

**PROBLEMS WITH THE  
PROPOSED RULES GOVERNING THE DISTRIBUTION OF  
ADVERTISEMENTS ON PRIVATE PROPERTY**

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My comments are focused on the provisions of the Proposed Rules which pertain to small walkup apartment buildings. The major problem with the Proposed Rules is that they **shift the responsibility for enforcement from the NYC Department of Sanitation (DSNY) to the property owner.**

The Proposed Rules **exempt the Department of Sanitation from any responsibility to inspect a property and to decide, based upon their inspection, whether there has been violation.**

The only responsibility assigned to DSNY by the Proposed Rules is to receive a complaint from a property owner and to decide whether to issue a violation based on the complaint submitted by the property owner.

The Proposed Rules place the following very deterring burdens on the property owner. He must:

1. Obtain an official complaint form
2. Fill out the form
3. Get the form notarized
4. Submit the advertising which is in violation
5. Submit a list of all current occupants in each unit, stating whether they consent to the prohibition against the advertising
6. Come before the Environmental Control Board to testify.

It is extremely unlikely that any landlord in a walkup apartment building is going to do this. Luxury buildings with doormen do not have problems with unsolicited advertising, because the doorman is constantly observing and controlling the situation. Some may feel that it is the responsibility of the property owner to keep his property clean. Unfortunately, however, most walkup buildings have owners who just do not care, because they know their apartments will remain rented regardless. Therefore it is imperative that the City enforce the new law in a way that will give the tenants, not the landlord, the means to obtain enforcement.

**I propose the following as a simplified and workable procedure:**

- If a property has a sign posted designating a "particular location or an appropriate receptacle" for the placement of the unsolicited advertising, and, if the advertising has not been placed appropriately, then any citizen may call 311 to make a complaint.
- The Department of Sanitation (DSNY) will then be required to inspect the property.
- The property should exempt the property owner from the issuance of a violation during routing hours from the time the 311 complaint is made until DSNY has inspected the property.
- If DSNY issues a violation based on its inspection, it will create a rebuttable presumption upon which the Environmental Control Board would pass final judgment.

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- The building owner or agent would not be required to submit any paper work or to appear before the ECB to testify.

I do not believe the public is strongly concerned about whether the number of advertisements left violates the permitted number. **The public is concerned with the unsightly appearance and potential safety hazard of advertising strewn on steps, stoops, and vestibule floors.** (See attached photos which I took in the last several weeks.) The Proposed Rules should make it easy for citizens to get fines imposed in order to correct this problem.

If the Proposed Rules are adopted the City and Department of Sanitation will be involved in the enforcement process and will be in a potentially vulnerable legal position. If someone falls and is seriously or fatally injured because the advertising was not deposited in the “designated receptacle” a personal injury attorney could bring a suit against the City and the Department, and argue that the burdensome requirements placed on the property owner by the City, play a role in perpetuating hazardous conditions. A personal injury attorney once told me his rule is to “sue everyone in sight, especially the deepest pockets.”

Injuries caused by falls on steps are common, almost epidemic. Data in Oklahoma over a period of years shows that 4% of the persons hospitalized or who died due to traumatic brain injury were injured falling on steps. (See attached.) In recent years over one million people in the United States received hospital treatment for stair related injuries. (See attached). The website of a local personal injury attorney states that injuries from falls involving stairs and hard surfaces “can be as severe and life altering as injuries suffered in car accidents and assaults.” (See attached.) The City should carefully consider the possible legal consequences of adopting rules which make it extremely difficult for citizens to obtain abatement of unsolicited advertising regularly deposited on their steps, stoops and vestibules, as intended by the state law.

I found nothing in the new state law which would prohibit the City from adopting the same simple procedure for unsolicited advertising which currently is used by the Department of Sanitation for trashy sidewalks. Namely, any citizen may call 311 to report a situation, and Sanitation will inspect the location and possibly issue a summons. For unsolicited advertising, the Department would mail the summons to the respondent by certified mail as specified by the law.

I would rather delay enforcement of this law until the Rules make it easy for the public to get citations issued and fines imposed. If necessary, the state law should be amended to specify that the posted sign (optionally) may specify only the location or receptacle where the advertising is to be placed, without necessarily specifying the number of advertisements allowed. This would eliminate the extremely burdensome administrative requirement on the part of the building owner to obtain and maintain as current, written proof of the number of residents who do not consent to the prohibition. Very few building owners are likely to undertake this responsibility, thus making the law completely ineffective for multi-unit walkup buildings.

Neither the State law nor the Proposed Rules addresses the issue of how frequently the receptacle must be emptied. Nothing is stated in either the law or the Proposed Rules regarding what the distributor of advertising must do if the receptacle is too full to accept more advertisements.

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This is an important point, because if the advertiser finds the receptacle full to capacity, and he deposits the advertising on the vestibule floor or stoop, the entire intent of the law has been subverted. On the other hand, if the advertiser is not able to leave the advertisements because they do not fit in the receptacle, advertisers may consider their rights violated.

The rules for the routing hours should be changed to state that during the routing hours building owners may be cited for a violation if the designated receptacle for placement of advertising is visible outside the property, and advertisements are protruding visibly above the top of the box.

**PROPOSED RULES CREATE A MAJOR LOOPHOLE IN THE LAW  
BY RE-DEFINING (DIFFERENTLY FROM THE STATE LAW)  
THE ADVERTISING MATERIALS WHICH WILL BE COVERED.**

The loophole (which was confirmed to be a potential loophole by an attorney I consulted) is that **if an advertiser puts even the smallest amount of material in the flyer which does not relate to the service or product being sold, the advertising will be exempt from the law.** For example, the advertising could mention in small print who won the World Series. The rules proposed by the Department of Sanitation state only advertisements which “do not contain **any** news” will be covered by the law.

See below the quotations from the state law vs. the Proposed Rules. The state law defines newspapers (which would be exempt of the law) as “newspapers regularly sold by the copy or by annual subscription or sale” and “that are published at least weekly”. The proposed rules drops these definitions.

From bill signed into law by Governor Spitzer on January 28, 2008 (Section 397-a of the General Business Law of New York State):

Nothing contained in this subdivision shall be deemed to prohibit or otherwise regulate the delivery of any such matter by the United States postal service, or prohibit the distribution of sample copies of newspapers regularly sold by the copy or by annual subscription or sale or coupon newspapers and magazines containing more than a de minimus amount of news that are published at least weekly.

From the “Proposed Rules [issued by the NYC Department of Sanitation] Governing the Distribution of Advertisements on Private Property” (Note: The supposed purpose of the “Proposed Rules” is to implement the enforcement of the State law in NY City.)

Additionally, this rule defines “unsolicited advertisement” in accordance with the law. Specifically, the only advertising materials that are covered are materials advertising one or more businesses or soliciting business, which do not contain more than a de minimus amount of news, in that they do not contain any news, editorial content or information other than material containing a) the business or businesses, or b) services or products offered by the business or businesses.

(From the bottom of page 5.)







# INJURY UPDATE

*A Report to Oklahoma Injury Surveillance Participants\**

February 22, 2006

## Traumatic Brain Injuries Resulting from Falls on Stairs/Steps in Oklahoma, 1992-2003

### INTRODUCTION

Falls are the second leading cause of unintentional injury death for people of all ages and the leading cause for people 60 years and older in the United States. One in three adults aged 65 years and older falls annually. Also, children and youth (<1 to 14 years) are at high risk for falls and accounted for 27% of non-fatal falls in the home. Falls are the most costly injury among older persons in the United States.

In Oklahoma, there were 12,173 hospitalized or fatal traumatic brain injuries that resulted from a fall from 1992 to 2003. This report describes the occurrence of falls on or from stairs/steps and the demographic and epidemiologic factors associated with these injuries. Falls on or from stairs/steps were defined as those resulting from going up or down any stairs/steps. Children who fell from their caregiver's arms as they went up or down stairs/steps and elderly who fell from their wheelchair onto stairs/steps were excluded. Specific recommendations of prevention are made based on the data, case briefs, and consideration of effective ways to reduce falls on stairs and their long-term consequences.

### DESCRIPTIVE EPIDEMIOLOGY

Based on surveillance data collected on persons who were hospitalized or died from a traumatic brain injury in Oklahoma from 1992 to 2003, a total of 505 (4%) injuries resulted from falling on or from stairs/steps.

The ages of injured persons ranged from less than one to 104 years with the highest number and rate of injuries among adults 65 years or older (48%, 4.5 per 100,000 population). Children less than five years old had the second highest number of injuries (11%, 2.0 per 100,000 population) (Table 1).

**Table 1. Traumatic Brain Injuries Resulting from Falls on Stairs/Steps, by Gender, Age Group, and Race, Oklahoma, 1992-2003**

Characteristic	Number	Percentage	Rate per 100,000
<b>Gender</b>			
Male	263	52%	1.0
Female	242	46%	1.0
<b>Age Group</b>			
0-4	56	11%	2.0
5-14	23	5%	0.4
15-24	24	5%	0.4
25-34	28	5%	0.5
35-44	36	7%	0.6
45-54	52	10%	1.0
55-64	45	9%	1.2
65+	241	48%	4.5
<b>Race</b>			
White	439	87%	1.3
African American	27	5%	0.8
Native American	20	4%	0.6

\*The INJURY UPDATE is a report produced by the Injury Prevention Service, Oklahoma State Department of Health. Other issues of the INJURY UPDATE may be obtained from the Injury Prevention Service, Oklahoma State Department of Health, 1000 N.E. 10<sup>th</sup> Street, Oklahoma City, Oklahoma 73117-1299, 405/271-3430 or 1-800-522-0204 (in Oklahoma). INJURY UPDATES and other IPS information are also available at [www.health.state.ok.us/program/injury](http://www.health.state.ok.us/program/injury).

According to figures compiled by the National Electronic Injury Surveillance System, 998,000 people received hospital treatment for stair related injuries in the U.S. alone.



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## Sidewalks, Stairs & Floors

Sometimes an injury results from a fall while walking down a street or up a stair. And as harmless as it sounds, falls often produce terrible injuries. The Law Offices of Mark A. Eskenazi, LLC represent clients who have been injured in all kinds of falls.

Injuries sustained as a result broken or defective sidewalks or stairs or from falls on slippery or soapy floors, can be as severe and life altering as injuries suffered in car accidents and assaults. Such injuries can cause incredible economic hardship, pain and suffering and range from severe head trauma or back problems, to scars, nerve damage, broken hips or dislocated bones, paralysis, loss of limbs and even death.

Accidents involving falls on public streets or sidewalks or on property owned by the City of New York or other government entities have additional requirements which the injured person must be aware of. **You have only 90 (ninety) days\* from the time of your accident to file a Notice of Claim** with the appropriate city agency when you've been injured on New York City sidewalks, on Housing Authority Property or at a City bus station or subway platform. In accidents resulting from falls on City property, a delay in either speaking to a lawyer or filing the appropriate paperwork can actually cause you to lose your right to sue.

We understand that the immediate goal following an accident is to ensure that you obtain all necessary medical care. We also understand that the next objective is to protect your rights and to move your case forward to seek compensation for your medical bills, your pain and suffering and the economic losses that you have suffered. We will discuss your unique situation and when appropriate, take immediate steps in court to move the process of recovery forward to seek money damages on your behalf.

If you live in the New York City, the Bronx, Brooklyn, Queens or on Long Island, and you or a loved one has been injured (or killed) as a result of a fall, you may be eligible to receive compensation under the law.

**Call us at 1-800-718-1555 or [contact us online](#) for a FREE consultation. Call before your time is up and it's too late to do anything.**

\*If more than 90 days have passed since your accident and a Notice of Claim was not filed, the law provides a way for a party to ask the court to extend that time beyond the 90 day limitation. If that's you, we will look at the facts of your case, the reason for the delay and discuss the options that are available to you.