

**Testimony of Tamala Boyd  
New York City Department of Consumer Affairs**

**Before the  
New York City Council Committee on Consumer Affairs and Business Licensing**

**Hearing on  
Introductions 823, 936, and 965**

**June 21, 2018**

Good morning Chair Espinal and members of the Committee on Consumer Affairs and Business Licensing. My name is Tamala Boyd and I am the General Counsel for the New York City Department of Consumer Affairs (DCA). Today, I will present testimony on Introduction 823, a bill that would allow bars and restaurants to impose surcharges unrelated to any additional services requested by consumers to the amounts already owed, so long as the bar or restaurant makes certain specified disclosures.

DCA protects and enhances the daily economic lives of New Yorkers, including consumers, workers and business owners, to create thriving communities. By supporting businesses through equitable enforcement and access to resources and, by helping to resolve complaints, DCA protects the marketplace from predatory practices and strives to create a culture of compliance. Through its community outreach and the work of its offices of Financial Empowerment and Labor Policy & Standards, DCA empowers consumers and working families by providing the tools and resources they need to be educated consumers and to achieve financial health and work-life balance. DCA also conducts research and advocates for public policy that furthers its work to support New York City's communities.

As a licensor and regulator, DCA hears from businesses both large and small every day. One of the things we've learned from these interactions is that, while New York City presents businesses with unique opportunities, those opportunities come with unique challenges. Because we recognize these challenges, DCA has made educating businesses and helping them understand and comply with our laws and rules major agency priorities. DCA conducts hundreds of outreach events including business education days, licensee open houses, online live chats, training webinars, and other events, each year. Last year, we rolled out our new Visiting Inspector Program, which provides new licensees with no-fine visits by a senior inspector to identify problems and help businesses correct them before a fine is issued. Thanks to this program, the first interaction that a new licensee has with a DCA inspector will be collaborative and educational, rather than potentially punitive.

Notably, DCA also collaborates with our sister agencies across the Administration to streamline the services we offer businesses, and to make the regulatory process more efficient. We routinely seek feedback from businesses on our education and outreach events and have even instituted business roundtables as critical feedback sessions for our Commissioner and senior staff.

In the hospitality industry specifically, DCA enforces key consumer protection and workplace laws, and licenses the sidewalk café activity of almost 1,300 restaurants across all five boroughs. All new sidewalk café licensees were offered VIP inspections. Our Licensing and Enforcement Divisions regularly interact with the industry, and our External Affairs Division has a direct line to many industry advocates. So, while we understand and appreciate some of the challenges particular to the hospitality industry, DCA opposes this bill's attempt to authorize the imposition on consumers of surcharges on top of the stated price of menu items, and unrelated to any additional service requested by the consumer. Currently, a DCA rule prohibits the imposition of such surcharges, but nothing in this rule prevents businesses from setting their menu prices at a level sufficient to cover their expenses, turn a profit, and grow their operation. What DCA's rule does prohibit are attempts to mask part of those prices as "surcharges."

Social science research, both from inside and outside the hospitality industry, has long indicated that the manner in which a price is presented can have a profound effect on how consumers perceive that price. For example, a recent study found that consumers rated menu prices that included an automatic service charge of 15% or less as better deals than menu prices that factored in the cost of service, even when the total amount paid by consumers was the same. Similarly, research has shown that consumers tend to be "price focused," meaning that they concentrate on the total price of an item or service, oftentimes to the exclusion of other fees or charges associated with a purchase.

DCA believes that consumers have a right to have terms and prices communicated to them in a way that they can understand and internalize. Allowing businesses to mask price increases as "surcharges" takes advantage of consumers' perception that they are getting a deal when, in fact, they are not. We believe that preventing that behavior is a common-sense consumer protection measure and thus we oppose Intro. 823 in its current form.

DCA will continue to work diligently to make it easier for businesses to understand and comply with the important protections for consumers and workers that we are charged with enforcing. We take our mission of helping consumers, workers and businesses very seriously and we are happy to engage in further conversations with you about any legislation that furthers that mission.

Thank you for the opportunity to testify today. I will be happy to take any questions.