



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Adrian Benepe
Commissioner

Dear Friend,

In a city as densely developed as New York, parkland will always be in short supply. Moreover, as the condition of our parks improves, more people want to use them. Consequently, the most difficult and essential task of the Parks Department is to balance the competing demands for the use of scarce parkland.

We issue permits for the use of our land in order to keep the competition fair and peaceful, and to keep public property safe from damage. For example, we issue permits for baseball games and protests because two games or two protests cannot be played or held on the same field at the same time. Indeed, the courts have recognized the need for us to do this by allowing us to regulate the "time, place and manner" even of activities otherwise protected by the First Amendment.

The courts and the legislature have also gone to great lengths to define and protect parkland as public space for recreation and relaxation – not areas to be encroached on by excessive or inappropriate commercial activity. However, in a court case decided last year based upon an interpretation of the City's Administrative Code, we lost the ability to regulate the sale of art on our property by issuing permits to artists. Now vendors of art can use public parkland for private gain, without limitation, without compensation, whenever and wherever they want in parks. Consequently, areas of the Battery and Central Park in particular have become choked with unlicensed commercial vending.

There is now a bill – Intro 160 - before the City Council that would restore the authority of the Parks Commissioner to balance commercial vending with other park uses. **Please help us in this effort by letting your elected officials know that you support Intro 160.** Write or call the Council Members listed below and let them know that you think passing Intro 160 is important.

Hon. A. Gifford Miller
Speaker of the City Council
City Hall
New York, NY 10007

(212) 788 - 7210
miller@council.nyc.ny.us

Hon. Joseph Addabbo
Chair, Council Parks Committee
250 Broadway, 18th Floor
New York, NY 10007

(212) 788-7069
addabbo@council.nyc.ny.us

Hon. Alan Gerson
Council Member
51 Chambers Street, Ste. 429
New York, NY 10007

(212) 788-7259
gerson@council.nyc.ny.us

Support for this common sense initiative is widespread. I have attached an article from the *New York Times* and editorials from the *Daily News* and the *New York Sun* on this bill as well as a fact sheet on the legislation. If you have questions, please call me at 212-360-1305. Thank you again for all your hard work to make our parks better and for your support of Intro 160.

Sincerely,

Adrian Benepe



City of New York
Parks & Recreation

The Arsenal
Central Park
New York, New York 10021

Adrian Benepe
Commissioner

January 17, 2003

Dear Friend of Parks,

I wrote to many of you this fall regarding **Intro 160**, a bill before the City Council that would restore the authority of the Parks Department to regulate the sale of art in parks through a permitting system. Thanks in part to your many calls and letters to the City Council, a hearing date has been scheduled. On January 27, 2003 at 1:00 p.m. at City Hall, the City Council Parks Committee will hear testimony. Either at or before that hearing, the Parks Committee Members will need to hear your thoughts again on the bill. If you did not reach out before, it is even more important now.

As many of you know, the courts and the legislature have also gone to great lengths to protect parkland as public space for recreation and relaxation – not areas to be encroached on by excessive or inappropriate commercial activity. In a court case decided in 2001 based upon an interpretation of the City's Administrative Code, we lost the ability to regulate the sale of art on our property by issuing permits to artists. This art ranges from original works to mass-produced reproductions of photographs and other pieces. Now vendors of art can use public parkland for private gain, with almost no limitation, whenever and wherever they want in parks. Consequently, areas of the Battery and Central Park in particular have become choked with unlicensed commercial vending.

We issue permits for the use of our land in order to preserve the freedoms of park visitors, to keep the competition fair and peaceful between various park uses and users, and to promote public safety and well-being. The courts have long recognized the need for municipalities to take such actions by allowing them to regulate the "time, place and manner" of activities otherwise protected by the First Amendment. Intro 160 would restore the authority of the Parks Department to balance commercial vending with other park uses. **Please help us again in this effort by letting your elected officials know that you support Intro 160.** Write or call the Council Members listed on the back of this sheet, and let them know that you think passing Intro 160 is important.

If you are interested in testifying on January 27 or would like more information about the bill, please call Christopher Osgood at 212-360-1309. Thank you again for your support of Intro 160.

Sincerely,


Adrian Benepe

Intro 160: A Clarification of the General Vending Law To Protect Public Parks from Unregulated Commercial Intrusion

Overview: As New York City's population grows beyond eight million and its streetscapes rise with new buildings, the city's parks and remaining open spaces become all the more precious. They are havens for retreat, places for recreation, and arenas for public expression.

The demand for use of the City's parks is consequently high. It is the responsibility of the Parks Department to provide for and coordinate the competing uses of this finite public space so that everyone has an opportunity to enjoy these commons. One manner of coordination is a permitting system. The Parks Department issues permits for events ranging from birthday parties and ball games to parades and protests. The authority to regulate first amendment use of public space through a permitting process has been upheld constitutionally by the Supreme Court of the United States.

Though the Parks Department has the authority to regulate certain free speech events in parks, it currently does not have the authority to regulate effectively the commercial vending of written matter. Consequently, areas of Central Park and Battery Park in particular have become choked with unlicensed vendors selling all forms of art – most typically copies of photographs of New York scenes and images of the World Trade Center. While this commercial activity should be allowed to continue, it must be brought in balance with the rest of the park use through a permitting process.

The Parks Department always had this authority codified in 1982 City Council legislation until a recent court case determined that the law was unclear. Intro 160, a bill before the City Council, would clarify the 1982 local law and reestablish a permitting system for the sale of written matter in parks within the standards of the First Amendment. The Department would then establish a permit system to regulate the number of spaces available for commercial sale of artwork or other written matter on parkland and allowing for fairer allocation of a scarce resource. (Legitimate artists have complained that they have been crowded out by hired vendors of reproduced materials.) Opponents of the proposed bill have spread misleading and incorrect information about the content and purpose of the bill. While there will always be critics of how a permitting system is used, it is critical that the Parks Department has the authority to coordinate the activity within its parks to ensure that our precious open spaces remain accessible, safe and attractive to all.

Below is information on the actual meaning and impact of the legislation.

- **Intro 160 is a clarification of the administrative code.**

Intro 160 is a clarification of an exception to the general vending law passed by the City Council in 1982. This law was created to allow the vending of written matter in the city,

without many of the regulations that are applied to general vendors, while at the same time not depriving the Commissioner of Parks & Recreation of the authority to regulate vending in parks. In part based upon an ambiguous preamble to the 1982 law, recent court decisions have severely restricted the ability of the Parks Commissioner to regulate vending on parkland, contrary to the plain meaning of the administrative code. Intro 160 would restore Parks' ability to regulate vending on parkland as was intended by the plain meaning of the original regulation.

The current administrative code states that:

"nothing herein shall be construed to deprive the commissioner of the department of parks and recreation of the authority to regulate the vending of written matter in a manner consistent with the purpose of the parks and the declared legislative intent of this subchapter." (§20-473)

The bill would amend this section to read:

"nothing herein shall be construed to deprive the commissioner of the department of parks and recreation of the authority to regulate through a permitting system the time, place and manner of the vending of written matter in areas under the jurisdiction of parks and recreation as it relates to public health, safety or welfare, in a manner consistent with the purpose of the parks and the declared legislative intent of this subchapter." §20-473

- **Intro 160 does not threaten the First Amendment rights of artists and other vendors of written material.**

This bill will not restrict constitutional rights. The sale or display of written matter on park property would still be allowed. The vending would simply be subject to reasonable time, place and manner restrictions, as many related First Amendment activities already are (i.e. permit requirements for protests and parades.)

This bill regulates commercial activity on public parkland, not free speech. Indeed, the purpose of the bill is to bring some order and sanity over the location where such materials are sold. This bill will not regulate or control the content of artwork or other written matter sold on parkland. It will restore the pedestrian experience for park visitors.

- **Intro 160 will support the rights of original artists as well as the rights of those selling reprinted material to vend these products in parks. It is neither anti-artist nor anti-art.**

This bill will not affect the content of written matter being sold. Instead it would allow Parks to establish a reasonable and fair system to regulate the *number* of spaces available for such sales, allowing the City to bring order to the current congestion and to restore safe and easy pedestrian access in Central Park or in Battery Park, for example. Most importantly, it will provide a means to balance the public's enjoyment of parks and the rights of vendors of written matter to sell and display their work. During the period when

Parks last used a permit system to avoid congestion and conflict between vendors, who frequently jockey for the same spaces, a substantial number of available spaces were made available, including 46 in Central Park. Now an unregulated mass of vendors, more than 100 in three areas of Central Park alone, choke various park perimeters and entrances, turning public parks into private bazaars.

- **Intro 160 allows small artists, book vendors and those with non-mainstream opinions to display and sell written matter.**

This legislation would allow Parks to establish a reasonable permit system to limit the number of vendors of written matter on parkland. Such a permit system would in fact provide more opportunities for individual artists to obtain a space to display and sell their works. The current unregulated system is much more likely to favor the organized sellers of mass produced or generic items, who can monopolize the limited number of desirable spaces and intimidate the individual artists, who are not supported by teams of sales staff.

- **This bill does not impact commercial activity on New York City streets and will not result in the restriction of free speech.**

Intro 160 specifically addresses vending in parks only. There is nothing in the legislation about limiting or restricting street vending. Parks are uniquely different from midtown street corners. Moreover, the bill seeks to reinstate the original intent of this regulation, which was to allow the Parks Commissioner to have some control over commerce in the parks. Indeed, the intention of this bill is to preserve the character of parks for public benefit by eliminating the chaos and crowding along some park perimeters, while at the same time permitting the sale of written matter at such locations in an organized fashion. It goes no further and does not set a precedent for limiting street vendor activity.

The Supreme Court and other lower courts have long upheld the rights of municipalities to regulate the time, place, and manner of expression under the First Amendment. Indeed, the First Amendment allows a rally, but not necessarily a rally on the Brooklyn Bridge at rush hour. Similarly, the City Council sought to minimize the restrictions on vendors of written matter, but specifically allowed for the regulation of its sale in parks. Intro 160 simply clarifies that decision.