



March 3, 2009

[Hon. Eugene Schulter](#)

Chairman, Chicago City Council Committee on License and Consumer Protection
121 North LaSalle Street
City Hall, Room 300
Chicago, Illinois 60602

RE: Event promoter ordinance

Dear Alderman Schulter:

As the independent advocate for Chicago's music community, the Chicago Music Commission (CMC) is writing to share with you our views on what we understand to be the most current version of the revised event promoter ordinance that is awaiting reporting out of your License and Consumer Protection Committee. We understand that you and the Committee are continuing to work on this ordinance and have not yet set a date for a Committee hearing on it.

We have many concerns with this ordinance in its present form, which we summarize below.

We are also suggesting alternative proposals that we believe will allow the music community and the City to achieve their shared objectives: the continued flourishing of Chicago's music community and music economy, the enhanced safety of music fans, and the increased transparency and accountability of promoters.

Above all else, CMC believes that the music community and government must reorient their relationship so that Chicago may become a world-class music city. The City must embrace the Chicago music community in the same way as our competitor city governments such as Seattle, Austin, and San Francisco are doing. Those cities have implemented laws and policies that actively bolster their music communities rather than creating additional regulatory and financial burdens—and they have healthy, growing cultural economies as a result.

Despite a less supportive city government than other cities, Chicago's music community gives Chicago a global tourism draw, generates hundreds of millions of dollars in entertainment revenue, and provides more than 50,000 jobs. Indeed, music is one of Chicago's most important and visible exports. Now, Chicago music's vibrant and diverse current scene and rich history gives Chicago music's "creative class" the unique ability to help Chicago emerge from the current economic



downturn and beyond. But first our leaders must acknowledge Chicago music is a positive economic and cultural force rather than merely entertainment or source of revenue—or, as we believe is reflected here, a potential threat to public safety.

In general, we have three objections to the ordinance as currently drafted:

- Other, less burdensome, means are currently available to address public safety and accountability concerns, and those means (including existing insurance coverage and control of venues during an event as required under the PPA/Special Events code) should be better enforced first.
- The City Council, law enforcement, and the music community, working together, need to do more research to understand what is and is not working when it comes to presenting safe music events in Chicago. Indeed, many in the music community are not even aware of what specific conduct the City is attempting to address with this proposed ordinance.
- The ordinance creates an unnecessary and overly burdensome layer of new regulation that will increase costs for the smallest and most fragile of Chicago's small music businesses while failing to add viable safety and transparency measures.

We gratefully acknowledge the significant and meaningful time and effort that you and the Department of Business Affairs and Licensing (DBA) have made in attempting to address CMC's concerns regarding this ordinance. Indeed, you and DBA have made positive changes to the ordinance over the course of our many discussions, including tightening and crafting exemptions to the definition of "promoter", lowering the required insurance coverage, and creating a sliding scale license fee. This process has shown CMC that even where we cannot find common ground on every issue, we can work together. Ultimately, even though we oppose this draft of the ordinance, we hope to continue our healthy dialogue about how to grow Chicago's music culture to benefit residents, music fans and small business owners.

In that spirit, we have come to believe, based on our conversations with you as well as this draft of the ordinance, that CMC and the City share three fundamental concerns about how music is currently being promoted in Chicago:



CMC AND CITY GOVERNMENT SHARE CONCERNS ABOUT HOW MUSIC IS PROMOTED IN CHICAGO

The Chicago promoter industry is not always transparent

Based on CMC's conversations across the community, the Chicago promoter industry currently remains a largely unexplored world. We are not aware of any verifiable research to determine who is promoting what events in Chicago, how many active promoters exist, and what events those promoters are promoting. We hold that promoters of music in Chicago have helped Chicago become one of the most diverse and unique music cultures in the world. In many ways, they are the lifeblood of the economic and cultural powerhouse that is Chicago music. There are those who are clearly in the business of promotion, and many more who do not identify themselves as professional promoters, but promote events only occasionally or just once.

And we have not seen any verifiable evidence of specific law enforcement problems with promoters that have arisen in the past that would warrant regulatory intervention. The "Chicago Independent Review Panel of Building Safety Enforcement Powers" report that the City cites in this version of the ordinance addressed failures in building, liquor, and occupancy City code compliance by the owners and operators of the E-2 nightclub (not by promoters) as well as failures in enforcement by City authorities.¹ We welcome a discussion about venue and promoter conduct and how to create dialogue among law enforcement, the music community and City officials. We have heard anecdotes about the problematic conduct of some "underground" promoters, but we have also seen the standard-setting promotion practices of exemplary community members such as JAM Productions, The Metro, Buddy Guy's Legends, The Double Door and Schubas Tavern.

Public safety is of paramount concern

Music events in Chicago draw crowds, and if not managed safely, crowds can create public safety risks. CMC and its constituents in the Chicago music community place public safety above all else and support responsible and workable solutions to improve public safety at music events. CMC believes that there should be discussions with the Chicago Police and Fire Departments, who have existing authority to deal with public safety concerns at promoted shows, to address how to more effectively deal with the isolated conduct of some "underground" promoters

¹ See Page 5 of this document for an extended discussion on why the ordinance as drafted creates an unnecessary additional layer of regulation for Chicago music promoters.



that have raised concerns.

Those in the business of promotion should be held accountable for their conduct at music events

The vast majority of music in Chicago is performed at PPA or Special Events licensed spaces. And the vast majority of PPA licensees are upstanding, law-abiding businesspeople. Currently, the PPA/Special Events licensing regime creates strong incentives for licensees to ensure that music events are safe and well run—and mandates severe penalties, including loss of the license, for noncompliance. Thus the vast majority of PPA venues and Special Events licensees tightly control their licensed spaces for music events and only work with promoters with whom they have an established, contractual relationship. But in the hypothetical case where a PPA or Special Events licensee does not retain sufficient control over his space and a promoter’s negligence leads to a safety incident, CMC believes that it is reasonable to in some form hold both the promoter and venue accountable.

Unfortunately, despite these shared goals and the City’s many revisions to the ordinance in response to CMC’s and others’ concerns, the ordinance in its current form still does not effectively create a system that would allow for greater accountability and transparency of the Chicago promoter industry while taking account of the realities of doing business in Chicago’s music economy.

CHICAGO’S MUSIC COMMUNITY DESERVES AN ORDINANCE THAT ENCOURAGES FLEDGLING “CREATIVE CLASS” MUSIC BUSINESSES TO GROW

We understand that the City is seeking new and creative revenue sources as it attempts to weather the economic downturn. However, Chicago’s small music promoter businesses, despite their unique economic and cultural contributions to our city, are extremely fragile enterprises that operate on very thin profit margins and in a regulatory climate that treats them not as treasures of Chicago, with specialized business needs and practices, but as safety risks and mere tax revenue generators.

Additionally, much of Chicago’s music emerged into public prominence slowly, from small venues, and with the support of small promoters. Their work in particular should be supported, not discouraged.

The proposed promoter insurance provision creates potentially high costs for those least able to afford it.

The proposed ordinance requires licensees to obtain promoter insurance for any



promoted event, even if it takes place at a licensed and already-insured space. If this becomes law, most promoters would be required to purchase single-event insurance, which CMC has learned would be extremely expensive. The City's recent revision to this ordinance allows for a promoter, in theory, to obtain "multi-event" insurance, which is intended to reduce the costs of purchase for promoters. However, CMC has learned that this new form of insurance is only being offered experimentally by one broker and has yet to be adopted by others. Therefore, CMC fears that too many small or new promoters—those least able to afford either the expensive single event insurance or the potentially unavailable and untested multi-event insurance—will be unable to obtain *any* required insurance and be shut out of the promoter market all together. CMC is very concerned that this will dampen the vibrant promoter community in Chicago and lead to less music in Chicago.

Additionally, the requirement that the promoter list the City of Chicago as an "additional insured" is not sufficiently specific. Our insurance industry sources inform us that in order for the City of Chicago to be listed as additionally insured on any policy as the ordinance as drafted requires, the underwriter must know exactly against what risks they are additionally insuring the City. In some cases an "additionally insured" provision will be fairly straightforward for an underwriter to issue, but in too many other instances we have been told that underwriters will demand much more specific information from a promoter and from the City before issuing a policy that additionally insures the City.

It is again worth noting that most promoters promote music in PPA/Special Events licensed spaces. These spaces, under existing City code, are required to be insured and that insurance in all cases far exceeds the minimum liability coverage that is required under this ordinance as drafted.

Because most venues and Special Events spaces are licensed and retain control over their spaces, there is an existing and more effective framework in place that can be used to address the City's objectives

It is widely known that many PPA and Special Events licensees regularly contract with various outside promoters for use of their PPA/Special Events-licensed spaces. For these common and usually incident-free events, the PPA/Special Events licensee is assuming substantial business risk; if the contractee creates a public safety incident or in any way violates the terms of the PPA or Special Events license, the licensee alone faces the risk of losing his license. Because of this substantial risk and assumed responsibility, PPA/Special Events licensees currently go to great lengths to ensure that their licensed spaces are controlled and managed responsibly at all times for the safety of their customers and Chicago residents (including having their



staffs on-site for the duration of the event), especially when working with outside promoters. Indeed, the proposed ordinance acknowledges this reality by exempting PPA licensees from needing a promoter license to promote their own events.

Thus, CMC believes that evidence of a legally binding contract, with an appropriately insured PPA licensee, would provide sufficient evidence of a controlling, responsible party while placing the burden of safety and insurance on the already-licensed venue and without imposing undue financial and administrative burden on Chicago's small promoter music businesses.

Young promoters will be effectively shut out of a substantial portion of the music promotion market in Chicago

The City has improved this version of the ordinance by allowing individuals over the age of 18 to obtain a promoter license. However, the ordinance continues to unnecessarily prohibit any licensee under 21 from promoting an event where alcohol is being served.

Alcohol sales are one of the key revenue sources for venue owners (and are a key tax revenue source for City government). In Chicago, most promoted music takes place at venues serving alcohol—including the popular “all ages shows” where customers over and under 21 coningle. If this version of the ordinance becomes law, venue owners will be reluctant to contract with an under 21-year-old promoter (and be forced to put on an alcohol-free event) given the potential cap in their profits compared to contracting with an older promoter.

Further, because PPA licensees control their venues during a promoted show, including access to the bar and alcohol, they appropriately mitigate the risk that an under 21-year old promoter would somehow provide alcohol to minors. We believe it is appropriate and correct that an underage promoter cannot engage in alcohol sales or profit from them. But as long as alcohol sales and profits are strictly controlled by the PPA licensee, we see no reason why an under 21-year-old promoter should be prohibited from presenting music in a PPA licensed space.

THERE HAS BEEN INSUFFICIENT DISCUSSION OF HOW THIS ORDINANCE AS DRAFTED WILL BE ENFORCED

CMC is concerned that there has been too little discussion of how the ordinance as drafted will be enforced by the various enforcement authorities, including DBA, the Chicago Police Department and the Chicago Fire Department.



Chief among our concerns is that there has been no discussion of what rules and regulations will emerge from the City that will guide these enforcement authorities as they carry out the will of the City. We encourage the City to publicly discuss with CMC and the music community whatever rules and regulations it decides to promulgate well in advance of them becoming effective.

As with many public safety-oriented ordinances, enforcement authorities will likely act under the proposed event promoter ordinance only when complaints are filed against a PPA or Special Events licensee or promoter. While understandable given the available resources to the authorities, CMC is concerned that such an ad hoc means of enforcement will lead to an unnecessarily stifling business climate.

CMC PROPOSED SOLUTIONS

In the interests of fostering our shared goal of enhancing safety at music events and implementing measures to ensure an accountable and transparent promoter industry, we propose a common-sense and pragmatic approach that will meet the needs of Chicago's music community and the City.

First, the most direct and least burdensome means to creating accountability without an additional cost to small music promoter businesses would be to amend the PPA/Special Events code such that the a licensee would be required to explicitly accept all legal responsibility for the conduct of outside promoters in the licensed space. If the space is not properly insured, they would be in violation of their existing license and should not be open to the public for business.

Second, CMC recommends the City commission an independent survey of the promoter industry (including those who promote in Chicago but reside outside of it) to accurately determine who is in fact "in the business of promotion". Included in this research should be an assessment of current practices of the industry, industry best practices, and verifiable records of public safety incidents caused by or materially related to the conduct of promoters. CMC would welcome an opportunity to assist in this research.

Third, we recommend creating a pilot City-managed registry of those regularly in the business of promotion. The pilot project registry would incorporate some of the accountability measures proposed in the ordinance, including the following:

- All registrants must participate in regular City-approved and joint industry-law enforcement led safety training;
- All registrants must make available to the City all relevant contact



information and information who is managing the event at any given promoted event;

- All registrants must submit disclosure forms annually to the City listing all promoted events in the past year;
- All registrants must submit to fingerprinting and criminal background checks;
- All registrants would be subject to unannounced audits of their suitability to be registered.

We propose adjusting the PPA code to require PPA licensees to only do business with registered promoters, rather than creating a new licensing class as this ordinance does.

Moreover, we recommend this registry be implemented initially on a pilot-project basis in order to test the strength of the accountability, transparency and enforcement mechanisms and to ensure that the music community's concerns are incorporated. After the pilot project is complete, we recommend the City convene a panel of experts, including representatives from the Chicago music community, to assess how to modify, if at all, the registry before rolling it out City-wide.

Fourth, to further accountable business practices among music venues, CMC encourages the City to issue a standardized contract rider that PPA/Special Events-licensees must use when contracting with third party promoters to use their venue's space. Currently, many PPA venues and Special Events spaces require outside promoters to enter into an individualized contract before promoting an event, and the proposed ordinance requires such a contract. CMC believes that many of the provisions in the ordinance as drafted (specifically those creating a more accountability measures for promoters) should be incorporated into a standardized contract rider that create uniform and City-approved business practices throughout the promoter community.

Fifth, we encourage the City to partner with the music community to develop innovative, accountable community self-help measures that also can help bring more awareness to Chicago's music culture. As the City has acknowledged repeatedly, the large majority of PPA and Special Events licensees and promoters in Chicago run upstanding operations and understand how to manage the public safety risks and business challenges facing those in the business of promoting music in Chicago. Yet the music community has not been given an opportunity to self-correct practices that the City finds objectionable. Indeed, many in the music community are not even aware of what specific conduct the City is attempting to address with this proposed bill.



Certain Chicago promoters have developed successful businesses in a very competitive marketplace and along the way created what should be industry standards for safety. We encourage the City to engage these leaders—including those operating small promotion enterprises—to develop best practices that should guide any attempt to regulate the industry.

From these best practices could flow innovative community self-help measures that would mitigate the need for onerous new regulations. These measures could include:

- Revision of DBA-produced “how to” guide for those in the business of promoting music in Chicago and those doing business with promoters;
- New and improved public safety measures;
- Voluntary seminars offering critical information to prospective PPA/Special Events-licensees and promoters (as well as performers and current PPA/Special Events licensees) on such topics as business record keeping, event management, and managing relationships with enforcement officials.

CMC would welcome the opportunity to work with the City in developing the curriculum and series for this program.

This ordinance as drafted reflects much progress and work since our first conversation in July, 2007. The fact that many individuals promoting music in Chicago will not be required to obtain a license (because of the exemptions in the ordinance) shows that the City is serious about trying to find common ground with the Chicago music community. However, we believe that instead of a first seeking to impose a top-down, costly, untested license the City should instead pursue an extensive outreach effort to better understand the community it is seeking to regulate. From that will come safer music events, a transparent and accountable promoter small business community, and greater and more effective promotion for Chicago’s world-class music community (as well as greater tourism and entertainment revenue for the City). As the world looks anew at our city in its bid for the 2016 Summer Olympic Games, and as we as a city struggle to weather the economic storm, CMC and the Chicago music community, including the promoters who help make Chicago music a world class resource , want to see responsible, safe promotion of Chicago music. We are confident that from that will come a more vibrant and prosperous Chicago.



As always, CMC stands at the ready to work with you to achieve our common objectives and make Chicago a world-class music city.

Sincerely,

Chicago Music Commission

CC: [Vice Chairman Isaac Carothers](#)
[Hon. Robert Fioretti](#)
[Hon. William J.P. Banks](#)
[Hon. George A. Cardenas](#)
[Hon. Willie Cochran](#)
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