

# New York City Health and Fitness Update

By: Dan Braff

Last month, the City Council approved a text amendment to eliminate the special permit required for health and fitness businesses in New York City.

Since the 1970's, New York City zoning regulations required health and fitness facilities (previously known as "Physical Culture or Health Establishments" or "PCEs"), which include gyms, fitness studios and spas, among many others, to secure a special permit from the New York City Board of Standards and Appeals prior to opening in certain zoning districts throughout the city. Oftentimes, this created a bar to entry for many small health and fitness businesses as the cost to go through this process could be upwards of \$50,000 and would result in many months of delays. The requirement for the special permit originated in the 1970s as a way for New York City to curb brothels disguised as massage parlors by giving the City a mechanism to conduct background checks on owners and operators of these establishments. Most industry professionals and land use attorneys, including myself, felt that the rules were outdated and unnecessary.

The approved text amendment creates a new use called a "Health and Fitness Establishment," which is defined as "any establishment that is equipped and arranged to provide instruction, services, or activities which improve or affect a person's physical condition by physical exercise or provide relaxation services." These Health and Fitness Establishments can now open "as-of-right" in every zoning district in the City that previously permitted the use by special permit (C1-8X, C1-9, C2, C4, C5, C6, C8, M1, M2, and M3 zoning districts).

The changes did not just include removing the special permit requirement, but also expanded the zoning districts where these facilities are permitted. Health and Fitness Establishments of up to 10,000 square feet can now open in all C1 districts "as-of-right", where such facilities were limited to only C1-8X and C1-9 districts by special permit. Facilities of less than 10,000 sf are now treated the same as any other retail use and can locate in any commercial district throughout the City where retail is permitted, including all commercial overlay districts. As an example, previously the special permit was not available to health and fitness businesses along First Avenue and Second Avenue between East 7<sup>th</sup> Street to East 14<sup>th</sup> Street in Manhattan (zoned R7A with a C1-5 commercial overlay district) or 5<sup>th</sup> Avenue in Brooklyn south of Flatbush Avenue (R6A with a C1-4 commercial overlay district). Today, any health and fitness business of less than 10,000 square feet can open there as-of-right.

Furthermore, to limit the impact of noise and vibration on surrounding uses (an issue the Board of Standards and Appeals was particularly focused on in its review of the special permit), the text amendment creates a subgroup of Health and Fitness Establishments

called “high intensity uses.” These uses include “gymnasiums where the predominant use of the floor space involves the use of exercise equipment or weights,” or “gymnasiums and other indoor recreation establishments used for activities, including basketball, martial arts for adults, handball, paddleball, racquetball, squash, tennis, rock climbing, soccer or volleyball.” These high intensity uses are subject to special requirements, including that they be located in completely enclosed buildings, and that where such uses are located in a building containing residential, community facility or commercial use, an acoustical engineer must verify to the Department of Buildings that the facility will comply with certain standards for noise and vibration.

Eliminating the requirement for the special permit should aid the recovery of a brick-and-mortar fitness industry reeling from the impacts of Covid-19. It will also remove a barrier to entry for smaller fitness businesses that couldn’t take on the additional cost, time and risk associated with the special permit that existed before Covid-19. Furthermore, by expanding the locations these facilities can locate, the changes may spur more demand for vacant ground floor retail space, particularly in the outer boroughs where such uses were not previously permitted.