

Testimony of Tracie Robinson
Before the New York City Council’s Committee on Consumer Affairs
Oversight Hearing on the Enforcement of New York City’s Cabaret Law
Monday, June 19, 2017

Thank you, Committee Members, for holding this oversight hearing on the enforcement of New York City’s Cabaret Law, and thank you, Council Member Espinal, for leading the effort to modernize the City’s entertainment and nightlife laws. I submit this testimony as a private citizen and a long-time participant in recreational partner dance.

I moved to New York more than seven years ago because it is the dance capital of the world. As a mambo and tango enthusiast, I know that no other city offers the same number or quality of opportunities for social dance. At the same time, I believe that New York can and should be more dance-friendly. The City’s antiquated law restricting dancing in restaurants and other spaces stifles a valuable social activity and burdens business owners without conferring any benefit on New Yorkers. The so-called “Cabaret Law” does not make the City any safer, healthier, more prosperous, or more livable, and its discriminatory roots serve only to prolong a shameful legacy.

Background

The Cabaret Law consists of several sections of the New York City Administrative Code. Section § 20-360(a) of the Code provides:

It shall be unlawful for any person to conduct, maintain or operate, or engage in the business of conducting, maintaining or operating, a public dance hall, cabaret or catering establishment unless the premises wherein the same is conducted, maintained or operated are licensed in the manner prescribed herein.¹

The law defines a cabaret as:

Any room, place or space in the city 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.²

Essentially, the law prohibits dancing in any place that sells food or drink to the public unless that place holds a cabaret license from the City’s Department of Consumer Affairs. It also requires installation of digital surveillance cameras³ and fingerprinting of license applicants.⁴ It does not define “dancing.” Many licensees and applicants view the license requirement as onerous.⁵ The volume of documentation required can be overwhelming for small business owners.⁶

¹ [N.Y.C. Admin. Code § 20-360\(a\)](#).

² [N.Y.C. Admin. Code § 20-359\(3\)](#).

³ “The recordings made by video surveillance cameras installed and maintained pursuant to this section shall be indexed by dates and times and preserved for a minimum of thirty days. . . .” [§ 20-360.2\(b\)\(9\)](#).

⁴ [N.Y.C. Admin. Code § 20-360](#).

⁵ Colon, D. (2014, September 30). [Owner of Muchmore’s fighting for the right to party sans permits](#). *Brooklyn*.

⁶ See the Department of Consumer Affairs’ cabaret license application [checklist](#).

The Cabaret Law was enacted in 1926—during Prohibition, the Roaring Twenties, and the Jazz Age—as part of a crack-down on jazz clubs in Harlem. Jazz was developed by black Americans in the late Nineteenth and early Twentieth Centuries, but by the mid-1920s, it had become popular even among middle class white Americans, particularly those living in major cities.⁷ Some historians believe that the law and its enforcement were calculated to curb the intermingling of races.⁸ Today, the law is selectively enforced and can still be used with discriminatory effect.

In its original form, the Cabaret Law prohibited unlicensed musical performances that included jazz instruments (such as drums, saxophones, and trumpets) while expressly allowing unlicensed performances “by not more than three persons playing piano, organ, accordion or guitar or any stringed instrument.”⁹ On its face, the law disproportionately affected jazz clubs. In the 1990s, then Mayor Rudy Giuliani used the law to diminish the City’s nightlife and shut down certain nightclubs for Cabaret Law and other violations.¹⁰ The statutory language regarding musical instruments was ultimately held to violate the Constitution,¹¹ but it remains in the City’s fire protection rules.¹²

Current Data

- As of June 16, 2017, there were only 99 licensed cabarets in the New York City,¹³ but it is generally stated that there are roughly 25,000 restaurants and bars.
- As of June 16, 2017, there were 28 pending applications for cabaret licenses.¹⁴
- From January 1, 2016, to June 16, 2017, the City issued 38 charges against licensed cabarets. Ten pertained to storage or indexing of surveillance videos.¹⁵

Balancing Business Autonomy, Public Safety, and Quality of Life

Business owners and landlords should have the right to decide whether to allow dancing on their premises. The Cabaret Law merely adds financial and administrative burdens to an industry that is already struggling under the weight of skyrocketing rents¹⁶ and regulatory restrictions. Restaurants and bars are required to pass safety inspections and maintain liability insurance, among other things, in order to obtain construction permits, certificates of occupancy, and food service establishment permits. These requirements are reasonably related to public safety. Restrictions on dancing, in contrast, are not.¹⁷ It is true that there is risk inherent in physical activity, but there is no evidence that restaurants in

⁷ Gioia, T. (2011). *The History of Jazz*. New York: Oxford University Press.

⁸ Chevigny, P. (2005). *Gigs: Jazz and the Cabaret Laws in New York City*. Routledge: Psychology Press. See also Offenhartz, J. (2017, March 3). [Movement For Repealing NYC's Archaic 'No Dancing' Law Gains Momentum](#). *Gothamist*.

⁹ See *Chiasson v. Consumer Affairs* (138 Misc.2d 394 at 395 (1988)). Note that noise could not have been the concern, as the bass is stringed instrument.

¹⁰ Steinhauer, J. (2002, November 10). [City Cracks Down on Nightclubs and May Change its Policies](#). See also <https://commercialobserver.com/2013/11/the-agony-and-the-ecstasy-of-opening-a-nyc-nightclub/>. It should be noted that resort to the Cabaret Law suggests that other laws-or their enforcement—are not working.

¹¹ *Chiasson v. New York City Dept. of Consumer Affairs* (132 Misc 2d 640 [Sup Ct, NY County 1986] [*Chiasson I*])

¹² [3 R.C.N.Y. § 15-02](#).

¹³ NYC OpenData (2017, June 16). [“DCA Licensed Cabarets.”](#)

¹⁴ NYC OpenData (2017, June 16). [“Pending Cabaret License Applications.”](#)

¹⁵ NYC OpenData (2017, June 16). [“Cabaret Charges Since 1/1/2016.”](#)

¹⁶ Eisenpress, C. (2017, January 23). [Restaurants are seeing their profits devoured by landlords and labor costs](#). *Crain’s New York*.

¹⁷ In the appropriately named *Festa v. New York City Department of Consumer Affairs*, the Court held that “the City does not here need to make a specific evidentiary showing that the licensing requirement bears a reasonable

which people dance are less safe than those in which people do not dance. Nor is there any evidence that dancing in restaurants reduces the quality of life of those who live nearby—most likely because of existing zoning and alcohol licensing laws. Very few styles of dance (such as tap, flamenco, and perhaps certain line dances) are inherently noisy.

Furthermore, there is no special inspection or license required of dance studios to certify the appropriateness of the premises for dancing.¹⁸ Restaurants should not be subjected to a higher regulatory standard simply because they serve food and beverages. In fact, some social dancers are notorious for eating and drinking very little when they dance. There is no shortage of social media and blog posts by frustrated salsa promoters lamenting the abstemious nature of mambo dancers. Safety is important, but it is unclear that there are unsafe conditions that necessitate a Cabaret Law in the first place.

The Dance Real Estate Crisis

Dance is a universal language that brings people together no matter their background, and in New York, it fosters a sense of community like no other. Across the City, people put aside their worries and their differences as they “cut a rug,” “shake a tail feather,” and “bust a move.” Unfortunately, the number of dedicated dance floors in Manhattan has declined in recent years. The real estate market favors office space and residential space, so dance studios such as Basic Ballroom (335 West 35th Street, 5th floor), Dance Manhattan (39 West 19th Street, 5th floor),¹⁹ and Ballroom off Fifth (37 West 37th Street, #2) have been priced out. Those who are moved by music are increasingly being moved by rising rents.²⁰

The Value of Dance

People dance to relieve stress, to meet people, to stay physically fit, to connect to their cultural heritage, to earn a living, because the music moves them, and for many other reasons. Numerous scientific studies have documented the health benefits of dance.²¹ Dance can be a beautiful expression of the human spirit—a picture of joy, sorrow, love, anger, hope, excitement, or nostalgia, for example, executed with the brushstrokes of the body on the canvas of life, with music as inspiration. It can support mental health, steer people away from destructive behaviors, and provide an outlet for pent-up energy and creativity. Today, the vast majority of New Yorkers would probably agree that dance is in fact good for society and that it is merely *malum prohibitum*, rather than *malum in se*. Business owners might welcome dancing to improve the ambiance of their establishments, foster community, promote particular artists, or increase revenue during hours when patrons tend to buy less food or drink anyway.

relationship to the public's health and safety” in order to survive a *judicial* challenge under the First Amendment. *Festa v. New York City Dept. of Consumer Affairs* (2006 N.Y. Slip Op. 26125). This does not preclude the City Council, the *legislative* body that enacted the law, from repealing it. In any event, I express no opinion as to whether social dance is a protected form of expression—a question that has been settled by the Supreme Court.

¹⁸ There are zoning regulations, but they do not pertain to the safety of a space specifically for the purpose of dancing.

¹⁹ Fractenberg, B. (2014, April 14). [Popular Dance Studio Has to Move Because of Rent Increase, Owners Say](#). *DNAInfo*. The studio closed, and many of its instructors now teach at You Should Be Dancing.

²⁰ Partner dance studios are not the only dance spaces that are struggling. DANY Studios, operated by The Joyce Theater Foundation, closed on October 31, 2016. Dance Informa (2016, August 16). [DANY Studios in NYC Closing](#). [Blog post]. Green Space, which I have rented multiple times, faced a 44 percent rent hike in 2015. Scilleppi, T. (2016, January 18). [Long Island City's doyenne of dance faces crippling rent hike](#). *Times Ledger*.

²¹ Scott Edwards provides a concise literature review. Edwards, S. (2015). [Dancing and the Brain](#). *On the Brain*. Cambridge: Harvard Mahoney Neuroscience Institute.

Options

The City has resources at its disposal to ensure safety and peace without restricting dance. It can improve the enforcement of other existing laws and streamline the operation of existing systems.

- Enforcement of noise complaints can be strengthened. For example, the City can reduce the response time for noise complaints. The current eight-hour window means that a noise nuisance can continue unabated for an entire night.
- The City can explore ways to improve collaboration with the State Liquor Authority to ensure that underage and otherwise irresponsible drinking does not endanger the health or safety of our communities.
- The City can review the performance of 311 generally. I have used this system many times only to be disappointed when my complaints are closed without any visit or follow-up from the relevant agency and when violations do not make it into the online 311 database.

Section § 20-360 as a whole is unnecessary and should be repealed. If, however, the Council insists on clinging to a Prohibition-era law that has no place in a city that never sleeps, it must, with input from business owners and the community, modify the law for the Twenty-first Century. It could increase the number of musicians and dancers that trigger the license requirement or create a trigger that is based on the size of capacity of the venue.

The taskforce proposed by Council Member Espinal should have a civilian counterpart—a working group of business owners and patrons who have formalized channels for providing input and informing the recommendations of the Taskforce.

The City should also improve public access to data by making the NYC OpenData portal more user-friendly. This excellent system provides a wealth of information, but it is difficult to filter, visualize, and overlay large data sets. For instance, it is difficult to generate a map based on the noise complaint data set that shows where the most complaints or violations occur, and it is difficult to generate a pie chart that allows comparison between complaints against cabarets and complaints against non-cabaret restaurants and bars. These features exist, but they are hard to use—perhaps because the noise complaint set, which spans 2010 to the present, is so large.

Finally, the discriminatory language in the Rules exempting a small group of instruments must be repealed, and the Council should consider adopting more a modern nomenclature than the archaic “cabaret.”

Conclusion

It is time for the City to get out of the business of unduly restricting dance—a business that has no place in a cultural capital or a city that never sleeps. The City should encourage, rather than penalize, dance for its positive contributions to communities. Within the framework of other existing laws and systems, we can ensure public safety and peace without missing a beat. As Justice Stallman wrote in the *Festa* case, “Surely, the Big Apple is big enough to find a way to let people dance.”²²

²² *Festa* (2006 N.Y. Slip Op. 26125 *14).