

ADVISORY NEIGHBORHOOD COMMISSION 2F



ALCOHOLIC BEVERAGE LICENSING GUIDELINES

(Approved April 2, 2003)

*For Applicants, Licensees, ANC Commissioners
& Community Organizations*

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INTRODUCTION

Advisory Neighborhood Commission 2F (“ANC 2F” or “the ANC”) appointed an Ad Hoc Task Force (“Task Force”) at its October 2002 monthly meeting, which was publicly advertised and at which a quorum was present. The Task Force was established for the purpose of recommending policy guidelines for the ANC to consider in the licensing of retail businesses selling alcoholic beverages, particularly with regard to the use of Voluntary Agreements.

The purpose of the Alcoholic Beverage Licensing Guidelines (“Guidelines”) is to provide applicants for liquor licenses and current license holders, as well as ANC Commissioners, community organizations, and interested residents, with useful information on the process for obtaining or renewing a license. The Guidelines also set forth ANC policy with regard to the consideration of license applications and certain operations of ABC-licensees in order to assure uniform treatment of establishments. For this purpose, the Guidelines provide a suggested standard voluntary agreement (Appendix A), which the ANC and license applicant may choose to alter based on the individual circumstances.

When developing these Guidelines, the Task Force gave placed great emphasis on the desires and concerns of the community. In order to ensure that it received the views of as many people as possible in the community, and not simply those who are most active or vocal, the Task Force conducted a survey of voters residing in ANC 2F in December of 2002. The methodology and results of this survey is fully described in the Task Force’s Report and Recommendations, issued concurrently with these Guidelines. Any references to “the ANC Survey” throughout these guidelines refer to statistics and insights gained from this study. The ANC then met and consulted with several neighborhood liquor licensees to listen to their comments on the ANC Survey and the licensing process.

ANC 2F approved these Guidelines at its April 2, 2003, monthly meeting, which was publicly advertised and at which a quorum was present. The Executive Director of the Commission is authorized to amend the Guidelines from time to time by to reflect changes in the ANC’s membership or contact information, modification of the procedures of the Alcoholic Beverage Control Board or Alcoholic Beverage Regulatory Administration, or to update other non-policy oriented information. Substantive changes to the policies provided herein will be subject to an ANC vote.

ABOUT ADVISORY NEIGHBORHOOD COMMISSIONS AND ANC2F

In 1973, the District of Columbia Home Rule Charter established **Advisory Neighborhood Commissions (ANCs)**. ANCs consider a wide range of policies and programs affecting their neighborhoods, including applications for liquor licenses. ANCs also consider traffic, parking, housing, recreation, street improvements, zoning, economic development, police protection, sanitation and trash collection, and the District's annual budget. In fact, no public policy area is excluded from their purview.

In each of these areas, the intent of the ANC legislation is to ensure input from an advisory body that is made up of the residents of the neighborhoods that are directly affected by government action. The ANCs are the body of government with the closest official ties to the people in a neighborhood.

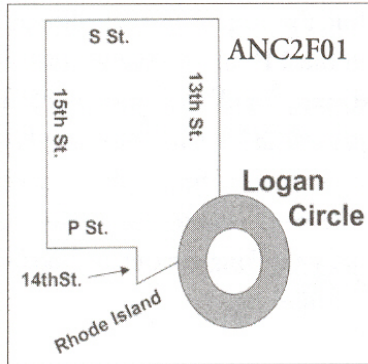
ANCs present their positions and recommendations on issues to various District government agencies, including the **Alcoholic Beverage Control Board (ABC Board)** and **Alcoholic Beverage Regulatory Administration (ABRA)**, as well as the Executive Branch, and the D.C. Council. They also present testimony to independent agencies, boards and commissions, usually under rules of procedure specific to those entities. By law, ANC recommendations must be accorded "great weight" by government agencies, meaning that agencies must consider the ANC's view and must explain its reasoning if it chooses not to follow the ANC's decision.

There are 37 ANCs throughout the city, which include 286 Commissioners. ANC 2F serves Logan Circle, Thomas Circle, Old City, Blagdon Alley, Franklin Square, and parts of Shaw and Downtown. It is composed of six Commissioners, each representing approximately 2,000 residents in a single member district ("SMD"). Voters who reside in the same SMD as the candidate elect the Commissioners. Commissioners are nonpartisan, unpaid local government officials. ANC 2F meetings are currently held on the first Wednesday of each month at 7 p.m. at the Washington Plaza Hotel, 10 Thomas Circle, N.W. Minutes of ANC 2F meetings are available at <<http://www.anc2f.org>>.

ANC 2F: SINGLE MEMBER DISTRICT BOUNDARIES AND COMMISSIONER DIRECTORY

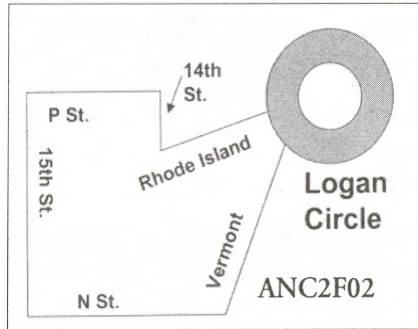
COMMISSIONERS

2F01



Cary Silverman
 1455 Q St. NW, 20009
 (202) 238-9109
 csilverman@juno.com

2F02



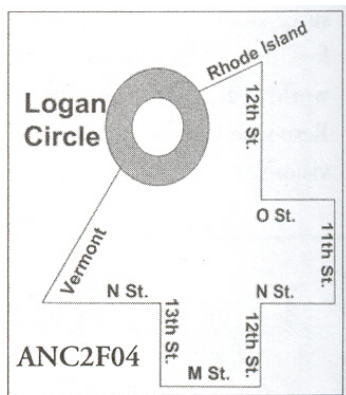
Jim Brandon
 1301 15th St. NW #615, 20005
 (202) 387-7537
 commbrandon@aol.com

2F03



Miriam K. Trimble
 1330 Mass. Ave. NW, 20005
 (202) 638-1577
 mimitrimble@aol.com

2F04



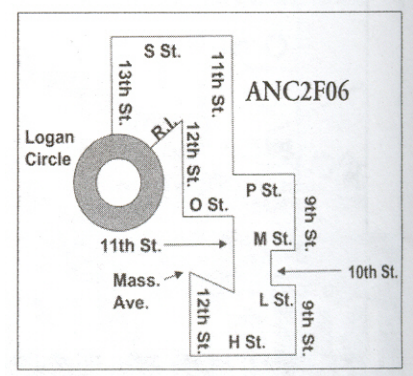
Helen M. Kramer
 1325 13th St. NW #25, 20005
 (202) 483-1728
 hmk-dc@att.net

2F05



Tom Funk
 1113 M St., N.W., 20005
 (202) 898-1666
 planetkelly@msn.com

2F06



Bob Hinterlong
 1015 O St. NW, 20001
 (202) 232-4800
 grobert@cs.net

EXECUTIVE DIRECTOR

Sherri Kimbel
 1500 Vermont Avenue NW, 20005
 (202) 462-0884
 kimbels@earthlink.net

REGULATION OF ALCOHOLIC BEVERAGES IN DC

The laws applicable to alcoholic beverage licensing, sale, and distribution are located in Chapter 25 of the D.C. CODE (2002), which may be accessed online at <<http://www.michie.com/>>. The Alcoholic Beverage Regulation Administration (ABRA) is in the process of adopting regulations implementing these laws. Applicants are responsible for following both the laws and regulations, and should look to these materials for answers to their questions and further detail on the licensing process and restrictions on licensees. These Guidelines provide limited information that may be helpful to business owners, applicants, community organizations, and ANC Commissioners. *The Guidelines should not be relied upon as a substitute for the laws and regulations of the District of Columbia.*

The District of Columbia Code provides the following “appropriateness standard” for determining whether the government should grant a new application or renewal of a liquor license, or a substantial change in operations of a licensee:

§ 25-313. Appropriateness standard. *(provided in part)*

(a) To qualify for issuance, renewal of a license, transfer of a license to a new location, or an application for the approval of a substantial change in operation as determined by the Board under § 25-404, an applicant shall demonstrate to the satisfaction of the Board that the establishment is appropriate for the locality, section, or portion of the District where it is to be located.

(b) In determining the appropriateness of an establishment, the Board shall consider all relevant evidence of record, including:

- (1) The effect of the establishment on real property values;
- (2) The effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726;
- (3) The effect of the establishment upon residential parking needs and vehicular and pedestrian safety; and
- (4) In the case of a license renewal, the provisions of this subsection and § 25-315.

§ 25-314. Additional considerations for new license application or transfer of license to a new location.

(a) In determining the appropriateness of an establishment for initial issuance of a license or a transfer of a license to a new location, the Board shall also consider the following:

- (1) The proximity of the establishment to schools, recreation centers, day care centers, public libraries, or other similar facilities;
- (2) The effect of the establishment on the operation and clientele of schools, recreation centers, day care centers, public libraries, or other similar facilities; and

(3) Whether school-age children using facilities in proximity to the establishment will be unduly attracted to the establishment while present at, or going to or from, the school, recreation center, day care center, public library, or similar facility at issue.

(4) Whether issuance of the license would create or contribute to an overconcentration of licensed establishments which is likely to affect adversely the locality, section, or portion in which the establishment is located.

(b) (1) No license shall be issued for any establishment within 400 feet of a public, private, or parochial primary, elementary, or high school; college or university; or recreation area operated by the D.C. Department of Recreation.

(2) The 400-foot restriction shall not apply to hotel licenses, club licenses, or temporary licenses.

(3) The 400-foot restriction shall not apply if there exists within 400 feet a currently-functioning establishment holding a license of the same class at the time that the new application is submitted.

(c) In the case of applications for nightclub or tavern licenses, the Board shall consider whether the proximity of the establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.

§ 25-315. Additional considerations for renewal of licenses. *(provided in part)*

(a) If proper notice has been given, as provided in subchapter II of Chapter 4, and no objection to the appropriateness of the establishment is filed, the establishment shall be presumed to be appropriate for the locality, section, or portion of the District where it is located.

(b)(1) The Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a voluntary agreement.

It is the role and responsibility of the ANC to provide its recommendation to the ABC Board regarding the appropriateness of an establishment to the neighborhood, with consideration to the factors above.

ABOUT THE ABC BOARD AND ABRA

The **ABC Board** is an independent body comprised of seven members appointed by the Mayor and confirmed by the Council of the District of Columbia. The ABC Board decides all licensure matters, including the issuance, renewal, suspension or revocation of ABC licenses in the District. The Board is empowered to hold hearings and to adjudicate licensure issues brought before them. These include the following types of cases: summary suspension, protest, “show cause,” and fact-finding.

The **Alcoholic Beverage Regulation Administration (ABRA)** is responsible for the administration and enforcement of the provisions of the ABRA laws and regulations related to the importation, distribution and sale of alcoholic beverages in the District of Columbia. ABRA regulates alcoholic beverage wholesalers, retailers, and manufacturers in the District of Columbia. ABRA issues licenses to breweries, brew pubs, restaurants, hotels and other establishments that manufacture or sell alcohol. ABRA also inspects license holders to ensure their compliance with regulations. ABRA provides support to the ABC Board in the administration, enforcement, compliance and adjudication of licensing matters.

ABRA falls under the purview of the **Department of Consumer and Regulatory Affairs (DCRA)** and consists of three branches: Administrative, Investigations and Adjudication. *Administrative Branch* processes all actions involving licensure, including new issues, transfers, renewals and changes in licensure. The ABRA forwards properly filed applications to the ABC Board for approval. After Board approval, the administrative branch issues the licenses and oversees any required compliance actions. The *Investigations Branch* addresses complaints, protests and regulatory inspections of all ABRA licensed establishments in the District of Columbia. The branch's twelve investigators and two supervisory investigators conduct fieldwork to ensure businesses comply with laws and regulations. The *Adjudication Branch* handles all matters channeled to the ABRA Board. The branch processes opposition materials filed against applications for licenses. The branch also processes matters requiring the suspension or revocation of license holders.

The ABC Board has three primary methods of discovering problems with current licensees: site visits by investigators, information from other law enforcement entities, and citizen complaints. Problems leading to suspension or revocation of a license can include: selling alcoholic beverages to intoxicated or underage persons, criminal activity, violence, failure to maintain food sale requirements, or selling during prohibited hours. ABRA investigators work with local law enforcement authorities to address concerns. If an ABRA investigator finds a violation, then the case will be forwarded to the ABC Board for action and a hearing will be conducted. The appeal rights are the same as with the application process.

LICENSE APPLICATION PROCESS

ABRA issues licenses for the manufacture, wholesale and retail sale of alcoholic beverages in the District of Columbia.

Businesses may call (202) 282-DCRA between the hours of 8:30 a.m. and 4:45 p.m., Monday through Friday, to obtain information, application forms, or to schedule an appointment. Application forms are also available online at <http://dcra.dc.gov/services/abra/application_forms.shtm>.

The Licensing process includes the following steps. First, an applicant must obtain a District of Columbia business tax number through the Office of Tax and Revenue Customer Service Center, 941 North Capitol Street, N.E., if it has not already registered. Second, the applicant is strongly encouraged to contact either the ANC Commissioner in whose Single Member District the business is located or the Chairperson of the ANC. The applicant should provide the ANC with a business plan for the proposed establishment at the earliest opportunity (see discussion on page 11). Third, the Applicant must file the required application(s) with ABRA. If the applicant and the ANC have reached a Voluntary Agreement (see discussion on pages 9-10), then a copy of this agreement should be filed along with the Application. Finally, there is a sixty-day placard period to allow those interested to comment before ABRA will issue the license.

ABRA is authorized to conduct a background investigation, including a criminal history records check, on the applicant. Citizens, including Advisory Neighborhood Commission 2F, the Logan Circle Community Association, and other neighborhood groups, may protest against the awarding of a license during the sixty-day posting period. Common citizen objections are that the proposed ABC establishment will adversely affect the peace, order and quiet in the neighborhood; residential parking; vehicular traffic and pedestrian safety; property values; and contribute to the over-concentration of ABC establishments in the neighborhood.

If there are no objections, and if the application and investigation are completed satisfactorily, ABRA can issue a license to an applicant any time after the minimum sixty-day posting period, unless ABRA approves a stipulated license (see discussion on page 8). If valid objections are raised, then the ABC Board will hold a hearing.

CLASSES OF LICENSES

There are several classes of licenses. These Guidelines describe only the most common licenses in the Logan Circle area. A full list of license types is available at http://dcra.dc.gov/services/abra/license_classes.shtm. The D.C. Code generally defines the classes of licenses as follows:

- **Class A (liquor stores)**: Authorizes the holder to sell and deliver alcoholic beverages, spirits, beer, wines and light wines directly to the consumer only for consumption off premises.
- **Class B (convenience stores)**: Authorizes the holder to sell only beer and light wines directly to the consumer only for consumption off premises.
- **Class CR (restaurants)**: The restaurant must have adequate kitchen and dining facilities; adequate employees; derive at least forty-five percent (45%) of its gross annual receipts from the sale of food; keep its kitchen facilities open until two (2) hours prior to closing.
- **Class CT (taverns)**: A tavern is a place serving both alcoholic beverages and food. The size of the dance floor in a tavern may not exceed one hundred and forty (140) square feet;
- **Class CN (nightclub)**: A nightclub is a place serving both alcoholic beverages and food, which may provide music and dancing facilities for patrons and entertainers. Nightclubs are the only licensee that may provide entertainment by nude performers.
- **Class D (limited to beer and wine)**: Restaurant, tavern, and nightclub licenses may also be issued as a “Class D” (*i.e.* Class DR, DT, DN). A Class D license authorizes the holder to sell *only beer and wine* for consumption on the licensed premises.

TEMPORARY (STIPULATED) LICENSES

A temporary or “stipulated” license is issued by the Alcoholic Beverage Control Board to allow an applicant to sell or serve alcoholic beverages pending the application process and final approval. In other words, a stipulated license allows an applicant to begin immediately selling alcohol upon acceptance of its application by the ABC Board and during the ordinary sixty-day placard period.

According to the ABC Board, to request a stipulated license:

- The Applicant must be applying for a Class “C” or Class “D” liquor license.
- The Applicant must submit a signed written request to the ABC Board that includes the applicant’s name, trade name, and address of the premises.
- The Applicant must submit to the ABC Board written correspondence from the ANC where the applicant is located stating that they have voted with a quorum present not to object to the issuance of a temporary license to the Applicant pending completion of the 60-day placard period, which includes a 45-day period for community objections. The Chairperson of the ANC must sign this correspondence.

ANC 2F POLICY ON STIPULATED LICENSES

ANC 2F encourages applicants to go through the ordinary application process because it provides the community with a reasonable amount of time to gather and provide its feedback to the ABC Board. Applicants should request a stipulated license only when there is some particular urgency or special circumstance. The ANC will approve a stipulated license only after it has solicited feedback from the immediate neighbors and community associations, reached a voluntary agreement, and found the application to be uncontroversial.

VOLUNTARY AGREEMENTS

A Voluntary Agreement (“VA”) is a contract reached between an applicant and the community (the ANC and/or a community association).¹ The purpose of the VA is to address community concerns regarding an applicant’s current operations and to avoid any potential problems that could occur after issuance of an alcoholic beverage license. VA’s are generally negotiated between the Commissioner in whose Single Member District the applicant is located and the owner or manager of the establishment. Community associations may also take part in these discussions. Such organizations include the Logan Circle Community Association, Rhode Island West Neighborhood Association, and the Que Street Association, among others.

Upon deciding to seek a liquor license, an applicant should contact the ANC and potentially interested community associations. While the community may enter into a VA with the applicant/licensee at any time, the ANC prefers to enter into such agreements prior to the filing of the license so that all parties can avoid needless dispute and unnecessary administrative hearings. The ANC strongly encourages applicants to contact the Commissioner for the Single Member District in which the establishment is located prior to filing an application. Conclusion of a VA allows the ANC to support an applicant during the hearing process and may expedite the process for obtaining a license. If a VA is not reached prior to the filing of an application, then it may be necessary for the ANC to protest the application so that its concerns are addressed by the applicant and heard by the ABC Board. The ANC will withdraw its protest upon reaching a VA. The ANC may also protest the *renewal* of a license through the same procedure, particularly when the community has issues with the licensee’s current operations and the licensee has not adequately addressed the community’s concerns.

¹ Section 25-446 the D.C. Code provides for the use and enforceability of Voluntary Agreements:

(a) The applicant and any protestant may, at any time, negotiate a settlement and enter into a written voluntary agreement setting forth the terms of the settlement.

(b) The signatories to the agreement shall submit the agreement to the Board for approval.

(c) If it determines that the voluntary agreement complies with all applicable laws and regulations and the applicant otherwise qualifies for licensure, the Board shall approve the license application, conditioned upon the licensee's compliance with the terms of the voluntary agreement. The Board shall incorporate the text of the voluntary agreement in its order and the voluntary agreement shall be enforceable by the Board.

(d) A voluntary agreement shall run for the term of a license, including renewal periods, unless it is terminated or amended in writing by the parties and the termination or amendment is approved by the Board.

(e) The Board shall initiate a show cause hearing upon evidence that a licensee has violated a voluntary agreement. Upon a determination that the licensee has violated the voluntary agreement, the Board shall penalize the licensee according to the provisions set forth for violations of a license in Chapter 8.

VAs must be presented to the ANC at its regular, public monthly meeting. An applicant should arrange with the ANC Chairperson to place the VA on the agenda at least two weeks prior to the monthly meeting. The Applicant or its representative must attend this meeting. VAs must be approved by the Commission and signed by the Chairperson. The Chairperson for the ANC will submit the original VA along with a cover letter to the ABC Board and provide a copy of the VA to the applicant and any other party to the VA. Once approved by the ABC Board, the VA is incorporated into the terms of the establishment's license. Breach of the VA is grounds for suspension or revocation of the license, fines, or other action by ABRA or the ABC Board.

BUSINESS PLAN

The ANC evaluates the appropriateness of an establishment on case-by-case basis. In order to provide the information it needs to make such a determination and identify any issues of concern to the neighborhood to be addressed in a Voluntary Agreement, applicants should submit a proposed business plan, in writing, to the ANC at the earliest opportunity. A proposed business plan need not be extensive, but should include the following information:

- Description of the nature of the business;
- Occupancy of the establishment;
- Hours of operation;
- Floor plan of the establishment (i.e. chairs and tables, bar, dance floor, etc. – a general description is sufficient);
- Expected means of advertising (i.e. word-of-mouth, local newspaper, radio, citywide media);
- Location of target clientele (i.e. primarily local or out-of-the-neighborhood);
- Any request for live music or dancing;
- Trash collection and rat and vermin control arrangements;
- Security arrangements, if applicable;
- Anticipated special promotions or events;
- Availability of parking for patrons and/or any special parking arrangements;
and
- For CR license applicants, a menu.

LICENSE APPLICATIONS BY RESTAURANTS

The development of more restaurants within the ANC, and in particular along the Fourteenth Street corridor, is essential to continued economic development. Today, there appears to be an unmet need for such establishments. Eighty percent of respondents to the ANC Survey expressed a desire for more restaurants, with eighty-one percent expressing a desire for more sidewalk dining. Residents also expressed a clear desire to avoid problems faced by neighborhoods such as Georgetown and Adams Morgan. These problems include congestion, parking, and “rowdiness.” Such concerns can be mitigated to some extent through Voluntary Agreements.

As more restaurants open in the Logan Circle area, the ANC will periodically review whether over-concentration on particular blocks necessitates a closer look. Current Arts Overlay zoning on Fourteenth and U Streets provide for a 25% limit on the number of eating and drinking establishments on a particular block within the zone. It does not appear that any block within the ANC is currently near this limit. In the future, the ANC may consider encouraging new ABC establishments to spread out in compliance with the Arts Overlay zoning. This would mitigate congestion, noise, and parking crunches on any one block. It would also provide one way to avoid problems associated with Georgetown and Adams Morgan, which survey respondents do not wish repeated in Logan Circle. Finally, it would facilitate the diverse commercial and retail mix urged by residents.

BAR AND TAVERN LICENSE APPLICATIONS

Neighborhood residents generally support more bars and taverns (CT licensees) in the neighborhood. However, residents strongly prefer neighborhood gathering places or sit-down lounges. Fewer than one in five ANC Survey respondents supported high-occupancy, high-impact bars. Such establishments would exacerbate neighborhood concerns over parking, congestion, and noise. The ANC will support applications for CT licenses from those meeting the desires of residents, as expressed in the ANC Survey, and will mitigate any specific concerns through the use of Voluntary Agreements. The ANC will generally not support the applications of high-occupancy bars or taverns.

LIQUOR STORE LICENSE APPLICATIONS

The ANC 2F has 21 Class A Class and B stores licensed to sell beer, wine and/or liquor. In some parts of the ANC, a Class A retail liquor store or a Class B store licensed to sell beer and wine (convenience store) is no more than a few blocks walk. The retail sale of alcoholic beverages in the ANC is not an unmet need.

Respondents to the ANC Survey were nearly unanimous in their opinion that the Logan Circle community has enough liquor stores. According to the Survey, 49% of respondents said that the number of liquor stores in the community was *about right* and 33% of respondents said that there were *too many liquor stores*. Only 7% supported *more* liquor stores and 9% were *unsure* of their opinion.

Given these results, ANC 2F policy strongly disfavors applications for new liquor store (Class A) licenses. ANC 2F has not decided to seek a moratorium on such licenses at this time and will continue consider Class A license applications on a case-by-case basis. This policy does not affect current Class A licensees who abide by Voluntary Agreements and DC law, and maintain a positive relationship with the community. In regard to Class B licensees, the District government has already imposed a moratorium on new licenses, but there is still the opportunity for a current licensee to seek to relocate its premises. The ANC will support the transfer of an existing Class B license within its boundaries only if the licensee offers to bring other needed services to residents, such as food, and another Class A or Class B licensee is not already located in close proximity to the applicant's establishment.

POLICY ON NIGHTCLUBS WITHIN RESIDENTIAL NEIGHBORHOODS

The ANC encourages ABC-licensed businesses that not only provide jobs, but serve unmet community needs, and which fuel development of other retail endeavors by bringing people into the neighborhood to shop. By their very nature nightclubs (CN licensees) bring people to a neighborhood only after most other establishments have closed. During the days and evenings, nightclubs are often empty spaces that do not contribute to the vitality of the neighborhood. Nightclubs are most appropriate for non-residential areas, such as downtown. For this very reason, the DC government has designed a downtown nightclub zone.

Fewer than one-in-three respondents to the ANC Survey supported nightclubs in Logan Circle. Even within the age group that some may consider most supportive, those between the ages of eighteen and thirty, fewer than half of respondents favored nightclubs. The ANC will generally not support applications for CN licenses within the residential portion of the ANC's boundaries (north of, and including, Massachusetts Avenue). The ANC may deviate from this policy if the ANC is convinced, based on the applicant's business plan, that the proposed establishment can fit within the residential character of the neighborhood and this plan is incorporated into a Voluntary Agreement.

**APPENDIX A:
STANDARD VOLUNTARY AGREEMENT**

Preliminary Provisions

THIS VOLUNTARY AGREEMENT (“Agreement”) is made on this ___ day of [DAY], [YEAR], by and between [APPLICANT’S LEGAL NAME AND D/B/A] AND Advisory Neighborhood Commission 2F (“ANC2F”) [and any other parties to the agreement (jointly “the Community”)].

WITNESSETH

WHEREAS, Applicant has applied for a _____ license Class CR for the premises at [ADDRESS], Washington, D.C.;

WHEREAS, the [ANC/Community], is [considering support of Applicant’s license / has filed a timely protest against the [issuance/renewal] of the Applicant’s license application pursuant to D.C. CODE §25-115(b) (2002); and

WHEREAS, the parties have agreed to enter into this Agreement with the [ANC/Community] to request that the Alcoholic Beverage Control Board (“ABC Board”) to approve the Applicant’s [stipulated] license application conditioned upon the Applicant’s compliance with the terms of this written Agreement.

[WHEREAS, the parties are desirous of entering into a Voluntary Agreement for the operation and maintenance of the business in such a manner as to be consistent with the peace, order and quiet of the neighborhood and to eliminate the need for a Protest Hearing regarding the [license / renewal] application,]

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the parties agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated herein by reference.

Nature of the Business

Applicability: All licensees.

Policy: This provision protects the community by requiring the Applicant to seek approval of a change in the nature of the Applicant's business that could have an adverse effect upon the community. Quite simply, this provision ensures that the licensee does not change the "basis of the bargain." For example, if an establishment presents itself to the community as a full-service restaurant in order to obtain the neighborhood's support of its application, then it should not be able to stop selling food during the daytime and operate primarily in the evening and late night hours as a dance club or bar. Such a change would require the licensee to again go through the licensing process to ensure that any community concerns are heard and addressed.

Draft Provision: The Applicant will manage and operate a [DESCRIBE PROPOSED BUSINESS PLAN], as noted below. Any change from this model shall be considered by all parties to be a substantial change in operation of great concern to residents and requires prior approval by the ABC Board.

Hours of Operation

Applicability: Restaurants, Bars, and Nightclubs.

Policy: This provision incorporates the Applicant's current or proposed hours into the Agreement. The ANC may consider use of this provision to address any current or potential concerns regarding noise or crime related to the establishment, and as a tool to help ensure, in the case of restaurants with an entertainment component, that the business remain that of a restaurant. The parties may choose to build some flexibility into the Agreement by permitting the licensee to extend its hours by a certain amount, *i.e.* no later than 2 a.m., without amendment of the agreement upon notice to the ANC.

Draft provision: The Applicant's hours of operation shall be as follows:

[INSERT DAYS AND HOURS OF OPERATION]

Applicant may not extend its hours without amendment of this Agreement. [Up until one (1) hour prior to closing, Applicant's kitchen facilities shall remain open with full menu service.] To the extent that there are problems resulting from the Applicant's hours of operation, the parties hereto agree to, in good-faith, meet to discuss solutions to such problems including, at a minimum, any necessary reduction in hours.

Square Footage and Occupancy

Applicability: Restaurants, Bars, and Nightclubs.

Policy: This provision protects the community by ensuring that an Applicant does not substantially increase its capacity without the feedback and approval of its neighbors.

Draft provision: The square footage of the establishment is ___ feet by ___ feet for a total of ___ feet for patrons and ___ square feet including the basement. The current authorized maximum occupancy of the establishment is ___ patrons. Applicant will provide seating for ___ patrons. Applicant shall post the certificate of occupancy in a prominent location in the entryway. Applicant may not expand its occupancy or reduce available seating by more than ___% without amendment of this agreement.

Parking

Applicability: Restaurants, bars, and nightclubs.

Policy: The ANC strongly encourages establishments with an approved occupancy of over 125 persons to provide off-street parking for its patrons. The results of the ANC Survey support this policy. Approximately 57% of respondents felt that establishments with approved occupancy of over 75 persons should provide parking to their patrons. Only 27% of respondents disagreed and 16% of respondents were either unsure or did not answer. This response suggests that the ANC require larger establishments to offer off-street parking for their patrons whenever feasible. In determining whether to require parking arrangements in a particular situation, the ANC will consider out-of-neighborhood traffic expected to be generated by the establishment, as indicated by the applicant's business plan.

The ANC understands that providing off-street parking may not always be possible, and encourages applicants to consider innovative alternatives and the existing space within the neighborhood, such as shared parking with a daytime establishment. For example, Sparky's Espresso Café (which has an occupancy of less than 75 persons) has an agreement with Advance Auto (located across the street from the establishment) to use their parking lot when Advance Auto is closed. Likewise, Hamburger Mary's and Vibe have an agreement with the Washington Plaza Hotel (located about three blocks from those establishments) by which the hotel makes a specified number of parking spaces available for its patrons.

Draft provision: Applicant has entered into and shall retain an agreement with [INSERT PARTY] to provide parking for its patrons. A copy of such agreement is appended hereto and incorporated herein. Applicant shall advertise the availability of parking [on its menu and] on a sign posted at the entrance to the establishment. To the extent this contract with [INSERT PARTY] terminates for any reason, Applicant shall enter into a like agreement to provide adequate off-street private parking for its patrons.

Sidewalk Cafés

Applicability: Restaurants.

Policy: Four out of five respondents to the ANC Survey support more sidewalk cafes in the Logan Circle area. Given this positive response, the ANC supports sidewalk dining. Sidewalk cafes should, however, be well maintained and appropriately staffed.

Applicants and current licensees should note that opening a sidewalk café requires a public space permit. Such permits can be obtained through the Public Space Office of the Department of Consumer and Regulatory Affairs. Applications for public space permits are available online at:

<http://dcra.dc.gov/services/permits/public_space.shtm>

Permits are applied for in the Permit Service Center, 941 North Capitol Street, NE, Room 2300. For more information call (202) 442-9463.

The ANC may also consider limitations on sidewalk dining, such as whether or not alcohol may be served outside or an earlier closing time for the outdoor café, to mitigate any potential noise concerns of immediate neighbors.

Draft provision: Applicant [currently/plans to] provides sidewalk café seating for [___] patrons. Applicant may not expand the capacity of the sidewalk café without amendment of this Agreement. Applicant will direct that its employees inspect the sidewalk café at least once each hour to ensure its cleanliness.

Optional: No alcoholic beverages will be served or allowed on the sidewalk café.

Optional: The sidewalk café shall remain open no later than ___ p.m.

Noise and Privacy

Applicability: Restaurants, bars, and nightclubs.

Policy: The ANC asks that businesses respect the rights of their neighbors to have reasonable quiet in their homes and be able to sleep at night without disturbance. In some cases, the additional crowds after granting of an ABC license and/or music at the establishment, may require that the Applicant take action to reduce sound and vibration emanating from its property. If there are current or potential situations that may disturb neighbors, the ANC may wish to add specific measures to this provision to reduce the noise. For example, the ANC might require installation of an industry standard noise reduction system or other soundproofing measures on the property.

Draft provision: Applicant will comply with the Title 25, Section 725 of the D.C. Code,² make architectural improvements to the property and take all necessary actions to ensure that music, noise and vibration from the establishment are not audible from within the adjacent properties. Applicant will also take reasonable steps to ensure that music, noise, and vibration is not disruptive to the adjacent property owners' reasonable use of outdoor areas of their property. Should any sound, noise, or music be heard in any premises other than the licensed establishment, Applicant will take immediate remedial action. If necessary, Applicant will take reasonable steps to reduce noise emanating from the establishment from the opening of the entry or exit doors.

² D.C. Code Ann. § 25-725 provides the standard for illegal noise from alcoholic beverage licensees:

(a) The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any:

(1) Mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise;

(2) Bell, horn, gong, whistle, drum, or other noise-making article, instrument, or device; or

(3) Musical instrument.

(b) This section shall not apply to:

(1) Areas in the building which are not part of the licensed establishment;

(2) A building owned by the licensee which abuts the licensed establishment;

(3) Any premises other than the licensed establishment which are located within a C-1, C-2, C-3, C-4, C-M, or M zone, as defined in the zoning regulations for the District; or

(4) Sounds, noises, or music occasioned by normal opening of entrance and exit doors for the purpose of ingress and egress.

(c) The licensees under this subchapter shall comply with the noise level requirements set forth in Chapter 27 of Title 20 of the District of Columbia Municipal Regulations.

Public Space and Trash

Applicability: All licensees.

Policy: The ANC relies on responsible business owners to keep trash from becoming a significant problem in Logan Circle. Establishments that serve alcohol are sometimes particularly susceptible to trash problems. The sidewalk, curb, and tree boxes near liquor stores are often lined with empty beer cans and bottles. Areas outside of nightclubs/restaurants are sometimes covered with fliers and promotional materials. Business owners should keep the area surrounding their stores, including public alleys, clean. They should also schedule trash collections so as not to disturb their neighbors. Please also note that, by law, dumpsters may not be kept on public space, i.e., any area extending beyond the building line.

Draft provision: The Applicant shall keep the sidewalk (up to and including the curb), tree box(es), curb, and alley clean and free of litter, bottles, and other debris in compliance with D.C. Code and Municipal Regulations.³ Applicant shall police these areas [twice daily] for refuse and other materials.

The Applicant agrees to obtain a dumpster to be placed in the rear of the building. Applicant further agrees to hold all recyclable materials and perishable food waste within the building until the morning of the scheduled pickup. Trash and recyclable material shall not be deposited into the outside dumpster or other exterior holding facilities between the hours of 11:00 p.m. and 8:30 a.m. Applicant shall require its trash and recycling contractors to pickup trash and materials after 9:00 a.m. Applicant will not install exterior public pay phones [and shall have current exterior public pay phone removed from the property within ___ days].

³ D.C. Code Ann. § 25-726 requires alcoholic beverage licensees to control litter. That section provides:

(a) The licensee under a retailer's license shall take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter.

(b) The licensee under a retailer's license shall comply with the Litter Control Expansion Amendment Act of 1987, effective October 9, 1987 (D.C. Law 7- 38; 23 DCMR § 720).

Rats and Vermin Control

Applicability: Any licensee that serves food on its premise.

Policy: Rats can become a significant neighborhood problem if everyone in the community does not do their part to keep the population under control. Establishments that serve food should be particularly proactive in the areas surrounding their property.

Draft provision: The Applicant shall provide rat and vermin control for its property. At the present time, the intended pest control company shall be [INSERT NAME]. Applicant shall provide proof of its rat and vermin control contract upon request of the ANC.

Live Music and Dancing

Applicability: Restaurants and bars.

Policy: The neighborhood's history of restaurants offering an entertainment component has been mixed. In some cases, applicants presented themselves to the community as a restaurant and later morphed into a nightclub with little or no real food sales or daytime presence. Most respondents to the ANC Survey opposed late-night dancing at restaurants.

CR licensees seeking entertainment components should be evaluated on a case-by-case basis. The ANC will consider the following factors in authorizing live music or dancing.

- That the licensee's primary business is that of a restaurant; and
- That the licensee has taken all steps necessary to ensure that sound produced by the establishment is not audible within adjacent or nearby residences, and does not interfere with the reasonable enjoyment of outdoor areas such as decks, patios, etc. of those residences.

If the above conditions are not met, then the ANC will not support CR requests for live music or dancing.

The ANC may also require the licensee to have a track record of one year or more in the neighborhood, and thus be able to demonstrate that it meets the restaurant definition provided by the D.C. Code. The soundproofing requirement is particularly important in cases where the establishment has shared walls, or is within 75 feet of a residence. The ANC may consider means to ensure the restaurant mission remains central, such as through limiting special promotions or the frequency of live music or dancing at the establishment. CT applicant requests for live music and dancing will also be reviewed on a case-by-case basis, but based on a more liberal standard and subject to the soundproofing requirement above.

Draft provision: Applicant shall not offer, create facilities for, or otherwise encourage or permit dancing by patrons or employees, [except as provided herein. Provide any negotiated exceptions to this provision.] Applicant agrees not to use the establishment for special promotions and/or fundraising events for third parties, including, but not limited to, non-profit organizations. Such use shall be deemed a major change in operations, requiring prior approval by the ABC Board.

Security

Applicability: Restaurants, bars, and nightclubs.

Policy: ANC licensees should provide adequate security in and around their establishment. Licensees may be required to employ additional security based on the occurrence of violent incidents in or around the establishment by its patrons.

Draft provision: Applicant shall designate at least [one] employee[s] to control unruly patrons, whether inside or in the immediate outside area. Further, this employee, aided by signage at the entrance, will instruct patrons that they are within a residential neighborhood and ask them upon leaving to leave quietly.

Note: According to Metropolitan Police Department policy, “any member responding to any serious incident or offense occurring in, around or emanating from any licensed ABC establishment must report these incidents/offenses on a PD 251, (Incident/Offense Report). The report shall be faxed within 24 hours to the Alcoholic Beverage Regulation Administration Liaison Office at (202) 442-9563. In addition, all Public Safety Area (PSA) lieutenants are encouraged to contact the Liaison Officer concerning nuisance establishments, underage drinking, community complaints and enforcement recommendations.”

Cooperation in Stemming Illegal Drugs and Public Drinking

Policy: ABC licensees should not sell items that are known to be associated with illegal drug use or that facilitate the drinking of alcoholic beverages on public streets. ABC licensees, as well as all businesses, should take an active role in stemming illegal drug sales or use within or in front of its property.

Applicability: All licensees with current or potential crime issues.

Draft provision 1: The Licensee shall prohibit sales of illegal drugs within or in front of the Establishment, and shall contact the police when known or suspected drug transactions occur. Licensee shall cooperate with the police in prosecuting all violations.

Applicability: Liquor stores.

Draft provision 2: Licensee shall make no sales of single cigarettes, cigarette rolling paper, glassine bags, Phillies Blunt cigars, or other drug paraphernalia. Licensee shall discourage the public consumption of alcohol by refraining from selling or distributing plastic or paper cups in quantities of ten or less. Licensee shall not sell or distribute single servings of ice, nor shall it make sales of beer in single bottles or cans of sixteen ounces or less.

Prohibition on Sale of Single Beverages

Policy: Over two-thirds of respondents to the ANC Survey expressed the view that retail licensees should not be permitted to sell single alcoholic beverages. In addition, seventy-eight percent of respondents stated that public drunkenness was of great concern (44% rated 5 on scale of 0 to 5), high concern (20% rated 4 on scale of 0 to 5), or moderate concern (14% rated 3 on scale of 0 to 5). Sales of singles greatly contribute to public drunkenness, loitering, littering, and public urination. For these reasons, the ANC prohibits the sale of single beverages within its boundaries.

Applicability: Liquor stores.

Draft provision: Licensee shall not sell or distribute single servings of ice, nor shall it make sales of beer in single bottles or cans of sixteen ounces or less.

Loitering

Applicability: Liquor stores

Policy: Liquor stores should work closely with the community to help address loitering in the vicinity of their establishments. Such loitering is often associated with illegal pan handling, which can sometimes become aggressive and raise safety concerns among residents.

Draft provision: In recognition of the problem of loitering in the vicinity of the establishment, the Licensee shall post a prominent “No Loitering” sign in the front window. The Licensee shall strongly discourage loitering in the vicinity of the Establishment, and shall contact police when loiterers refuse to leave.

Appearance of Premises

Applicability: Liquor stores.

Policy: It is the policy of the ANC, as well as DC law, that establishments maintain a clear view from the street of the interior of the store.

Draft provision: In accordance with Section 100.1 of Title 23 of the District of Columbia Municipal Regulations (“DCMR”), the Applicant shall limit advertisements in the window to the permitted twenty-five percent (25%) of the window space. The Applicant shall conform to Section 1100.2 of Title 23 DCMR by displaying no advertisement of any kind relating to alcoholic beverages on the exterior of any window or the exterior or interior of any door.

License Ownership

Applicability: All licensees.

Policy: The purpose of this provision is to ensure that the licensee does not transfer its license to another entity without giving notice to the community and providing the Advisory Neighborhood Commission and other interested parties with the opportunity to intervene. It also ensures that any party considering purchasing a license from a holder is properly informed of the Voluntary Agreement, which would remain in effect after the transfer.

Draft provision: Applicant agrees to abide by all Alcoholic Beverage Regulations Administration (ABRA) regulations regarding the ownership of the license. Applicant also agrees to be the sole owner of the ABC license and agrees not to transfer or sell to any other entity before obtaining approval from the ABC Board. Applicant agrees to notify any prospective transferee, assignee, or contractee of the existence of this Agreement and to provide them with a copy.

Participation in the Community

Applicability: All licensees.

Policy: The ANC strongly believes that any issues involving a licensee's operations can be addressed through open communication and a mutual desire to work together for the benefit of our shared community. For this reason, this provision encourages licensees occasionally to attend the ANC's monthly meetings, as well as meetings of other community organizations, both for the licensee to keep informed as to community events and concerns, as well as for its neighbors to learn about the licensee's ongoing operations.

Draft provision: In order to maintain an open dialogue with the community, Applicant is encouraged occasionally to send a representative to ANC 2F meetings, which occur on the first Wednesday of each month at 7:00 p.m. at the Washington Plaza Hotel, 10 Thomas Circle, N.W., Washington, D.C. 20005. Applicant, upon notice from the ANC [or other parties to the VA], shall send a representative of the establishment to a meeting(s) of the respective organization to discuss and find reasonable ways to resolve any problems associated with its operations.

Binding Effect

Applicability: All licensees.

Draft provision: This Voluntary Agreement shall be binding upon and enforceable against the successors and assigns of the Applicant.

Notice and Opportunity to Cure

Applicability: All licensees.

Policy: The ANC will work cooperatively with ABC licensees to obtain compliance with VAs. Enforcement of the provisions of a VA, or other action against the licensee, through the ABC Board should be considered only after communication with the licensee has failed. The ANC should provide the licensee with a reasonable time to comply with the VA and address community concerns.

Draft provision: In the event of a violation of the provisions of this Voluntary Agreement, Applicant shall be notified in writing by the person alleging such violation and given an opportunity to cure such violation within thirty (30) days thereafter before action against Applicant on the basis of such violation may be undertaken. A material violation of this Agreement or its ABC license by Applicant, which has not been corrected after such thirty (30) days' notice, shall constitute a cause for seeking a Show Cause Order from the ABC Board. 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. Notice is deemed to be received upon mailing.

Notice is to be given as follows:

1. If to the Applicant to:
[Applicant's name and address]
2. If to ANC 2F, to:
Advisory Neighborhood Commission 2F
P.O. Box 9348 – Mid-City Station
Washington, D.C. 20005
3. [Contact information for any other parties to the VA].

Applicant may change the notice address listed above by written notice to the other signatories at the addresses listed above. Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board.

Counterparts

Applicability: All licensees.

Policy: This provision allows the ANC and Licensee to enter into future agreements to address issues as they arise and for those agreements to be considered a part of a single Voluntary Agreement.

Draft provision: This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed as original, but all of which shall constitute one and the same instrument.

Withdrawal of Protest

Applicability: All applicants to which the ANC has filed protest of the application prior to the entrance into a voluntary agreement.

Policy: It is the ANC's preference to enter into a VA with an establishment seeking an ABC license prior to its filing of an application with the ABC Board. If, however, an establishment files for a license without engaging the community and the neighbors have concerns with the proposed operation, the ANC may be forced to file a protest with the ABC Board to protect its rights. This situation may also occur when an establishment's license is up for renewal and it has not worked with the community to address its concerns. In such cases, the ANC will withdraw its protest with the ABC Board upon reaching a mutually acceptable agreement with the applicant or license holder and support its application for a license or renewal.

Draft provision: Upon execution of this Agreement and its acceptance by the Board, Protestant shall withdraw its protest to the application for license [application/renewal].