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THE COUNCIL

**BRIEFING PAPER AND COMMITTEE REPORT OF THE GOVERNMENTAL
AFFAIRS DIVISION**

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COMMITTEE ON CONSUMER AFFAIRS

Hon. Rafael Espinal, *Chair*

June 19, 2017

OVERSIGHT:

ENFORCEMENT OF NEW YORK CITY'S CABARET LAW

Int. No. 1648

By Council Member Espinal

Title:

A Local Law to amend the administrative code of the city of New York, in relation to establishing an office of nightlife and a nightlife task force

City Charter:

Amends Charter § 20-D

I. INTRODUCTION

On Monday, June 19, 2017, the Committee on Consumer Affairs, chaired by Council Member Rafael Espinal, will hold an oversight hearing titled “Enforcement of New York City’s Cabaret Law,” and its first hearing on Introductory Bill Number 1648 (“Intro. 1648”), A Local Law to amend the administrative code of the city of New York, in relation to establishing an office of nightlife and a nightlife task force. 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. Historians 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 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

¹ Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City*, 2d ed., (2005); Michael A. Lerner, *Dry Manhattan: Prohibition in New York City*, Mass: Harvard University Press (2007).

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/>

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

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

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/>

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.

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 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

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.

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.*

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 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. The "night mayor" and representatives from its office patrol nightlife hot spots and remind patrons to keep noise levels down, use appropriate bathroom facilities, etcetera. They do not conduct enforcement. The model's success has led to its adoption in cities like Paris, Toulouse, Zurich, London and Berlin.¹⁸

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).

¹⁸ Feargus O'Sullivan, "A 'Night Mayor' Is Transforming Amsterdam After Dark," (January 29, 2016), *The Atlantic*, <https://www.citylab.com/solutions/2016/01/night-mayor-amsterdam-mirik-milan/433893/>

In the United States, San Francisco established the San Francisco Entertainment Commission to regulate, promote and enhance entertainment and nightlife in the city of San Francisco. The Commission is authorized to accept, review and gather information to conduct hearings for entertainment related permit applications.¹⁹ The San Francisco Commission also worked with that city's Office of Economic and Workforce Development to create a resources portal to support its nightlife and entertainment businesses.²⁰

III.INT. NO. 1648

This bill would establish a task force and an Office of Nightlife to address issues relating to the nightlife industry. The task force would be composed of nine members, five of whom would be appointed by the Mayor and four by the Speaker of the Council. The nightlife task force would be comprised of two advocates from the nonprofit or academic sectors, two representatives from the nightlife industry, one community board member, and four public members each of whom has at least five years' experience in one or more of the following areas: i) the New York City fire code and fire department rules; ii) the New York City building code; iii) the New York City zoning resolutions; iv) public safety and nightlife establishment security management; and v) urban planning and development. The task force would hold at least one public hearing in each of the five boroughs.

Further, the task force would examine and make recommendations regarding the following:

- i) The regulatory structure of the nightlife industry;
- ii) Common complaints regarding nightlife establishments;
- iii) Public safety concerns related to the nightlife industry;

¹⁹ City and County of San Francisco, Entertainment Commission, <http://sfgov.org/entertainment/>

²⁰ *Ibid.*

- iv) How to improve enforcement of nightlife industry-related laws and rules;
- v) Zoning and other community development concerns related to the nightlife industry;
- vi) Integration of the nightlife industry into the city's various neighborhoods; and
- vii) Any other issues the task force finds relevant.

Section five of this bill creates the Office of Nightlife, which is headed by a Director. The Director's duties would include: 1) examining 311 complaints relating to the nightlife industry; 2) liaising between nightlife establishments, government and residents; 3) advising the mayor and city agencies on nightlife related issues; 4) assisting with the implementation of any adopted recommendations; 5) develop further recommendations based on recurring issues or trends in the nightlife industry; 6) provide assistance to nightlife establishments in navigating the city's licensing and other requirements; and 7) promote an economically vibrant nightlife industry, taking into account the best interests of the city and its residents. The Director would issue a report on an ongoing basis. The report would include an assessment of the effectiveness of adopted recommendations, as well as any new recommendations.

By Council Member Espinal

A LOCAL LAW

A Local Law to amend the administrative code of the city of New York, in relation to establishing an office of nightlife and a nightlife task force

Be it enacted by the Council as follows:

1 Section 1. There is hereby created a nightlife task force to examine issues relating to the
2 nightlife industry, which includes restaurants, bars, nightclubs, public dance halls, and other
3 cultural or arts spaces. This task force shall identify and study common issues and trends relating
4 to the nightlife industry. The task force shall make recommendations to the mayor and the
5 council on ways to improve laws and policies that impact nightlife establishments. In making its
6 recommendations, the task force should examine the following: i) the regulatory structure of the
7 nightlife industry; ii) common complaints regarding nightlife establishments; iii) public safety
8 concerns related to the nightlife industry; iv) how to improve enforcement of nightlife industry-
9 related laws and rules; v) zoning and other community development concerns related to the
10 nightlife industry; vi) integration of the nightlife industry into the city's various neighborhoods;
11 and vi) any other issues the task force finds are relevant.

12 § 2. The nightlife task force shall consist of 9 members, 5 of whom shall be appointed by
13 the mayor, 4 of whom shall be appointed by the speaker of the council, and none of whom may
14 hold any other public office, employment or trust. The nightlife task force shall be comprised of
15 2 advocates from the nonprofit or academic sectors, 2 representatives from the nightlife industry,
16 1 community board member, and 4 public members each of whom has at least 5 years'
17 experience in one or more of the following areas: i) the New York city fire code and fire

1 department rules; ii) the New York city building code; iii) the New York city zoning resolutions;
2 iv) public safety and nightlife establishment security management; and v) urban planning and
3 development. The mayor shall designate 1 public member to serve as chair. Any vacancy on the
4 nightlife task force shall be filled in the same manner as an original appointment.

5 § 3. The nightlife task force shall hold at least 1 public hearing in each borough. The
6 commissioner of the department of consumer affairs shall serve as chairperson and shall convene
7 the first meeting of the task force within 90 days after the effective date of this local law.

8 § 4. No later than 1 year after the effective date of this local law, the nightlife task
9 force shall submit its findings and recommendations to the mayor and the speaker of the council.
10 The nightlife task force shall be dissolved upon submission of such report.

11 § 5. Chapter 1 of the New York city charter is amended by adding a new section 20-D to
12 read as follows:

13 § 20-D Office of nightlife. a. Definitions. For the purposes of this section the following
14 terms shall have the following meanings:

15 Nightlife establishment. The term “nightlife establishment” means a restaurant, bar,
16 nightclub, lounge, public dance hall and catering establishment.

17 Director. The term “director” means the director of the office of nightlife.

18 b. The mayor shall establish an office of nightlife. Such office may be established in the
19 executive office of the mayor or may be established as a separate office or within any office of
20 the mayor or department that does not conduct enforcement against nightlife establishments.
21 Such office shall be headed by a director who shall be appointed by the mayor or by the head of
22 such department.

23 c. Powers and duties. The director shall have the power and duty to:

- 1 1. Receive and examine 311 complaints relating to noise, loitering or other types of
2 complaints regarding the operation of nightlife establishments and assist such establishments in
3 addressing such complaints;
- 4 2. Serve as the intermediary between city agencies, law enforcement, residents and the
5 nightlife industry to resolve complaints;
- 6 3. Advise and assist the mayor and the heads of departments which provide services to
7 nightlife establishments including, but not limited to, the department of consumer affairs, the
8 police department, the fire department, the department of city planning, the department of
9 buildings and the department of small business, on issues relating to the nightlife industry;
- 10 4. Monitor and assist with the implementation of the nightlife task force
11 recommendations, if any;
- 12 5. Monitor the number and types of violations issued to nightlife establishments and
13 develop recommendations to address recurring problems or trends, in consultation with industry
14 representatives, city agencies, community boards and residents;
- 15 6. Provide assistance to nightlife establishments seeking to obtain relevant licenses,
16 permits or approvals from city agencies;
- 17 7. Promote an economically and culturally vibrant nightlife industry, while accounting
18 for the best of interests of the city and its residents; and
- 19 8. Perform other relevant duties as the mayor may assign.
- 20 d. Within 18 months of the effective date of the local law that added this section, and
21 annually thereafter, the director shall prepare and submit a report to the mayor and the council
22 which shall include, but not be limited to, any steps taken to implement recommendations of the
23 nightlife task force, any additional recommendations developed by the director pursuant to

1 paragraph 5 of subdivision c of this section, whether such recommendations were accepted, an
2 evaluation of the effectiveness of such recommendations, and any other duties assigned to
3 the office pursuant to paragraph 8.

4 § 6. This local law takes effect immediately.

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6/7/17

