

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON CONSUMER AFFAIRS

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

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

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

Julie Menin, Commissioner
New York City Department of Consumer Affairs

Nancy Schindler, Assistant Commissioner
Legal Affairs
New York City Department of Consumer Affairs

Amit Bagga, Deputy Commissioner
External Affairs
New York City Department of Consumer Affairs

Richard O'Hara, Assistant Director
Field Enforcement
New York City Department of Consumer Affairs

Mary Cooley, Director
City Legislative Affairs
New York City Department of Consumer Affairs

Melissa Chapman, Senior Vice President
Public Affairs, Brooklyn Chamber of Commerce
Appearing for Carlo Scissura
President and CEO of the Brooklyn Chamber

2 [sound check, pause]

3 [gavel]

4 CHAIRPERSON ESPINAL: Good morning. My
5 name is Rafael Espinal. I'm the Chair of the
6 Consumer Affairs Committee. Joining me from the
7 committee is no one yet, but I'm sure they will be
8 here shortly. Today the committee will conduct
9 oversight on supermarket regulation and consider one
10 bill, Intro 436. Supermarkets and grocery stores
11 play a vital role in our communities. They are the
12 key element in our food distribution system bringing
13 healthy foods to our neighborhoods. They're an
14 important part of our business community employing
15 tens of thousands of New Yorkers. They are also the
16 one retail establishment frequented by almost all New
17 Yorkers often on a daily basis. This quality of
18 necessity that remains a serious, yet also sensible
19 approach to regulation. This past summer the
20 Department of Consumer Affairs conducted an
21 investigation and enforcement action against Whole
22 Foods Market, one of the largest high-end supermarket
23 chains in New York City with respect to what the
24 department has characterized as systematic
25 mislabeling of and overcharging for pre-packaged

2 goods. DCA tested individual packages of 80
3 different types of pre-packaged products and found
4 all of the products had packages with mislabeled
5 weights. According to the agency, 89% of the
6 packages tested did not meet the federal standard for
7 the maximum amount that an individual package can
8 deviate from the average size weight. DCA has stated
9 that the overcharges from 80 cents for package of
10 Pecan PinGo (sic) to \$14.84 for a package of coconut
11 shrimp. This is a cause for concern considering that
12 some of the media have reported that Whole Foods are
13 often referred to as whole paycheck. The committee
14 hopes to learn the details of this enforcement--
15 enforcement action, the state of our supermarkets
16 from the agency's perspective and to discuss and
17 differentiate the enforcement issues DCA has
18 encountered with this industry.

19 Another area of concern is the collection
20 of sales tax. Food retail establishments must follow
21 a complicated unclear and often changing set of state
22 laws on which products are subject to various sales
23 taxes. For example, a plain bagel is untaxed, but a
24 buttered bagel is taxed. Honey roasted nuts are
25 taxed. Unroasted nuts are not. Even though it is

2 complicated, food retailers must properly apply the
3 tax code. DCA treats collecting taxes on a non-
4 taxable item as a deceptive trade practice under the
5 City's Consumer Protection laws, and issues notice of
6 violation if it observes such conduct. Earlier this
7 year, DCA proposed rules to codify this
8 characterization. The committee is interested in
9 learning the outcome of that rules hearing. Finally,
10 the committee is interested in the department's
11 experience with regards to item pricing violations.
12 For example, in past testimony DCA reported that it
13 has found violation of item pricing laws to be a
14 consistent and widespread problem. The industry has
15 encountered that in the age of computers and
16 scanners, item pricing and labor-intensive costly
17 outdated and actual overcharges are uncommon. New
18 York City is one of the few jurisdictions that still
19 requires an individual price sticker, or tag on any
20 individual items. In addition to shelf prices and
21 accurate price scanner readings, Intro 436 preserves
22 item pricing, but allows the department to issue
23 warnings rather than fines of instances when the
24 retailer has committed only a few violations. This
25 City Council, my Committee, the Administration and

2 the DCA have sought to ease the cost of doing
3 business in the City of New York, especially when it
4 does harm to the consumer, and we hope to continue
5 working on behalf of consumers in our city as well.
6 The committee will hear testimony from the agency,
7 the industry and other interested parties on this
8 matter, and I was just joined by my colleague Karen
9 Koslowitz of Queens. Thanks for joining us, and
10 would you please raise your right hand.

11 LEGAL COUNSEL: And please raise your
12 right hand. Do you affirm to tell the truth, the
13 whole truth, and nothing but the truth in your
14 testimony before this committee, and to respond
15 honestly to Council Member questions?

16 COMMISSIONER JULIE MENIN: Yes.

17 LEGAL COUNSEL: Thank you. Please state
18 your name, and begin your testimony.

19 COMMISSIONER JULIE MENIN: Well, thank
20 you so much. I'm Julie Menin, Commissioner of the
21 New York City Department of Consumer Affairs, and
22 it's a pleasure to be here today. So I want to thank
23 our Chair Espinal and members of the committee for
24 holding this important hearing. Let me take a moment
25 to introduce the colleagues who are here with me

2 today, Nancy Schindler, who is our Assistant
3 Commissioner for Legal Affairs, Amit Bagga our Deputy
4 Commissioner for External Affairs, Richard O'Hara our
5 Assistant Director of Field Enforcement; and Mary
6 Cooley, our Director of City Legislative Affairs. So
7 thank you first of all for inviting DCA to testify
8 today on Intro 436 as well as DCA's overall
9 regulation of supermarkets, specifically in relation
10 to the enforcement of New York City's law requiring
11 each item in supermarkets to be marked with a price,
12 which is also known as the Item Pricing Law. DCA's
13 overall mission, as you know, is to empower consumers
14 and businesses alike to ensure a fair and vibrant
15 marketplace. The agency, which is the largest
16 municipal consumer protection agency in the country
17 licenses approximately 80,000 businesses across 55
18 different industries. We resolve complaints between
19 consumers and businesses. We conduct patrol
20 inspections and legal investigations. We educated
21 businesses about laws and rules, and we also enforce
22 New York City's Paid Sick Leave Law, Commuter
23 Benefits Law and other labor-related laws. In
24 addition to licensing and consumer protection labor
25 related work, we also operate the Office of Financial

2 Empowerment. I'm certainly very pleased to be here
3 today to discuss supermarket regulations as well as
4 the proposed legislation you have in front of you
5 that would reduce the burdens of complying with the
6 item pricing law. DCA supports the goal of Intro
7 436, which is in line with steps the agency has
8 already taken to make enforcement more equitable and
9 less onerous on businesses since last year. These
10 steps, which together make up our Small Business
11 Relief Package were taken to realize Mayor de
12 Blasio's vision of significantly reducing fines on
13 small businesses throughout New York City. A key
14 example of the way that we've reduced fines on
15 businesses is a significant change in the way that we
16 assess fines on small groceries, bodegas, delis and
17 convenience stores for non-compliance with the
18 section of the law requiring each item to have a
19 price tag. This is different from the item pricing
20 section of the law that is the subject of today's
21 hearing, I would note. Prior to July of last year,
22 if a DCA inspector found that ten items of the same
23 exact type, for example cans of tomato soup of the
24 same brand or of the same size, were missing price
25 tags, DCA would have assessed ten counts worth of

2 fines, one for each can of soup. This practice
3 resulted in the assessment of extremely large fines
4 on businesses for the same type of violation for the
5 same set of products. Recognizing that this
6 enforcement practice imposed excessive burdens on
7 small businesses, we exercised our discretion and
8 began to assess only one count worth of fines per
9 violation type. Essentially this means that the fine
10 assessed for those ten cans of the same exact brand
11 of soup that were previously not marked with price
12 tags would now only be worth one, not ten counts.
13 This has resulted in a significant reduction of fine
14 amounts for owners of many of our city's small
15 businesses. Depending on the number of counts per
16 violation, fines in the past were often \$1,000,
17 sometimes up to \$10,000. With our fine reductions
18 that I just mentioned, owners have now been assessed
19 fines for the type of violation in the \$250 to \$1,200
20 range. This change was introduced as part of our
21 Small Business Relief Package, a series of
22 approximately two dozen reforms. Through these
23 reforms within a period of just one year, DCA reduced
24 the amount of fines assess on small businesses from
25 32.5 million in fiscal year 2014 to approximately

2 15.7 million in fiscal year 2015, a reduction o f
3 more than 50%. The number of violations issued
4 decreased by nearly 39% from 19,409 in fiscal year
5 2014 to 11,923 in fiscal year 2015. These reductions
6 in fines and violations on businesses represent the
7 agency and Mayor de Blasio's commitment to truly
8 making New York City a better place for small
9 business owners to operate. The reduction in the
10 number of violations issued was largely achieved by
11 issuing warnings for violations that do not
12 necessarily cause immediate consumer harm such as not
13 having a DCA license number on all printed materials.
14 It is notable, and I really want to emphasize this,
15 that these reductions were achieved while at the same
16 time increasing our consumer restitution by 70% over
17 the same time period, demonstrating that it is
18 possible to reduce violations and fines where there
19 is really no consumer harm while at the same time
20 being more aggressive than ever where there really is
21 consumer harm and predatory conduct. So we're very
22 proud of that result. In addition to the reduction
23 in violations and fines, patrol inspections are now
24 conducted on the spot in an owner's language of
25 choice. Each of our inspectors carries a laminated

2 card with 16 different languages listed. A business
3 owner or employee can simply point to the language
4 they wish to have the inspection conducted in, and it
5 is then conducted using an interpreter from Language
6 Line speaking on a cell phone with both the inspector
7 and the business representative in the language of
8 choice. This service, which is also available in
9 additional languages, helps to eliminate fear and
10 confusion on the part of business owners, and also
11 helps to increase information and access to
12 information for businesses. DCA also now offers
13 reduced settlement amounts to businesses and is
14 ensuring that inspections are conducted much more
15 equitably than they were in the past. Formerly
16 businesses in certain areas of the city were more
17 commonly subjected to inspections compared to
18 businesses in other areas. DCA is now using an
19 online mapping tool that compares block by block and
20 neighborhood by neighborhood where inspections have
21 been conducted to ensure geographic and neighborhood
22 equity. The agency has now expanded its business
23 education tools posting over 41 of our most commonly
24 used inspection checklists on our website in plain
25 language. Many of these checklists are available in

2 up to nine additional languages ensuring that our
3 city's immigrant small business owners who are the
4 backbone of the city's economy have access to crucial
5 information that enables compliance. As a former
6 small business small business owner myself, I know
7 how important it is to obtain clear, concise,
8 consistent information from the city about laws and
9 rules. In October of 2014, DCA introduced a new
10 legal ombudsman. So this is a new position that we
11 created, and that person is dedicated to answering
12 questions that businesses have about the laws that
13 DCA enforces. Our legal ombudsman has also conducted
14 dozens of presentations across the city on a variety
15 of topics, often assisted by translators who have
16 delivered these presentations in Spanish, Korean,
17 Mandarin, and Cantonese among other languages. DCA
18 also offers the city's first and only live chat
19 service, which gives business owners the ability to
20 easily ask questions during business hours without
21 having to visit DCA's licensing center or take
22 additional time away from customers to call in a
23 question. In addition to the reforms implemented
24 through the Small Business Relief Package that I just
25 mentioned, the agency now conducts reviews of laws of

2 laws and rules it enforces to determine the ease of
3 compliance. For example, in January 2014 following
4 the passage of a gas station signage law that placed
5 onerous and workable requirements on businesses to
6 maintain outdoor signs of a certain size, DCA
7 suspended the implementation of that law until a
8 legislative fix was enacted. DCA is also currently
9 reviewing a draft rule it has published that would
10 clarify the agency's authority to conduct inspections
11 to determine a businesses' compliance with State laws
12 regarding the collection of sales tax on specific
13 items. DCA is actively conducting a review of this
14 rule and has suspended the enforcement of this law
15 since December 2014. We have received comments from
16 the Food Industry Alliance, and are considering them
17 very carefully. I'm happy at the end of my testimony
18 to take any questions on that. These reforms reflect
19 DCA's commitment to realizing the Mayor's vision of
20 New York City as a place where small businesses to
21 thrive, and where consumer's rights are vigorously
22 protected.

23 I will now turn to DCA's regulation of
24 supermarkets, a key topic of today's hearing. With
25 respect to supermarkets in New York City, DCA has

2 been charged by the City Council and the State
3 Legislature to enforce the City's Consumer Protection
4 Law as well as portions of New York State's
5 Agriculture in Markets and general business laws.

6 Together, these--is the mic still working? Okay.

7 Together--I can talk louder if you want. Okay.

8 CHAIRPERSON ESPINAL: [off mic]

9 COMMISSIONER JULIE MENIN: Okay, great.

10 Together these laws establish comprehensive
11 regulations regarding weights and measures, item
12 pricing, receipt provision, signage and other
13 disclosure requirements in supermarkets and grocery
14 stores. It should be noted that the New York State
15 Department of Agriculture and Markets not DCA
16 licenses supermarkets and other similar retailers to
17 conduct business. DCA does license--I'm sorry. DCA
18 does issue licenses to many of these retailers for
19 the purpose of selling cigarettes and/or for opening
20 stoop line stands, which are the stands that are
21 found outside of stores on the sidewalk where produce
22 is commonly sold. DCA regularly inspects all of the
23 city's supermarkets for scanner and scale accuracy,
24 for pricing, selling expired over-the-counter
25 medication and charging tax on non-taxable item--

2 items among other regulations. DCA also enforces the
3 licensing laws with respect to cigarette retail
4 dealers and stoop line stands licenses. Supermarkets
5 encompass those retailers whose products consist
6 primarily of food, and which have several different
7 departments such a pre-packaged meats, seafood, deli
8 or bakery counters, and where there are several
9 checkout lines that have registers with scanners and
10 scaled. In calendar year 2015 to date, DCA has
11 conducted 995 supermarket inspections and has issued
12 243 violations for non-compliance with the Item
13 Pricing Law. In order to fulfill its mission as the
14 city's consumer protection agency, DCA does at times
15 conduct types of inspections that are aimed at
16 ascertaining levels of compliance with certain laws
17 and rules. When we do conduct such inspections, we
18 are certainly careful to do so in a manner that is
19 not overly burdensome to businesses, and we also
20 ensure that we focus on those laws that are designed
21 to protect consumers from significant harm. Between
22 September and December of 2014, DCA conducted more
23 than 120 supermarket inspections throughout the five
24 boroughs, and across several different chains to
25 determine if the stores were accurately weight pre-

2 packaged foods and to protect New Yorkers from
3 overcharging. The stores were randomly selected to
4 reflect the socio-economic diversity within New York
5 City's neighborhoods and to ensure that consumers
6 from all different income levels were protected from
7 overcharging. In order to do this, approximately 20%
8 of the stores inspected were selected from
9 neighborhoods with the highest levels of poverty,
10 another 20% from the second highest and so on and so
11 on and so on. As part of these inspections, our
12 inspectors first conducted a preliminary audit of
13 store-packaged goods meaning that they weighed goods
14 packaged in stores to determine if the weight on the
15 label was accurate. If they found that a particular
16 package had an incorrectly labeled weight, they would
17 then weigh additional packages of the same type of
18 product to determine if the problem of mislabeling
19 was confined to one particular package or if it was
20 perhaps more common and systemic. DCA found that
21 there was indeed non-compliance with this law, and
22 found that consumers were being overcharged for
23 products packaged in stores. The result of our
24 investigations demonstrate that supermarket
25 regulation is crucial to protecting consumers in New

2 York City, and we endeavor to ensure that businesses
3 that are largely complying with the law are not
4 subject to significant fines. As I mentioned earlier
5 in the testimony, DCA is actively engaged in constant
6 and consistent communication with businesses and
7 industry groups often in their language of choice
8 about how to comply with the law, and we support all
9 efforts to ease compliance. We believe that Intro
10 436 is such an effort, and I will now take the
11 opportunity to discuss our agency's views on this
12 bill.

13 DCA is supportive of the goals of Intro
14 436, which would allow the agency to issue warnings
15 in lieu of violations for the first time we observe
16 non-compliance with the Supermarket Item Pricing Law.
17 As is evidenced by the implementation of our Small
18 Business Relief package, which I spoke about, DCA is
19 committed to ensuring that businesses are not
20 subjected to onerous burdens and that they have an
21 opportunity to come into compliance before violations
22 are issued and fines are assessed. This said, item
23 pricing is important protection for consumers
24 particularly seniors, those with limited English
25 proficiency and lower income New Yorkers, all of whom

2 will be disproportionately affected by overcharges
3 resulting from a lack of item pricing. While
4 reducing burdens on businesses, Intro 436
5 simultaneously maintains these important consumer
6 protections built into the current Item Pricing Law.
7 We look forward to working with the Council on
8 refining their approach to enforcement proposed in
9 Intro 436. Rather than issue warnings, we recommend
10 that the Council authorize our agency to issue
11 curable violations for first time violators. We've
12 used this approach in other instances, and have found
13 that it is a very effective and approach to changing
14 behavior of businesses and at the same time making
15 sure that consumers are protected. Currently, DCA
16 manually keeps track of when warnings are issued to
17 retailers. While our inspectors do not have handheld
18 devices, which can provide on-the-spot information
19 about previously issued warnings, the agency is
20 exploring being able to provide our inspectors with
21 this very capacity. In addition to operational
22 concerns, it's important that the agency has the
23 ability to issue key curable violations as such
24 violations are still considered first violations,
25 meaning that subsequent violations would be

2 considered recidivist conduct, which carries stiffer
3 penalties. We believe that a business knowing that a
4 second violation would be considered recidivist
5 conduct will lead to a higher rate of compliance in
6 the future. We look forward to working with the
7 Council to incorporate the cure approach into Intro
8 436. Thank you very much for the opportunity to
9 testify, and we are all available to answer any
10 questions that you might have for us.

11 CHAIRPERSON ESPINAL: Thank you,
12 Commissioner. I also want to note that we've been
13 joined by Rory Lancman [coughs] of Queens. First and
14 foremost, I just really want to commend the agency on
15 the work you've been doing to reduce the amount of
16 fines 50% and as you also noted--what was it? You
17 also noted that violations issued decreased by nearly
18 39% while also increasing 30%--70% over the same
19 period on consumer restitution. So I think that's a
20 great job by the agency, and I really appreciate all
21 your hard work.

22 COMMISSIONER JULIE MENIN: Thank you very
23 much.

24 CHAIRPERSON ESPINAL: [coughs] As noted
25 in the Committee Report, there are over 5,700

2 supermarkets and grocery stores in the five boroughs.
3 How often are these establishments inspected?

4 COMMISSIONER JULIE MENIN: Okay. I'm
5 going to turn it over to Richard O'Hara to answer
6 that question.

7 RICHARD O'HARA: We try to get to the
8 supermarkets, because there are so many of them,
9 every two years. We--we try and make sure that we
10 comply with inspecting at least these scales at the
11 locations because they're required to be inspected
12 annually.

13 CHAIRPERSON ESPINAL: So what are--what
14 are the top violations you see that supermarkets
15 usually are--are--people ask for.

16 RICHARD O'HARA: Well, item pricing is--
17 is one of them.

18 CHAIRPERSON ESPINAL: [interposing] Uh-
19 huh.

20 RICHARD O'HARA: That's--that's up there.
21 Scanner accuracy. You know where they're
22 overcharging. When we do our undercover one for the
23 checkout counter--

24 CHAIRPERSON ESPINAL: [interposing] Uh-
25 huh.

2 RICHARD O'HARA: --um, the schools, the
3 customer scale not being either at the location or--
4 or it's not--it's not computed digitally. We also--
5 we also have the--the deli counters where they're not
6 displaying the--the--the prices of the deli items.

7 CHAIRPERSON ESPINAL: Uh-huh.

8 RICHARD O'HARA: And the--the, um, the
9 tail weight not being deducted from the deli items.

10 CHAIRPERSON ESPINAL: Right, and I'll
11 speak--

12 COMMISSIONER JULIE MENIN: [interposing]
13 I'd like--

14 CHAIRPERSON ESPINAL: Go ahead.

15 COMMISSIONER JULIE MENIN: And let me
16 just say that as Richie mentioned so item pricing is
17 the most common, and as I mentioned in testimony, in
18 fiscal year 2015 there were 243 counts followed by
19 customer scale accessibility 159 counts; sale of
20 expired medicine is 126 counts; scanner accuracy, 115
21 counts; refund policy, 75 counts. So those are the--
22 the five most common.

23 CHAIRPERSON ESPINAL: Now, speaking on
24 the scales and the weights of the items, the issues

2 you saw at Whole Foods, are these items weighed in
3 store or they were pre-packaged--

4 COMMISSIONER JULIE MENIN: [interposing]
5 These are pre-packaged.

6 CHAIRPERSON ESPINAL: --pre-packaged and
7 delivered into all the Whole Foods Markets. Okay.
8 Got you. Okay, now when it comes to item pricing--
9 well, actually, today I went to CVS and I went to buy
10 milk. Now, the--the--usually stores like CVS have
11 the shelf counter where--where they display the price
12 of the items instead of pricing each item. Now, the
13 item for the milk was--I mean the price for the milk
14 wasn't the say, how would DCA act when they see, for
15 example, that one item missing the price.

16 RICHARD O'HARA: Well, the--the milk is
17 actually exempt from item pricing.

18 CHAIRPERSON ESPINAL: So the milk is
19 exempt?

20 RICHARD O'HARA: Yes, they have--

21 CHAIRPERSON ESPINAL: [interposing] Why
22 is it exempt?

23 CHAIRPERSON ESPINAL: --they have certain
24 exempt items.

2 RICHARD O'HARA: Well, it's in the
3 Administrative Code that all the inspectors follow.
4 Um, you know, you have exemptions, you have frozen
5 juice, milk. You have frozen food that's sold in
6 plastic bag. You have baby food that's sold in jars,
7 ice cream. There's more. There's candy like snack
8 food that are--that are for a single serving--

9 CHAIRPERSON ESPINAL: [interposing] Uh-
10 huh.

11 RICHARD O'HARA: --that are less than
12 five ounces. You have--

13 CHAIRPERSON ESPINAL: [interposing] So
14 those are exempt from item pricing?

15 RICHARD O'HARA: They're exempt from item
16 pricing, yes.

17 CHAIRPERSON ESPINAL: That is because--
18 maybe because the prices fluctuate often or is it for
19 a reason?

20 RICHARD O'HARA: I really--I--

21 DEPUTY COMMISSIONER BAGGA: So these
22 exemptions are built are built into the
23 Administrative Code. I think for some reasons
24 they're practical considerations. For example, ice
25 cream a price tag I would imagine could very easily

2 melt once you take the ice cream out of the freezer.
3 For milk historically there have been major price--
4 price fluctuations in the price of milk and eggs. I
5 would venture to guess that that is part of it. I
6 can't speak to the basis of all of the exemptions.
7 This has been in the law for quite some time, but
8 there would have been a variety of reasons for why
9 these exemptions exist.

10 CHAIRPERSON ESPINAL: Okay. I'm going to
11 pass it on to Karen who actually authored the law,
12 and our adviser.

13 COMMISSIONER JULIE MENIN: It happens to
14 be my law in the '90s, and at that time [coughs] the
15 stores were really ripping off the people. I--I
16 think I visited probably so many supermarkets that
17 some of them I didn't even know existed. All the way
18 from New York to Westchester, and at that time, item
19 pricing was a very important thing, and, you know, it
20 still is. However, the fines that were put on the
21 owners of the supermarkets, and a lot of them now are
22 privately owned. You know, they--they come under a
23 name. For instance Key Food is owned separately by
24 different people. It's like a franchise, and many
25 others and, of course, now that A&P and Waldbaum's

2 have gone out of business, I know in Queens every A&P
3 or Waldbaum's is now a Stop & Shop. Um, so you're
4 dealing with just one person, one entity. Um, I
5 think it has to be revisited. At this time I'm on
6 both of these bills, and I think that we have to look
7 at it because when it was done we found that the item
8 pricing when the item pricing was done and they
9 stamped, you know, the cans and everything, it didn't
10 even make sense. They--they didn't correlate to what
11 was supposed to be. So I think now we can make these
12 changes, but at the time it was bad. People got
13 fined, and the fines were pretty steep, and it was
14 necessary. But I think everybody has learned their
15 lesson to a degree, and I think that people should be
16 warned. We don't want to put people out of business.
17 We want to keep them in business, and I think that,
18 you know, they're warned, and if you see they're
19 chronic well then, yes, then they should be getting
20 those fines. I think we have to protect a consumer.
21 That's also our responsibility to collect the--the
22 consumer, but at the same time I think we have to be
23 open to the people that run the businesses and own
24 the businesses. So I'm happy to sponsor these two

2 bills even though it's different than the bill. You
3 know, time moves on. Thank you.

4 CHAIRPERSON ESPINAL: Thank you. Sir.
5 [pause] Rory.

6 COUNCIL MEMBER LANCMAN: Yeah.

7 CHAIRPERSON ESPINAL: Yeah.

8 COUNCIL MEMBER LANCMAN: Good morning.

9 COMMISSIONER JULIE MENIN: Good morning.

10 COUNCIL MEMBER LANCMAN: Can you just
11 explain for me the difference between the warnings
12 that's contemplated in this bill and the cure that--
13 that you're saying might be more effective?

14 COMMISSIONER JULIE MENIN: Sure, well,
15 um--

16 COUNCIL MEMBER LANCMAN: [interposing]
17 And how--how does--

18 COMMISSIONER JULIE MENIN: [interposing]
19 Absolutely.

20 COUNCIL MEMBER LANCMAN: --how does--how
21 does the curing work?

22 COMMISSIONER JULIE MENIN: Well, the cure
23 is really important because it allows us to be able
24 to track it in the system. And so here you would
25 have 30 days to cure the violation, and so there are

2 a couple of advantages to the cure system versus the
3 warnings. One is the tracking of it. Two, as I
4 mentioned in the testimony, the second violation
5 would be viewed as recidivist conduct as opposed to
6 the warning system, which would not. And so we
7 believe that because there are important policy
8 reason behind item pricing, and the protection that
9 it affords to consumers, that's why we're
10 recommending cure versus the warnings.

11 COUNCIL MEMBER LANCMAN: So cure would
12 work different--different than a warning. The
13 inspector goes to the--the supermarket, sees a
14 violation. Instead of saying to the supermarket okay
15 you need to fix this, you've been warned, the cure
16 would be you need to fix this within 30 days--

17 COMMISSIONER JULIE MENIN: [interposing]
18 Uh-huh.

19 COUNCIL MEMBER LANCMAN: --or X number of
20 days.

21 COMMISSIONER JULIE MENIN: [interposing]
22 Correct.

23 COUNCIL MEMBER LANCMAN: And--and then
24 how does DCA know that that violation has, in fact,
25 been cured in that time period? Is there an

2 obligation on the part of the supermarket to--to--to
3 inform DCA or you send an inspector back or what?

4 COMMISSIONER JULIE MENIN: You send the
5 paperwork back in, but I'll turn it over to Nancy to
6 speak a little bit about that.

7 ASSISTANT COMMISSIONER SCHINDLER: [off
8 mic] So the--the cure requires--DCA will actually
9 issue a violation an, NOH with that charge in it.
10 Then, if the business produces proof of cure, which
11 is a certification, then we will--the business will
12 be found guilty of a violation.

13 CHAIRPERSON ESPINAL: Can you turn on
14 your mic, please?

15 COMMISSIONER JULIE MENIN: Oh, the mic is
16 on. You just need to sit closer.

17 ASSISTANT COMMISSIONER SCHINDLER: I'm
18 sorry. I was saying that the--under the Cure Law the
19 DCA inspector will issue a violation to that
20 business, and then if the business presents proof of
21 cure, the business will be considered to have pled
22 guilty to the violation, but will not be ordered to
23 pay a fine.

24

25

2 COUNCIL MEMBER LANCMAN: And what is the
3 nature of that certification? Is it something that's
4 notarized? Do they take a--what--what--what is it?

5 ASSISTANT COMMISSIONER SCHINDLER: It's
6 actually a form that DCA prescribes by rule, and it's
7 available online, and it's very simple to fill out.
8 It doe not have to be notarized, and the business
9 just certifies that they've corrected the violation.

10 COMMISSIONER JULIE MENIN: [off mic] It's
11 a self-certification.

12 COUNCIL MEMBER LANCMAN: Right, and so
13 for the--for the cure model does DCA let's say send
14 out an inspector to--to--to test whether or not
15 people are actually honestly certifying or, you know,
16 one of every 10 certifications someone from DCA is
17 going to go out and follow up just to make sure, and
18 also make sure that the supermarkets know that they--
19 they need to be honest.

20 DEPUTY COMMISSIONER BAGGA: So typically
21 that's--that's not a common practice. Partially
22 owing to just a set of very constrained resources, we
23 have a limited number of inspectors, and we would
24 like to believe a business when they say that
25 they've---they've self-certified that they've cured a

2 violation. However, what I will share with you is
3 that we do conduct complaint-based inspections. So
4 were we to receive a complaint, for example, about
5 the very same business that has self-certified that
6 they've cured a particular type of violation, we
7 then--we would then, of course, send an inspector to
8 inspect whether or not that violation--that
9 particular complaint--

10 COUNCIL MEMBER LANCMAN: [interposing]

11 You know, it--

12 DEPUTY COMMISSIONER BAGGA: --is cured.

13 COUNCIL MEMBER LANCMAN: --it sounds
14 similar to if someone gets stopped while driving and
15 they don't have their insurance card, which happens,
16 or they have an expired one, at least when this
17 happened in recent years ago you had X number of days
18 to provide DMV or whoever with proof of insurance,
19 and you were--you know, you were okay. But my last
20 question is, are there any consequences to a business
21 arising from being found guilty of this violation?
22 Even if there's no monetary fine does it affect their
23 license or anything--or anything else--

24 COMMISSIONER JULIE MENIN: [interposing]

25 Well, I--I'm--

2
3 COUNCIL MEMBER LANCMAN: --their school
4 or anything else.

5 COMMISSIONER JULIE MENIN: I'm glad you
6 asked that because it actually referred to the prior
7 question you just asked. So one of the reasons why
8 we're recommending the curable violation approach as
9 opposed to the warning approach is because again the-
10 -the penalties will be stiff the second time for
11 recidivist conduct. So your prior question I believe
12 very strong that that serves as a deterrent so we'll
13 get a higher amounts of proper self-certification.
14 To answer your latter question, yes. I mean there's
15 going to be the stiffer penalty, and that's where the
16 deterrents come into play.

17 COUNCIL MEMBER LANCMAN: So the only--the
18 only consequence of--of being found guilty of this
19 violation under this--the--the cure method is that a
20 future violation will have greater penalties.
21 There's no other impact on--again, they're licensed
22 to operate or, you know, we have a score grading them
23 like that, or anything--

24 COMMISSIONER JULIE MENIN: [interposing]
25 Correct.

2 COUNCIL MEMBER LANCMAN: --there is no
3 fine? (sic)

4 COMMISSIONER JULIE MENIN: Correct.

5 COUNCIL MEMBER LANCMAN: Okay. Thanks
6 very much.

7 COMMISSIONER JULIE MENIN: Great. Thank
8 you.

9 CHAIRPERSON ESPINAL: I just--I just want
10 to be clear on how these same issues, these fines.
11 So the supermarkets usually have shelf. In the
12 bodega usually each item is priced with a sticker
13 because they usually don't have the price on the
14 shelf. So if DCA walks into a bodega and finds one
15 item without a sticker on it, would you fine?

16 RICHARD O'HARA: No, the answer is no.
17 Um, you're only--you're not required to item price if
18 you gross \$2 million--less than \$2 million annually
19 in the previous calendar year. So for the purposes
20 of groceries and small bodegas, we hold them
21 accountable for truth in pricing, which is they need
22 to make--they need to have the price displayed at the
23 point of purchase or of the item that you're going to
24 purchase.

25 CHAIRPERSON ESPINAL: Okay.

2 DEPUTY COMMISSIONER BAGGA: So, I just
3 want to draw a distinction when we're referring to
4 item pricing here, it's a very specific subsection of
5 the code. It's 708(b)(1) where as truth in price
6 that--what my colleague just referred to is just 708.

7 CHAIRPERSON ESPINAL: Okay. So, how--how
8 would a supermarket be able to come into DCA and
9 prove it cured the--the pricing issue in the store
10 that this a violation for?

11 COMMISSIONER JULIE MENIN: Yeah, it's a
12 self-certification that we talked about. So we mail
13 them this paperwork. They can also get it online.
14 They self-certify and mail it back in.

15 CHAIRPERSON ESPINAL: All right, let's
16 talk about unlawful tax collection, and you've
17 mentioned or it was reported that Whole Foods has
18 also been cited for charging taxes on tax-exempt
19 items. This seems to be a common problem I guess
20 across the city. Why is that?

21 COMMISSIONER JULIE MENIN: It is a common
22 problem, and we are engaged in rule making on that to
23 try to clarify some of the circumstances around that,
24 but I'll pass it to Nancy Schindler to talk a little
25 bit about that.

2 ASSISTANT COMMISSIONER SCHINDLER: So we-
3 -I believe your question was why is that.

4 CHAIRPERSON ESPINAL: Uh-huh.

5 ASSISTANT COMMISSIONER SCHINDLER: Um,
6 and I--and I think that's a--that's a difficult
7 question to answer, and maybe, Amit, you are better
8 prepared to answer that I mean.

9 DEPUTY COMMISSIONER BAGGA: So, um, in
10 conducting research for our testimony for today, my
11 colleagues and I found that one of the challenges in
12 terms of this particular issue is that the State
13 often does not make it abundantly clear which items
14 are taxable and which are not. I'll give you an
15 example, candy is not taxable but cookies are. So
16 how do you define, for example, a Twix bar? Is it
17 candy or is it cookies? It's very difficult to
18 define, and it is often difficult for retailers to
19 clearly understand what they should be charging for
20 and what they should not. Of course, there are some
21 items for which the law is clear, and for those items
22 DCA historically has conducted for many, many decades
23 enforcement of this law. Temporarily it has been
24 suspended while we review the circumstances the
25 Commissioner mentioned around just how easy it is to

2 understand the State law that delineates which items
3 are taxable and which are not.

4 CHAIRPERSON ESPINAL: Has DCA done any
5 education outreach around this issue to supermarkets
6 being that it's so--such a common issue?

7 DEPUTY COMMISSIONER BAGGA: His--
8 historically--historically, we have not, but that is
9 one of the things that we are looking into. I think
10 we believe that if it is a law that we would be
11 enforcing that we would want to (a) fully understand
12 the law ourselves so that we many, in fact, conduct
13 exactly that type of outreach in education. As the
14 Commissioner mentioned in her testimony, we are
15 really committed to ensuring that we are proactively
16 and preemptively educating businesses about the laws
17 that we enforce so that they have the opportunity to
18 come into compliance before our inspectors arrive.
19 So certainly that is a particular issue that we are
20 taking very seriously into account in our assessment
21 of how we enforce this law or if we enforce this law
22 moving forward.

23 CHAIRPERSON ESPINAL: Okay, it's--I think
24 it would be helpful to incorporate this into the DCA
25 Business Education Based program. And earlier this

2 year we passed a law to expand it, and how we have
3 every year, and I think it would be very helpful for
4 supermarkets and the stores. [off mic] Do you have
5 a question? Okay. [background comments, pause] No,
6 we're good. Thank you, guys. I appreciate your
7 testimony.

8 COMMISSIONER JULIE MENIN: All right,
9 thank you so much. [pause]

10 CHAIRPERSON ESPINAL: Let's call up
11 Melissa Chapman from the Brooklyn Chamber of
12 Commerce. [pause]

13 MELISSA CHAPMAN: [off mic] Good morning--

14 CHAIRPERSON ESPINAL: Is it--is it on?

15 MELISSA CHAPMAN: It's on. Yes. Okay,
16 perfect. Good morning. My name is Melissa Chapman
17 and I serve as the Senior Vice President for Public
18 Affairs of the Brooklyn Chamber of Commerce, and I'm
19 delivering testimony on behalf of Carlo Scissura,
20 President and CEO of the Brooklyn Chamber. The
21 Brooklyn Chamber of Commerce is a membership based
22 business assistance organization that represents the
23 interests of over 2,100 member businesses as well as
24 other businesses across the Borough of Brooklyn. The
25 Brooklyn Alliance is a not-for-profit economic

2 development organization of the Brooklyn Chamber that
3 works to address the needs of business--businesses
4 throughout the Direct Business Assistance Program.

5 As the voice of the Brooklyn business community, we
6 strongly support the legislation being proposed

7 today. Small businesses are very important to a

8 healthy economy. They provide jobs, improve quality

9 of life for residents, and they also contribute

10 directly to economic development. However, business

11 owners are being inundated with fines and fees from

12 various city agencies, and when combined these

13 hurdles can really take away from valuable resources

14 need to operate a business. We applaud your efforts

15 to have this hearing today, and to discuss ways in

16 which the City can work with businesses to reduce the

17 burden associated with fines. In July of 2014, as

18 the DCA would have mentioned, they had announced a

19 launch of the Small Business Relief Package to

20 overhaul small business regulation, and increase

21 business outreach. As such, in our 2014 Annual

22 Member issue Member Survey, we asked our members to

23 tell us about what should be a top priority for the

24 de Blasio Administration following that particular

25 announcement? To that end, the combined total of 35%

2 of our members indicted that the reduction of fines
3 and/or fees as well as business education and/or
4 opportunities to cure violations should be a top
5 priority. Within that same survey we asked our
6 members to weigh in on various issues that may or may
7 not limit their success as business owners. Their
8 response was that government regulations, fines and
9 fees were cited as a problem, or a severe problem for
10 52% of business owners. We strongly believe that
11 replacing fines with warnings will help to reduce the
12 burdens of doing business in New York City. We also
13 agree with the provision that no more than one
14 inspection of the retailer's check-off will be
15 conducted within a 24-hour period. This will greatly
16 reduce interruptions especially during the peak hours
17 of operation and with that, we thank you for the
18 opportunity to testify on this matter.

19 CHAIRPERSON ESPINAL: Thank you, Melissa.
20 So the Administration has been touting that they've
21 reduced the amount of fines on small businesses. Is
22 this something that you're hearing on the ground as
23 well from your businesses?

24 MELISSA CHAPMAN: I have not heard
25 anything directly. I mean when we did the survey, it

2 was a year ago. We're about to do another survey.

3 So that might be a good way to kind of gauge the

4 response to see if it has been effective, and where

5 the perceptions are real to see if--if it's having an

6 effect on--on small businesses.

7 CHAIRPERSON ESPINAL: Okay, that would be

8 great to look at once you--once the--the Chamber is

9 able to produce that information.

10 MELISSA CHAPMAN: Sure.

11 CHAIRPERSON ESPINAL: You know, I have

12 another question. Do you have a lot of supermarkets

13 and small delis or groceries that are registered with

14 the--with the Chamber?

15 MELISSA CHAPMAN: Not that many. Overall

16 I would say maybe--we're 2,100 members. So within

17 that I would think it--it would probably be in the

18 range of about 40 that--that are supermarket deli

19 type retail establishments.

20 CHAIRPERSON ESPINAL: Now, supermarkets

21 are they usually independently owned or would you say

22 they're part of a chain?

23 MELISSA CHAPMAN: They're mostly

24 independently owned.

25 CHAIRPERSON ESPINAL: Okay.

2 MELISSA CHAPMAN: Yes, small businesses
3 that are, you know, had the business for a long time
4 within the family--

5 CHAIRPERSON ESPINAL: [interposing] Uh-
6 huh.

7 MELISSA CHAPMAN: --so they're pretty
8 much independent.

9 CHAIRPERSON ESPINAL: Okay. I also want
10 to not that we've been joined by Julissa Ferreras
11 from Queens. Thanks for joining us.

12 COUNCIL MEMBER FERRERAS-COPELAND: Good
13 morning.

14 CHAIRPERSON ESPINAL: Questions? No.
15 [background comments] All right, thank you, Melissa,
16 and again I look forward to seeing the information on
17 the survey.

18 MELISSA CHAPMAN: We'll certainly try to
19 gauge the--

20 CHAIRPERSON ESPINAL: [interposing] Yes.

21 MELISSA CHAPMAN: --effectiveness within
22 the--the past year.

23 CHAIRPERSON ESPINAL: Okay, thank you--

24 MELISSA CHAPMAN: [interposing] Thank
25 you.

2 CHAIRPERSON ESPINAL: --so much. All
3 right, thank you everyone for your testimony. Thank
4 you to my colleagues who are joining me at this
5 hearing. That's said, this is adjourned. Thank you.
6 [gavel]

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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 December 13, 2015