

**Testimony on Intro 390**  
**City Council's Consumer Affairs Committee**  
**February 8, 2005**

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**Neighborhood Retail Alliance**

Good morning Chairman Reed and the members of the Consumer Affairs Committee. My name is Richard Lipsky and I'm here today on behalf of the Neighborhood Retail Alliance to voice our opposition to Intro 390, a measure that would increase the enforcement authority of the Department of Consumer Affairs.

Let me begin by saying that we are amazed by the persistence of the Commissioner Dykstra who, it seems, simply can't take no for an answer. In one form or another she has been trying to expand the enforcement authority of her agency for the past three years. In her first effort, the state legislature refused to act on her bid to gain docketing authority for DCA. This authority, if granted, would have, in our view, given the Department the ability to act as both judge and jury in enforcement actions against neighborhood retailers. Clearly, the legislature felt that this expansion of authority was unwarranted.

Undaunted, Commissioner Dykstra convinced Mayor Bloomberg to include the same measure as part of his 2003 Charter Revision package. Question 5, as it was called, was editorially opposed by the *New York Times*, the *New York Post*, and the *New York Sun* and, more importantly, by the voters of New York city who rejected the entire Charter package by a 70-30 margin.

Have circumstances changed so radically that Intro 390, the current version of the DCA power grab, becomes compelling? We certainly don't think so and, we would argue that, if anything, the changing circumstances have made the case for the expansion of enforcement authority ever less palatable than it was when first introduced in 2002.

The rationale against expansion is derived from a number of compelling points:

- 1) **Enforcement system is broken and needs a full overhaul**

As testimony at the recently concluded hearing on ECB highlighted, the entire enforcement system seems to be running amok and, whatever the original connection, was between violations issued and the protection of the public interest that connection has long been severed. The ECB process lacks due process and, as the recent furor about the fine schedules underscores, seems designed primarily to increase revenue;

2) **DCA wants ECB-like authority**

The Department wants to be able to replicate the ECB process precisely because it is rigged against the store owners and will make it more expeditious for DCA to collect money. DCA does not want to do this because they are overwhelmed with cases they have no time or resources to bring to court. Their sole motivation is to emulate ECB because the goal is to appear before ALJ's that are their own employees, that they control, with relaxed due process and evidentiary rules. They want to fix the game so that they will bat .900 at the expense of the rights of the business community (The conviction rate at their controlled DCA hearings is 89%);

3) **Climate for small business has worsened**

Since the original legislative effort by DCA was thwarted the Bloomberg administration has done the following:

- a) **Cigarette Tax** – The largest tax increase in New York City history hit New York's small retailers disproportionately hard. A

study done by the Small Business Survival Committee estimates that over \$250 million has been transferred from these businesses to New York City and New York State treasuries;

- b) **Commercial Real Estate Tax** – Most small businesses don't own the buildings they occupy. As renters, they are forced to absorb any real estate tax increase as part of their standard leases. In essence then, millions of dollars of tax increases show up as a non-negotiated rent increase;
- c) **Sales Tax Revenue Hike** – In a study done by the Giuliani administration in favor of reducing the sales tax on items such as clothing it was cogently pointed out that New York City's comparatively high sales tax generates a \$700 million sales leakage to surrounding municipalities. The recently enacted sales tax simply exacerbates this trend and is costing city retailers millions of dollars in lost sales;
- d) **Garbage Rate Hike** – On September 15<sup>th</sup>, 2003 the Business Integrity Commission lifted the cap on commercial garbage disposal rates. The new cap for "wet" garbage is \$8 per hundred pounds. When the new rate is transposed into cubic yards the new maximum is lifted from the current \$12.20 per cubic yard, to over \$40 a cubic yard, a potential tripling. Unlike the previous measures, this income transfer is from retailers to private garbage

haulers. The end result, however, is the loss of millions of retailer dollars.

As we have pointed out, there is a need to thoroughly overhaul the current enforcement and adjudication process. If we are to truly become, in the mayor's words, the "Opportunity Society," then enhancing the business climate for the smallest and most vulnerable neighborhood retailers should be the city's goal. As long as an arbitrary and punitive regulatory structure is maintained, however, the opportunity slogans will remain empty rhetoric. Except, of course, for the enforcement inspectors, pad in hand, who see and opportunity ever time they come into a neighborhood store.