



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



October 28, 2013

Ms. Ruthanne Miller, Chairperson
Alcoholic Beverage Control Board
2000 14th Street, NW, Suite 400S
Washington, DC 20009

Dear Ms. Miller,

I am writing in reference to a request on the Board's agenda for Wednesday, October 30th, 2013 by Joe Englert, on behalf of Vendetta (1210 H Street NE) (the "establishment"), to terminate its Settlement Agreement. Assuming this is a reference to a request to terminate this establishment's Settlement Agreement with ANC 6A, I write on behalf of ANC 6A in response.

As you are no doubt aware, DC 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 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.
 - (2) The Board may accept an application to amend or terminate a voluntary 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 voluntary agreement.
 - (3) Notice of an application to amend or terminate a voluntary 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.
 - (4) The Board may approve a request by fewer than all parties to amend or terminate a voluntary 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 voluntary 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 voluntary 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 voluntary 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.

As an initial matter, ANC 6A has not consented to the termination of this establishment's Settlement Agreement. Further, although the SA has been in place for more than four years and this is the time period of the establishment's license renewal,¹ the other prerequisites for the Board's consideration have not been met. Namely, a "good-faith attempt to negotiate a mutually acceptable amendment to the [Settlement Agreement]" has not taken place. DC Code § 25-446(d)(4)(A).

Approximately two months ago, I met with Joe Englert briefly to discuss his request to modify his Settlement Agreements for a number of his businesses, including Vendetta. His request for Vendetta was limited to the hours of the rooftop deck. I suggested that he bring his request before the ABL Committee, which he did on August 20, 2013. At that meeting, the Committee ultimately took no action, and noted to Mr. Englert that the ANC would soon be addressing rooftop deck (and public space patio) hours in a community meeting, and that the ANC was interested in addressing such concerns in a holistic manner, rather than on an individual basis. See August 20, 2013 ABL Committee Meeting Minutes, *available at* <http://anc6a.org/minutes/ABLM0813.pdf>.

Now, it appears that Mr. Englert is requesting that the *entire* Settlement Agreement between his establishment and ANC 6A be terminated. I do not believe that a good-faith effort was made to discuss this, as Mr. Englert only raised the issue of a limited amendment related to rooftop deck hours, a conversation we are still willing to have with him, along with all other businesses in ANC 6A. Given that our discussions only concerned an amendment to a small portion of the Settlement Agreement, and not a complete termination, as Mr. Englert has now requested, I do not believe that a good-faith attempt to negotiate as required by section (4)(A) has taken place.

For the reasons listed above, ANC 6A requests that the Board reject Mr. Englert's request because he did not undertake the necessary good-faith negotiation with the ANC under DC Code § 25-446(d)(4)(A). Should the Board determine that a good-faith effort *was* undertaken, the ANC will be prepared to present at a hearing arguments and evidence to the Board to show that Mr. Englert's request does not meet the standards set forth in DC Code § 25-446(d)(4)(B) and (C).

¹ I note that, although the SA has been in place for longer than four years, this particular establishment has not (Vendetta opened just this year).

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". The signature is fluid and cursive, with a large initial "J" and "W".

Jay Williams
Commissioner, ANC 6A05
Chair, ANC 6A ABL Committee