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Gale A. Brewer, Borough President

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**Recommendation on the ULURP Applications No. N210382ZRY
Health and Fitness Citywide Text Amendment
by the New York City of Department of City Planning**

PROPOSED ACTIONS

The New York Department of City Planning (“DCP”) (the “Applicant”) is seeking a city-wide zoning text amendment (the “Proposed Action”) to modify regulations relating to gyms, spas, licensed massage therapy, and other health and fitness facilities defined as Physical Culture or Health Establishments (“PCEs”).

This proposed text amendment would remove the need for PCEs to obtain a special permit (ZR 73-36) from the Board of Standards and Appeals (“BSA”). Additionally, the Proposed Action would reclassify these uses currently regulated by the special permit under Use Groups that are permitted as-of-right within certain zoning districts.

Every zoning district except for R1 and R2 districts would be affected by this proposal. Currently, the special permit for PCEs is required within C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2, and M3 districts.

With the Proposed Action, all facilities dedicated to physical fitness and health, limited to 10,000 square feet in floor area per establishment would be permitted as-of-right in all commercial and manufacturing districts. These facilities would be categorized under Use Group 6 and Use Group 14. Those facilities dedicated to physical fitness and health, which exceed 10,000 square feet, would be categorized under Use Group 9. These larger facilities would be allowed as-of-right within C2, C4, C5, C6, and C8 districts; M1, M2, and M3 districts; and high-density C1 districts (C1-8, C1-9, and C1 overlays mapped with R9 or R10 districts).

The proposed zoning text amendment also would incorporate criteria that would address the potential for adverse noise impacts. High intensity uses, that include gyms with exercise equipment and weights, would have to be in completely enclosed buildings and would have to verify with the Department of Buildings (“DOB”) that the plans would comply with the NYC Noise Code prior to the issuance of the Certificate of Occupancy. Other, less noise intensive health and fitness uses such as yoga studios and therapeutic services, would still be subject to the NYC Noise Code, but not any additional requirements.

Further changes would be made by the proposed zoning text amendment to reclassify different uses that fall under the category of health and fitness facility within the designated as-of-right

Use Group. The existing Use Group 9A reference to “Gymnasiums, used exclusively for basketball, handball, paddleball, racquetball, squash and tennis,” would be removed as those uses would be recategorized under Use Group 6 or 14, or Use Group 9, depending on the size of the facility. Licensed massage therapy would be categorized as Use Group 4A and Use Group 6B, treating these facilities in the same way as other health care facilities.

Furthermore, all facilities related to the promotion of health and fitness would be subject to parking requirement category B (PRC-B).

Lastly, the proposed zoning text amendment also reclassifies what is categorized as an Adult Physical Culture Establishment as an “Unlicensed physical treatment establishment.” Like the current definition, this new definition does not permit unlicensed massage therapy within any Use Group, or in any zoning district. Outside of zoning, unlicensed massage therapy is illegal, so it is not allowed, regardless of Use Group or zoning district.

BACKGROUND

The special PCEs permit originated out of concerns during the 1970s about the proliferation of prostitution and illicit sexual activity in New York City. At the time, there was concern about such illegal uses posing as health clubs and massage parlors. In response, a moratorium was placed on all PCEs in 1976 to allow for further investigation of the issue.

Prior to this, PCEs were first listed in the 1961 zoning code under Use Group 9, a category that included gymnasiums, reducing salons, masseurs, or steam baths. Through the 60s and 70s until the moratorium, small fitness facilities were uncommon.

In 1978, in response to findings during the moratorium period, the zoning code was amended to differentiate between Adult PCEs and PCEs. The new category Adult PCEs was defined as businesses that offer massage, body rubs, or other similar services by members of the opposite sex, excluding medical services such as services performed by licensed physicians or chiropractors. Furthermore, Adult PCEs were not allowed under any Use Group in New York City, effectively functioning as a ban on these uses.

With the new definition of PCE came a special permit by BSA that would allow these uses not designated as an Adult PCE in C2, C4, C5, C6, and C8 commercial districts, as well as in M1, M2, and M3 manufacturing districts. Later, special permit eligibility for C1-8X and C1-9 were also added. These special permits included further steps that were intended to prevent illicit uses. This included a background check administered by the Department of Investigation prior to the issuance of the special permit.

Since the 1970s, this permit has become more onerous for operators of legitimate PCEs as more smaller businesses hope to open their doors in the city. Two planning documents have been issued by the City (*One New York: The Plan for a Strong and Just City* and *Small Business First*) that detailed the negative effects of the permit, including a period of sometimes over 6 months for approval and costs reaching as high as \$50,000 to complete the permitting process.

In an effort to mitigate the burden of the permitting process, PCEs have since been allowed as-of-right on certain commercial streets in some Special Districts. In Manhattan, these include Battery Park City, the Governor’s Island Special District, the East Harlem Corridor Special District, and the Inwood Special District.

More recently, the COVID-19 pandemic has proved devastating to small business PCEs across the city. At the peak of the pandemic in spring 2020, businesses were ordered to close, and staff for these businesses were frequently laid off or furloughed.

COMMUNITY BOARD RECOMMENDATIONS

The Health and Fitness Citywide Text Amendment application was certified by DCP on May 19 and referred to all Manhattan Community Boards (1-12) for comment. Boards were given a 60-day period to review the application and submit a resolution recommending support or opposition.

As of the time of submission Manhattan Community Boards 2, 4, 5, 6, 7, 8, 9, 10, 11, and 12 have voted on and submitted resolutions recommending approval of the application. Manhattan Community Boards 1 and 3 are expected to vote on the application on July 27, 2021. Community Boards 2, 4, and 9 included conditions for approval including the following:

- The proposed zoning text amendment include stronger language defining the difference between high and low intensity uses;
- The proposed amendment should require that all activity association with a PCE should occur inside, not outside;
- A requirement that all practitioners in massage parlors hold licenses as massage therapists, not only the business owners; and
- More details for how restrictions would be enforced, with close attention paid to noise impacts.

BOROUGH BOARD RECOMMENDATION

The Manhattan Borough Board received a presentation from DCP about the proposed text amendment during its July 15, 2021 meeting. During the meeting, members raised questions and concerns that were addressed by DCP. Concerns included the noise impacts of PCEs, the lack of clear criteria beyond square footage for determining the difference between low and high intensity gyms, and enforcement of allowed uses.

Informed by these questions and the agency’s responses, the Manhattan Borough Board voted to approve a resolution to recommend approval of the application with conditions. The conditions are as follows:

- The noise impact of PCEs be considered by the DOB in their approval process, especially in buildings with residential units;
- The proposed zoning text provide clearer definitions of intensity of use for DOB to determine whether a facility meets criteria for a low or high intensity gym, and that

facilities receive DOB review regarding noise, vibration, and other quality of life concerns, regardless of the facility's level of intensity;

- The proposed zoning text require that all activities be conducted within the confines of the licensed space, which may or may not include unenclosed spaces;
- That the proposed zoning text require that the hours of operation for facilities located in residential or mixed-use buildings be reasonably limited;
- The proposed zoning text include language that all practitioners in massage parlors hold licenses as massage therapists, not simply the business owners;
- The proposed zoning text better outline which agencies are responsible for enforcement of violations;
- The proposed zoning text require that certification on noise levels be done by an acoustical engineer; and
- That the Department of Environmental Protection (DEP) agree to improve its response and enforcement of facilities that have noise level issues.

BOROUGH PRESIDENT'S COMMENTS

The current PCE licensing system is outdated. What was intended as a way to curb illicit activity and commercial sex work in the 1970s has become a significant burden for those hoping to open a gym, massage therapy studio, or other health related use. This proposed text amendment still would prohibit illegal activity by prohibiting unlicensed massage therapy in all districts, while alleviating outdated regulation

Lifting this special permit will help streamline the process for PCE approval and remove onerous requirements that have restricted legitimate small businesses from opening. Currently, this special permit can take longer than 6 months to be approved, and the process can cost as much as \$50,000 for the applicant. With a lower bar of entry, it is likely that affordable gyms will be able to operate in more neighborhoods.

One concern that I have heard from multiple community boards has been the noise impact of fitness facilities. As the proposed text amendment stands, the requirement for noise enforcement is dependent on a facility's classification as high or low intensity. However, the difference between the two is not definitely specifically enough. This could allow for misinterpretation by the Department of Buildings. To mitigate noise, DCP should include more precise language to differentiate between high and low intensity use, and include more strict requirements for noise mitigation in the zoning text.

Last year, gyms and other health and fitness facilities were particularly hurt by the COVID-19 pandemic. In spring 2020, these businesses were forced to close their doors and had to lay off staff. Only more recently have gyms been able to reopen. I look forward to the removal of the BSA special permit and the revival of this sector.

BOROUGH PRESIDENT'S RECOMMENDATION

Therefore, the Manhattan Borough President recommends **approval with conditions** of ULURP Application No. N210382ZRY. I request that the Applicant modify the proposed text amendment to:

- Include more specific restriction on noise levels than is included in the NYC Noise Code; and
- Specify high and low intensity uses.

A handwritten signature in black ink that reads "gale A. Brewer". The signature is written in a cursive, lowercase style with a large, looped initial "g".

Gale A. Brewer
Manhattan Borough President