

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

In the Matter of:)	
)	
Spork, LLC)	License No.: 089950
t/a A n D)	Case No.: 12-PRO-00074
)	Order No.: 2012-497
Application for a new)	
Retailer's Class CT License)	
at premises)	
1314 9 th Street, N.W.)	
Washington, D.C. 20001)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

**ORDER DENYING APPLICANT'S MOTION TO DISMISS PROTEST OF ADVISORY
NEIGHBORHOOD COMMISSION 2F**

This matter comes before the Alcoholic Beverage Control Board (Board) on the Application for a new Retailer's Class CT License (Application) filed by Spork, LLC, t/a A n D (Applicant). The Application was timely protested by ANC 2F, represented by Chairperson Michael Bernardo, and A Group of Five or More Individuals (Group), represented by Martin Smith and David Salter.

The Roll Call Hearing occurred on September 10, 2012, and the Status Hearing on October 10, 2012. The ANC appeared at both hearings.

On October 1, 2012, Applicant filed with ABRA its Motion to Dismiss Protest of Advisory Neighborhood Commission 2F (Motion) on the ground that the ANC failed to give proper notice of the ANC meeting at which authorization for the protest was decided, as required by D.C. Official Code § 309.11(c). Applicant argues that the ANC failed to provide two forms of notice of the meeting to the community, as required by statute, and instead, the only form of notice provided by the ANC was an e-mail sent through its distribution list. While Applicant notes that the ANC may have posted notice of the meeting on its webpage and facebook page, Applicant argues that neither method was authorized by the ANC's bylaws. Subsequently, on October 12, 2012, Applicant filed its Supplement to Motion To Dismiss Protest of Advisory

Neighborhood Commission 2F (Supplement), arguing that the ANC had failed to appear for the mediation scheduled for October 2, 2012.

On October 15, 2012, the ANC filed with ABRA a letter in response to the Motion and the Supplement (Opposition). The ANC points out that, as concerns notice to the community of Commission meetings, its bylaws simply reiterate the methods of notice provided in the ANC statute, which includes notice “[i]n any manner approved by the Commission. The Commission notes that “[b]y long-standing practice, which is well-known within the community, the ANC has construed the posting of its agendas to its website...and more recently, to its official Facebook page, as meeting the requirements of [its Bylaws].” Moreover, it argues that it does not meet in the month of August, received notice of the application after its July meeting and had to call an emergency meeting in order to timely respond to the application. As regards the failure to appear for the mediation, the ANC Commissioner who was to represent the Commission at the mediation was out of town and the flight that would have allowed for his attendance at the meeting was delayed and then cancelled, preventing him from appearing at the mediation session. Moreover, the ANC notes that ABRA rules do not list failure to appear at mediation as a penalty that would provide the Board with authority to dismiss the protest.

On October 17, 2012, Applicant filed a Reply to the Opposition of ANC 2F to Applicant’s Motion to Dismiss (Reply), pointing out (i) that the ANC has not provided any evidence that its alternative methods of community notice had been formally approved by the Commission, (ii) that there was no need for the ANC to call an emergency meeting, as it had more than sufficient notice of the application to provide at least seven days notice of the meeting, and (iii) that there was no way that the ANC Commission could have returned to Washington, D.C., in time to attend the mediation session.

Having reviewed the Motion, the Supplement, the Opposition, the Reply and the record before us, we are compelled to deny the Applicant’s Motion. The Board disagrees with Applicant that the ANC’s determination that posting on its website and on its facebook account of Commission meetings were either (i) violative of the ANC statute, or (ii) required to be formally voted on at an ANC meeting or included in the ANC’s bylaws. D.C. Official Code § 309.11 is very clear on what constitutes official actions that are required to be considered at regular, special and emergency meetings. ANCs, at their public meetings, are required to (i) adopt a schedule of regular Commission meetings for the calendar year; (ii) “consider and make recommendations on matters before the Commission that may include, but are not limited to, actions or proposed actions of the Council, the Mayor, executive branch agencies, or any independent agency, board or Commission,” (iii) elect its officers, and (iv) take any action to remove a Commission from holding one of the Commission offices. D.C. Official Code §§ 309.11(b)(3), 309.11(e)(1) and 309.11(e)(2). While the ANC statute requires that ANCs “establish mechanisms to ensure the broadest dissemination of information with respect to Commission meetings, positions, and actions,” nothing in this language requires that the establishment of such mechanisms be done at an official meeting of the ANC, nor does the language require that such mechanisms be included in an ANC’s bylaws. *Id.* Moreover, the language in the ANC statute that requires ANCs to provide notice of its meetings utilizing at least two different methods, including “any other manner approved by the Commission” likewise does not require that the adoption of such other manners of notice be approved by an ANC at a

public meeting. Finally, there is no requirement in the ANC statute that adopted bylaws include any language concerning notice of Commission meetings, nor is there a statutory requirement for an ANC to promulgate and adopt a handbook for its operations. The Board therefore accepts the ANC's argument that notice of its meetings by posting on its website and on its facebook page are long-standing practices that are well known in the community, have been properly adopted by the Commission, and therefore constitute valid methods of notice for purposes of Commission meetings. Accordingly, the Board finds that the protest was in fact adopted at a valid meeting of the ANC and denies this ground of Applicant's Motion.

Moreover, as to Applicant's Motion to Dismiss for failure of the ANC to appear for the Board's mediation, the Board accepts the ANC's explanation as to why the ANC did not attend the mediation session. Moreover, while the Board does not accept the ANC's argument that dismissal of a protest is not an available remedy for failure to attend a mediation session, the Board notes that this remedy is discretionary, not mandatory. Having accepted the ANC's explanation for its nonattendance at the mediation session, the Board denies Applicant's motion to dismiss for failure of the ANC to attend the mediation session.

ORDER

Therefore, based on the foregoing findings of fact and conclusions of law, the Board, on this 7th day of November 2012, **DENIES** the Applicant's Motion to Dismiss ANC 2F. ABRA shall deliver copies of this Order to the Government and the Appellant.

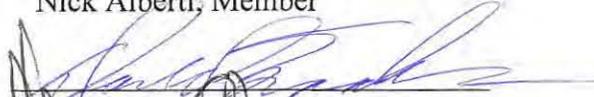
District of Columbia
Alcoholic Beverage Control Board



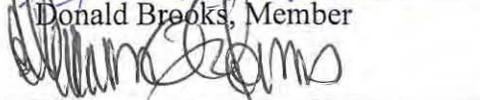
Ruthanne Miller, Member



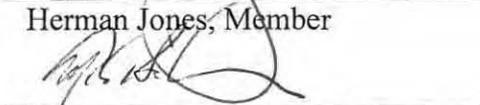
Nick Alberti, Member



Donald Brooks, Member



Herman Jones, Member



Mike Silverstein, 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, Reeves Center, 2000 14th Street, N.W., 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, District of Columbia 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 (April 2004) 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).