

New York City Council Committee on Government Operations  
February 27, 2017  
Hearing on Intros. 90, 264, 294 and 1091  
Written Testimony of Henry Berger, Special Counsel to the Mayor

**FOR THE RECORD**

I am submitting this written testimony on behalf of the Administration. The Administration is unable to appear in person today as we were only given three (3) full business days' notice for this hearing and many of the relevant senior agency staff were unavailable during that time period. As such, the Administration was unable to fully vet the legislation that is being heard before your Committee today. This testimony will document the concerns that the Administration was able to gather thus far. The Administration is more than willing to appear before this Committee at a later date once the agencies have had sufficient time to review the legislation and prepare testimony.

**Intro. 90 (Maisel)**

Intro. 90 requires agencies that issue violations to provide their inspectors with handheld devices so that they can review recidivism histories and issue warnings, as opposed to civil penalties, for first-time violations. Impacted agencies include the Department of Health and Mental Hygiene, the Department of Buildings, the Department of Sanitation, the Department of Environmental Protection and the Department of Consumer Affairs.

There is a significant legal and policy concern regarding the use of a warning that is not adjudicated as a predicate for a repeat violator civil penalty. The Administration has generally disfavored formalizing a mandated warning system, which could create the appearance of unfairness for those individuals who are unable to challenge the warning.

Additionally, a codified warning system would have a negative deterrent effect, resulting in an increase in the number of violations that occur. Such increase could result in damage to city property, and could ultimately increase enforcement expenses in the near future. Many of the impacted agencies already authorize "cure" periods for first-time violations as opposed to mandated warnings; if cured, the violations result in zero dollar penalties. These are often more useful and cost effective.

Concerning the Department of Buildings, civil penalties are an appropriate punishment and serve as a crucial deterrent for the many types of violating conditions the Department is responsible for enforcing to protect the safety of the public. Warnings would not be appropriate in these instances. Moreover, the Council has been quite clear that penalties for unsafe construction need to be strengthened. This bill would have the opposite effect.

Based on known costs for handheld devices, it is estimated that the cost for agencies to switch to handheld devices will be in the tens of millions of dollars.

### **Intro 264 (Maisel)**

Intro. 264 transfers the Parking Violations Bureau (PVB) from the Department of Finance (DOF) to the Office of Administrative Trials and Hearings (OATH). In FY 2016 DOF processed just over 11 million violations related to parking and red light, speed, and bus lane cameras. DOF holds approximately 1.6 million hearings per year. Hearings are held not only in person but also via Internet and mail request. Motorists typically win 40 to 50 percent of hearings conducted by roughly 110 Administrative Law Judges who are trained to adjudicate over 90 violation types that can be issued to both individuals and commercial companies. The cost of the PVB tribunal and other functions can't be stated accurately since it is thoroughly integrated with DOF's operations and cannot be easily lifted out and transferred, either in terms of personnel or programming without causing a major impact on both. Additionally, parking violations are highly controlled by state legislation and programs that are intertwined with DOF's programs that provide services to rental and other companies with large fleets of vehicles.

DOF has implemented a number of initiatives in recent years to improve customer service for motorists who have received parking violations such as the hearing by web service. It is about to unveil a mobile app for motorists to address parking tickets immediately upon receipt, including the ability to upload pictures taken with their cell phones.

Moreover, this bill fails to take into account the fact that OATH still has a way to go toward full consolidation of adjudications that requires unsnarling arcane ECB legislation. This change will lead to a massive increase in cost at OATH to handle the additional cases and it is not in a position to do so at this time.

### **Intro 294 (Ferrerias-Copeland)**

Intro. 294 requires that the maximum fee that the City may charge for the payment of a tax, penalty, fee or other payment to the City online shall be fifty dollars (\$50), or two (2) percent of the amount of such payment, whichever is less.

The Administration must clarify that these fees are not revenue generating for the City. We are almost always passing along a charge that is incurred by the City for having to process the fee through a credit card company when an individual chooses not to pay via check or money order; we aren't adding an extra charge. Thus, to get rid of these fees or lower them would be a direct hit to the City's revenue, which is covering expenses incurred. It should be noted that, in accordance with City policy, City payment websites for taxes, charges, and other fees (excluding bail) all offer e-check payments for which no fee is charged, so there is an alternative to having to pay a fee.

This bill is also a huge concern for the Mayor's Office of Criminal Justice. MOCJ is in the last stages of a lengthy procurement process for an online bail payment system, which will likely have a 5% fee. To be acceptable, this bill would need a carve out for this system or else MOCJ would be at risk of losing months of work aimed at improving the bail payment process for people across the City.

Additionally, due to the regressive nature of the \$50 cap, the legislation would generally benefit individuals making payments greater than \$2,500, with a minimum savings of \$12.25 per payment, most of which are large businesses with higher credit limits.

Pursuant to OMB's preliminary analysis, payments over \$2,500 were typically DCAS lease payments, DOB construction permit payments, DOT franchise payments, DPR Street Trees payments, SAPO event permit payments, business and property tax payments. Individuals who pay for licenses, parking tickets, and other typical small business transactions would benefit minimally from Intro. 294, if at all. It is also important to note that individuals can avoid the fee in its entirety by paying via eCheck, a payment option available to all individuals that have a credit card and thus a bank account. While the average individual paying a tax, penalty or fee would likely not see any savings, the City would be left paying the potentially large difference owed to credit card companies for payments from larger businesses that can easily absorb such costs.

Based on FY 2016 collections, this legislation would decrease revenues by at least \$2.8 million annually.

### **Intro 1091 (Kallos)**

Intro. 1091 amends references to the tribunal functions of the Environmental Control Board to include reference to a consolidated administrative tribunal at OATH. ECB has an unusual structure, in that it has been placed within OATH, but has public members appointed by the Mayor for terms with Council confirmation. It also has adjudicatory procedures related to docketing of its orders that originate in State legislation. Given this legal background, efforts to reform or replace ECB must be addressed in a larger context that may include state legislation. The Mayor's Office is presently engaged in such efforts, involving OATH and Law, to review ECB functions with the goal of improving the efficiency of the adjudicatory process within OATH. Thus, local legislation is not appropriate at this time.

**THE COUNCIL  
THE CITY OF NEW YORK**

*Appearance Card*

I intend to appear and speak on Int. No. 0264 Res. No. \_\_\_\_\_

in favor  in opposition

Date: \_\_\_\_\_

**(PLEASE PRINT)**

Name: Joseph FAMA

Address: 543 CANY AVE SE NY

I represent: EMPIRE COMMERCIAL SERVICES

Address: 543 CANY AVE SE NY

◆ Please complete this card and return to the Sergeant-at-Arms ◆