

# Supplemental Business Advisory on Restaurant Fee Disclosure Requirements in the District of Columbia



## Examples of Service Fee Disclosures that are Compliant and Non-Compliant with the District's Consumer Protection Laws

August 9, 2023

# OAG Guidance

- In March 2023, the Office of Attorney General (OAG) provided guidance to District restaurants explaining their legal obligation under the D.C. Consumer Protection Procedures Act (CPPA) to disclose fees, including service fees, in a timely, prominent, and adequate manner. See D.C. Code § 28-3901, *et seq.*
- The CPPA applies to all fees that merchants charge to consumers. OAG issued guidance specific to the restaurant industry because of recent consumer concerns about restaurant fees, especially "service" fees and charges.

# Surprised and Confused Consumers

- Diners have expressed concern about being surprised by unexpected fees and surcharges, including service fees, at the end of their meals. Diners have also expressed confusion about how restaurants are using service fees, especially whether restaurants distribute the fees as tips to servers or retain the fees to cover operational expenses (including employees' base wages).
- Under the CPPA, restaurants must timely, prominently, and accurately disclose all mandatory fees. And while the CPPA does not prohibit adding fees to bills, restaurants must explain fees that are vaguely labeled and likely to confuse consumers.
- While this Supplemental Business Advisory focuses on service fees and service charges, other mandatory fees that are unclear (e.g., wellness fees, restaurant recovery fees, 182 fees), or fees that are not used for the purposes consumers would reasonably expect (e.g., a gratuity that is not distributed like a tip), also require timely, prominent, and accurate explanations.

# Supplemental Business Advisory

- Because service fees have become relatively common, OAG has prepared examples of service fee disclosures that comply with the law, and examples that do not, to assist restaurants in complying with the law.
- The examples that appear on the following pages must be read in conjunction with every restaurant's obligation to *prominently* disclose fees *before* diners place their orders.

Please note that the examples in this Supplemental Business Advisory are offered for general illustrative purposes only. Compliance with the law is determined on a case-by-case basis and depends on the unique facts of each case.

# Example #1

In this scenario, the restaurant adds a mandatory 20% service fee to all guest checks. The restaurant retains that fee to help pay for its operational costs, including employees' base wages. The fee is not distributed to servers like a tip.

## Non-Compliant

**A 20% service fee will be added to all guest checks.**

## Compliant

**A 20% service fee will be added to all guest checks and will be used to cover our increasing operational costs. This fee is not a tip.**

*The non-compliant example fails to adequately disclose how the restaurant will use the service fee. In the absence of such a disclosure, a consumer could reasonably assume that a "20% service fee" functions like a tip that will be distributed to the servers on top of their base wages. The compliant example, if disclosed in a timely and prominent manner, communicates that the service fee will be retained by the restaurant and does not function like a tip to service workers. In the compliant example, unlike in the non-compliant example, a restaurant is conveying the information that consumers need to make an informed decision about whether and how much to tip a server.*

# Example #2

In this scenario, the restaurant charges a mandatory 22% service charge on every tab. The restaurant charges 15% to give directly to workers like a tip, on top of their hourly/base wages, and 7% to support operational costs, including base wages and health insurance.

## Non-Compliant

**22% service charge is included on every tab and will help to support our staff.**

## Compliant

**22% service charge is included on every tab. 15% is distributed directly to service workers on top of their base wages, and the remaining 7% is used to help pay for our staff costs, such as base wages, health insurance, etc. You may choose to leave an extra tip.**

*The non-compliant example fails to adequately disclose how the restaurant will use the service charge. In particular, the phrase "support our staff" is ambiguous, as it does not make clear whether the fee will be distributed directly to servers on top of their base wages—like a tip—or will more indirectly support workers by going toward base wages or benefits. It also fails to make clear what portion of the fee will be used for these purposes. Based on this non-compliant disclosure, a consumer could reasonably assume that the full "22% service charge" functions like a tip that will be distributed to the server. The compliant example, if disclosed in a timely and prominent manner, accurately communicates that a portion of the charge will be distributed to the server like a tip, while the remainder will be retained by the restaurant to help pay for staff costs. In the compliant example, unlike in the non-compliant example, a restaurant is conveying the information that consumers need to make an informed decision about whether and how much to tip a server.*

# Example #3

In this scenario, the restaurant adds a mandatory 15% service charge to all checks. The restaurant retains that fee to help pay the base wages and benefits of staff. The fee is not distributed to servers like a tip.

## Non-Compliant

**A 15% service charge will be added to your check to directly compensate our staff.**

## Compliant

**A 15% service charge will be added to your check to help us pay the base wages and benefits of staff. This fee is not a tip. If you would like to tip your server, we welcome you doing so.**

*The non-compliant example fails to adequately disclose how the restaurant will use the service charge because the phrase "directly compensate our staff" is ambiguous. In the absence of a clear disclosure, a consumer could reasonably assume that a "15% service charge" functions like a tip that will be distributed to the server. The compliant example, if disclosed in a timely and prominent manner, communicates that the service charge will be used by the restaurant to help pay for staff wages and benefits and does not function like a tip to service workers. In the compliant example, unlike in the non-compliant example, a restaurant is conveying the information that consumers need to make an informed decision about whether and how much to tip a server.*

# Example #4

In this scenario, the restaurant adds a mandatory 22% service charge to every bill. The restaurant retains that service charge to pay the base wages of staff. The fee is not distributed to servers like a tip.

## **Non-Compliant**

**A 22% service charge will be added to your bill, which allows us to increase the compensation of our staff.**

## **Compliant**

**A 22% service charge will be added to your bill. This charge goes entirely to increasing the wages of our employees to above the current minimum wage for all employees in DC. Tips are not expected, but always appreciated.**

*The non-compliant example fails to adequately disclose how the restaurant will use the service charge because a reasonable person could read it to mean that the restaurant will distribute the service charge to service employees, like a tip. In contrast, the compliant example, if disclosed in a timely and prominent manner, conveys that the 22% service charge will be used by the restaurant to increase the wages of employees and does not function like a tip.*



# Timely and Prominent Disclosure

- Timeliness: Restaurants must disclose the existence and the amount of fees, including service fees, before diners place their orders. Fees should not come as a surprise after an order has been placed or a meal has been consumed.
- Prominence: When restaurants disclose prices to consumers, they must also disclose mandatory fees, including service fees, in a manner that consumers are likely to be aware of them. Restaurants cannot bury fee information, obscure fees in fine print, or otherwise hide the existence or amount of fees. Disclosure can be made through a menu, signage, or orally—or any combination of the above—so long as diners are likely to be aware of the fees.

*\*A good rule of thumb for restaurants is to communicate service fee information in the same manner that they communicate their prices.*

# Non-Compliant Fee Disclosures

## Non-Compliant #1

### RISTORANTE ITALIANO



#### *Antipasti*

Caprese Salad.....\$10  
Bruschetta.....\$8

#### *Pizza*

Margherita.....\$14  
Quattro Formaggi.....\$14  
Prosciutto.....\$18

#### *Pasta*

Spaghetti Bolognese.....\$18  
Lasagna.....\$20  
Cacio e Pepe.....\$16



*Food allergy notice: Our restaurant uses eggs, milk, and wheat in our food. If you have an allergy, please notify your server. A 20% service fee will be added to all guest checks and will be used to cover our increasing operational expenses.*

*This fee is not a tip.*

## Non-Compliant #2

### RISTORANTE ITALIANO



#### *Antipasti*

Caprese Salad.....\$10  
Bruschetta.....\$8

#### *Pizza*

Margherita.....\$14  
Quattro Formaggi.....\$14  
Prosciutto.....\$18

#### *Pasta*

Spaghetti Bolognese.....\$18  
Lasagna.....\$20  
Cacio e Pepe.....\$16

***Food allergy notice: Our restaurant uses eggs, milk, and wheat in our food. If you have an allergy, please notify your server.***

A 20% service fee will be added to all guest checks and will be used to cover our increasing operational expenses. This fee is not a tip.

# Non-Compliant Fee Disclosures

## Non-Compliant #3

### RISTORANTE ITALIANO



#### *Antipasti*

Caprese Salad.....\$10  
Bruschetta.....\$8

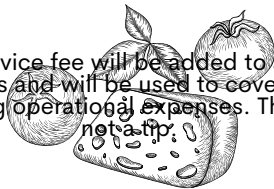
#### *Pizza*

Margherita.....\$14  
Quattro Formaggi.....\$14  
Prosciutto.....\$18

#### *Pasta*

Spaghetti Bolognese.....\$18  
Lasagna.....\$20  
Cacio e Pepe.....\$16

A 20% service fee will be added to all guest checks and will be used to cover our increasing operational expenses. This fee is not a tip.



**Food allergy notice: Our restaurant uses eggs, milk, and wheat in our food. If you have an allergy, please notify your server.**

## Non-Compliant #4

### RISTORANTE ITALIANO



#### *Antipasti*

Caprese Salad.....\$10  
Bruschetta.....\$8

#### *Pizza*

Margherita.....\$14  
Quattro Formaggi.....\$14  
Prosciutto.....\$18

#### *Pasta*

Spaghetti Bolognese.....\$18  
Lasagna.....\$20  
Cacio e Pepe.....\$16

Thank you for dining with us!

*About us: We're a locally and family owned business that was established in 1994. We are dedicated to preparing fresh Italian dishes using the highest quality ingredients, sprinkled with a dash of pride and love. Classic Italian dishes are our passion. When you dine with us, you're family. Carryout and delivery options are also available. A 20% service fee will be added to all guest checks and will be used to cover our increasing operational expenses. This fee is not a tip.*

# Compliant Fee Disclosure

- The non-compliant examples on the preceding pages do not qualify as prominent disclosures either because the fee language is buried in fine print (Ex. 2), or it is combined with other unrelated information (Exs. 1 and 4), or it is obscured by graphics (Ex. 3).
- The compliant example on this page qualifies as a prominent disclosure because it is displayed in a similar font size as the menu/pricing information, it is in a location customers are likely to see, and it is not combined with other unrelated information.

## Compliant

**RISTORANTE ITALIANO**



***Antipasti***

Caprese Salad.....\$10  
Bruschetta.....\$8

***Pizza***

Margherita.....\$14  
Quattro Formaggi.....\$14  
Prosciutto.....\$18

***Pasta***

Spaghetti Bolognese.....\$18  
Lasagna.....\$20  
Cacio e Pepe.....\$16

A 20% service fee will be added to all guest checks and will be used to cover our increasing operational expenses. This fee is not a tip.

*Food allergy notice: Our restaurant uses eggs, milk, and wheat in our food. If you have an allergy, please notify your server.*

# OAG's Office of Consumer Protection

If you would like further information on the District's consumer protection laws, please visit our website at [oag.dc.gov/consumer-protection](http://oag.dc.gov/consumer-protection).

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