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<p><b>1D02</b>  vacant</p>		<p><b>Dave Bosserman, 1D05</b> Vice Chair orilla@comcast.net</p>
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## Minutes of the November 20, 2007 meeting of Advisory Neighborhood Commission 1-D

*These minutes accepted at the December 4, 2007 meeting.*

### Call to order

[7:16 pm] Chair Gregg Edwards called the meeting to order at 7:16 pm. Present were the five seated ANC1D commissioners, Gregg, Dave Bosserman, Jane Zara, Jack McKay, and “Stormy” Scott, constituting a quorum.

### Public discussion

[7:17 pm] The meeting was opened to public discussion. Most of the discussion pertained to the live music dispute, and the pro-music demonstration of the previous evening.

### Minutes of previous meetings

[7:36 pm] No corrections being offered by any commissioners, the minutes of the November 6 meeting were declared accepted.

### Treasurer’s report

[7:36 pm] Jane Zara presented the third-quarter and fourth-quarter FY07 financial reports. After discussion and review, Dave moved that the commission accept these two reports. *Motion passed by unanimous vote.*

### Appeal of ABC Board’s Marleny’s decision

[7:50 pm] Jack read his draft of a letter to the ABC Board, appealing their decision to approve the DR license for Marleny’s Restaurant with the ANC voluntary agreement simply added to the MPNA agreement, with the proviso that, where the agreements differ, the more restrictive agreement prevails, thus nullifying much of the intent of the ANC VA:

Re: license no. 77454; case no. 61256-08/006P; order no. 2008-001

The ABC Board order specifies the following: "The Board is approving these two agreements and notes that where there are differences between the two agreements with

regard to the terms and conditions, the agreement with the more restrictive terms will govern."

ANC1D appeals this decision to take the two voluntary/cooperative agreements as equals, simply combining them, such that whichever agreement has the more restrictive conditions will prevail over the other. This has the effect of nullifying much of the ANC agreement, a step which clearly conflicts with the "great weight" legally afforded Advisory Neighborhood Commissions.

Specifically, a condition of central importance of the ANC-backed cooperative agreement (an agreement in which the "Mudd Eight" are also participants) is that permitting live music and entertainment:

"4. Licensee will be permitted to offer live music and other live entertainment (including karaoke, DJs, performances, readings and any other lawful form of live entertainment) and to charge an admission or cover charge therefore, and may permit dancing. . . ."

Compare the MPNA VA: "There will be no live entertainment, cover charge, or dancing."

ANC1D argues that the bans on live entertainment and dancing in the MPNA VA should be rejected by the ABC Board, and superseded by our provision, on the following grounds:

(1) These bans cannot be defended on any appropriateness grounds. No one has demonstrated any connection between live entertainment, or dancing, and peace, order, and quiet in the area.

(2) On the contrary, ANC1D asserts that the Mount Pleasant neighborhood will benefit from such live entertainment or dancing offerings. Mount Pleasant Street is notoriously deserted at night, even on weekend evenings in fine weather. Residents complain of fear and intimidation when walking along Mount Pleasant Street at night, e.g., returning home from the Metro station. Any increase in population of Mount Pleasant Street late at night due to such additional entertainment offerings will enhance public safety and security in this area.

Furthermore, many Mount Pleasant residents have asked the ANC, and signed petitions, for live entertainment in their neighborhood restaurants. Not only is the MPNA position, that live entertainment and/or dancing would render the restaurant "inappropriate", invalid, but entirely to the contrary, such entertainment and dancing would in fact contribute to the appropriateness of a restaurant for the Mount Pleasant neighborhood.

In addition, the ANC VA specifies that "this Cooperative Agreement supersedes any and all prior voluntary or cooperative agreements that previously applied to the license or the licensee." The MPNA VA is such a prior agreement, though it was not legally applicable to the licensee before the ABC Board's decision of November 7. That decision has the effect of revoking this clause in the ANC agreement.

Consequently, ANC1D appeals the Board's order, and requests as relief that the ANC agreement be given priority over the MPNA agreement, wherever there is a conflict, reflecting the "great weight" accorded Advisory Neighborhood Commissions; and that any provisions of the MPNA VA that cannot be justified on appropriateness grounds be stricken.

Specifically, that the ban on live entertainment, cover charges, and dancing in the MPNA agreement be stricken, and the pertinent provisions of the ANC agreement be applied.

In order that there be no unintended penalties imposed on the restaurant, their newly issued license should continue in force, according to the ABC Board order, until this appeal is resolved. ANC1D does not wish to impose either delays or legal fees on the restaurant.

During the discussion of this matter, the question of a problematic clause in the “version B” cooperative agreement came up. Jack moved that the matter of the appeal be tabled while the question of the CA wording was considered.

### **Amendment of ANC Cooperative Agreement**

[8:02 pm] Jack moved to amend version B of the VA by deleting the words of the first clause “which will be the full representative of the ANC1D in all matters dealing with the handling of this CA.”

*Motion approved by 5 to 0 vote.*

### **Appeal of ABC Board’s Marleny’s decision (resumed)**

[8:14 pm] The commission returned to the consideration of the ABC Board decision appeal letter. Jack proposed that his writeup on the state of night life on Mount Pleasant Street be appended to the letter of appeal. Gregg moved that text suggesting a mechanism for dealing with conflicting agreements be added to the letter. Jack moved that this text be sent in as a resolution accompanying the letter of appeal, rather than being a part of the letter of appeal.

*Motion to separate this text from the letter, and send it in as a separate resolution, approved, 5 to 0.*

*Letter, with appended report, approved by 5 to 0 vote.*

### **Handling conflicting voluntary/cooperative agreements**

[8:30 pm] The commission then voted on Gregg’s text, now as a resolution.

ANC1D advises the ABC Board as part of its acceptance of this appeal to ask that the MPNA and the ANC enter into mediation and attempt to resolve the differences between their versions, and to clarify the arguments for each stipulation. Further, that this take place before the rehearing so that the Board can quickly decide after the hearing which provisions to include.

ANC1D advises the ABC Board to consider this as a probe for how to handle conflicting agreements in general, towards the objective of single, simple cooperative agreements to be attached to liquor licenses.

*Resolution approved, 5 to 0.*

### **Protesting applications for entertainment endorsements**

[8:37 pm] Jack moved the following resolution:

ANC1D advises the Alcoholic Beverage Control Board of its protest of the applications for entertainment endorsements by Don Jaime (License No. 21925 – application for entertainment endorsement) and by the NHV Corporation (dba Haydee’s Restaurant, license no. 24663, application for entertainment endorsement), on grounds of peace, order, and quiet in the area.

ANC1D is amenable to negotiating a Voluntary Agreement with these licensees that would meet its concerns.

*Resolution passed, 5 to 0.*

### **Posting contractor**

[8:39 pm] Gregg offered the following resolution:

Resolved: ANC 1D contracts with Daniel E. George at \$50 each event to post notices of ANC1D meetings at least a week in advance for regular meetings, and as soon as practical for special meetings.

The role of the posting contractors shall be as follows:

Check with the Chair or Secretary on whether there will be a meeting or not, confirm the time and place, and a brief list of possible topics.

After a draft has been approved by the Chair or Secretary, the posters are to be printed out as a single sheet.

The posters should be securely tied to utility posts without adhesives, and doing no damage to the poles.

For regular business meetings, the posters must be done at least one week before the meeting, posted at 4 locations in each SMD, as specified by the Commission.

For special and emergency meetings, the posting times will be arranged but should be as soon as practical.

Then, on all postings, the contractor or his agent will make a second pass to assure quality.

Since there will be times when the contractor is not available, we also ask that the contractor engage sufficient others and train them so that there is always someone that can do the job.

For each meeting, the contractor shall submit an invoice noting the meeting date, the posting date, the number of notices posted, and contractor's current contact information.

*Passed, 4 to 1 (Jane voting no).*

## **Adjournment**

[8:46 pm] By a five to zero vote, the commission agreed to adjourn the meeting.