

**Testimony of the New York City Department of Consumer Affairs
Before the
New York City Council Committee on Consumer Affairs
Oversight Hearing on
Price Displays at Gas Stations in New York City
and on
Introduction 287 (Gas Station Road Signs)**

September 18, 2014

Good afternoon Chairman Espinal and members of the Consumer Affairs Committee. I am Amit S. Bagga, Deputy Commissioner of External Affairs at the Department of Consumer Affairs. I am joined by Marla Tepper, General Counsel of the Department of Consumer Affairs. I am here today representing Commissioner Julie Menin, who looked forward to testifying before you, but is currently in Washington, D.C. today for pre-scheduled meetings.

We greatly appreciate the opportunity to speak with you today about DCA's work regarding price displays at gas stations in New York City and about Introduction 287, a Local Law to amend the administrative code related to gas station road signs.

DCA is proud to be implementing Mayor de Blasio's vision for New York City by continuing to empower and protect consumers while also reducing onerous fines on small business.

The Agency's top priorities are to both educate business owners about the law and to facilitate compliance with the law. Since May 2014, we have undertaken many steps to achieve these goals. For the first time, all 41 of DCA's most commonly-used plain-language checklists are easily accessible to business owners through the Agency's website and DCA has made many of its resources available in several languages beyond those mandated by Executive Order, such as Bengali and Arabic.

Small business owners can also request an inspection in the language of their choice, as our inspectors can now conduct an inspection utilizing Language Line over a cell phone. DCA has also implemented a 24-point plan to reduce fines for minor violations, from reducing the number of counts for certain violations to issuing warnings instead of violations for small infractions.

DCA has expanded its assistance to businesses by providing an inspector in our licensing center at 42 Broadway to guide all new applicants, and we now also offer financial counseling to business owners through our Office of Financial Empowerment. Additionally, the Agency recently hired a new legal ombudsman, whose primary role will be to provide information to and answer questions from business regarding DCA's laws, rules, and eventually, hearing procedures.

It is in the pursuit of efficient, effective, and fair compliance that the Department of Consumer Affairs offers its position on the proposed legislation being addressed today.

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

In addition to ensuring accuracy at the pump, the Agency inspects gas stations for compliance with a number of other consumer protection laws and rules, including the posting of price signs, marking of fill ports, consistency of the unit price box on the pump and signage, and having a working air pump.

In fiscal year 2014, DCA conducted 1,611 inspections and issued 243 violations. Since July 1 of this year, fiscal year 2015, we have conducted 315 inspections and issued 40 violations through September 12, 2014.

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

In October 2013, in order to implement Local Law 9 of 2013, DCA issued rules, which became effective November 12, 2013, that established the size requirements of the newly mandated signs and required stations to display the road sign whether or not they charge one price for gas, irrespective of the payment type. This size requirement is a minimum of 60 inches wide and 36 inches high. The rules also require that, where the total selling price for purchases made with cash is less than for purchases made with another form of payment, such as debit or credit card, the signs disclose the total selling price for cash, debit card and credit card purchases. The rules also prescribe a minimum type size of 430 points. The previous rule did not require such signs, but only established the required content of a sign if the gas station chose to advertise the petroleum product for sale.

Based on concerns by the industry regarding the ability to post the prescribed road signs in compliance with zoning regulations and that the costs of the sign, DCA, under the direction of the office of Deputy Mayor Alicia Glen, decided to stay enforcement of the rule on January 24, 2014.

Introduction 287 would allow for gas station owners to apply for a waiver from DCA in instances when the prescribed size of the mandated road sign is deemed impermissible based on zoning regulations. We understand that business owners cannot be expected to comply with sign size requirements that contravene zoning regulations and therefore support the intent of this provision in the legislation.

We appreciate that the Council, through Introduction 287, has made efforts to address the challenges in enabling businesses to comply with existing law and also the challenges faced by the Agency in enforcing the law.

We must recognize at the outset that helping businesses comply with the existing law is a multi-faceted, multi-agency process. We look forward to working closely with the Department of City Planning, Department of Buildings, and the Mayor's Office to consider the most effective way to respect the City's zoning resolution while ensuring as many businesses are in compliance as possible.

The installation of exterior roadside signage is regulated by the Sign Enforcement Unit within the Department of Buildings. Signs must comply with regulations outlined in the NYC

Construction Codes and the NYC Zoning Resolution. One potential solution could require business owners, who are currently required by DOB regulation to obtain permission from the Sign Enforcement Unit in order to erect a roadside sign, to first seek written approval (or a denial) from DOB before a waiver determination can be rendered by DCA.

If the Department of Buildings does not approve the installation of a sign that is of the currently-required size and the denial of the permit is based on zoning requirements, then DCA could issue a waiver to the applicant, establishing that the applicant need not comply with the requirement for that particular gas station to feature a roadside sign. Our Agency does not take the position that signage laws can supercede zoning regulations and we do not recommend allowing additional signs on lots where such signs would violate zoning rules.

The proposed revision would streamline the waiver process for the applicant and for city agencies, and also render the law enforceable, as DCA's patrol inspectors, when observing the lack of a roadside sign as a gas station, could simply ask for the owner to produce proof of DCA's waiver.

This process, by which the appropriate city agencies are rendering relevant decisions, would ensure transparency and consistency in determining zoning requirements, reduce burdens on small business owners, and facilitate compliance.

It should be noted that pursuant to Local Law 9 of 2013, there are significant costs associated with business owners complying with signage requirements. We have been advised by both the Department of City Planning and the Department of Buildings that ensuring compliance with zoning can be an intensive process which requires significant City and business owner resources. Business owners would need to hire an architect to submit plans to DOB and pay filing fees even to receive an objection (which would be required to ascertain a DCA waiver.) The total cost to a business owner could be in the thousands of dollars.

With respect to the bill's current language regarding implementation, the proposed 120-day window after passage is unfortunately insufficient for DCA to engage in rulemaking and for businesses to go through the permitting process and obtain the signs or waivers. We recommend extending the time to add an additional 80 days.

Lastly, we do not take a position on the bill's provision to allow gas station owners to utilize LED lights to illuminate roadside signs, as jurisdiction regarding such usage lies with the Department of City Planning. The Mayor's Office is currently reviewing the proposed bill to determine whether there would be conflicts with the zoning resolution with respect to this issue.

We seek to work with you and your colleagues, Chairman Espinal, to consider a bill that is both equitable and enforceable.

Thank you for the opportunity to testify before you and the Committee today. Ms. Tepper or I will be happy to answer any questions you might have.