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**Land Use, Housing & Zoning**

March 2023, Land Use, Housing & Zoning Committee

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**Fogo De Chao, a restaurant at 31 West 52nd Street, between 5th-6th avenue, to renew a three-year permit to operate an open-air café as a permitted obstruction within an existing plaza on the property.**

At the regularly scheduled monthly Community Board Five meeting on Thursday, March 09, 2023, the following resolution passed with a vote of 33 in favor; 0 opposed; 1 abstaining:

WHEREAS, Fogo De Chao is a restaurant at 31 West 52nd Street (a building that also fronts on 40 West 53rd Street) within a C5-2.5 Zoning District; and

WHEREAS, The building in which Fogo de Chao Brazilian Steakhouse leases retail space comprises Block 1268, Lot 7501; and

WHEREAS, Since 1985, this building has provided a public plaza of 12,340 square feet with 7,654 square feet being bonusable, generating 45,924 square feet; and

WHEREAS, The 912-square foot area that Fogo de Chao is requesting to use as its Open Air Cafe comprises 7.4% of that privately-owned public space (POPS) that is generating a floor area bonus; and

WHEREAS, The proposed Open Air Cafe would have 9 tables with 36 chairs on the northeast edge of the public plaza, in an area set back from the building's property line; and

WHEREAS, The proposed Open Air Cafe would serve primarily as an advertising vehicle for Fogo de Chao within a public space, generating minimal revenue from the table-service, with the restaurant benefiting from its location across the street from the exit from the Museum of Modern Art; and

WHEREAS, CB5 is concerned about both the pedestrian congestion on the sidewalks of midtown, and the safeguarding of bonus-granting public space that the general public is meant to enjoy; and

WHEREAS, CB5 believes that open air café seating in a privately owned public place may be a public benefit only when seating and tables can be used by the public without a need for purchase of food or beverage; and

WHEREAS, If signage is not required to make clear to the public that they can use seating and tables without need for a purchase, we do not believe the public would have any knowledge that such seating is available to them; and

WHEREAS, At the CB5 Land Use, Housing and Zoning Committee meeting on March 1, 2023, representatives from Fogo da Chao agreed that anyone from the public will be able to sit on the proposed seats and use the tables without need for purchase of food or beverage and non-paying members of the public will not be told to move if a paying customer wishes to sit and all seating is occupied; and

WHEREAS, At the CB5 Land Use, Housing and Zoning Committee meeting on March 1st, 2023, representatives from Fogo de Chao agreed and confirmed that any member of the public may use the restroom as needed;

WHEREAS, Fogo da Chao representatives agreed at the CB5 Land Use, Housing and Zoning Committee meeting on January 9th, 2019 that Fogo da Chao will instruct the staff of the restaurant to welcome the public to use the seating in the Open-Air Café; and to use the public bathrooms inside the restaurant; and

WHEREAS, CB5 believes that if the public ends up unable to use the seating without purchase of food or beverage, the public costs associated with some commercial activity in this public space would outweigh any other potential public benefit associated with this Open Air Café; and

WHEREAS, The applicant has agreed to CB5's stipulations ad will display texts that states:

1. "This Area is Open to the Public" in text no smaller than the largest non-logo text on the board, displayed at the top of both sides of one 3'-10 3/4" by 2'-4" double sided curb sign labeled 17 Café Signage as shown on Drawings #SC-2, dated 11-16-22 and located in plan on Drawing #SC-1A, dated 11/16/22 labeled as Proposed Open Air Café Sign RE; 17/SC-2, at the café entrance;

1. "This Area is Open to the Public" displayed on 8" by 11" plaque located at the center of the seating area as well as in all windows as shown on Drawing # SC-11 dated 11/16/22 and shown in photos 1,2 and 3; and

WHEREAS, If the agreed upon signage is NOT part of the site plan approval for the Open Air Café, CB5 would be in very strong objection to City Planning approval of the Open Air Café as such an approval would constitute the privatization of public space without any benefit provided for everyday New Yorkers who do not wish to make a purchase to enjoy public space; and

WHEREAS, Fogo the Chao representatives have confirmed that they have abided by these stipulations for the past three years and will continue to abide by them; therefore be it

RESOLVED, Community Board Five **recommends approval** of the application for an Open Air Cafe to be operated and managed by Fogo de Chao, the restaurant leasing space at 40 West 53rd Street for the next three years with the following specified requirements:

- (1) Comply with the above signage stipulations for the three-year term of the sidewalk café permit;
- (2) A signed Affidavit that applicant agrees to the stipulations listed herein this resolution for the three year term of this renewal permit to operate an open air café at the above location.



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