

There's An *Artist*

Outside



My *Door*

As any sensible business owner knows, there's an intrinsic connection between the health of your business and the amount of art and culture that exists in the surrounding community. Most people understand that a community's vitality can be seen in its celebrations and arts festivals. And everyone loves art! But what do you do when an artist sets up shop right outside your business door?

According to William H. Whyte, founder of Project for Public Spaces, a nonprofit planning, design and educational organization dedicated to helping people create and sustain public spaces that build stronger communities, you should encourage them be there. While working with the New York City Planning Commission in 1969, Whyte began to wonder how newly planned city spaces were actually working out - something that no one had previously researched. This curiosity led to the Street Life Project, a pioneering study of pedestrian behavior and city dynamics.

Whyte asserted that **crowded, pedestrian-friendly, active spaces are safer, more economically productive, and more conducive to healthy civic communities**. "What attracts people most, it would appear, is other people," he wrote.

Unfortunately, since the 1950s, city planners, developers, policy makers, and transportation engineers have built and modified communities in just the opposite vein.

Robert Putnam and other sociologists have supplied convincing evidence that strong social connections are necessary ingredients of economic success. And this stretches not just to your business neighbors, but every person in the community, including that artist outside your door.



Should I call the police?

Probably not. No. In fact that's a really bad idea for a number of reasons. Quite often street vendors are low-income individuals who are just barely scraping by with what they earn. These vendors run a high risk of being ticketed or shut down by city officials, and many of them have been. According to a recent study of New York City vendors by researchers at the University of Wisconsin-Madison, more than 25,000 tickets are written to NYC street vendors every year. The fines associated with those tickets can run as high as \$1,000.

While it makes sense to regulate vendors who may be serving *food* under unsafe conditions, the report found that **most of the fines were levied for minor infractions unrelated to health and safety.**

According to the report, in New York City, the more expensive the fines were, the less likely vendors were to pay them. Fines over \$400 were paid only 25 percent of the time.

Fines over \$800 were paid only 7 percent of the time. Of the \$15.8 million in vending fines levied by the city in 2009, \$14.9 million were not paid. With the cost of enforcing vending rules totaling \$7.4 million that year, **fining vendors literally cost the city millions of dollars.** This facet of street art regulation is no different in your city, neighborhood and community.

The public safety issue raised surrounding street vendors, as stated by the Los Angeles Central City East Business Association, is that vendors might actually be the victims of crime, and not the perpetrators. An analysis of L.A. crime records showed a negligible relationship between street vendors and serious crimes. Using a goodness of fit test, it was found that the correlation between both Part I and II crimes with street vendors was less than one percent.

"The physical presence of purposeful and neighborly vendors on the street is associated with less frequent rather than more frequent incidents of crime. It is reasonable to conclude that the presence of vendors reduces conditions of anonymity that can encourage anti-social behavior, increases neighborhood stability, and contributes to community economic viability."

Street artists have rights

Would it surprise you to learn that whether you or your artist friend know it, artists and street performers have a Constitutional Right to be on the sidewalk?

The Supreme Court established the **doctrine of the public forum** in 1939, when it ruled in *Hague v. Congress of Industrial Organizations* that government may not prohibit speech-related activities in public areas traditionally provided for speech.

Areas the Court has designated traditional public forums include **streets or sidewalks** adjoining such public buildings as state capitols (Edwards vs. south Carolina, 1963), courthouses (United States v. Grace), schools (Police Department of Chicago v. Mosley, 1972), parks (Niemosko v. Maryland, 1951), and residential neighborhoods (Frisby v. Schultz, 1988).

The Supreme Court observed that "the notion of

unprotected 'commercial speech' [has] all but passed from the seen." (Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council, 425 U.S. 748, 759 (1976), citing Bigelow v. Virginia, 421 U.S. 809 (1975)).

"Indeed, speech . . . is protected even though it is carried in a form that is 'sold' for profit" (Va. St. Bd. of Pharm. v. Va. Cit. Cons. Council, *supra*, at 761. See also Bates v. State Bar of Arizona, 433 U.S. 350, 363 (1977)).

"The fact that plaintiff accepts contributions of passersby during his public performances, thus, does not dilute plaintiff's protection of the First Amendment."

The Supreme Court continued by saying "The requirement of merchants' [business owners] *approval* is *irreconcilable* with freedom of expression. It is *unqualified censorship* and it is just what the First Amendment *forbids*."

United States Court of Appeals for the Second

Circuit, *Bery v. City of NY* on October 10, 1996 stated that: "Visual art is as wide ranging in its depiction of ideas, concepts and emotions as any book, treatise, pamphlet or other writing, **and is similarly entitled to full First Amendment protection...** On the basis of this record before us, the City's requirement that appellants be *licensee*s in order to sell their artwork in public spaces constitutes an *unconstitutional infringement* of their **First Amendment rights.**"



But I still don't like X, Y, & Z!

Just because an artist has the right to set up on the sidewalk doesn't mean there aren't rules that don't apply to them. "Constitutional guarantee does not confer absolute protection from government regulation of public expression. States may impose reasonable and *impartial* regulations upon the **time, place and manner** of public expression." *Amal. Food Emp. U. Loc. 590 v. Logan Val. Plaza*, 391 U.S. 308, 315 (1968), and "**the Supreme Court** has consistently **condemned** licensing systems which vest in an administrative official discretion to grant or withhold a permit upon broad criteria *unrelated* to proper regulation of public places." *Shuttlesworth v. City of Birmingham*, 394 U.S. 147, 153 (1969).

In other words, your city or state may create (or have created) legislation that regulates certain behaviors of your artist friend while they are using the public forum to express themselves. For instance, most cities have an ordinance that states that a person cannot block the flow of pedestrian traffic. The usual standard used in determining the necessary amount of room a vendor should give is simply the question "can a

wheelchair get through?"

There may be other codes or regulations your city has created to regulate other behaviors such as "disorderly conduct", "aggressive solicitation", or if it's a musician or performer there may be noise regulations that apply.

Remember, this is about speech.. Any item with a clear message fixed to it such as buttons, t-shirts, etc. visual images or art, photography, etc. or anything that has the merit of expression and meaning is allowed. However if you suspect that the vendor outside your door is conducting regular business by buying and reselling, importing and exporting, or offering other goods or services in which it is unclear there is an inherent message in their items or activities, then any city, state or county codes that regulate any other business would apply to them. This is precisely what permits and licenses are for; the taxation of goods and services, not the taxation of speech or speech related activities.

However if your concern is strictly one of personal distaste for your friend's art, or if you simply just don't like artists, well, you're out of luck. You're just going to have to learn to tolerate others' rights to express themselves in the public forum.

What should I do then?

Approach them, talk to them, find out who they are, how long they plan to stay. You might find you like them! Make them a part of the community, instead of alienating them from it. Are they too loud? Are they rude? Are they aggressive? These problems can be handled differently. If you cannot simply rationalize with your artist friend, try to find an artist or musician you DO LIKE and have them sit there *instead!*

If all else fails you can ask them to simply move down the sidewalk a little. Be polite and nice and just explain the offense to them as one adult to another adult. If you're reasonable and your request is explained politely you'll be amazed at the results a simple talk and a handshake can accomplish. But before dismissing them, consider the benefits of having an artist outside your door.

MORE READING

Buskersadvocates.org

PPS.org (Project For Public Spaces)

Citylab.com/work/2012/06/enabling-street-vendors-become-small-businesses/2254 (Stop the Over-Regulation of Street Vendors)

Learn About



- How to handle an artist, performer, musician or other vendors who might have set up near your business.
- What the laws are that pertain to the regulation of vending and use of public spaces such as the sidewalk.
- The benefits of embracing spontaneous creativity in your neighborhood and community.