

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS

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February 24, 2015
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HELD AT: 250 Broadway - Committee Rm,
14th Fl.

B E F O R E:
RAFAEL L. ESPINAL, JR.
Chairperson

COUNCIL MEMBERS:
Vincent J. Gentile
Julissa Ferreras
Karen Koslowitz
Rory I. Lancman

A P P E A R A N C E S (CONTINUED)

Alba Pico
First Deputy Commissioner
Department of Consumer Affairs

Mary Cooley
Director of City Legislative Affairs
Department of Consumer Affairs

Eric Palatnik
Jericho Wholesale

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2 [gavel]

3 [background comments]

4 CHAIRPERSON ESPINAL: Good morning and
5 welcome to today's hearing of the Committee on
6 Consumer Affairs. My name is Rafael Espinal and I'm
7 the Chair of the Committee.

8 Today we'll discuss a matter of great
9 importance to every New Yorker who owns and operates
10 a vehicle -- gas prices and the signs that display
11 those prices. New Yorkers should not be met with a
12 different price at the pump than gas station road
13 signs advertise to street traffic. Motor fuel is a
14 necessity to many and the price of this item, like
15 any, ought to be transparent. To this end, the
16 Committee will hear testimony on Int. 0586, which
17 would amend Section 20-672 of the Administrative
18 Code, a consumer protection statute related to road
19 signs at gas stations. Section 20-672 was added to
20 the Administrative Code as a Truth in Advertising Law
21 to require that road signs advertising their prices
22 gave important information to consumers. This
23 information includes such things as brand and grade
24 of gasoline being sold and the total selling price of
25 that gasoline. Since it was first passed in the 80s,

1 the section has been amended a number of times; for
2 example, in 2006 Local Law 38 added the requirement
3 that once a price is posted it could not be changed
4 for at least 24 hours, thus offering consumers a
5 degree of protection from a constant price
6 fluctuation. Local Law 9 of 2013 took on the issue
7 of cash versus credit pricing and required that road
8 signs clearly disclose when the advertised total
9 selling price is a discounted price available only
10 for cash purposes. The law and the rules promulgated
11 to implement it have created some confusion as to
12 size requirements of these signs and some open
13 questions as to the degree of information that is
14 required to ensure that consumers are empowered to
15 make informed decisions. Int. 0586 will require a
16 minimum size of three feet in width and four feet in
17 height for gas station road signs advertising the
18 price of fuel; these are dimensions that are commonly
19 used today.

21 The bill would also require these signs
22 to post all brands and grades of gasoline or diesel
23 fuel being offered for sale, along with a total
24 selling price. Many road signs post a discounted
25 cash price but do not apply to credit cards. Int.

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2 0586 will require that the advertised total selling
3 price reflect a discount offered for purchases made
4 in cash and/or other tender; the road sign was
5 clearly disclosed as much; for example, that the
6 advertised prices for purchases made with cash and
7 debit only.

8 The Committee looks forward to hearing
9 testimony on this important consumer protection bill
10 and hopeful that we can come to a position to move
11 forward.

12 I would like to call up the first panel
13 -- we have Alba Pico and Mary Cooley, both from the
14 Department of Consumer Affairs. [background
15 comments] Thank you; you may begin, just state your
16 name.

17 ALBA PICO: Yeah. Alba Pico; I'm the
18 First Deputy Commissioner at the Department of
19 Consumer Affairs.

20 Good morning, Chair Espinal and members
21 of the Consumer Affairs Committee; I'm Alba Pico,
22 First Deputy Commissioner at the Department of
23 Consumer Affairs (DCA); I am joined by Mary Cooley,
24 Director of City Legislative Affairs at DCA. I'm
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2 here representing Commissioner Julie Menin, who
3 regrets that she could not be present today.

4 We appreciate the opportunity to speak
5 with you again about DCA's work on prices placed at
6 gas stations in New York City and about Int. 0568
7 [sic], a Local Law to amend the Administrative Code
8 in relation to signs, posters and placards that
9 advertise gas prices. It is in the pursuit of
10 efficient, effective and fair compliance that the
11 Department of Consumer Affairs offers its position on
12 the proposed legislation being addressed today.

13 The Agency's top priorities are to
14 educate business owners about the law and to
15 facilitate compliance with the law. Since May 2017
16 [sic], we have implemented many reforms to achieve
17 these goals. For the first time, all 41 of DCA's
18 most commonly-used plain-language checklists are
19 easily accessible to business owners through the
20 Agency's website and DCA has made many of its
21 resources available in several languages beyond those
22 mandated by Executive Order, such as Bengali and
23 Arabic. We have educated thousands of business
24 owners through outreach and education, presenting at
25 hundreds of events and meetings and we have made sure

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2 that businesses have a legal ombudsman who can help
3 answer their legal questions on the Agency's rules.

4 DCA plays a key role in regulating New
5 York City gas stations. We inspect the city's
6 approximately 10,000 pumps across over 800 gas
7 stations for accuracy at least once a year. We are
8 able to condemn pumps on the spot if they fail to
9 meet accuracy standards and we reinspect condemned
10 devices that must be fixed before we authorize them
11 to be put back into service. DCA also deploys
12 inspectors to respond to consumer complaints received
13 through 311 and through our website.

14 In addition to ensuring accuracy at the
15 pump, the Agency inspects gas stations for compliance
16 with a number of other consumer protection laws and
17 rules, including the posting of price signs, marking
18 of fill ports, consistency of the unit price box on
19 the bump and signage, and having a working air pump.
20 In calendar year 2014, DCA conducted 1,424
21 inspections and issued 197 violations. Since July
22 1st of 2014 (fiscal year 2015), we have conducted 806
23 inspections and issued 101 violations through
24 February 23, 2015.

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2 In 2013, the City Council enacted Local
3 Law 9 of 2013, amending Section 20-672 of the
4 Administrative Code of the City of New York, to
5 require that all gas stations post road signs
6 displaying the total selling price of gasoline or
7 diesel motor fuel. The law also requires that where
8 the total selling price for purchases made with cash
9 is less than for purchases made with another form of
10 payment, such as debit or credit card, the road signs
11 disclose the total selling price for cash, debit card
12 and credit card purchases.

13 In October 2013, in order to implement
14 Local Law 9 of 2013, DCA issued rules which became
15 effective November 12, 2013, that established the
16 size requirements of the newly mandated signs and
17 required stations to display the road sign whether or
18 not they charge one price for gas, irrespective of
19 the payment type. This size requirement is a minimum
20 of 60 inches wide and 36 inches high. The rules also
21 require that where the total selling price for
22 purchases made with cash is less than for purchases
23 made with another form of payment, such as debit or
24 credit card, the signs disclose the total selling
25 price for cash, debit card and credit card purchases.

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2 The rules also prescribe a minimum type size of 430
3 points. The previous rule did not require such
4 signs, but only established the required content of a
5 sign if the gas station chose to advertise the
6 petroleum product for sale.

7 Based on concerns by the industry
8 regarding the ability to post the prescribed road
9 signs in compliance with zoning regulations, as well
10 as the cost associated with the signage, DCA, under
11 the direction of the Office of Deputy Mayor Alicia
12 Glen, decided to stay enforcement of the rule on
13 January 24, 2014.

14 We appreciate that the Council, through
15 Int. 0586, has made efforts to address the challenges
16 in enabling businesses to comply with existing law
17 and also the challenges faced by the Agency in
18 enforcing the law. DCA understands that this
19 legislation is meant to be read in concert with Int.
20 0287 of 2014, another bill intended to enable
21 enforcement of the law. To that end, DCA has
22 outstanding questions and comments about the
23 legislation being discussed today, as well as Int.
24 0287.

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2 Int. 0287 would allow businesses to seek
3 a waiver from DCA if the minimum signage requirements
4 would result in a violation of otherwise applicable
5 zoning violations. As DCA stated in testimony from
6 September 2014, business owners currently required by
7 the Department of Buildings (DOB) to obtain
8 permission from their Sign Enforcement Unit in order
9 to erect a roadside sign could first seek written
10 approval or a denial from DOB before a waiver
11 determination could be rendered by DCA. Our Agency
12 does not take the position that signage laws can
13 supersede zoning regulations and we do not recommend
14 allowing additional signs on lots where such signs
15 would violate zoning rules.

16 As DCA also noted at that time, there are
17 costs associated with complying with signage
18 requirements. We have been advised by both the
19 Department of City Planning (DCP) and DOB that
20 ensuring compliance with zoning can be an intensive
21 process which requires significant City and business
22 owner resources. Business owners would need to hire
23 an architect to submit plans to DOB and pay filing
24 fees even to receive an objection, which would be
25 required to ascertain a DCA waiver. The total cost

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2 to a business owner could be in the thousands of
3 dollars.

4 In order to enable more businesses to
5 comply with existing law, there must be further
6 consultation with DOB, DCP and the Mayor's Office
7 about the technical specifications in the rules
8 issued by Local Law 9 of 2013 and those described in
9 Int. 0287, such as the ability to obtain a waiver and
10 potential use of illuminated light-emitting diode
11 (LED) lights.

12 Int. 0586 seeks to address other
13 enforcement challenges by removing the requirement to
14 advertise the selling price of each brand and grade
15 of gasoline for each payment method. It would also
16 reduce the size requirements of signage to 36 inches
17 by 48 inches, which may be permissible within more
18 zoning regulations. In addition, Int. 0586 creates
19 disclosures for discounted rates.

20 DCA has some questions about the
21 provision of Int. 0586, which we look forward to
22 discussing with the Council and representatives from
23 the industry.

24 As proposed in Int. 0586, gas station
25 signage must disclose that advertised total selling

1 prices that reflect a discounted rate are only
2 available with certain forms of payment. It is not
3 clear that where a discount is offered all selling
4 prices must be advertised. DCA is concerned that
5 simply advertising a discount without disclosing all
6 prices and, where relevant, the method of payment by
7 which a consumer may not receive a discount, is not
8 sufficient to inform consumers of options.
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10 It is DCA's understanding that the
11 reduction in size requirement for signage is intended
12 to enable most gas station owners to comply with the
13 law, but it should be noted that local zoning
14 regulations vary widely and it is not clear at this
15 time the requirement prescribed in the legislation
16 would apply to most gas stations. More information
17 is needed from DOB and DCP about the scope and extent
18 to which the proposed size requirement would conform
19 to local zoning. In addition, if a waiver system is
20 enacted, as proposed in Int. 0287, consultation with
21 DOB and DCP will be necessary to establish a criteria
22 and waiver application process.

23 Int. 0586 and 0287 are intended to
24 address different challenges with enforcement of
25 Local Law 9 of 2013. As such, with consideration of

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2 the questions and concerns outlined above, it is
3 DCA's position that both introductions should be
4 passed in tandem or combined into a single piece of
5 legislation to amend the original law. As with Int.
6 0287, the proposed 120-day window for implementation
7 in Int. 0586 after passage remains insufficient for
8 DCA to engage in rulemaking and for businesses to go
9 through the permitting process and obtain the signs
10 or waivers. We recommend extending the time to add
11 an additional 80 days.

12 We seek to work with you and your
13 colleagues, Chairman Espinal, as well as
14 representatives of the industry, to consider a bill
15 that is both equitable and enforceable.

16 Thank you for the opportunity to testify
17 before you and the Committee today. Ms. Cooley and I
18 will be happy to answer any questions you might have.

19 CHAIRPERSON ESPINAL: Thank you, Alba.

20 I just wanna start off by just clearing
21 up some of the questions you have here. You
22 mentioned that there's concern that the signs would
23 not have every grade and the price of each grade;
24 that is not my intention; I think what we're trying
25 to do is amend a bill that was passed in 2013 where

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2 it would require every single form of payment and
3 every single grade, you know, consequently making the
4 gas station to have put up a sign the size of a
5 billboard. So what we're trying to do here is keep
6 the signs the way they currently are, but including
7 that, the gas sign must post that the price listed is
8 a discounted cash price. So you will have every
9 grade on the sign and you will also have a sign
10 saying these are the cash prices, you know, something
11 along those lines where credit would charge you more.

12 MARY COOLEY: Sure. Yeah, based on some
13 conversations with the Law Department and our own
14 legal division, it was a question just based on the
15 reading of the language of the law. So we're happy
16 to continue that conversation. [sic]

17 [background comments]

18 MARY COOLEY: Sorry. Sure, of course.
19 And based on conversations with the Law Department
20 and our legal division, we understand that's the
21 goal; we just had some questions about the wording of
22 the law, based on our internal conversation, so we're
23 happy to continue that toward that end.

24 CHAIRPERSON ESPINAL: I wanna go back to
25 something you mentioned earlier about the number of

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2 violations each gas station has received. Can you
3 explain to me further what are the violations most
4 commonly for?

5 ALBA PICO: I have some data from
6 September of last year with me. So the top five
7 violations I have -- when a device fails to reset to
8 and hold zero before dispensing the product; when a
9 device continues to advance without mechanical
10 operation of the device; when the anti-drain valve
11 fails to function; when elements in the display are
12 burnt out; when it fails to supply a proper receipt.

13 CHAIRPERSON ESPINAL: Okay. When it
14 comes to the pump, what does DCA regulate; what does
15 DCA have jurisdiction over? One of the questions
16 I've had was the sign above the pump that gives you
17 the prices of each grade; do you have jurisdiction
18 over that sign or is that State?

19 ALBA PICO: We do; we inspect for that
20 sign, to make sure that the sign is posted on top or
21 in a way that when you're paying you're able to see
22 the sign. We also make sure that the pump has the
23 grading, you know the numbers -- 98, 99; whatever it
24 is; we make sure that it has that.

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2 CHAIRPERSON ESPINAL: So if some changes
3 needed to be made to the sign above the pump, do you
4 have jurisdiction over that?

5 ALBA PICO: It will have be... yeah, it
6 would have to be amendments to -- I don't know if
7 it's the law or the rules, but there would have to be
8 amendments to that. [background comment]

9 CHAIRPERSON ESPINAL: Okay. Okay, 'cause
10 one of the issues I have is, as a consumer, when you
11 go to certain gas stations and you go to pay at the
12 pump, you know they gave you the cash and credit
13 prices, but sometimes, when you use your debit card,
14 a certain gas station will give you the cash price
15 and if you go to another gas station they'll charge
16 you the credit price and most times I believe that
17 the consumer doesn't know which gas station is
18 providing a cash price for debit, so you're
19 oftentimes.. you know, you're oftentimes kinda playing
20 Russian roulette with the gas pump when you're using
21 your debit card. Is it possible to require for that
22 sign to say debit is the same as cash or credit is
23 the same as debit? Is that possible to make that
24 change within your rules?

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2 ALBA PICO: I know that we have been
3 enforcing the disclosure, but usually it's either in
4 the sign or next to the sign, through the Consumer
5 Protection Law. So through the Consumer Protection
6 Law we have enforcing that it tells the consumer
7 before the purchase if they're charging an extra
8 charge for either debit or credit or whatever mode of
9 payment, but through the Consumer Protection Law,
10 that's what we have been doing. We will have to go
11 back and take a look at, you know our laws and rules
12 to see if there's anything that could be done with
13 the current laws or rules.

14 MARY COOLEY: And we'd wanna understand I
15 think a little further just the exact wording and
16 placement of what you're envisioning.

17 CHAIRPERSON ESPINAL: For example, some
18 gas stations are helpful in that they'll put a
19 sticker saying "your debit card will be charged cash"
20 or it would say, "your debit will be charged credit,"
21 and I think they do it voluntarily and I was just
22 wondering if there's anyway we can make that a
23 requirement.

24 MARY COOLEY: Sure. Yeah, we can assess
25 that with our legal team.

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2 ALBA PICO: I mean we do get complaints
3 and we will go to that location and enforce and see
4 if they do have the signage and they will get a
5 violation for that.

6 CHAIRPERSON ESPINAL: Now another thing
7 in Int. 0586; we were discussing road signs and one
8 of them would allow for the gas station to apply for
9 a waiver if the DOB doesn't allow them to -- or
10 they're not zoned or have the permission to put a
11 sign up; what percentage of gas stations now do not
12 have signs up? Do you know a percentage or are there
13 gas stations out there in New York City that do not
14 have a sign?

15 ALBA PICO: Don't know. The... [background
16 comment] the curb signs; yeah, I wouldn't know that.
17 [background comment] We could go back and ask our
18 gasoline inspectors to see if maybe they have an
19 average of what they see and we will get back to you
20 with that number.

21 CHAIRPERSON ESPINAL: Okay. We have been
22 joined by my colleague from Queens, former Chair of
23 the Consumer Affairs Committee, Karen Koslowitz. Do
24 you have any questions?
25

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2 COUNCIL MEMBER KOSLOWITZ: No. I don't
3 have a question; so far I'm okay. I'm good.

4 [pause]

5 [background comments]

6 CHAIRPERSON ESPINAL: Yeah, I think
7 that's it. Well thank you, [interpose, background
8 comments] thank you for your testimony; I appreciate
9 it.

10 ALBA PICO: Thank you.

11 CHAIRPERSON ESPINAL: Up next I would
12 like to call up Eric Palatnik from Jericho Wholesale.

13 [background comments]

14 CHAIRPERSON ESPINAL: Whenever you're
15 ready, Eric...

16 ERIC PALATNIK: Alright.

17 CHAIRPERSON ESPINAL: Just say your name
18 on the mic.

19 ERIC PALATNIK: Sure. Good morning; Eric
20 Palatnik; I'm representing Jericho Wholesale; I'm an
21 attorney and I wanted to thank you and your committee
22 for listening to the industry and making good,
23 logical decisions based upon some of the ambiguity
24 that came out through the last iteration of the
25 proposal. I've been speaking with a lot of people

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2 that are in the industry; everybody's happy with your
3 clear decision to include LED signage. At the
4 outset, before I even go into the signage itself, the
5 LED signages I'm sure you see in all of your travels
6 outside of New York City is all over the rest of the
7 country and the fact that we're still -- I just
8 handed up a sign that shows a picture of the old
9 signs; in fact, we're still doing that, like the old
10 scorecards on the baseball games where the guy used
11 to climb up on the wall and change the numbers, so we
12 appreciate that for including that.

13 The new legislation we're also very happy
14 with; the language -- we do think that there needs to
15 be a little bit more clarity in what you were hitting
16 on a few moments ago, as far as the size of the signs
17 and when a waiver could be obtained from the
18 Department of Buildings. The minimum size that you
19 have is 36 inches by 48 -- 36 inches wide by 48
20 inches high -- ads up to 12 square feet of zoning
21 calculated signage. In answer to your question, I
22 haven't done any research, but I heard you just ask
23 the question a moment ago -- how many gas stations
24 don't have signs? Most everyone does have signs, but
25 most every gas station is maxed out on their signage

1 right now, as you can imagine, and the signage that
2 they do have in place is not just regulated by you
3 and the City of New York, but also by the brand that
4 they're carrying has a requirement in their lease
5 agreements with them that they advertise and display
6 in a certain manner. So in finding this balance,
7 they have to balance between the regulations and the
8 company that they're branded with.
9

10 The problem is going to be of course the
11 language and the regulations right now just simply
12 say at the Commissioner's discretion, going to
13 Department of Buildings. I think you're gonna find
14 yourselves with a lot of gas station owners going and
15 asking for that discretion and then having
16 Commissioner at Department of Buildings whose not
17 gonna have so much specific knowledge of guidelines
18 as far as to what they should be approving or what
19 they shouldn't be approving and you may find that
20 either the signs become, again, too much signage at a
21 site or too little signage at a site. That's really
22 the weakness that we see with it and I think you
23 called out on it yourself and Consumer Affairs called
24 out as well. It's just there's no -- it's sort of a...
25 it's a very well-tailored rule and then all of a

1 sudden they can see this huge door that anybody could
2 jump through and you don't know what the end result
3 will be.
4

5 To echo what you said a few moments ago
6 about the posting of all the grades, that was
7 something we did want confirmation of; I handed you
8 up a concept plan of a sign; I apologize it's in
9 black and white, our color function went down last
10 night when we were copying this. But you get the
11 gist of it and I think it's exactly -- we just wanted
12 to confirm if in your opinion and of what you desire
13 of the law to see create, if this is a sign that
14 would allow it; that would be consistent with that.
15 And you can see on the side, it's a 4-foot-high by
16 72-inch-wide total sign, which meets your 3 by 4
17 requirement and then you have every grade of gasoline
18 that's sold, as well as clearly indicating on the
19 left of the grade that it is and the cash price, as
20 the cash price.

21 So on behalf of my client, we wanna just
22 confirm that was something that you were envisioning
23 so that we could have some clarity on what we're
24 proposing, 'cause this would be the sign we would
25 propose. And that's all of our comments.

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2 CHAIRPERSON ESPINAL: Well thank you,
3 Eric. I just wanna start off by saying that as
4 Chair, it is my intention to be able to strike that
5 balance between the business and the consumers and I
6 wanna make sure that we don't over-regulate the small
7 businesses and the businesses, but at the same time,
8 make sure that our consumers are protected.

9 And looking at the sign, I have to say
10 this is something that I think is ideal; I guess the
11 only difference is that where you post cash on every
12 grade, you wouldn't have to do that, it would just
13 have to say it once somewhere, like for example,
14 under the shell, you know where you can clearly just
15 state that these are cash prices.

16 ERIC PALATNIK: Right, you don't have to
17 repeat it for each grade... [crosstalk]

18 CHAIRPERSON ESPINAL: Right. Right.
19 Yeah. Well I think that's it; [background comment] I
20 mean the sign looks great and this is something that
21 I would... [crosstalk]

22 ERIC PALATNIK: Great.

23 CHAIRPERSON ESPINAL: definitely look to
24 support.

25 ERIC PALATNIK: I'm glad to hear that.

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CHAIRPERSON ESPINAL: Uhm-hm.

ERIC PALATNIK: We look forward to your thoughts on the Commissioner's discretion; hopefully you could give Consume Affairs some guidelines so they get some good rules in place for the Commissioner [sic]... [crosstalk]

CHAIRPERSON ESPINAL: Well you know, after the hearing we'll circle back and see how we can all work together and work everything out [sic]... [crosstalk]

ERIC PALATNIK: Thank you. You've done a great job so far; we appreciate... [crosstalk]

CHAIRPERSON ESPINAL: Thank you; I appreciate it. Thank you, Eric. Well, that's it; let's conclude this meeting, the meeting's adjourned.

[gavel]

[background comments]

C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date March 4, 2015