

CITY COUNCIL
CITY OF NEW YORK

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TRANSCRIPT OF THE MINUTES

Of the

COMMITTEE ON GOVERNMENTAL OPERATIONS

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February 27, 2017
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HELD AT: 250 Broadway - Committee Rm,
14th Fl.

B E F O R E:
BEN KALLOS
Chairperson

COUNCIL MEMBERS:
David G. Greenfield
Mark Levine
Carlos Menchaca
Antonio Reynoso
Ritchie J. Torres
Joseph C. Borelli
Antonio Reynoso

A P P E A R A N C E S (CONTINUED)

Joseph Fama
Empire Commercial Services

[sound check]

[pause]

[gavel]

CHAIRPERSON KALLOS: Good morning and welcome to this hearing of the Committee on Governmental Operations. I am the Chair, Ben Kallos, and as always, you can tweet me with feedback questions you want asked @BenKallos; you can also feel free to email.

Today we'll be holding a hearing on four introductions. First is Introduction 90, sponsored by Council Member Alan Maisel in relation to requiring certain agencies to be capable of issuing warnings. For those paying attention to criminal Justice Reform Act, this is something we'd like to do as a city moving forward and this legislation is what we need to do so. Moving forward, folks would actually be able to draft legislation that would offer people an entitlement to a specific number of warnings before an actual violation could be issued.

The second is Introduction 264; it's also sponsored by Council Member Alan Maisel in relation to transferring the Parking Violations Bureau from the Department of Finance to the Office of

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2 Administrative Trials and Hearings. This follows
3 similar suit as we've been doing with other agencies,
4 as many folks would prefer to go before a judicial or
5 quasi-judicial body to find out whether they are
6 guilty or innocent versus having to go before the
7 collections agency, which would be Department of
8 Finance.

9 Third is Introduction 294, sponsored by
10 Council Member Julissa Ferreras-Copeland in relation
11 to limiting the fees charged by the City for making
12 online payments.

13 And fourth is Introduction 1091, that I
14 sponsored in relation to amending references to the
15 tribunal functions of Environmental Control Board to
16 include reference to a consolidated administrative
17 tribunal of the Office of Administrative Trials and
18 Hearings.

19 All four of these bills are seeking to
20 adjust the operations of our City government to
21 provide better and more efficient services to the
22 public. Introduction 90 seeks to do so by ensuring
23 that agencies are capable of issuing warnings the
24 first time a condition is observed; in the past, the
25 Council has been told that some agencies did not have

1 equipment capable of reporting that a possible
2 violation was observed and a warning issued so in the
3 future inspections where the same condition was
4 observed they could issue a notice of violation. The
5 Council has tried to ensure fairness when laws and
6 regulations change by requiring outreach and public
7 information campaigns so that business owners and
8 public will not find out about a new requirement when
9 they are paying a financial penalty for having
10 unknowingly violated it. The ability to more
11 effectively issue first-time warnings might allow us
12 to include them in laws more often and would allow
13 for greater fairness in our enforcement of actions.

14
15 Introduction 264 seeks to move the
16 Parking Violations Bureau, the agency that
17 adjudicates parking tickets, from the Department of
18 Finance where it's currently located to the Office of
19 Administrative Trials and Hearings, also known as
20 OATH. For those unfamiliar with OATH, describe the
21 mission of the independent agency in the words of its
22 own commissioner and chief administrative law judge,
23 OATH's function is to provide due process and reform
24 that is in fact and in appearance truly neutral and
25 unbiased. They are an agency solely dedicated to

1 providing unbiased hearings for the public when they
2 wish to challenge a civil summons or a notice of
3 violation that they have received from a City agency.
4 These tribunals used to be located within the agency
5 issuing the violation so that if, for example, you
6 received a notice of violation from Department of
7 Consumer Affairs and wished to challenge it, you
8 would have to go to a hearing held in the office of
9 the Department of Consumer Affairs and which was
10 adjudicated by a hearing officer hired by the
11 Department of Consumer Affairs. The appearance and
12 reality of bias in such arrangements where agencies
13 were both enforcers and judges led over a period of
14 several years to these tribunals being moved out of
15 their agencies and into OATH. Now an agency can
16 issue a notice of violation but the determination of
17 its validity is made by the impartial judges at OATH.

18
19 The most significant tribunal that has
20 not yet been moved to OATH is the Parking Violations
21 Bureau. Unlike the Department of Consumer Affairs,
22 for example, as I mentioned earlier, the Parking
23 Violations Bureau does not issue the parking ticket
24 that it adjudicates, so it may have a greater degree
25 of impartiality than some of the tribunals did, but

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2 it is located in an agency that includes among its
3 responsibility the collection of revenues for the
4 City and in a brochure describes its mission as
5 helping people "pay the right amount on time" and
6 determining "what the right parking ticket amount is
7 by providing a fair and independent forum" for
8 challenging a parking ticket. Such a mission
9 statement which focuses first on the idea of a person
10 paying some amount for their parking ticket makes for
11 a poor comparison with OATH's mission statement of
12 ensuring due process for the public.

13 Introduction 294 seeks to place a cap on
14 the convenience fee that the City can charge for
15 credit card payments made online. Currently, except
16 where exempted under Department of Finance rule, the
17 City charges a universal 2.49% convenience fee for
18 credit card transactions. This fee is meant to cover
19 the interchange fees charged by banks and credit card
20 companies to merchants who accept their cards. The
21 bill would seek to limit this fee to 2% or less in
22 some circumstances.

23 Introduction 1091, which I have
24 introduced, would amend the references to tribunal
25 functions of the Environmental Control Board to

2 include references to an authorized tribunal OATH to
3 better reflect the reality of a consolidated tribunal
4 structure within OATH. The roots of this bill can
5 actually be found in a law Council passed in 2008
6 which moves into OATH the Environmental Control
7 Board, known as the ECB, which among other
8 responsibilities held hearings on notices of
9 violations from several agencies. Under that law,
10 the chair of ECB is now the Chief Administrative Law
11 Judge of OATH and OATH uses the same rules and
12 processes that apply to its other hearings for ECB
13 hearings, yet for vestigial historic reasons, the
14 term ECB remains in our law; this can prove confusing
15 to the public who may receive a notice to appear for
16 a hearing before the ECB, only to arrive at a
17 building that says OATH. You should not have to
18 learn about the bureaucratic history of an agency in
19 order to be able to navigate it. This bill seeks to
20 remedy that confusion by amending the law to state
21 that since the ECB is located with OATH anyway, an
22 authorized tribunal of OATH may carry out the
23 hearing. I believe that OATH has done a tremendous
24 job in recent years in reducing confusing for the
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2 public and this law seeks to help them further that
3 goal.

4 Just to restate this in plain English.
5 People get quality of life violations, those quality
6 of life violations are called ECB violations or
7 summonses; people show up looking for the
8 Environmental Control Review Board and for the
9 Environmental Control Review Board hearing where they
10 can appear and no one knows what they're talking
11 about because they're standing in front of an OATH
12 building talking to security guards at an OATH
13 building, so when you ask, I'm here for my ECB
14 violation, they say, we don't know what you're
15 talking about, so this would actually fix that.

16 I'd like to acknowledge members of the
17 Governmental Operations Committee currently present
18 -- Carlo Menchaca, who's taken the lead from Joe
19 Borelli as being the first member here; we've also
20 been joined by Antonio Reynoso, following some text
21 messages from myself and Carlos and we're glad to
22 have you here.

23 That being said; this hearing was noticed
24 six days ago and so the Administration, for whatever
25 reason, has not provided testimony in person; they

2 have provided it in writing, so that is now on the
3 record and anyone here is welcome to get a copy. Do
4 we have them with the Sergeants-at-Arms? Perfect.
5 [background comment] Yes, please. Please, if we can
6 distribute it to members of the audience, and we've
7 been joined -- if you're interested in testifying
8 today, please see the Sergeant-at-Arms who is handing
9 out the testimony and fill out an appearance card.
10 So we have one, so I'll invite that individual to
11 testify, so Joseph Fama from Empire Commercial
12 Services.

13 JOSEPH FAMA: Good morning, thanks for
14 holding the hearing; thanks for the opportunity to
15 speak to the Council. My name is Joe Fama; I own a
16 company called Empire Commercial Services, and if you
17 would permit me, I'd just like to give you a little
18 background in my expertise in the field of parking
19 violations.

20 Way back in the day I was an official
21 with the City; I was the Assistant Commissioner for
22 parking violations under Commissioner Joe Bruno, who
23 you may know, and I was part of the cleanup team
24 after there was a very large parking violation scam.
25 I spent four years there, from 1986-1990, then became

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2 a Special Assistant to the Budget Director for
3 Revenue. And then in 1992 I left City government and
4 started Empire Commercial Services, initially to
5 assist commercial entities in complying with New York
6 City regulations regarding the operation of
7 commercial fleets. We've developed in the last 25
8 years into the largest parking ticket processor in
9 the city, other than the City of New York, for both
10 commercial entities and individuals, Empire doing the
11 commercial part and our company called WinIt, which
12 is a phone app that assists the general public, and
13 we process now about 30,000 parking violations a
14 month and conduct a hearing on each and every one
15 with the Department of Finance.

16 So I would first like to say that the
17 individual judges and the chief administrative law
18 judge for parking tickets at Department of Finance do
19 a terrific job. It's a difficult job, it's high
20 pressure, high volume; they know the laws very well;
21 they apply them very well, and I believe that
22 Commissioner Gatsofolis [sp?], who is the Chief
23 Administrative Law Judge, is excellently suited for
24 her job and serves the City very well.

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2 I am in favor of the move however to OATH
3 for two reasons -- one of perception and one of
4 reality. I think there is a bit of a chilling
5 effect, especially for members of the general public,
6 to respond to parking tickets and to go for hearings
7 at the Department of Finance. I think there's a
8 chilling effect because they view it as a collection
9 process and are less confident in the hearing
10 process. I think it's more an issue of perception
11 than substance; nonetheless, I think it is a real
12 problem that I think the Council is trying to address
13 and I think it's a good idea.

14 In terms of the reality that affects the
15 perception, is the finance commissioner has some very
16 broad discretion; fortunately, I think we have an
17 excellent finance commissioner today in Commissioner
18 Jiha and I think the City's administration has really
19 worked hard and produced some very good things to
20 help the general public and the business community
21 with parking violations. The prior administration
22 under Commissioner Franco, not so much and it's kind
23 of the concern that I would have with the Department
24 of Finance that we're lucky to have a great
25 commissioner today; we don't know what comes down the

1 road. One of the reality problems is that
2 Commissioner Franco put out an edict that says: the
3 Administrative Law Judge for parking violations no
4 longer has the discretion to waive penalties when a
5 respondent goes in for a hearing; that's a penalty
6 above and beyond the base fine of the ticket.
7

8 For many years, going back to 1976, when
9 the administrative tribunal was created, the
10 Administrative Law Judge always had the ability to
11 find someone guilty on a ticket, but had the ability
12 to waive the penalties. I think part of the chilling
13 effect under Finance today is that the judge no
14 longer has that discretion.

15 Penalties are designed to coerce
16 compliance, not to draw every nickel out of ever
17 person who shows up. My own belief is that if
18 someone is attempting to comply and appears for a
19 hearing and the computer has posted a penalty; the
20 judge should have the discretion to remove that
21 penalty. I think that would help the perception in
22 the hearing process, even if it were to stay at the
23 Department of Finance, that I'm getting a fair shake;
24 somebody's listening.
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2 So I would hope that if the City in its
3 wisdom does move the process to OATH; that the
4 ability of the judge to be independent and address a
5 penalty issue would be something that would be
6 allowed. In most OATH hearings, not only does the
7 judge deal with penalties; the judge can actually set
8 the fine, and so there might be a range; it could be
9 a \$1,000 minimum and a \$3,000 maximum; the judge
10 determines what the fine would be. In the parking
11 ticket world we're really only dealing with
12 relatively small dollar amounts of penalties. The
13 first penalty level is \$10; the next one is another
14 \$20, to a maximum of \$60. I believe that if John Doe
15 citizen shows up for a hearing, they are making their
16 best effort to comply and that that should be taken
17 into account and not penalize every respondent who
18 wants a hearing by assessing the penalties. So I
19 think we have an issue of perception and then an
20 issue of reality and the reality being the penalty
21 issue.

22 When I was with the Parking Violations
23 Bureau, because there was such a tremendous scandal,
24 we opened up with an amnesty program, which drove
25 compliance and revenues through the roof because

1 people felt then that they were going to get an
2 honest and fair shake. I'm not suggesting an amnesty
3 program, but what I am suggesting is that the
4 administrative law judges, who I think really know
5 the law and do a terrific job applying it, should
6 have the ability to waive penalties at their
7 discretion based on the testimony of the respondent.
8 I think that would resolve a big problem that we have
9 and why the Council is really considering moving
10 everything to OATH. I understand the volumes for
11 parking tickets outpace anything else by miles and
12 that might be a reason why you might not want it to
13 go to OATH; you might not want to overburden it with
14 the parking tickets, but if we determine that it will
15 stay with Finance or get to OATH, I think the ability
16 of the judges to waive the penalties is key. And in
17 fact, if I were creating legislation or policies, I
18 would probably mandate that the penalties be removed
19 for any respondent who's showing up for a hearing so
20 that the public knows there's a benefit for me to go
21 plea my case; at least get the penalties removed.
22 We've done a great job with Finance in terms of
23 access for the public; you can now do hearings
24 online, by mail, in person; there all sorts of ways
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2 to try to comply and I think giving the judge that
3 ability will increase compliance and increase
4 collections.

5 So based on my years of experience with
6 Empire, processing 30,000 tickets a month and about
7 half of them for the general public through our phone
8 app, this is the feedback that I get, we get it from
9 the commercial entities as well; most commercial
10 entities want to be good corporate citizens, the
11 companies we represent are very large, companies like
12 Poland Spring and DHL, they want to go in, they want
13 to clear up their tickets; they pay tremendous
14 amounts of money for the tickets that are found
15 guilty, they want to be good corporate citizens; my
16 company, we provide training for their drivers on
17 what to do if you get a ticket, how to avoid tickets,
18 where to park; where not to park. We all know the
19 realities of trying to operate within the five
20 boroughs, tickets are a fact of life and most of
21 these companies are doing their best to comply and
22 take care of their tickets, and I do believe that the
23 penalty issue is one that will encourage compliance
24 if there's an ability for the judge to review it and
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1
2 remove the penalties, whether it's under OATH or
3 whether it's under Department of Finance.

4 That's my story and I'm stickin' to it.

5 CHAIRPERSON KALLOS: Thank you very much
6 for your testimony. I want to note that we've been
7 joined by Council Member Mark Levine. I want to
8 express regrets from Council Member Alan Maisel, who
9 wanted to be here and cares tremendously about this
10 legislation, however he had an event for Holocaust
11 remembrance in his district which was long-scheduled.

12 So I guess a quick question for you...

13 JOSEPH FAMA: Sure.

14 CHAIRPERSON KALLOS: how did you learn
15 about this event; did the short notice impact your
16 ability to provide testimony or prepare?

17 JOSEPH FAMA: I actually learned about it
18 through my attorney, who monitors these things for me
19 and had notified me last week that there would be a
20 hearing and asked if I would like to testify and I
21 said sure.

22 CHAIRPERSON KALLOS: Great. Thank you
23 very much and do you have positions on any of the
24 other items, such as 294, which would cap the credit
25

2 card fee or how do your clients generally pay their
3 fines and fees?

4 JOSEPH FAMA: The general public
5 generally pays by credit card and I have not had a
6 negative response to the credit card fee from the
7 general public; they understand they're paying those
8 fees everywhere; I think they kind of expect that
9 there is going to be a fee to pay by credit card, so
10 I can't say that I've had any objection to it. I
11 think the payment by credit card is very helpful; I
12 think... and you can pay it through our phone app by
13 credit card and a vast majority of our customers who
14 are found guilty at hearing do pay through the credit
15 card without any objection or problem.

16 CHAIRPERSON KALLOS: Do you think that...
17 Why do you think at Finance they've given this
18 directive around discretion; do you believe that at
19 OATH the hearing officers will have more discretion?

20 JOSEPH FAMA: I think under the prior
21 administration it was simply a money grab. I believe
22 that the current Chief Administrative Law Judge would
23 be happy to entertain the process of giving that
24 flexibility back to the administrative law judges; I
25 don't know what Commissioner Jiha's position is on

1 that. But I think the judges would be happy with it
2 and if it went to OATH, it might be easier to do; I
3 just don't know what the administration's position
4 is, but I think it would actually be a boon to the
5 general public and to the City to dispense with the
6 penalty issue. I mean if you don't show up and your
7 ticket gets into judgment; you should be hammered
8 with all the penalties possible if you're a scofflaw;
9 most people are not scofflaws, they're going in with
10 a \$115 ticket and now it's \$125 -- relieve the \$10
11 penalty.
12

13 CHAIRPERSON KALLOS: Under criminal
14 justice reform we're now reevaluating penalties and
15 instead of slamming people with penalties, we're
16 looking at community service. Do you think that that
17 would be positive if we moved Parking Violations
18 Bureau to OATH if OATH hearing officers were able to
19 offer residents who had violated the parking rules
20 the opportunity of doing community service instead of
21 having to just pay a fine?

22 JOSEPH FAMA: I think that might be a
23 little extreme, simply because of the volumes. I
24 mean there are just hundreds of thousands of
25 respondents; that would be so unwieldy, I don't think

2 we could manage saying okay, you're going to do some
3 community service. And again, especially the fines
4 and the penalties are not huge for the individual, so
5 I think it would be hard to equate it. But I do
6 think that we would get more compliance if we had
7 people feeling like, I could go in, plead my case and
8 get something back from the City.

9 CHAIRPERSON KALLOS: Thank you very much
10 for your testimony... [crosstalk]

11 JOSEPH FAMA: Thank you.

12 CHAIRPERSON KALLOS: We'll excuse you as
13 a witness... [interpose]

14 JOSEPH FAMA: Thank you, Council Member;
15 appreciate it.

16 CHAIRPERSON KALLOS: If members of this
17 Committee, if members of the public; if members of
18 the press who are here have specific questions about
19 the Administration's testimony which has been
20 submitted on the papers, we will be forwarding
21 questions to them on everything from what other
22 actions they are taking as well as other means of
23 getting to the same issues given their positions on
24 some of this legislation.

2 We are going to go into recess while we
3 wait certain committee members who -- we have
4 multiple committee meetings here today and at that
5 point we will gavel out once members return.

6 [gavel]

7 [pause]

8 [background comments]

9 MALE VOICE: Excellent hearing, Committee
10 Chair Ben Kallos, that...

11 [pause]

12 COUNCIL MEMBER GREENFIELD: This
13 concludes the Government Operations Committee hearing
14 for Monday, February 27, 2017. This hearing is
15 hereby adjourned.

16 [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 February 28, 2017