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February 28, 2020

The Hon. Antonio Reynoso
New York City Council
250 Broadway, Suite 1740
New York, NY 1007
areynoso@council.nyc.gov

Re: Review of Zoning and Regulatory Restrictions Affecting
Dancing in New York City

Dear Council Member Reynoso:

You, along with Council Member Espinal, were sponsors for the repeal of New York City's Cabaret Law, which was signed as Local Law No. 214 - 2017, on November 27, 2017. You are listed as the second sponsor.

I had intended to direct this letter to Council Member Espinal, but he resigned recently, and I had finished the letter prior to learning of his resignation. So, I have redrafted it to direct the letter to you. I hope you will pass it on to appropriate colleagues.

The purpose of this letter is to express my disappointment as to the apparent lack of attention by the Nightlife Office, the Department of City Planning, and the Department of Buildings as to the elephant in the room in 2017: to wit, the repeal did nothing to address the restrictive regulations of the Zoning Resolution and Building Department regulations.

At the time in 2017, you and other informed principals were well aware of significant zoning and other regulatory restrictions affecting dancing and music in New York City and not affected by repeal of the Cabaret Law, a topic presented by many (including myself) in testimony before the City Council. Officials celebrated letting NYC Dance.



The Hon. Antonio Reynoso
February 28, 2020
Page of 2 of 5

I am very concerned by what appears to be a lack of visible progress concerning addressing the needed zoning, building code, and other regulations limiting dancing and live music.

Sponsor Espinal and other recognized the importance of these restrictions as reflected in a statement attributed to him in an article appearing in Derek Evers, *Cabaret Law Repeal Lets New York City Dance – as long as you're zoned for it*, CityState New York, November 29, 2017, where Espinal is quoted:

Espinal added that he is looking forward to working with the office of nightlife and advocates "to explore our city's archaic zoning code to see how we can build on this progress."

The article prominently discussed, for example, the limited geographical scope of Zoning Resolution's Use Group 12.

According to the Zoning Resolution, if even one person is dancing in a venue, then the venue must be located in a Use Group 12 district (or one of the special districts or narrow Use Groups, such as the manufacturing districts.) Notably, the Zoning Resolution has no definition of dancing. The Zoning Resolution regulates a venue with 2 couples dancing in the same way as a dance club with an occupancy of 200.

Furthermore, a venue must have a Certificate of Occupancy allowing a Use Group 12 Use. Building owners avoid changing Use Group designations in Certificates of Occupancy. Venues are subject to harassment for having improper filings.

The article went on to state:

Even with a repeal of the Cabaret Law, New York City establishments wishing to host music performances and dancing still must hold the various other permits needed from, for example, the city's health, buildings and fire departments, as well as the state liquor authority.

Since the Cabaret Law repeal did not address these restrictions, legislation adopted at the same time established a New York Nightlife Office and a Nightlife Advisory Board. Local Law No. 178, 2017 on September 19, 2017. The Board was not provided with a budget and has no secretary or other administrative support. That was 27 months ago.

There has been no movement on these issues.

Sponsor Espinal had committed to working with the Nightlife Office and the Advisory Board. I assume others as well have a similar commitment.

The Hon. Antonio Reynoso
February 28, 2020
Page of 3 of 5

The Nightlife Office has produced a new website purporting to be a checklists and guide for those wishing to establish new nightlife businesses. Oddly, nothing on the website mentions that one should verify that the proposed business complies with zoning and certificate of occupancy requirements. Use Group 12 is mentioned nowhere. Use Group 6 is mentioned nowhere. The requirement that venues with dancing are required to advise the State Liquor Authority is not mentioned. The Nightlife Office site is a dis-service to those seeking to open a dancing or music venue.

I personally communicated with the Department of City Planning imploring the Department to initiate a study of the zoning resolution issues affecting dancing, as was done in 1989, when many anti-dancing regulations were introduced with the express purpose to target “dancing.”

These restrictions paralleled the Cabaret Law, which helped lay the groundwork for the abuses of the Giuliani Era. DCP refused to conduct a review, and said it would only do so if requested by the Mayor or some other official body. So, they are waiting for instructions.

In a sense, the Zoning Resolution over the years implemented the Cabaret Law – and repeal of the Cabaret Law itself did not affect these restrictions.

I also asked DCP to prepare an official map, showing all areas of the City where dancing is not allowed under Use Group 12 (or another provision allowing dancing - the City’s ZoLA data does not include Use Group data for particular sites.) The DCP would not agree to provide such a map.

I attach a map I attempted to create showing areas where dancing is not allowed, but do not vouch for its accuracy. Areas in yellow do not allow dancing.
<https://tinyurl.com/DancingMapNYC>.

The Nightlife Office was copied on these communications with DCP.

Another issue I discussed with the Nightlife Office and the Advisory Board was the Department of Building’s “Cabaret Notes” bulletin which was issued in February 2017 which addresses the Cabaret Law. Three years later, these Notes remain on the DOB web site. No effort has been made by the DOB to revise or withdraw this bulletin.

I have also discussed this issue with the Advisory Board, a Board of regular volunteer citizens, which has no budget and does not appear to have received legal/technical support from the affected agencies as to the regulatory issues.

It is hoped that the Board will issue specific proposed recommendations for comment, beyond a request that further study is required, which was of course known in November 2017.

The Hon. Antonio Reynoso
February 28, 2020
Page of 4 of 5

One recommendation I would request is that Use Group 6 allow dancing up to at least 100 persons, without a venue having to be in a Use Group 12 district.

I would also request that the DOB Cabaret Notes be immediately withdrawn and that any regulations channeling the Cabaret Law be revised.

It would seem that neither Department of City Planning or the Department of Buildings have engaged with either the Advisory Board or the Nightlife Office. Certainly, the website of the Nightlife Office has no indication of any such engagements.

Finally, I do note that many supporters asserted the Cabaret Law was racist. Repeal of the Cabaret Law arguably has not measurably benefited minority groups in New York City. Now in 2020, I note that most of Harlem is located in districts which are not within Use Group 12.

For example, Lenox Avenue above 126th Street, location of the 1926 Savoy Ballroom, is not open for dancing. Latin restaurants in the Bronx and East Harlem, not in Use Group 12 still may not open their space and event rooms to Salsa dancing, even for a modest number of dancers such as two couples.

So, in actual effect, many of these continuing regulations have a disproportionate effect on certain demographics, which purportedly was to be remedied by eliminating this law. To be clear, the elimination of the Cabaret Law has done little to affect the racial impact of the Cabaret Law.

Also, interestingly, many venues which are in Use Group 12 have not amended their Certificates of Occupancy to legally designate Use Group 12, and are most likely still designated as Use Group 6, violating also their liquor licenses.

I urge you to look into this situation. I would ask you to officially and prominently urge the DCP to restudy the 1989 report and request that you formally ask the Department of Building to at least identify areas of its practices which affect dancing and to retract inconsistent publications immediately.

I also ask that you and your fellow sponsors meet with the Nightlife Office as to these matters.

Finally, you will find links to the documents referred to here at <http://zortmusic.com/nightlife/>. Included at this link is a PowerPoint which I submitted to the advisory Board in March, 2019, which presentation has been updated, expanded and reorganized. The presentation covers these issues in detail.

Thank you.

Alan D. Sugarman

The Hon. Antonio Reynoso
February 28, 2020
Page of 5 of 5

Sincerely,



Alan D. Sugarman

cc:

Enclosures

cc: Council Member Ben Kallos, BKallos@BenKallos.com
Ariel Palitz, Office of Nightlife, apalitz@media.nyc.gov
Soegaard, Jose, Office of Nightlife, jsoegaard@media.nyc.gov>
Sarah Ellmore, Department of City Planning, sellmore@planning.nyc.gov
Andrew Rigie, Nightlife Advisory Board, rigienab@gmail.com
Olympia Kazi, Nightlife Advisory Board, olympiakazinab@gmail.com



New York City Mayor Bill Blasio signs legislation to repeal the Cabaret Law requiring small businesses to have a dancing license. | Edwin J. Torres/Mayoral Photography Office

NEW YORK CITY (/NEWS-POLITICS/NEW-YORK-CITY)

Cabaret Law repeal lets New York City dance – as long as you’re zoned for it

Bill de Blasio repeals Cabaret Law and lets New York City dance – as long as you’re zoned for it

By *DEREK EVERS (/author/derek-evers)* | NOVEMBER 29, 2017



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On Monday night, New York City Mayor Bill de Blasio made his third appearance on a Brooklyn stage in as many months. While one was for his re-election party, the other two were bill signings specifically designed to help give a boost to the local music economy. After signing a bill to establish the Office of Nightlife in September, de Blasio repealed the city's 91-year-old – and very contentious – Cabaret Law.

Originally enacted in 1926 during prohibition, the Cabaret Law required any businesses in the city that sells food and/or drink to obtain a cabaret license in order to host “musical entertainment, singing, dancing or other form of amusement.” While aimed at illegal speakeasies, the law was often used in discriminating fashion. From targeting largely African American jazz venues at its inception to requiring mid-century musicians to carry a “cabaret card” to Rudy Giuliani’s use of the law as part of his “broken windows” policing, the selective nature of its use has found plenty of opponents, which is why the law’s repeal was widely championed throughout the city.

But while proponents were celebrating the move, a look at the legal implications suggests there’s much further to go for the city that never sleeps to dance away its insomnia. Specifically, the zoning for any establishment that wants to host dancing and music still needs to be addressed, which is not lost on City Councilman Rafael Espinal, who was the key sponsor of legislation to establish an office of nightlife and repeal the Cabaret Law.

► **RELATED: Rafael Espinal's Night Mayor scenario**
(http://cityandstateny.com/articles/personality/interviews-and-profiles/rafael-espinal-how-to-become-night-mayor.html)

“Monday night was a historic event and the start of a new chapter for our city,” Espinal said in a statement. “We doubled down on our commitment that NYC is truly a sanctuary city, open to all people who want to live and express themselves. The city that never sleeps sent a signal that we are a place where people can conduct business, and now dance, without fear of the dance police.”

Espinal added that he is looking forward to working with the office of nightlife and advocates “to explore our city's archaic zoning code to see how we can build on this progress.”

Those “archaic” zoning laws have less to do with how long they’ve been on the books and more to do with a lack of clarity. While it’s been widely reported [_____ \(https://www.nytimes.com/2017/10/30/nyregion/new-york-cabaret-law-repeal.html\)](https://www.nytimes.com/2017/10/30/nyregion/new-york-cabaret-law-repeal.html) that only 97 out of the roughly 25,000 eating and drinking establishments in New York City had a cabaret license in 2017, unless the zoning changes, many of these establishments are still not permitted to allow dancing, even without any requirement to obtain a cabaret license, Derek Wolman, chairman of the restaurant and hospitality practice group at Davidoff Hutcher & Citron, wrote in an email to City & State.

New York City neighborhoods are zoned into three categories: residential, commercial and manufacturing. Within those zones are “use groups [_____ \(https://www1.nyc.gov/site/planning/zoning/districts-tools/use-groups.page\)](https://www1.nyc.gov/site/planning/zoning/districts-tools/use-groups.page)” that determine specifically where and how different businesses can operate within a zone. Making things difficult for proprietors who wish to hold music events is that they fall under “Use Group 12,” which spans both commercial and manufacturing.

Wolman broke it down in all of its complexity:

“Use Group 12 (eating or drinking establishment with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing) are permitted in C2 zoning districts (with Special Permit from the Board of Standards and Appeals), C3 zoning districts (with Special Permit from the Board of Standards and Appeals), C4 zoning districts (with Special Permit from the Board of Standards and Appeals) [permitted as of right or by special permit in C4 districts, depending upon location], C6 zoning districts

[permitted as of right in C6 districts with conditions], C7 zoning districts, C8 zoning districts, M1 zoning districts [permitted in M1-5A, M1-5B, M1-5M, and M1-6M districts only as provided by special permit under Zoning Resolution Section 73-244], M2 zoning districts and M3 zoning districts.”

The repeal also does little to ease the licensing process.

“The cabaret license did add an additional checklist item and timeline for operators to keep track of, but the information/documentation would be otherwise needed for the premises’ lawful operation,” Wolman wrote.

Even with a repeal of the Cabaret Law, New York City establishments wishing to host music performances and dancing still must hold the various other permits needed from, for example, the city’s health, buildings and fire departments, as well as the state liquor authority.

Which is to say, repealing a nearly century-old, prohibition-era law is merely the first step in creating an understandable playing field for New York City’s music industry.

But at least you don’t have to worry about getting a ticket for dancing.



Derek Evers is the former digital director for City & State and a resident of Ridgewood, Queens.

@derekevers (<https://twitter.com/derekevers>)

Cabaret

Applications



CABARET

Applications

A ‘Cabaret’ is defined in New York City as any room, place or space in which any musical entertainment, singing, dancing or other form of amusement is permitted in connection with the restaurant business or the business of directly or indirectly selling to the public food or drink, (except eating or drinking places, which provide incidental musical entertainment, without dancing, either by mechanical devices, or by not more than three persons). A Cabaret license, issued by the Department of Consumer Affairs, is required for any business that sells food and / or beverages to the public and allows patron dancing in a room, place, or space.

A cabaret shall exercise proper care and responsibility in supervising crowd control in the areas adjacent to the cabaret's entrance. A cabaret shall also make an effort to ensure that the crowd awaiting admission to or leaving the premises does not cause excessive noise or litter or behave in a manner that would disturb the public peace or safety. Cabarets that are required to have an indoor waiting area shall utilize that area to its maximum capacity at all times when crowds are awaiting admission.

CABARET

Applications

NYC Building Code + NYC Administrative Code

The NYC Building Code (BC) and the NYC Administrative Code (AC) regulate the design and construction cabarets. The NYC BC outlines the requirements for occupant load limits, exits and exit components, fire protection systems, and accessibility. Where 75 or more people are anticipated indoors or on the roof, cabarets must have a capacity sign and Place of Assembly Certificate of Operation (PACO) posted in a highly visible location within the space. Approved PA plans should also be available at the site for yearly Fire Department inspection. See Code Notes for Places of Assembly, Eating and Drinking Establishment and Adult Establishments for additional information and requirements.

New York City Fire Code (FC)

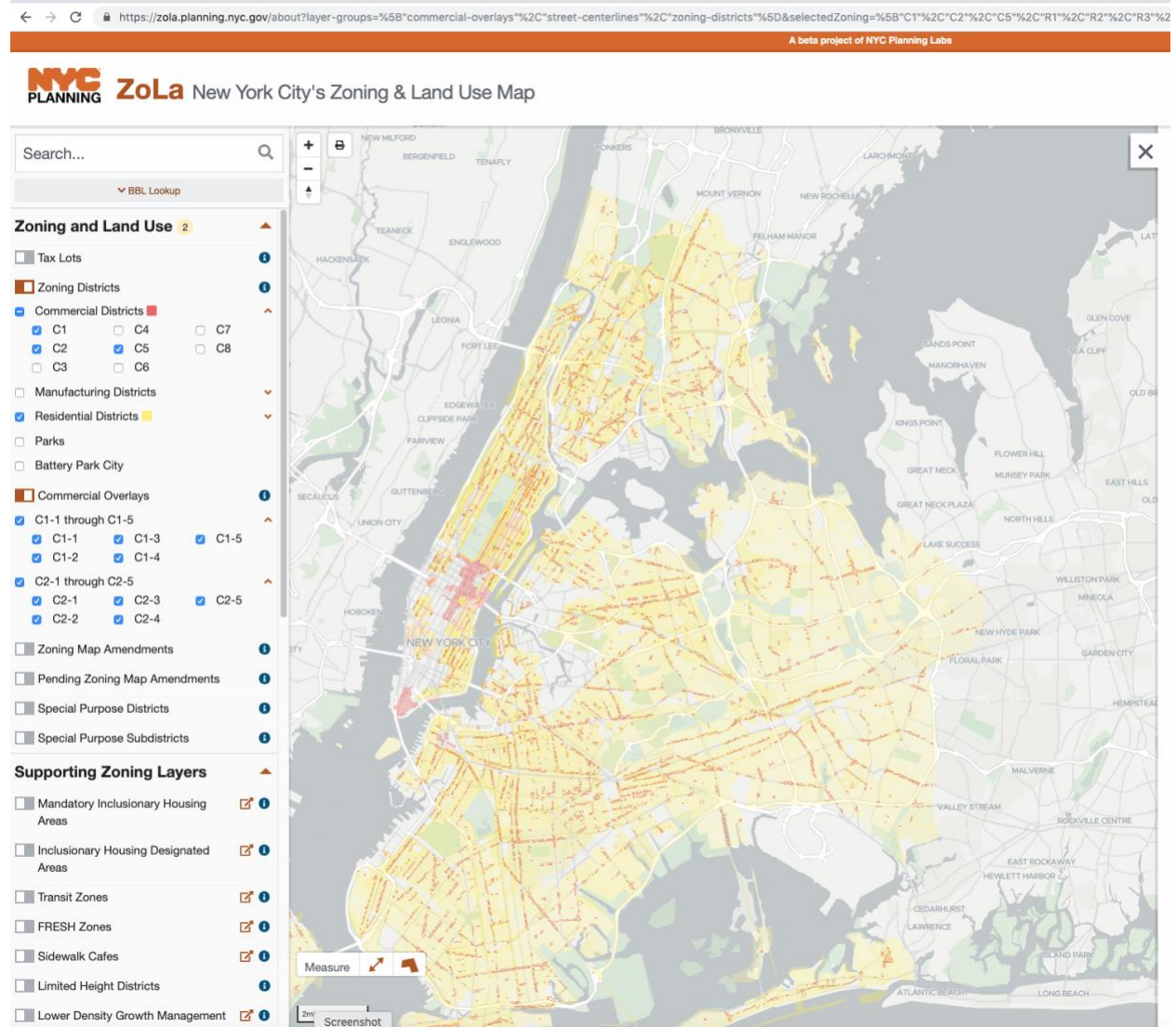
As part of the Cabaret license from DCA, the Fire Department performs fire safety inspections in conjunction with the Buildings Department. The NYC FC also outlines requirements for Public Gatherings and regulates decoration, standing areas, egress, fire guards, safety announcements, inspections, evacuation protocol and fire apparatus access. Where a PACO or Temporary Place of Assembly permit is required, a certificate of fitness may be required as part of the fire safety and emergency plan.

The [Code Notes](#) series has been developed to provide a general overview of the NYC Department of Buildings (DOB) project requirements for the construction industry. The information in this document is only a summary and overview and is not intended to substitute for the full text and meaning of any law, rule or regulation. Users may also consult with a registered design professional for more specific guidance on Construction Codes requirements, other regulatory laws and rules, and technical site-specific requirements.

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Where Dancing Allowed - An attempt to show in Zola - New York City's Zoning & Land Use Map. Dancing is permitted only in non-marked areas, with certain exceptions. If in yellow or with a red border, dancing is not allowed. Live jazz music is also subject to certain limitations.

Version 1.0.



Notes:

Note 1 - not indicated here are UG 9 (banquet halls and catering halls) where dancing may be allowed but ZR not clear as to whether these may be open to the public.
C2 C4 C5 C6 C8

Note 2 - Another exception not indicated applies to hotels. This is in Use Group 10 : C4 C5 C6 C8.

Note 3 - Many venues in UG 12 and UG 6 only have applied for UG 6 (no dancing) in their Certificates of Occupancy. This may relate to the requirement for sprinklers in any venues with any dancing, thus many venues in dancing permitted districts cannot push back the tables and allow any dancing, even a few couples.

Note 4. Note that the Zola depiction of these UG 6 but not UG 12 districts are in most districts outlines and not filled with a color - alas.

How created:

1. Start With Zola Screen

<https://zola.planning.nyc.gov/about?layer-groups=%5B%22street-centerlines%22%5D#9.72/40.7125/-73.733>

2. Select in left column zoning districts which are in Use Group 6 (not dancing) but not in Use Group 12 (dancing allowed)

<https://zola.planning.nyc.gov/about?layer-groups=%5B%22commercial-overlays%22%2C%22street-centerlines%22%2C%22zoning-districts%22%5D&selectedZoning=%5B%22C1%22%2C%22C2%22%2C%22C5%22%5D#11.72/40.7719/-73.851>

UG 6:
C1 C2 C4 C5 C6 C8

UG 12:
C4 C6 C7 C8

UG 6 not in UG 12
C1 C2 C5

3. Next, in left column select residential districts where dancing is not allowed, nor allowed in the commercial overlays which are both residential and limited UG 6 Commercial.

<https://zola.planning.nyc.gov/about?layer-groups=%5B%22commercial-overlays%22%2C%22street-centerlines%22%2C%22zoning-districts%22%5D&selectedZoning=%5B%22C1%22%2C%22C2%22%2C%22C5%22%2C%22R1%22%2C%22R2%22%2C%22R3%22%2C%22R4%22%2C%22R5%22%2C%22R6%22%2C%22R7%22%2C%22R8%22%2C%22R9%22%2C%22R10%22%5D>

Please provide any comments to me at sugarman@sugarlaw.com.

Alan Sugarman

July 5, 2019

<https://zola.planning.nyc.gov/about?layer-groups=%5B%22commercial-overlays%22%2C%22street-centerlines%22%2C%22zoning-districts%22%5D&selectedZoning=%5B%22C1%22%2C%22C2%22%2C%22C5%22%2C%22R1%22%2C%22R2%22%2C%22R3%22%2C%22R4%22%2C%22R5%22%2C%22R6%22%2C%22R7%22%2C%22R8%22%2C%22R9%22%2C%22R10%22%5D>

<https://tinyurl.com/DancingMapNYC>