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THE COUNCIL

COMMITTEE REPORT OF THE GOVERNMENTAL AFFAIRS DIVISION

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COMMITTEE ON CONSUMER AFFAIRS

Daniel R. Garodnick, Chair

September 20, 2012

**Oversight: Gas Stations in New York City - Putting a Premium on
Consumer Protection**

Int. No. 702:

By Council Members Fidler, Rivera, Brewer, Dickens, Eugene, Gentile, James, Koppell, Lander, Mendez, Nelson, Recchia, Rose, Williams, Rodriguez and Dromm

TITLE:

A Local Law to amend the administrative code of the city of New York, in relation to requiring that all signs advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit card purchases.

I. INTRODUCTION

On Thursday, September 20, 2012, the Consumer Affairs Committee, chaired by Council Member Dan Garodnick, will hold an oversight hearing entitled, “Gas Stations in New York City: Putting a Premium on Consumer Protection.” The Committee will also hold its first hearing on Introductory Bill Number 702 (“Int. No. 702”), a Local Law to amend the administrative code of the city of New York, in relation to requiring that all signs advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit card purchases. Those invited to attend the hearing include the Department of Consumer Affairs (“DCA”), the New York State Attorney General’s office, representatives from the retail gasoline industry, various chambers of commerce, consumer protection advocates and other interested parties.

II. BACKGROUND

During economically uncertain times, fluctuations in the price of certain goods, such as gasoline, can have a debilitating impact on working families. Unfortunately, gasoline prices have experienced an upward trend in the past year in the New York City metropolitan area. According to the New York State Energy Research & Development Authority, regular grade gasoline averaged nearly \$3.90 per gallon on September 10, 2012.¹ For the majority of New York City residents, the price of gasoline is a major concern. According to the Siena Research Institute, in August of 2012, 53% of residents within the five boroughs considered gasoline prices to be “a somewhat or very serious

¹ N.Y.S. Research & Dev. Auth. “Weekly Average Motor Gasoline Prices,” at <http://www.nyserda.ny.gov/Page-Sections/Energy-Prices-Supplies-and-Weather-Data/Motor-Gasoline/Weekly-Average-Motor-Gasoline-Prices.aspx> (accessed September 12, 2012).

problem.”² In light of its expense, and the fact that gas is often not an optional purchase, it is critically important that consumer protection regulations are enforced and that gasoline pricing policies be as transparent as possible.

a. State and Local Regulation of Gas Stations

Several provisions in State and local law address gasoline pricing and regulate the form and manner by which prices are disclosed in order to promote clear and accurate communication of information to consumers. First, consumers are protected against price gouging of any consumer goods and services by the State General Business Law, which prohibits offering or selling goods and services considered “vital and necessary,” such as gasoline, at “unconscionably excessive” prices during times of “abnormal disruption” of the market.³ When price gouging is alleged, the State Attorney General can apply to enjoin or restrain the offensive activity, and whether or not the activity violates the price gouging prohibition becomes a question for the court.⁴

Second, local consumer protection laws prohibit, among other deceptive practices, acts that result in “a gross disparity between the value received by a consumer and the price paid, to the consumer’s detriment.”⁵ Specifically, local law defines fraudulent practices in which sellers of gasoline and petroleum products (“gas stations”) are prohibited to engage, such as the sale of gasoline “in any manner so as to deceive, or tend to deceive the purchaser as to the price, nature, quality or identity thereof.”⁶

² Siena Research Inst. “Seriousness of Gas and Food Prices: Percentage of NY’ers,” at http://www.siena.edu/uploadedfiles/home/parents_and_community/community_page/sri/nys_cc/Gas%20and%20Food%20Table0812.pdf (accessed on September 12, 2012).

³ N.Y.S. Gen. Bus. Law § 396-r.

⁴ *Id.*

⁵ N.Y.C. Admin. Code § 20-710(b).

⁶ N.Y.C. Admin. Code § 20-673.

Additionally, the State Agriculture and Markets Law requires that the selling price per gallon of gasoline be posted on all dispensing devices from which gasoline is extracted, and the law dictates the size and style of such posting.⁷ The law also requires the posting of multiple prices on a dispensing device that offers more than one type or grade of gasoline for sale. A civil penalty of \$100 is assessed for violating the law once and subsequent violations can be punished by fines of up to \$500. The law authorizes DCA to enforce the provisions that relate to price posting at the pump.⁸

Local law provides further regulations on price posting for gas stations in New York City. All signs displaying the price of gasoline at or near the premises of a gas station, such as road signs visible to drivers, must state the name or brand, grade or quality, and the total selling price per gallon of the gasoline.⁹ The total selling price is defined as “the sum of the basic price per gallon plus all applicable taxes.”¹⁰ Further, local law dictates the size and style of such postings, requiring that all numbers and letters relating to the price of the gasoline be the same size and that the font shall be black on white background.¹¹

In 2006, the Council passed Local Law 38, which requires that sellers of gasoline adhere to the prices posted on such road signs, and prohibits such sellers from raising the posted prices for a period of 24 hours once they are posted.¹² The local law also contained recordkeeping requirements related to pricing.¹³ Additionally, the Agriculture and Markets Law and the Administrative Code both regulate disclosures at the pump

⁷ N.Y.S. Agric. & Mkt. Law § 192(5).

⁸ *Id.*

⁹ N.Y.C. Admin. Code § 20-672.

¹⁰ *Id.*

¹¹ *Id.*

¹² LL 38/2006; *see* N.Y.C. Admin. Code § 20-672(b).

¹³ *Id.*

related to octane ratings and proper representation of gasoline as either leaded or unleaded.¹⁴

b. Enforcement

Fortunately for drivers in New York City, DCA is tasked with ensuring that those who purchase gasoline are getting their money's worth. DCA's "gas squad" inspects each gas station at least once a year, testing for "pump dispensing accuracy; gas octane at levels advertised as priced; proper maintenance of gasoline storage tanks; properly marked fill ports for gas delivery; functioning equipment, including indicator lights, nozzles, air compressors, and valves; and proper signage, including matching prices on pumps and curb signs."¹⁵ According to DCA, its inspectors check the accuracy of every pump in the City, visiting each gas station about twice a year.¹⁶

In 2010, DCA conducted a sweep of gas stations in the City and found a 97% compliance rate for accuracy at the pump.¹⁷ The department inspected over 1,800 gas stations and 10,850 gas pumps, 345 of which were faulty and taken out of commission pending repairs.¹⁸ Three hundred eighty-two violations were issued for reasons that included failing to disclose octane ratings, improper priming of pumps, short measure on pumps, deceptive practices, and scales that failed to conform to the standards for weights and measures as laid out by the National Institute of Standards and Technology.¹⁹ Of the 382 violations, 28 related to signage problems, including improper curb signage.²⁰ That

¹⁴ N.Y.S. Agric. & Mkt. Law §§ 192-A, 192-B and 192-C; N.Y.C. Admin. Code §§ 20-673.1 and 20-673.2.

¹⁵ N.Y.C. Dep't of Consumer Affairs, "Department of Consumer Affairs Keeps Close Watch Over Gas Station Accuracy," Press Release, July 1, 2009, at http://www.nyc.gov/html/dca/html/pr2009/pr_070109.shtml.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ N.Y.C. Dep't of Consumer Affairs, data submitted via email to Council staff on February 28, 2012.

²⁰ *Id.*

year, DCA also received approximately 645 complaints about gas stations.²¹ The most common complaints were “overcharging, inaccurate meters and defective fuel pumps.”²²

In 2011, the Office of New York State Attorney General Eric Schneiderman launched an investigation into possible price gouging and zone pricing in response to dramatic price fluctuations that were occurring throughout the state. Examining 89 gas stations throughout the state between February 1 and April 1 of 2011, the Attorney General’s office ultimately concluded that despite the dramatic rise in gasoline prices during the period studied, and with the exception of two gas stations outside of New York City, price gouging did not occur and retail mark-ups on gasoline remained relatively consistent.²³ The fluctuations in gasoline prices, it was determined, were simply a reflection of the changes in the price of crude oil.²⁴ The Attorney General’s office did, however, find that gasoline wholesalers were engaged in zone pricing, a practice where different gas stations are charged different prices depending on their location.²⁵ The report noted that, while such practice was banned by the State in 2008, weaknesses in the law’s language render it unenforceable.²⁶

c. Cash Versus Credit Pricing

Despite the broad compliance with applicable laws and apparent lack of price gouging in New York, consumers still have reason to exercise caution when patronizing a gas station. A 2008 investigation of gas stations launched by then-Attorney General Andrew Cuomo found that roughly one quarter of the 130 stations examined in the New

²¹ N.Y.C. Dep’t of Consumer Affairs, *supra* note 14.

²² *Id.*

²³ Office of the N.Y.S. Attorney General “Report on New York Gasoline Prices,” December 2011, at 3.

²⁴ *Id.*

²⁵ *Id.*, at 4.

²⁶ *Id.*

York City area were engaged in deceptive practices.²⁷ Specifically, the Attorney General’s office found that the offending gas stations were “charging customers more for using a credit card [and] posting only the lower cash prices on their large, street-facing signs in order to lure patrons to their station and then charging them more at the pump.”²⁸ The Attorney General’s office found that while some of the gas stations did include the word “cash” in their street-level signs, the font size was too small to be legible from the street.²⁹

The New York State General Business Law prohibits retailers from applying a surcharge to purchases made with a credit card.³⁰ Nevertheless, State law does not prohibit retailers from applying discounts to their sales. Therefore, gas stations are permitted to charge a discounted price for gasoline purchases made in cash. Many gas stations do so, charging the higher “non-discounted” price on non-cash purchases to offset the processing fees (also known as “interchange” fees) incurred when a consumer uses a debit or credit card.³¹ It has been reported that gas stations in New York State are advertising only the (often lower) cash price on their street-level signs without adequate disclosure that such advertised price applies to cash transactions only.³² As the 2008 investigation revealed, it is not always clear that the price being advertised on the street-level sign reflects only the cash price until the consumer has already pulled into the gas station next to a pump.

²⁷ Office of the N.Y.S. Attorney General, “Attorney General Cuomo Issues Consumer alert for NYC Drivers After Investigation Reveals Nearly 25% of NYC Area Gas Stations Inspected Engaged in Deceptive Practices,” Press Release, August 28, 2008, at <http://www.ag.ny.gov/press-release/attorney-general-cuomo-issues-consumer-alert-nyc-drivers-after-investigation-reveals>.

²⁸ *Id.*

²⁹ *Id.*

³⁰ N.Y.S. Gen. Bus. Law §518.

³¹ Morell, J., “Filling up the tank? It may pay to use cash,” *CreditCards.com*, August 28, 2008, Available at <http://www.creditcards.com/credit-card-news/gas-discounts-for-cash-1275.php>.

³² Polsky, C., “Ire over credit card pricing,” *Newsday*, July 11, 2008, at A19.

Price differentials received renewed attention earlier this year when drivers in Long Island complained about disparities of up to two dollars between cash and credit purchases.³³ This significant markup, combined with the high cost of fuel and the failure of gas stations to adequately label the cash price, prompted New York State Senator Lee Zeldin (R, C, I-Shirley) to introduce a bill that would require gas stations to post the credit price on street-level signs when the disparity between the cash and credit price exceeds seven percent.³⁴ A similar bill was passed by the Westchester County Board of Legislators in December 2011, though that bill simply required that both cash and credit prices be displayed.³⁵ That same month, in response to price disparities in Long Island, Senator Charles Schumer (D-NY) sent a letter to the Federal Trade Commission asking them to consider rules that would require street-level signs at gas stations to more clearly disclose the cash and credit prices of gasoline.³⁶

III. INT. NO. 702

Int. No. 702 would require gas stations to clarify any differences that may exist between cash and credit prices on their road signs. It would require gas stations that charge cash-paying customers less than customers who pay with credit or debit cards to post on all road signs advertising the price of gasoline and/or diesel motor fuel either: (i)

³³ “New York Senator Takes Aim At Gas Cash-Credit Price Gap,” *CBS New York*, April 24, 2012, Available at <http://newyork.cbslocal.com/2012/04/24/new-york-senator-takes-aim-at-gas-cash-credit-price-gap/>.

³⁴ “Gas Price Gap Between Credit And Cash Up to \$2 A Gallon At Some L.I.,” *CBS New York*, April 20, 2012, Available at <http://newyork.cbslocal.com/2012/04/20/rising-gas-price-gap-between-credit-and-cash-up-to-2-a-gallon-at-some-l-i-stations/>.

³⁵ Swift, J., “Westchester Legislators Okay New Gas Pricing Law,” *Peekskill Daily Voice*, December 1, 2011, Available at <http://peekskill.dailyvoice.com/news/kaplowitzs-law-gasoline-pricing-signs-passes>.

³⁶ Coen, A., “Sen. Schumer Appears in Wantagh Calling for Better Cash Price Disclosure,” *Wantagh-Seaford Patch*, Decemb 6, 2011, Available at <http://wantagh.patch.com/articles/sen-schumer-appears-in-wantagh-calling-for-better-gas-price-disclosure>.

only the cash price along with the term “CASH PRICE” clearly displayed next to the price; or (ii) both the cash and credit card prices. Intro. No. 702 would also require that the language distinguishing the price for cash purchases from credit purchases be written in letters no less than half the size of the numbers displaying the price.

Int. No. 702

By Council Members Fidler, Rivera, Brewer, Dickens, Eugene, Gentile, James, Koppell, Lander, Mendez, Nelson, Recchia, Rose, Williams, Rodriguez and Dromm

A Local Law to amend the administrative code of the city of New York, in relation to requiring that all signs advertising the price of gasoline and/or diesel motor fuel disclose the total selling price for cash and credit card purchases.

Be it enacted by the Council as follows:

Section 1. Subdivisions b of section 20-672 of subchapter five of chapter four of title twenty of the New York city administrative code is amended by adding paragraph one to read as follows:

b. Where a sign, poster or placard advertises the selling price per gallon of gasoline or diesel motor fuel on, at or about the premises where such gasoline or diesel motor fuel is sold or offered for sale, or where such sign, poster or placard directly or indirectly refers to a premises where the advertised gasoline or diesel motor fuel is sold or offered for sale, such sign, poster or placard shall state the name, trade name, brand, mark or symbol and grade or quality classification of such gasoline or diesel motor fuel, together with the total selling price per gallon. Total selling price shall be the sum of the basic price per gallon plus all applicable taxes. A retail dealer shall only sell at such posted price. Any such price when posted may not be raised for a period of not less than twenty-four hours. Such sign, poster or placard shall conform to the rules and regulations of all governmental agencies with jurisdiction as to structure and location.

1. Where the total selling price for cash purchases is less than the total selling price for credit card purchases, such sign, poster or placard shall either (i) state "CASH PRICE" next to each total selling price for cash purchases; or (ii) shall state both the total selling price for cash purchases and the total selling price for credit card purchases.

c. All numbers referring to price shall be the same height, width and thickness. Identification of the gasoline or diesel motor fuel offered for sale, and any non-numerical language distinguishing the total cash selling price from the total credit card selling price shall be in letters and numbers not less than one-half of the height, width and thickness of the numbers referring to price. Letters and numbers shall be black on a white background.

§ 2. This local law shall take effect one hundred twenty days after it shall have been enacted into law; provided that the commissioner and the commissioner of the department of transportation may take any actions necessary prior to such effective date for the implementation of this local law including, but not limited to, promulgating rules.

R.C.
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