

Coalition of Musicians and Social Dancers
to
Eliminate Regulations against Dancing and Music
<http://dance-music-regulation.com/>

Position Paper #1

Without Reform of Liquor Law Restrictions, Reform limited to the Zoning Law Will Result in the De Facto Continuation of the Prohibition of Dancing and Restrictions Against Music

The Department of City Planning is considering changes to the Zoning Resolution to remove restrictions against dancing in Use Group 6 districts in response to the directive of the Mayor in June 2022. The proposal responds to the fact that repeal of the Cabaret Law in 2017 has had little impact because zoning restrictions and liquor laws were not modified at the same time.

- The State Liquor Authority and Community Boards¹ prohibit Live Music in 10,282 NYC establishments, although permitted by zoning.
- The SLA and Community Boards prohibit Patron Dancing in most establishments where zoning allows Patron Dancing, allowing Patron Dancing in only 278 NYC establishments.
- Expanding areas where zoning allows Patron Dancing will have little effect unless the SLA and Community Board practices are modified.

As predicted by the New York City Bar Association Hospitality Committee in 2018 in a letter to the Office of Nightlife describing liquor license regulation, the Cabaret Law repeal “will result in the de facto continuation of a near prohibition on dancing within the City of New York.” This statement can be extended to state that reforming only the zoning law will continue the de facto prohibition of dancing.

This prediction was accurate — Patron Dancing is allowed by the State Liquor Authority in only 278 of the 11,527 NYC on-premises establishments. The low number is explained partly by zoning restrictions, but more significantly by SLA and Community Board regulation.²

¹ Community boards are non-elected, and each have up to 50 volunteer members appointed by the local borough president, half from nominations by City Council members representing the community district.

² No data has been compiled (although possible) as to how many of the 11,527 establishments are in Use Groups allowing dancing - neither the SLA nor the Department of City Planning collect this information, so reform is proceeding in the dark. The SLA NYS Liquor Authority Mapping Project (LAMP) map provides a glimpse of anti-dancing and live music regulation in Use Group 12. Focusing on an area known to be Use Group 12, such as in mid-town, one can click on specific licenses and note the number where dancing and live music are not allowed. <https://lamp.sla.ny.gov/>.

Removing only zoning restrictions will have little impact on dancing without reform of liquor license restrictions imposed by the actions of the State Liquor Authority and Community Boards. Prohibition of Patron Dancing and Live Music are related, since Community Boards argue that both create community disturbance.

Live Music is allowed by zoning in nearly all of the 11,257 on-premises establishments in New York City, but because of restrictions imposed by the SLA and Boards, Live Music is allowed by the applicable SLA Methods of Operations in only 945 establishments. Why is this so? ... because of the reflexive actions of Community Boards to disallow Live Music.

It is probable that the attitude by the SLA/Boards against Live Music will also be applied to restrict Patron Dancing.

Any expectation that modifying only the zoning law will substantially expand Patron Dancing is overly optimistic, if not naive, based upon the SLA/Boards history in regulating live music. The SLA/Boards will likely repress Patron Dancing in the same manner that they have repressed Live Music.

The Community Boards are creations of the City and are subject to oversight by the City. Legislatively, for example, the City Council might restrict Community Boards from prohibiting Patron Dancing (and Live Music) without specific findings made by the Boards supported by verifiable evidence submitted with respect to the particular application.

The SLA in general accepts conditions imposed by the Boards in a license applicants' Method of Operations. At one time, court decisions (Circus Disco, 1980) criticized the SLA as acting as a super zoning board in rejecting activities allowed by zoning. Subsequent legislation allowed the SLA to consider factors when overriding zoning laws, ABCL § 64[6-a], and courts have required specific findings by the SLA as described in the *Chumley* case. Those same requirements as to particular findings should also be imposed upon Community Boards if attempting to override zoning laws.

Most license applicants do not even request Live Music, because the universal belief of applicants is that some member of a Community Board committee will object and delay the license. The same is expected as to Patron Dancing. In general, only applicants seeking to operate a disco or live music venue are willing and able to hire attorneys and have the financial resources and incentive to fight the Community Boards. Applicants seeking to enhance the enjoyment of their patrons to allow, for example, 6 couples to dance to a live salsa band of 5 musicians, just withdraw the request when any concerns are raised by Boards.

The Boards should also be made to comply with the decisions in the Chiasson cases in 1986 and 1988 which declared unconstitutional provisions in the Cabaret Law restriction live music. Restrictions against types of instruments and number of musicians were found to be unconstitutional — yet many licenses include these restrictions.

Further Information:

Complete citations and further explanation may be found at our web site: Dance-music-regulation.com.

Citations:

- New York City Bar Association: Letter to Ariel Palitz, Senior Executive Director of NYC Office of Nightlife. May 15, 2018.

<https://www.nycbar.org/member-and-career-services/committees/reports-listing/reports/detail/letter-to-ariel-palitz-senior-executive-director-of-nyc-office-of-nightlife>.

- *Chiasson v. New York City Department of Consumer Affairs*, 132 Misc. 2d 640 (N.Y. Sup. Ct. 1986). <http://dance-music-regulation.com/document/chiasson-i-1986/>
- *Chiasson v. NYC Dept. of Consumer Affairs*, 138 Misc. 2d 394, 524 N.Y.S.2d 649 (Sup. Ct. N.Y. Co. 1988). <http://dance-music-regulation.com/document/chiasson-ii/>
- *Circus Disco v. NYS Liq Auth*, 51 N.Y.2d 24, 431 N.Y.S.2d 491, 409 N.E.2d 963 (1980). <http://dance-music-regulation.com/document/sla-circus-disco-abcl-%c2%a7-646-a/>.

This is the first in a series of memoranda from the Coalition of Musicians and Social Dancers To Eliminate Regulations against Dancing and Music. For further information, contact Alan Sugarman at sugarman@sugarlaw.com.