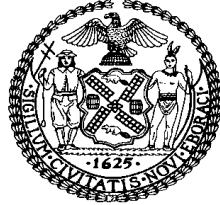


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Hon. Rafael Espinal, *Chair*

September 14, 2017

ENFORCEMENT OF NEW YORK CITY'S CABARET LAW

Proposed Int. No. 1652-A By Council Member Espinal

Title: A Local Law to amend the administrative code of the city of New York, in relation to security cameras and security guards at certain nightlife establishments and repealing subchapter 20 of title 20 of such code, relating to licensing public dance halls, cabarets and catering establishments

Administrative Code: Repeals Subchapter 20 of Chapter 2 of Title 20
Amends §§ 7-703, 16-306.1, and 17-502
Adds Subchapter 13 of Chapter 4 of Title 20

I. INTRODUCTION

On June 19, 2017, the Committee on Consumer Affairs, chaired by Council Member Rafael Espinal, held an oversight hearing titled “Enforcement of New York City’s Cabaret Law.” Approximately 60 witnesses provided testimony about the City’s Cabaret Laws. As a result of positive feedback from the hearing, Introductory Bill No.1688, A Local Law to amend the New York city charter, in relation to establishing an office of nightlife and a nightlife advisory board was passed on August 24, 2017.

On September 14, 2017, the Committee will hold its second hearing on the Cabaret Laws. The Committee will hear Proposed Introductory Bill Number 1652-A (“Proposed Int. No. 1652-A”), A Local Law to amend the administrative code of the city of New York, in relation to security cameras and security guards at certain nightlife establishments and repealing subchapter 20 of title 20 of such code, relating to licensing public dance halls, cabarets and catering establishments. Proposed Int. No. 1652-A represents a continuation of the Committee’s efforts to reform regulation of the nightlife industry. Those invited to testify include the Administration, representatives of the nightlife industry, advocates, and other interested parties.

II. BACKGROUND

The Cabaret Law was first introduced in 1926, during the Prohibition era, to crack down on establishments run by racketeers. Some academics argue that the law’s true aim was to prevent interracial mingling in Harlem jazz clubs.¹ Over the last several decades, the Cabaret Law has evolved as a result of court challenges and legislative updates. Today, it represents a collection of local laws, zoning laws, rules, and regulations that ensure establishments meet

¹ Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City*, 2d ed., (2005).

several safety measures, such as installing sprinkler systems, fire alarms and surveillance cameras.

As the population of New York City continues to grow, people and businesses are moving into the outer boroughs, resulting in higher demand for bars, restaurants and entertainment spaces. Between 2000 and 2015, business in the city grew, but businesses in the Downtown and Midtown Central Business Districts fell from 39% to 31%. In the City's gentrifying neighborhoods business grew by 45%.² Among such establishments is the growing popularity of "do-it-yourself venues" or "DIY venues," often located in vacant warehouses, office spaces, waterfront parks, and even laundromats. For example, the Metro Community Laundromat in Williamsburg became one such location hosting the "Dirty Disco Laundrette Party."³ This growth has also coincided with an increase in the number of resident noise complaints, particularly in the Brooklyn neighborhoods of Williamsburg and Bushwick.⁴ It has also led to concerns over safety. In December 2016, a deadly fire during a pop-up type party in a warehouse space in Oakland, California placed the spotlight on the dangers of illegal clubs that do not meet safety standards. A fire broke out resulting in 36 deaths from smoke inhalation. The building was in violation of fire and electrical codes.⁵ The tragedy caused cities across the nation to take notice of DIY venues operating illegally and the potential risks they pose.⁶

² Office of the New York City Comptroller, *The New Geography of Jobs: A Blueprint for Strengthening NYC Neighborhoods* (Executive Summary), April 25, 2017, <https://comptroller.nyc.gov/reports/the-new-geography-of-jobs-a-blueprint-for-strengthening-nyc-neighborhoods/>

³ J. Rachel Reyes, "Pop-Up Disco at Metro Community Laundromat. Wait. What?" (June 13, 2011), *Free Williamsburg*, <http://freewilliamsburg.com/pop-up-disco-at-metro-community-laundromat>

⁴ Ben Wellington, "Mapping New York's noisiest neighborhoods," (January 17, 2015), *The New Yorker*, <http://www.newyorker.com/tech/elements/mapping-new-york-noise-complaints>

⁵ Paige St. John, "The Ghost Ship fire was 'a matter of benign neglect.' It's not the only one," (December 28, 2016), *LA Times*, <http://www.latimes.com/local/lanow/la-me-ghost-ship-owner-20161227-story.html>

⁶ Judy Woodruff, "After Oakland fire, a nationwide crackdown on warehouse spaces," (December 9, 2016), *PBS*, <http://www.pbs.org/newshour/bb/oakland-fire-nationwide-crackdown-warehouse-spaces/>

In New York City, many venues with dancing do not possess a cabaret license, and as a result, have encountered police enforcement.⁷ The New York City Administrative Code requires that any “cabaret” must secure a license from the Department of Consumer Affairs (“DCA”).⁸ To obtain a cabaret license, an establishment must meet zoning, building code, and fire code requirements. Article III of Chapter 2 of the Zoning Resolution limits “establishments of any capacity with dancing” to Use Group 12 uses, which are generally only permitted, with some limitations, in C4, C6, C7, C8, and manufacturing zoning districts.⁹ The Building Code requires cabarets with capacities exceeding 75 to install manual fire alarms.¹⁰ It also requires cabarets of any capacity to install automatic sprinkler systems.¹¹ In response to a spate of shooting, rapes and murders¹² involving the security guards and bouncers of various nightclubs, the Council passed Local Law 35 of 2006, requiring security guards who are certified and subjected to rigorous background checks by the state, and, and Local Law 7 of 2007, requiring surveillance cameras at all public dance halls and cabarets.¹³

These regulatory requirements tend to be more onerous than those applied to venues without dancing. For example, restaurants must only install automatic sprinkler systems if their capacity exceeds 300. As such, some club owners complain that the costs are excessive for

⁷ Justine Joffe, “NYPD Conducts ‘Gotcha’ Raid on Nonprofit Market Hotel, Tweets High Fives,” (October 13, 2016), <http://observer.com/2016/10/todd-p-on-market-hotel-shut-down-aggravating-to-see-its-motivations-questioned/>; Alan Krawitz, “Arts advocates renew call to end New York City’s antiquated cabaret laws,” (June 1, 2017), Metro, <http://www.metro.us/news/local-news/new-york/arts-advocates-renew-call-end-new-york-citys-antiquated-cabaret-laws>

⁸ NYC Admin Code, Title 20, Chapter 2, Subchapter 20, §§20-359 – 20-369.

⁹ Zoning Resolution (web version), Article III: Commercial District Regulations, Chapter 2 Use Regulations, <https://www1.nyc.gov/assets/planning/download/pdf/zoning/zoning-text/art03c02.pdf>; Department of City Planning, Use Group Tool, <https://www1.nyc.gov/site/planning/zoning/districts-tools/use-groups.page>

¹⁰ § BC 907.2

¹¹ § BC 903.2.1.2

¹² See Baker and Fahim, “Who Killed Student? 17-Hour Gap Holds Answers,” *N.Y. Times*, March 2, 2006; The Associated Press, “Bouncer Indicted in Chelsea shootings,” *Newsday* (N.Y.), June 10, 2006; Alan Feuer, “A Teenager’s Last Steps on a Trail of Missed Chances,” *N.Y. Times*, July 29, 2006

¹³ For a careful detailing on these incidents, please see the committee reports for Local Law 35 of 2006 and Local Law 7 of 2007.

smaller venues.¹⁴ City officials have argued that dancing presents additional safety concerns beyond those present in establishments without dancing, hence the need for such restrictions.¹⁵ Various provisions of the Zoning Resolution provide additional justifications for the measures, which include the need to limit crowds and lineups in front of establishments; to maintain a distance from residential districts; to limit undue vehicle and pedestrian traffic; to limit noise; and to preserve the character of surrounding residential or mixed-use neighborhoods.¹⁶

Advocates from the music and arts community maintain that New York City's laws should not focus on "dancing," per se. The restrictions in the Zoning Resolution means that bars and restaurants that are not located in areas zoned for dancing cannot obtain a cabaret license. Therefore, if patrons start dancing, a bar or restaurant risks being shuttered for being an unlicensed cabaret.

It is this scenario which prompted the owner of Muchmore's Café in Williamsburg to sue the City on the grounds that the Cabaret Law unconstitutionally restricts dancing. The litigation is currently pending before the U.S. District Court for the Eastern District of New York. Prior litigants were unsuccessful in a similar case, where the N.Y. Supreme Court ruled that recreational dancing was not protected by the U.S. Constitution or the New York State Constitution.¹⁷

Regulating the nightlife industry is certainly not a unique issue facing New York City. Cities across the United States and indeed the world have taken unique approaches to address

¹⁴ Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City*, 2d ed., (2005).

¹⁵ Zoning Resolution §§ 32-21 and 73-244; See also Defendants/Respondents Brief in *Festa v. City of New York*, 830 N.Y.S.2d 133, 37 A.D.3d 343 (N.Y. App. Div. 2007).

¹⁶ *Ibid.*

¹⁷ *Festa v. City of New York*, 820 N.Y.S.2d 452 (2006), *aff'd* with modification, 830 N.Y.S.2d 133, 37 A.D.3d 343 (N.Y. App. Div. 2007), appeal dismissed by, 872 N.E.2d 870 (N.Y. 2007).

concerns with the nightlife industry. One such approach, spearheaded by the city of Amsterdam is the introduction of a *nachtburgemeester* – or “night mayor,” who is responsible for nurturing the nightlife economy and improving relations between nightlife businesses, residents and government. This model was recently adopted by the New York City Council. Several witnesses testified at the June 19, 2017 hearing in favor the establishment of an Office of Nightlife and a Nightlife Advisory Board, as well as repealing the Cabaret Laws. As such, On August 24, 2017, the City Council passed Introductory Bill No.1688, A Local Law to amend the New York city charter, in relation to establishing an office of nightlife and a nightlife advisory board.

Proposed Int. No. 1652-A, represents another step towards improving the regulation of nightlife establishments. The bill repeals the requirement to obtain a cabaret license, but maintains all of the important safety measures on security guards and surveillance cameras. It also replaces the term “cabaret” with “nightlife establishment” and moves away from referring to dancing in the definition. The repeal does not affect other fire and electrical safety requirements in the Administrative Code.

III. PROPOSED INT. NO. 1652-A

Proposed Int. No. 1652 repeals all of Subchapter 20 of Chapter 2 of Title 20 relating to the licensing of cabarets, public dance halls and catering establishments. Sections one, two, and three of the bill amend provisions of the Administrative Code that contain cross-references to Subchapter 20 covered by the repeal.

To maintain important safety provisions covered by the repeal of Subchapter 20, section 5 of the bill reenacts current §§ 20-360.1 and 20-360.2, which require cabarets and public dance halls

to install surveillance cameras at entrances/exits and to ensure that any security guards that are hired are licensed pursuant to articles 7 and 7A of the General Business Law. These security provisions are reenacted, with some minor changes, under a new Subchapter 13 in Chapter 4 of Title 20. The changes include replacing the terms “cabaret” and “public dance hall” with “nightlife establishment.” Section 5 also adds a new definition for nightlife establishments, replacing the previous definition of cabaret, much of which has been struck down as unconstitutional by the courts.¹⁸ The bill defines nightlife establishment as “...an establishment that is (i) open to the public after 12:00 a.m. at least one day each week; (ii) is required to have a license to sell liquor at retail pursuant to the alcohol beverage control law; and (iii) satisfies at least two of the following factors: 1. At least 2500 square feet of such establishment is open to the public; 2. Has an occupancy load of at least 150 persons as described on the certificate of occupancy; or 3. Imposes a fee for admission at least once a week.”

¹⁸ *Chiasson v. City of New York*, 132 Misc.2d 640, 505 N.Y.S.2d 499 (Sup.Ct., N.Y. Co. 1986); *Chiasson v. New York City Dept. of Consumer Affairs*, 138 Misc.2d 394, 524 N.Y.S.2d 649 (Sup.Ct., N.Y.Co.1988).

Proposed Int. No. 1652-A

By Council Members Espinal, Reynoso and Levin

A Local Law to amend the administrative code of the city of New York, in relation to security cameras and security guards at certain nightlife establishments and repealing subchapter 20 of title 20 of such code, relating to licensing public dance halls, cabarets and catering establishments

Be it enacted by the Council as follows:

1 Section 1. Subdivision (n) of section 7-703 of the administrative code of the city of New
2 York, as amended by local law number 8 for the year 2007, is amended to read as follows:

3 (n) Any building, erection or place, including one- or two-family dwellings, in which a
4 security guard, as defined in subdivision six of section eighty nine-f of the general business law,
5 is employed in violation of one or more of the following provisions: the alcoholic beverage
6 control law or sections [20-360.1 or] 20-699.12, 27-525.1 or 28-117.4 of this code;

7 § 2. The definition of “catering establishment” in subdivision a of section 16-306.1 of the
8 administrative code of the city of New York, as added by local law number 146 for the year
9 2013, is amended to read as follows:

10 “Catering establishment” [shall have the same meaning as set forth in section 20-359 of
11 this code] means any room, place or space in the city, which is used, leased or hired out for the
12 business of serving food or beverages for a particular function, occasion or event, to which the
13 public is not invited or admitted and wherein music or entertainment is permitted.

14 § 3. Subdivision b of section 17-502 of the administrative code of the city of New York,
15 as amended by local law number 47 for the year 2002, is amended to read as follows:

16 b. “Bar” means a business establishment or any portion of a non-profit entity, which is
17 devoted to the selling and serving of alcoholic beverages for consumption by the public, guests,
18 patrons, or members on the premises and in which the serving of food, if served at all, is only

1 incidental to the sale or consumption of such beverages. For the purposes of this chapter, the
2 term “bar”: (i) shall include a restaurant bar; and (ii) shall include any area located in a hotel or
3 motel, which is devoted to the selling and serving of alcoholic beverages for consumption by the
4 public, guests, patrons, or members on the premises and in which the serving of food, if at all, is
5 only incidental to the sale or consumption of alcoholic beverages[; and (iii) shall include a
6 cabaret as defined in section 20-359 of the code which is required to be licensed by the
7 department of consumer affairs pursuant to section 20-360 of the code and in which the serving
8 of food, if at all, is only incidental to the sale or consumption of alcoholic beverages]. For the
9 purposes of this subdivision, (i) service of food shall be considered incidental to the sale or
10 consumption of alcoholic beverages if the food service generates less than forty percent of total
11 annual gross sales and (ii) any business establishment or any portion of a non-profit entity which
12 is devoted to the selling and serving of alcoholic beverages for consumption by the public,
13 guests, patrons, or members on the premises that generates forty percent or more of total annual
14 gross sales from the sale of food for on-premises consumption shall be a restaurant.

15 § 4. Subchapter 20 of chapter 2 of title 20 of the administrative code of the city of New
16 York is REPEALED.

17 § 5. Chapter 4 of title 20 of the administrative code of the city of New York is amended
18 to add a new subchapter 13 to read as follows:

19 Subchapter 13
20 SECURITY MEASURES AT NIGHTLIFE ESTABLISHMENTS
21 § 20-699.10 Definitions. For the purposes of this subchapter, the following terms have
22 the following meanings:

23 Nightlife establishment. The term “nightlife establishment” means an establishment that
24 is (i) open to the public after 12:00 a.m. at least one day each week; (ii) is required to have a

1 license to sell liquor at retail pursuant to the alcohol beverage control law; and (iii) satisfies at
2 least two of the following factors:

3 1. At least 2500 square feet of such establishment is open to the public;

4 2. Has an occupancy load of at least 150 persons as described on the certificate of
5 occupancy; or

6 3. Imposes a fee for admission at least once a week.

7 Security guard. The term “security guard” means a person as defined by subdivision six
8 of section eighty-nine-f of the general business law. There shall be a rebuttable presumption that
9 a person employed or whose services are retained at a nightlife establishment whose job
10 functions include (i) the monitoring or guarding of the entrance or exit of such nightclub to
11 manage ingress and egress to such establishment for security purposes during the hours of
12 operation of such establishment and/or (ii) protection of such establishment from disorderly or
13 other unlawful conduct by such patrons is a security guard, provided, however, that such
14 rebuttable presumption shall not apply to the owner of such nightlife establishment.

15 Security guard company. The term "security guard company" means a company licensed
16 to provide security guards under contract to other entities pursuant to article 7 of the general
17 business law.

18 § 20-699.11 Digital video surveillance cameras. a. The owner of a nightlife establishment
19 shall equip all entrances and exits used by patrons with digital video surveillance cameras,
20 provided, however, that this section shall not apply to an establishment that operates primarily as
21 a restaurant, as defined by section three of the alcoholic beverage control law, during all hours of
22 operation.

23 b. Digital video surveillance systems shall comply with the following provisions:

1 1. The video surveillance cameras shall be digital in nature and shall be of sufficient
2 number, type, placement and location to view and record all activity in front of and within 15
3 feet of either side of each entrance or exit;

4 2. The video surveillance cameras shall be sufficiently light sensitive and provide
5 sufficient image resolution (supported by additional lighting if necessary) to produce easily
6 discernible images recorded at all times;

7 3. The video surveillance cameras shall record at a minimum speed of fifteen frames per
8 second;

9 4. The video surveillance camera images shall be capable of being viewed through use of
10 appropriate technology, including but not limited to a computer screen or closed circuit
11 television monitor;

12 5. The video surveillance camera or the system affiliated with such camera shall be
13 capable of transferring the recorded images to a portable form of media, including but not limited
14 to compact disc, digital video disc, universal serial bus, secure digital card or portable hard drive;

15 6. The video surveillance cameras shall not have an audio capability;

16 7. The video surveillance cameras shall be maintained in good working condition;

17 8. The video surveillance cameras shall be in operation and recording continuously
18 during all hours of operation of the nightlife establishment and for two hours after the nightlife
19 establishment closes;

20 9. The recordings made by video surveillance cameras installed and maintained pursuant
21 to this section shall be indexed by dates and times and preserved for a minimum of 30 days so
22 that they may be made available to the department, the police department and other government

1 agencies acting in furtherance of a criminal investigation or a civil or administrative law
2 enforcement purpose;

3 10. All recordings made by video surveillance cameras installed and maintained pursuant
4 to this section while in the possession of the nightlife establishment shall be stored in a locked
5 receptacle located in a controlled access area, to which only authorized personnel have access, or
6 shall otherwise be secured so that only authorized personnel may access such video recordings.
7 All personnel authorized to access such video recordings must certify in writing that they have
8 been informed on the appropriate use and retention of recordings as set forth in this section, and
9 on the legal issues associated with video surveillance and the use and retention of recordings.
10 The nightlife establishment shall keep a log of all instances of requests for, access to,
11 dissemination and use of, recorded materials made by video surveillance cameras installed and
12 maintained pursuant to this section; and

13 11. The nightlife establishment shall post signage to notify the public of its use of video
14 surveillance equipment so that the public has sufficient warning that surveillance is in operation.

15 § 20-699.12 Security guards. a. A nightlife establishment that employs or retains the
16 services of one or more security guards or a security guard company shall maintain and make
17 available during all hours of operation, proof that each such security guard is registered pursuant
18 to article 7-A of the general business law or that such security guard company is licensed
19 pursuant to article 7 of the general business law.

20 b. A nightlife establishment that employs or retains the services of one or more security
21 guards or a security guard company shall maintain a roster of all security guards working at any
22 given time when such nightlife establishment is open to the public, and shall require each

1 security guard to maintain on his or her person proof of registration at all times when on the
2 premises.

3 c. Any violation of this section may be reported to the state liquor authority.

4 § 20-699.13 Penalties. Any violation of this subchapter shall be subject to a civil penalty
5 of not more than \$1,000 for each such violation, except that the use or dissemination of
6 recordings made by video surveillance cameras installed and maintained pursuant to section 22-
7 699.11 in violation of the penal law or section 50 of the civil rights law shall result in a civil
8 penalty of not less than \$5,000 nor more than \$50,000.

9 § 6. This local law takes effect 120 days after it

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10 becomes law.

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