

**Testimony of Commissioner Julie Menin
New York City Department of Consumer Affairs
Before the
New York City Council Committee on Environmental Protection
Hearing on
Introduction 850: Regarding the Use of Air Conditioning Systems**

September 8, 2015

Introduction

Good morning Chairman Constantinides, Council Member Richards, and members of the Committee on Environmental Protection. I am Julie Menin, Commissioner of the Department of Consumer Affairs (“DCA”), and I am joined by my colleagues, Alba Pico, First Deputy Commissioner, Amit Bagga, Deputy Commissioner of External Affairs, Marla Tepper, Deputy Commissioner of Legal Affairs and General Counsel, and Mary Cooley, Director of City Legislative Affairs.

Thank you for inviting us to testify in support of Introduction 850 (“Intro 850”), which would require brick-and-mortar storefront businesses in New York City to keep their doors and windows closed while an air conditioner (“A/C”) or a central cooling system is operating. Intro 850 is an expansion of Local Law 38 of 2008 (“Local Law 38”), which only requires those stores that are a minimum of 4,000 square feet in size or part of a chain of five or more stores in New York City to keep their doors closed when the A/C or a central cooling system is running.

Intro 850 is being introduced in conjunction with Mayor de Blasio, who has made the protection of New York City’s environment and the reduction of harmful greenhouse gases a top priority. This bill will enable the city to make progress towards reductions in energy use and the generation of emissions. Nearly three-quarters of New York City’s greenhouse gas emissions come from energy used to heat, cool, and power buildings.¹ In the context of climate change and the need for a more sustainable and resilient city, the Mayor has committed to a significant reduction in emissions, and businesses, consumers, and City government all share a responsibility in working to reduce these emissions.

One of the easiest ways in which businesses in our city can curb their demand for energy is by keeping their doors and windows closed while the A/C is running. We know that many businesses leave their doors open with the A/C running during the hot summer months, a practice that might provide momentary reprieve from the heat to consumers or passersby, but is harmful to our city’s environment – as well as to a business’ bottom line.

DCA has been enforcing Local Law 38 since it went into effect. We fully support the proposed changes to the existing law and urge the Council to pass Intro 850. Once passed, the new law

¹ Press release, Office of the Mayor of the City of New York: <http://www1.nyc.gov/office-of-the-mayor/news/451-14/mayor-de-blasio-commits-80-percent-reduction-greenhouse-gas-emissions-2050-starting-with#/0>

will significantly reduce confusion on the part of business owners and reduce challenges the agency faces in ensuring compliance.

Energy and Environmental Benefits

The case for requiring businesses to keep their doors closed while the A/C is running is clear. According to the Mayor's Office of Sustainability ("MOS"), in 2013, commercial buildings were responsible for 10 million metric tons of greenhouse gas emissions in New York City, comprising approximately 20 percent of the City's total emissions.² Many of these emissions are generated by heating and cooling systems, which themselves are also often outdated and inefficient. Even as buildings are retrofitted to become more efficient, leaving doors and windows open while the air conditioning is on during the summer increases emissions and the cost of doing business. When a business leaves its doors open with a cooling system running, large amounts of cool air escape the building, forcing the cooling system to expend more energy to maintain the lower temperature. The expenditure of more energy increases emissions, which in turn contribute to pollution and climate change.

Based on data published by Con Edison, if just 1,000 businesses in New York City were to keep their doors open during the summer for eight hours each day, \$1 million would be added to summer electric bills and 2,200 tons of carbon dioxide would be released into the atmosphere, the equivalent of putting an additional 366 cars on the road.³ As New York City is home to tens of thousands of businesses, we know that requiring businesses to keep their doors and windows closed while the A/C is running could have a major impact on our City's environment and would put money back in the pockets of businesses and building owners.

It is with the important goal of reducing emissions that Intro 850's enforcement provisions have been designed. As Local Law 38 has been difficult to enforce, compliance has been challenging. Under Intro 850's provisions, small businesses will not face onerous burdens with respect to compliance and DCA will have an enhanced ability to conduct enforcement.

Outreach and Enforcement

As is the case with any new law that is passed regulating business practices, small businesses will need time to learn about, and come into compliance with, Intro 850's expansion of existing law.

Intro 850 would allow businesses to receive warnings, not fines, for the first violation observed before June 1, 2016, giving DCA, our sister agencies, and our partners such as chambers of commerce and industry associations, sufficient time to conduct outreach to businesses about the expansion of existing law. The agency is a strong proponent of business education efforts, and is deeply committed to raising awareness about this issue with small businesses. As many members of the Council are aware, on July 22 of this year, DCA undertook a major education and outreach

² The City of New York, Inventory of Greenhouse Gas Emissions, November 2014. Accessed June 2015.

http://www.nyc.gov/html/planyc/downloads/pdf/NYC_GHG_Inventory_2014.pdf

³ Con Edison, The Price of Open Doors. Accessed June 2015.

<http://www.coned.com/customercentral/brochures/Open%20door%20flyer.pdf>

effort to encourage businesses to “Shut the Front Door!” while their air conditioning is on. More than 200 volunteers, including many Council Members and other elected officials, visited several thousand businesses in all five boroughs to educate businesses about the environmental and fiscal impacts of keeping their doors open while running the air conditioning. The public awareness campaign included many components, including the distribution of a multilingual informational flier and a “cling” that a business could post on its front door, demonstrating that it is proud to “Shut the Front Door!” The campaign also featured social media engagement tools, and posters installed in bus shelters and on phone kiosks. Examples of these materials are in the folders you have received this morning.

Through our outreach efforts, DCA has communicated with business owners across all five boroughs about Local Law 38. While a large number of business owners have expressed support for the law and are readily complying, we have, of course, also spoken with business owners who have raised certain concerns, and we appreciate that Intro 850 addresses some of these concerns, and one in particular, which is related to sidewalk cafés.

As members of the committee are aware, DCA licenses businesses to operate sidewalk cafés in our city. As these cafés are often crucial sources of revenue for many restaurants and are indelible to New York City streetscapes and civic life, Intro 850 exempts restaurants with doors or full-length windows that must remain open so that sidewalk cafés can be serviced. There are just over 1,350 licensed cafés in New York City, a figure small enough compared to the total number of brick-and-mortar businesses in our city to justify an exemption, especially when the absence of one could have particularly adverse effects on a business’ revenue.

To ensure the bill is effective in achieving its goal of reducing energy use, Intro 850 also requires businesses to keep their windows closed while the A/C is running. Attendant to this requirement, DCA supports the exemption that allows for an exterior window to remain open if it is being used in direct relation to customer service.

Considering the exemptions provided for in the bill and taking into account the amount of money that businesses could potentially save by keeping their doors and windows closed, DCA believes the burden imposed on small businesses will be minimal. We are not aware of any studies, reports, or data that demonstrate a substantial correlation between keeping the doors open and increased profits, an absence that should underscore the strength of the environmental and fiscal cases supporting the passage of Intro 850.

Intro 850 will also enhance DCA’s ability to effectively enforce the existing law, which, as we have noted, only applies to chain stores with five or more locations in New York City or retail businesses that are 4,000 square feet or larger. When inspecting a business on patrol, DCA’s inspectors do not have the ability to easily determine the exact size of a business or whether or not it has more than five locations in New York City. Additionally, while business owners or landlords might have information about the exact size of a storefront area, managers or employees are neither privy to, nor can they easily access, such information. Between constraints faced by our inspectors and confusion faced by business owners, enforcement of this existing law has proven to be quite challenging.

Considering the importance of the law, however, DCA has prioritized the enforcement of existing law under Mayor de Blasio's leadership. In 2015 to date, the agency has conducted 1,357 inspections, a 132% increase over last calendar year, when we conducted 584 inspections. We have issued 19 violations and 267 warnings this year, also a significant increase from 2014, when only 64 warnings were issued. In 2015, more inspections to determine compliance with this law have taken place than in any year since the law went into effect.

By expanding the door and window closure requirement to nearly all storefront businesses, Intro 850 will take the guesswork out of enforcement with respect to square footage. If all businesses, with just a few exemptions, must comply with the law, our inspectors would no longer be forced to forego enforcement because they are uncertain of the size of a store. Additionally, by expanding the law, businesses are less likely to be confused about whether or not the law applies to them, which will hopefully encourage greater compliance.

Enforcement will also be more effective as a result of the reasonably higher penalties proposed in Intro 850. The current law, which requires DCA to issue warnings in perpetuity for all first violations and has a low fine structure, does not incentivize compliance. Intro 850 contemplates that chain stores are more likely to comply if they have to pay \$500 for an initial or \$1,000 for repeated violations, as compared to the current fines, which reach a ceiling of \$400. Non-chain stores, which are often smaller businesses, would still only be subject to fines that are similar to the current fine structure, with fines now proposed at \$250 for initial and \$500 for repeat violations. Additionally, DCA will no longer issue warnings for the first violation after June 1, 2016, which would also make the proposed penalty structure more of a deterrent.

Conclusion

New York City must play its role in reducing emissions and decreasing the demand for energy to guard against the ills of climate change. The implementation of Intro 850 will enable us to protect our natural environment and also foster a regulatory environment that is friendly to businesses.

Considering the significant environmental and fiscal benefits Intro 850 will provide to our city's environment and businesses, DCA urges the Council to pass this bill into law. Thank you for the opportunity to testify today. I will be happy to take any questions.