

**Testimony of the New York City Department of Consumer Affairs
Before the
New York City Council Committee on Consumer Affairs
Hearing on
Introduction 586 (Gas Station Road Signs)**

February 24, 2015

Good afternoon Chairman Espinal and members of the Consumer Affairs Committee. I am Alba Pico, First Deputy Commissioner of the Department of Consumer Affairs (“DCA”). I am joined by Mary Cooley, Director of City Legislative Affairs at DCA. I am here representing Commissioner Julie Menin, who regrets that she could not be present today.

We appreciate the opportunity to speak with you again about DCA’s work on price displays at gas stations in New York City, and about Introduction 568, a Local Law to amend the administrative code in relation to signs, posters or placards that advertise gas prices. 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.

The Agency’s top priorities are to educate business owners about the law and to facilitate compliance with the law. Since May 2014, we have implemented many reforms 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. We have educated thousands of business owners through outreach and education, presenting at hundreds of events and meetings. And we have made sure that businesses have a legal ombudsman who can help answer their legal questions on the Agency’s rules.

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 calendar year 2014, DCA conducted 1,424 inspections and issued 197 violations. Since July 1 of 2014 (fiscal year 2015), we have conducted 806 inspections and issued 101 violations through February 23, 2015.

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, as well as the cost associated with the signage, DCA, under the direction of the office of Deputy Mayor Alicia Glen, decided to stay enforcement of the rule on January 24, 2014.

We appreciate that the Council, through Intro. 586, 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. DCA understands that this legislation is meant to be read in concert with Introduction 287 of 2014, another bill intended to enable enforcement of the law. To that end, DCA has outstanding questions and comments about the legislation being discussed today, as well as Intro. 287.

Intro. 287 would allow businesses to seek a waiver from DCA if the minimum signage requirement would result in a violation of otherwise applicable zoning violations. As DCA stated in testimony from September 2014, business owners currently required by the Department of Buildings (“DOB”) to obtain permission from their Sign Enforcement Unit in order to erect a roadside sign could first seek written approval (or a denial) from DOB before a waiver determination could be rendered by DCA. Our Agency does not take the position that signage laws can supersede zoning regulations and we do not recommend allowing additional signs on lots where such signs would violate zoning rules.

As DCA also noted at that time, there are costs associated with complying with signage requirements. We have been advised by both the Department of City Planning (“DCP”) and DOB 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.

In order to enable more businesses to comply with the existing law, there must be further consultation with DOB, DCP, and the Mayor’s Office about the technical specifications in the

rules issued for Local Law 9 of 2013 and those described in Intro. 287, such as the ability to obtain a waiver and potential use of illuminated light-emitting diode (LED) lights.

Intro. 586 seeks to address other enforcement challenges by removing the requirement to advertise the selling price of each brand and grade of gasoline for each payment method. It would also reduce the size requirements of signage to 36 inches by 48 inches, which may be permissible within more zoning regulations. In addition, Intro. 586 creates disclosures for discounted rates.

DCA has some questions about the provisions of Intro. 586, which we look forward to discussing with the Council and representatives from the industry.

As proposed in Intro. 586, gas station signage must disclose that advertised total selling prices that reflect a discounted rate are only available with certain forms of payment. It is not clear that, where a discount is offered, all selling prices must be advertised. DCA is concerned that simply advertising a discount without disclosing all prices and, where relevant, the method of payment by which a consumer may not receive a discount, is not sufficient to inform consumers of options.

It is DCA's understanding that the reduction in the size requirement for signage is intended to enable most gas station owners to comply with the law, but it should be noted that local zoning regulations vary widely and it is not clear at this time the requirement prescribed in the legislation would apply to most gas stations. More information is needed from DOB and DCP about the scope and extent to which the proposed size requirement would conform to local zoning. In addition, if a waiver system is enacted, as proposed in Intro. 287, consultation with DOB and DCP will be necessary to establish a criteria and waiver application process.

Intros. 586 and 287 are intended to address different challenges with the enforcement of Local Law 9 of 2013. As such, with consideration of the questions and concerns outlined above, it is DCA's position that both introductions should be passed in tandem or combined into a single piece of legislation to amend the original law. As with Intro. 287, the proposed 120-day window for implementation in Intro. 586 after passage remains 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.

We seek to work with you and your colleagues, Chairman Espinal, as well as representatives of the industry, to consider a bill that is both equitable and enforceable.

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