

November 2010

## Sidewalk Standoff:

# Street Vendor Regulations Are Costly, Confusing, and Leave Many Disgruntled

### Summary

STREET VENDORS HAVE BEEN A PART of the city's landscape since the first pushcarts plied the sidewalks of the Lower East Side in the 1860s. It did not take long before their presence on city streets stirred controversy, which has continued to this day.

While some New Yorkers see the vendors as a fitting outgrowth of the city's entrepreneurial spirit, others see them as trouble. Many shopkeepers feel the vendors have an unfair advantage, having to pay neither rent or, they assume, taxes, which helps street peddlers undercut "legitimate" businesses. To some residents and pedestrians, the presence of street vendors undermines the quality of life in the city, making city streets disorderly, dirty, and even dangerous.

From these divergent views of street vending, a complex system of regulation and enforcement has evolved that involves numerous city agencies such as the departments of consumer affairs, health, business services, transportation, finance, city planning, and the police. Given the continuing controversy over street vending and the sprawling oversight system, IBO has estimated some of the costs of monitoring and enforcing the city's street vending regulations. We also reviewed revenue collected from licensed vendors as well as from fines levied against them. Among our findings:

- While we are unable to identify every city cost related to street vendor regulation and enforcement, we estimate expenditures of at least \$7.4 million in fiscal year 2009.
- Revenues attributable to street vending fees and fines totaled about \$1.4 million in 2009.
- A large share of fines imposed on vendors goes uncollected. Of the \$15.8 million in fines levied in 2008 and 2009, \$14.9 million was uncollected through fiscal year 2009.

IBO also explored the assertion that street vendors do not pay, or underpay, sales tax owed to the city and state. We did not find data that could verify or refute this claim. We did find that a 1995 state law aimed at improving sales tax collections from vendors has never been implemented.

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## Street Vendor Basics

There are a myriad of regulations for street vendors, including restrictions on the number of licenses for different types of vendors. There is a long-standing cap of 853 licenses for general merchandise vendors; separate general vending license rules apply to military veterans with an honorable discharge, with different licenses for able-bodied and disabled veterans. There are 3,000 permits for year-round food carts, 200 borough-specific permits, plus additional permits for seasonal carts, and no cap at all on the number of vendors who sell books or artwork.

With the different types of licenses also come different rules on where and when vendors can vend. These rules can change from one block to the next, making it difficult for the police, who have the primary enforcement role when vendors are on the streets, to know what applies and where. In Manhattan alone there are rules that restrict general merchandise vending on at least 160 blocks, with outright bans on some blocks and limits on hours or days vending is permitted on other blocks. For example, general vendors are banned from the east—but not the west—side of Fifth Avenue between 81<sup>st</sup> and 84<sup>th</sup> streets from 9 a.m. to 6 p.m. Moreover, different sets of rules are in place for able-bodied and disabled veterans who sell general merchandise. For food vendors, there are other street-related time and place rules. Vendors selling books or art cannot peddle on streets banned for general and food vendors. Another set of rules applies to vending in city parks, which has been a topic of recent media attention.

The extent of the rules for different streets and different types of vendors is in part a reflection of how controversial vending has been in the city for more than a century. Given this controversy, it is somewhat surprising that the two primary indicators of street vending enforcement—illegal peddling arrests and illegal peddling summonses—were dropped from the Mayor’s Management Report after 2007.

## Vendor Regulations and Enforcement

**Licenses and Permits.** A license is required for vendors to operate legally. The exception is peddlers of books or art who do not need a license due to rights to freedom of expression under the U.S. Constitution. The Department of Consumer Affairs issues licenses for general merchandise vendors. In fiscal year 2009 about 2,800 general merchandise licenses were issued, more than 1,900 of them to military veterans. There is little turnover among the general merchandise

vendors. In 2009 only 34 nonveteran general merchandise vendors were newly licensed—the waiting list for these licenses is so long that DCA says on its Web site that it is not taking additional names. The city’s 311 call center received 5,684 calls about applying for a new general vendor license last fiscal year (the only statistic regarding street vending that remains in the Mayor’s Management Report).

Selling food on the street requires two types of authorizations from the Department of Health and Mental Hygiene: a food vendor license and a permit for a mobile food cart. While there are no caps on the number of food vendor licenses that can be issued, the number of food cart permits is capped at 3,000 for year-round carts (with an additional 50 permits available in each borough except Manhattan), plus another 1,000 for seasonal carts. All food carts are required to be inspected before a permit is issued, year-round carts are inspected every two years and seasonal carts are inspected annually. In 2009, 3,090 pre-permit inspections were done according to information provided by the health department.

Before a license can be issued, a food or general vendor must apply to the state for a Sales Tax Certificate of Authority. The city’s Department of Finance checks with the state Department of Taxation and Finance to ensure prospective licensees have properly registered. In 2009, 6,800 “clearances”—confirmations that a permit applicant had registered with the state tax department—were issued by the city’s finance department.

**Street Restrictions.** In 1995, the City Council created the Street Vendor Review Panel to hear proposals and decide whether peddling should be banned or limited on specific city blocks. The four-member panel is chaired by the Commissioner of the Department of Small Business Services and also includes the Director of the Department of City Planning, the Commissioner of the Department of Transportation, and a representative nominated by the Speaker of the City Council.

Initial proposals brought to the review panel by the Giuliani Administration would have restricted vending on as many as 380 blocks across the city. The proposals were controversial, and the review panel eventually voted to limit peddling on about 130 streets (in addition to restrictions that had already been in effect). The panel has not met in nearly a decade.

**Enforcement.** Enforcement of the city’s regulations of where and when street vendors can operate falls primarily

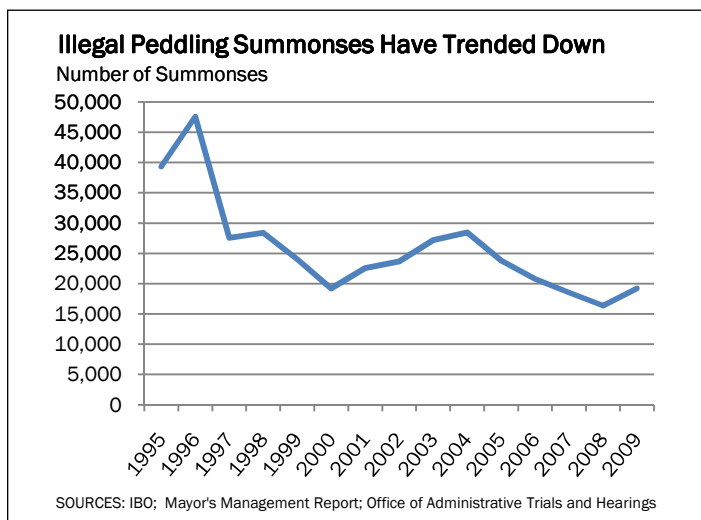
to the police. Only in Manhattan south of 59<sup>th</sup> Street is there a police unit specifically dedicated to enforcing street peddler regulations. This unit includes a total of 38 uniformed officers: 33 police officers, four sergeants, and a lieutenant. In the rest of the city, enforcement is part of routine patrols or “condition teams,” which focus on different quality-of-life issues depending upon local needs at any given time.

In addition to police enforcement, health department staff attempt to make annual inspections of each of the food carts out in the streets. This inspection is in addition to the pre-permit inspection. In 2009, 7,774 inspections were conducted on food carts while they were out on the city’s streets. Health department inspectors issue violations, but it is the Environmental Control Board, a division of the Office of Administrative Tribunals and Hearings, that hears vendors’ disputes of summonses and levies fines related to infractions.

### Reckoning Costs and Revenues

**Estimating Regulatory Costs.** The city incurs costs for issuing vendor permits and licenses, inspecting food carts, and enforcing regulations. Revenues are derived from permit and license fees and fines collected for violations. While we were unable to identify every city cost related to street vendors in 2009, we estimate expenditures of at least \$7.4 million. Revenues attributable to street vending fees and fines totaled at least \$1.4 million in 2009.

The single largest cost we could identify is about \$4.5 million for the police department’s street peddling enforcement unit operating south of 59<sup>th</sup> Street in Manhattan. While officers on beats throughout the city also spend time enforcing vendor regulations, there is no



information available that allows us to estimate how much time is spent and translate it into costs.

The Department of Consumer Affairs estimates that it spends about \$65,000 a year of its own funds on personnel directly responsible for issuing general merchandise and veteran vendor licenses. This estimate does not include a share of the cost of time spent by agency managers supervising the licensing nor the cost of supplies and other expenditures in addition to staff time. In addition, the Department of Consumer Affairs receives about \$458,000 from the Department of Health and Mental Hygiene to cover the cost of issuing food vendor permits and licenses on the agency’s behalf.

In addition to the funds it transfers to the consumer affairs agency, the health department spent about \$1.8 million on pre-permit and on-street inspections of food carts in 2009, \$1.5 million for staff and more than \$250,000 for supplies and other needs related to inspections.

IBO estimates that the cost of street vendor-related hearings and fine levying by the Environmental Control Board was about \$590,000 in 2009. We made this estimate based on the fact that summonses for peddlers comprised about 3 percent of the 704,000 violations received by the agency in 2009. We then took 3 percent of the agency’s \$19.7 million in spending for 2009 and applied it to the street vendor share of its work. We do not have an estimate of the cost to the finance department for issuing tax clearances for vendors.

**Revenue from Vendor Fees and Fines.** The largest source of revenue is from fines. In 2009, just over \$9.0 million in fines were imposed on vendors, up from nearly \$6.8 million in 2008. But the actual amounts collected were significantly less. In 2008, vendors paid \$479,325 on fines levied during that year. In the following year, they paid \$419,852 on fines still outstanding from 2008 as well as fines newly imposed in 2009. In other words, out of \$15.8 million in fines levied in 2008 and 2009, \$14.9 million was uncollected through the end of fiscal year 2009.

Licenses and permits for food carts generated \$762,700 in revenue in 2009. Licenses for general merchandise vendors produced more than \$177,000 in 2009 and the fee for obtaining a tax clearance certificate from the finance department garnered an additional \$68,000 in revenue.

**Peddling and Sales Tax.** One complaint often made about street peddlers is that they underpay—or do not pay—sales

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tax, giving them an unfair advantage over storefront retailers and cheating the city and state of tax revenue. IBO explored this assertion but was unable to find data that would verify or refute it. According to officials with the state Department of Taxation and Finance, which collects sales taxes from merchants on behalf of the city and state, the agency cannot track sales tax paid specifically from vendors. The registration for a sales tax certificate that most retail and service businesses must apply for does not include an identification that delineates between street vendors and storefront merchants.

A state law aimed at improving sales tax collection from street vendors went into effect in March 1995, but regulations to apply the rule were never implemented. The measure, based on a January 1993 report by the state tax department, *Improving Sales Tax Compliance: Recommendations for a Compliance Improvement Program*, was spurred by the finding that “itinerant vendors” often fail to comply with tax law. Because street vendors generally do not have a lot of paperwork documenting sales, it is hard to audit tax compliance. So the report suggests that the suppliers who provide food or merchandise for resale by street vendors be required to file reports with the tax department that can then be used to assess whether the vendors are likely making adequate

sales tax payments. While state tax law authorizes the tax department to require filing of these reports, the regulations to put the law into practice remain unwritten.

### Vending a New Approach

Despite the bevy of rules, regulations, and restrictions—and in some cases perhaps because of them—street vendors, community residents, and business owners all seem dissatisfied with the system. The complexity of the regulations spelling out where and when vendors can vend, and the paucity of licenses are just two of the factors that contribute to the dissatisfaction. The block-by-block changes in street regulations can lead to inconsistent enforcement, and with the demand for vending licenses far outstripping supply, unregulated street peddling is almost inevitable. The number of agencies involved in street vendor regulation contributes to the convoluted rules and enforcement. While there may always be some tension between the interests of vendors and the interests of community residents and businesspeople, the current system appears to provide little relief to any of them.

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