

# REGULATION OF DANCING AND MUSIC IN NEW YORK CITY

PRESENTATION TO THE NEW YORK CITY NIGHTLIFE ADVISORY BOARD

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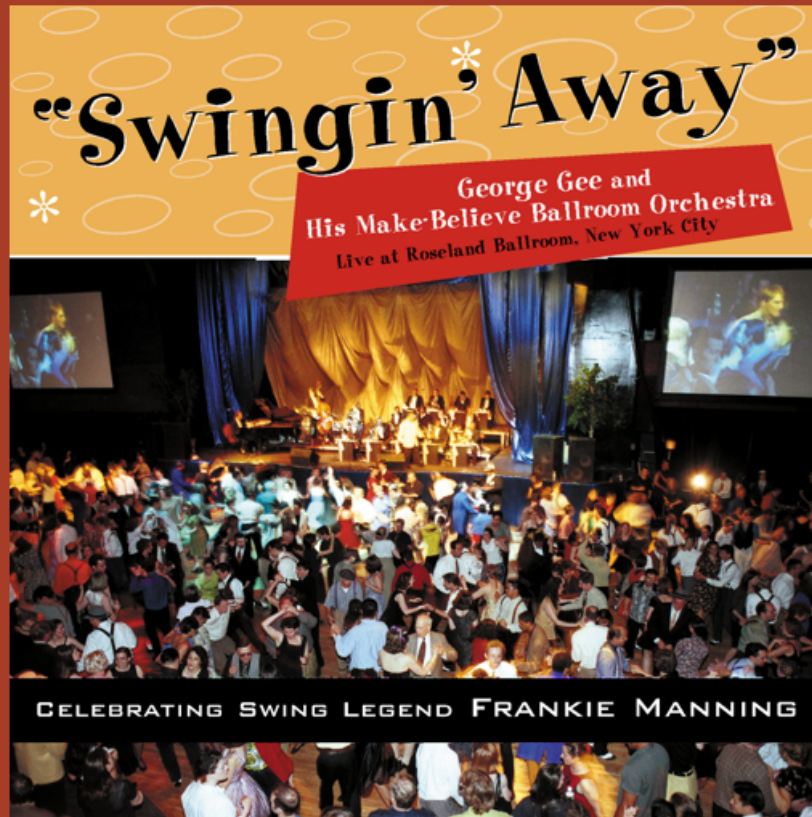
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- *Thank you for inviting me today. I am a New York attorney. This presentation is not to be considered legal advice.*
- *These observations are for discussion purposes only.*
- *My topic focuses on zoning regulations affecting dancing and music and is necessarily succinct.*
- *I will skip discussion of some slides.*
- *Follow the complete presentation now on your iPad or Laptop at [zortmusic.com](http://zortmusic.com).*

ROSELAND 1999  
1800 DANCERS  
TWO BIG BANDS;  
GEORGE GEE BIG  
BAND AND  
COUNT BASIE  
ORCHESTRA



2



*[I have been dancing Lindy Hop, Tango, and Salsa all over the US and in 19 countries since 1996 and have produced music and dance events and big band CD's. Here at Roseland ..]*

First, why I am interested in this subject. Since 1996, I have been dancing Lindy Hop, Tango, and Salsa. I met my wife on a dance floor. I have danced all over the US and in 19 foreign countries. I became a Jazz fan because of dancing. I have produced two big Band CD's. and large dance events such as this one at 1999 Roseland ....

# EDISON BALLROOM 2015

Edison Ballroom 2015 With Jazz at Lincoln  
Center Youth Orchestra and Dancing  
Classrooms Lindy Hoppers – for Frankie  
Manning



3



*[and here at Edison Ballroom –with the Jazz at Lincoln Center Youth  
Orchestra ]*



*[Here talking with Newport Jazz Festival founder George Wein about festival dance floors.]*

Music and dance are intricately connected. Here I am talking about festival dance floors with George Wein at the Newport Jazz Festival.



*[New York is Not Havana – Dance regulation has been my interest since 1997 – when Mayor Giuliani closed one of my favorite New York Latin restaurant for the “high crime” of dancing.]*

Surprisingly, New York City is the most anti-music and anti-dancing place I have been – It is not like Havana, that’s for sure.

Dance regulation had been my interest since 1997, when a New York Latin restaurant I patronized was closed for the “crime” of allowing dancing. That was not the last time that establishments I patronized have had to refuse to allow dancing or closed dance nights.

## LINCOLN CENTER MIDSUMMER NIGHT SWING



*[Luckily, there is NYC's partner dance iconic event: Lincoln Center's Midsummer Night Swing every June and July with 40,000 dancers over 15 nights and live bands –but what about the rest of the year?]*

A NYC exception is Lincoln Center's Midsummer Night Swing – a yearly 15 night event with 40,000 plus social dancer and live bands. Salsa, Lindy Hop, Tango, Hustle, Country Two Step, ... Samba.

The event offers work and exposure to musicians bands -all part of the Nightlife economy.

But where do New Yorkers go to dance the rest of the year??

IN VIOLATION OF ZONING RESOLUTION  
USE GROUP 6 MANHATTAN RESTAURANT EVENT ROOM – WITH 2019  
GRAMMY WINNER GIRAUDO TANGO QUARTET AND DANCING



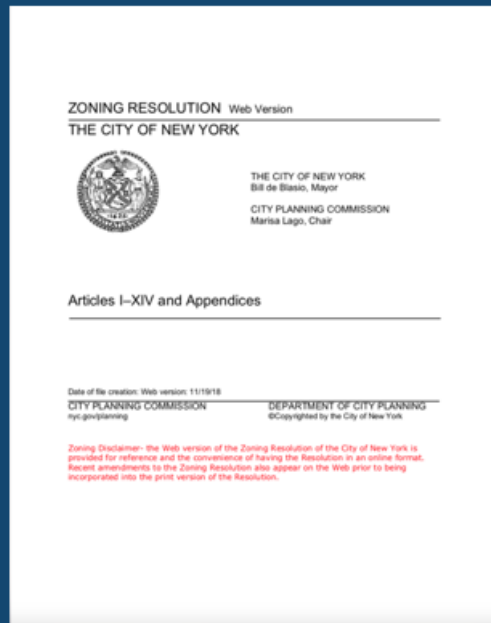
*[One example are illegal events in Use Group 6 restaurants which provide places to dance and support New York City Nightlife and restaurants and musicians - Nightlife is not just about nightclubs.]*

One place people dance are at Use Group 6 restaurants such as this event room. The restaurant probably violated the zoning resolution, its liquor license, its certificate of occupancy, and its public assembly permit by hosting this event - my wife's birthday party.

Here is her Birthday dance. I hired Pedro Giraudo's Tango Quartet. I like to think this and other illegal events helped Pedro win this year's 2019 Latin Grammy.

I can guarantee you that the restaurant earned a profit, the band was paid, and the the local bakery did well. This is what the nightlife economy is all about. It is not just about nightclubs.

# INTRODUCTION



- I will suggest a few proposals to amend the 8683 page Zoning Resolution, although reluctant to do so for the suggestions are not all inclusive due to time constraints and there are rules of other agencies.
- I will provide some context and a little history.
- An underlying problem: absence of definition such as "dancing," "cover charge," "musical entertainment."
- I will not cover significance of other use categories such as banquet and catering halls and clubs which exist partly to allow dancing for certain classes.

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*[Informed proposals for change suggest knowledge of the 8683 page Zoning Resolution and the history of regulations. Sorry – it is dense, poorly organized, at times vague, and inconsistent.]*

- I will introduce some specific proposals related to the 8683 page Zoning Resolution which impact dancing and music and also will provide some context and some history.
- Rules of other agencies' impact dancing

## PROPOSAL 1 UG 6 REMOVE “BUT NOT DANCING”, “ENTERTAINMENT” AND “MUSICAL ENTERTAINMENT” IN ZR §32-15 C.

- §32-15 C Eating or drinking establishments ~~with entertainment, but not dancing,~~ with a capacity of 200 persons or fewer.
- ~~§32-15 C Eating or drinking establishments with musical entertainment but not dancing, with a capacity of 200 persons or fewer.~~

Note: After removing “~~with entertainment, but not dancing,~~” the second clause becomes redundant and should be deleted.

Reference to “musical entertainment” is constitutionally suspect after the Chiasson decisions and ZR provides no definition for either term.

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*[The first proposal is to amend Use Group 6 C in the Zoning Resolution to remove the restrictions on dancing in most restaurants in the City.]*

The Zoning Resolution establishes Use Groups to which zoning districts are assigned. Many zoning districts are assigned to multiple use groups.

Eating and drinking establishments with a capacity of 200 persons or fewer in residential/commercial districts are allowed under Use Group 6, which encompasses a large part of the City. The City needs to publish a map of those areas in UG 12 and those in UG 6 which are not in UG 12.

ZR (Zoning Resolution) §32-15 C needs to be revised to allow patron dancing and musical entertainment without restriction: the words ~~with entertainment, but not dancing~~ need to be removed.

# PROPOSAL 1

## EXAMPLE OF A UG 6 RESTAURANT - NO DANCING EVER

**NYC PLANNING Zola** New York City's Zoning & Land Use Map

8101 NORTHERN BOULEVARD, 11370

**Tax Lot | BBL 4011770045**  
Queens (Borough 4) | Block 1177 | Lot 45

**Zoning District:** **C1-2**

**INTERSECTING MAP LAYERS:** None found

**ZONING DETAILS:**  
[Digital Tax Map](#)  
[Zoning Map \(pdf\)](#)  
[Historical Zoning Maps \(pdf\)](#)

**Owner:** GALLEGO LUIS GLORIA  
**Land Use:** Mixed Residential & Commercial Buildings  
**Lot Area:** 2,000 sq ft  
**Lot Frontage:** 20 ft  
**Lot Depth:** 100 ft  
**Year Built:** 1925  
**Building Class:** Store Buildings (Taxpayers Included) - Predominant Retail with Other Uses (R-4)  
**Number of Buildings:** 1  
**Number of Floors:** 2  
**Gross Floor Area:** 3,320 sq ft  
**Total # of Units:** 5  
**Residential Units:** 2  
**Building Info:** [BISWEB](#)  
**Property Records:** [View ACRIS](#)  
**Housing Info:** [View HPD's Building, Registration & Violation Records](#)

**Neighborhood Information**  
**Community District:** [Queens Community District 3](#)  
**City Council District:** [Council District 25](#)  
**School District:** 30  
**Police Precinct:** 115  
**Fire Company:** E307  
**Sanitation Borough:** 4  
**Sanitation District:** 03



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Here is a ZoLa map of a UG 6 restaurant you may know in Queens in a C1-2 district. Dancing is not allowed – period. No Salsa. No Bachata. No Punta.

## PROPOSAL 2A

### UG 6 - REMOVE ZR §32-15 A AS REDUNDANT

#### §32-15 A

"Eating or drinking establishments, including those which provide outdoor table service or have music for which there is no cover charge and no specified showtime, and those which have accessory drive-through facilities"

§32-15 A has no meaning if §32-15 C is amended by deleting "~~with entertainment, but not dancing.~~" The cover charge and show time restriction is confusing and is discussed later

Note: Current §32-15 A does not prohibit dancing as written!!!

Note: Current §32-15 A language re drive-through conflicts with §32-31.

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*[The next proposal concerns another Use Group 6 use. Remove §32-15 A as redundant, confusing, conflicting with 32-15 C, and as next discussed, constitutionally suspect.]*

It is hard to understand the distinction between "or have music" and "musical entertainment" in C.

§32-15 A is not meaningful except as to the restriction re cover charges and showtimes, terms not defined. §32-15 C allows restaurants with entertainment without showtimes and cover charges. So, A makes no sense. Recommend eliminating all of §32-15 A as if C is amended.

## **\*PROPOSAL 2 (CONT.): SYNCHRONIZE USE GROUP 12 WITH USE GROUP 12**

- Common Interpretation of Use Group 12 is that any eating or drinking establishment with dancing must be in Use Group 12 and that UG 12 supersedes §32-15 A.
- There is no language in the ZR which supersedes §32-15 A.
- A restaurant qualifying under A should be allowed to permit dancing if occupancy under 200 persons.
- Amend relevant sections in both UG 6 and UG 12.

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*[Not in live presentation.]*

*[Confusion as to meaning of a Use Group. Definition in ZR is that the listed uses are allowed in the Use Group].*

Any Use listed under UG 6 is allowed in districts under UG 6, even if not listed under UG 12.

Strictly speaking dancing is allowed under UG 6 A though it appears that my interpretation is not followed.

Many Use Groups involve dancing – not just UG 6 and UG 12. UG 10 applies only to hotels.

## **\*PROPOSAL #2 (CONT.) DOB CABARET CODE NOTES**

The DOB has prepared a publication "Code Notes" which incorrectly conflates §32-15 A and C:

Use Group 6 - Eating or drinking establishments with entertainment and a capacity of 200 persons or fewer, including those which provide outdoor table service or have music for which there is no cover charge and no specified show time.

- 200 person Capacity limit is in C.
- Reference to cover charge and showtime is in A.
- DOB incorrectly conflates A and C.

13

*[[Not in live presentation.]*

*[Shows how DOB merges A and C in §32-15 and wrongly applies the limitation of cover charges and showtimes to C. The 200 person capacity limit is in C and the cover charge limit is in A]*

"The information in this document is only a summary and overview and is not intended to substitute for the full text and meaning of any law, rule or regulation.

DOB Code Notes

Page 6. DOB Code Notes, Cabaret Version1 | 3 2017

<https://www1.nyc.gov/assets/buildings/pdf/pj913.pdf>

## \*COVER CHARGES AND SHOWTIME: §32-15 A VERSUS §32-31 INCONSISTENCY

- §32-15 A: "Eating or drinking establishments, including those which provide outdoor table service or have music for which there is no cover charge and no specified showtime, and those which have #accessory# drive-through facilities.<sup>2</sup>"
- §32-31 Eating or drinking establishments, including those which provide outdoor table service or have music for which there is no cover charge and no specified showtime, which have #accessory# drive-through facilities.
- §32-31 Eating or drinking establishments, including those which provide musical entertainment but not dancing, with a capacity of 200 persons or less, or outdoor table service, which have #accessory# drive-through facilities [PRC-B]

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*[Not in live presentation.]*

*[ The variation between 32-31 and 32-15 suggest mistakes in drafting, which have not been corrected in 30 years.*

## PROPOSAL 2B

### UG-6 ELIMINATE REQUIREMENTS BASED UPON “COVER CHARGE” AND “SHOWTIMES” - HURTS MUSICIANS

#### §32-15 A

"Eating or drinking establishments, including those which provide outdoor table service or have music ~~for which there is no cover charge and no specified showtime~~, and those which have accessory drive-through facilities"

- "Cover Charge" means establishment cannot cover costs of band, and musicians are not paid properly.
- "Showtimes" Imprecise. Makes no sense if the venue is not emptied after each set. Can be arbitrarily applied to set times. Totally different.

DCP should be asked to provide a reasoned rationale for maintaining these and all other restrictions in the Zoning Resolution. The reference to "cover charges" and "showtimes" appears in nine other sections of the Zoning Resolution.

Delete all of the same references in the 10 other regulations in the Zoning Resolution such as §81-82.

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*[Also for §32-15 A. Delete references to music Cover Charge and Showtimes. -- not defined, impact negatively on musicians and establishments, and are constitutionally suspect.]*

*Delete these restrictions in all ten places in the Zoning Resolution such as §81-82.*

## **\*PROPOSAL OTHER ZR AND DOB PROVISIONS LIMITING THE PLAYING OF LIVE MUSIC**

- §14-124 Prohibiting live music in enclosed sidewalk cafes decreases opportunities for musicians – many sidewalk café open into the restaurant.
- Allowing any music to be defined as a Cabaret invokes requirements of sprinklers, even in small spaces.
- Prohibiting dancing means owners do not wish to book bands that people like for dancing – owners must play fun spoiler.

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*[Not in live presentation.]*

*[ Need to review other provisions of ZR, DOB, and SLA re restrictions on music and impact on dancing.]*

## PROPOSAL 3-1 DEFINITIONS

### DEFINE “ESTABLISHMENT” CLEARLY FOR VENUES WITH MULTIPLE FLOOR RE 200 PERSON OCCUPANCY

- Clarify definition of terms “Establishment” and “200 person capacity.”
- If establishment has multiple floors or venues under same operation, ZR is not clear as to whether 200 person limits applies to all floors together or each floor separately.
- May or may not include establishment staff and performers.
- Some establishments have different operations on multiple floors – i.e Jazz Standard/Blue Smoke, Red Rooster/Ginny's, Birdland/Birdland Theater.
- Allows too much discretion to inspectors and interpretations may change.
- Instructions for Public Assembly Certificate allows separate permit for each floor.

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*[Definitions: 200 person capacity standard needs definition where establishments have multiple venues. If capacity of both venues exceeds 200, waiting rooms and other conditions are imposed.]*

*Allows regulators and inspectors to exercise dangerous discretion and does not alert owners as to the applicable rules.*

## PROPOSAL 3-2 DEFINITIONS DEFINE DANCING TO BE 50 OR MORE PERSONS DANCING SIMULTANEOUSLY

- If not politically feasible to delete all restrictions on dancing, then provide a definition of “dancing” to apply to all City codes and regulations and rules including fire code and building code: i.e, 50 persons or more dancing (not patrons in establishment.)

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*[The next definition needed is one for “dancing”. Ideally, all references to dancing should be removed in the codes and regulations. This is offered for discussion purpose only as an alternative to apply not only to the ZR, but to all City codes and rules and regulations. ]*

## PROPOSAL 3-3 DEFINITIONS C5 LOWER MANHATTAN DISTRICT DANCE FLOOR UNDER 400 SQUARE FEET

### §91-112:

In all C5 Districts within the #Special Lower Manhattan District#, in addition to eating and drinking establishments permitted pursuant to Section 32-15 (Use Group 6), the following types of eating and drinking establishments shall be permitted: eating or drinking establishments with entertainment, including musical entertainment or dancing, with a total capacity of 200 persons or fewer, **provided that the dance floor or area, if any, does not exceed 400 square feet** [plus waiting area requirements].

- This is an example of creative crafting of zoning language.

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*[ Another possible definition is to define dance venues by the dance floor size: §91-112 offers a type of compromise as opposed to removal of all dancing restrictions.]*

For example, dancing allowed if dance floor less than 900 square feet. Could combine with restriction based upon number of dancers.

## PROPOSAL 4

### USE GROUP 12 – DELETE REFERENCE TO “ESTABLISHMENT OF ANY CAPACITY WITH DANCING”

- Delete the words “establishments of any capacity with dancing” from §32-21 which defines Use Group 12:  
“Eating or drinking establishments with entertainment and a capacity of more than 200 persons, ~~or establishments of any capacity with dancing.~~”
- This requirement is particularly silly for it treats an establishment with a capacity of more than 200 in exactly the same way as an establishment with a small dance floor for 20 dancers or so.
- This language appears in other ZR provisions such as §85-03.
- Statutory interpretation issues – allowed uses are not exclusive!

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*[Removal of the language implied in UG 12 equating any number of dancers with an establishment 200 capacity. Imposes waiting rooms on venues with small dance floors and only a few dancers or in manufacturing zones.]*

*Since most UG 12 districts are also in UG 6, this provision would be irrelevant if an amended UG 6 allowed dancing if capacity under 200.*

## PROPOSAL 5

### LIMIT JURISDICTION OF BSA AND REDUCE APPLICATION FEES

Many regulations require establishments in certain districts to apply for a Special Permit if dancing is to be allowed. Due to BSA acting as a super regulator to assure compliance with fire and safety issues and other costs, the process is very expensive. See Red Rooster case study.

The Special Permit requirement is there to protect neighbors from noise and congestion – the ZR should be amended to severely limit BSA scope of review. BSA should be limited to review of only those issues that directly impact congestion, leaving it to the Fire Department and DOB to address issues of egress and fire safety without oversight by BSA. Noise Regulation should be regulated by DEP. There should be no CEQR requirement.

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*[Thousands of words are devoted to obtaining a Special Permit from the BSA to allow dancing in certain districts.*

*Not simple and allows BSA to micro-regulate all aspects of the establishment. Only three establishments in NYC have current Special Permits to allow dancing.]*

*Not be BSA micro-regulated if there were no dancing.*

This is a expensive and lengthy process as shown by the Red Rooster case study.

## PROPOSAL #6

### ELIMINATE BLANKET REQUIREMENTS FOR WAITING AREAS IN ESTABLISHMENTS WITH DANCING

A requirement added as a result of the 1989 "comprehensive review" was the requirement of waiting areas in UG 12 over 200 person establishments and establishments with any dancing (even two people dancing.) for certain districts.

§32-21 "...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."

See also: §73-244 Special Hudson Square District and the Special Tribeca Mixed Use District , §91-11 "Lower Manhattan District" 91-112

Cumbersome. Increases egress problems. Non-income producing space. Added cost to establishments.

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*[Consideration should be given to the requirement for establishments to have waiting areas/lobbies in all locations where there is dancing, even in a small establishment. The requirement does not make a lot of sense and again is focused on large nightclubs, but has an impact on other establishments.] This requirement appears to have been added in 1989. I know of many places which just ignore this provision, or maybe they fall just under the 200 person limit.*

## PROPOSAL 7

### DEPARTMENT OF CITY PLANNING (DCP) SHOULD CONDUCT A COMPREHENSIVE REVIEW AS IN 1989 AND RECONSIDER 1989 CHANGES

The 1989 "comprehensive review" targeted dancing and music and dismissed concerns of nightlife industry and musicians. Advocates for dancing were not heard.

No attempt in 1989 to even define dancing.

The comprehensive review should be zero based and the review should not accept provisions merely because they existed in the past. The regulatory intent should be explained with alternate approaches discussed. Terms should be defined with clarity and not subject to future arbitrary discretion. The review

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*[The 1989 DCP review is discussed shortly and should be reviewed by anyone focusing on changes to the zoning resolution. History is destiny.]*

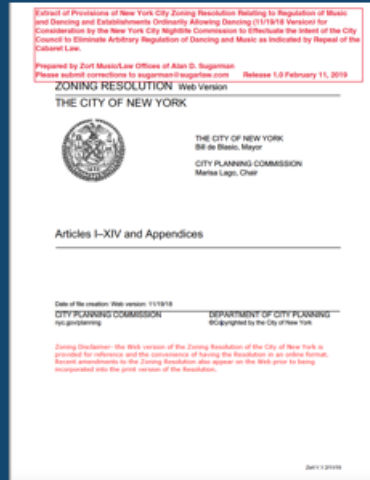
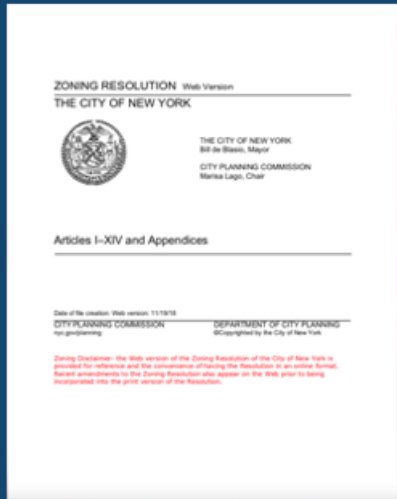
## THE ZONING RESOLUTION (ZR) – WHAT IS IT

- The Zoning Resolution could be called the New York City Zoning Code.
- The creations of the ZR is under the umbrella of the Department of City Planning and the City Planning Commission.
- But the ZR is administered by the Department of Buildings.
- And, the Board of Standards and Appeals (BSA) (i.e, the Zoning Appeals Board) handles variances from the requirement of the ZR and Special Permits.

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*[What is the Zoning Resolution – ZR. It is the New York City zoning code and enacted by the City Council with multiple agencies involved.]*

# THE ZONING RESOLUTION: 8683 PAGES LONG! BUT WE HAVE PREPARED A 155 PAGE EXTRACT.



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Search Terms Acrobat Advance Search: dancing, dance, music, banquet, catering, showtime, cover charge.

*[The 155 page extract Includes references to clubs, banquet halls, catering halls, and music, all ways which are used to allow the privileged to dance.]*

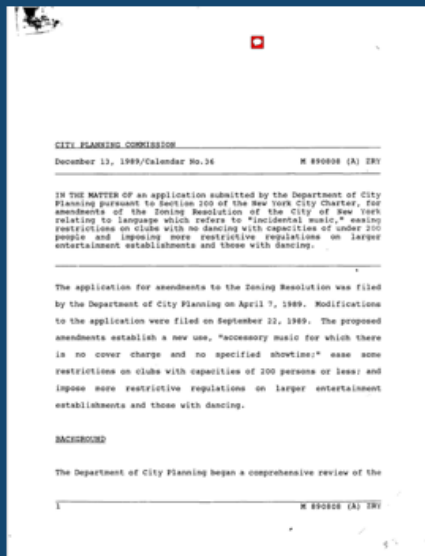
# FIFTY SIX ZR REFERENCES AFFECTING DANCING AND MUSIC

§12-10 Definitions Public banquet halls, ballrooms, or meeting rooms are not permitted #accessory uses#.	§42-132 Use Groups 6C, 9A, 12B Manufacturing District Regulations	§82-21 Restrictions on Street Level Uses Special Lincoln Square District	§95-081 Use Group T Special Transit Land Use District
§14-124 Music and noise amplification Sidewalk Cafes	§52-34 Commercial Uses in Residence Districts Non-Conforming Uses	§85-00 Special United Nations Development District	§99-00 Special Madison Avenue Preservation District
§32-15 Use Group 6	§62-00 Special Regulations Waterfront Areas	§85-03 Modifications of Use Regulations United Nations Development District	§99-03 Special Use Regulations Madison Avenue Preservation District
§32-18 Use Group 9 Banquet halls	§62-212 Waterfront-Enhancing (WE) uses	§87-00 Special Harlem River Waterfront District	§99-031 Use Group MP Madison Avenue Preservation District
§32-19 Use Group 10	§73-00 Special Permits by the Board of Standards and	§87-212 Special floor area requirement for certain commercial uses Harlem Riverfront District	§104-00 Special Manhattanville Mixed Use District
§32-21 Use Group 12	§73-241 Eating or Drinking BSA Special Permits C1-, M15_	§88-00 Special Hudson Square District	§104-16 Use Group MMU Manhattanville Mixed Use District
§32-22 Use Group 13 Banquet Halls	§73-242 In C3 District Eating or Drinking BSA Special Permit	§88-13 Commercial Use Special Hudson Square District	§104-131 Use Group 6A Special Manhattanville Mixed Use District
§32-23 Use Group 14 Clubs	§73-243 C1-1, C1-2 and C1-3 Districts BSA Special Permits	§91-00 Special Lower Manhattan District	§109-00 Special Little Italy District
§32-30 USES PERMITTED BY SPECIAL PERMIT	§73-244 In C2, C3, C4, C6-4, M1-5A, M1-5B, M1-5M and M1-6M Districts, the Special Hudson Square District and the Special Tribeca Mixed Use District	§91-061 Applicability of special permits by the Board of Standards and Appeals Lower Manhattan District	§109-211 Use Group LI Special Little Italy District
§32-31 Special Permits By the Board of Standards and Appeals	§81-00 Special Midtown District	§91-112 Eating and drinking establishments with dancing in C5 Lower Manhattan District	§112-00 Special City Island District
§42-00 Manufacturing District Regulations	§81-82 Special Regulations on Permitted and Required Uses Fifth Avenue Subdistrict	§94-00 Special Sheepshead Bay District	§112-073 Uses permitted in C3 Districts Special City Island District
§42-13 Use Groups 6C 12B Manufacturing District Regulations	§81-722 Use Group T Special Midtown District	§94-062 Use Group SB Sheepshead Bay District	§118-00 Special Union Square District
§42-14 Use Group 17 -M1 M2 M3 Manufacturing District Regulations	§81-725 Entertainment-related uses Special Midtown District see 81-724	§94-063 Uses permitted by City Planning special permit -Sheepshead Bay	§118-11 Ground Floor Uses Special Union Square District
§42-31 Special Permits Board of Standards and Appeals Manufacturing District	§82-00 Special Lincoln Square District	§95-00 Special Transit Land Use District	Appendix A_ Index of Uses

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*[There are Fifty-Six Sections affecting dancing and music and are in the 155 page extract we prepared.]*

# 1989 DCP COMPREHENSIVE REVIEW



- [Report at CPC Website](#). [Report at Zortmusic.com](#). <http://zortmusic.com/CabaretLaw/ZR/>

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*[ In 1989, after the City lost litigation declaring limits on music and number of musicians as unconstitutional, the DCP undertook a comprehensive review of regulations affecting music and dancing with the express intent to crack down on dancing.]*

# THE 1989 AMENDMENTS CREATED MANY OF THE INADEQUACIES OBJECTED TO TODAY

In 1989, DCP conducted “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.” DCP then issued a report with proposed amendments stating among other things that the amendments were intended to:

“impose more restrictive regulations on larger entertainment establishments and those with dancing.”

The result were a series of measures which were intended to replace and make harsher the restrictions which had been declared unconstitutional. The new language added requirements for waiting areas, prohibition of dancing, and restrictions affecting the livelihood of musicians, and used undefined terms such as “dancing” and “musical entertainment”, “showtime”, and “cover charge.”

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*[The purpose of the 1989 review is clear – QUOTE - “to impose more restrictive regulations on larger entertainment establishments and those with dancing.” The review did not discuss what is meant by “dancing”. Appears to assume that “dancing” means large dancing nightclubs.]*

## THE 1989 AMENDMENTS CREATED MANY OF THE TODAY'S RESTRICTIONS – UNDERSCORED TEXT ADDED IN 1989

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

\*\* ~~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.

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*[[Not in live presentation.]*

*[The 1989 report deleted statutory text that placed no limits on  
entertainment or dancing with new language which restricts  
dancing.]*

## CITY PLANNING COMMISSION SHOULD CONDUCT A NEW COMPREHENSIVE REVIEW

Respectfully, the Advisory Board and Nightlife Office should request, and the Mayor should ask, the DCP to undertake another comprehensive review, as performed in 1989, and providing a zero-based justification of every single restriction and condition as related to musical entertainment, entertainment and dancing.

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*[First, anyone working on these issues should study the 1989 report. The new review needs to be “zero-based” where every assumption and current statement requires a justification.]*

## THESE PROPOSAL FOCUS ON THE ZONING RESOLUTION AND ARE NOT COMPREHENSIVE

- Other reforms are needed in the Building Code, Fire Code, and SLA regulations and procedures.
- Sprinkler requirements instituted by Local Law 41 of 1978 should be modified.
- Some issues are raised in the slides not shown today but included in the downloadable Acrobat File.
- Quickly .....

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*There are other agencies with confusing and often out of date rules, regulations, codes, memoranda, so-called policies etc. These must be exhaustively reviewed and cleaned up, removing those which are outdated and conflicting with other provisions.*

**SEE SUPPLEMENTAL SLIDES  
RED ROOSTER: 310 LENOX AVENUE  
BSA SPECIAL PERMIT CASE STUDY SUMMARY**

- Two years to obtain BSA Special Permit – required for dancing in C4-4A.
- Red Rooster hired attorneys, sound consultants, fire consultants, architects, engineers, and contractors.
- Constructed two cellar waiting areas to comply with UG 12 requirements of 4 sq. ft. per person - non-income producing.
- Multiple hearings and meetings with BSA over two year period.
- BSA decided that it should act as a superseding fire safety regulator imposing endless reports, inspections, and studies - all for allowing a few dancers and being within 100 feet of a residential district.
- Permit effective for only three years.
- Only two other establishments have currently active BSA Special Permits allowing dancing.
- Other Restaurants up Lenox Avenue are in no-dancing Use Group 6 zones.



*[The Red Rooster is an important Case Study as to its BSA Special Permit. It is very expensive and time consuming to obtain BSA Special Permits]*

*Which is why only two other establishments in NYC have active Special Permits to allow dancing. You may review these slides on your own time.]*

*This is an unusual case study since so much is available via FOIL and the contradictions of music and dancing zoning were confronted.]*

*I am not the attorney for Red Rooster and my knowledge derives exclusively from documents obtained by FOIL requests.*

# THE RED ROOSTER CASE STUDY

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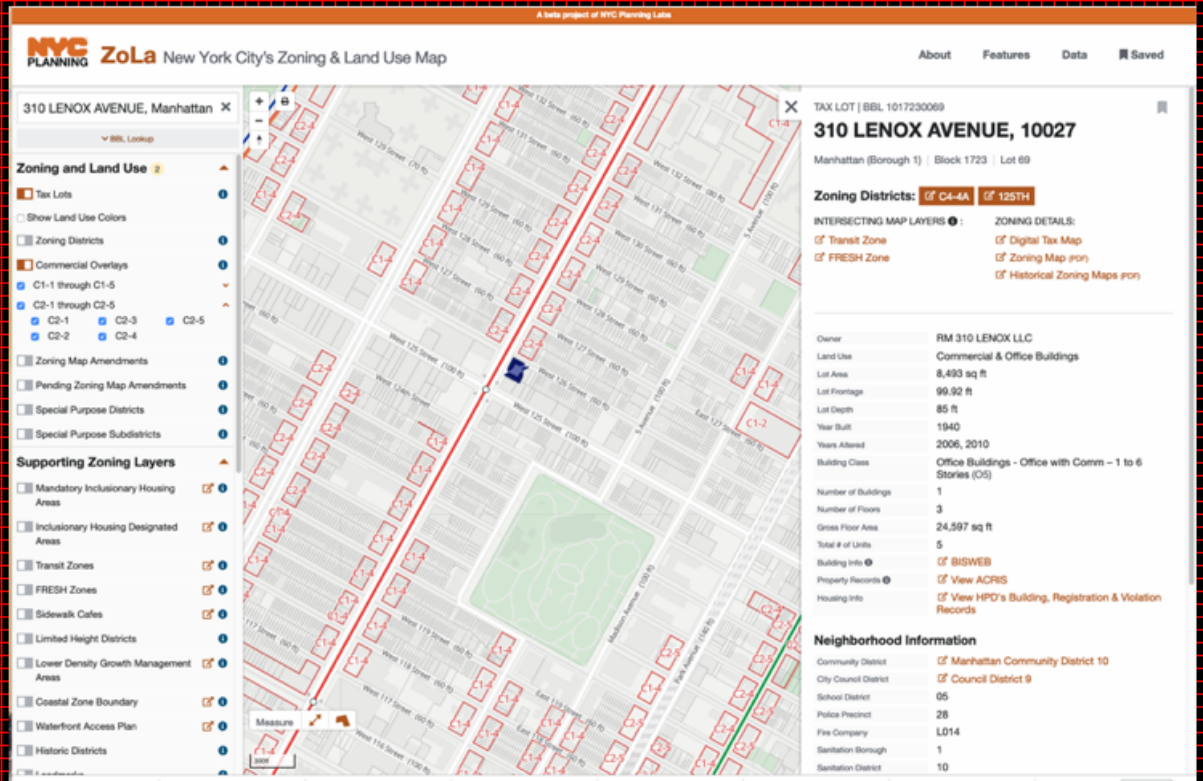
*[Not in live presentation.]*

[\_\_\_\_\_]

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RED  
ROOSTER:  
310 LENOX  
AVENUE –  
C4-4A.

UP LENOX  
AVENUE, USE  
GROUP 6  
ZONING –  
NO  
DANCING



[Not in live presentation.]

Summary: Red Rooster is in C6-4A with dancing allowed with BSA Special Permit. Surrounding area is Use Group 6.

## RED ROOSTER: 310 LENOX AVENUE – C4-4A.

- “Ginny’s does not have a dance floor and there is no designated area for dancing activities. However, Ginny’s does not prohibit its patrons from dancing either during dinner or its gospel performances.”
- Did not increase number of patrons in First Floor Restaurant or Cellar Club.
- Did not change the noise emanating from either – and both allowed to have live performances.

36

*[Not in live presentation.]*

*[ Number of patrons not increase and noise emanating did not change and live music did not increase]*

RED ROOSTER: 310 LENOX AVENUE – C4-4A.

UP LENOX AVENUE, USE GROUP 6 ZONING – NO DANCING

- “Although the Proposed Use requires a special permit in accordance with Section 73-244 of the Zoning Resolution, it is important to note that both Use Group 6A Eating and Drinking Establishments (i.e., including those that have music for which there is no cover charge and no specified show times) and Use Group 6C Eating and Drinking Establishments (i.e., including those that have musical entertainment but not dancing with a capacity of 200 persons or less) are permitted by the Zoning Resolution as a matter of right. We also note that but for the proximity of the Site to a residential district boundary (i.e., the Site is within 100 feet of a residence district boundary), the proposed Use Group 12A Eating and Drinking Establishment would be an as-of-right use pursuant to the Zoning Resolution. ”

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*[Not in live presentation.]*

*Red Rooster explains why it needed a Special Permit – the cellar (not the Ground Floor) was within 100 feet of a residential district, which under the ZR would require a Special Permit if there is to be any dancing.*

## RED ROOSTER: 310 LENOX AVENUE BSA SPECIAL PERMIT CASE STUDY

- Two years to obtain BSA Special Permit – required for dancing in C4-4A.
- Red Rooster hired attorneys, sound consultant, fire consultants, architects, engineer, and contractors.
- Constructed two cellar waiting areas to comply with UG 12 requirements of 4 sq. ft. per person - non-income producing.
- Multiple hearings and meetings with BSA over two year period.
- BSA decided that it should act as a superseding fire safety regulator imposing needless reports, inspections, and studies - all for allowing a few dancers.
- Permit effective for only three years.
- Only two other establishments have currently active BSA Special Permits allowing dancing.
- Other Restaurants up Lenox Avenue are in no-dancing Use Group 6 zones.

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*[Not in live presentation.]*

*Red Rooster – Special Permit duration is only 3 years. Very expensive and time consuming to obtain BSA Special Permit which is why only two other establishments in NYC have Special Permits to allow dancing.*

**RED ROOSTER:  
THE IRONY. OTHER VENUES ON LENOX AVENUE ARE ZONED FOR  
"NO DANCING".**

**The Re-establishment of Harlem's Entertainment Uses**

The Red Rooster Restaurant seeks to re-establish and re-capture part of Harlem's history and culture through its "supper club" experience. Red Rooster's proposal builds upon a central ideal that flourished during the Harlem Renaissance: the view of neighborhood eateries as extended dining rooms for social interaction and artistic enjoyment. Few existing venues provide this type of entertainment that Harlem was once known for. Red Rooster Restaurant's proposal steps into this void because it provides an

39

*[Not in live presentation.]*

This is an ironic statement from the Red Rooster in support of its Special Permit.

Other venues neighboring Red Rooster are in Use Group 6 where dancing is not allowed.

"The Red Rooster Restaurant seeks to re-establish and re-capture part of Harlem's history and culture through its "supper club" experience. Red Rooster's proposal builds upon a central ideal that flourished during the Harlem Renaissance: the view of neighborhood eateries as extended dining rooms for social interaction and artistic enjoyment. Few existing venues provide this type of entertainment that Harlem was once known for."

Down

**A NIGHT-CLUB MAP OF HARLEM**

The stars indicate the places that are open all night... The only important omission is the location of the various speakeasies but since there are about 500 of them you won't have much trouble.

Expanded and copyrighted 1932 by J. P. Morgan & Co. Inc. Light blue lines show main roads.

This famous 1932 “Nightclub Map of 1930s Harlem) by E. Sims Campbell shows the Nightlife scene on upper Lenox Avenue during the Harlem Renaissance – now zoned Use Group 6 – dancing not allowed. The Red Rooster would be further down Lenox on the upper left. “The only important omission is the location of the various speakeasies, but since there are about 500 of them you won’t have much trouble,” the map instructs readers. Original at Yale University.

## SEE SUPPLEMENTAL SLIDES

### SLA – METHOD OF OPERATION APPLICATION – BECOMES CONDITIONS OF LICENSE

2. Will the premises have music? ☐ Yes ☐ No

2a. If YES, check all that apply: ☐ Recorded ☐ DJ ☐ Juke Box ☐ Karaoke

☐ Live Music (give details: e.g., rock bands, acoustic, jazz, etc.):

2b. Will the premises use the services of an Event Promoter? ☐ Yes ☐ No

3. Will the premises permit dancing? ☐ Yes ☐ No

3a. If dancing is permitted, who will be permitted to dance? ☐ Patrons ☐ Employees for Entertainment ☐ Both

3b. If dancing is permitted, will there be exotic dancing including, but not limited to, topless entertainment, pole dancing and/or lap dancing? ☐ Yes ☐ No

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*[The SLA Liquor License Application requires applicant to state whether there is dancing and state the type of live music. The answer then is incorporated as a condition into the license.*

*Violation of the conditions invites shutdowns.]*

The requirement to state the type of music is constitutionally suspect.]

# STATE LIQUOR AUTHORITY REGULATION OF DANCING AND MUSIC

42

*[Not in live presentation.]*

Queens-Listening-Tour-Excerpts-Re-Dancing-Regulations%  
<https://youtu.be/OGi50dGTJaa?t=55>

¶

<https://youtu.be/OGi50dGTJaa?t=66>

• **MICHAEL JONES-State Liquor Authority¶**

[Link to YouTube¶](#)

Yes Michael¶

1911-01:26:50 → Jones is deputy CEO of the New York¶  
1912-01:26:51 → State Liquor Authority and I want to¶  
1913-01:26:54 → comment about the Cabaret Law repeal.¶  
1914-01:26:57 → That was a City law and ordinance.¶  
1915-01:27:00 → I'm a state agency. We have state laws¶  
1916-01:27:03 → and regulations. It really didn't have¶  
1917-01:27:06 → an effect on us because we have our own¶  
1918-01:27:09 → way to regulate dancing. It's part of the¶  
1919-01:27:12 → application that the licensee-applicant¶  
1920-01:27:15 → submits - I think it's 30 pages or so. On¶  
1921-01:27:18 → page 14 is called the method of¶  
1922-01:27:20 → operation. On that page we ask - Will¶  
1923-01:27:23 → there be dancing will there be DJs? Well¶  
1924-01:27:25 → you know the type of music? There are¶  
1925-01:27:27 → a number of boxes to be checked. So, and¶  
1926-01:27:31 → it's also part of the notice to the¶  
1927-01:27:34 → community board. When you apply for a¶  
1928-01:27:36 → license you give notice to the community¶  
1929-01:27:37 → board. I think that's something that¶  
1930-01:27:40 → is asked. A community board should be aware¶  
1931-01:27:42 → that there may be dancing. Because of the¶  
1932-01:27:46 → cabaret law, most of the applicants¶  
1933-01:27:49 → didn't have dancing. It's restricted.¶  
1934-01:27:52 → A lot of people for the opportunity. [sic]. But¶  
1935-01:27:54 → now that Cabaret Law is repealed, you¶  
1936-01:27:58 → have the opportunity to dance. But you¶  
1937-01:28:00 → have to overcome these other obstacles¶  
1938-01:28:02 → at this table before you come to us. But¶  
1939-01:28:05 → you still have to give notice to us.¶  
1940-01:28:09 → It's called the method of operation¶  
1941-01:28:11 → change. It's a form. I'm expecting¶  
1942-01:28:13 → about 80,000 of them. But that is how you¶  
1943-01:28:16 → do it. As Bill Parcells once said¶  
1944-01:28:21 → about football teams, you are what your¶  
1945-01:28:23 → record says you are. And I say that you¶  
1946-01:28:26 → are what your application says you are.¶  
1947-01:28:28 → So when you apply for your license and¶  
1948-01:28:31 → you check check off - you did not check off¶  
1949-01:28:34 → dancing, dancing is not permitted. So you¶  
1950-01:28:37 → have to do file a method of operation¶  
1951-01:28:39 → change which is another form.¶  
1952-01:28:41 → normally we will approve¶  
1953-01:28:44 → that sort of operation change. That¶  
1954-01:28:48 → is the proper way when your life for you¶  
1955-01:28:52 → to change a manual liquor license.¶

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## REGULATION OF DANCING BY THE NY STATE LIQUOR AUTHORITY (SLA) AT QUEENS LISTENING TOUR

*[Not in live presentation.]*

The SLA is clear that it considers itself a regulator of dancing and types of music. Scary.

## \*\*\*SLA – METHOD OF OPERATION APPLICATION

2. Will the premises have music? ☐ Yes ☐ No

2a. If YES, check all that apply: ☐ Recorded ☐ DJ ☐ Juke Box ☐ Karaoke

☐ Live Music (give details: e.g., rock bands, acoustic, jazz, etc.):

2b. Will the premises use the services of an Event Promoter? ☐ Yes ☐ No

3. Will the premises permit dancing? ☐ Yes ☐ No

3a. If dancing is permitted, who will be permitted to dance? ☐ Patrons ☐ Employees for Entertainment ☐ Both

3b. If dancing is permitted, will there be exotic dancing including, but not limited to, topless entertainment, pole dancing and/or lap dancing? ☐ Yes ☐ No

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*[Not in live presentation.]*

*These answers become part of the conditions of the Liquor license.*

## REGULATION OF DANCING BY THE NY STATE LIQUOR AUTHORITY (SLA).

- Deputy CEO of SLA at Nightlife Listening Tour:
- It's part of the application that the licensee-applicant. It is called the method of operation. On that page we ask – Will there be dancing? Will there be DJs? What is the type of music?
- So when you apply for your license and you did not check off dancing, dancing is not permitted. .. So you have to do file a method of operation change.

45

*[Not in live presentation.]*

## REGULATION OF DANCING BY THE NY STATE LIQUOR AUTHORITY (SLA).

- Deputy CEO of SLA at Nightlife Listening Tour:
- “I’m a state agency. We have state laws and regulations. [The repeal of the Cabaret Law] really didn’t have an effect on us because we have our own way to regulate dancing.”

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*[Not in live presentation.]*

# DOB AND FIRE DEPARTMENT MISCELANEOUS NOTES

47

*[Not in live presentation.]*

**The Advisory Board should cause to have undertaken a comprehensive review of rules, regulations, forms, web sites, and publications of the DOB and FDNY. Many statements are inconsistent, meaningless, fail to reflect repeal of other provisions, as relates to dancing and music.**

**Building Code Chapter 1 Subchapter 8: Places of Assembly  
§ 15-02 Interior Fire Alarm and Signal System for Place of Assembly Used as a Cabaret and for Stages, Dressing Rooms, and Property Rooms.**

.

# PLACE OF ASSEMBLY CERTIFICATE OF OPERATION

## 4 Place of Assembly Space Information *Submit comments using an AI-1 form (optional). \*Use 2014 Code occupancy designations only.*

Specific Floor(s) of PA Space		Occupancy Designation*	Cabaret	Number of Persons	Description Code
NB/A1 Job No. Establishing PA	<i>If Pre-BIS, provide BIN:</i>	Primary Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Prior PA No. <i>(if applicable)</i>	Irregular Floor Numbering? <input type="checkbox"/> Yes <input type="checkbox"/> No	Alt. 1 Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name of PA Establishment		Alt. 2 Plan	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Required if "75 or more members of the public gather indoors."

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## Building Code Chapter 1 Subchapter 8: Places of Assembly

## FIRE DEPARTMENT RULES – OUTDATED MISCELLANEOUS

- **§ 15-02 Interior Fire Alarm and Signal System for Place of Assembly Used as a Cabaret and for Stages, Dressing Rooms, and Property Rooms.**
- (a) *Number of occupants.* Subdivisions 27-968(a)(10)(a) and (b) of the Building Code state that an interior fire alarm and signal system shall be provided in any room, place or space occupied or arranged to be occupied by 75 or more persons and in which either any musical entertainment, singing, dancing or other form of amusement is permitted in connection with the restaurant business or the business of directly or indirectly selling to the public food or drink, or where dancing is carried on and the public may gain admission, with or without payment of a fee, and food or beverages are sold, served, or dispensed, and any new or altered catering place as of April 4, 1979 having 300 or more persons. This does not apply to eating or drinking places which provide incidental musical entertainment, without dancing, either by mechanical devices, or by not more than three persons playing piano, organ, accordion or guitar or any stringed instrument or by not more than one singer accompanied by himself or a person playing piano, organ, accordion, guitar or any stringed instrument.

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*[Not in live presentation.]*

**§ 15-02 Interior Fire Alarm and Signal System for Place of Assembly Used as a Cabaret and for Stages, Dressing Rooms, and Property Rooms.**

[http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/th  
erulesofthecityofnewyork?f=templates\\$fn=default.htm\\$3.0\\$vid=  
amlegal:newyork\\_ny](http://library.amlegal.com/nxt/gateway.dll/New%20York/rules/th<br/>erulesofthecityofnewyork?f=templates$fn=default.htm$3.0$vid=<br/>amlegal:newyork_ny)

**§ 27-246 Occupancy group B-1.**

Fire Protection Systems

903.2.1.2 Group A-2

An automatic sprinkler system shall be provided for Group A-2 occupancies where any one of the following conditions exists:

\*\*\*

4. The A-2 occupancy is used as a cabaret.

## DOB CABARET CODE NOTES PAMPHLET – NOT CURRENT BUT STILL AVAILABLE

- A 'Cabaret' is defined in New York City as any room, place or space in which any musical entertainment, singing, dancing or other form of amusement is permitted in connection with the restaurant business or the business of directly or indirectly selling to the public food or drink, (except eating or drinking places, which provide incidental musical entertainment, without dancing, either by mechanical devices, or by not more than three persons). A Cabaret license, issued by the Department of Consumer Affairs, is required for any business that sells food and /or beverages to the public and allows patron dancing in a room, place, or space.
- Also see " CABARET. The term cabaret shall mean any room, place or space in which any musical entertainment, singing, dancing or other similar amusement is permitted in connection with an eating and drinking establishment." Building Code §27-232-is this in effect????

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*[Not in live presentation.] Random Notes*

Cabaret Code Notes: Fire Protection Systems 903.2.1.2 Group A-2

**§ 15-02 Interior Fire Alarm and Signal System for Place of Assembly Used as a Cabaret and for Stages, Dressing Rooms, and Property Rooms.**

**New York City Charter 27-232. Definitions. Repealed?**

CABARET. The term cabaret shall mean any room, place or space in which any musical entertainment, singing, dancing or other similar amusement is permitted in connection with an eating and drinking establishment.

**§ 27-246 Occupancy group B-1.**

**Title 6 – Consumer Affairs Reg re Cabarets Not Revised -  
Subchapter T: Public Dance Halls, Cabarets, and Catering  
Establishments**

## RESOURCES/LINKS

### WWW.ZORTMUSIC.COM

- [Entire Zoning Resolution 8683 Pages](#)
- [Zoning Resolution Dancing/Music Excerpts 155 Pages](#)
- [CPC ULURP Chart](#)
- [CPC Use Group Chart](#)
- [Red Rooster Documents \(Zort Site\)](#)
- [1989 Report at CPC Website.](#)
- [1989 CPC Report at Zortmusic.con.](#)

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This concludes my five minute presentation. Download a pdf version of this PowerPoint Presentation at zortmusic.com. Also, available at that site are source documents.

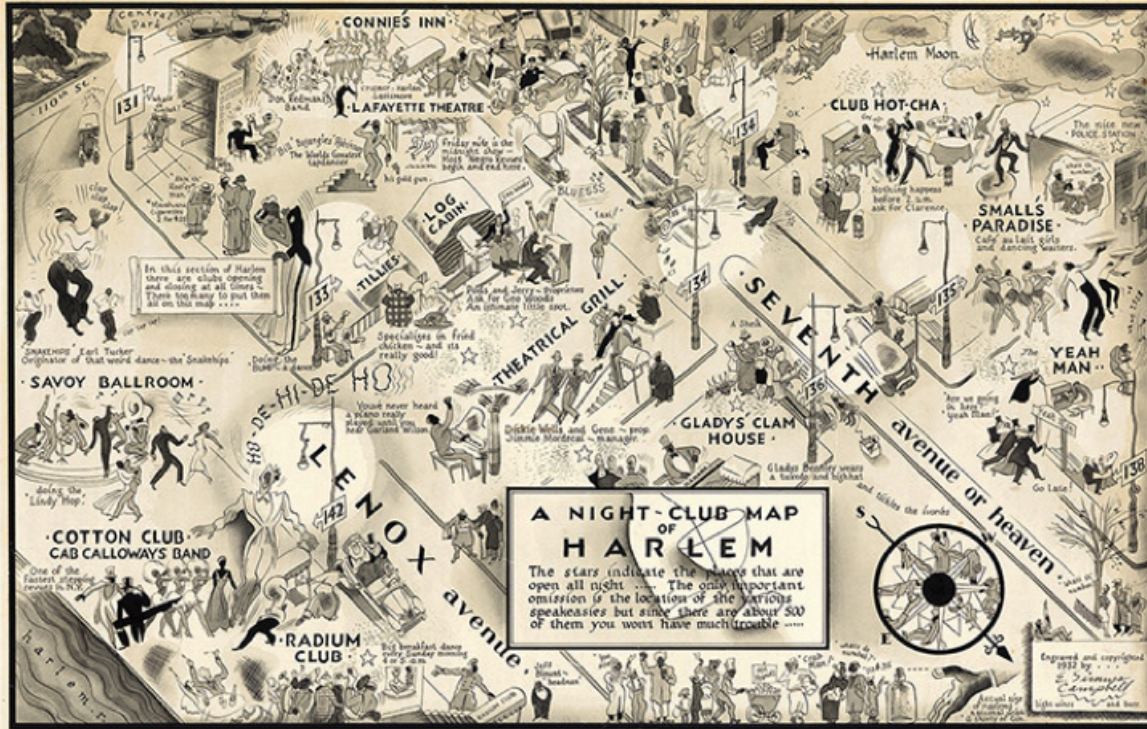
# FINISH

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So, as someone who does not practice and appear before these agencies on a regular basis, I would ask if I have misstated or overstated anything here – in particular, Mr. Bookman, this is your expertise. Have I misled the assembled here in any way?

Thank you.

# HARLEM 1932 – NO DANCING 2019



Harlem in 1932 just prior to end of Prohibition with 500 Speakeasies and clubs serving all parts of society. Zoned “no dancing” now.