NEW YORK CITY LAW DEPARTMENT
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Press Release

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For Immediate Release

COURT REJECTS CONSTITUTIONAL CHALLENGES TO CITY'S CABARET LAWS, ALLOWING CITY TO BETTER ENSURE QUALITY OF LIFE PROTECTIONS BY MINIMIZING NOISE DISTRUPTIONS IN RESIDENTIAL NEIGHBORHOODS

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New York, April 3, 2006 – In a confirmation of the City's efforts to protect residential communities from disruptions attributed to some cabarets, Justice Michael D. Stallman of the Supreme Court of the State of New York, New York County, today dismissed the complaint and granted the City of New York summary judgment on all claims raised in *John Festa, et al. v. New York City Department of Consumer Affairs, et al.* The Court upheld the constitutionality of the City's licensing requirement for cabarets, *i.e.*, establishments that sell food or drink and have recreational dancing, as well as the City's zoning provisions which limit where these establishments may be located. The individual plaintiffs claimed they wanted to be able dance in any bar or restaurant of their choice. They challenged the licensing requirements and zoning restrictions on State constitutional grounds.

The lawsuit alleged that recreational dancing is expressive conduct protected by the New York State Constitution, and that the cabaret licensing requirements for eating or drinking establishments with dancing was an impermissible infringement on their right to free expression. The plaintiffs also argued that the restrictions in the Zoning Resolution on eating or drinking establishments with dancing violate State substantive Due Process guarantees, because the zoning restrictions are not reasonably related to a legitimate governmental interest.

The Court rejected all of the plaintiffs' arguments. The Court upheld the licensing of cabarets by the Department of Consumer Affairs as well as the Zoning Regulations which control where establishments with dancing may be located. The Court recognized that "[w]hether dancing, as an activity in itself, causes noise and crowding is not the issue. Rather, the issue is whether the presence of additional people who wish to dance may cause increased noise and congestion in certain places. …. It is self-evident that bars, clubs and restaurants can generate noise, especially when patrons consume alcohol, and smokers and others awaiting entry congregate outside. If these establishments draw more people because they offer dancing, then there is a greater likelihood of pedestrian traffic, increased vehicular traffic, and associated noise."

In addressing the free expression claim, Justice Stallman noted that the "plaintiffs propose that social dancing is expressive conduct due only to the 'esthetic and communicative pleasure' between the participants. Under that standard, many recreational and social activities arguably could be constitutionally protected as well, such as gymnastics or figure skating….[the] plaintiffs' proposed standard is over inclusive; it would significantly depart from the level of expressiveness and communication required by the federal standard."

The case was litigated by Ave Maria Brennan, a Senior Counsel with the New York City Law

Department's Administrative Law Division. Brennan said, "Today's decision affirms the City's rights to protect its residential communities from potentially intrusive uses."

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