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The Public Ought to Know: Unwanted flyers can't be stopped without a fight

By Corey Bearak

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One of my last acts before leaving the City Council in January 1999 was to recommend legislation to restrict those circulars that are thrown on our front walks by various advertising distributors - whether we want them or not.

That legislation offered a simple solution to a problem that got worse since I first worked on it more than a decade ago: "It shall be unlawful for any person to distribute or cause to be distributed to a dwelling without the permission of the property owner one or more weekly circulars contained in a plastic bag." (1998's Int. No. 1080 , a reintroduction of 1994's Int. No. 490, which became Int. No 147 in 2002 and was reintroduced as Int. No. 88 in the current Council session.)

Its sponsors include Queens Council Members John Liu (D-Flushing) and David Weprin (D-Hollis). It authorizes the Sanitation commissioner "to collect a fee each time one or more weekly circulars are distributed or caused to be distributed to a dwelling in a plastic bag."

While my neighborhood pennysaver now gets delivered by regular mail, the Bellerose Marketplace either gets placed in my screen door handle or thrown on my walk; two other sets of circulars lacking any identifiable information as to the source of distribution include advertisements for various supermarkets and department stores. Another set of flyers gets distributed by Newsday's subsidiary, Distributions Systems of America.

Long ago, I gave up calling both DSA and Bellerose Marketplace to cease the distribution of their materials; when I worked on the circular legislation I called to complain almost weekly and recorded the results. I appreciate the need to promote one's wares; I use my website and some call this column an opportunity to promote my professional services. But you can choose not to buy this worthy paper; you can choose not to view my column on-line at Timesledger.com; you can certainly choose not to view CoreyBearak.com and any emails you might receive from me. In addition to anti-spam programs, many email providers allow users to block senders.

Still residents of homes and garden apartments lack the ability to prevent unwanted delivery of fliers. We can block unwanted bulk mail and unwanted telephone calls, yet intrusive deliveries of circulars often in plastic wrapping that requires a scissor or knife to open can continue unabated.

New York's Court of Appeals in *People vs. Remeny*, declared unconstitutional on federal First Amendment grounds the city's then-existing ban on casting or distributing handbills, circular or other advertising matter in any front yard or courtyard or on any stop or in the vestibule of any hall or building.

City lawyers cite *Remeny* to ground Int. No. 88. The court in 1976 found a ban on commercial leaflet distribution failed to reasonably regulate the time, place and manner of distribution.

A City Council committee report on an alternate bill, Int. No. 480, notes how "the material poses a safety risk for residents slipping and falling, particularly when the material left on the ground gets wet." Think of fliers left on your porches, open vestibules or your front walk. Frankly, the unwanted fliers pose a much greater risk to public safety. Criminals who specialize in burglaries often view the accumulation of circulars as signs the occupants are away, or at least not home for part of the day.

The report prepared for a Nov. 20, 2003 hearing on this legislation introduced the previous May and re-introduced as Int. No. 159 in Feb. 2004, would prohibit "any handbill, circular, card, booklet, pamphlet, placard or other advertising matter whatsoever, anywhere inside or outside of a building" where the owner installs a "receptacle to receive such material." Outside, it must be placed within five feet of the entrance. The building

owner must also install a sign "directly outside the main entrance" that states in letters at least one-half inch in height: "This building is providing a receptacle for all unsolicited material pursuant to city law. All materials must be placed in the receptacle provided. Any and all material is prohibited from being placed inside or outside this building. A violation of this law could result in a civil penalty of not less than \$100."

This fix imposes some physical graffiti on homes. Why not simply ban fliers not placed inside a door, a mail slot or box? If an exemption to allow homeowners to use oversized, country-style mailboxes proves necessary from Congress, enlist its aid.

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