

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend its rules to clarify legitimate (bona fide) restaurant service charges and to clarify restaurant labor-oriented surcharges.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 AM on December 10, 2025. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial +1 646-893-7101
 - Phone conference ID: 496 882 160#
- To participate in the public hearing via videoconference, please follow the online link:
 - Meeting Link: <https://tinyurl.com/7ryjw6va>
 - Meeting ID: 227 896 151 630 6
 - Passcode: rH3ti7oa

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by emailing Rulecomments@dcwp.nyc.gov. You can also sign up on the phone or videoconference before the hearing begins at 11:00 AM on December 10, 2025. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before December 10, 2025.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by December 3, 2025.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-702 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in the Department of Consumer and Worker Protection’s regulatory agenda for this Fiscal Year.

Where can I find DCWP’s rules? The Department’s rules are in title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rules

The Department of Consumer and Worker Protection ("DCWP" or "Department") is proposing to amend its rules relating to restaurant surcharges to:

- clarify the meaning of legitimate (bona fide) service surcharges,
- allow for a mandatory gratuity charge to consumers where the proceeds of such charge are provided to the restaurant's employees pursuant to a written agreement such as a collective bargaining agreement, and
- clarify that employers must still comply with applicable state law concerning minimum wages and gratuities.

In addition to clarifying existing rules related to bona fide service charges, this change would also ensure an appropriate balance between consumer and worker protection by allowing a charge for a mandatory gratuity for restaurant employees under limited circumstances while maintaining the requirement that such a charge be conspicuously disclosed to the consumer.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-702 of the New York City Administrative Code authorize the Department to make these proposed amendments.

New material is underlined.

[Deleted material is in brackets.]

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 5-59 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-59 Restaurant Surcharges.

(a) 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.

(b) A seller may impose a bona fide service charge [(such as an added charge for two persons splitting one meal, or a per person minimum charge),] if the charge is conspicuously disclosed to the consumer before [the] food or beverage is ordered. For the purpose of this subdivision, a bona fide service charge is a fee charged for services requested by a consumer, over and above what is included with the consumer's purchase of a menu item, including, but not limited to, an added charge for two persons splitting one meal, a mandatory gratuity for parties of eight or more, or a per person minimum charge.

(c) A seller may impose a charge required by a written agreement, including but not limited to a collective bargaining agreement, between a seller and its employees, if the charge is conspicuously disclosed to the consumer before food or beverage is ordered and the full amount of the proceeds from such charge is provided to the seller's employees; provided, however, that nothing in this subdivision shall be construed to supersede, alter or affect any provision of the New York Labor Law or any rule, regulation or wage order promulgated thereunder, including, but not limited to, section 196-d of the labor law and section 146-2.18 of Part 146 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, relating to minimum wage and gratuities.

(d) In this section, the term "surcharge" does not include tax.

**NEW YORK CITY LAW DEPARTMENT
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100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Relating to Restaurant Surcharges

REFERENCE NUMBER: 2025 RG 091

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: October 31, 2025

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Relating to Restaurant Surcharges

REFERENCE NUMBER: DCWP-65

RULEMAKING AGENCY: Department of Consumer and Worker Protection

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro
Mayor's Office of Operations

October 31, 2025
Date