

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

of the

COMMITTEE ON PUBLIC SAFETY

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October 27, 2008

Start: 10:08am

Recess: 10:30am

HELD AT: Council Chambers
City Hall

B E F O R E:
PETER F. VALLONE, JR.
Chairperson

COUNCIL MEMBERS:
Joseph P. Addabbo, Jr.
Daniel R. Garodnick
Melinda R. Katz
Erik Martin Dilan
Hiram Monserrate
Vincent J. Gentile

A P P E A R A N C E S

COUNCIL MEMBERS:

Anthony Como

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

William Heinzen
Deputy Counselor
Mayor's Office

Vince McGowan
President
United War Veterans Council

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2 CHAIRPERSON VALLONE: Good morning,
3 everyone. Welcome to today's hearing of the City
4 Council Public Safety Committee. Today we're
5 going to discuss a piece of legislation, which I
6 sponsored, which will allow for anyone who
7 destroys or damages a memorial that honors
8 firefighters, police officers or armed services
9 members to be fined between ten and \$25,000.

10 One might think that damaging a
11 memorial dedicated to a person who has risked, and
12 most likely given up, his or her life for the
13 safety of the greater community is not something
14 that would happen or that anyone would do.
15 Unfortunately, this is not the case. There have
16 been many recent incidents of memorials being
17 defaced. Some of these have been publicized and
18 some haven't.

19 All, however, represent
20 disrespectful serious acts of vandalism in our
21 community. For example, last year in June, parts
22 of a memorial on Staten Island dedicated to 9/11
23 victims were broke into pieces. One broken part
24 was dedicated to a firefighter, Jeremy Olson.
25 Olson's family was planning to visit the memorial

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2 in order to commemorate what would have been his
3 37th birthday. Just this past summer, a mural in
4 the Bronx, which was dedicated to Peter Bielfeld,
5 a firefighter who died on 9/11, was covered over
6 with graffiti. Family and friends compared
7 viewing the graffiti-covered memorial to viewing a
8 desecrated tombstone.

9 We believe that there needs to be a
10 heightened disincentive to these types of
11 vandalism. We can't continue to have these very
12 important memorials, which honor people who have
13 sacrificed so much, damaged in such a malicious
14 manner. If a vandal doesn't understand that these
15 memorials are made to those who paid the ultimate
16 price, then we will impose upon them, in addition
17 to some jail time, the highest price that we can,
18 as a City. And, that's what this hearing is about
19 today.

20 So now, I'd like to call up
21 Mr. William Heinzen, from our Corporation Counsel,
22 I believe. Do you have actual testimony with you?

23 WILLIAM HEINZEN: I do.

24 CHAIRPERSON VALLONE: Okay, hold on
25 one second, we'll get it. Thanks.

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2 WILLIAM HEINZEN: Okay.

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3 CHAIRPERSON VALLONE: Thank you.

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4 WILLIAM HEINZEN: I'm actually no
5 long with Corp Counsel. I'm in the Mayor's office
6 now.

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7 CHAIRPERSON VALLONE: Can't keep up
8 with you guys over there. Okay.

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9 WILLIAM HEINZEN: Good morning,
10 Chairman Vallone. My name is William Heinzen. I
11 am the Deputy Counselor to the Mayor. And, thank
12 you for the opportunity to be heard today about
13 Intro 849-A, which would amend the Administrative
14 Code to create a civil penalty for damaging or
15 defacing memorials honoring our firefighters, police
16 officers and armed services members.

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17 Since day one, the Bloomberg
18 Administration has been committed to eradicating the
19 scourge of graffiti in this City. The Police
20 Department has appeared before this Committee
21 several times to discuss the message of disorder
22 and lawlessness that graffiti communicates. They
23 have described the comprehensive initiatives that the
24 Administration has undertaken to address this
25 problem; by enforcement, by education, and, with the

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2 help of our Community Assistance Unit, by cleanups.
3 This year, as of October 19th, the Police Department
4 has made approximately 3,400 arrests for graffiti
5 crimes, representing a 12% increase over the number
6 of arrests made during the same period last year.
7 The Police Department continues to devote significant
8 resources to fighting this crime, including not only
9 focused enforcement efforts, but also the development
10 of a graffiti tag database, implementation of a
11 reward program, educational outreach efforts, and the
12 conduct of the weekly GraffitiStat meeting, to
13 ensure that the Department's emphasis on addressing
14 this offensive conduct remains strong.

15 Despite these initiatives, there is
16 always more that we can do to protect New Yorkers,
17 and the Administration salutes the intent behind
18 Intro 849-A. We also salute your Committee's
19 constant battle against graffiti in the City.

20 Every day tens of thousands of the
21 City's firefighters and police officers put their
22 lives on the line to make this City better.
23 Unfortunately, some of them make the ultimate
24 sacrifice for the City in the line of duty.
25 Moreover, since 2003, 80 New Yorkers, men and

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2 women from all boroughs, have given their lives in
3 Iraq and Afghanistan, including just this
4 Thursday, Police Officer Deon Taylor, of the
5 Brooklyn North Narcotics Borough, who served in
6 the Army National Guard and was killed during his
7 second deployment in Afghanistan. The flags at
8 City Hall are at half-mast today and will over
9 this weekend, in his memory.

10 For generations New Yorkers have
11 dedicated large and small memorials honoring the
12 service and sacrifice of these brave men and women.
13 These memorials are often on public land throughout
14 the City, but private memorials are also an
15 important part of the City's landscape. Indeed
16 every New Yorker has seen and been moved by the
17 countless memorials, amateur and professional, to
18 the first responders killed on September 11th,
19 2001.

20 We share your view that there is an
21 important governmental interest in protecting
22 these memorials from senseless acts of
23 desecration, just as the law protects tombstones
24 and other memorials to the dead in our
25 cemeteries. To that end, we are prepared, and

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2 indeed happy, to work with the Committee to make
3 certain changes that we believe will turn Intro
4 849-A into an even better bill.

5 First, and in order to protect
6 against legal challenges, we believe that the bill
7 should make clear that it applies to actions taken
8 without the consent of the owner of the property
9 on which the memorial is located. I note that
10 this change would mirror provisions in recent
11 anti-graffiti laws. Additionally, because of the
12 potentially broad scope of the bill, we believe
13 that the term memorial should be defined, and we
14 are ready and willing to work with the Committee
15 on crafting a brief definition that provides
16 adequate legal notice while fulfilling the bill's
17 intent. Finally, we would like to work with the
18 Committee on appropriate enforcement language, to
19 avoid any doubt about how the bill's provisions
20 are implemented.

21 We applaud the Committee for
22 focusing on this issue and we look forward to
23 working with you as soon as possible to reach the
24 best possible bill. Thank you for allowing me to
25 speak to you today. And, I'm happy to take any

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questions.

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CHAIRPERSON VALLONE: Thank you, Mr. Heinzen. We've been joined by Council Members Como and Addabbo. Thank you for--

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WILLIAM HEINZEN: Good morning.

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CHAIRPERSON VALLONE: -- attending.

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Mr. Heinzen, as we discussed previous to your testimony, we look forward to working with you on all of those matters that you discussed. And, we, I'm sure in the near future, are going to craft a bill that both the Administration and the Council, you know, feels accomplishes those goals. And, we'll be able to move forward.

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By way of background, now I know that you've moved over from Corp Counsel to the Mayor's side. Would you happen to know of how many of instances like this in the past, where you have acted as either Corp Counsel or in some other manner, to recover fines from individuals in this type situation?

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WILLIAM HEINZEN: In the type of situation of a desecration or defacement of a memorial? I don't know. I can look into that.

CHAIRPERSON VALLONE: So, you

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2 agree, though, with the intent of this bill, which
3 would basically equate damaging memorials with
4 damaging-- with the fines we have nowadays for
5 damaging religious artifacts or things of that
6 nature? You would support that intent, correct?

7 WILLIAM HEINZEN: Yes, we think
8 there's a sufficient and significant government
9 interest in protecting those.

10 CHAIRPERSON VALLONE: And, we
11 agree. As I said, if you vandalize a memorial to
12 those who paid the ultimate price, then, in
13 addition to jail time, we are going to ask that
14 you pay the highest price the City can inflict
15 upon you. And, in this case, that's a fine of a
16 minimum of 10,000 and a maximum of \$25,000.

17 Oh, we've also been joined by
18 Council Member Garodnick. Thank you.

19 WILLIAM HEINZEN: Good morning.

20 CHAIRPERSON VALLONE: Council
21 Member Addabbo. Thank you.

22 COUNCIL MEMBER ADDABBO: Thank you
23 very much, counselor. I appreciate your time here
24 today. And, Mr. Chair, thank you very much for
25 your work on graffiti, in general, and, of course,

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2 on this bill. With regards to 849-A, you had
3 mentioned in your testimony GraffitiStat,
4 obviously, statistics regarding graffiti crimes.
5 Are they broken down as to what is being targeted
6 with graffiti? Basically, this bill has to do
7 with, and focuses on, memorials--

8 WILLIAM HEINZEN: Um, hm.

9 COUNCIL MEMBER ADDABBO: -- and the
10 such. And, we have tombstones and you mentioned
11 also in your testimony that tombstones are also a
12 target of graffiti. Does GraffitiStat categorize
13 what areas are being hit with graffiti and maybe a
14 trend, you know, whether it be private property or
15 memorials or the such?

16 WILLIAM HEINZEN: In other words,
17 the types of targets?

18 COUNCIL MEMBER ADDABBO: Exact
19 right.

20 WILLIAM HEINZEN: I believe it
21 does. I will clarify that and get back to you.

22 COUNCIL MEMBER ADDABBO: If you
23 could, we appreciate it. And, if it doesn't, that
24 would be my suggestion that we break down graffiti
25 even further and finding out what is being

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2 targeted by the vandals and, you know, maybe
3 showing a trend throughout the City further, you
4 know, I guess, supporting the need for this kind
5 of Intro. But, we appreciate, or I, personally,
6 appreciate, your efforts in trying to work with us
7 on this bill. So, if you could get that
8 information, I would appreciate it.

9 WILLIAM HEINZEN: I will, thank
10 you.

11 COUNCIL MEMBER ADDABBO: Thank you
12 so much. Thank you, Mr. Chair.

13 CHAIRPERSON VALLONE:
14 Mr. Garodnick, Mr. Como, any questions? Not that
15 we don't appreciate your coming down this morning,
16 it's just that we're all on the same page.

17 WILLIAM HEINZEN: Okay.

18 CHAIRPERSON VALLONE: And, it's a
19 very simple issue on both sides. Just a
20 technical, legal question, you mentioned that we
21 should add that this is done without the consent
22 of the owner. But, the bill, as written, says any
23 person who willfully and without authority--

24 WILLIAM HEINZEN: That's right.
25 And, we were discussing back and forth about

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2 whether that might take care of it right there.
3 So, I think that's just something we can work out
4 afterward. But, obviously, our Legislative
5 Affairs office, myself, and we've got a few
6 lawyers from Corp Counsel who are working on this.
7 So, we're happy to meet with you at any time.

8 CHAIRPERSON VALLONE: Council
9 Member Garodnick has a question.

10 COUNCIL MEMBER GARODNICK: Thank
11 you. I just wanted to go to that other
12 suggestion, I'm sorry if you addressed this before
13 I came in, on the definition of memorial, because
14 I think that you make a fair point that that could
15 be open to a fair number of interpretations as to
16 what constitutes a memorial. I wanted to see if
17 you were prepared to flesh that out a little bit
18 as to how we could define that in this legislation
19 so as to make it clearer as to what falls into
20 that category? I mean, obviously, the bill itself
21 says plaque, mural, structure or other memorial
22 with a purpose as described in the bill. But,
23 what would you suggest to try to narrow that down?

24 WILLIAM HEINZEN: I do have draft
25 language, which I'm happy to share with you. But,

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2 it is just draft language just for purpose of
3 discussion. We had thought about saying something
4 along the lines of memorial shall mean any
5 monument, painting or other work of art,
6 headstone, footstone, edger stone, marker or
7 plaque erected or installed in or on any cemetery,
8 grave, mausoleum or other appropriate place of
9 memorialization. Again, that's draft language. I
10 would want to make sure that we capture murals,
11 for example, in private places. I think a concern
12 that someone raised was whether, if memorial isn't
13 defined sufficiently, if we leave this vulnerable
14 to a legal challenge, which would just overturn
15 all of our efforts here, whether we would agree
16 with that legal challenge or not.

17 But, we just began discussing, at
18 the end of last week, possible ways of defining
19 memorial. So, this is more in the way of our
20 offer to continue to work on trying to define that
21 to make sure that this is a bulletproof piece of
22 legislation.

23 COUNCIL MEMBER GARODNICK: In your
24 proposed text, you talked about place of
25 memorialization.

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WILLIAM HEINZEN: Um, hm.

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COUNCIL MEMBER GARODNICK: Should

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we be making any distinctions here between

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memorials that are on public property versus

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memorials that are on private property? Is there

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any reason to make any distinctions there? Or,

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for the purposes of a bill like this, does it

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matter at all?

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WILLIAM HEINZEN: Well, I think the

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intent, and we support the intent, is to cover

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private and public memorials equally. Something

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that, you know, we can talk about is there may be

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possible First Amendment issues when you talk

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about private property. And so, we'll want to

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make it very clear what the government interest is

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in protecting those memorials. We think that the

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government interest is sufficient. And, we think

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that we can craft, with you, we can craft a bill

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that would pass muster and that would equally

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protect public and private memorials.

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COUNCIL MEMBER GARODNICK: Sorry,

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I'm not sure I understand the legal issue. You're

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saying there may be a legal issue with our

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legislating to protect memorials on private

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2 property?

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WILLIAM HEINZEN: I'm speaking as a former member of the Law Department, and as a lawyer, so that my job is to be nervous.

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COUNCIL MEMBER GARODNICK: Good, mine, too.

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WILLIAM HEINZEN: That's all.

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COUNCIL MEMBER GARODNICK: But, just explain that to me, though, 'cause I'm not sure I understand, 'cause it seems to me, obviously, there's a right to speak on behalf of the private property owner who puts a memorial up on their front lawn.

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WILLIAM HEINZEN: Absolutely.

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COUNCIL MEMBER GARODNICK: And, certainly, there's a--

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WILLIAM HEINZEN: Absolutely.

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COUNCIL MEMBER GARODNICK: -- there's a right to speak on behalf of somebody who may object to that memorial for whatever reason. But, there is no right--

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WILLIAM HEINZEN: But, not a right to deface.

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COUNCIL MEMBER GARODNICK: -- under

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2 any circumstances for anybody to--

3 WILLIAM HEINZEN: That's correct.

4 COUNCIL MEMBER GARODNICK: --

5 deface that.

6 WILLIAM HEINZEN: That's correct.

7 COUNCIL MEMBER GARODNICK: So, I'm

8 not sure I understand the point that you were

9 making.

10 WILLIAM HEINZEN: I'm thinking of
11 an extreme case where whether or not the issue of
12 consent may be unclear; the issue of whether the
13 act constituted a defacement may be unclear. What
14 I'm thinking of is a nightmare situation where we
15 had litigation over an extreme case that delayed
16 the utilization of this law by, you know, the vast
17 majority of people who would fall squarely within
18 it. Under the--

19 CHAIRPERSON VALLONE: I think he's
20 doing a very good job of being nervous.

21 COUNCIL MEMBER GARODNICK: Yes.

22 CHAIRPERSON VALLONE: That's very
23 good.

24 COUNCIL MEMBER GARODNICK: I think
25 so, too. You know what--

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WILLIAM HEINZEN: Sorry?

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COUNCIL MEMBER GARODNICK: He said
you're doing a good job of being nervous.

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WILLIAM HEINZEN: Oh.

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COUNCIL MEMBER GARODNICK: And, I
think that's fair and that's also, that's your
job. So, that's good. But, I wanted to just
understand the existing law today. Let's say
somebody did a private memorial on their own lawn
and some person jumped over the fence, you know,
destroyed it in one form or another.

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WILLIAM HEINZEN: Um, hm.

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COUNCIL MEMBER GARODNICK: What
civil penalties could they be liable for today?
And, for what? Presumably, there's trespass,
presumably there's a-- I mean whatever damage to
the property, you could potentially be liable for.

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WILLIAM HEINZEN: Right. You could
bring a civil action against them in court. You,
being the property owner, could--

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COUNCIL MEMBER GARODNICK: For the
damage--

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WILLIAM HEINZEN: --bring a private
lawsuit.

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2 COUNCIL MEMBER GARODNICK: -- to
3 the property for trespass.

4 WILLIAM HEINZEN: Right.

5 COUNCIL MEMBER GARODNICK: But,
6 anything for, I guess, nothing--

7 WILLIAM HEINZEN: But, the City
8 could not bring a separate civil action.

9 COUNCIL MEMBER GARODNICK: The City
10 could not?

11 WILLIAM HEINZEN: Right.

12 COUNCIL MEMBER GARODNICK: And,
13 does this bill allow the City to bring the civil
14 action?

15 WILLIAM HEINZEN: I discussed with
16 the Chairman, we also have offered to work on
17 crafting some appropriate enforcement language.
18 Right now, it's somewhat open-ended regarding
19 enforcement. So, we would want to make sure that
20 it's clear how this bill would be enforced,
21 whether that's through the City or through some
22 other means, but, presumably, through the Corp
23 Counsel.

24 COUNCIL MEMBER GARODNICK: I think
25 that's, actually, I think that's a fair point

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2 because, you know, obviously, opening up to civil
3 penalties, presumably, when you're talking about
4 certainly a memorial on public property, that
5 should be the easy case. As to the private
6 property, this may be where you're getting
7 nervous. But, I think that we should probably
8 spell it out in here. But, I think that the
9 intent is excellent. And, again, I thank you for
10 being here, and to the Chairman. Thank you.

11 WILLIAM HEINZEN: Thank you.

12 CHAIRPERSON VALLONE: Thank you.

13 And, just to clarify or make it even more
14 confusing, I think we're all on the same page that
15 for public monuments we want the City to have the
16 right to enforce. For private, we want private
17 people to have the right to enforce. The
18 questions we're discussing are, for a public
19 monument, do we want to have any private right to
20 enforcement and vice versa. And, that's where the
21 legal issues become complicated. We're looking
22 into what other areas have done around the city
23 and around the state and country. And, we will be
24 crafting appropriate language after working with
25 the Administration on that.

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2 If there are no other questions, we
3 are going to thank you for your assistance and
4 going to continue to work with you on this.

5 WILLIAM HEINZEN: Thank you.

6 CHAIRPERSON VALLONE: We're going
7 to hear from Vince McGowan now, who is a member of
8 United War Veterans. And, we appreciate your
9 coming down today, Mr. McGowan.

10 VINCE MCGOWAN: Thank you.

11 CHAIRPERSON VALLONE: Mr. McGowan,
12 thank you for joining us. And, you may begin.

13 VINCE MCGOWAN: Thank you for
14 convening this Committee on this very important
15 subject. The United War Veterans Council has been
16 charged by the City to create the events that
17 honor service. And, to that end, we will be
18 participating in the Veterans Day Parade again
19 this year. We've been doing it since 1988. We
20 also do a number of welcome home events for our
21 New York City men and women who proudly serve our
22 country. And, we cooperate with the Intrepid Sea-
23 Air Space Museum to make successful Fleet Weeks
24 throughout the City.

25 Our response to the legislation is

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2 a positive response. We recognize that the safety
3 of our citizens, the public safety, as this
4 Committee is charged, is of the utmost importance
5 and is the first responsibility of government. We
6 recognize that citizens cannot protect themselves
7 in all cases and their government must act in
8 their behalf. United War Veterans Council also
9 recognizes that the men and women who work on
10 behalf of the citizens are not always overly
11 compensated. And, we recognize that the private
12 sector and government work cooperatively to plan
13 and build monuments and memorials that recognize
14 the service of dedicated men and women of the fire
15 departments, police departments and other
16 uniformed agencies and of the United States Armed
17 Forces.

18 We recognize that the security of
19 the monuments and the memorials is the
20 responsibility of government. The United War
21 Veterans Council supports Intro Number 849 as it
22 pertains to creating civil penalties for damaging
23 memorials and monuments honoring firefighters,
24 police officers, members of uniformed services and
25 members of the United States Armed Forces. We

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2 request that the bill include other uniformed
3 agencies including, examples are the Department of
4 Sanitation and the EMS squads.

5 We support the Mayor's office in
6 defining memorials and monuments. And, we would
7 request that our comments be considered as that
8 definition is created.

9 CHAIRPERSON VALLONE: Thank you,
10 Mr. McGowan. I did not realize you were
11 President. Congratulations. I thought you were
12 just a member.

13 VINCE MCGOWAN: Yeah, thank you.

14 CHAIRPERSON VALLONE: How long
15 you've been President?

16 VINCE MCGOWAN: I'm the founder and
17 the President for all these many years.

18 CHAIRPERSON VALLONE: That's very
19 nice. Great. So, we appreciate you coming down
20 today. And, we'll look into your suggestion
21 regarding expanding perhaps the people included in
22 this bill.

23 VINCE MCGOWAN: Thank you, sir.

24 CHAIRPERSON VALLONE: Again, we
25 work with the Administration on it. So, we may be

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2 able to-- EMS sounds eminently doable. But, we
3 will take a look at these--

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VINCE MCGOWAN: Thank you.

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CHAIRPERSON VALLONE: -- things.

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VINCE MCGOWAN: I appreciate the
consideration.

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CHAIRPERSON VALLONE: Are there any
questions from any members of the Council? No,
again, I think we're all on the same page in this
one, which--

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VINCE MCGOWAN: Right.

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CHAIRPERSON VALLONE: -- doesn't
happen all that often.

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VINCE MCGOWAN: I know.

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CHAIRPERSON VALLONE: And, you
know, as you noticed last week, this is much
simpler, quicker hearing than much of what
happened recently. So, thank you, again, for
coming down. And, our staff here looks forward to
reaching out to you if we need any assistance on
this. If we don't have his information, let's
make sure we get it. Okay.

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VINCE MCGOWAN: Great.

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CHAIRPERSON VALLONE: Thank you,

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Mr. McGowan.

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VINCE MCGOWAN: Thank you.

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CHAIRPERSON VALLONE: And, with that, this hearing has-- the other police officer's not coming as far as you know? Okay. Okay. This hearing's adjourned then. Thank you.

We're going to reopen this hearing, this Public Safety Committee hearing this morning, and recognize the presence of Melinda Katz and Erik Dilan. And, thank you for joining both of us. Have any questions? No, good. Okay. So, we're going to re-adjourn this hearing. Thank you.

Okay. I'm going to once again reopen the Public Safety Committee hearing and recognize the presence of Hiram Monserrate and Vincent Gentile, who don't have any questions. And then, once again, adjourn this hearing. Thank you.

COUNCIL MEMBER MONSERATTE: Take back the vote. Good morning.

CHAIRPERSON VALLONE: And, watch us, government, you're taking back a vote.

Welcome to City Hall Chambers,

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2 kids. What just happened here and what you just
3 missed was a Public Safety Committee hearing.
4 This is Council Member Gentile, Council Member
5 Monserrate. I'm Council Member Pete Vallone from
6 Queens. And, a few moments ago, we had the Police
7 Department here and we were discussing a new bill,
8 which would create penalties for destroying a
9 monument to war veterans. So, if somebody spray
10 painted graffiti, let's say, over a 9/11 memorial
11 mural, there would be a fine from 10,000 to
12 \$25,000. So, that's what we discussed today.

13 They sat there. We questioned them
14 about it. The City Council sits up here. And, it
15 happened relatively quickly because everybody was
16 on the same page, not like last week. So, this is
17 the City Hall Chambers where these hearings are
18 held. And, I'm sure that your guide will tell you
19 much more about that. But, thanks for coming by
20 today. Thanks. Bye, bye now.

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C E R T I F I C A T E

I, DeeDee E. Tataseo certify that the foregoing transcript is a true and accurate record of the proceedings. I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

Signature DeeDee E. Tataseo

Date October 8, 2008