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**WRITTEN TESTIMONY OF THE ANIMAL LAW COMMITTEE
AND THE CIVIL RIGHTS COMMITTEE**

**New York City Department of Parks and Recreation
Hearing on Proposed Rule: Prohibition on Feeding Wildlife in Parks
Reference Nos.: DPR-14
March 1, 2019**

THE PROPOSED RULE IS OPPOSED

This written testimony is submitted on behalf of the New York City Bar Association’s Animal Law Committee and Civil Rights Committee.¹ We oppose the proposed rule because it may impose severe penalties on people who are acting with good intentions and who are likely unaware that they are violating the law.

The proposed rule would amend NYC Parks’ rules, section 1-04(g)(2), titled “Abuse of Park Animals,”² resulting in three significant changes. *First*, the rule dispenses with the requirement that NYC Parks “designate certain areas” where feeding squirrels and wild birds³ is prohibited; historically, NYC Parks “designated . . . areas” with a sign notifying the

¹ The City Bar is one of the country’s oldest and largest bar associations, with more than 24,000 lawyers, law professors, and government officials. The City Bar’s Animal Law Committee — the first of its kind in the nation — has supported numerous bills and regulations protecting wildlife. *E.g.*, NYC Bar Animal Law Committee, Prohibiting the Use of Wild Animals in Circuses (2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017396-WildAnimalsCircus.pdf>; Support for Legislation to Make Animal Killing Contests or Competitions Unlawful (2018), <https://s3.amazonaws.com/documents.nycbar.org/files/20072480-ShootingContests.pdf>; Support for Orca Responsibility and Care Advancement Act of 2017 (2018), <https://s3.amazonaws.com/documents.nycbar.org/files/2017368-OrcasResponsibilityCare.pdf>; Report on Legislation to Prohibit the Use of Live Pigeons for Targets at Trap Shoots and Block Shoots (2018), <https://s3.amazonaws.com/documents.nycbar.org/files/20073033-PigeonShootBillPAAnimalFinal20160125.pdf>. The Civil Rights Committee addresses both civil rights and civil liberties matters. The Committee’s civil rights concerns include issues affecting racial, ethnic and religious minorities, the rights of people with disabilities, and the scope and enforcement of anti-discrimination laws. The Committee’s civil liberties concerns include First Amendment and Due Process rights, as well as other constitutional protections against overreaching by state actors. (All websites cited in this testimony were last visited on February 14, 2019.)

² 56 R.C.N.Y. § 1-04. A copy of the proposed rule is at http://rules.cityofnewyork.us/sites/default/files/proposed_rules_pdf/parks_wildlife_feeding_proposed_rule_with_notice_of_hearing.pdf.

³ The rule refers to “unconfined birds,” which seems to be synonymous with wild birds.

public.⁴ *Second*, it expands the property covered by the rule from City parkland to any land under the jurisdiction of NYC Parks. *Finally*, it bans feeding squirrels and wild birds. Currently, the NYC Parks' rules prohibit feeding all animals in City parks, except that it allows the public to feed squirrels and wild birds in parks where not expressly prohibited.⁵

Violating the rule can result in fines that may pose a financial hardship for some. In particular, the violation carries a civil penalty of \$50 (or \$75 for a default penalty).⁶ It also constitutes a violation under the Penal Law, punishable by imprisonment of up to one day and/or a fine of up to \$200, which may carry collateral consequences.⁷

These consequences do not fit the underlying act. Most people will be unaware that feeding wild birds and squirrels is illegal. (And by eliminating the requirement that NYC Parks "designate certain areas" where their feeding is banned, the proposed rule seems to contemplate eliminating signs notifying the public where their feeding is banned.) Moreover, the rule's expansion from official parks to property under the jurisdiction of NYC Parks is likely to lead to confusion because it is not clear to the public where those places are.

⁴ E.g., Michael Pollack, *Feed a Pigeon, Breed a Spat*, N.Y. TIMES (Mar. 4, 2007), <https://www.nytimes.com/2007/03/04/nyregion/thecity/04fyi.html>; Sheila McClear, *The New Pigeon Wars*, N.Y. POST (Feb. 21, 2010), <https://nypost.com/2010/02/21/the-new-pigeon-wars>.

⁵ We note that under the current rule and the proposed rule, there is no exception for a licensed wildlife rehabilitator's or his or her agent's use of food to lure an injured wild animal in order to capture the animal for veterinary treatment or other care. This oversight should be corrected in an amendment.

⁶ In addition, civil charges must be disclosed in a variety of circumstances and, because the rule title is "Abuse of Park Animals," a disclosure may wrongly imply that a violator has committed a violent act. Parolees would have to disclose a charge to their parole officers. DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION, NEW YORK STATE PAROLE HANDBOOK, SECTION 3, WHAT ARE THE GENERAL CONDITIONS OF PAROLE, ("I will notify my Parole Officer immediately any time I am in contact with, or arrested by, a law enforcement agency."), http://www.doccs.ny.gov/Parole_Handbook.html#h1_8. Applicants for a license from the NYC Department of Consumer Affairs would have to disclose that they have an open charge or a violation. New York City Department of Consumer Affairs, Basic License Application, Questions 4 and 5, <https://www1.nyc.gov/assets/dca/downloads/pdf/businesses/Basic-License-Application.pdf>. Applicants for City employment would have to disclose that they have an open charge or a violation in their Department of Investigation Background Questionnaire. The City of New York Department of Investigation, Background Investigation Questionnaire, Court Record and Investigative History, 31-37, <https://www1.nyc.gov/assets/doi/downloads/pdf/bg/bg-questionnaire.pdf>. Owners of businesses that seek to enter into contracts with the City would also have to disclose any open charge or violation. NEW YORK CITY MAYOR'S OFFICE OF CONTRACT SERVICES, PASSPORT, VENDOR ENROLLMENT: A BEGINNER'S GUIDE TO PASSPORT (Dec. 1, 2017), https://www1.nyc.gov/assets/mocs/passport-downloads/pdf/resources-for-vendors/UserManual-Vendors_Beginners_Guide_to_PASSPort.pdf.

⁷ 56 R.C.N.Y. §§ 1-04 & 1-07. Violations of the NYC Parks Rules were formerly classified as misdemeanors. In 2016, the City Council lowered the penalties for violating NYC Parks Rules as part of the Criminal Justice Reform Act due to a concern that the penalties were disproportionate to the acts. New York City Council, *Committee Report of the Governmental Affairs Division, Int. 1056-2016* (Jan. 25, 2016), <https://legistar.council.nyc.gov/View.ashx?M=F&ID=4219056&GUID=0215DB9F-3197-409F-ADD1-6ACBBFC865AB>. Collateral consequences for criminal violations have been reported on extensively. See generally THE BRONX DEFENDERS, THE CONSEQUENCES OF CRIMINAL PROCEEDINGS IN NEW YORK STATE (Apr. 2015), <https://www.reentry.net/ny/library/attachment.265297>.

This rule would be an outlier among other animal-related laws. Generally, laws that penalize acts involving animals are characterized by human maliciousness, negligence, or greed.⁸ But people who feed birds and other wildlife are motivated by a desire to help animals, not harm them.⁹ Indeed, the practice of feeding wild birds grew out of the humanitarianism movement in the 19th century, which promoted kindness to animals.¹⁰ Since then the activity of feeding wild birds continues to be popular¹¹ and in cities, it is one of the few ways that urban dwellers connect with nature. Many people in New York City lack backyards for bird feeding and hence they turn to the City's backyards — City parks — as a place to feed birds.¹² Still others may offer food to animals, including injured wildlife and domestic animals dumped in City parks, as the only means of rescuing the animals to potentially place them in private homes or sanctuaries.¹³

We understand that NYC Parks has proposed this rule to address several unintended consequences of feeding wild birds and squirrels: sometimes feeding wildlife human food deprives them of nutrients found in their natural diets; sometimes it may cause wildlife to lose their fear of humans and exhibit aggressive behavior; and sometimes it may disturb the healthy balance between the wildlife population and their habitat.¹⁴ While we acknowledge that feeding wild birds and squirrels may create problems,¹⁵ we believe that NYC Parks would be more successful at solving those problems if it instead educates the public about

⁸ *E.g.*, Agric. & Mkts L. § 353.

⁹ *E.g.*, Helen Macdonald, *Why Do We Feed Animals?*, N.Y. TIMES (Jan. 6, 2016), <https://www.nytimes.com/2016/01/10/magazine/why-do-we-feed-wild-animals.html>.

¹⁰ Lisa Mighetto, *Wildlife Protection and the New Humanitarianism*, 12 ENV'TL R. 41 (1988), <https://www.jstor.org/stable/3984376>. For example, in 1876, children in the then-popular Dicky Bird Society pledged, “to be kind to all living things, to protect them to the utmost of my power, to feed the birds in the winter time, and to never take or destroy a nest.” THE REVIEW OF REVIEWS 570 & 572 (1890).

¹¹ *E.g.*, Macdonald, n. 9 above.

¹² *E.g.*, COLIN JEROLMACK, THE GLOBAL PIGEON 23-43 (2012) (describing the various demographics and ages of people who feed birds in City parks, contrary to popular stereotypes). Some organizations support the backyard feeding of wild birds in winter with some precautions. *E.g.*, Cornell Lab of Ornithology, Winter Bird Feeding, Bird Notes, http://www.birds.cornell.edu/AllAboutBirds/notes/BirdNote01_WinterFeeding.pdf; The Humane Society, Feeding Your Backyard Birds, <https://www.humanesociety.org/resources/feeding-your-backyard-birds>.

¹³ For instance, waterfowl and other birds often become tangled in fishing line and other strings. Unless those animals are caught and rescued, circulation is slowly lost to the legs, feet, or toes, and, over the course of many painful months, the birds lose the affected appendages entirely. Rescuers will often be able to remove the string from the animal without leaving the park, but the animal cannot be caught without using food to lure them close enough. Waterfowl who cannot fly as a result of angel wing also need to be rescued, again, with food being a necessary tool for capturing the animal.

¹⁴ Statement of Basis and Purpose of Proposed Rule.

¹⁵ As just one example, dumping food into ponds during winter can lead to geese being stranded on the water and dying of dehydration.

these unintended consequences.¹⁶ Rather than handing a person feeding birds or squirrels in the park a summons, an Urban Park Ranger could provide an educational pamphlet.

In summary, penalizing the public for feeding birds and squirrels — and potentially doing so without notice like a sign — seems to be at odds with the de Blasio administration's efforts to promote desirable behavior without reliance on penalties.¹⁷ And because the acts prohibited by the rule have long been legal and are motivated by altruism, enforcement may lead to a perception that the government is unfair. We instead urge NYC Parks to adopt a different approach to the problems listed in the Statement of Basis and Purpose.

Thank you.

Animal Law Committee
Christopher Wlach, Chair

Civil Rights Committee
Philip Desgranges, Chair

¹⁶ Notably, the City's WildlifeNYC program uses educational means aims to improve interactions between humans and animals. New York City, WildlifeNYC, <https://www1.nyc.gov/site/wildlifeny/index.page>.

¹⁷ See, for instance, The Small Business Relief Package, which issued warnings instead of violations in many cases and used education as a means to promote compliance. NYC Office of the Mayor, Press Release, De Blasio Administration Reduces Fines Assessed by Consumer Affairs on Businesses in Half, Cuts Violations Issued by One Third Over Past Year (July 31, 2015), <https://www1.nyc.gov/office-of-the-mayor/news/530-15/de-blasio-administration-reduces-fines-assessed-consumer-affairs-businesses-half-cuts>.