



# **STREET VENDORS UNITE!**

## **Recommendations for Improving the Regulations on Street Vending in New York City**

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## **Why the Laws Need Reform**

Street vendors have been a hallmark of New York City since the 1860's, when the first pushcart peddlers began roaming the Lower East Side. Over ten thousand people currently make their living selling their wares on streets of our city, in every neighborhood and throughout all five boroughs. Most are immigrants and people of color. Many are disabled veterans. They earn very little money and work under harsh conditions. They perform an important service by providing convenient and affordable goods to New Yorkers and visitors from all economic backgrounds. They are entrepreneurs who ask for nothing more than the opportunity to earn a decent living on the street.

Yet even today, with an entrepreneur in City Hall, the city continues to treat these small businesspeople like criminals. Under the guise of public safety, the city has erected a complex web of overlapping and conflicting regulations that make life nearly impossible for vendors. Jurisdiction over vending is divided between at least ten different city agencies, none of which is responsive to the real needs of vendors. Punishments for minor violations have become so severe that many vendors cannot work. Licensing restrictions have forced many to vend illegally, under constant threat of arrest. Indeed, it seems like every time the city attempts to solve vendors' problems, it only makes them worse.

While the city must regulate street vending to ensure the health and safety of the public, it has no interest in harassing vendors with endless arrests and exorbitant fines, delaying their ability to work, destroying their products, denying them a fair hearing, driving them from areas where they have vended for years at the whims of giant corporations, passing regulations governing their livelihood without any notification, failing to acknowledge the contribution they make to our city, disrespecting them when they attempt to voice their grievances, and in many other ways impeding their right to vend on the streets of New York City. But the city does.

Finally, the city's mistreatment of vendors has caused them to rise up, come together, and turn to organizations for help. Both the Street Vendor Project of the Urban Justice Center and Local 169 of the Union of Needletrades, Industrial and Textile Employees (UNITE), have committed resources and time on behalf of the city's vendors in an attempt to break the bureaucratic lock which stifles the entrepreneurial spirit of men and women whose only wish is to survive in a city increasingly turned over to corporate interests.

Below are our modest proposals developed with and on behalf of the thousands of vendors who provide a real service to our great city, but who continue to be denied the respect and justice they deserve.

## **Ten Ways to Improve Vending in New York**

- 1. Lift the Cap.** Since the Koch administration, the number of merchandise licenses and food vending permits have been arbitrarily limited at 853 and 3,000, respectively. Demand far outweighs supply; the waiting list for a merchandise license is now longer than 25 years. No names have even been added since 1993. In the meantime, most food vendors are forced to pay thousands of dollars every year to rent their permits from permit holders. Aspiring vendors have no chance of getting a license,

forcing many to vend illegally. By removing the cap on licenses and permits, the city could create thousands of jobs during a time of rising unemployment and government cutbacks. By bringing vendors into the system, the city will also collect millions in additional tax revenue. Congestion is already sufficiently limited by street closings and place restrictions. Two city reports in the last twelve years have recommended the license cap be lifted,<sup>1</sup> but pressure from the Business Improvement Districts (BIDs) has kept it from happening. The city should stand up to the BIDs and lift the licensing cap.

2. **End Forfeitures.** In addition to levying fines against vendors and temporarily seizing their vehicles or pushcarts, the city seeks forfeiture of these items. This policy is akin to taking away someone's car (for good!) for a single speeding ticket. In one case, the city sued an ice cream vendor for his \$80,000 truck after a single violation. This cruel policy would never be tolerated by more influential groups. The city's tough new sidewalk café law, for example, allows an unlicensed restaurant to be closed, but only after repeat offenses, and only for a limited time. In contrast, the city puts street vendors out of business, permanently, after a single violation. Courts have already found this forfeiture policy to be unconstitutionally excessive.<sup>2</sup> The city should abolish it and put in place a system where this ultimate sanction – taking away a person's business – is reserved for chronic offenders.
3. **Abolish the Review Panel.** With great fanfare in 1995, Mayor Giuliani created the Street Vendor Review Panel and placed it in charge of determining which streets would be closed to vending. Eight years later, it's a complete failure. With no objective criteria for determining which streets to close, the Review Panel does the bidding of powerful business interests. While the BIDs hire "transportation consultants," vendors and their advocates are swept aside. The sole City Council member on the Panel called it an "outrage" with "no input from elected officials."<sup>3</sup> In nine years, the Review Panel closed more than 130 blocks to vending. How many streets were opened? *Zero*. Even the Department of Business Services (DBS), which administers the Review Panel, now wants nothing to do with it. The Review Panel, a bad idea from the beginning, should be abolished and the streets it closed to vending should be re-opened.
4. **Reform Enforcement.** Of all the problems street vendors face, police harassment is by far the greatest. Each day, vendors are inspected by a different officer – with a different interpretation of the law. Unlike laws on newsstands and sidewalk cafés, which are enforced by Department of Consumer Affairs (DOCA) agents, the NYPD enforces vending regulations. Enforcement is arbitrary and inconsistent. Why are licensed street vendors – small businesspeople – being treated like criminals? Why are police officers measuring the sidewalk to ensure compliance with the vending laws – when they could be fighting real crime? A recent survey by the Citizens

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<sup>1</sup> "New York in Transition: Itinerant Peddlers and Vendors Everywhere," City of New York Department of Business Services, November 1992; "Balancing Safety and Sales on City Streets: A Report on Street Vending to Mayor David N. Dinkins," New York City Department of Consumer Affairs, February 1991.

<sup>2</sup> City of New York v. Fred Nadler, No. 40430/00 (Decision of J. Shulman dated Sep. 5, 2001)

<sup>3</sup> Testimony of Council member Noach Dear, Street Vendor Review Panel public hearing, December 16, 1999.

Crime Commission found that the vast majority of New Yorkers are *opposed* to police enforcement against vendors.<sup>4</sup> Yet the city wastes precious police resources on its NYPD “Peddler Squad”. How misguided. Enforcement against street vendors should be done by trained Health and Consumer Affairs inspectors, not the NYPD.

5. **Streamline Bureaucracy.** Street vending in New York is overseen by at least ten city agencies, none of which are accountable to vendors. For example, the Department of Health (DOH), which licenses food vendors and inspects their carts, recently closed its Manhattan inspection center, forcing vendors to push their carts all the way to Queens and back. Input from vendors was never solicited. DOCA licenses merchandise vendors, DBS administers the Review Panel, and the Department of Sanitation seizes vendors’ property – but vendors must get a release from the Corporation Counsel before the same property is returned. Property that *is* returned is often damaged, yet vendors have no where to turn. The Department of Transportation regulates the placement of sidewalk furniture – and has allowed hundreds of illegal planters to displace vendors across the city, despite protests from vendor advocates. It’s no wonder vendors feel besieged. The city should establish a single agency (like the Taxi & Limousine Commission) to consolidate these functions and streamline the vending bureaucracy.
  
6. **Write Manual.** Current vending laws are a mixture of state statutes; various city rules and regulations; state and federal case law, and unpublished city memorandums. Lawyers and judges can barely understand these laws – let alone street vendors and police officers. The city has made no attempt to combine these laws into an easy-to-use format. Rather than a map, the city gives vendors a 29 page list of restricted streets. General vendors must refer to zoning maps – not even available from the Department of City Planning – to learn where they may vend. Confusion and harassment reign supreme. Police officers frequently announce “new rules” on vending, yet there are no new rules. Enforcement varies from precinct to precinct. Vendors will comply with the law if they know what it is. Vendors and police officers alike need a simple, readable and authoritative manual published in multiple languages.
  
7. **Legalize Craft Vending.** In 1996, a federal court ruled that, under the First Amendment, art may be sold on the street without a license.<sup>5</sup> What is art? The city has taken a narrow-minded view that “art” is limited to “fine art” such as paintings, prints and photographs. As a result, hundreds of hard-working artists and craftspeople have been arrested for selling their unique, hand-made creations on the street. Their work is seized and often damaged. After a night in jail, the charges are invariably dropped. Already the harm has been done. Shame on our city, the art capital of the world, for treating its artists and craftspeople this way. Officers on the beat are not qualified to determine what is and is not art. The city should recognize that not all art comes in a rectangular frame. Rather than arresting and ticketing

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<sup>4</sup> “Crime, Police and Community: A Report by the Citizens Crime Commission,” July 2001.

<sup>5</sup> *Bery v. City of New York*, 97 F.3d 689 (2d Cir. 1996).

them, it should pass a law making it legal for people to see their hand-made work on the street.

- 8. Improve Adjudication.** The present process of adjudication is stacked against vendors and needs reform. The city's 30,000 yearly vending violations are adjudicated at the Environmental Control Board (ECB), while the Office of Administrative Trials and Hearings (OATH) handles license revocation hearings. In neither forum is there any opportunity for mediation or settlement. Judges should be given discretion to reduce fines in appropriate cases in the interests of justice. Otherwise, exorbitant fines of as much as \$1,000 each will continue to put many hard-working people out of work. In addition, vendors should not be made to return to court repeatedly – losing a day's earnings each time - when police officers don't bother to appear. Finally, the city should provide interpreters so that vendors who don't speak English can explain their case. Justice will never be done in a system where judges must choose between believing a police officer who isn't there and a vendor they can't understand. Adjudication must be improved.
- 9. Abolish Bidding.** In 1995, City Council passed the “one-vendor, one-permit” law to limit the exploitation of vendors by the large corporations that had accumulated hundreds of permits. Companies vying for vending spots in the parks, however, are exempt; coincidentally, the Parks Department raises millions of dollars every year from vendor concessions. This exemption has fostered a system where several well-connected companies have grown rich while their workers receive less than minimum wage.<sup>6</sup> Now, the administration is reportedly considering a similar bidding system for our city streets! Bidding would force out of business the hard-working individuals who have always been the hallmark of street vending in New York. Vendors will never be able to out-bid huge corporations like Wendy's, which was recently awarded a vending contract for a park in the Bronx. Our streets, like our parks, should never be auctioned off to the highest bidder. Bidding should be abolished.
- 10. Provide Small Business Assistance.** Instead of being treated like criminals, vendors should be given training to grow their businesses. Many of today's department stores got their start as pushcarts, but vendors need help to get there. The city should create a program for street vendors to learn basic accounting, tax, and marketing skills. Rather than being driven into remote “market” sites, vendors should be given low-interest loans to move into vacant storefronts. Since 9/11, food vendors can no longer cross the city's bridges with propane; they're required to store their carts in commissaries. Yet gentrification has pushed many commissaries out of the city, leading to exorbitant rates at the few that are left. The city should consider providing storage depots for vendors to keep their goods and pushcarts at night. By treating vendors like entrepreneurs instead of criminals, the city can expand the base of immigrant small businesspeople that make New York City so vibrant.

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<sup>6</sup> The New York State Office of the Attorney General has documented minimum wage and overtime violations by one large Parks Department concessionaire.