

## **Suggested Changes to 4/3/19 ABO Ordinance Draft** **(Revised June 16, 2019)**

### **Section 10-78—Suspension, Revocation Procedure**

This is a substantial improvement over the proposal in the last draft of the ordinance, however, some questions remain, and we are concerned about the inclusion of the Director of Safety and Permits being given the authority to order an emergency suspension of an ABO, particularly given the broad nature of the required rationale for the suspension (“the impending existence of a practice that can reasonably cause substantial physical harm...”). Certainly if there is a serious threat to physical harm (a building in imminent nature of collapse, etc) the Director of Safety and Permits could relay this information to the Mayor or Chief of Police to order the suspension. The inclusion of the Director of Safety and Permits points to this provision being used as an aggressive form of code and permit enforcement, rather than as a way to protect public safety.

### **Section 10-101—Form and Content**

The removal of fingerprint requirements is good.

The provision that allows resident aliens to be granted a liquor license is very good.

While we appreciate the removal of the term ‘moral turpitude’, we are concerned that the long list of disqualifying misdemeanor offenses may be overly broad. Misdemeanor battery or theft, for example, may be very minor infractions—certainly not on par with kidnapping or sexual battery. This is particularly important because of inequities in the criminal justice system, where people of color, particularly young Black men, may be charged more severely than a white counterpart.

The requirement that applicants needs to 100% current on all taxes, penalties, interest, or government liens still needs more clarity—what if the applicant has an installment agreement to pay their federal or state taxes, for example? Would they still be denied a new permit? If their delinquent debt has nothing to do with their businesses, why would it be used against them in the application process?

The requirement that the property be current on all delinquent taxes, penalties, interest, or governmental liens (which is the landlord’s responsibility, not the applicants) needs to be removed. Many small businesses, particularly DBEs, do not own their building where they have their businesses—and rising property values make it even less likely this will be the case for the foreseeable future. Including this could put make it virtually impossible for many small ABO’s to function through no fault of their own, and further increase inequity and gentrification—it is generally these small, neighborhood barrooms and businesses that incubate and grow New Orleans’ culture. (And how many renters in the city actually know the status of their landlord’s taxes? Very, very few.)

### **Section 10-123—Permit Fees Due Annually and Penalties Thereto**

The requirement that an entirely new application must be submitted if not all permit fees are submitted by June 30<sup>th</sup> could be detrimental to many small businesses, particularly in light of the fact that it is also proposed in this ordinance that applicants must be 100% current on all taxes, penalties, interest, or government liens. Having tax debt unrelated to their business could result in the non-renewal of their license, as could the property owner falling behind on his or her financial obligations.

### **Section 10-124—Failure to Timely Pay Permit Fees**

Installment agreements should be an option with or without consent of the Alcoholic Beverage Control Board.

### **Section 10-125—Permits to Be Displayed**

The failure to post permits/provisos shouldn't lead to heavy sanctions or the loss of a liquor license. A fine would be more appropriate.

### **Section 10-136—Neighborhood Compatibility**

The revised language is a substantial improvement, but could still lend itself to abuse. What is the protocol if fraudulent complaints are being made? Does the complainant have to be a resident of New Orleans? It would be unfortunate if AirBnB guests lodged complaints against neighborhood bars and businesses without any context. There are already concerns about neighbors complaining about trash left after a second-line, blaming the bars on the route despite the fact that vendors and participants left the trash, and it was unrelated to the business.

### **Section 10-157—Grounds for Revocation or Suspension of Permit or Remedial Sanctions**

This section remains overly punitive and allows suspension or revocation, as well as remedial sanctions—including the loss of live entertainment—for virtually any violation of any kind, including failure to pay ANY tax, any violation of any penal ordinance by a patron, or any violation of any part of the City Code. Essentially, an ABO could be in danger of losing their license for any violation of any kind, no matter how small. A few highlights:

(5): Improper conduct is so broadly defined, it means any violation of any penal ordinance in the city by a patron could lead to the revocation of the businesses alcoholic beverage license.

(26 & 29): “Any other violation of this Chapter”, “Any violation of La. R.S. Title 26” and “to violate any lawful rule or regulation made pursuant to this chapter” are so broad they make a single violation of say, not posting provisos, an offense that could lead to the loss of a liquor license if the ABO Board sees fit. **These provisions are a Trojan Horse and need to be removed.**

(36) “Allowing patrons to loiter on or about the premises” is impossible to enforce fairly, likely unconstitutional, and will lead to the targeting of people of color, particularly young Black men. This is a fundamental deal breaker and needs to be removed. We will actively oppose an ordinance that contains this provision.

We appreciate the removal of the section that would tie violation of provisos to the loss of a liquor license and the changes in language regarding sex workers.

#### **Section 10-160—Fines and Penalties**

(1) This remains a tremendous increase of fines from between \$50 and \$500 to between \$100 and \$500 per violation, per day. That means a business with a litter violation for two weeks could incur \$7000 in fines—which could easily put some small businesses in jeopardy.

(4) There needs to be clarity that video surveillance ‘as dictated by the City’ does not include a mandatory connection to the Real Time Crime Center.

#### **Section 10-236—Restrictions as to Property Near Schools, Churches, Etc**

The way this has been re-written is not a prohibition on the sale of alcohol within 300 feet of churches, schools, etc—but rather a targeted prohibition on barrooms and most live entertainment, which fundamentally unacceptable (it allows alcohol to be sold and consumed on premises for a number of businesses, just not those that are strictly bars and prohibits live performance venues completely). The swap of terms from ‘cabaret’ and ‘nightclub’ with ‘live performance venue’ and ‘live-performance secondary use that is also authorized to sell alcohol’ is not equivalent, and further limits live music in neighborhoods. We question why live entertainment is in this provision at all, when this ordinance is strictly about alcoholic beverages. Live entertainment is already limited under the zoning ordinance; there is no reason to further restrict it here, and the wording of the original Section 10-236 clearly suggests that it is about alcohol sales, not live entertainment. The restriction on live performance venues is counter intuitive and out of sync with New Orleans culture. Indeed, many churches, such as St. Augustine in Treme and the recently shuttered Norwegian Seaman’s Church on Prytania St, actively host live performances, and other former churches are being repurposed as live performance venues, such as the Marigny Opera House. We also note that state law (see RS 26:81 C(1)) defers distance requirements to ordinances adopted at the Parish level, so there is no reason that this cannot be removed. We’ve pointed out this issue repeatedly and this needs to be resolved before any ordinance moves forward. **We will oppose any ordinance that does not fix this issue.**

#### **Section 10-237—Restrictions on Retail Sales of Package Liquor Near Churches, Schools, Etc**

We are concerned that specifying that changing the point of measurement to a 300 foot radius around the lot line could end up being more consequential than it seems

and make it more difficult to obtain an alcoholic beverage license in many areas. We maintain this needs further study before being adopted.

### **Section 10-238—How Distance Is Measured**

The same concerns as 10-236 and 10-237.

### **Section 10-261—Alcoholic Beverages Outlets Prohibited in Residential and Park Districts**

This section is contradictory to the Zoning Ordinance, which allows Live Performance Venues in both OS-G and OS-R districts. Again, this is a restriction on live entertainment and live performance venues in ANY residential areas, which are already regulated by the zoning ordinance. We don't need to create a secondary, full, prohibition in this ordinance. This ordinance is about alcohol sales and permitting, not live entertainment. This is very similar to 10-236, is redundant, and should be reworked or entirely removed.

### **Section 10-401—Sales Restricted to Within Premises**

Our comments here remain the same. This is a huge change in how alcohol is sold, largely in the French Quarter, which could have major implications, and potential safety implication for existing bars—particularly during Mardi Gras, Halloween, and other high traffic periods on Bourbon St, Frenchmen St, and other heavily visited areas. The requirement that new business cannot have a bar within 10 feet of the outward facing wall seems arbitrary, and may be impossible in some older buildings.