

NOISE, DISPLACEMENT, AND JUSTICE IN DESIGNING URBAN LAW AND POLICY FOR THE NIGHT

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I. INTRODUCTION

The spatiotemporal acceptability of sound emitted at night in cities must be rethought within existing frameworks for nighttime urban law and governance as cities increasingly adopt 24-hour city models and gain interest in harnessing the development potential of the nighttime economy.¹ Waning societal expectations of a noisy day ac-

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1. See generally ANDY LOVATT, *The Ecstasy of Urban Regeneration: Regulation of the Nighttime Economy in the Transition to a Post-Fordist City*, in FROM THE

accompanied by a quiet night alongside the embrace of vibrant night spaces requires a greater acknowledgment and acceptance of those who do not keep traditional hours.²

The case of music spaces and venues that operate at night exemplifies an area in which a shift in legal treatment is needed. Specifically, a shift is necessary to balance the contribution such spaces provide to a city's nighttime economy and its cultural offerings with the realities of increased density and urban (re)development patterns near entertainment zones that abut with or contain residential housing which caters to daytime-oriented spatial use patterns.³ The resulting overlaps in spatiotemporal use patterns frequently result in noise complaints.⁴ In response, as this article will explore, some cities have begun to con-

MARGINS TO THE CENTRE: CULTURAL PRODUCTION AND CONSUMPTION IN THE POST-INDUSTRIAL CITY 141–68 (Justin O'Connor & Derek Wynne eds., 2017); SÉBASTIEN DARCHEN ET AL., ELECTRONIC CITIES: MUSIC, POLICIES AND SPACE IN THE 21ST CENTURY (2021) [hereinafter DARCHEN, ELECTRONIC CITIES]; Sébastien Darchen & Diane-Gabriel Tremblay, *The Local Governance of Culture-Led Regeneration Projects: A Comparison Between Montreal and Toronto*, 6 URB. RSCH. & PRAC. 140 (2013) [hereinafter Darchen, *The Local Governance*]. See also Sara Gwendolyn Ross, *Urban Law at Night: Night Mayors and Nighttime Urban Governance Strategies for Sustainable Urban Night Spaces and Spatiotemporal Equality*, 20 J. L. & SOC. DEVIANCE 21 (2020) [hereinafter Ross, *Night Mayors and Nighttime Urban Governance*].

2. See, e.g., A.L. Brown, *Soundscape Planning as a Complement to Environmental Noise Management*, INTERNOISE (Nov. 16–19, 2014), www.acoustics.asn.au/conference_proceedings/INTERNOISE2014/papers/p912.pdf. See generally MARCIA JENNETH EPSTEIN, *SOUND AND NOISE: A LISTENER'S GUIDE TO EVERYDAY LIFE* (2020). The “Soundscape Approach” shifts the focus from quantitative noise measurements to noise perception-based modeling and interdisciplinarity in studying the impact of auditory stimuli on individuals and communities.

3. LAAM HAE, *THE GENTRIFICATION OF NIGHTLIFE AND THE RIGHT TO THE CITY: REGULATING SPACES OF SOCIAL DANCING IN NEW YORK* (2014); SAEED HYDARALLI, *What Is Noise? An Inquiry into Its Formal Properties*, in REVERBERATIONS: THE PHILOSOPHY, AESTHETICS, AND POLITICS OF NOISE 219 (Michael Goddard et al. eds., 2012); PAUL CHATTERTON & ROBERT HOLLANDS, *URBAN NIGHTSCAPES: YOUTH CULTURES, PLEASURE SPACES AND CORPORATE POWER* 3 (2003); SARA ROSS, *LAW AND INTANGIBLE CULTURAL HERITAGE IN THE CITY* 112, 117–21 (2020) [hereinafter ROSS, *LAW AND INTANGIBLE CULTURAL HERITAGE*].

4. See CHATTERTON & HOLLANDS, *supra* note 3, at 5.

sider and/or apply forms of the agent of change principle and noise easement agreement framework.⁵

A common theme amongst such cities is their growing attention to the socioeconomic potential of the nighttime and the nightlife districts which operate during these hours.⁶ The use of the agent of change principle, or noise easement structure, is intended to prevent the displacement of existing sound and noise emitting nocturnal venues that endure noise complaints and can provide a mechanism for the equitable treatment of city residents who find a sense of home within nighttime spaces of music and culture.⁷ The spatial and cultural home fostered by these spaces, as well as the nightlife districts where they may be located, can shape residents' sense of belonging within in a city.⁸

This article will map local law and policy developments regarding nighttime noise and music in Toronto, Canada, within the context of international guiding frameworks for sustainable and equitable urban

5. The agent of change principle and noise easement agreement framework allocate the responsibility for noise management costs on the party proposing a change in land use and shields an existing venue from compliance costs and remedial measures related to the “agent of change,” which includes new residents, owners, or developers. *See, e.g.*, MUSIC ADVISORY COMM., MELBOURNE MUSIC STRATEGY 2014–17: A REVIEW OF THE REGULATORY FRAMEWORK RELATED TO LIVE MUSIC VENUES IN THE CITY OF MELBOURNE 13 (2014), <https://www.melbourne.vic.gov.au/SiteCollectionDocuments/review-regulatory-framework-live-music-venues.pdf>; SEAN MCARDLE ET AL., LIVE MUSIC AND THE ‘AGENT OF CHANGE’ PRINCIPLE 1 (2014), https://www.acoustics.asn.au/conference_proceedings/INTERNOISE2014/papers/p792.pdf.

6. *See generally* Andy Lovatt & Justin O’Connor, *Cities and the Nighttime Economy*, 10 PLAN. PRAC. RSCH. 127, 128 (1995); LOVATT, *supra* note 1; HAE, *supra* note 3; DARCHEN, ELECTRONIC CITIES, *supra* note 1; Darchen, *The Local Governance*, *supra* note 1. *See also* Ross, *Night Mayors and Nighttime Urban Governance*, *supra* note 1.

7. *See, e.g.*, ANNA WYNVEEN ET AL., NOT ZONED FOR DANCING: A COMPREHENSIVE REVIEW OF ENTERTAINMENT IN DOWNTOWN TORONTO 23 (2014), http://static1.squarespace.com/static/551ebc3ee4b038b5fc34d0b0/t/5520938ce4b0f588f5136b40/1428198284405/SPREADSsmallPages_Not+Zoned+For+Dancing_A+Comprehensive+Review+of+Entertainment+in+Downtown+Toronto+Pages.pdf. For a related discussion, see also JOHN SCHOFIELD & ROSY SZYMANSKI, *Sense of Place in a Changing World*, in LOCAL HERITAGE, GLOBAL CONTEXT: CULTURAL PERSPECTIVES ON SENSE OF PLACE 1, 2–4 (2011).

8. *See supra* note 7 and accompanying text.

development. Specific focus will be given to the agent of change principle and noise easement agreement framework as tools for urban law and policy that better respond to the realities of a 24-hour city. Then, it is argued that such tools can be used to preserve tangible and intangible cultural assets such as nighttime music venues, music performance, and the ability of urban denizens to participate in nighttime music culture. In doing so, this article will draw briefly on the application of the agent of change principle and noise easement agreements in the United Kingdom, which is placed in the broader context of discourse exploring the differing treatment of participants within nighttime culture. It is argued that the inconsistent treatment of participants within the nightlife industry and nightlife spaces should be considered in the development and implementation of local sustainable urban development policy that better mirrors guiding international frameworks for sustainable and equitable urban development.⁹

II. INTERNATIONAL SUSTAINABLE URBAN DEVELOPMENT FRAMEWORKS AND THE ROLE OF CULTURAL SPACES AND CULTURAL ACTIVITIES

International organizations such as UN-Habitat (the United Nations Human Settlement Program) advocate for an “urban paradigm shift” to drive progress towards a better future and higher quality of life in our increasingly urbanized world.¹⁰ This shift envisions increased attention to urban culture, diversity, cultural heritage, inclusion, identity, and belonging.¹¹ The beauty of urban culture is in its endlessly varied manifestations, and venues provide the requisite

9. See, e.g., G.A. Res. 71/256, New Urban Agenda (Dec. 23, 2016) [hereinafter New Urban Agenda]; United Nations Educational, Scientific and Cultural Organization [UNESCO], *Recommendation on the Historic Urban Landscape* (Nov. 10, 2011) [hereinafter *HUL Recommendation*]; UN-HABITAT, *International Guidelines on Urban and Territorial Planning* (2015) [hereinafter UN-HABITAT, *International Guidelines*], https://www.uclg.org/sites/default/files/ig-utp_english.pdf.

10. New Urban Agenda, *supra* note 9, ¶¶ 15(c)(ii), 41, 48, 97.

11. See, e.g., UN-HABITAT, *The Strategic Plan 2020-2023*, at 75, ¶¶ 60, 71 (2019) [hereinafter UN-HABITAT, *Strategic Plan*], unhabitat.org/sites/default/files/documents/2019-09/strategic_plan_2020-2023.pdf.

physical space in a city for cultural activities, cultural participation, and expression to take place.¹²

International standard-setting frameworks for local, sustainable urban development policy, like the UN-Habitat’s 2016 *New Urban Agenda*, highlight the importance of a city’s social and cultural dimensions and the requisite economic considerations that should be explored to harness a city’s sustainable development potential.¹³ Steps towards these goals include safeguarding and growing a city’s tangible and intangible cultural assets, which can consist of various cultural preferences, practices, spaces, and activities including music, performance, and art venues as well as a city’s cultural and creative industries more broadly.¹⁴

Urban law and local policy, ordinances, and bylaws play an integral role in localizing the inclusion of culture in sustainable urban development policy. For example, as the *New Urban Agenda* suggests,

[Including] culture as a priority component of urban plans and strategies in the adoption of planning instruments, including master plans, zoning guidelines, building codes, coastal management policies and strategic development policies that safeguard a diverse range of tangible and intangible cultural heritage and landscapes, and will protect them from potential disruptive impacts of urban development.¹⁵

Suggested measures might consist of “reviewing building norms and their enforcement, introducing or reinforcing planning restrictions in locations of risk ... reviving increasingly targeted cultural herit-

12. See, e.g., RAY OLDENBURG, *THE GREAT GOOD PLACE: CAFES, COFFEE SHOPS, BOOKSTORES, BARS, HAIR SALONS AND OTHER HANGOUTS AT THE HEART OF A COMMUNITY* (2d ed. 1997); MIRANDA CAMPBELL, *OUT OF THE BASEMENT: YOUTH CULTURAL PRODUCTION IN PRACTICE AND POLICY* (2013); KATHERINE N. RANKIN ET AL., *Toronto’s Changing Neighborhoods: Gentrification of Shopping Streets*, in *GLOBAL CITIES, LOCAL STREETS: EVERYDAY DIVERSITY FROM NEW YORK TO SHANGHAI* 140, 154–156, 159, 161 (Sharon Zukin, Philip Kasinitz & Xiangming Chen eds., 2013).

13. See, e.g., *New Urban Agenda*, *supra* note 9, ¶¶ 10, 13, 15, 24, 26, 37, 38. See also UN-HABITAT, *International Guidelines*, *supra* note 9, Principle 6(k).

14. *New Urban Agenda*, *supra* note 9, ¶¶ 10, 13(b), 14(a), 26, 37, 38, 40, 60, 97; UN-HABITAT, *Strategic Plan*, *supra* note 11, ¶¶ 60, 71.

15. *New Urban Agenda*, *supra* note 9, ¶ 24; UN-HABITAT, *Strategic Plan*, *supra* note 11, ¶ 71.

age.”¹⁶ Further, as a toolkit to operationalize the sustainable urban development objectives of the *New Urban Agenda* within local planning policies, the UN’s *International Guidelines on Urban and Territorial Planning* notes that encouraging indoor and outdoor cultural activities such as “concert halls” and “musical parades” is important in “recognizing that the development of urban cultures and respect for social diversity are part of social development and have important spatial dimensions.”¹⁷ Accomplishing the localization of these objectives requires initiating effective urban policy and governance including within “the content of planning instruments such as plans, designs, regulations, by-laws and rules.”¹⁸

III. SUSTAINABLE URBAN DEVELOPMENT, THE 24-HOUR CITY, NIGHT, SOUND, AND MUSIC

The cultural assets and creative industries present in cities are shaping the new development strategies of numerous cities as they embrace their vibrant cultural spaces and the local enjoyment of these spaces and activities.¹⁹ Music venues in particular are frequently char-

16. UN-HABITAT, *Strategic Plan*, *supra* note 11, ¶ 114.

17. UN-HABITAT, *International Guidelines*, *supra* note 9, Principle 6(k).

18. *Id.* Principle 5(b).

19. For example, the burgeoning interest in establishing a “night mayor” or “nightlife director” position in numerous urban centers of various sizes, such as New York, Sydney, Dublin, Paris, California, Austin, Iowa City, Pittsburgh, Edmonton, and others. *See, e.g.*, Ross, *Night Mayors and Nighttime Urban Governance*, *supra* note 1; Marissa J. Lang, *From Rats to Noise Complaints, City’s New Nightlife Director Takes on DC After Dark*, WASH. POST (Dec. 29, 2018), https://www.washingtonpost.com/local/from-rats-to-noise-complaints-citys-new-nightlife-director-takes-on-dc-after-dark/2018/12/28/18a71230-09ff-11e9-88e3-989a3e456820_story.html; Marissa J. Lang, *Want to Deal with DC’s After-Hours Noise? The District is Looking for its First ‘Night Mayor’*, WASH. POST (Oct. 18, 2018), https://www.washingtonpost.com/local/people-are-excited-about-it-applicants-vie-to-become-dcs-first-director-of-nightlife/2018/10/18/b070d67a-d21c-11e8-83d6-291fceed2ab1_story.html; Jeff Weiner, *Orlando Hires ‘Night Manager’ to Oversee Nightlife Scene*, ORLANDO SENTINEL (July 28, 2017), <https://www.orlandosentinel.com/news/os-night-manager-downtown-orlando-20170726-story.html>; Natanael Rother & Jenesa Jeram, *Living After Midnight: For a Better Night-Time Environment*, N. Z. INITIATIVE (Aug. 20, 2019), <https://www.nzinitiative.org.nz/assets/Uploads/Report-summary-Living-after-Midnight3.pdf>. Toronto has been particularly interested in harnessing the night mayor position over the years such that this objective has appeared in a number of Toronto’s reports, strategic development reports, cultural reports, motions

acterized by an interconnectedness with the nightlife of the city in question. As but one example, Toronto's recent *Nightlife Action Plan* illustrates the interest many cities are beginning to dedicate to their nighttime venue assets and accompanying nighttime activities.²⁰

Whether this nighttime activity consists of work, fun, or leisure time, the nocturnal soundscapes of a city that are characterized by music at night can generate conflict between those with differing spatio-temporal life patterns.²¹ Here, a risk of displacement typically arises due to conduct that is inconsistent with dominant city norms about the emission, type, and location of acceptable noise.²² More broadly, as cities turn to their underexplored and often previously ignored nighttime cultural assets, a central question remains around how to create urban law and policy that fits the needs of spaces that have habitually faced displacement.

As noted above, the *New Urban Agenda* emphasizes balancing stakeholder interests within the overlapping spaces of the city in a manner that avoids inequality, marginalization, and gentrification and preserves cultural heritage.²³ Its framework seeks to strike this balance while also remaining cognizant of housing densification needs and managing urban sprawl.²⁴ Achieving this balance requires context-sensitive local law and policy that addresses the spatiotemporal clash-

to City Council, and staff instructions. See, e.g., CITY OF TORONTO, TORONTO NIGHTLIFE ACTION PLAN (2019) [hereinafter TORONTO NIGHTLIFE ACTION PLAN], <http://www.toronto.ca/legdocs/mmis/2019/ec/bgrd/backgroundfile-134955.pdf>; RESPONSIBLE HOSPITALITY INSTITUTE, TORONTO SOCIABLE CITY AT NIGHT: HOSPITALITY ZONE ASSESSMENT (2019), <https://www.toronto.ca/legdocs/mmis/2019/ec/bgrd/backgroundfile-134957.pdf>; Lauren Pelley, *City Officials, Business Owners Want to Beef Up Toronto's Overnight Economy*, CBC (Nov. 10, 2019), <https://www.cbc.ca/news/canada/city-officials-business-owners-want-to-beef-up-toronto-s-overnight-economy-1.5350127>.

20. TORONTO NIGHTLIFE ACTION PLAN, *supra* note 19.

21. See, e.g., HAE, *supra* note 3; Davina Cooper, *Far Beyond "the Early Morning Crowing of a Farmyard Cock": Revisiting the Place of Nuisance Within Legal and Political Discourse*, 11:1 SOC. & L. STUD. 5 (2002).

22. See, e.g., DAVID NOVAK, *Noise*, in KEYWORDS IN SOUND 125, 133 (David Novak & Matt Sakakeeny eds., 2015).

23. See *supra* notes 10, 13 and accompanying text.

24. See generally *New Urban Agenda*, *supra* note 9, ¶ 15(a), (c)(i)–(ii), 81–82, 97.

es of sound and noise that challenge the coexistence of music venues within newly densifying zones and mixed-use city developments.²⁵

If a 24-hour city is to exist in an equitable manner, divergent views on acceptable sound and noise pose a significant challenge.²⁶ Policies that balance divergent stakeholder interests pertaining to urban noise and different patterns of day/night use must better address the night to complement current policies that have traditionally managed the daytime hours such as, for example, the traffic of people commuting to and from the standard nine-to-five work day, pre- or post-work errands, school, leisure activities, third places, and other events, obligations, and activities.²⁷ Patterns and the general spatial use and occupation of a city shift during the transition from day to night as dominant nine-to-five work hours end and people congregate to eat, visit, recreate, or participate in culture or art activities. During later hours of the night, people can be seen gathering to dance or attend live entertainment or meet for late dinner, snacks, or drinks. Even later hours of the night (or the following day's early hours) might be

25. *Id.* ¶ 97. See also Sharon Zukin, Scarlett Lindeman & Laurie Hudson, *The Omnivore's Neighborhood? Online Restaurant Reviews, Race, and Gentrification*, 17 J. CONSUMER CULTURE 459 (2015).

26. See, e.g., CARL GRODACH, *City Image and the Politics of Music Policy in the "Live Music Capital of the World,"* in THE POLITICS OF URBAN CULTURAL POLICY: GLOBAL PERSPECTIVES 98 (Carl Grodach & Daniel Silver eds., 2013); CMTY. SERV. COMM., CITY OF MELBOURNE POLICY FOR THE 24 HOUR CITY (Sept. 9, 2008) [hereinafter CITY OF MELBOURNE POLICY], https://www.melbourne.vic.gov.au/about-council/committees-meetings/meeting-archive/MeetingAgendaItemAttachments/111/1959/CSC_53_20080909.pdf. See also SILVIA RIEF, CLUB CULTURES: BOUNDARIES, IDENTITIES, AND OTHERNESS (2009) [hereinafter RIEF, CLUB CULTURES]; Paul Chatterton, *Governing Nightlife: Profit, Fun and (Dis)order in the Contemporary City*, 1:2 ENT. L. 23 (2002). See generally EPSTEIN, *supra* note 2.

27. See, e.g., GEN. MANAGER OF ECON. AND CMTY. DEV. COMM., REPORT FOR ACTION: STRENGTHENING TORONTO'S NIGHTTIME ECONOMY EC6.8 [hereinafter REPORT FOR ACTION], <https://www.toronto.ca/legdocs/mmis/2019/ec/bgrd/backgroundfile-134446.pdf>;

B.C., *From Dusk 'til Dawn: Arbitration, Cultivating Culture and the Other Stuff of Night Mayors*, THE ECONOMIST (Oct. 24, 2016), <https://www.economist.com/prospero/2016/10/24/arbitration-cultivating-culture-and-the-other-stuff-of-night-mayors>; Dan Fumano, *Nighttime Economy—Vancouver Looks at 'The Other 9 to 5'*, VANCOUVER SUN (May 24, 2019), <https://vancouversun.com/news/local-news/dan-fumano-nighttime-economy-vancouver-looks-at-the-other-9-to-5>. See also Ross, *Night Mayors and Nighttime Urban Governance*, *supra* note 1. For an example of "third places," see OLDENBURG, *supra* note 12.

characterized by visits to afterhours spaces or restaurants which provide late night/early morning food options. These use patterns of the city are further varied by the many individuals who work during the night or begin their worknight after everyone has left a space in order to ready the space for the following day of use.²⁸

The notion of the “24-hour city” is frequently associated with cities seeking to capitalize on their nighttime economy and the economic assets presented by the consumption of and employment within nighttime cultural spaces.²⁹ This 24-hour model gains popularity as cities realize that daytime-centric governance will no longer suffice when the nighttime of a city becomes full of sanctioned and economically lucrative activity for arts, culture, and tourism. Yet, simply applying daytime law and policy to the nighttime context results in an ill-fitting match.³⁰ The vision of a 24-hour city ideally recognizes the clashing of interests between the daytime and nighttime experiences of a city and between urban stakeholders who may not be equally invested in both. The nighttime noise that is acceptable or meaningful to one person could be intolerable to another. One person’s enjoyment of the nighttime sounds of thumping bass spilling from the doors or walls of a music venue and the laughter and conversations of patrons as they exit the venue might be the bane of another’s person’s sleepless night and exhausting early next morning at work. In contrast, the bustling daytime noise of the morning commute, the cacophony of garbage trucks, a construction project, a neighbour’s vacuuming, or the noise emerging from a local coffee shop might result in another person’s sleepless day and tired night at work. The two seemingly contrary positions or experiences of the day/night continuum for an individual in a city also shifts over the course of the week and over the course of

28. CITY OF MELBOURNE POLICY, *supra* note 26, at 3.

29. REPORT FOR ACTION, *supra* note 27; Sound Diplomacy & Andreina Seijas, *A Guide to Managing Your Night Time Economy*, ACADEMIA (2018), https://www.academia.edu/36858181/A_Guide_to_Managing_your_Night_Time_Economy; B.C., *supra* note 27; Fumano, *supra* note 27; DARCHEN, ELECTRONIC CITIES, *supra* note 1. See generally JESSICA REIA, *Can We Play Here? The Regulation of Street Music, Noise and Public Spaces After Dark*, in NOCTURNES: POPULAR MUSIC AND THE NIGHT 163 (Giacomo Botta & Geoff Stahl eds., 2019); Pelley, *supra* note 19; Ross, *Night Mayors and Nighttime Urban Governance*, *supra* note 1.

30. See *supra* note 29 and accompanying text.

life as schedules fluctuate, jobs and careers change, housing circumstances alter, and relationships and family statuses evolve.

For music venues, the complaint spectrum for nighttime music may also shift over the course of the music venue's life in a city as, for example, additional housing developments or types of development might create the possibility of greater perceived disruption.³¹ Alternatively, a venue might undergo a shift due to the changing preferences of nearby residents regarding nightlife in their neighbourhood, acceptable sound, and their choice or ability to relocate between neighborhoods, which can then also influence a city's response to and available mechanisms for engaging with noise complaints in a neighbourhood.³²

Regardless of the sociocultural or economic value of music venues and the equitable treatment of communities that flourish within these spaces, the very existence of music venues, their sound systems, and their performers will inevitably produce sound alongside the noise generated as attendees arrive at the venue, congregate in line, enjoy the show, and leave. All of these factors together can, over time, create sound levels that exceed a community's shifting standards for or perceptions of acceptable nearby sound and noise. The social interpretation of noise and sound, however, can also reveal realities about relations of power in a municipal space such as, which spatiotemporal practices are permitted, which are not, the contexts of production and reception of sound, and which groups in society are ultimately affected by spatiotemporal-based noise regulation.³³ These dynamics are amplified by the complexities of human sensitivity to noise and perceptions of what falls within the range of tolerable, acceptable, dis-

31. See, e.g., ROSS, LAW AND INTANGIBLE CULTURAL HERITAGE, *supra* note 3, at 199; RIEF, CLUB CULTURES, *supra* note 26, at 36; Matthew Burke & Amy Schmidt, *How Should We Plan and Regulate Live Music in Australian Cities? Learnings from Brisbane*, 50:1 AUSTL. PLANNER 68 (2013); Wynveen, *supra* note 7. See generally Sara Ross, *Causing a Racket: Unpacking the Elements of Cultural Capital in an Assessment of Urban Noise Control, Live Music, and the Quiet Enjoyment of Private Property*, 1 QUIET CORNER INTERDISC. J. 35 (2016) [hereinafter Ross, *Causing a Racket*].

32. See, e.g., HAE, *supra* note 3.

33. NOVAK, *supra* note 22, at 126. See also Michael Mopas, *Howling Winds: Sound, Sense, and the Politics of Noise Regulation*, 34 CAN. J. L. & SOC. 307, 308 (2019); A.L. Brown, *supra* note 2 (providing an example of sound perception-based modeling and the soundscape approach to noise and sound); EPSTEIN, *supra* note 2.

turbing, or annoying sound.³⁴ For example, independent of sociocultural variances, the human auditory system is less sensitive to single tones than it is to multi-tonal sounds and complex noise, which is difficult to capture within noise measurement processes.³⁵

IV. THE MECHANICS OF THE AGENT OF CHANGE PRINCIPLE, NOISE EASEMENTS, AND MUSIC VENUES

Although the agent of change principle and noise easements are relatively new legal and policy planning tools, they have a recent history of use in countries such as the United Kingdom where they have been used to navigate the complexities of preserving existing music venues and surrounding urban (re)development pressures.³⁶ Their use within the United Kingdom, for example, illustrates how the agent of change principle and noise easements can be applied as comparatively novel planning law and policy concepts.³⁷ As UK Labour MP, John Spellar, described when introducing his Agent of Change Bill to the House of Commons:

This Bill is designed to protect existing music venues from closure or crippling cost arising from the development of new residential properties in their vicinity, especially over questions of noise.

...

I accept that there is a variety of reasons for the decline in venues, but many relate to changes in the neighbourhood, increasingly when redundant commercial or industrial premises are converted to residential, or are knocked down and rebuilt, or as empty sites are developed. Of course, much of that is very welcome. It is part of the regeneration of our inner cities, restoring their historic vibrancy and creating much-needed homes. However, it can sometimes lead to the loss of what makes parts of those areas attractive in the first

34. Michael Lotinga et al., *Music Venue Noise: A Development Planning Case-Study Examining the Application of the 'Agent of Change' Principle, a Novel Legal Mechanism, and Noise Control Design Issues*, ACADEMIA (2019), https://www.academia.edu/44133550/Music_venue_noise_a_development_planning_case_study_examining_the_application_of_the_Agent_Of_Change_principle_a_novel_legal_mechanism_and_noise_control_design_issues. For further examples on the sound-scape approach, see also Brown, *supra* note 2; EPSTEIN, *supra* note 2.

35. Lotinga, *supra* note 34.

36. See *infra* note 38 and accompanying text.

37. *Id.*

place, especially to younger residents. Incidentally, that applies not just to music venues but to the wider fabric of inner-city life, and there are important questions as to how we preserve the vibrancy and diversity of city life more generally across our main conurbations.

My short Bill is a modest and focused measure that would adopt the principle of agent of change into planning law. That basically means that when buildings are converted to residential use or a new development is put up, the onus is on the developer—not the venue—to ensure that the new dwellings are protected from factors, particularly noise, that could be held to affect their general amenity and enjoyment.³⁸

The agent of change principle may be particularly useful as an urban law, planning, and policy tool that works to include and safeguard the culture and heritage inherent within music venues in urban neighbourhoods experiencing changes in land use, zoning, gentrification processes, and shifting noise expectations.³⁹ Within these processes, previously less desirable, less “hip” parts of the city, such as former industrial districts or socioeconomically marginalized neighbourhoods become attractive for mixed-use redevelopment and rezoning by either introducing residential zoning or increasing housing density in the area—commonly through the construction of condominium or strata property.⁴⁰ In these cases, the newly introduced land uses are frequently more “sensitive” than pre-existing surrounding or proximate

38. 8–19 Jan. 2018, *HC Deb* (2018) Col. 330 (U.K.).

39. See TORONTO MUSIC ADVISORY COMMITTEE (TMAC), NOISE BYLAW RECOMMENDATIONS 2, 8 (2015) [hereinafter TMAC, *Noise*], www.toronto.ca/legdocs/mmis/2016/ma/bgrd/backgroundfile-92019.pdf.

40. See, e.g., Ute Lehrer & Jennefer Laidley, *Old Mega-Projects Newly Packaged? Waterfront Redevelopment in Toronto*, 32 INT’L. J. URB. REG’L RSCH. 786 (2008); Ute Lehrer & Thorben Wieditz, *Condominium Development and Gentrification: The Relationship Between Policies, Building Activities and Socio-Economic Development in Toronto*, 18 CAN. J. URB. RSCH. 140, 141–44 (2009); Ryan K. James, *From ‘Slum Clearance’ to ‘Revitalisation’: Planning, Expertise and Moral Regulation in Toronto’s Regent Park*, 25 PLAN. PERSP. 69, 71 (2010); Ute Lehrer et al., *Reurbanization in Toronto: Condominium Boom and Social Housing Revitalization*, 46 THE PLANNING REV. 81 (2010). See also SHARON ZUKIN, *NAKED CITY: THE DEATH AND LIFE OF AUTHENTIC URBAN PLACES* (2010); Douglas C. Harris, *Condominium and the City: The Rise of Property in Vancouver*, 36 L. & SOC. INQUIRY 649, 695 (2011).

uses. Thus, the agent of change principle can be utilized to require the party introducing a new, more sensitive form of land use to manage and mitigate the results of this change.⁴¹ For example, the noise from a longstanding nighttime music venue may negatively impact a new residential development that does not feature appropriate soundproofing or provide advance disclosure to incoming owners and/or occupants of pre-existing noise, which places the various affected stakeholders—the music venue owner and/or operator, the property developer, and new residents—in a situation where differing temporal norms and policies for sound and life in a city must be negotiated and balanced.

The agent of change principle is one example of the kind of urban planning law compatibility mechanism called for by the *New Urban Agenda*.⁴² While nighttime hours usually define the temporal norms for sound emission from a music venue, these same hours can simultaneously carry an expectation of silence for spatially proximate residential occupants.⁴³ The premise of the agent of change principle is to protect existing, sound-emitting venues from displacement due to noise complaints from an incoming property owner or sensitive occupant, even if the sound emission may take place at night, might be technically classified as a nuisance, or contravenes municipal noise

41. TMAC, *Noise*, *supra* note 39. While a claimant who has “come to the nuisance” may be accounted for in a court’s assessment of a noise/nuisance matter, see for example *Lawrence v. Fen Tigers* [2011] EWHC (QB) 360, the agent of change principle is designed to effectively account for and protect an originate occupant within the neighbourhood. See also Stephanie Chalkley-Rhoden, *Developers Required to Pay for Sound-Proofing Against Live Music Venues Under New Planning Principle*, ABC NEWS (Aug. 3, 2014), <https://www.abc.net.au/news/2014-08-04/live-music-sound-proofing-law-change-in-victoria/5646570>; Gwynn Mapp, *The Agent of Change Principle, Noise From Music Venues and Recent Case Law*, NOISEWISE (Apr. 28, 2015), www.noisewise.com [<https://web.archive.org/web/20171224214012/http://www.noisewise.com/the-agent-of-change-principle-noise-from-music-venues-and-recent-case-law>]; MUSIC VICTORIA, MUSIC INDUSTRY POSITION PAPER—THE CASE FOR REGULATORY REFORM (2012), musicvictoria.com.au/assets/Documents/Music_Victoria_position_paper_Li.pdf [https://web.archive.org/web/20130411062922/musicvictoria.com.au/assets/Documents/Music_Victoria_position_paper_Li.pdf]; ROSS, LAW AND INTANGIBLE CULTURAL HERITAGE, *supra* note 3, at 211.

42. See, e.g., *New Urban Agenda*, *supra* note 9, ¶ 24.

43. ROSS, LAW AND INTANGIBLE CULTURAL HERITAGE, *supra* note 3, at 211.

bylaws.⁴⁴ Through the application of the agent of change principle, owners or occupants of the new residences are restricted in their ability to make noise complaints and, perhaps more importantly, developers have the onus of mitigating pre-existing noise levels between the neighbourhood and longstanding music venues through means such as the implementation of sufficient soundproofing within the new development rather than this onus being placed on the music venue.⁴⁵ As a result, the agent of change principle can work to curb the displacing effects that noise complaints stemming from the sound emissions of a music venue can have on longstanding or historic venues neighboring newly constructed residential properties in a manner that is responsive to the *New Urban Agenda's* emphasis on balancing stakeholder interests while avoiding gentrification and displacement.⁴⁶

Through the application of the agent of change principle, conflicting spatiotemporal uses of proximate urban spaces—such as newly present residential communities and the sound amplification realities of a longstanding music venue—can be aligned in a manner that avoids or mitigates displacement and is also mindful of neighbourhood power dynamics and the context within which the conflict takes place. Rather than forcing the pre-existing venue to bear the responsibility and cost of new soundproofing for pre-existing noise emission levels and sound systems, an incoming developer bears the responsibility and costs of noise mitigation. The developer also assumes the burden of disclosing the existing noise levels affecting a new development or property. Incoming property owners and residents are then considered to have made the decision to purchase or move into the property with knowledge of the pre-existing noise levels.⁴⁷

As a corollary, pre-existing music venues are unlikely to be able to unilaterally increase sound emission levels, such as purchasing a different sound system, without introducing measures to mitigate the increased noise experienced by surrounding property owners and oc-

44. TMAC, *Noise*, *supra* note 39. See also Chalkley-Rhoden, *supra* note 41; ROSS, LAW AND INTANGIBLE CULTURAL HERITAGE, *supra* note 3, at 211.

45. See also Sara Ross, *Protecting Urban Spaces of Intangible Cultural Heritage and Nighttime Community Subcultural Wealth: A Comparison of International and National Strategies, The Agent of Change Principle, and Creative Placekeeping*, 7 W. J. L. STUD. 1, 17 (2017) [hereinafter Ross, *Protecting*].

46. *New Urban Agenda*, *supra* note 9, ¶ 97.

47. Ross, *Causing a Racket*, *supra* note 31, at 47.

cupants. Further, new sound-emitting, nighttime music venues will face the same “agent of change” approach to balancing conflicting interests, existing property uses, and the character of a neighbourhood when entering, or proposing to enter, a neighbourhood. This approach to balancing conflicting urban spatiotemporal stakeholder interests illustrates how the “urban paradigm shift” and integrated, sustainable development framework described by the *New Urban Agenda* can be locally incorporated in a manner that also recognizes the social, economic, and environmental dimensions implicated.

The practical outcome of the agent of change principle can be envisioned (or justified) in property law terms as similar to a noise easement. Generally, an easement provides a dominant tenement the benefits of a right of use or access to (or through) an adjacent or nearby servient tenement.⁴⁸ The servient property, property owner, or resident of this property burdened by the easement must permit the use granted in the easement.⁴⁹ Where landownership consists of a bundle of rights, it can be divided between, for example, two parcels of property (two tenements) such that the rights of one property owner might increase to the detriment of and encroachment upon the other tenement or parcel of property.⁵⁰ The encroaching property is termed the “dominant” tenement.⁵¹ Here, through the application of an easement, the dominant tenement might benefit from the right to access or use part of the servient tenement.⁵² The (positive) easement, in this case, usually grants the dominant tenement the ability to infringe upon the rights of the servient tenement in a manner that limits the rights of the servient tenement but benefits the dominant tenement.⁵³

The typical example of an easement that might be used in a first-year property law class is that of a “right of way.” An in-class PowerPoint slide illustrating this might show a beachfront property with one house built along the water and another house on an adjacent piece of property located behind the waterfront property. The slide might show

48. See, e.g., BRUCE ZIFF, *PRINCIPLES OF PROPERTY LAW* 420–25 (7th ed. 2018).

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

two docks—one belonging to the waterfront property owner and one belonging to the house behind the waterfront property. The following slide would then show a path through the waterfront property: that path is the “right of way” that permits access from the non-waterfront property to the dock. Instead of pathways, beach access, and docks, a noise easement pertains to sound, or noise, from a music venue that passes through and over another’s property. Here, a deed of easement of noise operates along the same lines as an easement where the noise emitted from a dominant parcel of land can pass over or through the servient piece of land to the benefit of the dominant property.⁵⁴ When a noise easement is established in favour of a music venue as the dominant tenement, this means that whether or not the noise might otherwise be considered a nuisance, noise can legally continue to pass over the new development, which is burdened as the servient tenement with this right-of-way for the passage of noise over and through it as the servient property.⁵⁵ As a result, this curbs the ability of new residents to lodge noise complaints pertaining to the noise permitted by the easement such that the result is functionally similar to the application of the agent of change principle.

Importantly, since easements exist in perpetuity and “run with the land,” a noise easement for the emittance of noise from a dominant tenement music venue remains as an encumbrance on the title to the servient tenement (the newly built property or “agent of change”) despite any future transfer or sale of the property. Thus, the new owner of the servient tenement lacks recourse to curb property right incursions included in the noise easement agreement. Adopting the agent of change principle for application within local planning law and policy operates similarly.

A. Noise Easement Agreement Applied

One prominent example of the successful application of a noise easement agreement within the UK used to prevent the displacement of a pre-existing late night music venue in a neighbourhood undergoing new development is the case of the Ministry of Sound. The Minis-

54. *Id.* at 420–25.

55. Martin Dixon, *The Sound of Silence: Easements to Make a Noise*, CONVEYANCER & PROP. L. 79, 79–80 (2014). See generally *Lawrence v. Fen Tigers* [2011] EWHC (QB) 360 (Eng.).

try of Sound is a South London electronic dance music (“EDM”) nightclub that opened in 1991 and operated out of an old bus garage in a “rundown” part of the city.⁵⁶ At first, the club operated with a no-alcohol license and was only discoverable to those with pre-existing knowledge of house music or the resident DJs of that time.⁵⁷ However, it quickly became known for its early role in providing a permanent home for house music, its devoted attendees, and as an important space for DJs to perform and develop their craft.⁵⁸ The Ministry of Sound remains known for its prioritization of the sound experience of its attendees, its music quality, and its accompanying top-notch sound system.⁵⁹

However, like many other venues struggling to sustain their space in light of increasing development pressures in underused industrial zones or otherwise marginalized neighbourhoods, the Ministry of Sound feared displacement. The club’s location was ripe for mixed-use development proposals, and the planning application for the redevelopment of a nearby 41-story office building tower into a new residential building was a particular source of concern for the Ministry of Sound as it predicted inevitable conflict with incoming residents related to its sound emissions, the noise generated by its attendees, and its 24-hour operating license, which would all likely result in an uptick in noise complaints.⁶⁰ The new development was ultimately allowed to proceed on the condition that soundproofing features would be included—such as acoustic glazing and partly sealed winter gardens instead of fully open balconies—to account for the existing sound emission

56. *Dance Music History: Ministry of Sound*, IBIZA SPOTLIGHT (Feb. 8, 2011) [hereinafter *Dance Music History*], www.ibiza-spotlight.com/night/reviews/2011/dance_music_history_ministry_of_sound_i.htm.

57. Jochan Embley, *Ministry of Sound: Everything you need to know about the London Club*, EVENING STANDARD (Feb. 12, 2019), www.standard.co.uk/reveller/clubbing/ministry-of-sound-london-dress-code-elephant-and-castle-a4060766.html.

58. See, e.g., *Dance Music History*, *supra* note 56; Jessica Lone Summers, *A Brief History of Ministry of Sound*, READER’S DIGEST (Feb. 4, 2019), www.readersdigest.co.uk/culture/music/a-brief-history-of-ministry-of-sound; Embley, *supra* note 57.

59. See *supra* note 58.

60. See, e.g., Kiran Randhawa, *Ministry of Sound in Last Ditch Plea to Avoid Threat of Closure*, EVENING STANDARD (Nov. 6, 2013), www.standard.co.uk/news/london/ministry-of-sound-in-last-ditch-plea-to-avoid-threat-of-closure-8920967.html.

levels from the Ministry of Sound.⁶¹ The mandatory inclusion of this type of sound insulation and acoustic protection are examples of what can be expected in development proposals for zones with pre-existing sound-emitting music venues where the agent of change principle is introduced within local planning policies for the zone in question.

Moreover, to have the development approved, the developer entered into an easement agreement with the Ministry of Sound to ensure the legal protection of the Ministry of Sound's existing noise emission levels.⁶² As a result, future residents would not be permitted to place noise complaints based on the Ministry of Sound's current noise levels.⁶³

The introduction of this type of mandatory easement agreement, ensuring that venues can continue to operate at existing noise levels, as a condition for the construction of new development projects, strikes a balance between the interests of existing valuable art and community spaces and those of city (re)development and rejuvenation.⁶⁴ This balancing of divergent but spatially overlapping stakeholder interests alongside the social, economic, and environmental dimensions of sustainable urban development aligns well with the framework envisioned in the *New Urban Agenda*.⁶⁵

61. See generally SOUTHWARK COUNCIL, RECOMMENDATION LDD MONITORING FORM REQUIRES, 2014, 09-AP-0343 (U.K.), <https://modern.gov.southwark.gov.uk/documents/s22729/Recommendation%20Eileen%20House.pdf>. See also *Ministry of Sound Tower Block Plans Approved by Mayor*, BBC NEWS (Jan. 7, 2014), www.bbc.com/news/uk-england-london-25642151.

62. *Supra* note 61. See also GREATER LONDON AUTHORITY, RESCUE PLAN: A REPORT FOR THE MAYOR, MUSIC INDUSTRY, LOCAL AUTHORITIES, GOVERNMENT, PLANNERS, DEVELOPERS, LICENSERS, POLICE, ECONOMISTS, TOURISM, AGENCIES, MUSICIANS, CULTURE FOUNDERS (2015), https://www.london.gov.uk/sites/default/files/londons_grassroots_music_venues_-_rescue_plan_-_october_2015.pdf.

63. *Id.*

64. MCARDLE ET AL., *supra* note 5, at 1. See also MIKE TANNER, SUMMARY: CITY-APPROVED VENUE PROTECTION MEASURES INCLUDING TOCORE AND "AGENT OF CHANGE" (June 29, 2018), <https://www.toronto.ca/legdocs/mmis/2018/ma/bgrd/backgroundfile-117429.pdf>.

65. *New Urban Agenda*, *supra* note 9, ¶ 24. See also SCHOFIELD & SZYMANSKI, *supra* note 7, at 2–4; COUNCIL OF EUR., COUNCIL OF EUROPE FRAMEWORK CONVENTION ON THE VALUE OF CULTURAL HERITAGE FOR SOCIETY (2005), <https://rm.coe.int/1680083746>, for a related discussion pertaining to the Faro Convention.

B. Local Law and Policy, Applying the Agent of Change Principle and Rethinking Noise Bylaws: A Toronto Case Study

Mitigating the effects of noise complaints for music venues is crucial for global cities like Toronto, where noise-related complaints, charges, and convictions linked to music generated by bars and residential units increased by 170% between 2009 and 2015.⁶⁶ It increased even more sharply by 275% to 825% in several downtown wards.⁶⁷

On October 1, 2019, after a lengthy five-year period of public consultation to iron out policy concerns, the City of Toronto's revised noise bylaw went into effect.⁶⁸ Among the challenges faced in developing and passing the bylaw amendments was the City's need to update the amendments to align with new and evolving City projects and policies. For example, the Toronto Music Advisory Council (TMAC) was created in 2014 to serve as a liaison between City Hall and Toronto's music industry.⁶⁹ TMAC's first term stretched from 2014 to 2018.⁷⁰ Its principal accomplishments focused on noise and sound emissions as a cause of displacement and a barrier to music venue sustainability.⁷¹ TMAC advanced this goal by advocating for the City to adopt a version of the agent of change principle within the City's Downtown Official Plan Amendment (TOCore).⁷² The 2019 Toronto

66. See Jessica Walters, *Chapter 591, Noise By-law Review: Presentation for Toronto Association of Business Improvement Areas and Stakeholders Interdepartmental Meeting 7* (June 16, 2015), media.wix.com/ugd/ab8e0e_4984c0a7a8274bd3882732d6b44deb96.pdf (data collected by Toronto Municipal Licensing and Standards).

67. *Id.*

68. ECON. CMTY. DEV. COMM., CITY OF TORONTO BY-LAW 878-2019 TO AMEND CITY OF TORONTO MUNICIPAL CODE CHAPTER 591, NOISE (July 4, 2019) [HEREINAFTER CITY OF TORONTO BY-LAW 878-2019], <https://www.toronto.ca/legdocs/bylaws/2019/law0878.pdf>; *Noise*, City of Toronto, www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement/noise/ (last visited Mar. 12, 2023). The amendments are scheduled to be reviewed by the City of Toronto in 2023.

69. TORONTO MUSIC ADVISORY COUNCIL (TMAC), *Overview of Key Accomplishments 2014–2018*, CITY OF TORONTO (June 19, 2018) [hereinafter TMAC, *Overview*], <https://www.toronto.ca/legdocs/mmis/2018/ma/bgrd/backgroundfile-117426.pdf>.

70. *Id.*

71. *Id.*

72. TOCore was officially adopted by City Council in June 2019. *Downtown Plan*, CITY OF TORONTO, www.toronto.ca/wp-content/uploads/2018/08/966f-city-

Nightlife Action Plan summarized TMAC's efforts stating, "During 2018, the Toronto Music Office reviewed and provided comments on many development applications, alerting City planners to the presence of nearby music venues, requiring developers to include advisory clauses about nightlife activity on offers of purchase and lease, and notifying venues likely to be affected by nearby developments."⁷³

TMAC members also played a role in the City's noise bylaw revision process by providing music-industry expert opinion and working with the City's Economic Development and Culture division, City Planning division, and Municipal Licensing and Standards.⁷⁴ Of particular relevance was TMAC's official Noise Bylaw Recommendations provided as part of this process, where a key theme was the importance of striking a balance between the interests of businesses, residents, and music venues.⁷⁵ This balancing scheme again speaks to the approach emphasized by the *New Urban Agenda*.⁷⁶ In working towards this balance, TMAC created two sets of recommendations for Toronto's noise bylaw revision—one specifically directed toward residents, and the other focused on aiding businesses.⁷⁷

TMAC's recommendations for residents included: the implementation of noise protection for residential buildings; the requirement that developers provide information regarding local music venues and existing noise levels to future residents; the establishment of extra-legal, non-adversarial dispute resolution processes for noise-related

planning-to-core-opa406-attachment-1-schedule-5-downtown-plan.pdf (last visited Mar. 12, 2023); TMAC, *Overview*, *supra* note 69.

73. TORONTO NIGHTLIFE ACTION PLAN, *supra* note 19, at 6; *Summary*, CITY OF TORONTO, <https://www.toronto.ca/city-government/planning-development/planning-studies-initiatives/tocore-planning-torontos-downtown/tocore-overview/> (last visited Apr. 9, 2023) ("The Downtown Plan and three of the five accompanying infrastructure strategies – community services and facilities, parks and public realm, and mobility – were adopted by City Council on May 22–24, 2018 (with amendments), and the final Plan was approved by the Minister of Municipal Affairs and Housing on June 5, 2019.").

74. TMAC, *Summary: Music-Related Work at City Hall 2015–2019*, CITY OF TORONTO, www.toronto.ca/legdocs/mmis/2019/ma/bgrd/backgroundfile-138685.pdf (last visited Mar. 22, 2023) [hereinafter TMAC, *Summary*]; TMAC, *Overview*, *supra* note 69, at 4.

75. TMAC, *Noise*, *supra* note 39.

76. *New Urban Agenda*, *supra* note 9, ¶ 97.

77. TMAC, *Noise*, *supra* note 39, at 2.

disputes; and the introduction of standardized noise measurements utilizing accurate and objective equipment and methods.⁷⁸ The recommendations also advised that anonymous noise complaints should no longer be accepted; Municipal Licensing and Standards should establish better preventative noise complaint policies and resolution procedures by considering input from music venues and the music industry; affected residents should be better informed when noise exemption permits are granted; and exemption permit guidelines should be better enforced and withdrawn if breached.⁷⁹

For venue owners, operators, and event planners, TMAC recommended the description of legal noise limits be clarified and revised to include established decibel limits.⁸⁰ It also recommended that the City adopt clear noise limits based on property type alongside greater leniency for areas targeted for entertainment opportunities, business growth, or heritage preservation.⁸¹ The recommendations further asserted that creating property classifications that clearly distinguish standard residential and adjacent zones from mixed-use and special-use zones would provide further protection for venues.⁸² Additionally, TMAC suggested that the burden of proof for noise complaints should lie with the complainant, that investigation processes in assessing noise complaints should begin by discerning whether the complaint arose from industrial use or entertainment noise.⁸³ Finally, TMAC recommended that the agent of change principle should be utilized in designated zones to determine the allocation of noise mitigation costs and to ensure that developers and building permit applicants are aware of their responsibility to incorporate appropriate external noise reduction measures to their project designs and eventual construction where there are pre-existing music venues in close proximity to the project.⁸⁴

Drawing on Music Canada's 2015 report, "The Mastering of a Music City: Key Elements, Effective Strategies and Why It's Worth

78. *Id.*

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 4.

83. *Id.* at 3.

84. *Id.*

Pursuing,”⁸⁵ TMAC’s recommendations narrowed in on the agent of change principle as a tool for safeguarding “culturally rich or significant districts from development and gentrification, especially heritage properties and other Special Use properties such as Entertainment Establishments and Concert Halls.”⁸⁶ As TMAC’s recommendations note, while the agent of change principle provides no guarantee as to the economic viability of a music venue, it nonetheless protects music venues from displacement caused by significant costs associated with soundproofing in response to changes within neighborhood noise preferences outside of the venue’s control and where alternative options are unfeasible.⁸⁷ For example, “simply ‘turning down the music’ is often not a feasible option as this can have a rapid adverse effect on reputation and economic viability of the business [especially where] customers expect and are prepared for certain levels of sound when attending music venues.”⁸⁸ Notably, regarding music venues operating within heritage properties, the recommendations emphasized the additional costs and logistical challenges associated with soundproofing historic buildings.⁸⁹

TMAC’s heritage consideration is noteworthy where “[m]usic is a valuable component of heritage that warrants special recognition and protection.”⁹⁰ Further, as noted by the TMAC Recommendations, the agent of change principle has additional potential for retroactive application to a property historically used as a music venue or a music heritage space that may have nonetheless experienced a change in ownership or gap in its operation as a music venue.⁹¹ Where music is an integral component of culture and heritage that merits preservation and UN-Habitat emphasizes the importance of having the sociocultural value of heritage reflected within local sustainable urban development policy, the agent of change principle functions not only as a tool

85. MUSIC CAN., THE MASTERING OF A MUSIC CITY: KEY ELEMENTS, EFFECTIVE STRATEGIES AND WHY IT’S WORTH PURSUING 42, <https://musiccanada.com/wp-content/uploads/2015/06/The-Mastering-of-a-Music-City.pdf> (last visited Apr. 5, 2023).

86. TMAC, *Noise*, *supra* note 39, at 11.

87. *Id.*

88. *Id.*

89. *Id.* at 12.

90. *Id.*

91. *Id.*

for preserving music venues but also as a mechanism for safeguarding local historical musical assets.⁹² As outlined by the UN-Habitat's *Historic Urban Landscape Recommendation* and *New Urban Agenda*, the equitable treatment of divergent and sometimes dissonant heritage(s) forms part of what is necessary for the equal treatment of urban denizens and culture in the urban space.⁹³

Ultimately, agent of change policies were adopted city-wide in Toronto in 2018.⁹⁴ Toronto's new *Downtown Plan* acknowledges the importance of live music venues as "some of the city's most significant cultural heritage landmarks" and notes that such venues have faced displacement as a result of the city's (re)development intensification and, in particular, with the growth of Toronto's downtown.⁹⁵ The *Downtown Plan* further reflects the agent of change principle by incorporating a disclosure requirement for developers near live music venues.⁹⁶ The disclosure must provide notice that the sound generated by the venue(s) may affect future purchasers, lessees, and tenants of the property development.⁹⁷ Notably, in the context of downtown Toronto's mixed-use and regeneration areas, the following policies—which are entirely related to noise mitigation—are included to address the identified importance of live music venues and "[t]o ensure that live music venues can continue to function without noise-related impact on new residential development"⁹⁸:

12.11.1. new live music venues located within Mixed Use Areas 1, Mixed Use Areas 2, Mixed Use Areas 3, Mixed Use Areas 4 and Regeneration Areas will be designed and constructed to minimize noise from the premises and provide acoustic attenuation measures that would protect residential uses; and

12.11.2. new mixed-use developments located within Mixed Use Areas 1, Mixed Use Areas 2, Mixed Use Areas 3, Mixed Use Areas 4 and Regeneration Areas will be designed and constructed to include acoustic attenuation measures on-site, or within the building

92. See *HUL Recommendation*, *supra* note 9.

93. *Id.*; *New Urban Agenda*, *supra* note 9.

94. RESPONSIBLE HOSPITALITY INSTITUTE, *supra* note 19, at 14.

95. *Downtown Plan*, *supra* note 72, at 56.

96. *Id.* at 57.

97. *Id.*

98. *Id.*

design, to mitigate noise levels from adjacent indoor live music venues and from outdoor live music venues.

12.12. Development containing residential units that are located within 120 metres of a live music venue will be required to include an advisory provision within the Site Plan Agreement and/or Condominium Declaration that notifies purchasers, leasees and tenants of possible noise that may arise from its proximity to a live music venue.⁹⁹

In a victory for Toronto's music venues, the revised noise bylaw removed the "general noise" prohibition, which provided that "no one shall produce noise that disturbs anyone else, from day or night," to instead incorporate a framework for noise measurement contingent upon the site and the context.¹⁰⁰ Specifically, the amendments introduced a clear and objective standard for quantitative decibel limits for venues in terms of measuring amplified sound.¹⁰¹ In addition, the amendments provided a change to the measurement site for decibel levels.¹⁰² Rather than conducting measurements at the property line where the sound originates, the amendments alter the place of measurement to the point of sound (noise) reception and also factor in background ambient noise.¹⁰³ There is also a newly established "noise team" tasked with resolving noise complaints and conducting noise measurements.¹⁰⁴

99. *Id.*

100. CITY OF TORONTO BY-LAW 878-2019, *supra* note 68.

101. *Id.*

102. *Id.*

103. *Id.* See also Anastasia Andric, *The City has a New Noise Bylaw, and Here's How it Will Work*, CBC NEWS (Oct. 1, 2019), www.cbc.ca/news/canada/toronto/toronto-new-noise-bylaws-1.5304084; CITY OF TORONTO BY-LAW 878-2019, *supra* note 68; *Noise: Submitting a Noise Complaint*, CITY OF TORONTO, www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement/noise (last visited Mar. 12, 2023); Michael Rancic, *Toronto's New Noise Bylaw: What Music Fans Need to Know*, NOW TORONTO (Oct. 3, 2019), nowtoronto.com/music/toronto-new-noise-bylaw; *Types of Conflicts*, ST. STEPHEN'S CMTY. HOUSE, <https://www.sshcto.ca/Conflict-Resolution-Training/Community-Mediation/Types-of-Conflict> (last visited Mar. 12, 2023); *Noise: Using Mediation in Noise Complaints*, CITY OF TORONTO, www.toronto.ca/city-government/public-notices-bylaws/bylaw-enforcement/noise (last visited Mar. 12, 2023).

104. Andric, *supra* note 103; CITY OF TORONTO BY-LAW 878-2019, *supra* note 68. *Noise: Submitting a Noise Complaint*, *supra* note 103.

Another positive addition to the bylaw administration and enforcement operations of Toronto Municipal Licensing and Standards is the inclusion of non-adversarial approaches to resolving noise-related disputes via the newly created community partnership between St. Stephens Community House and Toronto Municipal Licensing and Standards.¹⁰⁵ This partnership established a service that includes confidential, free mediation for noise-related disputes.¹⁰⁶

V. CONCLUSION

As this article has explored, the agent of change principle and noise easement agreement framework provide an example of local urban law mechanisms that can be applied towards localizing the UN-Habitat's vision for sustainable development with a special emphasis on social, cultural, and economic factors surrounding development. These legal tools are also responsive to shifts in urban policy priorities and strategies that emphasize a city's cultural assets and nighttime music venues, as described in this article. Nonetheless, additional steps will be helpful for operationalizing these tools. For example, implementing the agent of change principles requires cooperation among various segments of local government. City governments would benefit from divisions similar to TMAC that are explicitly dedicated to the preservation of culture and music. Similar divisions could collaborate with a city's planning division, bylaw enforcement, the local music industry, and community members to generate insight into how and where urban legal tools, such as the agent of change principle, might best be applied to address the displacement of music venues including older, historic music establishments. Similar divisions could also aid in navigating the displacement pressures brought on by changes in the composition of neighborhoods with respect to noise tolerance, zoning, and higher resident concentration.

Furthermore, as TMAC's recommendations highlight, when tools such as the agent of change principle and noise easements are utilized, it is also important for local government to mandate that developers in mixed-use zones with pre-existing music establishments include external noise mitigation measures in addition to the internal noise miti-

105. Rancic, *supra* note 103; *Types of Conflicts*, *supra* note 103; *Noise: Using Mediation in Noise Complaints*, *supra* note 103.

106. *See supra* note 105 and accompanying text.

gation measures already expected between, for example, condominium units.¹⁰⁷ Importantly, building codes should be amended to reflect this change.¹⁰⁸

Finally, although mechanisms such as noise easement agreements can serve as a measure to protect pre-existing venues under threat of displacement and can curb the effects of noise complaints, they do not necessarily mitigate concerns and disputes that nonetheless arise in a neighbourhood and among local residents.¹⁰⁹ As a result, the development of non-adversarial dispute resolution mechanisms, such as accessible local city-sponsored mediation services for noise-related disputes, provide another positive step towards establishing an inclusive local urban legal framework for sound, noise, and the soundscapes of a city.

107. TMAC, *Noise*, *supra* note 39, at 12.

108. *Id.*

109. Lotinga, *supra* note 34.