

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

**Oversight Hearing on
Used Car Sales in New York City:
Ensuring Consumer Protections and Safety in the Sale of Used Vehicles
Recalled by the Manufacturer**

**And on
Introduction 178 (Price Displays for Used Cars) and
Introduction 518 (Prohibiting secondhand automobile dealers from failing to repair automobiles
that have been recalled by the automobiles' manufacturers)**

October 28, 2014

Good afternoon Chairman Espinal and members of the Consumer Affairs Committee. I am Julie Menin, Commissioner of the Department of Consumer Affairs (DCA), and I am joined by several colleagues from the agency: Marla Tepper, General Counsel, Alba Pico, First Deputy Commissioner, Amit Bagga, Deputy Commissioner of External Affairs, Connie Ress, Associate Commissioner of Communications Marketing, and Douglas James, Senior Advisor.

I greatly appreciate the opportunity to speak with you about the two bills before the committee today - Intro. No. 178 and Intro. No. 518 - as well as many important issues related to the marketing and sales practices of secondhand auto dealers in New York City. It is the mission of DCA to empower and protect consumers as well as to educate and engage businesses to ensure a fair and vibrant marketplace. To that end, the agency licenses, regulates, and educates approximately 80,000 businesses across 55 industries in New York City in addition to engaging in wide-ranging enforcement of the City's consumer protection law.

We applaud the Committee for its attention to important issues related to secondhand auto dealers. In particular, I would like to recognize the leadership of Council Members Williams and Richards for introducing the bills we are discussing today. Both of these bills will enhance DCA's ability to protect consumers from improper practices in the used car marketplace. I will provide specific comments on each of these bills after I describe the agency's current work regarding this industry.

Overview of DCA's licensing and enforcement of used car dealers

DCA currently licenses 869 secondhand auto dealers across the five boroughs. The agency's oversight of used car dealers recognizes that purchasing a used car can often be the largest single purchase an individual or a family makes in a year or even over the course of several years. This is especially true for

lower-income New Yorkers, who often benefit from access to a car, but can also be subject to crushing debts by owning one.

In 2013 and 2014 to date, DCA has received nearly 500 complaints about secondhand auto dealerships and has secured more than \$1.1 million in relief and restitution for consumers. Because many consumers do not file complaints with the agency even when they have been deceived, DCA engages in two types of proactive enforcement: patrol-based inspections that address basic consumer and community based protections in addition to aggressive case-based enforcement directed to ensuring that consumers wronged by car dealers get back the money they are due and that dealers do not continue to engage in illegal and deceptive conduct.

Patrol-based inspections

DCA's inspectors conduct field inspections of secondhand auto dealers in all boroughs to ensure, among other things, that businesses appropriately display their license information, conspicuously post important signage about consumers' rights, keep required books and records, and provide bills of sale that contain legally-mandated information, such as a notice certifying that a purchased vehicle is in safe condition. DCA has also conducted sweeps of secondhand auto dealers in the past to ensure that they are selling cars that they have advertised. In a proactive effort to ensure that dealers are aware of how to comply with the law, DCA has now for the first time posted 41 of its most commonly-used inspector checklists online in several languages. Any business owner can access these checklists to see exactly what an inspector will be looking for. To date in calendar year 2014, DCA has conducted 615 inspections of secondhand auto dealers and issued 338 violations to dealers. These inspections help to ensure consumers are provided with key disclosures about the vehicles they purchase and the legal protections to which they are entitled and help inform larger cases brought by the agency.

Unlicensed activity

DCA is also continuing to deliver on Mayor de Blasio's mandate to support and empower law-abiding businesses by conducting enforcement of unlicensed secondhand auto dealers. In 2013, DCA issued 47 violations for unlicensed secondhand auto sale activity and the agency has issued 20 so far this year. The agency is currently working with the industry to address the illegal practice known as "curbstoning," which is the sale of used cars from the curb rather than from licensed secondhand auto dealers. "Curbstoners" disrupt the used car sales market by taking away business from legitimately licensed used car dealerships without the costs associated with licensing and maintaining property where their cars are displayed and often sell cars to consumers that are not roadworthy.

Aggressive investigations and prosecutions

Through its current licensing and regulatory authority, DCA's legal team aggressively pursues used car dealers engaged in deceptive and illegal marketing and sales practices. The agency's recent action against Planet Automotive, a secondhand auto dealer in Long Island City, Queens, exemplifies DCA's uncompromising approach against deceptive and predatory practices. DCA charged Planet Automotive

with using deceptive advertising to lure consumers and pressuring those consumers into agreeing to thousands of dollars in unwanted add-ons, such as extended warranties and theft protection, and then compelling those consumers to obtain financing through the dealership. Earlier this year, DCA issued charges against another group of dealerships engaged in fraudulent and deceptive conduct, including false advertising, forcing consumers to purchase add-ons, inducing consumers to sign blank documents, forging documents, and, disturbingly, communicating with a consumer in his or her native language and then having the consumer sign documents written in English with substantially different terms. In this and other secondhand dealer cases, the agency is focused on obtaining restitution for aggrieved consumers and ensuring that the dealership implements policies and procedures that will bring the dealership into compliance. Through these cases, the agency is sending a strong message to the industry that these types of abusive, illegal practices will not be tolerated.

DCA is the first and to our knowledge the only municipal agency in the country actively working to address a key loophole in federal law, which prohibits the sale of new vehicles with recalled parts but fails to ban the sale of used vehicles with such parts. Under New York State's Vehicle and Traffic Law, a vehicle must pass an 18-point inspection and be considered roadworthy in order to be sold. As the State is not currently inspecting secondhand vehicles for recalled parts, DCA is utilizing its authority to enforce New York City's Licensing and Consumer Protection Laws to investigate the extent to which secondhand auto dealers are selling cars that are the subject of safety recalls. The primary goal of these inspections is to make certain that no New York City dealer sells secondhand recalled cars until they are fixed. As the members of the Committee are aware, more cars have been recalled in 2014 than any other year on record. According to the National Highway Traffic Safety Administration ("NHTSA"), approximately 52 million cars have been recalled this year in the U.S., beating a previous record of 30.8 million set in 2004.¹ Reportedly, there are millions of cars sold each year to unsuspecting buyers that have been recalled but remain unfixed.² Rather than wait for tragic statistics, DCA sent subpoenas in July of this year to approximately 200 secondhand auto dealerships - nearly a quarter of all dealers citywide - in effort to discover whether dealers are selling unrepaired recalled cars, providing their policies on selling unrepaired recalled cars and revealing how many such vehicles they have sold in the past year.

Introduction 178 (Price Displays for Used Cars) and Introduction 518 (Recalls)

I will now provide specific comments on the two bills being considered before the Committee today. The first bill, Introduction 178, requires that secondhand auto dealers display a stamp, label, or tag that contains the total selling price, including any administrative, service or other fee charged by the secondhand automobile dealer, but exclusive of tax and fees for securing a registration and/or certificate of title. Improving price transparency is an important step to empower consumers to make informed purchase decisions. DCA supports the goal of this legislation to require more full and complete price disclosures. We offer the following suggestions to strengthen the proposed bill.

¹ See, e.g., Jim Gorzelany, "What to Do (And How To Find Out) If Your Car Is Being Recalled", Forbes, October 23, 2014. Available at <http://www.forbes.com/sites/jimgorzelany/2014/10/23/what-to-do-if-your-car-is-being-recalled/>

² See, e.g., Carfax, "Consumer Alert: 3.5 Million Recalled Cars Sold Online in 2013," February 11, 2014. Available at <http://news.carfax.com/2014-02-11-Consumer-Alert-3-5-Million-Recalled-Cars-Sold-Online-In-2013>.

We recommend that the Council include in this bill a requirement that the prices of any offered add-on products are also clearly and conspicuously posted. All too often, dealerships include in sales agreements thousands of dollars unwanted add-on options. Such tactics are of serious concern to the agency, as consumers are often tricked into purchasing expensive add-on items such as warranties, theft deterrent systems, insurance products, debt cancellation agreements (“gap insurance”), exterior or interior surface protection, and window etching. Requiring dealers to post prices of these products will allow the consumer to avoid being unwittingly duped into purchasing these products and to know the base cost of these items. This posting will also prevent another predatory practice: disconcertingly, many dealers will not only include such items to inflate the final sales prices, but will also deceptively steer consumers into loans with rates higher than necessary so that dealers can receive kickbacks from lenders, as the vehicle is actually being financed through the dealer at a rate lower than what has been sold to the consumer. Following specific comments on both bills, I will highlight serious concerns DCA has with respect to secondhand auto dealers’ financing practices.

To ensure that the price-posting requirement is meaningful, the agency also recommends the addition of language to the bill that would ensure the posted price is the same price that is advertised and that is reflected in the bill of sale.

Finally, to improve the efficacy of this legislation in meeting its intended purpose, we ask the Council to consider the following technical amendments to the bill:

b. For secondhand automobile dealers **required to be** licensed pursuant to section 20-265 of this code, such stamp, tag, label or sign displayed pursuant to subdivision a of this section shall state the total selling price, which shall include any administrative, service, **inspection**, or other fee charged by the secondhand automobile dealer, exclusive of tax and **optional** fees for securing a registration and/or certificate of title.

DCA would also like to work with the Council to make further amendments to the legislation to:

- Ensure these protections are also applied to unlicensed auto dealers by clarifying that the provisions of this legislation apply to all secondhand automobile dealers that are “required to be” licensed by DCA;
- Clarify that disclosure of any inspection fees is required; and
- Ensure consistency with DCA’s rules (6 RCNY 2-103(i)), as well as the New York State Attorney General’s Advertising Guidelines, which treat title and registration fees as optional fees (meaning that it is optional for a consumer to pay these fees through the dealer as opposed to obtaining title and registration independently).

Introduction 518

The second bill being considered today, Introduction 518, would amend the Administrative Code to specifically prohibit secondhand automobile dealers from selling any used automobile that a

manufacturer has recalled without repairing it first. Consumers purchasing used cars have an expectation, grounded in law, that the car they are sold is safe and does not have a dangerous defect that could cause serious harm, injury, or even death. Compared to other municipalities in the nation, New York City and DCA are in a unique position to investigate these businesses because of the authority DCA has under the City's licensing and consumer protection laws and because it is illegal to sell cars "as is" under state and City laws. Current City law, enforced by DCA, requires dealers to certify that their vehicles are "roadworthy" and prohibits dealers from misleading consumers about the safety of their vehicles. As I've discussed, regulating the sale of unrepaired recalled cars is already in DCA's jurisdiction and has been a priority for the agency. This legislation would confirm DCA's position and, by increasing penalties, would enhance the agency's ability to protect New Yorkers by ensuring dealers comply. DCA is supportive of this legislation. We anticipate that the industry will urge the Council to simply require disclosure of a vehicle's recall status prior to sale, an approach which we think is inadequate to protect the lives of consumers who buy cars, as well as those who use the roads. We recommend clarifying the proposed bill by defining "recall" to mean any manufacturer or NHTSA safety recall. Such a provision would not place an undue burden on auto dealers, as information about recalls is easily retrievable by inputting a vehicle identification number ("VIN") on the NHTSA's recall database website: www.safercar.gov.

To ensure that the bill can be enforced, we recommend adding the following requirements. First, dealers should be required to maintain documentation that they complied with this provision, including maintaining documents that they confirmed the recall status of the vehicle prior to sale and that the vehicle was actually repaired. Amending the proposed bill to provide the Commissioner with the authority to describe required documentation in rules would address this concern.

Requiring clear disclosures of the full selling price of a secondhand car and confirming that the sale of a secondhand car with unrepaired recalled parts is illegal and is subject to heightened penalties would ensure that consumers are better informed about how much purchasing a secondhand car would cost them, and, crucially, would reassure them that their lives and the lives of others are not being endangered by an unsafe vehicle.

At the same time, further reforms are necessary to protect consumers from predatory practices by used car dealers.

Dealer Financing Practices

Such reforms include stringent regulation of secondhand auto dealer financing practices. Dealer financing is not only often predatory, but can result in particularly dire consequences for New Yorkers of limited means. As I said before, a used car is often the largest purchase a low-income family may ever make. DCA, in consultation with the Mayor's Office, is currently considering additional measures to address predatory and discriminatory automobile financing practices and abusive practices.

Nearly 80 percent of secondhand auto sales are financed through dealers³, who frequently mark up used car loans by an average of an additional 2.91%.⁴ Too often, consumers believe the dealer has negotiated the best rate for them and are unaware that they are actually paying to increase the dealer's profit margin. These dealer markups can inflate the costs of loans by more than \$1,200 over a five-year term.⁵ Dealer markups also provide dealers with the incentive to sell consumers unwanted add-ons to increase the amount of financing on a loan and the related markup. A July 2014 New York Times article noted that subprime auto loans often come with interest rates that can exceed 23 percent.⁶ The Times's investigation also found that dozens of loans that included incorrect information about borrowers' income and employment, leading people who had lost their jobs, were in bankruptcy or were living on Social Security to qualify for loans that they could never afford.⁷

Through its Office of Financial Empowerment ("OFE"), DCA has since 2008 provided more than 50,000 hours of free, one-on-one, intensive financial counseling to New Yorkers at thirty sites across the five boroughs, and many of our clients have been saddled with auto-related debt. Among those who have such debt, DCA has found that average amounts are more than \$12,000 and that 70% of these same clients have annual incomes of \$36,000 or less. For such clients, auto-related debts can amount to over 35% of their annual incomes - amounts that can be difficult to manage, pay down, and ultimately, could leave them in paralyzing debt.

The fact that so many New Yorkers face such financial challenges renders a careful and critical assessment of secondhand auto dealer practices especially important. In addition to requiring full disclosure of the total selling price of a car and criminalizing the sale of unrepaired cars with recalled parts, DCA would like to work with the Council to that effective legislation would also require the posting of a "consumer's bill of rights," significantly increase regulation of high-pressured sales tactics, ban or cap dealer markups on loans, and also ban curbstoning. The inclusion of such provisions in legislation would significantly expand the positive impact of a statutory approach to regulating the industry and in particular ensure that New York City's most vulnerable consumers are better protected from harm.

We look forward to an ongoing dialogue with the Council on this topic. Thank you for the opportunity to testify today. I will be happy to answer your questions.

³ Delvin Davis, "The State of Lending in America & its Impact on U.S. Households: Auto Loans," Center for Responsible Lending, December 2012. Available at <http://www.responsiblelending.org/state-of-lending/reports/4-Auto-Loans.pdf>.

⁴ Delvin Davis and Joshua M. Frank, "Under the Hood: Auto Loan Interest Rate Hikes Inflate Consumer Costs and Loan Losses," Center for Responsible Lending, April 19, 2011. Available at <http://www.responsiblelending.org/other-consumer-loans/auto-financing/research-analysis/Under-the-Hood-Auto-Dealer-Rate-Markups.pdf>.

⁵ *Id.*

⁶ Jessica Silver-Greenberg and Mike Corkery, "In a Subprime Bubble for Used Cars, Borrowers Pay Sky-High Rates," New York Times, July 19, 2014. Available at http://dealbook.nytimes.com/2014/07/19/in-a-subprime-bubble-for-used-cars-unfit-borrowers-pay-sky-high-rates/?_php=true&_type=blogs&r=0.

⁷ *Id.*

[The following is only submitted, not delivered, testimony]

Summary of DCA's Recommendations

Intro. No. 178

- Include a requirement that the prices of any offered add-on products are also clearly and conspicuously posted.
- Add language to the bill that would ensure the posted price is the same price that is advertised and that is reflected in the bill of sale.
- Make 3 technical amendments to the bill:
 1. Clarifying that the provisions of this legislation apply to all secondhand automobile dealers that are “required to be” licensed by DCA (hence including those which are unlicensed);
 2. Clarify that disclosure of any inspection fees is required; and
 3. Clarify that title and registration fees are “optional” for a dealer to collect, ensuring consistency with both DCA’s rules and the New York State Attorney General’s Advertising Guidelines.
- The following edits to the bill text would accomplish these 3 points:
 - b. For secondhand automobile dealers **required to be** licensed pursuant to section 20-265 of this code, such stamp, tag, label or sign displayed pursuant to subdivision a of this section shall state the total selling price, which shall include any administrative, service, **inspection**, or other fee charged by the secondhand automobile dealer, exclusive of tax and **optional** fees for securing a registration and/or certificate of title.

Intro. No. 518

- Clarify the proposed bill by defining “recall” to mean any manufacturer or NHTSA safety recall.
- Require dealers to maintain documentation that they have complied with this provision, including maintaining documents that they confirmed the recall status of the vehicle prior to sale and that the vehicle was actually repaired.
 - This can be accomplished by providing the Commissioner with the authority to describe required documentation in rules would address this concern.

Additional Reforms

In addition to requiring full disclosure of the total selling price of a car and criminalizing the sale of unrepaired cars with recalled parts, DCA would like to work with the Council to:

- Require the posting of a “consumer’s bill of rights”
- Significantly increase regulation of high-pressured sales tactics
- Ban or cap dealer markups
- Ban curbstoning