



C. James Robert von Scholz SC
Advocate / Agent / Federal Lobbyist
Direct Tel. +1.212.444.2670
Direct Fax. +1.212.590.6136
www.birchhillchambers.com
jvonscholz@bhchambers.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

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

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.

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.

1. 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.

2. 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.

3. Key Areas of Inquiry

The enquiry should focus on the following critical areas:

a. 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.

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

5. **Recommendations for Adjustments**

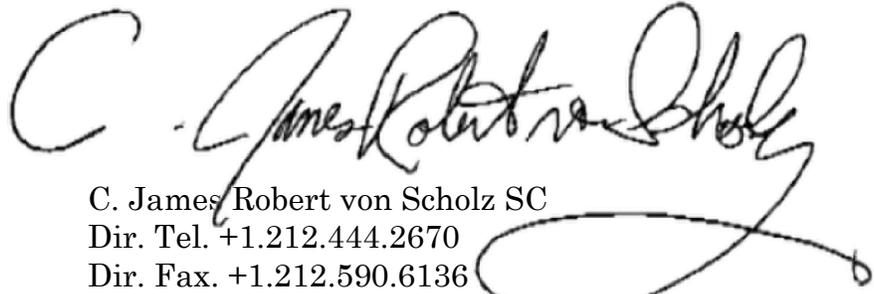
Based on the operational and consumer impacts identified, the following adjustments should be considered:

- 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.
- 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,

A handwritten signature in black ink, reading "C. James Robert von Scholz". The signature is written in a cursive style with a large initial "C" and a long, sweeping flourish at the end.

C. James Robert von Scholz SC
Dir. Tel. +1.212.444.2670
Dir. Fax. +1.212.590.6136
Email : jvonscholz@bhchambers.com

cc : File