



Comments Received by the Department of
Consumer and Worker Protection on
Proposed Rules related to Restaurant Surcharges

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

From: [Andrew Rigue](#)
To: [Jung, Karline \(DCWP\)](#); [Ortiz, Carlos \(DCWP\)](#); [Radecker, Hali \(DCWP\)](#); [Aldana, Miriam \(DCWP\)](#); [Revina, Reina \(DCWP\)](#)
Cc: [Andrew Rigue](#)
Subject: [EXTERNAL] 12.10.25 Comments on DCWP Restaurant Surcharge Rule
Date: Friday, November 14, 2025 6:26:25 AM
Attachments: [12.10.25 Comments on DCWP Restaurant Surcharge Rule.pdf](#)

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Hi team. Hope you're well. Please accept our below/attached comment for the record and confirm receipt. Thank you and have a great day!

(Attached and below)

December 10, 2025

Comments of the NYC Hospitality Alliance on the Department of Consumer and Worker Protection's proposal to amend its rules to clarify legitimate (bona fide) restaurant service charges and to clarify restaurant labor-oriented surcharges.

The New York City Hospitality Alliance is a not-for-profit association, representing thousands of restaurants, bars, and nightclubs across the five boroughs affected by the Department of Consumer and Worker Protection's ("DCWP") restaurant surcharge rule. We submit these comments on the agency's proposal to amend its rules to clarify legitimate (bona fide) restaurant service charges and to clarify restaurant labor-oriented surcharges.

We appreciate and commend DCWP for its effort to incorporate many years of Department of Consumer Affairs ("DCA") opinion letters regarding restaurant surcharge rules into formal regulation. Codifying these long-standing interpretations will bring clarity for restaurants, consumers, and government alike. However, we do question the timing of this proposal after so many years – it seemed to come out of nowhere - and we question why the agency did not seek industry feedback prior to proposing it.

We have long been critical of this decades-old rule—which we understand was originally implemented in response to some restaurants adding undisclosed surcharges to beef prices during a market spike in the 1970's. It has since remained on the books and continues to restrict restaurants from adding clearly disclosed surcharges for other purposes that could not have been contemplated when the rule was originally promulgated. Restaurant surcharges are widely permitted and used in jurisdictions across the country, including throughout the rest of New York State, they are only prohibited in New York City.

It is our position that when a restaurant clearly and conspicuously discloses to a consumer any surcharge before a consumer places an order, the government should not object. This is particularly true given that many other industries, including large corporations and even government entities, routinely impose various surcharges. Unfortunately, this rule is yet another example of how restaurants in New York City are subject to arbitrary, discriminatory, and outdated regulations.

That said, we commend DCWP's proposal to bring transparency and consistency to the consumer experience. However, we object to the inclusion of the provision limiting a "bona fide service charge" and "mandatory gratuity" to "parties of eight or more." This threshold was arbitrary when first implemented decades ago, and it remains arbitrary today. The original agency staff lawyer who wrote this opinion could not have known what party size or circumstance would create additional or unexpected work for every type of restaurant and in every type of situation that may justify the use of a "bona fide service charge" and "mandatory gratuity."

In practice, the threshold varies by establishment. For example:

- In a restaurant composed mostly of two-top tables, combining three tables to accommodate a party of six creates extra work and could reasonably warrant a mandatory gratuity.
- Conversely, a restaurant that regularly seats large parties of ten may not experience any additional burden at that size. However, in this case, the guests may be celebrating a special occasion, and additional and unexpected work is required that may justify a mandatory gratuity.
- Whether or not a mandatory gratuity would be applied may depend on how busy or not a restaurant is, or other factors.

These examples illustrate that the use of a bona fide service charge is based on a restaurant's specific layout, operations, and the situation. Therefore, DCWP should not further entrench an outdated and arbitrary standard.

We strongly recommend that DCWP revise the proposed rule to allow that a mandatory gratuity may be added for any party size, provided that such a party size or circumstance creates additional work or there are other factors that justify a mandatory gratuity be used by that particular restaurant.

While we question the underlying theory behind the restaurant surcharge rule, we believe our proposed modification addresses DCWP's underlying intent and would establish a fair, flexible, and realistic standard that better reflects the operational realities of New York City's diverse restaurant industry—while maintaining transparency and consumer and worker protections.

Thank you for your consideration of our comments.

If you have comments or questions, please contact our executive director Andrew Rigue at 212-582-2506 or 212-582-2506.

ANDREW RIGIE | EXECUTIVE DIRECTOR | NYC HOSPITALITY ALLIANCE

[REDACTED] | **I THENYCALLIANCE.ORG**

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Please note that this information is provided to you for general informational purposes only, and should not be relied upon for personal, medical, legal, or financial decisions.

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Thank you for your consideration of our comments.

If you have comments or questions, please contact our executive director [REDACTED]

From: [Mitchell, Shane](#)
To: [rulecomments \(DCWP\)](#)
Cc: [Roy, Desiree](#); [Tibrewal, Bhav](#)
Subject: [EXTERNAL] HTC Comment RE: "Restaurant Surcharges"
Date: Monday, December 8, 2025 4:43:14 PM
Attachments: [HTC comments RE restaurant surcharges 12-8-25.pdf](#)

You don't often get email from smitchell@nyhtc.org. [Learn why this is important](#)

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Please find attached written comments regarding the proposed rule changes to "Restaurant Surcharges." I am submitting on behalf of our President, Rich Maroko.

Best,

--

Shane Mitchell, MPA
Deputy Political Director
Hotel Trades Council

<https://hotelworkers.org/>



Hotel and Gaming Trades Council, AFL-CIO • 707 Eighth Avenue, New York, NY 10036 • Telephone (212) 245-8100 • www.hotelworkers.org

December 8, 2025

Commissioner Vilda Vera Mayuga
New York City Department of Consumer and Worker Protection
42 Broadway
New York, NY 10004

Dear Commissioner Mayuga:

I write to you in support of the proposed rule change to section 5-59 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York, "Restaurant Surcharges."

The Hotel and Gaming Trades Council represents food and beverage workers in the City. In other jurisdictions, it is common for food and beverage workers to bargain with their employers for mandatory gratuities on restaurant bills and banquet contracts. These gratuities are a key component of these workers' compensation, and are conspicuously advertised at the relevant establishments. This proposed rule change would offer clarity on the City's view of these bargained-for gratuities.

I commend the Department for its attention both to the rights of consumers to fair and transparent pricing and to the rights of workers to bargain with their employers for appropriate compensation. I believe the proposed rules provide clear and enforceable directives to restaurant employers in the City. The Hotel and Gaming Trades Council wholeheartedly endorses these changes.

Sincerely,

Rich Maroko

President, Hotel and Gaming Trades Council, AFL-CIO

Online comments: 21

- **anonymous**

dom't

Comment added November 12, 2025 10:59am

- **Judi Wong**

No comment

Comment added November 12, 2025 11:13am

- **Dorina Dashi**

Hi, what is this in reference to? My establishment has paid the fees through a third party for Workers Compensation and Disability insurance. Is this part of the process or are there additional fines we were unaware of?

Comment added November 12, 2025 11:19am

- **SANDRA HUNG FONG**

As a consumer, I just would like to say if the mandatory gratuity is going to be enforced to the operators and have it posted more visibly on the food menu, or wait service, I suggest that the operators remove the mandatory tip line below gratuity %. That creates confusion for us to consumers. We cannot pay the Tax % with Gratuity % and Tip % , it will add btwn 30- 40% more on the bill, which is absurd when we dine in. Take out cashiers should not expect TIPS or have gratuity %, unless it is table service.

I agree that the gratuity % will help balance fair wages for table service staff. But I believe it is not fair for us to consumer to pay additional 18% to 20% on TIPS if we pay already the mandatory Gratuity fees. That is greed.

Comment added November 12, 2025 11:29am

- **Xintong Li**

The surcharge is becoming an issue because the cost of running business is getting higher and higher. I recommend that the NYC allow restaurant charge whatever service charge that is conspicuously displayed. To incentivize the restaurants not to charge service charges, NYC should provide tax credit to restaurants.

Comment added November 12, 2025 11:51am

- **Andrew Benvenuti**

As a bartender I believe transparency is the best policy. I think this change will make clear where a patron's money is going and for what they are being charged.

Comment added November 12, 2025 5:33pm

- **Anonymous**

Why are democrats making more and more regulations that hurt small businesses/restaurants. The more regulation that a restaurant has the higher the prices. People in NYC keep voting for the same people and complain why prices are so high. We need to vote these people out. Stop voting blue. All they do is charge businesses and raise their taxes so they can waste the money on useless things. We have a spending problem in the city. Stop strangling the restaurants and let them make money. That's how you keep prices down. You need competition, but when the government makes it harder and harder for small restaurants to survive, there's no competition.

Comment added November 12, 2025 7:44pm

- **Unknown**

1. Why is it necessary to tip at least 20% when getting a haircut or manicure? Can I order a haircut or manicure like food to take out? Is tipping not required?

Comment added November 13, 2025 3:23am

- **Anonymous**

As a consumer and frequent user of food delivery services like Seamless, I support this proposal. There is nothing more frustrating than putting in an order and then, when the total pops up, discovering a hefty service fee tacked on — and for what? The restaurant proprietors are the ones offering the service of delivery, which I am taking them up on via app. The fees have started to influence which restaurants I will order from again. Transparency behind the fee would go a long way toward earning goodwill from the customer.

Comment added November 18, 2025 5:31pm

- **Anonymous**

A "gratuity" is a voluntary contribution. Traditionally, a gratuity is a graduated dollar amount based on a variety of factors as may be determined by the customer. Therefore, classifying a gratuity as a mandatory fee is contrary to what a gratuity is. The rule should indicate that a "mandatory 'fee' in lieu of a 'gratuity' for parties over a certain size" may be charged and must be clearly stated on the menu, on-line reservation sites and on the entrance to the premises (it's too late after you've sat down), and should be limited to cases of parties of 7 or more (so as to avoid such fee for what would otherwise be a relatively normal party size of 3 couples). The "computed percentage" of such fee should be based on the base charge and not on charges including taxes or other markups. Finally, such a fee percentage should be capped as it is a free-for-all of surcharges that needs to be reined in. On a very large tab it is unreasonable to expect a 20% markup. Alternatively, if an establishment wants to continue to call it a 'gratuity', then it becomes discretionary on the part of the customer whether to pay it or not and such rule should be clearly displayed in the menu and other locations noted previously.

Comment added November 19, 2025 10:38am

- **JS**

GET RID OF THIS BULLSHIT SURCHARGE IF A CUSTOMER USES A CREDIT CARD!!

THAT WAS SUPPOSED TO HELP RESTAURANTS (AND OTHER BUSINESSES) ONLY DURING COVID. COVID IS LONG GONE,, GET RID OF THE BULLSHIT CREDIT CARD SURCHARGE ALREADY!!!!

Comment added November 19, 2025 12:12pm

- **Mara**

NYC restaurants are already expensive to dine in: the Mandatory gratuity charge in addition to the tips and taxes makes the bill 30-40% more than what the intended price is. When consumers are dining in, they are already paying a lot for the food per person. From my personal experience, I have had dinner at restaurants that already added the tax and gratuity fee. The server is already suggesting how much tip should be based on 10%, 15%, 20% of the bill. Sometimes when you don't tip appropriately, the servers get upset. All these fees make it very difficult for an average person to dine out. If restaurants keep adding their gratuity and taxes, they will lose business from people that can not afford to come out and pay \$30-40 more than their bill.

Comment added November 20, 2025 3:35pm

- **Anonymous**

Do you know what happens when there is mandatory gratuity? Workers don't care about service because they get tipped anyway. Everyone pays more, and the quality and level of service goes down. Stop enabling lazy people, and bring back competition.

Comment added November 27, 2025 2:25pm

- **Anonymous**

Please see attached notarized explanation and defense from Pamela Anderson which was uploaded on October 14, 2025 to your office for the telephone hearing scheduled for October 20, 2025 at 9:30am. Ms.

Alexander arrived at my office at 9:00am but we never received the expected telephone call from OATH. She remained in my office until 11:30am without any calls.

[Comment attachment](#)

20251203221650813.pdf

Comment added December 3, 2025 10:18pm

Department of Health and Mental Hygiene
Environmental Health Division
125 Worth Street, 10th floor, room 1020, CN 59A
New York, NY 10013-4006

Re: Summons Number: [REDACTED]

To whom it may concern:

My name is [REDACTED] the owner of the restaurant DBA [REDACTED]

My business address is [REDACTED] and not [REDACTED]
[REDACTED] as incorrectly stated on the summons.

I first became aware of the summons when inspector [REDACTED] hand delivered it to me on 09/18/2025.

He told me that my signature was missing on my application with the Department of Consumer Affairs. I thought I had signed my name on all papers given to me. After he told me that my signature was missing on one document, I returned and signed it on October 6, 2025. A copy of my signature on said document is attached herein.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Doe". It is written in a cursive, flowing style with a prominent 'J' at the beginning.

Sworn to before me this 14th day of October, 2025



NEW YORK CITY LICENSING CENTER
42 BROADWAY
NEW YORK, NY 10004
TELEPHONE: 311

Receipt Number: [REDACTED]

Application Number: [REDACTED]

Accela/CAMIS Number: [REDACTED]

PIN: [REDACTED]

Application Type: Food Service Establishment (general)

Class: H25

Sub Class: FS

Date of Submission: 03/06/2025

For: [REDACTED]

Reference Number	Payment Method	Amount Due	Convenience Fees	Amount Paid
[REDACTED]	Credit Card	[REDACTED]	5.60	[REDACTED]
Total Payment:				[REDACTED]

Thank you for applying for a permit or license from the Department of Health and Mental Hygiene. We will review your application, a process that may take a few days. We may need to contact you if additional information is required.

Want to check the status of your application?

Go to <http://nyc.gov/health> or call 311

You will need the PIN number above to check on the status of your application.

Want more information about application requirements?

Go to <http://nyc.gov/businessexpress> or call 311

Operating a restaurant and want to apply for an on-site, penalty free, non-graded consultative inspection conducted by trained DoHMH inspectors?

Go to: <http://nyc.gov/consultation>

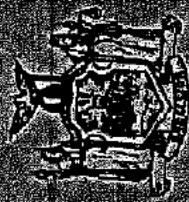
License your dog – it's the law and easy to do online – go to <http://nyc.gov/doglicense>

Want to know about air quality in your community? – go to <http://nyc.gov/health/nycas>

Learn how to control rats in your home or community – go to <http://nyc.gov/rats>

New York State Department of Taxation and Finance
Certificate of Authority

Permit Number:



VALIDATED

2/10/2025

EGG CONSTRUCTIONS
111 NO STRAND AVE
BROOKLYN NY 11235-5911

Dept of Tax
and Finance

Is authorized to collect sales and use taxes under Articles 2B and 2B of the New York State Tax Law.
Nontransferable
Evidence of other property of this certificate will be subject to inspection.
The certificate may be photocopied or reproduced.

402010-1111059

1DBB-0410636 P000026310

DL-15-A (7/14/21)

App-2025-0002818

STANDARD APPLICATION FOR NEW LICENSE OR PERMIT



Health

APPLICATION DATE		
MONTH	DAY	YEAR

FOR OFFICE USE					
CAMIS/RECORD NUMBER			LICENSE/PERMIT		
			TYPE		FEE CLASS/ SUBCLASS
			H		
EXPIRATION DATE			FEE AMOUNT	DOLLARS	
MO	DAY	YEAR			
			►		

NAME OF LICENSE/PERMIT

(For detailed instructions and information about what is required to apply for this permit, please go to www.nyc.gov/healthpermits)

R E C E I V E D
MAR 06 2025
KN

NYC DCWP

IMPORTANT: Please type or print legibly in ink using capital letters. Allow spaces between completed words or numbers. Standard abbreviations are permitted. All section must be completed in ink.

SECTION A – NAME, ADDRESS AND CONTACT INFORMATION OF ENTITY TO WHICH LICENSE/PERMIT IS TO BE ISSUED

READ CAREFULLY: Enter the corporate name and location of business establishment. If not incorporated, enter your name(s) and location of business establishment.

NAME OF CORPORATION, PARTNERSHIP, PARTNERS OR INDIVIDUAL OWNER (Last Name First)		TELEPHONE NUMBER	
[REDACTED]		(AREA CODE) [REDACTED]	
TRADE NAME/Doing Business As (DBA)		FAX NUMBER	
[REDACTED]		(AREA CODE) [REDACTED]	
BUILDING NUMBER	STREET		
[REDACTED]	[REDACTED]		
PREMISES LOCATION (FLOOR, STORE #, BOOTH #)		[REDACTED]	
CITY OR TOWN		STATE	ZIP CODE
[REDACTED]		[REDACTED]	[REDACTED]
E-MAIL ADDRESS (REQUIRED)		[REDACTED]	
DATE OF BIRTH (If applying as an individual)		MONTH	DAY
		YEAR	
		OPTIONAL	
		GENDER: [REDACTED]	

Language Preference for Inspections: If the permit you are applying for requires an inspection by the Department of Health and Mental Hygiene, do you prefer that this inspection be conducted in, or translated to, a language other than English? No Yes
If "yes" that language is _____.

I agree to receive all official notices from the Department of Health only by email at the email address provided in this application form. An official notice is any correspondence from the Department of Health that requires a response by a date certain. These include, but are not limited to, permit or license renewal notices; notices of fines or fees owed; collection letters and Dunning Notices, and Notices of Violations.

I would like to receive Department of Health publications, including information about new regulations, newsletters, fact sheets and other educational material, only by email at the email address provided in this application form.

SECTION B – DATE EXPECTED TO OPEN/START OPERATING		
MONTH	DAY	YEAR
06	19	2025

SECTION C – NYS SALES TAX ID#		SOCIAL SECURITY NUMBER (If applying as an individual)		ITIN NUMBER (If no SSN and applying as an individual)	
[REDACTED]		[REDACTED]		[REDACTED]	

SECTION D – MAILING ADDRESS, IF DIFFERENT FROM PERMITTED/LICENSED ESTABLISHMENT'S ADDRESS (INCLUDE APARTMENT #, PO BOX #)			
STREET ADDRESS		[REDACTED]	
CITY OR TOWN		STATE	ZIP CODE
[REDACTED]		[REDACTED]	[REDACTED]

CITYWIDE LICENSING CENTER – DEPARTMENT OF HEALTH AND MENTAL HYGIENE – 42 BROADWAY, NEW YORK, NY 10004

SECTION E – LIST NAMES (LAST, FIRST) OF OWNER – PARTNER – CORPORATE OFFICERS

1	NAME	PHONE NUMBER	E-MAIL ADDRESS	TITLE	CFO
	ADDRESS	STREET	CITY	STATE	ZIP CODE
2	NAME	PHONE NUMBER	E-MAIL ADDRESS	TITLE	COD
	ADDRESS	STREET	CITY	STATE	ZIP CODE
3	NAME	PHONE NUMBER	E-MAIL ADDRESS	TITLE	
	ADDRESS	STREET	CITY	STATE	ZIP CODE
4	NAME	PHONE NUMBER	E-MAIL ADDRESS	TITLE	
	ADDRESS	STREET	CITY	STATE	ZIP CODE

SECTION F

ALL APPLICANTS (EXCEPT THOSE APPLICANTS FOR A MOBILE FOOD VENDING LICENSE, TATTOO LICENCE OR A HORSE LICENSE) MUST COMPLETE THIS SECTION REQUESTING WORKERS' COMPENSATION AND DISABILITY BENEFITS INSURANCE INFORMATION AND PROVIDE COPIES OF PROOF OF CURRENT INSURANCE IF IT IS REQUIRED.

YOUR APPLICATION FOR A PERMIT WILL NOT BE ACCEPTED IF YOU DO NOT COMPLETE THIS SECTION AND PROVIDE THIS INFORMATION AND PROOF IF YOU ARE REQUIRED TO HAVE THIS INSURANCE.

Please check the appropriate box:

The business described in this application has Workers' Compensation and Disability Benefits Insurance as identified below:

Workers' Compensation Insurance Carrier: _____ Policy #: _____ Expiration Date: _____
 Disability Benefits Insurance Carrier: _____ Policy #: _____ Expiration Date: 02/28/2020
 OR _____

Form CE-200 was submitted to the Worker's Compensation Board stating such coverage is not required for this business and a copy with the New York State-assigned Exemption Certificate Number is attached.

Certificate Number: _____ Issuance Date: _____

Form CE-200 attesting to an exemption of this requirement can be found at <http://www.wcb.ny.gov>

Legal reasons for an applicant to qualify for this exemption are listed on Form CE-200. Please review Form CE-200 to see if your business qualifies for this exemption and is not required to obtain Workers' Compensation and Disability Benefits Insurance.

By signing this application for a permit, I agree that I will comply with provisions of the Health Code and other laws that apply to the permitted activity, and that all the statements made in this application are true and complete.

Making a false statement is an offense punishable by fines, imprisonment or both. (NYC Administrative Code § 10-154.)

SIGN HERE → 
 SIGNATURE OF BUSINESS OWNER, PARTNER, OR CORPORATE OFFICER

TITLE

CFO

ARE YOU
18 YEARS
OF AGE
OR OVER?

YES
 NO

ARE YOU REGISTERED TO VOTE?

If not, you may request a Voter Registration form when you submit your application, or you can access www.nycclf.info/registertovote online.

RECEIVED	OCT 16 2025	2025
CITYWIDE LICENSING CENTER - DEPARTMENT OF HEALTH AND MENTAL HYGIENE		42 BROADWAY, NEW YORK, NY 10004
NYC DCWP		

- **C. James Robert von Scholz SC**

BY WEBSITE SUBMISSION / NO HARDCOPY SENT:

<https://www.rules.cityofnewyork.us/rule/restaurant-surcharges/>

New York City Department of Consumer and Worker Protection
Attn: Office of Legal Counsel
42 Broadway, 8th Floor
New York, NY 10004

Re: Public Comment on Proposed Rule – Consumer Disclosure and
Restaurant Service Charges of Title 6 Chapter 6 Section 1 §5-59
Subchapter B of the Rules of the City of New York

To Whom It May Concern:

I submit this comment on the proposed restaurant surcharge regulations in my capacity as a registered representative advocating for parties before the Office of Administrative Trials and Hearings (OATH).

I routinely counsel and represent parties across the city's administrative forums and frequently address matters involving NYC Administrative Code Title 20, consumer-deceptive practice allegations, and service-charge disputes.

My perspective is shaped by the evidentiary burdens and procedural realities that both businesses and consumers face once a case reaches OATH for adjudication.

That experience informs the support I express below as well as several operational concerns that merit attention before final adoption.

Support: Consumer and Public-Facing Benefits

The rule promotes transparency and aligns with longstanding consumer-protection principles under the Administrative Code. Requiring restaurants to provide conspicuous, pre-order disclosure of

any service charge is a significant improvement. Consumers gain clear notice at the correct point in the transaction rather than discovering additional fees at payment. This restores meaningful consent and supports the enforcement structure relied upon by DCWP and OATH.

The rule's definition of a bona fide service charge provides needed clarity. Mandatory gratuities authorized by a valid written agreement, including collective bargaining agreements, and charges connected to specific services are clearly identified.

This prevents the infusion of vague or opportunistic fees that previously caused confusion and triggered consumer complaints. Establishments that comply receive a well-defined safe operational pathway.

The emphasis on written disclosure across menus, digital platforms, and ordering interfaces strengthens the overall reliability of the marketplace.

Consistent, accurate information: lowers the volume of disputes that reach OATH; reduces allegations of deceptive business practices, and improves the public's ability to evaluate total cost before choosing a restaurant.

The rule also supports equitable labor practices.

When mandatory gratuities are tied to a written workforce agreement, the flow of funds to employees is clear.

Consumers benefit from knowing that the charge serves an identifiable labor purpose rather than operating as general revenue.

Taken together, the rule advances legitimate consumer-protection interests under the city's authority within Title 20 and Chapter 5 of the Administrative Code.

It is a constructive step toward restoring consumer confidence in a marketplace that has experienced fee inflation and inconsistent business practices.

Opposition: Liabilities and Operational Impacts on Restaurants

While the rule enhances consumer transparency, several provisions create material burdens for restaurants, many of which operate with limited administrative capacity. These burdens will directly influence the enforcement environment at OATH.

The absence of a cure period is a significant concern. Any failure to display required disclosure on menus, websites, app-based platforms, or point-of-sale materials exposes the business to immediate enforcement.

In practice, this will capture many restaurants that make good-faith efforts but have inconsistent disclosures across multiple ordering systems.

Once a violation is issued, there is no procedural mechanism that allows correction before penalty assessment.

However, this increases case volume at OATH and heightens enforcement risk for operators working to comply.

The documentation demands are substantial.

Restaurants must maintain accurate, contemporaneous records demonstrating that each service charge falls within the rule's permitted categories. They must also ensure that all staff rely on the same definition of the charge when communicating with customers.

Gaps in documentation weaken a restaurant's position in OATH proceedings because the agency's case often relies on menu screenshots, receipts, and consumer testimony, while the business must produce full operational records.

Restaurants that operate under New York Labor Law wage structures face additional complexity. A mandatory charge that is not correctly allocated to employees may conflict with the Hospitality Wage Order.

Even when the charge complies with DCWP rules, misapplication may expose the business to parallel liability under state wage law. Operators must therefore manage two regulatory frameworks simultaneously, each with different evidentiary demands.

Many restaurants will encounter sudden cost increases when updating print and digital materials. Third-party delivery platforms require separate updates, and discrepancies across interfaces will be treated as noncompliant disclosures.

Although the goals of the rule are valid, the operational impact on smaller establishments is significant.

The strict limits on what constitutes a permissible surcharge also carry unintended consequences. Restaurants may eliminate certain service models or cease offering specialized services if the associated charge is difficult to document under the rule.

This could reduce service availability rather than improve transparency.

Opposition: Liabilities and Impacts on Consumers

Consumers gain transparency, but they also assume new burdens. Service charges raise the total cost of dining, particularly in establishments with union agreements that rely on fixed mandatory gratuities. While disclosed, these charges still increase economic pressure on households.

Consumers also face limited avenues for challenge when disclosures are complete. Once a restaurant meets the pre-order notice

requirement, the charge is lawful, and an OATH challenge will not succeed.

Many consumers may misinterpret the nature of the charge or assume it is optional despite full compliance by the restaurant. This creates frustration and contributes to misunderstanding without altering the legal status of the charge.

Terminology variations may still cause confusion. Even with standardized disclosure requirements, consumers must navigate terms such as "service charge," "mandatory gratuity," "non-discretionary fee," and "operations charge."

Without aggressive public guidance, misunderstandings will continue, which increases tension between consumers and restaurants.

Finally, the strict enforcement regime may cause restaurants to implement rapid pricing changes in response to violations.

Consumers may see inconsistent policy shifts that create uncertainty at the point of sale.

Conclusion

The proposed rule strengthens consumer transparency and offers restaurants a clearer regulatory pathway for permissible service charges. The framework is legally sound and within the authority granted to the Department under Title 20 of the Administrative Code.

At the same time, however, several operational burdens will fall heavily on restaurants, primarily due to the immediate-enforcement structure, documentation demands, and multi-platform disclosure requirements.

Consumers benefit from advance notice, yet they also face increased total costs and persistent confusion in terminology.

To ensure the proposed rule under New York City jurisdiction is implemented effectively and equitably, I urge the Department to conduct a comprehensive stakeholder enquiry process.

This process will address the operational, legal, and consumer impacts identified in the document and ensure that the rule achieves its intended objectives while minimizing unintended consequences.

Stakeholder Identification

Key stakeholders to engage include:

Restaurants: Small, medium, and large establishments, including those operating under union agreements or specialized service models.

Consumer Advocacy Groups: Organizations representing consumer interests, particularly regarding transparency and economic impacts.

Labor Organizations: Groups representing hospitality workers, especially those affected by mandatory gratuities and wage compliance.

Regulatory and Enforcement Agencies: Entities responsible for oversight, such as the Department of Consumer and Worker Protection (DCWP) and the Office of Administrative Trials and Hearings (OATH).

Third-Party Platforms: Digital ordering and delivery services that may face compliance challenges.

Methods of Engagement

To gather meaningful input, the following methods should be employed:

Public Hearings: Provide a forum for stakeholders to present their perspectives and concerns.

Surveys and Questionnaires: Distribute targeted surveys to businesses, consumers, and labor groups to collect quantitative and qualitative data.

Focus Groups: Conduct sessions with diverse stakeholder groups to explore specific operational and consumer concerns.

Written Submissions: Invite detailed feedback from stakeholders, including legal and operational analyses.

Key Areas of Inquiry

The enquiry should focus on the following critical areas:

Operational Challenges for Restaurants: Compliance costs associated with updating print and digital materials; Documentation requirements to demonstrate compliance with permissible surcharge categories; Coordination across multiple ordering platforms to ensure consistent disclosures.

Consumer Transparency and Understanding: Effectiveness of pre-order disclosure requirements in reducing confusion; Potential for misunderstandings due to varied terminology (e.g., "service charge," "mandatory gratuity"); Economic impacts on households, particularly regarding increased dining costs.

Labor and Wage Compliance: Interaction between the rule and New York Labor Law, including the Hospitality Wage Order; Risks of parallel liability for restaurants under state wage laws.

Enforcement Mechanisms: Feasibility of introducing a cure period to allow businesses to correct violations before penalties are assessed; Potential for reduced case volume at OATH through operational flexibility.

Outcome Utilization

The findings from the enquiry should be used to:

Refine the Rule: Address operational and enforcement concerns while maintaining transparency and consumer protection goals.

Develop Guidance: Provide clear, accessible public guidance to reduce consumer misunderstandings and support restaurant compliance.

Support Equitable Implementation: Balance the needs of businesses, consumers, and workers to ensure fair and effective enforcement.

Recommendations for Adjustments

Based on the operational and consumer impacts identified, the following adjustments should be considered: Introduce a cure period for noncompliance to reduce enforcement risks for good-faith operators; Simplify documentation requirements to ease administrative burdens on small businesses; Standardize terminology and provide public education campaigns to improve consumer understanding; Allow flexibility in surcharge definitions to accommodate diverse service models without undermining transparency.

This expanded framework ensures that the rule is implemented in a manner that reflects the practical realities faced by all stakeholders while advancing its core objectives of transparency, fairness, and consumer protection.

Thank you for the opportunity to comment.

Respectfully submitted,

/s/ C. James Robert von Scholz
C. James Robert von Scholz SC

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Dir. Fax. +1.212.590.6136

Email : jvonscholz@bhchambers.com

[Comment attachment](#)

5-59-12042025.pdf

Comment added December 4, 2025 11:03am



C. James Robert von Scholz SC
Advocate / Agent / Federal Lobbyist

www.birchhillchambers.com

Thursday, December 4, 2025

BY WEBSITE SUBMISSION / NO HARDCOPY SENT:
<https://www.rules.cityofnewyork.us/rule/restaurant-surcharges/>

New York City Department of Consumer and Worker Protection
Attn: Office of Legal Counsel
42 Broadway, 8th Floor
New York, NY 10004

Re: Public Comment on Proposed Rule - Consumer Disclosure and Restaurant Service Charges of Title 6 Chapter 6 Section 1 §5-59 Subchapter B of the Rules of the City of New York

To Whom It May Concern:

I submit this comment on the proposed restaurant surcharge regulations in my capacity as a registered representative advocating for parties before the Office of Administrative Trials and Hearings (OATH).

I routinely counsel and represent parties across the city's administrative forums and frequently address matters involving NYC Administrative Code Title 20, consumer-deceptive practice allegations, and service-charge disputes.

My perspective is shaped by the evidentiary burdens and procedural realities that both businesses and consumers face once a case reaches OATH for adjudication.

That experience informs the support I express below as well as several operational concerns that merit attention before final adoption.

Support: Consumer and Public-Facing Benefits

The rule promotes transparency and aligns with longstanding consumer-protection principles under the Administrative Code. Requiring restaurants to provide conspicuous, pre-order disclosure of any service charge is a significant

improvement. Consumers gain clear notice at the correct point in the transaction rather than discovering additional fees at payment. This restores meaningful consent and supports the enforcement structure relied upon by DCWP and OATH.

The rule's definition of a bona fide service charge provides needed clarity. Mandatory gratuities authorized by a valid written agreement, including collective bargaining agreements, and charges connected to specific services are clearly identified.

This prevents the infusion of vague or opportunistic fees that previously caused confusion and triggered consumer complaints. Establishments that comply receive a well-defined safe operational pathway.

The emphasis on written disclosure across menus, digital platforms, and ordering interfaces strengthens the overall reliability of the marketplace.

Consistent, accurate information:

- a. lowers the volume of disputes that reach OATH,
- b. reduces allegations of deceptive business practices, and
- c. improves the public's ability to evaluate total cost before choosing a restaurant.

The rule also supports equitable labor practices.

When mandatory gratuities are tied to a written workforce agreement, the flow of funds to employees is clear.

Consumers benefit from knowing that the charge serves an identifiable labor purpose rather than operating as general revenue.

Taken together, the rule advances legitimate consumer-protection interests under the city's authority within Title 20 and Chapter 5 of the Administrative Code.

It is a constructive step toward restoring consumer confidence in a marketplace that has experienced fee inflation and inconsistent business practices.

(continued on next page)

Opposition: Liabilities and Operational Impacts on Restaurants

While the rule enhances consumer transparency, several provisions create material burdens for restaurants, many of which operate with limited administrative capacity. These burdens will directly influence the enforcement environment at OATH.

The absence of a cure period is a significant concern. Any failure to display required disclosure on menus, websites, app-based platforms, or point-of-sale materials exposes the business to immediate enforcement.

In practice, this will capture many restaurants that make good-faith efforts but have inconsistent disclosures across multiple ordering systems.

Once a violation is issued, there is no procedural mechanism that allows correction before penalty assessment.

However, this increases case volume at OATH and heightens enforcement risk for operators working to comply.

The documentation demands are substantial.

Restaurants must maintain accurate, contemporaneous records demonstrating that each service charge falls within the rule's permitted categories. They must also ensure that all staff rely on the same definition of the charge when communicating with customers.

Gaps in documentation weaken a restaurant's position in OATH proceedings because the agency's case often relies on menu screenshots, receipts, and consumer testimony, while the business must produce full operational records.

Restaurants that operate under New York Labor Law wage structures face additional complexity. A mandatory charge that is not correctly allocated to employees may conflict with the Hospitality Wage Order.

Even when the charge complies with DCWP rules, misapplication may expose the business to parallel liability under state wage law. Operators must therefore manage two regulatory frameworks simultaneously, each with different evidentiary demands.

B I R C H H I L L C H A M B E R S

115 Forest Avenue, Unit 61, Locust Valley, NY 11560

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115 Forest Avenue, Unit 61, Locust Valley, NY 11560

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2. Methods of Engagement

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The enquiry should focus on the following critical areas:

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- Compliance costs associated with updating print and digital materials.
- Documentation requirements to demonstrate compliance with permissible surcharge categories.
- Coordination across multiple ordering platforms to ensure consistent disclosures.

b. Consumer Transparency and Understanding:

- Effectiveness of pre-order disclosure requirements in reducing confusion.
- Potential for misunderstandings due to varied terminology (e.g., "service charge," "mandatory gratuity").
- Economic impacts on households, particularly regarding increased dining costs.

c. Labor and Wage Compliance:

B I R C H H I L L C H A M B E R S

115 Forest Avenue, Unit 61, Locust Valley, NY 11560

- Interaction between the rule and New York Labor Law, including the Hospitality Wage Order.
- Risks of parallel liability for restaurants under state wage laws.

d. Enforcement Mechanisms:

- Feasibility of introducing a cure period to allow businesses to correct violations before penalties are assessed.
- Potential for reduced case volume at OATH through operational flexibility.

4. Outcome Utilization

The findings from the enquiry should be used to:

- Refine the Rule: Address operational and enforcement concerns while maintaining transparency and consumer protection goals.
- Develop Guidance: Provide clear, accessible public guidance to reduce consumer misunderstandings and support restaurant compliance.
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5. Recommendations for Adjustments

Based on the operational and consumer impacts identified, the following adjustments should be considered:

- Introduce a cure period for noncompliance to reduce enforcement risks for good-faith operators.
- Simplify documentation requirements to ease administrative burdens on small businesses.
- Standardize terminology and provide public education campaigns to improve consumer understanding.
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This expanded framework ensures that the rule is implemented in a manner that reflects the practical realities faced by all stakeholders while advancing its core objectives of transparency, fairness, and consumer protection.

Thank you for the opportunity to comment.

Respectfully submitted,

C. James Robert von Scholz SC

[REDACTED]
[REDACTED]
[REDACTED]

cc : File

- **Nash**

Please review correction file thank you

[Comment attachment](#)

Pizza-violation-.pdf

Comment added December 10, 2025 10:42am

SANITARY INSPECTION GRADE



Card Number [REDACTED]

Establishment Name [REDACTED]

Date Issued 4/24/2025

Inspection Date 4/24/2025

Address [REDACTED]

Borough [REDACTED]

Zip Code [REDACTED]

NYC
Health

For additional information
or a copy of an inspection
report, call **311** or visit
nyc.gov/health















- **Anonymous**

I believe that the automatic gratuity has helped many tipped employees not only survive but thrive in the restaurant community. That being said, I believe it has also eliminated any motivation to provide better service for patrons, because this is money handed to them for no extra effort.

Signage should disclose the automatic gratuity policy details and patrons should understand that since they may be paying this there is no obligation to pay anything extra on top of that as some people I know believe they deserve. This eliminates the illusion that employees think this is their right to earn this money but not provide any benefit to the patrons in terms of real customer service. Having transparency with our patrons also helps improve the hospitality industry as a whole instead of this predatory feeling that's been going on since CoVID. There should be a middle ground between gratuity and tips where if there is gratuity the % should be reasonable and restaurants continue to get a tip credit for this.

New York especially should take this opportunity to improve these measures and therefore increase the general sentiment New Yorkers and tourists have regarding the hospitality they receive in many of our restaurants. That sentiment has worsened over the last few years and it only hurts New York's economy.

Comment added December 10, 2025 10:43am

- **Yremil Rosario**

No comment

Comment added December 10, 2025 11:01am

- **Anonymous**

How do they plan on clarifying surcharges? What is their plan for helping restaurants with all their surcharges?

Comment added December 10, 2025 11:44am

- **Angie**

Asking that :

1)DCWP define clearer boundaries for mandatory gratuity by party size. Proposal cites parties of 8 or more without additional guidance. If restaurants apply mandatory gratuity to small parties, what is the guidance.

2)Require standardized receipt language for gratuity or service charge.

3) And clarify guidance on pay impacts –classification of tips vs mandatory service charges that can affect withholding and OT calculations under existing law. We need to understand how these charges will appear on paystubs and how OT is calculated.

With minimum wages rising every year, this creates big impact on restaurants' labor budget. Thank you.

Comment added December 10, 2025 11:49am

- **Anonymous**

There are many different perspectives about bona fide restaurant service charges. A service charge, also known as a mandatory gratuity, is different from a tip because it is automatically added to the bill. If the rules and explanations are not clearly stated, customers may feel uncertain or burdened by it.

To avoid confusion, the explanations should be clearly listed depending on the situation. For example,

1. It must be labeled under a name that is not "tip" or "gratuity".
2. It must be clearly disclosed on the menu when customers can easily see it.
3. It may apply to special requests made by the customer.
4. It may apply when two guests share one meal.
5. It may apply to parties of eight or more at one table.

When these explanations are clearly communicated, both customers and employees can better understand the purpose of a bona fide service charge.

Comment added December 10, 2025 6:08pm