



**District of Columbia Government  
Advisory Neighborhood Commission 6A  
P. O. Box 75115  
Washington, DC 20013**



December 5, 2016

Mr. Donovan Anderson, Chairperson  
Alcoholic Beverage Control Board  
2000 14<sup>th</sup> Street, NW, Suite 400S  
Washington, DC 20009

Dear Mr. Anderson,

Please be advised that at the October 13, 2016 meeting of Advisory Neighborhood Commission 6A, with a quorum present, the Commission voted (8-0) to approve a protest of the request by Nomad Hookah Bar (ABRA-087558) ("Nomad" or "the establishment") to terminate its Settlement Agreement with ANC 6A.<sup>1</sup>

I further write to formally request that the Board dismiss Nomad's petition as soon as possible without a protest hearing. This is because Nomad's petition does not meet the minimum standards set forth in the D.C. Code for such a petition.

As you are no doubt aware, D.C. Code § 25-446 sets forth the requirements for when an application for termination of a Settlement Agreement ("SA") can be considered. Specifically:

- (d)**
- (1)** Unless a shorter term is agreed upon by the parties, a settlement 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.
  - (2)** The Board may accept an application to amend or terminate a settlement agreement by fewer than all parties in the following circumstances:
    - (A)** During the license's renewal period; and
    - (B)** After 4 years from the date of the Board's decision initially approving the settlement agreement.
  - (3)** Notice of an application to amend or terminate a settlement agreement shall be given both to the parties of the agreement and to the public at the time of the applicant's renewal application according to the renewal procedures required under §§ 25-421 through 25-423.

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<sup>1</sup> ANC 6A meetings are advertised electronically on [anc6a-announce@yahoogroups.com](mailto:anc6a-announce@yahoogroups.com), [anc-6a@yahoogroups.com](mailto:anc-6a@yahoogroups.com), and [newhilleast@yahoogroups.com](mailto:newhilleast@yahoogroups.com), at [www.anc6a.org](http://www.anc6a.org), and through print advertisements in the Hill Rag.

**(4)** The Board may approve a request by fewer than all parties to amend or terminate a settlement agreement for good cause shown if it makes each of the following findings based upon sworn evidence:

**(A) (i)** The applicant seeking the amendment has made a diligent effort to locate all other parties to the settlement agreement; or

**(ii)** If non-applicant parties are located, the applicant has made a good-faith attempt to negotiate a mutually acceptable amendment to the settlement agreement;

**(B)** The need for an amendment is either caused by circumstances beyond the control of the applicant or is due to a change in the neighborhood where the applicant's establishment is located; and

**(C)** The amendment or termination will not have an adverse impact on the neighborhood where the establishment is located as determined under § 25-313 or § 25-314, if applicable.

**(5)** To fulfill the good faith attempt criteria of paragraph (4)(A)(ii) of this subsection, a sworn affidavit from the applicant shall be filed with the Board at the time that an application to amend a settlement agreement by fewer than all parties is filed stating that either:

**(A)** A meeting occurred between the parties which did not result in agreement; or

**(B)** The non-applicant parties refused to meet with the applicant.

**(6)** For the purposes of this subsection, the term "license's renewal period" means the 60-day period before the expiration date of a license.

As an initial matter, ANC 6A has not consented to the termination of this establishment's settlement agreement, meaning that Nomad is required to have conferred with the ANC in good faith. D.C. Code § 25-446(d)(4)(A)(ii). Nomad's application for termination states that the owners of the establishment met with the ANC's Alcohol Beverage Licensing Committee and requested a change in hours of operation and service on Nomad's sidewalk cafe. Most notably, and as acknowledged by Nomad, the request to the ANC was for an additional hour for the establishment's sidewalk café, not a full termination of Nomad's Settlement Agreement, which is what the establishment is now requesting. Therefore, the application is facially improper, as the request being made (full termination) was never discussed with the ANC, as required by governing law. This alone should justify a summary rejection of Nomad's request without a protest hearing.

Further, Nomad's petition provides the following justification for full termination of the Settlement Agreement: "We will be enclosing the sidewalk café because our clientele

enjoys our establishment but when there is inclement weather; we lose clientele because there is not enough space inside for them.” Even if Nomad could prove the truthfulness of these statements at a hearing, such issues are not “circumstances beyond [Nomad’s] control and/or a change in the neighborhood that requires the ... termination of [the] settlement agreement(s)” as required by the law. D.C. Code § 25-446(d)(4)(B). Primarily, the enclosure of Nomad’s sidewalk café is a speculative event that has not happened yet, so any effect from such closure cannot be demonstrated with any reasonable degree of certainty. The volume of clientele inside or outside Nomad has no bearing on a request to terminate the entire Settlement Agreement, which is what is being requested here, and nothing in Nomad’s statement explains how any of these factors are beyond its control and/or relate to a change in the neighborhood. For this additional (and independent) reason, Nomad’s petition should be rejected without the need for a protest hearing.

Finally, Nomad’s petition is untimely. Per D.C. Code § 25-446(d)(2)(B), an applicant may not request amendment or termination until at least four years have elapsed from the Board’s decision approving the agreement(s). An Amendment to Nomad’s Settlement Agreement was approved by the Board on February 19, 2014, less than three years ago. Thus, because Nomad is requesting a full termination of its Settlement Agreement, and the latest iteration of the Settlement Agreement was approved less than four years ago, Nomad’s petition should be dismissed as untimely.

In short, there are three independent reasons why Nomad’s petition is improper; any one of them justifies dismissal of the petition without a full protest hearing. However, should the Board disagree, the ANC is prepared to move forward with its protest and we look forward to the opportunity to be heard on this matter.

I, along with my Co-Chair Christopher Seagle, and ANC Chair Phil Toomajian, are authorized to represent the ANC in this matter. I can be reached via email at [williamsANC6A05@gmail.com](mailto:williamsANC6A05@gmail.com) or by phone at (202) 906-0657.

Please do not hesitate to contact me if you have any questions or would like additional information.

On behalf of the Commission,

A handwritten signature in black ink, appearing to read 'Jay Williams', with a stylized flourish at the end.

Jay Williams  
Co-Chair, ANC 6A ABL Committee