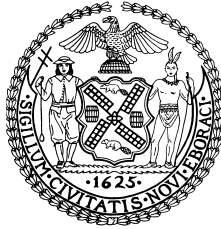


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The City of New York Manhattan Community Board 8

VENDOR TASK FORCE COMMITTEE MEETING FEBRUARY 26, 2013 MINUTES

Present: Michele Birnbaum, Elizabeth Ashby, Rita Popper, Teri Slater, Elaine Walsh.

Absent: Nick Viest, Matt Bondy, Barbara Rudder, Peggy Price, Debbie Teitelbaum

The first item on the agenda was a DISCUSSION OF THE CITY PLANNING ZONING RESOLUTION AND VENDING, which was a joint issue with the Zoning Committee. Elaine Walsh and Teri Slater were present as the co-chairs of that Committee. We noted that the Zoning Resolution does not specifically mention vending.

Michele Birnbaum explains the reason this item was put on the agenda was because of the logic some see in having the Zoning Resolution make mention of vendors and vending.

Teri Slater told the attendees that Community Board 2 asked the Mayor and the City to re-convene the Vendor Review Panel, for the record.

Teri Slater comments that people assume that because streets are in a residential district that commercial uses on the sidewalk are not permitted. However, that doesn't apply. The term "zoning lot" is used in the Zoning Resolution, and that refers to the "footprint" of the building and to those uses that occur within the bricks and mortar of that building. However, buildings are required to keep the streets clean up to 18 inches into the gutter and are required to maintain their curb-cuts in good condition. So, there is ambiguity in the Zoning Resolution, which we would like to explore. The Zoning Resolution had been tweaked in other situations where clarification or refinement was necessary, and there is precedent that when there are conflicting regulations, the higher standard should apply. The Zoning Resolution is the blueprint for the city. It defines neighborhoods throughout the city. Teri recommends that we should send a letter to Consumer Affairs asking them to explore these conflicting sets of regulations.

She further suggests that just as a vendor is given a list of streets restricted to vendors, a vendor should be given a list of zones restricted to vendors, i.e. residential districts where no commercial activity is allowed, and advise them not to locate in these districts.

The consensus of our committee is that we should encourage a change in the Zoning Resolution to reflect our concerns about this issue. Elaine Walsh notes that we have restrictive streets that cannot have a small cafe. If that's not permitted on a street, then why should a vendor be permitted in that space? The property owner is liable for someone tripping or falling on his property, whereas the vendor does not carry any liability insurance but should be held responsible for someone who might fall while purchasing from him, or who might trip on his table, chairs or wares.

Michele explains the use of vendor commissaries and how they service vendors and whether or not they carry insurance, which will all be addressed at our next meeting. Michele adds that the buildings' zoning classification doesn't go out to the street, but their liability and their responsibility goes out to the street, and we should try to address this. If a banana peel falls out of a fruit stand and somebody falls, the building is responsible. Chris Stephens, a member of the public and a regular attendee at our meetings, supports this effort.

Elizabeth Ashby enforces the idea that if there is a conflict not only between items in the Zoning Resolution, but if there is a conflict between regulations that cross agencies, the more restrictive shall apply.

Michele asks Teresa Boemio, from Councilmember Dan Garodnick's office, what would be the process for changing the Zoning Resolution? She will follow up to get the answer to that question.

Teri suggests that there is room for interpretation of the Zoning Resolution with respect to commercially zoned areas as well, i.e. if the Zoning Resolution, as it is currently written, refers only to the building, then why would commercial activity be permitted outside of a commercial building on its street? But, it makes sense that we would begin our effort for a change in the Zoning Resolution with the residential areas.

Lenore Passavanti suggests that people who reside in residential areas have an expectation for their streets and do not expect food carts or vendors to be in front of their buildings. They have an expectation of a residential thoroughfare, and vending, a commercial activity, changes the character of the neighborhood.

Toni Morenzii of Assembly Member Kellner's office, explains that if a commercial establishment is only permitted to use the property that is approximately 3 feet out from his building line in front of his store for merchandise or an A-frame sign, why should a vendor be permitted at the curb?

Elizabeth says the zoning regulations end in the middle of the street, i.e. 100 feet from a corner in a commercial district.

There is a lot of room for discussion and inquiry here and this Committee will explore this further. We will start with residential areas, examine the zoning resolution, and meet with someone in City Planning with an aim to fill out an application for a zoning text amendment. Teresa will call Land Use of the City Council and further define the process.

The issue of mixed-use neighborhoods and special districts are more complicated. There are not a lot of vendors in the mid-block, because they cannot be close to exits and entrances, which lines of houses or buildings necessitate, but despite this regulation, there is a proliferation of mid-block vending. Rita Popper reminds us that the corners are used by vendors because of the foot traffic that they yield.

Elaine Walsh suggests exploring whether or not we would like other groups to join us in support of, or as an applicant, for a text amendment change. Elizabeth suggests that we may not need an amendment, but just an interpretation.

Item 2 was an INTERN REPORT ON THE MAPPING OF VENDOR LOCATIONS AND THE LISTING OF FOOD AND PRODUCT SUPPLIERS. We were very fortunate to get Arban Vigani, a graduate student from Hunter, who mapped the district and was tireless and precise in his effort to gather information on the number, type and location of vendors and their inventory trucks. He created a DVD for the elected officials with statistics, a map and visuals to inform them of our research.

Arban walked the entire Community Board 8 district four times in the months of December and January. He conducted some visits between 11 AM and 3 PM and others between 9 AM and 11 AM which yielded information on the breakfast and coffee carts. These explorations were done during the very, very cold weather, and we can surmise that the number of vendors on the streets will increase during the warmer weather months. The report is on file with the office.

This was first phase of our project which was to locate, photograph, map and note violations in the CB8 area, and each vendor was categorized in accordance with his vending activity. These were general merchandise, food cooking, food non-cooking, and fruit vendors. A Total of 179 vendors were observed. Forty-four were general merchandise vendors, 72 were food carts cooking, and 41 were food carts not cooking. Fruit vendors numbered 22. Arban took note of newsstands, not that they were in our domain, but the number spoke to the crowded streets. The entire Board was canvassed with the exclusion of Roosevelt Island.

Arban presented a beautiful keyed, color coded map showing the location of each vendor and the type of vendor it was. Most congestion was noted on 86th Street, 68th Street between Park and Third Avenue, around the Metropolitan Museum, around the Guggenheim and on the streets surrounding New York Presbyterian and Memorial Sloan Kettering Hospital.

Along with the enlarged map, we presented 8 view boards with pictures of the vendors and a view board that had the inventory trucks with the names of the distributors on the sides.

Violations included, being too close to building entrances, blocking hydrants, exceeding the legal size of their displays, adding to the size of their displays with enclosures to protect the vendor from the weather, sanitation concerns, merchandise on the ground or in tree pits, home cooking and packaging, and A-frames on sidewalk. The pictures on the boards supported Arban's findings.

The second part of this first phase of our research was to identify the distribution trucks, note their violations and confirm that they were standing in one location for hours and sometimes all night. We chose to identify the distributors to counteract the claim that the vendor was a small, independent operator and that any restriction on his activity or fines substantially impacts his ability to earn a living. Our aim was to show that these are bigger operators. Arban also noted that during the days close to the New Year, many tables with like merchandise appeared in multiple locations, indicating that one distributor delivered to all.

This report was very well received by our committee and the meeting attendees. Michele offered very high praise of Arban who was wonderful to work with and who exhibited a very high level of competence, a substantial work ethic and high standard.

Lenore Passavanti suggests that officers in the neighborhood write tickets. Officer Lomardi, of the 19th Precinct reported that over 1400 summonses were written to vendors since September. Leonore reflected concern that fines were reduced from \$1000 to \$500.

Lenore suggests that the New York City Administrative code says that a vendor should have 12 feet of sidewalk clearance when he/she occupies a space, but Officer Lomardi said that that regulation is interpreted as permission to be on a street that is 12 ft. wide. There seems to be room for interpretation and discrepancy in the way the code is worded.

Mr. Silverglad asked when the Department of Consumer Affairs receives an application from a prospective vendor, does the community know that he/she plans to locate in their midst? Is the license tied to a location? Michele tells him - NO.

The next phase of this project will be to research the distributors whose names we have gathered and the commissaries to which each vendor is assigned, to try to get to know how vendors are serviced and supported by these entities.

Michele stated that streets inundated with vendors have become unlivable, and most issues go back to the issue of enforcement. Elizabeth reported that a vendor can be back on the street following confiscation of property before an officer finishes the paperwork.

Chris Stephens said we should stress that a vendor is not a small operation, but affiliated with a larger operation. Elaine reported how some vendors rent carts and Michele reported that some vendors pay as much as \$1200 per month, yet claim to earn only \$14,000 per year. Rita said that a vendor, his customers and his truck are functioning like a store, but are not held accountable like a store owner would be. Vendors working carts and those employed by other vendors, are not necessarily earning a living wage, and when did a daily cart become a 24 hour/7day a week venture? Vendors are a unified group with representation, and Michele would like to bring them in to the professional realm. They are hard workers but they need to be controlled so that they are not earning a living on somebody else's back.

In response to an inquiry from a meeting attendee, Michele informed the group that our Council Members Lappin and Garodnick are active participants in an effort to enforce vendor law and enact legislation that addresses community concerns with respect to vendors, but she notes that not all City Council Members are of this mind and are not necessarily concerned about vendor activity and their effect on crowding the pedestrian way and impeding quality of life. She reminds the attendees that one of the possible solutions to vendor concerns is to let each community have input as to what transpires in that community with respect to vendors, although this method might complicate rather than remedy the issues. Teri reminds us that there is precedent for this, as with the signage regulations, as set forth in the Zoning Resolution, that permits for neighborhoods to decide what would be permissible on store awnings, windows and signage.

Teri repeated her interest in having the Vendor Review Panel re-instated.

The third item on the agenda was a FOLLOW UP WITH THE 19TH PRECINCT ON VENDOR LAW ENFORCEMENT AND DISMISSED TICKETS. Officer Lombardi reported on what he discovered about the possibility of getting feed-back to officers who write tickets that are then dismissed for various reasons. It was discussed extensively at our last meeting as to how to get feed-back to the officers, and we were informed by Officer Lombardi and Sgt. St. Claire that there was no mechanism to do this. So if an officer were making a mistake in writing tickets, he would not know and so could not correct his method. We asked Officer Lombardi to go "up the ladder" in his command to see if a process could be put in place to ameliorate this concern. Officer Lombardi found out, to our disappointment, that it is out of the hands of the police. He consulted with Inspector Bernsten, the commanding officer at the 19th precinct, who told him that this is strictly within the jurisdiction of the courts.

He reported that the precinct and the Condition Teams conducted sweeps to spot vendor violations. The team conducted three operations since September along with the Department of Health, testing temperature of foods, broken glass, etc. and gave out multiple tickets. Elaine reported that the fruit vendor on 77th Street at 2nd Avenue smokes and doesn't wear gloves or a hairnet, nor do the food truck vendors on Third Avenue at 86th Street, nor do those around the hospitals.

Office Lombardi informed us that the police are permitted to give tickets for health violations, contrary to what we had heard. There are Conditions Teams consisting of two sergeants and sixteen officers. A day tour has one sergeant and 8 officers from 6:00 AM until 2:00 PM, and the night tour

consisting of one sergeant and 8 officers also, begins at 4:00 PM and continues until 2:00 AM. They patrol in vehicles and on bicycles.

This expanded Conditions Team has been in force for the past 2 ½ years. Prior to that there were eight officers for the two tours. The Team functions from Tuesday to Saturday.

Officer Lombardi informed us that 1,400 tickets were issued to vendors since September and that there were four arrests this month, for lacking a license or for improper licensing. The Conditions Unit deals with bicycles primarily. While she recognizes the serious problem of rogue bicycle riding in our district, Michele suggests that the Conditions Unit might want to switch their priority from bicycles to vendors. Tony Morenzi asked, out of the 1,400 summonses issued, how many were paid? The Officer has no way of knowing. Tony reported that if there was court monitoring by the community to see that the tickets were paid, the public's presence and interest would tell the judge that enforcement was a priority with the community. He reported that one community did this and found that more fines were issued. We might try to follow a ticket through the system so that the court knows that the community and the officers are following up to see what happens to the tickets. Michele suggests that we could go to our elected officials and to our community groups who may be able to provide the man power to affect such a monitoring program.

There are two Courts that hear vendor tickets, the Environmental Control Board for vendor summonses and the C summons court for Criminal activity. Chris Stephens offers that at the ECB hearings, if you sit in, you will hear the full discussion between the judge and the vendor, but you will not get the decision until later in the day or a day or two later. Then, a second judge will review the case, and the second judge may throw it out, and you wouldn't necessarily know that. Rita Popper said there is no likelihood of a vendor being ticketed daily, so if you get a ticket 3 times a year, it's the cost of doing business.

Elizabeth Ashby suggested that rather than getting people to go to court and monitor the outcomes, if the 19th Precinct would let us know what tickets were issued, we could FOIA the disposition of the tickets. When people showed up it intimidated the judge, as might a FOIA request. Mr. Silverglad sees the same vendors day in and day out and surmises that they probably have received many summonses. He asked if there is a record kept of how many summonses each vendor received for any infraction. Michele reported that this issue was addressed in proposed legislation, but never went anywhere.

Victoria of Our Town asked if the precinct gave training. Officer Lombardi does peddler training. Elaine stated that the ECB is under the Mayor's jurisdiction. Do they put this data into the Mayor's report? A study was done years ago that yielded that there was \$14 or \$15 million in fines for vending, and only \$1.4 million was actually collected. Rita Popper suggests that vendor tickets should be issued like car tickets, where there is an electronic swipe and the ticket is automatically printed, so as to avoid human error in writing the ticket. Currently, the tickets are written by hand. When the tickets are written, are the carbon copies brought back to the precinct? Michele stated that we will make the recommendation of electronic scanning to our legislators.

Item #4 was A CONTINUING DISCUSSION OF NEW MOBILE TRUCK BUSINESSES. Michele reported about the proliferation of new kinds of businesses that are being generated which have no license and have other infractions. She reported on the new clothing and accessory truck on 125th Street. The owner sought and received a lot of PR, yet she did not receive tickets for being parked all day, vending from a truck and having an A-frame on the sidewalk attended by a worker on the street who ushers people in to her business. We've reported the college truck and the woodworking truck along with other businesses that are finding their way to our streets. Mr. Lissauer's (Special Permit Office) only response to my e-mail explaining my concern about this proliferation accompanied with pictures and articles, was "if you think you see an infraction, call the police." This was unsatisfactory and showed a disinterest in this issue.

Michele showed the view boards that pictured street businesses that are not traditional vendors and have no license.

All of the food trucks on York between 67th and 71st Streets are parked illegally all day, every day. Ms. Passavanti wants to report violations when she sees them, and it was suggested that she call 311, because then you create a paper trail, and it helps with targeting sweeps and the agencies like the record.

Michele asks the question “How do we make a dent in this issue?” We need community groups that we can call upon – people who will write letters and who will show up if asked- not just people who claim membership in an organization because they sent in dues.

Teri suggests that targeting policing does work if they keep it up, as was done on Lexington and 86th Street and resulted in the Taco truck leaving, although he returns at 7:00 PM when the meters are not in force.

We gave Officer Lombardi three areas to target – 86th St. between 2nd and Park Ave., York Ave. between 67th and 71st Street and 68th Street, between Third and Park Ave. Many vendors have licenses, but they are non-compliant.

Old Business: Teresa Boemia reported on the 6 bills that were submitted to the City Council as a vendor legislation package; three bills had to do with where vendors can vend and prohibited vending in front of hospitals and taxi stands, and in no standing zones; one bill had to do with fines which were reduced fines from \$1000 to \$500 and slowed the escalation of fines. One bill prohibited vending 20 feet from any entrance to commercial or residential buildings and their service doors. One bill asked 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. And most importantly, 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. The concern was that the electronics and computer interconnections be brought up to date to allow this to happen in 120 days. It was noted that all vendors on 86th Street, between Park and Lexington, will be in violation if the law passes.

Councilmember Dan Garodnick is considering legislation that would require all city tribunals to report back to agencies on violations, and this would give the precincts information. We are expending resources to give tickets, and the ticketing should be financially worth it.

The next meeting will be at the end of April.

The meeting was adjourned.

Respectfully submitted,
Michele Birnbaum, Chair