

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON ENVIRONMENTAL PROTECTION

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June 27, 2016

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HELD AT: Committee Room - City Hall

B E F O R E: COSTA G. CONSTANTINIDES
Chairperson

COUNCIL MEMBERS: Stephen T. Levin
Rory I. Lancman
Donovan J. Richards
Eric A. Ulrich

A P P E A R A N C E S (CONTINUED)

Angela Licata, Deputy Commissioner
Sustainability
NYC Department of Environmental Protection

Eric Landau, Deputy Commissioner
Public Affairs
NYC Department of Environmental Protection

Casey Adams, Deputy Director
City Legislative Affairs
NYC Department of Consumer Affairs

Lieutenant Robert Corbett
New York Police Department

Gerry Kelpin, Director
Air and Noise Enforcement Units
NYC Department of Environmental Protection

Robert Bookman, Counsel
New York City Hospitality Lines

Josh Gatewood
NYC Food Truck Association

Melanie McGillick
Douglas Manor Environmental Association, DMEA

Lucy Weinstein, Pediatrician
Chair, Environmental Health Committee
Chapter 2, Academy of Pediatrics

Alan Fierstein, President and Founder
Acoustilog

Silvio Calzino (sp?)
Power Tools Distributor

George Pauloff. Small Business Owner
Flushing, New York

Allison Blaine
Metropolitan Lumber and Hardware

Mike Gannon, President
Douglas Manor Environmental Association

2 [sound check, pause]

3 CHAIRPERSON CONSTANTINIDES: Good

4 afternoon. I am Costa Constantinides Chair of the
5 Environmental Protection Committee, and today the
6 committee will hold a hearing on Intro 59, a Local
7 Law to amend the Administrative in the city of New
8 York in relation to the sale and use of gas-powered
9 leaf blowers. Intro 186, a Local Law to amend the
10 Administrative Code of the city of New York in
11 relation to the noise standard for commercial
12 establishments, and Intro 745, a Local Law to amend
13 the Administrative Code of the city of New York in
14 relation to the operation of electronic sound devices
15 on food vending vehicles. Noise continues to be the
16 number one quality of life issue in New York City as
17 evidenced by the number of 311 noise complaints.
18 According to the Mayor's Management Report of Fiscal
19 Year 15--2016, the Department of Environmental
20 Protection, DEP, received a total of 53,862 noise
21 complaints in FY15. The number of noise complaints
22 has been on the rise over each of the previous five
23 years from 31,400 in FY11 to 35,363 in FY12 to 36,130
24 in FY13 to 45,8--8--584 in FY14 to 53,862 in FY15.
25 Noise pollution causes a variety of adverse human

1 health impacts, many of which are related to noise
2 induced stress including hearing loss, hypertension,
3 tachycardia, increased cortisone release, sleep
4 disruption and cognitive impairment. According to
5 the Mayor's Management Report for Fiscal Year FY14,
6 the--the New York City Department of Environmental
7 Protection, which is the lead agency regulating noise
8 in the city received 45,584 noise complaints in FY14,
9 which would represent a 26% increase relative to the
10 previous year. In 2005, Mayor Bloomberg enacted
11 Local Law 113 of 2005 overhauling the city's Noise
12 Code for the first time in over 30 years in order to
13 update the code and make it reflective of modern
14 acoustic technologies and standards. The local--the
15 main goals of the 2005 Noise Code update would reduce
16 sound from construction, reduce sound from commercial
17 music sources, regulate noise from air conditioning
18 devices more effectively, make enforcement of the
19 Noise Code simpler, and to legislatively establish
20 limits for certain sources of noise. The Noise Code
21 is designed to reduce the making and creating or
22 maintenance of excessive unreasonable and prohibitive
23 noises. DEP and the--and--and the city's Police
24 Department, NYPD share responsibility for enforcing
25

2 the noise--Noise Code depending on the nature of the
3 noise complaint that is received. Under the existing
4 Noise Code violations--under the existing Noise Code
5 violations that may be issued to a commercial
6 establishment, if DEP or an NYPD agent has determined
7 that the establishment has caused noise in exceedance
8 of specific noise limits that are set forth in the
9 code. These statutory set noise code limits include
10 sound that is seven decibels or more above the
11 ambient sound level between 10:00 p.m. and 7:00 a.m.,
12 sound that is 10 decibels or more above the ambient
13 sound level between 7:00 a.m. and 10:00 p.m. and
14 impulsive sound that is 15 decibel levels or more
15 above the ambient sound level. Representatives of
16 the city's entertainment industry have for years
17 argued the City should base any noise tickets that it
18 issues upon violations of the noise limits that are
19 specified in the Noise Code, and not the more
20 subjective unreasonable noise standard.

21 Entertainment establishments argue that they should
22 be given notice to precise noise limits to which
23 they'll be held. However, the Noise Code authorize
24 DEP and NYPD agent sot issue tickets to commercial
25 establishments on the basis they have violated the

2 unreasonable noise standard as determined by a city
3 inspector. Intro 186 require commercial
4 establishments to comply with the specific noise
5 levels. Noise from leaf blowers often occurs earlier
6 than permitted [coughs] and as it is very loud,
7 disturbs the quiet of otherwise peaceful residential
8 communities. The code prohibits the use of leaf
9 blowers before 8:00 a.m. and after 7:00 p.m. or after
10 sunset, whichever is later on weekdays and before
11 9:00 a.m. and after 6:00 p.m. on holidays and
12 weekends. The code also prohibits the use of leaf
13 blowers that generate and aggregate sound level of 75
14 decibels in the A sign (sic) or more. Many towns or
15 counties have enacted ordinances to regulate leaf
16 blower noise with some restricting blower use to
17 limited times of the day or year. Others banning the
18 use of blowers that emit a certain decibel level of
19 noise, and others banning gasoline powered leaf
20 blowers altogether by allowing electric leaf blowers,
21 which are often less noisy. Intro 59 prohibits the
22 sale and use of gas powered leaf blowers, which
23 exceeds 65 decibels. Noise from food vending
24 machines and ice cream shops have are also a
25 persistent--a persistent source of complaint. The

2 Mayor Bloomberg Administration considered outright
3 banning the jingle such as Mr. Softee. This proposal
4 was scaled back after there was real concern that was
5 expressed. As a result, the City enacted a noise
6 code that continues to allow food vending vehicles to
7 emit noise for the purposes of attracting customers
8 while such vehicles is in motion. Food vending
9 vehicles may not play their jingles while stationary.
10 DEP works with the Department of Consumer Affairs,
11 which license vendors, to educate drivers to their
12 responsibilities under the Noise Code. Even after
13 the restriction on noise from food vending vehicles
14 were put in place, the city has continued to receive
15 a substantial number of noise complaints due to these
16 vehicles. Through 2011 to 2014, the City received
17 7,031 noise complaints related to ice cream trucks.
18 Intro 745 prohibits food vending vehicles from
19 operating a sound signal device earlier than 9:00
20 a.m. in the morning or later than 9:00 p.m. in the
21 evening. Protecting the environmental quality from
22 noise pollution in urban areas is part of the work of
23 this committee. These pieces of legislation are
24 intended to reduce noise pollution, and improve the
25 quality of life for city residents. Now, we'll hear

2 from the-- Well, first, I want to recognize Council
3 Member Lancman who is here from Queens, and we will
4 now hear from the sponsor of two of the bills, Intro
5 745 and Intro 59 from Danny Dromm, Council Member
6 from Queens.

7 COUNCIL MEMBER DROMM: Thank you very
8 much, Chair Constantinides, and I appreciate your
9 interest in this issue and holding this hearing for
10 us today. Imagine at 7 o'clock on a Saturday when
11 you're trying to catch up on some much needed sleep
12 after a hectic week and then this comes blasting
13 through your window. [Leaf blower] or after spending
14 hours trying to get your child ready for bed she
15 finally appears to be falling asleep and then this
16 comes wafting through her window on a warm summer
17 night. [Ice cream truck music]. Leaf blowers and
18 ice cream truck jingles are two of the more annoying
19 noise assaulting New Yorkers' ears everyday. The
20 constant current Noise Code--excuse me--the current
21 Noise Code while fairly comprehensive does not
22 specifically address these vexations of life in New
23 York City. We do live in a noisy city, and anything
24 that we can do reign in noise to a reasonable level
25 would go very far to improving the quality of life in

1 our communities. Looking for a way to address these
2 problems, I have introduced two bills. Intro 745
3 would prohibit the electronic sound devices of food
4 vending vehicles, ice cream truck jingles, for
5 example, from operating between 9:00 p.m. and 9:00
6 a.m. Intro 59 would prohibit gas powered leaf blowers
7 from operating before 12 noon on weekends and
8 holidays and at any point between May 15 and
9 September 15. This legislation would also prohibit
10 the operation and sale of overly noisy gas powered
11 leaf blowers meaning those operating over 65-A rated
12 decibels. Thank you Chair Constantinides for holding
13 this hearing. I look forward to continuing to work
14 with you on reducing noise pollution in our city.

15
16 CHAIRPERSON CONSTANTINIDES: Thank you,
17 Council Member Dromm. At this time, we'll call the
18 first panel forward. If Eric Landau, Deputy
19 Commission for NYC DEP can step forward. Angela
20 Licata, also a Deputy Commissioner at DEP; Lieutenant
21 Robert Corbett from the NYPD and Casey Adams from the
22 Consumer--Consumer Affairs can all step forward and
23 be sworn in by Samara, our attorney. Thank you.

24 MALE SPEAKER: Okay, sure.

2 CHAIRPERSON CONSTANTINIDES: A quick
3 statement from Council Member Lancman.

4 COUNCIL MEMBER LANCMAN: Yeah,
5 unfortunately, I have to leave for a hearing across
6 the street simultaneous to this one on the Close to
7 Home Initiative in the Juvenile Justice. So I have
8 to run, but these are legitimate issues. I have some
9 concerns about the--the Mr. Softee bill, but I
10 certainly support the other two, and if anybody is
11 testifying today wants to discuss it further with me,
12 you know how to--you know how to reach me, but I have
13 to run across the street. Thank you very much.

14 CHAIRPERSON CONSTANTINIDES: Thank you,
15 Council Member.

16 LEGAL COUNSEL: Can you please raise your
17 right hands. Do you swear or affirm to tell the
18 truth, the whole truth and nothing but the truth
19 today?

20 [background noise]

21 DEPUTY COMMISSIONER LICATA: Good
22 afternoon, Chair Constantinides and members. I am
23 Angela Licata, Deputy Commissioner of Sustainability
24 in the New York City Department of Environmental
25 Protection, and I am joined today by Eric Landau,

2 Deputy Commissioner for Public Affairs, as well as
3 other members of my team that I will bring up for the
4 questions that you may, and also by the PD--as--as
5 mentioned. Thank you for the opportunity to present
6 testimony on these bills before this committee
7 relating to noise control and enforcement. As you
8 know, DEP has overall responsibility for the city's
9 water supply and sewer system including providing
10 drinking water to all 8.5 million in-city New Yorkers
11 and another one million Upstate residents.

12 Maintaining pressure to hydrants, managing storm
13 water and treating wastewater. In addition, DEP
14 regulates air quality, hazardous waste, and critical
15 quality of life issues including the subject of these
16 bills, noise. Intro 186 of 2014 would not permit
17 notices of violation issued to commercial
18 establishments offering music to cite unreasonable
19 noise without including sound meter readings obtained
20 by enforcement personnel that are above the threshold
21 levels for unreasonable noise in the Noise Code. The
22 Administration supports the intent of this bill, but
23 it raises an issue with enforcement. Both the New
24 York Police Department, NYPD and DEP enforce
25 violations of the unreasonable noise standard with

regard to commercial establishments. Enforcement usually occurs on the street in front of the establishment, but can also be accompanied by taking noise meter readings in a complainant's dwelling. In response to complaints from the night life industry, DEP amended Section 24-218 of the Noise Code in 2005 to define unreasonable noise by decibel levels in most situations. Inspectors take readings with noise--noise meters to support the violation of the unreasonable noise standard. DEP issues violations from the street citing the decibel levels contained in Section 24-218(b), which establishes the prescribed decibel limits when a violation is issued under Section 244. There are, however, a few instances when using decibel levels is not practicable, and on those occasions such as when ambient noise masks the A scale music, the meter won't be able to register the noise and, therefore, there is no detected violation of the standard even though the noise is clearly unreasonable. It would be beneficial to have the ability to take readings using the C scale, which is in the Commercial Music Section, 24-231(c), but was not previously added to the Unreasonable Noise Section in 24-218 during the

2005 Noise Code update. The C scale follows the frequency sensitivity of the human ear at very high noise levels. The C scale includes much more of the low frequency range of sounds including bass than the A and the B scales. Adding this provision to the Noise Code would enable inspectors to use the most appropriate decibel level when the circumstances allow for measurements. However, even still, some flexibility is necessary and our inspectors must be able to make decisions regarding the practicality of meter readings based on field conditions. For example, it can be impractical to take readings during MARCH initiatives. MARCH, which stands for Multi-Agency Response to City Hot Spots is led by NYPD, and they only present an opportunity for the inspector to issue without taking readings with the inspector witnesses noise that is clearly loud and therefore unreasonable. A violation is then written under Section 20--244(a) which permits a non-decibel based standard to be used. DEP will, however, always use decibel levels when taking readings in a complainant's home in accordance with Section 24-231(a). DEP inspectors are trained in the use of the meters and have been at all times. The

meter must be properly calibrated in order to withstand challenge at the Environmental Control Board hearings. Furthermore, police officers who are called on to address noise from commercial establishments also need flexibility so that they will not be hampered in their enforcement efforts because a limited number of officers are sound device qualified. That is training qualified. According to 311, commercial noise complaints, meaning complaints generated as a result of noise emanating from bars, restaurants and clubs account for approximately 10,733 complaints directed to NYPD so far this year alone. Officers rely on Section 244 of the General Unreasonable Noise Provision to enforce by standing at the prescribed 15 feet or more from the source of the sound. Section 244(a) refers back to Section 10-108, the Public Safety Code, and permits NYPD as well as DEP to address noise issues that disturb the public peace and comfort without the need to take decibel readings. Officers will first instruct staff at the establishment to turn the music down. If they cannot obtain compliance with their direction, they will write an NOV when the sound is too loud. Taking into account the ambient sound level, time of the

2 day, the number of the complaints, whether neighbors
3 have asked the establishment to lower the sound and
4 the residential or commercial character of the area.
5 The preference is always to correct the condition
6 without need for enforcement. We look forward to
7 working with this committee to achieve the shared
8 intents of this bill.

9 Intro 745 of 2015 proposed to regulate
10 the operation of electronic sound devices on food
11 vending vehicles by prohibiting food vending vehicles
12 and cars from operating a sound signal device between
13 the hours of 9:00 p.m. and 9:00 a.m. DEP supports
14 the greater limitation on the use of these devices
15 during the hours when citizens need as much peace and
16 quiet as possible in order to rest and sleep. DEP
17 recently received 1,013 complaints in 2016 to date
18 about these vehicles especially ice cream trucks
19 parked outside parks. But actually issuing NOVs is
20 rather difficult. Inspectors will construct a
21 complaint in order to get a time frame when the
22 vehicle is using the sound device while parked in
23 order to witness the violation, but they vendors'
24 schedules vary or they will often turn the device off
25 when they see an inspector's vehicle. So only one NOV

was written in 2016. It would also be beneficial to amend the section to enable DEP to issue violations to the operator or registered owner so that the inspectors are not required to approach the person in the vehicle for license information as that could potentially become a safety issue for the inspectors. Intro 59 of 2014 would regulate the sale and use of gas powered leaf blowers. This bill would prohibit the use of gas powered leaf blowers before noon on weekends and state and federal holidays and would set noise standards for leaf blowers. It would also prohibit the use of gas powered leaf blowers from May 15 to September 15 and limit noise to a maximum of 65 decibels as was earlier stated. DEP supports the expanded restrictions in this bill on when these devices may be used. However, DEP cannot speak to the availability of alternative devices that will meet the specified 65 decibel limit in the bill, and the effect on the businesses that rely on these machines. Further, we believe that the phrase "not equipped with a functioning muffler" should not be removed from Section B(3) as our position is that all leaf blowers should be equipped with the muffler, which is in the current law. DEP defers to the

2 Department of Consumer Affairs on the provisions that
3 would prohibit the sale of gas powered leaf blowers.
4 Thank you once again for the opportunity to present
5 testimony. We would be happy to answer any of your
6 questions.

7 CHAIRPERSON CONSTANTINIDES: Is there
8 anyone else from the panel that has testimony to
9 give?

10 CASEY ADAMS: Yes.

11 CHAIRPERSON CONSTANTINIDES: Okay.

12 CASEY ADAMS: Good afternoon. My name is
13 Casey Adams, and I am the Deputy Director of City
14 Legislative Affairs at the New York City Department
15 of Consumer Affairs. I would like to thank the
16 committee for the opportunity to testify today. DCA
17 would be responsible for enforcing Introduction 59 of
18 2014's prohibition on the sale or offer for sale of
19 gas powered leaf blowers rated to produce a maximum
20 sound level in excess of 65 A-weighted decibels
21 measured 50 feet from the source in accordance with
22 the American National Standards Institute commonly
23 referred as ANSI E175.2-2000 Testing Standard. Other
24 jurisdictions have adopted similar approaches
25 including places as disparate as Montgomery County in

2 Maryland and Portland in Oregon. DCA expects that
3 like in these other jurisdictions enforcement of this
4 law would be primarily driven by resident complaints.
5 DCA is grateful for the opportunity to begin a
6 conversation with the committee and the Council about
7 how this bill would operate and looks forward to
8 discussing issues like the reliability of
9 manufactured and disclose of decibel level ratings,
10 the merits of independent testing of these ratings
11 and the successes and challenges of other
12 municipalities with similar laws. Again, I thank the
13 opportunity--the committee for the opportunity to
14 testify today.

15 CHAIRPERSON CONSTANTINIDES: Okay, anyone
16 else in the panel to testify. All right. So I will
17 then begin my questions, and hand it over to my
18 colleague Danny Dromm. I think the first place I
19 want to start is on page 2 of your testimony. In the
20 second full paragraph there, you--you make the
21 argument that there--you need to be able to continue
22 with the unreasonable noise to have more flexibility
23 because there are a limited number of officers that
24 are sound device qualified. The bill--the law of
25 2005 is now 11 years old. Can you explain to me why

2 there are still--we're talking about so few officers
3 that are sound device qualified 11 years later?

4 [pause]

5 LIEUTENANT ROBERT CORBETT: There are
6 approximately 1,428 police officers in the NYPD that
7 are currently qualify to operate a sound meter. We
8 do the training once a year for one week. I have no
9 answer to your specific question as to why is the
10 number. I believe in the grand scheme of things for
11 the NYPD the officers on patrol respond to obviously
12 many different things throughout the course the
13 night.

14 CHAIRPERSON CONSTANTINIDES:

15 [interposing] Right, of course, and I--and I
16 appreciate.

17 LIEUTENANT ROBERT CORBETT: And so--and I
18 don't mean to say that--that, you know, that we are
19 not looking at noise complaints as an important
20 thing, but that's the number currently that is
21 currently qualified.

22 CHAIRPERSON CONSTANTINIDES: And I mean I
23 just--if it's--when it's used as an argument against
24 a piece of legislation that--that just sort of--it's
25 11 years later. I'm just concerned as to why that's

2 that case. That--that's my--my point. So, I--I
3 appreciate work that the NYPD does and I--I work with
4 my precinct very closely--

5 LIEUTENANT ROBERT CORBETT: [interposing]
6 Of course.

7 CHAIRPERSON CONSTANTINIDES: --on lots of
8 different issues. [laughs] But it's seeing 11 years
9 later and that being an argument against a bill is--
10 is concerning to me. So I'm going--I'm going to
11 point that out. So why is it necessary to use the
12 unreasonable noise standard against certain
13 establishments? How do we--how do we decide who gets
14 the--the handheld device and who doesn't or how do
15 we--how do we sort of carve that up? Who--who goes
16 out--how--how is this sort of deciphered? How do we
17 make those determinations when doing enforcement? I
18 mean what do we--how do we do that?

19 DEPUTY COMMISSIONER LICATA: I'd like to
20 bring Gerry Kelpin up to the desk to help us answer
21 some questions. She is the Director of the Air and
22 Noise Enforcement Units for DEP.

23 GERRY KELPIN: I do. [laughs] I don't
24 know if you have to actually swear me in or.

2 LEGAL COUNSEL: I think you want to be
3 sworn. Be sure you.

4 DEPUTY COMMISSIONER LICATA: She always
5 tells the truth.

6 LEGAL COUNSEL: [off mic] Do swear to
7 tells us nothing but the truth today?

8 GERRY KELPIN: I do.

9 CHAIRPERSON CONSTANTINIDES: All right,
10 I'm--I'm--thank you for being sworn. [laughter]

11 GERRY KELPIN: Generally, you ask so I
12 just was following procedures.

13 CHAIRPERSON CONSTANTINIDES: I appreciate
14 that.

15 DEPUTY COMMISSIONER LICATA: Do you want
16 to on.

17 CHAIRPERSON CONSTANTINIDES: Okay.

18 GERRY KELPIN: [coughs] Complaints about
19 commercial music come to DEP after they have been
20 sent to the--the Police Department. The way that
21 it's currently set up through 311 all complaints
22 about music from commercial restaurants, bars, clubs
23 first go to PD. If there is sufficient information
24 about the complainant, we're able to pull a report
25 that allows us to then contact those complainants and

2 ask them whether they would want DEP to follow up
3 because often the Police Department has visited the
4 establishment. Has gotten them to turn down their
5 music and come into compliance.

6 CHAIRPERSON CONSTANTINIDES: Uh-huh.

7 GERRY KELPIN: We also are often limited.
8 If it is not corrected, to take a reading from their
9 apartment, which sometimes is much more successful in
10 terms of actually solving their problem, the
11 complainant's problem.

12 CHAIRPERSON CONSTANTINIDES: Uh-huh.

13 GERRY KELPIN: [coughs] We also
14 participate in the MARCH initiatives.

15 CHAIRPERSON CONSTANTINIDES: Uh-huh.

16 GERRY KELPIN: So those are locations
17 precinct by precinct. It could be, you know, a lit
18 of five. It could be 15 locations that we go to.
19 The other is that we sometimes get correspondence
20 about a location that has kind of been in PD but we
21 haven't gotten the information because they have
22 chosen to remain anonymous at that point. That's
23 another subset that we then, you know, follow up with
24 the complainant on.

2 CHAIRPERSON CONSTANTINIDES: Okay, so
3 the--is--is--are the inspectors from DEP using the--
4 the noise, the meter--the noise meter, are they--

5 GERRY KELPIN: We did a little bit of
6 research. So as the testimony indicated, if we're
7 issuing--if we're taking readings from a person's
8 apartment under Section 231--

9 CHAIRPERSON CONSTANTINIDES:
10 [interposing] Uh-huh.

11 GERRY KELPIN: --that requires us to take
12 readings every time.

13 CHAIRPERSON CONSTANTINIDES: Okay.

14 GERRY KELPIN: So those--those are always
15 done.

16 CHAIRPERSON CONSTANTINIDES: So if I call
17 and say, you know, there's a noisy restaurant
18 downstairs and that they'll--they'll come to my
19 apartment and use the meter?

20 GERRY KELPIN: Yes. It has to--for
21 music.

22 CHAIRPERSON CONSTANTINIDES: Correct.
23 Okay.

24

25

2 GERRY KELPIN: But it could be a noise, a
3 circulation device. We also come to the apartment,
4 too.

5 CHAIRPERSON CONSTANTINIDES: Okay. So,
6 if--but if--if--so now--now walk me through the rest
7 of it. I'm--I'm trying to understand how this works.
8 Okay.

9 GERRY KELPIN: So if it's from the
10 street, we do try to take readings on--I looked at
11 some of our violations and about 50% of the time we
12 were able to use the meter and got more than either 7
13 or 10 decibels depending on the--the time of day.
14 There were some situations where the ambient noise is
15 so loud that it masks the ability for the meter to
16 pick up actually the music. So we get a reading of
17 something like, you know, 63 to 65. It's just not
18 enough for us to be able issue using the meter.
19 However, we then use some of this alternative
20 criteria, which 218 actually says you can use--not
21 limited to the--the actual decibel when it's--that
22 are listed in the 218(b)

23 CHAIRPERSON CONSTANTINIDES: How many--
24 how many unreasonable noise complaints through that

2 section are received every year, or this year? Even
3 this year to date?

4 GERRY KELPIN: So I think we issued
5 under--for the sound reproduction devices 244(a) we
6 issued 67 fiscal year to date.

7 CHAIRPERSON CONSTANTINIDES: And that's
8 not stake--okay. That's like 67, you said?

9 GERRY KELPIN: Uh-huh.

10 CHAIRPERSON CONSTANTINIDES: All right, I
11 guess my, you yeah my--what is the big impediment
12 from the--I know there was a very arduous
13 conversation 11 years ago, and my--my former--the
14 former chair of this committee was very involved with
15 that particular conversation, and--and he was of the
16 mind and--and I was of the mind that this bill is a
17 negotiated desk level for a reason. Not only to make
18 sure that the establishments understand that they
19 have a certain responsibility, but also for the, you
20 know, for the private--for the private citizen to
21 know that it's not going to be a subjective
22 standards. It's going to be an objective standard.
23 Someone comes by with a machine and says this is too
24 loud. It's no--or this study of it. There's a lot
25 of subjectivity in that unreasonable noise. That--

2 that sort of makes me uncomfortable as someone that
3 calls on a consistent basis. You know, I--no matter
4 who shows up, I want to make sure that it's--it's--
5 that the same law is applied.

6 DEPUTY COMMISSIONER LICATA: Right. So,
7 and that's why we're making that recommendation, as
8 Jerry indicated when you have the ambient levels
9 masking the music noise, it's very difficult to get a
10 10 DBA or greater change--

11 CHAIRPERSON CONSTANTINIDES:
12 [interposing] Okay.

13 DEPUTY COMMISSIONER LICATA: --in noise
14 levels from the meters. So, what we would need is
15 for a consideration of adding the C scale. I think
16 we could do, then successfully do more readings
17 taking the C scale, and be able to decipher the noise
18 level changes and noise levels associated with the
19 commercial music noise.

20 CHAIRPERSON CONSTANTINIDES: And as far
21 as the MARCH that--that does--that--that does concern
22 me seeing that--them. You know, there have been a
23 few MARCH operations in my district, and I've been
24 glad that happened, and--and how is this--as the--how
25 does this unreasonable standard utilized that's--

2 that's unable to use through a--a meter, what is the--
3 --Someone walks--they walk into the establishment in
4 unison. There is music still playing and what is
5 the--what's the impediment there?

6 GERRY KELPIN: So in some cases there's
7 sufficient time between when a DEP inspector gets to
8 the location. Generally, what happens with the MARCH
9 is that the DEP staff go out first, and have maybe
10 five minutes before the rest of the agencies get to
11 their location. So it's set up that way so that the
12 music stays on for us to be able to be assess the
13 situation on the street. In some of the cases, it's
14 sufficiently loud that we can quickly take a reading
15 and get an ambient and the--the reading with the
16 source on. Sometimes, as I said, and I--it's very
17 hard to predict, there are situations when the
18 inspector is--can hear the music but the meter is not
19 picking up the loudness of the music component.
20 Traffic plays a huge part in masking the--the meter's
21 ability to pick out a sound. So the criteria that
22 we've worked with and--and also developed with the
23 Police Department is that [coughs] we have to be able
24 to show something like if I'm more than-- Let's say
25 something-- There's one scenario where we'll go out

2 50 feet, and start to walk, and we can hear it at 50
3 feet, and then walk into 15 feet, and it's
4 significantly louder that we're hearing. We also may
5 note that the windows and doors of the location are
6 open so the music is blasting out to the street.
7 Another criteria that we use is we're 15, 20 feet
8 away and we're trying to have a conversation with our
9 partners, and we're unable to hear each other. We
10 consider that type of volume unreasonable.

11 CHAIRPERSON CONSTANTINIDES: Uh-huh.

12 GERRY KELPIN: And so that's--those are
13 some cases where we--when can't get an absolute
14 reading, we'll use that type of criteria to
15 demonstrate that the music is very audible on the
16 street, and equivalent to unreasonable. As we said,
17 this other--the--the standard that we're talking
18 about, and our experience with it 11 years ago was
19 very minimal. We had introduced it for apartments
20 for the 231. We've--we've found that it is somewhat
21 successful. We've been talking with a number of
22 people about implementing it on--on the street.
23 Again, as we've explained in the testimony, it tends
24 to focus on the base sound of the music. So we would
25 be able to sort of raise the music portion to be

2 audible on our--to show up on our meters using the C
3 scale.

4 CHAIRPERSON CONSTANTINIDES: All right,
5 so I have--I have two questions left. One, I mean
6 I'll--I'll-- So I know that the--the entertainment
7 industry sort of establishments states that they--
8 there was an agreement as part of a deal 2005 and I
9 wasn't there. [laughs] I wasn't working for
10 Councilman Gennaro at that time, but if--that the
11 city agreed to conduct enforcement on established
12 entertainment sound based on the objective noise
13 limits set forth in the Noise Code, not the
14 unreasonable noise standards. Do you recall--recall
15 the city making this agreement?

16 GERRY KELPIN: I think the way that we
17 wrote it in is that we left ourselves an opportunity
18 for a case--for cases where it was clearly
19 unreasonable--where the music was clearly loud, that
20 we would determine it as unreasonable using this--
21 these other standards. But for the--for DEP we would
22 try to take readings as often as we could. So for us
23 it's sort of this balance between I know it's really
24 loud. I'm not getting it on my meter. Do I just let
25 it go, and not issue the violation? And then--

2 CHAIRPERSON CONSTANTINIDES: Do we need
3 better meters? I mean it sounds like--

4 GERRY KELPIN: [interposing] Excuse me?

5 CHAIRPERSON CONSTANTINIDES: Do we need
6 better meters? We just need to make--we need to find
7 the right--the C scale.

8 DEPUTY COMMISSIONER LICATA: Okay.

9 GERRY KELPIN: So we think it would
10 better, we would have a much better--

11 CHAIRPERSON CONSTANTINIDES:
12 [interposing] All right, and I think--

13 GERRY KELPIN: --ability to--to sort that
14 out at that point.

15 CHAIRPERSON CONSTANTINIDES: And then
16 lastly I mean I know that there are particular
17 neighborhoods in the city that have been--seen uptick
18 in noise. What is being done to address these hot
19 spots? Because I know that there are just certain
20 communities that are just--they're exploding in--in a
21 good way but also in a bad way when you have a lot of
22 noise complaints? How do we as a--what's been
23 happening sort of in--in communities to improve the
24 quality of life there?

2 DEPUTY COMMISSIONER LICATA: Well, with
3 respect to construction noise, we understand that the
4 Buildings Department is taking a closer look at after
5 hour variances, and we are working in close
6 coordination with--with them now, and we are giving
7 them addresses of sites that we find have routine
8 complaints. In addition, Gerry, do you want to
9 describe some of the extraordinary steps that you've
10 taken to address the carting industry and--?

11 GERRY KELPIN: Recently or within the
12 last year and a half we've added eight new
13 inspectors. We put out two different shifts to deal
14 with complaints that we are seeing an uptick in. They
15 may or may not be what you are seeing, but one is for
16 construction. So we have an early morning shift that
17 starts at like 6:00 in the morning, and they run--
18 they work Tuesday to Saturday. So we're picking up
19 the construction complaints for Saturday almost--a
20 lot of time on real time. We also added a shift, a
21 later night time shift Monday to Fridays, but they
22 work until 4:00 in the morning. Some of that is--is
23 potentially for music, but one of the other things
24 that we are a lot of complaints about are for private
25 carters. So this allows us to find the locations and

2 take measurements on the-the trucks to see how
3 compliant they are. The rest of the time that
4 they're not doing those things, they are responding
5 to the various complaints that we get. They're--all
6 of our inspectors, as we mentioned, are noise
7 qualified. And we--we set up the shifts to, you
8 know, try to control, you know, to respond to these
9 various complaints and locations that are--that we
10 see a lot of complaints about. Where there are more
11 than, you know, we necessarily get complaints about,
12 and we--we follow up with them.

13 DEPUTY COMMISSIONER LANDAU: And then
14 Councilman to--to add to that, our Community Affairs
15 staff, as I think you know, works very, very closely
16 with community boards and a elected officials that if
17 there's an area or a location that there's a concern
18 about noise, our--our staff works very closely with
19 those offices to get that information, and then works
20 closely and coordinates with our enforcement staff.

21 CHAIRPERSON CONSTANTINIDES: Okay. All
22 right, so at this point I'm going to--I'm going to
23 turn it over to my colleagues Council Member Danny
24 Dromm. I know he has some questions in relation to
25 his two bills. So I'll turn it over to him.

2 COUNCIL MEMBER DROMM: Thank you. Just
3 to follow up on what you just said in regard to
4 working with the council members' offices. Is that
5 true also for things like the ice cream trucks and--
6 and the leaf blowers? So you would work with our
7 offices on that? That's outside of the--what the
8 NYPD could do?

9 DEPUTY COMMISSIONER LANDAU: Certainly,
10 if there's any issues that you're having in your
11 district to--that falls within our jurisdiction.
12 Please let us know and--and we'll follow up as
13 quickly as we can.

14 COUNCIL MEMBER DROMM: Okay, and just
15 before I get started with some question that I have,
16 I just want to if I may, Mr. Chair, list some facts
17 that I have received--excuse me [coughs]--from the
18 residents for a clean Forest Hills Gardens. Leaf
19 blowers pose a serious health threat. Leaf blowers
20 create pollution. A single leaf blower operating for
21 an hour emits as much pollution as 40 cars idling
22 during the same period of time. Leaf--leaf blowers
23 spew a number of toxic chemicals including, but not
24 limited to Benzine, carbon monoxide, formaldehyde,
25 and a whole bunch of other chemical who I can't say

1 their manes. Leaf blowers are--release and spin
2 contaminants such as mercury, arsenic, lead, and
3 Cadmium. That's according to the American Lung
4 Association. In one hour, one leaf blower sends over
5 five pounds of particulate matter into the air
6 including, but not limited to, feces from cats, dogs,
7 rodents and birds, rat poison, fertilizers, fungal
8 spores, herbicides, insecticides, mold, pathogens,
9 pollen, et cetera. Leaf blowers exceed the World
10 Health Organization's acceptable ambient noises by 20
11 decibels at 50 feet. Over 400 communities nationwide
12 including 15 in New York State have already banned
13 all leaf blowers during certain seasons and children
14 are especially at risk from leaf--leaf blowers
15 because compared to adults, they inhale more air per
16 pound of body weight, and their organs, which are
17 still developing, are more sensitive to environmental
18 hazards. So I just wanted to make sure that that was
19 in the record as well, and then I guess I'm guess I'm
20 going to just start off with the NYPD. You said
21 there were 1,428 qualified officers. What is the
22 number? Did we get the number of how many tickets or
23 violations were issued by those officers?
24

2 LIEUTENANT ROBERT CORBETT: I'm unable to
3 break it down by the specific section of the Admin
4 Code, but year to date 2016 we've issued 1,000
5 criminal court summonses citywide for noise
6 violations. We do not have a tally on ECB and OVs,
7 but we will in the near future thanks to the summons
8 reform package that has passed recently.

9 COUNCIL MEMBER DROMM: Sometimes when I
10 deal with the precinct one of the issues that has
11 come up with me is that they don't have a noise
12 machine to be able to read these levels. How many
13 noise machines do we have in this city?

14 LIEUTENANT ROBERT CORBETT: Every
15 precinct has at least one sound meter. Many of the
16 sound meters are older models that cannot get the C
17 scale of frequencies that would pick up base and
18 lower frequencies, which we need for clubs and bars.
19 We are replacing them over the next year or two, and
20 each precinct would have at least one.

21 COUNCIL MEMBER DROMM: So each precinct
22 then by the end of next year have a modern sound
23 machine?

24 LIEUTENANT ROBERT CORBETT: I can't--I
25 can't say for sure by the end of next year. I don't

2 know the exact schedule, but we are replacing the
3 older ones yes.

4 COUNCIL MEMBER DROMM: And--and how many
5 precincts do we have in the city?

6 LIEUTENANT ROBERT CORBETT: Seventy-
7 seven.

8 COUNCIL MEMBER DROMM: So that's 77
9 machines. Do you feel that one machine per precinct
10 is sufficient to address the issue?

11 LIEUTENANT ROBERT CORBETT: I--I think
12 when it comes to--it's becoming difficult for us--not
13 becoming difficult, but for lack of a better word
14 becoming difficult for us to carry everything we need
15 out there, and you have to remember that for all the
16 different things we could enforce, you would be
17 carrying--cops are carrying radiation detectors.
18 They're carrying--you would need a window detector or
19 meter for that, noise meters. They have gas masks.
20 It's difficult to carry everything in every car.
21 What we'd like to--

22 COUNCIL MEMBER DROMM: [interposing] Is
23 it required that a car carry it or is it something
24 that could be held in the hand or on the belt or how
25 big are those machines? I've never seen any?

2 LIEUTENANT ROBERT CORBETT: I--I'm not
3 sure. We have three different models. I don't
4 remember what each one looks like, but there is
5 definitely no room left on the cops' belts for
6 anything.

7 COUNCIL MEMBER DROMM: But are they--are
8 they--are--are--are the ones that--have you see any
9 of them? Are they large? Are they so large that
10 they have to be carried in a car? Are they in a box
11 or how--?

12 LIEUTENANT ROBERT CORBETT: They--they
13 come in a case. They can fit in a car, in the back
14 seat or a trunk. I don't know if they could be
15 mounted to a belt, but even if they could, we really
16 don't have any room left on the cops' belts.

17 COUNCIL MEMBER DROMM: And I'm--I'm not
18 suggesting that. I just wanted to get the feel for
19 what--what size there was. Do they break down often?

20 LIEUTENANT ROBERT CORBETT: I don't know
21 the answer to that.

22 COUNCIL MEMBER DROMM: Because that's
23 also been a complaint that I've heard as well is that
24 they're not operational. So that may be with the
25 fact that they're older as you're saying, and that

2 may be something we want to look at the Council as
3 well. Now, I feel like these noise complaints are
4 majority quality of life complaints in the city, and
5 I know that the NYPD has been doing a great job with
6 doing with quality of life issues, and I think that
7 this is one of the ones that I think we as a council
8 should look at more carefully, and get a--and get a
9 grasp of it. Because I get a lot of complaints,
10 especially once Mr. Softee starts coming around, and
11 that's one of the--my next set of questions is about
12 that. So Mr. Softee I think it was said in the
13 testimony or not just Mr. Softee, but these--these--
14 these vending--these vending trucks that have this,
15 you know, sound equipment. So 1,013 complaints and
16 one. I mean that's--that's a terrible, terrible
17 number and I really hope that, you know, when we come
18 back again to a hearing here, that we have more than
19 one--one violation issued. I mean and it just brings
20 me back to who--who enforces that? Is that the NYPD.
21 I've tried to call the NYPD on this as well, and I do
22 understand the issue of these trucks being, you know,
23 able to move around, but often times the complaints
24 come from residents under whose apartment building
25 they sit for hours and that bell and that thing is

2 going on for hours and hours and hours. And as it
3 was mentioned I think even in your testimony, it's
4 also a Parks. I have one--and not only--not only did
5 the issue of the sound coming from these trucks, they
6 leave their motors running and--and the emissions
7 from--from the tailpipes of these trucks is horrible
8 in areas where children play. So what can we do
9 because one is not acceptable. It's just not
10 acceptable. We need to see if we have--are those
11 1,428 officers qualified to give summonses as well to
12 Mr. Softee.

13 LIEUTENANT ROBERT CORBETT: The
14 qualification refers only to the sound meter--the
15 sound meter use itself. I'm sure if we're talking
16 specifically about the noise, or if--I believe
17 there's a section of the Admin code. I'm not sure if
18 it's Admin code or traffic rules that says they
19 cannot play the music at all when parked. So I don't
20 believe we would need a sound meter for that, and we
21 could address that if that's the case.

22 COUNCIL MEMBER DROMM: So that's--that's
23 one piece of it, but the other piece of it I think is
24 the--the--the volume of the sound that's emanating
25 from these Mr. Softee trucks. So any officer could

2 issue a violation. I believe it's in the--in the
3 testimony today--for a truck that is idling. The
4 problem is that we--we don't get enforcement on that
5 either. So, I--I really hope that you'll bring that
6 back to the department.

7 LIEUTENANT ROBERT CORBETT: Sure.

8 COUNCIL MEMBER DROMM: Because that's a
9 major issue for us, and then the other one is the
10 volume. Would we need a--a sound reading on that in
11 order to be able to enforce it or could the selective
12 enforcement, which the commissioner was talking about
13 be able to be invoked for this--that type of a
14 situation. So where--where an officer comes upon a
15 situation, and feels that the sound coming from Mr.
16 Softee or the ice cream truck is just too loud, would
17 they also be able to address that issue--

18 LIEUTENANT ROBERT CORBETT: [interposing]

19 Yes.

20 COUNCIL MEMBER DROMM: --without having
21 a--a machine?

22 DEPUTY COMMISSIONER LICATA: Yes, they--
23 and they can basically enforce on that. The
24 refrigeration trucks, though, are tricky because
25 sometimes there's an auxiliary engine or an engine

2 that's necessary to keep the products cold. So that-
3 -that's just something be mindful.

4 COUNCIL MEMBER DROMM: Meaning that would
5 affect the sound level?

6 DEPUTY COMMISSIONER LICATA: That would
7 affect their ability to issue for the idling. I just
8 wanted to mention that.

9 COUNCIL MEMBER DROMM: But I believe with
10 the idling, don't they--is there a limit on that time
11 that they're allowed to idle?

12 DEPUTY COMMISSIONER LICATA: Yeah, but
13 the refrigeration function of the engine that is
14 meant to keep the products cold, those--those are
15 allowed for a period.

16 COUNCIL MEMBER DROMM: So are they
17 allowed to idle as long as they can--

18 DEPUTY COMMISSIONER LICATA: They're two
19 different engines. Do you want to explain that--

20 COUNCIL MEMBER DROMM: [interposing] Yes.

21 DEPUTY COMMISSIONER LICATA: --Gerry, a
22 little bit better? So it can be tricky because there
23 are components that are on board those vehicles the
24 products cold.

25 COUNCIL MEMBER DROMM: Yes.

2 DEPUTY COMMISSIONER LICATA: And that is
3 necessary to run.

4 COUNCIL MEMBER DROMM: Okay.

5 GERRY KELPIN: So the ice cream trucks--

6 COUNCIL MEMBER DROMM: Just why don't you
7 indentify yourself again for the record.

8 GERRY KELPIN: Jerry Kelpin--

9 COUNCIL MEMBER DROMM: [interposing]
10 Okay, Gerry

11 GERRY KELPIN: --DEP Air and Noise. So
12 the--the ice cream trucks specifically have to have a
13 generator to run their equipment. A generator is an
14 auxiliary engine. It is not covered by the Idling
15 Law. The Idling Law is specific to the motor vehicle
16 engine. So you do have that. What we did in the new
17 air code since we're going back and forth between air
18 and noise, the--we are requiring that those generator
19 engines be upgraded to the more recent engines that
20 have--are cleaner. EPA passed regulations about them
21 so that--excuse me--they'll be the cleaner emissions
22 at least because they do have to run if they're going
23 to maintain their business. In terms of
24 refrigeration trucks, those are your delivery trucks.
25 Those are also run on an auxiliary engine. A lot of

2 them are--actually have a battery assist. So
3 although you hear them, they're not actually running
4 on diesel, just FYI.

5 COUNCIL MEMBER DROMM: So with the ice
6 cream trucks--

7 GERRY KELPIN: Uh-huh.

8 COUNCIL MEMBER DROMM: --should most of
9 them now be able to run that auxiliary engine--

10 GERRY KELPIN: [interposing] They are.

11 COUNCIL MEMBER DROMM: --without--without
12 running the whole truck?

13 GERRY KELPIN: It's different engine.
14 It's not their vehicle engine that's on. It's the
15 generator.

16 COUNCIL MEMBER DROMM: Well, I--I--I
17 smell the--the emissions.

18 GERRY KELPIN: It--it runs on diesel.
19 You--it will smell the same. The difference is that
20 the engine in the front that runs the vehicle is off.
21 The other one, which is not only--not only does it
22 smell, it makes a lot of noise when they're not
23 properly maintained. Something else that we're
24 trying to deal with.

2 COUNCIL MEMBER DROMM: Okay. That's a
3 good distinction to know. So have--of--of--well, I
4 guess there's only one. That one--who is the one
5 violator that got the ticket.

6 GERRY KELPIN: I don't know. Actually,
7 I--I think we've--we've issued a couple of things.
8 They don't always appear exactly in the--the stats
9 that we have. [coughs] But a part of the problem,
10 you know, it's--it's either a police officer, you
11 know, approaches or one of my enforcement staff
12 approach. Very often they'll click it off before we
13 can get there to actually document it.

14 COUNCIL MEMBER DROMM: But if you hear it
15 from across the street, is that--and you watched them
16 sitting for--

17 GERRY KELPIN: [interposing] Yes, we can.

18 COUNCIL MEMBER DROMM: --ten minutes--

19 GERRY KELPIN: Yes.

20 COUNCIL MEMBER DROMM: --you can still do
21 it.

22 GERRY KELPIN: Absolutely, we--we do try
23 a lot of times we try to go exactly when people tell
24 us that the trucks is going to be there, and the
25 trucks aren't there, or they turned it off. I don't

2 know. Maybe they see us coming. I am not sure, but
3 it is not for lack of trying to get these, you know,
4 vehicles--a violation if they are playing. We also
5 if we do see a truck and it's part of the--a group,
6 we will give them a notice that explains what the law
7 it so that, you know, they share it or they're aware
8 of it so--

9 COUNCIL MEMBER DROMM: So that--that
10 comes down to another question because I do believe
11 in educating them, but often times there's just too
12 much education, and they just violate anyway because
13 they've been educated and this is the same guy who--
14 and actually I should say in two instances there's--
15 it's the same truck dealer in two different
16 locations, two different people, but the same people
17 always at the same locations in my district, and
18 they've been educated already about the law, dah-dah-
19 dah. But still I don't know if they've gotten any,
20 but obviously I don't think so if there's only been
21 one violation.

22 DEPUTY COMMISSIONER LANDAU: Councilman,
23 we'll happily follow up with you afterwards to get
24 the specific locations, and coordinate some
25 enforcement efforts.

2 COUNCIL MEMBER DROMM: Okay. Let's just
3 go back to the leaf blowers, if you don't mind. How
4 many--how many complaints did the city receive from
5 the leaf blowers?

6 [pause]

7 DEPUTY COMMISSIONER LICATA: So this
8 falls under the general lawn care device. So in
9 total for general lawn care devices we received in
10 2016 173 complaints.

11 COUNCIL MEMBER DROMM: Is--is that in
12 your testimony or no? That's--you're reading from
13 something separate?

14 DEPUTY COMMISSIONER LICATA: [off mic]

15 COUNCIL MEMBER DROMM: Okay. So 1000?

16 DEPUTY COMMISSIONER LICATA: 73.

17 DEPUTY COMMISSIONER LANDAU: 173.

18 DEPUTY COMMISSIONER LICATA: I'm sorry,
19 173.

20 COUNCIL MEMBER DROMM: 173 complaints,
21 and how many violations?

22 DEPUTY COMMISSIONER LICATA: Two tickets.

23 COUNCIL MEMBER DROMM: So, look, the
24 testimony is just saying to me that these issues are
25 not being taken seriously.

2 DEPUTY COMMISSIONER LICATA: Well--

3 COUNCIL MEMBER DROMM: They just--there's
4 no way around it.

5 DEPUTY COMMISSIONER LICATA: Well, the
6 way we view this is--

7 COUNCIL MEMBER DROMM: [interposing] Two
8 violations--

9 DEPUTY COMMISSIONER LICATA: Right, but
10 they--

11 COUNCIL MEMBER DROMM: --in a city of 8-
12 1/2 million people.

13 DEPUTY COMMISSIONER LICATA: So what we
14 try and do first and foremost is to educate folks and
15 to, you know, let them know that we--

16 COUNCIL MEMBER DROMM: [interposing] They
17 know they law. They've been talked to. In my
18 neighborhood they've been talked to. I have the same
19 issue, by the way with vendors. They know the law.
20 We need to enforce the law as it exists. The law is
21 written to be enforced--

22 DEPUTY COMMISSIONER LICATA:
23 [interposing] But you're not aware--

24 COUNCIL MEMBER DROMM: --not to be
25 ignored.

2 DEPUTY COMMISSIONER LANDAU: Councilman,
3 the--the one point that--that I want to make sure we
4 make is that while there aren't a large number of
5 violations being issued, every single complaint that
6 we receive, this 173 complaints we received we follow
7 up on 100% of those complaints. So we do take it
8 very seriously.

9 COUNCIL MEMBER DROMM: But it hasn't
10 solved the problem. I--I bet you're going to get
11 another 173, and the numbers keep going up according
12 to our chair in many of these noise complaints. So
13 the education is not working. Right, I mean if I
14 was--I used to be a New York City public school
15 teacher for 25 years, and--and by the way, teachers
16 are judged on their test scores, eight. So all I've
17 got to do is look at your statistics, and something
18 is not working. If this--if the number of complaints
19 continue to rise, and--and we have such--so little,
20 one violation for ice cream trucks and two for leaf
21 blowers, something is not work.

22 DEPUTY COMMISSIONER LICATA: Well, I
23 think this is the general intent of this legislation.
24 These leaf blowers are not--they're not illegal. So
25 there's--we're--we're a little bit hemmed in terms of

2 what we can do. We do respond as Eric indicated to
3 100% of the complaints, and we do try to make
4 appointments with complainants if they can let us
5 know when does this particular lawn care service come
6 on Tuesday. But these hours vary as well, so it's
7 been a very, very tricky business, and I want to
8 assure you that we take--

9 COUNCIL MEMBER DROMM: [interposing] And
10 I agree and that is the intent of the legislation.

11 DEPUTY COMMISSIONER LICATA: --we do take
12 it--

13 COUNCIL MEMBER DROMM: [interposing] I
14 just kind of wanted to make that point as forcefully
15 as I could, and I do appreciate your testimony in
16 support of the legislation, and look forward to--to
17 working with you on negotiating it. So thank you. I
18 appreciate it. Thank you very much.

19 CHAIRPERSON CONSTANTINIDES: Really
20 quickly just before Council Member Richards comes
21 back. Just a couple of follow-ups that I have from
22 Council Member Dromm's questions. How many meters
23 does DEP have? This sound meters, how many do you
24 currently have?

2 GERRY KELPIN: We--we--every inspector I
3 believe has a meter. So there's--we have no lack of
4 the devices---

5 CHAIRPERSON CONSTANTINIDES:
6 [interposing] Okay.

7 GERRY KELPIN: --and what we started
8 earlier in terms of them breaking down, it's not so
9 much that the meters break down, it's that they need
10 very consistent calibration.

11 CHAIRPERSON CONSTANTINIDES: Okay, that's
12 what I was going to ask is like how often, how long
13 do they last? You know, when the last--you know, we
14 did--the last has gone for 11 years. So we still
15 have 11-year-old meters?

16 GERRY KELPIN: Oh, we--we are very
17 current with our equipment. The equipment is--is not
18 hampering our ability to serve in this regard.

19 CHAIRPERSON CONSTANTINIDES: Okay, all
20 right. So DEP they--when someone is answering,
21 they're answering with the most up-to-date meters
22 that we possibly have?

23 GERRY KELPIN: We--if we don't have faith
24 in the meter, we wouldn't be using that particular
25 meter. We have equipment that is state-of-the-art,

2 current, calibrated. That is one of the efforts that
3 we take every seriously, and there is routine
4 training that is done for these air and noise
5 inspections.

6 CHAIRPERSON CONSTANTINIDES: And is
7 there--is--I mean as far as the NYPD coordination
8 with DEP when--when they're going out as well to
9 answer noise complaints is there that coordination
10 there to make sure that those meters that they have
11 in the precinct are--as up to date, are--are--are you
12 working together? I mean how do we make sure that--
13 that--that the meter that the NYPD has is the same
14 meter that DEP has and that they're both equally up
15 to date, and we're not using one that's maybe five
16 years in one instance and one that's more recent and
17 that's up--as up-to-date as you're saying that they
18 are DEP?

19 LIEUTENANT ROBERT CORBETT: I don't think
20 there has been coordination with regard to the meters
21 themselves. The NYPD is phasing out the older meters
22 now and will have the most up-to-date modern meters
23 shortly.

24 CHAIRPERSON CONSTANTINIDES: And--and is
25 it an impediment? What--what is the cost of these

2 meters? I mean is it an impediment to have more than
3 one per precinct?

4 LIEUTENANT ROBERT CORBETT: I don't know
5 what the cost is. I'm--I'm sure the city could
6 afford it but, you know, I think part of the issue is
7 training everyone and getting enough of them out
8 there. Theoretically, if we wanted to be 100%
9 efficient with these, we would need one in every car
10 on every shift.

11 CHAIRPERSON CONSTANTINIDES: I mean I'm--
12 I'm just see the--the noise complaints going from
13 36,000 to, you know, upwards of 50,000 in three
14 years. I just want to make sure we have--if we are
15 going to be dealing with these quality of life
16 issues, that we have all the tools in our toolbox to
17 make sure that they're doing in an efficient way,
18 right. I mean we don't want anyone who's doing
19 enforcement out there that doesn't have the right
20 tools in their toolbox in order to get to the mission
21 that we want, which is protecting the quality of life
22 and make sure there's fair an equal distribution of
23 the law. So that's--that's--that's sort of my point
24 here, and then are there different meters? That--you
25 said, oh, the--the--I guess it's the--a variation of

2 my question before, but really what both meters need
3 as you're saying is a C scale, correct? As being
4 able to measure that--on that C--the C scale that's
5 the one?

6 GERRY KELPIN: Yeah, we were talking
7 about now our A scale. I don't know if they can also
8 do the C scale or if there's a need. They have some
9 versions of the meters can do A, B I guess and C
10 scale as well. The important thing is we buy from
11 different manufacturers. The important thing is that
12 they have a certain qualification to them either a
13 type 1 meter so that we have faith in them. We
14 actually like trying different manufacturers so that
15 we can make sure that we are using the best ones and
16 ones that we prefer.

17 CHAIRPERSON CONSTANTINIDES: And at the
18 end of the day, I think we all have the shared--
19 shared goal of making sure that establishments know
20 their responsibilities, and that the public citizens
21 are--you know, the citizens are able to--that
22 they're--they're relying on law and not relying on--
23 on subjective standards. That's--that's my--that's
24 the intent of the bill, and that's where we're
25

2 looking to get to. I'll turn it over this time to
3 Council Member Donovan Richards for some questions.

4 COUNCIL MEMBER RICHARDS: Thank you,
5 Chair and thank you Council Member Dromm and both
6 chairs for your--your bills. So I'll just get to the
7 infamous question that I ask at every hearing. How
8 many noise monitors do we have for the city of New
9 York? I mean I wasn't here. Sorry. I was coming
10 from another event, but I just--did we get an uptick?
11 Did we get five more this year? No

12 DEPUTY COMMISSIONER LICATA: We--we have
13 57. We started with 49. So added eight.

14 COUNCIL MEMBER RICHARDS: Let me ask you
15 question so I--apparently you do the multi-agency
16 response to community hot spots. How often is that
17 done, and do you have a breakdown by borough and
18 location in particular where these particular
19 targeted inspections happen?

20 [pause]

21 DEPUTY COMMISSIONER LICATA: I don't
22 believe either DEP or NYPD has the breakdown here.

23 COUNCIL MEMBER RICHARDS: NYPD has the
24 breakdown?

2 DEPUTY COMMISSIONER LICATA: No, we're--
3 we--I don't believe either one of us have the
4 breakdown here with us.

5 COUNCIL MEMBER RICHARDS: So we're going
6 to work towards making sure we can get a breakdown
7 and that we're communicating more, and I say that
8 because there's in particular in my industrial area,
9 in Springfield Gardens it's the same hot spot and DEP
10 has been out several times. It just seems like we're
11 getting no resolution to it, but, you know, it's like
12 a broken music box almost now. You know, because we--
13 -it's just always a revolving. You know, it gets
14 quiet and it ramps back up again, and it, you know,
15 it has to do with the refrigerator trucks. The
16 neighbors complain. You come out. You inspect. I'm
17 sure issue a violation, but I think, you know, I'm--
18 I'm not to be the, you know--stay on this subject for
19 long because we've--we've been here before. But I
20 just want to say until the city takes it serious and
21 until DEP and NYPD really starts to take this issue
22 seriously, we'll just continue to lead in 311
23 complaints hypothetically. And I think the city
24 needs to do more here. It is a quality of life issue
25 that homeowners and people who live near these

2 particular facilities, the vending trucks really
3 deeply by it, if you have children. I think one
4 gentleman has--his father is really sick, and has to
5 deal with ongoing issue. So I'm hoping that, you
6 know, the city will look at this more seriously as we
7 move forward. So did we ramp up? How many did we
8 ramp up from last year?

9 DEPUTY COMMISSIONER LICATA:

10 [interposing] We--it was

11 COUNCIL MEMBER RICHARDS: --in terms in
12 these monitors.

13 DEPUTY COMMISSIONER LICATA: I believe it
14 was the--the school year before. So that would be
15 fiscal year '16--

16 CHAIRPERSON RICHARDS: So we did no more?

17 DEPUTY COMMISSIONER LICATA:

18 [interposing] We added eight.

19 CHAIRPERSON RICHARDS: Right, I remember
20 that. So we added none this year?

21 DEPUTY COMMISSIONER LICATA: We have not
22 added any additional inspectors this year. I will
23 tell you, though, we work very hard to make sure that
24 we have our full complement. We work very hard to
25 make sure that we have our full complement of

2 inspectors. So that if there is anybody who gives
3 notice and leaves, then we work very hard to recruit
4 and bring people up, and it's a very daunting task to
5 stay at as high a full complement of staff members as
6 possible.

7 CHAIRPERSON RICHARDS: Okay. I just hope
8 we take this seriously because we've been here
9 before, and like I said I don't want to stay on this,
10 but until the city really gets serious about this,
11 we're going to be here again.

12 ASSISTANT COMMISSIONER LYNCH: Well,
13 again, I want to just reiterate that we do take it
14 very seriously. We do work very hard to not only
15 address trends, but also to address one off or
16 individual circumstances. I encourage you to work
17 through Deputy Commission Landau's office if you know
18 of repeat locations. We've been working very hard
19 with our colleagues in different agencies. As we
20 testified to in our budget hearing, we've issued over
21 10,000 NOVs in FY15 and as of April of 16 we have
22 issued over 5,000 so more than half in those four
23 months or so. So, we--we are taking the issue very
24 seriously. We have the inspectors out constantly,
25 and violations are being issued.

2 CHAIRPERSON RICHARDS: When do we take
3 their property from them? [pause] When do we take
4 property? After a while, after you've given 100
5 summonses, and they pay the bill, you know, when do
6 we get to that point where we make them have to pay
7 for it to get it back in steeper fines for them?
8 [pause] It's a question.

9 DEPUTY COMMISSIONER LICATA: You know, we
10 don't have the authority to take property as a result
11 of this, but we do increase the fine. [background
12 comments, pause] Okay, Gerry has some information
13 that you might find interesting.

14 GERRY KELPIN: So, you need to--we have a
15 process for cease and desist orders, which requires--

16 COUNCIL MEMBER RICHARDS: Hmm, so you do
17 do it?

18 GERRY KELPIN: Yes, we do.

19 COUNCIL MEMBER RICHARDS: Okay.

20 GERRY KELPIN: And we have many--

21 COUNCIL MEMBER RICHARDS: [interposing]
22 Ah-ha.

23 GERRY KELPIN: --at ECB over the year.

24 It requires us to issue multiple violations. They
25 need to be upheld by the court and then they are they

2 are then heard by the Environmental Control Board,
3 and they must comply with the standard. If they
4 don't, we are then able to seal the equipment until
5 they make the changes necessary. Now, that's very
6 difficult on a moving vehicle--

7 COUNCIL MEMBER RICHARDS: [interposing]
8 Why?

9 GERRY KELPIN: --for vehicles like an ice
10 cream truck.

11 COUNCIL MEMBER RICHARDS: NYCD doesn't
12 have tow trucks?

13 GERRY KELPIN: No, no, no, they would
14 just have to turn the music off when the vehicle is
15 stopped.

16 COUNCIL MEMBER RICHARDS: Oh, I'm aware
17 of that because my predecessor actually passed that
18 bill so I was advised of that.

19 GERRY KELPIN: [interposing] But knowing
20 that that's the solution, I mean that's the resolve
21 for an ice cream truck. They need to turn off their
22 music. If we were to issue to the same truck, you
23 know, three times over the course of the summer, you
24 know, we could go after him. But the compliance, we
25 are not authorized to take the vehicle.

2 COUNCIL MEMBER RICHARDS: Oh, so you
3 can't take the vehicle?

4 GERRY KELPIN: DEP is not authorized--

5 COUNCIL MEMBER RICHARDS: [interposing]
6 Authorized.

7 GERRY KELPIN: --to take it.

8 COUNCIL MEMBER RICHARDS: So who is
9 authorized? Is no one authorized at this moment?

10 GERRY KELPIN: I don't know if PD is
11 ever--

12 COUNCIL MEMBER RICHARDS: [interposing]
13 Maybe that's a bill.

14 GERRY KELPIN: I don't know. I mean the--
15 -the problem with that is that compliance is simply
16 that you need to turn it off so--

17 COUNCIL MEMBER RICHARDS: Similar to HPD.
18 If we go into a building and there's several
19 violations, after a while we start talking. We make
20 repairs. We do what we need to do and we make them
21 pay the city back for what we had to do. Maybe just--
22 -just a thought. [pause] I'm finished, Mr.
23 Chairman.

24 CHAIRPERSON CONSTANTINIDES: Okay.

25 [laughter] I wanted to make sure. Didn't want to--

2 didn't want to short change you. Council Dromm, I
3 know you wanted to come back for another round of
4 questions.

5 COUNCIL MEMBER DROMM: Sure, sure, as a
6 follow-up to what Council Member Richards was saying.
7 I thought I read in the newspaper that last week a
8 van that had about eight rows of speakers was
9 confiscated. I thought NYPD did it, if I'm not
10 mistaken, and they actually confiscated that vehicle.

11 LIEUTENANT ROBERT CORBETT: NYPD does
12 have the authority to take sound reproduction devices
13 depending on, you know, the complaint. I don't know
14 that we would want to take every vehicle for every
15 complaints, but if--if we knew that it was a repeat
16 or chronic violator, we can take sound reproduction
17 devices.

18 COUNCIL MEMBER DROMM: So, according to
19 what I read in the papers, which isn't always
20 accurate, I know that for sure, but often times it
21 most times is. They were able to confiscate this
22 also because he was having a street festival with
23 the--with the sound equipment. It was large enough
24 that everybody apparently in the neighborhood was out
25 having an unauthorized party. Does that contribute

2 to the willingness to confiscate that, or how does it
3 work? When--when--how is the decision made to
4 actually confiscate?

5 LIEUTENANT ROBERT CORBETT: When the--
6 when the noise emanates from a sound reproduction
7 device, our procedure is first to try to get
8 compliance, to try to ask the person to lower the
9 music. We will consider many factors when we come
10 upon something like that such as the number of
11 complaints, the time of day, the type of neighborhood
12 residential verse commercial. It's actually written
13 right into our procedures so that officers know what
14 to do, and--and what to look for. If there's an
15 actual unpermitted street festival going on that
16 would certainly add to our need to take away the
17 vehicle.

18 COUNCIL MEMBER DROMM: So, you know,
19 having, you know, run a few street festivals and
20 parades myself, I know that for any amplified sound
21 you always need a permit.

22 LIEUTENANT ROBERT CORBETT: Yes.

23 COUNCIL MEMBER DROMM: So can it be
24 confiscated just on that basis?

2 LIEUTENANT ROBERT CORBETT: It probably
3 could, yes.

4 COUNCIL MEMBER DROMM: And that's not
5 done, though, in every case.

6 LIEUTENANT ROBERT CORBETT: Well, I don't
7 know how many unpermitted street--I don't have any
8 stats on how many unpermitted, you know, large street
9 parties are going on. But certainly we would address
10 them regardless of which code we used, or which, you
11 know, mechanism we used to--to bring them into
12 compliance.

13 COUNCIL MEMBER DROMM: But it could be
14 confiscated just on the basis of not having a sound
15 permit?

16 LIEUTENANT ROBERT CORBETT: I believe so.

17 COUNCIL MEMBER DROMM: Okay, thank you.

18 CHAIRPERSON CONSTANTINIDES: Council
19 Member Richards.

20 COUNCIL MEMBER RICHARDS: Yeah, I just
21 wanted to add, and in the 105th precinct in
22 particular and strike this shift (sic) and it's
23 something we've been doing for a few years around
24 this subject especially because of the--as the summer
25 hits, it's a lot of back yard parties. So they've

2 asked for your protocol we have in place where
3 individuals who are chronic, who we get chronic
4 complaints about every summer, we send them a letter
5 before the summer begins, and the letter states we
6 have zero tolerance for anything that comes from your
7 specific location. And if you're found to be
8 violating the noise code, we will immediately seize
9 your property. Zero tolerance. So it can be done.
10 It just once again goes back to, you know, everyone
11 will have the commitment that an inspector sheriff
12 has that this subject. You know, I think it is
13 something that the city can do. NYPD can certainly
14 do. So maybe, you know, perhaps that is someone you
15 want to reach out. This has been going on for I
16 think going on four years now, and it's been highly
17 effective outside of the roughage (sic) area to
18 track.

19 CHAIRPERSON CONSTANTINIDES: Council
20 Member Dromm.

21
22 COUNCIL MEMBER DROMM: Well, thank you
23 again, Council Member. When a--a store is blasting
24 music out into the street, the same law could not be
25

2 used to--to apply to them that they don't have a
3 sound permit?

4 LIEUTENANT ROBERT CORBETT: I'm--I'm not
5 sure that it can, but either way we would be able to
6 take their sound reproduction devices under the
7 standard noise code. You can issue an criminal court
8 summons.

9 COUNCIL MEMBER DROMM: Okay, thank you.

10 CHAIRPERSON CONSTANTINIDES: Seeing no
11 more questions, I--I thank you all for your testimony
12 and look forward to working with you to move these
13 two pieces of legislation forward. So with the next
14 panel, thank you all. [coughs] [background
15 comments, pause] We have Rob Bookman from the New
16 York City Hospitality Alliance and for Josh Gatewood,
17 New York City Food Truck Association. [pause] Just
18 one moment. No, that's all right for right now.

19 LEGAL COUNSEL: Can you please raise your
20 right hands? Do you affirm or affirm to tell the
21 truth, the whole truth and nothing but the truth
22 today?

23 PANEL MEMBERS: [in unison] I do.

24 CHAIRPERSON CONSTANTINIDES: So
25 gentlemen, I am--I am going to--and this goes for

2 everyone. I'm going to dispense today. So I'm going
3 to give you the opportunity to testify. Please don't
4 abuse that right. So, we--I'm--I am going to not put
5 you on a clock, but do not take that as an
6 opportunity to--to abuse that. Okay. [laughs] Thank
7 you, and I'm--I'm just saying that for everyone who's
8 testifying as well. Please go on.

9 ROBERT BOOKMAN: Thank you.

10 CHAIRPERSON CONSTANTINIDES: [interposing]

11 One more thing. If anyone has--I see a lot of people
12 in the crowd. I know a lot of people have signed up
13 to testify. If you would like to testify, please see
14 the sergeant-at-arms. Make sure that you have filled
15 out a slip because if you do not hand in a slip we
16 cannot have you testify. Thank you. Mr. Bookman,
17 please.

18 ROBERT BOOKMAN: Good afternoon, Mr.
19 Chairman, Councilman Richards. My name is Robert
20 Bookman. I am counsel to the New York City
21 Hospitality Lines. It's a trade association that
22 represents roughly 2,000 restaurants, bars, night
23 clubs and destination hotels in New York, and for 20
24 years prior to that, I was counsel to the predecessor
25 organization the New York Night Life Association, and

2 as such, I was integrally involved in the negotiation
3 back in 2005 on the two or three pages of the new
4 Noise Code Bill that dealt with commercial music.
5 But basically what we're here today to discuss on
6 Intro 186--it's the only bill I'm testifying on--is
7 the concept of subjective versus objective standards
8 for review. So just a couple of, you know, analogous
9 examples for all of us in our daily life. Would you
10 prefer to get a speeding ticket that is based a
11 posted sign with a radar gun used to determine that
12 you are over that limit or a police officer say call--
13 -it just seemed pretty fast to me? Would we allow
14 the Health Department to go into a salad bar to
15 determine whether hot food is properly and the cold
16 food is properly cold without using the thermometer,
17 just by tasking it or touching saying, you know, it
18 doesn't really seem hot enough. You know. So here
19 we are in 2016 when our phones, our cameras,
20 calculators, calendars with their apps making them
21 mobile TV stations as we've just learned from the
22 floor of the Congress. They are weather stations and
23 they're move. When handheld sound meters--sorry,
24 Council Member Dromm is not here--they're very
25 inexpensive. They're easy to hold. They last pretty

2 long, and they're reliable. When they are readily
3 available, we seem to be discussing once again why
4 businesses cannot be measured by an objective
5 standard before they get a ticket? I've got to say
6 even my mom--may she rest in peace--who when we were
7 little used to take our temperature by putting our--
8 her hand on our forehead. Even she when they came
9 out with east to use oral thermometers that were
10 reliable bought them and said hot dog. That was, you
11 know, why wouldn't we that. It's more reliable and
12 it's more accurate. So I guess if it's good enough
13 for my mom, it should be good enough for the city of
14 New York. That's always the standard I've always
15 lived with. And this issue, in fact, as you stated
16 in your questions was resolved years ago when the
17 Noise Code was adopted in 2005. The last item
18 holding the entire legislation up was the Council's
19 insistence especially Chairman Gennaro with the
20 support of the small business community that there be
21 an objective standard for a noise violation, and it
22 was agreed to that a new section--now, a new section
23 was added, 24-218(b) and it places businesses on
24 notice of how they will be measured, how they need to
25 monitor their sound on their own when they are not

2 being inspected so they will be in compliance, and
3 what constitutes a violation? And I will point out
4 for the record that DEP is the one in that
5 negotiation that chose that--the wording of that
6 section. We didn't negotiate it. They chose the
7 seven and the ten decibels at various times of the
8 day. Our position was we just want objective
9 criteria. You're the experts. You tell us what it
10 should be, you--and--and we all--and--and Councilman
11 Gennaro agreed and we agreed. So it's a bit
12 disingenuous for them to come back now, but we'll get
13 to that in a moment. And guess what, we adopted the
14 standard. It went into effect in 2006, and the
15 number of noise violations issued to business dropped
16 precipitously. Businesses now knew what to do, and
17 inspectors and police officers had something to
18 measure us by. Yet, we still see from time to time
19 violations being issued improperly, in my opinion,
20 under the old subjective, unreasonable noise
21 standard. It should not happen, yet it does and
22 unfortunately, they have upheld it at ECB as an
23 option available to their inspectors even though
24 there's a more detailed objective standard, which
25 should be controlling. We argued at an ECB appeal

1 that when the Council adopted a more specific
2 criteria for a particular type of noise, it's
3 generally recognized that specific controls generic,
4 and we now have the specific. So for that particular
5 type of noise, commercial sound coming from
6 commercial--fixed commercial sections is actually
7 controlled. ECB argued otherwise, which is why I--I
8 would--we'd like part of the record. I asked at that
9 point Councilman Gennaro to make sure that it wasn't
10 just my recollection because, you know, in the heat
11 of negotiations sometimes you may want to hear what
12 you want to hear. And he wrote a letter, which was
13 submitted to ECB stating exactly what I've just
14 stated that it was understanding that the law was
15 clear, that the new section would be the exclusive
16 remedy available to the NYPD, and to ECB for that--
17 those limited types of violations. And I say limited
18 because only from the street. We did not deal with,
19 you know, and this bill does not impact whatsoever
20 the more serious violations of a resident complaining
21 about commercial sound and DEP goes to the residence
22 and they take readings 100% of the time as--as--as
23 Jerry said. So this bill doesn't impact that. It
24 impacts just those street noise violations that we
25

2 were getting thousands of years ago unreasonable
3 noise. And Chairman Gennaro quite clearly said in
4 his letter that that was not the intent that they
5 should be able to use that section any long. And, as
6 a matter of fact, he said that the only reason why he
7 didn't take that section on altogether from the new
8 noise code, "We did not retract 24-244 with the
9 understanding from the enforcement agency that the
10 Department of Environmental Protection that Section
11 24-218 would be used to regulate noise within
12 commercial establishments and 24-244 could remain on
13 the books to deal with other noise issues that may be
14 less defined, and more difficult to measure in an
15 objective manner. And, you know, we also agreed as
16 part of that deal to stricter standards for
17 violations measured in residential units. It's under
18 the new noise code. It's easier to get a violation
19 in a residential unit, and we agreed to that as well
20 as long as we had objective criteria for the street.
21 And the testimony that I heard today from ECB both in
22 writing and in the verbal testimony is very
23 disturbing. Because basically what they told this
24 committee is yes everyone of our inspectors has a
25 handheld meter, the latest equipment available. They

2 know how to use it. We go out when the--you know,
3 on--on a call. We use it, and if we can't get a
4 violation, well, we want to be able to issue
5 something. So we go to 24-244. That's basically
6 what they're telling you that the--this is in
7 compliance with the law. They measured it. It's in
8 compliance in the law. They want an ability to issue
9 a violation anyway, and to me that's really
10 outrageous. That's exactly what we were trying to
11 stop, and for years we did stop it, and we can't
12 slide backwards now, and when they say the ambient
13 masks it, as the Assistant Commissioner said, what
14 they're saying is you can't hear the commercial sound
15 significantly because it's noisy out on that street.
16 And the Council has determined that if it's noisier
17 out on the street, you know, and the commercial sound
18 might be adding slightly to that, but not enough for
19 it to be heard, well then it shouldn't be a
20 violation. When she says that they can't have--the
21 issue with unreasonable noise was if inspectors are
22 standing 20 feet away, and they can't have a
23 reasonable conversation. Well, what they're saying
24 is that they're on a noisy street. Not that the
25 sound from the--from the bar, you know, or the

2 restaurant was noisy because if it was, they can give
3 them a violation under the objective criteria. So
4 it's really nonsensical that they gave you in--in
5 response to your excellent pointed questions
6 concerning what wrong with the objective standing.
7 Their answer is there's nothing wrong with the
8 objective standing. We used it. We created it, but,
9 you sometimes you just want to give the business a
10 violation anyway. You know, and ones that they beat
11 in ECB because the inspector comes in, and I've tried
12 and I may not be Clarence Darrow, but I'm pretty good
13 after 30 years of doing this kind of stuff. And I've
14 gone into ECB and the inspector just says the magic
15 words: Yeah, it was loud. You know, I thought it
16 was unreasonably loud. It disturbed me, and you
17 guilt, and--and that's the end of it, and it comes
18 back to haunt you at the State Liquor Authority if
19 you have a liquor license because now you've been
20 found guilty of a--of a noise code violation, and
21 community boards use it against you. So it's--it's
22 amazing to me that we're re-discussing this because
23 we thought it was long resolved, and we really thank
24 you for introducing this legislation, which does
25 nothing more than make it clear that what we passed

2 in 2005 we meant it, and if your guys--you're going
3 to try to come through the back door government and
4 try to issue those old violations again. When it
5 comes to fixed commercial establishments, we're going
6 to stop it, and make you use an objective criteria,
7 and we thank you for that. It's easy to use.
8 Thousands of establishments have them, and they use
9 them, and that's they know they're in compliance, and
10 that's what you wanted. You wanted all of them to
11 have, to use it, to make sure that if it's--if it's
12 warm weather, if their French doors are open that
13 whatever sound that they're producing on the street
14 is within the code and it is. And that should be the
15 end of the--of that conversation it seems to me.
16 Thank you.

17 CHAIRPERSON CONSTANTINIDES: Thank you.
18 Sir.

19 JOSH GATEWOOD: [off mic] Good afternoon,
20 I'm--[on mic] Oh, well, thanks. I'm a little new at
21 this. I'm working on the transition for new New York
22 City Food Truck Association, and I just want to say,
23 you know, there are a lot of violations out there.
24 It's a constant battle on the street for us, and to
25 add some objective legislation, I don't think it--

2 it's completely reasonable. I mean we are all about
3 protecting the--the--the quality of life for the
4 people of New York City. I'll give you an example.
5 Last Friday, I was vending at 46th and 6th from my
6 food truck and, you know, we had the classic rock
7 station going, and some--some guys from the building
8 came out and they said hey your music is too loud.
9 You know what the solution was? I turned down the
10 music and I--I didn't need someone to come and issue
11 a summons. I didn't need someone to come and
12 confiscate my property. It just required someone who
13 said hey, your music is bothering me. Please turn it
14 down. I said is this enough? He said no turn it
15 off. It would be better. You know what I did? I
16 turned off the music. So when I hear this increased,
17 you know, pushes for more regulation, we're already
18 paying, you know, I have more bills from--citations
19 from vending, from metered parking. You know, it's
20 for--from selling. I think any time we're talking
21 about more regulation that's--it's just anti-small
22 business, and we need to take that into consideration
23 when you're--you're making these pushes. I was very
24 I guess leery of hearing about the--the seizure of
25 property as well, you know, and it's--for it to be a

2 judgment call on an officer, what if it's an--an
3 officer just doesn't like, you know, the way
4 someone's food truck looks. Am I just going to seize
5 his property. I mean that's--you're--you're getting
6 kind of in dangerous territory there, but I'm looking
7 forward to working with you all and--and solving a
8 lot of the problems in our business, and I would like
9 to say from my perspective as a street vendor, you
10 know, the music and attracting customers can be the
11 difference between us making money and not. It might
12 be difficult for you in--in a--in a business where,
13 you know, you don't need to do those types of things.
14 But it's--it's a very real concern for us in--in our
15 livelihoods. So anything that's reasonable, you
16 know, I will do my best to ensure the other trucks
17 are following it. But, you know, as this gentleman
18 said, we already have objective standards. It
19 shouldn't be left up to judgment, and that's--that's
20 my entire position on it. So thanks for your time
21 today, and I'm looking forward to working with you
22 all.

23 CHAIRPERSON CONSTANTINIDES: First, I'll--
24 -I'll begin with--I'll ask it's very similar for I'll
25 take for the testimony of the Administration and have

2 you comment on that. They had talked about
3 supporting this legislation, but instead being able
4 to utilize the C scale to measure the noise in order
5 to sort of come up and make sure that they're getting
6 an accurate objective standard. Is that something
7 that you think would help? Do you think that's
8 something that is unfair. I mean sort of comment on
9 that particular proposal and--and sort of get from
10 the--to the core ministry (sic) tell me why that's
11 good, bad.

12 ROBERT BOOKMAN: I'm not a noise expert
13 and you're going to be hearing from one who is I
14 believe after me, and on prior teams, with all
15 respect, that he tells me it's a terrible idea, and
16 so I would agree. My understanding of the C scale is
17 it's more appropriate, and it is when you're inside a
18 residential unit and you're measuring for all types
19 of, you know, types of sound, which we did add to the
20 last noise code. They did an ad--like I said, they
21 drafted this--this section for commercial--you know
22 for commercial noise 218, and they didn't put the C,
23 you know the C in there because at the time they felt
24 it was not appropriate for taking readings 15 feet
25 from a--from a storefront. So my suspicion scale,

2 you know, goes up when all of a sudden they're
3 telling me 50% of the time that they try to get a
4 violation under 218. They can't meaning you're in
5 compliance. So now they want to throw something else
6 in to try to increase the number of violations they
7 can issue. Well, by the way while simultaneously
8 still not committing to you that they--that that
9 would be the exclusive section. I noticed they
10 didn't say that. I noticed they still want 244. So
11 I think let them comply with 218 as amend--you know,
12 as--as amended by this bill, and let them come back
13 at another time and explain why, you know, that's not
14 good enough.

15 CHAIRPERSON CONSTANTINIDES: Okay, and--
16 and additionally, what effect--what--what chilling
17 effect does this have for this, you know, 24-244?
18 What does this--what effect does it have on business
19 currently, and this unreasonable noise is being able
20 to use rather than the objective standard?

21 ROBERT BOOKMAN: You know, it used to
22 have a huge chilling impact. There were literally
23 thousands of these unreasonable noise violations that
24 were issued before the Council passed the new noise
25 code, and it was horrible because you never knew what

2 you would be--what the standard was, and it was--by
3 definition it was arbitrary, and the truth of the
4 matter is most of them were not DEP violations back
5 them. Most of them were Police Department and
6 criminal court summonses, and 100% of the time they
7 did not show up in criminal court for those
8 summonses. So you do get them dismissed there, but
9 you now have to go to court and often hire an
10 attorney if it was issued to the corporation, but
11 they then got sent to the State Liquor Authority
12 where they didn't care that was dismissed in criminal
13 court for failure to prosecute. So we are having
14 hearings on this New York City Noise Code at a State
15 Liquor Authority, which is really ridiculous because
16 they are not trained, you know, for--you know,
17 hearing local code. So it had a huge chilling
18 impact, you know, on the industry, and that was why--
19 that is why it--it--it's the single most significant
20 compromise that we got out of the new Noise Code was
21 an objective criteria for when the police or DEP came
22 by in the street to measure, you know, our--our
23 sound. So it's very frustrating for a business owner
24 who has a handheld meter who uses it to get one of
25 these violations right now for all those reasons, and

2 because they know they're in compliance and it
3 doesn't matter.

4 CHAIRPERSON CONSTANTINIDES: Do you think
5 we have enough meters out there?

6 ROBERT BOOKMAN: I think that the police
7 could probably use more. I was kind of surprised to
8 hear that after 10 years they have one per precinct.
9 If they had just put in their budget per year per
10 precinct they'd--they'd have ten now. So DEP has
11 enough. They said 100% of their inspectors have
12 them. So it's clearly that DEP has enough. The
13 police could probably use some more.

14 CHAIRPERSON CONSTANTINIDES: You know,
15 the--based on your knowledge, and maybe you don't
16 know that, but how--how much these things cost? I
17 mean are they--are they terribly expensive that
18 we're--

19 ROBERT BOOKMAN: [interposing] No, a few
20 hundred bucks is the--is the basic one. You could
21 probably get a really Cadillac one if you had like an
22 \$82 billion for example for thousand bucks, you know.
23 [laughs]

24 CHAIRPERSON CONSTANTINIDES: All right.
25 So we're talking about, you know--

2 ROBERT BOOKMAN: [interposing] A very
3 reasonable amount of money to make sure that a hand,
4 you know, that at least one officer per shift, you had
5 one, rather than one per precinct.

6 CHAIRPERSON CONSTANTINIDES: All right,
7 that--that makes sense. Okay, I guess I'll ask in
8 relation to--to--my colleague is not here to ask his
9 questions. I'll ask of the--on the other bill
10 relating to food truck music, because I know that
11 these are fixed--the correctional established on
12 186th, the build-out sort of applies through the Food
13 Truck Association is Intro 745. So I assume you are
14 coming here to testify against moving the clock back
15 from 10:00 p.m. to 9:00 p.m. Is that--is that a fair
16 and accurate rendition?

17 JOSH GATEWOOD: Yeah, I--I don't see
18 anything wrong with that--the clock limit on that
19 myself, but I'm not very familiar with that. I
20 haven't--I'm not well versed, but, you know, I don't
21 see a problem with that.

22 CHAIRPERSON CONSTANTINIDES: Okay, so
23 you--you're--you're against the bill because? Can
24 you--?

2 JOSH GATEWOOD: Well, I--I listened to
3 the testimony before. You know, it sounds like
4 they're--you're opening the door for subjective
5 interpretation of the law.

6 CHAIRPERSON CONSTANTINIDES:
7 [interposing] Well, this--this is the bill that we
8 have in front of us and that's--that's what the
9 hearing is about.

10 JOSH GATEWOOD: [interposing] Right.

11 CHAIRPERSON CONSTANTINIDES: And that's
12 why you commented on that one?

13 JOSH GATEWOOD: Right. Yes, and so I--I
14 think when they mentioned allowing an officer to come
15 up and making--making a judgment call if the music is
16 too loud coming from a food truck that there's--
17 there's no evidence there, and you're allowing them
18 to write tickets or summons, you know, based on
19 subjective evidence.

20 CHAIRPERSON CONSTANTINIDES: Okay, the--
21 the bill is about a timeframe, but I'll--I'll defer.

22 JOSH GATEWOOD: All right.

23 CHAIRPERSON CONSTANTINIDES: Council
24 Member Richards do you have any questions.

25

2 COUNCIL MEMBER RICHARDS: Well, I just
3 wanted to add, and I thought you were a very good
4 neighbor when someone--you said someone came to you
5 and said your music was too loud and you turned it
6 down?

7 JOSH GATEWOOD: Right.

8 COUNCIL MEMBER RICHARDS: Well, if
9 thousands of other people did the same thing, we
10 wouldn't be here today. So, you know, the City
11 Council in particular and our Chair, you know, we--we
12 have other bills we could be entertaining, but this
13 is an ongoing issue that many of us have to deal
14 with. So, therefore, as legislators it is our job to
15 legislate when we identify in particular an issue.
16 And I'm liking it to having son now. You know, if I
17 fold him no cookies and he takes--and there are five
18 cookies in the jar and then I go back and there's
19 four, there is obviously a case to sort of understand
20 that he took a cookie. So, therefore, there should
21 be some sort of punishment. What that punishment is
22 I guess we'll find out what that is as he gets a
23 little older. Maybe he'll sit in the corner for a
24 little while.

25 JOSH GATEWOOD: Okay.

2 COUNCIL MEMBER RICHARDS: But--but I--but
3 in all seriously, you know, it is our job as
4 legislators to legislate when we identify a specific
5 issue, and that's why there are laws in lace, and I
6 trust our officers. You know, I entrust them to be
7 able to tell if your music is too loud from a curb
8 and disturbing, you know, whether you're in a
9 residential neighbor--neighborhood or a commercial
10 district. And the bottom line is if you're not
11 violation the law, you will not get a summons. So, I
12 mean there's--unless you tell me you're receiving
13 summonses for no reason. Are you?

14 JOSH GATEWOOD: I--I have in the past
15 received summons for, you know, no cause, but in this
16 particular instance the evidence said was there 1,400
17 complaints and there was only one actual summons
18 issued for a noise complaint from a food truck. So
19 maybe people are, you know, when their--the complaint
20 is made maybe they are addressing the situation. I
21 mean that suggests and Mr.--

22 COUNCIL MEMBER RICHARDS: No, I don't
23 think they are. I just think the City is not really
24 taking the issue serious, and that's why, you know,
25 and, you know, as someone who represents a--a very

2 interesting district, I'm right near JFK. So I have
3 industrial, residential commercial and I can tell
4 you, you know, a lot of our residents call 311 and
5 there's just no real response to their issues. So I
6 don't know how they came up with two, but I do know
7 how they came up with two. It just means that
8 there's--they're not taking the issue serious. So
9 that's what brings us here today. So I commend you
10 for turning your music down, and I urge you to tell
11 your neighbors to do the same, you know, and--and we
12 won't be here today.

13 ROBERT BOOKMAN: It's true and one other
14 quick point, very quick. When I always dig down into
15 those tens of thousands of 311 noise complaints--I
16 have--I haven't done it in a couple of years, but I
17 always found that when it comes--when it comes to
18 bars and clubs it's not 10,700--is the number they
19 used--people, different people complaining. It's
20 often a much fewer number of people complaining very
21 frequently not that they may not have cause to, but I
22 just wanted to make--make it clear sometimes people
23 can call hundreds of time number one. Number two is
24 a very small fraction of the noise about late night
25 bars is concerning music emanating from the

2 establishment. It's generally concerned about street
3 noise because of all the people out on the street
4 talking on their phones, and being loud after having
5 a couple of drinks. So it goes--it's recorded as a
6 noise complaint against a bar that has nothing to do
7 with noise from the bar. It has to do with the
8 smoking ban [laughs] you guys passed years ago, and
9 we warned you there were going to be a lot of people
10 out on the street late at night. [laughter]

11 CHAIRPERSON CONSTANTINIDES: Okay.

12 [laughs]

13 ROBERT BOOKMAN: I just had just last
14 week we did a town hall with the Mayor, and I can
15 assure you. So the lady comes to the town hall and
16 complains to the Mayor about this particular club.
17 Has nothing to do with smoking, but noise from the
18 bar. The next day the inspector goes out. The lady
19 was accurate. Guess what they did? Shut them down.
20 It had very little to do with smoking. So, it--it,
21 you know, so I hear you and in some cases maybe the
22 smoking ban does ensure people have to smoke outside,
23 but music and smoking is two different things.

24 ROBERT BOOKMAN: Absolutely, but they
25 won't be complaint numbers together. That's a fact.

2 COUNCIL MEMBER RICHARDS: Sometimes you
3 do get the same person calling. I mean if I lived
4 next door to an establishment, I would--

5 ROBERT BOOKMAN: [interposing] I call 311
6 every time.

7 COUNCIL MEMBER RICHARDS: --call and--and
8 as we do tell them, call every night, you know, call
9 every time, but you know, but it is a real issue
10 outside of the smoking ban, it is a real issue.

11 ROBERT BOOKMAN: And I think we have very
12 tough law to control that, which would allow to
13 happen what you just said, offer you proper
14 enforcement, but it was an objective criteria
15 enforcement. They just didn't show up and shut them
16 down because somebody complained that it was too
17 noisy. [off mic] objectives [on mic] is all we're
18 asking for.

19 CHAIRPERSON CONSTANTINIDES: Objectives?

20 ROBERT BOOKMAN: You got a bad actor
21 take--take action against him as long as it's
22 objective. Thank you.

23 CHAIRPERSON CONSTANTINIDES: Objective--I
24 love--my--my lungs appreciate the smoking, I'll

2 [laughter]. With that, I thank you very much both
3 for your testimony.

4 ROBERT BOOKMAN: Thank you.

5 CHAIRPERSON CONSTANTINIDES: The next
6 panel please step forward. Lucy Weinstein from the
7 American Academy of Pediatrics, Melanie--

8 MELANIE MCGILLICK:

9 CHAIRPERSON CONSTANTINIDES: Mc Gillick.
10 Sorry. I--I--from DMEA, and from Alan Fierstein if
11 you're still up. [pause]

12 LEGAL COUNSEL: Go ahead. Can you please
13 raise your right hands? Do you swear or affirm to
14 tell the truth, the whole truth and nothing but the
15 truth today?

16 ALAN FIERSTEIN: I do. [pause]

17 CHAIRPERSON CONSTANTINIDES: Okay.

18 MELANIE MCGILLICK: [off mic] I'm going
19 to start.

20 CHAIRPERSON CONSTANTINIDES: You're going
21 to start. Than you go.

22 MELANIE MCGILLICK: [off mic] Thank you
23 for hearing our testimony this morning. [on mic] Is
24 this on? Okay. I'm Melanie McGillick from the DEMA,
25 which is the Douglas Manor Environmental Association,

1 and we're here today to support Council Member
2 Dromm's Intro 59. The constant use of gas-powered
3 leaf blowers has been an ever-increasing issue of
4 concern for our community. These insidious machines
5 are constantly being misused by neighborhood
6 landscapers, and have been the subject of numerous
7 complaints. Results from a survey that we conducted
8 revealed that there's an overwhelming consensus to
9 have landscapers limit their use of gas-powered leaf
10 blowers. The noise and pollution degrade our quality
11 of life. As concerned residents of our community the
12 DMEA has educated ourselves on the harmful health
13 impact by gas-powered leaf blowers. We have urged
14 residents to communicate with their landscapers and
15 have them voluntarily stop using gas-powered leaf
16 blowers during the timeframe May 15th to September
17 15th gas-powered leaf blowers. We live in our quaint
18 neighborhood and for most of our day we hear the
19 noise nuisance of multiple leaf blowers. These
20 machines create noise levels of 90 to 100 decibels at
21 close range, which far exceed the EPA's recommended
22 maximum of 80 decibels at even 50 feet. There World
23 Health Organization recommend ambient noise levels at
24 55 decibels or less. Not only is the noise a

2 nuisance, gas-powered leaf blowers are harmful--have--
3 --are causing harmful health effects on our health.

4 Leaf blowers literally scour the earth off top soil,
5 propelling air clouds of dirt, dust, danger con--
6 dangerous contaminants such as mold, fungal spores,
7 molecules of toxic chemicals people sprinkle on their
8 lawn and trees, and fecal matter of animals. Some of
9 the particulate matters going into the street

10 straight into our water drains. Eventually, these
11 toxins [coughs] another unwanted material is

12 deposited into our waterways. Heat compounds the
13 negative health effects. During the summer months,
14 particulate pollution is at its worst. Particulate
15 matter blown into the air can take days to settle.

16 These particulate aggravate allergies. We have an
17 endorsement from the American Academy of Pediatrics
18 that support the harmful health effects of gas-
19 powered leaf blowers. As a community, we feel that

20 it is a reasonable request to restrict the use of
21 gas-powered leaf blowers during the timeframe of May
22 15th to September 15th. It is unnecessary to use a
23 leaf blower during the spring and summer months.

24 Seasonal restrictions allow for the use of leaf
25 blowers during some periods of the year while

2 disallowing it for others. A significant reduction
3 in noise and air pollution would result from the
4 implementation of the seasonal regulation. Practical
5 steps can be taken both by residents and government
6 to achieve cleaner air. The implementation of
7 seasonal leaf blower regulations is such a step.
8 Please consider passing legislation to restrict the
9 use of gas-powered leaf blowers during the months of
10 May 15th to September 15th. We look forward to have
11 a continued dialogue with our local politicians and
12 move forward to implement a restriction of gas-
13 powered leaf blowers citywide between May 15th and
14 September 15th. [coughs] Excuse me. I also have a
15 letter of support from our Community Board 11 for
16 Council Member Dromm's Intro, as well as I've passed
17 out a local position to support. [pause]

18 LUCY WEINSTEIN: Hi there. Thank you for
19 allowing me to speak in support of the legislation to
20 restrict the time frame and restrict the sale of
21 gasoline leaf blowers. I'm Lucy Weinstein. I'm the
22 pediatrician. I have the sense of humor of a five-
23 year-old. Forgive me. I am the Chair of the
24 Environmental Health Committee of Chapter 2 of the
25 Academy of Pediatrics, which includes Brooklyn and

2 Queens, also Nassau, Suffolk. I happen to live out
3 in Suffolk, but I was born in the Bronx, grew up in
4 the Bronx. We also have the endorsement for this
5 issue, which we've been working on for quite a while
6 throughout the state actually. We have letters of
7 endorsement in our area from so many other medical
8 organizations and others, Medical Society of the
9 State of New York, and I've handed--handed out a
10 flyer with the resolution that the Suffolk County
11 Medical Society put forward with some of the dangers
12 of leaf blowers urging the state, which they did.
13 The state--Medical Society of the State of New York
14 came out with a resolution in favor of limiting
15 gasoline leaf powers looking for alternatives, but
16 bring you to the National AMA meeting. Other
17 organizations that have been in support, the Long
18 Island Chapter of the American Lung Association,
19 Cancer Society, Asthma Society, Breast Cancer
20 Coalition, Citizens Campaign for the Environment, the
21 Sierra Club, Audubon Society, Grassroots
22 Environmental. There's no health or safety
23 organization that I know that is not in support of
24 limiting gasoline leaf blowers. They pose multiple
25 environment and health hazards, and basically they're

2 exposing all of us in New York City and elsewhere to
3 unnecessarily to pollutants and noise, and they're
4 certainly unnecessary in the summertime when there
5 are so few leaves. We do understand people really
6 loved their nice clean lawns. I wish people would
7 realize, and it becomes a matter to education that a
8 perfect lawn is actually environmentally unfriendly.
9 But we do understand that when there's lots of leaves
10 perhaps people will agree to use them. In the
11 summertime there's really--they're really--totally
12 unnecessary. Gasoline leaf blowers are a particular
13 kind of engine called the two-stroke engine. I had
14 to go look that up, but it's interesting that on the
15 website for something called How Does it Work?
16 explaining gasoline leaf blowers it says: "Two-
17 stroke engine reduce a lot of pollution, so much, in
18 fact, that it is likely that you won't see them
19 around too much longer. This was an unbiased, you
20 know, just definition of a two-stroke leaf blower.
21 They are inefficient. They don't have emissions
22 control. They're inefficient at burning fuel. They
23 spill up to perhaps 30% of the gasoline that is
24 totally unburned into the environment. They are
25 highly polluting. Americans spill approximately it's

2 been estimated 17 million gallons of gasoline each
3 year filling lawn equipment. That's more than the
4 Exxon Valdez Oil Spill from 1989 in Alaska. It's
5 just a huge amount, and there's a lot of good medical
6 evidence, which is indicating the emissions that are
7 spewed forth and particulates blown up. There's a
8 lot of evidence about particulate matter, these tiny
9 little particles that the leaf blowers blow up that
10 there's an increase--this is medically proven--an
11 increase in early deaths from oil cause from heart
12 attacks, strokes, congestive heart failure, asthma.
13 Particularly asthma and we're concerned about
14 children because there's a huge amount of asthma
15 particularly in New York City and this adds to that.
16 And again, it's just totally unnecessary. Chronic
17 obstructive lung disease. Anybody elderly who has
18 heart or lung disease are--is at risk, and they
19 mostly don't see these particles. You or I when we go
20 around yes we'll see leaf blowers spewing forth dust,
21 and we're--we're upset about it, but what we don't
22 see is like even up to a day later, the particles are
23 still in the air, and people out there playing. In
24 the summertime children are out and not in school.
25 They breathe more quickly and so they actually take

2 in more air per body weight than adults do. So,
3 they're particularly at risk. They have developing
4 lungs, brains and other organs. So they're
5 susceptible to some of the carcinogens that they spew
6 forth. People with chronic illnesses. I mentioned
7 landscape workers are very much at risk. Very often
8 they're undocumented, but even if they're documented,
9 every often they don't use the protective equipment
10 that they are supposed to be using as said by the
11 manufacturers. Much of it is invisible as we said,
12 but it surrounds our homes, our schools, places of
13 work without our permission. When compared, you've
14 heard some of the comparisons already, but when
15 compared to an average large car, one hour of
16 gasoline leaf blower use emits 498 times as much
17 hydrocarbons, 40% times as much particulate matter
18 and 26 times as much carbon monoxide. And again, it
19 really isn't necessary. We understand that certain
20 machinery in our day and age isn't necessary to--for--
21 -for our lives to become more pleasant, more
22 productive, but these are not necessary. So the
23 major pollution effects are and I'll try to be brief.
24 A lot of it is summarized in the handouts you have.
25 Exhaust pollution, fine particulate pollution, noise

2 pollution, which you've talked about quite a bit, and
3 environmental degradation including water pollution,
4 small animal habitat destruction when you blow out
5 the leaves from under the bushes. Just so that I
6 just get this in, in the end of your hand-outs of my
7 testimony, but in terms of what the alternatives are,
8 I hear lots of questions. Well, are they any worse
9 than lawn mowers? Yes, they are lawn mowers are
10 four-stroke engines. They don't pollute as much, and
11 again, they're mowing a lawn. The grass is put down.
12 They're not spewing things up in the air. What are
13 the alternatives? What are the alternatives? And
14 won't landscapers lose money or be inconvenienced?
15 Okay, are they going to lose business financially?
16 The answer is no. Landscapers don't believe this,
17 and I've chatted with many of them, but it's been
18 proven in other areas where there have been
19 restrictions. Not only do they not lose money, they
20 actually save money. They don't need any more
21 employees. They save money on gasoline, which is
22 quite expensive on repairs and maintenance, and they
23 need any more workers. What alternatives are there?
24 There are lithium ion battery now. There is now very
25 good electric commercial equipment, and I see a steel

2 manufacturer represented in the back. We actually--
3 we've been--locally, we've been working with them to
4 help provide buy backs incentives to switch to
5 electric equipment, and they are putting out some
6 very good electric equipment, which is in use in
7 other parts of the country without any--without any
8 problems. And anybody here those old rakes and
9 brooms, they're not even mentioned, rakes and brooms,
10 especially during the summer time. You don't need a
11 leaf blower to just rake up that one little leaf.
12 Good exercise. You know, there's really no problem
13 with using that. In a head-to-head comparison
14 California Department of Water and Power did a--a
15 comparison with a grandma with rakes and brooms
16 against a gasoline leaf blower and an electric
17 battery, a battery-powered leaf blower and the
18 grandma did it just as fast as the battery powered.
19 Not quite as fast as the gas leaf blowers, but just--
20 but a better job and basically just about as
21 efficient. Many municipalities in New York and
22 elsewhere have already banned leaf blowers without
23 any problems, there's--or restricted, rather. I
24 shouldn't say banned totally, although there are some
25 complete bans. Westchester County, 16 towns already.

2 In 2008, the Township Rye (sic) instituted a
3 summertime ban against a substantial objections from
4 landscapers. They decided just give it a try. Let's
5 give is a one-year try and revisit the issue. One
6 year later only one landscaper--landscaper came up to
7 object. Most of them found it just fine. It's
8 understandable that change is difficult, and the
9 landscape industry thinks that they can do a better
10 job. It turns out it's just objectively not true.
11 Other--other issues that have been brought, which are
12 realistic, well lithium ion battery powered, don't
13 they spew up stuff? Well, they don't have the
14 pollution of the gasoline. They're not quite as
15 powerful so the pollutants don't go up in the air as
16 much. It also turns out that the lithium ion
17 batteries are less toxic metals than other batteries,
18 and it turns out they're generally considered non-
19 hazardous waste and they're recycled. So that was a
20 legitimate concern as well. So we don't have those
21 concerns. So basically yes there are alternatives.
22 We don't need them. Why shouldn't we use them?
23 Airborne pollutant and volatile organic compounds
24 some of the ones you weren't able to pronounce
25 earlier, Benzene and many of these are considered air

2 pollutants by the EPA that may cause or do cause
3 cancer and other serious health effects as the
4 metaldehyde, formaldehyde. Also release nitrogen
5 oxides, carbon monoxide, particulate matter, and
6 carbon dioxide which are considered what's called the
7 criteria pollutants. Definitely harmful to the
8 public health and environment, and we just know this.
9 Even low level exposures have been associated with
10 respiratory and central nervous system effects, and
11 in the summer particularly there is heat. It
12 combines with these pollutants to form low level
13 ozone, which we know is harmful.

14 I won't address noise, as it has been
15 addressed before, but let me just mention one thing
16 about noise. I know I can go on a little bit too
17 much, but harmful effects of noise, which include, of
18 course, stress, cortisol. They've actually done a
19 study with children in schools. The children, the
20 same type of children demographically in a classroom
21 that's near a noisy outdoor environment do less well
22 on standardized tests than the children in a
23 classroom that's in a quieter area. So noise really
24 is not just an annoyance. It is a public health
25 problem. Particulate matter has been quantified.

2 There was study by the Environmental Protection
3 Agency last year that actually quantified landscape
4 particulate matter. It's very tiny. Again, we don't
5 see it. So people aren't aware of it, but they--

6 CHAIRPERSON CONSTANTINIDES:

7 [interposing] I do want to remind everyone I did not
8 put everyone on the clock, but I do--

9 LUCY WEINSTEIN: [interposing] Yeah, I
10 know.

11 CHAIRPERSON CONSTANTINIDES: --please
12 we'll ask you to keep your--

13 LUCY WEINSTEIN: [interposing] Okay,
14 basically I think I've covered--

15 CHAIRPERSON CONSTANTINIDES: --your--your
16 testimony more succinct.

17 LUCY WEINSTEIN: Yeah, I think I've
18 covered it, the pollutants, again the hazards. No
19 benefit, no--no known benefits that we can see, and I
20 can't see any reason why that they--why the Council
21 shouldn't go ahead and ban leaf blowers for the
22 summer months. Than you.

23 ALAN FIERSTEIN: Good afternoon. My name
24 is Alan Fierstein. I'm the President and Founder of
25 Acoustilog, which I founded in 1976, 40 years ago. I

2 work for businesses, residents, the City Council,
3 City--the City of New York, many colleges,
4 universities all over. I--I was the consultant who
5 was advised by the City Council--asked by the City
6 Council to advise on the 2005 revisions to the new
7 Noise Code, which into effect on July 1, 2007. So I
8 worked with Councilman Gennaro and Robert Bookman,
9 who was here before. So I've heard everything that's
10 been said so far. I'm not going to talk anything
11 about leaf blowers unless you want to ask some
12 questions later about them. I'm only going to talk
13 about the two other intros. First of all, you have
14 to understand a few things, which I'm going to
15 hopefully not bore you with about decibels. When you
16 measure decibels, you can measure them with a scale
17 that's called the A scale, and when you do that, the
18 measurements are called DBA, and you heard Gerry
19 Kelpin talking about DBC, which is another scale.
20 Both of these are ways of limiting the sounds that
21 the meter picks up. If you don't use a scale to
22 weight the measurements, it's just called decibels.
23 If you weight it with the C scale it doesn't do very
24 much. You still get most of the sound, but if you
25 measure it with the A Scale, it cuts off the base.

2 It's like the sound has been castrated. You don't
3 get the base any more. This is very important
4 because I'm going to describe why you get all these
5 complaints, and why you don't get that many tickets
6 and why the complaints occur again and again and
7 again about all types of noise, particularly music.
8 I'm in favor of help businesses in the city. I'm in
9 favor helping residents in the city. I work for
10 both. I always try to do the same thing, which is
11 solve the problem. Now, you asked about meters.
12 Meters range in price from \$40 for a Radio Shack
13 meter, which you can still buy used, to this meter
14 which costs \$10,000. The reason it costs \$10,000 is
15 because it has various programs in it. It's like a
16 computer. You can run different applications, and
17 one of the things that you can do with it is you can
18 measure the simple DBA level. The DBA level is
19 showing on the meter right now. So as you can see,
20 when I talk it's in the range of the mid 60s. That's
21 the typical level you get--even though it's a little
22 bit amplified in here--three feet from a voice, 65
23 decibels. But continuing throughout this whole
24 hearing every once in a while--a lot of whiles--you
25 get subway trains running underneath this building,

2 and you get low frequency sounds. And if you measure
3 on the C scale, that even when I'm not talking
4 [pause] it's just as--it's higher than when I was
5 talking on the A scale because you're picking up very
6 low frequency base, sounds that's not only produced
7 by subways and traffic, but by bars and night clubs
8 that have subwoofers. Now, in 1992, the Noise Code
9 was amended with a local law to add in a measurement
10 base specifically because the code only looked at DBA
11 levels. In 1992. That's a long time ago. To
12 measure those specific base sounds or frequencies,
13 you have to use something called a Spectrum Analyzer.
14 I don't know if you can see it too well on this
15 little screen from 15 feet away, but when you do a
16 spectrum analysis it's like a bar graph. I'm going
17 to show you a picture of a screen. [pause] If you
18 think of a piano keyboard with the base on the left
19 and the treble on the right, this particular sound is
20 mostly base. That's why you see this Empire State
21 Building like spike on the left hand side from the
22 way--where you're facing. That's bass sound. This
23 is what drives a lot of people crazy. If you think
24 about it, almost everybody who lives in the second
25 floor apartment in New York City has a very good

2 chance of having some noise making enterprise
3 underneath them. It doesn't have to be a bar or a
4 restaurant. It could also be a GAP Clothing Store.
5 It can be a restaurant, but it could also be a deli.
6 People play music all the time. So the sound comes
7 up through the ceiling usually, sometimes through the
8 walls as well. The issue that 244 addresses is the
9 problem when bar make too much noise people complain.
10 The inspector comes over and he pulls out a meter,
11 and the meters that they use despite what you heard
12 before about Gerry Keplin telling you that they have
13 state-of-the-art meters, many of the meters that they
14 have are like this. This one is from 1970. That's
15 even before I started Acoustilog. It looks something
16 like this, but it only measures A and C. B no one
17 uses for anything. It uses A and it uses C. It
18 cannot measure the individual frequencies, and the
19 reason this is important--let me just jump ahead. If
20 you're out on a sidewalk and there's noise coming
21 from a nightclub or a bar through their front door
22 with the door closed, the noise that you hear on the
23 sidewalk is largely comprised of traffic and subway
24 and airplanes and all this other stuff, which is a
25 lot of bass noise. If you use the C scale, it's a

2 tremendous mistake. You will measure so much garbage
3 that you won't be able to distinguish it from the
4 noise coming from the bar. The reason why people
5 were giving--why the city inspectors were giving out
6 tickets to bars on the sidewalk in the first place
7 was this: They only had these simple meters. They
8 only could measure A or C and didn't really measure
9 C. A ignores the bass. So people call up. The
10 inspector comes maybe two weeks later because there's
11 only about 20 teams of inspectors. So what you heard
12 about each inspector has a meter, actually each two
13 inspectors have one meter. They measure the noise in
14 the person--in the complainant's apartment. And then
15 they do this unbeknownst to the noise maker down
16 below. Then they go downstairs and ask them to turn
17 off the music. So they hear the bass, they hear
18 boom, boom, boom like that. They hear a little bit
19 of voices. Just a little bit, and they go
20 downstairs. They ask them to please turn off the
21 music. If they don't turn off the music, they give a
22 ticket for obstruction. Okay. So the bar owner or
23 the manager turns off the music for 30 seconds, and
24 the sound level of the boom, boom, boom goes away in
25 the apartment. But the traffic noise is still coming

2 through the windows. So, they don't get much
3 difference between the A reading with the music on,
4 which doesn't pick up the bass in the first place.
5 You see what I mean? And the--when they turn the
6 music off, you still get basically the traffic noise,
7 which still has some midrange sound. So the
8 inspector says, well, gee, we're not getting enough
9 of a reading. Remember Gerry Kelpin was here and she
10 says, yeah, a lot of times we don't get that Ten DBA
11 difference? The reason is because the meters are
12 ineffective. They have a few of these meters. I'll
13 get to that in a second. They don't use them. And
14 so then the--the complainant says please, please you
15 hear this music? Yes, we do, we do, but there's
16 really nothing we can do. We're not getting enough
17 of a reading on our A scale. Well, is there anything
18 you can--? Yeah, we'll go downstairs. We'll go on
19 the sidewalk and see if we can give the ticket for
20 plainly audible sound?

21 CHAIRPERSON CONSTANTINIDES:

22 [interposing] So, let me ask a question here.

23 ALAN FIERSTEIN: Yeah.

24 CHAIRPERSON CONSTANTINIDES: So what is--
25 if you're saying that not moving to the C scale is a

2 solution that the A scale is the correct--that there-
3 -because of this other background noise even that's
4 not--not effective or not-- So what is the--what--
5 what should we take first? There's meters and what
6 is--how do we--how do we measure noise in your
7 opinion--in your opinion correctly to make sure that
8 the resident who lives in that second floor can have
9 a--a quality of life that is protected and that the
10 business downstairs can understand that they're
11 responsibility is to the City, and they say this--
12 this is my decibel level. I go no more than this,
13 and if so, I'm--I am creeping in territory where I
14 can--rightfully get a ticket because I am ignoring he
15 law of the land. So, how--what--where--where is the
16 balance there. What is the--is it a better meter? Is
17 not--if it's not the A scale the C scale--what--where
18 do we sort of land here to fix this problem because
19 we have these thousands upon thousands of complaints.
20 So--and I'm---I have this Bill 186 like does that fix
21 the problem? What do we do here? [laughs]

22 ALAN FIERSTEIN: Okay, let me answer that
23 question two ways. First of all, Section 244, the
24 way you've written it is very good. It's good just
25 the way it is, but you must not modify 24-218, which

2 is the section about unreasonable noise. 24-244
3 basically says that you shouldn't penalize music
4 coming from the interior of some establishment that
5 you hear, but it doesn't say where. The problem has
6 always been as Bob Bookman told on the sidewalk. Say
7 it. Put it right in there. Music on the sidewalk.
8 This 24-244 is to stop the people putting loud
9 speakers in the front of their store facing out onto
10 the sidewalk like American Apparel does on--a block
11 away from y office at the Corner of Broadway and
12 Howard Street, and to stop all of those stores that
13 used to sell CDs on 42n Street, blasting CD. So say
14 on the sidewalk you cannot make any noise that could
15 be heard intentionally, that that is intentioned.
16 That's the way it was worded for the business
17 advertising purposes. It's right the way it, and
18 just add a sentence saying "This shall not be for
19 unintentional music leakage from a bar, restaurant,
20 nightclub or other establishment." However, the DEP
21 has always held that they don't check the noise level
22 on the sidewalk if the bar--if the door opens
23 momentarily for a customer walking in or out, but if
24 they prop the door open, then they do. So that's
25 obviously good faith. If the--if the bar opens the

2 door up, they're asking for trouble. You've already
3 had this issue with the air conditioning leaking out
4 onto the sidewalk. So that's what they should do
5 with that. Now, I want to answer your question even
6 more by telling you that there's a section for music,
7 which they are supposed to enforce. And that's 24-
8 321(b) B--and they referred to this. And, the hand-
9 out you got from the DEP today refers to 24-231 but
10 they say the letter A after it. A means it's the
11 paragraph that only talks about DBA. They don't have
12 enough of the meters, and they certainly don't have
13 enough of the inspectors trained to use the meters
14 that can measure the individual base sounds, that are
15 the cause of 95% of the complaints in the first
16 place. If they would take those meters that they've
17 got, dust them off, train the inspectors properly how
18 to use them to measure base, they will immediately
19 get these bars to turn down their music and to do
20 soundproofing or to modify their speakers or take
21 them out of the ceiling where sometimes they're
22 recessed into as insane as that may sound. That's
23 what's causing the problem. Go right to the actual
24 problem. The base measurement will clearly pick up
25 the base. It will not pick up the sound from outside

2 because the windows are usually shut. It will show
3 the actual culprit. You won't be penalizing the
4 wrong person by mistake, and you won't be getting--
5 letting the guilty loud bars, you won't let them off
6 the hook, which is not fair to the residents. Okay,
7 that's what you do with that, but 24-218 should not
8 be modified the way you're talking about here because
9 it basically says that 20--they want to modify 24-
10 218. So the only way any kind of establishment can
11 get a ticket for music is if it violates this, these
12 three examples, which are in--in this section you've
13 got here. Your examples 1, 2 and 3, and those
14 examples are continuous noise at night, continuous
15 noise during the day--day and impulsive noise any
16 time. Those are separate types of problems. You
17 cannot modify that because those are real problems
18 that occur. When a bar, night club or restaurant
19 closes down at 4 o'clock in the morning, what do you
20 think the people who clean up do? They take all the
21 chairs, they turn them upside down. Boom, boom on the
22 tables, on the bar. It makes huge loud noise. It's
23 not music. So it's not covered by Section 24-231,
24 which is entitled Commercial Music. You have to have
25 a way of measuring those sounds, and you cannot

2 measure low frequency sounds using DBA, which are the
3 examples given in 24-218(b). 24-218(a) However, says
4 exactly: No person shall make or cause or permit to
5 be caused any unreasonable noise. Period. 24-218(b)
6 says: Examples of this are the following--and
7 they're just examples--that should include but shall
8 not be limited to, is the wording. That means
9 they're examples. That was very wise of them to put
10 that in. It was not meant to deal with sidewalk
11 noise. It was meant to deal with noise that
12 continually too loud because it's 7 decibels or more
13 over at night or 8 or 10 decibels or more over during
14 the day, or 15 decibels if it's a short impulsive
15 sound. And the short impulsive sound doesn't have to
16 be bass. It can be [claps hands] a high frequency
17 sound like that, and you those, too. So that--that
18 has to be left in because you cannot possibly think
19 of all the different types of noises that can come
20 from any kind of establishment or from someone that
21 isn't one of these bar or night clubs or restaurants.
22 It could be a manufacturing plant. It could be
23 drilling or sawing that is not really construction.
24 So it's not covered by the Construction Code. Some
25 examples are people singing. That's not necessarily

2 considered music. If they sing happy birthday to you
3 in a restaurant, you hear it upstairs. Cleaning up,
4 banging sounds, thudding from sliding couches. Even
5 if the chairs are padded, you put them on a table
6 upside hard. That thudded--it would be like a boxing
7 glove. If you're hitting a big heavy bag, it makes a
8 big boom. Watch any movie. Scraping bottles as you
9 drag the--the garbage bags across the floor. Hand
10 trucks going down the stairs.

11 CHAIRPERSON CONSTANTINIDES: Well, so
12 I'm--I'm just going to sort of jump in here for
13 clarity's sake to see if I'm--I'm following you on
14 all of this. So basically you're saying that we
15 should not do Intro 186. We should leave it the way
16 it is. Leave 24-2-- 24-224 the way it is, and just
17 get better equipment to measure noise. Is that--is
18 that a fair--

19 ALAN FIERSTEIN: [interposing] Almost.

20 CHAIRPERSON CONSTANTINIDES: --
21 interpretation of what--what you're saying.

22 ALAN FIERSTEIN: [interposing] Leave 24-
23 218 the way it.

24 CHAIRPERSON CONSTANTINIDES: Right.

2 ALAN FIERSTEIN: 24-244 leave it the way
3 you have modified it with one addition, say this does
4 not include accidental noise emitting onto the
5 sidewalk or a public street, park or place
6 accidentally from any establishment. Because it was
7 this--that section was designed for deliberate
8 advertising, attention getting noise onto the street,
9 which we need like a hole in the head. That's what
10 you should specifically say. Sidewalk noise coming
11 from an establishment accidentally is exempt from
12 this provision. That's all you have to do.

13 CHAIRPERSON CONSTANTINIDES: So if
14 someone is playing music, you would--you would
15 consider accidental noise, and being--if someone is
16 playing music in their establishment, but they're
17 meaning it for it to be inside that establishment and
18 not on the street that is--that is accidental noise,
19 not advertising or so on, correct?

20 ALAN FIERSTEIN: The fellow who was
21 sitting in this chair before you asked the impact on
22 their business--

23 CHAIRPERSON CONSTANTINIDES:
24 [interposing] Uh-huh.

2 ALAN FIERSTEIN: --from doing this. I've
3 had to advise people because they got these 244
4 violations to put up a second sheet of glass in front
5 of their storefront window so they had six-inch air
6 space to reduce accidental sound. The slightest
7 sound you can hear. The way they worded it could be
8 cause for a violation, and we fought this many times
9 with the DEP where you--at the ECB where you
10 adjudicate them--

11 CHAIRPERSON CONSTANTINIDES:

12 [interposing] Uh-huh.

13 ALAN FIERSTEIN: --and it was upheld, but
14 the inspectors need to be trained in the right stuff,
15 not just--and they cannot have the discretion that
16 they basically outlined especially with DBC in their
17 paper that they handed to you today. So that's what
18 I wanted to tell you about those. The only other
19 thing I wanted to mention to you was on Intro 740--

20 CHAIRPERSON CONSTANTINIDES:

21 [interposing] But--but--but if you have a--a--a
22 restaurant that's--has their doors propped open--

23 ALAN FIERSTEIN: Yeah.

24 CHAIRPERSON CONSTANTINIDES: --you know,
25 or they're not supposed to do that in the summer with

2 the air condition. We did that bill last year. But
3 if they are still doing so, would consider--would
4 still consider it accidental noise, or they're--
5 they're--

6 ALAN FIERSTEIN: That's--that's
7 deliberate.

8 CHAIRPERSON CONSTANTINIDES: [laughs]

9 ALAN FIERSTEIN: It is--it's an open door
10 policy.

11 CHAIRPERSON CONSTANTINIDES: Uh-huh.

12 ALAN FIERSTEIN: They know sound goes
13 out.

14 CHAIRPERSON CONSTANTINIDES: Right.

15 ALAN FIERSTEIN: Everybody knows that. I
16 worked for all these restaurants and bars. I tell
17 them keep your door closed. They say okay we will,
18 but I have to tell them this, you know. Can I go
19 into 745?

20 CHAIRPERSON CONSTANTINIDES: Yeah,
21 please, please, I'm--I'm not really sure about that.

22 ALAN FIERSTEIN: I just wanted to say
23 that there's--the way this has been worded, it deals
24 with the words electrically and electronic. There
25 are many things, there are many ways to attract

2 attention to an ice cream truck or a food truck
3 without using electricity, many ways. You could have
4 wind chimes. You could have one of these bicycle
5 horns where you squeeze the rubber bulb and it goes
6 [mimics sound of horn]. You could have whistles.
7 You could do all kinds of things that are no
8 electronic, and this is not covering that. So where
9 they say--when you talk about the words "sound signal
10 device", change it to "sound source", and take out
11 the word "electrically" and "electronic." That way
12 you protect people. Now, there's one more thing I
13 wanted to say about this. Councilman Dromm, who I'm
14 sorry is gone, he talked about engines left idling,
15 and you heard council--Gerry Kelpin say well there's
16 not much we can do about it. There's generators and
17 they run the refrigeration trucks, and this is true.
18 But the main problem is this. The compressors that
19 are like refrigerators in these trucks, they produce
20 a tonal noise. Now, what do I mean by a tonal noise?
21 Instead of the sound like [mimics buzzing sound] I
22 was going to give a demonstration, but no one wanted
23 to hear my demonstration [mimics buzzing sound].
24 Instead of like that, it's a pure tone. It sound
25 like this [mimics low steady tone]. Now, imagine

2 hearing that. They're so penetrating these sounds
3 they go through your closed windows. So there's many
4 ice cream trucks where they got the refrigeration
5 equipment and the compressors running inside there,
6 and the generators and the compressors make this pure
7 tone [mimics low steady tone] for hours, and it goes
8 through your window, and in some places in your
9 apartment because they're in effect called standing
10 waves, it's super loud, and in other places you can't
11 hear it at all. So as you walk from end of your
12 apartment to the other the [mimics low steady tone].
13 It's maddening. You have to find a place to sit
14 where you're in a null point. You see what I mean?
15 Those things have to be regulated, and they can be
16 muffled. They have to muffle those. There's a
17 section in the Noise Code 24-231 called Circulation
18 Devices, an extremely weak section that only refers
19 to DBA. DBA ignores [mimics low steady tone] because
20 that's a low frequency base sound. It really
21 tremendously ignores it, and not only that, I just
22 have to say this. It's not exactly what's in this
23 bill, but I just want to point out the Noise Code has
24 a serious deficiency in that because there's plenty
25 of people who hear fans on the roof, they're droning

2 through their roof. People hearing the boilers
3 coming up through the floor if they live on the first
4 floor, pumps transformers, outside noise, inside
5 noise, low frequency noise caused by circulation
6 devices, and the Circulation Device section has to be
7 amended to include low frequency sounds. There are
8 prohibitions against low frequency sounds in 24-232,
9 but it only deals with sounds made by a commercial
10 establishment. So, a landlord who has a noisy boiler
11 or a noisy elevator or noisy roof fans or cooling
12 toward on the roof is exempt from getting a violation
13 under the Circulation Device section because of that
14 problem. It's a tremendous problem. I've written to
15 Council Member Rosenthal about this. I gave her a
16 whole bunch of things including about the 244--which
17 I'm glad that they are dealing with it--last year and
18 I can send it to anyone else if they want to get it.

19 CHAIRPERSON CONSTANTINIDES: Well thank
20 you.

21 ALAN FIERSTEIN: You're welcome.

22 CHAIRPERSON CONSTANTINIDES: I thank you.
23 I appreciate your testimony. Thank you very much. I
24 appreciate all of your expertise. Thank you all for
25 your testimony. I have--when it comes to 59, I think

2 we are--my--my colleagues is not here to ask you
3 questions, but I thank you for your testimony as
4 well. Thank you for your time. [pause] All right,
5 so the next panel is George Pauldoff (sp?) Allison
6 Blaine, and Silvio Calzino (sp?). Will you all come
7 forward and be sworn. [background comments, pause]

8 LEGAL COUNSEL: Can you please raise your
9 right hands. Do you swear or affirm to tell the
10 truth, the whole truth and nothing but the truth
11 today?

12 PANEL MEMBER: Yes.

13 CHAIRPERSON CONSTANTINIDES: I guess you
14 can begin on one side and work your way over.

15 SILVIO CALZINO: [off mic] Hi, my name
16 is Silvio Calzino. I thank you for the [on mic]
17 opportunity of speaking to the Council today. I own
18 a company that sells outdoor power equipment, and I
19 sell leaf blowers as well as other noisy things that
20 people use to do useful work, and we sell them to all
21 types of agencies, landscape companies. We sell a
22 ton of them to the City. We sell them to the
23 Department of Parks. We sell them to the Housing
24 Authority. We sell them to the Department of
25 Sanitation. We sell them to DEP themselves and we

2 have for years, and I'm particularly concerned with
3 the--the amendment that would ban the sale of leaf
4 blowers especially in light that a lot of our sales
5 goes directly to--to the City yourselves. And I
6 think it's--I think it's just wrong that you can set--
7 --you can take one product. There's a--you know,
8 there's a lot of things that make a lot noise, as we
9 heard today, and it just--just completely talk about
10 one product as it's--as--as the culprit that makes
11 all this noise. And--and by your own statistics you
12 said you said you had 70,000 complaints, and of that
13 1,173 related to landscaping noise complaints, which
14 probably, you know, of that--I mean there's mowers
15 that are going and Weed Wackers and I'm sure that
16 some of those people could have taken steps to
17 mitigate that noise. I think there are probably--
18 that's--that's like less than 2% of your complaints
19 based on landscaping complaints. I mean I think the
20 education of--of these--of these companies is the
21 main thing. I think you have a very good law that's
22 in effect right now. It seems--it seems that you're
23 having trouble--trouble in measuring it, which is
24 probably the problem. I mean what really matters is
25 all we hate noise. I mean I was woken--I woke--

2 ironically, a week ago I was woken up dead out of my
3 sleep by some guy that had his Harley cranked up in
4 front of the--in front of the 7-11 making all kinds
5 of noise going up and down the street. I mean I
6 think somebody should give that guy a ticket, you
7 know, and we all-- I mean nobody wants to be awakened
8 by noise and it's--we all want quieter neighborhoods,
9 and I think it really comes down to education,
10 educating these people on--on how to use the blower
11 and how to use all the products to make sure they
12 have all the proper emissions devices on them. So
13 that they're not making more noise than they need,
14 and--and maybe just, you know, regulating the amount
15 of throttle at certain times. But--and beyond that,
16 I mean the--the--the truth is these landscapers who
17 can't come here today because they're out working. I
18 mean, you have a--a committee meeting to ban
19 something that's--these people use for their
20 livelihoods, and it--they're--they can't come today.
21 They're all too busy working because this is their
22 season. You know, it's the 4th of July Weekend, and--
23 -and you guys are having a--a discussion on banning
24 something they use to make a living, it's really
25 unfair to the landscape community that you can do--

2 just go in there and write this law while they're--
3 while they're all too busy to show up because they
4 have to make a living, and they're not, you know,
5 this is an instrumental device--I--I can tell you
6 that there's--if there was a different or a
7 replacement for this product, if it was so easy, they
8 would all use them. Okay, it's--it's not as simple
9 as--as--as some other people who here gave testimony
10 earlier that, you know, we can use a broom, and we
11 can go back to using goats or whatever. I mean,
12 these--these--you know, there are hundreds of--
13 hundreds and thousands of blowers that sold every
14 year. It's just, you know, what needs--what needs to
15 be done is more education how to use them, and to
16 come with a system as you are and you already have.
17 As this gentleman testified earlier is that you have
18 a very good ordinance on noise, and we all agree
19 that, you know, we should enforce the current law
20 rather than make new laws because we can't figure out
21 how to measure the noise because there are other
22 things that make noise that need to be addressed that
23 aren't--It's just not leaf blowers. I mean by your
24 own statistics it's purely leaf blowers. So to just

2 come out and ban one product over something else
3 makes absolutely no sense. That's all I have to say.

4 CHAIRPERSON CONSTANTINIDES: Thank you.

5 GEORGE PAULOFF: Thank you. My name is
6 George Pauloff. I'm a small business owner as well
7 in Flushing, New York. I feel as though in regards
8 to [coughs] the leaf blower banning sale, we have
9 many customer in the New York City Metro Area
10 [coughs]t that would buy a gas-powered leaf blowers
11 for their summer home maybe in Jersey, the Hamptons
12 or Pennsylvania, some place else. So banning the
13 sale of this hear is also going to--as a taxpayer, as
14 a business, you know I agree it's going to prohibit
15 us from--from selling and making money and, you know,
16 I--I just think that that's not, and it doesn't seem
17 right with me. The 65 decibels. I'm not a scientist
18 or, you know, I'm not an expert in that field, but
19 that pretty much covers all of the gas-powered leaf
20 blowers that we sell. So that means we wouldn't be
21 selling any gas-powered leaf blowers if this was to
22 go through, banning the sale of the leaf blower in
23 the New York City Metro area. From our understanding
24 talking with our salesmen [coughs] supposedly the
25 city agencies would have some rights to purchase

2 these. We currently do service some of the agencies,
3 the Department of Parks, Department of Transportation
4 but if you're going to ban us from selling it, that
5 means that we can't sell it to the city agencies,
6 which means they're just going to buy it from Nassau
7 County or Westchester or New Jersey for that matter,
8 hindering the small businesses in New York City.
9 That's one of our main concerns. I don't think
10 banning the sale. Perhaps for the manufacturers to
11 come up with maybe lower decibel rated leaf blowers.
12 They might be something that they could perhaps come
13 up with, but I think the 65 decibels as that
14 gentleman just showed, that's me talking here that 65
15 decibels. 70 decibels was a vacuum, although he
16 didn't use the vacuum backwards. He said to have it
17 suck you can stick the hose on the other side so you
18 can blow. I often do that for my son's inflatable
19 pool. The vacuum is 70 decibels so I--I think that--
20 that's 65-A or whatever that code is. I think that
21 should be raised a little bit. Perhaps not--again,
22 I'm not a scientist. I don't know but I think that
23 measurement might be a little on the low side.
24 Perhaps it will brought up a little bit, and maybe
25 not. You know, again I don't know the--the decibels

2 on the stronger backpack mower--blowers, but there
3 are often a lot of handheld blowers that we do sell
4 quite a few of. Maybe that measurement can be
5 tweaked a little bit. Thank you.

6 ALLISON BLAINE: Good afternoon. My name
7 is Allison Blaine. I represent Metropolitan Lumber
8 and Hardware. Metropolitan likewise sells these so-
9 called, what we're referring as grass blowers. I
10 think it's important to note--know that--to notice
11 that these blowers don't simply only blow grass. So
12 if you restrict them during the spring and the
13 summer, that's an assumption that they're only used
14 in the fall to--to blow--I'm--I'm sorry--leaves.
15 These-these are used by the landscapers. They're
16 used all year round to blow grass. Like I said,
17 there's construction dust. They're sold throughout
18 the city and outside of the city, outside of this
19 jurisdiction throughout the state into New Jersey and
20 Connecticut. Thousands and thousands of these units
21 are sold, like this gentleman said, it would have a
22 chilling effect on small businessmen, and including
23 the landscapers who--a good point. We're leading up
24 to the 4th of July Week--Weekend. They obviously
25 can't be heard because they're out working during

2 their peak season in which the--the woman for DMEA,
3 Melanie McGillick's conclusion was that it's okay to
4 ban them in the spring and the summer, but obviously
5 we can't ban--ban them in the spring or the summer.
6 But in pointing to--this gentleman referenced that
7 were 1,172 complaints that--with regard to these leaf
8 blowers, and only two violations. Perhaps there were
9 only two violations because there were only two
10 violations. You have a million complaints in the
11 world. It doesn't mean they're legitimate. So to
12 expand the statute--to expand to solve a problem that
13 doesn't obviously exist, that--that's--that doesn't
14 make any sense. And going--referring back to Ms.
15 McGillick's comment from the DMEA, she even pointed
16 out that the EPA recommends 80 decibels at just the
17 C. Then why is this Council looking and this
18 committee looking to set the level at 65 decibels?
19 When the EPA itself is saying 80 decibels? I don't
20 know. [pause] And if you have any other questions--
21 any questions, I'll be happy to answer them.

22 CHAIRPERSON CONSTANTINIDES:

23 [interposing] I mean do you have any--does anyone
24 have any testimony to submit or do you have testimony
25 to submit at all or--?

2 ALLISON BLAINE: No.

3 CHAIRPERSON CONSTANTINIDES: No, okay.

4 All right.

5 SILVIO CALZINO: [off mic] I just want to
6 say one thing--

7 CHAIRPERSON CONSTANTINIDES: Uh-uh

8 SILVIO CALZINO: [off mic] --about the
9 leaf blower was mentioned as [on mic] all these bad
10 things that leaf blowers do, and I mean obviously you
11 guys--you--you--the committee should--should stick to
12 noise because this is about noise. I mean I'm
13 betting--you know, you can make all kinds of
14 different arguments about all kinds of different
15 things, two-stroke engines and, you know, in a
16 perfect world we should all have goats eat our lawn,
17 and we should all use brooms and we should--You know,
18 but it's not going to happen, okay. And, you know,
19 probably 90% of a--of the handheld stuff that we sell
20 is two-stroke, and manufacturers are--are striving
21 every day. It's a very competitive market, to make
22 much cleaner two-stroke engines, but they haven't
23 figured out a way to eliminate the two-stroke engine.
24 So I mean to say let's just ban the two-stroke engine
25 because it make emissions is ridiculous because I

2 mean they--it's in every manufacturer's best interest
3 to make--to comply with EPA regulations, and they all
4 have to write very stringent regulations, and very,
5 very stringent regulations on--on--on emissions for
6 two-stroke and four-stroke engines. And to simply
7 just say we should get rid of two-strokes is
8 ridiculous and that's really above the jurisdiction
9 of the-of the New York City law. I mean it goes to
10 federal EPA regulations as to--as to what--what
11 should and shouldn't be regulated.

12 CHAIRPERSON CONSTANTINIDES: Okay.

13 SILVIO CALZINO: And to pick out again
14 just to pick out one device over others that make,
15 you know, that--that make--there's--there's just so
16 many things that make noise. Garbage trucks and--and
17 lawn mowers make noise and chainsaws make noise and
18 backpack blowers make noise and, you know, these are--
19 -these are all noisy devices. I think that you need
20 to stick to the original--your orig--the original law
21 that said just figure out what the noise levels are,
22 and--and fine violators and--and fine the violators
23 who are making too much noise, and what--what--
24 regardless of what that means. Don't pick one thing,
25 you know. It's just that simple. Thank you.

2 CHAIRPERSON CONSTANTINIDES: All right.
3 Thank you all for your testimony. I appreciate it.

4 ALLISON BLAINE: Thank you.

5 CHAIRPERSON CONSTANTINIDES: Thank you.

6 All right, the last panel for Paul Peloquin and
7 Michael Gannon if you can both step forward please.

8 [background noise, pause]

9 PAUL PELOQUIN: Hi, I'm Paul--

10 LEGAL COUNSEL: [interposing] Can you
11 please raise your right hands.

12 PAUL PELOQUIN: Oh, I'm sorry.

13 LEGAL COUNSEL: Do you swear or affirm to
14 tell the truth, the whole truth and nothing but the
15 truth today?

16 PAUL PELOQUIN: I do.

17 MICHAEL GANNON: I do.

18 LEGAL COUNSEL: Thank you.

19 PAUL PELOQUIN: Hi, my name is Paul
20 Peloquin. I'm a lifelong resident of the New York
21 City. I've lived in [coughing] Ditmas Park for the
22 past 31 years. I'm testifying on behalf of myself.

23 A lot of things I would have said have been said.

24 With regard to what Council Member Dromm said, with

25 regard to enforcement with regard to truck noise, I--

2 there are two instances where trucks had--ice cream
3 trucks are illegally parked on a regular basis, and
4 they're parked illegally and--and they're operating.
5 One--one--one--on area, one place is--was north of
6 us, Columbus Circle where Central West comes into
7 Columbus Circle. There's a pretty big ice cream
8 truck that parks there, and you get the tourist
9 crowd, and it's quite noisy, and every time I walk,
10 which is on a pretty basis because to go to the
11 YMCA--the 63rd Street Y, you have to walk through a
12 barrier of noise and, I often wonder why I'm
13 breathing when I go by that truck. Another place is
14 that on 63rd Street and Broadway, they set up a
15 little park area where they set up places where you
16 could sit and eat or do the computer. There's free
17 WiFi there. Boom, the ice cream truck comes and that
18 compression noise is--is--is--is very penetrating and
19 awful, and it's--it sits there and once I made a
20 complaint, and it moved. Another time I---I--I
21 simply walked away, and I was surprised about how far
22 I had to walk away to the other end of this island
23 where they had a park and there were other seats at
24 the other end. I was surprised at how far away I had
25 to--to walk. The point is--the point I'm trying to

2 make with regard to these two--two instances is that
3 there's enforcement. This is an ongoing stable
4 business use of the--of--of--of space. Unless
5 there's a permit that allows these people to park
6 illegally, they--there--there's no enforcement with
7 regard to the use of that space. I would--there's an
8 epidemic. I--I would secondly comments--public
9 health comments with regard, you know, that were
10 made. There's an epidemic of asthma with New York
11 City and the whole use of--of--of these things have--
12 has to be studied with regard to their public health
13 impacts. I mean the--the whole widespread children
14 are being affected by that, and this--this is a--so
15 as not to be cumulative, there are two things that--
16 that haven't been mentioned that aren't covered by
17 the bills. One thing that terrifies people that are
18 sensitive to noise is the proposals to make the New
19 York subways--cell--cell phone accessible. Nothing
20 is going to be worse than someone sitting across from
21 you regularly and even people that are sensitive to
22 it, still do it.

23 CHAIRPERSON CONSTANTINIDES: If we can we
24 stick to the--the subject of our bill.

2 PAUL PELOQUIN: Yeah, well in terms of
3 something for the--the committee to consider in the
4 future, and the others are noise from dogs. Dogs
5 barking. They can be very annoying. I was sleeping
6 in the back of my house a number of years ago. I had
7 a German Shepherd arf-arf, and a little went squeak-
8 squeak. And that's a--the dogs throats can go for
9 hours. So this is something for--for the Council to
10 consider with regard to noise.

11 CHAIRPERSON CONSTANTINIDES: Sir.

12 MICHAEL GANNON: Good afternoon, Council
13 Members. My name is Mike Gannon. I'm President of
14 the Douglas Manor Environmental Association, a
15 homeowner's association comprised of 595 families
16 residing in the Douglaston, a community of all R1 and
17 R12 zoned homes in Northeast, Queens. As the zoning
18 implies, the homes are surrounded by grass, shrubs
19 and trees. We applaud the committee's limiting of
20 leaf blowers to 65 decibels. We feel Intro 59 does
21 not go far enough in protecting our community from
22 hazards. We have already heard from the Douglas
23 Manor Environmental Association and the Long Island
24 Society of Pediatricians on the many toxins blown
25 into the air by leaf blowers. We agree with the

2 statements of both the organizations. The DMEA has
3 participated this year in a voluntary leaf blower
4 ban. To our surprise it's raised by landscapers who
5 realized that a 10 to 20-minute time savings at each
6 stop. One landscaper now offers a 5 to 10% discount
7 to his customers who decline the use of leaf blowers
8 on their property. We urge the committee join our
9 neighborhood in the New Merrimack, Yonkers and
10 Douglaston's nearest neighbor the Great Neck Station
11 in Nassau County to ban all leaf blowers from May
12 15th to September 15th as a transition period to a
13 total year-round ban with three years. Thank you.

14 CHAIRPERSON CONSTANTINIDES: Okay, I
15 definitely appreciate both of you taking the time out
16 of your schedules to come here and testify to make
17 testimony the record. I will definitely take it into
18 consideration as we move forward. Are there anyone
19 else that wishes to testify at this time? All right,
20 with that, we will look forward to speaking further
21 about these three introductions, and coming to a good
22 resolution. Thank you for your time today, and we'll
23 be gaveling this committee closed. Thank you.

24 [gavel] I thank our Legislative Attorney, Samara
25 Swanston for always her great work, and our Policy

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2 Analyst Bill Murray as well, as well as Council

3 Member Dromm's staff and my Legislative Director Nick

4 Lozowski, and with that, I wish everyone a good

5 weekend and gavel this Environmental Protection

6 Committee closed. Thank you. [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date July 7, 2016