

New York City Department of Consumer and Worker Protection

Notice of Adoption

Notice of Adoption to amend rules to clarify legitimate (bona fide) restaurant service charges and to clarify restaurant labor-oriented surcharges.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection by sections 1043 and 2203 (f) of the New York City Charter, and section 20-702 of the New York City Administrative Code, and in accordance with the requirements of section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on November 10, 2025. A public hearing was held on December 10, 2025.

Statement of Basis and Purpose of Rules

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is amending its rules relating to restaurant surcharges to:

- clarify the meaning of legitimate (bona fide) service surcharges,
- allow for a mandatory gratuity charge to consumers where the proceeds of such charge are provided to the restaurant’s employees pursuant to a written agreement such as a collective bargaining agreement, and
- clarify that employers must still comply with applicable state law concerning minimum wages and gratuities.

In addition to clarifying existing rules related to bona fide service charges, this change ensures an appropriate balance between consumer and worker protection by allowing a charge for a mandatory gratuity for restaurant employees under limited circumstances while maintaining the requirement that such a charge be conspicuously disclosed to the consumer.

A public hearing was held on December 10, 2025, and DCWP received comments from various members of the public and representatives of the hospitality industry. Several commenters expressed support for the rules, while others suggested the rules should provide more flexibility for restaurants. A trade group questioned the inclusion of “a mandatory gratuity for parties of eight or more” as an example of a “bona fide service charge,” suggesting that the rule should allow restaurants to impose a mandatory gratuity for varying group sizes.

The Department has considered these comments and declines to make further changes. The addition of the language regarding mandatory gratuities codifies the Department’s longstanding interpretation that a mandatory gratuity for a party of eight or more is a “bona fide service charge.” The Department notes, however, that the examples set forth in the rule are not exhaustive. A restaurant may impose charges for services requested by a consumer, over and above what is included with the consumer’s purchase of a menu item, as long as such charges are clearly

disclosed. Such bona fide service charges may be based on the particular circumstances of that restaurant. As such, the rule already provides restaurants with reasonable flexibility while ensuring price transparency for consumers.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-702 of the New York City Administrative Code authorize the Department to make these amendments.

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.

Section 1. Section 5-59 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 5-59 Restaurant Surcharges.

(a) A seller serving food or beverages for consumption on the premises may not add surcharges to listed prices. For example, a restaurant may not state at the bottom of its menu that a 10 percent charge or a \$1.00 charge will be added to all menu prices.

(b) A seller may impose a bona fide service charge [(such as an added charge for two persons splitting one meal, or a per person minimum charge),] if the charge is conspicuously disclosed to the consumer before [the] food or beverage is ordered. For the purpose of this subdivision, a bona fide service charge is a fee charged for services requested by a consumer, over and above what is included with the consumer’s purchase of a menu item, including, but not limited to, an added charge for two persons splitting one meal, a mandatory gratuity for parties of eight or more, or a per person minimum charge.

(c) Notwithstanding any other provision of this title, a seller may impose a charge required by a written agreement, including but not limited to a collective bargaining agreement, between a seller and its employees, if the charge is conspicuously disclosed to the consumer before food or beverage is ordered and the full amount of the proceeds from such charge is provided to the seller’s employees; provided, however, that nothing in this subdivision shall be construed to supersede, alter or affect any provision of the New York Labor Law or any rule, regulation or wage order promulgated thereunder, including, but not limited to, section 196-d of the labor law and section 146-2.18 of Part 146 of Title 12 of the Official Compilation of Codes, Rules, and Regulations of the State of New York, relating to minimum wage and gratuities.

(d) In this section, the term “surcharge” does not include tax.