

Appendix A: Minutes from Public Meetings

- **January 18, 2011**
- **February 8, 2011**
- **February 17, 2011**

Public Meeting Number 1 – West Dupont Circle Moratorium Committee

January 18, 2011 – 7pm

Committee Members in Attendance

Kevin O'Connor, Commissioner ANC2b02

Mike Feldstein, Commissioner ANC2b01

Donald Benedick, representative of ANC2b06

Robin Diener, DCCA representative

Aaron McGovern, DC MAP representative

Also in Attendance:

Fred Moosally, ABRA Director

Minutes from the Meeting

Introduction was given by Commissioner O'Connor.

- Explanation of process and goals – will present report at Feb. ANC meeting
- Next Meetings will be January 26 and February 8
- Introduction of ABRA Director Moosally

ABRA Director Moosally gave presentation and answered questions.

- ABRA hearing will take place if the process continues past the ANC and a recommendation is made.
- History of this Moratorium
 - o Has been in effect 5 years (last renewed 2006)
 - o First enacted in 1990s
 - o Amended in 2008 to amend from 17 DR/CRs to 21 DR/CR
 - Total now 34
 - o Currently 21 CRs (Philips Gallery given CX exchanged for reduction of one CR license in 2010)
 - o 1500 CT Ave exempted out of moratorium in 2008
 - o No nightclubs currently in Moratorium zone.
 - o There are no Licenses in safe keeping
 - o Hotels are exempt
 - o Dupont Underground is not covered – ABRA would like clarification
 - o 2006 there was an allowance for 3 lateral expansions

Question from Ruth Horn (ANC2B02 resident): What happened at 1500 CT Ave?

Director Moosally: It was exempted

Ms. Horn: Why isn't more of CT Ave covered?

Director Moosally: Boundaries for moratoria can be 600, 1200 or 1800 feet. That area is outside the zone

Ms. Horn: What if the Moratorium lapsed?

Director Moosally had no comment but said it would be up to the ANC and they could use VAs.

Question from Jeff Krehbiel: What else is in place to control licensing besides the Moratorium?

Director Moosally: the protest and VAs exist.

Question from Robin Diener (Committee): Is there demand for licenses?

Director Moosally: there has been. An example is Ping Pong Dim Sum.

Question from Jim Dudney: How does it work with Hotels?

Director Moosally: it depends on the relationship with the restaurant but they are generally exempt.

Ms. Diener: Could A hotel have a nightclub?

Director Moosally: Conceivably, yes.

Ms. Diener: Is this a zoning issue or a licensing issue? We need more communication across DC government.

Director Moosally: We are meeting with Zoning, so it's possible we may address some of this.

- ABRA will exempt blocks but not addresses.

Mr. Dudney: Can you set criteria for exemptions?

Director Moosally: It is possible.

Question: What is the difference between Restaurant and Tavern?

Director Moosally: Generally, the food requirements and reporting to ABRA.

Director continued his presentation.

- Moratorium Process
 - o Requires an ANC vote
 - o Ask for Council review
 - o MPD review
 - o Must be 3 or 5 years
 - o 600, 1200, 1800 feet
 - o Classes that can be regulated include A/B/C/D
 - o Can object on behalf of:

- Peace/Order/Quiet
- Adverse impact on parking/pedestrian safety
- Adverse effect on property value
- Over concentration
- ABRA tries to avoid continuance
- Nude Dancing is not impacted and need not be considered

Question from Bob Oaks (ANC2B02 resident): What are other moratorium areas?

Director Moosally: Georgetown, Glover Park, Adams Morgan, Dupont East, Dupont West

Question from Mr. Oaks: Do they go away? Any precedent for expiration?

Director Moosally: Usually, they are continued. None have gone away yet.

Question from Commissioner Feldstein: Do the supermarkets count?

Director Moosally: Yes, class A/B count.

Question from Mr. Dudney: What happened with Pesce?

Commissioner O'Connor: License holders can sell them. Pesce probably bought the Johnny Half-Shell license.

Director Moosally: They can also be obtained through judicial actions and settlements

Ms. Diener: Do new applicants still need to reapply and placard?

Director Moosally: yes.

Ms. Diener: Do licenses die?

Director Moosally: yes. They are not free either.

Commissioner Feldstein thanked Director Moosally on behalf of the Committee and the ANC.

General Discussion began.

Comment from Mr. Rick Schreiber (ANC 2b02 resident): Moratorium is good because it allows 3 residents and not 5 for protesting. (Director Moosally confirms this).

Resident expresses concern about parking if the moratorium is lifted.

- Commissioner Feldstein questions whether this would be the case with or without alcohol.
- It was pointed out that hours for licensees now is til 3am on weekends and 2am on weekdays (unless stipulated by a VA or otherwise).

Commissioner O'Connor raises the point of benchmarks. What should we consider to measure the effectiveness of a Moratorium if we continue? How do you feel about this?

Commissioner Feldstein elaborates: for 17th street Moratorium, we didn't measure noise levels to include in moratorium, should we have?

- Evaluations check-ins?
- Is there a 6 month review period?

Director Moosally: if the ANC acts, it must wait 2 years to act again. But you can ask ABRA to review after a period of time (i.e. 6 months).

Ms. Diener: Can we change the number of CR/DR licenses only?

Director Moosally: Absolutely.

Mr. Dudney: What about liquor stores?

- Commissioner O'Connor: you can regulate those in the Moratorium.

Ms. Horn requests comments from Aaron McGovern.

- Generally businesses don't like restrictions but they understand why they are there as well.
- VAs exist to isolate problems and help control them individually

Commissioner Feldstein: There hasn't been a moratorium on CT Ave, interesting that it hasn't been much of an issue there. We should look at the number of new licenses there the past 10 years.

- How much room is let there?
- Business have very large costs associated with starting up and occupying spaces that aren't already restaurants.

Ms. Diener: What were the issues at the beginning? What caused it to go in place? Are there changes? Crime rate?

Comment from public: Moratorium is a good resource, but it shouldn't be the only resource, we need zoning and VAs and other tools to keep things in check.

We need to help separate the good neighbors from the bad neighbors. What is the best way to do this?

Ms. Diener: It seems the ANC in the past has been reluctant to shut down bad offenders. Let's them go on.

- Commissioner Feldstein did think this was the case. Marrakesh being an example.

Next Meeting will be January 26, 2011. – Meeting adjourned.

Public Meeting Number 2 – West Dupont Circle Moratorium Committee
February 8, 2011 – 7pm

Committee Members in Attendance

Kevin O'Connor, Commissioner ANC2b02
Mike Feldstein, Commissioner ANC2b01
Donald Benedick, representative of ANC2b06
Robin Diener, DCCA representative

Committee Members in Absent

Aaron McGovern, DC MAP representative

Also in Attendance:

Lt. Scott Dignan, MPD
Sgt. Bryant Jeter, MPD
Ramon Estrada, Commissioner ANC2b09

Minutes from the Meeting

Introduction was given by **Commissioner O'Connor**

- Explanation of Process thus far
- Next Meeting Feb. 17

Question from **Tom McMahon** (resident outside Moratorium): If you can cut out blocks of the Moratorium, can you also add to it?

Commissioner Ramon Estrada: It has to be done in increments of 600'
Commissioner O'Connor: There may be jurisdictional problems occurring should that happen. We need to keep that in mind.

Question from **Robin Diener:** We should ask if we can determine whether or not moratoria have an effect of pushing nightclubs/taverns to surrounding areas outside the Moratorium zone.

Comment from **Ellen McCarthy** (American Council on Education): Question about one block in the Moratorium zone: the space of One Dupont Circle.

- A building of non-profits, 75% of rent comes from renting space below
- Not able to keep retail interested in space only restaurants have been approaching about vacant space
- For retail to succeed it needs to have a critical mass in an area. This is the reason many business on southern CT Avenue NW are successful. Nothing on this particular block, however offers this. The building opposite has office space and Front Page restaurant.
- Little foot traffic there now
- Can we look at exempting the block?

Comment from **Fran McDonald** (business owner – Ping Pong Dim Sum): We are looking to move to that space. We think the important thing is the focus on food driven businesses versus liquor focused ones. We are food focused.

Comments from Metropolitan Police Department

Lt. Dignan: Our basic concern is public safety.

- P Street was never on our radar until one establishment changed that
 - The establishment in question has agreed to a reimbursable detail for only Fridays and Saturdays – Thursdays cut back
 - Details does help some
- I'd rather see restaurants on the streets than vacant space
 - We actually need more pedestrian traffic. It makes it far safer to have more people than less.
- We would worry about police presence/effectiveness if there were more nightclubs to watch out for

Question from **Commissioner Feldstein:** People always used to get out of taverns on P street at 1-2am, what is different now?

Lt. Dignan: It's really been the one problem actor. Promoters seem to be one of the big issues. If we did that it would help.

Sgt. Jeter: Officers on detail still have to respond if there is a problem in the area, it makes it hard.

Robin Diener: I've seen a problem around O street between 23rd and 20th do you notice this?

Lt. Dignan – yes, but we have increased patrols and it has helped a lot.

- MPD hates vacant property – more foot traffic is better.

Question from **Sandy Spellman** (ANC 2B02 resident): What is the difference between tavern versus restaurant license?

Commissioner O'Connor: the focus is on selling food and the requirements in the license.

Comments from **Luigi Diotauiti** (business owner – Al Tiramisu): I've been a business owner for over 20 years in Dupont. We don't want to see empty space here.

- The emphasis should be quality over quantity.
- The type of licenses we are allowing is very important.
- Please move people into the One Dupont Circle space, more traffic is good.

Commissioner Estrada: Does MPD plan to testify on this matter?

- Lt. Dignan: Not at this point.

Comment **Ellen McCarthy:** a Moratorium seems to be a blunt tool. It would be far more effective to work with ABRA and make better VAs.

- Targeted approach is far more effective

- CR licenses have restrictions built in to them in the regulations for example: no cover charges/30% liquor rule
- Safeguards are built into the process

Sandy Spellman: The regulatory system doesn't seem to be working, that's the problem. Is there a way to help force enforcement matters? How often are Tavern licenses up for renewal?

Commissioner O'Connor: 3 years.

Robin Diener: ABRA enforcement problem – there is a big disconnect. We've raised issues again and again but its hard to get enforced

Luigi Diotauti: We have a good mix in Dupont Circle. We should be very proud.

- No one complains about the restaurants – it has to do with license types
- If something happens at vacant property, it impacts all of us – let's not ruin what we have

Comment from **Susan Lindall** (resident outside Moratorium zone): The advantages of a Moratorium are that they make it easier for residents to mobilize against a bad actor.

Robin Diener: We should be looking block by block, we should be able to carve things out and add things in – it's really a zoning matter. The current way of defining things is too arbitrary.

Comments: Ruth Giesser (business owner – Pizzeria Paradiso):

- I was a business owner when the Moratorium first went into effect, it is interesting to see the difference in tone – people used to be scared of restaurants now they are embracing them
- I always thought laws exist to control businesses, but I see how the Moratorium offers a compromise on some levels.
- We moved our location – the Moratorium prevented us from expanding where we were – but we were able to move down the road into a bigger space
- It can be a bigger expense, but I'm glad it worked out

Comment Carolyn Brennan (ANC2B06 resident): I love that the Moratorium exists.

- I support cutting out the block of One Dupont Circle
- I like how P Street is currently
- I'm not against getting more restaurants but I do like our balance

Comment Susan Lindall: Can a restaurant stay open until 3am?

Commissioner O'Connor: Yes

Commissioner Estrada: We are looking at best practices for VAs with the ANC – the best practices seem to support early VAs at the beginning of licesnses.

Commissioner Feldstein: If the Moratorium ended, would we be able to just institute stronger VAs for all businesses at the same time?

Robin Diener: What if we allowed a limited amount of lateral expansions?

Ruth Giesser: That would have solved our problems

Commissioner Estrada: Has the Moratorium served its purpose? – the ABRA board was actually looking at Sunset provisions for it.

- ABRA will ask you at the hearing when you think it should end.

Commissioner O'Connor: At their root, they are intended to be temporary – the question is when should that be ended?

Robin Diener: But can we answer we don't know when? How will we define success?

Sandy Spellman: Moratorium needs to stay because we have a system where VAs try to replace bad regulations that aren't working.

Ruth Giesser: We should be focusing on problem licensees

- Under the current Moratorium a license is more valuable

Commissioner Estrada: successors do assume the VA – so that is a valuable tool

Ellen McCarthy: but selling license can restrict the type of business to move in because it can price people out – less likely to get a small/local business

Ruth Giesser: rents do move what moves in and impacts things

Ellen McCarthy: Actually the caps on licenses may impact rent too, requires more investment and discourages small businesses

Luigi Diotauti: The clients that are attracted to the area are important. When the president wants to dine in your neighborhood, we all benefit.

- Can we stop a McDonalds-type from getting in the area?

Commissioner O'Connor: that's not really in our power, it's more liquor focused.

Fran McDonald: There is a big entry cost for restaurants – a large capital investment is required – this is why restaurants operate differently.

Public Meeting Number 3 – West Dupont Circle Moratorium Committee

February 17, 2011 – 7pm

Committee Members in Attendance

Kevin O'Connor, Commissioner ANC2b02

Donald Benedick, representative of ANC2b06

Committee Members in Absent

Aaron McGovern, DC MAP representative

Mike Feldstein, Commissioner ANC2b01

Robin Diener, DCCA representative

Minutes from the Meeting

Introduction given by **Commissioner O'Connor** (Committee Member)

- Explanation of ANC2B's action to temporarily extend the Moratorium 60-days
- Introduction of Draft Report

Commissioner O'Connor on draft report: the goal of the report was to offer a compromise between both sides on the Moratorium debate.

- End to CR/DR restrictions – allows some new businesses into the zone but offers control as to what type of businesses. Most problems and concerns seem to stem from CT/DT and CN/DN.
- Block of One Dupont Circle will be carved out
 - Interestingly, it may already have been cut out but was accidental drawn back in during the 2006 renewal period.
 - Plan is to introduce separate legislation to act to immediately carve out section once and for all.

Carolyn Brennan (resident within Moratorium zone): How big of an issue is zoning? Is this going to be a factor if new CR/DRs come into the area?

Commissioner O'Connor: There are actually several zoning overlays for the area. This has different implications for the space. Unfortunately for this matter zoning is separate. We are only allowed to push this decision forward with ABRA not the Zoning Commission. Committee Robin Diener has been a big advocate for ABRA to work closer with Zoning Board, but with regards to the Moratorium there isn't much we can do on that front.

Daniel Kramer (owner LevelOne Lounge): Big on Dupont as a destination spot. We must acknowledge costs that come into play with discussion of the Moratorium and how to maintain the "hipness" of Dupont Circle.

- Would be open to completely opening Moratorium or leaving as is, not part way.
- The concern is maintaining balance to keep the neighborhood identity as it is

- Business has thrived under Moratorium, not sure it would be the same were it lifted.

Donald Benedick (Committee member): Do you think more foot traffic would help?

Mr. Kramer: I'm not sure I could say that.

- The important thing is balance
- Do we risk becoming like the 18th Street "Club Central" area if we lift the Moratorium?

Commissioner O'Connor: We also need to look at license value. One of the big problems is that institutions can unfairly sell liquor licenses, which can price out small and local businesses. There is a risk that this would result in a big chain moving in because they could afford it.

Mr. Benedick: [Mr. Kramer] did you pay a lot for your license?

Mr. Kramer: It wasn't free – but you know what you are going to get.

Mr. Benedick: Do you make a lot from liquor?

Mr. Kramer: Yes, but we meet our food requirement.

Commissioner O'Connor: You are what? A CT or a CR?

Mr. Kramer: A CR.

Commissioner O'Connor: You know, one of the reasons I think it is important to offer a compromise to the Moratorium is the ABC Board. During the previous renewal period, the ABC Board made it clear in testimony that they are interested in relaxing or abandoning the Moratorium. If we provide concessions acknowledging that, I think it will lend us the ability to continue the Moratorium in a manner that addresses the concerns of residents: prevent morphing and prevent new CT/DTs or CN/DNs.

Mr. Benedick: You know, the way I see it we should just get rid of the whole thing.

Mr. Kramer: I look at P Street and I just don't see many new places open for restaurants.

Commissioner O'Connor: That's partially why I made the recommendation to lift CR/DR restrictions; there aren't many new spaces to move to. I think by allowing CR/DRs the ability to be the first to occupy new space; we address neighbors concerns about controlling businesses coming in.

That brings up an important point. In my proposals I talk about engaging businesses at the start. Making sure we can get them into VAs early stops problems and makes businesses get engaged with the community. In the past we had waited for renewal cycle.

Mr. Benedick: Pre-Moratorium, my neighbors actually helped close down a bar where Buffalo Billiards now is. It was through the protest process.

Commissioner O'Connor: Actually, it raises an important point made at the last meeting as well regarding the use of the space and retail. We have to acknowledge one reason for a Moratorium is to promote retail diversity and we've actually seen that decrease since the last renewal.

Mr. Benedick: There was woman who spoke at the last meeting about that. The area really doesn't offer a "retail friendly" area.

Commissioner O'Connor: Actually, important question: How do you all feel about Class A and Class B restrictions? Are you comfortable with the cap?

Mr. Benedick: Well I talked to at least one liquor store on P Street. He said he wouldn't want more competition but was comfortable lifting the Moratorium.

Commissioner O'Connor: Well, I'm not sure competition is a valid reason in my mind, but most people have expressed being comfortable with the current numbers. There can be an oversaturation issue here and I want to make sure we address it. I know I am comfortable with the A/B license numbers and I'm not sure what value more would add to the community, regardless of competition.

If there are no other comments, we can adjourn. The Committee will discuss the report, vote on the recommendations and then I will be sure you all get a copy. The ANC votes on the resolution on March 9, 2011.

Appendix B: Public Comments Submitted

- **Bill and Deb Johnson**
- **David Gleave 1**
- **Dupont West Condo Association**
- **John Hammond**
- **John Snyder**
- **Judy Brody**
- **Kathryn Greene**
- **Mason Kalfus**
- **Matt Pritsker**
- **Robin King/Ron Senegal**
- **Rod Woodson**
- **Ruth Horn**
- **Susan Dunn**
- **Wilber Alvarez**
- **American Council on Education**
- **Francis McDonald**
- **David Gleave 2**

Bill and Deb Johnson

Dear Ms. Diener and Mr. O'Connor,

Some thoughts on the West Dupont Moratorium issue, based on a long history of living in close vicinity to many of bars and restaurants in the neighborhood.

We have lived at 1723 21st Street, N.W. since 1974. On the west side of the 1700 block of Connecticut Avenue there are at least ten bars or restaurants. Our house backs up on a narrow alley where most of these establishments receive their deliveries and extrude their trash. The patrons and employees of a number also regard the alley as a smoking lounge.

What is it like? Most of the establishments for most of the time are respectful, quiet, and obey the rules, with the notable exception of Maddy's, which is directly behind us. Due to some strange acoustics, the bass notes of its loud music come right into our house. At enormous expense, we had sound proof windows installed. It decided to use the public space in the alley, precisely where our car backs out, to store its dirty laundry cart. Only repeated complaints and District government involvement got this out of the public space. It is a repeat offender with respect to garbage bags, boxes and beer kegs thrown in the alley. The cause is obvious. Storage closets originally designed for garbage are now filled with beer kegs. When the closets are full (or the weather is bad) then the alley is where the garbage bags go. The District government has on occasion been excellent in sending inspectors, but a period of compliance is followed by slippage. Rats are a constant problem, at least once taking up residence on the warm engine compartment of our car, making room for a nest by eating through wires.

What is the point of this for the moratorium? First, it seems hopeless to rely on the good will of any particular establishment or even full compliance with existing regulations. When many establishments are in close proximity, it is easy for each to regard their own noise and their own violations as trivial when collectively they are not. If a truck pauses "for just a minute" to make a delivery, what else would one expect in an urban area. But what of trucks for ten restaurants, and not just one truck per restaurant but garbage trucks, beer trucks, fish trucks, vegetable trucks, etc.? And large trucks that can't fit in the alley feel free to stand rumbling, shaking the windows of nearby houses double parked on the street, block the alley exit and entrance and also block the fire hydrant. Second, the district government seems to have people active and engaged in trying to obtain rule compliance. But even the process of repeatedly invoking their assistance is destructive of the feeling of neighborliness we would like to enjoy and is a constant source of tension and aggravation, especially when the response of the establishment is rude and accusatory. Third, commitments made and accommodations worked out are easily ignored. Also, ownerships or management changes. One owner may give you his home telephone number and ask you to call with any problems; the next may curse you out for the mildest complaint.

Structural solutions – limitations on the number of liquor serving establishments – would seem to be at least a partial solution in an effort to achieve some balance. Such limitations would seem appropriate to the West Dupont Moratorium area but stricter limitations north at least as far Florida Avenue would seem be equally in order.

Thank you,

Bill and Deb Johnson

1723 21st Street, NW

Washington, DC 20009

David Gleave

Dear Kevin,

Unfortunately, because of business commitments, I was unable to attend either of the two public meetings regarding the West Dupont Moratorium.

I'm a long-term resident of the affected neighborhood. I have owned my condo on O St between 21st and 22nd Streets since January 1998. I have lived it in continuously since this date. My home is within the moratorium zone.

My perception is that this type of moratorium is often an unreasonable accommodation to the demands of a small but vocal minority that opposes any sort of change or new developments in neighborhoods. This tiresome story is played out again and again across our city.

I moved to this neighborhood precisely because it is lively, entertaining and enjoyed by a diverse community. From my point of view, the moratorium represents an unreasonable restriction on those who wish to create new and vibrant businesses on P Street.

The current moratorium should be allowed to expire.

Please let me know that you have received these comments.

Sincerely,

David Gleave

dave.gleave@bristledge.com

Dupont West Condo Group

Councilman Evans, ANC 2B Commissioners, and Kevin O'Connor

The Board of Directors of the Dupont West Condominium, after two meetings and extended discussion, has passed a resolution in support of extending the West Dupont Moratorium Zone.

We thank our ANC Commissioner Kevin O'Connor for the public meetings he has hosted on the subject which have helped to educate us on the issues. The resolution follows:

Resolution of the Board of Directors of the Dupont West Council of Co-Owners
for extension of the West Dupont West Moratorium Zone

Approved February 8, 2011

The Dupont West Condominium is located at 2141 P Street, NW, in the heart of the West Dupont Moratorium Zone;

We are an association of over 100 owners and residents who enjoy the vibrant lifestyle of our Dupont Circle neighborhood;

We support the diverse business and residential environment on our street and in our vicinity;

The West Dupont Moratorium Zone has made a positive contribution to the limitation of liquor licenses and the promotion of different local businesses;

Implementation of the Moratorium Zone has had a beneficial effect on the peace and quality of life of our neighborhood.

Therefore, we support the continuation of the West Dupont Moratorium Zone without change in the number or type of licenses in the Zone and we urge the Area 2B Advisory Neighborhood Commission and the Alcohol Beverage Regulatory Administration to approve extension of the Moratorium for an additional term of five years.

Board of Directors

Dupont West Council of Co-Owners
Bob Oaks, President
Board of Directors
Dupont West Council of Co-Owners
2141 P Street, NW
Washington, DC 20037
Bob.oaks@lw.com

John Hammond

I support extension of the West Dupont Circle Moratorium.

Best,

John Hammond

John Snyder

I vote for the extension of the moratorium of West Dupont. Thanks Judy Snyder
(Dupont West condominium

Can't attend meeting Feb. 17th as I have a conflict

Judy Brody

Dear Kevin,

As I listen to the drunks who now shout and wobble down 21st Street in the early hours of Saturday nights, I will be thankful for an extended and even permanent moratorium on places to purchase alcoholic beverages in this wonderful, definitely mixed use but still residential neighborhood. Its not like anyone has to go more than half a block in any direction to get a drink as things now stand.

It seems to me that the number of licenses currently allowed is more than adequate, and the relevant sections as outlined in The Current, are fair and workable. As they say, if it ain't broke, why fix it?

Please extend the current moratorium.

Judy Brody
1706 21st Street NW
Washington DC 20009

Kathryn Greene

Good morning Mr. O'Connor,

My husband, Ernie, and I live at 2141 P. Street, NW, in the West Dupont Moratorium zone. We are writing to you to express our full support to see this Moratorium extended for another five years. We firmly believe the Moratorium has had a beneficial effect on the peace and quality of life in our neighborhood. In addition to prohibiting new bars and taverns, we urge you to support the Dupont West Moratorium Zone without change in the number or type of licenses in the Zone.

Kathryn Greene

2141 P. Street, NW, Apt 207

Washington, DC 20037

Mason Kalfus

I have lived in Dupont Circle for 10 years. What has kept me in Dupont Circle is the diversity and quality of the restaurants, nightlife, entertainment options, and residents. Despite now having two children and a significant need for (1) yard space and (2) better public schools than Ross, my wife and I have chosen to stay in Dupont Circle because we enjoy the vibrant urban lifestyle. I don't understand why Dupont Circle would choose to limit those urban experiences that make this neighborhood great. We should be doing everything we can to encourage, not discourage, new development of food and entertainment options. People that want a quiet residential neighborhood are free to live elsewhere -- DC and the suburbs have a wide array of residential and more urban neighborhoods. People that want a vibrant urban lifestyle, and choose to live in Dupont Circle for that reason, don't want that diminished by excessive regulation.

In short, please end any moratoriums that seek to discourage new commercial businesses in our neighborhood.

Matt Pritsker

Dear Kevin,

This is Matt Pritsker. I live at 2141 P Street NW, apt 902. I am writing to strongly support extension of the alcohol moratorium. Basically, I live in the front of my building and hear enough loud noise and fights outside when the clubs and bars let out now.

I don't think more alcohol is going to improve things. in short, we don't need more alcohol in the neighborhood, there is far more than enough already. For this reason, I very strongly support the West Dupont Moratorium, and I support its extension.

Please feel free to contact me at this email address if you have any questions.

Sincerely,

Matt

Robin King and Ron Senegal

Kevin,

I'm not sure if it's too late to forward our response or not. If not, we would also like to be counted in as supporting the extension of the West Dupont moratorium zone.

Robin King and Ron Senegal

2141 p st nw, unit 903, 20037

February 8, 2011

Memorandum

To: Kevin O'Connor
ANC 2B02

From: Rod Woodson
Holland & Knight LLP

Re: West Dupont Circle Moratorium Zone

Kevin ---

On behalf of Ping Pong Holdings, Inc., we have reviewed the evolution and current status of the West Dupont Circle Moratorium Zone ("Zone"), and the situation associated with the possibility of obtaining a Class CR license for a new restaurant at One Dupont Circle, NW.

1. The Zone was first imposed on July 22, 1994 through a rulemaking adopted by the DC Alcoholic Beverage Control Board ("ABC Board" or "Board").¹ No new retailer's licenses (including Class CR) would be issued for a period of five (5) years in an area that extended approximately six hundred (600) feet in all directions from the intersection of 21st and P Streets, N.W, and more specifically described at Rule 307.2. ² The Zone included the entire western side of Dupont Circle, which includes One Dupont Circle. ³ Interestingly, the published record for this rulemaking does not reveal why the Board determined to install the Zone. ⁴

¹ See, 41 DCR 4925 (July 22, 1994) where the Board published its adoption of the Zone rules found as 23 DCMR 307.

² *Id.* The only exception to the new license prohibition was for existing or future hotels. See, 41 DCR 4925, 4926, codified at 23 DCMR 307.3

³ *Id.*

⁴ *Id.* See also, *Notice of Proposed Rulemaking* at 40 DCR 8388 (December 3, 1993).

2. The Zone was again approved on August 4, 2000 for an additional five (5) year moratorium period.⁵ This time, however, the ABC Board stated that the reason for the moratorium was that additional licenses would have an "...adverse effect on (1) peace, order and quiet; (2) real property values; and (3) residential parking needs." ⁶ The basic provisions for the Zone, as originally adopted, were continued.

3. On March 24, 2006, the Zone was approved once again for an additional five (5) year period.⁷ This time, however, the ABC Board elaborated more fully the rationale for the moratorium, and made several alterations.⁸ First, the Board imposed the moratorium through a "cap" on the number of licenses by class. The "cap" regime, however, would allow a defunct license (one which was held by a business which subsequently failed during the moratorium period) to be replaced. Second, the then-existing DR licenses would be permitted to apply for a conversion to the CR class. Third, all class DR and CR licenses would be allowed to apply for out-door seating. Fourth, CR licenses would be permitted to apply for lateral expansion under certain circumstances. Fifth, the Board also found that there was no "adverse effect" on property values due to the presence of ABC licenses, and thus could not be cited as grounds for continuation of the moratorium Zone.⁹

Significantly, the Board noted that the moratorium extension petition was proffered jointly by ANC 2B and the Dupont Circle Citizens Association ("DCCA"). Additionally, testimony and evidence was submitted by the Dupont Circle Merchants and Professionals Association ("DC MAP").¹⁰

4. On November 28, 2008, the Board reviewed the terms and conditions of the Zone at the request of ANC 2B.¹¹ This time, the effort was to expand the number of CR licenses from 17 to 21; and, again, the DCCA and DC MAP participated with testimony and evidence. While the ANC desired a midnight closure of these new licenses, as well as a limitation to the sale of beer and wine only, the Board did not accept these recommendations in toto, but indicated that it would consider them on a case-by-case basis.¹² The Board approved the increase in the number of CR licenses from 17 to 21. ¹³

⁵ See, *Notice of Final Rulemaking*, 47 DCR 6215 (August 4, 2000).

⁶ See, *Notice of Emergency and Proposed Rulemaking*, 47 DCR 1382 (March 3, 2000).

⁷ See, *Notice of Final Rulemaking*, 53 DCR 2198 (March 24, 2006).

⁸ See, *Notice of Emergency and Proposed Rulemaking*, 52 DCR 8648 (September 23, 2005).

⁹ *Id.*

¹⁰ See, nt. 7.

¹¹ See, *Notice of Emergency and Proposed Rulemaking*, 55 DCR 12169 (November 28, 2008).

¹² See, *Notice of Final Rulemaking*, 56 DCR 2493 (April 17, 2009).

¹³ *Id.*

5. On January 29, 2010, the Board issued a proposed rulemaking at the request of ANC 2B to exclude the 1500 block of Connecticut Avenue, NW from the Zone, and to permit the Phillips Collection to convert its license class from CR to "multi-purpose facility".¹⁴ The rationale advanced by the ANC was that the "buildings on [that block] have been vacant....and an opportunity now exists to place restaurants in that vacant space". This request was supported by the DCCA, the Historic Dupont Circle Main Streets, and DC MAP. On September 24, 2010, the Board approved these changes to the Zone.¹⁵

Conclusion

6. In light of this outline on development and evolution of the Zone, there is ample precedence for approval of a CR license to be located at One Dupont Circle, and several thoughts come to mind:

(a) the rationale for the exclusion of the 1500 block of Connecticut Avenue from the Zone in 2010 to fill-in "vacant" space is the very same as that being presented for Ping Pong now. Having the space in One Dupont Circle utilized by Ping Pong will return this currently "dead" space to live activity in a way which will enhance the quality of life in the area and add to the diversity of restaurant offerings with a well-regarded and popular business;

(b) there has been a demonstrated willingness to increase the number of CR licenses within the Zone where the community will stand to benefit from this type of business activity. For example, in 2008-2009 both ANC 2B and DCCA supported increasing the number of CR licenses to permit installation of additional establishments on "Restaurant Row" within the Zone;

(c) the Board approved exempting establishments located in, or to be located in, the New Hampshire Avenue side of One Dupont Circle, NW in 2004.¹⁶ In what appears to be a simple error, this exempting language did not carryover when the moratorium period was extended in 2006;¹⁷ and,

¹⁴ See, *Notice of Emergency and Proposed Rulemaking*, 57 DCR 1113 (January 29, 2010).

¹⁵ See, *Notice of Final Rulemaking*, 57 DCR 8683 (September 24, 2010).

¹⁶ See, *Notice of Final Rulemaking*, 51 DCR 4309, 4349-4310 (April 30, 2004).

¹⁷ See, nt. 7.

(d) the Zone modifications were also supported by the DCCA, as that organization views these issues in a fashion similar to the ANC 2B.

RLW

Cc: David W. Briggs, Esq.

Holland & Knight LLP

Ruth Horn

Kevin,

Please add me to further emails.

My comments on all of these are

- 1) is diversity created by huge chain restaurants that need huge profit margins moving into the neighborhood? Seems to me that minimizes diversity.
- 2) my neighbors on 21st St support the Moratorium and we would like to meet with you sometime in the near future re the Moratorium and re Maddy's. When is convenient for you?
- 3) I sincerely hope that it is NOT the case that the ABC Board will abandon the Moratorium even if the neighbors want it to continue, as Susan Dunn stated. That would be utterly counter to the best interests of Dupont citizens.

Regards

Ruth Horn

DCCA Board Member

1732 21st St NW

Susan Dunn

At the time of the last P Street Moratorium renewal, P Street area residents and business people were all on the same page. I hope that is still the case. But the ABC seemed to be anxious to get rid of moratoria. So even if all of us agree to keep the moratorium, it may have to go. In that case, I like the effort Mike Silverstein has promoted for some problematic neighborhood areas, whereby the ANC develops a published policy on liquor license approval and that proscriptive action eliminates much guesswork and speculative investment. It's sort of a broad VA, as I understand it. Elements of the policy, in my view, ought to be noise limits, a required parking plan, and loss of license for failure to maintain a safe environment (including physical safety and hygiene). I oppose the idea that a liquor license is "property" that conveys with the sale of a site. . . but I think that's probably beyond your level of authority to deal with.

Wilber Alvarez

I support extension of the West Dupont Circle Moratorium.



Mr. Kevin O'Connor
ANC Commissioner, 2B02
2147 O Street NW 309
Washington, DC 20037

Re: Dupont West ABC License Moratorium

Dear Mr. O'Connor:

The American Council on Education, a non-profit organization, is the owner of the building at One Dupont Circle, bounded by the Circle, New Hampshire Avenue, and O and 20th Streets, NW. We are a 501(c)(3) organization founded in 1918, which serves as a consensus leader on higher education issues and the major coordinating body for the nation's higher education institutions. Our members are college and university presidents at institutions of higher education serving more than 80% of America's students enrolled in programs of higher education. We serve a broad range of institutions – public and private, community colleges and four year institutions. Our current initiatives include a wide variety of programs, including improving awareness and utilization of the GED tests, increasing responsiveness of colleges and universities to the needs of veterans, providing outreach and leadership training to increase the diversity of the senior officials in American higher education, expanding the internationalization of US educational institutions and many others.

In addition to serving as our headquarters, our building, the National Center for Higher Education, houses 15 other non-profit higher education associations. As a result of their membership in the National Center for Higher Education, the base rent for the space they occupy cannot exceed 75% of market value. Therefore, it is essential for ACE to obtain a reasonable rate of return on our ground level space.

At the ground floor, we have retail and service tenants. Unfortunately, when our building was designed by the offices of architect Vlastimil Koubek in the 1970's, public policy and architectural practice encouraged recessing retail behind open arcades at the ground level. Our building featured these types of arcades around virtually the entire perimeter, and they turned out to be wholly unproductive in terms of street vitality and retail success. At great expense to the ACE, we recently obtained zoning permission to fill in those arcades, and began construction of the new space, in anticipation of renting it to a restaurant which is very interested in locating in the area.

Now, we recently learned that, because of the Dupont West ABC License Moratorium, we are unable to rent the space to any restaurant, since critical to any restaurant operation is the ability to provide alcohol beverage service as part of a dining experience. We have a large block of contiguous ground floor space that is vacant and ideal for a first class restaurant.

This is highly problematic. Not only is it a financial blow to the Association, but the wide sidewalks along New Hampshire Avenue and proximity to Metro make this an ideal location for a café, with outdoor seating in nice weather, to animate what is otherwise a dead section of street, and complement the pleasant atmosphere created by Hoban's Restaurant just to the north. We understand that the Dupont West ABC License Moratorium is set to expire on March 23rd of this year, and that ANC 2B is currently considering its position on modifying or extending the moratorium for an additional period. As you know, the present moratorium fixes the maximum number of ABC licenses that are permitted within the moratorium area, and it is our understanding that all licenses permitted in the various license categories have already been issued by the ABRA, prohibiting the issuance of any new licenses in any license category.

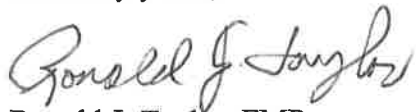
Our building and the entire Square (Square 114) is within the moratorium area, at the eastern edge. The square immediately adjacent to ours to the east, in fact, is outside the moratorium boundary. All of the buildings in our Square are non-residential buildings, commercially zoned. The buildings across New Hampshire Avenue, where the major presence of our proposed restaurant use would be concentrated, are also commercially zoned and used.

We urgently request that, if the ANC supports a continuation of the moratorium, it ask the Alcohol Beverage Control Board to exempt all legitimate CR licensees from the moratorium. The bulk of the problems that have been associated with liquor licenses in the past are due to clubs and bars, not to the restaurants that give our neighborhood such great dining options and lively, enjoyable street presence. If the ANC cannot support this approach, then at least treat us the same as our sister square to the north. In 2010, the mirror image square to our Square, bordering Dupont Circle to the north, was deleted from the moratorium area. That square is similar in character to our Square both as to its internal make up of uses and as to its relationship to the commercial core around the Circle. If there is to be a request to continue the moratorium, we would think it appropriate to treat our Square similarly to the square to the north, and to drop our Square from the moratorium area. Alternatively, we would ask that the ANC recommend an increase in Class CR licenses to a number slightly greater than 30. This would allow our restaurant tenant to proceed with obtaining a CR license; however, it would constitute only a very small expansion, recognizing the widely-reported observation that current CR licensees number 30, which, though exceeding the limit of 21 listed in the moratorium, does not appear to have generated serious problems at that level.

As the owner-occupant of our building, we have the same concerns as the neighborhood regarding disruptive activities, and would be highly vigilant to avoid any adverse impacts from a restaurant tenant. We would also stress that our only interest is in leasing to a restaurant tenant – we have absolutely no interest in leasing to a bar or nightclub.

We appreciate you taking our thoughts into consideration as the ANC deliberates this matter. Not only is this a serious financial issue for a non-profit with a long history in this neighborhood, but an opportunity to create jobs for DC residents and generate substantial tax revenue at a time our city desperately needs it.

Sincerely yours,

A handwritten signature in cursive script that reads "Ronald J. Taylor".

Ronald J. Taylor, FMP
Director, Facilities and Office Services
American Council on Education
1 Dupont Circle, NW
Washington, DC 20036
(202) 939-9377

January 28, 2011

By E-Mail Transmission: kevin.oconnor@dupontcircleanc.net

Mr. Kevin O'Connor
Commissioner, SMD 2B02
ANC 2B

RE: Dupont West Moratorium Debate

Dear Kevin,

I am disappointed with the postponement of the meeting on January 26, but the weather conditions were indeed awful. In any case, it was a pleasure to speak with you and I truly appreciate the opportunity to submit written comments for your consideration.

I am writing in the capacity of a restaurant industry consultant serving a client base of restaurants from Europe, UK, South Africa and Australia who have developed successful restaurant businesses in their home territories and have targeted the USA as a natural growth market. I have selected to work with these brands as they are unique, niche operations and have no direct large scale competitor here in the USA.

I have been involved and continue to be involved in the development of many brands including La Tasca, YO! Sushi, Nando's, Wagamama and Ping Pong, as well as Jamie Oliver's Jamie's Italian, also considering a foray into the USA market. Despite serving different customer bases with very different menus and price points, they all share common traits. None of these are simply offshore versions of Chili's, Friday's, Pizza Hut or Five Guys. They are all unique and I find myself trying to describe them to people who try to relate them to familiar USA brands but cannot do so. Simply, they bring new ideas and vitality to the landscape. Something I believe Washington, DC residents are eager to experience. They all add to the character and texture of the neighborhood bringing more sophistication and diversity.

All of them typically invest a minimum of \$1.5MM to \$3.5MM in each new location. And, they are staffed 100% by American citizens and those who are approved to work in the states. These companies do not, in fact cannot, simply import their workforce to the states. The jobs are local and spending is local.

These companies recognize the unique posture of Washington DC and especially the area around Dupont Circle as representing the best and highest target audience with high levels of education and income and the palate for something new. In fact, in our research, we have found that many of you have traveled abroad and know many of these restaurants and look forward to seeing them in the states. The challenge is that DC is a relatively small city with few pockets of opportunity that include Chinatown, Dupont Circle, Capitol Hill and just a few more. Frankly, Dupont Circle is the gem that brings each of these new companies face to face with the best target audience in the city.

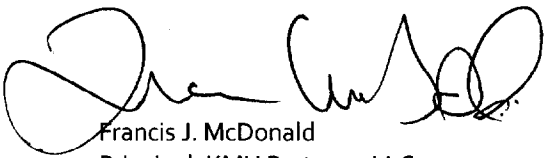
While I certainly understand that the District and its residents have the right to determine how they want to live and can see how an alcohol beverage service moratorium may be perceived to be in the best interests of the District, but what the residents may not realize is that a broad based moratorium, especially as it impacts CR (restaurant) licenses, de-facto places a moratorium on restaurant growth and stifles the very diversity and cultural interest that makes Washington, DC so attractive. Simply, a decent drinks offering is absolutely essential to a successful restaurant. The types of restaurants that I refer to are typically experience an alcohol to food ratio of 30%. These are not bars and taverns that require a CT license.

Further none of the brands that I am working with are interested in locating in neighborhoods that cannot have the potential to deliver the kind of revenue needed to make the operation economically feasible. To dimensionalize, these restaurants require over 3,000 guests per week, and this is simply not possible without close

proximity to the commercial part of the trade area; location in areas of more dense concentration of residents is thus not ideal. In the case of the Dupont West Moratorium Area, the squares around or close to Dupont Circle are ideal, being part of the commercial fabric of that Area, offering a population of workers that can support these restaurant operations while also be close enough so that residents can take advantage of their offerings. To express my point just a bit differently, restaurants do not want to be removed from the concentration of commercial activity and thus desire to be in locations where people can reach them on foot in a 5-minute walk for lunch, can stay after work for happy hour or come to dinner any night of the week. In the case of the Dupont Circle West Moratorium area, those squares next to or close to Dupont Circle and the Connecticut Avenue corridor, which have few if any residents, but dense commercial activity, are ideal locations for restaurants similar to those I am working. The inclusion of these squares in this moratorium area however effectively make these locations off limits to these new and exciting restaurant concepts.

To summarize, if a renewal moratorium is in the offing, then I would strongly recommend a relaxation of the limits on CR licenses and/or the contraction of the boundary of the Moratorium Area away from the Circle to insure that there can be a vibrant, dynamic restaurant community. I believe that making these location opportunities available will enhance the restaurant experience in the Dupont Circle area for benefit of residents and workers alike.

Best Regards,

A handwritten signature in black ink, appearing to read "Francis J. McDonald". The signature is fluid and cursive, with a large initial "F" and "M".

Francis J. McDonald
Principal, KMH Partners, LLC

Contribution to Committee on West Dupont Liquor License Moratorium

We're rightly proud of our freedoms in this country, yet we seem to be willing to accept a million petty restrictions on them. The West Dupont liquor license moratorium represents an unreasonable and outdated restriction on those who wish to create new and lively businesses in our neighborhood.

My home is close to the corner of 21st and O, at the heart of the moratorium zone. I moved here 13 years ago, attracted by the diversity of life in these few blocks and by the abundant foot traffic that keeps these blocks fun, safe and walkable day and night.

The moratorium is an outdated and unreasonable accommodation to the demands of a small but vocal minority. This tiresome story is played out again and again across our city, and we've seen it most recently in the absurd hysteria over the expansion of Hank's Oyster bar – a well-managed and much-loved neighborhood treasure just a few blocks away.

The moratorium contains an implicit message that any new bar, restaurant, club or license holder will be assigned an almost genetic bent towards bad behavior. On the rare occasions when an establishment becomes troublesome, there are effective remedies available to neighbors. The raft of regulations is strong, and DC's Alcoholic Beverage Regulation Administration has become a nationally-awarded enforcer.

The moratorium also relies upon an outdated view of retail, stifling creativity on a commercial corridor. This moratorium was adopted to preserve a hardware store, a florist, and other businesses which have simply moved on. Market forces--from the increase in rents to the shift of dry-goods retail to the Internet--are a reality beyond this moratorium, and beyond the control of its small but vocal set of supporters.

The moratorium is a blunt instrument. It is an undemocratic device that allows opponents of liquor licenses to impose a blanket ban that then affects the whole community for years on end.

The moratorium also restricts competition. It favors businesses that already have licenses and reduces the incentive for them to invest in their businesses or to improve their services.

We will all enjoy a more vibrant and interesting neighborhood when competitive businesses are free to innovate. The West Dupont liquor license moratorium belongs to the past. DC is evolving into a place that people find highly desirable and attractive to live in on its own merits as a world-class city. The moratorium should be allowed to expire.

David Gleave

13-year Resident of the Moratorium Zone

No business relationship to any local bar, restaurant or club other than as a patron.

17 February 2011

Appendix C: Existing Dupont West Liquor Moratorium

307 WEST DUPONT CIRCLE MORATORIUM ZONE

- 307.1 A limit shall exist on the number of retailer's licenses issued in the area that extends approximately six hundred (600) feet in all directions from the intersection of 21st and P Streets, N.W., Washington, D.C., as follows: Class A - Two (2); Class B - Three (3); Class CR or Class DR - Twenty-One (21); Class CT or Class DT - Six (6); Class CN or DN - Zero (0); and Class CX or Class DX - Two (2). This area shall be known as the West Dupont Circle Moratorium Zone.
- 307.2 The West Dupont Circle Moratorium Zone is more specifically described as beginning at 22nd Street and Florida Avenue; North on Florida Avenue to R Street; East on R Street to 21st Street; South on 21st Street to Hillyer Place to 20th Street; South on 20th Street to Q Street; East on Q Street to Connecticut Avenue; Southeast on Connecticut Avenue to Dupont Circle; Southwest around Dupont Circle to New Hampshire Avenue; Southwest on New Hampshire Avenue to N Street; West on N Street to 22nd Street; North on 22nd Street to Florida Avenue.
- 307.3 All hotels, whether present or future, shall be exempt from the West Dupont Circle Moratorium Zone.
- 307.4 Nothing in this section shall prohibit the Board from approving the transfer of ownership of a retailer's license Class A, B, CR, CT, CX, DR, DT, or DX located within the West Dupont Circle Moratorium Zone, subject to the requirements of the Act and this title.
- 307.5 Nothing in this section shall prohibit the Board from approving the transfer of a license from a location within the West Dupont Circle Moratorium Zone to a new location within the West Dupont Circle Moratorium Zone.
- 307.6 A license holder outside the West Dupont Circle Moratorium Zone shall not be permitted to transfer its license to a location within the West Dupont Circle Moratorium Zone unless the transfer will not exceed the number of licenses permitted in the West Dupont Circle Moratorium Zone for that particular class or sub-class, as set forth in Section 307.1.
- 307.7 Subject to the limitation set forth in Section 307.8, nothing in this section shall prohibit the filing of a license application or a valid protest of any transfer or change of license class.
- 307.8 No Class CR or Class DR licensee in the West Dupont Circle Moratorium Zone shall be permitted to request a change of license class to CT, DT, CN, or DN.
- 307.9 A current holder of a retailer's license Class A, B, C, or D within the West Dupont Moratorium Zone shall not be permitted to apply to the Board for expansion of service or sale of alcoholic beverages into any adjoining or adjacent space, property, or lot, unless: (1) the prior owner or occupant has held within the last five (5) years a retailer's license Class A, B, C, or D; or (2) the applicant is a Class CR or DR licensee and the prior owner or occupant has held during the last three (3) years, and continues to hold at the time of application, a valid restaurant license from the Department of Consumer and Regulatory Affairs. The number of substantial change applications approved by the Board for expansion of service or sale of alcoholic beverages into an adjoining or adjacent space, property, or lot, as allowed under this subsection, shall not exceed three (3) during the five (5) year period of the West Dupont Circle Moratorium Zone. Nothing in this section shall prohibit holders of a retailer's license Class C or D from applying for outdoor seating in public space.
- 307.10 This section shall expire on March 23, 2011.

SOURCE: Final Rulemaking published at 47 DCR 6215 (August 4, 2000); as amended by Final Rulemaking published at 51 DCR 4309 (April 30, 2004); as amended by Final Rulemaking published at 53 DCR 2191 (March 24, 2006); as amended by Final Rulemaking published at 55 DCR 12991 (December 26, 2008); as amended by Final Rulemaking published at 56 DCR 2945 (April 17, 2009).