

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

In the Matter of:)

919 U Street, LLC)
t/a El Rey)

Applicant for a New)
Retailer's Class CR License)

at premises)
919 U Street, N.W.)
Washington, D.C. 20001)

Case No. 11-PRO-00031
License No. ABRA-086604
Order No. 2011-478

919 U Street, LLC, t/a El Rey (Applicant)

Juan Lopez, Chairperson, on behalf of Advisory Neighborhood Commission (ANC) 1B
(Protestant)

BEFORE: Nick Alberti, Interim Chairperson
Donald Brooks, Member
Herman Jones, Member
Calvin Nophlin, Member
Mike Silverstein, Member

ORDER ON VOLUNTARY AGREEMENT AND WITHDRAWAL OF PROTEST

The Application filed by 919 U Street, LLC, t/a El Rey (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 July 25, 2011 and a Protest Status Hearing on August 8, 2011, in accordance with D.C. Official Code § 25-601 (2001).

On August 8, 2011, pursuant to Title 23 of the District of Columbia Municipal Regulations (23 DCMR) § 1602.3 (2004), the Board dismissed the Application, because the Applicant failed to appear at the Roll Call Hearing.

On August 17, 2011, the Applicant filed a request for reinstatement with the Board indicating that the Applicant's absence was due to a scheduling oversight on its part. ANC 1B also submitted a letter, dated August 22, 2011, recommending that the Applicant's Application be reinstated. On September 14, 2011, the Board reinstated the Application.

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The official records of the Board reflect that the Applicant and ANC 1B have entered into a Voluntary Agreement (Agreement), dated October 6, 2011, 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 Juan Lopez, on behalf of ANC 1B, are signatories to the Agreement.

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

Accordingly, it is this 16th day of November 2011, **ORDERED** that:

1. The Application filed by 919 U Street, LLC, t/a El Rey, for a new Retailer's Class CR License, located at 919 U Street, N.W., Washington, D.C., is **GRANTED**;
2. The Protest of ANC 1B in this matter is hereby **WITHDRAWN**;
3. The above-referenced Voluntary Agreement submitted by the Applicant and ANC 1B to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED**, except for the following modification:

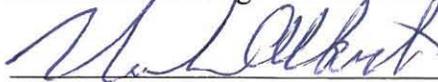
Section H (Modification of Voluntary Agreement) – shall be modified to read as follows: "This agreement can be modified only by mutual agreement of the parties with the approval of the ABC Board for acceptance and enforcement or by the ABC Board consistent with D.C. Official Code § 25-446."

The parties have agreed to this modification.

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

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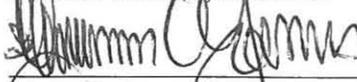
District of Columbia
Alcoholic Beverage Control Board



Nick Alberti, Interim Chairperson



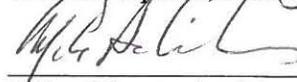
Donald Brooks, Member



Herman Jones, Member



Calvin Nophlin, 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, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.



Advisory Neighborhood Commission 1B

Government of the District of Columbia

2000 14TH Street N.W., Suite 100B

Washington, DC 20009

202-481-3462

202-870-4202

Juan Lopez 1B07, Chairperson, Ahnna Smith, 1B08, Vice Chairperson

Myla Moss, 1B01, Secretary, Mary Streett, 1B05, Treasurer

Aaron Spencer 1B02, Sedrick Muhammad 1B03, Deborah Thomas 1B04, Charles Meisch 1B06,

Lauren McKenzie 1B09, Tony Norman 1B10, E. Gail Anderson Holness 1B11

October 24, 2011

Mr. Nick Alberti
Interim Chairman
Alcoholic Beverage Control Board
1250 U Street N.W., Third Floor
Washington, DC 20009

ABRA-86604
El Rey, 919 U Street N.W.

Dear Chairman Alberti:

At its regularly scheduled meeting on July 7, 2011 (notice of which was properly given, and at which a quorum of eleven of eleven members was present) ANC1B voted (6 yes, 4 no, 1 abstain) to protest this application for a new Class C Restaurant License on the basis of peace, order, quiet and parking.

The Commission has now negotiated and signed a satisfactory voluntary agreement with the applicant and therefore withdraws its protest of this application.

Sincerely,

Juan Lopez
Chairperson

Myla Moss
Secretary

Voluntary Agreement Concerning Issuance of License
El Rey

THIS AGREEMENT made and entered into this 6th day of October 2011, by and between 919 U Street, LLC ("Applicant") and ANC1B ("Protestant") witnesses:

Whereas Applicant has filed an application with the District of Columbia Alcoholic Beverage Control Board (ABC Board) for a new class CT01 license for premises to be known as El Rey, and to be located at 919 U Street NW, Washington, DC 20009 ("Premises");

Whereas Protestant has filed before the ABC Board a protest opposing the granting of this application;

Whereas in recognition of the ABC Board's policy of encouraging parties to a protested proceeding to settle their differences by reaching voluntary agreements, by their signatures below, the parties hereto desire to enter into a voluntary 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 and withdraw its protest 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. Ambient music will be played in summer garden, and applicant will regularly monitor to assure no impact on nearby residents. 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. Applicant agrees to implement sound suppression measures that will mitigate any noise from the summer garden that may be heard in surrounding resident's homes.

B. LIVE ENTERTAINMENT. Applicant has applied for an Entertainment Endorsement on their ABC License to allow for live performances to conclude at 11 pm Sunday through Thursday nights and 1 am on Friday and Saturday nights.

C. SAFETY & SECURITY. Applicant agrees to provide a security plan for inclusion in ABC Board and Protestants files.

D. FOOD AND ALCOHOL SERVICE. Law of the license assigned will permit applicant Summer Garden hours to not exceed 2AM on weeknights and 3AM on Friday and Saturday nights. Applicant agrees that the establishment will be shut down and completely vacated, except for routine maintenance and clean-up by closing time each night. Applicant agrees that there will be no after-hours activities in the establishment. Applicant will be allowed extended hours as authorized by DC Government for special events/holidays i.e., Inauguration, holidays, etc.

E. 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. 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. Applicant will place dumping containers on private space. Applicant will make every reasonable effort to eliminate accessible food sources for rodents and eliminate the rat population. Applicant will have professional extermination services or provide them as needed. Applicant will provide for the proper removal of grease and fatty oils from the establishment and will not deposit grease or fatty oils in the dumpster nor dispose of them down the sink. Applicant shall request that its trash and recycling contractors pick trash and materials no earlier than 9:00am and no later than 5:00PM. Recyclables will not be dumped after 9:00 pm.

F. CAPACITY. 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. Applicant shall post a conspicuous sign at each exit advising patrons of the residential neighborhood and the necessity of quiet departure. Applicant will take necessary steps to control the noise generated by the operation of any outdoor space to avoid disturbing nearby residents.

G. PARKING. Applicant will encourage transit use, and will direct patrons to use nearby public parking facilities rather than parking on residential streets.

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

I. 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.

J. NOTICE AND OPPORTUNITY TO CURE. In the event that any of the parties is in breach of this Agreement, it 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 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) failure shall constitute a cause for seeking a Show Cause Order from the ABC Board pursuant to DC Official Code 25-447. Unless otherwise noted above, any notices required to be made under this Agreement shall be in writing and mailed via certified mail, return receipt requested, 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.

If to Applicant: El Rey, 919 U Street NW, Washington, DC 20009

If to Protestant: ANC1B, 2000 14th Street N.W. Suite 100B, Washington, DC 20056

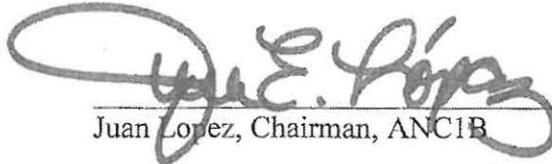
Wherefore, by the signing of the representatives of Applicant and Protestant, Applicant hereby agrees to aforementioned covenants and Protestants agrees to the issuance of the Class CT license to Applicant, and withdraws its protest, provided that this agreement is incorporated into the ABC Board's order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

FOR 919 U STREET, LLC

FOR ANC 1B



Sheldon Scott



Juan Lopez, Chairman, ANC1B

Accordingly, on this 2 day of October 2011 it is ordered that the Voluntary Agreement between Applicant and Protestant is incorporated into the ABC Board's order issuing Applicant an amended Class CT license.

