



Wednesday, May 4, 2016

**STATEMENT OF CHIEF WILLIAM T. MORRIS  
CHIEF OF MANHATTAN SOUTH  
NEW YORK CITY POLICE DEPARTMENT**

**BEFORE THE NEW YORK CITY COUNCIL CONSUMER AFFAIRS COMMITTEE  
CITY HALL, COUNCIL CHAMBERS  
WEDNESDAY, MAY 4, 2016**

Good afternoon Chair Espinal and Members of the Council. I am Chief William T. Morris, Chief of Manhattan South for the New York City Police Department (NYPD). I am also joined here today by Captain Robert O'Hare, Commanding Officer of the Times Square Unit, and Lieutenant Daniel Albano of the NYPD Legal Bureau. On behalf of Commissioner William J. Bratton, I would like to thank you for the opportunity to speak to you about the bill before you today, Intro. 467-A, which would amend the Administrative Code to require costumed individuals who solicit in public spaces in our City to register with the Department of Consumer Affairs (DCA).

Intro. 467-A would enact new Administrative Code provisions that apply to any person wearing a costume who accepts or requests "by spoken word, signs, gestures, or any other means, a fee, donation, tip, payment or any other form of compensation." The bill would require that costumed individuals who solicit in public spaces register with DCA. The bill would make it unlawful for a costumed individual to solicit without having first registered with DCA as well as to not conspicuously display their proof of registration while engaged in solicitation of the public. Lastly, the bill would require that the costumed individual, at the request of a police officer or other enforcing agency, remove portions of a costume that obscure the individual's face in order for the officer to verify that the individual wearing the costume is the authorized registrant whose photograph appears on the displayed proof of registration.

We appreciate the Council's interest in addressing the concerns surrounding the proliferation of costumed individuals in our City. The Administration recognizes that most costumed individuals are not engaging in criminal activity or intending to take advantage of unwitting tourists – they are simply trying to make a living for themselves and their families and we respect their right to do so. Registration is one tool to address this proliferation so that good actors can operate in a better environment, and bad actors can be identified and the public can be protected from them.

The Police Department is supportive of the concept of registration because it will help our officers better identify costumed individuals in the field. As we have seen in Times Square, multiple individuals often wear the same costume and this dynamic has, at times, inhibited our abilities to investigate reported crimes and identify those responsible. The Police Department, however, has concerns with the bill as currently drafted. Notably, the bill contains no criminal penalties for unregistered solicitation by a costumed individual and/or failure to display proof of such registration. The bill only permits police officers and other enforcing agencies to issue a civil penalty for this conduct.



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The lack of any criminal penalty provides a significant challenge to enforcing the registration framework currently contemplated in the bill. Essentially, there would be no practical way for a police officer, or any enforcement authority, to properly issue a civil penalty if a costume character refuses to display their registration or provide any form of identification upon request. Without the ability to properly enforce, the need for registration becomes obsolete and also fosters inequity between those who take the time to register and those who do not.

While we certainly recognize that the intent of the bill is to use civil enforcement, a criminal penalty must be available to the enforcing officer in order to compel a costumed individual to produce the required registration, or any kind of identification, and to possibly elevate the severity of enforcement for repeat offenders.

Notwithstanding this challenge, we are pleased to continue this discussion as well as collaborating with the Council to make this legislation workable for those that will be tasked with enforcement. Thank you for the opportunity to speak with you today, and I am pleased to answer your questions.



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**Gale A. Brewer, Borough President**

**Testimony before the New York City Council  
Committee on Consumer Affairs  
Proposed Int. No. 467-A  
May 4, 2016**

Good morning Chair Espinal and members of the Consumer Affairs Committee. My name is Jim Caras and I am General Counsel and Land Use Director for Manhattan Borough President Gale A. Brewer. Thank you for the opportunity to testify today on Int. No. 467-A and the subject of the registration of costumed individuals.

We would like to thank Council Member King and the Committee for pursuing this legislation. As you know, at this point Times Square is the area in greatest need of regulation relating to costumed characters. We want costumed characters to be able to operate in a manner that allows them to earn a living and provide entertainment, but not in a manner that allows abuses to go unaddressed because of their anonymity. As we testified at the original hearing on the legislation, the Manhattan Borough President believes licensing or registering these costumed characters should be a tool in addressing this phenomenon so that good actors can operate in a better environment, and bad actors can be identified.

First, the Borough President would like to thank the Council staff for reaching out as they worked on amending this legislation. Borough President Brewer supports the registration approach as one that is protective of expressive conduct. We would recommend that the Committee consider reducing the thirty dollar (\$30) registration fee to ten dollars (\$10) or twenty dollars (\$20) and include a provision that the registration – or a temporary registration – be issued immediately upon presentation to the department of Consumer Affairs of the required materials. In this way no one will be able to claim that we are restraining anyone's right to express their inner super hero.

In addition, we know that there must be careful balancing between the First Amendment protections for expressive conduct and the City's interest in protecting the public from being targeted by characters who may have engaged in egregious conduct. However, we would urge the Committee to consider if registrations could be suspended, or not renewed, if the registrant has engaged in any type of aggressive criminal conduct. We understand that the types of violations found in licensing schemes which can result in suspension and revocation such as locational requirements and payment of taxes could create legal difficulties when applied to expressive commercial conduct, but we believe that narrowly tailored requirements preventing aggressive behavior would withstand judicial scrutiny.

Thank you for the opportunity to testify today.

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

**Hearing on  
Introduction 467-A: In relation to the registration of costumed individuals engaged in  
solicitation**

**May 4th, 2016**

**Introduction**

Good afternoon Chairperson Espinal, Council Member King, and members of the New York City Council Committee on Consumer Affairs. I am Alba Pico, First Deputy Commissioner and Acting Commissioner of the Department of Consumer Affairs (“DCA”) and I am joined by my colleagues, Amit S. Bagga, Deputy Commissioner of External Affairs, and Tamala Boyd, Deputy General Counsel.

Thank you for the opportunity to speak with you today about Intro. 467-A, which would require DCA to register individuals who solicit in public while wearing costumes or face-obscuring make-up. We would like to thank Chairperson Espinal for convening today’s hearing, as well as Council Member King and other members of the committee for your close consideration of this issue.

DCA is the largest municipal consumer protection agency in the country, and it is our mission to empower consumers and businesses alike to ensure a fair and vibrant marketplace. The agency licenses approximately 80,000 businesses across soon-to-be 54 different industries, mediates complaints between consumers and businesses, conducts patrol inspections and legal investigations, educates businesses about laws and rules, and also enforces New York City’s Earned Sick Time Act, commonly known as the “Paid Sick Leave” law. In addition to its licensing, consumer protection, and labor-related work, DCA operates the Office of Financial Empowerment (“OFE”) to connect low-income New Yorkers with valuable financial services and education.

**Costumed Individuals**

As the number of tourists coming to New York City has continued to grow over recent years, and is expected to reach a record high of nearly 60 million this year, so too has the opportunity to provide tourists with new and varied experiences. Among these experiences is that which affords tourists – mainly in Times Square – the ability to interact and take pictures with individuals dressed in costumes that are designed to look like recognizable characters: from Minnie Mouse to Elmo to Buzz Lightyear, among others.

These costumed individuals have become an indelible part of the urban fabric in New York City and in many instances, interactions between costumed individuals and tourists are safe and pleasant. Unfortunately, this is not always the case. While many costumed individuals are are hard-

working New Yorkers attempting to earn a living, there have been many reports of these individuals engaged in troubling, unsafe, and reckless behavior.

As costumed individuals are largely concentrated in tourist-heavy areas, such as Times Square, the resultant competition between individuals for business can lead to congestion problems and conflict between performers. Costumed individuals have been reported to be aggressive toward rival performers,<sup>1</sup> tourists who they feel have failed to tip them sufficiently,<sup>2</sup> and even the New York City Police Department (“NYPD”).<sup>3</sup> The problems caused by congestion and over-concentration tend to become more acute as the weather gets warmer and more people venture out to enjoy New York City’s public spaces.

I will now ask my colleague, Amit S. Bagga, to speak in greater depth about Intro. 467-A.

### **Intro. 467-A**

Intro. 467-A would create a registration for individuals who solicit in public while wearing costumes, masks, accessories, makeup, or other objects that obscure the face beyond recognition. Costumed individuals would be required to conspicuously display their registration while wearing a costume and engaging in solicitation in a public space. The fee for a registration would be \$30 and each registration would be valid for two years from the date of issuance. Costumed individuals who solicit in public without a registration would be subject to a civil penalty of \$25 to \$100 for the first offense and \$100 to \$250 for subsequent offenses.

### **DCA feedback and challenges**

DCA very much shares the Council’s goal of protecting consumers and tourists, ensuring that our public spaces are accessible and inviting, and making it easier for NYPD to respond should problems arise. We believe that Intro. 467-A is an important first step in creating an appropriate and enforceable regulatory framework, which we believe is a goal shared by the Administration and the Council. We seek to work closely with the Council in pursuit of this goal, and it is with this in mind that we offer specific feedback on Intro. 467-A as it is currently written.

We have identified several challenges and concerns in the current bill that may mitigate Intro. 467-A’s ability to address issues involving soliciting by costumed individuals. We hope our feedback will be helpful and look forward to continuing discussions with the Council about how Intro. 467-A could be strengthened.

First, and most importantly, Intro. 467-A does not provide for a method by which DCA can deny, revoke, or refuse to renew registrations. DCA has this ability for all of our existing license

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<sup>1</sup> <http://pix11.com/2015/06/05/minnie-mouse-hello-kitty-brawl-in-latest-times-square-mascot-melee/>

<sup>2</sup> [http://newyork.cbslocal.com/2016/03/27/spider-man-times-square/;](http://newyork.cbslocal.com/2016/03/27/spider-man-times-square/)

<sup>3</sup> [http://newyork.cbslocal.com/2016/03/27/spider-man-times-square/;](http://newyork.cbslocal.com/2016/03/27/spider-man-times-square/) [http://nypost.com/2014/07/27/spider-man-allegedly-punches-cop-in-times-square/;](http://nypost.com/2014/07/27/spider-man-allegedly-punches-cop-in-times-square/)

categories. Under the current language, DCA would not be able to withhold registration from an individual who violates the law by soliciting without registering, engages in fraud or misrepresentation, or is convicted of aggressive solicitation. As the bill is currently written, DCA would be required by law to renew such an individual's registration.

New York City sanctions an individual's activity when it grants a permit, license, or registration. In particular, a DCA license or registration signals to consumers that it is safe to transact business with the holder and that they will have recourse to the agency's consumer protection mechanisms should any problems arise. Creating a DCA registration without giving the agency the power to deny, revoke, or refuse to renew registrations for cause risks misleading consumers about the level of risk in their transactions and undermining confidence in DCA's imprimatur as a consumer protection agency.

In addition, Intro. 467-A provides that registration will be valid for two years from the date of issuance. Typically, all of the licenses in a DCA license category will expire in a set month, rather than on a rolling basis. Applicants can still come in to apply for a license at any time and fees are pro-rated based on how much of a license period has already elapsed. This structure allows DCA to better manage our approximately 80,000 licenses by staggering the expiration periods for the 55 different categories. Instituting a rolling registration for costumed individuals would create operational difficulties by requiring the agency to process and track these registrations differently than all of our other license categories.

### **Conclusion**

DCA appreciates the opportunity to testify before the committee today. While the agency must respectfully decline to support Intro. 467-A in its current form, we appreciate the Council's leadership on this issue and look forward to continued discussions about creative solutions. We hope that our feedback will be helpful to the Council as Intro. 467-A continues through the legislative process. My colleagues and I will be happy to answer any questions you may have.

**STATEMENT OF THE BROADWAY LEAGUE****IN SUPPORT OF INT. 467-A****FOR THE RECORD**

May 4, 2016

The Broadway League has been the principal trade association for the commercial Broadway theatre industry in New York State and across North America for over 80 years. It represents more than 750 theatre owners, producers and road presenters nationwide – with over 400 maintaining offices in New York City. We thank Chair Espinal and the other distinguished members of the Consumer Affairs Committee for the opportunity to comment on the proposal under consideration. We also express our gratitude to Council Member King for addressing this escalating problem.

The League has always encouraged legislation aimed at enhancing the flow of pedestrian traffic, encouraging visitor and resident access, and improving the overall quality of life in the Times Square area. In the past, we have endorsed sensible restrictions that support economic activity on the streets of New York City, including licensing pedicabs and improving oversight of street vendors.

With respect to Int. 467-A; it is imperative that the Council act to regulate what has quickly become a leading contributor to an unsafe, chaotic and disorganized atmosphere in Times Square, one of the premiere tourist destinations in the world. 13.1 million theatre tickets were purchased during the 12-month theatre season ending in May of 2015. Approximately 10.8 million of these admissions were patrons residing outside New York City.

Approximately 59% of all tourists reported that attending a Broadway show was a principal reason for visiting New York City. Therefore, it is imperative that their entire experience - from the moment visitors arrive in the area to the moment they depart - is overwhelmingly positive and lives up to what they envisioned it would be. However, we have seen a recent proliferation of anonymous vendors who aggressively solicit trusting families, take unfair advantage of their children's familiarity with the characters the solicitors portray and often attempt to embarrass or harass our guests into paying for photographs. Not only is much of this behavior arguably illegal for many reasons, but these actions damage the perception of New York City and discourage tourism. In addition, the publicity generated by their frequent acts of bad behavior, while often presented in a humorous and entertaining light by local media, ultimately deters residents from visiting Times Square and, with it, all of the businesses in the area.

We are familiar with the recent designation of Times Square as a pedestrian plaza and how this change will grant the Department of Transportation authorization to regulate much of the activity in the area. However, the careful planning required for such regulation -- which we hope will limit the time and place where costumed characters may operate -- is helpful but may not address this issue head on. This is why we support Int. 467-A and the effort to license costumed characters.

This bill will enhance existing laws designed to thwart aggressive panhandling, disorderly conduct, disturbing the peace and larceny. This legislation provides the public, Department of Consumer Affairs and the New York Police Department with a pro-active measure to, at a minimum, identify whoever is wearing the costume and conducting business transactions on the streets of New York. The legislation will help remove



the anonymity that supports belligerent behavior merely by granting dissatisfied consumers a way to identify the individuals wearing the costumes. It also allows for the fine and removal, permanently for the worst repeat offenders, of solicitors who engage in very carefully proscribed activities.

The Broadway League feels this proposal is a positive step in addressing several challenging issues that face Times Square. We look forward to working with this Committee, Council Member King, various City agencies and our partners in the midtown community to continue providing a unique and safe experience to our visitors. On behalf of the Broadway theatre community, the League applauds the Council's ongoing and sincere dedication to addressing this problem in a fair and balanced manner.

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 467-A Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: Jim Caras

Address: MBPO Centre St

I represent: Gale A Brewer

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

Date: 5.4.16

(PLEASE PRINT)

Name: Aunt Baggia Deputy Commissioner

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

I represent: DCA

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

Date: 5.4.16

(PLEASE PRINT)

Name: Alba Pico Acting Commissioner

Address: DCA

I represent: \_\_\_\_\_

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

◆ Please complete this card and return to the Sergeant-at-Arms ◆

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

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

in favor  in opposition

Date: 5.4.16

(PLEASE PRINT)

Name: Tamela Boyd, Deputy General Counsel

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

I represent: DCA

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 467-A Res. No. \_\_\_\_\_

in favor  in opposition

Date: May 4, 2016

(PLEASE PRINT)

Name: Johanna Zaki

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

I represent: Alliance for Coney Island

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

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 467-A Res. No. \_\_\_\_\_

in favor  in opposition

Date: 5/4/16

(PLEASE PRINT)

Name: Lt. Daniel Alhano

Address: Legal Bureau

I represent: NYPD

Address: 1 Police Plaza

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

**Appearance Card**

I intend to appear and speak on Int. No. 467-A Res. No. \_\_\_\_\_

in favor  in opposition

Date: 5/4/16

(PLEASE PRINT)

Name: Capt. Robert O'Hare

Address: Times Square Unit

I represent: NYPD

Address: 1 Police Plaza

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

**Appearance Card**

I intend to appear and speak on Int. No. 467-A Res. No. \_\_\_\_\_

in favor  in opposition

Date: 5/4/16

(PLEASE PRINT)

Name: Chief William Morris

Address: Chief of Manhattan South

I represent: NYPD

Address: 1 Police Plaza

Please complete this card and return to the Sergeant-at-Arms

**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. \_\_\_\_\_ Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: \_\_\_\_\_

(PLEASE PRINT)

Name: JOSE ESCALONA

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

I represent: \_\_\_\_\_

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

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**THE COUNCIL  
THE CITY OF NEW YORK**

Appearance Card

I intend to appear and speak on Int. No. 4/67-A Res. No. \_\_\_\_\_  
 in favor  in opposition

Date: 5-4-16

(PLEASE PRINT)

Name: JACK FRIEDMAN

Address: 1560 BROADWAY, STE 800

I represent: TIMES SQ. ALLIANCE

Address: 13

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