

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

In the Matter of:)	
)	
Family, LLC)	Case No.: 20-PRO-00024
t/a MK Lounge & Restaurant)	License No.: ABRA-88787
)	Order No.: 2021-297
Application to Renew a)	
Retailer's Class CT License)	
)	
at premises)	
1930 9th Street, N.W.)	
Washington, D.C. 20001)	

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

ALSO PRESENT: Family, LLC, t/a MK Lounge & Restaurant, Applicant

Richard Bianco, Counsel, on behalf of the Applicant

Evan Schlom, Abutting Property Owner, Protestant

Pierson Stoecklein, Westminster Neighborhood Association, Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND ORDER**

INTRODUCTION

The Alcoholic Beverage Control Board (Board) approves the Application to Renew a Retailer's Class CT License filed by Family, LLC, t/a MK Lounge & Restaurant (hereinafter "Applicant" or "MK Lounge") with conditions based on compelling evidence that MK Lounge

regularly generates noise in violation of its settlement agreement that disturbs residents in their homes, permits its admission line to block and interfere with the ability of residents to enter their building, and illegally permits the use of hookah and smoking. The Board is further persuaded that crowd conditions in the neighborhood are leading to disturbances on a regular basis. For these reasons, the Board renews MK Lounge's license on the condition that it cease permitting the use of hookah and smoking until the establishment obtains the appropriate authorization from the District of Columbia Department of Health, utilizes the Metropolitan Police Department (MPD) Reimbursable Detail on a regular basis, ceases placing speakers on its walls, ceases generating noise that may be heard outside the establishment or inside a residence; and directs its admission line away from the ArtView Condominium.

Procedural Background

The Notice of Public Hearing advertising MK Lounge's Application was posted on March 20, 2020, and informed the public that objections to the Application could be filed on or before May 4, 2021. *ABRA Protest File No. 20-PRO-00024*, Notice of Public Hearing [*Notice of Public Hearing*]. The records of the Alcoholic Beverage Regulation Administration (ABRA) indicate that the Westminster Neighborhood Association and an Abutting Property Owner, Evan Schlom, (collectively the "Protestants") have filed protests against the Application. *ABRA Protest File No. 88787*, 1930 9th Street, N.W., Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on September 11, 2020, where all of the above-mentioned objectors were granted standing to protest the Application. On November 19, 2020, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on March 25, 2021.

Based on the issues raised by the Protestants, the Board may only grant the Application if the request will not have an adverse impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2021).

FINDINGS OF FACT

The Board, having considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file, makes the following findings:

I. Background

1. MK Lounge has submitted an Application to Renew a Retailer's Class CT License at 1930 9th Street, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Jeremy Zollarcoffer investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 88787, Protest Report* (Mar. 2021) [*Protest Report*].

3. The proposed establishment is in an ARTS-2 zone. *Protest Report*, at 7. Sixty-nine licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 7-8. There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 11. The establishment's hours of operation and hours of alcohol sales, service, and consumption run from 10:00 a.m. to 2:00 a.m. between Sunday and Thursday, and 10:00 a.m. to 3:00 a.m. on Friday and Saturday. *Id.* at 12. The establishment's entertainment hours begin at 6:00 p.m., and end at 2:00 a.m. on Sunday, and 3:00 a.m. on Saturday. *Id.*

4. ABRA investigators visited the establishment on four separate occasions between February 17, 2021, and March 13, 2021. *Id.* at 2. Investigators did not observe any issues during their visits; however, the visits were made while emergency orders related to curbing the spread of the coronavirus 2019 (COVID-19) disease were in effect. *Id.*

5. MK Lounge is located near the Shaw-Howard University Metrorail Station. *Id.* at 12. Four metro bus lines run near the establishment. *Id.* at 13. Street parking is also available near the establishment. *Id.* The parking spots available on the street have parking meters and have limits related to parking permits. *Id.*

6. The records of the Metropolitan Police Department (MPD) indicate that MPD received 27 calls for service related to the establishment's address between February 2020 and February 2021. *Id.* at 13. The records of ABRA's Noise Task Force indicate that between the same period there were 11 noise complaints related to the establishment. *Id.*

7. MK Lounge's investigative history indicates two pertinent enforcement actions taken against the establishment. *Id.* at 13-14. First, in Case No. 20-CIT-00239, MK Lounge was fined \$1,000, for failing to comply with a Mayor's Order and Board regulations related to combatting the spread of COVID-19 by failing to comply with social distance and seating rules. *Id.* at 14. Second, in Case No. 20-CMP-00099, MK Lounge agreed to an offer-in-compromise (OIC) for violations of a mayoral order and Board regulations related to combatting the spread of COVID-19 by operating after legal hours and failing to comply with social distance and mask requirements. *Id.* As part of the OIC, the establishment received a 25-day suspension of its license where the establishment served 15 days of the suspension and the remaining days were stayed on the condition that the establishment does not commit any additional offenses during the next year. *Id.* The remaining enforcement actions noted in the investigative history are still pending or did not merit an enforcement action. *Id.*

8. Investigator Zollarcoffer has observed that the neighborhood is a popular nightlife destination and has many nightlife businesses. *Transcript (Tr.)*, Mar. 25, 2021 at 49. In his experience, the neighborhood is noisy, and many establishments leak noise into the street when their doors are open. *Id.* at 50.

9. As part of the protest investigation, Investigator Zollarcoffer was present at the establishment for a noise test. *Id.* at 54. During the noise test, the establishment played its music at an extremely loud level, but it could not be heard emanating outside from the second-floor exterior door. *Id.* at 55-56, 68.

10. Investigator Zollarcoffer is further aware that an establishment cannot permit the smoking of tobacco products or hookah unless it obtains an exemption from the D.C. Department of Health. *Id.* at 73. He does not believe MK Lounge has received a smoking exemption from the Department of Health. *Id.*

II. Derege Zewdie

11. Derege Zewdie is the owner of MK Lounge and personally manages the establishment. *Id.* at 87. In conjunction with other owners, beginning in 2012, he also ran the establishment that existed at the same location before MK Lounge opened for business. *Id.* at 88. The establishment is located near the intersection of 9th Street, N.W., and U Street, N.W., which attracts large crowds and traffic. *Id.* at 98.

12. MK Lounge began operating in 2015. *Id.* at 89. The establishment occupies two floors and has an occupancy of up to 122 people. *Id.* MK Lounge abuts the ArtView Condominium. *Id.* at 90.

13. MK Lounge has taken various steps to address compliance with COVID-19 restrictions placed on the business. *Id.* at 94. As part of its efforts, the establishment plays an informational video, limits customer table sitting times, and posted relevant signs inside the premises. *Id.* at 93-94.

14. Mr. Zewdie indicated that he received a sound mitigation report related to his premises and the neighboring building. *Id.* at 105, 123. According to the report, it was recommended that MK Lounge suspend all speakers and subwoofers from roof joists and use certain sound equipment products to reduce sound transmission. *Id.* at 111-12. After receiving these recommendations, MK Lounge implemented the recommendations to reduce potential sound transmission from his premises. *Id.* at 113. As a result, all of the speakers are suspended in the manner recommended by the report and none of the speakers are on the floor. *Id.* at 118.

15. Mr. Zewdie also took additional steps to curb noise. *Id.* at 119. For example, the establishment moved the volume control from the disc jockey booth to the bar. *Id.* He also created a “text group” so that neighbors can keep the establishment informed about any issues caused by the establishment. *Id.* at 121. He also bought headphones so people could listen to music without the establishment having to play loud music. *Id.* at 121.

16. Mr. Zewdie admitted that the establishment sells and offers hookah at the establishment. *Id.* at 128. He indicated that hookah has been offered at the premises since 2012. *Id.* at 129. He further admitted that the Department of Health ordered the establishment to cease selling and offering hookah at the establishment in 2018. *Id.* at 129. He then admitted that the establishment did not have the required exemption from the Department of Health that permits smoking and hookah. *Id.* at 130, 145. Finally, Mr. Zewdie admitted that the establishment continues to permit the smoking of hookah on the premises. *Id.* at 145; *see also id.* at 225-26, 228-32 (regarding the use of hookah at the establishment).

III. Alex Padro

17. Alex Padro serves as the executive director of Shaw Main Streets. *Id.* at 152. The organization's goal is to help with the revitalization of the 7th Street, N.W., and the 9th Street, N.W., commercial corridor. *Id.* at 153. He believes the establishment is well-run and popular. *Id.* at 154-55. He also noted that he has not received or heard any complaints regarding the establishment. *Id.* at 155-56. He noted that as part of his organization's duties, it applied for outdoor seating and other outdoor operations in a nearby parklet on behalf of MK Lounge. *Id.* at 157-58. He noted that the permit for outdoor operations was revoked in October 2020. *Id.* at 160. He is aware that the establishment still has bike racks in the public space formerly made available by the permit. *Id.* at 170.

IV. Zekarias Belachew

18. Zekarias Belachew serves as the manager of MK Lounge. *Id.* at 176-77. As part of his duties, he controls the establishment's music. *Id.* at 177. The establishment provides recorded music and disc jockeys as entertainment. *Id.* at 178. In order to control the sound level, MK Lounge has a "music controller board." *Id.* at 178-79. The establishment also has sound measuring equipment that allows the establishment to keep the sound level at 80 decibels or lower. *Id.* at 180. He noted that the establishment generally takes two sound readings when in full operation from outside the establishment and inside the establishment. *Id.* at 191, 193. He admitted that he does not have special training related to sound engineering or using sound testing equipment. *Id.* at 198.

19. He also noted that the establishment had a text group where nearby residents could report when the sound level was too high and make other complaints. *Id.* at 184. He noted that the last time he received a complaint about music through the text group was February 27, 2020. *Id.* at 185. He further noted that in March 2020, he received a noise complaint about the establishment's exhaust fan. *Id.* at 185. Finally, in August 2020, the establishment has also received complaints about people standing in front of a residential building. *Id.* at 186-87. In response to the complaint about persons standing outside, the establishment put up a barrier to direct the crowd away from the residential property. *Id.* at 187.

V. Frank Chauvin

20. Frank Chauvin lives on the 1800 block of 9th Street, N.W. *Id.* at 203. He has lived in the neighborhood for approximately 17 years. *Id.* at 204. He complained that vehicles from other jurisdictions are parking in residential parking areas. *Id.*

21. Mr. Chauvin further complained about patrons blocking the sidewalk. *Id.* at 205. For instance, on March 12, 2021, he observed a crowd of 15 people block the sidewalk in front of the establishment and had to walk in the street to get around the crowd. *Id.* at 205, 207. He noted that the establishment's patrons frequently block the sidewalk on a regular basis. *Id.* at 206. He further observed that persons regularly loiter near the establishment and engage in disruptive behavior, such as screaming and fighting. *Id.* at 210, 215-16, 217-18. He has also, on some occasions, heard gunfire in the neighborhood. *Id.* at 214.

22. He is also aware that MK Lounge advertises the availability of hookah at the establishment. *Id.* at 211.

VI. Evan Schlom

23. Evan Schlom lives in the Artview Condominium building that abuts MK Lounge. *Id.* at 221. He has lived there since 2017. *Id.*

24. Mr. Schlom believes that MK Lounge regularly violates the settlement agreement attached to its license. *Id.* Specifically, § 3(b) of the agreement provides that the “Applicant shall take all necessary actions to ensure that music, noise, and vibration from the Establishment are not audible in any residential premises, including, but not limited to, making architectural modifications to the Establishment.” *In re Family, LLC, t/a MK Lounge & Restaurant*, Case No. 16-PRO-00110, Board Order No. 2017-126, Settlement Agreement § 3(b) (D.C.A.B.C.B. Mar. 8, 2017). Nevertheless, in Mr. Schlom’s residence, “prior to the pandemic, loud music . . . [and] strong base vibration from the establishment” could be “felt” or heard on a “nightly basis, until 2:00 a.m. or 3:00 a.m.” *Tr.*, 3/25/21 at 222-25.

25. Mr. Schlom has made repeated complaints regarding the establishment’s noise to MK Lounge and ABRA, but the situation has not been resolved. *Id.* at 223. In particular, he has found that when he has reached out to MK Lounge, the establishment either only temporarily lowered the volume or ignored the issue. *Id.* It further appeared to him that MK Lounge lowered their volume when ABRA investigators intervened but raised the volume of their music when ABRA left. *Id.* at 223.

26. Mr. Schlom is not aware of any architectural or sound mitigation measures made, installed, or employed by MK Lounge. *Id.* at 225. Furthermore, he is not aware of any sound test conducted by the MK Lounge that includes his condominium unit or building. *Id.* at 225, 256.

27. Mr. Schlom further complained about MK Lounge’s use of a parklet in front of his condominium building. *Id.* at 232. The parklet is located on the west side of 9th Street, N.W., in the parking lane and has extended in front of the condominium in the past. *Id.* at 232-33. In the parklet, the establishment has put up umbrellas, operated a grill, and erected a tent. *Id.* at 233-34. Nevertheless, despite having the permit for the parklet revoked by the D.C. Department of Transportation, MK Lounge continues to occupy the parklet with bicycle racks and bollards and has taken away parking spaces from the neighborhood. *Id.* at 239-40, 252. Finally, Mr. Schlom has not recently observed any customers being served in the parklet. *Id.* at 239, 252.

28. Mr. Schlom also discussed his issues with the establishment’s queuing practices. *Id.* at 240. Specifically, MK Lounge regularly has its admission line run past the ArtView Condominium’s front entrance. *Id.* at 240-42. Based on this practice, many residents of the condominium use the building’s back entrance during MK Lounge’s business hours. *Id.* He noted on one occasion when he complained about the line to the establishment, MK Lounge put up stanchions to address the blocking of the condominium’s entrance. *Id.* at 253-54.

CONCLUSIONS OF LAW

29. The Board may approve an Application to Renew a Retailer's Class CT License when the proposed establishment will not have an adverse impact on the neighborhood. D.C. Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2021). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet; residential parking and vehicular and pedestrian safety; and real property values of the area located within 1,200 feet of the establishment. D.C. Code § 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2021).

I. The Establishment is Inappropriate for the Neighborhood Without Conditions.

30. The Board is persuaded that MK Lounge is having a negative impact on the neighborhood and requires conditions on the license to merit renewal.

31. Under the appropriateness test, “the applicant shall bear the burden of proving to the satisfaction of the Board that the establishment for which the license is sought is appropriate for the locality, section, or portion of the District where it is to be located” D.C. Code § 25-311(a). The Board shall only rely on “reliable” and “probative evidence” and base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2021). The substantial evidence standard requires the Board to rely on “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Clark v. D.C. Dep't of Employment Servs.*, 772 A.2d 198, 201 (D.C. 2001) citing *Children's Defense Fund v. District of Columbia Dep't of Employment Servs.*, 726 A.2d 1242, 1247 (D.C.1999).

32. In determining appropriateness, the Board must consider whether the applicant’s future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances—not just whether the Application complies with the minimum requirements of the law. D.C. Council, Bill 6-504, the “District of Columbia Alcoholic Beverage Control Act Reform Amendment Act of 1986,” Committee on Consumer and Regulatory Affairs, 38 (Nov. 12, 1986); see *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013) (“However, in mandating consideration of the effect on peace, order, and quiet, § 25-313(b)(2) does not limit the Board's consideration to the types of noises described in § 25-725.”). As part of its analysis, the Board should evaluate each “unique” location “according to the particular circumstances involved” and attempt to determine the “prospective” effect of the establishment on the neighborhood. *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Furthermore, the analysis may also include the Applicant’s efforts to mitigate or alleviate operational concerns, the “character of the neighborhood,” the character of the establishment, and the license holder’s future plans. *Donnelly v. District of Columbia Alcoholic Beverage Control Board*, 452 A.2d 364, 369 (D.C. 1982) (saying that the Board could rely on testimony related to the licensee’s “past and future efforts” to control negative impacts of the operation); *Upper Georgia Ave. Planning Comm. v. Alcoholic Beverage Control Bd.*, 500 A.2d 987, 992 (D.C. 1985) (saying the Board may consider an applicant’s efforts to “alleviate” operational concerns); *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979); *Gerber v. D.C. Alcoholic Beverage Control Bd.*, 499 A.2d

1193, 1196 (D.C. 1985); *Sophia's Inc. v. Alcoholic Beverage Control Bd.*, 268 A.2d 799, 800-801 (D.C. 1970).

a. MK Lounge's normal operations are having a detrimental impact on the peace, order, and quiet of the neighborhood.

33. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment on peace, order, and quiet, including the noise and litter provisions set forth in §§ 25-725 and 25-726.” D.C. Code § 25-313(b)(2); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider “noise, rowdiness, loitering, litter, and criminal activity.” 23 DCMR § 400.1(a) (West Supp. 2021).

34. The Protestants have persuaded the Board that MK Lounge's efforts related to noise are insufficient when compared to the establishment's legal obligations. The establishment's settlement agreement explicitly prohibits the establishment from generating noise that can be heard in a residence. *Supra*, at ¶ 24. Nevertheless, Mr. Schlom hears music and bass sounds from MK Lounge in his residence in the early morning hours on a regular basis when the establishment is engaged in normal operations. *Id.*

35. The Board is further not persuaded that Mr. Schlom's complaints are unwarranted or that MK Lounge has taken sufficient steps to mitigate noise. First, the language of the settlement agreement related to noise are not dependent on whether MK Lounge responds to noise complaints or installed various soundproofing devices; instead, the standard under the agreement is that no noise should be heard in a residence, which has not currently been achieved. *Supra*, at ¶¶ 14, 18-19, 25. Second, the sound test conducted by the establishment did not undermine the credibility of Mr. Schlom where the test did not determine whether noise could be heard in his residence. *Supra*, at ¶ 26. Therefore, the operations of MK Lounge merit additional restrictions to curb noise disturbances caused by the establishment.

36. The Board is further concerned about loitering, crowd control, and exterior noise generation near the establishment. The Board credits Mr. Schlom's testimony that MK Lounge regularly has its admission line run past the ArtView Condominium's front door and this interferes with the ability of residents to use the building's front entrance. *Supra*, at ¶ 28. Interfering with the ability of residents to enter and exit the building is a safety hazard in emergencies and potentially exposes residents to crowd noises. Third, the record shows that MK Lounge does not appear to consistently keep the volume of its music at an appropriate level. *Supra*, at ¶ 25. Therefore, the operations of MK Lounge merit additional restrictions to improve crowd control and exterior noise environment at the establishment.

37. Finally, the Board is persuaded that the establishment's operations require the presence of the MPD Reimbursable Detail on a regular basis. Specifically, the neighborhood is a highly trafficked and popular nightlife destination. *Supra*, at ¶ 8. This has led to crowds of patrons blocking the sidewalk and disruptive behavior throughout the neighborhood on a regular basis. *Supra*, at ¶ 21. Finally, the establishment has recently had a string of violations that raise

questions about the ability to management to prevent violations of the law. *Supra*, at ¶ 7. Therefore, conditions warrant the presence of the MPD Reimbursable Detail on a regular basis.

38. Therefore, the Board finds the renewal of MK Lounge’s license appropriate so long as it follows the conditions outlined by the Board.

b. MK Lounge is not having a negative impact on residential parking needs and vehicular and pedestrian safety.

39. “In determining the appropriateness of an establishment, the Board shall consider . . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety” D.C. Code § 25-313(b)(3); *see also* D.C. Code §§ 25-101(35A), 25-314(a)(4). Among other considerations, the Board is instructed to consider the availability of both private and public parking, any parking arrangements made by the establishment, whether “[t]he flow of traffic . . . will be of such pattern and volume as to . . . increase the [reasonable] likelihood of vehicular [or pedestrian] accidents” 23 DCMR § 400.1(b), (c) (West Supp. 2021). In this case, the establishment is located near a Metro station and various bus lines. *Supra*, at ¶ 5. The Protestants did not present any compelling evidence that the establishment was having any significant impact on residential parking or otherwise posing a danger to pedestrians and vehicles. Therefore, the Board finds in favor of the Applicant on this issue.

c. MK Lounge is not having a negative impact on real property values.

40. In determining whether an establishment is appropriate, the Board must examine whether the establishment is having a negative effect on real property values. D.C. Code § 25-313(b)(1). The Board has noted in the past that the presence of blight may have a negative impact on property values. *In re Historic Restaurants, Inc., t/a Washington Firehouse Restaurant, Washington Smokehouse*, Case No. 13-PRO-0031, Board Order No. 2014-107, ¶ 48 (D.C.A.B.C.B. Apr. 2, 2014) *citing In re Rail Station Lounge, LLC, t/a Rail Station Lounge*, Case No. 10-PRO-00153, Board Order No. 2011-216, ¶ 62 (D.C.A.B.C.B. Jun. 15, 2011). In this case, there is no indication that the Applicant’s property is blighted or having a negative impact on property values. Therefore, the Board finds in favor of the Applicant on this issue.

II. The Board Imposes Conditions on the License.

41. In light of the Board’s findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant’s license. *See In re Dos Ventures, LLC, t/a Riverfront at the Ball Park*, Case No. 092040, Board Order No. 2014-512. ¶ 49 (D.C.A.B.C.B. Nov. 13, 2013) (saying “[i]n practice, the Board has imposed conditions when it is shown that there are valid concerns regarding appropriateness that may be fixed through the imposition of specific operational limits and requirements on the license”). Under § 25-104(e), the Board is granted the authority to impose conditions on a license when “. . . the inclusion of conditions will be in the best interest of the [neighborhood]” D.C. Code § 25-104(e).

42. The Board imposes several conditions to prevent a negative impact on the neighborhood. First, the Board requires MK Lounge to hire the MPD Reimbursable Detail on a regular basis to

address negative impacts caused by the movement of large crowds traveling to or passing by the establishment while the establishment is in full operation and attracting crowds by providing live entertainment. Second, based on the transmission of sounds and vibrations into the neighboring residence and MK Lounge's failure to consistently control the volume of its music, the establishment shall be prohibited from generating noise that may be heard outside or inside a residence, and shall be prohibited from placing speakers on its walls. Third, MK Lounge shall not be permitted to have its admission line block the front entrance of the ArtView Condominium.

43. The Board further notes that D.C. Official Code § 25-311 requires all licensees to obtain and maintain all "licenses and permits required by law or regulation for its business." D.C. Code § 25-311(c). In this case, no smoking or hookah may be permitted at the establishment unless the Department of Health provides an exemption from the District's smoking laws. *Supra*, at ¶ 10. Therefore, the Board will order the cessation of all hookah, smoking until the appropriate exemption from the Department of Health is obtained as a condition of licensure.

44. Finally, the Board considered evidence related to the alleged illegal use of the nearby parklet. *Supra*, at ¶¶ 17, 27. Nevertheless, it appears that the establishment no longer uses the space for patrons, but rather has only failed to remove a bike rack and bollards after its permit for the space was revoked. *Id.* In that case, the best and most effective remedy would be to complain to the agency with jurisdiction and seek an enforcement action by that agency; especially, when the violation is not occurring on the licensed premises, no alcohol or related services are being provided in the parklet, and the parking spaces taken up by the parklet are not critical to the neighborhood where the area was recently approved for other uses by the D.C. Department of Transportation. *See In re Hank's on the Hill, LLC, t/a Hank's Oyster Bar*, Case No. 16-PRO-00045, Board Order No. 2016-471, ¶ 11 (saying "not all violations of the law or disturbances require or merit a finding of inappropriateness").

III. The Establishment's Record of Compliance Merits Renewal.

45. Under § 25-315, "[t]he Board shall consider the licensee's record of compliance with this title and the regulations promulgated under this title and any conditions placed on the license during the period of licensure, including the terms of a settlement agreement." D.C. Code § 25-315(b)(1). While MK Lounge has recently committed a large number of violations, the Board is presently convinced that the conditions imposed by the Board will improve the establishment's operations and reduce the impact on the neighborhood. *Supra*, at ¶ 7. Therefore, MK Lounge still merits renewal at this time.

IV. The Application Satisfies All Remaining Requirements Imposed by Title 25.

45. Finally, the Board is only required to produce findings of fact and conclusions of law related to those matters raised by the Protestants in their initial protest. *See Craig v. District of Columbia Alcoholic Beverage Control Bd.*, 721 A.2d 584, 590 (D.C. 1998) ("The Board's regulations require findings only on contested issues of fact."); 23 DCMR § 1718.2 (West Supp. 2021). Accordingly, based on the Board's review of the Application and the record, the

Applicant has satisfied all remaining requirements imposed by Title 25 of the D.C. Official Code and Title 23 of the D.C. Municipal Regulations.

ORDER

Therefore, the Board, on this 26th day of May 2021, hereby **APPROVES** the Application to Renew a Retailer's Class CT License at premises 1930 9th Street, N.W., filed by Family, LLC, t/a MK Lounge & Restaurant, subject to the following **CONDITIONS**:

1. The Applicant shall not allow or permit smoking or hookah at the establishment until it applies for, obtains, and submits to the Board, a smoking exemption issued by the District of Columbia Department of Health.
2. The Applicant shall hire at least two (2) officers with the Metropolitan Police Department Reimbursable Detail whenever a disc jockey or live band performs at the establishment. The detail shall be hired for at least four hours and run until at least one hour after the end of the Applicant's operations. The Applicant may fulfill this requirement individually or as part of a larger group, such as a Business Improvement District initiative.
3. The Applicant shall not affix speakers, subwoofers, or other sound amplification devices to the establishment's walls.
4. The Applicant shall not generate amplified noise that may be heard outside the establishment except when the doors are being immediately used for ingress and egress.
5. The Applicant shall not generate amplified noise that may be heard inside a residence.
6. The Applicant's admission line or other patron queue shall not extend towards, by, or past any door connected to the ArtView Condominium.

IT IS FURTHER ORDERED that the Board's findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

The ABRA shall deliver a copy of this order to the Parties.

District of Columbia
Alcoholic Beverage Control Board

eSigned via SeamlessDocs.com
Donovan Anderson
Key: ac43cb969d5f09e46730000d1dccc8

Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com
Bobby Cato
Key: 286d3fca0f0e146d7f4b75bd7917d20d

Bobby Cato, Member

Rema Wahabzadah, Member

eSigned via SeamlessDocs.com
Rafi Aliya Crockett, Member
Key: b560e91845e179e4016155e5c12f81cc

Rafi Crockett, Member

eSigned via SeamlessDocs.com
Jeni Hansen, Member
Key: 82172931f550944740f1b56f9c2a4189f

Jeni Hansen, Member

eSigned via SeamlessDocs.com
Edward Grandis, Member
Key: 5027bda77f9f0040ec14adeb52541ce5

Edward S. Grandis, Member

I dissent from the position taken by the majority of the Board and would not renew the license in this case. My dissent is based on the testimony given during this hearing regarding violations of the Mayor's emergency orders relating to curbing the spread of COVID-19, illegally permitting the use of hookah at the establishment, and creating conditions that negatively impact the peace, order, and quiet of the community.

eSigned via SeamlessDocs.com
James Short
Key: 547ae3738202e6a6e8c1b332e2d248e

James Short, 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, Reeves Center, 2000 14th Street, NW, 400S, Washington, D.C. 20009.

Also, pursuant to section 11 of the District of Columbia Administrative Procedure Act, Pub. L. 90-614, 82 Stat. 1209, D.C. 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. However, the timely filing of a Motion for Reconsideration pursuant to 23 DCMR § 1719.1 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).