



# City of New York Parks & Recreation



## New York City Council Committee on Parks & Recreation

**Introduction Number 1047  
(replacement of trees)**

**September 24, 2009**

**Testimony by  
Fiona Watt  
Assistant Commissioner for Forestry and Horticulture**

### **INTRODUCTION**

I would like to thank Council Member Foster and members of this committee for continually taking the lead to raise awareness of the need to protect New York City's tree canopy. New Yorkers love trees, and as the stewards of over 600,000 street trees, and over 2 million trees on public greenspaces, we love them too.

As you all know by now, Parks is going into its third year of the MillionTreesNYC campaign to plant 1 million new trees on public and private property throughout the city over a ten year period. Along with our partners, our goal is to increase tree canopy across all of New York City and to help New Yorkers understand the benefits of this large-scale tree planting effort. With the help of private/public partnerships, stewardship by private citizens, and support of our local elected leaders in identifying places to plant and educating constituents on the benefits of trees, we can green our city together. To date, we have planted over 248, 906 trees towards our 1 million tree goal. October begins tree planting season, as well as the second anniversary of the MTNYC campaign. We look forward to further expanding both our tree planting and outreach efforts and adding to our base of committed volunteers. On October 24<sup>th</sup>, in conjunction with It's My Park Day, we will hold our third large-scale volunteer tree planting effort, planting 20,000 trees in one day in parks across the city. And next month our seasonal street tree planting begins, with 10,600 trees targeted for neighborhoods this fall all across the City. With the support of the Mayor's Fund to Advance NYC, we have also launched a Stewardship Corps to enlist key strategic partners and the botanic gardens in the care and maintenance of our newly planted trees. The Stewardship Corps will build participation in young tree care and continue to educate all New Yorkers about the importance of trees. We look forward to your participation.

### **THE BENEFITS OF TREES**

New York City's urban forest comprises over 5 million trees on public and private property. As the stewards of nearly half of those trees, we appreciate their value and work hard to protect them. The air that we breathe is improved by the presence of trees when they absorb harmful

chemicals such as carbon dioxide and in turn give off oxygen. Trees also trap airborne particulate matter by filtering and trapping pollutants such as smoke, dust and ash, making our air cleaner. They also reduce stormwater run-off, by capturing water on their leaves and trunks and absorbing it in their roots. During the summer, trees block the sun and cool our homes and streets. During the winter, trees shield us from wind. By cooling the air trees help to reduce energy use thereby reducing the formation of ozone, which can exacerbate health problems in children and others with respiratory ailments.

Trees also define the character of a community, providing beauty, connecting people to nature and adding tangible value to property. In 2007, The U.S. Forest Service analyzed the City's street tree population and calculated that each year our 600,000 plus street trees provide almost \$122 million in environmental benefits and additional property value. In air quality alone, street trees remove 272 tons of particulate matter each year valued at \$5.3 million.

### **INTRODUCTION 1047**

Introduction 1047 seeks to amend section 18-107 of the Administrative Code. This section currently gives the Parks Department jurisdiction to regulate and permit tree removals by individuals, firms and corporations. The amended bill adds city agencies to this section.

While Parks certainly lauds the intent of this bill to protect trees, we have five concerns with the bill as written: first, Parks' jurisdiction to regulate street trees is established in the New York City Charter and Administrative code; second, city agencies regularly seek tree removal permits from Parks during construction projects on land under our jurisdiction; third, the bill actually appears to propose a confusing standards for tree removal; fourth, this bill adds a bonding requirement that duplicates bonding provisions already included in city contracts; and lastly, there are issues of timing in the bill.

I would like to discuss all five issues with the committee.

### **CHARTER AND ADMINISTRATIVE CODE MANDATED AUTHORITY OVER TREES ON CITY-OWNED PROPERTY**

Half of New York City's tree canopy is growing along streets and highways or on land reserved for open space and recreation. Most of these trees fall under the jurisdiction of Parks, which controls all trees growing in the public right-of-way and on land under the jurisdiction of Parks. The other half of the tree canopy in New York City is growing on mostly privately-owned land, which are not subject to any regulatory or administrative controls.

First, Parks has jurisdiction over trees generally as outlined in the City Charter in Chapter 21, section 533. In subsection (a)(4), Parks has the power to "to plant and maintain trees..." along with subsection (a)(11), where Parks has the power to "plan, plant and maintain trees and other plantings..."

Additionally, the Charter is explicit in saying in subsection (a)(9)(ii) that

“Any violation of a rule or regulation concerning the unlawful cutting, removal or destruction of any tree shall be a misdemeanor triable by a judge of the criminal court of the city of New York and punishable by not more than one year imprisonment or by a fine of not more than fifteen thousand dollars or by both. Any violation of a rule or regulation concerning the unlawful cutting, removal or destruction of any tree shall also subject the violator to a civil penalty of not more than ten thousand dollars for each violation which may be recovered in a proceeding before the environmental control board.”

And, under the Rules of the City of New York, title 56, chapter 1 section 1-04, it states

(b) *Destruction or abuse of trees, plants, flowers, shrubs and grass.*

(1) (i) No person shall deface, write upon, injure, sever, mutilate, kill or remove from the ground any trees under the jurisdiction of the Department without permission of the Commissioner.

(ii) No person shall deface, write upon, sever, mutilate, kill or remove from the ground any plants, flowers, shrubs or other vegetation under the jurisdiction of the Department without permission of the Commissioner.

In the Administrative Code, the agency’s ability to protect street trees is re-stated in section 18-104 where it provides that “[t]he planting, care and cultivation of all trees and other forms of vegetation in streets shall be under the exclusive jurisdiction of the commissioner,” except as defined under section 18-105.

Clearly, Parks has control of trees in parks and on streets.. And, the penalty for the unlawful cutting, removal and destruction of a tree can be both criminal and civil. With such authority already conferred under the Charter, Administrative Code and our rules, we believe the proposed amendments in Introduction 1047 are unnecessary and duplicative.

## **TREE PERMITS FOR CITY AGENCIES**

In all circumstances where a city agency is planning a construction project on property under the jurisdiction of Parks, that agency will seek tree removal permits from Parks. Parks will evaluate the request and using our tree appraisal methodology, which I will discuss shortly, Parks will grant that permit along with a mandated cost and replacement figure for remediation.

## **TREE APPRAISAL AND REPLACEMENT METHODOLOGY**

We believe that the amendments proposed in Introduction 1047 could actually weaken the currently implemented tree replacement requirements used by Parks. Parks is keenly aware of the benefits of trees and applies a professionally recognized replacement standard, when evaluating tree removal requests from City agencies, individuals, firms or corporations. Tree replacement requirements are based on the appraisal—i.e. monetized value—of a tree.

Neither the existing code nor the proposed language alters our ability to enforce a strong tree replacement policy guided by professionally recognized standards. In fact, the proposed

language seems conflicted and could lead to confusion as to what was intended – a caliper standard, a stem standard, or a combination of both.

### **BONDING REQUIREMENT**

Introduction 1047 needlessly attempts to levy a bonding requirement on city agencies when they seek to remove trees on property under Parks' jurisdiction. As stated earlier, when a city agency contracts to do construction work, their contractor will post a bond for that project. Included in that bond will be the value of the tree replacement, as established by Parks when granting the tree removal permit. And, already established under section 18-107 of the Administrative Code is the requirement that bonds be required of individuals, firms and corporations who apply to Parks for a tree removal permit.

Thus, the double-bonding of a project is unnecessary since the protection of a bond is already secured by the contractor.

### **TIMING REQUIREMENTS**

Lastly, there are some technical issues raised by Introduction number 1047 that should be addressed. It states that, instead of tree replacement occurring 30 days after completion of construction, replacement shall occur 30 days after removal. This requirement could be construed to mandate replacement before construction is complete or during a non-planting season. In either instance, the viability of replacement trees would be seriously impaired and the purpose of the legislation would be undermined. Further, an effective date 90 days after enactment would not be feasible in light of the fact that the legislation contemplates new rulemaking by Parks.

### **CONCLUSION**

The Parks Department is committed to preserving and increasing our urban forest—both by protecting and growing the trees under our direct jurisdiction as well as by working with partners through MillionTreesNYC to increase canopy on private lands throughout the city. We agree with the Council that protecting trees under the jurisdiction of Parks is essential to keeping our city clean, green and sustainable, and look forward to working with the Council to continue our work.

**JOINT TESTIMONY OF THE QUEENS & BRONX BUILDING ASSOCIATION AND  
THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY, INC. BEFORE  
THE CITY COUNCIL COMMITTEE ON PARKS  
SEPTEMBER 24, 2009**

GOOD DAY. MY NAME IS ROBERT ALTMAN AND I AM THE LEGISLATIVE CONSULTANT TO THE QUEENS & BRONX BUILDING ASSOCIATION AND THE BUILDING INDUSTRY ASSOCIATION OF NEW YORK CITY, INC., TWO LOCAL CHAPTERS OF THE NEW YORK STATE BUILDERS ASSOCIATION.

I AM HERE TODAY TO OPPOSE INTRO. 1047. OUR OPPOSITION IS BASED ON THE FACT THAT THE PARKS DEPARTMENT HAS NOT SHOWN ITSELF TO BE REASONABLE STEWARDS OF THE COSTS OF TREE REPLACEMENT. UNFORTUNATELY, THE CURRENT BILL WOULD GIVE EVEN MORE DISCRETION TO THE DEPARTMENT, DISCRETION THAT IS UNDESERVED.

AS MANY OF YOU KNOW, THERE ARE TIMES WHEN BUILDERS MUST CUT DOWN A TREE. A VERY COMMON REASON IS BECAUSE UNDER ZONING REGULATIONS PASSED OVER THE PAST FEW YEARS, THERE ARE ADDITIONAL OFF-STREET PARKING REQUIREMENTS NECESSITATING MORE CURB CUTS AND DRIVEWAYS TO ACCOMMODATE THE OFF-STREET PARKING. TO PRESERVE A TREE WITHIN SUCH AREAS, THE BUILDER WOULD NEED A WAIVER FROM THE OFF-STREET PARKING REQUIREMENT, A WAIVER THE DEPARTMENT OF BUILDINGS IS RELUCTANT TO GIVE. ALTERNATIVELY, THE PARKS DEPARTMENT COULD WAIVE THE REQUIREMENT OF TREE REPLACEMENT, SOMETHING IT NEVER GIVES. THUS, THIS TREE INEVITABLY MUST BE REPLACED WITH MULTIPLE NEWER TREES.

UNDER THE LAW, ONE LOST TREE IS NOT REPLACED WITH A SINGLE TREE. INSTEAD, CURRENT LAW CALLS FOR A MINIMUM REPLACEMENT OF THE TREE BY A SET OF TREES THAT ARE APPROXIMATELY 3 INCHES IN DIAMETER. THE MINIMUM AMOUNT OF SUCH TREES IS SET BY HOW MANY OF THESE THREE INCH TREES FIT WITHIN THE DIAMETER OF THE CUT TREE (THE CALIPER METHOD). WHILE PARKS CHARGED \$700 FOR EACH TREE, WHICH IS ABOUT TWICE WHAT WE PAY, WE COULD STILL HANDLE THE COST. ALTERNATIVELY, WE COULD PLANT REPLACEMENT TREES, BUT PLANTING TREES IS ONLY ALLOWED DURING A NARROW PLANTING SEASON. IF YOU WANT (OR IN THE CASE OF STATEN ISLAND, NEED) A PERMANENT CERTIFICATE OF OCCUPANCY AND IT IS NOT THE PLANTING SEASON, YOU NEED TO PAY THE FEE. UNTIL A FEW YEARS AGO, THE CALIPER METHOD (WITH EACH TREE COSTING \$700) WAS THE STANDARD.

A FEW YEARS AGO, THE PARKS DEPARTMENT BEGAN TO TRY TO SQUEEZE MORE MONEY FROM THE BUILDERS. NOW THE PARKS DEPARTMENT CONTENDS THAT IT COSTS \$1,900 TO REPLACE A TREE. THIS IS SHOCKING TO US BECAUSE OUR COST IS STILL \$300 TO \$500. WE HAD THOUGHT \$700 PER TREE WAS EXORBITANT AND MISMANAGEMENT. HOW DO YOU DEFINE \$1,900 PER TREE? EXTORTION?

MOREOVER, OVER THE LAST FEW YEARS, THE DEPARTMENT BEGAN TO USE THE BASIL METHOD. THIS METHOD STATES THAT THE NUMBER OF TREES THAT MUST REPLACE THE OLD TREE IS EQUAL TO THE AMOUNT OF THREE INCH TREES THAT CAN FIT WITHIN THE AREA OF THE DOWNED TREE. SUDDENLY, A

TREE THAT COULD BE REPLACED FOR \$6,000 WAS COSTING \$50,000 AND MORE TO REPLACE.

MOREOVER, IN DISCUSSIONS WITH THE PARKS COMMISSIONER, HE HAS INDICATED THAT HE THINKS A TREE MIGHT BE WORTH EVEN MORE, USING THE FIGURE OF \$120,000 IN OUR LAST MEETING WITH HIM. MEANWHILE, ESTIMATES FROM THE INTERNATIONAL SOCIETY OF ARBORISTS SUGGEST FIGURES THAT ARE MORE WITHIN THE \$5,000 TO \$15,000 RANGE, A HUGE DIFFERENCE FROM THE FIGURE OF \$120,000.

THE CURRENT SITUATION SUFFERS FROM THREE PROBLEMS. FIRST, THE PARKS DEPARTMENT CHARGES AN UNREASONABLE PER TREE PRICE FOR THE INSTALLATION OF A TREE. WHEN WE CAN PUT IN A TREE FOR \$300 AND IT COSTS THE PARKS DEPARTMENT \$1,900, YOU KNOW THAT SOMETHING IS NOT RIGHT AND NEEDS TO BE REVIEWED. SECOND, WHEN THE WOOD TO BUILD A SINGLE FAMILY HOME IS APPROXIMATELY \$16,000 AND PARKS WANTS TO CHARGE \$120,000 FOR A SINGLE TREE, YOU KNOW THAT THE DEPARTMENT HAS LOST ALL PERSPECTIVE ON WHAT A TREE IS WORTH. THIRD, BECAUSE THE PARKS DEPARTMENT HAS LOST ALL PERSPECTIVE, THERE IS NO CERTAINTY IN THE PROCESS OF VALUATION OF A TREE. AS BUILDERS, WE ARE BUSINESSMAN AND WE VALUE REASONABLENESS AND CERTAINTY. THE CURRENT PROCESS AND THE PROCESS THAT IS REFLECTED IN THIS BILL DEMONSTRATE NEITHER REASONABLENESS NOR CERTAINTY.

MOREOVER, WHILE BUILDERS ARE QUITE WILLING TO REPLACE TREES ON OUR OWN (THAT WILL COME WITH A TWO PLANTING SEASON GUARANTY), TO

DO SO WITHIN 30 DAYS IS NOT REASONABLE. FIRST, IF THAT PERIOD IS NOT WITHIN THE PLANTING SEASON, THE DEPARTMENT WILL SIMPLY COLLECT ON THE BOND WITHIN 30 DAYS, AND WE KNOW THAT THE DEPARTMENT DOES NOT VALUE A TREE CORRECTLY. SECOND, EVEN IF IT IS WITHIN THE PLANTING SEASON, THE PARKS DEPARTMENT MOST OFTEN DOES NOT HAVE A LIST OF WHERE THE TREES CAN BE PLANTED WITHIN THE THIRTY DAY PERIOD.

THERE ARE REASONABLE SOLUTIONS TO THESE MATTERS, BUT AS DRAFTED, THE CURRENT LEGISLATION ONLY OFFERS THE PROMISE OF MORE ABUSE AND MISMANAGEMENT BY THE PARKS DEPARTMENT. THE SECTION NEEDS TO BE AMENDED SO IT PROVIDES REASONABLENESS AND CERTAINTY, OTHERWISE THE COUNCIL IS ONLY GIVING CARTE BLANCHE TO AN AGENCY THAT HAS NOT SHOWN THE ABILITY TO USE IT.





**City Council Parks & Recreation Committee Hearing  
Int. No. 1047  
September 24, 2009**

Good afternoon. My name is Sheelah Feinberg and I am Director of Government and External Relations at New Yorkers for Parks. Thank you for this opportunity to testify today. As the only independent watchdog for all the city's parks, beaches, and playgrounds, New Yorkers for Parks has worked to ensure greener, safer, cleaner parks for all New Yorkers for nearly 100 years.

**Benefits of Trees**

New Yorkers for Parks supports this legislation, which creates standards and requirements for the replacement of trees. Trees improve water and air quality by filtering pollutants, which helps to address public health issues such as asthma. This is particularly important in New York City's urban environment. It is essential that we replace damaged or removed trees in order to maintain these important functions.

With this amendment, trees that are removed or injured must be replaced within thirty days with the same total caliper and quantity of trees that were lost. This guarantees that the environmental benefits of larger trees remains constant and minimizes the negative effects of their removal from a community. Requiring developers to adhere to these rules is critical to balancing the impacts of rapid development and sustaining healthy neighborhoods.

Thanks to the work of MillionTrees NYC and the City of New York, the initiative to plant one million trees in public and private open spaces throughout the five boroughs has

seen enormous progress this year. To date, over 248, 906 trees have been planted since MillionTreesNYC was launched in October 2007. This legislation will help protect these vital trees.

### **Recommendations**

With more trees comes a greater need for maintenance funds. We encourage the restoration of funding to the Parks Department for more frequent pruning, in order to ensure public safety as well as the health of our street trees. All newly planted trees should be consistently monitored for pruning needs and care in order catch the subtle growth patterns which can lead to breakages and other vulnerabilities. Unfortunately, the FY 2010 Adopted Budget reduced tree pruning by \$3.5 million, significantly reducing the Parks Department's ability to maintain trees in the city.

In addition, this legislation will place an increased burden on the Parks Department, which will be required to review permit applications. We recommend that the amendment includes a time frame for the early submission of permits for tree removal, so that the Department of Parks and Recreation can best determine the impacts of awarding each permit. We also recommend increased resources to help the Department implement this new responsibility.

Again, we support this effort to rightfully restore a neighborhood's trees in equal quality and quantity. We ask that the City Council recognize the critical need for dedicated funding to ensure the long-term survival of replacement trees. Thank you.