

**THE DISTRICT OF COLUMBIA  
ALCOHOLIC BEVERAGE AND CANNABIS BOARD**

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In the Matter of:	)	
	)	
Rito Loco, LLC	)	Case No.: 22-PRO-00072
t/a Rito Loco-El Techo	)	License No.: ABRA-104119
	)	Order No.: 2023-199
Application to Renew a	)	
Retailer's Class CR License	)	
	)	
at premises	)	
606 Florida Avenue, N.W.	)	
Washington, D.C. 20001	)	

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

**ALSO PRESENT:** Rito Loco, LLC, t/a Rito Loco-El Techo, Applicant

Andrew Kline, Counsel, on behalf of the Applicant

Larry Handerhan, Commissioner, Advisory Neighborhood Commission (ANC) 1B, Protestant

Alex Lopez, Commissioner, Advisory Neighborhood Commission (ANC) 6E, Protestant

Rami Badawy, on behalf of a Group of Five or More Individuals, Protestant

Craig Kujawa, Abutting Property Owner, Protestant

Martha Jenkins, General Counsel  
Alcoholic Beverage and Cannabis Administration

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

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## INTRODUCTION

The Alcoholic Beverage and Cannabis Board (Board) approves the Application to Renew a Retailer's Class CR License filed by Rito Loco, LLC, t/a Rito Loco-El Techo (hereinafter "Applicant" or "Rito Loco") subject to conditions where the Protestants demonstrated that amplified music at Rito Loco causes on-going and repeated noise disturbances in residentially zoned homes in violation of the law, and where measures taken by the establishment to address noise have been wholly inadequate to curb the problem. Based on this determination, the Board conditions renewal on the establishment's entertainment hours being limited to 10:00 p.m.; a prohibition on generating amplified noise that may be heard in a residence; a prohibition on the use of outside sound equipment; and mandate that the establishment keep its windows and doors closed when entertainment is provided. Finally, the Board will consider and permit Rito Loco to file an application for a substantial change to remove or modify these conditions upon the completion of sound tests and the generation of a report by a qualified sound professional. The Board's reasoning, Order, and conditions are described in detail below.

### *Procedural Background*

The records of the Alcoholic Beverage and Cannabis Administration (ABRA) indicate that Advisory Neighborhood Commissions (ANC) 1B and 6E, a Group of Five or More Residents and Property Owners, and an Abutting Property Owner (hereinafter collectively "Protestants") have filed protests against the Application. *ABCA Protest File No. 22-PRO-00072*, Roll Call Hearing Results. On November 9, 2022, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on December 7, 2022. The parties also filed Proposed Findings of Fact and Conclusions of Law, which were considered by the Board.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. D.C. Code §§ 1-309.10(d), 25-609; *Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982). Accordingly, the Board "must elaborate, with precision, its response to the ANC[s] issues and concerns." *Foggy Bottom Ass'n*, 445 A.2d at 646. The Board notes that it received properly adopted written recommendations from ANC 1B and 6E, which indicated that their protests are based on concerns regarding Rito Loco's impact on peace, order, and quiet and residential parking and vehicular and pedestrian safety. Their issues and concerns shall be addressed by the Board in its Conclusions of Law below.

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 and residential parking and vehicular and pedestrian safety 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. 2023). The Protestants further object to Rito Loco's compliance with its settlement agreement pursuant to D.C. Official Code § 25-315. *Protest Letter*, 1 (Group), *Protest Letter*, 1 (Abutting Property Owner).

## FINDINGS OF FACT

The following statements represent the Board's findings of fact based on the evidentiary record. In reaching its determination, the Board considered the evidence, the testimony of the witnesses, the arguments of the parties, and all documents comprising the Board's official file. The Board credits all testimony and evidence identified or cited below unless otherwise stated.

### I. Background

1. Rito Loco has submitted an Application to Renew a Retailer's Class CR License at 606 Florida Avenue, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABCA Investigator Kevin Puente investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 22-PRO-00072, Protest Report (Dec. 2022) [Protest Report]*.
3. The proposed establishment is in a MU-4 zone. *Id.* at 4. The premises appear well-maintained and in good condition. *Id.* at Exhibit Nos. 8-16. Forty-two licensed establishments are located within 1,200 feet of the proposed location. *Id.* at 4. There are no schools or public libraries within 400 feet of the establishment. *Id.* at 7. Directly behind the establishment are several buildings located in a RF-1 (Residential) zone. *Id.* at Exhibit No. 5.
4. The establishment's hours of operation run from 9:00 a.m. until 2:00 a.m. on all days except Friday, when the establishment closes at 3:00 a.m., and on Saturday, when the establishment operates from 7:00 a.m. until 3:00 a.m. *Id.* at 7-8. The establishment's alcohol sale hours and entertainment hours end at the same time as its hours of operation each day. *Id.* The establishment's summer garden hours of operation and sale begin at 10:00 a.m. each day and end at midnight on all days, except for Friday and Saturday, when the summer garden area closes at 1:30 a.m. *Id.* at 8.
5. ABCA investigators visited the establishment on seven separate occasions between November 11, 2022, and November 25, 2022. *Id.* at 8-9. Investigator Puente did not report any activity that would have a negative impact on appropriateness. *Id.*
6. Pertinent to the present matter, Rito Loco's investigative history indicates a settlement agreement violation in 2021, which resulted in a fine of \$250 for each offense. *Id.* at 10-11 (See Case Nos. 21-CIT-000462, 21-CIT-00703). In the same year, Rito Loco paid a \$2,000 fine related to another violation of its settlement agreement. *Id.* at 10 (See Case No. 21-CMP-00068). Finally, Rito Loco paid a \$1,000 fine related to a violation of D.C. Official Code § 25-823(a)(1). *Id.* (See Case No. 21-CMP-00080) (Board Order No. 2022-203). ABRA's records also indicate that 45 noise complaints were made against Rito Loco, in which two were prosecuted. *Protest Report, 9.*
7. The Protest Report indicates that the establishment is near one metro station and two bus stops. *Id.* Investigator Puente indicated that he observed that some areas around the

establishment did not have a lot of parking, but parking was available on 6th Street, N.W., and 7th Street, N.W. *Transcript (Tr.)*, December 7, 2022 at 52.

8. The establishment is in a two story building that abuts “neighboring establishments on both sides” and a residential building abuts the back of the business. *Tr.*, 12/7/22 at 43. The establishment has an interior occupancy of 79 people and a summer garden occupancy of 79 persons. *Id.* The first floor features a kitchen, limited seating area, and pick up food area. *Id.* at 44. The summer garden is located on the second level and has a bar and retractable roof deck. *Id.*

9. Investigator Puente has visited the establishment in the past related to noise complaints. *Id.* During prior visits, the establishment’s management has been willing to turn down the volume of music playing at the establishment. *Id.* He also did not see any issue related to how the establishment managed its trash when he was present at the establishment. *Id.* at 61.

## **II. Settlement Agreement**

10. Rito Lico is subject to a settlement agreement, which was approved by the Board on January 29, 2020. *Protest Report*, at Exhibit No. 17, 1-2. Section 2 of the agreement permits a disc jockey on the rooftop deck but forbids the use of a microphone. *Id.* at Settlement Agreement, § 2. Section 2 further states that “Applicant must position all speakers to face the opposite direction of the Florida Avenue end of the rooftop.” *Id.* Section 3 provides that the “Applicant shall make commercially reasonable efforts to contain within its establishment any and all noise so that no noise exceeding lawful decibel levels is detectable outside the establishment.” *Id.* at § 3. Section 4 of the agreement requires the Applicant to “install sound absorptive materials and barriers to maintain sound levels as required by law” and to “use various means to mitigate noise on the rooftop garden” including “shrubbery, cinderblock or wooden walls (perhaps with vines), trees in planters, fountains with running water, and other muting or muffling objects.” *Id.* at 4(a). Section 4 further provides that “Applicant has installed polycarbonate wall panels in the summer garden . . . Applicant agrees to ensure that the wall panels facing Florida Avenue remain in place and are closed . . . after 10:30 P.M. Monday through Thursday, 12:00 A.M . . . on Fridays and Saturdays, and 9:00 P.M. on Sundays[.]” *Id.* at 4(b). Section 7 of the agreement also contains a notice and opportunity to cure provision that requires written notice before a violation may be found. *Id.* at § 7.

11. Investigator Puente did not observe that sound absorptive materials had been adequately installed on the ceiling of the summer garden. *Transcript (Tr.)*, at 80.

## **III. Louie Hankins**

12. Louie Hankins owns Rito Loco. *Id.* at 89. The business started as a food truck but later opened as a brick-and-mortar restaurant. *Id.* at 89-90. The brick-and-mortar business opened in 2015 at its present location. *Id.* at 91. In 2017, the business expanded to the rooftop area. *Id.* at 92. As part of his business model, Rito Loco operates as a restaurant during the day and then offers disc jockey entertainment in the evening. *Id.* at 93. He noted that the establishment maintains the use of tables during the evening and only has 12-inch speakers. *Id.* at 94-95. If

tables are removed, there is a small area for dancing near the disc jockey booth. *Id.* at 117. Typically, the establishment removes some tables around 11:00 p.m. *Id.* at 118.

13. Mr. Hankins indicated that the business has made efforts to address noise. *Id.* at 95. When the rooftop was first opened, it was strictly open air and leaked noise throughout the area. *Id.* at 96. Over the past five years, the establishment has enclosed the rooftop, switched to smaller speakers, removed all of the subwoofers, added decibel readers, engaged sound engineers, and trained staff regarding noise control. *Id.* at 96-97. The establishment also typically only provides disc jockey entertainment on Friday and Saturday evening until 1:30 a.m. *Id.* at 100, 117. The business also installed polycarbonate wall panels in the summer garden as required by the settlement agreement and has them closed when required by the agreement. *Id.* at 103-04.

14. Mr. Hankins is aware that District law limits the generation of noise to 60 decibels on the sidewalk. *Id.* at 97. The business uses sound meters to ensure compliance with the sound decibel requirement. *Id.* He noted that the sound meter is placed in the middle of the restaurant in order to ensure that staff and the disc jockey are aware of the noise level at the establishment. *Id.* at 98. The decibel reader was installed after a violation occurred in December 2021. *Id.* at 111.

15. Mr. Hankins admitted that in the past year the business needed revenue and contracted with a local promoter. *Id.* at 105. He admitted that the promoter “threw several parties where they brought in excessive amounts of speakers and sound.” *Id.* at 105. He noted that during the promoted parties, the establishment removed all the tables from the rooftop to make space for customers. *Id.* at 118. After discussing the matter with ABCA investigators after these parties, the business ended the relationship with the promoter. *Id.* He further indicated that the business will forgo the use of promoters in the future. *Id.* at 106, 141, 156.

16. Rito Loco has currently obtained the services of a sound engineer to help mitigate noise generated by the business. *Id.* at 125. Mr. Hankins admitted that he previously hired sound engineers in October 2021 to address noise issues. *Id.* at 125, 151. Nevertheless, sound complaints related to the promoted parties occurred in November and December 2021. *Id.* at 127; *see also id.* at 193-94, 197. He is also aware that after December 2021, and after the installation of the noise meter, that people are still making noise complaints related to Rito Loco. *Id.* at 128, 157.

17. The establishment stores its trash in the alleyway between 600 T Street, N.W., and the Shaw residential building. *Id.* at 121. There are also trash containers from other establishments and residences in the alley. *Id.* at 121. He admitted that the business is in the process of getting approval to store the trash in the alley but has not obtained such approval as of the date of the hearing. *Id.* at 123-24. The business recently had issues obtaining consistent trash pickup service when their prior trash removal business was purchased by another trash service. *Id.* at 143.

#### **IV. Steven Lawrence**

18. Steven Lawrence lives on T Street, N.W., and lives “directly adjacent” to Rito Loco. *Id.* at 162. He is the landlord and owner of the property where Rito Loco is located. *Id.* He admitted that noise from the establishment could be heard in his home in the past. *Id.* at 163. He has raised the issue with Rito Loco and believes the establishment has made a good faith effort to address the noise problems. *Id.* at 163.

19. Mr. Lawrence also owns an apartment building next to Rito Loco. *Id.* at 165. As a result, he has an interest in preventing noise from disturbing his tenants. *Id.* at 166. He noted that he has given permission to Rito Loco to use the rear of one of his properties for trash storage and disposal. *Id.* at 168-69. He notes that the manner in which trash is stored does not interfere with the flow of traffic. *Id.* at 173.

#### **V. Daniel Hatem**

20. Daniel Hatem serves as an accounting, financial, and business consultant that provides various services to Rito Loco and other hospitality businesses. *Id.* at 175. He assisted the business during the pandemic in 2020 when the business was forced to close for a time and restructure its operations when conditions allowed for the reopening of the business. *Id.* at 176. As part of his services, he assisted Rito Loco with noise mitigation and responding to neighborhood complaints. *Id.* at 177. He noted that supplier delays during the pandemic caused the establishment’s noise mitigation project to take more time than expected. *Id.*

21. As part of Rito Loco’s noise mitigation plan, the business bought a better speaker system that is designed to generate quality sound that does not carry long distances. *Id.* at 179-180. The business also removed speakers and directed the establishment’s speakers toward the center of the premises. *Id.* at 180. The business further took steps to mitigate sound by installing sound governors to limit the volume of the system. *Id.* at 198. He also confirmed that the business hired a sound engineer to curb noise at the premises. *Id.* at 185. He further confirmed that the business also consulted with another sound engineer, Martin Beam. *Id.* at 187.

22. Mr. Hatem does not believe the establishment’s business model focuses on being a nightclub. *Id.* at 181. He noted that the establishment offers lunch service, the business does not generally operate late at night, does not offer a cover charge, does not have a dance floor, and does not offer bottle service. *Id.* at 181-82.

#### **VI. Martin Beam**

23. Martin Beam works as an acoustical consultant. *Id.* at 210. He has been hired to consult on noise mitigation at Rito Loco. *Id.* at 211, 222. As of the date of the hearing, Mr. Beam had not conducted an “objective measurement.” *Id.* Based on his preliminary review of the premises, he believes Rito Loco can improve the noise mitigation at the premises by addressing the partition between the premises and the neighboring building, which has a lot of holes and a walkway that may encourage noise transmission. *Id.* at 212. He also believes that any base sound transmission can be addressed by isolating the speakers in a manner to avoid vibrations.

*Id.* at 214-15. Finally, he has no reason to believe that the ownership of Rito Loco will not follow any recommendations he makes regarding noise mitigation. *Id.* at 216.

## **VII. Craig Kujawa**

24. Craig Kujawa lives in a condominium on 6th Street, N.W., and has lived there since 2005. *Id.* at 225-26. He briefly rented his residence between January 2020 and May 2021 while he was posted abroad. *Id.* at 226. His home is located in a RF-1 residential zone. *Id.* at 229.

25. The area around the establishment features many residential areas. For example, the 500 block of Florida Avenue, N.W., the 500 block of T Street, N.W., and the 1800 block of 6th Street, N.W., are all highly residential areas. *Id.* at 231. He further estimates that within 200 feet of Rito Loco there are approximately 100 residences. *Id.* at 232.

26. In relation to the establishment, his home is located around the corner but Rito Loco's roof deck is on the other side of the his wall. *Id.* at 226-27. The portion of the roof deck and his residence that faces each other is approximately 27 feet in length. *Id.* at 231. He has observed that Rito Loco has hosted disc jockey entertainment at its establishment between May 2021 and October 2022 on a regular basis. *Id.* at 240.

27. In his experience, when living in his condominium as a resident, Mr. Kujawa has heard amplified music coming from Rito Loco in his residence for the past three years on a regular basis. *Id.* at 235. Specifically, he has heard large amounts of bass and other amplified sounds that appear to be house and electronic dance music coming through his walls. *Id.* at 236. He further noted that in his experience the noise disturbances coming from Rito Loco last approximately three to five hours. *Id.* at 237. He also noted that people on the rooftop disturb him in his residence when the roof deck is crowded and loud. *Id.* at 246. He estimates that Rito Loco has generated music that has disturbed him in his residence between 50 and 100 times. *Id.* at 246. He noted that the noise from Rito Loco disturbs him in his home because it interferes with his ability to sleep or watch television in his home. *Id.* at 236.

28. In response to the noise disturbances, he has contacted ABCA approximately twenty times in the past year and a half. *Id.* at 247. He also received a recommendation from the establishment's sound engineer to install sound insulating material inside his residence but he did not want to do that because it would reduce the square footage of his home too much. *Id.* at 248.

29. Finally, he noted that he files complaints when there are noise issues. *Id.* at 256. Nevertheless, ABCA is not always able to respond. *Id.* at 256-57. He further noted that when disc jockeys perform he still experiences noise disturbances in his residence after December of 2021. *Id.* at 263, 265, 279.

30. Mr. Kujawa also described the trash situation related to the establishment. *Id.* at 248. Rito Loco stores its trash in the alley near 600 T Street, N.W. *Id.* at 248. He has observed the trash overflow on various occasions from May until a month before the hearing and that this situation is a regular occurrence during the weekend. *Id.* at 248, 273-74. He further observed that they alley where the trash is stored is approximately 15 feet across and Rito Loco's trash

takes up approximately a fifth or a quarter of the space. *Id.* at 249. He has further observed an increase in the presence of rodents and burrows in the area around the establishment. *Id.* at 255. He is not aware of any authority granting Rito Loco the ability to store trash on public space. *Id.* at 249-50. An order from the D.C. Board of Zoning Adjustment indicates that the establishment is currently required to store trash in the rear of 600 T Street, N.W., not the alley. *Id.* at 250.

### **VIII. Jonathan Horsford**

31. Jonathan Horsford lives on T Street, N.W., in a condominium. *Id.* at 280-281. He has lived in the area since 2016. *Id.* at 280. His home is located in a residential zone and his residence faces Rito Loco. *Id.* at 281-82.

32. Over the past three years, he has heard music generated by Rito Loco come into residence. *Id.* at 283, 285, 298. He indicated that he often hears music from Rito Loco in his home on Friday, Saturday, and Sunday. *Id.* at 283. He further indicated that the music comes into his home even when his doors and windows are closed and has interfered with his ability to sleep in his bedroom at night. *Id.* at 284-85. Finally, he noted that as of the date of the hearing, the noise disturbances from Rito Loco continue at a level that is still disturbing. *Id.* at 288, 290.

### **IX. Paul Baranowski**

33. Paul Baranowski lives on 6th Street, N.W., in a condominium, which is located in a residential zone. *Id.* at 303. He has lived in the neighborhood for approximately 18 years. *Id.* His home is located diagonally from Rito Loco and is approximately 300 feet away from the establishment. *Id.* at 304. Similar to other witnesses, Mr. Baranowski has heard music from Rito Loco in his home. *Id.* at 305, 307-08.

### **X. Margo Badawy**

34. Margo Badawy lives on 6th Street, N.W., and has lived there for approximately 18 months. *Id.* at 313-14.<sup>1</sup> Her home is located in a residential zone. *Id.* at 314. Her home is located north of the establishment. *Id.* at 315. Since moving into her home, she has heard music from Rito Loco emanate into her home even with the windows and doors shut. *Id.* at 315-16. She indicated that the noise disturbances occur frequently on weekend days at a minimum. *Id.* at 316, 322. She further indicated that the noise generated by Rito Loco starts at around the brunch hour and ends in the early morning hours. *Id.* She indicated that the noise disturbs the ability of her and her young children to sleep at night. *Id.* at 316-17. In response, she has spent approximately \$1,000 on noise machines and soundproof curtains and wears earplugs to bed. *Id.* at 319. She indicated that these measures have had no effect on the noise disturbances. *Id.* Finally, she indicated that she attempted to communicate her concerns to the business using multiple channels but never received a response. *Id.* at 329.

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<sup>1</sup> The Board is aware of the marriage relationship between Ms. Badawy and counsel for the protestants; however, the testimony of other witnesses is sufficient to corroborate her testimony and overcome any objections related to potential bias.



## **XI. Lynne Venart**

35. Lynne Venart lives on 6th Street, N.W., in the same building as Mr. Kujawa, and has lived there since 2013. *Id.* at 334-35. Her testimony confirmed and corroborated the testimony of Mr. Kujawa. *Id.* at 335-339. She also noted that when she complained to the ownership about noise, they did not respond by turning the volume down. *Id.* at 340. She noted that when she discussed the issue with the ownership of Rito Loco and their sound engineer, they suggested that they add extra insulation to the building's hallways, which she believed was unreasonable. *Id.* at 341. Finally, she indicated that recently another establishment has been engaging in loud noise; as a result, she cannot confirm if recent noise is coming from Rito Loco. *Id.* at 348.

### **CONCLUSIONS OF LAW**

36. The Board may approve an Application to Renew a Retailer's Class CR 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. 2023). Specifically, the question in this matter is whether the Application will have a negative impact on the peace, order, and quiet and residential parking and vehicular 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. 2023).

#### **I. The Burden of Proof Lies with the Applicant to Prove its Case Through Substantial Evidence.**

37. The burden of proof in this matter is assigned to the Applicant. D.C. Code § 25-311(a). “. . . [T]he Applicant in meeting its burden may rely on the record as a whole, which includes information provided in the Protest Report and the Protestant's case, and not just what the Applicant presents during its case-in-chief.” *In re The New 7307, t/a Premier Lounge*, Case No. 22-PRO-000222, Board Order No. 2022-701, ¶ 1 (D.C.A.B.C. B. Oct. 19, 2022) *citing Esgar Corp. v. Commissioner of Internal Revenue*, 744 F.3d 648, 655 (10th Cir. 2014); *see also Washington Metro. Area Transit Auth. v. Dist. of Columbia Dept. of Employment Services*, 992 A.2d 1276, 1283 (D.C. 2010) *citing Dale v. S & S Builders, LLC*, 188 P.3d 554, 561 (Wyo. 2008) (saying in determining whether a party met its burden during an administrative hearing the court will look at the “record as a whole”). The Board further notes that where there is an “absence of evidence on an essential point [this] supports denial rather than granting of an application.” *Conrad v. Dist. of Columbia Alcoholic Beverage Control Bd.*, 21-AA-748, 2023 WL 163964, at \*5 (D.C. Jan. 12, 2023).

38. Furthermore, in determining whether the Applicant has met its burden, the Board shall only base its decision on the “substantial evidence” contained in the record. 23 DCMR § 1718.3 (West Supp. 2023). 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).

**I. Rito Loco is Inappropriate Based on the Frequent Noise Disturbances Caused by the Establishment.**

39. 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). 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. Rito Loco has failed to demonstrate that it satisfies the peace, order, and quiet criteria based on the frequent noise disturbances caused by the establishment.**

40. “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. 2023).

41. D.C. Official Code § 25-725 provides that

(a) The licensee under an on-premises retailer's license shall not produce any sound, noise, or music of such intensity that it may be heard in any premises other than the licensed establishment by the use of any:

(1) Mechanical device, machine, apparatus, or instrument for amplification of the human voice or any sound or noise . . . .

(b) This section shall not apply to:

(1) Areas in the building which are not part of the licensed establishment;

(2) A building owned by the licensee which abuts the licensed establishment;

(3) Any premises other than the licensed establishment that are located within a commercial, manufacturing, or mixed-use zone, as defined in the zoning regulations and shown in the official atlases of the Zoning Commission for the District;

(4) Sounds, noises, or music occasioned by normal opening of entrance and exit doors for the purpose of ingress and egress; or

(5) Heating, ventilation, and air conditioning devices.

(c) The licensees under this subchapter shall comply with the noise level requirements set forth in Chapter 27 of Title 20 of the District of Columbia Municipal Regulations.

D.C. Code § 25-725(a)-(c).

42. The District’s noise regulations further provide that

every person is entitled to ambient noise levels that are not detrimental to life to life, health, and enjoyment of his or her property. It is hereby declared that excessive or unnecessary noises within the District are a menace to the welfare and prosperity of the residents and businesses of the District. It is the declared public policy of the District to reduce the ambient noise level in the District to promote public health, safety, welfare, and the peace and quiet of the inhabitants of the District, and to facilitate the enjoyment of the natural attraction of the District.

20 DCMR § 2700.1 (West Supp. 2023). In this vein, the noise regulations set daytime and nighttime decibel limits in various zones in Chapter 27 of Title 20 of the D.C. Municipal Regulations. 20 DCMR § 2701.1 (West Supp. 2023). According to the regulations, “. . . no person shall cause, suffer, or permit any sound that emanates from an operation, activity, or noise source under his or her control to exceed the maximum permissible sound level. . . .” when measured from the “property line” of the “noise source. *Id.* In commercial and light manufacturing zones, the decibel limit is set at 65 dB(A) during the daytime and 60 dB(A) during the nighttime. *Id.* Finally, in residential, special purpose, and waterfront zones, the decibel limit is set at 60 dB(A) during the daytime and 55 dB(A) during the nighttime. *Id.*

43. Case law also addresses noise. As noted in *Panutat*, “. . . 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.” *Panutat, LLC v. D.C. Alcoholic Beverage Control Bd.*, 75 A.3d 269, 277 n. 12 (D.C. 2013). Furthermore, it has been recognized that “[t]he government has a substantial interest in protecting its citizens from unwelcome noise . . . .” *In re T.L.*, 996 A.2d 805, 812 (D.C. 2010) (quotation marks removed). This interest is “. . . greatest when [the] government seeks to protect the wellbeing, tranquility, and privacy of the home.” *Id.* As a result, the government has a right to prevent noise so unreasonably loud that it “. . . unreasonably intrude[s] on the privacy of a captive audience or so loud and continued as to offend[] a reasonable person of common sensibilities and disrupt[] the reasonable conduct of basic nighttime activities such as sleep.” *Id.* at 813 (quotation marks removed).

44. Finally, under the District’s disorderly conduct law, “It is unlawful for a person to make an unreasonably loud noise between 10:00 p.m. and 7:00 a.m. that is likely to annoy or disturb one or more other persons in their residences.” D.C. Code § 25-1321(d).

45. In this case, the Protestants have established that DJ entertainment at the establishment causes amplified music to be heard in various residentially zoned homes on a regular basis in violation of § 25-725 and that it will continue if unabated. *Supra*, at ¶¶ 26-27, 29, 32-35. The Protestants further persuasively demonstrated that the steps taken by Rito Loco to curb noise are inadequate where despite engaging in various soundproofing measures the establishment has not meaningfully curbed noise disturbances or complied with the establishment’s minimal legal obligations. *Id.* In reaching this determination, the Board finds the testimony presented by Rito Loco’s acoustical consultant, Mr. Beam, was unpersuasive and speculative where no objective measurement of the noise situation at the establishment was conducted and no specific plan was presented. *Supra*, at ¶ 23. Thus, he was not in adequate position to rebut the testimony provided by witnesses. *See, e.g., In re 1001 H Street, LLC, t/a Ben’s Chili Bowl/Ben’s Upstairs*, Case No. 13-PRO-00133, Board Order No. 2014-071, ¶ 48 (D.C.A.B.C.B. Mar. 12, 2014) (saying an “. . . [a]pplicant’s pledges to work with the community and conduct tests after the restaurant is built are not sufficiently definitive to merit consideration; especially, when it is the Applicant’s burden to show at the protest hearing that its plans are appropriate.”). Finally, given the on-going and repetitive nature of the noise issue, the noise problem extends beyond the activities of a bad promoter, which is not a reasonable argument—as it unreasonably presumes that establishments are incapable of monitoring or controlling sounds when promoters are present. *Supra*, at ¶¶ 15, 26-27, 29, 32-35. Therefore, the Board agrees with the Protestants that the establishment has failed to meet its burden related to noise.

46. On the matter of trash storage, even if legally deficient, the Board does not find that the violations merit a finding of inappropriateness at this time. In this case, the Protestants have shown that the establishment stores trash in an inappropriate location on public space and that the trash overflows on occasion. *Supra*, at ¶ 30. Nevertheless, there is insufficient evidence that the establishment’s trash is appearing as litter on private property, contributing to litter throughout the neighborhood, or tied to any increase in vermin. There is also no indication that the location of trash storage interferes with traffic or the usage of the alley given the size of the alley. *Supra*, at ¶¶ 19, 30. Finally, the record in this case shows that the D.C. Board of Zoning Adjustment has already addressed this issue. *Supra*, at ¶ 30. Therefore, based on evidence that trash and litter have not risen to the level of a public or private nuisance that interferes with the quality of life of residents and that enforcement of existing laws and agency orders remains a

viable means of redress, the Board advises the Protestants to file complaints with the appropriate agencies for enforcement (e.g., the Department of Public Works, D.C. Office of Zoning) and refrains from finding inappropriateness related to the trash issue at this time.

**b. The operations of Rito Loco do not have a negative impact on residential parking needs and vehicular and pedestrian safety.**

47. “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. 2023). In light of evidence that there is adequate public transportation in the vicinity of the establishment and no evidence that the operations of the establishment have a negative impact on parking or vehicular and pedestrian safety, the Board finds in favor of the Applicant on this issue. *Supra*, at ¶ 7.

**II. The Board Imposes Conditions on the License.**

48. 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).

49. The Board is persuaded that the following conditions will address the noise issue identified by the Protestant. First, entertainment at the establishment shall cease at 10:00 p.m. seven days per week. Second, Rito Loco shall not generate amplified sounds that may be heard in a residence or residential unit so long as the residence has its windows or doors closed. Third, whenever entertainment is provided, the establishment shall keep its windows and doors closed except when used for ingress and egress. Third, the establishment is prohibited from using sound amplification equipment provided by third parties or promoters. Finally, the Board will permit Rito Loco to file a substantial change to restore its entertainment privileges and modify the conditions so long as it hires a qualified sound professional to conduct a commercially reasonable sound analysis of the premises and produce a report on sound issues and soundproofing at the establishment. The report shall indicate the qualifications of the sound professional; the method used to test the noise levels and soundproofing at the establishment; the time and place such tests were undertaken; additional soundproofing recommendations, if any; and whether the soundproofing and architectural features of the establishment allow the licensee to comply with the District noise laws and prevent noise disturbances in all residential properties in the protest area.

50. The Board finds these conditions in the best interest of the neighborhood because it will ensure compliance with § 25-725 and protect the interests of nearby residents to have peace and quiet in their homes during traditional sleeping hours. Strict conditions in this case are warranted where there is a history of noise violations, residents are located in close proximity, and the ownership failed to correct the problem despite being on notice regarding the issue. In particular, a 10:00 p.m. hour limitation will ensure compliance with the District’s disorderly conduct law. The Board further notes that a prohibition on the use of outside sound equipment will prevent outside parties from subverting any noise controls or soundproofing relied upon by the establishment. The Board further notes that the submission of sound plan as required by this Order will allow Rito Loco to potentially demonstrate a sufficient change in circumstances and facts to modify the conditions imposed on the license. Finally, the use of the substantial change process will provide an appropriate forum for the Protestants and other members of the community to express their objections and arguments against any changes if they so desire.

### **III. The Establishment’s Record of Compliance Merits Renewal.**

51. 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). In this case, the Board finds renewal appropriate where the nature of the violations are not so severe to merit termination of the license and the conditions imposed by the Board adequately address the qualify of life objections raised by the Protestants.

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

52. 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. 2023). 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 April 2023, hereby **APPROVES** the Application for a New Retailer’s Class CR License at premises 606 Florida Avenue, N.W., filed by Rito Loco, LLC, t/a Rito Loco, subject to the following **CONDITIONS**:

- (1) Rito Loco’s entertainment hours shall cease at 10:00 p.m. seven days per week;
- (2) Rito Loco shall not generate amplified sounds that may be heard in a residence or residential unit so long as the residence has its windows or doors closed;
- (3) Whenever entertainment is provided, the establishment shall keep its windows and doors closed except when used for ingress and egress;

- (4) The establishment shall not permit third parties or promoters to use outside sound equipment at the establishment, including but not limited to speakers, subwoofers, and microphones; and
- (5) In order to seek the removal or modification of these conditions, Rito Loco shall file a substantial change application. As a condition of having its application accepted, Rito Loco shall hire a qualified sound professional to conduct a commercially reasonable sound analysis of the premises and produce a report on sound issues and soundproofing at the establishment. The report shall indicate the qualifications of the sound professional; the method used to test the noise levels and soundproofing at the establishment; the time and place such tests were undertaken; additional soundproofing recommendations, if any; and whether the soundproofing and architectural features of the establishment allow the licensee to comply with the District's noise laws and prevent noise disturbances in all residential properties in the protest area. The report shall be included with the substantial change application.

**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 omission of any testimony or evidence in the Board's Order indicates that such testimony or evidence was contravened by the evidence or testimony credited by the Board, had no or minimal weight on the Board's findings and conclusions, was irrelevant, was not credible, was not truthful, was repetitious, was too speculative, or was otherwise inappropriate for consideration.

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

District of Columbia  
Alcoholic Beverage and Cannabis Board

eSigned via SeamlessDocs.com  
*Donovan Anderson*  
Key: ac43cb0b66d45f08e4b730060d1dccc8

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Donovan Anderson, Chairperson

eSigned via SeamlessDocs.com  
*James Short*  
Key: 547ac373f8209e6ac8d1b5325d2d48ec

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James Short, Member

eSigned via SeamlessDocs.com  
*Bobby Cato*  
Key: 256d3fcaadfbe148d7f4b75bd7817d20d

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Bobby Cato, Member

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Rafi Crockett, Member

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*Jeni Hansen, Member*  
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Jeni Hansen, Member

eSigned via SeamlessDocs.com  
*Edward Grandis, Member*  
Key: 5027bda7f09f0040ec14adeb52541ce5

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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 and Cannabis 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).