

# THE COUNCIL OF THE CITY OF NEW YORK

Hon. Corey Johnson  
Speaker of the Council

Hon. Fernando Cabrera  
Chair, Committee on Governmental Operations



Report of the Finance Division on the  
Fiscal 2020 Preliminary Budget and the  
Fiscal 2019 Preliminary Mayor's Management Report for the  
**Office of Administrative Trials and Hearings**

March 12, 2019

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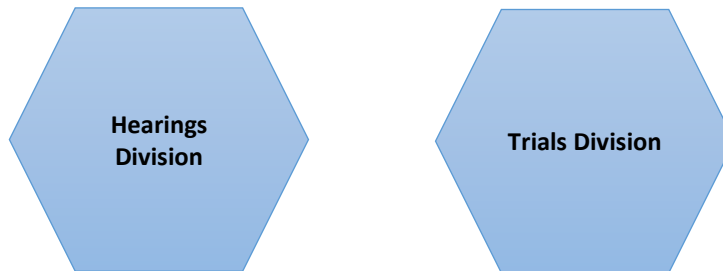
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## Office of Administrative Trials and Hearings Services Overview

The Office of Administrative Trials and Hearings (OATH) is the City's central, independent administrative law court. OATH has two divisions: the OATH Trials Division and the OATH Hearings Division.

### Divisions



#### **OATH Hearings Division.**

The Hearings Division conducts hearings on summonses issued by enforcement agencies for alleged violations of City rules and regulations. The Hearings Division represents the consolidation of three previously separate tribunals: the Environmental Control Board (ECB); the Department of Health and Mental Hygiene (DOHMH) Health Tribunal and the Taxi & Limousine Commission (TLC) Tribunal. Under the management of current OATH commissioner Fidel Del Valle, these three tribunals have been gradually streamlined into a single Hearings Division, which manages cases that were formerly overseen by these tribunals under an integrated system with a unified hearing process. In addition, hearings formerly adjudicated by the Department of Consumer Affairs were also streamlined into the OATH Hearings Division beginning in September 2016.

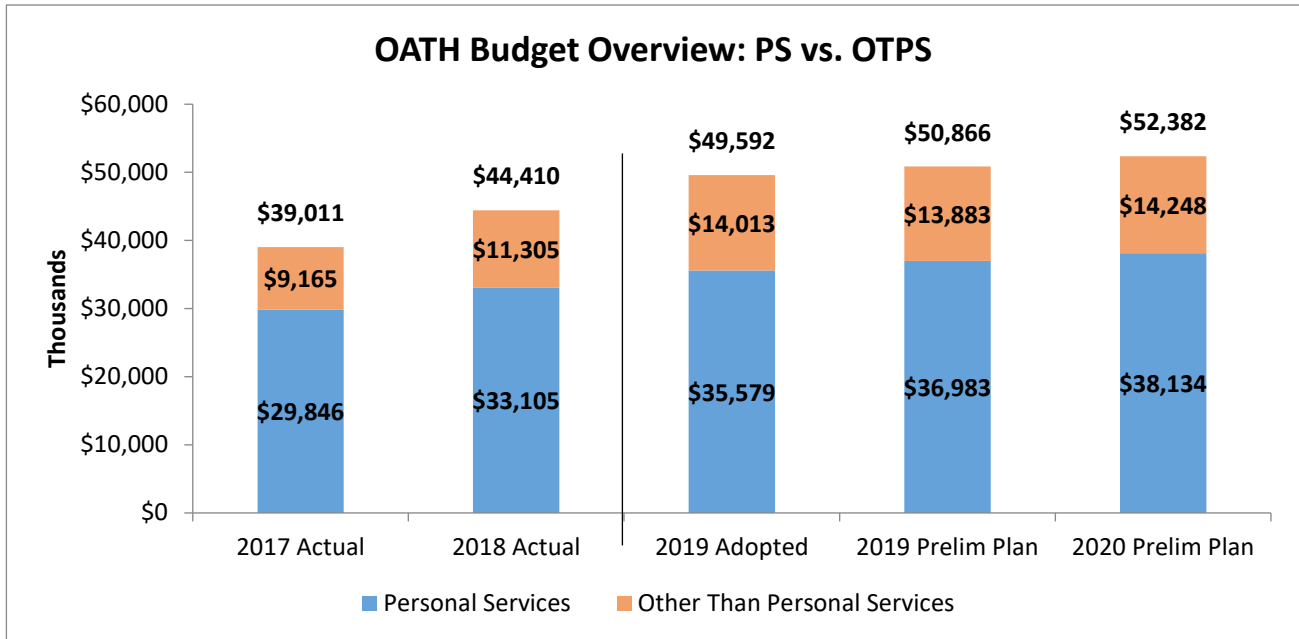
#### **OATH Trials Division.**

Formerly the OATH Tribunal, the OATH Trials Division adjudicates a wide range of issues that can be referred by any City agency, board or commission. Hearings conducted by the Trials Division include disciplinary cases brought by City agencies against civil service employees; matters pertaining to licensing, regulatory and enforcement authority, including cases involving City contractors; cases involving holders of various City licenses and loft tenants and their landlords; and hearings conducted after the New York City Police Department (NYPD) seizes vehicles of drivers accused of crimes.

## Fiscal 2020 Preliminary Budget Highlights

The Office of Administrative Trials and Hearings Fiscal 2020 Preliminary Budget totals \$52.4 million, including \$38.1 million in Personal Services (PS) funding to support 315 full-time positions. The entirety of OATH’s budget is funded through City tax-levy. While OATH’s operations are separated into the Hearings and Trials Divisions, the agency’s budget is organized into only two units of appropriation<sup>1</sup> (U/As): Personal Services and Other Than Personal Services (OTPS).

Figure 1



### Highlights of OATH’s Fiscal 2020 Preliminary Budget

- New Needs.** Since the Adoption of the Fiscal 2019 Budget, the Office of Administrative Trials and Hearings has identified new needs of \$666,000 for Fiscal 2019 and \$604,000 for Fiscal 2020.
- Miscellaneous Revenue.** The Financial Plan projects that the Office of Administrative Trials and Hearings will generate Miscellaneous Revenue totaling \$142 million in Fiscal 2020, almost entirely from the collection of fines issued at OATH courts.
- Contract Budget.** OATH’s Fiscal 2020 Preliminary Contract Budget totals \$4.8 million for 25 contracts, accounting for 33.9 percent of the Department’s OTPS Budget.
- Preliminary Mayor’s Management Report (PMMR) Highlights.** Notable performance metrics reported by the Office of Administrative Trials and Hearings in the 2019 PMMR include the following.
  - The total number of summonses that OATH receives from issuing agencies has been steadily increasing over the past several years, and expanded from 844,299 in Fiscal

<sup>1</sup> Units of Appropriation are the subdivisions of the City Expense Budget that the City Council votes upon.

2017 to 872,364 in Fiscal 2018. In the Fiscal 2020 Preliminary Plan, OATH added \$450,000 in Fiscal 2019 and Fiscal 2020 to address this increase in summonses.

- The total number of summonses processed at the OATH Hearings Division has been steadily increasing, but not by enough to keep up with the growth in summonses received. The number of summonses processed by OATH grew from 633,596 in Fiscal 2017 to 658,245 in Fiscal 2018.
- The average time from OATH Hearings Division hearing assignment to decision rendered grew from four days in Fiscal 2016 to seven days in Fiscal 2017 and Fiscal 2018. OATH has been adding additional funding for Hearings Officers to handle the increase in summonses, including an additional \$450,000 in the Fiscal 2020 Preliminary Plan.

## Financial Plan Summary

Table 1

OATH Financial Summary						
<i>Dollars in Thousands</i>	FY17	FY18	FY19	Preliminary Plan		**Difference
	Actual	Actual	Adopted	FY19	FY20	FY19 - FY20
<b>Personal Services</b>						
Additional Gross Pay	\$539	\$525	\$468	\$468	\$468	\$0
Full-Time Salaried - Civilian	17,898	20,356	22,085	23,049	24,058	1,973
Unsalariated	11,357	12,156	12,977	13,416	13,557	580
Overtime - Civilian	51	68	50	50	50	0
<b>SUBTOTAL</b>	<b>\$29,846</b>	<b>\$33,105</b>	<b>\$35,579</b>	<b>\$36,983</b>	<b>\$38,134</b>	<b>\$2,555</b>
<b>Other Than Personal Services</b>						
Contractual Services	\$2,900	\$4,128	\$5,158	\$5,163	\$4,831	(\$327)
Other Services & Charges	4,792	5,368	6,862	7,115	7,483	621
Property & Equipment	319	468	158	404	275	117
Supplies & Materials	1,154	1,341	1,835	1,200	1,657	(178)
<b>SUBTOTAL</b>	<b>\$9,165</b>	<b>\$11,305</b>	<b>\$14,013</b>	<b>\$13,883</b>	<b>\$14,248</b>	<b>\$235</b>
<b>TOTAL</b>	<b>\$39,011</b>	<b>\$44,410</b>	<b>\$49,592</b>	<b>\$50,866</b>	<b>\$52,382</b>	<b>\$2,790</b>
<b>Funding</b>						
City Funds			\$49,592	\$50,866	\$52,382	\$2,788
<b>TOTAL</b>	<b>\$39,011</b>	<b>\$44,410</b>	<b>\$49,592</b>	<b>\$50,866</b>	<b>\$52,382</b>	<b>\$2,790</b>
<b>Budgeted Headcount</b>						
<b>Full-Time Positions - Civilian</b>	<b>274</b>	<b>290</b>	<b>308</b>	<b>315</b>	<b>315</b>	<b>7</b>

Source\*\*The difference of Fiscal 2019 Adopted Budget compared to Fiscal 2020 Preliminary Budget.

## New Needs

Since Adoption of the Fiscal 2019 Budget, the Office of Administrative Trials and Hearings has identified New Needs of \$666,000 dollars for Fiscal 2019 and \$604,000 dollars for Fiscal 2020. This includes \$450,000 dollars for Fiscal 2019 and Fiscal 2020 for Hearing Officers, a baselined PS Adjustment of \$154,000 dollars, and \$62,000 dollars for an IT Upgrade in Fiscal 2019. The additional funding for Hearing Officers is allocated to help the agency deal with the increasing growth in annual summonses received.

## **Former Tribunals of the OATH Hearings Division**

The Hearings Division conducts hearings on summonses issued by enforcement agencies for alleged violations of City rules and regulations. The Hearings Division represents the consolidation of three previously separate tribunals: the Environmental Control Board (ECB), the Department of Health and Mental Hygiene (DoHMH) Health Tribunal, and the Taxi & Limousine Commission (TLC) Tribunal. Under the management of current OATH commissioner Fidel Del Valle, these three tribunals have been gradually streamlined into a single Hearings Division, which manages cases that were formerly overseen by these tribunals under an integrated system with a unified hearing process. In addition, hearings formerly adjudicated by the Department of Consumer Affairs were also streamlined into the OATH Hearings Division beginning in September 2016.

### **Health Tribunal**

The OATH Health Tribunal provides hearings for individuals and businesses charged with violating laws related to, or affecting health within New York City. The Health Tribunal does not issue Notices of Violation (NOVs) and does not conduct inspections. The Tribunal schedules about 65,000 cases each year. Most of the cases involve public health and environmental sanitation, with the largest number of cases coming from inspections of food service establishments.

### **Taxi and Limousine Commission Tribunal**

The TLC Tribunal is responsible for holding hearings on tickets that are issued by the TLC, NYPD and the Port Authority of NY/NJ. These tickets are issued to TLC licensees and non-licensees for violations of NYC laws and TLC rules and regulations. The TLC Tribunal is not a part of the TLC. Tribunal judges do not work for the TLC and are independent, impartial decision-makers.

### **Environmental Control Board (ECB)**

ECB is the City's largest tribunal, and holds approximately 200,000 hearings annually on quality of life and public safety charges that are filed by 13 different agencies, including the Department of Buildings, the Fire Department, the Department of Environmental Protection and the Department of Sanitation.

### **Department of Consumer Affairs (DCA) Hearings**

In September 2016, the OATH Hearings Division began hearing summonses issued from the Department of Consumer Affairs, which DCA formerly heard themselves. DCA is responsible for inspecting and licensing businesses in New York City in order to ensure that labor, consumer protection and other business regulations are being adhered to. The OATH Hearings Division now conducts hearings on the alleged violation of DCA business regulations.

## Budget Issues

### Environmental Control Board Debt

OATH miscellaneous revenue figures discussed in the “Miscellaneous Revenue” section of this report underrepresent the quantity of fines levied in ECB courts because a major share of OATH fines are not collected. Unpaid fines are re-categorized as OATH/ECB debt, which the Department of Finance is responsible for collecting. In response to growth in unpaid OATH/ECB debt, the Department of Finance (DOF) established the “NYC Amnesty Program for Office of Administrative Trials and Hearings (OATH)/Environmental Control Board (ECB) judgements violations.” This program, which ran from September through December 2016, allowed violators with OATH/ECB debt to have a portion of their debt forgiven if part of their debt was paid off over the period of the amnesty. This resulted in the generation of \$45 million in debt payments over the amnesty period.

The Department of Finance has also been more assertive in its efforts to collect OATH/ECB debt, with debt collections rising from \$41.5 million in Fiscal 2014 to \$67.3 million in Fiscal 2018. For more information on the DOF’s efforts to collect ECB debt, please see the [“FY18 Annual Report on DOF Collection of ECB Judgement Debt,”](#) a report the DOF must submit to City Council following the passage of Local Law 11. This report can be found on the Department of Finance’s website.

### Criminal Justice Reform Act (CJRA)

Criminal Justice Reform Act (CJRA) is a series of bills passed by the City Council and signed by the Mayor in June 2016 that diverted a number of low level offenses (such as public urination and public consumption of alcohol) from criminal court to OATH. OATH’s Fiscal 2019 Preliminary Budget includes \$7 million and 51 staff allocated towards the implementation of the CJRA, with funding going towards staff salaries, facility renovations to accommodate the increased volume of hearings, security guard coverage, community service programs, and additional supplies and equipment.

Following the implementation of CJRA in June 2017, the number of summonses OATH received from the Police Department grew substantially, as shown in the chart below. Monthly New York Police Department (NYPD) OATH summonses spiked to 13,054 in August 2017, but have subsequently tapered off. Nonetheless, the NYPD continues to issue more OATH summonses in the summer months.

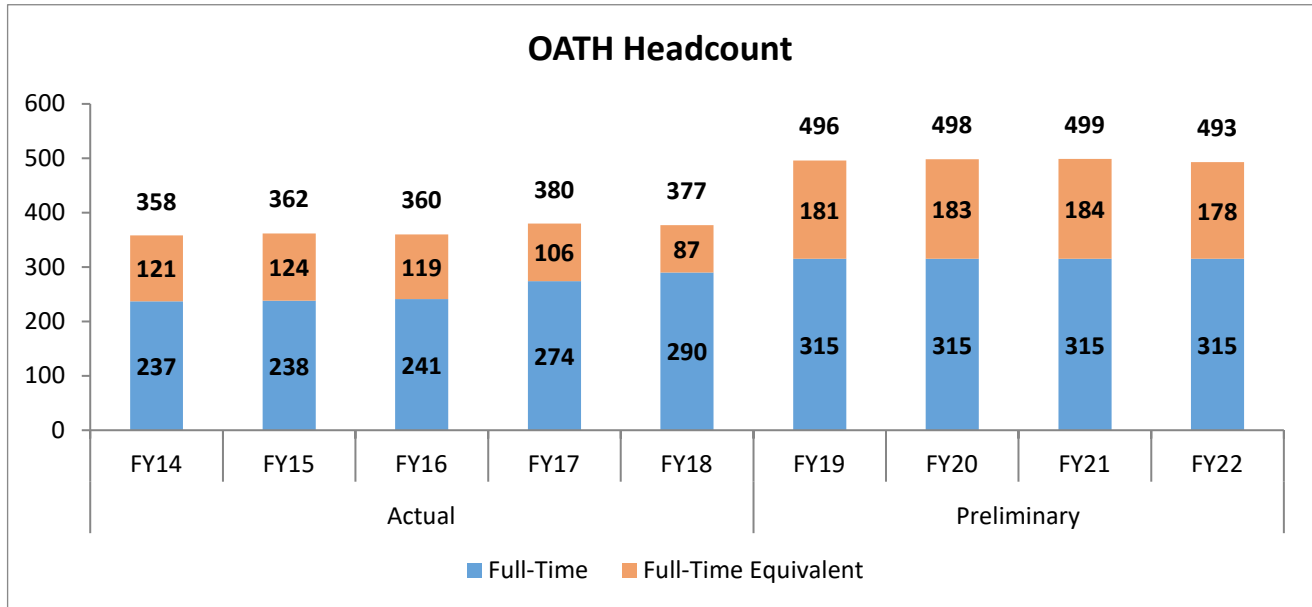
It should be noted that, despite this growth, police summonses nonetheless make up a relatively small share of OATH’s over 800,000 annual summonses. In Fiscal 2017, 22,695 police summonses<sup>2</sup> represented 2.7 percent of all OATH summonses, while over the seven months of Fiscal 2018, coinciding with the implementation of CJRA, 53,058 police summonses represented 10.1 percent of all OATH summonses. Comparatively, over the first seven months of Fiscal 2018, the Department of Sanitation and Department of Buildings issued 224,412 and 51,728 OATH summonses, respectively.

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<sup>2</sup> Excludes summons from Port Authority Police, which are a separate entity under the jurisdiction of the Port Authority. Includes police summonses issued to drivers not licensed by the Taxi and Limousine Commission, such as for unlicensed operation of a cab.

## Headcount

Figure 2



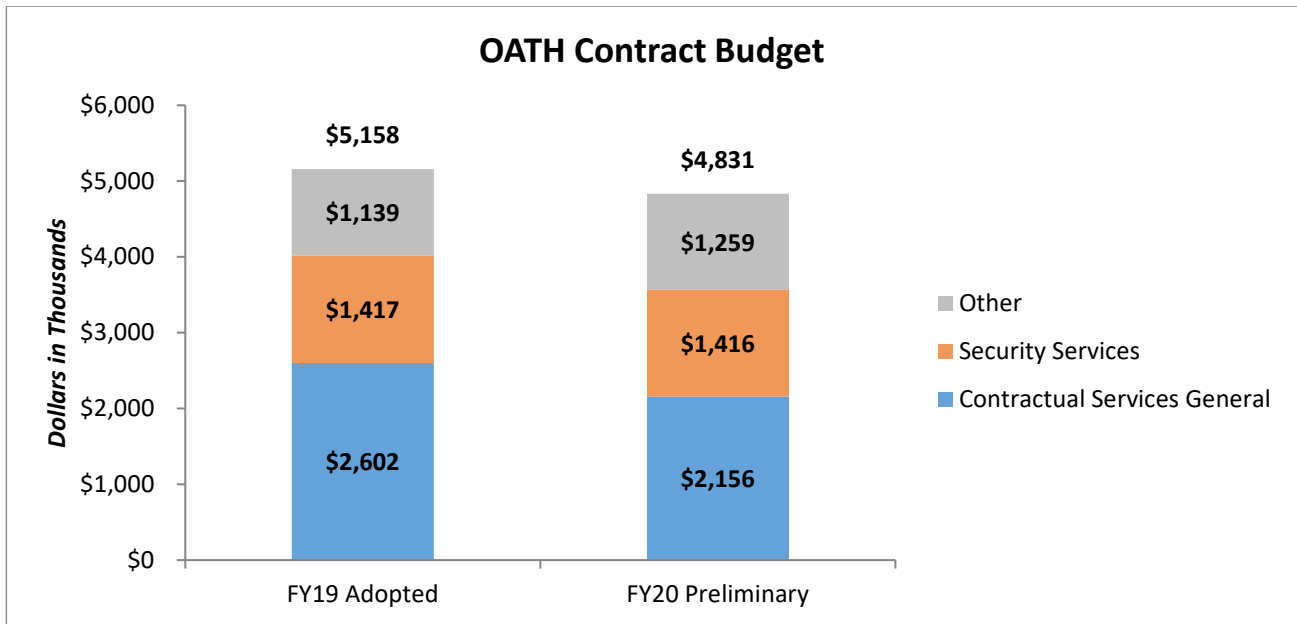
In the Fiscal 2020 Preliminary Plan, the Office of Administrative Trials and Hearings’ Fiscal 2020 PS Budget provides for \$38.1 million to support a headcount of 315 full-time positions and 183 full-time equivalent positions. As of December 2018, OATH actually employs 295 full-time staff and 93 full-time equivalent staff, representing a full-time vacancy rate of 7.3 percent and a full-time equivalent vacancy rate of 48.6 percent. OATH’s headcount has expanded in recent years in order to accommodate several changes to the Agency, including the reorganization of OATH from four tribunals into the Trials and Hearing Divisions; the addition of new offices such as the Office of the Ombudsman and the Center for Creative Conflict Resolution; and most recently, to accommodate an increasing case load following the passage of the Criminal Justice Reform Act and other regulatory legislation. OATH’s staff vacancy rate has therefore been relatively large as the Agency gradually fills these positions. Please see Appendix B for more detail regarding OATH’s headcount.



### Contract Budget

The New York City Charter mandates the preparation of a Contract Budget to identify expenditures for contractual services, which are defined as any technical, consultant or personnel service provided to the City by means of a contract. The Contract Budget is a subset of the OTPS portion of the City’s Expense Budget. The Administration prepares a Contract Budget twice each Fiscal year. The Fiscal 2019 Preliminary Contract Budget totals \$15.9 billion for procurement expenditures across all agencies.

**Figure 3**

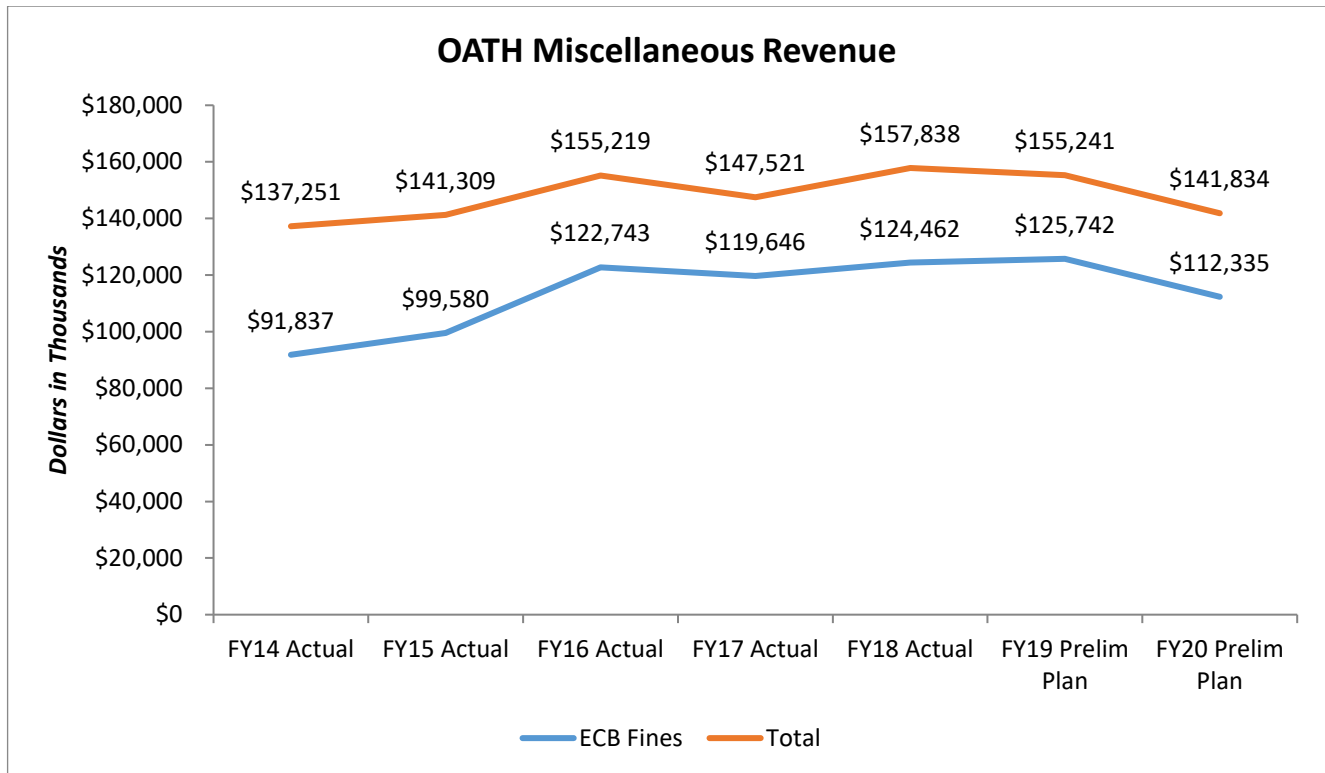


The Office of Administrative Trials and Hearing’s Fiscal 2020 Contract Budget totals \$4.8 million for 25 contracts, accounting for 33.9 percent of the Department’s OTPS Budget. OATH’s Fiscal 2020 Budget includes \$2.2 million for general services contracts, accounting for 44.6 percent of OATH’s total Fiscal 2020 Preliminary Contract Budget. These contracts are related to summons processing, language services, community service and lockbox services. In addition, OATH’s Fiscal 2019 Budget includes \$1.4 million for contracted security services, representing 29.3 percent of OATH’s Fiscal 2020 Preliminary Contract Budget, contracted to provide security at OATH tribunals. Please see Appendix C for more detail regarding OATH’s Contract Budget.

### Miscellaneous Revenue

The OATH Hearings Division generates revenues for the City through the collection of fines issued for various violations. Even though the Health Tribunal, TLC Tribunal and ECB have been consolidated into the Hearings Division, revenue generated from Hearings Division fines are still subdivided by the types of cases these tribunals previously adjudicated. In addition to fine revenue, a smaller share of agency revenue is generated through fees charged at the OATH Hearings Division. OATH revenues totaled \$157.8 million in Fiscal 2018.

Figure 4



It is projected that OATH will generate miscellaneous revenue of \$142 million in Fiscal 2020. ECB fine revenue stems from violations issued by the Department of Sanitation, Department of Buildings, Department of Environmental Protection, Fire Department, Police Department, Department of Transportation, and several other agencies. Revenue generated from ECB fines is expected to represent 79.2 percent of OATH’s total miscellaneous revenue in Fiscal 2020, a percentage in line with actual revenue generation in recent Fiscal years. ECB revenue has grown over the past several Fiscal years as the number of ECB hearings has increased with the greater inflow of summonses. In contrast, revenue generated through Health Department fines has declined in recent Fiscal years. This decrease is due in large part to the Council’s efforts to reform the City’s restaurant grading system. In October 2013, the Council passed legislation that improved the oversight and performance of the restaurant inspection system. In March of 2014, the Council and the Department of Health and Mental Hygiene announced new restaurant grading rules designed to reduce fines and provide additional educational resources to help restaurants maintain high health standards throughout New York City. Please see Appendix D for more detail regarding OATH’s miscellaneous revenue.

**Preliminary Mayor’s Management Report (PMMR)**

**Figure 5**

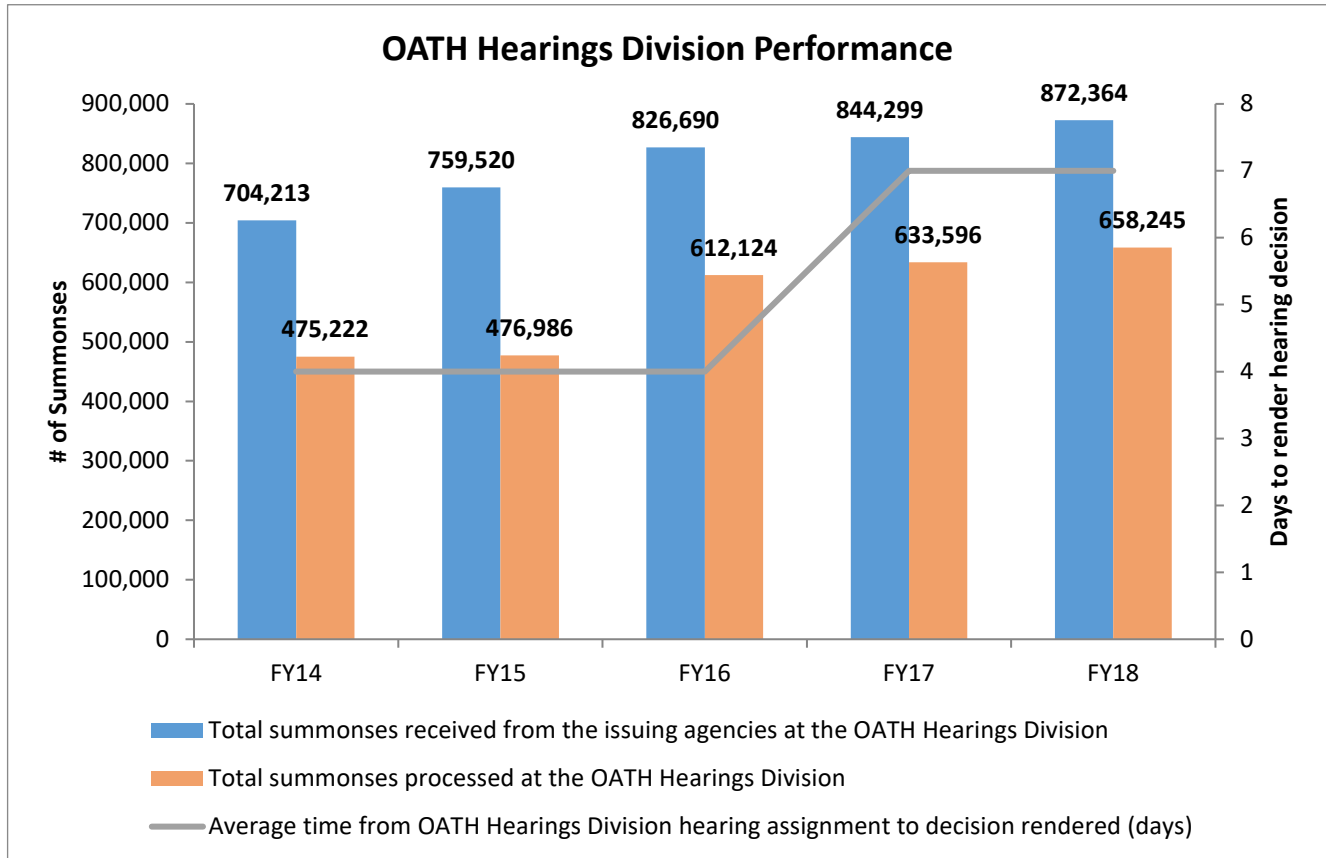


Figure 5 highlights the OATH Hearings Division’s performance over the past several Fiscal years using indicators sourced from the 2019 PMMR. The Hearing Division has seen the number of summonses it receives increase over the past several Fiscal years. The number of summonses grew between Fiscal 2014 and Fiscal 2018 primarily because of an increased caseload from the Department of Buildings and Department of Sanitation, as well as due to a transfer of case jurisdiction from the Department of Consumer Affairs to OATH in Fiscal 2017.

The Hearings Division has been able to process more summonses as a result of increased resources and efficiency gains from OATH’s internal restructuring, as well as the increased usage of mail, phone and online hearings. Nonetheless, the Division has not been able to fully keep pace with the growth in summonses received. Consequently, the average time OATH requires to render a hearing decision has increased over the past several Fiscal years. Please see Appendices E and F for a complete list of OATH’s 2019 PMMR indicators.

## Appendices

### A: Budget Actions in the November and the Preliminary Plans

<i>Dollars in Thousands</i>	FY19			FY20		
	City	Non-City	Total	City	Non-City	Total
<b>OATH Budget as of the Adopted FY19 Budget</b>	<b>\$49,592</b>	<b>\$0</b>	<b>\$49,592</b>	<b>\$50,736</b>	<b>\$0</b>	<b>\$50,736</b>
<b>New Needs</b>						
PS Adjustment	\$154	\$0	\$154	\$154	\$0	\$154
Hearing Officers	450	0	450	450	0	450
IT Upgrade	62	0	62	0	0	0
<b>Subtotal, New Needs</b>	<b>\$666</b>	<b>\$0</b>	<b>\$666</b>	<b>\$604</b>	<b>\$0</b>	<b>\$604</b>
<b>Other Adjustments</b>						
Collective Bargaining	\$607	\$0	\$607	\$1,040	\$0	\$1,040
<b>Subtotal, Other Adjustments</b>	<b>\$607</b>	<b>\$0</b>	<b>\$607</b>	<b>\$1,040</b>	<b>\$0</b>	<b>\$1,040</b>
<b>Citywide Savings</b>						
<b>Subtotal, Citywide Savings</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b>TOTAL, All Changes</b>	<b>\$1,273</b>	<b>\$0</b>	<b>\$1,273</b>	<b>\$1,644</b>	<b>\$0</b>	<b>\$1,644</b>
<b>OATH Budget as of the Preliminary FY20 Budget</b>	<b>\$50,866</b>	<b>\$0</b>	<b>\$50,866</b>	<b>\$52,382</b>	<b>\$0</b>	<b>\$52,382</b>

### B: OATH Headcount

	Actual - Year end					Budgeted – FY20 Prelim Plan			
	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
Full-Time	237	238	241	274	290	315	315	315	315
Full-Time Equivalent	121	124	119	106	87	181	183	184	178
<b>Total</b>	<b>358</b>	<b>362</b>	<b>360</b>	<b>380</b>	<b>377</b>	<b>496</b>	<b>498</b>	<b>499</b>	<b>493</b>

### C: OATH Contract Budget

<b>OATH FY20 Preliminary Contract Budget</b>				
<i>Dollars in Thousands</i>				
Category	FY19 Adopted	Number of Contracts	FY20 Preliminary	Number of Contracts
Contractual Services General	\$2,602	10	\$2,156	10
Telecommunications Maintenance	80	2	154	2
Maintenance and Repair - General			35	1
Office Equipment Maintenance	75	1	117	1
Printing Contracts	124	1	101	1
Security Services	1,417	3	1,416	3
Temporary Services	195	1	219	1
Cleaning Services	480	3	540	3
Training Program City Employees	83	1	8	1
Professional Services - Computer Services	18	1	0	0
Professional Services - Direct Education Services	22	1	22	1
Professional Services - Other	62	1	62	1
<b>TOTAL</b>	<b>\$5,158</b>	<b>25</b>	<b>\$4,831</b>	<b>25</b>

**D: OATH Miscellaneous Revenue**

<b>OATH Miscellaneous Revenue Budget Overview</b>								
<i>Dollars in Thousands</i>								
Revenue Sources	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actual	FY19 Adopted	Preliminary Plan		*Difference FY19-FY20
						FY19	FY20	
OATH Hearing Fees	\$15	\$3	\$33	\$17	\$11	\$11	\$11	\$0
DOHMH Fines	33,082	27,324	24,813	29,722	26,288	26,288	26,288	0
ECB Fines	99,580	122,743	119,646	124,462	107,512	125,742	112,335	4,823
TAXI Fines	8,632	5,149	3,029	3,638	3,200	3,200	3,200	0
<b>TOTAL</b>	<b>\$141,309</b>	<b>\$155,219</b>	<b>\$147,521</b>	<b>\$157,838</b>	<b>\$137,011</b>	<b>\$155,241</b>	<b>\$141,834</b>	<b>\$4,823</b>

**E: OATH 2019 PMMR Indicators: Trials Division**

OATH Trials Division Indicators	Actual			Target		4-Month Actual	
	FY16	FY17	FY18	FY19	FY20	FY18	FY19
OATH Trials Division cases with decisions issued within 45 business days (%)	93%	93%	91%	*	*	88%	91%
OATH Trials Division facts and conclusions adopted by agencies (%)	99%	99%	99%	96%	96%	99%	97%
OATH Trials Division settlement rate (%)	57%	59%	57%	55%	55%	56%	55%
Cases filed at the OATH Trials Division (total)	2,553	2,661	2,836	*	*	992	893
Cases closed at the OATH Trials Division (total)	2,560	2,668	2,677	*	*	871	907
Cases processed per ALJ (total)	188.6	189.6	202	UP	UP	67.5	71.2
Average time for the OATH Trials Division to issue decisions after records closed (business days)	5.4	5.2	4.0	15	15	5.5	4.2

**F: OATH 2019 PMMR Indicators: Hearings Division**

OATH Hearings Division Indicators	Actual			Target		4-Month Actual	
	FY16	FY17	FY18	FY19	FY20	FY18	FY19
Total summonses received from the issuing agencies at the OATH Hearings Division	826,690	844,299	872,364	*	*	322,859	295,868
Total hearings at the OATH Hearings Division	271,920	298,571	330,110	*	*	103,157	116,457
Total number of pre-hearing activities at the OATH Hearings Division	298,819	313,665	290,437	*	*	98,709	103,047
Total summonses processed at the OATH Hearings Division	612,124	633,596	658,245	*	*	218,348	236,115
Summonses with decision rendered at the OATH Hearings Division	195,290	207,723	248,438	*	*	75,913	89,122
Average time from OATH Hearings Division hearing assignment to decision rendered (days)	4	7	7	*	*	8	6
OATH hearings by mail (% of total remote hearings)	24.4%	32.3%	19.9%	*	*	21.7%	16.2%
OATH hearings by phone (% of total remote hearings)	16.7%	15.5%	19.2%	*	*	19.9%	18.1%
OATH one-click hearings (% of total remote hearings)	58.9%	52.2%	60.9%	*	*	58.4%	65.7%