

**THE DISTRICT OF COLUMBIA
ALCOHOLIC BEVERAGE CONTROL BOARD**

In the Matter of:

Whole Foods Market Group, Inc.
t/a Whole Foods Market

Application for Renewal of a
Retailer's Class DR License

at premises
1440-1446 P Street, NW
Washington, D.C. 20005

Case No.: 19-PRO-00052
License No.: ABRA-086071
Order No.: 2021-344

Whole Foods Market Group, Inc., t/a Whole Foods Market, Applicant

Sidon Yohannes, Counsel, on behalf of the Applicant

John Guggenmos, Vice-Chairperson, Advisory Neighborhood Commission (ANC) 2F

Julie Earne, Designated Representative, on behalf of a Group of Five or More Individuals
(Julie Earne Group)

Robert Guidos and Tricia Cavell, Designated Representatives, on behalf of a Group of
Five or More Individuals (Robert Guidos Group)

BEFORE: Donovan Anderson, Chairperson
James Short, Member
Bobby Cato, Member
Rema Wahabzadah, Member
Rafi Crockett, Member
Jeni Hansen, Member
Edward S. Grandis, Member

**ORDER ON SETTLEMENT AGREEMENT AND WITHDRAWAL OF ANC 2F'S
PROTEST AND DISMISSAL OF JULIE EARNE GROUP AND
ROBERT GUIDOS GROUP'S PROTESTS**

The Application filed by Whole Foods Market Group, Inc., t/a Whole Foods Market (Applicant), for renewal of its Retailer's Class DR License, having been

protested, came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing on June 10, 2019, and a Protest Status Hearing on September 11, 2019, in accordance with D.C. Official Code § 25-601 (2001).

The official records of the Board reflect that the Applicant and ANC 2F entered into a Settlement Agreement (Agreement), dated June 11, 2021, that governs the operations of the Applicant's establishment.

The Agreement has been reduced to writing and has been properly executed and filed with the Board. The Applicant and Vice-Chairperson John Guggenmos, on behalf of ANC 2F, are signatories to the Agreement.

Furthermore, the Board dismisses the Protests of Julie Earne Group and Robert Guidos Group pursuant to D.C. Official Code § 25-609(b), which states that "...In the event that an affected ANC submits a settlement agreement to the Board on a protested license application, the Board, upon its approval of the settlement agreement, shall dismiss any protest of a group of no fewer than 5 residents or property owners meeting the requirements of § 25-601(2)..." Having approved the Settlement Agreement between the Applicant and ANC 2F, the Board now dismisses Julie Earne Group and Robert Guidos Group by operation of law.

Accordingly, it is this 16th day of June 2021, **ORDERED** that:

1. The Application filed by Whole Foods Market Group, Inc., t/a Whole Foods Market, for renewal of its Retailer's Class DR License, located at 1440-1446 P Street, NW, Washington, D.C., is **GRANTED**;
2. The above-referenced Settlement Agreement submitted by the parties to govern the operations of the Applicant's establishment is **APPROVED** and **INCORPORATED** as part of this Order, except for the following modifications:

Section 3 (Service Providers) – The language "A copy of semiannual notice" shall be replaced with the language "The licensee agrees to provide a copy of the representative semiannual notice."

Section 10 (Repair, Maintenance and Construction) – The language "Licensee shall take reasonable steps to notify the Advisory Neighborhood Commission 2F" shall be replaced with the language "Licensee agrees to take reasonable steps to notify the Advisory Neighborhood Commission 2F."

The parties have agreed to these modifications.

3. This Settlement Agreement replaces and supersedes other previous Settlement Agreements between the Parties;

4. The Protests of Julie Earne Group and Robert Guidos Group are **DISMISSED**; and
5. Copies of this Order shall be sent to the Parties.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDoc.com

Donovan Anderson

Key: a43c665c5d5804c704609d1a2017

Donovan Anderson, Chairperson

eSigned via SeamlessDoc.com

James Short

Key: 547ce97d5206cc3a1e5921d2043**

James Short, Member

eSigned via SeamlessDoc.com

Bobby Cato

Key: 7d5d3f0e470e19d7f5d7b1e142c1

Bobby Cato, Member

Rema Wahabzadah, Member

eSigned via SeamlessDoc.com

Rafi Altiya Crockett, Member

Key: b580a51845e1f0a4016155bdc12f81c*

Rafi Crockett, Member

eSigned via SeamlessDoc.com

Jeni Hansen, Member

Key: 82172931c500447491b568e2a4182*

Jeni Hansen, Member

eSigned via SeamlessDoc.com

Edward S. Grandis, Member

Key: 5027bda7f0f0040ec14adeb52541cef

Edward S. Grandis, Member

Pursuant to D.C. Official Code § 25-433(d)(1), any party adversely affected may file a Motion for Reconsideration of this decision within ten (10) days of service of this Order with the Alcoholic Beverage Regulation Administration, 2000 14th Street, N.W., Suite 400S, Washington, DC 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. Official Code §2-510 (2001), and Rule 15 of the District of Columbia Court of Appeals, any party adversely affected has the right to appeal this Order by filing a petition for review, within thirty (30) days of the date of service of this Order, with the District of Columbia Court of Appeals, 430 E Street, N.W., Washington, D.C. 20001; (202/879-1010). However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR §1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made on this 11 day of June, 2021 by and between Whole Foods Market Group, Inc. t/a Whole Foods Market, ABRA License #086071 ("Licensee"), and Advisory Neighborhood Commission 2F ("Protestant"), and (collectively, the "Parties").

RECITALS

WHEREAS, Licensee has applied for renewal of its Retailer's Class "DR" License for a business establishment ("Establishment") located at 1440 P Street, NW, Washington, D.C. 20005 ("Premises");

WHEREAS, the Parties are desirous of entering into a Settlement Agreement pursuant to D.C. Official Code § 25-446 for the operation and maintenance of the Establishment in such a manner as to minimize the effect on (i) peace, order, and quiet of the neighborhood and (ii) to eliminate the need for a Protest Hearing regarding the renewal license application.

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and conditions set forth below, the Parties agree as follows:

1. ***Recitals Incorporated.*** The recitals set forth above are incorporated herein by reference.
2. ***Deliveries/Noise Reduction.*** Delivery arrival hours to the Premises are limited to 7:00 AM to 10:00 PM daily. The Licensee agrees to notify its service providers of these delivery arrival hours and other rules as set out in paragraph 3 below to ensure deliveries do not disturb neighbors between the hours of 10:00 PM and 7:00 AM. Clear signage in the loading dock area shall be posted to communicate delivery arrival hours to service providers as well as to direct delivery vehicles to wait on 15th Street NW until 7:00 AM for morning deliveries. Such signage also shall be large enough in font to be visible from inside the truck and clearly communicate that idling of truck engine motors and horn blowing in the alley and loading dock are prohibited. It is understood that on rare occasions, due to extenuating circumstances (e.g., trucks breaking down), delivery arrival times may occur beyond the 10:00 PM arrival cut off time. However, Licensee shall take all reasonable measures to assure such variance from the stated delivery times is limited. Further, it is understood that to prevent food spoilage, refrigeration units on refrigerated trucks may run, if necessary, while the trucks are being unloaded. However, refrigeration units are not the same as truck engine motors, which must be turned off in the alley and loading dock. Licensee also shall make its best efforts to ensure delivery trucks are unloaded expeditiously and in a manner that minimizes disruptions to the neighbors and depart immediately after unloading.
3. ***Service Providers.*** Licensee agrees to send a list of rules, including limitations on delivery hour arrival times, the prohibition on truck engine motor idling and horn blowing, and that trucks should not linger in the loading dock once they have been

unloaded, on a semiannual basis to service providers for distribution to their drivers. A copy of representative semiannual notice to service providers shall be distributed to the (Protestant) on a semiannual basis, and the Advisory Neighborhood Commission 2F shall distribute to this to relevant Condo Boards and neighbor lead representatives at robertguidos@yahoo.com and julie.earne@gmail.com

4. **Temporary Supplemental Refrigeration Units.** On occasion, Licensee may require temporary supplemental refrigeration capacity (e.g., in advance of busy holidays) and may need to park refrigeration trailers/units in its loading dock. Such trailers/units shall be limited to electrically-powered only and must operate quietly and with appropriate noise reduction equipment (e.g., hoods over the fans or other reasonable equipment) installed. The parking of trucks/refrigeration units in the alley itself (outside of the loading dock and the Premises' boundaries) is prohibited for purposes of providing supplemental refrigeration capacity or for any other purposes beyond what is necessary to make prompt deliveries to the store.
5. **Lights in Rear Alley.** Licensee shall use commercially reasonable efforts to maintain light shields over the lights located on the outdoor, rear of the Licensee's premises to prevent light pollution bleeding into neighbors' residences.
6. **Point of Contact.** Licensee hereby designates mapststoreleadership@wholefoods.com as its contact in the event of complaints from neighbors concerning parking and idling around and on the Premises and concerning use of the alley and loading dock. Licensee shall endeavor to provide updated contact information in the event there is any change in the identity of the contact person or in email addresses.
7. **Public Space, Trash and Employees and Management Smoking.** Licensee shall routinely clean the sidewalk, tree boxes and alley free of litter, cigarette butts, bottles, chewing gum, trash, and other debris in compliance with D.C. Code and Municipal Regulations. Licensee shall routinely clean the alley areas directly around the business and the dumpsters for refuse and other materials. Licensee's employees are prohibited from smoking on neighbors' property including the alleyway gates and entrances to garages. Licensee shall establish a designated area on its Premises for employees' to smoke and dispose of cigarettes butts.
8. **Trash and Recycling.** Licensee shall contract with a trash and recycling contractor to provide container(s) and pest control service to prevent rodent intrusion, and further agrees to take reasonable steps to keep the containers closed and sealed at all times when waste is not being disposed. The Licensee shall require its trash and recycling contractors to pick up trash and materials not earlier than 7:00 AM, as mandated by D.C Ordinance. If Licensee's chosen trash and recycling contractor arrives before 7:00 AM, Licensee shall notify the contractor and take reasonable efforts to ensure the contractor complies. Licensee's employees shall not dispose of trash into external trash containers in a manner which unreasonably creates noise audible outside of the premises after 12:00 AM nor shall employee's run the store's trash compactor after 11:00 PM.

9. ***Rats and Grease Removal.*** Licensee shall maintain a contract with a professional, licensed pest-control service provider for routine control for the exterior of the Premises as needed to control pests. Licensee shall schedule third party grease removal and power washing companies to perform work between the hours of 7:00 AM and 10:00 PM only. All unfinished work must stop, and Licensee shall prohibit vendors from performing such work outside of those times, due to the extremely loud noise such equipment generates.
10. ***Repair, Maintenance and Construction*** Licensee shall take reasonable steps to notify the Advisory Neighborhood Commission 2F of emergency repairs that need to take place between the hours of 10 PM and 7 AM. Licensee shall take reasonable measures to ensure any noise generated by emergency work during those hours is minimized to avoid disturbances to neighbors.
11. ***Participation in the Community.*** Licensee is encouraged time to time to participate in the monthly meetings of the ANC of 2F. Participation in such meeting promotes open lines of communication, neighborhood involvement, and awareness of neighborhood issues. Dates and times can be found at www.ANC2F.org.
12. ***Counterparts.*** This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
13. ***Notice and Opportunity to Cure.*** In the event that any of the parties is in breach of this Agreement, it shall be entitled to reasonable notice and opportunity to cure, as a condition precedent to seeking enforcement of the Agreement. Unless the breach is of an emergency nature, reasonable notice and opportunity shall provide for a cure within 30 days of the date of such notice. Unless otherwise noted above, any notices required to be made under this Agreement shall be in writing and sent via certified mail, return receipt requested, postage prepaid, hand-delivered, or sent via electronic mail to the other parties to this Agreement at the addresses below. Notice shall be deemed given as of the time of receipt or refusal of receipt.

If to Licensee: Whole Foods Market Group, Inc. t/a Whole Foods Market
1440 P Street, NW
Washington, D.C. 20005
Attn: Ryan Bissett
Email: Ryan.Bissett@wholefoods.com

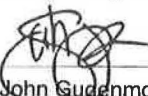
If to Protestant: Advisory Neighborhood Commission 2F
5 Thomas Circle, NW
Washington, DC 20005
ANC2FOffice@gmail.com

Failure to give notice shall not constitute waiver or acquiescence to the violation, but notice shall be a prerequisite to the filing of a complaint with the ABC Board or any other enforcement action.

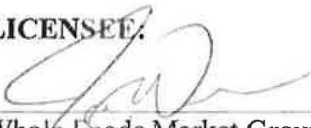
14. ***Withdrawal of Protest.*** Upon execution of this Agreement by the Parties and its acceptance by the ABC Board, Protestant shall withdraw the Protest.

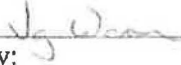
PROTESTANT:

Advisory Neighborhood Commission 2F


By: John Gugenmos, Vice Chair 2F

LICENSEE:


Whole Foods Market Group, Inc.


By: