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 2 THE CITY OF NEW YORK DEPARTMENT OF
 SANITATION
 3
 4 NOTICE OF PUBLIC HEARING AND OPPORTUNITY TO
 COMMENT ON:
 5 PROPOSED RULES GOVERNING THE DISTRIBUTION
 OF ADVERTISEMENTS ON PRIVATE PROPERTY
 6
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 8 125 Worth Street
 Second Floor Auditorium
 9 New York, New York

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Wednesday,
 June 4, 2008

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13 The above entitled matter came on
 14 for hearing at 9:30 a.m.

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16 BEFORE: ANDREA CICCONE,
 17 Director of Intergovernmental Affairs

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1 MS. CICCONE: Good morning and
 2 welcome. My name is Andrea Ciccone.
 3 I am the Director of Intergovernmental
 4 Affairs in the Bureau of Legal Affairs
 at the Department of Sanitation.
 5 Thank you for attending the
 6 Department's hearing this morning.
 7 The Department is conducting
 8 this hearing in accordance with the
 9 requirements of the City
 10 Administration Procedure Act. The
 11 purpose of this hearing is to receive
 12 comments from the public on the
 13 Department's proposed rules governing
 14 the distribution of advertisements on
 15 private property. The Department
 16 published the proposed rules in the
 17 City Record on April 30, 2008. It
 18 also electronically transmitted and,
 19 in some instances, mailed by
 20 first-class mail, copies of the rules,
 21 to all New York City local elected
 22 officials, the state elected officials
 23 who sponsored the underlying new state
 24 legislation, all fifty-nine community
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0003

1 PROCEEDINGS
 2 board managers, and several media
 3 organizations in the City.
 4 Acting pursuant to his

5 Charter-conferred authority under
6 Section 753 of the New York City
7 Charter, the Sanitation Commissioner
8 is authorized to adopt rules relating
9 to street and sidewalk cleanliness. In
10 New York City, the owners of private
11 homes and multiple dwellings are
12 responsible for maintaining and
13 keeping their properties in a clean
14 manner. This includes the areas
15 behind owners' property lines or
16 fences that are visible from the
17 street, and the public sidewalks
18 abutting their properties and 18
19 inches from the curb line. There are
20 many property owners in neighborhoods
21 across the City who take substantial
22 personal and civic pride in the
23 appearance of their properties, and
24 carefully monitor and sweep in front
25 of their properties to make sure they

0004

1 PROCEEDINGS

2 are clean and free from sidewalk and
3 street litter debris. However,
4 unsolicited advertisements that are
5 placed on doorsteps or other areas of
6 private property can be blown away by
7 the wind, causing litter to accumulate
8 on the streets and sidewalks that abut
9 homes and apartment buildings. This
10 causes a serious visual and physical
11 blight upon communities across New
12 York City.

13 To address the littering problem
14 associated with the distribution of
15 advertisements to private residences,
16 while preserving the privacy of
17 persons who do not wish to be
18 solicited at their homes or
19 apartments, the Governor signed into
20 law Chapter 3 of the Laws of 2008 on
21 January 28, 2008. This new state law
22 amends Section 397-A of the New York
23 State General Business Law which was
24 added to Chapter 585 of the Laws of
25 2007. Section 397-A makes it unlawful

0005

1 PROCEEDINGS

2 for any person to distribute unwanted
3 advertisements to a one, two, or
4 three-family home if the property
5 owner posts a sign expressly
6 prohibiting the delivery of such
7 materials. The new state law
8 specifically requires that this sign
9 be at least 5 inches by 7 inches in
10 size, and contain the words, "Do Not
11 Place Unauthorized Materials On This
12 Property." The state law also
13 requires the property owner to
14 conspicuously post this sign on his or
15 her property.

16 Similarly, the new state law
17 provides that, in a multiple dwelling
18 in which some unit owners or tenants
19 have consented to prohibiting the
20 delivery of unsolicited
21 advertisements, the property owner may
22 post, in a conspicuous location, a
23 sign at least 5 inches by 7 inches in
24 size identifying the number of unit
25 occupants who wish to receive

0006

1 PROCEEDINGS
2 unsolicited materials, and the
3 location where the materials must be
4 placed.
5 Additionally, the state law
6 creates a rebuttable presumption that
7 the person whose name, telephone
8 number, or other identifying
9 information appearing on any
10 unsolicited advertisement placed at
11 two or more premises is liable for
12 violating this state law. Also
13 pursuant to the new state law, on
14 February 20, 2008, Mayor Michael
15 Bloomberg designated the New York City
16 Department of Sanitation to locally
17 enforce the new state law requirements
18 in this City. The state law provides
19 that all summonses issued in the City
20 of New York are returnable to the New
21 York City Environmental Control Board,
22 and authorizes the Department of
23 Sanitation to serve all summonses
24 either by personal delivery or by
25 certified, registered mail with return

0007

1 PROCEEDINGS
2 delivery receipt.
3 Although Chapter 585 creates the
4 prohibited act of unlawfully
5 distributing advertisements to
6 property owners who have conspicuously
7 posted a visible sign on their
8 properties, both Chapter 585 and
9 Chapter 3 are silent regarding the
10 implementation and enforcement of
11 certain provisions of Section 397-A of
12 the New York State General Business
13 Law. Accordingly, the purpose of this
14 rule is to set forth the procedures
15 for owners of one, two and
16 three-family dwellings, and multiple
17 dwellings, to inform the Department of
18 any violation that has occurred at the
19 owner's property in order for the
20 Department enforcement agents to take
21 necessary enforcement action against
22 the responsible party.

23 The following are some of the
24 highlights of the proposed rule:
25 First, the rule establishes a

0008

PROCEEDINGS

process by which property owners may obtain a property owner complaint affidavit form through the Department of Sanitation's website or by calling the 3-1-1 action center, and subsequently submit this form to the Department for appropriate enforcement action;

Second, the rule clarifies that, for purposes of enforcement, the advertisement must be of the type that it does not contain any news, editorial content or information other than material concerning the business, or services or products offered by the business. Where one or more documents are packaged together either by a plastic bag or wrapper, or a rubber band or similar device, each document will be analyzed separately to determine whether it constitutes an advertisement; and

Third, the rule provides that, in addition to submission by a

0009

PROCEEDINGS

property owner of a complaint affidavit form, an enforcement agent may also issue a summons based on his or her personal observation of any violation of state law governing the distribution of advertisements on private property.

Also present at this morning's hearing is Jim Macron, counsel to the New York City Environmental Control Board. On April 30, 2008, the Environmental Control Board jointly published in the City Record a proposed rule to revise the Sanitation Penalty Schedule under Section 31-122 of Subdivision G of Chapter 31 of Title 15 of the Rules of the City of New York by adding one charge for violating Section 397-A of the New York State General Business Law that prohibits the placement of unsolicited advertisements at two or more premises. This new charge, corresponding to the provisions of the

0010

PROCEEDINGS

new law, is being added to the Sanitation Penalty Schedule so that the Department of Sanitation may enforce against such violations that carry a minimum civil penalty of \$250.00 for each summons issued.

A Court Reporter is present today and will record the hearing. You may present an oral statement or submit written comments concerning the

12 proposed rules. Please sign in at the
13 entrance of the room if you wish to
14 present an oral statement today. We
15 have been accepting written comments
16 on the proposed rules since we
17 published them in the City Record, and
18 will continue to do so through the
19 close of business today.

20 The Department will make
21 available a copy of all written
22 comments received by the Department,
23 together with today's hearing
24 transcript, for viewing on its website
25 by mid-June.

0011

1 PROCEEDINGS

2 The Department will carefully
3 consider all the comments it receives
4 today and all written comments
5 received through the close of business
6 today. Following the consideration,
7 we will issue proposed final rules and
8 publish them in the City Record. The
9 rules will then become effective
10 thirty days after this publication.

11 I will begin calling those of
12 you who wish to speak this morning in
13 the order in which you have signed in.
14 When you speak, please state your name
15 and affiliation. Also, please speak
16 slowly and clearly so that the Court
17 Reporter can understand and accurately
18 record your statement. We also ask
19 that you limit your statement to five
20 minutes.

21 Before we begin calling
22 individuals to speak, however, I would
23 first like to read into the hearing
24 transcript record a joint letter which
25 the Department received from New York

0012

1 PROCEEDINGS

2 State Senator Frank Padavan of Queens
3 and New York State Assemblyman Mark
4 Weprin of Queens, who sponsored the
5 state law regulating the distribution
6 of advertisements to residents. The
7 letter is addressed to the Deputy
8 Commissioner for the Bureau of Legal
9 Affairs for the Department, and states
10 as follows:

11 Dear Commissioner Orlin:

12 We are writing concerning
13 Chapter 3 of the Laws of 2008
14 regarding the distribution of
15 unsolicited advertising on private
16 property and the public hearing being
17 held on the proposed rules to
18 effectuate the law.

19 First, we feel it is important
20 for your Department to realize the
21 widespread public support for this
22 legislation. From our personal

23 observations, to complaints from
24 community boards, civic organizations
25 and our neighbors, unwanted

0013

1 PROCEEDINGS

2 literature, advertisements and fliers
3 left on private property is not only a
4 blight throughout Queens but a safety
5 issue as well. Not unlike the calls
6 to telemarketers until the "Do Not
7 Call" registry was adopted, we felt
8 legislation was necessary to alleviate
9 this nuisance of unwanted litter. As
10 a matter of fact, once the law was
11 signed our offices made the pertinent
12 signs available and over four thousand
13 citizens in our District alone have
14 already placed such signs on their
15 property.

16 In respect to the proposed
17 rules, we are in general agreement and
18 commend your Department for its
19 efforts in this regard. There is,
20 however, one issue which we feel may
21 have an impact on our constituents not
22 filing a complaint and that is the
23 requirement of it being notarized. It
24 may be difficult for one reason or
25 another for people to get to a Notary.

0014

1 PROCEEDINGS

2 To that end, we would maintain that if
3 the complaint makes it clear that the
4 signer swore to the truth thereof
5 under penalty of perjury, this would
6 be sufficient for your Department to
7 act. Of course, if the complainant
8 had to later appear in an
9 administrative hearing or if your
10 Department felt a notarized affidavit
11 was necessary to obtain a conviction,
12 the individual would have to comply.
13 The point is the requirement of a
14 notarized complaint in the first
15 instance may well discourage citizens
16 to file complaints. Therefore, we
17 would ask your Department to consider
18 deleting such requirement from the
19 proposed rules.

20 Should you have any questions or
21 require anything further, please do
22 not hesitate to contact us. As we
23 will both be in session in Albany on
24 June 4, we would ask you to include
25 this letter as part of the hearing.

0015

1 PROCEEDINGS

2 Lastly, we have enclosed a
3 recent unwanted flier left on a
4 constituent's lawn as an example of
5 this unsightly litter.

6 Cordially, Frank Padavan Senator
7 of the 11th District. Mark Weprin,

8 Assembly District 24

9 Now I will begin by asking Mr.
10 William Marquardt to speak first.

11 MR. MARQUARDT: My name is
12 William Marquardt, M-A-R-Q-U-A-R-D-T,
13 and I'm here representing only myself,
14 except that I know that many members
15 of the community in the area where I
16 live, including two local community
17 resident associations, are very
18 concerned about these issues.

19 My concern is that we have a
20 number of laws on the books now
21 relating to improving the quality of
22 life, but we simply are not enforcing
23 them. For example, the bill passed
24 about cars sounds good. It says you
25 don't have to see the person putting

0016

1 PROCEEDINGS

2 it on the car; but I have tried and I
3 am unable to get any city agency to
4 provide summonses about this, period.
5 It's very frustrating and I'm
6 concerned that this will become simply
7 another example of a law being passed
8 and nothing being done with regard to
9 enforce it.

10 I have here some photos. I have
11 examples, but these are some photos.
12 I have a number of them here and you
13 can pass them around. I'm showing
14 that they are just left on the step
15 where people walk, in front of doors,
16 and covering the entrance to the
17 doors. You can pass these around.
18 These are more typical. But here is
19 an example. I took all these photos
20 myself. I did not touch any of these
21 up before taking the photos. It's
22 exactly just the way they are. I'm
23 going to start my prepared remarks.

24 There are two major problems
25 with the proposed rule. First, the

0017

1 PROCEEDINGS

2 rules change the definition of
3 advertising, which may be subject to
4 prohibition, from the definition given
5 in the state law. You read the two
6 definitions, they're quite different.
7 And this creates a loophole. The
8 proposed rule states that only
9 advertisements which do not contain
10 any news will be covered by the law.
11 Now, this will allow an advertiser to
12 exempt his advertising from
13 enforcement simply by adding some item
14 in small print, such as who won the
15 World Series.

16 The second problem is that the
17 rules shift responsibility for
18 enforcement from the Department of

19 Sanitation to the property owner. The
20 rules exempt DSNY, the Department of
21 Sanitation, from any requirement to
22 inspect the property. Now I
23 understand the staffing problems, the
24 budget concerns and so forth.
25 However, it is apparent to me that the

0018

1 PROCEEDINGS

2 Department of Sanitation desires to
3 avoid having to devote any significant
4 personnel resources for additional
5 enforcement of this new law. And,
6 furthermore, it provide a loophole to
7 make it easy for advertisers to exempt
8 their advertisement from enforcement.

9 The proposed rules place very
10 deterrent burdens on the property
11 owners for making a complaint. As
12 we've heard earlier, you must obtain
13 complaint forms, a single form; fill
14 out the form; get it notarized; submit
15 the advertising; submit a list of
16 current occupants; state whether or
17 not they consent to the prohibition
18 against the advertiser; and be
19 prepared to come before the
20 Environmental Control Board to
21 testify.

22 It is extremely unlikely that
23 any landlord in a walk-up apartment
24 building, which is the area of my
25 primary concern, is going to do this;

0019

1 PROCEEDINGS

2 nor would he want to pay one of his
3 salaried employees to serve as his
4 agent. Luxury buildings with doormen
5 do not have problems with unsolicited
6 advertising because the doorman is
7 constantly observing and controlling
8 the situation. Some may still feel it
9 is the responsibility of the property
10 owner to keep his property clean.
11 Unfortunately, however, most walk-up
12 buildings have owners who just do not
13 care because they know their apartment
14 will remain rented regardless.
15 Therefore, it is imperative that the
16 city enforce the new law in a way that
17 will give the tenant means to obtain
18 enforcement.

19 I found nothing in the state law
20 which would prohibit the city from
21 adopting the same simple procedure for
22 unsolicited advertising which
23 currently is used by the Department of
24 Sanitation for trashy sidewalks.
25 Namely, any citizen may call 3-1-1 to

0020

1 PROCEEDINGS

2 report a trash sidewalk, and
3 sanitation will inspect the location

4 and possibly issue a summons.

5 For an unsolicited
6 advertisement, if a property owner has
7 a sign designating a location or a
8 receptacle, and if the advertisement
9 has not been placed as designated, any
10 citizen should be able to call 3-1-1
11 and make a complaint. Forget about
12 the exact number of ads. Tenants and
13 the public are concerned about the
14 trashy appearance and safety hazard of
15 the depositing of advertising on their
16 steps and vestibule floors.

17 If the proposed rules are
18 adopted, the City and the Department
19 will be in a potentially -- a
20 potentially vulnerable legal
21 condition. Because they become now
22 part of the act. They're players in
23 the process. If someone falls and is
24 seriously or fatally injured, a
25 personal injury attorney could claim

0021

1 PROCEEDINGS

2 that the burdensome requirements the
3 City placed on the property owner
4 played a direct role in perpetuating
5 hazardous conditions. Personal injury
6 attorneys sue everyone in sight,
7 especially the deepest pockets.

8 Injury caused by falls on steps
9 are common, almost epidemic. In
10 recent years over one million people
11 in the United States have received
12 hospital treatment for stair-related
13 injuries, which can be as severe as an
14 injury suffered in a car accident or
15 an assault.

16 If necessary, the state law
17 should be amended to specify that the
18 posted sign optionally may specify
19 only the location of the receptacle
20 where the advertising is to be placed,
21 without necessarily specifying the
22 number of advertisements allowed.
23 This would eliminate the burdensome
24 administrative requirement on the
25 building owners to maintain current

0022

1 PROCEEDINGS

2 written proof of the number of
3 residents who do not consent to the
4 prohibition.

5 Also, there is the issue of how
6 frequently the receptacle must be
7 emptied, which is not addressed by
8 either the state law or proposed rule.
9 This is an important point. Because
10 if the advertiser finds the receptacle
11 full to capacity, and he deposits the
12 advertising on the vestibule floor or
13 stoop, the entire intent of the law
14 has been subverted. On the other

15 hand, if the advertiser is not able to
16 leave the advertisement because they
17 do not fit in the receptacle,
18 advertisers may consider their rights
19 to have been violated.

20 I appreciate very much the time
21 that has been allowed for me to speak
22 here. And I want to say that I
23 recognize the very fine work the
24 Department of Sanitation does in many
25 areas, cleaning up after parades and

0023

1 PROCEEDINGS

2 getting the garbage cleaned up and the
3 snow off the streets in a very
4 responsible manner. But I do have a
5 concern which I voiced here in my
6 remarks. Thank you again.

7 MS. CICCONE thank you very
8 much, Mr. Marquardt. I will pass
9 those compliments on to our sanitation
10 commissioner too.

11 I would like to call Jason
12 Buckweitz, representative for
13 Councilman Vincent Gentile of
14 Brooklyn, to come to the podium.

15 MR. BUCKWEITZ: Good morning. I
16 am in support of promulgating rules by
17 the City Department of Sanitation for
18 the state's lawn litter law, and in
19 support of the Environmental Control
20 Board's proposed rule to establish a
21 \$250 civil penalty. However, I am
22 opposed to one aspect in the proposed
23 rule that makes this law nearly
24 unworkable unless the section in
25 question, Section 16-02 of Chapter 16

0024

1 PROCEEDINGS

2 of the Rules of the City of New York,
3 is amended.

4 Section 16-02 predicates the
5 issuance of a notice of violation of
6 the lawn litter law on the submission
7 of a notarized complaint affidavit
8 form submitted by the property owner,
9 along with the unsolicited
10 advertisement. This need for a
11 notarized form as a predicate to
12 filing a complaint and issuance of a
13 violation is burdensome on the
14 property owner and will result in far
15 too many actual violations being
16 overlooked and forgotten because of
17 the effort required to file a
18 complaint. This burden of obtaining a
19 notary will put a damper on the effort
20 to curb this type of unsolicited
21 advertising and will significantly
22 lessen, if not eliminate, the
23 significance of this new law. Rather,
24 this proposed rule should be amended
25 to require a signature of the property

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PROCEEDINGS

owner who attests to the validity of the information on the complaint and to his/her signature based on information and belief. This affirmation should further state that false statements or supplying a false identification could result in criminal charges against the signatory.

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This affirmation instills the same concern for the affidavit's veracity as the proposed rule for a notarized complaint, yet allows the homeowner or owner's designated agent the ability to easily comply with the rules for submission of a complaint form. The need for a convenient, yet verified process, is even more necessary and evident when one location is beset by a series of violations of this law over a period of days or weeks. There must be an easy and efficient way for petitioners to file a complaint, while still

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PROCEEDINGS

maintaining the affidavit's legal status and veracity, or else homeowners or their agents will not use this new law to its fullest. This provision, if not amended, would serve to undercut the law's intent and the number of complaints filed.

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Accordingly, this provision must be amended in the way suggested or in some other way that would not deter petitioners. Thank you.

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MS. CICCONE: Thank you very much, Jason. Right now we don't have any other speakers but we're going to hold the microphone open pending any other individuals that wish to speak.

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MR. MARQUARDT: Can I just add one or two sentences?

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MS. CICCONE: Mr. Marquardt wishes to add some further comments.

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MR. MARQUARDT: In my opinion the requirement for a property owner to maintain this administrative -- to hold off to the tenant and maintain

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PROCEEDINGS

these written records, and a requirement that we may have to come down and testify, are far greater deterrents than getting a notary. A notary is fairly easy to find in comparison. And I don't think single-family homeowners are going to want to take time off from work to come down and testify.

11 MS. CICCONE: Thank you again.
12 I would like to call Mr. Marquardt to
13 the microphone.
14 MR. MARQUARDT: I would look to
15 state for the record that the location
16 for the photos that I took, they were
17 between First and Second Avenue from
18 87th Street to 95th Street. Most of
19 them were in the 91st Street to 95th
20 Street area -- maybe all of them,
21 because I didn't submit all of the
22 photos that I took. The one which is
23 the most egregious, which has them all
24 over the sidewalk, the exact address
25 of that, if I recall correctly, is 319

0028

1 PROCEEDINGS
2 East 95th Street.
3 MS. CICCONE: Thank you again.
4 I'd like to call our third speaker
5 this morning Mr. Murray Berger,
6 representing the Kew Gardens Civic
7 Association.
8 MR. BERGER: Thank you. The
9 directions are reversed this morning.
10 May I ask to whom I'm speaking? I like
11 to know whom I'm addressing.
12 MR. MACRON: Jim Macron with the
13 Environmental Control Board; Juliette
14 Neisser from the Environmental Control
15 Board; and Liz Nolan from the
16 Environmental Control Board.
17 MR. BERGER: I'm Murray Berger,
18 executive chairman of the Kew Gardens
19 Civic Association. I would like to
20 preface, I would like to say that if
21 the Department wanted to design a law
22 that is impossible to enforce by its
23 own weight, it couldn't have done a
24 more effective job.
25 Asking the average or even the

0029

1 PROCEEDINGS
2 nonaverage homeowner, in Queens or
3 elsewhere, to go get an affidavit, you
4 should be able to at least -- or even
5 downloading the application form is
6 not unreasonable. Asking for an
7 affidavit at this time is actually
8 stupid. Even though I couldn't say
9 this anymore -- to go for an affidavit
10 when the banks don't have notaries
11 anymore, and to have to go and locate
12 one in the shopping center somewhere
13 and pay two, two and a half dollars
14 for it. It's strictly a burden that
15 should not be imposed on a homeowner
16 who is reporting a violation of the
17 law. I think the laws are probably
18 designed by lawyers who don't have a
19 problem getting a notary.
20 Then, the presumption that the
21 adjudicating officer might call the

22 homeowner to testify is certainly a
23 threat that would hang over any
24 homeowner -- who would certainly not
25 want to get involved with either the

0030

1 PROCEEDINGS
2 city or elsewhere to testify that
3 somebody garbaged his lawn. And
4 that's the truth with an unreasonable
5 request.

6 The affidavits are -- the
7 notarizations are uncalled for because
8 the homeowners can be verified by
9 asking them to submit a recent tax
10 bill which would have his name and
11 address -- or for the Department, the
12 reporting officer to look on the
13 website. It wouldn't be hard to find
14 him, and check out the property plot
15 and lot of the address, and identify
16 the homeowner. So this is a lot of
17 duplication that merely creates
18 obstacles to easy enforcement to what
19 should be an easy law.

20 On the enforcement issue I would
21 like to say that when I saw that the
22 sanitation enforcement officers can
23 give tickets when they catch a
24 violation or a violator red-handed,
25 but it would have to be pretty rare of

0031

1 PROCEEDINGS
2 those enforcement officers in the
3 city. It should be delegated as well
4 to the police, so that, if they see
5 the kid or whoever distributing, they
6 can stop it and stop the violation.

7 I was asked to come up with a
8 suggestion: What about people who
9 want to receive the mail or the
10 literature? And my suggestion there
11 was to require distributors or
12 advertisers who want it to put a
13 supplied mailbox similar to what the
14 newspapers do when the people
15 subscribe to a newspaper delivery --
16 have a legitimate marked box on their
17 lawn or elsewhere on the property or a
18 receptacle for receiving advertising.
19 That poses a problem because one of
20 the big problems, one of the major
21 reasons homeowners object is because
22 of the accumulation of garbage when
23 they're away for a weekend or a week,
24 and the house becomes vulnerable for
25 break-ins. And how do you have your

0032

1 PROCEEDINGS
2 mailbox without it spewing piles of
3 paper, which would add to the
4 accumulation of mail around the box to
5 show you were away for weeks?

6 I have one other thought which I

7 -- forgive me. It's not coming back
8 to me, so I'll stop right now. Thank
9 you. I hope we could accomplish this.
10 Thank you. Oh, I think I know what I
11 was going to say.

12 It's beyond the jurisdiction of
13 the Department of Sanitation. It's
14 the creation of Albany. But by
15 extension of the sign that's required
16 to be on the lawn of the homeowner,
17 would that not imply for anybody that
18 you may not litter my lawn but you may
19 defecate on my lawn, you may break my
20 window? I'm assuming you got specific
21 violations of the administrative code
22 or the sanitation code if you weren't
23 for it, implying that it's okay to
24 violate all the other violations, all
25 the other restrictions of the

0033

1 PROCEEDINGS

2 sanitation code and other codes. So
3 seeking that one violation is implicit
4 to violate codes.

5 Thank you very much. If you
6 have questions I'll be happy to answer
7 them.

8 MS. CICCONE: Thank you very
9 much Mr. Berger. Do we have anybody
10 else that would like to make any
11 statements?

12 MR. MARQUARDT: I have
13 information from the Post Office about
14 using a Post Office box if you'd like
15 me to talk about that.

16 MS. CICCONE: If you'd like to,
17 you can.

18 MR. MARQUARDT: I made an
19 inquiry to the local Postal Authority,
20 you know. Steve Montana, a public
21 relations person there, forwarded my
22 inquiry to someone else and I got an
23 email reply as to whether someone can,
24 a property owner can go to some sort
25 of, like, Home Depot and purchase a

0034

1 PROCEEDINGS

2 mailbox for these advertisements. And
3 they said, yes, that's fine, you can
4 use such a mailbox. He said just put
5 a label on the box saying for
6 unsolicited advertisements only, not
7 for U.S. mail.

8 MS. CICCONE: Our fourth speaker
9 today, we would like to welcome
10 Councilman Simcha Felder of Brooklyn.

11 MR. FELDER: Thank you for the
12 opportunity to speak here today. So,
13 the first thing, it's been a very long
14 road getting to this point -- I think
15 that everyone would agree. I want to
16 thank the sponsors in Albany for the
17 bill, Senator Padavan and Assemblyman

18 Weprin, and of course Commissioner
19 Doherty and the Department of
20 Sanitation for working on a very
21 complicated issue. What seemed to be
22 to me very simple at the outset, but
23 became much more complicated,
24 certainly, on the issues of freedom of
25 speech. And I thank Carmen Tagnetta

0035

1 PROCEEDINGS

2 from the city council for steering me
3 in the right direction on this issue
4 and trying to make sure that we get
5 something done that will actually
6 work.

7 So the bottom line is that the
8 lawn bill, the lawn leaf bill has been
9 in effect for more than a month now
10 and it needs to be enforceable; that's
11 the issue. You have to enforce the
12 rules. People won't have to testify
13 or may testify about the problems with
14 the Department's proposed rules as
15 they exist now. And they stem from
16 the struggles to protect both the
17 bill, both the Bill of Rights and the
18 rights of the property owners, which
19 is a very, very complicated issue.

20 Indeed, the proposed rules
21 require that homeowners jump through
22 hoops to make formal complaints and
23 the effectiveness of these procedures
24 will need to be monitored and approved
25 upon accordingly in the future.

0036

1 PROCEEDINGS

2 However, I think what's most
3 important today is that we make sure
4 that the enforcement agents have the
5 tools necessary to enforce the law and
6 impose fines, which these rules in
7 effect do as they exist now.

8 Moving forward, it will be
9 incumbent upon the Department to
10 direct their agents. This is very
11 important. I think it will be very
12 important for the Department to direct
13 their agents to issue these violations
14 based upon their own observations and
15 to do so with vigilance, both seeking
16 to catch violators in the act or to
17 observe material already distributed
18 in violation. So I just thought for a
19 moment I want to make sure that, as
20 things stand now, the Department has
21 the right to direct its agents to
22 issue violations, both whether they
23 see somebody distributing this junk or
24 not.

25 And the effectiveness of this

0037

1 PROCEEDINGS

2 bill is -- I don't want to say it's

3 exactly like the pooper scooper law,
4 but once a number of these violations
5 are issued without the complaint by
6 the homeowner, they're going to stop
7 doing it in certain places. It's not
8 going to take much because the profit
9 on the distribution is, you know, is a
10 very small profit margin. And if
11 somebody gets hit with a ticket for
12 \$250, whatever else, they're going to
13 direct their distributors to stop
14 doing it. So it's imperative that the
15 Department make sure that their agents
16 issue these violations.

17 I'm not suggesting in any way
18 that there should be special agents,
19 you know, called the flier agents or
20 anything like that. But to just have
21 agents out there and not give them
22 the -- not only the authority, but to
23 encourage them to issue these
24 violations just as the same way that
25 they're encouraged to issue violations

0038

1 PROCEEDINGS

2 for garbage on the street.
3 We don't want to send people
4 out, but it's very important that the
5 word get out. That's what is
6 important, that the word get out to
7 distributors that it's serious. And
8 if somebody has a card up saying he
9 doesn't want the stuff, that they have
10 to honor that. That's what it's
11 about. And having it done only
12 through the, you know, signing
13 something and there's no right is not
14 enough. That is an added benefit
15 that's giving people the benefit of
16 being able to do it that way. But
17 unless the Department does it the way
18 I just suggested it will be
19 meaningless. I belabored it but I
20 wanted to belabor it.

21 So, additionally, I would say
22 it's incumbent upon the Department not
23 only making complaints available by
24 3-1-1, but to take and to respond to
25 general complaints that distributors

0039

1 PROCEEDINGS

2 are hidden and ticketed in certain
3 blocks and neighborhoods and directly
4 having enforcement agents to these
5 areas as it would with any other
6 areas.

7 Just to be clear, I am again not
8 trying to advocate that we have
9 special agents going out only for this
10 purpose. But there are going to be
11 blocks, as there are today, that have
12 an overwhelming number of homes for
13 these signs, and they keep on getting

14 fliers despite the signs. The
15 Department should be able -- they
16 should be able to call, and the
17 Department should be able to respond
18 by saying we normally don't send out
19 an agent just for this purpose, but in
20 this case it would make sense to do
21 so.

22 I'm thrilled with everything
23 I've heard. I'm thrilled and I'm
24 thankful that we're finally at reach
25 on enforcement of the lawn litter law.

0040

1 PROCEEDINGS

2 No one is going to say the proposals
3 are perfect and my advocacy -- on any
4 issue, nothing is perfect. I daresay
5 even here the only thing that is
6 perfect is God. But nothing else is
7 perfect, certainly not this law. What
8 is really most important now is that
9 the agents have the ability to enforce
10 the law and that we as citizens and
11 elected officials hold the Department
12 accountable from here on for such
13 enforcement.

14 Again, I thank all those that I
15 thanked before, again, for making
16 something this complicated into
17 something that will actually be a
18 reality.

19 MS. CICCONE: Councilman Felder,
20 thank you very much. As always we do
21 appreciate your comments and we thank
22 you for coming and taking the time
23 from your busy schedule this morning.

24 Do we have anyone else who would
25 like to speak?

0041

1 PROCEEDINGS

2 It is now 12:30 p.m.. This will
3 conclude our hearing today. Once
4 again, I would like to state that the
5 Department will continue to accept all
6 written comments on today's proposed
7 rule, together with the Environmental
8 Control Board's rule, through the
9 close of business today. Thank you
10 very much for attending.

11 (Time notd: 12:30 p.m.)

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C E R T I F I C A T I O N

I, SHERRY SPALLIERO, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify that I reported the proceedings in the within-entitled matter, on Wednesday, June 4, 2008, at 125 Worth Street, New York, New York, and that this is an accurate transcription of these proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day of _____, 2008.

SHERRY SPALLIERO,