERSON MILLER: Okay. So what  
16 else is a solution here? I mean, I heard you  
17 say that, you know, it's metal. Somebody got an  
18 extra trash receptacle, Mr. Jones said. But it  
19 looks like there is still a problem.

20                   MR. KOLL: So there is an open sewer  
21 grating at the very front of that alley that was  
22 requested, I believe it was with the ANC, but I

1 could be mistaken, to put a different style of  
2 grating over it, so that rodents couldn't come  
3 up through the sewer into that alley as well as  
4 permission to get the alley repaved. I don't  
5 know what any of that has led to.

6 CHAIRPERSON MILLER: Okay. So as  
7 far as -- let's presume -- and I'm not saying  
8 that this is fact. Let's presume this is your  
9 trash receptacle and somebody else is putting  
10 trash in it. Is that problem being addressed in  
11 these community conversations or some other way?  
12 I mean --

13 MR. KOLL: It had been, yes.

14 CHAIRPERSON MILLER: Okay. So this  
15 picture was taken December 18th?

16 MR. KOLL: Yes, ma'am.

17 CHAIRPERSON MILLER: 2014?

18 MR. KOLL: Yes.

19 CHAIRPERSON MILLER: Is there a  
20 problem now in your view? I mean, is this like  
21 history? I mean this is the case we are looking  
22 at, but my question really goes to whether since

1 December conversations are continuing or actions  
2 are continuing that have actually been  
3 successful?

4 MR. KOLL: Most of the issues have  
5 been alleviated. As I mentioned, the rodent  
6 infestation has leveled, almost nonexistent.  
7 And the dumpsters most of the time, if not all  
8 of the time, seem to be separated to deal with  
9 the trash for each establishment as indicated.

10 CHAIRPERSON MILLER: Are there any  
11 other steps that you could take, at this point,  
12 to improve the situation of your trash?

13 MR. KOLL: Yes. As he mentioned, it  
14 is possible to lock the receptacles with chains  
15 and I -- yes, there are obviously continued  
16 steps we could take.

17 CHAIRPERSON MILLER: Well, do you  
18 think it is continuing to be bad enough to  
19 warrant that?

20 MR. KOLL: From the progress I have  
21 seen, I believe that it is progressing to a good  
22 point where more steps are not necessary.

1 CHAIRPERSON MILLER: Okay. All  
2 right.

3 MEMBER ALBERTI: I have --

4 CHAIRPERSON MILLER: Yes, Mr.  
5 Alberti?

6 MEMBER ALBERTI: -- a question. So,  
7 Mr. Koll, you told me before that you have two  
8 receptacles, right, trash receptacle --

9 MR. KOLL: And recycling.

10 MEMBER ALBERTI: Recycling is always  
11 green and trash is?

12 MR. KOLL: Orange.

13 MEMBER ALBERTI: And once you label  
14 them, you get -- you always get the same  
15 receptacles back?

16 MR. KOLL: Yes.

17 MEMBER ALBERTI: So once it's  
18 labeled, then it's consistent for you from day-  
19 to-day?

20 MR. KOLL: Yes.

21 MEMBER ALBERTI: I want to draw your  
22 attention to Exhibits 2 and 3 from -- that were

1 part of our evidence from the previous case.

2 MR. KOLL: Okay.

3 MEMBER ALBERTI: They were defense  
4 Exhibits 2 and 3. And --

5 CHAIRPERSON MILLER: Well, wait a  
6 second. Wait a second. I'm not sure that that-  
7 -

8 MS. GEPHARDT: Wait. Objection.  
9 They have not admitted those exhibits.

10 CHAIRPERSON MILLER: In this case.

11 MS. GEPHARDT: In this case.

12 MEMBER ALBERTI: All right. And  
13 they are not part of our administrative record,  
14 I guess.

15 MS. GEPHARDT: That's right.

16 MEMBER ALBERTI: Okay. So all  
17 right, I have no further questions.

18 CHAIRPERSON MILLER: Okay. Any  
19 other Board questions? All right. Questions on  
20 Board questions?

21 MS. BABIN: All right.

22 REDIRECT

1 MS. BABIN: Mr. Koll, can we lock  
2 other people's dumpsters?

3 MR. KOLL: I would imagine not.

4 MS. BABIN: Are you overflowing our  
5 dumpsters with our trash?

6 MR. KOLL: No, ma'am.

7 MS. BABIN: Are we putting trash on  
8 the ground in front of the dumpsters?

9 MR. KOLL: No.

10 MS. BABIN: Could we arrange for a  
11 pickup of the other business' dumpsters?

12 MR. KOLL: No.

13 MS. BABIN: So as a businessman, do  
14 you think that there is really any viable way to  
15 force our neighbors to comply with -- or can you  
16 think of viable ways to force our neighbors to  
17 comply with trash regulations?

18 MR. KOLL: Not outside of what our  
19 ability is.

20 MS. BABIN: And just to be clear,  
21 our dumpsters in the pictures that we have seen  
22 and in your experience, have they been

1 overflowing since last October?

2 MR. KOLL: It was more consistently  
3 -- sorry, less consistently an issue from the  
4 visit from October. And it is almost entirely  
5 alleviated.

6 MS. BABIN: And how frequently have  
7 you been taking pictures? And so in other  
8 words, how frequently are you observing whether  
9 or not our dumpsters are overflowing in the  
10 evening?

11 MR. KOLL: At this point, probably  
12 four to five times a day.

13 MS. BABIN: Okay. No further  
14 questions.

15 CHAIRPERSON MILLER: Ms. Gephardt?

16 MS. GEPHARDT: Oh, nothing. I'm  
17 sorry, what were you asking?

18 CHAIRPERSON MILLER: Do you have any  
19 questions on Board questions?

20 MS. GEPHARDT: No, no, thank you.

21 CHAIRPERSON MILLER: Okay. I'm just  
22 kind of curious, you have been taking pictures

1 four or five times a week?

2 MR. KOLL: I have been checking on  
3 the alley.

4 CHAIRPERSON MILLER: Oh.

5 MR. KOLL: Our staff has really been  
6 trying to take periodic pictures to record these  
7 things, that I was taking between the time of  
8 Inspector Jones' first visit and, I believe, the  
9 last one was probably around March of 2015.

10 CHAIRPERSON MILLER: So well, okay,  
11 let me just ask you about that picture of  
12 December 18th.

13 MR. KOLL: Yes, ma'am.

14 CHAIRPERSON MILLER: Not knowing or  
15 not saying whose these are, whose trash  
16 receptacles these are, is this picture an  
17 aberration? Is it -- how does it compare to  
18 your pictures or your visits of the trash every  
19 day?

20 MR. KOLL: That's -- at the time, it  
21 did resemble the standard.

22 CHAIRPERSON MILLER: Okay. All

1 right. So you are saying that at the time, this  
2 picture shows that there was still a problem.  
3 This is not unusual. But since then it has  
4 gotten much better?

5 MR. KOLL: Yes.

6 CHAIRPERSON MILLER: Okay. I'm  
7 sorry, okay.

8 MEMBER ALBERTI: So --

9 CHAIRPERSON MILLER: Mr. Alberti?

10 MEMBER ALBERTI: -- I have some  
11 questions, may I?

12 CHAIRPERSON MILLER: Yes.

13 MEMBER ALBERTI: It's unusual, but  
14 since the door has been opened, I'll go there.

15 CHAIRPERSON MILLER: Okay.

16 MEMBER ALBERTI: So you guys, does  
17 everyone -- do you have like a joint contract  
18 with Tenley for trash receptacles or do all --  
19 each -- whoever shares this alley, do you all  
20 have separate contracts with Tenley for trash?

21 MR. KOLL: We have separate  
22 contracts.

1                   MEMBER ALBERTI:   Separate contracts.  
2                   So is it your understanding that Tenley would  
3                   come back and put your receptacles back in the  
4                   same spot?

5                   MR. KOLL:    I --

6                   MEMBER ALBERTI:   I mean, how do they  
7                   know which ones are yours to pick up?

8                   MR. KOLL:    They are both on the same  
9                   pickup schedule as far as I'm aware.

10                  MEMBER ALBERTI:   All right.   So they  
11                  made no attempt to put them back where they  
12                  think the customer that they are serving is or  
13                  something?

14                  MR. KOLL:    Not that I have seen.   I  
15                  mean, I can't really control how the garbage men  
16                  come and pick up their -- the recycling and the  
17                  trash and how they put them back.

18                  MEMBER ALBERTI:   Okay.   Very good.  
19                  Thank you.

20                  CHAIRPERSON MILLER:   Okay.   Do you  
21                  have any questions, in fairness, based on --

22                  MS. GEPHARDT:   I just have one quick

1 question.

2 CHAIRPERSON MILLER: Okay.

3 RECROSS

4 MS. GEPHARDT: But so, Mr. Koll, you  
5 mentioned that you don't know where the garbage  
6 men put the containers or the trash receptacles,  
7 because you don't have any control over it, but  
8 doesn't this picture with the arrangement,  
9 particularly of this first receptacle and the  
10 second, aren't they exactly what we saw in  
11 October 22, 2014?

12 MS. BABIN: Objection.

13 MS. GEPHARDT: This is -- I'm  
14 referring to Exhibit No. 2.

15 MS. BABIN: I don't think he has the  
16 knowledge. He didn't take the picture.

17 CHAIRPERSON MILLER: Wait a second.  
18 I think it is a fair question. They are both in  
19 the record. And you are asking --

20 MS. GEPHARDT: I'm just asking, you  
21 know, you basically said that there is really no  
22 order to it, but isn't this the exact same

1 series of this orange one with the chain and  
2 then this green one next to it?

3 MR. KOLL: I can't speak for the  
4 thought process of the people who are picking up  
5 the trash, but that one in the front of the  
6 picture that is chained is the only one of that  
7 type. So I imagine it is easier for them to  
8 replace it in the same spot. Whereas, all of  
9 the other receptacles are relatively containers  
10 of same color and style.

11 MS. GEPHARDT: Okay.

12 CHAIRPERSON MILLER: Okay. Thank  
13 you very much.

14 MEMBER ALBERTI: You can ask them if  
15 they have anything they want to put in evidence.

16 CHAIRPERSON MILLER: I was just  
17 raising a point that you respondent, Mr. Koll,  
18 made reference to dates on pictures on his phone  
19 or something and you had objected to -- did you  
20 object in this case?

21 MS. GEPHARDT: I objected to any  
22 photograph that they submitted with no date.

1 CHAIRPERSON MILLER: With no date.

2 MS. GEPHARDT: Because there is no  
3 relevance.

4 MEMBER ALBERTI: But they haven't  
5 offered any photos.

6 CHAIRPERSON MILLER: That's -- but  
7 you haven't offered any in this particular case.

8 MS. GEPHARDT: But wait, there was  
9 one that was -- that she offered in evidence.

10 MS. BABIN: We referred to this --  
11 correct. We referred to this picture.

12 CHAIRPERSON MILLER: There is one.  
13 That's what I was -- there is one document that  
14 hasn't been moved into evidence yet, I don't  
15 believe. That's that one?

16 MS. BABIN: I believe I have this.  
17 We discussed whether or not the order had  
18 changed in this picture, because the order has  
19 changed in this picture.

20 CHAIRPERSON MILLER: But the  
21 question is did you want to move that into  
22 evidence?

1 MS. BABIN: Yes, we would like to  
2 move this.

3 CHAIRPERSON MILLER: Okay. And then  
4 my question just goes to Ms. Gephardt's  
5 objection that it doesn't have a date. And then  
6 Mr. Koll, I believe, had said I have the date on  
7 my phone.

8 MS. BABIN: Mr. Koll said that he --  
9 All right.

10 MR. KOLL: I --

11 MS. BABIN: -- had the date and also  
12 that he testified in the earlier hearing that he  
13 had contemporaneous knowledge of when he took  
14 the pictures.

15 CHAIRPERSON MILLER: Okay. We are  
16 talking about just this hearing --

17 MS. BABIN: I don't --

18 CHAIRPERSON MILLER: -- so I just  
19 wanted to --

20 MS. BABIN: Okay.

21 CHAIRPERSON MILLER: The relevance  
22 of that picture is? Because I haven't

1 considered whether to accept it again.

2 MS. BABIN: The relevance of this  
3 picture is one of the main points of determining  
4 -- really the only point left to determine  
5 whether or not that was our dumpster that is  
6 viable is the order of the dumpsters. And this  
7 order -- it shows a different order, does not  
8 show the one with the chains next to our  
9 dumpster or the alleged dumpster --

10 CHAIRPERSON MILLER: Okay.

11 MS. BABIN: -- that is overflowing.  
12 That's why I believe it's relevant.

13 CHAIRPERSON MILLER: Okay. We don't  
14 know when it was taken?

15 MS. BABIN: I don't think that the  
16 date of it matters, because the point is is that  
17 the order changes all the time and that's what  
18 Mr. Koll was saying that the order that they  
19 drop and leave the dumpsters, sometimes it is  
20 predictable, but sometimes not.

21 CHAIRPERSON MILLER: Okay. Okay.

22 MS. BABIN: And even if this was say

1 taken the week of the dumpster violation or  
2 three months later, it would show that the order  
3 of the dumpsters changes. So I don't know that  
4 the date is necessarily relevant. And that is -  
5 - that speaks to whether or not we have properly  
6 identified this as our dumpster.

7 CHAIRPERSON MILLER: Okay.

8 MS. BABIN: And therefore are  
9 responsible for it.

10 CHAIRPERSON MILLER: Okay.

11 MS. GEPHARDT: I sustain my same  
12 objection.

13 CHAIRPERSON MILLER: Okay.

14 MS. GEPHARDT: I just maintain it.

15 CHAIRPERSON MILLER: All right. I'm  
16 going to accept that then as Respondent's  
17 Exhibit No. 1 in this case.

18 (Whereupon, the above-referred to  
19 document was marked as Licensee Exhibit No. 1  
20 and was received into evidence.)

21 MS. BABIN: Do I need to resubmit  
22 it?

1                   CHAIRPERSON MILLER: Resubmit it?  
2 Did you give it to someone?

3                   MS. BABIN: For this case, so you  
4 have it?

5                   CHAIRPERSON MILLER: Yes, yes, you  
6 do, yes. Okay. Anything else before we go to  
7 closing? All right. Ms. Gephardt, closing  
8 then?

9                   MS. GEPHARDT: All right. Ladies  
10 and gentlemen of the Board, again, this is a  
11 very narrow case. As we talked about in the  
12 last case, from October 22, 2014. The only  
13 difference, well, the one of main differences is  
14 this occurred on Thursday, December 18, 2014.

15                   A similar scenario where  
16 Investigator Jones was doing a monitoring of the  
17 establishments on D Street, N.W., for the  
18 overflow of trash and rodent issues. And when  
19 he came upon Red Apron, he saw that there was  
20 the green dumpster on the left hand side of the  
21 alley, which was overflowing. The lid was open.  
22 It was virtually an identical situation as he

1 saw on October 22nd.

2 He went in to the establishment and  
3 talked to Mr. Koll. He said he showed Mr. --  
4 Mr. Jones said he showed the photograph of the  
5 alley to Mr. Koll and that Mr. Koll did not deny  
6 that this was their dumpster.

7 So and if anything, he continued to  
8 talk about remedial measures that he has taken,  
9 things that he has done to hopefully remedy the  
10 situation. And so I think that based on the  
11 testimony of Investigator Jones alone, that the  
12 Government has proved by a preponderance of the  
13 evidence that just by looking at that dumpster,  
14 that Red Apron failed to take reasonable  
15 measures to ensure that litter was properly  
16 disposed of in the immediate environment of the  
17 establishment, including adjacent alleys or  
18 other public property immediately adjacent to  
19 the establishment.

20 Just a couple of things. As I said  
21 that Mr. Koll said that they have made some  
22 improvements and changes. However, as you see

1 from the photograph, the lid is still open.  
2 There is still trash piled up. Mr. Koll  
3 testified here today that that picture  
4 represented the standard at that time.

5 As I mentioned earlier, the  
6 photograph that the defense tried to admit into  
7 evidence, I objected that it was relevant and  
8 that is because it as not necessarily taken on  
9 December 18th and they cannot show what the date  
10 was. If it was taken on any other date but  
11 December 18th, it is irrelevant. It doesn't  
12 matter what they did after that to fix the  
13 situation.

14 The other thing is it doesn't matter  
15 whose trash it is when it comes to maintaining  
16 your own dumpster. As I was saying in my  
17 earlier closing argument, that if another  
18 establishment is dumping things in your  
19 dumpster, then it is your responsibility to  
20 remove it and do things like lock it or take  
21 other remedial measures to ensure that other  
22 establishments are not dumping into your

1 dumpster.

2 And even if for some reason that  
3 dumpster is not their dumpster, which I highly  
4 doubt that it -- I highly believe that it is  
5 their dumpster, the statute is very sort of  
6 generous in what the responsibility is of a  
7 licensed ABC establishment.

8 And that is that you have to take  
9 reasonable measures to ensure that the litter is  
10 probably disposed of in the immediate  
11 environment of the establishment including  
12 adjacent alleys or other public property.

13 So it doesn't say fail to take  
14 reasonable measures to ensure your dumpster is  
15 clean. It is to take reasonable measures to  
16 make sure that, you know, it is swept and the  
17 rodents are gone and, you know, that even though  
18 your neighbor's dumpster lid might be up, you've  
19 got to put, you know, it down.

20 Of course, then go have a  
21 conversation with your neighbor and say what the  
22 heck? Why are you not putting your dumpster lid

1 down? But again, it is being sort of a good  
2 citizen.

3 And I believe that is it and I  
4 believe that the Government has met its burden  
5 of proof in this case and I would ask that the  
6 Board find that the licensee is guilty of Charge  
7 1. Thank you.

8 CHAIRPERSON MILLER: Thank you.  
9 Okay.

10 MS. BABIN: I'll call to mind the  
11 expression no good deed goes unpunished. And I  
12 think that it is interesting here to contemplate  
13 the scope with which the prosecutor would have  
14 us go to in order to prevent our neighbor's  
15 trash from overflowing. And I would really  
16 strongly object as a business person, as someone  
17 who is called upon to take reasonable care that  
18 actually removing the overflowing trash from our  
19 neighbor's dumpster is not within our purview of  
20 reasonable care.

21 I think that, you know, to do  
22 business has to have some level of

1 predictability and to actually say that we would  
2 need to go over to our neighbor's dumpster,  
3 close it, which as we can see from the photos,  
4 our neighbor's dumpsters were unclosable. There  
5 is no question as to whether or not Red Apron  
6 was filling its own dumpsters up to overflowing.

7           There is no trash on the ground in  
8 these pictures. If we were -- if there was  
9 trash in the alley in this picture, and I'm  
10 talking about this specific case, you could make  
11 the argument that we needed to pick up that  
12 trash. But there is no trash on the ground in  
13 these pictures. There is only trash overflowing  
14 from the dumpster that cannot be positively  
15 identified as ours.

16           And we know from looking at the  
17 trash that is there, this trash that is  
18 overflowing in this dumpster does not belong to  
19 us. And we really strongly feel particularly,  
20 at this point, that you can no longer say with  
21 any certainty that this dumpster belonged to us.  
22 We think it belonged to our neighbor.

1           We had -- as you can see in the  
2 photographs that we discussed, that the  
3 Inspector took, that we had gone to a lot of  
4 measures to make sure our trash receptacles were  
5 not overflowing and were not habitats for  
6 rodents. And beyond that, it is not reasonable  
7 to expect us to then care-take somebody else's  
8 dumpsters.

9           The dumpsters that we were using  
10 were metal. This dumpster is not. Our trash  
11 dumpster is brown. This one is green. There is  
12 not -- there doesn't seem to be any recycling in  
13 this dumpster, so there is no issue of whether  
14 or not this was actually recycling.

15           At this point, you know, when we  
16 came into this space and Mr. Koll, you know,  
17 having come on at some point as general manager,  
18 really has gone to a lot of effort to try to  
19 keep this alley clean. And at this point, I  
20 think it is a stretch to say that Red Apron did  
21 not take reasonable care or care about the  
22 contents of this alley, but that we did as much

1 as we can as business owners to try to force our  
2 neighbor into compliance.

3 And one of those results resulted in  
4 a dumpster that is no longer overflowing with  
5 our neighbor's trash. And that has been a  
6 success and that we don't think beyond that  
7 there is anything reasonable about asking us to  
8 empty their dumpsters.

9 And finally, just on the basic point  
10 I do reiterate to get across to you on this  
11 point, there has been nothing in the evidence  
12 that conclusively points to this dumpster as  
13 ours. And I'm sorry that probably might be the  
14 same thing that our neighbor will be able to say  
15 when they come here, because I would like for  
16 them to be held culpable for this, because it's  
17 very frustrating for us and we care a lot about  
18 the alley.

19 And that's an important thing that I  
20 want to go on the record is that Red Apron cares  
21 about its trash or we wouldn't be sitting here.  
22 We would have just paid our fine and moved on,

1 but we care about the condition of our alley.  
2 We care about the fact that we care-take our  
3 trash carefully. We don't produce gobs and gobs  
4 of it. We don't use disposables. We recycle  
5 our grease.

6 So, you know, we feel like we have  
7 gone to actually above and beyond the duty and  
8 that the prosecutor failed to show with any  
9 certainty that this dumpster is ours or our  
10 neighbors. And, therefore, we cannot be held  
11 responsible for its contents based on that. If  
12 they can point to this, then we would be having  
13 a different discussion about whether or not what  
14 is in it, not belonging to us, was our  
15 responsibility.

16 And as I stated earlier, in addition  
17 to the fact I don't think that this has been  
18 proved conclusively, I also don't think that,  
19 you know, when we leave at 1:00 a.m. and we  
20 check our trash and it is not overflowing, that  
21 there is a whole lot more we can do. But we  
22 would welcome and we really appreciate and I

1 think that is probably the thing that is  
2 surprising to Peter at this point is that he has  
3 worked closely with Inspector Jones and we feel  
4 like Inspector Jones has been exceptionally  
5 helpful and we appreciate his efforts.

6 And this is not in any way our -- or  
7 having anyone in contention with Inspector  
8 Jones, but rather we feel like we have worked  
9 hard to remedy the situation. And somehow our  
10 efforts are now being impinged as inadequate and  
11 we feel very disappointed in that.

12 But at the end of the day, we don't  
13 think the Board has proved that we did not take  
14 reasonable care or that these dumpsters are ours  
15 or the prosecutor, I should say. But thank you  
16 for letting us have our say so, we appreciate  
17 it.

18 CHAIRPERSON MILLER: Okay. Thank  
19 you. All right. Then the record is closed in  
20 this case. And do the parties wish to file  
21 proposed findings of fact and conclusions of law  
22 or waive your right to do so?

1 MS. BABIN: We would happily waive  
2 our rights.

3 MS. GEPHARDT: Yes, we waive our  
4 rights.

5 CHAIRPERSON MILLER: Okay.

6 MS. GEPHARDT: Not all our rights,  
7 just that right.

8 CHAIRPERSON MILLER: Yes, okay. So  
9 I am now going to poll the Board for deliberate  
10 on this case in closed meeting.

11 As Chairperson of the Alcoholic  
12 Beverage Control Board for the District of  
13 Columbia and in accordance with DC Official Code  
14 Section 2-574(b) of the Open Meetings Act, I  
15 move that the ABC Board hold a closed meeting on  
16 this case, which is Case No. 15-CMP-00059, Red  
17 Apron Butchery/The Partisan for purposes of  
18 seeking legal advise from our counsel and  
19 deliberating upon the case.

20 Is there a second?

21 MEMBER SILVERSTEIN: Second.

22 CHAIRPERSON MILLER: Mr. Silverstein

1 seconded the motion. I'll now take a roll call  
2 vote on the motion before us now that it has  
3 been seconded.

4 Mr. Brooks?

5 MEMBER BROOKS: I agree.

6 CHAIRPERSON MILLER: Mr. Alberti?

7 MEMBER ALBERTI: I agree.

8 CHAIRPERSON MILLER: Mr. Rodriguez?

9 MEMBER RODRIGUEZ: I agree.

10 CHAIRPERSON MILLER: Ms. Miller  
11 agrees.

12 Mr. Silverstein?

13 MEMBER SILVERSTEIN: I agree.

14 CHAIRPERSON MILLER: Mr. Short?

15 MEMBER SHORT: I agree.

16 CHAIRPERSON MILLER: Okay. It  
17 appears that the motion has passed by a 6-0-0  
18 vote.

19 I hereby give notice that the ABC  
20 Board will hold this aforementioned meeting in  
21 closed session in the ABC Board conference room  
22 pursuant to 2-574(b) of the Open Meetings Act

1 and we will issue a decision in writing within  
2 90 days.

3 MS. GEPHARDT: All right. Thank  
4 you.

5 CHAIRPERSON MILLER: Okay. Thank  
6 you very much.

7 (Whereupon, the Show Cause Hearing  
8 in the above-entitled matter was concluded at  
9 5:09 p.m.)

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