

CITY COUNCIL  
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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June 28, 2013  
Start: 10:00 a.m.  
Recess: 10:51 a.m.

HELD AT: Council Chambers  
250 Broadway - Hearing Room, 14th  
Fl

B E F O R E:  
GAIL A. BREWER  
Chairperson

COUNCIL MEMBERS:  
Inez E. Dickens  
Erik Martin Dilan  
Domenic M. Recchia, Jr.  
Peter F. Vallone, Jr.  
G. Oliver Koppell

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

Laura Ringelheim  
Special Counsel  
Mayor's Office of  
Contract Services

Robert Fanuzzi  
Bronx Community Board 8

1                   CHAIRPERSON BREWER: So, good morning.  
2  
3 My name is Gale Brewer. I'm the chair of the  
4 Governmental Operations Committee, and I'm joined  
5 here by David Seitzer, who's counsel to the  
6 committee, and Tim Matusov, who's the policy analyst,  
7 and my friend and City Councilmember Inez Dickens  
8 from the Harlem community. And we will be soon  
9 joined, I hope, by Councilmember Oliver Koppell,  
10 whose bill is being considered today.

11                   We are going to be hearing intro or  
12 having a hearing on Intro 948. This bill would  
13 extend the period of time that the Franchise and  
14 Concession Review Committee, FCRC as we know it, has  
15 to act on a franchise application after it has been  
16 filed and extends the period of time that franchise  
17 or revocable consent hearings must be publicly  
18 noticed before those hearings are actually held.

19                   Franchises are rights to private entities  
20 to utilize city-owned property to provide a public  
21 service. I think many New Yorkers know it as  
22 applicable to Time Warner and Cablevision's  
23 utilization of city-owned land to run their cable  
24 lines. Such franchises, I might add that Verizon had  
25 to go through them also when they did FIOS, are

1 approved by the FCRC. Similarly, revocable consents  
2 are rights granted to private entities to construct  
3 structures on public streets and sidewalks, such as  
4 sidewalk planters, sidewalk cafes, and they are  
5 approved by various city agencies.  
6

7 Before a franchise or revocable consent  
8 can be approved, the agency in question must hold a  
9 public hearing within 30 days of the filing, and  
10 public notice of the hearing must be provided at  
11 least 15 days prior to the hearing date.

12 Unfortunately, the city has received complaints that  
13 the FCRC is only able to meet the requirement that  
14 **adhere** franchise proposals within 30 days of filing  
15 by scheduling hearings and then canceling them at the  
16 last minute. In addition, community boards have  
17 complained that the 15-day hearing notice does not  
18 provide enough time often for them to schedule their  
19 own hearings, denying them proper input into the  
20 process. Intro 948 introduced by Councilmember  
21 Koppell seeks to alleviate both of these issues.

22 I appreciate everyone who's here today  
23 and be glad to hear the first witness. Thank you  
24 very much.  
25

SPECIAL COUNSEL RINGELHEIM: Thank you.

Good afternoon, Chairwoman Brewer and members of the Committee on Governmental Operations. My name is Laura Ringelheim, and I am special counsel in the Mayor's Office of Contract Services.

I would like to thank the committee for the opportunity to testify today about Intro 948, which would amend the city charter related to public hearings and notice requirements of the Franchise and Concession Review Committee. The bill pertains to public hearings on franchises held by the FCRC, as well as public hearings by city agencies with respect to revocable consents.

By way of background, pursuant to Chapter 14 of the City Charter, the FCRC has certain oversight and approval authority with respect to franchises and concessions in the City of New York. As to franchises, the FCRC holds public hearings on franchises proposed by city agencies, and the grant of such franchises is subject to approval of the FCRC at public meeting. The director of the Mayor's Office of Contract Services is the city's chief procurement officer and is charged with insuring that city agencies comply with the New York City Charter

1 when soliciting and awarding franchises. The Special  
2 Counsel at MOX ensures compliance with applicable  
3 laws and regulations and is responsible for working  
4 closely with the submitting agency and the New York  
5 City Law Department to review and revise the  
6 franchise paperwork and other relevant documentation.  
7 In order to facilitate the award of a franchise, MOX  
8 functions as a liaison between the submitting agency,  
9 the proposed franchise Z and/or other agencies,  
10 people or entities whose roles must be coordinated.

11  
12 The FCRC is comprised of the mayor, an  
13 additional appointee of the mayor, the corporation  
14 counsel, the director of Office of Management and  
15 Budget, the comptroller, and the borough president of  
16 the borough affected by the proposed franchise. If  
17 more than one borough is affected by a particular  
18 franchise, the affected borough presidents must  
19 designate one borough president to serve as a member  
20 for purposes of voting.

21 As required by the City Charter, the FCRC  
22 holds a public meeting on the second Wednesday of  
23 every month. A public hearing is always scheduled  
24 for two days prior to the public meeting. The FCRC  
25 holds public hearings on proposed franchise

1           agreements, and the public is invited to speak or  
2           submit testimony about any of the items on the  
3           agenda. The agenda is posted on the MOX website one  
4           week prior to the hearing and is distributed at the  
5           hearing. All items calendared for the hearing are  
6           published in The City Record for 15 business days,  
7           which is three calendar weeks prior to the date of  
8           the hearing. In order to further assure that the  
9           public is given notice of upcoming FCRC franchise  
10          hearings, such notice is also published at the  
11          expense of the proposed franchisees in newspapers  
12          that meet the city charter circulation requirements.  
13          At the public meeting, the committee votes as to  
14          whether to approve the franchise agreements that have  
15          previously been considered at the public hearing.  
16          Each member of the FCRC holds one vote. Of the six  
17          total votes on the FCRC with respect to each proposed  
18          franchise, five are required to approve that  
19          franchise.  
20

21                   An understanding of franchises is also  
22                   helpful in order to assess the provisions of this  
23                   proposed legislation. A franchise confers the right  
24                   to occupy or use inalienable property of the city to  
25                   provide a public service. Examples include

1 unsubsidized bus lines, coordinated street furniture,  
2 cable television, payphones, and broadband and  
3 wireless services. The FCRC approved 26 franchise  
4 transactions in fiscal year 2012 including seven  
5 Department of Information and Technology and  
6 Telecommunications Cable Franchise agreements. In  
7 fiscal year 2012, the city's 60 existing franchises  
8 produced nearly 214.7 million in franchise fee  
9 revenue including more than 129.5 million from cable  
10 television franchisees and more than 51.4 million  
11 from the city's coordinated street furniture  
12 franchisee. Franchise agreements granted by the city  
13 with the FCRC's approval often include public  
14 benefits in addition to the payment of franchise fees  
15 to the city. For example, through partnership with  
16 local nonprofit organizations, Time Warner is  
17 creating 40 public computer centers to provide free  
18 broadband access in Brooklyn, Queens, Staten Island  
19 and Manhattan. Cablevision offers infrastructure  
20 support to public libraries in Brooklyn and the  
21 Bronx. Together, Time Warner Cable and Cablevision  
22 are building and will maintain Wi-Fi hotspots in  
23 dozens of city parks. The cable companies are also  
24 working to bring high-speed fiber optic cabling into  
25



1 nonresidential buildings not currently being served,  
2 helping to remedy the limited service options in some  
3 of the city's commercial and manufacturing areas. In  
4 addition to franchise revenue for street furniture,  
5 Cemusa, the city's coordinated street furniture  
6 franchisee, also uses its street furniture in a  
7 variety of cities around the world to provide the  
8 city with advertising and marketing opportunities  
9 reaching potential tourists internationally.  
10

11           The proposed legislation would change the  
12 timeframe within which an agency proposing a  
13 franchise would be required to publish the notice of  
14 public hearing in The City Record from 15 days to 30  
15 days for newly proposed agreements. Instead of  
16 achieving the goal of more transparency and giving  
17 notice to the public, we believe this change would  
18 almost certainly make the process more confusing and  
19 burdensome.

20           Currently, a notice of public hearing  
21 regarding a proposed franchise agreement begins its  
22 15-day publication about one week after the last  
23 hearing is held. For example, if a public hearing is  
24 held on April 8th, notice of the next hearing is  
25 published beginning about April 15th, and it runs

1 continually until the date of the hearing. The  
2 proposed change to increase the publication to 30  
3 days would mean the publication begins before the  
4 prior hearing is even held. Items that are  
5 calendared for different months would run  
6 simultaneously, which we believe would simply make  
7 the process more confusing. Under the current  
8 process, the public has three calendar weeks of  
9 notice before the item comes to a hearing, fitting  
10 appropriately within the FCRC's monthly schedule.  
11 The fact that these hearings are held monthly is why  
12 the proposed legislation would not work and would be  
13 counterproductive. The current formula of publishing  
14 each notice one week following the last hearing keeps  
15 the process clear and simple while providing ample  
16 notice to those who wish to attend or submit  
17 testimony.

18  
19 The bill also seeks to introduce a new  
20 concept of renewal that may present an additional  
21 hurdle and expense for businesses and individuals who  
22 have already completed the FCR process by requiring  
23 publication of another notice of public hearing prior  
24 to the renewal of an existing franchise. It is  
25 important to note that if we understand the concept

1 of renewal as referring to an option to renew  
2 included in an existing franchise agreement, the  
3 terms of such renewal will have already been reviewed  
4 by the FCRC subject to a public hearing held by the  
5 FCRC and have been voted on by the FCRC. In such a  
6 context, the requirement of an additional public  
7 hearing does not make sense procedurally. Franchise  
8 agreements require a vote by members of the FCRC at a  
9 public meeting. A public hearing is held two days  
10 immediately prior to the scheduled vote so the public  
11 can be heard regarding each franchise item that is  
12 expected to be voted on two days later. Any renewal  
13 options, contemplated, and signed franchise  
14 agreements will have already been subject to a public  
15 hearing and FCRC vote. Since the FCRC will not be  
16 voting again on the item, an additional public  
17 hearing would have no practical effect. The expenses  
18 imposed upon the franchisee to hold public hearings  
19 are significant and can total thousands of dollars  
20 for costs such as newspaper publication, attorneys  
21 and special outside regulatory counsel and travel.  
22 It would be ill-advised to add another layer of  
23 expenses for a process that the franchisee previously  
24 completed merely to exercise a renewal option already  
25

1 negotiated and approved by the FCRC. In general, the  
2 proposed changes in this bill would add unnecessary  
3 obstacles for new entrants to offer competitive  
4 public services in New York City. Instead of adding  
5 obstacles, we should, whenever possible, be  
6 facilitating entry into the New York City marketplace  
7 on reasonable terms but without unnecessary  
8 procedural impediments. New entrants increase the  
9 competitive options for consumers, decrease the cost  
10 of services, bring jobs and revenue to the city, and  
11 strengthen our infrastructure and our economy's  
12 resiliency. New entrants seeking to provide public  
13 services often face high startup costs and stiff  
14 competition from established service providers. New  
15 Yorkers can benefit from increased competition, but  
16 adding unnecessary procedural hurdles will hamper  
17 that competition, when our goal should be to foster  
18 it.  
19

20 And finally, some comments about  
21 revocable consents which I will refer to today as  
22 consents. These are grants of a right to an  
23 individual or entity to construct and maintain  
24 certain structures on, over or under the inalienable  
25 property of the city, and the city's department of

1 transportation grants the majority of consents, and  
2 DOT must approve all consents that are granted by  
3 other agencies. Generally consents are granted for a  
4 term of ten years for which there is an annual fee.  
5 At the end of the term they may be renewed. However,  
6 as the name implies the City retains the right to  
7 revoke a consent at any time. Therefore, the length  
8 of the term of the consent does not constrain the  
9 city's right to terminate it at any time. Consents  
10 are for the use and benefit of the applicant who is  
11 often the owner or lessee of a budding private  
12 property that will benefit from the structure as in  
13 the case of consents for sidewalk plaques, planters,  
14 benches, brownstone steps and similar facilities.

15  
16 Consents follow process is set forth in  
17 Chapter 14 of the New York City Charter and in the  
18 Revocable Consent Rules adopted by DOT set forth in  
19 Title 34, Chapter 7 of the Rules of the City of New  
20 York. The responsible agency conducts public  
21 hearings, and MOX oversees compliance with applicable  
22 laws and regulations. In fiscal year 2012, the DOT  
23 registered 91 consents with a total projected value  
24 of nearly \$17 million dollars.

1  
2           Currently DOT holds a public hearing on  
3 the terms and conditions of a proposed consent. All  
4 items calendar for the hearing are published in The  
5 City Record for 15 business days which is three  
6 calendar dates prior to the date of the hearing. In  
7 order to further assure that the public is given  
8 notice of upcoming hearings held by DOT, notice is  
9 also published in advance of the hearings at the  
10 expense of the proposed holder of the revocable  
11 consent in newspapers that meet city charter  
12 circulation requirements. Such public hearings are  
13 held biweekly and monthly if there are not enough  
14 applicants. Further is the practice of DOT to afford  
15 a 10-day-period subsequent to each consent hearing,  
16 during which time the public can comment. Increasing  
17 the length of time to publish the notice of the  
18 hearing may result in the same confusion for consents  
19 as we explained for franchises and potentially more  
20 so given the shorter timeframe before hearings.

21           For the foregoing reasons, we believe  
22 that the amendments are not necessary and would  
23 complicate an already lengthy process. We welcome  
24 the opportunity to further discuss the issues with  
25 the committee. Perhaps, we can determine whether

1  
2 there are ways that the committee and the  
3 administration can ameliorate issues that are of  
4 concern to the counsel.

5 Thank you again for the opportunity to  
6 appear before you today. I'd be happy to answer any  
7 questions that you may have at this time.

8 COUNCILPERSON BREWER: Thank you very  
9 much. Now I'm glad I've been joined by Council  
10 Member Koppell. I don't know if he wants to make an  
11 opening statement or some comments before we start  
12 our questions. Councilman?

13 COUNCIL MEMBER KOPPELL: Yes, I'm sorry  
14 that I was late, Madam Chair. I've looked briefly at  
15 the comments of the city here, and I'm a little bit  
16 confused because if the problem is coordinating with  
17 other requirements while giving the community board  
18 more time, we can change those other dates so that we  
19 don't have the problem. The whole idea here is to  
20 give the community board greater time. This bill  
21 comes to me at the request of a community board which  
22 had a difficult decision to make with respect to a  
23 franchise for an ice skating rink in my district, and  
24 they've asked and I believe at least one other  
25 community board has agreed that more time should be

1 allowed. I heard your comments and I haven't been  
2 able to, you know, put down the different timeframes  
3 and compare them, but if the problem is that by  
4 increasing from 30 days, what is it, to 45 days, if  
5 that creates a problem with publication dates we can  
6 change the publication dates too so that there's the  
7 proper time between the publication and the  
8 consideration of the item. So, if that's the problem  
9 I'm happy to work with you and I'm sure the committee  
10 will work with you. Is that the problem?

12 SPECIAL COUNSEL RINGELHEIM: I'm not sure  
13 as you address it that's the problem. The charter  
14 mandates that the meetings be held monthly, on the  
15 second Wednesday of every month.

16 COUNCIL MEMBER KOPPELL: Right.

17 SPECIAL COUNSEL RINGELHEIM: So, what  
18 we're saying, and the hearing is held two days before  
19 that meeting, so it's not that we want to move the  
20 meeting dates, if they're held monthly, we're trying  
21 to give as much notice, or the way the charter is now  
22 it gives as much notice as practicable after the last  
23 meeting, before the next meeting, the next hearing  
24 and meeting.



1  
2 COUNCIL MEMBER KOPPELL: I'm not sure I  
3 fully understand that and can understand it unless  
4 we, you know, put the dates down on a piece of paper.

5 SPECIAL COUNSEL RINGELHEIM: It looks  
6 better on a calendar.

7 COUNCIL MEMBER KOPPELL: I mean would it  
8 be better to make it 60 days so that would conform  
9 more to the monthly meeting?

10 SPECIAL COUNSEL RINGELHEIM: We think  
11 that if you begin the publication of the notice  
12 before the meeting takes place, before two meetings  
13 take place, then there's confusion on when the actual  
14 hearing is taking place and when the vote is taking  
15 place.

16 COUNCIL MEMBER KOPPELL: But you can  
17 clear that up in the notice. You can just say  
18 exactly what's gonna happen at each event, right?

19 SPECIAL COUNSEL RINGELHEIM: Well, the  
20 way that the proposed legislation is written, it  
21 would add six weeks because it's business days versus  
22 calendar days, so The City Record is only published  
23 during business days, and in effect saying we want to  
24 publish it for 30 days really means six calendar  
25 weeks. So then you have a meeting two weeks after

1 the publication of the notice at which time that item  
2 would not be on the calendar for the following two  
3 weeks, so it would take six weeks. You'd have lots  
4 of notices published for different hearings.  
5

6 COUNCIL MEMBER KOPPELL: But we can  
7 change the notice dates if that would make it clear.  
8 All we want to do is give the community board more  
9 time to consider this, and whatever dates have to be  
10 changed so that there's appropriate notice is fine.  
11 I'd be happy to sit down with you at any time. We  
12 can do it today, we can do it next week, anytime, and  
13 I actually would leave it to the committee staff to  
14 do this.

15 The problem is that we ran up against the  
16 fact that the 30-day date didn't give the time to the  
17 community board to consider the franchise  
18 appropriately, and that's why they asked that the  
19 time be extended, and I think that makes sense.

20 SPECIAL COUNSEL RINGELHEIM: I mean the  
21 other problem that we see with extending the time is  
22 in order to... it's already a lengthy process. We're  
23 already for, and when you say ice skating rink, it's  
24 possible that we're confusing a franchise and a  
25 concession agreement. It's already a lengthy process

1  
2 that can take six months from the time that a vendor  
3 or franchisee gets to the vote. Our concern is that  
4 making this timeframe longer will, if you're going to  
5 extend it for a six-week publication, the proposed  
6 franchisee is going to miss a couple of meetings at  
7 which time there can be a vote. I'm not sure why the  
8 problem with publishing three weeks doesn't give a  
9 community board enough time to consider the item.

10 COUNCIL MEMBER KOPPELL: All I can say is  
11 that as I read this, all we're trying to do is add 15  
12 days... well, no, 30 days, I guess. Yeah. I just  
13 don't see that this is a big deal. I mean the fact  
14 is it takes six months or it takes seven months.  
15 That's not, in my opinion, a major issue. We can  
16 change whatever other parts to the process there are.  
17 This is just one part and at worst it would increase  
18 it by 30 days.

19 SPECIAL COUNSEL RINGELHEIM: Well,  
20 increase it by an additional three weeks. It's  
21 already at a minimum of three calendar weeks. This  
22 would increase it by an additional minimum three  
23 calendar weeks.

24

25

1  
2 CHAIRPERSON BREWER: I have one question.  
3 Does it indicate in the charter whether it is  
4 calendar or business days because I'm not sure it  
5 does, which do you say it says?

6 SPECIAL COUNSEL RINGELHEIM: It's  
7 business days.

8 CHAIRPERSON BREWER: It says business  
9 days?

10 SPECIAL COUNSEL RINGELHEIM: It's 15  
11 business days, and since the city charter isn't  
12 published on Saturdays, Sundays or holidays. It's in  
13 effect three weeks.

14 CHAIRPERSON BREWER: I think at some  
15 point you might have to show where it says business  
16 days because it's not clear to us.

17 SPECIAL COUNSEL RINGELHEIM: I have the  
18 charter provisions with me, but I'm not sure I can  
19 point out...

20 CHAIRPERSON BREWER: We can do it later,  
21 but I'm just saying that seems to be not clear.  
22 While we're waiting, Council Member Dickens, you had  
23 a question and then I'll come back.

24

25

1  
2 COUNCIL MEMBER DICKENS: Yes, thank you,  
3 Madam Chair. The community boards also meet once a  
4 month, and they're made up of volunteers of the  
5 community with an interest in the community, so I  
6 kind of take exception to your statement that you  
7 don't understand why they can't, because they too  
8 meet once a month. But having said that, that they  
9 only meet once a month, since the review committee  
10 frequently cancels meetings, and I don't understand  
11 what the timeframe, you know, is such a big deal,  
12 such a problem, because they cancel meetings at the  
13 last minute, and so apparently the timing is not as  
14 big of a concern as being proposed here. Can you  
15 please explain that?

16 SPECIAL COUNSEL RINGELHEIM: Well, when  
17 you say cancel meet... we only cancel the meetings if  
18 there are no items on the agenda. So if we don't  
19 have anything for that month, then we cancel the  
20 meetings. We never pull an item and cancel or at  
21 least since I've been there. We don't pull an item  
22 and cancel it.

23 COUNCIL MEMBER DICKENS: So there were  
24 five cancelations, for instance, that were done out  
25

1  
2 of the 13 scheduled. So for five of them, there was  
3 nothing on the agenda, is that what it was?

4 SPECIAL COUNSEL RINGELHEIM: That's  
5 correct, that's correct. So that determination has  
6 to be made already by the time we can get it into The  
7 City Record. It's even more than the three weeks.

8 COUNCIL MEMBER DICKENS: Well, since  
9 there seems to be so little that this committee has  
10 to do, maybe there's, Council Member Koppell, maybe  
11 they're meeting too frequently. Maybe the charter  
12 needs to be...

13 SPECIAL COUNSEL RINGELHEIM: Well, if I  
14 could comment on that... just reviewing my records from  
15 the prior year, I think there were maybe four  
16 cancelations of the public hearing and the public  
17 meeting. So it meets 24 times a year, 12 meetings,  
18 12 hearings; there were maybe three or four  
19 cancelations the prior year. After Sandy, it did  
20 slow down. There were a few months that things just  
21 didn't make it to the calendar, but in general, there  
22 is something calendared for at least a hearing or a  
23 meeting monthly.

1                   COUNCIL MEMBER DICKENS:   Except the five  
2  
3 that were canceled, with nothing scheduled.  So do  
4 you understand what I'm saying?

5                   COUNCIL MEMBER KOPPELL:  Yes, yes.  Well,  
6 that's something we could look at certainly.

7                   COUNCIL MEMBER DICKENS:  Thank you so  
8 much.

9                   COUNCIL MEMBER KOPPELL:  No, again, I'm  
10 happy to sit down with you, and I'm sure the  
11 committee staff is to work out the proper sequence,  
12 but the point is that some of these agreements, at  
13 least the one that I'm familiar with, were quite  
14 contentious, and the community wants to have the time  
15 to adequately consider these matters, and with  
16 respect to the renewal, I think it is very important  
17 to have the community board look at the renewal of  
18 these franchises.  I'll just give you an example.  I  
19 had a fairly contentious interchange with the  
20 commission of Department of Parks about a particular  
21 franchise that happens to also be in Van Cortlandt  
22 Park in my district, which is subject to renewal, and  
23 I think that it's going to be very important to look  
24 at whether that franchise should be renewed.  It's of  
25 the stable.  I don't want to divert, but all I can

1 say to you is that I think the renewal, looking at a  
2 renewal is particularly important because we now have  
3 experience with the franchisee, and before the city  
4 renews that permit it is important that the community  
5 have an opportunity. After all, this is merely  
6 advisory. The community can't stop the franchise.  
7 It's merely advisory and there were considerable  
8 concerns raised in connection with the skating rink  
9 issue. It was very contentious. It was ultimately  
10 approved and I think ultimately a good thing, and I  
11 think part of the reason that it is a good thing, and  
12 that it is that a lot of the concerns that the  
13 community board expressed were addressed. So this is  
14 not... I think giving the community board an adequate  
15 time is not a frill. It's something that really is  
16 helpful, and I would, as I say, I'm happy to sit down  
17 with you or whoever else and work out whatever other  
18 dates may have to be adjusted given your a statement.

20 SPECIAL COUNSEL RINGELHEIM: If I could  
21 just point out, the community board is by the FCRC  
22 rules by the rules of the City of New York, they're  
23 notified by letter and all of the franchises and  
24 concessions are discussed with the community board 40  
25 days prior to any solicitation even being released.



1           So we're talking months. The community board has  
2 notice months before the actual hearing or meeting  
3 date. It isn't just these three weeks. For every  
4 single item that comes before the committee, there's  
5 already been six months of opportunity and I know  
6 Parks Department, which isn't at issue here because  
7 that's a concession, but all of the agencies are  
8 required to give notice and give the opportunity to  
9 meet and speak with community boards at least six  
10 months prior in most situations.

12           COUNCIL MEMBER KOPPELL: Madam Chair, I'm  
13 not going to say anything more. We have several  
14 representatives of the community board here who will  
15 testify why this is needed and maybe the  
16 representative of the city who just testified could  
17 wait and listen and hear what the experience has been  
18 so that you'll understand why we want to do this.

19           CHAIRPERSON BREWER: Thank you very much.  
20 I know that we will hear from the community board,  
21 but I am really familiar with the Franchise Review  
22 Commission because of the cable contracts. That's  
23 why I spend a lot of time, I might be the only one  
24 who went to all those hearings but I did go, and I  
25 have to say that they are also... the community boards,

1 I'm sure, would like to be more part of the franchise  
2 process because between the street furniture and what  
3 the cable and Verizon contracts could be giving to  
4 the community. For instance, I think they'd like to  
5 know where the 40, what I call community technology  
6 centers will be. I bet if you ask all of the 59  
7 community boards they have no idea where they're  
8 going to be, and if you ask the community boards  
9 where the hundred or so... I think it's 100 what I call  
10 hotspots that Time Warner is doing or AT&T is doing  
11 for that matter. I bet they have no idea. I might  
12 be wrong. When the community boards come up we can  
13 ask them, but that's the problem. And so it's not  
14 just that the timing is challenging, but... and I'm not  
15 saying it's your fault, but this administration  
16 sometimes forgets there are community boards, I'm not  
17 saying it's you, so one of the questions would be  
18 for, me have you ever sat down with the community  
19 boards to say does this timing work for you?  
20 Obviously, there's a problem so they're coming to  
21 you, or have you ever sat down, and I don't know if  
22 it was you, MOX or if it's somebody else, maybe it's  
23 CAU, to say, look, we have 40 community technology  
24 centers, we have these hotspots, is this the right  
25

1 place for them to go, I don't think so. I could be  
2 wrong but I'm just saying so it's more than even the  
3 timing. It's this whole issue of how the city, you  
4 know, actually can interact with the community  
5 boards. Do you know if any of that's ever been done?

7 SPECIAL COUNSEL RINGELHEIM: I know that  
8 each agency, it's not MOX, but the agency meets with  
9 the community boards. I can find out exactly for you  
10 the dates prior to any meeting when that would occur.

11 CHAIRPERSON BREWER: I don't know that  
12 that kind of information gets transferred, but I  
13 think it's also your responsibility as a monitor to a  
14 certain extent, that you pass this you might want to  
15 know whether it's being implemented or not.

16 SPECIAL COUNSEL RINGELHEIM: It is my  
17 responsibility, and I can assure nothing gets to the  
18 committee before... you cannot go to the committee  
19 without this notice and without meeting, giving the  
20 opportunity for the community board to meet on each  
21 item. So that occurs.

22 CHAIRPERSON BREWER: Has anything been  
23 canceled after being noticed? In other words, do the  
24 cancelations take place after something's been  
25 noticed and then, I guess there were five last year

1  
2 or this year, how does the cancelation get noticed so  
3 to speak?

4 SPECIAL COUNSEL RINGELHEIM: So, since  
5 I've been with MOX which is since October, no, there  
6 has not been a notice of public hearing where an item  
7 has then been canceled or the hearing or meeting has  
8 been canceled. I don't believe that the prior year  
9 had that as well. I think there was one item that  
10 might have been canceled in the past two years.

11 CHAIRPERSON BREWER: Okay.

12 SPECIAL COUNSEL RINGELHEIM: The hearing  
13 and meeting might be canceled if nothing is  
14 calendared, and that is published on MOX's website.

15 CHAIRPERSON BREWER: Okay. And then do  
16 you also pay attention, community boards often don't  
17 meet in committees during the summer, so is there  
18 some planning to the effect that an important item  
19 that might be of interest to a community board,  
20 although you could argue that all items are of  
21 interest to community boards, how do you deal with  
22 the summer issue, because they have sometimes they're  
23 full board meetings but not their community meetings?

24

25

1  
2 SPECIAL COUNSEL RINGELHEIM: Again, the  
3 community board would be noted. If the meeting was  
4 going to occur during July or August, the  
5 notification would've gone to the community boards in  
6 about April or May.

7 CHAIRPERSON BREWER: And then finally,  
8 this is not relevant to the community boards, but I'm  
9 a bigger opponent of webcasting, like this hearing is  
10 being webcast. Do you think it would be a good idea  
11 to webcast the Franchise and Review Commission, and I  
12 suppose would MOX also be considered a webcastable  
13 entity in terms of hearings?

14 SPECIAL COUNSEL RINGELHEIM: Well, the  
15 hearings, they're held in places open to the public,  
16 so there's nothing happening at MOX exactly that is  
17 the hearing, but I...

18 CHAIRPERSON BREWER: Because the Review  
19 Commission has hearings.

20 SPECIAL COUNSEL RINGELHEIM: To have a  
21 hearing and to televise, I really couldn't comment on  
22 that...

23 CHAIRPERSON BREWER: Okay.  
24  
25

1  
2 SPECIAL COUNSEL RINGELHEIM: ...but I could  
3 find out a position for you.

4 CHAIRPERSON BREWER: I just want  
5 everybody to know that we're going to be webcasting  
6 and passing a bill that says you need to webcast your  
7 hearings. Not you. Alright, I don't have any other  
8 further questions. Anybody down there? Okay.

9 COUNCIL MEMBER KOPPELL: And, again, in  
10 looking at this over more carefully, I'm completely  
11 confused as to what confusion would be created by  
12 having 60 days and the 30 days. It just doesn't make  
13 sense to me that that should cause a problem.

14 CHAIRPERSON BREWER: Thank you very much.

15 SPECIAL COUNSEL RINGELHEIM: Thank you.

16 CHAIRPERSON BREWER: Next is Robert Rosy  
17 from the Bronx Community Board..

18 ROBERT FANUZZI: Fanuzzi.

19 CHAIRPERSON BREWER: Fanuzzi, sorry.  
20 Bronx Community Board 8. If anybody else wants to  
21 testify, please fill out a slip with the sergeant.  
22 Thank you for joining us. Go ahead.

23 ROBERT FANUZZI: Thank you for having me.  
24 Thank you Councilman Gale Brewer and the members of  
25 the Government Operations Committee for inviting me

1 to speak to you in the matter of Intro 948 of the  
2 Local Law to amend the Administrative Code of the  
3 City of New York in relation to the public hearings  
4 and notice requirements. I'm Robert Fanuzzi, Chair  
5 of Community Board 8. Community Board 8 has taken a  
6 strong position in favor of this proposed  
7 legislation, and I speak on their behalf.

9 That we are at this juncture and I am  
10 before you is a testament to the great seriousness  
11 and respect that you and the sponsors of this bill,  
12 Council Member Koppell along with Council Members  
13 James, Palma, Williams, and Halloran record the work  
14 of my community board and all across the city. This  
15 is an important footing on which to establish my  
16 testimony. For any discussion of this bill, to have  
17 any discussion of this bill, we must first dispense  
18 with the notion that any community participation in  
19 the review of locally cited franchises, SAPO,  
20 sidewalk concessions, would be token, superfluous or  
21 an obstacle to government efficiency.

22 I refer to the relevant City Charter  
23 Sections 2700 and 2800, which explicitly affirm and  
24 articulate the role of community boards in government  
25 operations under principles known as coeterminality

1 and management decentralization. Sections 2700 and  
2 2800 of the charter clearly intend a partnership  
3 between agencies and community boards in planning, in  
4 budgeting, in regulation, in delivery, in monitoring  
5 of services, in oversight and regulation all in the  
6 name of government efficiency.  
7

8 Under the current provision for public of  
9 the Franchise, Concession and Review Committee, that  
10 principle is severely compromised. Section 371  
11 stipulates that a summary of a proposed agreement  
12 between a city agency and a company shall be  
13 published for at least 15 days except Sundays and  
14 legal holiday prior to the holding of an FCRC  
15 meeting. I'll just add to my testimony that after  
16 hearing this, that it's our experience that the FCRC  
17 is itself captive to the completion of a contract  
18 between two other parties, an agency and a private  
19 company. So, if the RFP is announced, if the agenda  
20 item is announced well in advance of 15 days, they  
21 often will not get that item or be able to calendar  
22 that agenda because that contract is not finished,  
23 and in our case this was the case, that the contract  
24 arrived late and they had the minimum time to  
25 announce. They worked within the law, but they were



1 working within the law which required them to wait  
2 for a contract. We believe that as a city agency,  
3 community boards have a right to participate in a  
4 relationship between an agency and a city company and  
5 a private company. I also believe that 371 under  
6 which we operate now, arrogates to the FCRC the right  
7 of public review, which the city charter explicitly  
8 created community boards for. It creates a new form  
9 of public review that oversteps the city charter  
10 obligations and provisions under 2700 and 2800. So  
11 the fact that the FCRC does hold public hearings does  
12 not preclude our own and our own involvement in this  
13 matter.  
14

15 Community Board 8 learned the hard way  
16 that it is extremely difficult, if not impossible, to  
17 produce adequate public review under this 15-day  
18 period. For the better part of 2011, 2012, our parts  
19 committee calendar discussion of a proposed  
20 concession in which the public had an intense  
21 interest, the first outdoor ice skating rink in the  
22 Bronx cited in Van Cordlandt Park. Month after month  
23 we did this at our regularly scheduled meeting  
24 because we could never be sure until it was too late  
25 if the FCRC was placing the item on the agenda for

1 the aforementioned reason of that contract. Like a  
2 game of cat-and-mouse, we ended up canceling our  
3 agenda three times because the FCRC did not have the  
4 contract. When the FCRC did have the contract and  
5 calendared the ice rink concession, we had no good  
6 options. With 15 days to spare, we could not  
7 schedule the Parks Committee and bring a resolution  
8 to the regularly scheduled board meeting. We would  
9 not make the Parks Committee a committee of the whole  
10 on a matter of such intense interest in which the  
11 board had such clear stake in. We had to dispense  
12 with the committee discussion we had been scheduling  
13 for the good part of a year and hold a special board  
14 meeting that like all four board meetings was  
15 conducted under parliamentary rules that delimit the  
16 extent of public interaction. Clearly, Section 371  
17 played havoc with the meeting schedule of Bronx  
18 Community Board 8, and with it the core of our  
19 government service. As community board members, our  
20 job is to announce and engage the community in open  
21 discussion about a proposed government action or  
22 agency proposal through regularly scheduled committee  
23 meetings. Those committee meetings are the lifeblood  
24 of our board, the lifeline to our community. In this  
25

1 case, the resulting uncertainty about when and if the  
2 public would have the chance to review in detail the  
3 proposed concession and actual contract engendered  
4 needless concerns about due process and the fairness  
5 of our city government. Councilman Oliver Koppell  
6 was witness to this long process and has proposed  
7 legislation that would strengthen the public's faith  
8 in open government. We believe that this is one of  
9 his finest acts of service to our community in show  
10 of support for Community Board 8, and we are deeply  
11 grateful. Immediately after Councilman Koppell  
12 proposed this bill, Community Board 8 followed with a  
13 resolution in November of 2012 that affirmed Intro  
14 948 and called on the city council to amend Section  
15 371. And if you are wondering, yes, it did go  
16 through a committee, our Law, Rules, and Ethics  
17 Committee whose chair is here now, with the full  
18 participation of the public.

19  
20 Please support the work of community  
21 boards across the city and the civic engagement of  
22 New Yorkers and join the sponsors of this bill in  
23 making public review under 371 actually practicable.  
24 At a time when New York City is endeavoring to make  
25 more and more of its public estate and its parkland

1 open and available to more and more users often  
2 through concessions, we firmly believe that the  
3 public has an even greater right to participate in  
4 this vital process than ever before. I thank you and  
5 will take your questions.

7 CHAIRPERSON BREWER: Thank you very much.  
8 I appreciate this because it's a good illustration of  
9 what the challenges are, and I'm sure other community  
10 boards would appreciate what you have to say. My  
11 question is, can you just be really specific, because  
12 one of the challenges that you described is really  
13 frustrating, that you have to keep telling the public  
14 that there's going to be a meeting about this  
15 important topic and then canceling, canceling,  
16 canceling?

17 ROBERT FANUZZI: Yes.

18 CHAIRPERSON BREWER: So if you could just  
19 describe when you finally, I guess, got notice, how  
20 late it was and what the challenges are? I know you  
21 did a little bit here, but...

22 ROBERT FANUZZI: I'd be happy to.

23 CHAIRPERSON BREWER: ...but be specific.

24 ROBERT FANUZZI: Thank you very much,  
25 yes. It was no secret that there was a proposal for

1 a concession, it is true. There had to have been a  
2 RFP, and there was intense community interest. Over  
3 that six-month-period or however long it was, between  
4 the announcement of an RFP and the actual closing of  
5 the contract, there was an intense discussion and  
6 without that contract, a lot of rumors and I'll just  
7 say anxiety and political opposition. So, we did  
8 have that on our committee agenda on a regular basis,  
9 and I must tell you that it was an extremely  
10 frustrating discussion because it was all in theory,  
11 all in air, and as you know in government, when you  
12 discuss an item without the specifics and the  
13 particulars in front of you, no good can come from  
14 that. It was more heat than light, and it honestly  
15 damaged a process that should've been a great  
16 experience for our board, a great boom to our  
17 community. The first ice skating rink in the Bronx.  
18 We're privileged to have it and we're thrilled with  
19 the way it worked out. But just putting it on the  
20 agenda, hoping that it would be on FCRC, under which  
21 they had no control, created really a minefield that  
22 put the community and all members of the community  
23 board in very difficult positions. So, yes, we did  
24 discuss it, we had to table it again and again.  
25

1           Every time that happened, the community got more sick  
2 of us talking about it and more cynical about our  
3 ability to actually produce anything. Our Parks  
4 Committee Chair Robert Bender, one of the finest  
5 members of our community board we've ever had, dug so  
6 deep into the calendar and into the roster of FCRC.  
7 He was in touch on a regular basis with a very nice  
8 man, Mr. Krauthammer [phonetic], I believe his name  
9 was, who was extremely open about the difficulties  
10 about getting the final resolution of this contract.  
11 As I emphasized, nothing is worth talking about it  
12 unless you have a piece of paper in front of you.  
13 So, we waited and we calendared, we waited and we  
14 calendared. Mr. Krauthammer did all that he could.  
15 He got it within the 15 days. They had it on their  
16 hearing schedule and then you saw what happened.  
17 But, no, we did have in our committee, and I would  
18 say that in the absence of that contract, the  
19 discussion was poor.

21                   CHAIRPERSON BREWER: But what's  
22 interesting to me is because the representative  
23 testified that community boards get notified 40 days  
24 in advance, but the problem is if you don't have a  
25 contract then what's the point of the 40 days?

1  
2           ROBERT FANUZZI: That is where the rubber  
3 hits the road. That's where we do our work, and to  
4 be able to present particulars and budgeting and  
5 location and specifics, that's how we inform our  
6 community. You don't want a community board to be  
7 acting in a vacuum. That diminishes our role and  
8 creates embarrassment for all, and that is not  
9 efficient government either.

10           CHAIRPERSON BREWER: Alright, so that's a  
11 really important part that was left off of the  
12 earlier testimony.

13           ROBERT FANUZZI: Absolutely, absolutely.

14           CHAIRPERSON BREWER: And I think this is  
15 particularly important because when you're talking  
16 about franchises which, like I said, I'm really  
17 familiar with the cable because I went to all those  
18 hearings and I have an interest and I was chair of  
19 Technology Committee, without a contract exactly what  
20 the specifics are on... I means it's slightly different  
21 perhaps on schools or housing or things where you  
22 have a more general notion of what might exist at the  
23 end of the road. The devil is really in the details  
24 of these contracts.

1  
2           ROBERT FANUZZI: Absolutely. We take our  
3 work too seriously to take it on principle, and when  
4 you do then you really do diminish the value of  
5 public review. We aim to keep the high quality of  
6 that review by actually being to review an existing  
7 contract.

8           CHAIRPERSON BREWER: I appreciate that.  
9 Council Member Koppell?

10           COUNCIL MEMBER KOPPELL: Well, let me  
11 just thank Robert Fanuzzi for testifying and for  
12 persisting in this, and the other members of the  
13 community board who are here today, I really  
14 appreciate them coming. And let me also say I  
15 appreciate, Madam Chair, you're taking the time out  
16 in a very difficult week in which you have had some  
17 great success on matters of great public importance,  
18 but taking time out even after that. I would think  
19 you would be still asleep after working so hard on  
20 getting that bill passed, but your having this  
21 hearing which is very good.

22           And I just don't understand the  
23 opposition of the city extending the time a little  
24 bit. They, themselves, admit that it's a six-month  
25 process, so if we add another 30 days, I mean what's



1 the deal. And I hope that, you know, I asked  
2 community counsel to sit down with me. I don't think  
3 there's a problem with the bill as written to tell  
4 you the truth. I don't understand the opposition,  
5 but I'll be happy to consider whatever needs, other  
6 changes may be needed, to make it more workable, but  
7 I don't think there's any need for a new change. So  
8 thank you again for doing this and I hope we move the  
9 bill.  
10

11 CHAIRPERSON BREWER: I have one other  
12 question, so once you finally got the information  
13 that the contract was available finally, then you had  
14 to schedule it sounds like a special Parks Committee  
15 hearing, how did you handle it?

16 ROBERT FANUZZI: No, we could not  
17 schedule a parks committee, that's the real point I  
18 want to make here.

19 CHAIRPERSON BREWER: Go ahead, be more  
20 specific.

21 ROBERT FANUZZI: Yes, there was no parks  
22 committee meeting ever because this fell between the  
23 previously scheduled parks committee and our next  
24 meeting, and we have to keep a consistent schedule  
25 with the public. We cannot break faith with them and

1 start making things up. So this came after our  
2 regularly scheduled meeting, and before our meeting  
3 there was no way to produce a committee resolution  
4 that the entire board could examine and then create a  
5 full position on. So, under our bylaws we needed to  
6 have a special meeting within ten days, which we did.  
7 And I want to stress although we are able to produce  
8 a very satisfactory conclusion, this is not the way  
9 that community boards should be making policy. They  
10 should not be making it from the floor of the board  
11 because that insulates them from the public. And  
12 then it's just a bunch of volunteers making their own  
13 choices. We made special effort, we had a list of  
14 public gallery session; I broke, bended and allowed a  
15 long number of speakers to come up in front of us who  
16 testified about the role of this ice skating rink,  
17 for and against, would plan our community. But under  
18 our bylaws, under the city charter, as you know, the  
19 public gallery session is severely constraint, and  
20 those special meetings, like all board meetings, are  
21 for parliamentary purpose to pass already discussed  
22 embedded resolutions. It is not to be making policy  
23 on the spot. So I think we did an amazing job in  
24 manufacturing the public review, but that's not what  
25

1 a community board meeting is for. I have to  
2 emphasize, it is not to make policy on the spot.

3  
4 CHAIRPERSON BREWER: So if Council Member  
5 Koppell's bill is to pass you would've had the extra  
6 month and you could've had your regular parks  
7 committee and done it appropriately?

8 ROBERT FANUZZI: The system would've  
9 worked.

10 CHAIRPERSON BREWER: Okay, alright.  
11 Thank you very much.

12 COUNCIL MEMBER KOPPELL: Thank you again  
13 for taking the time, and as we know all the community  
14 board people are volunteers, and I really must say  
15 it's impressive that they've taken the time to get  
16 together with me to lobby, to get this together, and  
17 then to come today.

18 CHAIRPERSON BREWER: Have you had this  
19 kind of discussion about these challenges, because  
20 the other one that's coming up, of course, is the  
21 telephone franchises.

22 ROBERT FANUZZI: I'm aware, yes.

23 CHAIRPERSON BREWER: And I've been very  
24 active in letting the community boards know that this  
25 is something that might be of interest. Do you find

1  
2 that there are a lot of other community boards  
3 interested in this topic, do they pay attention to  
4 the Franchise and Review Commission and so on, have  
5 you had any discussions?

6 ROBERT FANUZZI: Very much so. We've  
7 started this process, and we expect to be bringing  
8 this before more community boards and hopefully at  
9 the borough level discuss this as well. So I hope  
10 this is the beginning of a conversation we can have  
11 about how to make this happen.

12 CHAIRPERSON BREWER: Good, thank you very  
13 much.

14 ROBERT FANUZZI: You're welcome.

15 CHAIRPERSON BREWER: This committee will  
16 come to conclusion, but I want to thank all who  
17 participated from the city, from the community, and  
18 since I'm always very interested in what the  
19 Franchise and Review Commission is doing I appreciate  
20 the input and thank you all for being here today and  
21 we will take this under consideration. Thank you.

22

23

24

25

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date 07/03/2013