

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON FINANCE JOINTLY WITH THE
COMMITTEE ON GOVERNMENTAL OPERATIONS

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November 19, 2015
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HELD AT: COMMITTEE ROOM - CITY HALL

B E F O R E: JULISSA FERRERAS-COPELAND
Chairperson

BEN KALLOS
Chairperson

COUNCIL MEMBERS: Ydanis A. Rodriguez
James G. Van Bramer
Vanessa L. Gibson
Robert E. Cornegy, Jr.
Laurie A. Cumbo
Corey D. Johnson
Mark Levine
I. Daneek Miller
Helen K. Rosenthal
Steven Matteo
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A P P E A R A N C E S (CONTINUED)

Jeffrey Shear, Deputy Commissioner
Treasury, Payments and Operations
NYC Department of Finance

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NYC Department of Buildings

Fidel Del Valle, Commissioner
Office of Administrative Trials and Hearings
NYC Chief Administrative Law Judge

Robert Bookman, Esquire
New York City Hospitality Alliance

1 COMMITTEE ON FINANCE JOINTLY WITH THE
2 COMMITTEE ON GOVERNMENTAL OPERATIONS

3

2 CHAIRPERSON FERRERAS-COPELAND: Good
3 afternoon and welcome to today's hearing regarding
4 the Environmental Control Board Data. I am Council
5 Member Julissa Ferreras-Copeland, and I Chair the
6 Committee on Finance. We are joined today by the
7 Committee on Governmental Operations chaired by my
8 colleague Council Member Kallos. We've also been
9 joined by Council Members Matteo, Rosenthal, Cumbo
10 and Levine. Today, we are holding an oversight
11 hearing as well as considering five bills, one of
12 which is in the Finance Committee and four of which
13 are in the Governmental Operations Committee. The
14 oversight portion of the hearing will examine the
15 Department of Finance's first annual report regarding
16 outstanding ECB Judgment debt, which was issued this
17 month as a result of legislation passed by the
18 Finance Committee this past January. Before we
19 begin, I'd like to thank the staff of the Finance and
20 Legislative Division for their work they did
21 preparing for this hearing. Specifically, my Chief
22 Counsel Tanisha Edwards, Assistant Counsel Rebecca
23 Chasen, Finance Analyst John Russell, and James
24 Sabudi (sp?), Committee Counsel, Sanita Dishmuk
25 (sp?), and Policy Analyst Laurie Wen.

1
2 The legislation in the Finance Committee
3 that we're considering today is Proposed Intro 806-A,
4 sponsored by myself, which would authorize the
5 Department of Finance to hold a temporary amnesty
6 program to forgive certain ECB debt. The remaining
7 four pieces of legislation we are considering are in
8 the Governmental Operations Committee, and Council
9 Member Kallos will speak about those bills in his
10 opening statement. For the benefit of the public and
11 my colleagues, I will provide a little background on
12 ECB and the process by which notice of violations are
13 adjudicated. ECB is an administrative tribunal that
14 adjudicates hearings on notices of violations issued
15 by the City's enforcement agencies for various
16 qualities of life infraction such as Sanitation Code
17 or Building Code violations. ECB does not issue
18 notice of violations itself, nor does it direct
19 control or otherwise influence where, when or to whom
20 notices are issued. Once an agency writes a quality
21 of life ticket, it is referred to ECB for
22 adjudication. It is after a hearing--if after a
23 hearing, ECB finds that the respondent was in
24 violation, then it will impose penalties. If the
25 respondent does not pay the fine or appear before

1
2 ECB, then they are in default and ECB will impose
3 default penalties. Outstanding ECB judgment debt
4 results when either the penalty or default penalty is
5 not paid, and ECB docketed a judgment in court, and
6 refers the case to the Department of Finance for
7 collection.

8 Earlier this year, in an effort to bring
9 about more transparent in the ECB debt collection
10 process, the Council passed Local Law 11 that
11 requires an annual report from DOF to the Council
12 detailing the amount of outstanding ECB judgments at
13 DOF, the enforcement tools used by DOF and the
14 success of DOF's efforts. The first such report was
15 issued this month, and it is re--and it--and it
16 revealed that there is currently \$1.58 billion in
17 outstanding ECB judgment debt, up \$91 million from
18 June '14--June 2014. Of this amount, \$386 million is
19 interest; \$709 million is penalties, and
20 approximately 75% of the total debt owed is more than
21 2-1/2 years old. \$200 million of the outstanding
22 debt is for judgments docketed in Fiscal 2015, and
23 DOF reports that it has collected \$17.7 million or
24 80--or 8.8% of the Fiscal 2015 debt. The Council
25 appreciates the steps DOF has taken to pass--in this

1 past year to be more effective at collecting ECB debt
2 including documenting the outstanding debt in its
3 recent report. Beginning to use the sheriffs and the
4 marshals to collect debt, and sending out more than
5 150,000 enforcement letters. However--there's always
6 a however--the data in the report demonstrated there
7 is still room for improvement. We look forward to
8 hearing from DOF and--on what recommendations it has
9 for future enforcement initiatives that could help
10 bring the collection rates up even higher. One
11 recommendation that DOF has made in the past is being
12 considered by the Council today in the form of a
13 Proposed 806-A, which would create a temporary
14 amnesty program under which respondents could resolve
15 their outstanding ECB debt. Respondents who have
16 default judgments would be able to resolve their debt
17 by paying the base penalty, and having the default
18 penalties and the accrued interest waived.
19 Respondents who have judgments against them as a
20 result of being found in violation after an ECB
21 hearing, would be able to resolve their debt by
22 paying 75% of their imposed penalty and having the
23 accrued interest waived.
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1
2 DOF administered a similar program in
3 2009 that did not have a very high participation--
4 high participation rate. As a result, the proposed
5 legislation includes a provision stating that
6 eligible respondents who do not participate in the
7 amnesty program will be offered a less generous
8 settlement agreement should they try to resolve their
9 debt with DOF after the program has ended. In
10 addition to the requirements of the legislation, DOF
11 has agreed to investigate additional administrative
12 steps to incentivize respondents to participate in
13 the amnesty program including reporting delinquencies
14 to credit rating agencies, including questions about
15 outstanding ECB debt on both the vendor and principal
16 Vendex questionnaire, cross-referencing entities with
17 outstanding ECB debts with the vendors who already
18 have or are applying to have contracts with the city
19 for purposes of holding city contracts until the debt
20 is paid. And asking the city's depository banks
21 whether they have any outstanding ECB debt and
22 encouraging them to pay.

23 Before I turn the mic over to my co-chair
24 Council Member Kallos to speak to the details of the
25 four bills pending in this committee, I'd like--in

1 his committee--I'd like to briefly talk about Intro
2 807, which I have sponsored. When agencies issue
3 notices of violation to "generic owners of"--quote,
4 unquote--a property or business, Intro 807 would
5 require the agency and DOF to use best efforts to
6 learn the respondent's true name including a
7 respondent's--a respondent's true name on the ticket,
8 would provide stronger due process for respondents as
9 well as provide better information for DOF as it
10 attempts to collect outstanding debt through
11 telephone calls and letters for seizures of assets.
12 I would like to remind my colleagues that we are
13 covering a lot of ground today. So I would encourage
14 everyone to ask questions and engage with the
15 administration. I will do my best to be brief with
16 my questions, and ask my colleagues to do the same.
17 We will have multiple rounds of questions so Council
18 Members will have plenty of time to participate in
19 today's hearing. And now we will hear from Council
20 Member, Co-Chair Kallos.

22 CHAIRPERSON KALLOS: Good afternoon and
23 welcome to this joint hearing of the Committee on
24 Finance and Governmental Operations. I'm Council
25 Member Ben Kallos, Governmental Operations Chair, and

1 you can Tweet me up on social media at Ben Kallos.
2
3 I'd like to thank our Finance Chair and my Co-chair
4 for this hearing, Council Member Julissa Ferreras-
5 Copeland for all of your hard work on this. We've
6 been working together on this for--

7 CHAIRPERSON FERRERAS-COPELAND:

8 [interposing] Far too long.

9 CHAIRPERSON KALLOS: --a very long time.

10 I'd also like to thank, as have already been thanked,
11 Tanisha Edwards, Rebecca Chasen, John Russell and
12 James Sabudi from the Finance Division. I'd also
13 like to thank Governmental Committee Analyst Laurie
14 Wen, and my Legislative Directive, Paul Westrick who
15 has been really doing really great work for the
16 Committee and carrying us to this point. And some
17 amazing news. We are joined by a new member and
18 welcome to the team, Samita. We look forward to
19 working with you as Committee Counsel. As the Chair
20 has already gone over the outstanding ECB debt was an
21 issue that these two committees have been focused on
22 for a year and a half now, it resulted in Local Law
23 11 of 2015 carried by Council Member Julissa
24 Ferreras-Copeland. Which led to a recently released
25 DF-DOF Report we'll be discussing today, and also to

1 much of the legislation on today's agenda, all of
2 which I support. A month after our joint hearing in
3 May of last year, DOF produced another report on ECB
4 debt, which explained the difficulties in collecting
5 on the money owed to the city, and made a number of
6 recommendations for improving the summonses or
7 notices of violations issued by 13 city agencies as
8 well as incentivizing those found in violation to
9 actually pay the money they owe to the city. At
10 issue here was \$1.48 billion. It now is \$1.46
11 billion in outstanding money owed to the City of New
12 York. The City spends money to enforce building
13 safety, and maintain clean streets and sidewalks, and
14 uphold the quality of life of New Yorkers. Since we
15 spend resources issuing these fines, we must ensure
16 we have the ability to collect on them, and use that
17 money for needed services. This is \$1.6 billion that
18 could be spent on school lunches, senior centers,
19 free CUNY, building affordable housing. Today's
20 hearing focuses on both pre and post-hearing aspects
21 of these types of violations.

22
23 Introductions 807, 811 and 812 focus on
24 improving the integrity of the summonses issued by
25 the city agencies through respectfully requiring

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2 efforts to find respondent's true name as opposed to
3 citing a generic owner of; requiring agencies to
4 review each summons for error and the time to correct
5 them; and requiring the summons include the borough,
6 block and lot number and building identification
7 number of the violation. Thousands of summonses are
8 dismissed each year as defective. Ensuring that a
9 summons issued by an inspector is legible, contains a
10 specific and correct address and contains the correct
11 name of the respondent and section of laws cuts down
12 on the amount of time wasted issuing defective
13 summonses, and furthermore, makes the task of
14 collection much easier.

15 Intro 810 focuses on incentivizing
16 payment after the hearing. What we've seen
17 particularly with violations issued by DOB is repeat
18 offenders racking up fines and refusing to pay them.
19 Having the agencies notify individuals and business
20 entities that non-payment will result in license and
21 permits being suspended or revoked or result in
22 applications of licenses--for licenses and permits
23 being denied is a powerful incentive for respondents
24 to either pay the fines immediately or enter into a
25 payment plan with DOF. After discussing these bills

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2 with both agencies slated to testify today, we've
3 agreed to make several changes particularly to Intro
4 818. The consensus seems to be that the agencies
5 should be required rather than encouraged to suspend
6 or revoke licenses, and permits for any fine and
7 judgment without a waiting period or monetary
8 thresholds that are currently specified by the
9 legislation. We are joined by Council Member Robert
10 Cornegy, and have been joined by Council Member
11 Daneek Miller and Council Member Van Bramer. I'd
12 like to now turn it over to the Finance Chair Julissa
13 Ferreras to swear in our witnesses.

14 [pause]

15 LEGAL COUNSEL: Do you affirm that your
16 testimony will be the truthful to the best of your
17 knowledge, information and belief? [pause]

18 CHAIRPERSON FERRERAS-COPELAND: You may
19 begin.

20 DEPUTY COMMISSIONER SHEAR: Good
21 afternoon, Chairwoman Ferreras-Copeland and Chairman
22 Kallos, and members of the Committees on Finance and
23 on Government Operations. I Jeffrey Shear, Deputy
24 Commissioner for Treasury, Payments and Operations
25 for the Department of Finance, DOF. Thank you again

1
2 for the opportunity to present our report on the
3 collection of debt resulting from violations
4 adjudicated by the Environmental Control Board, which
5 is part of the Office of Administrative Trials and
6 Hearings, or OATH. These summonses are issued by
7 many city agency for safety and environmental and
8 vio--violations such as Building Code and sanitation
9 infractions. The primary purpose of the violations
10 is to change behavior so that we may all live in a
11 safer, cleaner city. Collecting past due debt on
12 these violations provides incentives for these
13 behavior--for this behavior and has the additional
14 benefit of generating revenue for essential city
15 services. As you know, DOF testified on this topic
16 last year. At that time, we indicated that while
17 this debt is more challenging to collect than other
18 types of city issued debt, there was much more than
19 we could to better understand that collect it. We
20 agreed with the Council that DOF could do better in
21 analyzing the debt, taking more enforcement action,
22 and generating more revenue. This year I am here to
23 say that we have made good progress. We supported
24 Council sponsored legislation to improve the quality
25 and transparency of information on the CB adjudicated

1 debt. This legislation became Local Law 11, which
2 requires us to submit a report to the Council and the
3 public each November that focuses on the overall
4 inventory of debt as well as information pertaining
5 to judgments DOF received in the previous fiscal
6 year. We presented the first report on November 2nd,
7 and will review it today. We also support--supported
8 the provisions of Local Law 11 that authorized
9 Department of Sanitation issued judgments to be
10 referred to city marshals. This law has contributed
11 to a significant increase in referrals to both the
12 city sheriff and city marshals. Referrals to
13 enforcement agents went from single digits during the
14 past several years to nearly 500 during fiscal year
15 2015. This and other initiatives have contributed to
16 an improvement in debt collection in the 2015 fiscal
17 year to a record \$50.1 million, and 21% increase over
18 the \$41.5 million collected in fiscal year 2014.

19
20 I will start my testimony today with a
21 presenting relating to our Local Law 11 Report. It
22 begins with some background information, highlights
23 the findings of the Local Law 11 Report, includes
24 some additional analysis and concludes with next
25 steps. After the presentation, I will to the

1 legislation before the committees today.

2 Introduction Nos. 806-A, 807 and 810. OATH will
3 address Introduction Nos. 811 and 812. We've handed
4 out [pause] the slide show and we also are projecting
5 it. Now, is a good time for me to thank Daniella
6 Kerme (sp?) who was Chief Analyst of the Report, as
7 well as Pamela Parker Crateho (sp?) sitting behind me
8 to my right, who both--who also played a key role.

9
10 So we will start with context. So,
11 without going through the entire process here, this
12 slide reinforces remarks made by Chairwoman Ferreras-
13 Copeland. We are at the end of a long process.
14 First, summonses are issued by various city agencies.
15 They may be paid prior to hearing or they may be
16 adjudicated. If the summonses are not paid, not
17 adjudicated or if a respondent loses that
18 adjudication, ultimately the summonses are entered
19 into judgment and referred to the Department of
20 Finance. In Fiscal Year '15, New York City received
21 \$96 million as a result of these judgments in the
22 pre-judgment mode before they were referred to the
23 Department of Finance. Most of the violations that
24 can be docketed by ECB are resolved prior to DOF
25 referral. As you can see, 53% of them are paid in

1 full; 9% are dismissed through the hearings process;
2 and the remainder that are not resolved are docketed
3 and referred to the Department of Finance. This
4 slide details the nearly \$1.6 billion in outstanding
5 judgment violations. A total is due to the eight-
6 year lifespan of the judgments as well as the fact
7 that most of the judgments we receive are--pertain to
8 violations for which a respondent did not appear for
9 a hearing, and failure to appear at a hearing results
10 in the full penalties that can be fairly sizeable.
11 The average age of the inventory is 4.3 years. I
12 should say the average age of judgments in the
13 inventory is 4.3 years, roughly the halfway point of
14 the eight-year cycle. Here is a chart detailing
15 collections over the last several years showing that
16 last year we collected \$50.1 million. As indicated,
17 that was a record for us, and there is an upward
18 trend over the last several years.

19
20 The next part of the report is dedicated
21 to Local Law 11. We printed the website on which
22 it's posted. One of the breakdowns required by the
23 report is an inventory by agency. You can see here
24 that while many agencies issue debt that's
25 adjudicated by ECB, the two primary agencies are the

1 Department of Buildings and the Department of
2 Sanitation. They make up eight--79% of the total
3 outstanding debt, and 85% of the outstanding penalty
4 amounts. The Fiscal Year '15 refers to the
5 Department of Finance from ECB. We received 218,000
6 judgment violations for a total of more than \$200
7 million including penalties. As you can see from
8 this chart, more than half of the amount of the
9 judgments we receive are due to the default
10 penalties. We were asked about the length of time
11 the transfer judgment got to DOF. It is a little bit
12 more than one day. I think this was brought up
13 because in the past there had been some delays in
14 terms of docketing of the judgments and referral to
15 DOF, but now ECB docketes the judgments on a regular
16 cycle, and we receive them almost immediately.

18 I'll take a little more time with this
19 next slide. We were asked for collection rates.
20 Collections increase over time as we have more time
21 to try to collect, but the rate at which the revenue
22 increases slows as the judgment debt ages. So, after
23 15 months, the collection rate on the Fiscal Year '15
24 judgments was 8.8%. That is what we reported in the
25 Local Law 11 Report. However, if one follows the

1
2 judgments over time, we can see that the rate grows
3 as they age. So for judgments that go back to Fiscal
4 Year '14 that we had two years to collect on, the
5 collection rate is 11%. And we did an extrapolation
6 based upon all of the collections we received during
7 Fiscal Year '15, and we project that for the newly
8 referred judgments not to the whole inventory, but
9 just to the \$200 million that came in this year that
10 during their lifetime we will collect 24%. [pause]

11 Our Fiscal Year '15 collection efforts,
12 as previously indicated, we and our collection
13 agencies sent out a total of over 150,000 collection
14 letters. Other Fiscal Year '15 initiatives include,
15 as mentioned, the increased use of Sheriff
16 executions. An execution is a referral--a legal name
17 for the referral to the Sheriff's Office. We had 430.
18 The new execution program with the city Marshals
19 resulted in 52 executions, and we also initiated debt
20 rotation amongst our collection agencies. So a
21 collection agency that has had debt for a long time
22 was asked to give it up, and give it to a different
23 collection agency that could work the debt freshly.
24 And we found that in the six months after debt
25 collection that \$4.5--nearly \$4.5 million more was

1 produced than in the six months prior to the debt
2 rotation. We were asked to provide information on
3 expired judgments. The judgments last statutorially
4 for eight years. This chart breaks down the
5 judgments that expired during Fiscal Year '15, \$85
6 million. [pause]

8 This last section has--starts with
9 information that I believe is in the Local Law 11
10 Report, but then also talks about other analyses that
11 we are performing. So one of the pieces of
12 information is the collection rate by issuing agency.
13 So this is a collection rate on Fiscal Year '14
14 judgments. So this is two-year collection rates, and
15 you can see that the Department of Transportation and
16 the Fire Department their violations have the highest
17 collection rates. [pause] As indicated, we have
18 more to do, and part of that is further exploring
19 challenges to further increasing collections. So we
20 did have \$900 million worth of debt that's now been
21 worked by two different collection agencies. The
22 debt is very old. We have--the Department of Finance
23 since the 2009 Amnesty Program has had a policy of
24 abating penalties upon request in drawing up
25 settlements with respondents. As a result of that,

1
2 75% of the penalties are uncollectable. This means
3 that \$530 million of the inventory based on the
4 current policy could not be collected.

5 And lastly, we have \$175 million of
6 inventory that's attributed to limited liability
7 companies. We did a special enforcement project
8 during Fiscal Year '15 and had an extremely low
9 collection rate on this debt, less than 1%. So we
10 are very concerned about this. It is a growing part
11 of the inventory, and we are trying to figure out how
12 to tackle it. I spoke a little bit about debt
13 rotation earlier. Here is some additional
14 information. We made two assignments. First, we
15 rotated \$500 million worth of debt. More recently
16 we've done a second debt rotation of \$400 million.
17 We are now looking at the first group in particular
18 that was rotated for the possibility of doing some
19 write-offs to better reflect the inventory, and what
20 the city can expect to receive against it.

21 This slide emphasizes an earlier point.
22 In Fiscal Year '14, we abated \$3.00 of penalties for
23 every \$1.00 of penalties collected. This, again, is
24 attributable to our policy, the historic policy since
25 2009 of abating penalties upon request for settlement

1
2 agreements. And we wanted to highlight some other
3 issues that are under review, which we think will
4 have an effect on collections, but which we need more
5 time to explore further. Property changes of
6 ownership since the issuance of violations to
7 respondents. It's harder to find a debt or if after
8 they've received a violation they sold their home.
9 They may be living in the city. They may have moved
10 out of the city or out of state. Respondents that
11 have gone out of business, moved out of the city or
12 passed away, we need to quantify how large that is in
13 terms of the inventory. And some portion of the
14 inventory represents violations issued against
15 respondents who are not property owners such as
16 littering or pooper-scooper violations. When a
17 respondent owns a home, it's more likely that they
18 will have assets to pay the violation. It's more
19 difficult to collect when the violations are issued
20 to a member of the public.

21 Finally, we want to conclude our next
22 steps. We do agree that it is time to have another
23 amnesty program. This will help improve
24 communication and outreach to the public at large.
25 We want to incentivize participation. We are

1 proposing that after amnesty that settlements only
2 abate 50% of penalties rather than 100% of penalties,
3 and we are ramping up enforcement both through
4 enforcement agents--agents and through other methods
5 such as stopping vendor checks. [pause] We also
6 want to address the high penalty amounts. We have
7 been working with OATH and the Department of
8 Buildings on reducing the full penalties, cutting
9 them in half if the respondent fixes the underlying
10 condition that led to the violation in the first
11 place. [pause] Write-offs I've spoken about. We
12 want to accurately reflect the collectable portion of
13 the inventory. Even though we want to write off
14 judgments, the judgments will remain in effect for
15 the full eight-year statute period, and we will start
16 with the review of the debt that has been worked by
17 the two collection agencies. And we are also
18 restructuring our internal efforts to increase annual
19 revenue, accelerate collections. So we are working
20 the more recent debt, and doing more debt analysis.
21 So that concludes the presentation. So I will return
22 to the testimony on the bills that stand before this
23 committee.
24
25

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CHAIRPERSON FERRERAS-COPELAND:

3

Successfully, the bill was down to three numbers.

4

(sic)

5

DEPUTY COMMISSIONER SHEAR: If--if--

6

CHAIRPERSON FERRERAS-COPELAND:

7

[interposing] So let's do like an edited version of

8

your statement now.

9

DEPUTY COMMISSIONER SHEAR: I will.

10

CHAIRPERSON FERRERAS-COPELAND: So we are

11

okay--

12

DEPUTY COMMISSIONER SHEAR: [interposing]

13

Okay.

14

CHAIRPERSON FERRERAS-COPELAND: --for

15

questions.

16

DEPUTY COMMISSIONER SHEAR: Intro 806-A I

17

will skip the outline of the provisions, and say

18

beyond what is mandated in the Amnesty Legislation,

19

the Department of Finance will also administratively

20

obtain employer identification number information for

21

city vendors and match that against vendors' ECB

22

judgments to stop vendor payments to respondents with

23

judgment debt. We plan to put this in motion and

24

believe we can complete it by the time the Amnesty

25

period ends. We believe the Amnesty Program combined

1 with those new enforcement efforts will improve how
2 quickly we obtain money owed to the city so that the
3 funds can be used for essential programs and
4 services. For 807, which is the owner of
5 legislation, the department generally supports this
6 legislation although it largely impacts agencies,
7 which issue violations and they may have additional
8 operational concerns. While the number of these
9 violations is not insignificant, with 3,284 judgment
10 violations totaling \$8 million in our inventory
11 issued to owners of properties, it is very small
12 relative to the overall inventory of 1.4 million
13 violations totaling nearly \$1.6 billion. We do not
14 support the provision requiring DOF to mail a copy of
15 the default decision in these cases. This is already
16 done by ECB, and we issue our own collection letters.

17
18 For Intro 810, which is the bill that has
19 provisions pertaining to license and permit
20 suspension, DOF supports the concept that agencies
21 should suspend, revoke and deny licenses and permits
22 for certain reasons. However, for some agencies,
23 particularly those that ensure safety conditions,
24 suspending or revoking a permit or license could
25 complicate the regulatory process, and it is

1
2 important to ensure that their views are taken into
3 account as we continue conversations about this
4 legislation. One example where an agency has been
5 successful in striking the right balance is the
6 Department of Transportation. It has a successful
7 permit suspension program. However, the bill as
8 currently envisioned may potentially result in fewer
9 actions against licenses and permits because of the
10 high dollar and one-fee time triggers in Section 8.
11 These need to be reworked with issuing agencies and
12 DOF or left to DOF rulemaking. Another option is the
13 Council may wish to consider requiring licensing and
14 permitting agencies to report to the Council on the
15 extent to which they are currently checking
16 licensees, permittees or applicants to determine if
17 they have outstanding judgments. Thank you for the
18 opportunity to testify today. The Department
19 appreciates the attention the Council has brought to
20 the issue in our ongoing work to improve our
21 collection efforts. I welcome any questions you may
22 have.

23 CHAIRPERSON FERRERAS-COPELAND: Thank you
24 very much. We've been joined by Council Members
25 Rodriguez, Torres and Johnson. Thank you for the

1 report. It gave us a lot of information, and we were
2 able, you know, we digested a lot, but it also has
3 given us opportunities to ask questions, and that's
4 why we're here today. I know that it was stated in
5 the past year DOF has made a significant effort to
6 increase and strengthen its collection efforts
7 including documenting this outstanding debt in the
8 report. Sending out more than 150,000 enforcement
9 letters and starting to use sheriffs and marshals.
10 But even with those improvements, it seems that for
11 Fiscal 2015's collection rate it was only 8.8%. You
12 mention that in the coming years--it seems like we've
13 know that if the debt is older than two years, it is
14 more difficult to collect. Yet, in one of your
15 slides you stated that as the new debt gets older,
16 your rate goes up. So I'm confused.

18 DEPUTY COMMISSIONER SHEAR: Yea, and
19 actually, one thing before I go into that,
20 Commissioner Del Valle is here to testify on Intros
21 811 and 812. So, I wonder if we might have him--

22 CHAIRPERSON FERRERAS-COPELAND: He can
23 join us also if this can help us through the process,
24 Commissioner.

1
2 CHAIRPERSON KALLOS: I think the plan is
3 to reserve the questions that he can answer for him.
4 So that they can testify separately. DOF is the
5 collections entity while ECB is the judicial body.

6 CHAIRPERSON FERRERAS-COPELAND: So please
7 have someone document the questions that we're asking
8 because we're going to have to ask them again to you
9 right after. So if someone can just--

10 CHAIRPERSON KALLOS: Sorry about that.
11 That's the plan.

12 [background comments]

13 DEPUTY COMMISSIONER SHEAR: Yes, do we
14 have it in there? So to--to answer your question, if
15 you turn to the last page of the--of the debt that
16 was handed out, so we tried to address that here. So
17 what we are saying--

18 CHAIRPERSON FERRERAS-COPELAND:
19 [interposing] So, I guess what I'm asking is you had
20 another slide that showed the collection at 24% once
21 we got--

22 DEPUTY COMMISSIONER SHEAR: [interposing]
23 Yes.

24 CHAIRPERSON FERRERAS-COPELAND: Right,
25 but you passed it I think.

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[background comments]

CHAIRPERSON KALLOS: It's Appendix A.

DEPUTY COMMISSIONER SHEAR: Appendix A,
yes.

CHAIRPERSON FERRERAS-COPELAND: Okay.

DEPUTY COMMISSIONER SHEAR: Okay. So
what we are saying is if you add up all of these bars
together, they add up to 24%.

CHAIRPERSON FERRERAS-COPELAND: In total
for over the eight year, not that at the eighth year-
-

DEPUTY COMMISSIONER SHEAR: [interposing]
Yes.

CHAIRPERSON FERRERAS-COPELAND: --you're
going to collect 24%?

DEPUTY COMMISSIONER SHEAR: That is
correct.

CHAIRPERSON FERRERAS-COPELAND: Okay,
now--

DEPUTY COMMISSIONER SHEAR: [interposing]
Sorry if that was not clear.

CHAIRPERSON FERRERAS-COPELAND: Thank
you. Thank you for clearing that. And then I just
wanted to kind of go back to the 8.8%. If I'm

1 looking at the 8.8% and I'm watching this, and I'm at
2 home and I just got an ECB fine, and you are only
3 collecting 8.8%, I'm going to take my chances and not
4 pay the debt. So what incentivizes people. If it
5 seems that you're having a hard time collecting the
6 debt for the fine, so you get a Sanitation ticket.
7 You cross your fingers. You may never have to pay
8 it.
9

10 DEPUTY COMMISSIONER SHEAR: Yes. Well, I
11 think that is why we are ramping up our enforcement
12 efforts. Because we did have more people this year
13 where we were seizing bank accounts, and where people
14 were contacted directly by marshals and by the City
15 Sheriff.

16 CHAIRPERSON FERRERAS-COPELAND: Okay. So
17 let's kind of follow through on that. Can you
18 enumer--enumerate all of the enforcement tools that
19 you have available in our report as required by Local
20 Law 11, you stated that the enforcement tools that
21 DOF uses in 2015 were the sheriffs and marshals and
22 sending out duns letters. Dunning letters. I'm
23 sorry. However, at last year's hearing you testified
24 that you also make calls, and do bank restraints and
25 have--and you have also informed the Council that you

1
2 have frozen contracts. Were these enforcement tools
3 used in Fiscal 2015, and if they were, why weren't
4 they included in the report?

5 DEPUTY COMMISSIONER SHEAR: So the bank
6 restraints those are done by the sheriff and by the
7 marshals. We are not authorized to do those on our
8 own. So they represent the subset of the executions
9 that were referred to the--the City Sheriff and to
10 the marshals.

11 CHAIRPERSON FERRERAS-COPELAND: So, can
12 you walk me through what happens when debt is given
13 to the Sheriff? We've been joined by Council Member
14 Greenfield. What is the process when debt is sent to
15 the sheriffs and the marshals? Because I think we--
16 the last time we kind of talked about the collection
17 agencies. But tell me what happens to the sheriffs
18 and the marshals, and this is a tool that you're
19 saying is authorized or used by sheriffs?

20 DEPUTY COMMISSIONER SHEAR: Yes. When
21 we--we send a legal document to the sheriff or to the
22 marshals, that empowers them to use the means at
23 their disposal to collect the debt. And they may
24 impose additional fees as authorized by law on that
25 debt. They use a variety of techniques. I think

1
2 they may send their own letters to the debt--judgment
3 debtors. They may visit them or they may--if they
4 identify a bank account, they may levy upon that bank
5 account.

6 CHAIRPERSON FERRERAS-COPELAND: Okay, and
7 what kind of debt is sent over to the marshals? Like
8 is it a mixture of new debt and old debt? Is it only
9 Sanitation debt? Is it a particular debt? Like how
10 are you engaging with the sheriffs and the marshals?

11 DEPUTY COMMISSIONER SHEAR: It--it's a
12 mixture. We're trying to focus more on the newer
13 debt as we go through the inventory and catch up. It
14 is typically debt where we are able to identify a
15 potential asset. Or it is debt that's over a certain
16 dollar amount.

17 CHAIRPERSON FERRERAS-COPELAND: Okay.
18 Well, I'm hoping that with this package of
19 legislation we're able to bring clarity to some of
20 the issues that you have with collection. It is very
21 disconcerting that we're only collecting 8.8% of this
22 total debt that we have kind of looming, and do you
23 see the process of how--how--how do you just write
24 off the debt that you know you're not going to be
25

1
2 able to collect? What does that process eventually
3 look like?

4 DEPUTY COMMISSIONER SHEAR: Well, I--
5 we're going to come up with a criteria that we want
6 to share, but that will articulate that certain
7 efforts have been made, and that we stand little
8 chance of collecting perhaps because someone is
9 deceased, out of business, moved out of the city, but
10 the--

11 CHAIRPERSON FERRERAS-COPELAND:
12 [interposing] So you don't--do you currently have a
13 process to say we've figured out that this person is
14 deceased? Do you do that now with the debt that we
15 currently have?

16 DEPUTY COMMISSIONER SHEAR: We currently
17 mark our system. So when we discover a debtor is
18 deceased or a business has ceased to function, there
19 is a--an uncollectable code on our system. But we
20 have not been writing the debt off, which is a formal
21 process.

22 CHAIRPERSON FERRERAS-COPELAND: So, you
23 can--you consider uncollectable incorrect information
24 such as name and/or address listed by issuing agency
25 that renders a judgment unenforceable, a debt--

1 obviously a debtor is deceased and a bankruptcy
2 filing right?

3
4 DEPUTY COMMISSIONER SHEAR: Uh-huh.

5 CHAIRPERSON FERRERAS-COPELAND: So you
6 say you put this in--in an uncollectable code. Does
7 that take it out of the total that we've been talking
8 about?

9 DEPUTY COMMISSIONER SHEAR: It does not.

10 CHAIRPERSON FERRERAS-COPELAND: It does
11 not, and how much of that debt is in that code?

12 DEPUTY COMMISSIONER SHEAR: I'll have to
13 get back to you.

14 CHAIRPERSON FERRERAS-COPELAND: Okay,
15 please do. I just want to very quickly have some--a
16 couple of questions on the Amnesty Bill directly.
17 But in 2009, DOF held an Amnesty Program similar to
18 the one that you would--that we would be authorizing
19 in Proposed Intro 982-A. Yeah, I was going to say.
20 I'm giving him another number. 806-A through the
21 2009 program DOF collected approximately \$14.3
22 million in base fines and waived approximately \$33.7
23 million in combined interested and default penalties.
24 How many responders participated in the 2009 program?

1
2 DEPUTY COMMISSIONER SHEAR: I don't have
3 that figure with me.

4 CHAIRPERSON FERRERAS-COPELAND: And you--
5 can you please get it to the committee?

6 DEPUTY COMMISSIONER SHEAR: Yes.

7 CHAIRPERSON FERRERAS-COPELAND: What if
8 anything would DOF do differently from this year's
9 program to increase its participation?

10 DEPUTY COMMISSIONER SHEAR: Yes. So we
11 do support a provision that would reduce the amount
12 of penalties we would abate after an amnesty program.
13 We feel that with enough outreach and publicity and
14 knowing that we are offering tougher deals and as
15 well as ramping up our enforcement efforts, more use
16 of the enforcement agents, sheriff and marshals, and
17 doing the vendor checks that we've talked about that
18 that will drive more people into participate.

19 CHAIRPERSON FERRERAS-COPELAND: So I know
20 that you mentioned kind of a marketing strategy. So
21 what do you look like? What would that advertisement
22 with DOF look like for this amnesty program?

23 DEPUTY COMMISSIONER SHEAR: I'm sorry.
24 I'm not following.

1
2 CHAIRPERSON FERRERAS-COPELAND: So
3 obviously, we have to inform people that there's an
4 amnesty program.

5 DEPUTY COMMISSIONER SHEAR: Yes, we do.

6 CHAIRPERSON FERRERAS-COPELAND: So what
7 are the strategies that you're going to be using to
8 let New Yorkers know that there's an amnesty program.
9 It starts this date and it ends this date. We need
10 you to participate.

11 DEPUTY COMMISSIONER SHEAR: We are
12 working on that right now.

13 CHAIRPERSON FERRERAS-COPELAND: Okay. So
14 I would urge you to continue to engage with this
15 Council. We have many ways of communicating with our
16 constituencies, but also being able to use any of the
17 interfaces--any of the multi-cultural use papers, and
18 other very diverse ways that we can get the message
19 out. So don't just use your traditional ways of
20 communicating with New Yorkers.

21 DEPUTY COMMISSIONER SHEAR: We are very
22 open, and look to the Council to--to help us form a
23 strategy.

24 CHAIRPERSON FERRERAS-COPELAND: Okay. I
25 have a couple of more questions, but I'd like to give

1 my colleague an opportunity to ask questions? Do you
2 have amnesty questions or just on your bill? [pause]

3
4 CHAIRPERSON KALLOS: Thank you for all
5 the effort and transparency in just working together
6 on this issue. This is a \$1.6 billion problem that's
7 been passed onto us from previous administrations and
8 our goal is to work with this Administration,
9 Department of Finance and every single agency to make
10 sure that when you write a ticket for quality of life
11 or protecting our people from things like toxic
12 chemicals that it's actually being written. That
13 those items are actually being stopped, and that our
14 people are being protected and the justice is
15 actually happening. So, just to be clear, if you can
16 go to page 4, out of the 535,600 violations that are
17 being issued, 50% of them--53% of them are getting
18 paid in full, which is good news. Nine percent,
19 which is part of what we're trying to crack down on
20 are going to hopefully not be dismissed because the
21 point is we don't want to waste somebody's time by
22 bringing them into ECB or elsewhere. So one piece is
23 just, hopefully as we're fixing these, we have fewer
24 things being dismissed because of defective
25 documents. But, I guess one piece I'm troubled by is

1 just 38% of the violations are ending up in
2 collection, and then even with your 24%, we're
3 looking at that as 29--29% to the people. So more
4 than one in four people who get a NOB or a violation,
5 for doing something bad that we don't want them to
6 do, aren't facing the consequences for their actions.
7 Is that accurate?

9 DEPUTY COMMISSIONER SHEAR: I--the--your
10 numbers are accurate. I mean I--I think that yes
11 it's an issue. There are many factors involved. As
12 indicated in some instances, we have people who sell
13 their properties--

14 CHAIRPERSON KALLOS: [interposing] Uh-
15 huh.

16 DEPUTY COMMISSIONER SHEAR: --and then
17 they're--they are a lot harder to track down.

18 CHAIRPERSON KALLOS: Well, we'll get into
19 it by just--

20 DEPUTY COMMISSIONER SHEAR: [interposing]
21 Yes.

22 CHAIRPERSON KALLOS: --by just
23 understanding it so--

24 DEPUTY COMMISSIONER SHEAR: Yes, at--at
25 30,000 feet--

3 CHAIRPERSON KALLOS: [interposing] Yeah.

4 DEPUTY COMMISSIONER SHEAR: --we have a
5 large population of people who are not addressing
6 those violations.

7 CHAIRPERSON KALLOS: So out of those
8 535,600, 155,324 of those violations are not--not
9 resolved. So I think that--when--when people are
10 thinking about them, this is actually from the
11 Administration. We're actually trying to write fewer
12 summonses, and trying not to earn income off folks.
13 These--these are--is it correct to characterize these
14 as items that we're actually trying to correct
15 behavior, which I think you mentioned in your
16 testimony?

17 DEPUTY COMMISSIONER SHEAR: Yes.

18 CHAIRPERSON KALLOS: And in terms of it,
19 you've identified that of the problem, a lot of it is
20 happening in two key agencies. Um, so what we've
21 seen looking through the report, and thank you for
22 that report and supporting the passage of that
23 legislation, which I co-sponsored with our Chair
24 Ferreras-Copeland, and we've seen it going through
25 the data. It's been confirmed in the report, DOB
issued summonses in a way that is far proportionate--

1
2 disproportionate to the amount of summonses that the
3 agency is issuing when compared to other agencies.
4 So, they've issued \$870 million of this outstanding
5 debt, which is 55% of it. So out of all the 13
6 agencies, DOB seems to be the one place where that
7 is. What about DOB-issued summonses makes the debt
8 so difficult to collect?

9 DEPUTY COMMISSIONER SHEAR: [pause] I--I
10 guess one thing that I would cite would be the DOB
11 summonses are more complex than other summonses. So,
12 when we look at the universe of summonses, we divide
13 the universe into summonses that we call simple
14 fines, which would be the Department of Sanitation
15 summonses. So for failing to sweep the sidewalk, or
16 what have you. It's a one-time offense or failing to
17 re-separate recycling. It's a one-time offense.
18 You're not required then to go back and--and sweep
19 the sidewalk that day. You're required to pay the
20 fine. When it comes to the Department of Buildings,
21 you're required to fix whatever infraction Buildings
22 has cited. And so that means that it's a little more
23 difficult for someone to comply. They're not just
24 supposed to pay. They're also if there's a crack in
25 the wall, if they--if work is being done without a

1 permit, whatever the infraction is that Buildings
2 observes, the homeowner is expected fix that
3 underlying condition.
4

5 CHAIRPERSON KALLOS: And I--I--so--so we
6 are writing--so DOB is writing this fine. They're
7 writing an order. They're writing a fine. They're
8 saying please fix a dangerous condition or else, and
9 then there is no 'or else' for--for

10 DEPUTY COMMISSIONER SHEAR: [interposing]
11 Right, well the--

12 CHAIRPERSON KALLOS: --approximately
13 125,108 (sic)--

14 DEPUTY COMMISSIONER SHEAR: [interposing]
15 Right, well the--and then the 'or else' the other
16 reason why the DOB fines are very high in dollar
17 amount is that the default penalties tend to be very
18 high for the DOB violations. So the 'or else' is fix
19 it or contest it or be hit with a large fine for
20 failing to have a hearing.

21 CHAIRPERSON KALLOS: And so, in terms of
22 it so the DOB fine gets issued. Is that--should we
23 be revoking that building owners licenses or permits?
24 Should we be revoking the builder or construction
25 company or somebody who's doing that? What--what

1
2 should we--what can we be doing, and this is all
3 contemplated around Intro 810 where we're actually
4 trying to create some 'or else.'

5 DEPUTY COMMISSIONER SHEAR: Right, well,
6 that's something that we are very interested in
7 having those conversations with you. [background
8 comments] We are very interested in having those
9 conversations with you. We think that DOB needs to
10 be in the room, and as indicated, there needs to be a
11 balance struck between the--enhancing the tool to
12 collect and being sensitive to their capacity to do
13 those checks, and enforce the rules.

14 CHAIRPERSON KALLOS: So I've been advised
15 by the Finance Committee Counsel Tanisha Edwards that
16 we actually have DOB in the room.

17 CHAIRPERSON FERRERAS-COPELAND: They look
18 petrified.

19 CHAIRPERSON KALLOS: [laughs] So, I'd
20 like to ask Patrick Wehle from the Department of
21 Buildings to come up. He's is--he is--it's great to
22 have him here. We've been hoping to sit down with
23 him for several months now, and I will ask you--

24 CHAIRPERSON FERRERAS-COPELAND:
25 [interposing] And he's here.

3 CHAIRPERSON KALLOS: Great. So, I'll ask
4 our Committee to please swear him in.

5 LEGAL COUNSEL: Do you affirm that your
6 testimony will be truthful to the best of your
7 knowledge, information and belief?

8 ASSISTANT COMMISSIONER WEHLE: I do.

9 CHAIRPERSON KALLOS: Please proceed.

10 ASSISTANT COMMISSIONER WEHLE: I'm here
11 to do my best to answer any questions you might have.
12 I didn't come with any prepared testimony.

13 CHAIRPERSON KALLOS: So there's 125,108
14 summonses that have been issued by DOB that have been
15 defaulted upon for a total of \$874 million in
16 outstanding debt. Of that, \$225 million is
17 penalties. Sorry, is base fines; \$440 million is
18 penalties; \$204 million is interest. So if you could
19 speak to us about who's getting these summonses, if
20 it's homeowners, construction companies, builders?
21 What is the difference between the base fine and the
22 penalty, and why are we having so much trouble to--
23 collecting these types of fines?

24 ASSISTANT COMMISSIONER WEHLE: Okay. So
25 in reverse order, the third question why are we
having so much difficulty. I think I'll defer to the

1
2 Department of Finance on that. I really don't think
3 I'm equipped to answer that type of a question, but
4 in terms of the first two questions, about 94% of the
5 ECB issued debt in dollar value is issued to property
6 owners. The remaining 6% is issued to folks who take
7 out permits with the department. [pause]

8 CHAIRPERSON KALLOS: And for the 6% who
9 take out permits with the department, once they
10 default can they take out additional permits?

11 ASSISTANT COMMISSIONER WEHLE: It depends
12 on who they are. So a large number of folks who take
13 out permits with the department, as you can imagine
14 happen to be holders of licenses. The department
15 currently has the authority to not renew a license if
16 that that licensee has outstanding debt. And that's
17 authority that we do exercise.

18 CHAIRPERSON KALLOS: How--how many times
19 have you not renewed a license or permit?

20 ASSISTANT COMMISSIONER WEHLE: Um, I--I
21 don't have those exact numbers, but I'm happy to get
22 them for you. I'd say that our success rate is
23 pretty good. Um, as you had mentioned earlier, if
24 you reduce the total debt just to the base not
25 including the defaults to around like \$216 million or

1 something thereabouts, our collection from license
2 holders totals about--I think it's \$1.8 million the
3 last fiscal year.
4

5 CHAIRPERSON FERRERAS-COPELAND: [off mic]

6 Is this just--I--I've got to believe that you're very
7 efficient at what you do. We sent you an email with
8 that particular question a month ago. So I'm hoping
9 that you can get that to me as soon as possible from
10 Tanisha Edwards. You can look it up, and if you can
11 just get us that data, it would really help us.

12 ASSISTANT COMMISSIONER WEHLE: I

13 certainly will.

14 CHAIRPERSON FERRERAS-COPELAND: Okay,

15 thank you.

16 CHAIRPERSON KALLOS: I--I--I second my

17 colleagues' motion on that, and so I guess one
18 concern here is 6% of the 100--or the 225 should be
19 around \$12 million. So in terms of that, it
20 shouldn't be at \$1.8 million. It should be upwards
21 of \$12 million. So you're--I'd love to figure out
22 with you where that other 80% are. And then, have
23 you ever revoked or suspended a permit from somebody
24 who has an outstanding fine, penalty or interest?
25

1
2 ASSISTANT COMMISSIONER WEHLE: Revoked a
3 permit? Um, I--I don't have that information with
4 me, but I'm sure that's the case.

5 CHAIRPERSON KALLOS: So I think you made
6 news recently when you revoked one, but given that
7 there's 125--but you permanently revoked a permanent
8 one for Brooklyn based MRMD in New York Court. I
9 guess I'm very happy that that happened. It was
10 covered by Sally Goldenberg at Capital New York.
11 What is--would the DOB support 810, which would
12 actually--would you support changes to 810 that would
13 actually require that permits be revoked when people
14 don't pay off their debt?

15 ASSISTANT COMMISSIONER WEHLE: Well, the
16 instance or reference was the registration for a
17 general contractor that was revoked.

18 CHAIRPERSON KALLOS: [interposing] Uh-
19 huh.

20 ASSISTANT COMMISSIONER WEHLE: There was
21 a stipulation agreement with the Water Department to
22 pay a very large volume of funds, which they
23 neglected to pay, and that resulted in the revocation
24 of their registration. Um, I'd--I'd say on Intro 810
25 from a purse debt collection perspective, holding up

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2 permits certainly has some merit, but I think from
3 the department's perspective we think that there are
4 other factors. Perhaps unintended consequences that
5 the Council may want to consider. The department
6 does have concerns that denying permits based on
7 outstanding debt has the potential to drive work
8 underground making the department's regulatory
9 enforcement efforts more challenging, and having the
10 potential to effect the safety of the public.
11 Additionally, from our perspective, correcting unsafe
12 condition is more important than collecting a debt.
13 And when the department takes enforcement action
14 based on an unsafe condition, denying permits to
15 correct that condition until debts are paid can
16 result in the unsafe condition existing for a longer
17 period of time or perhaps not being corrected at all.
18 And I think the last thing I would add, which I sort
19 of mentioned earlier was that, you know, of all of
20 the ECB issued debt that the department has issued, a
21 relatively small slice of this is issued to permit
22 holders. The majority of it is issued--the
23 overwhelming majority is issued to owners of property
24 who don't take out permits.

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2 CHAIRPERSON KALLOS: Thank you for
3 reading your prepared remarks. It's good to know you
4 brought them. So, your position is that a general
5 contractor that has done enough things that you've
6 issued enough debt that you're now--we're now saying
7 that they didn't even bother paying it or correcting
8 the conditions, that somehow that stops work from
9 being done by somebody else to correct the underlying
10 conditions? That there is no universe of other GCs
11 that could be brought into fix the underlying
12 conditions or--

13 ASSISTANT COMMISSIONER WEHLE: No, not at
14 all. What I'm saying is that that particular permit
15 holder if we're not going to be issuing new permits
16 to that individual for the volume of outstanding
17 debt, they may be inclined to do work underground and
18 not seek permits in the future, and for those--

19 CHAIRPERSON KALLOS: [interposing] So if
20 a person is doing things that are wrong and getting
21 fined, and they're not paying the fines, your
22 position is that it is better for them to continue to
23 do that work and continue to disobey the laws, and
24 still be registered with you than to otherwise do
25

1 exactly what they're doing without being registered
2 with you?

3
4 ASSISTANT COMMISSIONER WEHLE: What I'm
5 saying is that in--in getting a permit they would be
6 subject to the regulation and enforcement of the
7 Buildings Department, and had they--

8 CHAIRPERSON KALLOS: [interposing] But
9 they're not--

10 ASSISTANT COMMISSIONER WEHLE: --not
11 sought that permit, it would be far more difficult
12 for us to be able to identify bad actors.

13 CHAIRPERSON KALLOS: In--in both
14 circumstances, the actor--the--the construction
15 companies are doing whatever they want. It's just in
16 one case you know about it, and you're not doing
17 anything about, and in another, um, you still find
18 them because you see construction work has started.
19 And inspectors walk by the site and they say, hah,
20 there's no permit here. It's being done by a company
21 without a registration, and they will face an
22 entirely different set of penalties. So, I--I guess
23 I don't find favor with your argument and think that
24 if we are trying to get people to follow the rules we
25 should. When you collected those \$1.2 million from

3 permit holders, did that get remitted to DOF or to
4 DOB or where did that money go, and was--is that
5 reflected in DOF's report?

6 ASSISTANT COMMISSIONER WEHLE: It's \$1.8
7 million--

8 CHAIRPERSON KALLOS: [interposing] Yes.

9 ASSISTANT COMMISSIONER WEHLE: --and it's
10 from license holders not from permittees, and I
11 believe that money goes back to the general fund, if
12 I'm not mistaken.

13 DEPUTY COMMISSIONER SHEAR: So, in--in
14 terms of the revenue we report--

15 CHAIRPERSON FERRERAS-COPELAND: [off mic]
16 I'd like his report.

17 SERGEANT-AT-ARMS: [off mic] Use the mic.

18 CHAIRPERSON KALLOS: The mic.

19 DEPUTY COMMISSIONER SHEAR: If the ECB
20 debt in question is in judgment then that would be
21 included in the revenue we report, the \$51.1 million.
22 If there's prejudgment debt then that would be
23 attributed elsewhere in the budget, the \$96 million
24 that I referenced earlier in Fiscal Year '15

25 CHAIRPERSON KALLOS: And with regard to
the--so-so with regard to the 6% will DOB come back

1
2 with a--a plan for the Finance Committee and
3 Governmental Operations as well as perhaps the
4 Buildings Committee on just how you plan to make sure
5 that every single permit holder and licensee is
6 paying their fines when they get fined?

7 ASSISTANT COMMISSIONER WEHLE: We could
8 certainly work with the Department of Finance and get
9 back to you on that.

10 CHAIRPERSON KALLOS: Okay.

11 CHAIRPERSON FERRERAS-COPELAND: I
12 actually have a follow-up question. So I want to
13 kind of delve deeper into the--but you say it's
14 directly--as opposed to licensees and permit--to
15 those permit holder, the fines in the majority are
16 going to property owners, is that correct?

17 ASSISTANT COMMISSIONER WEHLE: Yes.

18 CHAIRPERSON FERRERAS-COPELAND: Can you
19 walk me through what is the average--what does the
20 average fine look like? Like so what are we--I know
21 that you have a plethora of things that you can find,
22 but is it that--for example, is it illegal
23 conversions? Is it--what is it? What does it look
24 like.

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ASSISTANT COMMISSIONER WEHLE: So as you had said, the--the scope of types of violations that we can issue vary in those amount, but generally an issue of violation can be anything on the order of one to two or three thousand dollars. And that would be the ECB penalty that's assigned. Certain types of violations also have a corresponding Department of Buildings civil penalty, which being an additional penalty on top of that. And then, of course, if they default or there are additional violations of the same sort on top of the one that was first issued, they would receive additional aggravated violations that are significantly higher.

CHAIRPERSON FERRERAS-COPELAND: And when you issue--when you issue this--these fines, do they say owner of or do you fine the person or--'cause what--you know, we also have an issue with owner when you write 'owner of' right. So if you walk in and you have access, do you issue your fine to the property owner directly? Is that something that you do at DOB?

ASSISTANT COMMISSIONER WEHLE: That's correct.

1
2 CHAIRPERSON FERRERAS-COPELAND: Okay, and
3 for example if there is a--there is someone who gets
4 fined--who has a fine on their property, but they
5 want to go and get a permit to--for some construction
6 in their home or to do something new. What happens
7 at DOB through that process.

8 ASSISTANT COMMISSIONER WEHLE: Depending
9 on the type of violation issued, they may be issued a
10 permit to perform the work.

11 CHAIRPERSON FERRERAS-COPELAND: What is
12 the difference in the type? What--what fine allows
13 or what permit allows you to get--go ahead with no
14 problem, and which one is stopped?

15 ASSISTANT COMMISSIONER WEHLE: So the
16 best way to explain are the ones where you wouldn't
17 be allowed to get the permit. So certainly for work
18 without a permit violation, which you get an ECB
19 violation, you get a corresponding a corresponding
20 DOB civil penalty as well. In that instance, in
21 order to get the permit, you will need to pay the
22 violation because not to do so kind of makes a
23 mockery of the idea of getting the work without a
24 violation in the first place.

1
2 CHAIRPERSON FERRERAS-COPELAND: And is
3 that the only example or--?

4 ASSISTANT COMMISSIONER WEHLE: I think
5 there is one other, which is working in violation of
6 a stop work order. I think that's--those are the two
7 examples where that exists.

8 CHAIRPERSON FERRERAS-COPELAND: And why
9 are those two? Is there--is there something that's
10 prohibiting you from using other situations or other
11 fines to, you know, kind of force people that when
12 they want to engage with DOB that they have to take
13 care of all their other debt?

14 ASSISTANT COMMISSIONER WEHLE: We
15 certainly do our best with the Department of Finance
16 to keep folks who have received violations to try to
17 and to compel them to pay. But for the other types
18 of violations where we don't require the payment, it
19 goes back to the remarks that I made earlier. The
20 concern the department has about driving that work
21 underground, and linking the period of time for them
22 to correct violations that they've issued.

23 CHAIRPERSON FERRERAS-COPELAND: It just
24 seems, you know, from our perspective we want the
25 debt to be collected. To go through this process,

1
2 which within itself is very costly, right? How many
3 people had to come today to testify to explain just
4 the process of a ticket that may be \$50, right? Or
5 in your case a little more, probably \$1,000, and
6 there are other opportunities where we're engaging
7 with the same people that DOF is trying to find, but
8 there's no coordination to say hey I have this person
9 in front of me that wants to get a permit, but
10 there's--it seems like there's no coordination that
11 say, oh, by the way, you owe us \$2,000. And then
12 you're say well, we'd rather them do it by getting a
13 permit and not--not focus on the \$2,000 they owe.
14 And my understanding--tell me that I'm not
15 understanding that correctly?

16 ASSISTANT COMMISSIONER WEHLE: I think we
17 wouldn't characterize it that way. Certainly for our
18 a license--

19 CHAIRPERSON FERRERAS-COPELAND:
20 [interposing] Sure you wouldn't characterize it that
21 way.

22 ASSISTANT COMMISSIONER WEHLE: --
23 certainly for our licensees, when--when they apply
24 for renewals we don't just look at Department of
25

1 Building-issued ECB debt. We look at debt issued
2 across all agencies before we renew their license.

3
4 CHAIRPERSON FERRERAS-COPELAND: I just
5 think--and we have a lot of the players and you're
6 just one of the agencies. Obviously, there's a list
7 of other agencies, FDNY, Sanitation. It just seems
8 to me that we can--we can put in all the enforcement
9 tools. We can give this to the sheriff and the
10 marshals. We can give it to everybody, but if you
11 guys aren't talking to each other, we're never going
12 to get this debt paid, for sure. Like that's
13 guaranteed, and we're always going to be at 8%. So
14 it just seems like how do we not have a coordinated
15 effort just to talk about this debt, and for there to
16 be agreements in between the agencies that say, DOF,
17 we're going to help you collect? If this person that
18 you're looking for, for the last eight you've sent
19 them letters, you've knocked on their door, you've
20 done everything, happens to come to come into DOB to
21 ask for a permit 'cause they want a new bathroom,
22 we'll let you know, It just seems--I don't know, I
23 think pretty easy, but you guys make it so painfully
24 hard. I--I don't understand. So that's going to be
25 our next suggestions, and we're going to figure out a

1 way to hopefully make that happen from our
2 perspective because it just seems that it's the only
3 way that we're going to increase and improve the
4 collection on this debt, and writing it off isn't the
5 only answer that we have.
6

7 CHAIRPERSON KALLOS: All right so just to
8 follow up, and I agree with my co-chair on all of
9 that. So 94% goes to property owners. What is the
10 challenge to collecting against the property? Right,
11 like so it's I live at 1520 York. Let's say I'm the
12 owner there. So you know where I live. You know
13 where the property is. How do I get away with not
14 paying?

15 DEPUTY COMMISSIONER SHEAR: Well, one of
16 the challenges is that the summons and the judgment
17 is not issued against the property. So one thing
18 that when I talked last year, I addressed, and want
19 to make sure that we're clear about is that this debt
20 is harder to collect than for example parking
21 violations. If parking violations go unpaid, then
22 somebody who is incurring the violations is driving
23 around an asset, mainly the vehicle that can be
24 seized to help pay for the violation. We are--the
25 violations that turn into judgments for the

1
2 Department of Buildings and Other ECB adjudicated
3 violations, are against an individual. We are only--
4 we have to go against the individual. We are not
5 authorized to go against the individual's property to
6 collect. And so that means we need to not only know
7 where they live, and certainly we are sending bills
8 to that address, but if they refuse to pay we have to
9 identify an asset that they have that we can go
10 after.

11 CHAIRPERSON KALLOS: Does the law provide
12 for you to convert your judgment into a lien against
13 a person's property?

14 DEPUTY COMMISSIONER SHEAR: No--generally
15 speaking, no. There is a small exception where some
16 Department of Buildings violations pertaining to
17 illegal conversion of one, two and three-family
18 properties can be converted to liens if at the very
19 beginning of the process the lien holders and
20 mortgage holders receive the notice of violation, and
21 have an opportunity to adjudicate the violations
22 themselves.

23 CHAIRPERSON KALLOS: Would an expansion
24 of the Introduction 807 for owner--wouldn't the
25 Introduction 807 owner allow you to collect against

1
2 the person, and would it be helpful if it was
3 expanded to from in personam jurisdiction to in rem
4 jurisdiction so that the--I mean like if the law is
5 stopping you from collecting good news. We've got
6 the right laws. So, would 807 be helpful in terms of
7 allowing--providing you the power to not only bring
8 liens, which I think is another introduction we have
9 that isn't being heard today, but as well as convert
10 the judgments into having in rem jurisdiction?

11 DEPUTY COMMISSIONER SHEAR: In general,
12 expansion of that authority to bring more in rem
13 would be something that Finance would be interested
14 in, and I think Buildings shares that. And, in fact,
15 we have just started for the small slice of
16 violations for which that conversion is authorized by
17 law, we have just commenced making sure that the lien
18 holders, the mortgage holders are notified at the
19 point of the notice of violation. So that they may
20 be converted. We have been working with Buildings
21 and OATH and ECB to have that done. It's just
22 started. So it's too preliminary to report the
23 results, but we would be interested in seeing an
24 expansion of that authority. Yes

25

1
2 CHAIRPERSON KALLOS: Okay, and then with
3 regard to 810, can DOB provide a list of the licenses
4 and permits that you believe could be revoked
5 automatically when somebody is in default on a
6 judgment that has been rendered by the--by OATH that
7 would not frustrate the purposes that you are
8 concerned about? Having an enumerated list like that
9 would be helpful?

10 ASSISTANT COMMISSIONER WEHLE: Understood.
11 We'll provide that.

12 CHAIRPERSON KALLOS: Thank you, but you
13 believe there is a universe of permits and licenses
14 that could either not be issued or revoked to
15 actually get people to get--to incentivize that
16 behavior without forcing people underground?

17 ASSISTANT COMMISSIONER WEHLE: I think
18 that's why it might be very difficult to sort of draw
19 that line, but I understand.

20 CHAIRPERSON KALLOS: And how many--just
21 in terms of just to quantify the problem, how many
22 construction companies do you believe are doing work
23 without a permit? And how many of those violations
24 are you writing a year?

1
2 ASSISTANT COMMISSIONER WEHLE: I don't
3 have that information with me. It's something I
4 could provide you with data in terms of violations
5 that we've issued to construction companies?

6 CHAIRPERSON KALLOS: I--I'm--do you have
7 more questions for DOB because I have questions about
8 DSNY, which is the second one.

9 CHAIRPERSON FERRERAS-COPELAND: [off mic]
10 I have no further questions.

11 CHAIRPERSON KALLOS: Okay, Patrick, I
12 think you are--thank you for coming. Thank you for
13 joining us and stepping up, and we look forward to
14 working with you as part of this. And actually,
15 would--for--for both of you, and we'll as the next
16 panel this, would you be willing to take part in an
17 interagency task force with the 13 agencies that are
18 writing ECB violations, DOF, OATH, and the Finance
19 Committee Gov Ops to really get to the bottom of
20 this, get it onto the table, and make sure that these
21 bills are as strong as possible.

22 ASSISTANT COMMISSIONER WEHLE: So for
23 myself, thanks for having me, and I'll certainly take
24 that back, and report back to the committees on what
25 we can do? Okay?

1
2 DEPUTY COMMISSIONER SHEAR: Yes, we would
3 be interested in participating. We have been meeting
4 within the Administration with OATH and the major
5 issuing agency. So we're happy to meet with you on
6 that as well.

7 CHAIRPERSON KALLOS: Thank you. These--
8 so now I'm--that was question number. Question
9 number two the agency with the largest number of
10 summonses is the Department of Sanitation. They--
11 they weigh in at 1.34 million summonses for a total
12 of \$382 million, and that accounts for 24% of the ECB
13 debt. So between the two agencies that's 79% of all
14 the debt, which with the 80/20 rule is one way we
15 could deal with that. Why is this so?

16 DEPUTY COMMISSIONER SHEAR: Why is--?

17 CHAIRPERSON KALLOS: What--why do you
18 believe that the Department of Sanitation is coming
19 with so many summonses and so many of them getting to
20 you, and not getting resolved?

21 DEPUTY COMMISSIONER SHEAR: Well, I think
22 that question really needs to be direct--in terms of
23 the number of summonses, that's something that
24 Sanitation would need to address. In terms of what
25 comes to us, we did have the slide where we had the

1
2 collection rates of the various agencies. So I think
3 Sanitation was [pause] at--right. So, I--I don't
4 have information with me today on why the Sanitation
5 rate is lower than for the other agencies. I think
6 that is the next step for us. We've taken to the
7 first step to start the segment to debt, and now that
8 we see the success rates of the agencies, the next
9 step is identifying factors that would make their
10 summonses less collectable than others.

11 CHAIRPERSON KALLOS: Thank you and I will
12 pass it back to our co-chair.

13 CHAIRPERSON FERRERAS-COPELAND: Thank
14 you. We are going to have the next panel come up.
15 Thank you for coming to testify. There are several
16 questions that we're going to get to you. So if you
17 can get them back to us, I would really appreciate it
18 so we can make recommendations also as we go along.
19 I just wanted to acknowledge that last year you did
20 suggest openly that there should be an interagency
21 conversation on this debt.

22 DEPUTY COMMISSIONER SHEAR: Uh-huh.

23 CHAIRPERSON FERRERAS-COPELAND: So that
24 came from your recommendations, and so we're just
25

1 going to follow up to make sure that that happens.

2 Okay?

3 DEPUTY COMMISSIONER SHEAR: Yes.

4 CHAIRPERSON FERRERAS-COPELAND:

5 Excellent. Thank you so much. Let's call up our
6 next panel. We have Commissioner Fidel De Valle of--
7 oh--[pause].

8 CHAIRPERSON KALLOS: We'll be warm in
9 there but--Oh.

10 CHAIRPERSON FERRERAS-COPELAND:

11 [interposing] It's freezing in here.

12 CHAIRPERSON KALLOS: They can--they can
13 make it warmer in here. They have to call DCAS.

14 CHAIRPERSON FERRERAS-COPELAND: Yeah,
15 good luck with that.

16 CHAIRPERSON KALLOS: If the Sergeant-at-
17 Arms could call DCAS and raise the temperature in
18 this room.

19 CHAIRPERSON FERRERAS-COPELAND: I hear
20 the one next door is boiling. So maybe we can get
21 some heat from next door. Of course, this is all
22 going to be transcribed now in the hearing. [laughs]

23

24

25

1
2 COMMISSIONER DEL VALLE: [off mic] It's
3 really nice to [on mic] It's really nice to hear my
4 name pronounced right.

5 CHAIRPERSON FERRERAS-COPELAND: Yeah,
6 isn't it great. [laughs]

7 COMMISSIONER DEL VALLE: The double L
8 freaks out a lot of people.

9 CHAIRPERSON FERRERAS-COPELAND: Yeah,
10 isn't it great. [laughs] If you can swear him in.

11 LEGAL COUNSEL: Do you affirm that your
12 testimony will be truthful to the best of your
13 knowledge, information and belief?

14 COMMISSIONER DEL VALLE: I do.

15 CHAIRPERSON FERRERAS-COPELAND:
16 Excellent. You may begin your testimony.

17 COMMISSIONER DEL VALLE: My name is Fidel
18 Del Valle. I am the Commissioner for the Office of
19 Administrative Trials and Hearings and the Chief
20 Administrative Law Judge of the City of New York.
21 I'm also the Chairman of the Environmental Control
22 Board. The Office of Administrative Trials and
23 Hearings, OATH, is one of the largest independent
24 administrative law courts in the United States.
25 OATH's Hearings Division adjudicates a wide variety

1 of summonses. In Calendar Year 2014 this division
2 held over 300,000 live hearings that resulted from
3 about 700,000 summonses that were issued. OATH's
4 trial division was previously referred to as the
5 OATH's tribunal and adjudicates the more complex
6 administrative law matters that include city contract
7 cases, human rights violations, employee disciplinary
8 cases and Loft Board cases. As an independent
9 administrative court, OATH's primary mission is to
10 provide impartial, fair and timely trials and
11 hearings to everyone who appears before the
12 administrative law judges and hearing officers of
13 OATH. OATH keeps both public--both the public and
14 the enforcement agencies informed of its commitment.
15 OATH regularly provides to issuing agencies
16 statistical data concerning disposition of summonses
17 returnable to OATH Hearings Division including
18 dismissal rates. To inform the public, OATH posts
19 quarterly reports containing this data on its
20 website, and pursuant to Local Law No. 64, OATH now
21 provides the Council, the Public Advocate and
22 enforcement agencies with a monthly dismissal report
23 concerning for-hire vehicles and taxi hearings,
24 health and restaurant hearings, and ECB hearings.
25

1
2 OATH's Dismissal Report provides the number and
3 reasons for dismissals. The reasons for these
4 dismissals might including, but not limited to
5 improper service, defective summonses and dismissal
6 on merits. Specifically, in reference to Intro 811,
7 OATH is committed to its mission to act as an
8 impartial forum where equity and fairness are the
9 goals. The proposed legislation requiring agencies
10 to amend summonses, if they are aware of deficiencies
11 there are in them, will make the process more
12 difficult than it currently exists. Currently,
13 enforcement agencies contact OATH. OATH corrects
14 errors prior to a hearing date subject to due process
15 requirement. The summons may also be amended on
16 motion at the hearing if there is no negative impact
17 on the respondent's due process rights. For
18 instance, where a summons reverses the first and last
19 names of the respondent, but the respondent appeared
20 at the hearing. In more simple terms, right now if
21 an agency finds that there was an error in the
22 summons that it issued, it can go online into our
23 system within 72 hours and make that correction
24 themselves, and provide proof that the respondent was
25 notified of the correction. After that period of

1
2 time, they will have to contact OATH with the
3 correction together with proof that the respondent
4 was notified. Finally, if at the hearing itself it
5 is found that there was an error on the summons that
6 is not a substantive error a perfect example is this
7 and it happens very commonly, especially handwritten
8 summonses. A lot of summonses are still handwritten.
9 The enforcement agent may incorrectly put down the
10 section of rule or law violation that the person is
11 charged with violating. But the narrative itself
12 articulates the actual violation detail and the
13 respondent understands what the actual violation was.
14 And they both defend it on the--the respondent
15 defends it on the merits, and the agency prosecutes
16 it on the--whatever merits they have. If there is a
17 motion made to make a correction at that point, and
18 it is not a substantial change that is to say the
19 respondent is clearly on notice of what he is being
20 charged with, then the amendment will be allowed.
21 If, however, the requested amendment is to something
22 that is significantly, for example where the elements
23 of the offense are different, than what was stated on
24 the summons, then that summons--that amendment will
25 not be allowed, and probably the summons will be

1 dismissed. And the agency will have to start by
2 reissuing a new summons in the process with proper
3 notice to the--to the respondent. The problem, if
4 you can call it a problem, the concern with this
5 particular piece of legislation is that it--it puts
6 time limits on--on the process. The process right
7 now pursuant to our rules basically has no time
8 limits, and corrections can be made at any point so
9 long as the due process rights of the respondent are
10 not compromised in any way.

12 In reference to Intro 812, which I call
13 the block and lot bill, the identifier bill, the
14 legislation requiring enforcement agencies to include
15 unique identifiers including block and lot or
16 property registration numbers, does not really have
17 an impact on OATH operationally. However--and this
18 is an aside, which I think should be brought to the
19 Council's attention--there exist property locks that
20 including multiple properties within the locks making
21 it seeming difficult, if not impossible, to identify
22 the property block and lot. This is what I mean:
23 There are some--there are some co-ops for example in--
24 -in Queens where you have a block and lot. And in
25 side the block and lot you may have as many as 200

1
2 different houses. With that understanding in those
3 cases, this legislation we think it is a good idea.
4 Right now, the Buildings Department summonses that we
5 are receiving include block and lot information,
6 which we include in our database. There seems to be
7 an urban legend going around that I've heard already
8 three times in the last two weeks that OATH's
9 computer system doesn't catch a block--lot and--block
10 and lot numbers. It does. We have been doing it,
11 but we only do it in those cases where the issuing
12 agency actually puts down the block and lot number on
13 the summons.

14 I want to echo something that Jeff Shear
15 testified to a while ago, and it's this, and this is
16 very important in the context of OATH. The only
17 legitimate purpose for fines and other penalties to
18 induce compliance with laws and regulations designed
19 to maintain public safety and order. The purpose is
20 never policing for profit. The fundamental issue of
21 this legislation is addressing what has--is that when
22 fines and penalties can be ignored with impunity, all
23 public safety and order laws and regulations are
24 essentially pointless and worthless, which I think
25 was an issue that was brought up earlier. From my

1
2 perspective where I sit in adjudication, it is very
3 frustrating to adjudicate a matter that results in a
4 penalty that turns out to be a meaningless exercise
5 that can be inordinately punitive. And I'll accept
6 any questions you're going to have on any of the
7 bills before you today.

8 CHAIRPERSON FERRERAS-COPELAND: Thank you
9 Commissioner Del Valle. Thank you for coming to
10 testify. So, I'm going to have a broader
11 conversation. I'm going to have another, a more
12 specific one, but DOF's--in DOF's report that was
13 released this month, \$709 million, roughly half is
14 from default penalties levied because of the
15 respondent failed to appear at a hearing. What can
16 the City be doing better to ensure and individual
17 shows up at a hearing?

18 COMMISSIONER DEL VALLE: About year ago
19 when--when I arrived in this position, I saw those
20 same numbers, and I found them very troublesome. So
21 I started looking into that, and there are many
22 reasons for it, but some of the reasons are
23 bureaucratic obstructions. For example--and I think--
24 -I don't know if they are still here but I think I
25 agree with them on this. Somebody gets a summons,

1
2 say a Sanitation summons--I'm just picking that up as
3 an example. And they get the summons and they want
4 to--they contest the summons or just pay the summons.
5 And they go over to ECB Tribunal and say I want to
6 pay the summons, and we will tell them certainly a
7 year or two ago, we can't do that because we don't
8 know about the summonses existence. We don't know
9 what to adjudicate. We don't know what the penalty
10 is, et cetera because the system that existed at the
11 time involved a Sanitation inspector issuing the
12 summons, which was a paper summons. It stayed in his
13 car for maybe a day or two. Then it went to the box,
14 and then it was sent to ECB. ECB then sends it to a
15 vendor to scan it and put into data entry. To make a
16 long ridiculous circulating story, it'll--it could
17 take three weeks before we know about it. That's an
18 example. When I conferred with the--with the Mayor's
19 Office on this, it was decided that among other
20 things, this is one issue that has to be cleaned up,
21 and the process has started. A perfect example of
22 that now is Sanitation is starting to convert to
23 electronic summons writing. We get--for those units
24 that--at Sanitation, which is not all of Sanitation
25 yet, where they're doing electronic summons writing,

1 we have the summons within 24 hours. The beauty of
2 that part is, though, that as far as the response is
3 concerned, and this is almost a psychological thing.
4 If you can take care of the summons right away, most
5 people take care of it right away. If I tell you to
6 come back in a month, you'll forget about it.

8 CHAIRPERSON FERRERAS-COPELAND: Right.

9 COMMISSIONER DEL VALLE: It's just human
10 nature.

11 CHAIRPERSON FERRERAS-COPELAND: Right.

12 COMMISSIONER DEL VALLE: What we have
13 seen with Sanitation that's--that's starting to
14 convert to the Department of Transportation, which
15 is--which is almost completely converted, there is a
16 dramatic drop in bad summonses that are being written
17 because a lot of it is electronic. It's not a matter
18 of how good the inspector's handwriting is. He picks
19 the right section of the violation, pushes the button
20 and that's what prints out. They don't have to worry
21 about whether they put a decimal point here or there
22 or not. And--and the--the respondent gets a clear
23 document. For example, again Sanitation summonses,
24 although they're doing it electronically, they will
25 leave a paper copy of the summons at the--at the

1 residence or building or wherever it was that it
2 applied to. They go back, they check out and
3 eventually they'll be able to do this in the field if
4 everything goes according to plan, and they will
5 generate another copy of the summons with the actual
6 owner's name on it as it appears in the City Registry
7 and mail it. So that covers--that--that enhances the
8 due process mechanism and--and the rest. The other
9 part of it is making it easier for human beings to
10 deal with summonses period apart from us timely
11 having the--the summons. To that end, we have
12 instituted a system whereby in all our hearing room,
13 the hearing officer has access on his desk, a direct
14 line to a translation service that provides
15 translation in 80--I believe 84 languages. And I've
16 heard this thing in action, and it is awesome. I've
17 done a lot of--of--of depositions with--with
18 translators, and the way the system operates online
19 is absolutely amazing. We are also enhancing the
20 process of people being able to adjudicate summonses
21 remotely using either submitting your--you defenses
22 or your payment for that matter online or having a
23 live hearing online either by telephone or eventually
24 as we've already started experiments with the Port
25

1
2 Authority Police, which read some of our--our
3 summonses. Where the officer who wrote the summons
4 is on a television monitor, and the respondent may be
5 on a television monitor, and the hearing officers are
6 on another one, and we conduct a hearing that way.
7 Nobody has to leave whatever they're doing. The
8 enforcement personnel don't have to travel to some
9 other point. They are back doing their enforcement
10 thing. You're in your office or even your home. You
11 can do your thing or to deal with the summons, and
12 our hearing officer is--is at our facility, which
13 actually makes the facility more stressful. Those
14 are just a few of the examples of--of things that
15 we're doing along those lines. Um--

16 CHAIRPERSON FERRERAS-COPELAND:

17 [interposing] Can you--

18 COMMISSIONER DEL VALLE: I'm sorry.

19 CHAIRPERSON FERRERAS-COPELAND: --and
20 just--and I guess you can wrap it--

21 COMMISSIONER DEL VALLE: [interposing]
22 Okay.

23 CHAIRPERSON FERRERAS-COPELAND: --and you
24 can add it to your wrap-up, but when people or I
25 guess those who are fined come in, do they--what's

1
2 their hardship that you hear that's expressed? Is it
3 that the San--is it that the summons is incorrect?
4 Is it that they can't pay? I guess is there a
5 hardship that is expressed, and as the judge, can you
6 or as the person who has the authority over the
7 summons, what are the hardships that you consider
8 when going through this process.

9 COMMISSIONER DEL VALLE: On the--on the
10 specific summons or--or going through the process?

11 CHAIRPERSON FERRERAS-COPELAND: Um, both
12 actually.

13 COMMISSIONER DEL VALLE: As far as going
14 through the process, the biggest complaint I hear is
15 how long it takes when you get the example. There is
16 a particular agency I won't name right now in order
17 to protect the guilty, but they--[laughs--they would
18 write all of their summonses returnable at 8:30 in
19 the morning.

20 CHAIRPERSON FERRERAS-COPELAND: For all
21 fines?

22 COMMISSIONER DEL VALLE: Yeah, the--at
23 8:30 in the morning, which is not necessarily a bad
24 thing because we can provide enough hearing officer
25 to do it, but if they only send for 140 summonses

1
2 four people to testify, it backs everybody up because
3 you can only do four at a time rather than 20 at a
4 time. And the ugly part is I'm--I'm John Q. Citizen
5 or whatever, I've got his summons and I'm being a
6 good citizen. I'm coming here at 8:30 in the morning
7 to have my--my summons heard. It's now 2 o'clock in
8 the afternoon, and I see a hearing officer sitting
9 there with nothing in front of him, and frankly, we
10 look like incompetent idiots. And they're not
11 interested in hearing that the reason that they're
12 back up is that they--they can only do four hearings
13 at a time because everything was scheduled at 8:30 in
14 the morning and--and there's only four guys that they
15 sent to present their summonses. We're resolving
16 that pretty much right now by introducing that agency
17 to number one, stagger the summonses. And number
18 two, if within a certain period of time, and I'm
19 talking about a half hour, if they're not prepared to
20 go forward with the summon and the respondent is
21 prepared to go through with the summons, then we will
22 proceed with the case whether or not the agency is
23 ready to go or not. And if the summons stands on its
24 own, it will go forward. If the summons cannot stand
25 on its own, it will be dismissed, and the agency--and

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2 some agencies decided to do this anyway regardless of
3 this process. If they decide not to send anybody to
4 represent the agency at the hearing, that the--the
5 summons--a sworn to summons that stands by itself,
6 they'll run the risk. And it's a calculated risk on
7 their part whether or not the respondent can rebut--
8 easily rebut the summons or not, and if the
9 respondent rebuts it, it's dismissed.

10 CHAIRPERSON FERRERAS-COPELAND: Okay.

11 I'm going to have some follow-up questions, but I'm
12 going to allow my co-chair to ask his questions.

13 CHAIRPERSON KALLOS: Thank you very much
14 for your remarks on why we write these summonses and
15 the purpose of justice and having impartiality and
16 just trying to protect the people of our city. So
17 thank you for those, and thank you for your service
18 and all the great news about the things that you're
19 working on. So I guess one important question. So
20 in terms of a challenge that might exist with making
21 sure we have block and lot, will the issuing of--
22 using electronic tools to issue summonses overcome
23 that and make sure that we're getting the right block
24 and lot, and do things actually work together.

1
2 COMMISSIONER DEL VALLE: In fact, there
3 is a project that has just recently been undertaken
4 by us with the 16 agencies that write the bulk of the
5 summonses that we adjudicate to streamline the
6 process, and one of--and the process that I'm talking
7 about directly on OATH is communicating the summons
8 data to OATH and back to the--the feedback to the
9 enforcement agencies. A collateral effect of that
10 has been--the system is being designed so that
11 eventually every enforcement agent in the city will
12 be able to issue summonses electronically that are
13 GPA--GPS-enabled and have a link not only to OATH's
14 database, but will have a line to the Department of
15 Finance's block and lot database, and the Department
16 of Buildings' building identification number
17 database. So that an inspector, for example, a
18 Building inspector, a Sanitation inspector or
19 whatever standing in front of a building the machine
20 he's holding in his hands will immediately tell him
21 what the block and lot number is, and who the owner
22 of the property is, and everything can be generated
23 right there.

24 CHAIRPERSON KALLOS: Do you anticipate
25 that in combination with the program we've already

3 undertaken plus the--the block and lot bill will
4 minimize the number of cases dismissed for wrong
5 party cite, which are numerous in your report?

6 COMMISSIONER DEL VALLE: I expect that
7 not only would it--would it do that, I think it would
8 also reduce the number of specious appeals where
9 people claimed that the--they never had notice of a
10 summons.

11 CHAIRPERSON KALLOS: With regard to
12 Introduction 812, so what you recommend is where it's
13 clear that there's an individual property associated
14 with the borough block and lot number that that be
15 sufficient, but in a location such as a cooperative
16 or condo that we supplement the unique identifier of
17 the block and lot with the actual address as well?

18 COMMISSIONER DEL VALLE: I think the
19 actual address should always appear on it. For
20 example, for mailing purposes--

21 CHAIRPERSON KALLOS: [interposing] Uh-
22 huh.

23 COMMISSIONER DEL VALLE: --we have to
24 notify for example if somebody defaults, we have to
25 send them a copy of the default. It's handy to have
their address. I mean we can look it up from the

1 block and lot, but if it's already there, it's a lot
2 more simple.
3

4 CHAIRPERSON KALLOS: And with regard to
5 811, thank you for bringing up the actual practice as
6 is the--as ordered by your regulation. So if we were
7 to remove the timelines from Introduction 811, which
8 would in essence just base into the law what your
9 practice already is, would that be acceptable to
10 OATH?

11 COMMISSIONER DEL VALLE: Absolutely.

12 CHAIRPERSON KALLOS: Thank you, and if I
13 may ask you to go a little bit out of portfolio with
14 regard to Introduction 807, if you can talk about
15 whether or not we--it is appropriate to have owner of
16 apply to--allow it to be in rem, which would be a
17 fine to property. [pause]

18 COMMISSIONER DEL VALLE: Right now if we--
19 -just broadly speaking--right now if we receive a
20 summons to adjudicate that says owner of a particular
21 piece of property, we will proceed with the--the
22 hearing. If it's an individual from the agency
23 that's--that issued the summons is there, it will be
24 prosecuted. If the respondent is there, he's
25 prosecuted, and if there is a default, essentially

1 nobody shows up, a default judgment will be issued.
2 Essentially, an "owner of" quote, unquote is treated
3 as s John Doe in a complaint, in a civil complaint,
4 and having it from the prior incarnation in the--in
5 the practice of law, John Doe works to pursue a civil
6 action anywhere so long as at a certain point, you
7 find out who that John Doe was when you get to a
8 judgment. To make a long story short, the
9 adjudication is still valid if we just get an 'owner
10 of' summons. [pause]

12 CHAIRPERSON KALLOS: So--and by--so in
13 terms of moving forward as if they're a John Doe in
14 the civil piece, would there be any change for OATH
15 if it was that you're collecting against owner of
16 plus the property itself and that way you're able to
17 have in personam as well as in rem jurisdiction?

18 COMMISSIONER DEL VALLE: I don't think it
19 has any--any impact one way or the other on OATH.
20 It's a matter of policy more of the enforcement
21 agencies than of OATH. For example, DEP in the
22 system with growing a summons and starting over in
23 cases where there's an issue of owner of, but that's
24 just--at the end of the exercise it doesn't change
25 anything.

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2 CHAIRPERSON KALLOS: Has the volume of
3 owner of summonses remained the same and--

4 COMMISSIONER DEL VALLE: [interposing]
5 Excuse me?

6 CHAIRPERSON KALLOS: Has the volume of
7 owner of summonses issued to owner of remained the
8 same or have they gone down? And what steps has OATH
9 and the issuing agencies taken to address the
10 problems before a hearing? Which I think you've
11 already done for the latter piece, but is the volume
12 of owner of going down?

13 COMMISSIONER DEL VALLE: The volume of
14 owner of is going down as more and more agencies are
15 going to electronic summons writing. And as they go
16 down, not only is the owner of part going down, but
17 errors in the writing of the summonses is going down.
18 And in this--this--I don't have the actual numbers,
19 but in some cases by as much as 50% has dropped in
20 error with the electronic system and having the
21 actual name of the owner of the property on the--on
22 the summons.

23 CHAIRPERSON KALLOS: And thank you for
24 your jurisprudence on 807. With regard to--we see a-
25 -according to your report, there are over 200 ECB

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2 dismissals because of defective service. Is that--is
3 that when the person shows up and says I never got it
4 or what--what defective service is in civil service--
5 the Civil--the Civil Rules of Procedure. What does
6 it mean for OATH?

7 COMMISSIONER DEL VALLE: Um, defective
8 of--I believe it's Section 1049-A of the Charter
9 specifies chart--that service process in many of
10 these cases, and essentially it calls for as we
11 called it in Law School Mailing Mail Service, and if
12 it can't be established that a summons--a copy of the
13 summons was left on the property, and one was timely
14 mailed to the respondent, that's defective service.
15 If--and there are--those are the--those are the most
16 mechanical ones. They are all the technical ones
17 such as very often happens. I see--I get complaints
18 at least two or three times a week about these--they
19 issued the service to--they served the neighbor
20 property for a violation on some other person's
21 property. That's defective service and that
22 typically is--is exposed when the respondent shows up
23 and--and has proof that this isn't my property. That
24 kind of--that sort of thing.

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CHAIRPERSON KALLOS: With regard to Introduction 810, do you believe that if we removed the timeline penal--the timeline requirement and fine requirement and changed it from agencies could, but shall revoke permits and licenses and this again would follow, making sure that it's actually permits and licenses that would helpful instead of harmful to the public? Good that that would increase the number of people who pay up to OATH versus going into default?

COMMISSIONER DEL VALLE: I'm stepping a little bit out of--out of character here for a second, but the--

CHAIRPERSON KALLOS: [interposing] If the question is--

COMMISSIONER DEL VALLE: --short answer is yes.

CHAIRPERSON KALLOS: If the--if the--
Speak. Sorry.

COMMISSIONER DEL VALLE: The short answer is yes, and again this is--this is more of a policy issue for individual enforcement agencies. But having and speaking out as having been in charge of an enforcement agency before coming to OATH.

CHAIRPERSON KALLOS: Which one is that?

COMMISSIONER DEL VALLE: The Taxi and Limousine Commission, and the system that exists. By the way, we adjudicate their cases, and that gives an--an additional perspective. TLC has I think close to 200,000 licensees; drivers, owners, fleet operators, brokers, meter shop operators and so forth including paratransit. The process at OATH hearings for their summonses is--is very straightforward. If you're innocent, that is not found guilty of the charged offense that is the end of the case. If you're found guilty of the offense and a penalty is imposed, generally speaking you have 30 days to pay the fine. 30 days after that your license is suspended until you pay the fine. There's very, very little problem collecting TLC fines when the respondent knows that if they don't pay the fine within 30 days you're out of business. There's another variation on that, which is if it's a safety related issue, that goes with the--the fine, then they are also required to--depending on what the-- what the safety issue is and how serious the safety issue is, if they're found guilty they must--they are suspended. That they are suspended at the moment of

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2 the hearing until they correct the conditions. If a
3 less of a critical issue they have 10 days or 30 days
4 to correct the condition. Otherwise, their license
5 is automatically suspended until compliance. Now,
6 what I'm suggesting is, and this is a--this is a
7 public policy issue either for the Council or for
8 individual enforcement agencies as to whether they
9 want to adopt something similar. But speaking from
10 my experience, it is remarkable how quickly somebody
11 complies when they're about to be put out of
12 business. And that also applies to DEP orders.
13 Somebody can get a DEP summons for not having a
14 backflow preventer under--under the Sanitation
15 system. And they'll come in and have a hearing, and
16 they'll get a fine, and if they do not fix the
17 violation, they'll eventually get an order from the
18 Commissioner to fix it, and they'll ignore it. Then
19 they come and ask for another hearing where a cease
20 and desist order is issued, and they'll ignore that.
21 And finally, two years later they'll come in and ask
22 for a sealing order, and amazingly as DEP goes out
23 there to seal the equipment, they manage to figure
24 out how to comply. So that's just my perspective,
25 but I think it's important because I--I believe it

1 is--I don't believe, I can tell you right now it's
2 very frustrating to sit in an adjudicatory function
3 and issue findings or judgments that are ignored.
4 And you feel like it's a--it's a pointless exercise.
5

6 CHAIRPERSON KALLOS: Okay. Thank--thank
7 you for going over some of the places where things
8 are very broken with suggestions on how to fix it. I
9 asked the Department of Finance and I asked DOB would
10 you be willing to participate in interagency group
11 with Committee Chair on Finance as well as Committee
12 Chair on Governmental Operations to work with the 13
13 issuing agencies to get to the bottom of what's going
14 on, and get all those fines issued, paid and get
15 those behaviors corrected?

16 COMMISSIONER DEL VALLE: Absolutely. I
17 have no problem whatsoever. We've already--the
18 Finance Commissioner and I back in February got
19 together and we created a working group between us
20 on--on finding ways to make the system work better as
21 is between our respective agencies communicating data
22 and information that is necessary for them, and
23 helpful for us in our process. And we've gone a
24 fairly long way on it, and as recently as a week ago
25 at the direction of the Mayor, we met at the

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2 Commission level with about 16 different city
3 agencies and formed a working group to ultimately
4 have the goal of uniform summonses across--uniform
5 summons structure, uniform procedural structure, and
6 the uniform IT structure throughout the city with a
7 target of a--with a working target I should say of
8 the end of next year. The IT part of it is going to
9 be the biggest hurdle that we've found. We find that
10 we are dealing with 14 different computer systems
11 plus quill pens in a few agencies. And the systems
12 don't all talk to each other. I found that OATH has
13 four different computer systems. The agencies that
14 feed information to us have ten different systems.
15 Some of them are very sophisticated and very modern.
16 Some of them we found out go back to 1984, which I
17 think is like a Commodore 64 type thing that we had
18 as kids. And the City has committed to putting--
19 putting in significant resources into making the
20 system work.

21 CHAIRPERSON KALLOS: And just to be
22 clear, so when something is adjudicated by OATH the
23 person can if they're found guilty, they can then pay
24 at OATH?

25 COMMISSIONER DEL VALLE: Right now yes.

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2 CHAIRPERSON KALLOS: And then they have
3 45 days or however long after the order to correct or
4 pay at OATH and then it goes to DOF, and I guess how
5 many--how many people where you adjudicate and find
6 that the person owed, pay OATH and how many of the
7 cases that you adjudicate against the respondent end
8 up at DOF?

9 COMMISSIONER DEL VALLE: Um--

10 CHAIRPERSON KALLOS: [interposing] I'm
11 sorry to catch you by surprise on that one.

12 COMMISSIONER DEL VALLE: I believe--I
13 believe it's like 58% pay--

14 CHAIRPERSON KALLOS: [interposing] Okay.

15 COMMISSIONER DEL VALLE: --right away.
16 They--they go to a collection, another percentage
17 within a relatively small period of time pays and
18 then it's finances right from there.

19 CHAIRPERSON KALLOS: So I guess my--my
20 question specifically pertains to--so of the 53%
21 according to DOF those are the folks who are
22 adjudicated and pay. I'm curious if you can break
23 out the people who default and do not pay in which
24 case they may have never shown up, and the people who
25 lose the case. We've seen them. We've met them in

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2 person. There's a human being. They have a pulse we
3 know what they look like, and then they just decide
4 not to pay. So I would be curious to see who those
5 people are and see what their payment is once--rate
6 is once it goes to collections on items like that.
7 Because I feel like there's between a person we've
8 never managed to contact or disappeared and we never
9 found them versus a person who did show up, lost and
10 we lost them. I'm curious how many of those people
11 we are losing.

12 COMMISSIONER DEL VALLE: I was just
13 looking through my notes to see if I had that number.
14 I don't. But you're--you're right because that--that
15 type of individual clearly is thumbing their nose at
16 the system.

17 CHAIRPERSON KALLOS: Well, I'll be
18 interested in it. Would you be willing to share that
19 information with us?

20 COMMISSIONER DEL VALLE: Absolutely.

21 CHAIRPERSON KALLOS: Thank you very much.
22 That ends my questioning.

23 CHAIRPERSON FERRERAS-COPELAND: All
24 right. Well, thank you--what was that? [background
25 comment] Thank you, Commissioner, Del Valle, for

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2 coming to our hearing today. We do have additional
3 questions that we're going to get to you. So you can
4 get them to our committee as soon as possible, I
5 would greatly appreciate it. And we're going to be
6 following up on the interagency conversation or task
7 force, or whatever we're going to title it, as soon
8 as possible. Okay.

9 COMMISSIONER DEL VALLE: Sure.

10 CHAIRPERSON FERRERAS-COPELAND: Thank
11 you, Commissioner, and now we will have our final
12 panel Robert Bookman of the New York City Hospitality
13 Alliance come and testify.

14 [background comments, pause]

15 CHAIRPERSON KALLOS: While we are waiting
16 for our next panel, I just want to thank our Finance
17 Chair, our staff and the Administration because we
18 are--we are able to have a working group, or task
19 force or whatever we want to call it without passing
20 a bill to do so, which is--

21 CHAIRPERSON FERRERAS-COPELAND:

22 [interposing] That's great.

23 CHAIRPERSON KALLOS: Yes.

24 CHAIRPERSON FERRERAS-COPELAND: That is.

25 [background comments, pause]

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2 ROBERT BOOKMAN: I'm the--I'm the entire
3 panel? [laughs] Wow. Thank you all you other
4 Council members. I'll be a little less formal, if
5 you don't mind, since it's last. (sic) My name is Rob
6 Bookman. I have testified before the Council many
7 times over the last 30 years over many Councils. My
8 last job in city government was the Department of
9 Consumer Affairs. I was the Director of
10 Adjudication, which is I guess a good topic today. I
11 thought the OATH testimony, by the way, was great and
12 very elucidating. In my practice in the last 30
13 years I represent small businesses. That's what I
14 do, and two particular trade associations, the New
15 York City Hospitality Alliance, which is about 2,000
16 restaurants, bars, nightclubs, hotels in the City of
17 New York. And my much older organization and my
18 older one is the New York City Newsstand Operators
19 Association the 300 sidewalk mostly immigrant
20 newsstand operators. So really small mom and pop
21 stuff. So I'm really here in all that, you know,
22 capacity and I worked with prior administration with
23 the bills that brought a lot of the work to OATH and
24 we did a lot of reforming legislation years ago that
25 reformed OATH. And I think they've been doing a

1 much, much better job that ECB used to do, you know,
2 when they were alone. Having said that, and I
3 thought that guys really elicited a tremendous number
4 of facts and a tremendous amount of information. In
5 representing small businesses and seeing this data, I
6 realize that it's a small percentage of the overall
7 because, you know, buildings the bulk of it and the
8 people I'm dealing with for the most part are not the
9 people who are getting those building violations.
10 But I'm--but I'm worried about the potential impact
11 on some of these bills, you know, on the small
12 business community. And my initial reaction was I
13 was kind of surprised, you know, in reading it
14 because this Council and this Mayor has been
15 particularly known for let's get government off the
16 backs of small businesses, which for too long were
17 viewed as ATM machines, you know, especially by the
18 prior administration. And you folks and the prior
19 Council passed lots of legislations that we were
20 integrally involved in trying to reform that process.
21 And what I always said was, you know, we could all
22 the laws we want trying to reform it, but the best
23 reform is having somebody at the top with a different
24 attitude. And that's really what we've had in the
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2 last two years, and it's been a breath of fresh air,
3 and we see it in our practice. We see it anecdotally
4 that the number of gotcha violations, you know, the
5 nuisance violations are down dramatically. So that's
6 all great, but what concerns me here is we're talking
7 a lot about how do we make it easier for the city to
8 collect on violations many of which we small
9 businesses, and the--since they're going back eight
10 years, a lot of the unpaid dollars, if you will, the
11 very same gotcha and nuisance violations that we were
12 all complaining about. And now, we're talking about
13 passing legislation making it easier to put people
14 out of business, and revoke their licenses or not let
15 new people go into business because they haven't paid
16 some old gotcha violation that may not have been
17 served upon them properly before OATH took over ECB.
18 So I think we need at these prospectively versus
19 retroactively, and I'm concerned about applying any
20 of these things retroactively to the current
21 outstanding dollars as opposed to going forward after
22 all these reforms have been put int. And--and this--
23 and the next thing--the next point I want to make is,
24 you know, this city here it seems to me that we--we--
25 and I say we because I'm still an active New Yorker.

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2 I don't think we have a collection problem. I think
3 we have a default problem. I mean, Councilman
4 Kallos, you asked a number of excellent questions
5 concerning just that issue. The percentage of these
6 outstanding monies that come from defaults is
7 staggering, and I think we really need to work
8 together and I know our community, the business
9 community, the chambers of commerce that I spoke to
10 or the partnership, we would be very happy to be part
11 of any group that you put together to talk about that
12 real issue. Because a lot of this outstanding money
13 is because don't know about the fines in the first
14 place. They didn't know about the summons in the
15 first place, and to say that we now a pizza place
16 that went out of business three years ago in your
17 neighborhood and that owner now is coming to open a
18 new pizza place in a different location three years
19 later is being told that he may not be able to get a
20 sidewalk cafe or the Health Department license to
21 open that business because there's some outstanding
22 summons from years ago. Without a process for giving
23 the opportunity to reopen that summons to prove that
24 it was served properly I think is--is fundamentally
25 unfair. And you folks are going to get inundated

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2 with complaints from the small businesses, the
3 restaurants in your neighborhoods who are now going
4 to be told that they may lose their license. There's
5 a difference between not paying a fine for--for a--a
6 violation that your licensing agency gave you and was
7 adjudicate versus I can't get a license renewed
8 because I have Health--I have a restaurant and
9 Sanitation allegedly gave me a ticket three years
10 ago.

11 CHAIRPERSON FERRERAS-COPELAND:

12 [interposing] No, I'm sorry. We're going to be a
13 little bit more informal, right, and I think it
14 important that we communicate it accurately, right?
15 This has been years in the making, and we've been
16 talking about what the challenge has been with DOF in
17 collecting their fines. What we are hearing today is
18 recommendations on how to make sure that (1) fines
19 are given accurately, that the agencies do the proper
20 work to figure out who the owners are as opposed to
21 just giving it to like random. Hopefully, to address
22 the default process. And I also, you know, we can't
23 overlook the fact that we are actually proposing an
24 amnesty program. While I understand and we are very,
25 very supportive. I was this morning with a group of

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2 my small businesses, right? We understand the fabric
3 and many of your clients, you know, we--we represent
4 as constituents. This is really for a lot of the bad
5 actors that have gone for years without paying their
6 fines. I'd like to think that--well, we obviously
7 have proven today in this hearing that is no
8 coordinated effort. That if you go get a license in
9 one place, because you have a fine, DOF is going to
10 trigger that you don't get this license. That is not
11 where we are. We are going to engage in further
12 conversations with all the agencies. That is not the
13 intention. However, the intention here especially
14 for me as Finance Chair, we have to figure out what
15 programs we're going to move forward, and there is
16 \$1.5 billion in debt that's uncollected that we
17 collect, which has been--gone through due process.
18 It's gone through the process of noticing, the
19 process of all of it, that we should be able to
20 collect on that. But as was stated, we're collecting
21 on 8.8%. So most of the money is not being
22 collected. I would love to work with your
23 organization to figure out ways that we can continue
24 to be supportive of small business. But the focus
25 today is really an amnesty program to get people out

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2 of the shadows and to be able to pay their debt that
3 sometimes they actually do go ECB and show face, and
4 decide, you know what, I'm not going to pay that
5 fine. I'm not saying that those are your customers
6 because it very well probably if they belong to an
7 association it's usually not the people we're talking
8 about.

9 ROBERT BOOKMAN: [interposing] I--

10 CHAIRPERSON FERRERAS-COPELAND: As the
11 Department of Buildings stated, it's home. It's very
12 different but there are--there is a plethora of
13 those--of individual cases that really have--either
14 have very minimal fines that have grown
15 astronomically, and we're saying take away the
16 penalties. Take away everything that you've added
17 on, and a \$50 fine can become a \$40 fine or a \$35
18 fine, and you can pay. And that is what, you know,
19 this hearing is about today, and I'm sure my
20 colleague will have something else to add. But it's
21 about kind of engaging and hearing your voice, and
22 I'm very excited that you're here to testify on the--
23 Yes--

24 ROBERT BOOKMAN: [interposing] Yeah.
25

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2 CHAIRPERSON FERRERAS-COPELAND: --with
3 this huge room of--of participants.

4 ROBERT BOOKMAN: It's a complicated set
5 of bills. No question about it and no question that
6 the City is entitled to collect on legitimate fines
7 where there were adjudicated violations, where both
8 sides were there. But what I'm hearing today is the
9 bulk of the uncollected fines are where both sides
10 were not there where there was a default, and that
11 default--And your amnesty program doesn't address the
12 ability of people to open up those defaults only to
13 pay as if they were guilty as if they showed up.

14 CHAIRPERSON KALLOS: That's not fair.
15 Let me--if I can speak to it, we did not have the
16 numbers on the defaults, and that is something that
17 we asked questions, we'll be following up on. Just
18 some key issues: 55% of what we're talking about is
19 DOB, that's issued by DOB so it is not going to be in
20 the hospitality industry. It's going to be in the
21 construction industry. The next big group is
22 sanitation, which might affect some of your numbers.

23 ROBERT BOOKMAN: [interposing] It might.

24 CHAIRPERSON KALLOS: But again, here
25 we're dealing with--I imagine as my co-chair shared,

1 the people who are in your association are not the
2 people who are leaving trash out, and when they're
3 not supposed to be, and leaving things littering on
4 the streets. So I have a problem in my district
5 where one store puts its trash out in front of all
6 the other stores, and I can't do anything to stop
7 them other than write fines for them, but then they
8 don't have to pay. And as we saw today, one in four
9 people don't bother paying. People and corporation
10 don't even bother paying their fines. So I think
11 what we're trying to do here is make sure that people
12 don't end up in a situation where they get so many
13 fines that they go out of business. But, in fact,
14 people know when they get the fine and they show up
15 that they're right person to show up. So the unique
16 identifier means that you're not getting a fine for
17 your next door neighbor, you're getting a fine for
18 you. And then that's moving forward, and then where
19 it's owner of, we're actually able to track and get
20 it to the right person instead of the wrong person.
21 Because at the end of the day, we want people to be
22 able to eat healthy, not have to worry about bad
23 things happening to their food and be able to make
24 sure that the environment is protected. But all of
25

1 this is just to make sure that when we write
2 something that it's actually enforced and corrects
3 the behavior instead of just having at point--The
4 \$386 million in interest isn't the issue here. The
5 issue is that we want to actually write these
6 summonses, get them resolve before it becomes a half
7 a billion dollar problem.

9 ROBERT BOOKMAN: No. I agree. You know,
10 there's no question about that. I agree.
11 Historically, my recollection Sanitation always had a
12 very large uncollectible because they also had one of
13 the largest defaults because of the way they served
14 violations, and I don't know if that's ever been
15 cured. Your situation is obviously--there needs to
16 be other penalties--there needs to be other
17 mechanisms to stop somebody who is being served
18 properly, and is just ignoring the city and not
19 correcting the underlying violation. But all too
20 often we--we, and I'm sure you are not going to want
21 a business not to be able to open because of a--a
22 Sanitation ticket that was defaulted three years ago
23 because it was put on the door, and no one ever
24 showed up. ECB says they can only dismiss those when
25 somebody shows up and points out that it was

1 defective service. Nobody shows up to point out
2 those defective services because they didn't get it.
3 Well, that's one of those uncollected defaults, and
4 so I don't think you really--the City is really owed
5 that amount of money when you knock out all of the
6 defective--defective--all the defaults that were
7 based on defective service.
8

9 CHAIRPERSON KALLOS: And I think part of
10 the reason we tried to do this as a package is
11 because we actually have good conflict of sweet
12 amnesty at the same time as bad cop with let's
13 actually have some teeth.

14 ROBERT BOOKMAN: So, anyway, we--we, you
15 know, we're here. We're interested and I know I
16 spoke to Manhattan Chamber of Commerce. You know,
17 they're interested. Nancy is away. We'd like to be
18 part of the process. We appreciate that the Council
19 notified us, you know, of these bills. That's always
20 helpful, and we appreciate that. We want to make
21 sure that the legitimate concerns that both the non-
22 compliant people and the collection issues are not
23 resolved in such a way that we have these unintended
24 consequence of legitimate businesses that never knew
25 of violations in the first place now rushing into

1
2 your office, you know, hey want to put me out of
3 business because three years ago I had a corporation
4 that went out of business, and now I want to open up
5 a new corporation and they won't let me.

6 CHAIRPERSON FERRERAS-COPELAND: Right.

7 I--I don't think any, you know--

8 ROBERT BOOKMAN: [interposing] And I know
9 that's not your intention.

10 CHAIRPERSON FERRERAS-COPELAND: Right. It
11 is not our intention, and I don't think unfortunately
12 what we've learned today is that they don't work that
13 fast.

14 ROBERT BOOKMAN: [laughs]

15 CHAIRPERSON FERRERAS-COPELAND: So, we--
16 what we do need from you is to help us spread the
17 word, you know, once we get this amnesty approved to
18 your clients or your members so that they can take
19 advantage. For those that are in this area and they
20 haven't been able to pay that they can take advantage
21 of the Amnesty Program.

22 ROBERT BOOKMAN: I think the last time
23 you--you pointed out the Amnesty didn't work all that
24 well was because there was no way--and I think we're
25 repeating that mistake--there was no way of

1
2 requesting a default to be reopened and have--it was
3 just that you had to accept the fact that there was a
4 default. And I think you should be able to request a
5 default be reopened because of sewer service or lack
6 of service, and I think you'll get more people
7 involved in the process, you know, if that's an
8 option in your--in your program.

9 CHAIRPERSON FERRERAS-COPELAND: Duly
10 noted. Thank you very much for coming--

11 ROBERT BOOKMAN: [interposing] Thank you
12 so much.

13 CHAIRPERSON FERRERAS-COPELAND: --to
14 testify. I'm calling this hearing adjourned.

15 [gavel]

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C E R T I F I C A T E

World Wide Dictation certifies that the foregoing transcript is a true and accurate record of the proceedings. We further certify that there is no relation to any of the parties to this action by blood or marriage, and that there is interest in the outcome of this matter.



Date November 23, 2015