THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD

In the Matter of:	)	
	)	
The Griffin Group, LLC	)	Case Number: N/A
t/a Policy	)	License Number: 76804
	)	Order Number: 2013-072
Application for a Substantial Change	)	
to a Retailer's Class CR License	)	
	)	
at premises	)	
1904 14th Street, N.W.	)	
Washington, D.C. 20010	)	
	)	

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

ALSO PRESENT: The Griffin Group, LLC, t/a Policy, Applicant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

ORDER DENYING APPLICANT'S APPLICATION FOR A SUBSTANTIAL CHANGE

The Griffin Group, LLC, t/a Policy, (Applicant), filed an Application for a Substantial Change to its Retailer's Class CR License (Application), located at premises 1904 14th Street, N.W., Washington D.C.

The Applicant has requested additional hours, which "exceed the hours set forth in the [Settlement] Agreement dated May 15, 2008 and approved by the Board [on] June 5, 2008." Letter from Andrew J. Kline, on behalf of The Griffin Group, LLC t/a Policy, to the Alcoholic Beverage Control Board, 1 (Jan. 30, 2013). In support of its request, the Applicant asks the Board to consider newly enacted § 25-446.02(1)(E), which states that settlement agreements may not prohibit a licensee from applying for changes to licensed operation procedures, including . . . changes of hours." D.C. Code § 25-446.02(1)(E) (West Supp. 2013).

The Board finds that § 25-446.02(1)(E) does not apply to the Applicant's Settlement Agreement, because the agreement does not prevent the Applicant from applying to change its operating hours. Instead, the Settlement Agreement merely prohibits the Applicant from operating the indoor part of the establishment past 1:00 a.m. during the week and 2:00 a.m., and prohibits the Applicant from operating the

establishment's summer garden past 11:00 p.m. during the week and 11:30 p.m. during the weekend. In re The Griffen Group, LLC, t/a Policy, Case Number 61226-07/057P, Board Order No. 2008-207, *Settlement Agreement*, § 2 (D.C.A.B.C.B. Jun. 5, 2008).

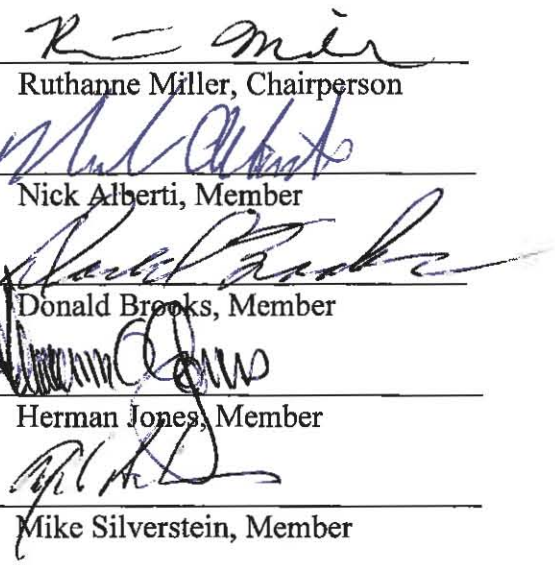
Separately, we also note that the Act specifically authorizes hour restrictions in settlement agreements. The Act explicitly permits parties to provide for "[r]estrictions on hours of operation and sales and service for a new or existing licensee's facilities" in their settlement agreements. D.C. Code § 25-446.02(7) (West Supp. 2013). Furthermore, the Committee Report discussing the Act indicates that the Board may enforce settlement agreement provisions that restrict "hours of operation and sales and service." Council of the District of Columbia, Report on B19-824, the "Omnibus Alcoholic Beverage Regulation Amendment Act of 2012," Committee on Human Services, 22 (Nov. 8, 2012).

Finally, all alcoholic beverage license holders in the District of Columbia should also be aware that the legislative changes made to the settlement agreement law do not alter or amend settlement agreements that the Board has previously approved. The Attorney General has previously stated that the Council of the District of Columbia may not amend existing settlement agreements through legislation pursuant to the Contract Clause of the United States Constitution and the District of Columbia Home Rule Act. Memorandum from Peter J. Nickles, Attorney General, to Fred P. Moosally, General Counsel, Alcoholic Beverage Regulation Administration, Legal Opinion on Inaugural Celebration Extension of Hours and Voluntary Agreements, 4 (Dec. 18, 2008). As a result, the Board will continue to enforce provisions in existing settlement agreements that may conflict with the Act, because such provisions remain in effect until amended or terminated.

ORDER

Therefore, the Board, on this 20th day of March 2013, hereby **DENIES** the Application for a Substantial Change submitted by The Griffin Group, LLC, t/a Policy. The Alcoholic Beverage Regulation Administration shall deliver a copy of this Order to the Applicant.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson

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).