

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

HEARING
BOARD MEETING

Training Room 143, 12th Floor
100 Church Street, New York, New York

January 29, 2015

9:20 A.M. to 10:45 A.M.

January 29, 2015

MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department
Robert Carver, Esq. - Citizen Member
Fidel F. Del Valle, Esq. - Chair, OATH
Renaldo Hylton - Exec. Dir., Dept. of Buildings
Elizabeth Knauer, Esq. - Citizen Member
Tayo Kurzman, Esq. - Fire Department
Emily Lally - Citizen Member
Madelynn Liguori, Esq. - Dept. of Sanitation
Jorge Martinez, Esq. - Dept. of Health and Mental Hygiene
Russell Pecunies, Esq. - Dept. of Environmental Protection
Thomas D. Shpetner - Citizen Member
Douglas Swann - Citizen Member

ALSO PRESENT:

James Armstrong - Law School Fellow, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
Denis Brogan - Assistant General Counsel, OATH
John Burns - First Deputy Commissioner, OATH/ECB
Vanessa Caughman - Computer Service Technician, OATH
Arisleyda Fernandez - Facilities Assist. OATH/ECB
Fana Garrick - Public Affairs Assistant, OATH/ECB
David Goldin, Esq. - Administrative Justice Coordinator
Shamonda Graham - Department of Transportation
Diana Haines - Assistant General Counsel, OATH
Vincent Maniscalco - Department of Transportation
Jim Macron, Esq. - Counsel to the Board, ECB
Maria Marchiano - Senior Counsel/ Assist. Commissioner,
OATH
Douglas Parker - Staff Attorney, OATH/ECB
**Peter Schulman, Esq. - Deputy Supervising Attorney,
Appeals, ECB**
Frances Shine - Secretary to the Board, ECB
**Amy Slifka, Esq. - Deputy Commissioner/Executive Director,
ECB**
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
ECB

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2 (The public hearing commenced at 9:18
3 A.M.)

4 MR. FIDEL F. DEL VALLE, ESQ.,
5 CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATION
6 LAW JUDGE, OATH: Good morning everyone. We just
7 got a quorum in the last two minutes. Thanks to
8 the -- thanks to the weather report. Snow
9 Armageddon did not wipe us out. I'm still
10 accustomed to having a living, breathing court
11 reporter or stenographer at these things. So, I'm
12 going to try to keep, keep up to the practice of
13 having folks identify themselves on the record so
14 that the recording and the people who transcribe
15 the recording afterwards have some idea of who's
16 talking when and where. And if I forget, you
17 know, kick me under the table or something.

18 So, I'll call this meeting to session
19 and ask everyone, starting myself to identify
20 themselves for the record and for the benefit of
21 the recording. I am Fidel Del Valle. I am
22 Chairman of the Board.

23 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
24 OF ENVIRONMENTAL PROTECTION: Russell Pecunies,

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2 representing DEP.

3 MS. TAYO KURZMAN, ESQ., FIRE DEPARTMENT:
4 Tayo Kurzman, Fire Department.

5 MR. THOMAS SHPETNER, CITIZEN MEMBER:
6 Thomas Shpetner, Citizen Member.

7 MS. ELIZABETH KNAUER, CITIZEN MEMBER:
8 Elizabeth Knauer, Citizen Member.

9 MS. EMILY S. LALLY, CITIZEN MEMBER:
10 Emily Lally, Citizen Member.

11 MS. MADELYNN LIGUORI, ESQ., DEPARTMENT
12 OF SANITATION: Madelynn Liguori, Sanitation
13 Member.

14 MR. JORGE MARTINEZ, DEPARTMENT OF HEALTH
15 AND MENTAL HYGIENE: Jorge Martinez, Department
16 of Health.

17 LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:
18 Dan Albano, Police Department.

19 ALJ DEL VALLE: And sitting with me is
20 the Counsel.

21 MS. HELAINE BALSAM, ESQ., DEPUTY GENERAL
22 COUNSEL, OATH: Helaine Balsam, Deputy General
23 Counsel.

24 MR. JIM MACRON, ESQ., COUNSEL TO THE

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2 BOARD, ECB: Jim Macron, Counsel to the Board.

3 ALJ DEL VALLE: Is there a motion to
4 adopt the minutes of the December 18 meeting?
5 Don't rush. I believe everyone raised their
6 hands. So I think it's unanimous. We're going to
7 have a presentation by the Deputy Commissioner of
8 OATH and Director of the Board, Amy Slifka.

9 MS. AMY SLIFKA, ESQ., DEPUTY
10 COMMISSIONER/EXECUTIVE DIRECTOR, ECB: Hi. Good
11 morning everyone. Let's see if I can get this to
12 work, which is -- alright. Most of you know what
13 this is. It's a quarterly presentation. For those
14 of you who are new to this, basically the number
15 by -- it, it says what the number of violations
16 received by ECB, broken down by issuing agencies.
17 There is a quarterly comparison of violations
18 received, violations heard and decisions
19 rendered. I'll look at the elapsed time for
20 hearing to decision date. I'll look at the
21 decision results from each of the issuing
22 agencies. And lastly, I'll look at the most
23 commonly issued violations by agency.

24 Okay. So, let's begin. Okay. So

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2 violations received by ECB in the fourth quarter.

3 From the Department of Sanitation, you can see

4 comparing the third quarter to the fourth

5 quarter, there was a decrease of seven percent.

6 From DOB, Department of Buildings, a 19 percent

7 decrease third to fourth quarter. Department of

8 Transportation, a two percent increase. FDNY, a

9 30 -- wait a minute -- a 36 percent decrease.

10 DEPA, 29 percent decrease. Department of Health

11 and Mental Hygiene, an 18 percent decrease.

12 Department of Parks and Recreation, a 47 percent

13 decrease. NYPD, an 18 percent decrease. DoITT, a

14 12 percent decrease. BIC, 77 percent decrease.

15 And Landmarks, an 11 percent decrease. So overall

16 there seems to be a decrease.

17 Now if we compare the fourth quarter in

18 2013 versus the fourth quarter in 2014, for a lot

19 of it we're actually going to see an increase.

20 And remember the fourth quarter of 2013, at this

21 point there were much more snowstorms; so it

22 prevented somewhat of an issuance. So in DSNY,

23 you have a 15 percent increase between fourth

24 quarter 2013 and fourth quarter 2015. DOB had a

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2 20 percent increase. FDNY has a two percent
3 decrease. Department of Transportation, a 32
4 percent increase. Department of Health and Mental
5 Hygiene, a 12 percent increase. NYPD, there's
6 been a 33 percent decrease. DEP, four percent
7 decrease. Department of Parks and Recreation, a
8 31 percent decrease. DoITT, there's been an 89
9 percent increase actually. BIC -- Landmarks,
10 there's been a 320 percent increase from ten to
11 42. And BIC, there's been a decrease from 12 to
12 seven; it's about 42 percent. And that's where we
13 stand there. Okay?

14 LT. ALBANO: And that, that --

15 MS. SLIFKA: Yeah.

16 LT. ALBANO: -- missing agency code is,
17 it's, is --

18 MS. SLIFKA: The missing agency code, as
19 you can see, it's decreased. So apparently more
20 people are putting in the agency codes, which his
21 good for us.

22 LT ALBANO: But we couldn't -- we
23 couldn't tell who the employee, which agency the
24 employee worked for by their tax number?

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2 MS. SLIFKA: We couldn't tell that, no.
3 We -- you know, the way we know the agency and
4 the way it picks up is if the agency's --

5 LT. ALBANO: Agency code.

6 MS. SLIFKA.: -- you know, it's NYPD,
7 you know, and such, traffic, or whatever. So, we
8 couldn't tell that.

9 LT. ALBANO: Alright.

10 MS. BALSAM: And not all agencies have
11 tax numbers.

12 LT. ALBANO: Oh, okay.

13 MS. SLIFKA: Right.

14 LT. ALBANO: I thought --

15 ALJ DEL VALLE: That, that was
16 Lieutenant Albano from the Police Department.

17 LT. ALBANO: I'm sorry, sir.

18 ALJ DEL VALLE: That's okay.

19 MS. SLIFKA: So, violations heard
20 comparing the fourth quarter 2013 to the fourth
21 quarter 2014. So for DSNY, violations heard has
22 increased. For DOB, it's decreased seven percent.
23 FDNY, it's decreased 14 percent. Health and
24 Mental Hygiene, decreased three percent. DEP,

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2 it's increased four percent. NYPD, it's decreased
3 22 percent. DOT, it's down 12 percent. Department
4 of Parks and Recreation also down 29 percent.
5 DoITT is down 27 percent. Landmarks, we're
6 getting a good showing; it's up 58 percent. BIC
7 is down 38 percent.

8 MR. SHPETNER: Excuse me. This is Tom
9 Shpetner. Just to pick up on Lieutenant Albano's
10 question. Once we hear a violation, don't we know
11 what the -- who the agency is? I mean, the --

12 MS. SLIFKA: We don't -- we don't enter
13 the agency. That comes in in the sense that this
14 information comes into our AMES system. It's
15 picked up that way. We can put in information.
16 The Judge can put information in. There's nothing
17 that captures the agency code at the hearing. So
18 you can't put in who the issuing agency is at
19 that point. It just won't be picked up. So even
20 though we'll know at the hearing, it won't be
21 picked up for AMES purposes for it to be
22 determined.

23 ALJ DEL VALLE: Actually -- this is
24 Fidel Del Valle; actually certain agencies can

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2 write summonses across a lot of these categories.

3 MR. SHPETNER: Okay.

4 ALJ DEL VALLE: Like the Police
5 Department can write on any single one of these
6 if they so choose.

7 MS. SLIFKA: Correct.

8 MR. SHPETNER: Oh, okay.

9 MS. SLIFKA: Correct. And as Helaine
10 said, Helaine Balsam said, some don't have tax
11 registry codes and things like that. So it's just
12 -- it's just not picked up. It's, it's a small;
13 it's a small percentage of the violations in
14 total.

15 MR. SHPETNER: No question.

16 LT. ALBANO: But Amy -- Dan Albano from
17 the Police Department again; in a way that was my
18 point. Couldn't somebody, an individual look at
19 these things and figure it out? Or is that --

20 MS. SLIFKA: At, at this point in time,
21 we just don't have the staff to do that, you
22 know.

23 LT. ALBANO: It's too much. Alright.
24 Okay.

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2 MS. SLIFKA: However, if you want to
3 fund it? No, I'm kidding. Okay. Decisions
4 rendered. So, we have a five percent increase for
5 DSNY. DOB, a four percent decrease. SDNY, a five
6 percent decrease. Department of Health and Mental
7 Hygiene, a six percent decrease. NYPD -- am I
8 right? NYPD, a 12 percent decrease. DEP, an eight
9 percent increase. DOT, a 12 percent decrease.
10 Department of Parks and Recreation, a 15 percent
11 increase. DoITT, basically a zero percent.
12 Landmarks, 280 percent. And BIC is a 67 percent
13 decrease. Okay.

14 So hearings to decisions. You can see
15 that most of our decisions are being -- were
16 heard and the decisions are rendered within, 82
17 percent less than ten days; and 11 to 20, we're
18 pretty much 98 percent we've completed decisions.

19 Okay. So decisions rendered after
20 hearings. You can see that in general the total
21 dismissed is 42 percent; in violation is 53
22 percent. That was the fourth quarter 2013. So for
23 the fourth quarter 2014, it's 3919 percent
24 dismissal and 59.5 percent in violations. It's

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2 about the same ratio. Okay. So for Department of
3 Sanitation, 58 percent dismissed, 42 percent in
4 violation. Fire Department, 91 percent in
5 violation, eight percent dismissed. Department of
6 Buildings, 79 percent in violation, 21 percent
7 dismissed. Department of Environmental
8 Protection, 77 percent in violation, 13 percent
9 dismissed. Department of Transportation, 62
10 percent in violation, 38 percent dismissed. NYPD,
11 49 percent dismissal, 51 percent in violation.

12 LT. ALBANO: That's pretty standard.

13 MS. SLIFKA: So, Department of Health
14 and Mental Hygiene, 56 percent in violation, 44
15 percent dismissed. Department of Parks, 58
16 percent in violation, 42 percent dismissed.
17 Department of Information and Technology, 49
18 percent in violation, 51 percent. BIC, it's a 100
19 percent in violation. And Landmarks, it looks
20 like it's a 100 percent in violation.

21 ALJ DEL VALLE: Of course they only had
22 four cases.

23 MS. SLIFKA: Yes. They were well-written
24 I guess and they proved their case. So the most

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2 commonly issued violations by agency pretty much
3 hasn't changed. For DOT, it's failure, Department
4 of Transportation, failure to departmentally
5 restore your cut within the required time;
6 failure to comply with terms and conditions of
7 the DOT permits and opening streets without
8 permits.

9 For NYPD, it's: the vending in a bus
10 stop or next to a hospital or a crosswalk;
11 failure to display your license and/or plate and
12 items not in or under the cart.

13 DOB: it's unlawful acts; failure to
14 comply with the Commissioner's order; failure to
15 comply or to file a certificate of correction
16 with DOB; and failing to maintain the building in
17 a code compliant manner.

18 DSNY, and they were here: a dirty
19 sidewalk, dirty area that needs cleaning 18
20 inches into the street. Okay?

21 Department of Environmental Protection:
22 failure to submit an annual backflow; operating
23 without renewing your expired certificate; and
24 failure to install a backflow preventer.

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2 Fire Department: inspection and testing;
3 fire protection system failed to prevent
4 unnecessary, unwarranted alarms and posting of
5 permits and records keeping.

6 Pest -- Department of Health and Mental
7 Hygiene: failure to eliminate rodent infestation
8 shown by active rodent signs; failure to
9 eliminate conditions conducive to rodent debris,
10 vegetation; and failure to eliminate conditions
11 conducive to pests.

12 So, Landmarks: work without a permit;
13 miscellaneous violations; work without putting up
14 a banner or awning without the proper permit or
15 approval. And again it's basically the same
16 thing: no proper approval for any alteration to
17 your façade.

18 DoITT: failure to provide working public
19 pay telephones; failure to clean and maintain the
20 public pay phones; and installing, operating and
21 maintaining public pay phone without a permit.

22 Department of Parks and Recreation:
23 failure to comply with directions; failure to
24 comply with bicycle riding restrictions. And I

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2 almost got knocked by over by someone riding on
3 the sidewalk yesterday. So, unleashed or
4 uncontrolled animals in the park.

5 ALJ DEL VALLE: I hope you got their
6 license plate.

7 MS. SLIFKA: No, I didn't. But I was
8 thinking about it. I was like; it was one of the
9 restaurant people. I'm like: Well, let me see if
10 I can see his name. But I didn't.

11 BIC, it's failure to register as a
12 wholesale and/or a market business. Idling of
13 motor vehicle and failure to register a wholesale
14 and/or market business as per the subsection.

15 And appeals, the number of appeals for
16 fourth quarter; you can see it right there:
17 Department of Sanitation, 329. DOB, 235. Fire
18 Department, 91. Health, 63. DOT, 38. DEP, 36.
19 Parks, 24. NYPD, 17. And DoITT, 10. Okay.

20 And faults: again, DSNY, 71 percent
21 default rate. DOT, eight percent. And Health and
22 Mental Hygiene, six percent.

23 And that's it. Any questions?

24 LT. ALBANO: You don't have the default

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2 -- the data on NYPD, you didn't have a default
3 for, for PD?

4 MS. SLIFKA: Those are the three high-,
5 that's the three highest at this point.

6 LT. ALBANO: Okay. Alright.

7 MS. SLIFKA: So, you must be getting a
8 good showing I guess.

9 ALJ DEL VALLE: Just as a matter of
10 information -- this is Fidel Del Valle: Every
11 City employee has a tax ID except generally
12 speaking only members of the Police Department
13 know what it is. And I think the tax ID number
14 for most people is actually their pension number
15 but I'm not sure. That's something I researched a
16 long, long time ago. And it became custom and
17 practice to put your tax ID number on, on a
18 summons because if -- and it started with the
19 Police Department because if you put your shield
20 number down, the shield number changes as, as
21 you're promoted and like that. And the only thing
22 that's consistent is your pension number, your
23 tax ID number.

24 Now we have 27 different numbers on your

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2 paycheck that identify you. Maybe that's
3 something that we might try to get some kind of
4 consistency to identify who writes a summons by
5 using their, their City ID number or something
6 like that. It might be helpful. We have a
7 proposal by the Sanitation Department.

8 MS. LIGUORI: Good morning. I'm Madelynn
9 Liguori, Associate Counsel with the Department of
10 Sanitation. The first proposal we have before the
11 Board today has to do with electronic waste. New
12 York State law bans the Department of Sanitation
13 from picking up electronic waste in our solid
14 waste stream. As a result, we are in the midst of
15 promulgating rules which we should publish as
16 final sometime next week that would make it
17 unlawful for any person or commercial
18 establishment to place any electronic waste out
19 on the curb for collection; either by the
20 Department or by private carter --

21 ALJ DEL VALLE: Standby for technical
22 difficulties.

23 MS. LIGUORI: -- or by a private carter.
24 The fine would be \$100. Right now the Department

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2 is in the midst of an educational campaign to
3 educate residents and businesses that E-waste
4 cannot be placed out on the curb for any type of
5 collection by the Department or a private carter.

6 There are several options for persons to
7 have their E-waste collection; including the
8 Department's E-cycle program, which is open to
9 any building that has ten or more units. There
10 are -- our website lists many entities that take
11 back electronic waste, such as Best Buy and
12 Staples. And the Lower East Side Ecology runs
13 events, as well as the Department runs for
14 special events for E-waste take-back. The penalty
15 associated with this would be \$100.

16 Right now the Department is putting this
17 sticker on all electronic waste that is out for
18 collection. It says: As of January 1, 2015 it is
19 against the law to put electronic waste out for
20 DSNY collection. Please call 311 or visit
21 NYC.GOV/ELECTRONICS for options to safely dispose
22 of electronic waste. Any questions?

23 MR. MARTINEZ: Jorge Martinez, DOH. In
24 Section 1-04.2, we define electronic waste. You

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2 limit computer peripherals to items weighing less
3 than a hundred pounds. Why is that?

4 MS. LIGUORI: Our definition here is the
5 State law.

6 MR. MARTINEZ: Okay. So if you have a
7 fax machine that weighs 200 pounds, you consider
8 it waste, electronic waste?

9 MS. LIGUORI: Facsimile machines are in
10 there. There is a specific list --

11 MR. MARTINEZ: I know. But only those
12 are limited to weighing less than a hundred
13 pounds. So if you have some -- one that weighs
14 more?

15 MS. LIGUORI: Well, because usually if
16 you have a printer that weighs more, you have a
17 deal with a company to come and get it.
18 Manufacturers are responsible for taking back all
19 electronic waste.

20 MR. MARTINEZ: Okay.

21 ALJ DEL VALLE: But what if you don't?
22 What, what if you have a 150-pound old Hewlett
23 Packard printer and you put it out to the curb? I
24 mean, I can't see the sanitation guys putting it

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2 on a scale and weighing it.

3 MS. LIGUORI: Well, something like that
4 probably wouldn't be placed out by residents. It
5 would probably be more of a commercial
6 establishment would put that out. Under State
7 law, manufacturers are required to have take-back
8 programs throughout the State. And that would
9 fall under the take-back programs pursuant to the
10 State law.

11 ALJ DEL VALLE: Hmm.

12 MR. MARTINEZ: But would Sanitation pick
13 up an item?

14 MS. LIGUORI: No.

15 MR. MARTINEZ: No?

16 MS. LIGUORI: We will not be picking up
17 electronic waste from the curb.

18 MR. MARTINEZ: Okay.

19 ALJ DEL VALLE: Regardless of how much
20 it weighs?

21 MS. LIGUORI: Regardless of how much it
22 weighs. If it's out there, if it's a TV, it's a
23 little VCR, we're not picking it up.

24 MS. KNAUER: Elizabeth Knauer, Citizen

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2 Member. But I think the question is if somebody
3 puts out --

4 ALJ DEL VALLE: Can I read it and pass
5 it on?

6 MS. KNAUER: -- something that's heavier
7 than a hundred pounds, they would not be subject
8 to this violation; is that correct? Is there a
9 separate; is there a separate --

10 MS. LIGUORI: This mirrors -- it
11 mirrors; this mirrors the State law. This mirrors
12 the State law. I was not the attorney for the
13 Department that drafted this rule. So this
14 mirrors the State law. And the rule is not really
15 for up discussion. It's more the penalty
16 associated with the rule. We -- our comment
17 period closed last week on E-waste rules.

18 MS. KNAUER: Well, we all know nothing.

19 ALJ DEL VALLE: Any other questions?

20 MS. LIGUORI: Can we vote?

21 ALJ DEL VALLE: Is there a motion to
22 approve the proposed penalty? I think that's
23 everyone. Any abstentions or nays? The Sanitation
24 Department abstains. The schedule is approved.

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2 And of course the staff is directed to proceed
3 with the publication per CAPA [phonetic].

4 We have another presentation on
5 collection bins.

6 MS. LIGUORI: Our second presentation
7 has to do with publicly accessible collection
8 bins. And everybody has seen these wonderful bins
9 in your neighborhood all around on public
10 property and some on private property. This law
11 basically extends -- expands the existing law on
12 publicly accessible collection bins. Back in
13 2007, the City prohibited bins from being placed
14 on public property but allowed bins to be placed
15 on private property. The law still has that
16 aspect within it.

17 However, under the previous law, the
18 Department of Sanitation had to tag a bin and
19 collect it and we were allowed to remove it
20 within 30 days after the tag was placed. What we
21 were seeing happening was on the 29th day these
22 entities would go in, take the bin and move it to
23 another location; thus starting the clock all
24 over again. Last year we tagged over 2,100 bins

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2 that were placed on public property.

3 Since the law was si-, it was not signed
4 by the Mayor; but since the law became effect-,
5 since the law was lapsed into law back in
6 December, we've only tagged 40 bins. That is a
7 amazing because people are already ready, that
8 this is going into effect as of March 13th. So
9 what we are requesting are several penalties
10 associated with certain violations as outlined by
11 Local Law 67 of 2014.

12 And there is the requirement that any
13 bin on private property be maintained in a neat
14 and clean condition; a requirement that all
15 private property -- all bins on private property
16 be registered with the Department and that they
17 also have annual reporting requirements to the
18 Department that we will count within our tonnage
19 requirements for recycling as most of these bins
20 are recycling.

21 Obviously, most of these bins are
22 textile bins but there are several other types of
23 bins that could pop up out there. So there's new
24 ways to other types of bins; so we're ready in

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2 case those pop up as well.

3 And individual who does place a bin on
4 public property is subject to a \$250 fine, as
5 well as all storage and removal fees associated
6 with the removal of the bin. And if they decide
7 to affix the bin in any manner to City property,
8 either affixing it to the sidewalk or a fencing,
9 they would be subject to a \$500 fine in addition
10 to all storage and removal fees. All fines are
11 fixed in Local Law 67. DSNY had no absolutely no
12 discretion coming here with this penalty
13 schedule.

14 MS. LALLY: Emily Lally, Citizen Member.
15 Is there a time frame of when you can remove
16 them? And --

17 MS. LIGUORI: Oh, yes, I'm sorry. We can
18 remove them immediately. I apologize. As of March
19 13th, we tag it and we can remove it.

20 LT. ALBANO: Dan Albano, Police
21 Department. Like the tags, is there a presumption
22 that if your name appears on the, the bin, you
23 placed it there?

24 MS. LIGUORI: Yes. But most of these

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2 bins will not have any identifying information on
3 them.

4 LT. ALBANO: Really?

5 MS. LIGUORI: Mm-hmm.

6 LT. ALBANO: Hmm.

7 MR. DOUG SWANN, CITIZEN MEMBER: Doug
8 Swann, Citizen Member. Are these bins limited to
9 just commercial properties? Are we talking about
10 --

11 MS. LIGUORI: Public property. Pub-,
12 they are prohibited on public property. However,
13 private property, private parking lots; they can
14 have a written agreement with a bin owner and is
15 lawful on private property. We're not prohibiting
16 those.

17 MR. SWANN: Is there a size limitation
18 on the bin?

19 MS. LIGUORI: No.

20 MR. SWANN: Because sometimes with
21 residential properties, they have these bins at
22 this -- on their property. Do they have to
23 register those, just for regular recycling?

24 MS. LIGUORI: Wait, I'm -- that would

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2 it; could you explain a little further? I'm
3 sorry.

4 MR. SWANN: They may have bins on their
5 private property for regular recycling.

6 MS. LIGUORI: Right. That wouldn't
7 pertain to the --

8 MR. SWANN: It doesn't --

9 MS. LIGUORI: That's totally different.

10 MR. SWANN: I saw a mention in here
11 about that and I just wanted to make sure.

12 ALJ DEL VALLE: Any other questions?

13 MS. KURZMAN: I have a question. Sorry.
14 Tayo Kurzman from the -- from the Fire
15 Department. I'm just wondering when people
16 register the bins, are there certain regulations
17 regarding the registration, like how far it has
18 to be from any --

19 MS. LIGUORI: No, it's on private
20 property.

21 MS. KURZMAN: Only on private property?

22 MS. LIGUORI: Only on private property.

23 MS. KURZMAN: So there's --

24 MS. LIGUORI: Bin agreement on private

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2 property.

3 MS. KURZMAN: Okay.

4 ALJ DEL VALLE: Is there a motion? I
5 think it's unanimous except for Ms. Liguori from
6 Sanitation, who is abstaining.

7 MS. BALSAM: He's running late. So let's
8 table this for now. He's not going to --

9 ALJ DEL VALLE: The next item is from
10 the Department of Buildings. But the
11 representative is running late, so I'm going to
12 move that to the tail end. See the rest about
13 that.

14 MS. BALSAM: So is this -- these are the
15 rules. They proposed the fine. Has Diana looked
16 at this?

17 ALJ DEL VALLE: The presentation on
18 proposed rules regarding an amendment to
19 Sanitation Penalty Schedule.

20 MS. DIANA HAINES, ASSISTANT GENERAL
21 COUNSEL FOR OATH: Good morning. Diana Haines,
22 Assistant General Counsel for Oath. This is a
23 proposed rule, originally presented by Department
24 of Sanitation at last month's Board meeting. DSNY

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2 is asking ECB to amend Section 16-4-71 of the
3 Sanitation Penalty Schedule; so as to restore the
4 intended purpose of the law to apply to owners of
5 vehicles related to bulk collection of recyclable
6 containers. Just to note, Law Department and
7 Mayor's Office of Operations have both certified
8 this law. Any questions?

9 ALJ DEL VALLE: If there are no
10 questions, is there a motion?

11 MS. LALLY: I have one question.

12 ALJ DEL VALLE: Oh, I'm sorry.

13 MS. LALLY: This is and I could be wrong
14 here but my memory recalls we were changing this;
15 it used to be the \$2,000 fine and is that
16 correct? And this went down to 500 anyway, I'm
17 not recalling this at all [unintelligible]
18 [00:26:14] because it's --

19 MS. LIGUORI: I'm sorry -- Madelynn
20 Liguori, Sanitation. The fine that they're
21 changing has to do with mobile redemption, not --
22 that's with recycling, so there's different
23 fines.

24 ALJ DEL VALLE: Anything else? Is there

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2 a motion? It's unanimous, except for Sanitation
3 again, which is abstaining. And it is approved.
4 And it will be published per CAPA regulations.
5 And there's another one?

6 MS. HAINES: Yes. Do you want to take it
7 here at the table?

8 MS. BALSAM: No, you can do it.

9 MS. HAINES: No, I mean, because --

10 MS. BALSAM: If there are questions,
11 then we'll --

12 MS. HAINES: Okay. Our next rule is a
13 final rule. Again, Diana Haines, Assistant
14 General Counsel. This is a final rule first
15 presented by the Department of Buildings. ECD is
16 making amendments to the DOB Penalty Schedule in
17 order to enforce the 2014 construction code
18 update. Note that this final rule has been
19 published on the City Record and a public hearing
20 was held. No comments or testimony from the
21 public were received. Are there any questions on
22 that one?

23 ALJ DEL VALLE: Because there are no
24 questions, is there a motion? And it's unanimous

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2 for everyone present and it's adopted. And we'll
3 proceed with the final publication. Do you have a
4 DOT Penalty Schedule?

5 MS. HAINES: Yes. Our next, final rule
6 was first presented by the Department of
7 Transportation regarding failure to obtain
8 confirmation numbers prior to street opening. ECB
9 is amending the DOT Penalty Schedule to decrease
10 the penalty for failure to obtain a confirmation
11 number prior to the expiration of a street
12 opening permit from 750 to \$250; and is adding a
13 new provision to the schedule to impose a \$750
14 penalty for failure to obtain a confirmation
15 number two hours prior to commencing a backfill.
16 Once again this final was published in the City
17 Record and a public hearing was held. And again,
18 no comments or testimony.

19 MS. BALSAM: We do have one comment --
20 one comment.

21 MS. HAINES: Oh, we do have a comment.
22 There was one comment.

23 LT. ALBANO: National Grid?

24 MS. BALSAM: Yeah.

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2 ALJ DEL VALLE: There was a comment
3 received by National Grid -- from Brooklyn
4 National Grid rather. Is -- are there any
5 questions or discussion? Is there a motion? It is
6 unanimous by everyone present. It is -- they are
7 adopted and it will be published. I believe we
8 actually have another one from --

9 MS. HAINES: Yeah, from -- this is a,
10 another final rule. This final rule was first
11 presented by the NYPD regarding failure to yield
12 and leaving the scene of an accident; both part
13 of the Mayor's Vision Zero Action Plan. ECB is
14 amending the DOT Penalty Schedule in order to
15 enforce these two new provisions. This is -- the
16 final has been published in the City Record and a
17 public hearing was held. Are there any questions?

18 LT. ALBANO: Was it published?

19 MR. MACRON: The final, no.

20 MS. HAINES: The proposed rule.

21 MR. MACRON: Jim Macron, Counsel to the
22 Board. The proposed rule was published in the
23 City Record. The final will be published sometime
24 next week.

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2 ALJ DEL VALLE: Oh, what would be
3 published next week would be the final rule
4 proposal or the final rule as, as enacted?

5 MR. MACRON: The actual final rule will
6 be published in the City Record. After 30 days
7 elapses, the rule will become effective.

8 ALJ DEL VALLE: Okay. Is there a motion?
9 Or are there any questions first or discussion?

10 LT. ALBANO: I'm going to have to
11 abstain.

12 ALJ DEL VALLE: Okay. Is there a motion?
13 It is approved by everyone and Daniel Albano is
14 abstaining.

15 MS. LALLY: I was against it.

16 ALJ DEL VALLE: Oh, I'm sorry. And Emily
17 Lally is voting against -- I'm sorry, for the
18 record. It is approved and it'll be published. I
19 believe we have a DEP request?

20 MR. PECUNIES: Yup. Okay, good morning.
21 Russell Pecunies, Assistant Counsel with the
22 Department of Environmental Protection. This
23 month DEP has actually four different types of
24 cease and desist requests, which I think might be

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2 a record. The first one that I will address will
3 be the one that was sent out yesterday, for which
4 I apologize. The sewer cease and desist requests,
5 which are very rare, do not come through DEP
6 Legal. So I didn't realize that they had only
7 sent it to Judge Lasserton [phonetic] and not for
8 inclusion in the Board package. So that's why you
9 only got it yesterday.

10 This is for M Star Pizza, which is a
11 restaurant located at 117-02 Atlantic Avenue in
12 Queens. The location pretty much all through last
13 year was served with a series of Commissioner's
14 orders and notices of violation, requiring them
15 to provide access to their existing grease trap
16 and to install an additional grease trap. And
17 they have disregarded all of those Commissioner's
18 orders and notices of violation; defaulting with
19 regard to the violations in July, August, twice
20 in October and in December. So based on the
21 continuing failure of this establishment to
22 comply with the grease requirements as set forth
23 in the Commissioner's orders that have been
24 issued to them; DEP is requesting that the Board

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2 issue an order to cease and desist.

3 ALJ DEL VALLE: Any questions? Excuse
4 me. Is there a motion? The request is unanimously
5 approved. I assume Mr. Pecunies is abstaining?

6 MR. PECUNIES: Yes. Okay. The next
7 group: there are 11 requests for cease and desist
8 orders relating to boilers that have not renewed
9 their certificates of operation to use a fuel
10 other than Number 6 fuel oil. There are three
11 points that I'd like to make about these 11
12 requests. 81 Realty Company at 311 East 72nd
13 Street had two of the 11 requests and that is
14 because they have two different boiler burner sin
15 the same building; both of which have expired
16 certificates to use Number 6. So there are two
17 separate requests for that location.

18 On the request for Park Terrace Realty
19 LLC, there is a typo on the cover memo. The
20 premises should be 229 Seaman Avenue in
21 Manhattan, instead of 223. The affidavit and the
22 notice of violation that were issued have the
23 correct address of 229. So on that one, disre-,
24 just amend the premises address on the cover memo

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2 to 229 instead of 223.

3 And the request for Parcel One Company
4 at 35 East 84 Street is a resubmittal of a
5 request that had been approved at the December
6 meeting. The order had gone out with a typo in
7 the premises' address. It said 315 East 84th
8 Street instead of 35. So presumably that's why no
9 one appeared for the hearing. So, we're bringing
10 that one back as a new request with the correct
11 address. So there are a total of 11 of these.

12 ALJ DEL VALLE: Any questions?
13 Discussion? Motion? It's unanimously approved I
14 believe with one abstention.

15 MR. PECUNIES: One abstention, correct.
16 Okay. The next group we have, we have 18 requests
17 for cease and desist orders for failing to
18 install backflow prevention devices. All of these
19 are the usual situation where the building owner
20 has been ordered to install the device. After
21 their failure to comply, they've been issued a
22 notice of violation, which has been adjudicated
23 in violation. And they are still not in
24 compliance with the requirement. So for each of

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2 these 18, the Department is requesting that the
3 Board issue an order to cease and desist.

4 ALJ DEL VALLE: Any questions? Motion?
5 It's unanimously approved.

6 MR. PECUNIES: Okay.

7 ALJ DEL VALLE: With one abstention.

8 MR. PECUNIES: One abstention. And
9 finally we have four requests for cease and
10 desist orders under the noise control code. I'll
11 go through these quickly, one at a time. The
12 first one is for the United Talmudical Seminary
13 at 6620 Thornton Place in Queens. This apparent-,
14 establishment apparently has a commissary or
15 cafeteria. And the kitchen exhaust has been cited
16 for being too noisy on three occasions, starting
17 in June of last year. Due to the repeated
18 violations and continuing failure to come into
19 compliance, DEP is asking the Board to issue a
20 cease and desist order.

21 The next one, the respondent is Bake
22 Ridge Bagels at 9417 Third Avenue in Brooklyn.
23 This one again is for a noisy kitchen exhaust.
24 They have been cited on six occasions, going back

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2 to the summer of 2013 actually. And due to their
3 continuing failure to bring the kitchen exhaust
4 into compliance with the noise code, DEP is
5 asking the Board to issue an order to cease and
6 desist.

7 The next one is for Mukumbeca [phonetic]
8 Group at 194 Bleecker Street in Manhattan. This
9 is an Indian restaurant I believe. And their
10 kitchen exhaust has been cited on three
11 occasions, going back to January of last year and
12 most recently in January of this year. So based
13 on the continuing failure to bring the kitchen
14 exhaust into compliance with the noise code, the
15 Department is requesting an order to cease and
16 desist.

17 And finally, the -- we have LX Food
18 Grocery at 96-14 Corona Avenue in Queens. This
19 one is for a refrigeration unit and that unit has
20 been cited four times for being too noisy. And
21 due to the continuing failure to bring the unit
22 into compliance with the noise code, DEP is
23 requesting an order to cease and desist.

24 ALJ DEL VALLE: Any questions? Motion?

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2 It is approved with one abstention.

3 MR. PECUNIES: One abstention. Alright,
4 thank you.

5 MS. HAINES: I think I've got ten
6 besides this.

7 ALJ DEL VALLE: And we have a Department
8 of Building's proposal concerning the penalty
9 schedule.

10 MR. RENALDO HYLTON, EXECUTIVE DIRECTOR,
11 DEPARTMENT OF BUILDINGS: Good morning everyone.
12 It's still January, so happy New Year. I
13 apologize for the tardiness this morning. Renaldo
14 Hylton from the Department of Buildings. The
15 Department of Buildings this morning requests an
16 amendment to the ECB -- DOB's ECB's Penalty
17 Schedule to adequately enforce some changes that
18 were brought about mainly by the enactment of
19 Local Law 141, which is called the 2014 code,
20 building code.

21 In the 2014 building code, if you recall
22 a couple months ago, we did a massive change to a
23 penalty schedule. But however, we are -- I'm
24 coming to you this morning to bring some new

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2 charges to add to our penalty schedule that were
3 brought about by those -- by this local law.

4 In addition, we are also doing a little
5 housekeeping in our penalty schedule by
6 clarifying some description of charges and also
7 changing some sections of law that are -- and are
8 elevated charges for maintenance; just to more
9 specifically bring it down to what we're going to
10 describe.

11 So I don't know if everyone had a list
12 of the charges that are included in your
13 packages. But if you need it, I have it. They,
14 they relate to the requirement to obtain an
15 equipment -- service equipment certificate of
16 compliance prior to operation for service
17 equipment. That charge was already inside our
18 penalty schedule. However, it related only to
19 elevators and we want to broaden it to any, any
20 service equipment as described in the
21 Administrative Code: service equipment such as
22 boilers, escalators, elevators, air condition
23 equipment, et cetera.

24 We tried to narrow the, the test, the

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2 maintenance of elevator equipment by just
3 changing the section of law specifically to 30;
4 it's right there, it's articulated in the changes
5 too. Instead of 301.1 which relates to
6 maintenance of buildings; to just 304.1 which
7 talks about the maintenance of elevator
8 equipment.

9 Also we added -- we are adding some new
10 charges related to testing of the elevators; a
11 requirement to test and inspect these elevators.
12 The new code added a requirement to, well,
13 clarify it I guess the fact that you can't tamper
14 with a vacate order once it's posted on a
15 premises. It was kind of implied but it wasn't
16 quite there in the code that you cannot tamper or
17 deface an elevator or a vacate order for that
18 matter. And we, we've successfully prosecuted but
19 we just want to make sure that a new code
20 clarified it so that we're adding those sections.

21 Also failure to obey a vacate order.
22 Believe it or not, quite a bit of people, people
23 just kind of rip down the vacate order notice and
24 go back and live in these illegal apartments. We

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2 never had a charge for that and the new code
3 added that charge. And you'll see it on the
4 penalty schedule. That's the most significant
5 penalty that we're asking for today of four
6 thousand -- \$4,800.

7 And interesting enough, in the zoning
8 resolution always require or made it illegal for
9 you -- for anyone in a special nat-, special
10 nature area district, aka anywhere in Staten
11 Island, to remove tree -- a tree or any natural
12 feature. But we, we're just targeting trees
13 without a -- without a permit from the citywide,
14 New York City Department of City Planning. And
15 that summarizes it. The penalties are found in a
16 spreadsheet, the changes that is. If you have any
17 questions?

18 ALJ DEL VALLE: I have a que-, oh, I'm
19 sorry, go ahead. You go first.

20 MS. KNAUER: Excuse me. Elizabeth
21 Knauer, Citizen Member. Just could you explain
22 how the default penalties were set please?

23 MR. HYLTON: Sure. At the bottom of my
24 letter it explains the, the penalties. Once we

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2 set a minimum penalty, which is the guideline
3 penalty as to what we impose if it's found in
4 violation; default penalties are five times those
5 penalties. And, and then you have what we call an
6 aggravated factor for violations. An aggravated
7 one fact-, an aggravated one violation is
8 anything, any charge that occurred in the last
9 three years at the same premises against the same
10 respondent and the aggravated is 2-1/2 times that
11 amount.

12 MS. KNAUER: I --

13 MR. HYLTON: Yes.

14 MS. KNAUER: The reason I ask, because
15 the -- at least for one of the -- not one of the
16 ones where the penalty is being newly proposed
17 but it's the class three --

18 MR. HYLTON: Yes.

19 MS. KNAUER: -- for, for the failure to
20 maintain the elevator.

21 MR. HYLTON: Yes.

22 MS. KNAUER: The default penalty for
23 that is; but then then the penalties are the same
24 across the board.

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2 MR. HYLTON: Right.

3 MS. KNAUER: So --

4 MR. HYLTON: Because, because the code,
5 the Administrative Code sets the default penalty
6 for -- excuse me; sets the penalty for a class
7 three at a maximum of \$500. So we can't go any
8 higher than that.

9 MS. KNAUER: And then can I ask one more
10 question?

11 MR. HYLTON: Sure.

12 MS. KNAUER: Just in terms of the their
13 failure to obey a vacate order; that applies to a
14 resident who is sub-, you know --

15 MR. HYLTON: Yes.

16 MS. KNAUER: -- that there's a building
17 subject to a vacate order.

18 MR. HYLTON: Typically, yes.

19 MS. KNAUER: And the resident moves back
20 into the; an individual resident could be fined?

21 MR. HYLTON: We don't cite residents --

22 MS. KNAUER: As a matter or practice?

23 MR. HYLTON: No, we don't. It's all
24 against the owners. I mean, for these charges at

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2 least. I mean, the illegal conversions --

3 MS. KNAUER: But the code -- the code
4 would allow a resident to be cited by --

5 MR. HYLTON: Yeah, it does. It would.
6 But you know, we would have never to; the ECB
7 codes can talk but I would have never cited
8 residents, except in illegal hotels. You know,
9 that actually -- the code actually allows us to
10 do that because these charges relate to illegal
11 conversions. We don't think the residents convert
12 these properties. They, they are converted and
13 then -- and then rented.

14 MS. KNAUER: But if here, this is a new
15 violation for failure to obey a vacate order,
16 correct?

17 MR. HYLTON: Right. But the vacate order
18 would have been issued to first; remember we have
19 to issue it first, right? So we vacate the
20 premises. And yes, it would allow us to cite, to
21 issue it to a resident if he disobeys the order.
22 But typically, we issue the failure to vacate to
23 the person who we issue the vacate order to;
24 which would be the owner of the prop- property.

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2 But it does -- yeah, the code does allow it. I'm
3 just saying as a matter of practice, we wouldn't
4 be too successful if we had to, to residents.

5 LT. ALBANO: Dan Albano from the Police
6 Department. But we -- Renaldo, we do find people
7 and get complaints from DOB sometimes that
8 there's residents in a building where there's
9 vacate orders posted.

10 MR. HYLTON: Correct.

11 LT. ALBANO: And what we have done in
12 the past was on some ver- very rare occasions is
13 to arrest people for obstruction of governmental
14 administration if they refuse to move.

15 MR. HYLTON: Right. But that's a
16 different --

17 LT. ALBANO: Right. But now, now we have
18 this, this civil penalty --

19 MS. HAINES: Sure.

20 LT. ALBANO: -- as, as an alternative or
21 really as the first step.

22 MR. HYLTON: Right. But I think -- I
23 think you're, you're -- the Police Department
24 actions are a little enhanced enforcement. This,

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2 this allows us to bring a, an administrative
3 charge against the owner of the property for
4 failing to obey the vacate. He's responsible.
5 Once we put a vacate order sticker on his
6 premises and lock the doors; you know, if it's
7 opened again it's his responsibility. We do that;
8 I mean, a lot of owners will cry foul a lot of
9 times and say: Well, I didn't alter this
10 property. Also, I didn't -- I didn't put in a
11 bathroom in my basement. But you're the owner of
12 the property. You know, a tenant is -- you know,
13 we can't prove that. So, since the -- since the
14 code says that you as owner is responsible to
15 maintain your property, then that's who we go
16 after -- the owner.

17 LT. ALBANO: I think what I'm hearing --
18 Dan Albano from the Police Department again; is
19 that what I'm hearing is that the Police
20 Department should not use this as a tool with
21 residents.

22 MR. HYLTON: No, I didn't -- I'm not
23 saying that. I, I -- you, the Police Department
24 acts a lot of times in conjunction with other

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2 agencies and go and do some enhanced enforcement.
3 But the Department of Buildings inspectors would
4 be able to use this administrative tool, such we
5 can't perform arrests. We can't do that. They,
6 they -- we, you know, they can charge an owner
7 with vacate; the failure to obey --

8 LT. ALBANO: The owner.

9 MR. HYLTON: -- the owner. And, and
10 again the code allows anyone but we just go after
11 owner. The same thing with a stop work order, for
12 example. We would issue a failure to obey a stop
13 work order, which is a pretty high fine, the same
14 fine as failure to vacate.

15 LT. ALBANO: Alright.

16 MS. KNAUER: I just -- I have a concern
17 that because the code allows it that this could
18 be used to, to impose very high penalties on, on
19 residents. So I'm just wondering if, if there is
20 any way and I don't -- I don't know if it's -- if
21 there is legally to have a separate penalty for
22 failure to obey a vacate order for a tenant, as
23 opposed to the owner of the building?

24 MR. HYLTON: That would be something

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2 we'd have to bring back and discuss with, with
3 our, our Commissioner I guess. The code
4 specifically just talks about, you know, not
5 obeying a vacate order -- anyone. So, so it is a
6 serious matter regardless of whether it is the
7 tenant doing it or the -- or the, the owner
8 allowing it.

9 In fact, you'll find a lot of times when
10 the owner may try to put his or her foot down and
11 say: You cannot come back in, we have a vacate
12 order; yet, the, the tenant may, may go around
13 the owner some-, you know; but at that point we,
14 you know, we don't get involved or we cannot get
15 involved in who's allowing the action. We have to
16 get -- we have to go after the person who we
17 think is respo-, who we know to be responsible
18 for maintenance of their property and that is the
19 owner.

20 So, I, I know I can't tell you that one
21 will never be issued to a -- to a tenant. But
22 it's not typically the Department of Building's
23 enforcement; for illegal conversions especially,
24 to go after a tenant. We've never done that, as

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2 far as I know, and I've been in charge of the
3 Administrative Enforcement Unit for eight years.

4 So --

5 ALJ DEL VALLE: This is -- yeah --

6 MR. HYLTON: -- so, it's just the
7 practice to go after the owners.

8 ALJ DEL VALLE: This is Fidel Del Valle.

9 I know that in some instances where there are
10 posted vacate orders, you find essentially
11 squatters moving in and that becomes a serious
12 safety hazard -- issue because then there, there
13 are fire considerations. Very often the premises
14 don't have -- doesn't have electricity or, or
15 water or gas. And in, in the water they'll try to
16 heat the place with some other heating device.
17 And it be-, it becomes a very dangerous
18 situation.

19 MS. KNAUER: I have at least these four
20 questions. Alright, what's the process leading up
21 to the vacate order? I mean, are you --

22 MR. HYLTON: Oh, okay. So, actually --

23 MS. KNAUER: If there is a tenant living
24 there, do they get 30 days to leave? If it's

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2 somebody; how does that work?

3 MR. HYLTON: Okay. Well, we don't always
4 vacate prop-, illegal conversions actually.

5 MS. KNAUER: Okay.

6 MR. HYLTON: And I'm speaking primarily
7 to illegal conversions because that's our
8 primary use of vacate. You know, whereas
9 commercials, you know, it's harder to enforce a
10 vacate. But first you have to identify the
11 violations that -- against the property. Actually
12 the code says that, you know, there must be some
13 violations that are imminently hazardous or
14 dangerous to, to the occupant. But when we move
15 in to vacate, we have to -- the inspector us-,
16 typically will have to determine that there's not
17 been a sufficient light; that there -- that the
18 exposure to carbon monoxide or, or; but also with
19 less than one -- excuse me, not less than, but
20 one -- not more than two egress from the -- from
21 the apartment.

22 And so those -- we put those into
23 consideration before we de- decide whether or not
24 this illegal conversion has to be vacate.

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2 Sometimes illegal conversions are just cited to
3 correct. But when it -- when the threshold; when
4 it -- when it comes down to egress, lighting and,
5 and exposure to carbon monoxide, they usually
6 vacate. So it's, it's, it's, it raises to another
7 level before we issue a vacate order.

8 When, when the order is issued, that is
9 it. You are -- it is immediately issued. It's
10 immediately issued. And so we don't -- we don't
11 extend the time to say: Well, give them, you
12 know, give them another 30 days or a week. We
13 issue a vacate. However, they can request to go
14 back in to remove their stuff under, under
15 supervision. Yes?

16 MS. KNAUER: I, I recognize the, the
17 safety concerns and I fully endorse having high
18 penalties imposed on owners for failure to obey a
19 vacate order. My concern is that individual
20 residents of a building, if the owner lets them
21 back in, in violation of the vacate order; they
22 may not fully understand that what they are doing
23 is violating a vacate order. They might believe
24 that they're actually moving back in legally;

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2 that the owner has corrected the condition.

3 And I think you referred to the illegal
4 hotel conversions and enforcement against
5 individuals. I think we were presented with; we,
6 we were given a presentation by the Special
7 Enforcement Unit concerning that and assured that
8 the, the driving force there was not to enforce
9 against individual apartment tenants. But I'm not
10 sure that that has borne out in practice.

11 MR. HYLTON: A- apartment owners.

12 MS. KNAUER: Sorry?

13 MR. HYLTON: Apartment owners, right?

14 MS. KNAUER: Well, apartment -- either
15 tenants or owners who are renting out a, a place
16 for less than 30 days.

17 MR. HYLTON: Okay, apartment owners --
18 apartment owners.

19 MS. KNAUER: Um, I'm not --

20 MR. HYLTON: The individual apartment
21 owners. So a person who is renting, the tourist
22 that's renting is not --

23 MS. KNAUER: No, no. But it's the -- but
24 you could still be a, a ten-, a long-term tenant.

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2 MR. HYLTON: Oh, I see, I see. Okay,
3 alright.

4 MS. KNAUER: Anyway, so my -- I would
5 propose that the Department consider adopting
6 this penalty for -- that would apply to building
7 owners but a lower penalty that could be imposed
8 on individual building residents. I don't -- I
9 don't feel comfortable voting in favor of this
10 rule as, as it's --

11 MR. HYLTON: I, I hear you. How does
12 that though affect -- diminish the hazard? You
13 know, if an owner -- if an owner -- if an owner
14 allows them or a tenant kind of ignores the --

15 MS. KNAUER: It doesn't -- it doesn't
16 diminish the hazard one bit. It's just that I'm,
17 I'm concerned about imposing very high penalties,
18 especially the default penalty, which can be up
19 to \$24,000, on an individual person who may be
20 reentering an apartment under, under the illusion
21 that they're doing so legally.

22 MR. HYLTON: Right.

23 MS. KNAUER: Which I think is -- which I
24 don't think is an uncommon scenario.

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2 MR. HYLTON: Okay. It's, it's not --
3 it's not fair to use the default penalties
4 because the default penalties are just typically
5 no one answers the partic-, which is they come in
6 and answer to --

7 MS. KNAUER: Which, it's probably more -
8 - which is probably more likely in the case of an
9 individual tenant who may not --

10 MR. HYLTON: Right. But then that would
11 make excuses for a person not to answer too, you
12 know, with the penalty. But in, in essence
13 though, I don't know how I can carve this out for
14 a tenant versus owner when the code just does not
15 --

16 MR. KNAUER: There's no way to do that?

17 MR. HYLTON: I don't see how we could
18 get that passed. An illegal -- I mean, if
19 somebody; we can probably --

20 ALJ DEL VALLE: Well, we can --

21 MR. HYLTON: You know what I mean? I
22 mean, there's nothing that says the owner versus
23 the tenant. So there's no separate sections of
24 law. As we would have to maybe arbitrarily come

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2 in and say: When tenants do -- when a tenant do
3 it, it's this penalty. When an owner does it,
4 it's a different penalty. I think we'd have -- we
5 would need support from the Administrative Code
6 on that.

7 MS. KNAUER: So there's no way to just
8 within the penalty schedule have, have --

9 MR. HYLTON: No, because it'd be
10 arbitrary. I mean, I, you know, I, I think,
11 right? If you -- if you just say; if the code
12 says: You shall not vacate this; you shall not
13 disobey a vacate order. And then we say: Well,
14 when a tenant does it, it's one penalty. When an
15 owner does it, it's a different penalty.

16 MS. KNAUER: Well, I mean, different
17 penalties for, you know, class one, class two,
18 class three.

19 MR. HYLTON: Oh, I see.

20 MS. KNAUER: And that's -- so --

21 MR. HYLTON: I see, you mean making it a
22 class two violation if a tenant does it? I think
23 that would be -- that also; because the
24 definition of a class one is any-, is, is the

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2 actual facts.

3 MS. KNAUER: No, that's not -- that's
4 not -- that wasn't what I was suggesting. What I
5 was just saying was that there are -- there are
6 different penalties. But, I, I don't know if
7 that's because the, the Administrative Code
8 defines class one, class two, class three? So, it
9 doesn't --

10 MR. HYLTON: Yeah, it, it wouldn't.
11 Yeah, the classes wouldn't. Because we already;
12 we're arguing here as the per se class one to
13 disobey a, a vacate order. Same by the way as a
14 stop work order. And if a tenant vacate --
15 disobeys a stop work order, they're going to be
16 charged already \$4,800. So they're -- a stop work
17 order; this is already existing for a stop work
18 order.

19 MS. KNAUER: That's -- I, I see; I
20 personally see that as different.

21 MR. HYLTON: I understand. But the
22 seriousness of the thing is: If, if the Depart-,
23 if there is a -- if there is an order because
24 there's something imminently dangerous about the,

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2 the situation and they're told not to, to either
3 stay out because you're going -- because by
4 staying in you're putting yourself and first
5 responders and everybody else at risk; and, and
6 you continue to do that will- willingly, I think
7 that's -- I think that's, that is the gist of the
8 whole thing. And the high penalty is to prevent
9 you from doing it; not, not to make it more
10 affordable at some point and it will depend on
11 who's doing it. Because they will -- if an owner
12 will come in and argue: Oh, I didn't -- I didn't
13 allow this to happen. The tenant did it just so
14 he can get a lower penalty or qualify for a lower
15 penalty, I think. So I think we, we -- it's the;
16 we don't want to go down that road I don't think.
17 I mean, I can bring this back to the Commissioner
18 but I don't think we would want to go down that
19 road and try and differentiate between owner --
20 who, who did this.

21 But I understand your concern. It's
22 high. But it is a precedent. We charge \$4,800 for
23 three different violations: fail- failure to
24 vacate a stop work order; failure to vacate a --

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2 and now we're proposing, excuse me -- now we're
3 proposing a vacate -- failure to obey a stop work
4 order; and operating a crane in an unsafe manner
5 -- the crane operations. Those are the three
6 charges that we -- that we go this high on
7 because of the hazard that we see for that. And
8 it's strictly to deter that -- those activities.

9 ALJ DEL VALLE: I think we can vote on
10 this proposal and recommend that you take back to
11 your Commissioner our concerns and explore the
12 possibility of having a separate schedule, as, as
13 pointed out by Ms. Knauer.

14 LT. ALBANO: Alright. Dan Albano from
15 the Police Department.

16 ALJ DEL VALLE: Mm-hmm.

17 LT. ALBANO: I just, just want to set
18 something straight for the record, Elizabeth; is
19 that the Police Department doesn't arrest people
20 based on a vacate order. It's based upon, you
21 know, we don't do anything on, on our own
22 initiative. It would -- the Buildings Department
23 would have to come to us and say that they, they
24 tried everything to get this person to comply

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2 with the vacate order. There's still a resident
3 inside and we'd, we'd like to get them out.

4 And I've even turned that request down
5 if the vacate order was issued like sometimes
6 it's a year ago. And now for some reason the
7 Buildings Department wants to get him out now.
8 Well, where's the imminent danger that we're,
9 we're going to make a forcible entry into
10 someone's home? It has to be a dangerous
11 condition and they won't comply with the vacate
12 order. And then we'll, we'll take steps. We don't
13 do it on our own initiative.

14 ALJ DEL VALLE: Is there any other --
15 are there any other questions or further
16 discussion? Is there a motion? Is there anybody
17 voting negative? With two votes in the negative
18 and one abstention, the motion passes. And it
19 will be pub-, excuse me?

20 MR. HYLTON: I will -- I will report
21 back when we have a discussion to see if there's
22 anything we can do to; in rela-, in relation to
23 this particular charge for failure to --

24 ALJ DEL VALLE: Thank you.

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2 MR. HYLTON: Yes, thank you.

3 ALJ DEL VALLE: Did we do -- did we do
4 this stuff?

5 MS. BALSAM: No, we didn't. And this is
6 going to be the Commissioner and Kelly's not
7 here.

8 ALJ DEL VALLE: Shall we skip it?

9 MS. BALSAM: No, don't skip. You can do
10 it now.

11 ALJ DEL VALLE: Oh, okay. We have a
12 request for a pre-sealing order by Kelly Corso.

13 MS. BALSAM: No, it's Peter Schulman.

14 ALJ DEL VALLE: Peter -- I'm sorry.

15 MR. PETER SCHULMAN, ESQ., DEPUTY
16 SUPERVISING ATTORNEY, APPEALS, ECB: Good
17 morning. Peter Schulman, [unintelligible]
18 [01:02:07] Director of ECB. And this month we
19 have 26 total pre-sealing reports for the Board.
20 But three of them pertain to the failure of
21 boilers and burners at the premises to comply
22 with the air code. In the first, the hearing
23 officer recommended no further action is
24 necessary because the respondent came into

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2 compliance.

3 In the second two of those, the hearing
4 officer recommended that the cease and desist
5 proceedings be discontinued; in one of those
6 because the C&D mistakenly referred to the
7 address as being in Queens when it actually was
8 in the Bronx. And the second, because the
9 respondent established that it sold the premises
10 prior to issuance of the NOV. So those are the
11 three boiler-burner pre-sealing ones. I don't
12 know if you want to vote on those first and then
13 we'll get to the other one?

14 ALJ DEL VALLE: Sure. Is there a motion?
15 Are there any questions first of all? Is there a
16 motion? It's unanimous.

17 MR. PECUNIES: I abstain in
18 [unintelligible] [01:03:13].

19 MR. SCHULMAN: The remaining --

20 ALJ DEL VALLE: DEP abstained. I'm
21 sorry.

22 MR. SCHULMAN: The remaining 23 pre-
23 sealing reports pertain to the respondent's
24 failure to install backflow prevention devices;

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2 21 of those, the hearing officer recommended no
3 further action because respondent came into
4 compliance by installing the required backflow
5 prevention devices. In the last two of those, the
6 hearing officer recommended no further action or
7 that the C&D be discontinued because the
8 premises; that upon further inspection by DEP, it
9 was determined that the premises no longer
10 required backflow prevention devices. So that's
11 it for the last 23 and that's all of them.

12 ALJ DEL VALLE: That's all of them?

13 MR. SCHULMAN: That's all of them.

14 ALJ DEL VALLE: Do we have to make the
15 vote on this?

16 MS. BALSAM: On the motion, yeah.

17 ALJ DEL VALLE: Any discussion?
18 Questions? Is there a motion? And it is unanimous
19 with DEP abstaining.

20 MS. PECUNIES: Correct.

21 ALJ DEL VALLE: That's Mr. Pecunies. Am
22 I pronouncing that correct?

23 MR. PECUNIES: Excuse me?

24 ALJ DEL VALLE: Am I pronouncing your

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2 name right?

3 PECUNIES: Yes.

4 ALJ DEL VALLE: We will now move to
5 Executive Session. And I'll ask non-staff, non-
6 DEP -- or the ECB personnel to kindly leave. And
7 we'll reopen to the public in a few minutes.

8 [OFF THE RECORD]

9 [END Part1 ECB Board Meeting Jan.mp3]

10 [START Part2 ECB Board Meeting Jan.mp3]

11 [ON THE RECORD]

12 ALJ DEL VALLE: Are we back on the
13 record?

14 MS. BALSAM: Yes.

15 MR. MACRON: Yes, sir.

16 ALJ DEL VALLE: Is there a motion to
17 accept the Appeals recommendation? It's
18 unanimous. Is there a motion to adjourn? We are
19 adjourned. And I'd like to remind everybody who
20 hasn't signed in to sign in please. Thank you
21 very much.

22 (The public hearing concluded at
23 approximately 10:45 A.M.)

24

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Board Meeting Environmental Control Board on January 29, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: January 30, 2015

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