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# **Making a Music City: The Commodification of Culture in Toronto's Urban Redevelopment, Tensions between Use-Value and Exchange-Value, and the Counterproductive Treatment of Alternative Cultures within Municipal Legal Frameworks**

SARA ROSS\*

Pour que la diversité et l'inclusion soient significatives dans les villes d'aujourd'hui, il faut porter attention à plusieurs choses, y compris les stratégies et les politiques de réaménagement urbain. Pour ce faire, cet article se concentre sur les stratégies de régénération par la culture — et plus particulièrement sur l'initiative « Ville de la musique » et la stratégie « Ville créative » de Toronto. L'article examine aussi la mécanique de l'utilisation de la culture et du patrimoine comme outils de réaménagement, dans un contexte où leur marchandisation peut révéler une confrontation entre différents intérêts divergents relatifs aux valeurs, dans les espaces culturels de la ville. Le développement urbain durable doit tenir compte de ces divergences, tout en évitant le déplacement et l'absence de reconnaissance équitable des individus, des groupes, des (sous)cultures et des espaces qui ont une certaine vulnérabilité relationnelle. Les effets contreproductifs que peuvent avoir les initiatives de réaménagement par la culture finissent par faire disparaître la « culture » qui justifiait leur existence. Il s'agit d'un exemple de l'échec de la gouvernance et de l'aménagement urbains à inclure de manière efficace les groupes et les espaces précaires de la ville affectés par les stratégies de réaménagement. Cela démontre aussi jusqu'à quel point les intérêts relatifs à la valeur d'échange ont surpassé les intérêts relatifs à la valeur d'usage, et ce, au détriment de ces groupes et espaces précaires.

Meaningful diversity and inclusion within today's cities requires attention on many fronts, including that of city redevelopment strategies and policies. To that end, this article focuses on culture-led regeneration strategies—specifically, those of Toronto's "Music City" initiative and "Creative City" strategy—and unpacks the mechanics of using culture and heritage as tools for redevelopment where their commodification can reveal the clash between divergent value interests that exist within spaces of culture in the city. Sustainable urban development must carefully account for these divergences to avoid the displacement and lack of equitable accounting of relationally vulnerable individuals, groups, (sub)cultures, and space. Counterproductive effects of culture-led redevelopment initiatives which have, despite themselves, wound up either dismantling or failing to curb the disappearance of the "culture" that served as their initial impetus, are an example of where urban governance and planning have not effectively engaged

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precarious groups and spaces in the city that are affected by redevelopment strategies and where exchange-value interests have overwhelmed use-value interests to their detriment.

CULTURE SELLS. FIRST IT TAKES TIME AND SPACE TO GROW, and people to nurture it. After this, others are often willing to invest money into the cultural experiences sown by this process. Cities seeking global status today promote these cultural experiences, and trade on the market value of what these experiences can bring to economic wealth and the popularity of the city. There is a point though, when the focus on selling culture and its market and exchange-value tends to favour certain kinds of culture, leaving others excluded by civic policies. There is a point where the sale of culture can overwhelm the meaningfulness, utility, and use-value that culture has for people, and it can become empty or inaccessible. Deconstructing the “lawscapes” where law and the city meet, and the social spaces where culture-led regeneration and rejuvenation projects play out, reveals that a market- or exchange-centric approach to culture as a commodity within recipes for city redesign can result in the displacement of segments of society from the spaces of high use-value where they have generated intangible cultural fabric.<sup>1</sup>

As Neil Smith asserts, “[t]he pursuit of difference, diversity and distinction forms the basis of the new urban ideology but it is not without contradiction. It embodies a search for diversity as long as it is highly ordered, and a glorification of the past as long as it is safely brought into the present.”<sup>2</sup> Within Toronto and this “neoliberal vision of gentrified urban diversity,”<sup>3</sup> it can often be the image of diversity or a reified version of the notion of diversity that is sought when it is convenient, rather than meaningful inclusivity, an equality of differences or diversities, or an environment of equal valuation and exchange amongst differing iterations of culture and cultural practices.

The diverse views on what is and/or should be valued in the context of city redevelopment are one of these areas where meaningful inclusion is sorely needed as to questions such as: whether the future should be privileged over the past, whether heritage should be privileged over innovation, or whether heritage preservation is simply a form of outdated nostalgia; what constitutes “heritage,” what kinds of heritage and whose heritage matters, and how do we determine which spaces—whose spaces—merit protection and/or promotion. These questions make us think about what kind of weight should be accorded to places that are meaningful to people but could be more commercially viable if redeveloped or transformed into a place that attracts more people to spend money, or the kinds of people who have more money to spend. But oftentimes this notion of what is meaningful—or what carries great cultural community wealth, use-value, or embodies a group’s intangible cultural heritage—takes a back seat in determining the redevelopment strategies of cultural spaces in the city and in addressing gentrifying processes.<sup>4</sup>

A survey of some of Toronto’s culture-based strategies for rejuvenation and redevelopment, namely its “Music City” initiative, reveals a problematic focus placed on exchange-value over use-value and community cultural wealth. Two particular effects have been

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<sup>1</sup> Andreas Philippopoulos-Mihalopoulos, ed, *Law and the City* (Abingdon, Oxon: Routledge-Cavendish, 2007).

<sup>2</sup> Neil Smith, *The New Urban Frontier: Gentrification and the Revanchist City* (London, UK: Routledge, 1996) at 111 [Smith].

<sup>3</sup> Mariana Valverde, *Everyday Law on the Street: City Governance in an Age of Diversity* (Chicago: University of Chicago Press, 2012) at 210 [Valverde, *Everyday*].

<sup>4</sup> Sharon Zukin, *Naked City: The Death and Life of Authentic Urban Places* (Oxford: Oxford University Press, 2010) at 11 [Zukin, *Naked City*].

noted and will be explored in the following pages: (1) the displacement, replacement, or refashioning of certain kinds of venues to the detriment of preserving the urban intangible cultural heritage, access, and high use-value generated within these spaces by their originate communities;<sup>5</sup> and (2) the disjunctive nature of creative city planning initiatives and frameworks in the context of other municipal policy and planning documents that can ultimately deploy conflicting strategies, by-laws, policies, and so on, that block or snuff out the very cultural initiatives desired.<sup>6</sup>

This article will undertake a discussion of the role that the commodification of culture, as a generator of exchange-value, plays in this context, especially in relation to the disjunctive and unequal results that occur on the ground as a result of creative city and culture-led regeneration legislation, policies, and strategies, and why this matters. It will look at the commodification of culture and the reification of “authenticity” in relation to spaces of community cultural wealth and intangible cultural heritage where, even if these spaces carry a high use-value for those who have generated culture within a space, this use-value may be trumped by the exchange-value that tempts developers to capitalize on the space. Whether the space is capitalized upon through an invasion and repurposing of the space while harnessing its history and cache; or whether it is done through a reconstruction of the space and attempt to keep those who attend and generate use-value; or whether the space is instead demolished and reconstructed in order to maximize the potential exchange-value embodied by a new build, but which simultaneously decimates the use-value that has been grown within the previously existing space of cultural practice. It is predominantly within the latter that I situate my case study that draws on the City of Toronto, its aspirations of harnessing the power of becoming a “Music City,” and its spaces of (sub)cultural practice, such as its rapidly disappearing grassroots music venues and Do-It-Yourself (“DIY”) spaces. I use Toronto as a case study due to its similarities to other attempts at “Music City” initiatives, and although Toronto-specific by-laws and plans affect the specifics of the case study, lessons learned from Toronto can be applied to the wider scope of international urban efforts to produce Music Cities.<sup>7</sup> Toronto is also a pertinent focal point for this examination due to the way in which it seeks to position itself as a leader in Music City-oriented development, planning, and policy-making.<sup>8</sup>

<sup>5</sup> Rather than the term “original,” I use the term “originate community” to indicate the community or communities that have grown out of a space, flourish in a space, or carry a strong attachment to a particular space. The term “original” imports the idea of the first or earliest claims to space or land, which is not necessarily the correct claim for the sites and venues I am discussing, especially since Toronto is built on traditional Indigenous lands.

<sup>6</sup> Laam Hae, *The Gentrification of Nightlife and the Right to the City: Regulating Spaces of Social Dancing in New York* (New York: Routledge, 2012) at 5-6 [Hae].

<sup>7</sup> See e.g. Canadian Chamber of Commerce & Music Canada, “Music Cities Toolkit,” at 3-4, online: <chamber.ca/resources/music-cities/Music\_Cities\_Toolkit.pdf> [perma.cc/5L5G-UMFJ]. For but a few other Canadian examples, see Sandra Sperounes, “Live Music Initiative Hopes to Help Edmonton Venues,” *Edmonton Journal* (13 October 2015), online: <edmontonjournal.com/entertainment/local-arts/live-music-initiative-hopes-to-help-edmonton-venues> [perma.cc/A2N2-SKLB]; “It was a Rough Year for the Local Music Scene, But a New Venue has Opened its Doors,” *Edmonton Journal* (18 November 2015), online: <edmontonjournal.com/storyline/it-was-a-rough-year-for-the-local-music-scene-but-a-new-venue-has-opened-its-doors> [perma.cc/QCD8-84TK]; Lynn Saxberg, “Mercury Lounge: Keeping it Fresh for 19 Years,” *Ottawa Citizen* (28 November 2015), online: <ottawacitizen.com/entertainment/local-arts/mercury-lounge-keeping-it-fresh-for-19-years> [perma.cc/FX7V-FAZH]; Amy Terrill, “How Cities Benefit from Helping the Music Industry Grow,” *WIPO Magazine* (September 2015), online: <wipo.int/wipo\_magazine/en/2015/05/article\_0009.html> [perma.cc/5V6Y-3ABB].

<sup>8</sup> See e.g. “The Mastering of a Music City” creative-economy summit held annually in Toronto that is offered by Music Canada and Canadian Music Week as part of Canadian Music Week programming online: <musicciessummit.com> [perma.cc/QT39-RLZ7].

# I. CITY REDEVELOPMENT TODAY AND THE ROLE OF CULTURE

## A. CULTURE AS STRATEGY IN CITY REJUVENATION AND REDEVELOPMENT

“Culture” takes an increasingly prominent role as cities turn to their potential cultural, artistic, and heritage attributes as strategic tools for city redevelopment projects and as a key to resolving urban problems.<sup>9</sup> This has been documented, as well as encouraged, by United Nations’ programs like UN-Habitat—which note that “in recent decades, cities ... have expressed a growing interest in placing culture at the core of urban development strategies”—and “creative city” based redesign strategies, such as those currently favoured in cities like Toronto.<sup>10</sup> Culture has become such a preferred tool in city development that it has been identified as a global phenomenon where,

[c]ities now routinely look to culture in its diverse manifestations—as the arts, group identity and heritage, and media and design-based industries (e.g., film, music, architecture)—as urban policy tools to address a broad array of urban issues. These range from neighborhood revitalization and community engagement to job creation, talent attraction, and achieving ‘world city’ status.<sup>11</sup>

Within the strategic toolkit that culture can provide for city reinvention, common zones one tends to find include “hipster districts, ethnic tourist zones, and other cultural spaces” ripe for cultural consumption.<sup>12</sup> But in turning to culture as a redevelopment strategy, urban cultural policy theorists, such as Carl Grodach and Daniel Silver, identify Richard Florida’s “creative

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<sup>9</sup> See e.g. Hae, *supra* note 6 at 4-5, 19-20; Sophia Labadi, “The Impacts of Culture and Heritage-Led Development Programmes: The Cases of Liverpool (UK) and Lille (France)” in Sophia Labadi & William Logan, eds, *Urban Heritage, Development and Sustainability* (London, UK: Routledge, 2016) 137 [Labadi].

<sup>10</sup> UN-Habitat, Habitat III Issue Paper #4, “Urban Culture and Heritage” (31 May 2015) at 5 [Habitat III Issue Paper #4]; Ute Lehrer & Andrea Winkler, “Public or Private? The Pope Squat and Housing Struggles in Toronto” (2006) 33:3 *Social Justice* 142 at 144 [Lehrer & Winkler]. For the popular Richard Florida “creative city” notion, see e.g. *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life* (New York: Basic Books, 2002) [Florida, *Rise*]. See also Richard Florida, *Cities and the Creative Class* (New York: Routledge, 2005) [Florida, *Cities*]. See also Strategies for a Creative City Project, “Imagine a Toronto ... Strategies for a Creative City” (2006), online: <[web.net/~imagineatoronto/fullReport.pdf](http://web.net/~imagineatoronto/fullReport.pdf)> [perma.cc/E4NL-73YA] [Strategies for a Creative City]; City of Toronto, Culture Division, *Culture Plan for the Creative City* (Toronto: Culture Division, 2003) [*Culture Plan for the Creative City*]; AuthentiCity, “Creative City Planning Framework—A Supporting Document to the Agenda for Prosperity: Prospectus for a Great City” (Toronto: City of Toronto, 2008) [AuthentiCity]; *Central Waterfront Secondary Plan* (2003) (approved in full by the OMB in 2007) [Central Waterfront Secondary Plan].

<sup>11</sup> See Carl Grodach & Daniel Silver, “Introduction: Urbanizing Cultural Policy” in Carl Grodach & Daniel Silver, eds, *The Politics of Urban Cultural Policy: Global Perspectives* (London, UK: Routledge, 2013) 1 at 2 [Grodach & Silver].

<sup>12</sup> Zukin, *Naked City*, *supra* note 4 at 234, 236.

cities” thesis as potentially the “dominant intellectual perspective that has legitimated the ascendancy of many urban cultural policy efforts.”<sup>13</sup>

Within the creative city framework, specific iterations of “culture” and commodified cultural spaces are often strategically designed, preserved, or artificially generated in order to attract not only private investment and tourist dollars (both tourists from other cities and countries as well as intra-city tourists from other neighbourhoods within the same city), but also to attract a particular “class” of people—the creative class or, according to Zukin’s terminology, the “hipperati.”<sup>14</sup> As urban sociologists John Logan and Harvey Molotch explain, “[d]evelopers and city officials believe that signals of creativity, like art galleries, espresso bars, and foreign magazine stands, can generate rent and revenues. The ‘arts’—in the most general sense of the word—have become a conscious strategy for growth.”<sup>15</sup>

## B. CULTURE AS COMMODITY IN CITY REJUVENATION AND REDEVELOPMENT STRATEGIES

A focus on art and culture as commodity to be used as a redevelopment tool and the reification of particular kinds of “culture” and “authentic” culture in municipal policy and the legal complexes of the city can result in the prioritization of a market rationality that enables the colonization of use-value with exchange-value where culture and art are considered first for their market potential, and second for their cultural and artist value.<sup>16</sup> In designing cities that provide culturally for all urban citizens though, one must consider the comparative weight placed on culture that carries a high exchange-value for redevelopment and tourism potential, and that which might have a comparatively lower exchange-value but a high use-value and important community cultural wealth. Equal valuation of the use-value and exchange-value embodied by spaces of culture in the city is often needed in order to better account for, promote, and preserve all cultural spaces and the right to these spaces and cultural practices in the city. This is increasingly observable within the “right to the city” oriented mechanisms gaining traction internationally with the *Global Charter-Agenda for Human Rights in the City*, and in the

<sup>13</sup> Grodach & Silver, *supra* note 11 at 4. For a discussion of the manifestations of these creative city initiatives in Toronto, see Lehrer & Winkler, *supra* note 10 at 144; Ute Lehrer & Jennifer Laidley, “Old Mega-Projects Newly Packaged? Waterfront Redevelopment in Toronto” (2008) 32:4 Intl J Urban & Regional Research 786 at 794, 796. See also Florida, *Rise*, *supra* note 10; Florida, *Cities*, *supra* note 10.

<sup>14</sup> See e.g. *Culture Plan for the Creative City*, *supra* note 10; AuthenticCity, *supra* note 10; City of Toronto, Ontario Municipal Board, *Official Plan* (Toronto: City of Toronto, July 2006) at 3.5.2; Strategies for a Creative City, *supra* note 10; Robert J Foster, Karen Kain & Jim Prentice, *Creative Capital Gains: An Action Plan for Toronto* (2011), online:<torontoartscouncil.org/news/creative-capital-gains-an-action-plan-for-toronto> [perma.cc/L9PG-R5E6] [Foster, Kain & Prentice]; Ute Lehrer, Roger Keil & Stefan Kipfer, “Reurbanization in Toronto: Condominium Boom and Social Housing Revitalization” (2010) 46:180 disP: Planning Rev 81 at 82 [Lehrer, Keil & Kipfer]; Zukin, *Naked City*, *supra* note 4 at 7; Hae, *supra* note 6 at 4-5, 20; Labadi, *supra* note 9.

<sup>15</sup> John R Logan & Harvey L Molotch, *Urban Fortunes: The Political Economy of Place* (Berkeley: University of California Press, 1987) at xix [Logan & Molotch].

<sup>16</sup> Steven Miles & Malcolm Miles, *Consuming Cities* (New York: Palgrave Macmillan, 2004) at 64 [Miles & Miles]; Foster, Kain & Prentice, *supra* note 14; Lehrer, Keil & Kipfer, *supra* note 14 at 82. See generally: Florida, *Rise*, *supra* note 10; Florida, *Cities*, *supra* note 10; Richard Florida, *The Flight of the Creative Class* (New York: HarperBusiness, 2005). See also Zukin, *Naked City*, *supra* note 4 at 18. “Legal complexes” include “the assemblage of legal practices, legal institutions, statutes, legal codes, authorities, discourses, texts, norms, and forms of judgement” (Nikolas Rose & Mariana Valverde, “Governed by Law?” (1998) 7:4 Soc & Leg Stud 541 at 542 [Rose & Valverde]; see also Hae, *supra* note 6 at 7).

*European Charter for the Safeguarding of Human Rights in the City* (“European City Charter”), as well as recent footholds in Canadian cities such as Montreal with its *Montreal Charter of Rights and Responsibilities* and even Vaughan, Ontario with its *City of Vaughan Declaration of Citizens’ Rights and Responsibilities* and *Vaughan Accord*.<sup>17</sup>

## II. USE-VALUE AND EXCHANGE-VALUE GENERATED BY AND WITHIN THE CREATED SPACES OF THE CITY

The undervaluation of the cultural capital of certain groups and individuals, and the unequal valuation of different iterations of culture, cultural practices, and attached spaces of cultural practice, is interlaced with the comparative valuation of the use-value/exchange-value of spaces within municipal legal governance frameworks. The work of Logan and Molotch “construct[s] a sociology of cities on the basis of a sociology of urban property relations” that seeks to “clarify the interconnections between a wide range of urban phenomena.”<sup>18</sup> In doing so, they turn to the “Marxian lexicon” to propose an analytical framework that draws on the “exchange value” and “use value” of place, but in a manner adjusted to speak to the urban development context.<sup>19</sup> “Exchange-value,” in this context, refers to “the utilization of property to generate profit” while “use-value” refers to “values individuals assign to property.”<sup>20</sup>

Seeking to build on urban theorist Henri Lefebvre’s notion of the production of space by people, Logan and Molotch do so “by offering specific concepts, mechanisms, and examples of how individuals and groups” produce space within the urban setting and the use-value/exchange-value framework.<sup>21</sup> Where space is created by people and may be additionally viewed for its intangible properties, different spaces and their attached value-attribution—whether measured in terms of “use” or “exchange,” or both—can overlap and coexist within the physical boundaries of tangible space. An overlap in created spaces and alternate values can also be generated in the same space but at different times—for example, day versus night, and so on. These overlaps within the same physical boundaries and tangible space can create an antagonistic relationship between the contrasting and conflicting value interests of the parties that occupy the space. Drawing on this framework is useful in considering how the use-value generated within a space is treated, valued, protected, and promoted in comparison to the exchange-value it carries.

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<sup>17</sup> *Global Charter-Agenda for Human Rights in the City* (drafted by social movements gathered in the World Social Forum in Porto Alegre, Brazil (2001)), *UCLG Committee on Social, Inclusion, Participatory Democracy and Human Rights* online: <[uclg-cisdp.org/en/right-to-the-city/world-charter-agenda](http://uclg-cisdp.org/en/right-to-the-city/world-charter-agenda)> [perma.cc/HRF7-6DGR] [*Global Charter-Agenda*]; *European Charter for the Safeguarding of Human Rights in the City*, 2000, *UCLG Committee on Social, Inclusion, Participatory Democracy and Human Rights* online: <[uclg-cisdp.org/en/right-to-the-city/european-charter](http://uclg-cisdp.org/en/right-to-the-city/european-charter)> [perma.cc/T5BE-8RV2] [*European City Charter*]. For Montreal, Quebec, see online: City of Montreal, *Montréal Charter of Rights and Responsibilities* (1 January 2006), online: <[ville.montreal.qc.ca/portal/page?\\_pageid=3036,3377687&\\_dad=portal&\\_schema=PORTAL](http://ville.montreal.qc.ca/portal/page?_pageid=3036,3377687&_dad=portal&_schema=PORTAL)> [perma.cc/P7HE-8RBK] [*Montreal City Charter*]. For Vaughan, Ontario, see the *Vaughan Accord*, online: <[vaughan.ca/council/vaughan\\_accord](http://vaughan.ca/council/vaughan_accord)> [perma.caa/Z5EG-NQCW] [*Vaughan Accord*], and the City of Vaughan, “Meeting Archives” at 3, *City Council and Committee Meeting Agendas, Minutes and Extracts Archives* (21 February 2005), online: <[meetingarchives.vaughan.ca](http://meetingarchives.vaughan.ca)> [perma.cc/6ZMK-5YCJ] [*Vaughan “Meeting Archives”*].

<sup>18</sup> See generally Logan & Molotch, *supra* note 15; see especially, *ibid* at viii; Ray Hutchison, “Book Review of Urban Fortunes” (1988) 94:2 *Am J Sociology* 459 at 459 [Hutchison].

<sup>19</sup> Logan & Molotch, *supra* note 15 at viii.

<sup>20</sup> Hutchison, *supra* note 18 at 459.

<sup>21</sup> Logan & Molotch, *supra* note 15 at xi, ix.



Where much of Logan and Molotch's work is related to the production of neighbourhood space, residents, and use-value,<sup>22</sup> use-value can additionally be drawn on to address the occupation, use, and/or identification of a space that is not necessarily connected with habitation. Interconnected with the use-value of a space is the notion of intangible cultural heritage that can be generated within a space of community cultural wealth and high use-value, regardless of the exchange-value the space may or may not carry. People in the city frequent spaces that are important to them beyond the limits of their home and neighbourhood. These forms of use and occupation of space often arise in relation to cultural activities and practices, in addition to leisure activities. These uses of space may occur at unconventional times of the day or night where use may go unnoticed by those who use the space, or the surrounding space, at other times during the day or night. Or, they may overlap in such ways that they clash, causing nuisance concerns to arise. Nuisance clashes tend to carry a greater threat and have a more detrimentally displacing result on those using the space who are relationally vulnerable—often with weaker property claims to the space and/or less social, economic, or cultural capital to ensure their voice is heard and valued.<sup>23</sup> Additionally, an overlap in the use of space, but one that occurs invisibly at different times of the day or night, may result in one group's complete lack of awareness of the presence of the other group. This may ultimately bring about the inability of the relationally vulnerable users of the space to preserve their use-access to the space as their invisibility can lead to a neglect in consultation when the space or the access to the space is altered or removed. The case of the music venue Government, explored below, is an example of a space of high use-value that has been displaced, without consultation with the affected community, in favour of the exchange-value the space carries as a new mixed-use development.

## A. RELATIONALLY VULNERABLE CLAIMS TO SPACE AND SUBCULTURES IN THE CITY

The claims to spaces in the city by relationally vulnerable groups and individuals is pertinent to subcultures and countercultures that use and occupy spaces in the city, but often in unconventional ways and/or at unconventional times of day/night use patterns—especially since the critical mass of like-minded individuals and the cover of anonymity provided by the dense urban context encourages the formation of subcultures within city spaces.<sup>24</sup> Within these marginal and unconventional spaces and occupation patterns, use-value tends to carry a far greater emphasis than exchange-value,<sup>25</sup> and where “subcultures are usually located at one

<sup>22</sup> See generally *ibid*; see also *ibid* at 49.

<sup>23</sup> Davina Cooper, “Far Beyond ‘The Early Morning Crowing of a Farmyard Cock’: Revisiting the Place of Nuisance Within Legal and Political Discourse” (2002) 11:1 Soc & Leg Stud 5 [Cooper]. See also Mariana Valverde, *Chronotopes of Law: Jurisdiction, Scale and Governance* (Abingdon: Routledge, 2015) at 19-22 [Valverde, *Chronotopes*].

<sup>24</sup> Iris Marion Young, *Justice and the Politics of Difference* (Princeton: Princeton University Press, 1990) at 238. While some scholars prefer the term “scene” when referring to music cultures (see e.g. Richard A Peterson & Andy Bennett, “Introducing Music Scenes” in Andy Bennett & Richard A Peterson, eds, *Music Scenes: Local, Translocal, and Virtual* (Nashville: Vanderbilt University Press, 2004); Daniel Silver, Terry Nichols Clark & Clemente Jesus Navarro Yanez, “Scenes: Social Context in an Age of Contingency” (2010) 88:5 Social Forces 2293), I use the term “subculture” rather than “scene” in order to better represent the importance of these iterations of culture that are often disregarded in contrast to relationally dominant or more conventional iterations of culture. “Scene” can carry with it a dismissive tone in comparison to “(sub)culture,” which is something I seek to avoid.

<sup>25</sup> Paul Chatterton & Robert Hollands, *Urban Nightscapes: Youth Cultures, Pleasure Spaces and Corporate Power* (London, UK: Routledge, 2003) at 208 [Chatterton & Hollands].

remove from property ownership [and] territorialise their places rather than own them,”<sup>26</sup> subcultures are particularly vulnerable in the context of city redevelopment projects that target “authentic” or “hip” spaces for their exchange-value potential to the detriment of use-value.<sup>27</sup> Here, the originate subcultural occupiers might either be no longer able to afford the rent necessary to operate a subculturally-oriented venue, or the owner of the space may sell it out from under them for a greater profit than that which is gained from the lease of the space when used in its subcultural context.<sup>28</sup>

The reality of the unruly spaces that often result when subcultural practices are located on a space/time continuum is that they tend to be associated with unconventional or alternative day/night use patterns.<sup>29</sup> While these occupants of a space may or may not go unnoticed by those who only use the space during more conventional or dominant day/night use patterns, their invisibility, at the times where the space is being observed for the effects potential changes to a space might have on occupants, can lead to a lack of accounting for their presence as well as a failure to, or difficulty in, engaging with unconventional occupiers. Whether this is due to an unknowing, thoughtless, or purposeful oversight, the alternative or unconventional space/time coding of their occupation exacerbates the tendency of municipal governance structures to stifle unruly spaces and association within these spaces, which has a negative effect on the spontaneous organic development and flourishing of subcultural communities that inhabit these spaces.<sup>30</sup>

The vulnerability of particular subcultures and their attached “authentic” grassroots music spaces will be further explored below in the context of the DIY music community—among other music community subcultures—specifically within Toronto’s “Music City” cultural-led development initiatives.<sup>31</sup>

## **B. VULNERABILITY AND THE COMMODIFICATION OF SUBCULTURES AND NIGHTTIME SPACES**

Vulnerability is also a concern within the commodification of culture and nighttime cultural spaces that often occurs alongside an overvaluation of the exchange-value of a space over its

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<sup>26</sup> Ken Gelder, *Subcultures: Cultural Histories and Social Practice* (London, UK: Routledge, 2007) at 3.

<sup>27</sup> See e.g. Zukin, *Naked City*, *supra* note 4 at 102; Hae, *supra* note 6 at 20, 22, 32; Chatterton & Hollands, *supra* note 25 at 19-44.

<sup>28</sup> See e.g. Zukin, *Naked City*, *supra* note 4 at 102; Hae, *supra* note 6 at 20, 22, 32; Chatterton & Hollands, *supra* note 25 at 19-44.

<sup>29</sup> Deborah Talbot, *Regulating the Night: Race, Culture and Exclusion in the Making of the Night-time Economy* (Hampshire: Ashgate, 2007) at 132-33 [Talbot]. See also Valverde, *Chronotopes*, *supra* note 23 at 19-22.

<sup>30</sup> Hae, *supra* note 6 at 3. For an example of purposeful stifling of unruly venues in Toronto, see e.g. Sebastien Darchen & Diane-Gabriel Tremblay, “The Local Governance of Culture-led Regeneration Projects: A Comparison between Montreal and Toronto” (2013) 6:2 *Urban Research & Practice* 140 at 150:

“We find that the quickest way to get rid of a nightclub is to approve a condo on site that displaces the nightclub [...] therefore you can start to stabilise the district” (Interview Councillor, 15 October 2009). Given the extraordinary concentration of nightclubs that developed in the district at the start of the decade, the City of Toronto’s objective is to try to stabilise the district by allowing condominium development and progressively pushing some of the largest nightclubs out of the area.

<sup>31</sup> Hae, *supra* note 6 at 20, 49-50.

use-value. As Laam Hae describes in relation to the neoliberal and post-industrial restructuring of the urban environment and its effect on spaces of nighttime cultural practices, it “has been reshaping the conditions in which the exercise of people’s rights to (spaces for) ‘experiential consumption’ (of night clubbing and social dancing) are thwarted, and corporatized/gentrified forms of nightlife become the primary provider of nightlife to people.”<sup>32</sup> In a parallel manner, Deborah Talbot would describe this as the trend toward gentrification—or gentrification proper—where there is “a reconfiguration of the parameters of inclusion and exclusion where subcultural products are colonised (and in the process sanitised) in localities whilst the poor, ethnic minorities (or majorities, for example in New Orleans) and the difficult or the marginal are excluded or spatially contained.”<sup>33</sup>

While Hae notes that subcultures are already vulnerable to commodification, night spaces for subcultures located in the urban cores of cities are particularly targeted for their exchange-value potential in attracting those deemed as creative class individuals and tourists looking for a particular aesthetic of authenticity.<sup>34</sup> The formerly loosely regulated “undesirable” nature of the space that afforded a lot less potential exchange-value to lose, can be marketed for its edgy grit such that is transformed into a space that, (1) is now deemed desirable and leverages a high exchange-value in terms of the expenditure that the former subcultural night space is now able to command from attendees, and (2) also carries a high exchange-value generated by newly constructed residences in the area. These new elements of value lead to an altered treatment of, for example, noise and nuisance complaints within the reregulated environment that now has significant potential exchange-value to lose, which—when viewed within redevelopment initiatives—now often weighs higher than the potential eroding effect on the intangible use-value of a space that closing or displacing an unruly venue, more rigidly regulating its noise and nuisance output, or pushing out unruly occupiers may have.

But where “[a]lternative marginal nightlife spaces also represent the importance of ‘use’ rather than the ‘exchange’ value of the society,”<sup>35</sup> a focus on the exchange-value of “corporatized/gentrified” night-occupied cultural spaces does not effectively account for a diversity of spaces of culture and creativity for which there is a high use-value but not necessarily exchange-value. This, again, can often have a disproportionately negative and marginalizing effect on subcultural communities and limits the access of urban citizens in post-industrial and rapidly redeveloping cities to diverse, transgressive, or experimental subcultures, subcultural practices, and subcultural spaces.<sup>36</sup> This echoes Hae’s observation that populations deemed “undesirable” tend in fact to be regulated by a city’s legal framework in a manner that removes them from urban city space.<sup>37</sup> This also echoes the work of Steven Miles and Malcolm

<sup>32</sup> *Ibid* at 13. Hae also notes the significant vulnerability of alternative cultures to commodification.

<sup>33</sup> Talbot, *supra* note 29 at 132-33.

<sup>34</sup> Hae, *supra* note 6 at 29-30. See also Johannes Novy & Clair Colomb, “Urban Tourism and Its Discontents: An Introduction” in Johannes Novy & Clair Colomb, eds, *Protest and Resistance in the Tourist City* (Abingdon: Routledge: 2017) 1 at 14 [Novy & Colomb].

<sup>35</sup> Chatterton & Hollands, *supra* note 25 at 238. See also Novy & Colomb, *supra* note 34 at 14-15.

<sup>36</sup> Hae, *supra* note 6 at 3, 5, 29-33; Chatterton and Hollands, *supra* note 25 at 19-44.

<sup>37</sup> Hae, *supra* note 6 at 5. See also Nicholas Blomley, *Unsettling the City: Urban Land and the Politics of Property* (New York: Routledge, 2004) at 76; Damian Collins & Nicholas Blomley, “Private Needs and Public Space: Politics, Poverty, and Anti-Panhandling By-Laws in Canadian Cities” in Law Commission of Canada, ed, *New Perspectives on the Public Private Divide* (Vancouver: UBC Press, 2003) 40; Nick Blomley, “Civil Rights Meet Civil Engineering: Urban Public Space and Traffic Logic” (2007) 22:2 *Can JL & Soc’y* 55; Valverde, *Everyday*, *supra* note 3; Valverde, *Chronotopes*, *supra* note 23 at 19-22; Mariana Valverde, “Taking Land Use Seriously:

Miles who remind us that “[t]he symbolic economy may trade on place identity, but it has little use for the knowledges of the unempowered.”<sup>38</sup>

Additionally, this marginalizing effect on different and diverse ways of knowing flies in the face of international decolonial development and redevelopment movements, which call for the equal valuation of the quality of life of non-dominant and marginalized individuals,<sup>39</sup> as well as the respect and concern for the substance of the diversities of cultures and ways of knowing expressed within the city-based human rights charters noted above.<sup>40</sup>

### III. THE DESIRE FOR “AUTHENTICITY” IN THE CITY, PROCESSES OF COMMODIFYING CULTURE, AND GENTRIFYING EFFECTS OF CITY REDEVELOPMENT

In looking at the comparative valuation of different iterations of cultural spaces and practices, Zukin’s urban sociology, which examines the gentrification of New York City, provides another lens to the tension between use-value and exchange-value in the city by considering the commodification of culture and the reification of authenticity as it relates to urban redevelopment and regeneration.<sup>41</sup> Applying Zukin’s perspective helps to incorporate gentrification processes into the work of Logan and Molotch—especially in relation to what is considered to be the “desirable” place. Where Logan and Molotch see a high social status as an enabler in gaining access to a highly desirable place and space,<sup>42</sup> their work (written as it was in 1987) does not consider the gritty, ironic, and exotic attraction that traditionally undesirable spaces now carry for “an audience of investors not known for an interest in social justice, and [for] aspirational consumers more interested in status and leisure” than in preservation interests and struggles against displacement.<sup>43</sup>

The desire of groups and individuals for “authenticity” and “authentic” spaces in the city, as described by Zukin,<sup>44</sup> adds to the city-situated use-value/exchange-value discussion pioneered by Logan and Molotch. In this context, the work of Logan and Molotch is open to this development where they identify people as the generators of place and space, and identify the relational dominance of particular groups and individuals, which can provide comparably greater

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Toward an Ontology of Municipal Law” (2005) 9:1 Law, Text, Culture 34 at 85, 132-33; Chatterton & Hollands, *supra* note 25 at 235.

<sup>38</sup> Miles & Miles, *supra* note 16 at 65.

<sup>39</sup> See e.g. Boaventura de Sousa Santos, *Epistemologies of the South: Justice Against Epistemicide* (Boulder: Paradigm Publishers, 2014); Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 2012); Eduardo Gudynas, “Buen Vivir: Today’s Tomorrow” (2011) 54:4 Development 441 [Gudynas, “Today’s Tomorrow”]; Eduardo Gudynas, “Buen Vivir” in D’Alisa, Giacomo, Federica Demaria & Giorgos Kallis, eds, *Degrowth: A Vocabulary for a New Era* (Abingdon, Oxon: Routledge, 2015) 201 [Gudynas, “Buen Vivir”].

<sup>40</sup> *Global Charter-Agenda*, *supra* note 17; *European City Charter*, *supra* note 17; *Montreal City Charter*, *supra* note 17; Vaughan Accord, *supra* note 17; Vaughan “Meeting Archives,” *supra* note 17.

<sup>41</sup> See generally Zukin, *Naked City*, *supra* note 4; Sharon Zukin, *Loft Living: Culture and Capital in Urban Change* (New Brunswick, NJ: Rutgers University Press, 1982); Sharon Zukin, “Cultural Strategies of Economic Development and the Hegemony of Vision” in Andy Merrifield & Erik Swyngedouw, eds, *The Urbanization of Injustice* (New York: New York University Press, 1997) 223.

<sup>42</sup> See e.g. Logan & Molotch, *supra* note 15 at 49.

<sup>43</sup> Miles & Miles, *supra* note 16 at 64-65. But see Novy & Colomb, *supra* note 34 at 11.

<sup>44</sup> See also John L Comaroff & Jean Comaroff, *Ethnicity, Inc* (Chicago: University of Chicago Press, 2009) at 140 [Comaroff & Comaroff].

access to any kind of space—be it desirable or undesirable.<sup>45</sup> Groups, individuals, as well as private/public actors involved in entrepreneurial structural or spatial speculation, are able to acquire undesirable space and refashion it—while leveraging a sustainable grit, edginess, “authenticity,” and subversive quality that is embodied by the undesirable space—in order to generate desirability and a high exchange-value within the space, even though this space often simultaneously becomes less socioeconomically accessible.<sup>46</sup>

In reifying the exchange-value of “authenticity” and “authentic” spaces for a city, the exchange-value of authenticity for the city’s benefit tends to be valued over the use-value carried within the space for those who occupied the space prior to its refashioning and who may not be able to afford the cost of accessing the space once its authenticity has been harnessed and commodified.<sup>47</sup> In this way “authenticity” can become a powerful tool of displacement and appropriation as well as a commodified element of culture that ultimately excludes those whose community cultural wealth connects most strongly with the space.<sup>48</sup>

In a similar vein, Arjun Appadurai takes up and expands on Marx’s iteration of use-value/exchange-value in order to apply this to his discussion of the commodification of things in the context of social life and “different regimes of value in space and time.”<sup>49</sup> Appadurai’s “aesthetic of diversion” touches on the interest in commodities or places and spaces that, when used in a different or “ironic” manner, can intensify the value of the space.<sup>50</sup> This is also apparent in Appadurai’s “aesthetic of decontextualization” (“itself driven by the quest for novelty”), where authenticity and the resulting value of an object or space is measured (often through a Foucaultian gaze, as Appadurai might suggest<sup>51</sup>) through its link to everyday use.<sup>52</sup> The intensification of value brought about by a diversion in the original use of a place/space (an aesthetic of diversion), as well as the aesthetic of decontextualization, is based within its value as “authentic” due to its original use. A repurposing or appropriation of an authentic cultural space within the city context allows for this same process, along with an increase in the exchange-value of the space.

But where Appadurai ultimately focuses on material objects and the tangible, Brian Spooner’s discussion of the reification of authenticity underlying the valuation of certain objects usefully extends this notion of commodification to the intangible and experiential aspect of things and spaces/places.<sup>53</sup> Putting our focus on the city momentarily aside, Spooner considers oriental carpets, where value is derived from the illusive intangible element generated by perceived authentic aspects, such as the age and the process of formation of the carpet.<sup>54</sup> These, along with the physical characteristics of the carpet, are what signals different levels of

<sup>45</sup> See e.g. Logan & Molotch, *supra* note 15 at 43-44.

<sup>46</sup> *Ibid* at 24, 30-31; Novy & Colomb, *supra* note 34 at 11-12, 14.

<sup>47</sup> See also Comaroff & Comaroff, *supra* note 44 at 20, 24-29; Zukin, *Naked City*, *supra* note 4 at 102; Novy & Colomb, *supra* note 34 at 11-12.

<sup>48</sup> See e.g. Zukin, *Naked City*, *supra* note 4 at xi-xiii, 3-4.

<sup>49</sup> Arjun Appadurai, “Introduction: Commodities and the Politics of Value” in Arjun Appadurai, ed, *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge, UK: Cambridge University Press, 1986) 3 [Appadurai]. See also Comaroff & Comaroff, *supra* note 44 at 29.

<sup>50</sup> Appadurai, *supra* note 49 at 28.

<sup>51</sup> *Ibid* at 46-47.

<sup>52</sup> *Ibid* at 28.

<sup>53</sup> Brian Spooner, “Weavers and Dealers: The Authenticity of an Oriental Carpet” in Arjun Appadurai, ed, *The Social Life of Things: Commodities in Cultural Perspective* (Cambridge: Cambridge University Press, 1986) 195.

<sup>54</sup> *Ibid* at 196-97, 200, 288.

authenticity.<sup>55</sup> These elements—similar to the gritty, local, ironic, and hip aesthetic of a neighbourhood ripe for commodification—comprise what Zukin would view as criteria within the “toolkit” for authenticity.<sup>56</sup> These criteria for authenticity—and *knowledge* of these criteria—thus influence the exchange-value assigned to the tangible object (or space) based on the intangible elements that inform its existence and context. While this commodification of the intangible aspect—or the authenticity of experience—of something or someplace allows for its presence on the market,<sup>57</sup> additional cultural or social capital, according to Zukin’s framework, is housed in what Appadurai describes as “the knowledge that goes into appropriately consuming the commodity.”<sup>58</sup>

Again turning back to Zukin, this commodification of the intangible aspect of something or someplace and of authenticity is also observable in Zukin’s discussion of a similar reification, valuation, and resulting consumption practices of “authentic” urban places in the city within the context of gentrification—where the aesthetic of diversion is rampant in the focus on remaking spaces such as factories and warehouses into housing and leisure spaces.<sup>59</sup> Similar to the perceived authentic aspects of Spooner’s oriental rugs, strategic culture-based redevelopment of the city space can also deliberately reference certain markers in order to generate an air of authenticity. As Zukin describes the strategic construction of authenticity within New York City’s gentrifying processes:

[I]t can also be deliberately made up of bits and pieces of cultural references; artfully painted graffiti on a shop window, sawdust on the floor of a music bar, an address in a gritty but not too thoroughly crime-ridden part of town. These fictional qualities of authenticity are not “real,” but they have a real effect on our imagination of the city, and a real effect as well on the new cafes, stores, and gentrified places where we like to live and shop.<sup>60</sup>

Nonetheless, where the social and cultural capital derived from the knowledge of authenticity makes it a potential tool for power, Zukin also suggests that this power might be harnessed by any group and that “[c]laiming authenticity can be a means of gaining ownership for *any* group.”<sup>61</sup> Yet, realistically, claims to a space by “any” group would still require an equal valuation of competing interests and cultural capital in order for a claim of authenticity to carry weight. This would also require the ability to effectively access, understand, and negotiate the relevant municipal legal and planning frameworks—such as rezoning and zoning by-law amendments—that structure and regulate city space.<sup>62</sup> The current enthusiasm, politics, and even fetishization within urban legal frameworks for the commodification and politics of the diversion of uses of spaces of culture, as well as with the value of exhibited authenticity within these

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<sup>55</sup> *Ibid* at 196-97, 200, 228. See also Comaroff & Comaroff, *supra* note 44 at 20, 24-29.

<sup>56</sup> Zukin, *Naked City*, *supra* note 4 at 121.

<sup>57</sup> See also Karl Polanyi, *The Great Transformation: The Political and Economic Origins of Our Times*, 2nd ed (Boston: Beacon Press, 2001) at ch 6.

<sup>58</sup> Appadurai, *supra* note 49 at 41; Zukin, *Naked City*, *supra* note 4 at 3, 18, 244-46.

<sup>59</sup> *Ibid* at 3-4, 221, 228-29, 237.

<sup>60</sup> *Ibid* at xii-xiii.

<sup>61</sup> *Ibid* at xiii, 3-4, 244-46

<sup>62</sup> See also *ibid* 82 (where rezoning processes in Harlem “crystallized the community’s fears about losing Harlem’s cultural authenticity”); Hae, *supra* note 6 at 27-28.

spaces, often leaves concerns for the use-value of a space and its community cultural wealth by the wayside.

## **A. TORONTO'S GROWTH MACHINE, CULTURE AND HERITAGE AS COMMODITY, AND THE REIFICATION OF "BEAUTIFUL" AND "AUTHENTIC" ELEMENTS OF CULTURE IN CITY REDEVELOPMENT**

As noted by Boudreau, Keil & Young, the focus on the exchange-value and commodification of culture in Canadian cities is not a new development. The use of creative city rhetoric by the local growth machines of cities such as Toronto is part of a longer tradition of seeking to make gains in public perception through, as the Boudreau, Keil & Young describe, the use of "civic boosterism" strategies.<sup>63</sup> As the authors explain, "[g]rowth machines try to build as wide a base of support as possible for the concept of 'value-free development' and to 'connect civic pride to the growth goal.'" <sup>64</sup> Writing about Toronto, but picking up on the work of Logan and Molotch in relation to growth machines, the authors note that "[t]he overall ideological thrust is to deemphasize the connection between growth and exchange values and to reinforce the link between growth goals and better lives for the majority."<sup>65</sup> As Toronto has globalized, and continues to do so, culture, and what is perceived as its "beautiful" elements, is reified by Toronto's growth machine to not only promote itself, but also to quiet opposition to the commodification of these particular elements.<sup>66</sup> The exchange-value potential of these elements is then utilized "in the interests of building the image of a global city and in turn, attracting footloose capital and knowledge workers, whom Torontonians are told are essential if the city is not to 'fall behind'."<sup>67</sup> Simultaneously, the "beautiful" and "authentic" elements of culture, as identified by urban development decision-makers, are reified for their "intrinsic qualities" that, it is argued, will enhance the lives of all citizens.<sup>68</sup> Civic boosterism is again deployed when, as Boudreau, Keil & Young so adeptly put it: "Torontonians are told that they will benefit from a massive wave of development if that development is beautiful, and if citizens are unable themselves to recognize beauty, experts will identify it for them."<sup>69</sup>

## **IV. THE CREATIVE CITY AS A CULTURE-BASED CITY REDEVELOPMENT STRATEGY AND THE CLASH BETWEEN DIVERGENT VALUE INTERESTS IN THE CITY**

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<sup>63</sup> Julie-Anne Boudreau, Roger Keil & Douglas Young, *Changing Toronto: Governing Urban Neoliberalism* (Toronto: University of Toronto Press, 2009) at 103 [Boudreau, Keil & Young]. See also Novy & Colomb, *supra* note 34 at 10; Shoshanah Goldberg-Miller, *Planning for a City of Culture: Creative Urbanism in Toronto and New York* (New York: Routledge, 2017) [Goldberg-Miller].

<sup>64</sup> Boudreau, Keil & Young, *supra* note 63 at 103.

<sup>65</sup> *Ibid.*, referring to Logan & Molotch, *supra* note 15 at 32.

<sup>66</sup> Boudreau, Keil & Young, *supra* note 63 at 110-11.

<sup>67</sup> *Ibid.* See also Novy & Colomb *supra* note 34 at 8-12; Goldberg-Miller, *supra* note 63 at 13.

<sup>68</sup> Boudreau, Keil & Young, *supra* note 63 at 110-11. See also Novy & Colomb, *supra* note 34 at 14.

<sup>69</sup> Boudreau, Keil & Young, *supra* note 63 at 110-11.

## A. CREATIVE CITY STRATEGIES: THE GOOD, THE BAD, AND CAUTIONARY NOTES FROM INTERNATIONAL SUSTAINABLE DEVELOPMENT FRAMEWORKS

With the passing of the 2015 target date of the Millennium Development Goals and the 2016 adoption of the new Sustainable Development Goals (SDGs), specialized agencies of the UN, such as UNESCO and UN-Habitat, have again turned to crafting their proposals for the kinds of goals, proposals, and strategies to follow for the next fifteen years. Once more we see the tension between—or balance that must be struck between—culture and its potential commodified exchange-value on the one hand, and the intangible use-value on the other hand.<sup>70</sup> While UNESCO notes the economic and social resource potential that culture can carry, it also cautions that culture is “a source of wealth in ways that do not have price tags.”<sup>71</sup>

While “culture” is eagerly deployed within redevelopment and tourism strategies, and creative-city oriented strategies can have many positive benefits, these strategies are not without their pitfalls and are certainly no cure-all.<sup>72</sup> Along the same lines as UNESCO’s cautionary note, the Habitat III issue papers—developed leading up to the development and adoption of the *New Urban Agenda* that took place during the United Nations Conference on Housing and Sustainable Development (“Habitat III”)<sup>73</sup>—highlight the use of creative city strategies and culture as a mechanism for better including culture in the city space and within city governance, while also cautioning that the relevant policies must be vigilantly implemented to ensure respect for diversity and an equal treatment of the diversity of cultures, even where cultural iterations are contrary to or contest “dominant norms and values within the communities.”<sup>74</sup> The Habitat III issue papers also warn that where tourism is concerned, “Urban cultural practices—traditional and contemporary—can be weakened by globalization processes, exploitation of economic resources and promotion of tourism. Tourism can potentially harm the ability of communities to safeguard and transmit their cultural practices and sites, or tend to encourage standardized features where minority cultural expressions can be at risk of marginalization.”<sup>75</sup>

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<sup>70</sup> See also Sophia Labadi & William Logan, “Approaches to Urban Heritage, Development and Sustainability” in Sophia Labadi & William Logan, eds, *Urban Heritage, Development and Sustainability* (London, UK: Routledge, 2016) 1 at 1 [Labadi & Logan, “Approaches”].

<sup>71</sup> UNESCO’s Contribution to Post-2015, “The Power of Culture for Development”, online: <en.unesco.org/post2015/power-culture-development> [perma.cc.7C34-EYY4].

<sup>72</sup> See e.g. Deborah Leslie & Norma M Rantisi, “Creativity and Urban Regeneration: The Role of La Tohu and the Cirque du Soleil in the Saint-Michel Neighborhood in Montreal” in Carl Grodach & Daniel Silver, eds, *The Politics of Urban Cultural Policy: Global perspectives* (London, UK: Routledge, 2013) 83 [Leslie & Rantisi]; Carl Grodach & A Loukaitou-Sideris, “Cultural Development Strategies and Urban Revitalization” (2007) 13:4 *International Journal of Cultural Policy* 349; A Markusen & A Gadwa, “Arts and Culture in Urban or Regional Planning: A Review and Research Agenda” (2010) 29:3 *Journal of Planning Education and Research* 379; H Mommaas, “Cultural Clusters and the Post-Industrial City: Towards the Remapping of Urban Cultural Policy” (2004) 41:3 *Urban Studies* 507. See also Smith, *supra* note 2 at ch 2. But see Zukin, “Cultural Strategies,” *supra* note 41 at 229: “[C]ultural strategies are often a worst-case scenario of economic development.” See also generally Labadi & Logan, “Approaches,” *supra* note 70.

<sup>73</sup> This conference occurs only once every twenty years (see (website), online: <habitat3.org> [perma.cc/NG3K-E4RD]). The *New Urban Agenda* represents the new framework for sustainable urban development that has been set for the next two decades by UN-Habitat (*Habitat III New Urban Agenda*, UN-Habitat (10 September 2016 final agreed upon draft, adopted on 20 October 2016)) [*New Urban Agenda*].

<sup>74</sup> Habitat III Issue Paper, *supra* note 10 at 4-5,7.

<sup>75</sup> *Ibid.* See also generally Labadi & Logan, “Approaches,” *supra* note 70; *The Florence Declaration on Heritage and Landscapes as Human Values: Declaration of the Principles and Recommendations on the Value of Cultural*



The Habitat III issue papers additionally note how the trend towards greater urbanization can disrupt intangible cultural practices and local cultural values, and lead to a “loss of community memory, cultural impoverishment and homogenization.”<sup>76</sup> With regard to the preservation of important cultural spaces and urban heritage preservation, the issue papers go on to acknowledge that “[g]entrification processes in historic areas can also lead to exclusion of the vulnerable communities who are the historic dwellers of these areas and the repositories of their memory.”<sup>77</sup> Related to the displacement of the originate inhabitants of a neighbourhood or space is the displacing effect that the commodification of culture within a neighbourhood can have on producers of a particular iteration of culture or art that is being commodified. As UN-Habitat has noted, with reference to the 2004 “State of the World Cities Report,” when forms of local city culture and cultural practices are deployed within city redevelopment and tourism strategies, there is a danger that “cultural accountants’ [will] forget to plan for the future of those who helped give these cities their flavour in the first place.”<sup>78</sup> This effect displaces not only the originate cultural producers, but also those that populated and supported the events and spaces that were created when they are priced out of continued attendance and participation, find themselves to no longer be welcome and become an undesirable presence, or find the new versions of a creative or artistic event or practice deployed to attract expenditure to be a shell of what they once were a part of.

As Boudreau, Keil & Young describe, “[t]he problem with the creative competitiveness consensus is that economic growth becomes the sole definition of prosperity and quality of life, just as ‘creative communities’ exclude the majority of Torontonians who see culture valorized only to be commercialized.”<sup>79</sup> Ultimately, as noted by city-based human rights charters that situate themselves within the “right to the city” framework and move beyond it—such as the *European City Charter*—a balance must be struck between the exchange-value potential of culture and cultural spaces within city redevelopment projects and the use-value of originate spaces and use-value interests of those who use those spaces within which community cultural wealth and intangible urban cultural heritage is generated and flourishes.<sup>80</sup> In the words of Article XXI of the *European City Charter*, municipal authorities must strike a balance between sustainable city tourism on the one hand and “the social and ecological wellbeing of the citizens on the other.”<sup>81</sup>

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*Heritage and Landscapes for Promoting Peace and Democratic Societies*, ICOMOS, 18<sup>th</sup> GA (adopted October 2014) ICOMOS, [online:](http://www.icomos.org)

[www.icomos.org/images/DOCUMENTS/Secretariat/2015/GA\\_2014\\_results/GA2014\\_Symposium\\_FlorenceDeclaration\\_EN\\_final\\_20150318.pdf](http://www.icomos.org/images/DOCUMENTS/Secretariat/2015/GA_2014_results/GA2014_Symposium_FlorenceDeclaration_EN_final_20150318.pdf) [perma.cc/L6RP-B6GV] [*The Florence Declaration*].

<sup>76</sup> Habitat III Issue Paper #4, *supra* note 10 at 4-5,7. See also Labadi & Logan, “Approaches,” *supra* note 70.

<sup>77</sup> Habitat III Issue Paper #4, *supra* note 10 at 4. See also, generally, Zukin, *Naked City*, *supra* note 4; Labadi & Logan, “Approaches,” *supra* note 70.

<sup>78</sup> UN-Habitat, “Trading on Culture: Planning the 21<sup>st</sup> Century City”, 2004, UN Doc SOWC/04/F/04 (2004) at 3, [online: <mirror.unhabitat.org/documents/media\\_centre/sowc/Featuretrade.pdf>](http://www.unhabitat.org/documents/media_centre/sowc/Featuretrade.pdf) [perma.cc/77kd-6HYQ]. See also UN-Habitat, “State of the World Cities 2004/2005: Globalization and Report” (New York: Routledge, 2005) [UN-Habitat, “Trading on Culture”].

<sup>79</sup> Boudreau, Keil & Young, *supra* note 63 at 195.

<sup>80</sup> *Supra* note 17; *New Urban Agenda*, *supra* note 73, point 11. See also *ibid*, points 8, 9, 47-48, 51, 85-92, 163; Labadi & Logan, “Approaches,” *supra* note 70 at 1; *The Florence Declaration*, *supra* note 75.

<sup>81</sup> UN-Habitat, “Trading on Culture,” *supra* note 78. See also, generally, Sophia Labadi & William Logan, eds, *Urban Heritage, Development and Sustainability* (London, UK: Routledge, 2016); and the need for “cities for people, not for profit” (Neil Brenner, Peter Marcuse & Margit Mayer, eds, *Cities for People, Not for Profit: Critical Urban Theory and the Right to the City* (London, UK: Routledge, 2012); Novy & Colomb, *supra* note 34 at 15).

While city governance of culture and culture-led redevelopment in cities such as Toronto may superficially answer the Habitat III issue papers' dictate that "[a]ccess to culture and participation in cultural life should be an integral part of all urban policies,"<sup>82</sup> cultural diversity within cities like Toronto is often reified and seen for its profit potential.<sup>83</sup> Here, not all iterations of culture or art receive equal regard or valuation. There is an unfortunate tendency, where cities function as commercial entities viewing culture and art for the potential profit value, for the consumption of culture to be considered before the production of culture, and for the exchange-value of culture and cultural spaces to be valued above the use-value of culture and cultural spaces.<sup>84</sup> Without effectively accounting and valuating alternative forms of culture, cultural capital and the community cultural wealth of diverse groups within the city, particular groups become vulnerable to unequal treatment by a city's legal complexes. Even if a city's legal complexes are technically neutral in nature, they have the potential for creating a differential impact on certain groups.<sup>85</sup> Those affected disproportionately and under-consulted tend to be in a non-dominant social, cultural, political, or economic position, or may be associated with unruly spaces and unruly practices that generate noise and other side effects of unconventional or alternative day/night spatial use patterns.<sup>86</sup> Their lack of equal inclusion and consultation neglects the call by the Habitat III issue papers for,

[t]he representation and participation of communities in the design and implementation of culturally-sensitive urban policies should be promoted, to fully respect the freedom of individuals to participate, access cultural heritage and contribute to the creation of culture, including through the contestation of dominant norms and values within the communities.<sup>87</sup>

The need for redevelopment design that better represents and consults with relationally less dominant groups in the city and unseats traditionally dominant voices speaks to a *buen vivir* approach to development gaining traction in the international context of decolonial and subaltern approaches to development, but which can be shifted to the local level as well.<sup>88</sup> Very broadly, a *buen vivir* approach, which asserts the importance of a "good" and "decent" life in the city, suggests an "equality of differences"—or, an equal valuation of diverse ways of knowing and being.<sup>89</sup> Here, different iterations of culture in the city would be afforded equal consideration in designing municipal policies that regulate culture in the city.

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<sup>82</sup> Habitat III Issue Paper #4, *supra* note 10 at 4-5.

<sup>83</sup> See generally, Valverde, *Everyday*, *supra* note 3; Goldberg-Miller, *supra* note 63 at 101, 114.

<sup>84</sup> See e.g. Grodach & Silver, *supra* note 11 at 2; Leslie & Rantisi, *supra* note 72 at 83.

<sup>85</sup> UN-Habitat, Habitat III Issue Paper #6, "Urban Rules and Legislation" (31 May 2015) at 2 [Habitat III Issue Paper #6].

<sup>86</sup> See Cooper, *supra* note 23 at 7, 12-14, 24. See also Mariana Valverde's incisive discussion of the hegemonic narrative of conventional spacetime patterns of urban property ownership and the "attempt to stuff the social chronotope of the domesticity of the 'married with children' cultural chronotope into the legal chronotope of 'single-family detached'" (*Chronotopes*, *supra* note 23 at 19-22). See e.g. Grodach & Silver, *supra* note 11 at 2; Labadi & Logan, "Approaches," *supra* note 70. Habitat III Issue Paper #6 *supra* note 85 at 2.

<sup>87</sup> Habitat III Issue Paper #4, *supra* note 10 at 4-5. See also the *New Urban Agenda*, *supra* note 73, points 124 - 125.

<sup>88</sup> Sara Ross, "Buen Vivir and Subaltern Cosmopolitan Legality in Urban Cultural Governance and Redevelopment Frameworks: The Equitable Right to Diverse Iterations of Culture in the City and a New Urban Legal Anthropological Approach" (2015) 5:1 City University of Hong Kong Law Review 55.

<sup>89</sup> Arturo Escobar, *Encountering Development: The Making and Unmaking of the Third World* (Princeton: Princeton University Press, 2012) at viii. Gudynas, "Today's Tomorrow," *supra* note 39 at 441; Gudynas, "Buen Vivir," *supra*

While important for a number of reasons, the voicelessness of portions of society and of society's margins is not something cities, or its citizens, should tolerate. Applying a *buen vivir* approach to municipal governance would seek to have central and/or dominant voices more equitably weighed with non-dominant voices and voiceless groups in order to create an equal playing field in terms of urban cultural governance that equally considers and represents all of a city's citizenry in the creation and implementation of a city's collective legal complexes.<sup>90</sup> This also engages with the goals identified by the Habitat III issue papers, among which include the call for a "re-humanizing" of the city as a strategic objective moving forward that recognizes that "[e]nhancing local culture and recognizing cultural diversity can be a powerful way to mitigate urban conflicts, foster tolerance, preserve the social fabric and promote pluralism."<sup>91</sup> As the Habitat III issue papers also note, "[s]ocial inclusion of disadvantaged groups, particularly in the redevelopment of urban areas and cultural spaces, can be facilitated through wider recognition of their cultural identity and their cultural capital."<sup>92</sup>

Finally, in addition to the Habitat III concerns and implementation of the *New Urban Agenda*, disregard for the use-value of particular spaces and the individuals and groups that generate and have generated intangible cultural heritage within the city does not comply with international conventions governing intangible cultural heritage protection and the internationally recognized human right to culture and the right to the city framework, as seen in the momentum of city-based human rights charters noted previously.<sup>93</sup>

## **B. TORONTO'S ARTS AND CULTURE SCENES, COMMODIFICATION, AND A CREATIVE-CITY INSPIRED REDEVELOPMENT FRAMEWORK**

As Music Canada explains in its outline for a new direction for music in Canada and the economic potential that lies with music and culture:

Music and other cultural industries, and the people who work in them, are closely linked to the overall economic health of a region. In *The Rise of the Creative Class*, Richard Florida noted that, "The key to economic growth lies not just in the ability to attract the creative class, but to translate that underlying advantage into creative economic outcomes in the form of new ideas, new high-tech businesses and regional

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note 39 at 202. See also Luis Macas, "El Sumak Kawsay" (2010) 13 *Revista Yachaykuna-Saberes* 13; Anibal Quijano, «'Bien Vivir' para Redistribuir el poder : Los pueblos indígenas y su propuesta alternativa en tiempos de domiación global » (2010) 13 *Revista Yachaykuna-Saberes* 47 at 62, fn 1.

<sup>90</sup> On "legal complexes," see Rose & Valverde, *supra* note 16 at 542; see also Hae, *supra* note 6 at 7.

<sup>91</sup> Habitat III Issue Paper #4, *supra* note 10 at 4. See also Labadi & Logan, "Approaches," *supra* note 70 at 1; *The Florence Declaration*, *supra* note 75.

<sup>92</sup> Habitat III Issue Paper #4, *supra* note at 4. See also Labadi & Logan, "Approaches," *supra* note 70 at 1.

<sup>93</sup> See e.g. *Convention Concerning the Protection of the World Cultural and Natural Heritage*, 16 November 1972, 1037 UNTS 151 (entered into force 17 December 1975); *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, 20 October 2005, 2440 UNTS 311 (entered into force 18 March 2007); *Convention on the Safeguarding of the Intangible Cultural Heritage*, 17 October 2003, 2368 UNTS 3 (entered into force 20 April 2006); *Declaration on the Principles of Tolerance* (adopted 16 November 1995 by UNESCO, 28th Mtg (1995)); *Universal Declaration on Cultural Diversity*, GA Res 25, UNESCOR, 31st Sess, Annex 1, UN Doc 31C (2001) Doc 31CGA Res 25, Annex I, 41 ILM 57 (adopted on 2 November 2001); *The Florence Declaration*, *supra* note 75; *Recommendation on the Historic Urban Landscape*, GC Rec, UNESCOR, 36th Sess (adopted on 10 November 2011); *Global Charter-Agenda*, *supra* note 17; *European City Charter*, *supra* note 17; *Montreal City Charter*, *supra* note 17; *Vaughan Accord*, *supra* note 17.

growth. ... Most civic leaders, however, have failed to understand that what is true for corporations is also true for city regions; *places that succeed in attracting and retaining creative class people prosper, those that don't, fail.*<sup>94</sup>

I replicate this passage because it reveals the fear of falling behind other cities—as noted above by Boudreau, Keil & Young in relation to Toronto's civic boosterism strategies—of failing to compete globally, of failing to keep up, and of missing the boat on the potential economic prosperity that harnessing its creative attributes might bring, and which appears to be behind many city redevelopment plans that are increasingly turning desperately to culture to cure their urban ills.<sup>95</sup> This passage also demonstrates the pedestal upon which the elusive “creative class” is placed as cities consider their redesign strategies moving into the future.<sup>96</sup> In this city planning context dominated by creative city rhetoric, ...

[y]he arts, or so the argument goes in Toronto, are valuable because they contribute to urban development, city branding and tourism ... , artists are called upon to embody a set of neoliberal values: their innovative ideas attract corporate investment and thus help to boost a city's global competitiveness and economic successes.<sup>97</sup>

In a colonizing manner, the arts in the city are scoured for their potential market benefit to the city and artists are called upon for their gentrifying potential,<sup>98</sup> while simultaneously weathering Toronto and the Province of Ontario's ongoing history of disregard and underfunding of spaces for art and artists beyond those identified as carrying the highest potential economic and tourist-dollar value.<sup>99</sup> All iterations of art and culture within creative cities, such as Toronto, are boiled down to their potential contribution within “an index of an alluring ‘alternative’ culture,”<sup>100</sup> which works to the disadvantage of those whose marginal iterations of art, culture, and creativity often “fails to register as a selling point for a hip urban future.”<sup>101</sup> It also works to the disadvantage of those who refuse cleansed spaces, oppose dominant cultural norms, avoid anything reminiscent of corporatization or commodification, and those whose cultural iterations and practices tend to be exclusively or just predominantly associated within nighttime and night spaces<sup>102</sup>—although the nighttime space and an alternative day/night life pattern may be

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<sup>94</sup> Music Canada, “The Next Big Bang: A New Direction for Music in Canada” (2013) at 5-6, online: *Music Canada* <musiccanada.com/wp-content/uploads/2014/06/TheNextBigBang.pdf> [perma.cc/3EM7-X2HY] [Music Canada, “The Next Big Bang”] [emphasis added]. See also Florida, *Rise*, *supra* note 10.

<sup>95</sup> Boudreau, Keil & Young, *supra* note 63 at 110-11. See also Novy & Colomb *supra* note 34 at 8-12; Goldberg-Miller, *supra* note 63 at 13; Labadi & Logan, “Approaches,” *supra* note 70.

<sup>96</sup> But see, for *e.g.*, George Morgan & Xuefei Ren, “The Creative Underclass: Culture, Subculture, and Urban Renewal” (2012) 34:2 *Journal of Urban Affairs* 127 [Morgan & Ren].

<sup>97</sup> Laura Levin, “Performing Toronto: Enacting Creative Labour in the Neoliberal City” in Nicholas Whybrow, ed, *Performing Cities* (Hampshire, UK: Palgrave Macmillan, 2014) 159 at 161 [Levin].

<sup>98</sup> *Ibid* at 173.

<sup>99</sup> *Ibid* at 161.

<sup>100</sup> *Ibid* at 174. See also Leslie & Rantisi, *supra* note 72 at 83.

<sup>101</sup> Levin, *supra* note 97 at 175.

<sup>102</sup> *Ibid* at 172. But see also Brian J Hracs, “Working Harder and Working Smarter: The Survival Strategies of Contemporary Independent Musicians” in Brian J Hracs, Michael Seman & Tarek E Virani, eds, *The Production and Consumption of Music in the Digital Age* (New York: Routledge, 2016) 41.

nonetheless celebrated (or arguably colonized) once a year with city festivals, such as Nuit Blanche, for example.<sup>103</sup>

Toronto's preference for culture-based creative-city oriented redevelopment strategies is readily observable in the documents that guide Toronto's plan for redevelopment. For example, the "Culture Plan for the Creative City," clearly states its creative city aspirations not only in its title, but in its noting that "that great cities of the world are all Creative Cities."<sup>104</sup> This document latches on to the increasingly popular creative city model and the strategic commodification of both culture and (ethnic) diversity as that which must be deployed in order to emphasize Toronto's uniqueness in marketing itself so as to effectively compete with other global cities.<sup>105</sup> It focuses in on and reifies the "creative class," uncomfortably insisting that these are the "kind of people Toronto wants to attract."<sup>106</sup> While this document holds up arts, creativity, culture, and heritage as the key to Toronto's future, the purpose of the culture-oriented strategy is clearly geared towards an economic return—the exchange-value. Quality of life is mentioned but is predominantly presented as important in order to attract the particular kinds of individuals that enjoy a "high" quality of life.<sup>107</sup>

Extending beyond the documents that delineate Toronto's cultural plans, Richard Florida's creative city model is a common reference point within many of Toronto's future-looking rejuvenation, regeneration, and marketing strategies. In a pointed fashion, creative city initiatives, such as Toronto's plans to develop into a Music City, directly reference and quote from Florida's body of work. For example, Music Canada's recommendation regarding the by-laws and funding allocations necessary to create and deploy the Music City framework—such as a municipal Music Office, Music Officer, Music Industry Advisory Board, and so on—cite Florida as an authority to establish the "social benefits that come from supporting a vibrant music scene" where "[c]ommercial music is an accessible form of expression and entertainment that can be enjoyed by people of all ages, income levels and ethnicities. It cuts across language barriers and unites people of all backgrounds. Music is part of every neighbourhood, every corner of the city; every street could be a stage. Music is a cultural ally for the City of Toronto."<sup>108</sup> These strategic Music City recommendations further rely on Florida's creative city vision, and focus on the "creative worker" by deploying a Florida soundbite asserting that,

[s]uccessful communities are those that are multidimensional and diverse; in addition to offering employment, they offer a wide range of lifestyle amenities and a climate that encourages and cultivates creative expression. Cultural offerings such as music, are a strong draw for creative workers ... a flourishing arts scene seems to suggest a

<sup>103</sup> Levin, *supra* note 97 at 172. Nuit Blanche is an increasingly common annual nighttime (and usually all-night) arts and culture festival that many cities, including Toronto have begun to hold. Each year more cities across Canada announce the launch of their own iteration of a Nuit Blanche festival.

<sup>104</sup> *Culture Plan for the Creative City*, *supra* note 10; Goldberg-Miller, *supra* note 63 at 13.

<sup>105</sup> For a discussion of this process as commonplace in many cities following similar development strategies, see *e.g.* Novy & Colomb, *supra* note 34 at 11; Goldberg-Miller, *supra* note 63 at 13, 27-34.

<sup>106</sup> *Culture Plan for the Creative City*, *supra* note 10 at 1; Boudreau, Keil & Young, *supra* note 63 at 36. See also Ute Lehrer & Thorben Wieditz, "Condominium Development and Gentrification: The Relationship Between Policies, Building Activities and Socio-Economic Development In Toronto" 18:1 (2009) *Can J Urban Research* 10 at 148; Novy & Colomb, *supra* note 34 at 14, Morgan & Ren, *supra* note 96.

<sup>107</sup> *Culture Plan for the Creative City*, *supra* note 10.

<sup>108</sup> Music Canada, "Proposal to Councillor Thompson" (5 March 2013) *Toronto City Council and Committees*, online: <[www.toronto.ca/legdocs/mmis/2013/ed/comm/communicationfile-34950.pdf](http://www.toronto.ca/legdocs/mmis/2013/ed/comm/communicationfile-34950.pdf)> [perma.cc/KX9N-KQ77] [Music Canada, "Proposal to Councillor Thompson"]

region values and supports creativity in all its forms—technological and economic as well as artistic and cultural.<sup>109</sup>

Minus the uncomfortable focus on the reified “creative worker,” these assertions sound fantastic, but as these plans begin to play out on the ground, it becomes clear that these statements tell a story of fictional inclusivity that does not effectively account for what music is, how it is practiced in various cultural and subcultural iterations, and the complex reality of the associated spaces of local and grassroots music cultures.<sup>110</sup>

The focus Toronto currently places on culture, however, is striking considering that Toronto arrived comparatively late and quite suddenly into the mix of cities that place a focus on culture and have a history of being known as centres for cultural production—such as Paris or Los Angeles, for example.<sup>111</sup> The shift by Toronto’s municipal government towards its current interest in developing cultural policies and capitalizing on cultural production began as the late 1990s rolled around and really began to take off in the 2000s as Toronto’s uptake of culture as a redevelopment strategy took center stage.<sup>112</sup> Matt Patterson and Daniel Silver attribute Toronto’s relatively recent and sudden recourse to cultural policy development to an “identity crisis” that the city suffered in the late 20<sup>th</sup> century due to what was effectively the end of Toronto’s industrial economy, alongside substantial social changes as the city shifted to an economy rooted in knowledge and service-based economies.<sup>113</sup> Suddenly, city policymakers were faced with the need to alter their approaches to development in order to deal with the city’s new reality and decide how to shape Toronto moving forward.<sup>114</sup> As this identity crisis took hold, the seductive qualities of “cultural city” notions were touted by individuals within Toronto’s cultural sector, while Richard Florida’s writings about the “creative class” began to gain international traction.<sup>115</sup> Florida’s urban planning model spoke to a desire for a vibrant city full of cafes, public art, studios, and so on—a potentially exciting cure for Toronto’s dwindling industrial economy and need for a new urban development strategy.<sup>116</sup> But as Patterson and Silver note, the cultural city coup that overcame Toronto policymakers and development plans was not uncontested and drew uneven support.<sup>117</sup> While downtown residents and those connected to cultural and knowledge industries tended to comprise the primary proponents, suburb residents were less enthusiastic about the cultural city vision.<sup>118</sup> Yet, the proponents of this vision “had the capacity to put this vision into practice and codify it in municipal policy.”<sup>119</sup>

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<sup>109</sup> *Ibid*; Florida, *Rise*, *supra* note 10.

<sup>110</sup> Julie-Anne Boudreau, Roger Keil & Douglas Young, *Changing Toronto: Governing Urban Neoliberalism* (Toronto: University of Toronto Press, 2009) at 195.

<sup>111</sup> Matt Patterson & Daniel Silver, “Turning the Post-Industrial City into the Cultural City: The Case of Toronto’s Waterfront” in Kate Oakley & Justin O’Connor, eds, *The Routledge Companion to the Cultural Industries* (London, UK: Routledge, 2015) 268 at 268 [Patterson & Silver].

<sup>112</sup> *Ibid* at 269-72; Goldberg-Miller, *supra* note 63 at 13-16, 94-125.

<sup>113</sup> Patterson & Silver, *supra* note 111 at 269-71.

<sup>114</sup> *Ibid*.

<sup>115</sup> *Ibid* at 269; Goldberg-Miller, *supra* note 63 at 13. But see also Morgan & Ren, *supra* note 96.

<sup>116</sup> Patterson & Silver, *supra* note 111 at 269-71.

<sup>117</sup> *Ibid* at 269.

<sup>118</sup> *Ibid*.

<sup>119</sup> *Ibid*.

## V. THE CRACKS IN TORONTO'S MUSIC CITY PLANS: DISAPPEARING VENUES, BACKWARDS AND CONFLICTING BY-LAWS AND LEGISLATION, AND AN UNDERVALUATION OF UNRULY SPACES OF CULTURE

Drawing again on the warning issued by the Habitat III issue papers, where urban law ultimately governs the framework and implementation of these creative-city oriented policies within the nuanced diversities of cultures housed within the close-quarters of a city's dense urban core, law "often has a dual character with an apparently neutral technical nature accompanied by a complex social aspect including the potential for differential impact on different groups within the urban environment."<sup>120</sup> In capitalizing on and promoting culture, arts, music, and so on, municipal legal complexes can carry a differential impact within these very same artistic and cultural spheres—although the negative effects of the differential impact are usually most prevalent at the margins of the spheres—where there is a stifling effect on diverse iterations of culture due to a number of conscious or unconscious oversights.<sup>121</sup> Some examples of these oversights include legislation that has ill effects on certain iterations of (sub)culture and the attached adherents; a lack of consideration of those who produce the particular cultural iteration in question in comparison to those who consume it; and disregard of the use-value of these cultural iterations, the diversity of these iterations, and what is needed for the sustainability of the many *diverse* iterations of urban culture in Toronto to flourish now and into the future. In line with the Habitat III issue papers' warning, and similar to what Hae suggests in relation to the undervaluation of spaces of nighttime cultural practice in New York, the Floridean "creative city" culture-led redevelopment favoured in Toronto "can ironically turn destructive towards creative sub-cultural formation in cities."<sup>122</sup> This can be seen in Toronto's quest to become an established Music City—a quest that illuminates the tension between the cultures and tastes that define both ourselves and our experience in the city space where different kinds of music cultures flourish and a balance between the interests of diverse citizens must be struck within the ways in which municipal legal frameworks ultimately regulate these differences.<sup>123</sup>

Toronto's Music City quest also demonstrates the disconnect between promoting culture—music culture, in this case—for the sake of culture, community cultural wealth, and its use-value versus promoting culture strategically for its profit potential and exchange-value. This tension again amplifies the larger tension explored above: within cities not all people and not all groups are heard equally, or able to make themselves heard, and even where heard, their voices are not necessarily equally accounted for.

### A. THE "MUSIC CITY": WHAT IS IT?

<sup>120</sup> Habitat III Issue Paper #6, *supra* note 85 at 2.

<sup>121</sup> Hae, *supra* note 6 at 5-6.

<sup>122</sup> *Ibid* at 32.

<sup>123</sup> Dave Morris, "Toronto's Music City Dream Hindered by Red Tape," *The Globe and Mail* (16 June 2015), online: <[theglobeandmail.com/arts/music/torontos-music-city-dream-hindered-by-red-tape/article24981758/](http://theglobeandmail.com/arts/music/torontos-music-city-dream-hindered-by-red-tape/article24981758/)> [perma.cc/J9AQ-5N2Y] [Morris]; Titan Music Group, "Accelerating Toronto's Music Industry Growth: Leveraging Best Practices from Austin, Texas" (March 2012), *Music Canada*, online: <[musiccanada.com/wp-content/uploads/2014/06/Accelerating-Torontos-Music-Industry-Growth-Leveraging-Best-Practices-from-Austin-Texas.pdf](http://musiccanada.com/wp-content/uploads/2014/06/Accelerating-Torontos-Music-Industry-Growth-Leveraging-Best-Practices-from-Austin-Texas.pdf)> [perma.cc/FYX9-RW9L] [Titan]. See also Zukin, *Naked City*, *supra* note 4 at 27.

While Toronto is not alone in grasping onto the Music City model, the Toronto initiative exemplifies that the model is by no means primarily concerned with the vibrant cultural boon music provides to the daily lives of its urban citizens. As a director of one of Toronto's major annual music and arts festivals North by Northeast ("NXNE") puts it frankly, "What everyone's getting ... is that not only is music essential for the soul and the imagination, spiritual aspiration of a city, it makes cities money. Like, tons of it."<sup>124</sup> The guiding document, "The Mastering of a Music City: Key Elements, Effective Strategies and Why It's Worth Pursuing" ("Mastering of a Music City"), provides a useful description of what constitutes a "Music City":

The term "Music City" is becoming widely used in cultural communities and has penetrated the political vernacular in many cities around the world. Once identified solely with Tennessee's storied capital of songwriting and music business, Nashville, Music City now also describes communities of various sizes that have a vibrant music economy which they actively promote.<sup>125</sup>

Primarily stemming from documents and reports where municipal economic and development strategies have turned to the music industry as a growth resource—such as, "Collaborating for Competitiveness: A Strategic Plan to Accelerate Economic Growth and Job Creation in Toronto" and "Creative Capital Gains: An Action Plan for Toronto"<sup>126</sup>—Toronto's Music City plans are a recent development in Toronto's creative-city oriented rejuvenation strategy. Guided by documents such as the expansive report, "The Mastering of a Music City," presented by Music Canada in conjunction with the International Federation of the Phonographic Industry,<sup>127</sup> and inspired by studying the Austin, Texas Music City model,<sup>128</sup> the main early recommendations for the successful transformation of Toronto into a sustainable Music City included the development of music and music friendly policies, a music office, music advisory

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<sup>124</sup> Interview of Michael Hollett in Morris, *supra* note 123.

<sup>125</sup> International Federation of the Phonographic Industry & Music Canada, "The Mastering of a Music City: Key Elements, Effective Strategies and Why it's Worth Pursuing" *Music Canada* (5 June 2015), online: <musiccanada.com/wp-content/uploads/2015/06/The-Mastering-of-a-Music-City.pdf > [perma.cc/BA89-JBXU] [IFPI & Music Canada].

<sup>126</sup> "Collaborating for Competitiveness: A Strategic Plan to Accelerate Economic Growth and Job Creation in Toronto" *City of Toronto* (January 2013), online: <www1.toronto.ca/static\_files/economic\_development\_and\_culture/docs/Collaborating\_for\_Competitiveness\_FINA L-v7.pdf> [perma.cc/DS4A-CV7K]; Foster, Kain & Prentice, *supra* note 14.

<sup>127</sup> This report was "written principally for music community experts as well as political leaders and government officials," see IFPI & Music Canada, *supra* note 125.

<sup>128</sup> Titan, *supra* note 123. See also the Austin-Toronto *Joint Music City Alliance*, Appendix C, *City of Toronto* (3 October 2013), online: <www1.toronto.ca/City%20Of%20Toronto/wp/business-economy/industry-sector-support/Music/Austin%20Toronto%20Music%20City%20Alliance%20Agreement%20-%20Oct%202013.pdf> [perma.cc/C6S3-SX45], which is widely touted as the world's first music city alliance agreement and was established during Mayor Rob Ford's tenure; Ben Rayner, "John Tory Gets a Great Vibe from Austin's SXSW Music Fest," *thestar.com* (21 March 2015), online: <thestar.com/entertainment/music/2015/03/21/john-tory-gets-a-great-vibe-from-austins-sxsw-music-fest.html > [perma.cc/U3NK-PYKT] [Rayner] and the *Austin-Toronto Music City Alliance Partnership Draft Framework & Terms of Reference*, Appendix B (November 2014), *Toronto City Council and Committees, By-laws and Codes*, online: <.toronto.ca/legdocs/mmms/2013/ed/bgrd/backgroundfile-63954.pdf> [perma.cc/K5EU-TJDM]. Austin, Texas is often seen as the "live music capital of the world": see e.g. Carl Grodach, "City Image and the Politics of Music Policy in the 'Live Music Capital of the World'" in Carl Grodach & Daniel Silver, eds, *The Politics of Urban Cultural Policy: Global Perspectives* (London, UK: Routledge, 2013) 98 [Grodach, "City Image"].



board, broader community engagement, access to music- and musician-friendly spaces and places, audience development, and music tourism.<sup>129</sup> Other recommendations gesture towards logistical aspects like loading zones for musicians, planning laws that accommodate music and musician needs, and revamping transportation availability to music venues in order to facilitate and encourage attendance. A number of these earlier initiatives and elements of the strategy—such as the now-defunct 4479 Music City initiative and the establishment and ongoing activities of the Toronto Music Advisory Council (“TMAC”) and a Music Sector Development Officer—have already been implemented with the intention of giving a greater voice to Toronto’s music industry, which was identified as underrepresented within plans relating to cultural development and management in Toronto.<sup>130</sup> Probably the most important element of Toronto’s attention to the music community was the proposed removal of the numerous barriers that continue to exist for performing, creating, participating in, consuming, and enjoying music,<sup>131</sup> but considering the current state of these plans in Toronto, its Music City strategies must be further developed and better implemented within its by-laws and applicable legislation that ultimately govern the everyday of music in Toronto.<sup>132</sup>

## B. ONGOING BARRIERS TO TORONTO’S MUSIC CITY ASPIRATIONS

While Toronto appears to have its heart set on “achieving” this new Music City status, it is arguable as to whether a city can ever truly “become” an artificially generated Music City if it is not already, or if the roots always had to be there. As an old book from 1898 full of musings about “Toronto the Good” by C.S. Lewis somewhat caustically observes:

For many years our ancient and beautiful city has taken unto itself the title of ‘Musical Toronto’. I think the origin of this expression can be traced to the gushing description given by a young man on one of the city papers, in connection with the musical festival held some years ago. With a sarcasm beyond his years, and of which he was entirely unconscious, he praised to heaven everything connected with the festival, though it might be

<sup>129</sup> See generally Titan, *supra* note 123.

<sup>130</sup> *Ibid* at 79-80. See also the 4479 website (online: <4479toronto.ca> [perma.cc/3PS6-TGYD]), although the 4479 initiative has since ceased to operate, citing “confidence in the momentum Toronto is carrying forward” in becoming “one of the greatest Music Cities in the world.”

<sup>131</sup> *Ibid*.

<sup>132</sup> See e.g. *Toronto Municipal Code*, c 591, Noise, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A [*Toronto Municipal Code*, c591, Noise]; City of Toronto, by-law No 569-2013, *Zoning By-law* (9 May 2013) [by-law No 569-2013]; *Toronto Municipal Code*, c 363, Building Construction and Demolition, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A [*Toronto Municipal Code*, c363, Building Construction and Demolition]; *Toronto Municipal Code*, c 415, Development of Land, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A [*Toronto Municipal Code*, c415, Development of Land]; *Toronto Municipal Code*, c 545, Licensing, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A [*Toronto Municipal Code*, c545, Licensing]; *Toronto Municipal Code*, c 629, Property Standards, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A [*Toronto Municipal Code*, c629, Property]; *Toronto Municipal Code*, c 632, Property, Vacant or Hazardous, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A; *Toronto Municipal Code*, c 767, Taxation, Property Tax, made under *City of Toronto Act*, 2006, SO 2006, c 11, Schedule A; *Building Code Act*, 1992, SO 1992, c 23; *Ontario Heritage Act*, RSO 1990, c O18 [*Ontario Heritage Act*]; *Planning Act*, RSO 1990, c P13 [*Planning Act*]. See also Rayner, *supra* note 128.

inferentially observed that he probably knew about as much about music as a child knows of metaphysics.<sup>133</sup>

As many who have grown up or happened through Toronto's various music scenes, subcultures, and venues have noted, Toronto has not been lacking in these areas despite rampant development that pushed music spaces out of various neighbourhoods over the years—like the erasure of the storied 1950s to 70s music scene along Yonge Street or the disappearance of the Liberty Village warehouse rave scene—and despite direct attacks on particular music scenes and subcultures, such as the infamous “rave ban” (Bill 73) proposed in the early 2000s.<sup>134</sup> With its already-existing Music City roots, this quest to “create” and “become” a Music City is perhaps indicative that some of the premises underlying the Music City policy initiatives are flawed in the first place. Rather than “creating”, it would instead only be possible to encourage and protect existing grassroots music scenes, (sub)cultures, and venues as well as focusing on removing the barriers for Toronto to flourish as a Music City.. As we will see, while Toronto's current policies may gesture towards removing these barriers, there are other legislative incongruences and redevelopment forces at play that are undoing the work that needs to be done towards facilitating Toronto's Music City status..

## 1. THE “DO-IT-YOURSELF” (“DIY”) COMMUNITY AND EVENT SPACES VERSUS COMMODIFICATION INTERESTS AND NOISE LEGISLATION, LIQUOR LICENSING, AND COST BARRIERS

As many of today's artists and musicians who are on the margins of mainstream art and society gain a community and artistic home in “the found authenticity of do-it-yourself performances,” what are known as DIY spaces of music and art consumption and production that correspond to this development are springing up in many cities like Toronto.<sup>135</sup> DIY venues tend to be no-frills, off-beat, gritty spaces, free of signs indicating their entrance, feature sound systems and performance areas of varying quality, and often display community art, found objects, and a haphazardly arranged welcoming décor and layout. More often than not, they are unlicensed, often not in compliance with the applicable zoning classification for the area where they are found, and often would not meet a municipality's building code or fire safety standards. DIY spaces often double as both a living space—for a single person, few people, or a collective of artists or attached community members—as well as an event space. As an event space, regardless of their liquor license status, DIY spaces may or may not serve alcohol, often have a capacity for visual displays, and usually boast a wild variety of programming within their open and versatile spaces. As one attendee publicly describes one of Toronto's better-known but recently-closed DIY spaces, Double Double Land, “It's part nightclub, part yoga studio, part live music venue,

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<sup>133</sup> CS Lewis, *Of Toronto the Good. A Social Study. The Queen City of Canada as it is* (Montreal: Toronto Publishing Company, 1898) at 191.

<sup>134</sup> Bill 73, *Raves Act*, 1st Sess, 37th Leg, Ontario, 2000 (first reading 3 May 2000) and see City of Toronto, “Establishment of Late Night Entertainment Event Protocol (Including Raves) and Co-ordinated Response to Inquest Recommendations into the Death of Allen Ho” (adopted December 1999).

<sup>135</sup> Zukin, *Naked City*, *supra* note 4 at 37. Although many spaces have come and gone over the year and are closing at an alarmingly rapid rate, some current examples of DIY-type spaces in Toronto (as of Summer 2017) include Smiling Buddha, D-Beatstro, the Jam Factory, Faith/Void, the Tranzac, 8-11, Geary Lane, and so on.

part gallery, part movie theatre and then some.”<sup>136</sup> These spaces, that at face value may appear aesthetically “undesirable,” carry great importance, community cultural wealth, and use-value for the DIY community. They are also spaces vulnerable to the aesthetics of decontextualization and diversion, and the commodification of their gritty “authenticity.”<sup>137</sup> Usually operating on the murky fringes of a city’s municipal legal framework in terms of use, zoning, liquor licenses, noise, and so on,<sup>138</sup> DIY spaces provide an affordable, accessible, and nurturing spaces for local musicians and artists whose musical genre identification can place them at the margins of dominant music, art, and performance norms and spaces in a city and make it difficult to perform, create, and workshop their music in more conventional music venues and bars.<sup>139</sup>

The cultural producers and cultural entrepreneurs who are members of the DIY musical subculture are often aspiring young artists with either a primary or secondary goal of building an artistic career, and they usually must do so in an unpaid, underfunded context reliant on their own investment from other paid work and leading to a certain level of precarity and vulnerability.<sup>140</sup> The DIY space not only provides an affordable space for these artists, but it also provides a safe space for creativity, for unconventional music, political music, art shows, film screenings, and artistic experimentation that tends to be removed from the commercial and exchange-value focus that many formal spaces of cultural practice have. Certainly, this is at least partially due to the location of DIY spaces within traditionally undesirable locations and their bare-bones structure and décor—a vast visual, spatial, and structural remove from most formal concert halls, theaters, and mainstream nighttime leisure spaces and nightclubs.

While the existence of DIY spaces on the margins of society tends to lead to active community participation and creative innovation rather than passive consumption practices, DIY spaces also exist for DIY community members who wish to experience and consume local music culture. Either way, the marginal space of the DIY venue tends to attract “people on the fringe of society [who] can find a space to articulate themselves” and where the use-value of the space supersedes the exchange-value.<sup>141</sup> Ultimately, the importance of the DIY space is the existence and availability of the space itself. As one of Toronto’s punk promoters involved in the DIY scene puts it, “[W]icked art’ is a byproduct of providing a space where such expressions can flourish. As a space for art, music or film, the space is the root that allows things to take hold.”<sup>142</sup> These are also the spaces where unknown musicians, talent, and new sounds can germinate and, while not necessarily the goal, eventually garner mainstream audience interest, finding their way onto the stages of large-scale, well-funded music venues.

Toronto has a well-developed history of DIY spaces that have functioned as safe spaces for the often marginalized subcultural music scenes like the punk scene, but have also provided a space to the margins of these margins, such as the historical roots of the queer punk scene

<sup>136</sup> Stephanie C (1 September 2011), online: <yelp.com/biz/double-double-land-toronto> [perma.cc/LWQ7-FPVG], review of Double Double Land.

<sup>137</sup> Appadurai, *supra* note 49 at 28, 46-47. See also Logan & Molotch, *supra* note 15 at 24, 30-31.

<sup>138</sup> See e.g. *Toronto Municipal Code*, c 591, Noise, *supra* note 132; by-law No 569-2013, *supra* note 132; *Toronto Municipal Code*, c 363, Building Construction and Demolition, *supra* note 132; *Toronto Municipal Code*, c 415, Development of Land, *supra* note 132; *Toronto Municipal Code*, c 545, Licensing, *supra* note 132; *Toronto Municipal Code*, c 629, Property Standards, *supra* note 132.

<sup>139</sup> See also Zukin, *Naked City*, *supra* note 4 at 102.

<sup>140</sup> See e.g. Michael Scott, “Cultural Entrepreneurs, Cultural Entrepreneurship: Music Producers, Mobilising and Converting Bourdieu's Alternative Capitals” (2012) 40 *Poetics* 237 at 238.

<sup>141</sup> Chatterton & Hollands, *supra* note 25 at 204, 208-10.

<sup>142</sup> Interview of Greg Benedetto in Astoria Felix, “S.H.I.B.G.B.’s Shuts Down” *the newspaper* (30 September 2015), online: <thenewspaper.ca/the-arts/shibgbs-shuts-down > [perma.cc/AN5C-6WM6] [Felix].

(“Queercore”) in Toronto that flourished and flourishes in the DIY context.<sup>143</sup> While Toronto already has a rich history of DIY music spaces and a well-entrenched DIY music community, these no-frills spaces sit as important sites of independent cultural entrepreneurship, cultural production, and musical subversion within the context of Toronto’s Music City strategies.

As these Music City initiatives take root, romanticize, and attempt to collaborate with the local DIY music community in order to capitalize on what is perceived as a “‘musically diverse’ utopia,” there remains a disregard of both what is needed for these spaces to flourish as well as of their tradition of presenting musical fringe acts of both “unproductive” (in market-oriented terms) varieties alongside those with varyingly higher degrees of arguable commercial success, although this kind of success is often not the goal.<sup>144</sup> Even though the operators of these spaces have a tendency towards an anti-establishment bend that can lead them to refuse to engage with a city’s bureaucratic licensing procedures that would provide, for example, a liquor license to leverage performance hosting and venue costs with the sale of alcohol, they remain vulnerable to commodification due to both their attractive edgy authenticity, as well as their subversive, rebelliousness nature.<sup>145</sup> As Miles and Miles explain, “although a field such as independent music production is outside mainstream capital interests and might be expected to be an arena for new and critical content, those old interest are adept in colonising alternatives as, in effect, a commodification of rebellion which neuters its political force.”<sup>146</sup>

The need for better and more context appropriate nighttime and cultural governance design was vocally highlighted by the requests and concerns heard from Toronto’s music (sub)cultural communities at the Toronto Music Advisory Council (“TMAC”) meeting held at City Hall that focused on the 2017 uptick in disappearing music venues (discussed further below) and developing measures to protect music venues in Toronto.<sup>147</sup> The overarching theme expressed by concerned music community and DIY community attendees revolved around the disconnect between city governance and the realities of operating and attending grassroots music venues, such as DIY spaces, as well as more commercial music establishments. Notably, the enforcement process was of particular concern. Community members spoke of how certain music spaces defined by specific (and often incorrectly presumed) demographics were disproportionately targeted for the enforcement of fire code regulations, noise by-law measures, and liquor licensing and special event permit spot checking. In addition, where many community music spaces exist as safe havens for marginal and transgressive groups and communities, the enforcement of fire codes, noise by-laws, and liquor licenses and special events licensing was often carried out in an unnecessarily forceful and unfriendly manner that community members found to be threatening. Further, when smaller, transgressive music venues, collectives, and production companies had at times worked with larger city-backed and development focused arts and performance-oriented organizations like Artscape, they noted that there were many more resources available to ensure in advance of an event that the venue in question would be able to

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<sup>143</sup> See *e.g. ibid.* See also Lizzy Shramko “Exploring Toronto’s Exploding Queer Feminist Music Scene”, *Bitch Media* (20 February 2014), online: <[bitchmedia.org/post/exploring-torontos-exploding-queer-feminist-music-scene-vag-halen-reg-vermue](http://bitchmedia.org/post/exploring-torontos-exploding-queer-feminist-music-scene-vag-halen-reg-vermue)> [perma.cc/4AVD-XEY5].

<sup>144</sup> Tom Beedham, “The Year in Toronto’s DIY Community” (8 January 2015), *Long Winter* (blog), online: <[torontolongwinter.com/blog/the-year-in-torontos-diy-community](http://torontolongwinter.com/blog/the-year-in-torontos-diy-community)> [perma.cc/A6ST-Z73E].

<sup>145</sup> There are many examples in Toronto. One example of a relatively recently-closed space would be the infamous now-closed S.H.I.B.G.B.’s; *Toronto Municipal Code*, c 545, Licensing, *supra* note 132; Felix, *supra* note 142. See also Zukin, *Naked City*, *supra* note 4 at 46.

<sup>146</sup> Miles & Miles, *supra* note 16 at 62.

<sup>147</sup> Toronto Music Advisory Council meeting, (13 February 2017) at Toronto City Hall [TMAC, 13 February 2017].

meet the requirements of a visit from fire code, noise, or liquor license enforcement officers.<sup>148</sup> But, this did not happen without attachment to big-name, city sanctioned organizations or initiatives.

In discussing these occurrences, community attendees and the TMAC members noted that addressing the sustainability, promotion, and protection of Toronto grassroots music venues in meaningfully working towards Toronto's Music City aspirations would require the development of governance structures, licensing, and enforcement that better understood and responded to the specific context of music venues, as well as nighttime venues and gatherings.<sup>149</sup> Ultimately a motion was passed that crystallized some of the concerns raised by the attending communities and narrowed in on how better governance of Toronto's music venues might be achieved.<sup>150</sup> For example, TMAC,

1. Requested the General Manager, Economic Development and Culture and the Chief Planner and Executive Director, City Planning to consider, as part of the Council requested report on Item MM22.5, the following actions for the City to take to help protect music venues:

<sup>148</sup> *Ibid.* Artscape is a Toronto-based not-for-profit development organization that focuses on creating spaces for and using creativity for community development, see online: <torontoartscape.org> [perma.cc/QN4H-L28F].

<sup>149</sup> TMAC, 13 February 2017, *supra* note 147. For similar needs and initiatives to develop legislation and enforcement that specifically meets the needs of nighttime-oriented (sub)cultures and music communities, see also "City of Melbourne Policy for the 24 Hour City: A Framework for Action" (2008), online: <melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/MeetingAgendaItemAttachments/111/1959/CSC\_53\_20080909.pdf > [perma.cc/YLV9-23XT]; Centre for Economics and Business Research, "London's 24 Hour Economy: The Economic Value of London's 24 Hour Economy" (London, UK: London First in association with EY, 2016); Jon Henley, "The Stuff of Night Mayors: Amsterdam Pioneers New Way to Run Cities After Dark," *the guardian* (21 March 2016), online: <theguardian.com/cities/2016/mar/21/night-mayor-amsterdam-holland-mirik-milan-night-time-commission> [perma.cc/5F3X-RZHQ]; Feargus O'Sullivan, "A 'Night Mayor' is Transforming Amsterdam After Dark: The Dutch Capital's Concept is Already Spreading to Other Major Cities," *Citylab* (29 January 2016), online: <citylab.com/solutions/2016/01/night-mayor-amsterdam-mirik-milan/433893/> [perma.cc/JMU4-HUE6]; BC, "From Dusk 'til Dawn: Arbitration, Cultivating Culture and the Other Stuff of Night Mayors," *The Economist* (24 October 2016), online: <economist.com/blogs/prospero/2016/10/dusk-til-dawn > [perma.cc/FXL8-QV9E]; Katherine Alexandra Newman & Michele Acuto, "New Night Mayors Could Make Cities' Dreams Come True – Here's How," (15 November 2016), *The Conversation* (website), online: <theconversation.com/new-night-mayors-could-make-cities-dreams-come-true-heres-how-68388> [perma.cc/98BW-XUZG]; Rebecca Nicholson, "Drugs, Developers and Diplomacy: London Night Tsar Amy Lamé on the Challenges of the Job," *the guardian* (10 December 2016), online: <theguardian.com/news/2016/dec/10/drugs-developers-diplomacy-london-night-tsar-amy-lame-interview> [perma.cc/24F5-XQVL]; "Mayor Announces Plans for Night Time Commission for the Capital," (15 March 2016), *Mayor of London & London Assembly* (press release), online: <london.gov.uk/press-releases/mayoral/night-time-commission-for-the-capital> [perma.cc/MB4A-MZPE]; "Mayor Appoints Philip Kolvin, QC as Chair of the Night Time Commission," (16 December 2016), *Mayor of London & London Assembly* (press release), online: <london.gov.uk/press-releases/mayoral/mayor-announces-chair-of-night-time-commission> [perma.cc/N7UE-G9ZL]; *London Night Time Commission*, online: <london.gov.uk/what-we-do/arts-and-culture/vision-and-strategy/london-night-time-commission> [perma.cc/FP4K-465J]; "24 London: Creating a City That's Always Open," *Mayor of London & London Assembly*, online: <scroll.london.gov.uk/24hourlondon/> [perma.cc/V4WD-LTZA]; "Mayor of London Appoints Amy Lamé as UK's First-Ever Night Czar," (4 November 2016), *Music Venue Trust* (website), online: <musicvenuetrust.com/2016/11/mayor-of-london-appoints-amy-lame-as-uks-first-ever-night-czar/> [perma.cc/3KU8-GZRJ].

<sup>150</sup> Toronto Music Advisory Council, "Measures to Protect Live Music Venues in Toronto – Update" (Motion) (adopted 13 February 2017) [Toronto Music Advisory Council].

a. Recognize Music Venues by creating a Live Music Venue Registry that would identify current music venues meeting clearly defined criteria in order to:

1. Recognize businesses as Music Venues independently of their primary license type.
2. Legitimize the operation of live music venues by working with Municipal Licensing and Standards to remove restrictions around floor space and seating.
3. Allow registered venues to apply for designation of municipal significance to selectively permit extended hours for the sale and service of alcohol.<sup>151</sup>

The mechanics of disregard for the essence of the DIY music community and DIY music spaces also manifest within noise and zoning by-laws. While the early stages of Toronto's (currently ongoing) Chapter 591 noise by-law review underway by the Municipal Licensing and Standards department initially did not meaningfully engage Toronto's music industry,<sup>152</sup> this has improved with a music industry consultation on July 2015 that better acknowledged Toronto's Music City objectives. TMAC now has a member who is involved in the by-law review and keeps the Committee aware of developments. The 2015 consultation involved the Municipal Licensing and Standards department, the Film and Entertainment Industries Division, TMAC, including Mike Tanner as Toronto's Music Sector Development Officer.<sup>153</sup> Tanner provided recommendations based on the premise of "good neighbourliness" that would see affected parties notified of anticipated noise-generating music events.<sup>154</sup> More specifically, Tanner recommended: "[C]lear standards of measuring noise; an 85dBA (decibel) health safety limit of noise based on perimeter of event; improved enforcement officer collaboration between ... concerned parties; streamlining of event-related permits; and shifting of burden of proof of unwanted noise."<sup>155</sup> It remains to be seen the degree to which the interests of Toronto's music communities will be reflected in the new by-law.

While revisions to Toronto's current noise regulation framework are sorely needed as they continue to be a hurdle that DIY music venues and events face, clashes with Toronto's noise regime also intersect with zoning by-laws that stifle DIY and grassroots music spaces and can target nighttime music and dancing spaces in an assortment of ways, such as dance floor moratoriums that have popped up in various Toronto neighbourhoods.<sup>156</sup> Or, as another example,

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<sup>151</sup> *Ibid.*

<sup>152</sup> See the information regarding the associated public consultation, online *City of Toronto* <[www1.toronto.ca/perma.cc/7WDP-RX3J](http://www1.toronto.ca/perma.cc/7WDP-RX3J)>. See also Andreas Kalogiannides, "Can the City of Toronto Reconcile its Noise by-law Review with Creation of a 'Music City'?" (29 June 2015) *torontomusiclaw.com*, online: <[kalogiannideslaw.com/city-of-toronto-noise-by-law-review-music-city/](http://kalogiannideslaw.com/city-of-toronto-noise-by-law-review-music-city/)> [perma.cc/HT63-2G4S].

<sup>153</sup> Toronto Music Advisory Council meeting, (5 June 2017) at Toronto City Hall [TMAC, 5 June 2017]. See also Ryan Ayukawa, "Noise Bylaw Changes Could Mean a Brighter Future for Music City", *NOW Toronto* (31 July 2015), online: <[nowtoronto.com/music/features/noise-bylaw-changes-could-mean-a-brighter-future-for-music-city/nowtoronto.com](http://nowtoronto.com/music/features/noise-bylaw-changes-could-mean-a-brighter-future-for-music-city/nowtoronto.com)>.

<sup>154</sup> *Ibid.*

<sup>155</sup> *Ibid.*

<sup>156</sup> See e.g. Director, Community Planning, Toronto & East York District, "Queen Street West (between Roncesvalles Avenue and Dufferin Street) – Restaurant Study – Final Report," *Staff Report Action Required* (24 May 2013); Anna Wynveen et al, "Not Zoned for Dancing: A Comprehensive Review of Entertainment in Downtown Toronto" (Toronto: Office of the Chief Planner, 2014); Benjamin Boles, "Toronto's War on Dancing: DJ Culture Facing Attacks from Right and Left at City Hall," *HuffPost Music, Canada* (5 June 2014), online:

while the Geary Avenue area is becoming a concentrated area for Toronto's DIY spaces,<sup>157</sup> the area continues to be zoned as an E2 Employment Industrial Zone (Zoning By-law 569-2013), and specifically, is zoned for "Performing Arts Studios" for dance, theater, and show rehearsals.<sup>158</sup> Noise complaints in relation to a couple of Geary Avenue venues eventually led Municipal Licensing and Standards Officers to visit the space on March 17, 2015 and issue by-law infraction notices due to the particular zoning of the area, which does not allow for "nightclubs" or "entertainment facilities", which is what music output during evening hours would appear to fall under.<sup>159</sup> This by-law effectively outlaws live music on the street and some venues have temporarily or permanently closed due to this zoning snafu,<sup>160</sup> but the process that instigated its enforcement ultimately revolved, and continues to revolve, around noise and clashes with Toronto's noise control regime

These kinds of barriers to the operation of DIY spaces and other grassroots music venues continue to fly in the face of Toronto Mayor John Tory's ongoing promotion and enthusiasm of the Music City initiative and "determination to more fully integrate music into the cultural and economic fabric of the city."<sup>161</sup> As Dave Morris summarizes: "Toronto may be making the right noises, but balancing various citizens' interests is harder than it looks. For every by-law whose impact is mitigated, there are plenty more that make other cities look downright debauched by comparison."<sup>162</sup>

## 2. TORONTO'S MUSIC VENUES CONTINUE TO DISAPPEAR WHILE TORONTO'S MUSIC CITY VISION CONTINUES TO CALL FOR MORE VENUES

In addition to the smaller spaces afforded by DIY venues, Music City aspirations also call for music venues that are more conventionally structured to house large events and serve as higher price-point music consumption and dancing spaces. Nonetheless, existing venues that used to respond to this need have recently been lost without so much as a second thought or consultation with affected community members. Government, as but one example, was a large iconic, well-designed, and internationally respected live music venue of high use-value and community cultural wealth for its associated subcultural communities which was recently razed from Toronto's East Bayfront Precinct area along the waterfront to be replaced by another mixed-use

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<huffingtonpost.ca/2014/05/06/toronto-war-on-dancing\_n\_5227816.html> [perma.cc/2UHF-K2PV]; Ben Spurr, "Parkdale Hit with Bar Ban," *NOW Toronto* (2 November 2012), online: <nowtoronto.com/news/parkdale-hit-with-bar-ban/> [perma.cc/EW5P-M5QH]; Anna Mehler Paperny, "Toronto Councillor Defends Move to Quiet Queen West," *The Globe and Mail* (23 December 2009), online: <theglobeandmail.com/news/toronto/toronto-councillor-defends-move-to-quiet-queen-west/article4297025/> [perma.cc/KC9Q-B4AJ]. See also Shawn Jeffords, "Vaughan in Legal Fight with Bar" *Toronto Sun* (10 October 2012), online: <torontosun.com/2012/10/10/vaughan-in-legal-fight-with-bar> [perma.cc/LP7P-LGWD]; Kirk Makin, "Nightclub Sues City for Harassment," *The Globe and Mail* (9 March 2009, updated 10 April 2009), online: <theglobeandmail.com/news/national/nightclub-sues-city-for-harassment/article1155043/> [perma.cc/4MLP-W7A6].

<sup>157</sup> See e.g. Stuart Berman, "Geary Ave: The Secret Life of an Ugly Street," *thestar.com* (4 February 2015), online: <thestar.com/entertainment/music/2015/02/04/geary-ave-the-secret-life-of-an-ugly-street.html > [perma.cc/5S8S-5YGW].

<sup>158</sup> By-law No 569-2013, *supra* note 132; Interview of Tammy Robinson (City of Toronto) in Aubrey Jax, "Geary Avenue Music Scene Under Threat Due to Red Tape," *blogto* (17 April 2015), , online: <blogto.com/music/2015/04/geary\_avenue\_music\_scene\_under\_threat\_due\_to\_red\_tape/> [perma.cc/2ZVT-GLV4].

<sup>159</sup> *Ibid.*

<sup>160</sup> *Ibid.*

<sup>161</sup> Rayner, *supra* note 128.

<sup>162</sup> Morris, *supra* note 123.

development advertised as a “hub for the creative industries.”<sup>163</sup> Ironically, just days after returning from a “fact-finding” trip to Austin, Texas, for which he sung the praises of Austin’s live music culture and available spaces for this music culture, Toronto’s Mayor turned around and spoke glowingly about the new development replacing Government at the project’s unveiling.<sup>164</sup> While some of Toronto’s disappearing venues like Government are being replaced with newly built mixed-use redevelopment projects, one of the other most common fates for the innumerable music venues lost over the years has been that of parking lot or parking garage.<sup>165</sup>

The loss of music venues in Toronto must also be considered beyond the need for spaces to house music, but also in the context of the adamant insistence within Toronto’s Music City initiative on the importance of Toronto’s music heritage where identifying a city’s unique music assets in terms of heritage is even cited as the “first step in developing a music tourism strategy.”<sup>166</sup> TMAC also pushes for greater recognition of Toronto’s music heritage contribution to Canada—although success on this front currently seems to have primarily been in establishing

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<sup>163</sup> See e.g. “Groundbreaking Plans Unveiled for Daniels Waterfront – City of the Arts at Former Government Entertainment Complex,” *Business Wire* (26 March 2015), online: <[businesswire.com/news/home/20150326006250/en/Groundbreaking-Plans-Unveiled-Daniels-Waterfront---City](http://businesswire.com/news/home/20150326006250/en/Groundbreaking-Plans-Unveiled-Daniels-Waterfront---City) > [perma.cc/3PW4-BP7P] [“Groundbreaking Plans”]; David Shum, “Daniels Corporation Unveils Waterfront Mixed-Use Condo Project,” *Global News* (26 March 2015), online: <[globalnews.ca/news/1904704/daniels-corporation-to-unveil-waterfront-mixed-use-condo-project/](http://globalnews.ca/news/1904704/daniels-corporation-to-unveil-waterfront-mixed-use-condo-project/) > [perma.cc/9VHR-Z9DA]; Susan Pigg, “\$700-Million Arts-Focused Complex Planned for Queens Quay Site,” *thestar.com* (26 March 2015), online: <[thestar.com/business/2015/03/26/700-million-arts-focused-complex-planned-for-queens-quay-site.html](http://thestar.com/business/2015/03/26/700-million-arts-focused-complex-planned-for-queens-quay-site.html) > [perma.cc/ZN3A-ZS2P]; “Waterfront Condos by Daniels Corp.,” *Daniels Waterfront Condos*, online: <[danielswaterfrontcondos.ca](http://danielswaterfrontcondos.ca) > [perma.cc/8H7E-6VSK] [*Daniels Waterfront Condos*]. See also the planning application and supporting documentation for the Daniels Waterfront development: #14 249503 STE 28 SA for 142 Lake Shore Blvd East, online: *Toronto Development Projects* <[app.toronto.ca/DevelopmentApplications/associatedApplicationsList.do?action=init&folderRsn=3656073&isCofA\\_Search=false&isTlabSearch=false](http://app.toronto.ca/DevelopmentApplications/associatedApplicationsList.do?action=init&folderRsn=3656073&isCofA_Search=false&isTlabSearch=false) > [perma.cc/5TL5-THY7] [*Daniels Waterfront Planning Application*]. Government was a music venue that contributed prolifically for nearly twenty years to Toronto and to Canada’s music culture. Its importance can be measured via the large number of musical acts that performed within its space throughout the years and for its role in developing Canada’s electronic music and electronic music scene, in addition to its international acclaim as an electronic music venue. In terms of more marginal music subcultures, Government was a key venue in the development of Toronto’s, Ontario’s, and Canada’s “drum ‘n’ bass” musical subculture. Similar to the role of DIY spaces, Government served as an important space for nascent young entrepreneurs in the music industry—such as promoters, musicians, and DJs.

As the sales website for the Daniels development (ironically) summarizes:

The club finally closed its doors on January 31st, 2015. Formerly the RPM nightclub for about 10 years which brought legends like the Beastie Boys and made former Jamaican born Canadian DJ Chris Sheppard into a superstar in the dance music world. Now currently the Government nightclub which opened its doors in 1996 where superstars such as Lady Gaga and the Rolling Stones played and where DJ Deadmau5 got his start. Charles Khaboth [*sic*], owner of INK Entertainment [*sic*] tried to buy the building with his partners but were unsuccessful as Daniels Corp. has bought it to turn the site at Queens Quay and Lower Jarvis into residential and commercial properties known as the Daniels Waterfront Condos (*Daniels Waterfront Condos*, *supra* note 163).

<sup>164</sup> “Groundbreaking Plans,” *supra* note 163. See also the Daniels Waterfront Planning Application, *supra* note 163.

<sup>165</sup> See generally Denise Benson, *Then & Now: Toronto’s Nightlife History* (Toronto: Three O’Clock Press, 2015) for an overview of Toronto’s music and dancing venues that have been influential throughout the years but have subsequently been replaced, shut down, and so on.

<sup>166</sup> IFPI & Music Canada, *supra* note 125 at 83, 87, 90.



plaques and smartphone apps rather than actually sustaining the life of the disappearing venues.<sup>167</sup>

One of the more recent positive developments in acting on the tenets of the Music City recommendations was a motion put forward by Toronto City Councillor and then-Chair of TMAC Josh Colle, which was seconded by Toronto City Councillor John Filion and was subsequently adopted by Toronto City Council on 8 November 2016.<sup>168</sup> This motion sought specifically to address and curb the ongoing loss, displacement, or forced relocation of music venues, such as the Government, the Hideout, Holy Oak, Comfort Zone, and so on, and the ongoing threat that redevelopment and gentrification poses to venues like the Silver Dollar Room.<sup>169</sup> This motion made reference to progressive policies currently underway in London, England that were designed to halt its astounding loss of thirty-five percent of its live music venues between 2007 and 2015.<sup>170</sup>

Yet, despite this progressive motion adopted by Toronto City Council addressing the ongoing concern with lost music venues, the beginning of 2017 brought with it an alarming rash of closures of many key Toronto music institutions such as the Hoxton, an important electronic and dance music venue; Toronto DIY mainstay Soybomb HQ, which fell victim to the onslaught of “building code vigilantism” raids instigated by white supremacist alt-right groups across North America in the wake of the tragic December 2<sup>nd</sup>, 2016 fire that destroyed the Ghost Ship DIY in Oakland, California, killing thirty-six people.<sup>171</sup> Double Double Land, another Toronto DIY mainstay that was forced to close around the same time as Soybomb HQ also due to building code vigilantism that targeted alleged fire safety code violations; Hugh’s Room closed, which would later manage to cobble together a relaunch as a community-based, not-for-profit initiative; Seven44 was locked out of its space and its lease terminated by the landlord due to breach of the lease; and a series of younger venues that had developed strong community

<sup>167</sup> See e.g. Music Canada, “Proposal to Councillor Thompson,” *supra* note 108. See also IFPI & Music Canada, *supra* note 125 at 83, 87, 90.

<sup>168</sup> Toronto City Council, “Protecting Live Music Venues in Toronto - by Councillor Josh Colle, seconded by Councillor John Filion,” MM22.5, (adopted by City Council 8 November 2016) [Colle & Filion]. See also Toronto Music Advisory Council, *supra* note 150.

<sup>169</sup> Colle & Filion, *supra* note 168.

<sup>170</sup> *Ibid.*

<sup>171</sup> Scott Glover & Susanna Capelouto, “Warehouse in Deadly Oakland Fire Hadn’t Been Inspected in 30 Years,” CNN (9 December 2016), online: <[cnn.com/2016/12/08/us/oakland-fire-city-budget-cuts/index.html](http://cnn.com/2016/12/08/us/oakland-fire-city-budget-cuts/index.html)> [perma.cc/8GJ9-BXSR]; Benjamin Wallace-Wells, “What Happened, Exactly, in Oakland’s Ghost Ship Fire,” *The New Yorker* (13 December 2016), online: <[newyorker.com/news/benjamin-wallace-wells/what-happened-exactly-in-oaklands-ghost-ship-fire](http://newyorker.com/news/benjamin-wallace-wells/what-happened-exactly-in-oaklands-ghost-ship-fire)> [perma.cc/9TXJ-B6DM]; Alene Tchekmedyan, Richard Winton & Paige St John, “Ghost Ship Fire Mystery: What Did Fire Officials Know and When Did They Know It?,” *Los Angeles Times* (17 December 2016), online: <[latimes.com/local/lanow/la-me-ghost-ship-fire-20161217-story.html](http://latimes.com/local/lanow/la-me-ghost-ship-fire-20161217-story.html)> [perma.cc/HL3H-9ZML]; Nastia Voynovskaya, “The Vanishing Underground: Oakland’s Housing Crisis Is Also Displacing its Arts and Music Counterculture,” *East Bay Express* (20 September 2016), online:

<[eastbayexpress.com/oakland/oaklands-housing-crisis-also-displacing-its-arts-and-music-underground/Content?oid=4979500](http://eastbayexpress.com/oakland/oaklands-housing-crisis-also-displacing-its-arts-and-music-underground/Content?oid=4979500)> [perma.cc/9MSR-FZ2Y]; Anonymous, “Do-It-Yourself Spaces Are Under Siege –And We Need to do Everything We Can to Protect Them,” *CBC Arts* (18 January 2017), online: <[cbc.ca/arts/do-it-yourself-art-spaces-are-under-siege-and-we-need-to-do-everything-we-can-to-protect-them-1.394173](http://cbc.ca/arts/do-it-yourself-art-spaces-are-under-siege-and-we-need-to-do-everything-we-can-to-protect-them-1.394173)> [perma.cc/YY3D-37BJ]; Sara Ross, “Transgressive DIY (“Do-It-Yourself”) Spaces, Urban Redevelopment, and Place Management within a Music City” [unpublished]; Sara Ross, “Safety vs Safe Spaces: Striking a Balance Between Grit and Maintenance, Intergenerational Equity, and the Protection of Precarious Cultural Space in the Face of Building Code Vigilantism and Gentrification” (Paper delivered at the 8<sup>th</sup> Annual Meeting of the Association for Law, Property & Society at the University of Michigan Faculty of Law, 20 May 2017) [unpublished].

followings over the past ten or so years also closed, like Populus, due to condo development; Holy Oak (DIY), the latter due to a significant increase in their rent; the Central, due to the mass redevelopment of Toronto's Mirvish Village by Westbank Projects Corp; and Harlem (Richmond East location), an important space for Toronto's Black artists, musicians, community members, and community leaders, as well as Ratio (DIY), both closed their doors on their own terms.<sup>172</sup> And the list continued to grow.

Beyond marginal and grassroots spaces, even spaces that seemed immune to gentrification processes fell victim to the next stage of exchange-value-centered development. While not necessarily considered within the same category as grassroots spaces for local music communities to congregate (although it did provide local musicians with some opportunities to perform on its stage), but an iconic venue nonetheless, the announcement of the upcoming closure of Toronto's Hard Rock Café at 279 Yonge Street downtown on Yonge and Dundas square (often considered to be Toronto's iteration of New York City's Times Square) raised the eyebrows of even those largely uninterested in, or unaware of, Toronto's Music City aspirations. Having itself taken over the space from Toronto's storied Friar's Tavern—one of Toronto's most popular Yonge Street nightclubs during Yonge Street music heyday, and a live music venue from 1963-76 that welcomed numerous jazz and rock legends, such as Bob Dylan—the lease for the space of the second oldest Hard Rock Café in the world (only eclipsed by London, England's Hard Rock Café) was set to nearly double what it was currently paying to \$2 million a year.<sup>173</sup>

As it turns out, even the Hard Rock Café could find itself in the same situation as a comparatively tiny and community-oriented venue like Holy Oak in facing the susceptibility that

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<sup>172</sup> Carla Gillis, "Vanishing Music Venues: Three Months Into 2017 and We've Already Lost Seven," *NOWToronto* (1 March 2017), online: <nowtoronto.com/music/torontos-vanishing-music-venues/> [perma.cc/355X-U6CV] [Gillis]; Matt Williams, "Canadian Music Venues Are Dropping Like Flies," *National Music Center* (16 January 2017), online: <nmc.ca>; Amy Carlberg, "Toronto's Most Unique Live Music Venue Shuts Down," *blogTO* (January 2017), online: <blogto.com/music/2017/01/torontos-most-unique-live-music-venue-shuts-down/> [perma.cc/28M4-3XC3]; Michael Rancic, "Toronto's Music Scene Reacts to Soybomb's Closure," *NOWToronto* (12 January 2017), online: <nowtoronto.com/music/features/torontos-local-music-scene-reacts-to-soybombs-closure/> [perma.cc/YK78-C58U]; Kate McGillivray & Natasha MacDonald-Dupuis, "City of Toronto Joins Fight to Keep Music Scene Bumping in the Face of Closures," *CBC News* (19 April 2017), online: <hcbc.ca/news/canada/toronto/toronto-music-venue-city-action-1.407622> [perma.cc/S4WP-44S9]; Kate McGillivray & Natasha MacDonald-Dupuis, "Shuttered Music Venues Raise Fears of 'Homogeneous' Toronto Culture," *CBC News* (20 April 2017), online: <cbc.ca/news/canada/toronto/toronto-venues-closing-1.4072744> [perma.cc/48GA-EAAB]; David Shum & Erica Vella, "Hugh's Room in Toronto Abruptly Shuts Down Amid Financial Troubles," *Global News* (9 January 2017), online: <globalnews.ca/news/3168622/hughs-room-in-toronto-abruptly-shuts-down-amid-financial-troubles/> [perma.cc/62D7-KJHM]; Kevin Ritchie, "Holy Oak to Close at the End of February," *NOWToronto* (9 February 2017), online: <nowtoronto.com/music/holy-oak-cafe-to-close-at-the-end-of-february/> [perma.cc/9SP8-WJCK]; Kevin Ritchie, "Live Music Venue The Central to Close After 10 Years," *NOWToronto* (20 January 2017), online: <nowtoronto.com/music/the-central\_to\_close\_mirvish\_village/> [perma.cc/55MA-QMU2]; Michael Rancic, "Two More Toronto Music Venues Close this Month," *NOWToronto* (16 May 2017), online: <nowtoronto.com/music/features/two-more-toronto-music-venues-close-this-month/> [perma.cc/AYS7-43K9]; *Commercial Tenancies Act*, RSO 1990, c L7; Michelle Da Silva, "Harlem is Closing its Richmond East Location in March," *NOWToronto* (27 February 2017), online: <nowtoronto.com/news/harlem-is-closing-its-richmond-east-location-in-march/> [perma.cc/7PX5-56K8].

<sup>173</sup> "Yonge Street Hard Rock Café to be Replaced with Flagship Shoppers Drug Mart," *Retail Insider* (13 March 2017), online: <retail-insider.com/retail-insider/2017/3/hard-rock-yonge> [perma.cc/L3TG-STHS]; James Cummins, *Elixir: Our Oldest Bars and Why They Matter* (TBA) at TBA [unpublished]; "The Friar's Tavern," *Heritage Toronto Historical Plaques Program* (plaque). See also Ellen Brait, "Hard Rock Café Closing its Doors at Yonge-Dundas Location," *thestar.com* (13 March 2017), online: <thestar.com/news/gta/2017/03/13/hard-rock-caf-closing-its-doors-at-yonge-dundas-square-location.html> [perma.cc/ER2L-Z6W7].

non-ownership of a space brings where displacement occurs as property values and taxes rise and areas redevelop and/or gentrify. What appeared to alarm individuals the most was not just the displacement of the Hard Rock Café, but that it would be replaced by yet another outpost of a drugstore/pharmacy chain to add to the many already in the neighbourhood—a Shoppers Drug Mart. The identity of the new tenant sprinkled salt in the wound of those still digesting the replacement of the recently closed Brunswick House music venue with a Rexall Drugstore, which opened around the same time (March 2017) as the Hard Rock Café closure was announced. To quote a sound bite gleaned from TMAC member Spencer Sutherland in relation to the closure of the popular live music venue Hideout when it was displaced from its Queen West location: “Hey, if they can’t survive there, nobody can.”<sup>174</sup>

The Silver Dollar Room’s closure was also announced in early 2017, although confirmed as temporary for the purposes of reconstruction since its heritage designated status under the *Ontario Heritage Act* and the resulting By-law 57-2015 ensures that it continues on in some form or another as a live music venue.<sup>175</sup> But as concerned music community members pointed out in their deputations at the 13 February 2017 Toronto Music Advisory Council meeting at City Hall, there is no way of ensuring that the new iteration of the venue will remain accessible and affordable as a grassroots music venue. These deputations reveal another legislative gap in dealing with historic (sub)cultural venues in the city, this time within cultural heritage protection and management in Toronto in terms of how living heritage and intangible (versus tangible) cultural heritage attributes and values are protected. As Toronto City Councillor Joe Cressy—who had played a key role not only in attaining heritage protection for the Silver Dollar Room, but in securing protection for specific intangible heritage attributes that were protected—summarized, “It’s an example of the challenges we’re facing and how despite all the best intentions we’re still failing. This is an example of the city using every belt and suspender, every tool we have available to protect a venue, but even then it shows you some of the challenges in the system.”<sup>176</sup>

Nonetheless, the seemingly relentless sudden onslaught of music venue closures did not (and could not) go unnoticed in the context of the ongoing Music City project, evidenced when,

<sup>174</sup> Sutherland is also the owner and operator of Nocturne, a music venue and nightclub on Queen West as well as the executive director of the Queen West BIA and board member of the Toronto Association of BIAs. See also Gillis, *supra* note 172.

<sup>175</sup> City of Toronto, by-law No 57-2015, *To designate the property at 484 Spadina Avenue (Silver Dollar Room) as being of cultural heritage value or interest* (11 December 2014); *Ontario Heritage Act*, *supra* note 132; Sara Ross, “Development Versus Preservation Interests in the Making of a Music City: A Case Study of Select Iconic Toronto Music Venues and the Treatment of their Intangible Cultural Heritage Value” (2017) 24:1 *International Journal of Cultural Property* 31; Sara Ross “Preserving Canadian Music Culture: The Intangible Cultural Heritage Management of Urban Spaces of Culture and the Case of the Iconic Toronto Music Venue the Silver Dollar Room” (2016) 10:2 *Architecture\_MPS* 1; Joe Cressy, “Silver Dollar Will Return as a Venue,” Letter to the Editor, *thestar.com* (6 February 2017), online: <[thestar.com/opinion/letters\\_to\\_the\\_editors/2017/02/06/silver-dollar-will-return-as-venue.html](http://thestar.com/opinion/letters_to_the_editors/2017/02/06/silver-dollar-will-return-as-venue.html)> [perma.cc/F5WG-WKQL]; TMAC (meeting), 13 February 2017; Gillis, *supra* note 172.

<sup>176</sup> TMAC (meeting), 13 February 2017; Gillis, *supra* note 172. The intangible heritage elements acknowledged By-law 57-2015 (*supra* note 175) include the Silver Dollar Room’s role in “the development and growth of music in Toronto, particularly the genres of jazz, blues, rock and bluegrass, from the 1950s through to the present day;” its role as “an incubator for musical talent;” its “international reputation that allowed local bands to be booked internationally;” the important musicians associated with its space; its “value as a landmark in Toronto by virtue of it being a well-known, long-standing destination for live music with an international reputation;” its “important contribution to Toronto’s musical scene;” and its frequent role as a “workshop for new and sometimes struggling musicians, both local and transient, to sit-in with more established musicians, to develop their music and build up a following.”

in advance of the February 13<sup>th</sup> Toronto Music City Advisory Council meeting, Mayor John Tory and City Councillor and Chair of the Toronto Music City Advisory Council, Josh Colle, released a joint message in response to the alarming rash of live music venue closures.<sup>177</sup> Despite the ongoing struggles for meaningful progress in preserving these music spaces, it is at least clear that the Music City campaign and guiding policy, and strategy documents like the “Mastering of a Music City” report, have at minimum garnered the attention of Toronto City Hall and have been acknowledged as part of current mayor John Tory’s agenda—economic and otherwise.

Yet even as identified problems and strategies were crystallized within official City Hall documents and the City’s legal complexes, and even where these strategies may carry merit and potential for more context-sensitive and inclusive policy for marginal music spaces and communities, barriers to actual implementation remain problematic. The steps forward during the February meeting, and the acknowledgement of the uncurbed problematic closure of venues alongside the many barriers to opening and sustaining grassroots music venues, somehow led only to a rather empty proposal at the next meeting on 5 June 5 2017 for the commissioning of yet another study—this one investigating the many closing local grassroots music venues, DIY spaces, and so on, even though, as a number of TMAC members noted, the results of the last commissioned Music City report still had not been addressed or implemented.<sup>178</sup>

While the utility of reports and studies should not be diminished, there was a noticeable frustration by those attending the meeting with the protracted timeline demanded by this new study and further research into the situation, all while local grassroots music venues and DIY spaces continued to close at a disconcertingly regular pace.<sup>179</sup> There was a desire for some sort of action beyond motions for commissioning further studies and for finding funding for the studies. It was also striking to observe the TMAC members in the “official” space of the room debating the merits of a study while the attendees in the audience/observer portion of the room comprised many of those who would logically become the object of the proposed report and, many of whom, had already given deputations based on their experiences and concerns. So, with the numerous already existing commissioned reports—both by TMAC and further reports which had been created by other branches of Toronto’s planning framework, even though these seem to be regularly overlooked by TMAC—in addition to the many members of local music communities and (sub)cultures attempting to participate in TMAC’s mission and purpose, and the use of Toronto’s prior reports on music venues and Music City strategies internationally by other cities as a guide for their own music communities and cultural (re)development, the focus on creating yet additional reports by TMAC members at this June meeting was puzzling at best.<sup>180</sup>

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<sup>177</sup> For a copy of the letter see *e.g.* Kate Robertson, “Mayor John Tory Releases a Statement on the Number of Toronto Venues That Have Closed,” *NOWToronto* (2 February 2017), online: <nowtoronto.com/music/mayor-john-tory-releases-a-statement-on-the-number-of-toront/> [perma.cc/8NYV-BSBE].

<sup>178</sup> TMAC, 5 June 2017, *supra* note 153. For the past report, see Toronto Music Advisory Council, “Toronto Music Strategy: Supporting and Growing the City’s Music Sector,” created for the City of Toronto (Toronto, February 2016) (adopted by Toronto City Council 31 March 2016), online: <app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.ED10.7> [perma.cc/ZEA2-8Q9P]. See also Anna Wynveen et al, “Not Zoned for Dancing: A Comprehensive Review of Entertainment in Downtown Toronto” (Toronto: Office of the Chief Planner, 2014) [Wynveen et al]. While it is unclear why the latter was not mentioned and its existence seems to have been completely overlooked by TMAC, it contains relevant information that supplements the initial report commissioned by TMAC.

<sup>179</sup> TMAC, 5 June 2017, *supra* note 153.

<sup>180</sup> *Ibid*; Wynveen et al, *supra* note 178; IFPI & Music Canada, *supra* note 125; Titan, *supra* note 123; Music Canada, “The Next Big Bang,, *supra* note 94.

### 3. BUT WHERE SHOULD DISPLACED MUSIC VENUES AND NIGHTTIME SPACES GO WHEN THERE IS NOWHERE LEFT?

While many of the music venues discussed above closed for good, others were displaced but able to find a new space—such as the infamous afterhours electronic music venue Comfort Zone which was displaced to make room for the parkade for a new mixed-use student oriented housing complex, and grassroots music venue Hideout, which was displaced by a Taco Bell replete with a liquor license. But with continued displacement, the barriers faced by opening and sustaining grassroots music venues and DIY spaces remain engaged, especially as the marginal and unwanted spaces in the city, old industrial land, and underused Employment Industrial Zones that used to be a refuge for these kinds of transgressive music, cultural, and community spaces are “retaken” by a city’s redevelopment projects and spaces become desirable and commodifiable for commercial redevelopment and to those able to and interested in acquiring property ownership in the area. Decreasing availability and affordability of subcultural music, dance, art, and performance is exacerbated by the lack of welcoming space within neighbourhoods, exemplified by NIMBY (Not-In-My-Backyard) sentiments, especially when a city’s legal frameworks—liquor licensing, zoning, noise legislation, and so on—do not effectively balance, let alone encourage, protect, or value, the interests of a city’s music venues and music communities. These types of sentiments within a neighbourhood have a tendency to eschew the inconvenience of welcoming or maintaining a music venue and music and dance (sub)cultural community with the idea that these spaces are better placed elsewhere, within someone else’s neighbourhood or space in the city.

Such a scenario played out during the 13 February 2017 TMAC meeting at City Hall which, as discussed above, had intended to focus on the rapid onslaught of music venue closures that took place at the beginning 2017 in order to discuss potential steps towards protecting these music venues and, at least, curb further losses. While many members of Toronto’s music community had been mobilized to attend the meeting, and have their voices heard through deputations, an unexpectedly large contingent of individuals also arrived to make deputations *against* the attempts to *reopen* one of Toronto’s historic music venues—The Matador, which had been closed for years.

While members of TMAC, as well as members of recently displaced music communities, tried to discuss how to halt the increase in lost music venues, a large portion of the meeting ironically wound up becoming monopolized by a galvanized group of individuals who spoke nearly consecutively and at great length and detail about how much they did not want the historic music venue to reopen in their backyard. That is, unless it were to operate more akin to a low-capacity event center, preferably without a liquor license, and with closing hours safely shy of midnight. The owner of The Matador was also in attendance—perhaps one of the motivating factors behind the attending group of detractors—but was there to provide a deputation that questioned the veracity of Toronto’s Music City strategy and commitment to solving the vanishing music venues problem when his efforts to reopen The Matador were consistently met with barriers and conditions via bureaucratic red tape, ongoing licensing and zoning issues, and the vocal protest of those who had moved into the area surrounding The Matador.<sup>181</sup> Given that

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<sup>181</sup> In seeking to reopen the club as a functioning dance and music and sometimes nighttime oriented space, the owner faces a conflict with the city as to whether or not he can successfully have the zoning status of legal non-conforming use grandfathered in for the Matador, since the building suffers from what can be seen as a gap in use and continuous operation between its sale in March 2010, subsequent vacant status, and its current renovations and

the Toronto Music Advisory Council had absolutely no role or power in the decision as to whether The Matador would ultimately open, the vocal attendance of those opposing The Matador's reopening remained entirely counterproductive, leading some TMAC members to become noticeably frustrated with the ongoing deputations against The Matador that provided no contribution to the principle agenda item on the table regarding how to better protect existing music venues.

As to the question of where music venues should ultimately go if displaced, at one point, well into the meeting when yet another public attendee began to speak out against The Matador, one TMAC member pointedly asked the speaker where nighttime music venues and their attendees should go. To this, the speaker responded that a good place for these people and spaces to relocate would be “down by the docks” or “over by the railroad on Dupont”—which caused muffled murmurs, raised eyebrows, and a few guffaws from the music community members in attendance. Recall that the area “down by the docks” that the speaker was referring to is where Government was recently displaced from and is the site of Toronto's large-scale waterfront redevelopment project,<sup>182</sup> so this area is no longer uninhabited. Additionally, other venues in the area have faced closure over noise complaints.<sup>183</sup> “Over by the railroad on Dupont” is Geary Avenue, where venues faced displacement due to noise complaints and zoning issues.

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plans to reopen. Otherwise, it will remain zoned as “commercial residential,” subject only to an application for rezoning of the property. Contrary to the Music City strategy, this rezoning application would present yet another barrier to the ten-year municipal legal and bureaucratic saga the venue has already faced in trying to reopen. *Planning Act*, *supra* note 132, s 34(9). But see *Emily (Township) v Johnson* (1981), 37 OR (2d) 623 at para 28, as McCaughey insists that his plans for The Matador always included, at least for a portion of the building, space for music/dancing events (see *e.g.* Jeff Gray, “The Fight of the Matador: A New Owner Struggles to Revive the Legendary Toronto Booze Can,” *The Globe and Mail* (13 May 2016), online: <[theglobeandmail.com/news/toronto/plans-to-revive-the-matador-torontos-worst-kept-secret-are-kicking-up-a-fuss/article30020947/](http://theglobeandmail.com/news/toronto/plans-to-revive-the-matador-torontos-worst-kept-secret-are-kicking-up-a-fuss/article30020947/)> [perma.cc/4GZU-9AFN] which is an important factual element that may play out in his favour (*Central Jewish Institute v Toronto (City of)*, [1948] SCR 101 at para 9; *O'Sullivan Funeral Home Ltd v Sault Ste Marie (City)*, [1961] OR 413 at para 13. See also Edward Keenan, “City in Need of That Old Matador Magic,” *thestar.com* (28 April 2017), online: <[thestar.com/news/gta/2017/04/28/city-in-need-of-that-old-matador-magic-keenan.html](http://thestar.com/news/gta/2017/04/28/city-in-need-of-that-old-matador-magic-keenan.html)> [perma.cc/3NAL-VZA4]; “Holding out Hope for a Music Hall,” *CityNews* (26 April 2017), online: <[citynews.ca/video/2017/04/26/video-holding-out-hope-for-a-music-hall/](http://citynews.ca/video/2017/04/26/video-holding-out-hope-for-a-music-hall/)> [perma.cc/X8N9-QM6L].

<sup>182</sup> See *e.g.* *Central Waterfront Secondary Plan*, *supra* note 10; *East Bayfront Precinct Plan* (2005), online: <[www1.toronto.ca/city\\_of\\_toronto/waterfront\\_secretariat/files/pdf/eb\\_precinct\\_plan\\_sm.pdf](http://www1.toronto.ca/city_of_toronto/waterfront_secretariat/files/pdf/eb_precinct_plan_sm.pdf)> [perma.cc/W8PM-K9AB]; Director, Community Planning, Toronto & East York District, “Lower Don Lands Official Plan Amendments and Keating Channel Precinct West Zoning By-Law – Final Report,” *Staff Report Action Required* (11 August 2010). See also Gene Desfor & Jennefer Laidley, eds, *Reshaping Toronto's Waterfront* (Toronto: University of Toronto Press, 2011).

<sup>183</sup> Venues like (formerly) The Docks/Sound Academy (currently Rebel), located “down by the docks” have been shut down in the past due to their noisy disruptive effects on neighbouring communities. The latter now only operates under the continued strict noise and licensing consequences placed upon it. In the mid- to late-2000s, Sound Academy, then known as The Docks, fought a series of well-publicized battles with residents of the relatively nearby Ward's Island over about ten years of noise complaints. While the club has increased its soundproofing in response and changed the hours its music is played on its patio, Ward's Island is nowhere near as close as the newly proposed mixed-use developments will be, such as the proposed redevelopment for the Victory Soya Mills (the same area where Toronto's infamous “Tent City,” home to hundreds of homeless individuals, was located from the late 1990s until their eviction by the then property owner Home Depot in 2002) (Saeed Hydaralli, “What is Noise? An Inquiry Into its Formal Properties” in Michael Goddard, Benjamin Halligan & Paul Hegarty, eds, *Reverberations: The Philosophy, Aesthetics and Politics of Noise* (London, UK: Continuum, 2012) 219 at 228-32; Nick Patch, “The Sound Academy has been Guttled to Serve You Better,” *thestar.com* (17 June 2016), online: <[thestar.com/entertainment/2016/06/17/the-sound-academy-has-been-guttled-to-serve-you-better.html](http://thestar.com/entertainment/2016/06/17/the-sound-academy-has-been-guttled-to-serve-you-better.html)> [perma.cc/465P-PTTD]; Egle Procuta, “In the City: The Sound and the Frustration,” *The Globe and Mail* (14 July

## VI. CONCLUSION

Not only must Toronto better synchronize its conflicting policies within which music in the city space must navigate, but the commodification of music culture and creativity for the purpose of city redevelopment and creative city status must be tempered with regard for those who are negatively affected, marginalized, or unheard within redevelopment processes and policymaking. While leisure activities are sometimes dismissed as the mundane or unimportant of everyday life, or something not necessarily vital to protect, this is one of the sites of faulty hierarchical valuation and devaluation of diverse, alternative, and transgressive iterations of cultural life. Culture, cultural spaces and practices, and leisure activities are domains that provide meaning to life in the city and where the fabric of urban society is woven.<sup>184</sup> The preservation of spaces of (sub)cultural practice that have a high use-value and community cultural wealth may be seen by some as an unnecessary and inconvenient nostalgia, but this is but one view. It remains important to also consider the views of those who occupy the space in question and those who derive meaning from the space—not just the views of the relationally dominant or those who place a lower value on someone else's (sub)cultural iteration. Where (sub)cultural spaces can exist on the margins of dominant society, they also represent spaces where those who identify with or have been pushed to the fringes of society “can find a space to articulate themselves.”<sup>185</sup> Dismissing the preservation value of these spaces dismisses the voices of those to whom these spaces are important, which flies in the face of an equal valuation of all iterations of culture and cultural practices in the city, and neglects an equality of differences amongst the diversities present in the dense urban cores of our cities.

An additional irony remains within the trend of creative city and culture-led strategies for urban redevelopment that may also serve as a warning for municipal legal and governance frameworks that fail to equally value, protect, and promote all iterations of culture, cultural practices, and cultural spaces to the detriment of iterations tending towards the unruly, the marginal, the alternative, and the non-dominant. When cities try to latch onto cookie cutter recipes of creativity and culture, the result is not necessarily a marketable uniqueness that will set them apart as a creative global city attracting the ideal creative individuals and sought-after tourist dollars. The result can also simply be an erosion of the uniqueness and diversity of a city's margins—leaving us only with a series of identically “diverse” and “creative” global cities

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2000), online: <[theglobeandmail.com/news/national/in-the-city-the-sound-and-the-frustration/article4166014/](http://theglobeandmail.com/news/national/in-the-city-the-sound-and-the-frustration/article4166014/)> [perma.cc/SJH2-B7MR]; Nicole Baute, “Island vs Club Feud Fizzles,” *thestar.com* (4 July 2008), online: <[thestar.com/news/gta/2008/07/04/island\\_vs\\_club\\_feud\\_fizzles.html](http://thestar.com/news/gta/2008/07/04/island_vs_club_feud_fizzles.html)> [perma.cc/8US4-PYLY]; Kevin Ritchie, “Rebel Resurrects Battle Over Noise on Toronto's Waterfront,” *NOW Toronto* (3 February 2017), online: <[nowtoronto.com/music/features/rebel-liquor-licence-waterfront-toronto](http://nowtoronto.com/music/features/rebel-liquor-licence-waterfront-toronto)>. See “Victory Soya Mills Silo Master Plan,” SvN (website), online: <[svn-ap.com/projects/victory-soya-mills-silo-master-plan/](http://svn-ap.com/projects/victory-soya-mills-silo-master-plan/)> [perma.cc/E4X8-UYAR]. For an excellent account of life in Tent City see Shaughnessy Bishop-Stall, *Down to This: Squalor and Splendour in a Big-City Shantytown* (Canada: Vintage Canada, 2005).

<sup>184</sup> See also Ernst & Young, “Creating Growth: Measuring Cultural and Creative Markets in the EU” (December 2014) at 7, online: <[ey.com/Publication/vwLUAssets/Measuring\\_cultural\\_and\\_creative\\_markets\\_in\\_the\\_EU/\\$FILE/Creating-Growth.pdf](http://ey.com/Publication/vwLUAssets/Measuring_cultural_and_creative_markets_in_the_EU/$FILE/Creating-Growth.pdf)> [perma.cc/XBU2-AULE].

<sup>185</sup> Chatterton & Hollands, *supra* note 25 at 204.

all full of high exchange-value potential, but void of spaces of high use-value and emptied of non-dominant iterations of community cultural wealth.<sup>186</sup>

Toronto's Music City development initiative is an example of one such creative city strategy that must do more to include music spaces and communities that may not fit neatly or conveniently into top-down strategies based on other cities. While documents are generated and Toronto's music assets are promoted, there is a simultaneous failing to meaningfully take note of, and more seriously consult, the voices of displaced music communities those that remain under threat of displacement. Even though Toronto's policies may hold up Austin, Texas as a shining example of a Music City, further investigation also reveals cracks in its Music City model, and the clash between use-value and exchange-value within creative city redevelopment frameworks.<sup>187</sup> While,

live music and the arts became resources of growth management by serving as a symbol of the city's "unique culture" in downtown redevelopment and as a defense against fears of homogenization and corporatization of the urban core ...[i]ronically, the success of these investments in attracting redevelopment has led to increasingly unaffordable living and work space for many artists and musicians in the center city.<sup>188</sup>

Similarly, in Toronto the closure or displacement of longstanding music venues have been brought about by a cocktail of zoning by-law amendments that result in heightened property taxes, or by other licensing issues surrounding noise and liquor, and so on.<sup>189</sup> Their replacement with mixed-use development projects, parking lots, and other commercially lucrative developments gradually edges out marginal gritty spaces of (sub)cultural practice and established use-value in the urban core of the city as these authentic bits that escape reification and commodification are instead simply replaced with cleansed space that maximize exchange-value potential. Nonetheless, tracing the developments of Toronto's Music City strategy and the attempts by the newly created TMAC to address the ongoing barriers that Toronto's music communities face show one important development: there is now a developing dialogue between the community and an established body that can eventually influence policymaking and the municipal legal complexes that ultimately govern music in the city. Finally, it is hoped that the current ways in which music, art, performance, and their numerous attached communities are treated by city regulatory frameworks will soon evolve to accommodate a Music City vision where a better balance can be struck between the creative interests of music venues and music generators, the economic development and tourism aspirations of the city, and the interests of residents and businesses that occupy the space surrounding precarious music and performance venues.

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<sup>186</sup> See also Zukin, *Naked City*, *supra* note 4 at 231.

<sup>187</sup> See *e.g.* Titan, *supra* note 123 at 79-80.

<sup>188</sup> Grodach, "City Image," *supra* note 128 at 100 [references omitted]. See also Zukin, *Naked City*, *supra* note 4 at 102.

<sup>189</sup> Grodach, "City Image," *supra* note 128 at 102.