



## Government of the District of Columbia Advisory Neighborhood Commission 4B

*By Electronic Mail*

September 23, 2024

Kathleen Patterson, DC Auditor  
Office of the District of Columbia Auditor  
717 14th Street NW, Suite 900  
Washington, DC 20005

RE: Requesting Audit of Protests and Settlement Agreements Approved by the Alcoholic Beverage and Cannabis Administration (formerly Alcoholic Beverage Regulation Administration) to Ensure Enforceability and Racial Equity

Dear Auditor Patterson:

Advisory Neighborhood Commission 4B, at a duly noticed public meeting, with a quorum being the “majority of the total number of commissioner positions currently filled in Commission 4B,” at its September 23, 2024, meeting voted with \_ Yeas, \_ Nays, and \_ Abstentions to send this letter to the Office of the District of Columbia Auditor requesting an audit of protests and settlement agreements approved by the Alcoholic Beverage and Cannabis Administration (formerly Alcoholic Beverage Regulation Administration) to ensure enforceability and racial equity.

The [Alcoholic Beverage and Cannabis Administration](#) issues and renews licenses that enable qualified businesses to sell and serve alcoholic beverages. In certain circumstances, applications for alcoholic beverage licenses can be [protested](#) based on “[the appropriateness of an establishment](#),” including the effect of the business on real property values, the effect of the business on “peace, order, and quiet” (including noise and litter), and the effect of the business on “residential parking needs and vehicular and pedestrian safety.” An abutting property owner, a group of District residents, a community association, the Metropolitan Police Department, the Mayor, and the relevant Advisory Neighborhood Commission are among [the entities that can file a protest](#). Protests are often used as leverage to encourage negotiations and [settlement agreements](#) that “include terms and conditions [in addition to what is already required] aimed at

addressing concerns of the neighborhood.” Once approved by the [Alcoholic Beverage Control Board](#), a settlement agreement places restrictions on the business’s operations that often exceed the business operation requirements contained in statute and regulations. Parties to a settlement agreement can [change or terminate the agreement](#) if the parties come to a mutual agreement and notify the Board of the proposed change or termination.

The groups and individuals protesting businesses that sell and serve alcoholic beverages vary, as do their interests in doing so. As a result, some businesses are subject to the protest and settlement agreement process, while others are not. In addition, while [certain settlement agreement provisions are enforceable under law](#) – things like allowing and prohibiting entertainment, methods to mitigate noise, and efforts to control litter – and [other provisions are unenforceable under law](#) – things like prohibiting applications for changes to a license, requiring businesses to provide community benefits, and requiring that businesses attend Advisory Neighborhood Commission meetings – whether a business is subject to a protest and settlement agreement and the contents of that agreement are often subjective. These statutory lists of enforceable and unenforceable provisions are not exhaustive; in fact, many settlement agreements include additional provisions not listed under statute, and settlement agreements vary by Commission and neighborhood, as well as within Commissions and neighborhoods.

The protest and settlement agreement process ultimately creates a tiered system of regulation of businesses that sell and serve alcoholic beverages. One set of rules apply to those businesses that *are not* subject to protest and/or settlement agreement, and an additional set of rules apply to those businesses that *are* subject to protest and/or settlement agreement. Whether a business is subject to one set of rules versus an additional, negotiated set of rules is in many ways subjective and subject to the whims of the groups and individuals that choose to protest and negotiate settlement agreements. As research has repeatedly demonstrated, where subjective application and criteria come into play so do the risks of implicit bias. See Betsy Mason, Q&A – Psychologist Anthony Greenwald, [“Curbing implicit bias: what works and what doesn’t,” Knowable Magazine \(June 4, 2020\)](#) (“And once you know what’s happening, the next step is what I call discretion elimination. This can be applied when people are making decisions that involve subjective judgment about a person. This could be police officers, employers making hiring or promotion decisions, doctors deciding on a patient’s treatment, or teachers making decisions about students’ performance. When those decisions are made with discretion, they are likely to result in unintended disparities.”).

In practice, many Advisory Neighborhood Commissions protest and/or enter into settlement agreements with businesses in an effort to address community concerns with regard to specific establishments. While some Commissions uniformly protest and negotiate settlement agreements, others do not. And while some Commissions use template and uniform settlement agreements, others do not. [Black business owners have reported facing disproportionately harsh scrutiny and challenges when applying for or renewing liquor licenses](#), and some data reveals that protests more commonly target Black-owned businesses, exacerbating feelings of racial bias and inequity in the process. This uneven treatment underscores a broader concern that the current system may perpetuate racial disparities and would benefit from a

comprehensive audit to ensure fairness and enforceability. In addition, settlement agreements exist in perpetuity – without need for renewal. In practice, this means that a settlement agreement may seek to address a specific set of concerns at a specific time, but may nonetheless follow a business for decades, including through changes in ownership, changes in business models, and even wholesale changes in the surrounding community.

As part of Advisory Neighborhood Commission 4B’s work to revise the Commission’s [Rules of Procedure](#) in early 2020, Commissioners engaged in lengthy discussions that considered which businesses in the Commission area were subject to protests and/or settlement agreements and the specific provisions contained in those agreements. These discussions raised concerns that these protests and settlement agreements potentially targeted Black- and immigrant-owned businesses and that the provisions contained in some of the settlement agreements were unenforceable (things like prohibiting Go-Go music).

The Commission’s Rules, as amended, sought to provide a fair process by noting a preference for Commission-led settlement agreements (as opposed to settlement agreements led by other groups and individuals); a preference that all businesses enter into settlement agreements with the Commission; and expressly noting “[t]he Commission shall reach settlement agreements with license holders without favoritism or preference and has a goal of equal treatment for all businesses in its geographic area” and “[t]he Commission seeks equity for historically marginalized groups and applicants.” In practice, however, Advisory Neighborhood Commission 4B has not protested any businesses that sell and serve alcoholic beverages since 2019, in part due to concerns about fairness in application.<sup>1</sup> Given continued questions about applying additional rules beyond those already contained in the relevant statute and regulations, as well as the procedural intricacies and time commitment required to protest and negotiate settlement agreements – particularly including the Alcoholic Beverage and Cannabis Administration’s requirement that the relevant Commissioner attend all hearings and mediations, which are scheduled during the work day<sup>2</sup> – the Commission has mostly limited its action on these licenses to offering support, where appropriate, and working with businesses and neighbors directly in other circumstances.

In addition, the practice of requiring the participation of every party of a settlement agreement has made it almost impossible for Advisory Neighborhood Commission 4B to revise existing troubling settlement agreements. In one case, a dated settlement agreement between the original licensee (no longer the owner of the business) and two Commissions contains an unenforceable musician ratio. Despite the business’s location within the boundaries of Advisory Neighborhood Commission 4B, the Commission must seek the cooperation of an additional Commission to seek revisions to the settlement agreement. Another troubling settlement

---

<sup>1</sup> Advisory Neighborhood Commission 4B has only considered one request in 2019 to protest an establishment that sells liquor. That proposed Resolution failed on the Commission’s vote. See Advisory Neighborhood Commission 4B, [2020 Annual Report](#) (Nov. 23, 2020).

<sup>2</sup> Studies suggest that who participates in public meetings likely varies by [race](#) and [age](#), raising racial equity concerns as to who is driving protests and settlement agreements.

agreement in the Commission area requires the participation of a largely-defunct condominium association for any revisions. This practice puts longstanding businesses, even with years of good conduct, at a disadvantage when compared to new businesses that may arrive with zero settlement agreement or one that is not obviously problematic.

According to District law, “racial equity” means “the elimination of racial disparities such that race no longer predicts opportunities, outcomes, or the distribution of resources for residents of the District, particularly for persons of color and Black residents.” The District government is currently integrating racial equity analysis into its decision and policy-making, in part through the Racial Equity Achieves Results (REACH) Act, a law requiring intentional consideration of “socioeconomic disparities that are endemic in DC, including those disparities experienced disproportionately by DC residents of color in housing, income, health care access, food access, and the criminal justice system.”

The REACH Act created Executive’s Office of Racial Equity – overseen by the City Administrator – which seeks to operationalize racial equity by developing racial equity tools; collaborating with agencies in the development of racial equity action plans; ensuring racial equity in all government operations and practices; and ensuring policies, procedures, and actions do not exacerbate racial inequities and are intentional to repair historic harms. The REACH Act also created a partner equity office in the DC Council’s Office of Racial Equity, which evaluates legislation and advises the Council on how a proposed bill will affect different racial and ethnic groups in DC through the use of Racial Equity Impact Assessments. A Racial Equity Impact Assessment is a careful, organized, and public examination of how a proposed bill will affect different racial and ethnic groups in DC.

Other regulatory agencies have recognized the importance of these racial equity goals and are incorporating them into their application processes. For example, DC’s Zoning Commission released a [racial equity tool](#) to be used as part of their zoning review to ensure that racial equity at the heart of their decisionmaking. Advisory Neighborhood Commission 4B has urged the Office of Planning to incorporate into its development of this racial equity tool data collection and analysis of the racial impact of present and proposed historic districts, and that this information be tracked longitudinally and include such data as racial and ethnic composition, income distribution, property values, rent, levels of education, health outcomes, and employment. [Resolution 4B-23-0502](#), Calling for Racial Equity Data Collection & Analysis of DC Historic Districts (May 22, 2023).

In light of the potential weaponization of the protest and settlement agreement process against minority and immigrant owned businesses, at worst, and the risk of implicit bias, at best, Advisory Neighborhood Commission 4B requests an audit of protest and settlement agreements approved by the Alcoholic Beverage and Cannabis Administration to ensure enforceability and racial equity. Specifically, the Commission requests the Office of the District of Columbia Auditor:

- review existing protests and settlement agreements as compared to existing businesses to understand which businesses are subject to protests and settlement agreements and which are not (mapping of data may be useful to determine trends);
- analyze geographic and demographic details regarding which businesses are subject to protests and settlement agreements and which are not;
- analyze the entities filing protests and entering into settlement agreements<sup>3</sup> to determine any connection between the entity filing a protest and entering into a settlement agreement and the business subject to a protest and settlement agreement;
- determine the average and median age of settlement agreements and explore the possible purpose and effects of creating an expiration date for settlement agreements;
- assess provisions in existing settlement agreements and whether they are enforceable, including under the statutory enforceability provisions, as well as whether provisions aiming to prevent or limit [loitering](#) and [panhandling](#) and other efforts to control the type of patrons that frequent an establishment might be racially motivated, anti-homeless, or even unconstitutional; and
- conduct or recommend a racial equity impact analysis for the protest and settlement agreement process based on the data collected regarding existing protests and settlement agreements.

Advisory Neighborhood Commission 4B encourages the Office of the District of Columbia Auditor to consider recommendations for statutory and/or regulatory changes to the protest and settlement agreement process that:

- address the high level of discretion imbued in “[the appropriateness of an establishment](#)” requirements warranting a protest;
- consider whether the [enforceability](#) and [unenforceability](#) statutory provisions include language necessary to prevent settlement agreement provisions that create racial equity or other concerns;

---

<sup>3</sup> The Home Rule Charter established Advisory Neighborhood Commissions, which serve at least in part as a mechanism for improved representation and accountability at the neighborhood level. See Martin Austerhuhle, “[D.C.’s unique Advisory Neighborhood Commissions are almost 50 years old. How are they working out?](#)” *WAMU* (Aug. 23, 2023) (“Many say that it empowers residents and better informs the government of what’s happening in neighborhoods across D.C. And they say it’s vastly more democratic and accountable than civic associations and informal neighborhood groups, many of which can influence local policy but may not answer to any actual residents’ needs.”). The protest and settlement agreement process takes a divergent approach, empowering neighborhood groups and residents with less (and sometimes no) accountability to the neighborhood.

- address issues related to outdated and potentially problematic settlement agreements, including where such agreements cannot be modified due to protesting entities having moved, died, or otherwise becoming unavailable; and
- assess whether the protest and settlement agreement process unfairly favors certain entities to protest or encourages racial inequities based on the time protesting entities can commit to the process.

The Commission requests the Office of the District of Columbia Auditor consider collaborating with the Mayor’s Office of Racial Equity and/or the Council Office of Racial Equity on this audit to ensure that the data gathered by auditors is the most useful for impact analysis. In addition, the Commission requests the Office of the District of Columbia Auditor provide best practices and modeling to Advisory Neighborhood Commissions, as practicable, given the frequent involvement of Commissions in the protest and settlement agreement process.

The Commission has voted with \_ Yeas, \_ Nays, and \_ Abstentions to appoint the Commissioner for Single Member District 4B02, Erin Palmer; the Commissioner for Single Member District 4B04, Evan Yeats; and the Commissioner for Single Member District 4B08, Alison Brooks, to be authorized to communicate this letter and represent Advisory Neighborhood Commission 4B in communication with you or any DC government entity regarding this matter.

Sincerely,

Erin Palmer, ANC 4B02 Commissioner  
 Evan Yeats, ANC 4B04 Commissioner  
 Alison Brooks, ANC 4B08 Commissioner

cc: Fred Moosally, Director, Alcoholic Beverage and Cannabis Administration  
 Donovan Anderson, Chair, Alcoholic Beverage and Cannabis Board  
 Dr. Amber Hewitt, Chief Equity Officer, Mayor’s Office of Racial Equity  
 Danaya Hough, Director, Council Office of Racial Equity  
 Councilmember Janeese Lewis George, Ward 4  
 Emily Cassometus, Senior Counsel, Office of Councilmember Janeese Lewis George  
 At-Large Councilmember Kenyan R. McDuffie, Chair, Committee on Business and Economic Development  
 Justin Kim, Committee Director, Committee on Business and Economic Development  
 Members of the Committee on Business and Economic Development