



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

330 West 42nd Street, 26th floor New York, NY 10036
tel: 212-736-4536 fax: 212-947-9512
www.nyc.gov/mcb4

CHRISTINE BERTHET
Chair

Jesse R. Bodine
District Manager

December 16, 2015

Street Activity Permit Office
100 Gold Street, 2nd Floor
New York, NY 10038

Re: Street Activity Permit Renewal Application 2010 Applicant: Hell's Kitchen Flea Market

Location: West 39th St (Ninth and Tenth Avenues)
Date: Every Saturday & Sunday, Starting January 9, 2016
Time: 9:00 a.m. – 4:00 p.m.
EVENT ID#: 247924

On December 7, 2015 the Quality of Life committee of Manhattan Community Board 4 (CB4) recommended that the renewal of the street activity permit for the Hell's Kitchen Flea Market (HKFM) be **denied unless** the operator agrees to the stipulations indicated below. This recommendation is subject to ratification by the Full Board at its January 2016 meeting and is being sent now due to the NYC Street Activity Permit Office's request.

Location & Market Hours:

- The Hell's Kitchen Flea Market ("HKFM") is located on West 39th Street, between Ninth Avenue and Tenth Avenue; including the sidewalk and a portion of a Port Authority parking lot.
- Market hours are 9:00 a.m. to 5:00 p.m. on Saturday and Sunday.
- Load-in and set-up commences Saturday morning at 4:00 a.m.
- Load-out ends at 8:00 p.m. Sunday night.
- Before 9:00 a.m. HKFM will maintain a seven booth "buffer zone", which is designated as between the easternmost booth and the buildings on the east end of West 39th Street.
- After 9:00 a.m. HKFM may fill this open space with booths, starting at the west end of the "buffer zone" as defined above.
- Only three vendors may be located on the eastern end of the street from Ninth Avenue to 411 West 39th Street. (This is the area in front of occupied buildings).
- When the market is not fully booked, empty space will be consolidated to the eastern end of the market to the greatest extent logistically feasible.

- These rules will be publicized on the web site and on the vendor contract

Loading and Set up

- Vendors will begin setting up at the west end of the street.
- Vendors will load-in from the 10th Avenue side of the market.
- Vehicles will not be driven from the east end of the street.
- Vendors will use rubber-wheeled carts while on the premises.
- Vendors' goods may remain on the sidewalk overnight on Saturdays.
- These rules will be publicized on the web site and on the vendor contract

Staffing:

- *Market Manager* - HKFM operators will ensure that all staff (as listed below) are properly trained and managed by a full-time experienced manager who will be on-site throughout the market's operation. Any change of the manager's employment or schedule will be reported in advance to CB4. HKFM will provide CB4 with his/her contact information.
- *Information Booth Attendant* - In order to reduce problems for West 39th Street businesses, HKFM will post a dedicated staff member at the Ninth Avenue *Information Booth* at all times when West 39th Street is closed to traffic.
- *Traffic Coordinator* - HKFM will post a dedicated Traffic Coordinator to open and close the barricade on West 39th and 9th Avenue. (This coordinator is a different staff member from the one manning the information booth.)
- *Traffic Director* - HKFM will hire a police officer from the Paid Detail unit of the NYPD to direct the traffic at the intersection of 9th Avenue and 39th Street, from 3 pm on Saturday and Sunday until the street is re-opened. The objective is to prevent gridlock on the east side of 9th Avenue and ensure safe pedestrian crossing on the south side of 9th Avenue.
- *Security Guards* – minimum of one per 50 10x10 spaces occupied - During regular operation HKFM will be secured by at least one licensed security guard
- *Maintenance Staff* (minimum of one minimum of one per 50 10x10 spaces occupied - During regular operation HKFM will be maintained by at least one staff member specifically dedicated to sanitation.
- Each person on HKFM's staff must be, at all times, equipped with a wireless communication system to ensure the safe and efficient operation of the market.

Signage:

- HKFM will erect and maintain the following signs at the intersection of 9th Avenue and West 39th Streets HKFM will

- consult with CB4 for size, text and placement of signs.
- The signs must be posted 4am Saturday through 8pm Sunday.
 - #1 - Pedestrian Entry will inform residents, businesses, customers and suppliers that they may enter the street.
 - #2 - Vehicular Entry will specifically note the names of all businesses on the block.
 - #3 - Parking will inform the public of access to the parking lot. The sign must include parking rates. The hotel will provide the text and design to HKFM, which will procure and install the panel within 10 calendar days of receiving the approved design.
- All three signs must be consistent in nature (color, font, etc.) and posted in a manner that pedestrians and vehicular drivers can easily see and quickly read.

Pedestrian Access:

- Pedestrians will have 24-hour access to the closed-off portion of West 39th Street. (This includes during set-up, load-out and cleaning time periods.)
- Residents, businesses and customers will have 24-hour access to load or unload vehicles from Ninth Avenue through to 411 West 39th Street (the westernmost building.)

Traffic & Parking:

- HKFM will maintain a fire lane of at least 12' to provide immediate access for emergency vehicles.
- HKFM operators will adhere to a revised site plan that includes a lane of traffic adjacent to the south curb of the street from 9th Avenue in order to allow residents, visitors and businesses access to both the garage entrance and the loading bay at 515 West of 9th Avenue. This area is approximately 100' west of 9th Avenue and is in addition to the Fire Lane.
- If problems persist with the Parking access, HKFM will agree to a revised floor plan that frees up more space between 9th Avenue and the Parking entrance - HKFM, SAPO, CB4 and the Garage will meet and agree to a new site plan that will alleviate some of the garage issues.
- In the event HKFM reinstates a Market Shuttle Van, it will not stand or park on the pedestrian crossing area at anytime [2006]

Sanitation:

- HKFM will ensure the entire street, including the sidewalk and the street in front of all buildings, are kept in a broom-clean condition throughout the entire operation of the market. Trash receptacles will be provided and maintained by market staff. No overflow will be permitted. Trash will be collected and stored in closed bins.

Governance/Operations:

- Vendors will be selected on the basis of quality, type, and merchandise

sales price. There will be no discrimination on the basis of race, color, national origin, religion, gender, sexual orientation, age, disability, or veteran status.

- Vendors suspected of fraud or the misrepresentation of merchandise, or who otherwise fail to maintain good customer relations, may be excluded from market. HKFM will make every effort to communicate its concerns to the vendor in order to provide the opportunity for a second chance IF the infraction is not egregious and is also the vendor's first. HKFM must document all infractions and outcomes, and include the information in its monthly reports to CB4.
- Priority may be assigned to vendors who have formerly sold at the HKFM or Annex Antiques Fair.
- Moving forward, HKFM will provide all vendors with a printed agreement (in a PDF format or other mutually agreed upon method), that details the business relationship between HKFM and vendor, and includes clearly written policies for reservations, cancellations, space allocation, weather-driven annulations, encroachments on adjacent lots, dispute resolution, etc. First time vendors will sign a printed agreement, which will include current stipulations. Returning vendors will also sign the revised agreement. All agreements must be dated and countersigned by an authorized representative of HKFM.
- HKFM will confirm all verbal transactions by email.
- HKFM will not retaliate against vendors who have exercised the right to speak freely at the CB4 Community Board meetings for the purpose of improving the market.
- In the event there is a dispute between HKFM and a vendor, or between vendors, all parties must agree to seek the services of non-binding resolution facilitator, who will be decided upon mutual consent of all parties. Low cost/free facilitator can be found at the New York Peace Institute.
- If facilitation is insufficient to resolve the problem(s), HKFM and vendor(s) agree to hire a mutually agreed upon mediator.
- HKFM will not use a raised stage.
- There will be no charge for customers to visit the market.
- Annex Antique Fair & Flea Market, Inc. will not subcontract management of any portion of the HKFM to any outside party, nor will it allow its vendors to sublet any portion of their space

HKFM, along with CB4, will continue to monitor the impact the revised site plan has on the residents and businesses on the block and will meet with CB4 to review any issues in advance of the next renewal period.

Market Rejuvenation:

- HKFM agrees to make its best efforts to attract new vendors by offering reduced rates for new vendors and to current vendors and by other marketing techniques.

- HKFM agrees to make its best efforts to attract more customers, by implementing a comprehensive marketing plan and exploring the opportunity to partner with other non-profit organizations that provide programming.

HKFM Communication/Documentation:

- HKFM management will meet with CB4 on a monthly basis for a minimum of one year commencing on the January 2016 Quality of Life Committee meeting and/or upon request, for the duration of 2016.
- At each meeting, HKFM management must be prepared to discuss all aspects of its operations, including but not limited to the following:
- Documentation to provide to CB4:
 - Monthly – HKFM’s Marketing Report, as noted below, must state the number of existing and new vendors on site per day; type of merchandise sold; booth and equipment rental income; etc.
 - Monthly - Progress report of marketing activities, including those reflected in the HKFM plan, to attract new customers.
 - Monthly - Report of the impact of the new site plan on specific residents and businesses on the block, including what has been done to resolve any issues that have arisen within the month.
 - Monthly - Report of vendor relations, including what has been done to resolve any issues that have arisen within the month.
 - Before 1/7/16 - A summary, backed up by copies of cancelled checks, of donations made for each year calendar year from 2003 to 2015.
 - Before 1/7/16 - Compiled Statements of Operations from 2005-2006 to 2009-2010
 - Before 2/5/16 - Drafts of new vendor application.
 - Before 2/5/16 - Drafts of new the vendor agreement.
 - Before 2/5/16 - Draft of application for CB4 residents and qualifying groups for gratis space at the market.
 - Before 1/7/2016 - A summary, backed up by copies of cancelled checks of donations made to-date. The summary must include the name and location of the organization, contact person, amount of donation, and date of donation.
 - Before 1/7/16 A copy of the cancelled check of the agreed upon funds to be deposited into the Hells Kitchen Foundation (HKF) 501(c)3 bank account.
 - Before 4-6-2016 - Copy of the operating agreement between HKFM and HKF, the foundation
 - Before 4-6-2016 - Copy of the donation policy

Non-profit Activities and Sponsor

- At least two spaces will be made available each day on the Port

Authority lot to local community groups and/or charitable non-profit organizations without charge. Application forms will be available at the market, on HKFM's website and/or upon request. Space will be assigned to groups on a rotating basis in consultation with, and at the recommendation of CB4.

- HKFM staff will maintain the painted promenade and immediately re-paint any deterioration
- HKFM has established the Hell's Kitchen Foundation (HKF) for the purpose of supporting struggling artists who live or work in Hell's Kitchen
- The Market had agreed to donate 25% of its profit in 2006 and in 2007 to a local charity, preferably in the Hell's Kitchen – Clinton area. This level of contribution reflects the high investment the Market had to make in order to relocate to 39th street.
- HKFM agrees to deposit 25 % of its profits into HKF accounts retroactively since 2006.
- Going forward, HKFM agrees to meet and consult with CB4 in regard to the creation of the HKF Board to ensure participation of local arts and relevant non-profit organizations.
- HKF will establish a contract with HKFM to operate the Hell's Kitchen Flea Market
- HKF will establish and publish a donation policy in collaboration with CB4, as described above. Until such time, HKF funds will not be disbursed.

Hell's Kitchen Foundation Documentation & Outreach:

- Monthly Progress in board recruitment
- Before 2-5-16 – Draft of the operating agreement between HKFM and HKF.
- Before 3/5/16 - Draft detailed mission statement.
- Before 3/5/16 - Draft of the grant policies.
- Before 3/5/16 - Draft of the grant application.
- Before 6/1/16 – Copies of submitted grant applications.
- Before 3/5/16 – Draft of the grant agreement.
- Before 3/5/16 – Draft of the grant reporting requirements and procedures, if any.
- Before 3/5/16 – Draft of outreach plan to find grant applicants.
- Before 3/5/16 – Report on specific activities undertaken to find grant applicants.

Renewal:

- The HKFM's permit renewal will be assessed on a month-to-month basis by CB4, with inspection and oversight by the appropriate governmental agencies, to ensure HKFM complies with

- all laws and CB4 stipulations.
- CB4 will review the HKFM's vendor growth and diversification before any renewal to determine whether the market has attained a size sufficient to justify the continued closing of West 39th Street, a public space, every weekend.

Sincerely,



Christine Berthet
Chair



Tina DiFeliciano
Co-Chair
Quality of Life Committee



David Pincus
Co-Chair
Quality of Life Committee

cc: Hon. Gale A. Brewer, Manhattan Borough President
Hon. Corey Johnson, City Council
Alan Boss, Hell's Kitchen Flea Market
Sean Basinki, Director, Street Vendor Project
David Bros
Jessica Charitos, Domani Consulting