

The



Sun

WEDNESDAY, SEPTEMBER 10, 2003

FOR HOME DELIVERY 1-866-

Mayoral Proposal Would Strengthen Department of Consumer Affairs

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A little-noticed clause in Mayor Bloomberg's proposed amendments to the City Charter would strengthen the enforcement powers of the Department of Consumer Affairs—a measure that small-business groups have repeatedly blocked in the City Council and the state Legislature.

If approved by voters in November, the clause would give the department the ability to prosecute more accused violators before its own administrative law judges rather than in the state court system.

The provision is sandwiched into the third question on the ballot, labeled "government administration," which has until now been completely overshadowed by the no. 1 question—whether the city should adopt a non-partisan system of elections after 2005.

Some small-business groups say the city is too zealous in enforcing its hundreds of consumer protection rules and argue that internal tribunals would give the department an unfair advantage over the people it accuses.

Department officials say the change

would make their enforcement activities less expensive for taxpayers and more even-handed for businesses. Department officials have sought the added authority for years, beginning under Mayor Giuliani, but have consistently run into opposition in either the council or the Legislature.

A lobbyist for bodegas, small grocers, and independent supermarkets, Richard Lipsky, said it was unfair of the Charter Revision Commission to put the proposal on the ballot without consulting groups who had opposed it.

"He's trying to go around the legislative process," Mr. Lipsky said of the mayor, who appointed the commission and supports its proposals. "It seems like it's an attempt to hide underneath the skirts of the non-partisan question, so that no one would even listen or hear about the debate."

Officials in the Bloomberg administration denied shutting anyone out of the process, noting that all of the commission's activities were thoroughly publicized, if unevenly covered by the press.

A spokeswoman for the Department of Consumer Affairs, Pauline Toole, said many business officials support the law, recognizing that the department's tribunals already adjudicate most cases.

"You have one guy with a suitcase and a telephone who says there's a lot of opposition," Ms. Toole said of Mr. Lipsky. "Everyone else supports it. All of those businesses understand you have to treat every business fairly, and not carve out some exemption for people with a lobbyist."

Mr. Lipsky said his clients are groups representing 7,000 bodegas, 3,000 Korean grocers, and 400 independent supermarkets. "You have 200,000 retailers [in New York City]," he said. "Do I represent all of them? No. But those three groups have told me strongly to go out and fight this measure."

The department has the ability to use administrative tribunals when prosecuting charges against the 55 categories of businesses that it licenses, including electronics stores, home-improvement contractors, used-car dealers, and cigarette retailers. But for violations involving unlicensed stores it cannot enforce its summonses except in court—an expensive and time-consuming process.

"It's the right thing to do," Ms. Toole said. "It's basically going to take the guy's finger off the scale when he's cheating somebody."

Under the proposed charter revision, the department's tribunals would be empowered to hear all cases and levy fines of up to \$500. The business penalized would have the option of appealing in court, but Mr. Lipsky said the burden of proof will have shifted from the accuser to the accused.

"The basic bedrock American principle of jurisprudence is due process that separates the people who are charging you and those people who then adjudicate that charge," he said.

Mr. Lipsky also questioned the need to put this arcane, technical change on the ballot as a charter revision, when the issue of non-partisan elections will distract most voters.

But the Charter Revision Commission, in a statement via e-mail, argued the consumer affairs provision was consistent with other parts of Question 3, which "are intended to enhance the effectiveness of government operations and to strengthen the ethics laws that govern city employees."