

THE CITY OF NEW YORK
DEPARTMENT OF SANITATION
NOTICE OF ADOPTION OF FINAL RULES GOVERNING THE DISTRIBUTION OF
ADVERTISEMENTS ON PRIVATE PROPERTY

NOTICE IS HEREBY GIVEN in accordance with the requirements of section 1043 of the New York City Charter and pursuant to the authority vested in the Commissioner of the Department of Sanitation by section 753(a) and (b) of the New York City Charter, section 397-a of the General Business Law, and Executive Order 113 of 2008, that the Department adopts the following rules governing advertisements distributed on private property. This rule adds Chapter 16 to Title 16 of the Rules of the City of New York. The Department published a Notice of Opportunity to Comment on the proposed rules in the *City Record* on April 30, 2008. On June 4, 2008 the Department held a public hearing on the proposed rules. Existing provisions to be deleted are shown below in brackets and new provisions are underlined.

Chapter 16

ADVERTISEMENTS ON PRIVATE PROPERTY

§16-01 Definitions

When used in this subchapter:

Advertisement. “Advertisement” shall mean any paper, card, flyer, pamphlet, handbill, circular, or other written material advertising one or more businesses or soliciting business, which does not contain more than a de minimis amount of news, in that it does not contain any editorial content or information other than material concerning a) the business or businesses, or b) services or products offered by the business or businesses. If one or more documents are packaged together (for example, using a plastic bag or wrapper, rubber band, clip or similar device), each document shall be analyzed separately to determine whether it constitutes an “advertisement” under this definition.

Commissioner. “Commissioner” shall mean Commissioner of Sanitation or his or her representative.

Multiple dwelling. “Multiple dwelling” shall have the same meaning as defined in section four of the New York state multiple dwelling law, except that it shall not include a “three family dwelling” as defined in this section.

Person. “Person” shall mean any individual, corporation, partnership, association, firm, trust, estate or any other legal entity whatsoever.

Three family dwelling. “Three family dwelling” shall mean a multiple family dwelling that is owner-occupied and is designed for and occupied exclusively by no more than three families. A

three family residence that does not satisfy the requirements of this definition shall be considered a “multiple dwelling” for the purposes of this chapter.

Two family dwelling. “Two family dwelling” shall mean a multiple family dwelling that is designed for and occupied exclusively by no more than two families.

Unsolicited advertisement. “Unsolicited advertisement” shall mean an advertisement placed on private property without being subscribed for, ordered by, or otherwise requested by the owner or a resident at the property.

§16-02 Issuance of Notice of Violation; Submission of Property Owner Complaint Form for One, Two or Three Family Dwellings.

a) This section shall apply to one, two or three family dwellings. For the purposes of the section “unauthorized placement of an unsolicited advertisement” shall mean placement of one or more unsolicited advertisements on private property where the property-owner has posted, or caused to be posted, in a conspicuous location a sign which is not less than five inches by seven inches in size and which states in legible letters at least one inch in size: “Do Not Place Unsolicited Advertising Materials On This Property”.

b) The department may issue a notice of violation to any person it determines to be responsible for the unauthorized placement of an unsolicited advertisement at a one, two or three family dwelling based upon the submission of a property owner complaint form to the department by the owner of a one, two or three family dwelling. The property owner must complete the complaint form and, as set forth in the complaint form, certify that the information is truthful and accurate, and acknowledge that false statements in the complaint form are punishable under section 210.45 of the New York State Penal Law. The property owner must submit the signed and completed complaint form together with the unsolicited advertisement. If one or more advertisements are bundled and tied together by a rubber band, string, or otherwise, or are bundled and placed inside any outer wrapper, all of the materials must be submitted together with the complaint form.

c) The owner of a one, two or three family dwelling may obtain a property owner complaint form through the department of sanitation website or by calling the city of New York 3-1-1 action center.

d) The owner of a one, two or three family dwelling shall mail his or her signed complaint form together with the unsolicited advertisement to: Director of Enforcement c/o Lawn Litter, New York City Department of Sanitation, 1824 Shore Parkway, Brooklyn, New York 11214.

e) The owner of a one, two or three family dwelling, who has submitted a property owner complaint form resulting in the department’s issuance of a notice of violation, may be called upon to appear at an adjudicatory hearing by the environmental control board for the city of New York for the purpose of testifying in such adjudicatory matter. If the environmental control board

determines that the appearance of the property owner is necessary, such property owner shall be contacted so that a date and time for the property owner's appearance can be arranged.

§16-03 Issuance of Notice of Violation; Submission of Property Owner Complaint Form for Multiple Dwellings.

a) This section shall apply to multiple dwellings. For the purposes of this section, "unauthorized placement of an unsolicited advertisement at a multiple dwelling" shall mean either of the following:

1) one or more unsolicited advertisements are placed on private property at a multiple dwelling where:

(a) at least one unit owner or lessee of each separate dwelling unit within the building or on the property has agreed to prohibit unsolicited advertisements; and

(b) the property-owner has posted or caused to be posted in a conspicuous location a sign which is not less than 5 inches by 7 inches in size and which states in legible letters at least one inch in size: "Do Not Place Unsolicited Advertising Materials On This Property"; or

2) one or more unsolicited advertisements are placed on private property at a multiple dwelling in a location other than that specified on a sign at the multiple dwelling, or the number of unsolicited advertisements exceeds the number specified on the sign, where:

(a) the property-owner has posted or caused to be posted in a conspicuous location a sign which is not less than 5 inches by 7 inches in size and which states in legible letters at least one inch in size i) the number of unsolicited advertisements that may be left on the property and/or ii) a particular location or appropriate receptacle where the unsolicited advertisements may be placed; and

(b) if a number of permitted unsolicited advertisements is specified on the sign, the number represents at a minimum every separate dwelling unit in the building where the unit owners or lessees have not consented to prohibit unsolicited advertisements.

b) The department may issue a notice of violation to any person it determines to be responsible for the unauthorized placement of an unsolicited advertisement at a multiple dwelling based upon the submission of a property owner complaint form to the department by the owner of a multiple dwelling, or the owner's designated agent. The property owner must complete the complaint form and, as set forth in the complaint form, certify that the information is truthful and accurate, and acknowledge that false statements in the complaint form are punishable under section 210.45 of the New York State Penal Law. The property owner must submit the signed and completed complaint form together with the unsolicited advertisement. If one or more advertisements are bundled and tied together by a rubber band, string, or otherwise, or are bundled and placed inside any outer wrapper, all of the materials must be submitted together with the complaint form.

c) The owner of a multiple dwelling, or his or her designated agent, who has submitted a property owner complaint form resulting in the department's issuance of a notice of violation, may be called upon to furnish to the environmental control board for the city of New York a list of all current occupants of each apartment or unit within the multiple dwelling at the time the violation occurred, indicating whether the occupants residing therein at the time of such alleged violation consented to prohibiting the placement of unsolicited advertisements within such multiple dwelling, and how this information was obtained.

d) The owner of any multiple dwelling, or his or her designated agent, may obtain a property owner complaint form through the department of sanitation website or by calling the city of New York 3-1-1 action center.

e) The owner, or his or her designated agent, of any multiple dwelling shall mail his or her signed complaint form together with the unsolicited advertisement to: Director of Enforcement c/o Lawn Litter, New York City Department of Sanitation, 1824 Shore Parkway, Brooklyn, New York 11214.

f) The owner of a multiple dwelling, or his or her designated agent, who has submitted a property owner complaint form resulting in the department's issuance of a notice of violation, may be called upon to appear at an adjudicatory hearing by the environmental control board for the city of New York for the purpose of testifying in such adjudicatory matter. If the environmental control board determines that the appearance of the property owner or designated agent is necessary, such property owner or designated agent shall be contacted so that a date and time for the property owner or designated agent's appearance can be arranged.

§16-04 Enforcement Agent Authority

Nothing in this chapter shall be construed to preclude an enforcement agent from issuing a notice of violation based on his or her own observations, or in any other way to limit the authority of any enforcement agent.

Statement of Basis and Purpose. Pursuant to §753 of the New York City Charter, the Sanitation Commissioner is authorized to adopt rules relating to street and sidewalk cleanliness. In New York City, the owners of private homes and multiple dwellings are responsible for maintaining their properties in a clean manner. This includes the areas behind owners' property lines, as well as the public sidewalks abutting their properties and 18 inches from the curb line. While many property owners carefully monitor their properties to ensure they are kept free from sidewalk and street litter debris, unsolicited advertisements that are deposited on doorsteps or other areas of private property can be blown away by the wind causing litter to accumulate upon the streets and sidewalks abutting residential premises. This causes a serious visual and physical blight upon communities across New York City. Also, the accumulation of materials when

residents are away can send a signal to potential burglars or others that no one is at home. In addition, when deposited in front of private homes and in the foyer entrances of apartment buildings, unsolicited printed material accumulated in sufficient quantities can jeopardize the safety of the occupants and their guests. The materials, when wet or covered with snow and ice, may cause a person to slip and fall. A similar slip and fall may also occur when printed matter is placed on smooth interior floors of apartment buildings. These materials also create a nuisance for unwilling recipients who must ultimately collect and dispose of them. Additionally, distribution of unsolicited advertising materials invades the privacy of individuals and families who do not wish to be solicited in their homes.

To address the littering problem associated with the distribution of advertisements to private residences while preserving the privacy of persons who do not wish to be solicited at their homes or apartments, the Governor signed into law Chapter 3 of the Laws of 2008 on January 28, 2008. This new law, together with Chapter 585 of the Laws of 2007, amends Section 397-a of the New York State General Business Law (“NYS GBL”) by making it unlawful for any person to distribute unwanted advertisements on private property if the owner posts a sign in accordance with the law indicating his or her desire not to receive such materials. Also pursuant to Chapter 3 of the Laws of 2008, on February 20, 2008, Mayor Michael Bloomberg designated the New York City Department of Sanitation (DSNY) to locally enforce the new chapter law requirements in the City.

The purpose of this rule is to set forth the procedures for owners of one, two and three family dwellings, and multiple dwellings, to inform DSNY of any violation that has occurred at the owner’s property in order for DSNY to take necessary enforcement action against the responsible party. 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 minimis amount of news, in that they do not contain any editorial content or information other than material concerning a) the business or businesses, or b) services or products offered by the business or businesses.

This final rule has been modified to reflect the comments received by DSNY during the public comment period. In response to these comments, DSNY has deleted the provision requiring home owners to have their complaint form signed before a notary. Instead, home owners will be required to certify that the information is truthful and accurate, and acknowledge that false statements in the complaint form are punishable under section 210.45 of the New York State Penal Law. A violation of section 210.45 of the Penal Law is a class A misdemeanor. Additionally, DSNY has redefined a two-family dwelling to allow an absentee owner to post the required sign as well as submit the property owner complaint form. The three-family dwelling definition has been clarified to indicate that a three-family home that does not meet the requirements of the “three-family dwelling” definition will be treated as a “multiple dwelling” for purposes of this rule.