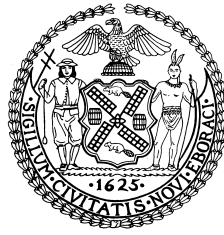


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**The City of New York
Manhattan Community Board 8
Vendor Task Force Committee
Lenox Hill Neighborhood House
331 East 70th Street (First-Second)
Auditorium
Thursday, May 28, 2015
6:30 PM
MINUTES**

Committee members in attendance were: Michele Birnbaum, Co-Chair, Marco Tamayo, Co-Chair, Barbara Rudder and Rita Popper.

There were two agenda items, as follows: 1. Restricted streets, and 2. A discussion of proposals to increase the number of vendor licenses and the Borough President's newly proposed plan for small business in which she discusses street vending.

Because we were fortunate to have representatives of city agencies with us, some of whom had schedule and time constraints, we addressed the two agenda items in accordance with their convenience.

The city representatives in attendance were, as follows:

- Lucien Reynolds – Borough President Brewer's office/business plan specialist
- Lt. Robert Bracero 19th Precinct/Conditions Unit/Special Operations
- Four Conditions Unit Officers-19th Precinct
- Detective Chris Helms-19th Precinct
- Andrew Brokman – Department of Consumer Affairs/Deputy Director of Outreach
- James Middleton – Executive Director of the Bureau of Food Safety and Sanitation
- Andrea Lasker – Department of Food Safety and Sanitation
- Keri Crayne - Special Projects Administrator/Department of Food Safety and Sanitation
- Magda Desdunes – Department of Food Safety and Sanitation
- Sam Friedman - Department of Food Safety and Sanitation/Press

The meeting began with a description of the restricted street survey that Michele Birnbaum and Marco Tamayo conducted throughout the District. They drove the district and listed infractions and breeches on those streets that are restricted to street vending.

Detective Helms addressed the group and explained the function of the police Conditions Unit with respect to vendors and enforcement of the vendor laws. He asked the community to feel free to send their observation of infractions to him and his partner, Michael Lombardi.

Lt. Bracero, also offered contact information and asked all to reach out to him with concerns. He explained that officers must observe the infraction in order to issue a violation. If a vendor is unlicensed, then he will be arrested for that. Michele Birnbaum gave the officers the list of the locations of vendor infractions that she and Marco Tamayo had noted during their sweep.

Lt. Bracero stated that if vendors just see a Conditions Officer, they often correct their infractions so as to avoid a summons.

Lt. Bracero explained that it is important for an officer to have knowledge of the vendor law, because, especially, when having to testify at a food vendor infraction hearing, the officer needs that knowledge in order to credibly testify. But, he went on to explain that the knowledge of the laws that govern food vendors is not always there. Michele Birnbaum asked that they make repeated visits to 86th street, most pointedly between 2nd Avenue and Park Avenue, because of repeated vendor infractions in that area.

The police are permitted to give tickets to food vendors if they are non-compliant. MB asked them to focus on carts that remain on the street long hours and often round the clock, because that means that they are not going to commissaries for cart and truck cleaning. She also asked them to ticket the inventory trucks that remain at one meter or in one illegal spot all day. The produce is not protected by temperature controls as it is in stores, but because it is not cut, it can stay out all day without health restrictions. This enables the vendor to remain on the street for as long as 24 hours, although it is against the law if the vendor didn't bring his cart to a commissary for cleaning.

A member of the audience talked about vermin and garbage and propane tanks on 72nd at 2nd.

Mr. Reynolds, of the Borough President's office explained how the Borough President's small business report and initiative addresses vendor issues.

The BP is hearing about small businesses being closed out of gentrified neighborhoods and many areas because of generally rising rents. She proposes opening up resources to small businesses to help them navigate through some of the difficulties they face. She is classifying vendors as small businesses in this report. The office is looking at whether or not the cap should be raised on the number of vendor licenses issued, as there is a great demand. She has spoken to BIDS and other community groups and heard their concerns. Mr. Reynolds and the BP agree that there are holes in the inspection process and want to streamline inspections and deal with the limited number of inspections and inspectors.

Borough President Brewer wants to accommodate the development of new small business via street vending by using it as a way for a new entrepreneur to test out a market concept and hone his business skills. She feels that the end game should not be street vending but a route to a bricks and mortar business. Some neighborhoods are more targeted for vending than others, and this should also be taken into consideration.

One gentleman spoke passionately about how upset he is while walking home and having to pass food vendors that are cooking on the street. He is appalled at the smoke, smells, garbage and sidewalk crowding. He is upset that he is not considered when food cooking is permitted, and that other tax payers have no say on vending on their streets, especially in a residential neighborhood. Mr. Reynolds informed us that the industry is looking for new technologies, i.e. natural gas vs. propane and others to help improve the environment and upgrade the standards of the cooking carts and trucks.

Michele Birnbaum explained that one CB8 resolution had supported vending zones. She showed pictures of La Marquita and supported vending in areas like that. There are many ideas afoot in favor of creating vending areas, zones or spots.

MB says that residents should not have to deal with vending at their front doors, especially in a residential area.

Some vending laws are a puzzlement, i.e., Food vending is permitted on subway grates, and general merchandise vending is not. Because of the rodent problem in the subways and the food drippings that sustain them, you would think it would be the other way around, with general merchandise vending being permitted, and food vending being prohibited .

MB also pointed to another vending zone on 8th Avenue @ 46th Street where a parking lot was converted to vendor stands selling general merchandise. It is enjoyed by the public, is visually appealing and in no way interrupts the pedestrian way

Christine Friedrich of E. 78th Street - raised the issue of a limited number of vendors being permitted on a given block. In her area, as many as 5 vendors locate on a block with unattractive graffiti covered trucks parked on 77th @ 3rd. She suggests limiting the number of vendors per block. MB explained the plan set forth by Council Member Dan Garodnick which addressed this issue, but did not offer enough detail to make it a viable bill.

Once again, MB spoke of a separate vendor enforcement squad.

Mitchell Balmus, a 1st Amendment vendor for 21 years, agrees about the need for enforcement and says that no changes should be made to vendor law until this is addressed.

Mr. Reynolds wants enforcement and a balance of everyone's interest.

MB discussed food trucks in no standing zones, yet they are not asked to move, even with police in their presence.

In response to a discussion of vending being a way for immigrants to get in to the business world, she noted that immigrant store owners are some of the most negatively impacted in the business community when vendors with like merchandise set up in front of their stores. She mentioned groups like the Korean Grocers Association and the Bodega Association that are trying to combat this un-level playing field competition. Some vendors, who do not own their carts, are exploited. They work long hours with no personal breaks.

A person in the audience said that, in some cases, vendors' presence on the street provide safety.

Mr. Reynolds told of business round tables being organized by the Borough President's office, which public can attend.

Andrew Brokman of the Department of Consumer Affairs spoke to the group. The DCA's new Commissioner, Julie Menin, has proposed a reform package which includes trying to make the DCA more about education of the public and the vendor community. The DCA deals with many consumer protection issues and also distributes general merchandise vending licenses to those who qualify. A 1st amendment vendor does not need a license. A veteran can get a license at no charge at any time and with no waiting list.

To sell food on the street you must obtain both a food vendor license and a permit for the food cart or vehicle from the Department of Health. While there is no limit on the number of operator licenses granted, there are the following caps on the number of food unit permits which may be issued:

- 2,800 Full-term Citywide Permits, valid for a two year period
- 100 Full-term Citywide Permits exclusively for disabled veteran, disabled personas and non-disabled veterans, valid for a two year period
- 200 Full-term Borough Specific permits. There are up to 50 permits available for each borough other than Manhattan, valid for a two year period
- 1000 Seasonal Citywide Permits, valid for the period from April to October each year
- 1000 Green Cart permits

MB asked what the DCA does with regard to enforcement. Mr. Brokman explained that it looks at fraud and works jointly with precincts. While it can't confiscate, it can close down a cart and then call the police to remove the cart. The DCA wants to be notified about infractions, but it may or may not send an inspector. It has approximately 60 inspectors. Alternatively, it will call and work with the NYPD. The NYPD is vastly larger than DCA. The DCA does not deal with creating restricted streets. That process is through legislation and city charter.

Veterans are permitted on restricted streets. 1st amendments vendors can sometimes be on restricted streets.

A person at the meeting asked about who collects sales tax. MB explains that studies have shown the city has had lost revenue from taxes not collected, but other vending activity provide revenue.

A vendor from the Street vendor project explained his point of view stating that he became a vendor so that he might eventually open a bricks and mortar business. He feels that the visual blight and odors are why people don't want street vendors.

MB stated that she would like to elevate vendors to a professional level and to do that, the vendors have to obey laws and regulations. MB asked speaker to think of ways to address the concerns of the community. The speaker said that he can start a vending business very inexpensively, but he referred to punishment for not adhering strictly to all the vendor laws as "nit-picking."

A speaker from 77th Street asked who is to be called if a vendor is on a restricted street? Answer- the DOH, the DCA and police.

The gentleman who spoke earlier about his distaste for food cooking in the streets said that even if a person has a license and is legal, the smoke, smell and crowding is still a problem and unacceptable for living.

James Middleton, of the Department of Health, spoke at length. Sam Friedman, from his press office, was in attendance. Mr. Middleton is involved in all food issues on the streets. He enforces all regulations, but he can't make vendors move,

The DOH does sweeps, but this is limited during the year because of man-power. He said his the DOH does about 10000 inspections a year, on average, of food vendors and that the DOH issues about 12000 violations a year. He stated that the police might issue twice that amount.

Inspectors are on foot, so if a vendor walks away, the inspector can't do much about it. He can ask them to move but can't force them to move, but if a food vendor is on a restricted street, the DOH can shut him down.

He stated that the fees for a two year period are \$50 for a non-processing food cart and \$200 for a processing cart.

Has been plagued for a long time on all the issues that we discussed. Court cases are a daily occurrence for him. He stated that the industry has its underside, and some licenses are revoked for not paying fines, or for fraudulently changing their names when their permit is due. They may produce false documentation. The Department of Health is also trying to improve things for vendors.

Most laws governing street vending are in the City Administrative code. There are some new codes in place for food carts, i.e. both a paper permit and decal must be on the cart. The permittee must now be present for the inspection. Once decal is on cart, you cannot change the cart; that's a violation.

MB asked about temp control for fruits and vegetables on the street, and was informed that no temperature control is necessary as long as the fruit and vegetables are not cut.

Smoothie carts use cut fruit and, therefore, refrigeration is necessary. The DOH can't do anything about the inventory truck even though they don't agree that they should be parked all day. They have to see the violation and confirm that the truck or cart has not been to the servicing Commissary in a 24 hour period. The Commissary does not report to the DOH.

An Inspector goes out at the time the complaint is made. A food cart can't touch or be in front of a hydrant, but can be next to a hydrant. The 20 foot rule controls the number of vendors on a block face.

Commissaries are privately owned and can close. They are given permits by DOH. There are approximately 92 in city. The DOH does not have a tracking system to know whether or not a commissary keeps track of the carts they are supposed to service. They do not report a vendor to the DOH if that vendor does not return for cleaning or bring in his garbage.

A person complained that there are too many agencies in charge and that the system is too complicated.

Mr. Brokman described the Mr. Softie commissaries and told of an incident when a truck was ticketed for keeping its music on while he was stopped. The music can only be played while the truck is in motion. MB said that there is not enough accountability of the Commissaries as they relate to their vendors.

There are new cart designs being proposed, with the owners input.

While the DCA works with health, fire and sanitation, it cannot seize property.

MB reiterates that if all enforcement was under one umbrella and if there was a separate enforcement squad, many of the issues could be resolved.

Valerie Mason reported on a stand on East 79th Street whose vendor covers his fruit stand with a tarp at night while he sleeps in his truck; rats crawl under the tarp and eat the fruit.

MB gave each speaker a list of restricted streets, the six CB8 Vendor resolutions and the list of observed infractions on Restricted Streets that she and Marco Tamayo noted during their drive-around.

Marco also did an evaluation on streets restricted to commercial activity in accordance with the Zoning Resolution, but are occupied by street vendors because they are not Restricted Streets according to the DCA list.

MB expressed that both a license and a permit should be prominently displayed.

Mr. Middleton informed us that while laws have to be changed through legislation, each agency of government also has rules, and these rules could be changed by request.

A department can't change the Administrative Code, but it can change its rules.

Barbara Rudder asked about responsibility of vendor garbage. Vendors are supposed to take garbage to commissaries. Garbage is empty cardboard crates.

The DOH does unscheduled inspections once a year.

Tom Schular of the Metropolitan Museum of Art reported results of litigation that will result in the city permitting only two vendors per block face in front of the Museum. Before this law, there were 26 vendors in front of the Museum resulting in dangerous conditions for loading and unloading tourist and school buses, taxi cabs, and pedestrian crowding. There were many safety and security concerns at the Museum which will now have some remedy. In windy weather, the wind blew carts away. The six permitted vendors will have spots based on the priority order number they were given when they received their licenses. The DOH, as well as the NYPD, will enforce these conditions.

MB stated that she felt that the Museum “shot itself in the foot” when it planned for tables and chairs in the plaza. She explained that these invited people to sit and eat whether or not they bought their food from the vendors or a local store. They are being encouraged to picnic.

MB gave out the list of restricted streets, list of locations with infractions, copies of our six vendor resolutions and copies of the Borough President’s report to those who wanted them.

The meeting was adjourned at approximately 8:40 P.M.

Respectfully submitted,

Michele Birnbaum, Co-Chair

Michele Birnbaum and Marco Tamayo, Co-Chairs