

NOTICE TO CURE for
DISTRICT SOUL FOOD RESTAURANT & LOUNGE

In accordance with the Settlement Agreement (SA) executed by the applicant on December 11, 2018 and approved by ABC Board Order on January 9, 2019 and specifically, Section 12. Notice and Opportunity to Cure, Advisory Neighborhood Commission 6B (“ANC 6B”) submits this official notice to ABRA # 112072, District Soul Food Restaurant & Lounge LLC, 500 8th Street, SE (“DSF”) to address issues which constitute violations or breaches of the SA. These breaches have been identified and compiled by ANC 6B based on substantive and persistent complaints from multiple nearby residents about the adverse impact of DSF operations on the residential community and on the abutting establishment. The areas of non-compliance with the existing SA are detailed below and ANC 6B requests that DSF provide a written response on each item and the actions that DSF has or will take to address these breaches within 10 business days of the date of this notice. To the extent that any of the issues require more than 10 days to cure, ANC 6B requests that DSF provide the ABC Board and ANC 6B with a detailed schedule and plan of action that DSF will take and the time frame for fully addressing the areas of non-compliance.

SA Section 5. Refuse Storage and Disposal, Conditions a, b, c, d, f.

DSF agreed to “exclusively utilize an interior trash storage room within the Premises with sufficient capacity to store all grease, recyclable trash, and non-recyclable trash (garbage).”(Paragraph 1) Residents have reported and Commissioners have witnessed that trash, recycling and grease receptacles are being stored on the E Street side of the building and used to store trash and garbage rather than the interior trash storage room. Over the past several weeks, neighbors have been sending photos to the commissioner who represents the area of trash heaps sitting outside your establishment in the afternoon and litter that is left behind once the trash is removed. This removal is apparently being handled by someone in a white pickup truck that illegally parks for longer periods in a No Parking area on E Street at the SE corner of 11th Street. On March 29, Commissioner Oldenburg received information that DSF was dumping its grease and oils nightly in the container behind Ted’s Bulletin. This was confirmed by 6B03 Commissioner Brian Ready’s communication with Ted’s Bulletin later that evening.

Curative actions requested: At the ANC6B Monthly Meeting on April 9, 2019, DSF owners informed the Commission that they had increased trash pickup by its DC registered trash firm F&L from 5 to 6 days a week: Monday through Saturday. Applicant agrees that trash and recycling receptacles will be moved up from the interior trash room located in the basement no earlier than 8 a.m. and will be taken back to the trash room immediately after pickup. At all other times, trash will be held in the trash room. The owners will no longer personally haul any DSF trash.

SA Section 6. Noise Mitigation.

DSF agreed to “...strictly comply with D.C. Official Code § 25-725 and to that end shall make architectural improvements to the property...” (Paragraph 1). On February 25, 2019, 6B04 Commissioner Oldenburg sent an email about a complaint received from a resident who could hear the music from the establishment across 8th Street and down the 700 block of E Street SE

and requested a response to the issues raised. Commissioner Oldenburg never received an initial response so she followed up with a phone conversation. During this call, the owner claimed to have sent a response and promised to resend that email, but no such response was received. It was our understanding from Commissioner conversations with the ownership that DSF had purchased historically appropriate sound proof windows and stated that they “will be installing them over the next week.” More than two weeks have passed since replacement was to have occurred and would appreciate an update on the status of the replacement. To the extent that DSF requires the assistance of the ANC to gain the support of the Capitol Hill Restoration Society (CHRS), the Commission stands ready to assist DSF in moving it forward.

Subsequently, on March 16, 2019, Commissioner Oldenburg emailed the owner about a complaint received from a resident on the 800 block of E Street SE about loud music from the establishment due to open windows on the E Street side of the building though the establishment explicitly agreed to “...keep all windows and drapes closed along the E Street side of the Premises during the hours that the entertainment area is in operation.” (Paragraph 3) The owner’s explanation of the circumstances surrounding the windows was that the air conditioning (AC) unit had failed forcing the establishment to open the windows on the E Street side.

Curative actions requested: At the ANC6B Monthly Meeting on April 9, 2019, DSF owners reiterated plans to replace all the windows on the 2nd floor of the 500 8th Street building but did not provide any documentation on the type of windows and their soundproofing rating. ANC6B counseled the DSF owners that the first step in the window replacing process should be to file an application with the DC Historic Preservation Office (HPO) and consult with HPO’s Capitol Hill Historic District staff person, Moira Nadal <moira.nadal@dc.gov>, to determine historically acceptable window options. ANC6B has offered to assist DSF in this process and to support the approval since replacing the existing windows would be in the best interest of DSF and beneficial in addressing the community’s concerns about amplified sound emanating from the establishment. The Commission requests that the Applicant provide documentation to the Board and the Commissioner that they have initiated the process for replacing the windows and a specific time frame for when the new windows will be installed.

SA Section 7. Odor and Emission Control.

DSF agreed in the SA to install and maintain a Pollution Control Unit (PCU) “...of sufficient design and capacity to effectively control and substantially eliminate any particulate or odorous emission from the Premises.” (Paragraph 1) Unfortunately, Commissioner Oldenburg learned on March 4, 2019, that smoke fumes from DSF’s cigar lounge on the 2nd floor as well as smoke from the kitchen were seeping through the party wall and into the abutting business. The cigar odors are strong enough within the abutting establishment that they reported an adverse impact on their evening and dinner business due to the loss of patrons not willing to endure the cigar smoke while dining.

Commissioner Oldenburg spoke with the owner of DSF about this problem and the owner had reported back that the matter had been addressed and settled with the affected establishment. However, this statement was contested on March 7, 2019 by a partner of the abutting establishment during a conversation with Commissioner Oldenburg and in the presence of Ms.

Clare Palace. Since that time, Commissioner Oldenburg has received emails on nearly a daily basis from the abutting establishment about the adverse impact of the odor and the correlating loss of business.

Curative actions requested: At the ANC6B Monthly Meeting on April 9, 2019, DSF owners and an owner of the affected abutting establishment—Trattoria Alberto, 504 8th Street SE—agreed to work together to resolve the smoke and cooking odor problems and to have a third party evaluate the effectiveness of the solutions. The Chair of ANC 6B has volunteered to mediate and facilitate the resolution of this issue, if necessary and requested by the establishments. The Commission requests confirmation that such efforts have been made and whether these meeting have been successful in resolving the cigar odor issue.

On March 20, 2019, an inquiry to the D.C. Department of Health (DoH) about the specifics of cigar rooms in restaurants, resulted in a surprising new revelation that DSF has not obtained the required exception or waiver enumerated in DCMR 20 §2106 for housing and operating a smoking area inside the Premises of the restaurant. Since the Monthly ANC meeting, the Commission has also received information from DCRA that the applicant must submit revised plans to lift any hold on their Certificate of Occupancy application including mechanical plans for the approved use of the building. The ANC requests that DSF submit to the Board, with a copy to ANC 6B, documentation that:

1. DSF has submitted to DCRA the requisite plans and has received approval of a Certificate of Occupancy for the primary and any accessory use of the building;
2. DSF has submitted design plans for the cigar lounge and the mechanical filtration system and had gained approval for the adequacy of such systems for such uses; and,
3. DSF has applied to DoH for an exemption that permits smoking within the premises and gained approval to operate a cigar lounge within the premises.

Curative actions requested: At the ANC6B Monthly Meeting on April 9, 2019, DSF owners submitted a DCRA Zoning Certificate dated February 5, 2019, as proof the establishment had an exemption from DC regulations on smoking indoors. This document, however, only states that the building at 500 8th Street SE is located in a zone in which a “cigar bar” is permitted as a valid accessory use at the premises. The Commission request that the Applicant provide the Board and the Commission with evidence that DSF has submitted an application to DoH and received approval from DoH or other authorizing agency to operate a cigar lounge as an accessory use within the establishment.

Taken together, these are potentially significant and serious breaches of the SA with ANC 6B and community. ANC6B does appreciate the statements by DSF owners at our April 9, 2019, meeting regarding these alleged violations. However, in accordance with Section 12. Notice and Opportunity to Cure, ANC 6B requests that DSF fully address the issues detailed above within 10 calendar days of this letter or submit a response to each of the violations. In the event that DSF finds that 10 days is insufficient to fully cure the breach of the SA, the Commission requests that DSF submit to the ABC Board and to the ANC, a detailed plan of action with a timeline indicating the actions that DSF will undertake to fully addressing the issues enumerated above.