

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

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In the Matter of:	)		
	)		
Cham Restaurant Group	)	Case No.:	14-PRO-00055
t/a New Town Kitchen and Lounge	)	License No:	093095
	)	Order No:	2014-526
	)		
Application to Renew a	)		
Retailer's Class CT License	)		
	)		
at premises	)		
1336 U Street, N.W.	)		
Washington, D.C. 20009	)		

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**BEFORE:** Ruthanne Miller, Chairperson  
Nick Alberti, Member  
Donald Brooks, Member  
Mike Silverstein, Member  
Hector Rodriguez, Member  
James Short, Member

**ALSO PRESENT:** Cham Restaurant Group, t/a New Town Kitchen and Lounge, Applicant

Zahra Jilani, Commissioner, Advisory Neighborhood Commission (ANC) 1B, Protestants

Aileen Johnson, Shaw-Dupont Circle Citizens Alliance, Inc. (SDCA), Protestants

Brian Racila, A Group of Six Residents or Property Owners (Racilla Group), Protestants

Martha Jenkins, General Counsel  
Alcoholic Beverage Regulation Administration

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

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## INTRODUCTION

The Alcoholic Beverage Control Board (Board) hereby approves the Application to Renew a Retailer's Class CT License filed by Cham Restaurant Group, t/a New Town Kitchen and Lounge, (hereinafter "Applicant" or "New Town Kitchen and Lounge"). The Board finds that New Town's continued operations without restrictions will likely result in ongoing noise violations, which are prohibited by D.C. Official Code § 25-725. In order to alleviate the detrimental impact New Town is having on nearby residents located on Wallach Place, N.W, the Board conditions the establishment's continued licensure on the establishment (1) ensuring that it does not cause amplified music or other amplified sounds to be heard in any residence, (2) refraining from operating a dance floor on the rooftop of the establishment; and (3) refraining from hosting live entertainment in the rooftop atrium.

### *Procedural Background*

The Notice of Public Hearing advertising New Town Kitchen and Lounge's Application was posted on June 6, 2014, and informed the public that objections to the Application could be filed on or before July 21, 2014. *ABRA Protest File No. 14-PRO-00055*, Notice of Public Hearing [*Notice of Public Hearing*]. The Alcoholic Beverage Regulation Administration (ABRA) received protest letters from Advisory Neighborhood Commission (ANC) 1B, the Shaw-Dupont Citizens Alliance, Inc. (SDCA), and a Group of Six Residents and Property Owners (Racilla Group) (collectively, the "Protestants"). *ABRA Protest File No. 14-PRO-00055*, Roll Call Hearing Results.

The parties came before the Board's Agent for a Roll Call Hearing on August 4, 2014, where all of the above-mentioned objectors were granted standing to protest the Application. On September 17, 2014, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on November 12, 2014.

The Board recognizes that an ANC's properly adopted written recommendations are entitled to great weight from the Board. *See Foggy Bottom Ass'n v. District of Columbia Alcoholic Beverage Control Bd.*, 445 A.2d 643, 646 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2014). 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 a written recommendation from ANC 1B. The ANC's 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 Board finds that the request will not have an adverse impact on the peace, order, and quiet, residential parking, and vehicular and pedestrian safety in the area located within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 25-314; 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

## 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. New Town Kitchen and Lounge has submitted an Application to Renew a Retailer's Class CT License at 1336 U Street, N.W., Washington, D.C. *Notice of Public Hearing*.
2. ABRA Investigator Earl Jones investigated the Application and prepared the Protest Report submitted to the Board. *ABRA Protest File No. 14-PRO-00055, Protest Report* (Nov. 2014) [*Protest Report*].
3. The proposed establishment is located in a C-2-A zone. *Protest Report*, at 5. Sixty licensed establishments are located within 1,200 feet of the proposed location. *Id.* There are no schools, recreation centers, public libraries, or day care centers located within 400 feet of the establishment. *Id.* at 12. The property does not appear to be blighted. *Id.* at Exhibit Nos. 32-41.
4. According to the public notice, New Town Kitchen and Lounge's hours of operation, hours of sales, service, and consumption of alcoholic beverage, and hours of outdoor operations are as follows: 10:00 a.m. to 2:00 a.m., Sunday through Thursday, and 10:00 a.m. to 3:00 a.m. on Friday and Saturday. *Notice of Public Hearing*. The establishment has hours of entertainment, which are as follows: 6:00 p.m. to 2:00 a.m., Sunday through Thursday, and 6:00 p.m. to 3:00 a.m. on Friday and Saturday. *Id.*
5. The Protest Report describes the neighborhood's parking resources. *Id.* at 12. New Town does not have its own parking lot, but street parking is available in the neighborhood. *Id.* at 13. There are two public parking lots in the neighborhood. *Id.* The lot located at 1925 14th Street, N.W., has seventeen parking spaces. *Id.* The parking lot at 2000 14th Street, N.W., offers 365 parking spaces from 7:00 p.m. to 3:00 a.m. *Id.*
6. The Protest Report also describes the availability of public transportation. *Id.* The 90, 92, 93, 96 and X3 Metro bus lines operate along U Street, N.W., and are within walking distance of the establishment. *Id.* at 13. Finally, New Town is located one block from the U Street/African-American Civil War Memorial/Cardoza subway station, which is located on the corner of U Street, N.W., and 13th Street, N.W. *Id.*
7. The establishment's investigative history shows that the establishment was found in violation of three secondary tier violations between January 29, 2014, and June 13, 2014, including one related to noise. *Id.* at 19. ABRA's records further indicate that ABRA received fifty-seven noise complaints related to the establishment between January 1, 2014, and October 3, 2014. *Id.* at 18. ABRA Investigators were able to substantiate five noise violations between January 1, 2014 and October 3, 2014. *Id.*

8. Investigator Jones described the establishment's rooftop during his testimony. *Transcript (Tr.)*, November 12, 2014 at 37. New Town has a rooftop seating area located in an atrium that features a retractable glass enclosure. *Id.* The rooftop seating area occupies the entire roof of New Town's building. *Id.* at 38. Besides the ability to open the roof, New Town can open the windows on the roof as well. *Id.* Investigator Jones noted that the presence of the retractable roof on top of the building makes it the tallest structure on its block. *Id.* at 41. The rooftop atrium also contains a disc jockey booth. *Id.* at 52. The establishment positioned its rooftop speakers away from the side of the building facing residents. *Id.* at 68.

9. The rear of the establishment is separated from residents by an alleyway. *Id.* at 40. New Town is located approximately twenty to twenty-five feet away from the residents located on the other side of the alley. *Id.* at 43.

10. Investigator Jones has entered residences near New Town on two occasions. *Id.* at 45-46. On one occasion, Investigator Jones heard the "bass line from the music as well as . . . a [disc jockey] on the microphone" inside the residence. *Id.* at 46, 61. The actual residences were at least fifty feet away from the establishment. *Id.* at 63. He noted that he could hear the establishment's music outside the establishment even though New Town's roof was closed. *Id.* at 74.

## **II. Howsoon Cham**

11. Howsoon Cham began operating New Town in July 2013. *Id.* at 92. Mr. Cham indicated that Tabaq, the prior establishment occupying the premise, offered disc jockey entertainment in the rooftop atrium. *Id.* at 92.

12. Mr. Cham has made efforts to reduce the noise being generated by the establishment. *Id.* at 93. First, Mr. Cham removed speakers from the portion of rooftop near the rear alley. *Id.* Second, Mr. Cham took out six speakers from the rooftop and the establishment has only been operating with two speakers on the roof. *Id.* at 93, 108. Third, New Town regularly closes the windows and doors to the atrium at 8:00 p.m. when a disc jockey is performing. *Id.* at 109, 147.

13. Mr. Cham noted that other establishments in the neighborhood offer entertainment on open roofs. *Id.* at 96.

14. Mr. Cham has owned a number of licensed establishments in the District of Columbia, including one with an inherited settlement agreement. *Id.* at 116. Even though Mr. Cham has previous experience with inheriting a settlement agreement, he admitted that he failed to review the settlement agreement attached to New Town's license when he took over the establishment. *Id.* at 117, 134.

15. Mr. Cham blamed a recent violation of the settlement agreement on a patron opening a window inside the establishment. *Id.* at 146.

### III. ANC Commissioner Zahra Jilani

16. Zahra Jilani serves as the ANC Commissioner for Single-Member District 1B12. *Id.* at 159. Ms. Jilani believes that the establishment has an adverse effect on the neighborhood when it provides disc jockey entertainment and dancing in the rooftop atrium. *Id.* at 163. Commissioner Jilani requested that the Board restrict entertainment and dancing in the atrium area as a condition of licensure. *Id.* at 167-68; *see also* 289-90, 309, 357, 369 (Multiple witnesses agreed with the recommendation).

### IV. Settlement Agreement

17. ABRA's records show that New Town has a settlement agreement attached to its license. *In re Shabuy, Inc., t/a Tabaq Bistro*, Case No. 60757-08/026P, Board Order No. 2008-213, *Voluntary Agreement*, § 3 (D.C.A.B.C.B. Jun. 5, 2008). In pertinent part, the agreement states

Applicant . . . will . . . comply with noise control provisions of District of Columbia law and regulations . . . . Music and/or Live Entertainment will not be directed to any outdoor area. The doors and windows of the premises will be kept closed at all times during business hours when Live Entertainment is being played, except when persons are in the act of using the door for ingress or egress from the premises. Applicant . . . agrees to prevent front entry door from being propped open during Live Entertainment. Live Entertainment shall not be played or amplified to the top floor greenhouse space when the retractable roof is open. Live Entertainment also shall not be played or amplified in any space where windows or doors are open. Ambient or background music that is not Live Entertainment will not be played in the greenhouse space beyond 1:00 AM when the retractable roof is open . . . . Applicant . . . will not contract the restaurant for any special events to be operated by outside promoters. Applicant will regulate volume of performance so as not to interfere with ability of abutting businesses to conduct normal business. Applicant will regulate volume of performance so as to ensure that music, noise, and vibration for the Establishment are not audible to neighboring Protestants. Applicant agrees to installation of sufficient sound proofing if or when it is shown that emissions of amplified sounds are excessive. Excessive noise will be determined by comparing any complained of noise levels against a noise analysis to be paid for and completed by the Applicant, with participation by the Protestants. Applicant . . . will train staff and install signage for staff requiring that . . . [the rear] should be quiet after 10PM weekdays and 11PM on weekends. Applicant . . . [will] encourage patrons and employees to promptly leave . . . [the front and rear of the premises] at closing.

*Id.* The Protestants identified in the agreement are: ANC 1B, Aileen Johnson, Sarah Goldfrank, Saskia Mooney, Dan Wittels, and Guy Podgornik. *Id.* at § 6.

### V. William Isasi

18. William Isasi represents the Racilla Group and lives on Wallach Place, N.W. *Id.* at 187-88, 225. He described the character of the residences located near the establishment. *Tr.*, 11/12/14 at 205. The row houses on Wallach Place, N.W., sit across the alley behind New

Town. *Protestant Exhibit No. 8*. These houses generally have their bedrooms located in the part of the house that faces the alley. *Tr.*, 11/12/14 at 205; *Protestant Exhibit No. 6*. According to the District of Columbia's Zoning Map, the houses behind the establishment on Wallach Place, N.W., lie in a zone designated R-4 residential. *Protestant Exhibit No. 8*.

19. Mr. Isasi described New Town's operations. *Tr.*, 11/12/14 at 215. Tabaq, the prior establishment, primarily used the rooftop atrium as a dining room. *Id.* In contrast, New Town hosts disc jockeys and dance parties in the rooftop atrium. *Id.* The parties regularly occur throughout the week; especially, on weekends. *Id.* at 215-16.

20. Mr. Isasi also witnessed a number of violations to the settlement agreement. *Id.* at 220. Specifically, he observed the establishment host disc jockeys on the roof when the retractable roof, doors, and windows to the atrium were open on multiple occasions. *Id.* He also found flyers on his car that indicated that the establishment was using outside promoters. *Id.* at 221.

21. Mr. Isasi complained about the noise generated by New Town, which is located behind his house. *Id.* at 201-02, 271. Specifically, on May 3, 2014, and May 6, 2014, around midnight, Mr. Isasi heard the establishment's amplified music in his home, which is located directly behind New Town. *Protestant Exhibit No. 3C*. On April 14, 2014, Mr. Isasi observed that the windows to the atrium were open while the establishment hosted a dance party. *Protestant Exhibit No. 3D*.

22. Mr. Isasi further described the amplified music generated by New Town that he hears in his home. *Id.* at 221, 262, 291. The noise generated by New Town consists of music and bass. *Id.* at 262. He further affirmed that when music is heard in his home, he can hear the lyrics; indeed, the music is sometimes so loud that it can be heard over his home's television. *Id.* at 263-65. He further noted that the noise can be heard in his home even when the establishment's roof and windows are closed. *Id.* at 267.

23. Mr. Isasi further confirmed that New Town is the source of the noise problem in the neighborhood by walking around the area at night to determine the source of the noise. *Id.* at 226-27, 276-78. He noted that the noise is so loud that a neighbor who lives on the other side of Wallach Place, N.W., has complained about noise from the establishment. *Id.* at 272. In addition, his neighbors report that they experience the same noise problems experienced by Mr. Isasi. *Id.* at 283.

24. Mr. Isasi noted that the noise problems caused by New Town occur on a weekly basis between 10:00 p.m. and 3:00 a.m. on a weekends. *Id.* at 224-25. The noise problems are so bad that Mr. Isasi provides his guests with earplugs when they stay over. *Id.* at 225-26. He noted that the noise generated by New Town disturbs his sleep and can be heard in every bedroom of his house. *Id.*

25. Mr. Isasi has submitted a number of complaints to ABRA regarding the noise generated by New Town. *Id.* at 234. He noted that on some occasions ABRA investigators would arrive in the alley behind the establishment, but New Town would turn down the music before the investigator could get out of the vehicle. *Id.* at 235.

26. ABRA's records further show that out of all of the establishments located between the 900 and 1700 blocks of U Street, N.W., New Town is the sole establishment that has committed a noise violation. *Protestant's Exhibit No. 3H*; see also *id.* at 312-13 (One witness reported that the other establishments in the neighborhood do not create noise problems).

#### **VI. Aileen Johnson**

27. Aileen Johnson lives on the 1300 block of Wallach Place, N.W. *Tr.*, 11/12/14 at 303; Email from Sarah Goldfrank to the Alcoholic Beverage Control Board (Nov. 9, 2014) (see address). On March 7, 2014, Ms. Johnson could hear the establishment's bass sounds thumping in her home. *Tr.*, 11/12/14 at 303. She also heard the music in her home on April 25, 2014. *Id.* at 304. She could also hear the words of the music played by the establishment inside her home. *Id.* at 304-05, 312. She noted that the establishment's music caused her windows and door in the back of her home to vibrate. *Id.* at 304-05. On at least one occasion, the establishment's music caused her son to wake up in the middle of the night, even though his room is in the middle of the house. *Id.* at 305. Both incidents were documented by ABRA investigators. *Id.* at 303-04.

#### **VII. Brian Netter**

28. Brian Netter lives on the 1300 block of Wallach Place, N.W., with his wife and young children. *Id.* at 324-25. He has lived on Wallach Place, N.W., since 2010. *Id.* In November 2013, Mr. Netter sent Mr. Cham a copy of the settlement agreement to remind him of his legal obligations. *Id.* at 325-26; *Protestant Exhibit No. 3P*.

29. Nevertheless, Mr. Netter complained that the music from the establishment's rooftop atrium can be heard inside his home on a regular basis. *Tr.*, 11/12/14 at 327, 347. He noted that the problem is so bad that his three-year old daughter must sleep with a white noise machine. *Id.* at 327. Mr. Netter further observed that he hears noise from New Town in his home even when the rooftop and windows of the establishment are closed. *Id.* at 358-59. Mr. Netter and his wife have informed the establishment of their noise complaints on multiple occasions. *Id.* at 328-29. Mr. Netter has also sent New Town a notice to cure letter in accordance with the settlement agreement. *Id.* at 339-340. The letter was returned unclaimed. *Id.* at 340.

#### **VIII. Diana Weed**

30. Diana Weed lives on the 1300 block of Wallach Place, N.W. *Id.* at 365. She regularly hears the music generated by New Town in her bedroom on a regular basis. *Id.* at 366-67.

### **CONCLUSIONS OF LAW**

31. 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. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, the question in this matter is whether the Application will have a negative impact on peace, order, and quiet, residential parking, and vehicular and pedestrian safety of the area located

within 1,200 feet of the establishment. D.C. Official Code § 25-313(b); 25-314; 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014).

32. Furthermore, “. . . the Board shall consider whether the proximity of [a tavern or nightclub] establishment to a residence district, as identified in the zoning regulations of the District and shown in the official atlases of the Zoning Commission for the District, would generate a substantial adverse impact on the residents of the District.” D.C. Official Code § 25-314(c).

**I. THE APPLICATION IS INAPPROPRIATE FOR THE NEIGHBORHOOD BASED ON THE EXCESSIVE NOISE GENERATED BY NEW TOWN THAT IS HAVING A NEGATIVE IMPACT ON A RESIDENTIAL AREA.**

33. The Board finds New Town, as currently licensed, is inappropriate based on the amount of excessive noise the establishment is emanating into the residentially zoned homes located on Wallach Place, N.W., which makes it likely that permitting the establishment to operate without conditions will result in future violations of D.C. Official Code § 25-725.

34. 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. Official 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. 2014).

35. The appropriateness test has never been limited to mere compliance with the law. *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.”). It has been said, that each location where an establishment is located is “unique,” which requires the Board to evaluate each establishment “. . . according to the particular circumstances involved.” *Le Jimmy, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 433 A.2d 1090, 1093 (D.C. 1981). Under this test, the Board must consider the “prospective” effect of the establishment on the neighborhood.” *Id.* Among other considerations, this may include the Applicant’s efforts to mitigate or alleviate operational concerns,<sup>1</sup> the “character of the neighborhood,”<sup>2</sup> the character of the establishment,<sup>3</sup> and the license holder’s future plans.<sup>4</sup> Thus, the appropriateness test seeks to

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<sup>1</sup> *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).

<sup>2</sup> *Citizens Ass'n of Georgetown, Inc. v. D.C. Alcoholic Beverage Control Bd.*, 410 A.2d 197, 200 (D.C. 1979).

<sup>3</sup> *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, 801 (D.C. 1970).

<sup>4</sup> *Sophia's Inc.*, 268 A.2d at 800.

determine whether the applicant's future operations will satisfy the reasonable expectations of residents to be free from disturbances and other nuisances. 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).

36. "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. Official Code § 25-313(b)(2); *see also* D.C. Official 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. 2014).

37. Under § 25-725, no on-premise retailer shall ". . . 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: . . . mechanical device . . . or instrument for amplification of the human voice or any sound or noise." D.C. Official Code § 25-725(a). While § 25-725 contains some exceptions, a licensee may not generate amplified music that may be heard in a residence located in a residential zone. *See* § 25-725(b).

38. The record in this case shows that Mr. Isasi, Ms. Johnson, Mr. Netter, and Ms. Weed live in houses located in a R-4 residential zone. *Supra*, at ¶¶ 18, 27, 28, 30. The Board credits their uncontroverted testimony that New Town is regularly playing amplified music in a manner that can be heard in their homes. *Supra*, at ¶¶ 10, 21-24, 27, 29-30. This is a clear violation of § 25-725, and cannot be permitted to continue.

39. For this reason, the Board determines that New Town has failed to demonstrate that the establishment is appropriate.<sup>5</sup>

## **II. NEW TOWN SATISFIES § 25-313(b)(3) BASED ON THE AVAILABILITY OF PUBLIC TRANSPORTATION.**

40. The Board finds in favor of New Town on the issue of whether the establishment is having a negative impact on residential parking or vehicular and pedestrian safety. "In determining the appropriateness of an establishment, the Board shall. . . [t]he effect of the establishment upon residential parking needs and vehicular and pedestrian safety . . ." D.C. Official Code § 25-313(b)(3); *see also* D.C. Official 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. 2014). Here, the record shows that the neighborhood is well served by public transportation. *Supra*, at ¶¶ 6. This showing has not been rebutted by the Protestants, and the Protestants have not submitted any other evidence that supports their claim on this factor. Therefore, the Board finds that

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<sup>5</sup> Based on this conclusion, there is no need to address the settlement agreement violations raised by the Protestants, which merely bolster the Board's decision to impose conditions on New Town.

renewing the license will not have a negative impact on residential parking or vehicular or pedestrian safety.

**III. THE BOARD IMPOSES CONDITIONS ON THE LICENSE IN ORDER TO REMEDY THE NOISE PROBLEMS CAUSED BY NEW TOWN.**

41. In light of the Board’s findings regarding appropriateness, the Board finds it necessary to impose conditions on the Applicant’s license in order to allow the renewal of the 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. Official Code § 25-104(e).

42. The first condition imposed by the Board is that the establishment shall not cause or play amplified music or other amplified sounds may be heard in a residence. The record in this case demonstrates that New Town has not complied with § 25-725 on a continuous basis. The Board imposes this condition in order to protect residents in the event of future noise violations. Specifically, future noise violations may be deemed primary tier violations, which will subject New Town to greater penalties if a violation of the Board’s condition is found. D.C. Official Code § 25-823(6); 23 DCMR § 800 (West Supp. 2014).

43. The Board further conditions licensure on the applicant refraining from providing a dance floor or entertainment in the rooftop atrium portion of the establishment. Based on the record, the use of the rooftop as a dancing and entertainment area appears to be the source of the problem. *Supra*, at ¶ 16.

44. Finally, the Board rejects the Protestants’ request to revoke the license. The Board is satisfied that the conditions imposed in this Order will resolve the Protestants’ noise complaints. Therefore, there is no need to revoke the license at this time.

**IV. THE BOARD HAS SATISFIED THE GREAT WEIGHT REQUIREMENT BY ADDRESSING ANC 1B’S ISSUES AND CONCERNS.**

45. ANC 1B’s written recommendation submitted in accordance with D.C. Official Code § 25-609(a) indicated that its protest was based on concerns regarding New Town Kitchen and Lounge’s impact on peace, order, and quiet. The Board notes that it specifically addressed these concerns in Paragraphs 31 through 44 of this Order.

**V. THE APPLICATION SATISFIES ALL REMAINING REQUIREMENTS IMPOSED BY TITLE 25.**

46. 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. 2014). 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

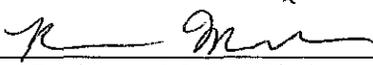
Therefore, the Board, on this 7th day of January 2015, hereby **APPROVES** the Application for a New Retailer's Class CT License at premises 1336 U Street, N.W., filed by Cham Restaurant Group, t/a New Town Kitchen and Lounge, under the following conditions:

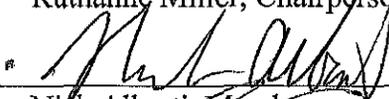
1. The license holder shall not cause or generate amplified music or other amplified sounds that may be heard in a residence.
2. The license holder shall not permit or allow the creation of a dance floor in the rooftop atrium.
3. The license holder shall not permit or allow live entertainment in the rooftop atrium. This prohibition on live entertainment includes, but is not limited to, “. . . live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys.” D.C. Official Code § 25-101(21A).

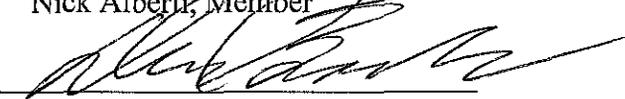
**IT IS FURTHER ORDERED** that the Board’s findings of fact and conclusions of law contained in this Order shall be deemed severable. If any part of this determination is deemed invalid, the Board intends that its ruling remain in effect so long as sufficient facts and authority support the decision.

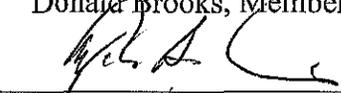
The ABRA shall deliver a copy of this order to the Applicant, ANC 1B, and the Protestants.

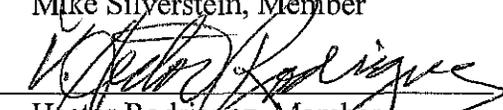
District of Columbia  
Alcoholic Beverage Control Board

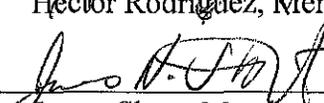
  
Ruthanne Miller, Chairperson

  
Nick Alberti, Member

  
Donald Brooks, Member

  
Mike Silverstein, Member

  
Hector Rodriguez, Member

  
James Short, Member

Pursuant to 23 DCMR § 1719.1; 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. 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 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).