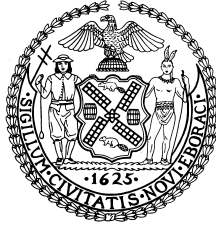


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## The City of New York Manhattan Community Board 8

### VENDOR TASK FORCE COMMITTEE SEPTEMBER 30, 2015 MINUTES

Michele Birnbaum welcomed all to the meeting and apologized for last minute change of venue..

Michele read e-mails of complaints about vendor activity that were sent to the Board office since the last meeting. The main concerns were vendors and their inventory trucks that stood on the street all night and the trucks parking in illegal spots and feeding meters all day.

Michele reviewed what the Committee has been doing over the past years and briefed the audience on what the Committee had addressed at past meetings. She also explained the activity of the Vendor Forum, the outcome of which was the establishment of a city-wide vendor coalition whose steering committee is currently addressing community outreach in all the five boroughs so that there could be consensus in addressing vendor concerns.

Michele explained that, in July, she and Marco, in the company of four officers of the 19<sup>th</sup> Precinct, did a sweep of East 86<sup>th</sup> Street at which the officers issued tickets where they thought applicable.

The first item on the agenda, *Vending on streets zoned residential*, was an outgrowth of our research verifying that the city zoning resolution will not deal with vendor locations. We thought, however that we could ask that street vendor locations be permitted in accordance with the zoning resolution and complimentary to the zoning law.

Item 2 on our agenda, *Rules of the Department of Health, Department of Sanitation, Department of Consumer Affairs as they pertain to the enforcement of street vending*, was an outgrowth of comments from Mr. Middleton of the Department of Health when he told us at our last meeting, that each agency has internal rules that could be changed without legislation. We investigated the rules of each agency and what we can do to improve them, and that's what on our agenda tonight.

Michele gave a brief overview of the committee's past resolutions and gave the public the websites of city agencies where people can read the rules of each agency.

First item on the agenda ***Vending on streets zoned residential:***

It made sense to us to explore the notion that if no business was permitted to be conducted in a residential building and that building was responsible for the sidewalk up to 14 inches in to the street, then why should commercial activity be permitted in front of or around that building? The building is responsible for the sanitation and repair of its sidewalk and can be ticketed for infractions committed by others. If you live in a residential building, you have no expectation of business being conducted at your front door nor do you expect commercial activity to impact your building or your life in that building. Michele explained that since we cannot address this through the zoning resolution, we will explore whether or not this issue can be handled through vendor laws, rules and regulations.

Marco showed the zoning map that he prepared and explained that while looking at the zoning map, he could garner no rationale as to the permitted location of vendors, which see themselves as a professional, entrepreneurial class, the logic of which could support vending only in areas zoned commercial.

It would make sense to have vendor zones and/or assigned vendor locations, issues addressed in the Board's prior resolutions.

The attendees viewed the zoning map and offered comments. Peggy Price was concerned that if vending is not permitted in front of any residential building, then vending in front of mixed use or commercial buildings would increase. Michele Birnbaum offered that any change would be made in the context of the overall vending location issue so that we would be addressing the adverse impact of any change.

The City Planning Commission put forth this zoning map, and Marco studied it for the Cb8 area. There are three avenues that are restricted to commercial use - Park Avenue, Fifth Avenue and East End Avenue. Park and Fifth are part of a Special Park Improvement District, and the rationale for this as described by City Planning, is to preserve and protect the unique character and residential character and value of these areas.

Commercial overly is a zoning designation in some locations which means that the first two floors of a building can be commercial while the floors above are all residential. Marco noted that Lexington Avenue is too narrow for vending, and so vending is restricted on that street.

It was The Vendor Review Panel that compiled the list of "restricted streets," as it exists today. The Vendor Review Panel, while not defunct, is not operational. The original Vendor Review Panel was made up of the Department of City Planning, The Department of Small Business Services, The Department of Transportation This panel also included a member appointed by the Mayor upon nomination by the Speaker of the Council. It assigned vendor locations, created vendor zones and approved vendor assignments. There was also a vendor representative and a member of the public on the Panel.

Vendors are not permitted to block subway entrances. While there are other restrictions based on borough assignments and a separate category for veteran vendors, vendors are generally restricted in accordance with the restricted streets list.

Andrew Fine, who resides on 84<sup>th</sup> and Third, said that he complains regularly about garbage, vendor non-compliance, litter, food waste, rats, and sidewalk congestion caused by street vendors and doesn't see the need for any street vendors on the UES. Their carts and chairs cause street crowding, and their presence is disruptive. We have stores. We don't need street vending. Michele explained that there is a history of street vending as far back as pushcarts, and vendors claim that street vending can be a stepping stone to owning bricks and mortar businesses. Michele further explained that the vendor community is very well organized and well-funded. Mr. Fine noted that vendors sell their licenses, but Michele explained that a person may have a permit for a cart, but rent it to different vendors who have licenses but who don't own their own carts.

A member of the public voiced a complaint about vending trucks that remain overnight and asked why the police don't confiscate them? Michele explained that the police ticket, but they don't ticket everyone every day. The police do not have the authority to tow away or confiscate. A member of the public mentioned the possible security risk of carts and trucks remaining on the street or sidewalk overnight, as no one knows what's in them.

Ken Jagmeder said that street vending is unfair competition to businesses. Michele explained the 1943 Good Humor Law which ruled that vendors with like merchandise are permitted to be in front of stores selling that merchandise. It was ruled that to not permit that would be a restraint of trade.. Many don't feel that way, however, because there is an uneven playing field as the vendors do not have to pay rent, insurance, many taxes, etc. She believes, however, that if studied, this law could possibly be challenged

In a conversation with Michele, Steven Sloane, of the Morton Sloane supermarket chain, stated that fruit vendors in front of his stores have caused him to lose 20% of his fruit and vegetable business. He reported that one of his fruit vendors offered to be the fruit distributor for his whole chain of stores, indicating how large the fruit vending networks are in this city.

Members of the public asked for more enforcement. Michele explained that a separate Vendor Enforcement Squad, modelled on the meter ticketing squad, that would be self-funding and fully conversant with vendor law is something that our Board has been advocating for since 2006.

She urged the audience to write to Speaker Melissa Mark-Viverito and Council members and ask for this. The Council is generally resistant to vendor controls and is generally supportive of the vendor community..

Michele explained that the City Council has to hear from the public.

A number of complaints about smoke, grease, and the public feeling frustrated that there are too many agencies that deal with vendor issues and so nothing gets done. It has long been suggested that all vendor issues should be dealt with under one agency's jurisdiction. Now, many agencies deal with vending, but others handle enforcement.

Chris Stephens said that vendor rules are too difficult for police and vendors to follow and enforce. Restricted Streets are complicated.. 1<sup>st</sup>, 2<sup>nd</sup> and Third Avenues and part of York are commercial as indicated on the zoning map. This would be easier to enforce. He suggests that

we should revise the Street Vendor Panel.

Mr. Amit Bagga of the Department of Consumer Affairs will address the issue of revising the Street Vendor Panel.

Barbara Rudder is concerned that if vendors are banned from one place, they will go somewhere else. Since commercial overlying buildings are residential above the first two floors, there is still concern for that residences are being impacted. Also, if we are concerned about unfair competition between vendors and stores, then it's silly to encourage them in front of commercial buildings. Barbara Rudder wants three things to be worked on at a time: over-night parking, oversized tables and chairs, and sanitation. She suggested that we concentrate on those and then go on to the next thing.

Michele explained that any changes would have to be done within the context of an overall plan; for example, with the understanding that you can't overwhelm a commercial neighborhood with street vendors, you can limit the number of vendors on a commercial street.

Michele explained that the Chair of the City Council is for increasing the number of licenses, and our position should be that they shouldn't consider this. They have not addressed any of the concerns and suggestions for remedy that our six Board resolutions outlined, i.e. a vendor enforcement squad, standardized street furniture, etc.

Barbara referred to the Borough President's small business proposal. Michele explained that in a meeting with the BP's office, she voiced that if the BP thinks vending is entrée to business ownership, then she should put a time limit on the license and encourage vending to entrepreneur status in a timely period.

Peggy Price opposes picking out commercially zoned avenues to be vendor streets because we are trying to beautify Second Avenue and looking for public spaces. We discussed that we can protect residential buildings by looking at the zoning, but we can restrict the vending on commercial streets, as well. For example, one vendor per block, etc.

Peggy wants us to push for our existing resolutions and insist that those be implemented. She thinks our resolutions are wonderful and we should push them.

Michele asked that, along with a cover letter from Chair Jim Clynes asking that the Council not increase the number of vending licenses, all six Board resolutions be attached to that letter and sent to all 50 members of the City Council, because there are at least 20 new members of the Council for whom this issue is new. Jim Clynes, who was present at the meeting, agreed, and the Board members present unanimously supported the position.

A member of the public complained about the cooking carts and fruit vendors on 86<sup>th</sup> Street and their trucks covered with graffiti that park illegally all day and night.

A community member complained about the garbage on 86<sup>th</sup> Street. She asked why Ready, Willing and Able is not currently cleaning 86<sup>th</sup> Street. Michele referred her to the East 86<sup>th</sup> Street Association. A member of the community mentioned that the 86<sup>th</sup> Street Assoc. wants a BID on 86<sup>th</sup> Street. Michele explained that the Association and the community have wanted a BID on 86<sup>th</sup> Street for many years, but the property owners on 86<sup>th</sup> Street have not

been in support of the creation of a BID, and their financial support is necessary to go forward.

In response to garbage, Michele explained that a vendor is supposed to bring their garbage back to a Commissary at the end of the day, but that there are loop-holes in that enforcement system. Mr. Middleton of the Department Of Health was present to address this in the context of internal rules of his agency.

Michele urged the public to write to Chair Melissa Mark-Viverito and the City Council, or call 311 because, as The Environmental Protection Agency told her, they can do nothing unless there is a complaint call to 311.

Michele reported that she and Marco made rounds on 86<sup>th</sup> Street with the 19<sup>th</sup> precinct and found that they were incorrect about how to measure from table to doorway to determine the compliant distance a vendor is permitted to be from an entrance or egress.

Marco showed the diagram (attached) for explanation. When we walked with the precinct, we noted that the police were not fully conversant of the laws that govern vendors, which is further reason that we need a separate vendor enforcement force. Marco explained the diagram we found in law specifying the distance that a vendor can be from an entrance or egress. The officers interpreted that the distance need only be from the main entrance, but they are incorrect in that the regulation applies to all entrances and egresses, i.e. PC Richards which was in violation but was not ticketed because the officer didn't know the law. Marco created a graphic about the distance law. It is correct to measure from the near corner of table to a doorway. It should apply to all egresses, including loading docks. PC Richard has a second means of egress. The officer only considered and enforced the distance rule with respect to the main entrance.

We believe there should be no vending in front of a residential building, and if there is a plan to support this, it should be comprehensive..

The second agenda item is **RULES AND REGULATIONS WITHIN THE AGENCIES.**

Mr. Middleton Department of Health and Mr. Amit Bagga of the Department of Consumer Affairs addressed the group and answered questions.

Based on our conversation and Mr. Middleton's presentation at our last meeting, Michele had specific questions for Mr. Middleton in an effort to have the DOH improve their internal rules to address loopholes and to introduce new rules. This agency deals with permits and licenses. The cart or vehicle needs a permit, and the vendor needs a license. If they don't have both, they are closed down. If there are four vendors on a truck and one does not have a license, they are given a violation, not closed down.

Mr. Middleton explained the different kinds of licenses that his department covers, i.e. veteran vendors, administrative issues, health codes which also cover restaurants and any food cooking vehicle. They are working on food cart design, which is not currently in the codes. There are 22 mobile vending agents and 15 agents that monitor other food establishments for the whole city.

A Commissary is supposed to receive garbage and keep records, but they have a long way to go to better that system. Mr. M said that the paperwork can be easily forged. The DOH monitors

the legitimacy of the Commissary. They should be clean and compliant, and the DOT closes them down if they are not. Sometimes it is the illegal vendors that create non-compliant and unsanitary conditions.

In preparation for this meeting, Michele looked at the DOH rules and wondered if suggestions could be incorporated.

She explained that a commissary is privately owned and run, and if it is not profitable, the commissary will close. How can we keep the commissary opened and tighten its rules? A vendor needs to have the cart cleaned every 24 hours, but many are on the street 24/7 with tarps over them. What is the punishment for the commissary owner? Does he get a fine, and does he have liability if the vendor doesn't report in? What's the commissary responsibility as an enforcing agency? Mr. M. said that the DOT is now looking at that as an internal rule, but the rules still need to be improved by the city. The administration of the Commissary is governed by the city business rules, not by the DOH, but the DOH could improve enforcement on a commissary's sanitation. Michele asks that if the garbage is not brought back to the commissary, what responsibility does the commissary have. Mr. M. has no control over the commissary. The DOH oversees the commissary only with respect to health concerns, but it does not oversee the business plan of the commissary.

Michele tried to give Mr. M suggestions to bring back to the DOH to change rules. She asked that Mr. M look at the commissary with respect to compliance, regulation, organization, punishment, liability and record-keeping for garbage and cleaning.

Michele noted that on a restaurant buffet, there is a cover over it. Has it been considered that street food be covered with plastic or a transparent cover. The DOH has no jurisdiction over the inventory truck.

A member of the public asked how can we make it simple for the vendors and enforcers. Mr. M said that he is compiling a vendor friendly book of rules that covers everything in the form of a "Do" and a "Don't" list. This book will be put out in many languages.

Rita Popper suggested color coding the types of vendors with a matching color code on the street so as to more easily alert the police and the vendor as to where a vendor can vend. Vendors speak different languages. Business operations are dealt with by city code and changes have to be addressed by the City Council.

The DOH has decals that will inform the public that they should only buy from a vendor that has a decal. We also have seen counterfeiting of decals. Michele explained that having standardized street furniture would address this. Vendors would only get the furniture when they get a license. This is under the jurisdiction of the City Council.

Lo Van der Valk, of Carnegie Hill Neighbors, asked if the decal has the type of vendor and the license # and whether or not they are Borough specific? It tells the year and what kind of permit it is. There are codes that are required to be displayed. Part of an internal rule called for the decals to be a certain size. Green carts are required to be 8 x 11. They are required to be displayed . A six inch border has to be around the decal so that they are not obscured. Lo asked if the new rules are in effect now, but Mr. M. said that they are, but that this is another issue of the lack of compliance. The cart passes inspection but when it goes to the street, the cart

significantly changes so that what was seen on inspection is not what we see on the street. If caught, the vendor can be closed down.

Michele asked about the regulations for personal sanitation for the vendor of a cart. Mr. M. said that some carts now have sinks for hand washing. Fruits and vegetable, ice cream and hot dog vendors are not required to have a sink, but a cooking cart has to have a hand washing sink, and as the carts are brought in for inspection, the carts are updated.

Mr. M also said that carts are accepting advertising and this crowds the cart and can obscure the decals.

Barbara Rudder stressed that the cooking carts are the most problematic in that they interfere most with our lives - the smells, the grease, the smoke, the sanitation, the garbage, etc.

Michele expressed that we are glad that the DOH and other agencies are making some changes.

Mr. Amit Babba, the Deputy Commissioner of the DCA which deals with general merchandise vendors, i.e. clothing, household items, etc. addressed the group. The DCA is a business regulatory agency. They license many businesses including vendors. They do not administer over First Amendment vending which covers merchandise that is a result of the creative process.

The DCA issues the license but does not do enforcement. They do not do inspections. The DCA inspectors are civilians. They cannot confiscate goods. They are not even peace officers. They are non-enforcing. The DCA has an arrangement with the police for them to do the enforcing. There is no question that the police can be better trained, and the DCA does do police training.

Mr. Babba affirms that the Council is sympathetic to vendors and the vendor community has pressed them to think about vending as an entry to bricks and mortar businesses. But, there are no statistics that indicate that individuals move from street vending to indoor businesses.

When vending becomes concentrated in certain areas, it becomes a problem, and Mr. B urges the community to reach out to the officials to voice concerns. If the officials don't hear about it, they will not address it.

“The Council must hear your concerns.” Mr. B recognizes the community's concerns.

Vendors are great advocates for themselves, and so must be the community.

Mr. B explained that the Street Vendor Review Panel was created as a matter of law to decide where vendors can vend and to me a mediator for complaints. It last met in 2001 for the purposes of revisiting what was passed in 1995. Vending was so contentious that the Panel could not really change anything that was passed in 1995. So now, the city is operating on rules that were passed in that year. It makes sense to revisit where vendors can be. It has to be done by law only, not by agency.

Mr. Winnik sked if there were any stats that showed that vendors transform to bricks and mortar businesses. There are no stats on this. Mr. W thinks this transition is a myth.

A member of the public is amazed how in a city of 8 million, we being held hostage by about 5000 vendors and have our communities so adversely affected.

A member of the public said citizens are being routinely ticketed , but vendors are not, and police and meter ticketing agents should be deputized to give tickets to vendors.

A separate vendor enforcement squad is the answer.

Mr. B explained that the conversations that are happening in Times Square are leading the conversation on enforcement.

Peggy Price repeated that stores have had a decline in business. Do you have stats on business loss? Mr. B handles general merchandise, so the DCA does not address this.

Peggy asks why don't people who can't afford to go in to bricks and mortar businesses, aren't encouraged to open internet businesses?

A man expressed concern as to why would anyone would want to increase the number of vendor licenses?

Michele reported that the Guggenheim is very concerned about the vendors in front of their Museum.. Michele explained that a ceramic seller was deemed a first amendment vendor by the police when we made rounds, because there were no markings on the bottom of the ceramic figure and so, we couldn't prove that he wasn't the maker.

George Stombly of Carnegie Hill Neighbors and Director Of the Times Square Alliance explained that vending a city-wide problem, and he is asked if when a vendor applies for a license , does he have to show tax returns, liability insurance or any paperwork that proves he is a part of the business community, as is required in some cities. Mr. B. referred him to the on-line listing of requirements.

Armand Crescendi, a veteran food vendor, said that this is the first year he did not have to present his taxes. He thinks the rules have been reduced. He doesn't want illegal vendors surrounding him. He wants the vendors to enforce themselves, but Michele says self-policing is not a popular notion.

Rob Byrnes, head of the BID Association spoke to the group. There are 72 BIDS in all five boroughs, and on behalf of these, the BID Association has sent a position statement to the elected officials. He summarized it for the group. The Association is very concerned about the Council increasing the number of licenses. He's been in each borough and met with 17 council members. He urges the public to write to the Council and to let their friends know what's happening and urge them to write as well in opposition to an increase in vending licenses. Position paper attached.

Manhattan South has a peddler squad, but we don't have that in our area.

Michele discussed the lack of oversight by the Mayor's Special Permit Office, who is not aware that there are businesses starting up on the street that office doesn't know about. Much of what's happening is coming under nobody's jurisdiction.



Mr. B of DCA has put the inspector's check list on line for the vendors and the consumers to understand, and they are in many languages. [Nyc.gov/consumers](http://Nyc.gov/consumers) has the checklist. An individual can then walk down the street and note non-compliance.

A woman asked about having a confrontation with a vendor. If a license can't be seen, you can call the precinct or 311 and report it. This is an offense.

Michele advises complaints to be reported to the 19<sup>th</sup> Precinct Conditions Unit.

Judy Schneider asked how we will handle notice to the officials.

Michele suggested that Jim Clynes write a letter asking all elected to not increase the number of licenses . The city should only deal with how enforcement is dealt with on the street. We should attach **all** our resolutions to the letter and send to all 50 council members, the BP and The Mayor.

The Committee and Board members unanimously supported writing a letter and attaching our resolutions.

Barbara Rudder suggested that each neighborhood is different and should be evaluated, but our resolutions already address these issues. Rob Byrnes expanded on this

Michele explained that Council Member Dan Garodnick tried to address assigned spots for truck vendors, but the details were not acceptable. Will Brightbill of DG;s office said there has been no tweaking of that bill yet.

Our aim is to get a letter and resolutions to everyone.

The meeting was adjourned.

Respectfully submitted,

Michele Birnbaum  
Co-chair

