



Jonathan Mintz
Commissioner

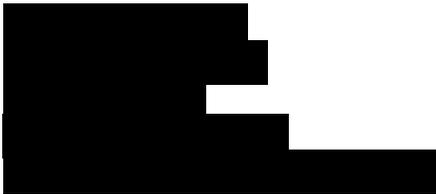
██████████
Staff Attorney

████████████████████
42 Broadway
9th Floor
New York, NY 10004

nyc.gov/consumers

September 3, 2013

BY U.S. MAIL AND E-MAIL



Re: Request for Interpretation of Rules of the City of New York, Title 6 § 5-59

Dear ██████████

This letter is in response to your inquiry asking whether a restaurant's imposition of a mandatory 18% "administrative charge" on the bills of all consumers who dine in the restaurant, irrespective of the size of the party, would constitute a "bona fide service charge" under Section 5-59(b) of Title 6 of the Rules of the City of New York ("RCNY"). You state that the restaurant would disclose the charge on the menu, which would also state that the charge was not a gratuity and that "no gratuity is expected." You further state that the charge will be used to "provide for a compensation system for all employees in the restaurant to participate, in an effort to equalize their compensations and to incentivize their performance." For the following reasons, the Department of Consumer Affairs ("Department") concludes that this charge is not a "bona fide service charge" under 6 RCNY § 5-59(b), and the restaurant may not impose the fee.

The Department's Restaurant Surcharge Rule, 6 RCNY § 5-59 (a) provides:

A seller serving food or beverages for consumption on the premises may not add surcharges to listed prices. For example, a restaurant may not state at the bottom of its menu that a 10 percent charge or a \$1.00 charge will be added to all menu prices.



The Rule itself provides guidance on what constitutes a “bona fide surcharge” and provides two examples of a “bona fide service charge.” They are:

(A) An additional charge for two persons splitting a meal.

This charge is a bona fide service charge because the consumer has requested an additional service that was not contemplated in the pricing of the item. That is to say, the consumer has requested that a meal (which was priced for consumption by, and for delivery to, one customer) be shared by two or more diners. The consumer is asking the restaurant to provide additional service by necessitating the provision of a second set of flatware, dinnerware, linens, etc. and the cleaning of those items once they have been used. It is fair for the restaurant to require the consumer to pay for this additional service and the rule allows imposition of this payment because the charge is a “bona fide service charge.”

(B) A minimum per person charge.

If conspicuously disclosed, a minimum per person charge is deemed to be a “bona fide service charge” because it is not imposed as a surcharge; that is, it is not imposed on top of the stated price of individual items, but reflects what the restaurant deems to be the point at which it is financially feasible to serve each customer at the prices it has established for the individual items on its menu.

The charge that the restaurant intends to implement is not consistent with these examples of “bona fide service charges.” The charge is not a charge for an additional service. The restaurant can factor employee compensation into its menu. Although the restaurant intends to disclose the mandatory service charge, the price for food and drinks listed on dine-in menus should include the full price for preparing and serving the meal, since such service is expected to be included when a consumer consumes food or beverages on the premises.

Regards,

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Staff Attorney