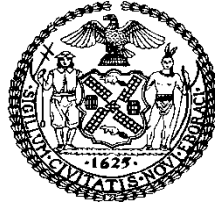


Committee on the Justice System:
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THE COUNCIL OF THE CITY OF NEW YORK

**COMMITTEE REPORT OF THE
GOVERNMENTAL AFFAIRS DIVISION**

**Jeffrey Baker, Legislative Director
Brian Crow, Deputy Director, Justice Division**

COMMITTEE ON JUSTICE SYSTEM

Hon. Rory Lancman, Chair

February 11, 2019

Int. No. 1156:

By Council Member Levin

Title:

A Local Law to amend the administrative code of the city of New York, in relation to requiring the mayor's office of criminal justice to report on Multi-Agency Response to Community Hotspots operations

Administrative Code:

Amends section 9-307

I. INTRODUCTION

On February 11, 2019 the Committee on the Justice System, chaired by Council Member Rory Lancman, will hold an oversight hearing regarding Multi-Agency Response to Community Hotspots (M.A.R.C.H.). The Committee will also hear Introductory Bill Number 1156 (Int. 1156), a local law to amend the administrative code of the city of New York, in relation to requiring the Mayor's Office of Criminal Justice (MOCJ) to report on frequency and type of M.A.R.C.H. operations, and where they occur. Those expected to testify include representatives of the New York Police Department (NYPD), MOCJ, and various advocates, stakeholders, and members of the public.

II. BACKGROUND

The Cabaret Law was first introduced in 1926, during the Prohibition era, nominally to crack down on establishments run by racketeers by prohibiting dancing in any venue selling food or drink that did not have a cabaret license. Some academics argue that the law's true aim was to prevent interracial mingling in Harlem jazz clubs.¹ Even without an explicit racial impetus, cabaret licenses were expensive, only available in certain zoned areas, and required the approval of multiple agencies. In 2017, only 97 out of almost 25,000 eating and drinking establishments actually had a cabaret license.²

Despite numerous legal challenges, the laws stood for 91 years. In *Club Winks v. New York City*,³ a New York State Supreme Court ruled unconstitutional the provisions of the Cabaret Law authorizing the denial or refusal to renew a license based upon a broad listing of criminal convictions and requiring the disclosure of stockholders holding a minimum of ten percent stock interest in a

¹ Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City*, 2d ed., (2005).

² Correal, Annie "After 91 Years, New York Will Let Its People Boogie" New York Times Oct. 31, 2017 available at <https://www.nytimes.com/2017/10/30/nyregion/new-york-cabaret-law-repeal.html>

³ (1979) 99 Misc.2d 787, 417 N.Y.S.2d 178.

corporation and the source of their money. In *Chiasson v. City of New York*⁴ a State Supreme Court found that the City failed to articulate a legitimate interest in restricting performance of live music to piano, organ, accordion, guitar or any stringed instrument. The Court further invalidated the portion of the Cabaret Law that restricted performance of live music to not more than three musicians.⁵ Despite the courts striking down several provisions of the Cabaret Law, most of the unconstitutional provisions remained codified until the laws were repealed in 2017.

Notwithstanding several problematic provisions, courts did not strike down the Cabaret Law in its entirety due to concerns for public safety. In *Festa v. City of New York*,⁶ a New York State Supreme Court upheld the Cabaret Law, despite its questionable history, recognizing that as it stood, “the legitimate purpose of the City’s licensing requirements includes the protection of the health and safety of the people of New York City. ... [T]he additional burden of verifying compliance is justified where there is risk of injury and loss of life in establishments which offer dancing.”⁷ Many venues with dancing did not possess a cabaret license, and as a result, encountered police enforcement – often with disproportionate effects on communities of color.⁸

Regulating the nightlife industry is certainly not a unique issue to New York City. Cities across the United States and indeed the world have taken unique approaches to address concerns with the nightlife industry. One approach spearheaded by the city of Amsterdam in the Netherlands is the introduction of a *nachtburgemeester* – or “night mayor,” who is responsible for nurturing the nightlife economy and improving relations between nightlife businesses, residents and government. This model

⁴ 132 Misc.2d 640, 505 N.Y.S.2d 499 (Sup.Ct., N.Y. County 1986)

⁵ *Chiasson v. City of New York*, 138 Misc.2d 394, 524 N.Y.S.2d 649 [“Chiasson II”]

⁶ 820 N.Y.S.2d 452 (2006), *aff’d* 37 A.D.3d 343 (N.Y. App. Div., 2007), *dismissing appeal* 9 N.Y.3d 858 (N.Y. Ct. App., 2007).

⁷ *Id.*

⁸ Justine Joffe, “NYPD Conducts ‘Gotcha’ Raid on Nonprofit Market Hotel, Tweets High Fives,” (October 13, 2016) *available at* <http://observer.com/2016/10/todd-p-on-market-hotel-shut-down-aggravating-to-see-its-motivations-questioned/> Alan Krawitz, “Arts advocates renew call to end New York City’s antiquated cabaret laws,” (June 1, 2017), *Metr available at* <http://www.metro.us/news/local-news/new-york/arts-advocates-renew-call-end-new-york-citys-antiquated-cabaret-laws>

was recently adopted by the New York City. In 2017, the city started an Office of Nightlife, and finally repealed the Cabaret Laws.⁹

However, advocates fear that the spirit of those laws still linger in how the city monitors nightlife establishments, especially in neighborhoods of color or “DIY venues.” As the population of New York City continues to grow, people and businesses are moving into the outer boroughs, resulting in higher demand for bars, restaurants and entertainment spaces. Between 2000 and 2015, business in the city grew, but businesses in the Downtown and Midtown Central Business Districts fell from 39% to 31%. In the City’s gentrifying neighborhoods, business grew by 45%.¹⁰ Among such establishments is the growing popularity of “do-it-yourself venues” or “DIY venues,” often located in vacant warehouses, office spaces, waterfront parks, and even laundromats. For example, the Metro Community Laundromat in Williamsburg became one such location hosting the “Dirty Disco Laundrette Party.”¹¹ This growth has also coincided with an increase in the number of resident noise complaints, particularly in the Brooklyn neighborhoods of Williamsburg and Bushwick.¹² It has also led to concerns over safety. In December 2016, a deadly fire during a pop-up type party in a warehouse space in Oakland, California placed the spotlight on the dangers of illegal clubs that do not meet safety standards. That fire resulted in 36 deaths from smoke inhalation. The building was in violation of fire

⁹ Local Law 214 of 2017 repealed all aspects of the Cabaret Laws, with two safety requirements: establishments previously required to obtain a cabaret license still must, and establishments must install security cameras.

¹⁰ Office of the New York City Comptroller, *The New Geography of Jobs: A Blueprint for Strengthening NYC Neighborhoods* (Executive Summary), April 25, 2017, <https://comptroller.nyc.gov/reports/the-new-geography-of-jobs-a-blueprint-for-strengthening-nyc-neighborhoods/>

¹¹ J. Rachel Reyes, “Pop-Up Disco at Metro Community Laundromat. Wait. What?” (June 13, 2011), *Free Williamsburg*, <http://freewilliamsburg.com/pop-up-disco-at-metro-community-laundromat>

¹² Ben Wellington, Mapping New York’s noisiest neighborhoods,” (January 17, 2015), *The New Yorker*, <http://www.newyorker.com/tech/elements/mapping-new-york-noise-complaints>

and electrical codes.¹³ The tragedy caused cities across the nation to take notice of DIY venues operating illegally and the potential risks they pose.¹⁴

Even after the Cabaret Laws, establishments that cater to more nightlife outside of dining are more heavily regulated. For example, restaurants must only install automatic sprinkler systems if their capacity exceeds 300, whereas any club is so required regardless of their capacity. As such, some club owners complain that the costs are excessive for smaller venues.¹⁵ City officials argued that dancing presents additional safety concerns beyond those present in establishments without dancing, hence the need for more stringent zoning restrictions.¹⁶ Various provisions of the Zoning Resolution provide additional justifications for the measures, which include the need to limit crowds and lineups in front of establishments; to maintain a distance from residential districts; to limit undue vehicle and pedestrian traffic; to limit noise; and to preserve the character of surrounding residential or mixed-use neighborhoods.¹⁷ As such, establishments that offer dancing are still susceptible to an enormous amount of potential penalties.

III. M.A.R.C.H. OPERATIONS

The Multi-Agency Response to Community Hotspots (M.A.R.C.H.) was started by then Mayor Giuliani to crackdown on nightclubs using the Cabaret Law in response to reports of injury and deaths from drugs and violent fights.¹⁸ According to media reports, the program was part of Giuliani's larger

¹³ Paige St. John, "The Ghost Ship fire was 'a matter of benign neglect.' It's not the only one," (December 28, 2016), *LA Times*, <http://www.latimes.com/local/lanow/la-me-ghost-ship-owner-20161227-story.html>

¹⁴ Judy Woodruff, "After Oakland fire, a nationwide crackdown on warehouse spaces," (December 9, 2016), *PBS*, <http://www.pbs.org/newshour/bb/oakland-fire-nationwide-crackdown-warehouse-spaces/>

¹⁵ Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City*, 2d ed., (2005).

¹⁶ Zoning Resolution §§ 32-21 and 73-244; See also Defendants/Respondents Brief in *Festa v. City of New York*, 830 N.Y.S.2d 133, 37 A.D.3d 343 (N.Y. App. Div. 2007).

¹⁷ *Ibid.*

¹⁸ Jane Laner, With Its 'No Dancing' Law Verging on Repeal, New York Legitimizes its Nightlife (Sept. 2017), *NPR News*, at <https://www.npr.org/sections/therecord/2017/09/20/552292586/with-its-no-dancing-law-verging-on-repeal-new-york-legitimizes-its-nightlife>; See also Jennifer Steinhauer, City Cracks Down on Nightclubs and May Revise its Policies (Nov. 2017), at <https://www.nytimes.com/2002/11/10/nyregion/city-cracks-down-on-nightclubs-and-may-revise-its-policies.html>

broken window initiatives,¹⁹ which involved the increased enforcement of quality of life laws to make the city safer. Despite shifting political leanings, M.A.R.C.H. operations have continued under successive administrations. In the first year of Mayor Bloomberg’s first term, M.A.R.C.H. enforcement actions increased 35 percent over the previous years.²⁰ And enforcement has continued under his current administration; in the first quarter of 2017, the city issued 27 criminal court summonses for “unlawful cabarets.”²¹

Little is known about the inner workings of M.A.R.C.H.. What is known about the program comes from a 2014 NYPD Operations Order, retrieved by a journalist in 2017 via a FOIL request.²² According to that order, M.A.R.C.H. is overseen by the Mayor’s Office of Criminal Justice (MOCJ) and is comprised of representatives from the New York City Police Department (NYPD), the New York City Department of Building (DOB), the New York City Fire Department (FDNY), the New York City Department of Environmental Protection (DEP), the New York City Department of Health and Mental Hygiene (DOHMH), and the New York State Liquor Authority (SLA).²³ These agencies work collaboratively on quality of life enforcement against venues that negatively impact the quality of life in the community.²⁴

Per the order, NYPD identifies venues for M.A.R.C.H. operation based on 311 complaints (e.g. noise and quality of life complaints), the number of incidents that have occurred within the space or

¹⁹ Jane Laner, With Its ‘No Dancing’ Law Verging on Repeal, New York Legitimizes its Nightlife (Sept. 2017), *NPR News*, at <https://www.npr.org/sections/therecord/2017/09/20/552292586/with-its-no-dancing-law-verging-on-repeal-new-york-legitimizes-its-nightlife>;

²⁰ Jennifer Steinhauer, City Cracks Down on Nightclubs and May Revise its Policies, *New York Times*, Nov 10 2017, available at <https://www.nytimes.com/2002/11/10/nyregion/city-cracks-down-on-nightclubs-and-may-revise-its-policies.html>

²¹ Emily Witt, Dance Outlaws Fight For the Right to Party (Jul. 2017), *The New Yorker*, at <https://www.newyorker.com/magazine/2017/07/10/dance-outlaws-fight-for-the-right-to-party>

²² Liz Pelly, Cut the Music (Feb. 2018), *The Baffler*, at <https://thebaffler.com/latest/cut-the-music-pelly>

²³ NYPD Operation Order #27: Criteria For Selecting a Location for Inclusion into the Multi-Agency Response to Community Hotspots (M.A.R.C.H) Operation (Jul. 2014), New York City Police Department, at https://www.scribd.com/document/371355332/2014-NYPD-Operations-Order-Retrieved-by-Foil-Request#from_embed

²⁴ NYPD Operation Order #27: Criteria For Selecting a Location for Inclusion into the Multi-Agency Response to Community Hotspots (M.A.R.C.H) Operation (Jul. 2014), New York City Police Department, at https://www.scribd.com/document/371355332/2014-NYPD-Operations-Order-Retrieved-by-Foil-Request#from_embed

surrounding area, and whether the venues has a history of cooperating with authorities.²⁵ The later category can be particularly vague – the “Operational Considerations” section of the order states “[a]n establishment’s lack of cooperation with members of the service regarding incidents and other matters of important to the Department or unwillingness to implement recommend crime prevention measures or assist the Department in combating crime or other concerns, would also merit inclusion in a M.A.R.C.H. operation.”²⁶ That consideration has nothing to do with an establishment’s keeping to code, only their perceived cooperation with their local precinct. The stakes of that perception are high - venues that are placed on M.A.R.C.H. list are subject to NYPD-led raids.²⁷

A court case revealed that about 30 or 40 people, comprising of NYPD officers and personnel from agencies that are on M.A.R.C.H. taskforce, raid targeted venues to conduct inspections concerning, for example, building safety, food quality, and liquor stock and issue citations and fines where venues are not in compliance with applicable regulations.²⁸ Generally, these raids take place during peak weekend hours without prior notice to the venues and business owners.²⁹ Because of that timing especially, advocates and business owners have described the raids as an economic hit that has a lasting financial effect on businesses. Many venues that are raided must pay thousands of dollars in fines for numerous violations.³⁰ Others are forced to close their doors due to numerous fines and loss of patrons.³¹ Advocates have found that many Latinx- and Black-owned businesses are forced to close

²⁵ Id.

²⁶ Id.

²⁷ Liz Pelly, Cut the Music (Feb. 2018), *The Baffler*, at <https://thebaffler.com/latest/cut-the-music-pelly>

²⁸ Sulkowska, plaintiff, was arrested when NYPD raided her bar, which was designated as a hotspot, to conduct an SLA investigation after the bar was cited for several minor SLA violations. Plaintiff sued the city and the officer for on several counts, including false arrest and abuse while in custody. Court ruled in favor of the plaintiff on all counts. *See Sulkowska v City of New York*, 129 F. Supp. 2d 274 (S.D.N.Y. 2001)

²⁹ Liz Pelly, Cut the Music (Feb. 2018), *The Baffler*, at <https://thebaffler.com/latest/cut-the-music-pelly>

³⁰ Cassidy Dawn Graves, After Shutdown, Brooklyn Venue The Gateway Turns to Crowdfunding to Reopen (Jun. 2018), *Bedford Bowery*, at <http://bedfordandbowery.com/2018/06/after-shutdown-brooklyn-venue-the-gateway-turns-to-crowdfunding-to-reopen/>; *See also*, Liz Pelly, Cut the Music (Feb. 2018), *The Baffler*, at <https://thebaffler.com/latest/cut-the-music-pelly>

³¹ Staff, After Violent Weekend, “Delilah” on Rivington Street is Raided in Multi-Agency Sting (Jan. 2018), *Bowery Boogie*, at <https://www.boweryboogie.com/2018/01/violent-weekend-delilah-rivington-street-raided-multi-agency-sting/>; *See also* Liz Pelly, Cut the Music (Feb. 2018), *The Baffler*, at <https://thebaffler.com/latest/cut-the-music-pelly>

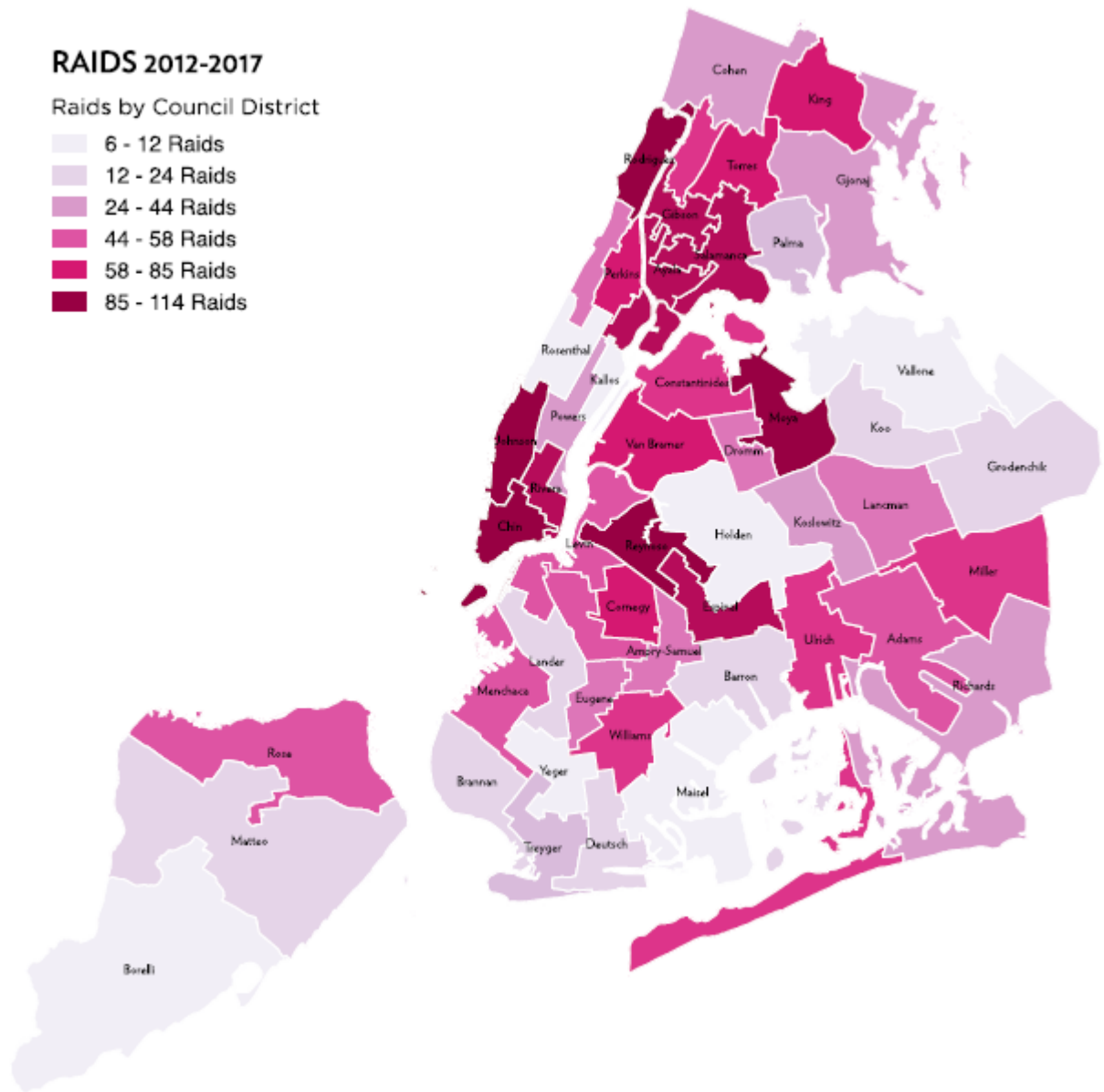
their doors due to the lack of financial and legal resources needed to reopen after receiving numerous fines for violations.³² These advocates have expressed concern that this is speeding up the process of gentrification because it is “more likely that gentrifying businesses would be able to afford those fine—not to mention the pending legal fees—than longstanding minority-owned business.”³³

While the Cabaret Laws have been repealed, and the Office of Nightlife has been established, advocates indicate that M.A.R.C.H. continues a troubling history of discrimination against establishments that cater to communities of color. The NYC Artist Coalition collected information from the NYPD via a Freedom of Information Act request on the number of M.A.R.C.H. raids. The graph below plots those raids by Council districts. This data does not include the race or ethnicity of the businesses that were raided.

³² Liz Pelly, Cut the Music (Feb. 2018), *The Baffler*, at <https://thebaffler.com/latest/cut-the-music-pelly>

³³ Id.

FIG. 1. M.A.R.C.H.. RAIDS 2012-2017, MAPPED BY COUNCIL DISTRICT³⁴



However, it is clear that the communities with the lowest number of raids – Bay Terrace and Richmond Valley in southern Staten Island, Marine Park and Mill Basin in southeast Brooklyn, Bayside and Maspeth in Queens, the Upper West Side and Yorkville in Manhattan – tend to be whiter.³⁵ In contrast, the neighborhoods with the highest number of raids tend to be communities of

³⁴ Data compiled by NYC Artist Coalition, *available at* <http://nycartc.com/march/>

³⁵ Overall citywide data from Fessenden, Ford and Roberts, Sam “Then as Now – New York’s Shifting Ethnic Mosaic” *New York Times* January 22, 2011 *available at*

color – Stapleton in Staten Island, Bushwick in Brooklyn, Corona in Queens, Chinatown and Washington Heights in Manhattan, and Highbridge and Mott Haven in the Bronx. The disparity is not explained by number of establishments, or number of liquor licenses – otherwise, for example, Midtown Manhattan or Yorkville, some of the densest collection of bars in the country, wouldn't have less raids than the South Bronx. For context, the New York State Liquor Authority granted more than five times as many “night” permits – allowing later selling of alcohol – in Manhattan than the Bronx.³⁶ The number of raids then is not dependent on the number of licenses, or businesses – in fact in some neighborhoods it seems to be

The data underlying the graph in Figure 1 also raises questions about the efficacy of M.A.R.C.H. operations. According to this data, 48% of raids resulted in “no enforcement action taken.”³⁷ If almost half of the raids find no issue, it is questionable whether they are worth the costs, both to the taxpayer and to the business that is raided. As discussed below, this lack of any needed enforcement action makes the lack of notice and the aggressiveness of the operations all the more problematic.

Advocates and business owners have expressed less issue with the idea of inspections than the lack of notice and excessive theatrics of the way M.A.R.C.H. raids are conducted. According to John Barclay, a club owner and advocate, “no one knows how you end up on their list... We don't know why the show up. They won't tell you. They just show up... write a bunch of tickets, and they leave and go to the next one.”³⁸ The opacity of the raids came up again before the Committee on Consumer Affairs at their June 19, 2017 hearing, where Rachel Nelson, an owner of several small clubs in Brooklyn, testified that “[M.A.R.C.H.] has no website, no known boss, no one to call, no[] way of

http://archive.nytimes.com/www.nytimes.com/interactive/2011/01/23/nyregion/20110123-nyc-ethnic-neighborhoods-map.html?_r=0

³⁶ Data available at <https://sla.ny.gov/system/files/documents/2018/12/allnightpermitsissued-12-12-18.pdf>

³⁷ Data available at <https://www.muckrock.com/foi/new-york-city-17/multi-agency-response-to-community-hotspots-39017/>

³⁸ Note 29, *supra*

knowing the predictability of if they will come once a year, on[c]e a month or never at all. There is no way of knowing if you've made it to their list, and there is no person to contact in order to get you off that when you've fulfilled your obligations.”³⁹

The manner in which the raids happen tend to be dramatic enough to scare away customers and convince neighbors the business being raided is dangerous. At the June 19, 2017 hearing on the Cabaret Laws, Barclay described the M.A.R.C.H. like “a SWAT team... like a counter-terrorism raid.”⁴⁰ Similarly at the September 14, 2017 Consumer Affairs hearing, Nelson, an owner of several small clubs in Brooklyn, described M.A.R.C.H. as an, “unknown, unregulated paramilitary enforcement agency.”⁴¹

Finally, M.A.R.C.H. operations do not allow venues to fix health and safety requirements before issuing citations and fines – summonses and tickets are handed out on the spot, regardless of how quickly an issue is, or could be, resolved.⁴² Both advocates and venue owners have expressed their frustration with the lack of opportunity to comply with health and safety standards before citations and fines are issued. This is especially problematic because of the number of zoning laws that cover nightlife establishments, meaning that a single M.A.R.C.H. raid could put a club out of business as a result of only minor infractions.

IV. ISSUES & CONCERNS

The Committee is interested in learning about why these raids occur predominantly in what appear to be communities of color. A fundamental question to both the NYPD, MOCJ, and advocates is whether searches can be scheduled in advance, on slower nights, or whether for these searches to be

³⁹ Pp 34-35, testimony available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=588936&GUID=5D6339CE-836A-4385-93C6-68AF63F51EDD&Options=info&Search=>

⁴⁰ Id, page 46

⁴¹ Page 141, testimony available at <https://legistar.council.nyc.gov/MeetingDetail.aspx?ID=588934&GUID=24BD25F0-4F07-464B-91C9-01EFB49382F3&Options=info&Search=>

⁴² Note 29, *supra*

effective they must happen with no notice on busy nights. The Committee is also interested in hearing from MOCJ about whether they are the appropriate entity to collect the information requested in Int. 1156.

V. ANALYSIS OF INT. NO. 1156

This bill requires the Mayor's Office of Criminal Justice to report on M.A.R.C.H. operations. This quarterly report would include the number of inspections, the underlying cause for the inspection, summonses that resulted from the inspection, and any closures that occurred as a result. The report also requires the numbers to be disaggregated by borough and council district. This bill would take effect immediately.

By Council Members Levin and Espinal

A Local Law to amend the administrative code of the city of New York, in relation to requiring the mayor's office of criminal justice to report on Multi-Agency Response to Community Hotspots operations

Be it enacted by the Council as follows:

1 Section 1. Chapter 3 of title 9 of the administrative code of the city of New York is amended by
2 adding a new section 9-307 to read as follows:

3 § 9-307 Multi-agency response to community hotspots reporting. a. The office shall submit to
4 the council within 25 days of the end of each quarter and post to the office's website and the city's
5 open data portal, in a machine readable format, a report on Multi-Agency Response to Community
6 Hotspots operations. Such reports shall include:

7 1. Information on the number of inspections, aggregated citywide, as well as disaggregated by
8 borough and council district;

9 2. The conduct or complaint that resulted in such inspections;

10 3. Information on the duration of inspections, including the time each inspection commences
11 and the average time spent inside each establishment;

12 4. Any summonses issued, and the agencies responsible for such summonses; and

13 5. Information on establishment closures as a result of summonses issued pursuant to such
14 inspections, including the average duration of such closures.

15 b. No information that is otherwise required to be reported pursuant to this section shall be
16 reported in a manner that would violate any applicable provision of federal, state, or local law relating
17 to the privacy of information.

1 § 2. This local law takes effect immediately.

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