

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs (“DCA” or “Department”) is proposing to add new rules to implement Local Law 34 of 2020, which prohibits food stores and retail establishments from refusing to accept payment in cash.

When and where is the hearing? DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on August 3, 2020. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 1-855-282-6330.
 - Meeting number (access code): 160 481 6046
 - Meeting password: zcNFs4WCF79
- To participate in the public hearing via videoconference, please follow the online link: <https://dcany.webex.com/dcany/j.php?MTID=m6296ab9a878ff67056749451448ca870>

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

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.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 calling (212) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 10:00AM on August 3, 2020. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before August 3, 2020.

What if I need assistance to participate in the hearing? You must tell DCA’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 telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by July 29, 2020.

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 DCA 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 authorizes DCA to make this rule? Sections 1043 and 2203(f) of the New York City Charter, Sections 20-104(b) and 20-702 of the New York City Administrative Code, and Section 2 of Local Law 34 of 2020 authorize the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the Department’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCA’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? DCA 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 Rule

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.

Specifically, these proposed rules would add presumptions that a food store or retail establishment is in violation of the prohibition on cashless establishments 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. These proposed rules would further add presumptions that a food store or retail establishment is in violation of the prohibition on cashless establishments if it displays a sign representing that it charges a higher price for consumers who pay with cash rather than through a cashless transaction, or if any employee or agent of such food store or retail establishment represents that it charges a higher price to consumers who pay for commodities in cash. These presumptions are necessary to allow the Department to effectively enforce the cashless establishments law. Without these presumptions, the Department would be required to conduct test purchases of commodities using cash to establish whether food stores or retail establishments are refusing to accept cash. Such test purchases are too costly and inefficient to perform.

These proposed rules would also add a penalty schedule for the new prohibitions on cashless establishments. The penalties are provided by section 20-840(d) of the New York City Administrative Code.

DCA’s authority for this rule is found in Sections 1043 and 2203(f) of the New York City Charter, Sections 20-104(b) and 20-702 of the New York City Administrative Code, and Section 2 of Local Law 34 of 2020.

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.

Proposed Rule Amendments

Section 1. Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a Subchapter R to read as follows:

Subchapter R: Cashless Establishments

§ 5-280. Presumption of a Cashless Establishment.

(a) There is a presumption that a food store or retail establishment is in violation of subdivision b of section 20-840 of the Administrative Code of the City of New York if such food store or retail establishment displays a sign representing that it refuses to accept payment in cash from consumers, or if any employee or agent of such food store or retail establishment represents that it refuses to accept payment in cash from consumers.

(b) There is a presumption that a food store or retail establishment is in violation of subdivision c of section 20-840 of the Administrative Code of the City of New York if such food store or retail establishment displays a sign representing that it charges a higher price for the same consumer commodity to a consumer who pays in cash than to a consumer who pays for such commodity through a cashless transaction, or if any employee or agent of such food store or retail establishment represents that it charges a higher price for the same consumer commodity to a consumer who pays in cash than to a consumer who pays for such commodity through a cashless transaction.

§ 2. Subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended by adding a new section 6-72 to read as follows:

§ 6-72. Cashless Establishments Penalty Schedule.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

<u>Citation</u>	<u>Violation Description</u>	<u>First Violation</u>	<u>First Default</u>	<u>Second Violation</u>	<u>Second Default</u>	<u>Third and Subsequent Violation</u>	<u>Third and Subsequent Default</u>
<u>Admin Code § 20-840</u>	<u>Violating the prohibitions on cashless establishments</u>	<u>\$750</u>	<u>\$1,000</u>	<u>\$1,350</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$1,500</u>
<u>6 RCNY § 5-280</u>	<u>Violating the presumptions regarding cashless establishments</u>	<u>\$750</u>	<u>\$1,000</u>	<u>\$1,350</u>	<u>\$1,500</u>	<u>\$1,500</u>	<u>\$1,500</u>

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

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

RULE TITLE: Proposed Rule Governing Prohibition of Cashless Establishments

REFERENCE NUMBER: 2020 RG 065

RULEMAKING AGENCY: Department of Consumer Affairs

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
Acting Corporation Counsel

Date: June 18, 2020

**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: Proposed Rule Governing Prohibition of Cashless Establishments

REFERENCE NUMBER: DCA-113

RULEMAKING AGENCY: Department of Consumer Affairs

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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

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

June 18, 2020
Date