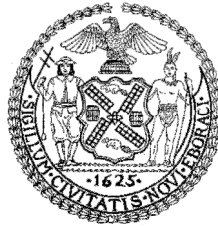


Nicholas Viest
Chair

Latha Thompson
District Manager



505 Park Avenue, Suite 620
New York, N.Y. 10022-1106
(212) 758-4340
(212) 758-4616 (Fax)
www.cb8m.com - Website
info@cb8m.com - E-Mail

The City of New York
Manhattan Community Board 8

Vendor Task Force
Monday, September 24, 2012
Brick Presbyterian Church
62 East 92nd Street, Living Room

Minutes

Board Members Present: Michele Birnbaum, Nicholas Viest, Teri Slater, Matt Bondy
Excused Absence: Rita Popper, Margaret Price, Barbara Rudder, Debbie Teitelbaum
Excused Public Member: Monica McKane-Sanchez

The meeting commenced at 6:45 PM in order to give extra time for people to find their way to this new convoluted location.

There were two agenda items: 1.) First Amendment Vendors, 2.) Veteran Vendors.

After thanking the Veteran Vendor attendees for their service to our country, Michele Birnbaum read the citizen complaints about neighborhood vendors into the Community Board record. She provided a brief summary of how vendor groups have participated in past meetings and described the mission of the Committee.

She read the complaints sent in by the E. 86th Street Association regarding fruit vendors and announced that she had forwarded these to Joseph Caleb of the Department of Health. Mr. Caleb had conducted neighborhood sweeps to check for vendor compliance, issued tickets for violations and performed some confiscations. She read into the record the numerous 311 calls from Robert Weiner, head of security at the Sherry Netherlands with regard to a Mr. Softee truck that parks daily in a No Standing zone and crosswalk at 59th St. Ms. Segal, who resides at the Sherry Netherland reported the same situation and sent an e-mail to the Committee stating that she witnessed the truck driver demonstrating poor personal hygiene and satisfying his personal needs on the street.

A Mr. Marquardt complained about street vendors, and a Mr. Stoll said fruit vendors are the newest and most prevalent problem.

Lo Van der Valk, President of Carnegie Hill Neighbors suggested that some kind of complaint tracking and evaluation system be implemented in the Board office, such as Compstat, so that statistics and data can be compiled.

One gentleman informed the group that he was seeking a response from Councilmember Garodnick's office with regard to his complaints about vendors. He was assured that the Councilmember is fully engaged in this issue and has been very helpful to the community. The Councilmember is also working on legislation to address vendor proliferation and non-compliance.

Michele Birnbaum reiterated that the premise of this Committee is that vendors are a very big concern of all residents and businesses, and that this Committee was formed to explore and implement solutions. The Community is not happy with the proliferation of vendors on the streets, and the vendors are not happy being chased and demeaned. We hope to encourage vendor professionalism by encouraging their legality and their compliance.

One vendor reported getting heavy fines for having a slightly oversized table. Michele Birnbaum suggested that it would be cheaper and easier to eliminate those costly tickets by correcting his infractions.

Michele Birnbaum gave a description of what qualifies as First Amendment vending, which includes the sale of printed matter, art, and an artist's work. This kind of vendor does not need a license to sell but must follow the rules of vending, i.e. the size of the table, location and clearance of doorways, hydrants, bus stops, etc. He/She may not vend on restricted streets but may join a Veteran Vendor on a restricted street if the Veteran vendor arrives before he does. A Veteran Vendor may vend on restricted streets.

There is a distinction between *pure* First Amendment speech which may be political or a kind of expression which does not involve profit. The second kind of First Amendment expression involves a commercial endeavor where the vendor may be considered First Amendment because of what he sells, such as a painting. The court might treat this kind of vending differently and use different criteria in deciding a case involving First Amendment expression with a commercial overlay.

There are also considerations made for performing art which can also be considered expressive.

There are restrictions which require that language and expressive matter sold on the street meet community standards and support a legitimate objection to pornography or profanity.

Michele Birnbaum reported on the new requirements for tables and displays that may be used by First Amendment vendors. There are compliance issues for both First Amendment and Veteran vendors that are in effect to protect public safety and comfort and support community standards.

There are two categories of Veteran Vendors: those who have served and those who have been disabled as a result of their service.

Ricky Wong of the NYC Dept. of Consumer Affairs explained that there are different types of licenses for different kinds of vendors. There is a white license issued to all vendors in the city of NY. Veterans and some family members may have this license.

Beyond this license, there are specialized veteran vendor licenses. These are yellow. For those who have been wounded, there are blue licenses. The yellow license allows veterans to have access to restricted streets. The blue colored license that are for wounded veterans specifically allows them to access the mid town core. Blue license vendors can also vend outside the midtown core, but most stay within the core where there is more traffic and businesses.

The blue licenses for disabled veteran vendors are capped at about 150, but there is no cap on the yellow licenses for veterans.

Mr. Wong reminded us that any change to licensing has to be done legislatively.

A gentleman vendor said that he feels harassed by the police, but admitted he was non-compliant. He said he had been ticketed for being too close to an entrance and because his table was too long. Given his admission that he was in violation of the laws and regulations, it was suggested to him that these are easy things to correct, and that compliance would be the best way to avoid punishment and fines.

Every vendor gets a copy of the regulations and administrative code when they obtain a license, and these are available at the Department of Consumer Affairs.

Michele Birnbaum asked Sean Basinski of the Street Vendor Project, whether or not his organization helps vendors to get copies of these guidebooks? Mr. Basinski said that he does provide these along with a list of locations that vendors can and cannot be, but claimed the original books are about 40 pages long and are not translated into many languages. Mr. Wong responded that the legal meaning would be lost in translation, and so a conscious decision was made not to translate. Some green cart vendors do get translations.

Mr. Basinski suggested that the troubled vendor might be helped by the Vendor Coalition's guidance.

Mrs. Birnbaum affirmed that the laws must be obeyed and questioned why a vendor would choose to be non-compliant. Sean Basinski stated that vendors should not receive summonses for these minor infractions as these should not be a concern of the community and constitute a form of harassment.

Armando who represents a veteran vendor organization called Vendors First clarified that the boundaries of the midtown corridor, where only disabled Veteran Vendors are permitted to vend, are from 30th Street to 65th Street and from 2nd Ave. to 9th Avenue.

Armando also stated that if the blue license vendor leaves midtown, he displaces a yellow license vendor who cannot take his place in midtown where a blue license is required. Armando asserted there are only 105 blues issued, compared to Mr. Wong's claim of 150 blue licenses issued. Armando claimed that a blue license vendor really has two licenses, since he can work both places. He suggested that a solution to the problem would be that while a blue license vendor should be able to go anywhere he wants; he should not have priority over the yellow license vendor. He claimed that blue license vendors are being recruited out of mid-town to work at the Metropolitan Museum location and are displacing yellow licenses which are not permitted to go to midtown.

Armand also voiced objections to new bus stops because they displace vendors, and wants to have a carved out space in a taxi stand for a disabled vet.

Matt Bondy stressed that standardized street furniture would be helpful and consistent with the uniformity of newsstands, newspaper boxes, benches, etc. He called for a strong voice from the veteran vendors in opposition of illegal vendors in order to stop the dilution of their licenses by these illegal vendors.

Armando, a veteran vendor, asked to allow food cart permits for veterans so that they can work on their own.

Matt Bondy asked Armando why the vets don't rally around in opposition to the illegal vendors, stressing that it's in their best interest to keep illegals off the streets. Armando explained that he doesn't have the organization that he would like because the agency that would ordinarily represent vets is having internal problems, and he doesn't have the organizational ability or manpower to confront this issue.

Matt suggested a simple test on the rules of compliance for vendors that they would have to pass in order to get their licenses, as to insure that everyone has received and read the compliance handbook.

Michele Birnbaum encouraged the vendors to educate themselves about compliance.

She explained that the community is trying to find a way to live with vendors on the street. A discussion ensued comparing vendor expenses vs. the expenses of bricks and mortar businesses. It was also noted that a street vendor has impact on the bricks and mortar business by blocking visibility of his signs, using the parking meters meant for their customers, causing dirt and litter that the store keeper is responsible for, and causing unsafe conditions by blocking the pedestrian way.

A discussion followed about the comparison of rules and regulations in place for all businesses and restaurants, versus those in place for vendors.

Teri Slater reported that there are special considerations for veteran vendors and that some rent their vendor licenses. She further reported on the disparity between veteran vendors and other vendors in front of the Metropolitan Museum. Do the veteran vendors support what is going on in front of the Met? How do they see the illegal activity affecting the veteran vendor licenses?

She further commented that the Parks Department gives out spots for money and asked how does the veteran organization work with the city, and how does the fact that the city gets a lot of money by selling licenses in prime areas affect the veteran vendors?

Armando stated that it's illegal to transfer or sell a veteran vendor license. The secondary market is mainly for renting food cart permits. These are permitted to be leased out, but licenses are not. Armando said that someone who is renting his veteran license, should have his license should be revoked.

Teri Slater also asked how one gets the vet or disabled vet spots? They are not permitted inside the park, but there is a possibility of the issuing of a new license to disabled vets that would allow them to work on the park perimeter. Vets can now work on the Park perimeter, but Parks should not look for \$200,000 - \$300,000 per year.

Armando suggested that special food cart licenses should be given to disabled vets.

MB explained that not every disabled veteran wants to come back to street vending. We would hope that the government, schools and other organizations would offer programs for training in new skills and careers for vets.

She also asked if the vendor organizations would concede that the proliferation of vending has reached such a point that the community is struggling to function. Armando conceded that he could work with the community to limit and comply. MB also asked if he would agree to standardized furniture which would identify a veteran vendor, as this would benefit veteran vendors, as the public would more likely choose to buy from them than others. Armando did not commit.

Chris Stephens compared the legality of the yellow cabs to gypsy cabs, and how riders often choose the licensed and regulated taxi.

Hyman Silverglad, who lives on East 85th Street, stated that he supports vets, but still feels that there is too much street vending, and the community is over run, and that most vendors don't seem to be vets.

The main proliferation is that of illegal vendors and because there is no large separate vendor enforcement squad, people can illegally vend without consequence. The only answer is a separate vendor enforcement squad. Armando agreed to this in the past.

We noted that there are 2,700 vendor licenses are issued city wide.

Teri Slater stressed the fact that midtown should not be compared to a zoned residential community like the Upper East Side. The Vendor Review Panel helped in the past to mitigate problems. It is now defunct. Everyone should remember this is a residential community, and very few vendors comply with the laws and restrictions. She stated that the threshold of tolerance has been exceeded.

Midtown has a peddler squad. Uptown does not.

The public does not know that a yellow license is a veteran license. Michele Birnbaum would be pleased to see a vet vendor sign on a standardized table.

Matt Bondy asked Ricky Wong how to determine who is a rightful first amendment vendor? Mr. Wong explained that there is no formal license, but one needs a re-sale number. Mr. Bondy asked if we can use the same standard as we do to qualify to live in an artist loft or building. The Department of Cultural Affairs deals with the housing issue.

First Amendment has grown to cover “everything.” For example, if you sell earrings that someone else made, are you a first amendment vendor?

Highlighting the difference between pure first amendment and commercial first amendment vendors, Michele Birnbaum read the 1st Amendment aloud.

There are violations of behavior not expression. Vendor behavior has to comply with vendor law. Is it 1st amendment vending when a vendor is selling photographs taken and reproduced by someone else? Is distribution permitted, like book distribution?

MB showed a picture of a book vendor table nicely displayed, but pointed out that he has an illegally parked inventory truck behind his table. That first amendment vendor is still not allowed to vend from a truck and not allowed to be at a meter or in no standing or a no parking spot. This is a big problem for other businesses who want the metered spots for their customers.

Some artists sell canvases, but also sell the frames. The frames are not 1st amendment permissible.

Is performance art the same as art? There should be a standard to define that. For example, some music may be permissible but can be a noisy annoyance to others. You need license for amplification.

Categorizing vendors as first amendment is getting difficult as technology advances. Is an IPAD seller a first amendment vendor?

Bricks and Mortar businesses are expanding using trucks because it's freewheeling with little enforcement.

Armando stated that disabled vets are too scrutinized on the streets. MB emphasized that all citizens have to obey the law, and vets have to live in their communities when they return. She also said that there are many agencies that can help vets with their return to civilian life.

Vet newsstand licenses are transferrable to families, widows, etc but should not be rented out.

Old business: We reviewed the 1943 Good Humor case ruling which said that vendors stationing themselves in front of businesses with like merchandise are within their rights. This decision is old, and the complaint was about competition, but you can't rule on only the competition issue. Mr. Bondy explained that if the city had other reasons beside competition, we might be able to have a different ruling.

A ruling in the 1970's said that the city could rule and control the pedestrian way, and the court upheld that a store owner can ask that a vendor to move. It ruled that inherent potential for conflict was such that it was reasonable for the city to regulate that distance between them. In North Carolina, it was ruled that a street location could be banned to first amendment vendors because of safety concerns. A Judge upheld the decision.

Our Committee will go back a look at this old law. Consumer Affairs can't look at it, because they do not deal with legislation; they only enforce the current law. They don't make law.

We reasoned that if an owner is liable for sanitation and safety of the sidewalk in front of his store or building, then he should have some input as to vending in that location.

This is an on-going issue for 185 E. 85th Street which complains about the vendors on its Third Avenue side. The building has reported the pedestrian traffic and disruption and has incurred fines for sanitation violations caused by the vendors.

Every store owner has to clean the sidewalk in front of his store up to 18 inches into the street. While every vendor has a commissary to which he is supposed to bring his trash at the end of the day, the commissaries do not have an intake evaluation, and so they don't know if a vendor followed this regulation. Vendors have been spotted putting their trash in street garbage cans.

Businesses report that they are impacted by vendors. Papaya feels impacted by the hot dog and drink vendors, and a fruit and vegetable store went out of business on 86th Street partially because of a fruit vendor competing in front of his store.

New Business: There was a discussion and great concern over new mobile truck businesses spotted on the streets. Some are dispensing goods and others are offering services. There are restaurants expanding by using food trucks, a DNA testing truck, a truck that holds mobile phones for students while they are in school, and returns it to them when they leave school and a college promotion truck. Pictures were shown of each.

Mr. Wong spoke to this issue and was not clear about the licensing necessary for trucks dispensing services. These might be licensed by the Mayor's office. The committee will investigate the rules pertaining to this new kind of vending.

Suggestions for going forward in an effort to control vendor proliferation and non-compliance are: 1.) Mapping of vendors in our district, 2.) Checking the names of the companies listed on the sides of fruit and general merchandise inventory trucks so as to investigate licensing abuses and irregularities.

The meeting was adjourned at 9:30 PM.

Respectfully submitted,
Michele Birnbaum, Vendor Task Force Committee Chair