



November 24, 2021

Hon. Rafael Salamanca Jr.
Council Member, 17th District, Bronx
Chair, Land Use Committee
1070 Southern Boulevard
Bronx, NY 10459

Hon. Francisco Moya
Council Member, 21st District, Queens
Chair, Subcommittee on Zoning & Franchises
32-33A Junction Boulevard
East Elmhurst, NY 11369

**Re: Health and Fitness Citywide Text Amendment (N210382ZRY)
Council File No. LU 0923-2021**

Dear Council Members:

PFNY LLC, a franchisee of and doing business as Planet Fitness within New York City, submits this letter in support of the pending Health and Fitness Citywide Text Amendment. As you are undoubtedly aware, the entire fitness industry, including Planet Fitness, was devastated financially by the pandemic and remains subject to restrictions on operations in New York City. We praise this effort to help businesses in the health sector recover and continue to provide needed health-related amenities to communities across the City.

Over the past two decades, we have invested significant resources on legal and filing fees pursuing special permit approvals at the Board of Standards and Appeals. As a result, Planet Fitness is the largest fitness chain within New York City, with 49 locations spread across all five boroughs. The core value of the Planet Fitness brand is inclusivity – our gyms are judgment free zones that provide a high-quality fitness experience at an affordable cost most often with convenient 24-hour access. For this reason, Planet Fitness has been embraced by surrounding communities and is excited to expand to new areas of the City where fitness center uses are not permitted under current regulations, especially communities that currently lack access to health and fitness resources.

While we are fully supportive of the Health and Fitness Citywide Text Amendment, we would like to raise some concerns relating to what may be unintended consequences of the text and detract from the overall policy goals of the text amendment. Our first primary is that the certain “high-intensity” gym uses would be subject to certain additional noise and vibration attenuation per Zoning Resolution sections 32-413 and 123-33 when located in a mixed-use building containing any residential, community facility or commercial use. While we recognize that residential use as a potentially sensitive receptor for noise and vibration, we are concerned that commercial and community facility uses would also trigger the additional noise and vibration attenuation. This is unique within the zoning text and we believe unfair where there are no similar requirements for potentially noisy uses such as bars, clubs, restaurants, food markets, laundromats, theaters, performance spaces and daycares, all of which are frequently located within mixed-use buildings - often buildings with residential use. We note that all Planet Fitness locations would be considered “high-intensity” per the definition of “health and fitness establishments.” Based on our considerable experience leasing real estate in New York City, we believe this may cause landlords to hesitate in considering gym tenants for mixed-use buildings (the predominant market within the City). We also would like to note that PFNY has and continues to operate 49 locations in New York City for over 14 years with no noise complaints from other tenants within our buildings. In a time where traditional retail is struggling, any further limitations in the market would be a unfavorable result. We urge the City Council to consider limiting the requirement for “high-intensity” gym uses to provide additional noise and vibration attenuation per Zoning Resolution sections 32-413 and 123-33 to only when these gyms are located in a mixed-use building containing residential use.

Moreover, the additional noise and vibration attenuation requirements themselves are a concern. We have consulted with several sound engineers to evaluate the cost implications of complying with the requirements of the new zoning text and, unfortunately, we have been unable to establish a baseline cost. Rather, we were informed that costs could only be determined on a site-specific basis and could range from approximately \$10,000 to well over \$250,000. This is in addition to the advanced acoustical engineering reports that will now be required for each and every location that PFNY will be considering.

While we welcome the opportunity to forgo the costs and time previously invested in pursuing special permits at the Board of Standards and Appeals, the uncertainty of new costs related to compliance with the additional noise and vibration attenuation requirements presents a serious concern. In particular, Planet Fitness and other gym operators will now need to incorporate a budget for sound and vibration consulting into the earliest stages of site selection simply to verify whether a new space will be financially feasible once attenuation costs are factored in. This favors larger gym chains like Planet Fitness that typically have more access to capital resources. It may also effectively replace the cost of pursuing a special permit with this new cost to comply with the additional noise and vibration attenuation. We urge the City Council to remove the additional noise and vibration attenuation provisions altogether as all gyms, just like any other use, remain subject to the standards set forth in the New York City Noise Code.

We thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chase Villafana', with a long horizontal stroke extending to the right.

Chase Villafana, Director
PFNY LLC



NYSSMMT

NEW YORK STATE SOCIETY OF
MEDICAL MASSAGE THERAPISTS

Thursday, November 18, 2021

Full length Testimony
for
New York City Council
On the NYC Planning Health and Fitness Amendment
For vote November 18th meeting

The New York State Society of Medical Massage Therapists, Inc. or NYSSMMT for short supports the Health and Fitness amendment. This is our full length written testimony.

Since 1927, NYSSMMT has been leading the massage therapy profession in the city, state and the nation. Thanks to Gov. Rockefeller, NYSSMMT is responsible for getting massage therapy regulated as a licensed healthcare profession under Title 8 with other healthcare professions since 1967. Health insurance coverage for massage therapy is via workmen's compensation, no fault auto insurance and most FSA/HSA plans. We are also responsible for having our professional title changed from medical masseuse to massage therapist with title protection. Today, we were successful to have the word "massage parlor" removed from The White House Office of Management and Budget's NAICS code system as it lends to misrepresentation and market confusion thus why we are having this moment today.

To become a massage therapist with all protections, one must attain an Associate's degree, pass the state boards exam to be licensed AND then registered. The REGISTRATION, the critical credential, must be renewed every 3 years upon the completion of 36 continuing education credits. NYS Education Department (NYSED) audits massage therapists to demonstrate proof of completing these credits. License and registration is available to the public record at NYSED website. Massage Therapists can carry professional liability insurance. In New Jersey, it is law that Massage Therapists have professional liability insurance to practice.

As healthcare licensees, Massage Therapists volunteered at September 11th Ground Zero as second responders to the first responders' rescue and recovery efforts.

The special permit is a burden to our profession as presented by NYC Planning nor has the permit been effective as it was intended to prevent commercial sex or unlicensed activity such as the illegal operators at the nail salon. Rejecting the proposal will continue with a system that is not working and missing the opportunity to address it with the help of our association. Rejecting this proposal is saying no massage for pregnant mothers, cancer patients, veterans with PTSD, cardiac patients, burn victims, mental health and the list goes on. In the pandemic area, rejecting this proposal is saying no to medical massage and manual lymphatic drainage therapists who are struggling to meet the high demand. If there is any stakeholder that has the MOST concern about enforcement, IT'S US, the massage therapy community. NYSSMMT makes itself available to any governing agency to continue to advance this proposal to allow our profession to provide more input, to bring the most competent and compassionate licensed massage therapy businesses to the forefront while effectively preventing and eradicating the current illegal operators. As we best know how, we will do so while using the correct reporting channels through the Mayor's Office of Special Enforcement.

In addition to the Mayor's Office, enforcement at the state level is through the NYSED's Office of the Professions (OP) Department. This department investigates professional misconduct and allegations of illegal (unlicensed) practice in all 50 licensed professions, including medicine. Practicing a profession without a license AND current registration is a felony in New York State. Massage Therapy is covered under this law. There are 4 OP offices in the 5 boroughs.

Lastly, massage therapy associations like NYSSMMT remain steadfast in enforcement efforts through education and by reporting illegal activity on behalf of massage therapists or individuals throughout New York State who wish to remain anonymous. Through our educational platforms, NYSSMMT educates our licensees through enforcement updates to protect our profession. In prevention, we are expanding our education in outreach efforts to other professionals beyond the massage therapy profession, landlords in the commercial real estate community and community boards. These educational efforts will provide an in-depth understanding of massage therapy and the licensee in order to cease misrepresentation and market confusion. This will support community boards and real estate professionals to best identify licensees of massage therapy. Most importantly, NYSSMMT will increase awareness and access of its anonymous reporting program beyond the profession.

Again, if there is any stakeholder more concerned about enforcement, IT'S US -- the massage therapy profession. There are over 3700 licensees and 5 massage therapy schools in the 5 boroughs. We are the first line of enforcement to protect our profession. The modified proposed text amendment will make enforcement easier and bring much relief to the massage therapy profession to thrive, do its part to recover the NYC economy and revitalize the NYC community.

With the passage of the proposal NYS Licensed Massage therapists will be able to contribute to the city's economic recovery while providing our best healthcare for each New Yorker in mind, body in spirit.

Thank you for the time and I am available for questions, especially for those who never experienced massage therapy.

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