HAVE YOU MADE ROOM FOR STREET MARKETS AND PUBLIC VENDORS?
Zoning for Public Markets and Street Vendors

By Alfonso Morales and Gregg Kettles

Public markets and street vendors make attractive social and cultural spaces.

Whether open air or indoors, they contribute to quality of life, improve access to healthy food or affordable goods, and boost the local economy. Markets and vendors have flexible land-use needs, and thus they often make a good fit for underused and vacant sites, such as parking lots, streets, and sidewalks.

Farmers, crafts, and flea markets are tourist destinations as well as a source of day-to-day consumer goods. Established markets become attractive neighborhood amenities that encourage social interaction. As a tool for economic and community development, markets provide jobs and help incubate new businesses. They link food producers to consumers, enhance food security in underserved communities, and improve access to affordable goods.

Individual street vendors offer these same advantages and more. Smaller in scale, budding street vendor entrepreneurs face lower costs of entry, and can easily fit their vending enterprises into a wider variety of suitable locations. Their mobility enables them quickly to adapt to changes in demand for their goods and yield to higher priority uses of space they temporarily occupy. Street vendors add life to streets often devoid of activity, discouraging antisocial behavior by acting as eyes on the street.

Public markets and street vendors can be temporary uses or more permanent responses to consumer demand, economic inequality, and mobility-constrained populations. When properly sited, they provide neighborhood amenities and can contribute to a positive community image. Because of their diversity, these markets and merchants can be powerful tools in the planner’s repertoire. This article places public markets and street vendors in a historical context, examines regulatory approaches, and makes recommendations for zoning practice.

PUBLIC MARKETS AND STREET VENDORS IN THE U.S.
Markets have historically served various economic or social objectives. In the late 19th century, municipal markets were a primary source of revenue for cities. In the early 20th century, rapidly growing cities used public markets to ease unemployment, create space for new business formation, supply convenient and inexpensive consumer goods, provide fresh produce, and to foster civic life by helping to incorporate newcomers into communities. Public markets were key elements in a rapidly growing industrial and agricultural infrastructure that was establishing distribution methods appropriate to rapidly changing cities.

However, by the early 1920s many street markets were replaced by chain stores and supermarkets. The last federal enumeration of markets was in 1920. While public markets never disappeared, they began to occupy a marginal space in the economy as indicated by the U.S. census, which eliminated “street peddler” as an occupational category with the 1940 census.

Over the last 30 years, the public has developed an interest in fresh, organic, and local produce, spurring the growth of farmers markets. Likewise, crafts markets have expanded to meet the demand created by nostalgia for the handmade and a newfound interest in sustainability. Cities have revitalized markets as places attractive to businesses, consumers, and tourists. These various interests have sparked a resurgence of local governmental attention to public markets. Since the 1970s many communities have taken the initiative to create, renew, or rehabilitate markets, and
Local governments typically regulate vendors for four reasons: to improve community image, to protect shops and restaurants, to avoid sidewalk congestion, and to reduce the liability of adjacent businesses. The following review provides examples of how communities use zoning and permitting techniques to regulate markets and merchants. After this review, we will present our proposal for a light-handed regulatory approach that acknowledges the benefits of public markets and street vending while minimizing administration costs and removing barriers for potential entrepreneurs.

VENDING LOCATIONS
The first consideration is whether the general location of vending activity should be restricted, and if so, how. Answers to this question differ for markets and merchants.

Cities that permit sidewalk vending often limit where it may take place, following one of two principal approaches: fine slicing or bulk packaging. One illustration of bulk packaging is provided by Portland, Oregon, where vending is permitted in any area zoned commercial (Code of the City of Portland, Section 17.26.070A).

A community may instead choose a fine-slicing approach that delineates more precisely where sidewalk vendors may operate; in these cases, zoning is less relevant. For example, in New York City, the legality of vending activity varies by street and street section. General vending is legal on six different sections of New York's Avenue of the Americas and the permitted hours of operation vary in each (New York City Rules, Title 6, Section 2-314).

Similar to sidewalk vending, cities typically fix the location of street markets using either zoning restrictions or permitting standards. For example, Riverhead, New York, permits indoor...
Restrictions on vending are often justified to protect neighbors from negative spillover effects. Public markets are by right in its Main Street zoning district. This is representative of the “bulk packaging” approach described above.

By way of contrast, New York City finely slices the locations of its farmers markets. Farmers markets are temporary uses, so the New York zoning laws that permit categories of uses as of right do not apply. Instead, a permitting process determines where markets can locate. In New York, about half the city’s “greenmarkets” are on sidewalks or closed streets, and applicants must apply for a temporary use permit. The rest of the greennet markets are in city parks, where the permit process provides an exception to the city’s general restriction on commerce in these locations.

EXEMPTIONS
Restrictions on vending are often justified to protect neighbors from negative spillover effects. But what if the neighbors of a particular vending site do not have a problem with the activity? Planners should determine if neighbors may be allowed to waive certain restrictions on vending. For example, Seattle and Portland waive restrictions when vendors obtain written permission from neighboring businesses.

Allowing vendors to buy permission from a neighboring business owner could be a powerful incentive to increase vending. Similar trading is allowed in the context of transferable development rights. However, in Portland this type of exchange is expressly prohibited (Code of the City of Portland, Section 17.26.80). It is not clear whether prospective vendors can pay neighboring business owners to obtain permission in Seattle.

PERMIT CAPS
A third issue that planners face in regulating vending is whether the total number of vendors operating in the community should be capped. New York City has 853 general vending permits (New York City Administrative Code section 20-459, Section A) and 3,000 food vending permits (New York City Administrative Code section 17-307(b)(2)(a)). In this instance, demand far exceeds supply. There is a waiting list of thousands of would-be vendors.

Limits may be applied communitywide or at the district level. Philadelphia, for example, has four designated neighborhood business districts, each with a separate limit on the number of vendors, ranging from as few as three to as many as 100 (Philadelphia Code, Section 9-206(10)). In the absence of absolute caps, the number of vendors may be indirectly limited by other restrictions, as suggested by the wide variation in vendor population across U.S. cities. New York, Philadelphia, and Miami each have more than 3,000 legal vendors, while Portland and Atlanta each have less than 100.

VENDING AREA
Planners should also consider a fourth issue, namely how to define a vendor’s permitted location in a market or on a given stretch of sidewalk. To the extent that communities regulate at this level of detail, they take one of two alternative approaches: bright-line rules (that is, rules that can be objectively applied) and flexible standards (which, when applied, involve some subjectivity).

Bright-line rules are best exemplified by New York City. Street vendors may occupy no more than eight feet of curb space, and no more than three feet of sidewalk depth. In addition, a vendor must operate at least 20 feet from any building entrance; at least 10 feet from any driveway, subway entrance or exit, or corner; at least 20 feet from any sidewalk cafe; at least five feet from bus shelters, newsstands, public telephones, or disabled access ramps; and at least 10 feet from entrances or exits to buildings which are exclusively residential at the street level (New York City Code, Section 20-465). Such bright-line rules are easily administered at street level (with a tape measure), but fail to take into account unique circumstances that call for more or fewer restrictions.

Flexible standards avoid this problem. For example, in certain areas of Philadelphia, a vendor may neither “restrict or interfere with the ingress or egress of the abutting owner or tenant” nor “become a nuisance or hazard” (Philadelphia Code, Section 9-206(9)(d)). While this allows enforcement to be tailored to conditions prevailing on a particular corner, it renders the law less predictable in application and encourages disputes.

The same bright-line/flexible standards distinction can apply to merchants in public markets. Chicago’s Maxwell Street Market illustrates how bright lines and flexible standards alternate over time. Currently, Chicago restricts Maxwell Street merchants to a particular space (Rule 5 in the City of Chicago’s Rules and Regu-
and assigning Maxwell Street vending space. During most of those two decades the rule on the city books awarded vending spaces each Sunday on a first-come, first-served basis, but the city did not attempt to enforce this rule. Instead, space allocation was left to the merchants themselves. Rather than follow a strict first-come, first-served approach, the merchants used a variety of practices that accommodated seasonal changes and differences in business organization.

Legal vendors in New York City and illegal vendors in Los Angeles both allocate prized sidewalk space under a first-come, first-served principle. Alternative methods of allocating a space include lotteries and auctions. When vending licenses are not transferable, lotteries do not guarantee that sidewalk space will be given to the highest value user. Auctions are attractive for their potential to raise revenue, but can be costly to administer effectively. Again, city sociodemographic context matters, as do the goals the city has for its markets and merchants. Zoning and administrative regulation can both apply, contingent on context.

Planners should consider the context of a particular market or area of street vending in order to discern the most effective and efficient way to designate permitted vending space.

A number of established restaurants do business one day of the week at Chicago’s Maxwell Street Market. Other spaces incubate restaurants hoping to move to storefronts in the future. Merchants at this informal market don’t need to be told to leave a path for pedestrians on the sidewalk. They brighten an otherwise dreary streetscape.

lations for the New Maxwell Street Market and Section 4-11-030 of the Chicago Municipal Code). However, historically (between 1973 and 1994) the market was self-regulated by merchants; vendors developed relationships with each other in respect to particular spaces without government intervention. Prior to 1973, individual spaces were assigned to merchants by a Market Master. Planners should consider the context of a particular market or area of street vending in order to discern the most effective and efficient way to designate permitted vending space. These designations are sure to vary place to place, by demographics of the merchants, and by the goals of the local government.

SPACE ALLOCATION
The fifth issue is a corollary of the fourth: whether vending spaces should be allocated among vendors by a government agency or a designated authority. Government intervention may not be necessary. In the case of Maxwell Street, the city of Chicago bears the costs of regulating and enforcing access to a particular vending space. A waiting list for spaces exists and potential vendors must pay fees and spend time placing phone calls and waiting in lines hoping for a space.

The city has not always borne the costs of space allocation. Between 1976 and 1994 the city took a different approach to allocating access
General ordinances that allow for categories of activities as a matter of right may enable markets and merchants to self-organize and solve problems cities would otherwise pay to have solved.

RESTRICTIONS ON CERTAIN GOODS
A sixth issue that planners should consider is whether or not to place restrictions on what street merchants or marketplace vendors can sell. Other than prohibitions specific to food, government control in this area is the exception rather than the rule. This would seem to be a victory for the consumer. However, other restrictions on vending may operate to restrict the number of vendors and thereby the variety of products they offer.

Vending officials in Washington, D.C., have complained about the prevalence of hot dogs and the absence of ethnic food or other healthy alternatives. New York City’s Green Cart proposal expanded the number of vending permits, but the ordinance restricts these new carts to a few parts of the city and to selling only fruits and vegetables.

CART OR DISPLAY DESIGN
The seventh issue planners face is whether or not to regulate the design of a vendor’s “cart” or display. While modest limitations on cart size are common in U.S. cities, rules concerning appearance are rare. Still, communities occasionally enact ordinances to improve the aesthetics of vending. Vendors in Portland, Oregon, for example, are required to undergo a design review to ensure aesthetically pleasing carts (Code of the City of Portland, Section 17.26.90).

Vague aesthetic standards can be difficult to administer, and some vending advocates point out that outdoor markets serve a different function than upscale indoor shopping centers. Costly carts can price entry-level entrepreneurs out of business. Any community considering cart or display design standards should pay close attention to context and the goals the city is seeking to achieve.

FEES AND TAXES
The eighth consideration for planners is whether or not to charge vendors or markets for licenses or permits. Boston charges each vendor $15 per square foot of space used per year. Other cities charge vendors a flat fee annually, such as $75 in Portland and $200 in New York. Vendors are often subject to additional fees, such as for business licenses, health permits (for food and beverage sales), and fire permits (for cooking on the street).

Communities have trouble collecting sales tax from businesses dealing in cash, including street vendors. Some cities do not bother trying to collect taxes from their vendors, while others have chosen to tax proxies for sales, such as a tax on inventory.

Another option is to charge graduated license fees contingent on time vending. A temporary or new merchant, for example, will be charged little to initiate a business, but after some designated time in business the merchant will be expected to pay a higher license fee. With higher fees might come additional assistance from the city, such as financial or business counseling, access to in-kind support, business loans, or additional business training. A schedule of permit fees and assistance could be adjusted in a variety of ways, all with the aim of encouraging street market startups (or other social goals that merchants are pursuing, like promoting savings for business expansion or investment in human capital), while indicating how storefront enterprises benefit from increased pedestrian traffic and the more lively atmosphere merchants bring to a place.

From time to time public officials and administrators complain that vending programs do not “pay for themselves,” in the sense that the fees and taxes generated by vending are less than the costs of administering vending programs. However, the social, cultural, and economic benefits of public markets and street vendors may be worth a modest subsidy.

RECOMMENDATIONS FOR REGULATING STREET VENDING AND STREET MARKETS
The pros and cons of various policy responses by planners should be clear, but a few points bear special emphasis. A well-known aphorism says that, “If you have a hammer, every problem looks like a nail.” A corollary might be, “If you have a full box of tools, you will want to use them all.” Planners clearly face a number of issues regarding street vending and street markets, and possess a variety of tools to address them. Some of them, such as restricting certain uses to specified areas, are the traditional tools of zoning. Other tools, such as permit schemes and design review, if not part of zoning per se, work hand in glove with it and are also available to planners to shape land uses in a community. Just because there are a number of tools available, however, does not follow that all of them should be used. Attention to context and goals helps indicate which tools to use in particular circumstances.
A great deal of order in street vending and street markets is private and informal. Cash-strapped cities can exploit the interest merchants have in establishing stable and flexible vending spaces and relationships. However, not every detail of merchant behavior needs to be regulated.

The ability of any city to adopt and enforce formal rules is limited by a host of practical considerations. These include budget constraints, political indifference, and lack of policy consensus. Cities may find it advantageous to leave the rulemaking to those “on the ground” and allow the merchants to organize themselves. The stable and flexible conventions that the merchants establish will be beneficial to succeeding generations of vendors. Cities espousing clear goals to markets and merchants should expect cooperation and responsiveness from merchants about achieving and revisiting those goals as circumstances change.

Where cities elect to make the rules, a sensible planner might ask, “Why did it take so long to specify restrictions for markets and merchants?” or conversely, “Do we need more ordinances?” Sometimes specifying vending standards or creating a temporary use ordinance is the appropriate response. However, comprehensive regulations may keep a community from enjoying all the benefits markets offer.

Temporary uses are important, but are insufficient to recognize markets and merchants for what they are, a niche in capitalism and a viable element of market economies. Furthermore, full regulation and temporary uses can increase regulatory costs by multiplying regulatory contacts and administrative fees as well as escalating the transaction costs of doing business. By contrast, general ordinances—or ordinances that allow for categories of activities as a matter of right—may enable markets and merchants to self-organize and solve problems cities would otherwise pay to have solved while providing the variety of benefits temporary uses provide without increasing or multiplying contacts with municipal officials.

Such general ordinances for street markets and merchants may provide a variety of benefits and thus multiply the uses and social definitions of a place. Benefits will vary by the particular context, but they may include:
• the ability to add amenities immediately to a place;
• the opportunity to incubate businesses;
• the prospect of enhancing street life; and
• the possibility of enhancing community spirit.

Additional Reading


Once established, markets and merchants provide an infrastructure or springboard to enable unusual tourist attractions or other periodic festivals or neighborhood gatherings.

When enacting general ordinances, planners should be open to doing things differently than in the past. Zoning as traditionally applied inhibits the mixing of multiple uses and definitions of a place. It does not have to be that way, of course. Instead, zoning for street vendors and public markets can encourage a mix of uses, contributing to a livelier pedestrian environment.

Planners should be aware of a variety of other approaches and sources of information that they can use to address political concerns regarding street vending and public markets. For example, recent APA Planning Advisory Service Reports and APA Policy Guides provide additional information about the benefits of markets and merchants.

A Planners Guide to Community and Regional Food Planning (PAS Report 554) provides a variety of information about how markets and merchants play an important role in supporting local food systems and sustainability, and the APA policy guide on Community and Regional Food Planning notes that the USDA Community Food Systems Grants Program has funded planning related farmers market projects. Street Vending (PAS Report 509) describes the multifaceted social and economic role merchants play. The APA policy guide on Planning for Sustainability promotes integrated community uses like public or farmers markets within walking or bicycling distance to reduce our dependence on fossil fuels.

In addition to experimenting with zoning ordinances and administrative rules, planners should also support research that explores the social and economic impact of markets and best practices that make the benefits of markets and merchants broadly available. In short, the reports and guides referenced above all integrate markets into discussions of land use and transportation plans, modifying development regulations, and preparing economic incentive programs to promote a variety of social and economic goals.

Zoning distinguishes between public and private purposes. Markets and merchants can serve both purposes. Whether it is in the hustle and bustle of downtowns or the quiet of residential streets, merchants and markets are here to stay, so let us harness them to the best of our abilities to suit our various needs.

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Produce on display at Fondy Farmers Market in Milwaukee, Wisconsin. Photo by Jessica Kozlowski Russell; design concept by Lisa Barton.

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