

ABRA Oversight Hearing

February 20, 2015

**Council of the District of Columbia
The Honorable Vincent Orange, Chairman**

Good morning, Mr. Chairman and Council Members. I am Sara Maddux, residing at 522 21st Street NW. I am presenting this testimony on behalf of the Federation of Citizens Associations of the District of Columbia (29 organizations). At the Board of Directors meeting, February 12, 2015, a quorum present and voting, the Board moved to support and present to you the attached letter to the Alcoholic Beverage Regulation Administration which provides comments on the proposed rules what would make procedural and administrative changes to Title 23 of the D.C. Municipal Regulations.

This letter represents a most thoughtful and detailed review of the proposed changes. It reflects a consensus of D.C. citizens who have broad and long term experiences with the issue of the sales and service of alcoholic beverages in all kinds of commercial and special events institutions throughout the District of Columbia. Most importantly, we citizens live among, next to, and nearby these institutions and have daily experiences with what works and what does not work. The impact of the distribution of alcohol affects the whole environment of the District of Columbia more so than any other function overseen by the authorities of the District of Columbia – even more than garbage pick-up.

This letter highlights six elements of concern. These are not the only ones but those of the highest priority. I would bring to your attention especially the one concerning noise issues – something which affects the quality of life for us and the need for quiet enjoyment in all venues whether private homes or public common areas.

A thread through all of these issues is the need for timely, open, effective, public notification of processes, bases for legal and regulatory decisions, and straightforward, not subjective, decisions. These are basic rights for all citizens in a democracy and should be held as the highest and required standards by those serving on public boards and commissions. We trust that ABRA will carefully review this letter and respond in detail to the issues described herein before any final regulations are issued.

Thank you for this opportunity and I would be pleased to address questions.

Attachment: Letter of February 15, 2015

February 15, 2015

Alcoholic Beverage Regulation Administration
Office of the General Counsel
2000 14th Street, NW, Suite 400 South
Washington, D.C. 20009

Re: Submission of public comment regarding proposed rules that would make procedural and administrative changes to Title 23 of the DC Municipal Regulations

Dear Chairperson Miller and Board Members,

Thank you for the opportunity to provide comments to the proposed rules to Title 23 of the DC Municipal Regulations. We are pleased that the Board is considering these changes. We believe that there are a number of issues that have needed to be addressed by the Board for some time.

- **Renewal Process**

Clarification of regulations regarding the practice of allowing applicants to ignore attendance at hearings that should result in dismissal of the license are welcomed. Current practice of the Board has resulted in continuous extensions granted by the Board during the renewal process that has significant impact on residents. In practice the Board has allowed applicants to "reapply" multiple times thereby never requiring the licensee to complete the process of renewal. This problem has been partially addressed by limiting the Board's ability to grant such special treatment only one additional time.

- **Regulatory Enforcement**

The use of the word "may" is used throughout this document in cases where it is inappropriate and results in the option for the Board to choose to not enforce the regulations. The word should be changed to "shall", which should improve compliance with the regulations.

- **Protestant Rights**

Each protestant has been individually recognized by complying with the requirements for recognition. Forcing legally recognized Protestants to designate a single person to represent them all would abrogate the rights of legal Protestants. The reality is that different protestants may have different concerns and they all have earned the right to be a direct participant in the protest hearing if they so choose. Protestant groups may choose a representative but it should not be required.

Another ongoing concern for residents is the language regarding Filing of Protests (under the previous 1605.2). The Board has no authority to adopt interpretations or regulations which diminish the standing granted to correctly filed protests by restricting the grounds for a protest to a narrow "appropriateness" standard (25-313, 25-314). Any aspect of Title 25 Chapter 3 "Requirements to Qualify for a License," and Chapter 4, Subchapter 1 "Application Requirements" should be applicable as grounds for a protest.

- **Safekeeping**

The issue of licenses in “safekeeping” has long been one that has plagued residents. If a license is not being used it should be terminated. Unused licenses have negative impacts to both residents and to potential legitimate business operators. If a licensee is not using a license after 6 months it should automatically be terminated. The licensee can reapply when they are ready to proceed.

- **Noise Issues**

The issues of “Entertainment Endorsements” coupled with the use of outdoor spaces have proved problematic for residents by producing noise conditions that greatly exceed regulations. Residents must continue to spend excessive time and money in efforts to have ABRA enforce regulations, and have largely been unsuccessful. The burden should be on the District to enforce, and on the businesses to demonstrate that they have taken appropriate steps to abate noise. If this were happening, protests on noise should be rare. This would reduce the burden on the Board, residents, and the establishments themselves. We would like to see significant regulatory changes made on issues of noise.

- **Substantial Changes**

Additionally we would like to have the rules specifically state that the list of 18 Substantial Changes will always be treated as substantial changes requiring notification to all legal signatories of a Settlement Agreement, and proper accessible posting of placards. The current practice of the Board making subjective decisions as to the list, without any formal notice to legal parties of a Settlement Agreement or placarding, has made it impossible for residents and legal parties to Settlement Agreements to have any input and rights in these issues.

We appreciate the opportunity to offer comments on this Rulemaking and request that a formal process be instituted to address the issues affecting residents in regard to the licensing of alcohol establishments in close proximity to residential areas.

Sincerely,

Sarah Peck and Abigail Nichols, Co-Chairs DC Nightlife Noise Coalition
Joan Sterling, President Shaw Dupont Citizens Alliance
Chris Young, President Meridian Hill Neighborhood Association
Robin Diener, Task Force on Noise and Legislative Working Group Representative
Jackie Blumenthal, Commissioner ANC3B-02 East Glover Park
Sara Maddux, President West End Community Association
