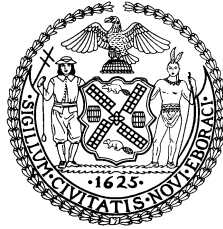


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**The City of New York
Manhattan Community Board 8**

Vendor Task Force Minutes
Lenox Hill Hospital, 130 East 77th Street, Einhorn Auditorium
July 23, 2013

Present: Michele Birnbaum, Teri Slater, Matt Bondy, Cory Evans, Rita Popper, Monica McKane-Sanchez

Absent: Debbie Teitelbaum, Nick Viest, Barbara Rudder, Peggy Price, Marco Tamayo, Elizabeth Ashby

The meeting began at 6:30 P. M.

The **first item** on the agenda was **STREET VENDING AND ITS EFFECTS ON BRICKS AND MORTAR BUSINESSES**, a joint item with the Small Business Committee, Cory Evans, Chair.

Michele Birnbaum gave a brief history of how the Vendor Committee functions and gave an overview of the subjects covered over the past year during which the committee dealt with different kinds of vending and they effect they have on the community. The committee deals with community concerns and tries to formulate solutions and incorporate them into legislation already called for by Community Board Resolutions.

The Committee heard from Morton Sloane, owner of Morton Williams supermarkets. He reported that his stores have problems with sanitation and other violations that a fruit vendor standing in front of one of his stores creates for his business. He reports that the vendors violate the 20 foot rule and are too close to his entrance, locate themselves in front of hydrants, have oversized tables and displays and create illegal sanitary conditions for which he is responsible. They also use cardboard boxes to extend their displays. He says he pays \$700,000 year in rent and costly real estate taxes. He states that the vendors are sometimes new business men, but many are operated by cartels. He reported that their scales are not monitored. He showed pictures of the fruit stand in front of his store on 23rd Street and 2nd Avenue and showed the violations.

He complained that they park their inventory trucks in the same place all day long and get no parking tickets. The Food Emporium has the same complaint. He believes that the original concept of having fruit stands was to bring produce to those areas that are underserved by supermarkets, but if you go to those areas, you do not necessarily find these carts. They tend to set up in front of supermarkets or foods stores, where they have built in traffic of customers going in and out who want to buy fruit and vegetables. They are also in front of subways and other high foot traffic areas. He has found no response from the Department of Consumer Affairs, the police department, and other city agencies when he has asked for help. He noted that most vendors are employees of others and that they are poorly paid.

Commissioner Greg Bishop from the Mayor's office of Small Business Services joined our meeting.

Jordon Wouk asked what the financial impact vendors have on Mr. Morton's business. Mr. Morton responded said that his internal accounting evaluations leads him to state that that these fruit stands take about 20% to 30% of his business.

Mr. Silverglad, a resident of the neighborhood, addressed the fact that one group controls about 30 locations, and how could that be?

Commissioner Bishop made responsive remarks. He reported that his department helps businesses open and realize their growth potential. His office helps them navigate through the system and understand the process. He reported that his department will intervene with regard to vendor activity on behalf of a business if they find that the vendor is illegal or non-compliant. If a vendor is acting lawfully, Small Business Services will not intervene. As there is currently no law forbidding a vendor from selling like merchandise in front of a bricks and mortar store, if that vendor is otherwise operating legally, SBS cannot intervene.

The Department of Small Business Services enforces restricted streets where vendor are not permitted, the 20 foot rule and other non-compliant situations. He has intervened between a vendor and a business to try to work out issues. He gave Mr. Sloane his card so that they could speak after the meeting and try to deal with Mr. Sloane's concerns. He read his contact information out loud for everyone to hear.

The Commissioner reported that he thought that there was some possibility in the law that could inhibit a store selling like merchandise from being in front of a store, but Michele Birnbaum reported on the effect of the 1943 Good Humor Law which labeled that restriction illegal, as being a form of restraint of trade. She encouraged the retail food businesses to examine that law which is very old and could possibly be challenged.

Commissioner Bishop has a member of his team who works with the Department of Consumer Affairs and the Department of Health, and he said his team works with the bricks and mortar business. Michele B. asked how the Commissioner deals with licensed vendors who are not compliant. How does SBS deal with these kinds of violations? They address these issues in conversation.

Sung Soo Kim of the Korean Grocers Association was the next to speak and said that vendors were one of the major concerns that the Association has. There is no solution that seems to satisfy the community, the stores and the vendors. He referred to the Green Cart program which was to put 1500 green carts selling fruit and vegetables in communities that are underserved by supermarkets. This program was not successful. The total of 1500 carts did not hit the streets, and those that did, did not necessarily serve the neighborhoods intended.

Mr. Kim said that the vendor issue should not be a political issue, but be dealt with rationally. He spoke at length suggesting solutions. Michele B. informed Mr. Kim that this Community Board has passed resolutions that support Mr. Kim's suggestions and will continue to work hard to get them in to law.

Mr. Kim made the point that if a property owner is responsible for his property up to 18 inches in to the gutter, than that property owner should have a right to determine whether or not he wants a vendor in front of his entrance or on the sidewalk for which he is responsible.

Michele told the public that when an Intro is schedule for a hearing, it is very important that the community and businesses come down to testify and make their concerns known. All too often, many more vendors and vendor interest groups show up to testify than members of the community, and that tilts the Council's view of the community's concerns.

Lo van der Valk, of Carnegie Hill Neighbors asked Commissioner Bishop how many people serve the businesses. The answer was 6.

Cory Evans asked Mr. Sloane about his stores which are either unionized or have the workers represented in some way. He noted that this is not the case with the vendors who are not represented and protected. Michele Birnbaum made the point that many of the vendors on the street are exploited, in that they do not necessarily make a fair wage, have poor working conditions, have no access to facilities and because they work so hard and spend many hours at their stands, they could be elevated to a level of professionalism, if they were more regulated and compliant. They don't have to be unionized, but they can be given more consideration by their employers and vendor groups.

Michele noted that one leader of a vendor group, who had been attending our meetings regularly and who she put on the agenda to speak, then refused to attend when he found out that a representative from another vendor group was also going to be given an opportunity to speak. Michele noted that there is dissention within the vendor community with some groups taking compliance and community concerns more seriously than others. This group, the Street Vendor Project formed a 501 (c) (4) organization and is seeking to become a political force by endorsing sympathetic candidates for City Council. They are supposed to be primarily a charitable organization, but Michele stated that she has no information as to how they balance their political and charitable interests. The forming of such an organization goes to the fact that they are a well-financed group. To their credit, they have a point of view and an interest and are organized and forceful in their effort to advocate for themselves. The people of the community have to be as strong and organized so as to get their positions heard.

Chris Stephens referred to the Vendor Review Panel and noted that since the Community Board hears issues of outdoor cafes and liquor licenses, these issues are street activity much like vendors, and perhaps the Community Board should hear issues of vending, as well and whether or not private vending should occupy a private space. Chris Stephens reported that those neighborhoods who want vendors could vote that they have a place, and those neighborhoods that don't want them could limit their activities and locations. Michele informed the group that this was a concept that had been discussed.

Rita Popper, a Committee member, noted that while someone may want a vendor in a space, which does not mean that, they want them there all day long. She reported that she watched the stand of a vendor who had to leave his post to go to the bathroom. While she was watching him, she noted that he changed his prices during the course of the day to match the pedestrian traffic flow. We are not necessarily helping the vendors get a better life by letting them proliferate and be non-compliant.

A member of the community suggested that the police routinely ticket vendors that are not obeying the laws that govern them. Michele explained the Committee's and the Board's desire to have a designated enforcement squad who would be fully conversant in vendor law and have the numbers of agents that could be deployed to make a difference. The police, while they ticket and do what they can, do not have the man-power to really impact the situation. The northern part of Manhattan does not have a Peddler squad as does Midtown South.

Michele asked the Commissioner if his office in any way deals with the commissaries, privately owned businesses that service the peddlers. These mainly service food and truck vendors and are supposed to store the carts, clean them, and service them in many ways. They are monitored by the Department of Health, but as small businesses, they routinely go out of business leaving a shortage of vendor accommodations. Because inventory trucks service the fruit stands and re-stock them, they can stay on the street for 24 hours, and so they are not cleaned in accordance with the law requiring them to be cleaned once a day. Does SBS monitor these commissaries? Commissioner Bishop says they do not monitor their compliance, but would only help them with their small business concerns.

Rona Reese, a vendor said she watched police and Department of Health ticket a fruit vendor on 87th and Lexington. She sells jewelry on the south side of the street.

Matt Bondy, a member of our committee, suggested that the veteran vendors should be more organized to be a strong political force so as to help them with their business. Armand, a veteran vendor, explained that veterans get special licenses, but the veteran vendors tend to compete with each other. Michele reminded Armand that one of the suggestions that the committee would like to see implemented is a sign on standardized street furniture that would distinguish a veteran vendor, as we believe that this would encourage the public to patronize them with preference.

Rita Popper reported that there are particularly egregious 24 hour operations on E 68th Street between Third and Lexington.

Matt Bondy suggested that we re-visit stoop line stands that belong to the store and have the stores vend in front of their property. Michele informed him that the bulk of the year has been spent on getting vending off the streets, and that his suggestion would defeat that whole purpose. Perhaps assigned vending spaces or vending zones would be a better solution. This would apply to truck vending, as well. What the community seems to want is to bring selling indoors and decrease street vending activity in general and to keep it out of residential areas.

The head of the Bodega Association, Raymond Murphy, told of his experiences with vendors and how hard he works, mostly 18 hours a day opening his store at 6:00 am and working late in to the day and how he pays rent, taxes, insurance his business is undermined by street vendors.

Michele reported that when the green carts were proposed for under serviced areas, she suggested that fruits and vegetables be permitted for sale in the bodegas that are already in those neighborhoods. Also, she raised the question that selling cigarettes is a big part of the bodega business, and now there are vendors outside the bodegas selling illegal, untaxed cigarettes.

One resident reported that her business would be shut down if she were caught not paying sales tax. She suggested that only one law need be passed to solve the vendor situation and that would be that the vendor on the street has to abide by every law that a bricks and mortar business must abide by. Enforcement of this law and all existing law would solve much of the problem. The SBS does no enforcement, but only offers help to the businesses.

Rona Reese, a jewelry vendor shared her view in favor of vending. She is located on 87th @ Lexington. She does not believe she is not an eyesore, and she believes that people like having her there. She thinks that the crowds, the grit and the grime is what makes New York, New York. She says she pays taxes, but not the same as a store has to pay. Michele asked her how she felt about having standardized street furniture. She said that she didn't want that, because she wanted to be unique. In response to Cory's question, Ms. Reese informed the group that she works from 12 to 6 each day.

Stephanie Herman, an attorney, said that she knows that there are laws on the books, and the police should enforce those and give tickets every time there is an infraction.

A discussion ensued about whether or not a restricted street would become open if a veteran vendor or a free speech vendor took a spot on that street. Michele said, she would re-check the law. Armand said that if there were two veteran vendors on a block that would not necessarily be a threat to the bricks and mortar businesses. Teri stated that when there is a truck on the sidewalk in front of a store, which is unfair competition for that store.

Michele wholeheartedly thanked Commissioner Bishop for coming, as he needed to leave at this point in the meeting. He requested a copy of the vendor mapping study conducted by this committee with the help of an intern. Michele said she would e-mail it.

Item 2 on the agenda was a **SUMMARY DISCUSSION OF PAST MEETINGS AND PROPOSED REMEDIES TO ADVERSE CONDITIONS RESULTING FROM VENDOR ACTIVITY.**

The **attached list** is a compilation of suggested remedies culled from the minutes of the meetings over the past year. Bob Qu, the legislative aide of Council Member Dan Garodnick was given a copy of these **SUGGESTIONS**. We recognized that not all of these are doable, some are contradictory, but all are worthy of consideration and discussion. We recognized that with all legislation, the devil is in the details.

Teri Slater suggested that vendor carts should not be on the sidewalk but on the street at the curb. She feels that public sidewalks have been co-opted as the carts and their customers block the pedestrian way making it no longer public space.

Because there are many suggestions and not all can be turned in to legislation, Michele suggested a couple of things to Bob Qu that he can take back to Council Member Garodnick and encourage him to start writing legislation for implementation. These would be items already requested in a Community Board resolution.

We asked that the Councilman start to work on legislation for “a separate, self-funding Vendor Enforcement Squad” and the implementation of “standardized street furniture for vendors”. For general merchandise vendors, it would mean standardized tables, table covers, chairs and signage, and for fruit and food carts, it would be regulated shapes, sizes and format.

Further discussion ensued about restricted streets and other bans on vending in residential neighborhoods, and while past discussions and investigation in to whether or not this could be handled, not only by changing the Administrative Code, but by changing the Zoning Resolution, that prospect seemed remote. However, Michele inquired of Brian Cook, of the Borough President’s, who suggested that because the Zoning Resolution deals with newsstands and cafes, that a case could be made that the it could address vending, a street activity, as well.

Both the Vendor Committee and the Zoning Committee heard complaints from many residents who expressed dismay to have to walk out the front doors of their buildings or walk on streets that are all residential and have vending at their front doors.

Chris Stephens noted that if the Mayor wanted to change things, he could do this in a moment. He proposed separating the list in to items that could be changed by fiat and those that had to be changed by legislation. Michele believes they all have to be changed by legislation, but Bob Qu will take the list back to Council Member Garodnick, and they will decide. Mr. Stephens proposed letter grades for food carts, which he thought might be changed within an agency, but that has already been proposed.

The reason for suggesting the uniform street furniture legislation is because it makes a non-compliant or illegal vendor eminently identifiable both to law enforcement and to the consumer, who we believe would prefer to shop at a legal vendor, thus causing the illegal to lose business and the make non-compliant more vulnerable to ticketing by police officers who do not necessarily know all the vendor rules.

Rita Popper suggested that our resolution on electronic ticketing be instituted for easier enforcement. Bob Qu reported that the new ticketing process that the Councilman is proposing which will tie the

permit to the license and provide feedback to the police about the results of the ticketing, might also have an electronic component.

Teri Slater asked Bob Qu what the status is on the new truck vendor legislation, which he informed us is still being tweaked.

Teri Slater suggested that the enforcement issue has to go hand in hand with other legislation.

Michele reviewed the vendor legislation that was passed this year.

Michele also re-iterated that the private business community uses their resources to challenge the 1943 Good Humor law.

Michele suggested that, because other Community Boards reached out to us and want to work with us on vendor issues that perhaps our next step would be to invite other Boards' representatives to come to one of our Vendor Committee meetings and encourage them to support our resolutions.

Michele reaffirmed that the inventory trucks escape the scrutiny of the police.

William Marquedt stated that the trucks get many tickets, but they do not pay them, and The Department of Finance should be called upon to enforce collection. Mr. Marquedt did a lot of research on this and contacted the Department of Finance to file his complaint. Michele showed an article in the Daily News which reported on 7 million dollars in fines going unpaid for Board of Health violations. Michele asked Bob Qu to ask Council Member Garodnick to look in to this.

Vendors pay a very low cost for licenses - \$60 per year for their license and \$200 every 2 years for a tax I. D. #. A store cannot complete, and in fact, the City Council did not raise the fees, and they lowered the fines.

Armand Cresendzi, a veteran vendor representing other veteran vendors, explained that 105 veteran vendors are allowed in the mid-town core; he wants the numbers increased. But Michele says that without a pedestrian flow study, she couldn't support or not support such a change. It appears that the mid-town corridor is over-crowded with vendors now. Armand wants to see vendors in bus stops and taxi stands – not a popular position. He says that bike racks also interfere with vending.

The members of the public voiced their opinions repeatedly against any interruption of bus stops and taxi stands and any increase in sidewalk obstruction. They want a significant decrease in street vending. Armand had been supportive in the past of a separate vendor enforcement team, but also suggests that education is important and not just fines. But, Michele said that fines and revenue control activity and force activity to be what the government and the community want. It shapes the issue. Why are people not parking illegally? Because they get tickets.

Michele says we're all trying to live together but that we do have some competing interests, and all have to be addressed.

Michele thanked Bob Qu for being at the meeting and thanked all those for remaining until the end and for their valuable input.

The meeting was adjourned at approximately 9:30.

Respectfully submitted,

Michele Birnbaum, Chair

Agenda item 2: Summary discussion of past meetings and proposed remedies of adverse street conditions resulting from vendor activity.

These are the suggestions that I culled from the minutes of the past year.

1. Limit the number of vendors per unrestricted street or zone.
2. Assign locations.
3. Vendors should notify the public and their supervising agency where they have chosen to vend.
4. Neighborhoods and Community Boards should decide if they want a given vendor.
5. Getting a location via a RFE through the Mayor's contract office.
6. Use the sidewalk café process to evaluate locations based on community access and need.
7. Create a moratorium on any new licenses.
8. More restricted streets and locations, i.e. residential areas, transportation hubs.
9. If you're not allowed to have a café on a street, then a vendor should not be permitted to vend there.
10. Create a license that cannot be copied or be fraudulent, i.e. credit cards
11. Dedicated vendor enforcement squad.
12. Create an uptown peddler squad.
13. Standardized street furniture- makes illegal vendors recognizable to both law enforcement and the consumer.
14. Licenses should be prominently displayed and readable and unobstructed.
15. It should be obvious to a consumer if the seller is a veteran.
16. Vendors should have the same regulations as bricks and mortar businesses.
17. Restrict the number of carts per owner so that they don't operate as a chain store.
18. The Mayor should create an enforcement plan that originates from his office.
19. Permits should be priced differently for different locations or a bidding process, i.e. park vendors.
20. No hiring of others with vending licenses so that a cart can be on the street for 24 hours.
21. License fees should be high enough so that they become an investment for the owner, and high cost would inhibit resale and black market activity.
The revenue could be used for enforcement.
22. Truck vendors should have to follow the same laws required by the "Clean Air Act" – no running generators or engine idling.
23. Letter rating system for trucks.
24. Food truck zones.
25. Inventory trucks not permitted, so that a vendor leaves when his merchandise is sold out.
26. Vendors should be required to clean up and have sanitations pick-up or be signed in for garbage return by the Commissaries.
27. Vendors have to pass a handbook compliance test before getting their licenses.
28. Board office should have a complaint tracking system, i.e. Comstat.
29. First Amendment Vendors can be made to comply with regulation and design standards.
30. Community standards, i.e. drug paraphernalia sold on our streets.
31. Truck and cart signage should abide by zoning regulations on signage.
32. Vendor Review Panel – would want to hear the make-up and who appoints them, how many, locating of hearings, etc.
33. Vending carts should be in the street not on the sidewalk.

34. Commissaries:

- Each food vendor must have a Commissary. Commissaries are privately owned, so they may go out of business leaving a shortage.
- Commissaries should monitor in and out times of vendors
- Commissaries should collect vendor garbage at the end of the day and report a vendor who does not bring in his garbage.
- Vendors and Commissaries should be insured
- Commissaries must clean carts, but some are on the street 24 hours.

Laws and Procedures for Trucks providing services or selling services:

Both the Department of Consumer Affairs and Street Activity Permit Office (SAPO) do not monitor these activities, i.e. phone storage, prayer activities, respites, advertising, etc. There are no ticket codes for these and other violations.

Existing Legislations and Proposed legislation that has dealt with some of our concerns:

- 20 foot rule
- Taxi stand rule
- No vending in front of hospitals and health facilities
- Dedicated truck vending spots – being tweaked.
- Form of the ticket – room for both permit and license numbers.
- Feedback on summons rulings for police
- Fine reduction
- A bill called for semi-annual reports to be given to the Council, the DOH and the DOC on the number of licenses that were given and revoked. This bill proposed linking the license violations to the permit and called for the permit not to be renewed if there are violations on the license.
- Garodnick is considering legislation that would require all city tribunals to report back to agencies on violations.

Proposed Law Changes:

- No Vending in Residential areas; might be able to go back to the Zoning Resolution using the sidewalk café and newsstand zoning regulations as precedent for dealing with street activity.
- Revoke the Good Humor Law. A 1970's law said that the city could rule on the pedestrian way, and the court upheld a store-owners right to ask a vendor to move.
- Change the law where other vendors can vend on restricted streets if a veteran vendor is on that street. Veteran Vendors can currently vend on restricted streets.
- Make sure that the state and city computer systems have the same codes and that all codes match the statutes.
- No food vending on top of subway grates.
- Pedestrian flow studies should be done to add to restricted streets.
- Warm weather restrictions for food vendors preventing contamination.
- Vendor must identify a respite station nears his cart for his needs.
- Space between vendors on a given street
- Refer to CB8 Resolutions on vendors.

Follow-up:

- Invite Chairs of other Boards to our Vendor Meeting.
- A Forum with other Community Boards, Block Associations and Bids
- Get community organizations to organize amongst themselves and pledge to monitor vending and send reps to testify at hearings.

Michele Birnbaum, Chair
Vendor Task Force Committee
CB8