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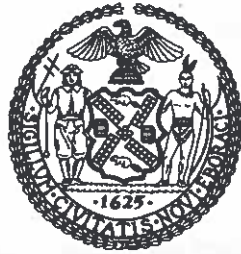
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THE COUNCIL OF THE CITY OF NEW YORK

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COMMITTEE ON PARKS AND RECREATION

Hon. Peter Koo, Chair

January 27, 2020

Oversight: Overview of the Parks Department Concessions Process

Introduction

On January 27, 2020, the Committee on Parks and Recreation, chaired by Council Member Peter Koo, will hold an oversight hearing on the Parks Department's Concession Process. Representatives from the New York City Department of Parks and Recreation (DPR), as well as parks conservancies and alliances, parks advocates and community organizations have been invited to testify.

Background

DPR maintains one of the oldest and largest municipal park systems in the country. The agency maintains over 30,000 acres of developed, natural, and undeveloped parkland, which constitutes 14 percent of the City's landmass, including 5,000 facilities that encompass nearly 1,000 playgrounds, 800 athletic fields, 550 tennis courts, 65 swimming pools, 51 recreational facilities and 14 miles of beaches.¹ These facilities are visited and used by millions of individuals every year.

Concessions

Many of the services provided in New York City parks are delivered through concessions, in which private companies pay for the privilege of operating a business within a City park. There are approximately 500 concessions which range from a pushcart selling hot dogs or pretzels, to tennis courts, riding stables, restaurants and 18-hole golf courses.² Currently, DPR is responsible for determining whether there is a need for a

¹ See, DPR Website, *About the New York City Department of Parks and Recreation*, available at: <https://www.nycgovparks.org/about>

² See, DPR Website, *Concessions Directory*, available at: <https://www.nycgovparks.org/opportunities/concessions/directory>

service, whether it should be provided through a concession, awarding the concession and monitoring compliance with the terms in the agreements and collecting payments from concessionaires.³

According to the Fiscal Year 2019 Mayor's Management Report, DPR generated \$82 million in revenue for fiscal year 2019.⁴ Approximately \$50.8 million came from concessions.⁵ Normally, all revenues collected go into the City's general fund, under New York City Charter ("Charter") §109, which states that "all revenues of the City... not required by law to be paid into any other fund or account shall be paid into a fund to be termed the 'general fund.'" As such, revenue generated by DPR goes into the General City Fund, not directly to DPR. The only exceptions are for fees collected at Recreation Centers, and grants made through the Adopt-A-Park program, in accordance with §18-133 of the Administrative Code. Also, there are some park conservancies that enter into agreements with concessionaires that allow the conservancy to keep some of the proceeds generated from concessions.⁶

Concessions in New York City parks are initiated by either a Request for Bid (RFB) or a Request for Proposal (RFP), with two ways that an RFP can be generated.⁷ According to DPR testimony on April 14, 2003, RFB's are used for smaller concessions such as pushcarts, mobile trucks and newsstands.⁸ All RFB's are sealed and are read publicly and

³ See, DPR Website, *How to Become a Concessionaire*, available at: <https://www.nycgovparks.org/opportunities/concessions/getting-started>

⁴ See Mayor's Management Report FY2019 available at: https://www1.nyc.gov/assets/operations/downloads/pdf/mmr2019/2019_mmr.pdf

⁵ According to the New York City Council Finance Division, January 22, 2020.

⁶ Letters To The Editor, "Voice of the People for March 31, 2010," *The Daily News*, March 31, 2010.

⁷ http://www.nycgovparks.org/sub_about/parks_divisions/concessions/concessions_opportunities.html

⁸ Testimony of Deputy Commissioner Robert Garafola, New York City Parks and Recreation at New York City Council Hearing, "Oversight of the Department of Parks and Recreation's concessions and other sources of revenue," April 14, 2003.

the concession is awarded to the highest responsible bidder.⁹ As for an RFP, DPR can release an RFP to meet a particular need or service in a park and the Department deems that a concession would be the best way to meet that need.¹⁰ Second, an RFP can be generated when an idea for a concession is proposed to DPR, and the Department decides to release an RFP for the proposed project.¹¹

Chapter 14 of the Charter requires that all concessions be awarded competitively and fairly. After all proposals have been received by DPR, they are reviewed and one is selected based on criteria set forth in the RFP.¹² Selection criteria generally include such factors as how well the proposal matches the original RFP, the financial stability of the operator, and the amount of financial investment the concessionaire plans to make.¹³ At this point, DPR is required by sections 374(b) and 1043(e) of the City Charter to determine if the concession is a “major” concession.

Charter §374 provides that if a concession is deemed to be “major” it must be reviewed under the Uniform Land Use Review Procedure (ULURP) under Charter §§197-c and 197-d.¹⁴ The ULURP process reflects the increasing involvement of the city's Community Boards in city development and a substantial increase in community participation in government.¹⁵ Each board was given the responsibility for advising the

⁹ §1-07 Title 12 of the Rules of the City of New York.

¹⁰ See, DPR Website, *How to Become a Concessionaire*, available at: <https://www.nycgovparks.org/opportunities/concessions/getting-started>

¹¹ See, DPR Website, *Suggest a Concession Idea*, available at: <https://www.nycgovparks.org/opportunities/concessions/suggest-idea>

¹² See, DPR Website, *How to Become a Concessionaire*, available at: <https://www.nycgovparks.org/opportunities/concessions/getting-started>

¹³ *Id.*

¹⁴ §374 (b) of Chapter 14 The New York City Charter.

¹⁵ See, New York City Department of City Planning, *The Uniform Land Use Review Procedure*, available at: <https://www1.nyc.gov/site/planning/applicants/applicant-portal/step5-ulurp-process.page>

City Planning Commission on "any matter relating to the development or welfare of its district."¹⁶ ULURP involves the input of the affected Community Boards (if more than one community board is involved) and the affected Borough President(s), the Department of City Planning, the City Planning Commission and, for a major concession to go forward, the City Council may elect to review by voting to take jurisdiction during Council call-up procedures.¹⁷

The ULURP rules of the City of New York, established by the City Planning Commission or the Department of City Planning,¹⁸ are used to determine what constitutes a "major" concession to provide an attempt to assess the potential impact of a concession and make sure those who will be affected adequately review it. A series of thresholds help to determine if the concession is "major." The ULURP rules provide the definition for a "major concession" as follows:

"§7-01 A concession shall be considered a major concession and therefore subject to Sections 197-c and 197-d of the Charter only if:

- (a) it has been determined pursuant to City Environmental Quality Review to require an Environmental Impact Statement, or
- (b) except as provided in §7-03, the concession will cause one or more of the thresholds set forth in §7-02 to be exceeded.¹⁹

§7-02 A concession shall be considered a major concession if it will cause one or more of the thresholds given for the specific uses listed below to be exceeded:

- (a) marinas with over 200 slips;
- (b) a permanent performance or spectator sport use with over 2,500 seats;
- (c) for parklands in or adjacent to Community Districts subject to the comprehensive off-street parking regulations, contained in Article I, Chapter 3 of the Zoning Resolution of the City of New York, accessory parking lots with over 150 spaces and, for all other areas, accessory parking lots with over 250 parking spaces on parklands;

¹⁶ *Id.*

¹⁷ See, New York City Department of City Planning, *The Uniform Land Use Review Procedure (ULURP), Rules for the Definition of Major Concessions*, available at: <https://www1.nyc.gov/site/planning/applicants/applicant-portal/step5-actions-rules.page>

¹⁸ *Id.*

¹⁹ *Id.*

- (d) a use for which a new building of over 20,000 square feet of gross floor area will be constructed when such building will be located on property other than parkland;
- (e) a use for which a new building of more than 15,000 square feet of gross floor area will be constructed when such building will be located on parkland;
- (f) an open use which occupies more than 42,000 square feet of open space other than parkland
- (g) an open use which occupies over 30,000 square feet of a separate parcel of parkland;
- (h) a use which in total occupies more than 2,500 square feet of floor area or open space and more than 15 percent of the total square footage of a separate parcel of land that is improved for park purposes, including passive and active recreational use, or that was improved for such purposes at any time during the preceding year; or
- (i) a concession comprised of two or more components, no one of which exceeds thresholds set forth in paragraphs (a) through (h) above, where at least two of such elements each exceed 85 percent of any applicable threshold set forth in such paragraphs.

§7-03 provide that notwithstanding any other provision of these rules the following shall not be considered major concessions unless an EIS is required:

- (a) A concession for any use which will be operated for 30 days or less;
- (b) A concession which is or directly furthers an active recreational use and would be available to the general public on a non-discriminatory basis, with or without a fee, including but not limited to the following:
 - (1) a seasonal covering of recreational facilities;
 - (2) a carousel; or
 - (3) a use intended for active participation sports including playing fields or sports courts (eg. tennis, volleyball, handball, softball), skating rinks, playgrounds, and practice facilities (eg. batting cages, golf driving ranges, miniature golf); provided that the area occupied by such recreational use does not exceed both 15 acres and 50 percent of a separate parcel of land;
- (c) Reuse of former amusement park lands for amusement or recreational purposes;
- (d) Any renewal, reissuance, extension, amendment of an existing concession or issuance of a new concession which continues a currently existing use or which permits a use which existed lawfully on the property at any point in the preceding two years, whether operated by a private or public entity, provided that any extension or amendment or the cumulative effect of any amendments or extensions made over any five year period does not include modifications which when added to the existing concession, cause any threshold of Section 7-02 to be exceeded and increase the size of an existing concession by ten percent or more;
- (e) A concession for which authorization to use a different procedure was granted or obtained, or which is operated under an agreement executed, prior to the effective date of this major concession rule;

- (f) A concession for lines, cables, conduits or underground pipes not used for the transport of people;
- (g) A concession on wharf property or waterfront property primarily for purposes of "water front commerce" or in "furtherance of navigation" as such terms are defined in the New York City Charter;
- (h) A concession on wharf property for purposes other than "waterfront commerce" or in "furtherance of navigation" which is granted pursuant to §1301.2(h) of the City Charter; or
- (i) A concession for an open air market which operates two (2) or fewer days per week, or, if a green market, three (3) or fewer days per week."²⁰

If the concession is not "major," the concession is governed by the rules set forth by the Franchise and Concession Review Committee (FCRC).

These two methods allow different levels of public and governmental review of a concession agreement. The ULURP process does not review the business terms of the agreement, but the land use impacts. In contrast, if DPR deems that the concession is not "major," there is not the same level of review. The determination of a major concession does not address the relative size difference in parks. This determination only sets a maximum threshold, instead of a percentage figure. This can allow for concessions of the same size to be placed in a small or midsized park just as it would be placed in a large park.

The Franchise and Concession Review Committee

Charter §373 governs the FCRC which is comprised of the following officials or their designees which include the Mayor, the Corporation Counsel, the Director of the Office of Management and Budget (OMB), the Comptroller, the Borough Presidents and one additional appointee of the Mayor.²¹ Public hearings are required to be held for all

²⁰ *Id.*

²¹ See, Mayor's Office of Contract Services, *About Franchises and Concessions*, available at: <https://www1.nyc.gov/site/mocs/reporting/about-franchises-concessions.page>

concessions considered "significant," which are concessions that have a term of 10 years or more, or that will result in projected annual income to the City of more than \$100,000.²²

Concessions awarded by sole source or any other non-competitive method required two FCRC approvals, each with at least four votes. Preliminary approval was required to allow the agency to enter into negotiations. If the concession is significant, a hearing is required, however, regardless of the necessity of a hearing, a vote is required to finalize the award.²³

Ongoing Issues

A 2018 report by the Center for an Urban Future entitled, *A New Leaf, Revitalizing New York City's Aging Parks Infrastructure*, (2018 Urban Future Report), highlighted the fact that the parks system is aging rapidly and pointed to numerous maintenance deficiencies that have affected City parks for decades.²⁴ The average City park is approximately 73 years old, with roughly 40 percent of city pools having been built before 1950, with half of DPR's 53 recreation centers similarly built before that time.²⁵ Additionally, DPR's waterfront facilities, including piers, bulkheads, marinas and docks are on average 76 years old.²⁶ The report further highlights that the average City park has not had any major renovations since 1997.²⁷

Stagnant budgets and poor staffing levels have directly resulted in an inability for DPR to properly maintain its parks over the years.²⁸ Expense funding on parks has

²² *Id.*

²³ *Id.*

²⁴ Center for an Urban Future, *A New Leaf, Revitalizing New York City's Aging Parks Infrastructure*, June 2018, available at: https://nycfuture.org/pdf/CUF_A_New_Leaf_.pdf.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

decreased from 1.3 percent of the City's budget to approximately 0.6 percent over the last four decades.²⁹ Per DPR's own maintenance requests, recommended maintenance needs went up 143 percent between FY 2006 and FY 2016 from \$14 million to almost \$34 million.³⁰ In FY 2016, only 12 percent of that request was actually funded.³¹ Additionally, according to the Trust for Public Land, the City spends less on parks per capita when compared to other large cities.³² For instance, as of 2017, the City spent about \$178 per capita, while other cities like Washington D.C. and Minneapolis spent \$270 and \$233 per capita, respectively.³³

Efforts to Enhance Parks and Increase DPR's Budget

Some ways the current Administration has tried to enhance neighborhood parks are through the Community Parks Initiative (CPI), Parks Without Borders (PWB) initiative and the Anchor Parks initiative.³⁴ Each initiative rebuilds, renovates and redesigns certain parks in need throughout the City to improve their overall condition and better integrate them into their surrounding neighborhoods and communities.³⁵ Each initiative also enhances parks making them more accessible and welcoming to everyone, improving neighborhoods by extending the beauty of parks out into communities and creating vibrant public spaces by transforming underused areas.³⁶

²⁹ *Id.*

³⁰ Center for an Urban Future, *A New Leaf, Revitalizing New York City's Aging Parks Infrastructure*, June 2018, available at: https://nycfuture.org/pdf/CUF_A_New_Leaf_.pdf.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ <https://www1.nyc.gov/office-of-the-mayor/news/468-14/de-blasio-administration-launches-community-parks-initiative-build-more-inclusive-equitable#/0>

³⁵ See, DPR Website, *Community Parks Initiative*, <https://www.nycgovparks.org/about/framework-for-an-equitable-future/community-parks-initiative>

³⁶ *Id.*

In addition, advocates and policy makers recently came together to announce the multi-year “Play Fair” initiative to directly advocate for the need to vastly increase public funding to the parks system.³⁷ Through this initiative, \$44 million in new funding was added to the Fiscal Year 2020 DPR expense budget.³⁸ The new funding is expected to provide more resources to hire more park maintenance workers, including 200 park workers and 100 gardeners, an additional 50 Urban Park Rangers, an additional 80 Parks Enforcement Patrol (PEP) officers, more funding for forestry management, and additional \$8.2 million for all 550 GreenThumb community gardens and additional funds for extending the beach and pool season and tree stump removal.³⁹

The 2018 Urban Future Report, also highlighted that the City would need to invest approximately \$5.8 billion over the next 10 years in order to sustain parks infrastructure.⁴⁰ For years, advocates and elected officials have discussed options for generating more funding for parks. DPR generates millions of dollars of revenue from its concessions, leases and rentals on parkland.⁴¹ DPR’s concession revenue has also remained steady over the last few years with \$47.2 million for FY’s 15 and 16, \$50.3 million in FY17, \$48.7 million in FY18 and \$50.8 million in FY19.⁴²

However, all of the revenue from these funds go to the City’s General Fund rather than being applied to DPR’s park needs.⁴³ The 2018 Urban Future Report, along with

³⁷ See New Yorkers for Parks Play Fair Coalition webpage, <http://www.ny4p.org/what-we-do/play-fair#overview>

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Center for an Urban Future, *A New Leaf, Revitalizing New York City’s Aging Parks Infrastructure*, June 2018, available at: https://nycfuture.org/pdf/CUF_A_New_Leaf_.pdf.

⁴² According to New York City Council Finance Division, January 22, 2020.

⁴³ Center for an Urban Future, *A New Leaf, Revitalizing New York City’s Aging Parks Infrastructure*, June 2018, available at: https://nycfuture.org/pdf/CUF_A_New_Leaf_.pdf.

advocates and elected officials, suggest that fees from new concessions should be at least partially dedicated to fund park maintenance and operations.⁴⁴ Revenue from concessions could provide more full time jobs in DPR which would be beneficial to City residents who are seeking employment and also beneficial to DPR in maintaining the City's parkland.

There are examples where money for park operations and projects are partially paid for through concessions such as the Madison Square Park Conservancy (MSPC).⁴⁵ The City and MSPC's contract allows partial use of a concession fee from the Shake Shack on its property which makes up approximately 10 percent of its \$3 million dollar budget.⁴⁶ Other examples include the new Yankee Stadium deal in the Bronx in 2009, which resulted in new parks and improvements in the Yankee Stadium expansion plan and a deal between the City and the United States (U.S.) Tennis Association to expand Arthur Ashe Stadium in exchange for funding the Flushing Meadows Corona Park Alliance.⁴⁷

Conclusion

At this hearing, the Committee will examine DPR's concession process and how concessions are awarded. Additionally, the Committee will examine and hear testimony on how, if at all, DPR can improve the concession award process and make sure that concessions are awarded fairly and benefit park users throughout the City.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

