



February 26, 2023

New Orleans City Council
1300 Perdido St.
New Orleans, LA 70112

Zoning Docket 022/23

Dear Councilmembers,

Over the past few years, we have continually been asked to create (and then adjust) the City's Short Term Rental program. The most recent revisiting is due to a lawsuit brought by out of town property owners who felt that the City's requirement that every Residential STR be tied to a Homestead Exemption was a violation of the Commerce clause of the Constitution. The Fifth Circuit US Court of Appeals ruled in the plaintiffs' favor, allowing every Residential property in the City to be eligible to become an STR, with no one on site during the stay. While there are many issues to address regarding the City's STR program, the Court has offered specific remedies to address the problems the City was trying to address: Quality of Life concerns, and the over proliferation of STRs in some neighborhoods.

We would like to address two ways the Court suggested to address these issues :

OWNER/OPERATOR: One of the most common complaints in the first program was the amount of Whole Home STRs and "party houses" that negatively impacted their neighbors' Quality of Life. The current program requires a Homestead Exemption, in the hopes that the owner's presence on site would eliminate this issue. This was a middling success, with the biggest issue being fraudulent Homestead Exemptions and the Assessor's Office's inability to fully enforce and investigate them. We endorse the Court's proposal to replace the Homestead Exemption requirement with the requirement that an Owner/Operator be on site during the stay. We believe this would address the concern about "party houses" while passing legal muster. This was recommended in the CPC Staff Report, accepted by the Commissioners and supported by many STR operators as well.

DENSITY REQUIREMENTS: The City also hoped the Homestead Exemption requirement would eliminate people from buying homes and converting properties to STRs, as well as preventing an over proliferation of



STRs in certain neighborhoods. This was not successful, and there is evidence to prove it. Per insideairbnb.com, which tracks both legal and illegal STRs, there are a total of 399 STRs in the Marigny alone. That ranks sixth in the City, behind the CBD (941), Central City (577), the Seventh Ward (451), Mid City (426) Tremé/Lafitte (421), and ahead of the Lower Garden District (302). **These seven neighborhoods (out of a total of 72 in the City) are home to 3,490 of the total 6,776 STRs in the City. In other words, less than 10% of the city's neighborhoods house over half of the City's STRs.** This total number of STRs (6,776) is not insignificant, as it puts New Orleans far ahead of other cities, per capita. New Orleans has 1 STR for every 55.63 residents (6,776 listings and a population of 376,971 residents), while New York City has 1 STR for every 212.3 residents (39,881 listings and a population of 8,468,000 residents). **New Orleans has almost 4 times more STRs per capita than New York City.** Obviously, the current plan to prevent an over proliferation of STRs in the City has failed. The Court has suggested ways to remedy this problem, such as caps on the number of licenses or density limitations. A successful BandB program has been around for years, and the more closely we stay to those policies, the better. We believe that there should be a limitation of 1 license per square for all categories of STRs, as well as all categories of Bed and Breakfasts, which was the preferred option of 56% of the respondents in a poll of FMIA members. This would prevent clustering in particular neighborhoods (as seen in the seven neighborhoods listed above), as well as not inflating housing prices to the point that longtime residents (particularly renters) are priced out of their homes in particular neighborhoods. This would allow 79 STRs or BandBs in the Marigny, which is a vast improvement over the 399 listings, according to insideairbnb.com, but still closer to the 127 currently licensed STR permits in the Marigny. Additionally, we feel it is important to address a glaring hole in the CPC's recommendations regarding density limitations. The CPC has finally recognized the similarities between STRs and BandBs, and has begun to treat them as such. The CPC Staff recommended allowing one Non-Commercial AirBnb, or Principal Bed and Breakfast (no more than 9 bedrooms) per block face. However, they did not limit Accessory Bed and



Breakfasts (no more than 5 bedrooms), which are allowed by right in the Marigny in Residential properties. By leaving the Accessory BandB out of the density limitations, the density caps are undermined, and it would in essence allow every property in the Marigny to become a Hotel, STR, or Bed and Breakfast. We ask that you add Accessory BandB's to the density cap.

Besides those two main issues addressed by the court, there are other issues on table that your motion asked to be addressed:

MUDDYING OF THE CZO- The Comprehensive Zoning Ordinance is intended to provide stability. When someone is considering purchasing a property, they should know what is (and is not) allowed at their property, as well as at the neighboring properties. In order for the Residential property next to you to have its use changed to Commercial, the property owner has to go through a public process and NPP in which the neighbors are aware of what is happening, and are allowed to register their comments. The City's STR program has confused this arrangement and allowed every Residential property to become transient lodging. Now, when you buy a property in the Marigny you have no idea if the Residential property next to you will have actual neighbors, or become a Commercial enterprise. While 22% of our respondents believe that both Residential and Commercial properties should have STRs (with a limit per block or square), the grand majority are in favor of something far more stringent. 54% of our membership believe that there should be a ban on STRs (similar to what was enacted in the neighboring French Quarter), and 11% believe it should only be allowed in Commercial zoned properties. **We echo the 65% of our membership that wants a complete ban on Residential STRs in the Marigny.** We also think the continual growth of the hotel industry in the Marigny is noteworthy, far outweighing business development for residents, and many residents have been pushed out by STRs. As of now, new hotels are being permitted at 2121 Chartres, 502 Frenchmen, the old Aquatic Gardens, the Michalopoulos studio, and a soon to open Hampton Inn at Elysian Fields and Decatur.. With uncontrolled hotel and STR growth,



where are the residents supposed to live? Banning Residential STRs would go a long way toward giving our residences back to actual residents. **As one respondent to our survey commented, “Tourists belong in hotels. Residents belong in homes.”**

COMMERCIAL STRs- While the lawsuit (and CPC Staff Report) only deal with Residential licenses, we feel it is crucial to deal with Commercial licenses at the same time. In our neighborhood, as well as other Historic Neighborhoods throughout the City, we do not have Commercial zones. Commercial properties abut Residential properties. This is most obvious on major corridors like Elysian Fields and N Rampart/St Claude (which have properties that back up to Residential properties on interior streets, usually HMC-2) as well as the traditional “corner store” (usually at the intersection, and usually zoned HMC-1), with Residential properties in the middle of the block. Whether or not the Whole House STR is located on a Commercial or Residential property, it can still have the same negative effect on the Quality of Life of the residents next door. Therefore, we believe that Commercial STRs must be considered at the same time, and count the same when considering density, and any other standards that are discussed. Furthermore, to not incorporate them in these regulations could see STRs dominate the “corner stores”, which are supposed to contribute to Residential Quality of our neighborhoods. What is most likely, however, is for a number of “spot zone” requests to be filed with the CPC, and find their way to the City Council, possibly turning a Residential building into an STR.

We have many properties in our neighborhood that people think are homes, and are zoned Commercial, thus becoming Whole House STRs. One example of this is the 2100 block of N Rampart. The entirety of that block (with the river side partially pictured below) is zoned Commercial, even though these buildings represent our Residential architecture, and were fully intended to be double shotguns, which is so common in our neighborhood. Four of the five on that side of the street are owned by Saxony Holdings, out of Mountain View, CA, and are currently Whole House STRs. Additionally, one house on the other side of the street



is owned by Rampart Vacation Holdings, LLC, located on Avenue of the Americas in New York City. We must make sure to include Commercial licenses in this new plan as to insure more housing is not lost to Commercial STRs.

HISTORIC CORE EQUALITY- One constant throughout all of the different STR programs has been a prohibition on STRs in the French Quarter, except for VCE, ie “Bourbon Street”. This is not unusual, as there is a ban on new hotels in the Vieux Carre also. Citizens in the French Quarter welcomed these special protections, as they were rightfully concerned with



the French Quarter becoming over touristed. But what wasn't addressed was the effect these bans would have on the surrounding neighborhoods. As stated above, we are seeing uncontrolled growth of hotels in the Marigny, and with no limitations on STRs, it is no surprise that we have the sixth most STRs in the City. An examination of parcels would probably reveal a higher percentage of STRs per parcel than other neighborhoods. It is also worth noting that of the seven neighborhoods with the highest amount of STRs, three of them (the CBD, Marigny, and Treme) abut the French Quarter. Over the last decade, we have seen huge growth in the number of visitors traveling to New Orleans. According to the New Orleans Area Visitor Profile from statista, New Orleans had 9.5 million visitors in 2014, and that number skyrocketed to 18.5 million visitors by 2018. While the City's tourism industry is not fully recovered from the pandemic, it is coming back. And there is no denying that tourism has spread from the French Quarter, Convention Center and Superdome, and into other areas of the City. While we don't draw the same amount of tourists yet, there is no reason not to enact the same controls on STRs and hotels now, before it's too late. Everywhere we look we see articles and lists that tell visitors places to explore in the Marigny, Treme and Bywater, the other neighborhoods in the Historic Core, as discussed in Articles 9 and 10 of the CZO.

The CZO groups these neighborhoods together because, as the beginning of Chapter 9 states, they "are the neighborhoods that developed during the city's colonial period, including adjacent areas that continued those development patterns. Consisting of the Vieux Carre, Faubourg Marigny, Treme, Bywater, and portions of surrounding neighborhoods, the Historic Core Neighborhoods reflect a scale resulting from historically pedestrian movement." In other words, the design and function of the neighborhoods is similar. While it made sense to many to have different rules for the French Quarter to protect it from over tourism, the lack of consideration for how those rules impacted the abutting neighborhoods has negatively impacted us. In short, no one lives in a vacuum, and a prohibition in one neighborhood can't help but have an impact on its neighbors. In fact, 66% of the respondents to our poll believe that the



prohibition has had a negative effect on the Marigny. **At this point, drawing distinctions between which side of Esplanade or North Rampart you live on seems arbitrary, as we are all impacted by the ever growing tourism industry, and deserve the same consideration for our Residential Quality of Life. Therefore, we ask that you institute the same rules for the entirety of the Historic Core, and acknowledge what the CZO does- that we're more similar than we are dissimilar.**

ENFORCEMENT- One of the biggest complaints about the STR program has been the lack of meaningful enforcement. We believe that the fines that have been assessed have simply been regarded as a “cost of doing business” and not taken seriously. The State does not allow fines above \$500 per violation, so it seriously handcuffs the City’s ability to assess meaningful fines. There must be a different way to do this. 39% of the respondents to our poll believe that a third violation should cause a property to lose it’s license. Also, we believe that the failure to possess a license should be attached to the property, as it would be too easy to wipe away the cumulative effect of those fines by simply transferring the property from one family member to another, as we have seen happen under the current program.

It is currently difficult to find the adjudication hearings online, making our ability to judge the enforcement process rather difficult. Therefore, we ask that all violations and hearing notices be added to the Notice Me app, just like other applications on the One Stop Shop, that are sent out nightly.

And, lastly, any rules that are considered should be enforceable. Currently, there are limitations on how many bedrooms in a particular building can be used for STR purposes. It is impossible for someone to see inside a building and know how much of that property is being rented out. We agree with the CPC’s plan to have simply one category of STR (Non-Commercial), and not try to govern them by size, such as Large or Partial Unit. This has proven to be too difficult in the past. First, we need to show that we can manage a simple plan, with clearly defined categories, before we create nuance and possible confusion.



Finally, the second to last question on our survey asked “Overall, what do you think the net effects of STRs in the Marigny are?” 14% of the respondents believe them to be a net positive, 11% believe them to have a neutral effect, and a resounding 75% believe them to be a net negative. We thank you for your careful consideration of our concerns, and ask you to learn from the previous programs and prioritize our housing for New Orleanians, and not for tourists.

Sincerely,
Allen Johnson
President