Alan D. Sugarman
Attorney At Law

17 W. 70 Street
Suite 4
New York, NY 10023
212-873-1371
mobile 917-208-1516
fax 212-202-3524
sugarman@sugarlaw.com
www.sugarlaw.com

Written Testimony of
Alan D. Sugarman
To The
New York City Council Committee on Consumer Affairs
Hearing on Proposed Int. No. 1652-A
A Bill to Repeal the New York City Cabaret Law
September 14, 2017

I support the repeal of the cabaret law if for no other reason than its erratic unconstitutional enforcement, *as well as the use of "dancing" as an element of noise regulation, the discrimination against legitimate restaurant and bar owners, the suppression of musicians playing danceable music, and as an affront to the 2.4 million Latinos in this City for whom dance is integral to Latin culture.*[1]

The Cabaret Law is widely ignored but still has an impact on smaller venues which are not willing to risk violation of even a rarely enforced law.

I bring to your attention that on November 29, 2017, the Hilton Hotel on 54th Street, which has no Cabaret License, is hosting a Gala benefit open to the public by the Alvin Ailey Dance Company featuring patron dancing.[2] Most hotels ignore the Cabaret Law.

I bring to your attention the article "The Best Places to Dance in NYC" as appears on the web site of the NYC Official Guide.[3] Many of the places do not have Cabaret Licenses. City officials are on the board of NYC & Company which published this Official Guide.

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[1] Italicized language was not included in the verbal presentation of this statement.

[2] https://www.alvinailey.org/support/opening-night-gala-benefit
https://www.alvinailey.org/opening-night-gala-benefit-tickets

[3] https://www.nycgo.com/articles/the-best-places-to-dance-in-nyc.
https://www.nycgo.com/articles/the-best-places-to-dance-in-nyc.

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It is not fair or appropriate for some powerful or favored venues to not face enforcement, while others do.

The law affects all age and cultural demographics, and not just the narrow demographic of house and free-style club dancers.

Proprietors of small bars and restaurants who wish to use small event rooms for social dancing should not be subject to over-bearing regulation intended to apply to large club-dancing venues.

It is appropriate to consider zoning reform incorporating number of patrons and size of assembly sapce as appropriate factors in monitoring noise and congestion producing activities. However, the proposed last-minute definition of Nightlife Establishments is not workable.[4]

As to another topic, many proponents of reform have adopted rhetoric as to racism, safe spaces, weaponizing etc. to distract from the issues of noise and congestion.

There are legitimate concerns as to noise and congestion, issues that motivated the 1926 adoption of the law. To assert that those having these concerns are complicit in racism, as was stated in the earlier hearing, is not only untrue and insulting, but portends trouble when modifications to the zoning resolution are proposed at the Community Board level.

With my testimony, today, I submit a copy of the 1926 Cabaret Law – perhaps some of the assembled here today might take the time to read it for the first time. *Despite exaggerated claims, there is nothing explicitly racist in the text of the law. It is false to state that the 1926 law text incorporates limitations on more than 3-musicians as an attack on Harlem Jazz Clubs, for that provision was not adopted until 1961. The 1926 Cabaret Law had no references to cabaret cards.*

Many of the same repeal supporters improperly cite the work of Professor Michael Lerner, historian, author of Dry Prohibition published by Harvard University, and consultant to the Ken Burns Prohibition Documentary, to support the claim that the 1926 Law was intended to prevent interracial mingling in Harlem jazz clubs, as inaccurately stated in this Committee's

[4] The latest version of the bill provides for security monitoring and registration of security guards for the following entities:

> Nightlife establishment. The term "nightlife establishment" means 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.

Briefing Paper.[5] Professor Lerner states the opposite: that there is little evidence to support those assertions. This is discussed in detail in my August 10, 2017 letter to the Committee which I will file with this letter.

The other support as to claimed racism cited in the Briefing Paper is conjecture, without supporting evidence, found in a book by the lawyer who had filed three cases against the Cabaret Law. Even there, the lawyer relies upon the use of the phrase "running wild" as evidence of racism, while apparently oblivious to the fact that "Running Wild" was a contemporaneous allusion to the highly popular Broadway review of the same name in 1923, which featured two songs "Running Wild" and "The Charleston" and sparked the 1925 Charleston craze by Flappers and others.

This legislation is the first step in modernizing the regulation of dancing. The Zoning Resolutions needs modification. The fire and building codes refer to dancing, without defining dancing. Oddly, these codes in some instances allow greater density of patrons for dining, than dancing, though in a fire, tables are obstructions. These codes need zero-based analysis. To be fair, these codes should apply equally to non-profits, clubs, catering halls, membership organizations, and religious institutions.

It is important that dancing no longer be a factor in any of these codes and regulations. A room crowded shoulder-to-shoulder requires the same fire safety and construction protections, whether patrons are dancing or not.

Sincerely,

Alan D. Sugarman

[5] http://legistar.council.nyc.gov/View.ashx?M=F&ID=5271616&GUID=274BA6D7-6DCC-4CF8-AA16-10BE9AE3E93E