



To: The Mayor of New York City; The New York City Council
From: The Department of Consumer Affairs
Date: January 17, 2020
Re: Penalty Mitigation Program Report Pursuant to Local Law 74 of 2018

I. Summary of Local Law 74 of 2018

Local Law 74 of 2018 (“the Law”) tasks the Department of Consumer Affairs (“DCA”) with conducting a review to determine whether it is feasible to implement a penalty mitigation program for retail establishments and food service establishments. A penalty mitigation program for retail establishments would allow such a business to have certain civil penalties waived if it complies with a program to make its restrooms available to the public. A penalty mitigation program for food service establishments would allow such a business to have certain civil penalties waived if it complies with a program to donate excess food to an appropriate nonprofit organization.

The Law mandates that, by January 22, 2020, DCA: 1) conduct a review of Title 20 violations that relate to the display of prices, the accuracy of scanners, and the posting of signage, or are commonly issued, to study the feasibility and appropriateness of establishing a penalty mitigation program; 2) if a review concludes that a penalty mitigation program is feasible, promulgate a rule authorizing the waiver of penalties for participation in the program; and 3) submit this report.

II. Feasibility and Explanation of a Penalty Mitigation Program

A. Retail Establishments

The penalty mitigation program for retail establishments is feasible and will require businesses to apply for participation in the program.¹ A program participant must certify that it:

- Has at least one bathroom that can be made safely accessible to the public;

¹ Only businesses that do not serve any food to customers are eligible for this penalty mitigation program. See the definition of “retail establishment” in section 1 of the Law.

- Will always allow the public to use its bathroom(s) when the business is open to the public, except that bathrooms need not be made accessible from the hours of 10 p.m. to 6 a.m.;
- Will maintain its bathroom(s) in a reasonable state of cleanliness and functionality; and
- Will comply with any other criteria considered necessary by DCA.

A program participant must post a sign, to be created by DCA, visible from the public entrance to the business and on the door of its bathroom(s) announcing that the business participates in the penalty mitigation program and has bathrooms accessible to the public. Participation in the program, if approved, is valid for 2 years, at which time the business must renew its participation.

DCA may investigate any complaints it receives from the public reporting that access was denied to a bathroom of a program participant. DCA may also terminate a business's participation in the program if it finds that the business does not meet the program requirements. DCA will make a list of program participants available on its website.

A program participant is eligible to have a first-time penalty waived for any violation indicated in Section III, below. The procedure for waiving the penalty will be like that used for curing a violation.² If a program participant is charged with violating a program-eligible provision, it must submit a certification in a form made available to DCA prior to the hearing date. DCA may require submission of other information necessary to prove that the business remains compliant with the program. Submission of a certification will constitute an admission of guilt and liability for that violation. If the submission is rejected by DCA, the business may attend its scheduled hearing at the Office of Administrative Trials and Hearings to contest the violation as charged. The option to submit a penalty mitigation certification must be offered as part of any settlement offer by the Department.

B. Food Service Establishment Penalty Mitigation Program

DCA's implementation of the penalty mitigation program for food service establishments is not feasible or appropriate. Section 1 of the Law defines a penalty mitigation program for food service establishments as a program that "allows such establishment to have civil penalties waived if such establishment complies with the requirements of a program designed to encourage such food service establishment to donate excess food to an appropriate not-for-profit organization."

² See 6 R.C.N.Y. 6-03(b) for DCA's rules covering curability.

DCA has no experience in studying or regulating excess food or food waste. None of the legal requirements currently enforced by DCA—whether imposed by state law, city law, or city rules—concern excess food or food waste. DCA has no expertise or ability to create regulations regarding how a business should donate excess food or in what volumes donation would be appropriate for participation in the program. DCA also has no expertise or ability to monitor or inspect whether a business is complying with regulations for donating excess food waste. Finally, DCA has no expertise or experience in working with or vetting the types of nonprofits that would be appropriate for inclusion in such a program.

III. Violations to be Included in the Penalty Mitigation Program

The below two charts list violations that will be included in the penalty mitigation program for retail establishments. If a violation is eligible for inclusion pursuant to section 3(a) of the Law but has been excluded by DCA, an explanation for its exclusion is provided in the chart as required by section 3(c) of the Law.

In total, the program will include 47 violations.

IV. Conclusion

The Department is in the process of promulgating rules to create the penalty mitigation program for retail establishments. DCA's proposed rule amendments are currently being reviewed by the Law Department and the Mayor's Office of Operations pursuant to the City Administrative Procedure Act.

Violations Relating to Display of Prices, Accuracy of Scanners, and Posting of Signage				
#	Citation	Violation Description	Included in Penalty Mitigation Program?	Explanation
1.	Admin Code § 20-271(b)	Failure of dealer in second-hand automobiles to clearly and conspicuously post price of second-hand automobile or prices for add-on products	No	Potential fraud is too serious and too costly for consumers; enforcement against secondhand automobile dealers is a Department priority
2.	6 RCNY § 2-103(i)	Sale of second-hand automobile at price other than advertised	No	Potential fraud is too serious and too costly for consumers; enforcement against secondhand automobile dealers is a Department priority
3.	6 RCNY § 2-105(b)	Failure of dealer in second-hand automobiles to post price of second-hand automobile according to required specifications	No	Potential fraud is too serious and too costly for consumers; enforcement against secondhand automobile dealers is a Department priority
4.	6 RCNY § 2-105(c)	Failure of dealer in second-hand automobiles to post price of add-on products according to required specifications	No	Potential fraud is too serious and too costly for consumers; enforcement against secondhand automobile dealers is a Department priority
5.	6 RCNY § 3-21	Failure to meet the requirements of display of price by quantity	Yes	
6.	Admin Code § 20-691	Failure to meet the requirements of price displays for cash registers in food stores	Yes	
7.	Admin Code § 20-708	Failure to display total selling price by tag or sign	Yes	
8.	Admin Code § 20-709	Failure to display price per measure	Yes	
9.	6 RCNY § 5-113	Failure to meet the requirements of calculation and display price per measure	Yes	
10.	Admin Code § 20-713	Improper display of prescription drug prices	Yes	

11.	6 RCNY § 5-121	Failure to meet the requirements for posting prescription drug prices	Yes	
12.	Admin Code § 20-750(a)	Improper display of service prices	Yes	
13.	Admin Code § 20-750(b)	Improper regular price list display	Yes	
14.	6 RCNY § 2-307(b)	Failure to conspicuously display price exclusive of tax	Yes	
15.	6 RCNY § 1-03(a)	Failure to post the license and complaint sign	Yes	
16.	6 RCNY § 1-03(b)	Failure to post the sidewalk café license and complaint sign	Yes	
17.	6 RCNY § 2-24(a)	Failure to post required signage	Yes	
18.	6 RCNY § 2-24(b)	Sign does not conform to requirements.	Yes	
19.	6 RCNY § 2-53(d)	Improper signs on a sidewalk cafe	Yes	
20.	6 RCNY § 2-57(f)	Posting prohibited signage	Yes	
21.	6 RCNY § 2-57(i)	Failure to post sign required by 6 RCNY § 1-03	Yes	
22.	6 RCNY § 2-425	Failure to comply with signage requirements	No	Sign too important to consumers, only place for consumer to see information
23.	Admin Code § 20-270	Failure to comply with signage requirements	No	Sign too important to consumers, only place for consumer to see information
24.	6 RCNY § 2-103(g)(1)(v)	Failure of dealer in second-hand automobiles to display required sign at place of business	No	Potential fraud is too serious and too costly for consumers; enforcement against secondhand automobile dealers is a Department priority
25.	6 RCNY § 2-134(a)(4)(i)	Failure to post notice regarding complaints and refunds that complies with sign requirements	Yes	
26.	6 RCNY § 2-134(a)(4)(ii)	Failure to post a sign on non-functioning machines	Yes	
27.	Admin Code § 20-324(b)	Failure to post the required rates sign	No	Sign too important to consumers, only place for consumer to see information
28.	6 RCNY § 2-161(g)(1)	Failure to post the required signs for separate entrances and exits	Yes	

29.	6 RCNY § 2-161(g)(2)(vi)	Failure to post the required signage regarding business hours, capacity, or bicycle parking	Yes	
30.	6 RCNY § 2-161(g)(2)(v)	Failure to post the required auxiliary signs	Yes	
31.	6 RCNY § 2-161(g)(3)(1)	Failure to illuminate the parking garage and lot sign	Yes	
32.	6 RCNY § 2-161(u)	Failure to post the bicycle parking waiver sign	Yes	
33.	6 RCNY § 2-275	Improper display of required information	Yes	
34.	6 RCNY § 2-275(c)	Failure to post the sign summarizing provision of the products for the disabled law	Yes	
35.	6 RCNY § 2-401	Failure to comply with signage requirements for booting of automobile	No	Potential fraud too serious and too expensive for consumer
36.	6 RCNY § 3-24(f)(2)	Failure to post sign informing customer that they may reweigh products	Yes	
37.	6 RCNY § 4-11(a)	Failure to include required statement in language assistance signs	Yes	
38.	6 RCNY § 4-11(c)	Failure to comply with the required display of language assistance signs	Yes	
39.	Admin Code § 20-672	Failure to comply with petroleum sign, placard, or other display requirements	Yes	
40.	6 RCNY § 4-55	No "out of order" sign on pumps	Yes	
41.	6 RCNY § 4-56	Improper interlock or signage at dispensing devices	Yes	
42.	6 RCNY § 4-63	Failure to comply with signage requirements	Yes	
43.	6 RCNY § 5-40(e)	Improper posting of sign that business is not liable for negligence	Yes	
44.	Admin Code § 20-708	Failure to display total selling price by tag or sign	Yes	
45.	6 RCNY § 5-66(c)	Failure to post the required tax preparation signs	Yes	
46.	6 RCNY § 5-171	Failure to comply with sign location requirement for income tax preparers	No	Too much fraud in industry; too expensive for consumer

47.	6 RCNY § 5-172	Improper sign form and content for income tax preparers	No	Too much fraud in industry; too expensive for consumer
48.	6 RCNY § 5-173(a)	Failure to comply with sign requirements for income tax preparers	No	Too much fraud in industry; too expensive for consumer
49.	Admin Code § 20-777.1	Failure to post sign or improper sign for immigration assistance services	No	Too much fraud in industry; too expensive for consumer
50.	Admin Code § 20-809	Failure to post sign or improper sign for tenant screening report	No	Too much fraud in industry; too expensive for consumer
51.	6 RCNY § 5-265	Failure to comply with the requirements for posting signs about tenant screening reports	Yes	
52.	6 RCNY § 4-10	Improper sign content regarding laser pointers	No	Violation concerns health and safety
53.	6 RCNY § 4-11	Improper size of sign regarding laser pointers	No	Violation concerns health and safety
54.	6 RCNY § 4-12	Improper posting of sign regarding laser pointers	No	Violation concerns health and safety
55.	6 RCNY § 4-15	Improper number of signs regarding laser pointers	No	Violation concerns health and safety
56.	6 RCNY § 4-16	Sign not in required language	No	Violation concerns health and safety
57.	Admin Code § 20-910(f)	Failure to post open door or window complaint sign	Yes	
58.	6 RCNY § 5-268	Failure to comply with requirements pertaining to displaying disclosure signs for pregnancy services centers	No	Violation concerns health and safety
59.	6 RCNY § 2-140	Improper posting of locksmith license information	Yes	
60.	Admin Code § 20-507	Improper posting of required information	No	Too much fraud in industry; too expensive for consumers
61.	6 RCNY § 3-12	Failure to have information in English.	Yes	
62.	6 RCNY § 5-122	Failure to meet the requirements for displaying information relating to emergency contraception	No	Violation concerns health and safety
63.	6 RCNY § 5-165	Failure to comply with display of ownership information requirements	Yes	
64.	Admin Code § 20-708.1(d)	Improper scanner accuracy	Yes	

65.	6 RCNY § 2-211(c)	Failure to post schedule of rates charged for each sightseeing bus trip	No	Information too important to consumers; only place to receive information
66.	6 RCNY § 5-37	Failure to comply with disclosure of refund policy requirements	Yes	
67.	6 RCNY § 5-46(d)	Failure to post notice of consumer protection law	Yes	

Commonly Issued Violations				
#	Citation	Violation Description	Included in Penalty Mitigation Program?	Explanation
1.	6 RCNY 5-37	Disclosure of Refund Policy	Yes	
2.	NYC Admin Code 20-822(a)	Prohibited conduct and violations (Expired medication)	No	Concerns health and safety
3.	NYC Admin Code 20-708	Display of total selling price by tag or sign	Yes	
4.	6 RCNY 5-41	Unlawful Sales Tax	No	Violations too deceptive and confusing for consumer
5.	NYC Admin Code 20-202(a)(1)	License (License required to sell cigarettes or tobacco products)	No	Violations too serious; concerns health and safety
6.	6 RCNY 5-32(c)	Documentation of Transactions (Contents of receipts)	Yes	
7.	NYC Admin Code 20-708.1(b)	Item Pricing (Item pricing required)	Yes	
8.	6 RCNY 2-70.2(A)	Physical Characteristics, Requirements and Prohibitions for Stoop Line Stands	No	Concerns safety for pedestrians
9.	6 RCNY 5-70(a)	Retail Service Establishments (Display price list)	Yes	
10.	6 RCNY 4-112(b)	Display of Required Information for Perishable Foods	No	Concerns health and safety
11.	6 RCNY 1-03(a)	Display of Sign and License Information (Sign includes license info and pertinent info for consumers as Dept. deems appropriate)	Yes	
12.	NYC Admin Code 20-691(a)	Price displays (Cost indicators visible in any food store with 1+ registers)	Yes	
13.	NYC Admin Code 20-327(a)	Limitation on number of vehicles; manner of storage (Whenever capacity reached, licensee shall post sign stating capacity reached)	No	Concerns health and safety
14.	6 RCNY 5-24(b)	Credit Card Limitations (Must appear at/near every entrance)	Yes	