

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PARKS AND RECREATION

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February 23, 2010
Start: XX:XXam/pm
Recess: XX:XXam/pm

HELD AT: Council Chambers
City Hall

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

COUNCIL MEMBERS:
Vincent J. Gentile
James Vacca

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

Fiona Watt
Assistant Commissioner
Forestry, Horticulture, and Natural Resources

Robert Altman
Legislative Consultant
Queens and Bronx Building Association and Building
Industry Association of New York City

Michael Schaeffer
Associate Member
Building Industry Association

Cheryl Huber
Deputy Director
New Yorkers for Parks

Joseph Bernardo
Director of Forestry
Trees New York

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CHAIRPERSON MARK-VIVERITO: Okay.

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I know that--

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SERGEANT-AT-ARMS: Quiet, please.

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CHAIRPERSON MARK-VIVERITO: --a lot

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of my committee members are away on a trip to

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Israel with the Speaker, so we will start

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regardless.

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And I want to say, good afternoon

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to everyone that's in the room, I'm Council Member

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Melissa Mark-Viverito, and I'm proud to be

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chairing my first committee hearing of the Parks

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and Recreation Committee.

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Today, the Committee will discuss

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Intro 4-2010, which is a reintroduction of Intro

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1047 from the last session. The lead sponsor of

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Intro 4 is Council Member Helen Foster, my

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predecessor as Chair of the Committee of Parks and

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I really want to thank her for all her hard work

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and for the leadership that she demonstrated in

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this committee after introducing the important

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legislation that we will discuss today.

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Intro 4 deals with the replacement

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of trees on public property. There is another

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piece of legislation, I guess at some point that

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2 we'll be discussing that, we'll probably talk
3 about trees on private property, but today's
4 hearing is on public property. Intro 4 will do
5 two very important things. First, while it will
6 ensure proper replacement of trees removed from
7 public property, it will also provide for rules
8 that govern the removal of trees. Based on the
9 testimony the committee heard last session, the
10 current system of replacement of trees is, quite
11 simply, no system at all. This bill will correct
12 that by requiring there to be rule-making which
13 substantially complies with guidelines set forth
14 by the International Society of Arboriculture.
15 The bill will also require that the Department of
16 Parks and Recreation provide written
17 determinations of the replacements required. It
18 will allow an applicant that wishes to remove a
19 tree the option of either replacing the tree or
20 paying a fee to the Parks Department to cover
21 replacement.

22 Second, and just as importantly,
23 the bill will have its requirements cover city
24 agencies, as well as private actors. Many of us
25 have become very concerned when agencies,

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2 including the Parks Department, remove a large
3 number of trees, such as what has occurred on
4 Randall's Island with the renovation of the ball
5 fields. This bill will ensure that all agencies,
6 even the Parks Department, properly replace trees.
7 While MillionTrees New York City is to be lauded
8 for greening New York, it will defeat the purpose
9 if the Parks Department or any other city agency
10 removes trees without adequate replacement.

11 So I'd like to thank everyone for
12 coming here today, and obviously I would like to
13 also thank the Counsel of the committee, Lyle
14 Frank and Patrick Mulvihill, for being here, and
15 Walter Pitts as well.

16 And with that, I would like to ask
17 the Department of Parks, I know is the first....

18 FIONA WATT: Thank you.

19 CHAIRPERSON MARK-VIVERITO: Yep.

20 FIONA WATT: Good afternoon.

21 MALE VOICE: Turn on the
22 microphone--

23 [Crosstalk]

24 FIONA WATT: Good afternoon,
25 Chairwoman Mark-Viverito and members of the Parks

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2 Committee. My name is Fiona Watt, I'm the
3 Assistant Commissioner for Forestry, Horticulture,
4 and Natural Resources. With me today is Michael
5 Schnall, Director of Government Relations. On
6 behalf of Commissioner Benepe, thank you for
7 allowing Parks the opportunity to discuss Intro 4
8 with you.

9 So I'd like to thank the Chair and
10 members of this committee for inviting us back to
11 discuss the regulation of tree removal and
12 replacement on Parks' property. We're pleased
13 that you have chosen this topic for the first
14 hearing of the new Committee, and your interest in
15 protecting trees demonstrates the Council is
16 acutely aware of the myriad benefits of our urban
17 forest. We look forward to working with both the
18 new and returning members of the committee on this
19 and many other Parks-related issues.

20 Just a quick update on our Tree
21 Planting and Care program. Since the last hearing
22 on this topic in September 2009, we have been hard
23 at work planting trees, making New York a better
24 place for them to thrive. In the past six months,
25 we have planted an additional 61,135 trees, for a

1
2 total of over 315,000 trees planted since the
3 kickoff of our MillionTreesNYC campaign in 2007.
4 That's an average of one new tree planted about
5 every four minutes. This pace--and we're ahead of
6 schedule to plant one million trees by 2017--is
7 due to the support of public/private partnerships,
8 stewardship by private citizens, and, of course,
9 the leadership of our city's elected officials.

10 We're also continuing to raise
11 awareness of the MillionTreesNYC initiative and to
12 empower our citizens to care for the city's tree
13 canopy, whether it is growing in a park or in
14 front of their home. This past fall, with the
15 leadership of our MillionTreesNYC partner, the New
16 York Restoration Project, we launched Put Down
17 Roots, a campaign to invite homeowners throughout
18 the city to plant trees in their yards and to
19 acquire the tools necessary to care for them in
20 the long run. NYRP reaches out to homeowners,
21 they foster tree giveaways, and they even go door-
22 to-door delivering and helping to plant free trees
23 for people who have requested them.

24 As we mentioned in the last
25 hearing, we're also partnering with several key

1
2 not-for-profit organizations to develop a
3 stewardship corps. Our city's botanical gardens
4 and other major greening organizations are
5 reaching out to the community to offer continued
6 support to tree stewards. During 2009, the
7 stewardship corps offered 85 free tree care
8 workshops to New York City residents. Throughout
9 the five boroughs, over 1,000 individuals learned
10 how to take care of the trees that were planted in
11 their neighborhood. Attendees received training
12 in basic stewardship skills, including watering,
13 weeding, mulching, and other ways to improve the
14 quality of local tree beds, such as planting
15 flowers and building tree guards. We're pleased
16 that our lead partners for the stewardship corps
17 have renewed their support in 2010.

18 And we're also using New York City
19 as a living laboratory, where we are able to bring
20 top scientific researchers from a variety of
21 fields together to study the effects of our
22 initiatives, such as increasing tree canopy, on
23 the urban ecosystem. We're hosting the
24 MillionTreesNYC 2010 Research Symposium, next week
25 in fact, on March 5th and 6th at the New School,

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2 where we have invited speakers and researchers
3 from around the world to come together to meet and
4 discuss a broad range of scientific topics. Last
5 year's event attracted more than 100 researchers,
6 practitioners, and policymakers to discuss
7 everything from air quality to forest health to
8 green jobs to social justice, and we look forward
9 to a similarly diverse and enlightening discussion
10 this year.

11 Introduction 4 of 2010. It is
12 crucial to protect and care for these newly
13 planted trees, and that is why we're thankful that
14 you have so carefully considered our prior
15 testimony on Introduction 1047 while re-drafting
16 Intro 4 of 2010. This bill seeks to amend section
17 18-107 of the Administrative Code. As we noted in
18 the last hearing, the Charter and the
19 Administrative Code confer control over trees in
20 parks and along streets to Parks. Moreover, the
21 Rules of the City of New York Title 56, Chapter 1,
22 Section 1-04, state that no person shall deface,
23 write upon, injure, sever, mutilate, kill, or
24 remove from the ground any tree under the
25 jurisdiction of the department without permission

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2 of the Commissioner.

3 However, we agree that it is wise
4 to codify our methods for tree valuation and
5 appraisal of trees. Legislation that strengthens
6 our ability to protect trees is a boon to the
7 continuing health of New York City's environment
8 and its residents.

9 In conclusion, we'd like to thank
10 the Council for your advocacy on behalf of trees,
11 both to grow our urban forest and protect existing
12 trees that are under our jurisdiction. We also
13 welcome any efforts you may make to encourage your
14 constituents to become tree stewards. Our third
15 annual MillionTreesNYC Month will be held this
16 April. We'll be planting lots of trees and we'll
17 also have events, programs, and activities for
18 people who want to learn how to care about trees--
19 care for trees, and we ask for your support in
20 getting the word out. We look forward to
21 continuing to work with the Council to protect and
22 to grow New York City's urban forest. Thank you.

23 CHAIRPERSON MARK-VIVERITO: Thank
24 you, Assistant Commissioner. And I know that
25 you're here to be in favor of this legislation, so

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2 I don't want to belabor the point, but I do have
3 just a couple of very quick questions, because
4 clearly everything that you've outlined is
5 obviously very important to me and it's important
6 to us in this Council and the PlaNYC and all the
7 planting of trees is obviously a critical role.
8 But I was very concerned that the lack of process,
9 I guess, and that's obviously why this resulted
10 and I know with Council Member Foster it was with
11 Yankee Stadium and the demolition and--well it
12 hasn't been demolished yet, but with the course of
13 the new stadium and the destruction of some of the
14 parks and I'm sure that that had to do with a lot
15 of tree uprootings, and for me it's Randall's
16 Island, but what was the process before when you
17 talk. But what was the process before when you're
18 talking about large-scale development that may
19 impact or having to disrupt trees or uproot trees,
20 what was the process by which a plan had to be
21 developed, or was there nothing in place on
22 replacement, you know, what was the process that
23 existed prior to this legislation?

24 FIONA WATT: Well, we view this
25 legislation as crystallizing a practice that we've

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2 had in place for a number of years now. In fact,
3 it's been several decades that we've been
4 insisting on very, very stringent tree
5 replacement, but over the last eight years we've
6 had a methodology--we've developed a methodology
7 that tracks with professional standards such as
8 those promulgated by the International Society of
9 Arboriculture and our tree valuation method is
10 very rigorous and we believe it to be a sound
11 method, and this really helps us hew to that
12 policy that we've had in place.

13 CHAIRPERSON MARK-VIVERITO: Well, I
14 would like if you would--for me in particular, and
15 I think for the two projects that I'm most aware
16 of that I think had the largest number of trees,
17 in terms of the Yankee Stadium and also with
18 Randall's Island, if you could provide us where
19 you're at with the replacement of the trees that
20 were uprooted, I think that would be really
21 important. I know that when I got the number of
22 how many trees were destroyed with the renovation
23 of the ball fields and Randall's Island I was
24 pretty--it was in the hundreds--

25 FIONA WATT: Yep.

2 CHAIRPERSON MARK-VIVERITO: --I
3 mean, it was an incredible number of trees and
4 those were very mature trees. And so if I could
5 get an update as to what that was, I would really
6 appreciate it.

7 But I appreciate your testimony,
8 I'm glad that we've been able to partner well on
9 this and that we're going to be able to pass this
10 in this City Council, and look forward to
11 continuing to make New York City one of the
12 greenest cities hopefully.

13 FIONA WATT: Well we'll get you
14 that follow up.

15 CHAIRPERSON MARK-VIVERITO: Okay.
16 I appreciate it.

17 FIONA WATT: Okay.

18 CHAIRPERSON MARK-VIVERITO: I think
19 that's--

20 FIONA WATT: Thank you.

21 CHAIRPERSON MARK-VIVERITO: --since
22 we don't have any other Council Members here with
23 questions, then thank you for your testimony
24 today.

25 FIONA WATT: Okay. You're very

1
2 welcome.

3 [Long pause]

4 CHAIRPERSON MARK-VIVERITO: All
5 right, so we'd like to call Robert Altman and
6 Michael Schaeffer.

7 [Long pause]

8 CHAIRPERSON MARK-VIVERITO: Okay.
9 You can decide who goes first and feel free to
10 begin.

11 MICHAEL SCHAEFFER: Thank you.

12 ROBERT ALTMAN: Good morning, my
13 name is Robert Altman, I am the Legislative
14 Consultant to the Queens and Bronx Building
15 Association and the Building Industry Association
16 of New York City, two local chapters of the New
17 York State Builders Association.

18 I just wanted to preface my remarks
19 by saying we're commenting or we have spoken to
20 the Committee since the Introduction of Intro 4.
21 And my comments represent the bill that has been
22 introduced, not anything that is currently being
23 contemplated.

24 The history of tree replacement for
25 a private builder was discussed in testimony that

1 we gave back in September of 2009. I've attached
2 a copy of that testimony, I see no reason to
3 repeat it here. But we would like to thank the
4 Committee, its staff, the Committee Chair, and
5 Council Member Foster for taking our comments to
6 heart on the prior bill. We testified previously
7 opposed to the prior bill, and a number of very
8 good changes have been made to the bill since
9 then. So we really want to take that to heart.
10 And it's an improvement, the new bill's an
11 improvement over the current state of the law.
12 For example, it sets a cap off the basal method
13 for the replacement, it requires that the method
14 for determining the cost of tree replacement be
15 put in writing and given to the applicant, it
16 provides an option of tree replacement or payment
17 of a fee, it uses ISA standards as the basis for
18 city regulation in the determination of the
19 payment of that fee. ISA is the standard used by
20 Parks, and so it's emphatically stated in its
21 September testimony by making clear that this is
22 the standard, the Parks Department cannot be as
23 arbitrary as we believe they have been over the
24 past few years.
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2 We do believe the bill can be
3 improved. For example, if an applicant decides to
4 replace a tree rather than pay a fee, money is
5 essentially tied up in escrow until replacement of
6 the trees occurs. The time period might be
7 lengthy due to limited planting seasons,
8 therefore, we are concerned that that Parks
9 Department will not timely designate replacement
10 locations for the new trees. For that reason, the
11 associations have suggested language to require
12 the department to designate locations within 60
13 days after the issuance of a permit or face
14 forfeiture of the escrowed funds.

15 Moreover, some builders would
16 prefer not to draw out the bureaucratic process,
17 they would actually pay, have an additional option
18 that guarantees the city will not forfeit the
19 funds and still obtain its trees. Under this
20 option, the applicant would go to an approved
21 contractor and pay the fees in advance, then that
22 contractor would subsequently plant the trees at
23 the direction of the Parks Department within any
24 time frame that the department would like. This
25 would mean that there would never be any time

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2 limit on designation of sites and no forfeiture of
3 funds for failing to designate sites. Obviously,
4 the applicant would need to show a paid invoice.
5 We understand that the Committee does have some
6 issues with this proposal, we're certainly willing
7 to talk further.

8 We believe these changes ensure a
9 smooth process and improve the bill for the
10 builder, the public, and the Parks Department. We
11 hope you consider our recommendations for
12 improving the bill and make them a part of an
13 amended version. We again thank the Council and
14 the Committee for this opportunity to comment.

15 MICHAEL SCHAEFFER: Oh no, no, no,
16 I'm just--

17 CHAIRPERSON MARK-VIVERITO: Oh.

18 ROBERT ALTMAN: He's here to answer
19 any technical questions you may have.

20 [Crosstalk]

21 CHAIRPERSON MARK-VIVERITO: Got
22 you, I thought, okay--

23 ROBERT ALTMAN: He's an engineer,
24 I'm just a simple country lawyer.

25 CHAIRPERSON MARK-VIVERITO: Okay.

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Well thank you for your--

ROBERT ALTMAN: Yeah.

CHAIRPERSON MARK-VIVERITO: --
testimony and I know that we are still in the
process of going back and forth a little bit on
the language, and my understanding is that we have
included, in terms of what you mention in your
second page on the first paragraph, some of the 60
day--

ROBERT ALTMAN: Mm-hmm.

CHAIRPERSON MARK-VIVERITO: --
discussion, maybe you can elaborate a little more
on this aspect of your recommendation, but it is
something that we're taking under consideration--

ROBERT ALTMAN: Yeah.

CHAIRPERSON MARK-VIVERITO: --in
what we're drafting right now.

ROBERT ALTMAN: We generally find
sometimes that the Parks Department can be a
little slow in getting designations to us.
Especially in this instance where there's a
potential for a large number of trees replacing
the one tree. As a result, it's different with
the zoning regulations a little bit because in

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2 there you're only talking about a few trees; here
3 you may be replacing upwards of doing 30 or 40
4 plantings versus under zoning you have to do two
5 or three or four, and that's about it.

6 CHAIRPERSON MARK-VIVERITO: Do you
7 have an example particularly of something that
8 you're working on now where this would pertain?

9 ROBERT ALTMAN: It's mostly
10 happened in past years.

11 CHAIRPERSON MARK-VIVERITO: In
12 past, okay.

13 MICHAEL SCHAEFFER: Well, I've
14 worked up on a 15-inch tree, which is your average
15 caliper, established tree, that would typically
16 want to be removed in some instances, it would
17 take a minimum of 25 replacement trees.

18 ROBERT ALTMAN: So it's a pretty
19 significant number, to find 25 separate off-site
20 locations would be difficult for Parks Department.

21 CHAIRPERSON MARK-VIVERITO: Okay.

22 ROBERT ALTMAN: So we're looking to
23 have that get done. Parks has in the past--you
24 know, we would have the option of either replacing
25 the trees or making the payment for ISA per an ISA

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standards that we'd like a great deal.

CHAIRPERSON MARK-VIVERITO: Sir,
give me one second, if you just identify yourself
on the mic? 'Cause we didn't get your name.

MICHAEL SCHAEFFER: Oh, I'm Michael
Schaeffer, Associate Member of Building Industry
Association.

CHAIRPERSON MARK-VIVERITO: Thank
you.

ROBERT ALTMAN: So that really
helps us out a bit having that choice of tree
replacement or payment. Currently right now, it
really boils down to, because we have not been
getting designations from the Parks Department
more than anything else making the payment, and
sometimes the payments seem to be quite high. And
we never know what--in the past we have not known
what the Parks Department was basing the dollar
amount on. We first learned at the September
hearing that they believed they were basing it on
ISA standards, we have some disputes on that, but
we would never get a chance to actually see what
they had written down. So the bill is a vast
improvement because at least then we can have a

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2 basis for discussing what does ISA actually call
3 for here and there can be more of a dialogue back
4 and forth with respect to what does ISA call for.
5 And ISA is an international standard so it does
6 make it a little easier from our standpoint to
7 discuss it and have something to refer back to
8 'cause everybody can then refer back to ISA.

9 CHAIRPERSON MARK-VIVERITO: Okay.

10 Well I think that obviously that's the intent of
11 the legislation is to clarify things and, as been
12 mentioned, codify and I think I'm glad that we've
13 been able to come to somewhat of an agreement with
14 Parks, since they're here testifying in favor.
15 And I want to thank you for your input along the
16 way 'cause I know we really did value the input of
17 organizations and entities and it was taken into
18 account in the current drafting. And so hopefully
19 we'll all come to a legislation that we can all be
20 happy with and that will make all of our lives
21 easier and make New York City a greener place with
22 more trees. So thank you for your testimony
23 today.

24 ROBERT ALTMAN: We appreciate that,
25 thank you.

CHAIRPERSON MARK-VIVERITO: Oh,
yes, and I want to recognize my colleague from the
Bronx, Council Member James Vacca has joined us.

Okay. The last two that we have
Cheryl Huber and Joseph Bernardo.

[Long pause]

CHAIRPERSON MARK-VIVERITO: Okay.
Can either one begin, yes.

CHERYL HUBER: Sure. Am I on?
Yes. Hi, my name is Cheryl Huber, I'm the Deputy
Director at New Yorkers for Parks. Thank you for
this opportunity to testify today on Intro 4, and
welcome to your new chairmanship, congratulations.

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 more than 100 years. New Yorkers for
Parks is here to support Intro 4, which creates
standards and requirements for the replacement of
trees by both the private and the public sectors,
with oversight by the City Parks Department.

Trees improve water and air quality
by filtering pollutants, which helps to address

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2 public health issues such as asthma. This is
3 particularly important in New York City's urban
4 environment. It's essential that we replace
5 damaged or remove trees with those of equal
6 caliper in order to maintain these important
7 functions.

8 With this amendment, the City has
9 taken steps towards creating an overarching
10 management strategy for our urban tree canopy.
11 The legislation's inclusion of oversight by a
12 horticultural officer and guidelines from the
13 International Society of Arboriculture creates a
14 fair, environmentally responsible policy. By
15 requiring all individuals, corporations, and city
16 agencies to adhere to these rules, the City is
17 ensuring that all are accountable.

18 Thanks to the work of
19 MillionTreesNYC, the initiative to plant one
20 million trees in public and private open spaces
21 throughout the five boroughs, we've seen enormous
22 progress. More than 315,000 trees have been
23 planted since MillionTreesNYC was launched in
24 October 2007. This legislation will help to
25 ensure that we continue to grow New York City's

1
2 vital urban tree canopy.

3 But with more trees comes a greater
4 need for maintenance funds. The Mayor's
5 Preliminary Budget for Fiscal Year 2011 has cut
6 almost \$20 million from the Parks Department,
7 which will result in significant losses in
8 staffing, programming, and maintenance of our park
9 system. Last year's Adopted Budget reduced tree
10 pruning by 3.5 million, significantly reducing the
11 Parks Department's ability to maintain trees in
12 the city, and this has not been restored. And
13 tree pruning is typically one of the first things
14 to get cut in the budget. The tremendous amounts
15 of newly planted trees through MillionTreesNYC
16 require extensive care and monitoring to ensure
17 their long-term survival. With a limited tree
18 pruning budget and additional cuts to Parks
19 looming, the survival of our trees is in jeopardy.

20 In addition, this legislation will
21 place an increased burden on the Parks Department,
22 which will be required to review an increased
23 number of permit applications for tree removal and
24 replacement. We recommend that the legislation
25 include a time frame for the early submission of

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2 permits, so that the Department of Parks can best
3 determine the impacts of awarding each permit. We
4 also recommend increased resources to help the
5 department implement this new responsibility.

6 Again, we support this effort to
7 rightfully restore and sustain a neighborhood's
8 trees in equal quality and quantity. In this
9 budget season, we ask that the City Council
10 recognize the critical need for increased funding
11 to ensure the long-term survival of every tree in
12 the city. Thank you, and we look forward to
13 working with the new Parks Committee over the
14 course of this term.

15 JOSEPH BERNARDO: Good afternoon,
16 Committee. My name is Joseph Bernardo and I am
17 against Intro 4. And what I've heard in previous
18 testimony here, I wonder if they were testifying
19 on Intro 4 or something else. Well my testimony
20 is going to be on Intro 4.

21 I'm the Director of Forestry for
22 Trees New York, a non-profit organization whose
23 mission is to plant, preserve, and protect New
24 York City neighborhood trees. I have been
25 involved with New York City urban forestry for 57

1
2 years plus. Starting out on the low ground of a
3 tree climber and going through the ranks of
4 promotion to Assistant Director of Forestry &
5 Horticulture, Director of Forestry and Education,
6 Director of Queens Forestry.

7 Historically, this issue has come
8 up many times, always with a change, but nothing
9 [off mic]. In 1963, the law started out saying
10 city-owned trees would be replaced on a tree for
11 tree basis--a contractor's dream, all he had to do
12 was knock down a tree of any size and just replace
13 it with one tree. I was fortunate to be able to
14 testify before the City Council in 1978 to change
15 this law. I am proud to say that the Council
16 voted 40 for and 0 against the new law, which
17 became Local Law 29, which I provided copies for
18 you. We are still working with that same law
19 these many years later and they have been
20 constantly trying to change. I'm not against
21 change, but I am against Intro 4 for its
22 confusion, misinformation, and misdirection is
23 what I'm against.

24 The inclusion of the name of the
25 International Society of Arboriculture, and its

1
2 tree ordinance guidelines attempts to validate the
3 proposed change in the existing code. As stated
4 by the International Society of Arboriculture,
5 their intent is not meant to provide a model
6 ordinance approach, but to provide examples of
7 ordinance from provisions made throughout the
8 country, mainly California, Florida, and South
9 Carolina. These guidelines are designed to assist
10 communities in drafting ordinance to specific
11 goals, it covers basic provisions and provisions
12 for specific goals. There are 15 basic
13 provisions, and 22 provisions specified goals. I
14 have taken the liberty also to provide you with
15 copies of these guidelines. Unfortunately, I
16 could not give you a magnifying glass to read it,
17 so you'll have to take my word on some of the
18 things it says.

19 These copies have Provision 12
20 Enforcement; Provision 30, permit required for
21 activities that may damage city-owned trees;
22 Provision 31, permit requiring activities that may
23 damage private trees. Provision 12, although
24 dealing with enforcement, only designates ensuring
25 that the person who will enforce the enforcement

1
2 is designated.

3 Provision 32 pertains to city-owned
4 trees, but does not specifically cover a formula
5 in determined replacement for damaged trees.

6 Provision 31, which deals with protected private
7 trees, is the only place in their guidelines that
8 deals with determining replacement trees. It is
9 recommending either of two methods--the caliper
10 method or the basal method.

11 Intro 4 does direct the department
12 to determine replacement of trees using either of
13 these two methods. It further states replacement
14 of trees shall at a minimum be caliper inch for
15 new trees for caliper inch of trees removed. It
16 also directs the department to put in writing how
17 the determinations were made to the permittee.

18 The statement using caliper inch shall be a
19 minimum inch for inch. I feel there's a lack of
20 understanding of how these calculations are made.
21 I have again taken the liberty of providing the
22 Council with an example of these calculations,
23 which is the last page on the enclosure of my
24 testimony.

25 I'd like to thank the Parks

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2 Department in providing us with a sample of what
3 is caliper replacement and what is basal
4 replacement, it is two different things. The
5 example shown to you on the rear shows you a 24-
6 inch tree in caliper. In going by caliper
7 measurement, it equals eight trees for
8 replacement. In dealing with basal area of the
9 trees, I have to bring you back to that
10 mathematics that we so said in high school, we
11 will never use this again, but fortunately, we do
12 use it and it comes out to a formula of area
13 equals pi R square, where we're taking the tree
14 and getting the area of wood. That area of wood
15 comes out to 452 square inches of wood in a 24-
16 inch tree. We then have to figure out how much
17 wood is in a 3-inch tree, 'cause that's our
18 replacement tree, and that comes out to 7 square
19 inches. We therefore, using the basal method,
20 dividing the 452 square inches by the 7 inches, we
21 wind up coming up with 65 trees--eight times as
22 much as the replacement of inch for inch.

23 So in this bill, it's telling the
24 department, use either and then it's telling the
25 department, make sure you do it in writing so that

1 the permittee will know what they're getting.
2 Well you figure the permittee getting a bill for
3 65 trees for 24-inch, but yet the bill says at a
4 minimum it will be inch for inch, meaning eight
5 trees. So we feel that this inclusion in the bill
6 is also misinformation of people who don't
7 understand caliper replacement or basal
8 replacement.
9

10 I therefore say it again, I am
11 against Introduction 4 because of its confusing
12 message stating that the ISA sets specific
13 guidelines--it does not. Its mission is to
14 provide communities with an opportunity to make up
15 guidelines, it does not specifically have
16 guidelines, especially for replacement of trees.

17 Also, eliminating the replacement
18 size of trees, stating that if the request of the
19 permit is made during the season prior to
20 replacement is totally out of context. Trees are
21 only replaced in the fall and the spring, and it
22 is natural that a tree being requested to be
23 removed is always going to be asked to be removed
24 prior to the planting season. And so, therefore,
25 that is another confusing end.

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2 The misinformation again on the
3 inference of the International Society of
4 Arboriculture guidelines were taken in
5 consideration when drafting this bill and finally
6 directing the Parks Department to enforcement,
7 there are no grounds. As I said, I have provided
8 you with the parts of it.

9 I would recommend that if you want
10 to change this bill and add something to the bill,
11 which we tried to do back in 1978, was the
12 inclusion that all trees replaced will be replaced
13 within a quarter mile of where the tree was
14 removed. Therefore, there is no such thing of,
15 okay, we removed this tree in front of this house
16 or this building and it came out to 65 trees, well
17 I can only put one or two trees, or even if we
18 said eight trees.

19 You know, it's very confusing in
20 this bill saying what will it be, will it be
21 caliper method or will it be the basal method.
22 Now basal method is also used in appraising what
23 is the value of a tree, and you use the same
24 formula on to it. But its inclusion, first off,
25 using the International Society of Arboriculture

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2 as a guide for the reason this bill was made, I
3 don't understand that. The inclusion of saying
4 you can use caliper method of measurement or basal
5 method of measurement is again confusion. One, as
6 I said, eight trees, if you figure it by caliper,
7 or 65 trees, if you figure it to basal area.
8 Which one does the department use? But then the
9 bill says, as a minimum you will use inch for inch
10 replacement. You know, there's too much confusion
11 in this bill as written, and that is why I'm
12 against it.

13 CHAIRPERSON MARK-VIVERITO: Well
14 thank you both for your testimony. Mr. Bernardo,
15 thank you very much. I know there's a lot of
16 information you've provided, but just two quick
17 comments and then additionally we'll look at what
18 you've presented and see in what ways we can just
19 take into account what you're mentioning. But the
20 legislation, the way it's being drafted and
21 discussed, it does give the opportunity for
22 substantial compliance to the Department of Parks,
23 so it gives them a little bit of leeway in being
24 able to determine the permits and some other
25 things that you outlined in your page two.

1
2 And, with regards to the issue of
3 the replacement and where the replacements are to
4 happen, I do agree it should be in the general
5 vicinity of where the tree was removed, and I
6 think that we are looking at language with that
7 the replacement has to happen within the community
8 district of where that tree was removed.

9 So those are different things, some
10 aspects of what you've mentioned are being taken
11 into account and we'll just look again at your
12 testimony.

13 Were you able to come to any of the
14 first testimony or the first hearing that we had
15 to provide testimony--

16 JOSEPH BERNARDO: [Interposing]
17 Unfortunately, I had a lung removed, I had lung
18 cancer.

19 CHAIRPERSON MARK-VIVERITO: Oh.

20 JOSEPH BERNARDO: And I was under
21 chemo so I was not able to make it, but I was glad
22 to make this one. And honestly when I read the
23 bill--'cause I typed it out, eliminating the
24 parentheses and filling in the underlined parts,
25 and came up with what that bill actually said--I

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2 was totally confused and the use of, oh yeah, we
3 used the ISA guidelines. Well as I provided with
4 you, there are no guidelines from the ISA, it
5 doesn't mention for a certain community using
6 basal area and for another community recommending
7 caliper area, it does not say you will use both or
8 either, it's a guideline, and they state it is not
9 their specific goal to set up a guideline that
10 will be gospel. They are set up for guidelines as
11 recommendations and that is their only way. So
12 the use of the ISA, no, it does not document that
13 this is a good bill because I follow the ISA.

14 And then the added confusion of
15 saying you will use the caliper method or the
16 basal method puts the onus on the Parks Department
17 because of the fact that you want the permittee to
18 be notified in writing of what calculation was
19 used. So I'm permittee who had a 24-inch tree
20 that I removed and Parks charged me for eight
21 trees. Fine. And then I find out my brother
22 contractor removed the 24-inch tree as well and
23 his letter says pay for 65 trees 'cause they used
24 the basal method. You know, it's totally
25 confusing to be placed on the Parks Department, it

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2 is one or the other. Now this year was--I guess
3 it's got to be at least eight years ago when
4 Commissioner Stern was Commissioner, when he tried
5 to get this law changed from caliper method to
6 basal method--of doing it, one or the other. That
7 did not follow through, it's still [off mic] inch
8 for inch the caliper method.

9 So I wish you would take that into
10 consideration when you're writing this here bill
11 up or rewriting it--

12 CHAIRPERSON MARK-VIVERITO: Right.

13 JOSEPH BERNARDO: --in the fact of
14 say it will be done by the caliper method or it
15 will be done by the basal method.

16 CHAIRPERSON MARK-VIVERITO: Well we
17 take every--you know, we really do appreciate you
18 coming down, I wish you the best in health. And
19 we do take everyone's testimony seriously 'cause
20 people take the time to come here, we want to make
21 sure we listen to them, so we will take under
22 advisement what you've presented, and I thank you
23 again for that.

24 JOSEPH BERNARDO: Well I thank you-

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[Crosstalk]

CHAIRPERSON MARK-VIVERITO: Because the purpose here is to provide greater clarity for--

JOSEPH BERNARDO: [Interposing]
Well I thank you for listening to me, all right?

CHAIRPERSON MARK-VIVERITO: Thank you. But, Ms. Huber, I did have a question. And I know since we do have the Parks rep here, they need to answer more fully, I would ask that they rejoin us at the table. But because obviously the concern--you know, we've heard the preliminary budget hearing and we know the concern about the cuts that are coming are really ones that are going to impact. But just, if you're aware of this, if not, if the Parks Department can answer, but with the whole MillionTrees initiative, I know that that's a partnership and that there is a large level of private investment I think that is going into that initiative as well. So to your understanding, do you know of any aspect of that initiative, not only on the planting side, does it also account for private monies to be raised for the care of trees, is that part of the initiative

1
2 as well or...?

3 CHERYL HUBER: I mean, I would
4 probably leave that to the Parks Department--

5 CHAIRPERSON MARK-VIVERITO: Okay.

6 CHERYL HUBER: --to answer, but I
7 know that, obviously, they're spending money doing
8 these stewardship trainings and things like that
9 that are training local stewards to take care of
10 the trees. But the pruners are more, as I
11 understand, a more highly trained kind of position
12 where you need to be able to go on the cranes and
13 that kind of thing. So I don't know if either of
14 you want to...

15 CHAIRPERSON MARK-VIVERITO: And
16 we're going to do our preliminary budget hearing--

17 CHERYL HUBER: Right.

18 CHAIRPERSON MARK-VIVERITO: --soon,
19 and we probably could answer this there as well,
20 but I'm just curious as we were hearing about the
21 cuts that are coming.

22 [Pause]

23 CHAIRPERSON MARK-VIVERITO: And I
24 want to recognize my colleague Council Member
25 Vincent Gentile for joining us, thank you very

1
2 much.

3 FIONA WATT: My name is Fiona Watt,
4 Assistant Commissioner of Forestry, Horticulture,
5 and Natural Resources for the Parks Department.
6 To answer your question, the MillionTreesNYC
7 project is a project to plant one million trees by
8 2017--

9 CHAIRPERSON MARK-VIVERITO: Right.

10 FIONA WATT: --and that is our main
11 partner, the New York Restoration Project, is
12 spearheading the effort to plant 40% or so of
13 those trees raising private money. But that's a
14 tree planting project, that does not include
15 maintenance for mature trees.

16 CHAIRPERSON MARK-VIVERITO: So
17 there's no additional idea of raising--

18 FIONA WATT: Right.

19 CHAIRPERSON MARK-VIVERITO: --
20 private monies for the care, so that's coming out
21 of--

22 FIONA WATT: That's right.

23 CHAIRPERSON MARK-VIVERITO: --the
24 existing budget of Parks and so the concern I
25 guess is how the cuts will impact that, I guess

1
2 the care of trees moving forward. I mean she was
3 raising, right--

4 FIONA WATT: [Interposing] It's
5 different funds that plant and maintain trees, but
6 the MillionTreesNYC project is a planting project.

7 CHAIRPERSON MARK-VIVERITO: Right,
8 I mean you said not all of it is private money
9 though, there is some of our--

10 FIONA WATT: [Interposing] It's
11 planting, the City is going to plant about 60% of
12 those trees.

13 CHAIRPERSON MARK-VIVERITO: Right,
14 okay. So thank you, I appreciate the
15 clarification. And thank you, Ms. Huber.

16 CHERYL HUBER: Thank you.

17 CHAIRPERSON MARK-VIVERITO: And I
18 think with that we have everybody that has spoken.
19 We thank you again, this is the second hearing
20 we've had. I want to thank my colleagues for
21 having joined today. And we look forward to
22 finalizing this legislation so that we can vote
23 and make it law in the city of New York. Thank
24 you all. This hearing is now adjourned.

C E R T I F I C A T E

I, Tammy Wittman, certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature Tammy Wittman

Date March 8, 2010