

A Right to Vend:  
New Policy Framework for Fostering Street Based Entrepreneurs in New York City

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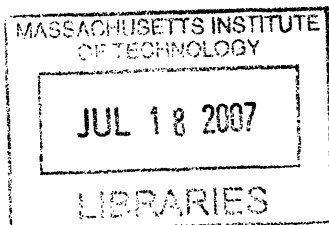
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**ABSTRACT**

Street vending remains one of the most highly regulated and least understood activities in New York City. The current regulatory framework is overly confusing and complex, leaving policy decisions about who gets to vend and where to the discretion of private interests represented by Business Improvement Districts. There is an estimated ten to twelve thousand street vendors today of which half operate outside any regulatory framework.

A historical analysis of street vending policies in New York City reveals a legacy of political and social biases that have influenced contemporary regulatory framework toward vending. Exploratory case studies in Sunset Park and Midtown Community Court illustrate new strategies that are being used today by a Business Improvement District and a criminal justice institution to address vending problem at its root causes. Such strategies break away from traditional prescriptions that focused largely on punitive enforcement measures.

A new policy framework for regulating street vending should break the legacy of bias and create a transparent decision making environment that recognizes street vending a right to economic livelihood. Such vending policies should also remain flexible to the nuance of neighborhood scale and need.

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## I. Introduction

### 1.1 Introduction

It is estimated that more than 12,000 vendors work on the streets of New York City today.<sup>1</sup> Even though street vendors are a ubiquitous fixture of the cityscape, about half of total vendors today operate outside municipal regulatory framework. This creates a murky policy arena where decisions about access and ability to vend legitimately are often left to the political foray. The current regulatory framework toward street vending is laden with contradictions and bureaucratic inefficiencies. Moreover, the lack of clearly defined street vending policy goals from the city's elected officials have crippled the ability to develop and foster a transparent regulatory system that can reduce current conflicts over issues such as license shortages, randomly assigned restricted access and discretionary enforcement that give rise to charges of discrimination.

A historical analysis of the logic and influences behind street vending policy in New York City reveals that most planning decisions were made as a result of largely biased viewpoints of vendors as either backwards foreigners or cheating hawkers unfairly competing with "legitimate" store-based merchants. In the early 1900s, real estate and business interests heavily influenced street vending policy by successfully depicting the activity of vending and the character of those who vend in a negative light. Two centuries later, the same arguments are being made by Business Improvement Districts, private entities created to provide supplemental maintenance of public sidewalk space.

Calls for reform of street vending regulation are undeniable and necessary. I present a historical overview of how street vending policy in New York City evolved over time and how it has led to the current confusing and ineffective regulatory environment. I argue that reform efforts toward new regulatory framework should not be based on the legacy of biased assumptions about street vending activity. In a press conference held on September 18, 2006 Mayor Bloomberg reiterated his commitment to ensure that New York City is "a city of opportunity for all."<sup>2</sup> I propose a new policy

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<sup>1</sup> Street Vendor Project, "Peddling Uphill: A Report on the conditions of street vendors in New York City" (a report by the Street Vendor Project of the Urban Justice Center 2006); available from <http://streetvendor.org/media/pdfs/PeddlingUphill.pdf>

<sup>2</sup> Mayor Michael R. Bloomberg, "Mayor Bloomberg Announces the Recommendations of the Mayor's Commission for Economic Opportunity" (remarks delivered at City Hall press conference, New York, New York, 18 September 2006).

framework that recognizes street vending as a right to economic livelihood and creates a more transparent environment where conflict over vending can be addressed in a fair and democratic way. The policy framework requires New York City government to take ultimate responsibility of managing access to public sidewalks by ensuring a streamlined regulatory system that can differentiate the nuance between vending needs in areas as disparate as Brooklyn's Sunset Park and Manhattan's Times Square.

## 1.2 Research Objectives

William Whyte once said, "So called 'undesirables' are not the problem. It is the measures taken to combat them that is the problem."<sup>3</sup> This thesis explores the history of municipal measures toward street vending, the perspectives on urban life that informed such measures and the continued pattern of ineffective policy prescriptions based on biases of a powerful business and real estate elite. What are the underlying frameworks of municipal responses to street vending and why haven't they been successful? What are some lessons from past municipal responses to street vending? What can New York City do to address the street vending issue today? What kinds of regulatory frameworks can be more conducive to the recognition of mutual interests amongst such vehement proponents and opponents of street vending? What does it mean to create street vending policy that is based on principles of transparency, fairness and "a city of opportunity for all?"

## 1.3 Research Design and Methodology

Situating the street vending issue in one particular set of academic literature is an impossible task. One can be looking at very disparate topics of academic discourse ranging from informal sector economy to theories of urban politics. Informal economy literature tends to focus on street vending as an economic entity in developing countries and its implications on economic development and planning<sup>4</sup> while "sidewalk

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<sup>3</sup> William Whyte, *Placemakers*, available from [www.pps.org/info/placemakingtools/placemakers/wwhyte](http://www.pps.org/info/placemakingtools/placemakers/wwhyte)

<sup>4</sup> It was first proposed by Hart in 1973 and popularized by an International Labor Office report on Kenya, the notion of the urban informal sector (UIS) has received tremendous attention in the development literature. Much has been covered on the theory and practical applications of the informal sector to economic development and planning. See Portes, Castells and Benton (1989); Richardson (1984); Bromley, (1979); Fernandez-Kelly, M. Patricia and Anna M. Garcia (1989). Other scholars like John Cross (2000) and Saskia Sassen (1994) have turned



democracy” literature is concerned with the regulation of public space in the context of democratic governance.<sup>5</sup>

My research design and methodology is inspired by the work of Jane Jacobs and William H. Whyte who both challenged traditional urban planning theories by *observing* human behavior in urban settings. While working with the New York City Planning Commission in 1969, Whyte began to wonder how newly planned city spaces were actually working out – something that no one had previously researched. He believed that through observation and talking to people, we can learn a great deal about what people want in public spaces and can put this knowledge to work in creating places that shape livable communities. We should therefore enter spaces without theoretical or aesthetical biases, and “look hard, with a clean, clear mind, and then look again – and believe what you see.”<sup>6</sup>

I set out with the lens of a historian to understand the street vending environment in the past. I relied on historical analysis of street vending in New York City to show the influences of and logic behind how street vending policies were created in the past. I trace the legacy of influence through documenting contemporary vending policies and highlighting similarities between past and present frameworks that are limited by its ineffective punitive and enforcement heavy scope.

I shifted toward a more journalist lens to understand the current vending situation by conducting largely informal and unstructured interviews with vendors and those who work on vending issues. In order to understand contemporary regulatory framework toward street vending today, I relied on interviews and meetings with key street vendor advocacy organizations and Business Improvement Districts that have worked on street vending issues in last five to ten years. The series of interviews led to a snowball sample of city officials, civic leaders, vendor advocacy groups and vendors themselves. The rest of the data about contemporary vending regulation came from administrative code and local law research.

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the gaze on the phenomenon of UIS in the context of advanced developed countries, suggesting that changing global socio-economic conditions have led to the emergence of UIS in advanced, industrialized societies as well.

<sup>5</sup> Sidewalk democracy scholars have written extensively on the impacts of privatizing public space through privatization trends in municipal planning. Setha Low (2006), Neil Smith (2006), Don Mitchell (2003), Margaret Kohn (2004), and Anatasia Loukaitou-Sidreis, Evelyn Blumberg, and Renia Ehrenfeuch (2005).

<sup>6</sup> William Whyte, *Placemakers*, available from [www.pps.org/info/placemakingtools/placemakers/wwwhyte](http://www.pps.org/info/placemakingtools/placemakers/wwwhyte)

I walked the streets of New York and over the course of three months relied on the generosity, time and support of strangers— vendors, their patrons, business store owners, advocacy groups, NYPD police, Business Improvement District personnel, elected officials, their staff, public agencies, public officials and non profits working on the street vending issue. I learned that there is more nuance on the streets than the usual media treatment of street vending issues as either a romanticized asset or threatening nuisance. I use two exploratory case studies to illustrate alternative frameworks and strategies toward the current street vending quagmire, one by a Business Improvement District in Brooklyn’s Sunset Park and the other by Midtown Community Court in Manhattan. These two particular cases are noteworthy because they deviate from how other similar organizations have viewed vending. I interviewed key staff and leadership within these organizations to understand the logic and thinking behind their “root causes” strategy toward street vending challenge in New York City.

## II. Historical Context of Pushcart Wars in New York City

### 2.1 Divergent Visions of Commercial Culture

Vision and articulation of public space remain areas of political and social contestation. The ability to dominate the public narrative about proper uses of space reinforces certain notions of order and acceptability while excluding others. With each political tinkering of acceptable urban form, street vending emerges as a contentious issue largely as a result of unprecedented urban densities and economic growth at the turn of the century. This chapter provides a historical analysis of how the municipality negotiated these competing visions and how the government has always been biased in favor of a modern ideal city since urban developments of the nineteenth century. Historian Daniel Bluestone explains, “This vision anticipated not only the eradication of street buying and selling but also the eclipse of earlier social uses of the street for political activity, gregarious socializing, and popular amusements.”<sup>7</sup>

In order to understand the array of municipal regulatory responses to pushcart peddling throughout New York City’s history, one must first look at the fundamental assumptions concerning the interplay of public and private interests, the evolution of attitudes towards the sidewalks, and the changing conditions of physical space.<sup>8</sup> Municipal regulations for management and control of public commerce on the streets were established as early as 1691, when a New York ordinance prohibited street selling by hucksters until two hours after the public markets opened. According to historian Daniel Bluestone, “During early 18th century, public officials used the public market system to provide a clearly defined meeting place for urban buyers to meet rural sellers in a period when urban food suppliers were far from assured.”<sup>9</sup> Street hawkers and peddlers were seen as a threat and disruption to the delicate public market system and the carefully crafted licensing and trading procedures associated with them.

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<sup>7</sup> Daniel Bluestone, “The Pushcart Evil: Peddlers, Merchants, and New York City’s Streets, 1890-1940,” *Journal of Urban History* 18 (1990): 69.

<sup>8</sup> Eleanor Fawcett, “At the Margins of Ordered Freedom: The Problem of the Sidewalk as Public Space in New York,” (Master of Science in Architecture Studies thesis, Massachusetts Institute of Technology, 2003), 11.

<sup>9</sup> Bluestone, “The Pushcart Evil,” 69.

Significant socio-economic changes developed during the 19<sup>th</sup> century that solidified a vision of a city based on a modern ideal<sup>10</sup>, where streets were seen as exclusive traffic arteries. The legendary Commissioner's Map of 1811 became the blueprint for private sector economic development and ultimate expansion of Manhattan. The desire for efficient circulation throughout the city was directly influenced by private property interests who saw this directly impacting profits, "The rational approach to the efficient circulation of traffic and air which lay behind the simple geometric order of New York City's street grid is one of the first manifestations of a 'scientific' approach to planning within New York City; the principles of simplification and 'cleansing' which characterize it have been of great significance for subsequent conceptions of desirable public spaces."<sup>11</sup>

As commercial exchange moved indoors and the birth of the department store phenomenon was heralded in cosmopolitan cities like London and Paris, class based differentiation of sidewalks quickly emerged.<sup>12</sup> Bluestone notes, "The architects of these settings for bourgeois consumption designed alluring and sumptuous buildings with orderly and controlled interiors that promoted commerce by fostering the image that retail shopping was a cultivated pursuit. Central to this process was the sumptuous aisles and monumental stairs that replaced public streets as the essential connection between expansive varieties of retail goods."<sup>13</sup> For the upscale residents of the city, sidewalks acquired the role of urban theater where bourgeoisie could display their social class and power. Even though middle and upper class shoppers withdrew from street markets, street vending and markets did not decline. In fact, pushcart vending rose to prominence in New York City during the final quarter of the nineteenth century as streets were left to the growing ranks of the poor in the expanding urban populations. Working class and immigrant neighborhoods bustled with pedestrians, street peddlers, cyclists, children and residents performing a variety of social and economic activities on the open streets.

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<sup>10</sup> John Friedman, *Planning in the Public Domain: From Knowledge to Action*, Princeton: Princeton University Press, 1987, 87.

<sup>11</sup> Eleanor Fawcett, "At the Margins of Ordered Freedom: The Problem of the Sidewalk as Public Space in New York," (Master of Science in Architecture Studies thesis, Massachusetts Institute of Technology, 2003), 11.

<sup>12</sup> Bluestone, "The Pushcart Evil," 70.

<sup>13</sup> *Ibid.*, 71.

## 2.2 Notions of Order and Acceptability

Manhattan's population peaked between 1910 and 1920 at 2.3 million residents. The increased building density and new modes of transportation flooded New York City streets with crowds beyond original capacity.<sup>14</sup> Vehicular and pedestrian circulation became the most pressing concern for city planners during the early twentieth century. Planners responded with proposals that entailed changes in both the physical layout of the sidewalk and social control mechanisms that would restore "order" to the sidewalk experience. Proposed physical solutions included the creation of additional pedestrian circulation space by introducing arcades to increase sidewalk widths, or building new raised or sunken sidewalks.<sup>15</sup> Here, the leisurely pedestrian experience, already well established in Europe by Haussmann's new Boulevards in Paris and Nash's Regent Street development in London (Richard Sennett) clashed with perceptions of New York City sidewalks as undesirable, dirty, chaotic places.<sup>16</sup>

Department store owners and other large commercial establishments felt increasingly threatened by the commercial activities of street peddlers and cart vendors. They wanted these activities confined to less desirable parts of the city. Beggars and panhandlers were another common sight in the nineteenth century. Their presence and activity were also perceived as threatening by municipalities and business interests. A series of "poor laws" attempted to clear the sidewalks of beggars and panhandlers and move the poor to orphanages and almshouses. The enforcement of these anti-vagrancy laws was inconsistent and often depended on the condition of the economy and general political climate.

The multitude of activities found in low income neighborhoods became the anathema of scientific planning – establishment of order based on predictable results.<sup>17</sup> It was also during the turn of the century when the rate of immigration into New York City was at an all time high and most of the low income neighborhoods were comprised of newly arrived immigrants. Their socio-economic status, compounded by their "foreignness,"

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<sup>14</sup> Bluestone, "The Pushcart Evil," 71.

<sup>15</sup> Eleanor Fawcett, "At the Margins of Ordered Freedom: The Problem of the Sidewalk as Public Space in New York," (Master of Science in Architecture Studies thesis, Massachusetts Institute of Technology, 2003), 27.

<sup>16</sup> *Ibid.*, 18-19.

<sup>17</sup> Friedman, *Planning in the Public Domain*, 88-136.

made them prime targets for planning strategies that argued for greater efficiency within the city's circulation. Adults socialized and children played in the same congested corridor where people and vehicles circulated, markets and street peddlers sold their wares, and trucks delivered goods to the establishments lining the sidewalks. It was in the final quarter of the nineteenth century when pushcarts rose to prominence and mobile peddlers started gathering at specific locations to form street markets. Daniel Bluestone writes, "Hundreds of thousands of poor immigrants familiar with European street markets and anxious to buy as cheaply as possible patronized thousands of peddlers. The extremely high residential densities in certain New York immigrant neighborhoods permitted many pushcart peddlers to stop pushing their carts and to start settling continuously from single locations."<sup>18</sup> Appalled reformers criticized street markets and push cart peddlers for creating unsanitary conditions and generating street congestion.

As the use of sidewalks as a leisure and market space by the lower, immigrant classes was being condemned, it was simultaneously being promoted for the wealthy. For New York City's elite, Fifth Avenue emerged as the important place to spend time out in public, observing others and being observed. For example, the tradition of the annual Easter Parade emerged from this culture in the 1870s. The elite would stroll along Fifth Avenue after church displaying new outfits before visiting friends and having lunch at lavish hotels nearby.<sup>19</sup> Visions for the sidewalk came with a narrow range of acceptable social activities. It is this distinction that provides the background to the 1916 zoning resolution that marked the first effective use of municipal zoning regulation to control the social population of the sidewalk that was desired by private landowners.

### **2.3 Public Narrative of Sidewalk Space in the Hands of Private Interests**

In 1916, New York City enacted its first comprehensive zoning ordinance in America that would dictate physical planning parameters in New York City for years to come – from building height limitations to separation of industrial and residential buildings. The 1916 Zoning Regulation was created by a powerful coalition of property owners and retailers who were motivated not only by desire to protect and increase

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<sup>18</sup> Bluestone, "The Pushcart Evil," 72.

<sup>19</sup> Max Page, *The Creative Destruction of Manhattan, 1900-1940*. (Chicago: The University of Chicago Press, 1999), 54.

property values for speculative investors; they wanted to enhance the allure of the streetscape for shoppers and retailers. The Fifth Avenue Association, formed in 1907, was the country's first modern business improvement district. The Fifth Avenue Association created precedence by persuading the city that Fifth Avenue required public intervention. It explicitly linked physical appearance of the street with desirability and thus its value to New York City's economy.

How did this coalition of individuals come to have so much influence over the design and regulation of a district's development? Historian Max Page argues that FAA succeeded in capturing and shaping "the public narrative that would be used to justify new forms of regulation of urban space."<sup>20</sup> In order to justify FAA's own interventionist work, they created a crisis narrative in which they portrayed themselves as the saviors of Fifth Avenue – the prestigious symbol of social progress and economic success in America and New York City at the turn of the century.<sup>21</sup> The "invasion" of manufacturing lofts and their immigrant workers were targeted as threatening elements that would deteriorate the allure and prestige of Fifth Avenue. The encroaching manufacturing sector was dominated by the garment industry that brought increased traffic, beggars, and peddlers. The perceived "derogatory effect" on the neighborhood was particularly linked to immigrant domination of the factory workforce: "These buildings are crowded with their hundreds and thousands of garment workers and operators who swarm down upon the Avenue for the lunch hour. They stand upon or move slowly along the sidewalks and choke them up."<sup>22</sup>

The Fifth Avenue Association was concerned about maintaining the "quality" of people inhabiting and using the Avenue. They instructed police to arrest workers for loitering, and discussed the possibility of roping off sections of side streets for the "hordes." The "solution" to this situation which the Association itself developed and lobbied for was the introduction of building height limitations, and the separation of business and residential and industrial activities, such that lofts would be effectively excluded from the Avenue. They effectively maintained the street as an elite residential

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<sup>20</sup> Max Page, *The Creative Destruction of Manhattan, 1900-1940*. (Chicago: The University of Chicago Press, 1999), 55.

<sup>21</sup> *Ibid.*, 56.

<sup>22</sup> *Ibid.*, 64.

and commercial area by restricting the types of traffic on the Avenue, forcibly removing beggars and peddlers, eliminating “unsightly” signage, keeping Broadway’s popular culture away, and influencing the architectural design of new buildings. These proposals were elaborated on a City wide basis and became the comprehensive zoning produced by the Commission on Building Districts and Restrictions in 1916.

Max Page writes, “The Fifth Avenue Association most powerfully shaped the narrative that would be used to justify new forms of urban space.”<sup>23</sup> The group’s success in stabilizing land values and regulating the area’s character served as an early model for Business Improvement Districts today. The group’s power in influencing the public narrative on notions of order and acceptability also greatly shaped municipal regulations that curbed public activities like street vending.

#### **2.4 Local Government Response to Street Vending 19<sup>th</sup>-20<sup>th</sup> Century**

Historian Daniel Bluestone’s seminal work on the history of pushcart peddling in turn of the century New York identifies four distinct but overlapping periods of development of pushcart street markets from its rise in the 1880s to its nearly complete abolition in the late 1930s. The first phase was that of the illegal street market, where any pushcart market set up for longer than fifteen or thirty minutes violated city ordinances against peddling. There was not much question that pushcart markets were made up of poor people who sold food and merchandise to other poor people. The first and only comprehensive study of New York’s pushcart system conducted by the city in 1906 recognized that proposed regulations to eliminate informal pushcart markets would have “serious consequences to the great mass of the poorer people of the city.”<sup>24</sup>

The second phase of pushcart markets involved the designation of areas underneath the approaches to the Manhattan, Williamsburg, and Queensboro bridges as official pushcart market areas in 1913.<sup>25</sup> According to Bluestone, “this represented the first firm step in dealing with the pushcart evil by enclosing it – reining in its threatening

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<sup>23</sup> Max Page, *The Creative Destruction of Manhattan, 1900-1940*. (Chicago: The University of Chicago Press, 1999), 55.

<sup>24</sup> The New York Pushcart: Recommendations of the Mayor’s Commission, Mayor’s Pushcart Commission Charities and Commons 16 (22 September 1906): 615-18 available from <http://www.arts.gla.ac.uk/www/ctich/eastside/push6.html>

<sup>25</sup> Bluestone, “The Pushcart Evil,” 72.



boundlessness.”<sup>26</sup> Peddlers faced an official legal system rife with potential for corruption and exploitation. For example, the city licensed pushcart peddlers and then made it illegal for them to stand at single locations where they found a ready market. This, according to Bluestone, opened the way for property owners and the police to exhort money from the peddlers as the price of not being hauled into court where they could be fined or deprived of time for selling their goods in violation of the laws at the time.<sup>27</sup>

Following decades of official hostility toward street vendors, New York City entered a third phase of municipal response to street vending in the period around World War I when food shortages, distribution problems, and a greater need to access cheap food, the city was forced to legalize and expand numerous pushcart street markets while phasing out licenses for itinerant peddling in hopes of confining all pushcarts to designated streets. Between 1920 and 1924 twenty-three city street markets were officially sanctioned.<sup>28</sup> By the early 1930s, sixty such markets operated throughout the city.<sup>29</sup> However, it was also during this peak when pushcart markets began to come under the attack of various reform efforts aimed at curbing pushcart vending activity, often laden with xenophobic immigration restriction campaigns. In twentieth century New York, the free use of streets by citizens had important commercial implications because pushcarts competed directly with retail stores occupying private property.

In the battle between pushcart street commerce and the modern commerce related to higher densities and large mercantile interests, municipal efforts undeniably favored the modern. Other claims, still evident in today’s street vending debates, were also put forth to broaden the impetus for more stringent pushcart restrictions. Pushcarts were blamed for citywide congestion, depreciating neighborhood real estate values and retail trade even though no empirical studies were ever conducted to prove such an effect.

The final phase of municipal response to pushcart peddling began when Mayor La Guardia was elected into office on an aggressive anti-Tammany platform that led to the

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<sup>26</sup> Bluestone, “The Pushcart Evil,” 72.

<sup>27</sup> *Ibid.*, 74.

<sup>28</sup> *Ibid.*, 75.

<sup>29</sup> *Ibid.*

near complete abolishment of pushcart markets in New York City.<sup>30</sup> On his first day in office, he delivered a radio address to the nation, declaring “New York City was restored to the people this morning at one minute after midnight. It is my duty from now on to guard and protect and guide the complete, peaceful and undisturbed enjoyment of that possession.”<sup>31</sup> In this context of Mayor La Guardia’s vision for a “cleaner” City, peddlers and street markets became prime targets to demonstrate his distaste for corruptive aspects surrounding pushcart commerce.<sup>32</sup> La Guardia and his Markets Commissioner Morgan engaged in a systematic centralization of peddler and street market regulation through executive and administrative activity.

In 1937 La Guardia closed eighteen markets and by 1939 only seventeen markets remained from the sixty that had operated when he first arrived in office.<sup>33</sup> During his reign, the number of vending licenses had reduced from 7,000 to a little over 1,000.<sup>34</sup> General merchandise vendors were completely banned from remaining public markets as Mayor La Guardia insisted they move into stores located on private property. In 1940 he created the Essex Street Market with space for 530 pushcarts<sup>35</sup> and successfully removed all pushcart peddlers from the Lower East Side, the birthplace of pushcart peddling in New York City. By the 1940s, only a vestige of the original pushcart street market system remained.<sup>36</sup>

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<sup>30</sup> Ibid., 84.

<sup>31</sup> Fiorello Henry La Guardia, 99<sup>th</sup> Mayor, 1934-45 available from [http://www.nyc.gov/html/nyc100/html/classroom/hist\\_info/mayors.html#laguardia](http://www.nyc.gov/html/nyc100/html/classroom/hist_info/mayors.html#laguardia)

<sup>32</sup> Bluestone, “The Pushcart Evil,” 85.

<sup>33</sup> Ibid.

<sup>34</sup> Ryan Devlin, “Street Vending Crackdown in New York City” (CP-290 Final paper, Street Vendor Project) available from

<http://www.streetvendor.org/media/pdfs/CP290%20Final%20Paper%20Ryan%20Devlin.pdf>

<sup>35</sup> Ibid.

<sup>36</sup> Bluestone, “The Pushcart Evil,” 88-89. According to Bluestone, by 1946 only 10 open air street markets operated: two in Lower East Side, two in Harlem, one in Greenwich Village, five in Brooklyn.

### III. Municipal Responses to Street Vending in 21<sup>st</sup> Century

The history of municipal responses to street vending reveals an underlying narrative of how private business and real estate interests shaped the regulatory framework toward street vendors. The legacy of mayoral attempts to contain and curb street vending continues into the 21<sup>st</sup> century. No empirical evidence was ever provided to back up claims made by those critical of vending, thus diagnosis and prescription of the problem remained political. The result is a regulatory strategy reflective of the political attitude of elected officials toward vendors. Even though City Council Members remained sympathetic to street vendors, the mayoral administrations of Edward Koch, David Dinkins and Rudolph Giuliani have all attempted to place strict limitations on street vending throughout New York City. Although the degree of aggressiveness varied in each instance, assumptions about the damage and threat street vending posed for “legitimate” store based merchants and property owners stuck in place even though studies about how street vendors affect local businesses or congestion are nonexistent.<sup>37</sup> Despite each mayoral attempt to reduce street vending in New York City, the sector continued to thrive and represent the faces of newly arrived immigrants.

#### 3.1.1 Mayor Edward Irving Koch (1978-89)

By the time Mayor Koch came into office, he was frustrated at the failed attempts of previous administrations to manage the street vending issue. After a year in office, Mayor Koch and then Commissioner of Consumer Affairs, Bruce Ratner introduced a series of restrictions on street vending which included banning vending on many midtown streets and putting a cap on the number of general vending licenses. The Koch administration had hopes that the vendors would accept a plan in which the city would

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<sup>37</sup> Over the course of my research, I came across only a few studies on the relationship and impact of street vendors and local economy. In 2004, City Comptroller’s Office released a report called “Bootleg Billions” that examined the impact of the counterfeit goods trade on New York City. It is available from <http://www.comptroller.nyc.gov/bureaus/bud/04reports/Bootleg-Billions.pdf>.

An investigate report written by Hillary Russ for CitiLimits Magazine in September/October 2002 on the removal of street vendors from Fulton Street in Brooklyn and the subsequent impact on neighborhood businesses. It is available from [http://www.urbanjustice.org/pdf/press/city\\_limits\\_oct02.pdf](http://www.urbanjustice.org/pdf/press/city_limits_oct02.pdf). The Street Vendor Project has also listed Masters Thesis work from Columbia University policy and planning students Joshua Benson and Ryan Devlin that show how street vendors and local businesses can work in symbiotic relationships. Copies of the thesis are available at [www.streetvendor.org](http://www.streetvendor.org)

limit the number of vendors allowed on each street without reducing their overall numbers. The Mayor, who often demonstrated his sympathy for vendors by referencing his father who had been a peddler in Poland, favored a plan in which the city would hold a lottery to award the locations. Vendor groups such as the Big Apple Food Vendor Association vehemently opposed the plan.

By summer of 1998, the media began reporting on the crackdown against food vendors, where in July an estimated 4,000 food vendors around the city began receiving curtly worded notices from the city's Health Department.<sup>38</sup> Then, a controversial bill - backed by merchants, theater organizations and business associations - which would restrict the number and location of food vendors in congested streets of midtown Manhattan, lower Manhattan, Brooklyn and Queens was passed by City Council.<sup>39</sup> "This is not supposed to look like a souk," the Mayor said, justifying his use of a little-enforced regulation to force the vendors to spread out.<sup>40</sup> He further instituted a cap on vending licenses that limited the number of legal general merchandise vendors under the Department of Consumer Affairs at 853 and mobile food vendors under the Department of Health at 3,000. The Big Apple Food Vendors Association and other vendor groups organized protests and demonstrations in front of City Hall, unfortunately to no avail. Chris Ferencsik, president of the Big Apple Food Vendors Association, contended that the council had passed the measure to please midtown restaurant owners and other business groups, including the Fifth Avenue Association, whose members would stand to benefit from restrictions on vendors.<sup>41</sup>

### **3.1.2 Mayor David N. Dinkins (1990-93)**

In 1993, Mayor Dinkins half-heartedly announced a crackdown on peddlers and their suppliers in New York City. Mayor Dinkins himself once admitted that in his youth, he had been an unlicensed peddler in Harlem as a means to earn a living.

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<sup>38</sup> Michel Marriot, "On the Sidewalks; Koch Clears the Pushcarts Out of the Way of the Crowds," *New York Times*, 17 July 1998.

<sup>39</sup> Robert D. McFadden, "Vendors of Food Face New Limit on Street Sale," *New York Times*, 22 June 1985.

<sup>40</sup> Michel Marriot, "On the Sidewalks; Koch Clears the Pushcarts Out of the Way of the Crowds," *New York Times*, 17 July 1998.

<sup>41</sup> Robert D. McFadden, "Vendors of Food Face New Limit on Street Sale" *New York Times*, 22 June 1985.

The Mayor said he was not against sidewalk vending but recognized that it had become “a thorn in the side of small businesses and legal vendors.” Mr. Dinkins' ambivalence highlighted the schism between many New Yorkers' heartfelt image of the city as an immigrant haven and others' fear that it was turning into an outpost of the third world.<sup>42</sup> A part of Mayor Dinkins' legacy toward vendors is the creation of a NYPD Peddling Task Force that added 46 police officers to enforce peddling rules and spread them throughout the city's boroughs. At the time, the State Department of Finance estimated unlicensed vendors deprive the city of \$25 million annually in sales taxes.<sup>43</sup>

City Council thought of ways to make the informal vendors formal by proposing legislation that would double the number of licensed peddlers. However, the required green card or citizenship status for license approval meant majority of new arrived immigrants who are engaged in street vending would still be selling without a city license. The bill never did muster enough support to pass and Mayor Dinkins' administration was never able to propose any reform with enough political consensus.

### **3.1.3 Mayor Rudolph Giuliani (1994-2001)**

In March of 1982, James Q. Wilson and George L. Kelling published an article in *The Atlantic Monthly* introducing their Broken Window's theory, “If the first broken window in a building is not repaired, the people who like breaking windows will assume that no one cares about the building and more windows will be broken. Soon the building will have no windows.”<sup>44</sup> The merits of the theory have since been vigorously debated, especially after it was used to justify increased police enforcement and aggression toward low level misdemeanors.

The assumptions made by Broken Windows successfully captured and dominated public narrative about what constitutes as “appropriate” uses and behavior in public places.<sup>45</sup> Theory turned into doctrine as the Giuliani administration based many

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<sup>42</sup> Deborah Sontag, “Unlicensed Peddlers, Unfettered Dreams.” *New York Times*, 14 June 1993.

<sup>43</sup> Ibid.

<sup>44</sup> James Q. Wilson and George L. Kelling, “Broken Windows: The police and neighborhood safety,” *The Atlantic Monthly* 1982, 29-37.

<sup>45</sup> Anatasia Loukaitou-Sideris, Evelyn Blumberg, and Renia Ehrenfeucht, “Sidewalk Democracy,” in *Regulating Place: Standards and the Shaping of Urban America* eds. Eran Ben-Joseph and Terry S. Szold (New York: Routledge, 2005), 156.

policy prescriptions on this particular diagnosis of urban problems. The key to the safety and growth of New York City was reduced to keeping the streets clean and deterring anti-social behavior. Street vendors, squeegee men, turnstile jumpers, graffitiists were all targeted with new vigor.

Giuliani's campaign to ban vendors started in 1995 when a panel of mayor's appointees was created to determine which streets should be closed partially or entirely to vending in order to alleviate congestion in some of the most bustling areas in New York City. Giuliani vetoed a bill passed by City Council that would have lifted several restrictions on vendors enacted under the Koch administration in 1983. Instead he created a five member panel responsible for voting on requests for street closings submitted by citizens or private groups. The Street Vendor Review Panel made decisions based on public hearing testimony regarding the level of congestion on certain streets where vendors operate. These decisions had tremendous implications on the livelihood of street vendors.

Ironically, vendors were rarely present at these public hearings. Vendors could not afford any time away to attend these meetings held during the day, nor were they privileged with professionalized organizational capacity. On the other hand, Business Improvement Districts and other real estate interests quickly mobilized. Like the Fifth Avenue Association's influence over the creation of zoning regulations in New York City in 1916, the Alliance for Downtown BID lead requests to bar vendors from a total of 300 blocks in Manhattan.

The gross power imbalance and lack of fair process went unchecked for one year until Big Apple Food Vendors Association sued to block the city's action, asserting that the panel had not used an objective standard to determine which streets were too crowded for vendors' carts. The lower courts eventually ordered the five member panel to create a standard method of measuring pedestrian and vehicular congestion. The courts also ordered the city to use that measure to decide where vendors could set up their carts, just as the city does when it decides where to permit newsstands and sidewalk cafes to operate." However, on June 18, 1997 the Court of Appeals overturned the lower court, citing that the city review panel was essentially a regulatory agency with the power to regulate the industry as it saw fit so long as it did so in accordance with the 1995 law that

created it.<sup>46</sup> In 1998, the Street Vendor Review Panel proposed a food cart ban from 300 blocks in Manhattan and an additional 261 block ban for general merchandise vendors based on claims made mostly by BIDs and other real estate interests of the negative impacts of street vending.<sup>47</sup> After a storm of public protests and threats of lawsuits, the administration backed down from its initial posture to settle on closing 144 Manhattan blocks from all vending.

### 3.2 Conundrum of Vending Regulations Today

Today, street vending remains arguably one of the most heavily regulated and least understood issues in New York City. Encompassing the jurisdiction of up to seven different city agencies, no single agency serves as a repository of information on the number of street vendors in New York City, who they are, where they come from, their socio-economic condition, or any baseline statistical information about the general vendor workforce population.<sup>48</sup> Current estimates on the number of street vendors in New York City range anywhere from 10,000 – 12,000<sup>49</sup> and half of the vending population operate without permits. One reason for such high volume of unlicensed vendors is that licensing caps enacted under the Koch administration remain unchanged since 1979: 3,000 food cart licenses and 853 general merchandise licenses.<sup>50</sup> The waiting list for food and general merchandise licenses are so long that Department of Consumer

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<sup>46</sup> Herman Hernandez, “City’s Right to Bar Vendors from Streets is Upheld,” *New York Times*, 18 June 1997.

<sup>47</sup> Julian E. Barnes, “Compromise Plan on Vendors Approved,” *New York Times*, 23 January 1999.

<sup>48</sup> In 2005 Mayor Bloomberg enacted a bill that would remove the requirement of asking for citizenship status in applications for vending licenses at the Department of Consumer Affairs who is responsible for issuing various licenses throughout New York City. Applications for vending licenses require NYS Sales Tax ID Number and Finance Certificate of Authority to Collect Sales Tax both received from NYS Department of Finance and Taxation. According to social worker at Midtown Community Court, application for Tax ID Number does not require Social Security Number. As a result many undocumented immigrants rely on Tax ID Number to seek means for income.

<sup>49</sup> The 10,000-12,000 figure comes from a 2005 report conducted by the Street Vendor Project called *Peddling Uphill* in which they added the following: 3,000 food licenses, 853 general merchandise licenses, 1,704 Veteran licenses, 1,000 First Amendment licenses, and additional 6,000 unlicensed vendors. This report presents the findings of the first comprehensive survey of New York street vendors to be undertaken in more than 80 years. Over the last two years, the Street Vendor Project of the Urban Justice Center selected 100 vendors in Lower Manhattan and asked them a detailed series of questions about their life and work.

<sup>50</sup> See Appendix 1 – Street Vending Typology. Department of Consumer Affairs (DCA) is the city agency responsible for issuing street vending licenses. In addition to the 3,000 food cart and 853 general merchandise licenses, DCA issue licenses for First Amendment and Disabled Veteran vendors who do not face the same licensing caps. It is unclear whether the 10,000-12,000 figure includes all vendor typologies.

Affairs (DCA), the agency responsible for issuing a variety of licenses throughout the city, has officially closed the waiting list. Simply put, if you are a non-Veteran who wants to vend general merchandise today, you cannot get a license in New York City. The only exceptions temporary vending licenses issued for street fairs and markets or seasonal food cart licenses issued during summer peak months.<sup>51</sup>

If one is fortunate enough to obtain a license from the DCA, a process that can take up to three weeks, one is given a booklet of the city's administrative codes listing restricted blocks and the time of day, the days of the week, and the types of vending that are prohibited<sup>52</sup>. "It takes at least two masters degrees to be able to interpret these codes," said Angela Tolosa, Project Director at the Center for Court Innovation in Midtown Community Court who frequently deals with vendors whom are either brought in for peddling without licenses or licensed vendors whom violate vending regulations.<sup>53</sup> "It is my job to know the regulations and after 15 years of doing this I still have to keep going back to the codes," explained Robert Esposito, VP of Operations at the Times Square Alliance.<sup>54</sup> The administrative codes, as they are currently written, are not in any user friendly format for anyone who may be referring to it – the vendor, BID staff, NYPD, the advocate, the concerned citizen, or the student researcher.<sup>55</sup>

The stakes are unmistakably high for the rest of the vendor population who vend without licenses. Peddling without a license is a misdemeanor offense and vendors caught without licenses are booked and brought to criminal court where they can not only be fined, but sentenced to some jail time if the presiding judge determines they are a repeat offender. Vendors who are engaged in trademark violations and caught selling counterfeit goods are subject to harsher sentencing as they fall under New York City's larger efforts to curb the counterfeit market.<sup>56</sup> As a result, street vendors in New York

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<sup>51</sup> Appendix 2 – NYC Street Vending Requirements

<sup>52</sup> Appendix 3 – Rules and Regulations for All Vendors

<sup>53</sup> Angela Tolosa, interview by author, New York, NY., 27 March 2007.

<sup>54</sup> Robert Esposito, interview by author, New York, NY., 15 March 2007.

<sup>55</sup> Appendix 4 – Sample of Street Restrictions from Department of Consumer Affairs.

<sup>56</sup> New York City Comptroller's Office released a report in 2004 titled "*Bootleg Billions: The Impact of the Counterfeit Goods Trade on New York City*" that estimates that \$23 billion was spent on counterfeit goods in New York City during 2003. The report claims, "This illegal trade deprived the City and its residents of about \$1 billion in tax revenue." The report also notes that large scale production of counterfeit goods occurs within New York City as evidenced by the fact that 42% of all counterfeit compact discs seized in the U.S. are made within the New York metropolitan area. Some street vendors interviewed at Midtown



are often stigmatized because they operate in a gray area between the formal and informal economy ranging from licensed vendors selling licit goods to unlicensed vendors selling illicit goods and many in between the two extremes. For example, even though many vendors are selling otherwise legal goods, they are labeled illegal lawbreakers simply for operating without proper licenses.

The restrictions upon vendors, licensing and enforcement are handled by multiple agencies: Department of Consumer Affairs, Department of Health, Department of Transportation, Department of Sanitation, the Fire Department and the New York Police Department. No single city agency is in any position to comprehensively address the issues raised by the regulation of vending. In a statement submitted before New York City Council Committee on Consumer Affairs, Legislative Counsel to the Criminal Justice Coordinator Robert Hettleman explains, “The vending laws are designed to ensure public safety and protect pedestrians on our bustling and congested sidewalks; to protect small businesses and hardworking legitimate vendors from unfair competition; to assure adequate health standards in the sale of food and beverages; and to provide a sense of order and control in the City’s busiest commercial areas. But as they are currently written, these laws serve very few of these important shared interests.”<sup>57</sup>

### **3.3 Enforcement Cat and Mouse**

The burden of enforcing the vending rules and regulations falls chiefly on the New York City Police Department (NYPD). All NYPD officers receive training on the vending rules and enforcement procedures. They receive additional training and regular updates at precinct roll calls and meetings. Also, the NYPD Street Peddling Task force was created to provide specially trained officers who have expertise in vending law to provide focused enforcement. It is a challenging task for any NYPD officer to assess the legality of vending on the street: Is the particular vendor selling handbags, donuts, CDs, or his/her own photographs regulated under City law or under state law? Is that particular street open to vending? Or is all vending prohibited? Is this vendor present at

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Community Court feel that arresting vendors for selling counterfeit goods seem unfair when large production and manufacturing suppliers seem to operate relatively unscathed.

<sup>57</sup> Robert Hettleman, “Street Vending in New York City” (Legislative Counsel to the Criminal Justice Coordinator’s testimony before New York City Council Committee on Consumer Affairs, 7 April 2003).

the right time of day and the right day of the week? Is the vendor licensed? Is he or she a veteran? Is he or she a Disabled Veteran Vendor? Is the veteran's license white? Blue? Yellow? Is more than one veteran vendor present and which has the higher priority number? If the vendor is a food cart vendor, does he or she have the necessary permits from the Department of Health and the Fire Department?

From an enforcement point of view, the entire regulatory scheme is further complicated by First Amendment Vendors – vendors who sell written matter, art and other materials protected by the constitutional First Amendment. Constitutional law as defined by the Supreme Court is clear: the government cannot impinge on a person's right to express him or herself without a powerful reason and a narrowly tailored method of doing so. Courts have repeatedly struck down attempts by New York City and other cities to require licenses and impose certain other limitations on First Amendment Vendors. New York City Administrative Code states that whenever a food or general vendor is allowed to vend on a particular street, First Amendment Vendors must also be allowed to vend on that street. If no vending at all is permitted on the street due to safety and regulatory concerns, then the City's demonstrated interest is strong enough to prohibit First Amendment Vendors. However, city and state vending laws actually conflict when it comes to Disabled Veteran Vendors. City law that prohibits all vending is superseded by State law that permits one Disabled Veteran Vendor to vend on those same streets. The presence of the one vendor, allowed by State law, also means First Amendment Vendors can come too.<sup>58</sup>

Under current laws, street vending violations are both criminal and civil offenses. The law allows criminal and civil penalties. Generally, violators are given a summons to the Environmental Control Board<sup>59</sup> or the Summons Appearance Part of the Criminal

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<sup>58</sup> Robert Hettleman, "Street Vending in New York City" (Legislative Counsel to the Criminal Justice Coordinator's testimony before New York City Council Committee on Consumer Affairs, 7 April 2003).

<sup>59</sup> The Environmental Control Board is an administrative tribunal, a decision making body that hears disputes like a court, but with a few important differences. ECB only hears cases in which people are charged with violating New York City's quality-of-life laws, the laws that protect the health, safety, and cleanliness of our environment and neighborhoods. Quality-of-life violations are not criminal offenses. For this reason, ECB issues only monetary penalties and/or orders to correct violations when it finds people in violation of the City's quality of life laws. ECB conducts hearings to resolve quality of life violations. At these hearings, parties can present evidence in order to prove or disprove alleged violations. Cases are heard by lawyers with specialized training called Administrative Law Judges (ALJs), who act as impartial decision-makers. However, ECB is less formal than a court. Legal counsel is not required, and most

Court<sup>60</sup>. Also, the City is authorized to seize the goods being sold by vendors who violate certain provisions of the law. Since unlicensed general vending is a misdemeanor crime, the police can arrest them and bring them before the Criminal Court. According to Legislative Counsel Hettleman, in 2001 there were over 59,000 vending related cases in New York City: about 43,000 were returnable to the ECB, 8,600 went to the Summons Appearance Part of Criminal Court, and 7,500 arrests went to Criminal Court. At the Environmental Control Board, 71% of vending related defendants did not appear to answer their summonses. At the Summons Appearance Part of Criminal Court, 49% of defendants did not appear to answer their summonses. In both instances, most cases were simply dismissed either based on the merits of the case, where the judge is not convinced of the accused guilt, or misunderstanding of the regulations, for example officers may cite the wrong legal section on the summons.

The Street Vendor Project (SVP) of the Urban Justice Center is a membership based, vendor led organization of more than 500 New York City street vendors. They believe that vendors are not receiving fair due process under the Environmental Control Board system. Executive Director of SVP, Sean Basinski explains, “Without court-appointed lawyers, vendors must present evidence and make legal arguments on their own. Moreover, without interpreters provided, many immigrant vendors find it impossible to even fill out the intake forms, let alone explain their case. Some vendors, unable to leave their spots, chose not to go in order to avoid the long wait periods and repeat trips that are often required. Others hired for-profit expeditors who process paperwork and appear on tickets for a fee.”<sup>61</sup>

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people choose to represent themselves. Cases are not presented in a courtroom and the ALJs do not wear robes. Information available from <http://www.nyc.gov/html/ecb/html/home/home.shtml>

<sup>60</sup> In Manhattan, most vending related violations are brought before Midtown Community Court. For more information, see Chapter 5.

<sup>61</sup> Street Vendor Project, “Peddling Uphill: A Report on the conditions of street vendors in New York City” (a report by the Street Vendor Project of the Urban Justice Center 2006); available from <http://streetvendor.org/media/pdfs/PeddlingUphill.pdf>

#### IV. Private Management of Sidewalk Space in New York City

Increasing number of public sidewalks throughout the five boroughs of New York City fall under the private management of Business Improvement Districts (BIDs), a legislative and financial mechanism that operates as a self taxing enclave formed by a majority of local property owners.

In the context of this new reliance on private management of public sidewalks, it is important to examine the premise of their objectives, the values embedded in them, and how they have influenced street vending policies in New York City. Turning over management of public space to a private entity means that decisions about acceptable public activities and uses of public spaces are no longer made democratically. The proliferation of Business Improvement Districts has tipped the balance of power and clout in favor of property and business owners throughout 55 BID neighborhoods. This disparity warrants a closer look into the implications of how public spaces are managed. Just as there is incredible diversity in the type of vendors that can be found in New York City, BIDs vary in terms of their form, function, and operating practices.<sup>62</sup>

Mayor Bloomberg touts, "Time and time again, they [BIDs] have proven effective in revitalizing neighborhoods and improving business conditions in commercial districts – injecting vitality into the community."<sup>63</sup> The injection of vitality and the revitalization of neighborhoods seem to have come at the cost of street vendors. Sidewalk beautification efforts have meant increasing harassment of vendors by hired BID security, installation of street furniture that occupy precious sidewalk space, or the entire removal of street vendors into other less profitable locations.<sup>64</sup> Gretchen Dyktra, former President of Times Square Alliance and current commissioner of Department of Consumer Affairs said, "BIDs by their very fundamental nature represent parochial interests. We have to

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<sup>62</sup> Jill Simone Gross, "Business Improvement Districts in New York City's Low-Income and High-Income Neighborhoods," *Economic Development Quarterly* 19 (2005); 174.

<sup>63</sup> Department of Small Business Services, "Guide to Business Improvement Districts" available from [http://www.nyc.gov/html/sbs/pdf/9880\\_nycsbs\\_bp\\_01.pdf](http://www.nyc.gov/html/sbs/pdf/9880_nycsbs_bp_01.pdf)

<sup>64</sup> Hillary Russ, "Sold Out: What happens to neighborhood when street vendors disappear?" *City Limits Magazine*: September/October 2002 available from <http://www.citylimits.org/content/articles/articleView.cfm?articlenumber=866>

always push ourselves to ask the questions where do we fit in the larger planning – and even wider issues, where do BIDs fit in the future of the entire city?”<sup>65</sup>

#### **4.1 Proliferation of Business Improvement Districts**

The Department of Small Business Services, the city agency that oversees the Business Improvement District Program in New York City, defines BIDs as “a public/private partnership in which property and business owners elect to make a collective contribution to the maintenance, development and promotion of their commercial district.”<sup>66</sup> I rely on Jill Simone Gross’ comprehensive study on the BIDs of New York City to provide a further overview of their operations and goals. In New York BIDs are publicly authorized, legally sanctioned, privately administered institutions that provide services designed to enhance the local business environment. Though the legal structure of BIDs and financing terms vary by state and locality, they tend to share a common set of goals – to provide services deemed by the BID partners to be beneficial to the business environment.

The BID partners define the agenda of the organization and either, directly or via contract, provide supplemental services such as sanitation, security, marketing, and technical assistance within the BID geographic area. BID governance is dominated by property owners with apportioned representation from businesses, local government and in certain instances neighborhood residents as well. Property owners and merchants finance these activities through an agreed-on self-imposed tax that is collected by the city and returned to the BID to administer. After the BID is formed, the tax becomes mandatory for all properties within the BID area, and frequently some, if not all, of the tax burden is passed on to merchants renting spaces in those properties.<sup>67</sup>

In New York, voting authority on BID board of directors is weighted in favor of property owners; thus their interests dominate. Board members define the BID’s geographic boundaries. BID formation requires that a majority of business and property owners do not object to imposition of BID tax. Within the BID, commercial property

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<sup>65</sup> Clifford J. Levy, “Mayor seeks stricter curbs on BIDs,” *New York Times*, 5 September 1996.

<sup>66</sup> Department of Small Business Services, “Guide to Business Improvement Districts” available from [http://www.nyc.gov/html/sbs/pdf/9880\\_nycsbs\\_bp\\_01.pdf](http://www.nyc.gov/html/sbs/pdf/9880_nycsbs_bp_01.pdf)

<sup>67</sup> Jill Simone Gross, “Business Improvement Districts in New York City’s Low-Income and High-Income Neighborhoods,” *Economic Development Quarterly* 19 (2005); 175.

owners and merchants pay an additional incremental mandatory tax, which is collected by the municipality but returned to the BID to be spent on geographically specific and locally defined services.

New York's BID movement began in the 1960s and 70s in response to a fiscal crisis that left commercial districts in disarray. In 1976, the City offered to make capital improvements within certain commercial districts on the condition that the property owners benefiting from them would maintain them. Local property owners agreed to provide the needed maintenance, and state legislation was passed to form the first Special Assessment District (SAD) in 1976. From this, the Fulton Mall SAD in Brooklyn was formed. In 1981 and 1982, legislation permitting property owners to define and self-fund similar districts, called Business Improvement Districts, was passed in New York State and New York City.<sup>68</sup> Three years later, Con Edison and other property owners around Union Square formed the first New York City BID in the 14<sup>th</sup> Street Union Square area. The Project for Public Spaces<sup>69</sup> describes BID activities as the following:

- Provide welcoming services and extra security for public spaces and private businesses. This can come through introducing “ambassadors” to assist visitors to the area, financing extra security guards, and setting up neighborhood watch groups.
- Advocate and lobby on behalf of downtown businesses.
- Generate financing for capital improvements (such as raising money to build a performance stage in a public park) or for infrastructure alterations (like funding historic street lighting).
- Commission research and marketing services, collect and analyze economic and demographic data, and promote businesses in the area.
- Embark on integrated planning efforts.
- Allow BID businesses to experiment with innovative practices, implement strategies at a faster pace than if they had to engage with the full mechanisms of local government, and tailor-make solutions to their own needs.

No where in the law does it state that they have the authority to determine and regulate access to public spaces within their district. However, BIDs have successfully extended

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<sup>68</sup> Department of Small Business Services, “Guide to Business Improvement Districts” available from [http://www.nyc.gov/html/sbs/pdf/9880\\_nycsbs\\_bp\\_01.pdf](http://www.nyc.gov/html/sbs/pdf/9880_nycsbs_bp_01.pdf)

<sup>69</sup> Project for Public Spaces is a not for profit organization dedicated to creating and sustaining public spaces that help build communities. Description on BID activities available from [http://www.pps.org/civic\\_centers/info/prtrnrshp/bid](http://www.pps.org/civic_centers/info/prtrnrshp/bid)

their supplemental beautification efforts into a larger lobby for more restrictive policies toward street vendors. Although they do not have the authority to enforce regulation, Street Vendor Project have reported that public safety and security personnel hired by BIDs often resort to verbal harassment to intimidate vendors to leave BID area.

#### **4.2 Impact on Street Vending Policy**

In the early 1900s, the Fifth Avenue Association successfully framed a vision of the development of Fifth Avenue that was based on a particular vision of a cosmopolitan city. This vision was codified through zoning regulations, resulting in the exclusion of immigrant manufacturing class from occupying the area. Similarly, Business Improvement Districts in New York City today have successfully articulated a vision for downtown urban renewal. Influenced by *Broken Windows* and economic competition with suburban malls, BIDs have consistently pushed for stricter policies and enforcement of existing street vending codes. When the existing regulations fall short, Business Improvement Districts change street vending policy.

Mitchell Duneire's ethnographic study of the lives of seven First Amendment street vendors on the sidewalks of Greenwich Village for two years tells a detailed account of how Business Improvement Districts directly shaped street vending laws in New York City. He writes, "During my years of research, only one legislative initiative to deal with written matter vendors passed the City Council, and this was chiefly due to the influence of two BIDs, the Grand Central Partnership and the 34<sup>th</sup> Street Partnership. To find out more about how this happened, I paid a visit to their counsel, Andrew Manshel, and asked him to describe the 'philosophy' behind his legal efforts on behalf of midtown property owners."<sup>70</sup> Duneire found that the BIDs hired as a paid lobbyist the very man who had fought for the passage of Local Law 33 of 1982, the original written matter exemption, Edward C. Wallace. He had left City Council when his seat was abolished and gone into private practice as an attorney.

On June 9, 1992 Wallace represented the Grand Central Partnership and 34<sup>th</sup> Street Partnership BIDs at a public meeting convened by the City Council's Consumer Affairs Committee. In his presentation, Wallace summarized the views of many of the

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<sup>70</sup> Mitchell Duneier, *Sidewalk*, (New York: Farrar, Strauss, and Giroux, 1999), 234.

real estate holdings who had been organized by the BIDs to attend the June 9<sup>th</sup> meeting. These holdings included the Real Estate Board, the Fifth Avenue Association, the Shubert Organization, the Rockefeller Group Inc., and the 665 Sixth Avenue. Wallace said before the Council, “Ten years ago, I introduced a minor amendment intended to protect pamphleteers from arrest for unlicensed vending on the general vending law. Unfortunately, that well-intentioned minor exemption grew during the legislative process into a loophole big enough to spawn a table-based sidewalk industry which has clogged the sidewalks to the point where pedestrians cannot pass, and police officers cannot chase the chain snatchers and muggers who prey on tourists in congested places. These table vendors form a virtual blockade, which prevents firefighters, ambulance crews, and police officers from moving quickly curbside to building. The need is urgent for the council to take back the sidewalks for pedestrian and emergency services.”<sup>71</sup>

Then Mayor David Dinkins was extremely concerned about the First Amendment values. Therefore, Wallace crafted a legislation to ban written matter vendors from setting up tables on streets where food vendors and general vendors were already banned, evading accusations related to targeting free speech. The new law would be seen as balancing of First Amendment rights with the health and safety of the public. A year later, two councilmen introduced Local Law 45 and the measure was overwhelmingly approved by the City Council. On June 1, 1993, Mayor Dinkins signed it into effect, with the following legislative finding:

“The Council hereby finds and declares that a threat to public health, safety, and welfare exists due to the practice of permitting general vendors who exclusively vend written matter to vend on sidewalks without subjecting them to certain placement and location restrictions which have been found to protect the health, safety and welfare of the public.” The Council also claimed that “these tables blocked the access of emergency services, including fire and police personnel, to the entrances to buildings and to fire hydrants; caused pedestrian congestion at major tourist points and transportation facilities; and impeded the movement of police foot patrols along the sidewalks.”<sup>72</sup> As Duneier pointed out, no evidence was ever presented to support or back up these findings.

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<sup>71</sup> Mitchell Duneier, *Sidewalk* (New York: Farrar, Strauss, and Giroux, 1999), 236-237.

<sup>72</sup> *Ibid.*, 238.



Since all of the avenues under the jurisdiction of most BIDs already banned general vendors and food vendors, written matter could no longer be sold once the Local Law 45 went into effect.

Duneire's account of how Business Improvement Districts curbed access to sidewalks for First Amendment vendors in New York City through creation of Local Law 45 is one example of how private management of sidewalk space under BIDs have very real and significant public policy implications. Legal scholar Margaret Kohn observes, "There have been several court cases challenging the anti-democratic decision making structure of Business Improvement Districts. The most notable decision involves New York's Grand Central BID, which encompasses 71 million square feet of commercial space (nineteen percent of Manhattan's total office space) and has a budget of over \$10 million."<sup>73</sup> Robert Kessler, a resident and shareholder in a co-op apartment building in the district, argued that the BID governance structure violated the constitutional principal one-person, one-vote by guaranteeing thirty one seats to property owners, seventeen seats to tenants, and four seats to government appointees. In 1997, the United States District Court found in favor of Grand Central BID and the decision was upheld a year later by the Second Circuit Court of Appeals.

Legal interpretation was based on the precedent established in *Avery v. Midland County*, the case in which the Supreme Court applied the doctrine of one-person, one-vote to local government. According to Kohn's analysis, "Although the court clearly states that cities and counties must guarantee personhood suffrage, it left open the question as to whether this doctrine applied to the myriad diverse and overlapping sub- and supra-local institutions."<sup>74</sup> The Supreme Court relied on the recognition of "a special purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents" might be exempt from the principle of one-person, one-vote doctrine. In *Kessler v. Grand Central Partnership*, United States Circuit Court Judge Kearse concluded that Grand Central Business Improvement District (BID) was similar to the water management district: it existed for the purpose of

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<sup>73</sup> Margaret Kohn, *Brave New Neighborhoods: The Privatization of Public Space*, (New York: Routledge, 2004), 85.

<sup>74</sup> Ibid.

promoting business. Due to its limited scope and disproportionate impact on property owners, one-person, one-vote did not apply.<sup>75</sup>

Urban space scholar Jerald Kayden asserts, “Cities are about publicness, seeing and being seen, mixing and avoiding, accidental encounters and planned meetings. Corporeal public space has of late taken something of an intellectual beating in a world currently fascinated by cyber-public-space and chastened by declining civic virtues. Academic conferences now ask the question, is public space dead? Yet any observer of city streets and sidewalks understands that urban residents, employees, and visitors are not ready just yet to abandon physical space for more esoteric worlds. The challenge for law and institutions of government, the private not-for-profit world, and the private sector, as well as members of the public, is to ensure that this physical space is provided for all citizens in its most alluring form.”<sup>76</sup>

#### **4.3 Impact on Street Vending on the Ground**

BID management and activities on New York City sidewalks has often sparked conflicts between street vendors and BID security and safety personnel. In a survey of one hundred licensed vendors operating in Lower Manhattan, the Street Vendor Project found: “seven percent of Lower Manhattan vendors reported problems with nearby businesses or Business Improvement Districts. Security guards at downtown office buildings frequently harass and intimidate vendors to get away from their premises.” One vendor reported, “The standard is twenty feet from a store entrance, but the managers don’t care. They tell me to leave. I had to move so many times.”<sup>77</sup> Portraying the BID and street vendor dynamic as purely antagonistic overlooks not only the underlying causes for conflict but possibilities for resolution.

I contacted several Business Improvement District managers to ascertain information on their approach to street vendor presence within their districts. I relied on Jill Simone Gross’ typology of BIDs so I can account for variation within BIDs in terms

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<sup>75</sup> Ibid., 86.

<sup>76</sup> Jerold S Kayden, “Using and Misusing Law to Design the Public Realm” in *Regulating Space: Standards and the Shaping of Urban America* eds. Eran Ben-Joseph and Terry Szold (New York: Routledge, 2005), 140.

<sup>77</sup> Street Vendor Project, “Peddling Uphill: A Report on the conditions of street vendors in New York City” (a report by the Street Vendor Project of the Urban Justice Center 2006), 17; available from <http://streetvendor.org/media/pdfs/PeddlingUphill.pdf>

of budget, size, resources, and location in either high or low income neighborhoods. I was able to interview BID personnel (ranging from manager to vice-president) representing ten different BIDs covering each typology.

My interviews informed that BIDs located in areas with heavy street vending presence rely on the details of administrative codes that currently govern, street by street, who gets to vend, what and where.<sup>78</sup> The administrative codes, as discussed earlier are complex and confusing. Although personal opinions on what the City of New York should do to help solve the street vending issue ranged from sympathetic support to outright disdain for vendors, all interviewees believed that BID's are responsible for adhering to letters of the law. Municipal codes, however complex and complicated, already dictate the technicalities of who can vend what, where and when in their geographic district. Adhering to the law comes down to enforcement, which is the responsibility of an already overcommitted NYPD. Corporate BIDs, like Times Square Alliance, have public safety and security personnel to act as monitors and de-facto enforcers of very little known street vending codes. Moreover, BIDs can hire professional senior staff to run such programs. These directors tend to come from some type of law enforcement background. They strengthen and maintain ties with the local NYPD precinct. Smaller neighborhood BIDs, like Sunset Park on Brooklyn's Fifth Avenue, also rely on the details of the administrative code to govern the nature of street vending in their area. However, unlike their larger, corporate BID counterparts in Manhattan, they lack the budget, resources, and staff to run and manage extra security and safety programs.<sup>79</sup>

Although harassment faced by vendors is pervasive, it is important to note here that not all BID managers or personnel are necessarily hostile toward vendors. In fact, in depth interviews with Sunset Park BID executive director Renee Giardano and Times Square Alliance BID VP of Operations, Bob Esposito, revealed quite sympathetic sentiments toward vendors. They approach the street vending issue by informing the public and the vendors themselves on details of what is already outlined in the administrative codes. In Times Square, Mr. Esposito manages a safety and sanitation

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<sup>78</sup> Appendix 4 – Sample of street vending restrictions from Department of Consumer Affairs

<sup>79</sup> Weekends in Sunset Park BID are full of unlicensed vendors selling hot foods, fresh fruit, and general merchandise. I counted 48 vendors along a 4 block stretch during weekend of March 10, 2007.

crew comprised of fifty five staff members that reflect the diverse background of vendors themselves. He also created more user friendly guides on vending that he distributes to his street staff so they can help inform vendors they find in violation of particular rules or codes.<sup>80</sup> “It is easier if vendors hear advice from people they can identify with. I have a staff member from Ghana that is friendly with all the Senegalese street vendors around here. When he tells them they have to move, they usually listen and don’t cause us any trouble.”<sup>81</sup> As I walked around the streets with Mr. Esposito, I quickly realized that he knew most of the vendors and most of the vendors knew him. “I’ve been here since 1992 and a lot of the vendors you see here are regulars. Some have been here even as long as I have.” We stopped at one hot dog vendor and Mr. Esposito points out this particular vendor on the corner of Broadway and 48<sup>th</sup> Street who is “technically” not suppose to be operating under scaffolding. “That guy has been here selling hot dogs since he was 14 years old. I’m not going to bother him.”

The current municipal system of regulating street vending is confusing and frustrating for all. Enforcement is spotty and varied, leaving street dynamics to the discretion of police and BID personnel. Business Improvement Districts approach the issue by spending extra money for staff and other resources to serve as monitors and de-facto enforcers within their geographic area. Those with stronger financial capacity can develop an entire team of professionally trained staff to carry out these functions. Other smaller neighborhood BIDs still rely on informal relationships with the NYPD to do extra enforcement and monitoring during peak vending times. The discretionary nature can create instances of antagonism and cooperation. However, the operating principle remains confined to that of enforcement: how to increase it, how to make it more efficient, how to reduce illegal vending recidivism. The obsession with enforcement is based on a diagnosis of street vending purely as a problem of legality: people don’t know the laws, people are breaking the laws, and we need to enforce the laws better. This rigid diagnosis has plagued the history of municipal street vending interventions in New York City since the 19<sup>th</sup> century and the time has come for alternative thinking that can create room for new strategies beyond enforcement to address the street vending issue.

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<sup>80</sup> Appendix 5 – Times Square Alliance Vending Guide

<sup>81</sup> Bob Esposito, interview by author, 15 March 2007.

## V. Alternative Diagnoses of the Street Vending Issue in New York City

The possibility of alternative strategies in tackling the street vending issue in New York City starts with alternative diagnoses of the nature and scope of the problem. This chapter explores alternative arguments that contribute to new thinking about municipal policy strategies and allow for a more differentiated policy approach.

### 5.1 Emergence of Informal Sector in Advanced Economies

Since street vending often takes place outside the formal regulatory frameworks, it is important to note contributions in the literature regarding informal economic activity in advanced economies. This will help provide deeper insight into why street vending exists and thrives in the developed world. First, the work of Manuel Castells and Alejandro Portes explore informal economies in both the developing and the developed world. They offer a useful working definition of the informal economy as a “process of income generation characterized by one central feature: *it is unregulated by the institutions of society, in a legal and social environment in which similar activities are regulated.*”<sup>82</sup> The informal economy refers to the process of production or distribution, not the goods or services being sold. “The basic distinction between the formal and informal activities proper does not hinge on the character of the final product, but on the manner in which it is produced or exchanged.”<sup>83</sup> Informal economic activities always involve illicit goods that are made or exchanged, to some degree, without the consideration of applicable regulations. This definition of informal economic activity provides an important distinction between informal and illegal activities. Moreover, this definition eliminates the clean distinction between indoor businesses deemed part of the formal economy and outside street vending which is typically considered informal. Under this definition either the street merchant or the store merchant could be labeled informal if relevant rules, such as tax payments, labor laws, etc. are not strictly obeyed.<sup>84</sup>

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<sup>82</sup> Manuel Castells and Alejandro Portes, “World Underneath: The Origins, Dynamics, and Effects of the Informal Economy,” in *The Informal Economy: Studies in Advanced and Less Developed Countries*, edited by a. Portes, M. Castells, and L.A. Benton, (Baltimore: Johns Hopkins University Press, 1989), 12.

<sup>83</sup> *Ibid.*, 15.

<sup>84</sup> Ryan Devlin’s unpublished paper, “Crackdowns on Street Vending in New York City” makes interesting distinction between the legality of goods itself versus the legality of the production process. For example,

Street vending scholar Professor John C. Cross posits, if we associate street vending with a pre-modern traditional economic order that survives only on the fringes of modern society, then why is street vending springing up in the current post modern age? Street vending should, by all logical criteria, eventually disappear, but despite problems, attacks and consistent government attempts to crackdown on informal street vending, it remains a thriving phenomenon.<sup>85</sup> Cross traces vending through history in relation to the “modern” and “postmodern” eras. He points out that while most informal activity has some illegality to it, “the distinction between ‘appropriate’ and ‘inappropriate’ economic behavior is not a matter of laws or rules, but of definition, motives and power.”<sup>86</sup>

Professor Cross asserts that although there are local, idiosyncratic reasons for the informal street vending phenomenon, the main reasons can be found in socio-economic conditions associated with the failures of the modernist ideal in the current post modern society, “As the state’s regulatory system expanded to encompass every aspect of economic activity in order to regulate and order the relations between owners, employees and consumers, it has become more and more difficult for the poor, in particular, to establish businesses that met all of the growing legal requirements. Not only are these requirements costly, they may require the assistance of lawyers, accountants or other specialists—services typically out of the reach of the poor.” As a result, street vending has emerged in New York City as a rational response to the economic, cultural and social realities of today.

Columbia University Professor Saskia Sassen has also conducted studies that show how the informal economy is mandated by the structure of the economy in large cities within developed countries. This view contrasts earlier notions that informality

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the production and sale of cocaine is illegal in New York City. The good itself is illegal under any circumstances. However, pirated DVDs and counterfeit handbags commonly sold by unlicensed vendors can be more difficult to define because DVDs and handbags themselves can be bought and sold legally across the city. The goods themselves are legal. What makes these goods illegal is the way they are produced, in violation of trademark laws. Both bootleg DVDs and sweatshop produced clothing violate laws dealing with production of goods. It is interesting to note that in the case of bootleg DVDs, whose production methods violate corporate trademark laws, both licensed and unlicensed vendors are prohibited from selling bootleg DVDs. However, in the case of clothing, whose illegal production methods violate labor laws and affect workers rights, the sale of these items is permitted. It is not illegal for retailers to sell clothing produced in violation of international labor laws.

<sup>85</sup> John Cross, “Street Vending in the Modern World: Conflict and Compromise in the Global Economy” *International Journal of Sociology and Social Policy*, 21, no. 1 (2000): 2, 30.

<sup>86</sup> *Ibid.*, 33.

was a vestige of undeveloped economies or had been transplanted to advanced developed economies by recent immigrants from less developed countries. Her work on New York City's informal sector economy finds "a good share of the informal sector is not the result of immigrant survival strategies, but rather an outcome of structural patterns or transformations in the larger economy of a city such as New York."<sup>87</sup>

Both Professor Cross and Sassen recommend policy prescriptions that acknowledge an urban economy that contains population areas with high levels of unemployment and poverty. These sectors are increasingly left out of the core economic model. According to Sassen, punishing informal entrepreneurs and workers will contribute to unemployment and further marginalization. This critique feeds into a growing public concerns about the staggering rise of New York City's working poor. In November 2004, the Center for Urban Future and the Schuyler Center for Analysis and Advocacy released a report titled "Between Hope and Hard Times," revealing that the American Dream is slipping further out of reach for more than twenty seven percent of working families in the state of New York.<sup>88</sup> The report attributes such dismal trends to growth in number of jobs that pay below poverty level, the rise in cost of housing and level or falling state support for vital programs that can help economically marginalized New Yorkers land better jobs. The report also highlights inadequate education and skills training services to better prepare New Yorkers to succeed in the current economic environment can no longer rely on a manufacturing base that helped so many families enter the middle class through the 20<sup>th</sup> century, "In 2004, just 90,305 students across the state were enrolled in ESOL instruction, representing only a small percentage of the overall population needing language assistance."<sup>89</sup>

On March 2006, Mayor Bloomberg convened thirty two civic leaders from various public and private sectors to think strategically about what New York City can do to help get tens of thousands of New Yorkers out of poverty. The Commission on Economic Opportunity (CEO) produced a set of ambitious recommendations for the City to adopt into policy. The report by CEO challenged New York City to use the \$400-500

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<sup>87</sup> Saskia Sassen, "New York City's Informal Economy," (paper delivered at Conference in Comparative Ethnicity, University of California, Los Angeles: Institute for Social Research, 1988), 15.

<sup>88</sup> Center for an Urban Future, "More Hard Times for New York's Working Families," March 2006, available from [http://www.nycfuture.org/images\\_pdfs/pdfs/002-FINAL2.pdf](http://www.nycfuture.org/images_pdfs/pdfs/002-FINAL2.pdf).

<sup>89</sup> Ibid., 3.

million it spends each year on workforce development more effectively. Department of Small Business Services (SBS) is the lead city agency for carrying out this charge and its current workforce development model has not addressed the new American population in any substantial manner. Workforce development managers at SBS confess to lack of language or educational training for immigrant workforce as the bulk of workforce center job placements have geared toward native-born clients. According to Assistant Commissioner Scott Zucker, the challenge immigrants pose for workforce development is that by law the city is not allowed to ask clients about their citizenship status. However, employers have the right to know and seldom will they be able to take on those without legal documentation. In light of the larger economic conditions and opportunities in New York City and State, it is not surprising street vendors continue to be a reflection of new wave of immigrants in New York City. With or without a license, it is one option among very few for new Americans to earn a living.

## **5.2 Vending as a Right to Economic Livelihood**

Another possible diagnosis for the street vending issue acknowledges the need for self-expression, monetary security, and entrepreneurship as an inherent right of any individual regardless of citizenship, race, class, or gender. Article Six of United Nations International Covenant on Economic, Social and Cultural Rights states, “ parties recognize right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard that right.”<sup>90</sup>

The Center for an Urban Future recently released a study on the importance and impact of immigrant entrepreneurship in New York City and Los Angeles. The report cites, “in every U.S. Census since 1880, immigrants have been more likely to be self-employed than the native born population. What’s different now is that the U.S. has been experiencing a prolonged burst of new immigration, at levels not seen since early 20<sup>th</sup>

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<sup>90</sup> International Covenant on Economic, Social and Cultural Rights. United Nations General Assembly 1966., available from <http://www.ohchr.org/english/law/cescr.htm>



century. True to form, this phenomenal growth has been accompanied by a concomitant explosion in immigrant-run businesses.”<sup>91</sup> Some highlights from the report include:

- Over the past 10 to 15 years, immigrant entrepreneurs fueled much of the overall growth in new businesses across the city and triggered dramatic turnarounds in neighborhoods in all five boroughs.
- In most cases, immigrant-run businesses aren’t even on the radar of local economic development officials. And when these cities have structured programs to support small businesses, too often these efforts have failed to reach immigrant entrepreneurs.
- Many immigrant entrepreneurs must contend with challenges that go above and beyond those faced by other business owners, from language and cultural barriers to difficulty accessing financing and a lack of understanding about local rules and regulations.
- In New York City, many immigrant entrepreneurs become street vendors, taxi owners or sole proprietors selling everything from make up to real estate. Others work out of their home, making tamales or cakes and selling them primarily to friends and neighborhood businesses. Some bring in suitcases full of products from their home country and sell them on the streets to local shop owners – for instance, women’s underwear made in Columbia has been a hot-selling item in Jackson Heights.<sup>92</sup>

In cities around the world, grassroots organizations have been quite active in recent years to promote the right of street vendors to economic livelihood and challenge government at various levels to safeguard that right. In terms of national scope and scale, the National Association of Street Vendors of India (NASVI) is the largest street vendor organization in the world. NASVI was created by the Self Employed Women’s Association (SEWA)<sup>93</sup> in September 1998 to “bring together the street vendor organizations of India so as to collectively struggle for macro-level changes which had

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<sup>91</sup> Center for an Urban Future, “*A World of Opportunity*,” February 2007, 4, available from [http://www.nycfuture.org/images\\_pdfs/pdfs/IE-final.pdf](http://www.nycfuture.org/images_pdfs/pdfs/IE-final.pdf)

<sup>92</sup> *Ibid.*, 5-12.

<sup>93</sup> SEWA is a trade union formed in 1972 dedicated to the organization of poor, self employed women workers. It is one of the largest trade unions in India today, available from <http://www.sewa.org/>

become imminent to support the livelihood of around 10 million vendors which stood severely threatened due to outdated laws and changing policies, practices and attitudes of the powers that be.”<sup>94</sup> Today NASVI has a membership of 276 street vending organizations representing 168,279 street vendors from 20 states in India. As a national street vendor advocacy organization, NAVSI vigorously promotes a public dialogue with government officials and has facilitated a paradigm shift toward “regulation” and not “prohibition” of street vending in India. They continue to hold public officials to task about street vending at the city, state and national levels by recommending the following actions: conduct vendor surveys; create a zoning system by using joint teams comprised of members from local government bodies, police, representatives of the resident welfare association, and vendors unions; ask the Minister or Secretary to recognize street hawking as a legitimate occupation; and implement a study on opportunities for micro-financing schemes to help street entrepreneurs grow.<sup>95</sup>

Similarly, New York City has also seen the rise of vendor organizations and associations in the last five years. The Street Vendor Project serves as an advocacy and vendors’ rights watch dog group for licensed vendors. With a membership of 500 licensed vendors, SVP is a non-profit organization hosted by the Urban Justice Center that has represented vendors in numerous litigation cases. They recently created “The Street Vending Opportunity Bill,” a proposal to increase economic development and promote small business growth by revising NYC laws on street vending. The proposal argues that street vendors should be supported like any other small businesses in New York City. This can be accomplished through a system that brings vendors into the system by: 1) raising licensing caps; 2) refining regulations on the location of vendors’ carts and stands; and 3) creating a fixed and fair penalty schedule that treats vendors as equal to other small business owners whilst maintaining an effective deterrent system.<sup>96</sup>

Esperanza del Barrio is a community membership organization in East Harlem, Brooklyn, Queens and the Bronx that aims to empower Mexican and Latino immigrants

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<sup>94</sup> National Association of Street Vendors of India available from <http://www.nasvnet.org/about.htm>

<sup>95</sup> National Association of Street Vendor of India, “National Policy”, available from [http://www.nasvnet.org/national\\_policy.htm](http://www.nasvnet.org/national_policy.htm)

<sup>96</sup> Street Vendor Project, “*The Street Vendor Opportunity Bill*,” 2006, available from <http://www.streetvendor.org/media/pdfs/Vendor%20Opportunity%20Bill%20Memo.pdf>

through community organizing, legal/political education and leadership development. Established in 2003, they have organized the Street Vendors for Justice Coalition to jumpstart a campaign to lift vending licensing caps in New York City. They have received strong political support from City Council Member Charles Barron who recently introduced a bill in Consumer Affairs Committee to lift all licensing caps and bans on street vending.

The Senegalese Vendors Association is another membership based group that assists West African vendors with legal and political education on issues related to vending. They have worked closely with Midtown Community Court to help translate myriad of vending laws and regulations into a user friendly format for their membership.

### **5.3 Negotiating Values and Protecting the Public Sphere**

It is important for policymakers to acknowledge the layer of values embedded in policies that shape the nature of public uses of public spaces. Sidewalk democracy scholars see unfettered access to public sidewalk space as an essence of civic engagement and urban citizenship. If the sidewalks of New York City have always remained a public boardroom where public and private interests are negotiated, then determining the primary uses of sidewalks in essence also determines the “publicness” of its character. Municipalities, charged with the task of regulating public spaces, have always relied on a slue of regulations and ordinances to control sidewalk uses – determining who gets to use them and how.<sup>97</sup> The connections between public space and political and cultural economy deserve closer scrutiny because public spaces are simultaneously an expression of social power and a force themselves that help shape social relations.<sup>98</sup>

French social theorist Henri Lefebvre asked the question, “Who has rights to the city?” He argued that space, as a complex social construction based on values and the social production of meanings, is a social product. Therefore, this social production of urban space is fundamental to the reproduction of society, hence of capitalism itself. He argued, “Every society - and therefore every mode of production - produces a certain

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<sup>97</sup> Anatasia Loukaitou-Sideris, Evelyn Blumberg, and Renia Ehrenfeucht, “Sidewalk Democracy,” in *Regulating Place: Standards and the Shaping of Urban America* eds. Eran Ben-Joseph and Terry S. Szold (New York: Routledge, 2005), 141.

<sup>98</sup> Setha Low and Neil Smith, eds., preface to *The Politics of Public Space*. (New York: Routledge, 2006).

space, its own space. The city of the ancient world cannot be understood as a simple agglomeration of people and things in space. Then if every society produces its own space, any 'social existence' aspiring to be or declaring itself to be real, but not producing its own space, would be a strange entity, a very peculiar abstraction incapable of escaping the ideological or even cultural spheres."<sup>99</sup> In other words, everyone should have rights to the city.

As sociologist professor Richard Sennett notes, the "right to the city" became more of a bourgeois prerogative during the turn of the century. Social control and surveillance of who "the public" is (or isn't) proceeded accordingly. The validation of the new public spaces (the splendor the boulevards displayed) was heavily dependent on the control of private functions and activities that abutted upon it.<sup>100</sup> Concerned scholars feel that with the resurgence of urban privatization, the boundaries of what is private or public have become less clear and public spaces and uses are being placed in corporate or commercial hands without transparency and accountability to the public. These tactics are bolstered by the economic and legal strategies of private interests. These schemes are hard to identify because they operate mostly outside public view since they utilize normative governmental procedures.<sup>101</sup> Subsequently, when asked who has rights to the city, scholars are increasingly concerned about individuals and/or groups that don't fit the bourgeois status quo— from street vendors and political protestors to the homeless and the poor. Does New York City have any obligations to maintain the publicness of public spaces? Do urban planners, policy makers and city officials feel an obligation to ensure that sidewalks are not the exclusive domain of business and property owner interests?

I now examine two case studies focusing on some groups that are changing the way street vending is being diagnosed and remedied in New York City today. One case study approaches the problem from a criminal justice angle. The people responsible for enforcement are redefining what enforcement means for street vendors caught without licenses. The other case study is centered on a small neighborhood BID in Brooklyn

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<sup>99</sup> Neil Smith and Setha Low, "The Imperative of Public Space.," in *The Politics of Public Space*, eds. Neil Smith and Setha Low (New York: Routledge, 2006), 3.

<sup>100</sup> David Harvey, "The Political Economy of Public Spaces," in *The Politics of Public Space*, eds. Neil Smith and Setha Low (New York: Routledge, 2006), 21.

<sup>101</sup> Setha Low, "How Private Interests Take Over Public Space: Zoning, Taxes, and Incorporation of Gated Communities," in *The Politics of Public Space*, eds. Neil Smith and Setha Low (New York: Routledge, 2006), 82-85.

where two renegade BID managers are trying to change perceptions toward vendors from within the rigid BID governance. Both cases serve as remarkable illustrations of how a broadening diagnosis of the street vending issue has led to new strategies for conflict resolution.

## **VI. Midtown Community Court Case Study**

### **6.1 Overview of Midtown Community Court**

The Midtown Community Court operates as a public/private partnership in the New York State Unified Court System, the City of New York and the Fund for the City of New York. It was a mix of federal government, local government and dozens of foundations and corporations that established the Court during its pilot phase.<sup>102</sup> The first of its kind in the country, Midtown Community Court was created in 1993 to address low level offenses around Times Square. Out of this experiment in judicial problem solving grew the Center for Court Innovation. The Center is a non-profit organization/criminal justice think tank comprised of researchers, planners, attorneys and social workers. They advance the idea that the justice system has an important role to play in aiding victims, getting to the root cause of offenses and improving public safety. Currently, the Center for Court Innovation operates more than a dozen demonstration projects here in New York. Each of these projects experiment with new ideas for difficult problems like drug addiction, mental illness and neighborhood disorder. Solutions range from large-scale reform efforts, like the Red Hook Community Justice Center that handles thousands of cases each year to smaller experiments like the Brooklyn Mental Health Court that works intensively with a few dozen offenders at a time. The projects also cover a breadth of topic areas, from juvenile delinquency to felony-level violence crime.

### **6.2 Alternative Approaches to Street Vending Misdemeanors**

Midtown Community Court, located on the corner of West 54<sup>th</sup> Street and 8<sup>th</sup> Avenue, operates on a “problem solving justice” philosophy. This is based on the idea that the justice system should do more than simply process cases, it should actively seek to address the problems that bring people to court. It targets quality-of-life offenses, such as prostitution, illegal vending, graffiti, shoplifting, fare beating and vandalism. Typically in these cases, judges are forced to choose between a few days of jail time and nothing at all. In contrast, the Midtown Community Court sentences low level offenders

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<sup>102</sup> 12 Yale L. & Policy Rev. 231 where Linda M. Ricci wrote an article criticizing corporate interests of Fifth Avenues Association ins establishing their own community courts with the intent of targeting vendors and getting them off the streets.

to community service, while at the same time offering them help with the problems that underlie their actions. The Court works in partnership with local residents, businesses and social service agencies in order to organize community service projects and provide on-site social services including drug treatment, mental health counseling and job training.

Since its inception, Midtown Community Court has arraigned over 141,000 cases and illegal street vending remains the most common. According to Angela Tolosa, Director of Midtown Community Court, each year street vending cases represent about 25% of all cases brought before the Court. The Court arraigns all illegal street vending cases that arise anywhere in the borough of Manhattan.

### **6.3 Street Vending Initiatives**

In response to growing case load of vending related violations, Midtown developed three informational workshops to provide vendors with the knowledge necessary to earn a living while complying with the laws of New York City: the Vendor Education Program (VEP), Vendor Impact Panel (VIP), and Responsible Vendor Program (RVP). VEP is targeted at unlicensed vendors who are being arraigned for the first time. VIP participants include unlicensed vendors who have been arrested for the second time, and RVP caters to licensed vendors.

The program is designed to educate them on the scarcity of licenses and resources available to them to seek alternative forms of employment. These classes are held twice a week for two hours and administered by a social worker. Each class can range from just a handful of vendors to more than a dozen at a time. The first two hour session is usually spent recounting their experiences on the street and why they were brought in and how. “That’s when they can’t stop talking. They talk about how they were arrested, how long they spent in jail waiting to be arraigned, what they were doing when they were arrested,” said Dita Vesey, vendor social worker<sup>103</sup>. During the second two hour session the social worker goes over a vendor informational packet that the Court has put together which includes: FAQs, vending street restrictions, health care options, immigration services and educational resources. The majority of the vendors that Dita works with at

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<sup>103</sup> Dita Vesey, interview by author, 10 April 2007.

the Court are unlicensed immigrant vendors who may have recently arrived to United States seeking to make a living. A large percentage of the vendors are from West Africa and the Court has relied on a partnership of with Senegalese Vendors Association to help address the specific concerns of West African vendors. As Dita guides the vendors through the information, most express a desire to make an honest living and want to open up their own businesses.

For second time offenders caught vending without licenses, Midtown Community Court created a Vendor Impact Panel that entails a two hour offender-community member session where unlicensed vendors dialogue with representatives from business and residential communities in hopes of fostering better understanding. This interaction is coupled with multiple days of community service, ordered by Judge Weinberg, whom presides over Midtown Community Court. A separate two hour Responsible Vending Program caters to licensed vendors who have received criminal summons for disorderly conduct as well as summonses for violating administrative code regulations. A social worker will walk the class through a Court created handbook on street vending and answer any questions or concerns by vendors.

#### **6.4 Outcomes of Street Vending Initiatives and Lessons Learned**

The street vending initiatives started two years ago and Ms. Tolosa is in the process of developing an outcomes-based program evaluation to assess the impact of the classes, if any, on the vendors who are brought in. When I asked the social worker about the rate of recidivism, she said that she does not really see the same vendors again: “Only a few of them get picked up again, but they know if it happens too many times, the Judge can sentence them to jail time.” Although there is no data yet to determine the impact of such classes on illegal vending recidivism, it is clear that the Court’s philosophy of getting to the root cause of the problem is a different approach other regulatory or enforcement agencies are using. No where else in the City is an organization linking immigration, health care, workforce development and economic development together when working with vendors. “We want to tap into the entrepreneurial spirit of these vendors who are being brought in because they don’t have licenses. The City is simply not issuing new licenses for them anymore so we need to



think of other ways to get them into a sustainable source of living,” explains Midtown Community Court Project Director, Angela Tolosa. She is currently developing a micro-enterprise class for vendors to acquire the tools necessary to open up their own businesses including financial literacy, computer skills and basic accounting skills. Ms. Tolosa hopes to launch the program this year. “We need to think about these linkages to immigration, workforce development, economic development and services to small businesses because we need to get to the root of why these vendors would risk so much.”

## **VII. Sunset Park Business Improvement District Case Study**

### **7.1 Overview of Sunset Park Business Improvement District**

Established in 1995, the Sunset Park Business Improvement District is located in Brooklyn, along 5<sup>th</sup> Avenue between 39<sup>th</sup> and 65<sup>th</sup> Streets. Today there are approximately 384 properties and more than 600 businesses within the Sunset Park BID boundaries. The ethnic composition of its residential and merchant population has changed dramatically. The new wave of Latin American immigration has been the greatest influence. On any given weekend, 5<sup>th</sup> Avenue is bustling with street vendors selling everything from fresh fruit to toys. Most of the vendors are operating without licenses, and they are concentrated within a 4 block stretch along 5<sup>th</sup> Avenue between 50<sup>th</sup> and 54<sup>th</sup> streets. During my field interviews with street vendors and store merchants along 5<sup>th</sup> Avenue, I found that a lot of vendors have set up an informal rent system where they pay store merchants a fee for vending space directly in front of their stores. In return, some store merchants allow street vendors to deposit trash or use their facilities (water, restroom, etc.)<sup>104</sup>

The vendors' presence has attracted a growing number of complaints from the Sunset Park BID Board of Directors, who want vendors to be removed completely. The majority of board membership view vendors as a nuisance: tax evaders engaged in illegal activities that should be deterred. However, one lone resident board member, Tony Giordano, believes that the BID has an obligation to consider the views of the entire community, even though there is no legal requirement to do so. The residents often rely upon the cheap food and merchandise vendors provide. In fact, the authenticity of ethnic food and wares attracts visitors from other parts of Brooklyn and allow for a vibrant street culture along with the traditional store based businesses. This case study details Mr. Giordano's efforts to change the way his BID Board Members view street vendors. He wants to develop a conflict resolution approach to solving the street vending issue in his district. This involves bringing disparate stakeholders to the table and convincing the city bureaucracy to support his proposal to create a special vending district zone that

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<sup>104</sup> Sunset Park BID field interviews conducted by author on March 10 and March 11, 2007.

would decentralize the issuing of vending permits to the local level. Ideally, vendors would receive a permit and pay a fee for vending in the special vending district zone.

## **7.2 Adopting a Conflict Resolution Approach**

Tony Giordano was born and raised in Sunset Park and has a long record of civic leadership. He was instrumental in the creation of the Sunset Park BID and has recently emerged as a vocal critic regarding the lack of transparency and accountability in his own BID's decision making processes. He holds a deeply sympathetic view toward street vendors because he was a vendor himself, and members of his family have tried to earn a living as street vendors. After many years of attending BID meetings, he grew tired of hearing BID management incessantly complain about street vendors. In a recent presentation on the street vending issue held in Sunset Park BID office, Mr. Giordano explained, "I was raised to always face a problem without being crippled by it. If you hit a wall, turn the corner and maybe you'll find a solution waiting there all along this time. The street vendor problem has always been this constant running into the brick wall. It's time to think more creatively about what can be done."

Mr. Giordano believes that the Sunset Park BID can serve as a model for how to use strategies of conflict resolution to bring vendors, store based merchants, residents, BIDs and elected officials together. He has put forth a rough proposal to local elected officials and Sunset BID board of directors that calls for the creation of a special vending zone within the Sunset Park BID district area where street vending licenses can be issued locally. Once formalized, street vendors would be treated with the same protections and privileges as store based merchants. Vendors would pay some small fee to the BID in exchange for special services like street cleaning and garbage disposal. It has taken several months of internal debate within the Sunset Park BID Board of Directors meetings just to agree to consider a proposal like this. "The first time I gave this presentation on why vendors in Sunset Park should be supported and allowed to stay, one guy just ripped the copy of the presentation apart and threw it back at me!" recalled Mr. Giordano. So far, his persistence has paid off, garnering the support of local elected officials for an approach that is more vendor-friendly. He has engaged the offices of Assemblyman Ortiz (NY 51<sup>st</sup> State Assembly District), Congresswoman Valezquez (NY

House 12th District) Councilwoman Gonzalez (NYC Council 38<sup>th</sup> District) and Brooklyn Borough President Marty Markowitz and each office has assigned legislative aides to work with Tony in developing this plan.

There is much work to be done, and Mr. Giordano knows that details will make or break any idea: “I’m being really careful about how I develop this proposal. I want to make sure that it is a result of engaging a variety of stakeholders. If it is to have any chance of survival, we have to bring people who are not used to coming together at the table to do so.” Reaching out to street vendors might prove the most difficult part of this process— Who should do it, how to do it and who can legitimately represent their interests? Mr. Giordano alone cannot tackle this set of challenging questions. The majority of street vendors found along 5<sup>th</sup> Avenue in Sunset Park are recent immigrants from Latin America. They speak very little English and may or may not have documentation of their citizenship status. These factors make them hesitant to engage in any official or formalized processes.

### **7.3 Implications of mutual gains strategy and Lessons Learned**

Even though Tony Giordano’s plan for Sunset Park is still in the early stages of inception, the novelty of a conflict resolution, mutual gains framework cannot be overstated. While plenty of groups remain adamant about either banning street vending all together or allowing street vending to thrive, Mr. Giordano has set into motion a series of discussions, meetings, presentations and conversations with key civic leaders and officials in his neighborhood to think beyond these two seemingly extreme polar opposite choices. A mutual gains approach where parties all walk away with some favorable outcome has implications for future BID decision making processes. He has recently been hired by the Department of Small Business Services to conduct training modules for enhancing BID governance. The implications of Tony Giordano’s plan for Sunset Park are significant in terms of it setting a precedent of a smaller neighborhood BID breaking away from the dominant, corporate model. The conversation it has created internally within BID governance is also significant in that there is acknowledgment from the Board of Directors of the need to include other views on vending that are more reflective of the majority of residents and store merchants alike.

### **VIII. Current Attempts to Improve Street Vending in New York City**

In the last two years, there have been several attempts by members of City Council to introduce bills that address different facets of the street vending issue.<sup>105</sup> Int. No. 621 sponsored by Council Members Reed, Liu and Martinez on April 18, 2005 was the first comprehensive bill in recent years that called for an overhaul of the entire street vending regulatory scheme by repealing much of the current local vendor legislation. It is worth some time explaining the details of this bill to illustrate the challenging task of balancing points of contention for disparate stakeholders – food vendors, general vendors, First Amendment vendors, disabled veterans, businesses, BIDs, residents, etc.

Int. No. 621 was sponsored by Council Member Reed whom sought to create a new section of the administrative code addressing rules concerning all non food vendors. The bill would open up nearly all city streets and avenues to vending, including locations that are presently closed to disabled veteran vendors. Only the area immediately surrounding the World Trade Center would remain restricted from all forms of street vending. The proposed scheme would limit the number of vendors to three per block face, or six per block while current regulations concerning sidewalk size, minimum distances from the curb and other limitations would remain in effect. This would be applied to all general, food and First Amendment vendors. Int. No. 621 would also eliminate the Street Vendor Review Panel, the body presently authorized to close additional streets.

In order to ensure the six to a block rule, priority would be given to a scheme that permits one food vendor, one general vendor and one First Amendment vendor on each block face. Where there is a lack of vending, nothing would prohibit two or more similar vendors from utilizing the available space. In cases where two similarly licensed vendors are contending for only one available space, the vendor who utilized the location earlier would have priority. However, in consideration of New York State's legislation with respect to disabled veterans, priority would always be given to disabled veterans over a general vendor.

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<sup>105</sup> Appendix 6 - Summary of bills introduced in New York City Council 2005-06 related to street vending.

Department of Consumer Affairs would issue new general vending licenses through a numbering scheme dictating the licensee's priority with regard to other similar licensees. For example, disabled veteran vendors would be deemed a special class of general vendors, assigned a unique number denoting that such vendors always hold a preferred priority with respect to general vendors when a particular location is in contention. Int. No. 621 called for a gradual increase in the number of authorized general vendor licenses from the current limit of 853 to 2000 by January 2007. The proposal would further require that all applicants be fingerprinted in an effort to thwart counterfeit licenses.

The proposal also alters the current penalty scheme, requiring multiple violations of the same offense within a one year period before fines begin to multiply. The penalties would be mandated and the forum at which general vendor violations would be heard would be relocated to offices of Department of Consumer Affairs, instead of the current Environmental Control Board. First Amendment vendors would be issued an independent license, denoting their unique status and applicants for First Amendment licenses would be required to complete a form determined by DCA, providing their contact information, three photos, a description of goods or services being offered, their tax ID and tax clearance certificate, and an agent within the city for the purposes of accepting process or other notifications if the applicant is not a city resident. There would be no limitation on the number of First Amendment licenses authorized.

The business community and BID managers responded to Council Member Reed's bill with much opposition and the bill never moved out of the Committee on Consumer Affairs for public hearing. This marked the last attempt from City Council for comprehensive reform of street vending laws.

In May 2006, Council Member Barron introduced bill no. 324 that calls for removal of all street vending licensing caps, but did not address other regulatory aspects of street vending. It is also unlikely this bill will gain enough political support to move out of Committee. Currently, there is political stalemate in City Council between members sympathetic to businesses and street vendors.

## **IX. Recommendations for a New Street Vending Policy Framework**

On September 18, 2006 Mayor Bloomberg held a press conference to announce the recommendations of the Commission on Economic Opportunity. His remarks reaffirmed his campaign promise to ensure that New York City remains a symbol of the American Dream and a place of entrepreneurial spirit, “A year ago, we asked the people of New York City to return us to office so that we could truly make this ‘A City of Opportunity’ for all. I believed passionately in that vision then – and I hold to it just as strongly today. Over the centuries, New York has provided opportunity to millions and we have been repaid many, many times over. Unlocking the tremendous potential of people with more dreams than dollars is the key to our whole city’s future prosperity. This will be an ambitious undertaking, make no mistake about it. But it’s one that we’ve already made a good beginning at addressing.”<sup>106</sup>

A new street vending policy framework should be guided by this universal principle of access and opportunity for street based and store based merchants alike. I propose a street vending framework that:

- Recognizes street vending as a right to economic livelihood.
- Creates one single city division responsible for administering, monitoring and mediating all street vending related policies, concerns, or conflicts based on a transparent and democratic process.
- Creates an overall policy goal towards street vending across the city while allowing for differentiated implementation strategies based on neighborhood specific needs.

### *Recommendation 1- City of Opportunity for Street Level Entrepreneurs*

If the concept of “opportunity for all” is truly universal, then Mayor Bloomberg should support City Council bills that lift the cap on vending licenses in New York City. In April 2007, Mayor Bloomberg vetoed a bill that would have capped the number of pedicabs to operate in New York City to 325 because he disagreed with capping a service

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<sup>106</sup> Mayor Michael Bloomberg, “Mayor Announces the Recommendations of the Mayor’s Commission for Economic Opportunity” (remarks delivered at press conference, New York, NY, 18 September 2006).

popular with the public.<sup>107</sup> With respect to restrictions toward pedicabs, Mayor Bloomberg rather “let the free market place decide.”<sup>108</sup> The same recognition should be extended to street vendors, whom also supply a public service popular with the public. The objectives of a new policy framework toward vendors should recognize this right to economic livelihood and separate out the counterfeit vending issue that requires a wholly different enforcement and regulatory tactic. Like store based merchants who have access to free training and workshops on aspects of business management, street-based merchants should also be granted the same access to such services provided by the city.

The cap on street vending licenses was established 25 years ago and was not based on empirical studies to support claims that street vending lead to crime, congestion or competition with store based retail. All claims regarding the threats street vending pose to pedestrian traffic flow, safety and security, and local businesses remain unsupported. The history of municipal responses to street vending shows that the regulatory environment toward vending has always been heavily influenced by real estate and business interests. The conversation is less about what may be empirically valid and more about certain notions of order and acceptability that come at the expense of others.

The licensing cap forces those seeking to earn a legitimate form of living to operate outside the regulatory environment. By formalizing street vending and bringing those that operate into a regulatory framework through licensing. The city can maintain better information on street vending activity and respond accordingly to changes in the street vending sector.

### *Recommendation 2 - One Stop Shop for Street Commerce and Entrepreneurship*

In 2002, Mayor Michael R. Bloomberg created the Department of Small Business Services (SBS) to serve the needs of New York City’s more than 200,000 small businesses, which account for half of the City’s private sector workforce and \$4.5 billion in tax revenues.<sup>109</sup> A year later, the agency merged with the Department of Employment,

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<sup>107</sup> March 20, 2007 newsday.com article available from <http://www.newsday.com/news/local/newyork/ny-bc-ny-pedalingrides0330mar30,0,4419918.story?coll=ny-nycnews-headlines>

<sup>108</sup> Ibid.

<sup>109</sup> NYC Department of Small Business Services website available from <http://www.nyc.gov/html/sbs/html/home/home.shtml>



forming a single agency that understands and responds to the needs of both businesses and their employees.

SBS serves as a single point of access for all questions that local businesses have when it comes to interacting with government. The agency serves to help local businesses resolve issues with city agencies, obtain permits and licensing, access financing and incentives, bid on government contracts, hire and train their workforce, and take advantage of the benefits of being in New York City. Additionally, SBS works with communities and organizations in all corners of the City to invigorate neighborhoods and make them more business friendly. The same service goals should be extended to street merchants as well throughout New York City. As such, street merchants should be provided the same kind of service and guidance to navigate the dos and don'ts of doing business in the City.

Department of Consumer Affairs is currently the lead agency in administering vending codes and licenses. A Street Commerce division should be established to handle all administrative details related to regulation, implementation and management of street vending throughout the five boroughs. Within the Street Commerce division separate units can be created to deal with food vendors, general vendors, First Amendment vendors, seasonal vendors, and disabled veteran vendors. This ensures that one single agency is responsible for ensuring the integrity of street vending throughout New York City while being able to quickly respond to any situation that may impact public safety. A Street Commerce division within Department of Consumer Affairs would be responsible for establishing performance goals and indicators from which to evaluate outcomes of street vending policy goals. The agency could establish a transparent process that details how street commerce standards are made while allowing for more flexible, neighborhood or district based approaches to achieving those goals.

### *Recommendation 3 - Policy of Smart Codes for Smart Places*

New York City is comprised of diverse and vibrant neighborhoods that often have unique traits and characteristics not replicable elsewhere. The physical, social and economic scale and scope of Sunset Park in Brooklyn is very different to that of Times Square. Currently the city's administrative codes dictate street vending regulations on

almost block by block basis which has led to implementation and enforcement problems. In an effort to streamline and simplify these codes, current reform measures introduced in City Council make arbitrary blanket designations like “three vendors to a block” that make sense in some places but not others. The challenge is to create a policy that allows for place specific flexibility while maintaining an overall policy goal.

I propose that city planners and policy makers borrow the tenants of Form-Based Codes, an emerging<sup>110</sup> regulatory technique used to address the relationship between buildings and facades and the public realm and apply to a new street vending policy framework, addressing the relationship between street-based merchants, store-based merchants and the public realm. According to Form Based Codes Institute, “the regulations and standards in form-based codes are keyed to a regulating plan that designates the appropriate form and scale and character of development rather than only the distinctions in land use type.” This is in contrast to conventional zoning’s focus on the segregation of land-use types, permissible property uses, and the control of development intensity through simple numerical parameters (e.g. FAR, dwellings per acre, per acre, height limits, setbacks, parking ratios). More importantly, form-based codes are drafted to achieve a community vision. Ultimately, a form-based code is a tool; the quality of which is dependent on the quality and objectives of the community plan that a code implements. According to the Form Based Institute, form-based codes process usually includes the following elements:

- *Regulating Plan.* A plan or map of the regulated area designating the locations where different building form standards apply based on clear community intentions regarding the physical character of the area being coded.
- *Building Form Standards.* Regulations controlling the configuration, features, and functions of a building that define and shape the public realm.
- *Public Space/Street Standards.* Specifications for the elements within the public realm (e.g., sidewalks, travel lanes, street trees, street furniture, etc.)
- *Administration.* A clearly defined application and project review process.

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<sup>110</sup> Form Based Codes is a method of regulating development to achieve specific urban form. They are a move away from traditional planning codes that restrict ability for planners to address site, neighborhood and context specific realities. The Form Based Codes Institute was formed in early October 2004 at a meeting convened at the Driehaus Estate in Lake Geneva, Wisconsin. Leading practitioners in disciplines of urban design, planning, architecture, public policy, and law met to consider various aspects of this emerging regulatory technique. Resources on Form Based Codes can be found at <http://www.formbasedcodes.org/definition.html>

A similar regulatory framework can be applied to street vending policy:

- *Regulating Plan.* A plan or map of the regulated area designating the locations where street vendors operate freely, based on clear community intentions regarding sidewalk areas where vendors can freely operate.
- *Street Vending Standards.* Specifications for controlling the configuration, features and functions of vending that takes into consideration public safety and health concerns. (e.g., size of table, distance from curb, distance from fire hydrant, distance from store entrance, etc.)
- *Public Space/Street Standards.* Specifications for the elements within the public realm (e.g., maintaining street cleanliness, proper disposal of garbage, etc.)
- *Administration.* A clearly defined street vending policy framework that fosters an economically sustainable market for street based entrepreneurs while balancing the needs of local residents that need to share a common sidewalk space.<sup>111</sup>

#### *Recommendation 4 - Mayoral and City Council Alliance for Street Vending Reform*

In recent years, City Council Members have tried to tackle the street vending quagmire by proposing bills like Int. Bill 621 that would streamline existing myriad of street vending regulations into concise body of rules to be implemented by one single city agency. None of the bills have gained enough political traction from the Mayor's office that could move it out of committee. Not only have the business and real estate lobby been effective at blocking vendor friendly legislation, but they have been effective at creating regressive policies that curb the ability of vendors to do business freely. If no such influence can be rightly exerted over any other forms of commerce in the city, why should street vending be at the mercy of private groups like Business Improvement Districts? If the city is willing to yield decisions about who has access to public spaces to private entities, then where do we draw the line between what is public and what is private? Mayor Bloomberg and City Council should be politically united in overhauling the current street vending regulatory environment based on the premise of "opportunity for all."

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<sup>111</sup> Peter Katz, President of Form Based Codes Institute "Eight Advantages to Form-Based Codes," available from <http://www.formbasedcodes.org/advantages.html>

### *Recommendation 5- Commission Study on Street Vending in New York City*

The last comprehensive study on street vending was conducted by the Commission on Pushcart Markets in 1928. There is little empirical information on the nature and extent of street vending today. Recently, the Russell Sage Foundation recruited Douglas Heckathorn, Cornell University sociologist to use a new sampling technique and mathematical formula to identify a hard-to-count population: low-wage workers.<sup>112</sup> The research relies heavily on a technique developed by Heckathorn called a “snowball sample” – seeking out workers who then recruit their friends in a process they liken to a theory of connectedness. Russell Sage Foundation is relying on this technique because, “they contend that unregulated work is proliferating, but advocates and policy makers have no solid data on the magnitude of the problem.”<sup>113</sup> The same methodology could be used to gain data on street vending – who vends, how much money do they make, who do they support with their earnings, etc. This information can be used by workforce development organizations or city agencies that aim to provide stable economic livelihoods for all New Yorkers. The Department of Consumer Affairs should commission a comprehensive study on the state of street vending in New York City today to inform future policy decisions regarding street vending.

### *Recommendation 6 - Workforce Development for New Americans*

Last September Mayor Bloomberg remarked in a press conference, “Let’s begin with the plain fact that the best anti-poverty program ever devised is a job. But for an increasing number of New Yorkers, their jobs do not lift them out of poverty. The result is that there are 340,000 working New Yorkers – people who regularly set the alarm clock and punch the time clock – who nevertheless live in poverty. For them, the American Dream of working your way out of poverty isn’t working – not yet, anyway. All those willing and able to work hard must be able to climb the ladder to better lives for themselves and their families. That involves a dual focus: Creating stronger career ladders, while also ensuring that as men and women reach for higher rung on those ladders, they don’t lose ground by being disqualified for the health benefits and other

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<sup>112</sup> Sam Roberts, “In Challenge to Survey Low-Wage Workers, Researchers Pursue ‘Snowball Sample,’” *New York Times*, 15 April 2007.

<sup>113</sup> *Ibid.*

supports their families need. The Commission [on Economic Opportunity] has challenged us to make better use of the \$400 million to \$500 million we spend each year in workforce development.” For many of the West African vendors I met at Midtown Community Court who see no other option than to take chances vending on the street without licenses, the city’s existing workforce services are simply not available to them.

The Department of Small Business Services is the city agency responsible for implementing the city’s workforce development policies and programs. Workforce Development is a relatively new responsibility for the Department of Small Business Services. In an effort to link the City’s economic and workforce development initiatives, Mayor Bloomberg took an unprecedented step in July 2003, and consolidated the Department of Employment and the Department of Small Business Services. The result is a single agency that responds to the needs of both businesses and their employees. The Division of Workforce Development is at the center of this relationship: connecting employers with a skilled workforce and providing employment services to the City’s adult jobseekers. SBS manages the seven Workforce 1 Career Centers located throughout the five boroughs of New York. However, the current model is limited in scope in that it only serves a certain “job ready” jobless population. Undocumented street vendors or new Americans who may lack English language skills are seldom served by the City. Since Workforce1 Career Centers are a partnership of agencies and organizations working together to provide a full array of free job training, recruitment, and placement services, SBS should consider partnerships with community based organizations and other service providers that target immigrant populations.

Chinatown Manpower Project, Inc. (CMP) is one example of a community based organization that provides vocational training, employment services, educational programs and economic development opportunities to disadvantaged immigrants and refugees throughout New York City. Founded in 1972, Chinatown Manpower Project grew from an organization to help Chinese immigrants with job training to over eight different types of workforce development programs for people with a wide range of backgrounds and aspirations. The Department of Small Business Services should link and support the efforts of these types of organizations to ensure immigrant communities are not left out of city’s larger effort to ensure that the American Dream is not exclusionary.

## X. Conclusions

Walter Lippmann once said, “Where all men think alike, no one thinks very much.”<sup>114</sup> A historical analysis of municipal responses toward vending in New York City reveals that much of the existing regulatory framework is based on a legacy of biased diagnosis of the street vending as a “problem,” not an asset. Furthermore, the city’s complicity in devolving decisions about access to public space and sidewalk uses raise profound concerns over the proliferation of Business Development Districts in the last five to ten years in cities across United States. The current complex vending regulatory environment cripples the ability for street based entrepreneurs to earn a legitimate living and unnecessarily creates sites of social and political conflict. The challenge is to develop a new framework that reflects a “City of Opportunity” for all by fostering street enterprise while being sensitive to the concerns of sidewalk congestion or public safety in high pedestrian traffic areas.

*Implications for the Field of Planning.* The emerging movement toward form based codes provides a framework under which policy makers and planners can find that balance between the need for overarching standard and sensitivity to neighborhood needs. Currently, a mobilization effort led by Sunset Park BID member Tony Giordano is gaining traction with local elected officials, civic and business leaders to think differently about how to manage street vending in Sunset Park. The goal is to create a localized system of bringing the currently informal street based merchants into a regulatory system that reflects neighborhood scale, density and consumer needs. If successful, such a pilot project would be the first of its kind in the history of municipal responses to street vending. The process of convening stakeholders to discuss policy based goals as a collective can serve valuable lessons to neighborhoods elsewhere.

*Areas for Further Study.* There is very little empirical information about street vending activity in New York City. It would be useful for BIDs, street vending advocacy groups and Department of Consumer Affairs to help create a formalized data collection system. Establishing baseline information on street vending demographics can help policy anticipate changes in the sector.

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<sup>114</sup> [http://www.brainyquote.com/quotes/authors/w/walter\\_lippmann.html](http://www.brainyquote.com/quotes/authors/w/walter_lippmann.html)

Another area for further study is a cross city comparison of street vending policies. What are the tensions in street vending in a city like Los Angeles? What has been the response of the city? What are the influences of street vending policy in different cities? How might these influences differ or mirror each other?

Lastly, the process and outcome of Sunset Park's initiative to create a special vending zone by creating localized structure to legitimize informal vendors in the neighborhood will serve as an interesting case study for further research. Was the mobilization effort successful? What were the main obstacles in creating a localized street vending regulatory scheme? Whose interests were being represented in the conversations about designing a structure? Does this process constitute a community vision?

## Appendix

### Appendix 1: New York City Street Vending Typology

General Vendors	853	Licensed by the Department of Consumer Affairs for non-food merchandise.
Veterans	1,304	Licensed by the Department of Consumer Affairs for non-food merchandise.
Disabled Veterans	374	Licensed by the Department of Consumer Affairs for non-food merchandise.
Food Veterans	3,000 permits	Licensed by the Department of Consumer Health for food merchandise.
First Amendment Vendors	---	No licenses, State Tax Identification Number only
Street Fair Vendors	---	Special 30 day permit licensed by Department of Consumer Affairs for non-food merchandise.
Unlicensed Vendors	---	No licenses.

*Source: Midtown Community Court – Vendors Informational Packet*



## Appendix 2 – Street Vending Requirements

TYPE OF LICENSE	REQUIREMENTS
General Vending	<p>Licenses are required to sell general merchandise such as pottery, jewelry, crafts, religious items, dolls, watches, socks, caps, toys, CDs and video cassettes. Many vendors selling these items on the street are illegal and if caught, their merchandise could be confiscated by the police. A person must obtain a license from the Department of Consumer Affairs. Unfortunately, with a legislative cap of only 853 licenses, and a waiting list of thousands, the chance of obtaining a license at this time is unlikely. The only exception is for veterans who were discharged from the service as disabled, and can provide a copy of their honorably discharged paper.</p> <p>The DCA waiting list for non-veteran applicants is currently closed. The waiting list will not re-open for further registration until we have run through the current pool of non-veteran applicants.</p> <p>Licenses cost \$200. If a vendor has received four or more NYC Environmental Control Board violations, license may be suspended or revoked after a hearing.</p>
Food Vending	<p>While there is no limit on the number of license granted, there is a cap of 3,000 Food Cart Permits. These permits are renewable every 2 years. All of the authorized permits have already been issued and there is a long waiting list. There are 2 exceptions:</p> <ul style="list-style-type: none"> <li>• Borough Food Vending Permits – There are borough specific permits available for people who want to vend outside Manhattan. A total of 50 permits are available in each borough.</li> <li>• Seasonal Food Vending Permits – Each year an additional 1,000 annually renewable, seasonal permits are granted for the period from April – October. There permits are awarded on a lottery system.</li> </ul> <p>Food Handling Course – One must take 20 hour course on food handling given by Department of Health.</p>
First Amendment Vendors	<p>Under the First Amendment, people who sell artwork, including: paintings, prints, photographs and sculptures, and those who sell printed matter, such as newspapers, magazines, pamphlets and books, on the street DO NOT need a vending license.</p>

	<p>However, they DO require a New York State Certificate of Authority / Tax ID Number from the Department of Taxation.</p> <p>First Amendment vendors are still subject to other rules and regulations applicable to all street vendors including the list of restricted streets shown in Subsection 2-314 of the Rules of the City of New York. Vendors are not allowed to vend on those streets that are restricted to both food and general vendors. (Contact the Department of Consumer Affairs for a list of these areas).</p>
<p>Disabled Veteran</p>	<p>If you are a VETERAN or a WIDOW OR WIDOWER OF A VETERAN (HONORABLY DISCHARGED - New York State resident), you are eligible to apply for a general vendor license. In order to receive an application, you must have one of the following documents</p> <ul style="list-style-type: none"> <li>• STATEMENT OF SERVICE Originals only; issued by the Veterans Administration regional office at 245 West Houston Street, New York</li> <li>• DD-214 FORM Originals or Type #4 copies You can request a DD-214 electronically by visiting the National Archives's <a href="#">National Personnel Records Center Web page</a>.</li> </ul>
<p>Street Fair 30 Day Permit</p>	<p>The DCA offers a 30-day Street Fair Permit under the General Vendor licensing law. These permits are issued to individuals participating in street fairs or events registered with the Mayor's Community Assistance Unit, and are valid for the duration of the event. These events usually take place during the spring through fall seasons.</p> <p>Sale of new non-food items on private property, such as flea markets and concessions, or for the sale of printed or written matter--books, magazines, etc.-on the sidewalk <b>do not</b> require a General Vendor license, but <b>do</b> require a New York State Certificate of Authority. Call the New York State Department of Taxation and Finance at 1-800-462-8100 and ask for Publication 750.</p>

*Source: Department of Small Business Services and Department of Consumer Affairs websites under "licenses."*

## **Appendix 3 – Rules and Regulations for All Vendors**

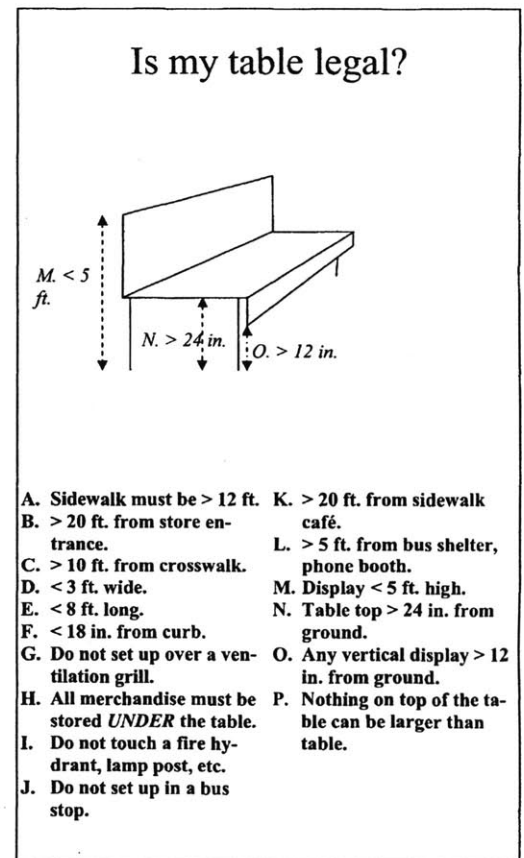
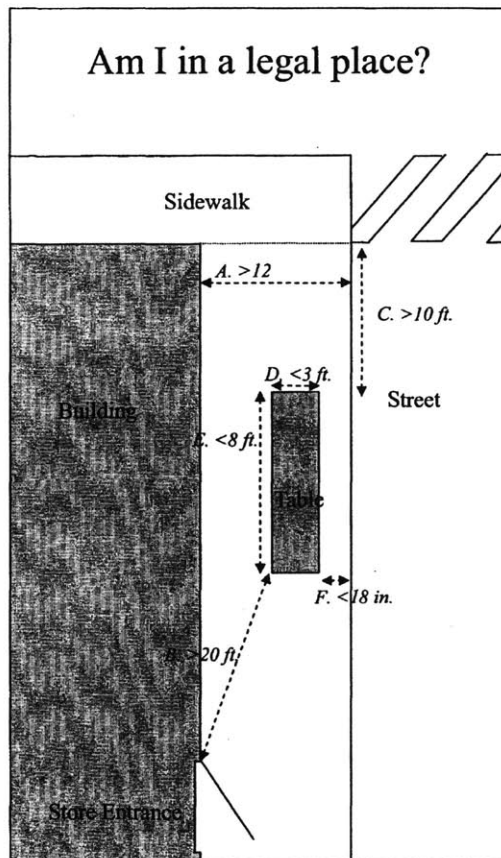
### *Location Related Regulations*

- It is illegal for a vendor to operate on any sidewalk, unless that sidewalk has a clear path for pedestrians to pass through. The path **MUST** be at least 12 feet wide, and in calculating 12 feet, vendors must start from the boundary of private property and measure up to their stand/table/cart, or from the curb up to their stand/table/cart.
- It is illegal to occupy a public space greater than 8 feet in length if he/she is running parallel to the curb by 3 feet or less.
- It is illegal to allow a stand/table/cart/vehicle/food/merchandise to touch a building or structure in anyway. This includes: lamp posts, parking meters, mail boxes, fire hydrants, benches, trash cans, and bus shelters.
- It is illegal to allow a stand/table/cart to lean against a display window of fixed business or to be within 20 feet of an entranceway to a building, theater, sports arena or other place of public assembly.
- It is illegal to vend within any bus stop/taxi stand or within 10 feet of a driveway, subway entrance/exit or any corner.
- It is illegal to disobey any traffic or parking law, or to restrict the passage of any vehicle.
- It is illegal to vend in the C-4, C-5, or C-6 zoning districts.
- It is illegal to vend anywhere within the area from 2<sup>nd</sup> Avenue to Columbus/9<sup>th</sup> Avenue, between 30<sup>th</sup> and 65<sup>th</sup> streets. The area from Broadway to West Street, between Liberty and Vesey streets is also prohibited. However, this area is open for vending only to disabled veterans with blue licenses.
- It is illegal to vend on an open roadway that is not a pedestrian mall or plaza.
- It is illegal to set up a stand/table/cart over a ventilation grill, cellar door, manhole, transformer vault, or subway access grating, or to use electricity of any kind.
- It is illegal to sell merchandise directly off of the sidewalk without the use of a stand/table/cart, or to place products on top of a trash can or cardboard box.
- It is illegal to sell out of parked or stationary vehicle.

- It is illegal to vend within 20 feet of a sidewalk café or within 5 feet of a bus shelter, newsstand, public phone, or disabled access ramp.
- It is illegal to vend within 20 feet from the entrance or exit of a residential building.

### Rules Regarding Displays

- Vendor displays **MUST** be no more than 5 feet above ground.
- Displays **MUST** be at least 2 feet above the sidewalk if the surface is horizontal. If the surface of the display is vertical, it **MUST** be at least 1 foot above ground.
- The base on which the display sits **MUST** be the same size as the display itself.
- Items may only be stored underneath the display space.
- Vendors **MUST** display prices.



Source: Diagram courtesy Street Vendor Project

### *Health Code Regulations for Food Vendors*

- Food shall be protected from contamination. This does not mean that you cannot display sample items such as pretzels, if you do not sell them.
- All potentially hazardous foods shall be kept below 45° F or above 140° F, except during preparation.
- Hats or hair nets must be worn when food is being prepared.
- A person with a food protection course certificate must supervise all food preparation.
- Mobile food processing carts must have hot and cold running water.
- Metal, stem-type thermometers must be readily accessible to measure temperatures.

*Source: Director of Program, Angela Tolosa's Midtown Community Court Guide to Street Vending in New York City.*

## Appendix 4 – Sample of Street Restrictions

NYC DEPT OF CONSUMER AFFAIRS  
42 Broadway, Legal Affairs  
NYC 10004; (212) 487-4259  
www.nyc.gov/consumers

### STREETS PROHIBITED TO BOOK VENDORS, ARTISTS AND OTHER FIRST AMENDMENT VENDORS

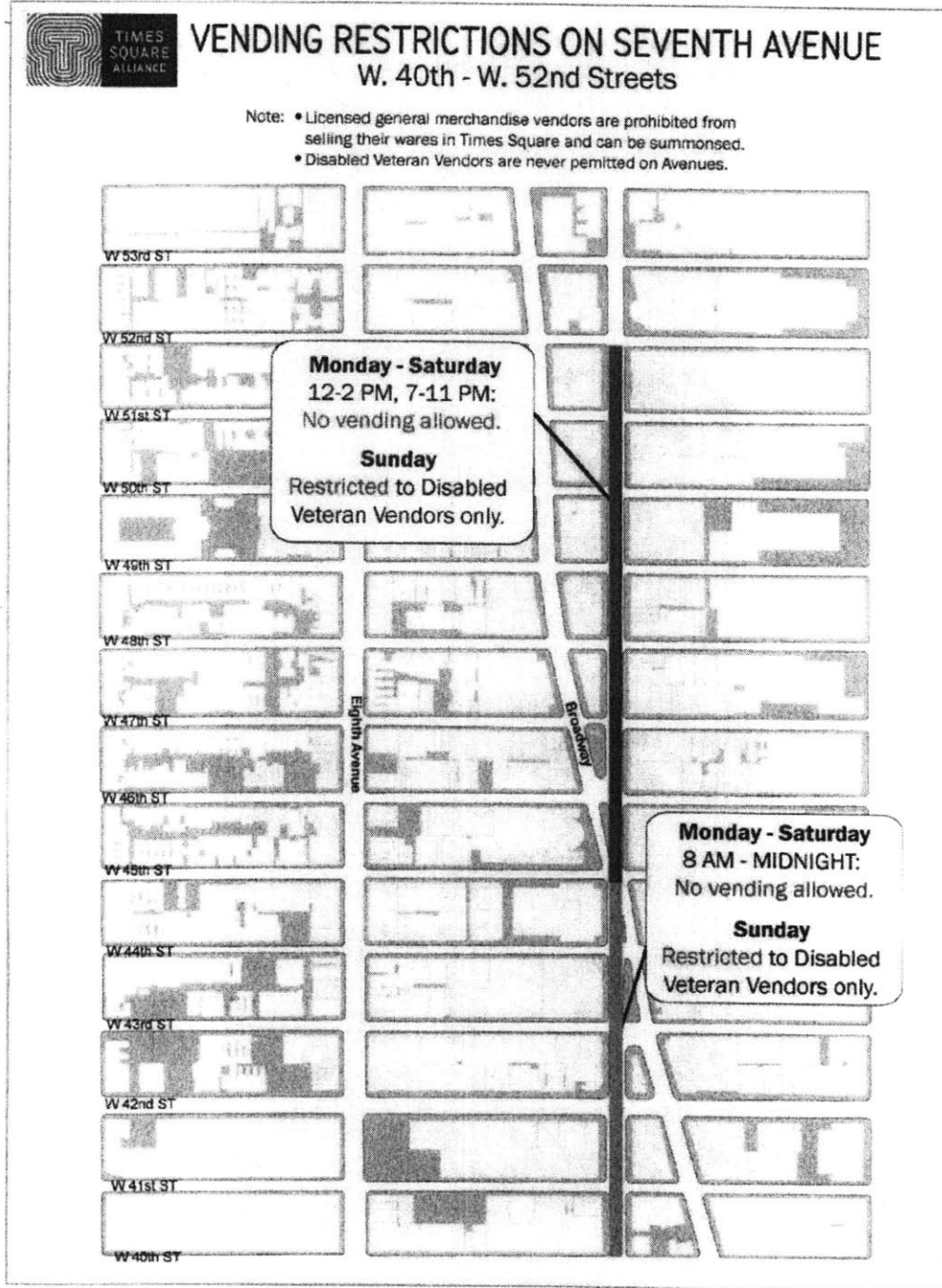
New York City restricts all vendors, including Booksellers and Artists, from using the streets listed below. Moreover, Booksellers and Artists are required to obey the laws on stand size and positioning contained in §20-465.

#### MANHATTAN

Broad Street	South Street to Beaver Street	M-F	8 am-6 pm
Broad Street	Wall St. to South St.	M-F	8 am-6 pm
Broadway	Bowling Green to Wall St.	M-F	8 am-6 pm
Broadway	Cortland St. to Murray St.	M-F	8 am-7 pm
Broadway	<b>WORLD TRADE CENTER AREA</b>		
	1. bounded on the East by the easterly side of Broadway.	Every day	24 hours
	2. on the South by the southerly side of Liberty Street.	Every day	24 hours
	3. on the West by the westerly side of West Street.	Every day	24 hours
	4. on the North by the northerly side of Vesey Street.	Every day	24 hours
Broadway	27th St. to 28th St.	Every day	9am-6pm
Broadway	W. 32nd to W. 32nd	Every day	8am-8pm
Cedar Street	Pearl St. to William St.	M-F	6am-6pm
Cortland Street	Entire Street	M-F	6am-7pm
Church Street	Vesey St. to Murray St.	M-F	8 am-6 pm
Church Street	Cortland St. to Dey St.	M-F	8 am-6 pm
Delancey Street	Orchard St. to Essex St.	Every day	8 am-6 pm
Dey Street	Entire Street	M-F	8 am-7 pm
Exchange Place	Broad St. to Broadway	M-F	8 am-6 pm
Fulton Street	Water St. to William St.	M-F	8 am-7 pm
Fulton Street	William St. to Church St.	Every day	24 hours
Gold Street	Fulton to Frankfort St.	M-F	8 am-6 pm
John Street	Gold St. to Broadway	M-F	8 am-7pm
Maiden Lane	Nassau St. to Broadway	M-F	8 am-6pm
Mott Street	Canal St. to Broome St.	Every day	10 am-7 pm
New Street	Exchange Place to Wall St	M-F	8 am-6 pm

Source: Midtown Community Court Vendor Informational Packet 2007.

## Appendix 5 – Times Square Alliance Vending Restrictions Guide



Source: Courtesy Bob Esposito, VP of Operations, Times Square Alliance Business Improvement District, 2007.



## VENDOR RESTRICTIONS ON W. 42ND STREET 3rd to 8th Avenues

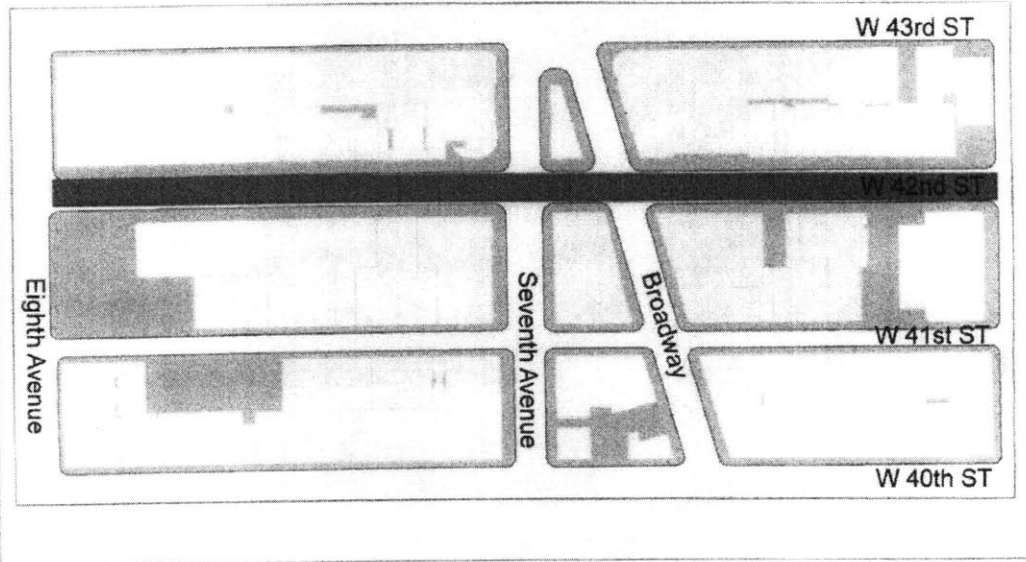
Note: Licensed general merchandise vendors are prohibited from selling their wares in Times Square and can be summonsed.

### Monday - Saturday

- 8AM - 7PM: Restricted – Food, Disabled Veteran, and First Amendment Vendors.
- AFTER 7PM: Open for Food and First Amendment Vendors ONLY.

### Sunday

- All Day: Open for Food and First Amendment Vendors ONLY.



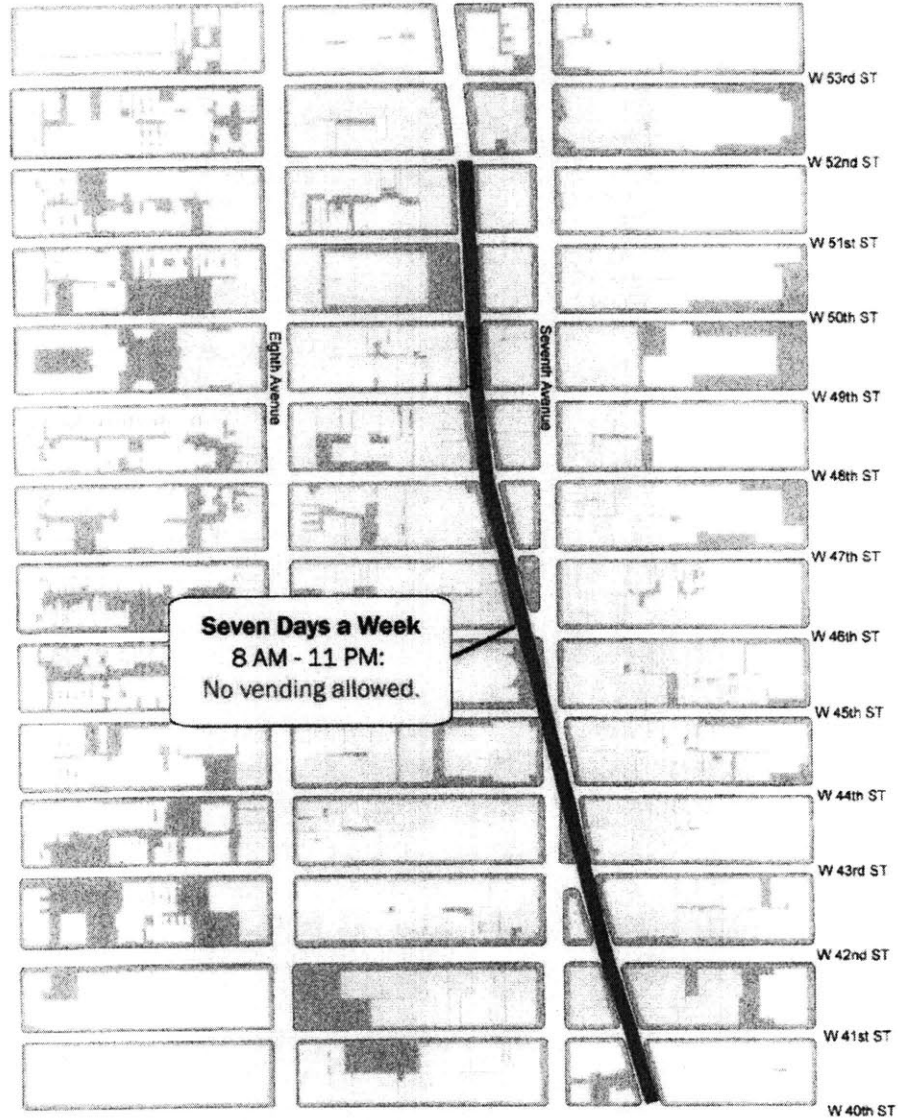
Source: Courtesy Bob Esposito, VP of Operations, Times Square Alliance Business Improvement District, 2007.





## VENDING RESTRICTIONS ON BROADWAY W. 40th - W. 52nd Streets

- Note:
- Licensed general merchandise vendors are prohibited from selling their wares in Times Square and can be summonsed.
  - Disabled Veteran Vendors are never permitted on Avenues.

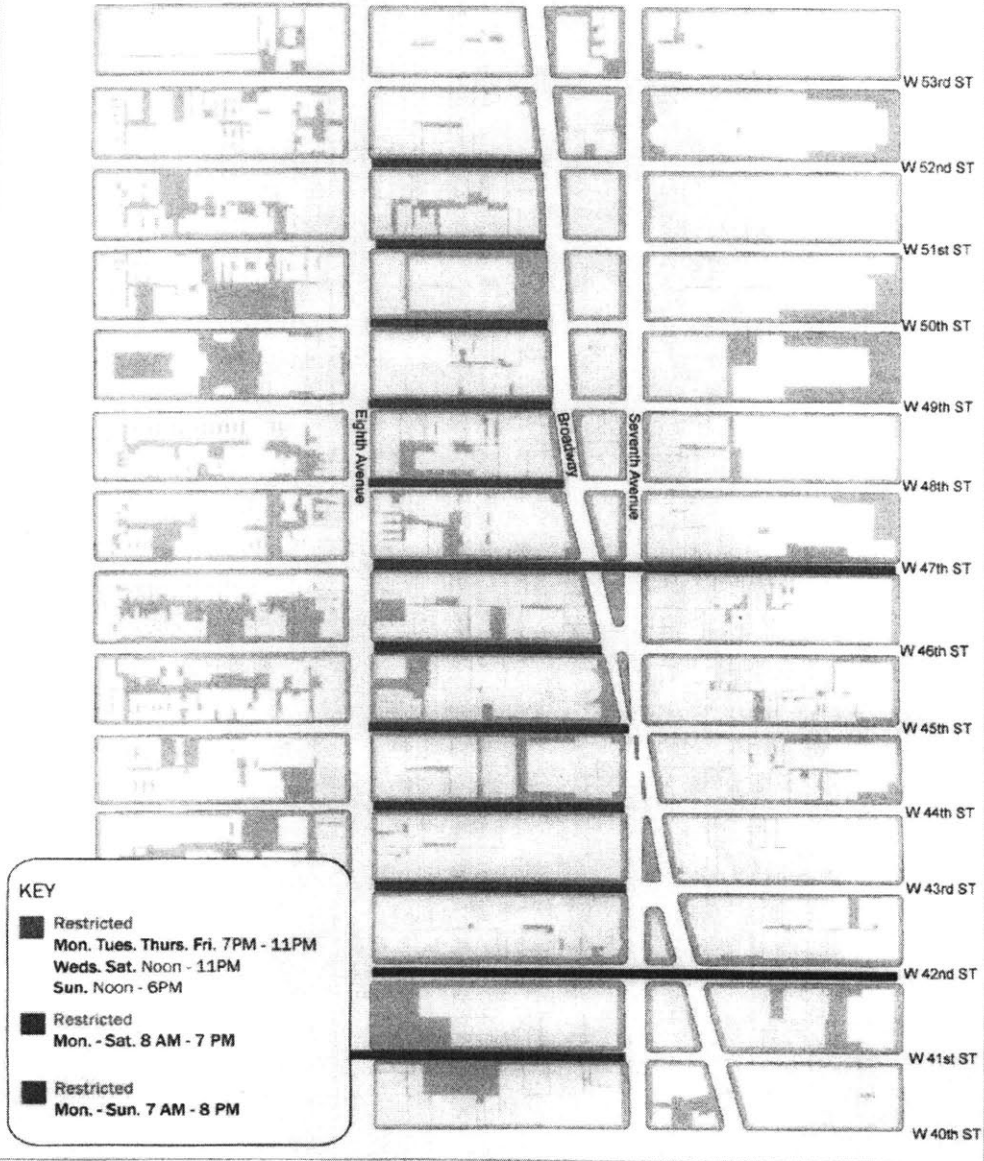


Source: Courtesy Bob Esposito, VP of Operations, Times Square Alliance Business Improvement District, 2007.



# FOOD VENDING RESTRICTIONS ON SIDESTREETS

- Note:
- Licensed general merchandise vendors are prohibited from selling their wares in Times Square and can be summonsed.
  - Disabled Veteran Vendors are never permitted on Avenues.



Source: Courtesy Bob Esposito, VP of Operations, Times Square Alliance Business Improvement District, 2007.

# FOOD VENDOR REGULATIONS IN TIMES SQUARE



LICENSED FOOD VENDORS may not sell on the following streets on the days and times shown below.  
 If they do, they can get a summons and their cart can be seized (returnable).  
 If no time is listed below, Licensed Food Vendors may operate at any time on the day shown.

UNLICENSED FOOD VENDORS may not sell at any time.  
 If they do, they can get a summons and their cart can be forfeited (non-returnable).

	MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
BROADWAY to 52nd Street	8 AM - 11 PM	8 AM - 11 PM	8 AM - 11 PM	8 AM - 11 PM	8 AM - 11 PM	8 AM - 11 PM	8 AM - 11 PM
SEVENTH AVE 35th to 45th Street	8 AM - MID	8 AM - MID	8 AM - MID	8 AM - MID	8 AM - MID	8 AM - MID	--
46th - 52nd Streets	12 - 2 PM; 7 - 11 PM	12 - 2 PM; 7 - 11 PM	12 - 2 PM; 7 - 11 PM	12 - 2 PM; 7 - 11 PM	12 - 2 PM; 7 - 11 PM	12 - 2 PM; 7 - 11 PM	--
EIGHTH AVE 34th - 42nd Streets	--	--	--	--	--	--	--
40TH STREET	--	--	--	--	--	--	--
41ST STREET 7th - 9th Avenues	7 AM - 8 PM	7 AM - 8 PM	7 AM - 8 PM	7 AM - 8 PM	7 AM - 8 PM	7 AM - 8 PM	7 AM - 8 PM
42ND STREET 6th - 8th Aves	8 AM - 7 PM	8 AM - 7 PM	8 AM - 7 PM	8 AM - 7 PM	8 AM - 7 PM	8 AM - 7 PM	--
43RD STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
44TH STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
45TH STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
46TH STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
47TH STREET 6th - 8th Aves	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
48TH STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
49TH STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
50TH STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
51ST STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
52ND STREET 6th - Broadway	--	--	--	--	--	--	--
Broadway - 8th Ave	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	7 PM - 11 PM	7 PM - 11 PM	NOON - 11 PM	NOON - 6 PM
53RD STREET	--	--	--	--	--	--	--

Source: Courtesy Bob Esposito, VP of Operations, Times Square Alliance Business Improvement District, 2007.

## **Appendix 6 – Summary of Street Vending Reform Bills Introduced in City Council 2005-06**

### *Int. No. 447 September 27, 2006*

- Food vendors must be licensed by DOHMH to operate on the streets of NYC. In addition to obtaining a food vending permit, a food vendor may only use a pushcart that has been inspected and permitted by DOHMH.
- Presently there are no restrictions on the number of food vending license that may be issued, anyone can file an application with DOHMH and receive a food vending license. Presently, approximately 9,200 people have such licenses.
- However, the city does restrict number of food cart permits to 3000 (plus some 200 borough specific permits and 100 permits to disabled persons)
- Bill proposed will remove limitations on food vending permits to disabled veterans and veteran vendors.

### *Int. No. 446 September 27, 2006*

- Local law 15 of 1995 restricted number of food cart permits that DOHMH could issue to individuals engaged in food vending business to one full term or temporary food vendor permit / individual.
- Bill proposed to restore multiple push-cart permits to exclusive distributors or manufacturers who were hurt by Local Law 15.

### *Int. No. 324 May 10, 2006*

- Past support for improving access to vending licenses exemplified by local law 66 of 2005
- Remove vending licensing caps.

### *Proposed Int. No. 349-A October 17, 2006*

- Administrative code of NYC outdated, not practical, etc.
- To improve small biz environment in NYC.
- Food vendors have the right to display samples of non-perishable items sold.

### *Int. No. 108 February 15, 2006*

- Every food vendor, whether licensed or unlicensed, and every general vendor shall keep the public space in which he or she vends free from garbage, refuse, rubbish, litter, and other offensive material. Such vendors shall not, however, be responsible for cleaning the garbage which accumulates at catch basins located within such public space. Public space shall mean the public space within six feet of any pushcart stand or vehicle used by such vendor.

### *Int. No. 35 February 1, 2006*

- No general vendor shall vend on the north side of 37<sup>th</sup> Avenue from and including 72<sup>nd</sup> Streets to and including 82<sup>nd</sup> Street, on the south side of 37<sup>th</sup> Avenue from and including 72<sup>nd</sup> street to and including west side of 78<sup>th</sup> street, on 72<sup>nd</sup> street from.... All in the borough of Queens.
- No food vendor shall vend in above mentioned area.

*Int. No. 621 by Council Members Reed, Liu and Martinez April 18, 2005*

- There presently exists a varying array of regulations, laws and judicial decisions governing street vending in the city of New York. This scheme has helped to create diverse directives governing disabled veterans, non-disabled veterans, artists, crafts people, booksellers and food merchants. Consequently, vendors have a different legal status and each is subject to varying parameters. This complex scheme has resulted in nearly impractical enforcement, as agents are faced the arduous task of unraveling a complex net of restrictions affecting the thousands of various vendors operating on the City streets. Accordingly, the Council finds it necessary to develop and promulgate an inclusive regulatory framework for vendors.
- Intro 621, a comprehensive proposal that would repeal subchapter 27 of chapter 2 of title 20 of the administrative code of the city of New York and replace it with new language that considers the expansive universe of vendors who operate in the City. The bill would also amend subchapter 2 of chapter 3 of title 17 of the administrative code, relating to food vendors, with the intention of providing increased uniformity with respect to restrictions, enforcement and penalties relating to food and non-food merchants.

*Int. No. 491-A July 12, 2005*

- Local law to amend the administrative code of City of New York in relation to the license application requirements for general and food street vendors and to repeal paragraph 7 of subdivision b of section 17-309 and paragraph 6 of subdivision b of section 20-455 of the administrative code of the city of New York.
- Recent executive orders Nos. 34 and 41 place new restrictions on the types of information the City is allowed to collect or disclose including immigration information. Street vendors should be able to access government services without fear that their personal information will be collected or disseminated.
- No City officer or employee shall inquire about an applicant's immigration or citizenship status.
- PASSED

*Int. No. 434 December 31, 2005*

- Prohibit food vendors from vending over any ventilation grill, cellar door, manhole, transformer vault, or subway access grating.

*Int. No. 109 December 31, 2005*

- Increasing penalties for illegal general vendors and food vendors

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