



Comments Received by the Department of Consumer Affairs on  
Proposed Rules to Implement Local Law 34 of 2020

IMPORTANT: The information in this document is made available solely to inform the public about comments submitted to the agency during a rulemaking proceeding and is not intended to be used for any other purpose

**New York City Hospitality Alliance**  
**Comments on Proposed Rules on Cashless Establishments**  
August 3, 2020

The New York City Hospitality Alliance ("The Alliance"), a not-for-profit trade association representing restaurants and nightlife establishments throughout the five boroughs submits the following comments of the proposed rules on cashless establishments.

Over the past few months, the Mayor has repeatedly made public statements assuring the city's struggling bars and restaurants that they have his administration's support. "This is the greatest restaurant city in the world," said the Mayor on June 18, noting "I've talked to a lot of restaurant owners, they've been going through so much the past months, just trying to figure out, could they keep their businesses alive." We thank the Mayor for his continued support, and applaud him on his leadership with the outdoor dining program, which has helped countless restaurants keep their doors open a little bit longer.

But no amount of goodwill and creative policies can erase the impact of COVID on the greatest restaurant city in the world. During this treacherous time for an industry that employs so many and plays such an important role in forming the fabric of our neighborhoods, DCA should not be taking an aggressive rulemaking approach that promises to add yet another "gotcha" fine to the list of straws that were already breaking the camel's back before COVID began.

Yet if these rules are adopted in their current form, that is exactly what would happen. We therefore strongly suggest the following changes:

**1. A presumption is not necessary**

The Department justifies its proposed presumption by claiming that establishing violations through test purchases using cash are too costly and inefficient to perform. We struggle to understand how. The Department routinely conducts test purchases using cash in connection with several license categories, including newsstands, Tobacco Retail Dealers, and Electronic Cigarette Retail Dealers. Why would test purchases in this context be any more costly or inefficient?

**2. The presumption must be rebuttable**

The City Council made it unlawful for businesses to refuse to accept cash as a form of payment, but created several exceptions to that general rule. Denominations over \$20 may be refused. Telephone or internet-based transactions are exempt. Businesses that offer a machine that converts cash to a prepaid card are exempt. The presumption proposed by the Department does not accommodate any of these exceptions, or for common scenarios such as inspector mistake, recalcitrant employees, and the like. By creating an irrebuttable presumption, the Department has essentially created a strict liability rule more severe than the statute passed by the City Council. As a basic matter of due process, businesses must have the opportunity to rebut a categorical presumption based on facts that require inference to establish a violation.

### **3. The first violation should be a warning**

This law will be one more of thousands regulating our City's small businesses. Small business owners should not be constantly tagged with "gotcha" fines for first-time violations that do not directly endanger public health, safety or welfare. The Department notes that no cure period is provided in the statute, but that minimizes what the City Council did in articulating the penalty. The Council set a *maximum* penalty but no minimum penalty. The Department therefore has all the authorization it needs to set a first time penalty as a warning letter, or a nominal fine. If the Department insists on the fine as currently proposed, that is the Department's anti-business decision, not the City Council's.

### **4. The Council did not authorize the Department to create a penalty for "violating the presumptions"**

We are vexed by the Department's decision to propose an independent penalty schedule for violating the proposed presumptions. By the Department's own account, the presumptions are needed to *facilitate* the Department's enforcement of the *statute* passed by the Council. Dubious as it is that the Council authorized the Department to utilize presumptions, the Council *certainly* did not authorize the Department to create an independent violation for such presumptions. The Department is conflating an evidentiary rule of convenience with an independent violation.

Moreover, this is a clear case of double dipping. In what factual scenario would a business be found in violation of the statute but not the rule? Conversely, if there is a factual scenario where a business is found in violation of the rule and not the statute, that raises doubts as to the rule's validity.

We look forward to answering any questions and appreciate your consideration of our comments regarding this proposed rule. Please contact executive director Andrew Rigie at [arigie@thenycalliance.org](mailto:arigie@thenycalliance.org) for more information.

Respectfully submitted,

NYC Hospitality Alliance



Stuart Appelbaum, *President*  
Jack C. Wurm, Jr., *Secretary-Treasurer*  
Joseph Dorismond, *Recorder*

**Retail, Wholesale and Department Store Union**

**New York City Department of Consumer Affairs  
Testimony regarding new rules to implement Local Law 34 of 2020, which prohibits food  
stores and retail establishments from refusing to accept payment in cash  
August 3<sup>rd</sup>, 2020**

My name is Josh Kellermann and I am the Director of Public Policy for the Retail, Wholesale and Department Store Union, RWDSU. We represent approximately 100,000 workers, including workers in retail and grocery stores, where thousands of cashiers work every day. All of our union employers accept cash.

I want to thank DCA for its leadership on this issue. Amid the COVID-19 pandemic it can seem that these regulations are ancillary to the task at hand. I want to highlight that particularly in a moment of high unemployment and economic decline, more and more people, particularly people of color, will be unbanked or underbanked. These communities need access to basic goods and services that people with debit and credit cards take for granted. There is no better time than now to finalize the regulations that ensure the ban on cashless businesses has teeth.

I'd also like to note that the safe handling of cash is of utmost importance. We suggest the city work closely with the state and the CDC to ensure that there are clear standards that are conspicuously posted in workplaces demonstrating the safe handling of cash.

These regulations do two primary things:

- Create a presumption that a business is in violation of the law if it displays a sign representing that it does not accept payment in cash from consumers, or if an employee or agent of such food store or retail establishment represents that it does not accept cash, or if it has a sign saying that it charges higher prices for cash transactions.
- Create a penalty schedule.

The two parts of the proposed regulations are essential because they create clear standards for businesses to follow, create a clear penalty structure, and ultimately facilitate enforcement of the ban on cashless businesses. A law is only as good as its enforceability and this will tighten up the enforcement regime.

It is hard to overstate the value of this law and its attendant regulations:

- Communities of color, low-income, disabled, and other marginalized households go unbanked at rates far higher than the national average. Close to 17% of Black households and 14% of Latinx households are unbanked, compared to an average of 6.5% nationally and an average of white households of only 3%.
- About one in five households have no credit, making it difficult for these households to access credit cards.

- Many people of color in NYC can't even find a bank branch near them. Data shows that in NYC neighborhoods of color, there is just one bank branch, on average, for every 10,000 residents, compared to 3.24 branches for every 10,000 residents in all other NYC neighborhoods.
- Amazon is one of the most notorious cashless businesses (although they have apparently changed this practice in NYC in response to the city law). Amazon, credit card companies, and cashless enterprises promote the cash-free economy but fail to address its financial burden and exclusion of low-income New Yorkers and communities of color. In fact, Amazon and other cashless institutions encourage a "FinTech Jim Crow" by restricting the places where people of color can shop, eat, and receive basic services. By refusing to serve low-income New Yorkers and communities of color, establishments like Amazon carve out niches for gentrification through cash exclusion in an already unaffordable city.

Thank you for your work on these regulations and we look forward to their adoption.

Josh Kellermann

## **Public Comment:**

### **Proposed Rules regarding the Prohibition of Cashless Establishments**

**By: Alex DeWitt**

"The Department of Consumer Affairs ("DCA" or "Department") is proposing to add new rules to implement Local Law 34 of 2020 (LL34), which prohibits food stores and retail establishments from refusing to accept payment in cash and further prohibits food stores and retail establishments from charging a higher price to consumers who pay for commodities with cash, rather than through a cashless transaction. The intent of LL34 is to ensure that all New Yorkers, including those who are unbanked or underbanked, can make retail and food purchases using cash."

## **Introduction:**

Thank you for the opportunity to comment on this proposed law in New York. My name is Alex Dewitt. I am a City and Regional Planning program graduate candidate at Pratt Institute in Brooklyn (Fall 2020). Prohibition on cashless businesses has become a recent topic of discussion in the news cycle and among small business owners across the country. I believe that the city is taking the correct action with this law. Currently, cashless businesses are discriminatory, and I believe they should be prohibited, and violators should be penalized heavily. In the following comment I will provide support for this opinion and conclude with my thoughts on the future. Thank you for the time given to read my words.

## **The Facts:**

Cashless businesses are discriminatory on the basis of income, and subsequently race and ethnicity as these variables frequently overlap (NW et al., n.d.) (*Ethnic and Racial Minorities & Socioeconomic Status*, n.d.). This is because there are significant barriers to entry into the banking system. To acquire a debit or credit card in the U.S, it is necessary to provide legal identification, and a social security number. Those members of the population that do not have access to a bank account can no longer participate in a cashless economy.

Persons that do not have access to a bank account are considered "unbanked" and as of 2017, make up about 6.5 percent of households in the U.S or roughly 8.4 million people. An additional 18.7 percent of U.S households or roughly 24.7 million people are considered "underbanked" meaning that they

“had a checking or savings account but also obtained financial products and services outside of the banking system” (FDIC: 2017 FDIC National Survey of Unbanked and Underbanked Households, n.d.).

In a 2019 Consumer Diary conducted by the Federal Reserve Bank of San Francisco, it was found that:

### 2018 Payment Instrument Use by Merchant Type

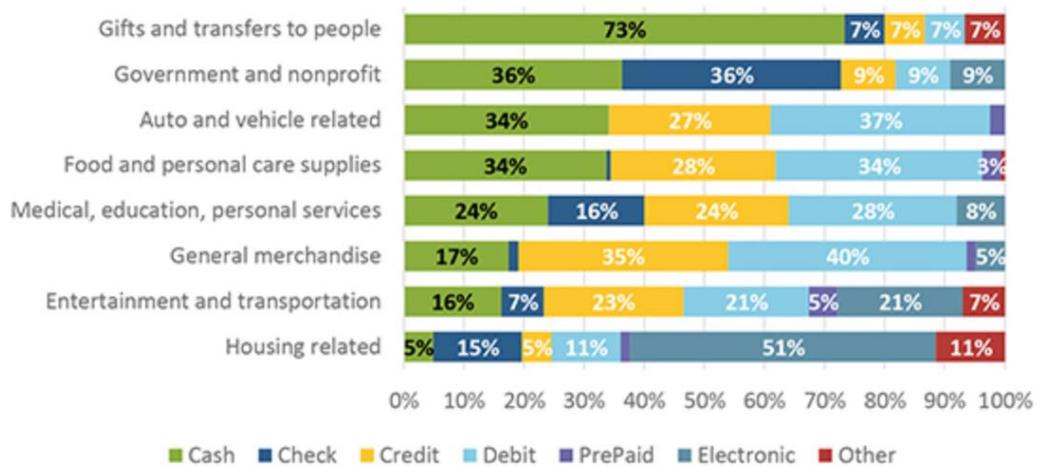


Figure 1 source: <https://www.frbsf.org/cash/publications/fed-notes/2019/june/2019-findings-from-the-diary-of-consumer-payment-choice/>

“While participants used cash at a range of merchant types, the total number of transactions varied dramatically by merchant category. The largest share of payments take place for food and personal care supplies, where consumers make an average of 16 payments each month. Within this merchant category, participants used cash and debit cards most often and to an equal degree, 34 percent each, accounting for approximately five payments per person per month. Because the 16 purchases consumers made in a month for food and personal care supplies is more than double the purchases they made for general merchandise, cash use on food and personal care expenditures is a key component of overall cash usage “

In addition to this finding it is important to note that cash dominated in small transaction (49 percent of transaction of 10 dollars or less) and was most popular amongst those 25 and younger as well as 55 and older (2019 Findings from the Diary of Consumer Payment Choice, n.d.).

## **Opinion:**

Now that we have an understand of who is using cash and who would be discriminated against if cashless businesses were to continue in the city and expand, I will interject my opinion on the facts. Personally, I do not buy the argument put forth by some businesses that any legislation prohibiting cashless businesses slows down technological progress because these laws as they are written do not prevent consumers from not using cash. No one is mandating the use of cash. The cashless economy very well could be the future as access to technology and financial institutions becomes more accessible. These laws are put in place so that all New Yorkers can take place in the economy and have access to necessities at all walks of life. I believe that these policies are a convenient way to mitigate risk from a business perspective by covertly banning undesirables from using their location. Its exclusion masquerading as convenience and progress which is not a new concept.

On a more pragmatic note, I think it would be silly to allow these businesses to disenfranchise such a large section of the economy, both in household percentage and given the fact that cash makes up such a large percentage of food and retail transaction. One of the government's jobs whether anyone reading this will admit it (and I will interject here that I hate that this is the reality) is facilitating the movement of capital. This law just makes sense from both an equity perspective (protecting those without access to banks) and from an economic perspective. This almost never happens and so I think it makes sense to prohibit these discriminatory business models.

## **Conclusion:**

I whole heartedly support this prohibition and hope to see it enforced regularly because not only is it discriminatory which is enough to warrant the law but it is also foolish and dishonest. Progress will continue regardless of the law decided upon here. This will not take us a step back, it will only take us a step towards a more just and fair society.

Lastly, I will end with an anecdote to remind all of us to stay humble. My first year living in New York, I lost my wallet in an uber. This had all my identification, debit and credit cards inside and suddenly I was unbanked. It can and probably will happen to any one of us. As I wandered around the Lower East Side, I came to a small business selling drinks and small foodstuffs, I waited in line and ordered and was told that they did not take cash. It was embarrassing but also frightful as I realized that although I was thirsty, hungry and had adequate legal tender I was denied access to a fair transaction. As a side note, many businesses require purchase of something to even use the restroom and so I was denied access to necessities in the blink of an eye. It could have been anyone of us and that's not right.

**Sources:**

*2019 Findings from the Diary of Consumer Payment Choice*. (n.d.).

Federal Reserve Bank of San Francisco. Retrieved July 29, 2020, from <https://www.frbsf.org/cash/publications/fed-notes/2019/june/2019-findings-from-the-diary-of-consumer-payment-choice/>

*Ethnic and Racial Minorities & Socioeconomic Status*. (n.d.).

<https://www.apa.org>. Retrieved July 29, 2020, from <https://www.apa.org/pi/ses/resources/publications/minorities>

*FDIC: 2017 FDIC National Survey of Unbanked and Underbanked Households*. (n.d.). Retrieved July 29, 2020, from

<https://www.fdic.gov/householdsurvey/>

NW, 1615 L. St, Suite 800 Washington, & Inquiries, D. 20036 USA 202-419-

4300 | M.-857-8562 | F.-419-4372 | M. (n.d.). Racial and ethnic

income inequality in America: 5 key findings. *Pew Research*

*Center*. Retrieved July 29, 2020, from

[https://www.pewresearch.org/fact-tank/2018/07/12/key-](https://www.pewresearch.org/fact-tank/2018/07/12/key-findings-on-the-rise-in-income-inequality-within-americas-racial-and-ethnic-groups/)

[findings-on-the-rise-in-income-inequality-within-americas-racial-and-ethnic-groups/](https://www.pewresearch.org/fact-tank/2018/07/12/key-findings-on-the-rise-in-income-inequality-within-americas-racial-and-ethnic-groups/)



clare wiseman

Comment:

This is an important rule. Not all people have access to banks or lines of credits, and no one should be punished for that lack of access. Cashless business or business that charge a higher price to pay with cash have a disparately negative impact on poor people and people of color. That is not acceptable.

Alejandro Varela

Comment:

To Whom It May Concern: I support this new rule because no-cash businesses discriminate against poor and working-class people who are disproportionately Black and brown, and who face barriers to obtaining credit cards (just as they do home loans, etc). These no-cash establishments also discriminate against computer unsavvy people, who are disproportionately older and maybe with certain disabilities, for whom navigating the various electronic payment methods is a great barrier. I'm not opposed in general to moving toward different systems of payment, but they must be equitable in their access. Thank you, Alejandro Varela