

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

_____)	
Pal the Mediterranean Spot, LLC)	Case Number: 13-PRO-00101
t/a Pal the Mediterranean Spot)	License Number: 092484
)	Order Number: 2014-038
Application for a New)	
Retailer's Class CR License and)	
Sidewalk Café Endorsement)	
)	
at premises)	
1501 U Street, N.W.)	
Washington, D.C. 20009)	
_____)	

BEFORE: Ruthanne Miller, Chairperson
Nick Alberti, Member
Donald Brooks, Member
Herman Jones, Member
Mike Silverstein, Member

ALSO PRESENT: Pal the Mediterranean Spot, LLC, t/a Pal the Mediterranean Spot,
Applicant

Christina and Mark Parascandola, Abutting Property Owners,
Protestants

Michael K. Hibey, Esq., on behalf of the Abutting Property Owners

Matthew J. Abbruzzese, President, Meridian Hill Neighborhood
Association, Protestant

Elwyn Ferris, Designated Representative, The Shaw Dupont
Citizens Alliance, Inc., Protestant

Martha Jenkins, General Counsel
Alcoholic Beverage Regulation Administration

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

INTRODUCTION

The Alcoholic Beverage Control Board (Board) grants the Application for a New Retailer's Class CR License and Sidewalk Café Endorsement (Application) filed by Pal the Mediterranean Spot, LLC, t/a Pal the Mediterranean Spot (hereinafter "Applicant" or "Pal"). Nevertheless, based on valid and legitimate concerns regarding noise from Pal's future sidewalk café, the Board requires that the sidewalk café close at 11:00 p.m., Sunday through Thursday, and 12:00 a.m. on Friday and Saturday.

Procedural Background

The Notice of Public Hearing advertising Pal's Application was posted on June 28, 2013, and informed the public that objections to the Application could be filed on or before August 12, 2013. *ABRA Protest File No. 13-PRO-00101*, Notice of Public Hearing. On or before August 12, 2013, the Alcoholic Beverage Regulation Administration (ABRA) received protest letters from the following parties in accordance with District of Columbia Official Code §§ 25-601 and 25-602: Abutting Property Owners Christina and Mark Parascandola; the Meridian Hill Neighborhood Association (MHNA), and the Shaw Dupont Citizens Alliance, Inc. (SDCA) (collectively, the "Protestants"). *ABRA Protest File No. 092484*, Letter from Matthew J. Abbruzzese, MHNA, to the ABRA (Jul. 22, 2013); Letter from Christina and Mark Parascandola, to the ABRA (Jul. 1, 2013); Letter from Joan Sterling, President, SDCA, to the ABRA (Jul. 29, 2013) (received July 31, 2013).

The parties came before the Alcoholic Beverage Control Board (Board) for a Roll Call Hearing conducted by the Board's Agent on August 26, 2013, where all of the Protestants were granted standing to protest the Application. On September 25, 2013, the parties came before the Board for a Protest Status Hearing. Finally, the Protest Hearing in this matter occurred on October 16, 2013.

The Board received Proposed Findings of Fact and Conclusions of Law from Christina and Mark Parascandola on November 25, 2013, which the Board considered in resolving this protest.

The Board also received a recommendation from Advisory Neighborhood Commission (ANC) 1B to approve the Application, because the residents of the neighborhood have "strong support" for Pal and have no issues regarding "noise, trash or the operation of the business." Letter from Tony Norman, Chairman, ANC 1B, to Ruthanne Miller, Chairperson, Alcoholic Beverage Control Board (Oct. 9, 2013); see also Letter from Tony Norman, Chairman, ANC 1B to Tesha Anderson, ABRA (August 8, 2013). 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 ABC Bd., 445 A.2d 643 (D.C. 1982); D.C. Code §§ 1-309.10(d); 25-609 (West Supp. 2012). 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 addresses the recommendation of ANC 1B in its Conclusions of Law.

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 a negative impact on peace,

order, and quiet; real property values; 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); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). In addition, the Protestants argue that the issuance of the license will lead to an overconcentration of licensed establishments. D.C. Official Code § 25-314(a)(4).

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. Pal has submitted an Application for a New Retailer's Class CR License and Sidewalk Café Endorsement at 1501 U Street, N.W. *ABRA Protest File No. 13-PRO-00101*, Notice of Public Hearing.

II. ABRA Investigator Ileana Corrales

2. ABRA Investigator Ileana Corrales investigated the Application and prepared the Protest Report submitted to the Board. *Transcript (Tr.)*, October 16, 2013 at 37; *ABRA Protest File No. 13-PRO-00101*, Protest Report (Oct. 2013) [Protest Report]. The report describes Pal as a Mediterranean style carryout and sit-down restaurant that offers coffee, salads, sandwiches, smoothies, and wraps. Protest Report, at 3, Exhibit 5A. The establishment has an indoor occupancy of fifty people and a seating capacity of thirty-two people. *Id.* at 5. The establishment also has an outdoor seating area consisting of eight seats and three tables. *Id.*

3. Pictures of the establishment show that it is a long and small establishment with little room between the establishment's food counter, indoor seating area, and front entrance. *Id.* at Exhibit 9. The establishment's food preparation, food display, and beverage display area appears to be almost as large as the establishment's indoor seating area. Compare *id.* at Exhibit 9, Exhibit 10 with *Id.* at Exhibit 11

4. The proposed hours of the establishment are as follows: First, Pal has applied for hours of operation that run from 10:00 a.m. to 12:00 a.m., seven days per week. Protest Report, at 6. Second, the proposed hours of alcoholic beverage sales, service, and consumption for the establishment are 11:00 a.m. to 12:00 a.m., seven days per week. *Id.* Third, Pal has requested similar hours of operation and hours of alcoholic beverage sales, service and consumption for its sidewalk café. *Id.* The Board notes that the Applicant has not applied for an entertainment endorsement, which means that the proposed establishment may not charge a cover charge, provide facilities for dancing, or offer live entertainment. *Id.*; D.C. Official Code §§ 25-101(21A);¹ 25-113a(b).

¹ Under the definition provided by Title 25 of the D.C. Official Code, entertainment is defined as "live music or any other live performance by an actual person, including live bands, karaoke, comedy shows, poetry readings, and disc jockeys. The term 'entertainment' shall not include the operation of a jukebox, a television, a radio, or other prerecorded music." D.C. Official Code § 25-101(21A).

5. Pal is located in a R-5-B zone. Protest Report, at 3. Forty licensed establishments operate within 1,200 feet of Pal's proposed location. Id. No schools, recreation centers, public libraries, or day care centers are located within 400 feet of the proposed establishment. Id. at 7.

6. ABRA Investigators also monitored the establishment on five occasions between September 30, 2013, and October 8, 2013. *Tr.*, 10/2/16 at 42. Investigators did not monitor the establishment at night. Id. at 44. None of the investigators observed trash or litter during the observation period. Id. at 43. Furthermore, the investigators observed that parking was available in the neighborhood during the afternoon. Id. Finally, investigators did not observe any loitering around or near the establishment. Id.

7. The Metropolitan Police Department (MPD) reported that there were six calls for service made at 1501 U Street, N.W., between January 1, 2013, and October 6, 2013. Protest Report, at Exhibit 15. The report indicates that there was one incidence of disorderly conduct and one case of "WOMAN DOWN"; however, but MPD did not make any reports related to these incidents. Id. The remaining incidents involved a sick person or "BUSINESS/ALARM." Id.

III. ANC 1B Chairperson Tony Norman

8. Tony Norman, the chairperson of ANC 1B, testified on behalf of Pal's Application. *Tr.*, 10/2/16 at 54. Mr. Norman is a frequent customer of the Applicant's current establishment and has worked in the area near the establishment. Id. at 54, 67, 92. He also noted that the ANC's office is located only one block away from the establishment and the ANC often holds meetings at the establishment. Id. at 54. He further noted that residents of the Paul Dunbar Building across the street have expressed their support of the Application to the ANC. Id. at 57.

9. Mr. Norman observed that the establishment is "a small mom-and-pop" business. Id. During his visits to the establishment, he has never encountered or observed crime or objectionable noise. Id. at 59-60, 94. Furthermore, Mr. Norman has not observed any trash or litter in the surrounding neighborhood that came from the establishment. Id. at 59, 94. He further believes that any trash in the neighborhood comes from the gas station across the street, and not the establishment. Id. at 60.

10. Mr. Norman further observed that the establishment currently operates very late into the early morning selling food and nonalcoholic beverages, which means that the establishment is committing to closing earlier once licensed. Id. at 62-63, 90. Furthermore, the establishment is never crowded. Id. at 80. According to Mr. Norman, the ANC would like to see more businesses like Pal in the neighborhood. Id. at 93.

IV. Mohammed Rashed

11. Mohammed Rashed and his wife, Azanech Haile, have operated a family-owned food-serving establishment in the neighborhood for the past fifteen years. Id. at 124, 146. The current establishment has been open since September 1, 2012, at its present address. Id. at 134-35. Mr. Rashed has a degree in business administration, and he has experience

hiring individuals to serve alcohol. *Id.* at 125. Mr. Rashed testified that Pal intends to hire staff to serve alcohol, and Mr. Rashed has no plans to serve alcohol himself. *Id.* at 125, 139. Mr. Rashed noted that the establishment is currently open until 2:30 a.m. during the week and 4:30 a.m. on weekends; however, once licensed, the establishment will close at midnight. *Id.* at 125-26, 155. Thus, once licensed, the establishment will close much earlier than its current closing time. *Id.* at 126. Mr. Rashed also noted that Pal will not feature live music, and will only play recorded music on the establishment's speakers. *Id.* at 129, 140. He noted that the establishment has never received a noise complaint. *Id.* at 142, 150.

12. The Application filed with the Board lists Ms. Haile as the sole shareholder. *ABRA Licensing File No. 092484*. The Board notes that the operating agreement submitted by Pal the Mediterranean Spot, LLC, states that Mohammed Rashed is the LLC's registered agent and Azanech Haile is the LLC's sole member. *ABRA Licensing File No. 092484*, LLC Operating Agreement, § 1.8.² Therefore, Mr. Rashed's claim during the hearing that he is a part owner was mistaken. *Tr.*, 10/2/16 at 147.

V. Matthew James Abbruzzese

13. Matthew James Abbruzzese testified on behalf of the Meridian Hill Neighborhood Association (MHNA). *Id.* at 160. He has lived in Single Member District ANC 1B12 for almost three years. *Id.* The MHNA is concerned that the establishment shares a common wall with residences and is located in a residential zone.³ *Id.* at 163. The MHNA is also concerned that outdoor seating at the establishment will disturb nearby residents. *Id.* at 163.

VI. Elwyn Ferris

14. Elywn Ferris testified on behalf of the Shaw-Dupont Circle Citizens Alliance (SDCA). *Id.* at 185. Mr. Ferris has lived on T Street, N.W., for the past thirty-seven years. *Id.* at 185-86. The SDCA is concerned that the establishment will disturb residents, because it shares a common wall with residents and is located in a residential zone. *Id.* at 187-88. In addition, Mr. Ferris notes that residents live directly above the establishment. *Id.* at 188.

VII. Michael Van Meter

15. Michael Van Meter testified on behalf of the Protestants. *Id.* at 199. He currently lives in an apartment located at 2000 15th Street, N.W. *Id.* Mr. Van Meter noted that Pal took over the basement space previously occupied by The Love Café and refurbished the premises before occupying the property. *Id.* at 200-01.

² The Operating Agreement released with this Order redacts financial information provided in § 2.1 of the agreement. The Board notes that the redacted information is not relevant to the Board's determination in this matter.

³ Generally, the Board cannot issue a liquor license in a residential zone; however, this Application is permitted by the exception provided by D.C. Official Code § 25-336(c), because there are two Retailer's Class CR Licenses located within 400 feet of the establishment. *Tr.* 10/16/2013 at 178.

16. Mr. Van Meter's apartment overlooks the establishment's proposed sidewalk café. *Id.* at 201. He noted that the establishment does not play loud music, but that a neighbor may be able to hear the music through her wall. *Id.* at 204. Mr. Van Meter is also concerned that the establishment's customers sitting in the sidewalk café will create too much noise. *Id.* at 204. Nevertheless, Mr. Van Meter admitted that he does not currently hear noise from the establishment's sidewalk café. *Id.* at 207 ("I give them an A plus. No noise at all.").

VIII. Christina Parascondola

17. Christina Parascondola is an abutting property owner and has lived at her present address for almost ten years. *Id.* at 211. Mrs. Parascondola lives with her husband and they have a tenant living in a basement apartment. *Id.* Her property shares a common wall with the establishment, and overlooks the establishment's current sidewalk café. *Id.* at 211, 213.

18. Mrs. Parascondola admitted that her tenant has never complained about noise emanating from the establishment. *Id.* at 216. She also admitted that she has not had any problems with noise coming from inside or outside the establishment. *Id.* at 217, 239, 241. Mrs. Parascondola admitted that her concerns are based on the establishment engaging in a renovation that could create noise. *Id.* at 220.⁴ She also noted that on occasion the establishment's customers sit on her steps and deposit trash. *Id.* at 217.

19. Mrs. Parascondola also alleged that ANC 1B failed to follow proper meeting procedures. *Id.* at 222-23.

CONCLUSIONS OF LAW

20. The Board may approve a request for a New Retailer's Class CR License and Sidewalk Café Endorsement when the proposed establishment will not have an adverse impact on area located within 1,200 feet of the establishment. D.C. Official Code §§ 25-104, 25-313(b); 23 DCMR §§ 1607.2; 1607.7(b) (West Supp. 2014). Specifically, based on the Protestants' protest letters, the issues in this case are whether the Application will have a negative impact on the peace, order, and quiet; real property values; residential parking, and vehicular and pedestrian safety of the area located within 1,200 feet of the establishment, or create an overconcentration of licensed establishments.

I. Ownership

21. As a preliminary matter, the Protestants argue that Pal cannot satisfy D.C. Official Code § 25-301(5), which states that licensure is conditioned on

⁴ The hearing featured testimony regarding the establishment's ability to serve brick-oven pizza. *Tr.*, 10/16/2013 at 221. According to Mrs. Parascondola's testimony, the establishment installed a brick-oven but is not able to use the oven due to ventilation issues. *Id.* Whether true or not, the Board does not view the Application as a promise to serve pizza, and this fact is not relevant to the issue of appropriateness. Furthermore, if true, Mrs. Parascondola's testimony further bolsters the credibility of the Applicant, because it shows that the establishment is investing in its ability to serve food.

the applicant [being] the true and actual owner of the establishment for which the license is sought, and he or she intends to carry on the business for himself of herself and not as the agent of [another] . . . not identified in the application.”
Proposed Findings of Fact and Conclusions of Law, ¶ 8.

D.C. Official Code §25-301(5).

22. During the hearing, Mr. Rashed claimed that he was a part owner of the establishment. *Supra*, at ¶ 12. In response to this statement, ABRA requested that Pal provide the agency with Pal’s operating agreement, which was not in ABRA’s records. The Board deemed this document necessary to the resolution of this matter, because the issue of ownership is a critical part of the licensing process. Pal delivered the document to the agency on January 7, 2014. *See* LLC Operating Agreement, 1 (date stamp). The Application and Pal’s operating agreement show that Ms. Haile is the sole owner of Pal the Mediterranean Spot, LLC; therefore, Mr. Rashed’s statement is simply mistaken. *Supra*, at ¶ 12.

23. Nevertheless, the Board does not view this mistake as fatal to the Application. The purpose of § 25-301(5) is to ensure that the ownership is accountable for the behavior of the establishment, and that the establishment is not controlled by an unlawful party, such as a manufacturer or wholesaler. *See* D.C. Official Code §§ 25-824, 25-825. In this case, the record shows that Mr. Rashed merely helps to manage the establishment, which is permitted under the law, and there is no evidence that he has an unlawful ownership interest in Pal. *Supra*, at ¶ 12. Thus, the Board finds that the Application satisfies § 25-301.

24. The Board notes that the operating agreement was not part of the record at the time of the Protest Hearing. As noted in *Kingman Park*, the Board has the discretionary authority to permit a licensee to amend an application or petition submitted to the Board after the original filing of the relevant documents, so long as the action does not result in prejudice to the protestants. *Kingman Park Civic Ass’n, Et Al., v. District of Columbia Alcoholic Beverage Control Bd.*, No. 11-AA-831, 7 (D.C. 2012). Similar to *Kingman Park*, the establishment’s ownership was “discussed during the hearing,” and the licensee was subject to “cross-examination.” *Id.* Furthermore, the facts provided by the operating agreement merely confirm the statements made by Pal in its Application; therefore, there is no undue surprise or change in the underlying facts contained in the Application. For this reason, the Board permits the January 7, 2014 amendment to the Application, because the amendment does not prejudice the Protestants.⁵

II. Appropriateness

25. The Board finds that the Application is appropriate subject to the condition that the sidewalk café close at 12:00 a.m. on Friday and Saturday, and 11:00 p.m., Sunday through Thursday.

⁵ The Board notes that the filing of the operating agreement on January 7, 2014, resulted in the Board delaying the issuance of this Order until the Board could satisfy itself that the documents submitted by Pal regarding its ownership were accurate.

26. The Board notes that the only issue contested at the Protest Hearing was whether the issuance of the license would have a negative impact on peace, order, and quiet. The Protestants did not present any significant evidence that the issuance of the license would lead to an overconcentration of licensed establishment or have a negative impact on real property values, residential parking, or vehicular and pedestrian safety. Consequently, the Applicant is entitled to rely on the Board's recent holding that the issuance of additional licenses in the U Street neighborhood will not lead to the overconcentration of licensed establishments, or negatively impact the neighborhood's real property values, residential parking, or vehicular and pedestrian safety. See Alcoholic Beverage Control Board, Notice Denying Petition for Rulemaking and Order, 21, 23-24 (Oct. 2, 2013); see also supra, at ¶ 8. Therefore, consistent with the Board's previous holding, the Board finds that the Application is appropriate under D.C. Official Code §§ 25-313(b)(1), 25-313(b)(3), and 25-314(a)(4).

a. *Peace, Order, and Quiet.*

27. The Board finds that, in general, the issuance of the license will not result in an adverse impact on the neighborhood's peace, order, and quiet, because the establishment is a legitimate restaurant.

28. By law, the Board must consider all evidence of record, including, but not limited to, "The 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) (West Supp. 2014).

29. The record clearly shows that the establishment is a legitimate restaurant that focuses on the sale of food, and there is no evidence that Pal intends to depart from its current business model as a fast casual restaurant. Supra, at ¶ 2. The establishment's tiny premises are largely occupied by food preparation and display areas to support its operations as a restaurant. Supra, at ¶¶ 2-3. The establishment has not applied for an entertainment endorsement, and the establishment will cease operations at midnight. Supra, at ¶ 4. Based on the character of the establishment as a legitimate restaurant, the Protestants' concerns that Pal will turn into a source of disorder and antisocial behavior is merely unsupported speculation that lacks any grounding in fact.⁶

30. Likewise, the Protestants' concerns regarding noise are merely speculation as well. Section § 25-725 states, "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 [located in a residential zone] other than the licensed establishment by the use of any: . . . Mechanical device" D.C. Code § 25-725(a), (a)(1), (b), (b)(3) (West Supp. 2013). Further, § 25-313(b)(2) permits the Board to consider noise beyond the scope of § 25-725.⁷ Panutat, LLC, t/a District of Columbia Alcoholic Beverage Control Bd., 2013 WL

⁶ The Protestants also were concerned about the establishment making unnamed modifications once licensed. *Proposed Findings of fact and Conclusions of Law*, ¶ 5. Any concerns the Protestants have regarding changes to the establishment are adequately covered by the prohibition against making substantial changes without Board approval, which is found in D.C. Official Code § 25-762.

⁷ The Board also made the same point in Riverfront. In re Dos Ventures, LLC, t/a Riverfront at the Ballpark, Case No. 13-PRO-00088, Board Order No. 2013-512, ¶ 41 (D.C.A.B.C.B. Nov. 13, 2013).

5271321, *4 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.”) Nevertheless, the Protestants’ own witnesses that about the licensed establishment indicate that Pal’s current operations have not created any noise concerns. Supra, at ¶¶ 16, 18. Based on this testimony, the Board cannot reasonably deny the issuance of a license to Pal on the grounds of noise when the establishment’s operations are not undergoing a significant change.

31. Finally, the Board finds that issuing the license will not result in an increase in trash and litter in the neighborhood. Under § 25-726, the licensee must comply with the Litter Control Amendment Act of 1987 and “. . . take reasonable measures to ensure that the immediate environs of the establishment, including adjacent alleys, sidewalks, or other public property immediately adjacent to the establishment, or other property used by the licensee to conduct its business, are kept free of litter.” D.C. Official Code § 25-726. The record contains conflicting testimony as to whether the establishment is a source of trash. Compare supra, at ¶¶ 6, 9 with supra, at ¶ 18. Nevertheless, by licensing the establishment, Pal will have to comply § 25-726, which offers more legal protection to the abutting neighbors than they currently have by neighboring an unlicensed establishment. Consequently, the Board cannot reasonably conclude that the issuance of a license to Pal would result in an increase of trash and litter in the neighborhood.

III. Conditions

32. Although the Board has decided to issue a license to the Applicant, the Board finds that a limitation on Pal’s sidewalk café hours is warranted.

33. Under § 25-104(e),

The Board, in issuing licenses, may require that certain conditions be met if it determines that the inclusion of the conditions will be in the best interest of the locality, section, or portion of the District where the licensed establishment is to be located. The Board, in setting the conditions, shall state, in writing, the rationale for the determination.

D.C. Official Code § 25-104(e).

34. In Duffy’s Irish Restaurant, the Board limited the hours of the sidewalk café to 11:00 p.m. during the week and midnight during the weekend based on the presence of residences near the outdoor seating area. In re Amduffy, LLC t/a Duffy’s Irish Restaurant, Case Number 13-PRO-00004, Board Order No. 2013-343, ¶¶ 21-23 (D.C.A.B.C.B. Jul. 10, 2013).

35. Here, similar to Duffy’s Irish Restaurant, Pal is located in a residential zone and has abutting neighbors that overlook Pal’s sidewalk café area. Supra, at ¶¶ 16-17. Consequently, a proper balance between the interests of Pal and the reasonable expectations of abutting neighbors require the sidewalk café to close at 11:00 p.m. during the week and midnight during the weekend.

IV. Great Weight

36. The Board also addresses the recommendation provided by ANC 1B. The Protestants challenge the right of ANC 1B to have its recommendation receive great weight under D.C. Official Code § 25-609(a). Proposed Findings of Fact and Conclusions of Law, ¶ 9 (Abutting Property Owners); *Tr.*, 10/16/13 at 73; D.C. Official Code § 25-609(a). Nevertheless, the Board finds that whether ANC 1B is entitled to great weight has no bearing on the Board's conclusion in this matter. As noted in Kopff, great weight, "does not build in some kind of quantum or presumption of deference to be accorded ANCs. It means, rather, that an agency must elaborate, with precision, its response to the ANC issues and concerns." Kopff v. District of Columbia Alcoholic Beverage Control Bd., 381 A.2d 1372, 1384 (D.C. 1977). Even if we accepted the allegation that ANC 1B's recommendation is improper, it cannot be argued that responding to the concerns expressed by the ANC is prejudicial in any way, because the great weight requirement does not change the manner in which the Board examines the Application.

37. Addressing the recommendation of ANC 1B on its merits, the Board partially agrees with the recommendation. The Board agrees that Pal merits a Retailer's Class CR License for the reasons stated in this Order. Nevertheless, based on the Board's precedent in Duffy's Irish Restaurant, the Board finds that a restriction on the hours of the sidewalk café is in the best interest of the neighborhood.

V. Conclusion

38. 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 22nd day of January 2014, hereby **GRANTS** Application for a New Retailer's Class CR License and Sidewalk Café Endorsement filed by Pal the Mediterranean Spot, LLC, t/a Pal the Mediterranean Spot, subject to the following condition:

- (1) Pal's sidewalk café shall not operate past 11:00 p.m., Sunday through Thursday, nor operate past 12:00 a.m. (midnight) on Friday and Saturday.

The Board further **ADVISES** Pal that the Board's records show that Ms. Haile is the sole owner of the establishment. Further, the records possessed by the Board show that Mr. Rashed does not have an ownership interest in the establishment. In order for the establishment to operate without the presence of Ms. Haile, the establishment must employ an individual with an ABC Manager's license, or Mr. Rashed must obtain an ABC Manager's license for himself. In addition, if Ms. Haile wishes to make Mr. Rashed an

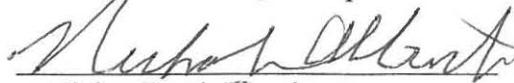
additional owner or holder of the license, then Pal must file the appropriate paperwork with the Board.

The ABRA shall distribute copies of this Order to the Applicant and the Protestants.

District of Columbia
Alcoholic Beverage Control Board



Ruthanne Miller, Chairperson



Nick Alberti, Member



Donald Brooks, Member

Herman Jones, Member



Mike Silverstein, Member

Under 23 DCMR § 1719.1 (2008), 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, under 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, 500 Indiana Avenue, N.W., Washington, D.C. 20001. However, the timely filing of a Motion for Reconsideration under 23 DCMR § 1719.1 (2008) stays the time for filing a petition for review in the District of Columbia Court of Appeals until the Board rules on the motion. See D.C. App. Rule 15(b) (2004).

LIMITED LIABILITY COMPANY OPERATING AGREEMENT

FOR

PAL THE MEDITERRANEAN SPOT AND MORE LLC

A Single Member-Managed Limited Liability Company

ARTICLE I

Company Formation

1.1 FORMATION. The Member hereby does form a Limited Liability Company ("Company") subject to the provisions of the Limited Liability Company Act as currently in effect as of this date. Articles of Organization shall be filed with the Secretary of State.

1.2 NAME. The name of the Company shall be: **PAL THE MEDITERRANEAN SPOT AND MORE LLC**

1.3 REGISTERED AGENT. The name and location of the registered agent of the Company shall be:

Mohammed Rashed

1439 T St. NW

Washington, DC 20009

1.4 TERM. The Company shall continue for a perpetual period unless,

- (a) The Member votes for dissolution; or
- (b) Any event which makes it unlawful for the business of the Company to be carried on by the Member; or
- (c) Any other event causing dissolution of this Limited Liability Company under the laws of the District of Columbia.

1.5 CONTINUANCE OF COMPANY. Notwithstanding the provisions of ARTICLE 1.4, in the event of an occurrence described in ARTICLE 1.4(c), if there is at least one remaining Member, said remaining Member shall have the right to continue the business of the Company. Such right can be exercised by the written vote of the remaining Member within ninety (90) days after the occurrence of an event described in ARTICLE 1.4(c). If not so exercised, the right of the Member to continue the business of the Company may expire if that member desires.

1.6 BUSINESS PURPOSE. The purpose of the Company is to operate a restaurant in DC

1.7 PRINCIPAL PLACE OF BUSINESS. The location of the principal place of business of the Company shall be:

1501 U ST NW

Washington, DC 20009

The principal place of business may be changed to a location the Member may select. The Member may also choose to store company documents at any address the Member chooses.

1.8 MEMBER. The name of the member is Azanach Haile

1.9 ADMISSION OF ADDITIONAL MEMBERS. Except as otherwise expressly provided in the Agreement, additional members may be admitted to the Company through issuance by the company of a new interest in the Company or a sale of current a percent of current Member's interest.

ARTICLE II

Capital Contributions

2.1 INITIAL CONTRIBUTIONS. The Member initially shall contribute to the Company capital with a total value of such property and cash is at least \$ [REDACTED]

2.2 ADDITIONAL CONTRIBUTIONS. Except as provided in ARTICLE 6.2, no Member shall be obligated to make any additional contribution to the Company's capital.

ARTICLE III

Profits, Losses and Distributions

3.1 PROFITS/LOSSES. For financial accounting and tax purposes the Company's net profits or net losses shall be determined on an annual basis and shall be allocated to the Members in proportion to each Member's relative capital interest in the Company.

3.2 DISTRIBUTIONS. The Member shall determine and distribute available funds annually or at more frequent intervals as the Member sees fit. Available funds, as referred to herein, shall mean the net cash of the Company available after appropriate provision for expenses and liabilities, as determined by the Member. Distributions in liquidation of the Company or in liquidation of a Member's interest shall be made in accordance with the positive capital account balances. To the extent a Member shall have a negative capital account balance, there shall be a qualified income offset.

3.3 C CORPORATION ELECTION. The Member may elect to be treated as a C corporation at any time to keep the profits of the LLC at the company level and not be forced to distribute profits to the Member.

ARTICLE IV

Management

4.1 MANAGEMENT OF THE BUSINESS. The management of the business is invested in the Member.

4.2 MEMBER. The liability of the Member shall be limited as provided pursuant to applicable law. The Member is in control, management, direction, and operation of the Company's affairs and shall have powers to bind the Company with any legally binding agreement, including setting up and operating a LLC company bank account.

4.3 POWERS OF THE MEMBER. The Member is authorized on the Company's behalf to make all decisions in accordance with ARTICLE 4.2 as to (a) the sale, development lease or other disposition of the Company's assets; (b) the purchase or other acquisition of other assets of all kinds; (c) the management of all or any part of the Company's assets; (d) the borrowing of money and the granting of security interests in the Company's assets; (e) the pre-payment, refinancing or extension of any loan affecting the Company's assets; (f) the compromise or release of any of the Company's claims or debts; and, (g) the employment of persons, firms or corporations for the operation and management of the company's business. In the exercise of its management powers, the Member is authorized to execute and deliver (a) all contracts, conveyances, assignments leases, sub-leases, franchise agreements, licensing agreements, management contracts and maintenance contracts covering or affecting the Company's assets; (b) all checks, drafts and other orders for the payment of the Company's funds; (c) all promissory notes, loans, security agreements and other similar documents; and, (d) all other instruments of any other kind relating to the Company's affairs, whether like or unlike the foregoing.

4.7 NOMINEE. Title to the Company's assets shall be held in the Company's name or in the name of any nominee that the Member may designate. The Member shall have power to enter into a nominee agreement with any such person, and such agreement may contain provisions indemnifying the nominee, except for his willful misconduct.

4.8 COMPANY INFORMATION. Upon request, the Chief Executive Member shall supply to any member information regarding the Company or its activities. Each Member or his authorized representative shall have access to and may inspect and copy all books, records and materials in the Chief Executive Member's possession regarding the Company or its activities.

4.9 EXCULPATION. Any act or omission of the Member, the effect of which may cause or result in loss or damage to the Company or the Member if done in good faith to promote the best interests of the Company, shall not subject the Member to any liability to the Member.

4.10 INDEMNIFICATION. The Company shall indemnify any person who was or is a party defendant or is threatened to be made a party defendant, pending or completed action, suit or proceeding, whether civil, criminal, administrative, or investigative (other than an action by or in the right of the Company) by reason of the fact that he is or was a Member of the Company, Manager, employee or agent of the Company, or is or was serving at the request of the Company, for instant expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred in connection with such action, suit or proceeding if the Member acted in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interest of the Company, and with respect to any criminal action proceeding, has no reasonable cause to believe his/her conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, conviction, or upon a plea of "no lo Contendere" or its equivalent, shall not in itself create a presumption that the person did or did not act in good faith and in a manner which he/she reasonably believed to be in the best interest of the Company, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his/her conduct was lawful.

4.11 RECORDS. The Member shall cause the Company to keep at its principal place of business or other location the following:

- (a) A copy of the Certificate of Formation and the Company Operating Agreement and all amendments;
- (b) Copies of the Company's federal, state and local income tax returns and reports, if any, for the three most recent years;

ARTICLE V

Compensation

5.1 MEMBER MANAGEMENT FEE. Any Member rendering services to the Company shall be entitled to compensation commensurate with the value of such services.

5.2 REIMBURSEMENT. The Company shall reimburse the Member for all direct out-of-pocket expenses incurred by the Member in managing the Company.

ARTICLE VI

Bookkeeping

6.1 BOOKS. The Member shall maintain complete and accurate books of account of the Company's affairs at the Company's principal place of business or other agreed location. Such books shall be kept on such method of accounting as the Member shall select. The company's accounting period shall be the calendar year.

6.2 MEMBER'S ACCOUNTS. The Member shall maintain separate capital and distribution accounts for each member. Each member's capital account shall be determined and maintained in accurate manner, and shall consist of his initial capital contribution increased by:

- (a) Any additional capital contribution made by him/her;
- (b) Credit balances transferred from his distribution account to his capital account; and decreased by:
 - (a) Distributions to him/her in reduction of Company capital;
 - (b) The Member's share of Company losses if charged to his/her capital account.

6.3 REPORTS. The Member shall close the books of account after the close of each calendar year, and shall prepare and send to each member a statement of such Member's distributive share of income and expense for income tax reporting purposes.

ARTICLE VII

Transfers

7.1 ASSIGNMENT. According to the appropriate Court, should the Member have a creditor with a judgment that was issued an assignment of the membership interest, the creditor shall only obtain an assignment of the membership interest, not the actual transfer of Membership in the LLC. The new assignee does not have any rights of the Member or have the ability to be involved in management of the LLC or the right to dissolve the LLC. The new assignee is only granted rights of the distributions of the Member's interests, if the Member decides to distribute at all, not the rights of membership. The assignee must release the Member's interests back to Member upon payment of the judgment in accordance with the appropriate Court.

ARTICLE VIII

Dissolution

8.1 DISSOLUTION. The Member may dissolve the LLC at any time. The Member may NOT dissolve the LLC for a loss of membership interests. Upon dissolution the LLC must pay its debts first before distributing cash, assets, and/or initial capital to the Member or the Members interests. The dissolution may only be ordered by the Member, not by the owner of the Members interests.

CERTIFICATE OF FORMATION

This Company Operating Agreement is entered into and shall become effective as of the Effective Date by and among the Company and the person executing this Agreement as Member. It is the Member's express intention to create a limited liability company in accordance with applicable law, as currently written or subsequently amended or redrafted.

The undersigned hereby agree, acknowledge, and certify that the foregoing operating agreement is adopted and approved by each member, the agreement consisting of 6 pages. the Operating Agreement of PAL THE MEDITERRANEAN SPOT AND MORE LLC

, adopted by the member as of January 2, 2013

Member:

Printed Name

HAILE AZARACH



District of Columbia: SS

Subscribed and Sworn to before me,

this 6th day of January, 2014



Notary Public, D.C.

My commission expires 04/30/2017