

July 9, 2018

The Committee of the Whole
Chairman Phil Mendelson
1350 Pennsylvania Ave NW, Suite 105
Washington DC 20004

CC: Councilmembers: Trayon White., Brianne K Nadeau, Jack Evans, Elissa Silverman, Robert White, David Grosso, Kenyon McDuffie, Brandon Todd, Mary Cheh, Anita Bonds, Vincent Gray

Re: Testimony of Listen Local First DC on B22-0839 - Proposed Amplified Noise Amendment Act of 2018.

Dear Members of the Council,

Listen Local First (LLF) was established a little over seven years ago for the purpose of creating alternate avenues for local music exploration and to raise the profile of working musicians living within the District. The initiative aimed at creating connections between locally owned businesses, local artists, cultural institutions and government officials to better navigate our own music economy and create greater opportunities for musicians to have a say in their own success in this city. Since its inception LLF has, hosted two local music policy conferences in coordination with the Music Policy Forum and Georgetown University, created connections between hundreds of local businesses and musicians, released quarterly playlist showcasing rising talent in all genres across the district, facilitated dozens of meetings between musicians and local government officials, produced over 50 smaller local events and panel discussions, co-produced the Kingman Island Bluegrass and Folk Festival and co-founded DC's largest all local music festival, Funk Parade.

Listen Local First is submitting this testimony on behalf of 57 co-signers including musicians, arts collaboratives, labels, media outlets, music policy experts and local business owners in opposition to the proposed "Amplified Noise Act of 2018" as well as the emergency version of the proposed legislation. The co-signers are disappointed that Chairman Mendelson, along with Councilmembers Bonds, Cheh and Evans would introduce a piece of legislation that would so negatively impact our city's cultural heritage without taking the time to actually meet with the creative community.

There are a small handful of DC residents who have complained about noise levels. The majority of the residents in Ward 2 and 3 either do not have a problem with the noise levels of buskers, expect that level of noise in a busy entertainment section of town, or have taken the step to properly soundproof their apartments and establishments.

1) Proposed changes to 20 DCMR §§§ 2713, 2799, and 2800 will irreversibly damage the cultural fabric of Washington D.C.

Washington DC has a vibrant music scene made up of street performers, brass bands, street drummers, gogo bands, soul singers and more. These performers are some of DC's most talented musicians who are honing their craft putting in the hours performing regularly in public space to become the best artists they can be. Within the past couple of years we have personally witnessed new DC residents who are not familiar with the culture of music and performance in DC treat DC musicians and public performance as a nuisance. Someone's inability to appreciate a specific type of art should not be able to stifle that type of art. Such measure would be a violation of all of our freedom of expression.

The current legislation and DCMR code clearly states the levels shall not exceed 80db within the closest occupied residence. That is a standard that can be and should be enforced. Implementing a reasonable level of noise standard is absolutely not enforceable when dealing with musicians and amplified noise.

DC Musicians throughout the city are being forced out due to rising costs of living, lack of affordable work and practice space and venues that have been uninviting to some of DC's most culturally significant genres. This legislation would take away a very important performance outlet for the music community. These are spaces with very high foot traffic where members of the public engage with the performers. Performers will not perform in public space if they are not receiving exposure, tips, and able to practice their art form in front of a crowd. Downtown areas like Gallery Place have grown louder because more and more residents are attending sporting events due to the increased excitement around the Washington sporting teams. That in turn has created a larger nightlife and provided the perfect opportunity for these musicians to proudly show off DC music and the culture of street performance in front of an increasingly diverse crowd.

Under this legislation it would be cost and time prohibitive for individual musicians to have to apply for special events permits to allow them to perform with amplification. Musicians' livelihood would be limited to performing at the handful of festivals and music events around the city that's if they get hired for those events.

2) 100 feet away from the source of amplification is not an objective standard, it is too small of a radius and there are many other amplified sounds in the neighborhoods that travel more than 100 feet.

Sounds that can travel well over 100 feet on a quiet Tuesday afternoon can be completely washed out by the immense amount of noise from traffic, bars, people, car stereos and more on a Saturday evening. 80dbs however is an objective measurable standard of noise.

Using the term "individual of normal hearing" is not an objective standard. Who will be the one that can determine whether the person has normal hearing? Who will determine if that individual with normal hearing has any additional sound sensitivities which has nothing to do with hearing.

As one ages they lose hearing in the upper sound register and become more sensitive to the lower register.

How will police enforce the 100 feet radius? Will they stand there with a measuring tape? How will they enforce horizontal or diagonal distances? Also if the musicians stop playing music when they see a police officer approaching how can the officer give a fine without a measurement? That would be like giving a speeding ticket without a speed gun and expecting that to be upheld in a court. Again this is another reason why officers would probably need to carry decibel readers and if that is the case then why not just enforce the original standard.

How will police enforce amplification coming from the sounds of TVs and DJs wafting out of the different bars and restaurants throughout the neighborhood? On a quiet afternoon all of those amplified noises including the sound of car stereos can be heard from over 100 feet away.

3) These musicians are not creating a disturbance. They are some of the most talented musicians in the city building their own small businesses and have received accolades all over the district and even nationally.

As much as DC has a long history of street performance there is an equally long history of street performers being treated as a nuisance,¹ and the act of busking treated like panhandling. These artist that take to our streets range from complete novices trying to cut their teeth and reach that famous 10,000 hours of practice to contestants for NBC's America's Got Talent.

Malik DOPE Drummer is a DC Native who used to perform with the Howard University Marching Band He got his start with his unique dance and performance style after spending hours performing in public with his drum and some amplified backing tracks. Malik is a DC music sensation and is now performing all over the country at national festivals and with artists like Usher, Wale and Rae Sremund and receiving much deserved press from *Time Magazine*, *The Washington Post*, *Complex*, *Fader* and all other local outlets. Malik is also slated to be an upcoming contestant on NBC's America's Got Talent.

Malik has also started performing with the phenomenal 14 year old drummer and vocalist, internet sensation Eli White showing him the ropes and helping him grow his fanbase in DC. ²

Kenny Sway who's viral video of him serenading his daughter in front of the Gallery Place Metro has been featured on news broadcasts across the country. Our very own *WJLA* said that Kenny Sway's voice has been said to be "the stuff that dreams are made of". ³ Kenny uses a

¹https://www.washingtonpost.com/local/trafficandcommuting/busker-wins-first-round-in-suit-against-metro-ban-on-accepting-tips-near-stations/2014/08/21/97fd216c-2860-11e4-8593-da634b334390_story.html?no_redirect=on&utm_term=.b86ea8c13c06

² <https://www.youtube.com/watch?v=pmnbbR7HH4k>

³<http://wjla.com/features/good-morning-washington/why-all-eyes-are-on-singer-dc-native-kenny-sway-and-why-yours-should-be-too>

microphone to not stress his voice and other electronic equipment and distortions when he plays with an accompanying band. New videos of Kenny and his bands appear online by entertained tourists every day.

Brass bands from Steelo Soul, Crush Funk Brass, The Experience Band, Brass Connection, Dupont Brass, Spread Love Band and more are all DC sensations. Dupont Brass busked to cover some of their college costs and pay for studio time. All of these bands get booked all over town for local festivals like Funk Parade where tens of thousands of DC Music fans come out to dance with them in the street. All of these bands from time to time use amplifications for vocalists or when other musicians come in and play with them.

Musicians are successful local businesses and economic drivers. The younger generations of musicians like Eli or Lo'Ryn who performs with the Unknowns Band use viral video of their street performances as one of the main tools to share their music, reach new audiences, and build their name while uplifting the vibrant DC music scene. Street performance is their version of American Bandstand and now a crucial tool for them to succeed in their career.

The number of local businesses that claim these musicians are a nuisance pale in comparison to the number of businesses that will be hurt by the lack of the vibrant street performance feel that brings so many people to the neighborhood on a daily basis.

4) Restricting Amplified sound will not solve any problem for sensitive neighbors. This proposed legislation is a slippery slope that will lead to banning all outdoor unpermitted performances.

As Councilmember Evans mentioned and many of those testifying said, the original purpose of this legislation was to limit all sound from drums horns and amplified sound. As we all know, horns, brass bands and drums can be much louder than an amplified voice or instrument and can easily travel further than 100 feet.

We believe the Councilmembers who introduced this legislations are applying an overly broad harmful solution to a problem that only impacts a handful of their residents. There are also a number of residents who testified who seem to have heightened sensitivity to any type of noise.

5) Proposed legislation § 2713 is overly punitive and prejudice.

This legislation will unfairly discriminate against a subsection of performers and musicians that regularly present the unique cultural sounds of DC. Cities all around the country have acoustic songwriters busking in public or classical musicians playing in certain public space. Those types of music are not what traditional DC music sounds like.

DC music is beat driven, funk soul hip hop and gogo. These are the urban demographics that are being targeted by this legislation. These are the old and the new sounds of the city.

The original form of the legislation called for a \$300 fine, up to 10 days in jail and confiscation of instruments and musical equipment. The emergency legislation seems to just call for a \$300 fine. Any fine in the range of \$300 is overly punitive, arbitrary and in no way equates to the harm of the offense itself. A \$300 fine is much higher than any traffic violation in the city which on its face carries much more serious potential for physical harm than amplified music.

6) Busking and Street Performance are not new DC phenomena and are the direct result of a much louder, vibrant and growing DC downtown which is a benefit to the city.

DC culture is intertwined with DC musicians, gogo drummers, bucket drummers, street dancers, horn players, brass bands. These are the sounds that make our entertainment zones more vibrant and make DC a unique city to live in. These are also the things that attract tourists and make DC more than just a city that hosts the nation's Capital.

Additionally, musicians have tried to move their performances into the metros like in other cities but WMATA does not allow for music in the metro and instead the musicians must perform in less controlled harsher environments outdoors.

Musicians and street performers migrate to the spaces by Metro where there is a lot of foot traffic, noise from restaurants and venues, heavy traffic and motor vehicle noise. This transformation has been happening in areas like Gallery Place for over a decade. This means long term residents have seen the change coming. They were aware of the increased property value that comes with living in a lively entertainment zone and benefit greatly from the luxuries of having shopping food and a safe and lively entertainment district at their doorstep.

7) If the city followed the well established Agent of Change Principle then the legislation would be obsolete.

The Agent of Change Principle is an established principle of city and urban planning that states that the person or business responsible for the change is responsible for managing the impact of the change.⁴ What this means is that any developer that has built new residential units in a neighborhood like Gallery Place in the last 8 years is solely responsible for covering the cost of heightened sound proofing because they knew they were building in a very busy loud entertainment district where sound gets amplified as it travels upwards.

8) There are objective laws in place that can better handle noise disturbance if they are implemented properly.

Washington DC has laws in place that are objective, based on technology, and do not defacto stifle an entire community of artists. The real issue is enforcement of the existing standards. If

⁴ <http://musicvenuetrust.com/2014/09/what-is-agent-of-change-and-why-is-it-important/>

this legislation focused on working with DCRA and requiring MPD to carry decibel readers to better enforce regulations in place then real data could be collected on actual noise levels inside apartments and whether or not residents complaining have heightened sensitivity to noise.

9) There are other avenues that can ensure a more fair and just solution to handling noise disturbances from musicians and entertainers.

There is currently legislation to create a Commission on Nightlife and Entertainment as well as the Mayor's Cultural Plan to preserve DC culture and expand the arts while finding ways to communicate the needs of artists to multiple agencies and communities throughout the government. Both of these pieces of legislation and initiatives will be able to study noise and noise complaints in a more granular and data driven way. The Council should not weigh in on the livelihood of the music community without the backing of one of these forthcoming entities or without a designated task force made up of aggrieved citizens, neutral agents and members of the music community and local arts advocates.

10) There were no mechanisms put in place to properly inform the members of the music community and art leaders throughout the community.

While the Chairman's Office and the office of the three councilmembers who introduced this legislation claim that they took all of the necessary steps to publicly announce the legislation and the hearing which happened on July 2nd, those steps were not enough. Of the 45 people who testified at the hearing only 2 represented the music community because they found out about the hearing the day before. Street musicians who showed up at the hearing were not even given the opportunity to speak on their behalf. No additional steps were taken by any of the councilmembers to reach out to organizations that regularly work with the music community, the musicians themselves or the music policy experts in the city. There was a supposed roundtable discussion a couple months back that was as one sided as the hearing itself.

The music community is not an entity that has the resources to hire attorneys, pay for lobbyists and fund advocacy initiatives, therefore mechanisms must be put in place to increase access to information regarding: Bill Introductions, Hearings , Roundtables and final Vote Times. Currently creatives are not being reached when it comes to these very important proceedings and decisions that have a direct affect on their livelihood. More heavy lifting must be done intentionally by the council.

The co-signers urge all members of the council to VOTE NO on the Emergency Legislation and schedule an additional series of hearings and meetings where stakeholders, including residents, business, and the music community, are properly notified and represented. It is your obligation as representatives to ensure that the District's laws achieve the goal of balancing the needs of these stakeholders, and I encourage you to abandon the current effort which fails to do so.

Thank you for your time,

Members of the DC Music Community including:

- Christopher Naoum: Listen Local First DC, Arts Action DC, Funk Parade & Kingman Island Bluegrass and Folk Festival
- Jennifer Langer: ECE (agency), Band Leader- Moonshine Society, Musician- The Ron Holloway Band
- Graham Smith-White: Professional Musician (The Sunrise Review), Founder-The Infinite Goodness, Resident Artist-Washington D.C. Mayor's Office of Cable, Film, Television, Film, Entertainment
- Rev. Erik W. Martinez Resly, Co-Director, The Sanctuaries
- Sriram Gopal - Jazz Musician
- Molly D. Ruland - Founder of One Love Massive
- Luke Stewart - Jazz Musician
- Matthew Dowling - Musician
- Margaret Gilmore - DC Public Library, programs coordinator
- Aaron Myers - Capitol Hill Jazz Foundation
- Kymone Freedman - WeAct Radio
- Joy Ford Austin - Director Humanities Council DC
- Kevin Erickson - Director of the Future of Music Coalition
- Anna Harwell Celenza - Thomas E. Caestecker Prof. of Music Georgetown University
- Jim Thompson - Multiflora Productions
- Nico Hobson - GoWin Radio
- Jamal Gray - Uptown Art House, Musician
- Clifford "Cartel" Bussie - Musician & Organizer
- Ronald Dixon, Studio202 DC
- Rodney Yarborough, BLIS.fm
- Julianne Brienza, Capital Fringe
- Odetta Hartman - Musician
- Katea Stitt - Interim Programming Director WPFW
- Paige H Muller - Curious Caravan
- Jess Elliot Myhre - Musician
- Danielle Vu - Musician
- Mylie Durham - Growroom Productions
- The Experience Band & Show
- Alex Tebelev - DCDIT, Musician
- Stephen Baiyewu - Trillectro
- Dior Ashley Brown- Emcee, Actor, Poet-Leader of The dAb Band, Founder of the DC Music Summit, 202 Creates- Creative
- Miles Ryan - 7DrumCity Owner & Founder
- Joshua Carroll, Catharsis on the Mall, Revolutionary Motion
- Myra Sinnott "DJ BEATrix" - Musician, Meso Creso
- Mary-Elizabeth Claire Novak, DC Voter and member of Meso Creso
- Graham Robertson - Musician, AZTEC SUN; 7DrumCity Employee
- Rose Jaffe - Local artist and owner of "The Stew" Art and Community Space

- Allison Guy, Meso Creso
- Jessica Reid, Meso Creso
- Beth Ferraro, The Art Island
- Marcus Moody, The Hip-Hop Orchestra. Artist and Arts Administrator.
- Mandy Lee, Love + Solidarity Collective and DC voter
- Scott Brown, Musician, Love + Solidarity Collective and DC voter
- Raha Wala, DJ, Meso Creso
- Anand Mylapore, DJ, Meso Creso
- Kokayi - Musician
- Elijah Jamal Balbed - Musician
- Capitalbop
- Rhizome DC
- Maplehouse Collective
- Artists for a Free World DC
- Morgan West - A Creative DC
- Chris Bulbulia, Funk Parade; Arts Action DC; Musician - Dr. Badlove and the Remedies
- Ryan Sarafolean, AZTEC SUN
- Adam Kent, AZTEC SUN
- Anastasia Antoinette, Champion Sound Band - Musician