

**Testimony of Assistant Commissioner Carlos A. Ortiz
New York City Department of Consumer and Worker Protection**

**Before the Committees on
Small Business and Governmental Operations**

**Hearing on
Introductions 491 and 815**

January 30, 2023

Introduction

Good afternoon, Chair Menin and Chair Ung, and members of the Committees on Small Business and Government Operations. My name is Carlos Ortiz, and I am the Assistant Commissioner for External Affairs at the Department of Consumer and Worker Protection (DCWP). I am joined by Michael Tiger, DCWP's General Counsel. Thank you for the opportunity to testify on today's legislation.

DCWP and Small Businesses

DCWP has been steadfast in its commitment to supporting small businesses in New York City. We do this in a number of ways. Our dedicated outreach teams share informational materials and conduct hundreds of educational events each year, partnering with sister agencies such as the Department of Small Business Services to bring resources to local businesses. DCWP's visiting inspector program has served more than 10,000 individual businesses since 2017, providing free, one-on-one educational inspections by a senior inspector. These efforts ensure that businesses have access to information regarding their requirements to operate in New York City, through which we hope to facilitate a culture of compliance with laws and rules that the Council and Administration have established. And, through our equitable enforcement and progressive discipline model, we prioritize our enforcement efforts against recidivist non-compliant businesses to ensure that the city's marketplace is free from predatory actors.

Moreover, DCWP regularly and meticulously assesses the provisions of the Administrative Code we enforce to ensure that the civil penalties we issue are appropriate and not overly burdensome on our city's small businesses. For example, in 2021, we worked with the Council to pass Local Law 80, which made business-friendly changes to over 30 categories or areas of our enforcement and substantially lowered penalties for over 150 individual violations that DCWP enforces. Local Law 80 also lowered civil penalties to zero dollars for the first-time offense of 12 violations and added the ability to cure a first-time violation for dozens more. Lastly, it repealed outdated or redundant licensing requirements to provide relief to small businesses recovering from the economic impact of the pandemic.¹ In 2022, as part of Mayor Adams' Small Business Forward Initiative, DCWP proposed an additional 24 reforms, principally to lower civil penalties to zero dollars for first time violations, which are projected to save businesses almost \$1 million

¹ <https://legistar.council.nyc.gov/LegislationDetail.aspx?ID=4805925&GUID=2C7D9F71-D49E-499E-A21F-F6A9D5C76B90&Options=ID|Text|&Search=2233>

a year.² The bill to implement those reforms, and similar reforms proposed by many other city agencies, also known as Introduction 845, is currently before the Council, carried by Chair Menin. The Administration looks forward to seeing it advance and provide substantive relief to New York City's small businesses.

DCWP's Penalty Schedules

Along those lines, I would like to describe for the committees, today, how DCWP establishes public "penalty schedules" for the laws it enforces. When the Council passes legislation that involves a range of penalties, DCWP will engage in rulemaking to establish a specific penalty for the first violation that weighs into consideration our knowledge of the industry, our knowledge of the harm that has been identified by the legislation, and the potential for deterrence of that harm. The proposed penalty is shared with the public through in order for elected officials, community boards, consumers, workers and businesses to provide feedback. When the penalty schedule is finalized, it is publicly available. Subsequently, whenever an OATH hearing officer issues a decision against a business, they will use the publicly available penalty schedule to assess a penalty against the business.

Introductions 491 and 815

Today, there are two bills for consideration at this hearing. The first, Introduction 491, would require the Department of Sanitation (DSNY) and DCWP to establish a program for food service establishments to donate their excess food, and in return see certain civil penalties waived. DCWP defers to DSNY with respect to this legislation.

Introduction 815 relates to Administrative Code provisions that have a range of penalty amounts for a specific violation and would require city agencies enforcing those provisions to utilize the lowest amount in the range as the standard first time penalty. City agencies would only be able to impose a higher penalty by establishing specific aggravating factors by rule for each violation in the Administrative Code, which would then need to be proven by the agency each time during a proceeding at the Office of Administrative Trials and Hearings (OATH).

As I described earlier, DCWP has been committed to continually and intentionally reassessing penalties in the Administrative Code, listening to feedback from small businesses and advocates, to ensure that they are appropriate and effective. However, the Administration does not support this legislation as drafted and has concerns with its sweeping approach that could have adverse consequences spanning a range of City agencies. For DCWP, specifically, these mandated changes will weaken penalties that serve as a deterrent to some of the most egregious business activity we observe, such as tobacco retail dealers operating unlicensed, debt collectors illegally pursuing a consumer, or individuals deceiving immigrant New Yorkers with false services and promises of gaining documented status. The bill would also require DCWP to establish aggravating factors in order to issue penalties above the lowest amount in a range. Proving "aggravating factors" would likely require DCWP to staff lawyers to attend OATH proceedings, making the hearing process more time consuming and elaborate for businesses.

² <https://www.nyc.gov/assets/home/downloads/pdf/press-releases/2022/Small-Business-Forward.pdf>

Finally, as my colleagues at DSNY can speak to, this bill would impact significant provisions of the laws they enforce, and those that our other sister agencies enforce to protect New Yorkers from illegal activity. We recommend, as an alternative, that we continue to collaborate on Introduction 845, which I referenced previously, to implement significant reforms to civil penalties as it relates to small businesses.

Conclusion

Once again, thank you Chairs Menin and Ung for the opportunity to testify today before your committees. I welcome any questions you and members may have about today's bills and DCWP's work to uplift small businesses and protect consumers and workers.