



**NEW YORKERS
FOR PARKS**

Ensuring greener, safer,
cleaner parks, together.

Hey, That's My Park!

Understanding Non-Park Uses on Public Parkland



Franklin Delano Roosevelt Boardwalk and Beach, Staten Island. In August 2002, the City converted a beach parking lot into a 700-space park and ride facility for commuters.

Protection of Parkland for the Public

Since the days of the Roman Empire, the public trust doctrine has established that parks, open space, air, waterways, shorelines and other natural resources should be preserved for public enjoyment.

Today this doctrine is legally guided by decisions of the courts, rather than written laws – otherwise known as common law. In New York State, the courts have held that using parkland for a “non-park use” requires permission from the State Legislature.

These activities require state approval to occur on parkland and are not permitted by the public trust doctrine:

- a lease for any purpose
- parking*
- museums
- municipal facilities (water filtration, sanitation)
- schools
- construction of a new vehicular street

* PARKING

Designated parking areas that support park facilities are permitted. Long-term parking of police, sanitation, or other vehicles violates the public trust doctrine.

Parkland Alienation

Alienation is the taking of parkland for a non-park use. Before alienation can legally proceed in New York State, these steps generally apply:

1. A municipality typically prepares the first draft of a proposed New York State Legislative bill that requests permission to alienate parkland.
2. The municipality then asks that the bill be introduced in the appropriate committees of the State Assembly and State Senate.
3. The municipality completes a review of the environmental impacts of the alienation as required by the State Environmental Quality Review Act (SEQRA), often in conjunction with a related action, project, development, etc.
4. The municipality’s governing body (i.e. city council, town board, county legislature or village board of trustees) passes a home rule resolution requesting State Legislative authority to alienate parkland. (i.e. Passage of the State bill in question)
5. Upon receipt of the home rule request, the State Legislature takes up the issue and votes on the bill that was submitted by the municipality.
6. If the bill is passed into law, the municipality (often through its chief executive, i.e. Mayor) is empowered to alienate parkland.

There is no required number of days for the above steps to occur. It can take years to alienate a park, or the alienation process can be completed legally in just a matter of days.

The Role of the Public During Environmental Review

Some municipalities delay the completion of necessary environmental review until the Legislature approves the alienation bill.

The New York State Department of Environmental Conservation recommends that environmental review occur as early as possible in the alienation process, before a municipality votes on a home rule resolution request seeking State Legislative approval of an alienation.

This environmental review provides important opportunities for public participation, which may include public notice, comment periods and hearings. It is therefore essential that municipalities comply with SEQRA, which may provide the only opportunity for public participation in the alienation process. Early environmental review ensures the public a meaningful role in the process before it is a “done deal.”

ALIENATION = the taking of parkland for a non-park use.

Photos Left: Shore Road Park, Brooklyn. Overflow classroom space was built next to the park and has cut off a pathway and made a lawn area unusable in the park. **Bottom Left:** Canarsie Park, Brooklyn. Original site of the waste transfer station now in Spring Creek Park. The Department of Sanitation has not undertaken promised site remediation and parkland remains inaccessible to the public. **Bottom:** Yankee Stadium, Bronx. Twenty-two acres of parkland were alienated for the construction of a new stadium.



FAQ's

Is a restaurant in a park considered alienation?

No. Courts have determined that restaurants (at least those that qualify as recreation amenities) are park uses. Restaurant operators (concessionaires) must operate under a revocable license.

Is private management of a city park considered alienation?

No. Parks can be managed and operated by independent entities (e.g., the Bryant Park Corporation).

Are community gardens protected under the same laws as city, state or federal parks?

Not always. To be protected under the public trust doctrine, a community garden must have been dedicated as parkland by the government. A community garden on land owned by the Department of Parks and Recreation is more likely to be protected than a garden on other municipal or privately-owned land.

Can land be alienated without a public purpose for the new use?

Yes. Parkland can be alienated legally for any purpose, unlike eminent domain, which requires demonstration of a public good.

Are there specific requirements for mitigation?

No. The public trust doctrine is based on case law, rather than statutes or regulations. While state guidelines recommend replacement parkland, there are no legal requirements for mitigation. If replacement land is not feasible, it is common practice for funds to be given to the affected area. The terms of any mitigation are decided by the municipality and State Legislature on a case-by-case basis.

How can I learn more about alienation?

Download a free copy of the *Handbook on the Alienation and Conversion of Municipal Parkland* from the State Office of Parks, Recreation and Historic Preservation at: www.nysparks.state.ny.us/news/public/

New Yorkers for Parks and Parks and Trails New York carefully monitor the increasing trend of parkland being used for non-park purposes. Alienation should be used as a last resort after all other alternatives have been examined.

About New Yorkers for Parks

New Yorkers for Parks is the only independent watchdog for all the City's parks, beaches and playgrounds. The City's oldest and leading independent expert on park conditions, efficiency and funding. New Yorkers for Parks has worked for 100 years to ensure greener, safer, cleaner parks for all New Yorkers. For more information visit: www.ny4p.org.

About Parks and Trails New York

Parks & Trails New York is the only organization working statewide to protect and promote New York's parks; help communities create new parks, including linear parks such as greenways and bikeways; and develop a network of parks, trails, and open spaces throughout the state for the use and enjoyment of all. For more information, visit www.ptny.org.



New Yorkers for Parks' work on parkland alienation is generously supported by the Education Foundation of America, Merck Family Fund and the Rockefeller Brothers Fund.

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Graphic Design: Stephanie Borgese Cover photo : © 2004. Lea Cetera for New Yorkers for Parks. All rights reserved. All other photos © 2007. New Yorkers for Parks. All rights reserved.

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What to Do If You Suspect a Park Is Being Used Illegally

- Take photos of the suspected illegal use.
- Record dates, times and descriptions of the suspected non-park use. How long has the use been in the park? How is the park being impacted?

In New York City:

- Call 311 and report the occurrence. Record your 311 incident number.
- Send a letter and copies of your photos to your local Community Board and Council Member requesting information on the suspected illegal use and referencing your 311 incident number.
- If you are not satisfied with the response, write a letter to the Commissioner of the Department of Parks and Recreation at: Commissioner, The City of New York Department of Parks and Recreation, The Arsenal, Central Park, New York, NY 10021.

Around New York State:

- Call the New York State Office of Parks Recreation and Historic Preservation or your local assemblyperson or senator.
- Keep copies of all correspondence for your own records.
- Send a copy of your letter(s) to New Yorkers for Parks and/or Parks and Trails New York:

New Yorkers for Parks
355 Lexington Ave, 14th Fl
New York, NY 10017

Parks and Trails New York
29 Elk Street
Albany, NY 12207