

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

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In the Matter of:)	
Red and Black, LLC)	
t/a The Red and Black)	
)	Case No. 60996-08/053P
Application for a)	License No. 72734
Substantial Change)	Order No. 2008-0247
To a Retailer's Class "CT" License)	
at premises)	
1212 H Street, N.E.)	
Washington, D.C.)	
<hr/>)	

Red and Black, LLC t/a The Red and Black, Applicant

Robert Pittman, Vanessa Ruffin, Lisa Greene, Eddie Curry, Laira Thompson and Yolanda Rivera (A Group of Five or More Individuals), Protestants

BEFORE: Peter B. Feather, Chairperson
Judy A. Moy, Member
Mital M. Gandhi, Member
Nick Alberti, Member
Charles Brodsky, Member
Donald Brooks, Member
Herman Jones, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWN PROTEST

The Substantial Change Application filed by Red and Black, LLC t/a The Red and Black (Applicant), for a Summer Garden with 12 seats, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call hearing on June 11, 2008 in accordance with D.C. Official Code § 25-601 (2001). Robert Pittman, Vanessa Ruffin, Lisa Greene, Eddie Curry, Laira Thompson and Yolanda Rivera (A Group of Five or More Individuals) filed timely opposition to the Application on May 27, 2008.

The official records of the Board reflect that the Applicant and the Protestants have reached an Agreement which has been reduced to writing and has been properly executed and filed with the Board. The official records of the Board also reflect that the Applicant and Joseph Fengler, Chairperson of Advisory Neighborhood Commission (ANC) 6A have executed an Addendum to the Agreement dated May 28, 2008.

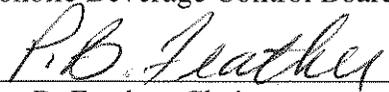
Red and Black, LLC
t/a The Red and Black
License No. 72734
Case No. 60996-08/053P
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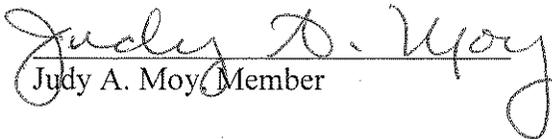
Pursuant to the Voluntary Agreement, dated July 16, 2008, the Protestants have agreed to withdraw their protest, provided, however, the Board's approval of the pending Application is conditioned upon the Licensee's continuing compliance with the terms of the Voluntary Agreement and the Addendum to the Voluntary Agreement.

Accordingly, it is this 31st day of July 2008, **ORDERED** that:

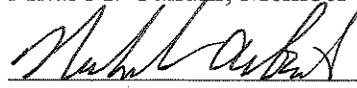
1. The protests of Robert Pittman, Vanessa Ruffin, Lisa Greene, Eddie Curry, Laira Thompson and Yolanda Rivera are **WITHDRAWN**;
2. The Substantial Change Application filed by Red and Black, LLC t/a The Red and Black, for a Summer Garden with 12 seats to its Retailer's Class CT License at 1212 H Street, N.E., Washington, D.C., is **GRANTED**;
3. The above-referenced Voluntary Agreement and the Addendum to the Voluntary Agreement are **INCORPORATED** as part of this Order; and
4. Copies of this Order shall be sent to the Protestants, ANC 6A and to the Applicant.

District of Columbia
Alcoholic Beverage Control Board

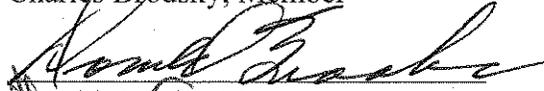

Peter B. Feather, Chairperson


Judy A. Moy, Member

Mital M. Gandhi, Member


Nick Alberti, Member

Charles Brodsky, Member


Donald Brooks, Member


Herman Jones, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Proposed Cooperative Agreement Provisions for the Red and Black 1212 H Street, N.E.

On this day Wednesday 16 July 2008, the Protestants and the Applicant agree to the following:

- I. Doors open for ingress and egress only.
- II. Sound baffling for Summer Garden Area.
- III. Have bands adhere to non-posting of events on street lamps.
- IV. Doors to the main bar area closed at 10:00pm every night from the front and rear entrances.
- V. Separate garbage/trash from glass, cans and other materials that generate sound. When placing garbage and other materials in dumpster after 9:30pm there can be no sound generated that disturb residential neighborsⁱ.
- VI. Cigarette butts will be removed from sidewalk daily before opening and once again prior to closing.
- VII. The Applicant will place copies of both group's cooperative agreements and the importance of adhering to them in employee's (management/staff) packet.
- VIII. The establishment will wash or hose downⁱⁱ the area in front and the rear of the establishment prior to opening each day. The establishment agrees to wash down the front and rear at least once per week, every week.
- IX. Removal of grease on a consistent basis.
- X. Establishment will make reasonable efforts to keep pedestrian traffic in front of business at a consistent flow. Patrons will be asked not to congregate in large groups in front of business and be asked to stay out of street.ⁱⁱⁱ
- XI. Establishment will post signs on door and in patio reminding patrons to respect the neighborhood.
- XII. Ownership of the establishment will be updated yearly.
- XIII. Summer Garden hours will be consistent with ANC 6A conditions and terms provided that terms of this cooperative agreement are adhered to by the establishment.
- XIV. Establishment will maintain an email account in order to correspond with neighbors.
- XV. Establishment representative as part of Atlas BID network will meet with neighborhood groups twice a year to share concerns, information and advice.

In consideration of the terms presented and discussed by both parties having reached consensus on this document, hereby withdraw our protest. The Protestants are satisfied that the establishment of a Summer Garden located at 1212 H Street; N.E will not adversely impact the public safety and quality of life of neighboring businesses or residents.

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DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE
REGULATION ADMINISTRATION

Signed:



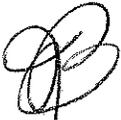
Joseph Englert
Red and Black



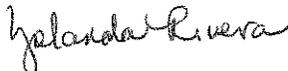
Luria Thompson
Protestant



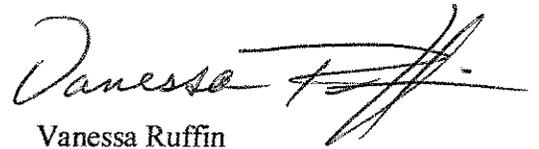
Lisa Greene
Protestant



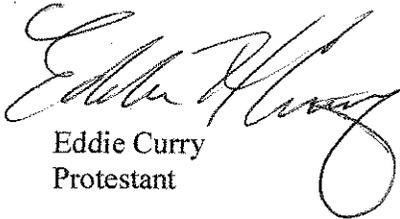
Robert Pittman
Protestant



Yolanda Rivera
Protestant



Vanessa Ruffin
Protestant



Eddie Curry
Protestant

ⁱ Especially Wylie and 800 Block of 12th Street, Neighbors.

ⁱⁱ Hose down is the process of using a water hose to apply water to the surface areas outside of the establishment. Wash down is the process of applying a cleaning agent(s) or green cleaning (earth friendly) products to water and cleansing the outside surfaces to remove smells, stains and other offensive irritants.

ⁱⁱⁱ The establishment will actively monitor its' patrons and provide management in adjacent public space (sidewalk) and provide the care needed to maintenance unencumbered / safe egress by pedestrians/traffic utilizing abutting public space. (Attention will be given to the front sidewalk/curb public space management shall not remove responsibility to the same in the rear.)

Addendum to Voluntary Agreement

Made this 16th day of September, 2005 by and between

The RED AND BLACK
1212 H Street, NE
Washington, DC 20002

and

Advisory Neighborhood Commission 6A

Whereas Joe Englert, owner of The Red and Black, has applied for a Summer Garden (16 seats) at the Red and Black located at 1212 H Street, NE, and
Whereas Mr. Englert and ANC6A agree that measures should be taken to mitigate noise emanating from the Summer Garden, the parties agree that:

- 1) The patio will be used for dining;
- 2) There will be no amplified music on the patio;
- 3) Wooden walls with sound baffling will be constructed to buffer noise to neighbors behind the establishment;
- 4) Patio will closed for seating at 10:00 PM weekday evenings and 11:00 PM on weekend evenings;
- 5) Placards or signs will be posted on walls to notify patrons of the hours;
- 6) Placard will be posted on walls requesting patrons to respect the neighboring residents;
- 7) Licensee will respond quickly to potential noise complaints, and if complaint is legitimate, will take action to mitigate the problem;

If residents have no noise complaints for a three month period following opening of the Summer Garden and the licensee has a record of good conduct during this time period, the hours for service on the patio may be extended to 11PM on weekdays and 12PM on weekends.

Agreed to this 2nd day of May, 2007.



Joe Englert, on behalf of Red and Black



Joseph Fenger, Chair ANC6A, on behalf of ANC6A

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

In the Matter of:)

Red & Black, LLC)
t/a The Red & The Black)

Application for a Retailer's)
Class CT License - at premises)
1212 H Street, N.E.)
Washington, D.C.)

Application no.: 60996
Order no.: 2005-278

Joseph Fengler, Chair, on behalf of Advisory Neighborhood Commission 6A and Joseph Englert, on behalf of Red & Black, LLC, Signatories

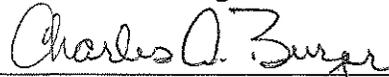
BEFORE: Charles A. Burger, Chairperson
Vera M. Abbott, Member
Judy A. Moy, Member
Audrey E. Thompson, Member
Peter B. Feather, Member
Albert G. Lauber, Member
Eartha Isaac, Member

ORDER ON VOLUNTARY AGREEMENT

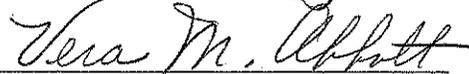
The official records of the Board reflect that Joseph Fengler, Chair, on behalf of Advisory Neighborhood Commission 6A and Joseph Englert, on behalf of Red & Black, LLC, have reached an agreement, dated September 16, 2005, which has been reduced to writing and has been properly executed and filed with the Board. Having determined that the September 16, 2005 agreement complies with all applicable laws and regulations, the Board does hereby, this 2nd day of November 2005, **APPROVE** the agreement and **INCORPORATE** the text of the same into this Order. Copies of this Order shall be sent to the Signatories of the September 16, 2005 agreement.

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t/a The Red & The Black
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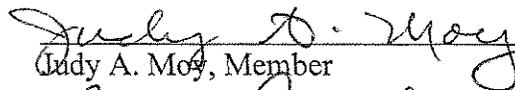
District of Columbia
Alcoholic Beverage Control Board



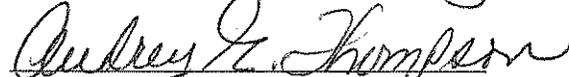
Charles A. Burger, Chairperson



Vera M. Abbott, Member



Judy A. Moy, Member



Audrey E. Thompson, Member



Peter B. Feather, Member

Albert G. Lauber, Member

Eartha Isaac, Member

Pursuant to 23 DCMR § 1719.1 (April 2004), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 941 North Capitol Street, N.E., Suite 7200, Washington, D.C. 20002.

Made this 16th day of September, 2005 by and between

The RED AND BLACK
1212 H Street, NE
Washington, DC 20002

and

Advisory Neighborhood Commission 6A

Preamble

Through this agreement, both parties aim to create an environment whereby the applicant may operate as a viable contributing business in the ANC 6A community, while concurrently curtailing any adverse effects a business such as the applicant's could have on the surrounding neighborhood.

The applicant agrees to work regularly with the ANC 6A, neighborhood associations, and residents to ensure the business operations do not adversely affect the surrounding neighborhood. All parties believe the statements and provisions contained in this agreement are reasonable and must become wholly integrated into the day-to-day operation of the business establishment.

Further, ANC 6A acknowledges that this Cooperative Agreement shall be presented to all Class CT applicants within the boundaries of ANC 6A. The community and merchants have agreed that it is in all the parties best interests to standardize the requirements for the operations of restaurant, tavern, and nightclub establishments within the boundaries of ANC 6A. To the greatest extent possible, the ANC will not insist upon or allow any significant changes to this Cooperative Agreement that will unfairly benefit or, conversely, cause competitive disadvantage to, any individual applicant or establishment within the ANC, unless such change is required by the District of Columbia government, other authorized governmental bodies, or rule of law.

The community and merchants understand and agree that the changes imposed upon the operations of all licensees within the ANC as set forth herein are important measures to protect the safety, peace, order and quiet of the neighborhood, its residents, and businesses.

Witnesseth

Whereas, Applicant's premises is within the boundaries of ANC 6A; and,

Whereas, the parties desire to enter into an agreement governing certain requirements and understandings regarding the issuance of a Retailer's Class CT Liquor License at the subject premises; and,

The Parties Agree As Follows:

1. Public Space Cleanliness and Maintenance. Applicant will maintain the public space (minimally the front sidewalk up to and including the gutter in front of the subject premises, and the alleyway behind the subject premises) adjacent to the establishment in a clean and litter-free condition by:
 - a. Picking up trash, including beverage bottles and cans, and all other trash a minimum of twice daily (once immediately before business hours and again between 5:00 p.m. and 8:00 p.m.).
 - b. Maintaining regular trash garbage removal service, regularly remove trash from the trash and dumpster area, and see that the trash and dumpster area remain clean.

- c. Applicant shall deposit trash and garbage only in rodent-proof dumpsters, and shall see that dumpster covers fit properly and remain fully closed except when trash or garbage is being added or removed.
- d. Exercising due diligence to prevent and/or rid vermin infestation in and around the establishment, including following, minimally, the recommendations and guidelines of the Vector Control Division of the Department of Public Works.
- e. Assisting in maintenance of the curb in front of the establishment to keep them free of trash and to remove snow and ice from the sidewalk and comply with all applicable D.C. laws and regulation in these respects.
- f. Planting, watering, and generally tending to tree boxes directly in front of the subject premises, if any.
- e. Promptly removing or painting over any graffiti written on the exterior walls of the property.

2. Business Operations and Practices:

- a. Applicant will not, directly or indirectly, sell or deliver alcohol to any intoxicated person, or to any person of intemperate habits, or to any person who appears to be intoxicated. A person of intemperate habits shall be defined as:
 - i. Any person convicted of alcohol offences or alcohol-related crimes three times or more in any one year; and
 - ii. Who has been so identified to the licensee by the Metropolitan Police Department by giving a photo and name to the licensee.
- b. Applicant agrees to take all necessary steps to prevent patron rowdiness, including refusing admission/service to rowdy and/or unruly persons.
- c. Applicant agrees to ensure that no patron bring alcohol into the establishment from outside sources, and at no time exits the establishment with alcoholic beverages.
- d. Applicant will not provide or sell alcoholic beverages "to go." Applicant agrees not to promote or participate in bar or pub "crawls" or any other event of this nature.
- e. The licensed establishment will be managed by the applicant in person or a board licensed manager.
- f. Applicant, and all employees of the applicant, shall attend and complete an alcoholic beverage server training course/seminar.
- g. Applicant shall post a notice kept in good repair and visible from point of entry a sign, which states:
 - i. Proper ID required (proof of age 21 minimum to be served and assurances that ID's will be checked at all times prior to serving alcoholic beverages to patrons).
 - ii. Prohibition against selling alcohol to minors.
 - iii. Request to patrons to not litter, loiter, or make excessive noise in the neighborhood as they arrive or depart.
 - iv. Warning: Drinking alcoholic beverages during pregnancy can cause birth defects.
 - v. Request that customers do not contribute to panhandlers.
- h. Applicant shall make every effort to prohibit and prevent loitering and criminal activity on or in front of the establishment premises, to include:
 - i. Asking loiterers to move on whenever they are observed outside the establishment,
 - ii. Calling the Metropolitan Police Department (MPD) to remove loiterers if they refuse Applicant's request to move on,
 - iii. Calling the Metropolitan Police Department if illegal activity is observed,
 - iv. Keeping a written record of dates and times (i.e. log) when the MPD was called for assistance.
- i. Applicant's log shall be provided to the Board and, for good cause shown to the Board, to any valid protestant during hearings involving future renewals or contested proceedings involving the Applicant's license.

- j. Applicant shall not support installation of pay phones outside of the establishment on their property.
- k. Applicant will utilize and maintain high-intensity flood-lights on the exterior of its premises so as to fully light any abutting alleyway from dusk until dawn.

3. Music / Dancing / Entertainment:

- a. Applicant agrees to ensure that sounds originating from within the establishment are mitigated by installing adequate sound proofing.
- b. Applicant shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment in accordance with DC Official Code Title 25-725.
- c. Applicant shall obtain an entertainment endorsement to have a cover charge. For purposes of this clause, a cover charge is a fee required by an establishment to be paid by patrons for admission that is not directly applied to the purchase of food or drink.
- d. Applicant may offer facilities for dancing for patrons only with an entertainment endorsement and may have recorded and background music without an entertainment endorsement. "Entertainment" means live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term "entertainment" shall not include the operation of a jukebox, a television, a radio, or other prerecorded music.

4. Cooperation with ANC 6A. Applicant agrees to work with the Single-Member District ANC Commissioner within whose boundaries the establishment is located, on resolving issues preventing the applicant from fulfilling its obligations under this cooperative agreement.

5. Modifications. This agreement can be modified only by mutual agreement of all the parties with the approval of the ABC Board. In the case of ANC6A, if applicant desires to modify the terms of this agreement, the applicant, prior to implementing the change(s), shall receive written agreement from ANC6A after a majority of the commissioners shall have voted in favor of the changes at a full public meeting.

6. Miscellaneous:

- a. Applicant certifies that it does not owe more than \$100 to the District of Columbia government as the result of any fine, fee or penalty interest or past due tax.
- b. Applicant shall post a copy of this voluntary agreement in the establishment in conjunction with the posting of its alcoholic beverage license.
- c. Applicant will operate in compliance with all applicable laws and regulations.

7. Enforcement:

- a. If either party hereto believes in good faith that the applicant is in violation of this agreement, written notice specifying the alleged violation shall be delivered to the applicant and the applicant shall have ten (10) days after receipt of such written notice to come into compliance with this agreement or respond to said alleged notice of default.
- b. Applicant and the ANC 6A Commission agree to enter into this agreement. If the applicant should breach the conditions of this agreement, it is understood by all parties that the ANC 6A, and/or its committees, or others shall immediately petition the ABC Board for a "show cause" hearing pursuant to 23 D.C.M.R. 1513.5.
- c. This cooperative agreement is binding on the applicant and its assigns and will continue in force for any and all subsequent license holders at this location.

In Witness Whereof

The parties have affixed hereto their hands and seals.

Applicant:

By: Joseph A. Englert Date: 9/18/09

Signature: JA Englert

Advisory Neighborhood Council 6A Representative:

By: Joseph Fengler, Chair Date: 9/18/09

Signature: Joseph Fengler

ABC Board-Licensed Manager:

By: Joseph A. Englert Date: 9/16/09

Signature: JA Englert