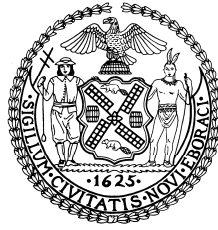


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**The City of New York
Manhattan Community Board 8**

Vendor Task Force
Tuesday, November 27, 2012
Lighthouse International, 111 East 59th Street, 6th Floor Studio/Jr. Ballroom

Minutes

Present: Michele Birnbaum, Nick Viest, Rita Popper, Teri Slater, Peggy Price

Public Member: Monica Sanchez

Absent: Matt Bondy, Debbie Teitelbaum, Barbara Rudder

The meeting began at 6:35 P.M. with a discussion of the first item on the agenda, an informational presentation on special permits for vending from the street. There is substantial new street activity, not categorized as vending, which if it were, would be conducted as per the licensing and permit requirements by either the Department of Health or the Department of Consumer Affairs. Other kinds of street activity, i.e. one time events, would be permitted by the Mayor's Activity Permit Office.

There is substantial concern about the proliferation of truck vending of services, advertising and promotion where trucks are usually parked at a meter or in a no parking area where they remain all day.

Michele Birnbaum explained the issue, showed pictures of some of these trucks and explained some of the Street Activity Permit Office (SAPO) guidelines, which did not seem to readily address this new kind of vending. Both SAPO and the Department of Consumer Affairs explained that they do not monitor this new street activity, and both referred her to the 19th Precinct, where they claim the enforcement responsibility lies. Sgt. St. Clair of the 19th Precinct was present and addressed the issue.

Mrs. Birnbaum showed pictures of a frozen yogurt cart for dogs, a private office stationed on a highway, a comfort truck and heated tent with bathrooms for shoppers and lounge space in mid-town, protective awning projecting out and mounted on the side of a truck and a table and fliers on the sidewalk, a cell phone check-in truck which holds students' cell phones until school has ended which generated \$4 million dollars of revenue last year. How are these trucks monitored?

She went through all the rules and regulations of the Street Activity Permit Office and found no information on this kind of public display. The only grounds for enforcement by the

police would be to enforce parking regulations, because there is no special licensing for this kind of activity.

Officer Leonard and Sgt. St. Clair, of the Conditions Unit of the 19th Precinct, were present. Sgt. St. Clair explained that the Precinct has been very involved in vendor issues in our community, such as the removal of an illegally parked Taco Truck. He said he has never dealt with the advertising on vehicles, but he will work with us to target vendors that are not compliant and will ticket them. He explained that he has found the same non-compliant vendor and has ticketed him 5 or 6 times a week for violations, but often the Judge will throw out the summonses. He discussed other enforcement that the Conditions Unit handles, such as bicycle compliance, but could offer no insight on truck businesses that are parked all day while offering services.

This seems to be under the radar for any city agency. MB stated she could find nothing about this kind of street activity which involves truck businesses. The telephone check-in truck is suing the city because they have been ticketed for having no license, but there is no license for such activity. These are proliferating, earning money, but no city agency is responsible for this, and Sgt. St. Clair stated that he had never heard of this kind of activity, and because there are no licensing for this activity, the tickets issued are only for parking. The police have no code or ticket for such a violation.

Mrs. Birnbaum had contacted Mr. Lissauer at SAPO directly, but he did not address this issue specifically.

Mrs. B asked the precinct to support a movement to create a licensing program or a ban on such activity. Teresa Boemio, from Council Member Garodnick's office said she would look in to this. Sgt. St. Clair said he could enforce the rules if he had a code that he could put on the violation. He said he would approach individual businesses such as the woodworking truck on 86th Street and issue parking violation tickets, as that is all the police could do at this time. Members of the public complained of this street activity, as well.

This Committee will try to bring this loop hole in the vending law to the attention of the city in an attempt to try to mitigate this proliferation and protect the city from more street activity. Mrs. B reported on a truck that set up a comfort zone, a tent, a bathroom, seating, cell phone chargers - all for advertising Di-Gel, but no one intervened.

The School for Excellence Truck is on East 86th Street at Third Avenue is at a meter and on other city streets with no permit or license to do that. Tony Morenzi, from Assembly Member Micah Kellner's office, also reported on the School for Excellence truck and its street activity. If a store set up an A-frame or something on the sidewalk, it would get a violation. Why doesn't the truck vendor get a ticket for putting a table on the street?

Chris Stephens, a local resident, says that judges throw out tickets because they are wrongly filled out, and so they are dismissed for technicalities. Mr. Stephens asks if the police get feed-back on why their tickets were thrown out. Sgt. St. Clair says that after he issues the summonses, he never gets any feedback or hears from anyone again. The Sgt. feels very frustrated about this.

Mrs. B. asks why vendors continue to repeat the same infraction, when they work very hard and are professionals and suggests that it is easier to be compliant than to pay the tickets. Mrs. B wants the police to coalesce around this issue with the courts. Sgt. St. Clair said that he would bring this back to the precinct to get a group of people together who can do something about this, and this committee would devote an entire meeting to talk to those people who can do something. about tickets being thrown out – judges, police, elected officials. We need them all to meet with us to stop the loophole of tickets being thrown out.

Rita Popper explains that what used to be vending during the day has turned in to a 24 hour venture.

Mrs. B explained that we are going to have an intern project that will map the neighborhood to pinpoint where there is always a vendor. There will be another project that will record the names that are listed on the inventory trucks that are parked 24/7 in illegal spots near the vendor in order to supply the fruit, food or merchandise that makes it possible for him to stay on the street all day and night and to help elucidate that these are not just one man businesses, but part of larger organizations. She believes the vendor is reluctant to go home, because he is afraid to lose his spot.

Jordan Wouk, a resident, tells of the problem that there is no clear distinction between the tickets for the carts and the tickets to the vendor. Some ticket forms don't have the correct spaces which would help an officer write the ticket correctly. Some penalties are perceived as high, and judges are sympathetic to the vendor's burden. Teresa Boemio, Councilmember Garodnick's legislative aide addressed this issue and clarified the new Intros, one of which addresses the fine structure for repeated offenses.

Another member of the community complained about the vendors on Third Avenue between 85th and 86th Streets. The inventory truck on the north side of 86th @ Third has been there for years and is always illegally parked. This has been reported endlessly to the Precinct.

There were complaints about Fresh Direct trucks which MB informed the group was taken up by the Transportation Committee.

St. St. Clair said that he will try to take this issue up the command and try to address the issue of new truck vending and advertising and try to tell the command that the police would like feedback on the tickets. And MB said she would like input from the police and hopes they would tell their command that they see a problem on the street but have trouble addressing it without a code. Teresa will take this back to Council Member Garodnick to try to look at legislation to address this new issue.

Tony Morenzi said that the state computer system on the state level does not have the same codes as the printed tickets. He thinks this might be an issue in the city, that the codes and the statutes don't match up, and that the police should start writing to the statute. The consumer laws have to be written correctly into the computer system.

In the case of general merchandise vendors, Consumer Affairs has to see if the actual laws and statutes are entered correctly and coded correctly so that the infraction pops up in the computer.

Teri Slater said the Environmental Control Board and the Administrative Court judge do business inefficiently, and research is needed to bring enforcement and infractions into the same fold. This new proliferation is very disturbing.

Sean Basinski of the Street Vendor Project was the second item listed on the agenda but declined to appear because he had objections to other items on the agenda.

The next item on the agenda was Dan Rossi, who is a hot dog vendor in front of the Metropolitan Museum. He came to tell us about the conflict of between and among vendors and to offer his insight into the relationship between people in the area and the vendors.

MB asked how Mr. Rossi feels he can work with the community and address some of our concerns. He explained that he started in the industry in 1979 manufacturing carts. He's been advocating for vending for over 30 years. Vendors have a right to vend, but need to vend within the law, and he wants law enforcement on the side of the legal vendors and against the illegal vendors. He believes that if a non-compliant vendor is given a ticket every day, he will be gone because he can't afford it.

MB doesn't call ticketing for illegal acts a burden. As a professional with a license, compliance should be a given. Dan Rossi says he does not advocate for vendors that are outside the law. He claims that street vendors in front of the Met are not veteran vendors, and they are not permitted to vend in front of the Met. The permit on his cart in front of the Met is restricted, and he is given a specific location. He has taken his issue to the Mayor, the Dept. of Labor and others, but he will continue to fight for that location. He claims that vendors are vending in front of the Met without restricted area permits. He claims that permit holders hire others to work for a low salary each day. He claims that if a license is taken away, it is very easy to get a license in another name. He claims that many permits on the streets are being illegally transferred to others. The permit is for the cart, and it seems to be legal to have a licensed vendor other than the owner of the cart, working. Permits are not assignable. The only person allowed to work a cart is the owner of the permit and a paid, licensed employee.

A street vendor spoke and defined different licenses which had been described at our last meeting. Armond, a veteran vendor, stated that the purpose of the veteran law is to give a vet an opportunity to work, but because of a disability that a vet might have, he cannot physically work the cart, so he may hire another who has is a licensed food handler, but he does not necessarily have to be a vet or have a food vendor license. Mr. Rossi says this is not legal. Armond says it is. It's not a black market permit, but it's a secondary permit. Teresa Boemio will inquire as to how the law reads. Mr. Rossi stated that the licensed vendor has to handle the money and not be sitting in his car.

Barbara Morris, a licensed vendor, works for Mr. Rossi and stated that there is a legal relationship between her and Mr. Rossi. She is given workman's compensation, is listed with the state and has a legal relationship with the disabled vet and the city as a legal employee. She is the widow of a disabled vet. Everything is done within the law. Dan Rossi's contention is that the other veteran vendors at the Met are not working within the law. Armond says some of his people have their own carts but contends that 5000 permits

have been given, but he believes that disabled veterans have been discriminated against, because he believes more licenses should be issued to disabled veterans and that not everyone on a disabled veteran list is actually a disabled veteran. He claims that the city favors concessionaires over disabled veterans because they bring more money to the city with lucrative contracts for their location. The Committee could not confirm or deny any of these allegations, but will ask the elected officials to look into this issue - the claim being that disabled vets are not getting their fair share of vending spots.

Barbara Morris says there is now no waiting list, but there is a lottery system with licenses going to others besides disabled veterans, and those who get them might lease them out. Barbara Morris wants to see carts that have no owners present be removed from the Metropolitan Museum. The Parks Dept. does some enforcement. Peggy Price, Co-chair of our Parks Committee says she will consider taking up this issue, upon further research and consideration.

Agenda items 5 was taken before Agenda item 4 and consisted of a discussion of streets restricted to vending within our Community Board and the parameters of those restrictions.

There are two lists of restricted streets, one for general merchandise vendors and one for food trucks and vendors. The Community Board office has this list.

Michele Birnbaum read from the city document that lists these streets, and the Committee and the public noted if they saw people vending at those locations.

This city list of restricted streets does not make the distinction between food trucks, food carts and fruit stands. It was noted that there are many violations for locations on 86th Street.

MB reported that there is a lady who sells home baked cookies wrapped in baggies in front of H & M on 86th Street and another lady, on the north side of 86th Street, between Third and Lexington, who packages small bags of candies in baggies and sells them for \$1 per bag. This is illegal, as it violates Board of Health regulations which do not permit home cooking or packaging of food.

Considering the proliferation, congestion, sanitation, and variation in vending products, there was a consensus within the Committee that there are some additional streets where we think that being designated a restricted street would be appropriate.

Should we inquire further about the possibility of adding restricted streets, what criteria should be used? What criteria did the Vendor Review Panel and the Department of Consumer Affairs use when they added restricted streets?

Teri Slater reported that she affected getting 77th and Lexington to become a restricted street because it was a transportation hub. There was heavy pedestrian traffic and three block associations along with residents that were involved and ultimately showed that the health and public welfare was being affected negatively. This was a 3 ½ year effort, but they were successful, and this is now an area restricted to vending. The Vendor Review Panel had criteria dealing with density and safety.

Michele would like to see the law reversed which permits food vendors to vend on top of subway grates, but restricts that area for general merchandise vendors. Food droppings into the subway tunnels only help to feed the rats. What is the logic of this regulation, and perhaps we could look into adding that restriction for food vendors. There might have been a reason for this at one time, but many of the the laws have not been reviewed in many years, and evaluation of what is currently happening on our streets would be helpful.

Tony Moranzi, of Assembly Member Kellner's office, added that the Department of Transportation should be involved and conduct pedestrian flow studies. The pedestrian flow should be considered when considering the placement of vendors just as it is when considering the placement of newsstands. Nick Viest suggests that we should look into this.

Let's say we do our evaluation and decide there is a dangerous situation in a location, to whom do we take it? There is now no functioning Vendor Review Panel. It exists but has not convened in many years. Teresa Boemio, of Council Member Dan Garodnick's office thought that the process might have to go to the City Council. (Title 6 of the Department of Consumer Affairs deals with restricted streets.)

We want to know the process in preparation for suggesting streets for restriction. Teri Slater believes that the Vendor Review Panel provided a regulatory entity for the Department of Consumer Affairs. It acted as an appeals board, but because it was part of the city administrative code, it seemed as though all requests for restricted streets would have to go to the City Council. Teresa Boemio will help us get accurate information on the process. She recollects that the Fifth Avenue Bid was involved early on in getting restricted streets. Tony emphasized the pedestrian flow criteria used for newsstand be used for vendor placement. It would certainly be helpful on 86th Street.

Item 5 on the agenda became a discussion of what are the rights of the taxpayer and the commercial use of city streets, and what are the rights of the residential and retail community and the commercial use of city streets? This topic was a natural flow from our discussion on restricted streets.

What happens if a community joins together and says they don't want vending on their blocks or if they get together and decide that something is inappropriate or they don't want it in their community?

Vendors have rights, laws and regulations that govern them, but what about the community? There are communities that want vending everywhere and communities that don't. Some communities have very few complaints about the location of vendors and others, such as ours, level complaints about vendors frequently, and that's why we have formed this committee. What about standards? We have a vendor on 86th Street that regularly sells drug paraphernalia. We have had complaints about that.

There is something in the law that says that a vendor can't breach a community standard with what he sells, such as pornography. Many believe that selling drug paraphernalia is a breach of a community standard. Currently, this kind of sale is legal, but should that kind of product be subject to the approval of the community?

MB asked Barbara Morris, a hot dog vendor in front of the Met, about the neon signs that many food stands now display. Peggy Price explained that there is a size restriction on the Park concession trucks. Michele expressed concern about these lights infringing on the rights of the community which might be disturbed by the lights as they reflect into its homes or businesses and as the lights are a visual blight, in much the same way as the neon advertising signs on the sides of buses were disturbing especially to people living on lower floors. There were complaints and many were removed.

Some food vendors who cook are disturbing others, because they have extreme smoke, charcoal grills (which are illegal) and emit odors and smoke that infringe on pedestrians and people who are disturbed in their homes and offices.

Barbara Morris wants special consideration of disabled veterans, and Michele reminded Barbara that if we had standardized street furniture, we would want a sign indicating that status. Barbara Morris also reports that there are many disabled vets that work for distributors and that they are abused and not licensed. MB asked Barbara for names of distributors, if she knows them, because unless their names are on a distributor truck, we have no way of finding out whom they are.

Teri Slater notes that at one time vets were a priority for newsstand ownership. Is that still true in the law?

Nick Viest suggests that signage on buildings is regulated in the city and so it could be regulated on carts. This subject goes to the discussion on what a community wants. He states that there should be a consistency between what is required of store owners and what is required of street vendors, i.e., signage, cleanliness, sanitation, etc. For example, if a restaurant is not permitted to have a street cafe, then a vendor should not be allowed to vend there. This goes to fairness. We will look into consistency and fairness.

Teri Slater says if we pay attention to the zoning resolution, we would restrict vendors in accordance with those regulations. Vendors are now in residential areas where they are restricted by the zoning resolution, but there is no enforcement and so they remain. We will put this (Vending and the Zoning Resolution) on our next meeting's agenda and will ask Brenda Levin to participate, as she was involved in this early on.

Rita Popper noted that at night fruit stands put garbage on the street. The garbage is supposed to be brought to a vendor's commissary at the end of the day. But, this is not enforced, and the rotten food left behind increases the rodent population, and the public has the right to have a clean sidewalk. Why should a building get a ticket for the garbage that a vendor leaves? A vendor should be responsible for cleaning his sidewalk.

Andrea Mendez, a representative of 120 East 87th Street complained bitterly about the fruit vendor on the corner of 87th Street @ Lexington and explained that her building is heavily impacted. MB suggested that she and her neighbors create a 311 record, although she understands how frequent reporting infringes heavily on someone's time.

Peggy Price stated that she believes that a community should definitely have a say on the amount of vendors in their midst, and while she doesn't support using the streets for vending at all, she would at least accept a number limit per street.

A general discussion ensued about 86th Street as being dirty and bordering on being unlivable between 2nd and Lexington Avenues. Teri Slater reports that The Doe Fund has stopped cleaning East 86th Street and claims that cleaning 86th Street costs \$300,000, and that they can't afford to do it anymore.

Peggy Price suggests that assigned spots would help to limit the number of vendors in a given location. MB agrees and has put that on a list of suggestions. Teri explains that vendors used to be on the streets at the curb, and she would like to see that protocol again, but MB doesn't agree. Those were different times when there were not many cars and truck businesses i.e. Fedex, UPS, Fresh Direct, etc.

Bricks and mortar businesses are expanding using trucks.

The Committee would like to see a vendor leave his position when his inventory is depleted.

Stores, the public and the vendors all contribute to the dirty streets.

The Community should have the right to control activity in terms of its own health and sanitary requirements. Teri offered that Atlantic Maintenance was hired by the East 86th Street Association to clean the street.

Agreeing that the community has the right to determine its living conditions, the committee needs to determine or create the process by which that could happen. What's the protocol? Quality of Life in this community has been compromised by vendors on our streets.

Peggy Price believes that vendors should have to get approval from the Community Board just as other street activity does. Taxpayers are paying for the sidewalks and so a community board should be given a say.

Nick Viest suggests that we define the rules that we want to be enforced and the ideas behind them and that we be specific and relate these regulations to those of other retail or business establishments.

Teri wants a Community Board letter to go to the Doe Fund encouraging them to clean 86th Street. MB wants the elected officials to send such a letter; Nick Viest will look into it.

We need to be specific with our suggestions, so that ideas and remedies can be turned into legislation, the original idea leading to the formation of this Committee in order to put teeth into the vendor resolutions passed by our full Board.

Rita Popper is pleased with our meetings, but wants smaller agendas, as our meetings have a lot of public input, and so they last a long time.

Tony suggests that we stress the public safety issue and request a pedestrian flow study for all of 86th Street.

Rosemary Aizer who lives on the corner of 86th and Fifth complained about vendors in front of the Guggenheim and reports that the vendors are proliferating and filling the space between the museums. The Parks Department has jurisdiction over the west side of Fifth Avenue. MB suggested she launch a complaint with Carnegie Hill Neighbors so that they know they have neighborhood support in their effort to limit vending in front of the Guggenheim.

The meeting was adjourned at 9:35 PM.

Respectfully submitted,

Michele Birnbaum, Vendor Task Force Committee Chair