

TRANSGRESSIVE DIY (“DO-IT-YOURSELF”) SPACES, MIXED VIRTUAL/PHYSICAL AFFINITY SPACES, AND BUILDING CODE VIGILANTISM

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I. INTRODUCTION

While there is a growing understanding of the importance that art, music, and other cultural experiences and their associated spaces play within the world’s continuously growing urban realm, as city development policies and related legislation increasingly turn to culture-and art-focused growth and redevelopment strategies, there is a tendency for certain iterations of art and culture to be acknowledged over others, and benefit from preferred treatment while other iterations of art and culture fall through the cracks or are marginalized and excluded within civic policies. These oversights and underrepresentation may occur due to a deficit in engaged attempts to understand and include a broader spectrum of art, music, and culture that span inclusively from formal, established concert halls to sites of independent grassroots artistic production.

Focusing on the sale of culture and the exchange-value of cultural places and cultural experiences can overwhelm the meaningfulness and use-value that culture has for people, leading it to become empty or inaccessible. Yet, as recent events affecting and/or targeting marginal spaces of independent grassroots arts and culture, such as DIY (Do-It-Yourself) spaces demonstrate, a failure to equitably respect, value, and protect these spaces can also have life threatening consequences, and

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lead to the prejudicial application of a city's seemingly neutral municipal legal complexes.¹

This article first situates itself within the example of Toronto as one of UNESCO's newly minted global "Cities of Culture." This network of "creative cities" is intended to facilitate a framework for these cities to work together in "placing creativity and cultural industries at the heart of their development plans at the local level and cooperating actively at the international level."² As one of Toronto's culture-oriented redevelopment strategies, its "Music City" initiative is an example of how music and sound can be used in city marketing and place branding, and how these redevelopment strategies must be more effectively deployed to protect the same cultural elements that are being marketed so that the diversities of "culture" and "music" in a city are better represented. To this end, this article then turns to the recent deadly fire that decimated Oakland's Ghost Ship DIY community and live/work artist-run space as a prominent and applicable warning for the local governance and municipal legal frameworks of many other cities with similar artistically potent, but precarious and vulnerable, spaces of independent and grassroots art and culture. Tracing the nuanced interactions of mixed virtual/physical affinity spaces engaging groups and individuals that find a home in DIY spaces with those who would seek to have these spaces and individuals displaced reveals a growing trend of what can be termed: building code vigilantism. While Toronto is but one example where independent grassroots arts and culture spaces have been affected by building code vigilantism, similar communities in cities across North America have been targeted with the same processes and to the same displacing effect. As such, a micro examination that narrows in on the experience of a local DIY community—such as the one found in Toronto—is relevant to any other urban center interested in sustainable redevelopment strategies, legislation, and policies that rely on "culture."

In particular, as the cross-border actions and engagement of

¹ "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?*, 7 SOC. & LEGAL STUD. 541, 542 (1998); LAAM HAE, *THE GENTRIFICATION OF NIGHTLIFE AND THE RIGHT TO THE CITY: REGULATING SPACES OF SOCIAL DANCING IN NEW YORK* 7 (Routledge, 2012).

² Creative Cities Network, UNESCO, en.unesco.org/creative-cities/home (last visited Oct. 4, 2019).

mixed virtual/physical affinity spaces and building code vigilantism show, many urban centers can benefit from rethinking how municipal legal complexes are designed and enforced in relation to local transgressive art practices and spaces. Without careful attention to all iterations of art and culture in the dense urban context of today’s cities—including transgressive, relationally marginal spaces—in addition to the displacement of these spaces throughout redevelopment and gentrification processes, the legal complexes of a city can wind up destroying the kind of artistic and cultural initiatives city culture and arts-oriented city redevelopment initiatives seek to promote. But of even greater concern, a failure to effectively engage with these spaces can lead to the complicity of municipal legal complexes in inequitable and discriminatory targeting of these spaces and communities through the language and enforcement of city by-laws. This article concludes by suggesting potential paths towards achieving more meaningful diversity and equal opportunities for a comprehensive spectrum of conventional to unruly musical cultures, subcultures, and community cultural wealth in the city. In particular, the rethinking and redesign of by-law implementation and enforcement measures alongside more engaged consultation with affected art and (sub)cultural groups that lead up to municipal decision-making and redevelopment strategies is suggested.

II. TORONTO: “MUSIC CITY”

Toronto’s culture-based creative-city oriented redevelopment strategies appear in the documents that guide Toronto’s plan for redevelopment. Toronto’s “Culture Plan for the Creative City,” for example, clearly identifies creative city aspirations in its title, epitomizes the creative city framework through “recogni[tion] that great cities of the world are all Creative Cities,” and latches on to the increasingly popular creative city model and strategic commodification of both culture and diversity as a tool for marketing Toronto’s uniqueness and competing with other global cities.³ This document additionally narrows in on and reifies

³ See CITY OF TORONTO, CULTURE DIVISION, CULTURE PLAN FOR THE CREATIVE CITY (2008), <http://www.torontocreaticity.ca/wp-content/uploads/2018/02/2003-Culture-Plan-for-the-Creative-City.pdf> [hereinafter CULTURE PLAN FOR THE CREATIVE CITY].

individuals deemed as belonging to the “creative class” by insisting that these are the “kind of people Toronto wants to attract.”⁴ While the document holds up arts, creativity, culture, and heritage as the keys to Toronto’s future, the purpose of the culture-oriented strategy is clearly geared towards an economic return—an exchange-value. The quality of life of affected urban citizens is mentioned but predominantly for the purpose of attracting those seeking a “high quality of life.”⁵

Beyond the documents that lay out Toronto’s cultural plans, Richard Florida’s popular creative city model dominates many of Toronto’s future-looking rejuvenation, regeneration, and marketing strategies, such as creative city initiatives like Toronto’s plans to develop into a Music City.⁶ Florida is cited directly by Music Canada for 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.”⁷ Music Canada’s recommendations further cite Florida to establish that music “cuts across language barriers and unites people of all backgrounds,” that it “is part of every neighbourhood, every corner of the city; every street could be a stage,” and to suggest that “[m]usic is a cultural ally for the City of Toronto.”⁸

As the guiding document “The Mastering of a Music City: Key Elements, Effective Strategies and Why It’s Worth Pursuing” (“Mastering of a Music City”) explains:

The term “Music City” is becoming widely used in cultural

⁴ *Id.* at 1. See also Ute Lehrer & Thorben Wieditz, *Condominium Development and Gentrification: The Relationship Between Policies, Building Activities and Socio-Economic Development in Toronto*, 18 CAN. J. URB. RES. 140, 148 (2009).

⁵ CULTURE PLAN FOR THE CREATIVE CITY, *supra* note 3, at 9.

⁶ See e.g. RICHARD FLORIDA, *THE RISE OF THE CREATIVE CLASS* vii (Basic Books, 2019); RICHARD FLORIDA, *CITIES AND THE CREATIVE CLASS* 1 (Routledge, 2005) [hereinafter FLORIDA CITIES]; RICHARD FLORIDA, *THE FLIGHT OF THE CREATIVE CLASS* 25 (HarperCollins, 2005); Richard Florida, Charlotta Mellander & Kevin Stolarick, *Inside the Black Box of Regional Development: Human Capital, the Creative Class, and Tolerance*, in *THE CREATIVE CLASS GOES GLOBAL* 11, 11–12 (Charlotta Mellander et al., eds., 2014).

⁷ Letter from Graham Henderson, President, Music Canada, to Councillor Michael Thompson, Toronto City Council and Committees (Mar. 5, 2013), <https://www.toronto.ca/legdocs/mmis/2013/ed/comm/communicationfile-34950.pdf>.

⁸ *Id.*

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 . . . Music City now also describes communities of various sizes that have a vibrant music economy which they actively promote.⁹

The Music City model is intended to serve a dual role by both capitalizing on the economic potential music can bring a city as well as providing the ingredients for “the soul and the imagination, spiritual aspiration of a city.”¹⁰ The auditory and distinctive musical characteristics and traditions of a place contribute to the local character, or brand, of a place or city and supply what Yi-Fu Tuan terms “*genius loci*.”¹¹

While documents and reports like “Collaborating for Competitiveness: A Strategic Plan to Accelerate Economic Growth and Job Creation in Toronto” and “Creative Capital Gains: An Action Plan for Toronto” played an important formative role as Toronto’s municipal economic and development strategies turned to the music industry’s potential as a growth resource,¹² the expansive “Mastering of a Music City” report developed by the International Federation of the Phonographic

⁹ INT’L FED’N OF THE PHONOGRAPHIC INDUS. & MUSIC CANADA, THE MASTERING OF A MUSIC CITY: KEY ELEMENTS, EFFECTIVE STRATEGIES AND WHY IT’S WORTH PURSUING, 10 (2015), <https://musiccanada.com/wp-content/uploads/2015/06/The-Mastering-of-a-Music-City.pdf>; CANADIAN CHAMBER OF COM. & MUSIC CANADA, MUSIC CITIES TOOLKIT 6 (last visited Oct. 31, 2019), http://www.chamber.ca/resources/music-cities/Music_Cities_Toolkit.pdf

¹⁰ Dave Morris, *Toronto’s Music City Dream Hindered by Red Tape*, THE GLOBE & MAIL (May 15, 2018), <https://www.theglobeandmail.com/arts/music/toronto-music-city-dream-hindered-by-red-tape/article24981758/>.

¹¹ Yi-Fu Tuan, *Geopietty: A Theme in Man’s Attachment to Nature and Place*, in GEOGRAPHIES OF THE MIND 11, 16 (David Lowenthal & Martyn J. Bowden eds., Oxford University Press 1976). 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, 2–3 (John Schofield & Rosy Szymanski eds., Ashgate 2011); Holly C. Kruse, *Local Independent Music Scenes and the Implications of the Internet*, in SOUND, SOCIETY AND THE GEOGRAPHY OF POPULAR MUSIC 205, 210 (Ola Johansson & Thomas L Bell, eds., Ashgate, 2009).

¹² CITY OF TORONTO, COLLABORATING FOR COMPETITIVENESS: A STRATEGIC PLAN TO ACCELERATE ECONOMIC GROWTH AND JOB CREATION IN TORONTO (Jan. 2013), https://www.toronto.ca/wp-content/uploads/2017/08/8ea9-collaborating_for_competitiveness.pdf; ROBERT J. FOSTER ET AL., CREATIVE CAPITAL GAINS: AN ACTION PLAN FOR TORONTO (2011), <https://www.toronto.ca/wp-content/uploads/2017/08/968d-creative-capital-gains-report-august9.pdf>.

Industry and Music Canada in 2015,¹³ itself turned to the Austin, Texas Music City model as a significant inspiration for Toronto's Music City strategies.¹⁴

A number of early progressive city-backed initiatives were instituted early on for the purpose of providing a voice to Toronto's music industry in Toronto's cultural development and management plans. These included strategies such as the 4479 Music City initiative, the establishment of the Toronto Music Advisory Council (TMAC), and the creation of a Toronto Music Office as well as the position of Music Sector Development Officer.¹⁵ The 4479 initiative, intended to promote and support Toronto's "music assets" as a "vibrant economic sector", has since been prematurely discontinued with an "our job here is done" type of pop-up announcement on its website proclaiming, "Since 2013, 4479 has worked to position Toronto as one of the greatest Music Cities in the world. With confidence in the momentum Toronto is carrying forward, we will be ceasing operations."¹⁶ Nonetheless, TMAC—the other early strategy for implementing Toronto's Music City project—remains for the time being. TMAC was established by Toronto City Council in 2015 initially for a four-year mandate (2014–2018) and, despite its slow start, was intended as a forum for Toronto's music industry, and as a resource for City Hall for recommendations, advice, and

¹³ INT'L FED'N OF THE PHONOGRAPHIC INDUS. & MUSIC CANADA, *supra* note 9.

¹⁴ The 2013 Austin-Toronto *Joint Music City Alliance* is widely touted as the world's first music city alliance agreement and was established during former Toronto Mayor Rob Ford's tenure. See Draft Framework & Terms of Reference, Austin – Toronto Music City Partnership Alliance (Nov. 2013), <https://www.toronto.ca/wp-content/uploads/2017/08/9648-backgroundfile-63954.pdf>. See, e.g., Ben Rayner, *John Tory Gets a Great Vibe from Austin's SXSW Music Fest*, THE STAR (Mar. 21, 2015), <https://www.thestar.com/entertainment/music/2015/03/21/john-tory-gets-a-great-vibe-from-austins-sxsw-music-fest.html>; SHOSHANAH GOLDBERG-MILLER, PLANNING FOR A CITY OF CULTURE: CREATIVE URBANISM IN TORONTO AND NEW YORK 201 (2017). Austin, Texas is often described 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 THE POLITICS OF URBAN CULTURAL POLICY: GLOBAL PERSPECTIVES 98 (Carl Grodach & Daniel Silver, eds., Routledge, 2013).

¹⁵ See Toronto – Music City, MUSIC CANADA, <https://musiccanada.com/resources/research/toronto-music-city/> (last visited Oct. 4, 2019); 4479, 4479toronto.ca (last visited Oct. 4, 2019); TORONTO MUSIC ADVISORY COUNCIL, OVERVIEW OF KEY ACCOMPLISHMENTS 2014-2018 (June 2019), <https://www.toronto.ca/legdocs/mmis/2018/ma/bgrd/backgroundfile-117426.pdf>; CITY OF TORONTO, Music, <https://www.toronto.ca/business-economy/industry-sector-support/music/> (last visited Oct. 4, 2019).

¹⁶ 4479, *supra* note 15.

marketing strategies for growing Toronto’s music industry, especially its viability, competitiveness, attractiveness, and opportunities for the music sector.¹⁷ Meetings are open to the public and are held four times a year on a weekday at varying times of the day.

The other main recommendations for the successful transformation of Toronto into a sustainable Music City include the development of music-friendly policies and infrastructure such as a music office and music advisory board, as well as generating broader community engagement and audience development, better awareness of and access to music- and musician-friendly spaces and places, and increased music tourism.¹⁸ Further recommendations involve addressing logistical aspects like a lack of loading zones for musicians, the need for planning law sensitive to accommodating music and musician needs, and increasing transportation availability to music venues in order to facilitate and bolster attendance. One of the most important elements of Toronto’s new “official” attention to its music community, and the one that is proving to be one of the most difficult to address, is the proposed removal of the numerous ongoing barriers that exist for music performance, creation, participation, and enjoyment.¹⁹

III. THE VALUATION OF DIVERSE ITERATIONS OF CULTURE AND VALUE INTERESTS IN THE CITY SPACE

”I’m sure to a lot of you . . . [we’re] a sea of dyed hair and piercings and tattoos that can melt together, but I hope that you know that places like Burnt Ramen, and other DIY spots, are where people learn how to be open and have progressive ideas about race, about gender, about sexuality. . . .”

- *Spoken by a frustrated attendee protesting the forced closure of the Burnt Ramen DIY space in Richmond, CA at Richmond City*

¹⁷ See CITY OF TORONTO, TERMS OF REFERENCE: TORONTO MUSIC INDUSTRY ADVISORY COUNCIL 1 (2013), <https://www.toronto.ca/wp-content/uploads/2017/08/9633-ToR-Toronto-Music-Industry-Advisory-Council-Adopted-by-CC-Dec-2013.pdf>.

¹⁸ See TITAN MUSIC GROUP, ACCELERATING TORONTO’S MUSIC INDUSTRY GROWTH: LEVERAGING BEST PRACTICES FROM AUSTIN, TEXAS 90–96 (2012) <https://musiccanada.com/wp-content/uploads/2014/06/Accelerating-Torontos-Music-Industry-Growth-Leveraging-Best-Practices-from-Austin-Texas.pdf>.

¹⁹ See *id.* at 101–03.

*Hall.*²⁰

Identified as one of the “dominant intellectual perspective that has legitimated the ascendancy of many urban cultural policy efforts,”²¹ the “creative city” thesis popularized by Richard Florida (but traceable to the early 1990s in Great Britain) focuses on culture as a primary tool for urban redevelopment.²² Foreshadowed by urban sociologists John Logan and Harvey Molotch in 1987,

[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.²³

But as Deborah Leslie and Norma Rantisi succinctly note, “[a]rts and culture-led regeneration efforts often privilege an instrumental understanding of culture and creativity, whereby the arts are valued mainly for their economic role.”²⁴

When the arts, culture, and their associated spaces in the city are sought out for their market benefit and branding potential, all iterations of art and culture within cities like Toronto can become reduced to their potential contribution within “an index of an alluring ‘alternative’ culture.”²⁵ As Laura Levin notes, this reduction excludes and disadvantages those associated with more marginal categories of art, culture, and creativity that do not “register as a selling point for a hip urban future,”²⁶ and oppose dominant cultural norms and spatiotemporal use patterns, and

²⁰ Field of Vision, *Field of Vision – In the Wake of Ghost Ship*, YOUTUBE at 00h:14m:50s, <https://www.youtube.com/watch?v=1Qh4vjMG1u4>.

²¹ Carl Grodach & Daniel Silver, *Introduction: Urbanizing Cultural Policy*, in *THE POLITICS OF URBAN CULTURAL POLICY: GLOBAL PERSPECTIVES* 1, 4 (Carl Grodach & Daniel Silver, eds., Routledge 2013).

²² See SIMON BRAULT, *Introduction in NO CULTURE, NO FUTURE* 1, 6–7 (Jonathan Kaplansky trans., Cormorant Books 2010); FLORIDA CITIES, *supra* note 6, at 24; FLORIDA, *THE RISE OF THE CREATIVE CLASS*, *supra* note 6.

²³ JOHN R. LOGAN & HARVEY L. MOLOTCH, *URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE* xix (2d ed. 2007).

²⁴ 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 *THE POLITICS OF URBAN CULTURAL POLICY: GLOBAL PERSPECTIVES* 83, 83 (Carl Grodach & Daniel Silver, eds., Routledge 2013).

²⁵ See Laura Levin, *Performing Toronto: Enacting Creative Labour in the Neoliberal City*, in *PERFORMING CITIES* 159, 174 (Nicholas Whybrow ed., 2014).

²⁶ *Id.* at 175.

turn their backs on anything reminiscent of corporatization, commodification, or “cleansed” spaces for arts and culture.²⁷

In proposing an analytical framework for urban development and the “urban growth machine,” Logan and Molotch draw on the “Marxian lexicon” of an “exchange-value” and “use-value.”²⁸ Here, “exchange-value” refers to “the utilization of property to generate profit” while “use-value” indicates “values individuals assign to property that do not enter into commodity exchange.”²⁹ While use-values and exchange-values can coexist within the same physical space, their overlap can also result in an antagonistic relationship between contrasting and conflicting value interests of different parties with interests in, or who occupy, the space—which occurs frequently within city redevelopment contexts where there are often conflicting or overlapping occupation or use interests in spaces targeted for redevelopment.³⁰

When use-values clash with exchange-values in redevelopment decisions, forms of community cultural wealth risk being ignored if they are not equally valued in comparison to more dominant or “accepted” forms of culture and cultural capital.³¹ This kind of

²⁷ See, e.g., MARIANA VALVERDE, CHRONOTOPES OF LAW: JURISDICTION, SCALE AND GOVERNANCE 20 (2015); Kristal Buckley, Steven Cooke & Susan Fayad, *Using the Historic Urban Landscape to Re-Imagine Ballarat: The Local Context*, in URBAN HERITAGE, DEVELOPMENT AND SUSTAINABILITY 93, 94–95 (Sophia Labadi & William Logan, eds., 2016).

²⁸ See LOGAN & MOLOTCH, *supra* note 23, at viii; Ray Hutchison, 94 AM. J. SOC. 459 (1988) (reviewing JOHN R. LOGAN AND HARVEY L. MOLOTCH: URBAN FORTUNES: THE POLITICAL ECONOMY OF PLACE (1987)).

²⁹ See Hutchison *supra* note 28, at 459. See also LOGAN & MOLOTCH, *supra* note 23, at viii–ix, 50–98 (discussing how the urban growth machine is characterized by the united desire for growth—or, a “growth consensus”—of a coalition of dominant or “elite” groups, actors, and organizations in the city, despite other potentially divergent interests that they may have); AARON MOORE, PLANNING POLITICS IN TORONTO: THE ONTARIO MUNICIPAL BOARD AND URBAN DEVELOPMENT 16 (2013) (discussing how Logan and Molotch’s growth machine theory applies to Canadian cities, and Toronto in particular).

³⁰ See LOGAN & MOLOTCH, *supra* note 23, at viii–ix; Sara Ross, *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*, 27 J. OF L. AND SOC. POL’Y 116 (2017); David Throsby, *Cultural Capital and Sustainability Concepts in the Economics of Cultural Heritage*, in ASSESSING THE VALUES OF CULTURAL HERITAGE: RESEARCH REPORT 101, 107 (Marta de la Torre, ed., 2002).

³¹ LOGAN & MOLOTCH, *supra* note 23, at viii–ix; PAUL CHATTERTON & ROBERT

undervaluation tends to disproportionately affect undervalued or deficit-valued cultural capital usually associated with unruly spaces and unruly practices that generate noise and other side effects of unconventional or alternative day/night use patterns.³² Within creative city frameworks, strategically designed or preserved cultural spaces that embody specific iterations of “culture” can be used and commodified to attract not only private investment and tourist dollars, but also to attract a defined “class” of people—the “creative class.”³³ But the countereffect of a high valuation of certain kinds of culture, art, and classes in cities seeking to achieve global cultural status is frequently the simultaneous undervaluation or disregard of the less commercially marketable cultural capital of other groups and individuals, which results in the unequal valuation of different iterations of culture, cultural practices, and attached spaces of

HOLLANDS, *URBAN NIGHTSCAPES: YOUTH CULTURES, PLEASURE SPACES AND CORPORATE POWER* 204 (2003). *See also* UN TASK TEAM ON HABITAT III, ISSUE PAPER 6: *URBAN GOVERNANCE* 47, 50 (2016) [hereinafter *HABITAT III*], http://habitat3.org/wp-content/uploads/Habitat-III-Issue-Paper-6_Urban-Governance-2.0.pdf. *See also* Lisa T. Alexander, *Hip-Hop and Housing: Revisiting Culture, Urban Space, Power & Law*, 63 *Hastings L. J.* 803 at 823–25 (2012).

³² *See* VALVERDE, *supra* note 27, at 21–22; MARIANA VALVERDE, *EVERYDAY LAW ON THE STREET: CITY GOVERNANCE IN AN AGE OF DIVERSITY* 49–50 (2012) [hereinafter *VALVERDE, EVERYDAY*]; Davina Cooper, *Far Beyond ‘The Early Morning Crowing of a Farmyard Cock’: Revisiting the Place of Nuisance Within Legal and Political Discourse* 11 *SOC. & LEGAL STUD.* 5, 14, 24 (2002); 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 INTERDISCIPLINARY J.* 35, 41 (2016).

³³ *See, e.g.*, *CULTURE PLAN FOR THE CREATIVE CITY*, *supra* note 3; AUTHENTICITY, *CREATIVE CITY PLANNING FRAMEWORK: A SUPPORTING DOCUMENT TO THE AGENDA FOR PROSPERITY: PROSPECTUS FOR A GREAT CITY* (2008), <https://torontoartscouncil.org/TAC/media/tac/Reports%20and%20Resources/City%20of%20Toronto/creative-city-planning-framework-feb08.pdf>; JULIE-ANNE BOUDREAU ET AL., *CHANGING TORONTO: GOVERNING URBAN NEOLIBERALISM* 36 (2009); FOSTER ET AL., *supra* note 12; MERIC GERTLER ET AL., *IMAGINE A TORONTO . . . STRATEGIES FOR A CREATIVE CITY* (2006); HAE, *supra* note 1 at 4–5, 20; Ute Lehrer et al., *Reurbanization in Toronto: Condominium Boom and Social Housing Revitalization*, 46 *DISP - THE PLANNING REVIEW* 81, 82 (2010); TED TYNDORF, *CITY OF TORONTO, OFFICIAL PLAN* 77, 3–31 (2007) [hereinafter *OFFICIAL PLAN*]; SHARON ZUKIN, *NAKED CITY: THE DEATH AND LIFE OF AUTHENTIC URBAN PLACES* 7 (2010). *See also* George Morgan & Xuefei Ren, *The Creative Underclass: Culture, Subculture, and Urban Renewal* 34 *J. URBAN AFFAIRS* 127 (2012). For an excellent overarching discussion of city redevelopment seeking to commodify culture and attract tourists, *see generally*, JOHANNES NOVY & CLAIR COLOMB, *Urban Tourism and Its Discontents: An Introduction*, in *PROTEST AND RESISTANCE IN THE TOURIST CITY* 1 (2017); GOLDBERG-MILLER, *supra* note 14, at 13–16.

cultural practice. This is especially problematic as it is the more diverse iterations of culture, such as the DIY spaces discussed later in this article, that are frequently and effectively used for gains in the kinds of cultural capital valued in designing global and cosmopolitan “creative cities.”

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. Despite Toronto’s motto “Diversity Our Strength,” numerous development processes at work in Toronto slowly erode the diverse iterations of culture and intangible urban cultural heritage generated within the urban core, which blocks the meaningful encouragement of diversity—especially where the impacts of diversity can have unpleasant by-products. Toronto’s cultural policies, as Neil Smith noted of gentrification and the revanchist city,³⁴ easily embrace diversity as long as it is structured in a highly ordered fashion. Sadly, not unique to Toronto is this reification of the notion of diversity, rather than meaningful inclusivity or an environment of equal valuation and exchange amongst differing iterations of culture. When redevelopment processes begin, this reified notion of diversity versus meaningful inclusivity oftentimes results in the underrepresentation of marginalized or transgressive spaces in the city that nonetheless carry great cultural community wealth, use-value, or embody a group’s intangible cultural heritage. As Steven Miles and Malcolm Miles summarize, “[t]he symbolic economy may trade on place identity, but it has little use for the knowledges of the unempowered.”³⁵

As 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 connected to cultural activities and practices in addition to leisure activities, can take place at unconventional times of the day, which can lead to their invisibility in comparison to those who use the space (or the surrounding space) at more conventional times of the day/night spectrum. This overlap may also create additional clashes in

³⁴ NEIL SMITH, *THE NEW URBAN FRONTIER: GENTRIFICATION AND THE REVANCHIST CITY* 111 (1996).

³⁵ STEVEN MILES & MALCOLM MILES, *CONSUMING CITIES* 65 (Palgrave Macmillan, 2004).

conflicting use interests in the space. In this context, populations deemed “undesirable” tend to be regulated by a city’s legal frameworks in a manner that excises them from the urban space.³⁶ In relation to Toronto’s Music City initiative, subcultures and countercultures are an example of relationally vulnerable groups and individuals that use and occupy spaces in the city in unconventional ways or times of day, especially as the critical mass of like-minded individuals and measure of anonymity provided by the dense urban context encourages the formation of subcultures.³⁷ Within these marginal and unconventional spaces and occupation patterns, use-value tends to carry a far greater emphasis than exchange-value, but “subcultures are usually located at one remove from property ownership [and] territorialise their places rather than own them,” which leaves them 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.³⁸

Hae explains the vulnerability of subcultures to commodification, notably in relation to nighttime subcultural gathering spaces located in the urban cores of cities, which are particularly targeted for their exchange-value potential in attracting those deemed as creative class individuals into new residential units or in attracting tourists looking for a particular aesthetic of creative authenticity and a vibrant aura of art and culture.³⁹ The attraction held by this aesthetic of authenticity demonstrates how places can be marketed beyond solely their visual elements.⁴⁰ In addition to visual elements, such as raw unfinished spaces, decay, graffiti, and so on, the compelling grittiness of subcultural night spaces is amplified by noise, smell, and touch. But where a subcultural space becomes commodifiable and gains an attractive exchange-value potential, the originate

³⁶ HAE, *supra* note 1, at 5; VALVERDE, EVERYDAY, *supra* note 32.

³⁷ IRIS MARION YOUNG, JUSTICE AND THE POLITICS OF DIFFERENCE 238 (1990).

³⁸ KEN GELDER, SUBCULTURES: CULTURAL HISTORIES AND SOCIAL PRACTICE 3 (2007). See also CHATTERTON & HOLLANDS, *supra* note 31; HAE, *supra* note 1, at 6; ZUKIN, *supra* note 33.

³⁹ HAE, *supra* note 1, at 29–30.

⁴⁰ See Dominic Medway, *Rethinking Place Branding and the ‘Other’ Senses*, in RETHINKING PLACE BRANDING 191 (Mihalis Kavaratzis, Gary Warnaby & Gregory J. Ashworth eds., 2015); Cathy Parker et al., *Back to Basics in the Marketing of Place: The Impact of Litter Upon Place Attitudes*, 31 J. MKT. MGMT 1090 (2015); Gary Warnaby & Dominic Medway, *What About the ‘Place’ in Place Marketing?* 13 MKTG. THEORY 345 (2013); Victoria Henshaw, et al., *Marketing the ‘City of Smells’* 16 MKTG THEORY 153; ZUKIN, *supra* note 33.

subcultural occupiers find themselves either no longer able to afford the rent necessary to operate a subcultural-oriented venue, or the owner of the space may simply choose to sell it out from under them to capture a greater profit or respond to an increase in property taxes.⁴¹ As the originate occupants of a space may go unnoticed by those who only use the space during more conventional or dominant day/night use patterns, their invisibility can lead to a lack of effective consultation regarding redevelopment decisions and ultimately lead to their inability to preserve their use-access to the space.

In designing cities that provide culturally for all urban citizens though, policies must consider the comparative weight placed on culture that carries a high exchange-value for redevelopment 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 needed in order to better account for, promote, and preserve the diversity of (sub)cultures and cultural spaces, and the right to these spaces and cultural practices in the city.⁴²

⁴¹ See, e.g., ZUKIN, *supra* note 33, at 102; HAE, *supra* note 1, at 20, 22, 32; CHATTERTON & HOLLANDS, *supra* note 31, at 19–44. I use the term “originate occupier” rather than “original” in order to distinguish 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 sites and venues discussed here, especially since Toronto is built on traditional Indigenous lands. HAE, *supra* note 1, at 6.

⁴² See General Conference of UNESCO, 33d Sess., *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, U.N. Doc. CLT-2016/WS/7 (Oct. 20, 2005); General Conference of UNESCO, 32d Sess., *Convention for the Safeguarding of the Intangible Cultural Heritage*, U.N. Doc. MISC/2003/CLT/CH/14 (Oct. 17, 2003); General Conference of UNESCO, 28th Sess., *Declaration of Principles On Tolerance*, ¶ 5.61, U.N. Doc 28 C/Res. 3.1, (Oct. 25, 1995–Nov. 16, 1995); General Conference of UNESCO, 31st Sess., *Universal Declaration on Cultural Diversity*, ¶ 25, 31 C/Res. 15, (Oct. 15, 2001–Nov. 3, 2001); UNITED CITIES AND LOCAL GOVERNMENTS, COMMITTEE ON SOCIAL INCLUSION, PARTICIPATORY DEMOCRACY AND HUMAN RIGHTS, *GLOBAL CHARTER-AGENDA FOR HUMAN RIGHTS IN THE CITY* (2012), http://www.uclg-cisdp.org/sites/default/files/CISDP%20Carta-Agenda_ENG_0.pdf (drafted by social movements gathered in the World Social Forum in Porto Alegre, Brazil in 2001); UNITED CITIES AND LOCAL GOVERNMENTS, COMMITTEE ON SOCIAL INCLUSION, PARTICIPATORY DEMOCRACY AND HUMAN RIGHTS, *EUROPEAN CHARTER FOR THE SAFEGUARDING OF HUMAN RIGHTS IN THE CITY* (2012), http://uclg-cisdp.org/sites/default/files/CISDP%20Carta%20Europea%20Sencera_baixa_3.pdf.

In terms of redevelopment, the rezoning of space and zoning by-law amendments comprise the primary frameworks through which redevelopment processes are enacted. Since municipal-level law and governance structures focus on governing space and operate primarily through by-laws that regulate spaces and things through their “use” and the “activity” that occurs within them, the legal categories comprised of people, personhood, and group identity are only indirectly or secondarily governed within municipal governance structures.⁴³ As such, the activities and uses that occur within these spaces are not necessarily located within available avenues for constitutional protection.⁴⁴ To this end, Mariana Valverde suggests that better accounting for human rights and equality in the city might be best approached within the language of space and things rather than that of people.⁴⁵

IV. INTRODUCING DIY SPACES

”Our subculture allows me to breath.”

- *Written on a protest sign as the Burnt Ramen DIY community protested the closure of their space to the Mayor of Richmond, CA and Richmond city council.*⁴⁶

Examining DIY spaces for independent grassroots artistic production and consumption in cities such as Toronto, and attending public interactions between advocates for DIY spaces and the City’s official mechanisms responsible for engaging with and implementing Toronto’s Music City strategy, shows how DIY spaces are an example of a music and performance-oriented affinity space that,⁴⁷ when compared to other more visible or mainstream music communities, provide a safe and welcoming

⁴³ Mariana Valverde, *Taking ‘Land Use’ Seriously: Toward an Ontology of Municipal Law*, 9 L. TEXT CULTURE 34, 36–37 (2005).

⁴⁴ *See id.*; HAE, *supra* note 1, at 6.

⁴⁵ Valverde, *supra* note 43, at 37.

⁴⁶ Michelle Lhoq, *This Film Examines How Ghost Ship Inspired a Crackdown on DIY Venues*, VICE: MOTHERBOARD (June 6, 2012), http://www.vice.com/en_us/article/gypqzx/ghost-ship-burnt-ramen-documentary-watch-online.

⁴⁷ The notion of affinity spaces is discussed further in Section V.B. *See also* Lesley Edana Liu, *Tweens, Teens, and Digital Tests: Designing Affinity Spaces to Understand Cyberbullying* (Oct. 2016) (unpublished M.A. thesis, University of British Columbia) (on file with the University of British Columbia Library system), <https://open.library.ubc.ca/cIRcle/collections/ubctheses/24/items/1.0320835>.

environment for those who are excluded by the more mainstream or visible music communities that often form the focus of culture—and arts—oriented urban redevelopment initiatives and creative city strategies.

DIY event spaces tend towards the unconventional in both their location and appearance as well as their programming. These gritty spaces are often discretely situated and hard to find with no visible signage indicating their existence in off-beat locations—e.g. up a set of rickety stairs above a bike shop or bakery, down a dimly lit alleyway, in an old warehouse in a forgotten corner of the city, in a hidden attic or basement, and so on. A common uniting factor, however, is that they are usually found in spaces not zoned for commercial use. DIY spaces might double as someone’s living space, or a living space shared by a group of people—often the operator or operators of the space. Inside, DIY spaces range from bare, minimally adorned spaces to spaces full of found objects, quirky décor, and intricately arranged kitsch. They may or may not serve alcohol, they do not usually have a liquor license or a special event permit, and where alcohol is not served, individuals are often welcome to bring their own. A wide array of programming is complemented by what is usually an open and versatile space that can serve multiple purposes—from live music venue to art gallery, to movie theater, to yoga studio, to nightclub, and so on. There is usually a capacity for visual displays and sound systems of varying quality. These spaces, which might on face value appear to be aesthetically “undesirable,” are full of community cultural wealth and use-value for the DIY community. Despite their often-questionable legal status in terms of conforming to local municipal by-laws and building codes, DIY spaces are an affordable, accessible, and nurturing space for local artists, musicians, and the performance and workshopping of genres of art and music that may be otherwise excluded from more conventional art and music venues and bars.

Members of the DIY community and DIY musical subcultural include cultural producers and cultural entrepreneurs who are often aspiring young artists seeking to build a primary or secondary artistic career and must usually do so in an unpaid, underfunded, precarious, and vulnerable context dependent upon

their own self-funding sourced from other paid work.⁴⁸ The marginal space of the DIY venue attracts “people on the fringe of society [who] can find a space to articulate themselves.”⁴⁹ The transgressive marginal spatial and social existence of DIY spaces, alongside their welcoming of transgressive and marginal groups and individuals, encourages active community participation and creative innovation rather than passive consumption. Nonetheless, DIY spaces, as affinity spaces,⁵⁰ also accept and exist for DIY community members who only wish to experience and primarily consume local music culture and may not be interested in active participation. Ultimately, the existence and availability of the DIY space is what characterizes its importance as a gathering space and its high use-value. To quote one of Toronto’s punk promoters active within Toronto’s DIY spaces, “‘wicked 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[.]’”⁵¹

A. A BRIEF HISTORY OF DIY IN TORONTO

DIY spaces in Toronto have a history of functioning as safe spaces for subcultural music communities like the punk scene, other marginalized subcultural music scenes, and LGBTQ individuals and communities in Toronto.⁵² They have also served as a home for marginalized groups from within these margins, such as the queer punk scene (“Queercore”) in Toronto that is connected to the DIY scene.⁵³ Toronto’s remaining DIY music spaces and well-established DIY music community provide essential space for independent cultural entrepreneurship, cultural production, and musical subversion that are needed for a vibrant “music city” but remain ineffectively accounted for within Toronto’s Music City strategies.

⁴⁸ See Michael Scott, *Cultural Entrepreneurs, Cultural Entrepreneurship: Music Producers, Mobilising and Converting Bourdieu’s Alternative Capitals*, 40 *POETICS* 237 (2012).

⁴⁹ CHATTERTON & HOLLANDS, *supra* note 31, at 204.

⁵⁰ See discussion *infra* Section V.B.

⁵¹ *S.H.I.B.G.B.’s Shuts Down*, *THE NEWSPAPER* (Sept. 29, 2015) (quoting Greg Benedetto), <https://thenewspaper.ca/2015/09/29/s-h-i-b-g-bs-shuts-down/>.

⁵² See *id.*

⁵³ *Id.* See also Lizzy Shramko, *Exploring Toronto’s Exploding Queer Feminist Music Scene*, *BITCHMEDIA* (Feb. 20, 2014), <https://www.bitchmedia.org/post/exploring-torontos-exploding-queer-feminist-music-scene-vag-halen-reg-vermue>.

While current strategies advertise a “determination to more fully integrate music into the cultural and economic fabric of the city,”⁵⁴ and acknowledge the potential commercial value a flourishing DIY space and community can bring as part of creative-city-oriented development initiatives, there are a lack of meaningful efforts in creating an environment where DIY spaces can actually flourish instead of being pushed out by other redevelopment processes or forced to close due to their ambiguous legal status and difficult fitting neatly into city zoning ordinances, noise standards, and so on.

The interest in the exchange-value potential that local DIY spaces might carry in promoting Toronto as a “musically diverse’ utopia” also misses the anti-commercial bend characteristic of many of these spaces and 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 (whether or not this kind of success is the goal of the artist).⁵⁵ Even while operators of DIY-oriented spaces may have an anti-establishment bend that can lead them to turn their backs on city’s bureaucratic licensing procedures, such as a liquor license, their gritty authenticity and edgy subversive nature make them attractive and vulnerable to commodification despite themselves.⁵⁶

V. METHODOLOGY

A. URBAN LEGAL ANTHROPOLOGY AND INSTITUTIONAL ETHNOGRAPHY

Referring to a new study by researchers at Emory University, Georgia Institute of Technology and University of Michigan,⁵⁷ a recent New York Times article posited that as social media platforms strategize effective methods to deal with hate speech and actions, research into the geography of these networks,

⁵⁴ See, e.g., Rayner, *supra* note 14.

⁵⁵ Tom Beedham, *The Year in Toronto’s DIY Community*, LONG WINTER (Jan. 8, 2015), torontolongwinter.com/blog/the-year-in-torontos-diy-community.

⁵⁶ See *S.H.I.B.G.B.’s Shuts Down*, *supra* note 51; ZUKIN, *supra* note 33, at 8.

⁵⁷ Eshwar Chandrasekharan et al., *You Can’t Stay Here: The Efficacy of Reddit’s 2015 Ban Examined Through Hate Speech*, 1 PROC. ACM ON HUM.-COMPUTER INTERACTION 31:1, (2017), <http://comp.social.gatech.edu/papers/cscw18-chand-hate.pdf>.

groups, pages and subcommittees is greatly needed.⁵⁸ In addressing this need, urban legal anthropology and sociolegal research pursuing justice for vulnerable affected communities in the context of intersecting virtual and physical elements must be flexible in research design.

Based on a twenty-three month period immersed in Toronto's Music City initiative and its local grassroots independent music communities, the project forming the basis for this article utilized an ethnographic approach combining participant observation within both physical and virtual music community spaces and events as well as at Toronto Music Advisory Council meetings, City Council meetings and public consultations where Music City related policy and motions were on the agenda, and at gatherings and panels organized by local non-profit organizations to discuss issues concerning music communities in Toronto and the status of Toronto's Music City initiative. Data gathered from these sources was also analyzed in relation to Toronto and Ontario policy and strategy documents related to cultural and music-oriented development, municipal legislation that governs the existence of music spaces and events in Toronto like Toronto's *Municipal Code*, *Official Plan*, Ontario's *Building Code Act*, *Heritage Act*, and so on, as well as documented occurrences of the enforcement of resulting by-laws.⁵⁹

More specifically, drawing on the tenets of institutional ethnography to shape the research methodology, DIY spaces were identified as the space/experience/problematic forming the "insertion point" of focused research for the project.⁶⁰ Based on earlier reconnaissance work charting the different genres of art, music, and grassroots independent arts venues, DIY spaces shaped the "first stage" that, as DeVault and McCoy note,⁶¹ is

⁵⁸ See Kevin Roose, *Reddit Limits Noxious Content by Giving Trolls Fewer Places to Gather*, N.Y. TIMES (25 Sept. 2017), <https://www.nytimes.com/2017/09/25/business/reddit-limits-noxious-content-by-giving-trolls-fewer-places-to-gather.html>.

⁵⁹ See, e.g., City of Toronto Act, S.O. 2006, c 11, Schedule A (Can.); OFFICIAL PLAN, *supra* note 33; Building Code Act, S.O. 1992, c 23 (Can.); Ontario Heritage Act, R.S.O. 1990, c O.18 (Can.).

⁶⁰ Nancy Taber, *Institutional Ethnography, Autoethnography, and Narrative: An Argument for Incorporating Multiple Methodologies*, 10 QUALITATIVE RESEARCH 5, 11 (2010); Marjorie L DeVault & Liza McCoy, *Institutional Ethnography: Using Interviews to Investigate Ruling Relations in* HANDBOOK OF INTERVIEW RESEARCH: CONTEXT & METHOD 751, 755 (Jaber F. Gubrium & James A. Holstein, eds., 2001).

⁶¹ DeVault & McCoy, *supra* note 60, at 755.

characteristic of many institutional ethnography-oriented research where researchers “begin from an experience that he or she knows something about, or where the problematic is already clear.”⁶² The approach in this first stage also drew on Paul Hodkinson’s work and research into goth subculture where an existing understanding, involvement, and access to key spaces allowed for a gradual intensification of existing interaction in order to take on the position of “critical insider.”⁶³

Initially identifying the processes and texts—legal, institutional, policies, municipal strategies, and so on—that were playing a role shaping the space and experience of DIY spaces led to a “second stage” where further texts and case sites were identified.⁶⁴ In line with this “second stage” of institutional ethnography-based research identified by DeVault and McCoy,⁶⁵ while the standpoint of the initial research approach and focus did not change, the site of research shifted by simultaneously narrowing in on specific physical spaces while also widening to include the virtual component of DIY interaction that had been revealed as intimately connected to the physical spaces in question.⁶⁶ As DeVault and McCoy suggest,

[T]here is no “one way” to conduct an IE [“Institutional Ethnography”] investigation; rather, there is an analytic project that can be realized in diverse ways. IE investigations are rarely planned out fully in advance. Instead, the process of inquiry is rather like grabbing a ball of string, finding a thread, and then pulling it out; that is why it is difficult to specify in advance exactly what the research will consist of. IE researchers know what they want to explain, but only step by step can they discover whom they need to interview or what texts and discourses they

⁶² *Id.* at 755–56. See also Taber, *supra* note 60, at 16; DOROTHY E. SMITH, INSTITUTIONAL ETHNOGRAPHY: A SOCIOLOGY FOR PEOPLE 38–39 (2005); Marie L. Campbell, *Institutional Ethnography and Experience as Data*, in INSTITUTIONAL ETHNOGRAPHY AS PRACTICE 89, 92 (Dorothy E. Smith ed., 2006).

⁶³ PAUL HODKINSON, *Translocal Connections in the Goth Scene*, in NASHVILLE: VANDERBILT UNIVERSITY PRESS, MUSIC SCENES: LOCAL, TRANSLOCAL, AND VIRTUAL 131–132 (Andy Bennett & Richard A. Peterson, eds., 2004); PAUL HODKINSON, GOTH: IDENTITY, STYLE, AND SUBCULTURE 4–6 (2002).

⁶⁴ DeVault & McCoy, *supra* note 60, at 755; Taber, *supra* note 60, at 11.

⁶⁵ DeVault & McCoy, *supra* note 60, at 756.

⁶⁶ Taber, *supra* note 60, at 17; IDDO TAVORY & STEFAN TIMMERMANS, ABDUCTIVE ANALYSIS: THEORIZING QUALITATIVE RESEARCH (Chicago: University of Chicago Press, 2014).

need to examine.⁶⁷

As is characteristic of institutional ethnography methodology, here, the analysis of texts played a key role in the research process.⁶⁸ In addition to relevant international, national, provincial, and municipal legislation and city by-laws, policy documents, reports, and studies were canvassed, and timely news sources were also drawn on in order to understand and reconstruct events leading up to occurrences of building code vigilantism and varying perceptions and reactions to the events in question.⁶⁹ Here, popular news sources pertaining to current events provided an array of local perspectives that ranged from formal to informal, neutral to opinionated, and represented the reality of everyday interactions and life in a city.

B. RESEARCHING MIXED VIRTUAL/PHYSICAL AFFINITY SPACES

Understanding DIY spaces and communities as mixed virtual and physical affinity spaces is a helpful tool for learning about, interacting with, and tracking DIY spaces in order to begin moving toward more effective and context appropriate protection, policy design, legislation, and enforcement of applicable city by-laws and other components of a city's municipal legal complexes.⁷⁰ Affinity spaces can be mixtures of the real and the virtual, and common characteristics of affinity spaces, as described by James Paul Gee, that apply to DIY spaces can include some or all of the following:⁷¹

⁶⁷ DeVault & McCoy, *supra* note 60, at 755.

⁶⁸ See Dorothy E. Smith, *Texts and the Ontology of Organizations and Institutions*, 7:2 *STUD. IN CULTURES, ORGS. & SOCIETIES* 159, 160 (2001); DOROTHY E. SMITH, *INCORPORATING TEXTS INTO INSTITUTIONAL ETHNOGRAPHIES* (Dorothy E. Smith & Susan Marie Turner eds., 2014); DeVault & McCoy, *supra* note 60, at 765.

⁶⁹ DeVault & McCoy, *supra* note 60, at 765.

⁷⁰ James Paul Gee, *Semiotic Social Spaces and Affinity Spaces: From the Age of Mythology to Today's Schools*, in *BEYOND COMMUNITIES OF PRACTICE* 214, 216 (D. Barton & K. Tusting eds., 2005).

⁷¹ *Id.* at 216, 225–28. See also Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 *SYDNEY L. REV.* 375, 399 (2008) (“[I]t is an imagined identification by a group of a common way of life, usually tied to a common language and history and contained within geographical boundaries of some kind, but there can be ‘communities’ of interaction which exist purely on the internet comprised of people from around the world. At the local level, communities consist of thick, share norms of interaction that

- the centrality of a common interest or endeavour in how people relate to each other and which transcends gender, race, class, disability and so on;
- the lack of segregation or differential treatment of newcomers and the lack of status based on levels of participation or roles within the space where everyone is not only accommodated within a common shared space but can also derive something entirely different out of engaging in the space depending on their own personal choices, interests, and identities;
- the encouragement and valuation of different kinds of knowledge (individual, distributed, dispersed, tacit, and so on), and the sharing of both intensive (specialized) and extensive (less specialized) knowledge, which enables and encourages many to contribute and engage in the space in whatever way they are able or inclined to do and feel comfortable in doing so;
- numerous forms, levels, and routes to status and participation within the space, which are fluid over time;
- leadership within the space is porous, flexible, and often vague, and leaders are viewed as resources rather than within a hierarchical framework.⁷²

constitute and characterise a way of life – including customs, habits, mores, and so forth – but at the broader level of the nation (or beyond) the bonds that constitute a community can be much thinner and mainly defined by a perceived identity. In its thinnest manifestation (which can nonetheless exert a powerful influence), the norms that bind a define the community may not be definite or reiterated enough to be considered a ‘system’ in the same sense that that applies to other categories.”). *See also* Sara Gwendolyn Ross, *From the Octagon to the Courtroom: The Right to Fight, Subaltern Cosmopolitanism, and Public Interest Litigation as a Tool for Mixed Martial Arts as a Community/Cultural Normative System*, 11 DEPAUL J. SPORTS L. CONTEMP. PROBS. 91, 93–94 (2015) (explaining that “MMA community members have shared understandings and commonalities in the structure of their everyday lives, their identities, and their choice of cultural and leisure practices.”).

⁷² *See also* Kruse, *supra* note 11, at 206 (“The existence of small local labels, and the availability of relatively cheap analog recording equipment . . . enabled bands to make recordings available locally without relying on signing major label or major indie deals.”).

Conceptualizing DIY spaces as mixed virtual/physical affinity spaces places the emphasis on the virtual/physical space itself rather than focusing on the notion of communities or groups, which can result in the labeling and categorizing of membership, composition, and belonging.⁷³ The notion of affinity spaces is additionally helpful in the context of studying the local legal governance of use and space, processes of displacement, and how it is through these processes that persons and things are ultimately governed in the city.⁷⁴ As Mariana Valverde suggests, accounting for human rights and equality in the city may be best approached through the language of space and things rather than that of people and communities.⁷⁵ While groups and individuals who use the space are affected by how the space is governed, it is the interaction of municipal legal complexes with the space in question and the use of this space that results in the unequal treatment of associated groups, individuals, and communities. As such, approaching the displacement of DIY spaces as affinity spaces rather than communities provides a narrowed focus on the precise area where municipal legal complexes begin to ineffectively or problematically interact with affected vulnerable groups and individuals.

VI. ASSESSING THE LIFE OF DIY SPACES IN A MUSIC CITY

Within the post-industrializing context of many cities, a lack of equitable balancing of exchange-value and use-value interests within city spaces and spaces of culture is noted as a result of the neoliberalization of city planning frameworks.⁷⁶ Leslie and Rantisi summarize that “[t]he literature emphasizes how creative city strategies fit into existing neoliberal agendas, promoting

⁷³ Gee, *supra* note 70, at 214–16.

⁷⁴ Valverde, *supra* note 43, at 34.

⁷⁵ *Id.* at 36–37.

⁷⁶ See HAE, *supra* note 1, at 13; Ute Lehrer & Andrea Winkler, *Public or Private? The Pope Squat and Housing Struggles in Toronto*, 33 SOC. JUST. 142, 144 (2006); NICHOLAS BLOMLEY, UNSETTLING THE CITY: URBAN LAND AND THE POLITICS OF PROPERTY 31 (2004); Ute Lehrer, *Re-Placing Canadian Cities: The Challenge of Landscapes of ‘Desire’ and ‘Despair’*, in CANADIAN CITIES IN TRANSITION: LOCAL THROUGH GLOBAL PERSPECTIVES 438, 445–48 (Trudi Bunting & Pierre Filion, eds., 3d ed. 2006); Ute Lehrer, *Urban Development and the Creative Class in a Neoliberal Age: Two Case Studies in Toronto*, in NEOLIBERAL URBANISM AND ITS CONTESTATIONS: CROSSING THEORETICAL BOUNDARIES 99, 102 (Jenny Künkel & Margit Mayer, eds., 2012); Martine August, *Social Mix and Canadian Public Housing Redevelopment: Experiences in Toronto*, 17 CAN. J. URB. RES. (SUPPLEMENT) 82 (2008).

gentrification and the displacement of working class, ethnic, and racially marginalized populations, and in many cases the displacement of the creative ecology that gave rise to these areas in the first place.”⁷⁷ But, as Leslie and Rantisi go on to note, even though the negative impacts of creative city agendas are highlighted by the literature, a complex set of rationales underlie these same creative city agendas, which leaves the door open for developing positive impacts and more socially and democratically progressive outcomes.⁷⁸

Assessing Toronto’s creative-city oriented strategies and the legal frameworks within which they are structured and deployed is this kind of examination and interrogation that is needed in order to consider the effects of current and developing cultural management policies on Toronto’s local spaces and associated communities, non-dominant spaces and associated communities, subcultural and countercultural spaces and associated communities, and their community cultural wealth and use-value generated within these cultural spaces. Turning to DIY spaces in particular, despite the plans and projections for Toronto as a Music City, the reality of these statements and plans is fictionally inclusive and diverse but struggle to effectively account for what music is, its diverse cultural and subcultural iterations, and the layered realities of the spaces associated with local grassroots music cultures.

As the overarching framework for the implementation of creative-city oriented policies, urban 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.”⁷⁹ John Chipman reminds us in his examination of the Ontario Municipal Board decision-making process and its development and application of provincial planning policies, “[t]he law is not neutral, but is an expression of the values and interests of dominant groups.”⁸⁰ Differential impacts result within the artistic and cultural spheres governed by municipal

⁷⁷ Leslie & Rantisi, *supra* note 24, at 83 (citations omitted).

⁷⁸ *Id.*

⁷⁹ HABITAT III, *supra* note 31, at 1.

⁸⁰ JOHN G. CHIPMAN, A LAW UNTO ITSELF: HOW THE ONTARIO MUNICIPAL BOARD HAS DEVELOPED AND APPLIED LAND USE PLANNING POLICY xi, 6 (2002).

legal complexes and harnessed for their potential in urban redevelopment projects. While the negative effects of these differential impacts are often more concentrated at the margins of affected spheres, across the board there is a stifling effect on diverse iterations of culture.⁸¹ A number of conscious or unconscious oversights can lead to this differentiated stifling—such as, context-ignorant legislation that results in negative impacts on only certain iterations of culture and the attached adherents; a failure to effectively weigh conflicting use-value and exchange-value interests within a space due to neglect or problematic design in effectively consulting with those who derive a high use-value from the space; and, connected to the latter, a disregard of the diversity of cultural iterations in the city that fails to meaningfully account for their acceptance, preservation, or flourishing, which is sorely needed for sustainable and equitable diversity in cities like Toronto, now and into the future.

Toronto's initiatives to achieve true Music City status reveals one of the difficulties in balancing conflicts and tensions between divergent preferences and understandings of culture and art that define both ourselves and our experience in the city space, and a balance is needed in the ways in which municipal legal frameworks ultimately regulate these differences.⁸² The Music City quest and tensions between different views of how art and culture should be governed in the urban context also amplify the overarching reality that remains within cities where not all people and not all groups are heard equally, or able to make themselves heard, and even if they are heard, their voices are not necessarily equally accounted for or valued in decision-making processes.

DIY spaces suffer especially from ambiguity and problematic characterization at the level of licensing and permit categories and also in terms of zoning bylaws and building safety requirements as they do not fit with existing zoning laws and safety requirements that are often different depending on whether a space is classified as residential, commercial, industrial, and so on, and DIY spaces do not fit into any of these as they are not just a residential space, they are not just

⁸¹ See HAE, *supra* note 1, at 5–6.

⁸² See, e.g., TITAN MUSIC GROUP, *supra* note 18; Dave Morris, *Toronto's Music City Dream Hindered by Red Tape*, GLOBE AND MAIL (June 16, 2015), <https://www.theglobeandmail.com/arts/music/torontos-music-city-dream-hindered-by-red-tape/article24981758/>.

workspaces, they are not a home, and they are not industrial either.⁸³ The concept of a DIY space is an entirely different paradigm for conceiving of use and space within municipal legal frameworks. The alternative or unconventional space/time coding of the use-patterns of unruly spaces is exacerbated by the tendency of municipal governance structures to stifle or neglect their continued existence, especially as previously undesirable areas of cities are redeveloped and retaken as desirable space.⁸⁴ Whether done purposefully or as an oversight, the spontaneous organic development and flourishing of the culture of subcultural communities that inhabit these spaces is affected negatively by being placed not only at risk of physical displacement but also physical harm.

A. THE GHOST SHIP

An example of the result of these often-intersecting risks and oversights of municipal governance structures is the deadly Ghost Ship fire that occurred in Oakland, California on December 2nd, 2016. This DIY community, live/work artist-run space was located at 1315 31st Avenue along a fairly vacant street in Oakland’s Fruitvale neighbourhood and not far from the nearby tent camp community found underneath one of the freeways leading to the Oakland bridge—another example of nearby unregulated, informal living spaces that are also very vulnerable

⁸³ See, e.g., City of Toronto, By-law No. 569-2013, Sched. A, Vol. 1 (May 9, 2013); Fire Protection and Prevention Act, 1997, S.O. 1997, c 4 (Can.); Building Code Act, O. Reg. 332/12 (Can.); Toronto Municipal Code, c 363, Building Construction and Demolition (Aug. 28, 2014), made under City of Toronto Act, S.O. 2006, c 11, Sched. A (Can.); Toronto Municipal Code, c 415, Development of Land (Jan. 31, 2019), made under City of Toronto Act, S.O. 2006, c 11, Sched. A (Can.); Toronto Municipal Code, c 545, Licensing (Jan. 31, 2019), made under City of Toronto Act, S.O. 2006, c 11, Sched. A (Can.); Toronto Municipal Code, c 629, Property Standards (July 9, 2015), made under City of Toronto Act, S.O. 2006, c 11, Sched. A (Can.); Toronto Municipal Code, c 632, Property, Vacant or Hazardous (Jan. 27, 2010), made under City of Toronto Act, S.O. 2006, c 11, Sched. A (Can.) (establishing standards for property owners); Toronto Municipal Code, c 767, Taxation, Property Tax (Mar. 28, 2019), made under City of Toronto Act, S.O. 2006, c 11, Sched. A (Can.); Building Code Act, 1992, S.O. 1992, c 23 (Can.); Planning Act, R.S.O. 1990, c P.13 (Can.).

⁸⁴ See HAE, *supra* note 1, at 3, 5, 29–33; CHATTERTON & HOLLANDS, *supra* note 31, at 19–44; Sébastien Darchen & Diane-Gabrielle Tremblay, *The Local Governance of Culture-led Regeneration Projects: A Comparison Between Montreal and Toronto*, 6 URB. RES. & PRAC. 140, 150 (2013).

to potentially disastrous fires. Ghost Ship was a labyrinthine, dilapidated two-story, 10,000 square foot warehouse full of makeshift partitions for artist work spaces, rooms, and alcoves.⁸⁵ It was full of assorted found objects like furniture, pianos, tapestries, scraps of wood, as well as artwork, pianos, carvings, and even housed a few recreational vehicles.⁸⁶ While the Ghost Ship space was not designed or structured in accordance with applicable fire safety regulations and had insufficiently developed fire safety measures—such as a lack of or inadequate means of safe exit, exit signs, exit lights and emergency lighting, overhead sprinklers, smoke, and fire alarms and extinguishers—it provided an affordable and welcoming home and environment for DIY culture, community, and creation in the face of displacement, unaffordability, and exclusion from other city spaces.⁸⁷

Ultimately, the precarious and neglected existence of Ghost Ship outside of the legal regulation of building codes and use permits, and where building code enforcement inspectors had not entered for at least thirty years, contributed to the death of thirty-six local DIY community members and the serious injury of many others.⁸⁸ But, while the existence and enforcement of building codes is clearly important in avoiding tragedies such as the Ghost Ship fire, these municipal legal frameworks can also become a means of inequitable marginalizing treatment in terms of their application, enforcement, and development when compared to the treatment received by more mainstream arts and cultural events and spaces. Additionally, as building code

⁸⁵ Master Complaint at ¶¶ 1–3, *In re Ghost Ship Fire Litig.*, No. RG16843631 (Alameda Cty. Sup. Ct. May 16, 2017), <https://maryalexanderlaw.com/uploads/2017/05/Ghost-Ship-Master-Complaint-file-endorsed.pdf>.

⁸⁶ *Id.* at ¶¶ 3, 47–51.

⁸⁷ *Id.* at ¶ 4; OAKLAND FIRE DEP'T, ORIGIN AND CAUSE REPORT: INCIDENT #2016-085231 13–15 (2017).

⁸⁸ See Master Complaint, *supra* note 85; Alene Tchekmedyan et al., *Ghost Ship Fire Mystery: What Did Fire Officials Know and When Did They Know It?*, L.A. TIMES (Dec. 17, 2016), <https://www.latimes.com/local/lanow/la-me-ghost-ship-fire-20161217-story.html>; Nastia Voynovskaya: *The Vanishing Underground: Oakland's Housing Crisis Is Also Displacing its Arts and Music Counterculture*, EAST BAY EXPRESS (Sept. 20, 2016), <https://www.eastbayexpress.com/oakland/oaklands-housing-crisis-also-displacing-its-arts-and-music-underground/Content?oid=4979500&showFullText=true>; Scott Glover & Susanna Capelouto, *Warehouse in Deadly Oakland Fire Hadn't Been Inspected in 30 Years*, CNN (Dec. 9 2016), <https://www.cnn.com/2016/12/08/us/oakland-fire-city-budget-cuts/index.html>; Phil Willon et al., *Oakland Officials Well Aware of Problems at Ghost Ship Before Fire Killed 36, Records Show*, L.A. TIMES (Feb. 8 2017), <https://www.latimes.com/local/lanow/la-me-ghost-ship-fire-20170208-story.html>.

vigilantism reveals below, of even greater concern, is where the *language* and enforcement of building codes and “safety” (and those who enforce them) is susceptible to co-option in becoming a means for the targeting of DIY spaces, groups, and communities with the specific intent of displacement.

VII. BUILDING CODE VIGILANTISM

“My friends died! And you cannot evict people in the name of my friends that died!”

- Shouted in the Richmond, CA City Hall chambers by a frustrated attendee protesting the forced closure of the Burnt Ramen DIY space.⁸⁹

The deadly fire that ripped through the Ghost Ship killing thirty-six people and injuring many was one of the deadliest building fires in California’s history.⁹⁰ Ghost Ship was a space for underground music, experimental performance, the LGBTQ community, and artists facing numerous socioeconomic barriers to securing safe living, performance, and gathering spaces. At the time of the fire, a pop-up electronic dance music event promoted by a small touring record label (the LA-based label 100% Silk) was taking place on the second floor of the Ghost Ship,⁹¹ the majority of those killed were attending this event, although two killed were 100% Silk artists performing at the event (Cherushii/Chelsea Faith and Nackt/Johnny Igaz) while a third 100% Silk artist Golden Donna/Joel Shanahan, another act booked to perform that night, escaped the fire.⁹²

Since the fire, a “master complaint” was filed in the Alameda County Superior Court that (at the time of the filing) consolidated the thirty-one civil suits filed by forty-seven individual plaintiffs

⁸⁹ *Field of Vision – In the Wake of Ghost Ship*, *supra* note 20, at 00h:15m:39s.

⁹⁰ Glover & Capelouto, *supra* note 88.

⁹¹ OAKLAND FIRE DEP’T, *supra* note 87; Master Complaint, *supra* note 85, at ¶ 2.

⁹² See 100% SILK, FACEBOOK (Dec. 3, 2016 11:45 AM), <https://www.facebook.com/100percentsilk/posts/1288529187835465>; Marc Hogan, *Cherushii and Nackt, Two 100% Silk Artists, Confirmed Dead in Oakland Fire*, PITCHFORK (Dec. 7, 2016), <https://pitchfork.com/news/70239-cherushii-and-nackt-two-100-silk-artists-confirmed-dead-in-oakland-fire/>; Gabrielle Canon, *After the Fire, an Uncertain Future for Artists in Oakland*, VICE (Dec. 9, 2016, 7:30pm), https://www.vice.com/en_us/article/mgwxgx/oakland-ghost-ship-warehouse-fire-feature-interview-100-silk.

of the families of the victims.⁹³ Alongside 100% Silk, Pacific Gas and Electric, building tenant and “manager” Derick Ion Almena, the building tenant and the Ghost Ship’s “creative director” Max Harris/Ohr who was in charge of running the event the night of the fire, the owner of the warehouse Chor Nar Siu Ng, the City of Oakland, Alameda County, and the State of California have also been named as defendants in the suits.⁹⁴ Almena and Harris were also arrested and charged with thirty-six counts of involuntary manslaughter on June 5th, 2017—charges for which they both pled not guilty on September 27th, 2017 with preliminary hearings beginning in the Alameda County Superior Court on December 5th, 2017 (just a few days after the one-year anniversary of the fire).⁹⁵

Not long after the Ghost Ship fire, a series of sudden closures began to overtake a number of Toronto’s longstanding DIY spaces that had previously flown under the radar. Authorities seemed to suddenly become aware of these spaces and begin investigating their compliance with fire safety codes and potential existence of building codes infractions. The closures of Toronto’s DIY spaces were not unlike what other DIY spaces and communities were facing in cities across North America like Baltimore, Denver, Forth Worth, Richmond, Nashville, Knoxville, Omaha,

⁹³ Master Complaint, *supra* note 85, at ¶ 8.

⁹⁴ *Id.* at ¶¶ 9–39; First Amended Master Complaint, *In re Ghost Ship Fire Litig.*, No. RG16843631 (Alameda Cty. Sup. Ct. May 16, 2017), <https://dolanlawfirm.com/wp-content/uploads/2017/01/Ghost-Ship-First-Amended-Master-Complaint-20170628.pdf>. See also Kristin Bender, *A Year Later: 31 of 36 Families Have Sued Over the Deadly Ghost Ship Fire*, FOX KTVU (Nov. 17, 2017), <http://www.ktvu.com/news/a-year-later-31-of-36-families-have-sued-over-the-deadly-ghost-ship-fire>.

⁹⁵ Arrest Warrant, *People v. Harris* (2017) (No. 17-CR-017349A), https://www.alcoda.org/newsroom/files/2017-05_JUN_Almena_and_Harris_PC_Dec.pdf; David Debolt, *Ghost Ship Fire: After Months of Delays, Almena, Harris Plead Not Guilty*, EAST BAY TIMES (Sept. 27, 2017), <https://www.eastbaytimes.com/2017/09/27/ghost-ship-fire-almena-harris-scheduled-to-enter-pleas-at-wednesday-morning-hearing>; David Debolt, *Oakland Warehouse Fire: Judge Rules City Had ‘Mandatory Duty’ to Ensure Safety at Ghost Ship*, EAST BAY TIMES, (Nov. 14, 2017), <https://www.eastbaytimes.com/2017/11/14/oakland-warehouse-fire-judge-rules-city-had-mandatory-duty-to-ensure-safety-at-ghost-ship>; Matthias Gafni et al., *Derick Almena, Second Ghost Ship Tenant Charged with 36 Counts of Manslaughter*, MERCURY NEWS (June 5, 2017), <https://www.mercurynews.com/2017/06/05/ghost-ship-fire-criminal-charges-filed-da-says>; James Queally et al., *2 Charged with Involuntary Manslaughter in Ghost Ship Fire That Killed 36 in Oakland*, L.A. TIMES (June 5, 2017), <https://www.latimes.com/local/lanow/la-me-ln-ghost-ship-fire-charges-20170605-story.html>.

Vancouver, and others.⁹⁶ It soon became clear that there was a pattern to these closures, that they were not random coincidence, and had been instigated by a series of coordinated attacks orchestrated via online forums like the 4chan/pol/ board (the politics/politically incorrect board) and Reddit’s /r/The_Donald forum by self-proclaimed “Right Wing Safety Squads” posting anonymously or under indicative names like “Armchair Fire Marshall”, and so on.⁹⁷ With Pepe the “Fire Safety” Frog often appearing as their avatar and in memes, and the “SS” abbreviation for “Safety Squad” or “Stay Safe” appearing in posted images in the SS bolt style that recalls the Nazi Germany Schutzstaffel (SS) symbol and flag that is now used by white supremacist/neo-Nazi SS, the Right Wing Safety Squads also proudly self-identify as alt-right, homophobic, and white supremacist, and have shifted the MAGA (“Make America Great

⁹⁶ Aaron Davis, *Online Spaces Become Battleground over DIY Spaces Around Country*, EAST BAY TIMES (Dec. 24, 2016), <https://www.eastbaytimes.com/2016/12/24/online-spaces-become-home-to-battle-over-diy-spaces-around-country>; Gabrielle Canon, *4chan Users Launch Campaign to Shut Down DIY Venues in Aftermath of Oakland Fire*, VICE (Dec. 15, 2016), https://www.vice.com/en_us/article/d7jwdj/4chan-trolls-diy-spaces-oakland-fire; Brandon Weigel, *DIY Arts Space Bell Foundry Shut Down by City*, BALTIMORE SUN (Dec. 5, 2016), <https://www.baltimoresun.com/citypaper/bcpnews-diy-arts-space-bell-foundry-shut-down-by-city-20161205-story.html>; Krystal Rodriguez, *After Oakland Fire, DIY Venues Across the Country are Under Scrutiny*, VICE (Dec. 9, 2016), https://www.vice.com/en_us/article/kb5pyn/oakland-ghost-ship-fire-diy-venue-crackdown; Michael Malice, *Internet Trolls Launch Campaign to Shut Down Progressive Spaces*, OBSERVER (Dec. 13, 2016), <https://observer.com/2016/12/internet-trolls-launch-campaign-to-shut-down-progressive-spaces>; Kaila Philo, *Is Baltimore’s DIY Art Scene Being Killed Off?*, VICE (Sept. 15, 2017), https://www.vice.com/en_us/article/43ad5g/is-baltimores-diy-art-scene-being-killed-off; Brandon Block, *In Hibernation: What Happened to the Mayor’s Safe Art Space Task Force and How is the DIY Scene Carrying On*, BALTIMORE SUN (Oct. 24, 2017), <http://www.citypaper.com/bcpnews-in-hibernation-20171024-htmlstory.html>; Rachel Kaufman, *Baltimore Hopes to Create Model for Safe DIY Artist Space*, NEXT CITY (Feb. 14, 2017), <https://nextcity.org/daily/entry/baltimore-model-diy-artist-spaces>; Michael Rancic, *Toronto’s Music Scene Reacts to Soybomb’s Closure*, NOWTORONTO (Jan. 12, 2017), <https://nowtoronto.com/music/features/torontos-local-music-scene-reacts-to-soybombs-closure>; Anonymous, *Do-It-Yourself Art Spaces Are Under Siege – And We Need to do Everything We Can to Protect Them*, CBC (Jan. 18, 2017), <https://www.cbc.ca/arts/do-it-yourself-art-spaces-are-under-siege-and-we-need-to-do-everything-we-can-to-protect-them-1.3941733>.

⁹⁷ See REDDIT: /r/THE_DONALD, https://www.reddit.com/r/The_Donald (last visited Nov. 16, 2019); Armchair Fire Marshall, */diy / - Right Wing Safety Squads*, Post No. 102802350, 4CHAN: /pol/ (Dec. 13, 2016), <https://archive.4plebs.org/pol/thread/102802350/> [<https://perma.cc/HUA9-XWJB>].

Again”) campaign slogan to MASA—”Make America Safe Again.”⁹⁸

Inspired by the building code and fire safety infractions of the Ghost Ship, Safety Squad attacks were coordinated to find and identify DIY spaces and then report suspected or observed fire safety and building code violations to local authorities utilizing the legal language of building codes and fire safety regulations. Local by-law enforcement and compliance officers (usually unknowingly) take it from there. These building code vigilantism threads sought, and seek, to mobilize and assist forum participants from around the world in identifying and reporting spaces of independent arts and culture and DIY, LGBTQ-friendly spaces not only in their own cities but wherever else they can be located.

A template is provided for the steps to take to locate and identify spaces to target (even via remote means such as YouTube videos of shows, events, and performances that have taken place at the spaces under attack), how and what to identify as potential infractions, and how to report these DIY spaces to local authorities, such as city council, the local fire marshal or fire safety enforcement, liquor control board, the landlords of DIY spaces, IRS/state tax agencies, city building inspectors, and so on. The instructions additionally note the importance of clearly identifying specific building code infractions and safety code violations observed either virtually or sometimes in person.

Another strategy has been to use the safety checklist that the DIY community developed and posted online for the benefit of all DIY spaces to use in trying to ensure they were coming up to fire safety codes as well as using websites and online directories of existing DIY spaces and LGBTQ-friendly spaces that were curated and frequented by community members over the years to find each other in other cities and share information, resources, support, and art.⁹⁹ Since the onset of building code vigilantism, many of these websites and directories have been taken down in an attempt to curb their use by the Right Wing Safety Squad. Nonetheless, despite their removal, these sites are still findable via internet archive services. Where some websites simply display the message that the content has been removed in an attempt to protect the community, a screen grab of the message

⁹⁸ See, e.g., Davis, *supra* note 96.

⁹⁹ See, e.g., *Harm Reduction for DIY Venues*, RED GATE ARTS SOCIETY, <http://redgate.at.org/archive/harm-reduction-for-diy-venues-do-it-yourself-do-it-now>.

has been used as the main photo accompanying the threads laying out DIY takedown strategies.¹⁰⁰

The intention of the posts and reports to local authorities is not motivated by the well-being of displaced DIY community members and artists, which becomes clear through the running tally of spaces shut down as well as the many explicit statements in the usually anonymous posts that accompany instructions for DIY “takedown strategies” and descriptions of the Ghost Ship fire and other potential fires that label them as an LGBTBBQ, as “Destroy It Yourself Communist Spaces,” and so on.¹⁰¹ Just a few examples of 4chan threads over the December 2016–November 2017 period that state the overarching intention of “safety squad” activity include:

- The Oakland warehouse fire occurred in a venue popular with leftists and degenerates, as well as normie party goers. These venues are known as “DIY Spaces”, and are often unsafe, as they don’t necessarily follow the fire codes. You might even have one of these places in your neighborhood or city and not even know it. Our communities need people like us to report violations and keep unwitting leftists from getting themselves killed. Do not visit these places, do not harass squatters, and do not make false reports. City officials are depending on us for correct information so that they can prevent this type of tragedy,¹⁰²
- These places are open hotbeds of liberal radicalism and degeneracy and now YOU can stop them by reporting all such places you may be or may become aware of to the authorities, specifically the local fire marshal [sic]. Watch them and follow them to their hives. Infiltrate social circles, go to parties/events, record evidence, and report it. We’ve got them on the run but now we must crush their nests before they can regroup! MAGA my brothers and

¹⁰⁰ See, e.g., Anonymous, *LGBTBBQ - DIY Destroy It Yourself Communist Spaces*, Post No. 102356261, 4CHAN: /pol/ (Dec. 10, 2016), <http://archive.4plebs.org/pol/thread/102356261> [<https://perma.cc/C7YR-J6GZ>].

¹⁰¹ *Id.*

¹⁰² Anonymous, *Comment No. 157352789, in Safety Squads*, Post No. 103217484, 4CHAN: /pol/ (Dec. 17, 2016), <https://archive.4plebs.org/pol/thread/103217484> [<https://perma.cc/FT5L-KUV8>].

happy hunting;¹⁰³

- REPORT ALL “ARTSPACES” AND ILLEGAL VENUES TO CRUSH THE RADICAL LEFT.¹⁰⁴
- Discuss DIY spaces info and general takedown strategies [sic]. We need to make sure building and fire codes are properly enforced and these leftist nests of ‘code violations’ are removed from cities.¹⁰⁵
- Oakland warehouse fire occurred in a radical leftist commune rife with HIV, drugs, and alternative lifestyle degeneracy. These communes are known as “DIY spaces” to the bums, anarchists, and drug addicts who populate them. . . . The purpose of this thread is to save the lives of those who populate such places. As the incident in Oakland has shown, these dens of ill repute are often decrepit, hazardous, and in violation of city ordinances. As members of this board of peace, we are obligated to report building code infractions and get these death traps shut down.¹⁰⁶
- Reminder, that there’s more to it than building code violations. These events push lots of illegal and seedy shit, and DIY openly admits to their wrongdoings. Make events quit that shit, and you have future teens and young adults growing up to be normal functioning citizens. Hold these bars/clubs/warehouses responsible and get the law involved and a bunch of criminal activity that plagues California decreases drastically. Not only are you stopping SJW culture from spreading, you’re also stopping mainstream edgy culture as well.¹⁰⁷

¹⁰³ Anonymous, *Comment No. 101951584, in Post No. 101951584*, 4CHAN: /pol/ (Dec. 7, 2016), <https://archive.4plebs.org/pol/thread/101951584> [<https://perma.cc/J6XA-LYSQ>].

¹⁰⁴ Anonymous, *Post No. 101951584*, 4CHAN: /pol/ (Dec. 7, 2016), <https://archive.4plebs.org/pol/thread/101951584> [<https://perma.cc/J6XA-LYSQ>].

¹⁰⁵ Anonymous, */diy/ - Destroy It Yourself General – Burning Leftist Edition, Post No. 102297188*, 4CHAN: /pol/ (Dec. 10, 2016), <https://archive.4plebs.org/pol/thread/102297188/> [<https://perma.cc/UAD5-JGJ7>].

¹⁰⁶ Anonymous, */diy/ - Fire Code Violations Are No Laughing Matter Edition, Post No. 102514200*, 4CHAN: /pol/ (Dec. 11, 2016), <https://archive.4plebs.org/pol/thread/102514200> [<https://perma.cc/6ZJX-MAWK>].

¹⁰⁷ Anonymous, *Comment No. 103201527, in /diy/ - Right Wing Safety Squads - #71 Keeping It (from) Burning Edition, Post No. 103201272*, 4CHAN: /pol/ (Dec. 16, 2016), <https://archive.4plebs.org/pol/thread/103201272/#103201527>.

Posts will often feature (((echoes)))—triple parentheses or brackets—which is a method of signaling to anti-Semitic individuals that a subject or individual in question is Jewish, and is also used here in this context more generally to indicate left-leaning spaces, LGBTQ spaces, and other known alt-right-targeted groups and communities.¹⁰⁸

The unique DIY outing and attack structure that 4chan in particular provided and provides is its ephemeral nature where posts are only likely to remain active for a short period of time as they expire and are “pruned” by 4chan’s software.¹⁰⁹ Most boards are limited by the site to ten pages of comments, but as older posts become no longer available, new threads repost the instructions for carrying out building code vigilantism, in addition to access to the archived version of some of the threads.

As far as the specific “takedown strategies” posted and then expanded upon by master “how to” threads, tools such as the “LOSER” acronym has been developed for ease of use:

LOOK on social media for punk shows from the past few months in your area!
OBSERVE the photos and videos, making special note of the offense[] . . . !
SAVE specific photos or videos, put links into the archive, take screengrabs!
ESTABLISH contact with the inspection authorities in the area!
REPORT specific violations, make sure reports are accurate and succinct!¹¹⁰

The checklists provided for reportable fire safety or building code violations to look for generally include: no sprinklers; sprinklers that are restricted or covered; exits that are not clearly marked; excessive electrical connections with a small panel; no five eights of an inch drywall for a fire barrier; uncovered holes in

7 [https://perma.cc/HDR8-3GFA].

¹⁰⁸ Matthew Yglesias, *The ((echo))*, *Explained*, VOX (June 6, 2016), https://www.vox.com/2016/6/6/11860796/echo-explained-parentheses-twitter.

¹⁰⁹ *Frequently Asked Questions*, 4CHAN, https://www.4channel.org/faq (last visited Oct. 10, 2019).

¹¹⁰ Anonymous, *Comment No. 102792784*, in */diy/ - Right Wing Safety Squads*, *Post No. 102792400*, 4CHAN: /pol/ (Dec. 13, 2016), https://archive.4plebs.org/pol/thread/102792400/#102792784 [https://perma.cc/R35H-AHPT].

ceilings; no smoke detectors; no emergency lighting; no certificate of occupancy; no permits for remodeling or building additions; the commercial use of residential property, and so on.

Most threads have a running tally that lists (a) venues that have been successfully identified, reported, and shut down; (b) venues that have been reported but not yet shut down; (c) venues that have been identified but not yet reported; and (d) leads on potential venues that require some research into whether or not they can be reported. The list of venues that have been shut down are treated as a badge of honor.

The threads are full of additional tips, bragging diatribes about successful instances of building code vigilantism, and complaints about different spaces or hurdles encountered in trying to shut down a particular space. Research is also shared on potential spaces to report and encouragement is provided to those who announce that they have found a space and identified reportable violations.

A. *BUILDING CODE VIGILANTISM IN ACTION IN TORONTO “MUSIC CITY”*

1. SOYBOMB HQ

In the case of one of Toronto’s longest running DIY mainstays, Soybomb came onto 4chan/pol/ radar as early as December 13, 2016:

Anon reporting from Toronto, Canada, but using progsi because I don’t want to risk any possible identification [sic]
I’ve found a den of degeneracy called Soybomb in Toronto’s downtown core. It’s a (((DIY space))) and (((venue))). See for yourselves.

<https://www.youtube.com/watch?v=gShcnVD9ITM>

concerning things in this video:

- > no fire sprinklers
- > skateboard ramp doubles as dance floor
- > dark, lots of obstacles
- > poor wiring[.]¹¹¹

¹¹¹ Anonymous, *Comment No. 102706533, /diy/ - Right Wing Safety Squads, Post No. 102706147, 4CHAN: /pol/* (Dec. 13, 2016), <https://archive.4plebs.org/pol/thread/102706147/#102706533> [<https://perma.cc/FF5L-2GJD>]. See also Elijah Wright, */diy/ Right Wing Safety Squad No. 45, SUP FORUMS*, <https://supforums.com/thread/102931479/politics/diy-right-wing-safety-squad-no-45.html> (last

By the week of January 9, 2017, Soybomb ceased operating as a DIY space and all future events to be held there were cancelled.¹¹²

Operating since 2003, Soybomb was an important community hub beloved by the DIY community and other local subcultural music communities. It provided space for local countercultural music festivals and countless bands over the years. But it was also a four-bedroom apartment/loft. Not intended as a bar, a nightclub, a venue, or the source of any revenue, Soybomb was described simply by its tenants/operators as a home with space for the events it held.¹¹³ Initially envisioned as a place to sleep for the tenant/operators, as well as a space for skateboarding that featured a mini half-pipe, the base of the half pipe eventually became the stage for bands with audience members sitting or standing on the edges of the half pipe as well as standing or moshing around the front of the base surrounding the bands. As the space began to hold more and more music events, it morphed into the DIY arts space it became known for.

Soybomb’s discrete street-level entrance was found next to a bike shop and led directly up a set of rather rickety stairs into the apartment/living/show/skateboarding space located above the bike shop. It was replete with a no-frills kitchen and blunt décor like a chain-link fence on one side of the half-pipe, haphazardly bikes hanging from the unfinished ceiling, raw plywood counters in front of a makeshift bar space, and featured an assortment of blunt hand printed signs with instructions for guests such as the sign found near the kitchen/fridge/bar: “IF YOU THINK YOU ARE GOING PAST HERE YOU ARE WRONG.” A little wooden staircase provided access to the roof with a small vegetable and herb garden and a wooden deck with a view of downtown Toronto and the CN Tower.

Within hours of appearing on one of the threads, the 4chan user who had initially shared Soybomb’s existence announced

visited Oct. 10, 2019).

¹¹² Michael Rancic, *Toronto’s Music Scene Reacts to Soybomb’s Closure*, NOW MAG. (Jan. 12, 2017), <https://www.nowtoronto.com/music/features/torontos-local-music-scene-reacts-to-soybombs-closure>.

¹¹³ See, e.g., Jesse Ship, *Soybomb HQ Knows How to Throw a House Party*, BLOGTO (Dec. 4, 2012), https://www.blogto.com/music/2012/12/soybomb_hq_knows_how_to_throw_a_house_party.

that Soybomb had now been reported to the City and included screenshots of the report submitted.¹¹⁴ Not long after, a fire inspector sent by Toronto Municipal Licensing and Standards arrived at Soybomb to investigate a blocked fire escape. Upon inspection, other fineable infractions were also identified. The inspector initially indicated that the infractions could likely be easily addressed and, if dealt with that same day, the resulting fines would be reduced. The investigation into the space, however, was not complete as the fire inspector returned again later in the day with a senior fire inspector. At that point the inspection and accompanying questions from the inspectors extended beyond fire issues and were followed in the coming days with a phone call from the landlord of the space who had been contacted by the inspectors with questions about Soybomb's events and suspected operation as an unlicensed nightclub. Further investigations by the inspectors followed and the landlord eventually signed agreements confirming that not only would no events be held at Soybomb the weekend following the investigation, but also that no further events would be held at Soybomb again.¹¹⁵

Despite repeated attempts by Soybomb's tenant/operators to find out what could be done to bring Soybomb up to code, this information was never provided.¹¹⁶ While community speculation at the time identified Soybomb as the first Toronto DIY space to be affected by building code vigilante efforts,¹¹⁷ it soon became clear that the effects were being felt across Toronto's DIY community.

2. DIY SPACE #2¹¹⁸

Shortly before building code vigilante activity that led to the

¹¹⁴ See, e.g., Anonymous, *Comment No. 102706533*, in */diy/ Right Wing Safety Squads*, *Post No. 102706147*, 4CHAN: /pol/ (Dec. 13, 2016), <https://archive.4plebs.org/pol/thread/102706147> [<https://perma.cc/FF5L-2GJD>]; Anonymous, *Comment No. 102714398*, in */diy/ Right Wing Safety Squads*, *Post No. 102706147*, 4CHAN: /pol/ (Dec. 13, 2016), <https://archive.4plebs.org/pol/thread/102706147> [<https://perma.cc/FF5L-2GJD>].

¹¹⁵ Joe Smith-Engelhardt, *Soybomb Founder Says Shutdown is Bigger than 4Chan*, A.SIDE (Jan. 22, 2017), <https://ontheaside.com/uncategorized/soybomb-founder-says-shutdown-is-bigger-than-4chan>.

¹¹⁶ *Id.*

¹¹⁷ See *id.*

¹¹⁸ The name of this DIY space has been retracted for its protection as it later became active again.

closure of DIY Space #2, the tenant/operators of the space responded to the Ghost Ship fire, as many other DIY and independent art/music spaces did, by expressing their sadness to their attending community, their sympathy for the victims of the fire, as well as noting how close to home the tragedy struck, especially where artists from the same label performing at the Ghost Ship the night of the fire (100% Silk) had also performed at DIY Space #2 many times in the past.¹¹⁹ Additionally, the tenant/operators of the space, again in a manner similar to other DIY spaces across North America, noted how the Ghost Ship fire had made fire safety precautions and fire safety awareness a focus moving forward, and also laid out the specific steps they would be taking in the future in this regard.¹²⁰ Some of these steps included a strict ban on smoking, without exceptions; a strict enforcement on capacity limits, without exceptions; the addition of an additional fire extinguisher for the stage; and the application of fire retardant spray to all curtains, black fabric, and chairs as well as on anything mounted on the ceiling.¹²¹

The tenant/operators of space also noted fire safety measures that they had already been taking—many of them based on prior advice given in past fire inspections. These included having regular fire inspections, fire alarms installed in every room, all stage lights mounted high enough on the walls in order to be out of reach, labelled fire exits running through the building, regulation fire extinguishers available, a ban on candles, and the removal of large hanging objects from the ceiling or that were blocking hallways. Other awareness raising efforts amongst the greater DIY community included links to harm reduction sites for DIY venues that the DIY community had been compiling.¹²²

DIY Space #2 also organized a fundraising event for the Fire Relief Fund established for the victims of the Ghost Ship fire. This event was held on the evening of December 16th, 2017, the

¹¹⁹ See Cameron Holbrook, *100% Silk Pay Tribute to Ghost Ship Victims with Benefit Compilation*, MIXMAG (Dec. 1, 2017), <https://mixmag.net/read/100-silk-pay-tribute-to-ghost-ship-victims-with-benefit-compilation-news>; Kelly Whalen, *A Boombbox Procession Honors Lives Lost in Ghost Ship*, KQED (Dec. 5, 2017), <https://www.kqed.org/arts/13816769/a-boombbox-procession-honors-lives-lost-in-ghost-ship>.

¹²⁰ See SAFER DIY SPACES, <https://saferdiyspaces.org> (last visited Oct. 15, 2019).

¹²¹ See, e.g., SAFER SPACES, <https://saferpac.es/> (last visited Oct. 28, 2019).

¹²² See, e.g., *supra* notes 120, 121 and accompanying text.

night before mention of DIY Space #2 began to circulate amongst 4chan/pol/ users accompanied by images of the space and a diagram of the venue's layout: "Alright, first up for Toronto DIY [DIY Space #2]. They host everything from Concerts, party's [sic], to porno shoots as dictated on their website."¹²³ The flagged suspected infractions to be reported included no exit signs, no sprinkler system, no fire extinguisher, only one exit, a door opening into the venue, a hole in the ceiling, images of shows with the room packed to the brim with attendees, and so on.¹²⁴

About four hours later, the 4chan user who initially flagged DIY Space #2 triumphantly announced: "Alright friends, I reported the Toronto DIY venue. Waiting for a response. They are holding an event tonight to commemorate those who died in Oakland. Little ironic considering their own lack of safety measures."¹²⁵ This update was followed moments later by confirmation that the 4chan user had "[j]ust got a response from the city gentlemen. They are forwarding my request to the Fire Preventive chief in the area! No way this place will pass, will update with info when its confirmed kill to avoid firebugs from messing with the investigation."¹²⁶ Even though someone else frequenting the 4chan/pol/ board noticed that DIY Space #2 had been identified and targeted, warned the tenant/operators of DIY Space #2, and interjected in the thread commenting that they knew the tenant/operators and had warned them about the 4chan/pol/ attack,¹²⁷ the intervenor was assured by the instigator of the attack that a fire inspector was already on the way.¹²⁸

Founded in 2009 without a mandate or a plan, DIY Space #2 was found in one of Toronto's few remaining neighbourhoods that has, at least for the moment, resisted invasive redevelopment that can consist of the entire replacement of the original building stock with condominiums and cleansed new spaces. The neighbourhood precariously remains largely full of independent

¹²³ Anonymous, *Comment No. 103065789*, in */diy/ - Right Wing Safety Squad*, *Post No. 103058032*, 4CHAN: /pol/ (Dec. 15, 2016), <https://archive.4plebs.org/pol/thread/103058032/#103065789> [<https://perma.cc/BBW3-9E8U>].

¹²⁴ *Id.* at *Comment Nos. 103065789, 103066122, 103066274*.

¹²⁵ Anonymous, *Comment No. 103155376*, in */diy/ - Right Wing Safety Squad*, *Post No. 103144665*, 4CHAN: /pol/ (Dec. 16, 2016), <https://archive.4plebs.org/pol/thread/103144665/#q103155376> [<https://perma.cc/HQH4-E2EK>].

¹²⁶ Anonymous, *Comment No. 103157065*, in */diy/ - Right Wing Safety Squad*, *Post No. 103152889*, 4CHAN: /pol/ (Dec. 16, 2016), <https://archive.4plebs.org/pol/thread/103152889/#103157065> [<https://perma.cc/JX5V-HZ6D>].

¹²⁷ *Id.* at *Comment Nos. 103157789, 103158760*.

¹²⁸ *Id.* at *Comment No. 103158911*.

and eclectic stores, restaurants, bars, counterculture spaces, and ramshackle buildings. It has also been the subject of a Heritage Conservation District Study and the subsequently recommended and developed Heritage Conservation Plan for the neighbourhood.¹²⁹

DIY Space #2 was a relatively small and compact space found down a dimly lit alleyway that led to its unmarked location above a bakery and accessed by a narrow set of stairs. It was known for its hybridity as a space that straddled the boundaries of an art gallery, live music venue, movie theater, music video set, performance space, yoga studio, dance floor, nightclub, an eclectic clubhouse, and so on. It had a small stage complete with curtains and lighting. Similar to other DIY spaces like Ghost Ship and Soybomb, and perhaps unappealing to some, the inside décor and structure was mismatched and might be described as unpretentiously rickety—which many attendees and DIY community members find to be part of the charm, attraction, or welcoming nature of these spaces.

Like Soybomb, DIY Space #2 was not focused on profit, and part of what permitted the ongoing existence of the space despite the decentering of profit incentives was its simultaneous use as the home for the operators of the space as well as numerous other visitors, bands, artists, and so on, over the years. In the same vein as other DIY spaces, DIY Space #2 provided a place for performances and performance art that are often either unwelcome in traditional venues or do not make sense to hold in these more traditional venues due to a number of factors from the nature of the performance to the lack of profit incentive. Again in the same vein as other DIY spaces, DIY Space #2 made it possible for artists and bands to be able to afford to tour, share their art, and perform by providing them with a place to stay, which also makes it possible for DIY spaces to curate and facilitate a steady stream of shows at the venue to present to the local community.¹³⁰

¹²⁹ See, e.g., Proceeding from Study to Plan Phase for the Proposed Kensington Market Neighbourhood Heritage Conservation District, Action PB 26.6, TORONTO PRESERVATION BOARD (Sept. 28, 2017), app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.PB26.6.

¹³⁰ See, e.g., Aubrey, *What's Up with Kensington Market's Oldest DIY Venue?*, BLOGTO (Nov. 10, 2014), www.blogto.com/music/2014/11/whats_up_with_kensington_markets_oldest_diy_venue (describing DIY Space #2).

B. CONCLUSION AND POLICY CONSIDERATIONS

While regulatory and other governance barriers that Toronto's Music City initiative seeks to ameliorate have yet to be meaningfully revised, artists and musicians have been increasingly turning to "the found authenticity of do-it-yourself performances," and the resulting DIY spaces of music consumption and production are becoming more visible in cities like Toronto.¹³¹ As Zukin notes, the "gritty authenticity" of the space then makes it vulnerable to commodification.¹³² The resulting increase in exchange-value potential may then pique the interest of developers and place marketers such that the space may no longer be affordable to the DIY music community occupants or, as Hae describes, a reregulation of the space may occur that targets noise and conduct by-products now deemed unruly or nuisance-generating.¹³³ But, as described above, the gritty authenticity of DIY spaces can also engage fire safety and building code compliance issues.

Where spaces of marginal or unruly music culture of those who identify with or who have been pushed to the fringes of society are not effectively accounted for within Music City initiatives, the protection and promotion of the true diversity of Toronto's musical subcultures is compromised. Cities like Toronto must better synchronize conflicting policies and legal complexes that govern music and musical communities to avoid this. Or, as Toronto's current Mayor John Tory noted in his opening remarks for the April 21st, 2017, Music Cities Summit included in the Canadian Music Week (CMW) program, city planning and music have to better work together—especially at the outset of development and redevelopment projects.¹³⁴

While leisure activities can sometimes be 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 cultural iterations. Culture, cultural spaces and practices, and leisure activities are domains that provide

¹³¹ See ZUKIN, *supra* note 33, at 37.

¹³² *Id.*

¹³³ HAE, *supra* note 1, at 30.

¹³⁴ Kate McGillivray & Natasha MacDonald-Dupuis, *Mayor John Tory Unveils Plans to Bolster Toronto's Music Scene*, CBC NEWS (Apr. 21, 2017), <https://www.cbc.ca/news/canada/toronto/tory-toronto-music-1.4079960>.

meaning to life in the city and are where the fabric of urban society is woven. The protection of spaces of subcultural practice that have a high use-value and community cultural wealth may be seen by some as only an unnecessary and inconvenient nostalgia, but this is but one view. To avoid placing a lower value on someone else’s cultural practices and preferences, the perspectives of those who occupy the space in question and those who derive meaning from the space remain important to consider. Where spaces of marginal or unruly music culture 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.”¹³⁵ Dismissing the use-value of these spaces dismisses the voices of those to whom these spaces are important. This 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. And, it also flies in the face of Toronto’s motto: “Diversity Our Strength.”

In improving culture-oriented redevelopment strategies, further research should examine how community consultation practices and participation might be more effectively designed and used to equitably canvas the full spectrum of divergent community values, uses, and interests in spaces up for redevelopment, zoning by-law amendments, and encroaching development proposals.¹³⁶ More attention and effort to gather the expressed needs of *all* factions of a city and its citizens would better represent the use-values present in city spaces in order to guard against an overdeveloped emphasis on exchange-value interests in designing redevelopment processes.¹³⁷ First steps

¹³⁵ CHATTERTON & HOLLANDS, *supra* note 31, at 204.

¹³⁶ See CHRIS BUTLER, HENRI LEFEBVRE: SPATIAL POLITICS, EVERYDAY LIFE AND THE RIGHT TO THE CITY (2012); MARK PURCELL, RECAPTURING DEMOCRACY: NEOLIBERALIZATION AND THE STRUGGLE FOR ALTERNATIVE URBAN FUTURES (2008) [hereinafter PURCELL, RECAPTURING DEMOCRACY]; Mark Purcell, *Excavating Lefebvre: The Right to the City and its Urban Politics of the Inhabitant*, 58 GEOJOURNAL 99 (2002) [hereinafter Purcell, *Excavating Lefebvre*]; Sara Ross, *Strategies for More Inclusive Municipal Participatory Governance and Implementing Un-Habitat’s New Urban Agenda: Improving Consultation and Participation in Urban Planning Decision-Making Processes Through Rapid Ethnographic Assessment Procedures*, 96 CAN. BAR. REV. 294 (2018).

¹³⁷ See Purcell, *Excavating Lefebvre*, *supra* note 136, at 100.

along this research path might also turn to how “community” is defined within consultation practices so as to ensure that it is not solely the physical inhabitants of a space or neighbourhood that are targeted when seeking to increase citizenship involvement in shaping policy and decisions that affect the city space.¹³⁸ Where “community” and a “community group” can carry a variety of meanings, it is as important to ensure the interested community is represented alongside the geographically proximate community or inhabitants.¹³⁹

Turning back to Toronto’s Music City policy aspirations and initiatives—alongside its interest in promoting and maintaining a reputation as a city of diversity—the rash of DIY closures in 2017 occurred even though its Music City aspirations seek in theory to support these spaces. The DIY community mobilized in attempts to raise awareness about the alarming number of sudden closures, the ongoing threats posed to DIY spaces due to building code vigilante efforts, and the lack of effective municipal legal categories and context-sensitive enforcement of by-laws affecting DIY spaces.

Not only did the community engage the local press,¹⁴⁰ but they

¹³⁸ See PURCELL, RECAPTURING DEMOCRACY, *supra* note 136.

¹³⁹ See Brian Hoyle, *Confrontation, Consultation, Cooperation? Community Groups and Urban Change in Canadian Port-City Waterfronts*, 44 CAN. GEOGRAPHER 228 at 228, 237 (2000).

¹⁴⁰ See, e.g., Commercial Tenancies Act, R.S.O. 1990, c L.7 (Can.); Amy Carlberg, *Toronto’s Most Unique Live Music Venue Shuts Down*, BLOGTO (Jan. 10, 2017), <https://www.blogto.com/music/2017/01/torontos-most-unique-live-music-venue-shuts-down/>; Michelle Da Silva, *Harlem is Closing its Richmond East Location in March*, NOW MAG. (Feb. 27, 2017), <https://nowtoronto.com/news/harlem-is-closing-its-richmond-east-location-in-march/>; Carla Gillis, *Vanishing Music Venues: Three Months into 2017 and We’ve Already Lost Seven*, NOW MAG. (Mar. 1, 2017), <https://nowtoronto.com/music/torontos-vanishing-music-venues/> [hereinafter Gillis, *Vanishing Venues*]; Kate McGillivray & Natasha MacDonald-Dupuis, *City of Toronto Joins Fight to Keep Music Scene Bumping in the Face of Closures*, CBC NEWS (Apr. 20, 2017), <https://www.cbc.ca/news/canada/toronto/toronto-music-venue-city-action-1.4076221>; Kate McGillivray & Natasha MacDonald-Dupuis, *Shuttered Music Venues Raise Fears of ‘Homogeneous’ Toronto Culture*, CBC NEWS (Apr. 19, 2017), <https://www.cbc.ca/news/canada/toronto/toronto-venues-closing-1.4072744>; Michael Rancic, *Toronto’s Music Scene Reacts to Soybomb’s Closure*, NOW MAG. (Jan. 12, 2017), <https://nowtoronto.com/music/features/torontos-local-music-scene-reacts-to-soy-bombs-closure/>; Michael Rancic, *Two More Toronto Music Venues Close this Month*, NOW MAG. (May 16, 2017), <https://nowtoronto.com/music/features/two-more-toronto-music-venues-close-this-month/>; Kevin Ritchie, *Holy Oak to Close at the End of February*, NOW MAG. (Feb. 9, 2017), nowtoronto.com/music/holy-oak-cafe-to-close-at-the-end-of-february/; Kevin Ritchie, *Live Music Venue The Central to Close After 10 Years*, NOW MAG. (Jan. 20 2017), <https://nowtoronto.co>

also began attending the quarterly TMAC meetings—especially the meeting held on February 13th, 2017. Many gave passionate deputations about what was happening to the DIY music community, their spaces, why TMAC should pay attention, and ideas as to what could be done. One of the operators of DIY Space #2 suited up for the occasion and gave a deputation at the June 5th, 2017 meeting about the 4chan/pol/ building code vigilante attacks, discussing how it was unacceptable that the city’s municipal legal infrastructure was being manipulated and used in this way, and that a small change might even be simply requiring that a complaint or report of this nature be accompanied by a name and address rather than being welcomed as an anonymous report—in part to ensure that the report was in fact being made by someone in Toronto rather than an online troll.¹⁴¹

Other deputations suggested that one of the most significant concerns and problems encountered by the DIY community when by-law enforcement officers arrived to inspect and enforce building code and fire safety regulations—even if these were problematically instigated by building code vigilante efforts—was the manner in which enforcement took place and the unwillingness of enforcement mechanisms and officers to work with a DIY space or event interested in, or hoping to bring itself up to code.¹⁴² Where many DIY spaces are seen as safe spaces for marginalized and transgressive groups and individuals to congregate and feel welcome, a lack of cultural competency in enforcement was identified as traumatic to the community. Other deputations noted that the notion that enforcement officers and procedures might aid DIY spaces and events in coming up to

m/music/the-central_to_close_mirvish_village; David Shum & Erica Vella, *Hugh’s Room in Toronto Abruptly Shuts Down Amid Financial Troubles*, GLOBAL NEWS (Jan. 9, 2017), <https://globalnews.ca/news/3168622/hughs-room-in-toronto-abruptly-shuts-down-amid-financial-troubles>; Matt Williams, *Canadian Music Venues Are Dropping Like Flies*, NMC: AMPLIFY (Jan. 16, 2017), amplify.nmc.ca/canadian-music-venues-are-dropping-like-flies.

¹⁴¹ Alex Clement, *Constructive Dialogue Emerges at June Meeting of Toronto Music Industry Advisory Council*, MUSIC CANADA (June 12, 2019), <https://musiccanada.com/news/constructive-dialogue-emerges-at-june-meeting-of-toronto-music-industry-advisory-council>.

¹⁴² See Minutes Toronto Music Industry Advisory Council, CITY OF TORONTO (Feb. 13, 2017), <http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getMinutesReport&meetingId=12492>.

code was not an unrealistic request as this is something that is frequently provided to mainstream Toronto arts organizations like Artscape—help which DIY event organizers noted they had benefited from when they had partnered with these more mainstream organizations.¹⁴³

While the time taken up by the numerous deputations ensured they were not easily dismissed at the meeting and even caused TMAC to defer some of its February 13th, 2017 agenda items to its next meeting, after the first half of 2017 had passed, attention to the vulnerability of DIY and marginal music communities in Toronto lessened and received less attention in comparison to other Music City projects and initiatives.

As TMAC and Toronto's Music Office move forward in addressing many of the barriers faced generally by music spaces in Toronto, the barriers connected to deadly occurrences like the Ghost Ship fire have not figured as a priority in terms of communities consulted in working towards better municipal policies to accommodate music venues. For example, large brick and mortar establishments and owners were consulted first by TMAC's venue protection working group, even though this working group was partially developed as a response to the DIY community deputations during the February and January TMAC meetings. As of the end of 2017, the promised consultation with the informal music sector and DIY community had yet to be arranged. The problematic intersections between Toronto's municipal fire safety and building code regulations—both in terms of avoiding tragedies like the Ghost Ship fire as well as addressing enforcement concerns—remained unaddressed while TMAC made progress working with Toronto's Municipal Licensing and Standards and Planning departments towards a better Music City through amendments to Toronto's Chapter 591 noise bylaw revisions and implementing an agent of change principle (modelled off successful models in London, UK and Australia) in Toronto's core to compel developers and incoming residents to account for pre-existing music, and so on.¹⁴⁴

¹⁴³ *See id.*

¹⁴⁴ *See, e.g.*, Presentation, Christine Heydorn, Music Sector Initiatives City Planning Update presented to TMAC Advisory Committee, MA 10.3 (Dec. 4, 2017), www.toronto.ca/legdocs/mmis/2017/ma/bgrd/backgroundfile-109743.pdf; Minutes Toronto Music Industry Advisory Council, CITY OF TORONTO (Dec. 4, 2017), <http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getMinutesReport&meetingId=12491>; Presentation, Municipal Licensing and Standards, Amendments to Chapter 591, Noise: An update from Municipal Licensing and

In addition to better consultation practices with all spectrums of artistic and cultural communities in designing better municipal policy and redevelopment strategies that engage meaningfully with diversity and the gaps that spaces and communities like Toronto’s DIY spaces and Oakland’s Ghost Ship fall through, cities must also work to develop better and more context-sensitive enforcement techniques for these policies and applicable local by-laws, as Toronto’s DIY community highlighted during their TMAC deputations. In addition to acknowledging vexatious and vigilante complaints and reports, cultural competency training in dealing with marginalized groups, individuals, and their spaces is sorely needed.

Even in the TMAC discussions dealing with upcoming noise by-law revisions and noise by-law enforcement measures, TMAC concern surrounded the noise measurement equipment and the training of enforcement officers with regard to noise measurement equipment.¹⁴⁵ The only concern about best practices in enforcement of noise by-laws revolved around whether noise measurement would occur at the source of the noise or the point of reception of noise.¹⁴⁶ Even though the prior DIY community deputations at TMAC had vocally expressed great concern with cultural competency in by-law enforcement, this concern was not represented by TMAC when the opportunity came for questions and concerns regarding these revisions to an aspect of Toronto’s municipal legal framework that—like the enforcement of fire safety regulations—can differentially affect marginal portions of Toronto’s artistic and cultural communities.

As Valverde notes, having city employees enforce bylaws in response to complaints “is a regulatory strategy that makes many

Standards (Dec. 4, 2017), <https://www.toronto.ca/legdocs/mmis/2017/ma/bgrd/backgroundfile-109742.pdf>. 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. OF LEGAL STUD., art. 5, at 1, 17–18 (2017).

¹⁴⁵ Minutes Toronto Music Industry Advisory Council, CITY OF TORONTO (Dec. 4, 2017), <http://app.toronto.ca/tmmis/viewPublishedReport.do?function=getMinutesReport&meetingId=12491>.

¹⁴⁶ See *id.*; CHAPTER 591, NOISE – AMENDMENTS AFTER FURTHER CONSULTATION, LS11.2, CITY OF TORONTO 1, 25 (2016), <https://www.toronto.ca/legdocs/mmis/2016/ls/bgrd/backgroundfile-92915.pdf>.

people feel that ‘the city’ is listening and is responsive.”¹⁴⁷ But, as with the case of building code vigilante reports and the manner by which fire safety regulations have been deployed in relation to DIY spaces in cities like Toronto, if enforcement is not done in a culturally competent, context-sensitive, and equitable manner that relies on meaningful and inclusive citizen consultation and participation, it can have the opposite effect. In Toronto, this has left the portions of Toronto’s grassroots arts and music community—which are simultaneously used for their representation of edgy and diverse artistic and musical output—without any sense that the city is listening or responsive. As Valverde explains in her study of everyday law on the streets of Toronto and Toronto’s governance of its reified diversity,

A governance process that depends largely on receiving complaints by groups and individuals with the resources and the know-how to get attention (from either city staff or the city councillor or both) will be necessarily biased in favor of the largely white, well educated, and mostly gray-haired folk who already feel a sense of civic entitlement, and whose claims to urban citizenship are confirmed and reinforced.¹⁴⁸

For a culturally vibrant city that—beyond a focus on dominant cultural institutions—engages a full spectrum of music creation, performance, and art, as cities such as Toronto profess a desire to do, better consultation with, engagement, and representation of transgressive, independent, grassroots DIY art and culture communities and spaces that face municipal legal barriers to their continued existence is sorely needed. Addressing these barriers requires attention to the problematic and culturally incompetent enforcement of vigilante action seeking to displace LGBTQ-friendly DIY spaces; to uses of property that currently do not fit with existing zoning laws, safety requirements, and licensing categories depending on whether a space is classified as residential, commercial, industrial, and so on; and to the help that is needed by independent arts spaces that provide safe social space but risk community displacement when they fall below municipal building code and fire safety standards and present a physical structural hazard to those inside—like the Ghost Ship. As DIY community members have expressed not only in Toronto

¹⁴⁷ VALVERDE, *EVERYDAY*, *supra* note 32, at 103.

¹⁴⁸ *Id.* at 102–03.

but across the many cities where spaces are being shut down, culturally competent enforcement would include the provision of clear information, guidance, resources, and time to be able to get DIY community spaces up to code as opposed to the immediate closure of a space subsequent to an inspection that leads to displacement and homelessness for precarious arts communities. For a city to become an inclusively burgeoning center for art and music, not only gathering this feedback from transgressive and marginal art and music communities, but also paying attention to this information is crucial to attend to moving forward.

As a concluding cautionary note for municipal policy-makers seeking to market a city’s image, brand, or sound, cookie cutter creative city recipes for urban redevelopment will not necessarily provide a marketable uniqueness that will set a city apart as a creative global city attracting the ideal creative individuals and sought-after tourist dollars. If the full spectrum of conventional to unruly musical diversity, (sub)cultural iterations, and community cultural wealth are not equally valued and provided with equal opportunities and protection, culture-based redevelopment strategies may simply result in the erosion of the uniqueness and diversity of a city’s margins—leaving us only with a series of identically “diverse” and “creative” global cities 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.¹⁴⁹

¹⁴⁹ See Warnaby & Medway, *supra* note 40, at 357; ZUKIN, *supra* note 33, at 222.