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Marisa Lago
Chair
NYC City Planning Commission
120 Broadway, 31st Floor
New York, NY 10271

Frank Ruchalla Jr.
Director of Zoning Division
NYC Department of City Planning
120 Broadway, 31st Floor
New York, NY 10271

Re: Health and Fitness City Wide Text Amendment

Dear Chair Lago and Mr. Ruchala:

On June 21, 2021, at Manhattan Community Board 4's (MCB4) Chelsea Land Use Committee Public Hearing, the Department of City Planning (DCP), presented its proposed City-wide text amendment to eliminate the special permit that is currently required for gyms, spas, and licensed massage therapy businesses – referred to as Physical Culture or Health Establishments (PCE) in the Zoning Resolution. The proposed changes could apply to a range of health and fitness businesses such as gyms, martial arts studios, indoor cycling spaces, yoga studios, and licensed massage therapy studios.

On the recommendation of its Chelsea Land Use Committee, the Executive Committee of MCB4, at its regularly scheduled meeting on June 28, 2021, ratified the Committee's recommendation to **approve the elimination of the special permit required for PCE's with conditions.**¹

Proposed Amendment

The text amendment would remove the requirement for PCE's to receive a special permit from the Board of Standards and Appeals, cutting red tape for small businesses that provide health-related amenities in communities. The proposed zoning text amendment would affect every community district within the City, since it would impact all zoning districts except R1 and R2 districts. Gyms and spas would be allowed to open and operate in commercial and manufacturing districts around the city. Similar to other neighborhood services such as restaurants, drug stores, and dry

¹ Due to the Comment period deadline this letter was approved by the Executive Committee and is subject to ratification at the July 28th Full Board meeting.

cleaners, these businesses would be allowed along all local retail streets. In certain commercial districts generally characterized by smaller establishments, gyms, and spas would be limited to 10,000 square feet.

MCB4 Analysis

It has been a longstanding issue with MCB4 that gyms and spas are required to receive a special permit, with regular renewals, after being opened. We recognize the historical significance of the special permit process to protect communities against illegal activities, and particularly appreciate the opportunity to review special permits when noise violations must be addressed at the local level. The elimination of the special permit process will certainly expedite the process for business owners which is an admirable accomplishment. However, MCB4 remains concerned about the perpetuation of illegal activities and the possible negative impacts from noise levels in our community.

We recommend the Zoning Text Amendment be strengthened to address four major areas of concern: DOB requirements and definitions; public assemblage outside gyms; DOE licensing of massage parlors; and enforcement issues.

DOB Requirements and Definitions

The zoning text amendment should provide clearer definitions of intensity of use.

The proposed zoning text amendment defines PCE's by size with facilities under and over 10,000 square feet as the determining factor to be allowed in certain districts. MCB4 would like to see a definition based on intensity of use, rather than simply size of facility. According to DCP, gyms with free weights and/or exercise machines would be considered high intensity, and facilities with multiple cardio machines that would be used in unison would be considered high intensity. DCP has explained that gyms and other facilities with weights or exercise equipment that are in mixed-use buildings will need to demonstrate to DOB that they are meeting an additional noise/vibration standard before they are allowed to open. The proposed zoning text requires these facilities to have a licensed acoustical engineer provide documentation that the space is designed to meet the NYC Noise Code as well as national standards for impulsive noise and vibration. It would be helpful to the public to know what the Noise Code levels are and what the national standards are. These criteria should be included in the proposed text.

The distinctions between high and low intensity facilities has a great impact on our community, with higher intensity use likely to cause the most problems. As currently defined, DOB would be the ultimate arbiter in determining high versus low intensity gyms. Clear definitions and standards are essential. The City Planning Commission should ensure that DOB has the ability when reviewing plans or doing inspections to determine whether a facility meets the criteria, especially noise and vibration requirements.

Public Assemblage

The zoning text amendment should require that all activities are conducted within the confines of the licensed space -- which may or may not include unenclosed spaces.

Some gyms offering group classes have gathered participants on the sidewalks in front of their facilities for jogging around the block, etc. These assemblages cause disruptions to pedestrian flow through our neighborhoods. Restricting activities to within the licensed space will eliminate this problem.

Licensing of Massage Parlors

The zoning text amendment should include language that all practitioners in massage parlors hold licenses as massage therapists, not simply the business owners.

During the 1970s, concerns were emerging regarding the proliferation of prostitution and illicit sexual activity as many establishments engaging in such activities were masquerading as health clubs and massage parlors. The NYS DOE licenses massage therapists as individual practitioners. They do not license studios/businesses. A licensed massage therapist is able to sponsor up to three people who have limited permits at one time. There is currently an issue with those under the supervision of the licensed therapist engaging in illegal activities. To avoid this, all practitioners within a facility should be duly licensed.

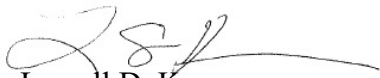
Enforcement Issues

The zoning text amendment should create better definitions for enforcement of violations, notably sound/vibration issues, non-conformance with intensity of use requirements, and massage licensing.

There are currently different enforcement agencies depending on the particular issue. Issues related to noise would be enforced by DEP; issues related to unlicensed massage or concerns about commercial sex would be enforced by the Mayor's Office of Special Enforcement; issues related to crowds that may violate place of assembly regulations would be enforced by the Fire Department. There needs to be a clear understanding of both the business owners and the neighbors about who is responsible for enforcement of the myriad issues affecting PCE's.

MCB4 is pleased to know that a proposal is under way to streamline the approval process for small businesses, especially the wide array of physical and health facilities that didn't even exist when the zoning ordinances were originally created. We wholeheartedly support efforts that assist the expansion and growth of local businesses, and see this amendment as a means to that end. We urge CPC to address some issues to make this amendment a success not only for the business owners, but for the neighbors as well.

Sincerely,



Lowell D. Kern
Chair
Manhattan Community Board 4



Betty Mackintosh
Co-Chair
Chelsea Land Use Committee



Paul Devlin
Co-Chair
Chelsea Land Use Committ

cc: Hon. Corey Johnson, Speaker, City Council
Hon. Gale Brewer, Manhattan Borough President