

Department of Finance Testimony

Before the NYC Council Finance Committee

On Legislation Related to the Reporting of Notices of Violation and ECB Debt

October 14, 2014

Good afternoon/morning Chair Ferreras, Councilmember Kallos and members of the Finance Committee. My name is Jeffrey Shear, and I am the Deputy Commissioner for Treasury, Payments and Operations at the New York City Department of Finance. I started in this position last month but I am pleased to have worked with many of you while at the Department of Education and the Office of Management and Budget. I am joined today by Samara Karasyk, Assistant Commissioner of External Affairs at the Department of Finance, Amy Slifka, Deputy Commissioner and Executive Director of the Environmental Control Board (ECB), and Marisa Senigo, Assistant Commissioner of Public Affairs & Communications at the Office of Administrative Trials and Hearings (OATH).

The bill under consideration today would require the Department of Finance to submit an annual report to the Council each May 1st detailing outstanding City agency summonses originally eligible for hearings at (ECB, which is part of OATH, and referred to the Department of Finance for collection after becoming judgments. The report would indicate the issuing agency, the base penalty for the violation, any default penalties and interest, and other descriptive information.

We support this legislation. We look forward to working with you to further refine the specifics of the reporting requirements. The reporting requested is not burdensome and we know there is keen interest from the Council after the Department reported that its inventory of judgment debt associated with violations adjudicated at ECB (hereafter referred to as "ECB debt") is \$1.5 billion. This reporting is consistent with our objective to increase our transparency. It is important for the Council and the public to have an understanding of the ECB debt owed to the city. The request also is timely as the Department has prioritized a comprehensive review of ECB debt. As you know, the Mayor has noted the need for the City to make every effort to collect on this debt. To this end, the Administration is developing a plan to increase collection of this debt, reduce the inventory of outstanding debt, and divide the inventory into categories that will allow the public to better understand it and what portion of it is potentially collectible.

In the spirit of transparency this bill aims to achieve, I would like to take the opportunity to discuss the current ECB debt inventory as well as explain the process through which an agency summons becomes a judgment and the role of the Department of Finance in collecting this outstanding debt.

Thirteen different city agencies issue violations that are adjudicated by ECB including the Departments of Buildings, Sanitation, and Environmental Protection, among others. These violations vary from minor to major offenses. The Department of Sanitation's tickets include improper recycling and failure to sweep the sidewalk. The Building Department's violations include building occupancy inconsistent with a Certificate of Occupancy and work without a permit. If found to be in violation after an ECB hearing,

these building code infractions result not only in a monetary fine but also a requirement to address the underlying condition such as applying for a revised Certificate of Occupancy or obtaining a required work permit. The City's enforcement agencies issue these violations, not to generate revenue, but to preserve the health, safety and order of our City. The ultimate goal is for the public to comply with the rules.

Of course, the fines associated with these infractions provide a disincentive to break these important rules. However, these summonses are intrinsically more difficult to collect than other fines and charges levied by the City. In issuing parking tickets, for example, it is easier to identify the responsible party because vehicle owners are responsible for violations even when they allow others to drive their cars and all vehicles must be registered with the State Department of Motor Vehicles. Therefore, we have the owner name and address associated with each license plate. Also, parking violations that become judgments can be readily enforced against the owner's vehicle through the City's booting program. Another example of charges that are easier to enforce are those related to real estate, which has straightforward ownership information. Thus, it is also easier to collect water and sewer charges. Under State and local law, unpaid real estate charges become a tax lien, which the owner must pay when seeking to sell the property and which the City can sell if the owner fails to do so. As a result, the City's property tax lien sale has become an effective tool in collecting delinquent real estate charges.

For summonses that are adjudicated by ECB, it is not always easy to identify the responsible party. For example, violations of littering may be totally unrelated to the owner of the property where the infraction was observed. Illegal trash or an abandoned car may be found at a vacant lot with no listed address. Even when responsible parties are properly identified and served, the fines are not enforceable against the property (they are judgments against an entity; not liens against the property) and a vehicle or other major asset can only be restrained or taken by the City if the summons has passed into judgment status and it can be proven that the asset belongs to the same party as the one who committed the infraction.

When a violation is issued, recipients are provided a date for an ECB hearing. In most cases, recipients may plead guilty and pay the fine, or participate in a hearing to contest the violation. In calendar 2013, more than 500,000 agency summonses eligible to be adjudicated by ECB were written. Thirty percent were paid or otherwise resolved prior to a hearing and 30% were contested. Of the contested cases, after a hearing at ECB, 43% were dismissed and 57% of cases were sustained. Recipients who do not pay the fine and neglect to participate in a hearing are considered to be in default. 40% of the violations issued in calendar 2013 fell into the default category. Because many of the defaulted violations had an additional penalty assessed for the default itself, we feel it is important to take a closer look at the penalty schedule for various violations. The default amounts vary by issuing agency and violation, and we want to make sure that default penalties accomplish the goal of encouraging respondents to pay or contest their summons, while not being so high as to deter people from taking action. We also are looking at whether there are ways to facilitate the scheduling of hearings for the public.

Currently, ECB judgments are referred to the Department of Finance after a default or after a contested hearing when it is determined that the respondent has some liability but fails to remit payment. Before

the judgment is referred to Finance, ECB will send two notices (or three notices, if there was a default) to the respondent. If an outstanding amount still remains, the judgment is docketed in court for the amount due and the case is referred to DOF. Once the judgment is filed, interest begins to accrue at a rate of nine percent annually, which is set out in State law. Nine percent is a high rate of interest in the current economic climate. Were the interest rate to decrease in line with current interest rates, the Department expects the inventory of debt would naturally shrink over time. Currently, about \$370 million of the \$1.5 billion inventory consists of interest. Upon receiving the judgment, the Department of Finance sends its own collection letter to the respondent and assigns the case either to its own staff or to an outside collection agency. DOF faces a number of obstacles in trying to collect this debt. It can be difficult to track down and contact the debtor. Some respondents are improperly identified through handwritten summonses. While the use of handheld devices that automatically look up property ownership has increased in recent years, there are still over 100,000 agency summonses that are handwritten each year, which can lead to improper identification of the respondent. In some instances, ownership of a property has turned over since the summons was issued, making contact with the respondent challenging especially if the respondent has moved out of the City. As referenced earlier, some violations are issued against individuals who are not the owner of the property where the violation was observed.

DOF has also struggled with the sheer volume of cases. We did not begin to use outside collection agencies extensively for ECB debt until FY2012. Currently, we have about \$1 billion of the inventory assigned to outside collection agencies. However, much of the referred judgment debt was older than two years at the time of the referral, making collection difficult. While the collection agencies are required to contact debtors by mail and by phone, we are taking steps to ensure that all the judgment debt assigned is sufficiently worked. We are implementing a policy that all judgment debt must be worked by two collection agencies in sequential fashion. Judgments that have been assigned to one collection agency longer than a prescribed period will be recalled and assigned to a different agency. When our staff or our collection agencies contact a judgment debtor, we also face the challenge of asking payment from individuals and businesses who refuse to pay or who are unable to pay. Many summonses are written against "paper companies" listed as the owners of City properties. These companies do not have staff, income sources, or assets. For debtors with insufficient assets to pay, we have the ability to settle outstanding amounts by reducing or eliminating default penalties but only for summonses that have no public health or safety risk that must be addressed. Also, many of the respondents we contact ask us for a comprehensive bill of their pre and post judgment debt but that currently requires staff to use two different computer systems.

DOF collected \$41 million on judgment debt in FY14. As part of our comprehensive review of this matter, we are looking to segment our inventory. We plan to work the easiest debt most intensively, take enforcement action against debtors with identifiable assets, ensure that all debt is reviewed in some manner, and proactively identify cases pertaining to deceased, out of business, bankrupt, or unfound respondents as uncollectible so that the revenue potential from this judgment debt is not exaggerated.

Before concluding, it is important to note that the matter of Finance's ECB judgment debt inventory has been raised before and that progress that has been made. In September through December 2009, the City ran a "penalty relief" program in an effort to increase revenue by settling default penalties and interest. Violations with an underlying condition (e.g. DOB violations) were only eligible if the underlying condition was addressed prior to filing an application. That program produced one-time revenue for the City of \$14 million. Since that time, ECB has moved from quarterly to monthly docketing of its judgments to speed the referral of cases to DOF. The amount of judgment debt collected by DOF has increased from \$21 million in FY09, the year before the amnesty program, to \$41 million in FY14. Still, more needs to be done. We think it may be time to consider another amnesty program for judgment debt if it is combined with extensive public outreach and then followed by tougher enforcement. We look forward to sharing our plans with you as they take shape.

Thank you for the opportunity to testify on the bill before the committee today. We appreciate the Council's attention to this issue and its engagement in working together to improve our debt collection. We have begun working closely with ECB and the agencies that issue the highest volumes of violations on a plan to improve our effectiveness in collecting debt associated with those violations. We look forward to working with you as we present and carry out our proposals. We will be relying on you to help us educate the public so that they understand the true universe of this debt. We will be reporting back to you with the specifics about our plan for improvements.

At this time, I would be happy to answer any questions you may have.