

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

In the Matter of:)
)
Half Smoke, LLC)
t/a Half Smoke)
)
Applicant for a New)
Retailer's Class CR License)
)
at premises)
651 Florida Avenue, N.W.)
Washington, D.C. 20001)
_____)

Case No. 15-PRO-00122
License No. ABRA-100855
Order No. 2016-080

Half Smoke, LLC, t/a Half Smoke (Applicant)

James Turner, Chairperson, Advisory Neighborhood Commission (ANC) 1B

BEFORE: Donovan Anderson, Chairperson
Nick Alberti, Member
Mike Silverstein, Member
Ruthanne Miller, Member
James Short, Member

**ORDER ON SETTLEMENT AGREEMENT AND
WITHDRAWAL OF ANC 1B'S PROTEST**

The Application filed by Half Smoke, LLC, t/a Half Smoke (Applicant), for a new Retailer's Class CR License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on January 4, 2016, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 1B have entered into a Settlement Agreement (Agreement), dated February 4, 2016, that governs the operation of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Chairperson James Turner and Commissioner Brian Footer, on behalf of ANC 1B, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 1B.

Accordingly, it is this 24th day of February, 2016, **ORDERED** that:

1. The Application filed by Half Smoke, LLC, t/a Half Smoke, for a new Retailer's Class CR License, located at 651 Florida Avenue, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 1B in this matter is hereby **WITHDRAWN**;
3. The above-referenced Settlement Agreement submitted by the Parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section I (Modification of Settlement Agreement) – This Section shall be modified to read as follows: “This agreement can be modified by the ABC Board; by mutual agreement of the parties with approval of the ABC Board; or as otherwise permitted by law.”

Section J (Binding Effect) – This Section shall be modified to read as follows: “This Settlement Agreement shall be binding upon and enforceable against the successors of the Applicant during the term of the license to which this Settlement Agreement applies.”

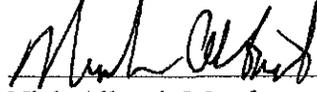
The parties have agreed to these modifications.

4. Copies of this Order shall be sent to the Applicant and ANC 1B.

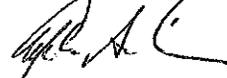
District of Columbia
Alcoholic Beverage Control Board



Donovan Anderson, Chairperson



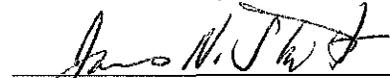
Nick Alberti, Member



Mike Silverstein, Member



Ruthanne Miller, Member



James Short, Member

Pursuant to D.C. Official Code § 25-433(d)(1), 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

Settlement Agreement Concerning Issuance of License 100855 to
Half Smoke, LLC, 651 Florida Avenue, N.W., Washington, DC 20001

THIS AGREEMENT made and entered into February 4, 2016 by and between Half Smoke, LLC ("Applicant") and ANC1B ("Protestant") witnesses.

Whereas Applicant has filed application 100855 with the District of Columbia Alcoholic Beverage Control Board ("ABC Board") for a new class CR license for premises to be known as Half Smoke, and to be located at 651 Florida Avenue, N.W., Washington, DC 20001 ("Premises").

Whereas Protestant has concerns opposing the granting of this application;

Whereas in recognition of the ABC Board's policy of encouraging parties to a potentially contested proceeding to settle their differences by reaching voluntary agreements, by their signatures below, the parties hereto desire to enter into a Settlement Agreement whereby (1) Applicant will agree to adopt certain measures to address Protestant's concerns and to include this agreement as a formal condition of its application, and (2) Protestant will agree to the issuance of the new license provided that such an agreement is incorporated into the ABC Board's order issuing the license, which license is conditioned upon compliance with this agreement;

Whereas Applicant has recently taken or intends to take certain measures designed to ameliorate Protestant's concerns;

In consideration of the mutual covenants and undertakings memorialized herein, the Applicant and Protestants hereby agree as follows:

A. NOISE. Applicant acknowledges familiarity with and will comply with noise-control provisions of the District of Columbia law and regulations, including preventing emissions of sound, capable of being heard outside the premises, by any musical instrument or amplification device or other device or source of sound or noise, in accordance with DCMR 905. Applicant will regularly monitor to assure no impact on nearby residents. The front and rear door will remain closed except to allow entrance to and exit from the building.

Summer Garden Area: Applicant agrees to play only ambient background music in the summer garden during operating hours listed in Clause B below. Applicant will ensure that that the ambient background music will cause no annoyance or disturbance to nearby businesses and residents. Applicant will ensure that no patrons will use electronic devices as speakers to play music during their entire visit in the summer garden. Once Applicant realizes that patrons are using their phone to play such amplified music, the Applicant shall notify patron that they must turn off the cell phone for such use or exit the summer garden. Applicant agrees not to have any live entertainment on or in the summer garden. Applicant agrees to post signage notifying patrons that the business is located in a residential area and request that patrons be respectful.

The Applicant agrees to restrict all events to those run by the restaurant and will not contract the

restaurant for any special events to be operated by an outside contractor.

B. FOOD AND ALCOHOL SERVICE.

- The establishment's hours of operation shall be as follows:

Day	Hours of Summer Garden	Hours of Alcoholic Beverage Service Inside	Hours of Operation Inside
Monday	11:00AM to 12:00AM	11:00AM to 12:00AM	11:00AM to 2:00AM
Tuesday	11:00AM to 12:00AM	11:00AM to 12:00AM	11:00AM to 2:00AM
Wednesday	11:00AM to 12:00AM	11:00AM to 12:00AM	11:00AM to 2:00AM
Thursday	11:00AM to 1:00AM	11:00AM to 1:00AM	11:00AM to 2:00AM
Friday	11:00AM to 2:00AM	11:00AM to 2:00AM	11:00AM to 3:00AM
Saturday	10:00AM to 2:00AM	10:00AM to 2:00AM	10:00AM to 3:00AM
Sunday	10:00AM to 12:00AM	10:00AM to 12:00AM	10:00AM to 2:00AM

- **HOLIDAY HOURS:** Applicant shall have the right to obtain ABC Board approval to sell or serve alcoholic beverages inside until 3:00 AM, operate the summer garden until 3:00 AM, and operate food services inside without time restriction on District and federal holidays and various holiday weekends.

C. TRASH/GARBAGE/RODENTS. Applicant shall:

- Maintain trash/garbage removal service at least three times weekly and see that the trash and dumpster area remains clean.
- Schedule trash and recycling pick up by contractors to commence no earlier than 9:00AM and no later than 5:00 PM.
- Properly maintain trash dumpster(s) so that they close properly and do not leak.
- Only use 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.
- Police the immediate environment of premises and make every reasonable effort to keep said area clean of trash and debris.
- Make every reasonable effort to eliminate accessible food sources for rodents and eliminate the rat population.
- Have professional extermination services or provide them as needed.
- Provide for the proper removal of grease and fatty oils from the establishment.
- No trash or recyclables will be dumped outside of the building between 10:00 PM and 9:00 AM.
- Restrict summer garden bussing so that removal of trash, recycling, glassware, and dishware from the summer garden area shall be done in a manner that mitigates ambient noise.

D. CAPACITY & SUMMER GARDEN. Applicant shall:

- At all times adhere to its occupancy limit as specified in its Certificate of Occupancy Permit, which shall remain posted in public view at all times.
- Restrict the total summer garden capacity to 50 people.

E. SMOKING. Applicant agrees to maintain the summer garden as a non-smoking outdoor space.

F. PARKING. Applicant will encourage transit use, and will encourage patrons to use nearby public parking facilities rather than parking on residential streets via signage and the website.

G. SIGNAGE/PUBLICITY. In all signs and advertisements, Applicant shall emphasize food over alcoholic beverages.

H. NOTICE AND OPPORTUNITY TO CURE. In the event that any of the parties are in breach of this Agreement, each such party shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature or is a repetition of a prior breach, reasonable notice and opportunity shall provide for a cure within thirty (30) days of the date of such notice. If Applicant or the licensee fails to cure within the thirty day period (or, with respect to a breach which reasonably requires more than thirty days to cure, fails to commence cure of such breach and diligently pursues such cure) such failure shall constitute for filing a complaint with ABRA. Unless otherwise noted above, any notice required to be made under this Agreement shall be in writing postage prepaid, or hand delivered, to the other parties to this Agreement at the following addresses. Notice shall be deemed given as of the time of receipt or refusal of receipt.

I. MODIFICATION OF SETTLEMENT AGREEMENT. This agreement can be modified only by mutual agreement of the parties with the approval of the ABC Board for acceptance and enforcement or by the ABC Board.

J. BINDING EFFECT. This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of the Applicant during the term of the license to which this Voluntary Agreement applies.

If to Applicant:

Andre McCain
651 Florida Avenue, N.W.
Washington, DC 20001
andre.mccain@halfsmokerrestaurant.com

With a copy to:

Candace Fitch cfitch@eslmgmt.com

If to Protestants:

ANC1B,
Attn: Brian Footer, ANC 1B01,
Frank D. Reeves Municipal Center,
2000 14th St., NW, Suite 100B,
Washington, DC 20009,
1b01@anc.dc.gov

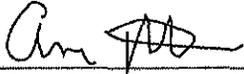
Wherefore, by the signing of the representatives of Applicant and Protestant, Applicant hereby agrees to aforementioned covenants and Protestants agrees to the issuance of the Class CR license to Applicant, and withdraws its protest, provided that this agreement is incorporated into the ABC Board's order issuing a Class CR license, the issuance of which is conditioned upon compliance with the Settlement Agreement.

SIGNATURE BLOCKS

Accordingly, on this 4 day of February 2016 it is ordered that the Settlement Agreement between Applicant and Protestant is incorporated into the ABC Board's order issuing Applicant an amended Class CR license.

Applicant:

Half Smoke, LLC



Andre McCain, Founder

2/8/16
Date

Protestants:

ANC 1B01



Brian Footer, Commissioner

February 8, 2016
Date

ANC 1B



James Turner, Chair of ANC 1B

February 8, 2016
Date