

**PRELIMINARY STAFF REPORT**

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**To:** City Planning Commission  
**Zoning Docket:** 110/14

**Prepared by:** Stephen Kroll  
**Date:** October 30, 2014

**I. GENERAL INFORMATION**

**Applicant:** City Council Motion M-14-381

**Request:** Text Amendment to the Comprehensive Zoning Ordinance, No. 4,264 M.C.S., as amended, to:

- 1) Amend **Article 2, Section 2.2 Definitions** of the Comprehensive Zoning Ordinance to define a new use, "Tobacco Retail Business," as an establishment whose principal business is the sale of tobacco products and accessories, where the sales of tobacco products and accessories (for on or off-premises) produces seventy (70) percent or more of the gross revenue for said establishment, where alcoholic beverages and/or food products are sold or served for consumption on premises, but where neither live entertainment nor gambling are provided, where package liquor products are not advertised outside or off the premises or in any place visible from the exterior of the premises.
- 2) Amend **Article 8, Section 8.5.5 Conditional Uses** of the Comprehensive Zoning Ordinance to classify "Tobacco Retail Business" as a conditional use in the VCC-2 Vieux Carré Commercial District.

**Why is City Planning Commission action required?**

The City Planning Commission is required to make a recommendation on all amendments to the text of the Comprehensive Zoning Ordinance prior to City Council action, in accordance with **Article 16, Section 16.2.3.2 Planning Commission Recommendation** of the Comprehensive Zoning Ordinance.

**II. ANALYSIS**

**A. What is the reason for the text amendment? What area would be affected by the text amendment?**

This text amendment is intended to create a use classification which does not currently exist in the Comprehensive Zoning Ordinance, that of a "Tobacco Retail Business." The

use classification would refer to businesses that are oriented toward the service and consumption of tobacco and related products. This could include a range of business types, including retail stores which primarily sell tobacco and tobacco-related products used for off-premises consumption, as well businesses such as cigar bars and hookah bars, which primarily sell tobacco-related products used for on-premises consumption. These tobacco retail businesses could also sell other products including food and beverages, but they would derive most of their revenue from the sale of tobacco products and accessories.

The Comprehensive Zoning Ordinance does not currently contain a use classification such as this. Currently, businesses which primarily sell tobacco-related products for off-premises consumption are generally considered to be retail stores for zoning and licensing purposes, while businesses that sell tobacco-related products for on-premises consumption are generally considered to be cocktail lounges. The City Council is concerned that uses which are oriented primarily around the sale and consumption of tobacco and tobacco-related products do not truly fall into either classification and that a new classification is necessary to capture those types of businesses. This application is partially motivated by one such establishment located in the VCC-2 District which functions as an on-premises consumption tobacco business though it is not considered to be such an establishment for zoning and licensing purposes. The text amendment would allow this business to be considered to be a tobacco retail business for zoning purposes.

The inclusion in the zoning ordinance of a tobacco retail business use classification would be consistent with the use of a similar term, "retail tobacco business" in the Louisiana Smoke-Free Air Act. That act prohibits smoking in most public places and workplaces, including all restaurants. However, it does allow smoking in some businesses, including retail tobacco businesses and cocktail lounges. By establishment the tobacco retail business use classification in the zoning ordinance, the Council motion would cause the zoning ordinance to more closely align with state legislation.

In addition to creating the use classification, this text amendment also proposes allowing tobacco retail businesses as conditional uses in the VCC-2 Vieux Carré Commercial District. There two geographic areas that are zoned VCC-2 Vieux Carré Commercial District. One spans much of the interior of the area generally bounded by Iberville, Decatur, Bourbon, and Saint Ann Streets and includes notable commercial strips along Chartres and Royal Streets. The second stretches from North Rampart Street to about Bourbon Street approximately between Iberville and Conti Streets, and then continues along the river-side of North Rampart Street, terminating at Esplanade Avenue. Should the text amendment to allow tobacco retail business as conditional uses in the VCC-2 District be approved, any individual tobacco retail business, including the one that motivates this application, would only be allowed if authorized as a conditional use by the City Council.

It should be noted that currently, retail stores are permitted by right (subject to floor area and spacing requirements) in the VCC-2 District. Since businesses selling tobacco and

related products for off-premises consumption are currently generally considered to be retail stores for zoning and licensing purposes, they are allowed by right (subject to those restrictions) in the VCC-2 District. In the VCC-2 District, cocktail lounges are prohibited. As businesses selling tobacco and related products for on-premises consumption are currently generally considered to be cocktail lounges for zoning and licensing purposes, they are prohibited in the VCC-2 District. Given this, the text amendment would have the effect of more strictly regulating businesses selling tobacco products for off-premises consumption and less strictly regulating businesses selling tobacco products for on-premises consumption than they are currently.

**B. What is the existing language of the Comprehensive Zoning Ordinance?**

There is currently no use classification identified in the Comprehensive Zoning Ordinance that is notably similar to the proposed tobacco retail business classification. Most existing businesses that would fall into that classification are likely currently classified as retail stores, restaurants, or cocktail lounges.

**C. What is the proposed language for amendment?**

The definition proposed by the City Council motion for **Article 2, Section 2.2** of the Comprehensive Zoning Ordinance is as follows (new language shown in **underlined, bold** text):

*Article 2, Section 2.2 Definitions*

**Tobacco Retail Business. An establishment whose principal business is the sale of tobacco products and accessories, where the sales of tobacco products and accessories (for on or off-premises) produces seventy (70) percent or more of the gross revenue for said establishment, where alcoholic beverages and/or food products are sold or served for consumption on premises, but where neither live entertainment nor gambling are provided, where package liquor products are not advertised outside or off the premises or in any place visible from the exterior of the premises.**

The motion also proposes for tobacco retail businesses to be classified as conditional uses in the VCC-2 District as follows:

*Article 8, Section 8.5.5 Conditional Uses.*

[...]

**7. Tobacco retail businesses.**

**D. Does the text amendment adequately answer the problem that is being addressed; if not, are other modifications necessary?**

As noted above in Section A, the problem identified by the City Council motion is that the Comprehensive Zoning Ordinance does not currently contain a use classification for businesses oriented primarily around the sale and consumption of tobacco products, either for on- or off-premises consumption. Currently, businesses selling tobacco products for off-premises consumption are generally considered to be retail stores while businesses selling tobacco products for on-premises consumption are considered to be cocktail lounges. Since these types of businesses (particularly those selling tobacco for on-premises consumption) do not cleanly fit into either classification, the City Council motion proposes to resolve this by creating a new use classification specific to these sorts of businesses. Such a classification would be consistent with state law, which identifies and treats tobacco retail businesses differently from other retail businesses and cocktail lounges.

In addition to creating the tobacco retail business use classification, the City Council motion proposes to designate tobacco retail businesses as conditional uses in the VCC-2 District. The classification of tobacco retail businesses as conditional uses in that district is based on a desire to create a path for an existing business, which functions as a business for the on-premises consumption of tobacco products but which is not classified as such for zoning and licensing purposes, to receive a zoning classification that reflects the nature of the business.

The staff supports in concept the idea of creating a new use classification for businesses selling tobacco products for on- or off-premises consumption. However, this distinction would not work well in practice because the City's licensing classifications do not make the same distinctions. Regardless of what they are called in the zoning ordinance, tobacco retail businesses for on-premises consumption would be licensed as cocktail lounges and tobacco retail businesses for off-premises consumption would be licensed as retail stores.

This licensing of on-premises consumption tobacco retail business as cocktail lounges is problematic because it would potentially allow them to become cocktail lounges. The City's Department of Finance does not typically divide a business' total revenue into the revenue derived from food sales, alcohol sales, and tobacco sales, respectively. If tobacco retail establishments and cocktail lounges have the same license, the only way to distinguish between the two is based on what percentage of their revenue is derived from tobacco sales and what percentage is derived from alcohol sales. Since that sales breakdown is unlikely to be enforced by the Department of Finance, there is the distinct possibility of a tobacco retail business becoming a de facto cocktail lounge.

This potential for tobacco retail businesses to become cocktail lounges is problematic because cocktail lounges are prohibited in the VCC-2 District, as they are not allowed as either permitted uses or conditional uses. Creating the tobacco retail business use classification would create the potential for this prohibition to be circumvented by

businesses which are identified as tobacco retail establishments for zoning purposes but which actually operate as de facto cocktail lounges.

Even if it is possible to ensure that tobacco retail establishments do not become de facto cocktail lounges, there is the question of whether tobacco retail establishments should be allowed in a zoning district that does not allow cocktail lounges. The staff believes that there is a distinction between tobacco retail businesses and other types of uses, such as cocktail lounges and retail stores, but does not believe the operational impacts of those uses would necessarily be different. A business selling tobacco products for off-premises consumption will be similar in operational intensity to a retail store selling other sorts of products. Despite the differences in the products they sell, both types of businesses will have similar operating hours and will generate similar levels and types of activity, noise, traffic, and demand for parking. Due to this similar operational intensity, both off-premises tobacco retail businesses and other sorts of retail stores should be allowed in the same zoning districts.

Similarly, while a tobacco retail business selling tobacco and related products for on-premises consumption is a different sort of business from a cocktail lounge, the two uses would be expected to have similar operational impacts and therefore should be allowed in the same zoning districts. On-premises tobacco retail businesses and cocktail lounges are both characterized by people gathering to consume a particular product (alcoholic beverages primarily at cocktail lounges and tobacco products primarily at tobacco retail businesses, though both often feature the consumption of both types of products). The consumption of these products occurs in a social setting and usually occurs during later evening hours. Based on these operational similarities, cocktail lounges and on-premises tobacco retail establishments will be similar in the levels of activity, noise, vehicular traffic, and parking demand they generate, as well as the times of day when this activity is experienced. Of course, there will be variation in operational intensity between individual tobacco retail businesses and individual cocktail lounges, just as there is variation between one cocktail lounge and another based on the particular characteristics of the individual cocktail lounges. Still, in general, cocktail lounges and off-premises tobacco retail businesses are similar in their operational intensity and their impacts on surrounding properties.

Due to this general similarity in their operational intensity, the staff believes that on-premises tobacco retail businesses should be restricted to the same zoning districts as cocktail lounges. Cocktail lounges are prohibited in the VCC-2 District based on the belief that the impacts of their operation cause them to be inappropriate for that district. Following the staff's belief that cocktail lounges and businesses are similar in their operational intensity, the staff concludes that off-premises tobacco retail businesses are similarly inappropriate for the VCC-2 District. As such, they should not be allowed as permitted or conditional uses in the VCC-2 District just as cocktail lounges are not allowed.

This analysis leads the staff to conclude that believes that no changes to the text of the Comprehensive Zoning Ordinance are necessary and the status quo should be preserved. Off-premises tobacco retail businesses should still be called retail stores for zoning purposes, as they are now, and should be permitted by right in the VCC-2 District, as they are currently, and on-premises tobacco retail businesses should still be called cocktail lounges for zoning purposes, as they are now, and should not be allowed as permitted or conditional uses in the VCC-2 District, as cocktail lounges are currently prohibited in that district.

**III. Are the proposed actions supported by or in conflict with the policies and strategies of the *Plan for the 21<sup>st</sup> Century*?**

A land use action is consistent with the *Plan for the 21<sup>st</sup> Century* (commonly referred to as the Master Plan) if it furthers, or at least does not interfere with, the goals, policies, and guidelines, including design guidelines, in the Land Use Element of the Master Plan and is compatible with the proposed future uses, densities, and intensities designated in the Land Use Element of the Plan.

The proposed text amendment would create a use definition for “tobacco retail businesses” and classify them as conditional uses in the VCC-2 District. The areas where the VCC-2 District is applied are designated by Chapter 14 of the Master Plan (the Land Use Plan) as “Mixed-Use Historic Core.” The goal, range of uses, and development character for that designation are reproduced below:

**MIXED-USE HISTORIC CORE**

**Goal:** Increase convenience and walkability for neighborhood residents and visitors within and along edges of historic core neighborhoods.

**Range of Uses:** A mixture of residential, neighborhood business, and visitor-oriented businesses. Uses may be combined horizontally or vertically, and some structures may require ground floor retail with residence or offices on upper floors. In some areas where current or former industrial use is verified, existing buildings may be appropriate for craft and value added industry.

**Development Character:** The density, height, and mass of new development will be consistent with the character and tout ensemble of the surrounding historic neighborhood. Appropriate transitions will be provided to surrounding residential areas.

The proposed tobacco retail business use would be similar to retail stores, restaurants, and cocktail lounges in that it would provide a service to both neighborhood residents and visitors. This sort of use is allowable under the “range of uses” identified for the Mixed-Use Historic Core District, which include neighborhood- and visitor-oriented businesses. Due to this consistency with the allowable range of uses, the staff believes the proposal is **consistent** with the *Plan for the 21st Century*.

#### IV. SUMMARY

Zoning Docket 110/14 considers a text amendment to the Comprehensive Zoning Ordinance to create a zoning use classification for “tobacco retail businesses,” which are those businesses primarily oriented toward the sale of tobacco and related products for on- or off-premises consumption. The text amendment would further classify tobacco retail businesses as conditional uses in the VCC-2 Vieux Carré Commercial District. Currently, businesses selling primarily tobacco products for off-premises consumption are classified for zoning and licensing purposes as retail businesses and businesses selling primarily tobacco products for on-premises consumption are classified as cocktail lounges. Since tobacco retail businesses, particularly those selling tobacco for on-premises consumption, do not cleanly fall into these classifications, the Council proposes to resolve this problem by creating a new use definition intended specifically for these businesses. Doing so would be consistent with state law, which identifies and treats tobacco retail businesses differently from other retail businesses and cocktail lounges.

The staff is supportive of the idea in concept but believes it would be problematic in practice because the City’s licensing does not make the same distinction between tobacco retailers and cocktail lounges and other sorts of retail stores as the zoning ordinance would. Regardless of what they are called in the zoning ordinance, tobacco retail businesses for on-premises consumption would be licensed as cocktail lounges and tobacco retail businesses for off-premises consumption would be licensed as retail stores. This is problematic because cocktail lounges are entirely prohibited in the VCC-2 District. Creating the tobacco retail business use classification would create the potential for businesses which are identified as tobacco retail establishments for zoning purposes but licensed as cocktail lounges to actually operate as de facto cocktail lounges, circumventing the VCC-2 District’s prohibition on cocktail lounges.

Even aside from this issue, the staff believes that despite the differences in use between tobacco retailers for on-premises consumption and cocktail lounges, they are similar enough in operational intensity and the amounts and types of activity which they can generate that they should be restricted to the same zoning districts. Following this logic, since cocktail lounges are prohibited in the VCC-2 District, on-premises consumption tobacco retailers should also be prohibited. Off-premises consumption tobacco retailers are similar in operational intensity to other retail stores and should be allowed by right in the VCC-2 District, just as other sorts of retail stores are. Given this analysis, the staff believes it is most sensible for the status quo to be preserved and for no changes to be made to the Comprehensive Zoning Ordinance. Tobacco retailers for on-premises

consumption should still be classified as cocktail lounges and prohibited in the VCC-2 District while tobacco retailers for off-premises consumption should still be classified as retail stores and allowed in the VCC-2 District.

**V. PRELIMINARY STAFF RECOMMENDATION<sup>1</sup>**

The staff recommends **denial** of Zoning Docket 110/14.

**VI. REASON FOR RECOMMENDATION**

1. The distinction between tobacco retail businesses and cocktail lounges and other sorts of retail businesses is sensible in concept but difficult to apply in practice. The City's licensing does not make the same distinction between tobacco retailers and cocktail lounges and other sorts of retail stores as the zoning ordinance would. Despite their zoning classification, tobacco retail businesses for on-premises consumption would be licensed as cocktail lounges and tobacco retail businesses for off-premises consumption would be licensed as retail stores. This is problematic because cocktail lounges are prohibited in the VCC-2 District. The tobacco retail business use classification would potentially allow businesses to circumvent this prohibition if they are identified as tobacco retail establishments for zoning purposes because they would be licensed as cocktail lounges and may ultimately operate as de facto cocktail lounges.
2. Despite the differences between tobacco retailers for on-premises consumption and cocktail lounges in the nature of their use, they can be similar in operational intensity and the amounts and types of activity which they can generate. As such, they should be restricted to the same zoning districts. Since cocktail lounges are prohibited in the VCC-2 District, on-premises consumption tobacco retailers should also be prohibited. Meanwhile, tobacco retailers for off-premises consumption are similar in operational intensity to other retail stores and should be allowed by right in the VCC-2 District, just as other sorts of retail stores are. Given this analysis, no changes to the Comprehensive Zoning Ordinance are recommended. Tobacco retailers for on-premises consumption should still be classified as cocktail lounges and prohibited in the VCC-2 District while tobacco retailers for off-premises consumption should still be classified as retail stores and allowed in the VCC-2 District.

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<sup>1</sup> Subject to modification by the City Planning Commission



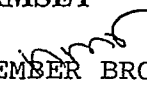
MOTION

NO. M-14- 381

SEP 16 '14 03:17 PM

CITY HALL: September 4, 2014

BY: COUNCILMEMBER RAMSEY

SECONDED BY: COUNCILMEMBER  BROSSETT

**BE IT MOVED BY THE CITY COUNCIL OF THE CITY OF NEW ORLEANS,**

That the City Planning Commission is directed to conduct a public hearing to consider an amendment to the text of Article 2, Section 2.2 of the Comprehensive Zoning Ordinance No. 4264 M.C.S., as amended, to create a new definition of Tobacco Retail Business and to define said use as an establishment whose principal business is the sale of tobacco products and accessories, where the sales of tobacco products and accessories (for on or off-premises) produces seventy (70) percent or more of the gross revenue for said establishment, where alcoholic beverages and/or food products are sold or served for consumption on premises, but where neither live entertainment nor gambling are provided, where package liquor products are not advertised outside or off the premises or in any place visible from the exterior of the premises, and to consider an amendment to Article 8, Section 8.5.5 to provide that a Tobacco Retail Business is a Conditional Uses in VCC-2, of the Comprehensive Zoning Ordinance No. 4264 M.C.S., as amended, and the designation of such on the corresponding zoning base maps of the City of New Orleans.

**BE IT FURTHER MOVED BY THE CITY COUNCIL OF THE CITY OF NEW ORLEANS,** That in the process of studying and reviewing this request, that the City Planning Commission staff is directed and granted the flexibility to make all appropriate changes to the

proposed regulations and any existing corresponding regulations in the Comprehensive Zoning Ordinance No. 4264 M.C.S., as amended, to establish consistency and continuity with the format of the existing zoning code, to add references wherever references are customary, needed and/or appropriate, to make the appropriate adjustments to clarify any ambiguities or mistakes, and to make adjustments deemed necessary in light of public testimony resulting from this study and review.

**THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION OF THEREOF AND RESULTED AS FOLLOWS:**

**YEAS:** Brossett, Cantrell, Gray, Guidry, Head, Ramsey, Williams - 7

**NAYS:** 0

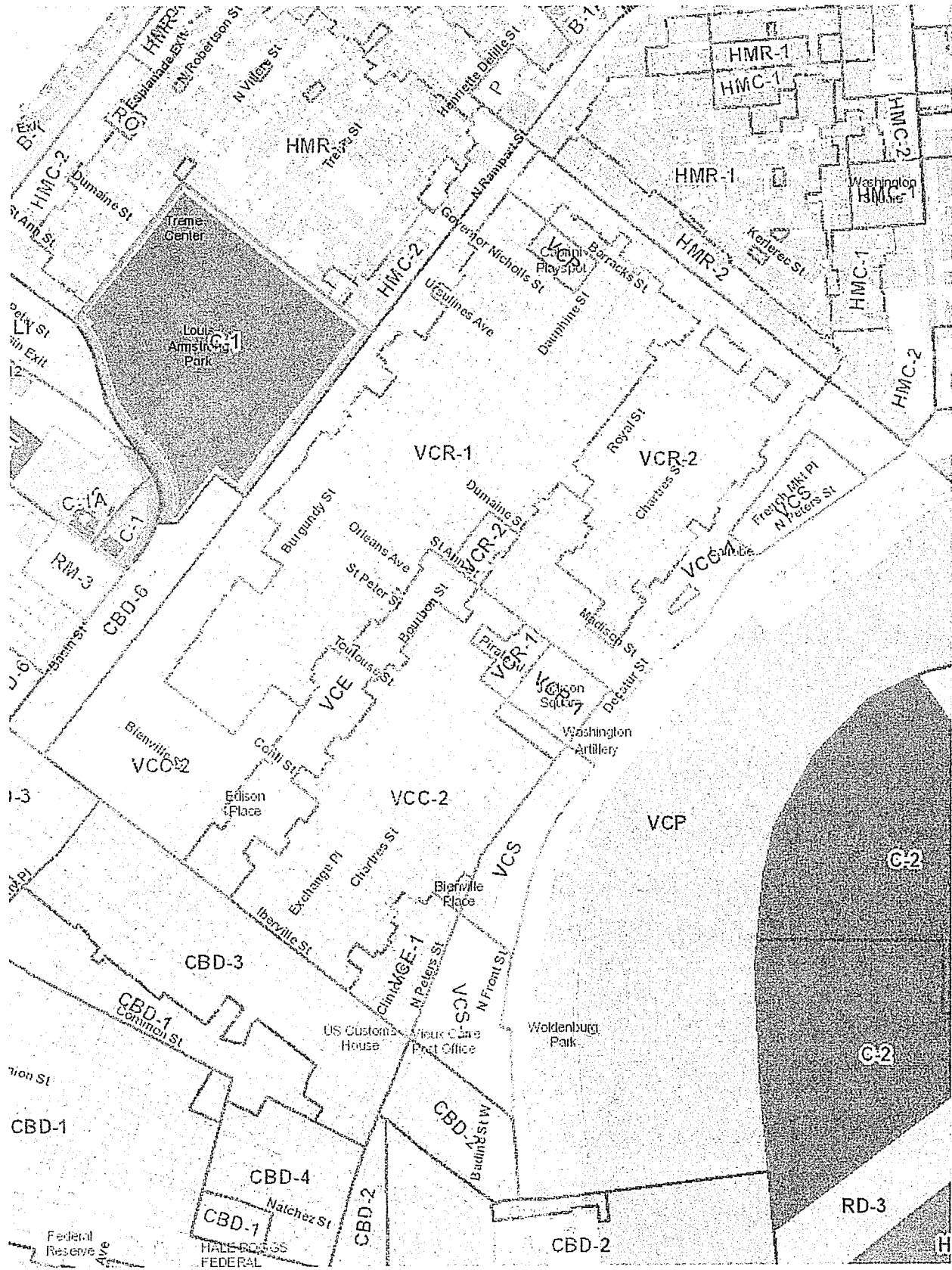
**ABSENT:** 0

**AND THE MOTION WAS ADOPTED.**

THE FOREGOING IS CERTIFIED  
TO BE A TRUE AND CORRECT COPY

*Lera W. Johnson*

CLERK OF COUNCIL



November 3, 2014

City of New Orleans  
City Planning Commission  
1340 Poydras Street, Suite 900  
New Orleans, LA 70112  
Re: Zoning Docket Number 110/14

Dear Planning Commission Members:

We write on behalf of French Quarter Citizens, Inc. (FQC) and Vieux Carré Property Owners, Residents and Associates (VCPOA), French Quarter community organizations that work to preserve the quality of life in the Vieux Carré' neighborhood, its historical character and architecture.

We urge you to deny the request by City Council Motion No. M-14-381 for a Text Amendment to Article 2, Section 2.2, Definitions of the Comprehensive Zoning Ordinance to create a new definition of "Tobacco Retail Business." The sale of tobacco products is currently permitted under retail zoning, while alcohol sales are covered under restaurant licensing.

There is no need to create a new "Tobacco Retail Business" category that essentially combines tobacco and alcohol sales. This new zoning category would have the effect of allowing bars as conditional uses in the VCC-2 zone, which would open nearly half of the Upper Quarter to additional bars. Given the density of bars in the French Quarter, there is no public need to allow more. More importantly, over the years of public meetings and opportunities for public input regarding the draft Comprehensive Zoning Ordinance, there was no call, nor even any proposal, to create categories in the Vieux Carre that would allow more bars.

Currently, in the VCC-2 zone, the zoning categories concerning tobacco sales and restaurants selling alcohol are distinct. Creating a category that blends the two would dilute the definitions of both and create a murky area that involves retail outlets, restaurants and bars. Such inconsistency is not only confusing for citizens, policy makers, and business operators, but more so, it's at odds with the purpose and spirit of the Master Plan and the CZO.

Beyond the policy implications, there are the logistical ones. The new category would be ostensibly regulated by tracking the percentage of revenue of tobacco sales, which would have to constitute at least 70% of the establishment's revenue. The enforcement challenges such a standard would pose would be difficult under the best of circumstances, and the city does not have a solid track record on such matters.

Lastly, this text amendment change would not only affect the French Quarter, which is already served by an abundance of ABOs, but would have repercussions throughout the city because it would throw into upheaval the current zoning regulations that affect existing tobacco retailer and tobacco bars.

We see no need to create an entirely new zoning category and strongly request that you deny this application.

Regards,

CoCo Garrett  
President, French Quarter Citizens

Carol Allen  
President, VCPORA