Liquor licenses, voluntary agreements, Mount Pleasant restaurants, and "live music"

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May 11, 2006

1. Background: "appropriateness"

The law assumes that there are locations in residential neighborhoods where businesses selling alcoholic beverages will not be "appropriate". An applicant for a liquor license must show that "a reasonable person" would conclude the following:

(a) The establishment will not interfere with the *peace, order, and quiet of the relevant area,* considering such elements as noise, rowdiness, loitering, litter, and criminal activity;

(b) The establishment will not have *an adverse impact on residential parking needs,* considering available public and private parking and any arrangements made to secure such parking for the clientele of the establishment; and

(c) The flow of traffic to be generated by the establishment will be of such pattern and volume as to neither *increase the likelihood of vehicular accidents nor put pedestrians at an unreasonable risk of harm from vehicles.*

One might observe that any business in a commercial district located adjacent to residences will violate all three "appropriateness" conditions. The category of "peace, order, and quiet" in particular is so vague and broad as to permit prohibition of almost any commercial activity. But only liquor license applicants are subject to this "appropriateness" law. Perhaps that is because ordinary businesses close by early evening, whereas liquor-serving establishments such as restaurants, taverns, and night clubs operate well into the night, when residents are at home and more sensitive to disturbances.

2. Protests

Any group of five or more "residents or property owners of the District sharing common grounds for their protest" may "protest" to the issuance, renewal, transfer, or change of a liquor license, based on the "appropriateness" conditions above. Restaurants and other vendors of alcoholic beverages must notify the neighborhood of their application for a license, or a change to an existing license, with placards placed in visible locations for a 45-day "protest period".

Protests may be filed also by the area ANC, or by an incorporated civic group, or by "an abutting property owner". In Mount Pleasant, VAs have been imposed by the Mount Pleasant Neighborhood Alliance, as an unincorporated "group of five or more residents".

There was an effort in 2003, when the current liquor license law was written, to limit "protestants" to ANCs, as the most legitimate representatives of the surrounding community. But Councilmember Sharon Ambrose, chair of the committee that rewrote the law, insisted that a small handful of nearby residents ought to be able to protest, even if the ANC, covering a much larger area, did not.

3. "Voluntary agreements"

A "protestant" and the liquor license applicant are told to meet in a "settlement conference" to try to devise a "voluntary" agreement, which amounts to a legal contract between the applicant and the protestant. The provisions of the "voluntary agreement" are supposed to mitigate the "appropriateness" problems claimed by the protestant, for example:

"Licensee agrees:
* That Licensee shall discourage loitering in front of the establishment and will call the police when it becomes aware that loitering is occurring in front of the establishment and Licensee shall

place a no-loitering sign in both English and Spanish on the premises so it is visible from the exterior.
* That Licensee will post signs in the establishment in both English and Spanish requesting its patrons to maintain quiet when exiting the premises."
(MPNA VA with Habana Riviera, April 2004)

4. Enforcement of "voluntary agreements"

The liquor license is issued with the condition that the provisions of this contract must be respected by the applicant. The ABC Board becomes the "enforcer" of the so-called "voluntary agreement". Even the Board has recognized that this is a misnomer. The agreement is not in the least voluntary, because the liquor license applicant is coerced into that agreement. The neighborhood organization that is protesting the liquor license can happily wait forever, and generally won't mind if the license is never issued. The applicant, on the other hand, urgently needs the license to make a living.

> DCMR 23, 1609.2: The Board may initiate a "Notice to Show Cause Hearing" upon evidence that the holder of a license has violated the material terms of the agreement. *Upon a determination that the licensee has materially violated the agreement, the Board may suspend or revoke the license or impose any other penalty authorized by the Act or this title.*

5. MPNA voluntary agreements

Most of the provisions of the Mount Pleasant Neighborhood Alliance (MPNA) voluntary agreements are inconsequential. The one provision that has been troublesome is the ban on any form of entertainment in restaurants, e.g.,

> "It is understood and agreed that said license permits no live music, dancing, cover charges or charges for admission to the establishment" (Haydee's VA, 1977).

More recent VAs increase the breadth of the ban:

> "Licensee shall permit no live music, DJ or live entertainment, cover charges nor charges for admission to the establishment, and shall not provide an atmosphere for dancing, or a dance floor for dancing, or permit the moving of tables and chairs for the purpose of dancing" (Pupuseria San Miguel VA, 2006).

The prohibition on the disk jockey is intended to stop the Marx Café from offering recorded music, and the ban on "live entertainment" is intended to prevent Don Juan's Restaurant from offering karaoke, which the ABC Board has decided is not, according to law, "live music".

Why does the MPNA impose this ban on entertainment? It has *nothing to do with loud music* disturbing the neighbors, which is already prohibited by DC noise ordinances (see box). It has to do with entertainment drawing more late-night customers to Mount Pleasant's restaurants,

> DCMR **20**, 2800.2: It shall be unlawful for any person to make, continue, or cause to be made or continued *any noise disturbance* by the operation, use, or playing of any musical instrument or device, loud speaker, sound amplifier, or other similar device, unamplified voice, for the production or reproduction of sound on private property or public space.
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> DCMR 20, 2799.1: Noise disturbance – Any sound which is loud and raucous or loud and unseemly and unreasonably disturbs the peace and quiet of a reasonable person of ordinary sensibilities in the vicinity thereof, unless the making and continuing of the noise is necessary for the protection or preservation of the health, safety, life or limb of some person. In making a determination of a noise disturbance, the Mayor shall consider the location, the time of day when the noise is occurring or will occur, and the duration of the noise. In addition, the Mayor may consider the magnitude of the noise relative to the maximum sound levels permitted under this act, the possible obstruction or interference with vehicular or pedestrian traffic, the number of people that are or would be affected, and such other factors as are reasonably related to the impact of the noise on the health, safety, welfare, peace, and quiet of the community. If the noise is outside the Central Employment Area or an area zoned manufacturing or industrial, or if the noise occurs at night, *the Mayor shall not be required to measure the decibel level of the noise in order to find a noise disturbance.* A sound shall not be considered a noise disturbance if made during noncommercial public speaking during the day-time.

and the possible disturbance caused by these customers *on the street after they leave the restaurant.*

6. Live music, karaoke, and disk jockeys

So the MPNA opposes these varieties of "entertainment" not because of loud-music problems, but because they fear that such entertainment will bring more people to Mount Pleasant, where they will possibly be noisy or disruptive *on the street* – not inside the restaurants. Of course, Mount Pleasant restaurant owners want entertainment specifically so that more people will come patronize their businesses. How do we resolve this conflict?

We must assure the neighborhood that Mount Pleasant is not going to become another Adams Morgan, with noisy crowds on the street late at night, heavy traffic congestion, and especially great disturbances at "closing time". This should be possible, because:

* Mount Pleasant Street is currently so near-deserted at night that some people are frightened to walk it. We could have a substantial increase in the number of people on the street, and gain in public security by having enough people around that one does not feel alone and vulnerable.

* Few Mount Pleasant establishments are large enough to handle many people. Even if Don Juan's, Marx, and Haydee's succeed in doubling their late-night patronage, that's still only some tens of people, not the hundreds that crowd Adams Morgan.

7. Business community self-policing

Clearly it is possible for late-night businesses in Mount Pleasant to cause problems for nearby residents. It is said that Adams Morgan erupts into noisy crowds and traffic jams at closing time. I believe that, if we are to persuade the MPNA to give up the "live music" ban, we must assure Mount Pleasant residents that that won't happen here, and provide a mechanism for dealing with any problems that may arise.

One problem at the moment is that it is not easy to complain when there are problems. Residents don't know, or don't want to approach, specific business owners. It would be very reassuring to the public if the business community arranged for a single point of contact where complaints can be filed, and the business owners themselves can work out what action is required. I'm sure the business owners would prefer hearing complaints coming to them from other owners, as opposed to being subject to investigations by the Alcoholic Beverage Regulatory Administration, and being called to hearings before the ABC Board.