REGARDING THE ERUV FOR SEPHARDIC COMMUNITIES

Concerning the possibility for Sepharadim to rely on an *Eruv* made around a portion of any city by constructing surot hapetah (door frames).

Teshuvah of our Mentor and Leader

The Splendor of Our Generation

Rabbi Ovadia Yosef יחשל"א

Rishon Lesiyon

CONCLUSION OF RAB OVADYA:

"That is what I see as true. That is also why I instructed an *eruv* to be built using door frames to save those that blatantly transgress the prohibition of carrying on Shabbat. And as an extra -- **but not legally necessary** – measure, I instructed them to announce that all the people who are *benei Torah* and didn't normally carry before should continue their custom of not carrying, and that the *eruv* was only made for those who were transgressing the prohibition. **What's more is that those who are stringent not to make an *eruv* are actually being exceedingly lenient, for they allow the desecration of Shabbat to continue by people carrying in a public domain**. The [sages] have already said in *Besa* (16b) about a rabbi who prohibited the making of an *eruv haserot* on *yom tov* that falls on Friday, that his ruling began badly, for the damaging of many people is surely considered bad. This must also be the reasoning of the Rosh for writing so harshly against the stringent one. See also *Hatam Sofer* (99). I also ruled to make an *eruv* in the city of Los Angeles. By my advice they brought in an important rabbi who was a member of the religious council in Jerusalem to make the *eruv* according to law. I have recently seen that my dear friend R' Shalom Mashash (Z"L) in *Shemesh Umagen III* (*Orah Hayim*, 84) agreed with me in law and practice on this issue saying that my words were clear and proper and needed no strengthening at all.

IN CONCLUSION, those that carry on Shabbat in a public domain by an *eruv* made with door frames, have basis to do so, and according to many authorities it is allowed even according to Maran. The sages of Jerusalem also wrote that we have no true public domain today and an *eruv* of doorways therefore is sufficient to carry in these days. Nevertheless he who trembles at the word of G-d and completely refrains from carrying

will be blessed. Such a person may still, however, give keys or a *siddur* and the like to someone who does carry to carry it for him, even if the person that carries is over the age of *misvot* (*bar* or *bat misvah*). *Vehanah lahem leYisrael, im enam nevi'im benei nevi'im hem.*

IT IS IMPORTANT TO NOTE THAT IN THIS TESHUVAH HACHAM OVADIA יחשל"א HAS PERMITTED AN ERUV MADE BY *SURAT HAPETAH* (DOOR FRAMES) RATHER THAN ONE MADE WITH ACTUAL DOORS (OR WALLS). AN ERUV OF *SURAT HAPETAH* IS A LOWER GRADE ERUV THAN ONE MADE OF WALLS. FOR WALLS ENCLOSE EVEN A PUBLIC DOMAIN BY TORAH STANDARDS AND RENDER IT PRIVATE. THE ERUV IN BROOKLYN IS MADE OF WALLS. THEREFORE, BASED ON THIS TESHUVAH, IT IS CERTAINLY PERMITTED ABSOLUTELY. FOR ALL THE DOUBTS BROUGHT IN THE TESHUVAH ABOVE WERE ONLY TAKING INTO CONSIDERATION THAT THERE MAY BE AN ACTUAL PUBLIC DOMAIN BY TORAH STANDARDS (WHICH CAN'T BE FIXED WITH DOOR FRAMES I.E.POLES AND STRINGS). WHEN USING ACTUAL WALLS EVEN PUBLIC DOMAINS BY TORAH STANDARDS CAN BE ENCLOSED HALACHICALLY.

HERE IS THE FULL TEXT OF THE SHEELA AND TESHUVAH

Concerning the possibility for Sepharadim to rely on an *eruv* made around a portion of any city by constructing surot hapetah (door frames).

The teshuvah was originally printed in Hebrew in Yabia Omer IX, Orah Hayim, 33 and is translated and distributed to all with the permission and authorization of the eminent author. Any amendments made from the original Hebrew to the body of the teshuvah itself were requested by the eminent author. The footnotes, section headings, and biographical notes were added by the translator. This English version was reviewed by Rabbi Shimon Alouf שליט"א.

QUESTION:

I was asked if we, the Sepharadim, who follow the rulings of Maran (Rabbi Yosef Karo)1[1] author of the *Shulhan Aruch*, may rely on an *eruv* made with door frames as is common practice, and thereby carry from a private domain (*reshut hayahid*) to a public domain (*reshut harabim*).

ANSWER:

Contradiction in Maran's ruling – HYDA's interpretation (stringent)

A) The argument among the *Aharonim2[2]* with regards to Maran's opinion as to what constitutes a public domain (by Torah standards) is well known. [The argument stems from the fact that] in *Shulhan Aruch* (*Orah Hayim*, 345:7) Maran wrote:

> "What is a public domain? Streets that are 16 *amot* wide (or more), that are not enclosed. Some say that if there are not 600,000 people passing through the street every day it is not considered a public domain."

It is also well known that whenever Maran writes two laws and begins one plainly and begins the other with the words "some say" we always rule according to the plain law rather than the one introduced with "some say". Yet, [with regards to our issue,] elsewhere in *Shulhan Aruch* (*Orah Hayim*, 303:18) Maran wrote:

"These days our women are accustomed to going out [to public domains] with jewelry that is prohibited to carry by law, [yet] it is better they do so unintentionally than intentionally3[3]. Still, there are some that put merit in the women's practice based on the opinion that permits wearing jewelry in a courtyard that hadn't been fixed with an *eruv*. And being that **we don't have actual halachic public domains today, all our public domains are halachically considered as a *carmelit4[4]*** thus it is like a courtyard without a fixed *eruv* where ["carrying" jewelry] is permitted."

R. Hayim Yosef David Azoulay (HYDA)5[5] wrote in *Birkei Yosef* (345:2) that based on these two sources Maran holds like the plain halacha brought first, that states that we *do* have a genuine public domain by Torah standards even without 600,000 people walking through it daily. And what Maran wrote in chapter 303 of *Shulhan Aruch* was only to find merit in the women's practice. What's more, is that even in chapter 303 he wrote plainly that it was prohibited for women to do so. The HYDA also wrote this in *Mahazik Beracha* (303:2). See also: *Tosefet Shabbat* (303:36); *Shiyurei Keneset Hagedolah* (345, *Hagahot Bet Yosef*, 3); *Michtam Ledavid* – Pardo (Ch. 2, pg. 4a); *Yismah Lev* – Gagin (*Orah Hayim*, 5); *Kiryat Hannah David* II (*Orah Hayim*, 61) among others that concur with HYDA's opinion.

The Lenient Opinions Outnumber the Stringent Ones

B) Furthermore, the HYDA also wrote in *Birkei Yosef* in the name of Morenu Yaakob Faraji (printed in the latter's responsa Chapter 59) that:

> "One should not include the opinion which requires 600,000 people to establish a public domain because the majority both in number and authority hold that 600,000 isn't necessary to establish a public domain. What's more is that it is the opinion of R. Yishak Alfasi (Ryf) and R. Moshe Ben Maimon (Rambam)."

It is true that the stringent opinions that don't require 600,000 are great and powerful. Among them are:

1) Rambam

2) Ramban

3) Rashba

4) Ritba

5) Ran

6) Magid Mishneh

7) Ribash.

(As I have written in *Yabia Omer*, V, *Orah Hayim*, 24:1). **Nevertheless, those that are lenient are also very great and many.** For the lenient opinion is held by:

1) Ba'al Halachot Gedolot (as cited *in Tosafot Eruvin*, 6a, s.v. *Kesad* – ד"ה כיצד) who writes: "The definition of public domain is a place that 600,000 people walk through every day similar to [Yisrael traveling under their] flags in the desert."

2) Rashi (*Eruvin*, 6a, s.v. *Reshut Harabim* – ד"ה רשות הרבים; ibid, 6b; ibid, 47a; ibid, 59a)

3) Tosafot (*Shabbat*, 6b, 64b; *Eruvin*, 6a)

4) Rosh (*Eruvin*, Ch. 1:8; *Besa*, Ch. 3:2)

5) Sefer Ha'itim (Ch. 92, pg. 113)

6) Teshuvot Hageonim (*Shaa'rei Teshuvah*, 209; *Hemda Genuzah*, 70)

7) Sefer Ha'Eshkol (Albek ed., Laws of *Sisit*, pg. 203)

8) Mahzor Vitri (31 & 41)

9) Rabenu Tam as brought in the *Shibolei Haleket* (106)

10) Rokeah (end of 175)

11) Ra'aban (349)

12) Ra'avya (391, pg. 448) writes:

> "Our cities are [public domains by standards] of the rabbis…as is understood from the ruling of Rabenu Tam that I heard in his name. For he ruled like R' Anani bar Sason that said when an area is roped off, courtyards are permitted and public domains are prohibited. This is what the women relied on to carry their jewelry for these days we have no real public domain according to Torah law (and it therefore is considered like a courtyard which is permitted)."

See also:

13) Or Zarua II (53);

14) Sefer Ha'Itur, (3:1);

15) Rabenu Yishaya Matrani (*Eruvin*, 6a);

16) Ryd (107);

17) Sefer HaTerumah (239);

18) Samag;

19) Samak;

20) Rabenu Shimshon ben Avraham (*Hagahot Maimoniyot*, end of *Hilchot Shabbat*, Ch. 16);

21) Rabenu Simha;

22) Maharam of Rotenburg (Short Responsa, 69);

23) Mordechi (*Perek Hazorek*, 375; *Perek Hadar*, 509);

24) Orhot Hayim (*Shabbat*, 284);

25) Seda Laderech (pg. 96a);

26) Piskei Rikanti (91);

27) Besamim Rosh (359).

Cf. *Bet Yosef* (*Even Ha'ezer*, 42, s.v. *Masati Katuv Beshem Ribbi Hayim Ha'aroch* – ד"ה מצאתי כתוב בשם ר' חיים הארוך). Many ***Aharonim*** also concur that 600,000 people is necessary to establish a public domain in Torah law. Among them are:

28) Maharitas (251)

29) Maharil (138)

30) Teshuvot Hadashot II (40)

31) Aguda

32) Terumat Hadeshen

33) Maharyo (cited in *Turei Zahav* 345:6)

34) Maharashdam (*Orah Hayim,* 4)

as well as others.

[Even] the HYDA disputed the words of R' Yaakob Faraji whom we brought earlier saying that the majority of opinions were in fact on the lenient side rather than the stringent side. The *Magen Avraham* and the *Turei Zahav* also wrote that the majority of opinions hold leniently, and in light of what I've written there are very many with us who hold the opinion of Rashi (and that 600,000 are necessary).

Mishnah Berurah questions whether 600,000 must pass through daily; proof is brought that it is indeed necessary.

C) Still, the *Mishnah Berurah6[6]* (345:24) opposed the fact that Maran wrote some require 600,000 people passing through **every day** saying that:

> "I have searched through all the *Rishonim7[7]* who hold this way and haven't found one that required the people to be passing through **every day**."

Maharsham (Responsa III, 188) was also asked about this point from another rabbi. The rabbi inquired saying that "it didn't seem to him that 600,000 people needed to actually pass through daily, rather, that the street be suitable for this." Maharsham answered this point saying that "the *Bet Ephraim* already dealt with

this question and rejected it by saying that 600,000 people did indeed need to actually pass through daily, and that he (Maharsham) didn't see a definitive reason to disagree with the *Bet Ephraim*." Thus, any city without 600,000 people passing through daily is not a public domain. Yet I wonder how they did not see the words of the Ran (beginning of *perek Bameh Isha*) in the name of the *Ba'al Haterumah*? He wrote:

> "These days, we have no public domain according to Torah, for we don't have 600,000 people passing through **every day**…"

The Ramban also wrote this in the name of the *Ba'al Haterumah*. Also, I already brought the *Ba'al Halachot Gedolot* above who wrote it explicitly, as did the *Me'iri* (*Shabbat*, 57a, pg. 213), *Rabenu Yeroham* (*Netiv* 12, pg. 70c), and *Rabenu Ovadia Mibartenura* (beginning of *Perek Hazorek*). Cf. *Igrot Moshe I* (*Orah Hayim*, 139, *Anaf* 5); *Maharsham III* (188, s.v. *Ume'ata* – ומעתה ד"ה); *Minhat Yishak VIII* (32, s.v. *Vhashe'elah Hasheniyah* – והשאלה הב' ד"ה).

Contradiction in Maran's ruling – R. Yishak Tayeb's interpretation (lenient)

D) One that sees clearly [will note] the words of the brilliant Morenu Harav Yishak Tayeb8[8] in *Erech Hashulhan* (345:2) who wrote:

> "Maran holds that if 600,000 people do not pass through every day it is NOT a public domain -- which is in accordance with the opinion he brought introduced with "some say" -- for he plainly wrote in Chapter 303 that 600,000 is required. What's more, it is evident from his ruling at the beginning of chapter 325 where he writes that it is permitted to send food with a gentile <u>via a public domain</u> to a violent gentile or to a gentile in a situation where not sending it would cause animosity. And in *Bet Yosef* it is explained that the reasoning for this law brought in the *Hagahot Maimoniyot* (*Hilchot Shabbat*, 6) in the name of the *Or Zarua* is <u>that we have no public domain today since there is not 600,000 people walking through it.</u>"

This is not how HYDA understood Maran's opinion. Yet, the *Bet Ephraim* (*Orah Hayim*, 26) also proved that Maran's opinion leaned more towards the lenient side and that there can't be a public domain without 600,000 people walking through it. The *Erech Hashulhan* also added as a rule (based on *Bet David*): that in cases where Maran brings a plain halacha in the way it is worded in the Talmud, and follows with a halacha preceded with "some say", he holds like the "some say". The reason being, that in the plain halacha he didn't specifically include the point written in the second halacha. And the second halacha is brought to define the first. If that is so, then that is the case here as well. For in chapter 345 he only wrote the law as brought in the Talmud and then defined it in the opinion

beginning with "some say". Therefore, he holds halacha is like that opinion. This is how *Ge'noei Yerushalayim* wrote in *Admat Kodesh II* (2) in the wording of the question, as well as *Sedei Ha'ares III* (*Yoreh De'ah*, 10, pg. 29, col. 3) that wrote:

> "We have no real public domain today as Maran wrote in *Shulhan Aruch* 303:18".

And although it is possible to explain Maran's reasoning for the ruling in chapter 325 above differently, as I explained in my book *Livyat Hen* (pg. 114) that it is permitted because one who carries from a private domain to another private domain via a public domain is exempt from bringing a korban (i.e. not prohibited from the Torah but still prohibited by the rabbis) according to Ramban, Rashba & Ritba. The Hazon Ish also ruled this way as halacha (62:19). It is a *Shevut Deshvut9[9]*. However, since Maran already wrote in the *Bet Yosef* that the reason is because we don't have a public domain these days, it is certain that when he ruled that way in *Shulhan Aruch* it was for the same reason. Compare Rabbi Hayim Palachi's words in *Lev Hayim I* (99, s.v. *Ve'aharei* – ד"ה ואחרי) who wrote similarly, as well as Morenu R' Y. Germon as cited in *Avraham Ezkor* (Pg. 63, col. 4). Extrapolate from there and establish it in our case.

Ben Ish Hai is stringent

In Rabbi Yosef Hayim's10[10] *Rav Berachot* (*Shin*, Letter *gimel*) he brings Maran's responsa *Avkat Rochel* (29) where he was asked whether it is permitted for a gentile to bring bread and other needs for a meal via a public domain and rules against it as Rambam did (*Hilchot Shabbat*, 6) who holds there are public domains these days. R' Yosef Hayim then deduced that since Maran wrote differently in *Bet Yosef* and *Shulhan Aruch* (and was lenient), and we are not sure which was written last, we must be stringent in accordance with the opinions of HYDA, *Kenesset Hagedolah*, and *Tosefet Shabbat* who say it is prohibited.

Others are lenient

Yet, Rabbi Shelomo Eliezer Alfandari wrote (*Orah Hayim*, 9) that even though it seems Maran is stringent in *Avkat Rochel,* he doesn't establish the law that way. Rather, he is simply concerning himself with the stringent opinions. Still, we have not alleviated doubt and common tendency is to follow the lenient approach. Also, the author of *Vayomer Moshe* (*Orah Hayim*, 6) wrote that Morenu Harav A. Hajaj and Morenu Harav M. Shamama both fully endorsed the words of the *Erech Shulhan* (that we have no real public domain today) to be followed as practical halacha. He rewrote it in his book *Vaydaber Moshe* (5, s.v. *Ve'od Ki* – ד"ה ועוד כי). The author of *Zera David* (8) also wrote that Maran's opinion leans towards leniency, and it is quoted in *Simhat Cohen VII* (45, pg.

119). Also Maharamaz is quoted in R. Yosef Buchris' *Zichron Yosef* (7, pg. 12) saying:

> "We hold like the *Erech Hashulhan's* opinion in Maran and we are lenient, and that this is the way all the early judges of Tunisia ruled. See also the new *Zivhei Sedek III* (101, pg. 192) who wrote that the great and saintly R. Eliyahu Mani ZT"L testified to the fact that the brilliant *Rishon Lesiyon* R. Yom Tov Elyakim ZT"L answered in a response to a question saying "all the cities of Europe have already accustomed themselves to follow the opinion, that although the streets may be wider than 16 *amot* we still consider them to be *carmelit* and are only prohibited by the rabbis. R. Moshe Pardo also said that this was the custom of the city of Bombay."

The *Zivhei Sedek III* (102) continued to write that:

> "It is a case so simple that without a doubt there is a need for 600,000 people to pass through every day to determine a place to be a public domain. For this is what we learned from the way Yisrael traveled by their flags in the desert! Therefore, the city of Bombay followed the lenient opinion. The *Turei Zahav* (345:6) also wrote that 'The majority of authorities are lenient. It is also commonly known that we have no public domain today -- which follows the opinion of "some say" as brought in chapter 345', thus the custom of the city of Bombay has its foundations from their great sages in accordance with the opinion of the majority."

See also *Shevitat Yom Tov* (*Orah Hayim*, 6) in the response of R' H. Yaakov Danon who wrote:

"In my opinion, Maran's opinion is not clearly established; does he rule like Rambam, or like Rashi who requires 600,000 people? [although] Maran's opinion is left uncertain, there is room to allow [carrying], for many doubts (sefekot) can be included in the issue."

Doubt has not been alleviated

However, in *Rav Pe'alim I* (*Orah Hayim*, 22, s.v. *Teshuvah* – ד"ה תשובה) R. Yosef Hayim writes:

> "It is well known that there are a great many authorities who hold that we have actual public domains today. I also wrote elsewhere that there are many who hold that this is the opinion of Maran, and we have accepted the rulings of Maran. And although there are those that understand Maran as being of the opinion that we don't have public domains today, this is not the main approach, and the people of Bombay should follow our decision in this matter."

(Compare *Rav Pe'alim IV* (*Orah Hayim*, 16). See also *Sho'el Venish'al V* (*Orah Hayim*, 52) who also agreed to the opinion of HYDA brought above -- that Maran's opinion is that we do have public domains today. Compare *Tevu'ot Shemesh I* (65, pg. 161); *Emek*

Yehoshua VI (20); *Mikveh Hamayim* (3); *Shoshanim LeDavid Sabah* (*Orah Hayim*, 61). In the end, we still have not alleviated doubt for there are opinions that go both ways.

Nevertheless, the majority is lenient…

E) Maran ruled in *Shulhan Aruch* (364:2):

"A public domain (by Torah standards) can't be made permissible by an *eruv*. Instead, it requires doors that are locked at night. Some say that even if they aren't actually locked but capable of being locked it is permitted."

The *Mishnah Berurah* (ibid:8) commented on this saying:

"It seems that Maran the Mehaber holds like the first opinion, because he wrote it plainly. It is thus clear from the *Shulhan Aruch* that the only way to establish an *eruv* in a real public domain is with actual doors. Thus, we are forced to say, that the custom in our cities to establish an *eruv* using only door frames (even though the streets are quite wide and it renders them actual public domains by Torah standards) is based on the lenient opinion which requires 600,000 people passing through [to render it a public domain] which is not the case…however, above in chapter 345 in *Bi'ur Halacha* I cited many *Rishonim* that argue on the law [brought by Maran as] 'some say'. Therefore, all those of spirit should be stringent on themselves and refrain from carrying in an *eruv* that was established with door frames alone. Nevertheless, those that are lenient shouldn't be reprimanded for that is what was always done."

Still, according to what I wrote above, that most of the authorities are, in fact, of the lenient opinion and hold if there are not 600,000 people passing through it every day it is NOT a public domain. Therefore, people certainly have what to rely on in order to be lenient with an *eruv* made with door frames.

…and there are other criteria that need to be met to establish a public domain

However, the *Mishna Berurah* wrote in the *Bi'ur Halacha* (364:2, s.v. *Ve'ahar* – ד"ה ואחר) that the reason we rely on an *eruv* of door frames is based on Rambam who ruled according to R. Elazar in the Talmud (*Eruv*in, 20a) that a multitude of people do not nullify [the presence of] walls (that render a domain private). [R. Zalman also ruled this way in his Shulhan Aruch (ibid:4) saying that by Torah standards door frames are considered absolute walls, and it is only by rabbinic standards that actual doors are required]. The Hazon Ish (107:4) agreed as well that we follow R. Elazar and not R. Yohanan, being that the *baraita* there is according to R. Elazar and it is brought there as

law. Rambam ruled this way in *Hilchot Shabbat* (7:37). This is also the opinion of the *Hagahot Maimoniyot* there. Thus, according to Rambam's opinion, it is certain that door frames are sufficient walls by Torah standards and there is only a rabbinic prohibition remaining. In fact, it introduces a double doubt11[11]: a) perhaps the only true public domain by Torah standards is when 600,000 people pass through it daily. And even if we find that to be false, b) perhaps door frames are sufficient by Torah standards to render the domain private. The *Mishnah Berurah* still ended by saying that it is difficult to be lenient here since the majority of authorities [including] Rif, Rosh, and Samag copied the opinion of R. Yohanan (who says if actual doors are not in place and locked [one who carries] would need to bring a sin offering) as law. Yet, if this is the reasoning of the *Mishnah Berurah*, it is not definitive, for the *Zivhei Sedek* (101:158) wrote that a double doubt can be established even by using a minority opinion against the majority even when the majority opinion has already been set as law. Rather, it must be that the *Mishnah Berurah* refused to use a double doubt because he felt that both sides of the doubt (a&b above) were minority opinions, and that even those who hold that 600,000 is necessary are against a majority who hold it is not necessary and a public domain can be established without that. But according to what I explained earlier, that is not the case! For in truth the majority is in fact those who hold 600,000 are necessary. And that being the case, a double doubt can surely be implemented. See also *Simha Le'Ish* (*Orah Hayim*, 3) concerning an event that occurred in the year 5641, when R. Akivah Yosef Shulzinger (author of *Lev Ha'Ivri*) wanted to make an *eruv* in Jerusalem to enable moving things from public to private domains and vice versa. He did it by erecting door frames. R. Yishak of Prague opposed it based on the fact that the Sepharadim who accepted the rulings of Maran were forbidden to carry just as before. This was because the conclusion of the Talmud (*Eruv*in, 6a) was that public domains could only be permitted by actual doors, and that is just how Maran ruled. He also ruled plainly that we have public domains these days, as HYDA explained. Thus, who would be so bold and carry against the ruling of Maran under a Torah prohibition? The brilliant *Rishon Lesiyon* Yisa Beracha responded to this opposition saying:

> "Although it is true that we have accepted Maran's rulings, in this case we have found his opinion to be under dispute. Therefore, he who condemns those that are lenient must be great, for many *Aharonim* (among them *Erech Hashulhan*) hold that Maran's opinion is actually to be lenient. So, leave Yisrael – it is better for them to do it unintentionally and unaware than intentionally for the *eruv* was already made and it is considered done."

The *Rishon Lesiyon* again wrote in his book *Simha Le'Ish* (end of ch. 6) that:

> "Nowadays, the permit to make an *eruv* of door frames is everywhere. For it is commonly said that 'we have no public domains today' and if we tell them it is prohibited to carry they won't listen to us, and it is a misvah not to say what will not be listened to. I furthermore, will not keep from saying that it is by this leniency that I openly carry things out of the walls of the old city."

It is also difficult that R. Ovadia Hadaya wrote in his book *Yaskil Avdi VIII* (*Orah Hayim*, 17:17) that "I do not know where Maran said our *eruv* does not work. Go see what the nation does! Everyone in *Eres Yisrael* makes *eruv* and we have never heard a protesting voice." For how is it that he did not know Maran plainly wrote that 600,000 is not necessary to establish a public domain, and that the only way to allow carrying in a public domain is with actual doors. It is only our custom to rely on door frames. Nevertheless, the custom of the entire world is to be lenient with an *eruv* of door frames based on the "some say" opinion brought in *Shulhan Aruch* that states that 600,000 people are necessary to establish a public domain. In which case a door frame *eruv* is permitted as explained by the *Mishnah Berurah* above. See also *Yaskil Avdi I* (*Orah Hayim*, 11) that expounds greatly on the issue of public domain these days, as well as *Yaskil Avdi V* (*Yoreh De'ah* 27:4 end of pg. 104).

Intersections render cities to be non-public domains

(leniency of Hazon Ish)

F) However, the brilliant giant of the generation, Hazon Ish12[12] (107:5 and on) cited the [stringent] words of the *Mishna Berurah's Bi'ur Halacha* mentioned above and commented on it saying:

> "These days, all the streets and marketplaces in the larger cities are considered private domains, for they are all surrounded with three walls rendering them so. Therefore, the permit to make an *eruv* by door frames for our cities is extensive and clear."

This is also explained in the responsa of the brilliant R' A.Z. Margaliyot in *Mishkenot Yaakov MiKerlin* (119):

> "Being that our streets are perpendicular to one another even though one may extend from one end of the city to the next, since they intersect and form grids, they are considered private domains by Torah standards."

This is based on the opinion of the Ritba brought in his *hidushim* (*Shabbat*, 6a) in the name of Rashi (*Eruv*in, 6a, s.v. *Reshut Harabim* – ד"ה רשות הרבים) that a public domain is only when the streets are straight from one end of the city to the other, for that is similar to Yisrael's travels under their flags in the desert. Ritba commented on this saying that: "This is also how it is defined in the Talmud Yerushalmi only that not all the commentators agreed with it." This is also brought in the Ritba's *hidushim* on *Eruv*in, 6a (pg. 48) in the name of Rashi. See also the printer's footnote ibid. Compare the Ra'abya (391, pg. 447) who wrote:

> "We hold like the commentary of Rashi who said that public domains can only be with streets that are wider than 16 *amot* and stretch in a straight line from one end of the city to the other – this is not found in the entire kingdom. Also, there can be no hills or valleys. This was also the opinion of my father and teacher Rabbi Yoel."

(Also see ibid, pg. 443). R' Menashe Klein שליט"א13[13] also brought the words of the Hazon Ish mentioned above in his book *Mishneh Halachot VIII* (61) that these days we don't have streets that stretch straight from one end to the other, for they are intersected with other streets that go opposite directions and this renders them as if enclosed by walls. They therefore are NOT considered public domains. He continued to write that the words of the Hazon Ish are like medicine to the eyes, and it is wonderful he wrote this for based on the words of the Hazon Ish our permit to make an *eruv* is clear and extensive in its application to our cities. Also, R' Y. Shteif (68) wrote:

> "I have found that the Or Zarua wrote in hilchot *Eruv*in (129) that door frames work even to enclose a public domain of Torah standards, providing that there are rows of houses (or the like) on two sides. If that is so, than it is certainly permitted in our cities for our streets are surrounded by houses on all sides. The Rashba also wrote that according to Rambam door frames work for public domains of Torah standards in this manner. So wrote R' Zalman in his *Shulhan Aruch* (364:4) that

> door frames work to enclose public domains by Torah standards, and it is only a stringency of the rabbis to prohibit it. It thus seems that this is what is relied upon everywhere there is an *eruv* erected using door frames. For we hold that there is no real public domain by Torah standards today, and although the *Mishnah Berurah* in *Bi'ur Halcha* wrote that those who rely on the authorities that say there is no public domain today is not sturdy because they are the minority, still, according to what I've written there is a huge basis to erect an *eruv* made of door frames."

This is certainly so according to the fact that the majority opinion is held by those who are lenient. And with the allowance to use houses as walls on two sides there is definitely a major basis to make an *eruv* of door frames. My good friend the brilliant R' Yisrael Yaakov Fisher also wrote this in *Even Yisrael VIII* (36) that according to the Hazon Ish we have an extensive permit to establish an *eruv* with door frames WITHOUT ANY CONCERN. This was also written in *Or Lesiyon I* (*Orah Hayim*, 30) based on the Hazon Ish mentioned above. R' Michel Epstein also wrote something similar in *Aruch Hashulhan* (345: 20). Cf. *Divrei Malchiel IV* (end of ch. 3); *Shemirat Shabbat Kehilchata* (17, footnote 21).

One who sees clearly [will note] the responsa of the Rosh (Principle 68) who wrote to a scholar named R' Yaakov son of Moshe DeValencia who prohibited carrying in an *eruv* made by door frames after all of Yisrael have already been accustomed to allow carrying by erecting door frames. The Rosh wrote to him as follows:

> "I have already informed you that none of your proofs contain criteria for any substantial prohibitions. I have also warned you to retract your prohibition! But I have been told that you still stand in your rebellion causing multitudes of people to violate the prohibition of carrying on Shabbat. Therefore I command you to establish an *eruv* within two weeks for if you refrain from doing so as I have ruled, I will excommunicate you because you are disputing [the ruling of] all the giants of Yisrael that lived until today."14[14]

You can clearly see how much trouble that great sadik went through to establish eruv so that the people wouldn't come to sin. *Uchdavar ish haElokim retet*. When I visited America I saw to my distress women coming in multitudes to the Synagogue with pocketbooks on their shoulders as if the prohibition of carrying on Shabbat didn't even exist. Therefore, I instructed the rabbis who heed my rulings to make an *eruv* in New Jersey and not follow the opinion of those who want to be stringent on this issue. The

reasoning of the stringent opinion was that the cars in the street numbered more than 600,000 every day, and according to all opinions that renders a domain public. I told him that in my opinion the 600,000 had to be on foot and not in cars. For cars are a private domain in and of themselves – we certainly didn't have anything like them while traveling through the desert! Therefore, they do not count as part of the 600,000. *Yeshuot Malko* (27) wrote similarly with regards to trains saying that even though they carry many people they do not render a domain public because the cars are totally enclosed making them private domains themselves. This is precisely the case with cars. Maharsham also wrote in the name of *Bet Ephraim* that the 600,000 need to be on foot similar to the travels of Yisrael through the desert. I also have seen R' Menashe Klein's book *Mishneh Halcahot VII* (60, pg. 47d, s.v. Vehineh – ד"ה והנה) who wrote:

"Even though R' Moshe Feinstein15[15] wrote in *Igrot Moshe* that it didn't make sense to be lenient due to the fact that a car is a private domain – his reasoning is not definitive, and for us it does make sense. For we require a public domain that people can walk through, and no one can walk in these streets because they are designated for cars. Therefore, there is no public domain here at all."

That is what I see as true. That is also why I instructed an *eruv* to be built using door frames to save those that blatantly transgress the prohibition of carrying on Shabbat. And as an extra -- **but not legally necessary** – measure, I instructed them to announce that all the people who are *benei Torah* and didn't normally carry before should continue their custom of not carrying, and that the *eruv* was only made for those who were transgressing the prohibition. **What's more is that those who are stringent not to make an *eruv* are actually being exceedingly lenient, for they allow the desecration of Shabbat to continue by people carrying in a public domain**. The [sages] have already said in *Besa* (16b) about a rabbi who prohibited the making of an *eruv haserot* on *yom tov* that falls on Friday, that his ruling began badly, for the damaging of many people is surely considered bad. This must also be the reasoning of the Rosh for writing so harshly against the stringent one. See also *Hatam Sofer* (99). I also ruled to make an *eruv* in the city of Los Angeles. By my advice they brought in an important rabbi who was a member of the religious council in Jerusalem to make the *eruv* according to law. I have recently seen that my dear friend R' Shalom Mashash (Z"L) in *Shemesh Umagen III* (*Orah Hayim*, 84) agreed with me in law and practice on this issue saying that my words were clear and proper and needed no strengthening at all.

IN CONCLUSION, those that carry on Shabbat in a public domain by an *eruv* made with door frames, have basis to do so, and according to many authorities it is allowed even according to Maran. The sages of Jerusalem also wrote that we have no true public domain today and an *eruv* of doorways therefore is sufficient to carry in these days. Nevertheless he who trembles at the word of G-d and completely refrains from carrying will be blessed. Such a person may still, however, give keys or a *siddur* and the like to

someone who does carry to carry it for him, even if the person that carries is over the age of *misvot* (*bar* or *bat misvah*). *Vehanah lahem leYisrael, im enam nevi'im benei nevi'im hem.*

IT IS IMPORTANT TO NOTE THAT IN THIS TESHUVAH HACHAM OVADIA יחשל"א HAS PERMITTED AN ERUV MADE BY *SURAT HAPETAH* (DOOR FRAMES) RATHER THAN ONE MADE WITH ACTUAL DOORS (OR WALLS). AN ERUV OF *SURAT HAPETAH* IS A LOWER GRADE ERUV THAN ONE MADE OF WALLS. FOR WALLS ENCLOSE EVEN A PUBLIC DOMAIN BY TORAH STANDARDS AND RENDER IT PRIVATE. THE ERUV IN BROOKLYN IS MADE OF WALLS. THEREFORE, BASED ON THIS TESHUVAH, IT IS CERTAINLY PERMITTED ABSOLUTELY. FOR ALL THE DOUBTS BROUGHT IN THE TESHUVAH ABOVE WERE ONLY TAKING INTO CONSIDERATION THAT THERE MAY BE AN ACTUAL PUBLIC DOMAIN BY TORAH STANDARDS (WHICH CAN'T BE FIXED WITH DOOR FRAMES I.E.POLES AND STRINGS). WHEN USING ACTUAL WALLS EVEN PUBLIC DOMAINS BY TORAH STANDARDS CAN BE ENCLOSED HALACHICALLY.