

**Testimony of Commissioner Julie Menin  
New York City Department of Consumer Affairs  
Before the  
New York City Council Committee on Consumer Affairs**

**Oversight Hearing on  
Supermarket Regulations and Introduction 436**

December 3, 2015

Introduction

Good morning Chairman Espinal and members of the Committee on Consumer Affairs. I am Julie Menin, Commissioner of the Department of Consumer Affairs (“DCA”), and I am joined by Amit Bagga, Deputy Commissioner of External Affairs, Mary Cooley, Director of City Legislative Affairs, Nancy Schindler, Associate Commissioner for Legal Affairs, and Richard O’Hara, Assistant Director of Field Enforcement. Thank you for inviting DCA to testify today on Introduction 436 (“Intro 436”) and DCA’s regulation of supermarkets, specifically in relation to the enforcement of New York City’s law requiring each item in supermarkets to be marked with a price (the “item pricing law”).<sup>1</sup>

DCA’s overall mission is to empower consumers and businesses alike to ensure a fair and vibrant marketplace. The agency, which is the largest municipal consumer protection agency in the country, licenses approximately 80,000 businesses across 55 different industries, resolves complaints between consumers and businesses, conducts patrol inspections and legal investigations, educates businesses about laws and rules, and also enforces New York City’s paid sick leave and commuter benefits laws. In addition to its licensing, consumer protection, and labor-related work, DCA also operates the Office of Financial Empowerment (“OFE”).

I am pleased to be here today to discuss supermarket regulations and the proposed legislation that would reduce the burdens of complying with the item pricing law. DCA supports the goal of Intro 436, which is in line with steps DCA has already taken to make enforcement more equitable and less onerous on businesses since last year. These steps, which together made up our Small Business Relief Package, were taken to realize Mayor de Blasio’s vision of significantly reducing fines on small businesses in New York City.

Small Business Relief Package and Fine Reduction

A key example of the way we’ve reduced fines on businesses is a significant change in the way we assess fines on small groceries – *bodegas*, delis, and convenient stores – for non-compliance with a section of the law<sup>2</sup> requiring each item to have a price tag (different from the “item pricing” section of the law that is the subject of today’s hearing). Prior to July of last year, if a DCA inspector found that ten items of the same exact type – cans of tomato soup of the same

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<sup>1</sup> “Item pricing law” refers to New York City Administrative Code Section 708.1(b) of Subchapter 2 of Chapter 5 of Title 20.

<sup>2</sup> “law” refers to New York City Administrative Code Section 708 of Subchapter 2 of Chapter 5 of Title 20.

brand and that are the same size, for example – were missing price tags, DCA would have assessed ten counts worth of fines; one for each can of soup. This practice resulted in the assessment of large fines on businesses for the same *type* of violation for the same set of products. Recognizing that this enforcement practice imposed excessive burdens on small businesses, DCA exercised its discretion and began to assess only *one* count worth of fines per violation *type*. Essentially, this means that the fine assessed for those ten cans of the same exact brand of soup that were previously not marked with price tags would now only be worth one, not ten, counts. This has resulted in a significant reduction in fine amounts for owners of many of our city's smallest businesses. Depending on the number of counts per violation, fines in the past were often \$1,000 up to \$10,000. With our fine reductions, owners have now been assessed fines for this violation in the \$250 to \$1,200 range.

This change was introduced as part of DCA's Small Business Relief Package, a series of approximately two dozen reforms. Through these reforms, within a period of just one year, DCA reduced the amount of fines assessed on small businesses from \$32.5 million in FY 2014 to approximately \$15.7 million in FY 2015 – a reduction of more than 50%. The number of violations issued decreased by nearly 39%, from 19,409 in FY 2014 to 11,923 in FY 2015. These reductions in fines and violations on businesses represent the agency's and Mayor de Blasio's commitment to truly making New York City a better place for small business owners to operate.

The reduction in the number of violations issued was largely achieved by issuing warnings for violations that do not necessarily cause immediate consumer harm, such as not having a DCA license number on all printed materials. It is notable that these reductions were achieved while consumer restitution increased by 70% over the same time period, demonstrating that it is possible to reduce violations and fines while also ensuring that New York City's consumers are being afforded the protections they deserve.

In addition to the reduction in violations and fines, patrol inspections are now conducted on the spot in an owner's language of choice. Each of our inspectors carries a laminated card with 16 different languages listed. A business owner or employee can simply point to the language they wish to have the inspection conducted in, and it is then conducted using an interpreter from Language Line speaking on a cell phone with both the inspector and the business representative. The service, which is also available in additional languages, helps to eliminate fear and confusion on the part of business owners, and also helps increase access to information.

DCA also now offers reduced settlement amounts to businesses and is ensuring that inspections are conducted much more equitably than they were in the past. Formerly, businesses in certain areas of the city were more commonly subjected to inspections compared to businesses in other areas. DCA is now using an online mapping tool that compares block-by-block and neighborhood-by-neighborhood where inspections have been conducted to ensure geographic equity. The agency has now expanded its business education tools, posting 41 of our most commonly-used inspection checklists on our website in plain language. Many of these checklists are available in up to nine additional languages, ensuring that our City's immigrant small business owners, who are the backbone of our City's economy, have access to crucial information that enables compliance.

As a former small business owner, I know how important it is to obtain clear, consistent information from the City about laws and rules. In October 2014, DCA introduced a new legal ombudsman, who is dedicated to answering questions that businesses have about the laws that DCA enforces. Our legal ombudsman has also conducted dozens of presentations across the City on a variety of topics, often assisted by translators, who have delivered these presentations in Spanish, Korean, Mandarin, and Cantonese, among others. DCA also offers the City's first and only online "live chat" service, which gives business owners the ability to easily ask questions during business hours without having to visit DCA's licensing center or take additional time away from their customers to call in a question.

In addition to the reforms implemented through the Small Business Relief Package, the agency also now conducts reviews of laws and rules it enforces to determine the ease of compliance. For example, in January 2014, following the passage of a gas station signage law that placed onerous and unworkable requirements on businesses to maintain outdoor signs of a certain size, DCA suspended the implementation of that law until a legislative fix was enacted. DCA is also currently reviewing a draft rule it has published that would clarify the agency's authority to conduct inspections to determine a business' compliance with State laws regarding the collection of sales tax on specific items.<sup>3</sup> DCA is actively conducting a review of this rule, and has suspended the enforcement of this law since December 2014. We have received comments from the Food Industry Alliance and are considering them very carefully.

These reforms reflect DCA's commitment to realizing the Mayor's vision of New York City as a place for small businesses to thrive and where consumers' rights are protected. I will now turn to DCA's regulation of supermarkets, a key topic of today's hearing.

### Regulation of Supermarkets

With respect to supermarkets in New York City, DCA has been charged by the City Council and the State legislature to enforce the City's Consumer Protection Law, as well as portions of New York State's Agriculture and Markets and General Business Laws. Together, these laws establish comprehensive regulations regarding weights and measures, item pricing, receipt provision, signage, and other disclosure requirements in supermarkets and grocery stores. It should be noted that the New York State Department of Agriculture and Markets, not DCA, licenses supermarkets and other similar retailers to conduct business. DCA does issue licenses to many of these retailers for the purposes of selling cigarettes and/or for operating "stoop line" stands, which are the stands often found outside of such stores on the sidewalk, where produce is commonly sold.

DCA regularly inspects all of the city's supermarkets for scanner and scale accuracy, pricing, selling expired over-the-counter medication, and charging tax on non-taxable items, among other regulations. DCA also enforces the licensing laws with respect to cigarette retail dealer and stoop line stand licenses. Supermarkets encompass those retailers whose products consist primarily of food and which have several different departments, such as pre-packaged meats; seafood, deli, or

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<sup>3</sup> "State laws" refers to relevant sections of Article 28 of the New York State Tax Code. Article 28 defines sales taxes, the imposition of these taxes, exemptions from these taxes, as well as recordkeeping requirements, determinations of refunds, and penalties, among other relevant items.

bakery counters; and where there are several checkout lines that have registers with scanners and scales. In calendar year 2015 to date, DCA has conducted 995 supermarket inspections and has issued 243 violations for non-compliance with the item pricing law.<sup>4</sup>

In order to fulfill its mission as the City's consumer protection agency, DCA does, at times, conduct types of inspections that are aimed at ascertaining levels of compliance with certain laws and rules. When we do conduct such inspections, we are careful to do so in a manner that is not overly burdensome to businesses and we also ensure that we focus on those laws that are designed to protect consumers from significant harm.

Between September and December 2014, DCA conducted more than 120 supermarket inspections throughout the five boroughs and across several different chains to determine if the stores were accurately weighing pre-packaged foods and to protect New Yorkers from overcharging. The stores were randomly selected to reflect the socioeconomic diversity within New York City's neighborhoods and to ensure that consumers from all income levels were protected from overcharging. In order to do this, approximately 20 percent of the stores inspected were selected from neighborhoods with the highest levels of poverty, another 20 percent from the second highest, and so on.

As part of these inspections, our inspectors first conducted a preliminary audit of store-packaged goods, meaning that they weighed goods packaged in stores to determine if the weight on the label was accurate. If they found that a particular package had an incorrectly-labeled weight, they would then weigh additional packages of the same type of product to determine if the problem of mislabeling was confined to one particular package or if it was perhaps more common. DCA found that there was indeed non-compliance with this law and found that consumers were being overcharged for products packaged in stores.

The results of our investigations demonstrate that supermarket regulation is crucial to protecting consumers in New York City, and we endeavor to ensure that businesses that are largely complying with the law are not subject to significant fines. As I mentioned earlier in the testimony, DCA is actively engaged in constant and consistent communication with businesses and industry groups – often in their language of choice – about how to comply with the law and we support all efforts to ease compliance. We believe that Intro 436 is such an effort, and I will now take this opportunity to discuss DCA's views on this bill.

### Introduction 436

DCA is supportive of the goals of Intro 436, which would allow the agency to issue warnings in lieu of violations for the first time we observe non-compliance with the supermarket item pricing law.<sup>5</sup> As is evidenced by the implementation of our Small Business Relief Package, DCA is committed to ensuring that businesses are not subjected to onerous burdens and that they have an opportunity to come into compliance before violations are issued and fines are assessed.

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<sup>4</sup> *Fines assessed for non-compliance with New York City Administrative Code Section 708.1(b) of Subchapter 2 of Chapter 5 of Title 20.*

<sup>5</sup> *The "item pricing" law in this instance refers to New York City Administrative Code Section 708.1(b) of Subchapter 2 of Chapter 5 of Title 20.*

This said, item pricing is an important protection for consumers, particularly seniors, those with limited English proficiency, and lower-income New Yorkers, all of whom would be disproportionately affected by overcharges resulting from a lack of item pricing. While reducing burdens on businesses, Intro 436 simultaneously maintains these important consumer protections built into the current item pricing law.

We look forward to working with the Council on refining the approach to enforcement proposed in Intro 436. Rather than issuing warnings, we recommend that the Council authorize our agency to issue “curable” violations for first-time violators. We have used this approach in other instances and have found that it is a very effective approach to changing behavior of businesses and protecting consumers.<sup>6</sup> Currently, DCA manually keeps track of when warnings are issued to retailers. While our inspectors do not have handheld devices which can provide on-the-spot information about previously-issued warnings, the agency is exploring being able to provide our inspectors with this capability.

In addition to the operational concerns, it is important that the agency has the ability to issue curable violations, as such violations are still considered “first” violations, meaning that subsequent violations would be considered recidivist conduct, which carries stiffer penalties. We believe that a business knowing that a second violation would be considered recidivist conduct will lead to a higher rate of compliance in the future. We look forward to working with the Council to incorporate the “cure” approach into Intro 436.

Thank you for the opportunity to testify today. My colleagues and I will be happy to answer any questions.

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<sup>6</sup> *It must be noted that for certain types of violations, DCA has the authority to issue warnings instead of curable violations for initial infractions. The agency does not have the authority to independently issue curable violations, which can only be created and implemented through administrative code (legislative) changes.*



December 3<sup>rd</sup>, 2015

**Written testimony respectfully submitted to NYC Council Committee on Consumer Affairs by Melissa Chapman, Senior Vice President for Public Affairs at the Brooklyn Chamber of Commerce, in Support of Int. 0436-2014**

Hon. Rafael L. Espinal, Jr., Chair

Good Afternoon Chair Espinal, Jr., other members of the NYC Council Committee on Consumer Affairs and guests.

I'm Melissa Chapman, Senior Vice President for Public Affairs at the Brooklyn Chamber of Commerce (BCC). I am delivering testimony on behalf of Carlo A. Scissura, Esq., President and CEO of BCC.

BCC is a membership-based, business assistance organization that represents the interests of over 2,100 member businesses, as well as other businesses across the borough of Brooklyn. The Brooklyn Alliance is the not-for-profit, economic development organization of BCC, which works to address the needs of businesses through direct business assistance programs.

As the voice of the Brooklyn business community, BCC strongly supports the legislation being proposed today, as it allows the Commissioner of the Department of Consumer Affairs to issue warnings in lieu of monetary penalties for certain item pricing violations in retail outlets.

Small businesses are very important to a healthy economy. They provide jobs, improve quality of life for residents, and they also contribute directly to economic development. However, business owners are being inundated with fines and fees from various city agencies, and when combined, these hurdles can take away from valuable resources needed to operate a business. BCC applauds the effort of this committee for facilitating today's hearing to discuss ways in which the city can work with businesses to reduce the burden associated with fines.

On July 9th, 2014 the Mayor's Office of Consumer Affairs announced the launch of a small business relief package to overhaul small business regulation and increase business outreach.<sup>1</sup> As such, in our 2014 Annual Member Issues Survey<sup>2</sup>, we asked our Members to tell us what should be a top priority for Mayor Bill de Blasio's administration, following that announcement. To that end, a combined total of 35 percent of the members we polled indicated that the reduction of fines/fees, as well as business education/opportunities to cure violations, should be top priority. Within that same survey, we asked our Members to weigh in on various issues that may or may not limit their success as business owners. The response was that government regulations/fines/violations were cited as a problem/severe problem for 52 percent of business owners.

Replacing fines with warnings will undoubtedly help to reduce the burdens of doing business in New York City. We also agree with the provision that no more than one inspection of the retailer's check-out system will be conducted within a 24-hour period. This will greatly reduce interruptions, especially during peak hours of operation.

Thank you for the opportunity to testify in this matter.

CAS/mc

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<sup>1</sup> [http://www1.nyc.gov/assets/dca/downloads/pdf/media/Media\\_News\\_PR070914.pdf](http://www1.nyc.gov/assets/dca/downloads/pdf/media/Media_News_PR070914.pdf)

<sup>2</sup> <http://www.ibrooklyn.com/news/publications?/news/publications>



## **FOOD INDUSTRY ALLIANCE OF NEW YORK STATE, INC.**

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### **Testimony**

**By the Food Industry Alliance of New York State, Inc.**

**in Support of**

**Int 0436-2014**

Thank you for the opportunity to submit testimony on behalf of the Food Industry Alliance of New York State (FIA) in connection with today's public hearing regarding Int. 436-2014. FIA is a nonprofit trade association that promotes the interests statewide of New York's grocery stores, drug stores and convenience stores. Our members include chain and independent food retailers that account for a significant share of New York City's retail food market and the grocery wholesalers that supply them, as well as drug and convenience stores.

New York City's item pricing law was enacted in the 1970s. At that time, there were no integrated, computerized pricing systems that allowed wholesalers to send pricing information directly to retailers electronically, supplemented by shelf tags and price signs. There were no computerized point of sale systems, where customers could easily follow item descriptions and item prices. Rather, the industry was dominated by push button cash registers (that easily allowed incorrect prices to be charged) and hand stamps that marked prices on individual packages in blue ink that could rub off. There was no state unit pricing law, which requires that the unit and item prices of each product be conspicuously displayed on uniform, transparent shelf tags. In addition, there was no state price accuracy law, which mandates that retailers meet a minimum 98 percent price accuracy threshold.

Indeed, the NYC item pricing law was enacted well before New York State determined, in 1991, that individual item pricing was no longer necessary to protect consumers. Accordingly, the State allowed its item pricing law to sunset that year, because technological and regulatory changes protected consumers to the point where item pricing laws were simply no longer needed. That determination was made approximately 24 years ago. Clearly, technology has significantly improved since then, providing even more transparency and accuracy regarding pricing.

When the state let its item pricing law expire in 1991, preemption of localities with regard to item pricing also ended. Even though localities have been free to require item pricing since then, to our knowledge, only 12 of New York's 62 counties have item pricing laws. Of those 12 counties, only 1 (Dutchess) follows the New York City model – an item pricing law without a waiver provision. Under a typical waiver clause, the item pricing mandate is waived if the retailer pays a minimum fee per store and meets a minimum price accuracy standard. Eleven counties, including Nassau, Suffolk and Westchester, as well as the City of Mount Vernon, have enacted such a waiver provision. To our knowledge, NYC is the only locality in the state that actively enforces an item pricing law that has not enacted such a waiver clause (Dutchess does not actively enforce its item pricing law and there is a waiver bill pending before the Dutchess County Legislature).

Accordingly, not only did the State determine, 24 years ago, that item pricing is no longer necessary to protect consumers, but the vast majority of New York's counties and cities have since made the same determination. In fact, New York is the only major city in the state that has a local item pricing law.

The economic impacts have been enormous: Millions of dollars have been spent, in the aggregate, attempting to comply with a law that is not only unnecessary, but has led to additional millions being paid by the industry in fines. This is because in a store with thousands of items that is restocked weekly, all items that are required to be marked can't be marked. Accordingly, a store that attempts to comply with an item pricing law in good faith pays substantial fines on top of the heavy labor costs incurred as part of a good faith effort to comply.

But the costs are even greater than that. The NYC item pricing law shifts millions of dollars from more to less productive uses. How many fewer food deserts would there be if a share of that money was available to invest in understored neighborhoods? How many neighborhood stores, too small to provide a full range of local and healthy food choices, would have expanded? How many jobs would have been added, both at the store and corporate levels? How many workers would have received pay increases?

Accordingly, FIA, on behalf its members, advocates for the repeal of local item pricing laws. In lieu of repeal, we support meaningful reform. One example of significant reform is a waiver provision.

Another example would be the waiver of penalties in certain circumstances. This bill is a good start. However, due to the significant costs created by NYC's item pricing law (with little or no benefit to consumers), and since even a 95% compliance rate will result in thousands of dollars in fines being paid over time, good faith attempts to comply with the law should be appropriately reflected in a reform bill. Accordingly, we respectfully request that the waiver apply to the first 50 items that are not marked, with a penalty imposed beginning with the 51<sup>st</sup> item.

In addition, since there is no way of knowing how reasonable enforcement will be at any particular time, we respectfully request that the penalty waiver be mandatory, not discretionary.

For the foregoing reasons FIA, on behalf of its members, supports adoption of this bill. Thank you for your time and attention to FIA's concerns and we welcome an opportunity to continue this dialogue after the public hearing.

Respectfully submitted,

**Food Industry Alliance of New York State, Inc.**  
**Jay M. Peltz, General Counsel and Vice President of Government Relations**  
**Metro Office: 914-833-1002**  
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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 436 Res. No. \_\_\_\_\_

in favor  in opposition

Date: 12.3.15

(PLEASE PRINT)

Name: Nancy Schneider, Associate Commisr,

Address: Legal Affairs

I represent: DCA

Address: \_\_\_\_\_

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in favor  in opposition

Date: 12.3.15

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Name: Richard O'Hara City Mgr Director

Address: DCA

I represent: DCA

Address: \_\_\_\_\_

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in favor  in opposition

Date: 12/3/15

(PLEASE PRINT)

Name: Melissa Cheffman

Address: 2515 Glenwood Rd Brooklyn NY 11210

I represent: Brooklyn Chamber of Commerce

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in favor  in opposition

Date: 12.3.15

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Name: Mary Cooley, City Fed Director

Address: \_\_\_\_\_

I represent: DCA

Address: \_\_\_\_\_

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Date: 12.3.2015

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Name: Anne Bagge, Deputy Commissioner

Address: \_\_\_\_\_

I represent: DCA

Address: \_\_\_\_\_

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in favor  in opposition

Date: 12.3.15

(PLEASE PRINT)

Name: Julie Meyer, Commissioner

Address: \_\_\_\_\_

I represent: DCA

Address: \_\_\_\_\_

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