DO THE HUSTLE:
MUNICIPAL REGULATION OF NEW YORK CITY'S UNDERGROUND ECONOMY, 1965 TO THE PRESENT

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by
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ABSTRACT

Beginning in the late 1960s officials in New York City faced a growing financial problem. Revenues collected did not add up to meet the city's budget. In 1975, that problem became a crisis when the city could no longer meet its debt obligations. On the precipice of bankruptcy, a city once known for its generous welfare state, adopted austerity and structural readjustment in order to access federal aid and stave off collapse. Historians have examined the political and economic causes and social consequences of the fiscal crisis as well as the ways in which the city rebuilt itself as a playground for visitors and through the actions of the city's financial elite. *Do the Hustle: Municipal Regulation of New York City's Underground Economy, 1965 to the Present,* examines the ways in which officials rebuilt and reorganized New York City through revenue.

Using New York City as a case study of state development I argue that the state rebuilt and reoriented itself around extracting and protecting revenues through regulation in the final decades of the twentieth-century. City officials rebuilt New York by creating new licensing requirements, offering generous tax incentives to businesses, and instituting regulations that protected what officials considered to be the most important sources of revenue – the financial industry, real estate, and tourism. Beginning with the Lindsay administration and ending with Giuliani's two terms as mayor, this project traces the ways in which city officials attempted to extract new revenues from previously untapped sources in the city's informal and semi-formal sectors while simultaneously working to protect revenues generated by finance, development, and tourism from nuisance businesses that might affect their bottom line and thus, municipal revenues. In

their pursuit of revenue, officials actively constructed a new New York City that courted business at the expense of average citizens. That transformation has not been limited to New York as other municipalities have also shifted focus to revenue extraction and protection. By the twenty-first century, the extraction and protection of revenue through regulation had resulted in high levels of income inequality, aggressive policing, and a growing homeless population in cities across the country.

ACKNOWLEDGEMENTS

I have been in a solitary conversation with New York City for the past 7.5 years now, but in reality, for much longer. It probably began more than a decade ago, late one fall evening, as I walked past the fields along Berry Street where a Hasidic softball team played against a Dominican team on Sundays. This was before the giant hotels and condos went up along the North Williamsburg waterfront, when they were just empty pits gathering water behind plywood boards. Back then you still had an uninterrupted view of the Manhattan skyline. Without sounding contrived, it was magical, akin to the first time I really saw the night sky without the dulling effect of light pollution. For a moment you could believe this was just for you to see. Graduate school is sort of like New York for me – at certain moments majestic, at others exhausting, crowded with many voices, yet also, full of solitude. Writing a dissertation is a private endeavor, an internal conversation spread over many years, made tolerable by the many people working and waiting in the wings. It is with great pleasure that I now get to thank all of them.

Susan Tracy first taught me how to be a historian as an undergraduate at Hampshire College. As my Division III advisor she gave me many of the skills that made this project possible. She also served as a model of the kind of scholar-teacher I continue to aspire to be and I fondly recall our weekly discussions. Laurie Nisonoff and Ernie Alleva also started me on this path and in their own ways kept me going. It was in Laurie's class on Poverty and Wealth as a first-year student that I began to think about many of the questions I took up in this project and Ernie first showed me how to "live the life of the mind" and how to be an engaged teacher. At a critical juncture when I thought

I might take a different path, Sam Roberts asked me to be his research assistant. Because of this I not only applied to graduate school, but also gained a wealth of knowledge about the history of New York City, in particular its politics.

Bryant Simon has supported this project since he gave his blessing to head off into the archives with a broad interest into what was happening in New York City in the 1980s. He asked the hard questions and made me think about this project in new ways while also advocating for me and sending me off to share this project across the globe. Heather Thompson suggested I look for the crisis moments when the city responded to issues with the underground economy. She has continued to be generous with her time, writing me countless recommendations after she left Temple and I am so thankful. David Farber told me to think about revenue and even though he too has left, his suggestion remained to the end. Lila Berman joined my committee towards the end and what a turn of luck that has been. She is an excellent editor and advice giver, in addition to being incredibly smart and kind. Harvey Neptune was the last addition and has pushed me to think about this project's global implications. I always look forward to his questions. Kim Phillips-Fein has also shared her time generously – offering feedback, suggesting venues to present my work in, and meeting for coffee to talk about New York.

Whenever I spoke with incoming graduate students I emphasized the need to find their people, the ones who they could share this experience and all its highs and lows with. Many thanks to Melanie Newport for all her tips in my first year and to my truly collegial cohort, Tom Reinstein, Tommy Richards, David Thomas, Kaete O'Connell, and Seth Tannenbaum. John Worsencroft and Minju Bae have read this dissertation in its

entirety as it took shape over the years, I thank them for their time, comments, and above all, their friendship. Tom, David, and Carly Goodman have also read and commented on various pieces of this project. Thanks also to my "friend across the river," Smita Ghosh, whose insightful comments on parts of Chapter Four proved particularly helpful. Time, and the kindness of various people in using their free time to help me, is really a theme of these acknowledgements.

This project benefited greatly from the assistance of various librarians and archivists without whom none of this could exist. Thank you to Nick Reynolds at Temple University who went through ILL to bring boxes of microfilm down from the Municipal Archives for me to read on campus. Thank you to Barbara Hibbert who has helped me order offsite material at the NYC Municipal Archives for over a decade now. Thanks also to Monica Blank and Tom Rosenbaum at the Rockefeller Archive Center. Tom has asked me great questions about this project each time I have visited and suggested helpful sources. Nick, Barbara, Monica, Tom, and everyone else at the various archives and libraries I have utilized made this project possible.

Over the years many old friends have supported this project in ways obvious and less so. Even when they were unsure of what exactly it was I did they offered much needed breaks and laughter. Thanks to Ab, Bevers, Jaime, Lindiwe, and Mariana for all the catch-ups when I came into the city, and extra thanks to Jaime for letting not only me, but my husband live with him for extended periods of time. Danya Shneyer has been a third support system for this dissertation, opening her home to me, and just generally being an amazing person that I count myself lucky to know. Our other coven-mate,

Sophie Woodruff, is equally incredible and our trips together over the years have served as a welcome break. Beryl Filton and Astrid Wood were some of the few to know what it was I've been up to all these years and Yader Lanuza has continued to push me along the way. Laura Feinstein welcomed me back to New York and joined me in many of the kooky extracurricular activities that powered me through the end of this project. I have had innumerable conversations about this project at Fort Tilden. A dissertation is not the first topic of conversation you'd want to engage in while relaxing at the beach, but nevertheless I found myself explaining the underground economy to very interested parties. Their questions helped me break free of jargon and it is my friends outside academe that I have imagined as readers. Hopefully they won't be disappointed.

I was able to finish this project in New York thanks to an ACLS/Mellon Dissertation Completion Fellowship. Heloise Affreux told me about the library at the Poet's House and in doing so contributed to the completion of this project by recommending a quiet space where I could look out over the Hudson River, *merci!* Comments from participants in the Doshisha Summer Institute and the Heidelberg Spring Academy, early and late in the project, helped my framing and let me know I was on the right track.

My family has given financial and emotional support during this journey. My brother Martel is an incredible writer, if this is half as good as what he writes I will have succeeded. My mom, Carolan Berkeley, gave us a place to live in Philadelphia and while this was probably not the career path she once had in mind for me has never once said otherwise. Both my grandmothers, Edna Broom and Gertrude Bird, are incredible

storytellers in their own right. All the women who raised me are strong, independent trailblazers who prepared me well for all the ups and downs that life can bring – what a blessing to know them. Several family members are not here to see me finally finish this, but I like to think their energy surrounded and sustained me: Papa, Aunt Ellie, Uncle Carl, Aunt Bernice, and Aunt Teeny. Boo kept me company in the final year of writing and made me leave the house to go for a walk at least once a day. She's a dog and can't read this, but she deserves to be thanked nonetheless.

Last, but certainly not least, Carl Snodgrass has been there from the beginning. Without exaggeration, he has read everything I have written, starting with my application essays. I haven't let him read this, so all the mistakes and flowery language is mine alone to apologize for. He has generously and willingly followed me across the country multiple times now; tolerated my long absences; and talked up this project to so many people that I really have no choice but to turn it into a book. He's also my best friend and greatest champion. It seems only fair to say this is for him.

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INTRODUCTION

Bemoaning New York City's off the books workers as tax cheats, a *Daily News* reporter wrote in late 1980, "They trade in everything from sex to flounder, heroin to fruit cup, Saturday night bingo to Saturday night specials. They are not invisible, just elusive and their common link is that on a large percent of their income, they do not pay a dime in taxes."[1] Herb Rickman, Special Assistant to Ed Koch, forwarded the clipping to the mayor, noting, "Jamie[, the author,] has some good ideas on regulating the [city's] underground economy" to generate new and much-needed revenues.[2] At the time of the exchange between Rickman and Mayor Koch, New York City was still recovering from near collapse five years earlier. City officials remained desperate to bring the city back from the brink, but were wary of scaring any more business away. Decades of white flight coupled with new tax abatements to prevent further flight severely undercut funds to cover even basic services like police, fire, and sanitation. To members of the Koch administration, regulating informal businesses in order to extract new revenue seemed like the solution to their problems. In light of the city's finances, the potential revenues outweighed the difficulty of bringing many of these submerged workers to the surface.

The Koch administration's decision to monetize the regulation of informal and semi-formal businesses did not appear out of nowhere. In 1979, the Federal government

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[1] James Stolz, "The Underground Economy: Millions for their Pockets, but not a Penny for Taxes," *NY Daily News,* September 16, 1980.

[2] Memo to Ed Koch from Herbert Rickman, January 30, 1981, Finance, Ed Koch Departmental Subject Files, NYCMA. It likely helped that some of those good ideas came from Rickman who was quoted in the piece.

held hearings on what they termed the "subterranean economy," people working off the books and not paying taxes. The purpose of those hearings, held by a House of Representatives Sub-Committee, was to determine the possibility of extracting revenue from new sources. In 1976, the IRS had estimated that the government lost $39 billion in income taxes on account of unreported cash transactions, overstated deductions, and unjustified tax credits. Economist Peter Gutmann had estimated that the underground economy produced $176 billion in 1977 and testified to that at the hearing.[3] No one, it seemed, wanted to pay taxes anymore. The federal government faced many of the same problems as those being dealt with in New York City: economic slow-down and a tax revolt from average citizens as well as large corporations. The globalizing economy triggered a panic in Washington, as politicians worried about overseas capital flight tried to induce companies to remain while also trying to extract revenue from new sources. Nationally and at the local level in New York, the state reorganized itself in a quest for revenues.[4]

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[3] Subterranean or Underground Economy: Hearings Before a Subcommittee of the Committee on Government Operations, HOR, 96th Congress, First Session, September 5 & 6, 1979; "Underground Economy Cited," *New York Times,* December 26, 1983; Robert Hershey, "Underground Economy Is Not Rising to the Bait," *New York Times,* January 24, 1988; and James Surowiecki, "The Underground Recovery," *New Yorker,* April 29, 2013.

[4] In 1978, California voters passed Proposition 13, a statewide cap on property tax rates that Robert Self links to a rejection of liberalism and the welfare state. Prop 13 also required a two-thirds majority in the state legislature to approve any future increase in tax rates. Michael Stewart Foley argues against treating the tax revolt, in particular Prop 13 as the result of grassroots activism. Instead, he marks it as the beginning of Astro-turf activism, or "faux populist movements" driven by corporations or in this case property interests and given the appearance of being grassroots. For my study, impetus is less important than the financial effect such tax revolts had on local and state revenues. Michael Stewart Foley, *Front Porch Politics: The Forgotten Heyday of American*

The idea that taxing the underground economy through licensing fees and fines could generate new revenues first circulated through City Hall in the late 1960s during the Lindsay administration. At that time, the early rumblings of fiscal problems had begun to appear, the result of residential and corporate flight. In the immediate postwar era, white residents fled the city in significant numbers thanks to generous Federal mortgage assistance and settled in new commuter suburbs on Long Island and in Westchester County and New Jersey. Corporations also moved their headquarters out of the city, spurred on by the inducement of lower taxes. The movement of people and businesses decimated New York City's tax base just at the moment when poorer newcomers arrived seeking better opportunities. City agencies still needed to support a large population, but with limited funds. The Lindsay administration tried to extract new revenue by licensing informal cab drivers and initiating a push to formalize all street vending.[5]

Activism in the 1970s and 1980s (New York: Hill & Wang, 2013); and Robert O. Self, *American Babylon: Race and the Struggle for Postwar Oakland* (Princeton: Princeton University Press, 2003). On the broader history of anti-tax politics and metropolitan voters ee also, Thomas Byrne Edsall and Mary D. Edsall, *Chain Reaction: The Impact of Race, Rights, and Taxes on American Politics* (New York: Norton, 1992); Kevin Kruse, *White Flight: Atlanta and the Making of Modern Conservatism* (Princeton: Princeton University Press, 2005); and Matthew Lassiter, *The Silent Majority: Suburban Politics in the Sunbelt South* (Princeton: Princeton University Press, 2006). On the implications of antitax politics and revenue in New York specifically see, Matthew Vaz, "'We Intend to Run It:' Racial Politics, Illegal Gambling, and the Rise of Government Lotteries in the United States, 1960-1985," *Journal of American History* 101:1 (June 2014), 71-96.

[5] For postwar New York City history see, Vincent Cannato, *The Ungovernable City: John V. Lindsay and His Struggle to Save New York* (New York: Basic Books, 2001); Robert Caro, *The Power Broker: Robert Moses and the Fall of New York* (New York: Knopf, 1974); Joshua Freeman, *Working-Class New York: Life and Labor Since World War II* (New York: New Press, 2000); Miriam Greenberg, *Branding New York: How a City in Crisis was Sold to the World* (New York: Routledge, 2008); John

Licensing vendors and cab drivers momentarily appeared as if it might provide a new path forward for the city, compensating for the lost tax base by gathering revenues from informal and semi-formal economic actors. But then, in the summer of 1975, the city's bond market collapsed and extracting revenues from street vendors and cabbies appeared paltry in light of the city's mounting debts. It would no longer be enough to extract new revenues, city officials would have to devise ways of protecting existing revenues from tourism and the FIRE (finance, insurance, and real estate) sector to ensure that industry, and its tax base, remained in the city.[6]

As city officials sought new sources of revenue and worked to protect established ones, they configured municipal power anew, not as a smaller state, but as a differently

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Mollenkopf, *A Phoenix in the Ashes: The Rise and Fall of the Koch Coalition in New York City* (Princeton: Princeton University Press, 1994); Kim Moody, *From Welfare State to Real Estate: Regime Change in New York City, 1974 to the Present* (New York: The New Press, 2007); Suleiman Osman, *The Invention of Brownstone Brooklyn: Gentrification and the Search for Authenticity in Postwar New York* (New York: Oxford University Press, 2011); Jonathan Rieder, *Canarsie: The Jews and Italians of Brooklyn Against Liberalism* (Cambridge: Harvard University Press, 1985); Jonathan Soffer, *Ed Koch and the Rebuilding of New York* City (New York: Columbia University Press, 2010); and Samuel Zipp, *Manhattan Projects: The Rise and Fall of Urban Renewal in Cold War New York* (New York: Oxford University Press, 2010).

[6] For analysis of the fiscal crisis' causes and consequences see, Julian Brash, "Invoking Fiscal Crisis: Moral Discourse and Politics in New York City," *Social Text* 76, vol. 21, no. 3 (Fall 2003): 59-83; Jonathan Mahler, *Ladies and Gentleman, the Bronx is Burning: 1977, Baseball, Politics and the Battle for the Soul of the City* (New York: Macmillan, 2005); Alice O'Connor, "The Privatized City: The Manhattan Institute, the Urban Crisis, and the Conservative Counterrevolution in New York," *Journal of Urban History* 34:2 (January 2008): 333-353; Kim Phillips-Fein, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics* (New York: Metropolitan Books, 2017); and Martin Shefter, *Political Crisis/Fiscal Crisis: The Collapse and Revival of New York City* (New York: Basic Books, 1987).

oriented one. By state I mean the local manifestations of governmental power: the New York City council, successive mayoral administrations, and city agencies and their staffers. Locally, the state rebuilt itself through revenue gained by regulation. That regulation manifested as either the extraction of new revenues that came from formalizing work via licensing or as the protection of tourism and FIRE generated revenues by removing nuisance businesses that threatened the money brought into the city by visitors and business. In New York City, the underground economy featured prominently in the ways in which the state rebuilt itself after the fiscal crisis.

Between 1968 and 2001, officials rebuilt New York City through a complex calculus based on what revenue they could extract from whom and how much. Declining state and federal funds coupled with revenue gaps had left the city struggling to balance the budget. Some politicians saw the underground economy as a source of much needed revenue. By increasing existing licensing fees and fines and creating new ones, the city could extract revenue and cover its losses. Other politicians, lobbyists, and business executives saw the protection of existing streams of revenue as more critical, however. The business brought in by financial industries, real estate, and tourism needed to be protected from businesses and people that might scare them off, such as adult businesses and windshield washers. The fiscal crisis in the mid-1970s cemented the focus on revenue to the detriment of all other issues. From 1975 onward, the state oriented its power toward revenue generation through regulation – extracting new sources or protecting older ones. Because of the fixation on revenues, state actors did not so much

actively decide to create a neoliberal order as they stumbled into it while reorganizing the state and reorienting its focus toward revenue.[7]

The reorganization of the state around revenue extraction and protection is a tangible example of the ascendancy of neoliberal policies. As historians continue wrangling definitions of neoliberalism, Vanessa Ogle offers one of the more useful and concise versions in her assessment of archipelago capitalism – the tax havens, offshore financial centers, flags of convenience registries and foreign trade zones that incubated deregulated, free market capitalism in the postwar period. Ogle points to a number of agreed upon points key to neoliberalism: "the deregulation of financial markets and industries and other aspects of economic life; the rollback in government intervention; the rise of finance at the expense of industry and manufacturing; and a preference for pro-business, pro-enterprise economic conditions including tax cuts for corporations as well as individuals."[8] The latter part of this definition, "a preference for pro-business, pro-enterprise economic conditions" is key, because it reminds us that the state actively sought to create those conditions.

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[7] On more recent New York City policy see, Ester Fuchs, *Mayors and Money: Fiscal Policy in New York and Chicago* (Chicago: University of Chicago Press, 1992); Alex Vitale, *City of Disorder: How the Quality of Life Campaign Transformed New York* Politics (New York: New York University Press, 2008); and Lynn Weikert, *Follow the Money: Who Controls New York City Mayors?* (Albany: State University of New York Press, 2009).

[8] Vanessa Ogle, "Archipelago Capitalism: Tax Havens, Offshore Money, and the State, 1950s-1970s," *American Historical Review* 122:5 (December 2017): 1431-1458.

The state did not shrink in the final decades of the twentieth-century, it re-oriented itself around revenue and expanded. In New York City, officials created pro-business economic conditions as a means of protecting revenues from what they considered to be the most valuable sectors of the economy: FIRE and tourism. City officials no longer believed they could enact progressive tax policy, because it might scare off more businesses leading to further capital flight. Yet, services still needed to be paid for, meaning new sources of revenue had to be found. Within this mix of revenue extraction and protection, officials slowly rebuilt New York City.[9]

Revenue

[9] Another way of thinking about state reorientation post-fiscal crisis is with Naomi Klein's notion of "disaster capitalism" and the application of a "shock doctrine" to treat various crises ranging from natural disasters to man-made financial collapse. New York's 1975 fiscal crisis served as the shock that ushered in the policies of austerity and structural readjustment. This is useful for tracing the economic and political policies that placed a premium on the free market while heavily managing that market; the social policies to maintain control and manage the shocks of economic restructuring; and the ramifications of reducing every interaction into an economic transaction, assigning monetary value to certain things and denigrating others as useless, wasteful, or dangerous. Yet, Wendy Brown cautions scholars from treating the current iteration of neoliberalism as the "essential truth" of it. As we interrogate its many meanings, we should question the narratives we have told about the New Deal and the American welfare state in the twentieth-century. Responses to Daniel Rodgers' piece in *Dissent,* got at Brown's suggestion, questioning the utility of the term itself and the things it might obscure. In this project, however, I attempt to explain how we got here via a case study of municipal revenue policy in New York. See, Wendy Brown, *Undoing the Demos: Neoliberalism's Stealth Revolution* (New York: Zone Books, 2015); David Harvey, *A Brief History of Neoliberalism* (New York: Oxford University Press, 2005); Naomi Klein, *The Shock Doctrine: The Rise of Disaster Capitalism* (New York: Metropolitan Books, 2007); Greta Krippner, *Capitalizing on Crisis: The Political Origins of the Rise of Finance* (Cambridge: Harvard University Press, 2011); Ruth Milkman & Ed Ott, eds., *New Labor in New York: Precarious Workers and the Future of the Labor Movement* (Cornell University Press: Ithaca, 2014); and Daniel Rodgers, "The Uses and Abuses of 'Neoliberalism,'" *Dissent* (Winter 2018).

Why was the state so focused on revenue in the latter half of the twentieth-century? In part, it was a problem of its own creation. As numerous scholars have shown, Federal housing policy helped spur suburban migration in the immediate post-war period. Taking advantage of generous mortgage interest rates and low home prices, former G.I.s and their families left cities. This outmigration continued as middle-and working-class people fled urban areas for the rapidly developing suburbs. Typically, those moving to the suburbs were white. Realtors and lenders had institutionalized a system of redlining in the twentieth-century based on HOLC ratings that designated certain areas as more prudent investments than others. Locations with an "A" rating meant access to home loans and investment, while lenders considered locations with a "D" rating to be a bad investment. Not only were many Black and Latinx people barred or intimidated away from suburban homeownership, they were also prevented from accessing mortgages in urban neighborhoods. The availability of low-interest mortgages in suburban areas drained much needed tax revenues out of urban areas. While many of those fleeing to the suburbs continued working in cities, at the end of the day they took the majority of their taxes and consumer spending elsewhere, leaving city governments strapped for cash.[10]

[10] On Federal housing policy, discrimination, and suburbanization see, Arnold R Hirsch, *Making the Second Ghetto: Race and Housing in Chicago, 1940-1960* (Chicago: The University of Chicago Press, 1983); Kevin Kruse and Thomas Sugrue, eds. *The New Suburban History* (Chicago: University of Chicago Press, 2006); Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985); Douglas Massey and Nancy Denton, *American Apartheid: Segregation and the Making of the Underclass* (Cambridge: Harvard University Press, 1993); and Beryl Satter, *Family Properties: Race, Real Estate, and the Exploitation of Black Urban America* (New York: Metropolitan Books, 2009).

At the same moment that people moved from cities to suburbs, large companies followed suit. The leaders of sunbelt cities, suburbs, and places like Stamford, Connecticut lured major corporations to them with the promise of lower taxes and low (or no) unionization. New York City lost a sizeable share of industry including credit card and pharmaceutical companies. Even more than white flight to the suburbs, corporate flight decimated the city's tax base. It also instilled fear of further capital flight from the city, leading politicians to adopt the tactics of their competitor locales and offer generous tax abatements and other financial incentives to prevent further loss.[11]

Finally, the loss of white residents and corporations coincided with the arrival of newcomers to the city, predominantly fleeing economic desperation and racial discrimination in the South and Puerto Rico. Many of those who arrived in New York in the immediate post-war era faced continued housing and employment discrimination in their new home. Black Southerners and Puerto Ricans were crowded into existing slums, denied the chance to rent or buy in many city neighborhoods. Unions also discriminated

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[11] On the rise of the sunbelt see, Elizabeth Tandy Shermer, *Sunbelt Capitalism: Phoenix and the Transformation of American Politics* (Philadelphia: University of Pennsylvania Press, 2013). On broader postwar economic transformations see, Jefferson Cowie, *Capital Moves: RCA's Seventy-Year Quest for Cheap Labor* (Ithaca: Cornell University Press, 1999); Nelson Lichtenstein, *The Retail Revolution: How Wal-Mart Created a Brave New World of Business* (New York: Metropolitan Books, 2009); Joseph McCartin, *Collision Course: Ronald Reagan, the Air Traffic Controllers, and the Strike that Changed America* (New York: Oxford University Press, 2011); Guian McKee, *The Problem of Jobs: Liberalism, Race, and Deindustrialization in Philadelphia* (Chicago: University of Chicago Press, 2008); Bruce Schulman, *The Seventies: The Great Shift in American Culture, Society, and Politics* (Cambridge, Mass.: Da Capo, 2002); Judith Stein, *Running Steel, Running America: Race, Economic Policy, and the Decline of Liberalism* (Chapel Hill: University of North Carolina Press, 1998); and Stein, *Pivotal Decade: How the United States Traded Factories for Finance in the Seventies* (New Haven: Yale University Press, 2010).

against the newcomers and for those who were able to obtain decent employment they were often in the "last hired, first fired" position. As industry drained out of New York, many of them lost their jobs. The effects of this were two-fold. First, many of those denied solid formal employment turned to the underground economy for income, working as informal (gypsy) cab drivers, vending without a license, running daycares out of their homes, and hustling various other side jobs. For the New Yorkers who chose this form of work, it meant they usually did not pay taxes as they were paid in cash without any formal record. Second, these new arrivals still relied on the city to provide basic services like sanitation, education, fire, and police. Many of them also relied on the city's extensive network of municipal hospitals and rent assistance. These things cost money and the loss of middle-and working-class residents and industry paired with the limited revenues that could be extracted from newer, low-income arrivals left the city strapped for cash.[12]

The loss and imbalance of revenue is not to say that those who moved to New York in the immediate post-war period were the cause of the urban crisis. That lay in the Federal policies that induced people to move to the suburbs, the state and municipal stakeholders who enticed companies to move with promises of lower tax rates and a corporate-friendly climate, and the reduction of state and federal assistance to cities. In

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[12] On the urban crisis more broadly see, Thomas Sugrue, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit* (Princeton: Princeton University Press, 2005). On postwar urban population transformation see for example, Andraes Torres, *Between Melting Pot and Mosaic: African Americans and Puerto Ricans in the New York Political Economy* (Philadelphia: Temple University Press, 1995); and Teresa Whalen, *From Puerto Rico to Philadelphia: Puerto Rican Workers and Postwar Economies* (Philadelphia: Temple University Press, 2001).

New York City, the precarity of revenues was exacerbated by financial institutions that told city officials the municipal bond market was solid, only to pull out in spectacular fashion in the summer of 1975. The failure to raise funds through its annual bond sale followed by a massive sell-off of municipal bonds brought New York City to the brink of collapse.

New York City did not cease to exist in 1975, however, and over the next twenty years city and state politicians worked to rebuild the economic foundations of New York. Scholars have examined several ways in which this occurred – by transforming Manhattan into a playground for visitors and the wealthy, through public-private partnerships wherein city officials relinquished control over large swathes of public space, and through financial incentives like abatements or "homesteading" assistance that provided money for people renovating homes in blighted neighborhoods.[13] While all of these pieces of the rebuilding puzzle are important factors in New York's turnaround, they leave out the critical role played by a near manic quest for revenues. I argue that the municipal state rebuilt itself through regulation that either extracted new revenues or protected existing forms generated by tourism and FIRE. The goal of the state was always to generate the most revenue possible – turning midtown into a tourist destination, granting private organizations control of parks and business districts, and even abatements, as counterintuitive as that may seem. City officials experimented with whatever regulation, or in some cases deregulation, might protect tourist and business

[13] Greenberg, *Branding New York;* Osman, *The Invention of Brownstone Brooklyn;* and Sharon Zukin, *Naked City: The Life and Death of Authentic Urban Places* (New York: Oxford University Press, 2010).

revenue and prevent a drop in visitors or further capital flight. Simultaneously, those same officials tried to extract new revenues through licensing and fines aimed at informal and semi-formal work. They did this because protecting business revenue meant not extracting revenue from the highest potential source: finance, insurance, and real estate.

The State

I draw from Margot Canaday's "people and places" approach to conceptualizing the state as "what officials do."[14] What officials did in New York between 1968 and 2001 was to rebuild the city by generating revenues, and that occurred in two main ways: the extraction of revenue from new sources via licensing and fines and the protection of revenue from tourism, finance, and real estate. Both of these revenue streams required new forms of regulation and so the state regulated itself back to health through revenue generation. Unlike Canaday, my study does not focus on the state's regulation of a singular issue, nor does it examine a singular facet of the state, like the military or welfare. Rather, I examine a singular focus, revenue generation, as a tool for assessing state building, or in this case, rebuilding. I use the underground economy as a jumping off point for an assessment of how the state rebuilt and reoriented itself after near economic collapse, tracing the thread of revenue extraction from informal and semi-formal businesses by the state to revenue protection against semi-formal and "nuisance" businesses.

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[14] Margot Canaday, *The Straight State: Sexuality and Citizenship in Twentieth-Century America* (Princeton: Princeton University Press, 2009), 5-6.

In "The Limits of the State," Timothy Mitchell argues that the difficulty of defining the state reflects its very nature. Mitchell offers an approach to defining the state that examines the boundary between state and society in order to understand state formation and power. In this study, I replace society with underground economy, because the state (here taken to be New York City) first sought to rebuild itself by extracting revenue from informal and semi-formal activities. Extracting revenue from businesses that had previously been hidden from or ignored by the state necessitated a new period of state building. Once that new period of state building began, it expanded to included regulatory systems that would protect existing sources of revenue. Focusing on the local level allows for a more controlled examination of the state building process. New York City also provides a powerful juxtaposition to narrative focused on conservative led state intervention during the 1980s. As Joshua Freeman noted in his history of postwar New York, the city had long served as a model of governance based on social welfare and strong unionization. That this paradigm changed in the latter decades of the twentieth-century is telling of a shift in state priorities.[15]

The Underground Economy

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[15] Timothy Mitchell, "The Limits of the State: Beyond Statist Approaches and Their Critics," *American Political Science Review,* vol. 85 (March 1991), 77-96. See also, Peter B. Evans, Dietrich Rueschemeyer, and Theda Skocpol, eds., *Bringing the State Back In* (New York: Cambridge University Press, 1985). On the significance of local politics see, Thomas Sugrue, "All Politics is Local: The Persistence of Localism in Twentieth-Century America," in *The Democratic Experiment: New Directions in American Political History,* ed. Meg Jacob, William J. Novack, and Julian E. Zelizer (Princeton: Princeton University Press, 2003).

Taking a clue from Mitchell's approach to defining the state illustrated above, an examination of the boundary between the state and the underground economy from the 1970s to the present reveals state re-formation and power. Looking at state attempts to extract revenue from informal and semi-formal businesses is tricky because both the state and the underground economy are slippery terms. As the state took shape in the twentieth-century it did so in part by regulating employment through federal and local policies that formalized some labor and deformalized others. The state formalized labor by linking it to Social Security, healthcare, unemployment, workers compensation, and of course, taxation. The state deformalized labor by not linking it to Social Security (as with domestic work and many forms of agricultural labor) and by actively criminalizing it (anti-drug, prostitution, and gambling laws).[16]

Saskia Sassen defines the underground economy as licit goods sold outside the "regulatory apparatus covering zoning, tax, health and safety, minimum wages laws and other types of standards."[17] However, omitting illicit goods further removes the state as an actor in creating and maintaining an underground economy. The underground economy is a global phenomenon, with each country's informal sector shaped by specific policies and practices. It is these policies and practices that reveal the workings of the state since the late 1960s. In fact, much of the scholarly work on the underground economy began to emerge in the 1970s at the same moment that various states began to

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[16] On federal work policy and inequality see, Ira Katznelson, *When Affirmative Action was White: An Untold History of Racial Inequality in Twentieth-Century America* (New York: Norton, 2005).

[17] Saskia Sassen, *The Global City: New York, Tokyo, London* (Princeton: Princeton University Press, 1991), 290.

take notice. A brief note on language, I use "underground economy" to demarcate untaxed and unregulated work, but this is in itself a slippery definition, because sometimes unregulated and untaxed work becomes taxed and regulated.[18] In this study, particularly when the state needed to extract new revenues. In cases where the status of an industry is in flux or unclear I refer to it as informal or semi-formal.

Two of the earliest works on the informal or irregular economy focused on Ghana and inner-city neighborhoods in America. The former assessed the informal economy as a product of underdevelopment and cautioned against interventions that might block the poorest in those countries from opportunities to earn income, interventions such as regulation. The latter treated the irregular economy as a product of racially discriminatory licensing policies and limited access to formal services. The authors of that study added that in periods where sufficient tax revenue was lost or licensed craftsmen felt threatened by competition, the state could be compelled to monitor the irregular economy to an extent that limited or prohibited it. Both of these studies considered the state's capacity to regulate the underground economy, but neither suggested sizeable revenues could be extracted from informal workers.[19]

Every definition of the underground economy includes the state as a key actor. The common thread is that the underground economy is composed of uncounted

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[18] For more on the difficulty in defining the underground economy see, George L. Priest, "The Ambiguous Moral Foundations of the Underground Economy," *The Yale Law Journal,* vol 103, no 8, Symposium: The Informal Economy (June 1994): 2259.

[19] Patricia Ferman and Louis Ferman, "The Structural Underpinnings of the Irregular Economy," *Poverty and Human Resources Abstracts,* Vol. 8 (January 1973): 3-17; and Keith Hart, "Informal Income Opportunities and Urban Employment in Ghana," *Journal of Modern African Studies* Vol. 11 (March 1973): 61-89.

economic activities, specifically, uncounted by state agencies. While some of these uncounted activities stemmed from workers trying to pocket more of their earnings or undocumented immigrants, considering the actions of large corporations points to other forces at work as well. In their edited collection on the informal economy, Alejandro Portes, Manuel Castells, and Lauren Benton argue that informal activity has grown since the 1970s because business owners have used informalization to break unions and state regulation of the economy. Competing to reduce labor costs in a globalized economy, manufacturers lowered wages, cut social benefits, and reduced state controls on the workplace such as workday hour caps and safety. Desperate for work, the authors note, people have been driven to make a living at the "margins of rules and organizational arrangements."[20]

The problem with many of the definitions of the underground economy is that scholars look to it for signs of government decline when it is much more complicated than a narrative of state decline matched by informal economic expansion. On the topic of government expansion and informal growth some scholars argue that the growth of the underground economy since the 1970s is due to over-regulation that pushed people to avoid the state. The idea of over-regulation driving work underground gets closer to the nature of the state post-1970s, but also omits some of the complexities at play. The

[20] Alejandro Portes, Manuel Castells, and Lauren Benton, eds., *The Informal Economy: Studies in Advanced and Less Developed Countries* (Baltimore: Johns Hopkins University Press, 1989), 29. See also, Hernando De Soto, *The Other Path: The Invisible Revolution in the Third World* (New York: Harper and Row, 1989); and Vinit Mukhija and Anastasia Loukaitou-Sideris, eds., *The Informal American City: Beyond Taco Trucks and Day Labor* (Cambridge: MIT Press, 2014).

number of people working off the books and the estimated financial growth of the underground economy in the late 1970s demonstrate two things critical to this study. One, that as people's wages stagnated or as their jobs disappeared, they needed to find income elsewhere. Two, the state began to take notice of the increase in informal and semi-formal work. The attention paid to informal work is key here. The underground economy was not new in 1968 when New York City officials expanded licensing of informal cab drivers and street vendors; it was not new in 1979 when the U.S. House of Representatives held hearings to determine its scope and potential for producing revenues; and it was not new in 1980 when Mayor Ed Koch tried to extract revenue from informal city businesses. The underground economy is usually hidden until it is not, and in this case, the state made it visible in its quest for revenues. In the state's exposure of the informal economy lies the beginning of policy directed at extracting revenues through regulation.[21]

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[21] On the historical use of informal work see, Hasia Diner, *Roads Taken: The Great Jewish Migrations to the New World and the Peddlers Who Forged the Way* (New Haven: Yale University Press, 2015); Brian Luskey and Wendy Woloson, eds., *Capitalism By Gaslight: Illuminating the Economy of Nineteenth-Century America* (Philadelphia: University of Pennsylvania Press, 2015); Stephen Mihm, *A Nation of Counterfeiters: Capitalists, Con Men, and the Making of the United States* (Cambridge: Harvard University Press, 2007); Seth Rockman, *Scraping By: Wage Labor, Slavery, and Survival in Early Baltimore* (Baltimore: Johns Hopkins University Press, 2009); and Christine Stansell, *City of Women: Sex and Class in New York, 1789-1860* (New York: Knopf, 1986). Twentieth-century historical treatments of the underground economy have focused on the first half of the century. See Robert Boyd, "Urbanization, Disadvantage, and Petty Entrepreneurship: Street Peddling Among African American Men in Southern and Northern Cities During the Early Twentieth Century," *Sociological Inquiry,* vol 69, no 2 (Spring 1999): 216-235; LaShawn Harris, *Sex Workers, Psychics, and Numbers Runners: Black Women in New York City's Underground Economy* (Champaign-Urbana: University of Illinois Press, 2016); Irma Watkins-Owens, *Blood Relations: Caribbean Immigrants and the Harlem Community, 1900-1930* (1996); and Victoria Wolcott, "The

From Progressivism to Neoliberalism

The crux of this study focuses on New York City between 1968 and 2001, however, I begin with a discussion of Progressive Era regulation in order to show the changes undergone by the state at the end of the twentieth-century. Progressive era regulation of vending, cabs, and nightlife and early zoning mechanisms serve as a counterpoint to the revenue-driven regulation that emerged in the late 1960s. The middle chapters examine the ways in which the state rebuilt itself through revenue-seeking regulation. Chapters Two and Five examine attempts by officials to extract revenue from informal and semi-formal activities in the city's underground economy. Chapters Three and Four focus on protecting revenues generated by tourism, the financial sector, real estate, and New York's fashion industry from businesses that allegedly detracted from their profitability. Chapter Six assesses the embrace of a neoliberal order by the state at the end of the twentieth-century following a decades-long quest to rebuild New York that oriented the state toward revenue extraction and protection.

Culture of the Informal Economy: Numbers Runners in Inter-War Black Detroit," *Radical History Review* 69 (Fall 1997): 46-75. Other fields offer more contemporary analysis, see for instance, Regina Austin, "An Honest Living: Street Vendors, Municipal Regulation, and the Black Public Sphere," *Yale Law Journal* 103, no.8 (June 1994): 2119-2131; Mitchell Duneier, *Sidewalk* (New York: Farrar, Straus and Giroux, 1999); John Gaber, "Manhattan's 14th Street Vendors' Market: Informal Street Peddlers' Complementary Relationship with New York City's Economy," *Urban Anthropology and Studies of Cultural Systems and World Economic Development* 23, no.4 (Winter 1994): 373-408; Eric Schlosser, *Reefer Madness: Sex, Drugs, and Cheap Labor in the American Black Market* (New York: Houghton Mifflin, 2003); and Sudhir Venkatesh, *Off the Books: The Underground Economy of the Urban Poor* (Cambridge: Harvard University Press, 2006).

As the city's financial precarity became clear in the late 1960s, city officials sought ways to extract new revenues from previously untapped sectors of the city's economy. The fiscal crisis in 1975 threw this into hyperdrive, pushing officials to not only seek new ways of garnering revenue but to also aggressively protect existing tourist and FIRE sector revenues. In order to protect the revenues that came from finance, insurance, and real estate, officials granted companies generous tax abatements, commercial rent deductions, and endowed the business associations formed by many of them with power over their commercial districts. Because city officials feared the flight of these industries they left them untouched as the largest potential source of revenue. Instead, state actors treated them as ambassadors for further business investment, so that by giving them the financial benefits they asked for, financial brokers, insurance firms, and real estate developers would bring in new businesses and thus, new revenues. In order to protect these revenues, city officials regulated the businesses that detracted from a so-called appropriate business climate. Anything that might detract from investment or induce further capital flight had to go, and so officials worked to clear adult businesses out of midtown, street vendors out of downtown, and windshield washers away from the bridges and tunnels that brought people into the city. The move to protect business revenue coincided with a move to protect and promote tourism-generated revenue. Tourist revenues, city officials believed, also depended on promoting the right image of the city. The tourist image and the business climate intersected in the economic actors that detracted from them: vendors and gypsy cabs who would rip off tourists or adult

businesses and squeegeemen who represented a seedy, blighted New York that scarred off visitors.

By the late 1990s, the revenue from these acceptable sources (business and tourism) appeared secure. The city's finances seemed stable enough that the problematic efforts at revenue extraction could be dropped. City officials no longer needed to extract revenue from informal and semi-formal activities, but because they had revealed them to state scrutiny in their quest for revenue, they had exposed them to the type of regulation aimed at protecting tourist and business revenues. Between 1968 and 2001, deregulation at the top had been met with regulation at the bottom as a means of revenue extraction and protection. The result of these policies was increased political, social, and economic inequality. Here is the tale of those two cities.

CHAPTER 1
CLEAN & ORDERLY:
PROGRESSIVE ERA MUNICIPAL REGULATION

Over the course of the first three decades of the twentieth-century a new form of urban governance replaced the Tammany Hall political patronage system that had become synonymous with New York City. Urbanization, industrialization, and increased immigration had pressed the nineteenth-century city to its limits in terms of housing, sanitation, and workplace safety. Abusive working conditions in the city's garment district; the reliance on child labor; contaminated food and drugs; overcrowding and poor sanitation – these were just a few of the issues taken on by Progressive reformers in New York City and across the country. Locally, reformers sought to address the political corruption of Tammany politics, the poor sanitation and abject poverty exacerbated by industrialization and population growth, and the general sense that chaos had descended upon the city. The Progressive Era style of municipal governance was marked by a quest for order, particularly, middle-class definitions of order. Regulation in this period focused on creating an orderly city and an orderly bureaucracy to manage it. Half a century later another form of urban governance would replace this order through regulation with a model focused on revenue through regulation.[1]

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[1] Jackson Lears, *Rebirth of a Nation: The Making of a Modern America, 1877-1920* (New Yorj: Harper, 2009); Michael McGerr, *A Fierce Discontent: The Rise and Fall of the Progressive Movement in America, 1870-1920* (New York: Free Press, 2003); Nell Irvin Painter, *Standing at Armageddon: The United States, 1877-1919* (New York: W.W. Norton, 1987); and Shelton Stromquist, *Reinventing the People: The Progressive Movement, the Class Problem, and the Origins of Modern Liberalism* (Urbana: University of Illinois Press, 2006).

What I term New York's Progressive Era municipal bureaucracy began to form following the incorporation of the five boroughs into "New York City," in 1898 and in response to political corruption and the sanitation and crowding issues associated with rapid industrialization and increased immigration. Associated with the latter were fears of poverty breeding a criminal underclass that might further threaten the city's stability. A new generation of city officials not affiliated with Tammany politicians worked in conjunction with private reform groups to address corruption, poverty, public health, and crime by building an efficient and orderly bureaucracy to manage the growing city. The pre-Depression bureaucracy was an attempt to restore a middle-class based social order marked by a focus on the curative properties of things like fresh air (evidenced by the creation of public parks and implementation of tenement air shafts); on ensuring worker safety through building and fire codes; and in creating a system of spatial ordering that maintained economic and racial hierarchies.

The focus of Progressive era municipal regulatory efforts, overseen and enforced by bureaucrats, was order. In this way, licensing for example, served to create and preserve order. Street vendors, for instance, would need licenses so that city agents could keep track of them, ensure they followed time and place rules, and adhered to established health standards. Fees associated with licenses went toward the cost of municipal regulation, but were not the end goal of licensing. Early twentieth-century officials and Progressive reformers treated the aspects of the city's economy that became the focus of revenue raising schemes in the latter half of the twentieth-century as things to be managed and contained, not as things to be extracted from and taxed. These included

street vendors, cabs, sex workers, and clubs as well as land use. In order to understand the reorientation of the state by the end of the twentieth-century we must first understand what it replaced and how the earlier model of municipal regulation paved the way for what came after it.[2]

One night in late October 1918, an inspector for the Committee of Fourteen, a private citizens reform group, set out to uncover the working habits of prostitutes in midtown Manhattan. Walking along Broadway between Fifty-ninth and Sixty-ninth streets he found few people willing to converse with him until he struck up a conversation with a taxi driver who told him his name was "Burke." The inspector tried to convince Burke he was "a regular guy and in with the crowd" looking for some company. The two eventually went for a drink at a nearby bar where the inspector continued to press Burke for information on soliciting prostitutes. The cab driver told him that few women came out on the streets anymore because they had "a bastard of an inspector in this district and they have to be careful."[3] The Committee frequently included cab drivers in their nighttime investigations, because they considered them to be links between customers and prostitutes. Committee leadership sent investigators to hack stands where their

[2] Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City* (New York: Routledge, 1991); and LaShawn Harris, *Sex Workers, Psychics, and Numbers Runners: Black Women in New York City's Underground Economy* (Urbana: University of Illinois Press, 2016).

[3] Graham Russell Hodges, *Taxi! A Social History of the New York City Cabdriver* (Baltimore: Johns Hopkins University Press, 2007), 21-22.

investigators reported back that cabbies served as reliable go-betweens for contacts with sex workers.

As Jennifer Fronc notes in her history of private surveillance in New York City during the Progressive Era, private activist groups like the Committee of Fourteen viewed prostitution, gambling, interracial spaces, and juvenile delinquency as a failure of government to police behavior and provide adequate social services to the city's working-class, immigrant, and African-American populations. The Committee sought to transform social conditions on the streets, in barrooms, hotels, and clubs through regulation and punition. They aimed to regulate those activities so that "moral contamination," such as prostitution and criminality, would not spread to other, more affluent, New Yorkers. The Committee built on undercover investigations conducted by predecessors in the city's many preventive societies, such as the Society for the Prevention of Crime. However, instead of relying on personal relationships with sympathetic public officials, they maneuvered backroom deals with business and insurance companies to fund their investigations, which they then conducted through settlement houses and social workers. In this way, reformers used private and municipal channels to reclaim the cityscape from the chaos they associated with early twentieth-century life. Another way of doing this involved the newly developed municipal role in determining land use.[4]

[4] Jennifer Fronc, *New York Undercover: Private Surveillance in the Progressive Era* (Chicago: University of Chicago Press, 2009), 25-28.

In 1916, city officials codified efforts by middle-and upper-class New Yorkers to stabilize real estate values through zoning statutes that prevented the "intrusion" of "incompatible" land uses in elite enclaves.[5] The Fifth Avenue Association played a critical role in the passage of these municipal zoning regulations, whose members sought to exclude loft buildings and the garment industry from spreading north. As a result, factories were banned along parts of Fifth Avenue, but the association did not act alone. Progressive reformers concerned with the health benefits of access to light and air advocated for limiting the heights of new buildings. This led to a prohibition on the construction of apartment houses and commercial properties in single-family neighborhoods and required setbacks for buildings to allow sunlight to reach the street.

Besides developers, who could win exemptions from the Board of Standards & Appeals, cabarets were some of the earliest businesses to be regulated through zoning. The city defined a cabaret as,

> any room, place, or space in the city in which any musical entertainment, singing, dancing or other form of amusement is permitted in connection with the restaurant business or the business of directly or indirectly selling to the public food or drink, except eating or drinking places which provide incidental musical entertainment, without dancing, either by mechanical devices, or by not more than three persons playing piano, organ, accordian [sic], guitar or any stringed instrument or by not more than one singer accompanied by himself or a person playing piano, organ, accordian [sic], guitar or any stringed instrument.[6]

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[5] Daniel Bluestone, "The Pushcart Evil: Peddlers, Merchants, and New York City's Streets, 1890-1940," *Journal of Urban History* 18:1 (November 1991), 80.

[6] Chevigny, *Gigs,* 9. For a broader analysis of the place of nightclubs in early twentieth-century cities see also, George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 1994); Lewis Erenberg, *Steppin' Out: New York Nightlife and the Transformation of American Culture, 1890-1930* (Chicago: University of Chicago Press, 1984); and Chad

Cabarets were only permitted in certain districts, which, as one observer noted functioned as a tool to "discriminate among neighborhoods and among uses for particular neighborhoods according to class and functional difference…according to the values and tastes of those who plan for the city."[7] A cabaret operating in a restricted zone could never become licensed and would remain informal and "illegal" in the eyes of city regulators and reformers. Zoning thus functioned to spatially informalize these businesses. By limiting where cabarets could legally operate, municipal regulation aimed to restore order to certain districts and contain the city's rowdy nightlife to specific neighborhoods. Regulating clubs was about restoring racial and class-based order, not about extracting or protecting revenue.

The zoning resolution was applied to the management of cabarets with the passage of the city's Cabaret Law in 1926. Cabaret licenses could only be obtained in areas zoned for entertainment and different agencies oversaw the individual parts of the process: licensing and zoning approval. Club owners who wished to obtain a license and remain "legal," but whose establishments existed outside the proper zone could either operate illegally or attempt to move.[8] Owners, like property developers, could apply for an exemption from the Board of Standards and Appeals, a municipal agency formed along with the passage of the zoning resolution in 1916. However, club owners often faced greater opposition than developers, especially those establishment close to the

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Heap, *Slumming: Sexual and Racial Encounters in American Nightlife, 1885-1940* (Chicago: University of Chicago Press, 2009).

[7] Chevingy, 3.

[8] Chevigny, 40.

city's wealthier residential neighborhoods. While the city's zoning laws would be rewritten several times over the course of the twentieth-century, the hurdles it created for entertainment venues and other businesses were inherent to its function. Zoning allowed city officials to determine the usage of urban space as they saw fit, and frequently those activities deemed unsuitable for certain districts could be zoned out. However, officials did not state that this had been done to protect revenues from other businesses or tourists. Zoning and the Cabaret Law were about maintaining social hierarchies.

Established in 1926, New York's cabaret law, was, in the words of an attorney who fought it in the 1980s, "rooted ultimately in racism."[9] Regulation of cabarets developed during Prohibition as part of a moral panic over the period's mixed race and gender nightlife spaces. Prior to WWI, cabarets in the city featured dinner, dancing, and music like their European counterparts. The city did not regulate these spaces so long as they did not use a stage or scenery in which case city policy only required a theater license. Comments from the Board of Aldermen's committee on local laws reveal motivation for the passage of the Cabaret Law in 1926. One of the cabaret licensees opposed to the bill said that, "when strangers came to New York, they wanted to 'run Wild.'" In response, one alderman exclaimed that there had been "altogether too much running 'wild' in some of these nightclubs." Committee members agreed that, "the 'wild' stranger and the foolish native should have the check-rein applied a bit," and not come "tumbling out of these resorts at six or seven o'clock in the morning to the scandal

[9] Chevigny, 2. This is in part based on testimony from the Board of Aldermen's Committee on Local Laws discussed in Note 3.

and annoyance of decent residents on their way to daily employment." Bemoaning the allegedly well-known fact that "wild" strangers were not interested in "our great museums of art and history," but were drawn to the "speakeasies and dance halls," from whence they returned, "to their native hearth to slander New York." After only two public hearings on the bill, "its adoption was urged by the police and license commissioners, by clergymen of various denominations and citizens interested in social and recreational work."[10]

While the hidden aim of the law may have been to control interracial mixing in nightclubs, the legal parameters of it established rules for any space in which musical entertainment, singing, dancing, or other forms of entertainment, and the public sale of food or drink occurred simultaneously. If an establishment met those guidelines, the law required it to be licensed as a cabaret. There was also a provision that came to be known as the "3 musician rule" that allowed no more than three musicians to perform in unlicensed spaces, but barred them from playing wind or percussion instruments, thus ensuring jazz clubs fell under the purview of the cabaret law. City council amended the law in 1936 to allow for "incidental musical entertainment, without dancing" (i.e. radio or piano playing) in eating or drinking places without a cabaret license. But acquiring and maintaining a license remained difficult and became more so over the next few decades. Any infraction could result in a loss of licensing, which rendered the space an unlicensed

[10] Chevigny, 32-35.

(i.e. illegal) cabaret and pushed it into the city's underground economy if it continued operating. Although in the outer boroughs, informal clubs went largely unnoticed.[11]

The original law relegated administration of licensing to the Department of Licenses, but in 1931 oversight was transferred to the police department. Beginning in 1940, the police department required everyone who worked or performed in a cabaret to obtain a cabaret identification card for which they would be fingerprinted and their criminal records checked in order to ensure they were of good character. Those who failed this background check, such as Billie Holiday due to a drug charge, could not get a cabaret ID card and could not, therefore, perform in a licensed cabaret. The transfer to the police department revealed another common trend in municipal regulation of the underground economy. Street peddlers, taxi cabs, and other informal economic activity would all at some point fall under the purview of the police department, an act which further criminalized these sectors. Many of these workers and businesses operated illegally because of zoning and licensing requirements. Adding the police to the mix not only increased the stigmatization and marginalization they faced, but set them up with possible jail time, criminal charges, and hefty fines. Police oversight, zoning, and licensing combined to restrict the operation of cabarets much to the delight of reform groups like the Committee of Fourteen, but some workers would not be hedged in so easily.

[11] Ibid; and Annie Correal, "After 91 Years, New York Will Let Its People Boogie," *New York Times,* October 30, 2017.

One enterprise that destabilized the imaginary borders of zoning and flaunted licensing rules was pushcart vending. Street peddlers threatened attempts to establish spatial order because their mobility allowed them to bypass boundaries and move freely throughout the city.[12] Their mobility also freed them from the need to obtain a license. Without a brick and mortar store, many peddlers could more easily evade police oversight than their counterparts in the entertainment industry. City officials first attempted to regulate peddlers as early as 1691, with an ordinance limiting street selling "by hucksters until two hours after the public markets opened."[13] In 1707, street vending became outright illegal; licensed vendors could sell in the public markets, but street peddlers operating outside the markets worked illegally.[14] In these pre-Revolutionary War measures, city officials had set up time and space restrictions against street vendors, controlling their movement and the hours which they might work.

By the middle of the nineteenth-century, however, city officials paid little attention to street hawkers. There were so few as to cause consternation from businesses or the city's elite. This changed in the latter part of the century as immigrants began selling good and provisions from pushcarts. Various politicians and reformers raised concern over what they saw as the disease spreading hordes of peddlers, but as preventive societies in the city had demonstrated, a payoff to the police could render just about anything "legal." As with the brothels and nightclubs inspected by the Committee of

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[12] Bluestone, "The Pushcart Evil," 80.

[13] Bluestone, 69. For a history of non-urban peddling, see Hasia Diner, *Roads Taken: The Great Jewish Migrations to the New World and the Peddlers Who Forged the Way* (New Haven: Yale University Press, 2015).

[14] Bluestone, 69.

Fourteen, the police extorted street peddlers in return for "protection" and turning a blind eye to their business. Growing fears over street peddling coincided with a panic over immigration to the city and the supposed threat posed by these newcomers from southern and eastern Europe as well as growing concern over police corruption. Prior to the reorganization of the police force in the wake of Reverend Parkhurst's revelations, the spread of pushcarts could be pointed to by the city's elites as yet another example of graft and departmental ties to unsavory elements in the city.

In fact, street peddling grew more in tandem with successive waves of European immigration at the end of the nineteenth-century. The forces driving this came from immigrants looking to eke out a living with limited money to start a business and with other immigrants hoping to buy items as cheaply as possible. While bribes to the police and brick and mortar stores certainly helped, the number of consumers flocking to pushcarts signaled high demand and likely added another layer of protection. Demand was so high that vendors began setting up what amounted to illegal pushcart markets. However, by standing in one spot for more than thirty minutes, pushcart vendors violated a city ordinance that barred them from doing so, but this policy was difficult to enforce. Business was booming and that disincentivized movement away from a steady stream of customers once one had been established.[15]

In 1906, Mayor McClellan established a commission on pushcarts to examine the existing time and place ordinances and propose better methods of enforcement and regulation. The commission's main proposal involved reducing the concentration of

[15] Bluestone, 72-73.

peddlers by limiting the number allowed per block face. In the restricted area south of Fourteenth Street and east of Broadway, peddlers would be required to purchase licenses at an annual auction that would grant them access to a specific corner. Elsewhere, pushcarts could set up in any of the designated spots. The mayor's office never enacted these proposals after the United Peddler's Association, which represented 5,000 licensed peddlers, threatened a boycott.[16]

Plagued by the continued failure managed the spread of vendors, taken by some as a sign of urban disorder, city officials set up peddler markets under the approaches to the Manhattan and Brooklyn bridges in 1913. Their aim was to enclose and reign in the growing threat of boundless pushcart markets taking over the Lower East Side and spreading north. These markets were expanded during WWI when wartime shortages and distribution problems revealed the necessity of peddlers. While peddlers faced intense hostility from many different parties throughout the city, they also had vocal supporters. Philanthropists recognized the importance of peddlers in providing the city's poor with affordable and quality food. Immigrant newspapers and religious leaders throughout the city touted the economic benefits of peddling to their communities. By the mid-1920s, vendors sold an estimated $50 million dollars' worth of food and goods each year.[17]

Despite the function vendors served, both as efficient wartime distributors and as sources of cheap goods in immigrant communities, a standard narrative about peddlers

[16] Bluestone, 83-84.
[17] Bluestone, 86.

rooted in anti-immigrant rhetoric and property value continued to grow. Private citizens and public officials repeatedly referred to peddlers as vermin – they were dirty, they infested neighborhoods, and carried unknown contagious diseases into middle-and upper-class neighborhoods. Even as city officials attempted to corral street vendors into markets and enforce restrictions, peddling continued to spread. Spatial restrictions and licensing did not have the same power over vendors as it did over other businesses. By 1938, after more than three decades of proposals to curb peddling, Deputy Mayor Henry Curran complained that, "dirty, defiant, unlicensed peddlers" had "infested" his neighborhood along Fifth Avenue between 8th and 12th streets. Claiming to have heard complaints that they blocked sidewalk passage and that the flowers they sold only "lasted about twenty minutes," Curran was particularly concerned with their spread. "At first there was only one peddler, but now there are seven or eight, each one dirtier than the other."[18]

In addition to concerns about over-crowded streets and disease, many saw pushcart vendors as an indication of an area's declining real estate value. Here we see an early indicator of the ways in which street vending would factor into debates over protecting municipal revenues. In 1896, a retailer wrote Street Commissioner, George Waring in support of the latter's efforts to suppress a pushcart market on Hester Street in the Lower East Side (L.E.S.). In language that would seem familiar to contemporary anti-vending forces, he wrote that peddlers interfered with the "business men who occupy stores," and who paid, "heavy licenses and rents." Pushcarts, he continued, "prevented

[18] Bluestone, 81.

[them] from carrying on their business [by] standing in front of their doors, collecting crowds, and giving such a disreputable appearance to the stores as to keep customers from entering."[19] The push to enact zoning measures in New York had been in large part about protecting property values and regulating the types of businesses that might enter elite enclaves. The mobility of street vendors threatened this and without a total ban on peddling in the city they would continue their movement. The Yorkville Citizens' Committee on the Upper East Side stated as much in a petition to ban the invasion of peddlers into new districts. This "undesirable institution," they wrote, would continue to spread unabated "unless checked." Complaints made by various residential groups illustrated that management of street vendors by city agents did not focus on revenue extraction, but on order maintenance.[20]

In addition to growing anger from retailers and residents over the spread of peddlers, licensed vendors, many of themselves former pushcart peddlers, began voicing their displeasure. In 1912, the United Citizens Peddlers' Association, many of whom had started as pushcart vendors, called upon city officials to ban pushcarts and establish open-air markets with fixed stands rented by the month. These peddlers saw city-run markets as the best way to deal with the estimated 22,000 unlicensed peddlers in the city at the start of the twentieth-century, peddlers who they claimed operated unfairly and in direct competition with those peddlers who followed the rules. The Association claimed that the city's failure to deal with the growth of unlicensed vendors in Lower Manhattan,

[19] Bluestone, 77.
[20] Bluestone, 79.

"made the life of the minority [them], who had licenses, unbearable."[21] However, as Curran's displeasure with the peddlers in his neighborhood in the late 1930s demonstrates, markets resulted in limited success.

Not until the Depression did city officials begin a concerted effort to bureaucratize management of the city's vendors. Part of a larger push by then mayor Fiorello La Guardia to standardize municipal governance, the Department of Markets Commissioner worked to wrest control of peddler markets from district leaders and centralize control in his agency. As with the reorganization of the police department earlier in the century, this centralization was promoted as a triumph of efficiency over a corrupt system of political favors. The approach of the 1938 World's Fair, to be hosted by New York, served as a catalyst for removing vendors from city streets. Once again, the concern with the image of the city that peddlers might render to out-of-towners hinted at concerns over tourist revenues. However, city officials framed the removal and corralling of peddlers out of sight as an effort to maintain order during the Fair, not as a long-term policy strategy to maintain business revenues. Mayor La Guardia and anti-vending forces did not believe peddlers fit with the image of a clean, orderly, modern metropolis they wished to promote during the fair. Following orders from the administration, the Commissioner of Markets began closing peddler markets. In 1934, sixty markets operated in the city, by the end of 1939 only seventeen remained open.[22]

[21] Ibid, 78.
[22] Ibid, 86-88.

The La Guardia administration also added to an already lengthy list of restricted streets and issued fines for violators. Unlicensed peddling was not new, but the fines for violating place restrictions likely pushed more vendors to forego licenses as it would be harder to track them if they did not register with the city. However, the administration went a step too far however in 1941 while attempting to enact a total ban on street peddling in the city. Local Law No. 11, prohibited peddling in order to prevent "unfair competition by itinerant peddlers with storekeepers who pay rent and various taxes." The total ban on selling "any goods, wares, or merchandise" anywhere in the city affected one group with the corporate support to fight back – ice cream vendors.[23]

The supplier of those vendors, the Good Humor Corporation, sued the city and won in the State Supreme Court as well as the Court of Appeals. The suit had major ramifications for the way the city could regulate vendors and street usage more generally. The majority opinion in the State Supreme Court ruling stated that city, in its powers granted by the state of New York, did not have the power to prohibit a business. Furthermore, "the power of regulation is not inclusive in the power of prohibition." Citing an earlier case involving the Eighth Avenue Coach Corporation, the court noted that, "when regulation becomes destruction it ceases to be regulation."[24] The majority opinion in the Court of Appeals ruling set up a loophole for the city. The court ruled that the city could not prohibit street usage for the purpose cited in the law, which was to

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[23] Good Humor Case Notes, Deputy Mayor Rudy Washington, Vendors, 1998, Rudy Giuliani DM Files, New York City Municipal Archives (NYCMA).

[24] Good Humor Corporation and others v. City of New York and Lewis J. Valentine, 264 A.D. 620; 36 N.Y.S.2d 85; 1942 N.Y. App. Div. Lexis 4220; July 6, 1942.

prevent unfair competition. Such justification, the court argued, bore no relation to "the welfare of the public," but was "designed for the convenience and interest of a special class." However, such regulation could be valid if the law had another purpose, specifically, the city could "prohibit peddling in restricted areas and streets in order to prevent interference with traffic."[25] Going forward, city officials would use street congestion and pedestrian safety to justify a series of increasingly restrictive and punitive measures against vendors. In this endeavor, city officials could draw inspiration from another business regulated through licensing and congestion abatement – taxicabs.

The city's modern-day cab system originated in Harry Allen's New York Taxicab Company. As with many innovations to New York's taxi services, Allen's company arose from an unpleasant personal trip in which he complained about the lack of regulation and metered fares. In 1907, he introduced a fleet of gasoline-powered automobiles to replace the horse-drawn hacks still in use and charged fixed, metered fares. Horse-drawn hacks for hire had been introduced in the city during the antebellum period; first driven mainly by African-Americans who were then replaced by Irish immigrants. This pattern, of successive waves of new immigrants using hacking as an economic foothold continued throughout the twentieth-century. In part due to the dominance of immigrants in the industry, most New York cab drivers were employees of larger fleets, with a few owner-operators. This translated into an industry dominated by a casualized labor that turned over rather frequently.

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[25] Good Humor Corporation et al v. City of New York, Court of Appeals of New York, 290 NY 312; 49 N.E.2d; 1943 NY Lexis 1118; argued March 1, 1943, decided March 15, 1943.

The arrival of Allen's Taxicab Company followed by competitors led reformers and politicians to call for regulation as early as 1909. Progressive reformers concerned with traffic congestion, health, and public safety demanded better oversight of drivers and the fleet companies they worked for. Their concerns ranged from pedestrian safety to air quality, but did not focus on the treatment of drivers. In response to public pressure, city officials treated the industry as a public utility and took actions to protect customers and thwart monopolistic practices. In 1909, the city placed taxi inspection under the Bureau of Licenses, which established a standard lower initial fare and uniform fares across companies and drivers. Fleet owners, in a move similar to contemporary ride-sharing companies, took the city to court where they prevailed when the state supreme court ruled that placing all passenger vehicles under a single law was unconstitutional. As would be the case with court rulings over municipal regulation of street vending, this established a framework within which city regulators began to operate.[26]

The eventual workaround to bring cabs under city oversight without constitutional challenges involved the use of meters. When the Board of Aldermen once again lowered fare rates, some fleet companies began operating as private livery services and charged more than the permitted rate. The city and fleet owners returned to court and in April 1915 the New York State Court of Appeals ruled that every cab equipped with a meter fell under city rate ordinances. Thus, the city could regulate metered passenger vehicles. Unsurprisingly, some drivers operated vehicles without meters to avoid this oversight.

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[26] Graham Russell Hodges, *Taxi! A Social History of the New York City Cabdriver* (Baltimore: Johns Hopkins University Press, 2009), 18.

By the early 1920s, there were over 17,000 licensed drivers, many of whom operated without meters to avoid the city rate ordinance and advertised their rates with different colored flags.[27]

As the ranks of cab drivers expanded, owner-drivers seeking to protect their interests called upon city officials to limit the number of cabs in the city. Agents at the Bureau of Licenses were limited in their capacities however. Drivers who chose to operate without a hack license faced little repercussion, and beyond curtailing the number of licenses there was little the Bureau could do. Despite initial concerns that transferring control of cabs from the Bureau of Licenses to the Police Department would overburden the police, Mayor Hylan signed the "Home Rule Bill" in 1925 transferring oversight. The NYPD then created a separate Hack Bureau dedicated to managing taxicabs. Drivers began complaining almost immediately that police officers were seizing licenses from drivers who were delinquent on debt payments and used their regulatory powers to extract money from cabbies. Here lay a seed of later extractive regulation.[28]

As with pushcarts, the Depression led more people to drive cars in an effort to earn a living. By 1931, the police department had issued 73,000 hack licenses with drivers competing to use one of the 21,000 cabs in circulation. At this point, the police did not have authority to limit the number of operators and increased competition and economic insecurity may have led some cab drivers to work as intermediaries between sex workers and brothel owners and prospective clientele. During Prohibition, many

[27] Hodges, 33.
[28] Ibid, 35-36.

drivers also gave tips on where to find a drink. The increase in taxi use led city officials to once again propose a more tightly regulated cab industry.[29]

A commission appointed by Mayor James Walker to study the cab industry revealed that as of 1930, taxis carried 346 million passengers a year and generated an annual income of over $120 million in fares plus $24 million in tips. The committee concluded that the volume of these transactions plus the number of licensed drivers warranted regulation of the industry as a public utility. In response, Walker created the Taxicab Control Bureau to regulate fares, limit the number of cabs on the street, issue permits with an expiration date, and field a squad of inspectors to ensure safety. The Bureau was short-lived however, after Walker was forced to resign in the midst of an investigation into racketeering in city government. Based on the Bureau's lack of popularity among drivers and the taint of political scandal, the interim mayor abolished the bureau citing it as a cost saving measure in the midst of the Depression.

Continued economic strain resulted in another push in bureaucratic management and resulted in a lasting reorganization of the cab trade during the mayoral administration of Fiorello La Guardia. In 1937, following several years of strikes and increasing tension between fleets and independent owner-drivers the city finally acted. In February, city Alderman Lew Haas proposed a bill capping the number of medallions at 13,595 and mandating that at least forty-two percent of medallions go to owner-drivers. Drivers would need a license and a medallion to operate a taxi cab in the city of New York. The Haas proposal became the law on March 1, 1937 and that May, the New York State

[29] Ibid, 46.

Supreme Court upheld it, ruling that the police had the right to limit the number of cabs in the city and granting municipal government the ability to control who accessed cab driving.[30]

Between La Guardia era regulation and the creation of the Taxi and Limousine Commission in 1971, cab driving experienced its heyday as an occupation. The industry peaked during WWII when a fare increase, fewer cabs on the street, and a decline in private auto use translated into weekly earnings ranging from $65 for the day shift to $90 for the night shift. Medallion prices also began a steady rise, marking their value as a commodity; in 1937 when the Hack Bureau first capped the number of medallions in circulation they cost $5, by 1947 they were selling for up to $2500, and three years later, in 1950, that price had doubled.[31] The steadily rising value of cab medallions meant that owning your own cab could be a stable enterprise with decent profits. Once an owner-driver was ready to retire, he could be assured his medallion would fetch a good price. This in turn compelled owner-drivers to protect the value of medallions, by keeping the cap down and re-sale high they guaranteed themselves a sizeable return on their investment.

Despite the increasing value of cab medallions, the wartime earnings eventually came down. By 1949, the average earnings for a six-day, sixty-hour work week had fallen to $60, less than a cabbie could have earned driving the day shift during the war.[32] Fleets began consolidating into a few large operators, which cut their costs on

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[30] Hodges, 66.
[31] Ibid, 80.
[32] Hodges, 87.

maintenance and insurance. A decline in the number of drivers in the 1950s led fleet operators to hire more part-time drivers who did not view cab driving as a modest foothold in middle-class life. Some placed the blame on the growing number of non-medallion cabs, also known as "gypsy" cabs. It was no secret that African-American passengers could not get cabs or that drivers would frequently refuse trips to Harlem or the outer boroughs. Moreover, newer arrivals to the city, fleeing racial discrimination in the south found the job market no better in the north. In 1958, city council passed a law outlawing "illegal hack operators" meaning non-medallion drivers, but this had little effect.[33] Most of the owner-operators of cabs in the city were white and by 1960, medallions sold for over $20,000, making it difficult to enter the industry as an independent driver.[34] Racial barriers to employment and consumption translated into the continued growth of so-called "gypsy" fleets. In 1960, the city counted 300 non-medallion cabs in operation; by 1970 that number had grown to 8,000; and by 1979, city officials listed 40,000 non-medallion taxi cabs.[35] As will be discussed in the following chapter, city officials eventually created rules governing the operation of non-medallion cabs, restricting them to responding to radio calls only and forbidding them from trying to pass themselves off as authentic yellow cabs.

By operating outside of the city's licensing scheme, "gypsy" cabs had pushed the boundaries of municipal oversight and earned themselves a place, however small, in the city's taxi industry. These cab drivers, street vendors, cabaret owners, and the city's sex

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[33] Hodges, 118.
[34] Hodges, 120.
[35] Ibid, 132.

workers demonstrate that the city's regulatory structures would never remain stationary. Pressed by informal workers, the possibility existed that gains could be made. There existed a peril in this as well. Without the protection of being state-sanctioned, the city's underground workers exposed themselves to many dangers. During a rise in attacks on cabbies in the 1970s, non-medallion drivers were more likely to be victims of crime than medallion drivers.[36] This was a product of the way in which municipal regulation took shape in the early decades of the twentieth-century.

Conclusion

Politicians in New York City began systematically regulating work and consumption in the early twentieth century. In this way, the American state developed and accrued power locally through municipal regulations that functioned through an expanding bureaucracy. Local politicians applied licensing, inspections, and spatial ordering to factories and entertainment spaces, cab drivers and pushcart vendors, and businesses considered as vice – gambling, prostitution, and drugs. Regulation of the activities that would come to form a sizeable share of New York's underground economy developed in tandem with the local bureaucratic state. The growth of the state produced the formalization or informalization of various types of work. A pushcart vendor could not be "illegal," for example, until a system of spatial regulations and licensing requirements existed, and the modern system through which this happened took shape in the early twentieth-century. Establishing vendor markets for instance, supposedly allowed

[36] Hodges, 134.

pushcart vendors to move into the ranks of the middle class and restored streets to their intended purpose: clean, smoothly circulating thoroughfares.

As this study will demonstrate, a new model of revenue through regulation took shape over the course of the latter decades of the twentieth-century. Using informalized workers as a starting point, city leaders built on an already disjointed set of regulations to extract or protect revenue as it related street vendors, sex workers, and other undesirable workers. Licensing was no longer simply a way to ensure some type of orderly maintenance of consumer goods and services, but provided a way to collect much needed revenues without raising taxes on the wealthy or the middle class. At the same time, licensing as a function of social control, established in the Progressive Era, spread to capture activities deemed by the city's elite as incompatible with a global center of finance.

Fifty years after Progressives used the state to "reform" society, the effects of suburbanization, deindustrialization, and new waves of immigration propelled a different type of reformer to seek financial order and stability in New York. Municipal government and the federal state had grown considerably since the Progressive era. Wielding new powers by the mid-twentieth-century and employing new technologies, regulation that once sought to ensure social order, and later, worker and consumer safety by holding producers and business leaders accountable, transformed into regulation as an exercise of state power, gathering revenue and authorizing the right to govern. In the first half of the twentieth-century, New York City politicians gathered revenue through a more progressive tax structure, regulating things like vending or clubs was about management

as opposed to extracting or protecting revenue. But once the older sources of revenue disappeared or threatened to leave the city, they became untouchable and something to protect. Just as politicians and activists had molded and finessed Progressive era municipal regulation in response to urbanization, industrialization, and immigration, a new generation of politicians and reformers would create a different set of regulatory principles in response to white flight.

CHAPTER 2
MONETIZING REGULATION:
EXTRACTING REVENUE FROM CABBIES AND VENDORS

In 1968, Mayor John Lindsay faced growing economic concerns. Unemployment may have been low, but the city's industrial and financial base was changing. In 1953, New York City was home to 56 percent of the region's manufacturing, over a decade later, in 1966, that percentage had shifted with a majority of the region's manufacturing occurring outside city limits.[1] In 1966, the major credit rating agencies had also downgraded New York City municipal bonds to "high risk" status. Between 1968 and 1974, the city also lost a sizeable share of Fortune 500 companies as the region's suburbs tripled their share.[2] As manufacturing and large corporations left the city they took critical revenues with them. Moreover, the service sector jobs that replaced some of the manufacturing loss neither kept up with the pace of that loss nor made up for the lost revenue.[3] Money had become a serious problem.

In addition to capital flight, New Yorkers were moving to the suburbs. Between 1940 and 1970 the white population of New York City dropped from 7 million to 5 million.[4] White flight drained wealth from the city as people heading to the suburbs took

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[1] Joshua Freeman, *Working-Class New York: Life and Labor Since World War II* (New York: The New Press, 2000),143.

[2] Miriam Greenberg, *Branding New York: How a City in Crisis was Sold to the World* (Routledge: New York, 2008), 100.

[3] For each manufacturing job replaced by a service sector position the city lost $1000 in annual income taxes. Kim Phillips-Fein, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics* (Metropolitan Books: New York, 2017), 35.

[4] Freeman, 28.

their taxes and consumer spending with them.[5] While revenues from former residents and companies disappeared, the Lindsay administration was busy at work creating a local version of the Great Society, establishing new agencies like the Human Resources Administration to oversee welfare programs. The increased focus on social welfare spending came in response to job loss and the poverty experienced by a growing number of New Yorkers. Between 1960 and 1972, the number of people granted public assistance grew such that by the early 1970s one in eight New Yorkers received help.[6] Job training, rent assistance, unemployment, and municipal hospitals cost money. In the early sixties, the city's expenditures totaled $2.5 billion a year, a decade later, expenditures had grown to over $10 billion a year. While city officials had once been able to rely on federal funds, the election of Richard Nixon in 1968 led to a drastic reduction in assistance from Washington.

To compensate for reduced federal funding, job loss, and white flight, city officials borrowed as much as possible. Officials were constitutionally limited in the total debt the city could carry. The Lindsay administration and members of New York City council faced other obstacles in their quest to manage revenue gaps. The state constitution required city officials to win approval from Albany prior to enacting any new taxes. The constitution also capped the amount city officials could raise taxes in a given

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[5] See for instance, Kevin Kruse and Thomas Sugrue, eds., *The New Suburban History* (Chicago: University of Chicago Press, 2006) and Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1985).

[6] Phillips-Fein, 21.

year.[7] In addition to the constitutional limits on raising revenue in the city through traditional means of borrowing and raising property and income taxes, tax delinquency was on the rise as property owners abandoned buildings in the outer boroughs. Moreover, city officials had begun to fear further suburban and capital flight, a trend that raising taxes seemed sure to exacerbate. The Lindsay administration needed to come up with a new means of collecting revenue that would not rely on Albany or conflict with the state constitution's limitations.

The need for new revenue streams happened to coincide with a noticeable uptick in unlicensed and non-medallion cabs (referred to as "gypsy" cabs) and unlicensed street vendors. Taxi companies, drivers, and business associations complained to city officials about the unruly and informal workers. These groups wanted the Lindsay administration to crack down on unlicensed workers, but some staffers saw the growth of these informal industries as a possible solution to the city's revenue problems. In 1967, the Mayor's taxi panel proposed a licensing scheme that would bring gypsy cabs under city regulation and revenue collection by adding them to a category of cab that did not require a medallion. In 1969, Department of Consumer Affairs Commissioner Bess Myerson Grant suggested opening all streets to vending as a way of extracting revenues from newly licensed peddlers. Informal and semi-formal work could be formalized and regulated, allowing city agencies to extract new and much needed revenues.

[7] Specifically, officials could not raise property taxes above "2.5 percent of the five-year average of the total assessed value of its real estate." Phillips-Fein, 26.

The monetization of street vendor and gypsy cab regulation faced opposition, however. City politicians faced considerable lobbying efforts by business associations looking to protect their property values and investments as companies abandoned the city. Downtown Manhattan faced a particularly troubling situation as vacancies rapidly increased. Concerned about their "business climate," the leaders of groups like the Downtown Lower Manhattan Association focused on removing elements they saw as disruptive to bringing business back downtown, such as street vendors. Street vendors, on account of their mobility and lower overhead costs, proved less easy to generate revenue from through regulation. Attempts to bureaucratize and monetize their management were met with opposition from groups like the Downtown Lower Manhattan Association who advocated for a near total ban on vending. The tensions between lobbyists and officials looking to monetize vending while appeasing the city's elites resulted in a haphazard set of policies that regulated vendors out of the most lucrative areas while charging high licensing fees and fines for violators, resulting in an increase in unlicensed vending. Ultimately, gypsy cabs proved the easier of the two to manage and produced sizeable revenues through the city's monopoly control on the cab industry via the Taxi & Limousine Commission (TLC).

Between 1967 and 1972, the Lindsay administration worked to extract new revenues from informal and semi-formal cab drivers and street vendors. City Hall staffers believed that new licensing schemes could produce new and desperately needed revenues to cover the government's growing budget gaps. The administration's attempts at extraction were a hybrid between a bureaucratic regulatory style and the revenue-

focused regulation that would slowly emerge over the next several decades. Lindsay's administration created two new bureaucracies to simultaneously extract new revenues and manage problems related to customer safety and crowded streets. The TLC was created in response to the outdated Hack Licensing scheme developed in the early twentieth-century and growing concern about unlicensed drivers. The Department of Consumer Affairs (DCA) resulted from the merging of the Department of Markets with the Department of Licensing. The Lindsay administration tasked the DCA with managing and taxing street vending in the city. The goal was to use these new agencies to manage and extract revenue from workers previously ignored by the state.

By 1960, the cap on taxi medallions instituted by the city in the 1930s had caused the price of a medallion to reach over $20,000 (the equivalent of roughly $170,000 in 2018). Despite the cap, wages had declined from their WWII era peak. A survey of 250 fleet drivers between 1964 and 1965 revealed cabbies earned between $85 to $115 a week, driving an average of nine hours a day, five days a week, which came out to a little more than $2 an hour. Around the same time, gypsy drivers could reportedly earn $200 in a six-day work week.[8] As drivers began an effort to unionize, industry-wide issues were laid bare. By the early 1960s, part-time drivers accounted for nearly half cabbies, and an NLRB ruling had given these part-time drivers an equal vote with full-time drivers. The latter was concerned that the students and artists driving part-time with little long-term

[8] "Gypsy Cabs Cruise City – and Thrive – Illegally," *New York Times,* November 23, 1964.

investment in cabbing would affect the union drive. This proved not to be the case as part-timers participated in a one-day work stoppage without complaint. Beyond the lack of benefits that part-and full-time drivers demanded, racial discrimination began undermining the taxi industry.[9]

White drivers dominated the city's cab industry, and African-Americans and Latinos were blocked both from driving and riding. Non-medallion, or gypsy, cabs began to fill the job and consumer demand, providing the ability to earn cash driving around riders ignored by the city's legal cab operators. For some the cost of a license or to lease a medallion as a driver or a ride as a passenger could be prohibitive. Many passengers told inspectors that they could get a better deal on a ride in a gypsy cab than in a metered cab since the price of the former could be negotiated. Despite some preference for non-medallion cabs, in 1965, the city responded to complaints from Black passengers and placed timing devices in yellow cabs to stop drivers from manually turning off the occupied light when they wanted to avoid picking up passengers.[10]

In stark relief to the regulations and rules placed on medallion cabs, gypsy cabs existed in a gray space of city regulation and definition. Technically, non-medallion livery cars could transport passengers, but could only pick them up through calls, not through street hails. Drivers that picked up passengers in this way violated city law. Moreover, some non-medallion drivers had hack licenses, while others did not, and some gypsy fleets painted their cars yellow and outfitted them so that they passed as licensed

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[9] Graham Russell Hodges, *Taxi! A Social History of the New York City Cabdriver* (Baltimore: Johns Hopkins University Press, 2009), 120; 123.

[10] Hodges, 127.

cabs. Thus, the term "gypsy cab" applied to a vast array of tactics to earn a wage driving a cab outside the Hack Bureau's oversight. As this piece of the taxi industry grew, problems mounted over how cabs collected passengers, what they looked like, and how to ensure public safety.

In the fall of 1964, the arrest of a gypsy driver for sexual assault and robbery of a passenger and an article in the *New York Times,* drove the Kings County District Attorney's office to initiate a campaign against unlicensed drivers. At a press conference to address the arrest, D.A. Aaron Koota claimed that 80% of unlicensed cab drivers had criminal records. "The operation of bootleg cabs," he said, "constituted a serious threat to the safety of our citizens."[11] Making good on his concern, Koota worked with the police in Brooklyn to increase surveillance of so-called illegal drivers, including licensed livery drivers who collected street hails. This project culminated in a two-day crackdown on drivers on March 19th and 20th, 1965, during which police arrested forty-two drivers for unlicensed hacking, unlicensed chauffeuring, lack of a hack stamp, and improper vehicle registration. Koota's office issued a press release noting that twenty-six of those arrested had prior convictions. Those priors ranged from gambling and assault to rape and murder.[12]

Complaints from fleet operators and medallion-holding cab drivers, once added to the safety concerns expressed by New Yorkers, put pressure on city officials to bring

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[11] "Inquiry Started into Gypsy Taxis," *New York Times,* November 25, 1964. This statistic on priors came from a crackdown under Koota in 1960 in which 23 gypsy drivers were arrested in a day, 80% of whom had prior arrest records.

[12] "42 Are Arrested in Drive on Gypsy Taxis," *New York Times,* March 21, 1965.

gypsy cabs under stricter oversight.[13] In 1965, city council passed a new law restricting gypsy cabs, which one city councilmember from Manhattan described as a ploy by the taxi industry to crush their competition.[14] City council defined gypsy cabs as private, unlicensed vehicles made to look like licensed cabs or licensed cars that picked up street hails. In order to regulate both, the new law outlawed all taxicabs not supervised by the NYPD's Hack Bureau from attempting to pass themselves as licensed cabs. Those opposed to the bill argued that gypsies offered the only mode of transportation to residents of Harlem and Bedford-Stuyvesant, areas where regular cabs often refused to go and that faced limited subway and bus options.[15]

The limitations on the look of gypsy cabs had little effect in curbing their continued growth however. In 1961, the Hack Bureau estimated there were 300 non-medallion taxis in the city. By 1970, that number had reached 8,000 and would continue rising, reaching 40,000 in 1979.[16] Since the 1965 law had failed to curb the number of gypsy cabs, city council tried again and passed a law forbidding unlicensed cab drivers from painting their cars any color other than black. The day the law went into effect, June 1, 1968, gypsy drivers revolted, arguing that the law discriminated against them in favor of licensed drivers. Calvin Williams, president of the Brooklyn Private Car Association, which represented 5,000 drivers, pointed out that in addition to the obstacles to getting a medallion or joining a fleet (financing and racism), licensed cabs would not

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[13] *New York Times,* November 23, 1964.

[14] "City Council Passes Law Restricting Gypsy Cabs," *New York Times,* December 8, 1965.

[15] Ibid.

[16] Hodges, 132.

enter the communities the gypsy cabs served.[17] The implementation of timing devices had done little to stop the discrimination toward Black riders.

Examples of cab drivers abusing the timing devices in order to continue discriminating against Black passengers were plentiful. The city's Commissioner on Human Rights, William Booth, observed cabs passing Black passengers while conducting nighttime surveillance. In 1969, the actor Godfrey Cambridge had been dragged ten blocks by a cab after he tried to enter and his arm got stuck as the driver sped away. The editor of *Harper's* magazine had once described yellow cab drivers as "among the meanest, sorriest creatures [he] had ever encountered, meaner than the worst Mississippi misanthrope."[18] While the financial security of driving a cab had declined, the industry was rife with discrimination. To alleviate some of this, Booth advocated for licensing of gypsy cabs since they served customers and neighborhoods medallion taxis would not. Tensions between the different cabs remained high following the new paint rules and in Brooklyn, unlicensed drivers allegedly destroyed fourteen licensed cabs in retaliation to the new paint rules. According to yellow cab drivers, the would following the licensed cabs until they went down less populated streets and where they would force the driver and any passengers out before setting the car on fire. In response, the Taxi Drivers Union, representing 33,000 licensed drivers, demanded city protection.[19] Mayor Lindsay created a Taxi Study Panel to investigate their concerns as well as those of owner-drivers, fleet operators, and consumers.

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[17] Jay Levin, "Lindsay Acts in Cab War," *NY Post,* July 9, 1968.
[18] Hodges, 131.
[19] Levin, *NY Post,* July 9, 1968.

The panel released the findings of their study more than a year later in September 1969, and proposed the creation of a new agency, the Taxi & Limousine Commission (TLC) to regulate the industry. The report argued that an increased supply of drivers and cabs on the street coupled with low fines had created a situation that put the public in danger. A city-run commission could improve service with sufficient coverage for all parts of the city and protect the public against unlawful behavior, especially that perpetrated by unlicensed gypsy cabs. While fleet owners balked at the proposal, the TLC would eventually become the gold standard of city regulation of the underground economy, providing major revenue streams to the city. The new commission would oversee the transfer of licensing from the Police Department's Hack Bureau.[20] Livery cars (non-medallion, licensed cabs) would also be overseen by the commission and face strict rules on how they could pick up passengers.

On March 2, 1971, Lindsay signed into law the new Taxi and Limousine Commission. It was not long before complaints of corruption and incompetence emerged. At first, gypsy cab drivers and fleets welcomed the TLC as a way to finally enter the formalized industry. By early 1973 the TLC had succeeded in bringing 1600 licensed non-medallion cars under their jurisdiction, but estimated 15,000 cars continued to operate illegally. The chairman of the Association of Licensed Limousines, Roy Thwaites, felt let down by the TLC. Commission agents had promised they would promote the use of livery cars and that obtaining a city license would help drivers access

[20] Mayor's Taxi Study Panel, Press Release, September 19, 1969, Taxis, John Lindsay Subject Files, NYCMA.

credit they had previously been denied. "We were promised that economic conditions would vastly improve," Thwaites said, but "after 80 days under the city license most of us are on the edge of bankruptcy."[21] Per the TLC's licensing rules, these cabs could not cruise for passengers, even though the commission had acknowledged that non-medallion drivers earned as much as 70 percent of their income from picking up street hails.[22]

Drivers continued to flout the rules, but not so much that medallions did not remain exclusive items even during the fiscal turmoil of the 1970s. What began as a way to increase oversight of the city's cab industry, transformed into a city-run monopoly. When the TLC was created medallion prices had barely risen. In 1960 a medallion sold for $20,000; ten years later they were selling for $28,000. However, by 1979, the market price for a fleet medallion had rebounded and reached an all-time high of $50,000 (roughly $173,000 in 2018 prices) despite the financial crisis.[23] This was because the TLC tightly regulated the number of medallions in circulation, which drove up the price even as the economy struggled. Drivers who continued to operate unlicensed gypsy cabs did so in part due to efforts by the taxi industry and private cab owner-drivers to block legislation increasing the cap on medallions in circulation. They feared that doing so would devalue their medallions.[24]

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[21] Frank Prial, "Limousine-Taxi Owners Decry City Policy Toward Gypsy Cabs," *New York Times,* March 20, 1973.

[22] Hodges, 134.

[23] Memo re: Taxi Industry, Joel Newman to Allen Schwartz, March 1, 1979, Department of Consumer Affairs, Ed Koch Departmental Subject Files, NYCMA.

[24] Their fears were well founded. I spoke with one owner-operator who paid nearly $2 million for his medallion in 2008 and was struggling to find drivers to lease it to by 2015 when the price of a medallion had dropped to $600,000 due to the arrival of Uber and Lyft in the city. Sadly, this has led to an increase in suicides among drivers in

Thus, nearly a decade after the creation of the TLC and with it the hopes of better regulating the city's gypsy cabs, they continued to occupy a gray area of oversight. TLC rules curbed the income potential of driving a licensed non-medallion car, so many drivers chose to continue as unlicensed and now "illegal" drivers. Despite the difficulty of enforcement against so-called gypsy cabs, the TLC served as revenue and agency model for managing street vendors, but it also clearly illustrated the problems of that model because gypsy cabs remained in operation and increased in number. While these cabs served a genuine community need, their existence outside municipal oversight meant they could operate without passing city safety inspections. Drivers could earn more away from the regulatory costs of the licensed industry, but as with informal workers in the 1920s and 30s, this came with risks and a lack of standardized benefits. Gypsy drivers remained most likely to be victims of crime throughout the 1970s. The TLC never dealt with the issues of driver earnings and racial discrimination within the industry that were exposed in the 1960s, instead the commission found a way to monetize regulation.

Peddling

City officials attempted to extract new revenues from street vendor regulation in the late 1960s and frequently cited the TLC as possible model. Officials also looked to the Parking Violations Bureau as another successful extractive agency. As part of the

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the city. In 2018 alone, five drivers committed suicide, stating in letters that the burden of paying off their medallions, mounting debts, and sense that they would never get ahead left them feeling powerless.

renewed interest in vendors, the indoor markets that survived closures during the La Guardia administration faced a new round of attacks from City Hall in the mid-1960s. Department of Markets Commissioner Pacetta cited the markets as "costly burden[s]" and urged the Wagner administration to close seven of the remaining markets. "They have outlived their usefulness as far as the original purpose is concerned," he added, because few of the original peddlers remained as tenants. In 1963, the markets produced about $78,000 in revenue for the city, but Pacetta argued that this profit did not account for the Department of Markets' administrative costs or the tax loss that resulted from public instead of private ownership of the properties. "The impression that I get from the enclosed market is they're nothing but a sloppy-looking bunch of supermarkets. We're subsidizing a bunch of individuals who deal in the same kind of merchandise that can be bought anywhere else in the city."[25]

Signs of the impending urban crisis were beginning to show in New York, but that did not stop a real estate boom in the late 1960s and early seventies. The state invested public monies in office building construction through the Urban Development Corporation, a local development corporation created by Governor Rockefeller in 1967. The use of public funds raised the stakes for vendors in business districts with major construction projects. The state had an active interest in their success, if vendors appeared to jeopardize investment, officials might view them as expendable. Yet, by 1973 the UDC went bankrupt, ultimately costing the state hundreds of millions of

[25] Lawrence O'Kane, "Indoor Markets of City Opposed," *New York Times,* November 3, 1964.

dollars.[26] Despite some opposition to vendors, city officials began to consider them as a new revenue stream. Anecdotally, business leaders downtown were noticing an uptick in vendors, as they made abundantly clear in their letters to City Hall. If those new, and presumably unlicensed vendors could be monetized, it might work toward closing the budget gap.

While many street vendors never showed up on official labor statistics because they worked off the books, the uptick in city issued licenses indicated that more New Yorkers were peddling. In 1971, the city issued 8,071 licenses, which was double the number of applications from 1970.[27] This uptick came after the Lindsay administration began expanding vendor licensing in the late 1960s and so on paper it appeared their new revenue source might materialize. Unlicensed vendors drastically outnumbered the licensed though; by 1972 the city estimated as many as 20,000 people were vending without a license.[28] Simultaneously, arrests and summonses for street vendors also increased, indicating both more peddlers and more policing targeted at them. Unlicensed street vendors accounted for the majority of infractions, but while summonses doubled from 51,700 in 1969 to 101,629 in 1971, the number of arrests rose and fell, from 454 in

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[26] Greenberg, 125. 66 million square feet of new commercial space was built between 1967 and 1973, which was more than double any similar period of time between 1960 and 1992.

[27] Charlayne Hunter, "Peddlers in Harlem Fear New Code is Death Blow," *New York Times,* September 2, 1970.

[28] Press Release from Lindsay, July 28, 1972, Downtown Lower Manhattan Association, Series 2:3, "Peddlers," Box 152, Folder 1495, Rockefeller Archive Center (RAC).

1969 to 2,535 in 1970 and down to 1,896 in 1971, possibly due to the higher number of licenses issued by the city that year.[29]

In the wake of the Good Humor court ruling in 1942, which restricted the manner in which city officials could regulate street peddling, the Markets Department had periodically cracked down on peddler congestion—typically during the holiday season in midtown or when large numbers of tourists were expected in the city, as during the 1964/5 World's Fair. In general though street vendors and peddler markets ranked low on the city's list of concerns and so they operated illegally on restricted streets with limited repercussions. What began to emerge in the 1960s however, were the seeds of a more punitive way of dealing with the underground economy broadly and with street vendors specifically. One that subjected informal workers to greater police scrutiny and sought to extract revenue from them. In this way, the TLC would serve as a model for city officials who hoped to monetize vendor regulation. However, they would face growing opposition from powerful forces that wanted a full-scale ban on street vending.

Between 1968 and 1970 the majority of summonses issued to street vendors occurred in three areas, Central Park, midtown, and downtown. Unsurprisingly, street vendors followed customers to the city's most populated business areas and restricting

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[29] Memo, Parking Violations Bureau re: Peddling Violations, September 22, 1971, Mayor John Lindsay Subject Files, New York City Municipal Archives (NYCMA); Fields, *Daily News,* April 25, 1972; and "Unlawful Peddling Summary 1969-1970," DLMA, 2:3, "Peddlers," Box 152, Folder 1492, likely given to the DLMA by the commanding officer of the first precinct, Captain Thomas J. Burke. A few years later, the Manhattan DA investigated charges of bribe taking by officers and patrolmen in the first precinct and the vice chairman of the DLMA, John Goodman was subpoenaed in the process.

them from the streets in these areas would not stop them from peddling there. City officials realized that the restricted streets encouraged peddlers to remain in the underground economy and forego purchasing vending licenses. City agents could not easily track an unlicensed peddler and so remaining in the shadows served as a survival skill for the city's unlicensed street peddlers.[30] As enforcement increased divisions between peddlers emerged, such that general merchandise vendors took the brunt of regulatory measures. Food vendors could also rely on the political clout of the businesses that supplied them, as had been the case with Good Humor. In 1967, the hot dog vendors union won another victory for food peddlers. Following a police crackdown on food carts who stood in one place for more than ten minutes, hot dog vendors organized a demonstration in front of police headquarters. With help from their union they eventually pressured Mayor Lindsay into lifting the 10-minute rule ban. However, other spatially restrictive provisions remained in place, such as the ban on operating within 100 feet of stores selling similar merchandise or within 250 feet of any facility or park managed by the Department of Parks.[31] Despite this victory, food and general vendors were about to

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[30] Another tactic embraced by street peddlers came about as a result of a supreme court ruling, People v. Krebs (19667) which held that distribution and sale of political materials did not fall under the regulation of street vendors aimed at commercial enterprises. Banning vendors with political items constituted a restriction of free speech. A similar argument would be made about book sellers in the 1980s.

[31] Charles Bennett, "Hot Dog Vendors Win City Victory," *New York Times,* March 31, 1967. The City of New York Department of Markets, "Rules and Regulations Governing Itinerant Peddlers," 108 (Rev) 5M-215179, 1968. The set of revisions that included the stationary ban protested by hot dog vendors further complicated the city's regulations. Item 13 stated that peddlers could not work within 100 feet of a store selling the same "commodity," and then Item 14 added to this by restricting peddling within 250 feet of a store selling the same commodity if the owner

face an intense and enduring effort by business interests to severely curtail their freedom of movement by expanding existing time and place restrictions and levying hefty fines on violators.

One of the most vocal anti-vending forces was the DLMA, a pro-business lobbying group started by David Rockefeller, head of Chase Manhattan bank and brother to then Governor Nelson Rockefeller. In the late 1960s, members of the group joined with other business organizations to lobby city officials. Their cooperation stemmed from the hot dog vendors' association victory, their investment in commercial real estate construction, in particular the World Trade Center, and in response to the growing numbers of peddlers working in downtown Manhattan. For the DLMA and their downtown members, peddlers represented economic turmoil, visible signs of poverty, and urban disorder at their doorstep that the city needed to eradicate by clearing out the street vendors. DLMA President Wagner echoed the sentiment of association members when he claimed that peddlers "contributed in a major way to impending the movement of traffic." Food vendors in particular he noted, "contribute to the filthiness of the city and make no attempt to pick up the papers and debris thrown by users. There are also those peddlers that open up suitcases on narrow sidewalks forcing pedestrians to walk in the street," he added," thus endangering them to traffic."[32] Since the beginning of the century, anti-peddling forces argued that the presence of peddlers corresponded to low

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objected. The city banned all peddling within 50 feet of any building if the owner objected, regardless of what they sold.

[32] Correspondence, Wagner to Myerson Grant, August 29, 1969, DLMA 2:3 Box 152, Folder 1492, RAC.

property values and their appearance signaled declining real estate. For the retail merchants who aligned themselves with the DLMA's crusade, regulating street peddlers was about getting the city to protect and maintain their monopoly on the retail trade. As the signs of economic downturn became unmistakable (fewer customers and thus declining sales), the city's retailers saw peddlers as competition to be eradicated through the state. Retailer groups aligned with the DLMA because they wanted the city to eradicate their competition. Here lay a paradox of their "free market" rhetoric – it was only free for those with political and economic capital.

The business associations that lobbied the city about street vending argued that peddlers flouted law and order, which resulted in crime and disorder in the city. Groups like the Downtown Lower Manhattan Association (DLMA) picked up on popular notions of who committed crime in the city and who caused disorder to press city officials to clear vendors off the streets. "The matter of itinerant peddlers in the entire city and in lower Manhattan, in particular," wrote DLMA President, Edmund Wagner, "is becoming a disgrace because of their proliferation and their utter disregard for the movement of pedestrians and motorists." Wagner had written to Bess Myerson Grant at the DCA urging her to draft new rules and regulations limiting vendor mobility. "We believe," he concluded, "that our proposal [of more restricted streets and higher fines] would net more license fees…and result in better control over a situation which is completely out of hand at the moment."[33]

[33] Correspondence, Wagner to Myerson Grant, August 29, 1969, DLMA 2:3 Box 152, Folder 1492, RAC.

Recent scholarship has revealed the link between the welfare state and the carceral state in the federal programs that presaged mass incarceration and urban surveillance, directing the welfare state's apparatus at disciplining delinquent bodies.[34] Anti-street peddling forces identified vendors as visible signs of urban disorder in need of a strong state to restore order to the city's public spaces. In one typical exchange, John Goodman the executive Vice President of the DLMA explained to a member the frustration felt by local police. Goodman reiterated an exchange with the Commanding Officer of the First Precinct, Thomas Burke, who said "his men were discouraged over the fact that they are giving summonses to certain peddlers almost daily and then learning that when they went to Court, they got off with only a $1.00 or $2.00 fine and were back operating the next day."[35] Goodman explained that the police felt hampered by the courts and the Association needed to lobby city council to act. He was not alone. John Hopkins, the executive Vice President of the Metropolitan New York Retail Merchants Association urged members to send letters to Commissioner of Markets Weisberg after he announced the department would be reviewing "controls for itinerant peddlers." Hopkins suggested members request that Weisberg "pursue ever means necessary to keep our business streets free from street peddlers."[36]

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[34] See for example, Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016) and Julilly Kohler-Hausmann, "Guns and Butter: The Welfare State, the Carceral State, and the Politics of Exclusion in the Postwar United States," *Journal of American History* 102:1 (June 2015): 87-99.

[35] Correspondence, Goodman to Charles Buek, October 25, 1968, DLMA 2:3 Box 152, Folder 1492, RAC.

[36] Memo re: Itinerant Peddlers Regulations, Metropolitan New York Retail Merchants Association, December 12, 1968, DLMA 2:3 Box 152, Folder 1492, RAC.

The DLMA-led crusade against vendors, however problematic, did not exaggerate the increase in street peddlers. As with gypsy cabs and other forms of underground work, more people began street peddling in the 1960s, signaling earlier ripples of economic decline amongst the working people of New York. The street peddlers that came under scrutiny at the behest of the DLMA's members were a mixed group of long-time vendors in the family business, part-time machinists and blue collar workers who used peddling to carry them through lean times, recent immigrants, those who struggled to find formal employment, and those who preferred working off the books.[37] Because a critical mass of New Yorkers made purchases from street peddlers and because of the racial and class diversity of the peddlers themselves, the DLMA would need to sway public opinion while lobbying officials for stricter controls.[38]

The DLMA and groups like the Fifth Avenue Association (who had earlier in the decade tried to get rid of peddlers in midtown) argued that the large share of real estate taxes they paid and the major expenditures they made to maintain business in the city as others fled entitled them to cooperation from city departments in ridding the streets of

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[37] Bernard Weintraub, "Vendors Profit From Universal Taste," *New York Times,* July 30, 1969; "Midtown Peddlers: Every Ware Everywhere."

[38] Commissioner Pacetta had faced opposition in Greenwich Village early in the decade when the Department of Markets tried to close an open air peddler market on Bleecker Street. The vendors, their customers, and the Village Independent Democrats banned together to protest the closure. Arnold Lubasch, "Fans Join Pushcart Peddlers in 'Village' Fight for Survival," *New York Times,* May 8, 1962. However, an art fair that had the backing of the Greenwich Village Chamber of Commerce faced opposition from neighbors two years later. One tenant who complained was informed that, "what happens outside your four walls is no concern of yours. Landlords and agents can dispose of the sidewalks as they see fit." This line of thinking seemed common amongst the business and real estate interests lobbying for bans on street vending. Sanka Knox, "Villages Object to Sidewalk Art," *New York Times,* September 20, 1964.

peddlers.[39] These arguments omitted the fact that many of these organizations represented real estate developers or companies with sizeable property holdings – investments that could not be plucked out of the city and placed in Westchester or Stamford, Connecticut. In the fall of 1968, the heads of these groups initiated talks with Lindsay's Commissioner of Markets, Gerard Weisberg, to voice their concern over what they saw as disorder caused by street peddlers in lower and midtown Manhattan. Their initial complaints revolved around public space: peddlers slowed traffic, obstructed pedestrian movement, and caused excessive litter. Mimicking arguments made by staunch law and order types, the DLMA argued that peddlers proliferated because of too lenient courts and the "privileges" of city issued peddling licenses. The DLMA believed that lax judges and a lenient criminal justice system encouraged peddler's disrespect for the law and what they continually referred to as the "peddler proliferation." This line of argumentation followed similar claims advanced by politicians and private interests who supported harsher drug sentencing. Both the DLMA and anti-narcotics forces saw a liberalized criminal justice system as the source of urban unrest, and both groups argued that harsher guidelines imposed on judges by the state could solve this crisis.[40]

As part of his reorganization of city hall to streamline various agencies and increase efficiency, Mayor Lindsay dismantled the Department of Markets in 1968 and

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[39] Internal Correspondence, September 6, 1968, DLMA 2:3 Box 152, Folder 1492, RAC.

[40] Memo re: Meeting with Markets Commissioner Weisberg," October 15, 1968, DLMA 2:3, Box 152, Folder 1492, RAC; Correspondence, Goodman to Buek, October 25, 1968, DLMA 2:3, Box 152, Folder 1492; "Peddler Fact Sheet," 1968, DLMA 2:3 Box 152 Folder 1492, RAC; Lindsay & Rockefeller Joint Statement on NACC Legislation, December 22, 1965, John Lindsay Subject Files, NYCMA.

added its functions to the Department of Consumer Affairs. The shuffling of departments eventually became a problem for the DLMA as the DCA focused on regulating price gouging and deception by brick and mortar stores and took serving the consumer's best interest as their main goal. In November 1968, the DCA announced a revision of the city's peddling rules. They aimed, Commissioner Gerard Weisberg stated, to "correct" the situation wherein it was cheaper for vendors to work illegally because the fines were lower than if they had a license. At that point the city had issued 1200 vending licenses and estimated that a larger number of vendors worked illegally without a license. The goal was to encourage licensing such that the city could increase revenues from vendor oversight. Weisberg announced that the intention of the revisions was to "correct" a situation where it was cheaper for vendors to work illegally because their fines would be cheaper than if they had a license. As DLMA executive Vice President Goodman had noted, those fines usually amounted to a dollar or two at most and in theory vendors could give a false name when summonsed. In order to do so, some staffers at DCA recognized the need to revise the restricted streets, because the agency banned vending in the most lucrative areas working without a licensing in those areas would still be financially preferable to working elsewhere with a license. Much to the dismay of anti-vending groups, Weisberg and the DCA asked for the input of street peddlers in rewriting the regulations.[41]

[41] "City Acts to Revise Rules that Govern Itinerant Peddlers," *New York Times,* November 15, 1968; Fifth Avenue Association, "Members Bulletin," November 19, 1968, DLMA 2:3, Box 152, Folder 1492, RAC.

While city officials hoped to monetize vendor regulation, the mobility of peddlers as compared to cab drivers would complicate that process. Vendors pushed against the limits of city control and sought to work in the most lucrative—and forbidden—areas of the city. With a cart, a suitcase, or a table that could easily be packed up, peddlers traversed the imaginary lines that banned them from working on certain streets. This put them in direct conflict with the police and in December 1968, a chestnut vender bit a patrolman after the latter told him to move from Rockefeller Plaza. The 24-year-old vendor, Douglas Rogers, refused and then declined to show a license (which he likely did not have) after which a scuffle ensued that ended with Rogers biting the officer.[42] Run-ins between the police and vendors were a daily occurrence and peddlers learned to gauge where to stand and when based on experience.[43]

In addition to the spatial restrictions relative to other businesses, parks, and curbs, peddlers had to contend with the myriad and frequently overlapping restricted streets built up since the Depression. Many staffers in Mayor Lindsay's administration argued that the byzantine system of rules actually encouraged peddlers to forego city licenses. Fines for peddling without a license were minimal and could easily be ignored if one worked "off the books" without a city-issued license. DCA staff proposed that abolishing restricted streets and areas could eliminate the downside of licensing and lead more vendors to register with the city, which would help increase declining revenues and restore respect for law and order. This made intuitive sense. In 1970, police issued

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[42] "Vender Arrested in Midtown Draws 35 Police to Scene," *New York Times,* December 19, 1968.

[43] "Peddler Sues to Curb Police," *New York Times,* July 11, 1972.

72,353 summonses to peddlers, 45,436 of which were for peddling without a license. The default rate in Criminal Court, where peddler cases were tried, was 74 percent.[44] Thus, a full year after the DCA began to study the peddling issue, police dedicated a majority of their vendor enforcement against unlicensed peddlers, that majority of whom would default, because without a license the city had few means to track violators down.

The number of summonses in 1970 also revealed a major uptick in policing of peddlers. In 1967, the total number of summonses issued for unlawful peddling in the city (without a license or in restricted areas) was 18,450 and a year later the number was up to 28, 430. In large part, the police acted in response to the businesses in their precincts.[45] The majority of these complaints emphasized the degraded nature of street peddling. The East Side Association, a consortium of retailers and banks in East Midtown, claimed that peddlers overran the streets around Bloomingdale's, contributing to the "honky-tonk atmosphere that has overtaken this once fashionable shopping quarter."[46] The Retail Merchants Association, attacking claims that peddling added to the city's "street scene," argued that "street peddling can in no way be considered beneficial to the City of New York. It is a serious problem to the community, the consumer, and to

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[44] Memo re: Peddling Violations, September 22, 1971, Transportation Administration, Mayor John V. Lindsay Subject Files, NYCMA.

[45] Increases as well as majorities of complaints were in the 22nd, 1st, and 18th precincts in Manhattan, or Central Park, Lower Manhattan, and Midtown North respectively. "Unlawful Peddling NYPD Data Sheet," DLMA 2:3 Peddlers, Box 152, Folder 1492, RAC.

[46] East Side Association to Bess Myerson Grant, September 15, 1969, DLMA 2:3 Peddlers, Box 152, Folder 1492, RAC.

city congestion and cleanliness."[47] The DLMA, the East Side Association, the Retail Merchants Association, and the other business organizations aligned against street peddling initially focused their critique on cleanliness and street disorder. They claimed that food peddlers "contribute[d] to the filthiness of the city," and made no effort to "pick up the papers and debris thrown by users." Likewise, suitcase vendors who "forc[ed] pedestrians to walk in the street," through their "utter disregard for the movement of pedestrians and motorists," contributed to the degradation of commercial areas.[48] In these arguments lay similar sentiments articulated by Progressive reformers earlier in the century; by othering street peddlers and blaming them for grime and chaos in public space, anti-peddler groups challenged their use of the streets and rendered it unacceptable to the status quo.

Retailers and financial services also focused on the sale of inferior goods by peddlers in an attempt to shift scrutiny away from their own businesses. This was only semi-successful. Lizabeth Cohen points to the peak of consumer activism in the late 1960s and early 70s as a boom in regulation. Between 1967 and 1973, advocates succeeded in getting over twenty-five new consumer and environmental regulatory laws passed including automobile, packaging, and credit standards.[49] During a major period

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[47] Letter from Retail Merchants Association to Bess Myerson Grant, September 17, 1969, DLMA 2:3 Box 152 Folder 1492, RAC.

[48] Correspondence, Edmund Wagner to DCA Commissioner Bess Myerson Grant, August 29, 1969, DLMA 2:3 Peddlers, Box 152, Folder 1492, RAC. As the Street Vendor Project has noted more recently, the organizations that complain about vendor congestion are frequently themselves or represent the developers responsible for construction based sidewalk and roadway closures.

[49] Lizabeth Cohen, A Consumers' Republic: The Politics of Mass Consumption in Postwar America (Vintage Books: New York, 2003), 357; 360.

of consumer rights activism, organizations like the DLMA tried to use public sentiment to push for greater regulation on street vendors. Speaking in terms of defrauded shoppers, safety, and public health, members of the DLMA sounded like some of their earlier Progressive Era counterparts. However, their concern for pedestrian safety and littering seemed hollow when compared to their intense lobbying for more restricted streets.

Companies with membership in the DLMA as well as the Association itself began running private surveillance on street vendors, hiring security firms to photograph peddlers, tally the number and type of vendors in a given area, and extrapolate their earnings based on observation of sales. In the fall of 1968, the president of United States Trust Co. sent photos of food carts, cabs, and general merchandise vendors to Edmund Wagner at the DLMA.[50] Ostensibly the photos were meant to demonstrate overcrowding as was a peddler survey conducted by Vollmer Associates for the DLMA around the same time. That survey noted 32 food carts and 16 merchandise vendors between noon and 1pm in the middle of the week in the area bounded by Fulton and Wall streets downtown.[51] As internal correspondence between DLMA members revealed, they hoped to retain some of the food vendors they personally liked while clearing out the general

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[50] Correspondence, Charles Buek to Edmund Wagner, September 6, 1968, Downtown Lower Manhattan Association, Series 2:3, Peddlers, Box 152, Folder 1492, RAC. Contrary to Buek's claims, the photographs did not show crowded sidewalks and the litter they claimed vendors contributed to Wall Street. What they did show were old women with small suitcases selling items near the curb and out of the way of pedestrian traffic. In addition, the Good Humor carts and hot dog vendors appeared out of the way in this same photo set.

[51] Vollmer Associates Peddler Survey, October 9, 1968, Downtown Lower Manhattan Association, Series 2:3, Peddlers, Box 152, Folder 1492, RAC.

merchandise vendors peddling women's clothing, accessories, and other similar items. Consumer protection provided the necessary lobbying angle.

Linking concern over consumer protection and congestion with the popular rhetoric of law and order, opponents of street peddling also claimed that vendors represented and spread public disorder. By flouting time and place restrictions and foregoing licenses, street vendors, they argued, were visible signs of a break down in law and order and harbingers of the city's decline. On the other side, Richard Mandell of the Mayor's Development Office argued that forbidding vendors from working in the most lucrative areas of the city lent to the disregard for the law and a weakening of the licensing system. Mandell noted that without a revision to the restricted streets peddlers would continue to work in restricted areas, which would make city hall look weak because they could not enforce the regulations. Other than summonses for unlicensed peddling, vending in restricted areas, or littering, peddlers did not commit crime; but that did not stop anti-peddling forces from linking them to rising crime rates. Members of the DLMA or local politicians like City Council President Sanford Garelik never directly stated that peddlers committed the violent crimes then on the rise in New York, but instead used coded language to imply that peddlers caused "disorder" and "chaos."[52]

The DLMA reminded city legislators of the growing urban disorder and lack of support felt by police officers who issued hundreds of summonses each month, only to

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[52] "City Council President Garelick, Press Release on Street Vendors," June 15, 1972, DLMA, Series 2:3, "Peddlers" Box 152, Folder 1495, RAC; and Memo re: Recommendations for Immediate Experimental Actions and Long-Range Goals, Mayor's Development Offices, June 5, 1972, DLMA 2:3 Peddlers, Box 152, Folder 1495, RAC.

see the same vendors back the next day due to too lenient criminal judges. To remedy the peddling situation they proposed legislation to add to the number of restricted streets, increase police enforcement and fines, and limit the number of licenses issued.[53] They pointed to violent incidences between peddlers and the police, reports of vendor scams, and lumped three-card monte dealers in with peddlers to highlight the criminality of street workers.[54] Some vendors targeted naive tourists, convincing them to buy poorly constructed trinkets, but many more sold legitimate merchandise supplied by wholesalers at consumer-friendly prices.

The DLMA and their allies frequently exaggerated the conditions that peddlers worked under to paint a picture of wealthy vendors scamming the system. Their estimates of how much vendors earned and cost the city in lost taxes ignored the fact that on the whole, peddling was seasonal work. Summertime generally led to an increase in the number of peddlers, in part because of the city's policy of giving seasonal licenses to teenagers once school let out. In addition to the students, men and women on social security supplemented their fixed income by peddling during the warmer months. Sam Hudson, an ex-machinist, told a reporter that peddling was "not a bad life. I make enough to support a family, and that's the important thing."[55] On a good day Hudson could sell up to 200 hot dogs and 100 sodas, which came out to $100 a week after settling with his suppliers. These were in fact good wages for anyone at the time, but

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[53] "Peddler Fact Sheet," DLMA, RAC.

[54] Just as the city began considering revising the peddling rules in late 1968, a chestnut vendor in midtown bit a police officer on the hand who had asked him to move his cart, *New York Times,* December 19, 1968.

[55] Weintraub, "Vendors Profit from Universal Taste," July 30, 1969.

extrapolating a good week in the middle of the summer and claiming that peddlers made those types of figures year round falsely inflated peddler earnings. Hudson and other vendors had to make that kind of money in the summer because once the weather changed fewer people would sit outside and eat a hot dog during their lunch break.[56] On account of this decrease in clientele once cold weather came, many vendors only worked during the summer.

DLMA correspondence with City Hall about the peddling problem mirrored the seasonal pattern as well. The number of their complaints usually went up when the weather started to get warmer and began dropping off in late October as the seasonal vendors went indoors for the winter. In addition to their flawed calculations of peddler income, the DLMA's own surveillance photographs of street vendors in the financial district contradicted their claims of crowded sidewalks and vendor generated trash heaps. Yet, the DLMA continued to stress that their criticism of peddlers stemmed from concern for safety and consumer rights. This was a tactical choice informed by the Good Humor ruling. The city could only ban street vending in the case of public safety, not because of business competition or property values.

However, while DLMA members and their allies in other business associations used various talking points to press their case against vendors (law and order, tax fraud, revenue, pedestrian safety, pollution, and unfair competition to name a few) their goal was to protect real estate prices and investment in midtown and lower Manhattan. As the

[56] Moreover, those types of earnings were unheard of uptown in Harlem where a good week constituted $50. Hunter, "Peddlers in Harlem Fear New Code is Death Blow," September 2, 1970.

DLMA increased their campaign against vendors, internal memos revealed a complicated relationship with the city's working and lower classes. In private correspondence one member of the DLMA told the Association's vice president that it was "important that we have enough of the right kind of peddlers downtown. I have in mind various of the Good Humor or ice-cream carts, some of the hot dog wagons and my own personal pet, the fruit peddler on the corner of Wall and William. As for the junk peddlers, anything we can do to rid the place of them would be all to the good."[57]

Some members of the DLMA seemed most upset with elderly women selling ladies' undergarments out of suitcases. This focus arose partially from the fact that many of the food venders had licenses and the DLMA's lobbying strategy was to target the "tacky" old ladies selling underwear who were more vulnerable than the food peddlers like the unionized hot dog vendors. In correspondence to the Mayor's office, DLMA Vice President John Goodman, lamented the "disgraceful situation of peddlers downtown," especially those who have been "hawking ladies underwear in front of substantial banking and financial institutions."[58] The visuals of this, Goodman implied, were bad for business.

Food peddlers could be an amenity if "properly managed," whereas suitcase peddlers "degraded" the area.[59] Many members of the DLMA owned properties rented by luncheonette owners and other small shops intended for downtown's office workers

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[57] Correspondence, Lindquist to Goodman, January 20, 1969, DLMA 2:3 Box 152 Folder 1492, RAC.

[58] Correspondence, Goodman to Kramarsky, Assistant to the Mayor, October 14, 1969, DLMA 2:3 Box 152 Folder 1492, RAC.

[59] Correspondence, February 25, 1969, DLMA 2:3 Box 152 Folder 1492, RAC.

and support staff; their tenants counted on those groups for business. Moreover, the founder of the DLMA, David Rockefeller and other association members were heavily invested in the construction of the World Trade Center and had a stake in the planned mall. Cheap food and consumer items would compete directly once the space opened. City officials might not have been able to regulate vending on account of competition, but that did not stop DLMA members from complaining. As the DCA continued its study of vendor regulation in anticipation of new proposals, Goodman wrote to Myerson Grant, reiterating that, "peddlers who have a $10.00 license from your department, and those who have no licenses whatsoever, can operate in direct competition with businessmen who are subject to City, State and Federal taxes, unemployment insurance and who must conform to inspections by the Board of Health."[60] Goodman made it clear that his members viewed peddling as unfair competition that degraded the business districts they "paid" for through their taxes.

In August of 1969, the Department of Consumer Affairs released notice of their intention to change the city's peddling rules and regulations. Commissioner Bess Myerson Grant's revisions did not include suggestions submitted by the DLMA, as made evident in an angry letter from the Association's President Edmund Wagner. In fact, the new regulations proposed doing away with restricted streets all together. The logic of this change was clear. City restrictions barred peddlers from working in the most lucrative parts of the city: midtown, downtown, and Central Park. Getting rid of

[60] Correspondence, John Goodman to DCA Commissioner Bess Myerson Grant, October 14, 1969, DLMA 2:3 Peddlers Box 152, Folder 1492, RAC.

restricted streets would in theory propel more vendors to obtain licenses since they would be allowed to work in these areas; having a permit would no longer be a liability when approached by police. More licenses would amount to more revenue brought into the department, an appealing proposition as the budgetary problems that would soon lead the city to the brink of collapse were already beginning to show.[61]

The DLMA and their allies were incensed by the DCA's suggestion of dismantling the restricted streets. In a letter to Grant, DLMA president Edmund Wagner complained that the recommendations drafted by their General Counsel after "considerable research" were nowhere to be found. "The matter of itinerant peddlers in the entire city and in lower Manhattan, in particular, is becoming a disgrace because of their proliferation and their utter disregard for the movement of pedestrians and motorists."[62] Wagner continued the narrative that regulation would ensure public safety and eradicate litter, but also added that the DLMA believed their suggestions would net the DCA more license fees. Here was the DLMA's first mention of city revenues to be gained through street vendor regulation. Wagner argued that more fines and penalties would produce more revenue, the harsher regulations would also compel vendors to purchase licenses from the city in order to avoid possible jail time. In their effort to pass new legislation the DLMA's strategy and arguments began to shift in the late 1960s from a focus on public safety and consumer protection to revenues and civic order.

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[61] Freeman, Working Class New York, Chapter 7; John Mollenkopf, Political Crisis/Fiscal Crisis: The Collapse and Revival of New York City (New York: Columbia University Press, 1992).

[62] Letter to DCA Commissioner Bess Myerson Grant, August 29, 1969, DLMA 2:3 Box 152 Folder 1492, RAC.

Meanwhile, tensions mounted between street peddlers and merchants in Harlem. The Uptown Chamber of Commerce's president, following correspondence with the DLMA and Fifth Avenue Association, claimed that peddlers "practically blocked entrances to businesses," and complained about the increase in petty theft and the "observable proliferation of hard drugs."[63] The implication being that the chaos and disrespect for the law created by street vendors bred other forms of urban disorder. In response, the 125th Street Peddlers Association said they recognized that their members broke the law, but that it needed to be changed "so that black people have the opportunity to earn money for themselves."[64] The Association's president, Lonnie Stringfield, likened the vendors to the founders of Macy's department store, adding, "this [peddling] is free trade."[65] Street vendors also used arguments about competition, but framed as free trade, because they recognized the push for regulation for what it was, an attempt by established businesses to maintain monopoly through state control.

Stringfield argued that the new legislation imposed "economic death on Harlem vendors."[66] Harsher fines meant to force vendors to obtain licenses amounted to city surveillance of peddlers. So long as the restricted streets remained in effect, licensed vendors would be barred from working in commercial areas and subject to fines and the potential loss of their licenses. Registering with the city made it easier to monitor the peddlers, but it also limited the number of peddlers when the city rejected license

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[63] Les Ledbetter, "Harlem's Stores and Peddlers Vie for Customers on 125th St," *New York Times,* May 30, 1972.

[64] Ledbetter, *New York Times,* May 30, 1972.

[65] Ibid.

[66] Hunter, *New York Times,* September 2, 1970.

applications. Just beneath the surface of tensions between peddlers and merchants in Harlem lay a fear on the part of business interests of another "riot." The peddlers, backed by over 400 Harlem organizations including the Urban League, rejected the Uptown Chamber of Commerce's claims that peddler regulation on 125th street had nothing to do with race. Of the 450 merchant members of the UCC only 12 were black. Despite their complaints, the Chamber's president, Hope Stevens, told a *New York Times* reporter that the organization had no actions pending. However, in a private letter to the Retail Merchants Association, Stevens asked for help navigating a situation he described as "too heavily charged with potentially kinetic consequences for us to treat it lightly."[67]

The UCC wanted street peddlers to be moved into an enclosed storefront which they believed would give them a stake in clearing the streets of unlicensed peddlers. Someone, likely a UCC member would sublet booths to the vendors. The problem with this, as the Peddlers Association noted, was that many peddlers did in fact want to move indoors, but lacked the funds to do so. Compared to vendors downtown who could pull in up to $200 on a good day, Harlem street vendors considered $50 to be a good day. As with other vendors, the 125th Street Association saw attempts to regulate their activities as stifling free enterprise and competition. The regulations, Stringfield argued, amounted to the city putting them out of business at the behest of white store owners. Should the city require licenses and then fine peddlers for vending in restricted areas, the peddlers would have few options to make money. "A lot of youngsters make [money] out here.

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[67] Letter from Stevens to John Hopkins, September 8, 1970, DLMA 2:3, Box 152, Folder 1493, RAC.

Without it, they'd be on welfare—or cutting throats and stealing," warned Stringfield.[68] Chamber president Stevens, acknowledged that engaging in peddling was preferable to criminal activities. "The argument is strong that if a man or a woman wants to work and engage in business rather than in pimping, prostitution, drug distribution, pocket book snatching, burglary and the like…repression of effort is not the answer." Still, the UCC wanted peddlers off the street and for the city to regulate their competition. Stevens, navigating this terrain, worried that any attempts to regulate the peddlers would be seen as white merchants preying on the community through price gouging and black peddlers being fined and locked up for "trying to make an honest living."[69] If the DCA would enact additional street restrictions, tighter licensing requirements, and harsher penalties it would take some of the pressure off the UCC who could point to city policy as the culprit in vendor removals.

Throughout the early fall of 1969, the DLMA and other business associations bombarded DCA Commissioner Myerson Grant with letters about the disaster that would befall the city should the rules governing street vending be relaxed. John Hopkins, Vice President of the Metropolitan New York Retail Merchants Association argued that, "[because] street peddling can in no way be considered beneficial to the City of New York but, on the contrary, is a serious problem to the community, the consumer, and to city congestion and cleanliness…the [DCA] should not modify its current rules and regulations. On the contrary," he concluded, "the City should pursue more vigorous

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[68] Hunter, *New York Times,* September 2, 1970.

[69] Stevens to Hopkins, September 8, 1970, DLMA 2:3, Box 153, Folder 1493, RAC.

efforts to further restrict the misuse which accompanies the use of city streets by itinerant peddlers."[70]

In addition to their standard claims of safety, cleanliness, and consumer protection they added the plight of the small business owner. These complaints represented a new critique used by the anti-peddling forces—the unjust treatment of the average New York shop owner. One example the DLMA repeatedly referred to was the plight of David and Leslie Gorman, a couple that owned a luncheonette at 1 John Street in the financial district.[71] The language Gorman used in his letters was striking, like the DLMA Gorman applauded the efforts of the police to control the peddling situation, but claimed that their efforts were fruitless. "In spite of the fact that the Police Department has tried to control this situation," Gorman wrote, "it has become worse, and the peddlers have actually defied them by not moving when they are told or given a summons."[72] More significantly, Gorman's letter contained a new element that the DLMA and their allies lifted and began repeating: the small business owner abused by the government. Gorman complained that he and his wife had to pay "unemployment insurance, city, state, and federal taxes, high rent, [and] were subject to Board of Health inspections," and had to account for "withholding taxes, disability insurance, the state compensation board, landlord restrictions, garbage disposal, and the monopolistic wholesalers who supplied his food and drink." Peddlers, he pointed out, did not have to pay any taxes or submit to

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[70] Correspondence, Hopkins to Bess Myerson Grant, September 17, 1969, DLMA 2:3, Box 152, Folder 1492, RAC.

[71] Incidentally that location is now home to a TD Bank.

[72] Letter from David Gorman to Downtown Association, October 6, 1969, DLMA 2:3, Box 152, Folder 1492, RAC.

city and state regulations, giving them an unfair advantage over the honest business owner. Gorman claimed that food vendors parked outside his luncheonette every day, siphoning off customers and slowly running his business into the ground. For him and other small business owners it was a matter of fairness.[73]

In the middle of October, the Retail Merchants Association warned the other business associations of a rumor circulating that Myerson Grant was going to put the proposed changes relaxing peddling regulations into effect.[74] The anti-peddling alliance sprang into action, hounding city hall with calls all day. Their tactics worked because a few days later DCA Deputy Commissioner Tirabasso called Goodman at the DLMA to inform him that due to "a lot of flak from business organizations," the proposed changes would not be going into effect and that the current rules would remain in place. Unwilling to settle for this small victory, the DLMA and their allies immediately began pressing for harsher rules.[75]

After the sea of letters and phone calls made to block Myerson Grant from "liberalizing" vendor regulations, the business organizations lobbied for stricter regulation of city peddlers.[76] In April 1970, city councilman David Friedland introduced legislation to enact harsher fines on peddlers. After their lack of success the first time

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[73] Letter from David Gorman to Unknown Recipient, October 1, 1968, DLMA 2:3 Box 152, Folder 1492, RAC.

[74] Memo re Regulations on Peddlers, October 16, 1969, DLMA 2:3, Box 152, Folder 1492, RAC.

[75] Internal Memo Goodman to Wagner, October 16, 1969, DLMA 2:3 Box 152 Folder 1492, RAC.

[76] Correspondence, East Side Association to Myerson Grant, September 15, 1969, DLMA 2:3 Box 152 Folder 1492, RAC.

around, the DLMA heeded the counsel of a Criminal Court Judge who suggested to president Wagner and vice president John Goodman, that legislation would be difficult to pass without public support. The tide had begun to shift however minimally, after the *Wall Street Journal* ran an article in early 1970 about the "parasites on the city's economy," by which the author meant street peddlers. The article quoted DCA associate commissioner Henry Stern as saying there were bargains to be found in the street and that until the lack of quality was made clear, bargain hunters would continue driving the growth of street vending. The State Assistant Attorney General, also interviewed for the article, speculated that street peddler earnings "must run into the millions," but what really upset him was that "the bums don't pay any income tax."[77] This element, Retail Merchants member referred to as the "fairness doctrine" came to dominate the anti-peddling forces' calls for increased regulation and fewer city issued licenses. In a letter to Robert Loevin at the EDA, the Executive Vice President of the Retail Merchants Association made his case,

> "You certainly wouldn't, for example, bring in an industrial firm, and once they are settled here, say to them in effect: 'we're glad to have you in New York, but you won't mind if we allow a small sized competitor of yours to occupy free premises next door to you; we're not going to ask him to pay any taxes, or collect any taxes, and we are not going to burden him with a lot of licenses and strict business regulations…you won't mind that, will you?'"[78]

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[77] Lindsay Miller, "For You Pal, Only $2: Sidewalk Peddlers Still Abound in New York," *Wall Street Journal,* January 7, 1970.

[78] Correspondence, NY Retail Merchants Association Executive Vice President John Hopkins to DCA Deputy Commissioner Loevin, October 6, 1970, DLMA 2:3, Box 152, Folder 1493, RAC.

Business organizations made this type of argument to city agencies focused on economic development as a subtle way of reminding them who paid the brunt of city taxes. In reality, the "fairness doctrine" espoused by the Retail Merchants Association was little more than a demand that the city regulate away their competition.

The DLMA and their allies also realized that public support for peddlers could be soured if they played up vendors as tax cheats who cost hard working New Yorkers millions of dollars in unpaid taxes. For those workers who played by the rules of the "fairness doctrine," street vendors could be seen as breaking the rules and by extension not adhering to their duties as citizens. In the summer of 1970 the DLMA's tactics paid off when Lindsay signed harsher penalties for peddling into law. The legislation enacted a maximum fine of $100 or 10 days in jail for peddlers of non-food items who peddled without a license. The new law also raised licensing fees from $100 to $150. While the DLMA was pleased with this victory, it was not enough. To begin with, it excluded food peddlers from the fine increase. Moreover, it did not solve the problem of imposing and collecting fines, something the DLMA believed criminal court judges were unwilling to do.[79]

Arguments about taxation, "fairness," and competition also precipitated a shift in which city agencies groups like the DLMA dealt with. In an effort to stem business flight and stem declining city finances, the Economic Development Administration (EDA) began dealing with complaints about peddlers and their effects on business. The EDA

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[79] "Up Cart Fee, Peddler Fines," *Daily News,* August 11, 1970; Edmund Wagner to John Lindsay, August 5, 1970, DLMA 2:3, Box 152, Folder 1493, RAC.

began to displace the DCA as the generator of vendor policies, proposing harsher penalties and regulatory structures. Over the course of the 1970s, the DCA continued to manage vending in the city, but often let EDA officials take the lead on developing new legislation, this was bad for street vendors. Whereas the DCA recognized the legitimacy of street peddling and grasped the economic conditions that led to its "proliferation," the EDA was more concerned with keeping major business in the city. Business groups, like the DLMA, couched their reasons to regulate vendors in the language of safety and fairness. Street vendors, they argued, sold stolen goods, thwarted the law (demonstrating a lack of respect for law and order), and blocked the flow of pedestrians and traffic in public spaces. Furthermore, the DLMA claimed that vendors frequently set up shop near brick and mortar retailers selling similar wares, acting as competition for law abiding small business owners who needed sales to cover their high rents while avoiding discussion of why those rents were so high in the first place. The anti-peddling forces argued that by stealing from retailers and squatting in public space, street vendors also stole from the city and cost tax paying citizens.

In the fall of 1970, following their victories in maintaining restricted streets and increasing fines, the DLMA began pushing the EDA to change jurisdiction for fine processing. Similar to the newly created Traffic Court, the DLMA envisioned an administrative unit housed in the DCA with the power to impose and collect fines. "The problem of peddlers in the city is a monumental one," Goodman wrote to EDA Deputy

Commissioner Loevin.[80] The solution always came down to harsher controls, "such as where food peddlers can operate," and the complete elimination of "suitcase peddlers."[81] Despite the seeming success of taxation and fairness as talking points, the association's leaders continued to complain about suitcase peddlers selling inferior merchandise, blocking sidewalks, and giving the city a "tawdry appearance."[82] The anti-peddling business groups feared that the Lindsay administration and other politicians viewed street vendors as part of the city's street scene. Representative Ed Koch noted at a hearing that while peddlers had certain obligations, they also the right to access the city's streets.[83]

The question of a "street scene" would be raised time and again and illustrated the undercurrent of public space use in the battle over street vendors. Who had the "right" to the street and how did they earn that right? The answer of course depended on who was being asked. Even with new measures being put in place, city officials estimated that tens of thousands of New Yorkers continued to work as unlicensed street vendors. In the crusade to rid New York of street vendors, the anti-peddling forces never mentioned what would become of those people who relied on peddling to make ends meet once their means of income disappeared. For groups like the DLMA and the Retail Merchants Association, their main goal was restoration of order to the streets and enforcement of the

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[80] Correspondence between Goodman and Loevin, September 11, 1970, DLMA 2:3 Box 152, Folder 1493, RAC.

[81] Goodman to Loevin, September 11, 1970.

[82] Ibid.

[83] Bill Liszanckie, "Ganz, Gorman Confront City Officials and Bootleggers," *New York Downtown News*, August 19, 1972, DLMA 2:3 Box 152, Folder 1495, RAC.

proper use of public space. This meant streets and sidewalks as orderly conveyors of pedestrians and car traffic, not as sites of "bazaar-like" commerce or political activity or civic engagement.

By the late fall of 1971, the anti-peddling organizations had gained serious traction with city hall, especially after the heads of the New York Chamber of Commerce joined the DLMA in lobbying Lindsay. Describing the "virtual gauntlet of peddlers" that pedestrians contended with on "any day of the week," the Chamber President Stainback viewed the honky-tonk atmosphere" as not only unfortunate, but also threatening the stability of business in the city.[84] Stainback seemed particularly disturbed by reports of a peddler with a garment rack on wheels displaying women's clothing. "Next they'll have a portable changing room so the girls can try them on...since there is no crackdown and no punishment, the sky's the limit with these people."[85] Goodman directed Stainback toward the real problem, as identified by DLMA members, as the judges who refused to assess the city-mandated fines. The two organizations agreed to join forces in clearing the peddlers out of downtown by targeting the city's criminal courts.

In January 1972, city hall released recommendations for modifying existing peddling regulations based on conversations with the Office of Lower Manhattan Development, the Office of Midtown Planning and Development, interested private parties, and peddler representatives. The recommendations included a review of restricted streets and a study on the feasibility of indoor peddler markets. In addition to

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[84] Stainback to Loevin.

[85] Correspondence, Stainback to Goodman, September 9, 1971, DLMA Series 2:3 Peddlers, Box 153, Folder 1493, RAC.

these proposals, the city would require license applicants to present a certificate of tax authority from the state department of taxation. Regulation would be divided among the police (unlicensed peddlers and restricted areas), the DCA (consumer infractions), and the Department of Health (food peddler inspections). The city also proposed the creation of a separate administrative tribunal within the Parking Violations bureau to handle violations as a work around supposedly lax judges letting vendors off with minimal fines. However, any peddler found to have ignored three or more notices of violation would have their wares confiscated and be referred to criminal court on criminal charges.

To aid in pushing for new legislation that would deliver harsher fines and fix the revolving door of peddler court summonses, officials in the Economic Development Administration used data collected by Vollmer in assessing restrictive measures downtown. In the spring of 1972, the EDA contacted John Goodman at the DLMA after their own survey revealed that "in the span of one hour some $74.34 in sales tax was lost to the City among the 28 peddlers" they observed. Another study, the EDA argued, would help with leverage in pushing for legislation. Goodman contracted Vollmer Associates to administer the survey, the same company that had conducted previous peddler "surveillance" for the Association.[86]

[86] Photos/correspondence from 1968 about vendors downtown. Contrary to the DLMA's claims, Vollmer's photographs from 1968 did not show crowded sidewalks and the litter they claimed vendors contributed to Wall Street. What they did show were old women with small suitcases selling items near the curb and out of the way of pedestrian traffic. In addition, the Good Humor carts and hot dog vendors that the DLMA villainized appeared out of the way in this same photo set.

In a two-day period the most peddlers investigators observed in a three-hour span was 115, seventy of whom sold food.[87] This demonstrated an increase from Vollmer's 1968 survey, conducted during October, when they observed 61 peddlers during lunchtime.[88] While the Vollmer surveys showed an increase in peddlers during equivalent months (neither was conducted during the summer), the methods involved to calculate peddler earnings were problematic. Vollmer sent researchers out to "observe and tally" the gross sales of individual peddlers without actually speaking to the peddlers. Based on this method they claimed that vendors made on average $100 an hour. One of the problems with the research was the expansion of peddler work to fit a traditional eight-hour workday. Most vendors worked fewer hours, targeting their working hours to align with lunch breaks and peak shopping hours. Moreover, Vollmer Associates researchers claimed to have seen vendors sell upwards of 10 handbags in a 20-minute time span. The suspect results continued when they applied maximum potential earnings across the spectrum of street peddlers. As their own data showed, the majority of street peddlers sold food. Interviews with vendors, as opposed to surveillance-like "observations," revealed that the $100 hourly wage alleged by Vollmer actually equaled a good *weekly* take. Beyond the question of whether their data reflected reality or not, the absence of conversation with street vendors by both Vollmer and the DLMA illustrated

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[87] Memo, Condon to Goodman re: Vollmer Peddler Survey, May 2, 1972, DLMA 2:3, "Peddlers," Box 153, Folder 1495, RAC.

[88] Vollmer Associates, Peddler Survey for DLMA, October 9, 1968, DLMA 2:3, "Peddlers," Box 152, Folder 1492, RAC.

the animosity the anti-peddling forces felt toward vendors and their inability to see them as human beings trying to make a living.[89]

Capitalizing on both the office workers and shoppers, vendors in midtown sold everything from tacos and egg rolls to handmade belts, acrylic flowers, and life advice. Midtown peddlers exemplified both those unable to find steady work elsewhere and those who preferred vending to formal employment. Jewelry vendors in midtown could make $60 to $90 a day, almost comparable to the higher earning food vendors downtown. When the New York Times interviewed a handful of midtown peddlers in July 1971 many of them scoffed at brick and mortar accusations of business drain, saying that there was nothing wrong with a little competitive selling.[90] Despite the truth in their claims, vendors faced an increase in police scrutiny that summer. By July the police had already issued 30,000 peddling summonses, a 25% increase from 1970. By year-end, the police issued had 101,629 summonses and arrested 1896 vendors.[91]

That summer, city council president Sanford Garelik voiced his opposition to street vendors, pandering to the business community as he considered running for mayor. In a press release, Garelik linked street vendors to organized crime, arguing that the mafia controlled them. Other than this new claim that street vendors worked for the mob selling stolen merchandise, Garelik repeated the economic arguments against street

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[89] Condon Memo, May 2, 1972, DLMA 2:3, "Peddlers," Box 152, Folder 1495, RAC.

[90] "Midtown Peddlers: Every Ware Everywhere," New York Times, July 20, 1971.

[91] Memo, Parking Violations Bureau re: Peddling Violations, September 22, 1971, Mayor John Lindsay Subject Files, New York City Municipal Archives (NYCMA); Fields, *Daily News,* April 25, 1972; and "Unlawful Peddling Summary 1969-1970,"

vendors, arguing that, "illegal street peddlers [cost] legitimate businesses millions of dollars in lost income and untold thousands of dollars...to the city in income and sales taxes." Garelik went on to run on a platform of law and order and continued to call for a crackdown on "illegal peddlers." Failure to do so he said meant "abandoning the city to anarchy, deterioration, and crime."[92]

The DLMA immediately wrote to Garelik thanking him for his attention to the serious matter of street peddling. Gaining political support would not be enough to eradicate vendors. While some members of the DLMA and other business organizations recognized the extent of public support for vendors, many others did not. At a meeting of the Downtown Merchants Association, many retailers rejected suggestions to offer sales and promotions as a way of easing consumer dependence on cheap sidewalk vendors. Perhaps as a way to persuade the public to their case, the Downtown Merchants Association (not to be confused with the DLMA) ran a series of bizarre advertisements/letters to the editor in the *Pennysaver*, informing readers that clearing peddlers from downtown would result in safer streets and could also mean "special sale days and other promotions which can be of great benefit to you the shopper."[93] Those deals would only be had, however, after consumers helped remove vendors by not patronizing them and supporting new legislation.

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[92] City Council President Garelik, Press Release on Street Peddlers, June 15, 1972, DLMA 2:3, Box 152, Folder 1495, RAC.

[93] "Merchants Meet," *News and Pennysaver,* June 20, 1972 and "The Peddling Situation: A Recent History as Compiled by Us," *News and Pennysaver,* July 5, 1972; DLMA 2:3, Box 152, Folder 1495.

Fed up with the business-led crackdown, some vendors appealed to outsiders for help. The Legal Aid Society represented a longtime peddler, Morris Gordon, in a suit against Lindsay and the NYPD, charging them with illegally conspiring to "remove peddlers from the street and eliminate their competition with stores."[94] Gordon had been arrested while opening a carton of socks in midtown and then taken into custody where police confiscated his property. Having worked as a peddler for over forty years, Gordon claimed to earn just $40 a week, which he used to supplement his social security income. His income fell far below the earnings alleged by the DLMA and their allies. But based on the survey supplied by Vollmer associates, city officials also began claiming outrageous salaries, estimating that the annual non-taxed profits for vendors ranged from $12,000-$33,000, resulting in a $100 million loss to the city in unrecovered taxes. Lindsay entered the fray arguing that something needed to be done to protect customers and the properly licensed business community as well as for the city to recoup their taxes. Over the course of a few years the narrative had shifted from one about blocked sidewalks and obstructed vehicular traffic to one about revenue, "fairness," and reestablishing law and order in an increasingly disorderly city. Not to be left out, city comptroller Abe Beame expressed his concern over peddling as he too geared up for a mayoral run.

In August, Lindsay and the EDA held an open forum regarding street peddler regulations. This further demonstrated the shift in city policy toward vendors as the forum was led by representatives concerned with economic development, with the DCA

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[94] "Peddler Sues to Curb Police," *New York Times,* July 11, 1972.

taking a back seat this time. However, Representative Ed Koch, Legal Aid, and several peddling associations came out in support of the right to be on the streets. A lawyer from Legal Aid told attendees that the courts had ruled against prior attempts to regulate vendors out of business. On the other side, a representative for the Goldsmith Brothers department store told sob stories about having to lay off 80 workers because of the street vendors' competition. Dave Gorman's wife, Lillian, said that repeated health inspections of her luncheonette threatened her livelihood, while vendors sold hazardous foods out front.

Despite some support for the vendors, the anti-peddling forces began to win out because of both the city and Albany's revenue problems. Taxing street vendors seemed like a good fix for the growing budgetary issues faced locally and in Albany. In addition, a national turn toward law and order and increased police powers changed the environment within which street peddler rights could be protected. The State Supreme Court denied Legal Aid's injunction for Morris Gordon in the fall of 1972. The justices held that the "right of the police to seize evidence reasonably related to the crime charged while affecting an arrest, has long been established."[95] The battle over asset seizures was far from over, but in the coming decades police would accrue new and far reaching powers to take vendor merchandise.

That process began in October of 1972, when Lindsay signed into law several bills increasing the fines for illegal peddling by licensed and unlicensed vendors.

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[95] Walter Waggoner, "Legal Aid Group Backs Peddlers," *New York Times,* September 17, 1972.

Unlicensed peddlers would be fined $50 for a first offense and up to $200 for a third with the possibility of a twenty-day jail sentence as well. Fines for licensed peddlers caught selling in restricted areas or violating other spatial regulations ranged from $25 for a first offense to $100 for a third. After a third conviction within an 18-month period, the commissioner of consumer affairs could revoke their license or suspend it for up to 6 months. EDA Commissioner Patton wrote to the DLMA expressing his excitement over the clean-up and thanking them for their assistance. Wetzel of Goldsmith Brothers apparently shared Patton's delight, informing the commissioner that the department store's sales were the highest they had been in months, thanks to the crackdown and new fines.[96]

All were not content however and a month after Lindsay signed the anti-peddling bills the DLMA and their allies made their next move. In a letter to Patton they opened by expressing their dismay at the "unchecked proliferation of peddling on the streets." They claimed to be "fully cognizant of the right of street peddlers to pursue their vocation," but the disregard of regulations by peddlers coupled with their "tremendous growth" resulted in "serious problems of pedestrian and vehicle traffic." In addition, the city suffered from revenue loss. While they were "happy with the city's management of illegal peddlers," the business and merchants associations felt it was now time "to make peddling less desirable for the legal ones."[97] With one victory behind them, the anti-

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[96] Correspondence, Patton to Goodman, October 13, 1972, DLMA 2:3, Box 152, Folder 1495, RAC.

[97] Letter from DLMA et al to Patton, November 17, 1972, DLMA 2:3, Box 152, Folder 1495, RAC.

peddling forces essentially asked the city to regulate the rest of the peddlers out of existence, suggesting that officials require peddlers to produce certificates of origin for their merchandise whenever requested, restrict more areas from legal peddling, and create a separate administrative tribunal to sentence and fine violators.

At the same time, many of those opposed to street vending were lobbying federal and state bodies to deregulate their industries, like banking, investment, and development. Whereas the regulation of so-called illegal cabs and creation of the TLC demonstrated a continuation of bureaucratic municipal management, the battle over street vendors revealed numerous tensions within city policy toward the underground economy. A group of powerful actors pressed the city to regulate working people while simultaneously lobbying for their own recusal from state oversight. These debates concerned the free use and access of public space signaling a move toward privatization of the commons. Gypsy cab drivers and street vendors also demonstrated the porous boundaries between formal and informal and legal and illegal as well as the state's role in determining those categories. A licensed, non-medallion car driver who picked up a street hail acted illegally, just as a licensed vendor who peddled on a restricted street or between certain hours. These workers faced similar repercussions as those who worked without a license or permit, loss of wages, their goods, or their jobs.

Conclusion

Operating a cart or a small stand had long served as a way out of poverty for New Yorkers, starting with the pushcart operators of the Lower East Side at the start of the

century. Industrial workers in New York relied on informal work to carry them through lean seasons when production in the city slowed down; they drove gypsy cabs, peddled, and repaired electronics. They joined those who chose these jobs as full time occupations for many of the same reasons: higher earnings and the chance for self-employment. But as industry began leaving New York City in the 1960s, first across the river to New Jersey and then progressively further away in a search for cheaper labor, the old tactics for upward mobility frayed. At the moment when formal employment options diminished, paired with decreasing wages and longer hours, the state began chipping away at the means of self-sufficiency for New York's poorer residents by treating them as revenue sources so as to avoid raising business or property taxes.

The creation of the Taxi & Limousine Commission (TLC) to regulate gypsy cabs and the use of the Department of Consumer Affairs (DCA) and the Economic Development Administration (EDA) to manage street vendors revealed problems with attempts to extract revenue with the city's informal and semi-formal sectors. While the TLC brought in revenues for the city, officials at the DCA struggled to monetize street vending in a similar way. Limiting where vendors could work encouraged unlicensed peddling, because summonses could more easily be ignored if the police did not have accurate records of you. Informal and semi-formal workers understood this very clearly, it benefited them to avoid the state, not only to avoid revenue extraction, but to avoid future criminalization.

In using the DCA and TLC to extract much-needed revenues working people, city officials exposed informal cab drivers and peddlers to state scrutiny. That exposure was

part of a broader set of issues facing the nation in the 1960s and early seventies. Questions about the appropriate role of government in managing social and economic life created debates over taxation, the criminal justice system, and racial discrimination. In New York these debates played out within the context of suburbanization and corporate flight. As Joshua Freeman has argued, the focus of New York City municipal policy in the late 1960s and 1970s moved away from the "social welfare paradigm" established in the immediate postwar period.[98] What would replace it, however, was not just a free market paradigm. The tensions between whose earnings would be treated as protected revenue and those whose earnings would be subject to extractive practices began to emerge in the late 1960s as city officials targeted informal and semi-formal workers. In seeking to extract revenue from cab drivers and street vendors, city officials exposed these workers to future aggressive policing practices and began to establish a two-tiered revenue policy. Businesses and tourist-generated revenues deemed substantial by city boosters and officials would be protected at all costs whereas some of the city's most marginalized workers would target for revenue extraction.

In addition to the growing fiscal issues, city officials also faced growing concern in the mid-to-late 1960s over rising crime and lawlessness. This focus on law and order tapped into a national reaction to the supposed social breakdown exemplified by the many activist movements of the era. Critics of city hall's management of "fun city," as

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[98] Joshua Freeman, *Working-Class New York: Life and Labor Since World War II* (New York: The New Press, 2000), 55. Freeman argues that financial elites promoted a small government deregulation paradigm as its replacement, which they certainly did, but only for themselves.

Mayor John Lindsay called New York, placed criminals who disrespected the rule of law, lax judges, and a weak criminal justice system at the heart of urban decay.[99] They urged the city and Albany to step in and overhaul the system—remove criminals from public spaces, force judges to impose mandatory minimum sentences, and create more punitive legislation. If city politicians could not or would not heed their warnings, these critics believed anti-social forces would continue to disrespect law and order, leading to further societal breakdown in New York and increased suburban flight; this was bad for business and as city hall officials came to realize, bad for city revenues as well.

City promotion and management of the 1964/65 World's Fair captured the stakes of protecting business and tourist-based revenues in the midst of a growing urban crisis. The city and state had invested hundreds of millions of dollars preparing for the World's Fair, whose theme was "Peace Through Understanding." Head of NYC Housing and Preservation, Robert Moses, promised the Fair would result in billions of dollars in revenue for the city when faced with criticism that the money spent on the Queens site would have been better put to use addressing housing and education needs in the city.

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[99] The similarities between campaigns against peddlers and drug users are striking. Both anti-peddling forces and drug enforcement advocates argued that a weak criminal justice system carried much of the blame for rising crime. The argument went that judicial discretion resulted in a revolving prison door and that judges needed to be forced by the state to impose mandatory minimum sentences that accurately reflected the severity of the crime. See Michael Flamm, *Law and Order: Street Crime, Civil Unrest, and the Crisis of Liberalism in the 1960s* (New York: Columbia University Press, 2005). Flamm argues that law and order discourse moved from the margins to the mainstream in the 1960s and that conservatives pointed to three major developments that led to a breakdown in order. The civil rights movement, the Supreme Court, and welfare programs, specifically Johnson's Great Society initiatives. Taken together these promoted disrespect for law and order, enabled criminal defendants, and rewarded undeserving minorities for criminal behavior.

Those billions failed to materialize and the Fair ultimately cost New Yorkers $50 million dollars and contributed to the city's near bankruptcy a decade later. On the Fair's last day crowds ransacked the grounds on live television, dismantling displays and pavilions in a search for souvenirs.

By the end of the Fair's run it seemed that John Lindsay's campaign promise of "fun city" had been a lie as the public image of New York became one of crime, disorder, and decay – the ungovernable city, the rotten apple. This concern with law and order reflected growing national sentiment and would be exploited by Richard Nixon as he campaigned for president. Locally, concern over the city's crime-ridden, trash-strewn image collided with the fiscal crisis in the mid-1970s.

Ten years after the World's Fair, New York was set to host two major events: the 1976 DNC convention and the nation's bicentennial. White flight, business relocation, declining federal funds, and state policy that handicapped city officials' ability to raise taxes had led the Lindsay administration to seek out new revenue sources in order to cover an ever-expanding budget gap. Following attempts to extract new revenues, the approach of the DNC convention and the bicentennial caused city officials to focus on protecting existing revenues. It would not be enough to find new revenue, facing bankruptcy, a new mayoral administration would work to market the city to visitors and new businesses while stemming the continued outflow of capital. In order to protect these revenues, the Beame administration would regulate informal and nuisance businesses, as identified by large corporations and property developers. The fiscal crisis

marked an acceleration of the state's reorientation toward revenue extraction and protection.

CHAPTER 3
"FOR THE LEGAL AND PEACEFUL ENJOYMENT OF CITIZENS:" PROTECTING REVENUE BY REGULATING ADULT BUSINESSES & NIGHTLIFE

The early indicators of economic disarray in New York City that drove the Lindsay administration to extract revenue from new sources in the late 1960s became a flood by the mid-1970s. In 1969, the city's unemployment rate had fallen to 3.1 percent. City officials had a growing budget gap, but low unemployment signaled that they could extract new revenues from previously untapped sources while maintaining their usual revenue streams. After 1969, this plan no longer seemed tenable. In 1975, the start of the fiscal crisis, city's unemployment had shot up to 12 percent. On the eve of the crisis, in 1974, the city was carrying $11 billion in debt. Between 1969 and 1974, New York City lost 51,900 apparel manufacturing jobs and 35,000 securities industry jobs. These losses were only the beginning, in total, the city lost 800,000 jobs between 1970 and 1980.[1] These job losses translated into further revenue loss and were compounded by a net population loss during the decade. Extracting new revenue from cab drivers and street vendors would no longer be enough, the city would need to protect existing revenues from the FIRE sector and tourism while simultaneously boosting those revenue sources.

[1] Joshua Freeman, *Working-Class New York: Life and Labor Since World War II* (New York: The New Press, 2000), 257.

The fiscal crisis threw city officials into panic mode, as it rightly should have. New York City balanced on the precipice of bankruptcy for several years in the mid-1970s and recognizing the precarity of the city helps explain the policy that emerged. Officials created new regulations to protect revenues from industries and visitors they viewed as vital to the city's economy. Thus, they re-oriented the state toward creating a cityscape they believed necessary for survival, chiefly through presenting a business and tourist friendly environment. The reorganization of Times Square and midtown over the course of the latter twentieth-century the fraught nature of the process of creating a "new" New York. It also demonstrates that this was not an immediate or linear development, city officials and private organizations, essentially tried whatever might stick in order to protect and expand business and tourist revenues generated through investment in midtown.

Adult businesses in and around Times Square illustrate the power of an emerging vision of what New York should look like, namely, that massage parlors, adult theaters, peep shows, and bookstores had no business doing business in midtown. This was unfortunate, because in much the same way that officials would leave untouched their greatest source of revenues – financial services and real estate – they also chose not to extract potentially sizeable revenues from the city's adult industries. Instead, officials regulated these businesses in order to render them illegal or incompatible with land use rules. This regulation stemmed from a mindset that further business flight needed to be stopped and tourists needed to be assured of the safety and desirability of coming to Manhattan.

In addition to protecting business and tourist revenues, city officials hoped to stem further suburban flight and encourage movement back into the city. As with abatements for major industries, officials offered property tax abatements to home owners and various other inducements to invest in "revitalization" projects in places like Brooklyn Heights. Should they extract revenue from clubs or protect revenues by promoting a certain image of the city – the answer as with so much regulation in the 1970s and 80s was to do a little bit of both. The uneven quality of attempting to extract or protect based on what might produce the greatest revenues, led city officials to keep in place older nightlife regulatory structures aimed at extract while creating new measures to protect business, tourist, and residential revenues by closing nuisance clubs. Nightlife and adult businesses represented a side of New York that city officials and boosters did not wish to promote because they believed it jeopardized critical revenues streams, those that existed and those they hoped to cultivate.

Despite the complications that arose from regulating street vendors – namely that licensing had pushed more to work off the books – the Lindsay administration attempted to apply similar tactics to the growing number of peep shows and adult businesses in midtown. However, peeps – coin-operated erotic video booths – represented the problems of a morally lax society to some. For these critics it was the judges, counter-culture, and civil liberties groups that had foisted the peeps and all the other adult businesses associated with them onto the innocent (and hardworking) residents of midtown. They argued that clearing these establishments out of Manhattan should be city

council's number one priority. The display of erotic material in publicly accessible locations incited regulation in a way that street vendors and unlicensed cabs had not.[2]

Despite agitation for their removal, regulating the city's sex-oriented businesses proved difficult for several reasons. Beyond soliciting customers on the street, peep shows, massage parlors, and most sex work functioned off the street and in private spaces. In addition to issues of private property protection, city lawyers had lost several of their tools for charging players in midtown's sex industry as a result of Supreme Court rulings on obscenity laws and freedom of speech. Moreover, the owners and workers in the industry continuously found ways to outmaneuver most city laws and regulations. A game of cat and mouse ensued between local politicians, the Corporation Counsel (the city's team of lawyers), and sex workers, peep show owners, and massage parlor operators (most of which did serve as fronts for prostitution). The latter groups met each attempt to rezone, license, litigate, or police the industry out of midtown with new tactics to avoid prosecution.

In the early 1970s, commercial tenants in and around Times Square were hard to come by. When massage parlors, burlesques, and adult bookshops paid the rent, offering double and agreeing to month-to-month leases, many owners turned a blind eye to their tenants' activities. One midtown broker claimed a man offered him $96,000 in cash for a

[2] Eleanor Blau, "Investigation Chief Proposes Licensing of Peep Show Outlets," *New York Times,* October 27, 1970; Edward Ranzal, "Times Sq. Uplift Urged by Lindsay," *New York Times,* January 23, 1971; and Richard Shepard, "Peep Shows Have New Nude Look," *New York Times,* June 9, 1969.

down payment on a year's lease for a building he wanted to use for peep shows and adult books; an adult movie theater allegedly paid $4000 a week in rent.[3] In addition to the financial incentive to rent to sex-oriented businesses, many of the actual property owners were unaware of who their tenants were. Real estate power brokers like Harry Helmsley, Seymour Durst, Sol Goldman, Alex DiLorenzo, Sr., and Irving Maidman signed long-term subleases with holding corporations who then found and managed shorter-term tenants. While some of these owners actively fought to oust the bookstores, peeps, and massage parlors others appeared fine with their tenants so long as they continued to pay the rent; and pay the rent they did.

Revenue was key to both the expansion of the sex industry and its ultimate demise. Adult bookstores, peep shows, burlesques, and massage parlors all paid high rents and accepted short-term leases. These shops could pay such high rents because they had a steady stream of customers. As one longtime property owner summed it up:

> "[they] pay tremendous rents. They would never be there if people didn't patronize them. You can't get respectable stores in that area. If someone came along for construction purposes most of the owners would gladly sell their property. But now they can't help themselves. The city wants tax money and the owners have to pay for it."[4]

On top of the easy money to be made off renting to adult businesses, property owners could ill afford to reject these tenants. Midtown accounted for a large portion of city property assessments and therefore a significant percentage of the tax base, the city

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[3] Carter B. Horsley, "The 'Porn' Thorn in Midtown's Side Gets Less Painful," *New York Times,* November 18, 1979; Murray Schumach, "Massage Parlor Raided; Girls and $17,000 Seized," *New York Times,* August 27, 1972

[4] Alan Oser, "Times Square Finds Erotica Has Impact," *New York Times,* August 23, 1970.

needed them to pay their taxes on time. That left many property owners with the choice between offloading their property or accepting less desirable tenants whose rent could easily cover real estate taxes.[5]

Thus, city officials and anti-vice crusaders faced an uphill battle – sex sold and it sold well. A young sociologist observing workers distributing cards for a burlesque on Lexington Avenue and East 59th Street, asked one of the girls the key to her success. She said if it looked like someone was not going to take the card she told them, "if it feels good, do it." She continued, "then they take it. They even turn around to get it."[6] Convincing pedestrians to take flyers may have required some maneuvering, but getting them inside proved no problem. From the handbill passers to the masseuses and dancers and on up the chain, people who worked in the city's sex industry in the 1970s saw it for what it was: a cash bonanza. It felt good, so people did it, paying out huge profits to the owners of various businesses.

One of those owners who cashed in on the sex industry's profits was Martin Hodas, the so-called "King of the Peeps." Erotic peep shows had shown up as early as

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[5] Other property owners in lower-income neighborhoods chose a third option: arson. Although Martin Hodas, known alternately as the king of the peeps and the porno king, was charged and eventually acquitted of fire-bombing two competitive massage parlors in Times Square. The fires, which occurred in 1972, caused varying levels of damage. The two men accused of carrying out the bombing testified that they were offered $300 to set the fires. Two associates of Hodas ended up being convicted on arson charges for paying the two men. Nathaniel Sheppard, "Hodas is Cleared in Two Bombings," *New York Times,* December 22, 1973.

[6] Field Notes, Lexington Avenue: Street Vendors, Handbill Passers, 1972-1974, William Whyte Papers, Rockefeller Archive Center (RAC). One hair salon employee predicted that in five years with all the handbill passers for massage parlors and hair salons along with street vendors, the east side of midtown would "be another 42d street."

the 1950s, when police raids in San Francisco and Washington D.C revealed that entrepreneurial arcade operators had repurposed Panorams, initially created to show short musical films, for more adult purposes. Adjustments to the original machine had resulted in Solo-Vue, which allowed only the person inserting the coins to view the film. The outcome of this technology seemed obvious and in 1966, while working as a jukebox distributor, Hodas watched a striptease on a Panoram at a gaming arcade south of Staten Island. He later claimed in an interview that this was the moment that sparked the idea of a Times Square empire.[7] Panorams already existed in tourist traps, along 42nd Street; the trick would be overcoming the city's legal obstacles and viewer anxiety about the public nature of peep consumption. The first hurdle was a ban on the machines in adult bookstores put in place under the Wagner administration. Adult bookstores that attempted to bypass the ban were told they needed a city license to exhibit films, but the city's Department of Licensing (prior to the merger with the Department of Markets) rejected the applications of those who applied for licenses.[8]

The city's surveillance of these spaces and the bureaucratic roadblocks dissuaded most bookstores from pushing any further, but Hodas instructed his attorney to find a loophole. Hodas' attorney eventually secured a letter from the Department of Licenses in mid-1967, stating that no license was required for the Panorams.[9] Then, beginning in May of that year and extending into June 1968, the Supreme Court handed down a series

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[7] Smutty Little Movies, 47. Alilunas notes that Hodas has told conflicting accounts of this origin story, this is his most recent from an interview with Ashley West for the *Rialto Report,* in 2014.

[8] Alilunas, 48.

[9] Ibid.

of rulings on obscenity that seemed to open the floodgates. The first, *Redrup v. New York,* overturned a conviction against a bookseller for carrying pornographic books for sale. Shortly after, the court ruled in favor of a Los Angeles peep show in *Schackman v. California,* reversing the lower court's decision and citing the *Redrup* decision. Both of these cases protected the respective businesses' rights to offer pornographic material for consumption.[10] Into the streets of Times Square came new bookstores, theaters, live peeps, and massage parlors, exploiting gaps in municipal restrictions created by the courts.

Martin Hodas acted fast before the city could formalize the industry, but bookstore owners remained wary of city officials and most rejected his offer of a fifty-fifty split on returns. That changed once the holdouts saw that no actions were taken against the few stores that offered peeps. By the summer of 1969, there were over four hundred machines throughout the city; by 1970, there were more than a thousand. Hodas controlled 350 of the machines, the largest take of any owner, which led the police to dub him, "King of the Peep Shows." Being the King was good, in the first few months of operation, Hodas deposited $15,000 in quarters every day at a bank near Times Square.[11] Even smaller operators could cash in. Police in midtown claimed that an average peep booth could gross between $2,000 and $3,000 a day and no wonder, women featured in the peeps were typically paid $75 for one fifteen-minute filming session. That session

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[10] Redrup v. New York, 386 U.S. 767 (1967) (per curiam), the Redrup test as it became known, was the argument that a film was deemed obscene if it aroused the viewer. This held until a later ruling established the Miller test the law lacked a clear definition of obscenity; Schackman v. California, 388 U.S. 454 (1967) (per curiam).

[11] Alilunas, 48.

would then be spliced into two-minute segments that cost 25-cents per "peep."[12] Customers, enclosed in booths designed in the late 1960s for the express purpose of privatized peep viewing, dropped coin after coin into viewing machines, mesmerized by the short clips of erotic films.

Ever the self-promoter, Hodas bragged about his enterprise, giving the *New York Times* a detailed accounting of his business operations including his production studio. Without case law to support their crackdowns, city officials sought a new way to bring down the burgeoning sex empire in Times Square and alleged ties to organized crime provided them an opportunity. When city officials tried to press for licensing, Hodas' attorneys argued that coin-operated peeps did not need to be licensed due to an earlier court decision that struck down a city law requiring film theaters to be licensed (and provide matrons for unaccompanied children). Taking a different tack, the city attempted to require licensing based on categorizing peeps as coin-operated exhibition amusements.[13] Hodas thwarted them once again with legal maneuvers, allowing his lawyers to tie city agents up with various suits. Eventually police surveillance (and not licensing as a mechanism) provided the opportunity to stop Hodas. Throughout the 1970s, the police department ran surveillance on the various sex-related businesses in the Deuce, searching for links to the area's crime families. These actions often revealed an easier to prosecute crime: tax evasion. Hodas eventually faced jail time for tax evasion

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[12] Richard Shepard, "Peep Shows Have New Nude Look," *New York Times,* June 9, 1969.

[13] Grace Lichtenstein, "City Peep-Show Law Disputed, As Lawyer Cites Court Ruling," *New York Times,* December 21, 1972 .

and later for obscenity. Despite these set-backs, as late as 1985 Hodas controlled more than 90 percent of the peep shows in the city.[14]

Hodas held a majority stake in a dying industry, however. The year the city teetered on bankruptcy, 1975, marked the peak of the "Dirty Deuce", after which the sex shops began leaving the Times Square area, the result of a lengthy struggle on the part of city officials to use any and all means necessary to clean up the "cesspool of the world."[15] Constant policing and new municipal legislation and zoning guidelines facilitated this decline, as did the development of home video. The latter raises important issues regarding privacy. After the flurry of Supreme Court rulings opened the door for freer operation of adult businesses, the court's decision in *Stanley v. Georgia* set a precedent used in future cases to limit the consumption of pornography within the home. As one scholar has noted, these later decisions limiting freedom from prosecution to obscene materials consumed in the privacy of one's home, implied that pornography's greatest threat lay in its public presence.[16] This public presence would push New York City officials to take drastic measures against commercial spaces. Here too the courts facilitated municipal regulations. In *Star v. Preller,* "the court ruled that arcades were by definition public, commercial spaces fundamentally distinct from the 'castle' of one's

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[14] Alilunas, Note 43, 227.

[15] Plainclothes midtown inspector as quoted in, Thomas Brady, "Times Square, New York: 'Cesspool of the World,'" *New York Times,* February 21, 1969. It is also likely that the advent of home video played a significant role in moving the consumption of pornography into the comfort of private homes and away from the seedier peeps and adult theaters, at least for middle-class consumers. See, *Smutty Little Movies*

[16] Amy Herzog, "In the Flesh: Space and Embodiment in the Pornographic Peep Show Arcade," *The Velvet Light Trap,* no. 62 (Fall 2008): 37.

home."[17] Using obscenity and prostitution charges against commercial spaces, city officials began a push to control what happened behind closed doors.

Meanwhile, real estate developers hoped to clean up the Deuce and all of midtown for good. Seymour Durst, one of the more prominent Times Square developers fought as the DLMA did, pressuring city politicians to change the rules in his favor. He called peep shows and adult bookstores, "serious deterrent(s) to the redevelopment of Times Square area," noting that "prestige and acceptability are very important to the office tenant." Peeps and their ilk posed a "definite detraction."[18] That the high rents they paid represented the so-called free market in action – this is what the market would bear and to the (porn) victor went the spoils – proved irrelevant to developers like Durst. Unencumbered by laws or spatial regulation, the sex industry would not fold in the face of new construction; real estate developers needed to press city hall and council to act legislatively in their favor.

In the first half of the 1970s, multiple suggestions for dealing with the growth of sex-oriented businesses floated around city hall. One state-level commissioner suggested licensing bookstores and peep shows in order to track who owned, operated, and worked at such establishments. That same commissioner, Paul Curran, also called for a local law that would require counting devices in peeps and other coin-operated entertainment to determine whether owners were withholding income. Around the same time, Mayor Lindsay pressed for new zoning laws to try and push the sex-oriented businesses out of

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[17] Ibid.

[18] Alan Oser, "Times Square Finds Erotica Has Impact," *New York Times,* August 23, 1970..

midtown. The desire by some to try and profit off these new businesses conflicted with the aims of others who sought to zone them out. While city politicians and planners debated the merits of licensing versus rezoning, city hall initiated a series of police crackdowns that would continue for much of the decade with varied success.

The crackdowns frequently hinged on the violation of loitering statutes. To even get to that point however, the city would need to overcome Supreme Court rulings that had struck down existing anti-loitering statues. In addition, they faced fierce opposition from the New York Civil Liberties Union (NYCLU) and other civil liberties groups that advocated for the rights of the city's sex workers, who frequently found themselves the targets of anti-loitering laws. As a precursor to city's stop-and-frisk policies of the 1990s and beyond, anti-loitering laws not only restricted people's free movement throughout the city, they criminalized their presence on public streets.

Opponents of loitering statutes faced a complicated situation themselves. Whereas the public generally supported street vendors as cheap and convenient, the sentiment did not apply readily to the city's street prostitutes. In an effort to reach an accord based on the assumption that sex work could never be fully eradicated in the city, the New York State Bar Association proposed the legalization of off-street prostitution, a suggestion vehemently opposed by then Mayor Abe Beame who refused to acknowledge that the world's oldest profession was not going to disappear. Crackdowns on the city's sex industry could easily begin with the most vulnerable workers – those on the street.

As with many of the city's sex workers, massage parlors and burlesques relied on sidewalk handbill passers to bring in customers. The public nature of their work meant

an easy way to round up people – city officials did not have to deal with entering private property. Political groups had won the right to pass informational handbills in May of 1968, when a Federal district court ruled that a state law banning distribution of political campaign literature, "violated constitutional guarantees of freedom of speech."[19] Those who distributed handbills and cards for sex shops continued to face police surveillance and the possibility of a summons for violating a city law that banned the distribution of all commercial handbills. Despite the threat of a ticket, the pay was decent, the cops rarely intervened and when they did, most judges dismissed the summons.[20] City officials could harass street workers with little to show for their efforts. If they wanted to make a dent in midtown's sex industry, they had to get inside.

At the end of November 1972, Deputy Mayor Edward Hamilton announced a new city task force to address welfare hotels. Amidst continued concern over drug use and crime, the task force would target Single Room Occupancy buildings on the West Side and Greenwich Village.[21] Described by the police as "centers of crime and addiction," SROs offered affordable housing for New York City's most precarious residents. The timing of the task force was questionable because earlier in the year City Council rescinded a bill passed in the late 1960s that targeted SRO buildings for removal by 1977 with the argument that increased housing needs required the continuing existence of SROs in the city. This looked like a way around that measure.

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[19] David Anderson, "U.S. Court Upsets a Curb on Political Handbills," *New York Times,* May 10, 1968.

[20] Handbill Passers, Whyte Papers, RAC.

[21] Max Siegel, "City is Inspecting 'Crime Buildings,'" *New York Times,* November 30, 1972.

The welfare hotel task force sent teams of inspectors from the city's housing administration, and the health and fire departments to buildings that had complaints from tenants and neighbors. The publicized aim was to pressure landlords to upgrade their buildings, but the search for violations also included finding tenants engaged in "drug pushing, prostitution, or other criminal activities" and forcing landlords to evict them or face a possible building seizure by the city. The SRO drive quickly spread into a focus on prostitution with the city's corporation counsel filing lawsuits against owners on the grounds that their buildings constituted a "public nuisance" because they leased apartments for the purpose of "lewdness, assignation, and prostitution."[22] The use of nuisance ordinances against "blighting" buildings gave the city the means to seize private property, especially when tax investigations and health inspections failed to provide enough evidence in court.

In September 1974, Manhattan District Attorney Richard Kuh charged the operators of four Manhattan hotels with maintaining a nuisance and promoting prostitution stemming from the welfare hotel investigation. These so-called hot bed hotels (because the rooms turned over so quickly the beds remained "hot") rented rooms for $8-10 for twenty minutes and while proprietors often argued they had no idea what their rooms were used for, everyone knew that was a lie. Yet these crackdowns did little to put a dent in the midtown sex industry. Hoping to make some headway, Beame appointed Sidney Baumgarten, a longtime fixture of local politics, to lead a "major drive"

[22] "Another West Side Building Target of Prostitution Drive," *New York Times,* December 9, 1972.

against prostitution. The self-named "Vice President in charge of vice," Baumgarten described the area around Eighth Avenue after midnight as a place that,

> "takes on elements of the Barbary Coast and a Hieronymous Bosch painting. Pimps, prostitutes, muscle men for the pornography places, homosexuals, transvestites, petty criminals, muggers lurking for victims, drunkards and panhandlers jam sidewalks along Eighth Avenue in garish light or else loiter against darkened buildings."[23]

However, the true boom in the sex trade occurred around noon, during the city's lunch hour when businessmen flocked to the area. Here lay the cold hard truth of the matter. No municipal action could ever fully eradicate sex work in the city, it would only succeed in driving it further underground and for many of the city's sex workers that would have dangerous consequences. As with the anti-vice campaigns earlier in the century, restrictions on sex work rendered it more dangerous because it forced women to work in unsafe conditions – on the street – and left them more vulnerable to violence, including at the hands of the police.[24]

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[23] Murray Schumach, "Major Drive on Illicit Sex is Being Drafted by City," *New York Times,* September 1, 1975.

[24] This remains true today. In a 2003 report from the Sex Workers Project at the Urban Justice Center, seventy percent of sex workers interviewed for the study reported near daily harassment by police, even when going about daily activities like grocery shopping. Thirty percent said they had been threatened with violence. Moreover, police are generally unwilling to assist women who had been victims of violence from customers (6-8). Urban Justice Center Sex Workers Project, "Revolving Door: An Analysis of Street-Based Prostitution in New York City," (2003) http://sexworkersproject.org/downloads/RevolvingDoor.pdf (Accessed August 21, 2018). Groups like SWP did not exist at the height of the crackdown in the 1970s so concrete numbers on violence by police and customers are hard to come by, made more so by the fact that most sex workers wish to operate covertly and so attempt to avoid detection by suspect persons. See also, Melissa Gira Grant, *Playing the Whore: The Work of Sex Work* (New York: Verso, 2014).

Beame, Baumgarten, and other city officials used anti-prostitution drives to expand municipal control over public spaces and private buildings. They were joined by the theater district association, developers like Seymour Durst, and residents of the area concerned with both crime and property values. For these groups, the presence of a perceived criminal class in the area around Times Square threatened their livelihoods and investments. Over the course of Beame's tenure as mayor, with Baumgarten at the helm of the midtown law enforcement coordinating committee worked with local precinct captains to press the limits of city practices and legislation, slowly expanding the ability of various municipal agencies to regulate private and public space. This expansion of power would pave the way for future initiatives to manage the city under the Koch, Dinkins, and Giuliani administrations.

The first task of the Beame administration in their anti-prostitution drive was to get a new anti-loitering measure passed through Albany. In 1973, the state court of appeals ruled against a section of the state penal code that dealt with loitering. That case, *People v. Berck,* focused specifically on a section which held that a person was guilty of loitering if they,

> "loitered, remained, or wandered in or about a place without apparent reason and under circumstances which justify suspicion that [they] may be engaged or about to engage in crime, and, upon inquiry…refuses to identify himself or fails to give reasonably credible account of his conduct and purposes."[25]

[25] 32 N.Y.2d 567 (1973) *The People of the State of New York, Respondent, v. Alan Berck, Appellant.* Court of Appeals of the State of New York. 405 U.S. 156, 162 (1972).

Based on the Supreme Court ruling in *Papachristou v. City of Jacksonville,* the NYS court of appeals argued that the law failed "to give a person of ordinary intelligence fair notice that the contemplated action was forbidden."[26] The city's lawyers needed to draft new legislation that could withstand a charge of vagueness. Manhattan Democratic senator Manfred Ohrenstein agreed to press their case in Albany in the spring of 1976.

In addition to the city's financial woes (this was the height of the fiscal crisis), for which a successful anti-prostitution drive could serve as distraction from, New York was set to host the Democratic National Convention at Madison Square Garden in July 1976. The approach of the convention had city leaders fearful that the wrong image of New York might be gleaned from the "cancer" afflicting midtown streets.[27] While the anti-loitering legislation made its way through Albany, the city moved forward with other tactics to clear the streets in midtown.

Baumgarten, the police, and the buildings and health departments started yet another crackdown with a ticketing blitz. As had become a standard line at the time, the Mayor's office promised that the latest crackdown on vice in midtown would cost voters nothing (the choice of voters as target audience was telling). Deputy Mayor Paul Gibson assured "voters" that the campaign against prostitutes, adult bookstores, and massage parlors would be funded through a $432,000 federal grant. That grant had been awarded by the federal Law Enforcement Assistant Administration in November 1975 and only a portion of it would go directly toward street policing. The bulk of it went to a new task

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[26] Papachristou v. City of Jacksonville.

[27] Tom Goldstein, "Experts Say 2 Laws Proposed to Clean Up Times Square Face Constitutional Problems," *New York Times,* November 3, 1975.

force convened by Beame on January 19, 1976. The Midtown Enforcement Project (MEP) oversaw a multi-agency task force established to "identify, investigate, and prosecute illegal activities in the Midtown area."[28] The project's priorities focused on prostitution, although this would expand once it became an official city agency – the Office of Midtown Enforcement (OME). In fact, the MEP drafted the anti-loitering bill sponsored by Ohrenstein, which initially included mandatory minimum sentences for prostitution offenses (a section taken out of the final version to ensure its passage in Albany).

As the MEP coordinated new legislation, project members lay out the tools available for prosecution of prostitution, obscenity, or lewdness. These included the use of public health law injunctions, administrative code violations, and the initiation of eviction proceedings under the Real Property Actions and Proceedings Law. Wary of constitutional challenges to their anti-loitering statute, staffers at the midtown law enforcement committee (a subgroup of the MEP) proposed new zoning regulations as well as an intensified schedule of health, fire, and building inspections. Incessant inspections by city agents looking for violations could deter business from the bookstores and peep shows and coupled with repeated arrests for obscenity violations established grounds for closing bookstores and peeps as public health offenses via civil injunction.[29]

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[28] Confidential-Restricted, Midtown Enforcement Project Report of Operations, January 19, 1976-December 8, 1976, City Hall Library, New York City Department of Records.

[29] Francis Clines, "Mayor Plans New Times Square Cleanup," *New York Times,* October 28, 1975.

The need for anti-loitering legislation and new zoning regulations was made apparent a few months after Beame announced his midtown clean-up (the one that Baumgarten promised would cost voters nothing). One *New York Times* reporter noted that the crackdown had been most successful in picking up litter. Meanwhile, the "prostitutes, massage parlors, porno bookstores, fleebag (sic) hotels and other sex-oriented establishments remain[ed] with business apparently as good as ever."[30] The ticketing and inspection blitz had little effect, because most bookstores and peep shows had the means to remedy violations issued by city inspectors. If they brought their businesses up to code the city had few options to proceed. As for the ticketing of prostitutes, city courts had become so overwhelmed by drug cases (especially following the passage of the Rockefeller Drug Laws in 1973) and major crimes (as well as the fact that prostitution cases were notoriously difficult to prosecute) that most charges against sex workers were dismissed. Further evidence that the courts were unreliable, creating a revolving door for prostitutes, drug deals, and street vendors to walk through and return to work on the city's streets.

If the courts could not be relied on, the city would focus on zoning the sex industry out of midtown. The midtown office of planning and development drafted restrictive zoning policies adopted by city council in January 1976. These new policies targeted midtown's "hot bed" trade and restricted "physical culture" establishments to hotels with 200 or more rooms, non-profit community facilities, or spaces that had

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[30] Baumgarten attributed the slow pace of the clean up on the delayed disbursal of the promised federal grant. Nathaniel Sheppard, "Midtown Streets Seem Cleaner, But Other Nuisances Persist," *New York Times,* March 15, 1976.

swimming pools "of at least 1500 square feet or more than one basketball, handball, squash, or tennis court." The zoning restrictions provided for exemptions on a case by case basis to businesses owning at least one floor of at least 4500 square feet or those that had been in operation prior to October 1, 1975. To further protect the value of midtown, city council passed additional restrictions later that year, which limited the number of massage parlors, topless bars, adult bookstores and theaters to no more than three within a thousand-foot radius of one another in commercial areas, and not within 500 feet of one another in a residential area.[31]

The zoning rules for physical culture establishments were particularly aimed at the massage parlors that eluded city regulators. Many massage parlors operated as brothels in disguise. With police crackdowns on the streets and exposure to potential violence, massage parlors afforded sex workers some semblance of security. However, officials like Baumgarten viewed them as "a cancer" afflicting critical tourist spots in the city.[32] As with peep shows and adult bookstores, there was serious money to be made in the massage parlor industry. One police raid in August 1972, revealed $17,000 in small bills hidden in a safe, assumed to be that day's take.[33] But Beame had ruled out decriminalizing prostitution and in addition to trying to use zoning and other removal tactics, city and state officials created new licensing guidelines for masseuses. Prior to

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[31] Maurice Carroll, "Times Square Cleanup: Breach of Civil Liberties?" *New York Times,* November 15, 1975.

[32] Tom Goldstein, "Experts Say 2 Laws Proposed to Clean Up Times Square Face Constitutional Problems," *New York Times,* November 3, 1975.

[33] Murray Schumach, "Massage Parlor Raided; Girls and $17,000 Seized," *New York Times,* August 27, 1972.

1971 to work as a masseuse in New York State you needed to be over eighteen and prove you had at least two years practice in massage. As part of an early wave of crackdowns on "illegal" massage parlors, the state began requiring licensees to have a high school diploma, have completed at least 800 hours at an accredited massage school, and to pass an examination with the state board of massage starting in 1973. Two years later, the rules would become more stringent and require an additional 400 hours of supervised practice. At the time, Mayor Lindsay considered requiring all massage locations to carry a city license to be administered by the DCA, which would cost $100 annually. Violators could face fines up to $500 or 90 days in jail or both. This way the city could collect revenues and institute a stricter regulatory protocol. Lindsay conceded that the legislation had been recommended to him by the Times Square Development Corporation.[34] The legislation never progressed, however, meaning that individual masseuses needed to be licensed by the state, but massage parlors required neither a state or city business license to operate. Thus, establishments continued operating and workers would face the brunt of any crackdowns.

Baumgarten believed that massage parlors and "transient hotels" created and bred street prostitution, so attacking the spaces where prostitutes worked would cut off a vital aspect of the trade. This new zoning policy laid plans for the built environment envisioned by city officials, planners, developers, and the theater association - and while it would be decades before that vision came to fruition, the groundwork had been laid. All of this effort was to protect one of Manhattan's most valuable parcels of real estate.

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[34] "Massage Places Face Crackdown," *New York Times,* September 19, 1972

The area encompassed by the new restrictions stretched from river to river and from 30th to 60th streets and represented 49% of Manhattan real estate assessments, which generated $742 million (roughly $3.1 billion currently) a year in taxes.[35]

Meanwhile, state representative, Ohrenstein successfully ushered the anti-loitering law through the state legislature, and the bill took effect July 11, 1976, one day before the Democratic Convention was set to start. The final measure had been amended to offer more specific definitions of public space and loitering in an effort to pass constitutional muster. The anti-loitering law stated, "any person who remains or wanders in a public place and repeatedly becks to, or repeatedly stops, or repeatedly attempts to stop, or repeatedly attempts to engage passers-by in conversation, or repeatedly stops or attempts to stop motor vehicles, or repeatedly interferes with the free passage of other persons for purpose of prostitution, patronizing a prostitute or promoting prostitution is guilty of a crime." The Legal Aid Society immediately filed suit in federal court in Manhattan, charging that the law remained unconstitutionally broad and vague.[36]

Despite the legal limbo of the new anti-loitering law, the police were able to reduce the number of street prostitutes during the Democratic National Convention. Precinct captains reported that prostitution dropped off during the convention. In part, this was likely due to some of the confusion around the new law. For instance, as was made clear in the Legal Aid Society's suit, many terms remained undefined or vague –

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[35] Sheppard, "Midtown Streets,"; Murray Schumach, "Midtowners Push for State Law Calling for Jail for Prostitutes," *New York Times,* March 27, 1976; Tom Goldstein, "New Loitering Law is Declared Invalid," *New York Times,* October 16, 1976.

[36] Tom Goldstein, "New Antivice Law Takes Effect Today," *New York Times,* July 11, 1976.

beckoning and "repeatedly" remained up to the interpretation of arresting officers. However, the major deterrent appeared to be the increased arrests made in the weeks before and during the DNC. In the first three months of 1976, the police arrested 299 women on charges of prostitution, whereas they arrested 510 in the period between June 18th and July 15th.[37] As even the police had to admit, the drop in prostitution proved temporary. Once the DNC left town, street prostitutes returned to midtown.

The anti-loitering forces won a victory in October, when a criminal court judge ruled that the law gave police "unfettered discretion' and enabled them to make arrests 'upon mere suspicion' rather than upon 'probable cause.'"[38] This ruling did not invalidate the law, but did encourage criminal court judges to convict less and police to make fewer arrests under the law. Here lay a major issue in the Beame administration's quest to clean up midtown: how could they successfully manage public spaces to create an environment deemed suitable by the city's elite? Moreover, even if they succeeded in removing offending parties from the area's streets, how could they police the private spaces they retreated to?

Members of the MEP proposed a major piece of new legislation as the solution to these problems. If passed, the Nuisance Abatement Law (NAL), would "provide expedited and tough injunctive procedures against a variety of defined public

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[37] Of the 299 arrested, 27 were sentenced to jail and 111 were sentenced in the latter period. "Prostitutes in Manhattan Get More and Longer Sentences," *New York Times,* July 21, 1976.

[38] Tom Goldstein, "New Loitering Law is Declared Invalid," *New York Times,* October 16, 1976.

nuisances."[39] The legislation did so by combining the powers of public health ordinances, administrative violations, and eviction proceedings into one package and strengthen the city's ability to use them to close unwanted businesses. The law established civil penalties and made it easier for city agencies to win court injunctions against buildings deemed public nuisances after two convictions for prostitution or the promotion of obscenity. The latter clause attempted to solve the problem of gathering evidence of prostitution by police officers and would be used to the full effect by the Office of Midtown Enforcement in the 1980s. However, the problem remained over how to gather the evidence. As would continue to trouble city agents, concrete proof of prostitution was notoriously difficult to provide a court of law.

Baumgarten ran into some trouble in this vein when he hired private detectives to gather evidence of prostitution at several midtown establishments. The idea came to him after a successful case against the owners of Relaxation Plus, a massage parlor housed in the Commodore Hotel by Grand Central station. In that case, the Commodore hired private detectives to patronize sex workers at Relaxation Plus, a choice that was upheld in court after the owners sued over the eviction. Baumgarten argued that even with zoning and anti-loitering statutes, the city still needed proof and since police officers were legally forbidden from undressing while on duty, private detectives were the best option.[40] Manhattan District Attorney, Robert Morgenthau seemed to agree and stated

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[39] Confidential Report, Midtown Enforcement Project, CH Library.

[40] The ban against disrobing had been used by prostitutes to their advantage as most refused to discuss sex or money until their clients had fully undressed. Tom Goldstein, "Landlord Shuts Sex Parlor by Hiring 3 to Buy and Tell," *New York Times,* November 16, 1976.

that his office would not prosecute private detectives if they acted within the scope of their duties. However, his office eventually declined to investigate evidence gathered by the so-called Baumgarten method, informing its namesake that using such testimony would not work before a grand jury, whose sensibilities might be offended. Baumgarten responded that "someone" should "consider the sensibilities of the people who try to live and work in a city increasingly filled with the most sordid, criminal, and antisocial behavior."[41] Whether prostitution posed as much of an existential threat as Baumgarten argued was debatable depending on your stance on the sex industry. But as had been clear from the beginning of Beame's anti-prostitution drive, the real matter here was property value - both for the real estate developers and the city's coffers.

While the matter of evidence of prostitution in massage parlors continued to plague city enforcement agents, the tide turned in the matter of the anti-loitering law in February 1977, when the state appellate court upheld it. The court ruled that the language was "sufficiently plain for people of ordinary intelligence to understand its meaning," thus passing the precedent established in the *Papachristou* case. Beame declared the ruling "a victory for those who believe [our] streets should be used for the legal and peaceful enjoyment of citizens." He added that the law would finally allow police to rid city streets, "of the unruly, often violent, prostitutes who have so blighted midtown Manhattan."[42] Building on the successful defense of the anti-loitering law's

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[41] Richard Meslin, "Prostitution Inquiry Tactics Scored as Too Disgusting for Grand Jury," *New York Times,* December 2, 1976.

[42] Leslie Maitland, "State Court Upholds Antiloitering Law," *New York Times,* February 18, 1977.

constitutionality, city council approved Beame's nuisance abatement law, which he signed in late July 1977 while campaigning for re-election.

Meanwhile, another set of "nuisances" threatened New Yorkers as well. In his first budget after being elected Mayor, Beame informed city council and New Yorkers that the budget gap needed to be filled. He proposed a series of so-called nuisance taxes, including a $15 auto tax and the application of sales tax to haircuts and shoeshines. City council balked at raising taxes and sought other ways to close the budget gap including cuts. The chairman of the city council's finance committee suggested councilmembers find ways to add revenue that, "could be made harmlessly and painlessly."[43] The city could ill afford a massive round of budget cuts with decreased aid from Washington and a declining tax base and eventually city council agreed. In June 1974, they approved Beame's budget and added a $15 auto use tax, a 46.4-cent increase on the real estate tax, and a one-cent increase in sales tax. Opponents were upset that they got tax increases instead of cuts, but in the meantime, Beame avoided cutting programs or jobs.[44] Within this context, the underground economy continued to present a new source of revenues. Despite the potential fiscal gains to be had in regulating the sex industry as opposed to criminalizing it, the Beame administration had chosen to crackdown on street prostitution, massage parlors, and the other facets of midtown's sex industry.

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[43] Edward Ranzal, "Find Painless Cuts in Beame's Budget, City Council Urged," *New York Times,* May 17, 1974.

[44] Edward Ranzal, "Beame is Victor in Budget Fight," *New York Times,* June 21, 1974.

In the midst of these crackdowns, New York City balanced on the precipice of bankruptcy. Other scholars have devoted considerable length to the city's fiscal crisis and as it pertains to regulation of the underground economy it is significant for several reasons. First, one of the key groups in attempting to drive street vendors out of the city, the DLMA, held a considerable stake in the World Trade Center. That development had been funded by a local development corporation (LDC) a precursor to Business Improvement Districts that allowed private companies to establish financial partnerships with the government outside normal oversight. According to Miriam Greenberg, one of the worst offenders was the Urban Development Corporation (UDC), created by Governor Rockefeller in 1967. By the time it went bankrupt in 1973, the year the World Trade Center opened (which it had financed) it had lost the state hundreds of millions of dollars.[45] Massive office building projects spanning from 1967-1973 occurred as many corporations left the city meant vacant towers. Demand for office space on Wall Street would remain low until the end of the 1990s. The World Trade Center (WTC), intended as a hub of global finance, struggled to find renters and amounted to, "a giant welfare scheme for the real estate operations of the financial sector, especially Chase Manhattan Bank," which had invested heavily in Lower Manhattan after building its corporate headquarters there in the fifties.[46] Ultimately the WTC had to be subsidized by the state, which rented office space for various agencies. As investors in the project, the leaders of

[45]Miriam Greenberg, Branding New York: How a City In Crisis Was Sold to the World (New York: Routledge, 2008), 125.

[46] Sharon Zukin, *Naked City: The Death and Life of Authentic Urban Spaces* (New York: Oxford University Press, 2009), 150.

the DLMA wanted to ensure people shopped at the WTC mall and to protect its property value, by attracting business. Based on this, lobbying by Association members to rid the area of street vendors is more easily explained. LDC's like the UDC had cost the city and state millions in borrowed money, their projects then required continued state assistance in the form of tenants, and to cap it off, many of these properties were tax exempt. In fact, by 1976, 40% of all real estate in the city had been exempted, costing the city tens of millions of dollars annually.[47]

In addition to borrowing massive sums for construction projects, New York City's government was responsible for a larger share of Medicaid than any other major American metropolis. While it is true that the welfare rolls had increased over the 1960s, the cost of health care truly crippled the city treasury. Making matters worse, Wall Street investors and banks like Chase Manhattan created a bubble in municipal bonds, so that when they began pulling out of the bond market, they left the city unable to service its debt. The proverbial nail in the coffin arrived in June of 1975, when the city offered its municipal bonds and few bought them. Without the sales the city would not have the funds to service its debts, and when those payments came due the city would face potential bankruptcy. Unable to meet their fiscal obligations, city politicians turned to Washington for aid. This is where conservative policymakers really left their mark. William Simon, then Secretary of the Treasury told New York officials there would be no bail out without the dismantling of the city's social welfare programs and President Ford, a fiscal conservative, agreed. The *Daily News'* famous cover accurately portrayed what

[47] Greenberg, 126.

was essentially a hostage situation – either the city instituted austerity or defaulted – in each scenario, Ford was telling the city "to drop dead." Here was disaster capitalism plain and clear. The shock of the nation's largest city teetering on bankruptcy allowed lenders to demand structural readjustments and led to lasting austerity measures.[48]

Governor Hugh Carey established the Municipal Assistance Corporation (MAC) and the Emergency Fiscal Control Board (EFCB) to oversee the city's fiscal crisis. He placed various bankers, financiers, and lawyers in charge of administering a program of austerity measures to stave off bankruptcy. Even as Beame was rendered a figurehead for much of the remainder of his term, he too embraced the structural readjustments proscribed as medicine for the ills that plagued New York City. In the EFCB's report on "Monitoring New York City's Expenditure Reduction Program" they listed the number of reductions and eliminations as of December 21, 1975; it is a disturbing catalog of the priorities of those given extraordinary power over municipal tasks without public input.

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[48] For detailed analysis and discussion of New York City's fiscal crisis see, Julian Brash, "Invoking Fiscal Crisis: Moral Discourse and Politics in New York City," *Social Text* 76, vol. 21, no. 3 (Fall 2003): 59-83; Kim Philips-Fein, *Fear City: New York's Fiscal Crisis and the Rise of Austerity Politics* (New York: Metropolitan Books, 2017); Martin Shefter, *Political Crisis/Fiscal Crisis: The Collapse and Revival of New York City* (New York: Basic Books, 1987); and William Tabb, *The Long Default: New York City and the Urban Fiscal Crisis* (New York: Monthly Review Press, 1982). See also, Greenberg, *Branding New York;* John Mollenkopf, *A Phoenix in the Ashes: The Rise and Fall of the Koch Coalition in New York City* (Princeton: Princeton University Press, 1994); Kim Moody, *From Welfare State to Real Estate: Regime Change in New York City, 1974 to the Present* (New York: The New Press, 2007); Alice O'Connor, "The Privatized City: The Manhattan Institute, the Urban Crisis, and the Conservative Counterrevolution in New York," *Journal of Urban History* 34:2 (January 2008): 333-353; Jonathan Soffer, *Ed Koch and the Rebuilding of New York City* (New York: Columbia University Press, 2010); and Lynn Weiker, *Follow the Money: Who Controls New York City Mayors?* (Albany: State University of New York Press, 2009).

The "elimination of the Ambulatory Care Subsidy," cut the city's matching share of a program through which hospitals received funds to offset deficits in their ambulatory care services. Reductions of city contributions were also proposed for the council against poverty, to daycare and senior citizen centers, and emergency public assistance grants. The total estimated annual tax levy savings from these cuts amounted to $20.9 million, miniscule compared to the debts owed by the city. The EFCB also proposed cuts to youth and addiction services, libraries, and cultural institutions.[49]

A year later, in December 1976, Beame unveiled "The New York City Economic Recovery Program." The key features of this economic development program included a cap on real estate taxes, a generous tax abatement program to encourage private investment, the expansion of financial and other assistance programs for businesses operating in New York, and the creation of a major marketing campaign to "sell" New York around the country and abroad. It also included proposals to reshape land use policy and expand the city's services to businesses. "This program is focused on jobs — maintaining those we have, encouraging expansion by firms already based here, and attracting new investment from outside." To do so, Beame argued, city officials had to "create an atmosphere — and adopt an attitude — that [would] enable businesses to function efficiently and profitably in New York City." Municipal policy would revolve around this sentiment for the rest of the twentieth-century.[50]

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[49] Report on Monitoring New York City's Expenditure Reduction Program as of December 21, 1975, Emergency Financial Control Board 1975-1976, Executive Secretary Sally Leonard Subject Files, 1974-1977, NYCMA.

[50] Press Release, Office of the Mayor, Monday December 20, 1976, Economic Recovery Program, 1976-1977, Executive Sally Leonard Subject Files, 1974-1977,

In response to budget cuts aimed at the police and fire departments, the fiscal crisis merged with the fear of crime when the police and firemen's unions distributed leaflets warning tourists away from New York City. "Welcome to Fear City," advised those who had no choice but to enter New York to only stay in midtown, to never walk the streets after 6pm, and hold their valuables close. Hoping to stem the bad publicity, the city and the Transit Authority sought court injunctions against those distributing the pamphlet, arguing that it would cause "irreparable harm to the city's mercantile interests, tourist trade and economy," unless halted.[51] Their focus on who would be harmed was revealing. Beame eventually agreed to hire back many of the laid-off police and firefighters, averting further problems. The parts of the pamphlet that painted the city's streets as unsafe and populated by predators who lurked behind every corner foretold of the power that fear itself would soon hold over city residents and the policies they supported.

The drive against prostitution had temporarily solved only one piece of midtown's vast sex industry. With budget cuts, the police department would need new tools and tactics to make up for reduced manpower. The bookstores, peep shows, and topless bars would have to be dealt with differently. Confounding city regulators, businesses constantly adapted to whatever regulatory measures they imposed. In response to repeated harassment by the SLA, topless bars went dry in the late 1970s. Without

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NYCMA. It arguably continues today as cities, including New York, compete to host Amazon's "HQ2."

[51] Tom Goldstein, "Leaflet Ban is Called Unconstitutional," *New York Times,* June 4, 1975.

serving alcohol they could get around one set of inspectors, so newly appointed director of the MEP, Carl Weisbrod, focused on violations concerning building, fire, health codes, and one new set of violations: noise pollution.

Noise pollution, as a threat to urban quality of life, would factor as an important legal tactic used by the city and groups opposed to any number of businesses. In 1966, a researcher at Harvard's School of Public Health, published findings on the damaging effects of city noises on American's hearings in the New England Journal of Medicine. The study compared the hearing of Americans to natives of noise-free areas of the Sudan and demonstrated that excess sounds generated by power mowers, subway trains, and jets created progressive deafness. The concern over so-called noise pollution was so great that city council called for an inquiry into noise pollution and its possible reduction in September. That inquiry, Mayor Lindsay's task force on Noise Control concluded after three years of study that noise in New York had "reached a level intense, continuous, and persistent enough to threaten basic community life." The task force was headed by Neil Anderson, the executive vice president of the New York Board of Trade, so it was unsurprising when in the wake of the report's release in January 1970, he called for voluntary cooperation between business and government to solve the problem.[52]

The task force's report, "Toward a Quieter City," became the background for a city law to curb noise pollution. Despite heavy opposition from the construction industry, the bill passed in late 1972, although Lindsay added an amendment to grant

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[52] David Bird, "Noise Level Called a Peril to City Life," *New York Times,* January 13, 1970.

emergency permits for night construction work. The new law also turned citizens into enforcers; anyone who made a noise complaint was afforded half of any fine if the city failed to enforce the law. While complaints about construction noise certainly occurred, the focus of the law was on loudspeakers on the streets and in entertainment spaces. Shop owners who used speakers to lure in customers came under scrutiny from inspectors from the city's Department of Air Resources. When one record storeowner complained that the loss of his loudspeaker to draw attention would affect his livelihood, an inspector responded, "to you it's a living, but to other people it's a nuisance." Here lay one of the key issues buried in the new obsession with noise "pollution," who and what got labeled as nuisances.[53]

In the month following the law's enactment, inspectors issued warnings to shop owners and vendors who used loudspeakers to let them know that they would soon face fines if they did not stop. After that grace period, inspectors began issuing summonses with possible fines up to $500 for loudspeaker violations. In comparison, construction noise outside of designated hours could result in a $1000 fine and arguable affected more people than a lone shop's speaker.[54] Regardless, the law created another source of revenue for the city in the form of fines, the question was, could they collect? City council provided a solution to the continued problem of collecting on administrative code fines through the city's criminal courts – take them out of that system and create a separate panel. The newly created Environmental Control Board would consist of nine

[53] Deirdre Carmody, "Noise Inspectors Now Issue Warnings, But Fines Are Only a New Meter Away," *New York Times,* October 13, 1972.

[54] Ibid.

board members who would focus on processing and collecting administrative code fees and fines like those covered by the city's noise control ordinance.[55] Based on the panel's success, city administrators eventually moved more fee collections into the ECB's jurisdiction, including street vendors. Thus, the city's noise control served the dual purposes of establishing another tool for regulating so-called nuisances and creating another source of revenue for the cash-strapped city. For regulators focused on the city's nightlife, noise pollution would prove to be an immensely powerful and useful tool.[56]

Nightlife

While the Lindsay administration, followed by Beame and eventually Koch worked to manage the city's informal economy, the decade presented them with a new set of issues revolving around regulating the commercial use of private property. Bottle clubs, after-hours bars, and discotheques only formed part of the semi-formal entertainment industry in New York. Especially in the outer boroughs, social clubs expanded in the 1970s, to match demand from newly arriving immigrants, because cheap space was plentiful, and to cater to consumer demand - the number of places to go out in parts of the Bronx, Queens, and Brooklyn were limited. Technically, social clubs were excluded from the special liquor license requirement aimed at bottle clubs, because they were non-profit

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[55] "City Council Unit Clears Way for Environmental Control Panel," *New York Times,* February 28, 1973.

[56] This proved to be less so with street vendors. After several years of ECB jurisdiction over peddler summonses, the board proved highly ineffective. According to data from CB2 in Manhattan as many as 92% of vendor summonses went unanswered. Moreover, in the switch from criminal court to the ECB citations became civil issues (as opposed to criminal matters) meaning a reduction in potential fines. Correspondence from Robert V. Lott, Chair of CB2, March 25, 1983, Department of Consumer Affairs, Ed Koch Departmental Files, NYCMA.

establishments. However, an owner of a social club could use it for community gatherings during the day and rent it out at night or turn it into an informal dance hall or bar. No one seemed to know whether this was "legal" or not, from owners to patrons on up to the police and the mayor.

In 1969, the state legislature attempted to close a loophole that enabled private clubs to go unlicensed on the principle that paying members consumed their own liquor there. A new law required "private" bottle clubs to get a special liquor license from the SLA that would cost $1700 a year.[57] The law defined a bottle club as a place that accommodated 100 or more people (which was lowered to 20 or more one year later).[58] Exemptions for the law included non-profit religious, fraternal and charitable organizations as well as all duly recognized political clubs. A full year after the law went into effect not one bottle club in the city had applied for the license. However, there was little the SLA could do. If an establishment did not have a license their usual tactics of suspending, revoking, or cancelling a license were meaningless.

Moreover, the police department simply lacked the manpower to police after-hours clubs. In response to reports that after-hours clubs were spreading uncontrollably in the city, Police Commissioner Patrick Murphy said that even if the police force doubled it would still be impossible to suppress their expansion. The state attorney

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[57] Many of these so-called private, membership only clubs, were barely such. Bouncers would collect an entrance fee from patrons which they then counted as a membership payment. Charles Grutzner, "Slain Man's Letters Give Impetus to Local and Federal Investigators of After-Hours Clubs Here," *New York Times,* March 23, 1970.

[58] Martin Arnold, "Illegal Liquor Clubs Reported to Flourish Everywhere in City," *New York Times,* June 22, 1971.

general, Lefkowitz, estimated that so-called illegal bottle clubs cost the state $7 million in licensing fees annually, in addition to the tax losses from unreported income. Lefkowitz also echoed claims made by city law enforcement that the clubs were devoted to drinking, to drugs, and to sex.[59] The narrative of unlicensed bars and clubs as dens of vice was not new, but it grew into a rallying cry as the decade wore on. Between 1970 and 1982 alone the majority of headlines in the *Times* linked clubs and discos to gunmen, robbery, and murder. Thus, public perception of clubs shaped by the media, politicians, police, and neighborhood associations bent towards the negative.[60]

While one piece of criticism against clubs was revenue loss, another was concern over their neighborhood effects. As with the sex industry in midtown, nuisance complaints were used by residents, police, and city agencies to regulate private property. In 1973, a battle over a club in the Concourse Plaza in the Bronx brought changing neighborhood demographics to the fore. Completed in 1909, the Grand Concourse is a broad boulevard meant to evoke the Champs-Elysees. The Concourse Plaza, a once grand old hotel, had hosted visiting teams stayed when playing the Yankees a few blocks away. By the early 1970s that had changed and business at the hotel had slowed down. Players from out of town stayed in Manhattan and the hotel began accepting tenants from the city's Department of Relocation. Moreover, as white residents left the neighborhood, Blacks and Latinos moved in, shifting the area from virtually all white in the mid-1950s

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[59] Ibid.

[60] A perusal of *Times* headlines from the period reveals a decidedly morbid bent, for instance, "Police in Brooklyn Investigate Bloodstained Social Club Room," January 20, 1970, "4 Die in Brooklyn in Gunplay Linked to 2 Social Clubs," October 16, 1972, or "Man, 37, Found Shot to Death Near a Brooklyn Discotheque," June 28, 1982.

to less than 60% by 1970. Similar change was underway in the neighboring communities of Claremont and Highbridge.[61]

In December 1971, a club called the Tunnel opened on the ground floor of the Concourse Plaza. Almost immediately, neighbors began complaining, and as a *Times* reporter noted, most of them came from elderly white residents, and the tone of the letters and calls lodged against the Tunnel were marked by racial bias. Some vaguely said that the patrons waiting outside "intimidated" them. Others were more blunt in their assessment. One woman told a reporter that she had lived in the area for over thirty years, but now she rarely went out after dark. When she had walked by the club one night the prior winter she said there had been, "a lot of colored people outside. They may have been alright, but you can never tell. I know some of them looked drunk. I got away as fast as I could."[62] The owner of the hotel said that when white organizations held dances that went late and double-parked their cars he barely got a call, but that when Black organizations did the same the complaints poured in about noise and parking.

The neighbors eventually got Bronx Borough President Robert Abrams involved and the DCA opened an investigation. Since the premises were clean, the hotel employed private security, and no one had ever been arrested on the premises, the reasons the DCA cited for revoking the Tunnel's license as well as licenses for three other spaces in the hotel, were a stretch. The DCA hearing found that the Tunnel kept no proper roster of employees, failed to adequately supervise its customers, and was using a part of the hotel

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[61] John Corry, "Concourse Plaza Hotel Fights City's Closing of Discotheque Catering to Blacks," *New York Times,* May 17, 1973.

[62] John Corry, *New York Times*, May 17, 1973.

not covered by its license. The battle over the Tunnel exhibited two types of issues with commercial spaces during the 1970s. One, the racial panic that was triggered as once majority-white enclaves became less so, in which many older, white, residents turned to local and state politicians to do something about the "problems" in their community. These problems frequently involved nightlife locations. Two, it revealed the limited powers of city agencies to regulate private property. Following the DCA's revocation of the hotel and club's licenses, the owner of the hotel brought a suit against the city. Although he ended up selling the hotel to the city the following year, the DCA counted on property and business owners not challenging their rulings in court.[63]

As the midtown enforcement project worked to change zoning rules in the Times Square area, the City Planning Commission focused on SoHo, voting to ban new large entertainment facilities from opening in the neighborhood. Similar to the debates about zoning out the sex industry around Times Square, the Planning Commission argued that large entertainment facility land use "exploit[ed] the energy of the art center (SoHo), but contribut[ed] nothing to its growth." Furthermore, they added, such businesses threated "the continued viability of the area by making it a less desirable place to work and live."[64] The new zoning rules banned new eating and drinking establishments larger than 5000 square feet, theaters, cabarets, clubs, and public dance halls.

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[63] Allan Siegal, "City is Taking Possession of Concourse Plaza Hotel," *New York Times,* May 28, 1974.

[64] Glenn Fowler, "Planning Unit Asks SoHo-NoHo Discotheque Ban," *New York Times,* August 12, 1976.

In addition to protecting property values in gentrifying areas, city agencies used noise pollution as grounds to close entertainment facilities as public nuisances. They relied on this tactic in part because there were no laws on the books regulating discotheques for much of the 1970s. As with loitering crackdowns in midtown, noise pollution offered the easiest way to go after entertainment spaces, because it applied a public space phenomenon to the regulation of a private building (the "noise" affected people outside the private space). Here too, the easiest regulatory solution could be corrected or challenged by owners and so city politicians began crafting new zoning restrictions and legislation to aid the efforts at regulating clubs and bars. Social clubs, however, presented a unique set of regulatory issues.

As newer waves of immigrants from Central America and the Caribbean replaced their earlier Italian and Jewish counterparts in the city's neighborhoods, many of them continued the tradition of establishing social clubs. These served as gathering spaces where information on jobs, housing, or immigration services could be exchanged; as entertainment spaces; and as community spaces available for birthdays and other events. Some club owners may have intentionally skirted licensing guidelines to avoid fees and taxes and others may have been unaware of the myriad rules and regulations, but if a social club set up as a non-profit community space that also happened to serve drinks and offer dancing on weekend nights it was unclear whether this was technically illegal. Based on the city's Cabaret Law, a social club serving alcohol and playing music with

dancing could either be identified as an unlicensed cabaret or as a private party using a community center for an event; it all depended on the assessment of an inspector.[65]

In the midst of the city's fiscal crisis, nearly every New Yorker dealt with some slowdown of basic services like fire, sanitation, and police. But as trash piled up and response times increased, certain neighborhoods fared worse than others. In particular, large swaths of the Bronx were all but abandoned by city agencies. The borough had been and continued to be disproportionately affected by deindustrialization and white flight. In response to aerial footage above Yankee Stadium during the 1977 World Series, Howard Cosell famously noted, "ladies and gentlemen, the Bronx is burning."[66] Insurance arson occurred throughout the city, as in the Brooklyn neighborhood of Bushwick, but the Bronx came to symbolize the urban crisis nationally. As such it generated a variety of responses, ranging from President Carter's visit to one of the most affected areas in the South Bronx with a promise to rebuild to New York City Department of Housing Commissioner Roger Starr's policy of "planned shrinkage." In an interview with *New York Magazine,* Starr expressed a desire to drive the poorest

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[65] City policy was never clear on this as would become obvious in the wake of the Happy Land fire in 1990. According to a rejection notice sent to the Chinese Association Social Club, Inc., in Queens in 1990, the city defined a social club as "an organization of persons incorporated to provisions of the membership corporations' law," which was "an entity that owned or leased a building [used] exclusively for club purposes." Social clubs could not be used for profit and could sell alcohol to club members and their guests only. And yet, following Happy Land, clubs that met these requirements were shuttered as unlicensed social clubs for lacking cabaret permits, such as El Caney. Rejection Notice sent to Chinese Association Social Club, Inc., 1990, Office of Latino Affairs, William Nieves and Marlene Cintron Subject Files, NYCMA.

[66] Jonathan Mahler, Ladies and Gentlemen, the Bronx is Burning: 1977, Baseball, Politics, and the Battle for the Soul of a City (New York: Farrar, Straus and Giroux, 2005).

residents out of blighted neighborhoods in order to make their abandoned properties available for more profitable use. To do so, city officials should end services to "dying" neighborhoods and speed up a process Starr believed already to be underway and beneficial to the city in the long run. While never formally put into practice, a policy of neglect functioned informally as city politicians turned their focus to wealthier parts of the city.[67]

In the midst of the fiscal crisis, twenty-five patrons of the Puerto Rican Social Club in the Morrisania section of the Bronx died in an arson fire. On the evening of October 25th, bouncers removed patron Jose Cordero from the club, after which he approached three teenagers outside a candy story and bribed them to set fire to the club. This they did by torching the club's only staircase. While the club had a second exit out the back, it was blocked at the time of the fire by a rolling steel door installed to keep burglars out. In addition to those who perished, twenty-four patrons were seriously injured after jumping from a second story window to escape the blaze.[68] Paying local teens to set fire to buildings in the Bronx was so common that the boys probably thought nothing of Cordero's request. The larger context within which the fire occurred – the ongoing arson fires as property owners tried to leave the borough, crime, and a lack of social spaces to congregate – were not priorities for the city. The fire likely garnered

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[67] As quoted in Greenberg, 141.

[68] The teens, aged twelve, fifteen, and sixteen at the time of the fire testified that Cordero bribed them with marijuana, rum, and a car. The youngest, Julio Hernandez, testified against the others and was not charged, but the older two, Francisco Mendez and Hector Lopez were charged with 25 counts of murder and sentenced to life in prison. Dena Kleiman, "Youth Guilty of Causing 25 Deaths in Bronx Social Club Fire in 1976," *New York Times,* February 11, 1978.

attention due to a different fire at a cabaret in Manhattan, the Blue Angel Café, a year earlier that had already prompted a grand jury investigation. The fire at the Puerto Rican Social Club threw social clubs into the debate as well.

The Blue Angel Café fire, in December 1975, occurred when the stage pieces at a café, a licensed cabaret, caught fire during a performance resulting in the death of seven patrons from asphyxiation. A grand jury panel convened in the aftermath eventually concluded that the city's limited safety requirements had contributed to the fire. The report also concluded that the fire could have been contained, and lives spared, if the café had a sprinkler system, clearly marked exits, and props made of flame-resistant material. Official response to the Puerto Rican Social Club differed from the Blue Angel Café fire, however, in its focus on criminal enforcement. In addition to the charges brought against the patron and the four teens he paid to start the fire, city officials directed scrutiny at the club itself. Per the exemptions granted to fraternal organizations (and social clubs) by the State Liquor Authority (SLA), the club had been serving alcohol without a license. The club had also offered music and dancing, which led some city officials to question whether it should have been licensed as a cabaret. However, the requirements for a liquor or cabaret license had little to do with fire safety. Even before the grand jury response to the Blue Angel fire, building and fire safety had been requirements for permits of assembly and certificates of occupancy. Yet, the Puerto Rican Social Club's serving of alcohol without a liquor license was cited as cause for concern. Deputy Mayor Stanley Friedman announced that he would be evaluating "all existing laws and

penalties," governing municipal oversight of social clubs "with a view toward making them much harsher."[69]

The site of the Puerto Rican Social Club at 1003 Morris Avenue was free of building code violations. The only charge the city could find was that it had operated without a liquor license, but even that was questionable since it listed itself as a fraternal organization. Liquor licensing was the domain of the SLA, an agency which had nothing to do with building safety or fire protections, its sole purpose being the collection of fees from establishments that served alcohol. They could deny a permit based on nuisance complaints or violations, but inspections for those issues were conducted by city agencies like the DOB, the Fire Department, or the police. The Puerto Rican Social Club, like many other clubs had the required certificates of occupancy, so when city politicians, police officers, or the local newspapers referred to them as unlicensed what they meant was, they did not have an SLA permit, which, technically, they did not need.

That the club was a few blocks away from the Concourse Plaza hotel is telling of the continued transformation of the neighborhood. In this case though, neighbors of the social club said it had been an orderly place that was often rented out for special occasions and that the only noise came from the music. The police, on the other hand,

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[69] Blue Angel Café fire grand jury report cited in, Bruce Ratner, "License Review Task Force: Report and Recommendations on 'Redundant Enforcement' License Laws," January 1979, Department of Consumer Affairs, Ed Koch Subject Files, NYCMA; Friedman quoted in, "Fire Department Plans Inspection of Social Clubs in the Night Hours," *New York Times,* October 28, 1976; Dena Kleiman, "Youth Guilty of Causing 25 Deaths in Bronx Social Club Fire in 1976," *New York Times,* February 11, 1978; and Robert Thomas, "Fire Sweeps Bronx Social Club, Leaving 25 Dead and 24 Injured," *New York Times,* October 25, 1976.

told a *Times* reporter that there were at least 100 other clubs like this in the Morissania section's precinct. One detective complained that the clubs sprung up unnoticed and they could do anything inside because the city was too lax to do anything about them.[70] Social clubs that considered themselves legitimate balked at their miscategorization by the police. Monserrate Flores, the founder of the Civic Society of San Herman, in the same neighborhood as the Puerto Rican Social Club, argued that a good club could help people, but not those that "charge admission fees, fail to pay taxes, and ignore building codes." Those he likened to profit-making ventures disguised as civic groups.[71]

Here were the arguments made against gypsy cabs, street vendors, sex workers, and massage parlors: the police had their hands tied by limited investment from the city and a lax judicial system; and that those who followed the rules were hurt by the scofflaws. As many people noted, from community members and reporters to city officials, the city's lax regulation of social clubs was motivated in part by an acknowledgement of the roles they played in their neighborhoods – sites of aid and information as well as a place to unwind away from cramped apartments. These roles of course never precluded city investment in maintaining safety, but it would repeatedly serve as a useful narrative from city officials: social clubs served a vital role (which they did) and so the city was reluctant to interfere (which they were not precluded from doing just because the clubs were important).

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[70] Leslie Mattland, "Tragedy of Fire is Nothing New for Morrisania," *New York Times,* October 25, 1976.

[71] Francis Clines, "About New York: Where Danger Lurks with Delight," *New York Times,* October 30, 1976.

Digging the city out of the fiscal crisis continued to take precedence, however. It took a few years after these two fires for city council to pass new fire safety laws based on the grand jury recommendations. Local Law No. 41 required all cabarets to have exit signs, sprinkler systems, fire alarms, and emergency lighting. New occupancy limits and a more rigorous set of requirements would be applied to new applications for permits of assembly and certificates of occupancy, but existing C.O.s (certificate of occupancy) and place of assembly permits would be grandfathered in under the original rules. This came at the behest of property owners and real estate developers who did not want to invest in capital improvements. The new measures, however limited, were necessary; sprinkler systems significantly reduce the danger of fires in buildings. Unfortunately, the new law only required licensed cabarets to have them and this only applied to commercial spaces. Residential sprinkler rules would not be considered for another decade and once again, powerful real estate interests would win exemptions for older buildings.[72]

Beyond safety measures, City Hall provided nothing in the way of financial aid for club owners to renovate their spaces or legal tools to assist them in holding property owners accountable for the hazardous conditions they failed to remedy. What was being set up was a system wherein establishments were penalized for failing to acquire the appropriate permits and licenses. Some of these requirements were questionable, as with occupancy limits, which remained the same for places with entertainment as for those without entertainment. The only difference remained that the latter needed a sprinkler system. Those limits would be undercut by a lack of sprinklers during a fire and at the

[72] "License Review Task Force," January 1979, NYCMA.

time the city only required licensed cabarets to install such systems. This drove some clubs to avoid city agents all together, it was better to fly under the radar without a cabaret license than face inspections and crackdowns by police, fire, or buildings department agents. That many social clubs had already functioned at the margins of city oversight facilitated this move as owners became fearful officials would qualify them as cabarets and require costly renovations they could not afford.

Following similar tactics as the DLMA had used regarding street vending, local and state politicians began talking about the cost of after-hours clubs to the state and city in lost licensing fees and taxes. According to the SLA, unlicensed after-hours clubs and bottle bars cost the agency $10 million a year in lost fees. In addition to the lost revenue, state officials argued that unlicensed venues stole business from licensed bars and restaurants, using once again a tactic employed by the anti-peddling forces: the unfair threat to so-called legitimate small business owners. However, this was a problematic line of attack. SLA rules required licensed establishments to close at 4am, the same time that after-hours (hence the "after-hours") clubs opened for business. Because of this the cheated small business owner narrative never really caught on, but state officials did hammer home the loss of tax revenue and license fees, something that could gain traction with a public suffering from an energy crisis, declining wages, and continued job loss.

Another issue was the SLA itself. It functioned in a similar mode as the TLC did locally – a state monopoly on a particular industry's licensing. The SLA's fiefdom relied on businesses purchasing liquor licenses in order to continue. Thus, the SLA commissioner and CEO, Lawrence Gedda alleged that his agency's "intelligence reports"

cited as many as 200 illegal (read: unlicensed) bottle clubs generating massive profits in the city. These establishments troubled the SLA, Gedda said, because they suspected them of being covers for narcotics, prostitution, and gambling, insinuating ties to the mafia. By linking unlicensed bottle clubs to the criminal underworld, Gedda and others at the SLA hoped to incite public anger that would force the NYPD to act. After all, every unlicensed club meant lost fees for the SLA. For city police however, busting up unlicensed clubs was a low priority. To start with, most officers acknowledged that doing so was meaningless, if they closed a club, it would be back in business the following day. Courts rarely pressed charges, because according to one officer, judges viewed going to an unlicensed bottle club as a victimless crime. Moreover, the NYPD refuted the SLA's so-called intelligence on clubs, citing a lack of evidence of widespread underworld activities at clubs, except at gay bars - itself a product of SLA practices. The real issue at stake here was lost license fees.[73]

Those lost licensing fees were enough for the Beame administration to initiate a crackdown on after-hours clubs. A few months after the SLA complained about the drop-off in police raids, the Manhattan South division of the Public Morals Division raided a club on the west side claiming that the majority of customers were pimps and prostitutes. Officers alleged that "10 of the city's most active pimps" were among those arrested. A similar narrative would play out in future raids - public morals division officers would place a club under surveillance, usually going off an anonymous tip or an

[73] Selwyn Raab, "Illicit After-Hours Drinking Clubs Costing State $10 million a Year," *New York Times,* January 24, 1977.

informant. After several weeks they would make a bust and tell the public that the club was an after-hours hangout for pimps and prostitutes and that they had observed illegal gambling and drug use and sales. While the PMD concentrated its efforts in midtown – working alongside the OME in their efforts to rid the area of massage parlors, adult bookstores, theaters, and peep shows – social clubs continued popping up in the outer boroughs largely unnoticed.[74]

Neighborhood coalitions organized more fiercely in opposition to new entertainment spots. One group, Citizens Against Disco, fought large capacity discotheques and pressed for stricter zoning controls. Pressuring the SLA to deny a liquor license frequently succeeded as a tactic, however, business owners could press back. In one case, the owners of a planned 2000 capacity discotheque, the Electric Circus, successfully lobbied the SLA to grant them a license after initially being denied one, arguing that the lack of a license would cause them grievous harm in light of the $170,000 they had invested in the club. The fickle nature of SLA agents led groups like Citizens Against Disco and their allies on city council to draft new zoning laws to cover discotheques, which remained uncovered by much of the city's zoning standards as late as 1979. Councilman Henry Stern argued that discos hurt a neighborhood's "quality of life." "They are all right in principle," he said, "but not when they disrupt the lives of the neighborhood. People have the right to sleep at night."[75]

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[74] Edith Asbury, "70 Arrested in an After-Hours Club on West Side," *New York Times,* March 12, 1977.

[75] Carter Horsley, "Zoning Controls on Discos Planned," *New York Times,* November 4, 1979. The DCA was reviewing the club's cabaret license application at the time amidst significant allegations regarding undisclosed financing. Memo re: Activity

Those in favor of new zoning restrictions cited noise and crowd problems as their main concerns. In response, one attorney for several business owners facing new zoning regulations criticized the complainants saying that if they did not like "the excitement and vitality of an urban environment, [they] should return to the suburbs from whence they came."[76] Other zoning opponents chose a different tactic, arguing that groups upset by discos were simply misinformed. The owner of one restaurant trying to expand to include a disco claimed they were the modern-day equivalent of Glenn Miller, instead of the throbbing punk rock associated with them.

In early 1980, state tax agents raided an after-hours club in collusion with the SLA, but without informing the NYPD. The SLA continued to complain that local police did nothing to stem the rise in illegal bars and that this particular bar allegedly brought in $100,000 weekly, all of it unreported. One patron of the raided bar told agents they were "decent citizens," and asked them "why don't you leave us alone and worry about the real criminals?"[77] By and large this sentiment seemed to be embraced by others - the underground economy was a natural hustle against the constraining forces of the government - whereas the real criminals, the murderers, the rapists, the burglars, roamed free while those who harmed no one were punished. The tactic embraced by the DLMA when members campaigned against street vendors, to incite public ire over "fairness" and

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Report for January 1-15, 1979, Department of Consumer Affairs, Ed Koch Departmental Files, NYCMA.

[76] *New York Times,* November 4, 1979.

[77] Selwyn Raab, "Tax Agents Raid After-Hours Club on Eat Side and Arrest 9 Persons," *New York Times,* March 2, 1980.

tax scofflaws had lost some traction. By the 1980s looking for a way to cheat the government was accepted, if still disliked by the majority of New Yorkers.

Conclusion

In addition to attempted crackdowns on midtown's sex industry, city officials faced pressure to deal with the growing number of after-hours bars, social clubs, and discotheques from neighbors irritated by noise or undesired clientele in their communities. The tactics used by city politicians to manage these entertainment-oriented businesses inserted local government into private spaces with serious consequences that reshaped the city's built environment. Noise pollution, zoning and usage ordinances, loitering statutes, and nuisance abatement allowed city officials to shutter unwanted businesses and clear undesirable populations out of an area – paving the way for redevelopment and a whitewashing of the city. Coupled with the policing of public spaces, the measures put in place in the 1970s to clean up the city not only pushed informal workers to the margins, but created new underground economies. Instead of monetizing peep shows as Lindsay once hoped to do, the Beame administration, followed by Koch, expanded city hall's power through social control, crackdowns, and intensified policing. At the heart of the matter lay concern over property values. For real estate developers in Manhattan, the hustlers, panhandlers, and vendors downtown and in midtown, and for the residents of once tony enclaves now neighbors with a club or after-hours bar, all signaled declining values.

Meanwhile, a massive financial meltdown and attendant budget cuts that affected city personnel including police officers, limited municipal regulatory powers. Declining job prospects and wages provided an opening for an expansion of the underground economy. In addition to the dispersal of state observation (there were simply too many problems to get a handle on any one) and fiscal issues, state and federal court rulings restricted some of the city's ability to regulate certain businesses. To compensate for declining revenues and funds and appease angry developers and business associations, city politicians passed new licensing and zoning laws that rendered formerly legal activities illegal, in practice, location, or both.

Couched in a language of public health and safety, declining property values and their attendant revenue streams lay at the heart of a string of new licensing and permitting requirements as well as the rezoning of large swathes of Manhattan. Suburbanization had already transformed many neighborhoods in the outer boroughs and the continued arrival of poor people and people of color into the city triggered demands from middle- and upper-class New Yorkers to protect their properties (and the city) from devaluation. In a manner similar to the artists who took over abandoned lofts in SoHo and the urban "homesteaders" who renovated brownstones in Brooklyn, city council created new laws and programs to regulate the redevelopment of troubled areas.[78] In 1970, one of the most

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[78] Kenneth Jackson, *Crabgrass Frontier: The Suburbanization of the United States* (New York: Oxford University Press, 1993); Kevin Kruse and Thomas J. Sugrue, eds., *The New Suburban History* (Chicago: University of Chicago Press, 2006); Suleiman Osman, *The Invention of Brownstone Brooklyn: Gentrification and the Search for Authenticity in Postwar New York* (New York: Oxford University Press, 2011); Wendell E. Pritchett, *Brownsville, Brooklyn: Blacks, Jews, and the Changing Face of the Ghetto* (Chicago: University of Chicago Press, 2002); Thomas J. Sugrue, *The Origins of the*

troubled areas in New York had been Times Square. Pressure from Broadway theaters and midtown developers pushed city council members and the Beame administration to use the area as a laboratory for new restrictive measures that would ensure the district generated the right kinds of revenues by protecting real estate development and tourism.

At a moment of professed small and limited government, regulation of nuisance businesses in order to protect the revenue of industries deemed vital to the city's economy (FIRE and tourism) signaled otherwise. Meanwhile, the power brokers steering the city through the fiscal crisis made new claims on city government. Deregulation of finance and real estate at both the local and federal level was met with increasing regulation at the bottom with the most marginalized of city residents facing new rules. Additionally, the Koch administration began shifting some municipal tasks to private actors. The creation of Business Improvement Districts in the early 1980s would slowly lead to a transformation of urban space that gained paced in the 1990s. Private actors representing area property interests began controlling public spaces and effectively privatizing them. They did so by using the new rules and regulations created in the 1970s to manage adult businesses and nightlife in the city: nuisance abatement, anti-loitering measures, zoning, and noise control. Combined with agencies like the DCA, OME, and EDA, private interests sought to protect and expand the revenues from financial services, real estate development, and tourism by heavily regulating and restricting nightlife and adult businesses. Increasingly, the focus of this management centered on quality of life,

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Urban Crisis; and Sharon Zukin, *Loft Living: Culture and Capital in Urban Change* (New Brunswick: Rutgers University Press, 1989).

as articulated by broken windows theory. Quality of life played on the fear of rising crime that continued into the 1980s. Protecting revenues could now also be spun as a public safety issue.

CHAPTER 4
"MILLIONS FOR THEIR POCKETS, BUT NOT A PENNY FOR TAXES:" REVENUES AND (DE)REGULATION

In November 1979, a man named Leroy Carpenter began operating an auto repair shop at 839 Tilden Street in the Bronx. The continued abandonment of the borough along with lax city enforcement afforded people like Carpenter the opportunity to start their own business on the fly. Carpenter's neighbor, Catherine Mottola, felt differently about the upstart businessman and wrote to her local, state, and federal representatives expressing her grievance against a man who, "did not belong." Mottola expressed her frustration with the city's inability to remove him in a letter to Mayor Ed Koch. "He is a menace to the whole block," she wrote. "Is he a privileged person?" she asked.[1] "If I were an affluent person, this case would have been resolved long ago," she lamented in a letter received by the Department of Buildings (DOB) commissioner in October 1980.[2]

Like members of the OME and DLMA, Mottola wanted to control what happened on her street. In addition to the mayor and building commissioner, she contacted the fire, police, and health departments as well as the EPA. Behind the scenes, various department administrators corresponded with one another about the unlicensed auto shop, searching for ways to shutter it and end the stream of complaints. An inspection by the Bureau of Highway Operations came up with nothing and the deputy commissioner had

[1] Letter to Ed Koch, 11/24/1980, Complaints of Mrs. Catherine to DOB, Ed Koch Departmental Subject Files, NYCMA.

[2] Letter to DOB Commissioner Fructman, received 10/7/1980, Complaints of Mrs. Catherine to DOB, Ed Koch Departmental Subject Files, NYCMA.

to inform Mottola that 839 Tilden Street was not in violation of the highways code. An examination of the property records by the Department of General Services revealed that the city had taken 839 Tilden in-rem, but had sold it in April 1979 to a private owner. The persistence of Mottola's letter writing campaign eventually led to repeated inspections by the DOB, a tactic of harassment they had used successfully in midtown to clear out adult bookstores and other sex-related businesses. They eventually issued Carpenter a summons, which he failed to appear for, after which the court issued a warrant for his arrest in June 1980.

Catherine Mottola's letters illustrate the lack of municipal oversight or involvement in day-to-day life in the outer boroughs, such oversight would neither produce new means of revenue extraction or serve to protect valuable revenue streams. In fact, as the Koch administration would soon argue, many of the city's regulations were redundant, antiquated, and senseless. Using New Yorkers' dissatisfaction with city government and the slow recovery, Koch and his staff promoted deregulation as the path to a "streamlined government" that was cost effective and based on commonsense policies. In fact, many of the deregulation proposals helped the industries that city officials hoped to keep and attract further investment in. As the Koch administration worked to pull the city out of the fiscal crisis and put it on a path to prosperity in the 1980s the shadow side of protecting business and tourist revenues became more apparent. In order to protect those revenues, city officials would have to regulate the people and businesses that threatened them.

City officials increasingly relied on criminal violations against nuisance businesses in order to protect revenues from tourism, finance, and real estate development. Over the course of three successive mayoral terms, Koch oversaw an expansion of regulation aimed at businesses considered revenue threatening by city officials. The passage of the city's padlock law that enabled the DOB to shutter commercial spaces along with the expansion of the Nuisance Abatement Law to include auto shops, gave city agents greater power to control the uses of various districts. In addition, the police department's social club task force initiated an era of problematic surveillance concerned with quality of life infractions, building on the Broken Windows Theory popularized by Kelling and Wilson.

The regulation based on protecting revenues that developed in the 1980s offered a paradox of increased government action at a moment of professed limited government and ascendant free market rhetoric. In this period, city officials could have chosen to increase access to business loans, created programs for rehabilitation of commercial space modelled after those that existed for residential space, or considered the needs of both consumers and employees in a period of high unemployment and reduced social welfare programs. Instead, the Koch administration laid the foundation for a more punitive form of municipal regulation marked by uneven oversight and stifled social mobility in their quest to protect revenues from tourism, finance, and real estate – all in the name of building a city that appealed to tourists and businesses.

Ahead of his first re-election bid, Mayor Koch initiated police sweeps to stop or at least deter, crimes that affected quality of life in the city. The argument that quality of life infractions such as graffiti or public intoxication affected the economic health of the city began to gain wider traction in the 1980s. Koch's focus on quality of life corresponded to the entrance of Broken Windows Theory into popular discourse in 1982. George Kelling's and James Wilson's article on order maintenance policing, "Broken Windows: The Police and Neighborhood Safety," appeared in the March 1982 issue of *The Atlantic.* Their argument, that small acts of disorder like graffiti led to more serious crime, drew heavily on their misinterpretation of a 1969 study. That study, conducted by Phillip Zimbardo, tried to explain the social psychology of the perceived breakdown of order in the 1960s.[3] His paper, over 70 pages long, examined multiple theories of deindividuation and dedicated only seven pages to vehicle abandonment, the source of inspiration for Wilson and Kelling. Their main focus drew from a fraction of Zimbardo's section on abandonment that featured a study wherein he placed two cars exhibiting signs of abandonment (open hood, no plates, etc), one in the Bronx and one in Palo Alto, and then waited to see how long it would take before someone stripped the car entirely. This occurred much faster in the Bronx than Palo Alto, and Zimbardo judged that this was due to the anonymity of large city living.[4]

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[3] Zimbardo was attempting to build a model of deindividuation, a social psychology theory of "the process by which certain antecedent conditions trigger cognitive processes that result in the 'release' of counter-normative behaviors." As quoted in, Talia Sandwick, "Spreading Disorder: Tracing the Social Psychological Roots of Broken Windows Theory," (June 2014) unpublished paper in author's possession.

[4] Ibid.

Kelling and Wilson distorted two features of Zimbardo's study to develop the core argument of broken windows theory. Zimbardo had used signs of vehicle abandonment as evidence of a sign of physical disorder. Kelling and Wilson added to this, claiming that "releaser cues" (abandoned vehicles, graffiti, or broken windows) also signaled social disorder and that signs of physical and social disorder led to increased rates of crime. Even more significantly, they pointed to an increased *fear* of crime stemming from this disorder, or as they put it in the article, the fear of being bothered by disorderly people.[5] Building from Zimbardo, Kelling and Wilson suggested that "untended behavior" led to a breakdown of community controls. They gave the example of a stable neighborhood where families cared for their homes and looked after each other's children:

> "A piece of property is abandoned, weeds grow up, a window is smashed. Adults stop scolding rowdy children; the children, emboldened become more rowdy. Families move out, unattached adults move in. Teenagers gather in front of the corner store. The merchant asks them to move; they refuse. Fights occur. Litter accumulates. People start drinking in front of the grocery; in time, an inebriate slumps to the sidewalk and is allowed to sleep it off. Pedestrians are approached by panhandlers."[6]

These developments did not make serious crime inevitable, but could lead residents to "think" that crime was on the rise and modify their behavior, thus weakening social controls by avoiding the streets and not getting involved in reprimanding problematic behavior. The solution to this cycle was to restore order-maintenance as a key focus of

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[5] George L. Kelling and James Q. Wilson, "Broken Windows: The Police and Neighborhood Safety," *The Atlantic* (March 1982) https://www.theatlantic.com/magazine/archive/1982/03/broken-windows/304465/ (accessed January 24, 2018).

[6] Kelling and Wilson, "Broken Windows."

the police, free from rules developed to, essentially Kelling and Wilson argued, protect criminals. "For centuries," they wrote, "the role of the police as watchmen was judged in terms of attaining a desired objective," as opposed to complying with appropriate procedures.[7] Targeting one drunkard on the street they conceded may seem unfair, but left uncheck, that one drunkard would grow to a hundred – the needs of the group needed to be considered over equity.

Even if we account for the issues inherent in the FBI's Uniform Crime Reports used to document national crime rates, that rate fluctuated heavily at the end of the twentieth-century, the key to Broken Windows and quality of life policies was its emphasis on the *fear* of crime.[8] What is important here is that BWT accounted for increased *fear* of crime irrespective of actual crime rates. For city officials panicked over the fiscal health of New York, fear of crime translated into decreased investment, a decline in tourism, and most importantly, a potential reduction in those critical revenues. Thus, crime control became a part of revenue protection. Based on Wilson and Kelling's arguments, street vendors, sex workers, unlicensed auto garages, and loud nightclubs represented physical and social disorder; they were the litter, the rowdy teenagers, and the slumping drunk that created fear. These visible signs of disorder had to be eradicated

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[7] Ibid.

[8] As other scholars have noted the increase in crime rates was affected by the creation of new crimes as well as the likelihood that more people reported crimes in response to law and order rhetoric and the perception of increased crime based on fear of crime. See for instance, Elizabeth Hinton, *From the War on Poverty to the War on Crime: The Making of Mass Incarceration in America* (Cambridge: Harvard University Press, 2016) and Heather Ann Thompson, "Why Mass Incarceration Matters: Rethinking Crisis, Decline, and Transformation in Postwar American History," *Journal of American History* 97:3 (December 2010): 703-734.

to ensure quality of life and most importantly, the revenues generated from tourists and the FIRE sectors. In the quest to protect revenues, tourism became a key feature of New York's revival and shaped the way the state re-oriented itself in the wake of the fiscal crisis.

Continuing the presence of state control established during the fiscal crisis, Governor Carey and his administration in Albany added tourism management to their expanding portfolio of city oversight. As Miriam Greenberg points out, the city's Office of Economic Development (OED) and the State's Department of Commerce (DOC) underwent similar restructurings during and after the city's financial crisis. During the crisis, the OED shifted focus to tax reform and marketing New York in an effort to rectify the city's struggling finances through increased private investment, a state level office similar to the city's EDA that played a key role in passing harsher regulations on street vending. In 1977, the DOC transformed into an agency tasked with managing "corporate interests" (deregulation and promoting international commerce) and marketing and tourism.[9] At the behest of Governor Carey, the DOC engaged in market research to establish a plan for marketing the city to tourists.

The way in which the city measured tourism signaled a shift in government priorities. Officials measured the success of the tourist industry not in the number of jobs created or the income generated, but the revenues produced. The state Convention and Visitors Bureau claimed that $1.5 billion spent by tourists would result in $4.5 billion in

[9] Miriam Greenberg, *Branding New York: How a City in Crisis was Sold to the World*, (Routledge: New York, 2008), 196.

revenue or roughly 25% of the city's total revenue in 1976. These figures were based on market research that argued every dollar spent by a tourist turned over three times in the local economy. However, between 1967 and 1977 the number of hotel employees in the city dropped by half.[10] Here lay the issue with measuring economic success via revenue, the tourism industry was not adding jobs, it was adding revenue and meanwhile, staff were let go.

Job loss meant a greater concentration of returns in the hands of a select few and the presence of more unemployed New Yorkers in a period where losing a job felt catastrophic; there simply were not as many jobs that an unemployed person seek to fill. Following what appeared to have been a successful bicentennial celebration and Democratic convention in 1976, the spectacle of 1977, with the Son of Sam, the Blackout, and the World Series exposed the rough face of a city on the verge of economic collapse. City and state authorities in conjunction with private interests had focused on polishing New York's image at the expense of jobs, services, and housing. They had worked overtime to clear the streets around Madison Square Garden and midtown of sex workers and other so-called nuisances. But the public images of the city a year later undermined the polished image that had been created at the expense of the city.[11]

Influenced perhaps by the negative press generated by images of New York City on fire during the blackout, the marketing research firm of Yankelovich, Skelly, and White, Inc (YSW) told the DOC they needed to "'purge,' the city once and for all of the

[10] Greenberg, 178.
[11] Greenberg, 191.

'negative associations' held by businesspeople and tourists.'"[12] YSW emphasized the potential draw of Times Square, with Broadway listed as one of the most popular tourist attractions in the country. Their reports were used to lobby for tax reductions and deregulation in an effort to make the city more business friendly. In addition to courting private investment, YSW and other marketing firms told city and state agencies that a "visual purge" of negative connotations should occur, including a de-emphasis on crime, the outer boroughs and most especially the South Bronx, and the city's working-class roots and unionized workforce. To carry out this purge and restructuring, the city and state increased spending on tourism, an increase that was accompanied by a 20% cut overall to the city's budget stemming from the need to guarantee federal support.[13]

In order to ensure continued federal aid to the city, Koch had to balance New York City's budget. While many in Washington and Albany believed it impossible, Koch eventually proved them wrong. His efforts to balance the budget led him to investigate every way in which the city could cut costs. Koch bought the argument that regulation caused inflation and declines in productivity, even going so far as to support claims that regulation was a major factor in the city's unemployment. Pro-business groups and politicians called for deregulation to unleash the power of business. Once the free market operated without the costly burdens of government oversight, consumer prices would go down, employment would go up, and New York City would rebound. In the meantime, on top of deregulation proposals, Koch offered generous abatements to

[12] Greenberg, 195.
[13] Greenberg, 200.

corporations as incentives to stay in the city. This included a $20 million abatement for AT&T, $7 million for a new office building for IBM, and roughly $50 million to Donald Trump.[14] That both local and national calls for deregulation and cost-effective government occurred while the Senate investigated revenue lost in the underground economy was no coincidence. Despite insistence on limited government, most Americans still expected basic services, and with tax cuts, abatements, and loopholes for corporations and the wealthy, the money to fund those services had to come from somewhere. Increasingly it came from some of the most disadvantaged.

Physical Nuisances

In complaints to Mayor Koch, New Yorkers repeatedly mentioned the trash, the weeds, the lack of lights, and people who prevented them from enjoying the city's streets and parks. One lawyer working downtown said he could no longer take pleasant strolls through Battery Park as he had for many years because of the difficulty walking "through all of the trash and through the marijuana groupies."[15] Increasingly conflated with the "marijuana groupies," drug dealers, and 3-card monte players, were street vendors who were seen by business and neighborhood associations as harbingers of decline, bringing with them all the problems of ill-managed urban space. According to these groups, like the DLMA, the problem of street peddling was always getting worse and epitomized the failures of municipal government and the judicial system. As support for quality of life

[14] Mary Papenfuss, "Needy and Greedy Clash in Tax Debate," *The Westsider,* December 24, 1981.

[15] Correspondence, Jack P. Jefferies to Ed Koch, October 12, 1978, DLMA, RAC.

controls took shape and gained traction, the arguments used by anti-vendor business associations had serious consequences.

The executive vice president of the Fifth Avenue Association, Michael Grosso, who had been involved in removing vendors from city streets since before the 1964 World's Fair, questioned the "rights" of street peddlers. Grosso claimed that, "streets and sidewalks are provided for the accommodation of pedestrians and vehicles," questioning where "in the Constitution" did it grant people the "right to conduct 'commerce' on public thoroughfares."[16] A battle for the right to the city was being waged between street peddlers and the groups aligned against them.

In 1977, city council passed a General Vendors Law and in 1979 they amended that law, setting a ceiling on the number of general peddling licenses available from the DCA. As previously discussed, the state supreme court had declared an outright ban on peddlers to be unconstitutional, but had upheld the city's right to regulate peddlers on the basis of health and safety needs. These justifications would take precedent in the years ahead as both city council and business associations like the DLMA fought to impose harsher regulations. In the 1977 version of the peddler's law, general vendors were banned in all of midtown Manhattan between Second and Ninth Avenues to the east and west and 30th and 65th streets to the north and south. This ban was justified as necessary to ensure safety in crowded areas and prevent the piling up of refuse. In addition, general

[16] Excerpt from letter to Bruce Ratner from Michael Grosso in "News from The Fifth Avenue Association," October 21, 1978, DLMA, RAC.

peddlers could not vend in all C4, C5, and C6 zones – some of the fancier commercial districts in the city and the ones with more potential customers.

The new law also gave the DCA commissioner the power to ban additional streets after holding hearings instead of requiring new restricted streets to be approved by city council, thus shortening the process of imposing new bans.[17] Commissioners would only be required to hold a hearing to consider adding to areas blocked to peddlers before restricting them. Furthermore, police could now seize a peddler's goods if they were found operating in a restricted area. The amendments also shortened the licensing period from two years to one, meaning peddlers would have to stay on top of their renewals or face fines and punishments that would bar them from obtaining a license again. All of these actions served to demotivate peddlers from getting licensed by the city. Food vendors, who faced slightly less scorn from business associations, fared better in the legal revisions. They would now be overseen by the Department of Health and had a higher cap on licenses than general vendors.[18]

Once seen as sources of new revenues, city officials began treating street vendors as threats to the revenue sources they sought to protect. By banning the streets they could work on, officials hoped to appease powerful business interests and residential groups, but despite the changes, the number of vendors appeared to still be increasing. Business

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[17] Memo re: Enforcement of General Vendors' Law, July 9, 1979, DCA, Ed Koch Departmental Subject Files, NYCMA; and copy of "Local Law to amend administrative code re: general vending," with comments, not dated, DCA, Ed Koch Departmental Subject Files, NYCMA

[18] Press Release, August 17, 1979, DCA, Ed Koch Departmental Subject Files, NYCMA.

and neighborhood associations viewed the continued spread (in their words, "proliferation") of street vending as a sign of urban anarchy. If city hall could not manage street vendors, how could they manage more serious problems?[19] Leading up to the revision of the general vendor regulations in 1979, members of the DLMA heavily lobbied the Koch administration and the police department to manage what they saw as a continued "invasion." Justin Murphy, the new president of the DLMA, wrote to Police Commissioner McGuire complaining that, "our downtown streets and sidewalks have produced what looks to us to be an even larger than last year's bumper crop of peddlers."[20] Members continued to frame their concern around vehicular congestion and pedestrian safety and to emphasize their position as "legitimate" contributors to society, whereas the "fly by night hustlers" did not contribute to "any government agencies and degrade these streets which are close to the greatest Financial District in the world."[21]

In addition to the lobbying efforts of the members of business groups, neighborhood associations joined the fray. The Waverly Block Association in Greenwich Village urged all members to engage in an aggressive letter writing campaign to spur action against street peddlers. "We found that we are all mad as hell…let's act together and keep on top of this. This problem is solvable!"[22] Block association members were incensed by the increase in peddlers along Sixth Avenue between Washington and

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[19] "Good Luck, Peter Solomon, Good Luck," *Metro Merchant,* October 1978, DLMA, RAC.

[20] Correspondence, Murphy to McGuire, April 14. 1979, DLMA RAC.

[21] Correspondence, Nassau Street Merchants Association to Ed Koch, July 7, 1978, DLMA, RAC.

[22] Correspondence from Lillian Richman, Secretary, Waverly Block Association, July 21, 1978, DLMA, RAC.

Waverly Place. Like their counterparts in the DLMA and Fifth Avenue Association, members of the WBA wanted to control the use of public space in their neighborhood. These groups repeatedly claimed in their protests to city hall that street vendors cheapened and debased the areas in which they operated, paid no taxes or rent, and competed unfairly with local businessmen. When the WBA was told by a city hall community liaison that street vendors added to the cultural and ethnic uniqueness of the Village and reminded them that their influx was seasonal, the president of the association exploded. In an angry letter to Mayor Koch, he referred to peddlers as an infestation, claiming that an "unhealthy and unsafe environment," comingled with them – riff-raff, pickpockets, drug dealers, and gamblers. "These people" he said, "in all likelihood don't vote here, don't pay city, state or federal taxes, don't obey the laws," whereas members of the WBA did vote and pay taxes and therefore expected their elected officials to "carry out our wishes."[23]

The language used by anti-vending opponents paired with the caps on licenses and further restriction of streets signaled a partial shift in city policy toward street vendors. As will be discussed in the next chapter, the Koch as well as the Dinkins administrations continued trying to extract revenue from managing street vendors. Attempts to regulate vending as a means of protecting tourist and business revenue (as well as appeasing residents to stem further suburban flight) while simultaneously trying new means of extracting revenue from vendors shows the preoccupation with revenue by

[23] Correspondence, Alfred Andriola, President Waverly Block Association to Ed Koch, August 28, 1978, DLMA, RAC.

city officials. In the 1980s and early 1990s it continued to be unclear what would help the city recover and how that recovery might look, so any and all tactics remained on the table. Regulation of adult businesses, nightlife, and peddling was just one way of working to protect business and tourist revenues. Another tactic gaining steam nationally as well as locally was deregulation of the very industries officials hoped to keep in the city.

As city officials increased regulation of street vendors in order to protect business and tourist revenues, the Koch administration proposed a rollback in other municipal regulations. The actions taken against street peddling conflicted with a license review task force Koch created to assess each city agency's licensing procedures. The goal of this task force was to thoroughly catalogue municipal regulation policies in an effort to curb excess municipal oversight at the very moment that new, and frequently more punitive, rules were being applied to vendors. The deregulatory aspect fit with a nationwide shift occurring at the same time wherein, anti-corporate sentiment, if not replaced, was at least joined by anti-government sentiment in the wake of the oil crises of the 1970s. Those energy crises revealed the limitations of government power just as, one could argue, the continued presence of vendors and peep shows did in New York City. Politicians appeared ineffective in the face of rising oil prices and stagnate wages, which led the public to look elsewhere for solutions. The public no longer saw unions or the government as guarantors of their best interest, but instead looked to a neutral, "market"

that could promote fairness and equality. This would require a loosening of government oversight to unleash the benefits of the free market.[24]

In response to alleged "public outcry over unnecessary government red tape," Koch instructed every city agency to conduct a review of its regulatory actions. The goal was to eliminate unnecessary, antiquated, or unenforceable policies and ensure that regulation was carried out in the "most efficient manner possible."[25] These agency reviews would then be compiled in a larger paper arguing the merits of deregulation. In prepared remarks delivered to city council ahead of a presentation on agency findings, Koch argued that many of the regulations and statutes on the books did not improve quality of life in the city, but rather, shifted the cost of compliance to the consumer and created a situation of overregulation, ultimately threatening the city's budget. In the final report, "Deregulation: The Need for a Streamlined Government," the administration further argued that regulations burdened businesses in the city. The administration claimed that by reducing the city's costs of enforcement while simultaneously "free[ing] business to compete in the absence of rules which foster inflation," the city could attract and keep industry while continuing the cost cutting measures necessary to adhere to Washington's budgetary requirements for continued federal assistance.[26]

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[24] See for instance, Meg Jacobs, *Panic at the Pump: The Energy Crisis and the Transformation of American Politics in the 1970s*. New York: Hill and Wang, 2016.

[25] Deregulation Summary Delivered to City Council, July 18, 1979, DCA, Koch, NYCMA.

[26] Deregulation: The Need for a Streamlined Government, prepared by Deborah E. Jordan, May 16, 1979, DCA, Koch, NYCMA.

The administration made the case that "government abstention" from regulation would allow the city to concentrate resources into areas that mattered. Moreover, the "Deregulation" report argued that many regulations failed to generate significant revenues because fees had not been updated since their original enactment. There was both a desire to re-assess fee structures to accrue more licensing revenue and slim down municipal oversight. This particular report characterized the uneven policies guiding municipal regulation of the underground economy. City agents wanted to increase revenues through the expansion of existing licensing fees and fines or the creation of new ones. At the same time, administration officials and city politicians felt pressure to regulate certain industries at the behest of powerful constituents. Two suggestions from the DCA pertaining to street vending and cabaret licensing illustrate these tensions and reveal the growing role being played by police in oversight.

Cost-effective regulation, better described as cheap government and limited oversight of industry, had been the primary goal of the individual agency reviews ordered by Koch. The master report revealed the acceptance at City Hall that streamlined government had replaced the notion that government regulation could better society. Instead, a smaller, more cost-efficient government would better society by stepping back. Here we see the paradigm shift described by Joshua Freeman – the move from a municipal government concerned with social welfare to one focused on business and tourism. While this could have simply been an extension of the decline in oversight brought about by the fiscal crisis, the Koch years were also marked by a dramatic

increase in regulation of the underground economy and the city's marginalized populations.

Frequently that increased regulation came through policing and punitive fines. For instance, the administration argued that if "criminals" were using discotheques to launder money, as had been charged, then law enforcement agencies should intervene in place of the DCA. A similar agency shift had already begun to occur in street vendor management as the Economic Development Administration dictated vendor policy over the DCA. This signaled a shift in municipal narrative. Street vendors were less an issue of consumer affairs and more an issue of economic and business development. As part of Koch's agency review, DCA Commissioner Bruce Ratner catalogued all of the industries under their purview including the various licensing requirements they had inherited when the agency had been formed.

When John Lindsay created the DCA in 1969, it was via the merging of the Departments of Markets and Licensing. This left the new agency with a large system of licensing rules accrued since the early twentieth-century. Over the years, those regulations had been implemented for all manner of things, from supervising "dens of iniquity such as bowling alleys;" to protecting members of the public from obscenity in movies and against "deceptive" business practices such as those used by pawnbrokers; to regulating health and safety; to "dispens[ing] privileges to deserving persons," such as sidewalk stand licenses; and to raising funds for the city's operating expenses.[27] When

[27] License Review Task Force Preliminary Report, October 1978, Department of Consumer Affairs, Koch, NYCMA.

the state legislature created the Department of Licenses in 1914 the intention had been that one day the department would oversee all licensing in the city. Instead, as with Hack and Cabaret licensing, the police and other departments frequently gained licensing oversight. As discussed in Chapter One, giving the NYPD jurisdiction over cab and nightclub licensing had resulted in problematic ID requirements, punitive measures, and police corruption. Ratner proposed further dispersal of licensing functions from the DCA to other agencies like the Department of Sanitation, but for many others suggested the police be in charge.[28]

Part of this rearranging of jurisdiction arose from staffing limitations at the DCA. When the Department was created it had over 400 personnel. That number had dropped due to the fiscal crisis' austerity measures to 250 staffers in 1978. The DCA lacked the manpower necessary to carry out all of its designated functions. Shifting duties to other city agencies was not a legitimate solution either as many of these departments had lost staff during the crisis and were still struggling to bring their budgets in line with Koch's plans. A more concerning shift arose from proposals to move several licensed sectors to the police department, including general vendors. Ratner and his staff suggested eliminating licensing and implementing "strict zoning and confiscation measures to be enforced by the police." The elimination of licensing never came to pass, but the Koch administration did adopt more regulated streets and implemented seizure practices to be carried out by police.

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[28] License Review Task Force, October 1978. These included locksmiths, general vendors, and second-hand dealers.

In addition to suggestions for dispersing licensing oversight the report assessed the value of the DCA's licensing laws. Ratner concluded that most of the laws did not "restrict entry…significantly" to the jobs and businesses covered, but worked to remove "persistent offenders from the marketplace."[29] Thus, they did not impede the functioning of the free market. However, Ratner did deem some licensing functions anachronistic and subject for revocation. One of the categories of licenses considered anachronistic were those for public dance halls and cabarets. The report claimed that the Cabaret law had been implemented to "prevent the illegal use of liquor and stop the Mafia and other undesirables" from operating establishments that fell within the law's definition of a cabaret. These original aims were no longer relevant, and so Ratner pushed for the elimination of licensing for public dance halls and cabarets. He argued that fire safety was now the primary concern and safety checks could be managed without a licensing apparatus. At the time of the DCA's suggestion that cabaret licensing be ended, the fee for obtaining a license ranged from $300 - $500 for a two-year period. In 1978, this included 34 public dance halls and 395 cabarets. In the previous year the DCA received 281 consumer complaints, but these numbers only captured licensed establishments. As with vendors, Ratner and his staffers argued that an end to licensing could bring informal spaces "above-ground" and allow fire department personnel to conduct safety inspections without businesses' risking action for operating without a license.[30]

[29] License Review Task Force, October 1978.
[30] Ibid.

Most significantly however, Ratner and other officials at the DCA viewed the cabaret law as wasteful. In a report and recommendations on "redundant enforcement" license laws, members of the license review task force at the DCA stated that it was "unwise" to "pour funds" into a licensing scheme they viewed as "costly and complex…and which appears to be unnecessary and anachronistic."[31] Licensing of clubs failed to ensure the safety, as had been demonstrated by the fires at the Blue Angel Café and Puerto Rican Social Clubs a few years prior. With the passage of new fire safety rules in Local Law No. 41 (discussed in Chapter Three), Ratner argued that clubs and discos were better served by inspections carried out through the fire and buildings department and that as a consumer agency, the DCA should not be in the business of building safety maintenance. To that end he introduced bills to city council in the spring of 1979 repealing cabaret licensing.[32] Just as DCA Commissioner Myerson Grant had suggested that time and place restrictions coupled with fines kept vendors from getting licensed, Ratner realized that cabaret licensing rendered many spaces more dangerous. The critical aspect was fire safety, but if the Fire Department had no record of space because it was unlicensed they could not take action to remedy hazardous situations. As with Myerson Grant's attempts overhaul vendor regulation, Ratner's proposal to abolish the Cabaret Law was met with swift opposition and the bills never made it past city council committee.

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[31] License Review Task Force, Report and Recommendations on Redundant Enforcement License Laws, January 1979, Department of Consumer Affairs, Ed Koch Subject Files, NYCMA.

[32] Memo: March 16-31, 1979 DCA Activity Report, DCA, Koch Subject Files, NYCMA.

In their case for deregulation, the Koch administration repeatedly cited the number of inspections made by various agencies; information that came from the agency reviews ordered at the start of his first term as mayor. Using DCA data, the administration's report noted that the Highway, Health, and Fire departments along with the Bureau of Gas and Electricity conducted 556,971 inspections each year.[33] These inspections, they argued, were essentially useless due to the limited capacity to enforce regulations. It was certainly the case that many regulations, added to the administrative code over the years, were ineffective, redundant, or prohibitory. However, arguments against regulation that used a lack of funds as justification ignored the large untapped revenue streams from finance, insurance, and real estate. In order to keep these industries in the city, officials offered them generous tax abatements, energy assistance, and other financial inducements.

The focus on the costs of regulation and attempts to make it pay for itself through fines and fees was not limited to New York City. The federal government was also slashing regulations in the name of unleashing business, reducing inflation, and saving average American consumers. A *Time* magazine article from 1978, bemoaned the costly burden of new regulations, such as automobile safety devices that added "an average $600 to car prices." Arguing that companies had to spend capital on devices to "clean the air and protect workers" instead of investing in "modern machinery that will produce goods more cheaply and efficiently." While the author conceded that some regulation would always be necessary, he claimed that the era's excessive regulations stifled

[33] "Deregulation," May 1979, NYCMA.

business investment, made inflation and unemployment worse, and reduced American competitiveness. Public sentiment appeared to be shifting away from support for government oversight and toward unleashing the power of the "free market."[34]

While the Koch administration suggested the elimination of unenforced regulations, in truth, many of these codes and licenses were shifted out of city agencies into the realm of the police department. In 1983, for instance, despite continued calls to end the Cabaret Law, the police department stepped up enforcement against unlicensed spaces, in particular unlicensed (i.e. lacking a cabaret license) social clubs, which they argued were bars disguised as non-profit cultural establishments.[35] Aggressive police action against clubs would have deadly consequences as the decade drew to a close, as will be discussed in Chapter Five.

What started as a way to manage Times Square's sex industry with nuisance abatement soon spread to other activities deemed "disorderly" by the OME, the Times Square Redevelopment Authority, and the Koch administration. Much of this was due to the city's success in clearing sex workers off the streets of Manhattan, pushing all but the most marginalized workers into private spaces. Sex workers continued to ply their trade in many of the older industrial parts of the outer boroughs such as Red Hook in Brooklyn and Hunt's Point in the Bronx, but by the 1980s many more relied on advertisements in

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[34] Jay Palmer, "The Rising Risks of Regulation," *Time* November 27, 1978.

[35] 1983 was the year the police department created an internal Social Club Task Force to try and apply nuisance abatement and the padlock law to various entertainment spaces. See Chapter Five.

the back of weeklies, specialized lists available at adult bookstores, and referrals. In many of the cases brought against alleged prostitution fronts, city agencies did not find substantial evidence of prostitution in the businesses they shuttered. Instead they relied on the NAL to allow "obscenity" violations as a means of getting an injunction. If neighbors complained the city took it as evidence of something and moved to shutter the offending business, because municipal courts increasingly ruled in their favor. As the city continued to limit the ways in which sex work could be done it further marginalized lower-income women, pushing them to work on the streets in less secure areas or forcing them to work within the criminal underworld.[36]

Koch's continued political and financial support of the OME allowed the office to expand the arsenal of legal tools available to city agencies tasked with cleaning up commercial and residential districts. The OME's main tactic relied on nuisance abatement to gain injunctive relief (a judge would grant an injunction against a particular business barring them from operation) and civil penalties. The targets were buildings with "illegal uses"—prostitution, gambling, narcotics, illegal construction, or zoning violations.[37] These illegal uses frequently overlapped and the office would attempt to use whichever means were available to shutter spaces. In the case of a swingers' club in Murray Hill, known as both "Midnight Interlude" and the "Church of Sharing," the OME closed the space by claiming that "female parishioners were prostitutes" and that the

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[36] In 1984, for example, before the OME made their big push on private spaces, the NYPD made 17,000 arrests for prostitution, the majority of which came from women working on the street-further stigmatizing and marginalizing lower-income sex workers.

[37] Memo re: August 1985 Report and Litigation Update, Office of Midtown Enforcement, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA.

video games in the "church" violated the Zoning Resolution. The video games were allegedly offered as an avenue to inner peace and spiritual redemption along with sex. In response to its closure, Deputy Mayor Nat Leventhal, sarcastically expressed his disappointment to OME commissioner Carl Weisbrod, writing that he would "now have to find some other place to spend my Sunday mornings." In Weisbrod's quest to shutter the "church" he had tried several tactics, with the NAL's prostitution clause and zoning regulations ultimately working. Neighbors of the church/club had also complained to the city about the "aggressive" handbill tactics employed to garner customers – but city laws on handbill passing were too weak. Instead the OME relied on community complaints and argued that other establishments closed through nuisance abatement had been hiding nefarious activity, meaning a similar business would be less likely to fight the city in court.[38]

In December 1985, the Office of Midtown Enforcement (OME), still under the direction of Carl Weisbrod, succeeded in shuttering a major scourge to the real estate interests behind the redevelopment of Times Square: Plato's Retreat. Citing evidence of high-risk sex at the alleged swingers club, the OME succeeded in bring nuisance complaints against Plato's Retreat, leading to its closure. As would soon be the case in Queens, Plato's Retreat closed because the city's surveillance and harassment affected business. Here too the OME and city lawyers developed a tactic that would be successful in their case against social clubs in the early 1990s: close a business and take the chance

[38] Memo, July 7, 1983, Office of Midtown Enforcement, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA. Memo re: June Report, July 5, 1983, OME, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA.

that the owner would not appeal. By acting first and dealing with the legality of their actions second, city officials could bank on the fact that smaller businesses would lack the resources or information to fight back. Even when a business did appeal, as Plato's Retreat did (and had the city's Temporary Closing Order lifted), the effort often proved insurmountable. By the end of 1985, Weisbrod had succeeded in reducing the number of sex-related businesses in midtown by more than half, from a total of 121 in 1977 to 53.[39]

Building on the success in midtown, Koch expanded the OME's jurisdiction to include Queens. Using lawsuits citing nuisance abatement over community safety concerns the office went after what they termed "illegal" massage parlors – fronts for prostitution.[40] It does appear that a fair number of the establishments targeted by the OME were selling sex. What is particularly striking is the ways in which these places had adjusted their practices to avoid detection by city officials. According to Daly, sex-based massage parlors had moved into residential buildings to try and blend in. They stopped passing handbills as they had in the 1970s and advertised in the back of magazines and newspapers. On account of these tactics, Daly said that the OME relied on nuisance complaints from neighbors to identify suspect locations.[41] While the number

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[39] The majority of "sex-related businesses" in midtown were concentrated around Times Square and comprised, on the majority, adult movie theaters and bookstores/peep shows. The OME's greatest success came in the shuttering of massage parlors, with only two still remaining open after their crackdown (a drop from twenty-seven in 1977). Memo re: November 1985 Report; and December 1985 Monthly Report, Office of Midtown Enforcement, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA.

[40] Howard French, "New York City Cracks Down on Prostitution," *New York Times,* December 28, 1986.

[41] Ibid.

of parlors shuttered by the OME was relatively small, a total of eighteen by mid-1986, the real success lay in building up case law and using zoning and state licensing requirements to bolster the power of city agencies to shutter so called nuisance businesses.[42] Even more, the threat of disruptive inspections and the levying of fines led many property owners to stop renting to the types of businesses likely to bring scrutiny as doing so was no longer as lucrative an investment.

The city's use of legal means to shutter businesses was not without setbacks. The New York Court of Appeals ruled in favor of a topless bar in Buffalo, New York in 1986, which limited the broad application of nuisance abatement and the padlock law in New York City. However, two Supreme Court rulings on zoning ordinances in Detroit, Michigan and Renton, Washington had allowed both cities to restrict businesses through zoning if certain criteria were met. These rulings would shape future actions taken against the city's adult businesses. Beginning in the 1990s, City Hall would focus on zoning as the primary tool for regulating these businesses out of existence. In this way, it would not matter whether a peep show or massage parlor were licensed or not, the business category would function as the cause for removal.[43]

The clearance of sex-related businesses from midtown in this period used municipal regulation as a form of urban renewal, paving the way for what city officials

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[42] Memo re: March 1986 Report, Office of Midtown Enforcement, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA. By April, the OME had closed twelve parlors via court action and six via repeat investigations, bringing the total to 18 in Queens; Memo, May 1986 Report, Office of Midtown Enforcement, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA.

[43] Richard Perez-Pena, "Plan to Restrict Sex Businesses May Be Flawed, Law Experts Say," *New York Times,* September 18, 1994.

and boosters hoped would be a renaissance of midtown Manhattan. The use of nuisance abatement and the padlock law contrasted with earlier renewal tactics, notably those used by Robert Moses to remake vast swathes of the city via eminent domain. Without access to federal monies for physically remaking the city, the Koch administration used local laws to remove undesirable people and businesses from New York's most lucrative districts. Postindustrial urban renewal relied increasingly on policing and protecting corporate and tourism-based revenues.

City officials also faced an auto theft problem in the city that threatened efforts to foster the right image of the city for business and tourism. By 1982, a car was reported stolen every five minutes according to police data. The NYPD's Auto Crime division claimed that $400 million worth of stolen vehicles passed through the city's underground car theft rings, where stolen cars were stripped for parts, sold intact via the classifieds, or in some cases were allegedly shipped to South America. The police struggled to convict anyone of the thefts; in 1981 motor vehicle thefts in the city reached a record high of 109,000, while statewide only 19 were sentenced to prison for that crime. Efforts by officials to deal with car theft soon focused on closing down unlicensed garages and "chop shops" as critical to efforts to stem the tide of thefts and prevent any capital flight that might result from auto crimes. The commander of the Auto Crime division argued that the industry did not rely solely on chop shops, but that thieves used semi-legitimate body shops, service stations, used car lots, and junkyards. This claim, that semi-formal commercial

spaces facilitated auto thefts, spurred city council into action toward managing the growing number of auto thefts.[44]

One spot in the city became particularly problematic: East Gun Hill Road in the north Bronx. The street ran near Co-op City, a massive, middle-income housing complex where many Bronx natives had moved to in their flight from south Bronx neighborhoods in the postwar period. In addition to the possibility that auto wreckers along Gun Hill road were scrapping stolen cars, neighbors accused the shops of illegal dumping and destruction of the neighborhood. City councilman Joseph Savino took up the task of investigating the unlicensed auto wreckers and illegal dumping occurring in the neighborhood and found that some of the shops were being paid by dumpers to deposit trash. Moreover, because the area was not zoned for auto wrecking, Savino argued their very existence was illegal and pressed for city and state agencies to remove them. Local businesses claimed that the dilapidation of the area contributed to a loss of customers, but when owners confronted the auto wrecking shops there were reportedly threatened. The local fire station said that on account of the fires breaking out in the garbage strewn lots, their services were being diverted from Co-op city and the surrounding residential neighborhoods. Not only were the auto wreckers cited as illegal squatters, but they were diverting valuable city services from the local community.

Savino used this narrative to press the DOB and the state Department of Motor Vehicles to issue summonses to the auto shops. When an agent of the DMV tried to

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[44] Barbara Basler, "Car Reported Stolen Every Five Minutes on New York Streets," *New York Times,* April 18, 1982.

deliver those summonses he only succeeded in passing them along to five establishments, because as he noted, "you can't issue summonses when nobody's there." When word spread of city and state departments issuing summonses many of the owners and workers had hidden.[45] This should not have surprised city agents. Skirting the rules meant avoiding detection, the city could not put surveillance on you if they did not know who you really were or where to find you. As long as police resources were limited and vacant land and buildings abundant, it would be easier to move along and set up shop again elsewhere or continue hiding from city authorities in the hopes that they would eventually be diverted elsewhere.

That hope would be short lived, however, as city politicians continued creating new legal restrictions. In 1983, city council voted 40-0 in favor of an amendment to add chop shops (as well as smoke shops) to the city's Nuisance Abatement Law. Prior to the inclusion of chop shops, they could only receive summonses, but after the police could get court injunctions, collect fines of up to $1000 a day for violations or force property owners to remove "offending tenants." The increased ease of gaining court approval for search and seizure and the ability to remove property rendered the tactic of avoidance less appealing. It was still possible to avoid court fines by giving a false name or disappearing, but it had become more likely you would lose tools, machines, or goods in the process. While the number of places shuttered by the NAL - chop shops, smoke shops, hotels and businesses accused of "lewd behavior" - was relatively small by comparison, the real power of nuisance abatement lay in the power accrued by municipal

[45] "How Auto Wreckers Destroy Neighborhood," *City News,* July 27, 1978.

agencies through this legislation. The growing list of businesses susceptible to nuisance charges gave agencies like the Office of Midtown Enforcement or the NYPD's Auto Crime division expanded powers to shutter commercial spaces.[46]

In addition to the expansion of the nuisance abatement law, city officials created another powerful tool for controlling space in New York: the padlock law. Deputy Mayor Nat Leventhal called it, "one of the best civil enforcement tools available to the city."[47] In December 1982, city agents issued 60 padlock citations to stores in midtown alone. The law, which had gone into effect in February of that year, allowed city agents to padlock premises or remove property from certain businesses including sidewalk cafes, cabarets, second hand dealers, and midtown electronics stores. Working with the DOB, the DCA intended to use the law to "stop illegal, unlicensed business activity," in the city.[48] In addition to sealing businesses and seizing property offered for sale to the public, the DCA could impose fines of up to $100 per day for each unlicensed activity. Building on prior licensing enforcement and the successes and failures of the general vendor law, the padlock law was designed to physically and financially hurt unlicensed businesses – to physically prevent them from operating and impose a string of fines that added up to hefty sums. Staff at the DCA believed that affecting the bottom line was the best way to stop unlicensed businesses.

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[46] David Dunlap, "Council Bolsters Law to Penalize Nuisance Stores," *New York Times,* April 27, 1983.

[47] Memo re: December Monthly Report, January 7, 1983, Department of Consumer Affairs, Ed Koch Departmental Subject Files, NYCMA.

[48] Simon Gourdine, Commissioner, "New York City Department of Consumer Affairs, *The Padlock Law:* First Annual Report," March 10, 1983, Department of Consumer Affairs, NYCMA.

The padlock law implemented new practices for city agencies that focused on maximizing the effect of enforcement while minimizing its costs. DCA staff hoped the law would expedite the sentencing process and block businesses from utilizing stalling tactics to drag out prosecution and add to the city's costs. DCA staffers hoped the law would lead more businesses to obtain licenses from the agency and that their intention was not to eliminate so-called nuisance businesses. In the first year of the law's implementation, DCA agents served 973 citations to businesses, prompting 590 of them to file for licenses. Commissioner Gourdine used this as evidence that the padlock law functioned as intended, that it did not eliminate businesses, but pushed them to obtain licenses. This, he argued, protected consumers (tourists and residents alike) "through imposition of a regulatory scheme directed for the most part at the prevention of deceptive trade practices."[49] "For the most part," proved critical as many examples of padlock law enforcement demonstrated that it was used to shutter businesses that particular communities found irritating.

The day the law went into effect in 1982, the DCA served fifteen padlock citations. One of those was to a video arcade on Church Avenue in Brooklyn. The DCA served them with a citation and then padlocked and sealed the arcade in April, two months after the initial citation. The main citation concerned the arcade's license – it did not have one. Upon padlocking the premises, DCA agents seized eleven video games. The owners eventually paid $1,430 to get their games back and agreed not to re-open until they obtained a license. However, their location was not zoned for a video arcade

[49] Gourdine, "Padlock Law," March 10, 1983, NYCMA.

and the Board of Standards and Appeals refused to grant them a variance. The arcade never reopened and in DCA Commissioner Gourdine's annual report on the padlock law he summarized the closure as a victory, writing that the "surrounding community [was] permanently relieved of an arcade which [had] been a continuing nuisance to local residents."[50] Despite initial claims from DCA staff that they had no intention of using the padlock law to shutter businesses, the city's zoning laws all but assured that unlicensed businesses would not be able to get variances and thus would be forced to choose between permanent closure or operating without a license and facing continued harassment, fines, and seizures from the DCA and DOB.

In December 1985, the Office of Midtown Enforcement (OME), still under the direction of Carl Weisbrod, succeeded in shuttering a major scourge to the real estate interests behind the redevelopment of Times Square: Plato's Retreat. Citing evidence of high-risk sex at the alleged swingers club, the OME succeeded in bring nuisance complaints against Plato's Retreat, leading to its closure. As would soon be the case in Queens, Plato's Retreat closed because the city's surveillance and harassment affected business. Here too the OME and city lawyers developed a tactic that would be successful in their case against social clubs in the early 1990s: close a business and take the chance that the owner would not appeal. By acting first and dealing with the legality of their actions second, city officials could bank on the fact that smaller businesses would lack the resources or information to fight back. Even when a business did appeal, as Plato's Retreat did (and had the city's Temporary Closing Order lifted), the effort often proved

[50] Ibid.

insurmountable. By the end of 1985, Weisbrod had succeeded in reducing the number of sex-related businesses in midtown by more than half, from a total of 121 in 1977 to 53.[51]

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[52] Howard French, "New York City Cracks Down on Prostitution," *New York Times,* December 28, 1986.

[53] Ibid.

businesses.[54] Even more, the threat of disruptive inspections and the levying of fines led many property owners to stop renting to the types of businesses likely to bring scrutiny as doing so was no longer as lucrative an investment.

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The clearance of sex-related businesses from midtown in this period used municipal regulation as a form of urban renewal, paving the way for what city officials and boosters hoped would be a renaissance of midtown Manhattan. The use of nuisance abatement and the padlock law contrasted with earlier renewal tactics, notably those used by Robert Moses to remake vast swathes of the city via eminent domain. Without access

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[54] Memo re: March 1986 Report, Office of Midtown Enforcement, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA. By April, the OME had closed twelve parlors via court action and six via repeat investigations, bringing the total to 18 in Queens; Memo, May 1986 Report, Office of Midtown Enforcement, Departmental Correspondence, Mayor Ed Koch Papers, NYCMA.

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to federal monies for physically remaking the city, the Koch administration used local laws to remove undesirable people and businesses from New York's most lucrative districts.

When neither the Padlock nor Nuisance Abatement laws granted city agencies the power to shutter businesses they found more inventive ways to the same ends. DCA Commissioner Gourdine explained to Koch that businesses licensed under state statutes could not be padlocked as the law was local in jurisdiction. This led administration officials to seek ways to expand the law. In one instance, Gourdine suggested a "new application of an existing enforcement mechanism," giving the example of the DCA's use of a weights and measurements law allowing them to seize inaccurate devises being applied to gas pumps at stations accused of cheating consumers. "Thus," Gourdine noted, "the new application of an existing enforcement mechanism was used effectively, without the need for City Council action."[56] This line of thinking was worrisome. One might not argue with actions taken against gas stations known for cheating customers, but the manner in which Gourdine and his agency dealt with the problem set a dangerous precedent. Bypassing City Council, and suggesting that other agencies do so as well, vested unchecked power within the Koch administration.

Knockoffs

In addition to stream-lining government the Koch administration moved forward with the I (Heart) NY campaign to make the city more appealing to tourists and business. At the

[56] Memo, January 10, 1983, Simon Gourdine to Ed Koch, DCA, NYCMA.

nexus of both these groups being courted by the city lay the problem identified by the International Anti-Counterfeiting Coalition – knockoff apparel and accessories. Boosters aiming to promote the city as a safe and exciting place for tourists, argued that visitors could not distinguish between a real and a knockoff Chanel bag. This inability to distinguish between real and fake rendered them susceptible to unscrupulous vendors and could prevent them from wanting to visit the city again. Members of the DLMA and other business groups had long complained about the knockoff goods sold by the city's general vendors, but as the knockoff industry globalized in the mid-1970s complaints against the manufacturers rose as well.

As the Koch administration worked to revive the city's image, anti-vending sentiment combined with the fashion industry's growing concern with knockoffs. Within the world of knockoff designer goods and apparel a perfect storm of municipal and private actions ultimately created a system in which private security companies worked in tandem with the NYPD to raid factories and seize their wares. Concern over revenue, be that through taxes or profits, drove government officials and corporations to pay greater attention to knockoffs. In New York City, this concern blended the continued need for revenues to manage the fiscal crisis and the desire to stem corporate flight out of the city. As with the cleanup of Times Square, city politicians acted at the behest of transnational fashion houses and local boosters to regulate out of existence the manufacturers and sellers of knockoff apparel.[57]

[57] In the 1980s, several fashion designers, like Donna Karan and Eileen Fisher, opened design houses in New York City, followed by manufacturers capitalizing on their

The roots of contemporary fashion piracy date back to the early twentieth-century. Beginning in the late 1920s, Parisian haute-couture designs became available for purchase by foreign retailers. Retailers with a buyer's card could obtain patterns for reproduction, establishing a system of buying and legally reproducing fashions. This system operated alongside fashion bootlegging and the lines between the two became increasingly difficult to police over the course of the century. In part this was a legal issue. In France, the law gave copyright protection to fashion design, but in the U.S., copyright law distinguished between works of art, which were copyrightable, and "useful articles" such as shirts, dresses, pants, footwear, and bags, which were not copyrightable.[58] At various junctures different parties lobbied against attempts by fashion designers to gain copyright protection, relying on variants of the same arguments: that it would harm independent designers, create monopoly, and adversely affect consumer prices. In the 1930s, leaders of the National Retail Dry Goods Association argued that fashion copyright would, "subvert [the] American ideal of social mobility."[59]

In early 1964, the National Retail Merchants Association (NRMA) blocked a House bill that would have granted designers of "useful items," including textiles and

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moves. New York's status as a global center of finance and communication made it a desirable base from which to market fashion products, Chin *Sewing Women,* 20.

[58] Of the more than seventy bills drafted in Congress since 1914 to create design-specific protections, all failed. See, Note, "The Devil Wears Trademark: How The Fashion Industry Has Expanded Trademark Doctrine to Its Detriment," *Harvard Law Review* 127 (2004): 998.

[59] Veronique Pouillard, "Design Piracy in the Fashion Industries of Paris and New York in the Interwar Years," *Business History Review,* vol. 85 no. 2 (Summer 2011): 331. See also, Kal Raustiala and Christopher Springman, *The Knockoff Economy: How Imitation Spurs Innovation* (Oxford University Press: New York, 2012).

apparel, a five-year term of copyright protection, renewable for an additional five years. William Burston, manager of the NRMA, said that the bill "does violence to our free economy and is a threat to our standard of living." He added that the bill would serve as a "way of creating a monopoly by the ownership of something that is in itself derivative."[60] In addition to free market arguments and discussions on the original nature of fashion, NRMA members warned consumers that fashion copyright would mean higher prices and less well-dressed women.[61]

Women's designer apparel became more affordable due in part to the dual copying system begun in the interwar period. Seventh Avenue firms in New York continued to purchase patterns from French designers and legally copy them. Using cheaper textiles and mass-producing dresses, blouses, and other garments translated to more affordable designer fashions. Meanwhile, piracy took various forms. Some manufacturers purchased French clothes from the designers and then sold them to "model-renters" who mass-produced copies in addition to holding showings for other manufactures to make their own copies. So-called "bump off" houses went a different route and sent employees to department stores to purchase clothing, which would then be copied and sold for much less than the original. One dressmaker saw a copy of his $70

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[60] Leonard Sloane, "Design Pirating Sets off Battle," *New York Times,* January 4, 1964.

[61] Ibid. Gendered arguments against copyright were also frequently incited. The city's Commissioner of Markets, Albert Pacetta, defending his department's attempts to curb street vending around Wall Street laid part of the blame on women shoppers, "because everyone was looking for a bargain, especially women." Pacetta, quoted in Murray Illson, "Peddlers Dogged in City Campaign," *New York Times,* December 21, 1963.

wool dress advertised for $30 a month after his came out. He claimed that customers returned orders asking why he was upcharging for a similar item. This, one knockoff manufacturer argued, was "the law of the Seventh Avenue Jungle…As long as women want clothes there will be copying."[62] Here was the argument repeatedly advanced by members of the Dry Goods Retail Association and the NRMA, copyright would mean higher prices to consumers and destroy the $12 billion ready-to-wear industry.[63] These associations also sought to protect their retailer members from punitive measures brought against sellers of knockoff items. By protecting retail profits and avoiding legal battles with fashion houses, the NRMA enabled producers to skirt the line between acceptable and unacceptable copying practices in the apparel industry.

For Jack Mulqueen, dubbed the "Knockoff King of Seventh Avenue," copying designs and making fashion affordable was "a moral service." Calling himself and other knockoff manufacturers, "the Robin Hoods of Seventh Avenue," Mulqueen was no fashion outsider.[64] He started out as a hosiery salesman and eventually worked his way through the ranks up to in-house designer before starting his own company in 1977. In addition to his own fashions, like the silk blouses that were some of his best sellers, Mulqueen signed licensing agreements with designers like Valentino and made "exact interpretations" of luxury brand women's garments. In this way he too walked a fine

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[62] Robert Dallos, "The Fashion Pirates: Their Booty is the Treasure of Design," *New York Times,* January 25, 1966; Nan Robertson, "Fashion Piracy Extends from Paris to 7th Ave.," *New York Times,* August 27, 1958.

[63] Leonard Sloane, "Design Pirating Sets Off Battle," *New York Times,* January 4, 1964.

[64] John Duka, "Notes on Fashion," *New York Times,* January 26, 1982.

legalistic line, copying the look of a dress, but not labeling it as the original and thus escaping legal action for trademark infringement. For the knockoff and bumpoff houses on Seventh Avenue, the growing demand for luxury goods at affordable prices presented a solid investment. The originality of a garment mattered less than the look itself.[65] This type of copying was so common and accepted that department stores like Bloomingdales sold both original Missoni scarves and their copies.[66]

For much of the immediate postwar period, the growth of the fashion industry had remained centered around Europe and the United States. Until then, most knockoffs, while resembling the real item, were not labeled as such. In the 1970s, due to cheaper shipping costs and reduced governmental tariffs, apparel production began to shift overseas, to South Korea, Taiwan, and Hong Kong. The logistics of transporting garments and accessories, once managed, opened up a large low-wage labor pool to companies. With consumer demand for lower prices the new production process meant fashion designers could continue maximizing profits through a reduction of labor and shipping costs. It also opened up a global trade in counterfeit fashion items, some of it produced in the same factories overseas manufacturing the authentic item.

Consumer demand did not stop at ready-to-wear, but expanded to include luxury branded goods. This in turn changed the knockoff industry at the same moment that

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[65] Woody Hochswender, "Desperately Seeking Chanel," *New York Times,* May 24, 1988. Beyond other designers copying the look of a classic Chanel suit, some women had dressmakers and tailors copy the suits for them. One dressmaker charged $350 for a suit that retailed for $1,800 in the late 1980s.

[66] Enid Nemy, "Knockoffs: Sincerest Form of Flattery," *New York Times,* June 15, 1975.

production rapidly shifted overseas. As with licit wares, knockoff producers could meet demand for luxury with affordable prices. In some cases, the mass-production of knockoffs appeared to be the main problem for fashion companies used to the smaller-scale knockoff and bump-off houses in New York City. Smaller enterprises, like Mulqueen's, posed less of a threat than global production chains. "When counterfeiting was artisanal, it didn't bother us much. Now it's become industrial, and we're frankly very worried," noted the head of Comité Colbert, a French couturier and perfumer trade group.[67] In 1976, fashion companies tried once again to secure protection under US copyright law. Title II of the Copyright Act of 1976 would have created a new category of protection for "original" designs even if they were part of a useful article. Congress argued that this legislation would result in monopolistic practices that would hurt independent designers and cut Title II before passing the Act.

This setback did not stop the fashion industry from continued lobbying for copyright protections. However, they looked elsewhere for protection and began using existing trademark laws to their advantage. Through a series of court cases over the next several decades, fashion designers and brands expanded the rights afforded them under trademark law and the procedures for curtailing counterfeiting. The largest gains occurred in the realm of civil actions, under which fashion companies amassed the ability to seize and destroy counterfeit apparel and accessories with logos as well as the machinery used for production. On the surface this made sense. For major fashion

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[67] Susan Heller Anderson, "The Big Couture: Rip-Off Couture," *New York Times,* March 1, 1981.

companies, the brand was their most important asset, with logos producing major profits. Logos, unlike the cut of a dress or the shape of trousers, could be protected via trademark law. Furthermore, trademarking a word or symbol gave the owner exclusive use permanently, whereas a copyright or a patent ended after a set period of time.[68]

On the international stage, fashion designers united to stop the spread of counterfeit apparel and accessories. The International Anti-Counterfeiting Coalition (IAC), created in 1978, existed to lobby governments to enforce a global code of conduct toward counterfeiters. Members of the IAC included Disney, Cartier, and Levi Strauss. The latter took an active stance against counterfeiters because knockoff jeans were some of the easiest items to produce. As with faux-designer handbags, the label was key and a fake Levi's patch could be attached to any pair of jeans. In 1980, the company filed a suit against seven defendants in a counterfeiting scheme that involved a wholesale deal worth $5.6 million. Levi's had hired a private investigator to track down the source of knockoff jeans. He was eventually offered a deal for the delivery of 50,000 pairs of jeans a month for nine months. Defendants in the case included Salespak, Inc, a Texas-based clothing manufacturer and First National Capital Bank, in New York, who the suit claimed had underwritten the fraudulent manufacturing. Other fashion companies began copying Levi's tactics, spending larger sums on corporate security, hiring private investigators, and bringing civil suits against parties involved in counterfeiting.[69]

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[68] Edmund Andrews, "Trademark Bill Passed By House," *New York Times,* October 20, 1988.

[69] "Levi Strauss Suit," *New York Times,* August 22, 1980; Sandra Salmans, "Talking Business: The Pirating of Brand Goods," *New York Times,* March 3, 1981; and Anne-Marie Schiro, "Keeping Jeans Honest," *New York Times,* April 4, 1981.

By 1981, industry insiders estimated that counterfeit goods accounted for hundreds of millions of dollars in sales each year. Many fashion companies claimed the goods were made overseas in Taiwan, South Korea, and the Philippines – the same places many of them had moved their manufacturing to capitalize on cheaper labor. The IAC wanted governments to confiscate counterfeit items instead of re-exporting them as many did, because the IAC argued this practice allowed counterfeiters to sell their goods elsewhere. Counterfeiters needed to "feel a financial risk," something the current government practice of returning counterfeit goods failed to do according to the IAC's lead counsel, William Walker. Re-exporting the confiscated goods simply gave counterfeit manufacturers "a chance to unload [their] goods."[70] Nationally and locally in New York, fashion companies pressured officials to regulate knockoffs in order to protect brand revenues and, it went without saying, the money they brought into the city.

Fashion companies did not wait for the city to act, however, and began targeting counterfeiters themselves through their attorneys and private investigators. Denim designers were among the first to act against counterfeit goods, in part because their items were the easiest to knockoff. Cheap jeans could be manufactured abroad, shipped to the US, and then have counterfeited labels attached before being sold as the genuine

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[70] Susan Heller Anderson, "The Big Couture: Rip-Off Couture," *New York Times,* March 1, 1981; and Sandra Salmans, "Talking Business: The Pirating of Brand Goods," *New York Times,* March 3, 1981.

article.[71] In the late 1970s, Levi Strauss and Jordache hired private investigators to locate the source (or sources) of counterfeit jeans they had discovered for sale in department and chain stores. In addition to the suit brought by Levi's discussed at the beginning of this chapter, Jordache brought suit against counterfeiters as well. In the spring of 1981, U.S. Marshals raided a factory in Los Angeles operated by Avri El-Ad. El-Ad had been manufacturing counterfeit Jordache jeans, a company that brought in $120 million in 1980 in their jeans division alone. To offset the growing ease with which counterfeiters manufactured and sold jeans, Jordache and Levi Strauss began spending large sums on private counterfeit investigations. In 1980, the year they began their investigation into El-Ad, Jordache spent $500,000 on corporate security; twenty years later companies were spending upwards of $4 million annually.[72]

The economic downturns of the 1970s had made consumers price conscious, but had not stopped them from being label conscious. Knockoffs provided the perfect solution. In response to the growing problem and the limits of their legal powers in a globalized marketplace, various companies banned together. Members of the International Anti-Counterfeiting Coalition argued that governments needed to act on their behalf and confiscate merchandise and either sell the goods at auction or destroy them. They advanced arguments similar to those given by members of the DLMA and

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[71] Attaching the label after the item arrived in the US helped counterfeiters avoid detection by Customs officials. Anne-Marie Schiro, "Keeping Jeans Honest," *New York Times,* April 4, 1981.

[72] El-Ad, a former Israeli agent, had been imprisoned for ten years by Egyptian forces for his role in an unsuccessful attempt to sabotage Egyptian relations with the U.S. and the U.K. by blowing up American cultural facilities in Cairo in 1954. Anne-Marie Schiro, "Keeping Jeans Honest."

Fifth Avenue Association: as "job creators" and high tax-payers their concerns should be the main concerns of governments. The organization's counsel, an attorney who had served as a U.S. envoy to multilateral trade negotiations from 1975-1977, estimated that sales of counterfeit goods in the U.S. amounted to hundreds of millions of dollars annually. The same corporations capitalizing on a globalizing market were themselves victims to the globalization of knockoffs. While the IAC pressed world leaders, individual fashion companies lobbied New York City politicians to act in their favor against counterfeiters. The growing focus on protecting luxury brands obscured the rising abuse in the actual manufacturing of the items.

In the context of the city's garment industry, the move to prevent any further outflow of manufacturing and to protect the city's burgeoning designer fashion industry makes sense. Apparel manufacturing, once the city's largest single employer, had precipitously declined in the lead up to the fiscal crisis. In 1947, the garment industry employed 350,000 people. By 1975, that number had slipped to 160,000 and it kept falling.[73] From the mid-1970s forward, as industry jobs disappeared and Seventh Avenue garment firms closed up, foreign-made clothing took over a larger share of American apparel sales. In 1983, foreign-made clothing accounted for nearly 50% of women's clothing sales in the U.S. The rise in foreign production corresponded to a decline in unionization of garment workers in the U.S. Nation-wide, ILGWU membership fell by

[73] Peter Hellman, "Anatomy of a Garment-Center Firm," *New York Times,* September 14, 1975.

40% between 1973-1983, from 450,000 members to 280,000.[74] American manufacturers faced intense pressure to reduce costs due to foreign competition. And therein lies one of the dangers of protecting revenue as policy, it means officials failed to adequately protect people.

One of the easiest ways to reduce cost in apparel manufacturing was through labor. In the U.S., unionized garment workers brought labor costs to over $7 an hour; in Taiwan and Hong Kong, manufacturers could allot as little as $1 an hour to cover labor; and in places like Sri Lanka it could be twenty-cents or less an hour. To compete, some manufacturers in the U.S returned to the era of sweatshops, hiring undocumented workers with little legal recourse, and paying them well below mandated wages. Other shops simply altered their employees' checks to make it appear they had earned minimum wage. On the far end of the spectrum, newly arrived immigrants set up shops in their homes. In the mid-1980s, workers could labor up to 80 hours a week assembling belts at home for 39 cents an hour or even less for hair accessories, which paid as little as 90 cents per dozen scrunchies.[75]

Holding manufacturers accountable for poor labor practices was difficult due to reduced funding to federal and local agencies as well as city officials' reluctance to scare

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[74] William Serrin, "After Years of Decline, Sweatshops Are Back," *New York Times*, October 12, 1983.

[75] Tang, 116-117. Tang focuses outside garment assembly in ethnic communities, such as those discussed by sociologist Margaret Chin, who found that in the mid-1990s, Chinese garment shops hired unionized, immigrant coethnic women whereas Korean garment shops hired undocumented Mexican and Ecuadorian men and women, see Chin, *Sewing Women.* Both works describe an extensive network of garment manufacturing in the United States utilizing an underpaid immigrant workforce.

off business. Compared to the extensive and largely successful investigations carried out by private firms hired by fashion companies to go after knockoffs, state and federal agencies struggled to deal with the wage and labor abuses in both licit and illicit apparel production. Funding frequently affected the extent of government investigations. A Department of Labor taskforce on garment industry conditions in U.S. cities ended in the early 1980s after which the DOL led no major drive against sweatshops. But opposition from manufacturers as well as an invisible workforce also stymied governmental interventions. Proposed legislation to better regulate garment manufacturing was met with stiff opposition from the manufacturers trying to compete with foreign labor. Kurt Barnard, the executive director of the Federation of Apparel Manufacturers, argued that registration and confiscation of goods made in sweatshops would be, "unfair to manufacturers and jobbers." Barnard claimed that the present laws were adequate enough to protect "satisfactory wages and conditions…if the laws [were] enforced."[76]

In the early 1980s, the city's Department of Consumer Affairs (DCA) started investigating counterfeit cases. According to DCA Commissioner Simon Gourdine, a growing trade in counterfeit apparel and accessories cost "private industry hundreds of millions of dollars each year."[77] The issue with Gourdine's comments was that the DCA was a consumer protection and licensing agency, not the DBS or other similar city agencies concerned with corporate profits and business retention. As a means of

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[76] William Serrin, "Combating Garment Sweatshops Is an Almost Futile Task," *New York Times,* October 13, 1983.

[77] Peter Kerr, "Consumer Saturday: Counterfeit Sweaters and Shirts," *New York Times,* August 28, 1982.

addressing that disparity, Gourdine framed his agency's intervention as being in the interests of consumers who believed they were "buying respected name brands," but ended up with "shoddy, low-quality goods."[78] A raid on twenty stores on Orchard Street in the Lower East Side had turned up five that sold counterfeit Lacoste shirts and sweaters. Under the city's Consumer Protection Law, stores were liable for fake garments and could be fined $350 for every knockoff sold or up to $500 if the DCA could prove they knew they were selling counterfeits.[79] Meanwhile, people toiled in sweatshops in the city.

By the early 1980s, New York State Attorney General, Robert Abrams noted that, "the sweatshop [was] almost as big a problem as it was at the turn of the century," yet little was done to combat the return of early twentieth-century labor conditions.[80] Not until 1987 did the New York State Department of Labor create a temporary task force to investigate safety hazards and labor violations throughout the state. By their estimates, up to 3,000 sweatshops operated in the New York Metropolitan area. This included factories that violated safety, wage, and child labor laws as well as manufacturers that sent workers home with piece work. New York state's industrial home-work law banned any type of garment assembly at home. Most of the manufacturers investigated by the state task force were contractors – middlemen hired by the larger shops to fill orders. As with a growing slice of the city's underground economy in the 1980s, both the

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[78] Kerr, "Consumer Saturday."
[79] Ibid.
[80] William Serrin, "After Years of Decline, Sweatshops Are Back," *New York Times,* October 12, 1983.

contractors and the workers they hired were immigrants. Thus, immigration status affected both the industry and the extent to which state investigators could gain access. Undocumented workers could easily find work in the city's apparel industry and their status set them up for exploitation by employers who could threaten them with exposure. They were also less likely to trust government officials and so the work of the task force was slow going. Further impediments came in the form of limited funding and staff. In response to the limited scale of state efforts, the president of the ILGWU noted that "the problem is so vast it will require significantly more of an effort than the state is capable of doing. What is needed is the effort of the Federal Government, which has been remiss."[81] The head of that task force had conceded that while worker safety was a concern, the primary motivation for initiating an investigation into sweatshops had come from legitimate manufacturers facing stiff financial competition.[82] Officials had dug themselves into a hole.

By not extracting revenue from the most viable sources – financial services, real estate, and the fashion industry – officials limited their ability to fund needed regulatory actions to keep workers safe. This was part and parcel of the larger shift occurring as the state re-oriented itself toward revenue in order to rebuild from the fiscal crisis. Maintaining a near singular focus on revenues left little space for long term progressive policy planning, the types of policy New York City had once been famous for and that unions had fought to implement.

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[81] Michael Freitag, "New York is Fighting Spread of Sweatshops," *New York Times,* November 16, 1987.

[82] *New York Times,* November 16, 1987.

Conclusion

If we place the regulatory actions taken against knockoff manufacturers, auto shops, sex workers, cab drivers, street vendors, and the many other informal and semi-formal workers in New York's underground economy in contrast with the deregulatory impulses of the period, then the paradox of the "free market" comes into view. The deregulation of financial markets and industries; the rollback in government intervention of those markets and industries and in consumer safety measures; the rise in labor abuses; and the supposed preference for pro-business conditions like tax cuts for corporations and individuals did not apply to everyone. This was particularly striking in New York as the city became a global center of finance. Business leaders, like those composing the membership of groups such as the DLMA, pushed for less government oversight of their industries while lobbying for increased government regulation of activities they deemed inappropriate for the business environment surrounding their headquarters.

As business elites in Manhattan lobbied local, state, and federal government to reduce oversight, cut their taxes, and promote a "free market" business environment, they simultaneously pressed for greater regulation on businesses they deemed incompatible with their interests. Officials, still on edge over the city's finances, re-oriented the state toward securing and protecting revenues. In a context of continued public concern over crime and disorderly urban spaces these regulations frequently took punitive forms. The addition of new industries to the nuisance abatement law further institutionalized the argument that certain businesses and people did not belong except at the outer margins of

the city. The passage of the padlock law gave new policing power to city officials and the NYPD, allowing them to more easily shutter commercial spaces. Low taxation and deregulation were not available to the various people deemed nuisances, in fact, higher taxation in the form of licensing fees and fines for violators and increased time and space regulations became the norm.

In addition to these increases in municipal regulatory powers, private industry began to more openly police competitors through manipulation of the legal system. Private investigations, corporate security, and civil suits functioned as renewed tactics of maintaining monopoly control. Smaller competitors could ill afford to take on the major firms retained by large fashion houses and retailers. One may argue the merits of the industrialized counterfeiting of jeans, but the consequence of Levi's and Jordache's responses was greater corporate control and an enforcement focused on protecting brand assets and not workers. Two decades after Jordache's counterfeit surveillance, Robert Holmes, a former New Jersey state trooper, learned this first hand one hot August afternoon in the early aughts, when he pushed aside some boxes at the back of a Canal Street store revealing a three-foot-high door. On the other side of that door sat an elderly man, hunched over in the cramped, sweltering room, attaching designer labels to counterfeit purses. When Holmes found him, he estimated the man had been there for seven hours. "It was 110 degrees in that room. I was amazed he was alive. He had two bottles of water and a big jug to go to the bathroom in. He was terrified when we went in

there."[83] Holmes ran a private security company frequently hired by law firms to help corporate clients investigate counterfeiters. He speculated that the man was working off a debt to a smuggler, and while he was disturbed by the man's plight, his real aim was gathering the purses, sunglasses, and belts that would be used as evidence against the bootleggers. The brand had to be protected and therein lies the problem. It was not a Department of Labor agent who discovered this man, it was a private security company.

The quest to protect FIRE and tourism-generated revenues led to greater municipal regulation despite repeated insistence from the Koch administration that New Yorkers wanted a smaller, streamlined government. At the very moment the government deregulated finance, banking, and real estate, city officials regulated businesses that might negatively affect the image of the city they were selling to the world. Those regulations included laws and codes that allowed city agencies to seize buildings and goods. None of this is to say that regulation was not needed, the critique instead is that the intention of these regulations had shifted. Did city officials want to support and protect average New Yorkers, or did they imagine regulation that paid for itself and appeased the business leaders they feared would flee? Increasingly, it looked like the latter.

Simon Gourdine, Carl Weisbrod, Ed Koch, and other officials may have believed their actions were in the best interest of New Yorkers. Gourdine, in laying out the DCA's agenda for the long term, envisioned the agency as a protector for those most likely to fall

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[83] Adam Fifield, "The Knockoff Squad," *New York Times*, June 23, 2002. In addition to the man in the closet discovered by Holmes, other investigators noted the labyrinth of tunnels beneath Chinatown.

through the "Reaganomics safety net" – the poor, elderly, and handicapped who would rely on institutions that would exploit their situation and need for healthcare, childcare, housing, and check cashing.[84] But it was this inability to truly see the long-term dangers of building up a legal system of tools that enabled city officials to seize, shutter, and destroy businesses they deemed problematic. And as the goals of protecting those slipping through the cracks due to federal policies and the promotion of the city as a safe and orderly tourist destination came into conflict, the suggestion to purge the city of "negative associations" took precedence. That purge could more easily be carried out thanks to the set of laws and agencies created between the mid 1960s and the early 1980s: the DCA, the OME, the OED, the CVB, the padlock law, the nuisance abatement law, and the General Vendors Law. In New York City, the larger tensions between the deregulation impulse and the need for revenues was reaching a tipping point.

[84] Simone Gourdine, Memo re: Proposed Agenda for February 8 Meeting, February 4, 1983, DCA, Ed Koch Departmental Subject Files, NYCMA.

CHAPTER 5
MINING THE UNDERGROUND:
REVENUE EXTRACTION POST-FISCAL CRISIS

In the fall of 1979, the House Committee on Government Operations heard testimony on the "subterranean or underground economy" in the U.S. The purpose of this subcommittee was to determine the amount of tax revenue lost to non-filers, many of whom worked off the books. The Government Accounting Office noted that 52% of all non-filers had incomes of $5,000 or less. Dealing with this group would be difficult and expensive, but potentially profitable in the long run. According to the GAO, non-filers accounted for up to $2.8 billion of legal sector tax loss each year.[1]

Proposals for bringing these subterranean earnings into federal coffers included lowering taxes, government deregulation, and legalization of certain illegal goods and sectors. With Reagan about to seriously ramp up the war on drugs and with the religious right's influence over the moral character of the nation, the legalization of drugs and sex work remained out of the question. Perhaps an overhaul of the tax code, lower tax rates, and a reduction of the government rules and regulations that "cost" businesses such as employment taxes as well as building codes and other oversight could induce people working off the books to report their incomes.

One expert expressed concern that the report not be used to justify spending a "disproportionate share of [the] budget on low yielding cases involving individuals

[1] Subterranean or Underground Economy: Hearings Before a Subcommittee of the Committee on Government Operations, HOR, 96th Congress, First Session, September 5 & 6, 1979.

earning a marginal living," while ignoring the more "significant tax issues among high income corporations and individuals." This was seconded by an attorney from Washington, D.C. who followed up with a statement underscoring his concern that the testimony had focused too greatly on "housewives, college students, waitresses, and similar individuals," while failing to consider the "billions of dollars stolen by white collar and organized crime members." These concerns illustrated a problem with discussions on the underground economy during this period. As Benjamin Rosenthal (D-NY) pointed out, many of the Representatives had just returned from meetings with constituents who were "furious about the tax cheats."[2]

The late 1970s marked a period of growing national and international concern over what could loosely be defined as a network of underground economies, a concern that would continue well into the 1980s. In the U.S. that concern arose from economic stagflation, the decline of industries like steel and oil that once produced sizeable revenues, and the tax revolt of both regular citizens hoping to keep more of their wages and corporations that pressed the Ford and Carter administrations to reduce their tax rates. These old sources of revenues could no longer be relied on in the same way, so officials sought revenues elsewhere. Groups without the political capital to oppose revenue extraction came under new scrutiny.

The House hearings on the subterranean economy revealed a national pattern that would play out locally as well. The underground economy came to be associated with tax cheats identified by politicians and the media not as the financial and business

[2] Ibid.

institutions that had moved their assets overseas, but the criminalized poor relegated to the margins of New York's economy. Moreover, the existence of people working off the books and the loss in revenue they represented served as an argument advanced by some in favor of lower taxes and deregulation. Government was stifling the free market, the argument went, and leading people to hide incomes that they felt were overtaxed and overregulated. Yet, the aim of the House hearings was to discover new ways of extracting revenue while the federal government cut corporate tax rates and increased military spending. New York City officials were not alone in their attempts to extract new revenue from some of the most marginalized people while leaving the city's greatest funding resources largely untouched.

Over the course of Ed Koch's three terms as mayor and into the Dinkins administration, city officials sought new sources of enrichment with which to rebuild New York. As Jonathan Soffer points out in his biography of the former mayor, Koch was limited in his efforts to rebuild the city's infrastructure and level of services by recalcitrant politicians in Washington and Albany.[3] In order to keep the large corporations and developers in Manhattan and to promote the city as a major tourist destination, officials felt compelled to offer financial incentives and perks. While tourism and the FIRE sector produced important revenues, the actions taken to protect those revenues cost money as well. Beginning in the 1980s, officials sought ways to make protection pay for itself by extracting revenue from the very groups they were

[3] Jonathan Soffer, *Ed Koch and the Rebuilding of New York City* (New York: Columbia University Press, 2010).

policing at the behest of businesses and the tourism industry. The Wall Street crash of 1987 revealed the fragility of the city's dependence on the financial industry for revenues, but by then the goal of extracting revenues from licensing had largely faded from municipal policy. Instead, licensing as revenue extraction was adopted by officials in Albany seeking new ways to fund state government. The fading of discussion over extractive licensing policy did not preclude one final push to monetize regulation of street vending during the Dinkins administration. By the early 1990s, however, earlier failures to extract revenues via licensing had given way to making regulation pay for itself, in particular regulation that worked to protect the revenue streams of finance, real estate, and tourism.

Taxing the Underground

As the Koch administration built up new tools to regulate businesses out of areas slated for new development, they continued seeking ways to generate needed revenues. In response to a *Daily News* article on the taxes lost in the underground economy, Koch encouraged his Department of Finance Commissioner, Philip Michael to "think about how we can tax the underground economy to a greater extent than currently exists."[4] Over the next several years Michael instructed the Department's Criminal Enforcement Unit to target cigarette vendors, clubs and discos, and any business dealing primarily in

[4] Memo, February 2, 1981, Department of Finance, Ed Koch Departmental Correspondence Series, NYCMA.

cash. Nicknamed the "Durk Unit" after Assistant Commissioner David Durk, investigators conducted one of their most successful raids in the summer of 1981.

On the night of August 14th, the Durk Unit raided the Melons Discotheque and seized their books and records (in addition to making arrests for gun and marijuana possession). According to Michael, the disco had operated for three years without filing corporate, income, sales, or commercial rent tax. Agents anticipated a $150,000 assessment against Melons, which they intended to collect by placing a levy on the personal assets of the owners.[5] Despite the seeming success of the Durk Unit's raid, Michael cautioned the mayor that many targets did not produced sizeable revenues and therefore failed to justify the costs. As such, focus on the city's underground would be dedicated to businesses with large revenue collecting potential.

Three years later the choice to focus on revenue producing regulation became a political problem. In October 1985, New York Governor Mario Cuomo responded to the growing AIDS crisis with a statewide measure allowing local health officials to fine or shutter any business within which "high-risk sexual activity" occurred (defined by the state as anal or oral intercourse). One of the first spaces closed by the measure was the Mine Shaft, a bar in Greenwich Village. City officials depicted the bar as a dark and seedy place where men met to engage in "high-risk sex," and shuttering it was necessary to protect public health. Upon further investigation it came to light that the bar had incorporated as a non-profit in 1976, and while the owners had kept up on their real estate

[5] Monthly Progress Report, August 14, 1981, Department of Finance, Ed Koch Departmental Correspondence Series, NYCMA.

taxes, they never paid city business or commercial occupancy taxes. The incorporation of businesses as non-profits had been of growing concern to local and federal officials interested in the underground economy, which they treated as a group of tax non-filers. Suddenly, the Mine Shaft story was less about public health and more about public revenues.

In response to this news Mayor Koch called for an investigation into the city's underground economy with the goal of discovering how to collect taxes from businesses and individuals who did not report earnings. The state's public health measure had, according to Koch, revealed a scandal involving tax delinquent gay clubs. At Koch's behest, Paul Crotty, the finance commissioner, dug up a 1982 investigation into tax delinquent social clubs, after-hours clubs, and discotheques by his predecessor. As it turned out, that investigation had been stopped, because it was, "not producing a large enough financial return." According to Crotty, the former DOF Commissioner (Michael) told him, "the primary goal [had been] to collect revenue for the City of New York," adding that the feeling had been, "let's make sure we're going to get some money from it." When they could not find a way to collect assessments, the department dropped the investigation. Three years later, Koch said money was no longer an issue.[6]

[6] The state legislature in Albany made the measure permanent in December. Maurice Carroll, "Bar Shut Down for High-Risk Sex Was Given a Not-for-Profit Status," *New York Times,* November 9, 1985; Robert McFadden, "City Seeks Cooperation of Bathhouses in Enforcing Rules on AIDS," *New York Times,* October 27, 1985; and Joyce Purnick, "City Says Tax Investigation of Clubs Was Halted in '82," *New York Times,* November 13, 1985.

Public safety, in this case, the public health injunction issued by Cuomo in response to the growing HIV/AIDS crisis served as a catalyst to restart the once costly investigations. Now facing a potential scandal over the cost-efficient stance taken toward regulation, the Koch administration needed to demonstrate its effectiveness to the public. The semi-scandal also revealed the continued trend toward punitive government measures in the face of crisis, frequently because these policies were cheaper to apply than more costly long-term solutions. Opponents of the health measure viewed it as cheap way of dealing with a problem the state did not want to invest in resolving. Betty Santoro, a representative for the Coalition for Lesbian and Gay Rights (who brought a suit against the Governor) assessed the measure as, "an easy way out. They just want to shut the public up – throw them a bone." Santoro added that, by focusing on regulating sexual behavior, "the state is avoiding real solutions and scapegoating gay people."[7] Shuttering clubs was not going to stem the tide of the AIDS epidemic, activists were fighting for housing, testing, and access to health care, not to mention a basic acknowledgment of the crisis from Koch and the federal government. But education, research, and assistance cost money and required planning; shuttering clubs, bars, and bath houses cost less, produced immediate results, and was in line with policy that sought to protect revenues from finance, real estate, and tourism.

When Koch appointed Philip Michael commissioner of the department of finance he had tasked him with reorganizing the department and streamlining its operations.

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[7] Robert McFadden, "Groups to Sue Over State Rules on 'High Risk' Sex," *New York Times,* December 1, 1985.

Michael needed to be cost effective, efficient, and produce tangible results. Coming off the heels of the House and Senate hearings on the subterranean economy it was fitting that the new commissioner would focus on New York's underground economy. In fact, Peter Gutmann, the economist who testified before Congress, claimed that in addition to lost tax revenues, the underground economy distorted unemployment and poverty rates. "There is less poverty," he testified, because official statistics did not account for "the subterranean income of low-income households." City officials may have found these claims appealing as they faced extraordinarily high unemployment rates and welfare expenditures. However, other economists challenged Gutmann's claim about who made up the ranks of the underground economy, speculating that the self-employed were more likely "the major agents." This too carried an appeal; if city officials could find a way to collect unpaid taxes from self-employed New Yorkers or cash-heavy businesses it would help pull them out of the mess left by the fiscal crisis.

In 1980, the Koch administration initiated a computer program to detect and catalog businesses in the city that had evaded business and income taxes. By 1983, they had allegedly collected $43 million in delinquent taxes from over 55,000 individuals and companies.[8] This program was part of the Koch administration's move toward computerized operations and data collection. The Department of Finance wanted to focus on personal income tax because it was the city's third largest source of revenue. In 1982, when the department began developing programs to capture un/der reported

[8] George James, "Koch Calls for Tax Investigation of Underground Economy," *New York Times,* November 10, 1985.

income, the personal income tax produced $1.2 billion in revenues (behind $3.6 billion from the real estate tax and $1.4 billion from sales tax).[9] However, until the Mine Shaft controversy attracted media and public scrutiny, DOF agents struggled to collect information on New Yorkers' personal income tax because they could not access IRS data on tax returns. In addition, the state department of finance was reluctant to share authority and access to personal income tax returns, despite no legal barriers on the part of the city.[10] As with other facets of the underground economy, Finance Department agents developed different tactics for tracking and capturing unreported income.[11]

Several of the projects run out of the Finance Department operated in strict confidentiality and were not discussed widely within the administration; the "Durk Unit" was one of these. Named after the department's Criminal Enforcement Unit director, David Durk, the unit signaled the spread of policing functions to other city agencies besides the NYPD. In the early 1980s, the Durk Unit had more than twenty investigators dedicated to street enforcement of the city's cigarette tax along with other small taxes like the motor vehicle tax. However, conducting store to store sweeps checking cigarette tax stamps did not produce significant revenue and so the investigators were transferred to more lucrative operations. Agents also conducted surveillance on flea market operators, assessing their unreported income based on their gross daily receipts, which investigators

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[9] Memo to Koch, May 21, 1982, Finance Department, Ed Koch Departmental Subject Files, NYCMA.

[10] Memo re: Tax Collections, Philip Michael to Ed Koch, May 21, 1982, Finance Department, Ed Koch Departmental Subject Files, NYCMA.

[11] Memo to Koch re: Cigarette Taxes, April 28, 1981, Finance Department, Ed Koch Departmental Subject Files, NYCMA.

simply asked them for without revealing their purpose. Commissioner Michael hoped that this surveillance would result in significant assessments. In addition, agents worked with the police to target policy and numbers operators.[12] One of the Durk Unit's biggest "busts" involved two brothers running wholesale and garment manufacturing outfits who failed to report $500,000 in city taxes between 1978 and 1982.[13]

In another raid conducted alongside the NYPD public morals squad, Durk Unit investigators raided an after-hours disco, resulting in 18 arrests, seizure of the club's books and records, and an estimated tax assessment of $150,000, which they expected to collect by levying the personal assets of the owners.[14] Despite this success, the unit did not dedicate significant manpower to investigating after-hours clubs. Commissioner Michael, before leaving the administration and taking a job at Merrill Lynch, responded to a request by Koch to target these establishments with the caveat that while after hours bars and discos had generated sizeable assessments for the department, they remained some of the most difficult to collect. Coordination with the police department had been effective, but as discussed in Chapter 3, the NYPD's in-house social club task force struggled to keep tabs on clubs in the city. Not only did clubs move and change names and records, owners frequently fought city collectors, tying them up for long periods. The investigation into after-hours bars had stalled in part because of the difficulty of

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[12] Memo re: Underground Economy, Michael to Koch, June 15, 1982, (with attachments), Finance Department, Ed Koch Departmental Subject Files, NYCMA.

[13] Memo re: Tax Seizures, Michael to Koch, August 13, 1992, including District Attorney, New York County, Outline of Arrest, August 12, 1982, Finance Department, Ed Koch Departmental Subject Files, NYCMA.

[14] Memo re: Monthly Progress Report, Michael to Koch, August 14, 1981, Finance Department, Ed Koch Departmental Subject Files, NYCMA.

collecting worthwhile revenues that justified the expenditure of time and money. Compared to the profitable investigation of the Levy brothers, targeting bars and clubs was neither cost effective nor efficient.

Following revelations about the tax status of the Mine Shaft, the new commissioner of the Finance Department, Paul Crotty, drafted a series of recommendations for dealing with the city's underground economy, which he used to refer to untaxed transactions. Crotty estimated that by 1986, the underground economy was potentially costing the city tens to hundreds of millions of dollars in lost tax revenues. If these revenues could be captured it would give city agencies greater operating budgets. To that end, Crotty recommended the creation of an Underground Economy Enforcement Unit within his department. Going forward, they would work with the IRS, State tax officials, and various law enforcement agencies, on a proposal for legislation to capture tax revenues from unreported income.

Crotty attempted to locate the causes of the underground economy. Separating the legal from the illegal (which he suggested accounted for 25% and was intended for elimination as opposed to taxation) Crotty pointed to social cues stemming from the inflation crisis in the 1970s. The crisis, he believed, had made tax evasion socially acceptable. Average Americans, faced with increasing tax rates and a declining value of the dollar, "worked harder and harder just to stay even." Cheating on their taxes appeared to be one way of getting by, either fudging the numbers or choosing not to report cash income. In addition, perceptions of fairness influenced people's decisions;

those who believed, "rich people get away with paying nothing," were less inclined to pay higher taxes.[15]

In July 1986, the Finance Department announced their Underground Economy Unit and began advertising employment opportunities for investigators. One ad, in the *Amsterdam News,* sought individuals with an "interest in developing creative approaches to tax compliance," and included positions for attorneys, investigators, and computer specialists.[16] The unit's use of old and new systems of surveillance netted $151 million in revenue by 1988. These gains came from people who falsely claimed homes outside the city as their permanent residences to avoid income taxes, people with out-of-state license plates who lived in the city, but did not pay the city's automobile taxes, as well as people claiming to have moved from the city when they had not in fact done so. Yet, this increase in tax collection was not used to offset budget cuts set for 1989. Due to continued issues with tax revenues (not to mention the generous abatements still being doled out to corporations) and a state-wide budget shortfall, 1989 would be marked by reduced services and no new programs. In the end, despite initial claims otherwise, taxing the underground economy was not going to prevent service cuts.[17]

While the Underground Economy Unit did not target street vendors, nannies, and other informal workers – in part because the revenue gains would likely not offset the

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[15] Memo re: Underground Economy, Paul Crotty to Koch, February 6, 1986, Law Department, Koch Departmental Correspondence Series, NYCMA.

[16] Josh Barbanel, "Wanted: A Tough Team to Take on Tax Cheats," *New York Times,* July 30, 1986; Classifieds, *New York Amsterdam News,* August 2, 1986.

[17] Richard Levine, "From the 'Underground,' $151 Million in Taxes," *New York Times,* December 7, 1988.

cost of enforcement – it still focused on groups of people without the knowledge or finances to hide their money effectively. As corporations and wealthy individuals continued to move their money offshore to friendlier tax havens, city officials targeted those most likely to produce sizeable revenues, the self-employed and those dealing primarily in cash.

As the technology to do so developed, city agencies began data collection programs that signaled a further spread of regulatory powers. The Finance Department's underground economy unit tracked the utility files of commercial customers and long-term overnight parking leases to root out individuals underreporting their incomes or falsely claiming residency outside the city. In addition, the department worked with other city agencies to track people and companies with city contracts, businesses that leased space from the city, and businesses licensed by the city (such as restaurants and home improvement contractors). Compiling these data sets, the Underground Economy Unit established audit guidelines to comb through New Yorker's tax returns. A major goal was not just to collect un/underreported income, but to deter others. The unit did produce sizeable revenues, but its deterrent effect was unclear. As other attempts to manage the underground economy had shown, people would develop new tactics in the face of municipal obstacles. The unit succeeded in further expanding the city's surveillance powers however.

Capitalizing on the continued critique of the underground economy as a haven for tax cheats, Mobil ran an "ad" in the *Times* in December 1985, suggesting that the solution to the nation's budget deficit lay in taxing the underground. The ad claimed that not

including drug dealing and gambling the country's informal workers produced $500 billion in untaxed income. Unlike the hard-working people who paid "their fair share of taxes" and struggled to realize their "dream of homeownership," off the books workers cheated the system. The implication being that tax cheats in the underground economy were un-American and selfishly prevented honest people from achieving the American Dream. But, the copy continued, they did so because of high income taxes meant to reduce the deficit. The best solution was to make off-the-books workers pay, not to raise income taxes.[18]

Absent from this call to action was legitimate context. The deficit had grown because Reagan cut taxes and the promised "trickling down" of benefits had yet to materialize. On top of tax cuts, the administration increased defense spending and despite massive cuts to social welfare programs the gaps could not be covered. In addition, Congress had attempted to include withholding on interest and dividends in legislation addressing the so-called tax gap. The Tax Equity and Fiscal Responsibility Act (TEFRA) did require banks to report interest and dividend income, but intense lobbying by the banking and securities industry succeeded in stopping the withholding provision.[19]

The Koch administration and members of city council hoped to more effectively "tax the underground" and extract major revenues from street vendor licensing. When city council revised the city's peddling rules under Local Law No. 77, they instituted

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[18] Mobil Ad "Taxes: The Problem and the solution – II", *New York Times,* December 19, 1985..

[19] Crotty Memo on Underground Economy, 2/6/86, NYCMA.

several other changes. One of these was a progressively higher fine structure based on prior violations. For instance, the violation for general vending without a license started at $100 and went up to $500 or three months in jail for a third offense (although this would require transferring the hearing back to criminal court where conviction remained unlikely). DCA commissioner Bruce Ratner (later of Forrest City Ratner), repeatedly expressed his frustration that the higher fines were not being applied in criminal court. This arose from several issues: one, the criminal courts were swamped with drug crimes, prostitution charges, and all the other criminal cases that arise in a major American city. Two, criminal charges required a higher burden of proof than in an administrative hearing as utilized by the Parking Violations bureau (which Ratner cited as a model of management and revenue generation). Three, unlicensed street vendors learned that if they plead not guilty to a violation, the arresting officer would have to appear in court; this was both a cost burden to the police department and almost an assured way to get the case tossed.[20]

In addition to the above issues of processing peddling violations in criminal court, once Koch ordered the corporation counsel and DCA to look into the matter, they found that violators ignored 87% of summonses.[21] Not only was the city losing out on a possible revenue source, but peddlers, "openly [violated] the law without fear of

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[20] Memo re: Fines for Peddler Law Violations, 1979, Peddlers (Food Cart Vendors), Office of the Mayor, Office of Operations, Ed Koch Departmental Subject Files, NYCMA; and Memo re: Progress Report on Peddler Enforcement, May 10, 1979, DCA, Ed Koch Departmental Subject Files, NYCMA.

[21] Draft memo re: Transfer of City Peddling Adjudication from Criminal Court to the Environmental Control Board, circa 1979, Office of the Mayor, Office of Operations, Ed Koch Files, NYCMA.

punishment."[22] To restore respect for the law, return order to city streets, and collect fines from violators, corporation counsel staff, along with staff from the DCA and other agencies involved in managing peddlers, suggested moving jurisdiction from criminal court to an administrative tribunal at the Environmental Control Board. Proponents of this switch argued it would increase the amount of revenue collected through fines because overburdened criminal court judges would no longer toss vendor summonses to clear their dockets. As part of the larger effort to monetize general vending, the DCA successfully moved jurisdiction over vendor summonses from criminal court and into an administrative hearing process at the Environmental Control Board.[23]

The anti-vending groups that complained to officials about the presence and number of vendors on "their" streets had also argued that the criminal courts failed to hold peddlers accountable for breaking the law. Their contempt for the "lax" courts may have had some sway, but the real motivation for transferring peddling violations from the criminal courts to the Environmental Control Board was money. City officials hoped that moving general vendors to the ECB and food vendors to the Department of Health would produce a dramatic increase in the actual fines collected for violations. A lower burden of proof along with the vanquished need for the arresting officer to appear at a hearing would increase the odds that the city could collect. While assessing whether ECB was the best office to adjudicate peddling violations, Office of Operations staff estimated that the transfer could produce $1.25 million annually in revenues. (This was based on ECB

[22] Memo re: Modifications of the Peddling Laws, February 27, 1979, Office of the Mayor, Office of Operations, Ed Koch Files, NYCMA.

[23] Ibid.

processing 100,000 violations a year, averaging $25 per violation, and assuming a 50% no show rate). As it turned out, this was a gross overestimate of the ECB's ability to handle a five-fold increase in summonses and a failure to account for the peddlers' adjustment to the new rules.[24]

Moreover, in their discussions of city policy regarding street vendors, administration officials consistently listed reducing the number of peddlers and increasing the tax yield from peddling as goals. It was curious that city officials could not see that regulating street vendors on the terms suggested by groups like the DLMA and Fifth Avenue Association undermined their efforts to secure revenue from vending as they had with the TLC's management of cabs. Part of the General Vendors Law amendments of 1979 included placing a cap on general vending permits issued by the city. Using a number based off existing licenses and an upward limit that would control the scourge of peddling in midtown and downtown, city council capped general vending licenses at 853. Unlicensed vendors could add their names to a wait list, from which they could move only when licensed vendors had their permits revoked for repeated infractions or a failure to renew their license. As even city hall staffers noted, an increased ability to collect fines would likely result in licensed street vendors choosing to forego their license rather than pay the fines.[25] Added to the those who could not get licensed due to the caps and those with no desire to be licensed, the new procedures set

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[24] Memo re: City Policy for the Management of Street Vendors, January 2, 1979, Office of the Mayor, Office of Operations, Ed Koch Files, NYCMA.

[25] Ibid. In fact, the current waiting list for a general vendor license has been closed for over a decade.

up a system that de-incentivized licensing, would add to the number of peddlers working in restricted areas, and would fail to collect the fines and generate estimated revenues.

Facing pressure from business and merchant groups as well as the Mayor's Mid-Town Task Force, the DCA recommended transferring peddling cases, arguing that they would have "better feed-back on chronic violators and scofflaws."[26] Thus, in addition to spatial management and revenue aims, the DCA was building up a surveillance database that could be used to police vendors in the future. As part of the transfer to the ECB, the board was required to set up a computerized database of summonses, vendor licenses, and personal information on unlicensed vendors. As the 1980s progressed, the Koch administration increased agency usage of computer systems to track people and groups deemed problematic by city officials (and to purge them as suggested by YSW). Clumsy at first, these data sets would prove valuable during the Giuliani administration when police commissioners Bratton and Kelly utilized them to target areas for sweeps, stop and frisk, and surveillance cameras. The city also contracted with Citibank to run the ECB's automated violation processing and reporting system, expanding the role of private companies in surveillance and data collection.[27]

The era was one of deregulation and smaller, "cost-effective" government. Koch wanted to manage the city's spending in ways that contributed to "quality of life." Earlier in his career as a U.S. Representative, Koch supported the rights of street vendors

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[26] Memo: Background on Transfer from Courts to ECB, 1979, Office of the Mayor, Office of Operations, Ed Koch Files, NYCMA.

[27] Fiscal Year 1981 Report, NYPD Peddling Reports, Environmental Control Board, Office of Operations, NYCMA.

to ply their trade on city streets, going so far as to suggest they added to the vibrancy of city life. As mayor, however, he took a different tack. By 1980, the General Vendors Law and its amendments appeared to be working. In an internal memo about a 6 o'clock news feature on Fifth Avenue by Rockefeller Center, Deputy Mayor Nat Leventhal noted that the administration "must be doing something right." The story featured comparison shots of the area in December 1979 and December 1980. In the 1979 frame the sidewalks were "jammed with sidewalk peddlers and pedestrians," but one year later there was no sign of either. Leventhal credited the seizure rules of the new law with finally sending the message to peddlers that city hall was serious about enforcement, but as one staffer asked in response, where had the pedestrians and tourists gone?[28]

The news crew may have chosen a deceptive shot because the data on the city's general vendor enforcement program was not good. In the first quarter of fiscal year 1981, police issued 7,588 notices of violation, with a default rate of 96 percent. The ECB had collected $14,685, which meant that on average each notice of violation produced $1.94 in fines. The majority of violations issued were for vending without a license (66%); the second highest percentage of violations went to vendors in prohibited zones (14%). The vendors law and subsequent push for enforcement had little effect on the number of unlicensed vendors in the city and those who were issued violations did not pay their fines, drastically undercutting the estimated revenues of $1.25 million touted as a reason to shift adjudication from the criminal courts to the ECB. The authors of the

[28] Memo re: CBS News Report on Peddlers, December 17, 1980, ECB Project, Office of Operations, NYCMA.

report on the vendor enforcement program concluded that vending without a license was in fact, increasing. They noted that the law did not act as a deterrent and that unlicensed vendors had adapted to the confiscation and removal fees by displaying less merchandise. As of April 1980, the DCA had licensed only 360 general merchandise peddlers in the city.[29]

The results were a far cry from the mayor's promise of cleaner streets and sidewalks, greater revenues for the city, and a general respect for law. This arose in part due to ECB's inability to handle the increased caseload. Prior to the switch from criminal court to administrative hearings, Koch had been warned that transferring summonses to ECB would change the board's workload from 20,000 cases a year to 300,000. Understaffed and underfunded (Koch had allotted them two assistant attorney hiring lines to cover the increased caseload), the ECB struggled to keep up.[30] Moreover, the regulation guidelines in various city departments frequently overlapped. The Parks Department, the MTA, the transit police, the NYPD, and DCA agents could all issues summonses for slightly different violations to street vendors, but the ECB's computer system for logging and tracking the violations was faulty according to a progress report in May 1980. By that point, the city had added to spatial restrictions on vending for nearly sixty years and few could navigate the myriad system efficiently.[31]

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[29] Violation Data General Vendor Enforcement Program, First Quarter Fiscal year 1981; and Memo re: Peddlers Law Enforcement, April 25, 1980, ECB Project I, Office of Operations, Ed Koch Departmental Subject Files, NYCMA.

[30] Memo re: summonses in Criminal Court, June 27, 1979, ECB Project II, Office of Operations, NYCMA.

[31] Memo re: Peddlers, May 6, 1980, ECB Project I, Office of Operations, NYCMA.

Fire in the Bronx

At the start of David Dinkins' term as mayor, a tragic fire revealed the outcome of municipal policy focused so intensely on revenue. In the early morning hours of March 25th, 1990, a disgruntled patron set fire to the Happy Land Social Club with a dollar's worth of gasoline and a few matches. The club, located in the East Tremont section of the Bronx, served as a gathering spot for the local Honduran community. As with most weekend nights, patrons congregated on the second floor, where deejay Ruben Vallardarez spun records from back home and the bartender sold cheap drinks. The space had not been renovated since the property owner, Alex DiLorenzo, turned it over to the leasing company that later rented it to the club's owner, Elias Colon. The second floor, reached by a rickety old staircase, lacked windows and a second exit. The only way in and out of the club was through the front door, and at 3:30 am, Julio Gonzalez sent it up in flames. The smoke spread so quickly that firefighters found some victims still holding drinks in their hands. In the ensuing chaos, six people, including Vallardarez, managed to escape; Colon and eighty-six other people did not.[32]

Like its early twentieth-century counterpart, the Triangle Shirtwaist Factory, the Happy Land Social Club fire revealed decades of problematic municipal oversight of

[32] Press Release, Sunday, March 25, 1990, Office of the Mayor, H. Robbins Subject Files, New York City Municipal Archives (NYCMA); "Club Survivor Recalls Dash into Flames," *New York Times,* April 7, 1990; James Barron, "The Living Search the Faces of the Dead," *New York Times,* March 26, 1990; Ralph Blumenthal, "Portrait Emerges of Suspect in Social Club Blaze," *New York Times,* March 27, 1990 and "Death in Minutes," *New York Times,* March 26, 1990.

buildings and property owners' lack of concern over the safety of their tenants. That the two fires shared an anniversary separated by 79 years seemed prophetic to some, but the different responses to the fires showed a troubling shift in government priorities. Whereas the Triangle fire resulted in workplace safety measures, however limited, the Happy Land fire produced a massive crackdown on the city's most vulnerable residents and the spaces they utilized, and cemented punitive regulation as policy. This crackdown stemmed in part from the way city officials and the media discussed the Happy Land. On the difference between the two fires one commenter noted, "this place [Happy Land] was already illegal."[33]

In the debates over the Happy Land's legal status, the response to the fire had more in common with the ways in which entertainment and informal spaces had been treated over the span of the twentieth-century. As previously discussed, New York City's Cabaret Law, rendered singing, dancing, and other forms of entertainment "illegal" in unlicensed spaces. The law's original proponents intended it as a measure to stop nightclub patrons from "running wild" throughout the city during Prohibition.[34] By this

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[33] They added that the owners of the Triangle factory had followed the regulations of the day, which was not entirely true. Sarah Lyall, "Grim Anniversary," *New York Times,* March 26, 1990. On the Triangle fire and the ways in which the building and factory owners skirted and manipulated the meager rules then in place see, David Von Drehle, *Triangle: The Fire that Changed America* (New York: Grove Press, 2003); and Leon Stein, *The Triangle Fire,* with forward by Michael Hirsch and introduction by William Greider (Ithaca: ILR Press, 2010).

[34] One member of the city's Board of Alderman complained that, "there has been altogether too much running 'wild' in some of these nightclubs…and the 'wild' stranger and the foolish native should have the check-rein applied a little bit. It is well known that the 'wild' strangers are not all interested in our great museums of art and history, in our magnificent churches and public libraries, our splendid parks and public monuments. They are interested in speakeasies and dance halls and return to their native heaths to

they meant controlling the mixing of genders, races, and classes in the city's many clubs and speakeasies.[35] However, social clubs as members-only spaces technically did not need to comply with the Cabaret Law so long as they only sold alcohol to members and their guests. By the 1980s, club owners along with city agents took advantage of the slippage between what constituted a social club versus what constituted a cabaret to either protect their space or prosecute so-called unlicensed social clubs. Municipal response to this piece of the city's underground economy – informal and semi-formal nightlife – became increasingly restrictive even as policy rendered more spaces "illegal."[36]

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slander New York." Quoted in, Paul Chevigny, *Gigs: Jazz and the Cabaret Laws in New York City* (New York: Routledge, 1991), 32-33.

[35] For the history of urban entertainment and culture see for instance, George Chauncey, *Gay New York: Gender, Urban Culture, and the Making of the Gay Male World, 1890-1940* (New York: Basic Books, 2008); Lewis Erenberg, *Steppin' Out: New York Nightlife and the Transformation of American Culture, 1890-1930* (Chicago: University of Chicago Press, 1984) and Chad Heap, *Slumming: Sexual and Racial Encounters in American Nightlife, 1885-1940* (Chicago: University of Chicago Press, 2009).

[36] Rejection notice from City to Chinese Association Social Club Inc., in Queens, 1990, Office of Latino Affairs, William Nieves and Marlene Cintron Subject Files, NYCMA; Annie Correal, "After 91 Years, New York Will Let Its People Boogie," *New York Times,* October 30, 2017. In other industries, city council passed limits on the number of licenses available for street vending and capped the amount of taxi medallions in circulation starting in the late 1960s; neither stopped people from working in these trades informally. For sociological works that deal with informality in New York see for instance, Philippe Bourgois, *In Search of Respect: Selling Crack in El Barrio* (New York: Cambridge University Press, 2003); Mitchell Duneier, *Sidewalk* (New York: Farrar, Straus and Giroux, 1999); and Katherine Newman, *No Shame in My Game: The Working Poor in the Inner City* (New York: Russell Sage Foundation, 1999). On the taxi industry see, Graham Russell Hodges, *Taxi!: A Social History of the New York City Cabdriver* (Baltimore: Johns Hopkins University Press, 2007); and Biju Mathew, *Taxi!: Cabs and Capitalism in New York City* (New York: New Press, 2005).

As neighborhood transformation began, noise and nuisance complaints took on additional power. Many long-running bars, jazz clubs, and "cabaret" spaces (any establishment with entertainment) faced harassment from city and state agencies and constant surveillance of their spaces. A dysfunctional fire extinguisher could result in an expensive fine and fees to reinstate a place's license. Owners with the resources to fight back did so and some succeeded.[37] However, the social club task forces of the 1980s aimed to regulate undesirable spaces out of gentrifying neighborhoods and use municipal government to reimagine the city. Under the guise of public safety, the police department initiated a series of crackdowns against formal and informal entertainment spaces. This has the adverse effect of driving many of these places further underground. To avoid hefty fines or closure, neighborhood social clubs played a game of cat and mouse with city agents in an attempt to avoid scrutiny. This also meant that fire inspectors could not gain access to or were wholly unaware of numerous nightspots in the city.

Social clubs illustrated the porous boundaries between formal and informal labor and spaces. As has been discussed, the underground economy is a function of state actors formalizing jobs, industries, and businesses. This happened through zoning restrictions, licensing and permit requirements, or laws that criminalize certain actions. Taxes, including license fees, are another way to legitimize work. In New York, a traditional social club functioned as a members-only space, typically serving a specific immigrant

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[37] The owner of a performance space in Chelsea waged a repeated campaign against the task force and was largely successful, in part because he kept excellent records. Social Club Task Force April-May 1990, Office of Operations, Director H. Robbins Subject Files, NYCMA.

group. As members-only spaces they did not need the many permits and licenses required of bars or other clubs, such as a State Liquor Authority (SLA) license or a cabaret license, despite the fact that many social clubs sold alcohol and offered music and dancing. Social clubs still needed to comply with building codes and fire safety regulations, but the line between business (requiring other permits) and limited access private club frequently blurred. What made a social club illegal shifted over time.

As newer waves of immigrants from Central America and the Caribbean replaced their earlier Italian and Jewish counterparts in the city's neighborhoods, many of them continued the tradition of establishing social clubs. These served as gathering spaces where information on jobs, housing, or immigration services could be exchanged; as entertainment spaces; and as community spaces available for birthdays and other events. Some club owners may have intentionally skirted licensing guidelines to avoid fees and taxes, others may have been unaware of the myriad rules and regulations, and some, like the owner of the Happy Land Social Club, sought the advice of city agents. With the help of a moonlighting lieutenant, Elias Colon set up the Happy Land as a non-profit community space that also happened to serve drinks and offer dancing on weekend nights. Based on interpretation of the Cabaret Law by city officials, a social club serving alcohol and playing music with dancing could either be identified as an unlicensed cabaret or as a private party using a community center for an event; it all depended on the assessment of an inspector.[38]

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[38] Primo Flores helped Colon incorporate the Happy Land as a non-for-profit establishment, mostly meaning he paid fewer taxes, Ralph Blumenthal, "Officer's Link to Social Club Under Inquiry," *New York Times,* April 19, 1990. City policy was never

As these city agencies began classifying social clubs as illegal, and thus criminal, spaces it drove them underground. Social clubs frequently closed in the wake of a raid reopening elsewhere in the neighborhood, sometimes under a different name. This made it difficult for the NYPD's social club task force to keep tabs on the clubs when they continued to base inspections off the original list. Nor did the DCA or the State Liquor Authority have a better idea of the number of clubs in the city. What the various regulations and increased surveillance did produce was a situation where club owners hid from authorities resulting in an inability by the fire department to inspect sites for safety hazards. Former DCA Commissioner Bruce Ratner noted this in his attempts to abolish the Cabaret Law, stating that the real need was for fire inspections to ensure public safety and that the Cabaret Law's licensing requirements could potentially interfere with those.

In the mid-1980s, a confluence of forces created pushback from the nightspots with political clout. In addition to the police department's social club task force, the DCA had been granted increased powers to regulate the city's nightlife. Throughout the 1970s the agency had limited powers. They could issue summonses, but that only worked for licensed places. Much like the problems the agency faced in regulating street

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clear on this as would become obvious in the wake of the Happy Land fire. According to a rejection notice sent to the Chinese Association Social Club, Inc., in Queens in 1990, the city defined a social club as "an organization of persons incorporated to provisions of the membership corporations' law," which was "an entity that owned or leased a building [used] exclusively for club purposes." Social clubs could not be used for profit and could sell alcohol to club members and their guests only. And yet, following Happy Land, clubs that met these requirements were shuttered as unlicensed social clubs for lacking cabaret permits, such as El Caney. Rejection Notice sent to Chinese Association Social Club, Inc., 1990, Office of Latino Affairs, William Nieves and Marlene Cintron Subject Files, NYCMA.

vendors, they needed court orders to deal with unlicensed, "illegal" nightspots. That changed in 1982, when DCA gained the power to impose fines and shutter clubs through an agency-run administrative process (similar to the ECB's handling of peddler violations). In 1984, the Koch administration increased DCA's budget specifically to aid the department in nighttime enforcement. Using the padlock law, the DCA could seal clubs that violated the Cabaret law and other licensing regulations or that operated without a license. On top of Consumer Affair's increased policing powers, the cost of licensing fees and high rents drove many clubs to forego the former in order to stay in business, even if it meant doing so illegally. Other clubs, hoping to get licensed, learned that their space was not zoned for cabarets.

The creation of the NYPD's social club task force in 1983 created further issues. Ostensibly this task force would keep tabs on social clubs and ensure patron safety through fire and building code enforcement. However, in practice, the social club task force used punitive enforcement measures to regulate businesses and extract revenues. This only functioned to drive clubs further underground and added to the NYPD's inability to maintain an up-to-date list of clubs and their locations. Taking advantage of the years of neighborhood flight, clubs could move to new buildings, sometimes changing their name and sometimes keeping it the same so patrons could identify them more easily. When the task force conducted a survey in 1985, to identify clubs they deemed illegal, they came up with 1,194 suspected locations. A follow-up survey in 1987, showed 727 of those locations remained active clubs. A year later, task force data indicated that of the original 1,194 locations only 210 were still in operation. The

reduction was only partially the result of police enforcement. Many clubs either moved or appeared closed on nights the police surveyed them, causing them to be listed as "stabilized" in police reports.[39] What this data revealed was that the city agencies charged with overseeing nightlife had no idea the scale at which clubs existed.

For club owners without the means to hire attorneys, architects, or construction crews, avoiding city agencies presented the best option. In the absence of oversight or intervention social clubs blurred the line between membership-based social space and what the city considered an illegal bar. As club owners sought additional ways to make money, skirting the line between "legal" and "illegal," the city's definition of social clubs also evolved. In many instances club owners did not know whether or not they were breaking any laws and because so many social clubs operated as community spaces *and* as nightclubs, applying code violations proved problematic, especially when property owners could easily claim plausible deniability. Once city officials began overlaying formal rules and regulations on social clubs (or salons) they created a mess of regulation in which no one – not city agencies, not the business owner, nor the landlord – really understood the rules. The question as to whether a space was a social club or an illegal nightclub was subject to interpretation by building inspectors, fire marshals, the police, and ultimately the courts if and when owners fought the city.[40]

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[39] Correspondence from Police Commissioner Benjamin Ward, August 30, 1988, District Attorneys Files, Ed Koch Departmental Correspondence Series, NYCMA.

[40] As was the case with Happy Land, which had been incorporated as a non-profit center that provided members with "entertainment, sport, recreation, and amusement." Josh Barbanel, "Bronx Social Club's Sublease: How a Firetrap Skirted the Line," *New York Times,* March 28, 1990.

When the city did charge a space with code violations it rarely resulted in action against the buildings' owners, separated as they were from the club operators by various holding and leasing companies. This was the case with the Happy Land Social Club. Upon its purchase, the owner of the building, Alex DiLorenzo, had immediately subleased the property to Little Peach Realty operated by Jay Weiss and Morris Jaffe. Weiss and Jaffe in turn leased the spot to the club owner Elias Colon. This set up separated DiLorenzo from the club housed in his property and created a problematic paper trail for city officials when trying to hold someone accountable. In fact, it was eventually revealed that Weiss and Jaffe (and possibly DiLorenzo) knew the city had issued multiple building and fire code violations. Yet, they had done nothing to remedy them. Following inspections in the wake of a different club fire in 1988, Weiss and Jaffe began eviction proceedings against Colon for rent arrears. Their filing made no reference to the violation notices and requests for court appearances issued in 1988.[41]

In November 1988, six patrons had died in a fire at a Bronx social club known as "el Hoyo." Koch responded by creating a Mayoral Social Club Task Force (SCTF) that

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[41] The Department of Buildings issued a peremptory vacate order to the owner of structure at 1961 Southern Blvd, Block 3117, Lot 1 on November 21, 1988, which read, "All persons occupying Happy Land Social Club on first and second floors must vacate premises." The reasons cited included, "danger to safety and life of occupants, no secondary means of egress, no fire alarm or sprinkler system, no emergency lighting, no exit sign, illegal place of assembly, no permit." The lack of a secondary exit and sprinkler system were key in the fire's high death toll. DOB Vacate Order, Office of Latino Affairs, William Nieves and Marlene Cintron Subject Files, NYCMA. Josh Barbanel, "Tracing the Club's Owners," *New York Times,* March 27, 1990, and "Bronx Social Club's Sublease: How a Firetrap Skirted the Line," *New York Times,* March 28, 1990; Don Terry, "Crackdown on Illegal Social Clubs," *New York Times,* March 26, 1990; and Todd Purdum, "Landlord of Burned-Out Club Surrenders," *New York Times,* April 4, 1990.

combined the police department's task force with inspectors from the Department of Buildings, the FDNY, and the DCA as well as State Liquor Authority agents. Koch instructed the task force to field reports of unlicensed bars and clubs, investigate them, and take appropriate action against those found in violation of permits and licenses. These included place of assembly permits, and cabaret and liquor licenses. As the new task force attempted to work from the list compiled and maintained by the police it became evident that it was insufficient. Beyond the movement of clubs to new locales, the SCTF faced budget and staffing limitations, which impeded their ability to visit clubs frequently enough to see if they were still open. As with the critique of the Governor's public health measure, a critical element of the Mayor's crackdown on clubs was to appease the public and lessen scrutiny as cheaply as possible.[42] The critically necessary step of requiring property owners to keep their commercial properties up to code gained little traction, however.[43] When public attention to the El Hoyo fire began to wane Koch cut the number of teams, reducing the extent of their surveillance. As had been the case with the Finance Department's 1982 investigation into clubs, cost determined the extent of city intervention.

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[42] Memo re: Illegal Social Clubs in the City, 1988, Department of Buildings, Ed Koch Departmental Subject Files, NYCMA; "700 Crime Sites Shut Down by Police Under New York City Padlock Law," *New York Times,* September 29, 1985; Sam Roberts, "Who Abdicated Responsibility to Enforce Law," *New York Times,* March 29, 1990.

[43] City council did strengthen the Padlock Law, granting police the ability to shutter and seal clubs after only one conviction and one arrest in a 12-month period. However, city councilmember Sheldon Leffler who would go on to write legislation in the wake of the Happy Land fire said that the decline in vigilance was a "conscious decision" to focus on more immediate concerns. Anemona Hartocollis and Jennifer Preston, "City's Pattern of Failure," *Newsday,* April 1, 1990.

One club cited by the SCTF following the fire at El Hoyo was the Happy Land Social Club. Inspectors noted its lack of a place of assembly permit and cabaret license, as well as the requisite sprinkler system. The club was also cited for lacking a secondary means of egress and fire alarm. SCTF inspectors listed the club as dangerous to the life and safety of its occupants. A follow-up visit one year later found the club closed; inspectors then listed it as "stabilized" and crossed it off their list. Citing costs and noting the success of the SCTF in shuttering clubs, Koch had begun reducing its budget and staffing levels a few months after the El Hoyo fire. Thus, the Happy Land could slip under the radar of inspectors spread thin across the city.[44] The task force also issued a summons to the owner of the building listed as Alex DiLorenzo via the Clarendon Place corporation. When DiLorenzo failed to respond, a judge issued a bench warrant for his arrest on March 10, 1989, but officers never executed the warrant due to its low status in a criminal justice system overburdened by drug offenders.[45] Four months after the SCTF listed the club as "stabilized," Julio Gonzalez torched the front door on a busy weekend night.

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[44] The Department of Buildings issued a peremptory vacate order to the owner of structure at 1961 Southern Blvd, Block 3117, Lot 1 on November 21, 1988, which read, "All persons occupying Happy Land Social Club on first and second floors must vacate premises." The reasons cited included, "danger to safety and life of occupants, no secondary means of egress, no fire alarm or sprinkler system, no emergency lighting, no exit sign, illegal place of assembly, no permit." The lack of a secondary exit and sprinkler system were key in the fire's high death toll. DOB Vacate Order, Office of Latino Affairs, William Nieves and Marlene Cintron Subject Files, NYCMA.

[45] Agenda, City Council hearing on Social Clubs, March 29, 1990, Office of Operations, Director H. Robbins Subject Files, NYCMA.

In the wake of the fire some media coverage implied that the Happy Land had been a violent den of vice. Based on community sentiment, however, the club had served as a place for the Honduran community in East Tremont to gather and socialize. In this way, the Happy Land was similar to other neighborhood social clubs that frequently offered the only safe and cheap place to spend a night out. One of the victims of the fire, Nicholas Zapata, had gone to the club that night for just that purpose. Zapata came to New York in 1988, intending to stay awhile, sending enough money home to provide for his family and save for a degree in business administration after he returned to Honduras. After a long week working construction, he planned to relax with friends at the club. Similar vignettes of new immigrants, long-term residents, and native New Yorkers seeking a few hours of fun came out in the aftermath of the fire. These stories would eventually be lost in the ensuing response from City Hall.[46]

The day after the fire and just a few months into his first year as mayor, David Dinkins restarted the Mayoral Social Club Task Force and ordered inspectors to shutter all entertainment spaces not in compliance with city and state licensing or building and fire codes. In the six weeks following the Happy Land fire, the SCTF issued 268 new vacate orders, sealed 131 spaces, and removed 16,075 people from "unsafe clubs." Inspectors worked from old lists and created new ones based on nuisance complaints and by patrolling outer borough and upper Manhattan neighborhoods on weekend nights. Dinkins wanted as many of the clubs shuttered as possible while his administration

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[46] "Saving Money to Go Home," *New York Times,* March 29, 1990; and Tim Golden, "In Saddest Way, New Yorkers Learn About Honduras," *New York Times,* April 1, 1990

worked with city council to develop a plan of action; however, the council had not passed a summarial vacate order following the fire at El Hoyo in 1988. This meant that the SCTF did not have the authority to padlock clubs without going through a lengthy process. Inspectors were told to padlock them anyway and deal with irate owners as they arose, but a wariness about this situation may have kept even more clubs from being closed. In the meantime, Dinkins' advisors began drafting legislation to strengthen the padlock law, increase penalties for violations, and streamline the process from summons to warrant. Some members of the administration expressed discomfort with the plan to padlock as many active clubs as possible, but were overruled. With limited means to force their landlords to maintain and renovate decrepit spaces and lacking the disposable funds to do it themselves, many of the shuttered spaces faced the choice of reopening and facing more charges or remaining closed and losing income. Income that could have theory gone toward upgrades and repairs.[47]

As the number of clubs sealed by the task force rose, prominent Latinx politicians and community leaders accused the administration of targeting their neighborhoods. Community leaders pointed out that cultural centers were being swept up in the crackdown and that many of these spaces could not afford rent in well-maintained

[47] Minutes from Meeting on Happy Land Fire, March 25, 1990, Office of Operations, H. Robbins Subject Files, NYCMA; "HR Notes from Sunday Meeting," Office of Operations, Social Club Task Force, H. Robbins Subject Files, NYCMA; Briefing Document for release of Social Club Task Force Annual Report, March 20, 1991, David Dinkins Subject Files, NYCMA; and Social Club Task Force Annual Report, March 1991, David Dinkins Subject Files, NYCMA.

buildings.[48] For those that could afford such spots, moving to a better-maintained building frequently meant leaving the community they served. Carmen Canales-Ambert, who worked with Familias Unidos del Bajo Manhattan, a Lower East Side community center, expressed frustration with the city's lack of nuance in dealing with publicly utilized spaces. Canales-Ambert argued that the SCTF was shuttering spaces, "without any consideration for the role of each in the community."[49] Her point revealed tensions between community centers/social clubs and establishments that many believed to be little more than unlicensed bars. As social clubs as spaces became tinged with illegality and criminality, some owners tried to distance themselves from the category.[50]

In a particularly embarrassing moment for the administration, it came to light that Hispanic Affairs Commissioner William Nieves owned one of the social clubs padlocked by the task force. Nieves defended El Caney as a cultural center. After all, the East Harlem spot was a regular campaign stop for local and state politicians looking to garner

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[48] Less than a month into the crackdown, the Hispanic Coalition, a group of business, community, and non-profit leaders called for a thirty to sixty day moratorium of the SCTF. The coalition told administration officials that establishments owned by Latinos were receiving undue attention from the task force. Administration officials argued that "genuine community social centers" would not reopen without assistance whereas "profit-oriented businesses" would move elsewhere. Implying that shuttering clubs could help separate the legitimate community centers from the unlicensed bars. Minutes from Social Club Task Force meeting, April 23, 1990, Office of the Mayor, Office of Operations, Director H. Robins Subject Files, NYCMA. Todd Purdum, "Fire Tests Dinkins as Leader in Crisis," *New York Times,* April 3, 1990; Stephanie Strom, "Hispanic Residents Rally Against Closing of Social Clubs," *New York Times,* April 6, 1990.

[49] Stephanie Strom, April 6, 1990.

[50] "Dinkins Latino Initiatives: Only A Repetition of Old Projects," trans., *El Diario-La Prensa,* February 26, 1991, David N. Dinkins Papers, Rare Book and Manuscript Library, Columbia University; and Todd Purdum, "Fire Tests Dinkins as Leader in Crisis," *New York Times,* April 3, 1990.

support from the Latinx community. In reality, El Caney fell into the grey space occupied by so many of the places shuttered by the SCTF. The spot had been issued multiple violations and shuttered in 1989. In his defense of El Caney, Nieves conceded that there was, "an area to serve refreshments [and] when we have parties, they can serve liquor. But you can't call that a bar, you can't call that a social club."[51] However, two "patrons" of El Caney contradicted Nieves, telling a reporter that the spot usually had a bar with $3 mixed drinks, but they added that the club did not feel dangerous and was "the only place we got."[52]

In an effort to clarify the city's definition of an illegal social club, the Fire Department assembled licensing guidelines. According to these, an illegal social club was a space either designed or used as a cabaret without a cabaret license and/or a place of assembly permit. The guidelines defined a cabaret as any "room, place, or space," where any form of entertainment was offered, be that music, dancing, or "other similar amusement."[53] However, a church, cultural center, or similar institutions only needed a place of assembly permit. This continued the murky definition of a social club; a cultural center could argue that it was holding an event that happened to have music and dancing, as was the case with El Caney. Moreover, the difference between the requirements for a cabaret license and a place of assembly permit were problematic. To attain either a cabaret license or a PA permit, spaces had to have more than one unblocked exit, an

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[51] Charles Sennott, "Bronx Inferno: Commish Ran Club," *Daily News,* Thursday, March 29, 1990.

[52] Ibid.

[53] FDNY Social Club Task Force Vacate Guidelines, October 1, 1990, Social Club Task Force, Office of Operations, Director H. Robbins Subject Files, NYCMA.

interior fire alarm, emergency lighting, a fire drill coordinator, and unsealed windows. The one key difference was that the city required an automated sprinkler system for a cabaret license but not a PA permit. With no significant difference between a space with entertainment and a similarly sized one without entertainment, the sprinkler rule served as a way to arbitrarily shutter unwanted clubs. These guidelines made it less profitable for property owners to rent to "nuisance" businesses, eventually reshaping the commercial and residential terrain of New York City.

A few days after the fire, Steven Boss, a self-professed "management consultant in the non-profit sector," wrote to the city council's chair of the public safety committee with suggestions for how to best mange the city's underground social clubs. The main thrust of his case hinged upon greater enforcement, which he proposed could be paid for through fines and fees incurred by the clubs themselves. Boss rightly noted that earlier attempts to regulate the clubs had fallen short of their mark, in part because when it came time to pass legislation, the clubs were no longer the focus of public attention and so bills easily died in city council. Moreover, limited resources and public demands required city hall to focus time and money elsewhere. This had been the case in 1976 and again in 1988. Boss had a solution. "In certain regulatory areas," he noted, "it is possible to increase enforcement without increasing net costs," by levying fines and creating penalties that would fund the enforcement costs.[54]

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[54] "Illegal Social Clubs and Law Enforcement," letter to Council member Sheldon Leffler, March 29, 1990, Office of Operations, Directory H. Robbins Subject Files, NYCMA.

Paying for enforcement by extracting money from the people being policed was a core feature of the emerging revenue-focused municipal policy. Boss suggested that city officials justify the seizure and confiscation of property from both tenant and landlord as being in the best interest of insuring public health and safety. But really, property seizure, payments to release the property, or potential sales would offset the costs of a permanent "anti-social club" enforcement program. City officials could extract money from new sources not through licensing, but through criminal enforcement. Police would be the new extractive arm of the state.[55]

Boss noted that implementing quotas would produce quick financial results. "In a few hours' time, a police officer can write enough summonses to pay for his day's pay as well as for the associated overhead."[56] Boss's analysis was a window into a new way of thinking about municipal government. Through taxes on the poor and people deemed "nuisances," city government could pay for its regulation of those same groups. Boss further expressed this sentiment when he argued that "the public" wanted more police in the streets, cleaner streets, and improved enforcement. Using the wants of "the public" Boss argued for greater enforcement that would have zero-net cost, because it would be paid for by the groups deemed incompatible with his version of comfort and quality of life in New York City. Boss' ideas perfectly illustrated themes that would dominate the city's response to the Happy Land fire: cost effectiveness, enforcement, and quality of life.

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[55] "Illegal Social Clubs and Law Enforcement," March 29, 1990, NYCMA.
[56] Ibid.

Quantifying the work of the social club task force served to justify its expense and demonstrate its value, but cost effectiveness required proof. To do so, the Dinkins administration and city agencies involved in illegal building usage, tallied up the number of places visited, summonses and vacate orders issued, and people evacuated from clubs. But, the focus on quantifying government actions to deal with what the Dinkins administration termed a public safety initiative demonstrated a shift in how local politicians "proved" their worth to the public. Instead of treating the task force and building inspections as a necessary governmental function, the value of it had to be demonstrated to the tax-paying "customers" of New York's municipal government. Lost in the Task Force's metrics was an accounting of the real issues: negligent landlords, affordable space, and declining government services. The response to the Happy Land fire by city agencies demonstrated the saturation of neoliberal governing rationale via its focus on cost effectiveness and personal responsibility. It also continued the dispersal of policing functions across city agencies, just as the Department of Finance had a "Criminal Enforcement Unit."

The issue remained that for clubs that wanted to adhere to city regulations, they did not have access to the funds needed in order to bring their spaces up to code, pay off the violations they had incurred, and apply for licenses. At the insistence of Latinx city councilmembers the law passed to strengthen social club regulation in June 1990, Local Law 23, included the establishment of a temporary commission to investigate how the city could help clubs and community centers comply with building codes and regulations. Internally, the Dinkins administration strongly opposed this provision on account of its

potential costs and worked behind closed doors to have the commission excluded from the final version of the law. When that failed, they dragged out the nominating process for appointees. A full year after the Happy Land fire and more than seven months after the law stipulated the commission be formed, the administration had still failed to nominate the fifth and final member.[57]

Cost concerns ultimately led the Dinkins administration to reduce the inspections conducted by the task force beginning in June 1990. By August, the administration had reduced the number of teams by half, down to ten on weekends and four on weekday nights. They insisted that staff reductions did not affect the thoroughness or number of inspections and cited the decline in active vacate orders as evidence that the task force worked. However, the decline in the number of active vacate orders may have been related to the initial overzealous issuance of orders by the SCTF. In June 1990, after the passage of Local Law 23, which laid out clear vacate procedures and limited the free for all shutdowns that had immediately followed the fire, the task force began rescinding vacate orders faster than they issued them. This suggests that the number of unsafe clubs had not diminished, but rather, that the task force had over-issued vacate orders in the immediate wake of the fire, orders without merit that the city had to rescind when pressed

[57] Memo re: Six Week Update – Social Club Task Force, May 8, 1990, Social Club Task Force, Office of Operations, H. Robbins Subject Files, NYCMA. The proposed bill also included a provision to change licensing standards, to "promote the continued, safe operation of local, non-profit civil, cultural, recreational and social groups and organizations." Int. No, 415-A, Sheldon Leffler, April 25, 1990, Social Club Task Force, Office of Operations, H. Robbins Subject Files, NYCMA.

by owners and operators. Dinkins, struggling with budget shortfalls and a slow economy, cut the teams to save on costs, not because of their success.[58]

Following the reduction of the task force, the Dinkins administration passed the onus of safety onto patrons, because personal responsibility as policy was cost effective. Dinkins chastised patrons who "quickly returned" to clubs that reopened in violation of a vacate order. The fire department created pamphlets for distribution in communities like East Tremont, warning patrons to be on the look-out for hazardous conditions. Club goers needed to be personally responsible for their well-being, by reporting unsafe clubs, looking for exits, lights, and other fire safety features, and refusing to patronize "illegal clubs." They needed to protect themselves by refusing to patronize illegal clubs and to report said clubs to the police or fire station in their neighborhood.[59] But passing the onus of safety onto patrons further let landlords off the hook for maintaining commercial properties by placing the blame on club goers who ignored warning signs.

The response by the Human Rights Administration (a local holdover from the Great Society era) in the hours after the fire demonstrated other possibilities. HRA staff set up operations to assist victims and their families at the local elementary school. Staffers assisted surviving family members with applying for local and state aid, including rent assistance; facilitated childcare; and provided counseling and set up a long-term mental health program through the Department of Mental Health. They coordinated

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[58] Social Club Task Force Annual Report, March 1991, David Dinkins Subject Files, NYCMA.

[59] Press Release, March 25, 1990, Office of Operations, Director H. Robbins Subject Files, NYCMA.

with city and private agencies like the Red Cross to get immediate assistance to the many families who had lost their primary wage earner, including $900 per family to offset burial costs. HRA administration also made sure that at least half of their staff at the site spoke Spanish.[60]

The HRA was unfortunately constrained in their efforts by budget cuts as well as strict welfare eligibility requirements. Staffers observed that few of the families seeking aid following the fire received public assistance, though "all seemed to be indigent and money [was] a major problem."[61] HRA Commissioner, Doby Flowers, foresaw the potential roadblocks families would face at the state level and assumed that most would be turned away. That assessment was not wrong. Ruben Vallardarez, Happy Land's deejay, had been badly burned in his escape. He applied for unemployment assistance to help his family while he recovered. However, because he worked off the books at the club the state had no record of his employment and rejected his claim. Vallardarez was not alone; only six of the families assisted by the HRA ultimately qualified for income

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[60] "Social Clubs and the City: What you Should Know about Social Clubs," Community Assistance Unit, Deputy Mayor Lynch Subject Files, NYCMA; HRA Report, "Services Provision for Victims of the Happy Land Social Club Fire, March 27, 1990, Deputy Mayor Lynch Subject Files, NYCMA; and HRA Report, "Services Provision for Victims of the Happy Land Social Club Fire," March 28, 1990 Social Club Task Force, Office of Operations, Director H. Robbins Subject Files, NYCMA.

[61] HRA Follow-up to the victims of the HL Social Club Fire, March 27, 1990, Social Club Task Force, Office of Operations, Director H. Robbins Subject Files, NYCMA.

maintenance and the State Crime Victims board only deemed thirty families eligible for $500 grants.[62]

In the wake of the Happy Land tragedy, city council and the Dinkins administration's reaction represented the uneven policy that flowed from a narrow focus on revenues – at once too sweeping and not far-reaching enough. They enacted harsher fines, stricter licensing rules and inspection guidelines, and expanded the definition of spaces that could be considered illegal social clubs. These solutions to prevent another tragedy amounted to more problematic regulation of low-income neighborhoods. Unsafe building conditions needed to be addressed by the city, but local politicians repeatedly failed to enact measures that would hold property owners accountable. Eventually, doing so no longer seemed possible. In the end, it was patrons of places like Happy Land who paid the price. By rendering unlicensed social clubs "illegal," city politicians further marginalized these spaces and their patrons. These policies also laid the groundwork for the criminalization of nightlife (and noise) that flourished during the Giuliani administration.

The city did eventually bring charges against social club owners and operators for safety code violations. In total the city initiated 1,102 criminal cases involving 434 locations. In the case of a social club in Crown Heights, the city charged both the lessee of the space as well as the person managing the premises. Ultimately, the city made it less pleasant for property owners to rent to "nuisance" businesses, eventually reshaping

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[62] HRA Report, March 28, 1990, NYCMA; "Club Survivor Recalls Dash into Flames," *New York Times,* April 7, 1990 and Tim Golden, "Grief and Bitterness Smolder in the Embers of a Fatal Fire," *New York Times,* March 25, 1991.

the commercial and residential terrain of New York City. The private market would sort itself out and clubs would either survive or not, the city's job was to ensure revenue collection. This mindset spread from the response to the Happy Land fire and affected policy toward other building issues.

The city's investigation into illegal building usage in the wake of the Happy Land fire led to the creation of a Buildings Safety Task Force (BSTF), implemented to address "unsafe illegal occupancies other than social clubs."[63] As with the SCTF, members of the BSTF first worked to identify the "universe of illegal occupancies." The aim was to collect data from various city agencies and then create a computer database accessible to each department of all known locations deemed unsafe or lacking the necessary city permits. Each department's list of illegal buildings reflected their respective enforcement aims. The NYPD focused on locations that housed sex work, gambling, drugs and alcohol, or chop shops – uses that fell under the purview of the Padlock and Nuisance Abatement Laws. The DCA also focused on commercial buildings that violated licensing laws or had received consumer complaints. Housing and Preservation and the DOB were able to identify residential spaces that either posed imminent safety threats or were improperly zoned (commercial in residential or vice versa). The reports given by the Fire Department were some of the most inclusive since the FDNY was responsible for inspecting all buildings for fire hazards. From the preliminary work of the BSTF emerged a focus on "illegal" sweatshops, most likely because these spaces posed the

[63] Memo re: Six Week Update – Social Club Task Force, May 8, 1990, Office of the Mayor, Office of Operations, Director H. Robbins Subject Files, NYCMA.

most serious threat to large numbers of people. The FDNY's data on sweatshops was lacking however, and initial suggestions of where to find information revealed how little attention had been given to the labor situation in the city. In addition to possible data held by the Department of Labor, Task Force member suggested using the "Leichter list," a list of sweatshops in the city that had been compiled in the early 1980s and not updated since.[64]

In the immediate aftermath of the Happy Land fire, the FDNY estimated that 119 factories operated illegally in the city (without certificates of occupancy and other permits). Compared to the 9,792 legal factories, unlicensed operations represented a small piece of illegal occupancies.[65] With a limited budget, the FDNY suggested "code enforcement" and possible new legislation to deal with the city's various illegal occupancies. An assessment by the City's Law Department concluded that new legislation would not be necessary to pursue enforcement against unsafe occupancies in commercial buildings.[66] However, as had become clear with attempts to manage social clubs, code enforcement produced limited results. The Happy Land Club had been cited by a previous social club taskforce for hazardous conditions in 1988. Small-scale illegal factories could simply set up shop again elsewhere and sporadic enforcement checks would enable them to go undetected. Despite these state and local-level task forces, wage

[64] Minutes from 4/11/90 Meeting on Illegal Occupancy, Office of the Mayor, Office of Operations, Director H. Robbins Subject Files, NYCMA.

[65] New York City Fire Department, Proposal to Set up Permanent Task Force, May 1990, Office of the Mayor, Office of Operations, Director H. Robbins Subject Files, NYCMA.

[66] Memo re: Six Week Update, May 8, 1990, NYCMA.

and safety abuses easily continued in the manufacturing process. In part because the focus remained on building code violations and not on labor law violations. Similar issues had stemmed from the earlier state-level task force discussed in Chapter 4. Once again, the state had turned its focus toward revenues, protecting or extracting them, leaving sweatshops and those who worked inside them by the wayside.

Revenue Extraction 2.0

Morris Powell sold homemade pies and body oils on 125th street in Harlem. He also served as president of the Universal Black Business People's Association, advocating for the needs of some 450 street vendors in the area, many of whom worked without a license. In the winter of 1993, Powell expressed concern with yet another round of proposed remedies from City Hall to deal with the city's street vendors. "With all the drugs and vices out here in the streets," he said, "we think the police should have enough to do and leave us alone. We just don't want to be treated like criminals."[67]

Morris Powell's critique of the way city officials treated vendors as criminals stemmed in part from his belief that vending constituted a respectable way to earn a living. Powell and his fellow vendors faced significant challenges in their attempts to convince other New Yorkers about the legitimacy of their trade. In response to the release of a lengthy DCA report on street vending, city council considered a proposal to create 2,000 more general vending licenses in 1993. The catch though was that these

[67] Jonathan Hicks, "Street Vendors Wary of Council Effort to Create More Licenses," *New York Times,* February 10, 1993.

licenses would expire after five years, which one city councilmember explained was an effort to, "make vending an acceptable and accessible, but temporary, way of earning a living."[68] An increase in the number of licenses, limited to five years, would help vendors get their business off the ground, after which period they would presumably move to a storefront location. At the same time, a Department of Business Service (DBS) task force released a number of proposals to, as Dinkins phrased it, "do more to get Government off the backs of small businesses." Suggestions included exempting small businesses from the commercial rent tax, a reduction in the number of DCA and sanitation violations, and a $2.5 million grant to establish day-care centers to assist working parents.[69]

The DBS task force demonstrated the thoughtful policy proscriptions that could arise from a careful study of a particular issue. The same was true of a report by the DCA on street vending in the city that was the product of a task force headed by DCA commissioner Mark Green. Green's final report, "Balancing Safety and Sales on City Streets," represented a good faith effort by city officials to reach a compromise on street vendor regulation. Green and his co-authors acknowledged the many factors pushing people to work and consume on the streets, such as un/underemployment and low wages. They noted that the economic recession at the tail end of the 1980s had triggered unemployment in the city and led people to look for the best bargains. As in the 1970s,

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[68] "Street Vendors Wary of Council Effort," February 10, 1993.

[69] Steven Prokesch, "Dinkins Promises Aid for Small Businesses," *New York Times,* February 17, 1993. The involvement of the DBS in managing vendors demonstrates the continued shift of away from vending as a consumer issue toward vending as an issue faced by the city's business community.

consumers hoped to stretch their wages further and street vendors offered price and convenience in addition to a source of income.

Green and members of the vending review panel saw the role of government as one of striking a balance between those who wanted unfettered access to city streets and those who wanted a total ban on vending. Here too, the report tried to accurately identify the causal factors for a noticeable increase in unlicensed vendors: the recession, cuts to federal welfare programs during the Reagan administration, and "a service economy putting a higher premium on skilled jobs."[70] A section on the historical roots of the vendor controversy, as they termed it, further revealed a serious attempt to expose the root issues surrounding vending. Ultimately, the authors noted, this was about "economics and the control of urban space."[71]

The report illustrated the continuing tensions over street vending in the city that had begun nearly a century earlier. In response to long-running claims that vendors created hazardous pedestrian obstructions, degraded commercial areas, and competed with brick-and-mortar businesses, the authors observed that vendors actually acted as anchors for pedestrians and could help clean up an area. Vendors interviewed for the report pointed out that they attracted consumers because of their prices, choice of goods, and convenience. Some local politicians supported this conclusion, adding that vendors likely attracted customers to merchants and provided a layer of security to the streets with

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[70] "Balancing Safety and Sales on City Streets: A Report on Street Vending to Mayor David N. Dinkins," Introduction, Task Force on General Vendors, DLMA Series 2:5, RAC.

[71] Balancing Safety and Sales, 4.

their presence. Several city officials and business leaders would actually concede this point a few years later as they tried setting up vendor marts in lower traffic areas to attract consumers. In SDR park on the Lower East Side and in lots on 116th street in Harlem, the local BIDs sought to place vendors to increase foot traffic and bring pedestrians and consumers to empty spaces.

Conservative, anti-government regulation types, like William F. Buckley, came to the vendors' defense in the DCA report. They sympathized with the plight of people trying to earn a living, but blocked by "arbitrarily" legislated caps on licenses. In the midst of discussions about welfare dependency and reform at both the local and national level, preventing people from working via regulation represented one more way in which government created dependency. Despite support for vendors' rights to earn a living from across the political spectrum, the report concluded that the real problem arose from too many unlicensed vendors and not the restrictions that rendered much vending in the city functionally illegal. Green and his co-authors estimated that as many as 10,000 vendors worked without a license in the early 1990s. Their solution to this included doubling the cap of 853 general vendor licenses, but allocating them to "uncongested boroughs, i.e. Non-Manhattan."[72] Increasing the number of licenses, they argued, would help vendors legally enter into trade and produce hefty revenues for the city.

In both the report and his conversations with the media, Green tried to represent the task force and by extension municipal government as striking a balance between two interest groups; retail, business, and community boards upset by the number of peddlers

[72] "Balancing Safety and Sales," Introduction.

and vendors who preferred work to welfare and who added to consumer choice.[73] But without reforming the spatial restrictions placed on vendors at the behest of major businesses in the city, a balance would be difficult to achieve. In addition to raising the caps on licenses, the report suggested bringing back vendor markets and forming a separate misdemeanors court where peddler cases could be tried, moving oversight away from ECB's administrative tribunals (which still struggled to collect fines). Both of these suggestions represented a move back toward older mechanisms of regulation. However, the continued demands from members of groups like the DLMA and the Fifth Avenue Association to do something about the "proliferation of vendors" who (they claimed) signaled decaying order and threatened quality of life, limited the implementation of any of the proposals contained in "Balancing Safety and Sales."[74]

Revenue extraction through new licensing schemes did catch on and continue at the state level after city officials abandoned the idea. Nail salons offered an easy new revenue source for Albany and by extension, New York City. The budget-friendly industry seemed to appear overnight and by the early 1990s manicures and pedicures had become an affordable luxury for most New Yorkers. Korean immigrants drove the expansion of low-cost nail salons in the 1980s that made manicures and pedicures

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[73] Consumer Affairs Press Release, February 4, 1991, DLMA, Peddlers 2:3, RAC.

[74] DLMA President Barbara Christen continued using the arguments established by past presidents in the early 1990s before her job was folded into the newly created Association for Downtown New York. For example, in letters to then Police Commissioner, Ray Kelly, she described the "proliferation of unlicensed peddlers" as a continued menace to safety and security downtown. She added that their presence undermined the image of the city the business community wished to project to clients and tourists, not to mention that they cost the city in sales tax. Correspondence, November 23, 1992, DLMA, Peddlers 2:3, RAC.

accessible. Whereas a basic manicure at an upscale location like the Elizabeth Arden Salon on Fifth Avenue cost $14 (and $27.50 for a pedicure), manicures could be found for as little as $5 elsewhere in the city and pedicures for $9.[75] Most manicurists learned their trade after arriving in the U.S., often in response to training ads in Korean newspapers. The job appealed to women with limited English-proficiency and until 1995 manicurists did not need to be licensed by the state. Like hair salons in prior decades, nail salons afforded new arrivals to the city a steady, off-the-books income as well as a path toward social mobility for those who set up their own shops.

Informal work has long served as a social ladder for working-class Black and immigrant women. Unreported income enabled them to achieve mobility while taking control of their working and personal lives.[76] Similar issues continued to frame the informal labor of women in Harlem. Some women welcomed the passage of licensing requirements, which enabled them to come in from the periphery and gain some state protection. Others, however, did not welcome the change. The New York Department of Licensing and the cosmetology board began formalizing the hair braiding and nail industries through licensing requirements – letting consumers know that their health and safety was protected, but not creating any oversight of worker treatment.

In response to lobbying by the cosmetology board and reports of fungal infections, Albany legislators passed the Appearance Enhancement Law in 1995, that forbade the re-use of emery boards, prohibited the use of other tools, and required new

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[75] 1986 prices. *New York Times,* February 21, 1986.

[76] LaShawn Harris, Sex Workers, Psychics, and Numbers Runners: Black Women in New York City's Underground Economy (Urbana: University of Illinois Press, 2016).

disinfection practices for shared supplies. Salon owners attempted to pass the cost of these provisions onto customers by requiring them to purchase personal manicure kits. However, this proved unsustainable as the industry continued to expand and competition grew. Cheapness was key to success so many owners simply cut their workers' wages – a response to the law that would have serious consequences a decade later.[77]

On top of hygiene requirements, the 1995 law also required manicurists to be licensed by the state and to pass written and practical exams - licenses cost $20 and were good for two years after which they needed to be renewed for another $20 fee. "Cutting cuticles is really like a surgical procedure," an assistant professor of dermatology at New York University told the *New York Times.*[78] Ostensibly this too was about hygiene and public health, but it remained difficult to separate genuine concern for public safety and lobbying by higher priced beauty salons that lost out to their bargain competitors. It remained unclear just how extensive state oversight of licensing would be and how the changes would affect the women giving the manicures (as opposed to those receiving the manicures).

A similar debate played out over hair braiding at the time. The main issue was, should hair braiders be required to attend costly programs that dealt marginally with their trade in order to become licensed? Hair braiding salons attracted similar scrutiny as nail salons following an influx of immigrants specializing in the craft in the 1980s. As with nail salon owners and workers, hair braiding offered a reasonably lucrative career in a

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[77] Rosalie Radomsky, "For the Files: New Rules on Manicures," *New York Times,* January 29, 1995.

[78] Ibid.

period of relatively high unemployment for people of color in New York City. Hair braiding offered women a way to earn income or start their own business with limited capital. In the 1980s, abandoned storefronts along 125th street in Harlem meant cheap rents.[79]

Unlike manicurists, hair braiders typically drew upon experience in their native country with elaborate braiding styles, so that the work was an extension of prior knowledge. For some then the creation of licensing laws in the early 1990s seemed discriminatory. As with nail salons, the state claimed that safety concerns motivated the new requirements. In 1992, legislators in Albany rewrote the state's cosmetology licensing requirements to include "natural hair care," which granted licensees an abbreviated course hours requirement – 900 hours compared to the standard 1200. The law grandfathered in those braiders who already had a cosmetology license prior to 1992.[80]

A sizeable number of braiders complained of customers who would sit until the last braid and then leave without paying, claiming the work was poorly done. Prior to the reform of licensing requirements to include hair braiders, workers had minimal recourse to these customers who walked out without paying. Reporting the theft to the police would only bring scrutiny to an informal space. Licensing enabled some braiders to "legitimize" their business and granted them new protections, but it also required an investment in courses, training hours, exams, and license fees, leaving those without the

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[79] Claudine Williams, "Hair Wars," *New York Times,* August 21, 1994.

[80] Lena Williams, "Battle of the Braid Brigade," *New York Times,* January 26, 1997.

means, or the desire to get licensed in a more precarious situation. African and Caribbean immigrants dominated the hair braiding trade by the 1990s and complaints from other salons certainly factored into state actions against unlicensed braiders. But lobbying efforts on the part of the cosmetology industry, which stood to gain financially from a new crop of beauty school students drove the legislative addition of natural hair care to the state's licensing requirements.

Women who braided the hair of their friends and families that wanted to go into business for themselves found the new licensing requirements barred their access. The lawyer in a 1997 case brought against the state by two hair braiders argued that the requirements drove more braiders into the underground economy, especially because the 900-hour curriculum barely pertained to natural hair-styles. (The training included 200 hours of hair-cutting, 160 hours of hair styling techniques braiders never used, like relaxing, and 12 hours on shaving faces). Licensed and unlicensed braiders agreed that some training was necessary, like recognizing scalp disorders and health related issued, but pointed out that the hundreds of hours and thousands of dollars required to get a license proved an insurmountable barrier to formal status. The state licensing board responded that the proliferation of braiding salons posed serious concerns about sanitary practices and accountability. Meanwhile, the cosmetology industry lobbied for tighter controls (meaning higher fees for them) on both public safety terms and fairness – arguing that if other cosmetologists received formal training why should braiders be given special treatment?[81]

[81] *New York Times,* January 26, 1997.

In order to do so, city officials created a permitting infrastructure to gain both licensing and citation revenue in order to compensate for reduced funding from the federal government and Albany and tax abatements given to keep businesses in the city taxes. The funds to provide basic services like police, fire, and sanitation increasingly came from revenues raised through regulation: parking tickets, licensing fees, and the many fines placed on off-the-books workers. When those revenues came too slowly or in negligible amounts, municipal agencies either ignored the industry (as had first happened with clubs and discotheques) or if public outrage and corporate lobbying necessitated it, they regulated it out of existence. In doing so, municipal regulation created an "illegal" underground, and city officials punished those who labored there with fines, loss of their business, and even jail time.

Conclusion

Faced with continuing budgetary issues stemming from limited federal funds, the impact of Reagan era tax cuts, and the 1987 Wall Street crash, the Koch and Dinkins administrations tried to extract revenues from new sources and increase the extractive potential of existing municipal fines and fees. The growing popularity of quality of life rhetoric, when combined with extractive revenue policies, transformed many municipal regulations into policing issues. As repeatedly occurred whenever the city tried to create new revenue streams, the addition of the criminal justice system frequently stunted potential revenues. Rather than conform to new extractive revenue policies which meant possibly facing the police, business owners further concealed themselves from the state.

The combination of new licensing requirements and increased policing pushed those who could not afford to legitimize their businesses to the margins of the city economically and spatially. Moreover, licensing scrutiny put immigrants without legal work status at risk and exposed them to greater potential for employer abuse. Yet the repeated efforts to extract revenue from the underground economy continued to fail. By 1993, informal economic activity accounted for an estimated 20 percent of the city's economy, or roughly $54 billion, much of it untapped.[82]

Through a combination of licensing agencies, BIDs, and the courts, officials believed the city could be remade to appeal to business interests, tourists, and an influx of middle-class residents. That appeal came at a price. As city politicians increased the regulation and surveillance of public and private space in an effort to both extract new revenues and protect major revenue sources, the underground economy served as the conduit through which this new legislation ran. From the need to regulate commercial and residential space due to so-called illegal usage to anti-nuisance and quality of life enforcements against peddlers or anyone working on the street, city politicians built a regulatory infrastructure to manage the city's informal sector that affected policy more broadly. What had initially been limited to extracting revenue from untapped sources morphed into extraction from anywhere possible, including litter, dog waste, parking and traffic violations, turnstile hopping, and other so-called quality of life infractions.

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[82] Deborah Sontag, "Emigres in New York: Work Off the Books," *New York Times,* June 13, 1993.

At the local and state level, many of these extractive policies took on an element of criminal enforcement. Hair braiders, nail salons, and social clubs that did not adhere to new and increasingly confusing licensing regimes were marked as illegal, dangerous, and thus subject to police intervention. Both intentionally and not, the mayor and governor made clear the limits of government action and the need for individual citizens to go it alone and exhibit personal responsibility – not only for their financial well-being, but their personal health and safety as well. This neoliberalization of governmental functions passed the costs along to marginalized groups, through fines and fees, but also through restrictive zoning practices that limited people's economic freedom to earn a living. This process corresponded to a rise in the role of Business Improvement Districts (BIDs) in managing the city's neighborhoods. Proponents of BIDs argued that government actors and agencies had failed to deliver services to their taxpayer customers and private organizations could respond better and more cheaply to these needs. They sought to supplant the commercial tastes of longtime residents with a new vision that underscored the "I Heart NY" campaign – "a safe, clean, predictable space."[83]

At the same time, the untapped revenue potential of the city's informal workers remained an unfulfilled goal of city politicians. However, as the 1982 investigation of tax-delinquent clubs and bars revealed, if the revenue gained proved too small or came forth too slowly city hall moved on to other, more pressing concerns. As before, the

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[83] Sharon Zukin, *Naked City: The Death and Life of Authentic Urban Spaces* (New York: Oxford University Press, 2009), 4. Zukin suggests that via their financial and cultural power over space, groups can remake urban spaces, rendering them safe for the middle class through dispersal of longtime residents.

goals of city officials to regulate and extract revenue from semi-formal and informal activities frequently came into conflict. Officials conceded that the burden of licensing led many businesses to cut corners and avoid bureaucratic tie-ups. Many social clubs for instance skirted the line between legal and unlicensed operation not only because they were unfamiliar with the city's myriad rules and regulations, but because limited oversight meant they could typically avoid scrutiny and thus keep more of their revenues. Moreover, the city's conflicting aims of extracting revenue and regulating businesses out of existence in order to protect other revenue sources created a situation in which the city would easily abandon the revenue side of a policy when confronted by business interests or faced with slow financial gains.

As the nuisances of the city's underground economy continued to reappear – street vendors in midtown, social clubs in the Bronx and Brooklyn, hair braiders on 125th street – neighborhood organizations, chambers of commerce, and BIDs opposed to these actions took notice. These groups argued that municipal government could not properly manage these problems, in part because it was weighed down by its own bureaucracy. According to them, private groups could better deal with these continued urban nuisances. Members of the DLMA, the Grand Central Partnership, and various block associations claimed they could draw upon their combined business experiences to nimbly and most critically, cheaply, put a stop to the continued reemergence of vendors, clubs, and other informal workers. In their quest for revenue, city officials had ceded power to private interests and by the mid-1990s that ceding had born fruit.

CHAPTER 6
"CASH RULES EVERYTHING AROUND ME:" NEOLIBERAL ERA MUNICIPAL REGULATION

The Wall Street crash in October 1987 hurt the city's economy, slowing renewal efforts and triggering demands yet again for budget cuts and service reduction to stave off further economic damage. Austerity had become a foregone conclusion.[1] Unemployment rose, this time concentrated in retail, service, finance, and real estate. The manufacturing sector declined as well, but due to its already reduced stature in the city, it only accounted for one-fifth of job loss. Beginning in April 1989, New Yorkers experienced a 10-percent job decline that finally bottomed out in 1993. As one analyst noted, excluding the 1970s this marked the city's largest loss of jobs, effectively erasing gains made during the Koch administration. Moreover, many of these jobs were not coming back. At a 1994 meeting of the DLMA board members, the future director of the association's BID noted that the city only projected regaining a quarter of the jobs lost.[2]

The gains of the 1980s had never been evenly distributed and others were erased in the 1987 Wall Street crash. Unemployment rates for African-Americans and Latinos remained high for much of the decade. Lower-income New Yorkers had experienced a disproportionate level of economic insecurity during the Reagan era as federal spending

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[1] For more on the institutionalization of austerity in New York City see Kim Phillips-Fein (2017) and Jonathan Soffer (2010).

[2] Samuel Ehrenhalt, "Economic and Demographic change: the case of New York City," *Monthly Labor Review* (February 1993) https://www.bls.gov/opub/mlr/1993/02/art4full.pdf (accessed January 28, 2018; and Carl Weisbrod, Speech to DLMA, September 1994, DLMA Series 3: Alliance for Downtown New York, Rockefeller Archive Center.

and programs were cut. Actions at the federal level triggered further cuts locally, adding to the insecurity as rent-assistance and other forms of aid overseen by the Human Resources Administration (HRA) – New York City's version of Great Society programming – were reduced or cut all together. In addition to the normalization of austerity politics in the city, informal and unlicensed workers faced growing barriers to earning a living. As discussed in Chapters 4 and 5, under the mayoral administrations of Koch and Dinkins, New York's marginalized workers dealt with new licensing requirements, exclusionary zoning policies, and new laws that made certain types of work nearly impossible.

Austerity measures worsened economic and social issues, from public health crises like the crack epidemic to the city's growing homeless population. At the same time, crime remained a politically hot button issue locally and nationally. Crime rates, an ever-present issue throughout the 1980s, peaked in 1990, a year in which the city recorded 2,262 murders, spurring fears that the so-called bad old days of the 1970s had returned.[3] Crime in the city began to drop after that, even before the full advent of broken windows policing, but as Kelling and Wilson argued and others in the city repeated, it was the fear of crime that mattered. That fear would be used to increase municipal policing powers. Coupled with decades of tools for regulating and extracting revenue from the city's underground economy, the 1990s would be marked by the

[3] Police Department, City of New York, CompStat Report - Historical Perspective, vol. 24, no 18 http://www.nyc.gov/html/nypd/downloads/pdf/crime_statistics/cs-en-us-city.pdf (accessed January 29, 2018).

coalescing of punitive regulation directed at people and spaces that did not fit the narrative of New York as a global capital of finance and trade.

As decades of revenue extraction, regulation, and control came to a tipping point, the economic downturn, fears of crime and disorder, the rhetoric of personal responsibility, and the election of a hardline former federal prosecutor translated into a coalescing of punitive regulatory policies aimed at protecting revenues from finance, real estate, tourism, and white-collar workers. What past city politicians had set in motion through agencies tasked with regulating and monitoring groups of workers, various laws and zoning measures to establish spatial control, and militarized task forces established to solve structural issues through temporary crackdowns, came to a head during the Giuliani administration.

The election of Rudy Giuliani as mayor in 1994 marked the consolidation of a new era in New York City. Officials oversaw the removal of street vendors, squeegeemen, the city's homeless, and anyone else who did not fit the increasingly sanitized version of New York, a sanitized vision meant to protect the revenues generated by tourism, finance, and real estate. In this period, real estate interests finally succeeded in clearing adult businesses out of Times Square with the help of city approved zoning measures. Concurrently, private property owners established a daunting number of BIDs, cementing private control over public spaces and the privatization of municipal functions. The privatized and corporatized city had no place in it for the hustlers that survived the fiscal crisis of the 1970s and the dark days of the 1980s. Pushed to the far corners of Manhattan and the outer boroughs, their erasure signaled the "renewal" of the city.

Involved in much of this change were the directors and members of the Downtown Lower Manhattan Association (DLMA). First, in their continued crusade against vendors and later in the creation of the Alliance for Downtown New York (ADNY) the city's largest BID with an operating budget of $9 million at its inception in 1995.[4]

The Giuliani era solidified a municipal policy based on deregulation for large corporations, punitive regulation to protect tourist locales, and generous subsidies to various business interests. This type of neoliberal governance had developed in the wake of the fiscal crisis, a governance focused on rebuilding and reorienting the city toward extracting and protecting revenues via municipal intervention. Various mayoral administrations and city agents had created a toolbox for Giuliani's disposal in solidifying his vision of the city scape. With the popularity of quality of life and zero tolerance policing in conjunction with a former prosecutor's zeal for enforcement, decades of restrictive zoning measures, laws (like nuisance abatement and anti-loitering), privatization of municipal functions, and a militarized police force became tools to complete the "purge" suggested in the early 1980s by market research firm YSW. By the 1990s, the transformations in governance, economic policy, and even social values had produced a situation in which the desires of some trumped the well-being and freedom of movement of others. The impulse to regulate portions of the city's economy in order to protect the revenues of other sectors had won. Unlicensed and informal workers were no

[4] "Annual Meeting of Alliance, April 25, 1995," DLMA Series 3: Alliance for Downtown NY, Inc., Rockefeller Archive Center (RAC).

longer potential revenue sources to be tapped, they were criminals to be removed from city spaces.

Critical to the full manifestation of a neoliberal order were the roles played by property owners and real estate developers in reshaping New York's neighborhoods through the organization of Business Improvement Districts, including the city's largest BID, the Alliance for Downtown New York created by members of the DLMA. BIDs advocated for rezoning measures that pushed unwanted people and businesses out of commercial areas, paving the way for successive waves of gentrification. At the same time, they lobbied for greater abatements and subsidies to keep corporations in the city. With the city "facing financial constraints," ADNY President Carl Weisbrod argued that officials had to "go out of [their] way to protect and nurture…a healthy lower Manhattan tax base."[5] Often that nurturing meant energy assistance grants, property tax abatements, job creation credits, and many other financial incentives to attract new business and prevent older companies from leaving. While many of the companies that received corporate welfare from the city did produce sizeable returns, they were no longer expected to pay the fair share of municipal costs.

Vendors

Since the creation of the DCA in 1968, management of the city's street vendors had been a contradictory affair. Despite a few nods to the problematic management of peddling in

[5] Weisbrod speech to DLMA, September 1994, DLMA Series 3: Alliance for Downtown NY, Inc, RAC.

the city, the report released by Mark Green in 1991 ultimately reinforced the status quo – a messy set of regulations driven by the desire of large corporations, financial institutions, and real estate developers to control urban space. The authors argued that an increase in licensed vendors would lead to fewer unlicensed ones, despite repeated evidence to the contrary, something that anti-vending forces would latch onto. Moreover, they repeated the promise that more licenses would translate into more tax and license revenue, citing figures from the state Finance and Taxation Department that estimated a loss of $100-300 million annually in uncollected sales taxes. Green and his co-authors failed to note that increasing licenses would fail in this respect so long as the most lucrative commercial spots in the city were forbidden, thus limiting the revenue production from licenses. Ramping up enforcement would also lead vendors to conclude that the cost of working without a license was far less than working with one, and this did not include vendors without the proper documentation required to secure a license. As long as property owners pressed for spatial limits on where vendors could work, people would forego licenses.

At the time of the report's release in 1991, a general vendor license cost $200 a year and there were 1000 people on the waiting list for a license, with the average wait being 4-5 years.[6] To get a license, applicants had to show proof of American citizenship

[6] "Balancing Safety and Sales." The current cap remains at 853 for general vending licenses and the waitlist for these licenses has been closed since 1992. Food licenses are slightly less difficult to come by as there is no limit on food licenses. However, food vendors also need a Department of Health permit, which is capped at 3,000. The average wait for a DOH permit is more than a decade. Current information on street vendor licensing available at The Street Vendor Project, "FAQ," http://streetvendor.org/faq/, accessed November 14, 2018.

or authorization to work, thus blocking undocumented immigrants from applying for a license. In addition, they needed certification from the state demonstrating their compliance with sales tax as well as the cash or a loan to cover a $2500 compliance bond. Taken together, the documentation, cap on licenses, and restricted streets rendered unlicensed vending a preferable choice for many.

Over the years, the DCA maintained the ability to add to the restricted streets after a hearing if the presence of vendors on a street created congestion that constituted a "serious and immediate threat to the health, safety, and well-being of the public."[7] This was in line with the Good Humor ruling limiting the actions for which the city could regulate vending. During a required comment period when considering restricting new streets, witnesses could offer testimony that referred to other issues raised by vendors such as competition with local merchants or their effect on the quality of life in the neighborhood, but per the courts and the 1979 General Vendors Law, this material would be inadmissible.

However, as the broken windows thesis advanced by Kelling and Wilson gained national traction, "quality of life" took on a new meaning, gradually becoming synonymous with broken windows policing and zero tolerance policies.[8] Workers in the

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[7] Form response letter from Bruce Ratner as Commissioner of the Department of Consumer Affairs, October 27, 1980, DCA, Ed Koch Departmental Subject Files, NYCMA.

[8] Where once city politicians had spoken of quality of life in terms of amenities or even a vibrant street scene, during the Koch administration it began to be equated with crime control, so that to have quality of life in the city meant to be free from street crime (or the fear of street crime). Under the Giuliani administration quality of life measures, such as policing panhandling and squeegeemen, signaled that a change had occurred on a policy level. Quality of life was now synonymous with the street level policing of broken

city's underground economy were frequently at the forefront of this change and street vendors were no exception. Quality of life concerns now implied constituent demands for public safety. With respect to the limitations on municipal regulation of streets (it had to be a matter of pedestrian safety) "quality of life" as safety and crime control allowed city officials to push against those limitations. A change to the General Vendors Law in 1990 signaled a shift in city policy. Throughout the Koch administration the police and city officials had struggled to apply forfeiture rules to licensed vendors without facing a court challenge (see Chapter 4). An amendment in 1990 enabled the police to seize the goods of licensed general vendors who worked on restricted streets and put those goods up for forfeiture. This was framed as integral to protecting pedestrian safety by imposing an immediate financial penalty on vendors who ignored time and place restrictions. City council had taken several preliminary steps to reach this point, beginning with a 1989 law requiring all distributors to general vendors to be licensed by the city. They also granted the police the authority to seize the goods as well as the vans of distributors who sold goods to unlicensed vendors.

The ability to treat vending as a serious quality of life issue was also laid out in the report when Green and the authors argued that unlicensed vendors ignored the laws and courtesies governing the city's streets. "Unlike familiar licensed vendors," they stated, unlicensed vendors became "another threatening presence in a city of strangers."[9]

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windows theory. See for example, Alex Vitale, *City of Disorder: How the Quality of Life Campaign Transformed New York City Politics* (New York: New York University Press, 2008).

[9] Balancing Safety and Sales, 24.

City agents and politicians had adopted one of the key tenets of Broken Windows Theory, that people's fear of crime affected their perception of crime regardless of actual rates or whether they themselves had been a victim. Anti-vending forces relied on the political power of the fear of crime and took advantage of the resurgent law and order sentiment espoused by people like Rudy Giuliani. The expansion of forfeiture laws at the federal level had trickled down to the local, but increased enforcement against knockoffs had also informed these new laws.

Since the 1960s, opponents of street vending had argued that they sold not only poor-quality merchandise, but in many instances counterfeit goods. As previously discussed, fashion and apparel companies built up their ability to prosecute trademark infringement against counterfeit manufacturers and sellers during the 1980s. Now the expansive use of trademark infringement and arguments about the legitimacy of the goods vendors sold came together as city officials pushed for a crackdown on illegal vending in the city. Per the General Vending Law and the Good Humor ruling, the city could only restrict vending on the basis of public safety and obstruction of sidewalks, not due to competition or lost revenues. The push against counterfeit goods however, gave police yet another justification for seizing goods and clearing vendors from the streets even if they had a license, though most frequently the association was between counterfeit manufacturing and sales by unlicensed vendors. Raids on factories revealed counterfeit designer T-shirts, handbags, watches, and other items. The media, BIDs, and

city council members then linked these items to the "flooded sidewalks" teeming with unlicensed vendors.[10]

Police raids on vendors based on counterfeit claims, for example, also revealed the limits of the law. If no groups came forward with legal challenges to these actions, the Mayor's office and the police department would continue. Luckily, some still did challenge the increasingly punitive measures taken against street vendors. In late 1992, the First Precinct ran operation "Stop Watch" against downtown vendors, charging them with "criminal simulation of trademarks." Beginning November 1, 1992, the city had begun charging people found guilty of manufacturing, distributing, or selling goods bearing counterfeit trademarks with a Class A misdemeanor with the potential to serve up to one year in prison.[11] However, a judge later threw out the cases stating that "everyone knows these cheap watches are imitation."[12] The president of the DLMA at the time, Barbara Christen expressed to Police Commissioner Ray Kelly the organization's frustration with the continued presence of vendors downtown. Christen played on arguments about the effects on tourism – that it gave a bad impression – and that this hurt legitimate sales in the area.[13] Linking vendors with counterfeit goods also played on

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[10] Jonathan Hicks, "Factory Raid Nets 45 Arrests and a Million T-Shirts," *New York Times,* May 12, 1993; Ronald Sullivan, "Crackdown on Vendors in the Streets," *New York Times,* April 13, 1993.

[11] Fax to DLMA September 25, 1992, DLMA Peddlers 2:3, RAC. DLMA staffers went so far as to print up notices for distribution to vendors alerting them to the new charges and the possibility of being charged with a felony. This likely functioned as a scare tactic to clear immigrant vendors off the streets.

[12] DLMA Meeting Notes, Thursday, November 12, 1992, DLMA 2:3 Peddlers, RAC.

[13] Correspondence, November 23, 1992, DLMA 2:3 Peddlers, RAC.

concerns that tourists were more easily duped than New Yorkers and so to preserve the city's tourism industry would require a serious crackdown. Despite alleged concern for tourists, the lobbying efforts of DLMA members remained fundamentally about the very act of street vending.

Complaints from anti-vending forces continued to take on new issues, such as the ability of disabled veterans to work anywhere in the city regardless of street restrictions, but they always focused on several broad claims. One, that vendors created disorder; two that they represented unfair competition; and three that they cost the city in lost taxes. In testimony before a state senate committee, Tom Cusick, president of the Fifth Avenue Association (and soon to be head of that association's BID), argued that vendors clogged the streets, deceived customers about the quality of their merchandise, "operated in the underground economy," littered, did not pay taxes, and attracted "other undesirable activities."[14] Cusick also blamed disabled military veterans, who could peddle without restrictions, for worsening pedestrian hazards. As Cusick's testimony demonstrated, however, this was fundamentally about control of space and the appropriate people allowed to occupy that space.

Whereas Green's report for the DCA linked the growing number of unlicensed street vendors to the economic downturn, members of the Fifth Avenue Association and DLMA placed the blame on disabled veterans, arguing that the state supreme court's decision in 1990 recognizing vets right to work in restricted areas "spawned" a "vendor

[14] Balancing Safety and Sales, 8.

explosion."[15] As in the past, these groups, including the Avenue of the Americas Association sent out memos to their members urging them to contact Governor Mario Cuomo directly and request that he sign the legislation applying general vendor limitations to disabled vets.[16] They wrote to Cuomo claiming that without the legislation, veteran vendors would continue selling counterfeit and fraudulent merchandise for which they did not report sales taxes. Further claiming that the veterans were being used by general vendors who recruited them and paid them a nominal wage, keeping the majority of profit for themselves. Thus, they argued, the city's right to regulate access to the public streets would help to "preserve the rights of the legitimate veteran."[17]

In cooperation with Tom Cusick of the Fifth Avenue Association, members of the DLMA gave their support to legislation requiring disabled veterans to abide by the general vendor guidelines – an old law in the city allowed disabled vets to work anywhere in the city regardless of restrictions. Those who sought to restrict their vending claimed that the vets were being manipulated by organizations who abused their ability to vend anywhere, getting them to apply for licenses and then giving them to other street vendors or setting them up in predatory commissary schemes.

Despite Cusick's and Christen's complaints, disabled veterans in lower Manhattan numbered less than a dozen. The debate over disabled veteran vendors was

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[15] Correspondence, David Strawbridge to Gov. Cuomo, July 10, 1991, DLMA Peddlers 2:3, RAC.

[16] Memo, Avenue of the Americas Association, re Peddler Legislation, July 9, 1991, DLMA Peddlers 2:3, RAC.

[17] Correspondence, Avenue of the Americas Association to Cuomo, July 9, 1991, DLMA 2:3, RAC.

fundamentally an issue of spatial control. Any slippage in who could access city streets free from control via vendor restrictions posed a potential slide toward unrestricted streets, long the bane of business associations, community boards, and more recently, BIDs. Hoping to get the mayor to support the governor on legislation to restrict disabled vets from vending freely in the city, Christen made a note to "try to make a deal to 'buy Mayor's Support.'"[18] This seemed to presage the eventual deal struck between the Fifth Avenue Association and Mayor Dinkins. In return for agreeing to push Governor Cuomo to sign legislation ending exemptions for disabled veterans, Dinkins required the Fifth Avenue Association to provide training and jobs for veterans affected by the new regulations.[19] The ban held disabled veterans accountable to the same rules that applied to other vendors. However, the measure was only temporary; signed into law in 1991 it would only apply for a four-year span, after which a permanent solution would have to be reached.

Christen contemplated a number of other options for ridding downtown of vendors that did not involve backroom political deals. These included installing large planters to block their spots on the sidewalks and bringing in permanent works of art.[20] This type of spatial maneuvering could keep vendors off certain blocks without involving city officials or police. "Our City is struggling to maintain for its citizens a quality of life which will help us to maintain our preeminence as a center for business, culture, and

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[18] Meeting notes, August 1991, DLMA, Peddlers 2:3, RAC.

[19] "Fifth Ave. Deal," Crain's New York Business, July 29, 1991, DLMA Peddlers 2:3, RAC.

[20] Notes, 10/12/90, DLMA Peddlers 2:3, RAC

good living."[21] In the same letter, Christen implied that the unfair competition posed by vendors and their financial burden to the city had forced so-called legitimate shops to close. The cityscape she argued, was meant to be one conducive to business, culture (as defined by members of the DLMA and their social peers), and good living, free from people they considered disorderly and disruptive of a manicured cityscape. Despite continued claims that vendors clogged public thoroughfares, the numbers of general vendors in downtown always fell far below the numbers of other areas, notably along 125th street in Harlem. The local precinct estimated when asked by Christen how many vendors operated in lower Manhattan that in addition to the 50-60 licensed general vendors, their numbers were "supplemented frequently by onslaughts of groups of 30-40, mostly Senagalese and Arabs."[22] The language in that exchange is telling.

Tourism and business climate were pieces of an argument over who should be able to access city spaces. Crime too provided a useful justification for managing vendors. As with Kelling and Wilson's arguments over broken windows, the fear of crime acted more powerfully than any real data. Several years after the publication of Green's report, Carl Weisbrod noted as much in his annual report on the Alliance of Downtown New York (the soon-to-be formed BID by the DLMA). Crime was relatively low, he pointed out, but according to surveys of area businesses and residents, people had a high perception of crime, which Weisbrod attributed to the poor quality of lighting

[21] Correspondence, October 25, 1990, DLMA Peddlers 2:3, RAC.

[22] Correspondence, Christen to Cusick, Fifth Ave, December 13, 1990, DLMA Peddlers 2:3, RAC.

downtown. The board's eventual solution was to use flood lights.[23] For some, dark streets signaled danger, for others, it was immigrant street vendors.

Recalling arguments used by DLMA members in the 1970s, current members placed some blame for the so-called peddler explosion at the feet of lenient judges, like those who tossed cases of counterfeit goods. By letting the peddlers go free not only were they returning them to the streets, but their actions served to demoralize police officers fighting the good fight against vendors. Christen urged members of the association to write to the District Attorney's office as well as the presiding judges in vending cases. The overall effect was typically the same, that the vendors hurt business, caused crowding and drove away tourists. Some real estate developers made clear their concerns over property values, claiming that "in order to attract first class tenants to our buildings we have to portray our buildings with a first-class image."[24] As visible manifestations of the city's informal economy and the working people of New York, vendors were not the right type of clientele. But the focus on congestion in their lobbying efforts was also practical as the city could only regulate vending based on street congestion and nothing else.

Running for re-election in a rematch of the 1989 race against Giuliani, Dinkins responded to the uproar over vendors by creating an Interagency Task Force on Small Business to respond to the problem. Continued concern with property values and tourism

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[23] "Annual Meeting of Alliance," April 25, 1995, DLMA Series 3: Alliance for Downtown NY, Inc., RAC.

[24] Letter from Larry Silverstein, President Silverstein Properties, January 21, 1993, DLMA 2:3, RAC.

pushed business association members to begin a targeted attack against food vendors, then the most numerous of street vendors thanks to the 1979 General Vending Law, which placed a cap on general vending licenses at 853 whereas the food licenses were capped at 3,000 (see Chapter Four). Adding fuel to the fire was candidate and soon to be mayor Giuliani's fiery campaign rhetoric against quality of life violators threatening the moral and social fabric of the city. Drawing considerable ire alongside squeegee men were the city's street vendors. But the build-up of laws, codes, and surveillance techniques over the prior decades made the situation in the mid-1990s more concerning. Meeting notes from the DLMA's president Christen listed possible tactics to combat vendors including fingerprinting, a master list/database, and police surveillance on their suppliers in order to cut them off from their goods. Of particular concern was the suggestion to monitor and report on the immigration status of vendors.

Local media also became involved in the renewed battle over street vending, publishing an "expose" into the filthy conditions in which New York's "dirty water dogs" were prepared. "It's 8:15 A.M. Monday, and Lonnie Simms, 24, homeless, wearing a neon green hat and a filthy T-shirt starts his work day at M. Parpis Foods, a vendor's depot/commissary." The article was essentially an exercise in grossing out readers by pointing out the disgusting and unhygienic men loading up food vendor trucks, placing ice for the carts on the "urine-covered sidewalk," with "fingers that look like they've been soaked in motor oil." Hidden within these lovely tidbits was the fact that the commissaries paid people like Lonnie between $4-7 to prep and deliver food carts.[25]

[25] Denis Hamill, "In Bad Taste," *NY Daily News,* July 25, 1993.

In addition to media coverage and business lobbying, tensions between smaller merchants and street vendors continued to simmer, bringing many smaller organizations on board with anti-vending initiatives. The Korean-American Grocers Association of New York joined in the critiques of street vendors, calling them unfair competition and asking the city to enact tighter regulation. Meanwhile, another task force established by Dinkins early in his administration, this one on small businesses, released a report and proposals including exempting 28,000 small businesses throughout the city from commercial rent tax and reducing the number of summonses and minor sanitation violations. In response to the report, Dinkins noted that more needed to be done, "to get Government off the backs of small businesses."[26]

Meanwhile, in response to a mayoral campaign increasingly focused on quality of life issues, Dinkins initiated a crackdown on street vendors in the spring. This time the focus was on 125th street in Harlem and the Fulton mall in Brooklyn. As with Green's report, Dinkins sought to strike a balance between the needs of brick-and-mortar shops and vendors. "For better or for worse," he noted, "street vending constitutes a thriving industry in New York City." Having worked as a street vendor himself in Harlem as a teenager, Dinkins understood the benefits of vending for both the vendor and consumers looking for cheaper or hard to find items. But even striking a balance between those who supported vendor rights and those who wished to see them gone remained difficult. As with the expose on hot dog vendors, the *Times* reported that "illegal vendors, mostly poor

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[26] Steven Prokesch, "Dinkins Promises Aid for Small Businesses," *New York Times,* February 17, 1993.

immigrants [had] taken over the sidewalks…undercutting small black and Hispanic shop owners and [costing] the city as much as $300 million a year in unpaid sales taxes."[27]

Beyond the growing focus on the immigration status of street vendors, which represented another problematic development, licensing caps remained absent from much of the discussion. A contemporary proposal to double the number of general vendor licenses failed to receive major support at a city council hearing committee, signaling a decrease in support from council members for vendors as well as an impending battle over the 10,000 unlicensed vendors in the city. Dropping any attempts to increase the number of available licenses intensified focus on the unlicensed as rule breaking criminals. The unlicensed, or as Giuliani and anti-vending forces referred to them, illegal vendors, served as one more example of the chaos and disorder in the city during the mayoral election. As with squeegeemen, Dinkins came under attack for his failure to get vendors off the streets. Giuliani and Dinkins' Democratic primary challenger, city council president Andrew Stein, repeated that he (Dinkins) was "too soft on illegal vendors." In an effort to undercut these attacks Dinkins announced a new group focused on vendor policy headed by Ray Kelly and Wallace Ford, from, respectively, the NYPD and DBS. Policy development concerning vendors was the purview of the police and city actors concerned with promoting and maintaining business interests in New York.

As the summer of 1993 came to an end and the mayoral election loomed on the horizon, the street vendor group proposed several remedies to the peddler problem.

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[27] Ronald Sullivan, "Crackdown on Vendors in the Streets," *New York Times,* April 13, 1993.

Drawing data from Green's report in 1991, they reported an estimated 10,000 people vended illegally in the city. Kelly and Ford focused on three main issues: better enforcement, a review of regulations, and the possible provision of "legitimate business opportunities as an alternative to illegal vending." Here they presented nothing new, but simply a rehashing of the suggestions made in Green's report, "Balancing Safety and Sales on the Streets." The key difference between the two reports was the more recent one contained an allotment via executive order of $1.25 million in overtime for vendor enforcement by the police.

In a turnaround from discussion during the Koch administration, the initiative also suggested moving vendor summonses from the Environmental Control Board, although to where was not suggested as the alternative, criminal court, had already been rejected because judges did not take the summonses "very seriously." Kelly and Ford noted that while the ECB could seize vendor merchandise, this represented the limit of their enforcement powers as most vendors never appeared to answer summonses, choosing to forfeit their merchandise instead. The report also revived the older peddler market model, specifying City-owned property (typically vacant lots or low-traffic parks) where vendors would pay a fee for a permit and to lease a designated spot. The authors conceded that these markets might "hurt the business of local merchants," and promised to consult with Community Boards, city councilmembers, and BIDs before establishing any type of vendor market.[28] Kelly and Ford defended Dinkins' actions on vendors

[28] Memo re: Follow-up Meeting on Street Vendors, Michael Kharfen, Community Assistance Unit, August 24, 1993, DLMA Peddlers 2:3, RAC.

against criticism that he was too soft and that his actions had been at best, halfhearted, saying that "under the leadership of Mayor Dinkins, we will continue to change the conditions under which business is conducted on New York City's streets."[29] The allocation of funds for greater police enforcement and the possible establishment of peddling zones in the form of markets were meant to demonstrate better control and management of vendors.

However, Dinkins would not get another chance to fix the vendor problem. In their second match-up Giuliani beat Dinkins and as one of his first actions, implemented a ban on food vending in midtown. That ban was based on regulations created in 1983 by the DCA but never enforced by Koch or Dinkins, the former in part due to backlash over the ban. One city councilmember noted as much, calling the effort "misguided" and adding that it was, "anti-business and anti-consumer."[30] The crackdown on vending in midtown, pushed vendors into Lower Manhattan, where according to the president of the Bowling Green Association vendors cluttered Broadway wall to wall, "turning New York City's oldest and best-known avenue into something out of Calcutta."[31] Similar movement would occur as city officials finally pushed all but a few adult businesses out of midtown. Downtown business leaders, wary of losing the area's major commercial tenants, sought out a way to stem the inflow of vendors and adult businesses.

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[29] Letter to the Editor, *New York Times,* June 30, 1993.

[30] Press Release, Councilman Anthony D. Weiner, April 7, 1994, DLMA Peddlers 2:3, RAC.

[31] Correspondence, Arthur Piccolo to Giuliani, November 3, 1994, DLMA Peddlers 2:3, RAC.

Through his various connections in city hall, Carl Weisbrod (formerly of the OME) learned that city officials were working on a comprehensive plan for redeveloping Lower Manhattan. Weisbord was in a unique position to leverage his knowledge of the city's political system. In the early 1990s, the leadership of the DLMA began the process of organizing a Business Improvement District, which they were calling the Alliance for Downtown New York, Inc (ADNY). They tapped Carl Weisbrod to lead the new BID. In the intervening years after he left the OME, Weisbrod served as president of the 42nd Street Development Corporation, wehre he utilized his knowledge of the area and links to city hall to press for major changes in Times Square. The Alliance was set to become the city's largest BID with an initial operating budget of $9 million.[32] Downtown had been left with high vacancies as businesses moved to midtown or out of the city. This was not a new issue, of course, city and state government had established offices in the World Trade Center to bolster occupancy rates. Through the lobbying efforts of prior DLMA presidents and other downtown business leaders, city officials had granted generous real estate tax abatements, energy assistance, and other subsidies to keep corporations from leaving Lower Manhattan. By the early 1990s, even these measures were failing to stem the tide of corporate flight from the districts older building stock. However, facing a major budget crisis, the Giuliani administration and city council were likely to approve measures that did not involve new expenditures.

[32] Annual Meeting of the Alliance, April 25, 1995, Alliance for Downtown NY, Inc, General, DLMA Series 3, RAC.

Weisbrod, along with others at the soon-to-be dismantled DLMA, believed tax abatements were critical to their redevelopment efforts and expressed concern over the potential loss of these and other incentives. In September 1994, just as the ADNY was finalizing its BID paperwork, Mitchell Moss, a professor at the urban research center at NYU wrote an op-ed in Newsday regarding the recent move to Stamford by Swiss Bank. Moss argued that New York had the chance to "demonstrate that sound economic development need not involve massive subsidies to large corporations." Instead of continuing the trend of the Koch and Dinkins administrations that prioritized deals to keep corporations in the city, he suggested that going forward city politicians create conditions that attracted people to New York by investing in schools and infrastructure. Ignoring these points in his response, Weisbrod wrote that other states and cities would continue poaching until the federal government stepped in and since he could not see that happening anytime soon, New York needed to play along and protect jobs in the city. To this end, the Department of Business Services would have to intervene, especially in managing street vendors.

The DBS played an integral role in dealing with street vendors and worked to implement Mark Green's earlier suggestion that the city establish markets for vendors. In Washington Heights, Harlem, and the Lower East Side, the agency first gained support from store owners and then suggested moving vendors to locations with low pedestrian traffic or more serious problems like drug use and sales in an effort to use vendors to clean up the streets. In opposition to most of the rhetoric surrounding street vendors, these actions illustrated a difficult truth: that street vendors had revitalized many areas by

attracting customers and keeping eyes on the street. Three sites in particular illustrated the costs and benefits of vendor markets – a city policy dismantled in the 1960s in part due to the cost of maintaining such spaces (as would be the case with Mart 125 the city stood to make a significant profit if it removed vendors and sold sites to developers).

Two markets that opened in an effort to clean up their respective areas failed. A market in Washington Heights, supported by local businesses and the Washington Heights Vendors Association was marred by delays and mismanagement. In an effort to draw pedestrians and cut down on drug sales, the market was set up in a vacant lot on 175th street in a vacant lot to help draw pedestrians and cut down on drug sales. Vendors struggled to attract customers without assistance in marketing the location. One year after its opening, the market struggled to attract vendors, drawing an average of fifteen a day, down from a peak of 115 when the market first started. With no one patronizing the market, the vendors eventually drifted back to more commercially viable spots.[33] Enforcement against those who left was limited as police attention was focused on 125th street and midtown. Moreover, the director of the vendors initiative at the DBS said that the Washington Heights market was too small to accommodate all the area's vendors so it would be "unfair to enforce the law."[34]

The private management of markets in public spaces may have seemed like a good idea to backers, but these situations frequently brought vendors into bad situations.

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[33] Emily Bernstein, "Street Vendors Agree to Move to 2 City-Approved Market Sites," *New York Times,* January 2, 1994; and J.K.B. "A Year Later, 'Model' Market Called a Failure," *New York Times,* December 11, 1994.

[34] "A Year Later," December 11, 1994.

One market opened in a former wading pool in Sarah Delano Roosevelt Park on the Lower East Side failed amid claims of embezzlement and mismanagement. The Parks Department went through multiple managers eventually settling on Century 21 developers. The delayed opening of the area to vendors added to existing opposition. The Chinatown Vendors Association did not believe the site would draw big enough crowds and balked at the cost of renting a stall which had been set at $350 a month.[35] Once the market was up and running, parks department personnel complained that vendors had set up permanent structures to vend from, something which the vendors felt the right to do based on the cost of their rental spaces. The Parks department disagreed and told the vendors to take down the structures. Adding to the troubles, the fears of the vendors association had been correct – drawing customers to the park between two major roads was difficult and on top of that Century 21 failed to promote the market or pay the lease they had with the parks department. The parks department eventually terminated the lease with Century 21 after repeated failures to make lease payments. As a result, the department also ousted the vendors from the park, regardless of whether they had been consistent with their payments to Century 21.[36]

Giuliani's proposed budget cuts drove the Parks Department to monetize their real estate and one way to do this was through the private management of public spaces, as with Century 21's vendor market. Other tactics included raising vendor fees in parks, selling signage rights to corporate sponsors, and leasing space to restaurants. Markets

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[35] B.L. "A Vendors Mall to Reclaim a Park," *New York Times,* December 5, 1993.

[36] Paul Zielbauer, "Vendors in Chinatown Park Protest Eviction," *New York Times,* February 20, 1999.

like the one in SDR park and several others failed for a variety of reasons, but mismanagement by the private groups running them stood out as a primary factor. Not only did they fail to pay their leases, but they never promoted the markets to aid the vendors in attracting customers. City officials had long used vendor markets to clear peddlers off commercial streets, appease merchants, and use the presence of the vendors to clean up an area, despite the fact that these same officials frequently cited vendors as the cause of litter and petty crime. When the vendors failed to revitalize abandoned lots and parks, they were cast aside.

One of the more major failures of monetizing vacant space through vendor markets was Mart 125 in Harlem. Back in 1977, the reformed Urban Development Corporation (the UDC behind the WTC and other major construction projects that drained state coffers) and city officials agreed to lease an unused partial of publicly owned property on 125th street so long as it was put to use for the "betterment of the community."[37] In 1981, the city finalized a lease with the Harlem Urban Development Corporation (a subsidiary of the state-level UDC) to manage a vendors market and parking garage with revenues from the latter being deposited into an account for area improvements. The HUDC stopped making payments to that fund in 1984 and did not

[37] Memo re: Harlem Community Developments, September 22, 1997, Mart 125, Deputy Mayor Rudy Washington Files, NYCMA. The UDC eventually became the Empire State Development Corporation. In 1995, then Governor Pataki shut down the HUDC claiming it had spent $100 million over the course of two decades with little to show for it, (Amy Waldman, "Vendors Angry at Evictions from City Mall in Harlem," *New York Times,* August 16, 2001). The Harlem Community Development Corporation followed by the Shabazz Mosque (the mosque that ran the 116th Street vendor market). Vendors accused these different entities in charge of Mart 125 with mismanagement of funds and failure to maintain proper safety standards in the building.

begin again until ten years later when developers began eyeing 125th Street and Harlem. By that point, vendor tenants at Mart 125 had been withholding rents for years due to poor maintenance. During his first term as mayor, Giuliani initiated a lawsuit to regain control of the land with the intent on turning it over to private developers.

At the same time, the recently formed 125th Street Business Improvement District took the reins from the Uptown Chamber of Commerce in leading a drive against area vendors. Barbara Askins, the president of the BID, said that "illegal vending created unfair competition and congestion in the streets."[38] Thus, uptown vendors faced a multi-front battle over their ability to do business – the enforcement of time and place restrictions on the streets, seizure of goods from unlicensed vendors, city hall's attempts to takeover Mart 125 and sell the lot to developers, and rising commercial rents as new tenants moved into Harlem. The BID was asking the new administration for help clearing out vendors because they felt it was hurting their ability to collect assessment payments from area businesses.[39] The BID needed to demonstrate its effectiveness.

An early proposal for the 125th Street corridor including Mart 125 involved turning the market into a "Vendors' Incubator School." Vendors would start at the open-air market on 116th street and then "graduate" to the indoor market where they would receive business training and assistance in eventually opening brick and mortar stores in

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[38] Hicks, May 9, 1994.

[39] Weekly Report, July 29, 1994, Department of Business Services, Rudy Giuliani General Correspondence, NYCMA. A month later, Washington noted in his weekly report that the 125th Street BID was still struggling to collect payments and had been required to apply for a line of credit to keep it afloat (Weekly Report, August 26, 1994, DBS, RG General Correspondence, NYCMA).

vacant properties.[40] However, likely due to the BID's concerns and developer interest this plan never came to fruition. Instead, city officials used the vendors' withholding of rent against them citing the Mart's insolvency. By 1997, according to the city's Economic Development Corporation (EDC), the Mart cost $622,660 annually to operate. This exceeded the $500,000 in rents collected, in part because of a backlog of necessary repair work never started or completed by the Mart's former managers.[41] Once the city regained control of the property following the aforementioned lawsuit, they began evicting tenants. Richard Hollins, the president of the Mart 125 Merchants Association, claimed that city officials were forcing vendors to sign short term permits that did not grant them ownership and wherein they agreed to vacate the premises upon thirty days written notice without cause or redress.[42] Economic transformation of 125th street rendered even those vendors who had tried to play by the city's rules as nuisances to be dispersed. The merchants at Mart 125 were effectively being held responsible for the errors of various city and state development corporations. As developers looked to new

[40] Memo re: Proposal for Revitalization of 125th Street Corridor, December 28, 1995, Harlem Community Development Corporation, Deputy Mayor Rudy Washington Files, NYCMA.

[41] Letter to CB 10 Chair from President of NYC EDC, December 3, 1997, Mart 125, Deputy Mayor Rudy Washington Files, NYCMA.

[42] Letter to CB 10 from Richard Hollins, March 4, 1997, Mart 125, RW, NYCMA. Hollins quoted a letter he had received from Deputy Mayor Fran Reiter saying that, "a plan for limited equity ownership for the Mart's vendors would not be an option at this time, particularly in light of the fact that the Shabazz Mosque Management is just getting started." Many of the vendors had signed on with the Mart back in the early 1980s on the pretense that they would eventually become co-operative owners of the property. More than a decade later they were being told it was still not an option.

areas of the city, businesses sought to reclaim their districts once and for all through their respective BIDs.

Repeating many of the same lines used by past directors of the DLMA and the Fifth Avenue Association, Dick Voell of the Rockefeller Corporation claimed that the impact of vendors was more than image, "it is economic." He argued that, the "retail tenants of Rockefeller Center have shown a measure of faith in New York by investing here, as have so many other Fifth Avenue retailers." Here again was the argument that the city's large corporations and financial institutions were owed extra assistance by city officials. "They keep their stores well-maintained and attractive. And whatever is left of Fifth Avenue's reputation as a fine shopping street is due to their kind of risk-taking and enterprise. But I can assure you these businessmen and women will take their business elsewhere if current conditions are allowed to persist." Adding that the "proliferation of uncontrolled vending" had a "more sinister impact." It confirmed "the city's inability to govern itself and to maintain even a semblance of order, let alone to project an image of vitality and polish that is critical in attracting and retaining employers and skilled workers who are vital to its economic well-being."[43] By privatizing management of public spaces, BIDs could begin to implement the visions of people like Voell.

The renewed push to clear vendors of the street came not only from within the Giuliani administration, but through the growth of Business Improvement Districts (BIDs). City officials described BIDs as, "an organizing and funding mechanism used by

[43] Correspondence, Dick Voell, President and CEO of Rockefeller Group to Cuomo, July 9, 1991, DLMA, RAC.

property owners and merchants to determine the future of their…areas."[44] To form a BID, property owners (and property owners only) filed paperwork with the city and underwent a somewhat lengthy review process. This process was based on state and local law from the early 1980s, that allowed property owners to band together and use the city's tax collection powers to asses themselves. The city collected an area's property tax and then "returned" it to the BID. Members then used those funds for "purchasing supplemental services," like sanitation and security and capital improvements, like planters and lighting beyond those provided by the city.[45]

The formation of a BID did not have to be well publicized and those that wished to stop the creation of a BID needed 51% of a district's property owners to make a formal filing of their objection. Excluded from the very start then were commercial and residential renters. The process effectively discounted these New Yorkers and legitimized a belief that those who owned property should control an area. John Dyson, Giuliani's deputy mayor for economic development and finance called BIDs "reinvented government." Adding that they were a "recognition by city government…that the city does not do what the people are already paying taxes for. The BIDs do this job very well and they also do this job very cheap."[46] The latter part of Dyson's comment was particularly striking. BIDs were not only private entities carrying out the functions of

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[44] New York City Department of Business Services, "Starting and Managing Business Improvement Districts," July 1993, DLMA Series 3: Alliance for Downtown NY, Inc., RAC.

[45] Ibid.

[46] Douglas Martin, "Districts to Improve Business Proliferate," *New York Times,* March 25, 1994.

local government, but they were allegedly doing it for less. As models of cheap, privatized government, BIDs embodied many of the ideals of neoliberal political and economic models. As entities controlling small fiefdoms, they were highly problematic.

As Sharon Zukin has pointed out, BIDs embodied the paradox of privately controlled public space in the late twentieth-century city. With the formation of the Union Square Partnership, for example, a public park was controlled by a private group of the biggest property owners in the neighborhood. Taking over the square at a time when the city's budget limited its options, the success of the Union Square Partnership in cleaning up the park served as a sign of City Hall's defeat. In the bargain, the public gained use of a cleaner, safer space, but lost control of that space.[47] BIDs used private security guards to police public spaces and bring an end to "disrespectful behavior in public spaces," including panhandling, prostitution, drug dealing, spitting, and sleeping in public.[48]

Furthermore, BIDs erased evidence of the city's working class in order to create a middle-class atmosphere appealing to tourists and investors alike. To these organizations, Times Square and 14th Street were terrifying spaces, but to the low-income shoppers who patronized them throughout the 1970s and 80s, these were comfortable public spaces. The members of BIDs, local development corporations, and business associations frequently described these spaces as bazaars, likening them to Calcutta. Times Square in the 1970s is characterized as the dirty Deuce, but in addition

[47] Sharon Zukin, 128.
[48] Zukin, 130.

to the X-rated theaters and peep shows, there existed a working-class entertainment space that families did in fact patronize, not only because it was affordable, but because the atmosphere at the video arcades and shops was comfortable to many.[49]

The number of BIDs increased dramatically during Giuliani's first term as mayor and this was particularly concerning in that it allowed for a combination of public surveillance by the NYPD and private surveillance in the form of security cameras and private guards. Combining public and private surveillance, the administration and BIDs used "explicit and subtle strategies…to create a civilized urban ideal."[50] Here, zero tolerance and quality of life policies could be carried out by public and private entities, expanding the city's range and ability to manage people. In doing so, city officials enabled a privatization of government functions via the BIDs, ceding responsibility to private groups.[51]

BIDs and local development corporations played a critical part in pushing Giuliani to enforce the ban on food vendors in midtown. Koch and Dinkins had chosen not to enforce the ban due to opposition from vendors and the public, but with the backing of the city's power brokers Giuliani plunged into battle. In May 1994, a year before the legislation that originally created the ban was set to expire, Giuliani announced that the city would banish all illegal vendors, which according to the midtown ban included even licensed vendors working "illegally" in restricted areas. Rudy

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[49] See for instance, Samuel R. Delany, *Times Square Red, Times Square Blue* (New York: New York University Press, 2001).

[50] Zukin, 142.

[51] Zukin, 143.

Washington, the business services commissioner said the city had a "responsibility to people who pay taxes in this town and those that go through the trouble of following the law and operating legitimate businesses."[52] The food vending ban in midtown would turn into a spectacle and mark a failure for the Giuliani administration.

Following the administration's announcement that they would be enforcing the midtown ban, city council's consumer affairs committee passed a measure allowing food vendors on seventeen formerly prohibited streets in the area until the ban expired in April 1995. The committee asked the DCA to examine their current list of restricted streets and develop new guidelines within that period. Giuliani vetoed that bill when it finally reached his desk in mid-summer. Despite city council's ability to override the veto, the sponsor of the bill was persuaded to drop it on the condition that the council be allowed to review Giuliani's vending plan. This was perhaps due to a desire to preserve political capital. City council had only recently overridden another mayoral veto concerning a bill that allowed them to review mayoral initiatives to turn city functions over to private companies. While city council members did care about the vending situation, the further privatization of city functions took precedence in this case.[53]

In addition, the law prohibiting disabled veterans from working on restricted streets came to an end. Tom Cusick, president of the Fifth Avenue Association added this to the general issue of vendors in midtown. Cusick claimed that crime in the area

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[52] Jonathan Hicks, "Giuliani Broadens Crackdown to Banish All Illegal Vendors," *New York Times,* May 9, 1994.

[53] Jonathan Hicks, "Mayor's Veto of Food Vendor Bill to Stand," *New York Times,* August 25, 1994.

had fallen 43% since the vendors left. Whether this was directly related to the vendors or caused by other factors was debatable. Not up for debate however, were the promises made by the Fifth Avenue Association to the city in order to get the law passed. The association had said they would find jobs that paid at least double the minimum wage for all 176 disabled veterans vending on or near Fifth Avenue. They had also agreed to donate $400,000 to programs designed to assist those veterans.

When the law expired in 1995, the American Legion claimed that the vendors had received $500 each as a grant from that donation and that few of them had ever been hired. In response, Cusick showed cancelled checks to prove the association had donated the money to veteran's programs and said that the vendors did not want the jobs he offered them.[54] The issue of whether disabled veterans could vend in restricted areas would be resolved along with the ban on food vendors in midtown through the creation of specialized licenses for the "midtown core." This concession came about because as expected, the ban on food vending in midtown drew opposition from New Yorkers looking for a fast and cheap lunch. Their support motivated food vendors to stage a protest, which in turn galvanized city council to act on their behalf.

The deal struck between city council and the administration allowed for the creation of a Street Vendor Review Panel that Giuliani intended to bend to his will. The Department of Business Services took over the SVRP and frequently faced scrutiny and legal challenge. In an early case, in September 1995, a state supreme court judge ruled

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[54] Douglas Martin, "Veterans Fighting for Right to Peddle in Midtown Once Again," *New York Times,* June 6, 1995.

that the panel's addition of twenty-six new streets to the restricted list could not stand as they had not used objective standards to decide which streets were too crowded.[55]

Vendors had long argued that restricted streets came about when someone with influence wanted them gone. In 1998, that was not only revealed to be true, but street vendors learned that some New Yorker still supported their right to the streets. When the Giuliani administration announced a ban on food carts on 144 blocks in Manhattan, effectively barring food vendors from nearly all of the Financial District and most of midtown, they claimed it was in response to applications for street closures by concerned citizens. As it turned out, two-thirds of those applications came from the Alliance for Downtown New York, the DLMA's BID. Moreover, the Street Vendor Review Panel was functioning with only three members, all appointed by Giuliani after he blocked the nominee for the fourth seat promised to the city council.[56]

While the Review Panel backed the proposed 144 street ban, others came forward in support of the vendors including former Mayor Ed Koch. Believing that Giuliani was making the same mistake he had when the bill to ban food vending had first been proposed in 1985, Koch said, "the realtors and the theater owners came in to me and said, 'We don't want these people,' and I listened to them. But then I thought, what are we doing? These are decent people and they give people the chance to buy an inexpensive lunch."[57] One office worker interviewed on the street about the ban supported this

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[55] Randy Kennedy, "Ruling Sets Back Efforts to Limit Street Vendors," *New York Times,* September 16, 1995.

[56] Mike Allen, "Giuliani to Bar Food Vendors on 144 Blocks," *New York Times,* May 24, 1998.

[57] Mike Allen, Sidewalk Vendors Rally to Protest, *New York Times,* June 4, 1998.

sentiment. "You never say, 'Oh my God, if that vendor weren't there, it would be easier for me to get around."[58]

Despite Deputy Mayor Rudy Washington's statement that "the city will never walk away from its authority to regulate the streets," opposition to the ban reached a crescendo. The Street Vendor Review Panel eventually backed away from its support for the 144-block ban, rescinding their vote and agreeing to take additional testimony before reconsidering it later in the summer of 1998. While more restricted streets would eventually be added to the city's already lengthy list, even Giuliani had to concede the battle, dropping the push for the ban and agreeing to reshape the review panel. As Esther Fuchs pointed out at the time, "the piece of this puzzle which the Mayor forgot was that the patrons of the street vendors are generally working people who probably voted for Rudy Giuliani."[59] Other informal workers lacking patrons and the support of former mayors would be less lucky in their efforts to stave off the Giuliani administration's quality of life campaign.

Squeegeemen

Despite efforts to deal with perceptions crime and disorder, Dinkins could not overcome the narrative that he was soft on crime. Giuliani had manipulated this and successfully campaigned with a message of a city out of control under an administration that was out of touch. Giuliani's plan, which Dinkins dubbed "arrestonomics" during the mayoral

[58] Ibid.

[59] Mike Allen, "Street Vendors Win Reprieve From Giuliani," *New York Times,* June 18, 1998.

campaign, embodied the move toward policing as policy and naturalized it beyond dealing with the city's streets. Not only did he propose arresting squeegeemen and panhandlers and anyone selling or buying drugs, he also aimed to seize the goods of all 10,000 unlicensed vendors. Beyond this, Giuliani wanted to shift school safety oversight from the Board of Education to the police department and ultimately to bring stop and frisk policies to the city.

The starting point for much of this, was to regain control of the streets from the informal workers who created disorder. This rhetoric was so pervasive that following Giuliani's victory the *Times* editorial page proclaimed, "the first task is to reclaim the streets."[60] To do so, Giuliani brought Bill Bratton, former head of the MTA police, down from his post as police commissioner in Boston to apply order maintenance policing to New York. Stop and frisk became the legacy of the Giuliani years and some of the first targets were formal and informal workers on the city's streets, starting with squeegeemen.

As with the midtown peddling ban unenforced during the Koch and Dinkins administrations, a Department of Transportation rule banning windshield washing and selling flowers and newspapers to drivers at red lights would become a tool in Giuliani's quest to create a specific quality of life in New York City. The ban went into effect in April 1992, but did not coincide with a crackdown or any increased enforcement. A DOT spokesman claimed it would just be used by police to get sellers and washers moving along, adding that "it would be an extraordinarily difficult thing to enforce,

[60] Editorial, *New York Times,* December 7, 1993.

because obviously there are more important things to enforce."[61] The application of the ban in these terms relied on city leaders focused on other issues, however, in his second campaign for mayor Giuliani made it clear who he considered to be the enemies of New York's quality of life and squeegeemen frequently came at the top. Giuliani saw the city's homeless, panhanders, and squeegeemen as symbols of crime and disorder instead of the products of post 1970s austerity, as such, his solution revolved around clearing them out of the city at which point they would no longer be his problem.

In his final year in office, Dinkins had commissioned a study on managing squeegee led by George Kelling, one of the early proponents of broken windows policing. During the mayoral campaign, both sides cemented the status of windshield washers as one of the city's main bogeymen, proposing greater police enforcement. While the report was not released until February 1994, after Dinkins had left office, the timing of it allowed the new mayoral administration to immediately justify zero tolerance crackdowns on disorderly street usage. "Managing 'Squeegeeing:' A Problem-Solving Exercise," suggested that with greater enforcement, the city's squeegeemen could be a thing of the past. The language used in the report was indicative of the ways in which the Giuliani administration would consider and categorize groups of New Yorkers seen as threats to order and quality of life.

Kelling and his co-authors divided squeegeemen into three categories of workers: competent washers who worked with minimal aggression toward drivers; youth

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[61] Steven Lee Myers, "New York to Ban Street Windshield Washers," *New York Times,* January 12, 1992.

"swarms"; and addicts, the handicapped, and the mentally ill. The study had involved a two month sweep during which time police used the previously unenforced DOT rule to arrest window washers. According to the study, three-quarters of those arrested had addresses at which they resided, going against the commonly held belief that most of the squeegeemen were homeless addicts. Proving Kelling's theories on crime and disorder, half of the men arrested had prior arrests for serious felonies and Kelling argued that this "population" had a strong disregard for the summons process, meaning they ignored them. Therefore, persistent warnings and dispersals might affect their earnings, but arrests would have some of the greatest impact in "managing" the squeegee problem. Furthermore, Kelling concluded that these tactics could successfully be applied to other problems, in particular, "aggressive street prostitution."[62]

In language reminiscent of his article with Wilson on broken windows theory, Kelling and his co-authors wrote that, "most citizens have no difficulty balancing civility,

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[62] George Kelling, Deputy Chief Michael Julian, & Sergeant Steven Miller, "Managing'Squeegeeing': A Problem-Solving Exercise," February 1994, New York City Hall Library, Department of Records. Despite the confidence with which Kelling and his co-authors suggesting ramping up police enforcement, the design of the study was particularly problematic. The authors explicitly stated it was not a research report, but rather an attempt to "shape police policy and practice" with existing information and data that could be "easily and inexpensively gathered and analyzed." The sample size was so small that the authors noted it "could not meet scientific standards of representativeness" nor was it intended to. Their claims that half of all squeegeemen had prior arrests should have been more thoroughly scrutinized based on the small sample of windshield washers they interacted with. Nevertheless, the authors found the results "persuasive," they wrote, because they were, "consistent with our earlier intuitions and beliefs." These experts believed that disorderly populations (i.e. sex workers, street vendors, and squeegeemen) created quality of life problems because on the whole they were criminals who should be appropriately managed with increased police enforcement. The Giuliani administration agreed.

which implies self-imposed restraint and obligation, and freedom. They understand that freedom, even freedom of speech, is not an *absolute* right." The authors continued that unfortunately, a small group of citizens did not "balance their freedoms with obligations" and believed they were "free to do and say what they [liked]." Within this latter group fell a spectrum of those who failed to balance freedom with obligation, ranging from murderers and rapists to those who engaged disorderly behavior like, "boisterous youth," who through their actions threatened the social order "by creating fear and crimongenic conditions." The authors aimed to bridge what they saw as society's ambiguity to "disorder" with "public demand for restoration of order."[63]

The report included interviews with 18 "victims" of window washing, and while most of them objected to squeegeeing and expressed fear, only one of the respondents could specifically give an example of something a windshield washer did that was frightening. They also handed surveys to the drivers of cars they stopped after observing them being washed. Fewer than 1% responded, but the authors noted that their responses confirmed what they believed, which was that New Yorkers were afraid of squeegeemen and wanted the police to do something about it.

As with the build-up of nuisance abatement, anti-loitering, and padlocking laws, broken windows policy would start small and expand outward and upward, eventually enveloping more people within its net of regulations. Kelling et al reported that increased patrolling and arrests of squeegeemen resulted in a considerable decline in window washing activity. Once the washers realized the police were serious about making

[63] Managing Squeegeeing, Introduction.

arrests, warnings and orders to disperse sufficed to clear an area. Based on their observations, interviews with drivers, and the success with the pilot study (i.e. crackdown) the authors recommended a zero-tolerance policy. Despite their sympathetic language in parts of the report, they claimed that the general assumption that squeegeemen were homeless and therefore victims of inadequate housing stock and lack of jobs was dangerous in that it masked the "fact" that most of them had homes and prior evidence of "predatory behavior." When asked by a reporter from the Boston Globe about his aggressive tactics, one squeegeeman responded, "everybody is an aggressor. If IBM takes over AT&T, they going to be nice about it?"[64]

Following Giuliani's electoral victory, squeegeemen working the 56th street exit of the West Side highway told a reporter they were unconcerned by the impending arrival of the new mayor and his police commissioner and what it would mean for their source of income. Come the spring they said they would return. "I mean, what else are we supposed to do?" asked one of the men interviewed. When the reporter explained that the new police commissioner would target them as symbols of disorder to send a larger message another responded, "you think stone killers uptown going to say, 'Check out what the cops are doing to those raggedy squeegee guys – we better get out of town real quick?"[65] Windshield washers understood the poor logic of broken windows policing, but that did not mean it would not be implemented or touted as critical to New York's crime reduction in the coming years. Using the squeegee report as a guideline, the

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[64] Quoted in "Managing Squeegeeing"

[65] Michael Kaufman, "Their End? Squeegee Guys Say No," *New York Times,* December 8, 1993.

administration would work quickly to clear as many windshield washers (and vendors) off the street. This was part of Giuliani's governing strategy, act first and then deal with whatever repercussions followed.

While the authors of the "Managing Squeegee" report had pointed out the need for guidelines in dealing with groups like squeegeemen in a moral, constitutional, and legal way, that was not part of Giuliani's vision for managing the city. The report demonstrated the success of policing as policy for managing populations deemed unruly by city officials and boosters, but also the need for more legislation to place that policy beyond legal reproach by the "libertarians" discussed by the report's authors. One observer of Giuliani noted that he truly believed his vision for the city was in everyone's best interest. "[Giuliani] views privacy and the rights of innocent citizens as a far lower value than law enforcement's domination of not only the streets, but also private areas of people's lives."[66] This was a summary not just of Giuliani's totalitarian vision, but broad reframings of what a civilized society entailed.

Privacy and rights had to be sacrificed to law enforcement that managed the structural ills caused by policies that concentrated wealth in the hands of the few and tore apart the social safety net to balance budgets starved by tax cuts in the first place. Giuliani stated that he expected more of people and that they should go get jobs in restaurants (a favorite refrain of his having grown up washing dishes in his father's restaurant). "There are plenty of jobs available," he told reporters, claiming to know of situations in which windshield washers turned down jobs in restaurants because

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[66] Bob Herbert, "Pushing People Around." *New York Times,* February 25, 1999.

squeegeeing was more flexible. Beyond the costs to people's rights, the increased enforcement actions against quality of life offenders ballooned the city's overtime budget. By August 1994, the city had spent nearly $500 million on overtime, nearly double the budgeted $260 million. Part of this was related to sanitation OT during the severe winter storms the city faced, but a significant amount was attributed to NYPD and FDNY overtime accruals.[67]

To further strengthen the police department's ability to manage quality of life issues like squeegeemen, city council approved measures to ban "aggressive" panhandling, defined as begging that was "threatening, involved physical contact, or blocked a prospective donor's path." The bill targeted squeegeemen and drew on the suggestions made by Kelling et al in their report to the city, granting the police greater powers of enforcement.[68] With increased oversight and stronger enforcement tools, the

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[67] Jonathan Hicks, "New York City Exceeds Limit on Overtime," *New York Times,* August 9, 1994. In addition, the increase in street-level arrests was straining the city's jails. Rikers was so overcrowded that inmates were being housed on decommissioned Staten Island ferries. Adding to the crowding, Giuliani's 1995 budget proposed cuts to the city's Department of Corrections budget that had the potential to reduce manpower by nine percent. The administration argued that the average guard to prisoner ratio of 1.6 was unnecessary. On top of this, Giuliani won a battle with Legal Aid to cut their budget while requiring them to serve at least as many clients with reduced staff. In a short span of time Giuliani remade the city's criminal justice system, straining the ability of lawyers to represent indigent clients who had come under increasing surveillance due to broken windows policing practices and holding them in overcrowded and increasingly dangerous facilities. Seth Faison, "Crackdown on Crime Strains Jails," *New York Times,* August 26, 1994; and Jan Hoffman, "Giuliani Wins It All in Legal Aid Battle," *New York Times,* January 29, 1995.

[68] Vivian Toy, "New York City Acts to Tighten Begging Laws," *New York Times,* June 27, 1996.

police department succeeded in clearing a majority of the city's windshield washers from the streets.

When combined with the limited oversight of privatized municipal agencies like BIDs, the impetus to clear people off the streets took a dangerous turn. An investigation into the financial practices of what was then the city's largest BID, the Grand Central Partnership (GCP) revealed the use of what one administrator referred to as, "goon squads." As part of their community outreach, the BID had employed local homeless to help beautify the area. On the face of it, this seemed fine, admirable even, but ex-outreach workers claimed they were instructed to do whatever they needed to get the homeless out, including physically forcing them from doorways, vestibules, and plazas, and beating them if they returned. GCP officials denied the claims, but city council launched an inquiry, which ultimately ruled that outreach workers employed with GCP funds did abuse the homeless. The BIDs legal woes were far from over, however. Andrew Cuomo, then the head of Housing and Urban Development (HUD) also got involved because GCP had received federal funds from the agency. Based on that investigation and information brought to light through the city council inquiry, HUD revoked a $500,000 grant.[69]

In addition to the inquiries focused on the GCP, city council ordered an audit of all the BIDs. Released in November 1995, the report based on that investigation spelled out more trouble for the BIDs. The report linked managerial problems and misdeeds to a

[69] Bruce Lambert, "Ex-Outreach Workers Say They Assaulted Homeless," *New York Times,* April 14, 1995.

lack of oversight. In some districts, little had been spent on community improvements while executive salaries exceeded the Mayor's (as was the case with the Grand Central Partnership). On top of salary issues, the report revealed that several BIDs had borrowed money for improvements and in addition to their mistreatment of the homeless had hired undocumented immigrants to work as cleaners at substandard wages. However, members of the Giuliani administration and many city councilmembers were inclined to limit oversight of BIDs to a self-imposed set of standards of conduct and behavior. John Dyson, Deputy Mayor for Economic Development stated that while there were some ways the city could improve oversight, officials needed to "be careful not to take the normal governmental approach, which would be to try to take control of everything that moves and regulate everything that doesn't move." Directors of the city's largest BIDs agreed. Robert Walsh of the 14th Street-Union Square BID said that oversight should be "imposed from within…by those folks who are closest to it and who have a real strong understanding of what neighborhood improvement is all about."[70]

In spite of a seeming reluctance to reign in the BIDs, City Hall prohibited business improvement districts from borrowing money to pay for large projects. The Giuliani administration framed the move as a safeguard against lenders holding the city responsible should a district default on a debt. The move disappointed BID leaders like Weisbrod; the ADNY had been planning to sell $20 million in bonds to finance various

[70] Vivian S. Toy, "City, Districts Reject Calls for Oversight," *New York Times,* November 9, 1995; Andrew Jacobs, "Street Fight: Unions Versus B.I.D.'s," *New York Times,* March 24, 1996.

projects in lower Manhattan.[71] Giuliani also moved to dissolve the Grand Central Partnership based on exceeding its authority by issuing bonds without government approval, paying the executive director a higher salary than the mayor, and forcing the homeless who slept in the station to take low-paying jobs with the partnership through which they harassed other homeless.[72] However, a last minute restructuring of the GCP's leadership saved it. Clearing people out of commercial districts through anti-vending regulations, panhandling, and loitering laws represented one aspect of sanitizing the city for business and tourists. The Giuliani administration strengthened existing laws regulating the free movement of people in public space, combined tactics, and passed new punitive measures to achieve the environment desired by those with political power. In addition, Giuliani used the zoning measures put in place by previous mayoral administrations to physically reshape the city, clearing out businesses, older buildings, and making way for the new city.

Carl Weisbrod of the ADNY and Gretchen Dykstra, president of the Times Square BID, drafted an op-ed, that while it never ran, gives insight on the level of concern many directors felt in the wake of the GCP scandal. Weisbrod had remarked to the ADNY's Board of Directors at the start of the inquiries into GCP mismanagement

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[71] Clifford Levy, "City Prohibits Borrowing By Improvement Districts," *New York Times,* September 14, 1996.

[72] Zukin, 144. This move may have also been a power play for control of the BID. After Giuliani refused to renew the Grand Central Partnership's BID contract in 1998 the directors voted to appoint Giuliani's finance commissioner as president of the GCP. Giuliani still broke up the GCP, but allowed a smaller portion of it to continue functioning. Memo re: April Report, Carl Weisbrod to ADNY Directors, May 8, 1995, DLMA Series 3, RAC.

that while BIDs were "private organizations" providing "supplemental services," because they operated in public they had a "special obligation to gain the public's trust."[73] Weisbor and Dykstra laid out a lengthy and carefully worded argument against regulation, stating that, "legal mechanisms already exist[ed] to provide appropriate government oversight of BID programs and finances." Creating new oversight, or as they phrased it, "over-regulation," would cause the City to "lose a valuable ally in our mutual efforts to improve quality of life." Buried midway through the draft, Weisbrod and Dykstra plainly state that BIDs "are private organizations, designed to serve business interests," albeit with public funds. They conclude that BIDs

> "are in the vanguard of the new 'reinventing government' movement, the effort to put emphasis on service delivery, not government process…[They] demonstrate persuasively that taxes are palatable when results are tangible and control is decentralized – that taxpayers yearn as much for high quality services as lower taxes."[74]

Wanting more for less was not unique. American consumers and taxpayers desired cheap goods and services, but "cheap" had hidden costs. Squeegeemen and the New York's homeless represented some of those costs. The abuse of the homeless by the GCP and the application of broken windows theory to windshield washers were about spatial control. They were a punitive response to poverty, addiction, unemployment, and mental illness. These were structural issues exacerbated and, in some cases, created by cuts to federal, state, and local social welfare services in the pursuit of lower taxes. Meanwhile, government officials spent profligate sums on the military, on law

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[73] Memo re: April Report, Carl Weisbrod to Directors, May 8, 1995, RAC.

[74] "BIDs: Private Dollars/Public Trust," Op-Ed submitted by Gretchen Dykstra and Carl Weisbrod, no date, DLMA Series 3, RAC.

enforcement, and on tax abatements and incentives to corporations that threatened to leave the city or the country. This was a matter of priorities, and by the late twentieth-century those priorities had been firmly cemented in corporate America.

Adult-Businesses

BID directors, like Weisbrod and Dykstra, may have balked at government oversight of their entities, but as with street vendors and windshield washers and the homeless, their reticence over regulation did not extend to adult-oriented businesses. Even before heading the ADNY, Weisbrod had spent much of his career battling the sex industry in Times Square, first as director of the Office of Midtown Enforcement (OME) and then as the president of the 42nd Street Development Project. He had helped create many of the tools used to evict businesses and workers from the area including the padlock law and exclusionary zoning policies. These tactics had resulted in varied results, and early in Giuliani's first term, the current director of the OME, William Daly, informed him that sex-related businesses in the midtown core (30th to 60th streets, river to river) had increased from 57 to 74.[75]

As in the 1970s, the increase in adult-oriented businesses resulted in part from the economic downturn – sex continued to sell and property owners wanted the rents offered by the industry. The enforcement capabilities of the OME were also about be drastically reduced due to budget cuts proposed by the new administration. A leaner office would have to focus solely on the midtown core and pull out of operations in Queens, first

[75] OME Weekly Report, 6/24/94, Mayor Rudy Giuliani General Correspondence, OME, 1994, NYCMA.

initiated under the oversight of none other than Carl Weisbrod. Daly considered privatizing the OME during this period in order to better fund its mission through a not-for-profit foundation; another municipal function privatized in the name of austerity and efficiency. Financing aside, the OME, city officials, and other opponents of adult-oriented businesses needed to prevent further growth of the industry if they were to attract new businesses and impart their urban vision on the city.[76]

A key factor in the renewal of the adult industry lay in the limitations of nuisance abatement as a tool for ridding the city of sex-based businesses. Without valid prostitution arrests or drug charges, the OME could not initiate closures based on nuisance complaints. This limitation had become more pressing with the determination by criminal court judges that, "a new variety of entertainment called 'lap dancing,'" did not count as prostitution.[77] As with bookstores, clubs offering lap-dancing could not be shuttered by nuisance abatement just because other businesses in the area did not like them. As with street vending, businesses and their supporters in City Hall would have to develop new methods or stretch existing measures to fit changing needs.

Working with the BIDs, the OME sought alternatives to nuisance abatement, including direct pressure (or financial incentives) to property owners considering leases with adult-themed businesses. During the 1970s, adult-oriented businesses found property owners willing to lease space to them because they paid well. The task faced by

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[76] OME Weekly Report 3/4/94, Mayor Rudy Giuliani General Correspondence, OME, 1994, NYCMA

[77] OME Weekly Report, 3/11/94, Mayor Rudy Giuliani General Correspondence, OME, 1994, NYCMA

the BIDs in the 1990s would be to counter the cash offered by these businesses. The Fashion Center BID offered a property owner in the area money to not lease a storefront to a "large porno and peep show business." In correspondence with the newly elected mayor, Daly noted that the proposed use was not illegal, but that the garment district was trying to clean up its image and attract business the area.[78] Persuading owners not to rent to lucrative adult-themed shops did not represent a viable long-term strategy, as Daly noted, it was clear that it would remain difficult to find tenants able to "match the kind of rents porno industry is prepared to pay."[79] BID leaders gave up this "free market" tactic and lobbied the city for new zoning legislation that would make shops like the one opposed by the Fashion District BID illegal.

Faced with growth of adult-businesses in the city, the limitations of nuisance abatement, and the prohibitive cost of finding alternative renters, BID leaders and city officials proposed what came to be known as "Adult Use Zoning." Harking back to earlier attempts by city officials to use flyer passers as a tool for shuttering shops and clubs, new zoning legislation enabled inspectors to shutter businesses using a variety of charges including implied sexual entertainment in advertising. The use of a broad array of charges was necessary, city officials argued, because theaters, massage parlors, bars,

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[78] OME Weekly Report, 2/10/94, Mayor Rudy Giuliani General Correspondence, OME, 1994, NYCMA. In Daly's weekly report from March 11, 1994, he notes that his office was working with BIDs to pressure property owners based on the success of the Fashion District BID. It is worth pointing out that these discussions happened as the OME reduced their inspections in the garment district based on business owners feeling that "they were being harassed," as discussed in Chapter Five. OME Weekly Report, 3/11/94, NYCMA.

[79] OME Weekly Report 6/24/94, NYCMA.

and clubs might try to avoid classification as sex-oriented businesses. Previous attempts to zone sex out of the city had come short, in terms of opposition from city councilmembers who feared zoning measures would result in shops in their neighborhoods as well as the delicate balance between restriction and free speech new laws would have to strike.

During Giuliani's first term as mayor both roadblocks had been resolved. Adult shops and entertainment venues had spread throughout the city in the early 1990s. Redevelopment efforts in Times Square had resulted in large scale evictions and clearance of older buildings, many of them in the adult industry. At the same time, strip clubs and video stores began appearing in neighborhoods like Forest Hills in Queens, Marine Park in Brooklyn, as well as the Upper East Side. The spread of the industry ultimately worked to the advantage of those who sought to eliminate it, because it united city councilmembers from across the city. "It's one thing when the subway is dirty, when the garbage truck is late, but when an adult video store opens around the corner, it's the last straw," noted one of the sponsors of a bill banning adult stores from residential neighborhoods.[80]

Legal and cultural barriers had been removed as well. In cases from 1976 and 1986, the Supreme Court ruled in favor of restrictive zoning, paving the way for municipalities to use zoning as a tool for clearing out adult-oriented businesses. Cities like Philadelphia and St. Louis had successfully implemented dispersal zoning (banning

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[80] Steven Myers, "Sex Shops Testing Neighborhoods' Tolerance," *New York Times,* May 3, 1993.

adult businesses to open within 500 feet of one another) in part because of the 1986 SCOUTS ruling. In that case, the court ruled that the city of Renton, WA could limit adult businesses through zoning so long as they demonstrated "harmful secondary effects" and did not unreasonably restrict people's access to adult material. St. Louis' ordinance, enacted in 1986, had been upheld upon appeal in 1988. Thus, the Giuliani administration felt confident the zoning restrictions would not be ruled unconstitutional.[81]

In addition, public acceptance of the city's sex industry had waned since the height of 1970s First Amendment arguments. This was likely due to several factors including the spread of these shops into new territory, new residents, and the growing power of quality of life sentiment.[82] A city councilmember from the Upper West Side lamented what she called the disappearance of liberal voices in the city. New Yorkers, she thought, had forgotten a tradition of tolerance in lieu of ire over quality of life issues like street vendors, squeegeemen, and sex shops. Other councilmembers felt differently, like Charles Millard who represented the Upper East Side and had campaigned against

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[81] Richard Perez-Pena, "Plan to Restrict Sex Businesses May Be Flawed, Law Experts Say," *New York Times*, September 18, 1994 and Nick Ravo, "Zoning Out Sex-Oriented Businesses," *New York Times*, March 6, 1994. The question remained however as to the legitimacy of "harmful secondary effects." According to a City Planning Department study actual results were mixed. Of six areas surveyed only two showed higher crimes rates around adult businesses. The city's real estate industry had long claimed that adult establishments depressed property values, but here too the CPD study showed that some local business owners disagreed and that the actual effect on assessed values was inconclusive. Quoted in, Tom Redburn, "Putting Sex in its Place," *New York Times*, September 12, 1994

[82] Mitchell Moss, the director of the Urban Research Center at NYU who Carl Weisbrod had written to after an op-ed on BIDs also weighed in adult businesses noting that growing opposition was "partly a result" of cleaning up midtown. Once it spread from Times Square and into residential areas people had a problem with it. Redburn, "Putting Sex In Its Place."

adult video stores in his neighborhood. "Not long ago there was a sense of allowing all people to do all things at all times. Suddenly people are realizing they don't have to feel guilty saying, 'I don't want somebody urinating on my building.'"[83] Just as Kelling argued in his report on squeegeeing, some people's rights had to be curbed for the greater good. The question was, whose rights and which greater good?

With moves by the new administration underway to significantly reduce the sex industry in Times Square (and the city) once and for all, a familiar face remerged. By early 1994, the former King of the Peeps, Marty Hodas, had re-emerged after abandoning his peep empire following prison terms for tax evasion and obscenity in the mid-1980s. The director of the Mayor's Midtown Enforcement Office, William Daly, noted that Hodas' new empire now included Playpen, Playworld, and Peeporama, all centered around Times Square. Gretchen Dykstra speculated that his return was driven by a desire to collect condemnation fees.[84]

In its first iteration, the proposal banned adult businesses everywhere but industrial zones outside Manhattan. City councilmembers from the outer boroughs were

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[83] Steven Lee Myers, "A Switch in Bastion of Liberalism," *New York Times*, September 25, 1994

[84] Bruce Lambert, "Back in Business: Once (and Future?) King of Times Sq. Porn," *New York Times,* September 25, 1994. Hodas was not the only one collecting on the redevelopment of Times Square. In 1994, the Municipal Art Society released a report on the costs of the project to rebuild Times Square. The plan called for evictions of businesses and clearance in order to build new, higher officer towers. To lure developers the city and the state offered generous abatements of up to 50 years, which the Art Society said would add up to a reduction of between $1.5 billion to $4.2 billion in tax revenues. While the developers had put up $270 million to cover condemnation, in the long run the deal would be extremely profitable for them. Thomas Lueck, "Financing for Times Square Leads to Harsher Criticism," *New York Times,* July 28, 1994.

fittingly unhappy with this measure and the city's lawyers warned that this piece of the legislation could be struck down because it unreasonably limited consumer access to adult material (key to the 1986 Renton case). Revisions removed the industrial zone provision and stuck with a ban on all adult businesses within 500 feet of residential buildings, schools, churches, *and* other adult-themed establishments.[85]

Across the city, however, the threat of the new measures had some effect. In September 1994, the city won a court case against the "Pink Rose," a massage parlor cited for operating "adult physical culture entertainment in violation of zoning resolution," in addition to building code violations based on their certificate of occupancy.[86] The City expected that if the Adult Use Zoning measures passed, they would surely face court challenges. To circumvent this as a stalling tactic, city council proposed a one-year moratorium on any new or expanded adult entertainment uses. In a city planning commission hearing on the proposal, Daly testified that in OME's experience, "even 'legal' adult uses often harbor[ed] illegal activities."[87] Illustrating the necessary "secondary effects" justification, city hall won the moratorium and in January 1995, Daly and agents at the DOB began issuing violations for any new establishments. Later that year, city council approved the Adult-Use zoning measures, and city agents

[85] Ravo, "Zoning Out Sex-Oriented Businesses."

[86] OME Weekly Report, 9/16/94, Mayor Rudy Giuliani General Correspondence, OME, 1994, NYCMA.

[87] OME Weekly Report, 11/4/94, Mayor Rudy Giuliani General Correspondence, OME, 1994, NYCMA.

began visiting businesses that violated the new law to inform them that they had one year to move or "legitimize" their businesses, those who did not would be rendered illegal.[88]

Following two years of court challenges, the City won against a final appeal brought by a group of adult business owners. Giuliani warned these businesses that enforcement would soon begin and owners would not be given warning of the impending closures as they had in 1996. In his second term as mayor and eyeing a move to national office, Giuliani toured the country touting his quality of life stance. He called adult businesses, "corrosive institutions,' that destroy neighborhoods and discourage 'legitimate businesses.'" An attorney representing the adult business owners who had appealed the city's zoning law expressed serious concern over the level of enforcement proposed by Giuliani. "It's not enough for them to comply with the law. He wants to stamp them out."[89] Proponents of zoning the sex industry out of existence treated the measures as a way to protect what they considered legitimate businesses that could not thrive surrounded by adult book shops, peeps, and theaters. Customers would continue to patronize these establishments, which meant the government would have to step in and regulate in order to shutter them. The owner of a former strip club in Queens, Wiggles,

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[88] Vivian Toy, "Panel Votes Zoning Rule on Sex Shop," *New York Times*, October 25, 1995.

[89] Mike Allen, "Giuliani Tells Sex-Based Shops That the End is Drawing Near," *New York Times,* July 20, 1998 and Dan Barry, "Federal Court Upholds City Zoning Law to Curb Sex Shops," *New York Times,* June 4, 1998. It should also be noted that consumption of pornography and some sex work was being reshaped by the Internet at this point – although as has recently been demonstrated even those spaces are not safe from the morality police. Home video was phased out by online access to vast arrays of adult entertainment. Various sites also facilitated the transfer of sex work from the back pages of print magazines to the Internet, although not equally accessible.

had pointed out the issue with this practice. "You can't just tell million-dollar businesses that pay taxes and pay rent that they have to shut down like this." As it turned out, you could.[90]

Enforcement began in mid-summer of 1998. Each night, inspectors combed the remaining outposts of the city's sex industry looking for violations. While New York's adult businesses always maintained vocal critiques, by the late 1990s they more than outweighed the few who defended them. Even Giuliani's critics applauded the measure. Public Advocate and former DCA commissioner, Mark Green, called the new zoning measures, "a significant legislative and legal victory for City Hall and our neighborhoods."[91]

Norman Siegel, director of the NYCLU, saw things differently. He considered the zoning measures an attempt by Giuliani to "stamp out legal activity," that he found "personally offensive." Beyond the moral regulation of the city's adult businesses, the Giuliani administration's actions revealed the paradox of free market, limited government that many of them allegedly espoused. Economic recession and a depressed real estate market had triggered an uptick in sex shops around the city to the dismay of residents, businesses, and property owners. A rise in crime rates, the general fear of crime, and the political power of "quality of life" rhetoric lent further support to a context in which restrictive government policies would be supported by the public. Through municipal

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[90] Vivian Toy, "Sex Shops Greet Law with Wink, Nod and Lawsuit," *New York Times,* October 16, 1996.

[91] Dan Barry and David Rohde, "Giuliani begins to See Results in Battle Against Sex Shops," *New York Times,* August 9, 1998.

regulation, the Giuliani administration restricted the ability of adult businesses to operate freely in the city. City agents closed establishments that violated the new zoning rules and posed immediate threats to public safety. Although whose safety they were concerned with was another question.

The zoning law also affected workers in the city's adult-oriented sector. In order to adhere to the new spatial restrictions and withstand fishing expeditions disguised as safety inspections, club needed capital and connections. Underground clubs, like the stripper-owned Blue Angel in Tribeca, that allowed workers to keep more of their earnings and hired a more diverse set of performers did not survive. The so-called gentlemen's clubs that took large portions of performers' earnings and were more selective in their hiring, did survive. For women in the industry, the corporate sensibilities of the remaining clubs meant lower wages and less concern for their safety on and off the job. Aside from the midtown clubs, other establishments operated in empty industrial zones, such as under the elevated subway tracks near Queens Plaza. Mobile, underground parties also sprang up, with their own set of complications – workers could earn more, but as the Happy Land fire demonstrated, informal spaces could also mean hazardous building conditions.

Clubs & Cabarets

Giuliani also ramped up enforcement against clubs and so-called cabarets, reviving the Cabaret Law after legal challenges to its constitutionality in the late 1980s. The administration used the usual set of justifications for crackdowns, building safety and

nuisance abatement, but added a new element to quality of life control: noise. When John Lindsay commissioned the noise control task force in 1966, the concern was damage caused by construction, jets, and subway cars. These forms of so-called noise pollution had been demonstrated to cause significant hearing loss and so noise control measures were a response to a public health issue. Over the course of the intervening decades, noise control had shifted to a focus on, essentially, annoying sounds – shops playing music on speakers aimed at the sidewalks, outdoor café spaces, and music venues.

By the time Giuliani came into office noise control had transformed into yet another tool for filing nuisance charges. Combined with quality of life rhetoric, the many sounds of a densely populated city became irritants to be swept aside. In many neighborhoods across the city, other factors appeared at play. One Chelsea resident, defending their community board's Disco Task Force, claimed they were not "fuddy-duddies. We welcome the friendly presence of small clubs and gay bars," she added. "What we hate is the giant discos that bring noise, destruction and mayhem."[92] Increasingly, noise became synonymous for crime and neighborhood disruption.

Deputy Mayor Rudy Washington used noise to defend the work of his Quality of Life Nightclub Enforcement Task Force as well. In a *Daily News* op-ed he painted a hypothetical portrait of an average New Yorker awoken at one in the morning. Looking out their window they noticed that, "the storefront where you bought your groceries a few

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[92] Marvine Howe, "Discomania? Some Say It's Really Discoterror," *New York Times*, June 4, 1992.

hours ago is now the hottest nightspot around, attracting patrons who party until daybreak and then start destroying the neighborhood."[93] Here were echoes of testimony supporting the Cabaret Law back in 1926, city regulators protecting hard-working New Yorkers from others running wild. By invoking the transformation of a storefront transforming into a nightclub, Washington implied its illegal nature. By claiming partiers would destroy the neighborhood at daybreak, he nodded toward broken windows theory, that unchecked, seemingly minor infractions portended greater mayhem.

The reality of Washington's task force differed from the protection of public safety he projected in public. Whereas, the number of complaints by residents about bars, clubs, and dance halls sent to Giuliani's office and contained in the pages of the *New York Times,* suggested support for crackdowns, Brooklyn's Caribbean population, for example, felt differently. The same summer that Washington argued the nightclub task force kept the peace, his "Bottle Club" task force targeted Flatbush and Crown Heights for major crackdowns. Locals likened the sweeps to invading forces; police used search lights, brought a mobile jail, and in one case a police helicopter that swept the neighborhood in the early morning.

One club padlocked after a sweep, Big Blue, was shuttered for its lack of sprinklers – required in cabaret licensed establishments. In addition to the $10,000 fine, the owner would need to raise $35,000 to cover modifications required before they could re-open. The owner described the situation as a Catch-22. He wanted to operate legally,

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[93] Rudy Washington, "The Cabaret Law – It Keeps the Peace," *NY Daily News,* August 5, 1997.

"but banks do not want to finance us," and so he had taken the risk to operate without sprinklers and raise capital via revenues.[94] When asked if they were targeting any white areas, a police sergeant allegedly responded that they had a list, "but are starting here."[95] Washington's office kept track of the negative press in Brooklyn, but did not seem discouraged. For them and the officers they worked with it was a matter of insuring New Yorkers had a safe place to go. "It is not easy to count the number of lives that we saved, but from what I [Washington] saw in those basement barrooms and back room clubs, I can say that our impact was significant."[96] However, they were not just targeting "basement barrooms." Using noise violations, they were breaking up backyard BBQs, house parties, and other neighborhood social gathering spots. In one instance, officers allegedly seized deejay equipment and drinks from one backyard. Some voiced concern that Carnival celebrations would be affected if the backyard parties used to raise funds kept being shut down by police.[97]

The public safety argument was flawed on another fundamental level as well. When Washington claimed to be saving lives from dangerous back room clubs he conveniently left out the many loopholes in sprinkler requirements. Per the Cabaret Law, only establishments with dancing were required to have sprinkler systems. Thus, a space without dancing or music that catered to the same number of clientele did not need

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[94] Michael Roberts, "Task Force Crash Sparrow's Party," *The New York Carib News,* July 22, 1997.

[95] Michael Roberts, "Washington's Boys Strike," *New York Carib News,* May 6, 1997.

[96] Washington, *Daily News,* August 5, 1997.

[97] Roberts, *New York Carib News,* July 22, 1997.

sprinklers per city regulations. Moreover, at the behest of the city's real estate and development industry, older buildings had been grandfathered into existing law, leaving the installation of sprinkler systems up to individual owners many of whom forewent installation, citing prohibitive costs.

Furthermore, the coalition of jazz and blues club supporters who had lobbied against the restrictions of the Cabaret Law had won by 1995. The law was amended to require a separate cabaret license for establishments that specifically promoted dancing to ensure they met zoning, building, and fire code regulations. From that point forward, jazz and blues clubs were no longer beholden to the Cabaret Law. As the president of the newly formed New York Nightlife Association pointed out, true cabarets, i.e. bars with live bands and/or singers, no longer needed a cabaret license (unless patrons were caught dancing. The law had morphed from regulating spaces with live music to encompassing noise pollution and nuisance abatement. The public safety violations seemed to some as post-raid justification. In addition, a state law signed by then governor George Pataki allowed the State Liquor Authority (SLA) to revoke or suspend liquor licenses, "for any 'sustained and continuing pattern of noise, disturbance, misconduct, or disorder' outside of an establishment."[98] Here too, noise pollution had taken on a new dimension, blending with the growing trend toward spatial regulation. Now businesses would be held accountable for behavior conducted on the street.

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[98] Kimberly Schaye, "Law Putting Stopper on Noisy Bars," *NY Daily News,* (date?).

Club Edelweiss, in Hell's Kitchen, learned this lesson the hard way. Neighbors laid blame for a rise in so-called transvestite prostitutes on the club, ignoring the concurrent displacement of sex workers from Times Square and Chelsea. Residents complained about finding used condoms on the streets and people urinating in the entryways to their buildings. Some seemed more worked up about the sex workers themselves. One resident expressed her dismay over looking out the window and seeing "two male prostitutes dressed in women's clothes motioning to oncoming cars as another one got into a red car."[99] Following solicitation arrests inside the club, the owner actively tried to stop prostitutes from working in Edelweiss, but failed to make similar gains outside the club. The OME won a court injunction and shuttered Edelweiss based on noise and prostitution outside the club.

For whom though was this a "quality of life"? Following the City's court victory against challenges to the Adult Use Zoning one observer noted it would be, "hard to imagine [adult shops] just being sloughed off without the city also seeming less authentic – a sanitized, falsely sentimental image of its genuine self."[100] Beyond the loss of a gritty, supposedly more authentic, city lay the transformative power of gentrification. Here, however, it was not simply a tale of newcomers moving in and pushing older residents out or bringing more resources (including the police) in. Municipal government had actively paved the way for the demographic changes; not merely responding to

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[99] Julia Campbell, "A Tolerant Neighborhood Finds One Club Intolerable," *New York Times*, April 22, 1997.

[100] Elizabeth Kolbert, "The Last Peep for Smutland in Times Sq.?" *New York Times,* June 4, 1998.

community concerns as the examples in Brooklyn showed. Through zoning, noise, nuisance, and the many other available tools crafted over the years, the Giuliani administration was remaking the city. Not just sanitized, but increasingly racially and financially unequal.

Conclusion

Despite the rough start, the 1990s turned out to be an era of economic growth. In New York City that growth spurred what officials saw as the renewal of once blighted neighborhoods in Upper Manhattan and Brooklyn. Neighborhoods like Harlem saw an influx of capital and development, not all of which took into consideration the people who had long lived called it home. As the city's wealth spread from upward from midtown and outward from downtown, the areas that had once served as fringes where street vendors, nightlife, and adult businesses could exist with minimal municipal interference began to contract. Gentrification functioned as a form of neo-colonialism that spread and cemented the revenue-centric policies that had developed in Manhattan over the course of several decades. New York was always a city in flux, but starting with Giuliani and continuing to the present that constant change has been a symbol of the city's ever deepening income inequality. A focus on protecting and generating new revenues from the wealthy corporations, white collar workers, and tourists flooding into the city has blinded politicians to the lack of affordable commercial and residential real estate, the segregated schools, and the crumbling transit system. Perhaps some of them do not care, or maybe others harbor a secret fear that the bad old days might return, but

either way, the state was reoriented by the end of the twentieth-century to hyper focus on revenue, through regulation or incentives and de-regulation.

Before the end of his time in office, Giuliani resolved the matter of vending in midtown and access for veterans through the creation of the midtown core zone and the requirement of specialty permits. While some vendors were allowed to work in the city's most lucrative commercial areas, it was a far cry from the situation in the 1960s when the DCA considered abolishing time and place restrictions. Unfettered access to city streets as a means of increasing vendor licensing and revenues was no longer a consideration, it was not even a possibility. Between 1968 and 2000 the DCA and later the DBS built a web of rules and restrictions that severely limited who could vend in the city and where. Anti-vending forces like the DLMA and the Fifth Avenue Association, while not entirely successful in their efforts, had on the whole won their battles. Through the creation of various development corporations and BIDs, private companies and property owners could affect near total control over the city's public spaces. As the ability to own property became increasingly concentrated in the hands of a few this meant that this minority controlled the environment of the majority. Through spatial control mechanisms and punitive measures inflicted on violators, officials and the city's elite worked to eradicate elements they considered detrimental to New York's image.

Giuliani's action against the Grand Central Partnership, however, did prove to be the exception as BIDs continued to grow, especially under his successor, Michael Bloomberg, who increased the amount of money that BIDs could raise by self-assessment. The attacks on 9/11 and the recession in 2008 only strengthened the position

of BIDs in the city, with both events indebting city government to private actors. Many districts built their power on "remedying" the actions taken by many of their members during the fiscal crisis and the 1980s who enforced austerity, pushed for tax cuts, and lobbied for abatements. Many of the problems BIDs sought to correct had been created by their members in the first place, dirty streets, public urination, and general disrepair of public spaces. BIDs reinforced the inequality wrought in the aftermath of the fiscal crisis through social control of public spaces, creating places where middle- and upper-class New Yorkers could drink in public while the police handed out summonses elsewhere in the city for those drinking out of brown bags.[101]

Building on his experience at the OME and the 42nd Street Development Corporation, Carl Weisbrod led the ADNY to improve lower Manhattan and entice businesses and residents. A similar story played out across much of Manhattan in the Giuliani years. That improvement was not for everyone, however, and it came at the price of restricting access to public spaces and zoning policies that contributed to neighborhood transformation, for better and for worse. In addition to legal controls, BIDs and government agencies used lighting, planters, anti-homeless devices like divided benches, and other physically restrictive controls that made being in a public place uncomfortable or impossible. As the city's economy improved, LDC and BID members no longer had to bribe (or bully) property owners into not renting to the most lucrative tenants, because that category was no longer dominated by adult businesses. This in turn

[101] Zukin, 146.

put more money into the coffers of various BIDs, enabling them to privatize more parts of their respective domains.

The continued privatization of municipal functions and the use of punitive regulation to control people and spaces deemed disorderly by those in power marked the 1990s in New York City as the start of a new era. Many of policies and practices utilized by city politicians were adopted by other municipalities meaning that privatized and punitive governance had been normalized and accepted. This period in the city marked the ascendance of a neoliberal order – the social, economic, and political transformations that reduced every interaction to an economic one, treated poverty as an individual moral failing, and gave the city's ruling class the tools to protect their status. These changes were problematic not because they sought to fix or clean-up the city, but because the manner in which they occurred excluded large groups of New Yorkers from a seat at the table. It ignored the needs of the city's working poor in terms of access to jobs and affordable housing. It priced long-time residents out of communities to which they had strong connections and privileged the wants and wishes of wealthier New Yorkers and tourists over the people who provided them with the many services they relied upon.

Anti-vending forces had frequently portrayed their battle against street vendors as a quality of life issue in terms of cleanliness, congestion, and "atmosphere" – generally understood to be the opposite of the bazaar-like conditions created by vendors. However, quality of life rhetoric took on a new life with the appointment of William Bratton as head of the transit police and Ray Kelly as police commissioner during Dinkins' administration (Bratton returned to the city to serve as NYPD commissioner at the start of

Giuliani's first term as mayor, before a falling out over who could claim success for broken windows policing). Bratton and Kelly subscribed to the broken windows theory made popular by Kelling and Wilson, which argued that small, seemingly harmless crimes, like graffiti or the eponymous broken window, led criminals to believe the area lacked order and oversight, thus encouraging them to commit larger and more serious crimes. Applying this theory to debates over the appropriate use of public space all but condemned street vendors and squeegeemen to come under attack. Added to the power of nuisance complaints and corporate trademark suits and the city's knockoff Gucci bags, underground clubs, cheap lunches, and hustlers trying to scrounge a dollar faced powerful forces with powerful tools tailored to get rid of them.

The paradox of free market rhetoric had become common sense as deregulation and incentives at the top have been matched by regulation and revenue extraction at the bottom. Lee X, Morris Powell, the dancers at spots like Blue Angel, and the patrons of informal clubs just wanted to be left alone like their counterparts that composed the boards of the Fifth Avenue Association and the ADNY. By the end of the century, few thought to question that while those on top experienced reduced government intervention, those on the margins faced greater and in some cases more violent scrutiny. This was not just about power or one particular group's vision of New York. It was about the life of a city, the people who resided in it, and the things that made it special. Without them, all that would remain was a shell of a former self.

CONCLUSION

By the end of the twentieth-century a new model of municipal governance had emerged in New York City, a model focused on rebuilding the city through revenue. In the wake of the 1975 fiscal crisis, city officials rebuilt and reoriented the state to extract and protect revenues through regulation. Initially, the Lindsay and Koch administrations had viewed new licensing schemes as a way to extract revenue from untapped sources such as unlicensed cabs and street vendors. State-level officials in Albany had followed suit in the early 1990s, initiating new licensing guidelines for nail salons and hair braiding, new industries built by immigrants in the 1980s. While the Beame and Koch administrations dealt with the city's near tumble into bankruptcy, various private interests joined with public officials in calling for the protection of existing revenues generated by the financial sector, real estate developers, and tourism. The latter became especially critical beginning in the 1980s as both state and local officials marketed New York City through the "I Heart NY" campaign hoping to generate additional tourism-based revenues.

The focus by city officials on protecting revenues manifested as regulation to push so-called nuisance businesses out of major commercial areas like Times Square. Property developers and financial institutions viewed street vendors and adult businesses as detrimental to the business climate they hoped to create. Following decades of capital flight from the city, officials worked to stem any more outflow by passing the types of regulatory laws that would protect the revenues of the FIRE sector. These laws included nuisance abatement and anti-loitering statutes as well as the padlock law and new zoning measures. Together, these tools worked to push adult businesses out of midtown and

when combined with stricter time and place restrictions helped remove many street vendors from major commercial areas in Manhattan, including downtown. In addition to restrictive measures aimed at appeasing business leaders in the city, officials created generous financial incentives to retain established industries and lure in new business.

Extracting new revenues through licensing failed to generate the returns officials had hoped for and in their quest for funds, officials slowly began to use policing as extraction. Extracting revenue in the forms of fines and fees via the police hinged on the notion that fines, fees, and per diem jail rates could fund municipal government. This model of extraction never fully manifested in New York City, in part because officials did successfully rebuild the city through revenues, likely generated by the newcomers who helped swell the city's population. Elsewhere, the orientation of the state toward revenues had disturbing consequences. In New Orleans, the "per diem" method for jail budgets resulted in the city paying the Orlean's Parish Sheriff's Office a daily rate for each parish prisoner. The per diem system essentially incentivized a steady jail population, and while New Orleans has recently ended the practice, it continues elsewhere.[1]

In Ferguson, Missouri city officials used court fees and fines to generate a majority of municipal revenues. In fact, court fines composed a major source of revenues for a number of municipalities in St. Louis County. According to a court employee

[1] Lauren-Brooke Eisen, "Paying for Your Time: How Charging Inmates Fees Behind Bars May Violate Excessive Fines Clause," *Loyola Journal of Public Interest Law, 15,* 319 (Spring 2014); and Brentin Mock, "How New Orleans Stopped Making Jailing a Business," *Colorlines,* June 18, 2015.

quoted in a 2014 *Mother Jones* report, hearings routinely started 30 minutes before the appointed time, meaning defendants showing up slightly late to deal with routine traffic infractions faced an additional $120-130 fine for "failure to appear." This fine was on top of whatever fees may be associated with the original charge. The average fine for a guilty verdict in Ferguson was $275 in 2013, and to this could be added penalties for late payments. The courts also imposed fines for failing to appear in court, issuing bench warrants, and jail time served while awaiting future court sessions.[2] St. Louis County is not alone in its use of punitive revenue extraction methods. In Lexington County, South Carolina, officials jail people unable to pay fines and fees associated with traffic and misdemeanor cases, resulting in modern day debtors' prisons. Nora Ann Corder, a plaintiff in a suit brought by the ACLU, spent fifty-four days in jail because she could not pay $1,320 in traffic fines and fees.[3] New Orleans and St. Louis and Lexington counties represent a potential end result of a state focused on extracting revenues from some of its most marginalized citizens while protecting the revenues of its wealthiest.

Since 1990, the impetus to protect revenues from industry and tourism has morphed into programs of massive state subsidies all over the country. But in protecting the revenues of the wealthy, New York state leads the way. A 2017 report by Timothy Bartik at the Upjohn Institute for Employment Research revealed that New York state

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[2] Julia Lurie and Katie Rose Quandt, "How Many Ways Can the City of Ferguson Slap You With Court Fees? We Counted," *Mother Jones,* September 12, 2014.

[3] Nusrat Choudhury, "Lexington County's Draconian Debtors' Prison Flies in the Face of Common Sense and Decency," August 10, 2017, https://www.aclu.org/blog/racial-justice/race-and-criminal-justice/lexington-countys-draconian-debtors-prison-flies-face, accessed November 12, 2018. *Full disclosure my husband worked on this case.

gave more tax breaks than any other state.[4] Based on Bartik's research, the Citizens Budget Commission estimated that Governor Cuomo gave away $8.25 billion in tax incentives in 2015.[5] According to Bartik's study, the majority of these incentives came from job creation tax credits, property tax abatements, and investment tax credits.[6] The same year New York state "spent" $8.25 billion in incentives like those, New York City lost $2.65 million in potential revenues through property tax abatements alone.[7] The majority of studies on the utility of business incentives has found that they are not cost-effective. In one such study, researchers estimated that the annual costs per job created through an incentive program in Michigan ranged from $8,000 per job up to $46,000 per job. It should be noted, however, that research on incentives is limited by a lack of good data accounting for all the different variances by industry, state, and city.[8] That said, some of the data issues arise from the fact that municipalities hide the details of various proposals to lure businesses. Nowhere has this been more telling than in the recent competition to attract Amazon's HQ2.

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[4] Timothy Bartik, "A New Panel Database on Business Incentives for Economic Development Offered by State and Local Governments in the United States," (2017), Prepared for the Pew Charitable Trusts, https://research.upjohn.org/reports/225/, accessed November 12, 2018.

[5] "NY's Economic Development Programs Costliest in the Nation," April 7, 2017, https://cbcny.org/research/nys-economic-development-programs-costliest-nation, accessed November 12, 2018.

[6] Bartik, 89.

[7] Bartik, Appendix F: Comparison of This Study's Incentive Estimates with Annual Incentive Dollar Estimates From State Tax Expenditure Studies and Other Sources, F-25.

[8] Bartik, 7-8.

In September 2017, Amazon announced plans for a second headquarters, "HQ2," and began accepting bids from municipalities all over the country. Amazon released materials claiming the company would "invest over $5 billion in construction" and add up to "50,000 high paying jobs," in whichever city won the bid.[9] As of mid-November 2018 it appeared as if there would not be a single HQ2, but rather two new sites – one outside Washington, D.C. and the other in Long Island City, Queens. Governor Cuomo was quoted as saying, "I am doing everything I can. We have a great incentive package. I'll change my name to Amazon Cuomo if that's what it takes."[10] "What it takes" is apparently $1.5 billion in incentives from the state and another $1.3 billion in existing incentive schemes from the city.[11] This amount pales in comparison to some of the incentives offered elsewhere. In Maryland, lawmakers approved $6.5 billion in tax incentives for Amazon in addition to $2 billion approved for infrastructure improvements near the state's proposed site.[12] But as research has shown, the benefits for average residents of such large incentive packages offered to large corporations is unclear. What

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[9] David Streitfeld, "Was Amazon's Headquarters Contest a Bait-and-Switch? Critics Say Yes," *New York Times,* November 6, 2018.

[10] Karen Weise and J. David Goldman, "Amazon Plans to Split HQ2 Between Long Island City, N.Y., and Arlington, Va.," *New York Times,* November 5, 2018.

[11] Critics of the L.I.C. project point to the seeming needlessness of the incentive package. It behooves large tech companies to locate offices in major cities where they can draw from a growing pool of talent. It appears as if, in contrast to Amazon, Google will be expanding in the West Village without billions in incentives. Josh Barro, "Here's Why New York Is Resorting to Paying Amazon $3 Billion for What Google Did for Free," *New York Magazine,* November 13, 2018; and J. David Goodman, "Amazon is Getting $1.5 Billion to Come to Queens. Now Begins the Fight Over if It's Worth It," *New York Times,* November 13, 2018.

[12] Erin Cox, "Maryland Oks $8.5 billion in incentives to lure Amazon, biggest offer in nation," *Baltimore Sun,* April 4, 2018.

this means for the already gentrifying Long Island City and New York's struggling mass transit system remains to be seen.

Critics of the company point to the high rents and increased homelessness that have attended Amazon's rise in Seattle. In fact, in June 2018, the company successfully lobbied Seattle city council to overturn a "head tax" meant to fund affordable housing initiatives by levying "a $275 per employee tax on Seattle businesses making more than $20 million a year."[13] The issue with HQ2 and corporate lobbying power is not limited to Amazon, and the issues with corporate monopoly and political influence go beyond municipal governance. What the bidding war over HQ2 and the repeal of the Head Tax in Seattle reveal are the outcomes of a state focused on revenues, in particular, protecting and gaining revenues from large corporations. Following news that Amazon may have been moving to Queens, State Senator Michael Gianaris, who represents Long Island City, told reporters that he would "like to see less focus on 'how much we can do for Amazon,' and more on 'what they are going to do to make the neighborhood they want to join better.'"[14] Since the end of the twentieth-century, corporations like Amazon, Citibank, and Tishman Speyer have become consumers of cities, and as the saying goes, the customer is always right.

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[13] Alana Semuels, "How Amazon Helped Kill a Seattle Tax on Business," *The Atlantic,* June 13, 2018.

[14] Neil Demause, "A Few Questions Need Answers Before Amazon Invades Long Island City," *Gothamist,* November 8, 2018, http://gothamist.com/2018/11/08/amazon_lic_questions.php, accessed November 12, 2018.

Unfortunately, not every business is seen as a customer. The same year that New York state gave away an estimated $8.25 billion in tax incentives, two issues with the city's and state's revenue extraction methods became crises. Twenty years after the Appearance Enhancement Act requiring manicurists to be licensed by the state, the *New York Times* ran a series titled, "Unvarnished," in the spring of 2015. Reporters exposed the hazardous, low-paid work that enables New Yorkers of all classes to afford regular manicures and pedicures. Outraged response spurned Albany into action and by the summer Governor Cuomo proposed new regulations and licensing requirements to address wage abuse. Effective October 6, 2015 salon owners would have to post a $25,000 bond with the state, to be used in the event that future wage abuse was discovered by state inspectors. The conditions faced by the largely female immigrant workforce in the salon industry were horrific, but the shock that accompanied the *Times* series was problematic. Anyone who paid less than $10 for a manicure in the past two decades should have known something did not add up. The licensing requirements passed by the state in 1995 had driven up the cost of doing business and some owners had not passed that cost onto consumers, but had taken from their employees instead. Focusing on the extractive potential of the new nail salon industry had led state officials to miss the ways in which workers might pay for state revenue.

The continued focus on protecting revenues is not limited to large corporations either, as exemplified by the de Blasio administration's recent creation of entertainment zones in Times Square. These entertainment zones are painted squares that performers must remain in while working lest they face police action. Ostensibly the entertainment

zones are to reign in the unregulated desnudas and cartoon characters hoping to earn money from the area's many tourists. The zones also represent the outcome of extractive revenue policies mixed with quality of life policing. Tourists have complained about the desnudas and characters, and there are certainly some workers who have caused problems, but they are more likely in need of access to quality mental health services and not painted boxes. Literally boxing in informal workers earning money off tips in Times Square demonstrates the failed logic of the new urban paradigm. That paradigm is marked by a focus on extracting and protecting revenues through regulation without serious consideration for the literal and figurative costs.[15]

This project began tracing the development of the state's turn toward revenue with the creation of municipal agencies to extract revenue from informal and semi-formal workers. From the expansion of municipal power in the Progressive Era came attempts in the 1960s to create new revenue streams that further expanded governmental capacity through the creation of new agencies and the expansion of regulation and oversight. While the TLC proved to be a money maker for the city, effectively creating a monopoly on taxi cabs, the DCA struggled to generate revenues through its management of street vendors. This stemmed from the role played by private interests like the Downtown Lower Manhattan Association whose members used their proximity to power to force city officials to act in their interest. Namely, in imposing stricter time and place

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[15] Charles Bagli, "Special Zones Proposed to Limit Toplessness in Times Square," *New York Times,* September 16, 2015; Emma Fitzsimmons, "New York Moves on Restricting Costumed Characters in Times Square," *New York Times,* April 7, 2016, and "In Times Square, New Zone Restrictions That Even the Hulk Can't Break," *New York Times,* June 21, 2016.

restrictions on vendors and creating harsher fines and punishments for violators. Officials ultimately went along with these suggestions because they feared further capital flight.

The panic over further capital flight and loss of revenues led city officials to regulate so-called nuisance businesses out of existence in order to protect tourism and FIRE-based revenues. Real estate developers and theater owners in midtown identified sex workers, peep shows, adult bookstores, and massage parlors as nuisances that undermined their ability to conduct legitimate business in the city. If the city wanted revenue from tourism and the financial sector it would have to create the "right" climate by purging the city of associations with the working class, unions, or blighting industries that instilled fear in visitors. In response, the Beame administration created a new anti-loitering law, nuisance abatement, and expanded the punitive use of noise pollution control. One of the most powerful tools being developed to spatially control the city was zoning. Over the next several decades new zoning measures would be introduced to keep adult businesses away from other similar establishments as well as schools, churches, and residential areas, all in the name of rebuilding the city in the "right" way.

In addition to new laws and measures intended to regulate the city's nightlife and adult businesses out of existence, a new theory of policing emerged that emphasized the need to manage small signs of disorder, like graffiti and loitering, in order to prevent more serious crime. Broken windows policing developed in tandem with many of the other measures adopted by city officials to ensure "quality of life," a loose phrase that encompassed everything from clean streets and pleasant amenities to the removal of

undesirable persons, like the homeless or street vendors. As these policies gained traction, local and federal officials began focusing on ways to make enforcement pay.

The tumult of the fiscal crisis in New York and the global crisis in Washington led to attempts at extracting new revenues at all levels of government. A federal investigation in 1979, into the so-called subterranean economy of tax dodging attempted to assess ways of securing new revenues from people earning income off-the-books. Several years later, Mayor Ed Koch created an Underground Economy Task Force and unit in the Department of Finance, also in an attempt to monetize oversight. Attempts made by city officials in the late 1960s to monetize regulation of informal street vendors and cab drivers had fit with an era of government oversight and consumer protection. By the early 1980s, these investigations into the underground economy coincided with a drastic reduction of government regulation of banking, finance, real estate, and other major industries. In this, they revealed the paradox of free market rhetoric, namely in who it would be applied to. At the very moment that city and federal officials promoted smaller government, they simultaneously enacted policies that expanded government oversight and regulation of the informal sector.

In New York, Koch's first DCA commissioner, Bruce Ratner, promoted a "streamlined government" and advocated for the abolition of the city's Cabaret Law. Ratner argued that the main issue for the city with nightclubs was fire safety, oversight that could be provided through FDNY inspections. If clubs were unsafe or neighborhood nuisances, then following the popular rhetoric at the time, the free market should decide whether they continued or not. Instead, Ratner's attempts to end the Cabaret Law died in

city council, which then passed the Padlock Law, granting the police department greater enforcement and seizure powers against nuisance businesses.

The problem of municipal oversight became clearer as the 1980s wore on. Koch's Underground Economy task force revealed the tensions in attempts to simultaneously extract revenue and regulate businesses out of existence in order to protect "legitimate" revenues. The push for DCA licensing and the move from criminal court to an administrative hearing process had not proven effective in raising revenue because City Hall had also increased time and place restrictions on where vendors could work. Vendors often chose to forego licenses because they could work in the most lucrative areas and disappear if given a summons. A system with no real record of a person could not hold them accountable for fines. The creation of licensing caps only added to this phenomenon. Moreover, this oversight as well as the increase in zoning restrictions and the myriad new laws aimed at adult businesses required an active and sizeable state to function. As it became clear that the underground economy did not produce the long-promised revenues, the bureaucracy created to generate those revenues shifted in line with the systems set up to regulate the informal economy out of existence. Frequently this occurred through the informalization of businesses and the growing criminalization of public space use.

City policy emphasized zoning out, fining out, or physically shuttering spaces away. This was done instead of investing in government programs and initiatives that could have addressed underlying structural issues related to health, welfare, and economic precarity. The mobility of vendors, informal club spaces, and even adult

businesses had for a time ensured their continued existence. That began to change with the privatization of municipal functions through BIDs and the institutionalization of Broken Windows theory. The end of the Dinkins administration and Giuliani's two terms as mayor resulted in the culmination of struggle between managing the city's underground economy through revenue versus regulation. Punitive regulation won out as Giuliani drew from a toolkit of laws, zoning restrictions, and licensing requirements to remake the city. 9/11 served as a moment of rupture, from which a different type of municipal oversight and surveillance emerged focused on terrorism and asking everyone to give up some rights to ensure their safety.

Beginning in 1968 and at the behest of business and neighborhood organizations, politicians enacted legislation to increase regulation of street vendors, gypsy cabs, knockoff manufacturers, and entertainment spaces. Agencies like the DCA and the Office of Midtown Enforcement acted as conductors for the laws and regulations restricting economic freedom, all in the name of protecting resources from the wealthiest New Yorkers. Over the course of three decades, city officials and business leaders hoping to maintain industry and boost tourism adhered to the advice given by marketing firm YSW – to purge commercial areas of people and businesses that sent the wrong message about the new New York. In doing so they created a new disorder – a more dangerous one that put lives at risk in their quest for order. At the most basic level, city officials created an order based on greater disparity – disparity of access, disparity of wealth, and disparity of experience.

In response to the official announcement of Amazon's decision to come to Long Island City, Governor Cuomo said, "When I took office, I said we would build a new New York State – one that is fiscally responsible and fosters a business climate that is attractive to growing companies and the industries of tomorrow."[16] It would be hard to find a better summation of the new state that emerged from the financial upheavals of the 1970s.

[16] Jake Offenhartz, "It's Official: Amazon Coming to Long Island City in Exchange for $1.5 billion in State Subsidies," *Gothamist,* November 13, 2018, http://gothamist.com/2018/11/13/amazon_announces_lic_hq.php, Accessed November 13, 2018.

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LaGuardia Wagner Archives, LaGuardia Community College, City University of New York

Ed Koch Mayoral Papers

Municipal Archives, New York, NY

John Lindsay Mayoral Papers

Abe Beame Mayoral Papers

First Deputy Mayor Cavanagh Subject Files

Executive Secretary Sally Leonard Subject Files

First Deputy Mayor John Zuccotti Subject Files

Ed Koch Mayoral Papers

Director H. Robbins Subject Files

David Dinkins Mayoral Papers

Rudy Giuliani Mayoral Papers

Deputy Mayor Rudy Washington Subject Files

New York Public Library Manuscripts and Archives Division

Ken Auletta Papers

New York Foundation

New York State Library Manuscripts and Special Collections

Theresa Funiciello Papers

Rockefeller Archive Center, Sleepy Hollow, NY

Downtown Lower Manhattan Association, Inc. Records

Ford Foundation Papers

Nelson Rockefeller Gubernatorial Records

Rockefeller Brothers Fund

Rockefeller Foundation

Russell Sage Foundation

William Whyte Papers

PERIODICALS

New York Amsterdam News

New York Daily News

New York Post

New York Times

The Atlantic

Time

The Westsider

Downtown Express

Village Voice

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