



NEW YORK
CITY BAR

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Honorable Eric Adams
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Honorable Randy Simons
Commissioner Pro Tem
New York State Office of Parks,
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625 Broadway
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Honorable Sue Donoghue
Commissioner
NYC Department of Parks and Recreation
830 Fifth Ave.
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Re: Composting in New York City and State Parks

Dear Governor Hochul, Mayor Adams, Commissioner Simons, and Commissioner Donoghue:

The Environmental Law Committee of the New York City Bar Association is writing to express its continued concern over the approach of New York City and its Department of Parks and Recreation to community composting sites. This approach - which views these sites as non-park uses or as inconsistent with park uses - jeopardizes the continued operation of such sites. We also are concerned that New York State and its Office of Parks, Recreation and Historic Preservation (OPRHP) has adopted a similar stance regarding community composting sites.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has 23,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

In March 2021, we sent a letter to New York City Mayor Bill de Blasio¹ emphasizing that the law does not compel a position that license renewal for community composting sites constitutes improper parkland alienation. We urged the City to rethink its approach to community composting sites and provide the support necessary for continued operation of such sites in the New York City parks. This letter updates and expands on that letter and urges the City and State to reorient their policies to recognize community composting as an important park use that facilitates the achievement of waste reduction, climate, and environmental justice goals.

At present, a number of community composting sites are reported to be under the threat of losing their space, including the Big Reuse composting site under the Queensboro Bridge.² We recently reviewed letters sent to Commissioner Donoghue by New York City Council members Julie Won, Shekar Krishnan, Shaun Abreu and Tiffany Cabán,³ and by Justin Green, the Executive Director of Big Reuse, in support of the Big Reuse composting site.⁴ From the circumstances of the proposed eviction of Big Reuse described in the letters, we understand that the Parks Department's plan not to renew a license agreement with Big Reuse may be due, at least in part, to the Parks Department's position that community composting activity is inconsistent with park use. Therefore, we believe it is important to draw the attention of the City and its Parks Department, as well as the State and its OPRHP, to our previously expressed position that the community composting facilities run by not-for-profit organizations in City parks do not constitute improper parkland alienation.

The concerns regarding improper parkland alienation are based on legal precedents related to facilities that are entirely different from community composting uses. It is important to distinguish community composting programs from the industrial facilities at issue in those cases. Physically, community composting facilities are much smaller in scale and do not create nuisance concerns. Moreover, community composting programs provide public education and foster community members' connection with and understanding of the natural world, a key purpose of parks. In addition, these programs could be key to the successful rollout of the City's mandatory organic waste program and the State's new Solid Waste Management Plan (SWMP).

We urge you to support community composting, consistent with the City's and New York State's climate change and zero-waste goals, by rethinking your approach to those facilities and working to ensure that they can continue to operate their composting programs in New York City and State parks.

¹ Letter dated May 11, 2021 from the New York City Bar Association's Environmental Law Committee to Mayor de Blasio, https://www.nycbar.org/wp-content/uploads/2023/05/2020888_CommunityCompostinginCityParks.pdf (All websites last accessed on May 7, 2024).

² Samantha Maldonado, Parks Department Throws Out Long Island City Compost Center, <https://www.thecity.nyc/2024/03/15/big-reuse-long-island-city-compost-center-evicted/>.

³ Letter dated March 4, 2024 from the NYC Council Members to Commissioner Donoghue, <https://www.documentcloud.org/documents/24480901-big-reuse-letter-final-2>.

⁴ Letter dated March 11, 2024 from Justine Green, the Executive Director of Big Reuse, to Commissioner Donoghue and First Deputy Commissioner Rodriguez-Rosa, <https://www.documentcloud.org/documents/24481261-big-reuse-letter-to-parks-3-11-24-2>.

I. Composting Plays an Important Role in the City’s and State’s Environmental Goals

As you know, food scraps and yard waste comprise a significant portion of the entire waste system. Most of that waste is now sent to landfills or incinerators. Landfills generate methane,⁵ a powerful greenhouse gas with a much higher global warming potential than carbon dioxide.⁶ Trash burning at incinerators also emits particulates and toxic chemicals that pose even more immediate public health threats to nearby communities. Composting food scraps and yard waste diverts significant amounts of waste away from these harmful practices. The City has recognized the critical role of composting in achieving the City’s zero-waste and carbon neutrality goals.⁷ According to the New York State SWMP, with 17% of solid waste in New York State coming from food waste, composting can play a major role in decreasing greenhouse gas emissions and rebuilding healthy soils that decrease erosion and store carbon by diverting organic material from disposal.⁸ The SWMP specifically provides that the expansion of community composting should be explored because such activities “encourage more community engagement and potential employment opportunities, and help prevent negative impacts to the community from waste management practices.”⁹ Further, the SWMP includes the following specific action items to advance composting practices:¹⁰

- explicitly allowing composting facility operation on the municipal park lands, through a legislative action to be implemented within next two years;¹¹
- promoting the recycling of food scraps at yard trimmings composting facilities by providing demonstrations, trainings, and other forms of technical assistance;
- providing financial assistance for local, nonprofit, and small-scale organics collection and processing operations;
- assessing the accessibility of composting opportunities and resources available for residents, especially in Potential Environmental Justice Areas and Disadvantaged Communities, and promoting the development of community accessible composting

⁵ EPA, *Landfill Methane Outreach Program*, <https://www.epa.gov/lmop/basic-information-about-landfill-gas#methane>.

⁶ The “global warming potential” of a greenhouse gas reflects the amount of heat it traps in the Earth’s atmosphere relative to carbon dioxide. Methane has a 20-year global warming potential of 84 to 87, meaning that it traps up to 87 times more heat in the earth’s atmosphere than carbon dioxide on a pound for pound basis, in the first 20 years after it is released. See U.S. Environmental Protection Agency, *Understanding Global Warming Potentials, GREENHOUSE GAS EMISSIONS*, <https://www.epa.gov/ghgemissions/understanding-global-warming-potentials> (last updated March. 27, 2024). Using a 20-year span for methane is appropriate because methane remains in the atmosphere for under two decades. IPCC, *Climate Change 2013, The Physical Science Basis*, Chapter 8, 714 (Sept. 2013).

⁷ See, e.g., *ONENYC 2050: BUILDING A STRONG AND FAIR CITY* (2015), Vol. 7 at 19.

⁸ New York State Solid Waste Management Plan (December 2023), Section 4, subsection “Equity Issues”, page 23. Available at: <https://dec.ny.gov/sites/default/files/2023-12/finalsswmp2023.pdf>

⁹ *Id.* page 26.

¹⁰ *Id.* Section 6, Focus Area 4: Organics Reduction and Recycling, page 46.

¹¹ We do not believe that legislative action is necessary to make community composting programs a park use, but the explicit authorization would remove uncertainty.

opportunities (community composting, food scraps drop-of programs, residential collection, etc.).¹²

And composting does not just reduce environmental pollution - it also serves the public interest because members of the public have the opportunity to visit composting sites, learn about the process, and use finished compost in their own yards and gardens.

II. The Parks Department's Actions Threaten the Survival of Two Community Composting Sites

Despite the significant benefits of community-based composting programs, the City has been taking actions towards eliminating two community composting sites - Lower East Side Ecology Center (Ecology Center) and Big Reuse.¹³

The Ecology Center had a compost yard in East River Park that occupied less than one acre. The yard operated for two decades, providing free educational programming in addition to processing food scraps, leaves, and woodchips into finished compost—including for use by the Parks Department. Construction of the East Side Coastal Resiliency project forced the Ecology Center to move out in 2021. The Center has not been provided with an alternative location although it keeps collecting food scraps, which it brings to Earth Matter and Big Reuse. Furthermore, the City's current financial plan eliminates funding for a temporary site build-out.¹⁴ The use of the site for composting has never been challenged and is currently not being challenged. At present, the Parks Department has not confirmed whether a temporary space will be made available for the composting yard or provided assurances that the Ecology Center will be able to return to East River Park once construction is complete.

Similarly, Big Reuse has run a successful community composting site on Parks Department property under the Queensboro Bridge in Long Island City since 2011. Big Reuse works with local

¹² The City's current approach relies exclusively on rolling out the curbside-pickup program and eliminates community composting by cutting its funding. It is important to note that this goes strikingly against the State's sustainable materials management strategy. Additionally, experts on composting have repeatedly pointed out that community composting is an integral part of urban sustainability with its unique environmental benefits and the growing civic awareness. The City's program focusing on anaerobic digestion brings different outcomes. As organic waste is digested in wastewater treatment plants, the resulting digestate is contaminated and therefore goes to landfills. For more information, *see* Clare Mifflin and Samantha MacBride, Don't Kill Community Composting in New York City, <https://www.bloomberg.com/news/articles/2024-02-01/new-york-city-don-t-toss-away-your-community-composting-program>; Jacob Wallace, Proposed NYC Budget Cuts "Devastating" For Community Composters, <https://www.wastedive.com/news/dsny-community-compost-budget-cuts-big-reuse-les-ecology-center-compost-power-nyc/700572/>; Jake Bolster, Why New York's Curbside Composting Program Will Yield Hardly Any Compost, <https://insideclimateneews.org/news/01102023/brooklyn-curbside-composting-is-digesting/>.

¹³ We understand that another important community composting site, the Earth Matter NY site located on Governors Island, is also potentially under threat in relation to a development proposal advanced by the Trust for Governor's Island. The Earth Matter site is a beloved facility that people from all over the city use and enjoy and that provides valuable educational and composting services, and we encourage the City to commit to supporting its continued operation on Governors Island as part of its review of development plans on the Island.

¹⁴ The City of New York November 2023 Financial Plan, section II subsection 827. Available at: <https://www.nyc.gov/assets/omb/downloads/pdf/peg11-23.pdf#page=33>.

Parks districts to compost leaves and woodchips, along with residential food scraps collected at community gardens and farmers markets. The finished compost is provided to local groups for community gardens and street tree care. In 2016-17, with the support of the Parks Department and the Department of Sanitation, Big Reuse transformed its half-acre parks space into a modern community garden and composting site. The Parks Department signed a three-year lease agreement for Big Reuse to operate its community composting program at the site. By all accounts this program has been an unqualified success. As Big Reuse’s executive director reported, “since 2011, Big Reuse’s Queensbridge composting site has composted over three million pounds of Parks Department leaves and wood chips and provided over 3,000 cubic yards of high-quality compost back to NYC Parks; last year alone, 700 cubic yards of high quality, screened compost was provided to 154 different parks, schools, community gardens, and greening projects”; compost and mulch from Big Reuse was applied to over 1,200 street trees with 1,000 volunteers.¹⁵ Again, there has never been and is not now a challenge to or litigation over the use of the site for composting. Yet, in 2021, a mere three years after retrofitting the site to host a compost program, rather than renew Big Reuse’s license, the Parks Department planned to eject the organization and use the site for vehicle parking. Ultimately, the Parks Department agreed to extend Big Reuse’s licensing agreement in 2021. At present, again, despite the unwavering support from local elected officials and wider community, the Parks Department is requiring Big Reuse to leave the site by June 30, 2024 without offering an alternative location. The composting site is to be ejected because of planned work to upgrade the Queensbridge Baby Park. However, the New York City Council members supporting Big Reuse and the organization’s executive director Justin Green assert that the compost site falls outside of the upgrade project footprint.¹⁶ The compost site has not limited the Parks Department’s vehicle parking use and does not impede the planned upgrade work.¹⁷

As we understand it, community members have shown unanimous support for these facilities.¹⁸ Uprooting these two composting sites is contrary to the City’s goals of achieving zero waste and maintaining a livable climate. The City should instead seek to sustain existing community composting efforts.

III. The Doctrine of Parkland Alienation Does Not Compel the Parks Department’s Position

It is our understanding that the Parks Department is concerned that renewing the licenses of the Ecology Center and Big Reuse would constitute improper parkland alienation. We also are aware that OPRHP guidance identifies landfills and composting centers as examples of non-park uses based on two court decisions involving industrial facilities, *Raritan Baykeeper v. City of New*

¹⁵ *Supra* note 3.

¹⁶ *Supra* notes 2 and 3.

¹⁷ *Supra* note 3.

¹⁸ See Joint Hearing, Committee on Parks and Recreation and Committee on Sanitation and Solid Waste Management, <https://citylimits.org/2020/12/21/opinion-parks-plan-to-evict-beloved-composting-sites-would-strike-blow-to-nyc-climate-goals/>; Melissa Iachan & Eric A. Goldstein, Opinion: Parks’ Plan to Evict Beloved Composting Sites Would Strike Blow to NYC Climate Goals, City Limits Newsletter, <https://citylimits.org/2020/12/21/opinion-parks-plan-to-evict-beloved-composting-sites-would-strike-blow-to-nyc-climate-goals/>.

York and Stephenson v. County of Monroe.¹⁹ But these interpretations are not compelled by the law and put countless small community composting operations at risk. We urge the City and State to rethink their approach.

The Court of Appeals has explained that “parkland is impressed with a public trust, requiring legislative approval before it can be alienated or used for an extended period for non-park purposes.”²⁰ Accordingly, “legislative approval is required when there is a substantial intrusion on parkland for non-park purposes.”²¹ The composting sites at issue, however, are not substantial intrusions onto parkland. Rather, by cultivating volunteerism, educating the public, processing landscape waste, and producing finished compost that is used on parkland, the composting programs advance purposes that are central to our City’s parks. Importantly, these composting sites operate as community facilities, which means they are not closed facilities, but are open to the public. Volunteering at composting sites or attending educational and other events at the sites is a form of recreation for the public. In addition, as gardeners well know, distributing compost helps build fertile, healthy soils, which goes hand in hand with sustainable usage of parkland.

Raritan Baykeeper v. City of New York does not undermine this point. In that case, the Supreme Court held that under the alienation doctrine, a 20-acre industrial composting facility could not operate in Spring Creek Park without state legislative approval.²² The facts of the case make clear, however, that the case is inapposite to the situations of community composting operations such as the Ecology Center and Big Reuse sites, and does not require the Parks Department to uproot those organizations.

In *Raritan Baykeeper*, the facility at issue occupied a 20-acre swath of the park that was, as a result, inaccessible to the public.²³ By contrast, the Ecology Center and Big Reuse composting programs require less than one acre each, and critically, bring members of the public onto parkland for volunteer and educational opportunities. Moreover, the facility in *Raritan Baykeeper* processed a number of types of organic matter, including manure, generating odors in the nearby community and leading the court to characterize it as “a working garbage dump.”²⁴ The composting programs at issue do not create this type of nuisance. As explained above, there are no complaints about the facilities. Instead, the community greatly supports the sites.

Raritan Baykeeper does not stand for the proposition that a composting site will always implicate the doctrine of parkland alienation. Instead, the court went to great pains to emphasize the facility’s large, industrial nature and the fact that the facility precluded the public’s use of the

¹⁹ NYS Office of Parks, Recreation and Historic Preservation, Handbook on the Alienation and Conversion of Municipal Parkland in New York (September 2017), p.6, <https://parks.ny.gov/documents/publications/AlienationHandbook2017.pdf>.

²⁰ *Friends of Van Cortlandt Park v. City of New York*, 95 N.Y.2d 623, 630 (2001).

²¹ *Id.*

²² *Raritan Baykeeper v. City of New York*, 2013 N.Y. Slip Op. 52258(U) (Sup. Ct. Kings Cty. Dec. 20, 2013).

²³ *Id.* at *2, *6.

²⁴ *Id.* at *2, *7.

occupied 20 acres²⁵—characteristics that completely distinguish the *Raritan Baykeeper* facility from community composting sites such as the Big Reuse and Ecology Center sites, which are small and facilitate enjoyment of the park by integrating members of the public into their operations.

In *Stephenson v. County of Monroe*, the Appellate Division held under the public trust doctrine that the County of Monroe could not establish a sanitary landfill in Black Creek Park without legislative approval.²⁶ A landfill is very different from a composting site. Landfills are solid waste disposal sites that require special engineering measures and environmental monitoring to prevent environmental contamination from deposited waste. They are not accessible to the public and not suitable for educational or other activities that could involve the public. On the contrary, a community composting site does not pose environmental risks. It is open to anyone in the community wishing to participate in composting activities through volunteer work or educational/outreach programs. Thus, *Stephenson* should not be used as a basis to categorize community composting sites as an example of non-park use constituting alienation of parkland.

Other cases on parkland alienation further demonstrate that community composting sites do not run afoul of the doctrine. For example, in *Friends of Petrosino Square ex rel. Fleischer v. Sadik-Khan*, the Supreme Court held—and the Appellate Division affirmed—that the installation of a bike share station in a park did not violate the public trust doctrine.²⁷ The court explained that the test of a non-park purpose is “whether the facility concerned offers substantial satisfactions to the public, which would only be possible in a park setting.”²⁸ As discussed, sites such as the Ecology Center and Big Reuse programs serve the public by promoting volunteerism, recreation, and education; and given the nature of composting, the programs need to take place in a park setting. Additionally, the court in *Friends of Petrosino Square* determined that a bike share station is a proper park purpose in part because biking has long been considered a proper use of parkland.²⁹ Similarly, composting has taken place on New York City parkland for many years—not only at the Ecology Center and Big Reuse sites, but also at the Hudson River Park in Manhattan, where a composting site begun in 2015 has grown into a park-wide operation that turns thousands of pounds of food scraps and yard waste into compost each year.³⁰

Evicting the Ecology Center and Big Reuse sends a harmful and negative signal to countless composting programs around the city. Many community gardens in the New York City parks system engage in composting. The Central Park Conservancy has a large on-site composting operation at a location called “The Mount,” a program which is crucial to the park’s ability to

²⁵ See, e.g., *id.* at *6 (operation of the facility “precludes the use of the 20 acre portion of the Park for recreational enjoyment by the public”); *id.* (“the composting facility is set aside and unavailable for use by the public”); *id.* at *7 (the facility “is a large scale solid waste facility” that is “inaccessible to the public and provides no typical benefits that are expected of a park”); *id.* (“The public is denied the use of the 20 acres.”); *id.* at *8 (discussing “the size and scope of this Facility” and that “the activity is fenced-off from the general public”).

²⁶ *Stephenson v. County of Monroe*, 43 A.D.2d 897 (N.Y. App. Div. 1974).

²⁷ 42 Misc.3d 226 (Sup. Ct. New York Cty. 2013), *aff’d*, 126 A.D.3d 470, 5 N.Y.S.3d 397 (1st Dep’t 2015).

²⁸ 42 Misc.3d at 230–31.

²⁹ *Id.* at 232.

³⁰ Hudson River Park, *Community Compost Program*, <https://hudsonriverpark.org/the-park/sustainability/community-compost-program/> .

process plant waste on site. For many City park users and community gardeners, community composting is just as integral to their enjoyment of the parks as “batting cages, golf courses, skating rinks, boat launches and marinas, and the associated equipment concessions.”³¹

Moreover, the Court of Appeals has recognized that the Parks Department enjoys discretion in interpreting the parkland alienation doctrine.³² For the reasons discussed above, the Ecology Center and Big Reuse’s composting programs fall squarely within the definition of a park purpose. Were this issue to come before the courts, it seems very likely that the City would prevail if it took the position that these community composting sites, and other sites like them, serve vital park purposes.

In addition, ensuring that well-established community composting operations continue is vital to meeting the City’s and State’s goals and mandates for reducing landfilling and combustion of waste, as well as achieving environmental justice and climate goals. For these reasons, we urge you to recommit to promoting composting as a means of advancing your zero-waste and carbon neutrality goals. We join all supporters of community composting in asking you to direct the Parks Department to find a way to accommodate the Ecology Center’s operation during the East River Park construction and assure its return to East River Park thereafter, and to allow Big Reuse to remain in its current location.

Sincerely,

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Environmental Law Committee

Jullee Kim

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Environmental Law Committee

Cc: New York State Assembly Member Deborah J. Glick
Chair of Standing Committee on Environmental Conservation

New York State Senator Pete Harckham
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³¹ Handbook on the Alienation and Conversion of Municipal Parkland (2017).

³² *Union Square Park Community Coalition, Inc. v. New York City Dep’t of Parks*, 22 N.Y.3d 638, 655 (2014).

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