

# SDCA

## THE SHAW-DUPONT CITIZENS ALLIANCE, INC.

April 30, 2015

ABC Board  
Alcohol Beverage Regulation Administration  
2000 14<sup>th</sup> Street NW / 4<sup>th</sup> floor  
Washington, DC 20009

RE: Second Proposed Rulemaking Submission of public comment from SDCA regarding proposed rules to Title 23 of the DC Municipal Regulations

Dear Chairperson Miller and Members of the Board,

Thank you for the opportunity to provide comments to the proposed rules to Title 23 of the DC Municipal Regulations. The mission of the Shaw Dupont Citizen's Alliance (SDCA) is to preserve the historic character, quality of life, and aesthetic values of this area with a particular eye toward protecting the interests of the neighborhood's residents and homeowners.

On November 13, 2014, the Board held a hearing pursuant to D.C. Official Code § 25 - 354 (2012 Repl.) to receive public comment on the proposed rules. In the summary of the responses in this second rulemaking very few of the residents and citizen association concerns have been mentioned, and even fewer addressed. It is unclear to us if this second proposed rulemaking is **in addition** to the substantive amendments to the initially proposed rulemaking mentioned in the summary, or if these are the "substantive amendments".

*The Board appreciates the many and varied comments submitted on the initial round of proposed rules. Because the Board adopted substantive amendments to the initially proposed rulemaking, the Board intends to submit the amended proposed rules for public comment, and it will also hold a second hearing following publication in the D.C. Register.*

We have a number of questions regarding these documents in the second proposed rulemaking:

The last three paragraphs of page 6:

*"The purpose of mediation at ABRA is to identify issues, clarify misunderstandings, explore solutions and mediate a settlement agreement. If a*

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*dispute is not resolved through mediation, then the parties will proceed to a protest hearing.*

*ABRA's mediator may provide information about the protest process, raise issues and help explore options, but the primary role of the mediator is to facilitate a voluntary resolution by the parties. If that can't be accomplished, then the mediation will at a minimum, help to narrow and identify the issues.*

*With that understanding, it is incumbent upon the parties, with the mediator's help, to narrow the issues that remain in dispute, and only bring those disputed issues to the Board for resolution at the protest hearing. Issues not in dispute or those resolved at mediation should not be the subject of the hearing. This will allow the parties to focus the more narrow issues for the Board and it affords the parties more time to address those issues that need attention."*

The inference in the above is that the issues on which there is agreement (at mediation) will be imposed in the Board Order. This has not been the case in the past, and when the mediation process fails, all issues are up for protest. In fact we have been told that the ABC Board is prohibited from knowing what transpired at mediation, and therefore unable to impose the conditions on which there was previous agreement in the Board Order.

We would like the language clarified to reflect the following:

*"...all issues on which agreement has been reached between the parties at mediation, will become enforceable provisions of the Board Order, without exception, and only those issues in dispute will be addressed during the protest hearing.."*

Further the language seems to imply that traditional mediation techniques will now be used to help the parties reach a negotiated solution to the disagreements. Again, this has not been the case, and "mediation" was used mainly as a reporting function on the progress of the parties to reach agreement. Please clarify if there will be a new mediation process in place.

Unfortunately this rulemaking continues to have the same problems as the first rulemaking regarding the pervasive use of the word "may", rather than "shall". This results in the option for the Board to choose to not enforce the regulations.

We also continue to be concerned about the "pubcrawl license" provisions. These provide no protection to the affected residents. The lack of any kind of reasonable

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notification regarding location and participating licensees, along with the unlimited repeatability of these licenses, show a disregard for the concerns of residents who will be affected by these events. Additionally a fee of \$250.00 is unreasonably low and the costs to the neighborhood and MPD has proven to be significant.

SDCA appreciates the opportunity to offer comments and we look forward to revised rules being published.

Sincerely,



Joan E. Sterling  
President, SDCA

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