



COMMITTEE ON HOSPITALITY LAW

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Ms. Ariel Palitz
Senior Executive Director
New York City Office of Nightlife
1697 Broadway, 6th floor
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Dear Ms. Palitz:

I am writing as chair of the New York City Bar Association Hospitality Law Committee, and on behalf of our regulatory subcommittee led by Abigail Nitka and Alexander Victor.

The nightlife and hospitality industries are crucial to the economic and cultural fabric of New York City, the City That Never Sleeps; however, in light of the City's density and the proximity between nightlife establishments and residents, a delicate balancing of interests exists. While operators must be sensitive to quality of life concerns, which must always be addressed and considered on a case-by-case basis, there are certain rules, regulations, and processes which unnecessarily hinder or stifle a business' ability to open or operate in ways that may never even affect a neighbor's quality of life.

The Regulatory Subcommittee is comprised of a diverse group of lawyers who collectively represent hundreds of owners and operators of nightlife, entertainment, and hospitality businesses. Our members interact with and appear before local and state officials, agencies, and community boards on a regular basis, and we navigate nightlife operators through the complex web of regulations that impact these industries. As a result, our members have a unique perspective and depth of knowledge about the state of the nightlife industry.

With our combined history, experience, and insight as a backdrop, we are writing to offer our experience and expertise to you. We anticipate that there will be discussion and debate about the status of the industry, current issues, and potential solutions, and we want to be available as a resource to your Office so that we can continue to foster the nightlife industry as an exciting and innovative force for the City of New York.

To that end, we have identified the following topics that we believe should be priorities for the new Office of Nightlife and Nightlife Advisory Board (collectively, the “Office”).

I. Nightlife Zoning

The Mayor recently signed legislation repealing Subchapter 20 of Title 20 of the Administrative Code of the City of New York (commonly known as the Cabaret Law). However, without implementing meaningful reforms to the New York City Zoning Resolution, the recent repeal will not have the desired or publicized impact of allowing more nightlife venues to permit dancing. Despite the repeal, only a small number of additional establishments can now lawfully permit dancing on their premises. Although establishments within the City of New York will no longer be required to apply for a Cabaret License from the Department of Consumer Affairs, operators will remain restricted by existing definitions and requirements contained in the Zoning Resolution (the “Resolution”). As it currently stands, the Resolution will result in the *de facto* continuation of a near prohibition on dancing within the City of New York.

The Mayor’s highly publicized and energized repeal demonstrates a desire to have our City live up to its fading reputation as “the City that never sleeps” and position our City to reap the benefits of an economically, ethnically, and culturally diverse nightlife industry. However, this reform cannot be at the sacrifice of the millions of people who live in the City and who deserve peace of mind.

Our Committee urges your Office to consider how the Resolution equally applies to venues of different sizes, capacities, and operation to determine whether the Resolution should be modified to allow for patron dancing in more venues. Specifically, we believe that a study should be undertaken to determine whether the Resolution should distinguish between those bars and lounges where there may be incidental patron dancing on the one hand and largescale night and dance clubs on the other, where patron dancing is advertised, promoted, or intended.

We stand ready to assist in the development and undertaking of such a study.

II. Community Board Reform

Community Boards have an important advisory role to play in providing a sense of a neighborhood’s advantages and limitations as liquor license applications are considered. Not all Community Boards have, however, evolved in the same ways that the communities they represent have developed, and the composition and philosophies of many Community Boards may not accurately reflect the composition and philosophies of the neighborhoods they represent.

As attorneys involved in the process of the acquisition of liquor licenses and other related permits, we have seen many occasions where Community Boards have taken unanimous positions against license applications for what appear to be minor or irrelevant issues, such as a restaurant's proposed menu, or based on highly subjective views of a neighborhood's past history as opposed to its current or future composition and character. These resolutions may well get rejected by the State Liquor Authority; however, this uncertainty coupled with the time and cost of challenging the Board's resolution at the SLA places a business owner in a fraught financial predicament.

Accordingly, to bring some balance and certainty to a highly uncertain and unpredictable process, we request that you consider the following ideas with respect to the community board process:

- Work with the borough presidents and city council members to seek community board members who have different experiences, perspectives, and views in order to promote a fair balance of interests between business and residential concerns in the license application process.
- Look for ways to establish equity among businesses in the liquor license process. At present, only large businesses may have the resources to take disputes to the SLA to overturn community board stipulation requirements that cannot reasonably be met.
- Evaluate the need for greater consistency among community board processes.

III. Nightlife Taskforce's Application Review

Many of the licenses or permits that are necessary for the operation of a nightlife or hospitality business require the review and recommendation of the local Community Board. While the liquor license is the most common license, other licenses, permits, or approvals are often required, including, for example, from the Department of Consumer Affairs for a sidewalk café, the Landmarks Preservation Commission for exterior or interior alterations, and the Board of Standards and Appeals for land use variances and special permits.

As mentioned above, there are inherent difficulties and complexities of navigating the Community Board process when there are 59 Community Boards and each has its own policies and procedures, and the membership of a particular Community Board may not accurately reflect or balance the diverse interests of the local community or neighborhood it serves.

For these reasons, we would like to work with the Nightlife Taskforce to develop a more consistent, uniform procedure that can be adopted by all Communities Boards, as well as a more universal list of issues, documents, or requirements an applicant may or must provide or address. Additionally, we would request that the Nightlife Taskforce consider a procedure whereby, after a Community Board decision, the Nightlife Taskforce would expeditiously review the facts of a particular application and issue its recommendation in order to potentially guide a business owner in their decision of whether or not to pursue the application, license, or approval from the reviewing agency.

IV. Amending the “500-Foot Law”

Under the current law, there is a presumption that no liquor license should be granted to an applicant whose premises are within 500 feet of three other on- premises liquor licensees. In order to overcome the presumption, the applicant must convince the State Liquor Authority that the grant of its license would be in the public interest. The Authority must reach this conclusion “in consultation with the municipality or community board” and there must be a public hearing, with notice to the community board.

More and more, community boards are seeking to place a moratorium on all on-premises licenses in New York City. In addition, many community boards have created a standard set of stipulations and use their substantial power to force new licensees to agree to terms and conditions that stand in the way of what would be a well-run operation. We believe that placing a de facto moratorium disallows case-by-case determinations and locks in current bad operators at the expense of welcoming in new businesses from proven, reputable operators. This approach is not good policy. Aside from this concern, we believe your Office should work with the Mayor’s State Legislative Office to consider modifying the 500 Foot Law for premises in New York City. We believe that the equal application of the 500 Foot Law to premises in New York City and to those located in much less densely populated areas in suburban and rural areas of New York State does not make sense.

Now is the time to address many of these issues. Interest and excitement about the creation of an Office of Nightlife and a Nightlife Advisory Board is high. There may no better time to make meaningful change for this important sector of New York’s business community.

In closing, we are hopeful to be part of a strong working relationship with the nightlife industry and your Office. Our members are excited about the prospects of addressing these and other issues going forward and we stand ready to assist you in your efforts.

Respectfully,



David Helbraun
Chair, Committee on Hospitality Law

CC: New York City Council Member Rafael Espinal