

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

In the Matter of:	)	
	)	
DC Live, LLC	)	
t/a XO	)	
Applicant for a New	)	Case No. 15-PRO-00108
Retailer's Class CT License	)	License No. ABRA-100316
	)	Order No. 2016-077
at premises	)	
15 K Street, N.E.	)	
Washington, D.C. 20002	)	

DC Live, LLC, t/a XO (Applicant)

Tony Goodman, Commissioner, Advisory Neighborhood Commission (ANC) 6C

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

**ORDER ON SETTLEMENT AGREEMENT AND  
WITHDRAWAL OF ANC 6C'S PROTEST**

The Application filed by DC Live, LLC, t/a XO (Applicant), for a new Retailer's Class CT License, having been protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on November 30, 2015, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 6C have entered into a Settlement Agreement (Agreement), dated February 17, 2016, that governs the operation of the Applicant's establishment.

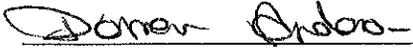
The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Commissioner Tony Goodman, on behalf of ANC 6C, are signatories to the Agreement.

This Agreement constitutes a withdrawal of the Protest filed by ANC 6C.

Accordingly, it is this 17<sup>th</sup> day of February, 2016, **ORDERED** that:

1. The Application filed by DC Live, LLC, t/a XO, for a new Retailer's Class CT License, located at 15 K Street, N.E., Washington, D.C., is **GRANTED**;
2. The Protests of ANC 6C in this matter is hereby **WITHDRAWN**;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; and
4. Copies of this Order shall be sent to the Applicant and ANC 6C.

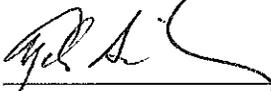
District of Columbia  
Alcoholic Beverage Control Board



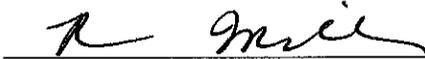
Donovan Anderson, Chairperson



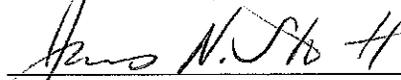
Nick Alberti, Member



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 14<sup>th</sup> 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

**THIS AGREEMENT** is made and entered into as of this 17 th day of February, 2016 by and between DC Live, LLC t/a XO (hereinafter “XO” or the “Applicant”) and Advisory Neighborhood Commission 6C (hereinafter “ANC 6C” or the “Protestant”).

**WHEREAS**, XO has filed an application with the District of Columbia Alcoholic Beverage Control Board (hereinafter “ABC Board”) for issuance of a Retailer’s Class CT license (100316) for premises at 15 K Street NE, Washington, D.C., including requests for Entertainment and Summer Garden Endorsements;

**WHEREAS**, ANC 6C has protested the approval of the application and the granting of the license;

**WHEREAS**, the parties desire to enter into this Settlement Agreement whereby XO will adopt certain measures to address ANC 6C’s concerns, such measures to be formal conditions to the approval of the license, in exchange for the withdrawal of the protest filed by ANC 6C.

**NOW, THEREFORE**, in consideration of the mutual covenants and undertakings herein after set forth, and other good and viable consideration, XO and ANC 6C agree as follows:

- 1. Recitals Incorporated:** The recitals set forth above are incorporated herein by reference.
- 2. Tavern Hours:** XO agrees that the hours of operation shall be from 10 AM until 2 AM Sunday – Thursday and 10 AM until 3 AM on Friday and Saturday. The ANC agrees that XO may apply for extended holiday hours for indoor operation of the establishment on the following eight (8) evenings per year: New Year’s Eve, Saturday and Sunday of Memorial Day weekend, the eve of Independence Day, Saturday and Sunday of Labor Day weekend, Christmas Eve and Christmas Day; provided, however, that XO may sell and serve alcoholic beverages until 4 AM on such 8 extended holiday evenings but shall not operate for 24 hours on these holidays. Patrons shall be encouraged leave the premises peacefully and quietly without disturbing the residents in the surrounding neighborhood.
- 3. Summer Garden Hours:** XO agrees that the hours of operation for the Summer Garden area shall not extend beyond 10:00 PM, Monday – Thursday and midnight on Friday, Saturday and Sunday.
- 4. Outdoor Entertainment:** XO agrees that no live music will be presented in the summer garden; provided, however, that XO may make use of a DJ the Summer Garden area until 10 pm. The playing of recorded music shall cease at least ½ hour prior to the designated closing time for the summer garden.

- 5. Capacity:** The capacity of the tavern is limited to 320 persons seated and 400 standing. The capacity of the summer garden is limited to 60 persons seated or standing, excluding employees. Standing persons shall not be served in the summer garden area.
- 6. Noise:** XO agrees to employ sufficient noise abatement and mechanical controls (e.g., governors) on audio devices to ensure that the level of any form of amplified sound, noise, and/or vibration emanating from the establishment complies with applicable law and this Agreement. Without limiting the generality of the foregoing, and consistent with the provisions of Section 7 of this Agreement, XO agrees to review and, as required to ensure ongoing compliance with this Agreement, take such additional actions (including, without limitation, the installation of additional sound abatement materials and the development of policies) to prevent the emanation of any form of amplified sound, noise, and/or vibration from the establishment or the summer garden which may be heard in any residence. XO may request reasonable access to neighboring properties, including those at 60 L Street, NE and 1005 North Capitol Street, NE, prior to opening the summer garden to conduct tests to confirm that any form of amplified sound, noise, and/or vibration from the establishment or the summer garden is not audible in such dwellings.
- 7. Continuing Cooperation:**
- (a) XO will provide the ANC with the name, direct phone number, cellphone number and email address of the manager on duty. If ANC contacts the manager on duty, who is responsible for compliance with this Agreement, the manager on duty will promptly determine whether the sound levels exceed the requirements of this Agreement, and if so, will promptly lower the sound levels or undertake such measures as may be needed to comply with this Agreement and applicable law.
- (b) Without limiting the generality of the foregoing, XO agrees to review and take any action reasonably required to ensure ongoing compliance with this Agreement, including without limitation, developing policies to avoid complaints. If there are noise complaints from the ANC or local residents, XO shall take all steps reasonably required to address such complaints, including the installation of additional noise controls to ensure XO's compliance with applicable law and this Agreement.
- (c) XO shall maintain readily visible signage at the entry and exit points of the establishment, the summer garden and the parking lot which signage shall contain language reminding patrons that they are in a mixed use neighborhood and requesting that their enjoyment of the establishment and summer garden be in a respectful and orderly manner. XO's staff or security personnel shall remove from the summer garden and the premises any patron who fails to adhere to this admonition.
- (d) XO agrees that its manager with understanding of the terms of this agreement and applicable law will monitor levels to ensure compliance.

- 8. Security:** XO agrees to (i) engage and maintain adequate security personnel at all times when the Establishment is operating and until at least one hour past closing time to ensure that the Establishment's patrons have dispersed from the area peacefully and (ii) ensure that all of its video cameras are maintained and fully functioning on a weekly basis every Friday night and (iii) maintain a log book of such maintenance checks and any complaints from patrons, the ANC and local residents. XO agrees to hire reimbursable details from MPD on Friday and Saturday nights when there is an "advertised event". An advertised event shall be an event featuring live entertainment that is advertised via radio advertising and distributed flyers. The Applicant agrees to share (i) a copy of its security plan that complies D.C. Official Code § 25-402(d)(3) with the ANC and the Board when such security plan has been approved by the Board and any subsequent amendments in the future. Whenever the Applicant has live entertainment, including a guest disk jockey, the Applicant shall employ additional security guards to address the anticipated crowd of patrons that typically attend such entertainment events.
- 9. Parking:** XO agrees to provide barricades to separate vehicle and pedestrian traffic in the driveway and parking areas. Further, XO agrees have a security person stationed on Friday and Saturday nights at the exit of the on-site parking lot from one hour prior to closing until one hour after closing each night to ensure that patrons leave the parking lot in an orderly manner and to minimize noise from patrons (e.g., honking of car horns). XO also agrees to (i) provide additional lighting in the parking lot to make it safer at nighttime and (ii) not play amplified music outside in the late night and early morning hours (e.g., after 9:30 PM or before 10 AM Sunday – Thursday or after 11:30 PM or before 10 AM on Friday and Saturday).
- 10. Promoters:** XO shall not cede control of the premises to any promoter or third party, nor shall XO allow any promoter or third party to control access to the establishment.
- 11. After Parties:** Except as otherwise provided herein, XO shall not operate beyond the hours stated in Section 2 of this Agreement. With respect to the eight evenings of extended holiday hours discussed in Section 2, every year XO shall each year (a) provide the ANC with a copy of its Extended Holiday Hours Program Registration Form and Public Safety Plan Information Form when XO files these forms with ABRA and (b) be invited to brief the ANC at a public meeting at least 30 days prior to each holiday requested about its safety plan.
- 12. Public Space and Trash:** XO shall keep the area adjacent to the premises clean and free of litter, bottles and other debris in compliance with DC Code and municipal regulations. Applicant shall police these areas sufficiently to ensure that refuse, flyers and other materials are promptly removed after each closing.

- 13. Trash Pick-Up and Removal:** XO will maintain regular trash/garbage removal service by a licensed trash hauler only during the hours from 9:00 AM to 5:00 PM. XO shall keep dumpster lids tightly closed to inhibit entry by rodents, to limit odors and help control the pest (insect) and rodent population. XO will also remove snow from the sidewalk adjacent to the premises within 8 daylight hours after the snow stops as consistent current DC law.
- 14. Notice and Opportunity to Cure:** The Parties to this Agreement agree to work together to resolve matters of community concern related to the Establishment. To this end, the Parties agree that each will notify the other as soon as reasonably possible of any complaint about the establishment and attempt a cooperative resolution of such complaints as the first recourse. Unless a breach of this Agreement is of an emergency nature, the Party in breach shall provide for a cure within 15 days of the notice of such breach. If Applicant fails to cure within the 15-day period (or, with respect to a breach which reasonably requires more than 15 days to cure, fails to commence a cure of such breach and diligently pursue such cure), such failure shall constitute cause for filing a complaint with the Board.
- 15. Notices:** Notices required to be made under this Agreement shall be in writing and mailed to the addressed identified in this Agreement via certified mail, return receipt requested, postage prepaid, or hand-delivered. Notice shall be deemed given as of the time of receipt or refusal of receipt. If to Protestant:

ANC 6C:  
Chairperson, ANC 6C  
P.O. Box 77876  
Washington, DC 20013

With a copy to:

Lyle M. Blanchard, Esq.  
1620 L Street NW, Suite 900  
Washington, D.C. 20036

If to Applicant:

DC Live, LLC  
15 K Street NE  
Washington, DC 2002

With a copy to:

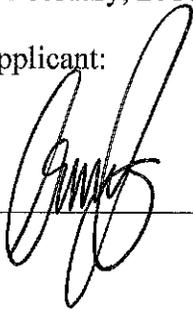
Andrew J. Kline, Esq.  
1225 19<sup>th</sup> Street NW, Suite 320

Washington, D.C. 20036

- 16. Entire Agreement:** This Agreement sets forth the entire understanding of the parties with respect to Applicant's alcoholic beverage application and issuance of the License. There are no other warranties or representations which have been made or shall be relied upon by any of the Parties to this Agreement other than those expressly set forth herein.
- 17. Counterparts:** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
- 18. Construction:** In the event any violation of this Agreement shall be deemed a violation of District of Columbia law, the violation of this Agreement shall be merged into the law violation, such that the Applicant shall only be found liable for one violation by the Board.
- 19. Withdrawal of Protest:** Protestants agree to the issuance of the license and the withdrawal of their protests upon execution of this Agreement, if the Board's order issuing the license is conditioned upon compliance with this Agreement.

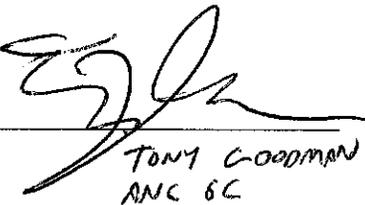
IN WITNESS WHEREOF, the Parties place their signatures to this agreement, this 17th day of February, 2016.

Applicant:



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Advisory Neighborhood Commission 6C:



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TONY GOODMAN  
ANC 6C