

THE LEGAL REGULATION OF STREET VENDORS: NEW YORK CITY, UNITED STATES OF AMERICA

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I. INTRODUCTION

Street vendors have always been a fixture of New York life. For new immigrants coming to America, selling on the streets was often the way to begin earning a living. For many immigrants, it represented the American dream—the belief that with hard work and a little entrepreneurship, a stall on the street could one day become a flourishing business. Yet, of all entrepreneurs, street vendors are amongst the most regulated and least protected by the law. This paper looks into the legal status of street vendors in New York City during the 1980s and 1990s. It shows evidence of police harassment, limited licensing and restrictive zoning regulations. It illustrates that, despite persistent lobbying by street vendors, attempts to liberalize regulations have met with limited success. And finally it sets out a case for relaxing the legal regulation of street vendors.

II. STREET VENDING IN HISTORICAL CONTEXT

From the time that street vendors were first licensed in New York City the issues have been the same. The debate has centered on: (1) the cap on the number of licensed vendors; (2) the areas of the city in which licensed vendors can operate; (3) how unlicensed vendors will be handled; and (4) how to deal with “mafia peddlers”—individuals who control a large number of licenses and rent them out or sell them at an inflated price.

Various interest groups have attempted to influence the development of legislation regulating street vendors. Business associations have argued that street vendors should be strictly regulated and that unlicensed vendors should be fined and jailed. These business people claim that street vendors unfairly cut prices and compete for customers, they block the sidewalks and make them unattractive, and they represent an unsavory element. Street vendors on the other hand state that they are hard working business people who are responding to overwhelming demand, especially the demand for low prices by other poor citizens. Vendors say that they inject new life into their business communities by attracting a variety of consumers who would otherwise not frequent the area. In addition, they say that peddling has kept them independent of government assistance. Licensed vendors argue that congestion is caused by unlicensed vendors.

Evidence of push carts in New York City goes back to the 1840s. Growth in the industry remained slow until 1870, but increased immigration and the subsequent rapid urban

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“protection” for a fee, and to the “padrones” who controlled over one third of all licenses. In summary, the committee noted, “The legal status of the push cart operator is that of a commercial outcast and his social condition is deplorable.”⁸

As a solution to the problem, the committee recommended that “push cart markets” be set up in specially designated parts of the city. A budget was drawn up for the markets and architects were identified to design the markets.⁹ Vendors were initially responsive to the idea and began to move their carts to the designated market areas. They found, however, that their old spots were taken by other hawkers and that it took time to attract customers to the new markets.¹⁰

In 1925, a report on push cart markets in New York city was published.¹¹ The statistics compiled by the researchers provide a comprehensive view of the situation of street vendors at the time. During this period, the height of the depression, hawking reached peak numbers, with an estimated 7,860 vendors in the city. The push cart markets were situated in the most impoverished parts of the city and they serviced in part or in whole over 1,500,000 people. The racial composition of street vendors was: 89% foreign-born whites (of this group 72% were Jewish and 22% were Italian); 6% native-born whites; and 5% blacks. Only 63% were US citizens despite the licensing requirement of citizenship.¹²

The most common produce for vendors to sell was fruit and vegetables (68%), followed by merchandise (28%), with only very few selling other food (4%).¹³ Most vendors (62%) hired their push carts, and approximately 31,000 people relied wholly or in part on the push cart trade for a livelihood.¹⁴ On practically all commodities, the prices offered by street vendors was the lowest in the city, and the typical vendor earned approximately US\$9.22 per week.¹⁵

Zoning regulations were stepped up in the 1940s and fewer streets were available for hawkers. In addition, the number of licenses was decreased and a cap was placed at 5,500 for all vendors.¹⁶ New restrictions were imposed on street vendors by the Department of Public Markets in 1963, in response to the concern of local merchants that their market was being captured by vendors. The regulations stipulated that a vendor could not sell within 100 feet of an establishment which sold the same commodities. These regulations

⁸ Ibid., p. 5.

⁹ Ibid., p. 7-8.

¹⁰ “New York City Push Carts and Market Committee Report and Recommendations” The City Record, v. 41, part 4, pp. 3763-3764, April 1913.

¹¹ Agriculture Economics Bureau. Push Cart Markets in New York City: a Preliminary Report. Washington DC, 1925.

¹² Ibid., pp. 2-3.

¹³ Ibid., p. 2.

¹⁴ Ibid., p. 3.

¹⁵ Ibid., p. 4.

¹⁶ Annual Reports of the Department of Public Markets 1920-1950.

photographs, a descriptions of the goods to be sold, and a vendor application form.²¹ Licenses are then valid for up to one year.

From 1989 to 1990, four additional laws were enacted affecting general vending. In 1989, distributors who sold goods to vendors were licensed for the first time. The same year vendors were prohibited from selling over subway grates and were required to use tables to sell their goods. In 1990, the police were authorized to seize the goods of licensed vendors working on restricted streets. Also in 1990, the police were authorized to seize the vans, as well as the goods, of distributors who serviced unlicensed vendors.²²

A commission was set up in 1991 to further examine the situation of street vendors in New York City. The commission made three key recommendations after an extensive study that assessed the regulations pertaining to vending in six other American cities. The commission found that: the cap on licenses should be raised from 853 to 1700; the enforcement of unlawful vending practices should be enhanced; and alternative vending spaces should be established, such as designated flea markets in which vendors could sell their goods on specific days of the week.²³

According to a report produced by the Department of Consumer Affairs in January 1995, there had been only sporadic enforcement of the restrictions regarding food vending under Mayor Koch and also under Mayor Dinkins. In addition, it was revealed that the Department of Consumer Affairs had not reviewed the food vending restrictions since 1984, nor had it held public hearings to amend the rules concerning restricted streets.²⁴ Breaking this pattern, in 1993, Mayor Dinkins set up a Vendor Advisory Board made up of vendors and business representatives. The Board voted to recommend enforcing the regulations. As a result, following the recommendations of both the 1991 commission and the 1994 Vendor Advisory Board, efforts at enforcement were stepped up in 1993. Mayor Giuliani took office in 1994, and in April of that year continued to vigorously enforce the street restriction.

In early 1994, a bill was proposed in City Council to open certain streets to food vending, to review all the street restrictions, and issue new regulations by mid-1995. The bill was passed by the full Council, but Mayor Giuliani vetoed the bill and demanded a comprehensive proposal for dealing with food vending.²⁵ This resulted in a joint plan of action by the Commissioners of the Department of Consumer Affairs and the Department of Business Services. The Commissioners recommended that the City create a Street Vendor Review Panel to hear petitions to promulgate, amend and repeal rules restricting the streets on which general or food vendors operated. The review panel was to take over

²¹ Balancing Safety and Sales on the Street, p. 11.

²² *Ibid.*, p. 13.

²³ *Ibid.*, p. 24, 33 and 40.

²⁴ Committee on Consumer Affairs, Report of the Legal and Governmental Affairs Division, January 6, 1995.

²⁵ *Ibid.*, p. 4.

After the April 20th meeting, the original group of 15 decided to recruit as many street vendors as possible to their new organization. They took turns manning a booth in the offices of a community organization, and membership increased quickly. Several local community organizations offered support to the vendors, including the Association of Progressive Dominicans which provided initial space in which the organizers met, the Broadway Temple Church which provided large meeting rooms for vendors to gather, and community development organizations such as the Washington Height's Inwood Coalition which provided advice and computer equipment. The organization was able to fund its activities initially by informal revenue sources, such as passing a hat at meetings.

The Vendors' Association and the Mayor's Office began negotiations to identify new locations for the street vendors to set up in. However, police harassment increased—vendors' had their merchandise confiscated, and on occasion they were beaten. The board of the Street Vendors' Association decided to call a second meeting.

The second meeting was held on May 10th, 1995. Various city officials were invited including the Mayor, the Victims Services office, the Police Commissioner, the President of the borough of Manhattan, councilmen, state senators, as well as the press and others. Although the Mayor did not attend the meeting he sent a representative. At the meeting, the Police Commissioner agreed to investigate the allegations of police brutality.

After the meeting, police abuse decreased a little, but street vendors' continued to have their merchandise confiscated. The Vendors' Association protested by holding several demonstrations and marches during July and August in the streets of Washington Heights and outside city hall. These demonstrations received good coverage in the Hispanic press and, as time went on, the street vendors were also able to secure coverage in the English-language press.

A major road-block for the vendors appeared to be the Community Board, which had to approve a new location for the street vendors. At the end of July, the Office of Business Services asked the Association for a list of all its members, approximately 600 names. After delivering the list, the vendors expected the community board to review and approve the Associations' demands quickly, but there was no action for two to three months. Finally, on November 2nd, 1993, the association decided to take matters into its own hands. The Association occupied the Community Board office with 100 street vendors and declared a hunger strike.

It was during the hunger strike that vendors' groups from around New York City began a confederation. They agreed to share information and work together. They realized that a Coalition of street vendors representing different areas of New York City was a more effective strategy than isolated action.

The hunger strike lasted only one day. As soon as news of it appeared in the media, the Mayor's office announced that the Economic Committee of the Community Board would consider the vendors' requests at their December 5th meeting. The Committee's

V. A CASE FOR LEGISLATIVE ACTION

The demands of the street vendors are clear. First, they need to have more access to licenses—the cap on licenses should be raised in recognition that 25 years have passed since 1980, the population of the city has risen, and there is more demand for vendors' services. Second, vendors need to be offered reasonable places to sell their goods—not areas isolated from customers and not areas the city intends to use for other purposes. Third, the role of license and push cart “padrones” requires ongoing monitoring, especially if the courts find in favor of the push cart barons. Fourth, unlicensed vendors should be regulated but only after the number of licenses have been increased. Fifth, regulations governing street vendors should be simplified and should be made available in other languages, such as Spanish. Finally, a detailed study on the situation of street vendors in New York City is long overdue.

VI. CONCLUSION

The cap on street vendor licenses in New York City must be raised. However, even if the cap on licenses is raised substantially, the issue of unlicensed vendors will continue to pose problems. Clearly, not all vendors can be licensed and therefore the regulations governing unlicensed vendors requires careful thought. Temporary licenses may prove to be a solution.

Street vendors should be treated with more respect by city authorities, especially by the police. Vendors should also be recognized as a class of worker that requires less rather than more regulation. Many vendors in New York are either illiterate or unable to read and speak english. They need to have access to their rights and obligations in their own language. They would rather not have to deal with endless red tape to make a days wage, and they ask for clear and simple regulations so that the areas in which they can vend are obvious. New York City regulations are so complicated and confusing it is not always clear to vendors where they can legitimately sell their goods.

Street vendors need increased access to designated market areas, such as the plaza used by the Washington Heights Street Vendors' Association. These areas provide a good ambiance and relatively reliable customers, without causing difficulties for other merchants.

Vendors need to be able to organize to find collective strength either through associations, unions, cooperatives or informal organizations. Their political voice is much more powerful if they act as a group. Their ability to influence local policy makers is greater if they are able to develop an effective strategy for mobilizing support, influencing change, handling the police, and ensuring media coverage of their cause. They also need to secure the support of local community organizations to build a strong local base. Vendors need increased access to finance in order to be able to expand their businesses.