Comments of Albert K. Butzel and Reed W. Super on Application for Liquor License at the Pavilion Restaurant in Union Square Park

Before CB5 Full Board Meeting

June 14, 2012

My name is Reed W. Super. Albert K. Butzel and I are the attorneys representing the Union Square Community Coalition – USCC – in their opposition to placing a restaurant in the Pavilion in Union Square Park. USCC believes that the Pavilion should be used for park purposes and as a children's haven, not for a commercial restaurant. There are, after all, more than 100 eating establishments within two blocks of the Park, and there is no need for yet another in the Park.

USCC strongly opposes the application for a liquor license in the Pavilion. It does so, in part, based of its overall opposition to using the Pavilion as a commercial restaurant. But there are very real reasons under the Alcoholic Beverage Control Law that make it critical that, whether or not a restaurant operates in the Pavilion, alcohol cannot and should not be permitted there.

The most significant reason is that the Pavilion restaurant immediately abuts the new children's playground in the Park. It is not 100 feet, or 25 feet, or 10 feet from the playground. It is right next to it. And it is unseparated from the playground. There is no opaque partition, or even windows, for that matter, to separate the place where alcohol is served from the place where children will be playing. It is an *open-air* Pavilion adjoining a playground. Contrary to testimony given by the restaurant representatives at the May 30, 2012 CB5 Committee on Public Safety and Quality of Life Meeting, there is NOT a 15-foot wall, separating the playground from the restaurant. The restaurant representatives also incorrectly claimed that children would not be able to see restaurant patrons from the playground. In fact, when standing in the playground, one can see clearly into the Pavilion through the many openings. These kinds of misrepresentations should be taken into account by this full board. In fact, one of the stipulations the Committee on Public Safety and Quality of Life made in granting the license on May 30th was that there be a visual barrier. There is no visual barrier now and if a new visual barrier were to be proposed, that alteration to the Pavilion might require prior Public Design Commission approval, and whether it is temporary or affixed to the Pavilion, the visual barrier would nevertheless be an aesthetic blight on the historic Pavilion for the six-month period when the Park is most popular. That too should also be of concern to this Board, its Parks Committee and others.

As it stands, children using the playground will be directly exposed to the drinking that would take place there if a liquor license is granted. And since the Pavilion restaurant will be operating only in the warmer weather of late spring, summer and early fall, children can be expected to be using the playground from the morning until late evening – during "happy hour" and beyond. They should not be exposed to or subject to the effects of alcohol consumption inside the unenclosed restaurant.

The Alcoholic Beverage Control Law, section 64(7)(a), prohibits an establishment from serving alcohol if it is located within 200 feet of a school. This is to protect the children who attend the school. In the case of the Pavilion, the same protective reasoning should foreclose allowing alcohol to be served in it. Less than five feet from a playground that is already heavily used by young children, the Pavilion should be denied a liquor license, if not based on the 200-foot rule, then by invoking its clear purpose.

Furthermore, Section 64(7)(f) of the Alcoholic Beverage Control law also provides that where there are three or more licensed dispensaries of alcohol within 500 feet of a new proposed facility, a license may be granted ***only*** if it is ***in the public interest***. In the case of the Pavilion, by our count there are at least 25 establishments serving or selling alcohol within 500 feet of the proposed restaurant, including bars, restaurants, liquor stores and other retail establishments. In these circumstances, there is clearly no need or benefit for yet another dispensary of liquor in the Union Square area, nor is there a public interest basis for granting a license here. In fact, just the opposite, there is an overwhelming public interest to protect the children who use the playground.

Given the proximity of the Pavilion to the abutting playground, it would be against the public interest to allow alcohol to be served in Union Square Park. The 200-foot rule reflects a clear legislative policy and mandate to protect children from exposure to liquor. That mandate and the public interest considerations of the 500-foot rule mandate denial of the application.

We respectfully ask this Board to recommend such a denial.

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