

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PARKS AND RECREATION

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April 27, 2010
Start: 10:04am
Recess: 01:17pm

HELD AT: Council Chambers
City Hall

B E F O R E: MELISSA MARK-VIVERITO
Chairperson

COUNCIL MEMBERS:
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Daniel Dromm
Julissa Ferreras
Vincent J. Gentile
James G. Van Bramer

A P P E A R A N C E S

Ms. Betsy Smith
Asst. Comm. For Revenue and Marketing
NYC Parks Dept.

Ms. Marla Simpson
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Mr. Joel Metlen
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Mr. David Cerron
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Green Market Program

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Brooklyn Bridge Park Defense Fund

Gary Pappish
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A P P E A R A N C E S (CONTINUED)

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Michael O'Neal
Representative
O'Neal Organization

B.R. Holzer
Representative
Riverdale Stables

Mel Whymore
Chairperson
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Michael Tappit
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Barry McLaughlin
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Bike and Roll NYC

Kandes Ametirkomar
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Christiana Pena
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A P P E A R A N C E S (CONTINUED)

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Gerald Tennenbaum
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Cesar Fuentes
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Food Vendors Committee of Red Hook Park

Lee Finkel
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American Golf Corp.

Mitchell Balmuth
Concessionaire
First Amendment Buttons

Ron McKechnie
President
Conservatory Sailboat Rentals

Jeffrey Croft
President
New York City Park Advocates

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2 CHAIR PERSON MARK-VIVERITO: Good
3 morning, my name is Council Member Melissa Mark-
4 Viverito, and I'm Chair of the Parks and
5 Recreation Committee. I want to really thank all
6 of those who are here today, and obviously the
7 representatives from the administration. I also
8 want to recognize Lyle Franks, who is counsel to
9 the Parks and Recreation Committee, as well as
10 Patrick Mulvihill, who is the policy analyst for
11 the Committee. In recent years, concessions have
12 been an increasing presence in New York City's
13 public parks, and today's oversight hearing is
14 focusing on concessions in our city's parks.
15 While these concessions do generate revenue for
16 our city, there have been serious questions raised
17 by community stakeholders, particularly about
18 areas of transparency and community input. In my
19 own district, the Randall's Island concessions and
20 the multiple concessions on Randall's Island have
21 been an issue of major concern to me, as well as
22 the recent proposal to put up tennis bubbles in
23 Central Park. It is my hope that we come away
24 from today's hearing with a greater understanding
25 of the role of concessions in our parks, what

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2 process exists for the awarding of concessions,
3 and what aspects of this process we might be able
4 to work together to improve. We'll also be
5 hearing on Intro 21, which is introduced by my
6 colleague Council Member Nelson. This local law
7 will put in greater regulations with respect to
8 the location of concessions in our city's parks.
9 So I want to thank you all for being here today,
10 and we can start with the representatives from the
11 administration, I appreciate it very much.

12 MS. SMITH: Thank you very much.
13 Good morning, Chair Mark-Viverito and members of
14 the Parks Committee, who are not quite here in
15 their seats yet. My name is Betsy Smith,
16 assistant commissioner for revenue and marketing
17 at the Parks Department. Thank you very much for
18 giving me the opportunity to discuss with you our
19 work on concessions and our analysis of
20 Introduction 21 of 2010. I'm joined here at the
21 table with Marla Simpson, who is the chief, the
22 city's chief procurement officer, and I'm also
23 joined by some of the staff from my office:
24 Charles Kloth, who is the director of concessions.
25 Do you want to identify yourself, Charles? Joel

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2 Metlen, who is our deputy director of concessions,
3 Toni Makari, the revenue architect, and David
4 Cerron, our accountant, along Alessandro Olivieri,
5 who is the Park's general counsel. And I'll be
6 calling on them to offer what they can with regard
7 to some process questions and some specific
8 concessions, issues with some specific
9 concessions.

10 Thank you for giving us the
11 opportunity to discuss concessions within the
12 city's parks. We all know that concessions help
13 generate revenue for the city. In fact, in 2009
14 we generated nearly \$43 million in revenue. The
15 revenue, however, is not the principal value of
16 our concession business. Concessions provide
17 other benefits that dramatically outweigh the
18 value of the funds they generate. What has been
19 confirmed over the decades, both in this city and
20 many others around the world, is that concessions
21 bring life to our city's parks. They make our
22 parks safer and more active, provide services to
23 park users, and employ thousands of New Yorkers,
24 many of whom are either working or managing their
25 own small businesses for the first time. So

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2 before I address Introduction 21 of 2010, I'd like
3 to take some time to further expand upon these
4 points, and perhaps, in doing so, clear up some
5 misconceptions that we hear from time to time that
6 concessions are about commercial interests or
7 taking away from other park uses. In fact,
8 popular concessions are woven into the very fabric
9 of our lively park system. Almost from the
10 beginning of the park system, concessions have
11 been seen by city planners and government
12 administrations as an important amenity for the
13 public. The idea of selling goods and merchandise
14 in public spaces is intertwined with the founding
15 of our city, and the first formal concessions were
16 in place as far back as 1870.

17 More recently, concessions have
18 been one of the keys to the renaissance of parks
19 in our city over the past 20 years. For example,
20 back in the 1980's, the city's thirteen municipal
21 golf courses, then run by the Parks Department,
22 were in very poor condition, and the city lost \$2
23 million a year operating them. Former Parks
24 Commissioner Gordon Davis realized that we weren't
25 experts on running and maintaining golf courses

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2 and we knew that these courses could be better
3 served being run by those who were. The new
4 operators were better able to care for and invest
5 in these courses. Today our golf courses have
6 received more than \$42 million of private capital
7 investment, they are dramatically improved and
8 better run, they remain affordable, compared to
9 private clubs, provide significant public-minded
10 programming, particularly for young people, and
11 the city now earns overall more than \$7 million in
12 income, money that goes to the city's general fund
13 to pay for basic city services, such as teachers,
14 police, fire fighters, other social services and
15 of course, parks.

16 There are other examples of
17 concessions galvanizing improvement in our parks,
18 and in the quality of life in their neighborhoods.
19 The 79th Street boat basin in Manhattan is a prime
20 example of this. Once a dangerous place used only
21 for illicit activity, we found an operator willing
22 to invest in an untried concession and open a café
23 that is now a bustling and thriving scene for
24 thousands of West Siders on evenings and weekends,
25 employing over a hundred people, and generating

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2 \$3.7 million in gross sales this past calendar
3 year. Many of our more than 450 concessions offer
4 similar success stories. They are now
5 quintessential New York experiences, and even
6 long-time New Yorkers may not know the extent to
7 which the parks and licensed concessions have
8 defined the New York experience. If you ride the
9 Cyclone roller coaster at Coney Island, rent a
10 model sailboat in Central Park, take a ride on the
11 Flushing Meadows carousel, take a water taxi from
12 the Battery to the Statue of Liberty, play golf in
13 Pelham Bay Park, ice skate at Kate Wollman rink in
14 Prospect Park in Brooklyn, or Clove Lakes in
15 Staten Island, pick up a magazine from our
16 newsstand at City Hall Park, ride a horse in Van
17 Cortlandt, learn from a tennis pro at Alley Pond
18 in Queens, rent a bike in the Battery and ride it
19 up to Fort Tryon Park, then you're taking part in
20 a Parks concession. And people are voting with
21 their feet. Many of our concessions attract
22 hundreds or thousands of users, from workers
23 lining up at lunch time for a burger at the Shake
24 Sack, to seniors signing up online for a golf
25 foursome at LaTourette Park, the skaters flocking

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2 to our outdoor rinks, and to families buying an
3 ice cream cone on the renovated boardwalk at South
4 Beach. And it's not just business as usual. We
5 support the Bloomberg administration's initiative
6 of healthy food choices, and the promotion of
7 exercise for citizens and visitors to New York
8 City, and we are continuing to work to establish a
9 healthier and more diverse array of concessions.

10 Many of our concessions involve
11 athletic activities: tennis, golf, bike riding,
12 kayaking, and even draw people to the park during
13 the winter months with ice skating and tennis
14 bubbles. We're also expanding our array of
15 pushcarts beyond the classic New York standbys.
16 We will be providing specialty carts with
17 offerings that are as diverse as New York itself,
18 and have already started licensing green carts in
19 several locations where parkgoers can purchase
20 fresh fruits and vegetables.

21 Moreover, we should always keep in
22 mind that behind each one of our concessions are
23 the men and women who operate them. For they are
24 the true success stories of this economic model.
25 New York City's concessionaires are as varied as

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2 the concessions they offer. From companies to
3 individual entrepreneurs, our concessionaires
4 bring an enormous dedication and creativity to the
5 parks. And most important, literally thousands of
6 jobs are created from our concessions, which
7 include the people who are directly employed by
8 each concession, ranging from the person standing
9 behind the pushcarts, to the Zamboni driver on our
10 ice skating rinks, to the professionals who
11 maintain our golf courses. Concessions also give
12 budding business men and women, many of them new
13 immigrants, a way to get a foothold in the local
14 economy and to chase a piece of the American
15 dream. And our specialty cart program has
16 flourished recently in this economy because it has
17 given small businesses and entrepreneurs a chance
18 to expand their businesses, even during an
19 economic downturn. Our concessions provide
20 unique, low-cost, low-risk, and low-overhead
21 opportunities that you just can't find elsewhere.
22 Our concessions are an economic engine, and we
23 should always keep that in mind, the thoughtful
24 ways to encourage their growth, and not merely
25 seek to mitigate their presence in our parks.

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2 In that spirit, I'd like to take a
3 few minutes to discuss Introduction 21 of 2010.
4 This Introduction, which adds section 18-136 to
5 Parks Administrative code section, would require
6 the Department to map, to the nearest foot, every
7 concession under the jurisdiction of the
8 Department, occupying a space greater than 75
9 square feet. The bill seeks to require
10 concessions to mark on the ground the boundaries
11 set forth in such a map, and make those maps
12 accessible on the city's website. Further, the
13 bill establishes civil penalties of no less than
14 \$200, and no more than \$1,000, for each violation.
15 We appreciate the intent of the bill, in making
16 sure that parks concessions adhere to the
17 boundaries set forth in their license or contract.
18 Concessions, whether a mobile food vendor and
19 established restaurant in a park, or one of the
20 many other options, are amenities to be enjoyed in
21 our parks, and should not have a deleterious
22 effect on the landscapes, views, infrastructure or
23 enjoyment of our green spaces. However, we do
24 oppose Introduction 21 on the grounds that we
25 simply believe the bill will not accomplish

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2 anything greater than what we are doing now in the
3 administration of our concessions across all the
4 boroughs.

5 First, all concessions are licensed
6 and under contract, and are required to adhere
7 strictly to the terms of that legal instrument.
8 In every case the legal instrument will include
9 either specific language delineating the
10 boundaries of the concession and their
11 responsibilities and maintenance operations, or
12 include a detailed site map, with the boundaries
13 clearly defined. Our agreement requires that the
14 concessionaire clean the area 50, and sometimes
15 100, feet beyond the boundary of the concession.
16 In other words, our concessionaires, at their sole
17 cost and expense, not only keep clean the areas
18 they use, but also a lot of the surrounding
19 parkland. Also, our park managers maintain strong
20 working relationships with the concessionaires in
21 our parks, and have ... they have unfettered access
22 for the purpose of investigations and inspections.
23 Our inspectors and park managers already have
24 direct access to the agreements and site map,
25 which allow them the ability to make

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2 determinations on compliance, and enforce those
3 agreements when needed.

4 Second, we believe that the
5 Introduction, Introduction 21's intent to capture
6 any and all concessions that occupy space greater
7 than 75 square feet in order to require mapping
8 and marking of boundaries on the ground, would
9 cause legal obstacles to the operations of most of
10 our mobile food vendors, which must navigate rules
11 and regulations of many city agencies. The 75
12 square foot threshold would include every single
13 concession under Parks jurisdiction, and as I've
14 mentioned there's over 450 of them, from the
15 mobile hot dog vendor to the golf course
16 concession and the water taxi operator. With
17 mobile vendors the boundaries of their location
18 are designed to be fluid, based on their access to
19 parking, other agency rules and guidelines,
20 including those of the Department of
21 Transportation, the Department of Consumer
22 Affairs, and the Police Department, and it would
23 be impossible to mark on the ground a
24 consistently-defined location day-to-day. For
25 example, when there are parades, rallies,

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2 concerts, road races, and other events, many
3 mobile concessions must relocate from their normal
4 spots.

5 With respect to concessions that
6 are more permanent, such as food kiosks or a
7 restaurant, those concessions are more clearly
8 defined by the physical limitations of their park,
9 and marking on the ground would serve no greater
10 purpose than to deface the ground and the
11 landscape. In fact, the requirement that the
12 boundaries of each concession be prominently
13 marked on the ground by the concessionaire will
14 not only add an intrusive element to city
15 parkland, but would compel the concessionaire to
16 violate Park's own rules and regulations. A
17 permanent or semi-permanent marking by the
18 concession operator would violate section 1-04 of
19 Park's rules, which prohibits the destruction or
20 abuse of property and equipment as follows, and I
21 quote: "No person shall injure, deface, alter,
22 write upon, destroy, remove or tamper with in any
23 way, any real or personal property or equipment
24 owned by or under the jurisdiction or control of
25 the Department."

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2 Third, with respect to those
3 concession maps, we are in the process now of
4 creating an online map of the boundary of every
5 concession, utilizing ArcGIS, which is also used
6 to create many of the site maps included in our
7 concession agreements. It is a process that will
8 take time, due to the sheer number of concession
9 agreements we have. Right now all of our
10 concession agreements are available for inspection
11 at the Arsenal, and we have provided the Committee
12 with a sample of a recent agreement with the
13 Dyckman Marina that includes a site map. The bill
14 would require mapping to the nearest foot, which
15 would be impossible for us to do, since we do not
16 even have many of our parks with such accuracy.
17 To endeavor to do so for our concessions would
18 require a wholesale remapping, using GIS for all
19 29,000 acres of parklands and would be cost
20 prohibitive. Further, our marina concessions
21 would have a problem complying with Introduction
22 21, should it become law. We believe the maps
23 that are included in each agreement work well, and
24 eliminate any confusion with regard to their
25 boundaries.

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2 Fourth, it is not clear what public
3 policy issue is driving this bill, as we have no
4 significant record of complaints about concessions
5 going beyond their boundaries. On rare occasions
6 when we do hear complaints regarding expansion of
7 vending space, we respond immediately by sending
8 our inspectors to conduct fact finding about the
9 allegations. As mentioned earlier, we also
10 include our park managers ... encourage our park
11 managers to maintain a strong working relationship
12 with the concessionaires in their district.

13 And lastly, with respect to the
14 imposition of a civil penalty, currently if a
15 concessionaire is found to be in violation of any
16 term of their contract, our contracts allow us to
17 issue notices, assess liquidated damages, or even
18 terminate the agreements of concessionaires who
19 fail to comply, in addition to other remedies
20 provided by the law. In other words, Parks
21 already has adequate methods of enforcement, and
22 Introduction 21 does not provide Parks with
23 something additional that we do not already have.

24 Let me conclude by saying again
25 that the principle role of concessions is to

1
2 augment the life of our parks, and this is not an
3 idea that only exists here in our parks system.

4 Concessions are used in cities all around the
5 world to help sustain and enliven our parks.

6 Whether the swan boats of Boston's public garden
7 lagoon, or the gardens of Luxembourg in Paris,
8 major cities all use concessions to improve parks
9 and promote citizens to use open space in a
10 congenial, service-oriented and personal way.

11 They make parks livelier, safer and more
12 interesting. As with all public amenities,
13 concessions are an evolving business, which we can
14 always improve. But parks concessions have added
15 to the richness of New York City parks and the
16 urban experience. Thank you. I'm happy to take
17 questions with regard to our process, our
18 procedures, and individual concessions.

19 CHAIR PERSON MARK-VIVERITO:

20 Assistant Commissioner, thank you very much for
21 your testimony and there's a lot of people here
22 today, we will try to move along the questions,
23 but there are going to be a lot. I project we're
24 going to be here for a little bit of time. But I
25 do want to recognize my colleagues, Jimmy Van

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2 Bramer and Danny Dromm, that have joined us, and
3 I'll try to kind of lay the foundation in terms of
4 ... I'll ask a couple of questions and I know that
5 my colleague, Danny Dromm, has a couple as well.
6 You can understand that there has been a lot of
7 concerns about concessions in parks, and I know
8 that you say in your opening paragraph that the
9 revenue is not the principal value of our
10 concessions' business, concessions provide other
11 benefits that dramatically outweigh the value of
12 the funds they generate. Yet, some of these
13 concessions that we have been seeing recently, not
14 only is there a lot of personal investment that
15 the individual operators are putting into the
16 concession to make them operational, obviously
17 they're going to have an interest in recouping
18 that investment as quickly as possible. But some
19 of these concessions are making the public parks
20 very inaccessible to a large percentage of our
21 population, which may not have the means to pay
22 for the prices that are being issued. So you talk
23 about, for instance, in your testimony the golf
24 course. Our golf courses have received more than
25 \$42 million in private capital investment, what is

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2 the average amount somebody has to pay per hour to
3 play on one of the golf courses that is contracted
4 to a concession?

5 MS. SMITH: Charles, do you know
6 the price range of the ...

7 CHAIR PERSON MARK-VIVERITO: You
8 need to ... anybody that's going to speak needs to
9 kind of identify themselves on the mike and issue
10 the answer.

11 MR. METLEN: It depends on the time
12 of day, but all the prices are listed on our
13 website. Specials, discounts and all those kind
14 of opportunities, even for people ...

15 CHAIR PERSON MARK-VIVERITO: He's
16 going to ... all right, I'm sorry, you want to start
17 again?

18 MR. METLEN: My name is Joel
19 Metlen, I'm the deputy director of concessions for
20 the Parks Department. What I was saying is that
21 all of our prices for the golf courses are listed
22 on our website. They're only increased by the CPI
23 for every given year, so they don't go up by
24 enormous amounts every year. It depends on what
25 time you're playing, but we do have discounts and

1
2 specials at different times of day. We have
3 discounts for seniors. We keep them extremely
4 affordable actually, in comparison to other public
5 golf courses.

6 CHAIR PERSON MARK-VIVERITO: Is
7 that an expectation of the contract with the
8 concessionaire that there has to be provisions for
9 people that are of lower income?

10 MR. METLEN: We approve every price
11 that they charge at the golf courses, as with most
12 of our concessions. We have a direct approval
13 over all the prices, and we always weigh
14 affordability into our decisions.

15 CHAIR PERSON MARK-VIVERITO: It is
16 my understanding with the bubbles in Central Park,
17 was that that concession was, and hopefully, you
18 know, we're going to roll that back. I think the
19 opposition has been very strong, but you know,
20 that it was going to be about \$80 to \$100 in order
21 to access the tennis concession, or the tennis
22 courts in that case. So I mean, I'm trying to
23 find out if within your concession agreements if
24 there is an expectation that there has to be an
25 affordability factor, is that written into the

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2 contracts.

3 MS. SMITH: We always, our RFP's
4 always, when we solicit interest in concessions,
5 we always talk about affordability, and always
6 make sure that the price range can incorporate a
7 range of prices. So, yes we do.

8 CHAIR PERSON MARK-VIVERITO: Okay,
9 so I would ... I guess we could look that up in
10 RFP's and see if that is an expectation, and
11 whether that's actually in the agreement, I guess
12 is the end result. It could be an expectation
13 written in the RFP, but whether the contract has a
14 specific, you know, expectation outlined, and that
15 has to be signed, I think that's a different
16 question. Is it in the contract.

17 MS. SMITH: They are in the ... the
18 pricing is in the contract, and any price
19 increases are subject to our approval.

20 CHAIR PERSON MARK-VIVERITO: Now in
21 our briefing paper, and we say that in the
22 Department of Parks, according to the mayor's
23 management report for 2010, DPR generated \$110
24 million in revenue for fiscal year 2009. \$43
25 million of that came from concessions, what's the

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2 other amount?

3 MS. SMITH: The other amount
4 includes revenue from Shea and Yankee stadiums,
5 which are no longer included in our ... the
6 agreements have been renegotiated, so the numbers
7 will be different going forward. It includes
8 money- -

9 CHAIR PERSON MARK-VIVERITO:
10 (Interposing) I'm sorry, as of when was the Shea
11 and Yankee stadium agreements not part of the
12 revenue for DPR?

13 MS. SMITH: I believe at the end ...
14 the end of fiscal '09.

15 CHAIR PERSON MARK-VIVERITO: Okay,
16 so as of fiscal 2010 it's not in there, okay.

17 MS. SMITH: But that number also
18 includes income from special events, from
19 recreation center fees, and other fees like that.

20 CHAIR PERSON MARK-VIVERITO: Okay,
21 so then it says that revenue in 2007 was \$75
22 million, in 2008 it was \$97 million, you know, so
23 I'm just trying to ... I guess my concern is whether
24 or not ... my sense is that there has been an
25 aggressive stance on the part of Parks to get much

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2 more revenue from concessions, to do more
3 concessions, higher-priced concessions, that are
4 going to generate more income for Parks as a way
5 of making up, maybe, some of the lost revenue.
6 That's the appearance, and we're hearing a lot
7 more of these concessions, the tennis bubbles,
8 that, you know, on the East Side, the one now in
9 Central Park, the large concessions that are in
10 Randall's Island, for instance, you know, so there
11 seems to be kind of an aggressive aspect to really
12 issue these concessions and these agreements to
13 generate more income for the parks.

14 MS. SMITH: Well, I'm not going to
15 deny that generating revenue from concessions is
16 an important source of revenue for the city. The
17 money goes into the general fund to help us pay
18 for other services provided by the other agencies.
19 But I do want to emphasize again that the primary
20 reason that we consider concessions is to provide
21 services to park users. I think Commissioner
22 Benepe has been very clear on this, we really do ...
23 it is the initial threshold, so almost every new
24 concession we look at, we do look at the community
25 interests and whether or not we feel that that is

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2 going to be a service to the park users. Actually
3 there has not been an aggressive push to have new
4 money coming out of concessions. In fact, we have
5 found that many of our concessions, because they
6 have suffered with the economic downturn, that it
7 has been difficult for us to maintain even the
8 levels of concession income that we've had. In
9 fact, I believe our concession income is down from
10 last year, is that true? So, as I say, it's,
11 revenue is an important element of our concession
12 business. It's important for us, it's important
13 for the city for us to make a contribution to
14 providing other services that the city offers.
15 But again, Chair Mark-Viverito, it is not the
16 primary driving force in when we put concessions
17 in our parks.

18 CHAIR PERSON MARK-VIVERITO: You're
19 saying the revenue is down this year, so where is
20 it at right now, compared to last year?

21 MS. SMITH: David Cerron, our chief
22 accountant, can answer that specifically.

23 MR. CERRON: Through the end of
24 March we're down approximately 4%, or about \$1.4
25 million, that's just with regard to concession

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revenue.

CHAIR PERSON MARK-VIVERITO: And you're just attributing that to the economic climate?

MS. SMITH: Primarily.

CHAIR PERSON MARK-VIVERITO: And what are you projecting for 2011?

MR. CERRON: Well, we haven't completed the projections yet, because we want to see how the rest of this fiscal year goes, but it's probably going to be below \$43 million, which is about what we did in fiscal year '09.

CHAIR PERSON MARK-VIVERITO: I have questions about the process of how you arrive at these concessions, but I'm going to ask Danny Dromm, I know he has a couple of questions.

COUNCIL MEMBER DROMM: Actually that might be what I'm going to ask about. I'm particularly interested also in what type of concessions you have, who gets the licenses, how that's determined, and outreach to "minority immigrant" populations, and their participation in the major concessions, and also in minor, or smaller, concessions. Can you describe the

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2 process that someone has to go through in order to
3 secure a concession, let's say, a hot dog stand or
4 something like that?

5 MS. SMITH: I'll ask Marla to
6 elaborate in this, but suffice it to say that we
7 publicly solicit interest in all of our
8 concessions. There's a very rigorous policy and
9 procedure that we go through with regard to coming
10 up with an idea for a concession, asking the
11 community, notifying them that we are going to
12 solicit an interest. We, in our own concession
13 agreement, largely in an effort led by Charles
14 Kloth, we have been very, very aggressive in
15 trying to encourage people to bid, to get wider
16 interest, not the same people bidding on the hot
17 dog stands, but trying to get a wider variety of
18 proposers, because one, we'd like to offer the
19 opportunity to more people, and two, we think it
20 improves the variety of what's being offered in
21 the parks. They respond to an RFP, a request for
22 bids, on the part of our mobile units and our
23 carts, or a request for proposals for our larger
24 concessions, and they go through a process that's
25 carefully monitored by Marla's office. Do you

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want to add anything, Marla?

MS. SIMPSON: Sure, if I could just indicate, I'm Marla Simpson, I'm the director of the Mayor's Office of Contract Services, and in that capacity, the city's chief procurement officer and under the city's concession rules, it is my office that has oversight on compliance with, among other things, the solicitation and award procedures. In each case, both the consultation process with the community, the notice process in terms of public advertising, and the method by which a concession is obtained, which as Betsy mentioned is typically done through a competitive sealed bid, but occasionally is done through a more flexible process called a competitive sealed proposal, or RFP. All of those are very rigorously shepherded and vetted by my office prior to release, and then at the point at which evaluations occur and awards are made. It is not unusual, picking up on something that Betsy referred to in her testimony, it is not unusual, particularly in those RFP awards, to see qualitative factors such as the range of offerings or the variety of food or the incorporation of

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2 cuisine or elements that are central to that
3 particular community, it's not unusual to see that
4 baked into the RFP, and then baked into the
5 evaluation process, which will give a leg up often
6 to proposers that are coming in, new entrants to
7 the marketplace, new potential concessionaires.
8 And that is one of the ways in which those new
9 businesses are brought in.

10 COUNCIL MEMBER DROMM: So in a park
11 like Flushing Meadows Corona Park, what type of
12 ethnic food, ethnic culturally food, do you offer?

13 MS. SMITH: A pretty wide variety,
14 given our neighbors.

15 MR. METLEN: We actually have ...
16 this is Joel Metlen again ... we actually have a
17 number of different ethnic vendors in Flushing
18 Meadows that are around the volleyball courts, and
19 they sell things, most of them are from South
20 America, they sell their native cuisines there.
21 And it really runs the gamut. There's a full row
22 of them there, and they serve the local immigrant
23 population who play soccer a lot there. So it's
24 really tailored to that community.

25 COUNCIL MEMBER DROMM: Is there a

1
2 difference between a concession and vendor permits
3 in the park, or is there a difference between a
4 concession and a special event permit for people
5 to sell certain items in the park?

6 MS. SMITH: I'm not sure about your
7 question. When someone has a short-term special
8 event permit, a temporary ... we call them temporary
9 use authorizations, for them to supply food to
10 people who are coming to a special event, that's a
11 short-term permit that usually lasts for an
12 afternoon or a day. So that's different from a
13 permit that we give to a permanent vendor, whose
14 term can be five to ten years to sell food in a
15 certain area. So yes, those permit agreements are
16 different.

17 COUNCIL MEMBER DROMM: Here's why
18 I'm going in this line of questioning, is because
19 I've gotten complaints, people are actually coming
20 to my office to say that getting a permit to sell
21 certain items at Flushing Meadow park,
22 specifically in front of the Queens Museum of Art,
23 has been a difficult process for them to go
24 through, and part of it I think is language and
25 language accessibility. Do you have forms in

1
2 different languages? How do you deal with that?
3 And is there a minimum requirement, a down
4 payment, or a deposit of some sort that vendors
5 must put up front before they ... or concessionaires
6 must put up front before they are granted these
7 permits?

8 MS. SMITH: I'm assuming you're
9 talking about the permanent concessions, not just
10 the daily special event concessions. Those carts
11 are, and locations, are solicited through a
12 request for bids, which is a process that
13 basically looks at the highest bidder. We reach
14 out extensively to people to try to, as I had
15 mentioned before, to try to increase the variety
16 of people who are looking. I'm not sure about our
17 language, are there other languages available on
18 our RFP's? I don't believe so, but that's
19 actually a pretty good idea. And those awards are
20 made, there is a bid deposit, that's required.

21 COUNCIL MEMBER DROMM: How much is
22 that?

23 MS. SMITH: Six hundred dollars.
24 So, you know, we try to reach out to as many
25 people as possible, and those are competitively-

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2 sealed bids, they're opened in public and the
3 highest bidder is awarded in a responsive bid.

4 COUNCIL MEMBER DROMM: And also I
5 wanted to ask a question about areas around parks,
6 smaller parks in particular. Nuisance things,
7 like the Mr. Softee man who comes and rings a bell
8 constantly, and I know there's a law against that,
9 it's really enforcement. But also do you regulate
10 that? Or how is that regulated? Is that through
11 another department? There are like ice cream
12 trucks that pull up alongside of a park, they have
13 exhaust fumes, the bells are ringing, what do you
14 do with that?

15 MS. SMITH: Well, I can answer part
16 of it, and I'll ask Charles to answer the other
17 half. We do have mobile truck vendors that we do
18 permit specifically. We tell them where to go and
19 when they can be there. And they are ... their
20 position in the park is, again, publicly solicited
21 through bids. There are other vendors who come
22 and park alongside parks, and I believe they are
23 under the jurisdiction of the Department of
24 Consumer Affairs, Charles? Maybe you want to add
25 to that.

1
2 MR. KLOTH: I am Charles Kloth, I
3 am the Director of Concessions for the Park
4 Department. I would just like to add that we also
5 have recently, recently in the last year, year and
6 a half, added a compliance unit to our division.
7 So in order for us to stay more on top of a.
8 making sure our vendors comply with the rules and
9 regulations that are contained in their permit,
10 and then to outreach with our park enforcement and
11 other, you know, police or other enforcement
12 units, to try to regulate or reduce the number of
13 illegal vendors in our parks.

14 COUNCIL MEMBER DROMM: So can you
15 tell me specifically in terms of Mr. Softee or a
16 motorized vehicle that's parked probably on the
17 street, let's say, or maybe even within a park,
18 are they allowed to idle their engine for any
19 specific amount of time or is there regulation,
20 you know, how long they can ring their bells?

21 MR. KLOTH: I don't know the answer
22 to the bells. They are allowed to idle their
23 engines, because they have to keep the machinery
24 running, I guess.

25 COUNCIL MEMBER DROMM: Because that

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2 creates an awful lot of pollution in an area where
3 people are coming to have a green experience, and
4 to be overwhelmed by those fumes, I think it's
5 something that you really need to look at, and I
6 would really appreciate it if you did, even in the
7 smaller parks, where people pull up on the side of
8 the street, and the fumes just come in and in the
9 playgrounds and things like that. I'd be most
10 grateful if you would look into that further for
11 us.

12 MR. KLOTH: Sure.

13 COUNCIL MEMBER DROMM: Thank you.

14 CHAIR PERSON MARK-VIVERITO: Thank
15 you Council Member. You know, the RFP's and
16 having them in different languages, can we get a
17 commitment from Parks to look at that seriously?

18 MS. SMITH: We'll ...

19 CHAIR PERSON MARK-VIVERITO: And to
20 implement it?

21 MS. SMITH: We'll certainly look
22 into that idea. It's a good idea.

23 CHAIR PERSON MARK-VIVERITO: The
24 other thing also, I mean, there are so many
25 questions that come up as we speak to you, but the

1
2 number of concessions in total. We had in our
3 research come up with about 400, and you in your
4 testimony say 450, what has been the growth in the
5 number of concessions year after year? How many
6 concessions were there last year? How many are
7 there this year? Are you projecting to have ... how
8 many additional concessions are you projecting to
9 have next year? I'm sure that these are factors
10 that you take into your decision making.

11 MS. SMITH: We're not being evasive
12 in coming up with the numbers, they actually
13 change, permits expire, new permits are issued.
14 They have to be registered, they're really not
15 part of our concession group until they are, and
16 new concessionaires are issued a notice to
17 proceed. So the number is a moving target. We do
18 not anticipate a huge growth, and in fact I would
19 imagine our ... the number of concessions we would
20 anticipate being flat next year. We have a
21 certain number of venues that we have worked with
22 the community on finding the right spaces. More
23 than half of our concessions, I would say, are
24 carts and mobile trucks, so most of our
25 concessions are small, they've been identified

1
2 locations in the parks. And as far as new
3 concession opportunities in other parks, we're
4 always looking, we can perhaps talk about that
5 later, to work with the community on finding new
6 concessions, but it's relatively rare to find a
7 brand new concession idea.

8 CHAIR PERSON MARK-VIVERITO: And
9 how typically do you come about determining the
10 park, you know, whether a concession is going to
11 happen? What community input is there in that
12 process?

13 MS. SMITH: We work very closely
14 with the community on new concessions. We work
15 with our park managers, who know the use of the
16 park well. They make determinations on whether or
17 not there is enough traffic, whether or not
18 there's enough interest, whether or not the
19 populations would support it. We work with the
20 community boards closely on new ideas, and try to
21 craft our ... any new proposals closely in
22 conjunction with them. As I have mentioned
23 earlier, our interest in concessions are to
24 provide services to the users of the park.

25 CHAIR PERSON MARK-VIVERITO: Now I

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2 know that, you know, concessions are overseen, or
3 the oversight is the FCRC, and the, you know, I
4 wanted to understand a little bit with regards to
5 the relationship there. Now, an RFP versus a
6 negotiated agreement, there's different levels of
7 oversight with each. So how do you come across ...
8 how do you determine whether something is going to
9 be done through an RFP, whether it's going to be
10 done through a negotiated sale? How many of the
11 total number of concessions fall into each of
12 those categories?

13 MS. SIMPSON: The ... let me take a
14 stab at answering that, because these are defined
15 in the franchise and concession rules. There are
16 three basic types of concessions, one being the
17 request for bids, the competitively-sealed bid
18 ones, and in this case, those tend to be the
19 smaller pushcart or mobile truck type concessions.
20 There are concessions that are awarded by request
21 for a proposal. And those are often, not
22 exclusively but often the larger facilities. And
23 then there are what the rules refer to as "other
24 procedure", which really can range a gamut from
25 different types of negotiations to occasionally

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2 sole sources, if there is only one potential
3 concessionaire for a given opportunity. Recently,
4 when the rules were revamped a few years ago, we
5 tried to introduce some new procurement tools that
6 are similar to innovations that were done by the
7 procurement policy board in the contract arena.
8 One of those is a specific process for a certain
9 type of negotiated concession, it's used only
10 where you have a very time-sensitive opportunity,
11 or a critical need, such as a concession has
12 defaulted and left, and we need to find a quick
13 way to reopen a facility where a concessionaire
14 has abandoned. So those are some examples of the
15 types of uses.

16 CHAIR PERSON MARK-VIVERITO: Well,
17 I know that there's also, you know, there's also
18 the ability for the Department of Parks to make a
19 determination of, you know, I guess what you'd
20 define as in the best interest of the city, and I
21 know that for instance we were approached
22 regarding the Central Park carousel, or the model
23 boats concessions. In the model boats concession,
24 a new RFP was issued and in the other one, the
25 carousel, the concession was cancelled.

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2 MS. SIMPSON: There was an RFP
3 there too.

4 CHAIR PERSON MARK-VIVERITO: In
5 which one?

6 MS. SIMPSON: The carousel.

7 CHAIR PERSON MARK-VIVERITO: Was it
8 the carousel? My understanding is a concession
9 was granted about two years ago, it was a longer
10 concession, it was for maybe five or seven years.
11 After two years, the city, I guess in the best
12 interests, determined to cancel the concession.
13 So I guess I'm just trying to get an understanding
14 of, you know, when that is applied.

15 MS. SIMPSON: Right.

16 CHAIR PERSON MARK-VIVERITO: And
17 how that is implemented.

18 MS. SMITH: That was a situation
19 where the Department felt that there was severe
20 violations by the concessionaire, and it was in
21 the best of the city to terminate that agreement.
22 There were violations on the health code, on the
23 payment terms, on some labor practices, there were
24 some significant violations, and we just felt it
25 was in the best interests of the city for us to

1 terminate that, and find a new concessionaire.

2 Working with Marla's office, we did do a
3 negotiated transaction to get an interim operator,
4 it's a very popular venue in Central Park, and
5 there were- -

6 CHAIR PERSON MARK-VIVERITO:

7 (Interposing) Who was that? Who was put in?

8 MS. SMITH: Who? Excuse me?

9 CHAIR PERSON MARK-VIVERITO: Who
10 was put in to, you know, as a way of while, I
11 guess, the RFP is going to be issued, there was
12 somebody in there now operating it?

13 MS. SMITH: Yes there was a
14 negotiated transaction and the Trump organization
15 is running the carousel at this time.

16 CHAIR PERSON MARK-VIVERITO: And so
17 then the basic- -

18 MS. SMITH: (Interposing) And if I
19 could just finish. And then that was a short-term
20 award while we issued a new RFP to solicit public
21 interest in running the carousel, which is we're
22 in the middle of that process right now.

23 CHAIR PERSON MARK-VIVERITO: So
24 basically the FCRC rules allow for that to happen,
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2 without having to come back to get approval for
3 that to be done?

4 MS. SIMPSON: There is a process
5 for approval at the FCRC even in a negotiated
6 setting. It is set up in a way to be expedited,
7 for the simple reason that in that setting you
8 don't want a concession to have to remain closed
9 for a lengthy period of time.

10 CHAIR PERSON MARK-VIVERITO: No,
11 no, I mean for the cancelling of a concession for
12 in the best interest of the city, that's something
13 that you can do as the Department of Parks without
14 having to go back to the FCRC for approval?

15 MS. SIMPSON: Yes, yes the
16 cancellation is by the terms of the contract
17 itself, and no, it doesn't come for approval by
18 the FCRC.

19 CHAIR PERSON MARK-VIVERITO: I just
20 want to recognize that my colleague Council Member
21 Julissa Ferreras is here. Okay, so then just, you
22 know, in terms of the total number of concessions,
23 I know that some parks have a greater number of
24 concessions than others, would we be able to get a
25 breakdown from you of every park and how many

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concessions are in each?

MS. SMITH: Sure.

CHAIR PERSON MARK-VIVERITO: Okay, it would be good to know. Now going into a little bit about the FCRC and the rules and the expectations, my understanding is there are a couple of sections, section 110 requires the Mayor's Office of Contract Services to provide an annual report to the FCRC on all concessions. So is that report made available publicly, and if so, where can we find it?

MS. SIMPSON: It is made available publicly, copies are distributed, and I believe it is also posted on our website.

CHAIR PERSON MARK-VIVERITO: It is.

MS. SIMPSON: It is.

CHAIR PERSON MARK-VIVERITO: Can you ... would you be able to give us ... I mean, we can look for it, but hopefully it's not hidden away, it's maybe something that you- -

MS. SIMPSON: (Interposing) No, and I'm happy to supply copies to- -

CHAIR PERSON MARK-VIVERITO:
(Interposing) So people can see.

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2 MS. SIMPSON: I'll supply copies to
3 the committee later today.

4 CHAIR PERSON MARK-VIVERITO: It
5 also says that section 110B requires the
6 Department of Parks to make available a plan for
7 concessions annually. Has there, was there a plan
8 issued in 2009, and again, is it publicly
9 available? And what goes into the plan?

10 MS. SMITH: David, did you want to
11 talk a little bit about that?

12 MS. SIMPSON: I think basically the
13 way it works is all the agencies, and there are a
14 number of them, Parks has obviously got the
15 highest volume, provide the information centrally,
16 and it comes out as one plan. I mean, it
17 identifies in the published plan which agency it
18 is, it's not difficult to ... and Parks is the
19 overwhelming majority of the concessions in the
20 concession plan.

21 CHAIR PERSON MARK-VIVERITO: Right,
22 so then is that plan ... again, is that plan made
23 available publicly on the website?

24 MS. SIMPSON: It's one plan, yes.

25 CHAIR PERSON MARK-VIVERITO: Okay.

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2 And that's updated annually. Section 113 requires
3 a determination that the agency must submit to the
4 FCRC that it is in the best interests of the city
5 to issue an RFP, as opposed to having a concession
6 awarded by bid. Is this report done, is there
7 public dissemination of this report?

8 MS. SIMPSON: That's not a report,
9 that's an individual concession-by-concession
10 finding, it is part of the documentation that is
11 prepared for each concession. It is a public
12 document, I would say that, I mean, the number of
13 these documents each year are voluminous. They
14 are provided individually to every member of the
15 FCRC when a concession is brought through the
16 FCRC. They are available from either our office
17 or Parks on a case-by-case basis if someone wants
18 to see extra copies of them. There are notices
19 that go to the community board, I don't believe
20 the entire package is sent to the community board.
21 It's basically a form that includes a
22 determination along the lines that you mentioned,
23 and it is part of the registration package that
24 goes to the controller when the concession award
25 is made, before it goes effective.

CHAIR PERSON MARK-VIVERITO: Okay.

With regards to the, all the concession agreements, are those ... can those be found online? Each individual concession agreement?

MS. SIMPSON: No. Well, there are places, I believe the controller has a public access process for obtaining copies of agreements. I think we are working, I know Betsy mentioned in terms of Parks' agreements and I think we are working city-wide on trying to increase access to those documents. The controller scans them in, and they are available from the controller in that way. These are not different than other procurement contracts, in terms of the city. We do not have procurement contracts online in their entirety at this point, it's obviously a goal the administration intends to pursue. But we have a lot of information about the contracts that are online, just to go back to one of your earlier questions. When you're talking about types of concessions, the number of concessions, all of that is detailed year by year in the annual report that's called the Procurement Indicators Report, that is also published on our website, and so that

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2 gives a breakdown by, you know, by types of
3 concessions, by marinas, by food concessions, by
4 all the different types, and it shows the number,
5 it shows how they were solicited in terms of what
6 method was used, and it shows revenue.

7 CHAIR PERSON MARK-VIVERITO: Well
8 obviously, you know, with as many concessions as
9 there are, the issue of compliance, and I know
10 that the gentleman that spoke before talked about
11 this, that you have now developed a compliance
12 unit. How many people are in the compliance unit?

13 MS. SMITH: It's led by one person,
14 she has two inspectors reporting to her, and she
15 has a very close relationship with our accounting
16 unit. She also has dotted line responsibility to
17 our internal audit staff. Our compliance efforts
18 over the past year and a half have been
19 significantly expanded. We've worked with Marla's
20 office and also internally to make sure that we
21 have a close, keep as close a watch as we can, on
22 our concessions. She manages internal reviews,
23 she meets with concessionaires prior to the
24 effective date of their concession agreements, to
25 make sure that concessions completely understand

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2 what their financial reporting responsibilities
3 are, notices to us on price changes and other
4 terms of the contract.

5 CHAIR PERSON MARK-VIVERITO: Okay.
6 All right, Council Member Julissa Ferreras I think
7 has a couple of questions.

8 COUNCIL MEMBER FERRERAS: Good
9 morning, and I'll apologize if you have to repeat
10 yourself, seeing that I just walked in.

11 MS. SMITH: Good morning.

12 COUNCIL MEMBER FERRERAS: We're
13 doing dual hearings today, so now I wanted to ask,
14 I actually represent the 21st Council District,
15 where Flushing Meadow Park is. And as you can
16 imagine, we have ... it's a large park, and it's a
17 whole host of concessions and other types of, I
18 guess, revenue-generating things in the park.
19 Now, I wanted to see if you would be able to kind
20 of explain to me the differences between like,
21 let's say, the boat house in Flushing Meadow Park,
22 and obviously the Terrace in the Park, or a USTA,
23 and their involvement or their contributions back
24 to the park.

25 MS. SMITH: Well, I would say first

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2 of all, their contributions, they ... all the
3 concessions in the park in our opinion, and
4 hopefully in the opinion of the general public,
5 contribute to the life of the park. The USTA is a
6 different arrangement, it's a lease agreement,
7 it's a very long term agreement that has obviously
8 enabled a very large capital investment in that
9 park, and the USTA, of course host of the U.S.
10 Open, is a material part of the activities in
11 Flushing Meadow. We have other, the restaurants,
12 the Terrace on the Park is a long-term agreement.
13 They also have been there for a while, they have,
14 I don't remember how much longer they have on
15 their concession agreement, but a number of years,
16 five or six years to go. That was solicited
17 through a request for proposals. And there are a
18 number of carts around the park that have been
19 solicited by requests for sealed bids. There's a
20 pitch and putt golf course in Flushing Meadows,
21 which has also been very popular, and of course
22 the ice rink.

23 COUNCIL MEMBER FERRERAS: Okay.

24 And now I know there is by the marina, there's
25 another restaurant there. So what's the status of

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2 that? Because that seems like it's more a limited
3 use, where it's a catering hall also, as the
4 Terrace in the Park, is that a restaurant or ...

5 MS. SMITH: It has very limited
6 restaurant service, mostly because there's very
7 little traffic to that spot, but it is open for
8 limited restaurant service, and it does have
9 catering operations.

10 COUNCIL MEMBER FERRERAS: Okay.
11 And then when you were talking about the
12 procurement report and the breakdown, is this
13 something, a report that we can access and it's
14 easily available? Or is there a way that you can
15 give it to us a little bit so that we don't have
16 to go through the whole, you know, digging it out
17 of a larger report?

18 MS. SIMPSON: We can supply hard
19 copies to the Committee, it's not a problem. It
20 is easily done, available off the website as well.
21 It's called the Annual Procurement Indicator
22 Report, it's on the Mayor's Office of Contract
23 Services website, it's an easy link, right on the
24 front page, and you can pull it, once you get to
25 the next link, you can pull by year. So any year

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2 you want. I will supply the most recent one that
3 was issued, which was FY09, it comes out in
4 approximately October. And that's when the FY10
5 will come out.

6 COUNCIL MEMBER FERRERAS: Okay, and
7 I have one more question, back to the USTA. One
8 of the number one complaints that I get from
9 community residents is that when there are games,
10 and in particular when there are games with a Met
11 game, because we share the same park, the same
12 parking area, they are allowed to park on
13 grassland, they are allowed to go through the
14 park. The traffic, the entire time that the park
15 is open, the rest of the year there are areas
16 where no one can drive. When the USTA is up and
17 running, they can drive all through the park. So
18 you can imagine, as a ... you know, children that
19 are used to riding their bikes down this road that
20 you never expect a car, all of a sudden now you
21 see a car. When I spoke to the commissioner, they
22 said that they do give back something, and he
23 wasn't able to give a number. Can you speak to
24 that number, when they destroy grassland, or they
25 being the cars, right? They tend to kind of rip

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2 up all the grass, and it really is an issue that
3 comes back from a lot of our park lovers, and just
4 residents, that say why can they do that, yet when
5 we want to drive up to our kids' little league
6 game, we're not allowed to park?

7 MS. SMITH: It's a good question,
8 it's a complicated situation. I'm not completely
9 familiar, I believe the fees that the U.S. Tennis
10 concession gives to the Parks is in the
11 neighborhood of \$3 million a year. I would say
12 that it's a very - and David Cerron can answer the
13 financial question more specifically - it is a
14 balancing act with the USTA and the Mets in
15 Flushing Meadows. It's complicated, we work very
16 closely with the community affairs unit, with the
17 Police Department, to try to have balanced use of
18 those parking areas. It's complicated. There is
19 a balance. We feel that the activities of the
20 USTA and also the Mets games really provide a lot
21 of vibrancy to the park and important
22 international and national games, so it's hard to
23 say we ... I mean, we're not going to be in a
24 situation where we can't do that, but it is a
25 balancing act, there's no question about it. It's

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2 also true that there are restoration bonds that
3 are charged against if there is damage to the
4 park, and we can get you some more specific
5 information on that.

6 COUNCIL MEMBER FERRERAS: I would
7 like more specific information on that. And I
8 understand that it's a balancing act, and I
9 definitely know the contribution. I think there
10 is somewhat of a difference between the Mets and
11 the USTA, the Mets are kind of isolated in an
12 area, Roosevelt Avenue divides the park. It's
13 like a major street. USTA is within the park.
14 The involvement between USTA and the community is
15 very limited, and, you know, a free day at Arthur
16 Ashe, everyone gets that. But the reality is that
17 we have community residents that are directly
18 impacted by this, and they're really not, you
19 know, they've become somewhat of a bad neighbor to
20 the 21st, count my district, Danny Dromm's
21 district, and I think there should be a little
22 more concrete direct giveback to the community,
23 because it really is imposing greatly on the
24 residents of that district.

25 MS. SMITH: Okay, I appreciate your

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2 comments, and we'll work with the Queens parks
3 commissioner to make sure that there is
4 appropriate community outreach so that we are
5 hearing all the issues.

6 COUNCIL MEMBER FERRERAS: Okay,
7 thank you.

8 CHAIR PERSON MARK-VIVERITO: I have
9 a couple more questions, because I want to get
10 into the issue of major concessions. But a quick
11 question. How many permits does the Department of
12 Parks issue for commercial events in the parks?
13 Is there a distinction between that, or is that ...
14 like for instance, like Cirque du Soleil on
15 Randall's Island, is that considered a concession,
16 or is that considered a special event? Is it a
17 different type of permit?

18 MS. SMITH: It's a- -

19 CHAIR PERSON MARK-VIVERITO:
20 (Interposing) Concerts in the parks, etc.

21 MS. SMITH: Right. A lot of them
22 are determined by how long they are. Cirque du
23 Soleil is a longer-term concession agreement. We
24 ... our temporary use authorizations, which as I was
25 mentioning before are for 29 days only, those are

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2 shorter-term permits. The Cirque du Soleil is, I
3 believe, several months, three months. So that
4 was a separate agreement.

5 CHAIR PERSON MARK-VIVERITO: That
6 is considered a concession?

7 MS. SMITH: That's considered a
8 concession.

9 CHAIR PERSON MARK-VIVERITO: So how
10 about a concert for one night?

11 MS. SMITH: Those are ... those are
12 short-term, one-day special events.

13 CHAIR PERSON MARK-VIVERITO: For
14 instance, on Randall's Island you have the Live
15 Nation concerts.

16 MS. SMITH: Right.

17 CHAIR PERSON MARK-VIVERITO: So is
18 that Live Nation, because they have a series of
19 concerts, is considered a concession, or is it
20 just per concert?

21 MS. SMITH: I believe that
22 Randall's Island solicited proposals for the
23 management of the concert series out there, and
24 that was a publicly-solicited concession
25 agreement.

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2 CHAIR PERSON MARK-VIVERITO: Which,
3 just quickly on the issue of the revenue generated
4 by the concessions, and again there's just so many
5 inconsistencies. You know, overall I understand
6 that most of the revenue generated from
7 concessions goes back to the general fund. But
8 there are specific conservancies that have made
9 arrangements where the revenues they generate come
10 back directly to the park. Where is that the
11 case?

12 MS. SMITH: It's ... there's a couple
13 of different ... there's a couple of different ways
14 that happens, but in the vast majority, I just
15 want to make this point before I get into the
16 exceptions, the vast majority of concessions,
17 income coming from ... income from concessions, goes
18 into the general fund. In our relationship with
19 the Central Park conservancy, there is an
20 agreement whereby if concession revenues exceed a
21 certain number, which I believe is \$6 million, the
22 concession revenues are split directly with the
23 conservancy. That arrangement is a procurement
24 agreement, which is separate from, and very
25 different from, our other agreements. In a couple

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2 of circumstances, where the conservancies or
3 private organizations have assumed the great bulk
4 of maintaining the parks, such as the High Line,
5 for example, that is a situation where concession
6 revenues will go back into the park. In the other
7 circumstances where our private partners have
8 participated in the revenue, they have bid in
9 public process to receive that concession. For
10 example, the Shake Shack is the best example. The
11 Madison Square park conservancy, which is our
12 partner in the management of Madison Square Park,
13 they bid on the snack bar concession in that park
14 in conjunction with the sub-licensee, the Union
15 Square Hospitality Group, they- -

16 CHAIR PERSON MARK-VIVERITO:

17 (Interposing) Do they get the money back?

18 MS. SMITH: And they get the money,
19 they pay a fee to the city, and they also keep the
20 money.

21 CHAIR PERSON MARK-VIVERITO: How
22 about Randall's Island?

23 MS. SMITH: Randall's Island is
24 again a separate agreement that was negotiated, in
25 conjunction with the Randall's Island Sports

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2 Foundation, where because the Randall's Island
3 Sports Foundation does assume the great burden of
4 managing that park, those revenues stay within the
5 island, and in that park.

6 CHAIR PERSON MARK-VIVERITO: 100%
7 of the concession revenues?

8 MS. SMITH: I believe that's true.

9 CHAIR PERSON MARK-VIVERITO: Would
10 you be able to give us a breakdown by park of how
11 much revenue is generated? Not only the number of
12 concessions in each of those parks. I think there
13 are some that have more than others. But we would
14 like to know what revenue is generated.

15 MS. SMITH: Revenue generated in
16 the- -

17 CHAIR PERSON MARK-VIVERITO:
18 (Interposing) From the individual, the
19 concessions, the total number of concessions in
20 each of those parks. I'm just trying to see what
21 the breakdown is.

22 MS. SMITH: In every park?

23 CHAIR PERSON MARK-VIVERITO: Well,
24 the ones ... I mean, we would like, we had indicated
25 earlier that we wanted to see the number of

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concessions in each of the parks.

MS. SMITH: Right.

CHAIR PERSON MARK-VIVERITO: I'm sure there's some parks that don't have any concessions.

MS. SMITH: Sure. No, I'm just trying ... yes, we certainly can take the major parks, for example, where there are a number of concessions. I mean, we have seventeen hundred different properties, we have carts all over the place. But for the major parks, we certainly give you a breakdown of what concessions are there and what income is generated.

CHAIR PERSON MARK-VIVERITO: Right. I mean, obviously the conservancies, I'm talking about conservancies specifically also, because those probably would be in the larger parks anyway. So that would be, I think, a good indicator.

MS. SMITH: Okay.

CHAIR PERSON MARK-VIVERITO: So just going into a couple of like specific case studies. I'm going to go into Central Park, for instance, with the ... you know, in terms of the

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2 community involvement, prior to awarding a
3 concession. The case study about the Central Park
4 tennis concession, the Queensborough Bridge tennis
5 concession, you know, we ... there was a lot written
6 and a lot heard. I've been contacted, I met with
7 some of these groups about the fact that community
8 input is more like lip service, you know, it's not
9 really taken into account. You came to the
10 community boards as Parks and already this idea
11 formulated, and had already said that these
12 agreements were in the works. And so the essence
13 of community input really wasn't there. So what,
14 you know, how is ... why is that the case? I mean,
15 obviously we would expect that there would be more
16 thorough discussion with the community prior to
17 even arriving at a decision of what it is that you
18 want to do in the parks. So, you know, there are
19 concerns specifically with the ... the Central Park
20 one, community boards 7 & 8, I think this falls
21 more within 7 and somehow 8 was approached. So
22 just can you speak to that a little bit, please?

23 MS. SMITH: Would you like for me
24 to address Central Park or the Queensborough one?

25 CHAIR PERSON MARK-VIVERITO: Well,

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overall the issue of community involvement.

MS. SMITH: Yes.

CHAIR PERSON MARK-VIVERITO: But I think specifically in the case of Central Park, you know, we would like some more clarity on that.

MS. SMITH: Okay. Charles, maybe you could join me, but while you're coming up, let me say that it is not lip service, it is not lip service. I can tell you, we spend an enormous amount of time with the community boards.

Community board input is advisory to the Parks Department, but we have been proactive in reaching out to parks, and in the case of the Central Park conservancy, I mean, the Central Park tennis, we published notices. When any concession goes into Central Park, all the surrounding community boards are notified, that's why both 7 and 8, and in fact actually there's two others, aren't there?

MR. KLOTH: There's three others, 5, 7 and - -

CHAIR PERSON MARK-VIVERITO:
(Interposing) You've got to talk into the mike, sorry.

MS. SMITH: Sorry, there's five

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2 community boards that are notified on concessions
3 in Central Park. We typically tell communities
4 when we're considering a concession. We send out
5 notices to say that we are considering sending out
6 a concession. In the Central Park situation,
7 Charles Kloth was directly involved, we, not only
8 did we hear back from one of the community boards,
9 community board 8, that they were in favor of this
10 concession, but we didn't hear back from the other
11 community boards. We reached out to them, and
12 asked them what their opinion was, and it wasn't
13 actually until later, when we actually got the
14 proposal itself, that we started to feel real
15 pushback by the communities, which we have
16 responded to.

17 CHAIR PERSON MARK-VIVERITO: In the
18 case of Queensborough, which is the Sutton Place,
19 wasn't that contract and agreement signed even
20 before you went to the community board?

21 MS. SMITH: Charles, do you want to
22 give the details on that? We notified the
23 community board and offered to talk to them about
24 a number of things, and did not receive in a
25 timely fashion input back from the community board

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2 on it, but there's ... let me give you Charles to
3 give you the dates.

4 MR. KLOTH: The, for the
5 Queensborough bubble, that was, we already had a
6 contract in place, and what we sought to do was to
7 amend the contract to allow the bubble to stay up
8 for four extra months, it stays up for eight
9 months, and the amendment was to have it stay
10 through the entire year, twelve months. The
11 process of getting ... we have to go to the FCRC
12 for, to amend a license agreement. The FCRC
13 process requires that we go first to the FCRC to
14 negotiate the amendment. And prior to that we
15 have to give 40 days' notice to the affected
16 community board that we are seeking FCRC approval
17 for that, which we did. Then we also notified the
18 community board that there is a public hearing, it
19 requires a public hearing, which we did. And we
20 had the public hearing and then we had a second
21 FCRC meeting, where the members of the FCRC voted
22 to approve this amendment. Subsequent to that,
23 the community came to me, the Community Board 8
24 came to me with their concerns. Community Board
25 8, I am not unknown to Community Board 8, so I was

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2 a bit surprised that they waited until after the
3 process, because I was available to them any time
4 during the process. But they didn't come to me
5 until after the process to express their concern
6 about this. That being said, I attended two
7 community board meetings where we heard both from
8 the tennis players, who like the idea of having
9 year-round tennis, and from the ballplayers, who
10 were concerned about having to relocate.

11 CHAIR PERSON MARK-VIVERITO: Can I
12 just ... okay, I need to stop you for one second,
13 because it really troubles me, and if I'm wrong,
14 clarify please, when I hear from a Parks rep to
15 say "we reached out to the community board, and
16 they didn't respond". I mean, I think it's pretty
17 clear that community boards meet every month. I
18 think it's pretty clear that each committee meets
19 every month, and those are standard meetings. So
20 if community input is really critical and such an
21 incredible role in your decision making, then you
22 would just show up, and find out when the
23 committee hearing is happening. You know,
24 community boards are volunteers. A lot of times,
25 maybe, the resources, we know that there's always

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2 been proposals by the administration to keep
3 cutting the resources of the boards, so they're
4 very limited in their ability, and these are
5 individuals from the community that are giving up
6 their time. So it's pretty standard that the
7 boards meet monthly, and it's standard that the
8 Parks committee hear meetings of those community
9 boards meet regularly as well. So, you know, it
10 doesn't bother anyone from just showing up to a
11 meeting and saying, "We have information to share
12 with you, and we would really like to get your
13 input", as opposed to kind of whatever, relaying
14 it in a call and not hearing back, whatever. I
15 mean, I just ... I'm very, very, very committed to
16 community involvement, that's a big thing for me.
17 And if it really is an important part of your
18 decision-making process, then I think that you
19 would make a more aggressive effort to be at these
20 meetings, at the local community boards that are
21 going to be impacted, and present the information.

22 MS. SMITH: We are now actually
23 being more proactive with regard to that. I would
24 say the community boards do have the
25 responsibility to respond to notices that we give

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2 to them, and I think Community Board 8, in this
3 particular case, did come back to us and say that
4 they had missed the notices and should have been
5 back to us earlier. That being said, Chair Mark-
6 Viverito, we are now reaching out on every new
7 concession and every new idea that we have, that
8 we are mandatorily, our staff is showing up at the
9 community boards to answer any questions. And by
10 the way, we have done this, and in many cases
11 there's no people there to talk to. But we have
12 arrived and we have talked to community boards
13 whenever there's been any concession that's been
14 proposed.

15 CHAIR PERSON MARK-VIVERITO: No,
16 these ... I mean, I'm getting a sense, you know,
17 obviously there's clearly a different sense of
18 these 450 concessions, there's different
19 categories. Obviously there's those that are
20 mobile carts, you know, understood there's one's
21 that are a bit larger, like the tennis bubbles,
22 for instance, or whatever, the concert venues on
23 different parks. So, I mean, I think is there
24 somewhere publicly delineated what the concessions
25 are and when the agreements expire? I think it

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2 really, the more information we get public so that
3 people can monitor, you know, the process,
4 because, you know, the RFP is a revolving door.
5 Some days ... some months they're issued, other
6 months they're not. Some years they're issued, I
7 mean, and we won't know that unless we know when
8 they expire, so- -

9 MS. SIMPSON: (Interposing) Let me
10 step in, because that is information that's
11 contained in the annual plan. The term of the
12 agreement is there, and the key element of at
13 least one of the annual plan submissions, the key
14 element that happens every year, which again we
15 made an effort to make sure that this was all in
16 one place. We put it into the rules, so that it
17 would all be in one place. We tell the community
18 up front all of the concessions that will expire,
19 or are likely to be solicited, re-solicited, in
20 their community for a given year. And we tell
21 them in one document, in one place. And then
22 again, when each one comes out, a notice goes out
23 to the community. The key difference, which I
24 think Betsy was just touching on, which Parks has
25 begun to be more proactive on, is that while it's

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2 one thing where a community knows that a
3 concession has been there for twenty years and,
4 you know, or even for five years, or whatever, and
5 the term is expiring and it's going to be redone
6 and it's going to be redone exactly, more or less,
7 the same way as it is now. Those tend often to
8 escape the community's, the community board's
9 concerns, because basically they're assuming that
10 the same pushcart or the same vendor, the same
11 operation that's been there all along will be
12 there again, and they may not have anything
13 specific to say about the re-solicitation of that
14 concession to be exactly the way it always has
15 been. Where we tend to get valuable input from
16 the community boards is where a new concession
17 that hasn't been there before is being proposed,
18 and those are circumstances where, again, being
19 proactive and going out to a community to solicit
20 those ideas, that is something that I think Parks
21 has been very committed to, because those are the
22 ones where really the fresh thinking or fresh
23 response is very, very helpful in the planning
24 process. Often, on the flip side, when you're
25 talking about concessions that have been there for

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2 a while, unfortunately one of the things that
3 happens, and my office tries to be of assistance
4 in explaining this to community board
5 representatives, we are required by law to re-
6 solicit each award competitively. And so there
7 comes times often when a community has become
8 quite attached to the concessionaire that has been
9 operating a particular one for five or ten or
10 twenty years. Then the community may well be
11 disappointed if that concessionaire then does not
12 submit the highest proposal, you know, the highest
13 bid the next time around. And obviously the rules
14 require us to go with competitive award in those
15 cases, and we work with the communities to try ...
16 so they can understand those transitions. But we
17 do sometimes get community input in that way as
18 well.

19 CHAIR PERSON MARK-VIVERITO: Now
20 all these reports that I was alluding to earlier,
21 if there could be a way ... I mean, I think a lot of
22 times that that information, you have to dig for
23 it. You know, it really is not that readily
24 available or accessible, so.

25 MS. SIMPSON: I really, I would

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2 urge you to look on ... I mean, we're happy to
3 accept suggestions, but we're not making it hard
4 to find these, we're putting them right up there,
5 and we're trying to publicize to people that this
6 is data that- -

7 CHAIR PERSON MARK-VIVERITO:

8 (Interposing) On your website.

9 MS. SIMPSON: It's made available.

10 CHAIR PERSON MARK-VIVERITO: Not
11 the FCRC's. On your website.

12 MS. SIMPSON: The FCRC doesn't have
13 a website.

14 CHAIR PERSON MARK-VIVERITO: Well.

15 MS. SIMPSON: I am the
16 administrator for the FCRC, it says so right on
17 the front page of our website, and we post all the
18 information on behalf of the FCRC. The FCRC has
19 members from six different offices, and it would
20 be very hard if you had to try to chase all of the
21 information in all of the different places where
22 the FCRC is. We have one central place where all
23 the data about the way in which vendors do
24 business with the City of New York is posted, and
25 it's right there.

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2 CHAIR PERSON MARK-VIVERITO: Right,
3 and it says Parks Annual Report, Concession
4 Report?

5 MS. SIMPSON: It does.

6 CHAIR PERSON MARK-VIVERITO: It's
7 categorized?

8 MS. SIMPSON: Yes.

9 CHAIR PERSON MARK-VIVERITO: Okay.
10 Because that information is critical in terms of
11 when these concessions expire, and being able to
12 keep track of them, I think the communities really
13 would appreciate that. So I know we've been
14 joined by my colleague, Vincent Gentile, and I
15 think Danny Dromm had a couple more questions.

16 COUNCIL MEMBER DROMM: Thank you
17 again, Chair Viverito. I just want to go back to
18 something that my colleague, Julissa Ferreras, was
19 saying, in terms of the United States Tennis
20 Association stadium. They have, yes, been very
21 close to being bad neighbors. They don't offer
22 any tickets to anybody that lives in the
23 community. We do have some cooperation with the
24 Mets, and they do give back some things to the
25 community. But the United States Tennis

1 Association has never reached out to the
2 community. In fact, when a game, a match is
3 delayed, ticket holders are not even allowed to
4 leave the stadium, and they are required to stay
5 within or they don't get re-entrance into it, so
6 therefore it precludes them from even mingling or
7 coming out into the park while they're waiting for
8 a match to start again if it was due to rain or
9 whatever. So I would really like to encourage you
10 to work with them, as we're going to approach them
11 as well, to become more community-oriented, and to
12 become more involved, and offer some of these
13 things. I mean, even like maybe a little tennis
14 camp or something. You know, Council Member
15 Ferreras and I represent some areas of very low
16 income, immigrant workers, people who could
17 benefit from some community outreach by these
18 people, who essentially take over the park for
19 about a month's time, and the visitors who come
20 into the community abuse the park in terms of
21 driving on top of the grass, parking their cars,
22 etcetera, and so forth and so on. And we would
23 hope that we would have some cooperation from the
24 Parks Department on that issue also.
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2 MS. SMITH: I'd be happy, as I had
3 mentioned before, to facilitate through our
4 borough parks commissioners discussions with USTA
5 to make sure that the community sensitivities are
6 heard.

7 COUNCIL MEMBER DROMM: And I know
8 that the Chair was also trying to get some
9 information in terms of how the money is
10 distributed, which is a very big concern for us as
11 well. If we in fact have, you know, the USTA
12 there, and I believe that you said, because I
13 stepped out for a moment, that it was a lease
14 agreement, and even with Terrace on the Park, and
15 with the restaurant in the marina, these are lease
16 agreements, how much money comes in from those
17 lease agreements that you have in Flushing Meadows
18 Corona Park?

19 MS. SMITH: I don't have, off the
20 top of my head, a sum of all the concession
21 revenues for Flushing Meadow, but I've made a note
22 to make sure that's available to you, in terms of
23 breaking out, again, and the Chair's request,
24 income from our various major parks. The USTA, I
25 believe, pays us, I want to say, \$2.7 million.

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2 \$2.1 million in '09, fiscal '09.

3 COUNCIL MEMBER DROMM: And what
4 about the Mets?

5 MS. SMITH: The Mets agreement, I'm
6 not as familiar with. Oh, the ... we can get you
7 the details on this, it's also available publicly.
8 The Mets are using their income to pay off their
9 bonds and therefore not making payments through
10 the Department of Parks at this time, and for, I
11 think under their new lease agreement.

12 COUNCIL MEMBER DROMM: So they're
13 not giving anything to Parks at this moment?

14 MS. SMITH: Financially they're not
15 giving anything to Parks at this time.

16 COUNCIL MEMBER DROMM: Right. Well
17 see, this is where we have a problem in the
18 community, because, you know, there's ... we're
19 giving up valuable park land and we're asking
20 continuously to be able to do this, with nothing
21 being given back to the communities that are
22 immediately affected by it, and this is very
23 problematic for us. We love our parks, don't get
24 me wrong, and we want to support our parks. But
25 when you're talking about this type of income, and

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2 we haven't even said how much is coming from the
3 marina, or how much is coming from the ice skating
4 rink, or whatever, and we don't see some of that
5 money, really I think all of that money, coming
6 back into what we call the jewel of the Queens
7 park system, right, is Flushing Meadows Corona
8 Park, it becomes very problematic for us.

9 MS. SMITH: Unfortunately, the
10 city's rules require that all the income generated
11 from concessions go back to the general fund. So
12 we are just complying with the city's rules on
13 that, but we will- -

14 COUNCIL MEMBER DROMM:
15 (Interposing) And where's that rule?

16 MS. SMITH: Where is the rule?

17 COUNCIL MEMBER DROMM: Uh huh.

18 MS. SMITH: That the city's
19 concession income- -

20 COUNCIL MEMBER DROMM:
21 (Interposing) Right, if we wanted to write a piece
22 of legislation to change that rule, where would we
23 find that rule?

24 MS. SMITH: Not in the rules, it's
25 in our budget process that requires concession

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2 income to go back into the city's general fund.

3 COUNCIL MEMBER DROMM: Well, all
4 right, I have to think about how we're going to
5 get that money back, but we're going to look at
6 that, look at that, I think, a little bit more
7 seriously. Do you require for vendors in Flushing
8 Meadows Corona Park to have any type of statement
9 of character before granting them a permit?

10 MS. SIMPSON: I won't say that it's
11 a statement of character, but there is for every
12 award of every concession, there is a finding
13 that's called a responsibility determination.
14 Now, for many of the small businesses, if you're
15 talking about a single pushcart, there are some
16 basic issues that would be looked at in terms of
17 the payment of taxes, in terms of their obtaining
18 the requisite licenses, it's very basic, but yes,
19 an evaluation is done of their responsibility.
20 Once a concessionaire is crossing the threshold of
21 \$100 thousand, which is the city's cutoff for many
22 of these processes, they are also required to file
23 a disclosure form with the Vendex system, that's
24 much more detailed. And then there's also a
25 review that's done, undertaken by both my office

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2 and by the Department of Investigations. But that
3 does not apply to a small business that operates
4 below the \$100 thousand threshold.

5 COUNCIL MEMBER DROMM: So below the
6 \$100 thousand threshold, could they have an
7 organization like Queens Museum of Art or the
8 theater, Queens Theater, give them that statement
9 that they need to- -

10 MS. SIMPSON: (Interposing) There's
11 no statement, it's not a statement. Certainly,
12 and again, I don't know Parks' process with some
13 of these bids. I don't know if we're requiring
14 references with the bids initially. I don't think
15 we are. When you're talking about a
16 determination, it's literally an administrative
17 determination that's made by the Parks Department
18 and vetted by my office, it doesn't require a
19 character statement or a reference by anyone. We
20 look on public data sources. I mean, for example,
21 we do get the, you know, the name of the business,
22 the name of the owner. We get the identifying tax
23 information, and we check whether they pay their
24 taxes, for example. The city would not go to
25 contract with someone who has an outstanding

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2 substantial tax lien for, you know, whether it's
3 related to that particular business or not, we
4 obviously are going to look at payment of taxes.
5 We look at often public databases for things like
6 criminal history. It's not usually relevant, but
7 those are information that are ... this is all done
8 by agency staff, it's not something that we ...
9 below \$100 thousand, they don't have to come
10 forward and tell us that stuff.

11 COUNCIL MEMBER DROMM: So would it
12 be- -

13 MS. SIMPSON: (Interposing) Vendex
14 asks all that stuff for the big guys, but that's
15 not a threshold that is undertaken below \$100
16 thousand.

17 COUNCIL MEMBER DROMM: Would there
18 be any reason then for people coming to me and
19 saying that the Parks Department was requiring
20 some type of a statement of, I would say, use the
21 word statement, a character statement or a
22 reference statement before they could be granted
23 access to the park to vend something?

24 MS. SMITH: Not on our, not on our
25 smaller concessions.

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2 COUNCIL MEMBER DROMM: Okay. And
3 then finally, just in terms of that procurement
4 report, or the breakdown of the concessions, does
5 that include the type of food that is offered?
6 Does it just state "food stand", or does it
7 actually indicate what type of food is available?

8 MS. SIMPSON: The annual report
9 does not indicate the menu details. It does give
10 you an indication of whether it's a pushcart or a
11 snack bar or a restaurant, but it doesn't tell you
12 whether it's a ... what type of food.

13 COUNCIL MEMBER DROMM: And I would
14 like to ask the Deputy Commissioner, is there any
15 way then that we could find out what type of food
16 is offered? Is there ... do you have a listing of
17 anything like that?

18 MS. SMITH: We certainly can get
19 that for you, for Flushing Meadows.

20 COUNCIL MEMBER DROMM: Okay. Thank
21 you very much.

22 MS. SMITH: Just as a ... just an
23 add-on on that point, I think I had mentioned
24 earlier, we have as a major initiative in the last
25 couple of years really tried to increase the

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2 diversity of the food being offered in all the
3 parks. This, we call these our specialty carts.
4 In many ways, in many instances, we have specialty
5 carts that we solicit under request for proposals,
6 instead of requests for bids, because often we
7 find that just with request for bids, where the
8 highest price prevails, we get hot dogs and
9 pretzels, where we actually want to have more
10 diversity, and so therefore, having the highest
11 price may not be the best way to get diversity.
12 So we solicit interest through requests for
13 proposals, where we've been able to do that. And
14 so that's an initiative that started last year,
15 which we're expanding across the city. But I will
16 get you the diversity of foods in Flushing
17 Meadows.

18 COUNCIL MEMBER DROMM: All right,
19 I'm really glad to hear that, and that's exactly
20 the point I was trying to get at, so thank you.

21 CHAIR PERSON MARK-VIVERITO: We've
22 been joined by Council Member Crowley, but you
23 know, along those lines, because I know in being
24 part of the contracts committee, and I've seen Ms.
25 Simpson many times before in those hearings with

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2 regards to MWBE's and the concessions that are in
3 our parks. Can we get a breakdown of that? Or is
4 that not relevant in this case? I think it's
5 relevant, but you may say it's not something that
6 you capture.

7 MS. SIMPSON: We haven't captured
8 that, I'll give a couple of legal reasons.
9 Obviously I think Parks can give you some
10 indication of the diversity of ethnic groups that
11 have participated in the award, or in the
12 administering of concessions. Legally, the city
13 cannot institute an MWBE incentive program without
14 something called a disparity study, that would
15 indicate that the relevant minority or gender
16 ethnic groups are not obtaining their requisite
17 share of these awards. When the city undertook a
18 disparity study in the procurement arena, that
19 study was actually overseen by the city council
20 and released in 2005, it did not cover
21 concessions. And again, I think anecdotally,
22 particularly because, I mean, unlike ... and again,
23 I appreciate that you've been at the contracts
24 committee, so this will not be news. When we talk
25 about contracts, obviously, the vast majority of

1
2 the dollars that the city spends through the
3 contracts system are spent in very large awards,
4 and while we have a small purchase program on the
5 contracts side, it's a very small proportion
6 overall of what we do. In concessions, that
7 balance is reversed. So in fact the preponderance
8 of the awards that Parks makes are relatively
9 small, awards to relatively small businesses. It
10 would be very difficult, and I won't say, you
11 know, that a disparity study couldn't be done in
12 this area, but it would be very difficult and the
13 chances are it would not show disparity. Because
14 in fact what it would show is that a very large
15 proportion of the operators and holders of these
16 concessions are businesses that have, you know,
17 that are minority or ethnic based. So the city
18 can't go ahead and impose rules in the absence of
19 proof of that disparity, and it's unclear to me
20 that we would actually be able to document
21 disparity.

22 CHAIR PERSON MARK-VIVERITO: I'm
23 just ... okay, that's all the legal, I understand,
24 but are you, as the Department of Parks, capturing
25 any information with your concessionaires that

1
2 gives you an idea of the diversity of the
3 operators? I think whether it's minority or women
4 business enterprises, you know, just do you try to
5 capture that information to insure ... I'm glad to
6 hear, and I know that I had spoken to the Parks
7 commissioner, I think these are great, great
8 opportunities for a lot of our immigrant
9 entrepreneurs and our immigrant community, and I
10 think that's what our colleague Council Member
11 Dromm was getting at, but you know, overall, in
12 terms of the 450-500 concessions that you have, do
13 you capture that information? Do you analyze
14 that? Do you make it an effort to maybe expand
15 the diversity of the operators? I mean, you know,
16 just curious if that's an internal effort that you
17 make.

18 MS. SMITH: It's a very internal ...
19 it's a very important effort. And it's an effort
20 not only to diversify the kinds of people who are
21 offering services, but just providing an initial
22 opportunity. As I had mentioned earlier, over
23 half of our concessions are the small pushcarts
24 and mobile trucks, and they are, the great
25 predominance of those, are operated by a wide

1
2 variety of new immigrants and a wide variety of
3 diverse populations.

4 CHAIR PERSON MARK-VIVERITO: Thank
5 you. I just want to recognize, I know we have
6 students upstairs, and thank you for joining us
7 with Principal David Cedar, who is here with his
8 students. So coming from Brooklyn, so thank you
9 very much for being here, and I hope you learn
10 something today. Council Member Gentile has a
11 question.

12 COUNCIL MEMBER GENTILE: Thank
13 you, Madam Chair. I actually wanted to ask a
14 question about a new Parks project, where there
15 has not been a concession previously. There's a
16 new, I would call it a band shell type of
17 structure being built in Owl's Head Park in Bay
18 Ridge, Brooklyn. And it's due to open, probably
19 in a month, a month and a half at the latest. And
20 there was some talk during its planning and
21 construction for a concession to be put at that
22 location. Now I just heard some testimony here
23 saying that there usually is some outreach to the
24 community boards and to the community as to the
25 types of concessions that they would want or would

1
2 seem ... they would deem appropriate for that
3 location. I have to tell you, I have not heard of
4 any input, or any outreach, by the Parks
5 Department in that regard, and- -

6 MS. SMITH: (Interposing) It may be
7 that we don't have immediate plans to do that.
8 I'm not familiar, actually, with a concession in
9 that location. Certainly I can assure you that,
10 if it is a new facility, where we will be
11 soliciting a new concession, we will be coming to
12 the community board and talking about it. At this
13 time, neither myself nor Charles Kloth, who is the
14 director of concessions, has a familiarity with
15 our plans with regard to that, but we will
16 definitely keep your office informed.

17 COUNCIL MEMBER GENTILE: And would
18 that be the case, whether it's an RFB or an RFP?

19 MS. SMITH: Yes.

20 COUNCIL MEMBER GENTILE: In either
21 case you- -

22 MS. SMITH: (Interposing) Yes.

23 COUNCIL MEMBER GENTILE: Before
24 those are- -

25 MS. SMITH: (Interposing) Yes.

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2 COUNCIL MEMBER GENTILE: Those go
3 out.

4 MS. SMITH: Yes we do, because even
5 in locations where we're ... we're usually very
6 responsive to communities with regard to where we
7 place carts even, even though they're smaller
8 concessions, you know, communities want to have
9 carts. It primarily comes to us because they want
10 to have food carts, not because they don't want to
11 have them. But we often move carts or don't
12 solicit them, but we tell communities, through
13 community boards, when we're anticipating a new
14 concession, and we would do that at Owl's Head.

15 COUNCIL MEMBER GENTILE: Okay. Let
16 me then ... so as far as you know, there is no plans
17 at the moment to do a concession at that
18 particular location?

19 MS. SMITH: As far as I know, I
20 don't know that, but I'll certainly find out when
21 I get back to the office and let your office know.

22 COUNCIL MEMBER GENTILE: Okay, I
23 appreciate that. In regard to a group like the
24 City Parks Foundation, they have established in a
25 city park last year a junior golf program. And

1
2 it's in the Dyker Beach Golf Course, which is a
3 city-owned golf course. Now, in regard to groups
4 like that, how does the concession aspect work,
5 when you're dealing with the City Parks Foundation
6 in that regard? Do they control that process?

7 MS. SMITH: I'm going to ask some
8 of my staff here to give you more specific
9 examples, but I can tell you that, in our
10 solicitations we often request that proposers
11 accommodate the City Parks Foundation, or other
12 junior golf programs, because we want to make sure
13 that we have plenty of athletic opportunities
14 available to younger populations. The City Parks
15 Foundation has run a very, very good, and very
16 extensive, program for golf and other sports
17 around the city. So we work with concessionaires
18 to make sure that they're offering time on the
19 courses for those programs. Do you have anything
20 else you wanted to add to that, Charles, with
21 regard to how we specifically solicit that in an
22 RFP?

23 MR. KLOTH: Yes, in all of our golf
24 and tennis RFP's, we do require a certain amount
25 of time set aside for park-sponsored programs,

1
2 which are run by the City Park Foundation.

3 COUNCIL MEMBER GENTILE: So is it
4 the Parks Foundation that has a role at all? Do
5 they choose the concession, or is that still your-
6 -

7 MS. SMITH: (Interposing) They
8 don't ... the choice of the concession is not the
9 City Parks Foundation, but we do often request or
10 require the successful concessionaire to work with
11 the City Parks Foundation to offer the junior
12 programs.

13 COUNCIL MEMBER GENTILE: I see.
14 Okay. Thank you, thank you very much.

15 CHAIR PERSON MARK-VIVERITO: I just
16 want to recognize, I know we have about twenty
17 people to testify, and thank you all very much for
18 coming. There's only two more quick questions
19 that I will ask, and then we're going to close the
20 questions with you. In that regard, two case
21 studies that we just needed more information on,
22 or response to, and one is regarding the Tavern on
23 the Green concession in Central Park, that, you
24 know, the RFP was awarded, and months later,
25 obviously, we still don't have a signed contract.

1
2 So why wouldn't the city have given a time frame
3 for signing a contract, and if that time frame
4 passed, another proposed concessionaire would be
5 given an option to, I guess, respond to that and
6 be awarded the concession?

7 MS. SIMPSON: Let me comment on
8 that, because again, this is an area where the
9 concerns are really for compliance with the legal
10 requirements. This was an RFP, it was timely
11 issued, it was evaluated in a timely manner and
12 contract negotiations are under way. We're not
13 really able to comment on the substance of that,
14 other than to say that contract negotiations are
15 ongoing.

16 CHAIR PERSON MARK-VIVERITO: But
17 has this process, you know, maybe had you
18 evaluate, Assistant Commissioner, how you would
19 proceed on this on the future? I mean, this is ...
20 or is this just something that's not typical?

21 MS. SMITH: I don't want to say
22 it's not typical. There are many cases where
23 contract negotiations can be very protracted. And
24 this happens to be one. So it is not, it is
25 certainly not unusual for there to be extensive

1
2 contract negotiations, which is where we are in
3 this particular case.

4 CHAIR PERSON MARK-VIVERITO: Would
5 it have been possible to allow the existing
6 operator to continue until an agreement or a
7 contract was signed with a new operator, so that
8 there was no lag?

9 MS. SIMPSON: Again, I think these
10 are questions that touch on a lot of, as you know,
11 there's been substantial litigation, there's been
12 a bankruptcy, there have been ... there has been a
13 significant litigation under which in most
14 respects the city has prevailed. I don't think
15 that it's appropriate for us to comment and
16 speculate on what could have been done in some
17 circumstance that did not happen.

18 CHAIR PERSON MARK-VIVERITO: Moving
19 forward, hypothetically on a situation like this,
20 where you have an extended concession, and you are
21 in the process of RFP, putting up an RFP and
22 getting a new concession for a new contract, would
23 you be able to, the Department of Parks, look at
24 continuing the concession, even if it's past, you
25 know, the time period, of the contract period, to

1
2 continue the concession until the new operator has
3 a contract as the new concessionaire? Is that
4 something that you can- -

5 MS. SIMPSON: (Interposing) That is
6 largely, again, a question of compliance. I'm not
7 sure it's entirely within the control of the Parks
8 Department. We are obligated in every competitive
9 process that the city undertakes, we are obligated
10 to make sure that it's a level playing field. It
11 is always tricky to do that when an incumbent is
12 present and an incumbent is proposing or bidding.
13 Whether, again, I don't think we can answer a
14 hypothetical.

15 CHAIR PERSON MARK-VIVERITO: Okay.

16 MS. SIMPSON: I think there are
17 circumstances where an ongoing use is permitted.
18 Normally we do what we did in this instance, where
19 we tried to get the RFP out early enough, where
20 hopefully we will be able to make the award prior
21 to the expiration of the original term. But I
22 think you would find, if you made a general policy
23 of saying that incumbents could always stay on,
24 that all the competitors who are going up against
25 incumbents would object to that. So again these

1
2 are very specific decisions that have to be made
3 on a case-by-case basis.

4 MS. SMITH: I just want to add to
5 what Marla is saying, we have, because of the time
6 it does take to issue community board notices,
7 make sure everyone is aware of what we're doing,
8 working with the Law Department, and Marla's
9 office, negotiating the contracts, giving ... making
10 sure we have enough time to review all the
11 proposals, we have made a concerted effort over
12 the last year to start our solicitation process
13 way earlier, so that we don't get to a situation
14 where we are actually running up against the
15 expiration date. So we're trying to back into it.
16 So Marla's comments about going over are obviously
17 apt. We are, we're trying to address it by
18 starting earlier.

19 CHAIR PERSON MARK-VIVERITO: By
20 starting earlier, okay. Now the last question on
21 Randall's Island, this issue of major concessions,
22 which has been, as you can all imagine, Randall's
23 Island has been a real thorn in my side. But I
24 think it's really important, because again, it's
25 the issue of public access to a public park. And

1
2 these major concessions sometimes encroach on
3 that, and that's the sentiment in particular with
4 Randall's Island. The issue of the private
5 agreement, the agreement with the private schools.
6 The case has now gone to court twice, and it's
7 found against the city, in terms of the fact that
8 that was in essence said to be a major concession,
9 and that is the argument that the community had
10 been making all along, and the Department of Parks
11 kept shunning and saying, no, it's not a major
12 concession, not a major concession. So basically
13 the last case ruling indicated that in fact it
14 should have gone through you. So I know that it
15 is in litigation, or you are considering whether
16 or not you're going to appeal it. Hopefully you
17 won't. It's already been twice, and twice the
18 city, the courts have found in favor of the
19 advocates. You know, so this issue of the
20 definition of a major concession, how do you come
21 about that?

22 MS. SIMPSON: Okay.

23 CHAIR PERSON MARK-VIVERITO: You
24 said in fact that it was not, and now it's been
25 said twice that it is. And you've tried to

1
2 circumvent it by the second contract, which was
3 struck down again, was a reconfiguration of the
4 first, again to try to subvert the definition of
5 major concession, because that would have come to
6 the City Council for review, it would have opened
7 it for community board approval or review. That
8 issue I think is a major concern moving forward,
9 that you may do this in other instances, as a way
10 of trying to shirk, you know, community input or
11 community process.

12 MS. SIMPSON: The city strongly
13 objects to the Council Member's characterization
14 of all of that. The definition of major
15 concession is in the major concession rules that
16 are established by the City Planning Commission.
17 The city has a good faith belief in the
18 application of those rules as the city did apply
19 it in the case of the Randall's Island. And the
20 matter, as you note, remains in litigation.

21 CHAIR PERSON MARK-VIVERITO: So you
22 have not made a decision as of yet, it's been
23 already four months, I think, five months since a
24 decision was made, the city has not decided
25 whether or not to appeal the case?

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2 MS. SIMPSON: The city is reviewing
3 its options and the matter remains under
4 litigation.

5 CHAIR PERSON MARK-VIVERITO: Well,
6 I mean, I think I really would hope that the city
7 respects the second ruling on this issue and not
8 waste taxpayer money trying to appeal it yet
9 again. So, you know, let's see how that moves
10 forward. I mean, I do have other concerns about
11 some of the existing concessions on Randall's
12 Island, and the possibility that those may also be
13 major concessions. I know that there was serious
14 expansion of the tennis concession, expanding the
15 clubhouse or creating a clubhouse, expanding the
16 footprint. You know, how do you determine that
17 that in fact is not a major concession?

18 MS. SIMPSON: All of those
19 determinations are made under the rules of the
20 City Planning Commission. Those determinations
21 are disclosed in notices that go both to the
22 community board and to the members of the FCRC.
23 Those determinations are vetted, not only by Parks
24 Department, but by my office and by the law
25 department, and we have a basis and a belief that

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2 all of those determinations that have been ... that
3 affect that particular park, or any other, have
4 been done correctly.

5 CHAIR PERSON MARK-VIVERITO: Now,
6 you indicate the ... the last, last question. You
7 indicated that in the contracts that are signed
8 with concessionaires, there is an expectation,
9 obviously enforcement is a concern, we understand
10 a lot of agencies are overstretched, but you
11 indicate that in contracts with concessionaires,
12 the expectation that they are to provide public
13 access in some ways, whether it's through public
14 programs or maybe providing affordable rates. In
15 the annual report that is provided to the FCRC, or
16 the Mayor's Office of Contracts, I guess you have
17 to put together, is there anything that breaks
18 down the number ... you know, how many hours were
19 provided for public access? You know, anything
20 that denotes kind of that?

21 MS. SIMPSON: No, I mean the report
22 obviously is covering hundreds and hundreds of
23 concessions, and it's in a spreadsheet format that
24 gives a lot of information about the description
25 of the concession in terms of its term and its

1
2 type. But no, you'd have to go to the individual
3 agreements in order to understand what the
4 specific commitments that each concessionaire has
5 made. It will vary, I mean obviously, for a push
6 cart.

7 CHAIR PERSON MARK-VIVERITO: Right.

8 MS. SIMPSON: You're not talking
9 about public programming.

10 CHAIR PERSON MARK-VIVERITO: No.

11 MS. SIMPSON: So if you have a list
12 of particular ones that you want to understand
13 what they ... what the public commitments are, then
14 that's something that the Parks Department and our
15 office can work to provide.

16 CHAIR PERSON MARK-VIVERITO: I
17 mean, because again, in the case of Randall's
18 Island, where you've got this ... the concert
19 venues, you've got now the tennis concession
20 that's been expanded considerably. I'm sure
21 there's a lot more revenue that's being generated
22 there, and probably fees are much higher than
23 before. Where you've got a golf concession, which
24 again I don't really believe the community really
25 thoroughly accesses. I mean, there's a lot of

1
2 concerns there about, you know, I would like to
3 know how much revenue is generated from all that,
4 because then they come up and say that they need
5 to have this private arrangement with the private
6 schools, because they need the revenue in order
7 to, you know, maintain the park. Meanwhile all
8 these other concessions are generating a
9 substantial amount of revenue as well, that
10 they're keeping. It's not even coming back to the
11 general coffers. So, you know, I know we had a
12 bill in about to kind of like trying to get from
13 the conservancy the amount of revenue generated.
14 I mean, again, this goes back to transparency, and
15 really openness and accountability. So, you know,
16 we'll be looking at those issues more closely.
17 But I think with that we'll close the questioning
18 here, and we'll open it up now to the people who
19 are here to testify from the public. So thank you
20 very much, Assistant Commissioner, Director
21 Simpson, thank you very much.

22 MS. SMITH: Thank you.

23 MS. SIMPSON: Thank you.

24 CHAIR PERSON MARK-VIVERITO: Okay,
25 so I want to ... we have about 21 individuals that

1
2 are signed up to speak, to testify. We have
3 another hearing in this room at one o'clock, so we
4 would ask that people as they testify, to try to
5 get your point across in a succinct manner, and
6 that would be greatly appreciated. And we're
7 going to just call the first panel Cheryl Huber,
8 Dennis Quirk. Dennis Quirk and Terry Scavo. You
9 have three minutes. We'll do a three-minute clock
10 on each, so that we can just get a sense.

11 MS. HUBER: Thank you.

12 CHAIR PERSON MARK-VIVERITO: I want
13 everybody settled, feel free whoever wants to
14 start by identifying yourself and giving your
15 testimony. Thank you. Anybody that would like to
16 start, take the lead.

17 MS. HUBER: Good morning, my name
18 is Cheryl Huber, I'm the deputy director of New
19 Yorkers for Parks. We're the city-wide
20 independent organization dedicated to insuring
21 that all New Yorkers enjoy a world class park
22 system. New Yorkers for Parks has long monitored
23 the issue of concessions. We would like to
24 commend Intro 21, which would insure that every
25 concession occupying a space more than 75 square

1 feet and under the jurisdiction of the
2 Commissioner, will have specific and clearly
3 marked boundaries that will be visible on a map
4 that's posted online. This legislation increases
5 transparency, and will be a useful tool for
6 community boards, advocates and park users.
7
8 Transparency in concessions will help to address
9 city-wide concerns regarding the use of park lands
10 and the possible infringement of commercial uses.
11 While this legislation is important, New Yorkers
12 for Parks has pinpointed many issues surrounding
13 concessions, including the need for a clearly
14 defined public process, as well as a serious
15 review of concessions rules and the revenue
16 streams. In terms of revenue, New Yorkers for
17 Parks has frequently spoken in favor of allowing
18 the Parks Department to retain a portion of
19 concessions revenue to support parks. Today all
20 of this funding goes to the city's general fund.
21 We support a system that would allow for the
22 distribution of these revenues among neighborhood
23 parks that may be not be able to sustain their own
24 concessions, but do need maintenance funding.
25 While concession revenue has steadily increased

1
2 over the last twenty years, the Parks Department
3 budget has fluctuated greatly, depending on the
4 political and financial climate. Concessions
5 revenue amounts to nearly \$50 million annually,
6 which would provide a steady funding stream for
7 our parks. This funding should supplement not
8 supplant existing city funding, and to Council
9 Member Dromm's point, several years ago we worked
10 with, I believe it was Council Member Adabo to
11 introduce legislation that would require division
12 of these revenues, so we'd be happy to work with
13 you on that in the future. Some public/private
14 partnerships are allowed to keep their concession
15 revenues. For example, the Randall's Island
16 Sports Foundation keeps the revenues earned, and
17 the Central Park Conservancy keeps half of all
18 concessions revenue earned in the park above \$6
19 million. We encourage the Committee to explore a
20 city-wide strategy that helps to benefit
21 neighborhood parks as well. And on another note,
22 we also recommend overarching guidelines for
23 public/private partnerships that will help to
24 regulate some of this. Public input is important
25 to insure that concessions are contact-sensitive.

1
2 As recent community opposition to proposed tennis
3 concessions has shown, a one-size-fits-all
4 approach to concessions does not work. They must
5 respond to the needs and demands of local park
6 users. And public review of proposed concession
7 varies widely, depending on the type of
8 concession. Major concessions, as defined by the
9 Department of City Planning, are subject to ULURP,
10 which includes four opportunities for public
11 input. On the other hand, the non-major
12 concession is subject to only one opportunity for
13 public comment. The result is that many
14 communities feel uninformed about non-major
15 concessions. So we would like to suggest an
16 interim concession that would not require the
17 extensive review of a ULURP, but would allow for
18 some increased input. Thank you very much.

19 MS. SCAVO: Good morning

20 Chairperson Melissa Mark-Viverito and members of
21 the Council's Park and Recreation Committee. I am
22 Theresa Scavo, Chairperson, Community Board 15 in
23 Brooklyn. The prepared speech is here, you can
24 read it for yourself, because after sitting
25 listening to all that testimony, I found a lot of

1 things a little contradictory. First of all, on
2 their own website it says that there are
3 approximately 500 concessions. Community Board 15
4 has never received one correspondence from Parks
5 Department after the initial notification of a bid
6 solicitation being asked for. There was never
7 anything coming to the community board to notify
8 of an awarding of a concession, after the RFP was
9 put out, nothing. Prime example: Manhattan Beach.
10 Last year an award was given on an RFP to
11 Manhattan Beach for the concession which includes
12 a building, parking lot. They went defunct. The
13 community board was never even notified of that,
14 and from one of the community Hedda Hoppers,
15 happened to find out that they were putting out a
16 new RFP. The Parks Department never notified the
17 board. I happened to find out from the city
18 record that there was a scope meeting that I just
19 happened to arrive at. The original vendor, who
20 was there making a proposal, had submitted
21 paperwork. The community board still had no
22 notification, the new RFP was already issued,
23 we're still waiting for that notification to come,
24 it still hasn't arrived. Payment of taxes,

1
2 another prime thing. Sheepshead Bay was a little
3 fishing village. Parks chose to make it a marina.
4 The marina has now become booze cruise heaven,
5 okay? We started out, there was one big ship
6 brought in, and every weekend you had three to
7 four hundred people out there partying. We are
8 now up to five booze cruises, each one holding
9 anywhere from three to four hundred people, doing
10 sometimes two cruises a day. There was never
11 notification, how many boats were going to be
12 brought in. When these new boats were brought in,
13 no notification whatsoever. Biggest joke: payment
14 of taxes. I recently contacted the gentleman in
15 charge of leasing these spots at the marina and
16 questioned the same thing you did. What kind of
17 background check do you do? Do you check that
18 these people had been paying their bills? Oh, of
19 course. Baloney, there is a new website out
20 there, the top 200 that don't pay their taxes.
21 Several of the names kept popping up. And he
22 claims, we'll look into it. Nothing has been done
23 about that either. The way they made it sound
24 just now with Intro 20 (sic), Councilman Nelson is
25 trying to preserve what little area we do have in

1
2 this city. Whether or not you've noticed, we've
3 got condos, we've got apartment houses, they pop
4 up everywhere. Years ago maybe we grew up in a
5 backyard, there are no backyards anymore. They're
6 condos. Now a family wants to go to a green
7 space. You have to walk sometimes through tables
8 and chairs to find green space, because you have a
9 guy, a prime example: a kiosk on 33rd. He has
10 tables and chairs that you couldn't even see a
11 tree if you wanted to. What Councilman Nelson is
12 trying to do is preserve what little space we do
13 have left. That's all he's trying to do. And to
14 turn around and say we're going to be defacing a
15 park? We're not going to come out there with big
16 white lines and start painting. It's just the
17 idea that if you even went to a park manager, they
18 don't know where the markings are. Oh, how much
19 room is he supposed to take up? Well, I don't
20 know, I don't have that paperwork. That's the
21 kind of response you have. So the Councilman,
22 maybe he's trying to do the right thing, let's
23 help him do it. And keep whatever green space we
24 have for the people in our community. Thank you.

25 MR. QUIRK: Good morning, ladies

1
2 and gentlemen, and thank you for the opportunity
3 to speak today. I'm here today ... my name is
4 Dennis Quirk, I'm here representing City Ice
5 Sports. City- -

6 CHAIR PERSON MARK-VIVERITO:

7 (Interposing) Excuse me, could you give us one
8 second, because I think that there's visitors that
9 just need to be recognized. One second?

10 COUNCIL MEMBER GENTILE: Before I ...

11 thank you Dennis, thank you Madam Chair. Before
12 the group leaves upstairs, I just wanted to
13 welcome the Renew Retirees Group from St. Francis
14 Assisi Church here at West 31st Street in
15 Manhattan. But the group, I'm told, consists of
16 people from all over the City of New York and
17 parts of New Jersey and includes one of my
18 constituents from Bay Ridge, and a former
19 colleague of mine from the Queens District
20 Attorney's Office, Jim Delaney. So we have a
21 wide, broad section of New Yorkers here today to
22 see our proceedings, Madam Chair. So, welcome.

23 CHAIR PERSON MARK-VIVERITO:

24 Welcome. Sorry about that, continue.

25 MR. QUIRK: My name is Dennis

1
2 Quirk, I'm representing City Ice Sports. City Ice
3 Sports has operated New York City park concessions
4 for 34 years, since 1976. We currently operate
5 the Abe Stark skating rink in Coney Island, the
6 War Memorial ice skating rink in Staten Island,
7 and we have ... we did operate the Manhattan Beach
8 concession, which was just spoken about, for 32
9 years. We lost it last year, we were not the
10 person who defaulted, and we are back now with a
11 new eight year agreement. Previously we have
12 operated all of the concessions in Prospect Park,
13 in the Prospect Park zoo, to the carousel, to the
14 boats, to the bikes, the World's Fair ice skating
15 rink in Queens, and the Orchard Beach Park in the
16 Bronx. Over the past ten years, the rules, the
17 regulations and the procedures of the Health
18 Department, and in particular the Mayor's Office
19 of Contracts and the New York City Law Department,
20 and the Department of Investigations and the
21 Controller, have created an unruly bureaucratic
22 system that is extremely difficult to navigate.
23 And it is extremely difficult to navigate for
24 somebody with experience. So somebody without
25 experience has a very difficult time. You know,

1 parks concessions are supposed to be serving the
2 public and at the same time generating revenue.
3 And these new, all these new procedures and
4 regulations that have been put into effect really
5 have created a number of problems. As an example,
6 in Staten Island there was a major Parks facility
7 on Arthur Kill Rd. and Richmond Avenue, which
8 operated for over twenty years with go-karts,
9 bumper cars, a miniature golf course, pizzeria and
10 an Italian restaurant. Major intersection of
11 Staten Island, several blocks from the Staten
12 Island mall, the place is vacant because the
13 existing operator left because of all of these
14 rules and regulations, it's been put out for bid,
15 and they can't even get a proposer to take over
16 because of the procedures. Tavern on the Green,
17 Central Park, another that was mentioned before,
18 because of all of these complex procedures. To
19 give you an example, our new contract at Manhattan
20 Beach right now, the law department insisted in
21 the agreement that we be responsible for cleaning
22 the ocean. That's how many feet from the
23 building, we have to clean the ocean, and all the
24 Parks Department says, argued with them, the law
25

1 department said, "Well, that's what the rule is."
2
3 There needs to be fine tuning on each one of these
4 agreements, fine tuning to the location, based on
5 the location, based on the service to the public,
6 and based on the elected officials and the
7 community board that are involved. And it's not
8 done. Everything is taken as one quick rule, and
9 that rule applies from the smallest person to the
10 biggest person. Many years, probably more than
11 eight years ago, all of the RFP's and RFB's were
12 submitted to the community board 30 to 60 days
13 prior to their release, and the community board
14 then had an opportunity to consult with the Parks
15 Department. The Mayor's Office of Contracts
16 stopped that several years ago. So therefore the
17 community boards and the elected officials have no
18 ability to see what's going on. I think the City
19 Council should not pass Intro 21, but if you
20 wanted to bring the community board and the
21 elected officials in sync and in control of this,
22 bring back the RFP and the RFB and the entire
23 process back to the community board and the
24 elected officials, and have them be able to speak
25 to it before. One of the things that was

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2 mentioned before is community events. Many of the
3 Parks Department agreements have the language in
4 it for community events. And in particular, at
5 two of our locations, the Abe Stark skating rink
6 at Coney Island, we have three yearly events that
7 Councilman Recchia opens the entire facility to
8 the public free of charge, during Christmas week,
9 during Washington and Lincoln's birthday week, and
10 during Easter. And in Staten Island, the same was
11 set up with Councilman McMahon, then Councilman
12 Mitchell, and although the new Council Member has
13 not taken part in it yet, because the event was
14 done prior to her being sworn in on January 1,
15 that is the intent, we do do that. So many
16 concessionaires do do a lot of community
17 involvement with various, you know, communities
18 and do things for free. I mean, but there seems
19 to be an attack on many concessions for a very
20 small, few people who are out there offending
21 concessions, and I think that the relationship
22 between the community board and the concession is
23 a very important thing. And sitting next to the
24 chairperson of the community board that we deal
25 with, we get along with very well. And I would

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2 urge you to not approve Intro 21, but to come up
3 with a new version of this to get what the end
4 result is you're trying to accomplish.

5 CHAIR PERSON MARK-VIVERITO: Thank
6 you very much to the three of you. I know Council
7 Member Gentile has a question.

8 COUNCIL MEMBER GENTILE: I'm just
9 curious, thank you for your testimony, all of you.
10 So you heard the testimony of the Mayor's Office
11 of Contracts, and how the question I put to her
12 about input from the community board prior to this
13 new project being completed and concession being
14 placed there. Are you telling me that the
15 testimony that she gave to us was not accurate
16 testimony as to the fact that the community board
17 will be notified, and I would be notified, as to
18 an RFP or an RFB?

19 MS. SCAVO: ... circumvented the
20 answer. Because it was never, yes, the board is
21 notified; no, the board wasn't notified. I could
22 tell you as far as Community Board 15, we never
23 received notification, ever.

24 COUNCIL MEMBER GENTILE: And Mr.
25 Quirk, you basically underscored that point.

1
2 MR. QUIRK: Well, let me say that I
3 think the Parks Department on its own does go out
4 to community boards throughout the city to discuss
5 new ideas, new ventures. But it's very difficult,
6 I think what the Chairperson before said,
7 community boards are volunteers, they meet once a
8 month. Who knows whether the Parks Department
9 tells them they're coming. I think a much better
10 way of doing it is sending out the RFP, RFB to the
11 community board and the council members 30 to 60
12 days prior to, and getting their comments back. I
13 think that would be better than what's in the
14 language of Intro 21. Parks Department contracts
15 very clearly delineate what the concession is, the
16 boundaries of the concession. I mean, for
17 example, Manhattan Beach it's very specific. We
18 operate a parking lot, a full-concession building,
19 three pushcarts. Those pushcarts can only be put
20 in locations on the beach in conjunction with the
21 approval of the Police Department and the
22 community board. So the language in the contract
23 pretty much controls that.

24 CHAIR PERSON MARK-VIVERITO: And I
25 got that from the testimony, that basically the

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2 contracts do specify. I think what Council Member
3 Nelson's Intro is getting at is the access to the
4 information. Right now the only people that have
5 access to the contract per se may be the
6 individual that has signed it. But if we are ... I
7 mean, I have to, you know, that's one of the
8 questions I have for more of the advocates, is how
9 readily available and accessible is the
10 information, because Director Simpson was kind of
11 saying that it's readily available, but I think
12 it's ... my understanding of Council Member Nelson's
13 Intro is that that information should be made
14 available so that the community can be a true
15 partner with the Department of Parks in
16 enforcement aspects. If we know that this cart or
17 this concession is supposed to be within these
18 areas, if in fact it's not encroaching, you know,
19 more on the park and creating a greater nuisance,
20 you know, the community board and members of the
21 community can be a partner with Parks and say,
22 "Look, you know, we have a concern that this
23 concession is going beyond what is delineated in
24 the contract". The contract to me, I don't think
25 the individual contracts are as readily available

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2 and accessible as maybe they're projecting it to
3 be. That's something we have to look at.

4 MR. QUIRK: Well the contracts in
5 prior years were mailed to the community board. I
6 don't know if they continue that practice, but
7 they were in the past.

8 CHAIR PERSON MARK-VIVERITO: I
9 don't know. But that's a good point, if that was
10 being done, it would be great to continue that.

11 MS. SCAVO: It's not.

12 COUNCIL MEMBER GENTILE: And you
13 also made us understand then that RFB's or RFP's
14 were also sent to the community boards.

15 MR. QUIRK: They were sent to the
16 community board- -

17 COUNCIL MEMBER GENTILE:
18 (Interposing) 30 or 60 days before?

19 MR. QUIRK: Yes.

20 COUNCIL MEMBER GENTILE: They were
21 issued.

22 MR. QUIRK: And the Mayor's Office
23 of Contracts stopped the Parks Department from
24 doing it.

25 COUNCIL MEMBER GENTILE: So there

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2 was a ... it was a conscious decision not to do that
3 any longer?

4 MR. QUIRK: I think that they made
5 a decision that it created an unfair advantage for
6 someone. But the RFP is the public document. I
7 mean, if there's something in there that you're
8 asking the concessionaire to submit a proposal on,
9 that the community board is opposed to, it would
10 be much better to have the community board have
11 the opportunity or the Council Member to speak to
12 that before the actual final version was. So a
13 draft could be issued and with the Council Member
14 and the community board's opportunity to respond
15 to it. And I think that's what Councilman Nelson
16 is trying to get at, but I don't think that Intro
17 21 does what you're trying to really accomplish.
18 And so I think Intro 21 needs to be, you know,
19 changed.

20 COUNCIL MEMBER GENTILE: Okay.

21 CHAIR PERSON MARK-VIVERITO: Thank
22 you all very much. I'm going to call on our next
23 panel, we have Lima Chapman, Judy Francis, Gary
24 Pappish. And I want to take notice, I see a lot
25 of community board reps here, and I really want to

1
2 thank you. I know that we made a conscious effort
3 to send this notification out to all the community
4 boards, so thank you, those that are here. All
5 right, you can start.

6 MR. PAPPISH: Okay, I'm Gary
7 Pappish, I'm representing Manhattan Community
8 Board 6, I'm also one of six originators of a
9 group called the 250 Plus Friends of New York City
10 Parks. All the parks in Community Board 6 are
11 small in area. In fact we have the least amount
12 of public parkland of all the 59 community boards.
13 Generally we have opposed any privatization and
14 the taking up of any additional space, the
15 exceptions being where the local community of park
16 users supports the creation of the concession as a
17 popular local amenity. Community boards were
18 created by the city charter to speak for the
19 community and balance various interests and
20 viewpoints. While our adopted positions are
21 advisory, it is advice that the city should seek
22 and consider. All proposed use of space in New
23 York City parks as proposed by the Parks
24 Department should be referred to community boards
25 for review and consideration. All RFP concessions

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2 should be transparent as to the amount of park to
3 be used, and total fairness in the awarding of the
4 contract. While we welcome Commissioner Benepe's
5 recent pledge to the 250 Plus Friends to send all
6 proposed RFP's in advance to the local community
7 board, we by resolution urge the same review where
8 a new RFP is not required but there is a change in
9 the contract during its approved term. Community
10 Board 6 by resolution in October, 2009 supported
11 the legislation you are considering today, with
12 suggested additions we think will make it more
13 effective. Further, that RFP's issued by the
14 Parks Department contain the language in the new
15 section 18.136, "The required boundary be made of
16 durable material to last the term of the
17 concession, replenished periodically to maintain
18 its visibility, and if a vendor seeks permission
19 to increase their presence in the park, the
20 Department of Parks and Recreation must refer such
21 requests to the local community board before
22 acting upon it." Now the language we use about
23 the durable material, we got that from the City
24 Planning Commission, because they require such
25 rules for ... in noticeable plazas, where the owner

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2 has given the café, and we just copied their
3 language and feel it should be obligatory on the
4 Parks Department as well. I too was amused by a
5 lot of the testimony of the earlier. While it's
6 true Community Board 6 does get RFP's in advance,
7 to use the cliché, the devil is in the details.
8 Generally we get a map of the park, and there is a
9 circle, a rectangle, putting off in the park where
10 the concession is to be located. But it doesn't
11 give the size, it just gives a circle, and so
12 there's a lot of flexibility on the Parks
13 Department in what kind of flexibility they give
14 to the thing. I mean, our main thing Community
15 Board 6 is the process. We have no firm
16 ideological position on concessions in general,
17 more because Board 6 does not have a Union Square
18 or a Central Park or a Flushing, all our parks are
19 small.

20 MS. CHAPMAN: Good morning, ladies
21 and gentlemen, my name is Lila Chapman, I am here
22 to read a statement by Michael Horowitz, who is
23 the director of the Green Market Program. Green
24 Market is a program of Grow NYC, formerly the
25 Council of the Environment of New York City, and

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2 currently operates 24 farmer's markets on New York
3 City Department of Parks and Recreation property.

4 He writes: "I am writing to express my concern
5 about the proposed law 18-136, location of
6 concessions in parks. Green Markets open-air
7 farmer's markets have been serving New Yorkers for
8 34 years, and some, such as Poe Park in the Bronx,
9 are the sole source of fresh fruits and vegetables
10 for the communities in which they are located.

11 The farmers that attend these markets must come
12 from the northeast region, which we define as 250
13 miles north, 120 miles south, and 170 miles east
14 and west, and they must be in full control of the
15 products they bring to market. The farmers are
16 not wealthy, able to afford punitive fines, nor
17 can they easily navigate the systems and policies
18 that apply to them in the city. That is the role
19 of the non-profit organization that manages the
20 markets, Grow NYC and Green Market. In every park
21 location that hosts the Green Market, there's a
22 permitted location and a fee associated. Our
23 concern with the proposed legislation is that it
24 fails to account for the realities of being a
25 concessionaire in New York City. While our strong

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2 preference is to remain within our permitted
3 location and our planned layout, on any given day
4 there could be a construction job, a movie shoot,
5 or some other unforeseen event that would force
6 the Green Market to shift its footprint. That
7 shifting could result in our violation of the
8 proposed legislation, which has potentially
9 expensive consequences. And while Parks does an
10 excellent job of alerting us to the conflict,
11 there are times when no warning is received, and
12 creative reconstruction of the daily market takes
13 place on the spot, in concert with the parks
14 manager, when one is available, or on our own,
15 when one is not. In the 34 years of doing
16 business in parks, there has never been a conflict
17 with our decision to reconfigure when required to
18 do so. We urge this committee to reconsider its
19 proposed rule, or to create a mechanism that would
20 allow for the flexibility that is required to be a
21 concessionaire in such a robust, active city. To
22 do otherwise puts at risk the largest distributor
23 of local foods in our region, one that is
24 addressing food and security in all five boroughs,
25 and which works with over 5,000 students annually,

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2 educating them about the relationship between
3 health, nutrition and food, thus empowering them
4 to make positive decisions about their diet. It
5 also is a deterrent for small business development
6 at a time when we crucially need new economic
7 activity in the city. Thank you for your time and
8 consideration of this matter."

9 MS. FRANCIS: Hello, my name is
10 Judy Francis, I'm the president of the Brooklyn
11 Bridge Defense Fund, the 501C3 not-for-profit park
12 advocacy group in Brooklyn. I'm here to speak in
13 favor of whatever lengths the City Council can go
14 to, to exert control over the existence, the type
15 and the location of concessions inside our public
16 parks. I thank you for taking up this subject,
17 it's really important. As the committee is fully
18 aware, the heights of privatization of our public
19 parks is really unprecedented in Brooklyn Bridge
20 Park, with 1,250 luxury condo units now going ...
21 contemplated to go up into this park. Over the
22 next month, the Mayor will assume control of
23 Brooklyn Bridge Park. The terms of the agreement
24 call for the creation of a new public entity, a
25 new public authority, outside the reach of you,

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2 City Council members, outside the reach of the
3 franchise concession review board, and local laws
4 governing our parks. And I talk about this today
5 because this is going to impact our parks going
6 forward. I have a document that I would love for
7 your Council to look at with regard to the general
8 project plan, and I read a clause that they will
9 obtain interest in certain other sites, and
10 subsequently dispose of them to this new park
11 entity. This is pernicious, something bad is
12 happening. This administration cares nothing
13 about the City Council and your reach and your
14 oversight of public parks. I also refer to the
15 twelve people who were sitting here from the Parks
16 Department and left the room as soon as they were
17 finished talking. They have no regard for the
18 community. I also by the way sit on my Community
19 Board 6 in Brooklyn in the parks committee, and
20 I'm not here in that capacity today, but I must
21 reinforce what my other colleagues and other city
22 community boards have said. They give no regard
23 to the community board process. I'm not going to
24 talk about the examples, they're here. I don't
25 want to use up precious time. I do want to give

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2 one example of one meeting that happened last week
3 with Regina Meyer, who is now going to be the new
4 president of this new public entity. Or private ...
5 whatever, entity to run Brooklyn Bridge Park,
6 okay. She was asked by the community board if
7 they could see the RFP for one concession on Pier
8 6, which is in Community Board 2, but affects all
9 of Community Board 6. It is our part of the park.
10 And she scratched her head and she said that she
11 would have to look into "whether they had to show
12 it to us or not". Had to show it to us. When did
13 the public come out of our public parks? When did
14 it become a burden to seek the input of the people
15 whose these amenities are planned for in the first
16 place? I urge the City Council to impose the
17 highest level of oversight on what concessions can
18 go into our parks, how they are administrated, and
19 to allow the local community boards that are in
20 and adjacent to, particularly the large parks, to
21 have a say. Thank you.

22 CHAIR PERSON MARK-VIVERITO: I want
23 to thank the three of you, I know, Ms. Francis,
24 that that issue is being looked at. I'm
25 definitely looking into it myself, I'm interested

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2 in just understanding what this new entity is, and
3 understanding what these agreements are. But I
4 share your similar concerns as well, and I thank
5 each of you for your testimony, and just, you
6 know, in terms of the Intro 21 that we're
7 discussing today, you know, based on what we're
8 hearing, you know, there are ... there is room for
9 making amendments in discussions with the lead
10 sponsor on some of the concerns that have been
11 raised. So with that, thank you very much for
12 your testimony. The next panel, Michael O'Neal,
13 B.R. Holzer, Mel Whymore ... is Mel here? All
14 right. Okay, feel free to start.

15 MR. O'NEAL: My name is Michael
16 O'Neal. The O'Neal family has been running a
17 restaurant business on the upper West Side for
18 almost 46 years. About twelve years ago, the New
19 York City Parks Department issued an RFP for a
20 food concession at the rotunda at the West 79th
21 Street Boat Basin. I've lived two blocks away for
22 over 30 years and had been active previously in
23 the community board, Community Board 7, for 25
24 years. I've catered parties at the boat basin,
25 and had often wondered why it wasn't used more and

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2 in a more proper fashion. And at that time it had
3 fallen on bad use, and a group of homeless men
4 actually were camping out at the base of the
5 staircase and made it very uncomfortable for dog
6 walkers, joggers, boat owners and people in
7 general to walk or stroll in the park. I came
8 upon the idea to have grilled, inexpensive foods
9 at a bar where patrons of the restaurant could
10 enjoy the views of the magnificent sunsets over
11 New Jersey. I responded to the RFP and my
12 organization has been the operator of the boat
13 basin since the beginning. Robert Moses had built
14 the rotunda in 1935 to be the grand entrance to
15 Riverside Park, but unfortunately it had fallen on
16 disrepair and misuse. By having a private
17 concession in the park, we keep the park clean and
18 green. The Parks Department has asked all the
19 restaurants to join the Green Restaurant
20 Association to become more environmentally aware,
21 as well as sustainable as possible. We've
22 actually planted three areas around the rotunda,
23 and this is repeated many times in various parks.
24 An area will be rundown, unsafe and in disrepair,
25 and by having a concession take over the area, the

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2 area suddenly is clean, well-planted and safe.
3 The Parks Department has done an admirable job in
4 awarding these concessions, as far as I'm
5 concerned. And they take great care in the
6 selection, and countless audits to keep us all
7 honest. The O'Neal organization operates the
8 Ballfields Café as well as the West 79th Street
9 Boat Basin Café. The Ballfields Café is in
10 Central Park near the extra ball fields, and is a
11 much smaller concession. We believe that
12 concessions in the parks are good for the public,
13 as well as providing the much-needed funding for
14 the city. I repeat, concessions make the parks
15 more people-friendly, cleaner and safer. Thank
16 you for your time and listening to me, and I hope
17 you'll look favorably upon concessions that you
18 might feel as passionately as I do about New York
19 City, that they should take advantage and use the
20 parks and open spaces as much as possible. We
21 will be safer and the parks will be cleaner and
22 better-maintained. Thank you.

23 MR. HOLZER: Thanks, my name is
24 Rusty Holzer, I'm here representing the Riverdale
25 Stables in Van Cortlandt Park. There was a photo

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2 back here of a horse earlier in the presentation,
3 that's our facility. I just want to speak out
4 against at least what I perceive to be this rule
5 to create sort of more, if you will, gotcha
6 moments, and more rules and regulations and red
7 tape that make running these concessions in New
8 York City extremely difficult. I am fortunate
9 enough to operate a few concessions in other
10 municipalities other than New York City, also
11 horseback riding stables, and I can tell you the
12 ease with which we run those facilities is many
13 times easier than working with New York City.
14 There are such a litany of various agencies and
15 oversight review, and it's not clear to me that
16 they even know, and perhaps because we deal with
17 horses, and that's a little bit of a ... not a
18 mainstream activity, but whether it's the
19 Department of Health or the Parks Department, or
20 SPCA, and you know, we routinely pass all these
21 inspections, but it's an inspector's job to find
22 something wrong. I don't believe they come there
23 to find something right. And we view it as an
24 unfortunate cost of doing business in New York
25 City, and that's really sad. Because the reality

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2 is much as my gentleman to my left has said, when
3 we took over the facility, it's about fifteen
4 years now that we've been in Van Cortlandt Park,
5 it was described in the press, these are not my
6 words, it was actually described in the press as a
7 manure-ridden dump. We've invested in excess of a
8 million and a half dollars. The red building,
9 which I'm not sure was clear, but we built a
10 brand-new building at the facility, and I can tell
11 you that building was mandated, Henry Stern was
12 the commissioner at that time, we had to work
13 around various trees, and we had to ... it was
14 reviewed not just by the local community board,
15 but also by the Arts Commission in this building.
16 So I would say that the review process is thorough
17 and thoughtful, and I would just add that, you
18 know, at various times there are other stables,
19 other equestrian facilities that the city owns,
20 and various people that represent the city have
21 asked me to bid on those. I passed, not because ...
22 and I think they have difficulty attracting
23 qualified bidders because of the sort of
24 Byzantine-like process of working with New York
25 City. So I would encourage you to try to

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2 streamline those processes where you can. I'm not
3 sure you're in total control of that, but adding
4 to it, you know, these kinds of gotcha moments so
5 that if, for instance, I was talking with someone
6 the other day, you know, our stable is bound by a
7 fence. However, if someone were to graze their
8 horse outside that fence and some inspector came
9 up and saw them grazing their horse outside that
10 fence, they'd say, well, you were taking advantage
11 of space beyond your gated facility, here's a \$200
12 to \$1,000 fine. And it's just sort of ... that's
13 the kind of thing that these inspectors tend to
14 find.

15 MR. WHYMORE: Hello, my name is Mel
16 Whymore, I'm the Chair of Community Board 7.
17 We're the district directly west of Central Park.
18 I'm here not to speak against concessions in any
19 way, to actually be an advocate for the public
20 process, and it's specifically the relationship
21 between the Department of Parks and Recreation and
22 the community board in fulfilling on a public
23 process. Most departments in the city have a
24 mission, a stated mission statement on their
25 website, but the Parks Department doesn't happen

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2 to have such a mission statement. But I would
3 submit that the mission of the Parks Department is
4 to provide, protect and preserve the parks for
5 public use. And when you talk about public use,
6 in particular Parks Department has to serve all
7 the citizens and all the visitors, so there's a
8 very broad range of constituencies that the Parks
9 Department has to plan for and provide services
10 for, and then that's always a balancing act.

11 Whether you provide for one individual or groups
12 of individuals, and different constituencies. So
13 in that balancing act, the fundamental question
14 is, how do you know, how do you know, what is best
15 serving, what would best serve the public in terms
16 of public space. And the only way I think you can
17 know is to actually ask the public. And the
18 community boards are well designed to be the
19 conduit for conversation between the public and
20 how the Parks Department provides its services.

21 What ... specifically with respect to the issuing of
22 RFP's, the community boards do get some moderate
23 notification once an RFP is let, and it is usually
24 something like a memo that comes to the board.

25 And in the case of the tennis bubble in Central

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2 Park, we received a memo, the only difference from
3 this memo which actually entailed at the time a
4 very big construction in the middle of Central
5 Park, the only difference between that and a
6 renewal of the existing concession was the word
7 "indoor" before tennis concession. So there was a
8 subject line on this memo that said "indoor tennis
9 concession", compared to the prior memo that said
10 "tennis concession". So it was basically filed
11 away without notice a year ago, and then we were
12 shocked when we realized what actually was being
13 proposed. So we would like to have more front-end
14 public input, before the RFP's are developed. And
15 currently it's not at all the practice of the
16 Parks Department to include the public in its
17 development of RFP's or even in some kind of a
18 surveying of the public about what might be
19 interesting as a concession. For the Parks
20 Department that's an entirely internal process,
21 and then the public is notified once an RFP is
22 developed. So if we were going to make any kind
23 of bill or some kind of an action requesting a
24 change in Parks Department policy, we would
25 recommend more input prior to an RFP happening.

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2 And finally, I just want to make one last thing.
3 In tough economic times, it's always a struggle to
4 generate revenue for the city, and I think that
5 this is a particularly important time to be very
6 vigilant about the public services that are
7 available, the public spaces that are available,
8 in protecting those against economic struggles
9 that we have. Thank you.

10 CHAIR PERSON MARK-VIVERITO: Thank
11 you, the three of you, for your testimony. Very
12 insightful and helpful, so thank you very much.

13 MR. WHYMORE: Thank you for running
14 this hearing.

15 CHAIR PERSON MARK-VIVERITO: Thank
16 you. We have the next panel, Michael Tappit,
17 Barry McLaughlin, Giorgio Kolaj. How do you
18 pronounce it?

19 MR. KOLAJ: Kolaj.

20 CHAIR PERSON MARK-VIVERITO: Kolaj.

21 MR. TAPPIT: Hello, my name is
22 Michael Tappit, my dad and I are concessionaires
23 of the Parks Department. We currently operate
24 five New York City golf courses, four of them are
25 in Queens and one in the Bronx. The first license

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2 we were awarded was the pitch and putt golf course
3 in Flushing Meadows Park. It was only a five year
4 license, but during those five years we made some
5 very dramatic improvements to the facility. Our
6 efforts did not go unnoticed by Parks. When the
7 next golf course came up for bid, we were chosen
8 again. Today we are the concessionaires of five
9 New York City golf courses. Our concessions are
10 located in Forest Park, Van Cortlandt Park,
11 Flushing Meadows Park and Kissena Park. My
12 responsibilities include overseeing day-to-day
13 operations, supervising our capital projects, and
14 handling our marketing and promotions. Our
15 licenses require us to make certain capital
16 improvements to the golf courses and building
17 structures. To date we have spent approximately
18 \$11 million on improvements. We are currently
19 committed to an additional \$7 million. These
20 projects include the renovation of Kissena Golf
21 Course clubhouse, the renovation of the Van
22 Cortlandt clubhouse and the renovation of the
23 Flushing Meadows pitch and putt golf course and
24 clubhouse, which will include a state-of-the-art
25 irrigation system. We are also in the process of

1
2 constructing a junior golf training area at
3 Flushing Meadows Park, which will be a great
4 addition to the City Park Foundation's junior golf
5 program. Last year we did approximately 260,000
6 rounds of golf at the courses, and we employed
7 approximately 160 people, the great majority of
8 whom live in the respective neighborhoods of the
9 courses. Financially, you could call us a
10 successful business, however, what we take most
11 pride in is that we strive to provide the New York
12 City golfers a satisfying golfing experience and
13 we do achieve that goal. We have always had an
14 excellent relationship with Parks. We have
15 accomplished a great deal in improving the golf
16 courses we operate, and the services that we offer
17 to New York City golfers. We would never have
18 been able to accomplish this without the
19 continuous help, cooperation and support of Parks.
20 Being a concessionaire has been a very rewarding
21 experience for me and my family. I have a
22 challenging career that I love, and look forward
23 to continuing for many years. Finally, let me say
24 one thing about Introduction 21-2010. Our golf
25 courses are approximately 100 plus acres each, and

1
2 it would be virtually impossible to mark on the
3 ground the boundaries of each course. Thank you.

4 MR. McLAUGHLIN: Good morning, my
5 name is Barry McLaughlin, I'm the executive
6 director of First Tee, we're the concessionaire at
7 Mosholu Golf Course in the Bronx. Our
8 organization manages the Mosholu Golf Course, and
9 it's been doing so since September, 2001. We're a
10 unique concessionaire because we operate as a
11 501C3, and the main purpose of our organization is
12 to operate our youth development program, our
13 First Tee curriculum, which provides a life skills
14 and education program, using golf as a vehicle to
15 do so. Since 2001, we've offered over 40,000
16 youngsters our program curriculum, and many of
17 them are the golfers utilizing Mosholu on a
18 regular basis. Our organization takes great pride
19 to be given the opportunity to operate the Mosholu
20 Golf Course concession for New York City Parks and
21 all the citizens of the Bronx community. We have
22 a diverse group of golfers, ages, ethnicities and
23 genders, that allow for a quality recreation
24 experience for all. Our program is ... our plan is
25 to continue offering our unique golf program and

1
2 recreation experience to all those that come to
3 Mosholu. We also continue to share the First Tee
4 curriculum for the youth and serve the Bronx
5 community while growing the game of golf. And
6 just a few points on our facility. We did a \$4
7 million renovation to the golf facility, we are
8 defined by fence and gating throughout our whole
9 property. We do have a contracted acreage of 67
10 acres, and we do operate specifically within our
11 designated area. On our program side, we have
12 grown a family atmosphere, and just this past
13 Saturday we had an event at our facility that had
14 over 400 youngsters and families that came in and
15 participated in a golf festival, and our goal is
16 to continue to increase the access for people of
17 all means and to try to keep our pricing
18 affordable. Thank you.

19 MR. KOLAJ: Good afternoon, and
20 thank you for having me here. My name is Giorgio
21 Kolaj, I'm president of Friendship Restaurant
22 Group, which I'll go into in a moment to describe.
23 Twenty five years ago my brothers and I started a
24 pizza company here in New York City. We happened
25 to be Kosovo refugees, minority of minorities back

1
2 in Yugoslavia. We came to this country and
3 America welcomed us here. My mother came here as
4 a single woman, my father died enroute, to come to
5 this country. She raised five children, landed
6 and Kennedy airport and by the grace of the
7 American people, we grew up on welfare. My mother
8 taught us hard work, good ethics, and we
9 translated these ideals into business as well. I
10 also, like these two gentlemen to my left, am
11 about to operate a fixed or confined space, and
12 it's owned by New York City Parks Department, so
13 I'm not sure if my comments are going to carry
14 much, but I'd like to make some observations on
15 the limited time, the year or so I've been working
16 with Parks. Today my brothers and I, outside of
17 this operation with Parks, operate the pizza chain
18 known as Famous Famiglia here in New York, and we
19 also have some other food and beverage concerns
20 throughout the U.S. and around the world. A
21 little over a year ago we bid on and were
22 subsequently awarded an operating license for a
23 concession property which is owned by New York
24 City Parks located in Bayside Queens. The
25 concession was previously called Caffe on the

1
2 Green and operated for just about 20 years, and
3 shall now be called Valentino's on the Green,
4 later this summer or July. It will be operating
5 as a high-end Italian restaurant on the first
6 level, and a banquet hall on the second level.
7 The concession will employ more than 70 New
8 Yorkers, mostly from the immediate vicinity there
9 in Bayside and Whitestone, and we've hired a good
10 number of young men and women that will be joining
11 us, we're very excited about it. And we're also,
12 as part and parcel of the project, going to be
13 implementing some, even some unique green
14 initiatives that you'll hear more about as our
15 project progresses. We of course look to generate
16 substantial revenue for the City of New York, and
17 I should also note that we've invested just shy of
18 \$3 million so far into the project into renovating
19 the building itself, and keeping the history and
20 the heritage in not only the building itself, but
21 also the environs. And I have met with Community
22 Boards 7 and 11, and to Parks defense, they did
23 make those introductions. I didn't know that I
24 could do that, quite frankly, and they took me
25 into their offices, the community boards' offices,

1
2 and we had a wonderful dialogue, in fact I had
3 some very good input, because I'm an eternal
4 student as well, and the community board members
5 that did come to that meeting were extremely
6 helpful. I'm here today to talk about my
7 experiences with the folks at Parks. I've spent
8 more than half of my life working with people and
9 agencies in the context of developing businesses.
10 I can truly say that my experiences with Parks
11 have been a very one. As I look back across the
12 various stages of our working relationship
13 together, Parks has proven itself to be a group of
14 people that are professional in their acumen,
15 knowledgeable in the processes, and competent in
16 the understandings of business, and certainly
17 capable of delivering results. A relationship
18 between any two people, whether it's a father and
19 a daughter, a brother and a sister, a husband and
20 a wife, or even a business partner with a business
21 partner, I strongly believe that there have to be
22 at least two elements in place. One is constant
23 and clear communication, and trust. Parks has
24 been a faithful partner to be throughout our
25 experiences with Parks. Their people have shown

1
2 themselves to be accessible, reasonable and
3 transparent in their communication with me. They
4 have listened to our needs as we faced various
5 challenges throughout the project, and they have
6 contributed their expertise whenever we have
7 asked. They have worked with us to reach out to
8 the community, and they have been there with us
9 through every step of the way. I am grateful to
10 Parks and to its people as I am making my largest
11 investment in my life in this property in Bayside.
12 My team and I are excited about this project and
13 we are humbly grateful to the good folks at Parks
14 for their assistance along the way. We look
15 forward to working closely with Parks for the
16 years to come as we generate revenue and provide
17 really a wonderful experience in our little corner
18 of Bayside. Thank you for having me.

19 CHAIR PERSON MARK-VIVERITO: Thank
20 you for your testimonies, all three of you. Just
21 two quick questions for each of you, if you could
22 just each answer. How long is each of your
23 concessions for, what are the number of years?
24 You have five golf courses and they probably vary?

25 MR. TAPPIT: My name is Michael.

2 CHAIR PERSON MARK-VIVERITO: Right.

3 MR. TAPPIT: Most of our licenses
4 are twenty years for our larger golf courses. The
5 pitch and putt golf course in Flushing Meadows
6 Park, we were just awarded a fifteen year license.

7 CHAIR PERSON MARK-VIVERITO: And
8 Mr. McLaughlin?

9 MR. McLAUGHLIN: At Mosholu Golf
10 Course we have ten years remaining on ours, and we
11 also have the water filtration project going on on
12 our particular concessions, so we'll have an
13 extension on top of that, but that is yet to be
14 determined.

15 MR. KOLAJ: At Valentino's on the
16 Green we were awarded a fifteen year license
17 agreement.

18 CHAIR PERSON MARK-VIVERITO: Okay.
19 And Mr. McLaughlin, I've got to say I'm very
20 interested in this aspect of a non-profit
21 concessionaire. I mean I definitely want to look
22 into that more. Maybe you would consider looking
23 into the Randall's Island golf course when it
24 comes up for renewal?

25 MR. McLAUGHLIN: If I might, we're

1
2 actually doing some programs there with the sports
3 foundation, so, you know, we're obviously looking
4 at any ideas and certainly consider any ways that
5 we can be involved in as a concessionaire.

6 CHAIR PERSON MARK-VIVERITO: I
7 mean, it's just a great idea that, you know, that
8 a non-profit would operate the concession. I
9 think that I had not even factored that or I guess
10 come across that in looking at this. So thank you
11 to the three of you for your testimony. I'm not
12 going to be able to pronounce this name, I
13 apologize. 140-15 Holly Avenue, who's the
14 individual represented there? Okay, and then if
15 you could, once you're here, I would like to hear
16 your name. I don't think I could pronounce it.
17 Kandes Amy is what I think I'm seeing.

18 MR. AMETIRKOMAR: Yes, Kandes Amy.

19 CHAIR PERSON MARK-VIVERITO: I'm
20 sorry, okay. Ron Kraut, okay, and then Scott
21 Kavanaugh.

22 MR. KAVANAUGH: Oops, I better have
23 a better copy to read. Thank you.

24 CHAIR PERSON MARK-VIVERITO: Just
25 for people to know that all testimony that we get

1
2 is scanned and is put up and is accessible on the
3 website. So we would encourage those people,
4 individuals that don't have written testimony, if
5 you want, that you could always submit it for the
6 record. And with that, if anybody could start.
7 Okay.

8 MR. AMETIRKOMAR: My name is Kandes
9 Ametirkomar, I operate a vegetarian vegan pushcart
10 in Washington Square Park. I am totally against
11 the marking points because right now they are
12 under construction in Washington Square Park, so I
13 have to move like fifteen feet away from my
14 ordinary spot, and also sometime NYU graduation,
15 so we won't be able to set up our regular spot.
16 So very short and quick, that's what I wanted to
17 say. Is because sometimes certainly I am listed
18 in 42 countries in tour guide books, because of
19 the special vegan food, so groups come and
20 suddenly take their place, you know, line up to
21 buy water, I see only one dollar, very cheap
22 water, so like 50 people stand in the line. So
23 it's like take up more than 75 feet. Thank you
24 very much.

25 MR. KRAUT: Thank you, good

1
2 afternoon. My name is Ron Kraut, I'm the project
3 manager on the new World Ice Arena in Flushing
4 Meadows Corona Park, and please consider this your
5 invitation to come skating, because we're open
6 twelve months a year. I'm not here to comment on
7 the process or protocol of the RFP's. However, I
8 would like to comment on the boundary legislation.
9 There may be concessions that require more
10 oversight regarding their operational boundaries.
11 But to constrain all licensees and concessionaires
12 with rigid boundary legislation might not serve
13 the needs of the community. At the World Ice
14 Arena, we often will receive ten plus buses of
15 young school children arriving to participate in a
16 daytime ice skating activity. This represents
17 six, seven, eight hundred young people in our ice
18 skating rink. Overall, this is wonderful news, we
19 all want New York City children to use our state-
20 of-the-art recreational centers, swimming pools
21 and ice skating rinks. But our facility is not
22 large enough to accommodate these types of crowds.
23 The ice rink staff has to expand beyond our strict
24 licensed premise area to manage the coming and the
25 going of youth and school groups. We have to go

1
2 beyond our licensed premised area to execute our
3 youth summer camp program in conjunction with the
4 new Al Oerter rec center, with regard to activity
5 both inside the ice skating rink and outside in
6 Flushing Meadows Corona Park. We have to utilize
7 the plaza in front of our pool/rink complex for
8 the staging of very popular kids' events hosted by
9 the Rangers, the Islanders, and Olympic and
10 Olympian appearances and performances. We have to
11 manage our waiting lines of public skaters who
12 want to skate during our very busy winter season.
13 And as previously mentioned, we're required to
14 maintain the area around our rink greater than our
15 licensed premised area with regards to snow
16 removal, cutting of the grass, debris, garbage,
17 etc. And it would seem reasonable that we could
18 also stage youth events, picnic tables, outdoor
19 eating, around our facility greater than our
20 licensed public area. It is a real privilege to
21 operate New York City's only twelve-month year-
22 round indoor ice skating arena. We have a very
23 supportive community, and currently boast over 800
24 children in our ice skating school on a weekly
25 basis. We would like to maintain flexibility to

1
2 expand and contract to best service the needs of
3 our growing ... of New York City's growing ice
4 skating community. Please do not penalize the
5 entire network of hardworking concessionaires
6 because of several overreaching partners. Thank
7 you.

8 MR. KAVANAUGH: Good afternoon, I'm
9 Scott Kavanaugh, I'm with Bike and Roll New York
10 City. Bike and Roll is a bicycle rental and tour
11 company operating in major cities across the
12 country, with five locations here in New York. We
13 are a new concessionaire with the Parks
14 Department. This year we will be operating in
15 Central Park and in Riverside Park. In 2011 we
16 will be in Highbridge Park, West Harlem Piers
17 Park, and in East River Park. Working with the
18 Parks Department overall has been a very positive
19 experience for us. As a new concessionaire, you
20 can imagine we have had many questions as we work
21 toward operating in a fashion that is optimal for
22 all involved. Parks has been very responsive to
23 our questions and thorough in their feedback and
24 in their directives. It's been clear from the
25 start that their most concern is for providing for

1
2 the public. We are excited about being a
3 concessionaire, because we think and we believe
4 that Parks agrees that Bike and Roll can play a
5 role toward that end. Bike and Roll New York City
6 is proud to be part of the Parks community. This
7 season we will employ over 80 people, many of them
8 this will be their first job, they're young
9 people. Bike and Roll allows residents and
10 tourists alike to be able to more thoroughly enjoy
11 the public spaces of New York City. We offer a
12 fun, green and active alternative to automobiles
13 and tour buses. More and more people are
14 discovering that you can see a lot more of a park
15 on a bicycle than you can on foot. We are looking
16 forward to strengthening our relationship with
17 Parks and with New York City in the coming years.

18 CHAIR PERSON MARK-VIVERITO: Thank
19 you all for your testimony. Just, Mr. Kavanaugh,
20 I had wanted to ask this of the panel before,
21 because all three are saying how wonderful it is
22 to work with Parks, as you proceed with your
23 concessions. During that relationship, do they
24 encourage you to meet with the community board?
25 Do they encourage you to establish relationships

1
2 and be a good neighbor with the community boards?

3 MR. KAVANAUGH: They do. With our
4 Central Park concessions, we've been encouraged ...
5 we met with folks from the local community board
6 there and with the local business improvement
7 district too, to make sure that those concerns
8 were addressed.

9 CHAIR PERSON MARK-VIVERITO: Okay,
10 I just wanted to know. Thank you very much for
11 your testimony.

12 MR. AMETIRKOMAR: Yes, and they
13 wanted to get signatures from before, if we loved
14 the proposal, from the community around our
15 neighborhood, and around the park, yes.

16 CHAIR PERSON MARK-VIVERITO: Okay.
17 And how long is your ... how long is your agreement
18 with them?

19 MR. AMETIRKOMAR: Five years, every
20 five years.

21 CHAIR PERSON MARK-VIVERITO: Five
22 years?

23 MR. AMETIRKOMAR: Yeah.

24 CHAIR PERSON MARK-VIVERITO: Okay.
25 Thank you very much.

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MR. AMETIRKOMAR: Thank you.

CHAIR PERSON MARK-VIVERITO: All right, thanks for the testimony.

MR. AMETIRKOMAR: Thank you.

CHAIR PERSON MARK-VIVERITO: The next, Christiana Pena, it's Christiana, right, Christiana?

MS. PENA: Yes.

CHAIR PERSON MARK-VIVERITO: Christiana Pena, Eldon Scott, Gerald Tennenbaum?

MS. PENA: Okay, I am Christiana Pena, I am the director of community outreach for Landmark West, and in the interest of time I'll read a slightly abbreviated version of our statement that we've handed in for the record. Landmark West is a not-for-profit community advocacy organization committed to preserving the architectural heritage and sense of place of the upper West Side of Manhattan, and that commitment extends not only to the bricks and mortar resources of our neighborhood, but also the open urban oases of our landmark public parks, which are in themselves achievements in landscape design. And in our density public parks are our

1
2 communal backyards, where millions of New Yorkers
3 and visitors alike gather to enjoy the benefits of
4 open space, fresh air and take pleasure in
5 recreation of all kinds. It was recently just
6 this past March that Landmark West learned of a
7 concession proposal by Parks which threatened all
8 of the characteristics fundamental to the
9 greatness of our city's first scenic landmark,
10 Central Park. Landmark West is here to report to
11 you from the field, to let you know from our own
12 experiences that the present practice of
13 soliciting concessions in parks is in desperate
14 need of reform. Without change, our public parks
15 risk being sold off to the highest bidder, their
16 designs degraded, their demographic existence
17 threatened, undermined by sky high fees, and we,
18 the community, would have no say about it. This
19 recent concession proposal to install four 35 foot
20 high bubbles over tennis courts in Central Park is
21 a perfect example, and underscores three of our
22 primary concerns of the concessions process.
23 First, that the process is not transparent. In
24 Central Park, the Parks Department was still
25 gathering information from the community, going

1 through the motions of soliciting and responding
2 to our concerns, when in fact behind the scenes, a
3 contract was already being hammered out. To
4 insure genuine and substantive community
5 consultation, a broad range of stakeholders must
6 be assembled when the RFP concept is still in the
7 early stages of inception, not after months, and
8 sometimes years, of internal Parks Department
9 project development. Secondly, in landmark-
10 protected parks, such as the Riverside Park and
11 Central Park, early consultation with fellow city
12 agencies is not presently practiced. Projects
13 within these two parks require oversight of the
14 Landmarks Preservation Commission and the Design
15 Commission, both professional experts on landmark
16 stewardship and design appropriateness. A signed
17 contract should come long after discussion with
18 these agencies, not prior. Like the community,
19 fellow city agencies with expertise on park
20 stewardship should be involved in RFP
21 brainstorming and development, rather than
22 apprised of RFP's after a deal is effectively
23 done, and this goes not just for our landmark
24 parks, but for all parks as well. And finally, we
25

1
2 cannot allow our public parks to mutate into
3 privatized cash cows. The issue currently
4 threatening to lay siege to Central Park, that of
5 privatization, has plagued other public parks as
6 well. On the East Side at York Avenue under the
7 59th Street bridge, on Randall's Island and in
8 Union Square in the guise of a restaurant, private
9 concessionaires have sought to monopolize park
10 land for private gain. And in other words, this
11 is nothing new, but certainly something that we
12 can change through thoughtful reform that brings
13 negotiations out from behind boardroom doors and
14 out into the open, before the public who
15 rightfully owns these democratic parks, we can
16 protect their integrity and insure accessibility
17 for all. Thank you.

18 MR. SCOTT: Hello, my name is Eldon
19 Scott, and I'm a concessionaire with the Parks
20 Department. We operate markets in Union Square
21 Park and Central Park in Manhattan. The
22 concessions we've operated are a significant
23 economic engine for New York, and a significant
24 place for the creative industries. Approximately
25 70% to 80% of our market vendors come from New

1
2 York, and approximately 85% are women- or
3 minority-owned businesses. For many of these
4 vendors, the holiday markets represent 30% to 40%
5 of their annual sales and is often the period in
6 which these businesses are able to get into the
7 black for the year. We estimate that the markets
8 we operate are a significant support for more than
9 250 small businesses and create over 600 seasonal
10 jobs. We understand the need for proper public
11 oversight, but the particular rule being discussed
12 is already covered in our contract. In our case,
13 we have last-minute cancellations, we may have to
14 respond to immediate concerns from parks users or
15 maintenance issues or weather, and the requirement
16 to map exactly our markets in advance might
17 actually create a worse outcome for parks users
18 and reduce our ability to respond quickly to
19 conditions on the ground. It's also been our
20 experience that Parks officials have been
21 extremely able and responsive in evaluating
22 spacial and other operational issues, and we've
23 often had to work with them to deal with issues on
24 the ground as they have occurred. Thank you.

25 MR. TENNENBAUM: Hello, my name is

1
2 Gerald Tennenbaum, I'm a representative from
3 Manhattan River Group. We're the concessionaire
4 for the Dyckman Marina and Café. I believe you
5 were given our contract as an example of Parks
6 concession contracts. I'm in a unique position
7 because I'm also the attorney who negotiated the
8 contract, so I can tell you how one-sided it is,
9 how inflexible it is, and how protective it is of
10 the parklands that the concession operates on.
11 Just to start, it's terminable at will, without
12 notice or reimbursement of capital expenditure.
13 It requires cleaning and maintenance, beyond the
14 property lines, as you've already heard. It
15 requires capital commitment that is set in
16 advance, and the Parks Department has approval
17 over every operational aspect on an annual basis,
18 including menu items, services, and prices. The
19 relationship between Parks and concession business
20 requires ... it requires flexibility. Parks not
21 having a really operational arm, looks to its
22 concessionaires in many ... it looks to many of its
23 concessionaires to handle issues as they arrive,
24 and at least the park that I'm involved in, the
25 administrator up there, Jennifer Hoppa, is very

1
2 involved with the community and is the first one
3 generally to come to us to suggest what needs to
4 change. So it's a ... we are her operator, as far
5 as that portion of the park goes. Which, I guess,
6 brings me to the point of the community board. I
7 was involved in the community board process with
8 regard to my concession, probably before Parks
9 was, because I was interested ... I became
10 interested in the land and the space and the
11 concession, and wanted to learn more about it and
12 learn what the community was interested in getting
13 out of it, and to gain an advantage in the
14 process. There was no advantage to be gained,
15 because the way that Parks communicates with the
16 community boards before the concession ... before
17 the RFP is issued is they provide a memorandum
18 that describes the general basic business terms of
19 the concession, of the RFP, sorry. The RFP, after
20 a comment period, and after meetings and review
21 with the community boards, has been shaped based
22 on those comments and then, only then is it issued
23 to everybody at once. To issue it to the
24 community board before would give people who are
25 tied into the community board, politically active

1
2 people or connected people, the ability to propose
3 ... give them a headstart, basically, give them a
4 competitive advantage that outside concessionaires
5 wouldn't have the ability to compete with. So
6 when I saw the concession, after having been to
7 all the community board meetings, I saw it the
8 same time everybody else did, and the members of
9 the community board saw it for the first time as
10 well. So I do know for a fact that, and based on
11 my discussions with the community board, I know
12 that many of their requests for the RFP were in
13 fact integral and the contract was very much
14 shaped by the requirements set forth by the
15 community board. For example, if I could just
16 take another minute, for example, one of the major
17 concerns in our concession was the prior
18 concessionaires, the noise that they made. They
19 had concerts there that attracted thousands of
20 people, disturbing people as far north as
21 Riverdale. So one of the requirements was, no
22 amplified music, which is extremely onerous for
23 me, but made it through the community board
24 process and into our actual contract. You can, if
25 you have the contract, you can see it, the

1
2 limitations of our ability to play amplified
3 music. And we have to get community board
4 approval in order to get that. So I find it very
5 doubtful that any community board is not receiving
6 notice of - just based on my own experience,
7 having seen it from both sides - that the
8 community boards are not receiving notice and
9 opportunities to input. Whether they provide
10 input, I think, is another issue. You know, we
11 can talk another day about whether community
12 boards ... how functional community boards are, and
13 who they actually represent. But the community
14 boards do have an opportunity to participate in
15 the process. And regarding this proposed rule,
16 I'm not really sure how it fits in with the
17 general discussion about Parks process, I think it
18 doesn't. I don't really see the point where most
19 contracts allow Parks the ability to enforce the
20 rules anyway, I'm just not really sure where
21 that's coming from. So, if you have any
22 questions, I'm happy to answer them.

23 CHAIR PERSON MARK-VIVERITO: I
24 appreciate all three, the testimony that you've
25 provided. Thank you very much. I also just want

1
2 to recognize that I have ... Patricia Dolan has
3 presented just a brief statement in support of the
4 legislation, and that will be put into the record.
5 The next panel is Cesar Fuentes, Lee Finkel,
6 Mitchell Balmuth, and then we have one last panel
7 after that. And we may just be out of here right
8 on time.

9 MR. FUENTES: Yeah, good afternoon,
10 Honorable City Council Members, my name is Cesar
11 Fuentes, and I'm the executive director of the
12 Food Vendors Committee of Red Hook Park, also
13 known popularly as the Red Hook Food Vendors. I'm
14 here today not just to represent one of the most
15 authentic and popular minority-owned concessions
16 in New York City, but also to share with you a
17 real story, the story of my family. We were given
18 an opportunity to set a small concession stand at
19 the Red Hook ball fields twelve years ago. They
20 began their unlikely odyssey into business
21 entrepreneurship with a small investment, just
22 enough to afford them a few basic items, including
23 a table, some chairs and a secondhand grill. They
24 first item they sold, a cup of coffee, was given
25 away free of charge to the first customer, as they

1
2 did not have enough money to break change for a
3 \$20 bill. This year my family was given the
4 opportunity to set a concession stand at the
5 Summer Stage Concert Series in Central Park, one
6 of the most sought after and successful venues of
7 its type in the city, run by the City Parks
8 Conservancy, and at this time, you better believe
9 that we'll have enough change to handle the
10 crowds. Their secret to success is simple: a good
11 family recipe, hard work, a dream, and an
12 incredible opportunity to set up shop at the Red
13 Hook ball fields. My family, as part of the
14 vendors group that I represent, have benefited
15 immensely from the opportunity to hold a share
16 concession at an affordable rate, which is tailor-
17 fitted to the specific sites and needs of our
18 organization. Because of this custom-made
19 relationship, New York City Parks Department has
20 allowed many entry-level entrepreneurs, like the
21 Red Hook food vendors who would otherwise be
22 priced out of their dreams, grow and flourish into
23 popular, authentic and unique destinations that
24 add to the flavor and character of this city.
25 Honorable City Council Members, the reason for my

1
2 testimony is to bring light to the good
3 relationship established between New York City
4 Parks Department and concessionaires like the Red
5 Hook food vendors, a relationship built on
6 individualized care and understanding of the needs
7 of our affairs. The knowledge that, just like New
8 Yorkers in general, concessions are unique and
9 distinctive to the neighborhood they belong. They
10 take shape and evolve according to the unique
11 needs of their patrons and community, that no two
12 are, nor there should be, alike. I hope that you
13 consider my testimony and remember my family's
14 story as a reflection of a broader reality. To
15 end my story, a Spanish version of a popular
16 saying, what is not broken doesn't need fixing.
17 Thank you.

18 MR. BALMUTH: I like the last
19 statement he said, what's not broken doesn't need
20 fixing. That's the first thing I would like to
21 say. My name is Mitchell Balmuth, I'm a first
22 amendment vendor, and I've been ... I sold first my
23 wife's artwork, and now I'm selling political
24 buttons. So now even members of the City Council
25 understand that this is a first amendment

1 activity. Now I have nothing against concessions
2 except when concessions are being used to get rid
3 of the first amendment, and a lot of the
4 complaints about first amendment vendors have been
5 enumerated in other hearings, and I will make this
6 short, because I hope we will have a hearing on
7 that issue, like the Green Market. They complain
8 that the artists blockade the walkways. Here's
9 pictures of trucks, which is ... which is in their
10 contract that no trucks are supposed to be on the
11 sidewalks. Trucks are on the sidewalks. Here's
12 one with a generator and a gasoline can wrapped
13 around a tree. That can't be very good for park
14 purposes, I would expect. And then they complain
15 about us being in front of entryways, or in
16 crosswalks. I have pictures, I'm not going to go
17 through all this now, because I know you're short
18 on time. But as I said, I hope that we will have
19 a hearing on this issue. Concessions are fine,
20 but when they become the purpose of getting rid of
21 the first amendment, the three parks involved all
22 have conservancies or bids that run those parks.
23 They want us out because they find that we are ...
24 they feel that we are competition for their
25

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2 concessions. In Central Park they've lost dozens
3 of hot dog stands because disabled vets have
4 started to have hot dog stands. And also they
5 have lost all the T-shirt concessions, and they
6 feel that the artists are selling souvenirs,
7 pictures of New York City, that are in competition
8 with their concessions. In Union Square, there's
9 a huge competition for space. But even on the
10 days that the Green Market or the holiday market
11 aren't there, they still won't let art vendors
12 there in those locations. And as far as this
13 healthy food issue, the fruit concessions around
14 Central Park, well, they've lost the hot dog
15 concession that was paying \$350,000 for one hot
16 dog cart, of two hot dog carts, in front of the
17 steps of the Met. So now because they can't get a
18 new concessionaire, because of the disabled vets,
19 they are putting in fruit vendors to show that
20 they're giving healthy food all of a sudden.
21 Believe me, if they could get a hot dog concession
22 to bid the same amount as before, then they would
23 have hot dogs instead of fruit concessions. They
24 actually put the fruit concession in one of the
25 spots that they're taking away from artists.

1
2 Thank you.

3 MR. FINKEL: My name is Lee Finkel,
4 I'm the regional director for American Golf
5 Corporation. We currently operate six golf
6 courses for you, Clearview Park in Queens, Pelham
7 Bay and Split Rock golf courses in the Bronx,
8 Dyker Beach in Brooklyn, and La Tourette and South
9 Shore in Staten Island. American Golf has been a
10 concessionaire in New York City since 1984. Prior
11 to us taking over the contract, the city was
12 losing approximately \$2 million a year, that posed
13 a tremendous burden on the city, and those losses
14 had to be subsidized right out of the general
15 fund. As a result of those losses, the golf
16 courses fell into considerable disrepair and did
17 not receive the capital improvement dollars to
18 preserve, let alone improve, those important city
19 assets. The city chose a public/private
20 partnership with American Golf to provide
21 professional management for the golf courses, and
22 now we contribute approximately \$4 million in
23 terms of rent to the city every year. American
24 Golf also invested more than \$20 million in much-
25 needed capital to upgrade these facilities. The

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2 city has had to take zero financial risk from any
3 operations of the golf course. However, they do
4 still share in the revenue increases resulting
5 from this capital investment. The considerable
6 investment was only possible through this
7 public/private partnership. Additionally, the
8 golf courses contribute about \$400 thousand worth
9 of improvements under its contract. I would like
10 to say that it seems like there's an opinion that
11 there's not a lot of oversight. I can say that
12 there's a considerable amount of oversight on how
13 our properties are operated. It does not provide
14 unlimited rights to us. It is critical that we do
15 try to make some money to recoup these investments
16 and to be able to take care of the assets
17 properly. I can tell you that in my experience in
18 other cities like Los Angeles, San Francisco, have
19 retained their city operations of the golf courses
20 and have found themselves in significantly poor
21 cash positions, because they've had to subsidize
22 these facilities, and they are now currently
23 actually looking to privatize them. American Golf
24 prides itself on being a good neighbor with Parks.
25 We partner with the City Parks Foundation to

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2 provide maintenance services to the Dyker Junior
3 Golf Center. We provide access to the
4 Foundation's lessons and players development.

5 Over the years, American Golf and American Golf
6 Foundation have donated over a half a million
7 dollars to the Parks Foundation. I'm sure David
8 Rivel would speak of our partnership warmly. As a
9 side note, if I'm going to get an extra second, we
10 open up our courses routinely to all junior
11 golfers, so all of the city golf programs, the
12 high school golf programs, play at all of our
13 courses for free, routinely. We routinely open up
14 for, once a year at the minimum, every course
15 donates, and completely donates, the golf course
16 to a charity that we pick, that they community
17 picks. We do work closely with the community
18 boards, where their involvement ... where they show
19 that they want to be involved. Recently the
20 community board at Clearview in Queens seemed to
21 be upset about how some of the perimeter was being
22 maintained, and I find it particularly interesting
23 to this event, because we do maintain over 50 feet
24 outside of that. We're working with that
25 community board, they seem very satisfied. We

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2 really, really do try to be a good neighbor. And
3 to speak to that event, you know, to 21-2010, it's
4 just not really realistic or feasible to be able
5 to sit here and tell you that I can mark out 150
6 acres to the foot. And frankly, we butt up
7 against a lot of other park land, so we're marking
8 parks to parks, it's just not feasible. It really
9 isn't, and it would obviously put a really undue
10 and unreasonable burden on the operations.

11 Personally, from sitting here now and listening to
12 this, not so much as, you know, Lee Finkel, RD,
13 just Lee Finkel, citizen, it seems to me that if
14 your desire and your goal is to get more public
15 interaction and public oversight, into how the
16 concessions are run, that's a positive thing. I
17 personally struggle to understand how me marking
18 153 acres on a golf accomplishes that goal. So.

19 CHAIR PERSON MARK-VIVERITO: Well,
20 I think ... I appreciate the testimony of all three.
21 I think when we look at the legislation, I think
22 the idea there was more for maybe, you know, not
23 the fixed concessions per se, you know, but more
24 about maybe the carts or the things that are more
25 mobile, you know. But those are things that

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obviously, the testimony is important.

MR. FINKEL: Right.

CHAIR PERSON MARK-VIVERITO:

Because that gives us more input and insight into the legislation.

MR. FINKEL: You can see how when I read this and it's within a foot and a thousand dollar fine.

CHAIR PERSON MARK-VIVERITO: Sure.

MR. FINKEL: Per event, and I've got thousands of acres that we maintain.

CHAIR PERSON MARK-VIVERITO: Right.

MR. FINKEL: For you, it's ...

CHAIR PERSON MARK-VIVERITO: Well, thank you all for your testimony.

MR. FINKEL: Thank you.

CHAIR PERSON MARK-VIVERITO: Thank you very much. And the last two are Ron McKechnie and Jeffrey Croft. Would you like to start, Mr. McKechnie?

MR. McKECHNIE: Sure. I'm the president of Conservatory Sailboat Rentals, and fifteen years ago we started a pretty unique concession in Central Park, the only one of its

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2 kind in the world, where we rented out remote
3 control model sailboats at the Conservatory water,
4 72nd and Fifth Avenue. Every so many years you
5 have to go through this RFP process and no one
6 ever bids against me because they don't understand
7 what the hell I do. Anyway, in dealing with the
8 Parks, it's very draconian, they sort of dictate
9 the terms, and it's not really a negotiation.

10 This last time I went through the RFP, was very
11 troubled. They're three blocks away, they can't
12 get anything right, okay? The RFP was troubled, I
13 presented the difficulties to the project manager,
14 Eve Mersfelder, who has probably been run out of
15 town. Anyway, the first document is in

16 highlighting, I state that the ... or this is
17 Charles Kloth, who was here earlier. He said that
18 my proposal was non-responsive because I didn't
19 use the current rental fee for my rental boats.

20 Well, I'm the only guy in the world that's been
21 doing it, okay? I submit an appeal letter, which
22 I can, which William Thompson, the City
23 Controller, is copied, no word from him. And I
24 state that the current rental fee is \$10 per half
25 hour and has been for several years. Okay? The

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2 next one, you see a photograph of me on Central
3 Park's own website, dated the summer of 2007,
4 where I actually state what the current rental fee
5 is, okay? This has got me like very troubled.
6 Then, and all this is under Ms. Smith's
7 letterhead. Then I get a rejection of my appeal
8 by Ms. Smith, dated April 2nd, 2009, she gives a
9 completely different reason for the finding of
10 non-responsiveness. She says that I did not
11 include a specific dollar amount in my fee offer.
12 Well, actually I did. Right at ... the day that the
13 proposal was submitted, Eve Mersfelder called me
14 up and asked me to ... see, I represented everything
15 as a percentage of my current rental fee, so she
16 wanted a dollar amount so that they could compare
17 with other proposals, which did not exist. And so
18 I sent her overnight a ... this is the next one ...
19 dated February 5th, which says, "Per your request,
20 these are the numbers", okay? And that was
21 attached to the proposal that I submitted. I
22 don't believe that Ms. Smith even read my appeal.
23 I think there's a lot of ... this process needs a
24 lot more transparency, because obviously there's
25 some backroom stuff going on. Anyway, this has

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2 been a disaster. They put me through a second RFP
3 process, this time I finally have competition,
4 okay? And they said that ... well, and I filed
5 another appeal. William S. Thompson, Jr. was
6 copied on it, nothing from him. And then when I
7 contacted his office, Mr. John Goddard, they
8 couldn't find any paperwork, I re-sent everything.
9 Nothing happened on it. I've been through the
10 process twice, I've had a year of grief from these
11 people, and I finally said, this is it. I hired
12 an attorney and I filed an article 78 procedure
13 against Ms. Smith. I didn't succeed in my
14 petition because, you should never find a lawyer
15 on the internet and then choose him because he has
16 a cool website. This guy was incompetent. The
17 Justice, Ms. Goodman, was like bogged down with
18 200 cases. And then I find out that the article
19 78 procedure is set up that a petitioner is
20 considered to be the nuisance, and that the
21 agency, be it city, state or federal, they have
22 done everything right. And this is like really a
23 shame. I put almost fifteen years of my life down
24 there, I'm very angry. I've been screwed by the
25 city, they are not ... nobody's held accountable,

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2 okay? And then I find out that this guy that they
3 awarded my concession to, that permit, he's going
4 around bragging he's a friend of Mayor
5 Bloomberg's. So now we've got nepotism. We've
6 got incompetence, because they can't right,
7 they've got nepotism on how they award the
8 contract. There's all this stuff going on behind
9 the scenes, I consider it to be fraudulent. Fraud
10 is where you, you pervert the truth in order to
11 take somebody's right away from them. Okay, that
12 is what has gone on here, is fraud. And it's
13 happening in the Parks Department and these
14 people, they're arrogant, they think they can do
15 whatever they want. And I don't know, you people
16 can do something or just sit on your hands like
17 all the other people I've contacted in the city.
18 It's up to you, but this should be looked into. I
19 would even get our new district attorney to take a
20 look at it, what goes on there. But it is, things
21 are going on behind closed doors, there's a lot of
22 little funny games going on, and they're taking
23 care of their friends. And this guy is not the
24 first one, there's the other guy, Peter, who did
25 the food concession for Summer Stage, he was Mayor

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2 Koch's financial adviser. I don't know what he
3 knew about, you know, running a food concession
4 more than the barbecue in his backyard. But this
5 is disgraceful, you know, to be put through this,
6 you know. Thank you for the extra time.

7 CHAIR PERSON MARK-VIVERITO: Okay.
8 Well no, thank you for your testimony. Because
9 obviously the purpose of this hearing was to, you
10 know, speak on the bill that's been introduced,
11 but also overall in terms of the concessions
12 process and how improvements can be made. So, you
13 know, experiences, really personal experiences, of
14 having gone through that process are very helpful
15 in giving us more insight, so I really appreciate
16 it, and I'm sorry for what you had to go through.

17 MR. McKECHNIE: An improvement
18 would probably be a housecleaning and, you know,
19 these people just cannot keep going on with it.
20 They destroy people by doing so.

21 CHAIR PERSON MARK-VIVERITO: Thank
22 you, Mr. McKechnie.

23 MR. CROFT: Good afternoon, my name
24 is Jeffrey Croft, I'm the president of New York
25 City Park Advocates. The amount of commercial

1
2 events and commercial activity has exploded on
3 city park land in recent years. Parks Department
4 is increasingly relying on these revenue deals to
5 help make up cuts in the city's general budget but
6 turning our public parks into cash cows. Ms.
7 Betsy Smith's division at the Parks Department is
8 now in charge of over \$110 million in revenue from
9 concessions and lease agreements from parks. Just
10 two weeks ago Ms. Smith told Brian Lehrer on his
11 radio show that the mayor looks at the parks, at
12 parks revenue when deciding the Parks Department
13 budget. This is outrageous. The mission of the
14 Parks Department is not to provide revenue for the
15 city, or prevent the public from accessing public
16 park land. Last year when the mayor was ... when
17 the mayor asked for 12% cuts in the Parks
18 Department, Parks Commissioner Adrian Benepe said,
19 "We have achieved our target for 12% savings
20 through our agency's revenue and expense budget."
21 We, as we are all aware, community-based planning
22 and consultation is a major source of contention
23 in this administration with regard to its parks.
24 Many communities do not feel they have a say. The
25 recent attempt to seize a popular ball field under

1
2 the 59th Street bridge is just one example. It
3 began with a for-profit tennis club enclosing the
4 park in a bubble for six months of the year. Over
5 the years the private tennis group slowly
6 encroached on this community's public space and
7 the bubble was eventually expanded to eight
8 months. Without community consultation or
9 approval, the city made a behind-closed-door deal
10 to extend the tennis concession to twelve months a
11 year. Even though this ball field is the only
12 publicly-accessible lit, non-asphalt field
13 available for miles, even though this community
14 has the least amount of park and open space in the
15 entire city, Mayor Bloomberg and Betsy Smith
16 attempted to displace children in the community by
17 taking it away. This agreement would have
18 displaced hundreds of children and community
19 residents in order to accommodate a pay-to-play
20 concessionaire who charges the highest rates of
21 any tennis facility on city park land, up to \$180
22 an hour. The concessionaire planned to charge
23 \$795 per child per week for their summer camp,
24 which would have displaced children when they have
25 few options. This is not a public amenity, but

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2 instead a private business being allowed to
3 operate on city park land. The local community
4 board had its first meeting about this issue three
5 months after the contract had already been signed.
6 Unfortunately this battle, like many others, had
7 to be played out in a very public way in order for
8 this to be resolved, and in this case, defeated.
9 This is yet another example of had the city sat
10 down with the community in the planning stages
11 before they made a decision, this could have been
12 avoided. Simply sending a letter to a community
13 board, or putting an ad in the city record, is
14 obviously not sufficient notification, as the city
15 is fully aware. We are also helping to battle the
16 proposed tennis bubbles in Central Park. The
17 city, it was recently revealed, was already in
18 negotiations with the chosen concessionaire before
19 the local community board had even had a chance to
20 discuss the issue. Randall's Island each year is
21 consumed with commercial events and activities
22 that prohibit the public from accessing major
23 parts of the island. For a fee, every year
24 Michael Bloomberg is allowed to rent out 24 acres
25 of Randall's Island for his annual corporate

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2 picnic. Many commercial events are being held on
3 the island at the expense of the public. Right
4 now Cirque du Soleil is there. In fact the
5 Renaissance Sports Foundation and the city are now
6 officially calling the southern area on Randall's
7 Island as "an event space". Who approved this?
8 And in Union Square, the city and the Union Square
9 Partnership have spent millions of dollars to
10 develop a restaurant at the expense of children
11 and the community. Despite having the least
12 amount of play space of any community board, and
13 the highest concentration of restaurants in the
14 entire city, they're still trying to install in
15 the park's historic pavilion. The community wants
16 the pavilion restored to its former use as a
17 children's recreation center and community space.
18 And in Brighton Beach, Brooklyn borough president
19 Marty Markowitz and the Mayor are attempting to
20 spend \$64 million to install an 8,000 seat
21 commercial amphitheater in the middle of a park,
22 in the middle of a quiet residential community.
23 This would destroy the community's only green
24 space. More than 12,000 people have signed a
25 petition against this irresponsible project. The

1
2 list goes on and on. Enforcement is also a huge
3 issue, the lack of full time inspectors- -

4 CHAIR PERSON MARK-VIVERITO:

5 (Interposing) Jeffrey, if you can just.

6 MR. CROFT: Yes, I'm wrapping up.

7 The lack of full time inspectors in the revenue
8 division charged with enforcing the terms of more
9 than 500 concessions must be addressed. Two is
10 obviously ridiculous, ridiculous for 14,000 acres
11 of park land. We've got a lot of complaints from
12 park employees saying these things are not being
13 addressed. In short, you know, the concession
14 process needs major work, and transparency is a
15 major issue and concern, and, you know, we look
16 forward to working with you. And also, thank you
17 very much for starting to bring these issues out.

18 CHAIR PERSON MARK-VIVERITO: Well,

19 thank you for your testimony and I know that this
20 hearing to me was very interesting. It really
21 shed a lot of light on a process that I think many
22 are not extremely familiar with. So I look
23 forward to conversations with Parks to make it
24 more inclusive, in terms of the conversations with
25 the community board, and more transparent as we

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move forward, and there's a lot of information that we will be following up with Parks based on this hearing. And I know that my colleague is here for the next one. Sorry that we took a little bit of time, but with that, thank you all that came to testify today, and this hearing is adjourned.

C E R T I F I C A T E

I, Richard A. Ziats, 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 ____May 6, 2010____