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**Testimony of Laura Ringelheim, Mayor's Office of Contract Services
Before the City Council Committee on Governmental Operations
Hearing on Intro. 948, Public Hearings and Notice Requirements of the
Franchise and Concession Review Committee**

June 28, 2013

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 ("FCRC"). The bill pertains to public hearings on franchises held by the FCRC, as well as public hearings held 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 a public meeting.

The Director of the Mayor's Office of Contract Services ("MOCS") is the City's Chief Procurement Officer and is charged with ensuring that City agencies comply with the New York City Charter when soliciting and awarding franchises. The Special Counsel at MOCS ensures compliance with applicable laws and

regulations and is responsible for working closely with the submitting agency and the New York City Law Department to review and revise the franchise paperwork and other relevant documentation. In order to facilitate the award of a franchise, MOCS functions as a liaison between the submitting agency, the proposed franchisee, and/or other agencies, people or entities whose roles must be coordinated.

Franchise and Concession Review Committee

The FCRC is comprised of the Mayor, an additional appointee of the Mayor, the Corporation Counsel, the Director of the Office of Management and Budget, the Comptroller, and the Borough President of the borough affected by the proposed franchise. If more than one borough is affected by a particular franchise, the affected Borough Presidents must designate one Borough President to serve as a member for purposes of voting.

As required by City Charter, the FCRC holds a public meeting on the second Wednesday of every month. A public hearing is always scheduled for two days prior to the public meeting.

The FCRC holds public hearings on proposed franchise agreements. The public is invited to speak or submit testimony about any of the items on the agenda. The agenda is posted on the MOCS website one week prior to the hearing and is distributed at the hearing. All items calendared for the hearing are published in the City Record for fifteen business days, which is three calendar weeks, prior to the date of the hearing. In order to further assure the public is given notice of upcoming FCRC franchise hearings, such notice is also published, at the expense of the proposed franchisees, in newspapers that meet City Charter circulation requirements.

At the public meeting, the Committee votes as to whether to approve the franchise agreements that have previously been considered at the public hearing. Each member of the FCRC holds one vote. Of the six total votes on the FCRC with respect to each proposed franchise, five are required to approve that franchise.

An understanding of franchises is also helpful in order to assess the provisions of this proposed legislation. A franchise confers the right to occupy or use the inalienable property of the City to provide a public service. Examples include unsubsidized bus lines, coordinated street furniture, cable television, payphones and broadband and wireless services. The FCRC approved 26 franchise transactions in Fiscal Year 2012, including seven Department of Information Technology and Telecommunications cable franchise agreements. In Fiscal Year 2012, the City's 60 existing franchises produced nearly \$214.7 million in franchise fee revenue, including more than \$129.5 million from cable television franchisees and more than \$51.4 million from the City's Coordinated Street Furniture franchisee.

Franchise agreements granted by the City with the FCRC's approval often include public benefits in addition to the payment of franchise fees to the City. For example, in partnership with local nonprofit organizations, Time Warner Cable is creating 40 public computer centers to provide free broadband access in Brooklyn, Queens, Staten Island and Manhattan. Cablevision offers infrastructure support to public libraries in Brooklyn and the Bronx. Together, Time Warner Cable and Cablevision are building and will maintain Wi-Fi hotspots in dozens of City parks. The cable companies are also working to bring high-speed fiber-optic cabling into non-residential buildings not currently being served, helping to remedy the limited service options in

some of the City's commercial and manufacturing areas. In addition to franchise revenue for street furniture, Cemusa, the City's Coordinated Street Furniture franchisee also uses its street furniture in a variety of cities around the world to provide the City with advertising and marketing opportunities, reaching potential tourists internationally.

Proposed Intro. 948

The proposed legislation would change the timeframe within which an agency proposing a franchise would be required to publish the Notice of Public Hearing in the City Record, from fifteen days to thirty days for newly proposed agreements. Instead of achieving the goal of more transparency and giving more notice to the public, we believe that this change would almost certainly make the process more confusing and burdensome.

Currently, a notice of public hearing regarding a proposed franchise agreement begins its fifteen-day publication about one week after the last public hearing is held. For example, if a public hearing is held on April 8th, notice of the next hearing is published beginning about April 15th and runs continually until the date of the hearing. The proposed change to increase the publication to thirty days would mean that publication begins before the prior hearing is even held. Items that are calendared for different months would run simultaneously, which, we believe, would simply make the process more confusing. Under the current process, the public has three calendar weeks of notice before the item comes to the hearing, fitting appropriately within the FCRC's monthly schedule.

The fact that these hearings are held monthly is why the proposed legislation would not work and would be counter-productive. The current formula of publishing each new notice one week following the last hearing keeps the process clear and simple while providing ample notice to those who wish to attend or submit testimony.

This bill also seeks to introduce a new concept of “renewal” that may present an additional hurdle and expense for businesses and individuals who have already completed the FCRC process, by requiring publication of another notice of public hearing prior to the renewal of an existing franchise. It is important to note that, if we correctly understand the concept of “renewal” as referring to an option to renew included in an existing franchise agreement, the terms of such renewal will have already been reviewed by the FCRC, subject to a public hearing held by the FCRC, and have been voted on by the FCRC.

In such a context, the requirement of an additional public hearing does not make sense procedurally. Franchise agreements require a vote by members of the FCRC at a public meeting. A public hearing is held two days immediately prior to the scheduled vote so that the public can be heard regarding each franchise item that is expected to be voted on two days later. Any renewal options contemplated in signed franchise agreements will already have been subject to a public hearing and FCRC vote. Since the FCRC will not be voting again on the item, an additional public hearing would have no practical effect. The expenses imposed upon the franchisee to hold public hearings are significant and can total thousands of dollars for costs such as newspaper publication, attorneys and special outside regulatory counsel, and travel. It would

be ill-advised to add another layer of expenses for a process that the franchisee previously completed, merely to exercise a renewal option already negotiated and approved by the FCRC.

In general, the proposed changes in this bill would add unnecessary obstacles for new entrants seeking to offer competitive public services in New York City. Instead of adding obstacles, we should, whenever possible, be facilitating entry into the New York City market place, on reasonable terms but without unnecessary procedural impediments. New entrants increase the competitive options for consumers, decrease the cost of services, bring jobs and revenue to the City, and strengthen our infrastructure and our economy's resiliency. New entrants seeking to provide public services often face high start-up costs and stiff competition from established providers. New Yorkers can benefit from increased competition, but adding unnecessary procedural hurdles will hamper that competition when our goal should be to foster it.

Revocable Consents

Finally, some comments about revocable consents, which I will refer to today as "consents". These are the grants of a right to an individual or entity to construct and maintain certain structures on, over or under the inalienable property of the City. The City's Department of Transportation ("DOT") grants the majority of consents and DOT must approve all consents that are granted by other agencies. Generally, consents are granted for a term of ten years for which there is an annual fee. At the end of the term, they may be renewed. However, as the name implies, the City retains the right to revoke a consent at any time. Therefore, the length of the term of a consent does not constrain the City's right to terminate it at any time. Consents are

for the use and benefit of the applicant, who is often the owner or lessee of abutting private property that will benefit from the structure, as in the case of consents for sidewalk plaques, planters, benches, brownstone steps and similar facilities.

Consents follow a process as set forth in Chapter 14 of the New York City Charter and in the Revocable Consent Rules adopted by DOT set forth in Title 34, Chapter 7 of the Rules of the City of New York. The responsible agency conducts public hearings and MOCS oversees compliance with applicable laws and regulations. In FY 2012, DOT registered 91 consents, with a total projected value of nearly \$17 million.

Currently DOT holds a public hearing on the terms and conditions of a proposed consent. All items calendared for the hearing are published in the City Record for fifteen business days, which is three calendar weeks, prior to the date of the hearing. In order to further assure the public is given notice of upcoming hearings held by DOT notice is also published in advance of the hearings, at the expense of the proposed holder of the revocable consent, in newspapers that meet City Charter circulation requirements. Such public hearings are held bi-weekly (monthly if there are not enough applicants). Further, it is the practice of DOT to afford a ten-day period subsequent to each consent hearing during which time the public can comment. Increasing the length of time required to publish the notice of hearing may result in the same confusion for consents as we explained for franchises, potentially more so given the shorter time frame between hearings.

For the foregoing reasons, we believe that the amendments are not necessary and would complicate an already lengthy process. We welcome the opportunity to further discuss the issues with the Committee. Perhaps we can determine whether there are ways that the Committee and the Administration can ameliorate issues that are of concern to the Council.

Thank you again for the opportunity to appear before you today. I would be happy to answer any questions you may have at this time.

Robert Fanuzzi,

Chairperson, Bronx Community Board 8

Testimony before New York City Council Government Operations Committee: Int. 948

June 28, 2012

Thank you Councilmember Gail Brewer and the members of the Government Operations committee for allowing me to speak before you on the matter before us, Int. 948, "a Local Law to amend the administrative code of the city of New York, in relation to public hearings and notice requirements of the Franchise Concession and Review Committee." I am Robert Fanuzzi, Chair of Bronx Board 8.

That we are hearing this matter and I am before you is a testament to the great courtesy and respect you, and the sponsors of this bill—Councilmember Koppell, along with Councilmember James, Palma, Williams and Halloran—offer mine and all Community Boards. This is an important footing on which to establish my testimony, for I believe in order to see the importance of this bill clearly, we must first dispense with the notion that Community Board participation in the review of proposed franchises and concessions is token, bothersome, or an obstacle to government efficiency. I need only cite the relevant City Charter sections 2700 and 2800, which explicitly affirm and articulate the role of community boards in government operations under principles known as co-terminality and management decentralization. Sections 2700 and 2800 of the Charter clearly intends a partnership between agencies and community boards in planning; in budgeting; in regulation; in delivery and monitoring of services, in oversight and regulation.

Under the current provision for public notice for the Franchise Concession and Review Committee, that role is compromised. Section 371 stipulates that "a summary of a proposed agreement between a city agency and a private company shall have been published for at least fifteen days, except Sundays and legal holiday," prior to the holding of FCRC meeting.

Community Board 8 learned the hard way that there it is extremely difficult, if not impossible to produce adequate public review under this 15 day period. For the better part of 2011-12, our Parks Committee calendared the discussion of an important concession—the first outdoor ice skating rink in the Bronx, sited in Van Cortlandt Park—month after month at its regularly scheduled meeting because we could never be sure until it was too late that the FCRC had placed the item on its agenda. Like a game of cat and mouse, we ended up cancelling the

agenda item again and again--until the FCRC did calendar the ice rink concession, and then it was too late. With fifteen days to spare, we could not schedule the Parks committee and bring a resolution to the regularly scheduled board meeting. We had to dispense with the committee discussion we had been scheduling for the good part of a year, and hold a special board meeting that, like all full board meetings, was conducted under parliamentary rules that limit the extent of public interaction with the public.

Clearly, section 371 played havoc with the meeting schedule of Bronx Community Board 8—and with that, the core of our government service. As community board members, our job is to announce and engage the community in open discussion about a proposed government action through regularly scheduled committee meetings. Those committee meetings are the lifeblood of our board, and the lifeline to our community. In this case, the resulting uncertainty about when and if the public would have the chance to review in detail the proposed concession engendered needless concerns about due process and the fairness of city government.

Councilman Oliver Koppell was witness to this long process and proposed legislation that would strength the public's faith in open government. We believe that this is one of his finest acts of service to our Bronx community and show of support for Community Board 8, and we are deeply grateful. Immediately after Councilman Koppell proposed this bill, Community Board 8 followed with a resolution in November 2012 that affirmed Int. 948 and called on the City Council to amend section 371. And if you are wondering, yes, it did through a committee, our Law, Rules, and Ethics committee.

Please support the work of community boards across the city and the civic engagement of New Yorkers and join the sponsors of this bill in making public review under 371 actually practicable. At a time when New York City is endeavoring to make more and more of its public estate and its parkland open and available to more and more users, often through concessions, we firmly believe that the public has an even greater right to participation in this vital process than ever before. Thank you.

**THE COUNCIL
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 948 Res. No. _____

in favor in opposition

Date: 6/28/13

(PLEASE PRINT)

Name: ROBERT FRANZINI

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Please complete this card and return to the Sergeant-at-Arms

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THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. _____ Res. No. _____

in favor in opposition

Date: 6/28/13

(PLEASE PRINT)

Name: Laura Ringelheim

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I represent: Mayor's Office of Contract

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