CITY PLANNING COMMISSION

December 13, 1989/Calendar No.36 M 890808 (A) ZRY

IN THE MATTER OF an application submitted by the Department of City Planning pursuant to Section 200 of the New York City Charter, for amendments of the Zoning Resolution of the City of New York relating to language which refers to "incidental music," easing restrictions on clubs with no dancing with capacities of under 200 people and imposing more restrictive regulations on larger entertainment establishments and those with dancing.

The application for amendments to the Zoning Resolution was filed by the Department of City Planning on April 7, 1989. Modifications to the application were filed on September 22, 1989. The proposed amendments establish a new use, "accessory music for which there is no cover charge and no specified showtime;" ease some restrictions on clubs with capacities of 200 persons or less; and impose more restrictive regulations on larger entertainment establishments and those with dancing.

BACKGROUND

The Department of City Planning began a comprehensive review of the

Zoning Resolution as it concerns entertainment establishments in order to create a more appropriate, up-to-date regulatory framework for controlling such uses. The review was begun after the City received complaints from community residents about noise, traffic, parking, sanitation and crowding impacts from clubs. In June 1986, the State Supreme Court ruled unconstitutional the provision of the Zoning Resolution that regulates incidental musical entertainment by distinguishing types of musical instruments. In January 1988, the State Supreme Court ruled that the provision of the Zoning Resolution that regulates eating or drinking establishments by the number of musicians was also unconstitutional.

Section 32-15 of the Zoning Resolution, Use Group 6A, currently includes: "Eating or drinking places, including those which provide outdoor table service or incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar, or any string instrument, and those which have accessory drive-through facilities." Such uses are permitted as-of-right in C1, C2, C4, C5, C6, C8, M1, M2 and M3 Districts; a special permit is required in C3 Districts. The court rulings which declared unconstitutional the provisions of Section 32-15 concerning the types of instruments that may be played and the number of musicians that constitute "incidental musical entertainment" have created a need to replace the relevant provisions in the Zoning Resolution.

Section 32-21 of the Zoning Resolution, Use Group 12A, currently includes "Eating or drinking places, without restrictions on entertainment or dancing." Such uses are permitted as-of-right in C4, C6, C7, C8, and most manufacturing districts and by special permit in C2, C3, M1-5A and M1-5B Districts. Such establishments are not permitted presently in C1 and C5 Districts (except that they are permitted in hotels in C5 Districts).

In April 1989, the Department of City Planning proposed amendments to the Zoning Resolution that set forth a new framework for regulation of entertainment establishments.

That proposal would have established a new use, "accessory music for which there is no cover charge or specified showtime."

Recognizing the limited impacts of small entertainment establishments without dancing, the proposal created a new Use Group 6C, based on capacity. Use Group 6C would have allowed eating or drinking establishments with entertainment but not dancing and a capacity of up to 175 persons as-of-right in C4, C6, C8 and most manufacturing districts and by special permit in C1, C2, C3, C5, M1-5A and M1-5B Districts.

The earlier proposal also sought to regulate large entertainment establishments, and all establishments with dancing, by hours of operation to prevent late night traffic, congestion on sidewalks and street noise. Eating or drinking establishments with entertainment and a capacity of more than 175 persons or any establishments with dancing (Use Group 12) would have been permitted as-of-right in C4, C6, C7, C8 and all manufacturing districts except M1-5A and M1-5B Districts, and by special permit under Section 73-241 in C2, C3, M1-5A and M1-5B Districts, provided they operated only during certain restricted hours. Any such establishments that operated beyond the restricted hours would have been classified as Use Group 13 and would have been permitted as-of-right in C6-5, C6-6, C6-7, C6-8, C6-9, C7, C8 and most manufacturing districts and by special permit under a new Section 73-244, described below, in C2, C3, C4, C6-1, C6-2, C6-3, C6-4, M1-5A, M1-5B, M1-5M and M1-6M Districts.

The earlier proposal also would have amended Section 52-34 of the Zoning Resolution (Commercial Uses in Residential Districts), which regulates changes in non-conforming commercial uses in residential districts. The proposal contained a provision which stipulated that accessory music in non-conforming eating or drinking establishments allowed by this section be by mechanical device only.

Finally, language dealing with accessory music or entertainment in various special districts (Section 81-722, Use Group T; Section 81-82, Use Group F; Section 82-062, Use Group L; Section 83-03, Use Group "LC"; Section 85-03; Section 86-092, Use Group G; Section 95-081, Use Group T; Section 99-031, Use Group MP; Section 109-211, Use Group LI; Sections 111-102 and 103; and, Section 118-11) was proposed to be amended as appropriate to ensure consistency with the proposed regulatory scheme.

On April 17, 1989 the earlier proposal was referred to every community board and borough board throughout the City. Each board was given the opportunity to hold a hearing and submit its comments to the City Planning Commission. On June 21, 1989, the City Planning Commission held a public hearing on the earlier proposal. However, in an unrelated suit, the New York Court of Appeals in July 1989, decided that "...the State has preempted any local regulation concerning the subject matter of hours of operation..." of businesses licensed by the State Liquor Authority. That ruling, and the comments received as part of the public review process, resulted in the City Planning Commission's decision to modify the earlier proposal. The modified proposal was referred to all 59 community boards and the five borough boards for comment on October 3, 1989.

As in the original proposal, the modified proposal would establish a revised standard for background music in eating or drinking establishments. That standard would establish a category of use (Use Group 6A) called "accessory music for which there is no cover charge and no specified showtime." The proposed text distinguishes between restaurants and bars with this "accessory music," and eating or drinking establishments that have entertainment with a cover charge or showtime, but no dancing. Eating or drinking establishments with accessory music would continue to be permitted as-of-right in C1, C2, C4, C5, C6, C8, M1, M2 and M3 Districts, and by special permit in C3 Districts.

The modified proposal distinguishes between two types of eating or drinking establishments with entertainment, those with no dancing and a capacity of up to 200 persons, and those with dancing and/or a capacity exceeding 200 persons.

Provisions in the modified proposal which deal with eating or drinking establishments with entertainment but no dancing (new Use Group 6C) revise the earlier proposal in several significant respects. The current proposal increases the capacity threshold to 200 persons and allows the use as-of-right in additional zones. The current proposal permits eating or drinking establishments with entertainment but not dancing and a capacity of up to 200 persons as-of-right in C1-5, C1-6, C1-7, C1-8, C1-9, C2-5, C2-6, C2-7, C2-

8, C4, and C6 Districts, which are high-density, centrally-located areas, as well as in C8 and most manufacturing districts. These uses would be permitted by special permit in C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C3, C5, M1-5A and M1-5B Districts.

Under the modified proposal eating or drinking establishments with entertainment and a capacity of more than 200 persons, or any capacity with dancing (Use Group 12 A) would be allowed as-of-right in C6, C7, C8 and most manufacturing districts, and by special permit in C2, C3, C4, M1-5A, M1-5B, M1-5M, M1-6M and the Lower Manhattan Mixed Use Districts. In C6-1, C6-2, C6-3 and C6-4 Districts, such establishments would be required to provide a minimum of four square feet of interior waiting area for each person permitted under the occupant capacity as determined by the New York City Building Code, and their entrance would be required to be a minimum of 100 feet from the nearest residential district boundary.

The modified proposal retains from the earlier proposal a new special permit section (73-244) for eating or drinking establishments with entertainment and either a capacity of more than 200 persons, or any capacity with dancing. The findings set forth in this section include: That a minimum of four square feet of enclosed waiting area within the zoning lot shall be provided for each person permitted under the occupant capacity as determined

by the New York City Building Code; that the entrance to such use is a minimum of 100 feet from the nearest residential district boundary; that such use will not cause undue vehicular or pedestrian congestion in the local streets; that such use will not impair the character or the future use or development of the surrounding residential or mixed-use neighborhoods; that such use will not cause the sound level in any affected conforming residential use, joint-living work quarters for artists, or loft dwelling to exceed the limits set forth in any applicable provision of the New York City Noise Control Code; and that the application be made jointly by the owner of the building and the operators of such eating or drinking establishment. In addition, the Board of Standards and Appeals is authorized to prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, specification of acoustical insulation, maximum size of the establishment, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts, or parking. The Section also provides that any violation of the terms of a special permit may be grounds for its revocation.

The modified proposal does not amend Use Group 13. All eating or drinking establishments with entertainment and a capacity of more than 200 persons, or any capacity with dancing, are included in the

current proposal in Use Group 12A. Therefore, the earlier proposal to amend Use Group 13 has been eliminated.

The earlier proposed change to Section 52-34 of the Zoning Resolution (Commercial Uses in Residential Districts) which would have stipulated that accessory music in non-conforming eating or drinking establishments be allowed by this section by mechanical device only has been dropped from the current proposal because it was deemed unnecessary and inappropriate.

Finally, language dealing with accessory music or entertainment establishments in Section 81-722, Use Group T; Section 81-82, Use Group F; Section 82-062, Use Group L; Section 83-03, Use Group "LC"; Section 85-03; Section 86-092, Use Group G; Section 95-081, Use Group T; Section 99-031, Use Group MP; Section 109-211, Use Group LI; Sections 111-102 and 103; and, Section 118-11, was further amended as appropriate to ensure consistency with the modified regulatory framework.

ENVIRONMENTAL REVIEW

This application (N 890808 ZRY) was reviewed by the Department of Environmental Protection and the Department of City Planning pursuant to the New York State Environmental Quality Review Act (SEQRA), and the SEQRA regulations set forth in Volume 6 of the New

York Code of Rules and Regulations, Section 617.00 et seq., and the New York City Environmental Quality Review (CEQR) procedures set forth in Executive Order No. 91 of 1977. The designated CEQR number is 89-252Y.

The Department of Environmental Protection and the Department of City Planning submitted to the Commission for its consideration the results of their study of the potential environmental impacts of the proposed action. A Negative Declaration was issued on April 17, 1989.

Modifications were made to the proposal on September 22, 1989. On September 29, 1989 it was determined that these were minor modifications and that the Negative Declaration issued on April 17, 1989 remains valid.

PUBLIC REVIEW

On April 17, 1989 the earlier proposed text change application was referred to the 59 community boards and 5 borough boards for information and review in accordance with the procedures for referring non-ULURP matters. On October 3, 1989 the modified proposed text change application was referred to the 59 community boards and 5 borough boards for information and review in accordance with the procedures for referring non-ULURP matters.

Community Board Review

The Commission received the following recommendations:

Community Board Number 15, Brooklyn, voted on July 25, 1989, 30-0-0, to adopt a resolution recommending approval of the application.

Community Board Number 1, Manhattan, voted on June 13, 1989, 21-1-5, to adopt a resolution recommending approval of the application with the following modifications:

1. There should be no prohibition on live musicians in favor of recorded music in Sec. 52-34, nor anywhere in the zoning, because it is noise levels and impact, not their source, which should be regulated.

2. Because large places with dancing [Large places (175+) and places with dancing which close by 12:30 AM weekdays and 2:00 AM Fri/Sat would be as-of-right in C4 and C6, but would require a Special Permit in M1-5A/5B. (Use Group 12).] are difficult to live near no matter what their hours of operation, they should only be allowed by Special Permit, so that their construction can be mandated to have proper sound mitigation.

3. Community Board #1 requests that CPC concentrate on implementation of controls over large establishments with dancing, and establish a fast-track approval process for smaller places so that smaller non-dancing live music establishments are not discouraged by the process.

4. CPC should add C6 districts to those requiring special permits for [Large places (175+) and places with dancing which close by 12:30 AM weekdays and 2:00 AM Fri/Sat would be as-of-

right in C4 and C6, but would require a Special Permit in M1-5A/5B. (Use Group 12).].

Community Board Number 2, Manhattan, voted on May 22, 1989, 20-13-3, to recommend the following:

> BE IT RESOLVED that the definition of Cabaret should read: "Cabaret" shall mean any room, place or space in the city in which any music (live or recorded), singing, dancing by performers and/or patrons or other forms of amusement is permitted in connection with the restaurant business or the business of directly or indirectly selling to the public food or drink, and
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> Any establishment with accessory music must file with the Department of Environmental Protection. The Department of Environmental Protection would then follow through with inspections and prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows, provision of sound-lock vestibules, kinds of amplification of musical instruments or voices, shielding of flood lights, adequate screening, curb cuts or parking.

Community Board Number 5, Manhattan, voted on May 11, 1989, 28-1-0, to adopt a resolution recommending approval of the application with the following modification:

> ...provided that the text applies only to establishments of patron dancing and/or of more than 200 person capacity.
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> Further, that the abatement of quality of life infringements resulting from large discos and clubs being of primary concern, that the language contained in the Text Amendment must include provisions for strict compliance with noise mitigation measures such as location of entrances and windows, provisions of sound lock vestibules, specification of acoustical insulation, and levels of amplification with

respect to establishments with patron dancing and/or more than 200 person capacity. In addition, language should be included which requires indoor waiting space for patrons to minimize the noise and congestion associated with the type of use.

Community Board Number 6, Manhattan, voted on June 14, 1989, 16-5-1, to recommend the following:

RESOLVED, that Community Board Six opposes the addition of non-accessory entertainment use by Special Permit under Use Group 6 in C1 Districts as proposed under this Zoning Text Amendment and recommends instead accessory entertainment use as-of-right.

Community Board Number 8, Manhattan, voted on June 21, 1989, 27-0-2, to adopt a resolution recommending approval of the application with the following modifications:

a) The Entertainment Uses of Use Groups 12 and 13 not apply to C2 zones and

b) that the proposed definitions of Accessory and non-Accessory musical entertainment be reviewed to eliminate all discrimination against live musical entertainment.

The Manhattan Borough Board voted on June 15, 1989, 10-0-0, to recommend the following:

(1) Eating and drinking establishments with entertainment but no patron dancing with a capacity of 200 persons or less should be as-of-right.

(2) Eating and drinking establishments with patron dancing or a capacity over 200 persons should be regulated as proposed.

(3) The entertainment uses in Use Group 12 and 13 should not be permitted in C2 zones.

(4) The category of "public dance hall" should be

retained in the zoning resolution.

Community Board Number 5, Queens, voted on June 12, 1989, 33-0-3, to recommend the following:

> RESOLVED, that Community Board 5, Queens strongly opposes and recommends against the creation of new special permit for entertainment uses in C1 zones and the as-of-right allowance of larger entertainment uses in C4 zones. Further the Board feel City Planning should more carefully consider the potential impacts on Queens neighborhoods from these proposed.

Community Board Number 1, Richmond, voted on June 13, 1989, 21-10-4, to adopt a resolution recommending approval of the application.

Community Board Number 8, The Bronx, voted on June 13, 1989, unanimously, to adopt a resolution recommending approval of the application with the following modifications:

> ...that Special Permit be required in the M-1 or M-2 Zones, and in any subclassification of either of them.

The Commission received the following recommendations on the modified proposal which was referred to the community boards and the borough boards on October 3, 1989:

Community Board Number 2, Manhattan, voted on November 16, 1989, 37-0-0, to adopt a resolution recommending approval of the application with the following modification:

> Where residential use exists within 100 ft., that adequate sound proofing be required for

all entertainment establishments, large and small, and such sound proofing should include sound proof vestibules, sound lock doors and fixed windows.

Community Board Number 5, Manhattan, voted on October 12, 1989, 26-0-2, to adopt a resolution recommending approval of the application with the following modifications:

1) That Use Group 6C establishment located in M1-5A and M1-5B Zones be moved from Special permit to "as-of-right" status.

2) That for zoning designations in Manhattan, the term "dancing" be defined as "patron dancing" only.

3) That all Use Group 12 establishments, regardless of the Zoning designation in which they are located, be required to seek Special Permits. As all of the public complaints regarding entertainment establishments have been associated with this use group, and whereas the Special Permit process affords the Bureau of Standards & Appeals an intelligent and wide range of actions to avoid public nuisance before they occur, we feel this is the surest way of reducing future conflicts. We would further recommend that the conditions currently applied to as-of-right establishments in your proposal be applied in all cases and serve as the minimum mitigation requirements.

Community Board Number 6, Manhattan, voted on October 11, 1989, 25-7-1, to recommend the following:

RESOLVED, that Community Board Six reaffirms its opposition to entertainment use in C1 districts and recommends that a special permit be required for any eating or drinking establishments with entertainment for any building which is primarily residential or is located in a residential area.

Community Board Number 8, Manhattan, voted on November 15, 1989, 22-0-4, to adopt a resolution recommending approval of the application with the following modifications:

> ...with the proviso that the Use Group 12 be excluded from all C2 Zones.

City Planning Commission Public Hearing

On June 7, 1989 (Calendar No. 9) the Commission scheduled June 21, 1989 for a public hearing on this application (N 890808 ZRY). The hearing was duly held on June 21, 1989 (Calendar No. 26). On October 18, 1989 (Calendar No. 14) the Commission scheduled November 8, 1989 for a public hearing on the modified application (N 890808 (A) ZRY). The hearing was duly held on November 8, 1989 (Calendar No. 38).

Fourteen speakers appeared in opposition to the earlier proposal at the June 21, 1989 hearing, and the hearing was closed.

Representatives of the American Federation of Musicians, Local 802 opposed the proposed amendment principally because, in their estimation, the regulations would require small establishments with live entertainment to obtain special permits in many zoning districts where none are now required because of the court decisions. The representatives asserted that music that is not live would need no special permit under the proposal and that there

is no evidence to support the assumption that live music creates more adverse impacts on a neighborhood than does mechanically-reproduced music.

A representative of the New York Cabaret Association opposed the proposed text amendments principally because large dance clubs would be subject to restricted hours of operation unless a special permit were obtained to allow them to remain open later. He argued that obtaining a special permit is time consuming and costly. The representative noted that the Association believes the proposed three year term for a special permit is too short; he stated that "few individuals will invest the considerable sums necessary for building new nightclubs while not knowing in advance whether or not a special permit will be granted and, if granted, then only for a maximum term of three years." The Association asserted that the areas where clubs with full operating hours would be permitted as-of-right are too few and further objected to the proposed special permit provisions requiring an indoor waiting area and entrances to be located no closer than 100 feet from a residential district.

The remaining speakers included club directors, managers, those involved in the nightclub industry, party planners, promoters, professional musicians and a professional singer. These individuals supported the comments made by Local 802 or the Cabaret Association. Some opposed the proposed text amendments citing

potential adverse economic impacts to the industry and, hence, the City. Others stated that the proposal would encourage the establishment of illegal clubs. Still others testified that late night clubs are essential to new musicians and some segments of the New York City community and should not be discouraged.

On October 18, 1989 (Calendar No. 14) the Commission scheduled November 8, 1989 for a public hearing on the modified application (N 890808 (A) ZRY). The hearing was duly held on November 8, 1989 (Calendar No.38).

Ten speakers appeared in opposition to the modified proposal.

Representatives of Local 802 of the American Federation of Musicians spoke in opposition to the proposed modified text amendments. Local 802 believes that the proposal discriminates against live music in favor of recorded music, especially in the boroughs outside of Manhattan, where a special permit would be required for small entertainment establishments in C1 and C2 Districts generally mapped as overlays in residential districts. The representatives of Local 802 say that there is no evidence to support the Department of City Planning position that live music in small entertainment establishments without dancing creates adverse land-use impacts, while mechanically-produced music does not. The Federation states that the time period for public review

of the modified proposal is too short. Local 802 of the American Federation of Musicians proposes a further modification to the proposed text amendment that eliminates any reference to accessory music. The Federation does not object to regulating entertainment establishments on the basis of size and patron dancing.

A representative of The New York Cabaret Association testified against the proposed modified text amendments, citing few complaints from the public about the nightclub industry. The Association objects to the requirements of the special permit for large entertainment establishments and those establishments with dancing, and to the expansion of the locations where a special permit would be required. The Association states that the process of obtaining a special permit is time consuming, costly and unpredictable. The process, the Association argues, makes it difficult to obtain the investment dollars necessary to open a nightclub; the special permit's term of three years is too short for a long term investment.

The New York Cabaret Association continues to believe that the proposed increase in the number of districts where such uses would require a special permit, such as the M1-5M, M1-6M and C4 Districts, will reduce the number of new nightclubs opening in the City. The Association also asserted that although existing nightclub locations would be "grandfathered" under the proposal,

the difficulty of opening a new club successfully in a location where one previously existed, coupled with the relatively short life-span of existing establishments, will result in extinction of the industry.

The Association continues to object to the findings for a special permit. The Association argues that the indoor waiting area will have no impact on reducing crowding on the public street because, unlike movie theaters where people wait to be admitted to the next set showtime, people wait to be admitted to nightclubs "primarily because the establishment has reached its legal maximum capacity." The Cabaret Association asks for re-examination of the proposed requirement that no entrance to a cabaret shall be within 100 feet of a residence district. The Association opines that the requirement will effectively preclude cabarets from locating in many areas, especially in C6 Districts.

The Cabaret Association believes further that the renewal of a special permit should not require the building owner's consent. The Association states that the cooperation of the landlord "will often not come without the club owner paying a heavy price."

Most of the remaining speakers were nightclub directors, party promoters and planners, and musicians. These individuals supported the comments of Local 802 or the Cabaret Association. Two

musicians stated that the proposed requirement that small entertainment establishments without dancing obtain a special permit in several C1 and C2 districts mapped as overlays outside Manhattan would eliminate opportunities for musicians to perform in those other boroughs. One stated further that the loss of such establishments would deprive nearby residents of a cultural resource close to their homes. Others made comments similar to those which were articulated at the June 21, 1989 public hearing on the earlier proposal.

A written statement asking for an amendment to the current zoning text as it relates to accessory drive-through facilities was submitted to the Commission. The writer asks that the proposed text amendment be further modified to permit eating or drinking establishments with accessory drive-through facilities in C4 Districts.

CONSIDERATION

The City Planning Commission considers the proposed amendment, as modified, to be appropriate. The Commission believes the modified amendment establishes an effective regulatory scheme for entertainment uses; based on sound planning principles, it eases some restrictions on small clubs with capacities of 200 persons or less and imposes more restrictive regulations on larger

entertainment establishments and those with dancing. We believe that these amendments will reduce conflicts that these establishments create with nearby residential uses.

Background Music

The need for a new standard for certain background music stems from court decisions declaring unconstitutional the Zoning Resolution definition of incidental music, as well as from the Commission's concern that circumstances have changed, rendering the current text an anachronism. The Commission believes that accessory music for which there is no cover charge and no specified showtime is background music that should be allowed as-of-right in restaurants and bars which are as-of-right in most commercial districts; such background music should be distinguished from entertainment which is the principal use of establishments such as cabarets.

The Commission considered the arguments presented by Local 802 of the American Federation of Musicians that the proposal would discriminate against live music in favor of recorded music in small clubs without dancing. The Commission feels strongly that the proposal does not in any way discriminate against live music. In fact, no distinction is made in the proposed zoning text between live and recorded musical entertainment. Rather, the proposed text

amendment would maintain the distinction between background music which is accessory to the principal use of restaurants and bars, and other entertainment which is the principal use of small clubs without dancing. The distinction is important because the thrust of the proposal is to properly regulate the impacts of entertainment establishments. Patrons do not generally line-up in front of restaurants and bars to place quarters in jukeboxes; they often do line-up to pay a cover charge for a musical performance or to hear a performance in a small club without dancing. Establishments where music is background and thus accessory to the primary eating or drinking use create fewer land-use impacts than establishments where music is the primary use.

Small Clubs Without Dancing

The Commission has considered the Department of City Planning recommendations that deal with smaller establishments which present entertainment but do not have dancing. In response to comments received during the public review process, several changes were made to that portion of the earlier proposal, designed to ease some restrictions on small clubs with a capacity of 175 persons or less.

During the public review process on the earlier proposal, a number of community boards in Manhattan and the Manhattan Borough Board questioned the need for a special permit for this use in C1 and C2

Districts. They pointed out that the "unregulated" situation which has been in effect since the court decisions has not given rise to additional complaints, and that the special permit is unnecessary. They also suggested that the capacity limit for these establishments be raised from 175 to 200 persons.

Although the proposed text is applicable city-wide, the divergence of neighborhood conditions makes a case for amending the earlier proposal by allowing small clubs without dancing as-of-right in those C1 and C2 Districts which are mapped in Manhattan and other centrally located areas, and retaining the special permit provisions for C1 and C2 Districts which are mapped elsewhere, primarily in the other boroughs. The Commission believes that the modified proposal respects the differences in character between the centrally located C1 and C2 Districts in Manhattan and those in the other boroughs. Easing restrictions on such clubs in districts in Manhattan would acknowledge and enhance Manhattan's role as an entertainment center. Requiring a special permit for such establishments in C1 and C2 Districts mapped as overlays of residential districts in the other boroughs acknowledges those districts which can be characterized as smaller in scale, less densely populated and more automobile-oriented than the Manhattan C1 and C2 Districts. A club with non-accessory entertainment is likely to cause greater land-use impacts in such areas.

The Commission has also given due consideration to the recommendation of the Manhattan Borough Board that the threshold capacity of small entertainment establishments be raised from 175, as originally proposed, to 200 persons. We concur with that recommendation, as it is consistent with research conducted by the Department of City Planning. Raising the capacity of such establishments by 25 persons will not generate undue negative impacts on the surrounding communities and will enable "jazz clubs" to operate as-of-right in many appropriate areas.

Large Clubs or Any Establishment With Dancing

During the public review process on the earlier proposal, many comments were made indicating widespread support for more restrictive regulation of these uses than currently exists. However, speakers at the June 21, 1989 public hearing objected strongly to any regulatory scheme for dance clubs based on hours of operation.

The Commission considered the views of various community boards that eating or drinking places without restrictions on entertainment or dancing be allowed only by special permit or by special permit in M1 and M2 Districts. We also considered the contrary argument presented by the New York Cabaret Association that the special permit procedure is time-consuming, costly and

unpredictable and would result in fewer such establishments. The Commission believes that in C6, C7, C8 and most manufacturing districts, large entertainment establishments and establishments with dancing would be compatible with other as-of-right uses and should be as-of-right.

The Commission concurs with Community Board 5, Queens, which opposed the earlier proposal to allow such clubs as-of-right in C4 Districts, as permitted under current zoning. The modified text amendment would require a special permit for large entertainment establishments or any establishment with dancing in C4 Districts. At the earlier public hearing, the New York Cabaret Association stated that it would not oppose eliminating altogether such uses in C4 Districts. At the November 8, 1989, public hearing, the Association objected to the proposed requirement that large entertainment establishments or any establishment with dancing obtain a special permit in M1-5M, M1-6M and C4 Districts. A member of the Association stated at the November public hearing that C4 Districts make up 80 percent of the commercial area in boroughs outside of Manhattan. However, research conducted by the Department of City Planning shows that C4 Districts make up approximately four (4) percent of commercial and manufacturing acreage mapped in boroughs other than Manhattan. The Commission believes that the proposed modification is a reasonable restriction because C4 Districts are most often found as part of retail strips

in residential neighborhoods, often with residences located directly above the commercial uses.

The argument was advanced that the Commission should approve an amendment to the Zoning Resolution that would preclude large clubs and clubs of any size with dancing in C2 Districts. After carefully considering this recommendation, the Commission feels that the current special permit in C2 Districts, supplemented with the additional restrictions proposed for Section 73-244 of the Resolution, requiring, among other things, an interior waiting area and minimum distance from a residence district, would provide adequate protection for residential neighbors.

The New York Cabaret Association argued at the earlier public hearing that there are too few areas where new clubs with full operating hours would be permitted as-of-right. By removing hours of operation from the modified proposal, and permitting such establishments as-of-right in all C6 Districts, these objections have been responded to.

Objections by the Association to the requirements of an indoor waiting area and minimum (100 feet) distance from a residence district were carefully considered by the Commission. The Commission is convinced that such requirements are necessary and appropriate to protect nearby residents from the impacts associated

with large clubs and clubs with dancing. Repeated field trips by Department of City Planning staff found large crowds waiting in front of such establishments. We believe that special permit findings which require an indoor waiting area and minimum distance from a residence district are needed in C2, C3, C4, M1-5A, M1-5B, M1-5M, M1-6M and the Lower Manhattan Mixed Use Districts. For the same reasons, we believe that these requirements are needed in C6-1, C6-2, C6-3 and C6-4 Districts where these uses are allowed as-of-right and where neighborhood character is often more residential than commercial.

A similar waiting area requirement which was established for motion picture theaters in certain commercial districts has achieved its desired objectives. The Commission recognizes the difficulty some club operators face in trying to regulate the conduct of persons who are outside awaiting entry. However, it is for that reason that the interior waiting area is needed. A reasonable portion of the building interior should be set aside for waiting patrons in order to avoid crowds congregating on the public streets during late night or early morning hours.

To further protect nearby residences from the impacts associated with such entertainment establishments, the 100 feet minimum distance requirement for the location of club entrances is also needed. The Commission believes that the minimum distance

requirement strikes an appropriate balance between the legitimate needs of the nightclub industry and the residents living nearby. To the extent that clubs generate noise, traffic and crowds, such activity should be on commercial streets and should be discouraged from spilling over onto residential side streets.

The Commission has retained the earlier proposal to delete all references to public dance halls from Use Group 12. It is the Commission's belief that public dance halls which also serve food or beverages constitute eating or drinking establishments with dancing and that there is no reason to maintain public dance halls as a separate use, as they invariably serve food or drink. Therefore, "public dance halls" has been eliminated to simplify the Zoning Resolution. We note that the Administration has submitted legislation to the City Council that would, consistent with this zoning change, amend the Administrative Code to repeal all references to public dance halls. These establishments are currently licensed by the Department of Consumer Affairs.

The Commission has considered arguments that the proposal would encourage the establishment of illegal clubs by overly restricting the areas where new clubs could open, and that the clubs are essential to new musicians and various segments of the City's population. The Commission concurs that nightclubs and dancing establishments serve an important role in the cultural life of this

city. They should not only be accepted, but encouraged. At the same time, they should be good neighbors at appropriate locations. In addition to the existing entertainment establishments that are "grandfathered," and can legally continue to operate at existing locations, future additional demand for large clubs and all establishments with dancing will be easily accommodated in the many districts and vast areas which will continue to permit such establishments as-of-right in all boroughs. In addition, very substantial additional areas are potential sites, subject to a special permit after review of possible impacts by the Board of Standards and Appeals.

The Commission is in receipt of a letter dated November 9, 1989 from the Board of Standards and Appeals stating that the Board "previously indicated its support of the proposed entertainment text amendment," and noting that, "In granting special permits, the Board is accorded broad discretion and may impose conditions on the special permit use."

RESOLUTION

RESOLVED, that the City Planning Commission finds that the action described herein will have no significant effect on the environment; and be it further

RESOLVED, by the City Planning Commission, pursuant to Section 200 of the New York City Charter, that the Zoning Resolution of the City of New York, effective as of December 15, 1961, and as subsequently amended, is further amended as follows:

Matter in underline is new, to be added;
Matter in ~~strikeout~~ is old, to be omitted;
Matter within # # is defined in Section 12-10;
*** indicates where unchanged text appears in the Zoning Resolution

32-15

Use Group 6

A. Convenience Retail or Service Establishments

C1 C2 C4 C5 C6 C8

* * *

Eating or drinking ~~places~~ establishments, including those which provide outdoor table service or have #accessory# music for which there is no cover charge and no specified showtime, ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar, or any string instrument,~~ and those which have #accessory# drive-through facilities.

(2)

* * *

C. Retail or Service Establishments

C1 C2 C4 C5 C6 C8

* * *

Dry goods or fabric stores, limited to 10,000 square feet of #floor area# per establishment

Eating or drinking establishments with entertainment but not dancing, with a capacity of 200 persons or less ***

Parking Requirement Category B

* * *

*** Permitted in C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C3 and C5 Districts only as provided in Section 73-241

* * *

32-21

Use Group 12

C4 C6 C7 C8

* * *

A. Amusements

* * *

** Eating or drinking ~~places without restriction on entertainment or dancing~~ establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing.

In C6-1, C6-2, C6-3 and C6-4 districts a minimum of four square feet of waiting area within the #zoning lot# shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. In these districts the entrance to such #use# shall be a minimum of 100 feet from the nearest #residential district# boundary.

* * *

~~Public dance halls~~

* * *

**Permitted in C4 districts only as provided in Section 73-244

32-30 USES PERMITTED BY SPECIAL PERMIT

32-31

By the Board of Standards and Appeals

C1 C2 C3 C4 C5 C6 C7 C8

* * *

C1-1 C1-2 C1-3 C3

Eating or drinking ~~places~~ establishments, including those which provide outdoor table service or have #accessory# music for which there is no cover charge and no specified showtime, ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar or any string instrument~~ and those which have #accessory# drive through facilities

Parking Requirement Category B

C1-1 C1-2 C1-3 C1-4 C2-1 C2-2 C2-3 C2-4 C3 C5

Eating or drinking establishments with entertainment but not dancing, with a capacity of 200 persons or less

Parking Requirement Category B

C2 C3 C4

Eating or drinking ~~places where there is entertainment or dancing~~ establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing

Parking Requirement D

* * *

42-13

Use Groups 6C, 9A, and 12B

M2 M3

Use Groups 6C, 9A and 12B as set forth in Sections 32-15, 32-18, and 32-21. Use Group 6C shall be limited to Antique stores; Art galleries, commercial; Artists' supply stores; Automobile supply stores; Banks; Bicycle sales; Candy or ice cream stores; Cigar or tobacco stores; Custom furrier shops; Eating or drinking establishments with entertainment but not dancing, with a capacity of 200 persons or less; Frozen food lockers; Fishing tackle or equipment, rental or sales; Jewelry or art metal craft shops; Locksmith shops; Meeting Halls; Millinery shops; Music stores; Newsstands, open or closed; Paint stores; Picture framing shops; and Watch or clock repair shops.

* * *

42-132

M1-5M and M1-6M Districts

* * *

In M1-5M and M1-6M Districts, eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing are permitted only by special permit of the Board of Standards and Appeals in accordance with Section 73-244.

* * *

42-14

Use Group 17

* * *

D. Special Uses in M1-5A and M1-5B Districts

M1 M1-5A M1-5B M2 M3

* * *

3. In addition to the above restrictions, the following #uses# are not permitted as-of-right in any #building or other structure# or on any tract of land in M1-5A or M1-5B Districts:

(a) All eating or drinking places as listed in Use Groups 6A, 10A, or 12A of more than 5,000 square feet of floor space, except that any eating or drinking place which is listed in Use Group 6A, which had obtained an Alteration Permit prior to July 14, 1976 is permitted.

(b) Eating or drinking places of less than 5,000 square feet with ~~out restriction on~~ entertainment or dancing as listed in Use Groups 6C, 10A, or 12A. However, such #uses# are permitted ~~only by special permit of the Board of Standards and Appeals in accordance with standards set forth in Section 73-241.~~:

(i) provided that there is entertainment but not dancing, with a capacity of 200 persons or less as listed in Use Group 6C, only by special permit of the Board of Standards and Appeals in accordance with Section 73-241; or

(ii) with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing as listed in Use Group 12A only by special permit of the Board of Standards and Appeals in accordance with Section 73-244.

* * *

(f)All other #uses# listed in Use Group 12A.

42-30

USES PERMITTED BY SPECIAL PERMIT

M1 M2 M3

42-31

By the Board of Standards and Appeals

* * *

Children's amusement parks, with sites of not less than 10,000 square feet nor more than 75,000 square feet per establishment

M1-5A M1-5B

Eating and drinking establishments with entertainment but not dancing, with a capacity of 200 persons or less

M1-5A M1-5B M1-5M M1-6M

Eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing

Parking Requirement Category D

* * *

73-241

In C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4 ~~C2~~, C3, C5, M1-5A or M1-5B Districts

In C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, ~~C2~~, C3, C5, M1-5A or M1-5B Districts, the Board may permit eating or drinking ~~places~~ establishments, ~~where there is~~ with

entertainment but not dancing, with a capacity of 200 persons or less for a term not to exceed five years, provided that the following findings are made:

(a) That such #use# will not impair the character or the future use or development of the surrounding #residential# or mixed-use neighborhood.

(b) That such #use# will not cause undue congestion in local #streets#.

(c) In M1-5A and M1-5B Districts eating and drinking places shall be limited to not more than 5,000 square feet of floor space.

(d) ~~In M1-5A and M1-5B Districts dancing shall be limited to a clearly defined area of not more than 300 square feet.~~ That in C1-1, C1-2, C1-3, C1-4, C2-1, C2-2, C2-3, C2-4, C5, M1-5A and M1-5B Districts such use shall take place in a #completely enclosed building#.

(e) That the application is made jointly by the owner of the #building# and the operators of such eating or drinking establishment.

The Board may modify the regulations relating to #accessory business signs# in C3 Districts to permit a maximum total #surface area# of 50 square feet of #non-illuminated# or illuminated non-#flashing signs#, provided that any #illuminated sign# shall not be less than 150 feet from the boundary of any Residence District. The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows; provision of sound-lock vestibules; specification of acoustical insulation; maximum size of establishment; ~~number,~~ kinds of amplification of musical instruments or voices; shielding of flood lights; adequate screening; curb cuts, or parking.

73-242

In C3 Districts

In C3 Districts, the Board may permit eating or drinking ~~places~~ establishments (including those which provide #accessory# music for which there is no cover charge and no specified showtime) ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion or any string instrument)~~ for a term not to exceed five years, provided that the following findings are made:

* * *

73-243

In C1-1, C1-2 and C1-3 Districts

In C1-1, C1-2 and C1-3 Districts, (except in Special Purpose Districts) the Board may permit eating or drinking places (including those which provide outdoor table service) ~~or incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, or any string instrument)~~ with #accessory# drive-through facilities for a term not to exceed five years, provided that the following findings are made:

* * *

73-244

In C2, C3, C4, M1-5A, M1-5B, M1-5M, M1-6M and the Special Lower Manhattan Mixed-Use District

In C2, C3, C4, M1-5A, M1-5B, M1-5M, M1-6M and Special Lower Manhattan Mixed-Use District the Board may permit eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing for a term not to exceed three years, provided that the following findings are made:

(a) That a minimum of four square feet of waiting area within the #zoning lot# shall be provided for each person permitted under the occupant capacity as determined by the New York City Building Code. The required waiting area shall be in an enclosed lobby and shall not include space occupied by stairs, corridors or restrooms. A plan shall be provided to the Board to insure that the operation of the establishment will not result in the gathering of crowds or the formation of lines on the #street#.

(b) That the entrance to such #use# shall be a minimum of 100 feet from the nearest #residential# district boundary.

(c) That such #use# will not cause undue vehicular or pedestrian congestion in local #streets#.

(d) That such #use# will not impair the character or the future use or development of the surrounding #residential# or mixed-use neighborhoods.

(e) That such #use# will not cause the sound level in any affected conforming #residential use#, #joint-living work quarters for artists#, or #loft dwelling# to exceed the limits set forth in any applicable provision of the New York City Noise Control Code.

(f) That the application is made jointly by the owner of the #building# and the operators of such eating or drinking establishment.

The Board shall prescribe appropriate controls to minimize adverse effects on the character of the surrounding area, including, but not limited to, location of entrances and operable windows; provision of sound-lock vestibules; specification of acoustical insulation; maximum size of establishment; kinds of amplification of musical instruments or voices; shielding of flood lights; adequate screening; curb cuts, or parking.

Any violation of the terms of a special permit may be grounds for its revocation.

* * *

81-722

Use Group T

* * *

Eating or drinking ~~places~~ establishments with ~~restrictions on~~ entertainment but not ~~or~~ dancing, with a capacity of 200 persons or less in C5 Districts, without restrictions in C6 or M1 Districts.

* * *

81-82

Special Regulations on Permitted and Required Uses

* * *

(c)Use Group F

* * *

Department stores

Eating or drinking ~~places~~ establishments including those which provide outdoor table service or have #accessory# music for which there is no cover charge and no specified showtime ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar, or~~

~~any stringed instrument~~.

* * *

82-062

Use Group L

* * *

F. Amusements

* * *

4. Eating or drinking places, including those which provide outdoor table service, without restrictions on entertainment, ~~or~~ dancing, or capacity.

5. ~~Public dance halls~~

~~6.~~ 5. Theaters

* * *

83-03

Use Group "LC"

* * *

D. Convenience retail or service establishments

* * *

6. Eating ~~and~~ or drinking ~~places~~ establishments, including those ~~establishments~~ which provide #accessory# music for which there is no cover charge and no specified showtime ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar, or any other string instrument~~.

* * *

85-03

Modifications of Use Regulations

* * *

(b) Eating or drinking ~~places without restriction~~ establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing.

* * *

86-092

Use Group G

* * *

5. Eating or drinking ~~places~~ establishments, including those which provide outdoor table service or #accessory# music for which there is no cover charge and no specified showtime ~~incidental musical entertainment~~.

* * *

95-081

Use Group T

* * *

B.Convenience Retail or Service Establishments

* * *

6. Eating or drinking ~~places,~~ establishments, including those which provide outdoor table service or have #accessory# music for which there is no cover charge and no specified showtime, ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar or any string instrument~~

99-031

Use Group MP

* * *

2. Retail Or Service Establishments

* * *

18. Eating or drinking ~~places~~ establishments including those which provide outdoor table service or have #accessory# music for which there is no cover charge and no specified showtime ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar or any string instrument~~.

* * *

109-211

Use Group ~~A1~~ LI

* * *

(6) Eating or drinking ~~places~~ establishments including those which provide outdoor table service or have #accessory# music for which there is no cover charge and no specified showtime ~~entertainment without dancing~~.

(7) Eating or drinking establishments with entertainment but not dancing, with a capacity of 200 persons or less.

~~7~~ (8)Food stores, including supermarkets, grocery stores, meat markets, delicatessen stores limited to 5,000 square feet of #floor area# per establishment on the ground floor.

~~8~~ (9)Hardware stores

~~9~~ (10)Package liquor stores

~~10~~ (11) Post offices

~~11~~ (12) Stationery stores

~~12~~ (13) Tailor or dressmaking shops, custom

~~13~~ (14) Variety stores, limited to 5,000 square feet of #floor area# per establishment on the ground floor.

* * *

111-102
Use restrictions

Except in Areas A2 and A3, use of the ground floor in #buildings# constructed prior to March 10, 1976 shall be restricted to #uses# listed in Use Groups 7, 9, 11, 16, 17a, 17b, 17c, or 17e, except that:

(a) In #buildings# having frontage on Chambers Street, Greenwich Street, West Street, Hudson Street, West Broadway or Canal Street, ground floor #uses# shall be permitted in conformance with the underlying districts except as provided in Section 111-103 (c); or

* * *

111-103

Additional use restrictions

* * *

(c) In all areas of the LMM District, eating or drinking establishments with entertainment and a capacity of more than 200 persons or establishments of any capacity with dancing as listed in Use Group 12A in any location within a #building# shall be permitted only by special permit of the Board of Standards and Appeals as provided in Section 73-244.

118-11

Ground Floor Uses

* * *

Eating or drinking ~~places~~ establishments including those which provide outdoor table service or have #accessory# music for which there is no cover charge and no specified showtime ~~incidental musical entertainment either by mechanical device or by not more than three persons playing piano, organ, accordion, guitar or any stringed instrument~~.

Eating or drinking establishments with entertainment but not dancing, with a capacity of 200 persons or less.

* * *

The above resolution, duly adopted by the City Planning Commission on December 13, 1989 (Calendar No. 36), is filed with the Secretary of the Board of Estimate, in accordance with the requirements of Section 200 of the New York City Charter.

SYLVIA DEUTSCH, Chairperson
DENISE SCHEINBERG, Vice-Chairperson
SALVATORE C. GAGLIARDO
WM. GARRISON MCNEIL
MARILYN MAMMANO
DANIEL T. SCANNELL, COMMISSIONERS