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Honorable Dan Garodnick
Chair and Director
New York City Department of City Planning
120 Broadway
31st Floor
New York, NY 10271

Re: Dancing and Music Rezoning

Dear Chair Garodnick:

From news reports and press release, I understand that you are chairing the effort to address the zoning of dancing and music. I have been involved in this issue for many years. Indeed in 2017 I asked the Department to undertake various analyses which in my view was needed to rationally consider this issue.

I wanted to briefly summarize some history and other issues that have not appeared in public discussion. I will not encumber this letter with detailed citations. All documents may be found at the web site mentioned below.

First, the objectionable provisions in Use Group 6 were enacted in 1989 in response to the loss by the City reflected in the two *Chiasson* decisions determining that certain provisions of the Cabaret Law were not constitutional. The 1989 report explicitly acknowledges this and attempted to get around the constitutional issues.

It also appears that some were concerned that the Cabaret Law restrictions against dancing would fall as well, although, alas, in the 2006 *Festa* case, this did not occur. Yet, these provisions may still be subject to challenge on grounds other than Freedom of Expression as discussed by the court in the *Muchmore* case.

Prior to 1989, it seems that the objectionable provisions as to Use Group 6 did not exist in the Zoning Resolution. There is no reference to cover charges or show times in prior regulations, and there is no explanation in the 1989 report of how and why such provisions were so universally applied.

Therefore, I urge that your staff carefully analyze the Zoning Resolution provisions in existence prior to 1989 and the 1989 report.

Second, most commentators seem to consider that the only Use Groups involved are Use Groups 6 and 12, when there are numerous other Use Groups, less well-known. In 2017, I asked the Department to provide an accurate map on Zola to show all areas with

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restrictions against dancing and music. This has not been done. Nor has the Office of Nightlife prepared such a map. The web site below contains a marked up excerpt of all provisions in the Zoning Resolution concerning dancing and music, and indeed I sent a copy of this extract to the Department in 2017.

Third, many of the provisions refer to Special Permits from the Boards of Standards and Appeals and your Department. As predicted correctly by commentators to the 1989 amendments, this escape valve would prove to be cumbersome and complicated. Indeed, they were correct. Three years ago, I analyzed all BSA special permits. The only special permit of any relevance granted or even considered since 1989 was a special permit by the Red Rooster, which was expensive, complicated, and in the end of little value. This special permit is summarized in my presentation to the Nightlife Advisory Board three years ago. I suggest that the Department conduct its own search for applicable special permits from 1989 to present.

Fourth, there is an all or nothing approach to regulation. For me, the approach of using the legal occupancy of a venue as the governing factor has no resemblance to reality. Some venues may only offer dancing in back rooms and not in the main restaurant. The applicable factors, in my view, are the number of patrons dancing at any one time or the amount of dedicated dance floor space. I am a social partner dancer. Current provisions have made it illegal for restaurants to offer late night dancing moving the tables back or having a small space to dance to live music. These are not night clubs with 200 people dancing at the same time.

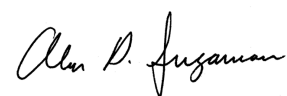
Finally, my impression is that enforcement of the existing regulation in practice were delegated by the City to the State Liquor Authority and Community Boards, using M.A.R.C.H.

The web site I mention above is <http://dance-regulation.zortmusic.com/> and is presented with support of the Coalition of Musicians and Social Dancers to Reform NYC Zoning. A copy of this letter will be posted on the web site.

I trust that you **will** be able to easily find any documents to which I refer above.

I would be pleased to discuss these issues and will be sending more detailed commentary in the future.

Sincerely,



Alan D. Sugarman