

Members of the City Planning Commission—

Once again, thank you all for your hard work on a long needed update to the City Zoning Ordinance. As this process approaches the end, we want to acknowledge some very positive changes that have been made in the latest draft, including inserting language that, for the first time, ensures residents can not violate the ordinance for playing an instrument in their own home. However, we still have a number of comments on this final draft that we believe will make for an even stronger ordinance, and we have several significant concerns.

First, once again, we must point out that the paradigm regarding music and culture needs to be flipped. Live entertainment should be allowed throughout the city except where it has been specifically restricted, rather than restricted except for where it is specifically included. Flipping this paradigm would immediately address many of our concerns, and would accurately reflect a City and a culture where music and traditions continue to develop organically from the neighborhoods. It would also bring New Orleans in line with norms and standards regarding music and performance as protected speech. We realize this is a longer conversation, so we have once again attached specific comments on the current draft.

#### **Non-Conforming Uses:**

In our reading, the language of this draft states all non-conforming uses that legally exist at the time of the adoption of this ordinance will be grandfathered in. We support this. Unfortunately, there are also a number of small businesses who may believe that they are legally operating as a non-conforming use but have not actually completed all the steps to gain official non-conforming status. It is imperative that these business owners (or others holding a non-conforming use) acting in good faith be formally informed of their current status and given an adequate opportunity to obtain legal non-conforming status after the passage of this ordinance through a fair, equitable and manageable process. There have been a number of lawsuits specifically launched to challenge the non-conforming status of long standing music venues, attempting to shut them down, so any language relating to nonconforming use status must not leave any legal loopholes that can be exploited. In addition, it needs to be made clear that the 5 hour a day, 4 day a week threshold does not apply to live entertainment or other uses that are, by definition, periodic.

#### **Article 10, Section B: Use Restrictions; Existing Hotel Uses in Vieux Carre Districts**

Changing the wording from ‘enclosed area’ to ‘enclosed structure’ would eliminate live entertainment from courtyards and should be reversed.

#### **Article 10, Section B: HMC 2 District Live Entertainment Restriction**

There is no need for, nor inherent benefit to, this arbitrary limit of one live entertainment venue or one establishment with live entertainment—secondary use per block face, and we oppose it.

#### **Article 16: Industrial Districts**

Live Entertainment-Secondary Use should be reinserted as a permitted use in these districts. It makes no sense that bars would face no restriction in these areas, but live entertainment is absolutely prohibited.

## **Article 18: Overlay Zoning Districts**

### *18.9 AC-1 Arts and Culture Overlay*

We support the letter cosigned with the Faubourg Marigny Improvement Association and the Frenchmen Street Business Association, and believe that Frenchmen St should have its own overlay category. In addition, we have several other concerns. Limiting live performance venues to plays and musicals is problematic, as it is unclear if or when a live band is allowed. Why would a live band be able to play songs during a musical, but be outlawed if they played the same songs without the surrounding dialogue? Also, limiting standard restaurants to 3 musicians is arbitrary and counterproductive. You could have 3 trombones, but not 4 piccolos? Which member of the jazz quartet misses out on the gig? As long as the business abides by the noise ordinance, there is no need for additional limitation. Finally, the prohibition on a permanent stage should be lifted. A stage becomes a seating area when it is not in use.

### *18.10 AC-2 Arts and Culture Overlay*

We echo the same comments about limits on music at live performance venues, removing restrictions on the number of musicians, and allowing a permanent stage.

### *18.11 AC-3 Arts and Culture Overlay*

It is outrageous that the St. Claude Arts and Culture Overlay, which was created with the participation and support of all areas stakeholders, MaCCNO included, as well as the Council member for District C, was gutted after being passed less than two years ago. The original St. Claude Overlay, which, once again, was passed by the City Council, with full support of all neighborhood stakeholders, should be reinserted into this ordinance in its entirety.

### *18.12 AC-4 Arts and Culture Overlay*

We support the AC-4 Overlay, and appreciate its inclusion.

## **Article 21: On Site Development Standards**

### *21.8 Temporary Uses; Temporary Outdoor Entertainment Events*

The language limiting temporary outdoor entertainment events to 4 per year is unclear. Is this 4 per the entire city? Four per lot? Per business? Per event company? There is no way to tell based on current wording. Also, having some sort of live entertainment should not automatically make an event an 'outdoor entertainment event'. If the primary function is an outdoor market, but there is also a band playing, it should be classified as a 'temporary public market'. Just as in brick and mortar businesses, events should be able to have a secondary entertainment component.

## **Article 26: Definitions:**

### *Live Entertainment*

The following exemption needs to be included in the live entertainment definition: "Mardi Gras Indian practices, Social Aid and Pleasure Club activities (including parades), jazz funerals and other traditional cultural practices".

The qualifier of ‘unamplified’ music in standard and specialty restaurants is problematic and needs to be removed. This would, in practice, eliminate nylon stringed guitars, keyboards (which need have some form of amplification to work), most vocalists, who would not risk their voice to try to sing at the volume necessary, and much more. The city already has a noise ordinance in place, which creates restrictions on volume. Restricting amplification is, once again, arbitrary, and puts many musicians and bands at an inherent disadvantage—and, in the case of many singers—could actually cause permanent damage if they were to perform without it.

While we disagree with the restrictions on amplification, we do support the addition of ‘musical accompaniment’ at standard and specialty restaurants. Yet, oddly, this is restricted in only in the French Quarter, the place people, tourists especially, are most likely to go to find both. Ironically, restrictions in this ordinance would make this the neighborhood the least likely in which they would find the two together, as only restaurants on Bourbon and two blocks of Decatur could hire musicians. This creates unfair competition, as for instance Channing Tatum’s Saints and Sinners could hire a band for dinner every night, but Antione’s couldn’t have a jazz brunch without a special events permit. It also deprives many musicians from receiving a steady gig in the most heavily visited neighborhood in the city.

In addition, this would also mean that there could be absolutely no live music on Rampart St, despite its cultural significance and importance in the development of New Orleans music and culture. These restrictions are counter intuitive; by restricting one of the primary referants of a generation of tourism marketing and branding they are bad for the image and by extension the economy of the city. On a more grassroots level these restriction would deprive many musicians of a major economic opportunity in the form of a steady, paying gig, still a rarity for many in a city where the average musician makes less than 18,000 a year.. We strongly urge you to reconsider this restriction.

#### *Noise Abatement Plan*

Change ‘Including but not limited to’ to ‘potentially including, but not limited to’. Without this change, all noise abatement plans would have to include everything listed, which may not be necessary, practical, or financially viable.

#### **Map Change in Planning District 1B**

The Parcel at 1000-1016 Decatur in the French Quarter should be changed from VCC-1 to VCS to bring it in line with the rest of French Market.

Once again, thank you for your time and attention, and we look forward to working with you on this, and in the future. If you have any questions, please do not hesitate to contact Ethan Ellestad, MaCCNO Coordinator at [coordinator@maccno.com](mailto:coordinator@maccno.com) or via phone at 504-327-7713.

Thank you,

The Music and Culture Coalition of New Orleans Planning and Facilitation Committee