

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

SUBCOMMITTEE ON ZONING AND FRANCHISES

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December 1, 2011  
Start: 9:53 a.m.  
Recess: 10:20 a.m.

HELD AT: Council Chambers  
City Hall

B E F O R E:  
MARK S. WEPRIN  
Chairperson

COUNCIL MEMBERS:

Leroy G. Comrie, Jr.  
Daniel R. Garodnick  
Robert Jackson  
Jessica S. Lappin  
Diana Reyna  
Joel Rivera  
Larry B. Seabrook  
James Vacca  
Albert Vann  
Vincent M. Ignizio

## A P P E A R A N C E S (CONTINUED)

Robert Callahan  
Representative  
Fabiane's Cafe and Pastry  
Atlas Cafe  
Lunella Cafe  
Ristorante S.P.Q.R.

Rebecca Houlihan  
Manager  
Gusto Restaurante

John Clement  
Treasurer and General Manager  
Grand Endeavors d.b.a. Clem's

Thomas Marcos  
Representative  
Nello's

Shlomo Steve Wygoda  
Architect  
Nello's  
Organization

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2 CHAIRPERSON WEPRIN: Good morning,  
3 everyone. I am Mark Weprin. I'm chair of the  
4 Zoning and Franchises Subcommittee and I thank  
5 everyone for being here today. I'm joined my  
6 following colleagues who are on the Committee:  
7 from Manhattan, Jessica Lappin and Dan Garodnick;  
8 my colleague from Queens to my left, Leroy Comrie;  
9 all the way to the right from the Bronx, Joel  
10 Rivera; and Diana Reyna who's from Brooklyn and  
11 Queens. To my right is Christian Hilton, the  
12 counsel to the Committee. We have seven cafes on  
13 today and we're going to start with the first one  
14 on our agenda, which is 529 Fabiane's Cafe and  
15 Pastry. I'm going to call Robert Callahan  
16 [phonetic] up. Mr. Callahan happens to represent  
17 four different cafes today. Mr. Callahan, if it's  
18 okay with you, we'll do them one, two, three,  
19 four. Okay. So, if you could start with 529,  
20 Fabiane's and describe the application and any  
21 information you want to read to the record.

22 ROBERT CALLAHAN: Yes. Dear  
23 Council Member Reyna, this letter should serve as  
24 our agreement with your district office and  
25 Community Board 1 that we will commit to the

1 following: arrange our tables in a way that will  
2 leave a three foot clearance from the fire escape  
3 ladder--Oh, I'm sorry...my name is Robert  
4 Callahan--arrange our tables in a way that will  
5 leave a three foot clearance from the fire escape  
6 ladder that is above our cafe. If this is not  
7 possible, we will remove one or two tables to  
8 accomplish this. We will remove the bench on  
9 North 5th Street. We will have a three foot wait  
10 service aisle available in the sidewalk cafe at  
11 all times. If there are any questions or anything  
12 else that is required, please call Michael Kelley  
13 [phonetic]. Sincerely Fabiane Lima [phonetic],  
14 Vice President.  
15

16 CHAIRPERSON WEPRIN: Thank you, Mr.  
17 Callahan. I'm going to call on Council Member  
18 Reyna whose district this is in.

19 COUNCIL MEMBER REYNA: Thank you,  
20 Mr. Chair. Hi, how are you? Good to meet you. I  
21 just wanted to thank you for coming down, taking  
22 the time from your busy schedule of leading a  
23 business to be able to come and represent your  
24 business. I just wanted to make sure that these  
25 particular items had been addressed, and as you

1  
2 have read into the record, that we continue to  
3 just allow for these particular points to continue  
4 to be in operation and just the dialogue between  
5 our offices--to be able to provide any assistance  
6 to you moving forward for your business to  
7 continue to flourish in the neighborhood. So  
8 thank you very much.

9 ROBERT CALLAHAN: We'd like to  
10 thank you and we look forward to that dialogue.

11 CHAIRPERSON WEPRIN: Great. Love  
12 happy people. Look at that. Anyone on the panel  
13 want to make a comment or question? Seeing none,  
14 thank you on this item. We're going close that  
15 item and move on to the next one, which also is  
16 represented by Mr. Callahan. It's 530, Atlas  
17 Cafe, also in Council Member Reyna's district.  
18 Mr. Callahan? We're joined by Robert Jackson from  
19 Manhattan. Mr. Callahan?

20 ROBERT CALLAHAN: Yes. My name is  
21 Robert Callahan, and I am representing Atlas Cafe.  
22 Dear Council Member Reyna, this letter should  
23 serve as our agreement with your district office  
24 and Community Board 1 that we will commit to the  
25 following: we will arrange our tables according to

1  
2 the sidewalk cafe plans and if necessary, remove  
3 any tables and chairs to provide a nine foot  
4 clearance from the traffic light, remove all  
5 planters and illegal signs attached to them, we  
6 will remove any tables and chairs that obstruct  
7 the fire escape ladder, and we will leave a three  
8 foot clearance. If there are any questions or  
9 anything else is required, please call Michael  
10 Kelley. Sincerely, Lucca Pacone [phonetic], Vice  
11 President.

12 CHAIRPERSON WEPRIN: Thank you  
13 again, Mr. Callahan. I once again will ask  
14 Council Member Reyna--would you like to make a  
15 comment on this discussion?

16 COUNCIL MEMBER REYNA: Yes. Thank  
17 you, Mr. Chair. Mr. Callahan, thank you so much  
18 for coming down and representing both of these  
19 businesses. I just wanted to inform you if you  
20 can pass this on--the message to the business  
21 owners--we're in discussion with DCA to try to  
22 figure out how do we deal with non undercutting  
23 the beautification in and around the establishment  
24 of the small business where planters are  
25 considered to be obstruction as opposed to part of

1  
2 a beautification process--that one's not reflected  
3 in the scope of work for the architectural plans  
4 that are filed, then have to be removed or the  
5 cost of trying to amend the plans to reflect them.  
6 So we hope that we can deal with this in a cost  
7 effective way for the business owner, and what  
8 would be in the safety of the public so that both  
9 parties are able to be in a happy medium. These  
10 are two establishments of which were probably one  
11 of the first sidewalk cafes in my neighborhood,  
12 and so I want to thank both establishments for  
13 continuing to do business and just beautifying  
14 what is Havemeyer Street with local restaurants,  
15 and we hope to continue to work with them on the  
16 merchants' association that we're working on in  
17 the near future.

18 ROBERT CALLAHAN: Yes, thank you.

19 We look forward to that also.

20 COUNCIL MEMBER REYNA: Thank you.

21 CHAIRPERSON WEPRIN: Thank you.

22 Anybody else have any comments? Seeing none, Mr.  
23 Callahan, thank you. We're going to close number  
24 530, and then we're going to skip--I apologize to  
25 the other people here--but we're going to skip to

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2 532, Lunella 'cause Mr. Callahan has two other  
3 items that he is representing, and we'll let him  
4 get right to it. So, Mr. Callahan, number 532,  
5 Lunella in Council Member Chin's district.

6 ROBERT CALLAHAN: Yes. My name is  
7 Robert Callahan. I'm representing Lunella. Dear  
8 Council Member Chin, this letter should serve as  
9 our agreement with your district office and  
10 Community Board 2 that we will commit to the  
11 following: arrange our tables in a way that will  
12 leave a three foot clearance from the fire escape  
13 ladder that is above our cafe, we will comply with  
14 all fire safety rules, we will maintain a three  
15 foot wait service aisle at all times, we will  
16 configure our sidewalk cafe according to the  
17 approved plans, we will remove the illegal menu  
18 board and we will remove any outside audio  
19 speakers. If there are any questions, please call  
20 my office. Signed, Guyataina [phonetic] Russo,  
21 President of Lunella.

22 CHAIRPERSON WEPRIN: Mr. Callahan,  
23 the concern of the fire escape also is that it has  
24 a way to get down--is that something that is going  
25 to be addressed? Not just the space between the



1  
2 awning and the fire escape, but will it be able to  
3 come down? Is there room to come down? Is there  
4 a space or--

5 ROBERT CALLAHAN: Yes, when the  
6 ladder comes down, there will be a three foot  
7 clearance around that ladder for the ladder to  
8 come down and anyone to come down that ladder.

9 CHAIRPERSON WEPRIN: Is there an  
10 opening in the awning? Can they get down through  
11 the awning? Do you know?

12 ROBERT CALLAHAN: Yes, and it's in  
13 the process of being done right now.

14 CHAIRPERSON WEPRIN: And I  
15 understand Council Member Chin's office is okay  
16 with this, and understands these discussions, so  
17 I'm going to ask anyone on the panel if they want  
18 to comment or question? Seeing none, thank you  
19 very much. We're going to move on to our next  
20 item. Right ahead. We're going to skip to the  
21 last item on the agenda, 535, S.P.Q.R. Ristorante  
22 S.P.Q.R., and Mr. Callahan, it is your last item,  
23 so you can start on that when you can.

24 ROBERT CALLAHAN: Yes. My name is  
25 Robert Callahan, and I am representing S.P.Q.R.

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2 Dear Council Member Chin, this letter should serve  
3 as an agreement with your office and to assure the  
4 community board that I will commit to the  
5 following: we will maintain our sidewalk cafe in  
6 accordance with plans approved by the Department  
7 of Consumer Affairs, we will maintain our tables  
8 flush to the building line, we have disconnected  
9 and removed the amplified sound device that was  
10 installed on our property. This letter pertains  
11 to the current renewal application for S.P.Q.R.  
12 and signed Perry Chrisatelli [phonetic],  
13 President.

14 CHAIRPERSON WEPRIN: This is also  
15 in Council Member Chin's district. She is at the  
16 doorway waving at us, and mouthed the words to me,  
17 "I'm fine with this." We are glad that she visited  
18 us here today. Does anyone have any comments or  
19 questions now that we have this agreement in  
20 writing? Okay. One compliment on the Christmas  
21 decorations you could bring back, we got from  
22 Council Member Reyna. Mr. Callahan, we appreciate  
23 that. We're going to close this item, and we  
24 excuse you to go back to work.

25 ROBERT CALLAHAN: Thank you very

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much.

CHAIRPERSON WEPRIN: Thank you.

Alright. We're now going to move to Rebecca Houlihan [phonetic] who is representing Gusto, I believe, right? Gusto in Speaker Quinn's district. Ms. Houlihan, please state your name for the record and start when you're ready.

REBECCA HOULIHAN: My name is Rebecca Houlihan, and I'm here representing Gusto Restaurante e Bar Americano [phonetic]. Dear Council Member Quinn, this letter serves as our agreement with the Chair, Council Member Mark Weprin and the encompassing members of the Subcommittee on Zoning and Franchises that we will commit to the following: the size of the sidewalk café will be reduced from 13 tables and 26 seats to 10 tables and 20 seats, specially removing a table and an accompanying two chairs which currently block the restaurant entrance, and two tables and four chairs from the middle section of the western portion of the café. The remaining tables and chairs in the western portion of the café will be centered between entrances of 60 and 62 Greenwich Avenue in a way that retains three

1 foot clearance from a - - stand pipe [phonetic].  
2 Similarly the two tables and the four chairs on  
3 the eastern portion of the café will be centered  
4 between the two doorways of 60 Greenwich Avenue.  
5 The three foot waiter service aisle on the Western  
6 portion of the café will be moved from the outside  
7 of the café to between the 8 tables and 16 chairs  
8 so as to prevent service from the public sidewalk.  
9 This waiter service aisle will additionally not  
10 extend to the entrance of 62 Greenwich Avenue,  
11 which is a non operational door. The two railings  
12 currently in use at our sidewalk café will be  
13 indicated on our plans. All of the aforementioned  
14 changes will be reflected in revised plans  
15 submitted to the New York City Department of  
16 Consumer Affairs. A copy of the approved,  
17 modified plans will be posted inside the  
18 restaurant for employee reference. Manager,  
19 Rebecca Houlihan—that's me—will oversee daily set  
20 up of the sidewalk café. The four planters within  
21 the sidewalk café zone have been removed and they  
22 have not been indicated on the sidewalk café  
23 plans. We will not operate the sidewalk café  
24 prior to noon on Sundays. If there are any  
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2 Chairperson Weprin and Council Member Reyna,  
3 recently our business, Clem's Bar, located 264  
4 Grand Street, Brooklyn, New York, was visited by  
5 Peter Janocik [phonetic]. Mr. Janocik informed us  
6 that although our sidewalk café was violation  
7 free, an adjacent tree guard installed by the  
8 building owner and a bicycle rack instead by the  
9 DOT were in fact not DOT compliant. Both the bike  
10 rack and the tree guard were installed after our  
11 café had been in operation for many years and  
12 without our knowledge. We have informed the  
13 owners of the building that the tree guard needs  
14 to be removed. They are eager to apply and the  
15 process to remove it has begun. We would like to  
16 see the back rack remain as the community utilizes  
17 it. Our café has been in good standing for over  
18 eight years with no opposition from local  
19 Community Board 1. We look forward to having our  
20 license renewed and continuing our business in the  
21 future. Thank you.

22 CHAIRPERSON WEPRIN: Thank you, Mr.  
23 Clement. - - I understand is the back rack is an  
24 allowed grandfathered use, so that's okay, but the  
25 railing around the tree is illegal--this blue

1  
2 railing that was put around that tree. Ms.  
3 Reyna, you want to comment on Clem's?

4 COUNCIL MEMBER REYNA: Thank you,  
5 Mr. Chair. I just wanted to again thank Mr.  
6 Clement for coming down and being a willing  
7 participant in this process. As far not  
8 understanding that this was part of the process  
9 application for a renewal application for sidewalk  
10 café and we just want to make sure that we're  
11 monitoring. Once upon a time there was no  
12 interest in sidewalk cafes in my district and now  
13 all of a sudden there's multiple interest and it's  
14 something that we want to welcome into the  
15 neighborhood and we want to also make sure that  
16 there is an accountability to the safety of the  
17 public as well the interest in making sure that  
18 there is good neighbor to neighbor relationships.  
19 Sometimes there is issues that are unknown to the  
20 small business that we are able to mitigate and  
21 this is the opportunity for that. Luckily as far  
22 as your business is concerned, there are no  
23 complaints, but we wanted to just assure that  
24 there are compliancy with what are the plans on  
25 file, and as I have stated before to Mr. Callahan,

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2 representing two other businesses, we want to make  
3 sure that we continue our discussions with the  
4 Department of Consumer Affairs on the issues of  
5 tree guards and trees that perhaps have not been  
6 requested by the small business, nor the property  
7 owner that have been installed or bike racks such  
8 as the one you just indicated to be able to not be  
9 the responsibility of the small business because  
10 in fact, if there was an inspection that the onus  
11 would be on the small business if a fine were to  
12 be issued, and so we're trying to be on the  
13 preventive side of things and further dialogue  
14 with the Department of Consumer Affairs will allow  
15 us to figure out how to best deal with these  
16 issues. Thank you.

17 CHAIRPERSON WEPRIN: Thank you,  
18 Council Member Reyna. Does anyone else have any  
19 questions or comments? Mr. Clement, we appreciate  
20 you coming down. We wish you luck with your  
21 business and I'm glad you've been so cooperative.  
22 Thank you.

23 [long pause]

24 CHAIRPERSON WEPRIN: Okay, I  
25 apologize. We need you to fill out a card. This



1  
2 gentleman has to fill out a slip. Okay. I'm  
3 sorry. I didn't realize - - concerned no one was  
4 here for the last item on the agenda, which is  
5 533, Nello's. Sorry about that. This is in  
6 Council Member Garodnick's area.

7 THOMAS MARCOS: My name is Thomas  
8 Marcos [phonetic]. Dear Council Member Garodnick,  
9 this letter serves as our agreement with the  
10 Chair, Council Member Mark Weprin and the  
11 encompassing members of the Subcommittee on Zoning  
12 and Franchises, that we will commit to the  
13 following: to the removal of the planters  
14 permanently unless a permit is obtained--see the  
15 attached photo showing the removal of the  
16 planters; to the removal of the heaters  
17 permanently unless a permit is obtained--see  
18 attached photo showing the removal of heaters; the  
19 tables will be set accordingly to the approved  
20 plans by the Department of Consumer Affairs. The  
21 restaurant's doors and windows will be closed  
22 every night at 11:30. Number 5, there has been an  
23 isolated incident on September 18<sup>th</sup>, 2011 during a  
24 birthday party celebration where the music was  
25 played louder and the restaurant closed at 1 am.

1  
2 That will not happen again. As a direct phone  
3 number for the complaints is for Thomas Marcos  
4 (917) 375-7262. If there are any questions,  
5 please contact us. Thank you.

6 CHAIRPERSON WEPRIN: Thank you,  
7 sir. We appreciate you coming down. Just on the  
8 issue of the planters that you're removing, the  
9 reason is the sidewalk is not wide enough for  
10 them, and they cannot be put there at all. It  
11 would create a hazard over there. We appreciate  
12 you filling out that form. Give me one second.

13 [long pause]

14 CHAIRPERSON WEPRIN: Mr. Wygoda,  
15 welcome.

16 SHLOMO STEVE WYGODA: - - .

17 CHAIRPERSON WEPRIN: We went faster  
18 than we anticipated. I know you had said you  
19 would be a little late. He has made the  
20 presentation already. Do you want to add anything  
21 or do you want to discuss it with the client?

22 SHLOMO STEVE WYGODA: No, if he  
23 read the letter fully - - .

24 [background conversation]

25 SHLOMO STEVE WYGODA: Hello. My

1  
2 name is Shlomo Steve Wygoda. I'm the architect,  
3 and sorry, I was late. I was with the Deputy  
4 Commissioner of DOB. We want to thank the Council  
5 Member for being so kind to come to an agreement,  
6 which Mr. Marcos read into the record. Thank you  
7 so much.

8 CHAIRPERSON WEPRIN: Council Member  
9 Garodnick, would you like to speak on this matter?

10 COUNCIL MEMBER GARODNICK: Yes, Mr.  
11 Chairman. Very briefly, I want to just thank  
12 these gentlemen and just recognize that it seems  
13 that there were some very small isolated incidents  
14 here—in fact, just one, which was raised to the  
15 attention of the local community board and we  
16 appreciate their existence as a thriving business  
17 in the 4<sup>th</sup> Council District, and appreciate their  
18 willingness to hear the concerns from the  
19 community board and also to address them here, and  
20 also to make themselves available to the extent  
21 that there are other issues on an ongoing basis,  
22 so with that and with the letter read into the  
23 record, I want to encourage my colleagues to  
24 support this application. Thank you, Mr.  
25 Chairman.

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2 CHAIRPERSON WEPRIN: Thank you, Mr.  
3 Garodnick. Does anyone else want to comment? We  
4 thank you very much for coming down today. I  
5 think we're okay. Everyone seems to be in  
6 agreement, so thank you very much. He did a great  
7 job. Don't worry about it, Steve. We missed you,  
8 but I apologize for the confusion. We were  
9 watching for you, but we were pressed for time. I  
10 know a couple of our members have to get a press  
11 conference right away. So thank you very much.  
12 We thank you for coming today.

13 MALE VOICE: Happy holidays.

14 CHAIRPERSON WEPRIN: Yes, and to  
15 you. Okay. Alright. That's the last item on our  
16 agenda. What we're going to do now is move to  
17 vote on these items. We are going to couple all  
18 of these items, Land Use No. 529, 530, 531, 532,  
19 533, 534 and 535. All seven of those cafes will  
20 be coupled into one vote. I will now call on  
21 Christian Hilton to call the roll on these seven  
22 café items.

23 COUNSEL: Chair Weprin?

24 CHAIRPERSON WEPRIN: Aye.

25 COUNSEL: Council Member Rivera?

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COUNCIL MEMBER RIVERA: Aye.

COUNSEL: Council Member Reyna?

COUNCIL MEMBER REYNA: Aye.

COUNSEL: Council Member Comrie?

COUNCIL MEMBER COMRIE: Aye.

COUNSEL: Council Member Jackson?

COUNCIL MEMBER JACKSON: Aye.

COUNSEL: Council Member Garodnick?

COUNCIL MEMBER GARODNICK: Aye.

COUNSEL: Council Member Lappin?

COUNCIL MEMBER LAPPIN: Aye.

COUNSEL: By a vote of seven in the affirmative, none in the negative and no abstentions, L.U. 529, 530, 532, 535, 531, 534 and 533 are approved and referred to the full Land Use Committee.

CHAIRPERSON WEPRIN: Okay. Well, thank you very much, Mr. Hilton. We are going to keep the rolls open for about 15 minutes. One of our members is going to be right back, and we're going to keep those rolls open. After that we will be formally adjourned, but for now, this meeting is adjourned pending the 15 minute open vote for the member to return.

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[background conversation]

FEMALE VOICE: Council Member

Ignizio?

COUNCIL MEMBER IGNIZIO: Aye.

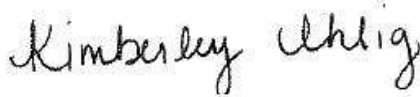
FEMALE VOICE: Final vote eight in  
the affirmative, none in the negative and no  
abstentions.

CHAIRPERSON WEPRIN: And with that,  
the meeting is now adjourned.

C E R T I F I C A T E

I, Kimberley Uhlig certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature \_\_\_\_\_



Date \_\_\_\_\_

12/14/11